

**The UNGP Protect, Respect and Remedy Framework as a Best Practice Model for Dispute Resolution for Tokelau**

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| **SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES** |
| In the Report of the Working Group on the Universal Periodic Review: New Zealand dated 7 April 2014, the Working Group simply noted New Zealand’s statement that after Tokelauans voted to remain a territory of New Zealand, New Zealand continued to have ‘special responsibilities’ to Tokelau. |

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| **NATIONAL FRAMEWORK** |
| Tokelau is part of New Zealand and all Tokelauans are New Zealand citizens under the Citizenship Act 1977.[[1]](#footnote-1) Tokelau’s substantive law is contained primarily in the Tokelau Act 1948. The law of Tokelau has a number of interesting features including that:   * + Tokelau is part of New Zealand;[[2]](#footnote-2)   + The Act is administered by the New Zealand Minister of Foreign Affairs and Trade;[[3]](#footnote-3)   + The substantive law of Tokelau is the common law of England as it was on 1 January 1949 when the Act came into force, rules made by the GF and any regulations made by the New Zealand Governor-General in respect of Tokelau;[[4]](#footnote-4)   + New Zealand statutes are not applicable to Tokelau law unless they expressly provide otherwise;[[5]](#footnote-5)   + In 2007, the GF passed the Constitution of Tokelau into law. The Constitution provides for the consequential repeal of the Act but the Constitution, itself, does not come into force until the Act has been repealed;[[6]](#footnote-6)   + Under the Constitution, the sources of law include the Constitution, the General Fono Rules, the custom of Tokelau, and general principles of international law. Currently, general principles of international law are excluded;[[7]](#footnote-7)   + Under the Tokelau Amendment Act 1986 (the 1986 Act), the High Court of New Zealand is a court of law for Tokelau, sitting as a separate court of justice in and for Tokelau;[[8]](#footnote-8)   + Under the 1986 Act, the New Zealand Court of Appeal can hear appeals from any judgment or decision of the High Court sitting as a court of justice for Tokelau;[[9]](#footnote-9) and   + In a recent decision, the High Court held that the atolls of Tokelau are currently unable to hear cases due to a lack of air travel and other infrastructure but that may change in the future.[[10]](#footnote-10) |

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| **CHALLENGES** | **IMPACT** |
| *Critical human rights challenges include:*   * *Failure of committing to adoption of the Protect, Respect and Remedy Framework.* * *Every Tokelauan civil dispute must be filed in the New Zealand High Court which is currently unable to sit in Tokelau .* * *Inability of Tokelauans to bring employment claims to the New Zealand employment institutions. Safeguards provided by New Zealand employment statutes and regulations do not apply to Tokelauans.* * *Inability of Tokelauans to access alternative dispute resolution mechanisms despite express provision for ADR in the Crimes, Procedure and Evidence Rules 2003 (Tokelau).* | *As a result of the failure to adopt the UNGP Framework, dispute resolution mechanisms have not been developed for Tokelau. It has contributed to the development of an ethos where fundamental freedoms and human rights don’t matter and don’t mean anything. It has left affected people in situations where there is an unremedied imbalance of power.*  *There are no providers of alternative dispute resolution services in respect of disputes governed by Tokelau law even though the Tokelau Rules provide that, in any dispute, the Court must promote reconciliation and amicable settlement of any dispute. Tokelauans appear to have no practical way of enforcing Rule 146 of the CPE Rules.* |

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| **RECOMMENDATIONS** |
| WCM Legal recommends that the New Zealand government must:   * + Urgently implement Recommendation 17 made by the UN Committee on Economic, Social and Cultural Rights in its Concluding Observations on the Fourth Periodic Report of New Zealand to adopt a national plan of action to implement the UN’s “Protect, Respect and Remedy” Framework and extend implementation to Tokelau as part of its administration of Tokelau;[[11]](#footnote-11)   + Provide legal aid urgently to all Tokelauans already involved in litigation or contemplating future litigation.   + Provide Tokelauans with unrestricted access to mediation and other ADR services. |

References/sources:

1. Citizenship Act 1977.
2. Employment Relations Act 2000.
3. Tokelau Act 1948.
4. Tokelau Amendment Act 1986.
5. Constitution of Tokelau.
6. Administration Rules 1993 (Tokelau).
7. Crimes, Procedure and Evidence Rules (Tokelau).
8. United Nations “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (United Nations, New York and Geneva, 2011).
9. United Nations Economic and Social Council *Concluding Observations on the Fourth Periodic Report of New Zealand* (United Nations, E/C.12/NZL/CO/4, May 2018).

1. Citizenship Act 1977, ss 2 and 6. [↑](#footnote-ref-1)
2. Tokelau Act 1948, s 3. [↑](#footnote-ref-2)
3. Tokelau Act 1948, s 9. [↑](#footnote-ref-3)
4. Tokelau Act 1948, ss 3A, 4, 4A and 4B. [↑](#footnote-ref-4)
5. Tokelau Act 1948, s 6. [↑](#footnote-ref-5)
6. Government of Tokelau “Constitution of Tokelau” (2007) <www.tokelau.org.nz>. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Tokelau Amendment Act 1986, s 3. [↑](#footnote-ref-8)
9. Tokelau Amendment Act 1986, s 4. [↑](#footnote-ref-9)
10. *Suveinakama v Council for the Ongoing Government of Tokelau* [2018] NZHC 1670 at [17]. [↑](#footnote-ref-10)
11. United Nations Economic and Social Council  *Concluding Observations on the Fourth Periodic Report of New Zealand* (United Nations, E/C.12/NZL/CO/4, May 2018). [↑](#footnote-ref-11)