

COURTS OF TONGA ANNUAL REPORT 2019-2020



Seated L-R: Acting Judge Lord Tupou, Attorney General Mrs L. Folaumoetui, Acting Minister of Justice Hon. S. Vaipulu, Acting Judge P. Langi, Justice C. Cato, Lord Chief Justice M. Whitten QC, Justice L. Niu, Solicitor General Mr S. Sisifa, Director of Public Prosecutions Mr J. Lutui.

Behind centre: Principal Magistrate Mafi, Chief Magistrate Lokotui, Senior Magistrate Tuita, Senior Magistrate Pahulu-Kuli.

**COURT OF APPEAL, SUPREME COURT, LAND COURT
MAGISTRATES COURT**

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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.

Unlike previous years in which the annual reports have reflected the relevant calendar year, this report has been requested to span the period from 1 July 2019 to 30 June 2020.

I commenced appointment as the Lord Chief Justice of the Kingdom of Tonga on 1 September 2019. I take this opportunity on the behalf of all the judiciary and court staff to once again acknowledge and thank the former Chief Justice Paulsen for his leadership of the courts since 2015.

The Courts have had another productive year and are keeping up with their workloads.

Significant events and developments during this reporting period include:

- The impacts of the ongoing coronavirus pandemic since March 2020.
- Cyclone Harold in April 2020.
- The introduction and increasing adoption of video link technology for appearances by overseas practitioners and witnesses.
- A marked increase in the number and rate of new criminal filings concerning methamphetamine related offences.

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. The heavy demands on the Family Protection Legal Aid Centre, which provides free legal services to victims of domestic and family violence, continue to strain the very limited resources of the service to, and at times, beyond, capacity. Regardless, Mrs Fitilagi Fa'anunu, the director of the FPLAC, and her dedicated staff continue to serve their many clients to the best of their abilities.

The lack of a full legal aid service also greatly impacts criminal proceedings. The very large number of self-represented defendants is a cause for considerable concern as the courts are only able to assist with advice on procedural matters, not merits advice or advocacy. Considerable additional time and resources are required to ensure that such cases are managed efficiently and brought to trial in a timely manner while also ensuring that those defendants are afforded a full and fair opportunity to know the case they have to meet and present their case in defence where they wish to do so. To that end, a detailed information guide has been created and made available to self-represented defendants to assist in their understanding of the criminal trial process, what they may expect and what is expected of them during the course of their trial.

That aspect of the courts' operations has been exacerbated by the significant increases in methamphetamine related cases. A number of initiatives have been pursued during this reporting period to address this difficult challenge, namely:

- the appointment of an Acting Judge pursuant to clause 88 of the *Constitution* commencing 1 September 2020 for an initial four-month period;
- remittal by consent to the Magistrates Court of low weight methamphetamine cases where the sentence, upon conviction, if any, will fall within the jurisdiction or enhanced jurisdiction of that court pursuant to s.36 of the *Magistrates Court Act*;
- proposed amendments to the *Illicit Drugs Control Act* to demarcate low weight cases by shorter maximum sentences to permit those cases to be dealt with directly by the Magistrates Court; and
- greater consistency in sentencing to enhance predictability, certainty and transparency for the community to understand the courts' approach to sentencing in these cases.

The Tonga Justice Sector Support Program, funded by the New Zealand MFAT, has been, and continues to be, instrumental in the development of a Youth Diversion Program for the Kingdom in conjunction with the courts, as well as the design and procurement of new and improved computer management systems for both the Supreme and Magistrates courts. Work is also underway to secure modern sound recording systems for the Magistrates Court to enable all proceedings to be transcribed where required.

From a management perspective, and despite the diverse and extraordinary challenges with which we have been confronted this year, the Supreme Court continues to function efficiently. That ongoing accomplishment has been due in no small part to the hard work of its former Registrar, Miss Fatima Fonua, who resigned at the end of 2019 to pursue opportunities in New Zealand, and her successor, the current Registrar, Mr Tevita Fukofuka with the able assistance of his Acting Deputy Registrar, Ms Mamaite Tuputupu.

The administration of the Magistrate's Court has improved significantly through the addition of Ms Eunice Moala as Principal Registrar to assist Chief Magistrate Lokotui with the operations of that very busy court. Ms Kato Lutui of the TJSSP has also been working 'on the ground' with the Magistrates Court staff to great effect.

Finally, I would to thank Registrar Fukofuka, Ms Fololeni Hufanga and Ms Mele Kulikefu and the staff of the Ministry of Justice for their invaluable work collecting the data essential for this report.

Michael H. Whitten QC
Lord Chief Justice of Tonga

Executive Highlights

This has been another productive year for the Courts, as marked by the following:

- There has been a slight increase in the number of licensed Law Practitioners in the Kingdom but 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 implementation of the Court's first Disability Policy to assist in safeguarding the rights and access of persons with disabilities to the Courts and to justice.
- The Court remained open and accessible throughout the COVID-19 restrictions.
- Very high clearance for the Court of Appeal.
- First ever Court of Appeal session conducted via video conference where the Hon. Justices were not physically in Tonga except the Lord President.
- The Appeal Court, Supreme Court and Land Court achieved overall clearance rates of greater than or very near to 100% across the different divisions and are keeping up with their workloads.
- 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 remains high.
- There were no 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 published on-line to the public.
- The Lord Chief Justice and Registrar of the Supreme Court continued to implement new procedures for processing cases within the Superior Courts.

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).

Upon the retirement of Mr Harry Waalkens QC KC, the current Lord Chancellor is Mr. Tavake Afeaki.

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

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.

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 (Paclii).

The Judiciary of the Kingdom comprises:

- 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 Michael Whitten QC.

The Vice President in the reporting period was Hon. Justice Ken Handley until his Honour's retirement in September 2019.

The only resident Judge of the Court of Appeal in the reporting period was the President Michael Whitten. 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 Michael Whitten QC (President);
- Hon Justice Ken Handley (Australia) (Vice President);
- Hon Justice Sir Peter Blanchard (New Zealand);
- Hon Justice Rodney Hansen QC (New Zealand); and
- Hon Justice Richard White (Australia).

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 Michael Whitten QC;
- Justice Charles Bentley Cato; and
- Justice Laki Niu.

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 Niuas.

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 Michael Whitten QC;
- 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 are only two Magistrates who exercise this enhanced jurisdiction namely; Principal Magistrate Salesi Mafi and Senior Magistrate 'Elisapeti Langi.

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 Deserted Wives Act and the Maintenance of Illegitimate Children Act. It hears all protection orders applications under the Family Protection Act.

The Magistrates in the reporting period were:

- Chief Magistrate Sione Folau Lokotui;
- Principal Magistrate Salesi Mafi;
- Principal Magistrate Paula Tatafu; (recalled for duty in July 2019)
- Senior Magistrate Frederick Tuita;
- Senior Magistrate Similoni Tu'akalau (Vava'u resident magistrate);
- Senior Magistrate Penisimani Ma'u (Ha'apai resident magistrate);
- Senior Magistrate Manamo'ui Kaufusi;
- Senior Magistrate 'Elisapeti Langi; and
- Senior Magistrate Loupua Pahulu-Kuli (appointed in January 2020).

The Magistrate's Court has four main registries situated in Nuku'alofa (Tongatapu), 'Ohonua ('Eua), Pangai (Ha'apai) and Neiafu (Vava'u). In the reporting period the Court undertook five circuits to 'Eua, two circuits to Lulunga and Mu'omu'a Groups (Ha'apai) and one circuit to Niuatoputapu Island.

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 Practising Certificates in this and the previous four years. It also breaks down the totals between the different categories of Law Practitioner.

Year	Total Certificates issued	Kings Counsel	Senior Counsel	Fully Qualified	Locally Qualified	New Law Practitioners
2019	88	1	6	69	12	6
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 an increase 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.

The Cook Island Indicators are described in the Appendix hereto.

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.

Hereunder are 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.

INDICATOR 1 - CLEARANCE RATES

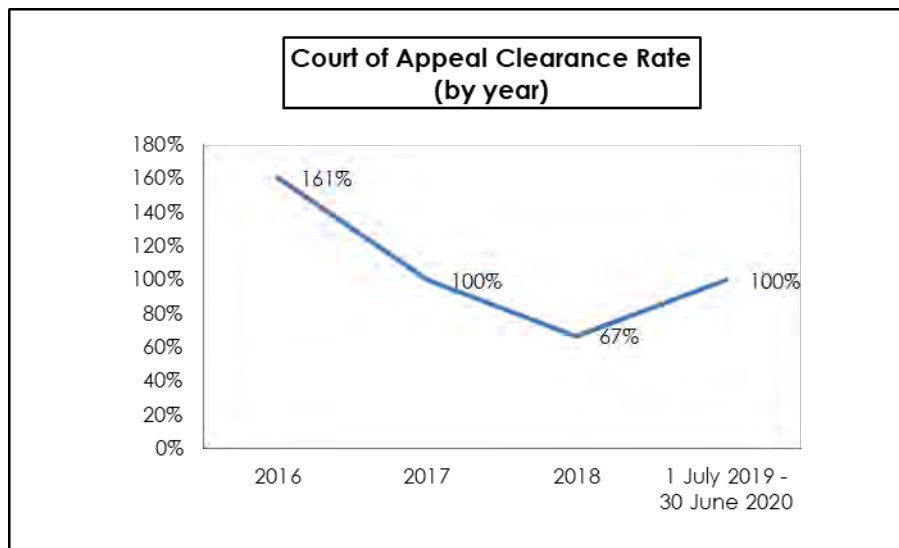
Court of Appeal

At the beginning of this reporting period (1 July 2019) there were 4 cases pending in the Court of Appeal. A further 11 appeals were filed in the reporting period. The Court finalized 11 appeals leaving 4 appeals pending at the end of the reporting period.

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

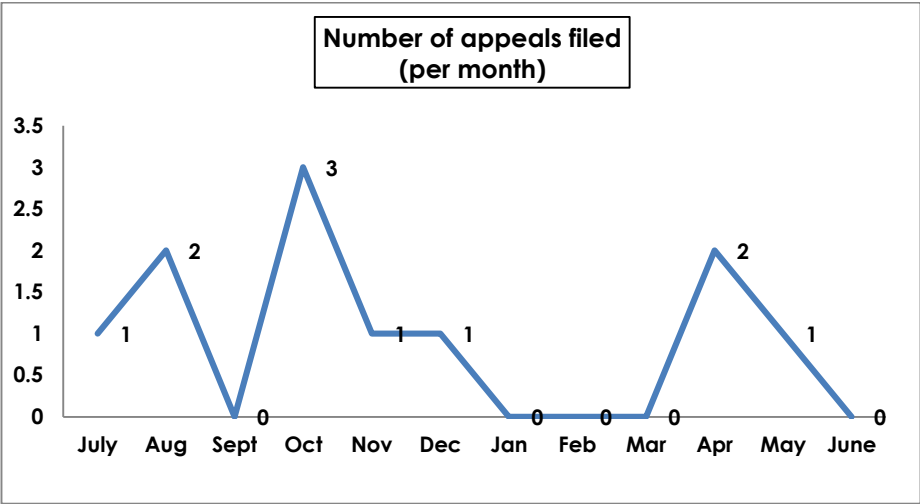
The table and line graphs below are a summary of the work of the Court of Appeal in this and the last three reporting periods.

Court of Appeal	Previous pending	New appeals filed	Appeals filed and finalised in this reporting period	Total appeals finalised	Total pending
1 July 2019 – 30 June 2020	4	11	9	11	4
2018	8	24	8	16	16
2017	7	15	8	15	7
2016	17	18	12	29	6



As the graph shows the clearance rate for last year fell to 67%. In the previous 2 years before that the clearance rate has been at or greater than 100%. In this reporting period the clearance rate has improved to be at 100%.

The table below shows the number of appeals filed per month, in this reporting period. As with previous years, most appeals are filed during the last quarter of the year.



Supreme Court

At the beginning of this reporting period there were 502 cases pending in the Supreme Court. A further 1010 cases were filed this year. The Supreme Court finalized 1006 cases. There were 506 cases pending at the end of the reporting period.

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

This clearance rate indicates that the Court is keeping up with its workload and is not creating or increasing a backlog of pending cases. 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 as in the previous report, both at the beginning and end of the reporting period, were family cases. Many of these cases have not been finalized because applications are incomplete. The Court provides direction to applicants as to what is required to advance their cases and is reliant upon them to comply.

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
1 July 2019 – 30 June 2020	502	1010	613	1006	506
2018	378	844	506	842	380
2017	417	727	448	795	349
2016	454	817	466	858	417

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	95	297	147	220	172
Civil	72	68	16	61	79
Criminal Appeal	6	18	9	15	9
Civil Appeal	1	4	4	5	0
Divorce	84	205	140	209	80
Adoption	73	90	51	117	46
Legal Guardianship	45	51	26	60	36
Wedlock	115	204	158	250	69
Custody	1	6	4	5	2
Estate Administration	10	67	58	64	13
TOTAL	502	1010	613	1006	506

Division	Clearance Rate
Criminal	74%
Civil	90%
Criminal Appeal	83%
Civil Appeal	125%
Divorce	102%
Adoption	130%
Legal Guardianship	118%
Wedlock	123%
Custody	83%
Estate Administration	96%
TOTAL	100%

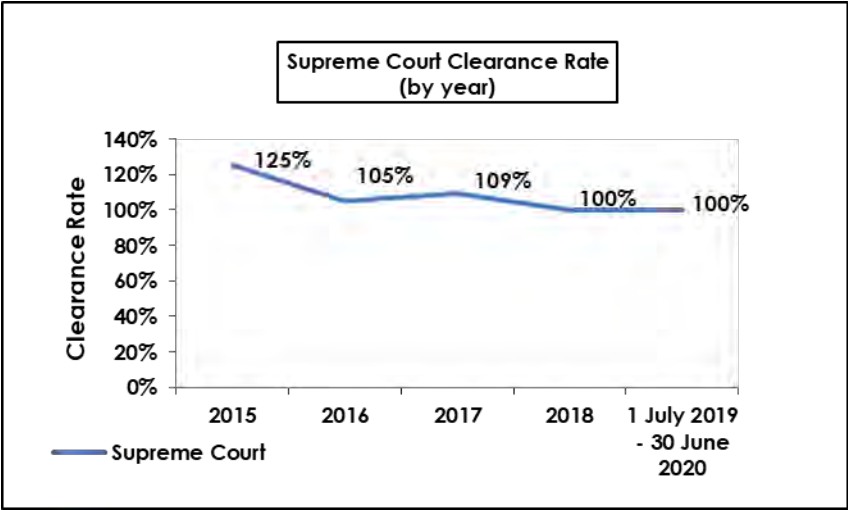
With the exception of criminal cases, civil cases, criminal appeals, custody and estate administration all clearance rates were at or exceeded 100% and the overall clearance rate for all divisions was 100%. Greater judicial resources were allocated to criminal cases. That the clearance rate for criminal cases has remained below 100% reflects a marked increase in the number of new cases that were filed from 844 in 2018 to 1010 in this reporting period. The statistics point out the fact that this is due to the upsurge in drug related matters being brought to Court. The lower clearance rates in estate administration cases are due to applicants failing to provide application requirements and do not suggest any concerns with the Court's processes. The 2 pending custody matters are ongoing.

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	33	43	130%
Ha'apai	0	0	0
TOTAL	33	43	130%

The Court attempts to finalize all pending cases when on circuit. There was a high clearance rate in during the Vava'u although there were no circuits to Ha'apai, '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.

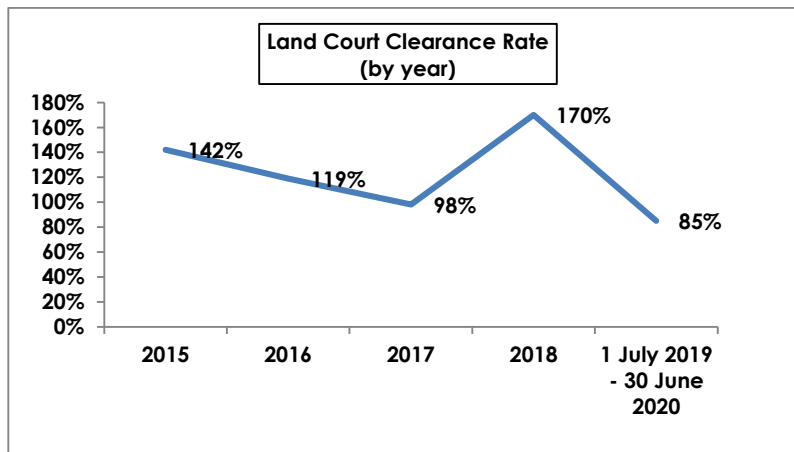


Land Court

At the beginning of this reporting period there were 30 cases pending in the Land Court. A further 22 cases were filed in the reporting period. The Land Court finalized 46 cases. There were 34 cases pending at the end of the reporting period.

The Land Court's clearance rate was 85%. 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	30	26	4	22	34



The clearance rate is lower than in previous years because of:

- the diversion of the Court's resources to the increased numbers of criminal matters;
- as in previous reports, lengthy delays in progressing cases because the Ministry of Lands' records cannot be obtained by the Crown Law Office where they are very often unable to obtain instructions from the Minister and cases cannot be progressed in a timely manner; and
- some Counsel failing to comply with interlocutory timetables.

The clearance rate at 85% remains satisfactory but there is a need for improvement.

Magistrate's Court

At the beginning of this reporting period (1 July 2019) there were 2,752 cases pending in the Magistrate's Court. A further 11,688 cases were filed in the reporting period. The Magistrate's Court finalized 12,030 cases. There were 2,410 cases pending at the end of the reporting period.

The Magistrate's Court's clearance rate in this reporting period was 103%.

The table below is a summary of the workload of the Magistrate's Court in this and the previous three 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
2019-2020	2752	11688	9391	12030	2410
2018	2644	12140	10541	12935	1849
2017	3942	12497		13809	2630
2016	4504	12575		13217	3862

The majority of pending matters are in the criminal division. However, the figures for all divisions 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 summary for this reporting period is broken down by division in the table below. The first table provides the numbers of cases pending, filed and finalized and clearance rate in the reporting period by division of the Court. The second table shows the clearance rate by division of the Court in the previous reporting period and this reporting period.

Division	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	Clearance Rate
Criminal	972	6053	4862	5764	1261	95%
Civil	68	153	89	147	74	96%
Civil inland	3	0	0	3	0	0%
Private prosecution	49	87	39	81	55	93%
Family protection	54	167	137	185	36	111%
Drunken driver	2	4	3	4	2	100%
Spot fine	579	1337	1100	1673	243	125%
Tobacco	17	31	30	47	1	152%
Litter and Waste	1	2	1	1	2	50%

Traffic	106	534	460	555	85	104%
Traffic general	901	3206	2567	3467	640	108%
Youth day	0	114	103	103	11	90%
TOTAL	2752	11688	9391	12030	2410	103%

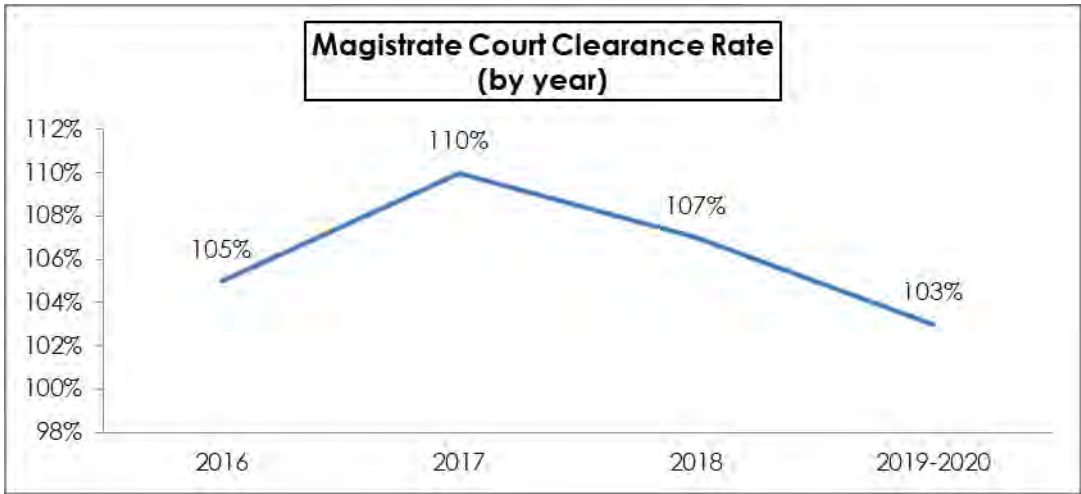
Division	Clearance Rate 2018	Clearance Rate 2019-2020
Criminal	102%	95%
Civil	127%	96%
Civil inland	141%	0%
Private inland	129%	0%
Private prosecution	87%	93%
Family protection	103%	110%
Drunken driver	96%	100%
Spot fine	111%	125%
Tobacco	112%	152%
Litter and waste	90%	50%
Traffic	97%	104%
Traffic general	113%	108%
Youth day	122%	90%
TOTAL	107%	103%

Clearance rates were lower than 100% in almost half of all divisions. One contributor for the lower clearance rate was that earlier in the reporting period two Magistrates in Tongatapu were away for 2 months on medical grounds. Also, Courts were adjourned numerous times due to heavy rains and tropical cyclones such as TC Harold and TC Sarai. More importantly, COVID-19 global pandemic plays a huge role in this as the Declaration of a State of Emergency came to effect on 20th of March 2020 hence border was closed (and still is) thus restricting few lawyers, parties and potential witnesses of pending matters from returning to Tonga to have their matters dealt with. This highlights the need for matters to be dealt with via video conferencing and for the Ministry to invest in new equipment to facilitate this.

There were no civil inland and private inland cases filed by the Ministry of Revenue and Customs (MORC) in this reporting period. The sudden drop in the number of drunken driver cases and traffic cases filed were mostly due to almost all (drunken driver related) cases

being struck out on grounds that there was no 'enforcement officer' in the Police Force to conduct such tests in accordance with s. 2(1) of the Traffic (Alcohol Breath Tests) Notice 2010. However, cases are expected to rise in the next reporting period since the Notice was amended in December 2019. There is also a decline in the number of litter and waste infringement cases filed by relevant authorized officers for no apparent reasons. Decline in civil and private prosecution cases was due to the major shortage in number of private practice lawyers in the Kingdom.

In each of the last three years, the Magistrate's Court has had a clearance rate of more than 100% indicating that the Magistrate's Court has managed its workload successfully. This is shown in the line graph below.



The sudden change of reporting period from calendar year to financial year does affect the presentation of data and the interpretation of trends in this reporting period. The results in this year will be used as a base line for future reporting periods.

INDICATOR 2 - 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 91 days. This is a significant improvement from the previous reporting period.

As there has always been, there are two sessions of the Court each year, one at the beginning and one at the end 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

The Ministry's 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 well exceeded as the average disposal time in all cases for this reporting period was 199 days. The overall total average time for all matters has considerably improved from 222 days to 157 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	1 July 2019 – 30 June 2020
Criminal	285	283	193	199	151
Civil	484	468	390	375	373
Criminal Appeal	Not reported	Not reported	148	128	134
Civil Appeal	Not Reported	Not Reported	109	609	119
Divorce	Not Reported	Not Reported	165	172	133
Adoption	Not reported	Not reported	249	376	276
Legal Guardianship	Not reported	Not reported	215	317	339
Wedlock	Not reported	Not reported	95	178	66

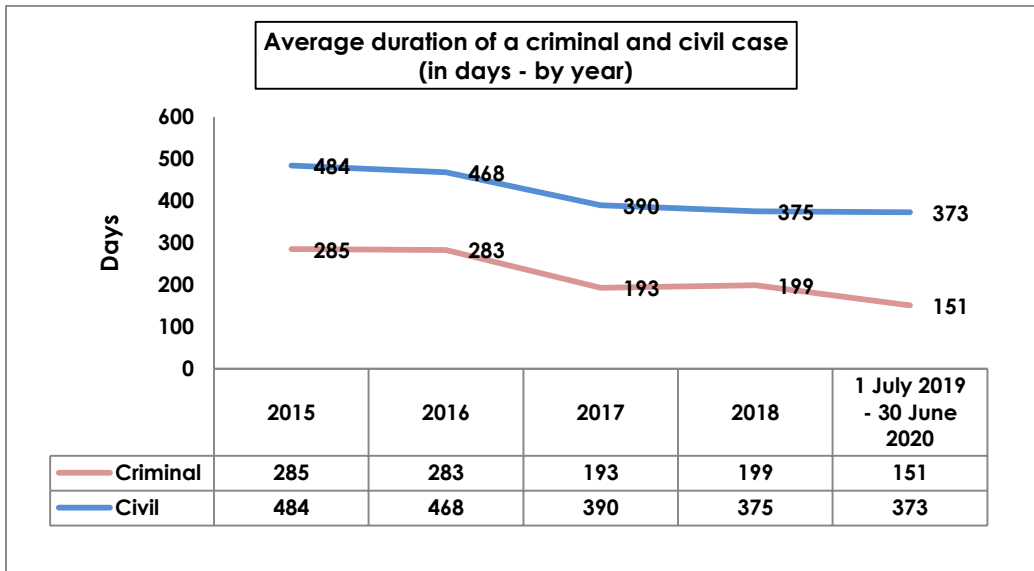
Custody	Not reported	Not reported	96	101	158
Probate & Administration	Not reported	Not reported	96	90	34
Protection Order	Not reported	Not reported	0	23	NIL
TOTAL AVERAGE	385 days	376 days	198 days	222 days	157 days
TOTAL AVERAGE CR/CV			292 days	257 days	199 days

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 much shorter in this reporting period to dispose of civil appeals. There was very high number of days in the last reporting period, as can be shown but was due to an anomaly resulting from the finalization of one very old case. As the data indicates the clearance rate for this reporting period of 119 days is satisfactory and a big improvement.

Disposal rates for family matters especially adoption and divorce have improved drastically while Legal Guardianship (LG) matters have taken longer to be finalized. This can be explained by the Courts having very strict requirements regarding LG applications. Most other jurisdictions do not recognize LG Orders from Tonga and therefore overseas applicants must provide evidence from their country of residence that a grant of LG will allow the child permanent residency in that country. These requirements are consistent with the Court's obligation to consider the interests of the subject children as its paramount consideration. The majority of LG applications by overseas cannot provide that evidence and therefore matters are not processed further.

Applications by married women to register illegitimate child (wedlock) and probate matters are being dealt with swiftly due to internal procedures and assistance of the Registrars in vetting these applications and providing briefs for the Judges approval.



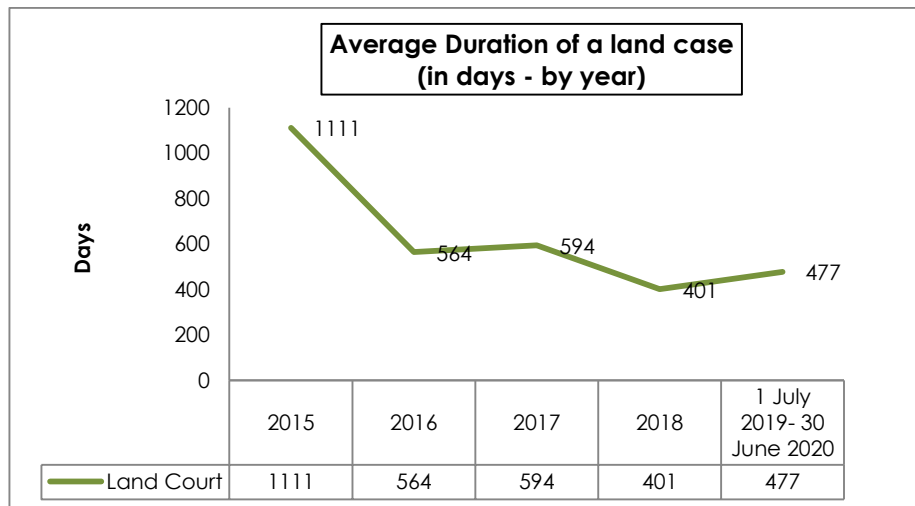
Previous annual reports have not included disposal rates for cases heard in circuit courts. Those figures are in the table below. In future years this data will be included allowing for trends to be identified.

The average disposal time in all cases in circuit courts was 137 days.

Circuit	Total cases finalised	Total Days	Average Days Disposal Time
Vava'u	43	5903	137
Ha'apai	0	0	0
'Eua	0	0	0
TOTAL	43	5903	137

Land Court

The average duration between filing and finalization of Land Court cases in this reporting period was 477 days. As with clearance rates for land matters, and identified above (page 22) there is much room for improvement.



Magistrate’s Court

Presently the Magistrate’s Court has yet to develop targets for this indicator, however there is effort invested to ensure that there will be targets promulgated in the next reporting period where work will be measured and reported against.

In the reporting period, the average disposal time in all cases was 84 days. This is a significant improvement from 129 days in the previous reporting period which demonstrate the tireless effort the magistrates and staff have put together in this reporting period despite limited manpower.

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

‘Eua Registry

Division	2018	2019-2020
Criminal	83	18
Civil	210	249
Private prosecution	62	249
Traffic	58	4
Traffic general	287	84
TOTAL AVERAGE	140 days	121 days

There is an improvement in the disposal of cases for this registry in the reporting period. However, in comparison to other registries the slower disposal of cases in this registry was affected by 1 case filed each in both civil and private prosecution divisions that were finalized within 8 months of filing. These matters were often adjourned at the request of counsels thus highlighted the urgent need for an adjournment policy to be in place.

Ha'apai Registry

Division	2018	2019-2020
Criminal	78	24
Civil	85	43
Family protection	0	113
Private prosecution	0	65
Traffic	31	5
Traffic general	0	16
TOTAL AVERAGE	65 days	44 days

With the exception of family protection cases, all cases are being heard and disposed of within 7 weeks of filing at Ha'apai. Family protection cases usually take a longer period because of temporary protection orders that remains active for 90 days before finalization. The disposal rate in the reporting period has improved and become quicker highlighting the fact that there is now a resident Magistrate in Ha'apai.

Vava'u Registry

Division	2018	2019-2020
Criminal	16	24
Civil	149	63
Civil inland	756	0
Family protection	0	1
Private inland	0	0
Private prosecution	84	43
Tobacco	0	0
Traffic	20	30
Traffic general	119	62
TOTAL AVERAGE	191 days	37 days

Overall cases are being heard more quickly at Vava'u where all cases are generally finalized within 6 weeks of filing. Except for criminal and traffic the disposal rates for all divisions had become quicker than in the previous reporting period. The major

improvement from 191 days to 37 days indicates that the resident Magistrate and staff of Neiafu registry have managed to deliver timely justice to the people of Vava'u in this reporting period.

Tongatapu Registry

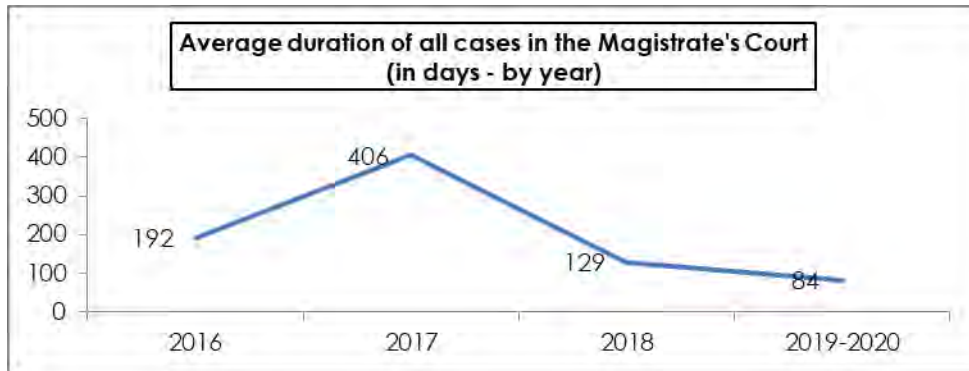
Division	2018	2019-2020
Criminal	170	54
Civil	238	74
Civil inland	130	250
Private inland	359	0
Private prosecution	156	80
Family protection	96	61
Drunken driver	95	43
Spot fine	90	62
Tobacco	66	78
Litter and waste	74	357
Traffic	41	32
Traffic general	105	62
Youth day	78	21
TOTAL AVERAGE	131 days	98 days

With the exception of civil inland and litter and waste, there is great improvement this year where most cases were finalized within two months of filing. The reason for the excessive days for litter and waste is that this case type is often overlooked as it is not in the Case Management System and court list is generated by the traffic clerk. There is a strong demand for the Case Management System to be upgraded so as to include litter and waste case type. 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.

As for civil inland, these were pending matters from 2018 where MORC had withdrawn in the same year but failure of this Court to disposed of resulted in these matters left inactive until finalization this year. This highlights the urgent need for time goals to be in place not only to monitor aged active cases but also timely disposition of cases.

All Registries

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



INDICATOR 3 - PERCENTAGE OF APPEALS

Court of Appeal

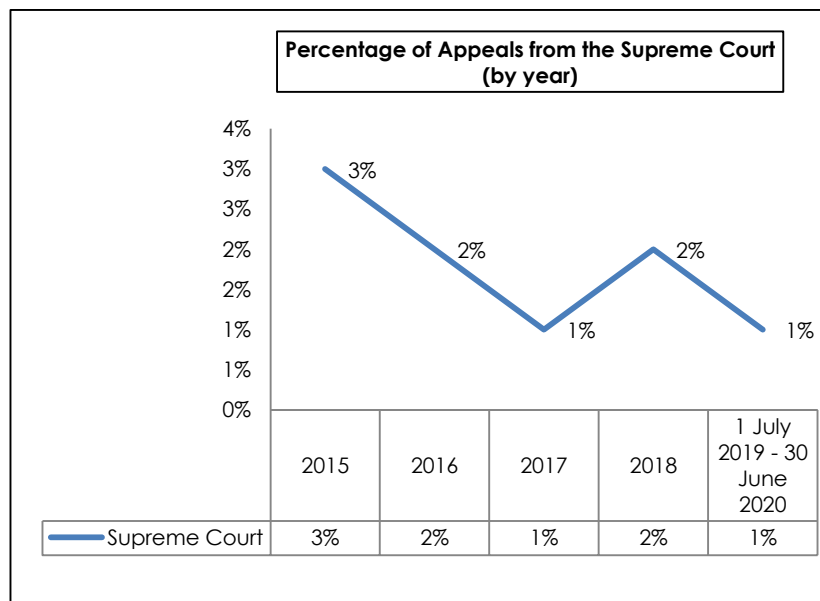
There are no appeals from decisions of the Court of Appeal.

Supreme Court

The Ministry's target for this indicator is that the percentage of appeals does not exceed 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	1 July 2019 – 30 June 2020
Supreme Court	3%	2%	1%	2%	1%



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	297	293	1%	99%
Civil	68	65	4%	96%
Criminal Appeal	18	18	0%	100%
Civil Appeal	4	4	0%	100%
Divorce	205	205	0%	100%
Adoption	90	90	0%	100%
Legal Guardianship	51	51	0%	100%
Protection Order	0	0	0%	100%
Wedlock	204	204	0%	100%
Custody	6	6	0%	100%
Estate Administration	67	67	0%	100%
TOTAL	1010	1003	1%	99%

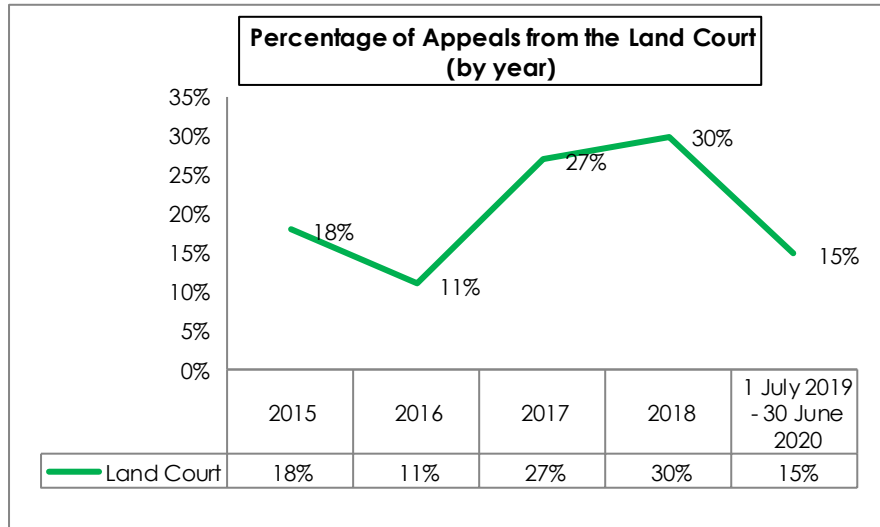
There is a decrease in percentage of appeals this year than in the previous reporting period. It is important to note that as the statistics show there were no appeals at all in all fields except in criminal and civil matters. Criminal matters remaining at 1% and civil at 4%. Overall these results are satisfactory.

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 the reporting period (1 July 2019 – 30 June 2020)	Number of cases appealed	Number of Cases Not Appealed	% of Cases Appealed	% of Cases Not Appealed
	26	4	22	15%	85%

% of Cases Appealed in Land Court	2015	2016	2017	2018	1 July 2019 – 30 June 2020
	18%	11%	27%	30%	15%



Magistrate's Court

Magistrate's Court has yet to develop a target for this indicator and it is anticipated that there will be a target in the next reporting period.

There were a total of 41 matters (34 criminal, 2 civil, 2 traffic, 2 family protection and 1 private prosecution) appealed in this reporting period which were filed as 18 criminal appeals and 4 civil appeals that amounts to a total of 22 cases in the Supreme Court. Most of the appeals were filed late in the reporting period, are still active, and will be determined in the next reporting period.

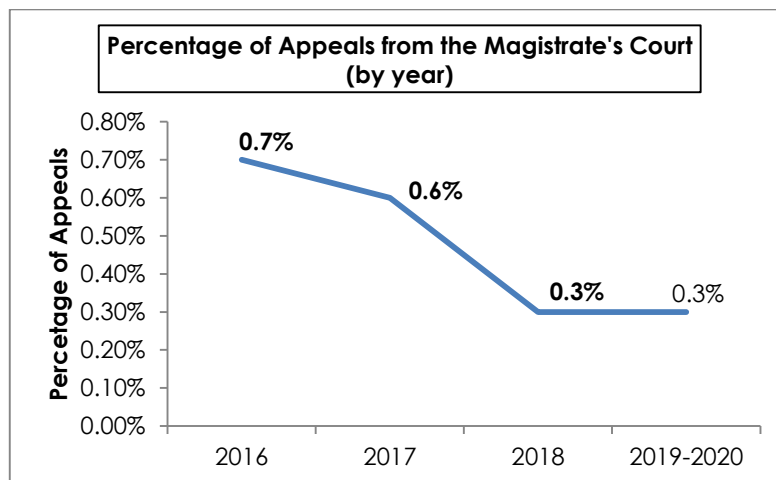
The number of appeals had decreased from a total of 50 cases in the previous reporting period to 41 cases in this reporting period. In comparison to the previous reporting period the percentage of appeals had remained steady at 0.3%.

The table below is a summary of the percentage of judgments entered by Magistrates that were appealed in this reporting period.

Magistrates	% of judgments appealed per Magistrate
Chief Magistrate Lokotui	0%
Principal Magistrate Mafi	17%
Principal Magistrate Tatafu	12%
Senior Magistrate Tuita	17%
Senior Magistrate Tu'akalau	2%
Senior Magistrate Ma'u	0%
Senior Magistrate Kaufusi	15%
Senior Magistrate Langi	22%
Senior Magistrate Pahulu-Kuli	15%
TOTAL	100% of 41 cases appealed

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

% of appeals in the Magistrate's Court	2016	2017	2018	2019-2020
	0.7%	0.6%	0.3%	0.3%



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	5764	34	5730	0.6%	99.4%
Civil	147	2	145	1.4%	98.6%
Civil inland	3	0	3	0%	100%
Private prosecution	81	1	80	1.2%	98.8%
Family protection	185	2	183	1.1%	98.9%
Drunken driver	4	0	4	0%	100%
Spot fine	1673	0	1673	0%	100%
Tobacco	47	0	47	0%	100%
Litter and waste	1	0	1	0%	100%
Traffic	555	2	553	0.4%	99.6%
Traffic general	3467	0	3467	0%	100%
Youth day	103	0	103	0%	100%
TOTAL	12030	41	11989	0.3%	99.7%

INDICATOR 4 - OVERTURN RATE ON APPEAL

Court of Appeal

There are no appeals from the Court of Appeal.

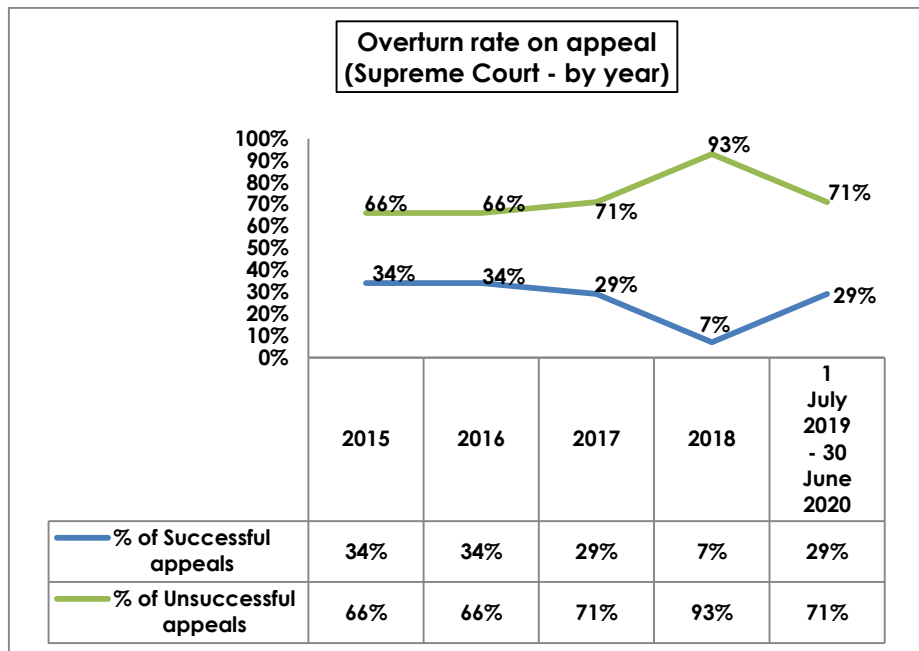
Supreme Court

The Ministry's 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.

The percentage of cases that were overturned on appeal was 29% , i.e. 71% of appeals were unsuccessful.

The percentage of cases overturned on appeal in this and the last four 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%
1 July 2019 – 30 June 2020	7	2	5	1	29%	71%

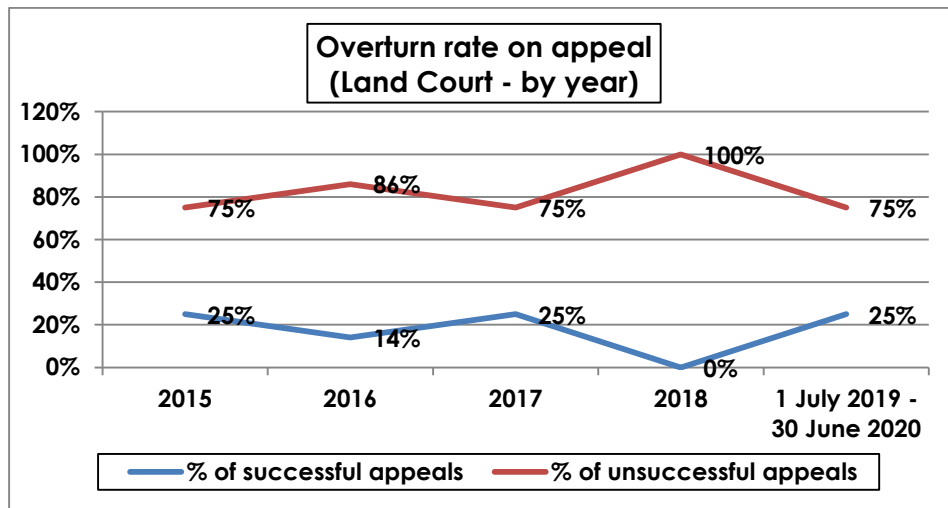


It will be observed that in the previous four years the percentage of cases overturned on appeal had remained steady at around or greater than 30% except for the last reporting period.

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.

Year	% of Successful appeals	% of Unsuccessful appeals
2015	25%	75%
2016	14%	86%
2017	25%	75%
2018	0%	100%
1 July 2019 – 30 June 2020	25%	75%



Magistrate's Court

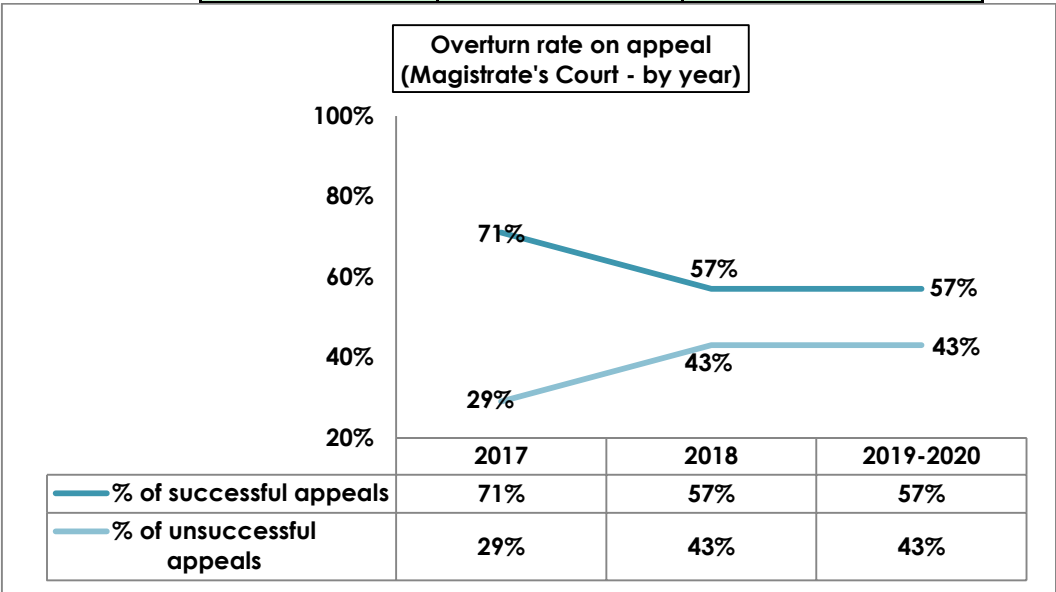
Magistrate's Court has yet to develop a target for this indicator and it is anticipated that there will be a target in the next reporting period.

Of the appeals heard and determined, 8 out of 14, or 57% of appeals were allowed resulting in the decisions below being overturned.

Division	Number of cases appealed	Number of appeals filed in Sup. Ct	Appeals allowed	Appeals dismissed	Appeals pending
Criminal	34	18	6	3	6
Civil	2	4	0	2	0
Civil inland	0		0	0	0
Private inland	0		0	0	0
Private prosecution	1		0	0	1
Family protection	2		1	1	0
Drunken driver	0		0	0	0
Spot fine	0		0	0	0
Tobacco	0		0	0	0
Litter and waste	0		0	0	0
Traffic	2		1	0	1
Traffic general	0		0	0	0
Youth day	0		0	0	0
TOTAL	41	22	8	6	8

The percentage of cases overturned on appeal in this and the previous two years is shown in the table and line graph below. The result of this reporting period had remained steady in that of the previous reporting period. This shows a decrease in the number of successful appeals since 2017 and an improvement in the quality of decision-making in the Magistrate's Court.

Year	% of successful appeals	% of unsuccessful appeals
2017	71%	29%
2018	57%	43%
2019-2020	57%	43%



INDICATOR 5 - PERCENTAGE OF CASES WHERE FEES ARE WAIVED

All Courts

There is presently no statutory authority to waive court fees.

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 work currently being undertaken by the Ministry 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.

In the Magistrate's Court, 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. As previously mentioned in the last reporting period 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 6 - 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

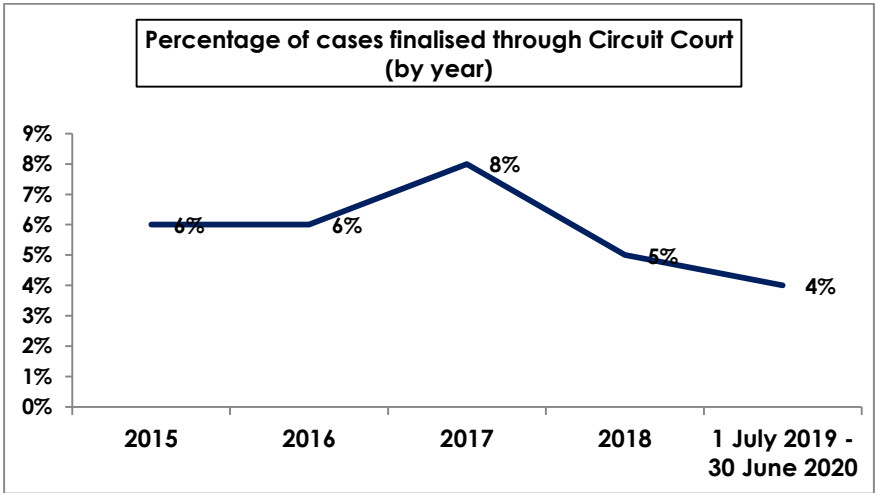
All Judges of the Supreme Court are also Judges of the Land Court. When going on circuit the Judges may sit in both the Supreme Court and the Land Court. In this reporting period there were no Land Court cases finalized in circuit courts.

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	220	8	4%	96%
Civil	61	0	0%	100%
Criminal Appeal	15	2	13%	87%
Civil Appeal	5	2	40%	60%
Divorce	209	15	7%	93%
Adoption	117	3	3%	97%
Legal Guardianship	60	4	7%	93%
Protection Order	0	0	0%	100%
Wedlock	250	8	3%	97%
Custody	5	0	0%	100%
Estate Administration	64	1	2%	98%
TOTAL	1006	43	4%	96%
LAND COURT	22	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 5-6%.



Magistrate’s Court

In this reporting period the Magistrate’s Court travelled on 8 circuits to Lulunga and Mu’omu’a Groups in Ha’apai Islands, ‘Eua Island and Niuatopotapu Island. Magistrates in Tongatapu took turns in undertaking the circuits to ‘Eua, Ha’apai resident magistrate undertook the circuits to Lulunga and Mu’omu’a Groups and Vava’u resident magistrate was responsible for the circuit to Niuatopotapu Island. While these magistrates undertook the circuits all their responsible cases will be adjourned during their absences until the circuit is over which usually lasted one to two weeks.

The percentage of cases disposed of through circuit courts was 89% which is an increase from 72% in the last reporting period.

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

- i. 16 – 20 of September, 2019.
- ii. 9 – 12 of December, 2019.
- iii. 25 – 31 of January, 2020.
- iv. 23 – 26 of March, 2020.
- v. 18 – 22 of May, 2020.

There were two circuits to Lulunga and Mu'omu'a Groups on:

- i. 24 of August to 7 of September, 2019.
- ii. 12 – 23 of March, 2020.

There was only one circuit to Niuatoputapu Island and was conducted on 23 – 30 of October, 2019.

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

Circuit Courts	Total cases called	Total cases finalized by Circuit	% of cases finalized in Circuit
'Eua	241	205	85%
Lulunga and Mu'omu'a	14	14	100%
Niuatoputapu	61	61	100%
TOTAL	316	280	89%

The percentages of cases finalized in circuit courts were below 100%. The average was brought down by the result from 'Eua as the 'Eua Police failed to prepare their cases ahead. They usually seek too many adjournments on the basis that the accused persons have left the island and were not aware that their cases would be called and in some cases they failed to serve summons.

INDICATOR 7 - PERCENTAGE OF CASES WHERE A PARTY RECEIVES LEGAL AID

All Superior Courts

There is still 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. They continue to file cases both in the Magistrate and Supreme Court relating to domestic and family violence.

Magistrate's Court

The percentage of cases where a party receives legal aid in this reporting period was 33%, which is a significant rise from 20% in the previous reporting period.

A greater number of cases were filed by the Family Protection Legal Aid Center (FPLAC) in the Magistrate's Court. A total of 77 new applications for protection orders under the Family Protection Act were filed and represented by the Center. The Center also acted for respondents in 4 applications during the reporting period. In addition, the Center also made applications to renew, vary or cancel existing orders from previous years.

A total of 167 applications were filed for protection orders in this reporting period of which 46% had legal assistance from FPLAC. Consequently, percentage of cases where a party receives legal aid had increased from 39% in the previous reporting period to 46% in this reporting period.

A total of 28 new civil actions filed by the Center sought permanent maintenance under the Maintenance of Deserted Wives Act and the Maintenance of Illegitimate Children's Act. There were also other civil applications made for warrant of distress, restraining order, commit the respondent for failure to pay maintenance in existing and pending civil cases.

A total of 153 civil cases were filed this reporting period where 18% received legal assistance from the Center. This is a slight decrease from 21% in the previous reporting period.

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	167	77	46%
Civil	153	28	18%
TOTAL	320	105	33%

Year	% of cases where a party receives legal aid
2018	20%
2019-2020	33%

INDICATOR 8 - 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). There have been no complaints during this reporting period.

INDICATOR 9 - PERCENTAGE OF COMPLAINTS AGAINST JUDICIAL OFFICERS

All Superior Courts

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

Magistrate's Court

There was one complaint received concerning a Magistrate in the reporting period. The matter was referred to and dealt with by the Judicial Appointments and Discipline Panel.

INDICATOR 10 - PERCENTAGE OF COMPLAINTS RECEIVED CONCERNING COURT STAFF

Superior Courts

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

Magistrate's Court

There were no complaints in records received concerning staff in the reporting period. However, the public still voiced their concerns at the front counter and over the phone and the Magistrate's Court makes no attempts to keep a record of those. In future such people will be encouraged to use the complaints process so there is a record.

INDICATOR 11 - AVERAGE CASES PER JUDICIAL OFFICER

Court of Appeal

There were a total of 15 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 5. In the previous reporting period the figure was 11. This reflects the smaller number of appeals filed in this reporting period.

Supreme Court

There are three Supreme Court Judges who were also Judges of the Land Court.

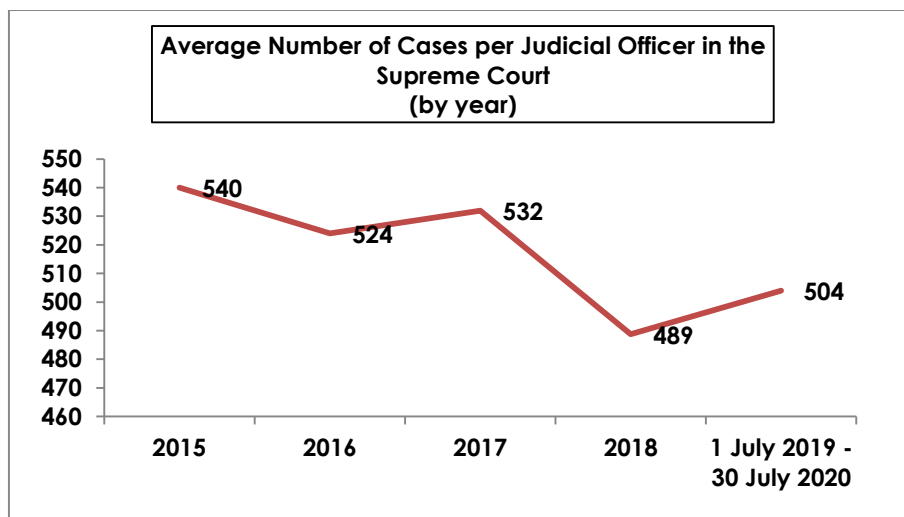
The work of the Supreme Court was broadly allocated to the Judges by division. Justice Cato undertook most of the criminal work. Justice Nui was responsible for most family cases and some civil cases. Lord Chief Justice Whitten was responsible for a broad range of work across all divisions. A breakdown of the number of cases finalized by Judge are set out in the table below. Former Lord Chief Justice Paulsen also ended his term at the beginning of this reporting period and dealt with some of the cases.

Division	Paulsen CJ	Whitten CJ	Cato J	Niu J
Criminal	7	27	151	35
Civil	4	40	0	17
Criminal Appeal	1	5	3	6
Civil Appeal	0	1	0	4
Divorce	0	18	56	135
Adoption	4	17	21	75
Legal Guardianship	0	11	19	30
Protection Order	0	0	0	0
Wedlock	14	78	11	147
Custody	0	4	0	1
Estate Administration	0	33	5	26
TOTAL	30	234	266	476

The total number of cases dealt with (including those finalized) by the Supreme Court in the reporting period was 1,512 which is broken down by division in the following table. This is an increase from the figures in the last reporting period.

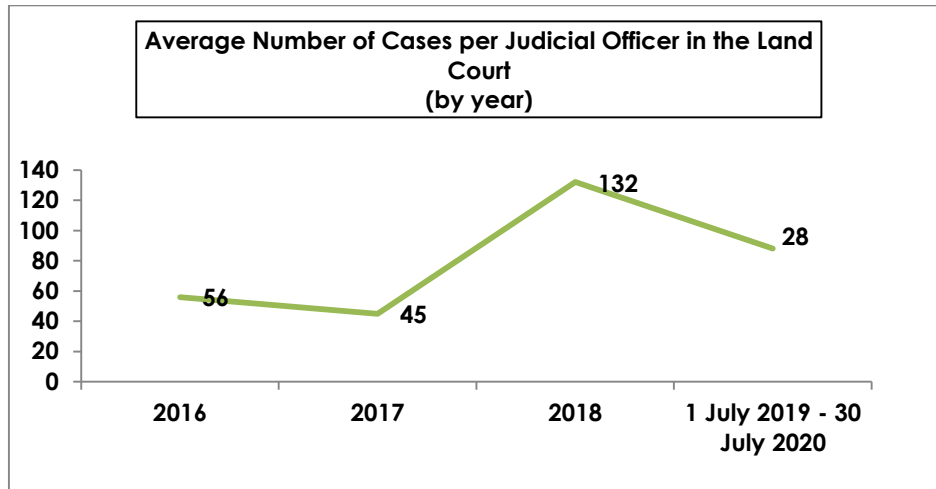
Division	Previous Pending	New Cases Filed	Total previous pending and new cases filed
Criminal	95	297	392
Civil	72	68	140
Criminal Appeal	6	18	24
Civil Appeal	1	4	5
Divorce	84	205	289
Adoption	73	90	163
Legal Guardianship	45	51	96
Protection Order	0	0	0
Wedlock	115	204	319
Custody	1	6	7
Estate Administration	10	67	77
TOTAL	502	1010	1512

The number of cases per Judicial Officer in this reporting period was 504. 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 56. The average number of cases per Judicial Officer was 28.



Magistrate's Court

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

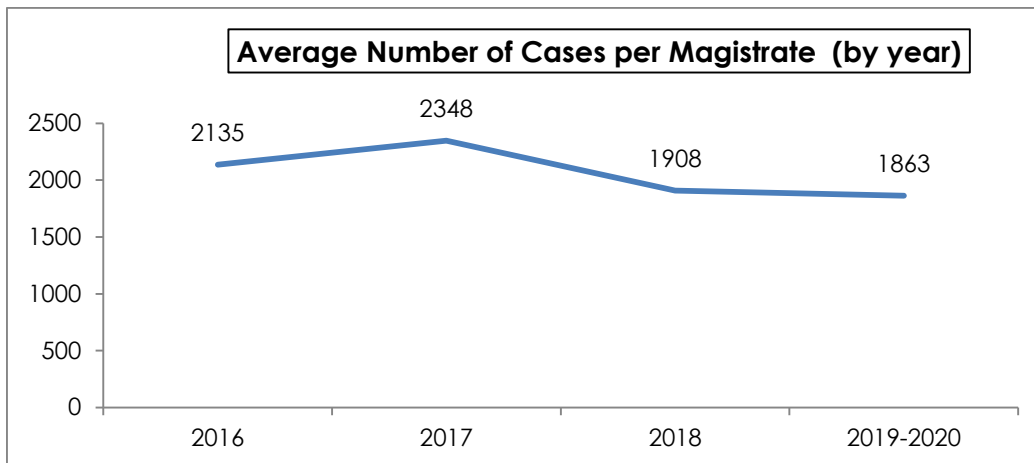
A breakdown of the number of cases finalized by Magistrate is set out in the table below.

Division	Lokotui CM	Mafi PM	Tatafu PM	Tuifa SM	Tu'akalau SM	Ma'u SM	Kaufusi SM	Langi SM	Pahulu-Kuli SM	TOTAL
Criminal	0	670	121	1512	722	165	785	881	908	5764
Civil	0	0	8	24	24	7	20	54	10	147
Civil inland	0	0	0	3	0	0	0	0	0	3

Private prosecution	0	1	3	32	7	2	4	22	10	81
Family protection	0	0	0	72	3	2	48	58	2	185
Drunken driver	3	0	0	0	0	0	1	0	0	4
Spot fine	388	48		467	266		308	9	187	1673
Tobacco	19	3	0	0	17	0	1	0	7	47
Litter and waste	0	0	0	1	0	0	0	0	0	1
Traffic	209	28	18	96	94	8	53	1	48	555
Traffic general	1544	134	22	662	904	8	103	12	78	3467
Youth day	0	0	0	29	13	0	51	10	0	103
TOTAL	2163	884	172	2898	2050	192	1374	1047	1250	12030

The total number of cases dealt with by the Magistrate's Court in the reporting period was 14,440 and the average number of cases per Magistrate in this reporting period was 1,863 (which makes allowance for the fact that former Principal Magistrate Tatafu was recalled for two months (July – August 2019) and newly appointed Senior Magistrate Pahulu-Kuli commenced duty on the third week of January 2020). A comparison with the results in the previous three years is contained in the table and line graph below.

Year	Average number of cases per Magistrate
2016	2135
2017	2348
2018	1908
2019-2020	1863



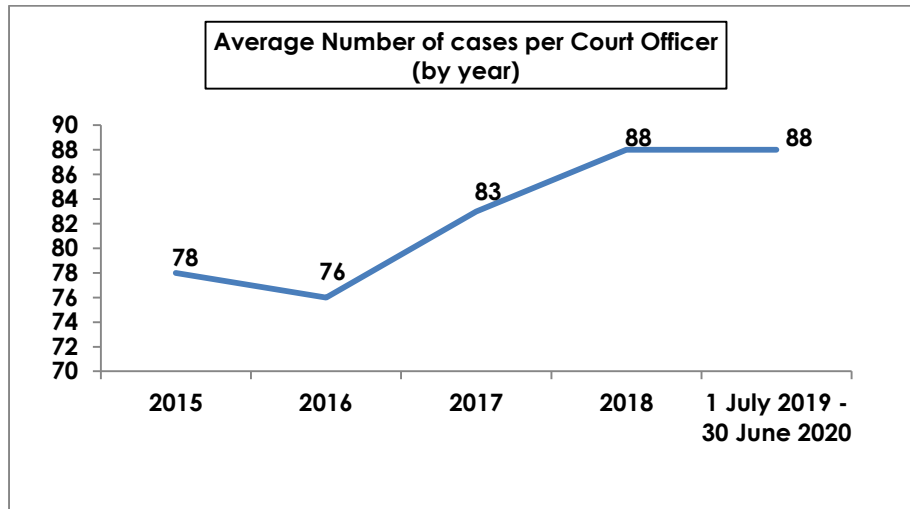
The average number of cases per magistrate is decreasing by year. However, uneven distribution of work amongst the magistrates is another contributor to the lower clearance rate in this reporting period in comparison to previous reporting periods. The rotations roster should be given due considerations so that workloads are equally shared by the magistrates.

INDICATOR 12 - AVERAGE NUMBER OF CASES PER MEMBER OF COURT STAFF

Superior Courts

In the reporting period the average number of cases per member of staff was 88. This is the same number as the last reporting period. 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	502	1010	1512	84
Land Court	30	26	56	9
Court of Appeal	4	11	15	3
TOTAL	536	1047	1583	88



Magistrate's Court

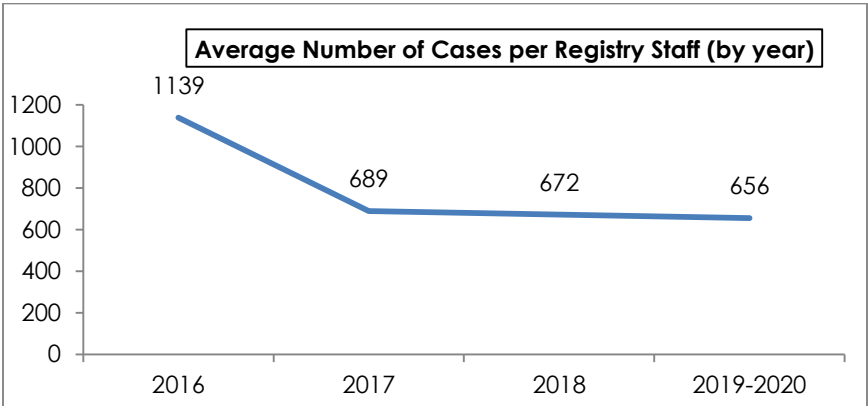
In the Magistrate's Court the number of staff in all registries was 22 and the average number of cases per staff member was 656. The work of 'Ohonua Registry in the reporting

period is counted to Nuku'alofa Registry since its workload was managed by the staff of Tongatapu Registry after the sudden passing of its only staff in early 2019. In the near future there will be training conducted for new recruited staff of 'Ohonua Registry so that they may be able to manage their own workloads.

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	2652	10044	12696	794
Vava'u	4	78	1443	1521	380
Ha'apai	2	22	201	223	112
TOTAL	22	2752	11688	14440	656

Year	Average number of cases per registry staff
2016	1139
2017	689
2018	672
2019-2020	656



INDICATOR 13 - COURT PRODUCES AN ANNUAL REPORT THAT IS AVAILABLE IN THE FOLLOWING YEAR

The Courts of Tonga produce an annual report that is available on the Ministry of Justice website and PACLII.

INDICATOR 14 - INFORMATION ON COURT SERVICES IS PUBLICLY AVAILABLE

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

There have also been public awareness programs both on TV, radio and the Ministry's website although the website is still developing. Information relevant to services and decisions of the Courts will be published and made available to the public through the internet.

Magistrate's Court

The Ministry of Justice has launched its official website www.justice.gov.to during Justice Week in late July, 2019 where each court has their own page to display services provided including necessary information and documentation to the public. Information regarding the Magistrate's Court can be obtained after selecting 'Magistrates Court' under 'Courts' drop down menu options on the home page of www.justice.gov.to.

Magistrate's Court used radio to announce circuit courts and court session's adjournment due to bad weather. The Magistrate's Court also used Ministry of Justice's Facebook page to display public notices.

INDICATOR 15 - COURT PUBLISHED JUDGMENTS ON INTERNET AND/OR PACLII

Superior Courts

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 Attorney General's website www.ago.gov.to. They are also sent electronically to media outlets, government departments and others by request on a distribution list. The judgments of the Superior Courts are also sent to PACLII for publication. In this reporting period, 77 judgments were published on PACLII.

The Superior Courts' judgments are also reported each year in the Tonga Law Reports. All Law Practitioners are required to purchase the Tonga Law Reports. The Tonga Law Reports are currently available up to and including 2016. Since the retirement of the editor of the reports, the Attorney-General's office has been seeking to enlist a new editor with suitable skills to produce the reports for subsequent years.

Magistrate's Court

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 sixteen Magistrate's Court judgments and most of them were in the Tongan language. The number of judgments had doubled since the last reporting period and is expected to rise in the future.

DISAGGREGATION OF DATA

Superior Courts

As previously identified 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 programs.

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 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.

Criminal disaggregated data

Concerns are commonly expressed about young people appearing before the Courts facing criminal charges and being treated as adults. Proposals to introduce a youth diversion scheme and a Youth Court are still progressing.

In this reporting period there were 13 cases in the Supreme Court where an accused was under the age of 18 years. This is more than an 100% increase from the last reporting period.

The criminal cases in the Supreme Court were divided by offence category. This showed that of all charges brought before the Court 46% related to drugs and firearms, 11% were for dishonesty offences, 13% were for sexual offences, 18% were for violence offences other than sexual offences and 12% other.

In all criminal cases 94% of accused persons were male and 6% were female.

In cases where a victim could be identified 34% were male and 66% were female.

In cases of sexual/violence 58% of the victims were under the age of 18 years.

The marked increase in drug related matters, particularly methamphetamine is reflected here with 46% compared to 24% in the last reporting period.

Divorce disaggregated data

In 43% of cases the petitioner for divorce was male and 57% were female.

In 88% 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 6% of cases the ground relied upon was adultery and in 6% of cases other.

4 petitions for divorce were filed by persons under the age of 20 years; 56 petitions were filed by persons between the ages of 20 and 30 years; 68 petitions by persons between the ages of 30 and 40 years; 55 petitions by person persons between 40 and 50 years and 22 petitions by persons over the age of 50 years.

Magistrate's Court

Some disaggregated data has been manually collected and is presented below. This data relates to juvenile (youth criminal), criminal (domestic violence) and family protection order cases in the Magistrate's 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.

Juvenile disaggregated data

In this reporting period there were 114 criminal cases filed in the Youth Court Division.

In all youth cases 96% of accused persons were male and 4% were female.

Of all accused persons 16% were 18 years old, 25% were 17 years old, 36% were 16 years old, 14% were 15 years old, 2% were 14 years old, 1% was 10 years old, 2% were not disclosed and 4% were later discovered that they were over 18 years old and were transferred to criminal division.

By category of offence, for all charges brought before the Court, 40% were for dishonesty offences, 30% were violence offences, 24% were for violation of National Lockdown Notices, 4% were traffic related cases and 2% were sexual offences.

By outcome category, 41% were discharged without conviction, 22% were withdrawn by complainants, 12% were acquitted, 5% were committed to Supreme Court, 5% were struck out, 5% were to compensate damages, 3% are on one-year probation sentences, 3% are on suspended sentences, 2% were fined and 2% other.

In all youth cases, 4% were legally represented and 96% were self-represented with parents or guardians present.

Criminal (domestic violence) disaggregated data

These are criminal cases pursuant to s. 28 & 29 of the Family Protection Act (FPA) prosecuted by the Police and were heard and determined in the Family Court.

In all cases, 92% of accused persons were male and 8% were female. 88% of victims were female and 12% were male.

By offence category, 75% were for physical abuse, 16% were for mental abuse, 3% breached protection orders, 3% breached police safety order and 3% were for other.

By outcome category, 28% were given suspended sentences, 17% were withdrawn, 11% were fined, 11% were issued protection orders, 7% were ordered to pay compensation or damages, 7% were discharged without convictions, 5% were incarcerated, 5% are on one to two years' probation sentences, 3% were reprimanded, 2% were acquitted and 4% were other.

Protection order disaggregated data

These are applications for protection orders under the FPA and are regarded as family protection cases.

In all family protection cases, 49% were filed directly to Court in accordance with s.10(1)(a)(c)(3) of the FPA, 46% were filed by FPLAC, 3% were filed by private lawyers and 2% were filed by Tonga Police Domestic Violence Unit.

Of all applicants for protection orders, 76% were female, 24% were male and 39% involved children.

Of the different types of orders sought, 38% were for Emergency Protection Orders (EPO), 56% were for Temporary Protection Orders (TPO), 5% were for Final Protection Orders (FPO) and 1% were for protection orders.

Of all EPO applications, 79% were granted, 8% were refused and 13% were withdrawn.

Of all TPO applications, 85% were granted, 5% were refused and 10% withdrawn.

Of all FPO applications, 88% were granted. Of the 12% of applications refused, 57% were granted an EPO and 43% were granted an TPO instead.

As to types of domestic violence, 36% were mental and emotional abuse cases, 31% were physical abuse cases, 12% were economic abuse cases, 7% were harm or danger to health or wellbeing cases and 2% were sexual abuse cases. The remaining 12% cases solely sought interim custody and access.

Of the various domestic relationships between the complainant/applicant and the respondent, 41% were married (s. 5(a) FPA), 6% lived together in the nature of marriage (s.5(b) FPA), 26% were parents of a child (s. 5(c) FPA), 2% were family members living in the same household (s. 5(d) FPA), 19% were persons sharing the same residence (s. 5(f) FPA), and 6% were other.

In all family protection cases, 13% of respondents had legal representation and 87% were unrepresented.

From time to time, the Courts utilize the services of non-government organizations such as the Women and Children Crisis Centre (WCCC) and Tonga National Centre for Women and Children (TNCWC) to provide counselling services. On occasion, those agencies conduct surveys and submit reports to assist the Court with the determination of applications. We are immensely grateful for their enduring support.

JUSTICES OF THE PEACE

Justices of the Peace are appointed pursuant to s.94 of the Magistrate's Court Act and perform the 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...”*

The Lord Chief Justice appointed 10 people to be Justices of the Peace for the period of 1 July 2019 to 30 June 2020.

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 programs 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 coronavirus pandemic and consequent national border closures greatly impacted the deliverability of programs for a good part of this reporting period. The PJSI conducted a number of on line webinars directed at supporting the courts in the Pacific in relation to meeting the challenges posed by the pandemic to the administration of justice.

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 indicator 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.