

ANNEX TO NEW ZEALAND REPORT – TOKELAU

This Annex was prepared by the New Zealand Government in consultation with the Government of Tokelau.

Tokelau consists of three atolls: Atafu, Nukunonu and Fakaofu. The atolls are separated from each other by 60–100km of open ocean and are located about 500km to the north of Samoa. The total land area of Tokelau is 12 square kilometres and the population is approximately 1400. In addition to Tokelauan, English and Samoan are widely spoken.

I. Constitutional Status and Government

Tokelau is a non-self-governing territory and has been administered by New Zealand since 1926. Tokelau is considered “part of New Zealand” under the Tokelau Act 1948 (NZ) and Tokelauans are New Zealand citizens.

In practice, however, Tokelau exercises a substantial degree of self-government. In accordance with obligations under the UN Charter, over the past three decades New Zealand has progressively devolved administrative powers to Tokelau and supported the development of its governance institutions. For example, in 1986 a separate court system was established; in 1993 public service responsibilities were transferred; and, in 1996 Tokelau’s national decision-making body, the *General Fono*, was given the power to make national laws. Tokelau’s current governance arrangements reflect a unique combination of local traditions and models from abroad.

In the mid-2000s Tokelau held two referenda on becoming self-governing in free association with New Zealand. The first vote was held in February 2006 but narrowly missed the two-thirds majority required for a change of status, as did a second vote held in 2007. However, the closeness of the results reflected a considerable desire by the Tokelauan people to achieve greater self-governance.

Since the self-government referenda Tokelau has put questions about its constitutional status on hold. It remains a territory of New Zealand, though one which exercises a substantial degree of self-government. The Administrator of Tokelau takes a largely advisory role rather than getting involved in day-to-day government, and at Tokelau’s behest, New Zealand’s focus has turned to improving the quality of life on the atolls.

The current formal statement of the relationship between Tokelau and New Zealand is the 2003 ‘*Joint Statement of the Principles of Partnership*’ which sets out the medium- to long-term context in which work can be carried forward on Tokelau’s constitutional and other development. The *Principles of Partnership* affirm the partners’ shared values of human rights, commitment to good governance and respect for the rule of law, and notes the responsibilities of both parties, including the importance of working together in a partnership based on trust, openness, respect and mutual accountability.

The *Principles of Partnership* also outlines New Zealand’s obligations to provide economic and administrative assistance to Tokelau, which, because of its isolation, small size and tiny population, faces considerable development challenges.

New Zealand provides around 40-50% of the budget for the Government of Tokelau, and its development assistance is focusing on supporting Tokelau to improve core public services (education, health, transport, telecommunications), build its climate change resilience, and strengthen its capacity and confidence to effectively self-govern.

A number of human rights instruments apply in Tokelau through New Zealand treaty action, including the International Covenant on Civil and Political Rights, and its two Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; International Convention on the Elimination of Racial Discrimination; and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

With New Zealand’s support, Tokelau participates in certain regional organisations in its own right, and is an associate member of a number of other organisations including the Pacific Islands Forum, the Secretariat of the Pacific Community, the South Pacific Regional Environmental Programme, the Forum Fisheries Agency and the Council of the University of the South Pacific. Tokelau is also an associate member of the World Health Organisation and UN Educational Scientific and Cultural Organisation.

II. Promotion and Protection of Human Rights

The Constitution of Tokelau 2007 provides that the individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights and reflected in the International Covenant on Civil and Political Rights. Those rights are to be exercised with proper regard to the rights of other individuals, and to the community to which the

individual belongs. A person may apply to the Council for the On-going Government of Tokelau for protection of any of their rights.

Women

Tokelau has a National Policy for Women and National Plan of Action that assists the Government's response to women's development issues. Women are employed throughout the public service, including in leadership roles, and participate in both national and village governance institutions. In the *General Fono*, three of the twenty one delegates are women, while in the villages women are part of village councils (*Taupulega*) and represent their extended families as family heads (family *matai*). Tokelau's women's groups (*fatupaepae*) also play an important role in representing women's interests.

Employment

The public service is the major employer on each of the three atolls as private sector activity is limited. The Public Service Rules 2004 and Public Services Human Resources Manual provide for the protection of certain labour rights. For example, there are processes to ensure that appointments are made on merit. A new Public Service Remuneration Framework endorsed by the *General Fono* in 2016 is now in place.

Within the public sector, there is only provision for a limited form of "maternity leave" and there have been requests from Tokelauans for this to be amended. This will be considered when the updated Human Resources Manual is submitted for endorsement in the last *General Fono* session of 2018.

The Tokelau Public Service Code of Conduct is a key document that governs the performance and conduct of its workforce. All public servants regardless of their gender, religion, nationality or political opinion are guided by this document. They are expected to read and adhere to the provisions in the Code of Conduct, and workshops are run to ensure it is understood and applied. The Tokelau Public Service does not tolerate or accept any form of discrimination amongst public servants, and complaints of discrimination have never been received.

Education

Tokelau children and young people have access to free education. Primary, senior secondary and foundation tertiary education is provided on each atoll. Ensuring the ongoing quality of education remains a challenge because of Tokelau's remoteness, small population and difficulties around recruiting and retaining trained teaching staff. Tokelau has started to see improvements in educational outcomes, with its 2016 literacy and numeracy assessment results showing significant improvements in Year 6.

Health

Tokelau is committed to quality health services and education facilities for its people. Hospital facilities are being upgraded and increasing emphasis is being given to primary health care efforts.

Rates of non-communicable diseases and lifestyle-related illnesses are high and remain the main health challenge in Tokelau. For example, 25% of the population has elevated blood pressure; 24% has diabetes; and 41% have high cholesterol. Tokelau is working to address these issues, including through awareness-raising and educational activities such as the Summit on Non-Communicable Diseases, which it held in 2017.

Fair Trial

Tokelau has its own criminal code set out in the Crimes, Procedure and Evidence Rules 2003. Tokelau's 2008 Handbook for the Law Commissioners of Tokelau, includes the main human rights documents of relevance to Tokelau (Children and Young People and Persons with Disabilities). Police and Law Commissioners (local lay judges with limited jurisdiction) are receiving ongoing training to enhance their familiarity with these documents and strengthen the justice system within Tokelau.

III. Identification of achievements, best practices, challenges and constraints

In 2003 the *General Fono* outlined *Human Rights Rules* for Tokelau, which were incorporated as Article 16 of Tokelau's Constitution endorsed by the *General Fono* following the second referendum in 2007. The *Principles of Partnership* between Tokelau and New Zealand signed in 2003 provide a platform for Tokelau's constitutional development.

As noted above, Tokelau faces a range of challenges to fully realising human rights in the areas of health and education, including from the lack of economies of scale inherent in small, isolated atoll communities. Human resource constraints are an ongoing issue and Tokelau faces the challenge of retaining skilled teachers and medical practitioners on its atolls.

Tokelau also faces a fundamental question regarding the interaction between law and custom, particularly of the challenge inherent in reconciling socially known codes based in oral traditions with written law. A similar question involves reconciling the imported notion of individuality, as it is promoted in human rights principles, with the Tokelauan emphasis on collectively and community.

V. Capacity Building

Core capacity needs in Tokelau include attracting and retaining trained teachers and medical personnel, improving core infrastructure for the people of Tokelau, and strengthening governance. New Zealand remains committed to developing capacity in all these areas, which comprise a key part of its development assistance to Tokelau.