



## **NAURU COUNTRY REPORT**

**37<sup>th</sup> PILON Annual Meeting**

**Rarotonga, Cook Islands**

**8<sup>th</sup> – 11<sup>th</sup> October, 2018**

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# PILON COUNTRY REPORT – NAURU

## 1. Major Law and justice sector achievements.

The law and justice sector in the Republic of Nauru comes under the Department of Justice and Border Control (DJBC). The Department is headed by the Secretary for Justice and Border Control. Under the office of the Secretary are the offices of the Solicitor-General, the Director of Public Prosecutions and the Director/Public Legal Defender.

The achievements below are the results of the hard work put in by officers in the offices stated above.

### 1.1 *Nauru Court of Appeal.*

Until May, 2018 Final Judgments or Orders of the Supreme Court of Nauru in any cause or matter, but not from a criminal proceeding or an appeal from any other Court or Tribunal, were appealable to the High Court of Australia. However, by the *Nauru Court of Appeal Act 2018*, the Republic of Nauru established its own court of appeal and designated it as the Nauru Court of Appeal. This Act was certified on and effective from 10 May, 2018. The Nauru Court of Appeal became, and is now, the highest appellate Court in the Republic of Nauru.

The establishment of the Nauru Court of Appeal should enable and facilitate appeals from the Supreme Court of Nauru against judgments and orders made in that Court in its original or appellate jurisdictions. The appellate court should enhance opportunities for Nauruan citizens and residents to access justice to a higher appellate court on civil and criminal causes or matters at affordable cost.

### 1.2 *New Legislations for the establishments of the Courts in Nauru.*

New legislations were prepared and enacted to establish courts in the Republic of Nauru. Courts were in existence when these new legislations were enacted. The Courts in the Republic of Nauru which existed when these new legislations were enacted were the District Court, the Supreme Court and the High Court of Australia. The Family Court was part of the District Court.

The existing District Court was established by the *Nauru Courts Act 1972*. The existing Supreme Court was established by Article 48 of the *Constitution* of the Republic of Nauru in conjunction with the *Courts Act 1972*. The District Court and the Supreme Court were therefore established and regulated by a single legislation – the *Nauru Courts Act 1972*.

The High Court of Australia was made the final appellate Court for the Republic of Nauru by the *Appeals Act 1972*, the *Nauru (High Court Appeals) Act 1976* and Article 1 of an *Agreement* between the Government of Australia and the Government of Nauru.

To facilitate easy access to justice and to facilitate easy and simple reading and understanding of the laws relative to the Courts of the Republic of Nauru, the *District Court Act 2018*, the *Supreme Court Act 2018* and the *Nauru Court of Appeal Act 2018* were enacted.

The *District Court Act 2018* is for the constitution of the District Court and it provides for the appointment of magistrates and other officers of the District Court. It also provides for the regulation of the magistrates' and court officers' duties and jurisdiction and for other related purposes.

The *Supreme Court Act 2018* is for the continued existence of the Supreme Court as established under Article 48 of the Constitution of the Republic of Nauru and for related purposes.

The *Nauru Court of Appeal Act 2018* establishes the Nauru Court of Appeal and provides for related purposes. The Nauru Court of Appeal replaces the High Court of Australia as the highest appellate court in the Republic of Nauru.

### **1.3 *Bail Act 2018.***

This legislation was also enacted to facilitate easier reading of provisions for bail and the applications of those provisions for the purposes of bail for persons charged with criminal offences and are remanded in custody. Prior to the enactment of this Act, applications for bail in the Republic of Nauru were made under relevant provisions of the *Criminal Procedure Act 1972* and under applicable principles of common law.

### **1.4 *Other Legislations.***

The Office of the Solicitor-General at the DJBC, by its Legal Drafting team, has drafted new legislations in the twelve months since the last PILON annual meeting in October, 2017. In addition to the *Supreme Court Act 2018*, the *District Court Act 2018* and the *Nauru Court of Appeal Act 2018*, thirteen (13) other new legislations were drafted and later enacted. These new legislations were prepared to meet the demand of circumstances and government policies pertaining to the Republic of Nauru.

The list of these new legislations is as follows:

1. Ozone Layer Protection Act 2017
2. Funeral Burial and Cremation Act 2017
3. Dog Management and Control Act 2017
4. Naoero Roads Act 2017
5. Limitation Act 2017
6. Births Deaths and Marriages Registration Act 2017
7. Naoero Citizenship Act 2017
8. Naoero National Anthem Emblem and Flag Protection Act 2018
9. Drones Act 2018
10. Administration of Justice Act 2018
11. Cenpac Corporation Act 2018
12. Communications and Broadcasting Act 2018
13. Shipping (Registration of Foreign Vessels) Act 2018.

Note: There was no *Limitation Act* in the Republic of Nauru until the *Limitation Act 2017* was prepared and enacted. Prior to this enactment, the Courts in Nauru were referring to the *Limitation Act 1939* (UK).

### ***1.5 Department of the Year Award.***

The DJBC of the Republic of Nauru won the Department of the Year Award again in 2018. This is the fourth consecutive year in which the DJBC has won this Award.

## **2. Significant Court Decisions.**

Officers of the Solicitor-General's Office and the DPP's Office represent the Republic of Nauru in the Nauru Courts. Officers of the Public Legal Defender's Office make Court appearances on behalf of citizens and residents of the Republic.

### ***2.1 Land Appeal No. 136 of 2015, Henry Kingrae v Nauru Lands Committee & Others.***

The Nauru Lands Committee (NLC) is charged with the duty of identifying the assets in a deceased Nauruan's real and personal estates, of determining the beneficiaries of the assets and the distribution of those assets to the proper beneficiaries. In this case, the Committee, after identifying the assets and determining the beneficiaries, then distributed the deceased's assets to those whom the Committee had determined to be lawful and proper beneficiaries.

The Appellant made an application to appeal out of time against the distribution of a deceased's person's estate. The distribution of the assets of the estate was done in 1983. The Appellant's application was made in 2015. It has been 32 years since the distribution of the estate. The Appellant appealed to the Supreme Court with the objective of having the Committee revisit its decision made in 1983.

The Supreme Court of Nauru decided that the original character of the land had changed with the passage of time and that the death of earlier beneficiaries had complicated matters. If the Committee were to revisit the determination and distribution of assets made in 1983 significant prejudice would be caused to the beneficiaries of the earlier estate/s. The Court also decided that the Committee was *functus officio* in relation to those determinations.

This decision effectively limited the time of appealing and the extent of an appeal against determinations of the Nauru Lands Committee.

## **2.2 *Civil Action No 108 of 2015, Monmay Detebene v Ina Scotty and Geoffrey Giouba.***

The issue in this case was the "ownership" of a certain dwelling-house in Nauru which was built by the government through a housing scheme. The plaintiff and the defendant both claimed ownership of the dwelling house. The dwelling-house was situated on a piece of land owned by the plaintiff and her siblings. The defendants were occupiers of the dwelling-house and claim that they enjoyed ownership because the land was gifted to them by a previous landowner.

The Supreme Court of Nauru decided that:

- The land on which the dwelling-house was situated was owned by the plaintiff and her co-landowners.
- The dwelling-house which was situated on the plaintiff's land was owned by the Government of Nauru.

In some circumstances a landowner on Nauru is not necessarily the owner of a house built on his land.

## **3. PILON strategic priorities.**

The citizens, the Police Force and the office of the DPP in Nauru are working together in the reporting, policing and prosecution of persons involved in cybercrime activities.

### 3.1 *Cybercrime.*

The Republic of Nauru enacted its *Cybercrime Act* in 2015. The *Act* was certified on 12 May, 2015. It became law on that date.

Two persons were charged under the *Cybercrime Act 2015* in 2016 and 2017 respectively. Both persons were juveniles and were charged for publishing or transmitting or causing to be published in electronic form material or information which is lascivious or appeals to the prurient interest of people. Both persons were convicted and sentenced.

A third person, also a juvenile, was charged, in 2018, under the Nauru *Crimes Act 2016* for taking lewd images by a phone camera and transmitting the images electronically. The charge was not laid under the *Cybercrime Act 2015*.

These cases show that the citizens of the Republic, the Nauru Police Force and the office of the Director of Public Prosecutions are working closely together in the investigation and prosecution of persons reported to be involved in cybercrime activities.

### 3.2 *Sexual and Gender-based Violence.*

The DPP's Office in the Republic of Nauru is a member of the PILON Sexual and Gender-based Violence Working Group. The Group developed a set of principles which was and is collectively known as '**General Principles for Obtaining the Best Evidence from Vulnerable Witnesses to Sexual and Gender Based Violence Offences**' (the General Principles). The General Principles identify broad concepts that underpin best practice policies and procedures for protecting the interests of vulnerable witnesses of SGBV offences during criminal proceedings. Nauru was actively involved in the discussions and contributions to the guideline. These General Principles had been presented to PILON at the 2017 Meeting in Majuro.

The DPP's Office in Nauru has also been involved in continuous discussions on matters pertaining to Sexual and Gender Based Violence (SGBV). These matters include forward work planning by the PILON SGBV Working Group, surveys to identify appropriate training needs and child abuse offences review.

The Republic of Nauru agrees that SGBV should continue to be a strategic priority for PILON for the life of the 2019–2021 strategic plan.

**4. Significant issues affecting the law and justice sector, and options to address these issues.**

*No local lawyers in the Justice and Border Control Department:*

No Nauruan lawyer was employed at the DJBC from October, 2017 to July, 2018. Three Pleaders work in the Department. Two of these three Pleaders work at the Solicitor-General's Office and one at the Public Legal Defender's Office.

Pleaders are persons who have undertaken training to do legal work and to represent Nauruans in Court in the Republic of Nauru. They are not qualified lawyers.

A number of Pleaders were trained by the Department of Justice and these Pleaders graduated in 2016. The New Zealand funded this training. A second group of new pleaders is currently being trained as part of capacity building. These new Pleaders are intended to also act as legal representatives and advisers to Nauruans in Nauru in place of qualified lawyers.

Currently, all lawyers at the DJBC in Nauru are expatriates.

**5. Significant initiatives/projects involving the member country and its law and justice sector.**

**5.1 *Nauru Pleaders Course 2018/2019:***

The Government of Nauru approved, in March 2018, the undertaking of a Nauru Pleaders Course for 2018/2019. After Cabinet's approval formal rules for the Pleaders Course were made and designated as *Legal Pleaders (Training and Examination) Rules 2016* (the Rules). The Rules were made under Section 57 of the *Nauru Legal Practitioners Act 1973*. The Rules came into effect on 30 June, 2018.

The duration of the Pleaders Course is twelve (12) months commencing in April, 2018. The trainees are employees of the government of Nauru and of other entities in the Republic.



The instructors are judges, magistrate and lawyers in the Republic of Nauru. These instructors are to teach eleven (11) areas of law. Each area of law is a Unit and there are 11 Units altogether. The Units to be taught to the group of new pleaders are:

1. Introduction to Law.
2. Constitutional and Administrative Law.
3. Criminal Law and Procedure.
4. Contracts.
5. Land Law.
6. Torts.
7. Equity, trusts, Wills and Succession.
8. Family Law.
9. Ethics.
10. Evidence.
11. Civil Procedure and Practice.

It is hoped that at the end of the Course, participants who qualify will be admitted under the Nauru *Legal Practitioner's Act 1973* as Pleadings of the Supreme Court of Nauru.

## **5.2 *Anti-corruption Workshop:***

A two-day National Workshop on the United Nations Convention against Corruption (UNCAC) was held on Nauru from 12<sup>th</sup> to 13<sup>th</sup> March, 2018. The Workshop was organized jointly by the Department of Justice of the Republic of Nauru and the United Nations Pacific Regional Anti-Corruption office. Funding though was provided by the United Nations Pacific Regional Anti-Corruption office.

The object of the Workshop was to engage with national and non-State actors and to bring them up to par with the global conversation on anti-corruption. The object was also to discuss priorities and the next steps to be taken, at national level, in the progress of the anti-corruption agenda under the United Nations Convention Against Corruption.

## **6. Technical legal assistance**

There has always been significant technical legal assistance from either regional and international development partners or the Government of Australia in Nauru. Recently there is an increased

involvement of DJBC as a check and balance mechanism. The involvement of DJBC occurs for numerous reasons, but primarily it is in the area of context, applicability, legality and enforcement.

The latest technical legal assistance provided to the DJBC in Nauru came from a Drugs Forensic Team of the Fiji Police Forensic Science Services. The assistance was in the form of a session of training for lawyers and other personnel of the DJBC about illicit and new synthetic drugs. The training was particularly about processes of testing specimens to determine whether such specimens test positive as drugs known to the Fiji Drugs Forensic Services.

## 7. Contact information for key law and justice agencies.

Name of Agency	Contact person and position	Contact phone number and email
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