



## **National Integrity Systems**

## **Transparency International**

## **Country Study Report**

# **Niue 2004**

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Most of the interviewees are professionals in their own field of work and vocation, but some responses relative to the current system appears to be somewhat limited. The reason for this could be attributed to there being an acute absence of corrupt and bribery cases brought before the courts, or else the current system is generally accepted as the norm. With Niue being such a small entity there is not much that would escape the attention of the general public. The responses reflected however, that there is a silent objection to some administrative decisions, and that the citizens preference is to 'let it be' rather than to publicly make the concerns known.

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## Executive Summary

Niue is a small island state, 19km long and 18km wide. Its location is 480km east of the Kingdom of Tonga and 560km southeast of Samoa. The single 258sq km island has a distinct two tier terrace, the lowest being 27 metres above sea level and the highest upper terrace rising to 65 metres.

The Island's fragile resource base makes it vulnerable to many influences. Its total resident population in 2003 is 1,769 people excluding the absentee population of approximately 20,000 people. Political independence from its colonial minder, New Zealand, in 1974 was achieved following the adoption of a Constitution, a document formalised by the Constitution Act 1974 (NZ) and which is also the founding document of state.

Niue laws are considered and passed by a 20 member Legislative Assembly. The members of the assembly are elected every three years on a first past the post election system under which persons of 18 years of age and over are eligible to vote. The executive government is made up of a Premier elected from amongst the elected members and three other Cabinet Ministers of the Premier's choice from the Assembly. Issues of transparency and corruption in this context arise partly from non-partisan politics, and partly from other contributing influences. For example, family solidarity ensures that kin are elected at each triennial general elections irrespective of corruptible tendencies. The tradition of reciprocity is used to gain election votes and thereby masking bribery in the process. The presence of a state media and a single private media outlet means that transparency and accountability is compromised. This is more so an issue reflected by an on-going polarity that existed between the private and public sectors.

In view of the potential for corruption to take its course in Niue then, there is a need to seriously consider the following recommendations:

- That partisan politics be accepted as a normal political process;
- The issue of reciprocity be legally clarified to prevent election bribery;
- That the government media be privatised to ensure transparency and accountability in government policies and legislation is fostered;
- That the government include representatives of all sectors in policy and legislation processes;
- Dialogue between the two sectors, government and private, to begin at some stage; and
- The issue of disclosing assets and interest of public figures must be made compulsory upon appointment and or elected.

## Country Overview

The Island State of Niue was an independent nation from the time of the first indigenous settlers right up to 19<sup>th</sup> October 1901. Oral history has it that the people of Niue throughout this period of independence did not welcome foreigners on its shores. The prohibition was however, only lifted when one of her sons who, in 1836, had run away on a passing vessel to Samoa and returned in 1846 armed with a bible and the good news. Oral history also has it that persons of extraordinary feat and prowess in local warfare were bestowed the auspicious title of king. The role of the king however, was not so much that which is accorded to and preserved for a monarchical ruler, but very much to ensure that natural elements do not affect the livelihoods of the population. Failing to do so meant a mandatory death sentence for the king, which meant that the individuals who were qualified for the office had little inclination to take on the position. And so Niue existed without a king for a long period of time.

However, in the 1870s the missionaries reconstituted the office of the king for purposes far beyond the comprehension of the local people. With a king firmly in place, an Island Council comprising representatives from each settlement was also formed around him so that a new form of government was established. Then, in 1897, the then king of the day was coached by an English missionary to write to the Queen of England to seek the protection of the British Empire for Niue. Thus in 1901, the Empire declared Niue its protectorate and a part of the realm of the British Empire thus also bringing the independence of Niue to an end. New Zealand being the closest to Niue was tasked with the responsibility of administering the island from 1901 until 1974, a time with which Niue made a decision to become politically independent but at the same time choose to maintain close association with New Zealand.

The Constitution Act 1974 (NZ), and the Niue Constitution therefore provides the legal instrument under which Niue is governed. The Niue Legislative Assembly comprising twenty members is elected once every three years in what is commonly practised under universal suffrage and first-past-the-post election. Contained in the constitution document for electoral purposes is a provision that each of the fourteen village constituency elects one representative, and the remaining six representatives are to be elected by the whole island. The whole Assembly in its first sitting elects a Speaker to officiate the swearing in of the elected members. The elected members in turn elect a Premier, and who in turn, selects his three Cabinet Ministers. This is the executive government and with the Governor General of New Zealand as its head of state will run the country for three years.

From 1974, Niue went through two decades of non-partisan politics, although in 1990 an ad hoc composite political party was formed but was out-manoeuvred due to the infighting amongst the elected members for the Premier's seat and for Cabinet Minister positions. Yet despite this setback as it were, the notion of party politics had taken a firm hold. In 1999, the impact of party politics emerged strongly with the Niue People's Party taking control of the government purse when the government of independent members lost the general election. In 2002, partisan politics took another turn when the Premier, a member of the Niue People's Party, included two independent members in his Cabinet. The manoeuvre was, for all intent and purpose, to ensure political survival. Effectively though, this turn of event had reduced the number of independent members who would otherwise provide effective and meaningful checks and balances on government policies.

In addressing the issue of elections too, there are issues of transparency at stake. Elections are predominantly a matter of family solidarity, so that many educated and effective debaters that have put their names forward as candidates in general elections have failed for two reasons. Firstly, they have very small family support base. And a second possible reason is a lack of adherence to a local tradition which, embraces reciprocity and expectation. Reciprocity is a tradition that emerged largely out of a situation of scarcity. The practice is used by the extended families to support each other and may have negative social connotations for the family if it is not carried out properly. How this plays out in elections is that successful candidates have often carried out all sorts of activities to get elected. They may give 'donations' to individuals and groups, attempt to discredit other candidates, give donations to the church when they themselves are not members and do not attend church on a regular basis and so forth.

With regards to the functioning of other governmental mechanisms in Niue, the appointment of the Judiciary and the Public Service Commission is made with the recommendation and approval of Cabinet. Both the Judiciary and the Public Service Commission remain constitutionally independent of the Cabinet, though the appointment of the Public Service Commission is for the most part politically made. All other appointments to statutory boards and bodies are collectively made by Cabinet Ministers and are again political.

In addition, the private and civil society sectors are the second and third estates of Niue, but for some reason or another, the sectors do not wield any form of political clout apart.

The media is the fourth estate of Niue. It carries the responsibility of collecting and disseminating information to the public, but this is not very effective in the case of Niue. The Niue Star is a weekly newspaper owned by a politician and a supporter of government. The Niue Broadcasting Corporation that operates on a six-day week basis provides Television and a Radio transmission service and is owned by the government. In addition a newsletter is also run by the PR service of the Premier's department. Together, the media in Niue is not obligated to question and publicise questionable policies of government, nor issues that are politically sensitive to the government.

Moreover, the government is also the main employer on Niue. It uses its hold on the nation's purse as a leverage for compliance by the private and civil society sector, to the point that cronyism is far too conservative a word to describe it. Although government has issued a statement of fostering and supporting the private and civil society sectors, the statement is and has been an all too familiar political platitude.

Given this scenario, the responses to the questionnaire support the fact that although the legal instruments are in place to counter corruptive practices, the need to update and amend inconsistent legislation is urgently warranted. There is also a need to make the majority of the public aware of their constitutional rights to demand for accountability, transparency, and good governance from its government and officials.

# Corruption Profile

## Definition and scope

The legal definition of corruption is provided only for the public sector in the Niue Criminal Act, 1966 (NZ), Section 180, (a) (b). It stated that;

(a) A holder of any office, whether judicial or otherwise, in the service of Her Majesty commits the offence of official corruption, who corruptly accepts or obtains, or agrees to accept or attempts to obtain, for himself or any other person any bribe – that is to say, any money or valuable consideration whatsoever – on account of anything done or omitted or to be afterwards done or omitted by him in his official capacity; or

(b) Corruptly gives or offers to any person holding any such office or to any other person any such bribe as aforesaid on account of any such act or omission.

Outside of the official sphere then, there is no legal definition of corruption. Instead, it is expected that fair play must prevail and more so by those holding positions of trust in matters concerning land, church, and the extended family in the community. This poses a real problem when deciding whether an act or omission at election campaigns is bribery or otherwise. For there is nothing in law to prevent anyone giving gifts throughout the period of the election campaign because giving gifts is a tradition in Niue.

## Causes

There are factors that have potential for corruption to exist in Niue. Oral tradition has always pointed to good and bad leadership when things work or do not work, and this has provided a benchmark for which community leaders today are measured. Hence, the expectation of a good leader in today's setting is one that leads by example and exemplified by visible accomplishments. The underside of this expectation is a potential to retain popularity by any means possible. It is therefore conceivable that some public decisions are done this way without it being labelled as corruption.

There is also the question of whether the people actually know their right to question public decisions. The fact that very little cases have gone before the courts is indicative of a population not so well versed with constitutional and civil rights. It may be argued though that although the people that are working for the government are aware of the aforementioned rights, insecurity in the work place means that the authority cannot be challenged for fear of losing their jobs.

In politics, cabinet ministers have stepped out of the policy arena and involve themselves in the 'nuts and bolts' area of statutory bodies and government departments. In this way, the ministers are able to get things done for their supporters at the expense of others without fear of there being reprisals.

Avoidance of bad publicity and stigmatisation has been the mechanism used to mask corruption. In the churches for example, financial management is entirely the prerogative of the pastor and deacons but who are directly accountable to the congregation. The responsibility is based on trust, but instances of unaccounted expenditure have been largely talked about but lacked action for recovery. It may be that the entrenched belief in divine intervention will, in time, sort it out or else the persons concerned are quietly moved aside to avoid bad publicity. This is intrinsically embraced in a belief in the workings of '**kula vave**' literally translated as what goes around will come around.

Corruption is also sometimes used as an instrument of vengeance. In the civil society sector, giving up one's own time to do the work of the organisation provides disgruntled people an opportunity to run a person down. The point here is that someone has to do the work, but the demands of the individual will never be satisfied. Unsatisfied demands are therefore used as a point of argument that corruption has taken place irrespective of whether such claim is substantiated or not.

## **Levels**

Public figures and influential community leaders are prime targets for corruption allegations, though it is questionable as to whether or not they are the sole sources of corrupt behaviour.

## **Costs**

Generally, the cost of corruption in Niue has never been measured in monetary terms nor documented, but there is also the factor of hidden costs for delayed delivery of services that needs to be addressed.

## **Types**

It is to be noted that there is a degree of hesitancy to quote specific cases as these are not documented. Instead, the examples that have been given are based on personal observation and deduction over a long period of time and include:

- Government Ministers and Associates who take it upon themselves to appoint contractors of their choice but who failed to deliver on time.
- The appointment of cronies to statutory bodies which opens the door to collusion and inefficient delivery of services.
- Ministers use their constitutional right of appointment to remove members of statutory bodies who do not succumb to their wishes.

## **The impact of change**

The change from colonial rule to self-government has institutionally promulgated an ideal that integrity is paramount in people holding the mantle of power. This expectation is reflected by a few cases of civil claims that have gone before the courts. In the absence of a bill of rights in the constitution, the issue of oversight is perhaps one of the reasons that the majority of the population do not take issue with the powers that be to redress their concerns and grievances. In this context, corruption will remain a foreign concept.

Moreover, transparency, accountability and good governance is something that people would talk about, but in practise none of it fits nicely into the local equation. A few workshops on good governance have been conducted in the past two years, but its impact has yet to be known.

# National Integrity Systems

## Executive

Citizens in Niue have a constitutional and natural right to sue government for infringement of their civil rights. There is however, a counter provision in the law that states that the executive may use to order a stay of proceeding per Section 283, Niue Act 1966(NZ), as is the limitation on the jurisdiction of the Courts to review Cabinet decisions per Article 24, Niue Constitution 1974.

Within the executive Cabinet Ministers are not legally required to disclose personal assets, gifts, and the like. Moreover, there has never been a case of corruption brought against the executive in Niue. That although the Premier and Cabinet Ministers have the final assent on any decision, this role is restricted by Article 3: (1) (2) of the Niue Constitution requiring the Ministers to be collectively responsible.

## Legislature

It is a requirement by law, and under the Appropriation Act, that the Legislature must approve the national budget, and that unauthorised expenditure is not an option to be exercised by the executive. Parliamentarians are legally disqualified from obtaining government contracts or from becoming public servants. The rules for parliamentarian conflict of interest and corruption however, are not very clear, although Cabinet Ministers are criminally liable for any act or omission that are deemed to be a contravention of the Niue Act 1966, Section 180 (a).

## Political Parties

All constitutions of non-profit organisations are required by the Incorporated Society Act, 1908 to be registered with a specific provision that annual financial statements are also to be submitted to the Registrar. Political Parties are, by their very nature, non-profit entities and are therefore required to register their constitutions, as well as to submit an annual financial statement to the Registrar to remain registered.

Apart from this requirement, there is no rule to regulate political party funding. And without such rules, donations to the party, expenditure, and source of income is neither published nor submitted to parliament. In-house accounting to party members is, to my knowledge, provided in a party constitution. Political Party Caucus and members elect its own leader along with the executive committee at each annual general meeting of the party.

## Elections

There is no independent Electoral Commission in Niue. There is however, a Chief Electoral Officer who is appointed by the Niue Public Service Commission or else appointed by Cabinet under constitutional decree. There has never been an official case of election fraud, at least for the time being.

## Supreme Audit Institution

The Audit Office of New Zealand is the auditor of Niue Government Account and all other public accounts, which also include individual departments and offices of the executive government and statutory bodies. This provision is provided under the Niue Constitution 1974 (NZ), Article 60 (1), and (2).

As a constitutional appointment, professionalism is assured, as is protection from arbitrary removal. The office conducts annual auditing and the Public Expenditure Committee naturally has access to the reports and which are also tabled in the house for debate. It means therefore, that should there be any discrepancies in government expenditure, the executive is legally accountable.

## **Judiciary**

The jurisdiction of the court to review the actions of the executive is limited. This is to say that, Cabinet decisions are not subject to a review by the court, other than for the court to give an opinion and to make a declaratory judgement. The actions of the officials contrary to their line of duty and responsibility, however, are liable to be brought before an indictment.

As mentioned earlier, the constitution of Niue, 1974, Article 45, provides for the appointment of the Chief Justice and Judges of the High Court of Niue, as is the appointment of Chief Judge and Commissioners of the land court. Conditions of appointments and removal from the judiciary are clearly set out in the constitution document so that any withdrawing of a warrant must be supported by facts. There has not been a prosecution of senior officials for corrupt practices.

## **Civil (Public) Service**

The civil service is required by the Public Service Regulation, to be politically neutral, meaning that affiliation to a political party is not permitted under any circumstances. This requirement is explicitly written in a contract of employment of senior officials and contracted government employees.

Officials are also required under the Regulation of the Public Service Act 1966 to disclose gifts and personal assets to the Public Service Commission. The register of gifts and personal assets is therefore required by law to be kept and updated by the Public Service Commission, albeit in practice, such records do not exist.

Under the Public Service Regulation and Manual of Instructions, all public employees are criminally liable for any other corrupt practices too. Senior officials, locally known as Heads of Departments are appointed on merit, and continuation in a senior post is based on performance evaluation. Similarly, all other public employees are continuously assessed for career training and development as well as for promotion. However, nepotism and cronyism in the public service do exist because there are no specific rules to prevent it.

Administrative decisions are not published, but for any decision that arouses public outcry, avenues for lodging public complaints are available. The courts in recent times have been used by those in the know to review the decisions of the Public Service Commission that affected their employment. This means that the checks and balances on decisions of public officials are institutionally assured by the presence of three institutions: the Courts, the Appeals Committee, and the Public Service Association.

The *Talagi vs Niue Public Service Commission* (1997) (Niue High Court – Judgement 28 October 1997, and *Talagi vs Cabinet* (2002), are the cases in point and serve as precedent for similar exercise of individual rights. A court decision is pending, in a recent appeal to the High Court to review the decision of the Public Service Commission to transfer an employee without any reasonable explanation apart from simply exercising the authority of the Commission. The appeal lodged by the plaintiff is to reverse the decision of the Commission to transfer him and which effectively, had terminated the plaintiff from a teaching career spanning over a period of twenty years. It is an interesting case to look forward to because precedent in both Niue and New Zealand favours the plaintiff.

## **Police and Prosecution**

The title of Chief of Police in Niue is equivalent to that of a Commissioner of Police and is independent. The Chief of Police in Niue is also the prosecutor and a coroner. As a senior post in the department, the appointment is based on merit and conditions of employment are clearly articulated in the contractual document.

The police investigate and prosecute general criminal offences, but they do not have a special unit to investigate and prosecute corrupt offences. However, provision in law such as the Criminal Act, 1966 Section 180 (a), (b) is an instrument available to the police to investigate and prosecute any alleged cases of corruption and bribery.

The police are also criminally liable should any allegation of corruption be brought against them. The organisation's employer, the Public Service Commission, will conduct investigations for any such allegation. This happened in a case not so very long ago which resulted in the dismissal of two police officers though the dismissals were not made public.

Overall there has not been a successful prosecution of alleged corruption and bribery in Niue over the past five years. Perhaps one reason for this is that the one and only case that was lodged in 1995 was viewed as a political smear campaign mounted by a jittery government, and one in which the court saw fit to throw out. The *Lakatani vs Niue Government* (1995) was dismissed because the defendant, Lakatani, was not in the service of her majesty when the alleged offence was purported to have taken place.

### **Public Procurement**

The procurement committee in Niue is known as the Tenders Committee and the rules governing public procurement do require competitive bidding but these (documented rules) are not easily accessible. Generally, major public procurements are advertised to the private sector, but the decisions are never made public, nor is a procedure undertaken to review procurement decisions. However, some unfavourable decisions can retrospectively be reviewed in a court of law.

Overall in Niue, there has never been a confirmed incident of bribery in the procurement process, but there have certainly been some suspicions on some decisions of the Tender Committee. As with civil service appointments, suspicion surrounds official purchases from businesses owned by relatives. It is most probable that suspicions arose because the rules and procedures to prevent nepotism and or conflict of interest in public procurement process do not exist. Similarly, there are not any rules that require the assets, income, and lifestyles of public procurement officers to be monitored.

### **Ombudsman**

There is no ombudsman in Niue but should there be one in future, the office and its role, governing rules, and so forth will have to be incorporated in the constitution itself. In this way, its independence is constitutionally affirmed, as is the protection from unjustified removal.

### **Investigative/Watchdog Agencies**

There are no special investigative/watchdog agencies in Niue but Cabinet can, from time to time, appoint a Commission of Inquiry if so warranted.

### **Media**

There is no law in Niue that guarantees freedom of speech of the individual and of the press. It is an accepted fact however, that the media can be censored at any time by a collective decision of Cabinet Ministers, although in practice, only oral threats have been issued. The views of critics on government policies and practices are sometimes expressed in the media, but in most cases, there is no obligation to make the critics views known.

### **Civil Society**

Public authorities do not permit its documents and information to be accessed by the general public until it has been declared a public document, but in most cases the public is kept in the dark. Civil society groups are controlled by public authorities and are required to conform to procedures before any form of assistance is considered. Similarly, civil society groups do not make submissions to the legislature for any proposed legislation. It is not that they are ignorant of their rights to do so, but rather the opportunity has never been given in the first place. In the education system there is an apparent lack of focus on issues governing integrity, corruption, and bribery.

### **Traditional Organisations**

Traditional organisations such as a 'council of chiefs' do not exist in Niue. However, at the village level, respect is accorded to the 'gray hair' fraternity because of the local belief that a 'gray hair' person holds greater experience and wisdom. This has led to some obvious manipulation of the 'gray hair' status, particularly in matters concerning family land and the rights of the members in land disputations.

### **Private Sector and NGOs**

Although there is a business sector and NGO sector in Niue, the issue of corruption and measures to prevent it has never been a major concern. There is a high level of trust within these organisations as are in the churches, but it does not necessarily mean that the members are immune from manipulating the system to their own advantage. There have been cases that are talked about but that was as far as it went. Therefore, prosecutions for alleged corruption in the sectors have yet to materialise simply because there is no anti-corruption mechanism in place.

### **Regional and Local Government**

There is no regional government in Niue. Local government on the other hand exists in the form of Village Councils but their role is limited to doing things at the village community level rather acting as a junior partner of the national government. Village council meetings are open to the public and the media. All Village Council members are elected at every three years by their own village. Disclosure rules and so forth does not exist.

### **Progress with Anti-Corruption Strategies**

There has never been an anti-corruption strategy set by the government of Niue so progress is difficult to assess.

### **Donor Anti-Corruption Initiatives**

New Zealand is the only bilateral donor that has an office in Niue. No other multilateral donor agency is based in Niue. Whilst New Zealand would like to see anti-corruption measures put in place, Article 36, Niue Constitution 1974 prohibits New Zealand from making legislation for Niue nor the subordinate legislation apply without the consent of the Niue Legislative Assembly.

### **Future Research and Donor Support**

Immediate attention is to be given to setting up procedures for proper disclosure of assets, gifts, and business interest of the executive government, members of the Legislature, public officials, and the public service for enforcement. Similarly, the civil society, and private sector needs to be kept better informed and could provide positive input in formulating policy.

## Anti-Corruption Activities

### Overview of Government's Reforms

There is a conspicuous lack of effort at enacting government reforms to improve accountability and transparency in Niue. No overall anti-corruption strategies have been implemented and the movement and switching of political alliances makes consensus for such changes difficult to achieve.

### Assessment of Progress

Progress, measured in terms of the successful implementation of anti-corruption strategies, is almost non-existent as such strategies are yet to be formulated. The public seem largely unaware of the avenues they can pursue if they are dissatisfied with alleged instances of corrupt practices. Moreover, the small size of Niue makes it difficult to avoid the influence of the importance of familial and kin ties, and local tradition insists upon the importance of reciprocity and reward for loyalty – making it difficult to break a cycle of what would be termed 'bribery' or 'vote-buying'.

### Overview of Donor Anti-Corruption Initiatives

As noted above, New Zealand is the only bilateral donor that has an office in Niue, and though New Zealand would like to see anti-corruption measures put in place it is prohibited from doing so by Article 36, Niue Constitution 1974 without the consent of the Niue Legislative Assembly. It has, however, been heavily involved in supporting audit measures, as the Audit Office of New Zealand is the auditor of the Niue Government Account and all other public accounts, which also include individual departments and offices of the executive government and statutory bodies as provided for under the Niue Constitution 1974 (NZ), Article 60 (1), and (2).

### Assessment of Priority Areas, Activities and Issues

Many areas require revisiting to determine what kinds of anti-corruption measures might best serve Niue. Some areas involve changing local notions as to how politics should operate – ie that partisan politics and debate can be healthy for preventing potential abuses of power. Issues regarding custom and tradition such as the issue of reciprocity could be legally clarified to prevent bribery and vote-buying. A strong independent media could help to improve public education and provide moral rebuke for corrupt practice – this might be aided by privatising the media. A stronger focus on encouraging private-government dialogue might also aid transparency, but most pressingly, it must be made compulsory for public figures to disclose assets and interests upon appointment.

## Key Issues

### The National Integrity System

Niue's NIS is by and large nonexistent. No independent electoral commission exists. No Ombudsman office exists. Registers for gifts that are supposed to be in place under current legislation are not kept in practice. Accounts are audited by the New Zealand Audit Office but this does not mean that there is any strict control on how finances are spent. A system where partisan politics are the norm is not entrenched, and loyalties can shift to give the government an arguably unhealthy preponderance of power. Gift-giving at election time is not illegal, and customary practice mean that it is difficult not to become involved in a cycle of reciprocity. However there is also a dearth of traditional organisations which could potentially act as a check and balance upon government actions. The media has not been able to act as a watchdog over government mismanagement or corruption, and there are no specific institutions devoted to improving accountability and transparency within Niue. No regional or local level of government exists, and the private sector is still prohibitively small. This means that much of the local society is heavily reliant upon public employment and spending, and that there is no other avenue for recourse to more accountable employment options. Relationships within the private sector and within Churches and NGOs are largely based on trust, with little formality about accountability measures.

### Effectiveness of Government and Donor-Supported Activities

To repeat the above, there has been no major attempt by Niue's governments to pursue anti-corruption strategies. New Zealand, as Niue's major donor partner, is restricted by Niuean law from imposing such strategies. No such strategies have therefore been successful as they have not even been initiated.

### Priorities and Recommendations

There are many recommendations to be made about the situation in Niue. To repeat, the most pressing might be:

- That partisan politics be accepted as a normal political process;
- The issue of reciprocity be legally clarified to prevent election bribery;
- That the government media be privatised to ensure transparency and accountability in government policies and legislation is fostered;
- That the government include representatives of all sectors in policy and legislation processes;
- Dialogue between the two sectors, government and private, to begin at some stage; and
- The issue of disclosing assets and interest of public figures must be made compulsory upon appointment and or elected.

## Appendix 1 – Questionnaire

### Executive

#### **Can citizens sue Government for infringement of their civil rights?**

*Formal or legal position*

It is every citizen's constitutional and natural rights to sue the government or its agents for any infringement of their civil rights.

*What actually happens*

The option to apply to the courts for a legal review of government actions that are in breach of natural right is available to the citizens. But even with this option open to them, the majority of the citizens do not use it, not through fear of reprisals, but through a lack of appropriately qualified public counsels in Niue.

#### **Are there any procedures for the monitoring of assets, including disclosure provision, for Cabinet Ministers?**

*Formal or legal position*

No for monitoring of assets but yes for disclosure.

*What actually happens*

There is no formal procedure in place that requires Cabinet Ministers to disclose their assets when in the service of Her Majesty. However, disclosure will be enforced if in the event that a Minister is alleged to have received gifts from person(s) primarily to gain from it.

#### **Are there any procedures for the monitoring of assets, including disclosure provisions, for high level officials?**

*Formal or legal position*

Yes. The Niue Public Service Act. 1966, and the Public Service Regulation and Manual of Instruction (1979).

*What actually happens*

The Niue Public Service Commission being the public employing authority is charged with the responsibility of monitoring the assets of high level officials employed in the Public Service. Included also in the Regulation and Manual of Instruction 1979, is a specific provision for the disclosure of assets and gifts received whilst in the service. Both the Regulation and Manual of Instruction are currently under review, which may reinforce the recording of Public Servants assets. There is no record kept at the present time consequence of the small number of people employed in the Public Service.

#### **Are there any difference in procedure and disclosure provisions between elected Ministers, appointed Ministers, and high level officials?**

*Formal or legal position*

No. There are no elected Ministers. All three Cabinet Ministers are selected by the Premier from amongst the elected members of the Niue Legislative Assembly to form an executive government.

*What actually happens*

The difference in procedures and disclosures is not applicable because there are no such requirements for selected Ministers.

**Are there conflict of interest rules for Ministers?**

*Formal or legal position*

Yes. The Constitution of Niue, Article 19(a) (b) prohibits **all** elected members of the Legislative Assembly from paid employment in the Public Service, or interest in the execution or enjoyment of any contract for which public money is payable.

*What actually happens*

There are a number of elected members in the Legislative Assembly of Niue whose spouses, sons, and daughters are receiving government contracts.

**Are there conflict of interest rules for high level officials?**

*Formal or legal position*

Yes.

*What actually happens*

Public contracts are processed and awarded by the "Tenders Committee", and the employment of close kin in public service departments are closely scrutinized by the Public Service Commission, although at times it is relaxed because of the circumstances that exist in Niue.

**Are there rules and registers concerning gifts and hospitality for Ministers?**

*Formal or legal position*

No.

*What actually happens*

Ministers are not required to register gifts and hospitality accorded to them whilst in the service of Her Majesty. However, under the Niue Act, 1966, Section 180 (a) (b), any Minister who corruptly accept, obtain, agree to accept, or to obtain for himself any money on account of anything done, omitted, or to be afterwards done, or omitted by him in his official capacity, commits a criminal offence.

**Are there rules and registers concerning gifts and hospitality for high level officials?**

*Formal or legal position*

Yes, the Regulation and Manual of Instruction (1979) of the Niue Public Service Act, 1966,

*What actually happens*

The officials are required to register gifts and hospitality when and if they receive it.

**If so, are these registers kept up to date? By whom?**

*Formal or legal position*

Niue Public Service Commission.

*What actually happens*

There is no register being kept because it is voluntary, and therefore an issue of integrity.

**Have they legal powers to enforce disclosures?**

*Formal or legal position*

Yes, under the Regulation and Manual of Instruction (1979) of the Niue Act, 1966, and the Constitution, Article 69 (2).

*What actually happens*

There has apparently never been an occasion to warrant the enforcement of disclosure but the power to legally enforce it is in place.

**Have they the staff to investigate allegations?**

*Formal or legal position*

Yes, the Public Service Commission may conduct investigations.

*What actually happens*

The Public Service Commission may commission person(s) to conduct an investigation should it become necessary.

**What powers of sanction are in place against parliamentarians?**

*Formal or legal position*

The specific sanctions provided in the Niue Constitution spells out the penalties for any parliamentarian found to be in breach of the law.

*What actually happens*

The avenue of sanction is the seat of any member of the Legislative Assembly shall become vacant in the event of a breach of Article 19, (a) (b) of the Niue Constitution.

**Have they ever been invoked?**

*Formal or legal position*

No.

*What actually happens*

There has never been a case brought against a parliamentarian.

**What powers of sanction are in place against Ministers who are also parliamentarians?**

*Formal or legal position*

Ministers are selected from amongst the parliamentarians or in the case of Niue, the Legislative Assembly. Sanction against a Minister is provided under Section 180 (a) (b), Niue Act 1966.

*What actually happens*

If found guilty of a crime the Minister may serve a jail term of five years and will lose public office for the duration of the term. The right to contest future election is not restricted provided that the jail term is fully served.

**Have they ever been invoked?**

*Formal or legal position*

Yes, Section 180(a) (b) of the Niue Act. 1966.

*What actually happens*

The one and only case of alleged corruption brought against a Minister was dismissed by the High Court for inconsistency with the law.

**What powers of sanctions are in place against ministers who are not parliamentarians?**

*Formal or legal position*

N/A

*What actually happens*

N/A

**Have they ever been invoked?**

*Formal or legal position*

N/A

*What actually happens*

There are no ministers who are not parliamentarians or in the case of Niue, elected members of the Legislative Assembly.

**Are there any restrictions on post ministerial office employment?**

*Formal or legal position*

No.

*What actually happens*

Ex-Ministers are not restricted from gaining employment in the Public Service and in the Private Sector. Public servants who take leave from the service to contest a general election and became ministers, are permitted to re-enter the service upon losing his/her seat. This is covered under Article 18 of the constitution.

**Are members of the executive obliged by law to give reasons for their decisions?**

*Formal or legal position*

Not necessarily since Cabinet decisions are collectively made, the jurisdiction of the court to review the decisions of Cabinet is limited to making an opinion or else make a declaratory judgement.

*What actually happens*

Submission for Cabinet deliberation has a way of leaking out to the public but for most of the time, their decisions are never disclosed to the public.

**Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?**

*Formal or legal position*

Yes, all public contracts and licensing are dealt with by the "Tenders Committee", and in the case of liquor license, the "Liquor Board" makes the final decision. There is no hard and fast rule on the award of a Business License as all application goes through the comptroller of customs, and for all it is worth, the licensing fee is only \$NZ30.00 per annum.

*What actually happens*

Not all contracts are awarded by the "Tenders Committee", and since the committee is not a statutory body, the legal teeth necessary to enforce adherence to procedure are lacking. Similarly, the Liquor Board has been inactive for sometimes. Business licenses on the other hand are awarded by a high level official, the Financial Secretary. Therefore, one cannot discount the possibility that the system may be open for abuse and manipulation.

**Are there administrative checks and balances on decisions of individual members of the executive?**

*Formal or legal position*

Yes, there are Acts and Regulations in place for which the executive must abide by.

*What actually happens*

Members of the executive are required by law to make decisions collectively, as failing to do so would create friction and a fall-out. But even with this implicit requirement in law, there have been incidences of misuse of the executive power.

## **Legislature**

**Is the legislature required to approve the budget?**

*Formal or legal position*

Yes. Article 34 (a), Niue Constitution.

*What actually happens*

The Appropriation Bill must be presented in three stages before it is approved by the legislature. It is only then that the Appropriation Bill becomes an Act of law. The very fact that partisan politics has never been a feature of Niue politics until 1999 does not make for

proper scrutiny of the budget. But even with the emergence of party politics, it is and has been a numbers game to get the budget through its three readings.

**Are there significant categories of public expenditure that do not require legislative approval? (Which departments does this involve, what is their expenditure and what percentage does this represent of the government's annual expenditure?)**

*Formal or legal position*

Yes. Twenty five percent of the next budget prior to its approval to maintain supply.

*What actually happens*

The executive is constitutionally authorised to expend twenty five percent of the next budget to maintain supply before the new budget is approved. However, this authority is limited only to cover the period in between the end of the budget year and the approval of the next budget. Under no circumstances are the executive and the departments to expend any money that was not budgeted for in the Appropriation Act.

**Are there conflict of interests rules for parliamentarians?**

*Formal or legal position*

Yes. Article 19(a) (b), Niue constitution 1974.

*What actually happens*

Because of the provision in the constitution, parliamentarian may register their businesses under their spouse, sons, and daughter's name to avoid the penalty. This amounts to double dipping when they themselves are awarded government contracts through their spouses, sons, and daughters.

**Are there rules and register concerning gifts and hospitality?**

*Formal or legal position*

No.

*What actually happens*

Gifts can be construed as anything that parliamentarians receive and donated in their capacity as leaders of the community/village they serve. It is expected of them to give and to receive whatever is gifted more so the parliamentarians that got elected on the common roll franchise.

**If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure?**

*Formal or legal position*

Yes.

*What actually happens*

Cabinet can instigate a Commission of Inquiry or else invoke court proceeding against a parliamentarian to enforce disclosure based on the premise that a person is innocent until proven guilty.

**Have they the staff to investigate allegations?**

*Formal or legal position*

Yes. The police force.

*What actually happens*

Cabinet can mobilise the police force to investigate allegations. It is a process that requires going through the Chief Justice to assent to a search warrant, and court proceedings, otherwise the process would be viewed as misuse of power.

**What powers of sanctions are in place against parliamentarians?**

*Formal or legal position*

The ballot box.

*What actually happens*

Parliamentarians are elected every three years, and therefore, their mandate comes from the people. The onus is therefore entirely left to the people to make their own judgement at the ballot box.

**Have they ever been invoked?**

*Formal or legal position*

Once attempted only in the political history of Niue.

*What actually happens*

The law is specific and therefore any generalisation in its interpretation is immaterial.

**Are there any restrictions on post legislature employment?**

*Formal or legal position*

No.

*What actually happens*

It is a codified expectation but in reality, it has not materialised in action.

## **Electoral Commission**

**Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies that are widely regarded as non-partisans?)**

*Formal or legal position*

Yes

*What actually happens*

The Chief Electoral Officer is independent and therefore not affiliated to a political party.

**Who appoints the Head of the Commission?**

*Formal or legal position*

The Public Service Commission or Cabinet.

*What actually happens*

As prescribed by law, the Public Service Commission appoints the Chief Electoral Officer, or else Cabinet makes the appointment by constitutional decree.

## **Political Parties**

**Are there rules on political party funding?**

*Formal or legal position*

No.

*What actually happens*

Political parties are, by their very nature, non-profit entities and are therefore required by law, under the Incorporated Society Act 1908, to register their constitution as well as to submit financial statements annually to the Registrar to remain registered. Apart from this requirement, there are no rules to regulate their funding, nor to regulate donations to the party, or to monitor its expenditure, and source of income.

**Are substantial donations and their sources made public?**

*Formal or legal position*

No.

*What actually happens*

Party funding is the business of the members of the party.

**Are there rules on political party expenditure?**

*Formal or legal position*

No.

*What actually happens*

Political parties are required by law to furnish annual accounts to the Registrar of Incorporated Societies for the sole purpose of maintaining its register as an Incorporated Society. However, to be fully registered, a political party must also have its own seal to authenticate its existence.

**Are political party accounts published?**

*Formal or legal position*

No.

*What actually happens*

Political party accounts are not published, but party executives are expected to furnish an annual report of income and expenditure to its own members.

**Are accounts checked by an independent institution, are they published and are they submitted to parliament?**

*Formal or legal position*

No

*What actually happens*

It is not a legal requirement to succumb to the process.

**Does this institution start investigations on its own initiatives?**

*Formal or legal position*

No

*What actually happens*

No need to.

**Who appoints the Head of the institution?**

*Formal or legal position*

N/A

*What actually happens*

N/A

## **Supreme Audit Institution**

**Is the national auditor generally independent?**

**i.e. Is the appointment of the general auditor required to be based on professional criteria/merit?**

*Formal or legal position*

Yes. It is a Constitution requirement.

*What actually happens*

The Audit Office of New Zealand is the auditor of Niue Government Account and all other public accounts, which also include individual departments and offices of the executive government and statutory bodies. This requirement is provided under Article 60(1)& (2), of the Niue constitution.

**Is the appointee protected from removal without relevant justification?**

*Formal or legal position*

Yes.

*What actually happens*

The fact that removal has not happened as yet points to the fact that the conditions of engagement can only be altered by amending the relevant provision in the constitution.

**Are all public expenditures audited annually?**

*Formal or legal position*

Yes, it is a constitutional requirement.

*What actually happens*

All public accounts are audited except off-shore banking accounts, since it is argued that the funds are not part of the bilateral understanding enshrined in the constitution document.

**Is reporting up to date?**

*Formal or legal position*

Yes.

*What actually happens*

Reporting is up to date because the services are paid for, and the employees in the audit office also enjoy travelling to Niue to work and for leisure.

**Are reports submitted to a Public Accounts Committee and/or debated by the legislature?**

*Formal or legal position*

Yes.

*What actually happens*

The Public Expenditure Committee (PEC) closely scrutinizes the budget and naturally, it has access to the audit report. Should there be discrepancies in the management of the national budget by the Executive questions will be asked at a sitting of the legislature.

**Are all public expenditures declared in the official budgets?**

*Formal or legal position*

Yes, and including Corporations.

*What actually happens*

The three readings of the budget provide an avenue for the legislature to question doubtful expenditure in the budget.

## Judiciary

### **Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's and their officials?)**

*Formal or legal position*

No for the Premier and his Cabinet Ministers. Yes for the officials.

*What actually happens*

The jurisdiction of the courts to review the decisions/actions of Cabinet is limited to the presenting of an opinion. Only where applicable can the courts make a declaratory judgement. This fact is clarified in a deportation case in which the decision of Cabinet when it exercised its discretion pursuant to Sections 10 and 14(1)(a) of the Entry, Residence and Departure Act 1985, was not reversed by the High Court (Father Glover vs Niue Government 1995). In the case of declaratory judgement sought by the Public Service Commission in 2002 for breach of Constitution by Cabinet, the Chief Justice declared that the Public Service Commission is correct in its interpretation of the constitution in Talagi vs Cabinet 2002.

The officials on the other hand can be dealt with by the courts for decisions/actions that infringe on the principles of natural justice. A case in point (in 1998) is the Niue Public Service Commission was found by the courts to have breached the principle of natural justice and a blatant misuse of power in its dealing with a public servant. The case is a first for Niue, and no doubt more will follow (Talagi vs Niue Public Service Commission 1997).

### **Are judges/investigative magistrates independent? i.e. Are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?**

*Formal or legal position*

Yes. Article 45, Niue Constitution 1974.

*What actually happens*

Appointment of the Chief Justice, Judges of the High Court, Chief Judge and Commissioners of the Land Court is a constitution issue. The conditions of appointment and removal are clearly set out so that removal of the appointees must be justified.

### **Is recruitment and career development based on merit?**

*Formal or legal position*

Yes.

*What actually happens*

The recruitment and development of local Justices of the Peace, and Land Commissioners is ongoing, whereas the Chief Justice cum Chief Judge is appointed from a New Zealand pool of High Court Judges.

### **Have there been instances of successful prosecution of corrupt senior officials in the past three years?**

*Formal or legal position*

No

*What actually happens*

There has not been a case of corruption brought against a senior official in the past three years.

## **Civil Service**

**Are there any laws establishing criminal and administrative sanctions for bribery?**

*Formal or legal position*

Yes.

*What actually happens*

The existing law depends on the burden of proof and the fact that there has never been a criminal and administrative sanction brought against a civil servant clearly reflects the nature of the service.

**Are there any rules requiring political independence of the civil service?**

*Formal or legal position*

Yes.

*What actually happens*

The civil service (public service) is required under the Public Service Regulation to be politically neutral, and therefore affiliation to a political party is discouraged. This is explicit in all contractual agreement of employment entered into by the public servant and the Public Service Commission.

Appointments, remuneration, discipline, promotion, demotion, and dismissal of Public Servants are areas in which the independence of the Public Service Commission is constitutionally assured, although from time to time, Cabinet Ministers have tried to impose their will.

**Are recruitment/career development rules based on merit?**

*Formal or legal position*

Yes.

*What actually happens*

Vacant positions in the Public Service are publicly advertised for which the applicants are screened and short-listed for an interview. The career path is then set for the successful applicant to develop through training and other means of instruction whilst in the service.

**Are there specific rules to prevent nepotism? (note: rules discriminating positively in favour of marginalised or minority groups are not included in this description).**

*Formal or legal position*

No

*What actually happens*

Although the Public Service policy on recruitment prohibits close kin employment in a government department, the circumstances of everyone being related to each other in one form or another in Niue makes it very difficult to enforce it.

**Are there rules (including registries) concerning acceptance of gifts and hospitality?  
By whom?**

*Formal or legal position*

Yes/No

*What actually happens*

The rules are in place, but the register is supposed to have been kept and updated by the Public Service Commission which to date is non-existent.

**Have they legal powers to enforce disclosure?**

*Formal or legal position*

Yes

*What actually happens*

Only high profile cases are disclosures enforced, otherwise there has never been a need to legally enforce disclosure.

**If so, are these registers kept up to date? By whom? Have they staff to investigate allegations?**

*Formal or legal position*

No

*What actually happens*

The Public Service Commission is supposed to keep a register but it has not. In all probability, the Commission office with three Commissioners and a Secretary does not have the staff to keep a record and to investigate allegations.

**Are there any restrictions on post public service employment?**

*Formal or legal position*

No

*What actually happens*

People that have left the service through retirement or for any other reason can actually take up consultancy work for the government if they so wish. The private sector can also use their services if so required.

**Are procedures and criteria for administrative decisions published (e.g. for granting permits, licenses, bank loans, building plots, tax assessment, etc?)**

*Formal or legal position*

No

*What actually happens*

It does not happen in Niue nor is it likely to in future.

**Are there complaint mechanisms for public servants and whistleblower protection measures?**

*Formal or legal position*

Yes. The Public Service Association (PSA) is one avenue for the public servants to air their grievances. The other is the Appeals Committee but which the members are selected by the Public Service Commission.

*What actually happens*

The two entities are ineffective mechanisms, but there is nothing else except to refer complaints for a judicial review as a last resort.

**Are there means of complaints by members of the public?**

*Formal or legal position*

No

*What actually happens*

There is no established means for the public to air its grievances with respect to public servants decisions and actions. There is however, an option to go directly to the Head of Department if a complaint is against a junior staff member, or else to the Minister if it is to do with a Head of Department.

## **Police and Prosecution**

**Is the commissioner of police independent? i.e. are appointments required to be based on merit?**

*Formal or legal position*

No. In Niue, the title of Commissioner of Police is known as the Chief of Police.

*What actually happens*

Theoretically, the Chief of Police is independent, but in practice, the appointee is responsible to the Public Service Commission, as well as to the Minister of Police. The post of Chief of Police has always been advertised both locally and in New Zealand.

**Is the appointment protected from removal without relevant justification?**

*Formal or legal position*

Yes

*What actually happens*

The conditions of employment are clearly set out in the contract agreement, and it is a document that protects the appointment and continuation in the post.

**Are public prosecutors independent?**

*Formal or legal position*

Yes

*What actually happens*

There has never been a recognised incident of influencing the prosecutor in Niue.

**Are there special units for investigating and prosecuting corruption crimes?**

*Formal or legal position*

No

*What actually happens*

General cases are investigated, but the police can investigate allegations of corruption should it arise.

**Is there an independent mechanism to handle complaints of corruption against the police?**

*Formal or legal position*

Yes.

*What actually happens*

The Public Service Commission being the employing authority has a responsibility to investigate any complaint of corruption against the police. The general public can also lodge a complaint with the PSC but not very many have done so.

**Does civil society have a role in such a mechanism?**

*Formal or legal position*

No

*What actually happens*

There is an apparent lack of cohesion between government and civil society.

**In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?**

*Formal or legal position*

No

*What actually happens*

There has never been a corruption case brought against a police officer, but there have certainly been cases of misconduct that resulted in the resignation of the officers concerned.

**Are there any cases of corruption within the prosecuting agencies?**

*Formal or legal position*

No

*What actually happens*

There are no cases of this nature in Niue.

**Which legislative instruments that the police and public prosecutors can use for the investigation and prosecution of cases of corruption/bribery?**

*Formal or legal position*

Section in the Criminal Act.

*What actually happens*

There is one law in the Criminal Act that deals with the parliamentarians and the officials.

**Is the law applicable?**

*Formal or legal position*

Yes

*What actually happens*

Regardless of the law, the interpretation of it will rely on precedence and the ability of the defense to argue its case.

**Is private-to-private corruption punishable by law?**

*Formal or legal position*

No

*What actually happens*

N/A

**Is the law applied?**

*Formal or legal position*

N/A

*What actually happens*

N/A

**How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there effective measures or other good reasons why the number is low?**

*Formal or legal position*

Nil

*What actually happens*

The legal instrument has yet to be put in place.

## **Public Procurement**

**Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?**

*Formal or legal position*

Theoretically, yes.

*What actually happens*

The government "Tender Committee" advertises for bids, and who in turn makes a decision. However, as a public committee, it does not have the legal teeth such as accorded to "statutory bodies" to act independently.

**Are the rules laid down in documents publicly accessible?**

*Formal or legal position*

No

*What actually happens*

The committee makes up its own rules and which are not publicly accessible.

**Are there strict formal requirements that limit the extent of sole sourcing?**

*Formal or legal position*

No

*What actually happens*

The policy of government is to give every opportunity to the private sector to source/procure materials, equipment etc. Policy being what it is, is not a legal instrument that would prevent sole sourcing.

**Are all major public procurements widely advertised to the private sector?**

*Formal or legal position*

Sometimes, which means that those in the private sector do not always know what is going on.

*What actually happens*

The conditions of the tender would always limit the chances of the bidder to compete.

**Are procurement decisions made public?**

*Formal or legal position*

No

*What actually happens*

Notification to successful and unsuccessful tenders are sent to the tenders, but are not publicly made.

**Is there a procedure to request review of procurement decisions?**

*Formal or legal position?*

No

*What actually happens*

There should have been a set procedure for a review in the event of a suspect decision. However, the citizens are not prevented from seeking a judicial review for any decision that is prejudicial.

**Can unfavourable decision be reviewed in a court of law?**

*Formal or legal position*

Yes

*What actually happens*

Although the avenue for a judicial review is available, a case has yet to be brought before the courts.

**Are there provisions for blacklisting of companies proved to have bribed in a procurement process?**

*Formal or legal position*

No

*What actually happens*

N/A

**Are there rules and procedure to prevent nepotism/conflict of interest in public procurement?**

*Formal or legal position*

No

*What actually happens*

A small population such as in Niue makes it very hard not to be nepotistic. This is so because there has been intermarriage among families, and so everyone is related one way or the other. It is therefore very hard not to be nepotistic when dealing with the procurement issue.

**Are assets, incomes and lifestyles of public procurement officers monitored?**

*Formal or legal position*

No

*What actually happens*

The requirement to monitor is not explicit, although it is implicitly an understanding that the "Tender Committee" should not have a vested interest. The committee is made up of public officials and the private sector representatives and since everyone knows each other by name and business connection, the need to monitor is indeed limited.

## **Ombudsman**

This section of the questionnaire is not applicable as there is no ombudsman in Niue.

## **Investigative/Watchdog Agencies**

This section of the questionnaire is also not applicable as there are no such agencies in Niue.

## **Media**

### **Is there a law guaranteeing freedom of speech and the press?**

*Formal or legal position*

No

*What actually happens*

The media does not have freedom of speech and expression enshrined in law, but there is general acceptance of the international declaration on the freedom of speech and the press.

### **Is there any censorship of the media?**

*Formal or legal position*

Sometimes.

*What actually happens?*

Cabinet Ministers can collectively censor the media at any time, though in practice only oral threats have been issued thus far. In 1995, the then Editor of Niue Star newspaper was verbally threatened but that was as far as it went. The practice is not common in Niue nor it is universally accepted.

### **Is there a spread of media ownership?**

*Formal or legal position*

No

*What actually happens*

The media in Niue comprises the Niue Star that prints a newsletter weekly; a government owned Broadcasting service (The Broadcasting Corporation of Niue), and an executive Logo Katuali PR newsletter.

**Does any publicly owned media regularly cover the views of government critics?**

*Formal or legal position*

No

*What actually happens*

The weekly print newsletter is owned by a politician, who is, himself a supporter of the government and would sometimes print the views of government critics. The views of critics on government policies and practices on the other hand are not covered by the government media, which is understandable given that the media personnel is paid by government.

**Have journalists investigating cases of corruption been physically harmed in the last five years?**

*Formal or legal position*

No

*What actually happens*

No case on record.

**Does the media carry articles of corruption?**

*Formal or legal position*

No

*What actually happens*

Corruption cases are not normally covered as it would be seen as a trial by the media, which would also affect the integrity of the case in a court of law.

**Do media licensing authorities use transparent, independent and competitive criteria and procedures?**

*Formal or legal position*

No.

*What actually happens*

Not required since the comptroller of customs is the licensing authority of all businesses. And anyone can go into media business under the same licensing criteria.

**Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?**

*Formal or legal position*

Yes

*What actually happens*

Section 187 of the Niue Criminal Act, 1966 deals with criminal libel or slander, which effectively rely on the burden of proof and for the public benefit.

## **Civil Society**

**Does the public have access to information and documents from public authorities?**

*Formal or legal position*

No

*What actually happens*

Government documents that have been declared public property are sometimes made available to the public at large, otherwise government documents are always classified.

**Do the public authorities generally co-operate with civil society groups?**

*Formal or legal position*

Generally, yes.

*What actually happens*

Public authorities and especially Cabinet Ministers wants to take complete control of the civil society groups because of its funding position. Government uses funding as a leverage for compliance, which, in the long term, does not give the NGOs the freedom to do things for themselves.

**Are there citizen's groups or business groups campaigning against corruption?**

*Formal or legal position*

No

*What actually happens*

Niue is far behind in this area.

**Are there any citizen's groups monitoring the government's performance in areas of service delivery etc?**

*Formal or legal position*

No

*What actually happens*

People are at liberty to lodge their complaints individually, whereas monitoring under a group umbrella is something that has yet to materialise in Niue.

**Do citizen's groups regularly make submissions to the legislature on proposed legislation?**

*Formal or legal position*

No

*What actually happens*

Legislation placed before the legislature for debate is never discussed with the various groups in society before being submitted because it is not a requirement.

**Does the education system pay attention to integrity issues and corruption/bribery?  
Is it expected to?**

*Formal or legal position*

No

*What actually happens*

Education providers in Niue comprise a primary and a secondary school, and a University Centre of the University of the South Pacific. Post secondary school education is primarily provided outside of Niue other than by the USP, and which explains the non-attention to issues of integrity, corruption and the like.

## **Traditional Organisations**

N/A. For this section, traditional organisations, such as council of chiefs, do not exist in Niue.

## **Private Sector and NGOs**

**What measures have private companies adopted to reduce corruption within their own activities?**

*Formal or legal position*

None

*What actually happens*

There is no record of any measures in place.

**What measures have private companies, or Chambers of Commerce, adopted to discourage their members from corrupting public officials?**

*Formal or legal position*

Nil

*What actually happens*

There is nothing in place to counter, or discourage corrupt tendencies, but in any case the issue of according proper recognition by public officials of the important role the Chamber of Commerce play in the running of a country is far from satisfactory. An ideal position would be for the public officials and the Chamber of Commerce to work in concert with each other.

**What has the impact of privatisation and outsourcing and increased use of NGOs in service delivery been on opportunities for corruption, and the control of corruption?**

*Formal or legal position*

Nil

*What actually happens*

The services that were privatised were those that the public sector had failed to maintain. Not surprisingly, these remained to be underutilized under the private sector, and which has subsequently been discontinued. There is no opportunity for NGOs to undertake service delivery for reasons already covered in parts of this survey. In reality then, the need to put in place anti-corruption measures is not warranted.

**What measures have NGOs and peak bodies adopted to reduce opportunities for corruption in their own practices?**

*Formal or legal position*

Nil

*What actually happens*

NGOs have their own constitutions to guide their activities, and which also serves the purpose of making the executive accountable for their actions and/or in-actions.

**What measures have churches adopted to reduce opportunities for corruption in their own activities?**

*Formal or legal position*

Churches have their own means of accountability in place.

*What actually happens*

There have been cases of impropriety but none has found its way to a court of law, at least for now. Particular cases are not documented but the normal practice have been to quietly move the person(s) aside thus avoiding bad publicity.

## **Regional and Local Government**

**Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?**

*Formal or legal position*

No

*What actually happens*

There is no regional government in Niue. The local government is known as the Village Councils and of which the council members are elected by its own village every three years. The role of the Village Council is far different from those undertaken by Local governments.

**What public offices at regional and local level are appointed by the national government?**

*Formal or legal position*

N/A

*What actually happens*

Section 50 of the Niue Act. 1966, provides for the establishment of village councils in any village in Niue by an Act of the Niue Legislative Assembly. There is however, no provision for the appointment of a public official to a village council.

**Is there a legal requirement that meetings of city/town councils be open to the press and public?**

*Formal or legal position*

No

*What actually happens*

The Village Council meetings are conducted separately, of which the issues raised is discussed at a later meeting with the whole community for endorsement/rejection if so necessary. There is no restriction whatsoever on the presence of the press, should they wish to attend this later meeting.

**Are there clear criteria restricting the circumstances in that city/town council can exclude the press and the public?**

*Formal or legal position*

No

*What actually happens*

It is commonly accepted that Village Council meeting is the business of the council. The press and the public get to have their say at a village meeting with the council. In this sense there are no set criteria per se.

**Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsman, supreme audit institution, and so on) work at a regional or local level and are there specific agencies with regional and local responsibilities?**

*Formal or legal position*

No

*What actually happens*

The auditors only work at the national level. There is no specific agency that deals has a remit to work at the local level.

## **Progress with Government Strategy**

**Has the government announced an anti-corruption strategy and a timetable for implementation?**

*Formal or legal position*

No

*What actually happens*

There is a fine line between corruption and custom, but this has yet to be clarified. For the time being, legal opinion is being sought which, if completed, will form a part of the strategy towards addressing the issue.

**How much of the strategy has been announced?**

*Formal or legal position*

Nil

*What actually happens*

The strategy is still pending, but it should not be too long before a strategy is put in place.

**Is the strategy at national level or regional/local level?**

*Formal or legal position*

This is not yet clear.

*What actually happens*

The concern really is to clarify what falls into customs and what is regarded as gifts intending to gain from it in return. Unfortunately, the strategy when completed would only apply at the national level.

**Is the government meeting its own timetable?**

*Formal or legal position*

No

*What actually happens*

Legal opinion can take a fair bit of time to get, and therefore there is no telling a time frame the strategy will be put together.

## **Donor Anti-Corruption Initiatives**

**Which bilateral and multilateral donor agencies are based in the country?**

*Formal or legal position*

New Zealand

*What actually happens*

New Zealand is the only bilateral donor that has an office in Niue. No other multilateral donor agency is based in Niue.

**What types of anti-corruption initiatives have they supported?**

*Formal or legal position*

Nil

*What actually happens*

An anti-corruption initiative is still pending and, until complete, the need for support by donor agencies is, for the time being, not required.

**Are there examples of donors cooperating or coordinating their programmes?**

*Formal or legal position*

No

*What actually happens*

The audit office of New Zealand can be regarded as having an anti-corruption role to play, but this is a constitutional requirement more than an issue of transparency, accountability, and good governance. Its report is always tabled at the Legislative Assembly, of which the negatives ought to have been justifiable reasons to bring a government down. In all probability, the generality in Article 60(1) (2) of the Niue Constitution which deals only with providing a report at least once annually does not go as far as pinpointing the areas under which corruption might have occurred.

## **Future Research and Donor Support**

**Can key areas or issues be identified in terms of corrupt activity that the research for the support has demonstrated as requiring immediate attention, and which are they?**

- Disclosure of assets, gifts, business interest of the executive government, members of the Legislature, public officials, and public servants.
- Good governance.
- Harmonizing government/Business/Civil society relations to ensure transparency, accountability, and good governance in all sectors.
- Legal instrument to enforce disclosure.

**Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?**

- Society needs to be more involved in the affairs of the nation rather than to continue being tacit observers, because by being such, people in power will not have the checks and balances to curb self-interest.
- Shifting attitudes is a priority, which can only be achieved by including everyone in key positions in society are included in the decision-making process for the building and managing a nation.

**Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?**

- Donors are very specific in the giving of aid, but it should also be mindful of the exclusivity of their aid.
- Memorandum of Understanding (MOU's) are sometimes very general which does not necessarily give reasonable assurance of compliance.

**Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritization, sequencing, cooperation and coordination?**

- Community focus
- Transparency
- Involvement of the four estates (government, business, civil society, media) in decision making process.
- Accountability, and
- Good practice.

## Appendix 2 - References

Niue Act. 1966.

Niue Constitution 1974.

Niue Public Service Manual of Instruction 1979.

Niue Public Service Regulation 1979.

Standing Order, Niue Legislative Assembly.

Talagi, Maru, Contemporary Politics of Microstate Niue (M.A. Unpublished Thesis) 1990, Auckland University.

### Interviewees:

#### **Chapman M, Terry (MBE)**

Former Secretary to Government, Inspector-Niue Public Service Commission (current)

#### **Edwards, Tony**

Senior Police Officer

#### **Hipa, Desmond (J.P.)**

President of Niue Sports Association and National Olympic Committee (NISANOC),  
Businessman.

#### **Ioane, Charles (B.A, Waikato)**

USP Net Operator; Former High School Teacher.

#### **Mc Moore, Sisifo Paese (Ms)**

Law Clerk (Government Crown Counsel Office)

#### **Dr Haresimelika Paka**

Director of Health; Former Member of Parliament; Former Public Service  
Commissioner.

#### **Punu, Bradley (B.S. East West Centre)**

USP Tutor; Former Director of Agriculture, Former Secretary to Government.

#### **Richmond-Rex, Etemafili (J.P)**

USP Tutor; Former Director of Community Affairs Dept.

#### **Sioneholo, Togia (B.A., LLB, PGDL)**

Secretary of Justice, Lands, and Survey; Acting Attorney General.

#### **Tohovaka. Satini, John**

Chief of Police

#### **Tukuitoga. Saukia**

General Manager of Niue Woodcraft.