

I THE CONSTITUTIONAL FRAMEWORK OF TOKELAU

1 The Government of New Zealand and the Relationship with Tokelau

Tokelau is a non-self governing territory administered by the government of New Zealand (Section 3 of the Tokelau Act 1948).

Tokelau is part of the realm of New Zealand, which also includes the self-governing states of the Cook Islands and Niue (Clause 1(d) of Letters Patent 1989).

Tokelau is listed with the United Nations as a territory which has the right to self-determination.

The basic structure of the government of Tokelau is outlined in the Tokelau Act 1948. The Head of State is the Queen of New Zealand. The Governor-General of New Zealand is the Queen's representative. Tokelau is administered for New Zealand by the Ministry of Foreign Affairs and Trade, and an Administrator who is the Head of the Special Relations Unit in that Ministry.

The Parliament of New Zealand can make law for Tokelau by Acts (Section 3B of the Tokelau Act 1948). The Governor-General can make law for Tokelau as regulations (Section 4(1) of the Tokelau Act 1948).

The people of Tokelau do not vote for the New Zealand Parliament and have no representatives in the New Zealand Parliament. The people of Tokelau are citizens of New Zealand.

The rights and freedoms of people in Tokelau are contained in Rule 16 of the Constitution of Tokelau.

The main crimes in Tokelau, and the rules of criminal procedure, are set out in the Tokelau Crimes, Procedure and Evidence Rules. They are explained in this book.

2 *The Government of Tokelau*

(i) Village government

Villages elect a Faipule and a Pulenuku every 3 years in accordance with the Village Incorporation Rules 1986.

Decisions that relate primarily to village matters are made at village level by the Taupulega.

Village rules are made in accordance with rules 18 and 19 of the Village Incorporation Rules 1986. The rules must be made by resolution of the Taupulega, signed by the Faipule and be impressed with the seal of the village.

Rules made by a village must not contradict Acts, regulations, international obligations and rules of the General Fono in force in Tokelau (Rule 18 of the Village Incorporation Rules 1989).

Law disputes at the village level are settled by the Commissioner and the Village Appeal Committee (Section 10 of the Tokelau Amendment Act 1986; Rule 103 of the Crimes Rules). Land and custom matters are settled by the Taupulega.

(ii) National government

Government decisions which affect the whole of Tokelau are made by the General Fono.

The General Fono consists of:

- (i) The Faipule and Pulenuku of each village; and
- (ii) One delegate from each village for every 100 inhabitants (rounded to the nearest 100 inhabitants) (Section 3 of the Constitution).

The term of office of delegates to the General Fono coincides with that of Faipule.

National Government

The General Fono should meet at least twice every year. Two thirds of the members must be present for a decision to be valid.

Decisions are valid if more than half of the members present vote in favour of the decision.

“The General Fono may... make such rules as it thinks necessary for the peace, order, and good government of Tokelau” (Section 3A of the Tokelau Act 1948). The General Fono may not make law that contradicts an Act, regulation, or treaty that is in force in Tokelau.

The General Fono may not make law that can apply or have effect outside Tokelau (Section 3A(4) of the Tokelau Act 1948).

Executive

It is the duty of the General Fono to manage the following matters in the interests of the nation:

- National budget appropriation
- National resources
- National public service
- International relations
- Telecommunications
- The relationship of Tokelau with New Zealand
- National integrity
- National transport
- Postal services
- Policy and structures for national health and education
- Tokelau currency for coin collectors
- Any matter referred by the Taupelga of each village to the General Fono.

(Section 5 of the Constitution)

Decisions of the General Fono are implemented by the Tokelau Public Service. When the General Fono is not in session, the Council for the Ongoing Government makes the decisions necessary for the administration of Tokelau. The Council includes the three Faipule and the three Pulenuku and is chaired by the Ulu o Tokelau (General Fono Standing Orders).

The court system

Tokelau has the following courts:

- The Commissioner's Court and Appeal Committee of each village;
- The High Court;
- The Court of Appeal

(Sections 3-10 of the Tokelau Amendment Act 1986; Rule 140 of the Crimes Rules; See also section 8 of the Constitution)

Human rights

All people in Tokelau have the rights and freedoms set out in the Universal Declaration on Human Rights (Section 16 of the Constitution).

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.

The Tokelau constitutional rule (Rule 16) and the relevant international treaties are set out in the Appendices to this book. Complaints concerning any breach or alleged breach of a Tokelau human right, are dealt with by the Council for the Ongoing Government.