

Pacific Island Legal Officers Network; 12th – 16th November 2009,
Samoa.

Country Report

Niue

Introduction

This report shall endeavor to focus on the recent developments relevant to this meeting that have occurred in Niue over the last year.

Crown Law Office

Primarily the responsibility of providing all legal advice to the Government is the Crown Law Office. However due to the limited number of legally qualified practitioners it is not unusual for a pooling of capacities from other Government Departments if the situation requires.

The Crown Law Office is a division within the Premier's Department and comprises of Ms. Peleni Talagi, Solicitor General, Ms. Toepenina Hekau Crown Counsel and Mrs. Vailita Pihigia, Receptionist/Office Manager. Currently Ms. Talagi is overseas undertaking a Masters degree in Malta and is due to return to Niue in May 2010. Crown Counsel Sinahemana Hekau is undertaking a one year period of Leave without pay.

The current Secretary to Justice has been request by the Niue Public Service Commission to assist the office where possible. The Office is also assisted by the Constitutional Law Advisor Professor Anthony Angelo and has recently retained an Australian Law firm to provide advice in regard to certain contractual matters.

In terms of public prosecutions the Niue Police Department prosecute the large majority of cases, which are mostly traffic offences, with the more serious matters being conducted by the Crown Law Office.

The limited number of lawyers is always a concern for the office and Government however there are at least two students undertaking law in New Zealand currently and it is hoped that if they choose to return to Niue to work that this will boost the legal fraternity on island. There are no specific Awards on offer to train more legal officers currently due to the competing training priorities of different Government Departments and the limited number of appropriate candidates.

Financial Intelligence Unit

The Financial Intelligence Unit is located within the Crown Law Office. Niue is member of the Asia Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units. With Ms Talagi currently overseas the FIU is severely understaffed.

Drafting of Legislation

The drafting of legislation is conducted by the Crown law Office and the Constitutional Law Advisor. It is noted that the adaptation of model legislation has been the standard practice due to the substantial work load that the office is required to manage.

The Niue laws were last consolidated in 2006 by the Constitutional Law Advisor and the Crown Law Office with funding assistance from NZAid. An electronic version is available from the Crown Law Office.

Niue Court of Appeal 2009

The Niue Court of Appeal was convened in Niue for the first time in April 2009 and sat for 1 week. The Court adjudicated on 4 Appeals from the Land division of the Niue High Court, the Court determined that further investigation into the determination of the title needed to be entered into and this resulted in 3 cases being referred back to the High Court for rehearing i.e. Part Tapeu, *Alofi Tongahai vs Hekau* and Part Tegalupo, *Alofi Misikea vs Asekona*, Part Pokoluo, *Lakepa Konelio vs Magatogia*. The other matter of Fonuakula, *Alofi Rex vs Tasmania* will be referred back to the High Court in 2010.

Of particular note the Court grappled with the issue of adoption in the legal and customary context and the rights that derive thereof in relation to Niuean land. The issue of custom as protected in the *Niue Constitution 1974* and the provisions of the *Niue Amendment Act 1968 (No. 2)* in relation to customary adoption is mooted as a potential conflict. Although the issue was not addressed directly in these cases due to the differing circumstances, it could become an issue that may need to be resolved.

The *Niue Amendment Act 1968 (No. 2)* provides for Niuean custom to be recognized and used to determine matters of title, estate or interest in land (s. 23) but adoption by Niuean custom will be invalidated by Section 92 of the same Act.

To not recognize customary adoption pursuant to *Niue Amendment Act 1968 (No. 2)* creates the situation whereby persons can be prevented to claiming land from their customary adoptive parents and then additional to that they may have no recourse to the land of their natural parents due to customary practice.

It was noted that the number of legal Counsel representing the parties involved in litigation has increased significantly, in terms of the level of representation that parties can avail themselves it could put some of the litigants at a disadvantage as was reflected

during these sittings. The disparity in earning capacity of Niuean's in Niue as opposed to those overseas and the retention of legal counsel is becoming a concern.

It is noted that the Niue High Court, Land Court is more of a Court of inquiry which has exercised wider discretion in terms of the admissibility of evidence, as the issue of the seeking the truth in land matters is paramount which in some respects brings some balance to trials where unrepresented litigants are appearing.

These Court sittings saw 8 lawyers appearing before the Court, at least 4 of them were paid for fully by the applicants in the matters before the court. It is acknowledged that the Court of Appeal may have been the cause for so many lawyers however in the High Court many matters were also being attended to by overseas legal counsel.

The High Court was also convened recently in early November for a week, with a heavy case load for the Land Division of the High Court.

Comment has been made recently by the Minister of Justice, Hon Togia Sioneholo to investigate the establishing a Law Society and possibly introducing a legal practitioner's bill to govern the practice and conduct of law in Niue.

Public Defender

The Government funds a Public Defender to assist persons appearing before the Court the current incumbent is not legally qualified and he is paid a fee of \$20.00 per case. Although many still choose to represent themselves, or find respected persons in the society to represent them.

Within the last two years a Mr. Gerard McCoy QC from New Zealand has been attending the High Court sittings and providing legal advice on a pro bono basis. The availability of such expert legal advice was timely with the recent implementation of the Niue Consumption Tax Act 2008 and prosecutions instigated by the Tax Office under the Income Tax Act 1961.

Major Cases

As noted previously the majority of cases that go before the High Court are related to land and the ownership thereof.

However there is currently there is one criminal case of note which is still before the High Court this matter arose in 2002 when a Prison Warden was charged for shooting and killing a prisoner, the accused was found guilty of manslaughter and sentenced to 10years imprisonment. The matter was appealed by the Defendant however as there were delays in convening the Court of Appeal, on the basis of the delay the Chief Justice ordered a retrial in 2007, the accused has been released on bail.

However given the delays and a major cyclone in 2004 much of the evidence adduced at the first hearing has been lost. The previous Government was considering its options in terms of a motion of nolle prosequi which was quashed by the new Government.

The accused has sought legal representation and an application to stay proceedings is being sought. The matter was recently brought back to the Court and the Defence and Prosecution were requested to submit better particulars. In the event that the Court refuses the application for a stay the matter will be retried on the charge of Homicide sometime in 2010.

The implications for Government are not only the cost of running a trial but what if a conviction can not be secured. The implications for the Defendant to consider, is the possibility of being found guilty of the homicide and the likelihood of serving a longer sentence.

Conclusion

It is hoped that this brief report highlights some of the issues that are relevant to Niue in terms of legal practice in Niue.

Justin Kamupala
Secretary to Justice