

# TRANSLATION MYTHS AND TRUTHS OF THE KEY LEGAL DOCUMENTS OF NIUE

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*Cet article décrit le processus d'élaboration du recueil des différents textes juridiques en niuean et ses modifications successives. Sont indiqués quels sont les textes concernés et la manière dont les erreurs de traduction de l'anglais au niuean ont été rectifiées au fil des différentes versions.*

*This paper provides information on the developing law lexicon of the Niuean language. It considers key legal documents and shows both the evolving nature of the lexicon and the errors and inadequacies of the current translations from English into Niuean.*

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## **I THE NIUE CONSTITUTION 1974, THE CONSTITUTION AMENDMENT ACT 1992 AND THE STANDING ORDERS 1998\*\***

The Niue Constitution Act 1974, which was enacted by the New Zealand Parliament, provides for the self-government of Niue and a Constitution for the people of Niue.<sup>1</sup> The Constitution is the supreme law.<sup>2</sup> Standard legislation enacted before and after 1974 is read and interpreted subject to the Constitution.

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\*\* The documents referred to in this paper have been published in several editions over the years. The comparisons made here relate to the documents as originally published. As a result of proof reading many linguistic issues identified in this paper have been resolved in the latest publication of the Constitution of Niue and associated documents.

1 It has 8 sections (the Niue Constitution Act 1974) and 82 articles (the Schedules to the Niue Constitution Act 1974).

The Constitution is enacted in both the Niuean and the English languages. Both versions are "equally authentic".<sup>3</sup> In the event that inconsistencies are found between the two languages, "regard shall be made to all the circumstances that tend to establish the true intent and meaning of that provision". Where a conflict arises between the two versions, the "Assembly may by resolution determine...one version only, being either the Niuean version or the English version, shall prevail".<sup>4</sup>

The Standing Orders 1998<sup>5</sup> which govern the conduct and procedure of the Niue Legislative Assembly also show significant translation issues. They are problematic both in form and content, internally and with the Constitution.

This paper provides insight into some translation issues that arise between the Niuean and English provisions of the Niue Constitution 1974, its amendment in 1992 and the Standing Orders 1998. A comparison will be made between use of terms and words in the 1974 and 1992 versions of the Constitution in the Niuean language. The terms in the Constitution which are also found in the Standing Orders are looked at to highlight the inconsistencies within individual documents and between the two. The comparison will also show whether words established in the 1974 document are either retained or changed in later documents.

The translation of terms found in the Constitution, supreme law, takes precedence over translated terms found in subordinate legislation. However, inconsistencies within individual versions and between the 1974 and 1992 versions of the Constitution make it a poor precedent for subordinate legislation to follow. The incoherent pattern in the documents provides a poor form and foundation for the structure and development of political and legal terms in the Niuean language. In the worst case scenario, such inconsistencies could mislead and confuse the development of legal and political terms generally in the Niuean language. This may create adverse implications for users. Hence the development and consolidation of legal and political terms and expressions in the Niuean language requires further work.

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2 Section 4(1), Niue Constitution Act 1974.

3 Article 23 (4), Constitution.

4 Article 23(5), Constitution.

5 Article 22 (10) Constitution: "Subject to this Constitution, the Niue Assembly may from time to time make Standing Orders for the regulation and orderly conduct of its proceedings and the despatch of business".

Part II of this paper is a general comment on the Niuean dictionaries and how they deal with political and legal terms and concepts. Part III discusses specific inconsistencies found in the legal documents. Part IV comments on constitutional amendments and the legal issues that arise as a result of translation discrepancies.

## **II Dictionaries – How they deal with constitutional and legal terms**

The Niuean dictionaries referred to in this paper offer limited help on the issues found in the political and legal terms of the Niuean language. In all three Niuean dictionaries the details of political and legal terms are either omitted or dealt with only briefly.

### **A McEwen<sup>6</sup> 1970**

McEwen's work comprises words collected in conversation and during the performance of his duties as Resident Commissioner of Niue<sup>7</sup>. He gathered and published 4,000 words of the Niuean language in this work<sup>8</sup>. He describes the Niuean language as partially belonging to the Tongic sub-group and the rest closely identified with origins of the Eastern Polynesian languages<sup>9</sup>. McEwen's work deals with very little political language. This may have been because of the background and the time the work was undertaken. The work precedes 1974 and therefore most of the words that describe positions, duties and obligations under the Constitution were not current at the time of McEwen. For example, the words for court and officers of the court are not in McEwen. The common word "fono"<sup>10</sup> was defined as "council, parliament, meeting". "Fakatufono" meant "law, administration, and government". "Tufono" was used to define "a member in council".<sup>11</sup> In the Constitution, these words have been

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6 J M McEwen *Niue Dictionary* (Department of Maori and Island Affairs, Wellington, New Zealand, 1970).

7 Ibid. Niue was annexed by New Zealand in 1901 and was administered by the New Zealand Government. The principal administrator posted in Niue was the Resident Commissioner. McEwen was appointed Resident Commissioner in 1953.

8 W B Sperlich (ed) *Tohi Vagahau Niue, Niuean Language Dictionary* (Government of Niue, 1997).

9 See above n 6, viii.

10 McEwen, above n 5, 55.

11 In the Constitution "tufono" is replaced with "Ekepule".

used or developed to accommodate many of the positions, duties and functions appearing in the Constitution.

McEwen uses macrons to indicate the pronunciation of vowels in a word and the sounding of 'g' is spelt as 'ng' similar to the Maori language. Therefore some of the words which start with 'g' are spelt as 'ng'. For example, ngutuumu, ngahua and pulangi all appear with 'ng' in place of a single 'g'.

***B Tohi Vagahau Niue, Niuean Language Dictionary 1997***<sup>12</sup>

Twenty-seven years after McEwen, a Niue Dictionary Project presented 10,000 Niuean words in a Niuean-English Dictionary. The Dictionary includes Niuean words and their derivations; it was written by Niueans for speakers of Niuean as a repository of the language.<sup>13</sup>

This work significantly increases the number of Niuean word entries and shows that the language is evolving and developing over time. Developments and changing circumstances since the 1970s would have created or expanded some of the basic words of the language to accommodate new things. There are limited entries on political and legal words. For example, "Fono Ekepule" is the Assembly meeting and "Fono Ikipule" is Cabinet meeting. Neither usage was available in McEwen's time. "Fakatufofo" and "matafakatufofo" means "government" and "law" or "regulation". The Speaker of the House of Assembly is "Fakatonufono". Words for "court" and the different divisions of courts established in the Constitution are dealt with briefly. There is an entry on "judge" and "commissioners of court" but nothing for "Chief Judge".

The 'ng' spelling used in McEwen is abandoned; many words directly borrowed and transferred from the English language are included.

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12 See n 8.

13 See n 8, 1.

### *C Tohi Vagahau He Vagahau Niue 2005*<sup>14</sup>

This Dictionary is exclusively Niuean. The work was undertaken by Niuean speakers, including some who had worked on the 1997 dictionary. This work deals with words that have developed in the language and which were not dealt with in previous works. There are a number of new words used for developments in a specific field. For example, the words to describe the technology of the field of linguistics have been directly transferred to the Niuean language and their meanings and purposes described in terms of their English origin.

There is a development of the legal and political terms found in this work by comparison with the 1997 Dictionary although without much more detail. A user of this dictionary will require knowledge of the bases from which a word has been derived in order to locate the word and its definition in the dictionary. Where the user attempts to search directly for a word there are few chances of finding it in its current and direct form. For example; "fakatufono" is found under 'tu' and defined as "how to govern" or "the way a country is governed". The Dictionary describes "tufono" as the representative in government, which in the present day is ekepule. "Fakatufono tohi" is described as law and "tohi-fakave", found under 've', is described as the document which confirms the sovereignty of a nation.<sup>15</sup> The term for Chief Judge found under 'iki' is 'iki fakafili' and is described as the "authority or leader of the court and all other officers of the court". "Fakafili" is court and is found under 'fili'.

### **III SPECIFIC EXAMPLES**

#### *A Issues within the Niue Constitution 1974*

Several problems noted throughout the Constitution include the incorrect spelling of words. This is often caused by writing a small letter for a name of a person or title rendering the word inappropriate in a particular context.<sup>16</sup> Others are by way of writing a capital letter for a noun in the middle of a sentence.<sup>17</sup> Erroneous spelling is

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14 Funaki, Ioane et al 2005 *Tohi Vagahau he Vagahau Niue*, Fakatufono ha Niue gahua fakalatalata mo e Aoga Pulotu he Pasifika Toga (USP). [Niuean Language, Government of Niue and the University of the South Pacific].

15 Ie the Constitution.

16 For example, ikifakafili in Art 48(2), ekepule in Art 7(1)(e) and Art 7(2).

17 For example, Fakafiliaga in Article 24 (3).

also caused by leaving a space between letters, or not leaving a space between letters,<sup>18</sup> thus giving the word a different meaning and rendering it meaningless and out of context. The following are some examples:

"Fakatufono-Tohi Fakave" is the translation for Constitution; however it is sometimes written as "fakatufono-tohi Fakave", "Fakatufono Fakave"<sup>19</sup> or "Fakatufono-tohi Fakave".<sup>20</sup> Its variation in form could tentatively remove or lower the significance of its identity as the supreme law of Niue. Ensuring the word is written correctly and uniformly throughout the Constitution and in all other political and legal documents that follow will ensure the acceptance of "Fakatufono-Tohi Fakave" as the distinctive translation of Constitution.

"Fakatonu-fono" or "Fakatonu-Fono" is the name given to the Speaker of the Legislative Assembly. Similar to the problem of "Fakatufono-Tohi Fakave" its correct form as "Fakatonu-Fono" is not uniform through the document.

"Fono" is sometimes used as the short form for Fono Ekepule, whereas "fono" when written with the small letter means meeting in a generic sense and not specifically the meeting of the Legislative Assembly or a meeting of any significance. Inconsistent spelling of "Fono" and "fono" could easily mislead and confuse the reference to a general meeting instead of the meeting of the Legislative Assembly.

The word "ke he" and "kehe" is often written in the wrong form and out of context in several places throughout the Constitution.<sup>21</sup> "Ke he" when separated by a space means "to" whereas "kehe" written without a space after "Ke" means "different". Hence, a slight mistake of not making the space between "Ke" and "he" alters the meaning of the word to "different" instead of "to".

Other problems noted are the changing use of words in the Niuean version rather than maintaining uniformity as in the English language version. For example;

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18 For example, ke he in Art 35 (3).

19 Article 24(5).

20 Articles 15(1), Art 22(10), Art 23(4), Art 27(1)(e), Art 33(4).

21 Articles 35 (3).

"Temporary" in the English language means<sup>22</sup> lasting, existing, serving or effective for a time only, not permanent; eg a temporary need, a temporary job.

"Temporary Judges" in the two constitutional enactments is translated as "Tau Iki Fakafili nakai gahua mau". Although the translation is not word specific, the translation adequately communicates the meaning intended in the English language.

On the other hand, "Temporary Ministers" in both enactments is translated as "Tau Ikipule Hukui". Hukui in the Niuean language is defined as "replacement" or "in place of" and is not usually used to mean a "temporary replacement". "Hukui"<sup>23</sup> is used for a person who is the representative of something or someone rather than to describe a role that is limited by time. "Acting Chief Justice" in both constitutional enactments is "Iki Fakafili Hukui". "Hukui" is therefore used for "Acting" and "Temporary" and should not be.

In both translations, the word temporary is incorrectly translated in the context of Temporary Minister as it does not fully correspond with its English meaning. The word "temporary" in the context of "temporary judges" is the translation that adequately corresponds with its intended meaning. "Acting Chief Justice" is consistently "Hukui". Therefore "Hukui" is the appropriate translation for "acting" rather than "temporary". However, the choice of term may depend on the preference of its users.

#### ***B Issues within the Niue Constitution Amendment 1992***

A translation error noted in the 1992 version of the Constitution which directly contrasted with the English version is in article 46 (2). The retirement age for Commissioners of the High Court in the English version is 68 years old. In the Niuean translation, the retirement age is 64 years, "To nakai fai tagata kua katoa e 64 e tau tau he moui, po ke ko e ekepule he Fono Ekepule Niue ka fifili ke he kotofaaga nai po ke fakatumau ke nofo ai he kotofaaga nai". Since the two languages are in direct conflict, the Niue Legislative Assembly will need to identify the correct age by way of Article 13.<sup>24</sup>

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22 *The Random House Dictionary of the English Language.*

23 See note 12, p 216.

24 Article 13: (4) The Niuean version and the English version of this Constitution and, subject to subclause (5) of this Article, the Niuean version and the English version of any record of

Another discrepancy that may have occurred during translation of the two versions is found in article 48(2). Article 48(2) "Ko e fakaataaga moua mai he Komisina he Fale Hopo Lahi ke liu hafagi mai he Iki Fakafili he Fale Hopo ia" is not found in the 1992 version. This appears to be a translation oversight rather than removal by amendment.

### *C Issues identified between the Niue Constitution 1974 and 1992*

The use of terms in the Niue Constitution appears to have moved away from the terms established in the 1974 text. Common terms found in the 1974 document have changed and appear to be shortened in the 1992 text. For instance, the original reference to "Constitution" as "Fakatufono-Tohi Fakave" is shortened and is written as "Tohi Fakave" in the 1992 amendment. Although a native speaker can reasonably infer this to mean the same as "Fakatufono-Tohi Fakave", it is evident that over time the usage of terms and the language have changed. Another example is the use of the phrase "Fono He Tau Ikipule" for Cabinet. It is now commonly referred to as "Fono Ikipule" or colloquially as "Kapeneta". The change over time may indicate preference for "Fono Ikipule" over "Fono He Tau Ikipule" since it is also found throughout the Standing Orders 1998. The later documents both use "Fono Ikipule" and seem to abandon the original "Fono He Tau Ikipule". The word for law, "fakatufono tohi" in the 1974 text, appears as "mata-fakatufono" in article 51(2) of the 1992 amended text.

### *D Issues in the Standing Orders*

The Niue Constitution 1974 and its amendments in 1992 compared with the Standing Orders 1998 show a lack of uniformity and clarity in the Niuean translation of these important documents. These can be observed internally within a single document and externally by comparing the three. This illustrates a need for well established rules and guidelines to aid and assist the development of Niuean translation and its language.

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proceedings in the Niue Assembly or any Committee thereof and of any enactment shall be equally authentic:

Provided that if in any case there is any apparent discrepancy between any provision of the Niuean version and of the English version of this Constitution or of any such record or of any enactment, then, in construing that provision, regard shall be had to all circumstances that tend to establish the true intent and meaning of that provision.

### *1 The alphabet*

An immediate defect in translation of the Standing Orders is the incorrect labelling and direct transfer of the English alphabet to the Niue version. The alphabetical labelling and numbering of the Niuean translation does not translate letters into the Niuean alphabet. This is widespread and is found throughout the document. For instance, 1 (b) (c) (d) (j) (q) (w) (x) (y) (z) or 2 (b) (c) (d) (j) (q) (w) (x) (y) (z).

The above letters of the English alphabet do not exist in the Niuean alphabet. To use them would be incorrect in Niuean. Therefore their use as a numbering or sequencing tool in the Standing Orders is improper and inappropriate.

### *2 Incorrect labelling or sub-headings and title*

The Standing Orders clause 49 is

Disposal of Petition

A member who has presented a Petition to the Assembly may then move "That the petition be read" or "That the petition be referred to a Select Committee".

The Niuean translation is

49 Moumouaga he Tohi Ole

(1) Ko e Ekepule ne tuku e Tohi Ole ke he Fono Ekepule ke talahau "ke totou e Tohi Ole" po ke "tuku atu e Tohi Ole ke he Komiti Fifili"

"Moumouaga" literally means to dispose of, such as to destroy<sup>25</sup> or be rid of something. However, in the context of Standing Order 49, the word is incorrect. A Niuean reader would translate the title in 49 to mean "destruction or disregard of a petition". However, upon reading the paragraphs that follow, the actual meaning of the paragraph refers to a different kind of disposal. The disposal referred to in that context means the method of dealing or processing a petition. Hence a reader finds that the title and the ensuing paragraphs contradict each other. A suggested translation

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25 See note 7, page 233.

in place of "moumouaga" is "omoiaga". Omoiaga describes the method of processing a petition.<sup>26</sup>

### 3 *Typographical errors*

Sometimes the errors appear because of the use of different letters in a word rendering the word non-existent and meaningless. This compromises the intention and quality of the Standing Orders.

The following group of typographical errors has created words that do not exist in the Niuean language. These errors have created words that do not fit in the context causing a major shift in the meaning of the provision and rendering the entire provision erroneous.

<i>4 Word/phrase appearing</i>	<i>Proper and intended word</i>
al <sup>27</sup>	
omoruo <sup>28</sup>	omonuo
Fakalataiata <sup>29</sup>	Fakalatalata
Fakamale <sup>30</sup>	Fakamole
Fakatoru Fono <sup>31</sup>	Fakatonu Fono
Fera <sup>32</sup>	pepa
hokola <sup>33</sup>	Hokoia
taiahauaga <sup>34</sup>	Talahauaga
Ka nakai kehe mal <sup>35</sup>	Ka nakai kehe mai

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26 See note 8, p 250.

27 Standing Order 101 Fakamatalaaga Matakupu 35(1)(a)(ii), [Note Article 35(1)(a)(ii)].

28 Standing Order 11.

29 Standing Order 101 Fakamatalaaga Matakupu 34 (2). [Note Article 34(2)].

30 Standing Order 107.

31 Fakatokaaga he tau Fakaveaga, Vala 3. [Arrangement of Provisions, Part 3].

32 Fakatokaaga he tau Fakaveaga, Vala 15(55).[ Arrangement of Provisions, Part 15(55)].

33 Standing Order 101 Fakamatalaaga Matakupu 35(1), [Note Article 35(1)].

34 Standing Order 101 Fakamatalaaga Matakupu 34(1).[Note Article 34(1)].

35 Standing Order 82 Fakamatalaaga Matakupu 29 [ Note Article 29].

Keke <sup>36</sup>	Kaeke
lauja <sup>37</sup>	Lauia
Mtakupu <sup>38</sup>	Matakupu
o molaga <sup>39</sup>	Omoiaga
tatou <sup>40</sup>	totou

### 5 *Quotations from the Constitution*

The Standing Orders quote directly from certain provisions of the Constitution before the Orders are stated. Many times, provisions from the Constitution differ in the Standing Orders. For example:

In the Standing Orders, Matakupu 4(1) is:

To ha ha i ai e taha Palemia ha Niue, ko ia ne fifili ai ke he numera tokologa he tau Ekepule kua nakai taumaleku e tokologa mai ia lautolu e **tua** Ekepule kua ha ha i ai ke he fono he Fono Ekepule Niue mo e eke vili ai i loto he fonoaga.

In the original Constitution, Matakupu 4(1) is:

To ha ha i ai e taha Palemia ha Niue, ko ia ne fifili ai ke he numera tokologa he tau Ekepule kua nakai taumaleku e tokologa mai ia lautolu e **tau** Ekepule kua ha ha i ai ke he fono he Fono Ekepule Niue mo e eke vili ai i loto he fonoaga

The errors and contradictions noted between direct provisions of the Constitution and reproduced in the Standing Orders are deceptive. One must carefully read the two documents together in order to avoid the erroneous instruction. These errors are deceptive and one where the Legislative Assembly should be compelled to correct by way of amendment.

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36 Standing Order 97(5).

37 Standing Order 86 Fakamatalaaga Matakupu 33(1) [ Note Article 33(1)]

38 Standing Order 7(2) Fakamatalaaga Matakupu 82 [Note Article 82 definition of "Palemia"].

39 Standing Order 101 Fakamatalaaga Matakupu 35(1)(b), [Note Article 35(1)(b)].

40 Standing Order 96.

### 6 *Inappropriate use of capital letters*

A variety of typographical errors places a capital letter in front of a word which makes it inappropriate and improper. Unless the word is at the start of a sentence or is for a name of a place or person, capital letters should not be used. However, words starting with capital letters sometimes appear in the middle of sentences but are not for a name of a place, or a distinct legal concept. The examples are

Humaiga	humaiaga
Gahua	gahua
Fono	fono

### 7 *Missing words*

The example is found in paragraph 3 of the Preliminary Note of the Standing Orders:

In order to gain a complete picture of the provisions governing the procedure to be followed in the Niue Assembly it would be possible to repeat these constitutional provisions as Standing Orders. However to do this would be to run the risk of giving the impression that the repeated provisions **can be amended or suspended** like other Standing Orders- which is not the case.

In the translation it is:

Kua lata ni ke fatiaki e tau fakaveaga fakatohi fakave nai ke eke ia mo Tau Fakaholoaga Fono ke maama mitaki e tau fakaveaga kua fakave ki ai e tau fakaholoaga ke muitua ki ai ki loto he Fono Ekepule ha Niue. Ka e taha e mena kaeke ke taute pihia to fakakite ai e talahauaga kua maeke e tau fakaveaga (**missing words here**) he tuga ia e falu a Fakaholoaga Fono- kae nakai kua tonuhia ke pihia.

The translation has words for "can be amended or suspended" and leaves the sentence incomplete and incorrect. Consequently, the meanings of the Niuean translation and intention of the English version do not correspond.

Bilingual readers and users of the Standing Orders may notice this discrepancy although monolingual users may not, causing different understandings of the same paragraph.

### 8 *Repeated phrases*

Sometimes, a phrase is repeated in the same sentence rendering the entire provision meaningless. The example is

34 Lagaaga he fekau he tau tagata mai fafo ke o kehe

Kua talia au loa he Fono Ekepule ke poaki **e tau tagata mai i fafo ke o kehe-**

(a) ke he o kehe oti e tau tagata mai i fafo; mo e

(b) o kehe foki e tau tagata tohi tala he poko fanogonogo fono.

(c) o kehe foki e tau tagata fakamau tala ti nakai fai fakailoaga tohi he tau fakaholoaga ke taute, mo e

(d) ke fakaoti noa foki e fakapuloaaga he tau fakatutala fetoko

This provision could be correctly re-drafted in the following manner

34 Lagaaga he fekau he tau tagata mai fafo ke o kehe

Kua talia au loa he Fono Ekepule ke poaki;

(a) ke he o kehe oti e tau tagata mai i fafo; mo e

(e) o kehe foki e tau tagata tohi tala he poko fanogonogo fono.

(i) o kehe foki e tau tagata fakamau tala ti nakai fai fakailoaga tohi he tau fakaholoaga ke taute, mo e

(o) ke fakaoti noa foki e fakapuloaaga he tau fakatutala fetoko

Two things have been done, the phrase "e tau tagata mai i fafo ke o kehe" has been removed from the sentence before (a). This gives meaning to the phrase. The other is the alphabetical letters (b), (c) and (d) do not exist in the Niuean alphabet. These have been replaced with the equivalents in the Niuean alphabet.<sup>41</sup>

### ***E Issues between the Niue Constitution 1974 and the Standing Orders 1998***

In the Standing Orders, the name Standing Orders is translated as "Tau Fakaholoaga Fono he Fono Ekepule ha Niue". The original name cited in the

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41 An alternative solution is to use the numeric system.

translation of article 22(10) of the Constitution is "Tohi he Tau Poakiaga Fakaholoaga Fono he Fono Ekepule ha Niue". The key word missing is "Poakiaga". "Poakiaga" has been used for a Order in the phrase Court Order. It is most often used to describe a direction by an authority which often is the Court or Council as in an Order in Council.

Another example is the translation of the Oath of Allegiance in the Niue Constitution 1974 and the Standing Orders 1998. The Niue Constitution 1974 translation is "Omonuo he Mahani Fakamooli". The Standing Orders quote article 21 of the Niue Constitution 1974 as "Omonuoaga he Fakamooliaga". The Constitution translation may be interpreted as the oath as to honest behaviour whereas the Standing Orders may be interpreted as the oath of truth. Some slight variation in the use of words as seen in this example risks changing the meaning and therefore may compromise the significance of the task at hand. Nevertheless, in the event a contention arises in relation to different use of terms in the translation, the terms found in the Constitution prevail.

Another example is observed in the first paragraph of the Preliminary Note of the Standing Orders. Article 22(10) is "Subject to this Constitution, the Niue Assembly may from time to time make Standing Orders for the regulation and orderly conduct of its proceedings and the despatch of business".

The Niuean translation of article 22(10) under Fakatufono tohi Fakave 1974 is

Mo e muitua atu ke he Fakatufono-tohi Fakave nai, ko e Fono Ekepule to maeke ai mai he taha magahala ke he taha magahala ke taute e taha Tohi He Tau Poakiaga Fakaholoaga Fono ke lata mo e fakatokatokaaga mo e fakahakohakoaga mitaki he tau fakaholoaga he tau gahua po ke tau fono.

The Niuean translation of article 22(10) in the Standing Orders is "ke lata mae Tohi Fakave nai kua maeke he Fono Ekepule ha Niue ke taute e tau Fakaholoaga Fono ma e matafakatufono mo e holoaga mafola he tau fekau".

The original translation of article 22(10) in the 1974 Constitution and the version reproduced in the Standing Orders, are not aligned. The translation in the 1974 version begins with "mo e muitua atu ke he Fakatufono-tohi Fakave nai..." and the Standing Orders version is "ke lata mae Tohi Fakave nai..."

Another example is article 24(1). In the 1974 Constitution it is

Ko e malolo mo e tonu ha ha i ai he ha tauteaga I loto he Fono Ekepule Niue, po ke i loto he ha Komiti ha ha i ai, mo e malolo he ha tohi fakamooli kua foaki atu he Fakatonu Fono i lalo he Matakupu 34 po ke Matakupu 35 ha ha he Fakatufono-tohi Fakave nai, to nakai maeke ke fai kupu huhu ki ai e ha Fakafiliaga.

The same in the Standing Orders 1998 is:

Ko e malolo mo e tonu ha ha i ai he ha tauteaga i loto he Fono Ekepule Niue kua tuku atu ki ai e tau malolo pule ke fakatonutonu e fakaholoaga po ke mahani he tauteaga he tau gahua, po ke levekiaga he puhala hako, to nakai lauia ai, ha ko e tauteaga e ia he tau malolo pule na, ke he ha Fakafiliaga.

The translation of article 24 (1) in the Standing Orders is shorter, incomplete and incorrect. It does not convey the meaning of "the validity of any certificate duly given by the Speaker under article 34 or article 35 of this Constitution shall not be questioned in any Court". There is reference to the powers exercised within the Niue Assembly but the Speaker's exercise of power to issue certificates under article 34 or article 35 is not identified.

This lack of uniformity between constitutional provisions found in the Standing Orders with the original translation is common. The effect of the lack of adherence to the original translation has a high chance of shifting the meaning of words as evident in article 24 (1). One would presume the rule is to adhere to the translation in the original; however this does not appear to have been followed.

Another consequence of this non-adherence is that the translation of documents becomes subject to individual style and preference rather than conforming to an approved set of rules. When rules are adhered to and documents translated according to a set standard, there is safety in knowing the meaning of the rules and the parameters within which they operate in cases of uncertainty. This ensures increased understanding and agreement when it comes to interpreting the use and intended meaning of a particular rule. There is also a greater guarantee that the users of the documents start with relatively the same understanding of a particular rule or procedure in the Standing Orders.

Other problems are noted in the example of the word election. "Election" is translated in the Niuean language as both "fifiliaga" and "viliaga". "General election" is translated as "viliaga lahi" whereas election of the Speaker and election of the

Premier are translated in the Constitution as "Fifiliaga" he Fakatonu Fono and "Fifiliaga" he Palemia.

In the Standing Orders, Part 3 (8) pursuant to the Niue Constitution 1974, article 20(4) "Fifiliaga he Fakatonu Fono" is used for Election of the Speaker. On the other hand the Standing Orders, Part 5 (17) pursuant to the Niue Constitution 1974, article 4(2) is "Viliaga he Palemia" for Election of the Premier. The translation for election is interchangeably "fifiliaga" or "viliaga" in the Standing Orders. This potentially confuses a reader as "fifiliaga" suggests "choosing" and does not fully correspond with elect or vote. Election or vote also has a tendency to belong in the context of the law more than the word choose. Choose, choice or choosing do not carry the same degree of authority or power for use in the context of general elections, election of the Speaker or the election of the Premier. The use of "fifiliaga" is therefore inappropriate in this context as the positions of the Speaker and the Premier are by way of election and not by appointment or selection.

In the Standing Orders "Komiti Fifili" or "Komisi Fifili" is adequately translated as "Select Committee". The translation addresses the role of the Committee and how the Committee is brought into existence as opposed to the position of the Speaker and Premier.

***F Issues between the Niue Constitution 1974, the Amendment 1992 and the Standing Orders 1998***

The attached table illustrates in summary form the use of words and phrases across the three documents. The table shows the uniform usage of words through all the documents and where words in the original appear to have changed over time or words that appear only once.<sup>42</sup>

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<sup>42</sup> Many of the terms found here do not appear in the Standing Orders. The Standing Orders deal only with the procedure of the Legislative Assembly. Key words appearing in Parts of the Constitution that deal with the Executive Government, Judiciary and the Niue Public Service are seldom found in the Standing Orders. The few words that do appear are provided. Note that the unmarked column in the Standing Orders means a term does not appear in the Standing Orders.

	Niue Constitution 1974	Niue Constitution 1992	Standing Orders
<b>Act</b>			
Fakatufono tohi	•	•	
La Fakatufono tohi	•	•	
<b>Cabinet</b>			
Fono He Tau Ikipule	•		
Fono Ikipule		•	•
<b>Constitution</b>			
Fakatufono-Tohi Fakave	•		
Tohi Fakave		•	•
<b>Court of Appeal</b>			
Fakafiliaga Ole Liu Fakafili	•		
Fakafiliaga Liu Fakafili		•	
<b>Enactment</b>			
Fakatufono-tohi	•	•	
La fono	•	•	
<b>Election</b>			
Viliaga			•
Fifiliaga	•	•	•
<b>High Court</b>			

Fakafiliaga Lahi	•	•	
Fale Hopo Lahi		•	
<b>Justice of the Peace</b>			
Tau Fakafili he Mafola		•	
Tau Lagomatai Fakafili	•		
<b>Land Court</b>			
Fakafiliaga Fonua	•		
Fakafiliaga Kelekele		•	
<b>Law</b>			
Fakatufono-tohi	•		•
Mata-fakatufono		•	
Tau Fakatufono			•
<b>Oath of Allegiance</b>			
Omonuo he Mahani Fakamooli	•		
Omonuoaga he Fakamooliaga			•
<b>Order (of the Court)</b>			
Poakiaga	•		
Poakiaga Tohi		•	

<b>Power</b>			
Malolo pule	•	•	
Malolo kotofa	•	•	
<b>Temporary Judges</b>			
Tau Iki Fakafili nakai gahua mau		•	
Tau Fakafili Hukui	•		
<b>Temporary Ministers</b>			
Tau Ikipule Hukui	•	•	
<b>Transmission of Order of Court of Appeal</b>			
Fakafanoaga he Poakiaga he Fakafili Ole Liu Fakafili	•		
Utaaga he Poakiaga Tohi he Fakafili Liu Fakafili		•	

#### ***IV ISSUES THAT ARISE AS A RESULT OF TRANSLATION ERRORS***

Any deviation from the original document without proper authority may render the defective parts or the entire document ultra vires. A suggested way forward is for native speakers with a legal background to revise and produce a draft where all the defects have been removed or corrected.<sup>43</sup>

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43 Article 35 specifies the procedure for constitutional amendment:

- (1) A Bill repealing or amending or modifying or extending any of the provisions of the Niue Constitution Act 1974 or of this Constitution or making any provision inconsistent with any of those provisions shall become law if, and only if-
  - (a) It has been passed by the Niue Assembly in compliance with the following requirements-
    - (i) On both the final reading, and on the reading which preceded it, the Bill receives the affirmative votes of not less than two thirds of the total membership of the Assembly, as provided in Article 16(2) (b) of this Constitution; and
    - (ii) the vote on the final reading takes place at least 13 weeks after but excluding the day of the vote on the reading which preceded it; and
  - (b) It has thereafter submitted to a poll, conducted in a manner prescribed by law, or the persons who at the time of that poll were entitled to vote as electors at a general election of members of the Niue Assembly, and has at that poll received the support-
    - (i) In the case of any Bill repealing or amending or modifying or extending any of the provisions of sections 2 to 9 or the Niue Constitution Act 1974 or of the Articles 1 and 69 of this Constitution or of this Article, by two-thirds of the votes validly cast; and
    - (ii) In any other case, of a majority of the votes validly cast; and
  - (c) The Speaker, being satisfied that it has been passed in accordance with this Constitution and with the Standing Orders of the Assembly, has endorsed on a copy of the Bill a certificate of compliance with the requirements of this Article, and has, in the presence of the Clerk of the Assembly, signed that certificate and sealed a copy with the Seal of Niue, and inscribed thereon the date of that signing and sealing; and
  - (d) The Clerk of the Niue Assembly has, in the presence of the Speaker, countersigned the certificate on that copy of the Bill.

Furthermore, a group of dedicated native speakers with a background in law or linguistics could assist the Niue Legislative Assembly with improvements to the Constitution.

There has been no constitutional amendment other than in 1992. Although well intentioned, the stringent requirements of article 35 can be considered a hindrance rather than a controlling factor in effecting change and improvement to the supreme law.

Under article 35, the road to rectifying the form and translation of the current Constitution is costly, time consuming, and difficult. It may well be that even where this paper provides compelling evidence that changes to the current translation of the Constitution are warranted an amendment may not be possible in the existing circumstances. The lack of political interest<sup>44</sup> will prevent any work necessary to correct the language in the documents. Ultimately, the value given to the supreme law of Niue rests in the hands of the people.

Future endeavours to protect the use of the Niue language and for it to be reflected in the supreme law will be useful. In early 2008, the Taoga Niue department drafted a Niue Language Commission Bill 2008. The Bill is intended to "preserve and promote Vagahau Niue as a living language. It confirms the role of the Komisina Vagahau Niue. The Komisina is the essential vehicle for language planning, modernisation and standardisation."<sup>45</sup> Section 3 states that the purpose of the Bill "is to give recognition in law to the Komisina, to promote the work of the Komisina, and to foster the use of Vagahau Niue as a living language". Section 5(1) (xi) provides that a key function of the Komisina is to "review translations submitted to it for scrutiny and to endorse works in Vagahau Niue before their publication". Section 9 (3) provides "for the purpose of providing official interpretations and translations, the Komisina may certify appropriately qualified individuals as competent interpreters and translators". It

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(2) A Bill which becomes law in accordance with the requirements of this Article shall be part of this Constitution and shall be described as a constitutional amendment.

(3) Subject to its provisions, a constitutional amendment shall come into force on the date of its certification and sealing.

44 The recently appointed Constitution Review Committee could propose the correction of the language in the documents.

45 Explanatory Note.

is presumed the Komisina is the authority to establish rules and standards for translations under section 5(vii) and section 5(xii) "to coordinate views on the status, form and usages of Vagahau Niue" and "to publish information on Vagahau Niue, material about Vagahau Niue, and works in Vagahau Niue". The Bill also proposes that the Komisina be the "final authority on the use of Vagahau Niue".<sup>46</sup>

The Bill is, in 2009, before the Niue Assembly. The sooner it is enacted the better; this might present the ideal opportunity for refining the current Constitution by the review and refinement of the Niuean version.

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<sup>46</sup> Section 5 (2).