

TOKELAU ANNUAL REPORT
FOR LAW AND JUSTICE AGENCIES
2012/2013



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Preface by the Chief Justice of Tokelau

It has been a real pleasure to receive this excellent report of how the rule of law has been observed in Tokelau in the 2012/13 financial year. Tokelau's first report was a considerable achievement. But in some ways a second report is even more important because it demonstrates commitment to annual accounting to the people of Tokelau for the working of the justice system. A system of justice that is not open is a contradiction in terms. Laying out how judicial services are provided in the three villages of Tokelau is necessary if people are to be assured that they live under the security of law. It allows the performance of the system to be understood and measured, so that it is fit for the needs of the people.

The 2012/13 report is something to be proud of. Those who produced it are to be congratulated. It is practical help to all who are engaged in providing legal services. And it allows the people of Tokelau to know what is being done, and especially the good work that is being done by the Law Commissioners, Court Clerks, and the Police. It also allows us to consider what improvements should be made – and all legal systems need constant improvement if they are to be fit for purpose and keep the confidence of the people they serve.

At a recent meeting of the Chief Justices of the Pacific I, learned of the steps that have been taken and are to be taken later in 2014 to assist with capacity building in the judicial system in Tokelau under the Pacific Judicial Development Programme. I expect that these initiatives will be the subject of reporting in the next annual report. And I was delighted to see that, in a comparative survey of the judicial systems in the Pacific Region, Tokelau is performing well against many of the measures against which other jurisdictions are measuring their delivery of judicial services.

I express my admiration for the work of all those who assist in the administration of justice in Tokelau, especially the Law Commissioners Ioane Tumua, Penehe Tulafono, and Fereti Lopa; the Court Clerks; the Police; and the Judicial National Coordinator and Legal Advisers Lise Suveinakama and Professor Tony Angelo. In turn, they could not do their work without the support of the Ulu o Tokelau, the Taupulega, the Government of Tokelau, and the people of Tokelau.

A properly working system of justice is the work of many hands. And it needs to be nourished by the support of the people and their expectations of a just society. This report is a way to acknowledge that support and those expectations.

Rt Hon Dame Sian Elias
Chief Justice of Tokelau

18 March 2014

Preface by the Ulu (Titular Head) of Tokelau

It is with great pleasure that I submit Tokelau's Second Annual Judicial Report for the 2012/13 Financial Year. This Second Annual Judicial Report reports on the work of our judiciary and the overall management of judicial services in the three villages of Tokelau. The report also includes information about the courts in Tokelau, their composition, jurisdiction and workload for 2012/13.

As the Ulu o Tokelau for 2013, I am pleased to contribute to this annual report. I must congratulate our Judicial Officers namely our Law Commissioners, Court Clerks and Police for their hard work and continuous effort to inform the public, court users and also the international community on their judicial performance. This report aims to reflect the vision outlined in the National Strategic Plan of Tokelau "*Healthy and Active Communities with Opportunities for All*". Through this report, it is my hope that our judicial services strive to adhere to the good governance principles, so that our judicial system and processes are not only responsive in a timely manner but more importantly are transparent and accountable. This I believe enables our judiciaries to stay on the right path in order to satisfactorily achieve our vision of healthy and active communities who trust and have confidence in our judicial systems.

I am excited and very appreciative to see the great work of our Law Commissioners, Court Clerks and Police in implementing judicial services for our people. It is important that our judicial systems and processes continue to deliver quality services. I must acknowledge and thank the Taupulega (Village Councils) and the Government of Tokelau and other agencies, especially the Pacific Judicial Development Programme for their support through financial and technical assistance which have helped build and strengthen the capacity and abilities of our Judicial Officers. This support I believe has contributed immensely to effective and efficient judicial services.

I aspire to see Tokelau's judiciary continue to evolve and deliver a quality justice that is fair, accessible and responsive in a timely manner to our people's judicial needs whatever their gender, colour, race, religion, age or whether they live with a disability.

Once again "well done and a big congratulations" to our Judicial Officers for their hard work that ensures our people and Tokelau continue to know your services and your goals. This will lead to our people living happily and in safe communities now and in the years to come.

Fakafetai,

Faipule Kuresa Nasau

Ulu o Tokelau, 2014

Forewords by the three Komehina Tulafono (Law Commissioners) of Tokelau

1. Atafu

Tulou o Paia o Ha ma o Tapu

Fakaofu, Nukunonu, Atafu ma Olohega

Greetings,

We acknowledge and thank our Taupulega for their commitment and patience and continuous efforts to ensure Tokelau and her people are living happily and in harmony.

It is a fact that this year has been a fruitful one, thanks to the efforts and hard work of the Council for the Ongoing Government of Tokelau. Our network and partnerships with other regional bodies and, more importantly, with New Zealand operates to implement the wishes and aspirations of the people of Tokelau and the Village. I want to especially thank the Ulu o Tokelau, all Ministers, and General Fono delegates, for your part in making sure the decisions you make are the most efficient and they meet the wishes and the needs of the Taupulega and our people.

Thank you to the Taupulega of Atafu for your wise governance and not feeling tired of doing your tasks. Thank you for your patience and leadership and especially to deal with the constant challenges we face.

Thank you to the men's group as the strength of the village, the women's group, and the village public service and to our youth and sport groups. Thank you for your obedience and for carrying out the instructions and the wishes of the Taupulega - despite the challenges, your love to serve supersedes.

We have completed our work for 2012/13, the work faced by our Nuku and also the work faced by the village. Let us see what will come about in 2014 as we get some guidance from the Government. Let us continue to pray and have faith in God.

I want to especially thank Aliko Faipule Kelihiano Kalolo and Kuresa Nasau for also performing my roles and responsibilities whilst I was away on medical leave in New Zealand.

I want to also thank our Legal Adviser for her contributions and efforts to lift the quality of services in our judiciaries in the villages. I am grateful not only for her work in Tokelau but also her work within the region to seek funding and support to enhance the knowledge and skills of our Judicial Officers. The Taupulega sees capacity building as an important area that must continue.

To the National Public Service, keep up with the ongoing training as you are the hope of the Government, to have the wisdom and knowledge to deal with issues of the world we live in, but more importantly the wisdom from God, to help us with the load we carry.

Thank you for paddling our canoe. Thank you for your patience.

May the love of God take care of us as we enter 2014 safely.

Fereti Lopa
Law Commissioner, Atafu

2. Fakaofu

Malo ni! We must give thanks to our Heavenly Father for His continuous presence amongst us always which brings happiness, freedom and peace till today as we begin this year's service.

I acknowledge Tui o Nuku, Tui o Vavau and the people of Tokelau.

I take this opportunity to thank the Government of New Zealand through the Ulu o Tokelau, the General Fono for their ongoing support in various ways: through training and also the support and improvements on law enforcement.

I want to also thank the Taupulega of Atafu, Nukunonu and especially the Taupulega of Fakaofu for its support to me and the public service. I will not forget the support and prayers of the people of Tokelau in all the three atolls, thank you for your support through your role in enforcing the laws and abiding by the laws so that we can live in harmony.

As we are all aware, the purpose of our judicial system is to ensure that everyone in our community receives judicial services that are responsive to their needs and protect them, especially if our people are faced with domestic violence and other types of abuse being committed against them. Our priority is the safety of our people and that they too have faith in our judicial system, and more importantly they have faith in us who are carrying out the judicial services for them. This makes it very important for us to work together and share the challenges and discuss ways and solutions to improve those challenges, especially to ensure that we provide judicial services in a timely manner and that our people are happy and have faith in our system.

We hope our plans for ongoing workshops will increase the awareness of our people in our community on the law, so they know and understand the processes to lodge

a complaint if an offence is committed; and for the law officers to respond to people's judicial needs.

I will also use this opportunity to thank the General Fono, the Government of New Zealand, the Government of Australia, and the Pacific Judicial Development Programme (PJDP), the New Zealand Police, the Council for the Ongoing Government, the Legal Advisers of Tokelau and all those who have contributed in various roles to ensure peace and order remains in Tokelau.

Our prayers are that Tokelau continues to be a country that lives happily and her people are living peacefully and in harmony in the love of God.

"Tokelau lives on"

Penehe Tulafono
Law Commissioner of Fakaofu

3. Nukunonu

"Nukunonu is to be congratulated for caring for her children"

Her customs and traditions are the foundation. This will certainly contribute to people living happily and safely.

Be faithful to your customs and traditions. Ears must listen; treasure in your hearts your customs and traditions, take them and use them as you live life.

The continuous changing of the climate, will surely drown our small islands; but similarly, behaviour and attitudes can also drown Nukunonu and our true Tokelauan way. My heart aches.

I must acknowledge and thank the Government of New Zealand, Government of Australia, Government of Tokelau; not forgetting the Pacific Judicial Development Programme (PJDP), the New Zealand Police, and the Council for the Ongoing Government of Tokelau, the Legal Advisers of Tokelau and all those who are responsible for keeping Tokelau safe and peaceful.

We should not be hesitant or shy to request, that we need your continuous support to strengthen the capacity and abilities of our Judicial Officers. It is also important that we have the appropriate tools and resources to enable the delivery of judicial services.

- There are so many challenges at present and these have become barriers in terms of delivering quality and efficient justice in Nukunonu. The reasons are as follows: There is insufficient knowledge/skills and abilities of our judicial officers to provide safety and peace;
- There are rules that need reviewing and amending, thus making them more relevant and responsive to the needs of Tokelau living in the 21st Century.

We aspire for Nukunonu (Tokelau) to be sustainable and continue to live in harmony now and in future as conveyed in the following chant:

Tui ni tiale ni fakatagata	The man puts on flowers
Aloalo ifo hopo ki te vaka	Comes to the canoe
Tui ni tiale ni fakafafine	The woman puts on flowers
Aloalo ifo hopo ki te puke	Comes to the bow covers of the canoe

Lagi e mamao, lagi e mamao	The sky is too far, the sky is too far
E fahia kita I he gaogao	Bound me in the empty space
Lagi e mamao, lagi e mamao	The sky is too far, the sky is too far
E fahia kita, tui ni tiale	Bound me with flowers
<i>He hoa, he hoa lava!</i>	<i>A partner, of course, needs a partner.</i>

Ioane Tumua
Komehina Tulafono
Fakamahinoga a Nukunonu

1. Organisational Review

1.1 Overview of the Tokelau Court System and Police and their Jurisdiction/Role and Functions

1.1.1 Constitutional Framework of Tokelau

Tokelau is a non-selfgoverning territory administered by the Government of New Zealand.

Tokelau is part of the Realm of New Zealand (Clause 1 (d) of Letters Patent 1989). The people of Tokelau are citizens of New Zealand.

The structure of the Government of Tokelau is outlined in the Tokelau Act 1948. The Queen of New Zealand is the Head of State. The Governor-General of New Zealand is the Queen's representative.

Tokelau is administered for New Zealand by the Ministry of Foreign Affairs and Trade, and an Administrator who is the Head of the Special Relations Unit in that Ministry.

The Parliament of New Zealand can make law for Tokelau by Acts because Tokelau is part of New Zealand. The Governor-General can make law for Tokelau as regulations (Section 4(1) of the Tokelau Act 1948).

The rights and the freedom of the people of Tokelau are contained in Rule 16 of the Constitution of Tokelau.

The main crimes in Tokelau, and the rules of criminal procedure, are set out in the Tokelau Crimes, Procedure and Evidence Rules.

1.1.2 The Government of Tokelau

Tokelau has two governance structures:

- (i) village government
- (ii) national government.

For the village government, decisions that relate primarily to village matters are made at village level by the Taupulega (Village Council). Village Rules are also made by the Taupulega. Disputes at the village level are settled by the Law Commissioner and the Village Appeal Committee (Section 10 of the Tokelau Amendment Act 1986, Rule 103 of the Crimes Rules). Land and custom matters are settled by the Taupulega.

At the national government level, decisions that affect the whole of Tokelau are made by the General Fono. The General Fono may make such rules as it thinks necessary for the peace, order and good governance of Tokelau (Section 3A of

the Tokelau Act 1948). The General Fono may not make law that contradicts an Act, regulation, or treaty that is in force in Tokelau. The General Fono may not make law that can apply or have effect outside Tokelau (Section 3A (4) of the Tokelau Act 1948). When the General Fono is not in session then the Council for the Ongoing Government, which comprises six members, makes the decisions necessary for the administration of Tokelau.

1.1.3 Courts System

Tokelau has the following courts:

- Commissioner's Court and Village Appeal Committee
- High Court of New Zealand (operating as the High Court of Tokelau)
- Court of Appeal of NZ (operating as the Court of Appeal of Tokelau).

The Chief Justice of New Zealand is also the Chief Justice of Tokelau.

The Commissioners, who are lay judges, are appointed by the Governor-General of New Zealand on the recommendation of the Minister of Foreign Affairs and Trade after consultations with the Taupulega of the relevant village. If the Commissioner is incapable by reason of sickness or otherwise of performing the office of the Commissioner, or where there is a vacancy in the office of the Commissioner, any person performing the functions of the Faipule becomes the default Commissioner in the village.

Tokelau has its own first instance courts: the Commissioner's Court and Appeal Committee of each village. In each Village Court, there is a Commissioner and a Court Clerk. The Appeal Committee comprises 3-4 members designated by the Taupulega, to hear any appeal on the decisions of the Commissioner.

A Commissioner has jurisdiction only in respect of the island to which that Commissioner is appointed and the territorial sea of Tokelau that surrounds that island. The civil and criminal authority of Commissioners is to hear civil claims of up to \$1,000 and deal with criminal offences punishable by a fine or up to one year's imprisonment. The sentencing power of the Commissioners is limited to imposing a fine of up to \$150 and imprisonment of three months.

Serious matters, such as murder, manslaughter and treason, and cases on appeal, are heard by the High Court of New Zealand and the Court of Appeal of New Zealand, operating respectively as the High Court of Tokelau and the Court of Appeal of Tokelau. New Zealand has abolished the right to appeal to the Privy Council but a prerogative right of appeal to the Sovereign continues for Tokelau. No Tokelau case has gone to trial in these external courts.

Civil matters relating to adoption and divorce applications, are dealt by the Council for the Ongoing Government of Tokelau. Decisions of Council on these matters are final.

1.1.4 Tokelau Police

The operation of local police in Tokelau can be traced back to colonial times. The Police were previously National Police of Tokelau under the Tokelau National Public Service. The devolution of the core national public services to village level changed the employment management of the Police to the Taupulega of each village. The police officers are the law enforcers and have many functions that include, but are not limited to, the preservation of the public peace, the prevention, detection, investigation and prosecution of offences against the laws of Tokelau and village rules. The functions of the police officers can be exercised nationally. The Police Rules give the Administrator the power to designate a member of the NZ Police as an officer of the Police of Tokelau.

1.2 Tokelau National Strategic Plan 2010-15: Justice Sector Guiding Principles

The Tokelau National Strategic Plan 2012-15 presents the development aspirations of Tokelau and identifies the medium-term development priorities for the Government of Tokelau for the period of 2012-15. Tokelau's strategic vision calls for "Healthy and Active Communities with Opportunities for All". The vision encapsulates the view that while the people of Tokelau aspire to a healthy life and vibrant communities with equal opportunities for all, it is important that any developments undertaken in Tokelau be sustainable and lead to improving the quality of life for the people of Tokelau without compromising their culture, heritage and environment.

There are 4 main strategic development policy goals under the Tokelau Strategic Plan, one for each of the four policy outcome areas of good governance, infrastructure development, human development and sustainability. The goals are:

Goal 1: Improved governance, public sector and financial management, and operation of the rule of law

Goal 2: Improved standard of living through adequate, reliable and efficient infrastructure

Goal 3: Improved health and education outcomes and social-wellbeing

Goal 4: Improved economic, cultural, environmental and spiritual sustainability.

For the purposes of this Judicial Annual Report, the focus is on goal 1 and specifically on the rule of law. The key objectives under this goal clearly state:

To enhance community safety; to improve access to justice; to institute principles of good governance and enhance integrity in the institutions of law and justice; to improve information and human resource management in the law and justice sector; and to improve national border management.

The objectives for the operation of rule of law clearly reflect the vision of the National Strategic Plan of Tokelau to ensure that its people continue to live in healthy communities with equal opportunities for all; hence the establishment of laws that ensure there is peace and harmony in the communities, and a judicial system that is responsive to everyone's needs and, more importantly, which provides equal opportunities for all.

1.3 Justice Sector Guiding Principles

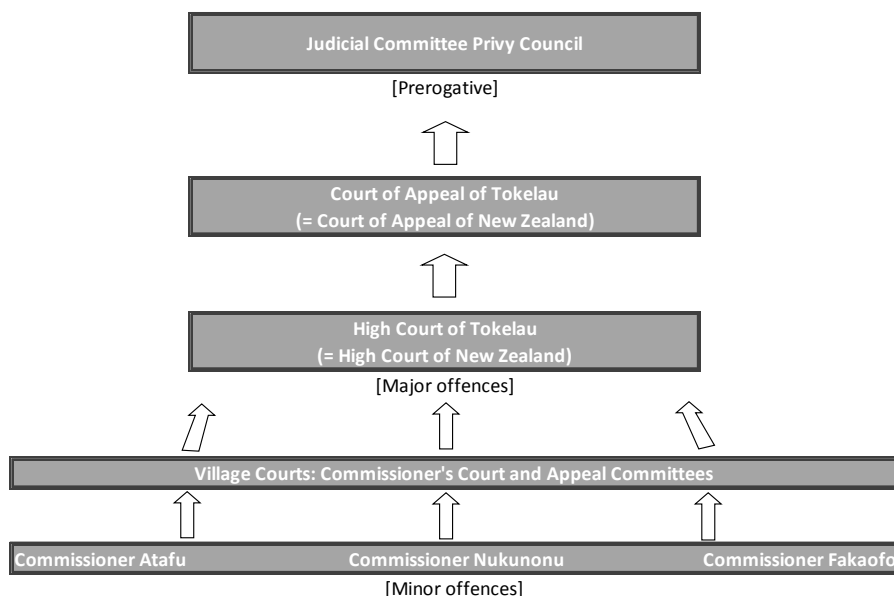
The following principles will guide the Justice Sector of Tokelau:

- Developing and building a robust justice sector in all the villages of Tokelau
- Supporting and building a reliable and accessible justice system in each of the villages of Tokelau that is trusted by the people of Tokelau
- Providing effective and quality services to support independent justice sectors in all the villages of Tokelau
- Working closely with communities to enhance safety and wellbeing for all.

1.4 Organisational Structure

The organisational structure of the Tokelau judicial system is illustrated in Figure 1.

Figure 1. Organisational structure of the Tokelau Courts system



2. Improving Access to Justice

To ensure there is a consistent and improved access to justice in all the three judiciaries of Tokelau, it is important to mention here that the key objective outlined under Goal 1 of the Tokelau Strategic Plan (page 13 above) is the main focus of this judicial report. The implementation of Goal 1 is clearly the collective responsibility of the judiciary and the Police, because Tokelau has a small public service with limited resources and capacities. Tokelau is unique and very different from other jurisdictions.

While it is very clear that the role of the Law Commissioners and the Police are distinct, there is an understanding in Tokelau there is a need for them to work together. The Law Commissioners cannot perform their functions effectively if the Police are not doing their work. They are the first point of contact if an offence has been committed. The Police are responsible for dealing with people's complaints on any offences committed, undertaking the necessary police work and lodging the cases with the courts. The Court Clerks will only then advise the Law Commissioner on the cases and a date for the hearing is set. The outcome of the hearing will be determined by the Law Commissioner based on the police reports and other relevant information.

The establishment of the complaint box is a joint effort by the three police departments and the judiciary of each village to improve access to justice. This complaint box is for the court users; anyone can put in any views they might have on the performance of the courts and the police officers. This is an opportunity for people to have their say on the performance of the Police in terms of their responsiveness to their complaints and for the court officers: especially the Law Commissioners in conducting the hearing and providing judgments and decisions on penalties and so on. It is important for the Law Commissioners, Court Clerks and the Police to know that they are doing their jobs efficiently and effectively; and if they are not performing, they need to know when the needs of court users or any individual are not being met in a timely manner. This system is still new and it may take a while for people to actually have the confidence to use this. The Court Clerks and the Police have reported that they have also encouraged people, especially those who use the services, to come to see them at their office. We hope to have some new developments on this in the next judicial annual report.

2.1 Nukunonu

The Nukunonu judiciary continues to improve its services by informing the community on the laws and getting help when the law is breached.

The public has been informed that those who are attending the court hearing must be present on the day, they should not consume alcohol, and must dress appropriately for the Court. When court users come to Court, it is always ensured that there are adequate seating arrangements for those waiting for the hearing.

There could be offences committed that went unreported during the reporting period. There are situations where people are reluctant to deal with matters when asked by the Police. Awareness workshops with the community are important to encourage people to report matters to the Police if they are aware of offences being committed in the villages.

The process of lodging a complaint includes the record of information on the name of the accused, time the complaint was made, time the Police arrived, date, venue and the nature of the charge. The accuracy in the recording of the information on the investigations from those involved, especially the witnesses that were presented at the scene/accidents, is important.

Those lodging complaints must check and make sure their statement is correct and signed by the Police and the person making the statement.

This Annual Report is an excellent opportunity to say “ THANK YOU” to the police force of Nukunonu for your support at all times. The support of the Taupulega, Government of Tokelau, people of Nukunonu, Police Office in Fakaofu, Atafu is also acknowledged, especially to the Law Commissioner for his support.

Let's not forget to say “Thank You Very Much” to the Government of New Zealand and the NZ Police: Superintendent Ross Arden, Sergeant Terry Gibbons ma Maulaivao Maima Koro, the Pacific Judicial Development Programme (PJDP), Samoa Police and the opportunity for police training.

We also acknowledge the support from the Judicial National Coordinator and Legal Advisers of Tokelau Lise Suveinakama and Professor Tony Angelo.

3. Enhancing Community Safety

The Police workloads on the three atolls are very similar as they deal with common offences that are regularly occurring in all four villages. It is important to recognize the workload of each police sector in relation to the number of cases they dealt with, especially enhancing the community safety in their respective villages.

3.1 Atafu

Community policing is a topic that was raised in our discussion with Terry Gibbons and Maima Koro. So far, we are trying to introduce this topic into the different sectors of the community, so that we work together in partnership to enforce the safety and provide a safer environment with the:

- Women's Group
- Men's Group
- Youth
- Council of Chiefs
- School (Matauala).

The department tried to get involved more in the community activities, and to help the different community groups to understand the connection between the Police and the different village sectors. Community safety is more likely where the Police and the community could work together to ensure we are living in a safer environment.

Awareness workshops have been planned for the year, on the judiciary side and also for the community to understand more about the law.

Workshops on the importance of the White Ribbon Day is to be held two weeks before the 25th of November. Additional work was included in our normal duties, to help the department gain good feedback and acknowledgement from the community.

- Visiting the old people in their houses.
- Presence at the school during their break periods and the school year end.
- Discussions between the different departments on their needs, especially on the side of the law.
- Establishing the school and police partnership.

One of the highlights 2012/13 was the NZ Police visit to Tokelau by Terry Gibbons and Maima Koro. This visit was timely and the purpose was to assist the Police in improving services to the communities at all times. More importantly, to ensure our communities and people have access to police services at all times and likewise with the courts.

During this visit from the NZ Police department representatives, it was decided that each police department should have a strategic plan for each financial year. These plans should be followed so that the status of the department can be improved and recognized at the national level. Atafu came up with a draft which

has been put into action. There was a presentation session with Terry Gibbons in preparation for an awareness programme, and also for workshops with the communities.

This was a good discussion session, where each person shared the things that they considered were an obstacle in improving our services in the village and also at the national level.

Some of the department's needs were noted: Name tags, ID cards, caps, footwear, and office resources.

3.2 Fakaofu

Ensuring there is peace and harmony in the village of Fakaofu is very important. The Fakaofu Police have worked extremely well with the communities and people of Fakaofu to ensure that people are fully aware of the processes in dealing with complaints, including when cases are heard in court. The following processes are explained to the people:

1. How to lodge a complaint with the Police first.
2. Next the Police will investigate the parties involved in the case and the following will occur:
 - The complainant will be called in and advised of the investigation process including taking their statements,
 - Insufficient information/evidence will slow down the case or even lead to it being dropped. This may be decided by the Law Commissioner when the case is referred to the Court.

The investigation skills and knowledge of the Police on alleged offences have improved and, as a result, cases are being dealt with in a timely manner.

- This year the Police did not disregard any cases lodged with them, all cases lodged were properly charged and prosecuted and appropriate penalties were given. In a few cases, the accused was found guilty but discharged under rule 139 as a first-time offender (noted as a conviction without sentence).
- It is important that there be standardised common criteria developed for Tokelau Police to help them determine whether a case should be dropped or continued.
- The usual practice is that if the Police have completed thorough investigations and there is insufficient evidence and it is considered that no further information or evidence may be gathered to further support the alleged offending, the case is dropped.

Domestic violence cases –

- This year, no domestic violence cases were lodged with the Police. The Police, through the White Ribbon Day Awareness Programme, have educated the communities on domestic violence crimes and the need to report on them if these cases are happening in the villages.

3.3 Nukunonu

The top priority of Nukunonu Police is to enforce the laws of Tokelau through compliance at both the nuku and the government. Healthy living and harmony is top priority for Tokelau so that people live happily and in peace and are in a much safer environment.

The Nukunonu Police was visited by Superintendent Ross Arden of NZ Police in February 2013. The purpose of the visit was to review the work of the Nukunonu Police, especially the investigations on the special case dealt by the Nukunonu Police in late 2012.

Sergeant Terry Gibbons and Maima Koro from NZ Police also visited Tokelau and Nukunonu in April 2013. The purpose of the visit was to build partnership between Tokelau and NZ Police. The visit involved consultations with all the communities where they provided information on how the NZ Police can support to Tokelau Police through training.

In regard to cases that are dropped by the Police, there was one dropped charge. The person involved was a Samoan citizen. This person has been charged three times and the Law Commissioner made a ruling that if this person appears in court again, then there will be a different decision. This person did not

listen and his last case had caused problems within the family; so the Taupulega decided to deport the person back to Samoa.

If a case is lodged with the Police and the Police find that there is no sufficient information and evidence to support the case, then the charge will be dropped.

There are no clear criteria in this area. There is a need to have clear guidelines in this area for the Police to follow and this should be standard for all the police forces of Tokelau.

On the matter of domestic violence, there is an acknowledgement that this is happening, especially violence involving women and girls.

The real challenge is that these matters are not being reported to the Police and these matters, if they have occurred, are resolved within the families.

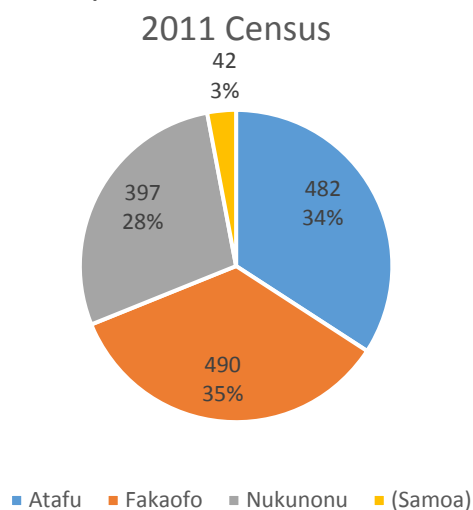
4. Improving Information and Human Resource Management in the Law and Justice Sector

4.1 Courts Results

This Annual Report provides for the second time case data for the three Tokelau islands. The inaugural Tokelau Judicial Annual Report was for the reporting period 2011/12.

At the time of the census held on 18 October 2011, the “usually resident” population of Tokelau was 1,411 people. The populations of the three islands are similar, with Atafu 482 people, Fakaofu 490, Nukunonu 397 (and 42 people residing in Samoa) – see Figure 2.

Figure 2: Population of the Tokelau islands,



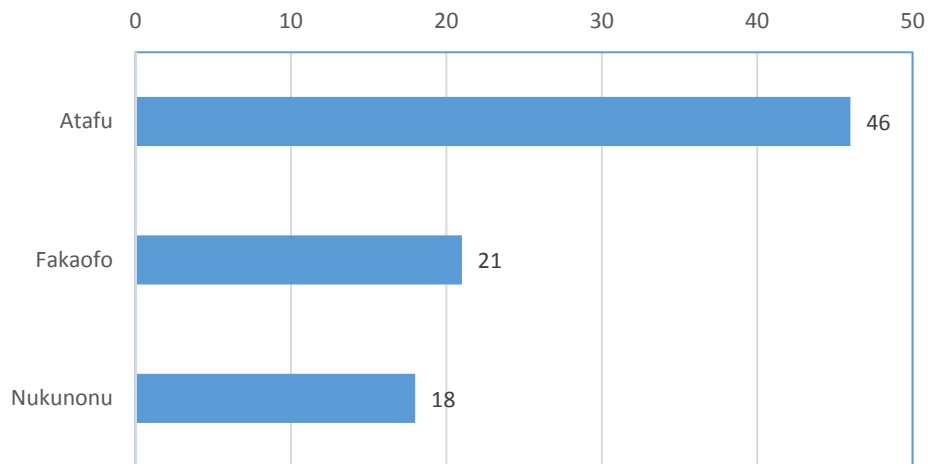
Although the number of residents on each of the three islands is similar, the number of cases brought before the Law Commissioners from 1 July 2012 to 30 June 2013 varies significantly: from 18 cases on Nukunonu to 46 cases on Atafu island (Figure 3). As each of the three islands has one Law Commissioner and one Courts Clerk, the workload of the Law Commissioners and Court Clerks varied significantly.

Over the year,

- In Atafu, the single Law Commissioner heard 46 cases on 8 hearing dates
- In Fakaofu, the single Law Commissioner heard 21 cases on 20 hearing dates
- In Nukunonu, the single Law Commissioner heard 18 cases on three hearing dates.

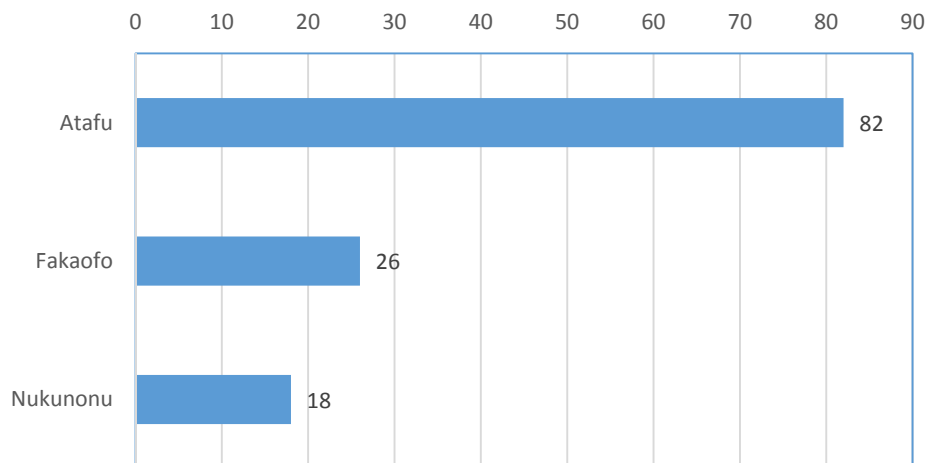
The 85 cases brought before the Law Commissioners on the three islands (Figure 3) are all criminal cases. There were no appeals from the decisions of the three Law Commissioners in any of these 85 cases. There are no court fees for civil cases brought before the Tokelau Court.

Figure 3: Number of cases filed in 2012/13



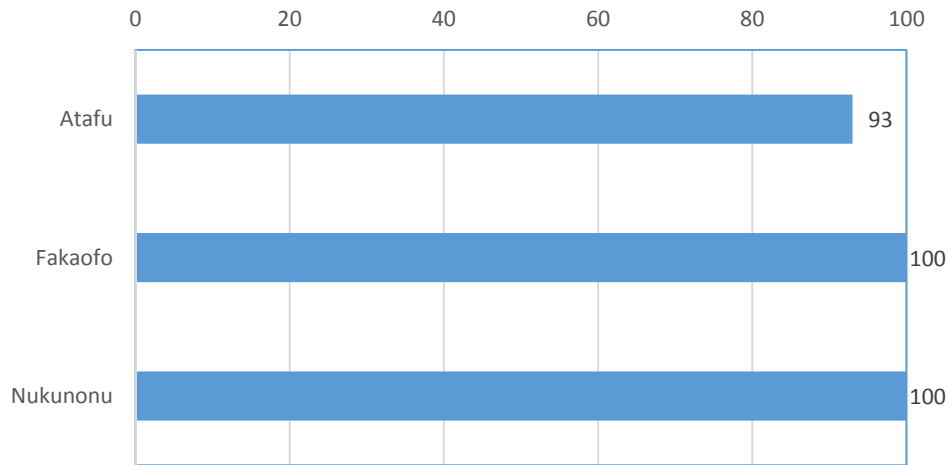
Similarly, the number of accused varies significantly between the three islands, from 18 accused on Nukunonu to 82 accused on Atafu (Figure 4).

Figure 4: Number of accused in 2012/13



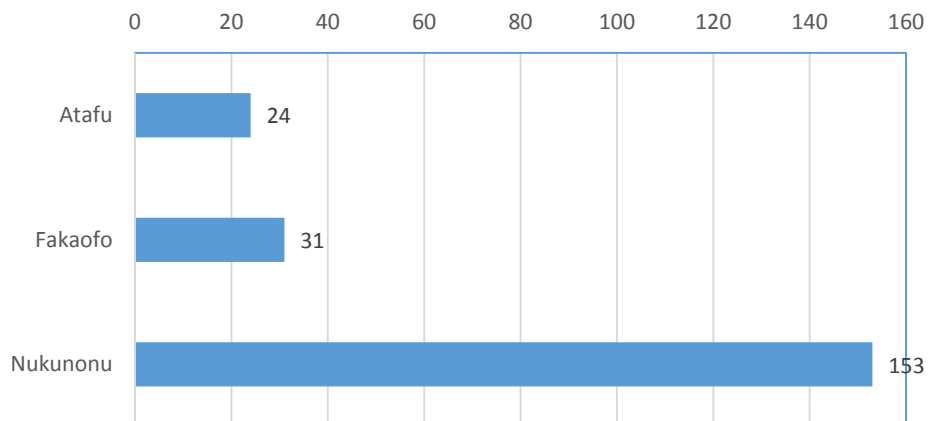
There is a high clearance rate across the three islands (Figure 5).

Figure 5: Clearance rate of cases in 2012/13 (%)



The Law Commissioner on Atafu hears the highest number of cases, and the average duration of a case heard in Atafu is the lowest at 24 days. The reverse is true in Nukunonu, where the Law Commissioner heard 18 cases in 2012/13 with the average duration of these cases being 153 days (Figure 6).

Figure 6: Average duration of a case in 2012/13 (days)



The most common types of cases are:

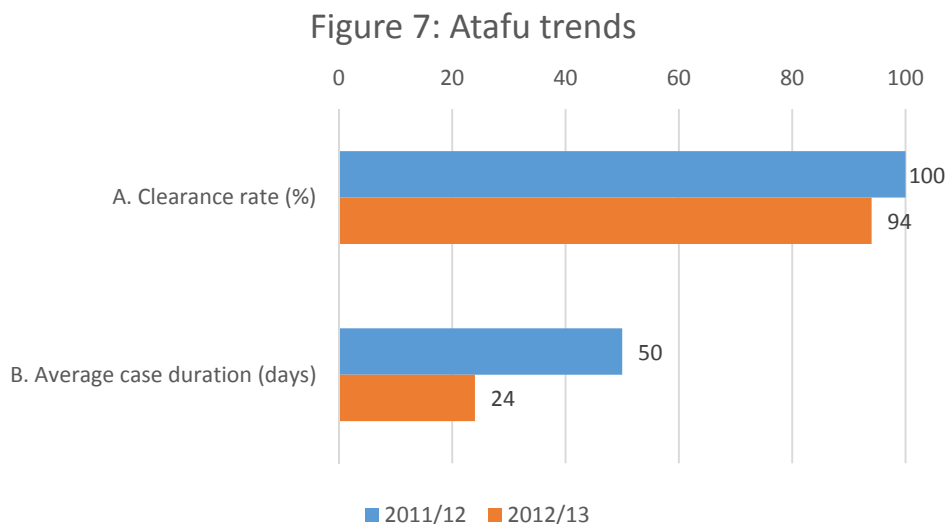
- Assault
- Bodily harm
- Fighting in public
- Intoxicating liquor
- Offensive behaviour
- Theft
- Trespass.

There was a 97 percent clearance rate for all cases brought before the three Law Commissioners in Tokelau during 2012/13.

4.1.1 Atafu

During 2012/13, 46 cases were filed with the Atafu Court. Of these 46 cases, 43 cases were finalised – this is a 94 percent clearance rate for cases filed in Atafu. This compares to a 100 percent clearance rate for cases filed in 2011/12 (Figure 7A).

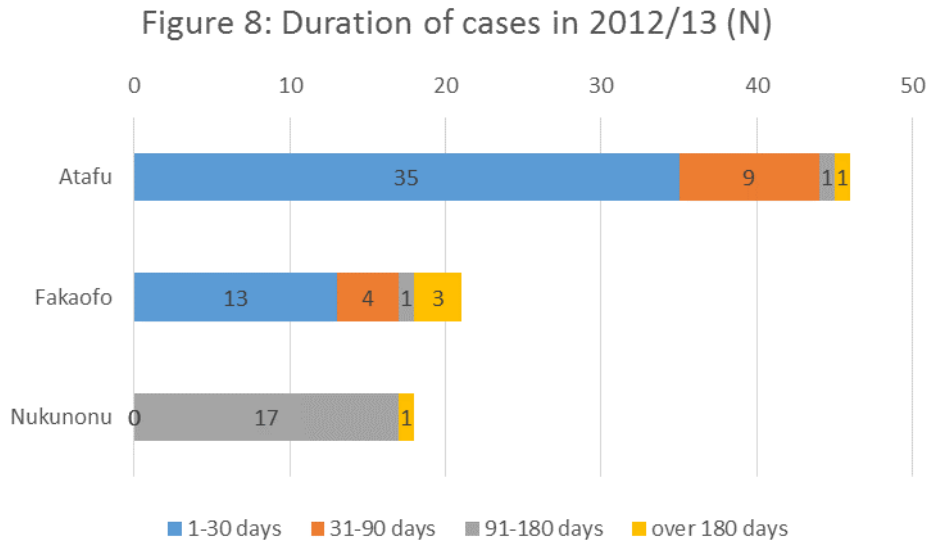
The average duration of a case in Atafu during 2012/13 is 24 days from filing with the Court Clerk to finalisation. The judicial officers in Atafu have halved the time it takes to hear a case from 50 days in 2011/2012, to 24 days in 2012/2013 while the number of cases has stayed the same (Figure 7B).



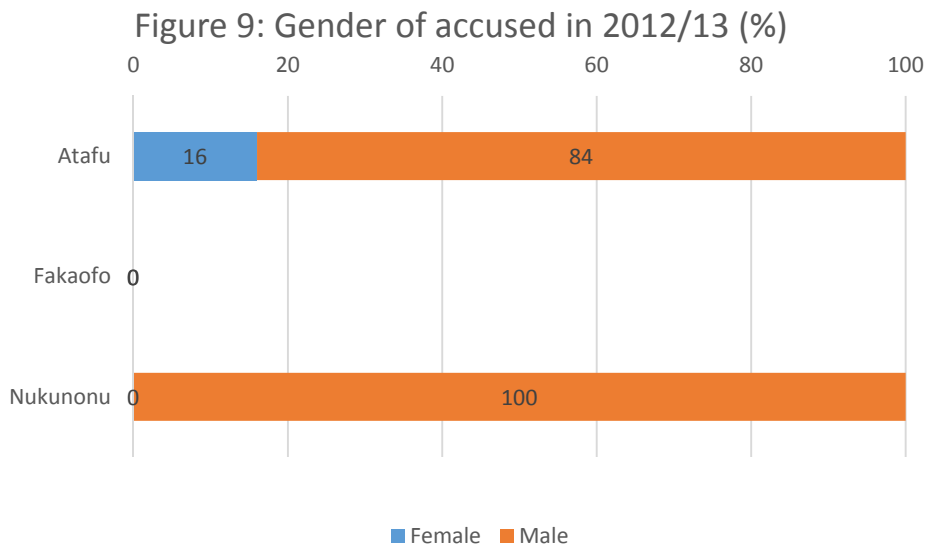
Of the 46 cases filed in the Atafu Court during 2012/13:

- 77% were finalised within 30 days of filing at the court house
- 19% were finalised between 31 and 90 days
- 2% were finalised between 91 and 180 days
- 2% were finalised over 180 days.

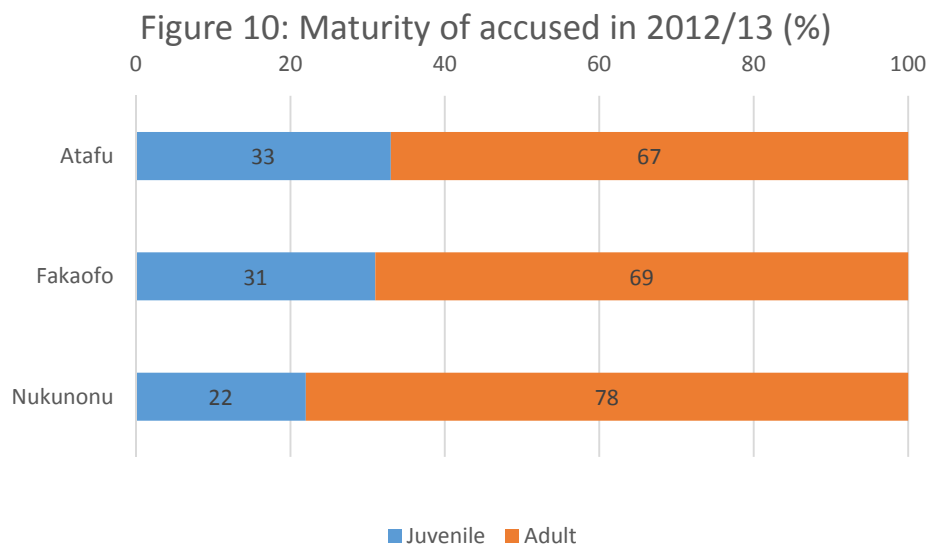
This is further illustrated in Figure 8.



The gender breakdown of the accused in the 46 Atafu cases is 16 percent female and 84 percent male (Figure 9, top).



About 33 percent of the accused in the 46 Atafu cases are under the age of 18 (Figure 10, top). In 100 percent of the 46 Atafu cases, the accused pleaded guilty.



4.1.2 Fakaofu

The average duration of a case in Fakaofu is 31 days from filing with the Court Clerk to finalisation. The average duration of a case in Fakaofu rose from 16 days in 2011/12 to 31 days in 2012/13 (Figure 6, middle).

Of the accused in the Fakaofu cases, 31 percent are under the age of 18 (Figure 10, middle).

4.1.3 Nukunonu

Of the 18 cases filed in the Nukunonu Court during 2012/13, 94 percent were finalised between 91 and 180 days of filing at the court house. The average duration of a case in Nukunonu is 153 days from filing with the Court Clerk to finalisation, up from 66 days in 2011/12 (Figure 6, bottom).

The gender breakdown of the accused in the 18 Nukunonu cases is 100 percent male (Figure 9, bottom).

Of the accused in the 18 Nukunonu cases, 22 percent are under the age of 18 (Figure 10, bottom).

4.2 Police Results 2012/13

This report accounts for the achievements by Police across the three villages. The Police are extremely pleased with their overall achievements in this reporting

period. The standard of services provided by the Police is the same across all the villages.

Highlights in the Police performance are:

- Assist anyone who needs assistance
- Community awareness workshops: being proactive
- Enforcing general rules (village rules and Tokelau Government law)
- Escorting students to and from school
- Involvement and organising sports and activities, youth and sport groups
- Patrolling: boat patrol, mobile patrol, village curfew
- Protect life and property
- Provide security and support to the Taupulega, General Fono, and community meetings
- Quarantine
- Taking part in local projects, e.g. seawall, solar projects
- Training.

The vision of the Police is that the Tokelau people will live in a peaceful and a safe community.

4.2.1 Atafu

Police achievements in the reporting period: We have seen that the department is progressing. Not at the pace needed but we are experiencing a lot of good changes with the help of our mentor from the NZ police force. At the moment we are trying not to depend too much on the help from outside, but we should create an environment within the force that strengthens the bonds between the officers and the sergeant (working together as a team).

4.2.2 Fakaofu

Services provided by the Police:

- Attend to emergencies
- Provide security to the school children on the school boat
- Provide information and security to all people/children on impacts of sniffing petrol and drinking homebrew
- Investigate vessels/canoes travelling between the two atolls of Fakaofu (Fale/Fenuafala)
 - Their speed
 - Ensure they have torch
 - Ensure the vessel/canoe travels at the right speed for safety reasons and especially for those who are bathing in the sea.

4.3 Police Workload

The Police workload for the three villages of Tokelau is very similar. The normal day-to-day duties for police officers is to enforce the law. Hence the Police would handle any complaints lodged to their office by complainants regarding any breaches of the laws; the Police patrol the villages at night time - mainly during curfew hours - and attend to any matter that could disturb and breach the peace and harmony in the villages and families. The Police do acknowledge that the festive season is the busiest time, with likely breaking of the law due to abundant consumption of alcohol, which can lead to other offences being committed.

The three village police forces have acknowledged the need to have sufficient staff with necessary working tools to effectively carry out their roles, and ensure peace and harmony is retained in the villages at all times.

The Police also are tasked to provide security to the meetings of the Taupulega (Council of Elders) in all the three villages and carry out any other tasks given to them by the Taupulega. The security for the meetings of the General Fono (Parliament of Tokelau) is also provided by the Police. Security is also extended to the Ulu o Tokelau (Titular Head of Government) when visiting any of the three villages of Tokelau, and to special guests of the villages and Government of Tokelau.

In one of the villages, the Police are responsible for the post service. The registration and the issuing of licences is also a responsibility of the Police in the three villages.

The common crimes committed in the three villages are:

- Adultery
- Assault
- Bodily harm
- Careless driving
- Careless with fire
- Civil cases
- Disorderly behaviour
- Drunkenness
- Fighting in public
- Fraud
- Homebrew
- Noise
- Sniffing (petrol, glue etc)

- Spreading rumours
- Theft
- Throwing stones
- Trespassing
- Underage drinking.

4.4 Courts Human Resources

4.4.1 Atafu

- Law Commissioner Mr Feleti Lopa
- Court Clerk Miss Latu Lopa
- Law Commissioner by default: Person performing the functions of Faipule.

4.4.2 Fakaofu

- Law Commissioner Mr Penehe Tulafono
- Court Clerk Mr Iona Tinielu
- Law Commissioner by default: Person performing the functions of Faipule.

4.4.3 Nukunonu

- Law Commissioner Mr Tumua Ioane
- Court Clerk Miss Lepeka Amato-Perez
- Law Commissioner by default: Person performing the functions of Faipule.

4.4.4 Village Appeal Committees

In each village there are members previously appointed by each Taupulega for their Village Appeal Committee. Each has a maximum of three members

4.5 Police Human Resources

4.5.1 Atafu

Sergeant: Mr Reupena Leitu.

Constables:

- Mr Poni Simi
- Mr Amanaki Paulo
- Ms Hegalo Vitale

4.5.2 Fakaofu

Sergeant: Mr Safiti Gavalofa (SG)

Constables:

- Mr Gau Gau (GG)
- Mr Heo Peleni (HP).
- Mr Kovati Gasologa (KG)
- Mr Tavita Gavalofa (TG)
- Mr Tavita Pue (TP)

Currently recruiting a female police officer.

Distributions of roles	Staff initials -->	GG	HP	KG	SG	TG	TP
Internal training refresher		○	○	○	● ○	○	○
Training and awareness for villages / communities / NGOs			●			●	
Youth crimes, school awareness		●			●		
Fitness programme – police / communities				●			●
Sea safety programme		●	●				
Meeting support group – alcohol / abuse / domestic violence					●		●
Emergencies		○	○	○	● ○	○	● ○
Boat schedule					●		
Office administration / filling / stationery / uniforms / notice				●		●	
Management of police budget							●

The current distributions of roles and responsibilities to the Police can change in the future. The Sergeant is also involved in all the different services and responsibilities performed by the different police officers.

All the above officers were trained in the Police Recruit course in Samoa, except two police officers from Nukunonu.

We acknowledge the presence of Terry Gibbons, he is an important resource to our National Police Force.

4.5.3 Nukunonu

In 2012/13 there were five police officers who were all new to the job. The officers still lack the knowledge and skills in relation to police work, especially in the area of conducting investigations and preparing police reports and a summary of facts.

Ongoing capacity building is needed for these officers.

- Training on police reporting and preparing a summary of facts.
- Training on the prosecution of cases.

Sergeant: Mr Sefo Leo (SL)

Constables

- Mr Aleki Manuele (AM)
- Mr Patrick Tegei Lui (PL)
- Ms Suliana Pehamino (SP)

Police (yet to undergo formal police training)

- Mr Kueva Aleki (KA)
- Mr Viliamu Ioapo (VI)

Distributions of roles	Staff initials -->	AM	KA	PL	SL	SP	VI
Internal training refresher		•			•		
Training and awareness for village / organisations		•		•		•	
Youth crimes / School awareness		•				•	
Fitness programme			•				•
Sea safety			•		•		
Group meeting consultations					•	•	•
Emergencies		•		•	•		
Galuega vaka/Polokalame vaka						•	
Filing and assets managements						•	
Budget manager						•	

Each police station is now equipped with some resources to enable the Police to do their work in the office, for example, laptop computers, printers, stationery, police hand-held radios, and a boat for travel between the islands (Fakaofu).

5. Instituting Principles of Good Governance and Enhancing Integrity in the Institutions of Law and Justice

5.1 Tokelau Public Service Code of Conduct

The Tokelau Public Service Code of Conduct was endorsed by the General Fono in 2004. It is a set of rules which clearly defines expected behaviours and standards of integrity from members of the public service, including members of the police force. The Code of Conduct also outlines expectations of the employer from the employees as well as the expectation of the employees from the employer. The employer has the responsibility to administer the Code of Conduct through ensuring that all public servants follow and abide by all stipulations in it. Unacceptable and inappropriate conduct, and failure to meet required standards of performance, may lead to disciplinary measures. It is a responsibility of all public servants to read and understand the Code of Conduct.

There are three principles under the Tokelau Public Service Code of Conduct. Employees shall:

1. fulfil their lawful obligations to the Tokelau authorities with professionalism and integrity
2. perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues
3. not bring the Tokelau public services into disrepute through their private activities.

5.2 Judicial Code of Conduct

The Judicial Code of Conduct provides guidelines and rules to the Law Commissioners of Tokelau on how they should carry out their roles; and also for the members of the community to know and understand the expected behaviours from the Law Commissioners when they carry out their duties. The common principles in practice are:

- (i) **Diligence:** The duty of the Judges to serve diligently when they deliver decisions without any unnecessary delays.
- (ii) **Integrity:** Judges must conduct themselves with utmost integrity to sustain and enhance public confidence in the judiciary.
- (iii) **Equality:** Judges must conduct themselves and proceedings so as to ensure equality according to the law.
- (iv) **Judicial independence:** Judges must make their decisions independently.

(v) **Impartiality:** It is important for Judges not only to be impartial but also to appear to be impartial in their decision-making.

(vi) **Judicial demeanour:** Judges must maintain firm control in the court room and ensure people in the Court are treated with courtesy and respect.

(vii) **Courtroom conduct:** Important for the Judges to ensure that the people coming to Court are treated with respect and are being served.

(viii) **Communication in Court:** The Judges should communicate clearly so that the people in Court understand what has been said.

5.3 Complaint-Handling Mechanism for Tokelau Judiciary and Police

At present there is no established complaint handling mechanism for the Tokelau Judiciary and Police. While the Police and Judiciary hear that there are people who are not satisfied with their services, no formal complaints were received.

The Tokelau Judiciaries and Police do value the voice of our communities especially the opinion of our court users on whether their judicial needs are being met in a timely manner. As previously mentioned, the initiatives by our justice agencies to have a complaint box or other ways to get feedback from court users are now established. One of the judiciaries reported to have put in place a complaint box; other judiciaries reported that court users are encouraged to bring themselves to the office to see the Police, the Law Commissioners or Court Clerks should they have any issues regarding their judicial needs or with judicial services. These processes are in their early stages and no doubt will take time to achieve their purpose. A lot more is required to be carried out by our judicial officers and Police, especially through community workshops. These could educate our people and court users on the legal processes available and knowing how to use these to meet their judicial needs.

5.4 Management Accountability

5.4.1 Annual Accounts for Reporting Period

The three respective judiciaries of Tokelau, in Fakaofu, Nukunonu and Atafu, are under the management of their respective Village Councils. The village judiciary accounts are managed under each village budget in accordance with the approved funding allocations for judicial services and Police for that particular financial year. In each village, the Financial Manager oversees village funding for this period in partnership with the Tokelau Government Department of Finance. This department has overall responsibility for reporting on village and departmental expenditure for the financial years to the General Fono. The allocation of funding

for each judiciary from the overall village funding differs, reflecting their approved budget by the General Fono as well as village development priorities for that particular period.

5.5 Training and Development Opportunities for Court Staff and Police

Training and development opportunities for Tokelau judicial officers and Police at both national and regional level are a significant component of the Tokelau National Strategic Plan. This is to ensure that the delivery of a quality justice service for the people of Tokelau is maintained at a high level. The development of human capacity is pivotal and a priority for the Tokelau judiciary. The Tokelau judiciary is grateful to the Government of Tokelau, the Taupulega and the Pacific Judicial Development Programme for ongoing support in the national and regional training of Tokelau Judicial Officers.

The Government of Tokelau has in the past, with the Pacific Judicial Development Programme, co-funded national training mainly for the capacity building of the Law Commissioners, Court Clerks and the Police. Past training has also included members of the Appeal Committees from the respective villages.

During the financial year 2012/13, the Tokelau Police Officers have been fortunate to take part in the Samoa Police Recruits training. The new police recruits course started in May 2013 and three police officers from Nukunonu participated in that training. The course was to run for 3 -4 months, finishing in September.

In February 2013, two Court Clerks participated in a regional training programme funded by the Pacific Judicial Programme on Training for Trainers in Auckland.

The availability of regular national and regional training opportunities for Tokelau judicial officers to enhance their judicial skills and knowledge is important: it can only contribute to overall improvements in the delivery of justice for the people of Tokelau.

The Tokelau Police and court judiciary staff hope for more regional training opportunities. There is also a need to establish their internal training programme/mechanism so that more regular training can take place within the police sector and the court for refreshing skills and knowledge. Having such a mechanism would enable the transfer of knowledge from those officers who attended regional trainings outside Tokelau, and pass new information and skills on to their work colleagues.

5.6 Management of Courts and Police Infrastructure

5.6.1 Court Houses

It is important to note that in the three villages of Tokelau there are no court houses. The court cases are held in the village meeting house in the village of Atafu and Nukunonu. In the village of Fakaofu, the court cases are held in the office of the Law Commissioner. Prior to holding court cases the Court Clerks must ensure the meeting house or office is ready and clean in preparation.

The Law Commissioners and Court Clerks do have offices and some are housed in the same office with other public services. In the village of Fakaofu and Nukunonu the judicial officers do have their own space although office is also shared with others.

5.6.2 Police Offices

In all the three villages of Tokelau, the police officers have their office space in the same building which is shared by all village employees. The police officers are responsible for the management of their office and any other infrastructure which belongs to them.

There are no holding cells at present at any of the police stations. The Police would like to have some cells built for security purposes especially for drunken people who need supervision overnight until when the person has settled.

5.7 Improving National Border Management

The Police in the three villages exercise some border management responsibilities, mainly in relation to checking the luggage of incoming passengers within atolls but also from outside Tokelau. The Police have identified the need to establish a border management mechanism within their respective villages, and within the 12 miles territorial waters of Tokelau.

- Yacht boarding
- Territorial waters
- EEZ (future achievement).

Needed are:

- good facilities and ongoing training to guard the border and coastline
 - good tools and resources to enable the Police to carry out their functions effectively
- support of the leaders of each village to enable the Police to conduct this work effectively and efficiently for the betterment of Tokelau.

Appendix: Summary of Expenditure for Police & Judiciary for the Period 01 July 2012 to 30 June 2013 (NZ\$)

ATAFU, COST CENTRE AA.3501	
EXPENSE TYPE	AMOUNT
ATAFU - 01 – PAYROLL	20,424.68
ATAFU - 03 – COMMUNICATIONS	1,290.88
Grand Total	21,715.56
FAKAOFO, COST CENTRE FF.3501	
EXPENSE TYPE	AMOUNT
FAKAOFO - 01 – PAYROLL	89,884.33
FAKAOFO - 03 – COMMUNICATIONS	2,817.49
FAKAOFO - 04 - TRAVEL & ACCOMMODATION	594.60
Grand Total	93,296.42
NUKUNONU, COST CENTRE NN.3501	
EXPENSE TYPE	AMOUNT
NUKUNONU - 01 – PAYROLL	81,780.14
NUKUNONU - 02 - HUMAN RESOURCES	102.90
NUKUNONU - 03 – COMMUNICATIONS	8,928.37
NUKUNONU - 04 - TRAVEL AND ACCOMMODATION	4,486.48
NUKUNONU - 10 - PRINTING & STAIONERY EXPENSES	1,375.09
NUKUNONU - 11 - CONSUMABLES & SUPPLIES	4,045.74
Grand Total	100,718.72