

CONVENTION 111 NEW ZEALAND (TOKELAU)

ARTICLE 22 OF THE CONSTITUTION OF THE ILO

Report for the period 1 July 2008 to 31 May 2010
made by Tokelau

on the

DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (No. 111)

- V. *Please give a list of the laws and regulations, bilateral or multilateral instruments, etc., which apply the provisions of the Convention. Where this has not already been done, please forward copies of such texts to the International Labour Office with this report. In so far as there exist measures other than legislation, administrative regulations, etc., which are relevant to the implementation of the Convention, please indicate their nature. Please give any available information concerning the extent to which these laws, regulations and instruments have been enacted or modified to permit, or as a result of, ratification.***

No change from the previous report

- VI. *Please indicate in detail, for each of the following Articles of the Convention, the provisions of the abovementioned legislation, administrative regulations, instruments, etc., or other measures under which each Article is applied. If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has had this effect. Please also specify what action has been taken to make effective those provisions of the Convention which require a national authority to take certain specific steps for its implementation. If the Committee of Experts or the Conference Committee on the Application of Standards have requested additional information or have made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.***

Article 1

- 1 For the purpose of this Convention the term "discrimination" includes:
- VII. any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - VIII. such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

No change from the previous report

III. Please state to what authorities or institutions the application of the above-mentioned laws, regulations, and international instruments, etc., is entrusted.

The Public Service Rules 2004 set out the lines of accountability in relation to National Public Service. There are specific processes for appealing appointment decisions set out in the Manual.

Previous reports have explained the special constitutional relationship between New Zealand and Tokelau.

IV. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.

No court or tribunal decisions of this kind have been issued in Tokelau.

V. Please add a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.

Please see comments in previous reports. The notions/ideals driving the Convention are cornerstones of the culture of Tokelau but the prescriptions of

the Convention can be viewed by Tokelau as foreign western ideas. However, once translated and expressed in their terms, as the Manual helps to do, there is a common understanding and motivation for the goals therein.

VI. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization. If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed. Please indicate whether you have received from the organizations concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention or the application of the legislation or other measures implementing the Convention. If so, please communicate the text of these observations, together with any comments that you consider useful organisations of employers and workers to which copies of this report have been provided.

New Zealand Council of Trade Unions
Business New Zealand

Responses to comments made by the Committee of Experts on the Application of the Conventions and Recommendations in 2009.

1. Protection against discrimination in the public service.

With reference to its comments concerning the implementation of the Public Service Code of Conduct and the Public Service Manual, the Committee notes the Government's statement that no disciplinary proceedings have yet been taken against employees violating the provisions on non-discrimination and harassment of the Code. The Committee asks the Government to continue to provide information on the practical application of the Public Service Code of Conduct, as well as to indicate any measures taken or envisaged to ensure that no discrimination occurs, in law and in practice, in the public service, on the grounds of race, gender and religious beliefs.

The comments are made in response by the Government of Tokelau:

During Meetings of the Public Service, members of the Public Service are encouraged to familiarise themselves with the Code of Conduct. Further, if any employee feels that they have been discriminated against based on race, gender or other factors they can contact the Human Resource Manager and there is a process to lodge complaints. To date there have been no disciplinary proceedings.

2. Grounds of discrimination.

The Committee notes the Government's statement that discrimination on the basis of colour, national extraction, political opinion and social origin is not an issue in the Tokelau public service, and that section 2.5 of the Code of Conduct protects all employees against any kind of discrimination. The Committee recalls that under the Convention these grounds are listed grounds upon which discrimination is prohibited. The Committee wishes to emphasize that even though certain forms of discrimination may not be an issue today, new forms of discrimination may emerge over time due to labour market and societal changes. It therefore asks the Government to monitor carefully any emerging forms of discrimination in law and in practice that may result in or lead to discrimination in employment and occupation on the basis of colour, national extraction, political opinion and social origin.

The comments are made in response by the Government of Tokelau:

Tokelau notes the comments above.

The Tokelau Government values the diversity of its workforce, and in that regard will ensure that measures continue to be in place to protect vulnerable employees against discrimination based on colour, race, religion, political opinion and social origin.

3. Discrimination based on sex. Maternity leave.

In its previous comments, the Committee had raised questions regarding sections 7.7(a)-(c) of the Public Service Manual. These appear to imply that in practice maternity leave could be substituted for leave without pay, putting women in a disadvantaged position as compared to men with regard to their leave entitlements. Moreover, section 7.10 makes maternity leave conditional upon at least one year of service thus excluding women employed for less than a year from maternity protection, including dismissal, which is contrary to the Convention. The Committee notes the Government's statement that it may consider amending section 7.7(a) and (b) to provide for three months' maternity leave. The Government remains silent however with respect to its intention to amend section 7.10 of the Manual. Noting the Government's commitment to securing maternity leave protection for all women, the Committee asks the Government to bring all the provisions, including section 7.10, regarding maternity protection of the Public Service Manual into conformity with the Convention, and to keep it informed of the progress made in amending the Manual.

The comments are made in response by the Government of Tokelau:

Tokelau notes the comments above.

It is important to note that the National Policy of Women of Tokelau identified under the areas of Women and Law the need to amend the section on Maternity Leave as currently stated in the Public Service Manual. The changes that the Policy aims to address/achieve will bring about more benefits for women working in the Tokelau Public Service at both national and village level. The amendments that the Policy seeks will take place whilst implementing the Policy and Action Plan in 2010-2015 and more importantly if the Taupulegas and General Fono endorsed the amendments that the Policy seeks.

4. National policy.

The Committee notes that a draft national policy for women and a national plan of action is being developed. The Committee would be grateful to receive a copy of the national policy and action plan on women, once they have been adopted, and it hopes that these will include activities to promote equality of opportunity and treatment between men and women in employment and occupation.

The comments are made in response by the Government of Tokelau:

Please note that the Government of Tokelau is currently working towards printing booklets of the Policy and Action Plan. Once printed copies are ready, copies will be sent to the Fatupaepae Groups, Taupulega Offices, National Departments, Office of the Administrator and Regional Organisations. Tokelau will make a copy available to the Office when it becomes available.

5. Employment statistics.

The Committee notes that out of the 45 national public servants, 19 are men and 26 are women. A total of 28 staff falls within the salary grading, with eight men and 20 women. The other 17 staff members are contract workers, 11 of whom are men and six of whom are women. The Committee also notes the information provided by the NZTUC that employment levels in the public service are similar for men and women and that there is a trend towards increasing representation by women in the General Fono. The Committee asks the Government to continue to provide data on the distribution of men and women in the General Fono and at the various levels of the public service, as well as their distribution in the various trades and occupations in the private economy.

The comments are made in response by the Government of Tokelau:

Tokelau notes the comments above. The following statistics are as at 31 March 2010.

General Fono:

Men: 17
Women: 3

Department of Education:

Men: 1
Women: 6

Department of Health:

Men: 1
Women: 4

Department of Finance:

Men: 3
Women: 3

Office of the Council for the Ongoing Government of Tokelau:

Men: 4
Women: 5

Department of Energy:

Men: 3
Women: 0

Department of Economic Development, Natural Resources and Environment:

Men: 4
Women: 1

Department of Transport and Support Services:

Men: 10
Women: 5

Teletok:

Men: 6

Women: 3

In total there are 35 men and 27 women in the National Public Service and Teletok. This does not include employees in the the Public Service at Village level.

The Fatupaepae (Women's Group) and Aumaga (Men's Group) are traditional local bodies and women and men of working age in each of the villages are members for that village. These groups undertake community work throughout the village and are remunerated by the village council.