

ASSESSING GENDER-BASED VIOLENCE IN NIUE

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The International Center for Advocates Against Discrimination (ICAAD) is non-profit organization that focuses on data driven solutions to uncover, understand, and undo systemic discrimination while promoting human rights norms consistent with international law. Systemic or structural discrimination refers to systems of inequality that provide a social, political, cultural, or economic advantage to a dominant group while furthering barriers of exclusion that make marginalized communities more susceptible to violence and indignity. ICAAD brings together passionate multidisciplinary teams of lawyers, data scientists, technologists, universities, and design strategists to improve access to justice for women, girls, and vulnerable communities, while strengthening the capacity of civil society and government.

This project is a community-needs assessment on gender-based violence in Niue. The scope of this project is focused on Niueans living in Niue and bolstered by accounts of Niueans living in New Zealand. This report is the culmination of a literature review and a week of interviews in Niue from August 8-15, 2017. The research was conducted under the supervision of Taoga Niue following the Talanoa semi-structured interview methodology¹ with a variety of leaders in the Niuean government and civil society. Key interviews are listed in appendix A.

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Cover photo credit: Erin Thomas

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¹ Vaoletti, T.M., *Talanoa research methodology: a developing position on pacific research*. *Waikato Journal of Education*, vol. 12, pg. 21-34 (2006), <http://researchcommons.waikato.ac.nz/handle/10289/6199> accessed 7 November 2017. (The talanoa research methodology is grounded in organic discussion, respect, and reciprocity.)

ACKNOWLEDGMENTS

This report is dedicated to all of the women and girls who have or will experience violence in their lifetimes and to the resilience and love that make aga fakamotu Niue what it is.

This report is also dedicated to the loane Aleke Fa'avae and Moira Enetama who provided the support and introductions to make this project possible.

A final acknowledgment is made to Dr. Tarisi Sorovi-Vundilo whose inspiration is a reminder of what it truly means to be an intellectual.



“The intellectual is an individual endowed with a faculty for representing, embodying, articulating a message, a view, an attitude, philosophy or opinion to, as well as for, a public. And this role has an edge to it, and cannot be played without a sense of being someone whose place it is publicly to raise embarrassing questions, to confront orthodoxy and dogma (rather than to produce them), to be someone who cannot easily be co-opted by governments or corporations, and whose raison d’etre is to represent all those people and issues that are routinely forgotten or swept under the rug.” (Edward Said, Representations of the Intellectual)

TERMS AND ACRONYMS

GENDER-BASED VIOLENCE (GBV)	Gender-based violence is an umbrella term for violence directed toward or disproportionately affecting someone because of their actual or perceived gender identity. The term ‘gender-based violence’ is primarily used to underscore the fact that structural, gender-based power differentials around the world place women and girls at risk for multiple forms of violence. ²
DOMESTIC VIOLENCE	All acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. ³
SEXUAL VIOLENCE	Engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; engaging in other non-consensual acts of a sexual nature with a person, or causing another person to engage in non-consensual acts of a sexual nature with a third person. ⁴
VAWG	Violence against women and girls, used interchangeably with GBV and SGBV
GENDER	Gender refers to the roles, behaviors, activities and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. ⁵
GENDER BIAS	Inclination towards or prejudice against a person based upon their gender.

² UN Task Team on the SEA Glossary for the Special Coordinator on improving the United Nations response to sexual exploitation and abuse, *Glossary on Sexual Exploitation and Abuse* (5 October 2016), <http://www.pseataaskforce.org/uploads/tools/1478613357.pdf> accessed on 27 June 2017.

³ Council of Europe, Convention on preventing and combating violence against women and domestic violence (2011), Article 3.

⁴ Council of Europe, *supra* note 3, at art. 36.

⁵ UN Women, *Gender Equality Glossary*, <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder> accessed on 27 June 2017.

GENDER MYTHS	Socially constructed assumptions that are widely held but false, relating to the different roles and behaviors that men and women ought to assume in society. ⁶
GENDER STEREOTYPING	A gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women. ⁷
CEDAW	UN Convention on the Elimination of all forms of Discrimination Against Women
PICTs	Pacific Island Countries and Territories
PPDVP	Pacific Prevention of Domestic Violence Programme
AGA FAKAMOTU	The set of cultural practices and beliefs that make up the Niuean way
VAGAHAU NIUE	Niuean language (both Vagahau Niue and English are official languages)
FAKATUPUOLAMOUI	Niuean Conceptual Framework for addressing family violence as constructed from research with Niuean families in New Zealand ⁸
MAGAFAOA	Family in terms of Niuean culture

⁶ OHCHR, *Gender Stereotyping as a Human Rights Violation*, pg. 60-61 (October 2013), <http://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx> accessed 7 November 2017.

⁷ *Id.*

⁸ Tavelia, M., *Koe Fakatupuolamoui he tau Magafaoa Niue: A Niuean Conceptual Framework for addressing family violence* (March 2012), <http://www.pasefikaproud.co.nz/assets/Resources-for-download/PasefikaProudResource-Nga-Vaka-o-Kaiga-Tapu-Pacific-Framework-Niuean.pdf> accessed 5 October 2017.

EXECUTIVE SUMMARY

The purpose of this research is to assess the state of gender-based violence (GBV) in Niue through a review of existing literature and interviews with government officials and community leaders. This report highlights some of the unique features of Niue and avenues to reduce GBV through policy and social change. The main finding is the need for an in-depth survey to assess the prevalence and risk factors of GBV in Niue as well as cultural attitudes population-wide. Beyond this baseline information, there is a need for strengthened efforts in tracking cases of GBV from police reports to the judicial system. Furthermore, criminal offences as defined in current legislation fail to meet international standards for ending violence against women. New legislation is needed to both modernize and set new standards to promote women's rights and gender equality in Niue. Interviews also demonstrated how gender bias functions to hinder survivors' access to justice and how limited formal mental health resources and stigma around help-seeking behaviors hinder survivor's safety and access to long-term mental healthcare. The taboo nature of GBV makes it difficult to discuss in a particularly close-knit community like Niue, and here, an outsiders' perspective to highlight issues that get very little coverage nationally can be valuable. However, in the end, social and political change must be found in *aga fakamotu Niue* and led by and for the people of Niue.

VAGAHAU NIUE SUMMARY TRANSLATION

Ko e haoaga he kumikumiaga nei ke onoono fakamakutu ke he tau mahani favale mo e ekefakakelea fakamahao ke he tau fifine. Puhala mai e kumikumiaga nei mai he tau hokotaki mai he falu a tau kumikumiaga ne kua fitā he fakahoko mo e lolomi he falu pulotu. Pihia mo e tau fakatutalaaga mo lautolu e tau lukuluku feua ne fekafekau ke he fakatufono a Niue mo e tau takitaki kehekehe he motu.

To folafola atu he hokotaki nei e falu a tau puhala ne maeke ke fakaaoga ke tukutuku hifo e tau mahani favale mo e ekefakakelea fakamahao ke he tau fifine i Niue. Ke maeke ke putoia ke he tau puhala fakamatafakatufono tohi mo e falu hikihihiaga mahani fakatagata.

Mai he fakatoatoaaga he kumikumiaga nei, kua lata ke fai fakatutalaaga mo e tau tagata taki toko taha ke maeke ke iloa mahino e tau lekua ne lalago ke he tau mahani favale mo e ekefakakelea tagata mo e falu a tau aga mo e tau mahani fakamotu ne fakaohoohe aki e tau vahega mahani pehē nei. Ka e mua atu ke kaufakalataha ke fai fakatokaaga ke lata ia ma e falu a tau hokotaki ma e tau lekua nei mai he Faahi Leoleo pihia mo e Faahi Fakafili.

Lafi mai foki ki luga e fakamaamaaga he tau mahani favale mo e ekefakakelea tagata ki loto he tau matafakatufono tohi he motu. Kua nakai ō tatai mo e tau fakatokatokaaga fakalaulahi he tau motu he lalolagi ke fakaoti e tau mahani ekefakakelea ke he tau fifine.

Kua lata ke fai matafakatufono tohi ke moua e falu fakatokaaga ke omoi mo e mailoga e tu tonuhiaaga he fifine mo e ha tagata Niue. Mai he potaaga hokotaki ma e tau fakatutalaaga, kua maeke ai ke iloa mahino e tuaga he fifine mo e tau talahauaga kehekehe ha ko e moui fakafehagai haana mo e tau mahani favale mo e ekefakakelea.

Ko e tau kakano nei ati uka ai ha taha ke ta ha hokotaki. To fafafa foki e tau lagomatai ma e gagao he manamanatuaga ke maeke ia ia e fifine ke moua e falu puipuiaga mo e hatakiaga ke tupu olaola mo e tu hokohoko e haana moui he vaha loa. Uka lahi foki ke fakatutala e tau mahani favale mo e ekefakakelea tagata ha kua fakataputapu mo e maimaina e tau tagata ha ko e motu tote a Niue. To lahi foki e mahuiga he tau talahauaga mai ia lautolu ne nonofo mai i fafo i Niue, he maeke a lautolu ia ke fakatutala fakalaulahi mo e falu e matakupu nei. Ko e fakakatoatoaaga he kumikumiaga nei, kua lata ke fai hikihihiaga ke putoia e tau hikihihiaga mahani fakatagata mo e fai maamaaga fakapolitika ki loto he tau aga fakamotu he tagata Niue. Ke maeke he tagata Niue ke uta mo e fakagahuahua ni e ia e tau vahega mena ne lauia ke he matakupu nei ne kua lata tonu ma e tagata Niue.

NIUE: AN OVERVIEW

Population: 1,618⁹ (July 2017 estimate¹⁰)

Niue peoples living in New Zealand: 23,882 (2013 Census¹¹)

Gross Domestic Product: \$25.46 million NZD (2009¹²)

Aid from New Zealand: \$22.5 million NZD (Indicative Programme Allocations 15/16 - 17/18¹³)



Niue was settled over a thousand years ago in a wave of migration from eastern Polynesia and a later influx from Tonga. In the colonial scramble for the Pacific, the Niuean King Fataaiki requested that Niue become a British protectorate which was granted in 1900. Niue was then annexed to New Zealand which administered the island until it became self-governing in free association with New Zealand in 1974.¹⁴

Modern Niue faces challenges similar to that of other Pacific Island countries and territories (PICTs) including climate change, isolation, and out-migration. Free association status with New Zealand has facilitated out-migration to New Zealand where 90% of Niueans live. The island economy is focused on tourism with a strong dependence on aid. Aid from New Zealand is guaranteed by law and will continue to be a major portion of the Niuean economy.¹⁵

Photo credit: Niue Island, *Niue Island Map* (September 2017) <https://www.niueisland.com/s/Niue-Island-Map-September2017.pdf> accessed 15 October 2017.

⁹ There are 14 villages with the capital, Alofi. The population is mostly ethnic Niuean with some Tongans, Palagis, and Tuvaluans. The area of the island is 261 sq. km. Calvert, Isabel, *Niue: A Situational Analysis of Children, Women and Youth*, pg. 2 (August 2004), https://www.unicef.org/pacificislands/Niue_Sitan_Report_Latest_pdf.pdf accessed 7 November 2017.

¹⁰ CIA World Factbook, *Niue* (October 2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/ne.html> accessed 15 October 2017.

¹¹ Stats NZ, *2013 Census ethnic group profiles: Niuean* (2013), http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/ethnic-profiles.aspx?request_value=24712&parent_id=24706&tabname=#24712 accessed 6 November 2017.

¹² Statistics Niue, *Economic Statistics* (2012), http://niue.prism.spc.int/index.php?option=com_content&view=article&id=8&Itemid=253 accessed 6 November 2017.

¹³ New Zealand Ministry of Foreign Affairs and Trade, *New Zealand Aid Programme Strategic Plan 2015-19* (2015), <https://www.mfat.govt.nz/assets/Aid-Prog-docs/ASEAN/New-Zealand-Aid-Programme-Strategic-Plan-2015-19.pdf> accessed 7 November 2017.

¹⁴ Fraenkel, Jon, *Pacific Islands and New Zealand - Cook Islands, Niue, Tokelau and Nauru*, Te Ara - the Encyclopedia of New Zealand (20 June 2012), <http://www.TeAra.govt.nz/en/pacific-islands-and-new-zealand/page-5> accessed 7 November 2017.

¹⁵ Radio New Zealand, *Niue - a brief history* (5 August 2011), <http://www.radionz.co.nz/collections/u/new-flags-flying/nff-niue/about-niue> accessed 7 November 2017.

REGIONAL ORIENTATION



Photo credit: Calvert, *supra note 9*, at xii.

BACKGROUND

In the past decade, violence against women and girls (VAWG) has become a much more visible issue in the Pacific. UN Women estimates that 60-80 percent of women and girls in the Pacific Islands will experience physical or sexual violence in their lifetimes.¹⁶ These rates vary widely across states, territories, and cultures. Given the diversity in the Pacific Islands, it is vital to recognize the need for policy and programming that is tailored to specific communities. This report intends to highlight some of the unique features of Niue and ways to improve VAWG policy.

GENDER-BASED VIOLENCE

Gender-based violence (GBV) is a term used to describe harmful acts perpetrated against an individual based on one's actual or perceived gender identity.¹⁷ Globally, GBV has a greater impact on women and girls than on men and boys which is why the term is often used interchangeably with VAWG.

Given that a disproportionate amount of sexual and family violence affects women and is perpetrated by men, responding to gender inequality and corresponding

power dynamics are integral to addressing GBV.¹⁸

In Niue, both personal interviews and data indicate progress towards gender equality. In the 2017 election, 5 women were elected to the *Fono Ekepule* (Niue Assembly), representing 25% of the 20 seats.¹⁹ While still not an equal representation of women in politics, it is still significant progress from previous elections which have never elected more than 3 women.²⁰ The National Council of Women is hopeful for the future as these newly-elected women representatives were chosen without a gender quota.²¹ However, there is still gender inequality, and there is no legal protection against gender discrimination as Niue lacks a Bill of Rights or any anti-discrimination provision.

With regard to GBV, interviews with government officials and the police department suggest that interpersonal violence (IPV) is more common than non-partner violence in Niue.²² Though, as with other Pacific Island countries and territories (PICTs), the data is sparse. Comprehensive surveys on VAWG have only been conducted in 12 other PICTs in

¹⁶ The World Bank, *Raising awareness of violence against women in the Pacific* (November 2011), <http://www.worldbank.org/en/news/feature/2012/11/25/raising-awareness-of-violence-against-women-in-the-pacific> accessed on 25 May 2017, cited in UN Women, *Ending Violence Against Women and Girls: Evidence, Data and Knowledge in Pacific Island Countries* (July 2011), <http://www.pacificwomen.org/wp-content/uploads/Ending-Violence-Against-Women-and-Girls.pdf> accessed on 25 May 2017; UNICEF, *Harmful Connections: Examining the relationship between violence against women and violence against children in the South Pacific* (January 2015), [https://www.unicef.org/pacificislands/Harmful_Connections\(1\).pdf](https://www.unicef.org/pacificislands/Harmful_Connections(1).pdf) accessed on 25 May 2017; Crook, T., Farran, S. and Röell, E., *ECOPAS Final Report: Understanding Gender Inequality Actions in the Pacific: Ethnographic Case-studies and Policy Options* (2016), http://nrl.northumbria.ac.uk/27092/1/ECOPAS%20Gender%20Equity%20report%20MN0216385ENN_sm_all.pdf accessed on 25 May 2017.

¹⁷ UN Task Team on the SEA Glossary, *supra note 1*.

¹⁸ Wall, Liz, *Gender equality and violence against women: What's the connection?*, Australian Centre for the Study of Sexual Assault Research Summary No. 7 (June 2014), <https://aifs.gov.au/publications/gender-equality-and-violence-against-women> accessed 7 November 2017.

¹⁹ Niue Politics 2017, *Election Results* (2017), <http://niuepolitics2017.nu/2017results/> accessed 7 November 2017.

²⁰ Pacific Islands Forum Secretariat, *Gender Profile: Niue* (2013), http://www.forumsec.org/resources/uploads/attachments/documents/Niue_Gender_Profile.pdf accessed 7 November 2017.

²¹ Interview with members of the National Council of Women.

²² Interviews with key government personnel.

the past 10 years, and Niue has not been one of them.²³

Fully understanding the prevalence and nuances of GBV in Niue is vital for many reasons. Most importantly, GBV is a violation of human rights and is often intertwined with other forms of discrimination that hold women and girls back in society. Addressing GBV is important to maintaining healthy and flourishing families in Niue. It is also a matter of serious public policy concern as GBV inflicts many other costs for society.²⁴

CULTURE AND GENDER-BASED VIOLENCE

There is a tendency to be torn between universalism and cultural relativism when it comes to GBV. The former can erase societal nuance including positive cultural practices and may take the shape of cultural imperialism. The latter subsumes individual rights and justice to protect culture - even when the costs are exorbitant. A rights-based approach should not be black or white. A more productive approach is Dill-Thornton and Zambrana's intersectional framework which takes into account nuances of women's lived experience.²⁵ In practice, this can include data like population-wide prevalence surveys in terms of making policy and victim impact reports for GBV case management. Simultaneously, it is important to

recognize the variety of broader factors that contribute to the presence of GBV in a particular community spanning both structural factors and cultural values.

PREVIOUS WORK IN NIEUE

Although data on VAWG in Niue is limited, there has been research on gender inequality and VAWG among Niueans in New Zealand.

In 2004, UNICEF conducted a Situation Analysis of Children, Women, and Youth in Niue. This report noted several trends in limited reporting for domestic and sexual violence cases.²⁶ It also published police records from 1996 to 2004 which demonstrates some of these patterns (see figure 1).²⁷ However, the report did not survey prevalence or attitudes regarding VAWG.

In 2010, UN Women released a comprehensive literature review of VAWG data from PICTs and noted the lack of information on VAWG.²⁸ What recent data does exist has focused on attitudes on GBV among Niueans in New Zealand and general gender inequality in Niue.

Specifically, a study done in 2013 looked at Tagata Pasifika populations in New Zealand disaggregated by ethnicity.²⁹ Through focus groups, the research discovered several trends in Niuean attitudes on GBV. In all of the focus

²³ Surveyed countries and territories include Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. UNFPA, *2016 Regional Snapshot: UNFPA Asia and the Pacific Region* (August 2016), http://asiapacific.unfpa.org/sites/default/files/pub-pdf/VAW%20Regional%20Snapshot_2.pdf accessed 2 October 2017.

²⁴ Duvvury, N., Grown, C., and Redner, J., *Costs of Intimate Partner Violence at the Household and Community Levels*, International Center for Research on Women, pg. 34 (2004), <https://www.icrw.org/wp-content/uploads/2016/10/Costs-of-Intimate-Partner-Violence-at-the-Household-and-Community-Levels-An-Operational-Framework-for-Developing-Countries.pdf> accessed 7 November 2017.

²⁵ Nafiesh Ghafournia, "Culture, Domestic Violence and Intersectionality: Beyond the Dilemma of Cultural Relativism and Universalism," *The International Journal of Critical Cultural Studies* 11, no. 2 (2014): 23-32.

²⁶ Calvert, *supra* note 9, at 28-29.

²⁷ *Id.* at 28.

²⁸ UN Women, *supra* note 16, at 36.

²⁹ Percival, T., Robati-Mani, R., Powell, E., Kingi, P., Peteru, M. C., Hope, L., Finau, E., Selu, E., and Rankine, J., *Pacific pathways to prevention of sexual violence: Full report*, University of Auckland School of Population Health (October 2010), <http://www.mpp.govt.nz/assets/Uploads/Pacific-PPSV-full-online-version.pdf> accessed 7 November 2017.

groups, participants noted that GBV is not socially acceptable in Pacific cultures; however, they also exposed some culturally-specific risk factors for family violence (see figure 3). Although this research was not focused on the island of Niue, this analysis of Niuean attitudes is a helpful framework for understanding the cultural context in which GBV can persist.

The 2015 Gender Mainstreaming Stocktake provides further insight into features of Niuean society that can perpetuate gender discrimination and GBV. Gender stereotypes often reinforce limited roles for women and toxic masculinity for men. This results in greater impunity in GBV cases and also inhibits help-seeking behaviors among men in Niue.³⁰

The findings from both of these studies also identify the positive protective factors in Niuean culture that demonstrate how VAWG is not culturally acceptable and is not a part of *aga fakamotu* (the Niuean way). From the New Zealand focus groups, the findings explain how the ideal state of wellbeing for Niueans occurs with a balance of spirituality, environment, relationships, and family.³¹ In the context of *aga fakamotu*, the Niue Working Group under the New Zealand Ministry for Social Development published a conceptual

framework for addressing family violence in 2012, named *fakatupuolamoui*.³² It identifies the cultural values in which relationships can be understood in Niue, examples of which can be seen in figure 3. Although this framework is also based on Niuean families in New Zealand, its analysis of *aga fakamotu* as it relates to family violence provides further insight into both protective and risk factors.

THE STATUS QUO

Throughout the Pacific Islands, there has been movement to address the issue of GBV. Some of the leading groups in the region are the Secretariat of the Pacific Community's Regional Rights Resource Team (RRRT), the Fiji Women's Crisis Centre, and Fiji Women's Rights Movement which have helped generate best practices in the region. One outcome of these efforts has been the Denarau 2015 Agreement reaffirming efforts to promote human rights and good governance, which Niue signed.³³

In 2007, Niue joined the Pacific Prevention of Domestic Violence Programme (PPDVP) which is a regional agreement reaffirming a commitment to ending impunity by working through the police.³⁴ The goal is to use best practices in the Pacific to train other police forces. The current police chief in Niue, Tony

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Assault against women		2		3	2		1		1
Assault against children		2			1				
Indecent assault against a girl under 12/15		1	1						
Rape		2	1	1					
Incest ³⁵									
Domestic violence		5		2	1		3		1

Source: Police Department records 2004

Figure 1. Credit: Calvert, *supra* note 9, at 28.

³⁰ Secretariat of the Pacific Community, *Stocktake of the gender mainstreaming capacity of Pacific Island governments: Niue*, pg. 11 (2015), <http://pacificwomen.org/wp-content/uploads/2017/09/Niue-gender-stocktake-4.pdf> accessed 7 November 2017.

³¹ Percival, *supra* note 29, at 41-54.

³² Tavelia, *supra* note 8.

³³ Secretariat of the Pacific Community, Denarau 2015 Declaration on Human Rights and Good Governance (2015).

³⁴ Pacific Prevention of Domestic Violence Programme, *The Programme*, <https://www.ppdvp.org.nz/about/> accessed 7 November 2017.

Edwards is also the DV Coordinator for PPDVP for Niue. This initiative has focused intensively on the Cook Islands, Kiribati, Samoa, and Tonga involving comprehensive baseline surveys and police training and community partnerships. This programming has yet to expand in-depth to other PICTs including Niue.

Niue is also partnered with the Pacific Judicial Development Programme (PJDP) which has involved training and support to improve judicial systems in the Pacific.³⁵ PPDVP and PJDP led a workshop in Niue on judicial handling of domestic violence cases in 2014 which produced a flowchart for standard protocol (see appendix C).³⁶ Although this collaboration is important, the resulting protocol raises questions of accountability in GBV cases when relying on “restorative plans.” More research is needed on how this protocol functions in GBV cases in practice.

Although regional and international agreements are important to recharging national agendas, it is important to recognize the pressure on human resources in small island states like Niue. Current compliance with CEDAW is an example of the balance of these pressures and priorities.

CEDAW

New Zealand ratified CEDAW in 1985 which meant Niue was also a party to the treaty. However, in 1994, the UN

Secretariat recognized Niue’s full independent treaty-making capacity.³⁷ This concurred with Article 36 of the Niue Constitution Act of 1974, which declared that no New Zealand legislation including international treaties would apply to Niue without the consent of the *Fono Ekepule* (Niue Assembly).³⁸ Since Niue has not formally ratified CEDAW under its treaty-making capacity, there are no obligations from the CEDAW committee for either New Zealand nor Niue to submit reports regarding Niue’s adherence to CEDAW’s human rights provisions.³⁹

CEDAW stands apart from other treaties and agreements because of its reporting procedures and international scope. Countries which have ratified CEDAW are mandated to report to the CEDAW committee every four years in order to assess progress towards eliminating discrimination against women. Community stakeholders are also encouraged to submit parallel reports. This accountability is different from the regional conferences and agreements which lack such comprehensive enforceability.

Also a self-governing country in free association with New Zealand, the Cook Islands, followed a similar path to CEDAW ratification via New Zealand as it was recognized with having treaty-making capacity in 1992.⁴⁰ However, in 2006, the Cook Islands formally acceded to CEDAW and submitted their initial report in 2007.⁴¹ Given the generally common

³⁵ Pacific Judicial Development Programme, *The Programme*, <http://www.fedcourt.gov.au/pjdp/home> accessed 7 November 2017.

³⁶ Pacific Prevention of Domestic Violence Programme, *The Pacific Judicial Development Programme (PJDP) Delivered a Family Violence and Youth Justice Workshop in Niue* (10 February 2015), <https://www.ppdvp.org.nz/2015/02/10/the-pacific-judicial-development-programme-pjdp-delivered-a-family-violence-and-youth-justice-workshop-in-niue/> accessed 7 November 2017.

³⁷ Repertory of Practice of United Nations Organs, Supplement No. 8, vol. VI (1989-1994), article 102, para. 11.

³⁸ Niue Constitution Act of 1974, Article 36.

³⁹ Baird, N., To Ratify or Not to Ratify? An assessment of the case for ratification of international human rights treaties in the Pacific, see footnote 26, pg. 8 (December 2007), https://ir.canterbury.ac.nz/bitstream/handle/10092/827/12608482_Baird.pdf accessed 7 November 2017; Interviews with key government personnel.

⁴⁰ Repertory of Practice of United Nations Organs, *supra* note 34.

⁴¹ UN, Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Cook Islands*, CEDAW/C/COK/CO/1(10 August 2007),

ground of eliminating discrimination against women, it might seem surprising that Niue has not joined almost all other PICs in formally ratifying CEDAW.⁴²

In 2001, a CEDAW compliance report was attempted but not completed. The results showed significant gaps in Niuean legislation including the lack of constitutional protection against discrimination based on sex or gender.⁴³ Ratifying CEDAW would require updating current legislation to meet international standards in addition to periodic reporting to ensure accountability.

Instead, the Convention on the Rights of the Child (CRC) was ratified based on the amount of change required to meet treaty provisions, the political move region-wide to ratify CRC, and the amount of human resources needed to follow through on reporting procedures.⁴⁴ In these trade-offs, Niue ratified the CRC in 1995 followed by the submission of a long overdue initial report in 2011.⁴⁵ CRC does address some gender-related issues, but there are still major gaps in addressing all forms of discrimination against women.

Furthermore, the CRC Committee's concluding remarks in 2013 following review of the first initial report noted that domestic violence is "pervasive" in Niue and must be dealt with accordingly.⁴⁶ The Committee highlighted the impact of domestic violence on children and the lack of intervention from police and teachers because domestic violence is considered to be a family matter.⁴⁷

<http://undocs.org/CEDAW/C/COK/CO/1> accessed 7 November 2017.

⁴² Only Tonga and Palau are not party to CEDAW. See Baird, *supra* note 39, at 3.

⁴³ Secretariat of the Pacific Community, *supra* note 30, at 13.

⁴⁴ Baird, *supra* note 39, at 7.

⁴⁵ UN, Committee on the Rights of the Child, *Initial report of States parties due in 1998*, CRC/C/NIU/1 (18 July 2011), <http://undocs.org/CRC/C/NIU/1> accessed 7 November 2017.

⁴⁶ UN, Committee on the Rights of the Child, *Concluding observations on the initial report of*

POLICY AND PROGRAMMING

In Niue, there have been actions to bring awareness to the issue of VAWG and particularly domestic violence. Many of those interviewed remarked on the increased publicity around domestic violence which can be attributed to the growing movement in the region.

The PPDVP created a DV committee in Niue which was centered on bringing together relevant actors to discuss cases and legislation. Although the committee has not met in two years, it is still said to exist on an ad hoc basis.

Legislation was drafted to cover family protection provisions in 2012.⁴⁸ The Family Law and Family Protection Law were combined to update outdated legislation from the Niue Act of 1966 focusing on issues like the age of majority and the prevention of domestic violence. The combined Family Law has not been passed by the *Fono Ekepule* (Niue Assembly) and is being reworked.⁴⁹

Niue, paragraph 36, CRC/C/NIU/CO/1 (24 June 2013), <http://undocs.org/CRC/C/NIU/CO/1> accessed 7 November 2017.

⁴⁷ *Id.*

⁴⁸ UN, Committee on the Rights of the Child, *List of issues concerning additional and updated information related to the consideration of the initial report of Niue: Written replies of Niue*, paragraph 35-39, CRC/C/NIU/Q/1/Add.1 (31 January 2013).

⁴⁹ Interview with Gaylene Tasmania, Director General of the Ministry of Social Services.

FINDINGS

This study is an assessment of previous work and present community needs regarding GBV. The primary finding is that there is not enough data nor attention on GBV in Niue. Existing research is outdated, and Niue has fallen off the radar of regional efforts to bring awareness to the issue. Interviews have also shown that gender bias, cultural practices, and shame are prevalent and often prevent survivors from seeking help or legal remedy. Shame, in particular, plays a major role in an isolated and close-knit community like Niue. There are also limited mental health resources which has harmful implications for the safety and wellbeing of survivors. Finally, the existing legislation defining GBV offenses is outdated and fails to support women and girls or gender equality.

1. There is not enough data on gender-based violence in Niue.

Gender-based violence often festers in private spaces and without data on its prevalence, it is difficult to understand the scope of the problem. In order to address reality, we must first discover what this reality is. Without data and diligent record keeping, we rely on existing reports that describe domestic violence as “pervasive”⁵⁰ and sexual assault against minors as occurring “regularly.”⁵¹

Remedying this lack of data involves a variety of stakeholders and will require a multi-stakeholder approach, including: the Ministry of Justice, Crown Law, Police Department, and CSOs. The last reported incident related to domestic violence and sexual assault from the Police Department was in 2004 (Figure 1). No population surveys have been done on the topic, and even reports from cases

that are publicly prosecuted are rarely made available to the public.

2. Gender biases inhibit access to justice for survivors of GBV.

Gender bias plays out in many ways and can hinder access to justice especially when frank discussion about the issues is *fakatapua* (forbidden). In one case of sexual assault against a minor, there was denial of the incident in the community. The narrative that it was the woman’s fault feeds into an attempt to understand disturbing violence but also promotes dangerous beliefs about the nature of VAWG. These myths function to excuse the perpetrator and assert that the victim was not vulnerable or blameless. The reality is that only the perpetrator of sexual assault is responsible.

Dressing in a certain way or flirting can be an invitation for attention or admiration but is never an invitation for sexual assault.⁵² These myths can permeate community beliefs to a point where shame actually prevents a victim from access to justice.

Shortly after the police department signed onto the PPDVP, a soft no-drop policy was instituted on the force. In practice, this translates to the department’s intentions to take domestic violence cases seriously. Two recent DV cases were withdrawn because further pursuit would have worsened the situation.

The goal with no-drop policies is to find a balance between empowering survivors and ending the culture of impunity around domestic violence cases. In navigating this balance, Niue presents unique barriers with such a small population. Silence, shame, and victim-blaming already keep women from reporting violence, and the no-drop policy is perceived to mandate prosecution which can keep women from

⁵⁰ UN, *supra* note 46.

⁵¹ Calvert, *supra* note 9, at 31.

⁵² Abbey A., *Sex differences in attributions for friendly behavior: Do males misperceive females’ friendliness?* Journal of Personality and Social Psychology 1982, Volume 42, p.831.

reaching out to the police in the first place.⁵³ However, the policy has been effective in Fiji in bringing more cases to court where police, prosecutors, and judges have taken GBV offenses more seriously in addition to bringing the issue of GBV to the fore in socio-political discussions.⁵⁴ Attitudes around reporting and no-drop policies must be further assessed in Niue before determining the level of no-drop policy to be formalized in legislation.

3. There is a lack of safety provisions and long-term mental health care for survivors of GBV.

Niue presents unique challenges to mental health care with barriers to maintaining confidentiality among a small population and pressure on human resources for professionals providing mental health care.⁵⁵ This has resulted in limited formal mental health resources for those who seek help; however, the

stigma around help-seeking behaviors often keep people from taking the first step anyway.

The 2013 WHO profile on mental health in Niue found this stigma against mental health services to be cultural and pervasive.⁵⁶ The impact of these attitudes are far-reaching as mental illnesses can impact relationships and if unaddressed can result in abusive behavior. It can also prevent survivors from seeking mental health services for trauma.

As the 2013 profile found, Niue offers many spaces for informal community care through families, villages, and churches (see figure 2).⁵⁷ However, there is both a lack of formal mental health services and a stigma against help-seeking behavior. This is understandable considering the obstacles to confidentiality in Niue. The small population exacerbates shaming associated with mental health and makes

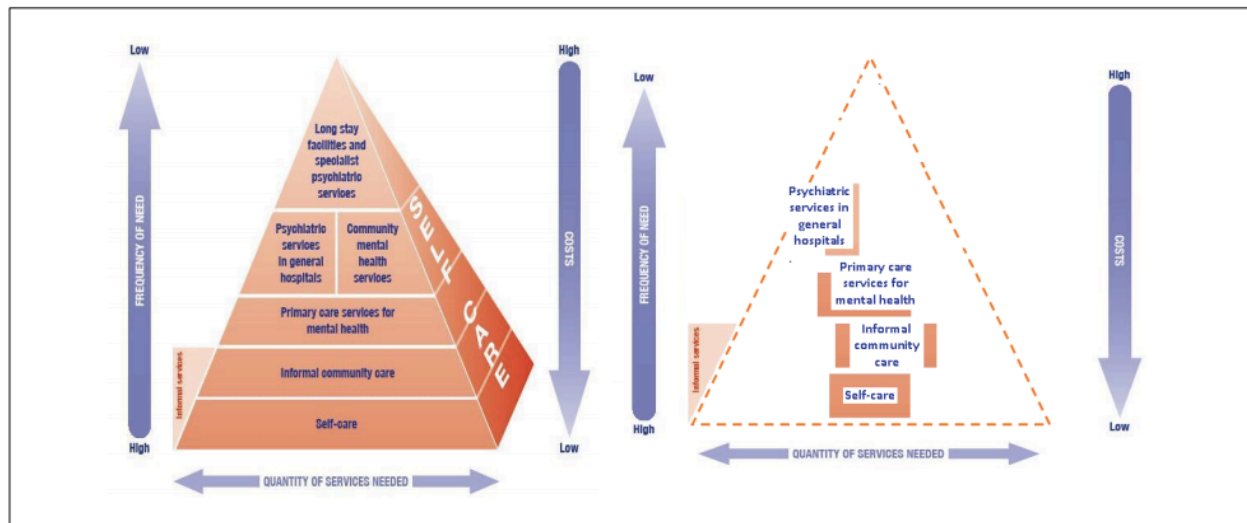


Figure 8(a)
The ideal structure for mental health care in any given country

Figure 8(b)
The reality of mental health care in Niue
Due to the size of the country, mental health services are provided through the general hospital and in the community. Also, it is not appropriate to have a long stay facility.

Figure 2. Credit: Nosa, *supra* note 52, at 28.

⁵³ Vincent, J., *Domestic Violence & No-Drop Policies: Doing More Harm Than Good?*, pg. 12-13 (2015), <http://stars.library.ucf.edu/cgi/viewcontent.cgi?article=1728&context=etd> accessed 7 November 2017.

⁵⁴ Movono, L., *Rape: What do the statistics say* (26 September 2017), <http://www.fijitimes.com/story.aspx?ref=archive&id=417784> accessed 7 November 2017.

⁵⁵ Interviews with key government personnel.

⁵⁶ Nosa, M., Pulu, M., Funk, M., Gaffa, J., McLean, A., Fereti, K., Hughes, F., Skeen, S., Drew, N., Sugiura, K., Akauola, E., Pulu, W., Tatui, P., *WHO Profile on mental health in development (WHO proMIND): Niue*, pg. 3 (2013), http://apps.who.int/iris/bitstream/10665/85308/1/9789241505680_eng.pdf accessed 7 November 2017.

⁵⁷ *Id.* at 27.

it difficult to provide formal mental health services with full confidentiality. This is particularly problematic when considering the mental health needs of survivors of violence who require confidentiality, often for immediate safety.

4. Existing legislation fails to support women and girls.

Although there has been progress in gender equality in Niue, there is no constitutional provision to prohibit discrimination based on sex or gender. Additionally, criminal offenses as defined in the Niue Act 1966 fail to meet international standards for ending violence against women and girls (see appendix B).

New legislation is needed to both modernize and set new standards promoting women's rights and gender equality. Without reform, this legislation puts women and girls at risk while allowing impunity for GBV offenses to continue. For example, Section 162.4 of the Niue Act 1966 explicitly states that rape within an existing marriage is not against the law.⁵⁸ Sexual violence can and often does exist within relationships and cannot be excused by marriage.

There are no provisions criminalizing domestic and family violence specifically. In practice, it is charged as common assault which ignores other aspects of domestic violence including sexual, psychological, and economic violence.⁵⁹

Furthermore, rape is narrowly defined as an offense only committed with penetrative sexual intercourse.⁶⁰ This ignores the range of ways in which sexual assault can occur. Sexual offenses should be graded by harm and should identify

aggravating factors.⁶¹ Reform should also include criminalizing sexual harassment.

Comprehensive legislative reform is needed to assert ending violence against women and girls as a priority. It should involve best practices from the region and around the world with the context of *aga fakamotu Niue*.

AREAS FOR FURTHER RESEARCH

The research for this report is not meant to be an exhaustive analysis, but to create a starting place for engagement. There are several areas of inquiry that have come out of gaps in the literature and interviews beyond the need for prevalence data. The presence of firearms in Niue has created a risk factor for domestic violence and requires further research to understand the scale and connection between gun violence and domestic violence. Alcohol abuse is a similar risk factor that is an avenue for further research in how it aggravates GBV. Finally, gender bias in judicial sentencing is an area that has been studied in other PICTs and would be valuable for Niue. With all three of these topics, more data is needed from the Ministry of Justice, Police Department, and Crown Law to fully investigate these areas of inquiry.

⁵⁸ Niue Act 1966, s 162(4).

⁵⁹ UN, Handbook for Legislation on Violence Against Women, pg. 24 (2009), <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> accessed 7 November 2017.

⁶⁰ Niue Act 1966, s 161.

⁶¹ Forster, C., *Sexual Offences Law Reform in Pacific Island Countries: Replacing Colonial Norms with International Good Practice Standards*, Melbourne Law Review, Volume 33, pg. 835-838 (2009), http://law.unimelb.edu.au/_data/assets/pdf_file/0009/1705248/33_3_6.pdf accessed 7 November 2017.

RECOMMENDATIONS

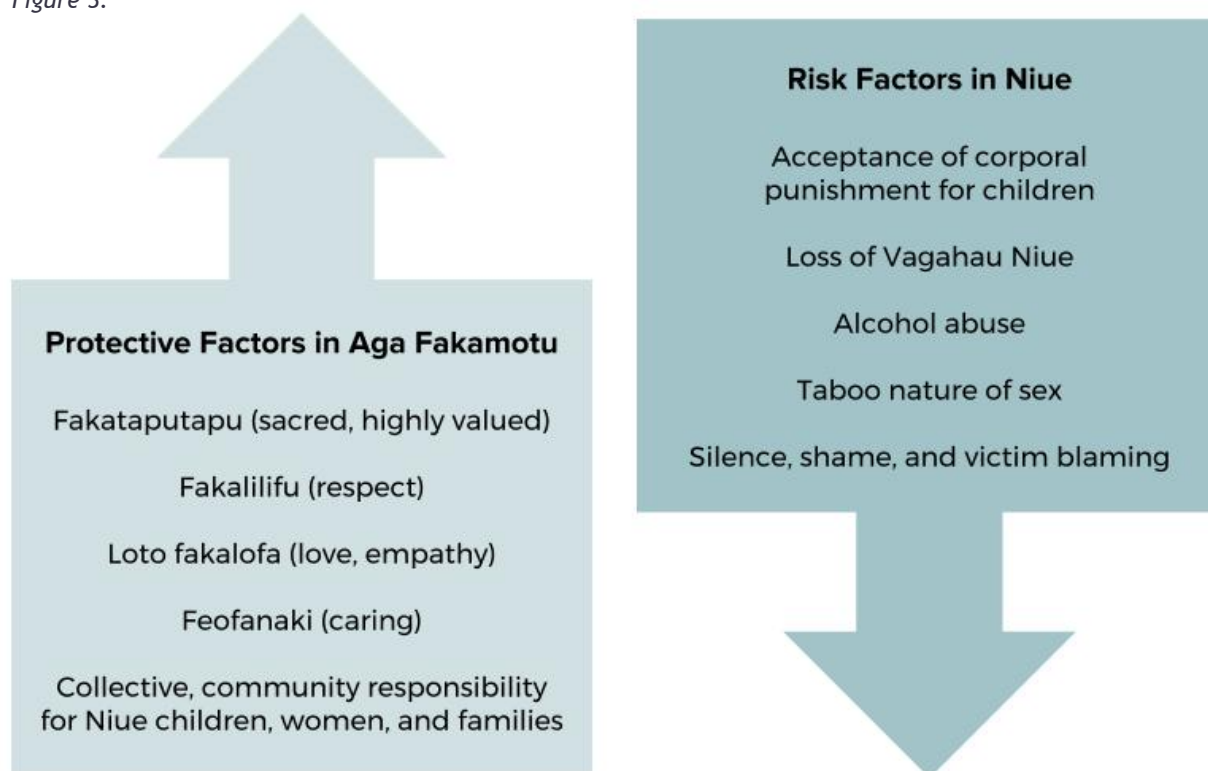
The objective of this project was to conduct a needs assessment to determine what the next steps are for eliminating violence against women and girls in Niue. First and foremost, a more comprehensive prevalence survey should be done. The WHO has a framework for Demographic and Health Surveys which are able to identify the intricacies of how GBV plays out in specific contexts by measuring prevalence, risk factors, and attitudes.⁶²

Compiling more data on gender-based violence must be a coordinated effort. The Ministry of Justice must make more cases public on the Pacific Islands Legal Information Institute (PacLII) database to allow for further accountability and

analysis of gender bias.⁶³ The police department must keep track of GBV cases to better understand the efficacy of the no-drop policy, reporting, and prevalence. One option for consolidating this data is the PPDVP Case Management and Intelligence System (CMIS) which has been implemented in the Cook Islands, Samoa, Tonga, Kiribati, Tuvalu, and Vanuatu.⁶⁴ Although it operates with different functionality in the various PICTs, Niue's size and existing DV Committee creates a good opportunity to utilize the CMIS to better understand and follow up on domestic violence.

As previously stated, there is no one-size-fits-all approach to eliminating GBV, and Niue in particular presents several unique challenges to traditional prevention strategies. The only way to effectively

Figure 3.



Adapted from Teuila Percival, Robert Robati-Mani, Elizabeth Powell, Pefi Kingi, Maiava Carmel Peteru, Linda-Teleo Hope, 'Eseta Finau, Elisala Selu and Jenny Rankine, "Pacific pathways to prevention of sexual violence: Full report," *University of Auckland School of Population Health*, (October 2010).

⁶² UN, *Guidelines for Producing Statistics on Violence Against Women* (2014), https://unstats.un.org/unsd/gender/docs/guidelines_statistics_vaw.pdf accessed on 7 November 2017.

⁶³ See the Pacific Islands Legal Information Institute database at <http://www.paclii.org/>.

⁶⁴ Pacific Prevention of Domestic Violence Programme, *CMIS Database* (10 November 2008), <https://www.ppdvp.org.nz/2008/11/10/cmisis-database/> accessed 7 November 2017.

address GBV in Niue is through *aga fakamotu*.

Fakatupuolamoui provides a strong framework to build on the protective factors of *aga fakamotu* as well as identify what is both against *aga fakamotu* and human dignity.⁶⁵ In addressing violence against women and girls in Niue, policy and programming must be centered on 1) establishing that GBV is not acceptable, normal, or validated in *aga fakamotu*, 2) reducing risk factors and opportunities for violence to occur, and 3) emphasizing existing protective factors and concepts in *aga fakamotu* that promote family wellbeing (see figure 3). While existing village-level mediation is vital to healing communities after incidents of violence, it is also important to provide alternative paths where a survivor can seek legal remedy and counselling without shame from her community.

Regarding the prevention of GBV, there are many existing mechanisms in Niue that can deliver programs promoting healthy relationships and domestic violence awareness. The Youth Council and the National Council of Women are both positive forums for these relevant issues to be discussed in addition to educational programming in schools paired with sexual and reproductive health curriculum.⁶⁶

Significant work needs to be done with regard to legislative reform for GBV, mental healthcare, and access to justice. The proposed Family Law legislation which addresses the outdated provisions in the Niue Act 1966 must be made a priority in the *Fono Ekepule* (Niue Assembly). The Domestic Violence Committee must also commence again to move forward with implementation and evaluation of new policies.

The Mental Health Working Group should also reconvene to prioritize the Mental Health Bill which was discussed in 2012.⁶⁷ Determining a way to encourage help-seeking behaviors while providing formal mental health services in Niue is essential to promoting protective factors and mitigating risk factors for GBV. One avenue to start this shift is making counselling available for students at schools which has been discussed before but never followed through on.⁶⁸

There are both benefits and drawbacks for a non-indigenous person to conduct this research. Care was taken to ensure respect and reciprocity through interviews and the final report. As the taboo nature of sex and particularly GBV make it a difficult topic to discuss in a particularly close-knit community like Niue, outside perspectives can highlight issues that might not have been considered. However, in the end, social and political change must be found in *aga fakamotu* and led by and for the people of Niue.

Although the DV Committee and government stakeholders play a vital role in leading change in Niue, it must be a community effort. Civil society including the National Council of Women, the Youth Council, and church communities must all work together to support policy that protects and empowers women and girls. Moreover, education and discussions about healthy relationships and gender roles can drive grassroots movement in setting positive expectations in the community. This challenges beliefs and attitudes that support violence and gender inequality in order to promote a safe community for all families in Niue.

⁶⁵ Tavelia, *supra* note 8.

⁶⁶ UNESCO, *Attitudinal Survey Report on the Delivery of HIV and Sexual Reproductive Health Education in School Settings in Niue* (2015), <http://unesdoc.unesco.org/images/0023/002325/232552E.pdf> accessed 7 November 2017.

⁶⁷ Nosa, *supra* note 56, at 4; UN, *supra* note 48, at para. 52.

⁶⁸ Interviews with key government personnel.

NEXT STEPS

- Conduct full survey of GBV in Niue
- Make available on PacLII all GBV-related cases
- Pass Family Law updating outdated provisions from the Niue Act 1966
- Criminalize marital rape by removing S. 162.4 of the Niue Act of 1966
- Reconvene the Domestic Violence Committee to implement new policies
- Reconvene Mental Health Working Group to resume work on the Mental Health Bill
- Engage community groups to bring awareness to the issue of GBV
- Challenge beliefs and attitudes that support violence and gender inequality

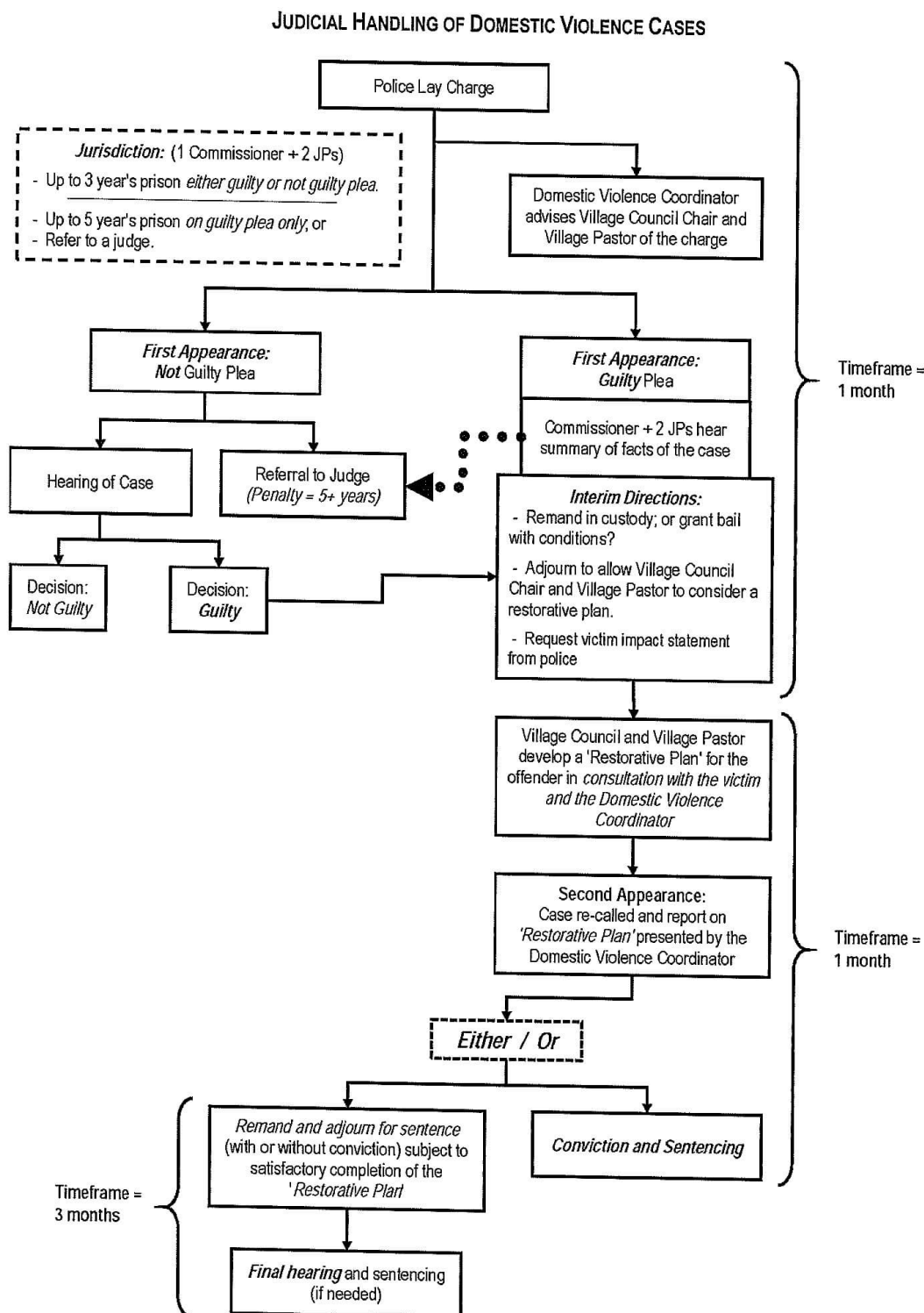
APPENDIX A: KEY INTERVIEWS

Name	Title	Department/Organization
Gaylene Tasmania	Director General	Ministry of Social Services
Tony Edwards	Chief of Police	Police Department
Darren Tohovaka	Deputy Registrar	Department of Justice
Charlene Tukiuha	Director of Community Affairs	Ministry of Social Services
Vilnus Talagi	President	Niue Youth Council
Sifa Ioane	Commissioner	Department of Justice
Frank Sioneholo	Head of Planning	Niue Public Services
Members of the National Council of Women		

APPENDIX B: GENDER-BASED VIOLENCE IN THE NIUE ACT 1966

Offense	Provision	Definition	Details	Sentencing
Family violence and intimate partner violence	There are no provisions in the Niue Criminal Code regarding family violence and intimate partner violence.			
Sexual assault	S. 157	Assault	No specifics	Maximum Imprisonment: 1 year
	S. 156	Indecent assault of a woman or girl		Maximum Imprisonment: 5 years
	S. 151	Causing grievous bodily harm without lawful justification		Maximum Imprisonment: 7 years
	S. 152	Causing actual bodily harm without lawful justification		Maximum Imprisonment: 2 years
Sexual abuses	S. 162	Rape occurs when a man penetrates a woman or girl without her consent or with consent extorted by threats or fear of bodily harm.	Explicitly states that rape within marriage is legal (S. 162.4).	Maximum Imprisonment: 14 years
	S. 162.3	Attempted rape		Maximum imprisonment: 10 years
Sexual abuses against minors	S. 163	Sexual intercourse or indecency, or attempt, with a girl under the age of 12	Consent from the girl is not a legal defense.	Maximum Imprisonment: 10 years
	S. 164	Sexual intercourse or indecency, or attempt, with a girl between the ages of 12 and 15	Consent from the girl or belief that she was over the age of 15 is not a defense.	Maximum Imprisonment: 3 years
Incest	S. 172	Incest between parent and child, brother and sister, or grandparent and grandchild	Everyone involved over the age of 15 is liable to legal consequences	Maximum Imprisonment: 7 years
LGBT Rights	S. 170	Buggery with another human being or living creature	Offense is committed upon penetration.	Maximum Imprisonment: 10 years
	S. 171	Attempt to commit buggery, assault with intent to commit buggery, or indecent assault by a male against another male person	At any age, consent is not a legal defense.	Maximum Imprisonment: 5 years
Other	S. 165	Sexual intercourse or attempt thereof with any woman or girl who is an idiot or imbecile or of unsound mind	If he knows or has good reason to believe she is an idiot or imbecile or of unsound mind	Maximum Imprisonment: 2 years
Legislation as of 2007 by the Niue Act 1966 corresponding sections.				

APPENDIX C: Judicial Handling of Domestic Violence Cases Flowchart



⁶⁹ PPDVP, *supra* note 32.

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