



## **PILON COUNTRY REPORT TEMPLATE**

*Please return this completed report to the PILON Secretariat ([coordinator@pilonsec.org](mailto:coordinator@pilonsec.org)) by no later than **cob Friday 16<sup>th</sup> October 2021**, 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:**

*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**

As no cases of COVID 19 have being identified in Niue at this stage, the Government continues to treat the COVID 19 pandemic as a public health issue and is therefore subject to the Public Health Act 1965.

Prior to the outbreak of the COVID 19 Delta variant in NZ, amendments to the Immigration Act 2011 had been undertaken to make provisions for the introduction of quarantine free travel (QFT) with NZ as per the Immigration Amendment Act 2021.

These amendments will facilitate QFT by imposing additional prerequisite conditions for passengers to Niue will be required to comply, to allow them to travel to Niue.

The major issue identified and addressed in these amendments was the suspension of the right of Niuean New Zealanders to return to Niue unhindered. The recent amendment will now require all travellers to comply with the specific requirements.

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

Draft Regulations have been prepared that provide further and more specific details but are being reviewed considering the recent COVID 19 Delta variant outbreak.

*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**

Cabinet endorsement of the reconsolidation of Niue Laws volumes 1-4 plus additional table of laws up to the 31 December 2019. The last reconsolidation of Niue Laws had been undertaken up to December 2006.

This significant piece of work was undertaken by Professor Tony Angelo, Victoria University, Law Faculty who is also the Constitutional Legal advisor for Niue.

*[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. However, the CLO is currently engaged in 2 civil matters of note (1 employment issue and 1 land matter) but due to the restrictions imposed by COVID 19, are both progressing slowly.

*[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 of the Aust AG’s office are still under review and discussion with relevant Departments and officials, and if policy authorisation required, to be endorsed by Cabinet.

- (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. Unfortunately, this work has not progressed during the last 12 months

- (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 must be resubmitted to the new Government for its endorsement which will not occur until the latest review and comments on the Bill have been completed.

The Chief of Police has identified and raised several issues pertaining to police related/ domestic violence aspects in the Bill, which are still undergoing review with relevant Departments and officials and will require that amendments to the current Bill.

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

The Crown Law Office is only staffed by 2 lawyers, namely the Solicitor General Justin Kamupala and Assistant Crown Counsel Aldric Hipa, and Office Manager Cassandra Motufoou.

The following legislations were enacted over the relevant period.

Legislation		
<b>The Prohibition of Nuclear Weapons Act 2021.</b>  Ko e Fakatufono-Tohi ke lata mo e Fakatapuina he tau kanavaakau Nukilia 2021	National ratification of Niue’s accession to the Treaty on the Prohibition of Nuclear Weapons.	17 March 2021
<b>Anti-Personnel Mines and Cluster Munitions Prohibition Act 2021.</b>  Ko e Fakatufono-Tohi ke lata mo e Fakatapuina he tau Kanavaakau	National ratification of Niue’s accession to the Treaty on the prohibition of Anti-Personnel Mines and Cluster Munitions.	17 March 2021

Pomu Tanu mo e tau Kanavaakau Pomu Gagana		
<b>Niue Philatelic and Numismatic and Amendment Act 2021</b>	To amend the Niue Philatelic and Numismatic Amendment Act 1996 to require that the Board of the Corporation is amended to now include the Premier who will also be the Chairperson for the Board.  The Corporation will also be required to report and seek to have its annual estimate of expenditure approved by the Niue Assembly.	28 April 2021
<b>Supplementary Appropriation (Covid 19) Act 2021</b>  Fakatufono-Tohi ma e Fatifatiaga Tupe Lalafi ki Luga (Covid-19) 2021.	Supplementary allocation to make provision for additional funding amounting to <b>\$NZ8M</b> allocated by the New Zealand Government to assist with the additional costs and reduction in revenue expectations, arising because of the adverse impacts of Covid 19.	12 May 2021
<b>Annual Appropriation Act 2021</b>  Fakatufono-Tohi ma e Fatifatiaga Tupe 2021	Annual appropriation of Recurrent operational expenditure of <b>NZ\$33,512,000</b> and Investment and development projects of <b>NZ\$37,392,000</b> .	1 July 2021
<b>Seal of Niue Act 2021</b>  Fakatufono -Tohi ke lata mo e Fakamailoga Fakatufono Niue 2021	To formally recognise the new Seal of Niue and Coat of Arms	29 September 2021
<b>Immigration (Health Emergencies) Amendment Act 2021</b>  Fakatufono -Tohi ma e Ofisa fakamooli tagata Hau mo e Fano Fenoga (Tau Gagao Fakalutukia) kua fakahui 2021	To amend the Immigration Act 2011 to introduce provisions to enable the imposition of additional provisions that will assist with the implementation of quarantine free travel arrangements.	29 September 2021
<b>Maritime Safety Act 2021</b>  Fakatufono -Tohi ke lata mo e Moui Haohao he Tofia	To establish a regime to regulate maritime activities within the Territorial waters and EEZ of Niue.	29 September 2021
<b>Building Code Amendment Bill 2021</b>  Fakatufono -Tohi ke lata ma e tau fatifatiaga talaga fale	To amend the Building Code Act to allow for subsequent Building Codes to be adopted by Regulation, additional regulation powers and determine penalties for the breach of the provisions of the Building Code.	To be tabled to the Niue Assembly on the 3 November 2021.
<b>8 Acts enacted within the relevant reporting period</b>		

Subsidiary Legislation	Comments	Date Effective
Seal of Niue and Coat of Arms Regs 2021		30 September 2021
<b>Only 1 Regulation was enacted within the relevant reporting period</b>		

However considerable work was undertaken in relation to several Bills but unfortunately for a myriad of reasons (COVID 19, Limited staff, unresponsive Departments, limited policy directions and need for more detail etc.) remain uncompleted and progress is slow. The following table highlights the current pending Bills Program.

Legislation		
	<b>Family Law Bill 2020</b>	<p>The current <b>Family Law Bill 2020</b> 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> <ol style="list-style-type: none"> <li>a. to consolidate and simplify the law relating to marriage, and to provide for no-fault divorce; and</li> <li>b. the recognition of de facto relationships; and</li> <li>c. a default position of a 50:50 division of assets when a marriage or de facto relationship ends; and</li> <li>d. various forms of financial support to spouses and partners;</li> <li>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;</li> <li>f. to confirm the responsibilities of parents to their children, and to update the law relating to adoption and guardianship;</li> <li>g. to provide the Director-General of Social Services with powers to arrange for the care of children in need of care and protection;</li> <li>h. to provide a mechanism for the ongoing care of elderly parents whose children do not provide the care and support they need;</li> <li>i. to provide effective mechanisms to protect the victims of domestic violence.</li> </ol> <p>Work on the Bill has been postponed with key stakeholders and officials overseas and unable to return to Niue, due to COVID 19 travel restrictions.</p>
	<b>Health Practitioners Assurance Bill 2021</b>	The Bill is nearing completion, the bill proposes to introduce a regime that will allow for the registration of health practitioners and allow for the grant/issue of annual practicing certificates.
	<b>Niue Civil Aviation Reform Bill 2020</b>	The <b>Niue Civil Aviation Reform Bill 2020</b> proposes to consolidate and reform the laws relating to civil aviation and civil aviation offences within and outside Niue;

		<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 3rd draft of the Bill is currently being worked on and is nearing completion.</p>
	<b>Pension and Benefits Act 1991</b>	<p>Proposed review and amendment of the <b><u>Pension and Benefits Act 1991</u></b> 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>
	<b>Niue Assembly Act 1966</b>	<p>Prior to the recent General Election it was proposed to review the <b><u>Niue Assembly Act 1966</u></b> 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>
	<b>Cybercrime Bill</b>	<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</p>

		<p>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 <b>Budapest Convention</b> 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>
	<b>Niue Public Service Bill</b>	<p>The <b>Niue Public Service Bill</b> 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> <p>The Bill has been resubmitted to the Niue Public Service Commission for further discussion and clarification.</p>
	<b>Territorial Sea and Exclusive Economic Zones Amendment Bill 2020</b>	<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, and allow for extra-territorial application beyond the limits of Niue's fisheries waters.</p> <p>The <b>Niue Treaty</b> 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 <b>Marine Living Resources Bill</b> 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>
	<b>Marine Living Resources Bill</b>	<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>

	<b>Maritime Search and Rescue Bill</b>	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.
	<b>Mental Health Bill</b>	<p>The current proposed Mental Health Bill was drafted with the assistance of Professor Tony Angelo in 2015.</p> <p>Unfortunately, the Bill 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.</p> <p>It is proposed that consent may be required to be set aside in limited circumstances on the basis of the mental capacity of the patient, and the need to treat the patient who due to their mental capacity may be unable to make an appropriate or informed decision pertaining to their welfare and wellbeing.</p>

<b>Subsidiary Legislation</b>		
	<b>Draft Immigration (COVID 19) Regulations</b>	To provide detail as to the specific prerequisite requirements that travellers to Niue must comply when quarantine free travel arrangements with NZ will be established.
	<b>Draft Building Code Regulations</b>	To formally recognise the Building Code 2020 as the current Building Code for Niue and impose additional requirements pertaining to the location of septic tanks in proximity to residential accommodation and section boundaries.
	<b>Draft Vaping Regulations</b>	To provide further detail for the control of the importation, sale and use of vaping (Electronic Nicotine Delivery Devices and Non Nicotine Delivery Devices) devices in Niue which has become quite popular for young adults and youth on Niue recently.

*[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**

The CLO has been providing advice to the Constitution Review Committee on the process and what is required to amend the Niue Constitution. Following a call for and receipt of public submissions the CRC has tabled a report to the Niue Assembly recommending a short list of provisions to be amended and is awaiting the determination of the Niue Assembly as to the provisions that the Niue Assembly agrees to amend before proceeding with its work.



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

## 6. Technical legal assistance

The New Zealand Parliamentary Counsels Office continues to provide essential drafting assistance to the CLO, 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 Act 2021 which was enacted recently.

*[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.]*

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