



*Environmental
Legislation
Review*



Tokelau



Environmental Legislation Review - Tokelau

1993

*Prepared by
Professor A.H. Angelo
at the Victoria University of Wellington*

*Report for the
South Pacific Regional Environment Programme
and the
Office for Tokelau Affairs*

*produced as documentation in support of the
Tokelau Environmental Management Strategy (TEMS)
with financial assistance from the
United Nations Development Programme (UNDP)*



USP Library Cataloguing-in-Publication Data

Angelo, A.H.

Environmental legislation review - Tokelau : 1993 /
prepared by Professor A.H. Angelo at the Victoria University of
Wellington. - [Apia, Western Samoa : SPREP, 1993].

viii 58 p. : 29 cm

"Report for the South Pacific Regional Environment
Programme and the Office for Tokelau Affairs produced as
documentation in support of the Tokelau Environmental
Management Strategy (TEMS) with financial assistance from the
United Nations Development Programme (UNDP)."

ISBN 982-04-0073-2

I. Environmental policy - Tokelau I. South Pacific Regional
Environment Programme II. Title.

HC79.E5A63

344.0460262'099615

Prepared for publication by the South Pacific
Regional Environment Programme, Apia, Western Samoa.

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Cover design by Peter Evans based on an original design by
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Printed on 110 gsm Tudor R. P. (100% recycled)
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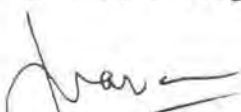
Foreword

This Environmental Legislation Review in Tokelau has been produced as an important component of the National Environmental Management Strategies (NEMS) Project. The NEMS Project has been developed to address sustainable environmental development and planning issues in a number of Pacific island countries. It has been funded by the United Nations Development Programme (UNDP) and implemented through the South Pacific Regional Environment Programme (SPREP) as part of a broader UNDP assistance project called PMI: Planning and Implementation of Pacific Regional Environment Programme which concentrates on regional and in-country institutional strengthening and training of environmental managers.

Pacific islanders have lived in close harmony with their island environment for thousands of years and are well aware of its importance to their way of life. Pacific peoples today face the complex challenge, common to many other countries of the world, of integrating economic development with the need to protect the environment. This is the primary aim of sustainable development and must be addressed if the Pacific way of life is to survive. The introduction of appropriate legislation represents one important means by which sustainable development can be achieved in the Pacific. A fundamental first step is the identification and review of existing environmental laws, taking into account also traditional customary measures aimed at environmental protection. This review also investigates administrative procedures and policy to determine ways of incorporating and strengthening environmental laws within the existing structure in each of the Pacific island countries associated with this project.

The Environmental Legislation Review of Tokelau is most timely as it comes during a period of Tokelau government restructuring involving changes to localise the Tokelau Public Service and, in particular, the relocation of its offices in Tokelau as distinct from the present system where the Tokelauan Administration is based in Apia, Western Samoa. The laws, administrative procedures and policy have been reviewed in terms of their effectiveness in addressing the major environmental issues existing in Tokelau. The research has had a particular focus on the development of practical recommendations that build on the findings of the review. This Environmental Legislation Review of Tokelau is an important step along the road to improved environmental management and protection of the Pacific region.

This review forms one part of a series of Legal Reviews undertaken in several Pacific island countries. I would like to thank Professor A.H. Angelo who prepared this Environmental Legislation Review on behalf of the South Pacific Regional Environment Programme (SPREP) and the Office for Tokelau Affairs (OTA).



Vili A. Fuavao
Director

South Pacific Regional Environment Programme (SPREP)

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Acronyms

SPBCP	South Pacific Biodiversity Conservation Programme
SPREP	South Pacific Regional Environment Programme, Apia, Western Samoa
TPS	Tokelau Public Service
UNCED	United Nations Conference on Environment and Development

Glossary

Failautuhi	secretary to elders or faipule
Faipule	chairperson of council of elders
in terrorem	'as a warning'
kaleve	cooked coconut toddy
lafu	area of land restricted by the village authorities for the purpose of letting the supply of food, building materials and other resources accumulate until such time as the authorities agree to lift the ban so that supplies may be collected.
mata pone	long handled spear
motu ha	restricted islets
pulenuku	elder responsible for village affairs
taupulega	elder responsible for village affairs
Ulu o Tokelau	Head of Tokelau

The currency of Tokelau is the New Zealand Dollar.

Acknowledgement

This report has been prepared on the basis of the terms of reference set out in Annex 1. Many people in Western Samoa, especially those from the Office for Tokelau Affairs, and in Wellington have assisted its preparation with the provision of documents and the giving of their time to discuss the issues involved. That help is gratefully acknowledged.

Professor A.H. Angelo

1 Introduction

This report on Tokelau has been prepared for the South Pacific Regional Environment Programme (SPREP) and the Office for Tokelau Affairs (OTA) on the basis of the terms of reference set out in Annex 1. It is written at a time of great administrative and organisational change for Tokelau. It also comes at a time of great environmental need and an increase in international environmental activities. On this scene Tokelau is a player with a great interest in and sympathy for the environment but with little or no law on environmental matters. The object of this report is to explore the existing law, to explain the nature of the law proposals that are awaiting promulgation for Tokelau, and to consider the future role for law in Tokelau in respect of the environment.

1.1 Background

Tokelau is part of the Realm of New Zealand and is listed by the United Nations Committee on Decolonisation as a territory which must in due course exercise its right to self-determination. There are many brief descriptions of Tokelau available. This section draws very heavily on that provided by Hosea Kirifi in *Tokelau Country Statement* to the SPREP/UNEP Legal Workshop 1992, Apia.

Tokelau consists of three small atolls in the South Pacific with a total land area of about 12 square kilometres and a population of approximately 1,700. The three atolls - Atafu, Nukunonu, and Fakaofu - lie between latitude 8° and 10° south, and longitude 171° and 173° west. The central atoll of Nukunonu is 92 kilometres from Atafu and 64 kilometres from Fakaofu. Western Samoa is 480 kilometres to the south and is the nearest sizeable neighbour. Each atoll consists of a number of islets encircling a lagoon. The islets (*motu*) vary in length from 90 metres to 6 kilometres, and in width from a few metres to 200 metres. At no point do they rise higher than 5 metres above sea level. The average mean temperature is 28° centigrade. Rainfall is heavy but irregular and a fall of 80 millimetres or more in a single day is possible at any time of the year. Severe tropical storms have caused widespread damage in recent years.

Tokelau's soil is thin and infertile. Its crop production base is therefore limited. Apart from the coconut palm and breadfruit tree, which are the main food crops, the fruit of the edible pandanus, pulaka, taamu, and pawpaw and banana (both cultivated with difficulty) provide a meagre dietary supplement. Rats, rhinoceros beetle, and stick insects present a continuing threat to the subsistence agriculture.

Ocean and lagoon fish and shellfish are available in quantity and form a stable constituent of the local diet. The most common species of fish caught are tuna, bonito, wahoo, trevally and mullet.

Tokelau does not have the kind of environmental concerns that many developing countries have because it is a small island territory. However, because of its limited resources, western foods and other western products have been introduced bringing with them a number of problems in the form of pollution and disease.

Waste disposal was not previously a problem in Tokelau, and biodegradable waste such as leaves, coconut husks, and wood was used as compost material. Nowadays, however, people are careless in their disposal of things like aluminium cans, plastic, and polystyrene, and because there is not enough space for compost heaps or plantations near to the houses rubbish is taken out to sea. It goes out with the tide only to come back to litter the shore and cause problems along the coast.

2 *The Law of Tokelau*

The law of Tokelau is prescribed by the *Tokelau Act 1948* which is the primary constitutional document for Tokelau. Tokelau became part of New Zealand on 1 January 1949. Since then a few New Zealand Acts of Parliament have been extended to Tokelau, regulations have been made by the Governor-General in Council for Tokelau under section 4 of the *Tokelau Act 1948*, and some regulations made under other New Zealand Acts which apply in Tokelau are also Tokelau law by virtue of section 7 of the *Tokelau Act 1948*. (For a complete list of Tokelau law, see Annex 4).

Under the *Tokelau Village Incorporation Regulations 1986* each village of Tokelau has the authority to make rules for the good government of the village.

Tokelau custom is expressly recognised in respect of land matters. Section 20 of the *Tokelau Amendment Act 1967* provides that all matters relating to land (other than a block of about 40 acres on Fenuafala which is held by Common Law title) are under the control of the elders of Tokelau and governed by the customs and practices of the island concerned. Beyond that the customs and traditions of Tokelau, to the extent they have not been expressly incorporated into legislation, are not part of the law of Tokelau and were specifically replaced as the basic law by section 4A of the *Tokelau Act 1948*. This provided that as from 1969, in the absence of any Act or regulation in force in Tokelau, the law of England as at 14 January 1840 would provide the law of Tokelau. The elders of Tokelau in 1989 voted to change that provision to one that said 'in the absence of any other generally applicable rule the law for Tokelau would be the Common Law of England for the time being'. This approach is the same as that used in the Constitution of Western Samoa.

In practice the laws of Tokelau are not enforced and are little known in Tokelau. Daily life is governed by the customs and traditions of each island. Those customs and traditions contain many rules of environmental interest which are attuned to regulating human activity with the subsistence conditions of the atoll in the community's interest.

Though custom generally has no force of law in Tokelau it nevertheless provides the rules of social conduct that govern the village and, exceptionally, within the legal system it is given the primary role in relation to all land matters. Rights over land and their associated environmental consequences are governed solely by the elders of the village in accordance with the customs and traditions of that village.

Until recently, Government laws of Tokelau had very little provision for matters of environmental interests and the extant law deals little with environmental matters. The main environmental texts remain in the form of proposals awaiting approval in Wellington. There is scope for legislation in areas such as wildlife conservation.

The law for Tokelau which exists outside the legislation is the Common Law of England. Its rules of environmental interest are few and primarily in the field of real

property and tort. In both cases most of the Common Law rules have been superseded in Tokelau by the legislative provision of section 20 of the Tokelau Amendment Act 1967 which leaves all matters relating to the land of Tokelau to be governed by the elders in accordance with the customs and traditions of Tokelau. There is a power in section 24 of the Tokelau Amendment Act 1967 to take land for public purposes.

If the Common Law were found to apply in a given case the rules on trespass and nuisance would be relevant. The bias of the Common Law rules is towards protecting the rights of the land holder rather than the land or the environment in general (see for example the decision of the House of Lords in England in the classic case *Bradford v Pickles* [1985] AC 587).

3 Constitutional and administrative structures

3.1 Government in law

The constitutional system of Tokelau is described diagrammatically in Annex 2. The law-making power is vested in the Parliament of New Zealand and in those bodies to which the Parliament has delegated the authority to make subordinate legislation. So far that power has only been delegated to the Governor-General in Council and to each of the Village Councils. The administrative authority vested in the Governor-General is exercised through the Minister of External Relations and Trade of New Zealand who is the person to whom the Administrator of Tokelau is responsible. Policy in respect of Tokelau is set at the political level by the Minister of External Relations and Trade. The State Services Commission of New Zealand provides an independent service commission for the employment of Tokelau public servants and the Administrator provides for the exercise of power by those public servants through delegations under the *Tokelau Administration Regulations 1980*. These are the structures of the legal and constitutional world. The reality in Tokelau appears somewhat different.

3.2 The General Fono

The body in Tokelau with responsibility for all of Tokelau is the General Fono. The General Fono is a gathering of representatives (currently up to nine from each island) of each of the three villages of Tokelau for the purpose of deciding matters affecting all three villages. The General Fono typically meets two times a year and is the body that settles the budget for Tokelau and also determines policy matters affecting the relationship of Tokelau to New Zealand and to the outside world in general. The General Fono has no direct legal authority of any kind under the law of Tokelau but in practice is the key political organ within the constitutional structure.

3.3 Customary village government

A tentative model of the traditional Tokelau government system is set out diagrammatically in Annex 2. It indicates the features of a pure traditional model and the participatory nature of a village system where each family provides its senior member for the governing council and also men for the aumaga (the workforce of able-bodied men) and women for the Women's Committee. The latter two groups work directly or indirectly under the control of the Council of Elders.

3.4 Government restructuring

Recent reports on Tokelau speak of the significant social and governmental changes taking place. Those changes relate to the localising of the Tokelau Public Service and in particular the relocation of its offices in Tokelau as distinct from the present system where the Tokelauan Administration is based in Apia.

The 'bringing home' of the Administration and of the Tokelau Public Service has long been discussed. It received particular impetus in the context of the reconstruction following cyclone Ofa. More recently the inter-atoll vessel, Tutolu, has become available for inter-atoll transport. The move is therefore underway and there have been several recent reports and debates in the General Fono and elsewhere about the appropriate size, structure, and operation of the Tokelau Public Service on its return to Tokelau. Along with the relocation there is likely to be a substantial redirection of the delegation of constitutional authority from offices and officers in Wellington. It is hoped these measures serve to meet Tokelauan concerns about self-government and also make it more internally self-responsible.

Executive decisions taken to date indicate that in the future the General Fono will have full administrative powers delegated to it by the Administrator of Tokelau and that the General Fono will have a standing committee (the Council of Faipule) to oversee the implementation of its policy decisions between sessions of the General Fono. The Council of Faipule will comprise the Faipule of each atoll and be headed by one of them, who will be designated the Ulu o Tokelau. In very broad and general terms this will be a newly formed cabinet with three ministers, one of whom will be elected leader of Tokelau. Implementation of the decisions of the General Fono will be by the Council of Faipule through the Directors of the Tokelau Public Service who are responsible for the various departments of government. Atoll action on the instructions of the Faipule will be by the employees of the Tokelau Public Service or by village employees on the basis of contracts negotiated between the relevant Director of the Public Service and the Village Council.

It is unclear what impact this new structure will have on the traditional role of the elders. It is expected that there will be a period of trial and error and of experimentation as the system accommodates itself to the political environment of Tokelau. The goal is to integrate the Tokelau Public Service into the social structures of the atolls to a much higher degree than has been the case in the past and, in their day-to-day activities, to clearly subordinate the functions of the Tokelau public servants to the policy decisions of the General Fono and the directions of the Faipule.

3.5 Judicial powers

It will be noted that by international standards the penalties set for offences in Tokelau are typically very small. There are two main reasons for this. The first is that in the Tokelauan communities, where a large number of people do not have jobs, the fines specified are significant penalties. The relative importance of these fines vis-a-vis the more traditional penalties such as reprimand and performance of community service needs also to be borne in mind. The second main reason for the low level of penalties is the jurisdiction of the lay judicial officers, the Commissioners, of each island. They have jurisdiction in respect of any offence where the maximum penalty does not exceed a fine of \$1,000 or imprisonment for one year. The maximum penalty that a Commissioner can impose is a fine of \$150 or a term of imprisonment not exceeding three months. There are no prisons in

Tokelau and no system of incarceration therefore in practice, prison sentences are not imposed.

There have been no cases of disputes going beyond Tokelau for judicial decision and there is a strong community desire that this pattern should be maintained to the greatest extent possible. In the setting of penalties and the establishment of offences the goal has been to retain matters within the jurisdiction of the Commissioners and to set fines within the framework of the maximum penalties that the Commissioners can impose.

The need for large penalties is felt particularly where a person external to Tokelau is likely to flout the laws if substantial penalties are not able to be imposed. Such penalty clauses therefore are largely promulgated as a warning because there could be no local prosecution for those offences either on jurisdictional grounds or on the basis of the inappropriateness of the maximum fine that a Commissioner could impose. Prosecution would have to take place before the High Court of New Zealand acting as a High Court for Tokelau.

4 Existing legislation

4.1 *Gilbert and Ellice (Consolidation) Ordinance 1917*

A number of pieces of legislation from the protectorate and colonial eras of Tokelau are still technically in force in Tokelau. In practice however they are all obsolete or inapplicable. None are known or enforced. Those technically in force with some environmental interest are sections 18, 19 and 20 of the *Gilbert and Ellice (Consolidation) Ordinance 1917*. Regulation 18 prohibits the collection and removal of guano and other fertilising substances from waste or unoccupied lands without the permission of the Administrator. The contravention of the regulation is punishable by a penalty of \$20 or imprisonment for a term not exceeding 1 month. Sections 19 and 20 provide respectively for the prohibition on the use of explosives for the purpose of catching or destroying fish in Tokelau and penalise contraventions by a fine not exceeding \$10 or imprisonment for a term not exceeding 14 days.

4.2 *Tokelau Copra Regulations 1952*

These regulations provide a subsidy for copra production through the Copra Stabilisation Fund operated by the Administrator of Tokelau. These regulations currently have little significance because the grant of copra subsidies is no longer made in accordance with the regulations and the total annual copra production of Tokelau is now insignificant. Those who do produce copra and export it for sale receive from the Administrator a price considerably in excess of the current market price.

4.3 *Tokelau Rhinoceros Beetle Regulations 1964*

Under these regulations provision is made for the eradication of the beetle *Oryctes Rhinoceros L.* It is the responsibility of every occupier of land to do whatever is necessary and reasonable to eradicate the beetle from the land. The powers under the regulations are able to be exercised by the Faipule and by any person appointed by the Administrator as an inspector for the purpose. The regulations include (regulation 5) a power of entry for the Faipule and inspector and also a power to act in the interest of beetle eradication. The penalty set for a contravention of the regulations is a term of imprisonment not exceeding six months or a fine not exceeding \$20.

4.4 *Tokelau Crimes Regulations 1975*

These are in essence Parts X, VI and VII of the *Niue Act 1966* extended to Tokelau with minor necessary adaptations. There are a few provisions of direct environmental interest. The most relevant are:

Section 219. Animal trespass - provides a fine not exceeding \$10 where a person 'permits any ... pig, goat ... to wander or be at large in a public place or to trespass upon any land'.

Section 221. Laying poison - proscribes the placing of poison in any place where it would be a source of danger to humans or to animals. The maximum fine for contravention is \$10.

Section 222. Polluting water - provides a fine not exceeding \$100 or a term of imprisonment not exceeding 6 months for any person 'who throws any offensive matter into or otherwise pollutes any watercourse, well, cistern or other place from which the supply of water for the use of the inhabitants is obtained'.

Section 224. Insanitary premises - a fine not exceeding \$20, sanctions the conduct of any person 'who permits any premises in his occupation or belonging to him to be in an insanitary or offensive condition to the danger or annoyance of the public or of his neighbours'.

4.5 Tokelau Village Incorporation Regulations 1986

These regulations are very significant for Tokelau. The first point to note is that they give official legal recognition to the existence of each of the villages of Tokelau by incorporating the villages (regulation 3) and by recognising the three customary officials - the Faipule, the Pulemuku and the Failautuhi as the village officers. Having thus given a formal legal identity to the villages the regulations also vest a rule-making power in the villages (regulations 18-20). At the atoll level there is, therefore, a comprehensive legislative power which can be exercised quickly and without outside intervention by the Taupulega (Village Council) of the relevant village.

The village has all the powers necessary 'to provide for the efficient and orderly conduct of village affairs, and generally to promote the economic and social well-being of the people of the village and of the island of which the village is part'. The territorial limits of the village powers include the land area of the atoll, the lagoon and a stretch of the high seas up to a maximum of 12 miles from the shore or such lesser distance as in custom is regarded as being within the authority of the village.

The management of the village is vested in the Taupulega. That Council may make such rules as it thinks fit for the purposes of fulfilling the objectives of the village. This legislative power includes the possibility of imposing charges and taxes of various kinds and also of prescribing penalties for the contravention of or non-compliance with rules made by the village. The maximum penalty that may be prescribed is \$150. Another limit on the exercise of the law-making power is that any rule made by a village which is contrary to a treaty obligation of Tokelau, an Act of Parliament in force in Tokelau, or any regulation in force in Tokelau, is of no effect. If, therefore, legislation is a useful tool in environmental management, that tool is readily available at a village level.

In 1988 each village exercised its legislative authority under the *Tokelau Village Incorporation Regulations 1986*. The type of legislation enacted differed from village to village. Some rules reflect customary practices to a significant degree. Others reflect responses to recent phenomena and leave custom to operate in its traditional way outside the law.

4.5.1 Village rules of Atafu.

Subject to specific exemptions, rule 3 provides that no person shall work on a Sunday, no person shall collect kaleve on Sunday, and nobody shall light a fire or go fishing on Sunday. The penalty for non-compliance with these prohibitions is a fine not exceeding \$5.

Rule 4 prohibits the sale of alcoholic drinks in Atafu. Rule 6 protects the lafu (special land areas) by making it an offence to enter any lafu without the permission of the Pulenuvu or of the elder on duty. The penalty is a fine not exceeding \$1.50. Nevertheless rule 7 provides an exception for a fisherman fishing outside the reef. He may take drink from his own land on an outer motu without contravening rule 6. Rule 7 also provides that 'Any person who without permission uses a mata pone or speargun outside the reef commits an offence and shall on conviction be liable to a fine not exceeding \$4'. Rule 9 prohibits the making of a fire on the seawall other than with the permission of the Pulenuvu. The maximum fine for disobedience is a fine of \$5.

4.5.2 Village rules of Fakaofu.

Rule 1 sets out the lafu areas and the motu ha (restricted islets) and goes on to provide that any person who is in the lafu or motu ha without permission commits an offence and is liable, on conviction, to a fine not exceeding \$5, or to a sentence of community service for a period not exceeding one month. Permission to enter the lafu or motu ha is given by the Pulenuvu. On returning from such a visit there may be a search of the boat by the Pulenuvu or a police officer.

Rule 2 deals with the ika ha (special fish). The ika ha identified are turtles, marlin, dolphins, and 50 or more bonito in one catch. The rule requires that these catches be delivered to the village for sharing in accordance with traditional sharing patterns - that is, according to the inati system. Failure to comply with the rule is an offence and subjects the offender to a fine of up to \$10. A person who catches a turtle, marlin, dolphin, or 50 or more bonito in one catch may on that day, notwithstanding rule 1, enter any of the motu ha to get food and drink. The exemption from the operation of rule 1 is also extended to all the fishermen in the boat if the catch is under the supervision of a master fisherman.

4.5.3 Village rules of Nukunonu.

These rules also address the question of entering the lafu without the permission of the elders. In Nukunonu the fine for contravention is up to \$20.

Rule 5 deals with the export of clams. The rule limits the quantity exported to a maximum of 15 pounds of clams per family per trip. Further, there is a village levy to be paid of \$1 per pound of clams exported. A failure to pay the levy or the export of clams in breach of the rule, makes the offender liable to forfeiture of the clams and to a fine not exceeding \$100.

Rule 6 deals with roaming pigs. Where a pig roams in a public place the owner of the pig commits an offence and is liable on conviction to pay a fine not exceeding \$20. While pig trespass is a relatively common phenomenon in Tokelau it is only in Nukunonu that the village rules create a special offence in respect of pig trespass. The three atolls are covered by section 219 of the *Tokelau Crimes Regulations 1975*. There the maximum penalty that may be imposed is \$10.

Rule 9 restricts the lighting of fires in the village to areas designated by the Council of Elders. Any person who lights a fire in contravention of the rule is liable to a fine of \$5 or to a period of community service not exceeding two weeks.

Rules 10 and 11 deal with environmental safety in that they specifically address unlawful wilful damage to village or government property and the dangers of the electric switch boxes along the village paths. A person who damages or destroys village property or government property is liable to a fine of \$10 and may be ordered to compensate for the damage or destruction. The village elders were concerned with a number of matters when this regulation was promulgated but in particular with the breaking of lights along village paths. Some people apparently took special pleasure in using the fluorescent light tubes which illuminate the village paths at night, for stone throwing target practice.

Rule 11 reflects village concern with the potential danger of electric switch boxes which children find attractive to sit on and play around. Parents are liable to a fine if they allow their children to sit on an electric switch box.

Rule 12 deals with ika ha. If a person who catches a turtle, marlin or a groper does not share the catch with the village, as is required by custom, that person commits an offence and is liable to a fine of up to \$150 and to a period of community service of up to three months.

Rule 13 has a similar provision in respect of a catch of 30 or more bonito. In that case failure to share incurs a fine of \$50 or community service for a period not exceeding one month. Rule 14 is also concerned with the sharing of a catch - in this case a catch of 100 or more aheu or gutula. The penalty is the same as for bonito.

Rule 15. Any person who sights a school of fish must report the matter immediately to the Puleniku. Any person who fails to do that and then catches fish for himself commits an offence and is liable to a public reprimand.

Rule 16 prohibits the placing of set nets in certain areas. Here again the penalty is a reprimand.

The use of poison or explosives to kill fish is prohibited by rule 17; the sanction is a fine not exceeding \$150 or community service for up to 3 months.

These rules make clear in Nukunonu what the position is for all of Tokelau, that rules relating to fishing are rarely if ever concerned primarily with conservation. They are concerned with community welfare in an immediate subsistence sense. The ika ha are typically large fish which have a particular value to the village because of healthful or other special qualities, or because of their relative rarity. The village is concerned not only to discourage and to punish selfishness but also to ensure that those for whom the flesh has special value (for example, the elderly in the case of turtle meat) get their share. The modern world is reflected in rule 18 which provides an answer to the most common excuse for not wishing to share turtle, marlin or groper. Rule 18 says that the person who catches the fish will receive a reward in the form of petrol to an amount decided by the Puleniku. The fisherman's argument is obviously that nowadays it costs money to catch these fish and, having paid for the outboard motor and the petrol, the fish should be the property of the fisherman. The village response is to compensate for the amount of petrol used.

The primary concern of the fishing rules is the proper provision and sharing of food within the community. Other factors are relevant too. In the case of clams there are two concerns - the raising of money for the village, and protection of the resource for the village. At \$1 a pound for export clams, it is thought that there will be a disincentive to export large quantities to friends and family in Apia. Another aspect of the tradition, as it affects the catching of ika ha, is that the village interest in those fish and the requirement of sharing both discourage a fisherman from seeking to catch the fish alone and encourage a fisherman to have the help of others to make the catch safely. There are definite dangers involved in the handling of these fish. If there is no personal advantage to the fisherman in catching the fish alone he is more likely to engage the help of others.

Rule 19 prohibits the installation of electricity or the making of electrical connections or repairs by any person other than the village electrician. In the absence of any government standards relating to electrical installations this is an important provision. The penalty for non-compliance is a fine not exceeding \$150 or a period of community service not exceeding three months.

4.6 Tokelau Post Office Regulations 1990.

There are no radio transmitters in Tokelau other than those operated by the Tokelauan Administration. There are radio transmitters in the administration office of each village and there is also radio transmission capability on the inter-atoll vessel Tutolu. Possession and operation of radio transmitters in Tokelau other than by the Tokelauan Administration is prohibited unless licensed by them. Short term radio licences may be obtained from the Office for Tokelau Affairs for periods of not more than one month. This provision was aimed at facilitating networking and reception testing by the radio hams who visit Tokelau for short periods.

There was at one time a non-directional beacon for Tokelau sited on Nukunonu. That beacon was for many years dysfunctional and has been removed. There are now no navigational or other beacons or guides in Tokelau.

4.7 Tokelau Plant Regulations 1989

Power is vested in the Administrator, by notice, to prohibit or restrict the importation into Tokelau of all plant material or such plant material as is specified in the notice, of any soil, and of any contaminated material. The Puleniku or a constable or other designated member of the Tokelau Public Service may act as an inspector for the purposes of these regulations and has powers of entry and search and the associated powers of examining, sampling, removal to quarantine and disinfecting necessary for the fulfilment of the objects of the legislation. An inspector may further, in accordance with the directions of the Director of Agriculture, destroy or otherwise dispose of plant material, any plant pest, soil or contaminated material if it is imported into Tokelau other than in accordance with the regulations. There is also power to destroy any diseased plant material, diseased soil or plant pest or any associated material that is in Tokelau. The regulations provide for compensation to be paid to the owner of material destroyed where the material is in Tokelau legally and also for the refund, in certain cases, of quarantine charges. Support for the requirements of the Administrator and the actions of inspectors is provided by offence clauses. The penalty for offending is a fine not exceeding \$150.

4.8 Tokelau Animal Regulations 1991

Provision is made for animals in a manner similar to the provisions for plants under the *Tokelau Plant Regulations 1989*. 'For the purpose of preventing the introduction into Tokelau, or the spread within Tokelau, of any disease, ... or any animal that has ... undesirable characteristics', the Administrator may prohibit or restrict imports. Inspectors are charged with the enforcement of the regulations, and for that purpose there are rights of entry and search, and the power to destroy animals and animal products. The maximum penalty for an offence against the regulations is a fine of \$150.

4.9 Tokelau Marine Pollution Regulations 1990

These regulations extend much of the *Marine Pollution Act 1974* of New Zealand to Tokelau and implement the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region. Section 3 of the Act proscribes discharging or allowing the escape of oil or pollutants from any ship in Tokelauan waters. There are statutory requirements as to preventive measures and equipment. Contraventions of the law may be punished by fines of up to \$100,000 plus the expenses and costs involved in dealing with the pollution caused. Part II of the Act deals similarly with dumping and incineration of waste from ships or aircraft. Section 25 gives powers for dealing with marine casualties. The supporting regulations made under the *Marine Pollution Act 1974* are the *Marine Pollution (Dispersants and Exceptions) Regulations 1975*, and the *Marine Pollution (Dumping and Incineration) Regulations 1982*.

4.10 Tokelau Shipping (Salvage) Regulations 1992

Marine accidents and the ownership and disposal of material washed up by the sea are covered in the *Tokelau Shipping (Salvage) Regulations 1992*. The provision relevant to environmental matters is regulation 11. It provides that if a vessel is sunk, stranded or abandoned on or near the reef or in any inland water of Tokelau the Administrator shall require the owner to remove the vessel within a reasonable time. An owner who fails to comply with notice from the Administrator commits an offence. Further consequences are that the Administrator may take possession of and cause to be removed or destroyed, the whole or part of the vessel and sell the vessel or any property recovered from it in such manner, and on such conditions, as the Administrator thinks fit. The regulation vests power in the Administrator to recover from the owner of the vessel the costs involved in the removal or destruction of the vessel.

4.11 Tokelau Customs Regulations 1991

Under these regulations the importation of, ozone depleting substances in an unprocessed form (whether alone or in a mixture) is prohibited. A specific exemption is provided for any ozone depleting substance that is in a manufactured product. 'Ozone depleting substance' is defined in regulation 2 and the Fifth Schedule. Reference is there made to the Montreal Protocol of 1987. The import of certain drugs and poisons may be prohibited absolutely or subject to conditions by notice given by the Administrator under regulation 7. To date no such drugs or poisons have been notified.

A second category of items may be imported only by permit. These are set out in the Second Schedule to the regulations and include drugs or poisons specified by notice of the Administrator (as yet there has been no such notice), explosives, firearms and ammunition, motorised vehicles, refrigeration equipment, aerosols for commercial purposes where the aerosol contains an ozone depleting substance, and organotin anti-fouling paint. Import permits are issued by the Administrator under

regulation 9. Before issuing a permit or declining to issue a permit the Administrator is required to consult with the relevant Village Council. A permit may be issued subject to conditions.

The *Tokelau Customs Regulations 1991* also deal with psychotropic and dangerous drugs (regulation 25), and with the import of alcoholic beverages and tobacco products (regulation 12).

Duty of 10% is imposed on the import of goods for commercial purposes other than for sale in a village store, and 65% on alcoholic beverages and tobacco. Goods imported in a quantity larger than what would normally be required for the private purposes of the importer are presumed to be imported for commercial purposes.

The regulations are administered by the police who for the purposes of the regulations, have powers of examining packages and goods, boarding vessels and aircraft within the territorial limits, and searching persons and premises. The regulations also provide for the forfeiture and disposal of certain goods. General offences against the regulations may be punished by a fine not exceeding \$150 or a term of imprisonment not exceeding three months. Specific offences in respect of dangerous drugs and psychotropic substances carry a maximum penalty of imprisonment for 1 year or a fine of \$1,000.

4.12 Tokelau Police Regulations 1989

The police officers of Tokelau are key figures in the enforcement of most Tokelauan laws and particularly of those affecting the environment where powers of search, seizure or destruction are involved. The powers of the police are set out in the *Tokelau Police Regulations 1989*. In addition to specific powers under other pieces of legislation, regulation 5 lists, as a function of the police officers, assisting Village Councils to give effect to the decisions of the Village Council and to the rules of the village. The police officers also have the primary function in respect of the control of explosives, firearms and ammunition in Tokelau.

A police officer is any employee of the Tokelau Public Service designated as such and includes any member of the New Zealand Police who is designated by the Administrator of Tokelau from time to time as a Police Officer for Tokelau.

4.13 Civil Aviation Act 1990

The general aviation law for Tokelau is provided by the *Civil Aviation Act 1990* of New Zealand and its supporting regulations. Civil Aviation Regulations for Tokelau were drafted out but have not been proceeded with and are currently not needed. Section 97 of the *Civil Aviation Act 1990* excludes liability in respect of noise, vibration or other nuisance caused by aircraft where the aircraft is operated in accordance with the prescribed rules. Liability is strict for material damage or loss to property on land or water by an aircraft and damages are recoverable from the owner of the aircraft irrespective of proof of negligence, intention, or fault.

4.14 *The land and the sea -Tokelau Amendment Act 1967*

The two abiding items of the Tokelau environment are the land and the sea. The land provides a place to live and coconut palms as a source of sustenance, and the sea provides fish. All but 40 acres of Tokelauan land is held by customary title in accordance with the customs and usage of the inhabitants. The *Tokelau Amendment Act 1967* provides that the people of Tokelau may dispose of their land among themselves, according to their customs, but that they may not alienate land to non-Tokelauans. Land holdings pass from generation to generation within families, and are held by the head of the family group. Some land is held in common. Forty acres on Fenuafala in Fakaofu is held in fee simple and is subject to English law rules.

The sea and sea areas are governed by several pieces of legislation. Most of those are a consequence of international treaties relating to the sea boundaries and sea resources of states and also to marine pollution control. The laws impact little on Tokelauans and have an outward looking aspect in their controls on foreign fishing in Tokelauan waters and on types of marine pollution that are beyond the capacity of Tokelauans to create.

The domestic Tokelauan environment in the key areas of land and sea is therefore very much within the control of the Tokelauans and the villagers in particular. The Tokelau Act provides specifically that title to land and beneficial rights in land are governed by Tokelauan custom. The precise extent of those rights is something that could only be determined by the Council of Elders of the relevant islands. It is therefore particularly appropriate that any laws made relating to environmental protection and enhancement should be made at a national level with the support of the elders and communities and also as far as possible at the village level.

There is no provision for marine resources in the Tokelau Act, however the guiding principles and reasons for legislation should be the same as those pertaining to land.

4.15 *Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 and Tokelau (Exclusive Economic Zone) Fishing Regulations 1988*

Fishing in the territorial sea and exclusive economic zone of Tokelau is controlled by the above Acts. No foreign fishing vessel may be used for fishing within the territorial sea of Tokelau, that is, a limit of 12 nautical miles from the base line of the low water mark on the seaward edge of the reef of each atoll of Tokelau.

Fishing in the exclusive economic zone - a distance of 200 nautical miles from the base line - is prohibited to all but licensed foreign fishing craft. The licensing provisions are in the *Tokelau (Exclusive Economic Zone) Fishing Regulations 1988*. Those regulations provide an absolute prohibition on the possession of drift nets in the exclusive economic zone and in the territorial sea (regulations 13B and 13C). A drift net is defined as a gill net or other net more than one kilometre in length which is used by being left to drift on the surface of the water or in the water. The

regulations provide substantial penalties for contraventions of provisions of the regulations with fines ranging from \$1,500 to \$100,000 and forfeiture of fishing vessels and equipment. Primarily, the regulations have an economic role but they do provide for fisheries protection in the form of conditions in licences and in the requirement (regulation 12) that no living organism, particle or substance that is likely to cause harm to any fish or marine mammal, obstruct fishing equipment or become a hazard to navigation, shall be put or released into the sea of the exclusive economic zone from a foreign fishing craft. The penalty for contravention of this requirement is a fine of up to \$10,000.

5 Treaties

5.1 Tokelau's international treaty status

Tokelau is part of New Zealand and its treaty-making power is vested in New Zealand. The treaties that are in force for Tokelau are difficult to specify. Some preliminary work on a complete treaty list has been done but is not yet completed. The situation in respect of Tokelau is complicated by the fact that Tokelau's pre-1949 history was affected by its relationship to Great Britain and varied with its status as a protectorate, part of the Gilbert and Ellice Islands Colony, or as a territory. The situation is somewhat clearer for the post-1948 period when Tokelau was part of New Zealand. Most treaties affecting the environment are of the post-1948 period. The treaties list set out in Annex 3 is taken from a New Zealand government list of environment treaties affecting New Zealand as at 10 March 1993. Those listed in the Annex are only those which are potentially applicable to Tokelau and which are currently in force. Those that have been signed but not ratified are not included. Some, such as the Tuna Fisheries Treaty, mentioned below are clearly of effect in Tokelau and the necessary supporting Tokelauan legislation is in force. The *Tokelau Marine Pollution Regulations 1990*, for instance, implement many of the marine oil pollution treaties.

5.2 Tuna Fisheries Treaty 1987

The 1987 *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the USA* (Tuna Fisheries Treaty) should be noted in a fisheries context. New Zealand is a party to the Treaty and the waters of Tokelau are covered by the Treaty. The territorial sea of each atoll of Tokelau, including a 25 nautical mile strip of high sea between the atolls of Tokelau, is declared to be a closed area. Vessels to which licences may be issued are those that fish only by the seine method and fishing should be directed only at the catching of tuna (with the exclusion of the southern bluefin tuna).

Article 2.1 of the Treaty also discusses the possibility of cooperation between the United States of America and Pacific Island parties 'through the provision of technical and economic support' to assist in maximising benefits from the development of the fishery resource.

5.3 Treaty of Tokehega 1980

Another treaty not specifically listed as an environmental treaty is the *Treaty between the United States of America and New Zealand on the Delimitation of the Marine Boundary between Tokelau and the United States of America* (the Treaty of Tokehega). This treaty states in article 6, in a manner not unlike that of the Tuna Treaty, 'That the government of the USA and the government of New Zealand ... agree to cooperate with a view to promoting social and economic development in accordance with the wishes of the peoples of Tokelau and American Samoa, and to

work towards the advancement of the South Pacific region as a whole ...'. The treaty was signed in 1980 and came into force on 3 September 1983.

6 Proposed legislation

6.1 Tokelau Emergency Regulations

These regulations were approved by the elders of Tokelau in 1986 to provide a clear legal basis for intervening in the lives of individuals or affecting the property of individuals (in ways that at other times would be against the law), 'where there is a serious threat to the environment of Tokelau or to life on an island of Tokelau, or where an emergency or sudden disaster endangers life or property on an island of Tokelau'. In particular, the regulations will give the Administrator or the Faipule, in consultation with the Taupulega, the legal authority to commandeer or destroy property as necessary.

The regulations are framed broadly and provide for the payment of compensation where the property of an individual or a family is damaged or destroyed for the purposes of the control of an emergency. Failure to comply with a lawful order given under the regulations is punishable by a fine not exceeding \$50.

6.2 Tokelau Crimes, Procedure and Evidence Regulations

In 1987 the General Fono approved the above draft regulations to replace the *Tokelau Crimes Regulations of 1975*. They are specifically directed to the Tokelau circumstance, retaining an offence of animal trespass and making it an offence to make or cause unnecessary and unreasonable noise in a village. They also (in regulation 53) take up the rule (already found in the Village Rules of Nukunonu (rule 11) and section 19 of the Gilbert and Ellice (Consolidation) 1917) against the improper use of explosives and any deleterious liquid or substance for the purpose of killing or taking fish. The prohibition on placing poison in such a way as to be a source of danger to human beings or animals, the provision against the pollution of water, and the offence of keeping insanitary premises are retained.

6.3 Tokelau Health Regulations

These regulations were approved in Tokelau in 1987 and deal with a large number of matters of environmental interest. In the first place they provide for the practice of medicine, dentistry or pharmacy in Tokelau only by qualified persons. Secondly, the regulations set up a Health Committee for each village. The Health Committee will consist of the Pulemaku, the medical officer, the executive officer, the village foreman and two members of the Taupulega. The role of the Health Committee is to give approval for the erection of buildings and for alterations to existing buildings. In particular the concern is with the siting of any building, its construction, the materials used, its water supply, sanitation facilities and similar factors which affect health. In case of need, the Health Committee has the power to impose sanctions and, ultimately, to have a building modified or demolished if it has not been constructed in accordance with the requirements set down by the Health Committee.

The third major matter relates to refuse disposal and a distinction is made between combustible material, non-combustible material, and plant and animal matter. The control of this matter is vested in the Pulemaku.

The section dealing with sewage disposal requires each village, in consultation with the Director of Health, to specify appropriate facilities and methods for sewage disposal in the interests of public health and the protection of the environment. After a decision by the village, the Director of Health and the Pulemaku are required together to inspect all existing facilities and methods of sewage disposal and where necessary a period of six months is given to the person in control to upgrade the facility. The ultimate control under this provision is for the Pulemaku to upgrade the facility at the expense of the owner. Failure to comply with the regulation is punishable by a fine not exceeding \$500.

The regulations also contain a number of general health measures of environmental interest. Regulation 7 provides for the control of mosquitoes, regulation 8 the preparation and sale of food, and regulation 9 for 'public nuisances'. Regulation 9 is modelled on general public health precedents and deals, inter alia, with drainage, accumulation of rubbish, vermin, unsafe structures, offensive odours, fumes, dust and gases, ventilation, buildings for animals and birds, industrial health, and the disposal of offal. In addition to any other right or remedy that may be available at law in respect of any of the nuisances the regulations provide that those who offend may be fined up to \$50 with the possibility of a continuing fine of \$10 a day till the nuisance is abated.

Regulations 10 and 11 deal with infectious disease and quarantine. The powers in respect of these matters are vested in the Director of Health or the local medical officer. Regulation 10 gives the power of entry and of medical inspection and also a power to isolate the affected persons and disinfection of premises and property. Failure to comply with directions under the regulation are punishable by a fine not exceeding \$50. There is also power in the Director of Health to require necessary work to be done in respect of premises at the cost of the owner or occupier.

Of the remaining provisions, those of environmental interest are regulations 13, 15 and 16. Regulation 13 deals with cemeteries and burial. The power to designate burial places rests with the Pulemaku and the public health requirements for burial and exhumation are controlled by the Director of Health. Regulations 15 and 16 provide for general health inspection of premises in the interests of community health.

6.4 Tokelau Pesticides Regulations

The general Fono approved these regulations in 1989 following representations made by the Director of Agriculture and Fisheries. The proposal corresponds to a South Pacific regional measure to control the importation, sale, storage, and use of pesticides. The system requires the registration of all pesticides for import into and use in Tokelau. The registration process gives the power to restrict the use of certain

pesticides in terms of their purpose, the user, or the conditions under which they would be used. The power is given to the Official Secretary to refuse to register a pesticide if 'the applicant fails to establish the need for the pesticide in Tokelau' or 'the use of the pesticide would give rise to an unacceptable hazard to the public or to the environment'. The regulations set out conditions for the storage and packing of pesticides and for appropriate labelling. Standards of practice for storage and for use are set out in a Schedule to the regulations. Contraventions of the regulations are punishable by a fine not exceeding \$150 or a term of imprisonment not exceeding 3 months. Agriculture officers and police officers have the powers of entry and search and of seizure necessary to achieve the purposes of the regulations.

6.5 Tokelau Electricity, Gas and Dangerous Goods Safety Regulations

These were approved by the Law Fono in 1989 following concern by overseas consultants and contractors about the absence of safety standards for electricity, gas and dangerous goods of an explosive, inflammable or corrosive nature. The standards established for electrical and gas work were the current New Zealand standards. Dangerous goods are subject to a set of standards of practice set out in the Schedule to the regulation. Those standards of practice relate to the storage, the method of use, and safe disposal of dangerous materials. The regulations provide for inspection powers, and for a fine not exceeding \$150 or a term of imprisonment not exceeding 3 months for contravention of the requirements of the regulations.

6.6 Tokelau Incorporation Regulations

Tokelau has no ready means of incorporating funds or groups of individuals. Some years ago it was seen as desirable that there should be an administrative facility available for the incorporation of social groups, educational groups, sports groups, family cooperatives, church groups, and the like. The current environmental consciousness may also make good use of such regulations when promulgated. In particular they would provide an alternative in terms of management and accountability, to the current situation where money, or other resources for a particular project or purpose, has to be given either to an individual, individuals, a village, or the Tokelauan Administration. The corporate identity and the associated publicity would give the necessary security to the project and would better provide for the accountability of the managers who would have sole responsibility and would also, through the constitution of the incorporation, provide for continuity of the endeavour beyond the life or interest of a particular individual.

6.7 General Fono Regulations

In August 1992 the General Fono approved a set of draft regulations which, if promulgated by the Governor-General in New Zealand, would bestow on the General Fono a rule-making power 'for the efficient and orderly conduct of affairs in Tokelau which are of common interest to the three islands and for the promotion of the economic and social well-being of the people in Tokelau'. For those purposes the General Fono could make rules for Tokelau in respect of a number of matters

including agriculture, copra production, domestic fisheries, environmental protection, health and sanitation, construction and safety standards, protection of Tokelau culture, use of non-foreign-going boats, use of vehicles and machines, and handicraft production. The items specified are those with potential for environmental interest. It is also to be noted that the bulk of the legislative powers of the General Fono would relate to matters with an environmental impact. The reason for this is that these matters are not simply viewed as village concerns but are considered to be of special domestic interest to the people of Tokelau as a whole and, as such, are better regulated in Tokelau by Tokelauans than externally from New Zealand. Legislation made by the General Fono could impose taxes and duties and could also create offences for which the maximum punishment would be a \$150 fine. A rule made by the General Fono which was in any way inconsistent with an international obligation of Tokelau, an Act of Parliament or a regulation in force in Tokelau would be of no effect to the extent of the inconsistency. A rule of the General Fono would have priority over a rule made by a Village Council.

A power for the General Fono to legislate has been sought for some time by the General Fono. The proposal of 1992 goes further than earlier requests in that the resolution included a draft set of regulations for signature by the Governor-General. The promulgation of these regulations will be important to environmental protection and enhancement in Tokelau because there will be power in a Tokelauan body to make appropriate rules promptly and in local terms to meet Tokelauan needs. To process laws for Tokelau through Wellington usually takes a number of years. The experience with the village rules is that decisions can be taken and rules made readily within a matter of days. The proposed General Fono regulations require a minimum of three weeks notice to be given of legislative proposals, but otherwise there is every indication that needs will be able to be met very quickly.

6.8 *Inter-atoll Shipping Service Regulations*

The inter-atoll shipping service is now operating and draft regulations are being prepared for implementation. In the meantime shipping is covered by the relevant Common Law of England principles and the international conventions which extend to Tokelau.

7 *Environmental policy of Tokelau*

The environmental policy of the Tokelauan Administration is articulated in a number of official documents that followed the Tokelau Country Report for UNCED of August 1991.

The key document is the Tokelau Environmental Management Strategy set out in a letter by the Official Secretary to the Director of SPREP of 27 January 1992. The strategy is based on the need 'for the use of appropriate technology to ensure the renewability and sustainability of the existing agricultural and marine resources'. The strategy is also concerned 'to enhance the quality of life and the environment' and to establish 'recreation and protected areas' in Tokelau. Chapter 4 considers the institutional base for environmental management and focuses specifically on the implementation of policies which will facilitate closer working relationships between the members of the Tokelau Public Service and institutions at the village level. Community involvement through the three Faipule and village committees is seen as the best way to coordinate contemporary environmental needs with tested traditional knowledge on resource management and conservation. It is envisaged that this involvement will result in the production of legislation at the village level. The strategy also calls for its implementation to involve teachers and students in issues affecting the environment. Annex 1 of the strategy describes the setting up of the Environmental Policy Unit. That unit is responsible to the Official Secretary and one of its roles is that of advising the Official Secretary on the formation of environmental law policy.

The strategy has been proceeded with and much that was foreshadowed in it has happened or is in the process of happening. The vessel, the Tutolu, which was seen as important to the efficient and effective delivery of support services and of assistance with the integration of village and government knowledge and services is now operating in Tokelau. Further, an Environmental Policy Unit has been established under the Health Department and there are two environmental officers working within the Office for Tokelau Affairs in Apia. The relocation of the directorates of the Tokelau Public Service and associated departments is in an advanced planning stage and the institutional structures related to that reorganisation were put in place by the General Fono at its meetings of August 1992 and February 1993. The structure of the General Fono has been changed slightly as a result and the General Fono has recognised the role of the three Faipule as the Standing Committee (Cabinet) of the General Fono with power to act between sessions of the General Fono. The notion that there should be a leader of Tokelau (Ulu o Tokelau) has also been accepted and that role will be taken on by one of the members of the Council of Faipule.

At a practical level the system is beginning to operate. At the legal constitutional level legislation is awaited. That legislation will make possible the delegation of executive powers by the Administrator to the General Fono, to the Council of Faipule, or to the Ulu as is seen appropriate. The power of delegation to the new structures by the State Services Commission (the independent employing agency for

Tokelau public servants) already exists and will probably be used in the same way that power is delegated by the Administrator, to confer central New Zealand governmental powers on the responsible bodies in Tokelau. That system (as the chart in Annex 2 shows) will provide legally for the establishment and implementation of policy at a national level.

8 *Environmental reports and the law*

A number of reports on the environment of Tokelau have been prepared and several were available for consultation in the context of the preparation of this report.

8.1 *Tokelau Airstrips Feasibility Report*

The major project of recent times with significance for the environment of Tokelau was the establishment of land strips for an air service. A draft Tokelau Airstrips Feasibility Report was prepared by the Ministry of Works and Development of New Zealand in June 1985. That was followed in October 1985 by a report of the Commission for the Environment by David Hill and Peter Lawless entitled Proposed Tokelau Airstrips. The proposed airstrips have not been proceeded with and the air service proposal is, for the time being, in abeyance.

The draft feasibility report discusses the physical environment, the practicalities of the airstrip development and suitable sites on each atoll for airstrips. It also considers the waste disposal and water supply factors involved in setting up a construction camp. More particularly it reported that extensive areas of coconut, pandanus and scrub would be cleared to establish the airstrips. In paragraph 6.8 there was the discussion of the use of coral rubble to build up the runway pavement and the extraction of coral fines from the lagoon to dress the runway. In the conclusions at paragraph 10.7 the environmental impact was assessed as follows:

'The only significant environmental impact the construction of the three proposed airstrips would have on Tokelau is the loss of approximately 25ha (Atafu 10ha, Nukunonu 4ha, and Fakaofu 11ha) of land presently used for growing coconut, pandanus, and other plants.

This loss is significant on both Atafu and Fakaofu as it represents approximately 3% of the overall land on each atoll and is prime land.

The loss is less significant on Nukunonu as it represents less than 1% of the overall land on the atoll and is not prime land.

Only the elders can truly assess what the loss of use of this land means to the local people.'

It was considered that the operation of an air service would not have any greater sociological impact on Tokelau than the former sea plane service had.

Paragraph 6.3 mentions the alternative of an inter-atoll boat service and states: 'The possible environmental effects of constructing deeper passages would suggest that such an option should be approached with caution'.

In respect of a one airstrip option (paragraph 6.4) states: 'Such an option would be associated with less environmental damage and could offer most of the benefits of the three strips. The role that air strip location would play in the future political and social development of Tokelau would need to be considered'.

In paragraph 6.5 the re-establishment of a sea plane service is seen as offering 'tremendous advantages' 'in terms of flexibility and environmental impacts'. Finally paragraph 6.6 suggests that the use of a smaller land based aircraft than that on which the feasibility report is based, would eliminate the need for anything but an emergency fuel dump on Tokelau.

Other recommendations in paragraph 7.2 are:

- (ix) *That solid wastes and waste oil that are not immediately useful to the Tokelau communities must be removed at the completion of each airstrip for controlled disposal away from the atolls.*
- (x) *That all possible steps be taken to rehabilitate cleared areas and borrow areas created in airstrip construction.*
- (xi) *That all care should be taken to minimise the generation of suspended solids in water.*
- (xii) *That the handling and storage procedures for fuel be reviewed to improve safety and reduce the possibility of accidental spillage. Such a review should consider specifications, handling in transshipment, unloading and internal transportation in Tokelau, the provision of appropriate storage facilities (including the containment of spillages), periodic inspections and training for local operators.*
- (xiii) *That before construction the role of hurricane banks in shore stability is further investigated'.*

8.2 Tokelau UNCED Report

The Tokelau Country Report for the United Nations Conference on Environment and Development was published by the Director of the Department of Agriculture and Fisheries of Tokelau in 1991 and reprinted by SPREP in June 1992. The lack of relevant legal structures and the areas of need for laws are well described in that report. The report comments not only on the lack of environmental protection laws but also on the importance to the protection of the environment of clear and acceptable authority structures as they affect governmental decision-making processes (page 3). The view presented in the report is that traditional authority structures are breaking down, that relevant customary sanctions are either obsolete or poorly enforced and further, that within the traditional government system there is a dearth of relevant environmental knowledge. It is stated that Tokelau still has time to act to reverse the degradation of its environment.

One of the major conclusions on page 7 of the report is that the current 'institutional capabilities are not at the level needed to deal with the present and impending environmental problems'. In the light of that conclusion the report proceeds to consider, among other things, the strengthening of the institutional capability for environmental and resource management.

Page 22 states:

'Although the traditional methods of resource exploitation had the significant function of providing status, maintaining the authority of the elders and a stability in the social order, at the same time these restrictions and rituals had inherently conservationist effects which have sustained the resource.

Probably the most important explicit fishing conservation measure is the "lafu" system whereby all types of fishing are periodically banned in specific areas of the main reef. Other measures are returning under-sized fish and banning of destructive methods of fishing. A variety of customs provide disincentives to over-fishing such as having to divide the catch equally amongst the community members. Customs encourage fishing for particular species at particular times which in effect results in a "season" and customary laws discourage hunting for rare species such as green turtles'.

Page 23 further states:

'The disassociation of fishing from its social context has led to wasteful and delinquent behaviour. For example, nets are left overnight and the catch rots. Land crabs, and other protein staples, are caught for sport surplus to need. Such practices would be unthinkable in earlier times.

At present the authority of the elders to impose management methods is diminishing while at the same time the far less discriminating and more intensive western methods of fishing are placing far greater pressure on the resource. Although the Department of Agriculture and Fisheries is attempting to institute controls, enforcement at the local level requires the support of the elders. Impressing upon the elders the need for modern management requirements is not straightforward and elders are reluctant to impose laws which they do not fully understand.

Consequently, attempts at regulations such as stipulating minimum net sizes are not able to be enforced if monitoring or conservation programmes do not receive favourable attention in the budget.'

Page 31 deals with the absence of systems for dealing with sewage and sullage and also the need for environmentally sound household products.

Under 3.4.7 Biodiversity, the absence of protected areas or conservation areas is commented upon. The preservation and management of coral reefs is of particular concern. It is stated that a 'Lagoon and Reef Conservation Strategy is urgently needed to address protection of species and ecological processes from pollution, siltation, and over-fishing. The strategy should include the establishment of an ecosystem profile; protection areas; regulation of fishing; monitoring of fishing effort and stocks; monitoring of effects of land-based pollution sources'.

In Chapter five the report considers planning for sustainable development. Page 36 notes that the Tokelau Public Service activities 'are not well integrated into the community and the ability and authority of the Village Councils to direct and organise life on each atoll is undermined'. There is further comment about the role and inadequate background experience and information for the General Fono to perform its role properly. The conclusion is - 'Consequently the delineation of authority is in practice blurred and affects the functioning of both the local authorities and the TPS'.

8.3 Tokelau Country Statement

The Tokelau Country Statement, presented by Hosea Kirifi to the SPREP/UNEP Legal Workshop held in Apia in 1992, emphasised the newness of environmental problems for Tokelau and also referred to the cultural practices of Tokelau which relate to protecting and conserving natural resources. Some of those practices relate to laying turtles and to the birds called talagogo (sooty tern). The use of dynamite or chemicals for killing fish is also mentioned. These practices and the comments on them illustrate the nature of many relevant customary practices, the community attitudes to natural resources, and also the importance of customary practice rather than law in the context of environmental management in Tokelau.

The reduction in the number of sightings of turtles in Tokelau is not a recent phenomenon and has been regarded with concern by the elders. However, no legislation has been passed at a village level to control the taking of turtles for conservation reasons and the customary rules continue to apply. It will be noted that the emphasis in the customary practices is not on protecting turtles but in conserving their eggs and meat for communal rather than individual use. The case of the talagogo is readily controllable, as are the practices relating to turtles, both by the villages in the exercise of the customary role of the elders and also through the legislation-making power of the villages. If there is a community will to change these practices the tools are at hand. The fact that nothing has been done suggests that the community will is not there yet. Because Tokelauans live closely in touch with their environment outsiders regard them as environmentally sensitive. It is likely however that the reason for the lack of protection of turtles and talagogo lies in a lack of awareness and understanding of the environment and life cycle of certain species.

The use of dynamite and chemicals for killing fish is already prohibited by legislation in Tokelau. It is dealt with in the *Gilbert and Ellice (Consolidation)*

Ordinance 1917 as a prohibition affecting all of Tokelau, and by a specific village prohibition in the Village Rules of Nukunonu. Though these practices are not followed by Tokelauans the comment on the desirability of legislating against them reflects Tokelauan understanding of the role and use of the culturally alien phenomenon called law.

8.4 *Waste Management Study and Strategy*

The Waste Management Study and Strategy of November 1992 also refers to both the lack of and the need for legislation in environmental matters in Tokelau and comments on the environmental legislation awaiting approval by the New Zealand Government. Particular concern is expressed about the role of the Health Department regarding sewage and waste water from showers, sinks and public taps, and waste water from hospitals piggeries and agricultural land where pesticides and rodenticides have been used. There is no legislation for air pollution either but that is not expressed as being a matter of major concern. It should be noted that the promulgation of the Tokelau Health Regulations will provide a legal structure within which the health officials and the appropriate village officials will be able to require the maintenance of proper standards for waste disposal by a system of permits and sanctions. Mention is also made of the government control over imported goods. This is a recurring theme in environmental reports. The recommendation is that the government 'entertain and promote incentives which address ... the importation of nonbiodegradable products or packages ... immediately'. A further recommendation is 'That all existing ordinary pit privies hovering over shorelines are to be dismantled and be replaced by water seal types of privy'.

In Tokelau 33% of the people are served by private flush toilets. The island distribution ranges from 65% of the population in Fakaofu to just 11% and 14% of the inhabitants of Atafu and Nukunonu. The primary restriction on the improvement of the sewage systems is the availability of an adequate water supply. The survey done for the sanitation programme of Tokelau in November 1992 estimated that the water catchment area then available had the capacity to provide 100 litres of water per person per day. The existing storage capacity however limits provision to 30 litres per person per day. The conclusions of the survey were that developmental emphasis should be on water storage rather than on construction of water catchment areas and further that the water supply developments would have to precede progress with the sanitation programme.

8.5 *The SPBCP Project Proposal for Tokelau*

The South Pacific Biodiversity Conservation Programme Project Proposal for Tokelau was transmitted to the Director of SPREP on 10 February 1993 by the Official Secretary of Tokelau. That letter and the project proposal indicate very strong support in Tokelau at both government and community level for the SPBC Programme. The Official Secretary also advised that new village laws have been prepared to assist implementation of the project. Those laws have not yet been promulgated. To the extent that approval at the General Fono would provide for

laws applicable Tokelau-wide that would have to await the grant by the New Zealand Government of legislative power to the General Fono. Pending that decision the villages could each promulgate identical sets of rules which would, but for the concern expressed to cover all the waters surrounding Tokelau, be equally as effective as rules made by the General Fono.

The goal of the SPBCP project is to stem the increasing pollution levels in Tokelau, reduce the cases of fish poisoning, and save the endangered animal species of Tokelau. The hope is expressed that the biodiversity conservation programme and the environment programme together will ensure an ecologically sustainable system of living in Tokelau.

8.6 *Report on the Community Workshops*

The Report on the Community Workshops held in Tokelau between November 1992 and January 1993 confirmed the areas of need and strategies relating to waste management, environmental health and environmental awareness identified in the other documents. The need for new village laws was specifically mentioned in all cases. Legislation was proposed which concerned many matters considered to be within the power of village and government officers to control by the use of fully developed management strategies.

In discussion in Apia, Steven Brown of the Environmental Policy Unit of Tokelau, raised a number of issues to which the law is or might be relevant: The need for building codes; village rules to control the burning of rubbish, to prohibit the throwing of rubbish into the sea, to control the collection of sand from motu, to prohibit sea latrines and to manage the replacement of sea latrines with septic tanks. He also raised the question of the laws relating to shipwrecks and the need for environmental impact assessment legislation.

In most cases (for example, the control of village activities) the necessary laws can be readily provided through the making of village rules. However in some cases, because of the advantages for the ordering of supplies and the transportability of installation and maintenance skills, Tokelau-wide rules would be preferable. This would be the case for building codes or sewage control standards. It may also be that, given the importance of the environment and the fragility of the Tokelau environment in particular, regulations should be promulgated in New Zealand which require the preparation of an environmental impact assessment report before the commencement of any substantial development in Tokelau or the implementation of any major policy for Tokelau.

The collection of sand for building and sea defence purposes in Tokelau is a matter of concern. The collection of sand has the potential for causing damage both in terms of erosion and the disturbance of the natural habitat. Some of the environmental aspects of removal and collection of sand and coral rubble were addressed by the environmental impact report prepared in connection with the proposal to build air strips in Tokelau. Most sand collection is done by or with the

approval of, the Village Council. Its control is therefore within the power of the Council. Complementary to a programme of education and information about the effects of removal of sand and rubble, it may be appropriate for each village to create it an offence to remove sand from any part of Tokelau without the prior approval of the Village Council.

8.7 *Improved community health by exportation of recyclable solid wastes*

The project proposal on 'Improvement of our community health by exporting of recyclable solid wastes from Tokelau' prepared by the Health Department early in 1993 documents the removal of all solid waste from Tokelau and the community support for and initial success of the project. These activities give rise to the question whether legislation to control exportation would be desirable to ensure as far as possible that waste exported from Tokelau will not be the cause of environmental difficulties for other countries. This is a matter that could appropriately be discussed with the responsible authorities in Western Samoa. An administrative certification procedure for certain waste may satisfy their needs.

It is also important to note that this proposal indicates that 'pollution levels will continue to rise in Tokelau while we continue to import the types of products that we are, and for as long as we continue to accumulate all the solid waste at the current rate'. There can be some control of imports by legislative measures but in the case of Tokelau such measures are probably much less significant and much less practically important than the taking and implementation of appropriate administrative decisions at all levels of the Tokelauan Administration. In principle there is no reason why Tokelau should import any product that is environmentally damaging.

The proposal refers to the abusive use of batteries (for the dyeing of pandanus leaves). This is a practice that may best be stopped by appropriate community education and action. It can also be prohibited immediately by the making of village rules backed by fines, reprimand, or requirements of community service.

8.8 *Health Association and Store Committee*

The project document of the Health Association and Store Committee of Tokelau (undated) is consistent with the other available policy documents in that it indicates concern at the village level about the nature and quantity of imported products and the environmental damage caused by some of the products. The standards being developed by the villages would complement and facilitate the administrative implementation of environmental policy decisions at the level of purchasing products for Tokelau in Western Samoa and elsewhere. This document further ties in with the Environmental Health Strategy for Tokelau (1992) where for the purposes of nutritional and environmental health, direct input is being sought from the executive officers of each atoll who are responsible for the placing of orders and from the purchasing officer based in Apia.

8.9 *Faka Tokelau*

The most recent document available at the time of preparation of this report is the paper presented by the Norwegian anthropologist Ingjoerd Hoem to the retreat for the Council of Faipule held in Wellington on 13 and 14 May 1993. That paper, entitled 'Faka Tokelau (the Tokelau Way of Life) and the Present Situation. Some Critical Issues' comments on the social environment, the speed of social change in Tokelau, and the areas of immediate concern for the future. In the present context one of the most interesting points about this paper is its reflection from a different disciplinary perspective of the same concerns and needs as those shown in the various administrative and environmental reports.

9 *Role of law*

There is a paucity of environmental law in Tokelau. The existence of appropriate laws will not of itself improve or protect the environment. What is required additionally is the knowledge, will and capacity to implement the laws. It is also the case that much of great value can be done for the environment without laws. The community endeavours in Tokelau for waste collection and disposal and the moves to change purchasing practices are examples of this.

Tokelau is governed, rather than ruled, by a set of laws. The government at a local level is in the form of the decisions and instructions of the Council of Elders on each island and of the village officials and organisations: the Faipule (the Chairperson of the Council of Elders), the Puleuku (the elder responsible for village affairs), and the President of the Women's Committee. Other matters are dealt with by the Tokelau civil servants acting on instructions from the Official Secretary and the Directors of the Departments of the Tokelau Administration, all of whom act on the basis of delegated authority from the Administrator of Tokelau and from the State Services Commission.

This system presents no practical problems at the village level, except in the case of a person who does not accept the customs and traditions of the village. It would be illegal without legislative authority to force such a person to comply with the custom or to subject him or her to loss of property or freedom because of failure to follow the orders of the elders.

Equally there is no practical difficulty for the Administration of Tokelau until the situation arises where it needs authority to enter premises, control individual behaviour, or seize property. In all these cases a tort or a crime is likely to be committed if the appropriate legislation is not available. Legislation is therefore required not only to empower those who govern Tokelau and its people but also to protect those in power in the event that actions have to be taken which affect the property or personal rights of individuals or groups in Tokelau.

There are a number of other significant roles for legislation. The promulgation of laws can have an educative effect, function positively in setting officially approved standards, provide incentives and rewards for good environmental practices, empower those charged with environmental management and protection, fulfil international obligations and responsibilities, and prescribe enforcement measures, damage control, and repair measures.

The practice of substantial involvement of the Village Councils and of the General Fono in the development of legislation for Tokelau serves to inform senior members of the community about various needs and the ways in which they can be met. The discussion and the policy formulation in those bodies also involves the elders of the community in establishing norms that will be applied in the future. Where the policy development and drafting have been followed relatively quickly by legislation promulgated in New Zealand, legislation has come into effect with the full

knowledge and support of the community leaders. Legislation is less successful where there is a delay between the discussion phase and its enforcement because those concerned with the initial implementation and operation do not always know the background and purpose of the regulations.

It is anticipated that within the next year or two the General Fono of Tokelau will have a law-making power which will include authority to make rules for environmental matters. At a government level, this will be a substantial advance on the present situation and have the potential for a very strong impact on environmental matters. General Fono decisions and rules will have immediate effect and will not require reference to New Zealand for approval and promulgation.

Tokelau is particularly vulnerable to environmental damage as its small size and low-lying nature make the ecological system very sensitive to change. Correspondingly it has particular environmental advantages because it has a small population - a population which lives close to nature and which responds positively to the known features of the environment. Tokelau also has a homogeneous population with a tradition of acting as a community in the common interest. Additionally, it can be well protected from the outside environment as it has a single overseas point of entry with, access by ship, there is a single purchasing point for goods supplied to Tokelau, and at the consumer level there is a single commercial distribution point in each village of Tokelau. The village authorities also have the powers necessary to do immediately whatever is needed in the interests of the environment.

Environmental initiatives and proscriptions taken and made by the elders are likely to be respected as at a customary level they have the authority to enforce their will. At present laws promulgated for Tokelau cannot be enforced without the support of the elders. The need for law to make people behave in a certain way will increase relative to any decrease in respect for the decisions of the elders and to any loss of a sense of community.

10 Conclusions

There is relatively little legislation for Tokelau and of that legislation very little deals with environmental matters. There is no legislation with a primarily environmental purpose. There is no general legislation reflecting the environmental concerns of this decade.

There is a need for legislation in the environmental field. The role of that legislation should be to support and complement other initiatives relating to environmental protection and enhancement, and to indicate to the international community Tokelau's support for international environmental initiatives.

There is a need for continued effort in the fields of environmental education and information dissemination of environmental policies. There should be a firm and positive administrative commitment to the implementation of those policies on a regular and continuing basis. To that end it is important that Tokelauan officials and public servants are fully advised of the policies and the background to them and given specific instructions and the necessary information to attain policy goals. Officials should have the information which enables identification of harmful products as well as suitable data to enable the purchase and supply of appropriate, environmentally safe, products or alternatives that will acceptably fulfil the practical needs of the communities in Tokelau.

Policy compliance should be monitored as a priority matter. Enforcement authorities should be informed of the policy, the legal requirements and the appropriate control procedures.

Initiatives taken at a community level should be encouraged and supported on an on-going basis by the Tokelauan Administration.

The New Zealand Government should, with all due speed, promulgate the legislative proposals already approved by Tokelau which have relevance to the protection of the environment. In particular the Government of New Zealand should give early approval to the proposal for vesting a law-making power in the General Fono.

The Tokelauan Administration should assist and facilitate the promulgation of appropriate village rules in matters of environmental interest which already have village support.

The elders of Tokelau have for many years expressed concern about the shift of power from them to the Tokelau Public Service and about the consequent diminution of their authority. This is an interesting cultural phenomenon, especially in light of the fact that since 1986 the villages have had full constitutional powers which, in a number of areas, they have failed to exercise. This is particularly evident in the field of environmental matters where the documents show a consistent comment from the villages that law is required to achieve the necessary results. The impact of the 20th century on Tokelau is probably the reason. Custom and its mechanisms were ideally

suited to the environment in which they evolved. That pattern of evolution has not kept pace with the rapidity of imported change in Tokelau, for instance it is no longer the case that age equates with the best knowledge of the environment. The wisdom and experience of the elders needs to be complemented by a range of scientific data that matches the technological sophistication of the imported products which cause environmental damage.

The elders who still control the customary mechanisms are not using them perhaps because they feel powerless in a world where much lies beyond their experience. The elders are now also the source of legislation, but they have been slow to use their power. The law and its operation at the village level is in fact little different from that of custom. The prime difference is that law has a written not an oral base.

If environmental law is needed at the village level the elders can make that law in Tokelauan and on the instant if they wish. Further the law empowers the police to enforce village law, and the elder who is the commissioner and village judge will decide on breaches of the rules and on the appropriate penalties to impose. Any fine levied for the infringement of village rules is paid into village funds. Community service performed by way of punishment for an offence also operates to the benefit of the village. The elders therefore are not disempowered; they have no need to call on others to act and can, in most cases, call down the state authority on those who fail to comply with rules they make.

The elders need to be provided with the necessary background information for environmental decisions. The members of the Tokelau Public Service should not only assist with the provision of that information but also, where appropriate, ask the Village Councils to make the necessary environment laws. Advice on law matters can be obtained through the Law Project Office.

The Tokelauan Administration should continue its programme of political and governmental development assistance so that the Village Councils both appreciate the powers they have and exercise them properly. The elders also have the power at village level and at the level of the General Fono to make the policy decisions which will lead to taking administrative measures that assure environmental protection and enhancement for Tokelau.

11 Recommendations

- 1 The legislation which relates to environmental matters and which has been approved by the elders of Tokelau in recent years should be promulgated by the New Zealand Government at the earliest opportunity. That legislation should, where appropriate, reflect current environmental knowledge.
- 2 The villages should, in addition to their current support of and involvement in activities for environmental protection, promulgate rules to deal with environmental matters generally and with fishing, sewage and sullage in particular.
- 3 ***The Tokelauan Administration should:***
 - (a) ensure that the necessary research is undertaken to provide the basic data upon which legislation and community practices should be based in the long term interests of Tokelau;
 - (b) acquire through its central purchasing system only environmentally appropriate products;
 - (c) monitor compliance with the *Tokelau Customs Regulations 1991*;
 - (d) assist in educating the community about environmental problems and environmental practices which are suitable to the atoll environment generally and to the use of imported (non-traditional) products in particular;
 - (e) Promote in the General Fono the legislation necessary for Tokelau.

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Health Association and Store Committee Grant Proposal, 1993, *Improving the nutritional quality of food in Tokelau*, Tokelau

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Hoem, Ingjoerd, 1993, *Faka Tokelau (the Tokelau Way of Life) and the Present Situation. Some Critical Issues* (unpublished paper), Wellington

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Tokelau Administration, 1992, *A Waste Management Study and Strategy for Tokelau*, Apia

Tokelau Administration, 1993, *Report on the Community Workshops on Waste Management, Environmental Health, and Environmental Awareness and Training*, 1993

Tokelau Administration, 1993, *South Pacific Biodiversity Conservation Programme Project Proposal*, Apia

Tokelau Administration, 1993, *Environmental Health Strategy for Tokelau*, Apia

Annex 1

Terms of Reference NEMS Legal Consultancy Tokelau

Generally:

Undertake an administrative/legislative/policy review to investigate ways of incorporating environmental legislation and policy into the existing procedures which currently apply in Tokelau.

Specifically:

Collect data on policy, legislation, regulations, decrees and administrative practices which have a bearing on environmental and resource management.

Interview relevant government and non-government personnel to identify environmental issues that need to be addressed in the review and identify overlaps.

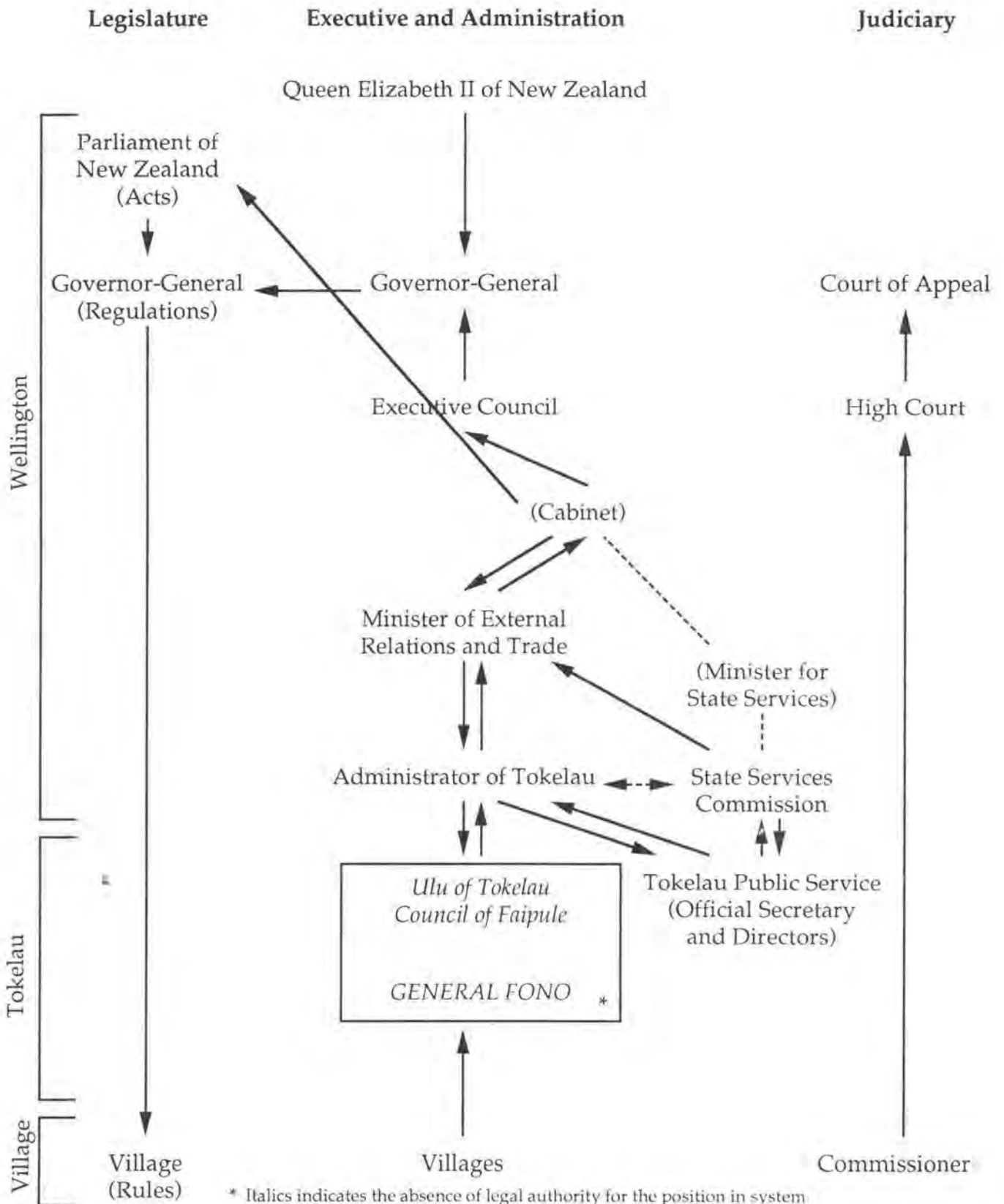
Review and analyse the effectiveness of the legislation, policies, and administrative practices.

Review customary laws relating to the environment and analyse their effectiveness for incorporation into environmental law for Tokelau.

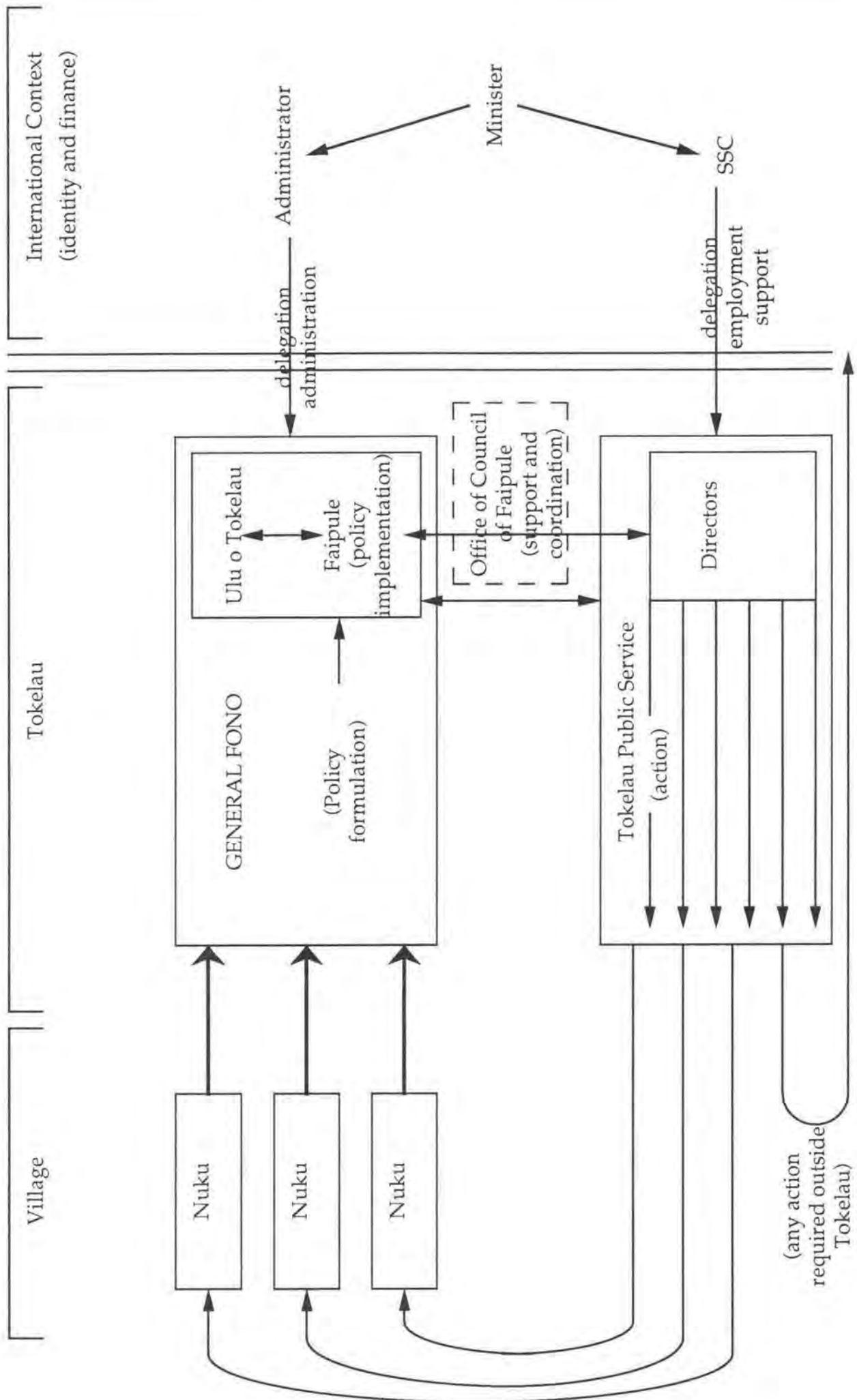
Make recommendations relating to amendments to existing legislation, and/or the need for new legislation.

Annex 2

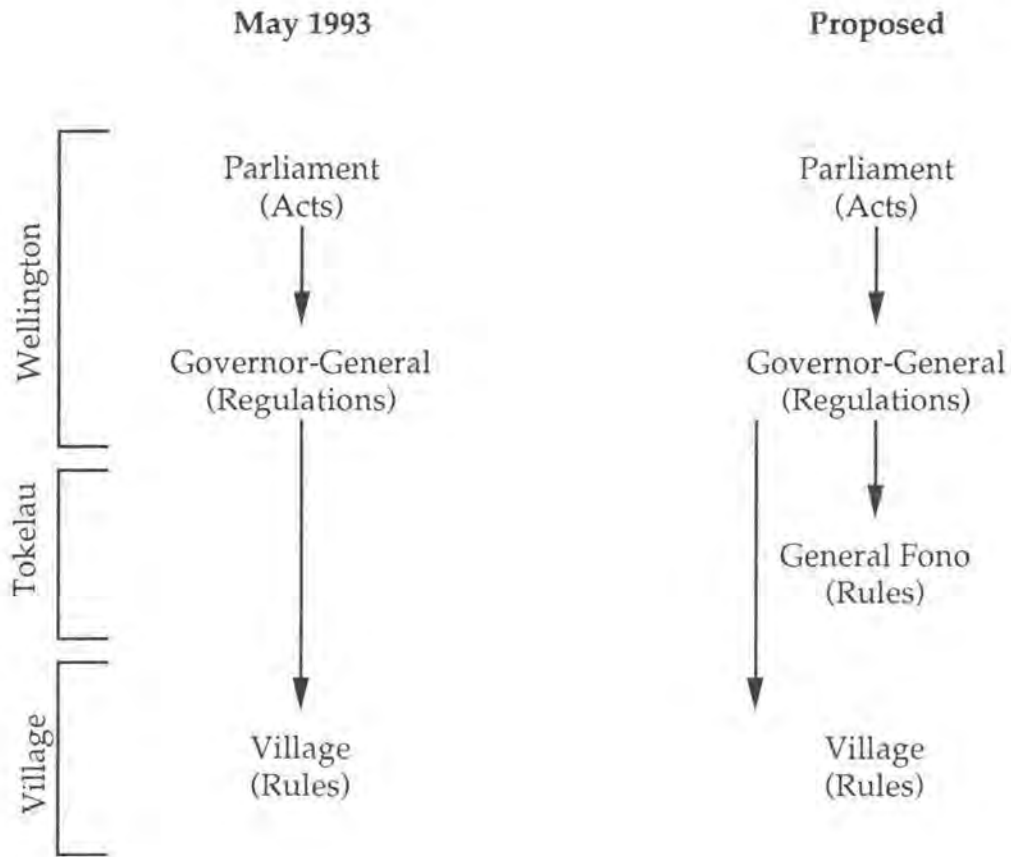
TOKELAU 1993 MAIN LINES OF GOVERNMENT



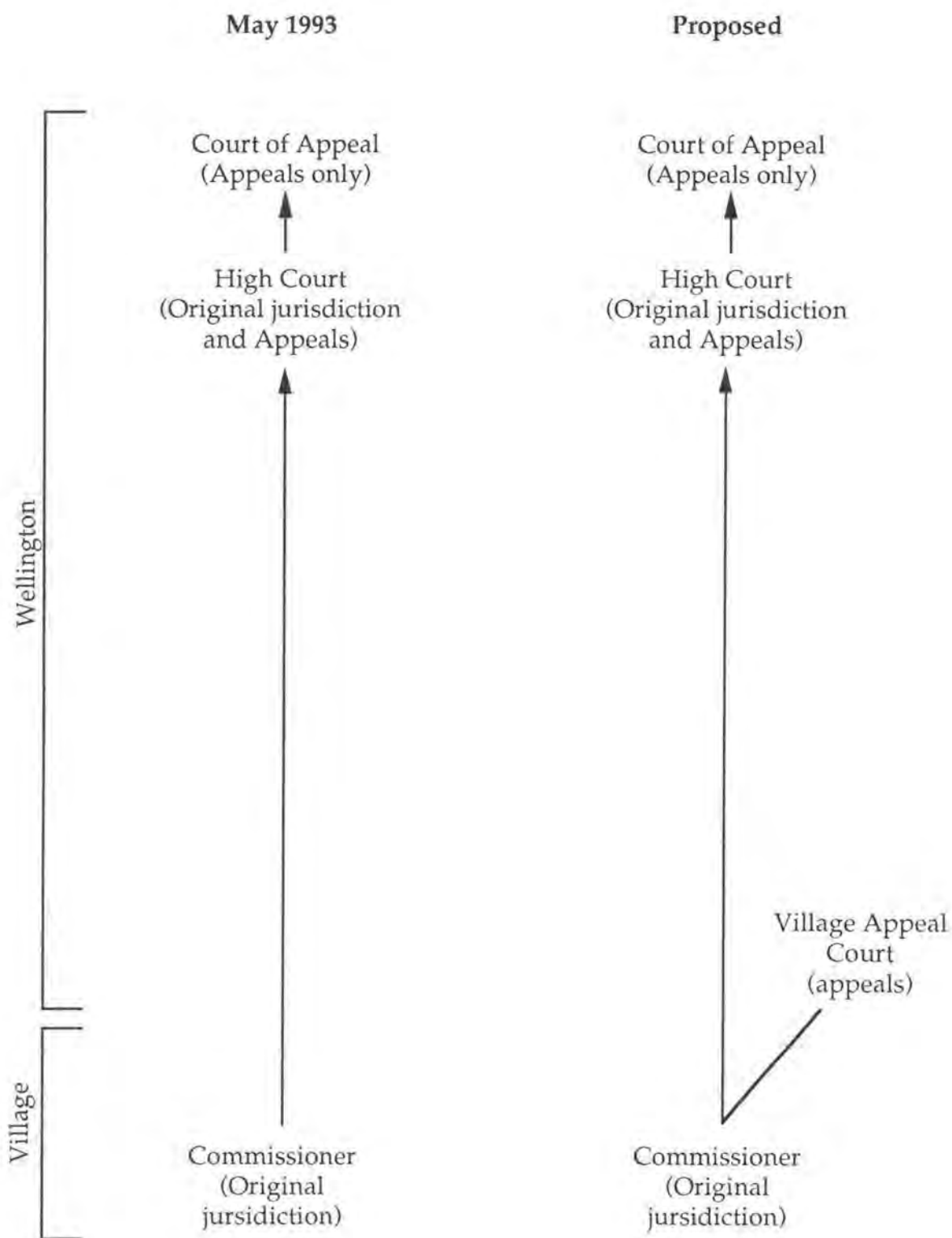
TOKELAU POLICY FORMULATION AND IMPLEMENTATION - PROPOSAL 1993



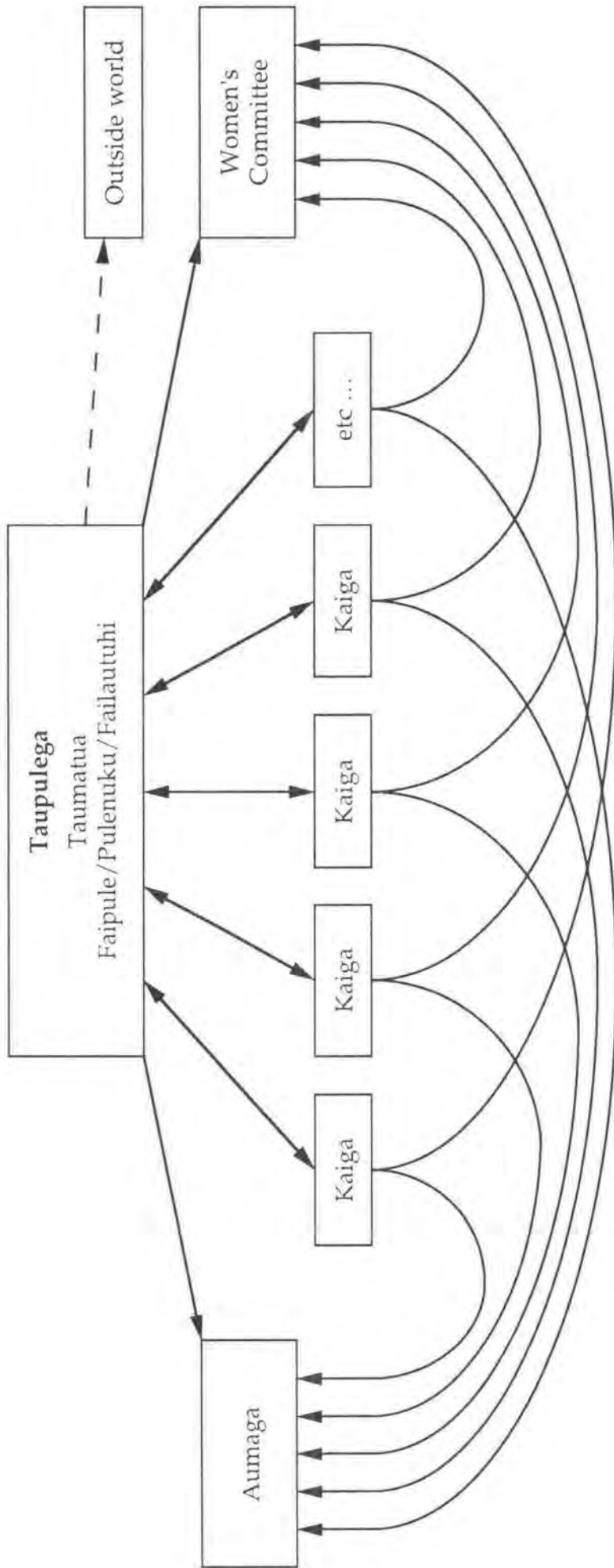
LAW-MAKING - THE LEGISLATURE



THE COURT SYSTEM



TOKELAU TRADITIONAL GOVERNMENT



Annex 3

Treaties relating to the environment in force for New Zealand at 10 March 1993 and of interest to Tokelau.

Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, 1987

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, 1989

International Convention for the Prevention of Pollution of the Sea by Oil, 1954

International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969

Protocol relating to Intervention on the High Seas in cases of Marine Pollution by Substances other than Oil 1973

International Convention on Civil Liability for Oil Pollution Damage, 1969

International Convention on the Establishment of an International Fund for Pollution Damage, 1971

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Dumping Convention)

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, (SPREP Convention), 1986

- Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, 1986
- Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, 1986

International Plant Protection Convention, 1951

Statutes of the International Union for Conservation of Nature and Natural Resources, 1948

Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972

Convention on International Trade and Endangered Species of Wild Fauna and Flora, 1973

Vienna Convention on the Protection of the Ozone Layer 1985

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

Adjustments and Amendments to the Montreal Protocol, 1990

International Agreement for the Creation at Paris of an International Office for Dealing with Contagious Diseases of Animals, 1924

International Health Regulations, 1969

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or other Gases, and of Bacteriological Methods of Warfare, 1925

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction, 1972

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1977

Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Underwater 1963

Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil thereof, 1971

South Pacific Nuclear Free Zone Treaty, (Treaty of Rarotonga), 1985

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

Convention on Early Notification of a Nuclear Accident, 1986

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, New York, 1976

Annex 4

Legislation in force in Tokelau (List taken from the contents pages of *Law of Tokelau*, (4 vol, 1993)

Volume 1

Acts extended by Parliament

Acts Interpretation Act 1924

Statutes Amendment Act 1942

Statutes Amendment Act 1945

Carriage by Air Act 1967

Citizenship Act 1977

Citizenship Amendment Act 1992

Citizenship (Western Samoa) Act 1982

Civil Aviation Act 1990

Civil Aviation Amendment Act 1991

Commonwealth Countries Act 1977

Constitution Act 1986

Consular Privileges and Immunities Act 1971

Copyright Act 1962

Decimal Currency Act 1964

Designs Act 1953

Diplomatic Privileges and Immunities Act 1968

Geneva Conventions Act 1958

Health Benefits (Reciprocity with Australia) Act 1986

Health Benefits (Reciprocity with the United Kingdom) Act 1982

International Finance Agreements 1961

International Finance Agreements Amendment 1966

International Finance Agreements Amendment 1975

Patents Act 1953

Reserve Bank Act 1989

Royal Titles Act 1974

Seal of New Zealand Act 1977

Tokelau Act 1948

Tokelau Amendment Act 1963

Tokelau Amendment Act 1967

Tokelau Amendment Act 1969
Tokelau Amendment Act 1974
Tokelau Amendment Act 1976
Tokelau Amendment Act 1982
Tokelau Amendment Act 1986
Finance Act 1987
Trade Marks Act 1953

United Nations Act 1946

Visiting Forces Act 1939

Volume 2

Acts extended by regulation

Administration Act 1969

Arbitration Act 1908

Arbitration Amendment Act 1938

Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act
1933

Atomic Energy Act 1945

Bills of Exchange Act 1908

Cheques Act 1960

Carriage of Goods Act 1979

Chattels Transfer Act 1924

Chattels Transfer Amendment Act 1931

Statutes Amendment Act 1936

Statutes Amendment Act 1939

Deaths by Accident Compensation Act 1952

Marine Insurance Act 1908

Marine Pollution Act 1974

Mercantile Law Act 1908

Mercantile Law Amendment Act 1922

Partnership Act 1908

Property Law Act 1952

Sale of Goods Act 1908
Layby Sales Act 1971

Sea Carriage of Goods Act 1940

Trustee Act 1956
Trustee Amendment Act 1988

Volume 3

Subsidiary legislation by empowering Act

Table of enactments indicating all principal enactments and all amendments

Arbitration Act 1908
Arbitration (Foreign Awards) Order 1977

Bills of Exchange Act 1908
Cheques Order 1960

Carriage by Air Act 1967
Carriage by Air (New Zealand Currency Equivalents) Notice 1984

Chattels Transfer Act 1924
Chattels Transfer Fees Regulations 1991

Citizenship Act 1977
Citizenship Regulations 1978

Civil Aviation Act 1990
Aeronautical Research Scholarship Regulations 1974
Civil Aviation Charges Regulations (No 2) 1991
Civil Aviation Regulations 1953
Civil Aviation (Security) Regulations 1989

Copyright Act 1962
Copyright (Customs) Regulations 1963
Copyright (International Conventions) Order 1964
Copyright (International Organisations) Order 1964
Copyright (Record Royalties) Regulations 1963
Copyright Regulations 1913
Works the Importation of which is prohibited under the Copyright Act 1913

Designs Act 1953
Designs Regulations 1954
Patents, Designs, and Trade Marks Convention Order 1990

Diplomatic Privileges and Immunities Act 1968

- Diplomatic Privileges (Common Fund for Commodities) Order 1983
- Diplomatic Privileges (Commonwealth Secretariat) Order 1973
- Diplomatic Privileges (Cook Islands) Order 1987
- Diplomatic Privileges (Customs Cooperation Council) Order 1963
- Diplomatic Privileges (European Bank for Reconstruction and Development) Order 1991
- Diplomatic Privileges (FAO) Order 1959
- Diplomatic Privileges (IAEA) Order 1960
- Diplomatic Privileges (ICAO) Order 1959
- Diplomatic Privileges (ILO) Order 1959
- Diplomatic Privileges (IMCO) Order 1960
- Diplomatic Privileges (Intelsat) Order 1972
- Diplomatic Privileges (Intelsat) Order 1981
- Diplomatic Privileges (International Court of Justice) Order 1959
- Diplomatic Privileges (ITU) Order 1959
- Diplomatic Privileges (New Zealand - United States Educational Foundation) Order 1970
- Diplomatic Privileges (South Pacific Bureau for Economic Cooperation) Order 1973
- Diplomatic Privileges (South Pacific Commission) Order 1950
- Diplomatic Privileges (Tuvalu Trust Fund) Order 1987
- Diplomatic Privileges (UNESCO) Order 1959
- Diplomatic Privileges (United Nations) Order 1959
- Diplomatic Privileges (UPU) Order 1959
- Diplomatic Privileges (WHO) Order 1959
- Diplomatic Privileges Withdrawal Order 1975
- Diplomatic Privileges (WMO) Order 1959

Marine Pollution Act 1974

- Marine Pollution (Dispersants and Exceptions) Regulations 1975
- Marine Pollution (Dumping and Incineration) Regulations 1982
- Marine Pollution (Records) Regulations 1976
- Marine Pollution (Ships' Equipment) Regulations 1982

Patents Act 1953

- Patents (Patent Cooperation Treaty) Regulations 1992
- Patents Regulations 1954
- Patents (United States of America) Regulations 1956

Property Law Act 1952

- Property Law (Mortgagees' Sales) Regulations 1983

Royal Titles Act 1974

- Royal Titles Proclamation 1953

Seal of New Zealand Act 1977
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Tokelau Administration Regulations 1980
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Tokelau Affidavits and Declarations Regulations 1986
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Tokelau Shipping (Salvage) Regulations 1992
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Tokelau Act 1948: Regulations preserved by section 5 of the Tokelau Act 1948

Arms Regulation Amendment Regulation 1893
Cinematograph Ordinance 1917
Gilbert and Ellice (Consolidation) Ordinance 1917
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Native Contracts Regulation 1896
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Native Status Ordinance 1921
Public Holidays Ordinance 1917
Tokelau Labour Ordinance 1935
Weights and Measures Ordinance 1916

Trade Marks Act 1953

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Trade Marks Regulations 1954

Trustee Act 1956

Trust Estates Audit Regulations 1958

United Nations Act 1946

United Nations Sanctions (Federal Republic of Yugoslavia
(Serbia and Montenegro)) Regulations 1992
United Nations Sanctions (Iraq) Regulations 1991
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United Nations Sanctions (South Africa) Regulations 1980
United Nations Sanctions (Yugoslavia) Regulations 1991

Visiting Forces Act 1939

Visiting Forces (Australian Naval Forces) Order 1978
Visiting Forces (Commonwealth Deserters and Absentees) Order 1983
Visiting Forces (Fiji Military Forces) Order 1960
Visiting Forces (New Zealand with Australia and United Kingdom
Order) 1979
Visiting Forces Order 1980
Visiting Forces (Penal Arrangements) Order 1963
Visiting Forces (Relative Ranks) Regulations 1985
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Letters Patent Constituting the Office of Governor-General of
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Governor-General of New Zealand 1987

Standing Orders of the General Fono of Tokelau

Rules made by the Villages of Tokelau pursuant to the Tokelau

Village Incorporation Regulations 1986

Village Rules - Atafu

Village Rules - Fakaofu

Village Rules - Nukunonu

Extension of Acts to Tokelau

<i>Legislation</i>	<i>How extended</i>
Acts Interpretation Act 1924	s 8 Tokelau Act 1948
Administration Act 1969	reg 2 Tokelau (New Zealand Laws) Regulations 1969 and s 7 Tokelau Act 1948
Arbitration Act 1908	reg 2 Tokelau (New Zealand Laws) Regulations 1975
Atomic Energy Act 1945	reg 3 Tokelau (New Zealand Laws) Regulations 1969
Bills of Exchange Act 1908	reg 4 Tokelau (New Zealand Laws) Regulations 1969
Carriage By Air Act 1967	s 3(2) of the Act
Carriage of Goods Act 1979	reg 5 Tokelau (New Zealand Laws) Regulations 1969 (Carriers Act) and s 7 Tokelau Act 1948
Chattels Transfer Act 1924	reg 3 Tokelau (New Zealand Laws) Regulations 1975
Citizenship Act 1977	s 29(3) of the Act
Citizenship (Western Samoa) Act 1982	s 11 of the Act
Civil Aviation Act 1990	s 28 Civil Aviation Act 1964 and s 7 Tokelau Act 1948
Commonwealth Countries Act 1977	s 5 of the Act
Constitution Act 1986	Necessary implication
Consular Privileges and Immunities Act 1971	s 12 of the Act
Copyright Act 1962	s 65 of the Act
Deaths by Accident Compensation Act 1952	reg. 7 Tokelau (New Zealand Laws) Regulations 1969
Decimal Currency Act 1964	s 3(b) of the Act
Designs Act 1953	s 50 of the Act
Diplomatic Privileges and Immunities Act 1968	s 25 of the Act
Geneva Conventions Act 1958	s 10(1) of the Act
Health Benefits (Reciprocity with Australia) Act 1986	Necessary implication (see article 1)
Health Benefits (Reciprocity with the UK) Act 1982	Necessary implication (see article 1)
International Finance Agreements Act 1961	s 8 of the Act
Marine Insurance Act 1908	reg 4 Tokelau (New Zealand Laws) Regulations 1975
Marine Pollution Act 1974	reg 2 Tokelau Marine Pollution Regulations 1990
Mercantile Law Act 1908	reg 9 Tokelau (New Zealand Laws) Regulations 1969
Partnership Act 1908	reg 10 Tokelau (New Zealand Laws) Regulations 1969
Patents Act 1953	s 118 Patents Act 1953

Property Law Act 1952	reg 12 Tokelau (New Zealand Laws) Regulations 1969
Reserve Bank Act 1989	Necessary implication
Royal Titles Act 1974	s 3 of the Act
Sale of Goods Act 1908	reg 13 Tokelau (New Zealand Laws) Regulations 1969
Sea Carriage of Goods Act 1940	reg 14 Tokelau (New Zealand Laws) Regulations 1969
Seal of New Zealand Act 1977	s 7(3) of the Act
Tokelau Act 1948	Necessary implication
Trade Marks Act 1953	s 86 of the Act
Trustee Act 1956	reg 6 Tokelau (New Zealand Laws) Regulations 1975
United Nations Act 1946	s 4 of the Act
Visiting Forces Act 1939	s 7(2)(b) of the Act

*Environmental
Legislation
Review*

