

**ANNEX TO NATIONAL REPORT SUBMITTED IN ACCORDANCE
WITH PARAGRAPH 15(a) OF THE ANNEX
TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

New Zealand

TOKELAU

Methodology/Consultation Process

The first draft of this report was prepared by New Zealand in consultation with the Government of Tokelau. The draft was then made publicly available for interested groups to comment on, including the NZHRC.

Background information on Tokelau

Tokelau consists of three atolls Atafu, Nukunonu and Fakaofo (the former two with a single village, the latter with two). The atolls are separated from each other by 60–100 km of open ocean and are located about 500 km to the north of Samoa. The total land area of Tokelau is 12 sq. km, and the population is 1466 (2006 Census). In addition to Tokelauan, English and Samoan are widely spoken on the atolls.

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” for certain purposes under the Tokelau Act 1948 (NZ) and Tokelauans are New Zealand citizens. In practice Tokelau remains substantially self-governing. The Tokelau General Fono is the national legislative and executive body. When the General Fono is not in session the Council for the Ongoing Government of Tokelau becomes the executive Government.

Tokelau has its own courts. The Village Court is administered by a Law Commissioner of each village. Jurisdictions of the Law Commissioners are limited. The Law Commissioners have power only in respect of offences punishable by a fine (of any amount) or a term of imprisonment of less than one year. The maximum sentence that a Commissioner can impose is \$150 fine. Serious offences are referred to the High Court of New Zealand.

In 2003, the Governments of New Zealand and Tokelau signed the *Joint Statement on 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 partners’ shared values of human rights, commitment to good governance and respect for the rule of law.

Tokelau and the International Community

A number of human rights instruments apply in Tokelau through New Zealand treaty action, including ICCPR and its two Optional Protocols; ICESCR; CEDAW; ICERD; and CAT.

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.

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 Ongoing Government for protection of any of their rights.

Women

Tokelau has a draft *National Policy for Women and National Plan of Action* that will assist the Government's response to women's development issues. Tokelau's women's groups (*Fatupaepae*) are currently involved in implementing the Government's Project to *Stop Violence against Women and Young Girls*. This involves raising awareness among women of their rights under the law as well as suggestions for amendments to Tokelauan laws as they affect women.

Employment, Education and Health

The Public Service is a major employment provider. The Public Service Rules 2004 and Public Services Human Resources Manual provide for the protection of certain labour rights, for example, appointments are made on merit, salary scales relate to jobs, not people, and paid maternity leave is available.

Literacy levels in Tokelau are high. There is 100% access to education up to sixteen years of age, and senior secondary and foundation tertiary education is provided on each atoll. Ensuring the ongoing quality of education remains a challenge.

Tokelau has reaffirmed its commitment to quality health services and education facilities for its people. Schools and hospital facilities are being upgraded and increasing emphasis is being given to primary health care efforts.

Fair Trial

Tokelau has its own criminal code set out in the Crimes, Procedure and Evidence Rules 2003. The Rules are consistent with Tokelau's human rights obligations. Tokelau's

2008 *Handbook for the Law Commissioners of Tokelau*, includes the main human rights documents of relevance to Tokelau, including Children and Young People and Persons with Disabilities.

Identification of achievements, best practices, challenges and constraints

Achievements and Best Practices

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.

Challenges and Constraints

Tokelau faces a range of challenges to fully realising human rights in the areas of health and education. Shortcomings in the health system include constraints on resources and the diseconomies of scale inherent in very small atoll communities. Health and education infrastructure, which continues to bear the brunt of the harsh and exposed environment, is being upgraded through a major infrastructure development programme funded by NZAID. Human resource constraints are also an ongoing issue and Tokelau faces the challenge of retaining skilled teachers and medical practitioners on its atolls.

Isolation is a major challenge for Tokelauans in realising human rights. There are no air services to and from the atolls and shipping services remain limited. They are being improved through a substantial, long-term shipping project in which a purpose built ship, suited to the conditions, will significantly improve transportation services to Tokelau from the end of 2010.

Tokelau faces a core question regarding the interaction between law and custom, and seeks understanding of its situation, particularly of the challenge inherent in reconciling socially known codes based in oral traditions and written law of the Western conception. A similar question involves reconciling the imported notion of individuality, as it is promoted in Human Rights principles, with the Tokelauan notion of community, which is held in high regard in Tokelauan society.

Key Priorities

The General Fono has identified health, education, economic development and shipping as priority areas for development. Self-determination referenda held in February 2006 and October 2007 on the issue of a possible change of status from that of territory to self-Government in free association with New Zealand did not reach the two-thirds majority set by the General Fono for a change of status. As a consequence of the outcome of these referenda Tokelau's leaders have decided in the immediate future to focus their efforts on ensuring adequate infrastructure and services are in place on each

atoll before any further consideration is given to the issue of self-determination. Tokelau continues to make progress in strengthening the governance and administrative capability of the public service, including the *Taupulega (village councils)*.

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 increasing capacity in the public service to deliver good governance at village and national level.