

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

TOKELAU

I. Methodology/Consultation Process

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

II. Background information on Tokelau

2. Tokelau consists of three atolls Atafu, Nukunonu and Fakaofu (the former two with a single village, the latter with two). The atolls are separated from each other by 60–100 km of open ocean and are located about 500 km to the north of Samoa. The total land area of Tokelau is 12 sq. km, and the population is 1411 (2011 Census). In addition to Tokelauan, English and Samoan are widely spoken on the atolls.

Constitutional Status and Government

3. Tokelau is a non-self-governing territory, and has been administered by New Zealand since 1926. Tokelau is considered “part of New Zealand” under the Tokelau Act 1948 (NZ) and Tokelauans are New Zealand citizens. In practice Tokelau remains substantially self-governing. The Tokelau General Fono is the national legislative and executive body. When the General Fono is not in session the Council for the On-going Government of Tokelau becomes the executive Government.

4. Tokelau has its own courts. Each island has a Village Court and a Law Commissioner who administers criminal matters. Jurisdiction of the Law Commissioners is limited. Law Commissioners have power only in respect of offences punishable by a fine (of any amount) or a term of imprisonment of less than one year. The maximum sentence that a Commissioner can impose is \$150 fine or 3 months imprisonment. Serious offences are referred to the High Court of New Zealand.

5. In 2003, the Governments of New Zealand and Tokelau signed the *Joint Statement on the Principles of Partnership*, which sets out the medium- to long-term context in which work can be carried forward on Tokelau’s constitutional and other development. The *Principles of Partnership* affirm the partners’ shared values of human rights, commitment to good governance and respect for the rule of law.

6. The *Joint Commitment for Development* signed by New Zealand and Tokelau in 2011, sets out what Tokelau and New Zealand have committed to do over the term of the agreement so as to achieve Tokelau's vision and development for the future. New Zealand remains the largest bilateral donor to Tokelau, with New Zealand's economic support amounting to around 75% of Tokelau's recurrent budget, and we are committed to this funding being used effectively and efficiently.

7. Tokelau and New Zealand completed a review of progress against the *Joint Commitment for Development Results Framework* in April 2013. The most significant results achieved this year include:

- Interim Shipping Charter providing a safe, regular service to Tokelau;
- 90% plus reduction in use of diesel for electricity (original target 70%);
- 200% increase in fisheries revenues since 2011 (original target 50% by 2015);
- 81% of students proceeding to further education beyond Year 11 (increase from 30% in 2006).

8. Whilst Tokelau continues to face a range of challenges, in particular around its geographical isolation, New Zealand remains committed to working together with Tokelau – not only, to continue to ensure each of the three atolls have essential services, but to develop our relationship over time.

9. Although the relationship between Tokelau and New Zealand continues to evolve, the underlying constitutional structure remains. The choice to remain a territory brings with it responsibilities and benefits for Tokelau and New Zealand, which must be guarded and worked at for the relationship to remain strong. Tokelau remains important to New Zealand.

Tokelau and the International Community

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

11. With New Zealand's support, Tokelau participates in certain regional organisations in its own right, and is an associate member of a number of other organisations, including the Secretariat of the Pacific Community, the South Pacific Regional Environmental Programme, the Forum Fisheries Agency, the South Pacific Applied Geoscience Commission and the Council of the University of the South Pacific. Observer status was granted to Tokelau by the Pacific Islands Forum in October 2005. Tokelau is also an associate member of the World Health Organisation and UN Educational Scientific and Cultural Organisation.

III. Promotion and Protection of Human Rights

12. The Constitution of Tokelau 2007 provides that the individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights and reflected in the International Covenant on Civil and Political Rights. Those rights are to be exercised with proper regard to the rights of other individuals, and to the community to which the individual belongs. A person may apply to the Council for the On-going Government for protection of any of their rights.

Women

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

Employment

14. The Public Service is the major employment provider on each of the three atolls. The Public Service Rules 2004 and Public Services Human Resources Manual provide for the protection of certain labour rights, for example, there are processes to ensure that appointments are made on merit and provision of salary scales.

15. There is no organised export sector and limited private sector activity. By necessity, however, a number of families operate family run micro-businesses.

16. Within the public sector, there is only provision for a limited form of "maternity leave". During village consultations on the Human Resource Manual in early 2013, a number of requests were made for amendments to be considered in this area (to include provision for women employed less than a year and for women to continue to receive pay during the first two months of maternity leave instead of receiving a grant after two months of returning to work). Maternity leave is an area that Tokelau has indicated will be considered in the expected review of the Human Resources Manual.

17. The Tokelau Public Service is a multi-racial organisation with 44.3% of the national workforce comprised of non-Tokelauans. The Tokelau Public Service Code of Conduct is a key document that governs the performance and conduct of its workforce. All public servants regardless of their gender, religion, nationality or political opinion are guided by this document. All public servants are expected to read and understand all provisions in the Code of Conduct and to closely observe them at all times.

18. Copies of the Code of Conduct are provided to all heads of national departments as well as to the three villages through their Taupulega Offices (Village Council Office). Staff are encouraged to consult the Code of Conduct or to discuss with their Director or the Human Resource Manager, any issue they may have regarding the application of the Code of Conduct, or if they feel they have breached the Code of Conduct.

19. The Tokelau Public Service does not tolerate or accept any form of discrimination amongst public servants. There has not yet been any complaint against the public service for discrimination and Tokelau would try its best to maintain that clean record.

20. The Council for the On-going Government of Tokelau is the Employer for the Public Service (via the General Manager, National Public Service). As such all discrimination cases would be addressed according to policies of the public service.

Education

21. Tokelau children and young people have access to free education up to sixteen years of age. Primary, senior secondary and foundation tertiary education is provided on each atoll. Ensuring the on-going quality of education remains a challenge because of Tokelau's remoteness, small population and difficulties around recruiting and retaining trained teaching staff. Whilst improving, there is limited statistical data available to track student achievement and progress. A student tracking system is hoped to be in place by January 2014. Latest information from the Consolidated Sector Report for July-December 2012 indicates not all targets are being met in the education space.

Health

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

23. New Zealand is hopeful that Tokelau will focus its attention on completing the Infrastructure Development Projects (IDP), which include two schools on Fakaofu and Atafu atolls and a new hospital on Nukunonu atoll. With Tokelau's continued efforts, the completion of these buildings will provide improved health and education services to Tokelau and Tokelauans.

24. In the health space, there are growing issues with rates of non-communicable diseases and other lifestyle related illnesses. A Health Sector Review is planned, together with a population database with benchmarked indicators to enable disease trends to be mapped, tracked and detected. Key statistical data on the health status of Tokelau's population is unavailable, which severely limits the amount of information available in key areas including mortality rates, obesity levels, immunisation rates and prevalence of key diseases. Latest information

from the Consolidated Sector Report for July-December 2012 indicate not all targets are being met in the health space.

Fair Trial

25. Tokelau has its own criminal code set out in the Crimes, Procedure and Evidence Rules 2003. The Rules are consistent with Tokelau's human rights obligations. Tokelau's 2008 Handbook for the Law Commissioners of Tokelau, includes the main human rights documents of relevance to Tokelau, including Children and Young People and Persons with Disabilities.

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

Achievements and Best Practice

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

Challenges and Constraints

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

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

29. In June 2012, the Administrator of Tokelau signed a contract for a two year shipping charter service between Apia and Tokelau, which was a significant step forward to achieve safe and secure transport for Tokelau. In February 2013, the Ministry of Foreign Affairs and Trade issued a tender for a new vessel to service this route. On 12 August, the Ministry went to the market seeking firm quotes from selected shipyards for the ship construction, with responses due on 9 September 2013.

30. The new ship design is based on user specifications that were provided by a representative cross section of Tokelau in late 2012. This new vessel will provide a critical service providing a vital lifeline. New Zealand is committed to provision of a safe and effective service.

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

32. Since 2008 the focus of the relationship between New Zealand and Tokelau has been addressing the core requirements of the three atoll populations, following the decision by the leaders of Tokelau and New Zealand that there should be an appreciable period of time before Tokelau would undertake any further act of self-determination. This decision was made following self-determination referenda in 2006 and 2007 where Tokelauans signalled that the timing and conditions were not yet right for constitutional change.

33. From New Zealand's point of view, much remains to be accomplished by Tokelau to ensure core services are delivered for the people of each atoll before conditions for any future referendum could be seen to be met. Present rates of achievement continue to indicate this will be some time in the future. New Zealand remains committed to working in partnership with Tokelau to continue to ensure each of the three atolls have essential services. This continues to pose challenges with such a small population base, skill shortages and a relative lack of resources. Tokelau continues to make progress in strengthening the governance and administrative capability of the public service, including the *Taupulega* (village councils).

V. Capacity Building

34. Core capacity needs in Tokelau include attracting and retaining trained teachers and medical personnel, improving core infrastructure for the people of Tokelau, and increasing capacity in the public service to deliver good governance at village and national level.