

**CHILDREN IN TOKELAU,
NEW ZEALAND CITIZENS**

An advocacy dilemma

by
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AN ADVOCACY DILEMA

The children of Tokelau face a dilemma. On the one hand the New Zealand Government formally recognises the evolving autonomy of Tokelau and works through a “Principles of Partnership”. Conversely, as a protectorate of New Zealand, the Government has a duty to protect the wellbeing of children in Tokelau as New Zealand citizens, in accordance with its international obligations under the Convention on the Rights of the Child (UNCROC).

In the interests of social and fiscal accountability, with annual funding of \$19 million per annum, constituting approximately 80% of Tokelau’s income, coupled with a lack of available data, some formal monitoring of the rights of children should be expected of the Government of New Zealand.

BACKGROUND TO TOKELAU

New Zealand administers Tokelau, and its people are New Zealand Citizens. Tokelau consists of three isolated atolls in the Pacific, 500 miles, or about 25 hours boat journey, from Samoa. There is no airfield or port. The total usual resident population is 1,466 of which 604 (40%) are below 18 years of age. The highest point is five meters. The country is almost 80% dependant on NZ economic aid. Further information is set out in Appendix 1.

New Zealand has ratified the Convention on the Rights of the Child (UNCROC). However, the UN Committee on the Rights of the Child Concluding Observations 1997 (No 8) and 2003 (No 7b) have raised concerns that UNCROC does not apply to Tokelau and New Zealand should continue its discussions with Tokelau for its application to that country.

The Ministry of Youth Development has been advised by the Ministry of Foreign Affairs that the Council for Ongoing Government (Tokelau’s national executive body) was not seeking to implement additional international human rights norms, such as UNCROC, from those already agreed.

New Zealand has a Joint Agreement with Tokelau to assist them. A Census was conducted on 19 October 2006 and the report is available. There is no evidence of the equivalent to a Social Report, which would provide the necessary evidence on a range of wellbeing indicators.

In response to ACYA questions the Ministry of Foreign Affairs and Trade have advised that a joint climate change working group is being formed to establish a climate change policy. A Disaster Risk reduction plan is in the final stages of completion. A national strategic plan for 2010-2015 is also being drafted. The Tokelau International Trust fund at 30 June 2009 was NZ \$56 million. A replacement ship to service the atolls should be available by the end of 2010.

HUMAN RIGHTS ISSUES

Tokelau is bound by the following UN Treaties:

- Convention Against Torture
- International Covenant on Civil and Political Rights
- Convention on the Elimination of discrimination against Women
- International Convention on the Elimination of all forms of Racial Discrimination
- International Covenant on Economic Social and Cultural Rights

Reports by the New Zealand Government to the UN Economic and Social Council and the treaty monitoring body for the International Covenant on Civil and Political Rights stress the tension between oral cultural community traditions and the introduction of western written individual human rights developed in other world wide communities.

Commenting from Tokelau in November 2006, the Administrator David Payton was quoted as saying “that Tokelau and New Zealand will always be family and will continue to do so by virtue of the NZ citizenship.” He noted the schools and hospitals on all the villages. He remarked that the facilities provided should be brought to a standard “befitting citizens of New Zealand”.

In considering the issues involving children of Tokelau as Citizens of the Realm it is not clear what obligations that imposes on the Government of New Zealand.

The view of the Commissioner for Children is that the extension of UNCROC to Tokelau is a matter for the people of Tokelau and the New Zealand Government. His office is available to assist in raising awareness and understanding of UNCROC in Tokelau should such assistance be requested. There are limits on the Office's ability to monitor the position of children in Tokelau and the application of the Convention there.

Tokelau has agreed to the following Human Rights Statement:

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 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 right, and if the Council for the Ongoing Government agrees with that complainant, it may make any order it thinks appropriate for the protection of that right.

RECENT NEW ZEALAND GOVERNMENT HUMAN RIGHTS REPORTS

Civil and Political Rights

The New Zealand Government 5th Periodic Report dated December 2007 addressed Tokelau at paragraphs 443-456. The Human Rights Committee Report in March 2010 did not address any issues relating to Tokelau.

Universal Periodic Review

The New Zealand Government addressed Tokelau in an annex (see Appendix 1). The Human Rights Council in May 2009 did not address Tokelau in its Recommendations and it appears that Tokelau was not discussed at the meetings.

3rd & 4th Periodic Report to Convention on the Rights of the Child

The Government in its report dated November 2008 addressed the Committee's 2003 Recommendation 7b in paragraphs 1.27-1.30. and reiterated its position that Tokelau was not ready to discuss the Convention.

CHILDREN AND YOUTH IN AOTEAROA 2010

ACYA in its report to the UN Committee June 2010 made the following comment:

Tokelau is a non-self-governing territory of New Zealand. Tokelau have twice rejected a public referendum for independence from New Zealand. The current administrative practice is to devolve day-to-day administration to each atoll.

There is a lack of clarity on the standards of health, education and other facilities and services available to Tokelauan children. World Health Organisation data indicates an infant mortality rate of 38.0 per 1000 live birth¹ over seven times higher than that of New Zealand. We are concerned that the approximately 600 children of Tokelau who are New Zealand citizens may not currently be enjoying an equitable degree of coverage under the Convention on the Rights of the Child as New Zealand resident children. We are unaware of any evidence that the Government has continued its discussions with the

¹ http://www.wpro.who.int/countries/2009/tok/health_situation.htm Accessed 25 June 2010.

Tokelauan people regarding extending the Convention to their territory as recommended by the UN Committee on the Rights of the Child in 2003.²

The Committee may wish to ask the New Zealand Government what steps it takes to support the wellbeing of Tokelauan children, including with regard to health and education services, given that the children of Tokelau are New Zealand citizens.

ACYA's Recommendation was:

The New Zealand Government, in conjunction with the civil authorities of Tokelau, and recognizing New Zealand's special relationship with Tokelau and duties to the people of Tokelau, takes all necessary measures to ensure that the children of Tokelau are able to enjoy their full rights.

New Zealand Human Rights Commission

ACYA wrote to the Commission on 26 February 2010 and posed the following questions:

- 1. From a human rights point of view what are the benefits for children living in Tokelau being citizens of New Zealand?*
- 2. In particular does MFAT (the Ministry of Foreign Affairs and Trade) and/or NZAid on behalf of the State have an obligation to assess the protection, education, health and wellbeing of such children, and the obligation to raise the issues with the Council for the Ongoing Government of Tokelau?*
- 3. In the light of the Joint Statement on Principles of Partnership with Tokelau is there an obligation to investigate the possible effects of climate change on Tokelau and have emergency plans to protect the welfare of children from adverse effects?*
- 4. What are the arguments for and against including Tokelau in the NZAPHR review?*

To date ACYA has not received a formal response.

CHILDREN IN TOKELAU SOCIETY

A questionnaire was prepared in December 2006 and the responses from the Ministry of Foreign Affairs and Trade dated 28 May 2007, with information provided from Tokelau are set out in Appendix 2.

The following seem important issues:

Protection from violence

There are no prisons, but there are six police officers and no reported serious crime.

Education

Primary schools exist on each atoll and there is a secondary school. Children receive secondary schooling in Samoa also. New schools for Atafu and Fakaofu are being built. The Tokelau Government website sets out a programme of development.

Health

Life expectancy at birth is 69 years. Infant mortality is 38 per 1,000 births.

² CRC/C/15/Add.216, 3 October 2003, para 7(b).

CONCLUSION

The absence of specific information about protection, education and health means that no independent conclusion can be made about the wellbeing of children in Tokelau.

REFERENCES

All websites were accessed 7 July 2010:

Tokelau

<http://www.tokelau.org.nz/>

Education

<http://www.tokelau.org.nz/Tokelau+Government/Education.html>

Health

http://www.wpro.who.int/countries/2009/tok/health_situation.htm

New Zealand Government background information

<http://www.mfat.govt.nz/Countries/Pacific/Tokelau.php#facts>

<http://www.nzaid.govt.nz/programmes/c-tokelau.html>

Ministry of Foreign Affairs and Trade - Office of Administrator

<http://www.mfat.govt.nz/Foreign-Relations/Pacific/Tokelau/index.php>

New Zealand Government ICCPR 5th periodic Report

<http://www.converge.org.nz/pma/CCPR-C-NZL-5.pdf>

Government Universal Periodic Report

<http://www.mfat.govt.nz/Media-and-publications/Features/895-Human-Rights-Report.php>

Government 3rd & 4th Periodic Report Committee on the Rights of the Child

<http://www.myd.govt.nz/working-with-young-people/uncroc/uncroc-in-nz-3rd-and-4th-periodic-report-full.pdf>

United Nations

<http://www.un.org/Depts/dpi/decolonization/docs.htm>

A report to the General Assembly A/ac.109/2008/1 dated 1 February 2008 post the second referendum is a 16 page document that has comprehensive coverage of Tokelau.

UNICEF

A report "The State of Pacific Children 2008" has useful information

http://www.unicef.org/pacificislands/SOPC1_2008.pdf

National Human Rights Institutions Pathways for Pacific States. June 2007, 44 pages. ISBN 978-0-478-28632-8

United Nations Economic and Social Council: E/1990/6/Add.33 16 October 2001

United Nations International Covenant on Social and Political Rights: CCPR/C/74/L/NZL 18 October 2001 & CCPR/C/NZL/2001/4 14 May 2001

The Administrator of Tokelau answered on 7 April 2010 a letter from ACYA of 26 February 2010 and provided information used in the text. A response has not been seen to a letter by the Administrator 29 March 2010 to General Manager OCOG, Tokelau seeking further information raised by ACYA.

Appendix 1

New Zealand National Universal Periodic Review Report

Annex to National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Resolution 5/1: New Zealand, 9 April 2009

Tokelau

Methodology/Consultation Process

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

Background information on Tokelau

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 1466 (2006 Census). In addition to Tokelauan, English and Samoan are widely spoken on the atolls.

Constitutional Status and Government

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

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

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

Tokelau and the International Community

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

With New Zealand's support, Tokelau participates in certain regional organisations in its own right, and is an associate member of a number of other organisations.

Promotion and Protection of Human Rights

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

Women

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

Employment, Education and Health

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

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

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

Fair Trial

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

Identification of achievements, best practices, challenges and constraints

Achievements and Best Practices

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

Challenges and Constraints

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

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

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

Key Priorities

The General Fono has identified health, education, economic development and shipping as priority areas for development. Self-determination referenda held in February 2006 and October 2007 on the issue of a possible change of status from that of territory to self-Government in free association with New Zealand did not reach the two-thirds majority set by the General Fono for a change of status. As a consequence of the outcome of these referenda Tokelau's leaders have decided in the immediate future to focus their efforts on ensuring adequate infrastructure and services are in place on each atoll before any further consideration is given to the issue of self-determination. Tokelau continues to make progress in strengthening the governance and administrative capability of the public service, including the Taupulega (village councils).

Capacity Building

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

Appendix 2 CHILDREN IN TOKELAU QUESTIONNAIRE

(Note: children defined as those under 18 years)

1. GENERAL

- a) *When was the last census?* 19 Oct 2006
- b) *Are the results available?* Yes
- c) *May we have a copy of the census questions and results?* Recieved.
- d) *How many children are there in Tokelau? (0-18 years)* -627
- e) *What is the distribution of children in the 3 atolls?* Atafu-235; Fakaofu-226; Nukunonu-166.
- f) *What are the age band figures?* See table below.
- g) *What are the age appropriate laws of Tokelau?* Tokelau Adoption Rules 1966, Tokelau Crimes, Procedure and Evidence Rules 2003, Human rights rules, the births, and deaths registration rules, the Tokelau Act and its amendments and the Interpretation rules

Age	Atafu	Fakaofu	Nukunonu	Total
0 – 4	57	44	58	159
5 – 9	71	55	42	168
10 – 14	66	72	36	174
15 – 18	41	55	30	126
235	226	166	627	

2. HEALTH

- a) *What are the five key health risk factors for children?* Smoking. Alcohol, Teenage Pregnancy, STIs, Lack of Awareness related to health issues.
- b) *What immunisation programme is there?* BCG, Polio, Convax, DPT, MMR, Tetanus Toxoid.
- c) *What is the age for sexual consent?* 16 years old.
- d) *Is abortion permitted?* No. Rule 24 of Tokelau Crimes, Procedure and Evidence Rules 2003 does not permit a person who without lawful excuse does anything to procure the miscarriage of a woman or a girl commits and offence.
- e) *If abortion is permitted, what is the number, per year, performed on those below the age of sexual consent?* See d) above.
- f) *What is the number of live births, per year, for those below the age of consent?* (no response)

3. EDUCATION

- a) *Is the school leaving age 16?* As the school only goes up to Year 11, there has been no official leaving age imposed as students usually turn 16 this year of study and school terminates then. Under rule 63(1) of Tokelau Crimes, Procedure & Evidence Rules 2003, states that “Every person between the ages of 5-16 years who is resident in Tokelau shall attend school.
- b) *Is schooling compulsory to that age?* See a) above.
- c) *Per year what expulsion, suspension, or none appearance rates apply?* Minimal numbers of students are excluded from schools and no official figures are kept, but I

would say an estimate would be an average of 2 per year per schools are suspended/expelled for unacceptable behaviour.

d) *What school curriculum applies?* The Tokelau National Curriculum applies from Term 3 onwards. This goes from Early Childhood education to year 11 (form 5).

e) *Does the curriculum address human rights?* The Social Science Curriculum includes issues around human rights.

f) *Is corporal punishment legal in schools?* Corporal Punishment is not permitted to be used in all schools (in policy)

4. CHILD EMPLOYMENT

a) *What laws apply to child employment?* Generally children 18 years of age below shouldn't be working. However, at present child employment exist in Tokelau according to the definition of the term children (those under the age of 18 years) as many young girls and boys once left school usually at the age of 16 - 17 years, they are directed to the Aumaga or the Fatupaepae. This is true for those who are not fortunate to receive government scholarships or those who do not wish to take further studies outside Tokelau.

b) *Have any reports been made on child employment safety, and protection from exploitation?* Cannot recall any study ever been done on child employment safety and protection from exploitation.

5. CRIME

How are children handled who are in conflict with the legal system, in the absence of any prison? Rule 114 of Tokelau Crimes, Procedure & Evidence Rules 2003 states that no person shall be convicted of an offence when that person was under the age of 10 years. A person under the age of 14 years cannot be convicted, unless that person knew the act or omission was wrong or contrary to the law. The usual manner of dealing with non- adults is a reprimand. Law Commissioner have the jurisdiction to give penalty of fines not more than 10 penalty units (\$50 per unit) or community services not more than 12 months.

6. INDIGENOUS RIGHTS

Are children encouraged to speak their native tongue and develop their cultural awareness? This is a key principle in all curriculum documents and the National Curriculum Policy Framework.