



General Assembly

Distr.
GENERAL

A/AC.109/877/Add.1
8 August 1986

ORIGINAL: ENGLISH

AUG 15 1986

SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

REPORT OF THE UNITED NATIONS VISITING MISSION TO TOKELAU, 1986

Addendum

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Annex I

ITINERARY AND ACTIVITIES OF THE MISSION

<u>Date</u>	<u>Place</u>	<u>Activities</u>
Thursday, 3 July	Auckland	Arrival from New York
Friday, 4 July	Auckland	Meeting with the Administrator of Tokelau Luncheon given by the Administrator of Tokelau Interview with Radio New Zealand Departure by air for Apia, Samoa
Thursday, 3 July (crossed the International Date Line)	Apia	Arrival from Auckland
Friday, 4 July	Apia	Meeting with the Director of Education, Office for Tokelau Affairs Luncheon given by the Official Secretary, Office for Tokelau Affairs Meeting with all Directors, Office for Tokelau Affairs
Saturday, 5 July, and Sunday, 6 July	At sea	En route to Tokelau
Monday, 7 July	Atafu	Arrival from Apia. Visit to hospital, housing scheme and agricultural projects Meeting with the Council of Elders Fete in honour of the Mission
Tuesday, 8 July	Atafu	Visit to school. Meeting with the women's committee. Meeting with <u>aumaga</u> Meeting with youth Departure for Nukunonu

<u>Date</u>	<u>Place</u>	<u>Activities</u>
Wednesday, 9 July	Nukunonu	Arrival from Atafu. Meeting with the Council of Elders Meeting with the women's committee Fete in honour of the Mission
Thursday, 10 July	Nukunonu	Visit to school, hospital, agricultural projects and housing schemes Meeting with youth Meeting with <u>aumage</u> Departure for Fakaofu
Friday, 11 July	Fakaofu	Arrival from Nukunonu. Opening ceremonies of the National Council for Women Meeting with the Council of Elders Visit to school, hospital and agricultural scheme Meeting with teachers of the three atolls Fete in honour of the Mission
Saturday, 12 July	Fakaofu	Visit to village Meeting with women Meeting with youth Meeting with the General <u>Fono</u> Departure for Apia
Sunday, 13 July, and Monday, 14 July	At sea	En route to Apia
Tuesday, 15 July	Apia	Arrival from Tokelau

<u>Date</u>	<u>Place</u>	<u>Activities</u>
Wednesday, 16 July	Apia	<p>Meeting with the Resident Representative of the United Nations Development Programme (UNDP)</p> <p>Meeting with the representative of the Food and Agriculture Organization of the United Nations (FAO)</p> <p>Meeting with the representative of the World Health Organization (WHO)</p> <p>Luncheon given by the UNDP Resident Representative</p> <p>Meeting with the Officer-in-Charge of the United Nations Educational, Scientific and Cultural Organization (UNESCO)</p> <p>Reception given by the Official Secretary</p>
Thursday, 17 July	Apia	<p>Meeting with the Tokelauan community of Apia</p> <p>Call on Prime Minister, Deputy Prime Minister and Secretary to the Government of Samoa</p>
Friday, 18 July (crossed the International Date Line)	Apia	<p>Radio interview</p> <p>Departure for New Zealand</p>
Saturday, 19 July	Auckland	Arrival from Apia
Sunday, 20 July	Wellington	Arrival from Auckland

<u>Date</u>	<u>Place</u>	<u>Activities</u>
Monday, 21 July	Wellington	Meeting with the Secretary of Foreign Affairs and officials of the Ministry of Foreign Affairs Luncheon given by the Assistant Secretary of Foreign Affairs Meeting with the State Services Commissioner and staff Reception given by the State Services Commission
Tuesday, 22 July	Wellington	Call on the Prime Minister Ministerial luncheon given by the Prime Minister Call on the Minister of Pacific Island Affairs Call on Member of Parliament and Opposition Spokesman on Foreign Affairs Round-up meeting with the Secretary of Foreign Affairs and officials of the Ministry Meeting with the Tokelauan community of Wellington
Wednesday, 23 July	Auckland	Arrival from Wellington. Meeting with the Tokelauan community of Auckland
Thursday, 24 July	Fiji	Arrival from Auckland
Friday, 25 July	Fiji	Call on the Secretary of Foreign Affairs of Fiji Call on the Director of the South Pacific Economic Commission
Saturday, 26 July	Fiji	Mission meeting; preparation of the report Meeting with Tokelauan students

<u>Date</u>	<u>Place</u>	<u>Activities</u>
Sunday, 27 July	Fiji	Mission meeting; preparation of the report
Monday, 28 July	Fiji	Luncheon given by the Secretary of Foreign Affairs Mission concludes its work

Annex IISTATEMENT BY MR. AMMAR AMARI, CHAIRMAN OF THE VISITING MISSION,
IN TOKELAU

It is a great honour and a privilege for me and the members of my Mission to stand on the shores of Tokelau and to receive the warmth of the welcome that you have extended to us. We have come from many corners of the globe to be with you: from Africa, from the islands of the Caribbean and from your own region of the South Pacific. We come representing all 159 countries that are Members of the United Nations to assure you of the continuing interest that the world Organization takes in the affairs of Tokelau. But first, as we thank you for the honour you have done us and the entire United Nations with your invitation and your welcome, let us pause for a moment to join the Faipule in his expressions of thanks to Almighty God, whom we know and worship in our own different ways, for the safe watch He has kept over us as we have journeyed from New York to be here with you today.

We have all looked forward to this day when we might come to Atafu to see for ourselves the beauty of your island. We have read the fine statement of welcome that you gave the Prime Minister of New Zealand when he came to Atafu/Fakaofu/Nukunonu last year. We have no doubt that we too will experience the spirit of Matau'ala, which you explained to him would lure him back. We are sure it will have an equally powerful effect on us. We look forward to seeing your island and to meeting with all the people of this atoll in the short time that we will be here. And we look forward with great anticipation to seeing for ourselves the skills of the dancers from Atafu who so skilfully represented Tokelau at the last South Pacific Islands Festival.

In New York I have the honour to serve as the Chairman of the Committee in the United Nations that each year meets to study developments in Tokelau. For many years the representatives of New Zealand have reported to us on the steps that Tokelau has taken in co-operation with New Zealand to develop your islands, to build up your economy, to preserve your history and your culture, to strengthen the schooling and the opportunities you can offer to your children, and to preserve Tokelau itself as the homeland for all Tokelauan people wherever they may live - in Tokelau or in other parts of the world.

Last year the representatives of all three atolls meeting in the General Fono agreed to extend an invitation to the United Nations to visit Tokelau once again. My Committee has been pleased to be able to take up this invitation, and it is therefore with a particular sense of satisfaction that we stand before you today to begin the discussions with you; to listen to you as you explain to us what you have achieved in the five years since the United Nations last sent a Mission and to listen also to your hopes and aspirations for the future. For it is important - right from this point - that I make it clear what the role of my Mission here is. We are not here to tell you what to do. We are not here to tell you what New Zealand thinks you should do or what the United Nations thinks you should do. That is not our role. We are here simply to find out from you what it is that you want

for your country, for your land, for your children; what you want for Tokelau now and in the future.

We are here to convey to the United Nations your hopes, your ambitions, your fears and above all, your confidence that at the end of the day, what is to happen represents your genuine hopes and aspirations and safeguard your interests.

Our prayers are that God will bless you, your country, your islands, your children and your culture and heritage.

May God guide us all as we continue our visit and our discussions. Thank you and God bless you.

Annex III

REQUESTS FOR UNITED NATIONS ASSISTANCE PRESENTED TO THE MISSION
BY THE TAUPULEGA (COUNCIL OF ELDERS) OF FAKAOFO

1. Construction of a walkway between the village (Fale) and Fanuafala.
2. Reclaimed area at the Administration block.
3. More opportunities for Tokelauan students in higher training.
4. Assistance for children's food.
5. Old-aged people and the handicapped.
6. Water tanks and sea wall.

Annex IV

LIST OF PROJECTS REQUIRING ASSISTANCE FROM NEW ZEALAND OR
THE UNITED NATIONS PRESENTED TO THE MISSION BY THE FAKAOFU
AUMAGA (VILLAGE WORKFORCE)

1. Our harbour should be lighted so that we can load or unload cargo night or day, but most of all so the people can get to their families right away.
2. For unloading of heavy cargo such as construction materials and food supplies, the aumaga needs two pieces of equipment: one for lifting from the boat and the other for transferring to locations.
3. All small family boats have no place where they can be anchored safely. We would like to make Tailua a place for our family boats (between the hospital and Fale). By moving all family boats to Tailua, the sea shores of Fakaofu will be built uniformly and beautifully.
4. Where possible, ships should be anchored instead of floating to save Tokelau money on fuel and time.
5. We need to own our own boat to take care of our needs, as well as for investment for our future.
6. Other areas of concern: (a) sea captains; (b) mechanics; (c) sea men; and (d) others.

Annex V

TOKELAU AMENDMENT BILL, 1986

[AS REPORTED FROM THE FOREIGN AFFAIRS AND DEFENCE
COMMITTEE]

House of Representatives, 1 July 1986.

Words struck out are shown in *italics* within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Right Hon. David Lange

TOKELAU AMENDMENT

ANALYSIS	
Title	
1. Short Title and commencement	9. Abandonment of part of claim to give Commissioner jurisdiction
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CIVIL AND CRIMINAL JURISDICTION	11. Validation of things done under Part I of Tokelau Amendment Act 1970
2. Interpretation	12. Consequential amendment
3. High Court of New Zealand to be a Court of law for Tokelau	13. Repeals and savings
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6. Incapacity or absence of Commissioner	14. Interpretation
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8. Extension of jurisdiction of Commissioners by agreement between the parties	16. Taking of land for public purposes
	17. Restriction on alienation of certain land

A BILL INTITULED

An Act to amend the Tokelau Act 1948

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Tokelau Amendment Act 1986, and shall be read

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together with and deemed part of the Tokelau Act 1948 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of *(July)* August 1986.

PART I

CIVIL AND CRIMINAL JURISDICTION

2. Interpretation—In this Part of this Act, unless the context otherwise requires, "Commissioner" means the Commissioner for Atafu or for Fakaofu or for Nukunonu appointed under **section 5** of this Act.

3. High Court of New Zealand to be a Court of law for Tokelau—(1) The High Court of New Zealand shall have all jurisdiction which may be necessary to administer the law of Tokelau in the same manner in all respects as if that jurisdiction had been conferred upon that Court as a separate Court of justice in and for Tokelau.

(2) The jurisdiction conferred on the High Court by **subsection (1)** of this section may, subject to the provisions of any regulations made under the principal Act, be exercised in the same manner in all respects as if Tokelau was for all purposes part of New Zealand.

(3) In the exercise of the jurisdiction conferred on it by **subsection (1)** of this section, the High Court may sit either in Tokelau or in New Zealand, or in such other appropriate place as the Chief Justice may direct.

4. Appeals to Court of Appeal of New Zealand—(1) An appeal shall lie to the Court of Appeal of New Zealand from any judgment, decree, or order of the High Court of New Zealand exercising the jurisdiction conferred on it by **section 3** of this Act in the same manner as from any judgment, decree, or order of the High Court exercising its jurisdiction in respect of New Zealand.

(2) The decision of the Court of Appeal on any appeal under this section shall be final.

5. Appointment of Commissioners—(1) The Governor-General, on the recommendation of the Minister of Foreign Affairs made after consultation by that Minister with the Elders of the island concerned, may appoint any Tokelauan to be—

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- (a) Commissioner for Atafu;
- (b) Commissioner for Fakaofu;
- (c) Commissioner for Nukunonu.

(2) Every Commissioner, unless that Commissioner sooner ceases to hold office, shall retire from office on reaching the age of 68 years.

(3) Notwithstanding anything in subsection (2) of this section, where a Faipule holds concurrently the office of Commissioner, that person shall remain in office as Commissioner, unless that person is sooner removed from office as Commissioner or resigns that office, until the completion of that person's term of office as a Faipule, notwithstanding that that person attains the age of 68 years before the completion of that person's term of office as a Faipule.

(4) The Governor-General may, if the Governor-General thinks fit, remove a Commissioner for inability or misbehaviour.

Struck Out

(5) A Commissioner may resign that person's office by writing under that person's hand addressed to the Administrator of Tokelau.

New

(5) A Commissioner may resign the office of Commissioner by notice in writing addressed to the Administrator of Tokelau.

(6) Every Commissioner may be paid out of the Tokelau General Account such salary or allowance and other allowances as may be fixed by the Administrator of Tokelau.

6. Incapacity or absence of Commissioner—(1) If at any time a Commissioner is incapable by reason of sickness or otherwise of performing the office of Commissioner or is absent from the island for which that person is Commissioner, or where there is a vacancy in the office of Commissioner, any person performing in that island the functions of a Faipule *(with the authority of the Administrator,)* may, without further authority or appointment, exercise any function, duty, or power of the Commissioner during that incapacity, absence, or vacancy.

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(2) The fact that any person performing the functions of a Faipule exercises any function, duty, or power of a Commissioner shall be conclusive evidence of that person's authority to do so.

7. Jurisdiction of Commissioners—(1) A Commissioner shall have jurisdiction—

- (a) In actions for the recovery of any debt or damages not exceeding \$1,000 in amount;
- (b) In actions for the recovery of chattels not exceeding \$1,000 in value;
- (c) In criminal proceedings for any offence punishable by fine only;
- (d) In criminal proceedings for any offence punishable by imprisonment for not more than 1 year.

(2) Subject to the provisions of any regulations made under the principal Act, a Commissioner shall, in the exercise of that Commissioner's criminal jurisdiction, have power to do any one or more of the following things:

- (a) To impose a term of imprisonment not exceeding 3 months;
- (b) To impose a fine not exceeding \$150;
- (c) To order the performance of community work;
- (d) To place an offender under Police supervision;
- (e) To give a public reprimand;
- (f) To order the payment of compensation, not exceeding \$1,000 in amount, for the loss of or damage to any property of the victim of the offence;
- (g) To order the restitution of any property to the victim of the offence.

(3) Subject to any regulation made for the purposes of section 10 (3) of this Act, a Commissioner shall have jurisdiction only in respect of the island for which that Commissioner is appointed.

(4) In any criminal proceedings, a Commissioner may, at any time during those proceedings, discuss the case, in the presence of the prosecutor, the defendant, and the defendant's counsel (if any), with the Taupulega of the island for which that Commissioner is appointed.

(5) Where any such discussion is held, the Commissioner shall give—

- (a) The prosecutor; and
- (b) The defendant or the defendant's counsel (if any)—

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the opportunity to be heard and to tender evidence on any matter raised in that discussion.

8. Extension of jurisdiction of Commissioners by agreement between the parties—If, but for the amount or value of the subject-matter claimed or in issue, a Commissioner would have jurisdiction under section 7 (1) (a) or (b) of this Act, and the parties, by memorandum signed by them or by their respective agents, agree that a Commissioner shall have jurisdiction to hear and determine the proceedings, that Commissioner shall, notwithstanding anything in any enactment, have jurisdiction to hear and determine the proceedings.

Cf. 1947, No. 16, s. 37

9. Abandonment of part of claim to give Commissioner jurisdiction—(1) Where a plaintiff has a cause of action for more than \$1,000 in respect of which a Commissioner would have jurisdiction if the amount were not more than \$1,000, the plaintiff may abandon the excess, and thereupon a Commissioner shall have jurisdiction to hear and determine the action.

(2) Where any action, in which the plaintiff has abandoned part of the plaintiff's claim under this section, is heard by a Commissioner, the plaintiff shall not recover an amount exceeding \$1,000 together with costs thereon, and the judgment of the Commissioner in the action shall be in full discharge of all demands in respect of the cause of action, and judgment shall be entered accordingly.

Cf. 1947, No. 16, s. 36

10. Appeal from Commissioners—(1) Subject to subsections (2) and (3) of this section, any party to any proceedings, whether civil or criminal, before a Commissioner may appeal from the judgment of the Commissioner to the High Court of New Zealand in the exercise of the jurisdiction conferred on it by section 3 of this Act—

(a) Subject to any other enactment, as if that judgment were a decision of a District Court in New Zealand; and

(b) In accordance with such procedures as a Judge of the High Court determines are appropriate to the circumstances.

(2) Any person who wishes to appeal pursuant to subsection (1) of this section shall, within 28 days after the date of the

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judgment of the Commissioner, give notice in writing to the Administrator of that person's intention to appeal.

(3) No appeal shall lie pursuant to subsection (1) of this section in respect of any judgment of a Commissioner in any proceedings for any offence punishable by imprisonment for not more than 3 months or any offence punishable only by a fine of not more than \$150, but any party to any such proceedings may appeal from the judgment of the Commissioner to such body, and in accordance with such procedures, as are prescribed by regulations made under the principal Act.

11. Validation of things done under Part I of Tokelau Amendment Act 1970—Nothing done before the passing of this Act by any Judge of the High Court of Niue in the purported exercise of the jurisdiction purportedly conferred by Part I of the Tokelau Amendment Act 1970, and nothing done by any person pursuant to or in reliance on anything so done, shall be held to be a nullity or otherwise invalid merely because, at the time it was done, that Judge had no jurisdiction under that Part of that Act because it was not then in force in Niue.

Struck Out

12. Consequential amendment—Section 2 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 is hereby amended by repealing the definition of the term "Court", and substituting the following definition:

"'Court' means the High Court of New Zealand exercising the jurisdiction conferred on it by section 3 of the Tokelau Amendment Act 1986:".

*New**Consequential Amendments*

12. Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977—Section 2 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 is hereby amended by repealing the definition of the term "Court", and substituting the following definition:

"'Court' means the High Court of New Zealand exercising the jurisdiction conferred on it by section 3 of the Tokelau Amendment Act 1986:".

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New

12A. Tokelau Crimes Regulations 1975—(1) Every reference in Parts V to VII of the Niue Act 1966 to the High Court, or to the Registrar of the High Court, or to the Chief Justice of the High Court, shall, in the application of those Parts of that Act to Tokelau (pursuant to regulation 2 of the Tokelau Crimes Regulations 1975), be read as references to the High Court of New Zealand, to a Registrar of the High Court of New Zealand, and to the Chief Justice of New Zealand respectively.

(2) The Tokelau Crimes Regulations 1975 are hereby amended by omitting from regulation 3 the words "the High Court of Niue", and substituting the words "the High Court of New Zealand".

12B. Tokelau (New Zealand Laws) Regulations 1975—The Tokelau (New Zealand Laws) Regulations 1975 are hereby amended by omitting from regulation 2 (2) the words "and every reference to the Supreme Court shall be read as a reference to the High Court of Niue".

12C. Chattels Transfer Act in force in Tokelau—The Tokelau (New Zealand Laws) Regulations 1975 are hereby amended by revoking regulation 3, and substituting the following regulation:

"3. (1) The Chattels Transfer Act 1924 shall be in force in Tokelau.

"(2) In the application of that Act to Tokelau, every reference to a Justice of the Peace shall be read as a reference to a Judge of the High Court of New Zealand and to the Commissioner for Atafu or for Fakaofu or for Nukunonu."

12D. Trustee Act in force in Tokelau—The Tokelau (New Zealand Laws) Regulations 1975 are hereby amended by revoking regulation 6, and substituting the following regulation:

"6. (1) The Trustee Act 1956 shall be in force in Tokelau, subject to the modification set out in subclause (2) of this regulation.

"(2) Every reference in that Act to New Zealand shall be read as a reference to Tokelau."

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New

12E. Saving—The amendment by any provision of sections 12A to 12D of this Act of the regulations specified in those sections shall be without prejudice to any power of amending or revoking those regulations.

13. Repeals and savings—(1) The following enactments are hereby repealed:

- (a) The Tokelau Amendment Act 1970;
- (b) Sections 3 and 4 of the Tokelau Amendment Act 1971;
- (c) Section 2 (2) (d) and sections 5 and 6 of the Tokelau Amendment Act 1976;
- (d) The Tokelau Amendment Act 1983.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal by subsection (1) of this section of the Tokelau Amendment Act 1970 shall not affect—

- (a) The amendments made by section 9 (6) and Part II of that Act; and
- (b) The effect of section 12 of that Act, which section declared that certain Ordinances of the Gilbert and (Ellis) Ellice Islands Colony were to cease to have effect as part of the law of Tokelau.

PART II

OTHER AMENDMENTS

14. Interpretation—Section 2 (3) of the principal Act (as enacted by section 2 of the Tokelau Amendment Act 1971) is hereby amended by repealing the definition of the term "Faipule", and substituting the following definition:

"'Faipule', in relation to any island, means the person elected as the Faipule for that island:"

15. Regulations for the peace, order, and good government of Tokelau—(1) Section 4 of the principal Act is hereby amended by repealing subsection (3) (as amended by section 2 of the Tokelau Amendment Act 1978), and substituting the following subsection:

"(3) Regulations made under this section may—

- "(a) Impose, or empower any specified authority or person to impose, tolls, rates, dues, fees, fines, taxes, and other charges;

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"(b) Provide for the making and issuing of commemorative coins to be a legal tender only in Tokelau."

(2) The Tokelau Amendment Act 1978 is hereby consequentially repealed.

16. Taking of land for public purposes—Section 24 of the Tokelau Amendment Act 1967 is hereby amended by repealing subsection (3) (as amended by section 3 (4) (b) of the Tokelau Amendment Act 1976), and substituting the following subsections:

"(3) The Administrator of Tokelau shall, within 90 days after the date on which any land so taken has vested in the Crown, offer to the persons entitled to share in the compensation such sum by way of compensation as the Administrator thinks fit.

"(3A) Where all the persons entitled to share in the compensation offered under subsection (3) of this section do not, within 60 days after the offer has been communicated to them, accept the sum offered, the compensation shall be assessed and awarded by an arbitrator appointed by agreement between the Administrator and those persons, or, if no agreement can be reached, by 2 arbitrators, one to be appointed by each of the Administrator and those persons, together with an umpire appointed by the 2 arbitrators."

17. Restriction on alienation of certain land—The Tokelau Amendment Act 1967 is hereby amended by inserting, after section 25, the following section:

"25A. It shall not be lawful or competent for any person who is the owner of any land to which section 18 (2) of this Act applies to make any alienation or disposition of that land, or of any interest in that land, whether by way of sale, lease, licence, mortgage, or otherwise howsoever, other than an alienation or disposition in favour of a Tokelauan, or the Crown."

Annex VI

STATEMENT ON POLITICAL DEVELOPMENT PRESENTED TO THE MISSION BY
THE TAUPULEGA (COUNCIL OF ELDERS) OF FAKAOFU

Political development issue

The Council of Fakaofu up to this stage cannot insert any new changes to Tokelau and the New Zealand Government relationship. We feel confident and whole-heartedly appreciate the tremendous help offered to us by New Zealand through the past years concerning the political, economical, social and cultural developments of Tokelau. And we urge the Mission to trust and be part of our decision to leave Tokelau as it is now.

