

ANNEX 1 - Tokelau

Tokelau

I. Introduction

1. As already stated above, New Zealand ratified the International Covenant on Economic, Social and Cultural Rights on 28 December 1978 and it entered into force for New Zealand on 28 March 1979. New Zealand's ratification also applied to Tokelau. The present information covers implementation of the Covenant with regard to Tokelau from 1998 to 2008. It should be read in conjunction with New Zealand's Fourth and Fifth Periodic Reports under the International Covenant on Civil and Political Rights.

II. General

2. Please refer to New Zealand's Second Report to the Committee for background on Tokelau's economic, cultural and political context.
3. Some updated figures for this reporting period include:
 - a. The population of Tokelau was counted as 1,411 in the 2011 census;
 - b. Tokelau's economy remains dominated by economic assistance from New Zealand. For the 2015/16 financial year, New Zealand's total assistance to Tokelau was approximately \$NZ16.3 million; and
 - c. An International Trust Fund was established in 2004 to provide Tokelau with an independent source of revenue and now stands at \$NZ 78.82 million (2015).

A. Constitutional programme

4. As mentioned in previous reports, for the purposes of the principle of self-determination of peoples enshrined in the United Nations Charter, Tokelau is classified as a non-self-governing territory. Thus New Zealand is responsible, as a member of the United Nations, for assisting Tokelau to exercise its options of self-determination and, should it so chose, to move towards self-government. As administering power for Tokelau, New Zealand is also responsible for meeting the needs of the people of Tokelau.
5. In 1992, Tokelau and New Zealand agreed to follow a constitutional programme which has the effect of providing Tokelau with formal powers to enable it to establish and operate its own national government. Since then, Tokelau has increasingly expressed a desire to be formally self-governing, to the extent that is realistic for such a tiny population. Much thought has been given, both in Tokelau and in New Zealand, to the best way in which to achieve some kind of "sustained autonomy".

6. Constitutional development in Tokelau has increasingly recognised the villages as the source of administrative authority. This stands in contrast to other systems of government in the Pacific, which typically follow the Westminster model. Village affairs in Tokelau have traditionally been administered by the village councils, the Taupulega. This remains the case today. The villages' role in national matters has not always been recognised, but in May 2004, the powers of the Administrator in respect of Tokelau as a whole were delegated to the villages. The Taupulega in turn delegated their authority in national matters to Tokelau's national legislative/executive body, the General Fono (and, when the General Fono is not in session, to its executive committee, the Council for the Ongoing Government of Tokelau). Work is currently progressing to enhance the Taupulega's decision-making, governance, and administration practices, and to strengthen the delivery of public services in the villages.
7. The General Fono has had statutory authority to make Rules for the peace, order, and good government of Tokelau since 1996. Rules of the General Fono have legal effect in Tokelau. Although Rules may be disallowed by the Administrator within a particular period of time, the disallowance power has never been exercised. New Zealand statute law does not apply to Tokelau unless it is expressly extended to Tokelau. In practice, no New Zealand legislation is extended to Tokelau without Tokelauan consent. Much of the work of the General Fono in recent years has involved taking New Zealand legislation in force in Tokelau and making in its place Rules suited to Tokelauan conditions.
8. Tokelau's ability to participate in certain regional organisations in its own right is a very important aspect of its progress toward greater autonomy. Accordingly (and with New Zealand's support), Tokelau participates fully and in its own right in regional organisations such as the Secretariat of the Pacific Community, the South Pacific Regional Environmental Programme, the Council of the University of the South Pacific, and the Forum Fisheries Agency. Tokelau is also an associate member of the World Health Organisation and the United Nations Educational, Scientific, and Cultural Organisation, the Pacific Islands Forum, and a full member of the Forum Fisheries Agency.⁷⁵⁷ On 21 November 2003, representatives of the Governments of New Zealand and Tokelau signed the Joint Statement on the Principles of Partnership between New Zealand and Tokelau. The Joint Statement sets out the medium- to long-term context in which work can be carried forward on Tokelau's constitutional and other development. The document is of a political rather than legal nature. It addresses the management of the partnership, self-determination for Tokelau, Tokelau's language and culture, New Zealand citizenship, shared values, economic and administrative assistance, coordination of services to Tokelau, defence and security, foreign affairs, and the Tokelauan community in New Zealand. A copy of the Statement is enclosed with this report. In this document New Zealand acknowledged its provision of economic assistance to Tokelau would, inter alia, be guided by New Zealand's obligations under the Covenant.
9. At the same time, the General Fono also endorsed self-government in free association with New Zealand as the self-determination choice to be actively explored with the New Zealand Government. That endorsement was confirmed in October 2004 in the presence of the Chair of the United Nations Special Committee

on Decolonisation, and two referenda on this issue have subsequently been held as outlined below. 759. In February 2006, Tokelau, under United Nations supervision, voted on whether to become self-governing in free association with New Zealand. This status was to be based on two documents – a Constitution for Tokelau and a Treaty of Free Association between Tokelau and New Zealand. Sixty percent of registered voters supported self-government. However, as this was less than the two-thirds majority level set by the General Fono, the referendum resulted in no change to Tokelau’s status.

10. After a period of reflection and consultation, the General Fono decided that Tokelau would hold a further referendum on this issue. This referendum, based on the same package, was held in October 2007, but still failed to reach the required two-thirds majority (by 16 votes). For the time being therefore Tokelau remains a dependent territory of New Zealand.
11. Following the second referendum, Tokelau, with the full support of New Zealand, has been engaging in a period of reflection on how it can ensure its people’s needs are met on each atoll through the strengthening of infrastructure and services. New Zealand’s focus remains on ensuring that all Tokelauans as New Zealand citizens are receiving appropriate essential services. This requires ongoing dialogue, a substantial level of general budget support to Tokelau, and effective responses to Tokelau’s requests for assistance to improve the quality of life for people living in Tokelau. As New Zealand representatives have noted in recent statements to the UN C24 Decolonisation Committee, New Zealand continues to support Tokelau’s current focus on providing core services and improving the quality of life of its people while it remains paused in its self-determination efforts, as has been the case since the referenda to change its status in 2006 and 2007 did not achieve the required majority set by Tokelau’s leaders. New Zealand will be guided by the pace that Tokelau alone will set as it develops towards the future of its choosing.

B. Tokelau and the Covenant on Economic, Social and Cultural Rights

12. Tokelau understands that it is bound by a number of international human rights treaties, including the Covenant. A booklet produced in Tokelauan and English in 1990 included the main human rights documents of relevance to Tokelau. The 2008 Handbook for the Law Commissioners of Tokelau also includes them. The Handbook for the Law Commissioners is a manual that will assist and guide the Law Commissioners in their work mainly when writing and delivering judgments on cases that come before them. It is hoped that the Handbook would contribute to the development of quality justice for the people of Tokelau.
13. In 2003 the General Fono made Human Rights Rules for Tokelau, which were incorporated as Article 16 of Tokelau’s Constitution endorsed by the General Fono following the second referendum in 2007. Article 16 of Tokelau’s Constitution states:
 1. Individual human rights for all people in Tokelau are stated in the Universal Declaration of Human Rights and are implemented in the International Covenant on Civil and Political Rights.

2. The rights of individuals in Tokelau shall be exercised having proper regard to the duties of other individuals, and to the community to which the individual belongs.
 3. If a person thinks that one of their human rights provided by these Rules has been denied or may be denied, that person may apply to the Council for the Ongoing Government for protection of that rights, and if the Council for the Ongoing Government agrees with that complaint, it may make any order it thinks appropriate for the protection of that right.
14. As mentioned in New Zealand's previous reports to the Committee, Tokelau does nonetheless face a core question of law and custom. Because, traditionally, government in Tokelau is on a village by village basis, there has been little in the Tokelau system that takes a formal shape recognisable externally. Custom is at the heart of the system. Much of it is unwritten but hallowed by tradition and by regular reinforcement in practice.
 15. At a time, as now, when custom and law interact to an increasing degree, Tokelau seeks understanding of its situation. For it faces a large challenge in moving from socially known rules in an oral tradition, to written law of the Western conception. As Tokelau considers what its commitment should be to basic human rights, Tokelau is mindful that human rights promote the imported notion of individuality, while the idea of community, with which Tokelauans are familiar, promotes a sense of unity and sharing.
 16. So this is a considerable evolution away from tradition. For Tokelauans this means a move away from following a particular set of rules and practices within their cultural setting, to following a set of rules and practices recognisable as consistent with life in the international community, and the rules and practices of other states.
 17. At this stage of Tokelau's constitutional evolution, questions concerning the application of the Covenant on Economic, Social and Cultural Rights remain formally the responsibility of the New Zealand Government. They are addressed in the context of New Zealand's relations with Tokelau. The Administrator has a close consultative relationship with the General Fono and the Council for the Ongoing Government.

III. Information relating to specific articles

18. Information on Tokelau relating to specific Articles of the Covenant follows. Please also refer to New Zealand's previous reports to the Committee.

Article 1

19. New Zealand continues to support Tokelau's current focus on providing core services and improving the quality of life of its people while it remains paused in its self-determination efforts, as has been the case since the referenda to change its status in 2006 and 2007 did not achieve the required majority set by Tokelau's

leaders. New Zealand will be guided by the pace that Tokelau alone will set as it develops towards the future of its choosing.

20. As described in Part I above, Tokelau, with New Zealand's assistance, has made considerable efforts in the reporting period to self determine its future. While neither referenda on self government met the required majority for a change in Tokelau's status, Tokelau recognises that its two acts of self-determination are clear testament to the importance both it and New Zealand attach to this right. Tokelau's current focus on ensuring its peoples' needs are met on each atoll through the strengthening of infrastructure and services is viewed as a prelude to a possible further referendum at some stage in the future.
21. Furthermore, in the meantime Tokelau is gaining experience of self-government, and making use of political structures which will make meaningful its choice of one of the political status options offered under relevant resolutions of the United Nations General Assembly.

Article 2

22. New Zealand, with Tokelau, has taken consistent steps, through economic and technical assistance and cooperation, to ensure that the rights recognised in the Covenant are realised in Tokelau.
23. Tokelau has a notably cohesive social structure based on family and the principle of sharing. The cultural order gives high priority to the welfare of the weaker members and the equitable distribution of economic resources. Tokelau's Human Rights Rules 2003 provide for the protection of individual human rights for all people in Tokelau.

Article 3

24. As we have previously reported, in Tokelau culture there has traditionally been a clear demarcation between male and female roles. However, there is nothing in the laws of Tokelau sanctioning any kind of discrimination against women.
25. The Government of Tokelau has always been supportive towards the women of Tokelau. Women's organisations have always received funds annually from the Government to support their work in their respective villages. Further, regional organisations such as UNDP, UNESCO, SPC have also funded projects to support the work of the women in the villages. At present the Office of the Council for the Ongoing Government of Tokelau is also supporting women in their efforts to enhance their lives in Tokelau.
26. There is a draft national policy for women and national plan of action which will assist the Government to respond to the issues highlighted by the women as important for the development of women of Tokelau. Tokelau's women's groups (Fatupaepae) are also currently involved in implementing the Government's Project to Stop Violence against Women and Young Girls. The focal points for the project in the 3 villages have reported that the women are enjoying the project, which has increased their knowledge about their rights under the law. The project has also given women the opportunity to understand Tokelau's current laws and have

suggested some amendments to the law to ensure that women are more fully protected.

Article 4

27. Neither the New Zealand Government nor Tokelau have taken any practical measures to limit the enjoyment of the rights recognised by the Covenant.
28. Tokelau's Human Rights Rules 2003 state that the rights of individuals in Tokelau shall be exercised having proper regard to the duties of other individuals, and to the community to which the individual belongs. This is consistent with the requirements of Article 4 and with Tokelau's traditional focus on community unity and sharing.

Article 5

29. There has been no attempt to destroy or unduly limit the rights and freedoms contained in the Convention in Tokelau; nor has there been any restriction or derogation from any existing fundamental human rights recognised in Tokelau.

Article 6 (and article 13)

30. Questions concerning the right to work must be seen in light of Tokelau's physical, economic and cultural context, and must take into account the virtual absence of employment opportunity outside of that which is community or publicly funded. To survive Tokelau has placed more emphasis on the obligations of its members to provide and share, than on individual effort. Over the past 25 years, the Tokelau Public Service has become the major employer; this includes both the National Public Service and the Public Services in each of the three villages. In July 2004 there was a major public sector reform whereby National Public Servants, mainly Health and Education staff in each Village, were devolved or transferred to the umbrella of the Taupulega or Council of Elders in each Village. Hence, the Taupulega is now their employer.
31. Literacy levels are high, there is one hundred percent access to primary through to Level 11 education (i.e. up to 16 years), and senior secondary and foundation tertiary education is provided on each atoll. The trend is to widen the curriculum to include vocational and livelihood skills.
32. Tokelau is in the process of remodelling its long term strategy for Primary Health Care. Evidence suggests that health systems oriented towards primary health care are more likely to deliver better health outcomes and greater public satisfaction at lower costs. This requires Tokelau to address common health system weaknesses and challenges, such as inadequate human and financial resources, lack of coordination, inefficient management, inaccessibility to appropriate technologies, and inadequate information and evidence for policy and decision-making. This is one of Tokelau's key goals.

Article 7

33. Tokelau has made good progress in the implementation of this Article in the reporting period. This response should be viewed in light of the fact that there is a very limited private sector in Tokelau.
34. In 2004, Tokelau agreed that all public services for Tokelau should be handled consistently and that common manuals and instructions should be developed for each village and the Apia, Samoa based office. The Public Service Rules 2004 (the Rules) and the Tokelau Public Services Human Resources Manual (the Manual) have been approved and endorsed by the General Fono. A copy of the Manual and the Rules is enclosed with this report. Together, they provide a strong basis for ensuring the rights contained in this Article are realised in Tokelau. For example, appointments to the Tokelau Public Service are made on merit and salary scales relate to jobs, not people. General workers are paid on an hourly rate set by the General Fono and listed in the salary scales in the Manual.

Article 8

35. The comments under Articles 6 and 7 apply here. While there are no trade unions in Tokelau in the outside world's sense, there is an informal association of public service employees.

Article 9

36. A sharing and caring ethos is fundamental to Tokelau society. Persons older than 60 receive a pension of NZ\$41.25 a month. Patients requiring medical treatment that is unavailable in Tokelau are officially sponsored to travel to Samoa or New Zealand, as required.

Article 10

37. Law, custom and practice recognise the family as the natural and fundamental group unit of Tokelau society. The Manual referred to in Article 7 provides for paid maternity leave.

Articles 11 to 15 and generally

38. The rights and freedoms established under the Covenant are broadly upheld in Tokelau practice, and are continue to be progressively realised by the people of Tokelau. This report shows how the implementation of those rights and freedoms may be viewed in a decolonisation context which is distinctive and challenging. Tokelau, with New Zealand's encouragement, continues to seek and find local solutions in areas of economic direction and governance that will work in its unique situation.
39. The underlying issue is how Tokelau can best establish the capacity for its economic survival in a sustainable way. The Joint Statement on the Principles of Partnership between New Zealand and Tokelau provides a blueprint for how Tokelau and New

Zealand will continue to move forward together on matters covered by the Covenant, including:

- a. Self-determination for Tokelau;
- b. The retention and development of the language and culture of Tokelau;
and
- c. The economic and social development of Tokelau.

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