

**NIUE LAWS
LEGISLATION AS AT DECEMBER 2006**

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1998

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For the provision and obtaining of international assistance in criminal matters

**PART 1
PRELIMINARY**

1 Short title

This is the Mutual Assistance in Criminal Matters Act 1998.

2 [Spent]

3 Interpretation

In this Act –

"Attorney-General" has the same meaning as in the Proceeds of Crime Act 1998;

"Commissioner" means a Commissioner of the Court;

"confiscation order" means a confiscation order within the meaning of the Proceeds of Crime Act 1998;

"criminal matter" means an offence against a provision of –

(a) Any law of Niue that is a serious offence; or

(b) A law of a foreign country, in relation to acts or omissions, which had they occurred in Niue, would have constituted a serious offence;

"criminal proceeding", in relation to an offence, means a trial of a person for the offence or a proceeding in respect of the offence to determine whether a person should be tried for the offence (whether or not a particular person is specified at the commencement of that proceeding as the person in relation to whom the determination is to be made);

"facsimile copy" means a copy obtained or sent by facsimile transmission;

"foreign confiscation order" means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part thereof) of the person's benefits from an offence against the law of that country;

"foreign forfeiture order" means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country; Mutual Assistance in Criminal Matters Act 1998

"foreign law immunity certificate" means a certificate given, or a declaration made, by a foreign country or under a law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required –

(a) To answer a specified question; or

(b) To produce a specified document;

"foreign prisoner" means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for an offence against a law of a foreign country, but does not include a person who is at large after having escaped from lawful custody;

"foreign restraining order" means an order, made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country;

"forfeiture order" means a forfeiture order within the meaning of the Proceeds of Crime Act 1998;

"money laundering offence" means an offence within the terms of sections 64 and 65 of the Proceeds of Crime Act 1998;

"offence" includes an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control;

"prisoner" means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against a law of Niue, but does not include a person who is at large after having escaped from lawful custody;

"prison" includes a jail, lock-up or other place of detention;

"proceeds" has the same meaning as in the Proceeds of Crime Act 1998;

"proceeding" in relation to a criminal matter, includes a proceeding before a judicial officer or a jury of the purpose of –

- (a) Gathering evidential material that may lead to the laying of a criminal charge; or
- (b) Assessing evidential material in support of the laying of a criminal charge;

"property" has the same meaning as in the Proceeds of Crime Act 1998;

"property-tracking document" has the same meaning as in the Proceeds of Crime Act 1998;

"restraining order" means a restraining order within the meaning of the Proceeds of Crime Act 1998;

"serious offence" means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months;

"tainted property" has the same meaning as in the Proceeds of Crime Act 1998;

"trial", in relation to an offence in a foreign country, includes any proceeding to determine whether a person should be convicted of the offence;

"video link" means a video and sound system that enables persons assembled in a place in a country to see, hear and talk to persons assembled in a place in another country.

4 Object of Act

The objects of this Act are –

(a) To regulate the provision by Niue of international assistance in criminal matters when a request is made by a foreign country for any of the following –

(i) the taking of the evidence, or the production of any document or other article, for the purposes of a proceeding in the foreign country;

(ii) the issue of a search warrant and the seizure of any thing relevant to a proceeding or investigation in the foreign country;

(iii) the forfeiture and confiscation of property in respect of a serious offence against the law of the foreign country;

(iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country;

(v) the giving of assistance in locating, or in identifying and locating, a person believed to be in Niue and believed to be a person who is or might be concerned in, or who could give or provide evidence or assistance relevant to, a criminal matter in the foreign country; and

(b) To facilitate the provision and obtaining by Niue of international assistance in criminal matters when a request is made by a foreign country for the making of arrangements for a person who is in Niue to travel to the foreign country to give evidence in a proceeding or to give assistance in relation to an investigation; and

(c) To facilitate the obtaining by Niue of international assistance in criminal matters.

5 Act not to limit other provision of assistance

This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

6 Application

This Act applies to all foreign countries.

7 Refusal of assistance

A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General, the provision of the assistance would –

- (a) Prejudice the national, essential or public interests of Niue; or
- (b) Result in manifest unfairness or a denial of human rights; or
- (c) It is otherwise appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

8 Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to such conditions as the Attorney-General determines.

9 Requests by Niue

(1) A request for international assistance in a criminal matter that Niue is authorised to make under this Act may be made only by the Attorney-General.

(2) Subsection (1) does not prevent the Attorney-General on behalf of Niue from requesting international assistance in a criminal matter of a kind that may not be requested under this Act.

10 Request by foreign country

(1) A request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General to receive requests by foreign countries under this Act.

(2) A request must be in writing and must include or be accompanied by the following information –

- (a) The name of the authority concerned with the criminal matter to which the request relates;
- (b) A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) A description of the purpose of the request and of the nature of the assistance being sought;
- (d) Any information that may assist in giving effect to the request, but failure to comply with this subsection is not a ground for refusing the request.

(3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.

(4) If a foreign country makes a request to a court in Niue for international assistance in a criminal matter –

(a) The court must refer the request to the Attorney-General; and

(b) The request is then to be taken, for the purposes of the Act, to have been made to the Attorney-General.

PART 1A

ASSISTANCE IN IDENTIFYING AND LOCATING PERSONS

10A Requests by Niue

(1) This subsection applies if the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in a foreign country, a person who –

(a) Is or might be concerned in, or affected by, any criminal matter in Niue; or

(b) Could give or provide evidence or assistance relevant to any criminal matter in Niue.

(2) If subsection (1) applies, the Attorney-General may request the foreign country –

(a) To assist in locating the person; or

(b) If the person's identity is unknown, to assist in identifying and locating the person.

10B Requests by foreign countries

(1) A foreign country may request the Attorney-General to assist in locating, or identifying and locating, a person who is believed to be in Niue.

(2) The Attorney-General may authorise assistance in accordance with this section if satisfied that –

(a) The request relates to a criminal matter in the foreign country; and

(b) There are reasonable grounds for believing that the person to whom the request relates is in Niue and –

(i) is or might be concerned in the criminal matter; or

(ii) could give or provide evidence or assistance relevant to the criminal matter.

(3) If the Attorney-General authorises assistance in accordance with this section, the Attorney-General must forward the request to the appropriate authority in Niue, and that authority must –

(a) Use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates; and

(b) Advise the Attorney-General of the outcome of those endeavours.

(4) On receiving advice from the appropriate authority under subsection (3)(b), the Attorney-General must inform the requesting country of the result of the inquiries made pursuant to the request concerned.

PART 2

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

11 Requests by Niue

(1) The Attorney-General may request the appropriate authority of a foreign country to arrange for –

(a) Evidence to be taken in the foreign country under the law of that country; or

(b) A document or other article in the foreign country to be produced in accordance with the law of that country; for the purposes of a proceeding or investigation in relation to a criminal matter in Niue.

(2) When making a request under subsection (1) the Attorney-General may also request that an opportunity be given for the person giving the evidence, or producing the document or other article, to be examined or cross-examined, through a video link, from Niue by –

(a) Any party to the proceeding or that person's legal representative; or

(b) Any person being investigated or that person's legal representative.

12 Requests by foreign countries

(1) Where a request is made by a foreign country (requesting country) that –

(a) Evidence be taken in Niue; or

- (b) Documents or other articles in Niue be produced; for the purposes of a proceeding or investigation in the requesting country or another foreign country, the Attorney-General may authorise the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the requesting country.
- (2) Where the Attorney-General authorises the taking of evidence or the production of documents or other articles under subsection (1) –
- (a) In the case of the taking of evidence, a Commissioner may take the evidence on oath of each witness appearing before the Commissioner to give evidence in relation to the matter, and a Commissioner who takes any such evidence shall –
- (i) cause the evidence to be put in writing and certify that the evidence was taken by the Commissioner; and
- (ii) cause the writing so certified to be sent to the Attorney-General; or
- (b) In the case of the production of documents or other articles, a Commissioner may, subject to subsection (6), require the production of the documents or other articles and, where the documents or other articles are produced, the Commissioner shall send the documents, or copies of the documents certified by the Commissioner to be true copies, or the other articles, to the Attorney-General.
- (3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).
- (4) The Commissioner conducting a proceeding under subsection (2) may permit –
- (a) The person to whom the proceeding in the requesting country relates;
- (b) Any other person giving evidence or producing documents or other articles at the proceeding before the Commissioner; and
- (c) The relevant authority of the requesting country; to have legal representation at the proceeding before the Commissioner.
- (5) If the requesting country has so requested, the Commissioner conducting a proceeding under subsection (2) may permit –
- (a) Any person to whom the proceeding in the requesting country relates or that person's legal representative; or

- (b) The legal representative of the relevant authority of the requesting country; to examine or cross-examine, through a video link, from the requesting country any person giving evidence or producing a document or other article, at the proceeding.
- (6) The certificate by the Commissioner under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present –
- (a) The person to whom the proceeding in the requesting country relates or his or her legal representative (if any);
- (b) Any other person giving evidence or producing documents or other articles or his or her legal representative (if any).
- (7) Subject to subsections (8) and (9), laws with respect to the compelling of persons to attend before a Commissioner, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Niue apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Commissioner, and to give evidence, answer questions and produce documents or other articles, for the purposes of this section.
- (8) For the purposes of this section, the person to whom the proceeding in the requesting country relates is competent but not compellable to give evidence.
- (9) For the purposes of this section, a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in the requesting or another foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in that country.
- (10) A duly authenticated foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

PART 3

ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

13 Requests by Niue for search and seizure

- (1) This section applies to a proceeding or investigation relating to a criminal matter involving a serious offence against the law of Niue if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation may be located in a foreign country.

(2) If this section applies to a proceeding or investigation, the Attorney-General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, in accordance with the law of the foreign country, authorises –

(a) A search for a thing relevant to the proceeding or investigation; and,

(b) If such a thing, or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search, the seizure of that thing.

(3) If the appropriate authority of the foreign country has obtained any thing relevant to the proceeding or investigation by means of a process authorised by the law of that country other than the issue (as requested by Niue) of a warrant or other instrument authorising the seizure of the thing, the thing –

(a) Is not inadmissible in evidence in the proceeding; or

(b) Is not precluded from being used for the purposes of the investigation; on the ground alone that it was obtained otherwise than under the request.

14 Requests by foreign countries for search and seizure

(1) Where –

(a) A proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;

(b) There are reasonable grounds to believe that a thing relevant to the investigation or proceeding is located in Niue; and

(c) The foreign country requests the Attorney-General to arrange for the issue of a search warrant under this section in relation to that thing;

the Attorney-General may authorise a constable to apply to a Commissioner for the search warrant requested by the foreign country.

(2) A constable authorised under subsection (1) may apply to a Commissioner for the issue of a warrant to search land or premises for the thing to which the request relates.

(3) Where an application is made under subsection (2) for a warrant to search land or premises in Niue for a thing relevant to an investigation or proceeding in a foreign country the Commissioner may issue a warrant of that kind.

(4) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the constable finds another thing that the constable believes on reasonable grounds-

(a) To be relevant to the proceeding or investigation in the foreign country or to afford evidence as to the commission of a Niue criminal offence; and

(b) Is likely to be concealed, lost or destroyed if it is not seized; the warrant shall be deemed to authorise the constable to seize the other thing.

(5) Where a constable finds, as a result of a search under a warrant issued under this section, a thing which the constable seizes wholly or partly because he or she believes the thing on reasonable grounds to be relevant to the proceeding or investigation in the foreign country, the constable shall deliver the thing into the custody and control of the Chief of Police.

(6) Where a thing is delivered into the custody and control of the Chief of Police under subsection (5), the Chief of Police shall inform the Attorney-General that the thing has been so delivered and arrange for the thing to be kept pending a direction in writing from the Attorney-General as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an authority of a foreign country).

PART 4
ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST
INVESTIGATIONS

Requests by Niue

15 Requests for removal of certain persons to Niue

(1) Where –

(a) A proceeding relating to a criminal matter has commenced in Niue; and

(b) The Attorney-General is of the opinion that a person who is in a foreign country –

(i) is a foreign prisoner;

(ii) is capable of giving evidence relevant to the proceeding; and

(iii) has given his or her consent to being removed to Niue for the purpose of giving evidence in the proceeding; the Attorney-General may request the foreign country to authorise the attendance of the person at a hearing in connection with the proceeding.

(2) Where –

(a) An investigation relating to a criminal matter has commenced in Niue; and

(b) The Attorney-General is of the opinion that a person who is in a foreign country –

(i) is a foreign prisoner;

(ii) is capable of giving assistance in relation to the investigation; and

(iii) has given his or her consent to being removed to Niue for the purposes of giving assistance in relation to the investigation, the Attorney-General may request the foreign country to authorise the removal of the person to Niue for the purpose of giving assistance in relation to the investigation.

(3) Where the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may make arrangements with an appropriate authority of the foreign country for the purposes of –

(a) The removal of the person to Niue;

(b) The custody of the person while in Niue;

(c) The return of the person to the foreign country; and

(d) Other relevant matters.

16 Custody of certain persons

Where –

(a) A person is to be brought to Niue from a foreign country pursuant to a request under section 15; and

(b) The foreign country requests that the person be kept in custody while he or she is in Niue, the person shall, while the person is in Niue or travelling to or from Niue pursuant to the request, be kept in such custody as the Attorney-General directs in writing.

17 Immunities

(1) Where a person is in Niue –

(a) Pursuant to a request under section 15; or

(b) To give evidence in a proceeding, or to give assistance in relation to an investigation, pursuant to a request made by or on behalf of the Attorney-General (not being a request under section 15) for international assistance in a criminal matter;

the person, subject to subsection (2), shall not –

(c) Be detained, prosecuted or punished in Niue for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request;

(d) Be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred, before the person's departure from the foreign country under the request, being a civil suit to which the person could not be subjected if the person were not in Niue;

(e) Be required to give evidence in any proceeding in Niue other than the proceeding to which the request relates (if any);

(f) Be required, in the proceeding to which the request relates (if any), to answer any question that the person would not be required to answer in a proceeding in the foreign country relating to a criminal matter; or

(g) Be required, in the proceeding to which the request relates (if any), to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.

(2) A duly authorised foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.

(3) Subsection (1) ceases to apply to a person if –

(a) The person has left Niue; or

(b) The person has had the opportunity of leaving Niue and has remained in Niue otherwise than for –

(i) the purpose to which the request relates;

(ii) the purpose of giving evidence in a proceeding in Niue certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or

(iii) the purpose of giving assistance in relation to an investigation in Niue certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(4) A certificate given by the Attorney-General for the purposes of subsection (2)(b)(ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).

18 Status of person prosecuted for offence committed after departure from foreign country

(1) Where a person has come to Niue pursuant to a request under section 15, the person shall be taken, for the purposes of this Act, to be in Niue pursuant to the request during any period during which the person remains in Niue for the purpose of being tried for a criminal offence against the law of Niue that the person is alleged to have committed after the person's departure from the foreign country.

(2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Attorney-General directs under section 16.

19 Limitation on use of evidence given by certain persons

(1) Where –

(a) A person is in Niue to give evidence in a proceeding –

(i) because of a request under section 15(1); or

(ii) because of a request (other than a request under section 15(1)) made by the Attorney-General for international assistance in a criminal matter; and

(b) The person has given evidence in the proceeding to which the request related or in a proceeding certified by the Attorney-General under section 17(3)(b)(ii) in relation to the person;

that evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against Niue law, other than the offence of perjury in relation to the giving of that evidence.

(2) If –

(a) A person is in Niue to give assistance in relation to an investigation –

(i) because of a request under section 15(2); or

(ii) because of a request (other than a request under section 15(2)) made by the Attorney-General for international assistance in a criminal matter; and

(b) The person has given assistance in relation to the investigation to which the request related or in relation to an investigation certified by the Attorney-General under section 17(3)(b)(ii) in relation to the person;

anything said or done by the person when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Niue law.

20 Conditions of imprisonment

The laws of Niue with respect to –

- (a) The conditions of imprisonment of persons imprisoned for offences against the law of Niue; and
- (b) The treatment of any such persons during imprisonment; and
- (c) The transfer of any such persons from prison to prison; apply, so far as they are capable of application, in relation to a person who is in Niue in pursuance of a request under section 15 and who has been committed to prison in Niue under a direction of the Attorney-General under this Act.

21 Release of certain persons upon request by foreign country

Where –

- (a) A person is being held in custody under a direction of the Attorney-General under section 16; and
- (b) The foreign country from which the person has been brought requests the release of the person from custody;

the Attorney-General shall direct that the person be released from custody.

22 Arrest of person who has escaped from custody

(1) Any constable, without warrant, may arrest a person, if the constable has reasonable grounds to believe that the person –

- (a) Has been brought to Niue pursuant to a request under section 15; and
- (b) Has escaped from lawful custody while in Niue pursuant to the request.

(2) The constable must, as soon as practicable, take the person before a Commissioner.

(3) If the Commissioner is satisfied that the person has escaped from lawful custody, the Commissioner may issue a warrant authorising any constable to return the person to lawful custody.

23 Aiding person to escape

The laws of Niue in relation to –

- (a) Aiding a prisoner to escape from custody;
- (b) Rescuing a prisoner from custody;
- (c) Permitting escape; and
- (d) Harboursing an escapee, apply in respect of a person who is in custody in Niue under a request to a foreign country by Niue under this Act.

Requests by Foreign Countries

24 Requests for giving of evidence at hearings in foreign countries

(1) Where –

- (a) A proceeding relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the attendance at a hearing in connection with the proceeding of a prisoner who is in Niue (whether or not in custody);
- (c) There are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceeding; and
- (d) The Attorney-General is satisfied that –
 - (i) the prisoner has consented to giving evidence in the foreign country; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may –

- (e) In a case where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a constable or prison officer appointed by the Attorney-General for the purpose; or
- (f) In a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody,

approve the travel of the prisoner to the foreign country to give evidence at the proceeding and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required and, subject to the obtaining of any necessary approvals, authorities, permissions or variations of the parole or other order or licence to be at large, make arrangements for the travel of the prisoner to the foreign country.

(2) Where –

- (a) A proceeding relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the attendance at a hearing in connection with the proceeding of a person (not being a prisoner) who is in Niue;
- (c) There are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceeding; and
- (d) The Attorney-General is satisfied that the person has consented to giving evidence in the foreign country, and the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person give evidence in the foreign country are –

- (a) That the person shall not –
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Niue;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Niue, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
 - (iii) be required to give evidence in any proceeding in the foreign country other than the proceeding to which the request relates;

unless the person has left the foreign country or the person has had the opportunity of leaving the foreign country and has remained in that country

otherwise than for the purpose of giving evidence in the proceeding to which the request relates;

(b) That any evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;

(c) That the person will be returned to Niue under arrangements agreed by the Attorney-General;

(d) In a case where the person is being held in custody in Niue and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country –

(i) the making of appropriate arrangements for that purpose;

(ii) that the person will not be released from custody in the foreign country unless the Attorney General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Niue law; and

(iii) if the person is released in the foreign country as mentioned in subparagraph (ii), that the person's accommodation and expenses pending the completion of the proceeding to which the request relates will be paid for by the foreign country; and

(iv) such other matters (if any) as the Attorney-General thinks appropriate.

25 Requests for assistance in relation to investigations in foreign countries

(1) Where –

(a) An investigation relating to a criminal matter has commenced in a foreign country;

(b) The foreign country requests the removal of a prisoner who is in Niue (whether or not in custody) to the foreign country for the purpose of giving assistance in relation to the investigation;

(c) There are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and

(d) The Attorney-General is satisfied that –

(i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and

(ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may,

(e) In a case where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of traveling to the foreign country to give assistance in relation to the investigation and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a constable or prison officer appointed by the Attorney-General for the purpose; or

(f) In a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country for the purpose of giving assistance in relation to the investigation and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required and, make arrangements for the travel of the prisoner to the foreign country.

(2) Where –

(a) An investigation relating to a criminal matter has commenced in a foreign country;

(b) The foreign country requests that a person (not being a prisoner) who is in Niue travel to the foreign country to give assistance in relation to the investigation;

(c) There are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation; and

(d) the Attorney-General is satisfied that –

(i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and

(ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney -General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation are –

(a) That the person shall not –

(i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Niue;

(ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Niue, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or

(iii) be required to give evidence in any proceeding in the foreign country; unless –

(iv) the person has left the foreign country; or

(v) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;

(b) That the person will be returned to Niue under arrangements agreed by the Attorney-General;

(c) In a case where the person is being held in custody in Niue and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country –

(i) the making of appropriate arrangements for that purpose;

(ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Niue law; and

(iii) if the person is released in the foreign country as mentioned in subparagraph (ii) that the person's accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the foreign country; and

(d) Such other matters (if any) as the Attorney-General thinks appropriate.

26 Effect of removal to foreign country on prisoner's term of imprisonment

Where a prisoner who is serving a term of imprisonment for an offence against a law of Niue is released from a prison pursuant to a request by a foreign country under section 24 or 25, the prisoner shall, while in custody in connection with the request (including custody outside Niue), be deemed to be continuing to serve that term of imprisonment.

PART 5 CUSTODY OF PERSONS IN TRANSIT

27 Transit

(1) If a person is to be transported in custody from a foreign country through Niue to another foreign country for the purposes of –

(a) Giving evidence in a proceeding; or

(b) Giving assistance in relation to an investigation; relating to a criminal matter in the other foreign country, the person –

(c) May be transported through Niue in the custody of another person; and

(d) If an aircraft or ship by which the person is being transported lands or calls at a place in Niue, shall be kept in such custody as the Attorney-General directs in writing until his or her transportation is continued.

(2) Where a person who is being held in custody under a direction under subsection (1)(d) and the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported.

28 Arrest of person in transit

(1) Any constable may, without warrant, arrest a person if the constable has reasonable grounds to believe that the person was being kept in custody under direction under section 29(1)(d) and has escaped from that custody.

(2) The constable must, as soon as practicable, take the person before a Commissioner.

(3) If the Commissioner is satisfied that the person has escaped from lawful custody, the Commissioner may issue a warrant authorising any constable to return the person to lawful custody.

29 Aiding person to escape

The laws of Niue in relation to –

- (a) Aiding a prisoner to escape from custody;
- (b) Rescuing a prisoner from custody;
- (c) Permitting escape; and
- (d) Harboursing an escapee, apply in respect of a person who is in custody in Niue pursuant to a request to a foreign country by Niue under this Act.

PART 6 PROCEEDS OF CRIME

Requests by Niue

30 Requests for enforcement of orders

Niue may request an appropriate authority of a foreign country to make arrangements for the enforcement of –

- (a) A forfeiture order made in Niue against property that is believed to be located in that foreign country;
- (b) A confiscation order made in Niue where some or all of the property available to satisfy the order is believed to be located in that foreign country; or
- (c) A restraining order made in Niue against property that is believed

to be located in that foreign country; if the order was made in respect of a serious offence.

31 Requests for issue of orders in foreign countries

Where a criminal proceeding or investigation has commenced in Niue in relation to a serious offence, Niue may request an appropriate authority of a foreign country to obtain the issue, in respect of the offence, of a warrant, order or other instrument similar in nature to any of the following warrants and orders under the Proceeds of Crime Act 1998 –

- (a) A search warrant for tainted property;
- (b) A restraining order;
- (c) A production order in respect of a property-tracking document;
- (d) A search warrant in respect of a property-tracking document.

Requests by Foreign Countries

32 Requests for enforcement of orders

(1) Where –

(a) A foreign country requests the Attorney-General to make arrangements for the enforcement of –

(i) A foreign forfeiture order, made in respect of a serious offence, against property that is believed to be located in Niue; or

(ii) a foreign confiscation order, made in respect of a serious offence, where some or all of the property available to satisfy the order is believed to be located in Niue; and

(b) The Attorney-General is satisfied that –

(i) a person has been convicted of the offence; and

(ii) the conviction and the order are not subject to further appeal in the foreign country;

the Attorney-General may apply for the registration of the order in the Court.

(2) Where a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Niue, the Attorney-General may apply for the registration of the order in the Court.

(3) Where the Attorney-General applies to the Court for registration of a foreign order under this section, the Court shall register the order accordingly.

(4) A foreign forfeiture order registered in the Court under this section has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act 1998 at the time of registration.

(5) A foreign confiscation order registered in the Court under this section has effect, and may be enforced, as if it were a confiscation order made by the Court under the Proceeds of Crime Act 1998 at the time of registration and requiring the payment to the Crown of the amount payable under the order.

(6) A foreign restraining order registered in the Court under this section has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act 1998 at the time of registration.

(7) Where a foreign confiscation order or a foreign restraining order is registered in the Court under this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purposes of this Act and the Proceeds of Crime Act 1998, have effect until they are registered.

(8) An order or an amendment of an order shall be registered in the Court by registration under the rules of the Court, of –

(a) A copy of the appropriate order or amendment sealed by the court or other authority making that order or amendment; or

(b) A copy of that order or amendment duly authenticated under section 49(2).

(9) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order shall be regarded for the purposes of this Act as the same as the sealed or authenticated copy but registration effected by means of the facsimile copy ceases to have effect at the end of 42 days unless the sealed or authenticated copy has been registered by then.

(10) The Attorney-General may apply to the Court for cancellation of the registration of a foreign confiscation order or a foreign restraining order that has been registered in the Court.

(11) Where the Attorney-General applies to the Court for cancellation of a registration under subsection (10), the Court shall cancel the registration accordingly.

(12) Section 68 of the Proceeds of Crime Act 1998 does not apply to an order registered under this section.

33 Requests for search and seizure warrants in respect of tainted property

Where –

(a) A criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;

(b) There are reasonable grounds to believe that tainted property in relation to the offence is located in Niue; and

(c) The foreign country requests the Attorney-General to obtain the issue of a search warrant in relation to the tainted property;

the Attorney-General may authorise a constable to apply to a Commissioner under the Proceeds of Crime Act 1998 for a search warrant in relation to that tainted property.

34 Requests for restraining orders

Where –

- (a) A criminal proceeding has commenced, or there are reasonable grounds to believe that a criminal proceeding is about to commence, in a foreign country in respect of a serious offence;
- (b) There are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Niue; and
- (c) The foreign country requests the Attorney-General to obtain the issue of a restraining order against the property;

the Attorney-General may apply to the Court for a restraining order under the Proceeds of Crime Act 1998 against that property in respect of the offence.

35 Requests for information gathering orders

Where –

- (a) A criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;
- (b) A property-tracking document in relation to the offence is reasonably believed to be located in Niue; and
- (c) The foreign country requests the Attorney-General to obtain the issue of –
 - (i) an order requiring the documents to be produced or made available for inspection under the law of Niue; or
 - (ii) a search warrant in respect of the offence, the Attorney-General may apply to a Commissioner for a production order under the Proceeds of Crime Act 1998 in respect of the offence for the purpose of obtaining possession of the property-tracking document or a search warrant under that Act in relation to the property-tracking document as the case requires.

35A Cabinet may approve proposals for sharing certain property

(1) In this section –

"qualifying property" means property –

- (a) That is vested in the Government by virtue of a forfeiture order and that can no longer be made the subject of an application under section 13 or section 14 of the

- Proceeds of Crime Act 1998 or section 23 of the Terrorism Suppression and Transnational Crimes Act 2006 by a person who claims to have, or to have had, an interest in the property; or
- (b) That has been paid to the Government under section 15 of the Proceeds of Crime Act 1998 (payment instead of forfeiture order); or
 - (c) That has been paid to the Government under a confiscation order.
- (2) The Cabinet may approve proposals for sharing specified qualifying property with a foreign country that has provided assistance to Niue under this Act or the Proceeds of Crime Act 1998.
- (3) For the purposes of subsection (2) –
- (a) The specified qualifying property need not have become property of the Government as a result of the assistance provided by the foreign country; and
 - (b) The proposals may, but need not, involve that country reciprocally sharing with Niue property realised under laws of the foreign country that correspond to the Proceeds of Crime Act 1998.
- (4) The Attorney-General may enter into arrangements with the competent authorities of the foreign country in order to give effect to any sharing proposal approved by the Cabinet under subsection (2).

PART 7

REQUESTS BY OR ON BEHALF OF A DEFENDANT

36 Requests by Attorney-General on behalf of a defendant

- (1) If a defendant in a proceeding (original proceeding) relating to a criminal matter thinks that it is necessary for the purposes of the proceeding that –
- (a) Evidence should be taken in a foreign country; or
 - (b) A document or other article in a foreign country should be produced; or
 - (c) A thing located in a foreign country should be seized; or
 - (d) Arrangements should be made for a person who is in a foreign country to come to Niue (under a request to a foreign country by Niue under this Act) to give evidence relevant to the proceeding,

the defendant may apply to the Court for a certificate that it would be in the interests of justice for the Attorney-General to make any appropriate request to the foreign country under Part 2, 3 or 4 so that –

- (i) The evidence may be taken; or
- (ii) The document or article may be produced; or
- (iii) The thing may be seized; or
- (iv) The arrangements may be made.

(2) Before making a decision on the application, the Court must give an opportunity to –

- (a) All parties to the original proceeding; and
- (b) The Attorney-General, to appear before the Court and be heard on the merits of the application.

(3) In deciding whether to issue a certificate, the Court must have regard to the following matters –

- (a) Whether the foreign country is likely to grant such a request made by the Attorney-General on behalf of the defendant;
- (b) The extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
- (c) Whether the court hearing the original proceeding would be likely to admit the material into evidence in the proceeding;
- (d) The likely probative value of the material, if it were admitted into evidence in the proceeding, with respect to any issue likely to be determined in the proceeding;
- (e) Whether the defendant would be unfairly prejudiced if the material were not available to the Court.

(4) Subsection (3) does not prevent the Court from having regard to any other matter that it considers relevant.

(5) If the Court issues a certificate –

- (a) The Court must, send a copy of the certificate to the Attorney-General; and

(b) The Attorney-General must in accordance with the certificate, make a request on behalf of the defendant to the foreign country, for international assistance unless he or she is of the opinion, having regard to the special circumstances of the case, that the request should not be made.

37 Certificate by Attorney-General if foreign country refuses request made under section 36

(1) If a foreign country refuses a request made under section 36(5), the Attorney-General must give a certificate in writing to that effect.

(2) A certificate under subsection (1) is prima facie evidence of the facts stated in it.

PART 8 ADMISSIBILITY OF FOREIGN EVIDENCE

Preliminary

38 Interpretation

In this Part –

"civil proceeding" means a proceeding other than a criminal proceeding;

"criminal proceeding" includes –

- (a) A prosecution for an offence;
- (b) A proceeding for the committal of a person for trial for an offence; and
- (c) A proceeding for the sentencing of a person convicted of an offence;

"foreign law" means a law (whether written or unwritten) of, or in force in, a country other than Niue;

"foreign material" means –

- (a) The testimony of a person that –
 - (i) was obtained as a result of a request of a kind referred to in section 40; and
 - (ii) complies with the requirements of section 42; and
- (b) Any exhibit annexed to any such testimony; and

(c) Any part of any such testimony or exhibit;

"Niue court" means –

(a) The Court; or

(b) A Commissioner; or arbitrator acting under Niue law; or

(c) A person or body authorised by a Niue law, or by consent of parties, to hear, receive and examine evidence;

"related civil proceedings", in relation to a criminal proceeding, means any civil proceedings arising from the same subject-matter from which the criminal proceeding arose.

39 Proceedings to which this Part applies

This Part applies to a proceeding, before a Niue court, that is –

(a) A criminal proceeding for an offence against the law of Niue; or

(b) A related civil proceeding.

Obtaining Foreign Material

40 Requests for foreign material

This Part applies to –

(a) Testimony, obtained as a result of a request made by or on behalf of the Attorney-General to a foreign country for the testimony of a person; and

(b) Any exhibit annexed to any such testimony.

41 Requirements for testimony

(1) The testimony must be taken before a court –

(a) On oath or affirmation; or

(b) Under such caution or admonition as would be accepted, by courts in the foreign country concerned, for the purposes of giving testimony in proceedings before those courts.

(2) The testimony may be taken in camera.

42 Form of testimony

- (1) The testimony may be recorded in any of the following manners –
 - (a) In writing;
 - (b) On audio tape;
 - (c) On video tape.
- (2) The testimony need not –
 - (a) Be in the form of an affidavit; or
 - (b) Constitute a transcript of a proceeding in a foreign court.
- (3) The testimony must be endorsed with, or be accompanied by, a certificate to the effect that –
 - (a) It is an accurate record of the evidence given; and
 - (b) It was taken in the manner specified by section 41.
- (4) The certificate must –
 - (a) Purport to be signed or certified by a judge, magistrate or court officer of the foreign country to which the request was made; and
 - (b) Purport to bear an official or public seal of –
 - (i) the country; or
 - (ii) an authority of the country responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer of the Government.

Using Foreign Material

43 Foreign material may be adduced as evidence

- (1) Subject to subsection (2) and to section 44, foreign material may be adduced as evidence in a proceeding to which this Part applies.
- (2) The foreign material is not to be adduced as evidence if –

(a) At the hearing of the proceeding, it appears to the Court's satisfaction that the person who gave the testimony concerned is present in Niue and is able to testify at the hearing; or

(b) The evidence would not have been admissible had it been adduced from the person at the hearing.

44 Direction to prevent foreign material being adduced

(1) The Court may direct that foreign material not be adduced as evidence if it appears to the Court's satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.

(2) Without limiting the matters that the Court may take into account in deciding whether to give such a direction, it must take into account –

(a) The extent to which the foreign material provides evidence which would not otherwise be available; and

(b) The probative value of the foreign material with respect to any issue that is likely to be determined in the proceedings; and

(c) The extent to which statements contained in the foreign material could, at the time they were made, be challenged by questioning the persons who made them; and

(d) Whether exclusion of the foreign material would cause undue expense or delay; and

(e) Whether exclusion of the foreign material would prejudice –

(i) the defence in criminal proceedings; or

(ii) any party to related civil proceedings.

Miscellaneous

45 Certificates relating to foreign material

(1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General.

(2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

46 Effect of Part on right to examine witnesses

(1) Subject to this section, nothing in this Part shall be taken to limit the right of the defendant in any criminal proceedings to which this Part applies (in this section referred to as "the defendant") to examine in person or by his legal representative any witness whose testimony is admitted in evidence in those proceedings.

(2) If the defendant requests that the person who gave the testimony concerned be present at the hearing in Niue for the purposes of cross-examination, the court shall warn the defendant that he may be ordered to pay any expenses incurred by the Crown in making the person available before the Court.

(a) As a result of the request, the person appears before the Court as a witness;
and

(b) It appears to the court that the cross-examination of the person was unnecessary, of a trivial nature or irrelevant to the matters in issue in the proceedings,

the Court may order that the defendant pay any expenses incurred by the Crown in obtaining the attendance of the person as a witness.

(4) A certificate signed by the Attorney-General shall be evidence of the expenses incurred by the Crown for the purposes of subsection (3).

(5) An amount payable by a person to the Crown under an order under subsection (3) is a civil debt due by the person to the Crown.

(6) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

47 Operation of other laws

This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other Niue law.

PART 9 MISCELLANEOUS

48 Delegation

The Attorney-General may, delegate to an officer of the Attorney-General's Department all or any of his or her powers under this Act.

49 Authentication of documents

(1) In a proceeding under this Act or a proceeding under or pursuant to the Proceeds of Crime Act 1998 arising directly or indirectly from a request made under this Act, any document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if –

(a) It purports to be signed or certified by a judge, magistrate or officer in or of a foreign country; and

(b) It purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Niue.

50 Restriction on use of information

(1) If, as a result of a request made by the Attorney-General under this Act, any material (whether it is evidence, a document, an article or a thing) has been sent to Niue by a foreign country for the purposes of a proceeding or investigation in relation to a criminal matter, the material is not to be used intentionally for any other purpose without the approval of the Attorney-General.

(2) The material is inadmissible in evidence in any proceeding other than the proceeding in respect of which it was obtained unless the Attorney-General has approved its use for the purposes of that other proceeding.

(3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material –

(a) Otherwise than for the purpose of the proceeding or investigation in respect of which it was obtained; and

(b) Without the approval of the Attorney-General; is inadmissible in evidence in any other proceeding and may not be used for the purposes of any other investigation.

(4) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by –

(a) If the person is a natural person, a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both; or

(b) If the person is a body corporate, a fine not exceeding 600 penalty units. (5) For the purposes of this section, disclosure of any material is taken to be a use of that material.

51 Requests for international assistance not to be disclosed

(1) A person who, because of his or her office or employment, has knowledge of –

- (a) The contents of a request for international assistance made by a foreign country to Niue under this Act; or
- (b) The fact that such a request has been made; or
- (c) That fact that such a request has been granted or refused, must not intentionally disclose those contents or that fact except if –
- (d) It is necessary to do so in the performance of his or her duties; or
- (e) The Attorney-General has given his or her approval to the disclosure of those contents or that fact.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by –

- (a) If the person is a natural person, a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both; or
- (b) If the person is a body corporate, a fine not exceeding 600 penalty units.

52. Regulations

The Cabinet may make regulations, not inconsistent with this Act, prescribing matters –

- (a) Required or permitted by this Act to be prescribed; or
- (b) Necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, prescribing the practice and procedure in relation to the performance by Commissioners of functions under this Act, including the summoning of witnesses, the production of documents, the taking of evidence on oath, the administering of oaths, the payment of expenses and allowances of witnesses and the protection and immunity of Commissioners, of barristers and solicitors appearing before Commissioners and of witnesses.