

TOKELAU: THOUGHTS ON THE EVOLUTION OF ITS LAW LANGUAGE

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Prior to the 1980s, there were few if any Tokelauan words for Western law terms. This paper provides an insight into the development of the Tokelauan language in respect of law from the 1980s through till 2023.

Avant les années 1980, il n'existait que peu voire pas de mots dans le vocabulaire tokelauien, pour définir les terme et concepts juridiques occidentaux. Ce article propose aux lecteurs un aperçu de l'évolution de la langue tokelaouane dans le domaine juridique depuis les années 1980 jusqu'en 2023.

I THE PROJECT

This paper deals with the period of constitutional development of Tokelau and selected legal documents. The documents are –

- (1) The Treaty of Tokehega 1983 – the first treaty translated into Tokelauan,
- (2) The Universal Declaration of Human Rights 1948: the Preamble (translated as part of the Law Project in 1990),
- (3) The Tokelau Amendment Act 1996 (This amended the Tokelau Act 1948 which declared the formal relationship of Tokelau to New Zealand).

The focus is on the preambles of the above documents and an analysis of the translations from English into Tokelauan over a 40-year period.

The analysis and the comparisons of the translations of the texts provides evidence of evolution of the Tokelauan law language as it has developed.

The source language of the documents which are the focus of this project is English. The documents have law usage and long sentences, particularly in their preambles. The early translators would often have struggled to find equivalents in the essentially spoken language of Tokelauan. At the time the only written document was the Samoan Bible. When Tokelau was under the British administration, Tokelau

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had an oral culture. The translation from English to Tokelauan was very much influenced by the Samoan Bible and probably by some Kiribati documents.

In a letter from a former Ulu o Tokelau, Faipule Pio Tuia, to the Administrator of Tokelau in 1996, the Ulu mentioned that Mr Kirifi, the translator, was not a lawyer and had no legal experience or qualification. This is strong evidence that Mr Kirifi was highly recognised and respected by the people of Tokelau. The translation of the first ever legal document, the Treaty of Tokehega of 1980 was a major task undertaken by him.¹

The fact that the consultations on the treaty took place in the villages of Tokelau – Fakaofo, Nukunonu and Atafu – is evidence that the translations were understood and approved by the Taupulega. The current name of the treaty, "Tokehega" Treaty, literally means in Tokelauan "taken away" or "given away". Given that, it is striking that Tokehega Day is a public holiday in Tokelau.

The preamble of a document captures the core messages and purposes of the Act or law. The translation of the preamble is therefore very important.

The following table provides an analysis and comparison of the translations carried out by Mr Kirifi and other key translators and my current translations.

English	Tokelauan Translation			
Key Terms and Phrases	1980 Treaty of Tokehega	1990 Universal Declaration of Human Rights	1996 Tokelau Amendment Act 1996	2023 CURRENT TRANSLATION
constitutional relationship			<i>hokotaga fakatulafono faka-va-o- malo a Tokelau ma Niu Hila</i>	<i>hokotaga e fakavae i-te- tulafono i te va o Tokelau ma Niu Hila.</i>

1 He was working as the Tokelau government translator at the time, having previously been the Director of Education.

For information on the treaty, see A H Angelo and Hosca Kirifi, "The Treaty of Tokehega – An Exercise in Law Translation" (1987) 17 VUWLR 125.

customary practices by elders			<i>pulega a na Taupulega</i>	<i>Ko na tu ma nofonofoga fakateaganuku a te Taupulega</i>
Desiring	<i>I te Manakoga</i>		<i>I te manakoga</i>	<i>E Iviivinaki</i>
exercises sovereignty	<i>e pulea</i>			<i>kua gafa ma te kikirilagia</i>
fundamental freedoms		<i>haolotoga fakavae</i>		<i>fakatauaga o na haolotoga</i>
General Fono	<i>Fono Aofia</i>		<i>Fono Fakamua</i>	<i>Fono Fakamua</i>
granting of Independence to colonial countries	<i>tuku atu o te tutokatahi ki atumukuma tagata ei lalo i na pulega fakakolone.</i>			<i>tuku atu o te pulega a he malo e tutokatahi ki na atunuku ei lalo o na pulega fakakolone a ietahi malo</i>
human rights		<i>aia tatau fakatetagata</i>		<i>aiatatau a te tagata or te hakoga o te tagata ola</i>
jurisdiction of Tokelau Commissioners			<i>pule faifakamahinoga a na Fakamahinoga Tokelau</i>	<i>Ko te mafai faifakamahinoga o na Komehina Tulafono a Tokelau</i>
justice		<i>te fai mea tonu</i>	<i>te fai mea tonu</i>	2008: <i>te amiotonu</i> 2018 to 2019: <i>te amiotonu o te fakamahinoga</i>
legislative power			<i>paoa faitulafono</i>	<i>ko te mafai faitulafono</i>
Noting	<i>I te iloa</i>			<i>E mataugia</i>

patterns of consultation		<i>ko na fakataumunaga haele</i>		<i>ko te auala e fai ai na fakatalatalanoaga</i>
Preamble		<i>Fakamatalaga Tomua</i>		<i>Fakatomuaga pe Kupu Taki</i>
Recalling	<i>I te Manatua</i>			<i>E Manatuagia</i>
recourse		<i>fouvalega</i>		<i>hulufaki mo he fehoahoani</i>
responsibilities	<i>tiute</i>		<i>tiute</i>	<i>galuega or tiute e gafa ma koe</i>
responsibility of the Government of New Zealand			<i>he tiute o te Malo o Niu Hila</i>	<i>he galuega or tautuaga e gafa ma te Malo o Niu Hila</i>
rule of law		<i>tulafono o te tulafono tuhituhia</i>		<i>pule a te tulafono or malohi o te tulafono</i>
Tokelau Amendment Act 1996			<i>Ko te Tulafono Fakapalemene a Tokelau 1996</i>	<i>Tulafono Toe Teuteu ki te Tulafono Fakapalemene mo Tokelau 1986</i>
Tokelau supreme national body			<i>fono faitonu maualuga ia a Tokelau</i>	<i>fono atunuku pito maualuga a Tokelau</i>
treaty	<i>feagaiga maliega</i>			<i>Feagaiga Fakateva-o-Malo or Tulafono Fakateva-o-Malo or Maliliega</i>
Whereas		<i>Talu ai</i>		<i>Ona ai or Ko teia ai</i>
wished			<i>Na nanau lahi</i>	<i>Na fofou or Na amanaki</i>

II THE ANALYSIS

The word law is itself a challenge because of the wide range of terms that the English language has for types of law. In Tokelauan there is only one word –*tulafono* – and that word relates typically, but not exclusively, to the custom of Tokelau which provides the main range of rules within the Tokelauan experience.²

"Constitutional relationship" is a technical phrase which refers to the legality of the relationship between two governments. It is translated as *"hokotaga e fakavae i te tulafono faka-va-o-malo a Tokelau ma Niu Hila"*; and this is correct. I would also translate this to *"ko te hokotaga ite va o na malo o Tokelau ma Niu Hila e fakavae i te tulafono"*, meaning the relationship between New Zealand and Tokelau is based on the law.

The translation of **"customary practices by elders"** in 1996 was *"pulega a na Taupulega"*. This in my view does not accurately reflect the meaning conveyed in the Act. *"Pulega"* means "authority to rule". The equivalent is *"Ko na tu ma na nofonofoga faka-te-aganuku a na tino matutua [Taupulega]"*, as this translation reflected the intention of *aganuku* as stated in the source language. "Customary practices" refers to the traditional and cultural ways of doing certain things. In the context of the Act, this reference to "customary practices" refers to the Taupulega who are the elders and to their traditional ways of managing the village.

"Desiring" is a standard English treaty wording; it was used in the 1980 legal document. Mr Kirifi translated this concept as *"manakoga"*. This translation, meaning "what you want or need", seemed very plain and restricted. In contrast, I would translate this concept as *"E Iviivinaki"*. This translation is in two words to fully explain and accurately reflect the meaning of this concept: "looking forward to seeing what you desire", "what you want to come to pass". This would be more formal and appropriate for the purpose of the legal document.

In the preamble of the Treaty of Tokelau, the legal concept **"exercise sovereignty over..."** was translated by Mr Kirifi as *"pulea"*. "Sovereignty" is a constitutional term and is not English that is often used in everyday language. The words "exercise sovereignty over" can also mean "having the power of control over" or "authority over". This means it can be understood as "the United States has control over American Samoa". The translation below is how I would translate these concepts and the whole of the seventh paragraph of the Preamble:

E mataugia atili ko te Iunaite Hatete kua gafa ma te kikilagia ma te pulepulea o na fenua ieia e takua ko Amerika Samoa ma ko Niu Hila e heki faia hana talohaga ke

2 Above n 1 at 129.

maua pe pulepulea ko he vaega e o Tokelau na fenua icia e pulepulea e te Iunaite Hetete ko he vaega e o Amerika Samoa.

Noting further that the United States exercises sovereignty over and administers the islands known as American Samoa and that New Zealand has not claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa.

As language changes over time and with experience, the translation of the Treaty of Tokehega can be simplified. However, the translation of this document provides a precedent and something to work from. The translations of the above legal concepts in 1980 were not wrong, but their equivalence was not fully conveyed in Tokelauan.

The use of concepts such as "**fundamental freedoms**" in the Preamble of the Universal Declaration of Human Rights is very important. Mr Kirifi translated this as "*haolotoga fakavae*" and this translation was the same in the 2008 translation. This translation missed the meaning of the concept. My preferred translation is "*fakatauaga o na haolotoga*". "*Fakatauaga*" means putting great emphasis, significance or importance on something, whereas "*fakavae*" refers to something established.

The General Fono is the supreme national meeting in Tokelau, similar to Parliament. Mr Kirifi translated "**General Fono**" as "Fono Aofia" which simply means "a meeting comprising". By the time I went to Tokelau, "General Fono" was already translated as "Fono Fakamua", which it remains at present. "Fono Aofia" is incomplete and does not make sense in Tokelauan. "Fono Atunuku", which is an expression sometimes used, means "National Meeting". These different translations are not wrong in the target language, as it is really a national forum meeting. However, the intention of the General Fono is very specific: it is a formal national gathering as the Parliament of Tokelau. It is evident this institution has had various names since it began. I presume that the term "Fono Aofia" must have been influenced by the Samoan speakers or the Samoan Bible.³ It was not until the 1996 translation, as currently documented in the Constitution of Tokelau, that the General Fono is referred to as the "Fono Fakamua".⁴

The "**Granting of independence to colonial countries**" means a lot to colonial countries. The realisation of this concept is a milestone achievement for those countries. Mr Kirifi's translation is a word-for-word translation and does not entirely

3 For background on the General Fono, see Tony Angelo "Establishing a Nation – Kikilaga Nenefu" (1999) 30 VUWLR 75. See fn 32 for background on the translation of the "general Fono".

4 Constitution of Tokelau.

communicate the general meaning to Tokelauans. These concepts relate to constitutional development; as a lawyer, I had some understanding of these concepts, hence my intention when translating them was to ensure the legal elements were captured and reflected in Tokelauan. Many times translators have to invent new words to help convey the equivalent meaning in the target language so that when a lay person reads the translated documents they can easily understand it.

"*Aia tatau fakatagata*" means "**human rights**". This is not wrong, but the language has changed since 2008 and at present is "*aiatatau o te tagata*" or "*hakoga o te tagata ola*". The changes in 2008 were recorded in the *Handbook for the Commissioners of Tokelau*.⁵ The new translation is relevant and appropriate in the sense that human beings have rights. Mr Kirifi translated "rights" in two words – "*aia tatau*" – but for me rights is plural and is one word – "*aiatatau*" – referring to many rights. "*Hakoga o te tagata ola*" is another translation that I would use, as "*hakoga*" means "the rights" and "*tagata ola*" refers to "an individual". My translations may be seen as too wordy, but they are easier for an ordinary Tokelauan to understand.

The concept of "**justice**" is an important concept; it has a specific legal meaning. Mr Kirifi translated this concept as "*te fai meatonu*". This is not wrong, but "justice" is a term with a deep meaning in law. In 2008, this word was translated in the *Handbook for the Law Commissioners* as "*amiotonu*". I was involved in this law project as the Project Manager, but now given more years of experience, I would translate "justice" as "*Te amiotonu o te fakamahinoga*" to better reflect the legal element of this term.

"**Legislative power**" was translated as "*paoa faitulafono*". This translation is limited by the use of the word "power" ("*paoa*"). The legal meaning is not accurately reflected. The translation in Tokelauan of "*ko te mafai faitulafono*" means "the power/authority designated/granted to Tokelau to make rules".

Throughout the Preamble of the Treaty of Tokehega, "**Noting**" was translated as "*I te iloa*" which means "knowing". Looking back at the time and context of this translation, this translation was not wrong, but since then this term has been used in many legal documents and memoranda of understanding. Now I would translate "Noting" as "*E Mataugia*" – something already known which is being acknowledged. This is more formal in Tokelauan.

"**Patterns of consultation**" was translated as "*ko na fakataumunaga haele*". This is used in conversation but I have not seen this written in any legal document. The

⁵ *Handbook for Law Commissioners of Tokelau*, (Government of Tokelau, Wellington, New Zealand, 2008) at 226.

meaning in Tokelauan is "having ongoing and regular discussions". This is an example of language evolution. The appropriate translation to be used now is well known; it is "*ko te auala e fai ai na fakatalatalanoaga*". This means "the patterns and the manner of how the meetings will be conducted to hold discussions and consultations".

"Preamble" was translated as "*Fakamatalaga Tomua*" which literally means "Introductory Comments". In the Treaty of Tokehega, there was a preamble that described the key elements of the treaty, but the word "Preamble" itself was not used. I would translate this as "*Fakatomuaga*" or "*Kupu Taki*" to show the importance of the preamble. "*Kupu Taki*" is commonly used nowadays.

The word **"Recalling"** was in the preamble of the Treaty of Tokehega. It was translated as "*I te manatua*" which means "it is remembered". In the context of the Treaty, "recalling" is referring to New Zealand and its responsibilities towards Tokelau. The translation can be improved to truly reflect the legal context; I would translate "Recalling" as "*E manatuagia*" to elaborate on the legal intention. It means "we know and we remember" the responsibilities of New Zealand towards Tokelau.

Another important term in the Universal Declaration of Human Rights is the word **"recourse"** at paragraph three of the preamble. It is translated in Tokelauan as "*fouvalega*" by Mr Kirifi. I have not heard of this word as a Tokelauan word; this word sounds Tuvaluan to me. In the 2008 translations this concept is translated as "*toe hakili fehoahoani*". I would translate "recourse" as "*hulufaki mo he fehoahoani*", meaning "come to for help" or "go to seek help".

The use of **"Responsibilities"** in the preamble of the Treaty of Tokehega was translated as "*tiute*". The word "responsibilities" is plural and referred to New Zealand's duties or roles concerning Tokelau. "*Tiute*" is the equivalent of "duty" or "roles/functions". The translation in Tokelauan – "*tiute*" – is used in the Tokelauan Bible and is also a Samoan word. My translation for "responsibilities" is "*ko na galuega*" meaning the "duties/responsibilities" of New Zealand for Tokelau. This is plural and is more representative of the responsibilities that New Zealand has to care for Tokelau. Currently customs duty is also known as "*tiute*". I believe "*tiute*" came from the Samoan word "*tiute*" and is probably a borrowing from the English "duty".

"Responsibility of the Government of New Zealand" was translated as "*he tiute o te Malo o Niu Hila*". In the context of the Act, this statement referred to New Zealand being responsible for the needs of Tokelau at the national level. I propose another translation: "*ko ni tautuaga (or tiute) e gafa ma te Malo o Niu Hila*". It means "the responsibilities or duties of New Zealand".

The translation of "**rule of law**" as "tulafono o te tulafono tuhituhia" means "the law of the written law". The translations in 2008 in the *Handbook* of "*pule a te tulafono*" is accurate. I would also translate it as "*malohi o te tulafono*", which means "authority given or provided by the law".

"**Tokelau Amendment Act 1996**" is translated as "*Tulafono Fakapalemene o Tokelau 1996*" by the translators referred to in Faipule Pio Tuia's letter to Mr Lindsay Johnstone Watt, the Administrator of Tokelau (1993-2003).⁶ This translation did not reflect the equivalent in the source language to show that the Tokelau Act had been changed from its original form. "*Tulafono Toe Teuteu ki te Tulafono Fakapalemene mo Tokelau 1996*" is my translation; it shows that the 1996 Act is an amendment.

A former Ulu o Tokelau (Titular Head of Government), Faipule Pio Tuia wrote to Mr Watt, the Administrator of Tokelau at the time and said:

...the process of translating the Preamble for the Bill has been an extremely challenging experience and one that has brought some sharp reminders of the work that lies ahead in terms of using the law making powers that would result from this legislation

We recognise that new language will result from the use of these law-making powers.

...We recognise too the historical nature of the legislation in that for the first time the Tokelau language will appear in New Zealand legislation. This decision is of major significance to us....

Some of the difficulties we faced in translating the Preamble, related to the vocabulary and language used. For example, the use of the word "power" as opposed to "legislate". The word "elders" instead of the "Council of Elders" which reflects the situation here in Tokelau....

The table gives some indication of the challenges involved. The Ulu o Tokelau, Faipule Pio Tuia further stated:

But in the main, we think that we have arrived at a translation which has taken in the need for the ordinary fisherman and weaver to understand as well as keeping to the spirit intended by the Select Committee noting of course that it is New Zealand legislation.

"**Tokelau Supreme National Body**" is translated as "*fono faitonu maualuga ia a Tokelau*"; this refers to the General Fono (*Fono Fakamua*). This translation is not wrong, but it does not accurately reflect the fact that the General Fono is the supreme

6 Pio Tuia, Ulu o Tokelau (A letter to Mr Lindsay Watt, Administrator of Tokelau) 14 May 1996 at 2.

national meeting forum of Tokelau. Hence my translation is "*Ko te Fono Atunuku Pito Maua luga a Tokelau*", which means that the General Fono is "the highest national meeting forum of Tokelau charged with the executive power to make decisions in the national interests of Tokelau".

"**Treaty**" is a specific and technical legal term. In ordinary English a treaty is an agreement – "*maliega*" – as per the translations in the 1980s and 1990s. Perhaps this should have been "*Maliliega*" which is plural and refers to two countries. Since this is a specific technical legal term, my translation would be "*Feagaiga Faka-te-va-o-Malo*". It makes clear that this is an international agreement between New Zealand and the United States.⁷

"**Whereas**" is used in all the seven paragraphs of the preamble to the UDHR. This law was produced in the 1940s but was only translated into Tokelauan in the 1990s. Mr Kirifi translated "Whereas" as "*Talu ai*". In my reading this translation aligned only with a few paragraphs. There are parts where the use of "*Talu ai*" does not make sense in the Tokelau language. For example, para 4 of the preamble reads "Whereas it is essential...", which is translated as "*Talu ai ona e manakomia...*". I would translate this as "*Ona ai e taua lahi ke...*". This means because of this universal declaration it is important to promote etc. "Whereas" is a term typically used to introduce a legal document. I would translate this now as "*Ona ai*"; it means "as a consequence this is the situation" and can also mean "because of something this is happening".

"**Wished**" refers to the desires or aspirations of the elders of Tokelau to have more control in terms of managing the government of Tokelau at the national level. This word was translated as "*nanau*" in the 1996 Act. I would now translate this term as "*nae amanaki*" or "*nae fakanau*": they are plural and are inclusive of all the things that the elders of Tokelau had hoped for and are even now hoping for, for Tokelau.

III CONCLUSION

In reflecting on the commentary above, it can be confidently stated that the Tokelauan law language has changed and evolved over time.

7 Tokelau has limited international capacity to enter into any treaties with other governments. This limited capacity is exemplified by the Memoranda of Understanding with other Pacific Countries like Tuvalu and Samoa.