

COURTS OF TONGA ANNUAL REPORT 2018



WELCOMING CEREMONY FOR HON. JUSTICE NIU (JULY 2018)

Back Row (L-R): Chief Magistrate Lokotui, Magistrate Kaufusi, Magistrate Langi, Magistrate Tuita, Magistrate Mafi

Front Row (L-R): Hon. Minister of Justice S. V. Fa'otusia, Hon. Justice Cato, Lord Chief Justice Paulsen, Hon. Justice Niu, Solicitor General Sione Sisifa

**COURT OF APPEAL, SUPREME COURT,
LAND COURT AND MAGISTRATE'S COURT OF TONGA**

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From the Lord Chief Justice

I am pleased to present this annual report for the Courts of the Kingdom of Tonga.

We have built on the work done in 2017 to make the annual report easily readable and informative. There have been two innovations. First, we have combined the annual reports of the Superior Courts and the Magistrate's Court. Secondly, whilst this report again focuses on the 15 Cook Island Indicators we have added sex and age disaggregated data in criminal and divorce cases which gives us information we need to improve Court services. In following years we will add to the disaggregated data and include disability data.

The Courts had another productive year and are keeping up with their workloads. Where performance appears to have declined on past years explanations are provided in this report.

There were significant developments in this reporting period. First, the business of the Courts was severely disrupted by Tropical Cyclone Gita and I wish to thank the staff for toiling under difficult conditions to keep the Courts open for a number of weeks before normalcy (and electricity) was restored. I would also like to thank Justice Cato who in my absence overseas performed the duties of Lord Chief Justice during this period.

Secondly, as I mentioned in the forward to the 2017 annual report, it was with great sadness that we learned of the passing of the Chief Executive Officer for Justice Miss Susana Faletau. It has been a year since Susana's death and the passage of time has only served to highlight the great work that she was doing in the justice sector. She is sorely missed.

Thirdly, there were two significant appointments. Mrs Elisapeti Langi was appointed a Senior Magistrate and is presently the only woman Judicial Officer in the Kingdom. She has been doing splendid work in the areas of family violence and youth justice and is a great asset to the Kingdom. Later in the year, Mr Laki Niu was appointed a Judge of the Supreme Court and Land Court. He is the first Tongan to permanently sit on the Supreme Court for over a century.

Fourthly, a new court house was completed and opened at Ha'apai. Senior Magistrate Ma'u has taken up the post of resident Magistrate there. These developments ensure that timely justice is now available to the people of Ha'apai.

There continue to be serious access to justice concerns in Tonga. Many people (including, but certainly not limited to, disadvantaged groups and people with disabilities) cannot access or afford lawyers or legal advice and face substantial barriers to obtaining justice. Except in one respect, there is no legal aid in Tonga. In addition, the quality of legal services provided to the public are not to the standard they are entitled to expect. There is also no youth diversion scheme nor a meaningful Youth Court. Much more needs to be done to resolve these concerns. That will require the allocation of resources by Government and community support.

On a positive note, the Family Protection Legal Aid Centre, which provides free legal services to victims of domestic and family violence, has been busy over the last 12 months and has processed a large number of cases. This demonstrates the need for legal aid assistance to be provided more generally to the people of Tonga.

From a management perspective, the Supreme Court continues to function efficiently due in no small part to the hard work of the Registrar, Miss Fatima Fonua, and the Deputy Registrar, Mr Tevita Fukofuka.

The administration of the Magistrate's Court must be improved and public criticisms of the Courts tends to be focused upon experience of the Magistrate's Court. There are at the moment proposals from donors to provide assistance to the justice sector and in so far as such assistance is to be given for the Courts it would be my wish and recommendation that the emphasis be on the Magistrate's Court and at a minimum provide the following:

- The appointment of an overseas trained Registrar who as well as providing leadership can conduct and implement a thorough review of the processes of the Magistrate's Court;

- Updating of the Case Management System so that it is able to collect comprehensive and accurate data, monitor case activities and performance and produce management reports/documents;
- Ongoing training to staff on the use of the Case Management System and the importance of recording accurate data;
- The installation of equipment to record and transcribe all Court proceedings; and
- Training for Magistrates who should be expected to produce written rulings on all significant matters.

It is desirable that in future all new Magistrates are legally qualified. However, it is presently difficult to attract fully qualified Law Practitioners to apply for appointment because the position is not accorded its proper status and is not well remunerated.

I am grateful to Miss Fatima Fonua and staff of the Ministry of Justice, Mrs Fololeni Vaiangina, Miss Salome Moala and Mr Albert Cocker, who together did all the hard work of collecting the data in this report and without whose assistance its production would not have been possible.

O G Paulsen
Lord Chief Justice of Tonga

Executive Highlights

This has been another productive year for the Courts which is notable for the following matters:

- There has been a decrease in the number of licensed Law Practitioners in the Kingdom. There remains an urgent need for more legally qualified Law Practitioners offering services to the public (rather than Government) to adequately service the public need.
- The Supreme Court, Land Court and the Magistrate's Court achieved overall clearance rates of greater than or very near to 100% and are keeping up with their workloads. There was a decrease in the clearance rate of the Court of Appeal due to a large number of appeals been filed late in the year. All of those appeals have now been heard and there is no backlog of appeals in the Court of Appeal.
- All of the Superior Courts are finalizing their caseloads within acceptable timeframes.
- The percentage of appeals from the Supreme Court is low whilst the percentage of appeals from decisions of the Land Court remains relatively high.
- The quality of the decisions of the Superior Courts remain high. The percentage of successful appeals from decisions of the Supreme Court and the Land Court has fallen and in the case of the Land Court there were no successful appeals this year.
- The percentage of successful appeals from the Magistrate's Court is relatively high and may reflect the fact that most Magistrates are not legally qualified.
- There are few formal complaints against Judicial Officers or Court Staff.
- The Ministry of Justice continues to be proactive in making information available to the public about the Courts' functions and services.

- All written decisions of the Superior Courts are widely reported in the media and distributed and available on-line to the public.
- There has been a strong emphasis on providing training to Judicial Officers. This has been mainly achieved through funding provided by the New Zealand Government under the Pacific Judicial Strengthening Initiative and the Pacific Participation Fund. In this reporting period mediation training was also provided to select Law Practitioners by a leading New Zealand mediator, Mr. John Hardie, in the hope that this would foster greater co-operation between Law Practitioners and result in the resolution by agreement of a greater number of cases.
- The Lord Chief Justice and Registrar of the Supreme Court continued to implement new procedures for processing cases within the Superior Courts. These included a new Practice Direction concerning applications for Letters of Adoption and Legal Guardianship Orders to ensure orders made are in the best interests of the subject children.

The Courts and the Judiciary

The Judiciary is the third arm of Government along with the Legislature and the Executive. Its principal functions are to interpret and apply the laws of the Kingdom, which have most often been enacted by the Legislative Assembly, and to review the policies and decisions of the Executive. The Judiciary is independent of the two other arms of Government (clause 83A of the Constitution).

The Head of the Judiciary is the Lord Chancellor who has primary responsibility for the administration of the Courts, all matters relating to the Judiciary and the maintenance of the Rule of Law (clause 83B of the Constitution).

The Lord Chancellor is Mr. Albert Harrison Waalkens Esq KC QC.

The Professional Head of the Judiciary is the Lord Chief Justice (clause 86 of the Constitution).

The Lord Chief Justice is Lord Chief Justice Owen Godfrey Paulsen.

The judicial power of the Kingdom is vested in the Superior Courts, namely the Court of Appeal, the Supreme Court and the Land Court and a subordinate court called the Magistrate's Court.

In past years separate annual reports have been prepared for the Superior Courts and the Magistrate's Court. This annual report is concerned with the performance of all of the Courts of Tonga. It is hoped that this innovation will continue in future years and make access to information about the performance of the Courts more accessible.

All written decisions of the Superior Courts are available to any person who wants them. There is a database maintained by the Lord Chief Justice's Personal Assistant of citizens, Law Practitioners, Government and non-Government bodies and news media who have asked to receive the decisions of the Superior Courts. They are sent all decisions by email, usually within a day of issue. Any person can be added to this list on request and it is updated regularly. In addition, the decisions of the Superior Courts are published on the websites of the Tonga Crown Law Office and the Pacific Islands Legal Information Institute (PacIii).

The Judiciary of the Kingdom comprises the following:

The President of the Court of Appeal and the Judges of the Court of Appeal;

The Lord Chief Justice and the Judges of the Supreme Court;

The Lord President and the Judges of the Land Court; and

The Chief Magistrate and the Magistrates of the Magistrate's Court.

The Court of Appeal

The Court of Appeal hears all appeals from the Supreme Court and from the Land Court except appeals relating to the determination of hereditary estates and titles (clause 92 of the Constitution).

There is no right of appeal from the decisions of the Court of Appeal. It is the highest Court in the Kingdom except in respect of appeals from the Land Court on matters concerning hereditary estates and titles. Those appeals are heard by His Majesty in Privy Council.

The Court of Appeal sits at Nuku'alofa twice a year for up to two weeks each session. The sessions are usually in March/April and September/October. The decisions of the Court are delivered at the end of each session.

There is a panel of Judges of the Court of Appeal. The Judges are appointed by His Majesty in Privy Council (clause 85 of the Constitution).

All Judges of the Court of Appeal are appointed on fixed term contracts.

The selection of the Judges to sit in each session of the Court is made by the Lord President of the Court of Appeal (often in consultation with the Vice President).

The Lord President of the Court of Appeal is President Owen Godfrey Paulsen.

The Vice President in the reporting period was Hon. Justice Ken Handley.

The only resident Judge of the Court of Appeal in the reporting period was the President Owen Godfrey Paulsen. The other Judges reside overseas. The overseas

Judges are all eminent jurists who have held high judicial office in their own countries.

The Judges who sat on the Court of Appeal in this reporting period were:

Hon President Owen Godfrey Paulsen (President);

Hon Justice Ken Handley (Australia) (Vice President);

Hon Justice Sir Peter Blanchard (New Zealand); and

Hon Justice Rodney Hansen QC (New Zealand).

The Supreme Court

The Supreme Court has jurisdiction to hear all cases arising under the Constitution and the Laws of the Kingdom except those cases concerning titles to land which are within the exclusive jurisdiction of the Land Court (clause 90 of the Constitution). It also hears appeals from the Magistrate's Court (section 74 of the Magistrate's Court Act).

Appeals from decisions of the Supreme Court are made to the Court of Appeal.

The Judges of the Supreme Court are appointed by His Majesty in Privy Council (clause 86 of the Constitution).

The Supreme Court Judges are presently appointed for fixed terms. They hold office during good behavior (clause 87 of the Constitution).

The Judges in the Supreme Court in the reporting period were:

Lord Chief Justice Owen Godfrey Paulsen;

Justice Charles Bentley Cato; and

Justice Laki Niu (appointed 1 July 2018).

The Supreme Court sits at Nuku'alofa but also undertakes circuits to the Outer Islands. This year the Court undertook two circuits to Vava'u, and one circuit to Ha'apai. There were no cases awaiting hearing in 'Eua or the Niucas and the Court did not travel there.

The Supreme Court's workload broadly covers the following areas (referred to as divisions) namely:

Criminal;

Civil;

Appellate (from the Magistrate's Court including civil and criminal cases);

Family (including custody and access, divorce, adoptions and wedlock applications); and

Estate Administration.

The Land Court

The Land Court has a broad jurisdiction to hear and determine disputes, claims and questions of title concerning land in the Kingdom (section 149 of the Land Act).

The Judges of the Land Court sit with Assessors whose role it is to assist the Judge with explanations and advice regarding Tongan usages and customs. However, the decision of the Court is formulated and announced by the Judge alone. Assessors have no voice in the decisions of the Land Court (section 146(1) of the Land Act).

Appeals from the Land Court are generally to the Court of Appeal except in cases where the appeal relates to the determination of hereditary estates and titles in which case the appeal is to His Majesty in Privy Council (section 162 of the Land Act).

The Judges of the Land Court are appointed by His Majesty in Privy Council and hold office during His Majesty's pleasure (section 146 of the Land Act).

The Judges able to exercise the jurisdiction of the Land Court in the reporting period were:

President Owen Godfrey Paulsen;

Justice Charles Bentley Cato; and

Justice Laki Niu.

The Land Court sits primarily at Nuku'alofa but undertakes circuits to the Outer Islands. The Land Court undertook two circuits to Vava'u but did not sit in Eua, Ha'apai or the Niuas as there were no cases to be heard there.

The Magistrate's Court

The Magistrate's Court exercises both civil and criminal jurisdiction. It is the Court of first instance in all criminal cases. For serious criminal cases that must be tried in the Supreme Court a preliminary inquiry is conducted in the Magistrate's Court and only if it is found that the accused has a case to answer is he/she committed for trial in the Supreme Court.

The Magistrate's Court has its own general criminal jurisdiction in respect of offences punishable by way of a fine not exceeding \$10,000 or a period of less than three years' imprisonment. In addition, it has an enhanced jurisdiction to hear criminal cases remitted to it by consent of the parties from the Supreme Court where the offence is punishable by way of a fine not exceeding \$50,000 or a period of seven years' imprisonment. There is presently only one Magistrate who exercises this enhanced jurisdiction.

The Magistrate's Court hears civil matters where the amount in dispute does not exceed \$10,000. It also has jurisdiction in some family cases, including claims for maintenance under the Maintenance of Deserter Wives Act and the Maintenance of Illegitimate Children Act. It hears almost all applications under the Family Protection Act.

The Magistrates in the reporting period were:

Chief Magistrate Sione Folau Lokotui;

Principal Magistrate Paula Tatafu;

Principal Magistrate Salesi Mafi;

Senior Magistrate Frederick Tuita;

Senior Magistrate Similoni Tu'akalau;
Senior Magistrate Penisimani Ma'u;
Senior Magistrate Manamo'ui Kaufusi; and
Senior Magistrate 'Elisapeti Langi (appointed 29 March 2018).

The Magistrate's Court has four main registries situated in Nuku'alofa, 'Ohonua, Pangai and Neiafu. In the reporting period the Court undertook six circuits to 'Eua, three circuits to Ha'apai and one circuit to the Niuas.

The work of the Magistrate's Court is broadly divided between five divisions which are as follows:

Criminal (including private prosecutions);
Civil (including revenue matters referred to as civil inland and private inland);
Family;
Youth; and
Infringement (including traffic, traffic general, drunken driver, spot fine, tobacco and litter and waste).

The Legal Profession

The Registrar of the Supreme Court is responsible to keep the Roll of Law Practitioners in the Kingdom (section 4 of the Law Practitioners Act). The Lord Chief Justice may enroll Law Practitioners who are of suitable character and have sufficient knowledge and experience and training in the law (section 5 of the Law Practitioners Act). Law Practitioners are required to be issued with a Law Practitioners Practising Certificate in each calendar year (section 7 of the Law Practitioners Act).

The table below shows the total number of Law Practitioners that were issued with Practicing Certificates in this and the previous three years. It also breaks down the totals between the different categories of Law Practitioner.

Year	Total	Kings	Senior	Fully	Locally	New Law
	Certificates issued	Counsel	Counsel	Qualified	Qualified	Practitioners
2018	79	1	7	62	9	6
2017	87	1	8	65	14	6
2016	83	1	8	60	14	7
2015	83	1	8	58	16	9

Fully qualified Law Practitioners have obtained a law degree and satisfied the requirements for admission as a lawyer in another Commonwealth jurisdiction. Locally qualified Law Practitioners do not hold a law degree but have satisfied the Lord Chief Justice that they are suitable persons to be engaged in the practice of law in the Kingdom's Courts.

There was a decline in the numbers of both fully qualified and locally qualified Law Practitioners in this reporting period. It appears that most legally qualified Law Practitioners (including those recently enrolled) choose to be employed in Government service rather than private practice. There is a major shortage of Law Practitioners offering services to the public. Only a very small number appear before the Courts. This is a serious access to justice concern.

The Cook Island Indicators

In March 2012, the Chief Justices of 14 Pacific Island Countries participating in the Pacific Judicial Development Programme (which includes Tonga) met in Suva, Samoa and agreed to progressively build the capacity of their Judicial and Court Staff to publish annual reports, which included Court performance data and results against 15 indicators. These 15 indicators are known collectively as the Cook Island Indicators.

A description of the Cook Island Indicators is in the Appendix.

The collection and analysis of this data over a number of years allows the Courts to evaluate performance year by year, identify trends, allocate resources efficiently and set realistic and appropriate Court performance standards.

The reporting of this data to stakeholders and to the public promotes accountability and transparency of the Judiciary.

What follows is the performance data for the Courts against each of the 15 Cook Island Indicators.

Where applicable (and data is available) performance is compared with results in previous reporting periods and against the standards set for the Courts in the Annual Management Plan.

Indicator one – clearance rate

Court of Appeal

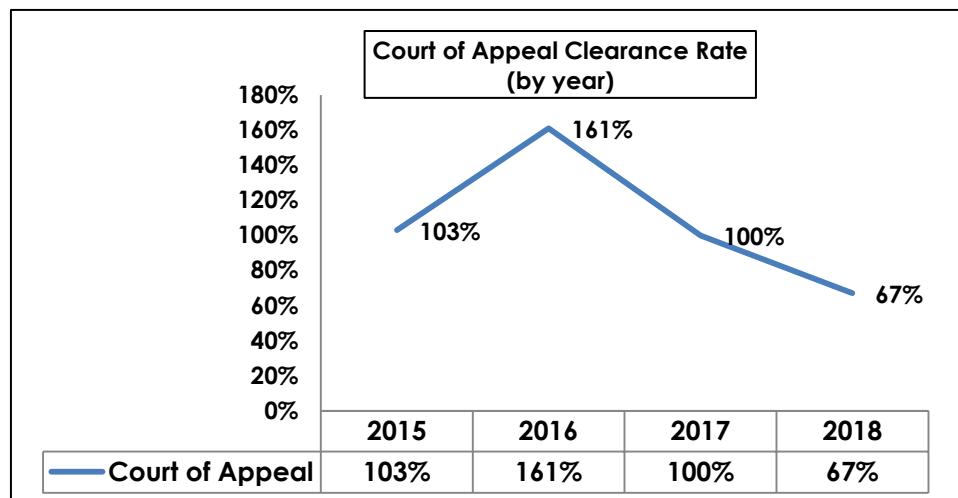
At the beginning of this reporting period (1 January 2018) there were eight cases pending in the Court of Appeal. A further 24 appeals were filed in the reporting period. The Court finalized 16 appeals leaving 16 appeals pending at the end of the reporting period.

The Court of Appeal's clearance rate in this reporting period was 67%.

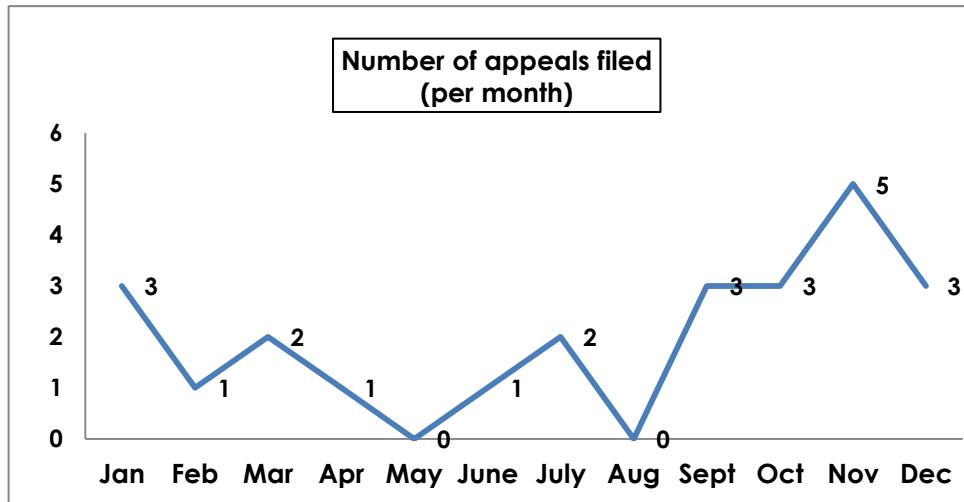
The table and line graphs below are a summary of the work of the Court of Appeal in this and the last three reporting periods.

It should be noted that there are some anomalies in the numbers of cases carried forward each year due to corrections made in the Case Management System.

Court of Appeal	Previous pending	New appeals filed	Appeals filed and finalised in this reporting period	Total appeals finalised	Total pending
2018	8	24	8	16	16
2017	7	15	8	15	7
2016	17	18	12	29	6
2015	13	32	15	33	12



There were both a high number and a low clearance rate of appeals this year. In the previous three years the clearance rate has been at or greater than 100%, but it fell to 67% this year. The reason is that an unusually large number of appeals were filed in the last few months of the year (see line graph below). There were 14 appeals filed in September to December. Because the Court sits only twice a year it had no opportunity to hear those appeals. They have now all been heard in the Court of Appeal's first session of 2019.



Supreme Court

In the Ministry of Justice's Annual Management Plan the baseline for this indicator is a clearance rate of 106% and the target was to increase the clearance rate in the reporting period to 110%.

At the beginning of this reporting period there were 378 cases pending in the Supreme Court. A further 844 cases were filed this year. The Supreme Court finalized 842 cases. There were 380 cases pending at the end of the reporting period.

The Supreme Court's clearance rate in this reporting period was 100%.

This clearance rate is satisfactory and indicates that the Court is keeping up with its workload. All cases that are ready for hearing are given dates immediately and once heard all written decisions are issued within no more than a few weeks and often on the same day in many types of case.

The largest number of pending cases, both at the beginning and end of the reporting period, were family cases. Many of these cases cannot be finalized because applications are incomplete. The Court provides direction to applicants as to what is required to advance their cases but is reliant upon them to comply. This is the main reason why the clearance rate is lower than the baseline indicator.

The table below is a summary of the work of the Court in this and the three previous years.

Supreme Court	Previous pending	New cases filed	Cases filed and finalised in the reporting period	Cases finalised	Pending at end of reporting period
2018	378	844	506	842	380
2017	417	727	448	795	349
2016	454	817		858	417
2015	598	751		926	423

There are anomalies in the number of cases carried forward from previous reporting periods due to updating of the Case Management System.

The summary for this reporting period is broken down by division in the tables below. The workload of the family law division is further broken down between the different kinds of application that are made to the Court.

Division	Previous pending	New cases filed	Cases filed and finalised in the reporting period	Total finalised	Total pending
Criminal	72	175	101	164	83
Civil	61	77	32	81	58
Criminal Appeal	2	23	19	21	4
Civil Appeal	4	3	2	5	2
Divorce	85	236	160	241	80
Adoption	53	89	28	77	65
Legal Guardianship	49	68	32	74	43
Protection Order	0	1	1	1	0
Wedlock	39	91	68	102	28
Custody	2	5	4	6	1
Estate Administration	11	76	59	70	16
TOTAL	378	844	506	842	380

Division	Clearance Rate
Criminal	94%
Civil	105%
Criminal Appeal	91%
Civil Appeal	167%
Divorce	102%
Adoption	87%
Legal Guardianship	109%
Wedlock	112%
Custody	120%
Estate Administration	92%
Protection Order	100%
TOTAL	100%

With the exception of criminal cases, criminal appeals, estate administration and adoptions all clearance rates were at or exceeded 100% and the overall clearance rate for all divisions was 100%. This year greater judicial resources were allocated to criminal cases. That the clearance rate for criminal cases has remained below 100% reflects an increase in the number of cases that were filed from 150 in 2017 to 175 this year. Criminal appeals are few in number and not statistically significant. The lower clearance rates in estate administration and adoptions cases are because applicants fail to complete application requirements and do not suggest any concerns with the Court's processes.

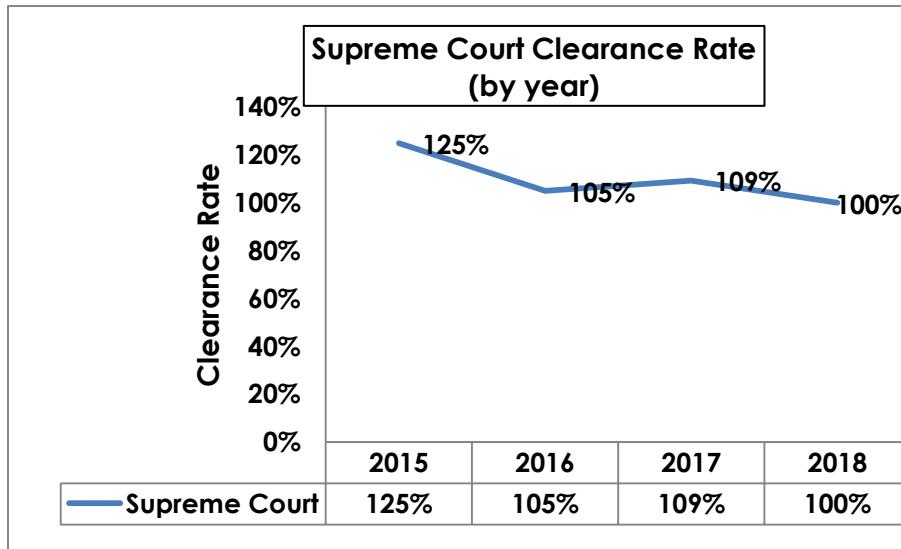
The clearance rates for all cases heard in circuit courts in this reporting period are shown in the table below.

Registry	New cases filed	Cases finalised	Clearance rate
Vava'u	44	37	84%
Ha'apai	5	5	100%
TOTAL	49	42	86%

The Court attempts to finalize all pending cases when on circuit. Typically however, applicants in family cases file late applications which cannot be dealt

with until the following circuit and this explains the low clearance rate in Vava'u. There were no circuits to 'Eua or the Nuias in this reporting period.

Overall the Supreme Court has maintained a satisfactory clearance rate of its workload. This is shown in the line graph below.

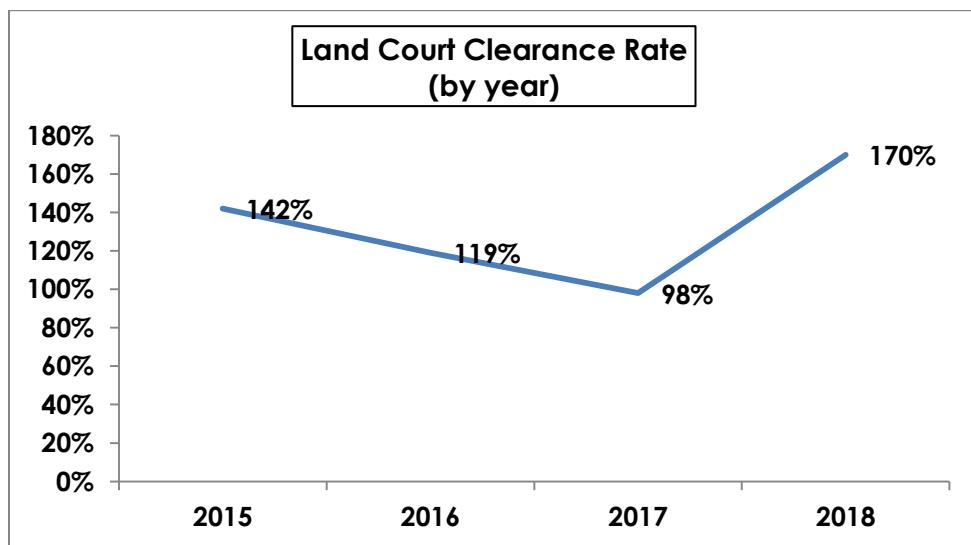


Land Court

At the beginning of this reporting period there were 39 cases pending in the Land Court. A further 27 cases were filed in the reporting period. The Land Court finalized 46 cases. There were 20 cases pending at the end of the reporting period.

The Land Court's clearance rate was 170% which is very good. This is shown in the table and the line graph below.

Court	Previous pending	New cases filed	Cases filed and finalised in reporting period	Total finalised	Total pending
Land Court	39	27	10	46	20



The clearance rate is higher than in previous years because fewer cases were filed this year, the appointment of a further Judge and efficient case management procedures which include the regular inspection and disposal of dormant files.

Cases in the Land Court could be disposed of even more efficiently but for delays in obtaining records from the Ministry of Lands. This was mentioned in the 2017 annual report and is worth highlighting again. There is an urgent need for the records of the Ministry of Lands to be digitized to ensure they are secure, complete, accurate and promptly accessible.

Magistrate's Court

At the beginning of this reporting period there were 2,644 cases pending in the Magistrate's Court. A further 12,140 cases were filed in the reporting period. The Magistrate's Court finalized 12,935 cases. There were 1,849 cases pending at the end of the reporting period.

The Magistrate's Court's clearance rate in this reporting period was 107%.

The majority of pending matters are in the criminal division. However, the figures for the criminal division refer to summonses not cases. A summons is issued for each offence pursuant to s. 15 of the Magistrate's Courts Act. One defendant may be issued with more than one (and sometimes many) summonses and they are recorded individually in the Case Management System. This is a different

procedure than in the Supreme Court where all charges are contained in one indictment and treated as one case in the Case Management System.

The table below is a summary of the work of the Magistrate's Court in this and the previous two reporting periods.

Magistrate's Court	Pending at start of reporting period	New cases filed	Cases filed and finalised in the reporting period	Cases finalized	Pending at end of reporting period
2018	2644	12140	10541	12935	1849
2017	3942	12497		13809	2630
2016	4504	12575		13217	3862

The anomalies in cases brought forward is due to the correction of errors found in the Case Management System upon completion of our review.

To ensure the integrity of the data in the Case Management System there should be ongoing training provided to registry staff emphasizing the importance of accurate data entry and collection.

In this reporting period, a new case type was introduced as the Magistrate's Court started issuing summons for unpaid fines of litter and waste infringement offences.

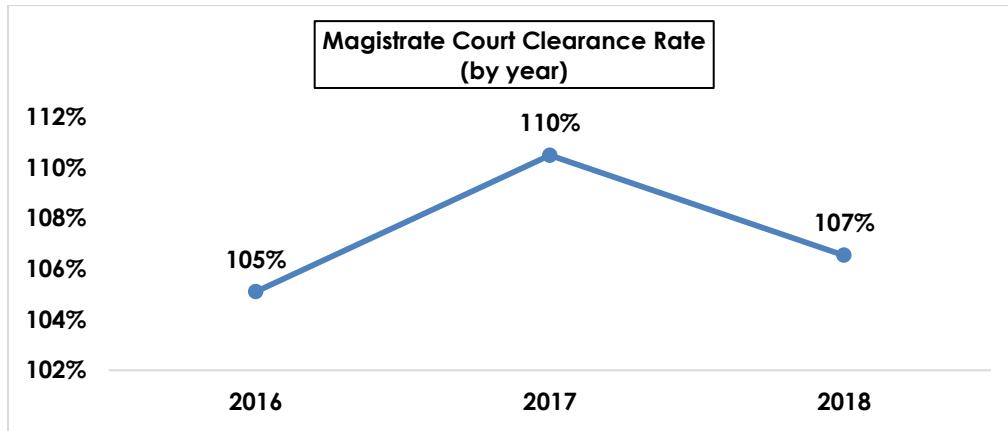
The summary for this reporting period is broken down by division in the tables below. The first table provides the numbers of cases pending, filed and finalized in the reporting period by division of the Court. The second table shows the clearance rate by division of the Court.

Magistrate's Court	Pending at start of reporting period	New cases filed	Cases filed and finalized in the reporting period	Cases finalized	Pending at end of reporting period
Criminal	1137	4949	4036	5035	1051
Civil	138	202	142	256	84
Civil inland	10	17	14	24	3
Private inland	53	52	14	67	38
Private prosecution	37	119	72	104	52
Family protection	43	227	190	233	37
Drunken driver	5	53	47	51	7
Spot fine	344	1501	1379	1667	178
Tobacco	7	33	30	37	3
Litter and Waste	-	51	46	46	5
Traffic	75	992	891	962	105
Traffic general	775	3872	3612	4365	282
Youth day	20	72	68	88	4
TOTAL	2644	12140	10541	12935	1849

Division	Clearance Rate
Criminal	102%
Civil	127%
Civil inland	141%
Private inland	129%
Private prosecution	87%
Family protection	103%
Drunken driver	96%
Spot fine	111%
Tobacco	112%
Litter and waste	90%
Traffic	97%
Traffic general	113%
Youth day	122%
TOTAL	107%

Clearance rates were lower than 100% in four divisions namely; private prosecution, drunken driver, litter and waste and traffic. This is because Law Practitioners and the Police are being granted too many adjournments. It highlights the need for a formal adjournments policy to be introduced in the Magistrate's Court.

Overall the clearance rate is satisfactory indicating that the Magistrate's Court has managed its workload successfully. This is shown in the line graph below.



In each of the last three years the Magistrate's Court has had a clearance rate of more than 100%.

The clearance rates for all cases heard in circuit courts in this reporting period are shown in the table below. The clearance rates for circuit courts remains satisfactory.

Registry	New cases filed	Cases finalized	Clearance rate
Ha'apai	296	298	101%
'Eua	173	194	112%
Niua	19	19	100%
TOTAL	488	511	105%

Indicator two - average duration of case from filing to finalization

Court of Appeal

The average number of days to dispose of an appeal (the duration of an appeal from filing to finalization) in this reporting period was 169 days.

Because there are two sessions of the Court each year and the intention is to hear all pending appeals each session it is to be expected that typically appeals will be heard within six months of filing.

Supreme Court

In the Ministry of Justice's Annual Management Plan the target for this indicator is that all criminal cases should be finalized within 1 year of filing (taken as 365 days) and all civil actions should be finalized within 15 months of filing (taken as 455 days). These targets were exceeded in the reporting period.

The average disposal time in all cases was 222 days.

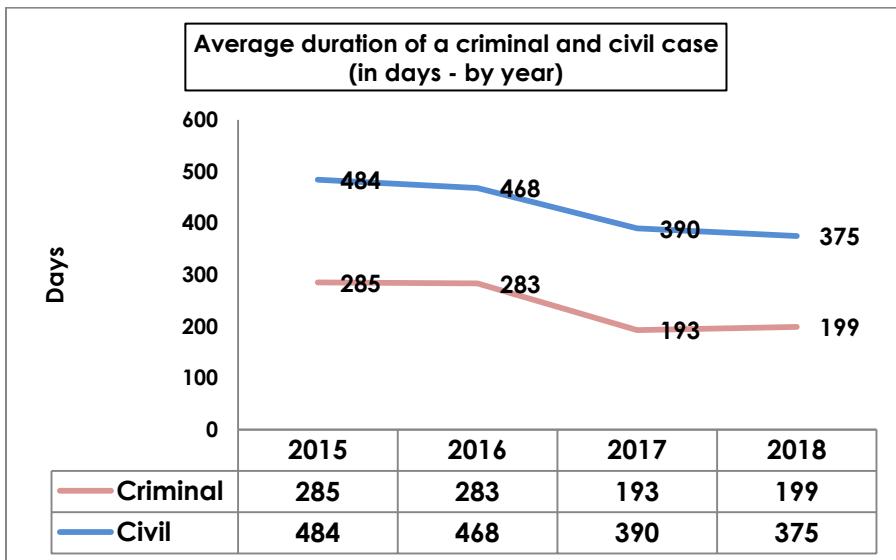
The average disposal time (in days) from filing to finalization in this and in each of the last three years by division of the Supreme Court is shown in the table below. Some data is not available in previous years.

Division	2015	2016	2017	2018
Criminal	285	283	193	199
Civil	484	468	390	375
Criminal Appeal	Not reported	Not reported	148	128
Civil Appeal	Not Reported	Not Reported	109	609
Divorce	Not Reported	Not Reported	165	172
Adoption	Not reported	Not reported	249	376
Legal Guardianship	Not reported	Not reported	215	317
Wedlock	Not reported	Not reported	95	178
Custody	Not reported	Not reported	96	101
Probate & Administration	Not reported	Not reported	96	90
Protection Order	Not reported	Not reported	0	23
TOTAL AVERAGE	385 days	376 days	198 days	222 days
TOTAL AVERAGE CR/CV			292 days	257 days

There is an overall trend for civil and criminal cases to be disposed of more quickly than in past years. This is represented in the line graph below. Civil and criminal cases consume the largest amount of the Court's resources. The faster disposal of these cases is due to greater case management including earlier identification of issues, strict timetabling and the allocation of early hearing dates. Such practices promote early finalization of cases by ruling or settlement.

The data indicates that it has taken longer this year to dispose of civil appeals and adoption and guardianship matters. In relation to civil appeals, this is an anomaly resulting from the finalization of one very old case and is not significant. The slower disposal of family matters is again due to applicants failing to provide necessary information. In this reporting period a Practice Direction was issued requiring more information to be provided in support of adoption and guardianship applications, including Police checks (for all applications) and social workers reports (for inter-country applications). These requirements are consistent with the Court's obligation to consider the interests of the subject children as its paramount consideration. The Court and Crown Law are working with a New Zealand agency

to make it easier for overseas applicants to obtain social workers reports in that country.



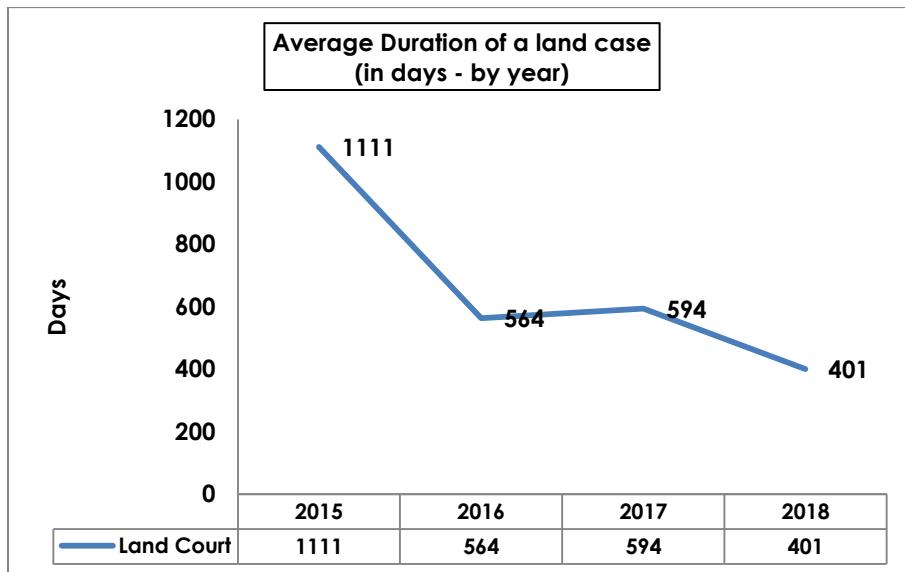
Previous annual reports have not included disposal rates for cases heard in circuit courts. Those figures are in the table below. In future years this data will be included allowing for trends to be identified.

The average disposal time in all cases in circuit courts was 82 days.

Circuit	Total cases finalised	Total Days	Average Days Disposal Time
Vava'u	37	3042	105
Ha'apai	5	386	77
'Eua	0	0	0
TOTAL	42	3428	82

Land Court

The average duration between filing and finalization of Land Court cases in this reporting period was 401 days. This is an improvement on previous years and is represented in the line graph below. Cases in the Land Court are set down immediately they are ready to be heard. There is no delay in allocating hearing dates in the Land Court.



Magistrate's Court

Presently the Magistrate's Court has no targets for this indicator. In the reporting period the average disposal time in all cases was 129 days.

The results for the four main registries and over all registries are reported in the tables below.

'Eua Registry

Division	2017	2018
Criminal	45	83
Civil	Not reported	210
Private prosecutor	Not reported	62
Traffic	Not reported	58
Traffic general	36	287
TOTAL AVERAGE	41 days	140 days

This registry started using the Case Management System in 2017. That is the reason for the unavailability of some data. The results in this year will be used as a base line for future reporting periods.

Ha'apai Registry

Division	2016	2017	2018
Criminal	84	1006	78
Civil	33	104	85
Private prosecutor	0	517	0
Traffic	0	23	31
Traffic general	122	338	0
TOTAL AVERAGE	80 days	398 days	65 days

Cases are being heard more quickly at Ha'apai. The disposal rate in the 2017 year was very high because of a concerted effort to finalize old cases in the Lulunga and Mu'omua Groups. There is now a resident Magistrate in Ha'apai and it is no longer a circuit court.

Vava'u Registry

Division	2016	2017	2018
Criminal	37	18	16
Civil	136	344	149
Civil inland	11	555	756
Private inland	189	510	0
Private prosecutor	168	167	84
Tobacco	0	64	0
Traffic	155	20	20
Traffic general	65	46	119
TOTAL AVERAGE	109 days	216 days	191 days

Overall cases are being heard more quickly at Vava'u. Civil inland cases are exceptions due to adjournment requests; again indicating a need for an adjournments policy. Criminal cases and traffic cases are generally finalized within 3 weeks of filing. This is much faster than in other registries.

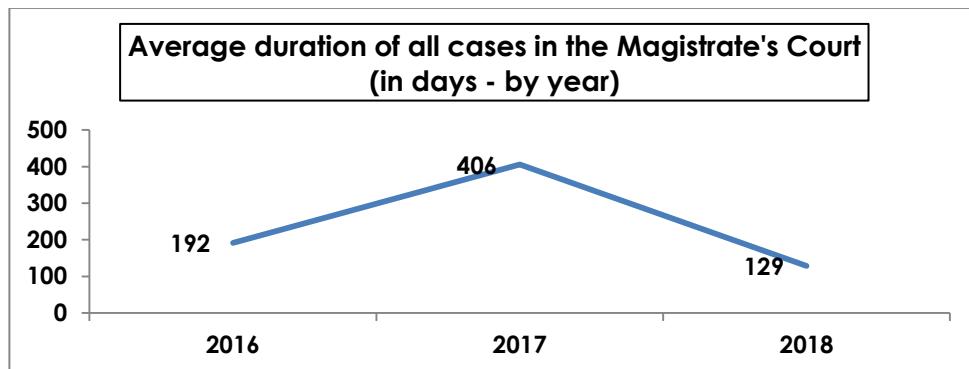
Tongatapu Registry

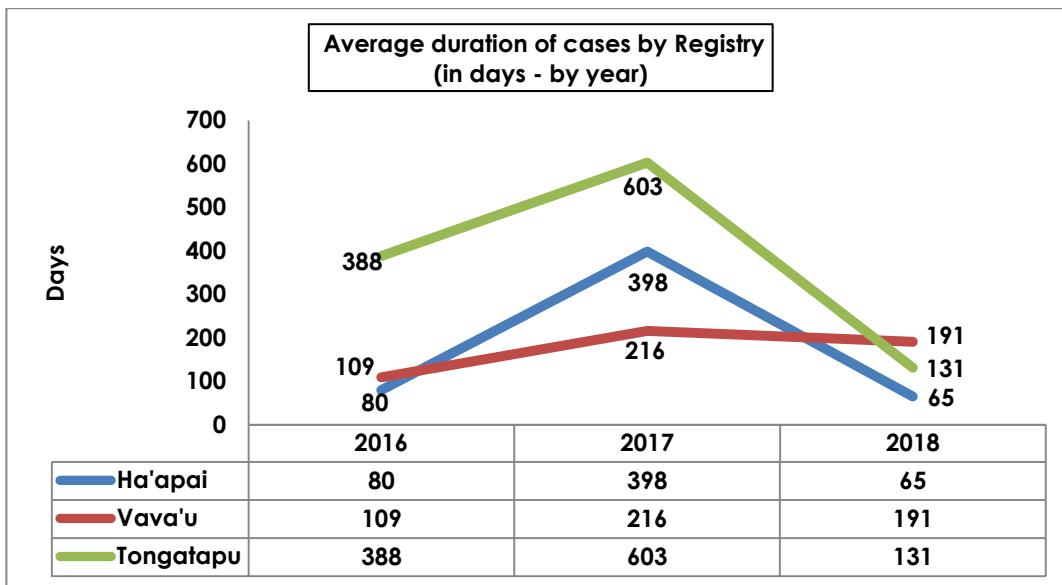
Division	2016	2017	2018
Criminal	766	506	170
Civil	647	765	238
Civil inland	403	640	130
Private inland	112	728	359
Private prosecutor	309	1671	156
Family protection	54	61	96
Drunken driver	105	512	95
Spot fine	862	46	90
Tobacco	50	79	66
Litter and waste	0	0	74
Traffic	778	172	41
Traffic general	165	66	105
Youth day	402	1986	78
TOTAL AVERAGE	388 days	603 days	131 days

There has been an improvement this year but this is largely due to a major effort to dispose of dormant cases in 2017. The result this year should provide a baseline for future reporting periods.

All Registries

The average duration of cases (in days) between filing and finalization in the Magistrate's Court for the last three reporting periods is shown in the line graphs below.





Indicator three – percentage of appeals

Court of Appeal

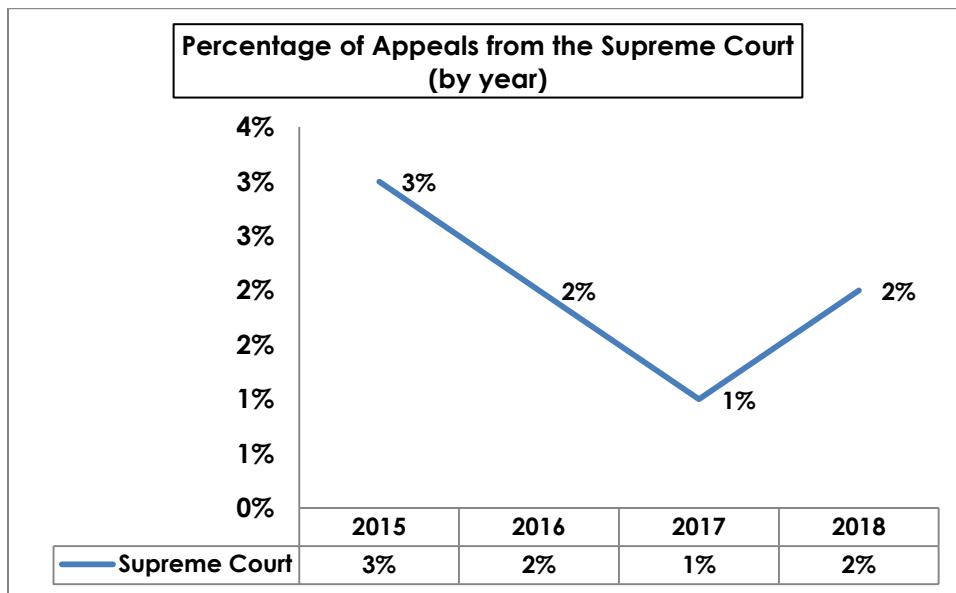
There are no appeals from decisions of the Court of Appeal.

Supreme Court

In the Ministry of Justice's Annual Management Plan the target for this indicator is that the percentage of appeals not exceeds 2% of all cases finalized in the Supreme Court.

The percentage of appeals from all cases finalized in the Supreme Court in the last three reporting periods is shown in the following table and line graphs.

Court	2015	2016	2017	2018
Supreme Court	3%	2%	1%	2%



The percentage of cases appealed by division of the Supreme Court in this reporting period is shown in the table below.

Division	Number of cases filed	Number of cases not appealed	% of cases appealed	% of cases not appealed
Criminal	175	171	2%	98%
Civil	77	76	1%	99%
Criminal Appeal	23	22	4%	96%
Civil Appeal	3	2	33%	67%
Divorce	236	236	0%	100%
Adoption	89	89	0%	100%
Legal Guardianship	68	68	0%	100%
Protection Order	1	1	0%	100%
Wedlock	91	91	0%	100%
Custody	5	5	0%	100%
Estate Administration	76	76	0%	100%
TOTAL	844	828	2%	98%

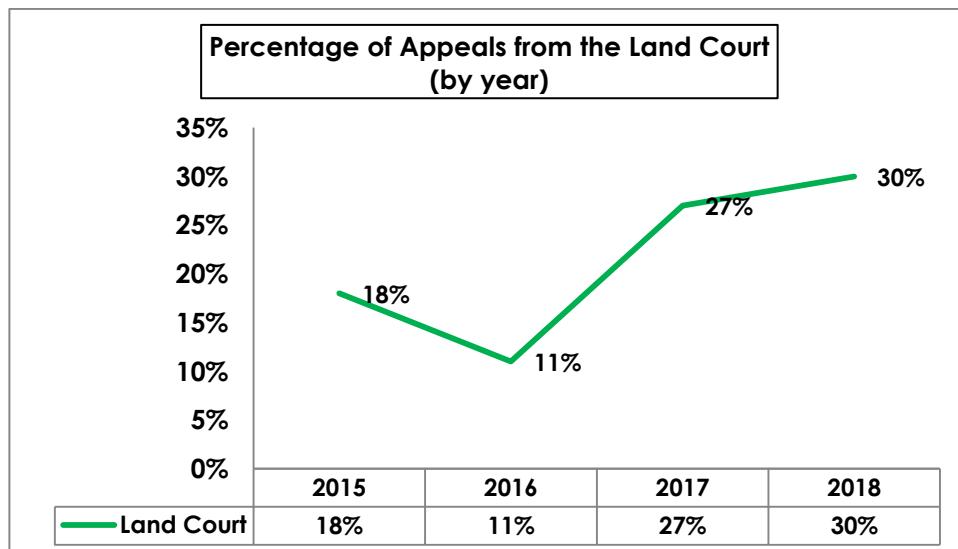
There were a greater percentage of appeals this year than in the previous reporting period. Most of these appeals were filed late in the year. Those appeals have now been heard and the results indicated a need for further judicial training which is being provided.

Land Court

Typically there have been a higher percentage of appeals from decisions of the Land Court than from decisions of the Supreme Court. The percentage of appeals from all cases finalized in the Land Court in this reporting period and in the previous three years is shown in the following tables and line graph below.

Land Court	Cases Filed in 2018 Year	Number of cases appealed	Number of Cases NotAppealed	% of CasesAppealed	% of Cases NotAppealed
	27	8	19	30%	70%

% of CasesAppealed in Land Court	2015	2016	2017	2018
	18%	11%	27%	30%

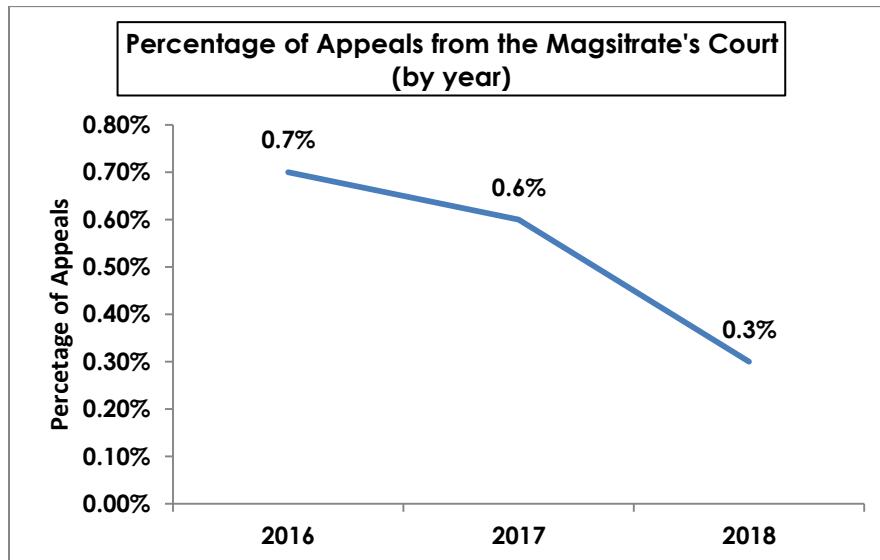


Magistrate's Court

There were a total of 39 matters (29 criminal, two civil, three private prosecutor, one family protection and four traffic) appealed in this reporting period which were filed as 22 criminal appeals and 3 civil appeals in the Supreme Court.

The percentage of appeals from all cases finalized in the Magistrate's Court in this and the last two years is very low as shown in the table and line graph below.

% of appeal in the Magistrate's Court	2016	2017	2018
	0.70%	0.60%	0.30%



The percentage of cases appealed by division of the Magistrate's Court in this reporting period is shown in the table below.

Division	Total cases finalized	Number of cases appealed	Number of cases not appealed	% of cases appealed	% of cases not appealed
Criminal	5035	29	5006	0.60%	99.40%
Civil	256	2	254	0.80%	99.20%
Civil inland	24	0	24	0%	100%
Private inland	67	0	67	0%	100%
Private prosecutor	104	3	101	2.80%	97.20%
Family protection	233	1	232	0.40%	99.60%
Drunken driver	51	0	51	0%	100%
Spot fine	1667	0	1667	0%	100%
Tobacco	37	0	37	0%	100%
Litter and waste	46	0	46	0%	100%
Traffic	962	4	958	0.40%	99.60%
Traffic general	4365	0	4365	0%	100%
Youth day	88	0	88	0%	100%
TOTAL	12935	39	12896	0.30%	99.70%

Indicator four – overturn rate on appeal

Court of Appeal

There are no appeals from the Court of Appeal.

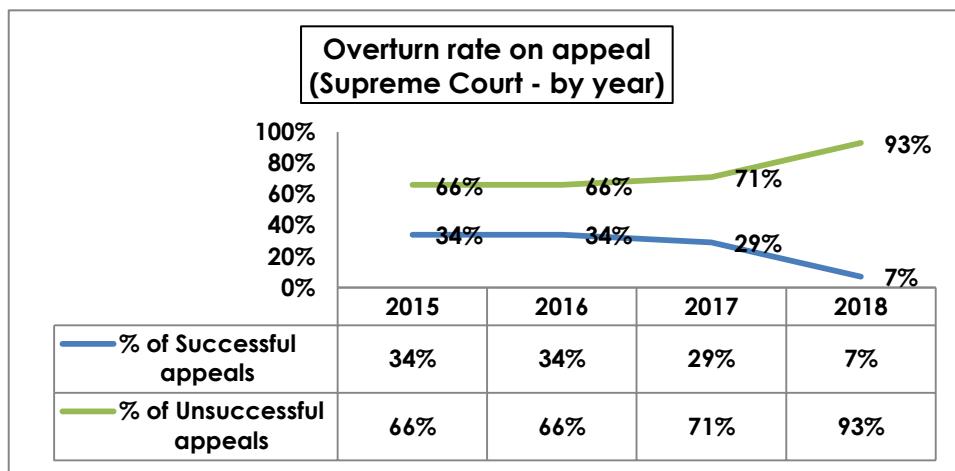
Supreme Court

In the Ministry of Justice's Annual Management Plan the target for this indicator is that the percentage of cases overturned on appeal should not exceed 30-40% (of all cases that are appealed). The overturn rate from the Supreme Court is set out in the table below and is lower than in previous reporting periods.

The percentage of cases that were overturned on appeal was 7%.

The percentage of cases overturned on appeal in this and the last three years is shown in the table and line graph below.

Year	No. of appeals filed	Appeals allowed	Appeals dismissed	Cases pending	% of successful appeals	% of unsuccessful appeals
2015	4	1	3	0	25%	75%
2016	7	1	6	0	14%	86%
2017	12	2	6	4	25%	75%
2018	16	1	3	11	7%	93%

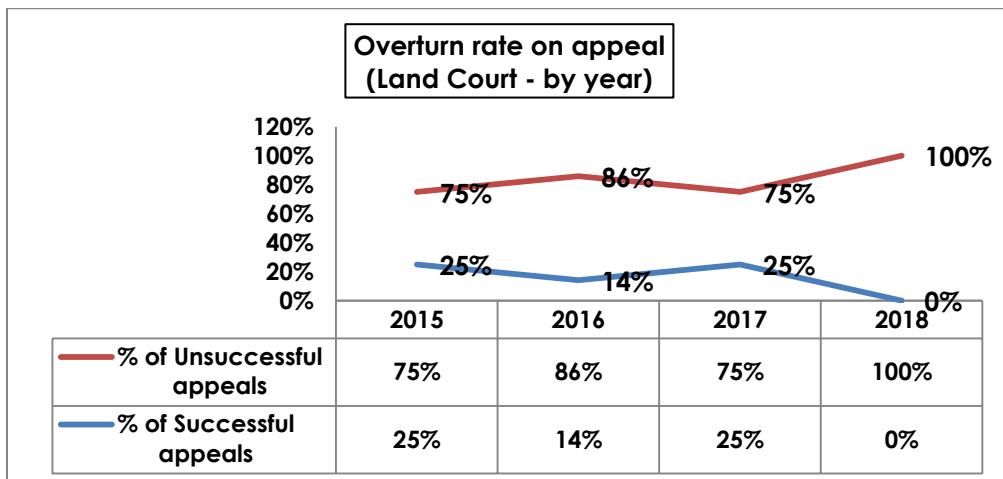


It will be observed that in the previous three years the percentage of cases overturned on appeal had remained steady at around or greater than 30% but in this reporting period it has reduced to just 7%.

Land Court

A breakdown of the percentage of cases overturned on appeal from decisions of the Land Court are set out in the table and line graph below. No cases were overturned on appeal this year.

Year	% of Successful appeals	% of Unsuccessful appeals
2015	25%	75%
2016	14%	86%
2017	25%	75%
2018	0%	100%



Magistrate's Court

The overturn rate of cases on appeal from the Magistrate's Court is set out in the table below.

The percentage of cases that were overturned on appeal was 57%.

Division	Total cases finalized	Number of filed cases finalized and appealed	Number of cases not appealed	% of cases appealed	% of cases not appealed
Criminal	5035	29	4	37.10%	34.20%
Civil	256	2	0	5.70%	0%
Civil inland	24	0	0	0%	N/A
Private inland	67	0	0	0%	N/A
Private prosecutor	104	3	0	5.70%	2.90%
Family protection	233	1	0	2.90%	0%
Drunken driver	51	0	0	0%	N/A
Spot fine	1667	0	0	0%	N/A
Tobacco	37	0	0	0%	N/A
Litter and waste	46	0	0	0%	N/A
Traffic	962	4	0	5.70%	5.70%
Traffic general	4365	0	0	0%	N/A
Youth day	88	0	0	0%	N/A
TOTAL	12935	39	4	57%	43%

The percentage of cases overturned on appeal in this and the previous two years is shown in the table below. This shows a decrease in the number of successful appeals since 2017 but more data is required to establish if this is a trend.

Year	% of successful appeals	% of unsuccessful appeals
2016	Not reported	Not reported
2017	71%	29%
2018	57%	43%

Indicator five - percentage of cases where fee waivers are given

All Courts

There is presently no statutory authority to grant fee waivers. There were no applications for fee waivers in this reporting period.

The fact that no applications were made for fee waivers should not be thought to indicate that there is no need for fee waivers. It is likely that no applications are made because it is understood that they cannot or will not be granted. There are certainly cases of hardship where fee waivers should be given and also good reasons why there should be a no fees regime in certain types of cases.

There is a proposal to amend the Court Fees Act to make Court fees more equitable, increase access to justice for disadvantaged persons and to allow the Lord Chief Justice to grant fee waivers in the exercise of his discretion. It is understood the proposals are presently with the Ministry of Justice and have been for some time. The introduction of a new fees regime should be pursued as a matter of urgency.

Indicator six – percentage of cases disposed of through circuit courts

Court of Appeal

The Court of Appeal sits only Nuku'alofa. It does not undertake circuits.

Supreme Court and Land Court

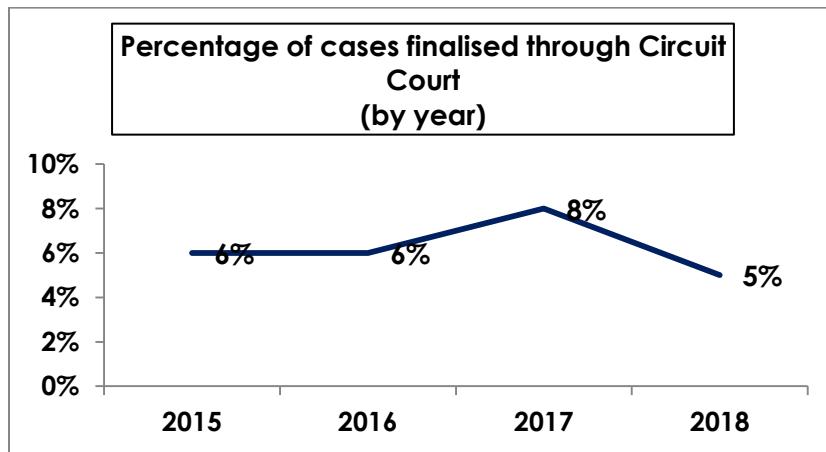
All Judges of the Supreme Court are also Judges of the Land Court. When going on circuit the Judges may sit in both the Supreme Court and the Land Court. In this reporting period there were no Land Court cases finalized in circuit courts. This was unusual.

A breakdown of the cases finalized in circuit and non-circuit courts (broken down by division) is set out below.

Division	Total Cases Finalised	Total cases finalised by Circuit	% of cases finalised in circuit	% of cases finalised in non-circuit
Criminal	164	7	4%	96%
Civil	81	0	0%	100%
Criminal Appeal	21	2	10%	90%
Civil Appeal	5	0	0%	100%
Divorce	241	15	6%	94%
Adoption	77	8	10%	90%
Legal Guardianship	74	8	9%	91%
Protection Order	1	0	0%	100%
Wedlock	102	2	2%	92%
Custody	6	0	0%	100%
Estate Administration	70	0	0%	100%
TOTAL	842	42	5%	95%
LAND COURT	44	0	0%	100%

The total percentage of all cases finalized in circuit courts has decreased in this reporting period. This is shown in the line graph below. Most cases heard on circuit are family cases in the Supreme Court but also, notably, there were no Land Court cases heard on circuit. The Ministry of Justice advertises circuits to the public and this often results in family cases being filed just a few days before (or even during) the circuit that cannot be disposed of despite best efforts.

It would appear from the data that the percentage of cases finalized in circuits courts will generally be in the range of 6%.



Magistrate's Court

In this reporting period the Magistrate's Court travelled on 10 circuits to Ha'apai, 'Eua and the Niuas.

There were six circuits to 'Eua on the following dates:

- i. 22 – 26 of January, 2018.
- ii. 19 – 24 of March, 2018.
- iii. 21 – 25 of May, 2018.
- iv. 24 – 27 of July, 2018.
- v. 25 – 27 of September, 2018.
- vi. 19 – 23 of November, 2018.

There were three circuits to Ha'apai on the following dates:

- i. 20 – 23 February, 2018.
- ii. 16 – 20 April, 2018.
- iii. 11 – 15 June, 2018.

The circuits to Ha'apai were conducted only in the first half of 2018 as the Resident Magistrate commenced duty there from 17 July, 2018. In future years Ha'apai will no longer be reported as a circuit court.

There was one circuit to the Niuas from 23 April 2018 to 17 May, 2018. Due to the unreliable travel options to and from the Niuas the Senior Magistrate and his clerk were stranded there for a period of weeks. In future years the Magistrates will be required to have confirmed return travel before undertaking circuits to the Niuas.

The percentage of cases disposed of through circuit courts is shown in the table below.

Circuit Courts	Total cases filed	Total cases finalized by Circuit	% of cases finalized in Circuit	% of cases finalized in non-circuit
'Eua	173	194	112%	N/A
Ha'apai	296	139	47%	53%
Niuas	19	19	100%	N/A
TOTAL	488	352	72%	28%

The percentage of cases finalized in circuit courts was on average below 100% but above 100% in both 'Eua and the Niuas. The average was brought down by the result from Ha'apai but Ha'apai now has a resident Magistrate and in future will not be reported as a circuit court.

Indicator seven – percentage of cases where a party receives legal aid

All Superior Courts

There is no statutory legal aid system in Tonga. Anecdotally, it is not uncommon for Law Practitioners to work on a *pro bono* or contingent fee basis but there is no data available in relation to this. The lack of legal aid, particularly in criminal and youth cases, is an access to justice concern.

The Family Protection Legal Aid Centre does offer free legal services in domestic and family violence cases. In this reporting period 13 cases were filed with the Supreme Court by the Family Protection Legal Aid Centre. These were four divorce cases, one custody dispute, two appeals, five wedlock applications and one application for Letters of Adoption.

Magistrate's Court

A greater number of cases were filed by the Family Protection Legal Aid Center in the Magistrate's Court. A total of 106 cases were filed for orders under the Family Protection Act and 18 civil actions for maintenance. It is understood that the Family Protection Legal Aid Center provided legal services to persons involved in or connected with criminal proceedings before the Magistrate's Court also but there are no data available for the work.

The table below shows the percentage of all cases filed in which the Family Protection Legal Aid Center provided legal services to a party before the Magistrate's Court.

Division	Total cases received	Total cases where a party receives legal aid	% of cases where a party receives legal aid
Family Protection	270	106	39%
Civil	340	18	5%
TOTAL	610	124	20%

Indicator eight – documented processes for handling a complaint

All Courts

There are documented processes for handling complaints against Judicial Officers.

Formal complaints are made to the Judicial Appointments and Discipline Panel. The procedures are set out in the Discipline Procedure Order 2017.

There is an alternative complaints process that is displayed at the Ministry of Justice, the Supreme Court and Magistrate's Court offices. Complaints have been received this way in the past and dealt with by the Ministry (often in consultation with the Lord Chief Justice).

Indicator nine – percentage of complaints against Judicial Officers

All Superior Courts

There were no complaints received against Judges of the Superior Courts in the reporting period.

Magistrate's Court

There were two complaints against Magistrates in the reporting period. Both were referred to the Lord Chief Justice and he dealt with them internally. In all cases complainants are advised of the process to be followed and outcome of their complaints.

The number of complaints received against Judicial Officers of the Magistrate's Court as a percentage of all cases filed was 0.02%.

Indicator ten - percentage of complaints received concerning Court Staff

All Superior Courts

There were no complaints received concerning staff in the reporting period.

Magistrate's Courts

There were no complaints received concerning staff in the reporting period. However, the public do from time to time voice concerns at the front counter and no record has been kept of those. In future such people will be encouraged to use the complaints process so there is a record.

Indicator eleven - average cases per Judicial Officer

Court of Appeal

There were a total of 32 cases before the Court this year. Three Judges sat on the Court in each session. The average number of cases per Judicial Officer in this reporting period was therefore 11. In the previous reporting period the figure was seven. This reflects the greater number of appeals filed this year.

Supreme Court

There are three Supreme Court Judges who were also Judges of the Land Court. Two Judges were engaged for the entire year but Justice Niu was appointed from 1 July 2018. From this it has been assessed that there were the full time equivalent of two (2) Supreme Court Judges a one half (.5) of a Land Court Judge in the reporting period. This is largely a matter of impression and makes comparison of results from year to year difficult.

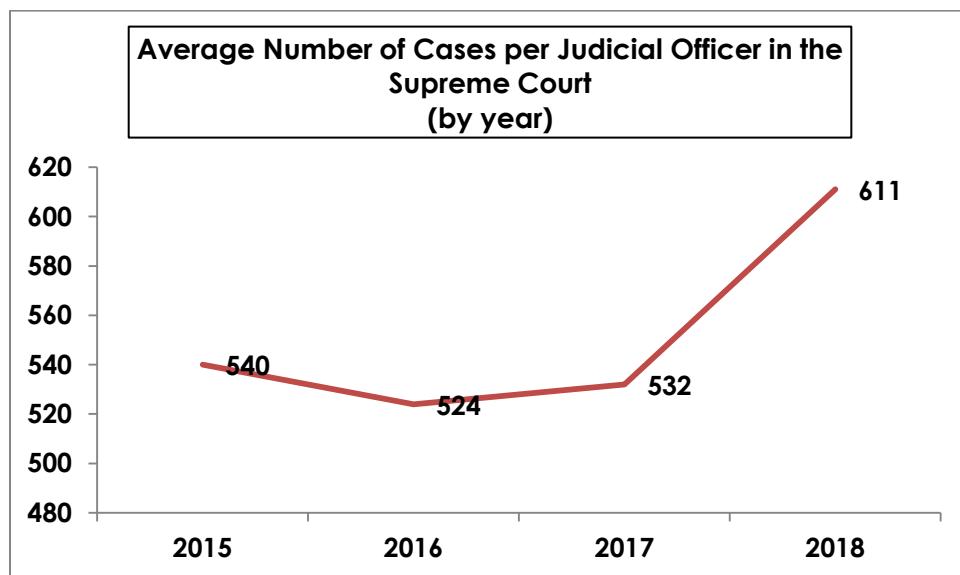
The work of the Supreme Court was broadly allocated to the Judges by division. Justice Cato undertook most of the criminal work. Justice Nui was responsible for most family cases and some civil cases. Lord Chief Justice Paulsen was responsible for a broad range of work across all divisions. A breakdown of the number of cases finalized by Judge are set out in the table below.

Division	Paulsen CJ	Cato J	Niu J
Criminal	26	131	7
Civil	73	1	7
Criminal Appeal	4	12	5
Civil Appeal	4	0	1
Divorce	129	33	79
Adoption	42	23	12
Legal Guardianship	43	18	13
Protection Order	1	0	0
Wedlock	85	15	2
Custody	5	1	0
Estate Administration	69	0	1
TOTAL	481	234	127

The total number of cases dealt with (including those finalized) by the Supreme Court in the reporting period was 1,222 which is broken down by division in the following table.

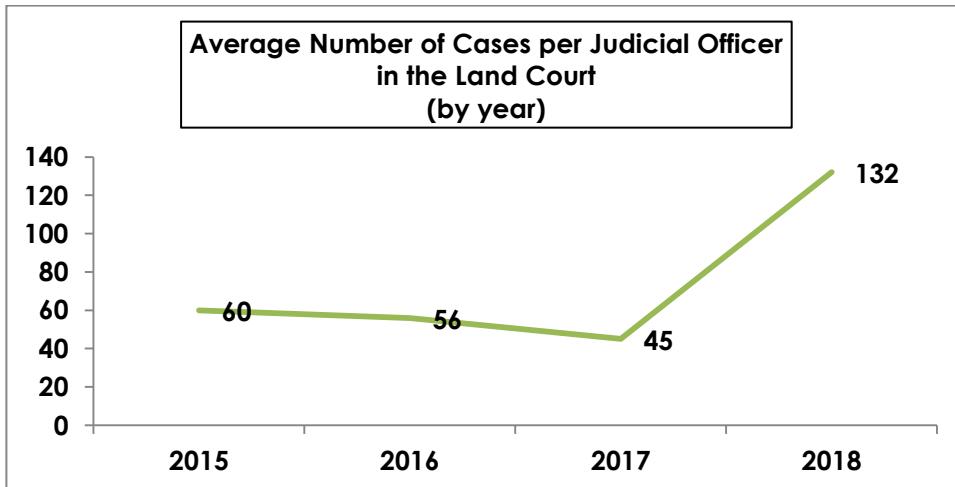
Division	Previous Pending	New Cases Filed	Total previous pending and new cases filed
Criminal	72	175	247
Civil	61	77	138
Criminal Appeal	2	23	25
Civil Appeal	4	3	7
Divorce	85	236	321
Adoption	53	89	142
Legal Guardianship	49	68	117
Protection Order	0	1	1
Wedlock	39	91	130
Custody	2	5	7
Estate Administration	11	76	87
TOTAL	378	844	1222

Assuming the full time equivalent of two (2) Supreme Court Judges the number of cases per Judicial Officer in this reporting period was 611. This is shown in the table and line graphs below.



Land Court

The total number of cases dealt by the Land Court in the reporting period was 66. Based on there being the full time equivalent of one half (.5) of a Judge engaged in the work of the Land Court the average number of cases per Judicial Officer was 132.



Magistrate's Court

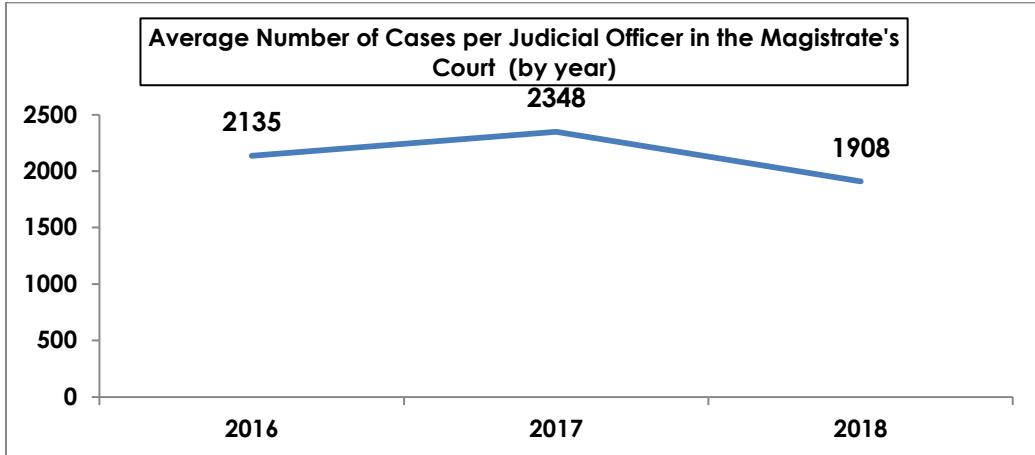
The work of the Magistrate's Court at Tongatapu was broadly divided amongst the Magistrates by quarterly rotations. Except for the Chief Magistrate, Principal Magistrate Mafi and Senior Magistrate Langi, the Magistrates in Tongatapu rotate between divisions. Chief Magistrate Lokotui was responsible for Traffic and Infringement Notices, Principal Magistrate Mafi was responsible for Criminal Enhanced and Preliminary Inquiry Jurisdiction and Senior Magistrate Langi was responsible for Family and Youth Courts. Nevertheless, those three Magistrates provided cover for the other Magistrates when they are away from work and vice versa.

A breakdown of the number of cases finalized by Magistrate is set out in the table below.

Division	Lokotui CM	Mafi PM	Tatafu PM	Tuita SM	Tu'akalau SM	Ma'u SM	Kaufusi SM	Langi SM
Criminal	32	698	745	789	798	453	1101	419
Civil	1	13	36	67	21	51	63	4
Civil inland	0	0	3	4	0	14	3	0
Private inland	0	0	0	42	0	20	5	0
Private prosecutor	0	5	40	24	2	20	12	1
Family protection	0	9	0	7	9	1	15	192
Drunken driver	24	5	0	1	17	0	4	0
Spot fine	560	93	0	73	533	77	317	14
Tobacco	20	0	3	0	14	0	0	0
Litter and waste	14	0	0	0	32	0	0	0
Traffic	259	114	66	40	284	43	150	6
Traffic general	1738	156	100	74	1666	55	574	2
Youth day	0	0	0	0	25	0	8	55
TOTAL	2648	1093	993	1121	3401	734	2252	693

The total number of cases dealt with by the Magistrate's Court in the reporting period was 14,784 and the average number of cases per Judicial Officer in this reporting period was 1,908 (which makes allowance for the fact that Senior Magistrate Langi was appointed on 29 March, 2018 and commenced duty on the first week of April). A comparison with the results in the previous two years is contained in the table and line graphs below.

Year	Average number of cases per Judicial Officer in the Magistrate's Court
2016	2135
2017	2348
2018	1908

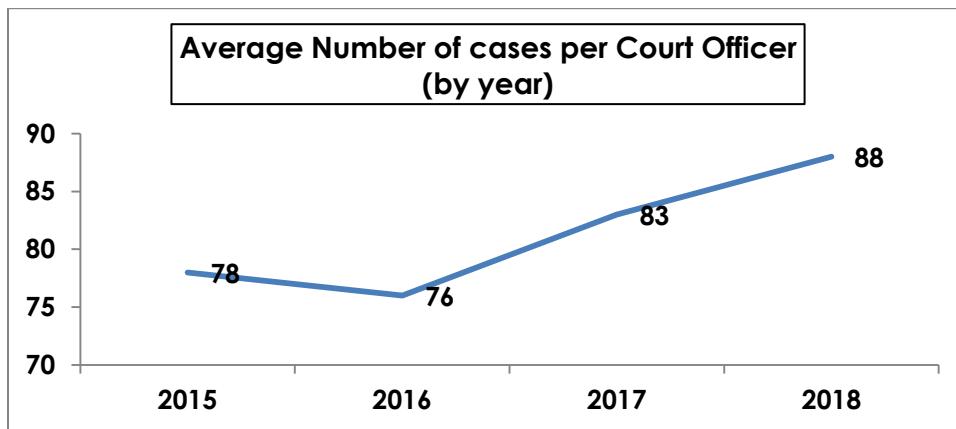


Indicator twelve – Average number of cases per member of Court Staff

All Superior Courts

In the reporting period the average number of cases per member of staff was 88. This is set out in the attached table with a comparison in the previous two years in the following line graph.

Division	Previous pending	New cases filed	Total previous pending and new cases filed	Average number per court staff
Supreme Court	378	844	1222	81
Land Court	39	27	66	9
Court of Appeal	8	24	32	6
TOTAL	425	895	1320	88



Magistrate's Court

In the Magistrate's Court the number of staff in all registries was 22 and the average number of cases per staff member was 672. A breakdown of average number of cases per staff member by Registry is shown below.

Registry	Number of court registry staff	Total pending	Total new cases filed	Total pending and new cases	Average number of cases per registry staff
Nuku'alofa	16	2440	10515	12955	810
Vava'u	3	83	1156	1239	413
Ha'apai	2	32	296	328	164
'Eua	1	89	173	262	262
TOTAL	22	2644	12140	14784	672

Indicator thirteen – Court produces an annual report that is available in the following year

The Superior Courts and the Magistrate's Court do produce an annual report that is available on the Ministry of Justice website and will also be made available on Paclii.

Indicator fourteen - Information on Court services is publically available

The Courts have continued using the radio to announce circuit courts. In all the circuits held in this year, the information was made available to the public via radio announcements.

Meetings and consultations are still ongoing to develop the website of the Ministry of Justice where it is intended that information relevant to the services and decisions of the Courts will be published and made available to the public through the internet.

Indicator fifteen - Court published judgments on internet and/or Paclii

The judgments of the Superior Courts are widely distributed and are available to the public. All judgments of the Superior Courts are published on the Crown Law website www.ago.gov.to within days of being issued by the Court. They are also sent electronically by the Court to those requesting them who are placed on a distribution list.

The judgments of the Superior Courts are sent to Paclii for publication. In this reporting period the Superior Courts identified and reported 117 judgments on Paclii.

The Superior Court's judgments are also reported each year in the Tonga Law Reports. The Tonga Law Reports are available up to and included 2016. All Law Practitioner are required to purchase the Tonga Law Reports.

Magistrate's Court judgments are mostly delivered verbally and the reasons recorded in the Magistrates' and clerks' minute books. There is no operational system for hearings of the Magistrate's Court to be recorded and this often causes problems obtaining an accurate record of proceedings when decisions are appealed. There is an urgent need for the Ministry of Justice to invest in a recording system in all Magistrate's Courts and Magistrates must be encouraged to start writing judgments.

The office of the Attorney General has published on its website (www.ago.gov.to) eight Magistrate's Court judgments in the Criminal Enhanced Jurisdiction and they were all in the Tongan language.

The Magistrate's Court has only one judgment that is published on Paclii which dates back to 22 April 1996.

Disaggregation of data

There has been an acceptance by Pacific Leaders (see Pacific Leaders Gender Equality Declaration 2012) that they should support the production of sex disaggregated data and gender analysis to inform Government policies and programmes.

The Courts are one source of such data. They have the ability to collect data on a range of matters which might broadly be described as sex, age and disability disaggregated data. Unfortunately data is either not collected or is not easily retrievable from our Case Management System. Some disaggregated data has been manually collected and is presented below. This data relates to criminal and divorce cases in the Supreme Court.

It should be a priority of the Ministry of Justice to update the Case Management System so as to make it possible to collect and provide disaggregated data more easily.

Criminal disaggregated data.

Concerns are commonly expressed about young people appearing before the Courts facing criminal charges and being treated as adults. Sadly, proposals to introduce a youth diversion scheme and a Youth Court have not progressed.

In this reporting period there were only five cases in the Supreme Court where an accused was under the age of 18 years. It is understood that in the Magistrate's Court the number will be much higher but is not recorded. It would be wrong to assume from the relatively few such cases coming before the Supreme Court that it is unnecessary to advance proposals for a Youth Court. The experience in New Zealand is that Youth Courts are effective in reducing reoffending in young people.

The criminal cases in the Supreme Court were divided by offence category. This showed that of all charges brought before the Court 24% related to drugs and firearms, 34% were for dishonesty offences, 23% were for sexual offences, 15% were for violence offences other than sexual offences and 4% other.

In all criminal cases 86% of accused persons were male and 14% were female.

In cases where a victim could be identified 51% were male and 49% were female.

In cases of sexual/violence 41% of the victims were under the age of 18 years. In 23% of such cases the victim was closely related to the offender.

Divorce disaggregated data

In 51% of cases the petitioner for divorce was male and 49% were female.

In 80% of cases the ground for divorce was that the parties had been separated for more than two years and had no intention of resuming cohabitation. In 11% of cases the ground relied upon was adultery and in 9% of cases other.

No petitions for divorce were filed by persons under the age of 20 years; 66 petitions were filed by persons between the ages of 20 and 30 years; 97 petitions by persons between the ages of 30 and 40 years; 43 petitions by persons between 40 and 50 years and 35 petitions by persons over the age of 50 years.

Justices of the Peace

The Lord Chief Justice appointed 13 people to be Justices of the Peace for the period of 1 July 2018 to 30 June 2019. The Justices of the Peace are appointed under the section 94 of the Magistrate's Court Act and perform duties set out in subsection 4 of that provision which are as follows:

"(4) Justices of the Peace shall have the powers specified in their warrants of appointment, which may include the power –

- a) to witness documents and take oaths, and the powers of Commissioners of Oaths to take affidavits and declarations;
- b) grant bail;
- c) issue search warrants;
- d) issue subpoenas; and
- e) such other powers that are assigned to them by any Act or by regulations..."

There is presently no centralized data maintained of the work of the Justices of the Peace. The Lord Chief Justice requires the Justices of the Peace to maintain and provide details of their work before re-appointing them each year.

Judicial Training

The Pacific Judicial Strengthening Initiative (PJSI) and Judicial Pacific Participation Fund (JPPF) continue to be the major suppliers of training and mentoring opportunities for Judges/Magistrates and staff. Both programmes are funded by the New Zealand Ministry of Foreign Affairs and Trade. PJSI is implemented by the Federal Court of Australia. JPPF is implemented by the New Zealand Institute of Judicial Studies.

The following PJSI workshops/trainings/meetings were held during this reporting period:

- ❖ **Mediation Training:** Through a successful application to the PJSI Leadership Incentive Fund, the Lord Chief Justice and the Registrar of the Supreme Court organized a Mediation Training for selected Law Practitioners over 4 days on 12 – 15 March 2018. The training was delivered by Mr. John Hardie who is an experienced and highly regarded mediator from New Zealand using materials from the Resolution Institute.
- ❖ **Chief Justice's Leadership Workshop:** The Lord Chief Justice attended this workshop which was held in Auckland, New Zealand from 16 – 18 April 2018.
- ❖ **Initiative Executive Committee (IEC) Meeting:** The IEC is the governing body of PJSI and comprises a nominated Chief Justice from each of the three Pacific sub-regions, a representative each of the Lay Judiciary and Court Officers and a representative from MFAT. The Lord Chief Justice and the Registrar of the Supreme Court, Ms. Fatima Fonua, are members of the IEC. The Committee meets to hear reports of PJSI's progress and provides strategic direction to the Technical Director (Livingston Armytage) and Team Leader (Lorry Metzner). Its second meeting was held on 19 April 2019 at Auckland, New Zealand and was attended by the Lord Chief Justice and Ms. Fatima Fonua.

- ❖ **Regional Judicial Leadership Workshop II:** Justice Niu and Ms Fatima Fonua attended this workshop in Auckland, New Zealand from 19 – 21 September 2018 where Ms Fonua delivered a presentation on the progress of the Mediation Training and Justice Niu developed a leadership plan to amend legislation to enable the adoption of illegitimate children in Tonga. This was subsequently provided to the Ministry of Justice for consideration.

The following trainings/mentoring programmes were provided under JPPF during this reporting period:

- ❖ **Probation Programme Training:** Ms Lisa Currie and Mrs Ola Tupouniua-Vaka of the Department of Corrections of New Zealand delivered 4 days of training to the Probation Officers at the Tanoa Hotel, Nuku'alofa, Tonga on 25 – 28 June 2018. The training covered topics such as risk assessment, offender management, managing boundaries amongst others. The Probation Officers were very satisfied with the trainings provided and appreciated the opportunity.
- ❖ **Mentoring programme for the Magistrates:** Justices Ron Young and Judith Potter both visited the Kingdom to provide one on one mentoring to the Magistrates.
- ❖ **Evidential Issues and Sexual Offences Workshop:** The Lord Chief Justice attended a workshop in Auckland on evidential issues that arise in criminal cases involving sexual offences.
- ❖ **International Association of Woman Judges:** Senior Magistrate Langi attended this conference which was held in Argentina in May 2018.

In addition a workshop on the Family Protection Act was provided to the Magistrates from a team sent by SPC Regional Rights Resource Team and Judge Adams from the Family Court of New Zealand.

Appendix

Indicator 1 - Clearance rate

The clearance rate is the cases finalized in a year as a percentage of the number of cases filed. The result of this indicator is obtained by dividing the cases finalized by the cases filed. A clearance rate of 100% or more indicates that a Court is keeping up with its new work and is not creating or increasing a backlog of pending cases.

Indicator 2 –Average duration of a case from filing to finalization

This indicator measures the average period that it takes from the date a case is finalized to the date that the Court issues a ruling on the merits. The result of this indicator is obtained by totaling the days for each case from the date the case is filed to the date it is finalized and then dividing that total by the number of cases finalized. This is a measure of the Courts efficiency in resolving its caseload.

Indicator 3 – percentage of appeals

This indicator measures the percentage of appeals filed from decisions of each division and circuit of the Court. The result against this indictor is obtained by dividing the number of cases in which an appeal is filed by the total number of cases filed.

This indicator is relevant for planning resources to handle the expected level of appeals in an efficient manner, to monitor any trends in the levels of appeals and identify whether appeals from particular divisions or particular judges are outliers and for what reasons.

Indicator 4 – Overturn rate on appeal

This indicator is the percentage of appeals for each division and circuit. The result of this indicator is obtained by dividing the number of cases in which an appeal is filed by the total number of cases filed.

Indicator 5 Percentage of cases that are granted a Court fee waiver.

This indicator refers to the percentage of cases by division and circuit where the Court has granted a fee waiver. It is considered a measure of the degree to which the jurisdiction promotes access to justice for people in need. The result of this indicator is obtained by dividing the total number of cases by division and circuit by the number of cases in which a fee waiver is granted.

Indicator 6 – Percentage of cases disposed of through Circuit Courts

This indicator refers to the percentage of cases per division that are finalized through a circuit court as a percentage of the total number of cases filed. The result of this indicator is obtained by dividing the number of cases finalized through any circuit court by the total number of cases filed. The indicator is considered relevant so for the efficient allocation of resources to handle the Circuit Courts workloads and to measure access to justice in remote areas.

Indicator 7 – Percentage of cases where party receives legal aid

This is self-explanatory but no figures can be provided as there is no legal aid in Tonga.

Indicator 8 – Documented process for receiving and processing a complaint

This is self-explanatory and the annual report documents the relevant processes.

Indicator 9 – Percentage of complaints received concerning a judicial officer

The result of this indicator is obtained by dividing the number of complaints received concerning a Judicial Officer by the total number of cases filed.

Indicator 10 - Percentage of complaints received concerning Court Staff

The result of this indicator is obtained by dividing the total number of cases by the number of complaints received about Court Staff.

Indicator 11 – Average number of cases per Judicial Officer.

The result of this indicator is obtained by dividing the total number of cases filed by the number of Judicial Officers.

Indicator 12 – Average number of cases per member of Court Staff

The result of this indicator is obtained by dividing the total number of cases received by the number of Court Staff.

Indicator 13- Court produces an annual report that is publically available in the following year

This is self-explanatory and no statistics are required.

Indicator 14 Information on court services is publically available

This is self –explanatory and no statistic are required.

Indicator 15 – Court publishes judgments on the internet and/or Paclii.

The result of this indicator is the total number of rulings issued by the Court that were sent to Paclii, the total number of rulings that appear on Paclii and the total number of rulings that otherwise appear on websites other than Paclii.