



# CONVENTION ON THE RIGHTS OF THE CHILD NIUE INITIAL REPORT

November 2010



**CONVENTION ON THE RIGHTS OF THE CHILD**

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**NOVEMBER 2010**

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## **ACRONYMS**

- AIDS Acquired Immune Deficiency Syndrome
- BCN Broadcasting Corporation of Niue
- CEDAW Convention on the Elimination of All Forms of Discrimination Against Women
- CPA Commonwealth Parliamentarians Associations
- CRC Convention on the Rights of the Child
- DAFF Department of Agriculture, Forests and Fisheries
- DFL Distance and Flexible Learning
- ECE Early Childhood Education
- EPDSU Economic Planning, Development & Statistics Unit
- EU European Union
- H1N1 Hemagglutinin Type 1 and Neuraminidase Type 1 (Swine Flu)
- HIV Human Immunodeficiency Virus
- HPV Human Papillomavirus
- HRD Human Resource Development
- ICCPR International Covenant on Civil and Political Rights
- ICEAFRD International Convention on the Elimination of All Forms of Racial Discrimination
- ICESCR International Covenant on Economic, Social and Cultural Rights
- LMS London Missionary Society
- MCH Maternal Child Health
- NCCCRC National Coordinating Committee on the CRC
- NCD Non-Communicable Diseases
- NCEA National Certificate of Educational Achievement
- NGOs Non Governmental Organizations
- NHS Niue High School
- NPS Niue Primary School
- NPSC Niue Public Service Commission
- NTDC National Training and Development Council
- NYC Niue Youth Council
- NZ New Zealand
- NZAID New Zealand Agency for International Development
- NZODA New Zealand Official Development Assistance
- NZQA New Zealand Qualifications Authority
- PASO Pacific Aviation Safety Office
- PIFS Pacific Islands Forum Secretariat
- PPA Pacific Power Association
- PRIDE Pacific Regional Initiative in the Development of Basic Education
- PTA Parent Teacher Association
- SPC Secretariat of the Pacific Community
- SPREP Secretariat of the Pacific Regional Environmental Programme
- SPTO South Pacific Tourism Organization
- STI Sexually Transmitted Infection
- TESL Teaching English as a Second Language
- TVET Technical, Vocational Educational Training
- UNDP United Nations Development Programme
- UNESCO United Nations Educational Scientific and Cultural Organisation
- UNFPA United Nations Population Fund

- UNICEF United Nations Children's Fund
  - USP University of the South Pacific
  - WHO World Health Organization
  - WMO World Meteorological Organization
  - YES Youth Employment Scheme
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## GLOSSARY

- *aga fakamotu Niue* culture and traditions of Niue
  - *Ekalesia Kerisiano Niue* the main church denomination on Niue
  - *leveki* a family custodian regarding land matters
  - *luku* an edible fern commonly found around Niue
  - *magafaoa* a family unit
  - *makatea* limestone
  - *patu* a young adult
  - *pekapeka* a small bird found around the island mainly nesting in caves
  - *pele* commonly known as 'slippery cabbage' and used in most food preparations on Niue
  - *tama taute* a child raised by other members of the extended family and is generally a form of informal adoption
  - *Vagahau Niue* proper reference to the Niuean language in its spoken form
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## **LEGISLATION**

- Adoption Act 1955 (NZ)
- Arms Act 1975
- Births and Deaths Registration Regulations 1984
- Child Allowance Act 1995
- Citizenship Act 1977 (NZ)
- Constitution Amendment Act (No. 1) 1992
- Education Act 1989
- Family Protection Bill 2010
- Film and Public Entertainment Act 1979
- Guardianship Act 1968 (NZ)
- High Court Rules
- Interpretation Act 2004
- Liquor Act 1975
- Mental Health Bill 2010
- Niue Act 1966
- Niue Amendment Act (No. 2) 1968
- Niue Assembly Act 1966
- Niue Constitution Act (NZ) 1974
- Penal Manual 2006
- Pensions and Benefits Act 1991
- Public Service Regulations 2004
- Race Relations Act 1972
- Tobacco Control Bill
- Wills Act 1837

## **Introduction**

Niue ratified the Convention on the Rights of the Child (CRC) on 19th January 1996.

This report aims to present the legal, economic, cultural and traditional situation in Niue within which the rights of the child are recognized, respected, promoted and protected. Where appropriate it has considered the constitutional arrangements between Niue and New Zealand as established under the Niue Constitution Act 1974 (NZ), and recognises that Niue is not independent but a self-governing state in free association with New Zealand. It also highlights the limited resources inherent in a small island state and comments on the restrictions that this entails on the implementation of CRC.

The first draft of this report was completed in 2005. However, in obtaining the national endorsement for the report, the executive authority vested in cabinet disagreed with the contents and a lengthy process of review and reconsideration was commenced.

The review process included extensive consultations and revisions of the draft report amongst all the key stakeholders of government, namely Education, Health, Justice and Community Affairs. Public consultations and comments on the report were sought from various sectors of the community which resulted in valuable contributions. The National Coordinating Committee for the Convention on the Rights of the Child (NCCCRC), established in 1996, completed the final review of the report in November 2010 and resubmitted it to cabinet for endorsement.

This report encompasses the various contributions from government departments, non-government organisations and community groups who have been instrumental in implementing the principles of CRC in Niue. It also reflects the valuable input of the many individuals who have provided much needed support and assistance to the NCCCRC.

This initial report has been prepared by the Government of Niue with technical assistance from UNICEF.

## COUNTRY PROFILE

Table 1

<b>Head of State</b>	Her Majesty Queen Elizabeth II represented by the Governor General of Niue and New Zealand
<b>Legal Status</b>	Self-governing in free association with New Zealand since 1974 under the Niue Constitution
<b>Head of Government</b>	Premier
<b>Executive Government</b>	Cabinet: Premier and 3 Ministers
	Legislative Assembly (Parliament) consisting of 20 members. General elections held every 3 years
<b>Population</b>	In 2006 - 1,625; 802 males and 823 females <sup>1</sup>
<b>Citizenship</b>	All Niueans are New Zealand citizens and hold New Zealand passports
<b>Land Area</b>	259 square kilometres (100 square miles)
<b>Exclusive Economic Zone</b>	390,000 square kilometres
<b>Average Rainfall</b>	Annual mean rainfall is 2066mm.
<b>Average Temperature</b>	Varies between 22.9°C in winter (July - August) to 26.6°C in summer (February)
<b>Climate</b>	Wet Season (summer): October - February Dry Season (winter): May - August
<b>Official languages</b>	<i>Vagahau Niue</i> and English
<b>Currency</b>	New Zealand dollar (\$NZD)
<b>Ethnic Composition</b>	- Niueans (85.2%) - Other (New Zealanders and Australians (5.5%), Samoans (1.0%), Tongans (3.3%), Tuvaluans (1.7%), Fijians (1.0%), Others (2.3%) <sup>2</sup>
<b>Religions</b>	Ekalesia Kerisiano Niue (70-75%) <sup>3</sup> , Church of the Latter Day Saints, Catholics, Seven Day Adventists, Apostolic, Jehovah's Witnesses, Christian Outreach Fellowship
<b>Exports</b>	Fish, noni, vanilla, taro, honey, drinking coconuts
<b>International personality</b>	Constitutionally New Zealand remains responsible for Niue's defence and external affairs. However Niue since 1988 Niue has started entering into international treaties in their own right.
<b>Diplomatic representation</b>	Niue High Commission Wellington, New Zealand

<sup>1</sup> Source: Statistics Niue 2006

<sup>2</sup> Total Population by Ethnicity 1997, UNDP SHD Situational Analysis 2002

<sup>3</sup> Niue - A Situational Analysis of Children, Women and Youth. UNICEF Pacific, Fiji. Printed 2006

# 1. GENERAL INFORMATION ON NUIE

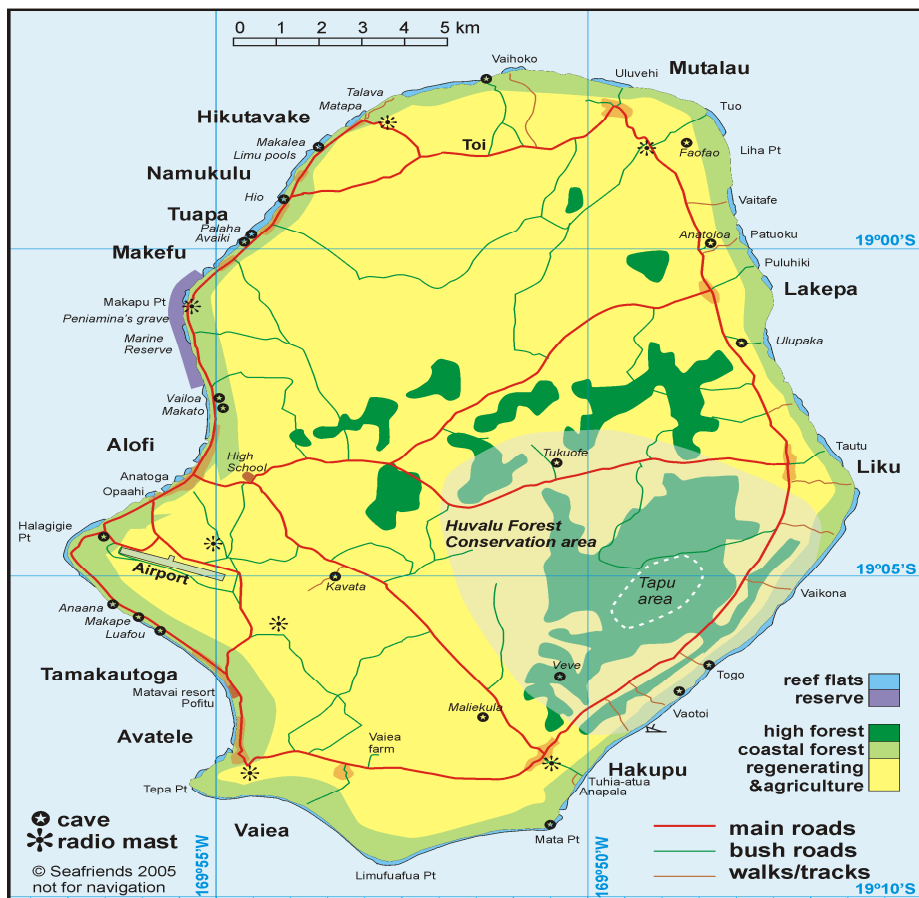
Niue is a raised coral island in Polynesia, 19°S and 169°W, that is located about 480km East of Tonga and about 660km. South East of Western Samoa. Niue's land area is 259 km<sup>2</sup> (100 square miles) and is approximately 21km by 18km with the highest point at 65 metres above sea level.

There are no mountains or rivers; the coastline is jagged and rocky creating scenic crevasses, chasms and caves. The soil is porous with an abundance of 'makatea' (limestone). The soil is not as fertile as Niue's island neighbours and agricultural produce reflects this. There is some forest cover, the largest is Huvalu forest (6,000 acres or 2,400 hectares), which includes a 'tapu' or environmentally protected area of 40 acres.

Niue's Exclusive Economic Zone is 390,000km<sup>2</sup> and is Niue's largest resource.

There are two seasons, summer which is the wet season, and winter when the island experiences very little rainfall. This is the ideal time to visit and relax in the warm tropical sun.

The wet season from December to March (also the cyclone season) has an average temperature of 27° C. The dry season from March to November averages 24° C when the southeast trade winds blow.



## **A) SOCIETY AND CULTURE**

### **History**

Niue's first settlers arrived about 1000 years ago. The Niuean language is based on both Samoan and Tongan, with traces from Pukapuka in the Cook Islands, but whether the Samoans or the Tongans arrived first is open to dispute. Possibly the settlers came in waves from both directions.

Captain Cook stopped by in 1774 on his second Pacific voyage, but his attempts to land were repulsed three times by local warriors. He dubbed Niue the "Savage Island" in contrast to Tonga which he had christened the "Friendly Islands". Although Niueans insist that Cook's unfriendly reception might simply have been a strong 'challenge' rather than outright hostility, it frightened off future visitors for many years.

The pioneering missionary John Williams came to Niue in 1830, but it was not until 1846 that Peniamina, a Niuean who had been converted to Christianity in Samoa, established the first Christian foothold on the island (London Missionary Society) (LMS). Peniamina was followed in 1849 by Paulo, a Samoan missionary. The missionaries had the island firmly under control when Niue became a British colony in 1900, before being annexed to New Zealand the next year. The Niueans were not consulted about this imperial handover, but they protested loudly when New Zealand proposed including Niue as part of the Cook Islands group.

Apart from visits by whalers and Peruvian slave ships, Niue's major problem in the later years of that century was exactly the same as it is today – a continuing exodus of islanders looking for opportunities abroad.

Niue remained a little known island until after the end of the World War II, when compulsory and free education was introduced in the early 1950s. Under pressure from the United Nations and New Zealand for independence, Niue resisted rushing into self-determination. The people were concerned more for the future economic and social security rather than political autonomy. Thus, after more than a decade of on-going consultation with both New Zealand and the United Nations, Niue opted for a special constitutional arrangement with New Zealand. By an act of self determination in September 1974, a large majority of the people voted in favour of self-government in free association with New Zealand and this special constitutional arrangement allowed Niueans to remain citizens of New Zealand.

### **Niuean Society**

Niue is unique in the Pacific in that egalitarian leadership is the norm. There are no chiefs or tribal system and hereditary rank is a cohesive and highly structured society based on family units. Although there is no hierarchical system, identity and status is firmly established in the family name. The *aga fakamotu Niue* sets the beliefs and behaviours that are the basis of individual identity, social stability and the basis of family, community and national development. Three factors central to the *aga fakamotu Niue* are: the family and family roles; sharing of resources; and the importance of land.

Each family normally has a designated head of the family called a *Leveki*, one of whose functions being to act as the Land Court appointed trustee for family land. Decisions over family land matters are generally by consensus and in consultation with absentee owners, provided they remain in close contact with those at home.

Norms governing relationships within and between families are based on respect – of the young for old, brothers for their sisters. Niuean women were traditionally the partners and co-workers of men – women helped clear and weed the plantations and the men did the planting. Traditionally, women held separate meetings from men about village or community matters, and their collective views are conveyed to the meetings of the ‘*patus*’ (young married men) and elders who make the final decision. Today, depending on the type of issue, women and men and young people can together participate at village meetings. Particular interest groups such as church, women, youth and sports have their own separate organisations managed by leaders elected by their members.

In traditional times, survival depended on families sharing resources. Customary ceremonies, detailed below, are still a strong feature of Niuean society today. Ceremonies are so important to *aga fakamotu Niue* that migrants return to Niue with their children to observe this custom with their families. Many families however celebrate these events in modified form in their adopted countries, mainly New Zealand and Australia.

Hair cutting ceremony – this occurs when the boy child is approximately seven. However as the event can be financially draining on the family it may be delayed. Guests attend the ceremony and provide a cash gift. It is asserted that some events can raise over \$28,000 for the child. However over half of this money may go to the cost of hosting the event. This family will also be required to reciprocate when applicable. It is noted how much each person gives and at the end of the ceremony names gets called, in order of the highest donation, to get a portion of food to take home.

Ear Piercing – this occurs when a girl child is in early primary school, approximately five to eight years of age. Traditionally done with a thorn from a lime bush it is now done with professional ear piercing equipment. The ceremony is similar to the hair cutting ceremony for boys. The Health Department is not aware of any serious infections as a result of the ear piercing.

Circumcision – for a boy child living on the island circumcision occurs at approximately seven or eight years of age. The procedure is done at the hospital at no cost to the family. This procedure is not so much a ceremonial event as a private surgical procedure that continues a tradition brought to the island by the missionaries. It is not uncommon for older boys, approximately 17 years, to return to Niue from New Zealand to undertake the procedure at a cost of \$100.

### **Language**

While the indigenous language, Niuean, is a Polynesian tongue closely related to Tongan and Samoan, most Niueans are bilingual. The language of business is mostly English although parliamentary debates are in Niuean. This is the same in village and council meetings.

Primary education emphasises the importance of learning and speaking Niuean. Pacific students undertake classes taught in Niuean until year four when English is taught. Students can undertake Niuean as a language subject in high school.

### **Land**

Most of the land in Niue is held according to custom ownership by family groups whose membership is constantly adjusted by complex social rules. Rights of ownership are based on descent as determined by the family group. Land is the source of family identity and social and economic security. Fishing grounds are also considered family property.

Land laws introduced in 1969 use the traditional descent group or *magafaoa*, as the basic land holding unit. The Land court has exclusive jurisdiction in all matters relating to Niuean land. Land rights are extremely complex. Most boundary areas have not been formally surveyed or recorded. Persons can exercise customary land rights in a number of *magafaoa* – those of their father, mother or spouse. Membership of a descent group can change by birth, adoption, death or migration. Absentee members of the '*magafaoa*' may progressively have less land rights unless they maintain close ties with those who continue to remain on and care for the family holdings. Rights are reinforced by continuing occupation which means the right to claim a share of the land diminishes with length of absence.

Being able to have access to family land is very important to a Niuean as this gives a person a measure of social security. Recently there has been an increase in the number of land matters at the Land Court. This is due to people's desire to establish secure titles to their customary land and proper survey delineation and registration. This is important when considering adoption or when identifying a father on a birth certificate (affiliation, see below).

Although land can be leased, the sale of land is strictly prohibited under law. However the Government may acquire land for a specific public purpose or for the Crown. The Government has both freehold and leased land but the percentage of total Crown holdings is small. Crown land is leased for housing and economic purposes.

## **Economy**

Niue's economy is subsidised by foreign aid, principally from New Zealand. Other avenues of aid are being sought from international bodies with limited success. Major contributors (as of April 2010) include:

- Global Environment Fund
- United Nations
- People's Republic of China
- Governments of Italy and Austria
- Secretariat of the Pacific Community (SPC) and
- European Union (EU)

Subsistence agriculture on small freehold family units has a vital role to play in the Niuean economy. Niueans grow their own vegetables where possible on small plots scattered around the island. Families practice mixed cropping with the exception of coconuts which are planted alone. Most families must rotate their subsistence gardens because of the quality of the soil. Cash cropping is very vulnerable due to the limited arable land available, erratic climate and absence of running streams and high transport costs to market. Niueans fish close to the coast in canoes and dinghies launched from the rocky and steep coast by way of specially constructed tracks to supply a domestic demand. Families generally keep pigs and poultry for their own use.

Minor commercial successes have been achieved with limes, passion fruit pulp, coconut cream, and some specialist vegetables for the New Zealand market as well as honey. Taro is exported to New Zealand to supply the very large Polynesian community there. However there is only a small amount available on the open market due to inconsistent supply. Recently noni and vanilla have become a prominent cash crop. However, the lack of a proper overseas to export them to and the limited human resources on the island to carry out farming means that there is a lack of significant interest.

Commercial fishing was established on the island with the opening of the Niue Fish Processing Plant in 2005 with the Niue Government as a joint venture partner. However, this plant is no longer in operation due to high maintenance costs and other management issues.

The consumer price index has risen from 3.55% in 2000 to 11.67% in 2009<sup>4</sup>.

Niue's 2008 imports totalled \$10,986,000 and 2008 exports totalled \$27,000 down from \$3,843,000 the previous year<sup>5</sup>.

National Gross Domestic Product was \$20.5 million in 2006 up from \$13.7 in 1997<sup>6</sup>.

## Population

The demography of Niue is unique in the Pacific in that it is in late transition, characterised by very low mortality rates and declining fertility. The age-sex structure and population size is strongly influenced by migration.

There are more Niueans residing overseas than on the island. At the turn of the century the population was around 4,500. When Niue became self-governing in free association with New Zealand in 1974 the population was still around 4,000 although it had probably been higher in the intervening years. The 1990 population totalled 2,532 comprising 1,310 males and 1,222 females. In the latest census, 2006<sup>7</sup>, the population had reduced to 1625, 802 males and 823 females with 1523 being Niuean residents. The population of Alofi, the administration centre is about 900.

The latest figures from the 2006 census show that the annual rate of population growth from 2001-2006 were -1.9%. This is obviously unsustainable. The drop is attributed to outgoing migration, mainly to New Zealand, where the numbers of Niueans are about ten times as many as those currently residing on the island (estimates 20,000). The main reason for the drop in residents is education and employment opportunities in New Zealand and the impact of the 2004 Cyclone which left 30 families homeless.

Out-migration is expected to rise if employment opportunities in New Zealand continue to improve. Return migration of Niueans domiciled in New Zealand is not expected to rise significantly unless job opportunities in Niue are made available or the business environment is given better support from the government.

Fertility also continues to decline. In 2006 the total fertility rate had dropped to 2.6, with the crude birth rate being 15.8%. Good access to family planning and a trend to a later age at marriage contribute to this low fertility level. The average age of first marriage is 27 for males and 24 for females.

In 2006, the life expectancy for males was 67 years and for females 76 years.

For the quarter ending June 2010 there were a total of 1,471 people arrived in Niue and 1,305 departed. Of the total arrivals 400 were returning residents and 1,071 were visitors;

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<sup>4</sup> Department of Economic Planning, Development and Statistics, November 2010

<sup>5</sup> Ibid 4

<sup>6</sup> Ibid 4

<sup>7</sup> Please note that all statistics are from the 2006 census unless otherwise specified. The 2006 Niue Census can be found at [www.spc.int/prism/country/nu/stats](http://www.spc.int/prism/country/nu/stats) along with updated reports from the Department of Economic Planning, Development and Statistics of Niue.

and of the total departures 357 were residents travelling overseas and 948 were returning visitors to their usual place of residence.

The majority of people arriving on Niue come by plane or yachts although visits by yachts virtually stop during the cyclone season. Niue is occasionally visited by cruise ships.

### **Cyclone Heta, January 2004**

In 2004, Niue was hit by 275km per hour winds and associated wave surges of Cyclone Heta. Killing two, severely injuring many and making homeless 30 families, the effects of Cyclone Heta are still being felt. The cyclone destroyed approximately half the land and infrastructure of Alofi, Niue's capital, including the Courthouse and the country's only hospital, including equipment and records. Many businesses were destroyed, both at the time of the cyclone or subsequently by lack of patronage, and this has directly impacted on the country's development. Cyclone Heta exacerbated ecological and economic fragility but brought together the Niuean community, at home and abroad.

The outcome of the cyclone is still evident by vacant and dilapidated buildings throughout Niue. It is also one reason why the statistics contained in this report are not always up-to-date with some physical materials destroyed in the cyclone. Information is therefore provided based on previous published reports or updated information where it is available.

### **Government System**

The General Assembly of the United Nations recognised Niue's act of self-determination on 13 December 1974. On the 19 October 1974 Niue became self governing in free association with New Zealand. The Niue Constitution Act (NZ) 1974 gave Niue control over its own internal affairs in free association with New Zealand. In 1988 Niue became responsible for entering into international treaties in its own right.

The Niue Legislative Assembly is an elected legislature of 20 members representing the 14 villages of Niue and six members elected by the whole country. The Assembly is presided over by a Speaker. This twenty-member assembly has full law-making powers.

A cabinet of four Ministers, comprising the Premier (elected by the Assembly) and three other Ministers appointed from the Legislative Assembly by the Premier have executive responsibility. Women have contested seats for the Assembly since the first general election in 1975.

The most recent elections in 2008 saw five women contesting the common roll seats. Currently there are four women in the Assembly, one of whom is a Minister and another who is an associate Minister.

The Justice Department is responsible for running general and village council elections.

### **Sources of Law**

Section 4 of the Interpretation Act 2004 states that the sources of law for Niue are:

- a) The Constitution;
- b) Acts of the Niue Assembly;
- c) Regulations;
- d) Niuean custom (insofar as it relates to land); and
- e) The common law of Niue.

(a) The Constitution

The Constitution is contained within the Niue Constitution Act (NZ) 1974 and the First and Second Schedules. The Constitution of Niue establishes the Parliament, the Niuean Judiciary and Niuean Public Service Commission. The Cabinet is required to establish the Niuean Public Service and health, education and other social services. This ensures services that provide a reasonable standard of living for the people of Niue and to ensure their economic, social and cultural welfare.

(b) Acts of the Niue Assembly

- Niue Ordinances before 1974;
- Acts of the New Zealand Parliament passed before 1974 that have not been repealed by the Niue Assembly;
- Acts of New Zealand accepted by Niue after 1974;
- Niue Acts passed by the Niue Assembly after 1974.

Article 36 of the Niue Constitution provides that no Act passed by the New Zealand Parliament or any New Zealand regulations made after October 19<sup>th</sup> 1974 becomes part of the law of Niue without the request and consent of the Niue Assembly.

The Niue Act 1966 establishes substantive rules of law for Niue dealing with a range of matters affecting families and children, such as the laws on marriage, maintenance, custody, illegitimacy, adoption and criminal law.

(c) Regulations

Subordinate legislation may be made under any statute. There is a substantial body of New Zealand subordinate legislation applying to Niue but no subordinate legislation made after 19 October 1974 extends to Niue unless it has been “requested and consented by the Cabinet of Ministers of Niue”. However this has not been exercised save for Customs and Civil Aviation matters.

(d) Niuean custom

Section 296 of the Niue Act 1966 states that judicial notice is to be taken of Niuean custom so far as it has the force of law. The Niue Amendment Act 1968 (No. 2) provides for Niuean custom to be recognised and used to determine matters of title, estate or interest in land (s. 23).

The same Act invalidates any customary adoption made on or after the 1 November 1969 (s.69).

(e) The common law of Niue

Section 672 of the Niue Act 1966 provided for recognition of common law of England existing at 14 January 1840. However this was repealed in 2004.

Any common law made outside of the Niue system is persuasive though not binding.

Niue has its own common law. However, this is still in its infancy and is currently limited to land matters.

Children’s Legal Rights

In the customary context of Niue young people were not granted individual rights but treated as part of a community. Young people are still treated as junior members of the

community as seniority and experience are valued. However, for example, children eat first and are given a special place in the community.

The right to be heard and listened to and the right to receive fair treatment from all in authority have been increasingly recognised by the community in Niue. This represents an important transition in the recognition of children's rights, where the common law has for many years treated minors as incompetent on the basic rationale that in a dependency relationship, the dependant is incapable of exercising any right without the consent of a parent, guardian or other representatives.

Although the existing legal system protects children's rights and it is possible that a child could have access to specialist legal counsel, this would depend on the circumstances and has not occurred to date.

In the context of common law and legislation, children possess legal rights but there is often little understanding as to where these rights are codified. The rights of children are not the same as those of adults because of their vulnerability. A number of laws for example, Part V of the Niue Act 1966 providing for criminal offences, the Film and Public Entertainment Act 1979 and the Liquor Act 1975, provide special protection. These are discussed in greater detail in Part Two.

### **International treaties**

As Niue is a party to a number of international human rights conventions which declare the existence of universal human rights, the influence of international law norms does make an impact on domestic legislation thereby supplementing the framework of the Constitution.

The Constitution allows for the Cabinet "to make laws for the peace, order and good government of Niue ... and the powers shall extend to the making, in relation to Niue, of laws having extra-territorial operation ... affecting or concerning any person or matter or thing outside Niue or any act done or omitted outside Niue" (Art. 28(1)(2)).

Constitutionally, New Zealand is responsible for Niue's defence and external relations. Section 6 of the Niue Constitution Act 1974 (NZ) provides that "nothing in this Act or in the Constitution shall affect the responsibilities of Her Majesty the Queen in right of New Zealand for the external affairs and defence of Niue". However, it is important to note that the responsibilities of the New Zealand government in relation to Niue's external affairs and defence are based on the delegated authority of the Niuean Government. Full legislative and executive powers are vested in the legislature and Government of Niue.

Niue has full constitutional capacity to conduct its own external affairs and to enter into treaties. Since November 1988, New Zealand's signature and ratification of a treaty does not affect Niue unless Niue expressly requests it to.

The four Treaties relating to human rights that extend to Niue are as a result of New Zealand treaty action and are set out below:

- 1) International Covenant on Economic, Social and Cultural Rights (ICESCR), signed 28 December 1978;
- 2) International Covenant on Civil and Political Rights (ICCPR), signed 28 December 1978;
- 3) International Convention on the Elimination of All Forms of Racial Discrimination (CERD), signed 22 November 1972; and

4) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), signed 10 January 1985.

Although it has not created specific legislation as a result of signing these treaties, Niue has existing legislation that substantially complies with the requirements.

The absence of specific legislative action following the signing of these treaties may be explained by the existence, at the time of signature, of law in force in Niue that was already consistent with the international obligations arising under these treaties.

## PART ONE

### GENERAL MEASURES OF IMPLEMENTATION

#### **General**

Niue does not have specific legislation for children or child rights nor does it have substantive common law or examples of juvenile justice matters. Children in Niue are treated as having the same right as adults but for specific sections of various legislations (detailed in part 2) that provide for specific protection of minors.

There has recently been a review of the Niuean laws and this has resulted in the consolidation of both criminal and family legislations into Codes with the intent to make future reform easier. There are no specific plans for review of current legislation. However, the Family Protection Bill is currently before Cabinet. A Mental Health Bill is also in its draft form.

International technical assistance may be provided by international and regional bodies such as the Forum Secretariat upon request (subject to the technical assistance required). Bilateral assistance may also be available from New Zealand upon negotiation.

There is currently no data specifically on the participation of children in the justice system in Niue. The Secretary of Justice has confirmed that there have been criminal cases involving children in the ages of 14 years to 18 years. Most cases have been minor traffic offences such as driving without a license. However over the past 5 years, there have been five cases of statutory rape with four of the defendants convicted. Two of the offenders were sentenced to jail. Both were given 18 months in jail with weekend release. There are no specific detention facilities for juveniles and they are held in the same jail as adults. Police are currently looking at options for diversion with a Cabinet paper submitted in June 2010.

There is effort by the Secretary of Justice to create a complaints handling service with respect to government services and there is a public service complaints mechanism already in existence.

#### Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention

The existing mechanism for monitoring policies and implementation at the national level is the National Co-ordinating Committee for CRC (NCCCRC). The Chair of this Committee is presently the Minister for Health. The Committee is comprised of:

- Representative from Education Department
- Representative from Health Department
- Representative from Community Affairs Department
- Representative from Crown Law Office
- Representative from Justice Department
- Representative from Statistics Office
- Representative from Office for External Affairs
- Representative from Environment Department

The Committee does not meet regularly. However, provisions are in place for them to meet as the need arises.

The Committee is currently considering how to effectively involve youth and civil society the NCCCCRC.

Measures taken to make the report widely known to the public

When the Convention was signed in 1996, it was translated and a public launch was held at the Fale Fono (Parliament House) with schools' celebration held at the Primary School.

Whilst there has been little information or consultation with the general public, this report has been subject to consultation with both the general public and the youth of Niue. It is also the intention of the Committee that when this report is finalised it will be publicly launched and made available to the people of Niue on the internet. The aim is to raise the status of the CRC throughout Niue and maintain consultation on a regular basis.

Although there was consultation with community and youth representatives when the original draft of this report was prepared in 2005, there has been limited consultation immediately preceding the finalisation of the current report. The Government of Niue acknowledges that this is not ideal and that a more structured consultation process will need to be undertaken when seeking to report in the future.

## **PART TWO**

### **DEFINITION OF THE CHILD**

In the laws of Niue, the relevant provisions which prescribe the various ages of children are as follows (please also see the summary table below):

- The Niue Act 1966 provides that a child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not (s. 132(1)).
- Part V of the Niue Act 1966 prescribes for criminal offences and defines the various ages where a child requires special protection in law as follows:
  - i. A child under the age of 10 years cannot be convicted of an offence “by reason of any act done or committed by him (s.237A).
  - ii. A child between the age of 10 and 14 years shall not be convicted of an offence unless he knew that the act or omission was wrong or contrary to law (s. 237B).
  - iii. Anyone having custody, control or charge of a child under the age of 16 years is liable to imprisonment for term not exceeding five years for wilful ill-treatment or neglect, or permitting the child to be ill-treated or neglected in a manner likely to cause the child “unnecessary suffering, actual bodily harm, injury to health or mental disorder or to incur any other unnecessary physical or mental disability” (s.157A).
- Under Section 303 of the Niue Act 1966 in any proceedings before a Court all witnesses who appear to be under the age of 12 years may be examined without oath but are required to make a declaration to tell the truth. The declaration has the same force and effect as if the witness has given evidence on oath.
- Under the Niue Amendment Act 1968 (No. 2) an adoption order may be made if the child is under the age of 21 years, but if above the age of 12 years, the child’s consent to the adoption is mandatory (s. 97(1)(a-e)). Niue has not considered becoming a party to the Hague Convention. Niue practises customary adoption (*tama taute*) which occurs when a child is living with a family as their child but the arrangement is not formally registered.
- The Education Act 1989 defines a “pupil” to mean any person who is enrolled on the register of any school and who has not attained the age of 21 years. “School age” in relation to any child, means any child between the age of 5 years and the age of 16 years or any earlier age at which the child ceases to be required to have his name enrolled on the register of a school (s.2). Education is compulsory for children up to the age of 16 years (s.24).
- The Niue Act allows marriages as follows:

s525 – “A Marriage Officer shall not solemnise or record any marriage unless the husband is at least 18 years of age and the wife is at least 15 years of age, but no marriage shall be invalidated by this section.

S526 – (1) A Marriage Officer shall not solemnise or record the marriage of any man under the age of 21 years or of any woman under the age of 19 years without the consent of one of the parents of the man or women...”

- Under the Film and Public Entertainment Act 1979 a child under the age of 12 years shall not be taken or admitted to any film exhibition held at night except upon a Friday and Saturday night (s.16). There is currently no censor or cinema in Niue.
- Under the Guardianship Act 1968, a child means a person under the age of 20 years (s.2).
- In Part XXIII of the Niue Act 1966 involving maintenance of children, the law recognises that both parents owe a duty of care to their child. Section 551 says that on request of the mother the Court has the power to make an Affiliation Order declaring a male to be the father of a child, but only if the child is under the age of 16 years.

Further relevant age based rights are set out below:

*Table 2: Age & Category for References to 'child' in Niue legislations*

<b>Category</b>	<b>Age</b>
Entitled to drive	14 years
Entitled to marry*	15 years (female), 18 years (male)
Eligible to vote*, stand for parliament*, buy liquor, poses a gun <sup>8</sup>	18 years
Can't be convicted at law*	Under 10 years
Can't be convicted unless they knew the act was wrong*	10-14 years
Compulsory education*	5-16 years
Concept of a 'minor' <sup>9</sup>	Under 21 years
Child under Guardianship Act 1968 s2	Under 20 years
Child under affiliation order <sup>10</sup>	Under 16 years
Entitled to maintenance*	Up to 16 years
Able to be adopted*	Up to 21 years
Require child's consent for adoption*	Over 12 years
Custody orders <sup>11</sup>	Cease at 16 years
Guardian can be appointed <sup>12</sup>	Up to 20 years
Inmates who shall be held in separate quarters <sup>13</sup>	Under 21 years
Restricted admission to a film at night <sup>14</sup>	Under 12 years
Sexual consent <sup>15</sup>	15 years (for girls), boys not specified

<sup>8</sup> Arms Act s5

<sup>9</sup> There is conflicting concept of the age of a minor. The Niue Act refers to minors under the age of 21, but is not specifically defined. There is also a Minors' Contracts Act 1969 which refers to contractual capacity of those under 18 years (s6).

<sup>10</sup> Niue Act s547

<sup>11</sup> Niue Act s570

<sup>12</sup> Guardianship Act s2

<sup>13</sup> Penal Manual, s17

<sup>14</sup> Film and Public Entertainment Act, s16

<sup>15</sup> Niue Act s164 – consent is no defence if the girl is under 15

Medical counselling	Not specified
Participation in legal proceedings <sup>16</sup>	From 'infancy' (age not defined)
Change of name by parents <sup>17</sup>	No consent required before 18 years
Valid will <sup>18</sup>	Over 21 years

\* As detailed above

On reflection, these variations in the definition of the rights of a child necessitate some consideration as they may conflict or may not reflect modern expectations. be out of date.

While Niue does not have labour laws, the Public Service provides that persons employed in the Service who are less than 15 years of age may not be a permanent staff. The Government is the principal employer on the island.

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<sup>16</sup> High Court Rules, s28- 'Infants and lunatics may sue and be sued by a guardian *ad litem* admitted for that purpose by the court'

<sup>17</sup> Births and Deaths Registration Regulations, 1984, s13

<sup>18</sup> Wills Act, s7

## **PART THREE**

### **GENERAL PRINCIPLES**

#### A) NON-DISCRIMINATION (*Convention Article 2*)

Non Discrimination is a feature of the recent human rights treaties to which Niue is a party, such as the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination against Women. The anti-discrimination provisions in the Convention on the rights of the Child are similar to those found in two other Conventions to which Niue is a party, the ICCPR and the ICESCR.

#### *Race Relations*

The Race Relations Act was promulgated in 1972 to promote racial equality in Niue and to implement the International Convention on the Elimination of All Forms of Racial Discrimination. Discrimination by reason of colour, race, ethnic or national origins is unlawful in such areas as public places, vehicles and facilities (s.3) in industry or businesses where goods and services are supplied to the public (s.4) in the field of employment (s. 5) and in land, housing and other accommodation (s. 6).

There have been no cases brought under this Act.

#### *Adoption*

Niue Amendment Act (No 2) s 100 states that “the Land Court may vary or discharge any adoption order subject to such terms and conditions as it thinks fit, on the application of any adoptive parents or of the adopted child”. Land rights in Niue are highly valued and the relationship to one’s family defines the title one may share with ones community.

#### *Land rights*

Each child of Niuean descent, born and living in Niue has equal rights to family land under the Land Act 1969. When disputes arise in relation to land use or entitlement such matters may be dealt with by the Niue High Court exercising its jurisdiction in relation to land.

Judges of the Niue High Court are appointed from current and former New Zealand judges or legal practitioners. The Courts are also served by local Land Commissioners.

As land is owned collectively by family groups, entitlement is determined in the large part by genealogical history or connection to a common ancestor and physical occupation.

#### *Education*

Article 61(2) of the Constitution charges Cabinet with the responsibility of “establishing and maintaining in Niue such public schools and for making other such provision as it considers necessary to provide educational opportunities for the people of Niue”.

Niue recognises that educational rights are vitally important to the well-being of children. The Education Act 1989 provides for equal rights to all children to have access to education. The Act provides for free education of all children from the age of 5 years until year 13. Children are also provided with free transport to and from school and all equipment. All parents are provided a quarterly ‘child allowance’ for maintenance, education and welfare of each child who is a permanent resident, a New Zealand citizen or of Niuean descent (Child Allowance Act 1995, s5). Any extra costs, such as uniforms, are expected to be provided out of the child allowance.

From the start of formal education classes are held in Niuean until year 4. However, children who are not permanent residents or are not of Pacific Island descent are able to take classes in English. For other students Niuean classes are compulsory.

Early education for 4 year olds is also provided for in Niue. Whilst the Government of Niue acknowledges that it would be preferable to offer early educational opportunities to younger children it is not possible due to lack of human and financial resources.

Both a child's parents and the Director of Education have a responsibility to provide children with disability with access to an education (s.27, Education Act). There is currently limited support for children with disabilities available and there is no teacher with qualifications in special needs in Niue.

#### *Voting Rights*

The Niue Assembly Act 1966 s.12(1)(d) provides for any person, which includes both males and females, over the age of 18 years the right to vote and stand as a candidate for election to the Niue Assembly. However there are some other conditions that are applicable in terms of residency and domicile in Niue.

#### *Maintenance and Affiliation*

No distinction is made between male and female children with regard to maintenance under the Maintenance and Affiliation section (Part 13) of the Niue Act 1966. However, the legislation does refer to children born out of wedlock with regard to affiliation and assessment of maintenance requirements.

#### *Divorce and Custody of Children*

A husband and wife have equal rights to petition for divorce under Part 12 of the Niue Act 1966 and equal rights to petition the Court for custody of the children of the marriage (s544).

#### *Citizenship*

The Citizenship Act 1977 (NZ) provides for citizenship by birth, descent or grant and no distinction is made between males and females in the acquisition of rights to citizenship. Amendments made by New Zealand to this Act currently do not apply to Niue.

Children born to parents who are neither citizens of New Zealand nor permanent residents of Niue cannot acquire New Zealand citizenship.

#### *Customary practice*

Niuean society does not distinguish between the boy or girl child with regard to land rights or social and cultural importance.

### B) THE BEST INTERESTS OF THE CHILD (*Convention Article 3*)

The principle of "best interests of the child" is not specifically referred to in legislation or the Constitution. However, this principle is reflected in free education and healthcare, child allowance payments and the adoption of the CRC.

#### *Child Protection Policies*

To date Child Protection Policies have not been considered. However, all overseas public service personnel, including teachers, are subject to appropriate police checks by immigration.

### *Legal*

As mentioned in Part one, Niue does not have specific legislation for children or child rights. Nor does it have substantive common law or examples of juvenile justice matters. Generally, children in Niue are treated as having the same right as adults. However, there are sections of various legislations (detailed in part 2) that provide for specific protection of minors.

The court acknowledges that allowing for the child's wishes to be heard permits the very person most affected by custody, access or guardianship to directly and effectively communicate with the Court. Although the principle of best interests of the child to be paramount is not specifically included in this section of the Niue Act, in practice it is accepted judicial policy that the child's best interest is the guiding consideration in all matters affecting the child.

### *The State and the Family*

As common in Pacific societies, Niuean children at birth are part of both the nuclear family as well, as the extended family and members of both parents' family acknowledges a relationship to the child. This is reflected in the way in which children's issues are dealt with by the Niuean government – each Department is responsible for issues that affect children and each Department is also a member of the NCCRC. There is no specialist unit. However, the Department of Community Affairs would be the focal point for interagency assistance where required.

## C) THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (*Convention Article 6*)

Children are specifically protected from physical harm by the Niue Act 1966 (detailed in Part Four). However, there is no reference to rights of citizens in any Niuean law or regulation. Children live in a free society and are encouraged to play, be creative and participate in spiritual and sporting activities.

For example, the primary school encourages general development of a child, including physical, mental and spiritual by:

- Primary school 'Pekapeka break' – for waking up the brain, including physical activity, at 11am. First break at 10am for half an hour, lunch time 11.45am-12.20pm and then ten minutes in shade. School hours are 8am to 1.45pm. Free play breaks are also utilised.
- Physical education is for approximately 45 min once a week and then both the junior and senior school sports on Friday are organised by community members.
- Arts/crafts/music are conducted on Friday.
- Devotion is practised every day and is Christian based. A Church representative comes one hour per fortnight to the school. Children can be directed by parents to sit out. No children currently sit out.

Children at high school may choose electives based on personal interest. This includes music, language and art.

Risk to children in the Niue community is considered minimal and so there are no specific prevention programs that are aimed at ensuring survival. There have been zero child deaths in Niue in the past five years.

The Department of Economic Planning, Development and Statistics (EPDSU) publish updated birth and death statistics on a quarterly basis with all births and deaths on island registered with the Department of Health. Statistics can be accessed at [www.spc.int/prism/country/nu/stats](http://www.spc.int/prism/country/nu/stats).

#### D) RESPECT FOR THE VIEWS OF THE CHILD (*Convention article 12*)

There are no specific 'right to expression' laws or regulations in place in Niue. However, there are also no restrictions on expression or right to associate and there are no curfews.

As mentioned above, a child is also given the right to express his or her own views with regards to

- adoption,
- guardianship,
- access and
- custody.

Children have the opportunity to share their views in Church at an annual event called White Sunday where children lead the congregation themselves. There is also a Youth Council and participation in the UNDP initiative of a Youth Parliament.

Whilst television and radio programs are limited, there is one free to air television station for the island, screening time is allocated to children's programming accessed through the Australian Network. General opinion can be expressed through talk back radio.

Children are also encouraged to actively participate in

- the classroom and school council,
- family life and
- society (including youth groups and sporting teams).

Traditionally, the older a child gets the more responsibility and respect a child will receive from their village community.

There are no institutional forms of care in Niue.

There is no dedicated Juvenile Justice system in Niue and there has not been a civil case that has focused on someone under 18 years in recent memory. Where a criminal case is brought against a child they are represented by the state or a private lawyer and will be allowed to participate as is suitable for their level of development.

Specific child rights or child development courses have not been provided to government staff.

Niue does not have the facilities to train child associated professionals in fields such as law or education.

## **PART FOUR**

### **CIVIL RIGHTS AND FREEDOMS**

#### **A) NAME AND NATIONALITY (Convention Article 7)**

The elements that preserve identity include name and nationality. The following are relevant to the protection of a child's identity:

##### *Registration of Birth*

The Niue Island Births and Deaths Registration Regulations (1984) require the following particulars of birth to be furnished, within 14 days after the birth of the child, to the Registrar of Births (reg. 6):

- i. the date and place of birth;
- ii. the Christian name or first name and sex of the child;
- iii. the names of the father and mother, when and where married, ages, place of birth, place of residence and occupations;
- iv. description of the father and mother (race to be stated in full);
- v. the name, address, occupation and relationship of the informant to the child;
- vi. the date of registration.

The person responsible for furnishing the particulars of birth to the Registrar could be the midwife, nursing sister or nurse in-charge at the time of birth in a public hospital; the mother or father of the child if the birth occurred outside the hospital; occupiers of the house or building in which the child was born; or any person present at the birth of the child (reg. 6-9).

Any child born out of Niue and before attaining the age of 24 months may be registered if the parents or persons having lawful custody of the child are ordinarily residents or about to take up residence in Niue provided that application for registration is made within 6 months of the child's arrival and the application is supported by documentary evidence of the child's birth (reg.12).

The parents of any child who has not attained the age of 21 years and has never been married may change the name of the child to his or her surname or to any first or Christian name but if the child has attained the age of 18 years his/her consent is required to any change of name (reg. 13(2)).

##### *Entry of Father's Name in Birth Register*

The name of the father of the child will not be entered in the Register of Births unless:

- the informant states that the child is born in lawful wedlock; or
- is the posthumous child of lawfully married persons; or
- unless the father, together with the mother, attends personally to the registration and admits that he is the father of the child and the mother agrees for the father's name to be entered in the register; or
- there is an Affiliation Order made under Part XXIII of the Niue Act 1966 in respect of the child (Births and Deaths Registration Regulations (1984) reg. 15).

The particulars of the father may also be included in the Register of Births if the parents of an illegitimate child born in Niue subsequently marry and application is later made to the Registrar with supportive evidence (reg. 17(1)).

### *Adoption*

The Adoption Act 1955 provides that every adoption order made “shall confer the surname of the adoptive parent on the adopted child, with such first name or Christian name as the Court, on the application of the person who is applying for the adoption order, may fix” (s. 16).

### *Citizenship*

The Citizenship Act 1977 (NZ) which defines New Zealand to include the Cook Islands, Niue, Tokelau and the Ross Dependency makes provisions with respect to the status of New Zealand citizenship. This Act applies to Niue as stated under section 29 of the Act.

The Citizenship Act provides for citizenship by birth, descent or in special cases. Section 6 of the Act provides that every person born in New Zealand on or after the first day of January 1949 shall be a New Zealand citizen by birth. A person born outside New Zealand after the 1 January 1978 shall be a New Zealand citizen by descent if at the time of his birth his father or mother is a New Zealand citizen otherwise then by descent (s. 7(1)). Citizenship by descent will lapse if the child has not registered his citizenship after two years of attaining majority (s. 7(2)). The Minister may, upon application authorise the grant of citizenship to persons in special cases, including minors (s. 9(a)).

The Citizenship Act also provides for citizenship to be granted in exceptional circumstances on humanitarian grounds (s. 9(1)(d)). Although there have been no cases of this, were Niue to have a refugee apply for citizenship this section may apply.

Article 22(2) of the Convention would also ensure that a refugee child is to be given the same protection as any other child permanently or temporarily deprived of his or her family environment. Children of other nationalities residing in Niue enjoy the same amount of civil rights protection under Niuean law and equal opportunities and protection also apply to them.

### **B) PRESERVATION OF IDENTITY (Convention Article 8)**

As detailed above, children are assured name and nationality based on the above regulations. Where for any reason the child has not been registered the Justice Department will assist the child and their family.

There have been no instances where a child has been at risk of having his or her identity interfered with. However, a parent currently has the ability to change a child's name without permission up to the age of 21 under the Niue Island Births and Deaths Registration Regulations (1984).

### **C) FREEDOM OF EXPRESSION (Convention Article 13)**

Freedom of expression is only limited by section 187 of the Niue Act 1966 that provides that anyone who “without lawful justification or excuse uses any words that are likely to injure the reputation of any other person by exposing him to hatred, contempt or ridicule...if the words are spoken or reproduced within the hearing of more than 12 persons at a public meeting or at a place to where the public has access or by radio broadcast or by publication is guilty of criminal libel or criminal slander” which carries a six months maximum prison term. Section 187 speaks of “anyone” and “any other person”, the terms making no distinction between adults and children.

Children are free to express their opinion with respect to matters that affect them. For example, under the adoption laws, a child over the age of 12 years has the right to express

freely his or her views with regard to adoption. In custody matters and in matters involving the termination in a parent/child relationship, or child access matters, the Courts will generally seek the views of the children on vital matters affecting their future. The maturity or capacity of children is considered by the Courts in determining the weight to be given to children's opinions. Under section 303 of the Niue Act 1966 in any proceedings before a Court all witnesses who appear to be under the age of 12 years may be examined without oath but are required to make a declaration to tell the truth.

### *Media*

Niue has a television station that shows some local content, such as news twice a week, and streams international programs mainly from New Zealand and Australia. The local newspaper, the Niue Star, is a weekly newspaper printed in New Zealand. This paper occasionally has contributions from youth. The Government also publishes a newsletter that informs the community about, for example, school and sporting activities.

Children are able to access wireless internet throughout the island which enables them to participate in current social networking sites such as Facebook. Talkback radio is also available for all people to contribute to.

### *Other*

The Young people are defined as men and women between the ages of 15 and 34, regardless of marital status, family and personal background, religion, ethnicity or sex. The definition of youth, however, does not restrict participation of younger or older people in youth activities. The participation of adults/ elders is to act as mentors to nurture young people's ability and capacity to lead and be active in community and national programmes and for personal growth.

The 2006 census recorded a total of 438 young people (15-34 years old), consisting of 207 females and 231 males and representing 26.9% of the total population. The 2001 reported a total of 471 young people-233 females and 238 males. Unlike other Pacific Island countries and territories where youth represents a significant portion of the total population, Niue is grappling with the migration of its youth population mainly to New Zealand, with more males migrating than young females.

The young people of Niue are well educated as education is compulsory and they have access to higher and tertiary education in New Zealand and at the University of the South Pacific (USP). Young people leaving Year 13 who are not able to continue their education either find employment in the public service or private sector, or they migrate to New Zealand.

Being the largest employer on the island, the Niue Public Service is also the main employer of young people. Few young people are employed by NGOs and the private sector. The issue of unemployment was not brought up by young people as they are employed by NGOs and the private sector.

The number of youth with disabilities could not be ascertained due to lack of data; however, the total number of people with disabilities in Niue was reported in 2006 to be 9 (5 males, 4 females).

Table 3: Resident youth population by age and gender-2006

Resident youth population (15-34 years) by five-year age group and sex			
Age Group	Males	Females	Total
15-19	90	73	163
20-24	40	49	89
25-29	49	45	94
30-34	52	40	92

Niue Youth Council (NYC) was established in 1982 and became an incorporated society in 1983, with membership made up of youth groups. The selection of the Management Committee happens every three years which consist of 19 affiliated youth groups. 14 of the members are from the 14 village youth groups and five account for denomination groups. However, Youth representation and participation does not restrict involve from non-affiliates youths. Niue Youth Council is also a member to the Pacific Youth Council and representative to the Commonwealth Youth Programme.

The Department of Community Affairs is the government focal point for youth development lobbying on behalf of NYC to government on measures to boosting the status of the Youth of Niue. However, this linkage does not restrict NYC from building networks with other stakeholders to boost youth development on Niue.. A good example of this is NYC's close relationship with the Health Department advocating and increasing awareness on health related issues affecting the youths of Niue Youth Council is also a member of the Pacific Youth Council and the Commonwealth Youth Programme., such as the Communicable Diseases STI, HIV/ AIDS KABOOM radio stingers, TV promotions and club DJ mixer to the Non Communicable Diseases Campaign physical fitness body jam competition.

A Youth Parliamentarian Project with UNDP was conductedimplemented in 2009 and funded by UNDP. It aimed at giving the young people of Niue the opportunity to raise issues affecting them at the highest government level. It enabled the young people of Niue to understand Niue's political system and how decisions are made and based in the Niue Legislative Assembly. The two day mock youth assembly session was held at the Niue Legislative Assembly Chamber with the Hon. Speaker to the Legislative Assembly as Chair. It also provided youths with anthe overall understanding of the electoral and voting processes, putting in motions for Youth MPs to name a few. Since the implementation of the Youth Parliament Project, Niue hashave seen a high representation of youth (both men and women) in the Village Councils (local government).

**D) FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (Convention Article 14)**

There are no restrictions on freedom of thought, expression or religion. This is best illustrated by the number of religious denominations (nine) in a small population.

The protection of the right of school children to freedom of thought, conscience and religion is protected by section 39 of the Education Act 1989 which provides as follows:

“The Minister may approve religious instruction to be given to pupils of any Government School for a period not exceeding 30 minutes for any class in any one week provided that...

- (a) such religious instruction shall be observed or conducted in accordance with syllabuses which are not contrary to Government policy and are given by voluntary instructors who must be approved by the Minister, and
- (b) such religious instruction shall be of a non-denominational character, and
- (c) no teacher shall be compelled to give such instruction, or to attend while such instruction is being given against the dictates of his conscience, and

- (d) if a parent or any pupil applies to the Principal of any school for the pupil to be excused wholly or in part from attendance at religious instruction, the pupil shall be excused from such attendance in accordance with the terms of the application.

Section 39 recognises the roles of both parents in providing direction to the child in the exercise of his or her rights to religion and the child's right to freedom of thought, conscience and religion.

The *Ekalesia Kerisiano Niue*, the island's major Christian denomination, is responsible for the religious instruction of students in schools.

A child's attendance at Church or participation in Church Youth Groups is based on family preference and there is no requirement to attend either.

Cultural traditions and the Niuean language are encouraged and remain an important part of every childhood. These practices are not impeded in any way and are in fact encouraged by the Government as illustrated throughout this report.

#### E) FREEDOM OF ASSOCIATION AND OF PEACEFUL ASSEMBLY (*Convention Article 15*)

Freedom of association plays a critical role in cultivating friendship and personal relationships that are important to the development of children. Group associations also play an important part in the transmission of ideas and information. Extended family gatherings and freedom to associate with one another is part of Niuean society. This freedom of association and peaceful assembly in Niue is consistent with the principle that children have rights to express themselves individually as well as through group participation in schools, in the playgrounds, on the streets and at home which contributes significantly to their evolving capacity into adulthood. There has been no need to create legislation to support this right of free association and peaceful assembly.

Children are able to join, for example, church and sporting based youth groups and leadership is encouraged through the work of the National Youth Council.

#### F) PROTECTION OF PRIVACY (*Convention Article 16*)

A child's reputation is protected by section 187 of the Niue Act 1966 that provides that "anyone who without lawful justification or excuse uses any words that are likely to injure the reputation of any other person by exposing him to hatred, contempt or ridicule...if the words are spoken or reproduced within the hearing of more than 12 persons at a public meeting or at a place to where the public has access or by radio broadcast or by publication is guilty of criminal libel or criminal slander" which carries a 6 months maximum prison term. Section 187 speaks of "anyone" and "any other person", the terms making no distinction between adults and children.

The age of consent for independent legal or medical advice is a matter of debate in Niue as there is no specific legislation that clarifies this issue. Accordingly, both medical and legal professionals would have to rely on the ethical guidelines of their own profession. This is significant as issues such as consent to medical treatment, provision of contraception advice and client or patient confidentiality become unclear.

#### G) ACCESS TO APPROPRIATE INFORMATION (*Convention Article 17*)

The Broadcasting Corporation of Niue (BCN), which produces programmes for both television and radio, has plans to produce children's programmes. However due to a lack of resources the production of children's programmes has not been able to be affected.

The Manager of the Broadcasting Corporation cites lack of resources as a major stumbling block in the production of other programmes, including children's programmes, but the Corporation will continue to keep the plans for children's programmes on the agenda. BCN's policy is to 'bend over backwards' to produce local material so that Niuean culture, language and heritage is not lost. Local news programs are featured every Tuesday and Thursday evenings and for special events.

Material deemed to be obscene is barred to children thus trafficking in obscene publications is an offence against Section 174 of the Niue Act 1966. Under this section anyone sells or distributes to the public any indecent book, picture, photograph, document, film, video-tape or other object tending to corrupt morals or publicly exhibits any obscene or indecent show tending to corrupt morals is liable to a term of up to 6 months imprisonment.

Niue has wireless internet available but there are no filters or restrictions for the general community. School and government offices have implemented an internet filter.

Educational texts are thought expensive and variable and so any books that are required for students in high school are supplied in photocopy form. Teachers are supplied their texts from the New Zealand Department of Education.

#### H) OTHER

Niue National Youth Policy (2009-2013) identified the following as issues hampering the realisation of the full potential of young people:

*a) Lack of organised activities for youth*

There are insufficient resources to organise activities that will best suit the interest of young people and inadequate human resource to manage and implement youth activities.

*b) Lack of motivation*

There is a lack of motivation and interest by youth participating in learning and promoting the Niuean traditions and customs. There is also a lack of understanding of the Niuean culture that may lead to the extinction of this unique heritage. Young people have a responsibility to maintain and carry forward Niuean culture. However, young people blame their lack of motivation and interest on modern influences and competing priorities.

*c) Inadequate employable skills*

Young people entering the workforce from high school do not necessarily have the skills to fully undertake their roles and responsibilities. There is a need to provide mentoring and capacity building for young employees.

*d) Limited opportunities for young people to diversify careers*

Due to limited resources (including human resources) and competing priorities, there are limited opportunities for young people to get into other fields and careers.

e) *Lack of interests in areas such as agriculture, handicrafts and small income generating activities*

Due to limited market and awareness of opportunities in the informal/ private sector young people have been discouraged from venturing into these sectors.

f) *Outward migration leading to a declining population*

Young people do not feel that increased Niuean migration is a problem as educational and employment opportunities abroad are more attractive. However, migration does affect young people's development as those responsible for youth development also have other commitments due to the shortage of human resources. Between 2001 and 2006, an average of 50 people migrated per year, with the majority being young people.

g) *Alcohol abuse (underage drinking and binge drinking)*

Alcohol abuse is quite prevalent among young people, leading to drunk driving offences.

h) *Negative influence by young delinquents sent back to Niue from overseas*

As part of an effort to rehabilitate young people in New Zealand, their parents/ guardians send them to Niue. Some display certain negative behaviours, which influence young people on the island. However in most cases, these young delinquents adapt well to the Niue lifestyle and have become productive contributors to the community.

i) *Health Issues*

Young people are a vital part of Niue's development; therefore it is important that these young people have healthy lifestyles so they can be productive in their field of work. However, the reality of living in a small-knit community is that the issue of confidentiality can discourage young people from seeking certain kinds of health care. Health Issues faced by young people on Niue are substance abuse (alcohol & tobacco), physical abuse (domestic violence, ethnic violence), sexually transmitted infections, teenage pregnancies, non communicable diseases, stress, peer pressure, bullying, low self esteem and depression.

l) THE RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT OR DEPRIVATION OF LIBERTY  
(Convention Articles 37 and 39)

The Criminal Offences section of the Niue Act 1966 sets out a list of activities that are considered to be criminal with the clear intention to punish offenders who abuse or neglect children. Assault, rape, defilement, incest and prostitution are criminal offences which carry a range of penalties. Sexual intercourse or indecency with a girl under 12 years of age, or a girl between the age of 12 and 15 years, carries a heavy term of imprisonment, and that the girl consented is no defence, nor that the person charged believed that the girl was over the age of 12 years or 15 years as the case may be (ss. 163, 164). Sexual intercourse with a girl who is an idiot, imbecile, or of unsound mind is also an offence.

The Police in Niue are available to investigate any form of child maltreatment.

The present size of the population in Niue makes it easier to address issues of child maltreatment as the protection of children is a pervading principle in Niuean society.

There have been recent workshops conducted with respect to domestic violence for police and health professionals. However, there has not been specific awareness raising in relation to the treatment or punishment of children. Domestic violence is a recognised issue and perpetrators do get charged by the local police. However, the treatment of children who are in a domestic violence situation has not been specially addressed.

The Department of Community Affairs is the focal point for any matters involving the welfare of children. However, there is an interagency approach. Matters such as domestic violence may involve the Department, the Police and the Department of Health.

It is possible that community members may not be confident knowing who to inform in the case of child abuse and it may stay within the family unless a child is brought to the hospital due to injury. Children themselves are not informed on how to protect themselves or who to approach with respect to personal safety.

## **PART FIVE**

### **FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

#### **A) PARENTAL GUIDANCE (*Convention Article 5*)**

Niueans live in villages in an extended family structure. Responsibilities are often shared and children may spend time with sisters, cousins, grandparents and others in the community. Where a parent does not perform their duties there is no shortage of people to support the child or children.

Under section 43 of the Education Act 1989, it is mandatory for a Principal to give guidance and counselling to the pupils attending school and to notify the parents of any pupil of any condition or circumstances which, in the Principal's opinion, is affecting the normal progress of the pupil through the school or is affecting the relationship of the pupil with the teachers or other pupils.

#### **B) PARENTAL RESPONSIBILITIES (*Convention Article 18(1)-(2)*)**

The Niue Act provides that parents have to provide the basic necessities of life. However, there are no provisions that outline specific responsibilities of parents.

The Niue Government provides free Health care and Education and also pays parents an allowance for each child. Pensions and benefits are also available to those who have lived in Niue for not less than 10 years and are destitute (Pensions and Benefits Act (1991) s.15).

The Education Act 1989 imposes a duty on each parent of a school-age child to enrol the child at a school and to ensure that the child attends and remains at school. There are however exceptions where a child is ill or there is some other significant cause to prevent the child attending school (s. 25). Upon failing to enrol the child, a parent is liable upon conviction to a fine. A parent is also liable to a fine if a child's attendance is irregular without just cause (s.30). Where a school-age child is suffering from a disability, the Director of Education may take steps to provide suitable education for the child and direct the child be sent to a special class providing for special education (s. 27).

#### **C) SEPARATION FROM PARENTS (*Convention Article 9*)**

In spite of the values placed on the family unit there may be instances where it is in the best interests of the child to remove the child from the parent/s. Section 69 of the Niue Act 1966 provides that a child may only be removed from its family unit by due process of law. The Court has the power to make an order for the child to be removed on the application of any person if it is considered that the parent or guardian is unfit to have custody of the child.

From 1995 to 2000, there were no applications to remove a child from his/her family. Under the Guardianship Act 1968 (NZ), the Court has the discretionary power to make an order allowing the parent who does not have custody of the child to have access to the child (s. 15). If a parent of a child dies the Court may order that, the parents, or any brother or sister of the deceased parent, or any brother or sister of the child, have access to the child at such times and places as the Court thinks fit (s. 16)

Under the Penal Manual 2006 prison inmates are permitted to receive visitors, which could include family members, relatives, Ministers of religion, on Saturdays and Sundays or any other weekday provided the Superintendent is satisfied that the security and discipline is

not affected. The time allocated for each visitor is at the discretion of the Superintendent of Prisons and in special cases the approval of the Controller of Prisons must be obtained (Instruction 9(1) and (2)).

There are instances in Niue where children live with their grandparents or are brought from other countries such as Tuvalu to live with extended family. The schools are aware of the situation but do not record the data.

#### D) FAMILY REUNIFICATION (*Convention Article 10*)

The Niue National Strategic Plan 2009-2013 provides that a “population strategy and policy will be developed to maintain and build Niue’s population. Inward migration policies will continue to focus on Niueans living abroad”. The aim is to “develop and implement a Population Strategy”. The hope is increase the population “by 20% by 2013” with an “average population growth rate increased annually to at least 1% by 2013”.

The preference is for Niueans residing overseas to return to re-establish their residency and family links in Niue. This will reunite extended families and members of families that have moved overseas to work.

The Citizenship Act 1977 (NZ) states that citizenship may be granted if a person is recognised as a New Zealand citizen by descent (s.7). Citizenship may also be granted based on residency (s.8) or even in special cases where it is in the public interest (s.9). This allows family members to come to Niue and apply for permanency for family reunification purposes.

All people may leave Niue if they have the required documentation. However, there is a criminal offence for abduction of children under s160 of the Niue Act 1966.

#### E) ILLICIT TRANSFER AND NON-RETURN OF CHILDREN (*Convention Article 11*)

Under Section 160 of the Niue Act 1966, a person can be liable to a term of imprisonment if he or she, with intent, deprives a parent, guardian or anyone who has lawful custody of a child under the age of 14 years –

- “(a) takes or entices away or detains the child; or
- (b) receives the child knowing it to having been so dealt with.
- (c) nothing in this section shall extend to anyone who gets possession of any child claiming in good faith a right to the possession of the child”.

International child abduction by parents locked in a dispute over the custody of the child is currently not an issue in Niue. From 1995 to 2009, there were no cases in which a person was convicted of depriving a parent or guardian having lawful custody of a child.

#### F) RECOVERY OF MAINTENANCE FOR THE CHILD (*Convention Article 27(4)*)

The Court may make an Affiliation Order with respect to a child born out of wedlock if it is satisfied that the defendant (not being the woman’s husband) is the father of the child. The child must be under 16 years (s551).

In Part XXIII of the Niue Act 1966 involving maintenance of children, the law recognises that both parents owe a duty of care to their child. Section 551 says that on request of the mother the Court has the power to make an Affiliation Order declaring a male to be the father of a child, but only if the child is under the age of 16 years.

A maintenance order may be made –

- s553 – in favour of an illegitimate child against the father

- s554 – against the father in favour of the child
- s555 – against the mother in favour of the child
- s556 – in favour of the wife against the husband if the wife shows reasonable cause for refusing or failing to live with her husband
- s557 – against the wife in favour of the husband
- s558 – against any person in favour of the father or mother

The Niue Act 1966 makes it an offence for anyone against whom a maintenance order has been made to leave Niue owing arrears in maintenance without the written permission of a Judge of the High Court. An offence will be committed if the father of a child leaves or attempts to leave Niue, with the intent of escaping his obligations as to maintenance of the child.

There is no data on the use of these provisions however where one parent is absent it would be unusual for at least the extended family not to take responsibility for the child.

#### G) CHILDREN DEPRIVED OF A FAMILY ENVIRONMENT (*Convention Article 20*)

At present, alternative care for children such as foster placement is not required. Accordingly, there is no provision for orphanages or alternative care facilities.

Although Section 69 of the Niue Act 1966 provides for alternative care, children in Niue have a wide system of family support through the extended family system which provides an immediate and accessible forum where matters concerning the care of children can be resolved.

There is no data on how many traditional adoptions are currently in place.

Any children who are incarcerated have the same right of access to visitors as adults under the Penal Manual 2006, which could include family members, relatives, Ministers of religion, on Saturdays and Sundays or any other weekday provided the Superintendent is satisfied that the security and discipline is not affected. The time allocated for each visitor is at the discretion of the Superintendent of Prisons and in special cases the approval of the Controller of Prisons must be obtained (Instruction 9(1) and (2)).

#### H) ADOPTION (*Convention article 21*)

Article 21 of the Convention applies to countries which recognise and permit a system of adoption. Niue permits legal adoption under Part eight of the Niue Amendment Act 1968 (No. 2) and the Adoption Act 1955 (NZ). Section 92 of the Niue Amendment Act (No. 2) does not give legal recognition to customary law including customary adoption. Promoting the welfare of the child is the guiding principle of adoption and ensuring the interests of the child to be the paramount consideration (s. 97(1)(f)).

Section 16 of the Adoption Act lists the effect of an adoption order made by the Court to include that an adopted child “shall be deemed to become the child of the adoptive parent, and the adoptive parent shall be deemed to become the parent of the child...” The Niue Amendment Act 1968 (No. 2) provides that no adoption order will be made without the consent of the child’s parent(s) whether the child is born in lawful wedlock or not. The Court will dispense with parental consent if it is satisfied that the child has been deserted, or if the parent is considered by the Court to be unfit to have the care and custody of the child (s. 98). The adoption laws of Niue provide for different kinds of adoptions and could involve adoption by close relatives, step-parents and adults who are unrelated to the child.

The adoption laws provide for continuity in a child's upbringing to be addressed and so the cultural background of the child would be considered.

Under the Niue Amendment Act 1968 (No. 2) an adoption order may be made if the child is under the age of 21 years, but if above the age of 12 years, the child's consent to the adoption is mandatory (s. 97(1)(a-e)). Niue has not considered becoming a party to the Hague Convention. Niueans recognise customary adoption (tamataute) which occurs when a child is living with a family as their child but it is not formally registered.

Adoption cases in Niue are held in public as there are often objections to adoption because of the enormous implications of family rights to land.

I) PERIOD REVIEW OF PLACEMENTS OF CHILDREN (*Convention Article 25*)

Although the laws of Niue make provision for alternative care of children, no Court Order has so far been made to provide for alternative care for children.

J) ABUSE AND NEGLECT, INCLUDING PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL REINTERGRATION (*Convention Article 19, 39*).

The following details how criminal acts relating to children are dealt with in Niuean law-

The Niue Act 1966 provides that the "killing of a child is homicide if it dies in consequence of injuries received before, during or after birth" (s. 132(2)). A person is liable under the criminal law for wilfully frightening a child, who is under 16 years of age, to death, or to the extent that the child becomes sick and infirm (s. 133(e)). It is also a criminal offence to counsel someone's successful suicide (s. 149); or to dispose and conceal the dead body of any child whether the child died before, during, or after birth (s.150).

Any person who has charge of another person, who because of age or some other cause is unable to provide for himself or herself, is under a legal duty to supply that person with the necessaries of life. In the case of a child, the person who has charge will be criminally responsible for omitting without lawful cause, irrespective of whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or health permanently injured by such omission (s. 142).

The parent or guardian of any child under the age of 16 years is under a legal duty to provide the necessaries of life. Neglect of duty without lawful excuse so that the life of the child is endangered or health permanently injured by such neglect carries a heavy penalty of a maximum of 7 years imprisonment (s. 143).

Under Section 157A of the Niue Act 1966 anyone who has custody, control or charge of a child under the age of 16 years will be liable to imprisonment of up to 5 years if he or she wilfully ill-treats, neglects or causes the child unnecessary suffering, actual bodily harm, injury to health or to incur any unnecessary physical or mental disability.

Any person found guilty of the abduction of children under the age of 14 years and depriving them of their personal liberty or depriving any parent, guardian or anyone having lawful custody of any child under the age of 14 years by enticing the child away, detaining the child, or receiving the child knowing that the child has been abducted is liable to a maximum term of 2 years imprisonment (s. 160).

Section 159 of the Niue Act 1966 makes abduction of a girl under the age of 15 years a specific offence. A person can be liable to a maximum term of 2 years imprisonment if,

without the consent of the father or mother or any other person having lawful charge of the unmarried girl under the age of 15 years, takes or abducts the girl, and the girl's consent will be no defence. No action will be taken if there is a subsequent marriage between the offender and the girl.

Sections 162-164 relate to sexual misconduct offences. Section 162 prohibits rape with up to 14 years imprisonment. Section 163 prohibits sexual intercourse with a girl under 12 with up to 10 years imprisonment or at s164 prohibits sexual intercourse with a girl between 12 and 15 for up to three years imprisonment.

Section 165 prohibits 'sexual intercourse with a woman or girl who is an idiot or imbecile or of unsound mind'.

Procuring one's own or another's miscarriage is illegal under ss166-168.

The offence of 'buggery' or 'attempted buggery' is prohibited and offenders are liable to imprisonment for up to 10 years (ss170-171).

Incest is prohibited and anyone of or over the age of 15 who commits incest is liable for a term of imprisonment not exceeding 7 years (s172).

A Family Protection Bill is currently being considered by Cabinet which will aim to protect families from such matters as domestic violence. The purpose of this Act is:

- (i) to preserve and promote harmonious family relationships; and
- (ii) to prevent domestic violence in all levels of society in Niue.

This Act is based on traditional values of Niue and on Christian principles and:

- (i) recognises that domestic violence of any kind is not acceptable behaviour,
- (ii) provides measures for the effective legal protection of the victims of domestic violence, and
- (iii) provides for punishment of all persons who commit acts of domestic violence.

### *Counselling services*

The reality of living in a small close-knit community is that the issue of confidentiality ceases to exist discouraging people are discouraged from seeking counselling out of concern for confidentiality.. As an outcome it was suggested to encourage residence of Niue to adopt the 'buddy system' approach as a form of counselling at an informal level. Living in a small close-knit community also hinders professional counselling from taking place-especially when half of the client may be island is either related to the counsellor, is a family the counsellor's close friend or work colleague, making it harder for the counsellor to have an objective view. With this in mind, people are now looking at other forms of counselling for issues such as substance abuse, STIs, domestic violence, village and family tension in oppose to utilizing government services because of the limitation of confidentiality.

The youths of Niue prefer an indirect form of counselling with the usage of modern technology as means of community with the counsellor. Such examples are the usage of Skype, Google talk, face book, beboFacebook, Bebo and twitter. This isTwitter, made available from a counsellor who works with the Department of Community Affairs.

Church leaders also provide moral and spiritual counselling and can be the first stop for people seeking such services, especially the older generations.

The Niue Counselling Committee was set up after Cyclone Heta (2004) an initiative by the Niue Catholic Mission who worked closely with the Regional Council of Churches to provide trauma counselling for the people of Niue in the aftermath of the tragedy.

More recently, people have been seeking counselling for substance abuse or due to engaging in unsafe and risky activities.

The Niue Counselling Committee at the time functioned as an ad-hoc body without a constitution hence why it is housed with the Department of Community Affairs but since post-Heta the committee has been defunct since.

### *Corporal punishment*

The Education Act makes no reference to corporal punishment but corporal punishment is permitted in both the primary and secondary schools. Section 22(3) of the Education Act states that “the Principal shall be responsible for the care, safety, control, and discipline of each pupil attending that school” is broad enough in its wordings to permit this practice.

It was admitted that corporal punishment may still be used in the schools. However, practices are believed to have decreased and it is discouraged by school administration. There are programs that do aim to utilise alternate discipline techniques including leadership and citizenship programs, sporting achievements and capacity building such as focusing on values that may have been an issue in the previous term. Children are also encouraged to participate in planning activities during the school term and discuss ‘where to next’ which encourages developing critical techniques.

In general, discipline in schools is not a problem and the close contact between teachers, children and their parents is a major factor in solving difficulties experienced as they arise. There are also more formal arrangements for parent and teacher evenings which are organised three times a year to give parents the opportunity to discuss with the teachers concerned, the progress and difficulties of their children.

There is no established training available that will allow professional such as teachers to identifying and report suspected abuse nor is mandatory reporting required at law. However, Police and Health have approached Cabinet to allow them to share information at Director level.

Schools state that they have seen the results of corporal punishment used against children in the homes, such as severe bruising in the shape of a broom handle. However, teachers state that any attempt at enquiry are extremely unwelcome and discourage teachers from asking further. Teachers have been required to take children to hospital after they come to school with injuries that occurred at home. However, these injuries have been the results of accidents.

## **PART SIX**

### **BASIC HEALTH AND WELFARE**

A Global School Health Survey was conducted in partnership with WHO with high school students in July 2010. Results will include information of issues as broad as nutrition, drugs use, bullying, abuse and suicide. The results of this survey have yet to be received and analysed.

There is a health clinic located at the high school usually staffed by a general health nurse who can provide information on issues including healthy lifestyle and nutrition. Whilst staffing is currently an issue a newly qualified public health clinician is returning from NZ and may be based there.

The 'Clean hands Save lives' campaign are to be launched soon, with soap already in schools and teachers teaching children how to wash their hands.

Updated data may not be available on all matters however a new data system was installed in July 2010 which will allow data updates in the future.

#### **A) DISABLED CHILDREN (*Convention article 23*)**

There are two children in Niue who suffer from serious intellectual disabilities, one in primary school and one in high school. Whilst these students are to be supported by a teacher's aid this has not always been possible due to reduced teacher numbers. Each student moves with her class each year but due to lack of specialist assistance may not be included in lessons. Other students have been identified with learning disabilities, such as dyslexia. However, there is no specialist assistance currently available for these children.

There are no children with physical disabilities in Niue. It is possible that this is because people with physical disability require off island care.

The children receive financial support in the form of a welfare benefit from the Department of Community Affairs.

The Health Department reports that the two children with intellectual disabilities do not have specialist medical requirements although updated medical assessments are being planned.

#### **B) HEALTH AND HEALTH SERVICES (*Convention article 31*)**

The Niue Act 1966 provides for the establishment and maintenance of such hospitals and other institutions as considered necessary for public health and that they be under the control of the Director of Health (s. 24). The function of the Director is to provide for all persons in Niue and such medical and surgical services as may be reasonably required and reasonably practicable (s. 23A (1)). Medical services are provided free of charge to Niueans and persons with permanent residence status but a small fee is paid by non-Niueans.

In 2004 a category 5 cyclone destroyed Niue's only hospital (Lord Liverpool Hospital) and a new hospital, Niue Ffoo Hospital was opened in 2006. The location of Niue Ffoo Hospital is at a safer location and not susceptible to sea damage during cyclones. It is built to withstand destructive cyclones and is considered a safe haven.

Since the early 1990's the hospital has been the centre for all preventative and curative health services, dentistry, and school health services for school children and village services. Community outreach is maintained through the Maternal Health Nurse village visitations, school clinics and regular Public Health Village Inspections. Government departments such as Public Works and Community Affairs work closely with the Health Department to ensure high standards of environmental sanitation, drinking water, refuse disposal, quarantine measures, vector control, infectious disease control, sexually transmitted diseases and AIDS prevention, school health and health promotion and education.

Niue Fook Hospital has both a maternity unit and an aged care facility. The hospital has three vans and one ambulance which ensure outreach to the villages. The Hospital has eight beds with specific allocation for both maternal and paediatric care.

All health services are currently free for permanent residents under the Niue Health Policy. All x-ray, physiotherapists, dentists and scripts are free. Tourists and visitors are recommended to have health insurance however if local services are required they would be provided at minimum cost (Consultation fee of \$25, revisit \$15, overnight admission \$50).

#### *Off island care*

As Niuean's have NZ citizenship they qualify for free medical care in NZ. The Niuean Health Department will refer up to 2-3 per week for medical care in NZ where a service is not available on island and the cost of attending the appointment in New Zealand is also covered. The Department has an annual programme for visiting specialists to attend the hospital to reduce the number of people required to go off island for care. A parent or guardian will be funded to attend with a child. Approximately 5 children will attend NZ for medical treatment each year.

In an emergency the Director of the Department can order the attendance of a medivac however this can take up to 72 hours. Where a person is not eligible for free transfer the medivac may cost \$40,000 or more.

Where a child requires ongoing treatment in NZ a family may choose to move there however there is no record of this in recent memory.

#### *Maternity*

The Health Department will currently not allow a woman to deliver in Niue if there is not a doctor who can perform a caesarean in residence, as it's too risky to both the mother and the child. In 2009, 11 babies have were born and three in 2010. However, previous to this no babies were born on island for five years.

The mother will be referred to Auckland for care where there is no doctor in residence or when the birth may have complications. This position is currently vacant. However, locums are brought in short term where possible.

#### *Health Indicators*

There has been a Zero Infant Mortality in recent memory.

Lengthening life expectancies indicate the Niuean population is comparatively healthier than many in the Pacific, due to many years of established health practices and services. However, Niue is showing the effects of changing patterns of disease. As in other Pacific

countries, lifestyle diseases such as hypertension, diabetes, obesity and cancer are now serious health concerns. Life expectancy of a male child at birth is 67 and for a female child 76.

Maternal care is also good, with 100% of women attending one or more antenatal visits. The last known maternal death was in 1982.

Table 4: Niue Health Indicators 2000

Total population	1, 625
Total fertility	2.6
Annual population growth rate (%)	3.5
Infant mortality at per 1000 live births	10
Life expectancy (years)	69
Immunisation coverage (%)	100
Under 5 Mortality Rate	1
Maternal Mortality	0
Access to safe water (% households)	100
Access to sanitation (% households)	100
Access to health services (% households)	100
Deliveries by trained health personnel (%)	100
Percentage of budget to health (%)	10
Per capita health expenditure (US\$)	518
Crude birth rate	18.3
Crude death rate	6.6

Acute respiratory infections and asthma are causes of illness among children. Passive exposure to smoking from parental or other family member's smoking habit is a possible contributing factor. The Tobacco Control Bill is yet to be passed by Cabinet.

#### *Immunisation*

Immunisation is one of the most basic preventive health services. It is available for all children in Niue regardless ethnicity or residential status. The use of vaccines to prevent the once common childhood diseases such as polio and measles is part of the preventive health care programme in Niue. Children are immunized against tuberculosis, tetanus, diphtheria, whooping cough, Rubella, Hepatitis B and Haemophilus Influenza type b, Measles, Mumps, Rubella, H1N1 and Pneumococcal meningitis (2009 October). But for the yearly influenza, no instances of these diseases have been seen in Niue in recent history.

There is a 100% immunisation coverage following the NZ well child immunisation program.

Immunisation against human papillomavirus (HPV) is being considered.

Tetanus Toxoid vaccination is given only as a booster dose for people over the age of 20 years old immediately after injury according to the doctor's recommendations, but not to pregnant women.

Since 2000, adults over 60 and children who assessed as requiring it are given a Seasonal Flu vaccination.

#### *Sexually Transmitted Infections*

There have been no reported HIV, or AIDS cases in Niue, however there is a program to raise awareness on at risk behaviour so education and consultation is ongoing with general public. The Health Department maintains the compulsory testing of blood donors for HIV and offers voluntary HIV testing.

There have been instances of chlamydia and trichomonas vaginalis (types of STI's) but no positive tests for gonorrhoea or syphilis in the last two years. Testing for these is ongoing.

This information is provided by the Department of Health and does not represent a certain age group but represents outpatient consultations only.

### *Health Education*

Health education programmes have been ongoing through radio sessions as well for community groups. A range of information is available through school curriculum based on issues such as hygiene and puberty.

The Health Department has created an Integrated Non Communicable Diseases Action plan (2009-2013) which mainly targets diabetes, cardiovascular diseases, obesity and cancer which have increased in the last several years and have become the leading key health burden in Niue. The Action plan targets poor nutrition, physical inactivity, tobacco use and alcohol abuse. It is a whole-of-government and a 'whole of society' approach beginning with maternal health and all throughout life. This plan includes school based programmes that promote healthy behaviours such as physical activity, healthy food and regular health checks.

The Health Department administers a number of key health programmes, which provide health coverage to all children. The programmes include:

- Maternal and Child Health
- Ante-natal, Post-natal, Obstetrics
- Family Planning Programme
- Public Health, Environmental and Sanitation
- Dental Services
- School Health Annual Check up
- Medical and Minor Surgeries
- Health Promotion and Education
- Referrals to Manukau District Health Board
- Integrated NCD Action Plan (2009-2013)

Teenage sexual health and pregnancy education is a challenge because of the influence of a conservative community and the attitude that advocating safe sex will promote pre-marital sex. While there are sexual health programs in school clinics or in the hospital clinic, there are now free condoms in public places such as the central service station, in place to prevent unwanted pregnancy in teenagers. However, teenage pregnancy is not considered taboo and there are no community repercussions. Young mothers are very well supported by family and villages and the parents take care of the child if the daughter wants to return to school.

### *Dental Health*

Dental services for children are free of charge. Both the primary and secondary schools have dental rooms attached and whilst it is the intention that a dentist is located at each this isn't always possible. There is also capacity for the hospital to see children at the hospital based dental unit.

Dental cavities are the main problem seen in children. Dental health education programs are ongoing and there are plans in place to undertake a fluoride programme in schools.

### *Nutrition*

The Department of Health reports that, where possible, most women breastfeed up to approximately six months. After this it is not unusual for babies to be given a combination of breast milk and formula. The Department is not aware of any restrictions put on imported formula.

Generally, a Niuean diet typically consists of staples such as taro, tapioca, yams, kumara, bananas and breadfruit and meat, fish crabs, sea-foods, and tinned meat and fishes. Vegetables include the *luku* fern, variety of vegetables (when available), and *pele*. Children are inclined to eat bread, biscuits, rice, chocolates and processed foods with poor nutritional value and high sugar content. This has resulted in a high incidence of tooth decay among children.

Both men and women weigh considerably more today than 40 years ago with males averaging the greater weight gains (of 15kg from 62kg to 77kg compared with 69kg to 79kg for women). Adults suffer from diabetes and high blood pressure. Alcohol consumption seems high, as indicated by the liquor importation figures, but alcohol related illnesses have yet to be documented.

Nutrition and exercise are important issues for all Niuean people. Eating and exercise patterns are learnt behaviours that can be influenced from early childhood. Promotion of healthy family nutrition is an important issue for children and is addressed in the Non Communicable Diseases Action Plan.

### *Water and Sanitation*

#### *The Source*

Water supplies are vital to the health of the population and therefore, under Section 222 of the Niue Act 1966, a penalty is imposed on anyone who throws any offensive matter into, or pollutes any water course, well, cistern or any other source of water supply. The Department of Health provides a public health service which includes, environmental health, mosquito control and sanitation service. Public health officers are responsible for the regular 3 monthly testing of water supplies which are assessed in the water laboratory. Niue exceeds WHO standards for water.

Water is pumped from an underground water lens to fifteen bores into header tanks or reservoirs and then reticulated to houses in each village. Clean water is available to 100% of the population.

As water is drawn from an underground water lens and the soil is generally porous, the threat to water quality comes from agricultural practices and the use of chemicals however this has not been a problem to date.

The Public Health Inspector, based at the hospital, together with the Public Health Nurse, the Building Inspector, Community Affairs and Village Councils conduct annual village surveys of water, rubbish, pipes and other health matters. This program is contributing quite significantly to improved hygiene and sanitation at home, especially food preparation facilities, quality of water supply, proper toilet facilities and general health of the family at home.

### *Changing environment*

Niue's water lens is big enough so there is minimal risk of running out of fresh water unless something fractures or contaminates the lens.

Importation of foods, tobacco and alcohol have led to rising incidences of non communicable disease and therefore impacts on child health and adults who are passing on bad food habits, which are filtering down to children who are not being provided with education on sustainable and healthy food options

### *Training of health professionals*

Recruitment and retention of skilled professional is an ongoing problem as is maintaining competency of existing staff and upskilling – all staff are required to be generalists.

### C) SOCIAL SECURITY (*Convention Article 26*)

Child allowance is provided to every child who is of Niuean descent and children of Non Niuean parents who holds Niue Permanent Residency under the age of 18. A child receives NZ\$240.00 annually. the sum of \$85 per quarter paid out by the Department of Community Affairs. A child over 18 years may continue to receive child allowance if they are still in school (Child Allowance Act, 1995).

The Government of Niue also provides assistance for people living with disabilities with sums varies depending on the severity of each case. Niue residents who are over 60 years receive a Pension Benefit of \$200 per fortnight (Pensions and Benefits Act 1991. Hardship assistance is provided to families with only one income earner and individuals regardless of work are still struggling to make ends meet.

### D) STANDARD OF LIVING (*Convention Article 27*)

Absent parents have child support responsibilities, as provided for in Part XXIII of the Niue Act 1966 on Maintenance and Affiliation. These provisions require parents to provide support until the child is 16 years, as detailed above.

Currently the cultural obligation of the extended family system to support the child has tended to eliminate the need for further structured State measures than currently exists, as the child's right to protection and adequate standard of living continue to be fully met by families.

Although some concern has been raised over teenage pregnancies, these issues were not highlighted as a problem during the course of this review as the extended family structure of Niuean society provides the necessary support and accepts responsibility for children irrespective of their birth status.

The changing economic conditions in Niue have also strengthened the ability of Niuean families to support children. Rights and access to food gardens and the sea all year round enable families to adequately meet the basic needs of children and they are assured of adequate food supplies and other basic necessities.

There is no permanent international NGO's on the island. However, there are local charitable organisations including church and women's group. There is also the Niue Island United Association of NGO's (NIUANGO) and a local body affiliated to the World Council of Churches.

## **PART SEVEN**

### **EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

#### **A) EDUCATION, INCLUDING VOCATIONAL TRAINING AND GUIDANCE (*Convention Article 28*)**

##### *General*

The Education Act 1989 establishes a Department of Education under the control of the Minister of Education whose duties are to administer the Education Act, promote education, control, administer and maintain all established government schools, and to exercise “supervisory and other functions in relation to private schools as may be provided under the Act” (ss. 3, 4, 5). The Act also provides for the establishment of Government schools (s. 18) private schools (s. 20) and special schools (s. 24). Currently there are 38 children at Early Childhood Education (ECE) (located at the Primary school), one Government Primary school with a student roll of 162 (2010) and one Government Secondary school with a roll of 175 students (2010). There are approximately 50 children at the four villages centres that accommodate children under the age of four.

Section 38 of the Education Act also provides that courses of instruction in all government schools must be of a standard which promotes an understanding in the values of learning and to adequately equip students with knowledge and skills required to achieve national goals.

Under Section 18 of the Education Act, government schools, institutions, classes etc, may be established to provide for:

- a) pre-school education in the form of kindergartens, play-centres and similar institutions;
- b) primary education;
- c) intermediate and secondary education;
- d) special education for mentally and physically handicapped children;
- e) further or continuing education in the form of community colleges etc.;
- f) training of teachers;
- g) training of technical skills, trades, including cultural arts and crafts;
- h) any other form of education or instruction which the cabinet may determine from time to time as necessary and appropriate for the people of Niue.”

There are three village play centres that are voluntary and available for children from zero to three years and eight months.

An early learning centre or crèche has been identified as a need and approved by Cabinet. However, funding is still being sought. Schooling is compulsory from three years and nine months. They turn four during that term and start attending school during the term of their fifth year. Children are required to attend school until the age of 16 years but this may change based on the Education Act review. The Department states that most children go through to at least year 12 or 13. Students may go to the University of South Pacific after year 12 for foundation courses for university.

Education of every child of school age in Niue is compulsory (s. 24) and free. Students in primary and secondary levels of education do not pay tuition fees and transport to and from school is also provided by Government free of charge irrespective of the economic status of the child’s family. However, Cabinet may from time to time by regulation require

fees to be paid in respect of certain schools or classes (s.19) however this has not occurred in recent memory.

It is mandatory for the Director of Education to advise the Minister from time to time on the number and location of schools. This is relevant as the government is currently considering moving the schools to a common area. This is also because the primary school is in a high risk area for cyclones. The Director also needs to advise on teachers and the courses of instruction which he or she believes to be necessary in order that education of the people of Niue may be satisfactorily promoted (s. 18(2)).

#### *Legislative requirements*

The Education Act 1989 reflects Niue's commitment to educating its children in that it requires every child of school age (five – 16 years) to be enrolled and attend the appropriate Government school in his or her zone of residence, a private school or a special school or any other form of tuition deemed necessary by the Director of Education (s. 24).

The Act imposes a duty on each parent to not only enrol the child but also to ensure that the child attends and remains at school unless affected by illness or some other sufficient cause (s. 25).

Where a child cannot attend the school it is open to parents to apply to the School Principal for a certificate of exemption. A certificate will not be issued except upon the grounds:

- a. that the child is elsewhere under instruction as regular and as efficient as in a government school; or
- b. that the child is unable to attend school regularly or is unable to be education by reason of physical or mental handicap (s. 26)

A certificate of exemption may also be granted where:

- (a) a child is unable to attend school by reason of sickness, danger of infection, infirmity, severe stress of weather, sudden and serious illness of a parent or other sufficient cause; or
- (b) that the road on which the child has to travel to school is not sufficiently passable (s. 29(3)).

No certificate of exemption may be granted for more than 3 months, but the certificate may be renewed from time to time during the continuation of the conditions for which the exemption has been granted (s. 29(5)).

A child may be exempted from school attendance for a period of up to 5 days without a certificate of exemption provided that the Principal of the school is satisfied that the absence of the child is for "good and sufficient reason" (s. 29(6)).

Failure of a child to attend school can invoke the penalty set out in Section 30 of the Education Act where the parents are liable on conviction to a fine, the amount of which is dependent on whether it is a first or subsequent offence (s. 30). In cases where a parent fails to enrol a child, the parent is liable on conviction to a fine of up to NZ\$100 (s. 28). The Director or any officer of the Education Department may from time to time inspect the attendance records of schools (s. 32), reflecting the role of Government in promoting regular school attendance.

The evolving capacities of children are taken into account as school curricula cover core subjects such as science, mathematics and the social sciences with emphasis also given to bi-lingualism (Niuean and English) and Niuean arts and culture. Children are taught in Niuean from early education and the first three years of primary class. European children have a choice to attend Niuean or English classes. All Pacific Islander children who are permanent attend Niuean up to the 4<sup>th</sup> year of class. Niuean is a subject that can be taken in high school otherwise classes are taught in English. Secondary education provides students with choices of subjects to enable them to make positive decisions about a career.

### *Partners*

International partner agencies include UNESCO, Pacific Development Educational Framework (Forum Secretariat), UNFPA, UNICEF, USP, SPC, International Reading Association and WHO.

### *Expenditure in Education*

Table 5: Public Expenditure on Education as a percentage of Overall Total Expenditure (\$NZ)

<b>Financial Year</b>	<b>Total Government Expenditure on Education</b>	<b>Overall Total Government Budget</b>	<b>Percentage (%)</b>
2003/2004	1,503,102	17,696,587	8.49
2004/2005	1,568,138	24,352,345	6.44
2005/2006	1,544,966	21,698,005	7.12
2006/2007	1,384,337	23,614,292	5.86
2007/2008	1,403,823	21,360,000	6.57
2008/2009	1,437,591	25,263,000	5.69
2009/2010	1,483,768	23,820,000	6.23

*Source: Treasury Department*

### *Teachers*

There are currently five early childhood education teachers, eight Niue Primary school teachers and 25 Niue High School teachers. Three further primary school teachers have been requested with the aim to take the total to 11.

Eight teachers have Bachelor of Education qualifications while the remaining teachers have Diploma's or Teaching Certificates. There is little opportunity for ongoing professional training. However, there are plans for all primary teachers to be enrolled in online postgraduate courses with a bilingual education and managerial focus by 2012.

In the past, teachers were able to gain ongoing training and experience through an exchange programme with New Zealand. Unfortunately, this programme is no longer active.

### *Tertiary opportunities*

The Government's National Training & Development Council (NTDC) is responsible for implementing the Human Resource Training and Development programme as linked to Niue's National Strategic Plan. NTDC has five main functions:

- policymaking,
- planning and coordination,
- administration,
- information gathering and dissemination, and

- monitoring and evaluation.

The NTDC provides training programs with core funding provided annually by New Zealand. Other training programs by way of fully funded scholarships are provided by other donor agencies including the Republic of China (ROC), the Commonwealth Secretariat and the World Health Organisation (WHO).

The NTDC provides funding towards approved programs for trainees that may lead to formal studies abroad. NTDC, in partnership with other agencies such as Education, Community Affairs, civil society, community based organisation, NGOs, the private sector and Faith-Based Organisation, is currently reviewing the Apprenticeship Training Program. The initiative aims to identify the best program for the school leavers taking into account Niue's current economic, social and cultural perspective. NTDC also hopes to offer a Joint Sponsorship Scheme to school leavers wishing to pursue studies in New Zealand.

The University of the South Pacific (USP) Centre offers in-country tertiary training programs. The USP offers credit and non-credit courses through Distance Flexible Learning (DFL) and Continuing Education courses.

The Niue Computer Society also offers an online Level 2 Certificate in Computer Application (CCA2) and Level 3 Certificate in Information Communication Technology (CICT3) through the Waikato Institution of Technology aims at delivering flexible IT training to the community.

#### *Vocational Training*

In a survey conducted in the mid 1990s, a number of school leavers were asked the question about their desire to either leave Niue or to remain in Niue to contribute to their community. Overwhelmingly, the results showed that the majority of youths preferred to stay on Niue, but only if employment opportunities were available. For the top 10-15% of students graduating from Secondary School opportunity for overseas educational scholarship and employment options on Niue are available. However, for other students who do not graduate top of their class, there are limited opportunities to further their studies or gain meaningful employment. In an effort to provide school leavers with better opportunities for employment, as well as to meet the needs of Niue in the areas of trade and skills based professions, the Niue Youth Employment Scheme (YES) Programme was developed.

The Niue Youth Employment Scheme (YES) is the Niue Government's initiative to provide in-school youths and school leavers with work experience and employment over the school holidays and Christmas period. The Niue YES Programme aims to:

- 1) give students and school leavers an insight into being employed in their area of interest with the aim of exposing them to the different trades;
- 2) provide options for students and school leavers to consider as part of their future careers; and
- 3) give youths whose interest and strengths are in technical skills based areas an opportunity to be paid to work in their area of interest.

YES particularly targets Year 12 & 13 students, school push-outs under the age of 18 and school leavers under the age of 25.

There is increasing emphasis on increasing the level of involvement by young people in the areas of agriculture, opportunities in the private sector and other income generating activities. However, many young people prefer full time employment in the government sector because it provides a secure source of income. The public service is currently Niue's biggest employer. Young people who do engage in small income generating activities are disillusioned due to the limited market which discourages them from venturing into full-time self-employment.

During the review of the Niue National Youth Policy in September 2008, the lack of opportunities in the areas of skills-based professions was particularly emphasised. Students in secondary school expressed the need for a fresh educational curriculum to offer more options and opportunities in the areas of performing arts, music and design. There is an increasing need to develop young people who are interested in skills-based professions which would then address some of the human resource needs of Niue.

#### *Overseas education*

Students apply for academic awards to attend university in New Zealand. Niue Government may assist pay students airfares to NZ to attend university and will pay for the return airfare after graduation. Students may be required to pay back this through service to the government.

It is not uncommon for families to move or for parents to send their children to families in New Zealand to give their children further opportunities in education.

#### Pass rate results for Niue High School

There is currently a gap in results for students in Niue in English based subjects which is a concern and requires further assessment:

*Table 6: Comparison of Pass Rates at Niue High School, with Pacific students living in NZ and NZ National result (2004)*

<b>SUBJECT</b>	<b>NIUE HIGH SCHOOL</b>	<b>PACIFIC STUDENTS IN NZ</b>	<b>NZ NATIONAL RESULTS</b>
English	50.7	55.3	69.6
Maths	76.6	58	71
Science	76	55.3	77.9
Technology	86.4	67.9	76
Social Sciences	56.4	64.7	76
Art	97.3	70.7	84
Health/ PE	75.2	73.3	82.9

#### *Equal Opportunities*

As the laws of Niue prohibit discrimination in education, the right to education is available to every child, including handicapped children and prison inmates.

Under the Penal Manual 2006, inmates interested in furthering their education by correspondence or by other means may be permitted to do so by special arrangements with the Controller for Prisons (Instruction 12). Handicapped children (both physical and mental) receive equal training opportunities and currently four students are receiving special education by a teacher specifically trained for this task. Handicapped children receive a special welfare benefit provided by the Department of Community Affairs.

Niue has a very small number of children with disabilities which makes it difficult to provide the necessary specialist attention. Please refer to further information under the heading of “Special Education”.

Children with disabilities receive a special welfare benefit provided by the Department of Community Affairs.

All children are provided the same quality of education by the Niue government regardless of their ethnicity or background - -

Table 7: Ethnic Background of Students in Niue

<b>Ethnic background of Students in Niue (2010)</b>	
Tuvaluan	3.11%
Samoan	1.50%
Philippines	0.25%
Niue	88.60%
Tongan	2.59%
European	2.50%
Fijians	1.20%
Kiribati	0.25%

However, there is a required that Pacific Islander students undertake classes in Niuean until year four. Other children or non permanent residents have the choice of taking classes in English or Niuean.

#### *School Discipline*

Under Section 34 of the Education Act 1989, the Principal of any Government school may suspend any child for gross misconduct, or incorrigible disobedience which is likely to injure or endanger other pupils or to have detrimental effect upon him or other pupils (s. 34(1)). The period of suspension varies according to the criteria laid down under the Act (s.34(2)(a)-(b)). Where the Director is of the opinion that the child should not be reinstated, he shall make arrangements for the child to be educated at another school, or if one is not available, to be enrolled with a correspondence school (s. 34(2)(c)).

The Education Act makes no reference to corporal punishment but corporal punishment is permitted in both the primary and secondary schools. Section 22(3) of the Education Act states that “the Principal shall be responsible for the care, safety, control, and discipline of each pupil attending that school” is broad enough in its wordings to permit this practice.

It admitted that corporal punishment may still be used in the schools however practices are believed to have decreased and it is discouraged by school administration. There are programs that do aim to utilise alternate discipline techniques including a leadership and citizenship programs, sporting achievements and capacity building such as focusing on values that may have been an issue in the previous term. Children are also encouraged to participate in planning activities during the school term and discuss ‘where to next’ which encourages developing critical techniques.

In general, discipline in schools is not a problem and the close contact between teachers, children and their parents is a major factor in solving difficulties experienced as they arise. There are also more formal arrangements for “parent and teacher evenings” which are

organised three times a year to give parents the opportunity to discuss with the teachers concerned, the progress and difficulties of their children.

School Committees (or Parents and Teachers Association) established under Section 12 of the Education Act are a group of parents and grandparents that provide a supportive role to schools and Committee member can be called upon by the schools to assist in a range of matters including fundraising. School Committees form a very important link between the schools and the community, as information concerning educational issues can be disseminated through committee members. However, the School Committee is currently inactive.

#### *“Drop-ins”*

There have been some Niuean students, mostly high school, who are sent back to Niue to attend high school, because of social behavioural problems in New Zealand. These students, called “Drop-ins” are closely monitored by teachers and the school would seek to provide counselling to assist them to adjust to the cultural and education system in Niue. Although this is an area of concern, school authorities have stated that through the discipline and support they have seen adjustments made, but in some cases re-orientation has been a difficult process as Niue does not have the specialised resources to treat extreme behavioural problems. Additional counselling training and family support would be advisable in this area

#### *School Drop-Out*

The focus of the Education Act is to encourage regular attendance at schools through compulsory and free education. School drop-out rates are not considered high however the Department is not complacent. In Forms 5 and 6 where some students do not complete their education for a variety of reasons as well as education not being compulsory after a child’s 16th birthday. The schools take the initiative to encourage students to remain at school and students who fail to obtain the grades in the annual examinations are permitted to repeat a class.

The Department is discussing the need for second chance learning particularly for teenage mothers through the high school or TVET.

#### *Special Education*

The Education Act requires parents of disabled children are under a duty to take steps to provide efficient and suitable education for their school-aged child. Upon failure on the part of the parents to provide that education for the child, the Director of Education may direct that the child be sent to a special school, class, or other institution providing special education as considered appropriate (s.27).

A special education unit was set up as part of the Niue High School. The classroom was modified to enable accessibility to children with disability. In 1995, there were 5 students in the programme but when this report was compiled, there were no students in the programme or special classes for children with disabilities. The classroom has been converted into a Dental Clinic.

The Department of Education reports that there are two students considered as having a disability currently in Niue. Each student, one in primary and one in high school, should have a teacher’s assistant assigned to them. However, with the lack of teachers a dedicated teacher’s aid is rarely available. As a result, the student is not always able to

stay with their own class and may not be included in lessons. There is an admitted lack of training and awareness of how to best cater for children with special needs.

The Department of Education and the Department of Health are currently consulting with each other to determine potential avenues of assessment and management for children with intellectual or learning disabilities.

The provisions of health care and educational needs of children with disabilities are not well defined in either policy and legislation, apart from providing for the availability of a disability welfare benefit.

The Welfare Committee, which came into existence under the Pensions and Benefits Act 1991, investigates and approves welfare benefits for disabled children.

#### B) AIMS OF EDUCATION (*Convention article 29*)

The approach taken in all educational programmes in Niue is developmental, as the school curricula is tailored towards a child's evolving capacities at particular points in the child's development and maturity. Academic content, art, speech, drama and physical education training are graded towards the child's evolving capacities to master the range of skills offered. The evolving capacities of the child is dependent on the understanding of child development and the way adults, such as parents, the family, teachers, religious leaders and other members of the community provide guidance and directions to prepare a child to meet the challenges of life.

The Education Department's "Education Strategic Plan, 2005-2010" ('Life-Long Learning is the Pathway to Prosperity') states the following as the mission and aims of Niuean education:

- *General Mission*

To provide and sustain a quality relevant and balanced education service for an effective dynamic education service is central to the fulfilment of our unique identity. It seeks to embrace and nurture the children within a secure learning environment so that as active learners they are healthy, happy and vibrant. Our education service will enable learners to be responsive to change, to make appropriate moral choices to become lifelong learners and responsible citizens. In these ways the achievements of all children will be raised and the aspirations of the nation will be fulfilled.

#### *Niue Early Childhood Education Mission and Philosophy*

"We believe that all children in Niue should have access to a quality, meaningful, authentic and relevant learning experience in our Niue Early Childhood Centre" (*Niue Early Childhood Education Me Report, 2003*) and "To grow up as confident, competent learners and Communicators, healthy in Mind, Body and spirit, secure in their sense of Belonging and in the knowledge that they make a valued contribution to the school and society (*Te Whariki Early Childhood Education Curriculum New Zealand, page 9*).

#### *Niue High School's Mission and Vision -*

'To be a school that provides quality education through the pursuit of excellence in both teaching and learning which is relevant to Niue and the global community' and 'Our fundamental aim is to provide a quality education for our students in a positive environment which reflects Niue's National goals "Halavaka ke he Monuina"'.  
The Department of Education notifies each parent by letter and through radio announcements. The Department works with the Justice Department to access all children. The high gross enrolment ratio in early childhood development programmes indicates Niue's adequate capacity for this type of programme. This is mainly due to

public awareness and introduction of formal Early Childhood Education. The Government and the community of Niue recognise the importance of any early, solid grounding in education and the benefits to the primary system and is fully committed to this area of education.

### Niue Primary Education

Niue Primary School is the primary school in Niue. It is co-educational and caters for Niueans from Year one to Year six.

Renovations are required for older buildings and toilet facilities as well as shelters outside schools, however it is hoped through the relocation the infrastructure will be improved. All stationary is provided however due to book costs at high school texts are photocopied and provided to students. Teachers are provided texts from the Ministry Of Education New Zealand. Any additional books are ordered through the school budget.

The roll in 2010 was approximately 253 students comprising several ethnic groups, the majority of these being Niueans.

The development of bilingualism remains one of the priorities for the school. Classes are taught in Niuean until year four for all Niuean children. English is formally introduced at Year four level aiming to achieve bilingualism by the end of year six.

Primary education totals six years, from year one to year six, after which all pupils are transferred to Niue High School for Year seven onwards. Once a child turns five,5 years old, the child can enrol at the beginning of each of the four terms.

### Niue Secondary Education

Niue High School was established in 1954 at Halamahaga as the only secondary school in Niue. In 1966 it was relocated to its present site at Paliati. Niue High School is a co-educational school catering for approximately 175 students from Year seven to 13. Niue High School offers a NZ based education system with senior students being able to achieve NZ qualifications.

Goals and Objectives are -

- To offer education from Year seven to Year 13.
- To offer a curriculum which caters for individual students' ability supplemented with programmes which enhance student learning and development.
- To continue with the development of the Niue Language and Culture.
- To ensure that the curriculum continues to further develop bilingualism; Niueans and English.
- To provide student guidance and counselling.
- To ensure that the delivery of education assists in the fulfilment of the National Goals.

### *Other*

Niue recognises that the schools play a crucial role in educating a child and preparing him or her for a career, family life, and a respect for fundamental human rights and freedoms. These values are also embedded in various pieces of legislation in Niue, such as the criminal offences section of the Niue Act 1966.

There is also legislation directed at protecting the environment, such as found in the anti-water pollution provision in the Niue Act 1966 (s.222) and schools encourage students to

maintain plants and gardens and participate in World Environment Day, and discussions with the Director of Community Affairs also reveal the efforts being made by students to plant trees.

The Niue Tourism maps indicate the special environment features of Niue, such as the Huvalu Reserve Forest and the Vaitafe Forest Walk track, depicting a variety of ferns, vines and indigenous trees not only for the enjoyment of tourists but also preserved as part of Niuean heritage for future generation.

Niuean children grow up with the knowledge and appreciation of their environment by accompanying parents and relatives to the food gardens at a very early age. The values children are being taught through schools are consistent with the respect placed by the community on the environment and also the promotion of important national values of a democratic society which are consistent with the obligations set out in Article 29 of the Convention.

### C) LEISURE, RECREATION AND CULTURAL ACTIVITIES (*Convention Articles 13, 17 and 31*)

Section 38(1)(d) of the Education Act provides that the course of instruction in schools should take into account the continuation and incorporation of Niue's traditional arts, crafts and values, in education development.

One of the aims of Niue's Education Act is to "continue with the development of bilingualism (Niuean and English)" (s. 39(1) (e)) to develop the child's full potential in both languages.

The Education Act builds upon the child's self-esteem by instructional use of the Niuean language and cultural heritage. This enhances children's knowledge, understanding and respect for their own culture and traditions.

The village communities have a variety of programmes and opportunities for children to engage in leisure activities such as sports, swimming, church fellowships and social gatherings. Officially sponsored programmes for sports are a common occurrence and it gives children in the community an opportunity to be involved. There are playgrounds which are open to the public and school grounds are also available for sporting activities out of school hours. Government has established a Youth Centre near the airport as part of their commitment to youth programmes. Youth projects may be submitted to the Department of Community Affairs for funding purpose from Government and other international donor agencies such as UNDP.

Niue has a museum and a cultural centre as well as a public library – all these facilities are open to children. The high school and the primary school both maintain school libraries however there are plans to combine all Niuean libraries.

Youth in all villages, have activities almost every night of the week. Girls and Boys Life Brigade activities include bible studies, marching practices and fitness training. Every end of the year the boys go camping in the bush, which is also part of their training. Most afternoons (except Sunday and Wednesdays) the boys play touch rugby games on the village green and the girls play volleyball. Youth practice dances and chants for their own fundraising events.

## **PART EIGHT**

### **SPECIAL PROTECTION**

#### **A) CHILDREN IN SITUATIONS OF EMERGENCY**

##### **i) Refugee children (*Convention article 22*)**

There have been no instances of refugee children (or refugees in general) in Niue.

Citizenship may be granted in special circumstances under the Citizenship Act 1977 (NZ) (s.7) which could apply were a refugee child to seek protection.

##### **ii) Children in Armed Conflict (*Convention Articles 38, 39*)**

There are no cases of Niuean children being involved or affected by armed conflict.

The ownership of guns in Niue is restricted to police and those with shooting licenses. It is unlawful to sell or supply any firearms or ammunition to any person under the age of 18 years (Arms Act 1975, s.5). Firearms are used for shooting bats, pigeons and other wild animals.

Niue does not have a defence force.

#### **B) CHILDREN INVOLVED WITH THE SYSTEM OF ADMINISTRATION OF JUVENILE JUSTICE**

Children can appear either as parties or witnesses to every type of legal action including domestic matters, custody and support disputes and criminal proceedings.

##### **i. i) The administration of Juvenile Justice (*Convention Article 40*)**

Section 237A of the Niue Act 1966 provides that no person may be convicted of an offence below the age of 10 years. A person between the age of 10 to 14 years will only be convicted of an offence if he or she knew the act done or omission was wrong and contrary to law (s. 237B).

Where young offenders are involved, the Police have favoured community based rehabilitation programmes as alternatives to custodial sentences and as a result there is no official data. Police have found it effective to provide counselling, to caution young offenders, to refer the youth to a Minister of Religion or to some other respected person in the community who is able to provide the offender and the family with support. The filing of charges is discretionary and community based alternatives to formal proceedings are widely used for young offenders. It is standard Police practice to have parents or guardians in attendance during police interviews with young offenders and these interviews are generally conducted in the privacy of an office.

There are 16 police officers in Niue, eight of who are community constables. There are no probation officers. Police officers receive some human rights training in Police College however there is no specialist training in juvenile justice or dealing with child victims.

Children getting into trouble with the law is not an issue of concern in Niue. There are a small percentage of children who get in trouble in New Zealand and are sent back to Niue through arrangements between families. In the last five years, there have only been one or two cases of this. Children (under 18 years of age) make up less than 10% of cases in which persons are charged with criminal offences. The most common charges against children are road traffic related and theft. Children are given a lot of warnings especially if

they are still attending school. A case has to be a serious one before children are charged with an offence.

The police typically do the prosecutions, as they do minor cases, and they have the discretionary authority to withdraw a charge. There are no special juvenile justice procedures in court. Normally the child's family arranges for a defence lawyer. Types of sentencing include: warnings, compensation, discharge without conviction, probation, community service (if not in school) or a custodial sentence. Every Monday morning the Police chief does a weekly radio report and gives community reminders including a reminder of the responsibilities of all community members.

Children are not generally imprisoned, and there are no special institutions for juvenile offenders. Children cannot continue with school if imprisoned. There is some counselling for offenders through the Community Affairs Department, but capacity-building is needed. Parents, community leaders and Police provide collective counselling for the offenders with the outcome often having an influence on court decisions.

Statistics specifically on children's cases are not kept in any systematic way by the police at this time.

### *Challenges*

#### *a. Negative influence by young delinquents sent back to Niue from overseas*

As part of rehabilitating these young people, their parents/ guardians send them to Niue. Some display certain negative behaviours, which can influence young people on the island and impact negatively on the community

#### *b. Alcohol Abuse (underage drinking, binge drinking and drink driving)*

The issue of alcohol abuse is quite prevalent among young people leading to drink and drive offences. There have been no reported cases of illegal substances. However Niue Police are aware and are monitoring the situation.

#### *c. Outside influences*

There is growing concern in the community that the influence of international television, general media and international visitors are impacting negatively on the island's youth. This is including the loss of Niuean language, religious and moral values and respect shown to elders.

### ii. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

#### *a. Fair legal representation of young people in court*

There is a need to inform young people of their rights and what is expected from the court process as a majority of young people who do stand before the court are not aware/ made aware of their rights. Some have expressed that there were some incorrect information carried by police officers during their interviews when read out in court but have said that they prefer to get it over and done with rather than challenge the matter.

#### *b. The presumption of innocence until proved guilty (Article 40(2)(b)(i))*

The principle of presumption of innocence until proven guilty is ingrained in the legal system of Niue. Criminal charges against children, like adults, must be proved beyond reasonable doubt. The arrest of juveniles is restricted generally by the same criteria applicable to adults. Arrests may only be for a crime and must be based on probable cause.

c. *The right to have the matter determined without delay by a competent, independent and impartial authority or judicial authority (Article 40(2)(b) (iii) and (v))*

The hearing of all cases in Niue is before an independent and impartial tribunal. The Constitution (Amendment No. 1) Act 1992 establishes a High Court of Niue for the administration of justice in Niue. The High Court has three divisions namely: the civil division, the criminal division and the land division (Art. 37(3)). They have jurisdiction to hear and determine –

- (a) “such proceedings as are, under or by virtue of any enactment, to be heard and determined by that Division;
- (b) such other proceedings as may from time to time be determined by the Chief Justice, either generally or in any particular proceedings or classes of proceedings (Art. 38(1))”.

Article 58 of the Niue Constitution also establishes a Court of Appeal for Niue. Article 39 makes provision for a Chief Justice, Judges of the High Court temporary Judges (Art. 41), Commissioners of the High Court (Art. 46) and Justices of the Peace (Art. 51).

In Niue there is no delay in bringing matters before the Court as the Court sits as and when necessary. The child has the same rights as an adult to appeal to a superior Court. Every jurisdiction provides for the appellate review of adverse decisions, including decisions relating to juveniles. The Chief Justice of Niue who resides in New Zealand travels to Niue when required to deal with Court matters and regular contact is maintained between the Chief Justice and Judiciary when the Chief Justice is out of Niue.

d. *The right to legal or other appropriate assistance (Article 40(2)(b)(ii))*

The number of juvenile cases that come before the Courts in Niue is very small. Currently there is no legally qualified Public Defender. There are at present a number of volunteer Defence Counsels available to represent children where necessary, which is considered to be adequate for the small number of juvenile cases that are brought before the Niue Courts. Depending on resources, some legal training is provided to judicial staff and supplemented from time to time. Children have many needs and juvenile court work is a specialised area of law. As a result, consideration is being given to training of local Defence Counsels in juvenile Court work, subject to resources.

Legal representation from lawyers practising outside Niue is also available to those who wish to engage them. In some cases, children have been represented by a parent, guardian, Minister of Religion or some other person. Representing the interests of the child in this forum is important as it contributes to the Court’s fashioning of appropriate remedies for the child in the community.

e. *The Right to Privacy (Article 40(2)(b)(vii))*

As a general rule, all proceedings before a Court must be held in public but this does not prevent the Court from excluding those persons who are not parties to the proceedings. The procedures to exclude the public are adopted by the Courts in Niue for domestic cases such as maintenance, affiliation and divorce but an exception is made in adoption cases because of the implications of adoption on inheritance and land rights.

Court cases involving juveniles are generally open to the public. However, the right of the child to have his or her privacy fully respected at all stages of the proceedings necessitates that closed hearings be considered for juvenile cases. Similarly, the records

and files on juvenile proceedings are confidential and access to those records strictly limited.

iii. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment

The Penal Manual 2006 establishes a probation system. Where any person is convicted of an offence punishable by imprisonment the Court, instead of committing the person to prison, may instead, release the person on probation for any period specified by the Court but in general, for not less than one year nor more than three years (Instruction 37). Probation Officers may be appointed by the Niue Public Service Commission (Instruction 40) and persons placed on probation will be supervised by a Probation Officer whose duty includes the social rehabilitation of the probationer (Instruction 41). There is currently no probation officers in Niue.

The figures for juvenile crime are currently low and they are likely to remain so unless there is an increase in population.

Capital punishment is not provided for as a criminal punishment in Niue.

iv. Physical and psychological recovery and social reintegration of the child

As there have not been many instances of juvenile incarceration Niue does not have specific techniques or programs for recovery or reintegration.

C) CHILDREN IN SITUATIONS OF EXPLOITATION

i. Economic exploitation of children, including child labour (*Convention article 32*)

There are no labour laws in Niue and so no laws which control the type of employment that is permissible for minors. Children under the age of 16 years are required to attend school and so cannot work full time. There is little opportunity for work for children outside assisting family members.

The Public Service Regulations 2004 prohibits the employment of any person under the age of 16 years.

ii. Drug abuse

The first reported juvenile drug related cases came before the Court in 1994.

Niue does not consider itself to have a problem with the use of drugs by people under age. Marijuana is not known to be cultivated in Niue. There has been observation of possible drug use but not abuse. Sea borders and a small population may be contributing factors that has so far prevented other drugs from being introduced and used in Niue.

Alcohol however is a significant concern. There was a serious incident in 2009 where a boy under 15 years of age fell asleep on the road due to alcohol abuse and was injured by a car. Drink driving is also a concern.

Anecdotal evidence indicates that children as young as 12 attending nightclubs however police are now vigilant on under age in night clubs. However, there are no laws preventing their attendance.

Drug and alcohol workshops have been held in the past through church initiatives but have not been attended by the youth considered to be in danger. There is literature and information on drug abuse available at the Health Department if sought after.

Second hand smoke from parents is also a concern that the Health Department are monitoring.

The results of the Global School Health survey conducted in partnership with WHO with high school students in July 2010 will assist in focusing attention on issues of concern when results are analysed.

iii. Sexual exploitation and sexual abuse

Abused and neglected children are currently not an issue which has been brought to the attention of the authorities. As such, problems, if they exist, tend to be settled by and within families. If alternative living arrangements are required for children, the extended family system provides a range of alternative care. Counselling services could also be sought.

There has been recent concern raised by the community, Police, Health and Community Affairs concerning some incidents of domestic violence. Alcohol is often implicated. This is an emerging issue that needs to be addressed. From time to time, there are cases of neglect and these are usually involving a guardian (as opposed to parents).

The following table outlines cases in which persons have been convicted of violence against children from 1995 to 2000. More recent figures are not available.

Table 8: *Convicted Violence against Children 1995 -2000*

<b>Year</b>	<b>Charge</b>	<b>Sentence</b>
1995	Indecent assault (1 count)	1 year imprisonment
1995	Indecent assault (1 count)	1 year imprisonment
1995	Incest (1 count)	2 ½ years imprisonment
1997	Assault (1 count)	6 months suspended sentence
1997	Rape (1 count)	5 years imprisonment
1997	Indecent assault (1 count)	1 year imprisonment
1997	Cruelty to a child (1 count) Attempted rape (1 count)	5 years imprisonment
1998	Rape (1 count)	1 year imprisonment
1998	actual bodily harm (2 counts)	6 months imprisonment
1998	rape (1 count) indecent assault (3 counts) induced indecent assault (1 count)	5 years imprisonment
1999	Rape (1 count) Indecent assault (1 count)	7 ½ years imprisonment
2000	Assault (1 count)	Fine

Source: Justice Department

Sexual abuse is mainly perpetrated against girls (as opposed to boys). Physical abuse, when it occurs, occurs equally against boys and girls.

It is often a challenge for the police to prove violence cases, and this is usually due to family dynamics. For example, families of the accused and the victim might get together, settle things themselves, and then withhold evidence from the police.

There is no sexual protection education provided to children through official channels.

iv. Sale, trafficking and abduction

There has never been an instance of the attempted sale or trafficking of a person in Niue. The abduction of a child is punishable under the Niue Act 1966, s160.

v. Other forms of exploitation

There is no extra information concerning exploitation or potential exploitation of children that has not already been mentioned above.

D) CHILDREN BELONGING TO A MINORITY OR AN INDIGENOUS GROUP

*(Convention article 30)*

As the total population of Niue is currently less than 2,000, the percentage of non-Niueans is small.

All residents of Niue enjoy the same rights and privileges to practice their own religion, language and culture. However, there are restrictions on who attend English speaking class in primary school. The promotion of indigenous Niuean culture is emphasised by the government and Niuean community where possible.

Currently there are nine different religious denominations that freely practice in Niue.

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