

TOKELAU

A HISTORY OF GOVERNMENT

The constitutional history and legal development of
Tokelau

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Tokelau: A History of Government

PREFACE

This book gives an overview of the constitutional history and legal development of Tokelau from the beginning of colonial times to the present. It traces the constitutional legal developments of Tokelau from the times of the British protectorate, to a United Kingdom colony, to a United Kingdom dependency, to a New Zealand territory administered by New Zealand government departments, to a New Zealand territory with extensive self-governing powers. Tokelau's constitutional history in this book is addressed under four headings:

Western Pacific High Commission establishment (1877 – 1889)

British Protectorate and Colony (1889 – 1926)

New Zealand Administration (1926 – 1993)

Self-government within New Zealand (1994 –)

The constitutional history of Tokelau has been largely executive driven and that is still the dominant characteristic of the constitution of Tokelau. To the extent that the constitution has been by the people of Tokelau, that is relatively recent.

The law has always recognised a village law-making power and a village judiciary as well as external authorities. The internal self-governing powers are now, in the 21st century, the strongest they have ever been: The external lawmaking is in abeyance and the external judiciary is not used.

The aim of this book is to record, in an accessible form, information on the constitutional laws of Tokelau from the

late-19th century to 2008. Its role is to supplement the studies of Tokelau traditional governance with a study of the features of the constitutional systems introduced for Tokelau by the various powers that have administered Tokelau.

This book is usefully read against the background of *Ko na fakamatalaga tubia a ni Papalagi e uiga ki Tokelau 1765 – 1925 Papalagi documents on Tokelau*, *Tokelau - A Collection of Documents and References relating to Constitutional Development* (3rd-5th editions), and against the anthropological background of *Ethnology of Tokelau Islands*, and the various anthropological publications by Antony Hooper and Judith Huntsman. Part of the modern constitutional setting is the Joint Statement on the Principles of Partnership, *Tulafono Fakavae a Tokelau / Constitution of Tokelau*, and the Arrangement between New Zealand and Tokelau on Economic Support to Tokelau 2008 – 2011.



INTRODUCTION

Tokelau refers politically to the three Pacific atolls of Atafu, Nukunonu, and Fakaofu which are part of New Zealand. The islands were also severally known in the 19th century as the Duke of York, Duke of Clarence, and D'Wolf or Bowditch. The three are identified in laws variously as 'the Union Islands' (from 1884 to 1946), 'the Union Group',¹ and as the 'Tokelau Islands' (from 1946 to 1976).² The name 'Tokelau' has been used officially since 1976.³ The fourth island in the archipelago, Olohega (or Swains Island), has been part of American Samoa since 1925.⁴ There are strong historical and cultural links between Olohega and the three atolls of present day Tokelau.

The abiding feature of Tokelau government is the exercise of *pule* (power) by the village authorities in accordance with tradition. This is the most important feature of Tokelau government. It follows a substantially unwritten and oral tradition.

The constitutional history of Tokelau began necessarily with human settlement in Tokelau by the people of Tokelau at least 1000 years ago.

¹ In WPHC Regulations of 1907, 1909 and 1912.

² Tokelau Nomenclature Ordinance 1946.

³ Tokelau Amendment Act 1976.

⁴ United States Code, Title 48, section 1662: Mar. 4, 1925, ch. 563, 43 Stat. 1357.

Traditional government

Traditionally, Samoa, the Cook Islands, and Tuvalu have all been described as 'homelands' by the people of Tokelau. The historical evidence available at the time of first European contact with the islands of Tokelau indicates a system of village organisation with the communities organised as a feudal domain dominated by the ruler of Fakaofu.

This traditional system was that encountered by the first Europeans and it was subject to a number of challenges during the late 19th century and early 20th century by epidemic, by the depredations of the Peruvian slave traders, by the Christianising influence of the Roman Catholic and Protestant missionaries, and by the presence from 1889 of the United Kingdom as protector and later as a colonising power.

Since 1889, the external or international aspect of Tokelau government has been dealt with by a variety of non-Tokelau mechanisms.

Rarely did the British authorities or the New Zealand authorities which followed them, create or impose structures that had any significant effect on the management of village affairs. To a large extent, the colonial powers sought to advance their governance purposes by building on the existing village structures. The law record, in its use of terminology and languages, indicates that the colonial powers had some knowledge of the laws and traditions of the Gilbert and Ellice Islands (now Kiribati and Tuvalu) and of Samoa, but rather less of the islands of Tokelau.

There is no evidence of active involvement by external authorities in the government of Tokelau at any time. Except for a brief period from 1910-1914, there has never been any external government official resident in Tokelau. There is however evidence of appeal by the authorities of Tokelau to external authorities to assist them in resolving problems.

A new element of indirect control has come in the late 20th century through the allocation of economic assistance by the Government of New Zealand.

Laws

The impact of externally generated laws on Tokelau has been minimal. The WPHC establishment period (1877-1889) mentioned the Union Islands (as Tokelau was then externally known) in its laws but these focused on regulating the conduct of British subjects in areas not under British sovereignty. The Protectorate period (1889-1916) was principally just that, with the British laws directed primarily at British citizens and British ships and, sometimes, to foreign nationals.

In the British colony period (1916-1926), Tokelau became subject to the small body of legislation of the Gilbert and Ellice Islands Colony. The law of most relevance from that period was the Native Laws Ordinance of 1917. It provided a rudimentary constitutional and criminal law code for each island of Tokelau. It continued in force in Tokelau theoretically as the operative body of criminal law until 1975 and was still in use in Nukunonu till the late 1980s.

The only other law of significance, and it is arguably the most effective imported law in Tokelau, is the system introduced by the British authorities in the early 20th century

for the registration of births, deaths and marriages. Though people in the villages of Tokelau know the customary rules, they are generally unfamiliar with the externally generated laws. The regulations for the registration of births, deaths and marriages are therefore notable because they have a long history of being honoured and, notwithstanding the effects of cyclones, high tides and the tropical climate, the records have managed to be maintained in a reasonably coherent form. The practice of registration was undoubtedly consistent from an early date with church requirements or practices, and in more recent times known to be the basis for possible material benefits such as the ready access to a New Zealand passport.

Courts

On the judicial front, traditional village systems have been used almost without exception for the purpose of resolving disputes. Land matters have always been the prerogative of the elders and village authorities. Civil law matters have either not attracted attention or, when they have had the potential for being seriously disruptive of village life, they have been referred for advice to a colonial officer. There is evidence in the field of divorce that Niue courts were used by Tokelauans. That was very unusual and in fact unconstitutional because the law for it was never brought into force.

On a broad view, Tokelau village government has changed little during the last 100 years. Villages are still controlled by village appointed officials operating under the aegis of the Council of Elders of the village. The titles of some village officers are different and the nature of the village workforce has altered and is in a state of continuing development. Constitutionally, what has changed significantly from the time of European involvement is the external face of

Tokelau. Not only does Tokelau now have a clear international presence but, since 1993 with the establishment of the first national government, that presence is one that the people of Tokelau themselves control. The ‘colonisers’ role vis-à-vis the outside world is in 2008 typically a matter for the national government of Tokelau.



WESTERN PACIFIC HIGH COMMISSION ESTABLISHMENT (1877 – 1889)

Although Tokelau was not under British sovereignty in 1877 it was brought within the ambit of British protection by the Western Pacific Order 1877. This Imperial Order established the post of High Commissioner of the Western Pacific to exercise British jurisdiction in respect of British subjects in the islands of the Western Pacific that were not colonial territories of Britain or foreign states. Early Western Pacific High Commission (WPHC) legislation focused on protecting indigenous communities in their contacts with British subjects.

The introduction of British law to Tokelau is linked to a sad time in its history. During the 1860s Peruvian slave traders visited Tokelau and forcibly removed nearly half of the population, including all the able bodied men. Following the havoc created by the slave ships and black-birding in the Pacific during the late 19th century, the British enacted the Kidnapping Act 1872 (UK), later reformed as the Pacific Islanders Protection Act 1875 (UK). These Acts restricted the ability of British vessels to carry indigenous labourers without a licence from a British Governor or consular officer. The Foreign Jurisdiction Act 1843 (UK) and subsequent amendment Acts made possible the exercise of British policing authority in respect of non-British territories.

The High Commissioner for the Western Pacific exercised jurisdiction over all British subjects in the area of the Western Pacific, including those living in non-British territories

such as Tokelau, all British vessels in the waters of the Western Pacific area, and in some instances, foreigners.

The High Commissioner had full executive power and was responsible to the Secretary of State in London and ultimately to the Sovereign. The High Commissioner could appoint Deputy High Commissioners who were responsible to him for a particular district in the Pacific. The High Commissioner could make Regulations for British subjects to enforce the observation of any treaty with indigenous leaders or authorities for 'securing the maintenance ... of friendly relations between British subjects and those authorities and any persons subject to them'.⁵ The High Commissioner also held the post of 'Governor of Fiji' and was based in Suva.

The High Commissioner's Court was established at the same time and consisted of the High Commissioner, Deputy High Commissioners, and Judicial Commissioners who were also Judges of the Supreme Court of Fiji. Deputy High Commissioners were able to exercise the jurisdiction of the High Commissioner's Court for their particular district. Appeals from the High Commissioner's Court were to the Supreme Court of Fiji. The High Commissioner could appoint court officers to assist with the running of the court as well as British subjects to act as Assessors to assist the Court in its decision-making.

The High Commissioner's Court had jurisdiction in criminal, civil, and admiralty matters. The Court also had procedures for arbitration and for the conciliation of parties. Foreigners could bring proceedings in the Court against British

⁵ Western Pacific Order 1877 (UK), cl 24.

subjects provided they had first received approval from the relevant foreign authority to do so. The Court Rules were determined by the High Commissioner and the Supreme Court.

Governance at the village level in Tokelau was unaffected by the High Commissioner's governance structure. British legislation continued to focus on the protection of indigenous communities from external forces. The Regulations relevant to Tokelau restricted the supply of arms and alcohol by British subjects to Tokelauans.⁶



⁶ Arms Regulations 1884 (WPHC) and Liquor Regulations 1888 (WPHC).

BRITISH ADMINISTRATION (1889 – 1926)

Union Islands Protectorate

Tokelau, then known as the Union Islands, became a British Protectorate with the raising of the Union Jack flag on each of the islands of Atafu, Nukunonu, and Fakaofu in June 1889. Tokelau was by those acts formally brought under the protection of the High Commissioner of the Western Pacific. The declaration as a Protectorate meant that Tokelau came under the WPHC structure established by the Western Pacific Order in Council of 1877. This structure was refined by the Pacific Order in Council 1893.

The WPHC system related largely to regulating British subjects. The High Commissioner's Court exercised civil and criminal jurisdiction in accordance with all the law of England for the time being in force. The High Commissioner could make Regulations for various purposes including to ensure the observance of any treaty with an indigenous community or of any customary laws.

During the Protectorate period the principal Regulations enacted by the High Commissioner for Tokelau were: the Arms Regulation 1893; the Liquor Regulation 1893; the Births, Deaths and Marriages of Foreigners Registration Regulation 1896; the Native Contracts Regulation 1896 (enabled a Tokelauan who was a party to a contract to take recovery action against a non-Tokelauan contract party in the High Commissioner's Court and for a non-indigenous contract party

to take recovery action against an indigenous contract party for contracts relating to vessel repairs); the Small Islands Native Lands Regulation 1896 (prohibited alienation of land of the Union Group to non-Tokelauan people but, subject to the High Commissioner's approval land could be leased for up to 21 years); the Definition (Native) Regulation 1907; and the Wireless Telegraphy Regulation 1907 (it referred to Tokelau as 'The Union (Tokelau) Islands'). These laws continued the British focus on exercising jurisdiction over its subjects in the Western Pacific.

Law-making for Tokelau

The Gilbert and Ellice (Union Group) Regulation 1909 extended certain Gilbert and Ellice Islands Regulations to Tokelau: the (Merchant Shipping) Fees Regulation 1909; the Distillation (Prohibition) Regulation 1909; the Gilbert and Ellice (Quarantine) Regulation 1909; and the Gilbert and Ellice Islands Protectorate (Consolidation) Regulation 1908 (it dealt with taxation, liquor, land sales and leases, indigenous labour, currency, indigenous passengers, guano, firearms, and immigration).

The Gilbert and Ellice (Union Group) Regulation 1909 also stated that any future Regulation relating to the Gilbert and Ellice Islands Protectorate included the Union or Tokelau Islands. Thus the subsequent Regulations made for the Gilbert and Ellice Islands Protectorate relating to taxation, intestates' estates, plants, leases, shipping fees, customs, radio, opium, quarantine, sale of food, birds, copyright, Commissions of Inquiry, liquor, and company registrations were deemed to be applicable in Tokelau.

The Native Laws of the Union Group 1912 set out a general criminal law and regulatory framework for Tokelau. It was presented in English and Samoan. The position of ‘Vaipuli’ (as spelt in the English) or ‘Faipule’ (in the Samoan) was created alongside that of the ‘Magistrate’ (Fa’amasino) to be ‘responsible for the good order of the island’ which included the powers to appoint policemen, preside over court proceedings, and make regulations ‘for the good of the island’. Both the Magistrate and the Vaipuli were accountable to the ‘British Resident’.

The Native Laws established a court and supporting infrastructure over which the Magistrate presided. The penalty for offences were imprisonment, fine, or flogging. However if the Magistrate and the Vaipuli were satisfied that an offender had limited financial means then any fine imposed could be paid (according to a fixed tariff) with coconuts.

The Gilbert and Ellice (Union Group) Regulation 1909 and the Native Laws of the Union Group 1912 were technically without force in respect of the internal government of Tokelau because Tokelau was still a Protectorate and the Protectorate authorities had no formal law-making power over the people of Tokelau. Further the Gilbert and Ellice Islands were a Protectorate too and did not become a British colony until 1915.

Gilbert and Ellice Islands Colony

Tokelau, as the Union Islands, was included within the boundaries of the Gilbert and Ellice Islands Colony by Order

on 29 February 1916.⁷ The annexation followed the signing of a document by the 'Native Governments of the Union Islands' on 25-26 January 1916. That document, addressed to the King of England, stated that the rulers of Tokelau accepted British sovereignty on the understanding that there would not be any changes to their indigenous laws or land system which, they stated, had remained unaltered by the Protectorate Government.

During the colonial period 1916-1926 laws were enacted by the High Commissioner as Ordinances. Colonial administration was carried out by the District Officer at Funafuti who was responsible to the Resident Commissioner of the Gilbert and Ellice Islands Colony based in Tarawa.

Each island had a Faipule responsible for general government administration.⁸ To assist with those duties there was a Native Magistrate who also supervised law enforcement. A Scribe performed the functions of a village clerk and held all public money. The Resident Commissioner approved the appointment of these island officers based on the recommendation of the District Officer. The Magistrate and Faipule were empowered to make 'Island Regulations' for the general order of their island. These island rules required the approval of the District Officer.

The village government structure of Tokelau ostensibly established in 1912 provided the basis for the Native Laws Ordinance 1917 which was enacted to replace the Native Laws

⁷ Order in Council annexing the Union Islands to the Gilbert and Ellice Islands Colony 1916 (UK).

⁸ The term 'Faipule' is used in the Samoan text. The English text uses the Gilbertese term 'Chief Kaubure'.

1912. Any previous actions taken by the Magistrate and Faipule's court were made valid. The court continued to operate with its main responsibilities being in respect of criminal matters. The sentences imposed were subject to review by the District Officer.

The Native Laws Ordinance 1917 set out a basic constitutional structure and was presented in Gilbertese Samoan, and English. The laws were simple and based on the English Common Law: murder was punishable by death but the sentence could only be carried out with the High Commissioner's authority; other offences were punishable by imprisonment, a fine, or flogging. Marriage was regulated, gambling was prohibited, and the registration of births and deaths was compulsory.



NEW ZEALAND ADMINISTRATION (1926 – 1948: 1949 – 1993)

Administering a British Dependency

New Zealand took over administration of the islands of Atafu, Nukunonu and Fakaofu from the British on 11 February 1926. The Governor-General of New Zealand as the Governor of the Union Islands was made responsible by the British Government for the colonial administration of Tokelau. The Governor-General immediately delegated that power to the Administrator of Western Samoa. The New Zealand Government administration of Tokelau was then conducted from Apia.

This period of administration was one of little official constitutional activity. The New Zealand Government made only five Ordinances for Tokelau. Of the significance for the future was the Port of Entry Ordinance of 1941 by which the port of Apia in Western Samoa became the official port of entry for Tokelau. Tokelau ceased to be a British dependency by effect of the Union Islands (Revocation) Order in Council 1948 (NZ).

New Zealand Territory

Tokelau formally became part of New Zealand on 1 January 1949 by section 3 of the Tokelau Act 1948 (NZ). The New Zealand Parliament and the Governor-General could legislate for Tokelau. The existing law (being custom) pre-1949 legislation, and the Common Law of England continued in force.

In the villages the structure established under the Native Laws 1917 remained. Powers that had been held by the British colonial officers were taken over by New Zealand officials. The Fa'amasino (Native Magistrate) continued to exercise limited civil and criminal jurisdiction but was now appointed by the Administrator of Tokelau.

From 1949 to 1968 the Department of Island Territories was responsible for New Zealand's administration of Tokelau. The role of Administrator was carried out by the High Commissioner of Western Samoa. From 1955 a Tokelau District Officer, who was based in Western Samoa, was appointed to manage the administration of Tokelau.

Western Samoa became an independent state in 1962. The Tokelau Administration office continued to be based in Samoa with the consent of the Samoan Government. However, there was a desire to separate the political role of the High Commissioner to Western Samoa from the colonial role of the Administrator of Tokelau.

In 1972 the Minister of Maori and Island Affairs took over administration of Tokelau. The Secretary of Maori and Island Affairs was by virtue of office the Administrator of Tokelau. The Department of Maori and Island Affairs was made responsible for Tokelau matters.

By the Tokelau Islands Amendment Act 1974, the Islands Division was separated from the Department of Maori Affairs and incorporated into the Ministry of Foreign Affairs which took over responsibility for Tokelau. The Secretary of Foreign Affairs became the Administrator of Tokelau from 1974. An

Official Secretary, based in Samoa, was then appointed to manage the administration of Tokelau from Apia.

Formal legal recognition of the *Taupulega* (Council of Elders) followed soon after through the Village Incorporation Regulations 1986 which acknowledged the *pule* (power) of the *Taupulega* for each village and recognised the law-making powers of each *Taupulega* in its own village.

National government

Up to the 1960s, New Zealand administration was carried out in respect of the three islands separately rather than as a collective. This practice was both historical and practical. Each island had strong local government, and transport, and communications to and between the islands were irregular.

Increasing calls for a combined meeting of the villages to discuss matters relating to Tokelau as a whole resulted, in 1963, in a national policy and planning meeting of representatives from each island. This forerunner to the General Fono was followed by another meeting in 1964 to discuss relations between Tokelau and New Zealand. Arranging the General Fono meetings initially was difficult because of transport. As transport facilities to and between the islands improved and became more frequent so too did the meetings of the General Fono become more frequent to a pattern of twice a year. The General Fono acted as a significant sounding board for the New Zealand Government in respect of policies and the annual budget of Tokelau and development expenditure. The Tokelau Amendment Act 1982 formally recognised the General Fono which at that time consisted of 45 members with equal representation from each island.

There was a significant shift in Tokelau's judicial system in 1986. The High Court of New Zealand was established as the High Court of Tokelau with appeals to the Court of Appeal of New Zealand as the Court of Appeal of Tokelau. The law Commissioner's court was strengthened with a system for appeals to go to the High Court. The lay judges, who had previously been appointed by the Administrator, were now appointed by the Governor-General on the recommendation of the Minister of Foreign Affairs. A retirement age of 68 years for Commissioners was set, and the Faipule would be the default Commissioner in the village. The civil and criminal authority of the Commissioners was increased, and Commissioners would be able to hear civil claims of up to \$1000 and deal with criminal offences punishable by a fine or up to one year imprisonment. The sentencing power of the Commissioners was however limited to a fine of \$150 and imprisonment of 3 months.

A shift away from control by New Zealand government officials was signalled on 3 September 1993 with the delegation of the State Services Commissioner's power to the Tokelau Public Service Commissioners.



SELF-GOVERNMENT WITHIN NEW ZEALAND (1994 – 2008)

Government at village level in Tokelau has always been a matter internal to the village. Therefore the political and constitutional interest of self-government in Tokelau is focused on management at the national level and, at the end of the 20th century, on the taking over by Tokelau authorities of the responsibilities for the external relations of the three islands.

The beginning of this development of national self-government was in the organising of national meetings of representatives of the three villages to discuss matters of common concern. The evolution of the General Fono as a national decision-making body was paralleled by the strengthening and ultimately the formalising of the role of the three Faipule as the Council of Faipule, a standing committee of the General Fono with executive powers. Self-government in respect of the Tokelau Public Service was clearly signalled with the abolition of the post of Official Secretary in 1994 and finally achieved with the establishment of a Tokelau Public Service Commission in 2001.

In 1994, the Administrator delegated ‘all powers exercisable by [the Administrator] in respect of Tokelau under any enactment [for the] administration of the executive government of Tokelau’ to the General Fono, and when it was not in session to the Council of Faipule. This delegation marked the turning point in national self-government.

The General Fono was given a national law-making power in 1996. This was one of the last steps needed to establish a system for full national self-government within Tokelau. Rules made by the General Fono would however be subordinate to Acts of the New Zealand Parliament and Regulations, and to the requirements of international obligations.

The Preamble of the Tokelau Amendment Act 1996 was translated into Tokelauan. This in itself indicates both New Zealand's changing approach to the administration of Tokelau and Tokelau's increasing engagement in external affairs.

Tokelau began to develop its own foreign relations. In 1996 it entered into a Memorandum of Understanding with the Government of Tuvalu which spoke of high-level governmental discussions and official cooperation. Mindful of Tuvalu's diplomatic representation in Suva, it was also agreed that the Governments would 'exchange information ... concerning participation in regional and international activities'. This was followed in 2003 by a Cooperation Arrangement with the Government of Samoa.

In the decade following 1996 the rule-making power of the General Fono was used extensively to clarify and consolidate the law of Tokelau. It was during this period that the last pieces of legislation from the pre-1949 period were repealed and major new pieces of legislation introduced. The two most significant legislative texts were the Crimes, Evidence and Procedure Rules 2003 and the Contract Rules 2004. The General Fono patriated laws made in New Zealand which were of continuing relevance to Tokelau through the Change of Name Rules 2004. It also specifically enacted the Application of

New Zealand Laws Rules 2004 to adopt New Zealand laws for certain subject areas to be general law in Tokelau. The Tokelau Amendment Act 2007 gave New Zealand parliamentary recognition to the effect of the General Fono Rules by the repeal of most New Zealand regulations that had been originally made for application in Tokelau.

The Government of New Zealand and Tokelau outlined the principles of their relationship in the Joint Statement of the Principles of Partnership at the end of 2003. The Principles of Partnership addressed the management of the partnership, self-determination, Tokelau's language and culture, New Zealand citizenship, economic and administrative assistance, co-ordination of services to Tokelau, defence and security, foreign affairs, and the Tokelauan community in New Zealand.

In 2004 the Administrator of Tokelau revoked the 1994 delegation and formally delegated 'all the powers exercisable by me in respect of Tokelau under any enactment, including any power delegated to me under any enactment' to the villages of Tokelau which in turn delegated their power to the General Fono for 'the government of Tokelau in respect of matters beyond those properly undertaken by each village alone'. The standing committee of the General Fono was expanded with the inclusion of the Puleuku of each village and was renamed as the Council for the Ongoing Government of Tokelau. Consistent with this power structure there was devolution of most public service delivery to the villages.

The Arrangement on Economic Support for 2004/05 – 2007/08 gave Tokelau responsibility for the allocation of its budget.

The Tokelau International Trust Fund was established in 2004 on the initiative of the governments of Tokelau and New Zealand to provide intergenerational financial security for Tokelau.



THE REALM OF NEW ZEALAND

On 1 January 1949, Tokelau became part of New Zealand by section 3 of the Tokelau Act 1948. Tokelau ceased to be a British dependency administered for the British Government by the Administrator of Western Samoa as the delegate of the Governor of the Union Islands.

The status of Tokelau as part of New Zealand remains unchanged in 2008 and is now governed principally by the Tokelau Act 1948 and by the Letters Patent Constituting the Officer of Governor-General of New Zealand 1983. These Letters spell out that the Realm of New Zealand has five parts: the state of New Zealand, the self-governing states of the Cook Islands and Niue, Tokelau (a territory of the state of New Zealand), and the Ross Dependency (a dependency of the state of New Zealand). The core of the Realm is the state of New Zealand; the other two states are self-governing in free association with the state of New Zealand.

All parts of the Realm share a common Head of State who is currently Elizabeth The Second, Queen of the Realm of New Zealand. She is represented in the Realm by a Governor-General who acts according to the laws in force in each particular part of the Realm. The Governor-General by oath undertakes to serve the people of the Realm in accordance with their respective laws and customs. It is the common membership of the Realm that gives the peoples of the Cook Islands, Niue, and Tokelau access to New Zealand citizenship.

Tokelau therefore has, at the level of Head of State, the Governor-General of the Realm of New Zealand as the representative of the Sovereign. The Governor-General exercises executive power in accordance with the laws of Tokelau. Given that the law of Tokelau is largely self-contained and the fact that that law rarely mentions the Governor-General, the role of the Governor-General in Tokelau is constitutionally a limited one. It is restricted almost entirely to ceremonial and prerogative roles. One of the few legal roles for the Governor-General is the appointment of the law Commissioners of Tokelau. This is done on the recommendation of the Minister of Foreign Affairs after consultation with the Elders of the relevant village. Other powers of the Governor-General in respect of Tokelau flow from the fact that Tokelau is a territory of New Zealand. For instance, the Governor-General in Council is a legislator in New Zealand and as such can make regulations for Tokelau.



THE RELATIONSHIP WITH NEW ZEALAND

Tokelau is part of New Zealand by virtue of section 3 of the Tokelau Act 1948. Therefore the Parliament of New Zealand and its senior officers have ultimate constitutional power in respect of Tokelau.

Tokelau has always had a legal system independent of that of New Zealand. The New Zealand Parliament makes laws for Tokelau by Act of Parliament expressly declared to be law for Tokelau. The Governor-General in Council with the Ministers of the Government of New Zealand can make regulations for Tokelau. An Act of Parliament or regulations made by the Governor-General overrides any laws made in Tokelau.

Administration

The administrative system has evolved from one where the public services of Tokelau were provided by members of the New Zealand Government Public Service through a situation where the Tokelau Public Service was an independent department within the New Zealand Public Service to the situation in 2008 where the Tokelau Public Service is a body of national employees under the control of the Council for the Ongoing Government of Tokelau.

The Administrator of Tokelau, who is a New Zealand Government official, is responsible for the 'administration of the executive government of Tokelau'. The exercise of this power is subject to the control of the Minister of Foreign

Affairs of New Zealand. As a result of the development of self-government in Tokelau, the Administrator of Tokelau has few express powers under the law of Tokelau and has also by delegation shared the exercise of most executive powers with the three villages of Tokelau acting together for national government.

The Administration Rules 1993, the Police Rules 1989, and the Commissions of Inquiry Rules 1991 are among the few remaining examples of legislation which vest a specific authority in the Administrator of Tokelau.

The Administration Rules have their origin in New Zealand regulations of 1949. Those regulations identified the Administrator of Tokelau as a New Zealand Government official in Western Samoa. Replacement regulations in 1971 saw the shift to the Ministry of Foreign Affairs and mention of delegation to a Tokelau public service. This was extended by regulations of 1980 and again by regulations of 1993 which in addition to providing for delegation to public servants also opened the possibility for the Administrator to delegate to the General Fono. It is the powers under these regulations of 1993 which facilitated the move to greater national self-government in Tokelau.

The operation of a local police system in Tokelau can be traced to colonial times. The present Police are, after some decades as members of the national public service, again village officers. The Police Rules give the Administrator the power to designate a member of the New Zealand Police as an officer of Police in Tokelau.

The Administrator retains a power under the Commission of Inquiry Rules. This provides for the formal establishment of a Commission to report on matters of governance and public importance in relation to Tokelau. This power of the Administrator has, like the power in the Police Rules 1993, been delegated and is therefore now a power that can be exercised both by the Administrator and by the General Fono.

An important element of Tokelau government and of the relationship with New Zealand are the Finance Rules 1998. They originated in the Tokelau Finance Regulations 1967 which set up a separate account for the Tokelau Administration in Samoa. A feature of those Regulations and of the current Rules is that the Auditor for the accounts of the Government of Tokelau is the Auditor-General of New Zealand.

The British and New Zealand administrative structures that were introduced for Tokelau (see Appendix 2) show a consistent basic framework with variations of detail over time. The Sovereign and her regional delegate are constants. In Tokelau, the village council (Taupulega) is the constant. The intermediate administrative system, that which delivered governmental services from outside to Tokelau, was subject to greater change. From 1967 at the latest, the Administrator's delegate for Tokelau affairs in Samoa was the head of a public service for Tokelau. That public service operated in parallel to, and sometimes at odds with, the customary arrangements that provided traditional services within the villages. The presence of that salaried public service caused friction because the public servants had their employment responsibility to an external master and because those public servants had cash in what otherwise was an economy of communal subsistence living.

Judiciary

Judicially, Tokelau has its own first instance courts but for serious matters and cases on appeal the High Court of New Zealand and the Court of Appeal of New Zealand operate respectively as the High Court of Tokelau and the Court of Appeal of Tokelau. New Zealand has abolished the right of appeal to the Privy Council but a prerogative right of appeal to the Sovereign continues for Tokelau. No Tokelau case has ever gone to these external courts.



LAND

For time immemorial, land in Tokelau has been governed by the custom of the relevant village. Matters relating to customary land are not within the jurisdiction of the courts of Tokelau.

The arrival of Europeans in the Western Pacific brought with it demands for land. An early reaction from the High Commissioner of the Western Pacific was to promulgate in 1896 a regulation prohibiting the sale of land to non-native persons and seriously restricting the right to take leases of land.

In the early period of contact with Europeans land in Fakaofu was sold to a European trader. In 1963 a portion of that land was acquired from the owners by the New Zealand Government and vested in the village of Fakaofu. The remaining portion continues as the only piece of non-customary land in Tokelau.

The colonial system continued with minor relaxation in the case of land purchase through until the Tokelau Islands Amendment Act 1967. The New Zealand Government then repealed all existing legislation relating to land in Tokelau and vested all land in the Crown subject to the rights of ownership in the land as determined in accordance with the customs and usages of the inhabitants of Tokelau. Consistent with the previous legislation, transactions by Tokelauans disposing of land among themselves was not restricted but all other interests were.

In 1986, the restrictions on disposal of land interests were extended from sale to all other types of land transaction. The 1967 enactment and its amendments were finally repealed by the Tokelau Amendment Act 2007 following the enactment by the General Fono of its own land rules. Those rules are now found in Rule 15 of the Constitution. They vest full control once again in the villages of Tokelau and retain the restriction on alienation of any kind to non-Tokelauans.



FAMILY LAW

Births, deaths and marriages registration was an early preoccupation of the Western Pacific High Commissioner. Provision was first made in respect of foreigners by regulation in 1896. This provision was gradually strengthened over the years till 1917 when the registration of births, deaths and marriages was made a formal requirement for Tokelauans and non-Tokelauans alike.

The New Zealand Government made new regulations for births and deaths in 1969 and for marriages in 1986. The first legislation on adoption dates from 1966. The status of illegitimacy was eliminated from the law of Tokelau by the Tokelau Islands Amendment Act 1969. Divorce was provided for by regulation in 1975 in a manner which reflected the New Zealand laws of the time. Tokelau divorce regulations adapted to the local circumstances, following, extensive discussion in Tokelau, were promulgated in 1987.

Matters of succession were at first dealt with by the Common Law and then by the New Zealand Administration Act. They are now dealt with by the Succession Rules 2004.



CRIMINAL LAW

The first criminal legislation that was intended to be effective in Tokelau was the Native Laws of the Union Group of 1912 published by the Western Pacific High Commission. These rules, clearly inspired by British notions of criminal law and punishment, were basic in form and reflected not only some traditional offences but also some of the realities of Tokelau life such as the provision for the payment of fines by coconuts. These rules were confirmed and elaborated on in the Native Laws Ordinance 1917. The Tokelauan language was not used in either the 1912 or 1917 laws but the Samoan versions would have been accessible to the people and the local magistrate as a consequence of the missionary influence and the use of the Samoan Bible.

The 1917 system remained in force until 1975. It had not been practised extensively; the preference was to deal with socially unacceptable behaviour in accordance with tradition. In 1975 the New Zealand Government imposed a new criminal law system which was modelled on the criminal law of New Zealand but taken directly from the law of Niue. This body of law never became part of the social ordering system of Tokelau.

The 1975 system was replaced by the Crimes, Procedure and Evidence Rules 2003 promulgated by the General Fono after an extensive review of offences and criminal procedures. These Rules include the most common and serious of customary offences. Criminal offences also exist under rules such as Electricity, Gas, and Dangerous Goods Rules 2003.

COMMERCIAL LAWS

In 2008, Tokelau has an array of law relating to commercial matters; arbitration, banking, business restriction, carriage of goods, contract, legal tender, income tax, incorporated bodies, maritime transport, salvage, and telecommunications.

During the British period there were laws for the control of trade, particularly with relation to arms and alcohol, but subsequently also with relation to registration of companies, merchant shipping, business licences, and labour contracts. Many of these colonial laws specifically addressed only non-Tokelauans. But the effect of prescribing for one party to a contract effectively controlled the behaviour of the Tokelauan party to the contract. Intellectual property laws and taxation came at an early date.

In 1949 the New Zealand Government declared the law of England of 1840 as the default system for Tokelau. By Regulations of 1969, New Zealand extended its Bills of Exchange Act, Sale of Goods Act, and its Partnership Act to Tokelau. By a similar exercise in 1975, it extended its Arbitration Act, Chattels Transfer Act, Marine Insurance Act, and Trustee Act to Tokelau.

The English law as the default system continues in 2008, but all references to New Zealand statutes have been repealed or substituted by laws made by the General Fono. In particular the Application of New Zealand Law Rules 2004 provides for the law of New Zealand on bills of exchange, marine insurance,

partnership, and intellectual property for the time being in force in New Zealand to be the law of Tokelau on those matters.



INTERNATIONAL LAW

The Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977⁹ established an exclusive economic zone for Tokelau in accordance with the United Nations Convention on the Law of the Sea. Consistent with international practice on the delimitation of maritime boundaries, there are boundary treaties with the United States (in respect of American Samoa)¹⁰ and France (in respect of Wallis and Futuna).¹¹

The Universal Declaration of Human Rights forms the basis of human rights in Tokelau. The rights are set out in Rule 16(1) of the Constitution:

“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.”

In addition Tokelau is bound by and reports regularly as required on: the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination

⁹ This Act replaced the Tokelau (Territorial Sea and Fishing Zone) Act 1976.

¹⁰ Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between Tokelau and the United States of America 1980 (it is also known as the ‘Treaty of Tokehega’).

¹¹ Agreement between the Government of New Zealand and the Government of the French Republic concerning the Delimitation of the Maritime Boundaries between Wallis and Futuna and Tokelau 2003.

against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; and on several ILO Conventions.

The Principles of Partnership between New Zealand and Tokelau in clause 10.2.2 established consultation as the basis on which New Zealand treaty actions will extend to Tokelau. New Zealand treaty ratifications will declare whether the treaty extends to Tokelau or the treaty text will exclude 'Tokelau' from the definition of 'New Zealand'. The current practice is that the Ministry of Foreign Affairs will consult the General Fono as to whether Tokelau wishes to be bound by any New Zealand treaty actions that are relevant to Tokelau. If the General Fono does not respond, the default position is that New Zealand treaty actions do not extend to Tokelau.

Tokelau has agreements relating to American Samoa,¹² Tuvalu,¹³ and Samoa¹⁴ to hold government to government discussions on matters of mutual interest. Tokelau also has specific understandings with a New Zealand District Health Board relating to patient referral and with the Government of Samoa on waste management.

In 2008, Tokelau is a member of the Secretariat of the Pacific Community, the South Pacific Regional Environmental Programme, the Council of the University of the South Pacific,

¹² Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between Tokelau and the United States of America 1980, art VI.

¹³ Memorandum of Understanding between the Government of Tokelau and the Government of Tuvalu.

¹⁴ Cooperation Arrangement between the Government of Tokelau and the Government of Samoa.

and the Forum Fisheries Agency; and an associate member of the World Health Organisation, and the United Nations Educational, Scientific, and Cultural Organisation. As part of the recognition of Tokelau's participation in regional affairs in its own right, in 2005 Tokelau was granted observer status at the Pacific Islands Forum.



SELF-DETERMINATION

Tokelau's status as a non-self-governing territory of New Zealand was confirmed in 1962 when it was listed in the schedule of territories under the supervision of the United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ('the Committee of 24').

Tokelau is administered by New Zealand in accordance with article 73 of the Charter of the United Nations. New Zealand is therefore under an international obligation and 'sacred trust' to develop self-government in Tokelau. The ultimate goal of the development of self-government is the exercise by Tokelau of its right to self-determination. The guidelines for this development of self-government and for the exercise of the right to self-determination are those set out in the United Nations General Assembly Resolutions 742 (VIII), 1514 (XV), 1541 (XV), 2685 (XXVI), and 2787 (XXVI). There have been five United Nations fact-finding missions to Tokelau: 1976, 1981, 1986, 1994, 2002.

The Government of New Zealand has increasingly promoted and supported the development of self-government in Tokelau. This development is particularly marked by the establishment of the separate court system in 1986, by the grant of a Tokelau national law-making power in 1996, by the transfer of public service responsibilities from the New Zealand

Government to the Tokelau Government in 1993, and by executive delegations to the Tokelau Government in 1994 and 2004.

In February 2006 and October 2007, Tokelau held a self-determination referendum. The proposal that was put to the people of Tokelau by their leaders was for self-determination based on a national Constitution and draft Treaty of Free Association with New Zealand.

The draft Treaty provided for the continuation of the relationship of partnership between New Zealand and Tokelau that was recorded in the Principles of Partnership of 2003, the protection of Tokelauan language and culture in New Zealand, and guarantees of New Zealand citizenship, economic and infrastructure support, administrative and technical support, emergency and disaster relief support, defence, collaboration on matters of international relations, continued support by New Zealand for the Tokelau International Trust Fund, and of high-level consultation with New Zealand on request.

The goal of the draft Treaty was to guarantee for Tokelau for the future the economic and political support mechanisms that it then enjoyed and to give Tokelau the freedom to conduct its own affairs internationally to the greatest possible extent within its capacity, to remove the colonial label on the relationship between the two countries, and to retain for Tokelau the ability at any time in the future to become an independent state or to enter into negotiations with New Zealand for the purposes of being integrated into New Zealand.

Self-determination

The required two-thirds majority in favour of the proposal was not obtained in either referendum. The future status of Tokelau and the exercise of its right to self-determination therefore remain on Tokelau's constitutional agenda.



BIBLIOGRAPHY

Selected texts

AH Angelo “Re-establishing a Nation – Kikilaga Nenefu” (1999) 30 VUWLR 75.

AH Angelo “Establishing a Nation – A Second Look” (2001) RJP HS Vol 1 235.

AH Angelo “Making the Criminal Law Your Own: The Tokelauan endeavour” in Hazlehurst ed. *Popular Justice and Community Regeneration* (Praeger, USA, 1995) ch 2.

Andie Fong Toy and Hosea Kirifi “Law in Tokelau” (1988) 12 Pacific Studies (3) 29.

Antony Hooper “Ghosts of Hierarchy I: The Transformation of Chiefly Authority on Fakaofu, Tokelau” (1994) 7 History and Anthropology 307-320.

Antony Hooper and Judith Huntsman (eds) *Ko na fakamatalaga tubia a ni Papalagi e uiga ki Tokelau 1765 – 1925 Papalagi documents on Tokelau* (Office for Tokelau Affairs, Apia, 1986).

Antony Hooper and Judith Huntsman (eds) *Matagi Tokelan: History and Traditions of Tokelau* (Office for Tokelau Affairs, Apia, 1991).

Antony Hooper and Judith Huntsman *Tokelau: A Historical Ethnography* (Auckland University Press, Auckland, 1996).

Judith Huntsman and Kelihiano Kalolo *The Future of Tokelau: Decolonising Agendas, 1975-2006* (Auckland University Press, Auckland, 2007).

Grahame Keen *Atoll* (A Bulletin for Schools, School Publications Branch, Department of Education, Wellington, 1976).

Hosea Kirifi “Old and New Systems of Laws in Tokelau” in Guy Powles and Mere Pulea (eds) *Pacific Courts and Legal Systems* (University of the South Pacific, Suva, 1988).

Gordon MacGregor *Ethnology of Tokelau Islands* (Bernice P Bishop Museum, Honolulu, 1937).

H.E Maude *Slavers in Paradise: the Peruvian Labour Trade in Polynesia 1862-64* (Australian National University Press, Canberra, 1981).

Peter McQuarrie *Tokelau: People, Atolls & History* (P McQuarrie, Wellington, 2007).

Neville Peat *Tokelau: Atoll Associate of New Zealand* (Wellington, Compatriot Press, 1984).

Casimilo Perez and Christian Giese “Tokelau: micro-politics” in Crocombe ed. *Politics in Polynesia* (USP, Suva, 1983).

Andrew Townend “Tokelau’s 2006 Referendum on Self-Government” (2007) 5 NZJPIIL 121.

Bibliography

Tioni Vulu “Decolonisation by Missionaries of Government – The Tokelau Case” in Sabine Fenton ed. *For Better or Worse: translation as a tool for change in the South Pacific* (St Jerome, Manchester, 2004).

Albert Wessen (ed) *Migration and Health in a Small Society: The Case of Tokelau* (Clarendon Press, Oxford, 1992).

Tokelau: A Collection of Documents and References relating to Constitutional Development

[The following three editions are cumulative]

(Moeimoana Atoni, 3 ed, Tokelau Administration, Apia, 1995)

(Andrew Townend, 4 ed, Law Publications, Wellington, 2003)

(Talei Pasikale, 5 ed, COG, Apia, 2008).

The items listed below are available from Law Publications, PO Box 9451, Wellington, New Zealand:

Tokelau: A Collection of Documents and References relating to Constitutional Development (3 ed, 4 ed, and 5 ed)

Tulafono Fakavae: A Collection of the Constitutional Documents of Tokelau (COG, Apia, 2008).

Useful websites

www.ocog.org.nz Office of the Council for the Ongoing Government of Tokelau.

www.mfat.govt.nz Office of the Administrator of Tokelau.

www.un.org United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (‘the Committee of 24’).

APPENDIX 1 OVERVIEW OF TOKELAU



(source: www.ocog.org.nz)



Tokelau is a non-self-governing territory of New Zealand. It is located in the Pacific Ocean north of Samoa and south of the Equator (9 00 S, 172 00 W). It consists of three small atolls separated from each other by high seas. The total land area is approximately 12 km². The total sea area of the exclusive economic zone is approximately 290,000 km². The height above sea level is between 3-5 metres, the maximum width is 200 metres. Tokelau is therefore particularly vulnerable to natural disasters.

The people of Tokelau are New Zealand citizens. The population of 1466 (2006 census) is spread approximately equally among the three atolls. The traditional lifestyle was subsistence but Tokelau has recently moved to a cash economy. The only natural resource of any current economic significance is the fishery of the exclusive economic zone.

Tokelau has no main town; each island has its own administrative centre, hospital, school and basic infrastructure. There are no airstrips or harbours in Tokelau. Access is only by ship; through the Port of Apia, Samoa.

There are 7000 Tokelauans living in New Zealand, and smaller communities live in Australia, Samoa, and Hawaii.



APPENDIX 2 CONSTITUTIONAL DIAGRAMS

BRITISH PROTECTORATE (1889 – 1915)

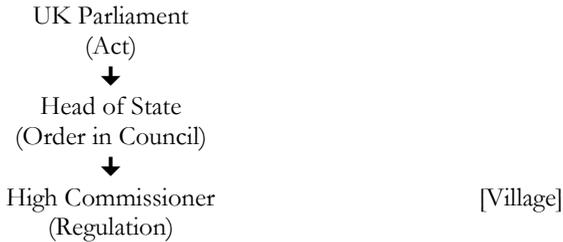
EXTERNAL

INTERNAL

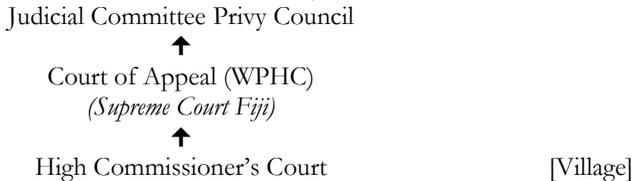
EXECUTIVE



LEGISLATURE



JUDICIARY



GILBERT & ELLICE ISLANDS COLONY (1916 – 1926)

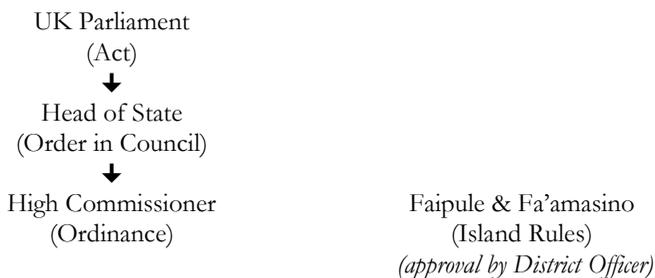
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INTERNAL

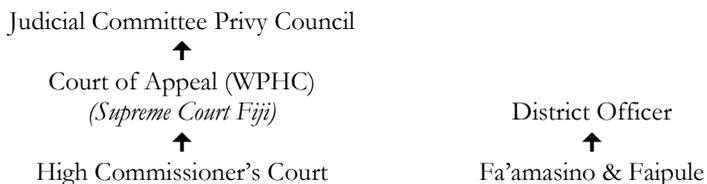
EXECUTIVE



LEGISLATURE



JUDICIARY

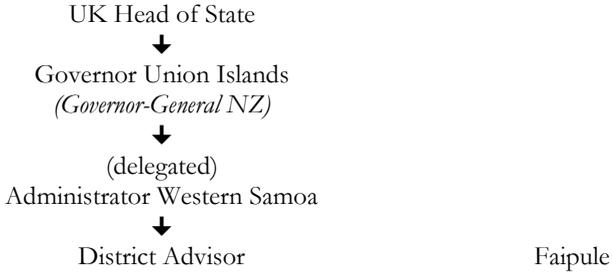


BRITISH DEPENDENCY ADMINISTERED BY NZ (1926 – 1948)

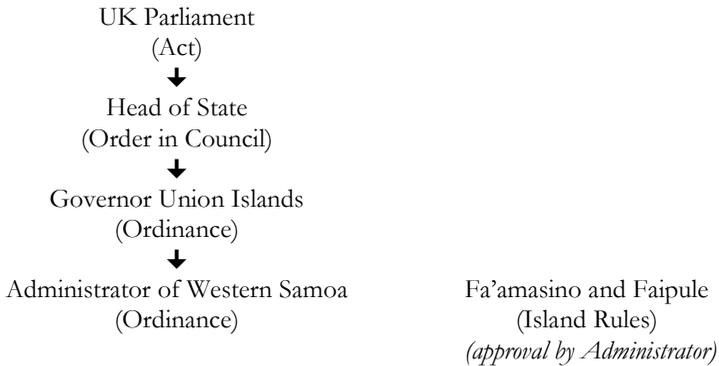
EXTERNAL

INTERNAL

EXECUTIVE



LEGISLATURE



JUDICIARY

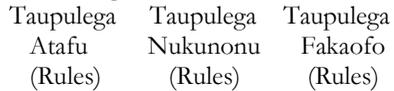


LEGISLATURE

1949-1985

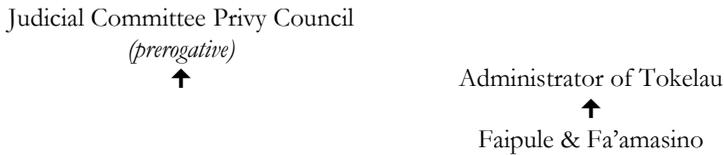


1986 Village Incorporation Regulations

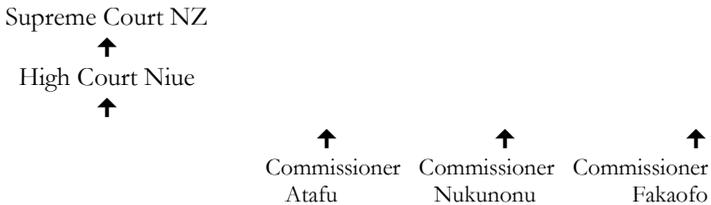


JUDICIARY

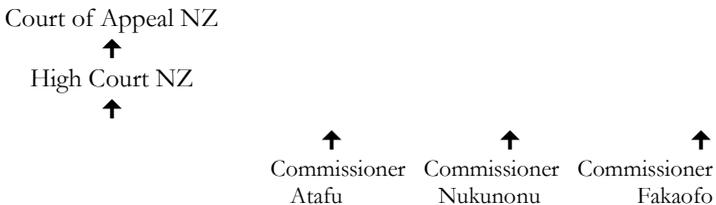
1949-1985



1970 Tokelau Islands Amendment Act

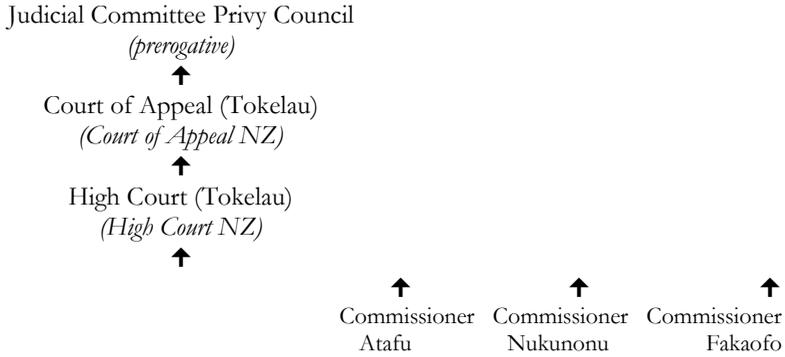


1986 Tokelau Amendment Act

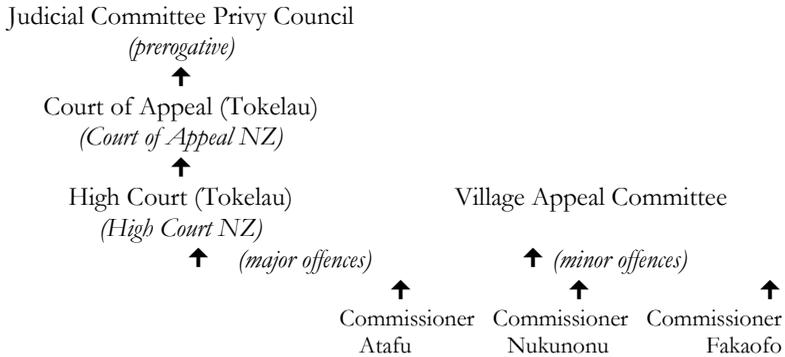


JUDICIARY

1986-2002



2003 Crimes, Procedure and Evidence Rules



APPENDIX 3 EXECUTIVE OFFICIALS

Administrator of Tokelau¹⁵

1926-1928	Major General Sir George Spafford Richardson
1928-1931	Colonel Sir Stephen Shepherd Allen
1931-1935	Brigadier General Sir Herbert Ernest Hart
1935-1946	Sir Alfred Clarke Turnbull
1946-1949	Lieutenant Colonel Francis William Voelcker
1949-1960	Sir Guy Richardson Powles
1960-1965	John Bird Wright
1965-1968	Owston Paul Gabites
1968-1971	Richard Basil Taylor
1971-1972	Duncan MacIntyre
1972-1973	Matiu Rata
1973-1975	William Gray Thorp
1975-1984	Frank Henry Corner
1984-1988	Harold Huyton Francis
1988-1990	Neil Douglas Walter
1990-1992	Graham Keith Ansell
1992-1993	Brian William Peter Absolum
1993-2003	Lindsay Johnstone Watt
2003-2006	Neil Douglas Walter
2006-	David Bruce Payton

District Officer

In the period 1955 to 1975, the following were among the District Officers:

Roger Pearless¹⁶
Lloyd Webber
Godfrey Garnett
Don Stewart

¹⁵ Source: www.mfat.govt.nz.

¹⁶ He was among 25 people on board the *Joyita* who disappeared on its voyage from Samoa to Fakaofu on 3 October 1955.

Official Secretary

1976-1978	Neil Walter
1978-1979	Simon Carlaw
1981-1982	John Larkindale
1983-1985	Tony Browne
1985-1987	Adrian Macey
1988-1992	Casimilo Perez
1993-1994	Bryan Lawrence

National Governments

1st National Government	1993-1995
2nd National Government	1996-1998
3rd National Government	1999-2001
4th National Government	2002-2004
5th National Government	2005-2007
6th National Government	2008-2010

Ulu o Tokelau (Titular Head)

1993	Salesio Lui
1994	Keli Neemia
1995	Lepaio Simi
1996	Pio Tuia
1997	Falima Teao
1998	Kuresa Nasau
1999	Pio Tuia
2000	Kolouei O'Brien
2001	Kuresa Nasau
2002	Pio Tuia
2003	Kolouei O'Brien
2004	Kuresa Nasau / Patuki Isaako
2005	Pio Tuia
2006	Kolouei O'Brien
2007	Kuresa Nasau
2008	Pio Tuia

Council of Faipule

Faipule of Atafu

1993-1996	Lepaio Simi
1996-2003	Kuresa Nasau
2003-2004	Patuki Isaako

Executive Officials

Faipule of Nukunonu

1993-1996 Salesio Lui
1996-2003 Pio Tuia

Faipule of Fakaofu

1993-1996 Peniuto Semisi
1996-1999 Falima Teao
1999-2003 Kolouei O'Brien

Council for the Ongoing Government

Faipule of Atafu

2004-2005 Patuki Isaako
2004-2005 Kelihiano Kalolo (acting for Isaako)
2005- Kuresa Nasau

Faipule of Nukunonu

2004- Pio Tuia

Faipule of Fakaofu

2003-2007 Kolouei O'Brien
2008- Foua Toloa

Pulenuku of Atafu

2004 Paulo Kitiona Toloa
2005-2007 Iosua Aleni
2008- Nouata Tufoua

Pulenuku of Nukunonu

2004 Panapa Sakalia
2005-2007 Vaha Tavite
2008- Lino Isaia

Pulenuku of Fakaofu

2004-2007 Keli Neemia
2008- Tinielu Tuumuli



APPENDIX 4 DOCUMENTS OF CONSTITUTIONAL INTEREST

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Notice of Proclamation of the Union Islands (No 1) Order in Council, WPHC <i>Gazette</i> , 11 February 1926.....	112
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Union Islands Transfer of Control to New Zealand, <i>Gazette</i> Notice, 11 February 1926	113
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Native Laws 1912

Native Laws 1912

Tokelau: A History of Government

Native Laws 1912

Native Laws 1917

TOKELAU AMENDMENT ACT 1996

An Act to amend the Tokelau Act 1948

TULOUI!

TALU AI ONA—

1. Ko te Tulafono Fakapalemene o Tokelau 1948 e fakatatia mai ai ko Tokelau he vaega e o Niuhila, ma fakamanino atili ai, fakatahi ma ietahi mea, ko te Kovana Hili e mafai i te Fakatonuga a te Pulega Faitulafono, ke fai e ia ni tulafono fakatonutonu mo te filemu, pulea, ma te malo lelei o Tokelau:

2. Ko Tokelau he atunuku e he ki faia hona malo pulea fakalotoifale i lalo o te Feagaiga Fakavae a Malo Kaufakatahi:

3. Ko Niuhila e iei tona tiute ke atiake te mafai e Tokelau ona pulepulea ma fai e ia lava ana tonu fakailotoifale, ona ko te atunuku ia e tauhia ma pulepulea ia Tokelau mae e i loto foki o Malo Kaufakatahi:

4. Ko te pulega mahani o Tokelau e fatu ki luga o na nofonofoga fakanuku, ma ko te fakafetauiga o manakoga o tagata i loto o na nuku e fakataunuku i na faiga mahani ma e i lalo o te pulega a na Taupulega:

5. Ko na manakoga fakateatunuku o Tokelau, he tiute e o te Malo o Niuhila te e patino ki te Ulu Fakatonu o Tokelau:

6. Kua lahi na tauhaga talu ona iei he naunau malohi o na Taupulega o Tokelau ke i loto ma kakau atili ki latou ki te pulega faigamalo fakateatunuku o Tokelau:

7. Ko he vaega e o te tiute taukave o Niuhila mae he naunauga foki e o ia ke mulimuli ki na manakoga iena,—

(i) I te 1993 ko na paoa o te Komehina o Tautuuga a te Malo (o Niuhila) i ona aia fakatetulafono mo Tokelau, na tuku atu ke fakaaoga e na Komehina o te Kaufaigaluega Tautua a Tokelau; ma

(ii) I te 1994 na tuku mai ai na paoa o te Ulu Fakatonu o Tokelau ke fakaaoga e te Fono Fakamua kafai e nofoia, ma te Fono a Faipule kafai e he nofoia te Fono Fakamua:

8. I te aho 7 o Apelila 1995 na fakahalalau ai e te Fono a Faipule tenei fakaaliga:

“Ki te Ulu Fakatonu o Tokelau

“Kua iloa e Tokelau te fuafuaga ke hui te Tulafono Fakapalemene o Tokelau ke tuku ki te Fono Fakamua te paoa fai tulafono. Ko

te fuafuaga tenei na toe talanoagia e tagata ma na Taupulega a na nuku takitahi i te mahina kua teka.

“E fakamaonia e ki matou te manatu malohi fakatahi o Tokelau e veia—

“1 I te taimi nei kua tatau lele ke maua he paoa faitulafono mo te atiakega o te malo pulea fakalotoifale.

“2 Talu mai te tukumaiga ke fakaaoga te paoa o te pulega fakatonutonu e te Ulu Fakatonu i te 1994, na lagona ho ai e te Malo o Tokelau te loto vaivai ona e he ki maua e ia te paoa ke fakamautu ai ana tonu fakafaigamalo.

“3 Ko ho he paoa e mafai ke tuku e te Palemene e he hili atu tona malohi fakatetulafono i lo i na Tulafono Fakapalemene ma na Feagaiga, ka e tatau ke lava ke mafai ai te toe falitega pe ko te fakaheaoga (1) na tulafono i mua atu o te 1949 (2) na tulafono fakatonutonu na fai e te Kovana Hili i lalo o te Tulafono Fakapalemene o Tokelau, ma (3) te tulafono ki na lafoga.

“4 Ko ho he paoa e mafai ke fakaheai e te Ulu Fakatonu.

“E talohaga e Tokelau te lagolago malohi o to ofiha ke fakataua lahi ai tenei matakupu.”:

9. Ko te Tulafono Fakapalemene tenei—

(i) E kaumai ai ki te Fono Fakamua he paoa ke fai ai ni tulafono mo Tokelau, e aofia ai te paoa ke poloaki ai na lafoga, ma ke fakatonu ai na aho malolo; ma

(ii) E fakatatia ai te mafai ke fakaheai e te Ulu Fakatonu o Tokelau na tulafono ve; ma

(iii) E toe falite ai te Tulafono Fakapalemene o Tokelau o te 1948 agai ki na pogai o tulafono mo Tokelau ma te pule faifakamahinoga a na Fakamahino Tokelau; ma

(iv) E fai ai ni ie tahi falitega o te Tulafono Fakapalemene a Tokelau o te 1948:

10. E talia e Tokelau tenei Tulafono Fakapalemene ona e taoga ma tona fofou ke aloalo lava e ia tona paopao ki te mea e ia nafatia, ma e taoga foki ma he fatofatoga kua leva o na kauafua e tolu o Tokelau ke nonoa fakatahi ki latou, ona ko te tutuha o te latou gagana ma te aganuku, ko he kaiga ma he atunuku e fokotahi:

11. E talia fiafia foki e Tokelau tenei Tulafono Fakapalemene, ona e ve he laulaumatagi foou ke fakakapu ai te la o tona vaka, ma te iloa ko te tukumaiga o he paoa faitulafono, ko he laka taua lahi tau tulafono fakavae, teia e fakamalohia ai te Fono Fakamua i tona tulaga ko te fono faitonu maualuga ia o Tokelau:

12. E aloakia e Tokelau ma Niuhila ko te tiute fai tulafono e tuku atu e te Tulafono Fakapalemene ki te Ulu Fakatonu o Tokelau e matea ai te hokotaga fakatulafono fakava o malo o Tokelau ma Niuhila e iei nei. Kae, e amanakia foki e ki laua, ko te Tulafono Fakapalemene tenei, e tuku ma fakamalohia ai te paoa o na nofonofoga pule a Tokelau, e takina pea i ni agaaga kikila mamao ma te fatufatu lelei. Ko Tokelau ma Niuhila e fakamoemoe ko na faiga mahani o na fakataumunaga haele ma te hakili fautuaga, ka fakaauau agai ki te paoa faitulafono ke atiake atili ai he malo pulea fakalotoifale i Tokelau:

MALO FAKAFETA!

WHEREAS—

1. The Tokelau Act 1948 provides that Tokelau is part of New Zealand, and further provides, among other things, that the Governor-General may, by Order in Council, make regulations for the peace, order, and good government of Tokelau:

2. Tokelau is a non-self-governing territory under the Charter of the United Nations:

3. New Zealand, as the State responsible for the administration of Tokelau, has an obligation, by virtue of New Zealand's membership of the United Nations, to develop self-government in Tokelau:

4. Traditional authority in Tokelau is vested in its villages, and the needs of Tokelau at a local level are generally met through the administration of customary practices by elders:

5. The needs of Tokelau at a national level are the responsibility of the Government of New Zealand, and in particular the Administrator of Tokelau:

6. The elders of Tokelau have for many years wished to have a greater and more direct involvement in the government of Tokelau at a national level:

7. As part of New Zealand's obligation and desire to comply with those wishes,—

- (i) In 1993, the powers of the State Services Commissioner in relation to Tokelau were delegated to Tokelau Public Service Commissioners; and
- (ii) In 1994, the powers of the Administrator of Tokelau were delegated to the General Fono when in session, and to the Council of Faipule when the General Fono is not in session:

8. On 7 April 1995, the Council of Faipule issued the following statement:

“To the Administrator of Tokelau

“Tokelau is aware of the proposal to change the Tokelau Act to give the General Fono a power to make laws. This proposal has been discussed again by the people and the Taupulega of each Village during the last month.

“We confirm the strong and unanimous view of Tokelau that—

“1 It is now essential to the development of self-government to have a legislative power.

“2 Since the conferral of administrative power by delegation by the Administrator in 1994, it has on several occasions proved an embarrassment to the Government of Tokelau that it has had no power to enforce its governmental decisions.

“3 Any power the Parliament may give may be subordinate to Acts & Treaties but must be sufficient to enable amendment or repeal of (1) pre-1949 law, (2) regulations made by the Governor-General under the Tokelau Act, and (3) the law relating to taxes.

“4 Any power may be subject to disallowance by the Administrator.

“Tokelau asks for the exercise of your good offices in this as a matter of high priority.”:

9. This Act—

(i) Confers on the General Fono a power to make rules for Tokelau, including the power to impose taxes, and to declare public holidays; and

(ii) Provides that any such rules may be disallowed by the Administrator of Tokelau; and

(iii) Amends the Tokelau Act 1948 as it relates to the sources of law for Tokelau and the jurisdiction of Tokelau Commissioners; and

(iv) Makes other amendments to the Tokelau Act 1948:

10. Tokelau welcomes this Act, as in accordance with its wish to paddle its canoe to the greatest extent possible, and as consistent with a long-standing desire by three dispersed atoll communities to come together and become stronger, on the basis of their shared language and culture, as one family and nation:

11. Tokelau also welcomes this Act as a fresh breeze to fill the sails of Tokelau's canoe, and in the knowledge that the conferral of

legislative power is a step of large constitutional significance which strengthens the General Fono in its role as Tokelau's supreme national body:

12. Both Tokelau and New Zealand recognise that the role this Act gives to the Administrator of Tokelau in the rule-making process reflects the present constitutional relationship between Tokelau and New Zealand. However, both also acknowledge that this Act, in conferring greater powers on Tokelau's own political institutions, looks forward in a constructive spirit. Both Tokelau and New Zealand expect that the established patterns of consultation and advice will continue in relation to the rule-making power, in order to further the development of self-government in Tokelau:

1 Short Title and commencement

(1) This Act may be cited as the Tokelau Amendment Act 1996, and shall be read together with and deemed part of the Tokelau Act 1948 (hereinafter referred to as the principal Act).

(2) —

[Part I incorporated into the Tokelau Act 1948]

[Part II incorporated into the Tokelau Amendment Act 1986]

Part III Consequential amendments not reproduced]

JOINT STATEMENT OF THE PRINCIPLES OF PARTNERSHIP BETWEEN TOKELAU AND NEW ZEALAND

PREAMBLE

Tokelau and New Zealand ('the Partners') wish to affirm their ongoing relationship, to honour their shared past and to build upon the close historical, social and cultural links between their people.

By articulating in this Joint Statement the principles underpinning the partnership and each Partner's expectations of the other, the Partners hope to create a framework within which they can work together to maximise the benefits of the relationship. They wish to strengthen cooperation between Tokelau and New Zealand, and to provide a firm foundation for ongoing and constructive dialogue about their relationship.

The Joint Statement also looks forward, recognising that Tokelau has the right to self-determination, and that New Zealand has a responsibility to facilitate that process in Tokelau's best interests.

1 Partnership and joint consultation

1.1 The Partners seek to develop a relationship of partnership in accordance with the principles set out in this Joint Statement. In doing so, the Partners acknowledge that their relationship is dynamic, and must be permitted to grow and evolve freely and constructively. The Partners also acknowledge that the relationship operates within the context of international and domestic law, as the law applies in New Zealand and in Tokelau at any particular time.

1.2 The relationship of partnership requires that all issues should be resolved on a cooperative and consultative basis. New Zealand and Tokelau will continue to work together, to consult on issues as they arise, and to cooperate on matters of mutual interest. The Partners will operate on a 'no surprises' basis, by maintaining clear and open communication.

1.3 New Zealand and Tokelau will hold joint senior-level official talks at least once a year ('the joint talks'), in Tokelau, Wellington or Apia (as the Partners decide). The joint talks will cover issues of concern to the Partners, including the detail of practical matters of concern to Tokelau as it works towards self-determination and builds confidence in its future. The joint talks will be additional to (and coordinated with) any other bilateral meetings on specific topics. Partners' officials will work cooperatively

together to advance issues of concern according to priorities and any work plan agreed between them.

2 Self-determination for Tokelau

2.1 The Partners acknowledge that self-determination for Tokelau, as provided for in Article 73 of the United Nations Charter, United Nations General Assembly Resolutions and various international human rights instruments, is an important goal for both New Zealand and Tokelau.

2.2 New Zealand and Tokelau affirm their commitment to work in partnership with the United Nations to achieve a self-determination outcome that fits the local Tokelauan context and has the support of the Tokelauan people. Where a self-determination option involves an ongoing relationship between Tokelau and New Zealand, the Partners acknowledge that the nature of that relationship will be one that is acceptable to both.

2.3 New Zealand will continue to work with Tokelau to provide the people of Tokelau with balanced and comprehensive information concerning the self-determination options of independence, self-government in free association and full integration.

3 Language and culture

3.1 The Partners recognise the value of Tokelau's unique language and culture as a source of strength and identity, and as the key element that distinguishes Tokelauans from other groups. New Zealand and Tokelau are committed to ensuring the retention and development of Tokelauan culture. This commitment will underlie all aspects of the partnership, and will be taken into account in all joint endeavours.

4 New Zealand citizenship

4.1 The Partners acknowledge that New Zealand citizenship involves the right to certain benefits and the acceptance of certain responsibilities.

5 Shared values

5.1 Tokelau and New Zealand affirm their respect for human rights, and their commitment to the purpose and principles of the United Nations Charter, good governance and the rule of law.

6 Economic assistance

6.1 New Zealand acknowledges its obligations with regard to economic support for Tokelau, and affirms its commitment to provide Tokelau with economic support, both before an act of self-determination

and after (as long as Tokelau retains a constitutional relationship with New Zealand).

6.2 New Zealand and Tokelau wish to work together in a partnership based on trust, openness, respect and mutual accountability in determining and implementing New Zealand's economic support for Tokelau's budgetary needs and economic and social development. The key goal of the Partners is to maintain and improve the quality of life of the people living in the villages of Tokelau.

6.3 The provision of New Zealand's economic assistance to Tokelau will be based on the following principles and factors —

- 6.3.1 New Zealand's international legal obligations, including those set out in Article 73 of the United Nations Charter, and the International Covenant on Economic, Social and Cultural Rights;
- 6.3.2 recognition that Tokelau is entitled to a good and satisfactory standard of services and infrastructure, and that this entitlement will be interpreted in the light of the local context (including the size of Tokelau's population, its remoteness, the physical separation of the three atolls and the fact that the administrations of Tokelau and New Zealand are separate);
- 6.3.3 acknowledgement of the commitment by both Partners progressively to meet Tokelau's entitlement to a good and satisfactory standard of services and infrastructure (as referred to in clause 6.3.2), to the maximum extent of available resources;
- 6.3.4 acknowledgement of Tokelau's progress towards full self-government and respect for Tokelau's readiness and ability to determine and shape the budget;
- 6.3.5 recognition, with regard to the delivery of services in Tokelau, that it is primarily Tokelau's role to deliver those services, and that New Zealand will provide economic and administrative support (as provided in clauses 6 and 7 respectively) to assist Tokelau to do so;
- 6.3.6 recognition of Tokelau's special constitutional status, which means that economic support to Tokelau represents a first call on New Zealand's overseas development assistance and that the content and management of the Tokelau programme will continue to be tailored to Tokelau's status and needs;
- 6.3.7 Tokelau's overall development strategy;

- 6.3.8 acknowledgement that Tokelau will plan and implement activities in accordance with Tokelau's specified goals and priorities;
- 6.3.9 acknowledgement and observance of identified obligations that each Partner owes the other, as set out in clauses 6.4 and 6.5;
- 6.3.10 recognition that the nature and level of support may evolve over time but that the Partners will work together to ensure that such evolution will be on the basis of the principles set out in this Joint Statement.
- 6.4 New Zealand —
 - 6.4.1 acknowledges its obligations with regard to economic support for Tokelau, now and in the future;
 - 6.4.2 recognises Tokelau's aspiration to achieve the greatest possible level of self-reliance, and will support Tokelau in this endeavour;
 - 6.4.3 expects Tokelau to manage New Zealand's contribution to its budget wisely and in the best interests of the people of Tokelau;
 - 6.4.4 will assist Tokelau to promote good and sustainable use of resources;
 - 6.4.5 will assist Tokelau in the event of emergencies beyond its control;
 - 6.4.6 will support Tokelau's efforts to attract support from other donors and from regional and international agencies.
- 6.5 Tokelau —
 - 6.5.1 is responsible for the prudent management and allocation of its own and New Zealand's resources, for the benefit of the Tokelau people and in line with Tokelau's strategic priorities;
 - 6.5.2 will provide New Zealand with accurate, full and timely financial planning and reporting in a form to be agreed between the Partners;
 - 6.5.3 will manage the consequences of its own decisions and management with regard to resource allocation or investment.
- 6.6 The forms of assistance that New Zealand provides to Tokelau may take a range of forms, tailored to Tokelau's changing circumstances, including the provision of administrative assistance under clause 7 below.

7 Administrative assistance

7.1 The Partners recognise that Tokelau will be likely to require an ongoing level of support in administrative and technical areas. New Zealand recognises that administrative capacity, technical skills and professional development are essential for the good governance and economic development of Tokelau. New Zealand is committed to providing Tokelau with appropriate administrative, technical and professional support, both before an act of self-determination and after (as long as Tokelau retains a constitutional relationship with New Zealand).

7.2 New Zealand and Tokelau will identify areas of priority or specific projects requiring technical, administrative or professional support during joint talks or other bilateral consultations. Appropriate support, coordinated through the Office of the Administrator of Tokelau, will be provided from New Zealand public sector agencies, in line with priorities and projects, agreed between the Partners.

8 Office of the Administrator of Tokelau

8.1 The Partners agree that the Office of the Administrator of Tokelau will work with the Tokelau Public Service to ensure that appropriate levels of service are provided in and from New Zealand in a well-coordinated manner.

9 Defence and security

9.1 New Zealand will remain responsible for the defence and security of Tokelau, and will discharge this responsibility as the need arises, in consultation with Tokelau.

10 External relations and international legal obligations

10.1 The Partners acknowledge that, subject to United Nations General Assembly Resolution 2625 (XXV), Tokelau does not have an international legal personality separate from that of New Zealand. New Zealand will accordingly continue to enter into binding treaty obligations on Tokelau's behalf (in consultation with Tokelau, as set out in clause 10.2).

10.2 In conducting foreign affairs on Tokelau's behalf, New Zealand will —

- 10.2.1 advise Tokelau as to which international instruments extend to Tokelau through New Zealand's treaty action;
- 10.2.2 ensure adequate consultation with Tokelau with regard to treaty actions that New Zealand is intending to take, and refrain from extending any such treaty action to

Tokelau unless Tokelau expressly requests to be included;

10.2.3 assist Tokelau, through the provision of advice and administrative assistance, to implement international legal obligations as required.

10.3 To the best of its ability and consistent with its commitment to the Partners' shared values, Tokelau will implement within Tokelau the treaty obligations to which it may be bound through New Zealand's treaty action.

10.4 New Zealand acknowledges that Tokelau may wish to further develop its interaction with the regional and international community. New Zealand will support Tokelau's aspirations to enter into arrangements with other countries or to join regional or international organisations in its own right, where such participation is consistent with Tokelau's status as a non-self-governing territory.

10.5 Tokelau will consult New Zealand about any such developments.

11 The Tokelauan community in New Zealand

11.1 In terms of New Zealand/Tokelau relations, the primary link is between New Zealand and Tokelau.

11.2 Both Partners recognise, however, that there is mutual benefit in continued engagement, by New Zealand and Tokelau, with the Tokelauan community in New Zealand. This engagement will strengthen and reinforce the cultural identity of Tokelauans resident in New Zealand. It will also maximise the potential of the Tokelauan community in New Zealand, in terms of support and assistance for Tokelau.

11.3 The Partners agree that the Tokelauan community in New Zealand, should be informed about developments in Tokelau's relationship with New Zealand, constitutional developments concerning Tokelau, and other issues of potential interest or concern to the Tokelauan community in New Zealand.

12 Review

12.1 This Joint Statement will be subject to review by the Partners as part of their ongoing consultation.

TULAFONO FAKAVAE A TOKELAU

FAKATOMUAGA

Ko kimatou, ia tagata o Tokelau, e takutino,

Ko Tokelau e fakavae tumau i te Atua. Ko te fakavae tenei e matea i nā nuku ma kafai ona tagata e faifaimea fakatahi, ma nonofo fakatahi i te filemu ma te fiafia,

Mai te kāloā, ko nā tālaaga ki nā fenua o Atafu, Nukunonu, Fakaofu, ma Olohega na fauhia kē fai ma o matou kāiga. Talu mai nā aho o Maui, ma Tui Tokelau ko te laukelekele, te tai, ma te ea nae fakaolaola ai o matou tagata ma ko te Atua e ia poupouakia kimatou,

E tāua lahi kia te kimatou i te taimi nei, ke haoloto kimatou i te faiga o a matou tonu. E fakatāua ia leo o ō matou tagata uma ia matou faigātonu uma. Ko kimatou e tu tautahi, i te fakaaogāga o a matou koa,

I te fakatinoga o aho takitahi o ō matou olaga, e fakamuamua ma fakatāua pea e kimatou a matou aganuku ma a matou tū ma nā aga, ma e fakaauau pea to latou fakatāuagia. Ko nā fakanauga a o matou tagata e tatau ke atafia ia matou nofonofoga,

Ko te kāiga, ko te fatu ia o to matou atunuku, ma ko nā faiga gali e atiake ai o matou kāiga, e fakaaogā e kimatou kē fatu ai nā faigātonu a te atunuku,

Ko nā nuku e puna mai ai te pule katoatoa i loto o Tokelau.

Ko kimatou, ia tagata o Tokelau, e talitonu,

I te faka-Tokelau, e aofia ai te taofi mau ki te ōlaga fakalagolago o te tahi ki te tahi e tauhi ai nā tagata fakaalofa, te tāinatiga ma te fakahoahoaga o nā koa, te tutuha o nā avanoa ke auai ai ki nā faifaiga a nā nuku, ma te āiātatau ke ola fiafia,

Ko nā galuega uma e fai i loto o Tokelau e fuafua fakalelei ke fetai ma nā fakanauga a tagata kua fakaali, ma e galulue mālohi ki ei kimatou ke fakataunuku ai iena fakanauga,

I te tāua o te ola mālōlō lelei, akoakogia, ma he tulaga o te ōlaga lelei, tauhihi ki nā tulafono, talia ni huiga e kui mai ai ni fakamanuiaga mo Tokelau, aloakia o te āiātatau a tagata tautokatahi, e hē fakailoga tagata, ma ni takitaki fakamaoni,

Ko a matou fakalapopotoga i loto o nā nuku, e manino a latou hini ma a latou tulafono fakavae, ma e i ei o latou hao ki te atiakega o Tokelau,

Ko a matou akoakoga e tatau lava ke falite lelei ke fakafetaui ki nā manakoga ma nā fakanauga a o matou tagata, ma e tatau kē tuku he fakatāuaga ki nā iloa faka-Tokelau fakatahi ai ma nā iloa fou e manuia ai ia Tokelau.

Ko kimatou, ia tagata o Tokelau, nei kua hokotakuau

Mo te puipuiga o o matou kāiga ma te aganuku, ma mo te puipuiga o te tutokatahi o nā nuku i nā matakupu e patino ki a te kilatou, ma ko nā mafuaaga ia kua fakavae ai nā takiala ienei, mo te Tulafono Fakavae o Tokelau.

1 Tokelau

Ko Tokelau ko nā fenua uma, te kogātai fakalotoifale, tai hiko takamilo, ma ietahi koga e āiā ki ei ia Tokelau, i nā Tulafono Fakavāomālō.

2 Ko nā Nuku

- (1) Ko nā nuku kua fakanofu tonu fakatatau ki nā tulafono.
- (2) E filifili e nā nuku he Faipule ma he Pulenuku fakatatau ki te tulafono.

3 Fono Fakamua

- (1) Ko te Fono Fakamua e aofia ai nā hui ienei —
 - (i) Te Faipule ma te Pulenuku o nā nuku takitahi, ma
 - (ii) E fokotahi te hui mai nā nuku takitahi, mo te toka 100 o tagata e nonofu i te nuku tēnā, fuafua ki te faitauga mulimuli o te aofaki o tagata, e tafapili ki te numela e lata ki te 100 o te aofaki o tagatānuku.
- (2) Ko nā hui e tofia e nā nuku takitahi fakatatau ki nā tulafono fakatātia a te nuku tēnā.
- (3) Ko te mataloa o te nofoakiga a nā hui ki te Fono Fakamua ke tāga tutuha ma te nofoakiga a nā Faipule.

(4) Kafai e i ei he mafuaga e tatau ke huia ai he hui i loto o te taimi o te nofoakiga, e tofia hona hui e te nuku fakatatau ki nā tulafono fakatātia a te nuku tēnā.

4 Fonotaga a te Fono Fakamua

(1) Ko nā fonotaga a te Fono Fakamua e uhuia, kafai e mafai, nāhe i lalo ifo i te fakalua i te tauhaga.

(2) Ko te Fono a te Mālō Fakaauau ka fakatātia e ia nā aho o nā fonotaga takitahi a te Fono Fakamua.

(3) E heai he tonu e tatau kē fai e te Fono Fakamua vāganā ko he lua vae tolu te numela o nā hui e i ei, fakatahi ai, e hē i lalo ifo o he tokafā o ni hui mai nā nuku takitahi.

(4) (i) Ko nā matakupu uma e tuku ki te Fono Fakamua ke fai ki ei he tonu, kafai e fai he palota, e tatau ke fakaiku e te tokalahiga o nā palota a nā uhufono o te Fono Fakamua.

(ii) Kafai he matakupu e tutuha nā palota, ko te matakupu e hēki pāhia.

(5) Ko nā fonotaga a te Fono Fakamua e tatau ke fakaavanoa ki tagata uma, e tuha ai ma nā Tulafono Fakatonutonu o te Fono Fakamua.

(6) Ko te Fono Fakamua e fai ana galuega i tana kikilaga e talafeagai ma fakatatau ki nā tulafono ma ana Tulafono Fakatonutonu.

(7) E heai he fakamahinoga e i ei hona mafai-fakamahino ki te fakatinoga o nā galuega a te Fono Fakamua, pe ko te tauhiga o te mamalu i te Fono Fakamua e hō he tino kua ia te ia te mālohiaga ke fakatino ai te vāega tena.

(8) Ko te aloakia o hō he fonotaga a te Fono Fakamua, ma te aloakia o he pepa fakamaonia e fai e te Takitakifono o te Fono Fakamua i te fakatinoga o nā tiute o te Takitakifono, e hē fakafehiligia e hō he fakamahinoga.

5 Ko nā mafai faitonu o te Fono Fakamua

(1) E ō te Fono Fakamua te tiute ke pulepule nā matakupu ienei mo te manuia o te atunuku—

(i) Fakahoahoaga o te tupe a te atunuku ma te pulepulega o te tupe a te atunuku;

(ii) Kaufaigaluega Tautua a te Atunuku;

(iii) Ko te hokotaga a Tokelau ma Niuhila;

(iv) Hokotaga Fakavāomālō;

(v) Mamalu o te Atunuku;

- (vi) Koa a te atunuku;
- (vii) Felakuakiga a te Atunuku;
- (viii) Fehokotakiga;
- (ix) Tautuaga tau meli;
- (x) Taki aloakia ma nā fauhaga mo te ola mālōlō ma akoakoga a te atunuku;
- (xi) Tupe Tokelau mo nā tino ao tupefakamanatu; ma
- (xii) Hō he matakupu e kāiga ki hō he matakupu o nā matakupu ienei, ma hō he matakupu e kaumai mai nā Taupulega o nā nuku takitahi ki te Fono Fakamua mo hana onoonoga, pe ni fakatinoga fakatetulafono e fia fai.

(2)-(3) —

(4) Ko nā pepa uma e tatau ke haini ki ei ia Tokelau e mafai ke hainia mo Tokelau e nā Faipule e tokatolu, pe ko te Ulu, e tuha ai ma he latou maliliega ki ei.

6 Fono a te Mālō Fakaauau

(1) Kafai te Fono Fakamua e hē nofoia, ko nā galuega e fakatino ai te pule a te Fono Fakamua, e tatau ke fakataunuku e te Fono a te Mālō Fakaauau, e tatau ai, ka uma nā fakatalanoaga ieia e kikila ia e talafeagai, ke fai nā tonu e fetau mo te lelei o te pulepulega o nā matakupu a Tokelau.

(2) Ko te Mālō Fakaauau, e i loto ai nā Faipule e tokatolu, ma nā Puluenuku e tokatolu, ma ko nā tiute fakaminihita e tatau ke tufatufa ki nā hui takitahi o te Mālō Fakaauau.

(3) Ko te Ulu o Tokelau ko te Takitakifono ia o te Mālō Fakaauau, ma, e hui e ia te Mālō Fakaauau, te Fono Fakamua, ma te atunuku, e veia ona fuafuagia e te Mālō Fakaauau.

(4) Ko te Ulu e tatau ke filifilia e te Mālō Fakaauau mai ona hui.

(5) E ō te Mālō Fakaauau te tiute ke —

- (i) Fakatino nā galuega fakaauau a te mālō o Tokelau fakatatau ki nā tonu a te Fono Fakamua;
- (ii) Fakatino nā tonu a te Fono Fakamua;
- (iii) Onoono nā fakafanogātupe a nā nuku i nā fakatupega mō nā galuega e tuku ki ei e te Fono Fakamua;
- (iv) Tautali atu ki nā fakalavelave fakafuaheki i te atunuku;
- (v) Mulimuli ki nā tonu a te Fono Fakamua, vāganā e i ei he mafuaga tatau ke fai ai he tahi tonu, ma e fakataunuku oioti kafai kua fakatalanoa muamua ma nā hui uhufono o te Fono Fakamua.

(6) Ko te Mālō Fakaauau e heai hona mafai kē fatu ai ni tulafono.

(7) Ko te Mālō Fakaauau e lipoti ki te Fono Fakamua i tana fonotaga ka hohoko, ana fakatinoga ki nā galuega e fakatino ai te pule a te Fono Fakamua.

7 Fatuga o nā tulafono

(1) Ko nā Tulafono fakaataata e mafai kē tuku atu ki te Fono Fakamua e hō he hui o te Fono a te Mālō Fakaauau i hō he taimi.

(2) Ko te Fono Fakamua e tuku atu e ia nā Tulafono fakaataata ki te Taupulega mo hana onoonoga, kafai e hēki fakatalanoa ki te Taupulega muamua.

(3) I te tukuatuga o nā Tulafono fakaataata ki te Taupulega mo ni onoonoga, ko te Taupulega e tuku atu o latou manatu ka ko heki nofoia te Fono Fakamua e hohoko.

(4) Ko te Fono Fakamua e ia onoonoa hō he manatu, pe ni fakaaliga kua mau mai te Taupulega, ma e mafai ke pāhia, teuteu, pe teteke nā Tulafono fakaataata, i hana kikilaga e talafeagai ai.

(5) I he tūlaga fakavave, pe onono e te Fono Fakamua e talafeagai te fakavave, e mafai e te Fono Fakamua oi pāhia ni Tulafono ko hēki onoonoa i ni fakaataataga e te Taupulega.

(6) Ko nā Tulafono e fatu ka ko hēki tuku atua ki te Taupulega mo ni onoonoga, e hē toe aloakia i te aho mulimuli o te Fono Fakamua ka hohoko, kafai e fokotahi te Taupulega, pe lahi atu, e hē taliagia e kilatou nā Tulafono, ma tuku atu ni fakaaliga tuhituhia o te hē taliagia, ki te Fono a te Mālō Fakaauau i loto o he mahina e fokotahi, mai te aho na pāhia ai e te Fono Fakamua.

(7) Ko te hē toe aloakia o nā Tulafono i lalo o te puipui (6), e tatau ke fakailoa ki tagata uma o nā nuku takitahi, e te Fono a te Mālō Fakaauau.

8 Fakamahinoga a Tokelau

(1) Ko nā Fakamahinoga a Tokelau ko—

(i) Te Fakamahinoga a te Komehina Tulafono ma te Komiti Apili o nā nuku takitahi;

(ii) Te Fakamahinoga Maualuga;

(iii) Te Fakamahinoga mo nā Apili.

(2)-(4) —

12 Punaaga o nā Tulafono

(1)-(2) —

(3) Ko nā agaga taki kua fakatātia i te Fakatomuaga e tatau ke fakafetaui i te fakauigaga o te Tulafono Fakavae tenei ma ietahi tulafono.

(4) Ko nā punaaga o nā tulafono [na fai i loto o Tokelau] ko tenei te fakahologa i to latou fakatāuaga, ko te Tulafono Fakavae tenei, nā Tulafono a te Fono Fakamua, nā Tulafono a nā Nuku, nā tu ma nā aga a Tokelau.

(5) I te tūlaga e heai ai ni punaaga fakatetulafono, ko te Fakamahinoga e ia fakaikua, fakatatau ki te tulafono teia e fai e ve he fakatinoga na fai e te Fono Fakamua.

13 Kaufaigaluega Tautua

(1) Ko nā tofiaga ki te Kaufaigaluega Tautua a te Atunuku, ma, ki te Kaufaigaluega Tautua a he Nuku, e tatau ke tofia fakatatau ki te tūlaga kua i ei te iloa ma te agavaka.

(2) Ko te fakafaigaluega i nā tautuaga a te Kaufaigaluega Tautua a te Atunuku, pe, i te Kaufaigaluega Tautua a he Nuku, e tatau ke fakatatau ki nā Tulafono a te Fono Fakamua.

14 Tupe

(1) Ko nā tupehau uma e maua mai e fakaagaaga mo te Mālō o Tokelau ko ni tupe fakamua, ma e tatau kē teu ki te teugātupe a te Mālō o Tokelau.

(2) E heai ni lāfoga e tatau ke fakamalohia ke fai vāganā e fakataga i he Tulafono a te Fono Fakamua.

(3) E heai he tupe e tatau ke kave kehe mai te teugātupe a te Mālō o Tokelau vāganā—

(i) E totogi ai ni tupefano na fakataga mai i te fakatupega o te tauhaga tupe tena, pāhia e te Fono Fakamua; pe

(ii) Fakatatau ki he tulafono a te Fono Fakamua.

15 Fenua

(1) E tuha ai ma te Tulafono Fakavae tenei, pe hō he Tulafono a te Fono Fakamua, ko nā fenua uma e i lalo o te kikilaga a te Taupulega.

(2) Ko nā fenua fakateaganuku, e taupau fakatatau ki nā tu ma nā aga mahani a te nuku tena.

(3) Ko nā fenua fakapitoa, e hē ni fenua fakateaganuku.

(4) Ko nā matakupu uma e kāiga ki nā fenua fakapitoa pe ō ai, e tatau ke fakaiku e te Fakamahinoga Maualuga ke talafeagai ma te Tulafono mahani a Egelani.

(5) E heai he fenua pe hō he āiā tau fenua e tatau ke fakaheke ki he tino e hē he Tokelau.

(6) Kafai he fenua e manakomia mo he fakaaogaga fakateatunuku, e tatau lava lā ke i ei he maliliea i te va o te Mālō o Tokelau, ma te nuku e i ei ai te fenua tena.

(7) Kafai he fenua e manakomia mo he fuafuaga fakateatunuku pe fakatenuku, e fai nā fetukunakiga a te nuku ma nā tino e ō kilatou te fenua, ki te fakatauga pe ko te fakaaogāga o te fenua, mo ni fuafuaga fakateatunuku pe fakatenuku.

(8) Kafai e hē maua e te nuku he maliliea mai nā tino e ō kilatou te fenua, ko te fenua e ono fakaaogā mo hō he fuafuaga fakateatunuku pe fakatenuku i te tukutukuga, ko nā tino e ō kilatou te fenua, kua maua muamua e kilatou ni fakamanuiaga talafeagai mai te nuku.

16 Ko nā Āiātatau o Tagata

(1) Ko nā āiātatau tautokatahi o tagata uma i Tokelau, ko ieia e takua i te Takutinoga a te Lalolagi mo Āiātatau a Tagata, ma, e kitea ki loto o te Feagaiga Fakavāomālō mo nā Āiā o Tagatānuku ma Fakanofonofoga Fakafaigāmālō.

(2) Ko nā āiātatau o tagata tautokatahi i Tokelau, e fakaaogā kae amanakia foki nā āiātatau a ietahi tino ma te nuku e nofo ai te tino tena.

(3) Kafai he tino kua mafaufau ko he tahi o ona āiātatau e ve ona takua i te Tulafono Fakavae kua fakahēaogā pe ka fakahēaogā, e ono mafai te tino tena ke tuhi talohaga ki te Fono a te Mālō Fakaauau mo he puipuiga o te āiātatau tena

(4) Kafai te Fono mo te Mālō Fakaauau e malie e tuha ai ma te talohaga, e ono mafai ke fai hō hana fakatonuga i tana kikila e talafeagai mo te puipuiga o tena āiātatau.

(5) Ko he fakatonuga e fai i lalo o te palakalafa (4) e ono mafai ke fakamalohia veia lava ko he fakaikuga e a te Fakamahinoga Maualuga.

(6) Ko te Fono a te Mālō Fakaauau, ko kinā tē fai ai te fakaikuga mulimuli ki te fuafuaga o nā matakupu uma e tau ki nā āiātatau o tagata.

17–19 [—

MATAKUPU FAKAOPOOPO

1 – 4 —

5 Ko nā mea e tutupu ona ko nā huiga

(1) ...ko nā fakatātiaga mo he tulafono e i ei nei, ieia kua opotia i loto o te Tulafono Fakavae tenei, e fakahēaogā e te Tulafono Fakavae tenei.

(2) Ona ko te puipui (1), ko te mea ia kua fakahēai ai nā vāega ienei—

(i) Nā Tulafono Fakatonutonu a te Fono Fakamua 1(1), 1(3), 1(4), 1(15), 3(1), 3(2), 4, 5(3), 5(5), 9, 11, 12 ma te 13;

(ii) Nā Tulafono o Āiātatau o Tagata 2003;

(iii) Nā Tulafono o te Kaufaigaluega Tautua 2004, vāega 3(3);

(iv) Nā Tulafono o nā Holigātulafono, Faiga e fai ai ma nā Fakamaoniaga 2003, vāega 112(1).

(3)-(4) —

CONSTITUTION OF TOKELAU

PREAMBLE

We, the people of Tokelau, declare,

Tokelau is permanently founded on God. This foundation is made manifest in the villages and when the people cooperate and live together peacefully and happily,

At the dawn of time the historic islands of Atafu, Nukunonu, Fakaofu, and Olohega were created as our home. Since the days of Maui and Tui Tokelau the land, sea, and air have nurtured our people, and God has watched over us,

It is important to us now that we be free to make our own decisions. We value the voice of all our people in all the decisions we make. We are independent in the use of our resources,

In the conduct of our daily life we place our culture and customs first and continue to value them. The wishes of our people shall be reflected in our way of life,

The family is the basis of the nation, and the positive approach we use for the raising of our families shall be the basis for making national decisions,

The villages are the source of all authority in Tokelau.

We, the people of Tokelau, believe,

In the Tokelau way, which includes a commitment to a life of interdependence where the less fortunate are cared for, the inati system of sharing resources, equal opportunity to participate in the life of the community, and the right to live happily,

That all undertakings in Tokelau will be planned to conform to the expressed wishes of the people, and will be performed to achieve the fulfilment of those wishes,

In the importance of good health, education and a good standard of living, respect for the law, acceptance of the changes that will benefit Tokelau, respect for the rights of all individuals, non-discrimination, and trustworthy leaders,

That our community groups will have clear aims and constitutions, and will have a role in the development of Tokelau,

That our education must be organised to respond to the needs and wishes of the people, and must give importance to Tokelau knowledge as well as to new knowledge that benefits Tokelau,

We, the people of Tokelau, now join together,

For the protection of our families and culture and for the protection of the independence of the villages in the issues that affect them, and for these purposes establish these principles for the Constitution of Tokelau.

1 Tokelau

Tokelau is all the islands, internal waters, territorial seas, and other areas to which Tokelau is entitled at international law.

2 Villages

- (1) The villages are organised in accordance with the law.
- (2) The villages shall elect a Faipule and a Puleuku in accordance with the law.

3 General Fono

- (1) The General Fono consists of the following members—
 - (i) The Faipule and Puleuku of each village, and
 - (ii) One delegate from each village for every 100 inhabitants of that village, based on the latest available census figures rounded to the nearest 100 inhabitants.
- (2) The delegates are designated by each village in accordance with the rules established by that village.
- (3) The term of office of delegates of the General Fono coincides with that of Faipule.
- (4) Where a need arises to replace a member during the term of office, the replacement shall be made by the village in accordance with the rules established by that village.

4 Meetings of the General Fono

(1) Meetings of the General Fono shall be held where possible at least twice a year.

(2) The Council for the Ongoing Government shall fix the date for each meeting of the General Fono.

(3) No decision shall be taken by the General Fono unless at least two thirds of the members are present, including no fewer than four members from each village.

(4) (i) All matters coming before the General Fono for a decision shall, where a vote is to be taken, be decided by a majority of the votes cast by members of the General Fono.

(ii) If a matter receives an equal number of votes for and against, the matter has not been approved.

(5) Meetings of the General Fono shall be open to members of the public, subject to the Standing Orders of the General Fono.

(6) The General Fono shall conduct its business in such manner as it thinks fit and in accordance with the law and its Standing Orders.

(7) No court shall have jurisdiction in relation to the conduct of the business of the General Fono, or to the maintenance of order in the General Fono by any person authorised for that purpose.

(8) The validity of any proceedings in the General Fono and the validity of any certificate given by the Chairperson of the General Fono in the exercise of the functions of the Chairperson shall not be questioned in any court.

5 Executive powers of the General Fono

(1) It is the duty of the General Fono to manage the following matters in the interests of the nation—

(i) National budget appropriation and national financial management;

(ii) National public service;

(iii) The relationship of Tokelau with New Zealand;

(iv) International relations;

(v) National integrity;

(vi) National resources;

(vii) National transport;

(viii) Telecommunications;

(ix) Postal services;

(x) Policy and structures for national health and education;

- (xi) Tokelau currency for coin collectors; and
- (xii) Any matters related to any of these items and any matter referred by the Taupulega of each village to the General Fono for its consideration, decision, or legislative action.

(2)—(3) —

(4) Every document that must be signed by Tokelau may be signed on behalf of Tokelau by the three Faipule, or the Ulu, as they decide.

6 Council for the Ongoing Government

(1) When the General Fono is not in session, the executive business of the General Fono shall be conducted by the Council for the Ongoing Government, which shall, after such consultation as it thinks fit, take the decisions necessary for the effective administration of Tokelau.

(2) The Council shall include the three Faipule and the three Pulenuku, and portfolios shall be allocated to each member of the Council.

(3) The Ulu o Tokelau is the Chair of the Council and represents the Council, the General Fono, and the nation, as determined by the Council.

(4) The Ulu shall be chosen by the Council from among its members.

(5) It is the duty of the Council to—

- (i) Conduct the ongoing government of Tokelau in accordance with General Fono decisions;
- (ii) Implement General Fono decisions;
- (iii) Monitor expenditure by villages of project money granted by the General Fono;
- (iv) Respond to national emergencies;
- (v) Follow General Fono decisions unless there is a necessity to do otherwise, and then only after consultation with the members of the General Fono.

(6) The Council has no power to make law.

(7) The Council shall report to the General Fono at its next meeting on its conduct of the executive business of the General Fono.

7 Law making

(1) Draft Rules may be introduced to the General Fono by any member of the Council for the Ongoing Government at any time.

(2) The General Fono shall refer draft Rules to the Taupulega for consideration if the Taupulega had not previously been consulted.

(3) Where draft Rules have been referred to the Taupulega for consideration the Taupulega shall submit any comments before the next session of the General Fono.

(4) The General Fono shall consider any comment or notice received from the Taupulega and may approve, amend, or reject the draft Rules as it sees fit.

(5) In case of urgency, or where the General Fono considers it necessary, the General Fono may approve Rules that have not been considered in draft by the Taupulega.

(6) Rules made without prior consideration by the Taupulega shall expire on the last day of the next General Fono session if one or more Taupulega disapproves of the Rules and gives written notice of that disapproval to the Council for the Ongoing Government within one month from the date of approval by the General Fono.

(7) The expiry of Rules under paragraph (6) shall be publicly notified in each village by the Council for the Ongoing Government.

8 Courts of Tokelau

(1) The courts of Tokelau are—

- (i) The Commissioner’s Court and Appeal Committee of each village;
- (ii) The High Court;
- (iii) The Court of Appeal.

(2)-(4) —

9-11 —

12 Sources of Law

(1)-(2) —

(3) The principles set out in the Preamble shall be applied in the interpretation of this Constitution and other laws.

(4) The sources of law [made in Tokelau] are, in descending order of priority, this Constitution, General Fono Rules, Village Rules, the custom of Tokelau...

(5) Where no source is available, the court shall decide according to the rule which it would make if it had to act as the General Fono.

13 Public Service

(1) Appointments to the National Public Service and to a Village Public Service shall be made on the basis of merit.

(2) Employment in the service of the National Public Service or in a Village Public Service shall be in accordance with Rules of the General Fono.

14 Finance

(1) All revenue received for the purposes of the Government of Tokelau is public money and shall be paid into the Tokelau government account.

(2) No taxes shall be imposed except by a Rule of the General Fono.

(3) No money shall be withdrawn from the Tokelau government account except—

- (i) To meet expenditure authorised by the current budget approved by the General Fono; or
- (ii) In accordance with a Rule of the General Fono.

15 Land

(1) Subject to this Constitution or any Rule of the General Fono, all land is under the control of the Taupulega.

(2) Customary land is land held in accordance with the custom of the village.

(3) Special land is land that is not customary land.

(4) All matters relating to the ownership of special land shall be determined by the High Court in accordance with the common law of England.

(5) No land or any interest in land shall be transferred to a person who is not a Tokelauan.

(6) If land is required for a national purpose then there must be agreement between the Government of Tokelau and the village in respect of the land.

(7) If land is required for a national or village purpose, the village shall enter into negotiations with the landowners for the purchase or use of the land for the national or village purpose.

(8) If the village is unable to get the consent of the landowners, the land may be used for the national or village purpose on the condition that the landowners have first received appropriate compensation from the village.

16 Human Rights

(1) 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.

(2) The rights of individuals in Tokelau shall be exercised having proper regard to the rights of other individuals and to the community to which the individual belongs.

(3) If a person thinks that one of their human rights as provided in this Constitution has been denied or may be denied, that person may apply to the Council for the Ongoing Government for protection of that right.

(4) If the Council of Ongoing Government agrees with the complaint, it may make any order it thinks appropriate for the protection of that right.

(5) An order made under paragraph (4) may be enforced in the same manner as a judgment of the High Court.

(6) The Council for the Ongoing Government has original and final authority to determine all matters of human rights.

17-19 —

SCHEDULE

1-4 —

5 Consequential amendments

(1)provisions of an existing law which are incorporated in this Constitution are superseded by this Constitution.

(2) As a consequence of paragraph (1) the following are repealed—

(i) Standing Orders of the General Fono 1(1), 1(3), 1(4), 1(5), 3(1), 3(2), 4, 5(3), 5(5), 9, 11, 12 and 13;

(ii) Human Rights Rules;

(iii) Public Service Rules, rule 3(3);

(iv) Crimes Procedure and Evidence Rules, rule 112(1).

(3)-(4) [Free Association rules only]

TOKELAU ACT 1948
[consolidated as at 1 July 2008]

An Act to provide for the incorporation of Tokelau as part of New Zealand and to make provision for its government

WHEREAS by an Order of His Majesty in Council dated the 29th day of February 1916, and published in the Western Pacific High Commission Gazette on the 5th day of May 1916, certain islands in the Pacific Ocean known as the Tokelau Islands and also known as the Union Islands (hereinafter referred to as Tokelau were annexed to His Majesty's dominions, and the boundaries of the Gilbert and Ellice Islands Colony were extended so as to include Tokelau: And whereas by an Order of His Majesty in Council cited as the Union Islands (No 1) Order in Council 1925 the boundaries of the Gilbert and Ellice Islands Colony were altered so as to exclude Tokelau: And whereas by an Order of His Majesty in Council cited as the Union Islands (No 2) Order in Council 1925 the Governor-General of New Zealand was appointed Governor of Tokelau: And whereas by an Order of the Governor-General in Council cited as the Union Islands (No 1 of New Zealand) Order 1926, as amended by subsection (3) of section 3 of the Samoa Amendment Act 1947, the powers and authority of the Governor-General under the Union Islands (No 2) Order in Council 1925 were delegated to the High Commissioner of Western Samoa: And whereas it has been agreed between His Majesty's Government in the United Kingdom and His Majesty's Government in New Zealand that it is expedient that Tokelau should become part of New Zealand: And whereas by an Order in Council of His Majesty cited as the Union Islands (Revocation) Order in Council 1948 provision has been made for the revocation of the Union Islands (No 2) Order in Council 1925 to take effect on a date to be fixed by Proclamation by the High Commissioner of Western Samoa after he is satisfied that legislation has been enacted by the Parliament of New Zealand providing for the incorporation of Tokelau with New Zealand:

1 Short Title

- (1) This Act may be cited as the Tokelau Act 1948.
- (2) This Act shall come into force on the 1st day of January 1949.

2 Interpretation

(1) For the purposes of this Act the expression Tokelau means the islands of Fakaofu, Nukunonu, and Atafu, together with all small islands, islets, rocks, and reefs depending on them.

(2) In this Act, unless the context otherwise requires, the term enactment includes any Act, Ordinance, regulation, rules, Order in Council, Proclamation, or Warrant of the Minister of Foreign Affairs and Trade.

(3) In this Act, unless the context otherwise requires—

Administrator means the Administrator of Tokelau:

Elder means the head of a Tokelauan family:

Tokelauan means a person belonging to the Polynesian race of Tokelau and includes a person descended from a Tokelauan.

3 Tokelau to form part of New Zealand

Tokelau is hereby declared to form part of New Zealand.

3A General Fono may make rules

(1) Subject to subsection (4) of this section and to sections 3B and 3F of this Act, the General Fono may from time to time make such rules as it thinks necessary for the peace, order, and good government of Tokelau.

(2) Without limiting the generality of subsection (1) of this section, the power conferred by that subsection includes—

(a) The power to impose tolls, rates, dues, fines, taxes, and other charges:

(b) The power to prescribe criminal offences in respect of the contravention of, or non-compliance with, any rules made under this section, and to prescribe penalties that may be imposed in respect of any such offence:

(c) —

(d) The power to declare that any regulation made under section 4 of this Act before the commencement of this section shall cease to be in force in Tokelau:

(e) The power to provide for the making and issuing of commemorative coins to be legal tender only in Tokelau.

(3) Without limiting the generality of subsection (1) of this section, but subject to subsection (4) of this section, any rule made under this section may apply generally to Tokelau, or may apply within any specified part or parts of Tokelau.

(4) No rule made under this section shall apply or have effect outside Tokelau.

(5) The General Fono may from time to time make rules amending or revoking any rule made under this section.

3B Rules subject to other enactments and international obligations

(1) Subject to section 8(2A) of this Act, any rule made under section 3A of this Act that is inconsistent with—

- (a) Any Act of the Parliament of New Zealand that is in force in Tokelau; or
- (b) Any regulation made under section 4 of this Act after the commencement of this section; or
- (c) Any international obligation of Tokelau or applying in respect of Tokelau—

shall, to the extent of the inconsistency, be of no effect.

(2) No rule and no provision of any rule made under section 3A of this Act—

- (a) Shall be deemed to be inconsistent with any law referred to in subsection (1) of this section solely on the ground that it deals with a matter already dealt with by any such law; or
- (b) Shall be invalid solely on the ground that it is repugnant to the law in force in Tokelau by virtue of section 4B(1) of this Act.

3C Procedure for making rules

Subject to this Act, the General Fono may determine its own procedures for making, amending, and revoking rules under section 3A of this Act.

3D Availability of rules

(1) The General Fono shall ensure that copies of every rule made under section 3A of this Act are printed in Tokelauan and in English as soon as practicable after the rule is made.

(2) A copy of every rule made under section 3A of this Act shall—

- (a) Be available at all reasonable times—
 - (i) For public inspection, without fee; and
 - (ii) For purchase, on payment of such amount (if any) as the Taupulega of the relevant village from time to time determines,—

at the Administration Office of each village of Tokelau; and

- (b) Be available at all reasonable times—
 - (i) For public inspection, without fee; and

- (ii) For purchase, on payment of such amount (if any) as the Administrator from time to time determines—

at the office of the Administrator at Wellington.

(3) Failure to comply with subsection (1) or subsection (2) of this section shall in no way affect the validity of any rule made under section 3A of this Act.

3E Proof of rules

(1) In any proceedings, the production of any document purporting to be a copy of any rule made under section 3A of this Act, and which is endorsed with a certificate signed by the Administrator or by a person authorised for that purpose by the Administrator certifying—

(a) That the document is a true copy of the rule; and

(b) The date on which the rule came into force—

shall, until the contrary is proved, be sufficient evidence that the rule was duly made and is then in force.

(2) Until the contrary is proved, it shall be presumed that every certificate purporting to have been given under this section has been given by the Administrator or by a person authorised by the Administrator to give certificates under this section.

3F Disallowance of rules

(1) A copy of every rule made under section 3A of this Act shall, as soon as practicable after it is made, be sent to the Administrator.

(2) Within 30 days after the Administrator receives a copy of any rule in accordance with subsection (1) of this section, the Administrator may, by notice published in the *Gazette*, disallow the rule or any provision of the rule.

(3) Where the Administrator, by notice, disallows any rule or any provision of a rule, the rule or provision so disallowed shall cease to have effect on the later of—

(a) The date of the publication of the notice in the *Gazette*; or

(b) Any date specified in the notice as the date on which the rule or provision ceases to have effect.

(4) Where any rule or any provision of any rule is disallowed under this section, the disallowance of the rule or provision shall have the same effect as a revocation of that rule or provision, but the disallowance shall not affect the validity of anything already done under the rule or provision so disallowed.

- (5) As soon as practicable after disallowing any rule or any provision of a rule under this section, the Administrator shall—
- (a) Notify that disallowance to the Chairperson of the General Fono; and
 - (b) By written notice, inform the General Fono of the reasons for the disallowance.
- (6) The Administrator shall not delegate to any other person the power of disallowance conferred on the Administrator by subsection (2) of this section.

3G Restoration of Acts or regulations

(1) Where any rule or any provision of any rule, being a rule or provision that—

- (a) —
- (b) Declares that any regulation made under section 4 of this Act before the commencement of this section shall cease to be in force in Tokelau—

is disallowed under section 3F of this Act, the disallowance of the rule or provision has the effect of restoring the Act or regulation in force in Tokelau, as the Act or regulation was immediately before it was declared to cease to be in force in Tokelau, as if the rule disallowed or provision disallowed had not been made.

(2) The restoration of an Act or regulation pursuant to subsection (1) of this section takes effect on the day on which the rule disallowed or provision disallowed ceases to have effect.

4 Regulations for the peace, order, and good government of Tokelau

(1) In addition to all special powers of making regulations that may be conferred upon the Governor-General by any Act, the Governor-General may from time to time, by Order in Council, make all such regulations as he thinks necessary for the peace, order, and good government of Tokelau.

(2) No regulation made under this section shall be of any force or effect so far as it is repugnant to this or any other Act of the Parliament of New Zealand in force in Tokelau, but no such regulation shall be deemed to be repugnant to this Act because it is repugnant to the law as established in Tokelau by section 4A of this Act, or because it deals with a matter already dealt with by this or any other Act; and every such regulation shall have

effect according to its tenor, except so far as it is inconsistent with any such Act in force in Tokelau.

- (3) Regulations made under this section may—
- (a) Impose, or empower any specified authority or person to impose tolls, rates, dues, fees, fines, taxes, and other charges:
- (b) Provide for the making and issuing of commemorative coins to be a legal tender only in Tokelau.

4A Existing laws to continue in force

(1) Subject to sections 4B and 8A of this Act, all laws in force in Tokelau immediately before the commencement of this section shall continue in force.

- (2) —

4B Application of common law of England

(1) After the commencement of this section, English common law (including the principles and rules of equity) for the time being shall be in force in Tokelau, except to the extent—

- (a) That it is excluded by any other enactment in force in Tokelau; or
- (b) That it is inapplicable to the circumstances of Tokelau.

(2) The law referred to in subsection (1) of this section shall have effect in Tokelau in place of the common law (including the principles and rules of equity) that applied in Tokelau immediately before the commencement of this section, but nothing in this section shall affect—

- (a) The validity, invalidity, effect, or consequences of anything done or suffered before the date of the commencement of this section; or
- (b) Any status or capacity existing immediately before that date; or
- (c) Any right, interest, or title acquired, accrued, or established before that date, or any remedy or proceeding in respect of any such matter.

5 —

5A Common law and equity to be administered concurrently

Every Court having jurisdiction in Tokelau shall within the limits of its jurisdiction administer common law and equity concurrently, and in all

cases in which there is a conflict between common law and equity with reference to the same matter the rules of equity shall prevail.

6 Statute law of New Zealand not applicable to Tokelau

Except as otherwise expressly provided, the statute law of New Zealand, whether enacted before or after the commencement of this Act, shall not be in force in Tokelau.

7 When Act in force in Tokelau, amendments and regulations to be in force also

When any enactment of the Parliament of New Zealand is in force in Tokelau, every existing or future amendment of that enactment and all existing or future regulations, rules, Orders in Council, and other acts of authority in force under any such enactment, and every Act passed in substitution for any such enactment shall, so far as applicable and with all necessary modifications, be or become also in force therein, except where otherwise expressly provided.

7A Other enactments in force in Tokelau to be read subject to principal Act

Except where otherwise expressly provided, every enactment of the Parliament of New Zealand which by virtue of this Act or any other enactment is in force in Tokelau, and all regulations, rules, Orders in Council, and other acts of authority under that enactment that are in force in Tokelau, shall, in their application to Tokelau, be read subject to the provisions of this Act, and subject also to all modifications necessary for such application.

8 Interpretation Act 1999 in force in Tokelau

(1) The Interpretation Act 1999, so far as it is applicable, shall extend to and be in force in Tokelau, and shall apply to Orders in Council and to regulations in the same manner as to Acts of Parliament.

(2) Notwithstanding anything to the contrary in the Interpretation Act 1999, the term “New Zealand” as used in any Act, whether now in force in New Zealand or hereafter to be passed, shall not include Tokelau, except where a contrary intention appears.

(2A) No rule and no provision of any rule made under section 3A of this Act, and no law (however described) made under the authority of any such rule or under the authority of any regulations made under section 4 of

this Act, shall be invalid solely on the ground that it is inconsistent with the Interpretation Act 1999 as that Act applies in Tokelau.

9 Act to be administered by Minister of Foreign Affairs and Trade

The Minister of Foreign Affairs and Trade shall be charged with the administration of this Act.

