

## New Zealand - Legislation

### NEW ZEALAND

#### NIUE AMENDMENT ACT 1968 (No. 2)

##### Act 132 of 1968 (NZ)

*Commencement: 1 November 1969*

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**An Act to amend the Niue Act 1966**

*[17 December 1968]*

**1. Short Title and commencement-** (1) This Act may be cited as the Niue Amendment Act (No. 2) 1968, and shall be read together with and deemed part of the Niue Act 1966 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be fixed for its commencement by the Governor-General, by Order in Council.

This Act came into force on 1 November 1969. See the Niue Amendment Act Commencement Order 1969 (S.R. 1969/205).

**2. Interpretation-** For the purposes of the principal Act (including this Act), unless the context otherwise requires,-

"Alienation", in relation to Niuean land, means the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation; and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined;

"*Cabinet*" means the Cabinet of Ministers of the Government of Niue pursuant to Article 2 of the Niue Constitution;

"Church purposes" means the provision for the benefit of the adherents of some Christian denomination of a site for a place of worship, or for a pastor's house, or for a school conducted by the denomination, or for houses for pupils or teachers of such a school, or for a plantation for the support of pupils or teachers of such a school, or for any one or more of such purposes;

"*Commissioner*" means a Commissioner of the Land Court of Niue established under Article 41 of the Niue Constitution;

"Crown land" means land in Niue vested in the Crown in right of the Government of New Zealand, being land that is free from Niuean custom;

"Customary title" means title in accordance with the customs and usages of Niue;

"*Land Court*" means the Land Court of Niue established under Article 40 of the Niue Constitution;

"*Leveki Mangafaoa*" means a trustee or guardian of a family having any right, title, estate, or interest in Niuean land;

"Niuean land" means land in Niue vested in the Crown but held by Niuean according to the customs and usages of Niue; and includes any land granted by the Crown in fee simple before the commencement of the Cook Islands Act 1915, and any customary land declared to be Niuean freehold land or native freehold land by an order of any Court before the commencement of this Act;

"*Niue Constitution*" or "*Constitution*" means the Constitution set out in the Second Schedule of the Niue Constitution Act 1974;

"Public purpose" means all purposes for which money is appropriated ... by [The Niue Assembly], and all lawful purposes and functions of the Government of Niue; and includes naval, military, and air defence, education, public health, fisheries, public buildings, wharves, jetties, harbours, prisons, water supply, sites for villages, housing purposes, public recreation, land

development, and the burial of the dead.

Cf. 1966, No. 38, ss. 2, 333

"Public purpose": In the definition of this term the words "by Parliament or" were omitted by s. 2(1) of the Niue Amendment Act 1974, and the reference to the Niue Assembly was substituted for a reference to the Island Assembly by s. 2(2)(d) of that Act.

*[Amended 2/133/1989]*

## PART I LAND TENURE

**3. Classification of land in Niue-**All land in Niue is Crown land or Niuean land.

**4. All land in Niue vested in the Crown -** All land in Niue is hereby declared to be vested in the Crown, subject to all rights lawfully held therein by any person at the commencement of this Act, whether by virtue of Niuean custom or otherwise howsoever.

**5.** *[Repealed 10/29/1977]*

**6. Administration and tenure of land -** (1) Subject to this Act and to Rules of Court, [the Niue Assembly] may, by [Act of the Niue Assembly], make provision for the administration and tenure of land in Niue and any other purposes relating to land in Niue.

(2) The Registrar of the Land Court shall proceed to register the title to all land in accordance with this Act and any other relevant enactment.

In subs. (1) the reference to the Niue Assembly was substituted for a reference to the Niue Island Assembly by s. 2(2)(d) of the Niue Amendment Act 1974, and the reference to an Act of the Niue Assembly was substituted for a reference to an Ordinance by s. 2(2)(e) of that Act.

**7. Saving of existing interests in Niuean land-** Where at, the commencement of this Act any Niuean land is subject to any valid and subsisting leasehold or other interest vested in any person or body corporate otherwise than by way of customary title, that leasehold or other interest shall be deemed to be held by grant from the Crown.

## PART II CROWN LAND

**8. Grants of Crown land-** (1) [Subject to any enactment, the Cabinet] may, by Warrant, grant in respect of Crown land any lease, licence, easements, or other limited estate, right, or interest, or may accept a surrender of any estate, right, or interest in such land.

(2) In the case of Crown land reserved or set apart for any public purpose, no such grant shall be made except so far as consistent with that purpose.

Cf. 1966, No. 38, s. 324

In subs. (1) the words in square brackets were substituted for the words "Subject to any regulations which may be made in that behalf, the Minister, or the Resident Commissioner with the consent of the Minister" by s. 2(1) of the Niue Amendment Act 1974.

**9. Crown land may be declared Niuean land-** (1) [The Cabinet] may, by Warrant, declare that any Crown land which is not subject to any lease or to any other right, title, estate, or interest vested in any person shall be Niuean land, and may in the Warrant indicate with what particularity he thinks fit the *Leveki Mangafaoa*, the person, or the family or group of Niueans by whom or on whose behalf it shall be held.

(2) The Land Court shall have jurisdiction to hear and determine any dispute between

Niueans affecting land which has become Niuean land pursuant to subsection (1) of this section, and may vary or describe with further particularity the *Leveki Mangafaoa*, the person, or the family or group of Niueans by whom or on whose behalf the land or any part thereof shall be held.

In subs. (1) the words "The Cabinet" were substituted for the words "The Minister" by s. 2(1) of the Niue Amendment Act 1974.

**10. Reserves of Crown land for public purposes** - Any Crown land may, by Warrant of [the Cabinet], be set aside as a reserve for any public purpose, and shall be reserved and used for that purpose accordingly, but any such Warrant may be at any time revoked.

Cf. 1966, No. 38, s. 325

The words "the Cabinet" were substituted for the words "the Minister" by s. 2(1) of the Niue Amendment Act 1974.

**11. Taking of land for public purposes** - (1) [The Cabinet] may from time to time, by Warrant, take any land in Niue for any public purpose specified in the Warrant, and it shall thereupon become absolutely vested in the Crown as from the date of the Warrant, or from any later date specified therein in that behalf, free from all estates, rights, and interests of any other person therein, save so far as any such estates, rights, or interests are expressly saved by the Warrant.

(2) Nothing in this section shall authorise the taking of any land occupied by any building, yard, cemetery, burial ground, or in bona fide occupation as an ornamental park or pleasure ground, except with the prior consent in writing of the *Leveki Mangafaoa* or of the owner or of [the Niue Assembly].

(3) The procedure for taking land for public purposes under this section shall be prescribed by Ordinance.

Cf. 1966, No. 38, s. 326

In subs. (1) the words "The Cabinet" were substituted for the words "The Minister" by s. 2(1) of the Niue Amendment Act 1974.

In subs. (2) the reference to the Niue Assembly was substituted for a reference to the Island Assembly by s. 2 (2) (d) of the Niue Amendment Act 1974.

**12. Revocation of Warrant taking land** - (1) If any Warrant under section 11 of this Act is made in error, or if the land so taken or any part thereof is found not to be required for the purpose for which it was taken, [the Cabinet] may, by Warrant, at any time before compensation has been paid in respect thereof, revoke the Warrant, either wholly or as to any part of the land so taken.

(2) A warrant so revoked shall, so far as revoked, be deemed never to have been made, and the land shall accordingly be deemed to have remained vested in the persons formerly entitled thereto or to their successors in title.

(3) Any person interested in the land and suffering loss or damage by the making and revocation of any such Warrant taking it shall be entitled to compensation in the same manner, with all necessary modifications, as in the case of compensation for land taken.

Cf. 1966, No. 38, s. 327

In subs. (1) the words "the Cabinet" were substituted for the words "the Minister" by s. 2(1) of the Niue Amendment Act 1974.

**13. Compensation for land taken** - (1) When any land has been so taken for a public

purpose, all persons having in respect of that land any right, title, estate, or interest which is extinguished or divested by the taking of the land shall be entitled to compensation therefor from the Crown.

(2) [The Cabinet of Ministers] may within 60 days after the date when the land taken has vested in the Crown, offer to the persons entitled to share in the compensation such sum by way of compensation as he thinks fit, and, if the offer is not accepted by all such persons within 30 days after it has been communicated to them, or if no such offer is made within the 60 days aforesaid, the compensation shall be assessed and awarded by the Land Court, either on the application of [the Cabinet of Ministers] or on application of any person claiming the compensation or share therein.

(3) The compensation so awarded to any person shall constitute a debt due to him by the Crown, and shall be payable out of [the Niue Government Account].

(4) In awarding any such compensation, the Land Court may direct that the compensation, or any part of it, be paid to the Registrar of the Land Court for distribution to the persons entitled thereto.

(5) The receipt of the Registrar of the Land Court shall be a sufficient discharge for any money so paid in the same manner as if that money had been then paid to the persons entitled thereto.

In subs, (2) the references to the Cabinet of Ministers wherever they occur, were substituted for references to the Resident Commissioner by s. (2)(c) of the Niue Amendment Act 1974.

In subs. (3) the reference to the Niue Government Account was substituted for a reference to the Niue Assembly Account by s. 2 (2) (f) of the Niue Amendment Act 1974.

**14. Resumption of Crown land for public purposes -** (1) [The Cabinet] may, by Warrant, resume for any public purpose specified in the Warrant any Crown land held under lease or otherwise subject to any right, tide, or interest in any other person, and every such lease, right, title, or interest shall in accordance with the tenor of the Warrant determine accordingly, save so far as expressly preserved thereby.

(2) All persons entitled to any lease, right, title, or interest so determined shall be entitled to compensation in the same manner as in the case of land taken for public purposes.

Cf. 1966, No. 38, s. 329

In subs. (1) the words "The Cabinet" were substituted for the words "The Minister" by s. 2(1) of the Niue Amendment Act 1974.

**15. Repealed by s. 15(2) of the Niue Amendment Act 1970.**

**[16. Acquisition of land for public purposes-** Her Majesty the Queen, acting by and through [[the Cabinets]], may, for public purposes, purchase or otherwise acquire any Niuean land or any undivided interest therein, or acquire by grant, assignment, or otherwise any lease, easement, *profit a prendre*, or other limited right, title, estate, or interest of or in any such land.]

This section was substituted for the original s. 16 by s. 14 of the Niue Amendment Act 1970.

The words "the Cabinet" were substituted for the words "the Minister or the Resident Commissioner acting with the consent of the Minister" by s. 2(1) of the Niue Amendment Act 1974.

**17. Public purpose for which land held may be altered-** Where any land has under this Part of this Act or the corresponding provisions of any former Act been set aside as a reserve or taken or resumed or purchased [or otherwise acquired] for any public purpose,

the public purpose for which the land is held may from time to time be [varied or cancelled] by [the Cabinets], by Warrant.

The words "or otherwise acquired" were inserted by s. 15(1) (a) of the Niue Amendment Act 1970, and the words "varied or cancelled" were substituted for the word "altered" by s. 15(1)(b) of that Act.

The words "the Cabinet" have been substituted for the words "the Minister" pursuant to s. 2(1) of the Niue Amendment Act 1974.

**18. Control of Crown land by Cabinet of Ministers-** [The Cabinet of Ministers] may exercise on behalf of the Crown all rights of suit, entry, re-entry, receipt of rents and profits, use, management, control, and possession vested in the Crown in respect of any Crown land.

Cf. 1966, No. 38, s. 332

The reference to the Cabinet of Ministers was substituted for a reference to the Resident Commissioner by s. 2(2)(c) of the Niue Amendment Act 1974.

**19. Saving of reserves under the Cook Islands Government Act 1908-** (1) All reserves in Niue established before the commencement of the Cook Islands Act 1915 under section 21 of the Cook Islands Government Act 1908, or the corresponding provisions of any former Act, shall be deemed to have been established under this Part of this Act.

(2) Paragraph (b) of subsection (3) of section 21 of the Cook Islands Government Act 1908 shall, notwithstanding the repeal of that Act by the Cook Islands Act 1915, continue to apply to all reserves for the purpose of defence which before the commencement of the last-mentioned Act had been vested by Proclamation in any person or authority for the purpose aforesaid.

Cf. 1966, No. 38, s. 334

**20. Power to revoke or amend existing Orders in Council-** The provisions of this Part of this Act shall apply with respect to every Order in Council in force at the commencement of this Part made under Part X of the principal Act, or the corresponding provisions of any former Act, as if the order were a Warrant of [the Cabinet] under this Part, and the order may be revoked or amended by [the Cabinet] under this Part accordingly.

The words "the Cabinet", wherever they occur, were substituted for the words "the Minister" by s. 2(1) of the Niue Amendment Act 1974.

### PART III NIUEAN LAND

**21. Ownership in Niuean land-** All land in Niue which at the commencement of this Act is held by Niueans in accordance with Niuean custom is hereby vested in the Crown as the trustee of owners thereof, and shall be held by the Crown subject to Niue custom, and all such land is hereby declared to be Niuean land accordingly, but shall remain subject to any right which may have been lawfully acquired in respect thereof before the commencement of this Act otherwise than in accordance with Niuean custom.

**22. Investigation of title to Niue land-** (1) The Land Court shall have exclusive jurisdiction to investigate the title to Niuean land and to determine the relative interests of the owners or occupiers of any such land in accordance with this Act or any other enactment.

(2) Nothing in this section shall preclude the Land Appellate Court from determining in any appropriate proceeding otherwise within the jurisdiction of the Court any question of title to Niuean land.

Cf. 1966, No. 38, s. 409

**23. Niuean customs to be recognised-** Every title to and estate or interest in Niuean land shall be determined according to Niuean custom and any [Act of the Niue Assembly] or other enactment affecting Niuean custom.

Cf. 1966, No. 38, s. 410

The reference to an Act of the Niue Assembly has been substituted for a reference to an Ordinance by s. 2 (2) (c) of the Niue Amendment Act 1974.

**24. No alienation of Niuean land-** No person shall be capable of making any alienation of Niuean land or of any interest therein, except as provided by Part II of this Act or in accordance with the provisions of any other enactment.

Cf. 1966, No. 38, s. 432

**25. For certain purposes Niuean land to be deemed Crown land-** (1) For the purpose of preventing trespass or injury to Niuean land the title to which has not been registered, or of recovering damages for any such trespass or injury, or for the purpose of recovering possession of any such land from any person in wrongful occupation thereof, an action or other proceeding may be brought by or on behalf of the Crown as if the land were Crown land.

(2) Nothing in this section shall be so construed as to take away or affect any jurisdiction conferred upon the Land Court by this Act.

Cf. 1966, No. 38, s. 408

#### PART IV LAND FOR CHURCH PURPOSES

**26. Vesting of land for Church purposes-** (1) The Land Court, if it is satisfied that any Niuean land has been at any time gifted or set aside by the *Leveki Mangafaoa*, or, where there is no *Leveki Mangafaoa*, the owners, exclusively for Church purposes for the benefit of the adherents of some Christian denomination, and that the *Leveki Mangafaoa* or the owners, as the case may be, are willing that the land shall be exclusively so used in perpetuity, and that no sufficient alienation or disposition of the land by way of lease or otherwise has been made in pursuance and furtherance of the said gift or setting aside, may make an order under this section vesting that land in any body corporate to hold and administer it for such Church purposes as are specified in the order.

(2) On application being made under this section, the Court may make one or more orders, subject to such terms and conditions as the Court thinks fit to impose, vesting the land in such body corporate as may be nominated by the applicant.

(3) Every order made under this section shall take effect according to its Tenor, and the land affected thereby shall vest in the body corporate without any transfer or other instrument of assurance.

Cf. 1966, No. 38, s. 435

**27. Land vested for Church purposes may be acquired by the Crown-** Where any land vested in any body corporate or persons under section 26 of this Act is no longer required for the Church purposes specified in the vesting order, the said land may be acquired by the Crown pursuant to Part II of this Act, and no compensation shall be payable to any person in respect thereof.

**28. Existing records and instruments-** All records, instruments, reservations, and generally all acts of authority relating to the gifting or setting aside of land for Church purposes subsisting and in force at the commencement of this Act may be accepted by the Land Court as evidence in support of any application under section 26 of this Act.

## **PART V THE LAND COURT OF NIUE**

**29. Qualifications of Judges of the Land Court** - (1) Subject to Articles 46(1) and 47 of the Constitution no person other than a barrister or solicitor of not less than seven years practice in Niue or in a country with substantially identical land tenure system to that of Niue, or as a Judge of the Land Court of such other country and can demonstrate an appreciation of the customary land rules and practices of the Niuean people, may be appointed as Chief Judge or a Ridge of the Land Court.

(2) With the exception of the Chief Judge who shall be the superior Judge of the Land Court, other Judges of the said Court shall have seniority among themselves according to the dates of their appointments as Judges. If two or more of them are appointed on the same day, they shall have the seniority according to the precedence as such Judges or, failing any such assignment, according to the order they take the official oath pursuant to Article 54 of the Constitution:

Provided that every permanent Judge shall have seniority over every temporary Judge.

*[Added 3/133/1989]*

**30. Qualifications of Commissioners of the Land Court** - (1) Subject to Articles 46(1) and 47 of the Constitution and to the provisions of this section any barrister or Solicitor with less than seven years practice in Niue or any other persons or officers of the government of Niue (except the Registrar of the Land Court) possessing the desired qualities and a good appreciation of Niuean customs in relation to land and other land related matters and of good standing in the community, may be appointed a Commissioner of the Land Court.

(2) Notwithstanding subsection (1) of this section, none of the following persons shall be qualified to be appointed as a Commissioner of the Land Court, namely-

- (a) A member of the Niue Assembly;
- (b) An officer of a political organisation;
- (c) An undischarged bankrupt;
- (d) A person with a criminal record (except for minor traffic offences); and
- (e) Ministers of religion.

The rules of seniority of Judges laid down in subsection (2) of section 29 of this Act, shall apply to Commissioners as if the reference to Judges in that section were a reference to Commissioner.

*[Added 3/133/1989]*

**31. Salaries and other remunerations** - Subject to Article 50 of the Constitution there shall be paid to the Chief Judge, Judges and Commissioners out of the Niue Government Account, without further appropriation than this section the salaries and allowances set out in the Second Schedule to this Act.

*[Added 3/133/1989]*

**36-37.** *Repealed by s. 2(1) of the Niue Amendment Act 1974.*

**38. Registrar and Deputy Registrar of Land Court** - (1) There shall be a Registrar of the Land Court, who shall be appointed under Part XXXI of the principal Act.

(2) The Registrar shall keep or cause to be kept such records of and in relation to proceedings in the Land Court as may be prescribed.

(3) There may also be appointed under Part XXXI of the principal Act a Deputy Registrar of the Land Court, who shall, subject to the control of the Registrar, possess, exercise and perform the same powers, functions, and duties as the Registrar, and every reference in any enactment to the Registrar of the Land Court shall, so far as applicable, extend and apply to the Deputy Registrar accordingly.

Cf. 1966, No. 38, s. 343

**39. Administrative officers** - There shall be appointed under Part XXXI of the principal Act in respect of the Land Court such clerks, interpreters, and other administrative officers as may be necessary.

Cf. 1966, No. 38, s. 344.

**40. Records of Land Court** - The records, plans, and documents relating to the business of the Land Court shall be kept, and the administrative work of the Court shall be carried on, at such places as the Chief Judge from time to time directs.

Cf. 1966, No. 38, s. 345

**41. Registers** - Registers shall be kept by the Registrar, in which shall be recorded minutes of all applications made by the Court and of all orders and proceedings made or had thereon.

Cf. 1966, No. 38, s. 346

**42. Seal of the Land Court** - (1) The Court shall have in the custody of each Judge and the Registrar a seal which shall be the seal of the Court, and shall be used for sealing documents which require to be sealed.

(2) The form or forms of seal shall be such as [the Cabinet of Ministers] from time to time determines.

Cf. 1966, No. 38, s. 347

In subs. (2) the reference to the Cabinet of Ministers was substituted for a reference to the Executive Committee (as substituted by s. 11 (2) of the Niue Amendment Act 1971) by s. 2 (2) (a) of the Niue Amendment Act 1974.

**43. Rules of Court** - [(1) The practice and procedure of the Land Court in all matters within its jurisdiction shall be as prescribed by enactment.]

(2) So far as the Rules of Court do not extend, but subject to this Act, the Court shall in all matters proceed in such manner as seems just and convenient in the particular case.

Cf. 1966, No. 38, s. 349

Subs. (1) was substituted for the original subs. (1) by s. 2 (1) of the Niue Amendment Act 1974.

**44. Applications to Land Court** - (1) The jurisdiction of the Land Court in any matter may be exercised on the application of any person claiming to be interested therein, or on the application of [the Cabinet of Ministers] or of any person [authorised by the Cabinet] in that

behalf.

(2) In the course of the proceedings on any application, the Land Court may, subject to this Act, Rules of Court, and any other enactment, without further application and upon such terms as notice to parties and otherwise as the Court thinks fit, proceed to exercise any other part of its jurisdiction the exercise of which in those proceedings the Court thinks necessary or advisable.

Cf. 1966, No. 38, ss. 350, 351

In subs. (1) the reference to the Cabinet of Ministers was substituted for a reference to the Resident Commissioner by s. 2 (2) (c) of the Niue Amendment Act 1974, and the words "authorised by the Cabinet" were substituted for the words "authorised by him" by s. 2 (1) of that Act.

**45. Rehearings** - (1) On the application of any person interested, the Land Court may, if it thinks fit, grant a rehearing of any matter either wholly or as to any part thereof.

(2) On any such rehearing the Court may either affirm, vary, or annul its former determination, and may exercise any jurisdiction which it might have exercised on the original hearing.

(3) When a rehearing has been so granted, the period allowed for an appeal to the Land Appellate Court shall not commence to run until the rehearing has been disposed of by a final order of the Court.

(4) Any such rehearing may be granted on such terms as to costs and otherwise as the Court thinks fit, and the granting or refusal thereof shall be in the absolute discretion of the Court.

(5) No order shall be so varied or annulled at any time after the signing and sealing thereof.

Cf. 1966, No. 38, s. 362

**46. Sittings of Land Court** - (1) The times and places of the sittings of the Land Court shall be determined by Rules of Court.

(2) The dates of the commencement of the ordinary sittings of the Court for the period of 12 months commencing on the 1st day of April in each year shall be published in the *Niue Island Gazette* before the commencement of that period or as soon as practicable after the commencement thereof.

(3) Special sittings may from time to time be held at such times and places as may be appointed by the Chief Judge.

Cf. 1966, No. 38, s. 354

#### *General Jurisdiction of the Land Court*

**47. Jurisdiction of Land Court** - (1) In addition to an jurisdiction specifically conferred upon the Land Court by any enactment other than this section, the Court shall have exclusive jurisdiction-

(a) To hear and determine any application to the Court relating to the ownership, possession, occupation, or utilisation of Niuean land, or to any right, title, estate, or interest in Niuean land or in the proceeds of any alienation thereof;

(b) To determine the relative interests of the owners or the occupiers in any Niuean land;

- (c) To hear and determine any application for the appointment of a *Leveki Mangafaoa* in respect of any Niuean land;
- (d) To hear and determine any claim to recover damages for trespass or any other injury to Niuean land;
- (e) To grant an injunction against any person in respect of actual or threatened trespass or other injury to an land;
- (f) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject matter of any application to the Court;
- (g) To create casements in gross over Niuean land;
- (h) To make any order matter relating recording the determination of any matter relating to land or any interest therein, whether provided for in this Act or other enactment;
- (i) To authorise the survey of any land.

(2) The grant of an easement pursuant to paragraph (g) of Subsection (1) of this section may, if the Court thinks fit, be made subject to the payment of compensation in respect thereof or to any other conditions that the Court may impose.

Cf. 1966. No. 38, s. 381

**47A. Jurisdiction of Commissioners** - (1) Subject to the provisions of this section, Commissioners shall, be empowered to exercise any or all of the jurisdiction conferred upon the Land Court pursuant to section 47 of the principal Act in addition to any other jurisdiction ( whether judicial or administrative) conferred upon the Land Court Judges or Commissioners by any enactment, but excluding those vested exclusively in the Chief Judge.

(2) Notwithstanding subsection (1) of this section and for the purposes of exercising the jurisdiction conferred of the Land Court pursuant to section 47(1) of the principal Act, the following provisions shall apply-

- (a) For the purposes of exercising the jurisdiction of the Court pursuant to paragraphs (a), (b) and (i) of subsection (1) of section 47, not less than five Commissioners sitting together may exercise such powers;
- (b) In every other case (whether arising out of the remaining provisions of said section 47(1) or of any other enactment) not less than two Commissioners sitting together may exercise such other powers, except where an enactment expressly empowers a Commissioner sitting alone to exercise any of the powers.

(3) All references in the principal Act or any enactment (including any rules of the Land Court, regulations, orders or by-laws) to a Judge of the Land Court shall be construed as applying to the Commissioners of the Land Court within the limits of the jurisdiction conferred upon them under this Section.

*[Added 4/133/1989]*

**47B. Commissioners may decline or adjourn jurisdiction** - (1) Where proceedings have been commenced before Commissioners, the Commissioners may, any time before a final decision has been made-

(a) decline to deal further with the matter and require that it shall be dealt with by a Judge; or

(b) where a question of law has arisen and it is necessary for such question to be referred to a Judge, the Commissioners may adjourn the proceedings until such question of law has been dealt with by a Judge.

(2) Where the Commissioners decline to deal further with the matter, a Judge shall deal with such matter by way of a rehearing.

*[Added 4/133/1989]*

**47C. Decision of majority to be decision of Court** - (1) In any proceedings before Commissioners, the decision of the Court shall be in accordance with the opinion of the majority of the Commissioners present.

(2), If the Commissioners present are equally divided in opinion then the Court shall decline from making a final decision and the opinions of all the Commissioners present shall be referred to the Chief Judge and whichever opinion the Chief Judge endorses that opinion shall form the decision of the Court.

*[Added 4/133/1989]*

**47D. Appeals from decisions of Commissioners** - (1) Any party to any proceedings before Commissioners of the Land Court may appeal from the judgment of the Commissioners to a Judge of the said Court.

(2) Every such appeal shall be by way of rehearing and the provisions of section 15 of the principal Act and rule 39 of the Niue Land Court Rules 1969 shall apply accordingly.

*[Added 4/133/1989]*

**47E. Attendance of Commissioners at Court** - (1) The Registrar shall keep and update from time to time a list of Commissioners.

(2) Where the attendance of Commissioners are required at any sitting of the Registrar shall summon as many Commissioners as he thinks necessary to attend.

*[Added 4/133/1989]*

**47F. Legality of acts done by person ceased to be a Commissioner** - The legality of anything done by a person while he is a Commissioner shall not be affected his ceasing to be a Commissioner, but anything done by any person after he has ceased a Commissioner in Purported exercise of any of the powers or duties of such office shall void.

*[Added 4/133/1989]*

**47G. Action against a Commissioner** - No action shall be brought against any Commissioner for any act done by him in the course of exercising his duties

*[Added 4/133/1989]*

**48. Order in Council may confer jurisdiction on Land Court** - (1) In addition to the jurisdiction elsewhere in this Act conferred upon the Land Court, [the Cabinet] may confer upon that Court, as effectually as if it were conferred by this Act, jurisdiction in any matter or question affecting exclusively the rights of Niueans in any property, and thereupon the Court shall have full jurisdiction to determine that matter or question according to law.

(2) Any order of the Court in any such matter or question shall be valid and binding in law,

and may be dealt with as nearly as may be in the same manner as an order or determination of a similar nature made by the Court in the exercise of the jurisdiction conferred upon it by this Act.

Cf. 1966, No. 38, s. 383

In subs. (1) the words "the Cabinet" were substituted for the words "the Governor-General" by s. 2(1) of the Niue Amendment Act 1974.

**49. Powers of Judges** - A Judge sitting alone or any 2 or more judges sitting together may exercise all the powers of the Land Court.

Cf. 1966, No. 38, s. 352

**50. Proceedings in Land Court before different Judges** - Proceedings in the Land Court may be continued before a Judge or Judges other than the Judge or Judges before whom the proceedings were commenced.

**51. Procedure with respect to the making of orders** - (1) The substance of every final order of the Land Court shall be pronounced orally in open Court. Subject to subsection (5) of this section, every such order shall take effect according to its tenor as from the commencement of the day on which it is so pronounced. A minute of the order shall forthwith be entered in the records of the Court.

(2) As soon as practicable after the entry in the records of a minute thereof, the order shall be drawn up in writing under the seal of the Court and shall be signed as hereinafter provided.

(3) Any such order may be signed by the Judge by whom it was made or by any other judge of the Court.

(4) The order drawn up, sealed, and signed as hereinbefore provided shall be dated as of the date of the minute thereof and shall relate back to that date. The validity and operation of all intermediate orders, instruments, proceedings, and transactions shall be determined accordingly.

(5) No order shall be questioned or invalidated on the ground of any variance between the order as so drawn up, sealed, and signed and the minute thereof; and in the case of any variance the order shall prevail over and supersede the minute thereof.

(6) Any order may be made subject to the performance of conditions within such time as may be limited in that behalf in the order and, in any such case, the Court, without further application but subject to the giving of such notices (if any), as the Court may direct, may amend or cancel the order on the failure to comply with the conditions within the time limited as aforesaid.

(7) No order made under Part IV of this Act shall be sealed and signed until and unless there has been drawn or endorsed thereon a plan of the land affected thereby sufficient to identify the land and the boundaries thereof.

(8) Except with the leave of the Land Court, no order from which there is a right of appeal to the Land Appellate Court shall issue from the office of the Land Court before the time allowed for appeal has expired or, in the event of an appeal, before the appeal has been duly disposed of.

(9) The Land Court may at any time cause duplicates of any order to be sealed and signed. Every such duplicate shall have the word "Duplicate" written or stamped thereon, and shall have the same evidentiary value as the order of which it is a duplicate.

(10) Where by any enactment provision is made for production of an order of the Land Court for purposes of registration or otherwise, it shall be sufficient compliance with that provision if a duplicate of the order, or a copy thereof issued under the seal of the Court and certified by a judge or the Registrar as a correct copy, is so produced.

Cf. 1966, No. 38, s. 367

**52. Orders bind all persons interested** - Every order of the Land Court determining or affecting the title to Niuean land or to any estate or interest therein shall bind all persons having any interest in that land, whether or not they are parties to or have notice of the proceedings in which the order is made, and whether or not they are subject to any disability.

Cf. 1966, No. 38, s. 367

**53. Validity of orders** - (1) No order of the Land Court shall be invalid because of any error, irregularity, or defect in the form thereof or in the practice or procedure of the Court, even though by reason of that error, irregularity, or defect the order was made without or in excess of jurisdiction.

(2) Nothing in the foregoing provisions of this section shall apply to any order which in its nature or substance and independently of its form or of the practice or procedure of the Court was made without or in excess of jurisdiction.

(3) Every order made by the Land Court shall be presumed in all Courts and in all proceedings to have been made within the jurisdiction of the Court, unless the contrary is proved or appears on the face of the order.

Cf. 1966, No. 38, s. 371

**54. Annulment of orders obtained by fraud** - The Land Court may at any time annul any order obtained by fraud.

Cf. 1966, No. 38, s. 364

**55. Enforcement of orders of Land Court by High Court** - (1) For the purpose of enforcing any order of the Land Court for the payment of any debt, damages, fine, costs, or other sum of money, a Judge of that Court may transmit a copy of the order under the seal of the Court to the Registrar of the High Court, who shall file it as of record in the High Court.

(2) On the filing of that copy, the order shall, so long as it remains in force, be deemed for the purpose of the enforcement thereof to be a judgment of the High Court in an action for the recovery of a debt, and may be enforced in accordance with the practice of that Court by execution or otherwise.

Cf. 1966, No. 38, s. 365

**56. Enforcement of charges** - (1) When any charge is imposed either by this Act or by the Land Court upon any Niuean land or upon any interest therein, that Court may at any time for the purpose of enforcing that charge appoint a receiver in respect of the property so charged.

(2) A receiver so appointed shall be entitled, unless the Court otherwise orders, to the possession of the property and to the receipt of the rents and profits thereof.

(3) Any person who obstructs any such receiver in the execution of his office shall be guilty of contempt of the Land Court.

Cf. 1966, No. 38, s. 366

**57. Registration of orders affecting title to land** – (1) Any order of the Land Court affecting or relating to the title to land may be registered against the title to that land.

(2) For the purposes of registration the order shall be filed in the Land Registry Office, and the Registrar shall thereupon, subject to the provisions of any enactment, register the order accordingly.

(3) Nothing in this section shall affect or modify any special provisions made in any other enactment for the registration of any such order.

*Contempt of the Land Court*

**58. Contempt of Court defined** – (1) Every person is guilty of contempt of the Land Court who-

(a) Knowingly disobeys any order of that Court or of a judge thereof, otherwise than by making default in the payment of any sum of money payable under such an order; or

(b) Uses any abusive, insulting, offensive, or threatening words or behaviour in the presence or hearing of the Court; or

(c) Assaults, resists, or obstructs, or incites any other person to assault, resist, or obstruct, any constable or officer of the Court in serving any process of the Court or in executing any warrant or order of the Court or of a Judge thereof; or

(d) By any words or behaviour in the presence or hearing of the Court, obstructs in any manner the proper and orderly administration of justice in the Court; or

(e) Does any other thing which elsewhere in this Act or in any other enactment is declared to be a contempt of the Land Court; or

(f) Aids, abets, counsels, procures, or incites any other person to commit contempt of the said Court.

(2) Every person shall be guilty of contempt of the Land Court who-

(a) Having been served with a summons requiring him to appear before the Court at a time and place mentioned in the summons, neglects or fails without sufficient cause shown by him to appear or to produce any document which he is so required to produce; or

(b) Whether summoned to attend or not, is present in Court and, being required to give evidence or to produce any document then in his possession, refuses, without sufficient cause shown by him, to be sworn or to give evidence or to produce that document; or

(c) Having been sworn to give evidence in any proceedings, neglects or fails without sufficient cause shown by him to appear at such time as the Court directs for the purpose of giving further evidence in the proceedings.

Cf. 1966, No. 38, ss. 355(2), 372

**59. Penalty for contempt** - Every person who commits contempt of the Land Court is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$100.

Cf. 1966, No. 38, s. 373

**60. Jurisdiction in contempt** - The offence of contempt of the Land Court shall be punishable either-

(a) By the High Court in the ordinary course of its criminal jurisdiction; or

(b) By the Land Court in accordance with sections 61 to 64 of this Act.

Cf. 1966, No. 38, s. 374

**61. Contempt in face of the Court** - (1) If the contempt is committed in the presence or hearing of the Land Court, any Judge there and then sitting in that Court may without order or warrant direct any constable, officer of the Court, or other person to arrest the person so guilty of contempt, and to bring him before the Court.

(2) The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, by warrant under the seal of the Court, either commit him to prison for a term not exceeding 6 months or order him to pay a fine not exceeding \$100.

Cf. 1966, No. 38, s. 375

**62. Arrest on warrant** - If contempt of the Land Court is committed otherwise than in the sight or hearing of the Court, any Judge of that Court may issue his warrant for the arrest of the offender or may summon him to appear before the Court.

Cf. 1966, No. 38, s. 376

**63. Conviction by Land Court** - On the appearance of the offender before the Land Court, the Court may, after giving him a reasonable opportunity to be heard in his defence, by warrant under the seal of the Court, either commit him to prison for a term not exceeding 6 months or order him to pay a fine not exceeding \$100.

Cf. 1966, No. 38, s. 377

**64. Enforcement of fine** - If a fine imposed by the Land Court for contempt under the foregoing provisions is not paid, the Court may, by warrant under its seal, commit the offender to prison for a term not exceeding 6 months.

Cf. 1966, No. 38, s. 378

**65. Discharge of persons in contempt** - Any person so committed to prison for contempt or for default in payment of a fine may be at any time discharged, and any fine so imposed may be at any time remitted in whole or in part, either by order of the Land Court or by warrant under the hand of [the Cabinet of Ministers].

Cf. 1966, No. 38, s. 379

The reference to the Cabinet of Ministers was substituted for a reference to the Resident Commissioner by s. 2 (2) (c) of the Niue Amendment Act 1974.

**66. Jurisdiction in contempt may be exercised at any time or place** - Notwithstanding anything in this Act, the jurisdiction hereby conferred upon the Land Court in respect of contempt of Court may be exercised by any judge of that Court sitting at any time and place which he thinks fit.

Cf. 1966, No. 38, s. 380

## PART VI

## THE LAND APPELLATE COURT OF NIUE

67, 68. *Repealed by s. 2(1) of the Niue Amendment Act 1974.*

**69. Proceedings may be continued before different Judges** - Proceedings in the Land Appellate Court may be continued before Judges other than those before whom the proceedings were commenced.

Cf. 1966, No. 38, s. 388

**70. Decision of majority to be decision of Court** - (1) The decision of the Land Appellate Court shall be in accordance with the opinion of the majority of the judges present.

(2) If the Judges present are equally divided in opinion, the order appealed from or under review shall be deemed to be confirmed.

Cf. 1966, No. 38, s. 389

**71. Officers of Land Court to be officers of Land Appellate Court** - The Registrar, Deputy Registrar, and other officers of the Land Court shall, without further appointment, act in the like capacity in the Land Appellate Court.

Cf. 1966, No. 38, s. 390

**72. Seal** - (1) The Land Appellate Court shall have in the custody of the Registrar a seal of that Court for sealing documents which require to be sealed.

(2) The seal of the Land Appellate Court shall be in such form or forms as [the Cabinet of Ministers] from time to time directs.

Cf. 1966, No. 38, s. 391

In subs. (2) the reference to the Cabinet of Ministers was substituted for a reference to the Executive Committee (as substituted by s. 11 (3) of the Niue Amendment Act 1971) by s. 2 (2) (a) of the Niue Amendment Act 1974.

**73. Rules of Court** - (1) [The Niue Assembly may from time to time, by Act,] make such Rules of Court as are consistent with this Act for the purpose of regulating the practice and procedure of the Land Appellate Court, and the terms and conditions on which appeals to that Court may be brought, prosecuted, or withdrawn.

(2) Any such rules may require an appellant to give security for the costs of the appeal, and may provide for the dismissal of an appeal by the Land Court or by a judge thereof by reason of the failure of the appellant to conform to any such requirement or to prosecute his appeal in accordance with the said rules; and no appeal to the Land Appellate Court, shall lie from any such dismissal of an appeal.

Cf. 1966, No. 38, s. 392

In subs. (1) the words in square brackets were substituted for the words "The Governor-General may from time to time, by Order in Council", by s. 2 (1) of the Niue Amendment Act 1974.

**74. Sittings of Land Appellate Court** - The times and places of the sittings of the Land Appellate Court shall be determined in accordance with Rules of Court.

Cf. 1966, No. 38, s. 393

**75. Appeals from Land Court** - (1) Except as expressly provided to the contrary in this Act, the Land Appellate Court shall have jurisdiction to hear and determine appeals from any final order of the Land Court, whether made under the principal Act or this Act or

under any other authority in that behalf.

(2) Any such appeal may be brought as of right at the suit of any party to the proceedings in which the order is made, or at the suit of any person bound by the order or interested therein.

(3) Every such appeal shall be commenced by notice of appeal given in the prescribed manner within 2 months after the date of the minute of the order appealed from (whether before or after the commencement of this Act).

Cf. 1966, No. 38, s. 394.

**76. Appeals from provisional determinations as to title to Niuean land-** (1) By leave of the Land Court, an appeal shall lie to the Land Appellate Court from any provisional or preliminary determination of the Land Court made in the course of any proceedings for the ascertainment of any right, title, or interest in Niuean land.

(2) Any such appeal may be brought at the suit of any person who is interested in the determination appealed from, or who would be bound by a partition order made in pursuance thereof.

(3) When leave to appeal is so given, the Land Court may either stay further proceedings in the matter or continue the proceedings, but no final order shall be made until the appeal has been finally disposed of or dismissed.

(4) When any such appeal has been determined by the Land Appellate Court, no further appeal shall lie as of right at the suit of any person from any final order thereafter made in those proceedings by the Land Court, so far as that order conforms to the determination of the Land Appellate Court.

Cf. 1966, No. 38, s. 395

**77. Successive appeals in respect of same matter-** Successive appeals to the Land Appellate Court may be brought in respect of the same order at the suit of different persons, but no matter determined on appeal shall be again brought in question in any other appeal.

Cf. 1966, No. 38, s. 396

**78. Powers of Land Appellate Court on appeal-** On any appeal, the Land Appellate Court may, in its discretion, do any one or more of the following things:

- (a) Affirm the order appealed from;
- (b) Annul that order, with or without the substitution of any other order therefor;
- (c) Vary that order;
- (d) Direct the Land Court to make such other or additional order as the Land Appellate Court thinks fit;
- (e) Direct a new trial or rehearing by the Land Court;
- (f) Make any order which the Land Court might have made in the proceedings;
- (g) Dismiss any appeal.

Cf. 1966, No. 38, s. 397.

**79. Dismissal of appeal for non-prosecution-** If the appellant in any case does not

prosecute his appeal with due diligence, the respondent or any other person bound by or interested in the order appealed from may apply either to the Land Court or to the Land Appellate Court for an order dismissing the appeal for non-prosecution; and, if such an order is made by either Court, the costs of the appeal and the security entered into (if any) by the appellant shall be dealt with in such manner as that Court may direct.

Cf. 1966, No. 38, s. 398

**80. Variation deemed part of original order-** (1) When an order of the Land Court is varied by the Land Appellate Court, it shall, as so varied, be deemed to remain and be an order of the Land Court, and the variation thereof shall take and be deemed to have taken effect from the same date as if the order had been originally made by the Land Court in that form.

(2) When an order of the Land Court is varied by the Land Appellate Court, the order as so varied shall be drawn up as an order of the Land Court, and shall be sealed with the seal of that Court and signed by the presiding Judge or by the Chief Judge, and shall bear the same date as if no such appeal and variation had taken place; and the order as so drawn up shall supersede and take the place of the order as originally made, whether or not that order has been already drawn up, sealed, and signed.

Cf. 1966, No. 38, s. 399.

**81. Orders of Land Appellate Court-** (1) If on appeal the Land Appellate Court makes (otherwise than by way of variation as aforesaid) any order which the Land Court might have made in the proceedings, a minute of the order shall be entered in the records of the Land Appellate Court, and the order shall take effect as an order of the Land Appellate Court as from the commencement of the day of the making thereof.

(2) As soon as practicable after the making of the order, it shall be drawn up in writing under the seal of the Land Appellate Court and the hand of the presiding Judge or of the Chief Judge, and shall be dated as of the date of the minute thereof.

(3) Subject to this section, all the provisions of section 51 of this Act with respect to orders drawn up, sealed, and signed in the Land Court shall extend and apply to orders so drawn up, sealed, and signed in the Land Appellate Court.

(4) Sections 52 and 53 of this Act (relating to the persons bound by orders and the validity of orders) shall extend and apply to orders of the Land Appellate Court in the same manners as to orders of the Land Court.

Cf. 1966, No. 38, s. 400

**82. Contempt-** Sections 58 to 66 of this Act (relating to contempt of Court) shall extend and apply to the Land Appellate Court in the same manner as to the Land Court.

Cf. 1966, No. 38, s. 402 (2)

**83. Land Appellate Court may order surveys-** The Land Appellate Court shall have the same powers with respect to the authorisation of surveys as are conferred upon the Land Court by paragraph (i) of subsection (1) of section 47 of this Act.

Cf. 1966, No. 38, s. 404

## PART VII ROADS

**84. Definition of "road"-** (1) In this Part of this Act the term "road" means any land which under this Part of this Act or the corresponding provisions of any former Act has been

declared as a road.

(2) Upon the declaration of any land as a road, it shall, subject to the public right of way thereon, vest in the Crown, together with all materials and things of which the road is composed, or which are capable of being used for the purpose thereof, and are placed or laid upon the road.

**85. Public rights over roads-** (1) Subject to the provisions of any enactment, the public shall have full rights to pass and repass over any road.

(2) All roads shall be under the control of and may be formed, maintained, and repaired by the Crown.

Cf. 1966, No. 38, s. 639

**86. Warrant declaring existing roads-** As soon as practicable after the commencement of this Act, the Registrar of the Land Court shall prepare and deposit in the Land Registry Office a plan showing all land which in his opinion has been used as of right by the public and ought to be constituted as road, and [the Cabinet] shall, by warrant, declare to be roads all land shown on that plan as roads.

The words "the Cabinet" were substituted for the words "the Resident Commissioner, acting by and with the advice of the Executive Committee" by s. 2 (1) of the Niue Amendment Act 1974.

**87. Warrants declaring new roads-** (1) [The Cabinet] may, by Warrant, declare any Crown land or Niuean land as a road.

(2) For the purpose of this Part of this Act, it shall not be necessary to define the boundary of any unsurveyed Crown land or Niuean land affected by any such road.

Cf. 1966, No. 38, s. 637

In subs. (1) the words "The Cabinet" were substituted for the words "The Resident Commissioner, acting by and with the advice of the Executive Committee" by s. 2 (1) of the Niue Amendment Act 1974.

**88. Warrants as to roads to be gazetted-** Every Warrant of [the Cabinet of Ministers] under this Part of this Act shall be under [its] hand and the seal of Niue, and shall be published in the *Niue Island Gazette*, and shall take effect according to its tenor upon that publication or upon any later date specified in that behalf in the Warrant.

Cf. 1966, No. 38, s. 644.

The reference to the Cabinet of Ministers was substituted for a reference to the Resident Commissioner by s. 2 (2) (c) of the Niue Amendment Act 1974.

**89. Access to land-** (1) The Land Court may, by order, at any time declare any land to be subject to a right of the public or of any person or class of persons to traverse that land for the purpose of gaining access or improve access to any other land, subject to any conditions which may be prescribed by the Court.

(2) The rights of any person under such an order shall be subject to an obligation not to cause any damage to the land affected by the order or any crops or improvements thereon.

(3) The Court may, at the time of making the order, or at any time thereafter, define by reference to a plan or map the route to be followed over the land; and, in any case where the route is defined subsequent to the making of the order, the Court may impose additional conditions or vary any conditions already made.

(4) No order shall be made declaring a right of access over Crown land except with the

consent in writing of [the Cabinet of Ministers].

(5) The declaration of any right of access over any land shall not affect the ownership of the land.

(6) Any order made under this section may at any time be amended or cancelled, if the Court thinks fit.

In subs. (4) the reference to the Cabinet of Ministers was substituted for a reference to the Resident Commissioner by s. 2 (2) (c) of the Niue Amendment Act 1974.

**90. Closing of roads-** (1) [The Cabinet] may, by warrant, close in whole or in part any road:

Provided that no road or part of any road shall be closed pursuant to this section, if-

(a) The area comprising the closed road or part will be left without access to a road, either directly or by being added to adjoining land which has direct access to some other road; or

(b) Any land having direct access to that road or part will be left having no direct access to any road.

(2) Where any road or part of any road has been closed pursuant to this section, the Land Court may, on application by [the Cabinet of Ministers], make an order vesting the whole or any portion of the land comprised in the road or part that has been closed in the *Leveki Mangafaoa* or, where there is no *Leveki Mangafaoa*, the owners of any adjoining land which, when the road was constituted, was Niuean land.

(3) Any land vested pursuant to this section shall become subject to any reservation, trust, right, title, interest, or encumbrance to which the land with which it is incorporated is then subject.

(4) By the same or a subsequent order, the Court may amend any existing title to include therein the land comprised in the road or part thereof that has been closed as aforesaid; and the Registrar of the Land Court is hereby authorised to make all necessary entries or amendments in the Land Register.

Cf. 1966, No. 38, s. 643

In subs. (1) the words "The Cabinet" were substituted for the words "The Resident Commissioner, acting by and with the advice of the Executive Committee" by s. 2 (1) of the Niue Amendment Act 1974, and in subs. (2) the reference to the Cabinet of Ministers was substituted for a reference to the Resident Commissioner by s. 2 (2) (c) of that Act.

## **PART VIII ADOPTION**

**91. Interpretation-** In this Part of this Act, unless the context otherwise requires,-

"Adopted child" means any person in respect of whom an adoption order is in force;

"Adoption order" means an adoption order made by the Land Court under this Part of this Act; and includes an adoption order made before the commencement of this Act by the Land Court under Part XXIV of the principal Act or by the High Court under Part XXV of that Act or by any Court under the corresponding provisions of any former Act;

"Adoptive parent" means any person who adopts a child in accordance with an

adoption order; and, in the case of an order made in favour of a husband and wife on their joint application, means both the husband and wife; but does not include a spouse who merely consents to an adoption;

"Child" means a person who is under the age of 21 years;

"Father", in relation to any child born out of wedlock, means the natural father.

**92. Adoption by Niuean custom invalid-** No adoption by Niuean custom, whether made before or after the commencement of this Act, shall be of any force or effect, whether in respect of intestate succession or otherwise.

Cf. 1966, No. 38, s. 580

**93. Adoption by Niuean custom before 1 April 1916 by parent dying before 5 December 1921-** Notwithstanding anything in section 92 of this Act, in any case where before the 1st day of April 1916 any child was adopted by Niuean custom and since that date and before the 5th day of December 1921 the adopting parent has died, the adoption shall for all purposes have the same operation and effect as that which is attributed by Niuean custom to adoption by Niuean custom.

Cf. 1966, No. 38, s. 581

**94. Validity of adoption registered before 1 April 1916-** Any adoption lawfully made and registered in the Cook Islands Land Titles Court in the exercise of its jurisdiction in Niue before and subsisting on the 1st day of April 1916, and continuing to subsist at the commencement of this Act, shall continue to have the same force and effect as if lawfully made by an order of adoption under this Part of this Act.

Cf. 1966, No. 38, s. 582

**95. Court may make adoption orders-** (1) Subject to this Part of this Act, the Land Court may, upon an application made by any person, whether domiciled in Niue or not, make an adoption order in respect of any child, whether Niuean or European, and whether domiciled in Niue or not.

(2) An adoption order may be made on the application of 2 spouses jointly in respect of a child.

(3) An adoption order may be made in respect of the adoption of a child by the mother or father of the child, either alone or jointly with his or her spouse.

Cf. 1966, No. 38, ss. 583, 584, 593

**96. Prohibition of payments in consideration of adoption-** Except with the consent of the Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption.

**97. Restrictions on making adoption orders-** (1) No adoption order shall be made under this Part of this Act, unless the Land Court is satisfied that-

(a) The child to be adopted is under the age of 21 years at the date of the filing of the application; and

(b) The applicant or, in the case of a joint application, one of the applicants, has attained the age of 25 years and is at least 21 years older than the child, or is the mother or father of the child; and

(c) The applicant (if unmarried) is at least 30 years older than the child; and

(d) Where the child is female and the sole applicant is male, the applicant is the father of the child, or there are special circumstances which justify the making of an order; and

(e) The child, if in the opinion of the Court is above the age of 12 years, consents to the adoption; and

(f) The applicant is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and the adoption will not be contrary to the welfare and interests of the child.

(2) In order to satisfy itself as to the matters mentioned in paragraph (f) of subsection (1) of this section, the Court shall call for a report thereon by [the Cabinet of Ministers], or by an officer of the Niue Public Service nominated for the purpose by [the Cabinet of Ministers].

(3) No adopted child shall, in the lifetime of an adoptive parent and while the adoption order remains in force, be adopted by any other person save the husband or wife of that parent.

Cf. 1966, No. 38, ss. 586, 596

In subs. (2) the references to the Cabinet of Ministers, wherever they occur, were substituted for references to the Resident Commissioner by s. 2 (2) (c) of the Niue Amendment Act 1974.

**98. Consents to adoptions-** (1) No adoption order shall be made without the consent of the parents or of the surviving parent (if any) of the child, whether that child is born in lawful wedlock or not, but no such consent shall be required from any parent if the Court is satisfied that the child has been deserted by that parent, or that that parent is for any reason unfit to have the care and custody of the child, or if the Court for any other reason whatsoever considers that the consent of that parent should be dispensed with.

(2) Every consent given under subsection (1) of this section shall be given in writing and witnessed by one of the persons specified in subsection (1) of section 78 of the principal Act, and every such witness shall certify that the parent signing the consent fully understands the effect of an adoption order.

(3) Where the application for an adoption order is made by either a husband or a wife alone, no order shall be made without the consent of the spouse of the applicant, save that no such consent shall be required if the Court is satisfied that the spouses are living apart and that their separation is likely to be permanent.

Cf. 1966, No. 38, ss. 587, 597.

**99. Effect of adoption order-** Every adoption order shall have [both in Niue and in New Zealand] the same operation and effect as an adoption order made under the Adoption Act 1955 has in New Zealand by virtue of subsections (1) and (2) of section 16 of that Act.

Cf. 1966, No. 38, ss. 590, 598

The words in square brackets were inserted by 16 (1) of the Niue Amendment Act 1970.

**100. Adoption order may be varied or discharged-** (1) The Land Court may, in its discretion, vary or discharge any adoption order subject to such terms and conditions as it thinks fit, on the application of any adoptive parent or of the adopted child.

(2) The Land Court may, in its discretion and subject to such terms and conditions as it thinks fit, discharge any adoption made in any place outside Niue either before or after the

commencement of this Act, if-

(a) The person adopted is living and is domiciled in Niue; and

(b) Every living adoptive parent is domiciled in Niue.

(3) No application for discharge of any adoption shall be made without the prior approval of the [Cabinet]; and no adoption order or adoption shall be discharged unless the adoption order was made by mistake as to a material fact in consequence of a material misrepresentation to the Court or to any person concerned.

(4) Where the Court discharges an adoption order or adoption as aforesaid, it may confer on the person to whom the order or adoption related such surname with such first or Christian name as the Court thinks fit; but, if it does not do so, the names of the person shall not be affected by the discharge of the order.

(5) The discharge of an adoption order shall have [both in Niue and in New Zealand the same effect as the discharge of an adoption order under the Adoption Act 1955 has in New Zealand by virtue of subsection (6) of section 20 of that Act.

(6) *Repealed by s. 16 (2) (b) of the Niue Amendment Act 1970.*

Cf. 1966, No. 38, ss. 589, 599

In subs. (3) the word "Cabinet" was substituted for the word "Attorney-General" by s. 2 (1) of the Niue Amendment Act 1974.

In subs. (5) the words in square brackets were substituted for the words "in Niue" by s. 16 (2) (a) of the Niue Amendment Act 1970.

**101. Adoption orders under Cook Islands Amendment Act 1921**– (1) Every adoption order duly made under section 9 of the Cook Islands Amendment Act 1921 and in force at the commencement of this Act shall for all purposes have the same force and effect as an order of adoption lawfully made under this Part of this Act, and the person named therein as the adopted child shall be deemed to have been lawfully adopted as from the date of his adoption by Niuean custom, or, where that date has not been proved to the satisfaction of the Court, from such date as may be specified in the order made under the said section 9.

(2) Section 100 of this Act shall apply to every adoption under the said section 9.

Cf. 1966, No. 38, s. 592.

## **PART IX MISCELLANEOUS PROVISIONS**

**102. Consequential amendments**– (1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act.

(2) Every reference to Niuean freehold land or freehold land or customary land in any Act, regulation, Ordinance, order, bylaw, or other enactment, or in any agreement, deed, instrument, application, licence, notice, or other document whatsoever, shall after the commencement of this Act, be read as a reference to Niuean land.

**103. Repeals**– The following provisions of the principal Act are hereby repealed, namely:

**Parts X to XV, Part XVIII, sections 492 to 496, section 499, and Parts XXIV, XXV, and XXV111.**

**104.** *Repealed by s. 2 (1) of the Niue Amendment Act 1974.*

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**SCHEDULE**

**CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT**

*The Amendments specified in this Schedule have been incorporated in the principal Act*

**SECOND SCHEDULE**

**CLASSIFICATION AND REMUNERATION SCALE FOR JUDICIARY OFFICERS**

Occupation Class	Step	Salary	Hourly Rate \$	Allowance	Designation
JO 004	15	48,834	25.04	500 pa	Chief Justice/Judge.
	14	46,534	23.86		
JO 003	13	44,147	22.63	400 pa	Judge
	12	41,760	21.41		
	11	35,678	18.29		
JO 002	10	32,503	16.66	300 pa	Commissioner
	9	29,328	15.04		
	8	26,621	13.65		
	7	25,078	12.86		
	6	23,895	12.25		
JO 001	5	22,698	11.64	200 pa	Justice of the Peace
	4	21,516	11.03		
	3	20,347	10.43		
	2	19,192	9.84		
	1	18,226	9.36		

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