

1. The Constitutional and court framework of Nauru

1.1 Relevant legislation (including amendments)

- [Custom and Adopted Laws Act 1971](#)
- [District Court Act 2018 \(DCA\)](#)
- [Interpretation Act 2011](#)
- [Nauru Court of Appeal Act 2018](#)
- [Supreme Court Act 2018 \(SCA\), Supreme Court \(Amendment\) Act 2019 \(SCAA 2019\), Supreme Court \(Amendment\) Act 2020 \(SCAA 2020\), Supreme Court \(Amendment\) No. 2 Act 2020 \(SCAA No 2 2020\)](#)
- [The Constitution of Nauru 1968](#)

1.2 The Constitution of Nauru

The Constitution of Nauru 1968 (the Constitution) came into force on 29 January 1968 and incorporates amendments made by the Constitutional Convention of Nauru under Article 92 on 17 May 1968.

The Constitution sets out the basis of Nauru's government by defining:

- the roles, responsibilities and powers of the President, the Executive, Legislature and the Judiciary (which incorporates the doctrine of separation of powers)
- the organization and structure of the legal system
- the fundamental requirements of citizenship and details related to finance, the public service, and emergency powers
- fundamental human rights including the principles of equality, social justice, human dignity and communal solidarity will be upheld.

The Constitution gives effect to three important constitutional principles:

- 1 the doctrine of separation of powers
- 2 the independence of the judiciary
- 3 the rule of law.

1.2.1 The doctrine of separation of powers

There should be three distinct and separate branches of government:

- 1 the Executive: administrator and policy maker
- 2 Parliament (legislature): makes the law
- 3 the Judiciary: interpreter of the law.

Each branch of government checks the roles and functions of the other branches. This checking maintains the balance of power between the three branches and does not allow the executive to assume too much power. The independence of the judiciary is an important element of the doctrine of separation of powers and is vital for maintaining the balance of power.

1.2.2 The independence of the judiciary

The judiciary must be independent and free from all political or other influence in carrying out its duties and in making decisions.

The independence of the judiciary is protected by:

- the Constitution,
- the concept of the rule of law,
- the process of appointing or removing judicial officers, and conditions of their appointment, and
- the immunity of judges and justices from civil actions.

1.2.3 The rule of law

Article [10](#) Constitution

The rule of law is the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced. No person can be convicted of an offence that is not defined by law. It requires that every action of a public servant is authorised by a law. Its purpose is to protect people from the arbitrary use of state authority. The rule of law also recognizes that the Constitution is the supreme law of the land (as provided for in Article [2](#)) and provides checks and balances for the executive and legislative branches of government.

1.3 The branches of government in Nauru

1.3.1 The executive

The role of the executive is to make and put into place government policy. In Nauru, the executive effectively runs and controls the public affairs of the country. The executive and Parliament are distinct even though some members are in both. The executive is made up of:

- the President
- the Cabinet
- the Chief Secretary.

1.3.2 President

Articles [16](#), [21](#) and [24](#) Constitution

The President of Nauru is elected by Parliament and must be a member of Parliament. The Speaker and the Deputy Speaker are not qualified to be elected President. The President holds office until another President is elected.

Parliament must elect a President whenever:

- the office of the President is vacant
- Parliament sits after it has been dissolved
- the President resigns their office in writing delivered to the Speaker
- a resolution for the removal from office of the President and Ministers is approved under Article [24](#); or
- the President ceases to be a member of Parliament otherwise than by reason only of its dissolution: Art [16\(5\)](#).

The Cabinet may appoint a Minister to perform the duties and exercise the functions of the President during any period during which the President is unable to act owing to illness, absence from Nauru or other cause: Art [21](#).

If Parliament has no confidence in the Cabinet, it may vote on a resolution approved by at least one-half of the members of Parliament that the President and Ministers be removed from office and an election of a President shall be held. Where a President has not been elected before the expiry of seven days after the day following the approved resolution, Parliament is dissolved: Art [24](#).

1.3.3 The Cabinet and Ministers

Articles [17-19](#) and [22-23](#) Constitution

Cabinet, consisting of the President and the Ministers appointed under Article 19 is the executive authority of Nauru and controls the government of Nauru. The Cabinet is collectively responsible to Parliament: Art [17](#). The President presides over Cabinet meetings: Art [22](#).

Each Minister must:

- before entering office, take and subscribe the oath set out in the [First Schedule](#)
- not hold an office of profit in the service of Nauru or of a statutory company: Art [18](#).

The President may assign, vary or revoke any business of the government of Nauru to each Minister or themselves: Art [23](#).

Whenever a President is elected, they should appoint four or five members of Parliament (MP) to be Ministers as soon as they can. If there are less than four Ministers at any time the President must appoint an MP to be a Minister. However, if Parliament is dissolved, the President must appoint a person who was a member immediately before the dissolution. Whenever there are four but not five Ministers, the President may appoint a member of Parliament to be a Minister: Art [19](#).

1.3.4 Chief Secretary

Articles [25](#) and [68](#)

The Cabinet must appoint a Chief Secretary of Nauru, who is not a member of Parliament. The Chief Secretary has such powers and functions as the Cabinet or the Constitution sets out or by law. The Chief Secretary may resign office by writing delivered to the President and may be removed from office by the Cabinet: Art [25](#).

The Chief Secretary has the power to appoint, remove or discipline persons who hold or act in offices in the Public Service, with the Cabinet's approval for any person in charge of a department: Art [68\(1\)](#) and [\(3\)](#). They may delegate these powers: Art [68\(2\)](#).

The Chief Secretary also reports to the Cabinet on matters relating to the exercise of the powers at least once a year and the Cabinet produces a copy of the report before Parliament: Art [68\(4\)](#).

1.3.5 The National Legislature (Parliament)

Part [IV](#) Constitution

The Parliament of Nauru is established under article 26 and consists of 18 members of parliament (MPs): Art 28. Parliament is dissolved every three years unless dissolved earlier by the Speaker on the advice of the President: Art [41](#).

The Speaker, is elected by the MPs and presides (controls) over any session of Parliament: Art [44](#). They may discontinue a session of Parliament at any time.

If the President advises the Speaker to dissolve Parliament, the Speaker must refer that advice to Parliament as soon as possible within 14 days, unless the President withdraws this advice. The Speaker must dissolve Parliament on the seventh day after referring the President's advice to Parliament: Art [41](#).

Parliament may:

- make laws for the peace, order and good government of Nauru subject to the Constitution: Art [27](#), and
- introduce and pass Bills, which become law on the date when the Speaker certifies that it has been passed by Parliament: Art [47](#).

1.3.6 The judiciary

Part [V](#) Constitution

The judiciary is the third branch of government in Nauru and:

- is an independent body which is responsible for interpreting and applying Parliament's laws,
- creates and interprets case law, and
- solves disputes of fact and law between individuals as well as between individuals and the State.

The court system is hierarchical and comprises the Court of Appeal, the Supreme Court (Chief Justice and a Judge) and the District Court (the Resident Magistrate).

This hierarchy is essential to the doctrine of precedent. The hierarchy provides an appeal system, which allows decisions to be checked by more senior courts. This helps prevent inconsistency within the courts and provides a check and balance system for the fair administration of justice.

Jurisdiction

Jurisdiction is the power and authority to hear or determine a particular matter. Courts may only act within their jurisdiction, as defined by law. If a court acts outside its jurisdiction, it is said to be acting *ultra vires* (outside the power), which makes the court's decision invalid on that matter.

Statutes define a court's power and authority. For example, the power and authority given to the District Court is set out in the District Court Act 2018 and its amendments.

Inherent jurisdiction: means that the court can fill in any gaps left by a statute or by case law. This jurisdiction is generally reserved for the highest courts in any given country. The Supreme Court has inherent jurisdiction.

Original jurisdiction: This means that a court is given power to hear certain kinds of cases in the first instance, eg: the Supreme Court has original jurisdiction to hear any question arising under or involving the interpretation or effect of any provision of the Constitution: Art 54 Constitution.

Concurrent jurisdiction: means that several courts have the power to hear a particular kind of case.

Territorial jurisdiction: refers to a court's power to hear cases for a particular district or tract of land.

Appellate jurisdiction: This is the right of a court to hear appeals from a lower court. The Court of Appeal and the Supreme Court all have some type of appellate jurisdiction.

Criminal jurisdiction

A crime is the commission of an act that is forbidden by statute or the omission of an act that is required by statute. The [Crimes Act 2016](#) as amended in 2020 sets out those acts and omissions that are crimes in Nauru.

There are different categories of crime, and the category of crime determines which court has jurisdiction to hear and determine the matter.

Criminal prosecutions are generally brought by the State, as represented by the Director of Public Prosecutions, against a person(s) who is alleged to have committed an offence.

Civil jurisdiction

This covers disputes between individuals, and between individuals and the State, that are not criminal matters.

Jurisdiction derived from custom

This jurisdiction arises from the customs, traditions and values of the people of Nauru.

Section 3(1) of the Customs and Adopted Laws Act 1971 has specifically recognised existing customary law and cultural practices for customary land cases and inheritance and any matters affecting Nauruans only. But does not apply to the ability to:

- take or deal with the property of any other person without that person's consent; or
- deprive the parents of a child of its custody and control without their consent.

The [Child Protection and Welfare Act 2016 \(CPWA\)](#), specifically in section 5 (Guiding Principles) also recognises Nauruan tradition, culture and community values apply when using or applying the CPWA in practice, except where such matters conflict with the rights of children as provided for in the CPWA.

In practice generally, common law will normally be followed without any consideration of whether there is an applicable customary law even though it is inferior.

Supervisory jurisdiction

Supervisory jurisdiction refers to the supervisory role that a higher court has over subordinate courts to ensure that justice is properly administered. Section [37](#) of the Supreme Court Act (SCA) gives the Supreme Court the supervisory power over inferior courts and tribunals. Where an appeal procedure is available, this remedy is not available for parties.

The Supreme Court may call for and examine the record of the District Court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order made and as to the regularity of any proceeding: s [58](#) SCA. The Resident Magistrate has the same powers over the Lay Magistrates (s [60\(1\)](#) SCA) but it must forward the matter to the Supreme Court for any remedial action: s [60\(2\)](#) SCA. See sections [61-64](#) of the SCA as to the exercise of the power.

1.4 The structure of Nauru's court system

1.4.1 Court of Appeal

The [Nauru Court of Appeal Act 2018](#) (NCAA) establishes the Nauru Court of Appeal (CA) as a court of record which means that proceedings are recorded and available as evidence of fact: s [4](#) NCAA.

The CA has the power and jurisdiction to hear and determine all appeals which lie to the Court under the Constitution, this Act or any other written law: s [5](#) NCAA.

An appeal to the CA in any civil proceedings is available from any final judgment, decision or order of the Supreme Court:

- sitting in the first instance including a judgment, decision or order of a judge in chambers; District Court, Family Court, or other subordinate tribunals where the law allows those decisions to be appealed to the Supreme Court,
- on an appeal from a decision of the Nauru Lands Committee; or under the [Refugees Convention Act 2012](#) in its appellate jurisdiction on questions of law only,
- interpreting the Constitution,
- when required as provided under this Act, other written law or the rules of the court: s [19](#) NCAA.

An appeal to the CA in criminal proceedings is available from any final judgment, decision or order of the Supreme Court:

- in its original jurisdiction against conviction on a question of law or a question of mixed law and fact:
 - with the leave of the court on a question of facts only,
 - against the sentence passed unless the sentence is fixed by the law,
 - with the leave of the court against the grant or refusal of bail including any conditions or limitations, made either by the accused or the Director of Public Prosecutions: s [29](#) NCAA
- in its appellate jurisdiction:
 - with the leave of the court
 - on a question of law only (error of law): s [30](#) NCAA
- for a case stated or the revisional jurisdiction of the Supreme Court:
 - with the leave of the court: s [31](#) NCAA.

The CA sits at least once a year and is notified in the Gazette by the Registrar no later than 15th January of each year, subject to the Court being able to sit as the President of the Court of Appeal deems necessary: s [6](#) NCAA.

If the CA or a single Justice of Appeal is unable to sit in Nauru due to urgent or exceptional circumstances, the Court or a single Justice of Appeal may sit to hear or make orders in a cause or matter from outside the Republic through audio visual link: s [6](#) NCAA.

The CA consists of not less than three Justices of Appeal including the President of the Court of Appeal. However, the Court may sit with two Justices of Appeal where the President of the Court of Appeal deems it is impractical to summon a full court: s [8](#) NCAA.

If the President of the CA is unable to sit in an appeal by virtue of Article [57\(6\)](#) of the Constitution or another reason, the Senior Justice of Appeal shall preside in the sitting of the Court, and another Justice of Appeal shall substitute the President of the Court of Appeal: s [8](#) NCAA.

A majority of the Justices of Appeal decide the judgment, decision or order of the Court. If they are equally divided, the judgment, decision or order appealed from the Supreme Court is taken as affirmed and the appeal is deemed to be dismissed. A Justice of Appeal or the Registrar may deliver the judgment, decision or order of the CA where it cannot be constituted in accordance with section 8: s [16](#) NCAA.

A judgment, decision or order of the court may be enforced by the Supreme Court as if it had been given or made by the Supreme Court: s [18](#) NCAA.

1.4.2 Supreme Court

Articles [48](#), [49](#) and [54](#) Constitution, [Supreme Court Act 2018 \(SCA\)](#), and [Criminal Procedure Act 1972](#) (CPA)

The Supreme Court of Nauru is established under Article 48 of the Constitution, as confirmed by the Supreme Court Act 2018: s [4\(1\)](#) SCA. It has the jurisdiction conferred on it by the Constitution, this Act, any other written law and inherent jurisdiction: s [4\(2\)](#) SCA. The Supreme Court is a Superior Court of record: s [4\(3\)](#) SCA. It has civil, criminal, commercial, family, probate, appellate, constitutional and administrative, miscellaneous, and such other divisions which the Chief Justice may deem appropriate; s [4\(4\)](#) SCA.

The Supreme Court has original and appellate jurisdiction to try all civil and criminal matters: s [17](#) SCA. The Court hears civil and criminal appeals from final decisions of the District Court. Criminal appeals may be based on questions of fact or of law: s [38](#) SCA. This right of appeal is limited to the extent and legality of the sentence and only with leave of the Supreme Court, in the case of a guilty plea or for petty cases where the sentence is a fine under \$100: s [39](#) SCA.

The Supreme Court has the following jurisdiction:

- to hear any offence under the [Crimes Act 2016](#), subject to the provisions of any written law relating to children or young persons: s [4](#) CPA,
- to hear any offence under any other statutes than the Crime Act 2016, where the court is not specified or even where the court is specified to be tried by a court other than the Supreme Court or the District Court: s [5](#) CPA,
- pass any sentence or combination of sentences, and make any order, authorised by law for which provision is made in the Crimes Act 2016 or in any other written law: ss [6](#) and [8](#) CPA,
- unlimited original civil jurisdiction: s [65](#) SCA. Although the [Civil Procedures Rules 1972](#) continue to apply to civil proceedings, the Chief Justice may also make these rules: s [76](#) SCA. The Supreme Court is paramount on constitutional issues: Art [54](#) SCA,
- supervisory jurisdiction over subordinate or inferior courts and tribunals, which are not criminal proceedings: s [37](#) SCA.

The Supreme Court may direct any matter be transferred into the District Court for determination, except where the District Court has already transferred this matter to the Supreme Court to determine a question involving the interpretation or effect of the Constitution: s [23](#) SCA.

The Supreme Court consists of a Chief Justice and any other judges appointed by the President in consultation with the Chief Justice and prescribed by the law: s [6](#) SCA. To be eligible a judge must have been entitled to practise as a barrister or solicitor in Nauru and have been entitled to do so for not less than ten years: Art [49](#). A single judge may exercise the jurisdiction of the Supreme Court except where a full Supreme Court is required as set out below.

The full Supreme Court is made up of a panel of three judges selected by the Chief Justice to:

- hear any matter of significant public importance,
- hear an important point of law,

- render an opinion under Article 55 of the Constitution, and
- hear any matter as required under any written law or the rules of the court exercisable by the Master, Registrar or other officer of the Supreme Court: s [7](#) SCA.

The Chief Justice directs when the Supreme Court sits for a trial or hearing of a cause, matter or an interlocutory application in the Republic and the registrar will issue notice to the parties in compliance with the directions of a judge or rules of the court: s [80](#) SCA.

Where a judge of the Supreme Court is not able to be in the Republic, in urgent or exceptional circumstances, they may hear or make orders for a cause or matter from outside the Republic through audio visual link: s 80(4) SCA (as amended by s [10](#) SCAA No 2 (2020)).

1.4.3 District Court

Article [48](#) Constitution, [District Court Act 2018](#) (DCA), and [Criminal Procedure Act 1972](#) (CPA)

The District Court has jurisdiction to deal with:

- criminal matters under the Criminal Procedure Act 1972,
- any jurisdiction conferred on it by the DCA or any other statute, and
- dividing chattels, recovering land in limited circumstances, interpleader applications, and family matters under the DCA: s [14](#) DCA.

See the chapter on [District Courts](#) to find out more details about the District Court's jurisdiction.

1.4.4 Family Court

The Family Court is a separate court. It has specific jurisdiction under the:

- [Family Court Act 1973](#)
- [Matrimonial Causes Act 1973](#)
- [Guardianship of Children Act 1975](#)
- [Maintenance Act 1959](#)
- [Adoption of Children Act 1965](#)

Proceedings are not open to the public.

See [Chapter 4](#) for further information on the Family Court Act 1973.

1.5 Public Service Board and Police Service Board

Article [69](#) Constitution

Parliament may vest the powers and functions of the Chief Secretary under Article [68](#) (appointments in the public service etc) in:

- a) a Public Service Board consisting of the Chief Secretary as Chairperson, and at least two other persons who are not members of Parliament; and
- b) the public officer in charge of the Nauru Police Force, for appointments of public officers in the Nauru Police Force. This power is subject to the consent if any, of the Police Service Board.

If this power is delegated under paragraph b, Parliament must also establish a Police Service Board consisting of at least three people who are not members of Parliament. One should be a person qualified to be appointed as a judge of the Supreme Court to be appointed by the Cabinet (the chairperson), the Chief Secretary, and one person elected by members of the Nauru Police Force in accordance with the law.

The Police Service Board may exercise such other powers and functions as are conferred on it by law and should regulate its own procedure, subject to this Article and any law.

The Police Service Board may hear any appeals from a decision of the public officer in charge of the Nauru Police Force to remove a public officer from office or to exercise disciplinary control over a public officer. There is no appeal from a decision of the Board.

1.5.1 Public Service Appeals Board

Article [70](#) Constitution

The Public Service Appeals Board consists of a person qualified to be appointed as a judge of the Supreme Court to be appointed by the Cabinet (the chairperson), one person appointed by the Cabinet and one person elected by public officers. A member of Parliament is not qualified to be a member of the Public Service Appeals Board (see Article 70 for more details around appointment or removal from the Board).

Except where an appeal lies to the Police Service Board, the Public Service Appeals Board may hear appeals from a decision to remove a public officer or to exercise disciplinary control over a public officer made by that public officer. Their decision is final.

The Public Service Appeals Board shall exercise and perform such other powers and functions as are conferred on it by law and regulate its own procedure (subject to the law and the Constitution).

1.5.2 Court processes

Article [10](#) Constitution

For criminal matters, the constitution provides for the right to a fair trial within a reasonable time by an independent and impartial court under Article 10. An independent judiciary will generally enforce this. Procedural safeguards are based on English common law. The defendant's fundamental rights include:

- the presumption of innocence until proven guilty according to the law,
- the right to be informed promptly of charges in a language the defendant understands or the right to use an interpreter free of charge and to be informed of the details of the nature of the offence,

- given adequate time and facilities to prepare a defence,
- the right to legal counsel (appointed at public expense when required in the interest of justice if they do not have sufficient means to pay the costs incurred),
- the right to examine the prosecution witnesses, present evidence, and be present for the whole of their trial (unless they behave so badly it is impractical for them to remain), and
- a prohibition on double jeopardy and forced self-incrimination.

All trials are held in public, except where you exclude persons, other than the parties and their legal representatives, where you are empowered to do so and:

- you consider it necessary or expedient in the interests of public morality or in circumstances where publicity would prejudice the interests of justice, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings; or
- in the interests of defence, public safety or public order.

For civil actions, there is an independent and impartial judiciary, including access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations.