

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.

[see Tokelau Act 1948 and Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977]

2 Villages

(1) The villages are organised in accordance with the law.

(2) The villages shall elect a Faipule and a Pulenuku in accordance with the law.

[see Tokelau Village Incorporation Rules 2004]

3 General Fono

(1) The General Fono consists of the following members—

(i) The Faipule and Pulenuku 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) Village delegates are designated in accordance with the rules that apply to the election of Faipule.
- (3) The term of office of a delegate coincides with that of the Faipule.
- (4) Where the need arises to remove or replace a delegate during the term of office, the removal or replacement shall be made by the village in accordance with the rules which apply to the Faipule.
- (5) Where the conduct of a member of the General Fono delegate brings the government of Tokelau into disrepute or indicates an incapacity to perform national duties, the General Fono may suspend the participation of that member and shall advise the village of the suspension and may recommend to the village the removal or replacement of that member.
- (6) The Kauhauatea has a place of right in the General Fono. The Kauhauatea consists of 6 elders of 60 years of age or more, 2 designated by each Taupulega.
- (7) The members of the Kauhauatea have a right to speak in the General Fono and to assist the General Fono as they see fit and also when the General Fono requests their advice. The members of the Kauhauatea do not vote on matters before the General Fono.

[from General Fono Standing Orders]

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.

[from General Fono Standing Orders]

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) [Free Association rules only]

- (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.

[from General Fono Standing Orders]

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) (i) The members of the Council are the three Faipule and one General Fono delegate from each village, designated by the Taupulega.
- (ii) Portfolios will be held by each Faipule and by other members of the Council as the Council decides. The allocation of portfolios will be decided by the council, taking into account matters of fair distribution and the interests, experience, knowledge and wishes of the individual members of the Council.
- (iii) The Council will advise the General Fono of its proposed allocation of portfolios to members of Council for endorsement at the earliest opportunity.
- (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.
- (8) (i) If a member of the Council is for any reason unfit to perform the national duties or it is inappropriate for any reason that a member continue to perform national duties, the Council may suspend that member from national duties.
(ii) If a Council member is suspended under this paragraph, the Ulu shall inform the relevant Taupulega of the suspension and the reason for it and the Ulu will take over the suspended member's duties until further decision by the General Fono.

[from General Fono Standing Orders]

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.

[from General Fono Standing Orders]

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) [Free Association rules only]

9-11 [see Tokelau Act 1948 and Crimes, Procedure and Evidence Rules 2003]

12 Sources of Law

- (1)-(2) [Free Association rules only]
- (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.

[from Public Service Rules 2004]

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.

[from Finance Rules 1998]

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.

[from Land Rules]

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.

[from Human Rights Rules 2003]

17 Flag of Tokelau

The official Flag of Tokelau is that set out in the Schedule

SCHEDULE

Flag

The Tokelau Flag is the following:

