

# 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.

## **2 Villages**

- (1) The villages are organised in accordance with the law.
- (2) The villages shall elect a Faipule and a Pulepule in accordance with the law.

## **3 General Fono**

- (1) The General Fono consists of the following members –
  - (i) The Faipule and Pulepule 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) The delegates are designated by each village in accordance with the rules established by that village.
- (3) The term of office of delegates of the General Fono coincides with that of Faipule.
- (4) Where a need arises to replace a member during the term of office, the replacement shall be made by the village in accordance with the rules established by that village.

#### **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.

## **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) (i) The capacity of Tokelau to enter into treaties and other international arrangements shall be exercised by the Council for the Ongoing Government.
- (ii) Any treaty or other international arrangement may be entered into by Tokelau only following a resolution of the General Fono to that effect.
- (3) No provision of a treaty or other international arrangement shall have the effect of law unless approved by the General Fono by Rule.
- (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.

## **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) The Council shall include the three Faipule and the three Pulenuku, and portfolios shall be allocated to each member of the Council.
- (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.

## **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.

## **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) Unless expressly provided in this Constitution, all matters relating to the courts and their operation shall be as provided by Rules of the General Fono.

- (3) The High Court has original and final authority to determine all matters of interpretation and application of this Constitution.
- (4) The power of the High Court under paragraph (3) is subject to articles 4 and 16 and to any right of appeal to the Court of Appeal.

## **9 Appointment of Commissioners**

- (1) Each Taupulega shall designate a person, who is appropriately qualified by virtue of knowledge, experience, and standing in the community and who is not a member of the General Fono, for appointment by the General Fono as the judicial Commissioner for that village.
- (2) The General Fono shall appoint as judicial Commissioner the person designated by each village for a period not exceeding 3 years on such conditions as the General Fono thinks fit.

## **10 Jurisdiction of the High Court**

- (1) The High Court shall have all the jurisdiction necessary to administer the laws of Tokelau.
- (2) The High Court alone shall have jurisdiction to try a case—
  - (i) Which is outside the jurisdiction of a Commissioner;

- (ii) In which a Commissioner is a party;
  - (iii) Where there has been a valid challenge to the exercise of jurisdiction by the Commissioner.
- (3) Any judge of the High Court may exercise all the powers of the High Court, at any time in Tokelau or beyond Tokelau.

## **11 Court of Appeal**

- (1) The role of the Court of Appeal is to decide appeals from the High Court.
- (2) Appeals from decisions of the High Court shall only be on matters of law and be a matter of right.
- (3) The decision of the Court of Appeal on any matter is final.
- (4) The Court of Appeal may exercise its powers in Tokelau or beyond Tokelau.

## **12 Sources of Law**

- (1) This Constitution is the supreme law of Tokelau and all other laws shall be interpreted so that they are consistent with the Constitution.
- (2) Laws inconsistent with the Constitution are invalid.

- (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 are, in descending order of priority, this Constitution, General Fono Rules, Village Rules, the custom of Tokelau, and the general principles of international law.
- (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.

### **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.

## **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.

## **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 for the 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.

## **17 Citizenship**

The citizenship law of Tokelau is as provided for by Treaty of Free Association between Tokelau and New Zealand.

## **18 Amendments to the Constitution**

- (1) This Constitution may be amended only by resolution of the General Fono following the procedure specified in this article.
- (2) A proposal to amend this Constitution shall be presented to the General Fono and then referred by the General Fono to each village for its consideration.
- (3) A proposal under paragraph (2) shall not be approved unless each village has, before the vote in the General Fono, advised the General Fono in writing that it supports the proposal.

**19 Commencement, savings, transitional matters and existing laws**

- (1) Provisions for the coming into force of this Constitution, savings, transitional matters, continuation of existing law, and amendments to existing laws are set out in the Schedule.
- (2) Article 5(2)(ii) does not apply to any treaty made with New Zealand at the commencement of this Constitution, and any such treaty will bind Tokelau from the time of its signature.

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**SCHEDULE**

**1 Commencement**

This Constitution becomes effective at the time of the repeal of the Tokelau Act 1948.

**2 Savings**

All holders of public office and public officers of Tokelau immediately before the commencement of this Constitution shall continue in office after the commencement of this Constitution in accordance with the terms and conditions of their appointment and as if appointed under this Constitution.

### **3 High Court and Court of Appeal**

- (1) Until the General Fono by Rule provides otherwise, the High Court and the Court of Appeal of New Zealand shall respectively act as the High Court and the Court of Appeal of Tokelau and shall in the exercise of their Tokelau jurisdiction apply the law of Tokelau.
- (2) All references in the law of Tokelau to the **High Court** and **Court of Appeal** of New Zealand are amended to be references respectively to the **High Court** and **Court of Appeal** of Tokelau.

### **4 Existing laws**

- (1) Unless otherwise expressly provided in this Schedule, laws in force in Tokelau immediately before the commencement of this Constitution shall, with all the changes necessary for their operation under this Constitution, continue in force.
- (2) For the avoidance of doubt it is declared that the Letters Patent constituting the Office of Governor-General of New Zealand shall continue to have effect as part of the law of Tokelau.

- (3) The following laws, being laws to which paragraph (1) applies, shall be deemed to be Rules of the General Fono and shall continue in force accordingly –
- (i) Anti-Personnel Mines Prohibition Act 1998;
  - (ii) Civil Aviation Act 1990 (except Part 8A);
  - (iii) Consular Privileges and Immunities Act 1971;
  - (iv) Diplomatic Privileges and Immunities Act 1968;
  - (v) Geneva Conventions Act 1958;
  - (vi) Subsidiary legislation, made under any of the above Acts, which is in force in Tokelau immediately before the commencement of this Constitution;
  - (vii) Tokelau Coinage (Commemorative Coins) Regulations (No 2) 1996;
  - (viii) Tokelau Coinage (Commemorative Coin) Regulations 1997;
  - (ix) Tokelau Coinage (Commemorative Coins) Regulations 1999;
  - (x) Tokelau Coinage (Commemorative Coins) Regulations 2003.
- (4) All references in laws referred to in paragraph (3) –
- (i) To **New Zealand** are amended to be references to **Tokelau**, unless the context otherwise requires;
  - (ii) To the **Administrator of Tokelau** are amended to be references to the **Council for the Ongoing Government**;

- (iii) To the **Governor-General** and **Orders-in-Council** are amended to be references to the **General Fono** and to **Rules of the General Fono** respectively, unless the context otherwise requires;
  - (iv) To the **Gazette of New Zealand** are amended to be references to “**public notification**”.
- (5) The Tokelau Act 1948 and the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 shall not continue in force in Tokelau after the commencement of this Constitution.
- (6) The Administration Rules 1993 are repealed.

## **5 Consequential amendments**

- (1) On the commencement of this Constitution, provisions of an existing law which are incorporated in this Constitution are superseded by this Constitution.
- (2) As a consequence of paragraph (1) the following are repealed –
- (i) Standing Orders of the General Fono 1(1), 1(3), 1(4), 1(5), 3(1), 3(2), 4, 5(3), 5(5), 9, 11, 12 and 13;
  - (ii) Human Rights Rules 2003;
  - (iii) Public Service Rules 2004, rule 3(3);
  - (iv) Crimes Procedure and Evidence Rules 2003, rule 112(1).

- (3) All references in existing laws to the **Government of Tokelau**, however expressed, are amended to be references to the **Government of Tokelau**.
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