



PILON COUNTRY REPORT TEMPLATE

Please return this completed report to the PILON Secretariat (coordinator@pilonsec.org) by no later than **cob Friday 16th October 2020**, to facilitate timely circulation to PILON members prior to the meeting. Please advise if you do not wish your Country Report to be made available on the PILON website.

COUNTRY REPORT PRESENTATION:

*PILON 2020 will be much shorter than previous years due to the constraints of meeting through a virtual platform. As the country report presentations are typically allocated 3 hours of meeting time, it will be a challenge to hear directly from each PILON member country. The Secretariat welcomes oral updates to the meeting this year on an opt-in basis. **Please advise the PILON Secretariat by 11 September 2020 if you wish to present a short update, so that we can allocate time on the agenda.***

The time for presentation will be strictly limited to **five (5) minutes** and we ask that the focus be on **one key law and justice achievement** that is relevant to **one** of the PILON Strategic priorities; Sexual and Gender Based Violence, Cybercrime, Corruption or you may choose to discuss the COVID-19 Pandemic experience from a law and justice perspective, including its impacts on any one of the PILON strategic priorities.

COVID – 19

Since the outbreak of the COVID-19 crisis, national governments have taken measures to address and mitigate the adverse systemic impact of the pandemic on all aspects of our lives. In particular, PILON members are now engaged in efforts to provide clarity to governments on the application of legal frameworks and measures to support a significant number of policy challenges on this pandemic, at both the national and international levels.

A key law and justice achievement could include a report on any recent legal reform, a review or introduction of important legislation or accession to a new international treaty, *or* efforts taken during the pandemic operations with your respective governments.

Niue's response to COVID 19 at this stage has been to treat the COVID pandemic as a public health issue and therefore subject to the Public Health Act 1965. This has been due to the fact that COVID 19 has not reached our shores. However this does not mean that strict border controls and mandatory quarantine measure were not implemented, the Public Health Act 1965 already had a number of broad powers that allows the Director Health to undertake the actions

and measures necessary to protect the Niuean public. The Director is advised by the Niue Health Medical team and the Niue Disaster Management Committee.

The Crown Law Office was involved and assisted with the drafting of notices and orders required to establish the particular mandatory isolation/quarantine stations.

Draft Regulations have been prepared should the Niue Cabinet opt to declare a state of emergency and the COVID 19 Act 2020 of the Cook Islands has been used as a template resulting in a draft COVID 19 Bill, which is awaiting direction from Government as to whether or not it wishes to enact such legislation.

It is not necessary to prepare a written presentation for this update.

COUNTRY REPORT WRITTEN SUBMISSION:

The Country Report written submission should be limited to 10-15 pages and include the following titles:

1. Major law and justice sector achievements

Unfortunately none since our last report.

[Countries are encouraged to report on recent developments and achievements in the law and justice sector (e.g. establishment of a new court).]

2. Significant court decisions

None during the period, noting that the Niue High Court has reduced the number of court sittings due to the COVID 19 travel restrictions.

[Countries are encouraged to report on recent court decisions which may be of interest to members.]

3. PILON strategic priorities

[Countries are encouraged to provide an update in relation to the three PILON strategic priorities, on relevant domestic developments (introduction or amendment of legislation, significant court decisions, policies or practices introduced, institutions established), challenges faced, or other observations.]

[Please indicate whether any PILON activities or resources (listed below) are relevant for your jurisdiction and whether they have been used, or are intended to be implemented in the future and what further support might be needed.]

- (a) **Cybercrime:** Unfortunately no developments since our last PILON Report. The peer review of our current draft Cybercrime Bill has been submitted to us by the Australian Attorney Generals Office.

Those comments are now under review and discussion with relevant Departments and officials here, and if policy authorisation required, to be endorsed by Cabinet. The

provisions requiring amendment will be submitted to PCO to draft the appropriate amendments.

- (b) **Corruption:** Unfortunately no developments since our last PILON Report.

However the new Government has indicated that they would be interested in a Bill to address issues of the pecuniary interests of Members of Parliament in relation to Government Contracts. Many MP's operate businesses that usually rely on Government for most or a large part of their business revenue.

- (c) **Sexual and Gender-Based Violence:** The Family Law Bill was not tabled in the Niue Assembly (Parliament) prior to its dissolution in April 2020. The Bill has to be resubmitted to the new Government for its endorsement.

The new Chief of Police has identified and raised a number of issues pertaining to police related/ domestic violence aspects in the Bill, which are now undergoing review with relevant Departments and officials and will require that amendments to the current draft be made.

As the Family Law Bill proposes to establish the age of majority at 18, there are concerns in relation to adolescent or young offenders that will be addressed in this latest review.

4. Significant issues (including COVID-19) impacting the law and justice sector, and options to address these issues

The Crown Law Office staff numbers have reduced again, currently the office is only staffed by 2 lawyers, namely our new Solicitor General Justin Kamupala and Assistant Crown Counsel Aldric Hipa.

The former Solicitor General Peleni Talagi has been appointed to the position of Secretary to the Government, Crown Counsel Jiutasa Vosikata has returned to Fiji and Assistant Crown Counsel Lilivaine Tukutama returned to New Zealand.

Unfortunately no legislations were enacted over the period however the following regulations were enacted within the period of our last report till now.

Tobacco Control Regulations 2020	To require the licensing and regulation of certain activities pertaining to the import and sale of Tobacco products on Niue and to establish certain requirements for determining the compound ingredients found within Tobacco products.
Departure Tax Regulations 2020	Increase of departure tax from \$80.00 to \$150.00 effective 01 July 2020
Customs Import Prohibition (Plastic Shopping Bags) Order 2020	To prohibit the importation of single use plastic shopping bags into Niue.
Public Health Notifiable Diseases Notice 2020	To formally recognise that Ebola and COVID 19 as notifiable diseases. Which allows the broad isolation provisions under the Public Health Act 1965 to be applied.

Moana Mahu Marine Protected Area Regulations 2020	To establish the large scale marine protected area and Beveridge reef special marine protected area for Niue. This protected area encompasses 40% of Niue’s EEZ and creates a special marine protected area surrounding and encompassing an offshore reef more commonly known as Beveridge Reef which is located south east of Niue.
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However considerable work was undertaken in relation to a number of Bills but unfortunately for a myriad of reasons (General election, COVID 19, Limited staff, unresponsive Departments, limited policy directions and need for more detail etc.) progress is slow. The following table highlights the current pending Bills Program.

Legislation	<p>Family Law Bill 2020</p> <p>The current Family Law Bill 2020 draft is a culmination of work that was commenced in 2007 with the codification of family law related provisions into the family law code. Of note the Bill endeavours to make the following amendments to the law relating to families:</p> <ul style="list-style-type: none"> a. to consolidate and simplify the law relating to marriage, and to provide for no-fault divorce; and b. the recognition of de facto relationships; and c. a default position of a 50:50 division of assets when a marriage or de facto relationship ends; and d. various forms of financial support to spouses and partners; e. to confirm that the best interests of the child are the paramount consideration in all matters relating to parenting and the care and protection of children: f. to confirm the responsibilities of parents to their children, and to update the law relating to adoption and guardianship: g. to provide the Director-General of Social Services with powers to arrange for the care of children in need of care and protection: h. to provide a mechanism for the ongoing care of elderly parents whose children do not provide the care and support they need: i. to provide effective mechanisms to protect the victims of domestic violence. <p>A potential controversial issue is that the Bill proposes to incorporate the Adoption regime into the Family law as opposed to the current situation where adoptions are incorporated into the Niue Amendment Act (No2) 1968 which deals primarily with Land.</p> <p>It is maintained that Adoptions or rights of Adopted persons in relation to Niuean Land will not be affected by incorporating these provisions into the family law regime. Adopted Niuean children will still be required to get their rights to Niuean land recognised in the Land jurisdiction akin to natural born children.</p>
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		As noted certain provisions within the latest draft of the Bill are currently being reviewed further, with an intention to be amended.
	Maritime Safety Bill 2020	<p>This Maritime Safety Bill 2020 proposes establish a regime to regulate maritime activities within the Territorial waters and EEZ of Niue.</p> <p>The Bill is being drafted by a NZ maritime law Firm Izard Western being funded by a regional maritime initiative of which NZ is the primary donor.</p> <p>There is a second aspect of this work the other being the drafting of a Bill that will ratify all the international Conventions that Niue is required to be in compliance with.</p>
	Niue Civil Aviation Reform Bill 2020	<p>The Niue Civil Aviation Reform Bill 2020 proposes to consolidate and reform the laws relating to civil aviation and civil aviation offences within and outside Niue;</p> <p>to provide for the powers and functions of the Cabinet, the Minister and the Director in relation to the enablement and regulation of civil aviation to, from and within Niue;</p> <p>to provide for a regulatory and control framework for maintaining and enhancing the safety and security of civil aviation in Niue,</p> <p>to promote and adopt the safety and security standards of certain international aviation agreements to the extent consistent with the distinctive culture, circumstances and requirements of Niue; and</p> <p>to provide for incidental matters relevant to civil aviation.</p> <p>A proposed development for this Act for Cabinet determination is in regard to the possible criminalisation of certain acts, actions or lack thereof by the Directors of Companies. This is a relatively recent trend to widen the potential pool of culpable offenders in order to bring about higher standards of safety and practice.</p> <p>The Bill is being drafted by a NZ Aviation Lawyer who has substantial experience in this field of law. The 2nd draft of the Bill is currently being worked on.</p>
	Pension and Benefits Act 1991	<p>Proposed review and amendment of the Pension and Benefits Act 1991 in order to consolidate all previous amendments to the Act which have been a number and to provide more clarity in terms of residency and eligibility criteria for a pension or benefit.</p> <p>It is being proposed that a new Pensions and Benefits Act will emerge from the consolidation of all previous amendments.</p>

	Niue Assembly Act 1966	<p>Prior to the recent General Election it was proposed to review the Niue Assembly Act 1966 with a view to amend the Act to achieve more clarity in terms of the eligibility of some electors and to review the prescribed deposits for the nomination of candidates.</p> <p>Unfortunately due to the proximity of the date of the General Election and adverse inference that could have been derived from a possible amendment to the electoral Act at this late stage the review was deferred to be revisited in the term of the New Government.</p>
	Cybercrime Bill	<p>The latest Cybercrime Bill was initially drafted with the assistance of the New Zealand Parliamentary Counsels Office in 2016. Unfortunately the Bill has not progressed to a stage where it is ready to be submitted to the Niue Assembly.</p> <p>Recently with increased regional efforts to strengthen national regulatory Cybercrime regimes, through organisations such as PILON (Pacific Island Law Officers Network), the Bill has been submitted to the Australian Attorney General’s Office for peer review, due to certain developments that have arisen since 2011 that need to be provided for in the Bill and whether or not it would be compliant with the provisions of the Budapest Convention which is the current international standard for mutual assistance and cooperation to combat cybercrime.</p> <p>A policy paper highlighting the proposed amendments to the draft Bill will be tabled for Cabinet consideration and endorsement in order to authorise the incorporation of the proposed amendments into the Bill.</p>
	Transport Act 1965	<p>Transport (infringement notices)Regulations 2020 initially drafted in 2019 to establish a regime for the issue of instant fines the Regulations have not been endorsed by Cabinet and will require further discussion with Niue Police to provide further clarity as to how the regulations will be enforced.</p> <p>The Transport Act 1965 has been mooted as being relatively dated and requires review for possible amendment to make the Act more relevant.</p>
	Niue Public Service Bill	<p>The Niue Public Service Bill drafted in 2015 proposes to establish principals to guide the implementation of the rules referred to in the Constitution which relate to the inter-relationship of Cabinet, the Niue Public Service Commission and the Public Service.</p> <p>The provisions of the proposed Bill remain relevant for the overall improvement to the machinery of Government.</p>
	Territorial Sea and Exclusive Economic	<p>The proposed Bill will make provisions to allow Niue to enter into mutual fisheries surveillance arrangements that may be entered into as a result of the Niue Treaty,</p>

	Zones Amendment Bill 2020	<p>and allow for extra-territorial application beyond the limits of Niue’s fisheries waters.</p> <p>The Niue Treaty was entered into by the PIF member countries to strengthen measures and mutual assistance for fisheries surveillance.</p> <p>The proposed amendments are viewed as an interim measure until the more comprehensive measures proposed for the Marine Living Resources Bill is completed and tabled in the Niue Assembly.</p> <p>Currently Niue remains the only country within the region that has not complied with these requirements under the Niue Treaty.</p> <p>The proposed amendment Bill is awaiting submission by the Department to Cabinet for final endorsement prior to introduction into the Niue Assembly.</p>
	Marine Living Resources Bill	<p>This Bill proposes to update the laws relating to fisheries and fishing activity within Niue’s waters.</p> <p>The drafting of this Bill has been undertaken by the Department of Agriculture, Forestry and Fisheries and FFA. To date CLO has had little involvement in the policy development or drafting.</p>
	Maritime Search and Rescue Bill	<p>It is understood the proposed Bill has been drafted to establish provisions and procedures for the conduct of search and rescue operations within Niue waters. CLO in discussion with Niue Police to determine the status of this Bill.</p>
	Mental Health Bill	<p>The current proposed Mental Health Bill was drafted with the assistance of Professor Tony Angelo in 2015. Unfortunately it has languished, the latest development was that the Bill was submitted to WHO for peer review. This was due to certain provisions within the Bill which advocated in limited circumstances where a patient may be treated without first acquiring the consent of the patient. Consent being set aside on the basis of the mental capacity of the patient, due to the patient being unable to make an appropriate decision pertaining to their welfare and wellbeing.</p>

[For example, this summary may cover issues including the impact of COVID-19, lack of skilled legal practitioners, lack of funding, lack of technical expertise, limited information sharing within the law and justice sector or political instability.]

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

No significant initiatives since our last report, however the new Government has indicated that they would like to amend our Constitution, currently 14 issues have been identified and mooted for amendment.

The CLO has been providing advice to the Constitution Review Committee on the process and what is required to amend the Niue Constitution. It is proposed that the Constitution amendment required referendum is to coincide with the Village Council Elections in September 2021.

[For example, hosting a workshop, conference, or program.]

6. Technical legal assistance

The New Zealand Parliamentary Counsels Office still provides essential drafting assistance to us for which we are very grateful.

Regional organisations also assist with providing resources to engage technical assistance for specific Bills such as the Civil Aviation Reform Bill and Maritime Safety Bill which are being drafted currently.

[Countries are encouraged to identify main law and justice training priorities or technical assistance needs, as well as any law and justice training or technical assistance that has been provided to the country in the last 12 months.]

7. Contact information for key law and justice agencies

[Including but not limited to: Attorney General’s Office, Ministry of Justice, Directors of Public Prosecutions, Crown Law Office, Courts, Law Reform Commission, People’s Lawyer, Office of Parliamentary Counsel, etc.]

Agency	Key responsibilities	Contact person and position	Phone number and email
Crown Law Office	All legal matters for Government	Justin Kamupala Solicitor General	Ph- (683) 4228 Justin.kamupala@mail.gov.nu
		Aldric Hipa Assistant Crown Counsel	Ph-(683) 4228 Aldric.Hipa@mail.gov.nu
Niue Police	Law and Order, Policing	Timothy Wilson Chief of Police	Ph- (683) 4333 Timothy.wilson@mail.gov.nu
Department of Justice, Lands and Community Services	Court Administration, Community Services	Darren Tohovaka Secretary to Justice	Ph- (683) 4127 or 4351 Darren.Tohovaka@mail.gov.nu