

# NIUE

## Introduction

**N**iue is a small parliamentary democratic island state located in the South Pacific Ocean with a land mass of 259 square kilometres. It has a total population of 1,625 enumerated in the 2006 Census, reduced from about 5,000 in the 1960s and down by 10 per cent from the 2001 census. The expatriate Niuean population in New Zealand during its 2006 census was 22,500.<sup>1</sup>

Niue's fragile economy and scarce resource base face many constraints: limited access to reliable air services; shortages of skilled professionals and entrepreneurial expertise; limited arable land; and poor soil quality. Natural disasters, especially cyclones, have long lasting impact. Its economic difficulties are exacerbated by, and reflected in, the long-term decline of its population. Causal factors of emigration are a result of social and economic pressures, lack of employment and educational opportunities, lack of natural resources, and due to Niueans' access to the New Zealand labour market.

New Zealand and Niue have a special relationship, which is founded on close historical ties, unique constitutional arrangements, and a common citizenship and currency. Prior to being a British protectorate in 1900, Niue was an independent nation from the time of its indigenous settlers. Encouraged by the British missionaries, it was annexed by New Zealand in 1901.

On 19 October 1974, Niue became a self-governing parliamentary government in free association with New Zealand, but fully responsible for its internal affairs. New Zealand has retained a constitutional responsibility for citizenship, external affairs, and defence; however these responsibilities confer no rights of control and are only exercised at the request of the Government of Niue. In addition, under the *Niue Constitution Act 1974 (NZ)*, New Zealand has an obligation to provide to Niue 'necessary economic and administrative assistance', some court facilities, and the base for the Niue public service. These provisions are also part of Niue law, but may be repealed by the Niue assembly. The Constitution under these terms provides for self-government with a unilateral option for independence.

Prior to 1901, Niuean leadership was largely shaped and characterised by traditions and customary practices including the introduction of Christianity in the early 1800s. Leadership issues are now predominantly within the purview of the Niue Constitution 1974 and other newly established laws.

Leadership in this context therefore includes leaders in the three key sectors of the Niuean community - civil society, and the private and the public sectors.

---

<sup>1</sup>Statistics New Zealand, 'Niuean' <<http://www.stats.govt.nz/~media/Statistics/Publications/Census/2001-Census-reports/Pacific-peoples/2001-census-pacific-profiles-niuean.ashx>> at 20 December 2008.

---



## Principle 1 – Respect for the Law and the System of Government

### i) Respect for and upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature:

The Constitution is the Supreme Law of the country. The Constitution clearly stipulates the three arms of government, which are the Executive, Judiciary and Legislative, as well as the legal instruments for Niue's governance.

The Executive Authority of Niue is vested in Her Majesty the Queen in right of New Zealand, and the Governor-General of New Zealand is the representative of Her Majesty the Queen in relation to Niue. The Executive comprises of the Cabinet, which includes the Premier of Niue and three ministers.

The Judiciary in Niue comprises of the Supreme Court of New Zealand and the Niue High Court that includes Commissioners of the Court and Justices of the Peace. The Chief Justice is the head of the Judiciary. The Chief Justice of the High Court is appointed by the Governor-General acting on the advice of Cabinet tendered by the Premier and the other Judges appointed also by the Governor-General, acting on the advice of the Cabinet, tendered by the Chief Justice of the High Court and the Minister of Justice. Appeal matters are referred to the New Zealand Court of Appeal except for matters under the Constitution, where New Zealand has no jurisdiction.

The unicameral Legislative Assembly is Niue's supreme law-making body. It has 20 members elected by popular vote to serve three-year terms, six elected from a common roll and 14 as village representatives. The Legislative Assembly is responsible for electing the Speaker as its first business, then the Premier; and a win by absolute majority for both offices is required by Constitution at its first meeting following the general elections.

Niue's Annual National Budgets leading up to 2008 have been in compliance with Article 58 Annual Estimates and Appropriations (1-2). In 2008, the national budget was in compliance with the *Appropriation (Annual) Act 2008* required by law and enacted each year. This is also stated in the Niue *Public Revenues Act 1959*. Article 59 states that excessive expenditure is unauthorised. There was no prosecution made in relation to Article 59(5) in 2008. Unauthorised expenditure is not an option to be exercised by the Executive. Cabinet Ministers are criminally liable for any act or omission that is deemed to contravene the *Niue Act 1966*, Section 180(a).

Apart from two incidents in 2007, there has been no report of interference of any magnitude by the Executive in the work of the Judiciary. One incident in October 2007 related to a bid by a former Premier to cancel court proceedings over issues of land ownership. According to reports by *Radio New Zealand International*, the Premier stated that 'new approaches were required to deal with land disputes'. This call was allegedly supported by MP Jacobsen and Niungo representative Hiva Levi. Opposition MP Jacobsen said there also needs to be a mechanism to revisit controversial decisions by the court.

The Minister of Justice and the Registrar at the time upheld provisions in law under the *Niue Amendment Act 1968*. Here the powers of the Chief Justice are clearly charted and conferred to set dates for meetings and not by the Executive. The Constitution (Article 37(2)) guarantees the Legislature independence of the Executive.

The other incident involved a police investigation over an assault that took place in the village of Vaiea. One of the assailants was the son of an MP for the village. The MP is alleged to have approached the Police Department, which consequently dropped the charges. Although details are vague, the Broadcasting Corporation of Niue reported on this incident.

Apart from these incidents leading up to 2008, no other action contrary to the rule of law in this respect was committed.

**a) Allow for the peaceful and lawful transfer of power;**

In compliance with Article 26 (1-2) of the Constitution and the *Constitution Act 1974*, elections are to be held every three years by secret ballot under a system of universal suffrage. Elections must be held not less than four weeks and no more than six weeks after the date of dissolution of the Assembly. The date must be set by the Speaker of the Assembly at the request of the Premier. If the Premier makes no such request within seven days of any dissolution, the Speaker, acting on his/her own discretion shall set the date by notice in the Niue Gazette. A change in government can be accomplished either by a vote of no confidence, or when the general elections elect a new Premier.

Article 17 on the nationality and residential qualifications of electors and candidates was amended by Section 2 of the *Constitution Amendment (No. 1) Act of 1992*. Voting eligibility is stipulated in the same Article 2. Article 17 states that public servants may become candidates to be elected.

The most recent election was held on 7 June 2008. At this election, nine village constituency members were re-elected unopposed and three new Common Roll members were voted in from the eighteen candidates that contested. The election was carried out in accordance with due process and overseen by the electoral management body, the entity responsible for elections at the national and local level.<sup>2</sup> This body's chief electoral officer is the Secretary of Justice. There were no violent actions or objections to the elections reported by the Police.

The new Assembly convened on 18 June 2008. After members were sworn in, voting for a new Premier took place. The elections proceeded peacefully resulting in Toke Talagi topping the polls by a large margin, followed by his successful election by the Legislative Assembly as Premier, defeating former Premier Vivian by 14 votes to 5 votes with one invalid vote.

**b) Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament, and ensure that the judiciary and Parliament are free from unlawful interference by the executive.**

To promote good governance, Niue enshrined in its Constitution the role of Select Committees such as the Public Expenditure Committee (PEC) under the *Niue*

---

<sup>2</sup>*Niue Constitution Act 1978*, pt 2, Art 23, s 1).

---





*Assembly Standing Orders* (in accordance with Article 22(1) of the Constitution). The purpose of the PEC is to vet all budget estimates before they go to the Assembly. The PEC is responsible for the budget and acts independently of the Legislature and Executive. The PEC tables its national budget in the House generally before the end of the fiscal year (30 June). The appropriation bill, once passed by the Legislature then becomes an Act for that year. It requires three readings before it is passed. If the appropriation bill is not passed then the Speaker would then call for dissolution of Parliament. This has not happened yet.

In 2008, the PEC explained that it had undertaken extensive consultations with Heads of Departments, Corporations and Government Agencies to make sure that essential elements for the budget were incorporated in the Budget.<sup>3</sup> The 2008-09 Budget was passed on 11 September 2008.

The financial independence of the Judiciary and Legislature are set out in the Constitution. The operational budget for the judicial system goes through the same process, as with any government entity and statutory body, to receive its annual budget through the Legislative Assembly. However, salaries of the judges are subject to an Act of Parliament. There were no reports in 2008 of disrespect by the Executive Government against the financial autonomy of the Judiciary in 2008 and similarly that of Parliament.

**ii) Upholding a just, fair and honest government through:**

**a) Respect for and enforcement of the decisions of courts and independent tribunals;**

The *Commissions of Inquiry Act 1968* provides for Cabinet to appoint Commission of Inquiry to inquire and report on any questions arising out of the administration of government, working of any existing law, including conduct of any officer in the service as well as any disaster or accident. The *Arbitration Act 1908* also provides for decisions taken by the arbitrators to be enforced, partially or fully.

In 2008, a dispute arose on the appointment of the Secretary of Justice when the applications of two senior public servants within the Department of Justice bidding for this position failed. Both were interviewed but were not considered suitable for the position. Instead, the Niue Public Service Commission (NPSC) appointed an officer from another agency, and treated the appointment as an internal transfer as per Section 55 of the *Public Service Regulations 2004*. The unsuccessful applicants lodged an appeal with the Niue High Court forcing the Public Service Commission to cancel its appointment and to re-advertise the job. The High Court subsequently ruled in favour of the decision made by the NPSC.

**b) Enforcement of lawful instructions and lawfully created policies;**

Policies in Niue are written by leaders in the public, private and civil society sectors. They are then passed on to legal officials to ensure that they are armed with the correct legal instruments to avoid any liable action and to serve the purpose for which they were written (in other words, enacted by the Legislative Assembly to give it the effect of law). As such, the enforcement of lawful instructions and lawfully created policies rests with the Heads of Departments. The Secretary of Government, who is the head of the public service, is the

---

<sup>3</sup>Government of Niue, 'Tau Tala Niue' <<http://www.gov.nu/Documents/TTNo437.pdf>> at 1 November 2008

---



overall controlling officer to oversee the operations of the public service, which includes ensuring that its policies are lawfully enforced.<sup>4</sup> The Niue Public Service Commission also has regulations that it is responsible for enforcing. Similarly, the Police Department is tasked with the enforcement of the law. Violation of the law results in the Police laying charges against the offenders.

On the whole, these policies have been lawfully adhered to under the respective arms of the Judiciary, Legislative and Executive, with only two notable instances of policies not being followed.

The first is the Niue Training and Development Council (NTDC) freight entitlement policy. The original intent of the NTDC Freight Policy was to provide monetary assistance to ship awardees' personal effects to Niue following successful completion of the course of study overseas. Departure from the policy was caused by students claiming that the entitlement was insufficient, to which Council responded by approving amounts of up to \$8,000 on a reimbursement basis. The NTDC freight policy was amended in November 2007 CM 07(347) under scrutiny of the Council, to be more transparent and not susceptible to any further changes. The second is the Health Referral Policy. The original intent of the policy was to provide a return airfare to a spouse to accompany patients referred to New Zealand for care. The Policy has allegedly been applied in an inconsistent manner, raising the need for a review.

**c) Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

There have been internal debates about the application of the spirit and letter of the Constitution. In 2008, a new member of the Legislative Assembly turned down the position of Associate Minister for the Environment. The MP declined the position, based on her belief that the Constitution is the Supreme Law of Niue and has no provision for such a position.<sup>5</sup>

There are examples in the Niue laws that have not provided adequate authority to enable officers to ensure compliance with the letter and spirit of the laws. For example, the *Environment Act 2003* has established the Department of Environment, but the Director of the Department believes it does not have the authority to allow the Department to effectively protect of the environment. Several cases support this point. The first is the wreckage of one of the Niue Reef Shipping boats off the reef between the villages of Mutalau and Lakepa in 2007. Officials from the Department of Agriculture dealing with fisheries and environment were concerned about the potential environmental impact on marine life caused by oil spillage. However, the company that owned the vessel could not be prosecuted because the Act governing environment matters is vague on prosecution.

The other incident concerns a farmer seeking clarification regarding careless actions of burning bushes by a neighbouring planter in 2007. The fire had spread, burning a large area of land including land belonging to the complainant. In seeking clarification and redress, the complainant was advised by the Niue Police and the Environment Department that the *Environment Act 2003* lacked of

---

<sup>4</sup>*Constitution Act 1974* (Niue) art 63.

<sup>5</sup>Radio New Zealand International, 1 July 2008.

---





provision to prosecute environmental damage except for civil claims, which are provided for in Part 3(2)(b) and (c).

The Government has taken steps to update legislation. The Niue Legislative Review Project aims to promote good governance through an appropriate review of the laws applicable in Niue. Peleni Talagi in her report<sup>6</sup> - *Country Report at the Pacific Islands Law Officers' Network (PILON) meeting (December 2008)* - stated that stage one of the Legislative Review was completed in 2004, with the enactment of the *Interpretation Act 2004* and the *Legislation (Correction of Errors and Minor Amendments) Act 2004*. The work includes promulgation of a number of reforms specific to particular areas in law such as family, land, judicature and succession. Their project to date has prepared the areas in family and criminal law, and Cabinet approval has been granted for the reprint of the Family Law and Criminal Law Code pursuant to the *Reprint of Statutes Act 1991*. Law reform in the area of immigration is also underway with the Immigration Bill.

**d) Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**

In 2008, leaders did not disclose instances of fraud, corruption and mal-administration that they became aware of, as there was none to report in that year. The *Niue Act 1966* deals with bribery and the corrupt use of information. It also sets the corresponding penalties. Ministers are liable and could receive not more than 14 years of imprisonment for accepting bribery if prosecuted and found guilty.

There has been no Internal Audit Report for 2008 at the time of writing this report, and public tenders have been above board. Public tenders adhere to regulation administered by the Treasury Department.

**e) Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;**

MPs and CEOs were not reported to have exerted pressure or abused persons carrying out their lawful duties in 2008.

**f) Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;**

Article 24, Part II of the Constitution provides immunity to MPs. There was no reported case in 2008 of MPs and CEOs inappropriately using legal immunity.

**g) Establishing and empowering bodies, such as an Ombudsman Commission, to independently investigate public complaints against government actions;**

Niue has no Ombudsman or Human Rights Commission. An *Arbitration (Amendment) Act 1938* and *Commissions of Inquiry Act 1968* exist. The latter can be invoked to inquire into and report on, amongst other matters, the administration of government.

**h) Ensuring that the Auditor General reports directly and in a timely manner to Parliament/Congress;**

---

<sup>6</sup>Talagi, P, *Pilon Annual Meeting 5-9 December 2008: Niue Country Report (2008)*  
<[http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/PILON+Niue+country+report+-+December+2008.PDF/\\$file/PILON+Niue+country+report+-+December+2008.PDF](http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/PILON+Niue+country+report+-+December+2008.PDF/$file/PILON+Niue+country+report+-+December+2008.PDF)> at 15 February 2009.

---



Article 60 of the Constitution establishes the Audit Office of New Zealand as the auditor of the Niue Government Account and all other public funds or accounts, inclusive of all Departments and Offices of executive government, and other public or statutory authorities as provided by the law. *Audit Regulations 1970* sets out governance arrangements.

The Audit Office of New Zealand prepares and presents to the Niue Government through the Speaker, the annual Audit Report for Niue on information relating to the Niue Government Account and to such other funds or accounts which under this Constitution or under any enactment are required to be audited by the Audit Office. This is set out in the *Public Revenues Act 1959*.

### iii) Protection of fundamental human rights:

The Constitution does not provide for an overarching legal protection covering fundamental rights and freedoms. Instead, human rights and fundamental freedoms are provided for in the *Trusts Act 1994*, specifically in Section 15, although without further elaboration or clarification. Section 15 of the *Trust Acts 1994* regards charitable purposes to include the ‘advancement of human rights and fundamental freedoms’. Others include relief of poverty, advancement of education, religion, protection of environment and advancement of amateur sports. Further in Section 7, the *Mutual Assistance in Criminal Matters Act 1998* contains the word, ‘human rights’. Under this provision, the Attorney-General could refuse a request for assistance from a foreign country, if it results in unfairness or a denial of human rights. Protection of certain rights are found in laws such as the *Niue Births and Deaths Regulations 1984*, the *Education Act 1989*, the maintenance and affiliation and criminal offences provisions in the *Niue Act 1966*, which provide for rights of children and their protection. Such legislation provides a broad network of rights that lend particularly to the concept of equal treatment and protection of the law. Other Acts of Parliament such as the *Citizenship Act 1997*, *Education Act 1989*, *Adoption Act 1957*, *Child Allowance Act 1995*, *Guardianship Act 1968*, *Minor’s Contract Act 1969*, and *Race Relations Act 1972* also protect rights covered by these activities. Niue is also a signatory to the United Nations Human Rights Convention.

## Section 2:

### Principle 2 – Respect for Cultural Values, Customs and Traditions

#### i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

Regard and respect for Niuean custom, traditions and indigenous rights is demonstrated in the way that Government has observed its *Niue Constitution Act 1974*. The traditional protocol on the exercise of power is enshrined in the Constitution with respect to land laws, customary rights, Christian values, and adoption. The Constitution of Niue is also translated into Niuean language known as *Ko e Fakatufono – Tohi Fakave a Niue*.

Land is increasingly becoming a key concern in many family circles with respect to customary rights as opposed to the English law. Cultural values such as proper court procedures on land matters are provided for in the *Land Act 1969*.





Legislation regarding the protection of Niue's traditions was advanced through the passage of the *Niue Cultural Act 1986*, whose aim is 'to establish the Niue Cultural Council to promote all aspects of work connected with the natural history and material culture of Niue and to define the functions and powers of the Council'. The functions of the Council are:

- a) To promote all aspects of work connected with culture and technology including documentation, conservation and repatriation of artefacts;
- b) To encourage and foster the study of oral traditions, language and creative and performing arts in their traditional and contemporary forms;
- c) To encourage the promotion of salvage archaeology and the conservation of archaeological materials, sites and monuments; and
- d) To regulate and control the use and development of historic sites.

This has been further supported with the establishment of the *Taoga Niue* Department, which is charged with supporting and promoting the use and preservation of Niuean culture, language and tradition.

This new initiative was incorporated as a late addition to the National Integrated Strategic Plan for 2003 – 2008.<sup>7</sup> The development and launching of *Taoga Niue's* own Integrated Strategic Plan was delayed by six months due to unforeseen circumstances and the devastating intervention of Cyclone Heta.

Christianity is another fundamental value intricately woven into the fabric of the Niue culture that is promoted by the Government of Niue and enshrined in its Constitution (Article 21), where members before they are formally recognised as members of the Assembly must first take an oath swearing on the Bible to be faithful and honest in their deliberations and actions whilst on duty as a member of the Niue Assembly. This is also legislated in the *Niue Assembly Standing Orders* (Article 30) where every meeting must start with a Prayer by order of the Speaker when the quorum is met. Part 9 of the Standing Orders (Article 26) also states that the Assembly must not sit on a Sunday in respect of its Christian heritage dedicating that day for worship. Modelling by example, all major occasions and meetings in the most part start and end with a prayer and its perpetuity therefore is guaranteed by the Constitution.

### Section 3:

#### Principle 3 – Respect for Freedom of Religion

##### i) Respect for religious belief and practice:

Christian belief and practices in Niue have been integrated with aspects of Niuean culture and is extended to govern the conduct of governance, including prohibitions on conduct of legislative sessions on Sunday. For example, Part 3 of the *Domestic Fishing Act 1995* is specific about the Sunday law. Section 13(1) and (2) state: "No person shall be allowed to fish on a Sunday between 4.00 am and 9.00 pm within Niue's fishery waters (territorial zone)." Any person found to be acting in contravention of subsection (1) shall be guilty of an offence.

The *Trusts Act 1994* is legislated to make provision for the law relating to trusts and trustees, and related matters. Section 15(c) and 62 of the Act allows for the setting up of trusts for the benefit of the community or a substantial section of the

<sup>7</sup>Government of Niue, *Niue National Strategic Plan, 2009 – 2013* (2008).



community. In addition, the *Niue Amendment Act 1968 (No. 2)* Section 30 includes ‘Ministers of Religion’ in the list of professionals that are disqualified from being Commissioners to the Land Court. This is in compliance with the culture and custom of Niue where ‘Ministers of Religion’ are considered to be dedicating their time to the Ministry and not to any secular job.

In 2008, these laws were complied with in addition to there being no reported religious persecution of other religious beliefs.

## Section 4:

### **Principle 4 – Respect for People on whose behalf Leaders Exercise Power**

#### **i) Proper use of official powers:**

There was no report on leaders’ abuse of their official powers.

#### **ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:**

MPs in taking Oath are sworn to honesty and faithfulness in their role. There were no reported incidents of this Oath being violated in 2008.

#### **iii) Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:**

The *Niue Assembly Standing Orders* Section 31 on broadcasting states the following:

- 1) The proceedings of the Assembly may be broadcast on radio or television with the approval of the Speaker, which may be given subject to conditions.
- 2) A broadcast of the televised proceedings of the Assembly must maintain such standards of fairness as are adopted, from time to time, by the Assembly.

At present, Assembly meetings are broadcast, and reported in the *Niue Star*, the Broadcasting Corporation of Niue, the ‘*Niue Ki Mua*’, and the government newsletter. Radio Sunshine’s Talk back-show also covers current issues.

#### **iv) Giving priority to official duties over private interests:**

Section 6 of the Code of Conduct of the *Public Service Regulations 2004 (PRS 2004)* requires public servants to act with professionalism and political neutrality. Furthermore, public servants (under Sub-clause c) are not to bring the service into disrepute through their private activities. Further emphasis is found in Principle One of the Niue Public Service Code of Conduct, which states that, “Employees shall at all relevant times ensure that their personal activities do not interfere or seem to interfere with this obligation.”

#### **v) Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:**

The *Public Service Regulations 2004* in particular, Regulation 3(1)(c) uphold the goal of service as being to promote mutual trust and confidence in all aspects of the employment relationship, and must be built on good faith and behaviour. In other words, public servants are expected to perform their public duties without fear of incurring personal costs or personal benefit.





**vi) Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:**

The *Public Services Regulations 2004 (PSR 2004)* provides guidelines, including examples on conflict of interest. The *PSR 2004* requires employees to inform the Head of Department if an individual or organisation is given preferential treatment, or has a financial or other interest or undertaking that could directly or indirectly compromise the performance of the employee's duties or standing of the department in its relations with the public, clients or Minister. The Public Service Commission must take steps to avoid, minimise or prevent situations of conflict of interest.

Point 48 of *PSR 2004* stipulates that every employee who will be appointed or to be elected to any paid office in connection with any commercial or industrial or other business, or to undertake any private practice, to first apply in writing to the Commission.

MPs have their businesses registered accordingly so they do not bring their office to disrepute. The Niue Assembly Standing Order under the subject 'Pecuniary Interests of Member to be Declared' specifies this to be a direct financial benefit that might accrue to a member personally, and includes interests held by a member's spouse or domestic partner, including any child of a member wholly dependent on the member for support. Part 23 requires members, before participating in the business, to declare any pecuniary interest the member has in that business. The Speaker of Parliament has the final say where a dispute has arisen, as to whether a member has pecuniary interest. Initially, this was a contentious issue, but now it is addressed by a new legislation, namely the Niue Assembly Standing Order for the Constitution Part 22 (124),<sup>8</sup> where the Speaker at his/her discretion can rule if that member has pecuniary interest or not. This allows members who had business entities prior to taking up office in Government or Parliament to transfer their business under different registration.

There were no reported cases or any prosecution or disciplinary actions reported in 2008 over conflict of interest by leaders.

**vii) Ensuring that public facilities are used only for public purposes and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:**

No one was prosecuted for misuse of public facilities in 2008. The *PSR 2004* however, is not clear on the use of public amenities. The *PSR 2004 44* 'Care of government stores and property' states that every employee must exercise strict care and economy in the use of plant, equipment, stores, stationery, documents and other property of the government. Disciplinary measures are also meted out if they are breached. However, most public servants are not aware of their entitlements and their expected code of behaviour within the workplace. The *PSR 2004* under "Disciplinary Provisions" point 70 specifies compliance with instructions and employee complaints (1-2).

In 2008, a policy was put in place to monitor and regulate the use of government vehicles as a cost cutting mechanism to reduce fuel costs. Heads of Departments not requiring transport on a regular basis had to park their Government vehicle at the appointed place. This was issued in a Cabinet Minute CM (06)520,

---

<sup>8</sup>*Niue Laws 2006* vol 4.



'Government Vehicle after Hours Usage Policy' approved at its Cabinet Meeting on 6 February 2007. Cabinet approved the implementation of the Government vehicle policy for the purposes of curbing the inappropriate usage of Government vehicles by public servants after official working hours. The Policy stated that all Government vehicles (heavy machinery is not included), subject to exceptions, must be parked either at the Department's head office or the *Fale Fono* and Police Department's car parks commencing at 4.00 pm in the afternoon and shall only be used again in the following day commencing at 8.00 am.

No one was reported for breaching these regulations.

## Section 5:

### Principle 5 – Respect for Members of the Public

- i) Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:

PSR 2004 R(6)(b) on 'Code of Conduct' specifically requires employees to perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and those of their colleagues. In 2008, there were no reports or any incidence of leaders mistreating members of the public.

## Section 6:

### Principle 6 – Economy and Efficiency

- i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:

One of the Pillars in the 2003-2008 Niue Integrated Strategic Plan (NISP) is Economic Development.<sup>9</sup> Its strategic objective is to maximise benefits from Niue's resources in a sustainable manner.

In June 2008, following the general elections, the Public Expenditure Committee recommended that the Legislative Assembly remove the normal annual appropriation of public funds to pay for the salaries of the *Ekalesia Niue* (EKN) and was approved by the majority of the members of the House on 11 September 2008.<sup>10</sup> Training funds appropriated annually for capacity building of the EKN under Theological Training however was supported in accordance with Article 61 of the Constitution.

After Cyclone Heta in January 2004, Niue signed another agreement with New Zealand called the '*Halavaka Ke he Monuina*' or Memorandum of Agreement, securing additional fiscal assistance of \$20 million over a five-year period outside the Recurrent Budget Support. In addition, the Niue Trust Fund (NTF) was set up for future assistance to Niue. This will not replace what was stated in Section 6 of the *Niue Constitution Act 1974*.

In the financial year 2007/2008,<sup>11</sup> Niue received \$20 million in monetary aid. This support covers a range of areas inclusive of the \$5 million to the Niue International Trust Fund, announced by the former Prime Minister of New

<sup>9</sup>Government of Niue, above n 7.

<sup>10</sup>Government of Niue, 'Tau Tala Niue' TTN#04 <<http://www.gov.nu/Documents/TTN0437.pdf>> at 1 November 2008.

<sup>11</sup>*Niue Star* (Auckland), vol 157, 15 February 2008.





Zealand in October 2004. According to the *Niue Star*,<sup>12</sup> the Trust Fund has some \$30 million that will earn interest from 2009, which will enable Niue meet its public expenditure costs. Direct Budget Support, which is the main component of the Bilateral Programme, is a cash grant paid to the Government of Niue in quarterly instalments for its normal operation, which is the Niue Recurrent Budget. As a cash grant, it goes directly to the Government Account under Legislative arrangement.<sup>13</sup> The total allocated Recurrent Support in the 2007/2008 financial year was \$7,375,000 and the Total Bilateral Project Support allocated was \$2,398,151.<sup>14</sup> The Targeted Support Budget includes: human resource development; the preservation of culture under *Taoga Niue*; tourism and marketing; education; technical assistance; airline marketing; asset maintenance; and other initiatives.

The non-recurrent aid funding (bilateral) received from New Zealand and elsewhere and allocated to agencies for a specified and one-off project, but not covered in Niue's normal daily operations, is not disclosed.

The Treasury Department has overall responsibility and oversight of expenditure. It is also the Department that ensures internal control systems are in place to provide reliable and accurate information on financial reporting. Treasury provides monthly reports to each Department providing updated information on expenditure levels and controlling spending.

The Niue Consumer Tax was introduced in 2007, with significant impact on the purchasing power of the local people, impacting on low income earners and pensioners.

The *Tau Tala Niue* (TTN) Bulletin of May 2009 revealed the terms of trade for Niue for the years 2005-2009. The value of imports from New Zealand continues to increase – from \$4.8 million in 2006 to \$8.9 million in 2007 and \$10.48 million in 2008. While significantly lower, Niue's exports are increasing rapidly. In 2005, Niue's export of \$0.2 million increased by 528% to \$1.8 million in 2006, followed by 116% to \$3.8 million in 2007.

## Section 7:

### Principle 7 – Diligence

#### i) Exercise of proper diligence, care, and attention:

Since Niue's resource base is small, limited and fragile, it has relied heavily on foreign aid. The MossFon Report of Mossacca and Fonseca (2002) stated that a nation constrained by natural resources would naturally seek economic advancement through the development of a competitive services sector. Their lack of industrial capabilities and limited agricultural potential has led to investments in tourism, financial services and in some case, to telecommunications. Niue consequently turned to the financial sector as part of its investment strategies and inadvertently got caught in money laundering for which it was duly included on the list of the Financial Action Task Force (FATF). Niue has since committed to pursuing a range of reforms, including repealing its Offshore Banking Act, resulting in its de-listing from the FAFT's black list.

<sup>12</sup>Ibid.

<sup>13</sup>*Niue Constitution Act 1974* pt IV 56-58

<sup>14</sup>*Niue Star*, above n 11.



The *Tourist Act 1995* has also been amended to enable it to increase its scope of activities in line with the National Strategic Plan.

**ii) Always seeking to achieve high standards of public administration:**

Leaders in Niue and in particular, the Niue Public Service Commission, which is the employing authority of the Niue Public Service, are tasked under Article 68 (1) and (2) of the Constitution with the responsibility of overseeing and controlling its organisation and management, including responsibility for reviewing the efficiency and economy of all departments and offices of the executive government. Leadership on this front is provided by Heads of Departments and led by the Secretary to Government. Depopulation also poses a different challenge for the public service. Human resource development has received assistance from NZAID (annual budget of \$320,000 over 2-3 years) and AusAID, along with other training programs from other development partners.

## Section 8:

### Principle 8 – National Peace and Security

**i) Promotion of peace, security and harmony;**

In Section 6 of the *Constitution Act 1974*, under the heading ‘External Affairs and Defence’, New Zealand is responsible for the external affairs and defence of Niue. New Zealand is also responsible for providing ongoing and necessary economic and administrative assistance. Since this Act came into force, New Zealand has honoured its legal commitments, although improvement in efficiently releasing funds in a timely manner has been identified by Niue leadership as being important to implement its strategic developmental aims. Additional aid assistance has also been sought from China, which has invited criticism from Niue’s traditional partner.<sup>15</sup>

In readiness for potential disasters, a Natural Disaster Committee has been setup. In times of disasters, the Committee is tasked to ensure systems put in place minimise damage and loss of life. Similarly, Government departments such as the Health Department have systems set in place to handle threats such as the Avian Flu and diseases like HIV/AIDS. Important legislation enacted by Niue which promotes peace, security and harmony includes the following:

*Arms Act 1975, Atomic Energy Act 1945, Aviation Crimes Act 1973, Crime Against Internationally Protected Persons and Hostages Act 1984, Environment Act 2003, Fugitive Offenders Act 1881, Land Act 1969, Mutual Assistance in Criminal Matters Act 1998, National Disaster Relief Fund Act 1980, Public Emergency Act 1979, Race Relations Act 1972, Terrorism Suppressions and Transnational Crimes Act 2006, United Nations Act 1946, Village Councils Act 1967, and Visiting Forces Act 1939.*

Support to regional peace and security is part of Niue’s growing contribution. Niue is an active participant in the Regional Assistance Mission to Solomon Islands (RAMSI) and is a signatory to several important international agreements and conventions promoting peace and security, including membership in the Weather Meteorology Organisation (WMO) which combats climate change.

**ii) Refusal to give or obey an illegal order to use force against another citizen:**

There has been no report on Niuean leaders using force against another citizen.

<sup>15</sup>Radio New Zealand International, 14 December 2007.



### Principle 9 – Respect for Office

- i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable;

Part V (1-3) of the *Niue Act 1966* requires Cabinet to ensure adequate provision of health, education and other social services, and economic and cultural welfare to ensure a reasonable standard of living for its citizens. The current Premier has instituted a dialogue forum amongst public servants, private sector and civil societies where participants are informed on developments in Government and where ideas and concerns are shared, amongst other matters, on the Niue National Strategic Plan. Other special interest forums such the Chamber of Commerce, actively engage and pursue its activities in the community, including support to achieving the goals of the Niue Private Sector Development Strategic Plan (NPSDSP) for 2007 to 2010.

- ii) Seek to strengthen the integrity of a leader's Office and its effectiveness:

Subsequent to the enactment of the *Niue Constitution 1974*, most of the nation's laws have not been reviewed to keep up with the changes over time. Work has now begun to accomplish this task. The Government of Niue's Crown Law Office has a Niue Legislative Review Project underway. This project aims to promote good governance that would lead to strengthening the integrity of Niue's leaders' offices and their effectiveness, through an appropriate review of the laws applicable in Niue. Some progress towards this has already been made with the introduction of the *Public Service Regulations of 2004*.



## BIBLIOGRAPHY

### 1. Articles/Books/Reports

Commonwealth Ombudsman, Complaint Department of Economic Development, Planning and Statistics, Government of Niue, *Niue Integrated Strategic Plan 2003-2008* (2003)

Government of Niue, *Niue National Strategic Plan, 2009 – 2013* (2008)

*Hume Report* (2004)

Ntummy, M N, *South Pacific Islands Legal Systems* (1993)

Terry, James P and Murray, Warwick E, *Niue Island, Geographical Perspectives on the Rock of Polynesia* (2004)

### 2. Legislation

*Adoption Act 1957* (Niue)

*Arbitration Act 1908* (Niue)

*Arms Act 1975* (Niue)

*Atomic Energy Act 1945* (Niue)

*Aviation Crimes Act 1973* (Niue)

*Child Allowance Act 1995* (Niue)

*Citizenship Act 1997* (Niue)

*Civil List Act 1999* (Niue)

*Commissions of Inquiry Act 1968* (Niue)

*Constitution Amendment (No. 1) Act 1992* (Niue)

*Crime against Internationally Protected Persons and Hostages Act 1984* (Niue)

*Crown Proceedings Act 1950*

*Domestic Fishing Act 1995* (Niue)

*Education Act 1989* (Niue)

*Environment Act 2003* (Niue)

*Fugitive Offenders Act 1881* (Niue)

*Guardianship Act 1968* (Niue)

*Interpretation Act 2004* (Niue)

*Land Act 1969* (Niue)

*Legislation (Correction of Errors and Minor Amendments) Act 2004*

*Minor's Contract Act 1969* (Niue)

*Mutual Assistance in Criminal Matters Act 1998* (Niue)

*National Disaster Relief Fund Act 1980* (Niue)

*Niue Constitution Act 1974* (Niue)

*Niue Constitution Act 1978* (Niue)

*Niue Act 1966* (Niue)

*Niue Amendment Act 1968* (No. 2)

*Niue Assembly Standing Orders*

*Niue Births and Deaths Regulations 1984*

*Niue Constitution Act 1974* (NZ)

*Niue Cultural Act 1986* (Niue)

*Niue Laws 2006 vol 4.*

*Niue Public Revenues Act 1959*

*Public Emergency Act 1979* (Niue)

*Public Revenues Act 1959* (Niue)

*Public Service Regulations 2004* (Niue)

*Race Relations Act 1972* (Niue)

*Reprint of Statutes Act 1991* (Niue)

*Terrorism Suppressions and Transnational Crimes Act 2006* (Niue)

*Tourist Act 1995* (Niue)

*Trusts Act 1994* (Niue)

*United Nations Act 1946* (Niue)

*Village Councils Act 1967* (Niue)

*Visiting Forces Act 1939* (Niue)

### 3. Treaties

*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990)

*Kyoto Protocol*, opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005)

*United Nations Human Rights Convention*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

### 4. Other Sources

Chapman, Terry and Enetama, M, *Taoga Niue* (2008)

Government of Niue, 'Tau Tala Niue' TTN#04 <<http://www.gov.nu/Documents/TTN0437.pdf>> at 1 November 2008

Government of Niue, 'Tau Tala Niue' TTN#04 <<http://www.gov.nu/Documents/TTN04-0972.pdf>> at 10 April 2009

*Niue Star* (Auckland), vol 157, 15 February 2008

*Niue Star* (Auckland), vol 158, 7 March 2008

*Niue Star* (Auckland), vol 159

*Niue Star* (Auckland), vol 162, 16 May 2008

*Niue Star* (Auckland), vol 163, 30 May 2008

*Niue Star* (Auckland), vol 164, 20 June 2008, 14

*Niue Star* (Auckland), vol 165, 11 July 2008, 7, 12

*Niue Star* (Auckland), vol 168, 12 September 2008

*Niue Star* (Auckland), vol 172, 5 December 2008

Radio New Zealand International, 14 December 2007

Radio New Zealand International, 1 July 2008

Statistics New Zealand, 'Niuean' <<http://www.stats.govt.nz/~media/Statistics/Publications/Census/2001-Census-reports/Pacific-peoples/2001-census-pacific-profiles-niuean.ashx>> at 20 December 2008

Talagi, P, *Pilon Annual Meeting 5-9 December 2008: Niue Country Report* (2008) <[http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/PILON+Niue+country+report++December+2008.PDF/\\$file/PILON+Niue+country+report++December+2008.PDF](http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/PILON+Niue+country+report++December+2008.PDF/$file/PILON+Niue+country+report++December+2008.PDF)> at 15 February 2009

