

**TOKELAU JUDICIAL
ANNUAL REPORT
2016/17 & 2017/18**

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Preface by the Chief Justice of Tokelau

Preface by the Ulu o Tokelau

As the Ulu o Tokelau for 2019 and Minister for the Office of the Council for the Ongoing Government of Tokelau, I want to thank the Almighty Father for His protection and ongoing blessings upon the Judiciaries and the people of Tokelau. I acknowledge the Taupulega of each respective village for its leadership role in overseeing the village affairs and ensuring that peace and stability are sustained in the communities of Tokelau.

I am delighted to present the Judicial Annual Report for 2016/2017 and 2017/2018 Financial Years merged into one report. These reports will provide information that will tell a story of what actually took place in the Law Commissioners' Courts of Tokelau. Access to law and justice is one of the key policy goals for the Tokelau National Strategic Plan 2016-2020 hence the information in the report will explain the performance of the whole Court's administration in details and the availability of these information will enable members of our communities and court users to respond as to whether they are satisfied with the quality of judicial services provided in their judiciaries.

While I acknowledge the many barriers in relations to accessing justice in all the villages of Tokelau, especially the most noticeable one is when the Law Commissioner is absent due to medical reasons the Faipule is the Law Commissioner by default. The Faipule is a political leader and often refuses to adjudicate on judicial matters due to them not having training at all on how to conduct the role of the Law Commissioner and giving court's users quality justice and more importantly free from any political influences. The issue of conflict interest is another challenge as everyone on each of the atoll's of Tokelau are closely related and linked to one another. Another big challenge is the total independence of the judiciary from traditional and cultural interventions. Irrespective of these challenges, justice must be easily access in a timely manner by anyone residing in any of the villages of Tokelau.

I take this opportunity to acknowledge the Judicial Officers, the Law Commissioners and the Court Clerks. Thank you for your commitment to deliver justice to our people. I particularly want to thank the Law Commissioners, as Judges makes the final decisions on matters brought to the court. The decisions and appropriate punishments can be challenging as we live in small villages where everyone know each other; nevertheless it is your responsibility to provide justice to our people. Our people's ability to access quality and timely judicial services depends on you Law Commissioners. It is befitting to also acknowledge the court clerks and the Police as their interdependence roles are significant to our people and court users accessing timely judicial services.

Acknowledging the importance of delivering quality justice for the people of Tokelau, having regular and ongoing capacity building to enhance competencies of judicial officers is significant. Improved capabilities would

only lead to improved quality justice delivery in a timely manner. In this regard it is appropriate to acknowledge the Pacific Judicial Strengthening Initiatives (PJSI) for its continuous support to Tokelau Judicial Officers in the past and present through regional and national capacity building training. Acknowledging too the support of the Judicial Studies Institution (JSI) through training.

Fakafetai lahi.

Ke ola pea ia Tokelau ite alofa ote Atua.

Faipule Keli Kalolo
Ulu o Tokelau
Office of the Council for the Ongoing Government

Foreword by the Komehina Tulafono (Law Commissioners) of

1. Fakaofu

First we give praise to our heavenly Father for his unfailing love for us Tokelau. I extend my sincere gratitude to all the leaders of Tokelau. Tulou! Tulou! Tulou lava!

I also extend my sincere gratitude to the Government of Tokelau, also to the Ulu o Tokelau, the Council of the Ongoing Government of Tokelau, and to the General Meeting (Fono Fakamua). I would also like to thank the Government of New Zealand and Australia and especially to the Pacific Judicial Development Program. Last but not least, I thank all those working for judiciary, Police as well as legal advisors and most thankful to our Senior Legal Advisor Lise Suveinakama for supporting me in this very difficult role.

For a peaceful Tokelau, we must all work together to maintain peace and harmony on Tokelau.

May Tokelau live on.

Etuale Vavega
Law Commissioner
Fakaofu

2. Nukunonu

I warmly greet you all, Talofa ni.

Te foa higanu tumoa, looking towards the seas, the fishermen's has successfully reached the shores by fishing in the preservation of justice for 2 years 2016/17 – 2017/18.

Malo ni, the right thing to do is for parents, an elderly men, and an elderly women to speak out their thoughts in a language spoken by a Alik/Chief, a fishing expedition that is not revered, will not harvest any good.

Tulou ni,

There are 2 main areas I want to emphasize on in this report 2016/17-2017/18, for the government to urgently find a solution to.

It is best to solve a problem while it is still noticeable, what a pity! To my beloved Nukunonu, let us take action now.

1. Indeed there is a huge drop seen in the cases that the courts deal with in the years 2017/17 – 2017/18.

Why?

- Is it due to the people are now righteous and have good knowledge of the laws; or
- The performance by Police, Court Clerks, and the Law Commissioners is not carried out well; or the people have no understanding whatsoever with the law.

2. Not many cases were heard in the years 2016/17-2017/18, and most of these cases are alcohol related. I advise the government of this village, to come up with an urgent solution to this problem before more flame is added to the fire.

Fathers, mothers and all members of the public, it is your responsibility to nurture your own freedom before either you or one of your children or myself gets burned in the fire.

Let us all work together, step by step, it is very important that we let the hard winds blow to its direction and the series of big waves that emerges in this life.

It is has now been all laid out, let us take caution, that our boat is safe. That you be safe, that your children may be safe, bless our village.

Tokelau will live on.

**Ioane Nui Tumua - Law Commissioner
Nukunonu**

3 Atafu

Firstly, we give praise to God for the gift of life and the strength to do our work, we lift up all praises and glory to You our Heavenly Father.

I extend my sincere gratitude to the New Zealand government and Australia and everyone that has together supported the courts of Tokelau.

I commend the Pacific Judicial Development Project for your on-going assistance and support provided not only for training and for capacity building to improve services.

I give thanks also to the 3 Taupulega, and the Council for the Ongoing Government of Tokelau for setting out rules for the development of the Tokelau government.

To God be the glory in the services we provide.

Malo ni

Lepaio Simi Lua
Law Commissioner
Atafu

1. Organisational Review

1.1 Overview of the Tokelau Court System and Police and their Jurisdiction/Role and Functions

1.1.1 Constitutional Framework of Tokelau

Tokelau is a non-self-governing territory administered by the Government of New Zealand. Tokelau is part of the Realm of New Zealand (Clause 1 (d) of Letters Patent 1989). The people of Tokelau are citizens of New Zealand. The structure of the Government of Tokelau is outlined in the Tokelau Act 1948. The Queen of New Zealand is the Head of State. The Governor-General of New Zealand is the Queen's representative. Tokelau is administered for New Zealand by the Ministry of Foreign Affairs and Trade. An Administrator is the Head of the Special Relations Unit in that Ministry. The Parliament of New Zealand can make law for Tokelau by Acts because Tokelau is part of New Zealand. The Governor-General can make law for Tokelau as regulations (Section 4(1) of the Tokelau Act 1948). The rights and the freedom of the people of Tokelau are contained in Rule 16 of the Constitution of Tokelau. The main crimes in Tokelau, and the rules of criminal procedure, are set out in the Tokelau Crimes, Procedure and Evidence Rules.

1.1.2 The Government of Tokelau

Tokelau has two governance structures:

- (i) village government
- (ii) national government.

For the village government, decisions that relate primarily to village matters are made at village level by the Taupulega (Village Council). Village Rules are also made by the Taupulega. Disputes at the village level are settled by the Law Commissioner and the Village Appeal Committee (Section 10 of the Tokelau Amendment Act 1986, Rule 103 of the Crimes Rules). Land and custom matters are settled by the Taupulega.

At the national government level, decisions that affect the whole of Tokelau are made by the General Fono. The General Fono may make such rules as it thinks necessary for the peace, order and good governance of Tokelau (Section 3A of the Tokelau Act 1948). The General Fono may not make law that contradicts an Act, regulation, or treaty that is in force in Tokelau. The General Fono may not make law that can apply or have effect outside Tokelau (Section 3A (4) of the Tokelau Act 1948). When the General Fono is not in session then the Council for the Ongoing Government, which comprises of six members, makes the decisions necessary for the administration of Tokelau.

1.1.3 Courts System

Tokelau has the following courts:

- Commissioner's Court and Village Appeal Committee
- High Court of New Zealand (operating as the High Court of Tokelau)
- Court of Appeal of NZ (operating as the Court of Appeal of Tokelau).

The Chief Justice of New Zealand is also the Chief Justice of Tokelau. The Law Commissioners, who are lay judges, are appointed by the Governor-General of New Zealand on the recommendation of the Minister of Foreign Affairs and Trade after consultations with the Taupulega of the relevant village. If the Law Commissioner is incapable by reason of sickness or otherwise of performing the office of the Law Commissioner, or where there is a vacancy in the office of the Law Commissioner, any person performing the functions of the Faipule becomes the default Law Commissioner in the village.

Tokelau has its own first instance courts: the Law Commissioner's Court and Appeal Committee of each village. In each Village Court, there is a Law Commissioner and a Court Clerk. The Appeal Committee comprises 3-4 members designated by the Taupulega, to hear any appeal on the decisions of the Law Commissioner.

A Law Commissioner has jurisdiction only in respect of the island to which that Law Commissioner is appointed and the territorial sea of Tokelau that surrounds that island.

The civil and criminal authority of Law Commissioners is to hear civil claims of up to \$1,000 and deal with criminal offences punishable by a fine or up to one year's imprisonment. The sentencing power of the Commissioners is limited to imposing a fine of up to \$150 and imprisonment of three months.

Serious matters, such as murder, manslaughter and treason, and cases on appeal, are heard by the High Court of New Zealand and the Court of Appeal of New Zealand, operating respectively as the High Court of Tokelau and the Court of Appeal of Tokelau. New Zealand has abolished the right to appeal to the Privy Council but a prerogative right of appeal to the Sovereign continues for Tokelau.

The first ever Hearing in the High Court of New Zealand sitting as a the High Court of Tokelau is a Civil Case which was heard in December 2017 in Wellington, New Zealand by Judge Thomas J. This matter was an application for an interim injunction which was dismissed by the Judge but agreed that there would be a substantive Hearing in February 2018.

The plaintiffs and defendants lawyers presented the case before the Judge without the plaintiffs and defendants being present.

The plaintiffs were not in Wellington and likewise for the defendants except for one defendant who is based in Wellington at the time of the Hearing. There are real access to justice issues in having this case heard in New Zealand only unless there is a budget allocated for some or all the parties costs to attend the Hearing.

Civil matters relating to adoption and divorce applications are dealt by the Council for the Ongoing Government of Tokelau. Decisions of Council on these matters are final.

1.2 Tokelau National Strategic Plan 2016-2020: Justice Sector Guiding Principles

The Tokelau National Strategic Plan 2016-20 presents the development aspirations of Tokelau and identifies the medium-term development priorities for the Government of Tokelau for the period of 2016-20. Tokelau's strategic vision calls for “**Healthy and Active Communities with Opportunities for All**”. The vision encapsulates the view that while the people of Tokelau aspire to a healthy life and vibrant communities with equal opportunities for all, it is important that any developments undertaken in Tokelau be sustainable and lead to improving the quality of life for the people of Tokelau without compromising their culture, heritage and environment.

There are 4 main strategic development policy goals under the Tokelau Strategic Plan, one for each of the four policy outcome areas of good governance, infrastructure development, human development and sustainability.

The goals are:

Goal 1: Improved governance, public sector and financial management, and operation of the rule of law

Goal 2: Improved standard of living through adequate, reliable and efficient infrastructure

Goal 3: Improved health and education outcomes and social-wellbeing

Goal 4: Improved economic, cultural, environmental and spiritual sustainability.

For the purposes of this Judicial Annual Report, the focus is on goal 1 and specifically on the rule of law. The key objectives under this goal clearly state: To enhance community safety; to improve access to justice; to institute principles of good governance and enhance integrity in the institutions of law and justice; to improve information and human resource management in the law and justice sector; and to improve national border management.

The objectives for the operation of rule of law clearly reflect the vision of the National Strategic Plan of Tokelau to ensure that its people continue to live in

healthy and safe communities with equal opportunities for all; hence the establishment of laws that ensure there is peace and harmony in the communities, and a judicial system that is responsive to everyone's needs and, more importantly, which provides equal opportunities for all.

1.3 Justice Sector Guiding Principles

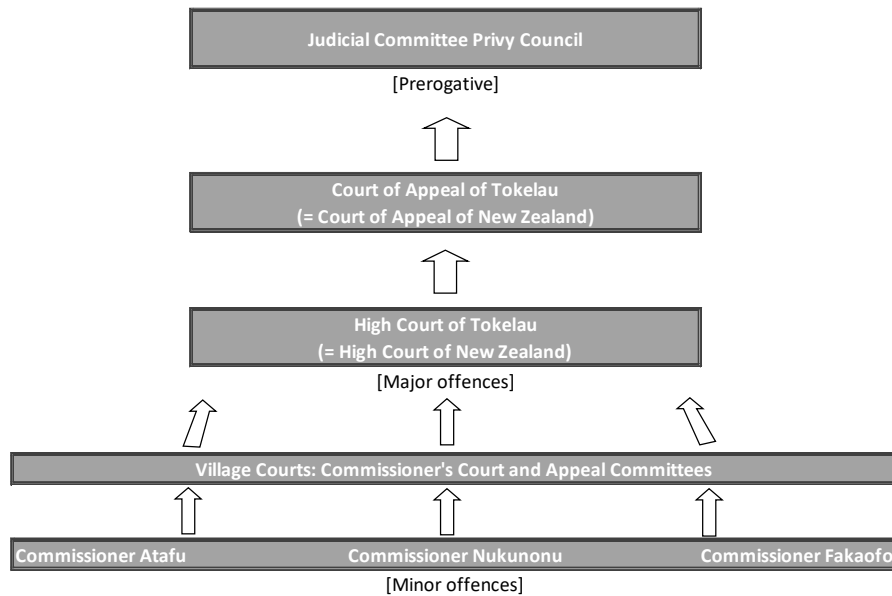
The following principles will guide the Justice Sector of Tokelau:

- Developing and building a robust justice sector in all the villages of Tokelau
- Supporting and building a reliable and accessible justice system in each of the villages of Tokelau that is trusted by the people of Tokelau
- Providing effective and quality services to support independent justice sectors in all the villages of Tokelau
- Working closely with communities to enhance safety and wellbeing for all.

1.4 Organisational Structure

The organisational structure of the Tokelau judicial system is illustrated in Figure 1.

Figure 1. Organisational structure of the Tokelau Courts system



2. Improving Access to Justice

To ensure there is a constant and improved access to justice in all the three judiciaries of Tokelau, it is crucial to mention here that the key objective outlined under Goal 1 of the Tokelau Strategic Plan (page 9 above) is the main focus of this judicial report, especially the judiciaries in the respective villages.

2.1 Nukunonu

Improvement:

There has been big improvement this year in terms of service delivery. In the previous year there were only 20 cases adjudicated by the Law Commissioner of Nukunonu in the year 2016/17 compared to the 10 cases for the year 2017/18.

The court is open to anyone who wants to come and listen to the court hearing during court hearing of the Law Commissioner. This information is important to be made known in order for people to take advantage of this opportunity,

The safety of the people, living happily and in cooperation, living healthy, working together, respecting one another remains a key factor for the people of Nukunonu.

The Judicial Officers and the Taupulega work together to ensure the people of Nukunonu live in a safe environment and are free and living accordingly to the laws.

Challenges:

The first point of early access to justice is the Police hence the work of the police is significant in ensuring the duration of preparing charges and timely delivery of justice will reach the Law Commissioner's court at the earliest opportunity.

Another challenge experienced by Nukunonu Judiciary is the resignation of Lepeka Amato, the former court clerk and the appointment of the new court clerk Lupe Kilino also caused delays in terms of finalising court data especially the newly appointed court clerk would require training and further support.

2.2 Fakaofu

Improvement:

While there is progress in the area of case management of cases on a daily basis, there is still a lot of improvements needed for an efficient case flow management. The duration of case flows right from the day of registration with the Court Clerk, to the Hearing, decision making and implementation of

decisions. The ongoing assistance from PJSI in terms of training and improving the skills of Court Staff to effectively perform their roles and proactively responding to judicial needs of court users or anyone coming to the courts.

The Law Commissioner was appointed in 2016 and the ongoing training continue to address the capacity gaps greatly assisted the Law Commissioner.

Challenges:

The waiting period for the Law Commissioner to be formally appointed by the Governor General of New Zealand caused a barrier to justice especially when the default Law Commissioner has not received any judicial training to conduct Hearing.

The lack of opportunity to promote knowledge and information is another challenge would abstain people due to lack of knowing or understanding the whole process of court's administration including case flow management.

2.3 Atafu

Improvements:

The assistance and support with capacity building in terms of Law from Pacific Judicial Strengthening Initiative (PJSI) previously known as Pacific Judiciary Development Programme (PJDP) has been immensely effective. The training and skills through past workshops and training have given us the knowledge and confidence to implement our roles in the Judiciary system. This training has also given us the knowledge and ability to develop and present Awareness and Capacity Building presentations specifically on Policing and Law to Council of Elders (Taupulega) and to local Community Based Organisations (Aumaga, Fatupaepae, Youth and Sports).

Amendments to Atafu Bylaws have also been endorsed by Taupulega this year. The Taupulega established a Committee which consists of 6 Taupulega members, Police Sergeant, Court Clerk and Policy Advisor. It is the Committees role to advice on Bylaws Taupulega felt needed to be reviewed, and to make sure these do not obstruct with the Tokelau Crimes. This was a great opportunity to go through Atafu Bylaws and review the bylaws on matters that were addressed by the Public during our Fono Tele that is held every year specifically for this reason.

Challenges:

The unavailability of Lotala for the scheduled Hearing of the Commissioner is a barrier to access to justice as this allows delays. The potential barriers that Atafu Judiciary has experienced and have caused delays in early judicial accessibility are normally due to;

- ❖ Delay in Police investigations
- ❖ Absence of Accused
- ❖ Absence of Law Commissioner
- ❖ Lack of training for Acting Law Commissioner
- ❖ No Court House

Improving information and human resource management in the courts

Court Results

Background Information

This Tokelau Judicial Annual Report for 2016/17 and 2017/18 is the sixth time that case data for the three Tokelau Judiciaries of the three villages of Tokelau has been presented. The inaugural Tokelau Judicial Annual Report was for the reporting period 2011/12.

The “usually resident” population of Tokelau was 1,499 people based on the census held on 18 October 2016. The populations of the three villages are similar with:

Atafu: 541 people
Fakaofu: 506 people
Nukunonu: 452 people

Whilst the majority of the populations in the three villages are mainly Tokelauans there are also people from Tuvalu, Samoa, Kiribati and Fiji.

Overall Summary

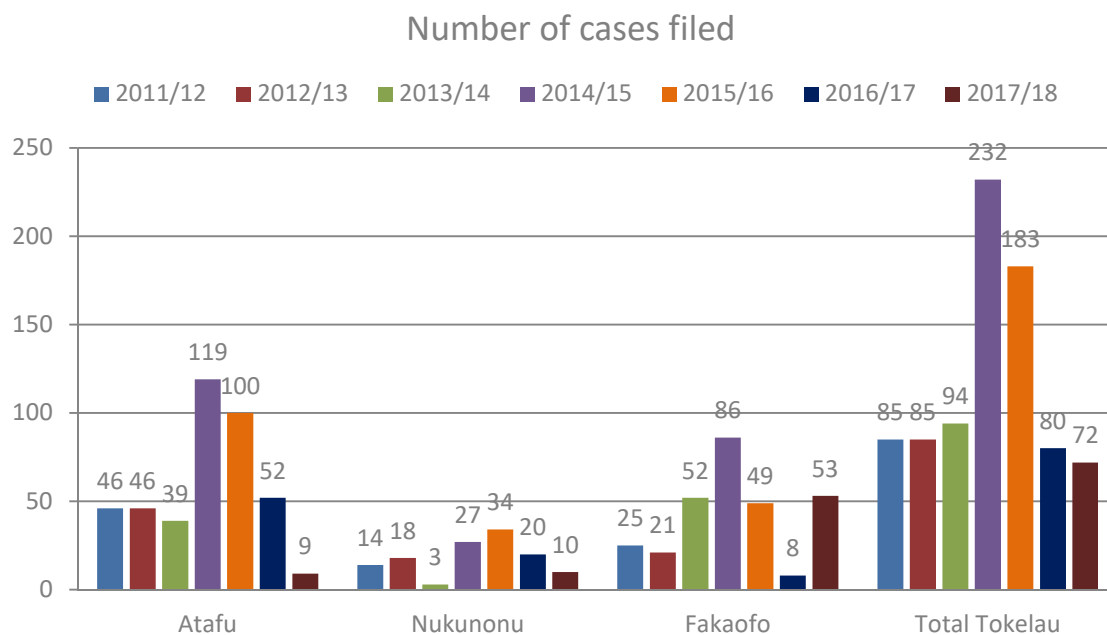
The number of the residents in the three villages is very similar, but it is noticeable that the number of the cases brought before the three Law Commissioners of the three villages varies significantly in 2016/17, from 20 cases in Nukunonu to 65 cases in Atafu, with 10 cases in Fakaofu. Each of the three villages has one Law Commissioner and one Court Clerk; the number of cases they heard and dealt with varies significantly.

Number of Cases

Atafu: The single Law Commissioner of Atafu heard 52 cases on hearing dates over the year of 2016/17 and 9 cases in 2017/18.

Nukunonu: The single Law Commissioner of Nukunonu heard 20 cases on hearing dates in the year 2016/17 and 10 cases in 2017/18.

Fakaofu: The single Law Commissioner of Fakaofu heard 8 cases on hearing dates in the year 2016/17 and 53 cases in 2017/18.

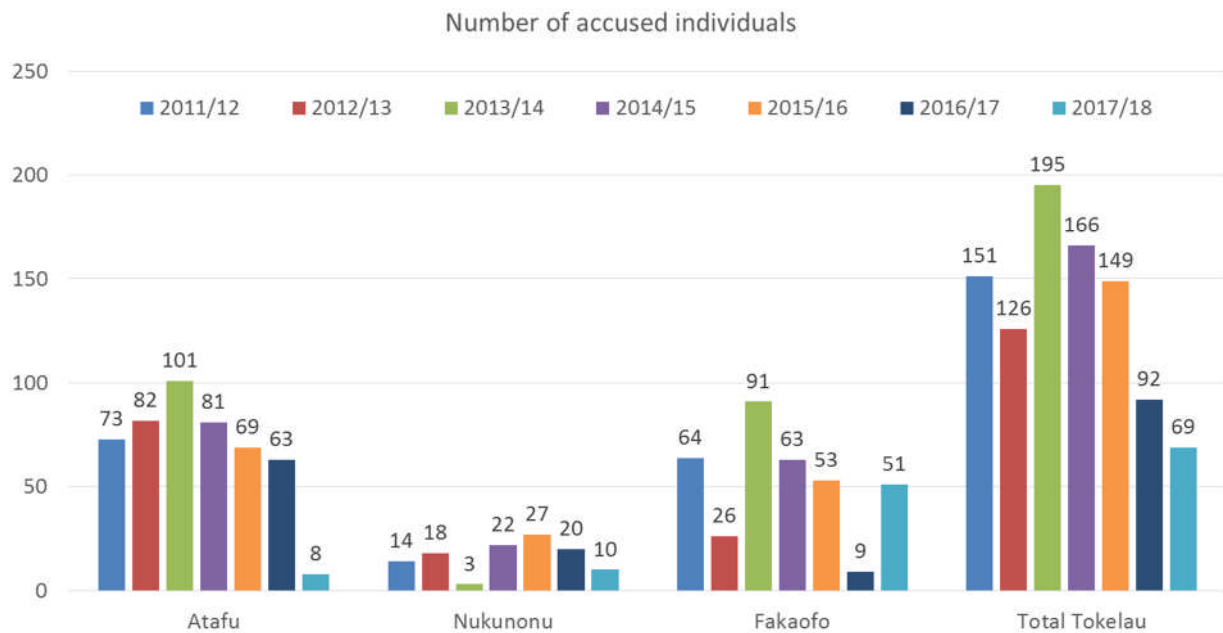


The year 2016/17, 80 cases brought before the Law Commissioners on the 3 villages are all criminal cases, there were no appeals from the decisions on the three Law Commissioners in any of these 80 cases. Same as in the year 2017/18, of all 72 cases brought before the Law Commissioner that are all criminal cases, no appeals from the decisions on the three Law Commissioners in any of these 72 cases. This is the sixth time Tokelau reports there are no appeals. There are reports from the judicial officers from the respective villages as to why there are no appeals. However the reasons as to why there are no appeals could be the same as previously reported something to do with the culture, people accept the decisions or the obvious reason is that people are not aware of the appeal processes; or people have no confidence in the appeal system. The other reason (this could be the only reason) is that the majority of the hearings are guilty pleas where accused already admitted they committed the offence. With the on-going awareness programmes people are becoming more aware of the judicial processes and their rights to appeal.

The court users in Tokelau are fortunate as there are no court fees for any cases whether criminal or civil brought are before the three courts of Tokelau. Transport to hearings is also not an issue as court users will only take 5-10 minutes to walk to their hearing.

Number of Accused:

The number of accused brought before the Law Commissioners varies significantly between the three villages in both years. In the year 2016/17, Fakaofu had 9 accused compared to 20 in Nukunonu and 63 in Atafu. In the year 2017/18, Fakaofu had 51 accused compared to 10 in Nukunonu and 8 in Atafu.



Gender of Accused/Age of Accused:

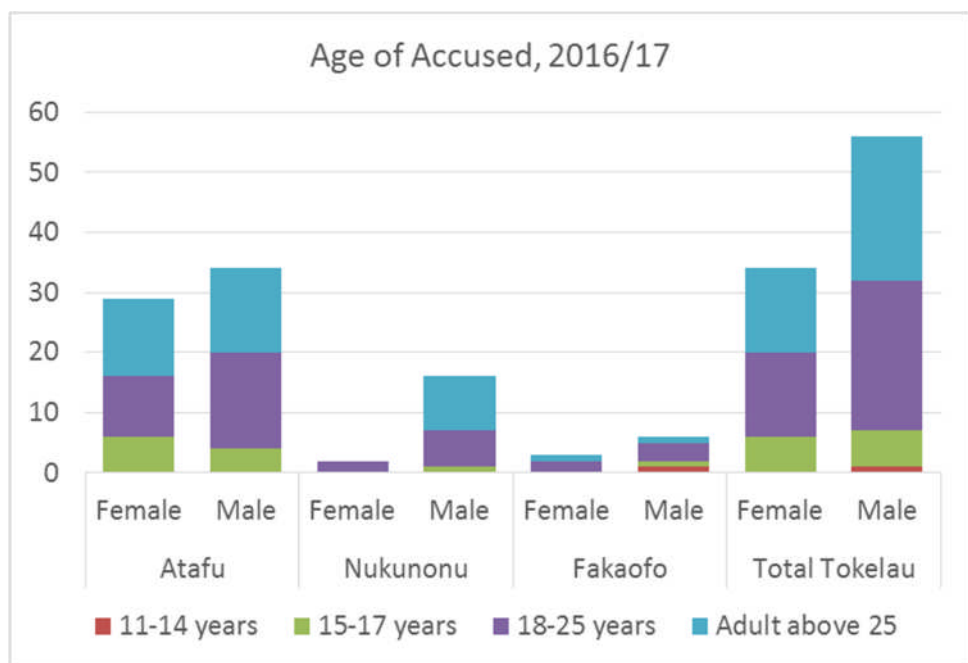
The table and graphs below shows there are more females participating in the breaking of rules compared to previous years. The majority of this seem to derive from drinking intoxicating liquor, and drunkenness creating other opportunities for the accused to reoffend.

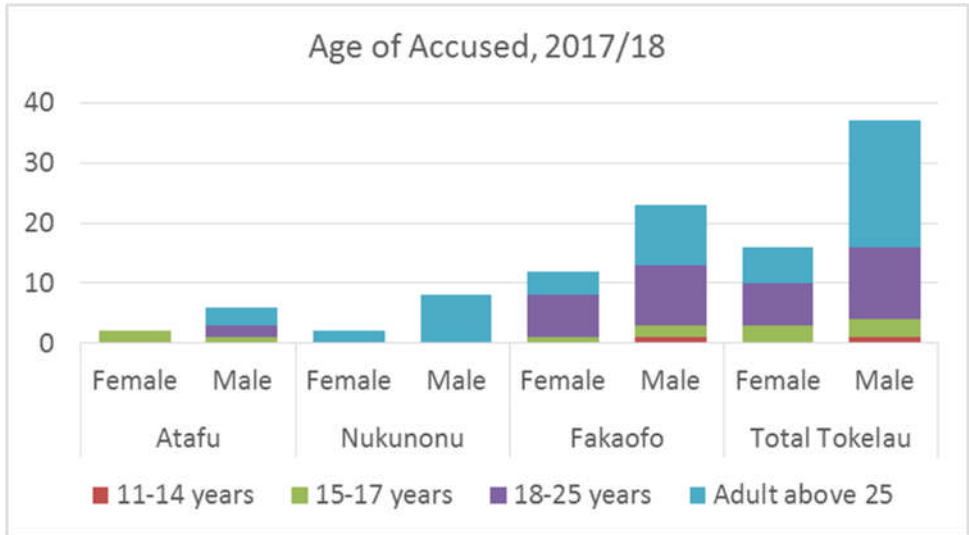
The below graph also shows that the highest number of accused are in the 18-25 years age range of 8 years; the adult category, above 25 years of age also has a high number, bur for a much wider age range. Most of the offences are alcohol related.

Data for 2016/17							
Atoll	Atafu		Nukunonu		Fakaofu		Tokelau
Gender	Male	Female	Male	Female	Male	Female	Total

10 years and under	0	0	0	0	0	0	0
11 - 14 years	0	0	0	0	0	0	0
15 - 17 years	2	5	1	0	1	0	9
18 - 25 years	8	4	2	6	4	1	25
Adult above 25	2	4	9	0	2	1	16
Total	12	13	12	6	7	2	52

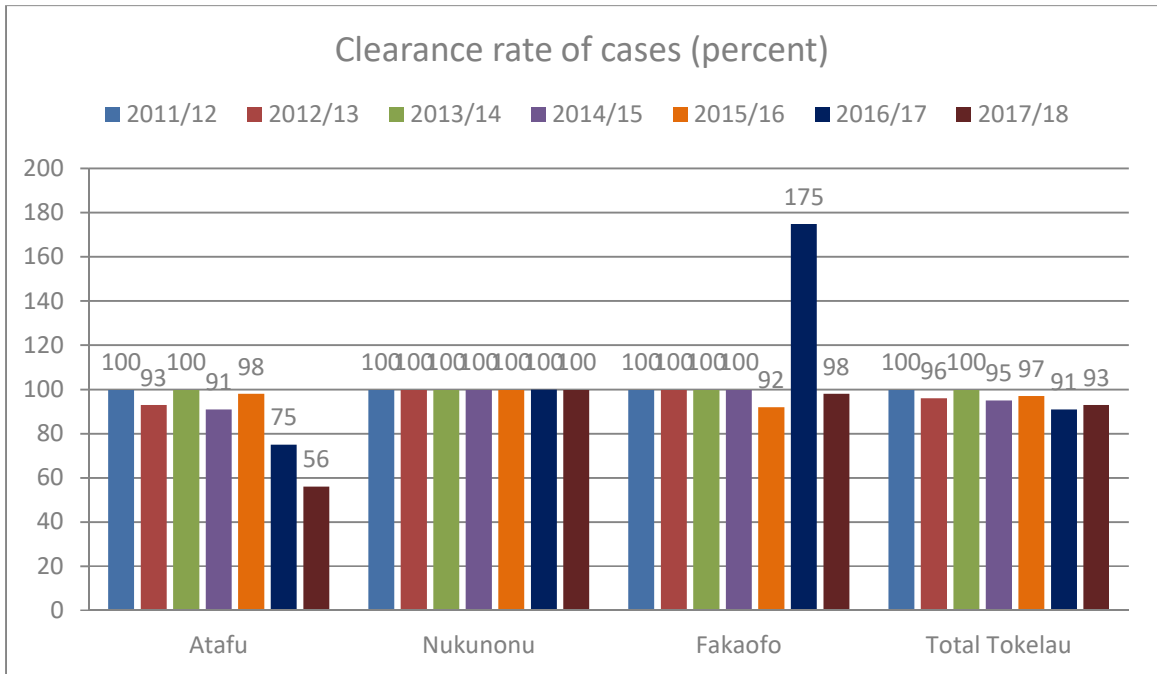
Data for 2017/18							
Atoll	Atafu		Nukunonu		Fakaofu		Tokelau
Gender	Male	Female	Male	Female	Male	Female	Total
10 years and under	0	0	0	0	0	0	0
11 - 14 years	0	0	0	0	2	0	2
15 - 17 years	1	2	0	0	2	0	5
18 - 25 years	2	0	0	0	11	7	20
Adult above 25	3	0	8	2	9	5	27
Total	6	2	8	2	24	12	54



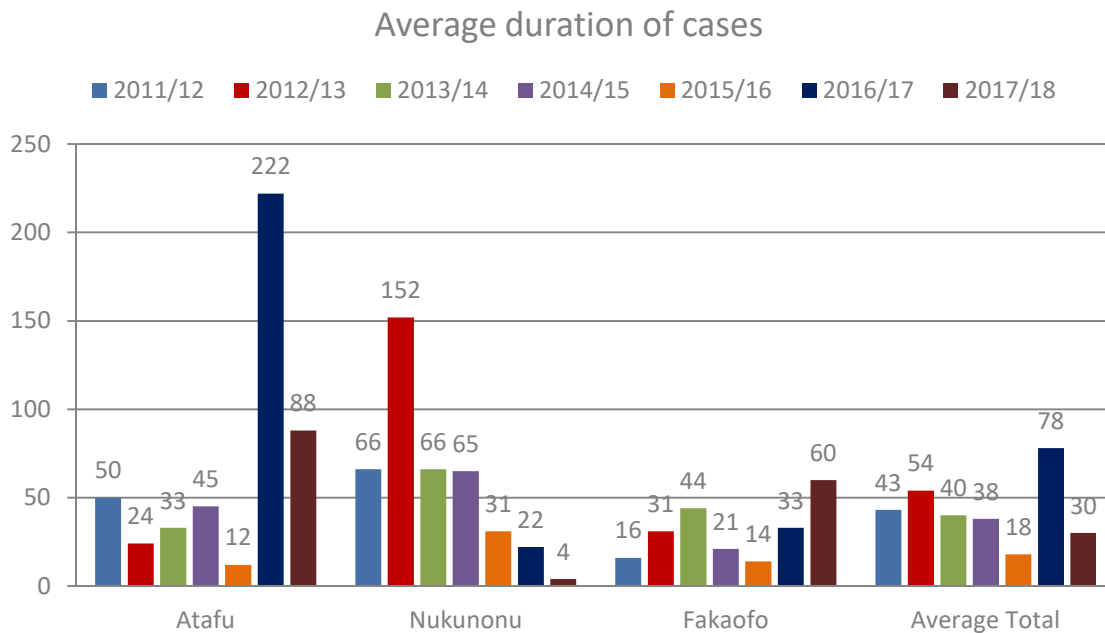


Clearance Rate of Cases 2016/17 and 2017/18

The data below show that there is a high percent clearance rate across the three villages of Tokelau: It is seen that there is a 93% clearance rate for the reporting period of 2017/18 compared to the 91% clearance rate in the previous year 2016/17 which is a big improvement. Fakaofu has a clearance rate of 175% in the reporting year 2016/17 and 98% clearance rate in 2017/18, Nukunonu also has 100% clearance rate which had been consistent with the previous reporting years, Atafu however has a 75% clearance rate in the reporting period 2016/17 and has dropped down to 56% clearance rate in the reporting year 2017/18.



Average Duration of Cases

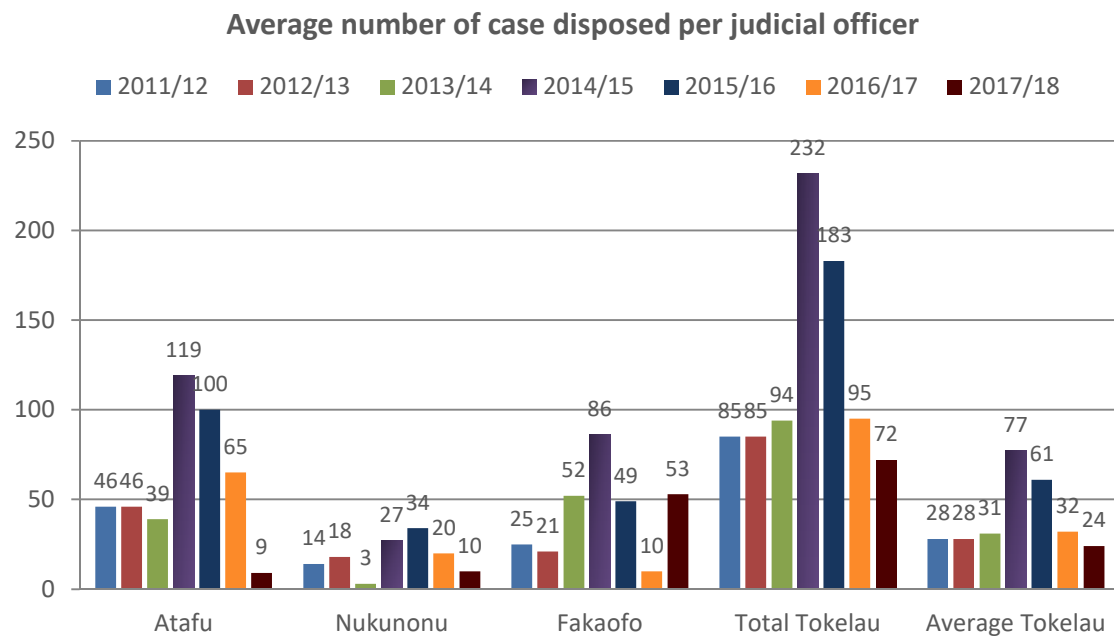
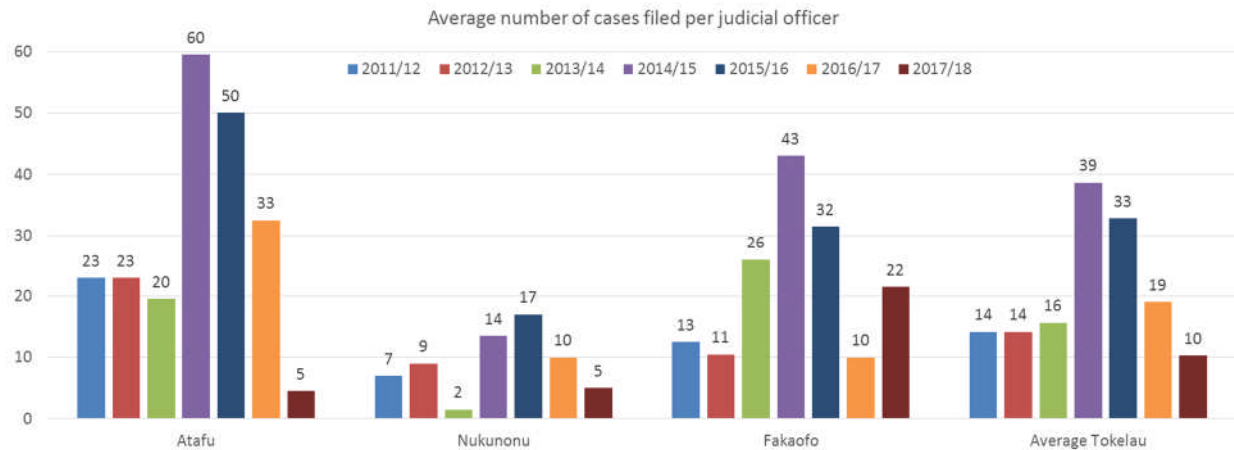


The average duration of a case from filing head by the Law Commissioner in Atafu in 2017/18 is 88 days. This is a big improvement compared to the previous year 2016/17 that had an average duration of 222 days. There is big improvement however in Nukunonu as their average duration of a case is 4 in the year 2017/18 compared to the 22 average duration of a case in the previous year 2016/17. Fakaofu showed great variation in the average duration of cases, during to the absence of a Law Commissioner for over a year. Overall there is great improvement of performance for Judiciary officers in 2017/18 compared to the previous year 2016/17 which showed extreme delays in Atafu and Fakaofu.

Most Common types of Cases:

In all the 3 villages the offences committed are very similar as follows:

- Assault
- Theft
- Fighting in Public Place
- Intoxicating Liquor
- Trespass
- Bodily Harm
- Offensive Behaviour



The above graph shows that there were 95 cases were brought to the three Law Commissioners during 2016/17 with an averga of 32 cases per Law Commissioner and Law Clerk.

- Atafu: The single Law Commissioner of Atafu heard 65 cases on hearing dates over 2016/17.
- Nukunonu: The single Law Commissioner of Nukunonu heard 20 cases on hearing dates .
- Fakaofu: The single Law Commissioner of Fakaofu heard 10 cases on hearing dates.

72 cases were brought to the three Law Commissioners during 2017/18 with an average of 24 cases per Law Commissioner and Law Clerk.

- Atafu: The single Law Commissioner of Atafu heard 9 cases on hearing dates over 2017/18
- Nukunonu: The single Law Commissioner of Nukunonu heard 10 cases on hearing dates.
- Fakaofu: The single Law Commissioner of Fakaofu heard 53 cases on hearing dates.

4. Instituting Principles of Good Governance and Enhancing Integrity in the Institutions of Law and Justice

4.1 Tokelau Public Service Code of Conduct

The Tokelau Public Service Code of Conduct was endorsed by the General Fono in 2004. It is a set of rules which clearly define expected behaviours and standards of integrity from members of the public service, including members of the police force. The Code of Conduct also outlines expectations of the employer from the employees as well as the expectation of the employees from the employer. The employer has the responsibility to administer the Code of Conduct through ensuring that all public servants follow and abide by all stipulations in it. Unacceptable and inappropriate conduct, and failure to meet required standards of performance, may lead to disciplinary measures. It is a responsibility of all public servants to read and understand the Code of Conduct.

There are three principles under the Tokelau Public Service Code of Conduct. Employees shall:

1. fulfil their lawful obligations to the Tokelau authorities with professionalism and integrity
2. perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues
3. not bring the Tokelau public services into disrepute through their private activities.

4.2 Judicial Code of Conduct

The Judicial Code of Conduct provides guidelines and rules to the Law Commissioners of Tokelau on how they should carry out their roles; and also for the members of the community to know and understand the expected behaviours from the Law Commissioners when they carry out their duties. The common principles in practice are:

- (i) **Diligence:** The duty of the Judges to serve diligently when they deliver decisions without any unnecessary delays.
- (ii) **Integrity:** Judges must conduct themselves with utmost integrity to sustain and enhance public confidence in the judiciary.
- (iii) **Equality:** Judges must conduct themselves and proceedings so as to ensure equality according to the law.
- (iv) **Judicial independence:** Judges must make their decisions independently.
- (v) **Impartiality:** It is important for Judges not only to be impartial but also to appear to be impartial in their decision-making.

(vi) **Judicial demeanour:** Judges must maintain firm control in the court room and ensure people in the Court are treated with courtesy and respect.

(vii) **Courtroom conduct:** It is important for the Judges to ensure that the people coming to Court are treated with respect and are being served.

(viii) **Communication in Court:** The Judges should communicate clearly so that the people in Court understand what has been said.

4.3 Complaint-Handling Mechanism for Tokelau Judiciary and Police

The Judicial Officers reported that while there is no formal mechanism set up in the respective judiciaries of Tokelau that allow court users or anyone to come forward to complain or provide any feedback on the services provided by the Law Commissioners and Court Clerks in the three villages, the judicial awareness workshops carried out with the communities provided opportunities for court users and members of the community to share their concerns in relation to judicial services. In most cases, members have used these meetings and have expressed their disappointments with the delayed service, especially for timely decisions or the outcomes of their case. The other common view that came through was the concern about the type of punishment given by the Law Commissioners. Some members complained that the punishments of a fine not more than NZD\$150.00 (3 penalty units) or not more than 3 months community work are far too lenient; heavy penalties should be given to offenders, as these would deter them from any further offending.

The Court Clerks also reported that some court users and members of the Community have shared their concerns with them verbally and most of them complained about the delayed services. Another comment that came through was the issue of conflict of interest. The Law Commissioners need to declare their conflict of interest more often so members of the community can respond and feel confidence in their work. The issue was that members of the communities sometimes questioned the Law Commissioners when dealing with family members, not realizing they have a conflict of interest; and ignoring the views of some members of the community - especially those associated with the case.

The absence of any mechanisms in our jurisdictions for complaint handling process have not enabled court users neither members of the Community to provide their views or complaints about the judicial services they receive. In the judicial officers' efforts to put something in place like an empty box to enable courts users and any member of the community put in any complaints or feed backs on the judicial service is not effective. However, during village consultations or workshops the judicial officers do provide the opportunity for the community and members to ask any questions or share

any concerns that they may have pertaining access to justice and the lack of information and knowledge on judicial processes.

4.4 Management Accountability

4.4.1 Annual Accounts for Reporting Period

The three respective judiciaries of Tokelau, in Fakaofu, Nukunonu and Atafu, are under the management of their respective Village Councils. The village judiciary accounts are managed under each village budget in accordance with the approved funding allocations for judicial services and Police for that particular financial year. In each village, the Financial Manager oversees village funding for this period in partnership with the Tokelau Government Department of Finance. This department has overall responsibility for reporting on village and departmental expenditure for the financial years to the General Fono. The allocation of funding for each judiciary from the overall village funding differs, reflecting their approved budget by the General Fono as well as village development priorities for that particular period.

4.5 Training and Development Opportunities for Court Staff

Tokelau Judiciary acknowledged the Pacific Judicial Strengthening Initiative (PJSI) and the Legal Institute of Justice for the opportunity provided each year for the Law Commissioners, Court Clerks and Judicial National Coordinator to attend regional training and workshops. For these reporting periods, there were regional judicial orientation and project management workshops held in Tokelau and Samoa for the Court Clerks in May 2017 by Lorry from PJSI, in the Solomons in 2017 where the Law Commissioner of Fakaofu and Court Clerk attended. In March 2018 a judicial orientation and capacity building regional training was held in Fakaofu and all the Law Commissioners; Committee Appeal Members and the Court Clerks were able to support the Law Commissioners in that training with Regional Trainer Enoka Puni funded under PJSI and Sir Ronal Young a retired Judge of the Court of Appeal of New Zealand funded by the Chief Justice of New Zealand. In July 2018 the Law Commissioners supported by a judicial officer attended the regional leadership workshop in Auckland. These workshops are very important as they enhanced the knowledge and provide new skills to the judicial officers and also to new Law Commissioners.

4.6 Management of Courts

4.6.1 Court Houses

The Law Commissioners and Court Clerks have recently reported that they have raised with their Village Councils the need to have an appropriate building for the court and sufficient space for the hearing and members of the community.

Nukunonu

At present there is no court house for Nukunonu. The court hearings are being held at the St. Maletino Tepole Talikilagi Hall. Law and Justice is a priority of the Government and also for the Villages. It is important that progressing law and justice is seen as a priority by building a court house administration in Nukunonu.

The Court Clerk is responsible to:

- Seek space to the Village Community Hall especially as there are many village activities for the Court Hearings and Judicial Awareness Workshops.
- Make sure the place given for the court hearings is clean and ready for the hearings.
- Make sure the waiting venue for the accused is clean and those who want to observe and sit in the court hearings are warmly welcome.

Office of the Law Commissioner.

There is an office for the Law Commissioner and the Court Clerk. The office is quite spacious and can house all the resources/or equipment of the Judiciary.

Challenges

There are many challenges as the people found it difficult to lodge complaints with the Police and below are some feedback from community members.

- The Police are not committed to enforce law and order;
- The Police took too long to investigate cases;
- The Police have provided poor police reports/writings;
- The Judicial Officers and Police sometimes are absent from the village;
- There is no court house administration;
- The village plans and those of the governments take priority and caused disruptions to the court hearings and judicial programmes;

- It was impossible to conduct workshops for this reporting period as planned due to too many activities in the villages.

Judicial Needs of Nukunonu:

Ongoing Capacity Building and Enhancement of judicial skills:

- Continue capacity building workshops for Judicial Officers;
- Good Governance Trainings to be carried out for Judicial Officers;
- Computer lessons/or trainings to be carried out for Judicial Officers;
- Ongoing refresher trainings to be carried out for court clerks in data reporting, analysis and report writing.

Court human resources.

Nukunonu Judiciary

Law Commissioner

1. Ioane Nui Tumua
2. Law Commissioner by default – Faipule Sio Perez
3. Court Clerk – Lupe Kilino

Atafu Judiciary

Law Commissioner:

1. Feleti Lopa (2016/2017)
2. Lepaio Simi 2017/2018
3. Commissioner by default – Faipule Kelihiano Kalolo
4. Court Clerk – Latu Lopa

Fakaofu Judiciary

Law Commissioner

1. Etuale Vavega
2. Law Commissioner by default – Faipule Afega Gaulofa
3. Court Clerk – Lolo Teao

Tokelau Legal Unit

1. Lise Hope Suveinakama; Senior Legal Adviser & National Judicial Coordinator.
2. Apolima Tamoia Panapa: Legal Officer

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