



[Home](#) » [Under Secretary for Democracy and Global Affairs](#) » [Bureau of Democracy, Human Rights, and Labor](#) » [Releases](#) » [Human Rights Reports](#) » [2009 Country Reports on Human Rights Practices](#) » [East Asia and the Pacific](#) » [Tuvalu](#)

2009 Human Rights Report: Tuvalu

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

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Tuvalu is a parliamentary democracy with a population of approximately 10,000. In 2006 citizens elected a 15-member unicameral Parliament in generally free and fair elections. There were no formal political parties. Following the elections a loose coalition of eight members of Parliament formed a new government and selected Apisai Ielemia as prime minister. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens, and the law and judiciary generally provide effective means of addressing individual instances of abuse. However, there were a few areas of concern. Traditional customs and social patterns led to and perpetuated religious and social discrimination, including discrimination against women.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices, and there were no reports that government officials employed them.

Local hereditary elders exercise discretionary traditional punishment and disciplinary authority. This includes the right to inflict corporal punishment for infringement of customary rules, which can be at odds with national law. However, during the year there were no reports of such corporal punishment.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards, and the government permitted visits by local church representatives. The government permits monitoring visits by international human rights observers, but there were no such visits during the year.

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d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

Civilian authorities maintained effective control over the national police service, and the government has effective mechanisms to investigate and punish police abuse and corruption. There were no reports of impunity involving the security forces during the year.

Arrest Procedures and Treatment While in Detention

The law permits arrests without warrants if a police officer witnesses the commission of an unlawful act or has "reasonable suspicion" that an offense is about to be committed. Police estimated that the majority of arrests were of this type. Police may hold a person arrested without a warrant for no more than 24 hours without a hearing before a magistrate. When a court issues an arrest warrant, the maximum permissible detention time before a hearing must be held is stated on the warrant and normally is one to two weeks.

There was a functioning system of bail. Arrested persons generally were promptly informed of the charges against them, although bureaucratic delays sometimes occurred because persons charged with serious offenses to be tried in the High Court must wait for its semiannual meeting. Detainees had prompt access to family members. A "people's lawyer" (public defender) was available free of charge for arrested persons and other legal advice. Persons on the outer islands did not have ready access to legal services, however, as the people's lawyer was based on the main island of Funafuti and only infrequently traveled to the outer islands. Nongovernmental organizations (NGOs) urged the government to provide sufficient personnel and financial resources to the Office of the People's Lawyer to enable it to meet the needs of the public effectively on both Funafuti and the outer islands. The country had no attorneys in private practice.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence in practice.

Trial Procedures

The law provides for the right to a fair trial, and an independent judiciary generally enforced this right. Procedural safeguards are based on British common law. The law provides for a presumption of innocence. Judges conduct trials and render verdicts; there are no juries. Trials are public and defendants have the right to be present. Defendants have the right to be informed of the nature of the offenses with which they are charged, to consult with an attorney in a timely manner, and to have access to an independent public defender. They also have the right to confront witnesses, present evidence, and appeal convictions. Since 2008 the number of backlogged cases awaiting trial both on the main island of Funafuti and the outer islands decreased significantly.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters. Individuals may bring lawsuits seeking damages for, or cessation of, human rights violations.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press. In previous years the government occasionally limited these rights in practice, but there were no reports of such government limitations during the year.

Citizens are free to criticize the government publicly or privately without reprisal, and there were no reports that the government sought to impede such criticism.

There were no private, independent media. The government's Media Department controlled the country's sole radio station.

There was no domestic television broadcast. Those few who could afford it received international satellite television broadcasts. DVDs and videotapes circulated freely and were widely available. International media were allowed to operate freely.

Internet Freedom

There were no government restrictions on access to the Internet and no reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. However, the relative lack of telecommunications infrastructure, especially beyond the capital island of Funafuti, and relatively high costs restricted public access to and use of the Internet.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice. The constitution also states that the laws are to be based on Christian principles. Despite official tolerance, religious homogeneity (more than 90 percent of citizens are members of the Church of Tuvalu, a Congregationalist denomination) and traditional structures of communal life posed practical barriers to the introduction and spread of other religious beliefs.

In September the Court of Appeal met to review the Tuvalu Brethren Church's 2006 appeal of the High Court's 2005 ruling permitting local traditional authorities to restrict the constitutional right to religious freedom in defense of traditional mores. In its decision the court set aside the High Court ruling and declared unconstitutional a 2003 resolution of the Nanumanga Island council banning the Brethren Church.

The constitution provides that no person attending a place of education shall be required to receive religious instruction or participate in other religious activities without his or her consent. Officials of Jehovah's Witnesses confirmed that during the year the government granted students at Motufoua Secondary School who were members of Jehovah's Witnesses exemption from religious instruction at school. The church had previously reported cases in which school officials required such students to attend religious instruction despite their requests to be excused.

Societal Abuses and Discrimination

There was a degree of societal intolerance toward religions other than established Christian denominations, particularly on the outer islands. There was no known Jewish community, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The occasion did not arise during the year for government cooperation with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

The constitution prohibits forced exile, and the government did not practice it.

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Its laws provide for the granting of asylum or refugee status, but the government has not established a system for providing protection to refugees. During the year there were no applications for refugee resettlement, asylum, or protection against expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

The 2006 general elections were generally free and fair. An eight-member majority of the newly elected Parliament selected Apisai Ielemia as prime minister.

There were no formal political parties; instead, Parliament tended to divide between an ad hoc faction with at least the necessary eight votes to form a government and an informal opposition faction.

Participation by women in government and politics was limited, largely due to traditional perceptions of women's role in society. There were no women in the 15-member Parliament. One woman served as a cabinet minister.

There were no members of minorities in the Parliament or the cabinet.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for some forms of official corruption, such as theft; however, laws against corruption are weak. There was widespread public perception that government transparency and accountability needed further improvement. While the government enacted a "leadership code" in 2007 that outlines standards of conduct for government officials, as of year's end it was not implemented. Concerns remained that public funds sometimes were mismanaged and that government officials sometimes benefited unfairly from their positions, particularly in regard to overseas travel and related payments and benefits. During the year the government continued to ban most overseas travel by officials unless funded from abroad.

The law provides for annual, public ministerial reports, but publication was spotty and often nonexistent. The Auditor General's Office, responsible for providing government oversight, was underfunded and lacked serious parliamentary support. Public officials were not subject to financial disclosure laws.

In March, together with Nauru and Kiribati, the country signed a memorandum of understanding to establish a subregional audit support program, a new initiative of the Pacific Association of Supreme Audit Institutions, with the goal of enabling public accounts to be audited to uniformly high standards in a timely manner.

There is no law providing for public access to government information. In practice the government was somewhat cooperative in responding to individual requests for such information.

Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

There were no local NGOs focused entirely on human rights, although there were no known barriers to their establishment. Some human rights advocates, such as the Tuvalu National Council of Women, operated under the auspices of the Tuvalu Association of Nongovernmental Organizations, which was composed primarily of religious organizations. The people's lawyer monitored sentencing, equality before the law, and human rights issues in general. This institution, which at times was critical of the government, nonetheless was supported by the government, which frequently sought its advice. The few other local organizations involved in human rights issues generally operated without government restriction, investigating and publishing their findings on human rights cases. However, opportunities to publicize such information locally were severely limited due to the lack of local print and electronic media. Government officials were somewhat cooperative and responsive to local organizations' views.

The government cooperated with international governmental organizations and permitted visits by UN representatives or other organizations, but there were no such visits during the year.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination on the basis of race, color, and place of origin, and the government generally enforced these prohibitions. In 2005 the High Court stated that the omission of gender as a basis of discrimination in the constitution was deliberate, and there is no constitutional protection against gender discrimination.

Women

A 2007 demographic and health survey conducted by the Secretariat of the Pacific Community reported that approximately 47 percent of the women surveyed had experienced some type of violence in their lifetime. Nine percent experienced sexual violence, 25 percent experienced other physical violence, and a further 12 percent were victims of both sexual and other physical violence.

Rape is a crime punishable by a minimum sentence of five years' imprisonment, but spousal rape is not included in the legal definition of this offense. There were both arrests and trials for rape-related offenses during the year.

The law does not specifically address domestic violence, and the issue was not a source of broad societal debate. Acts of domestic violence were prosecuted under the assault provisions of the penal code. The maximum penalty for common assault is six months' imprisonment, and for assault with actual bodily harm, it is five years' imprisonment. Human rights observers criticized the police for seeking to address violence against women using traditional and customary methods of reconciliation rather than criminal prosecution. There were no shelters or hotlines for abused women.

Prostitution is illegal and was not a problem. The law does not specifically prohibit sexual harassment but prohibits indecent behavior, which includes lewd touching. Sexual harassment was not a significant problem.

Couples and individuals have the right to decide freely the number, spacing, and timing of their children, and have the means and information to do so free from discrimination, coercion, and violence. The nongovernmental Tuvalu Family Health Association provided information and education about, and access to, contraception. Government hospitals also offered the same services and provided free prenatal, obstetric, and postnatal care. Women and men received equal access to diagnosis and treatment of sexually transmitted infections, including HIV.

There remained some areas in which the law contributes to an unequal status for women, such as land inheritance rights and child custody rights.

In practice women held a subordinate societal position, constrained both by law in some instances and by traditional customary practices. Nonetheless, women increasingly held positions in the health and education sectors, headed a number of NGOs, and were more active politically. In the wage economy, men held most higher-paying positions, while women held the majority of lower-paying clerical and retail positions.

Children

Citizenship is derived through one's parents.

The government did not compile child abuse statistics, and there were no reported cases of child abuse or child prostitution during the year. However, anecdotal evidence indicated that child abuse occurred. Corporal punishment, in the form of strokes of a cane or paddle, was common in schools.

The age of consent for sexual relations is 15. Sexual relations with a girl below age 13 is punishable by up to life imprisonment. Sexual relations with a girl above age 12 but under age 15 is punishable by up to five years' imprisonment. The victim's consent is irrelevant under both these provisions; however, in the latter case, reasonable belief that the victim was 15 or older is a permissible defense. There is no specific provision of law pertaining to child pornography.

Trafficking in Persons

The law does not prohibit all forms of trafficking in persons, but there were no reports that persons were trafficked to, from, through, or within the country. The law specifically prohibits procurement of persons within and across borders for purposes of prostitution.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/q/tip.

Persons with Disabilities

The law does not prohibit discrimination on the basis of physical or mental disability. There were no known reports of discrimination against persons with disabilities in employment, education, or the provision of other state services. However, supplementary state services to address the special needs of persons with disabilities were very limited. There

are no mandated building accessibility provisions for persons with disabilities. Although the one multistory government building had elevators, they were not operational, and there were no elevators in other multistory buildings.

There was no government agency with specific responsibility for protecting the rights of persons with disabilities.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

Sodomy and acts of "gross indecency between males" are illegal, with maximum penalties of 14 and seven years' imprisonment respectively, but there were no reports of prosecutions directed against lesbian, gay, bisexual, or transgender persons under these provisions during the year. Societal discrimination against persons based on sexual orientation was not common, and there were no reports of such discrimination during the year.

Other Societal Violence or Discrimination

Persons with HIV/AIDS faced some societal discrimination. Local agents of foreign companies that hired seafarers from Tuvalu to work abroad barred persons with HIV/AIDS from employment. The government and NGOs cooperated to inform the public about HIV/AIDS and to counter discrimination. There were no reports of violence against persons based on HIV/AIDS status.

Section 7 Worker Rights

a. The Right of Association

The law provides for the right of association. Workers were free to organize unions and choose their own labor representatives, but most of the population lacked permanent employment and was engaged in subsistence activity.

Public-sector employees, such as civil servants, teachers, and nurses, were members of professional associations that did not have union status. The only registered trade union, the Tuvalu Seamen's Union, had approximately 1,350 members, approximately 300 of whom worked on foreign merchant vessels.

The law provides for the right to strike, but no strike has ever taken place.

b. The Right to Organize and Bargain Collectively

The law provides for conciliation, arbitration, and settlement procedures in cases of labor disputes. Although there are provisions for collective bargaining, in practice the few individual private-sector employers set their own wage scales. Both the private and public sectors generally used nonconfrontational deliberations to resolve labor disputes.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children, and there were no reports that such practices occurred.

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits children under age 14 from working in the formal labor market. The law also prohibits children under age 15 from industrial employment or work on any ship and stipulates that children under age 18 are not allowed to enter into formal contracts, including work contracts. The government effectively enforced these prohibitions. Children rarely were employed outside the traditional economy of subsistence farming and fishing.

e. Acceptable Conditions of Work

The minimum wage, set by the Ministry of Foreign Affairs and Labor, was barely sufficient to allow a worker and family in the wage economy to maintain a decent standard of living. The biweekly minimum wage in the public sector was A\$130 (approximately \$116). Private-sector wages were typically somewhat lower than the government's minimum wage rate.

The Ministry of Foreign Affairs and Labor may specify the days and hours of work for workers in various industries. The law sets the workday at eight hours. However, very few persons worked in the formal economy, which was primarily on the main island, and the government did not have occasion to enforce the law during the year.

The law provides for rudimentary health and safety standards. It requires employers to provide an adequate potable water supply, basic sanitary facilities, and medical care. The Ministry of Foreign Affairs and Labor is responsible for the enforcement of these regulations, but in practice it provided minimal enforcement. Workers can remove themselves from work situations that endanger health or safety without jeopardy to their jobs; the law also protects legal foreign workers.