

## July 2012 – Jun 2013 ANNUAL REPORT

### 1. THE MINISTRY OF JUSTICE

#### A. GENERAL

**Hon. William Clive Edwards (LLB, OBE, SC)**

**Minister of Justice**

#### THE MINISTRY OF JUSTICE

This Annual Report records the operations and performance of the Ministry of Justice from 1 July 2012 until 30<sup>th</sup> June, 2013.

##### 1.1 Minister of Justice

The Minister of Justice is the Hon Clive Edwards, LLB, OBE, SC, who was appointed to the post of Minister of Justice on 1 September, 2013.

##### 1.2 The Ministry of Justice

The Ministry of Justice is responsible for:-

- The provision of policy advice on all Justice sector matters including relevant legislative issues to the Prime Minister and Cabinet. The Minister of Justice is currently the Chair of the Law Committee and the conduit between Parliament and Government on legislation created or proposed for amendment; The Minister is also the “Chief Whip” for Government in the Legislative Assembly;
- the provision of all support services to the judiciary (Court of Appeal, Supreme Court, Magistrates’ Court) and court related functions (Probation and Bailiff division);

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- the Ministry also maintains and operates the national system of civil registration for the people of Tonga (Registrar General's Office).
- oversight of the independent bodies which:- enforce and implement free and fair elections (Electoral Commission); the Anti-Corruption Commission which has not been set up as yet and impartial intermediaries between the public and government the Commissioner for Public Relations (Ombudsman's Office). All these bodies operate independently from Government, but for certain administrative and budgetary matters are linked to the Ministry.

The Ministry of Justice consists of the Minister of Justice and his Chief Executive Officer, all staff (public servants) in the Minister's Office, administration division, Registrar General's Office, Supreme Court, Magistrates' Court, Bailiff and Probation Division.

### **THE JUDICIARY AND THE OFFICE THE LORD CHANCELLOR**

Since the amendments to the Constitution in 2010, the Ministry and the Executive Government and Parliament no longer have any input into matters relating to advertising, appointment, financial contracts of members of the judiciary or the operations of the Judiciary. A full transition of administrative functions and human resource allocations (all administrative staff of the courts continue as Public Servants and remain the responsibility of the Chief Executive Officer) and financial matters relating to the operation of the courts has not been affected but continues to be with the Ministry, which holds the annual government budget since the Lord Chancellor's Office, does not have an established budget as yet. Transition to the new Justice system continues to be developed and progressed by the Minister of Justice, the Lord Chancellor and the Attorney General.

"Judiciary" is defined under Clause 84 (2) of the Constitution of Tonga as:

84 "(2) The Judiciary of the Kingdom shall comprise –

- (a) the Lord President of the Court of Appeal and Judges of the Court of Appeal;
- (b) the Lord Chief Justice, who shall be the professional Head of the Judiciary, and Judges of the Supreme Court;
- (c) the Lord President of the Land Court and Judges of the Land Court; and

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- (d) the Chief Magistrate and the Magistrates.”

The creation of the position of Lord Chancellor under Clause 83B of the Constitution of Tonga (as amended) notes the role of the Lord Chancellor as follows:

### **“83B The Lord Chancellor**

(1) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall appoint a Lord Chancellor who shall have primary responsibility for –

- (a) the administration of the courts;
- (b) all matters related to the Judiciary and its independence;
- (c) the maintenance of the rule of law; and
- (d) such related matters as are specified in this Constitution or any other Act.

(2) The Lord Chancellor shall, unless otherwise provided by law, have complete discretion to exercise his functions, powers and duties, independently without any interference whatsoever from any person or authority.

(3) The Lord Chancellor may, with the consent of the King in Privy Council, make regulations for the following purposes –

- (a) to establish an age at which the Attorney General, a Judge, a Magistrate and the Lord Chancellor shall retire from office;
- (b) to regulate a judicial pension scheme;
- (c) to provide for administrative arrangements for and related to the Office of the Lord Chancellor.

(4) The Lord Chancellor shall be a person who is qualified to be a Judge of the Supreme Court and he shall, subject to any contractual arrangements, hold office during good behaviour.

(5) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Lord Chancellor, and shall have the power to dismiss him.”

Furthermore, under Clause 83C is the establishment of the Judicial Appointments and Discipline Panel (JADP) with their functions which is quoted as follows:

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### **“83C Judicial Appointments and Discipline Panel**

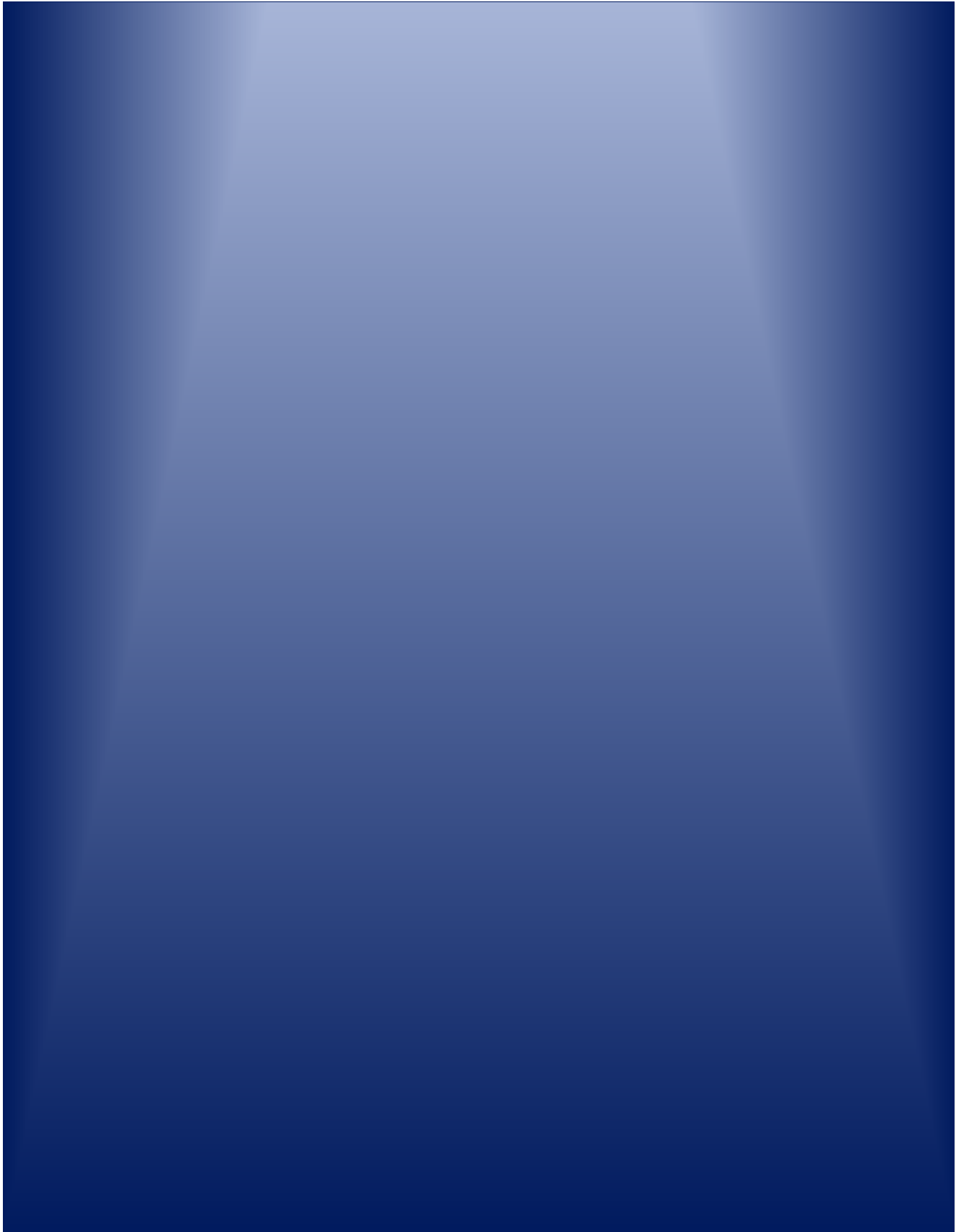
- (1) There is hereby established, as a Committee of the Privy Council, a Judicial Appointments and Discipline Panel comprising –
  - (a) the Lord Chancellor, who shall be the Chairman;
  - (b) the Lord Chief Justice;
  - (c) the Attorney General; and
  - (d) the Law Lords, being such persons versed in the law as the King from time to time shall so appoint.
- (2) The Judicial Appointments and Discipline Panel shall recommend to the King in Privy Council –
  - (a) the appointment of eminently qualified persons to the Judiciary, and as Lord Chancellor and to any other office that the King requires;
  - (b) the disciplining of members of the Judiciary;
  - (c) the dismissal of members of the Judiciary for bad behaviour through gross misconduct or repeated breaches of the Code of Judicial Conduct;
  - (d) the remuneration and terms of service of members of the Judiciary;
  - (e) a Judicial Pensions Scheme;
  - (f) a Code of Judicial Conduct; and

*(g) the appointment of assessors to the Panel of Land Court Assessors.”*



# ANNUAL REPORT OF THE SUPERIOR COURTS OF TONGA

2012 - 2013



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### 1. REPORT OF THE SUPERIOR COURTS of tonga

#### 1.1. Introduction

This report is for the period commencing 1 July 2012 to 30 June 2013. It covers the work of the Court of Appeal, the Supreme Court and the Land Court.

The superior courts continue to administer their workload in an efficient and timely fashion, despite the significant difficulty caused by a shortage of support staff due to the inability to replace outgoing registry staff.

The work of the Registrar-General's Department was formally reallocated in early 2012 following the separation of the Registrar-General's duties from that of the Lord Chief Justice, to allow for appeals of the Registrar-General to be effectively and independently heard by the courts. The work of the Registrar-General's Department is covered elsewhere in the Annual Report. The Hon. Minister for Justice is the acting Registrar-General.

#### 1.2. Staff of the Superior Courts

1	Lord Chief Justice	Mr. Michael D. Scott
2	Judge	Mr. Charles B. Cato
3	Judge	Vacant
3	Acting Chief Registrar	Mr. Frederick Tuita
4	Acting Assistant Registrar	Mrs. Hortensie Ngalu
5	Assistant Registrar	Mr. Reimen Hii, Australian Volunteer for International Development (AVID)
5	Acting Personal Assistant to Chief Justice	Mrs. Nehusita Tu'uholoaki
6	Assistant Court Interpreter	Mr. Viliami Fotu
7	Assistant Court Interpreter	Miss. Salote Koloamatangi (study leave)
8	Assistant Court Interpreter	Ms. 'Elenoa Salt
9	Assistant Court Interpreter	Mr. Seniloli Inoke (January 2013 to March 2013)
10	Clerk Class III	Mr. Sylvester David Tu'iono
11	Clerk Class III	Miss. Salote Veikune
12	Clerk Class III (Daily Pay)	Miss. Caroline Palu
13	Computer Operator Grade II	Vacant
14	Computer Operator Grade II	Vacant
15	Clerk Class III	Mrs. 'Ana Vainikolo
16	Clerk Class III	Mrs. Mele Kulikefu
17	Computer Assistant	Miss. Fololeni N Hufanga
18	Computer Assistant	Mrs. Tu'ilomoloma Lausi'i
19	Cleaner	Mr. Masungu Kafoa

The reporting period saw significant fluctuation in staffing levels due to the ongoing budget issues experienced by the Ministry. Following the separation and transfer of Chief Registrar



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Pahulu to the Registrar-General's Department, Registrar Frederick Tuita was made Acting Chief Registrar, while Assistant Court Interpreter Mrs. Hortensie Ngalu was made acting Assistant Registrar. They were joined in May 2013 by Mr. Reimen Hii, an Australian Volunteer for International Development (AVID), who is assisting the Chief Justice and the registrars with a number of projects including the administration of the court and registries.

Assistant Court Interpreter, Miss Salote Kolomotangi, remained on study leave the entire reporting period while she pursued her legal studies through the University of the South Pacific. Mr. Seniloli Inoke, a returned scholar was retained as an Assistant Court Interpreter for three months while Mrs. 'Elenoa Salt was on maternity leave. Computer Assistant/Case Management System Officer, Mrs. Lomoloma Piei, resigned from her position to pursue employment opportunities abroad in New Zealand. We wish Lomoloma well in her future career. The average number of cases per staff member for the Supreme Court of Tonga in 2013 was 65.

### **1.3. Technology Services**

The Registry is grateful for funding received from the New Zealand High Commission in Tonga for the purchase of two digital conference recording systems which have been installed in the Courts. Additional funding is being sought for the purchase of 2 more systems for use on circuit and in the third Supreme Court courtroom.

The court is currently in the process of designing a website which will host information about the court, its services, and fees. The website will provide a weekly court list of scheduled hearings.

### **1.4. Library & Information Services**

#### **1.4.1. Library**

The Supreme Court library continues to lack a trained librarian, following the transfer of the officer to the Bailiff Division in 2010. The library is currently being administered and organised by Lord Chief Justice, assisted by the registrar and assistant registrars. A proposal has been advanced for the recruitment of a part-time librarian to be shared between Crown Law and the Supreme Court.

#### **1.4.2. Tonga Law Reports**

The latest compiled Tonga Law Report is for 2010. Work has commenced to compile the relevant judgments for 2011 and 2012 for dispatch to New Zealand where the reports will be edited and prepared.

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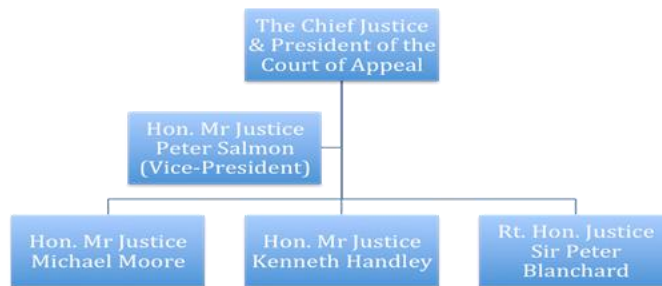
### 1.4.3. PacLII

The transfer of judgments to PacLII resumed in June 2013, with monthly emails being sent to PacLII attaching reportable decisions. Currently there are 1707 judgments available on PacLII which includes 55 uploaded during this reporting period.

### 1.4.4. Archive

Registry staff have reorganised the court's archives which are now in a satisfactory condition. There has however been a lack of progress in setting up a separate Archive Unit for the combined Courts', Registrar-General's Departments, and Vital Statistics Division's old files. With no available financial and human resources, all plans for the creation of such unit have been placed on hold until such time as funding may be found.

## 2. Court of Appeal of Tonga



The Chief Justice is the President of the Court of Appeal. The other members of the court in the reporting period were the Hon. Mr Justice Peter Salmon (Vice-President), the Hon. Mr Justice Michael Moore, the Hon. Mr Justice Kenneth Handley, and the Rt. Hon. Justice Sir Peter Blanchard, who sat for the first time in the 2013 April session.

The Court of Appeal aims to hold two sessions each calendar year. The court's second sitting for 2012 was held from 2<sup>nd</sup> to 12<sup>th</sup> October 2012; the first sitting of 2013 was held on 8<sup>th</sup> to 19<sup>th</sup> April 2013.

The Court of Appeal continues to experience great difficulty and delay in processing its cases due to the limited support staff available to administer its registry and prepare appeal papers. Staff members from other Supreme Court sections, particularly the overburdened translation unit, are drawn on to complete transcription and work.

The average number of cases per Judicial Officer for the Court of Appeal Tonga in 2013 was 4.

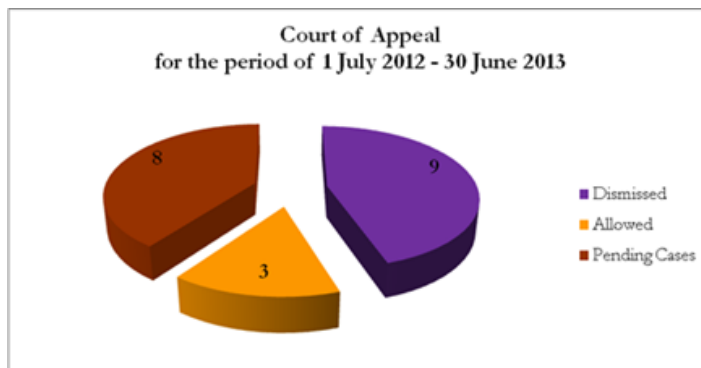
### 2.1. Clearance Rate

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The following table is a breakdown of the cases that were decided by the Court of Appeal in the reporting year. As the chart illustrates, there were 20 cases filed in the Court and a total of 12 cases disposed of in the reporting year resulting in a disposal rate of 60%. There are currently 8 cases pending on the list.

Reporting Year	Total Filings	Cases Disposed of	Pending	Disposal Rate in (%)
July 2012 – June 2013	20	12	8	60%

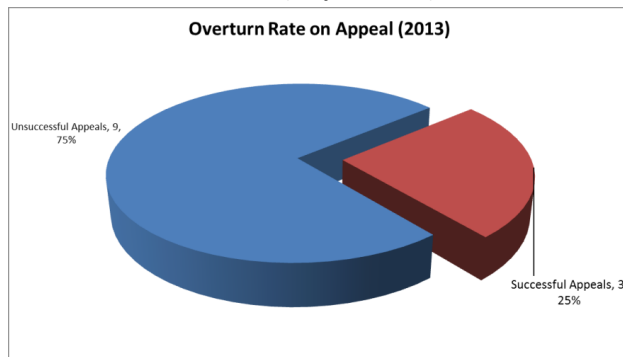
Of the 20 cases filed in the Tonga Court of Appeal in the reporting period 9 cases were dismissed while 3 were allowed.



#### 2.2. Overturn Rate on Appeal

The following chart illustrates that in 2013, of the 12 cases appealed only 3 were successful resulting in a 25% success rate on appeal.

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### 3. Supreme Court of Tonga

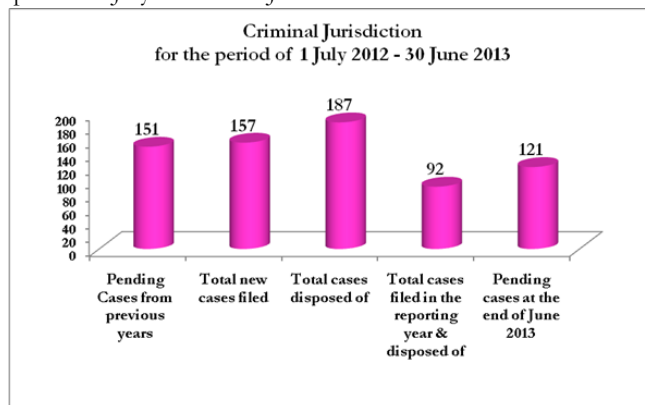
Following the departure of the Hon. Justice Shuster in May 2012, the Supreme Court was composed of the Hon. Lord Chief Justice Michael Scott, and the Hon. Justice Charles Cato. By internal agreement, the Chief Justice deals with the bulk of the civil, family and land disputes, while the Hon. Justice Cato hears the majority of criminal matters. Both judges travel on circuit to the outer islands to hear all cases filed in those areas.

Despite the present workable arrangement, the court remains in desperate need of a third judicial officer to assist in the growing number of disputes filed in the superior courts. It is hoped that funding for a third judge will be found and an appointment may be made soon.

The average number of cases per Judicial Officer for the Supreme Court of Tonga in 2013 was 624.5.

#### 3.1. Criminal Division

A summary of the work carried out by the Criminal Division of the Supreme Court of Tonga for the period of July 1<sup>st</sup> 2012 to June 30<sup>th</sup> 2013 is as follows:



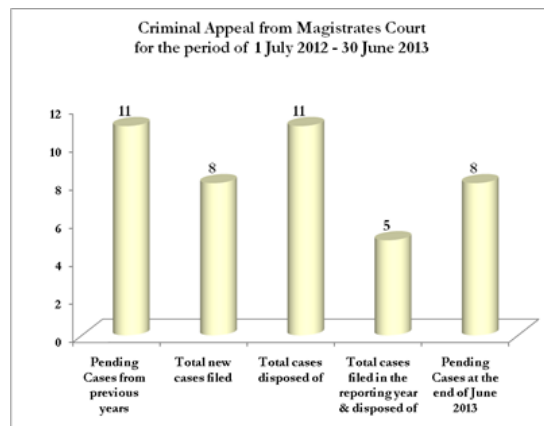
The graph above shows that there were a total of 157 criminal cases filed and 187 cases disposed of in the reporting period resulting in a clearance rate of 119%. This means that the

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criminal jurisdiction of the Supreme Court of Tonga disposed of more cases than those filed thereby reducing the pending cases list from 151 in 2012 to 121 cases in 2013.

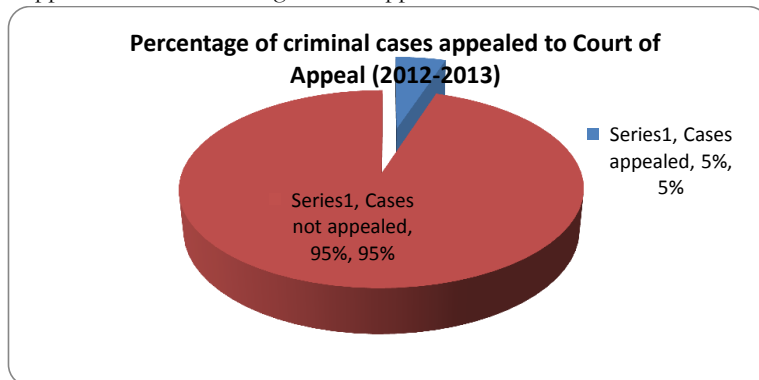
### 3.2. Criminal Division Appeals

There were a total of 8 criminal appeal cases from the Magistrates Court filed in the 2013 reporting period with 11 cases being heard and finalised resulting in a clearance rate of 137% thereby reducing the pending cases list from 11 in 2012 to 8 in 2013.



### 3.3. Percentage of Criminal Appeals

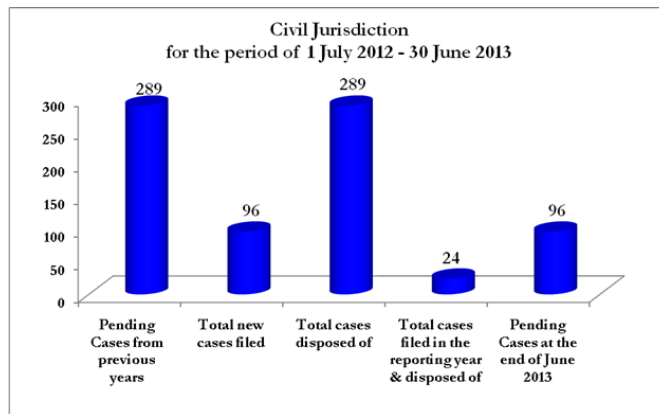
Of the 157 criminal cases filed in the reporting year, a total of 8 criminal appeals to the Court of Appeal were filed resulting in a 5% appeal rate of criminal cases. See below:



### 3.4. Civil Division

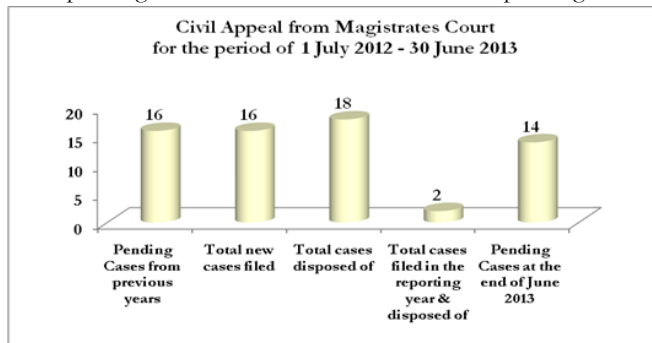
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In the Civil Division of the Supreme Court of Tonga, there were a total of 96 civil cases filed and 289 cases (154 which were classified dormant)<sup>1</sup>, disposed of resulting in a clearance rate of 301%. The pending cases list has subsequently reduced from 289 in 2012 to a total of 96 cases in 2013.



### 3.5. Civil Division Appeals

There were a total of 16 civil appeal cases filed from the Magistrates Court in the reporting period with 18 cases being disposed of resulting in a clearance rate of 112%. In 2012 there were 16 cases pending which has reduced to 14 cases still pending in 2013.

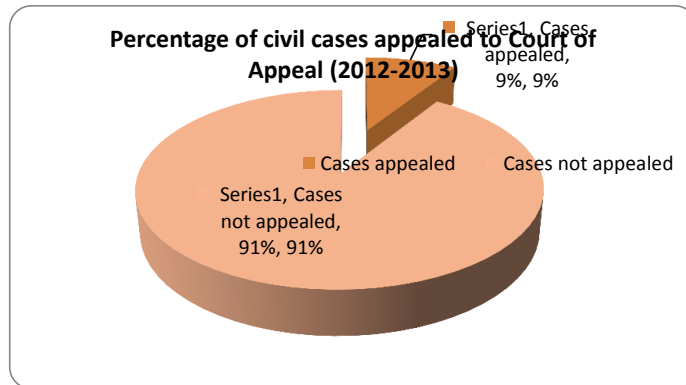


### 3.6. Percentage of Civil Appeals

Of the 96 civil cases filed in the reporting year, a total of 9 civil appeals were filed to the Court of Appeal resulting in a 9% appeal rate of civil cases. See below:

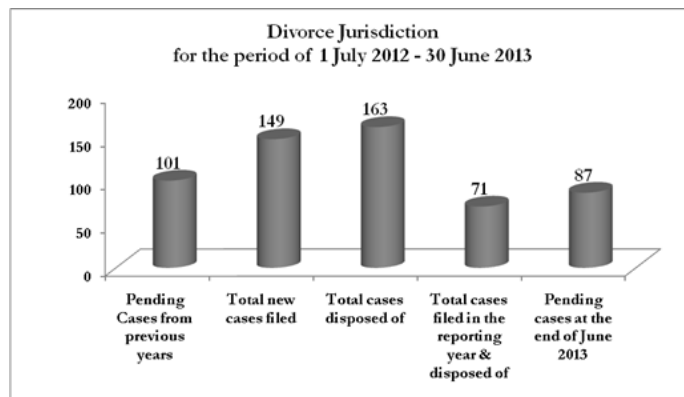
<sup>1</sup>Pursuant to Practice Direction 2 of 2012 (Reclassification of Dormant Proceedings), cases in which no step had been taken in over 12 months from the 30 June 2013 were marked "Dormant – disposed of" and archived for storage pending eventual destruction in accordance with established procedures. These files are not struck out, and may be reactivated upon application. An audit is to be carried out at the end of each reporting period, to ensure matters are not simply lost in the system.

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### 3.7. Family Division

In the Divorce Division of the Supreme Court of Tonga, there were a total of 149 divorces cases filed in the reporting period, with a total of 163 cases disposed of resulting in a clearance rate of 109%. The pending cases list has therefore reduced from 101 cases in 2012 to a total of 87 cases still pending disposal.



### 3.8. Supreme Court on circuit

During the reporting period, the Supreme Court travelled twice on circuit to the Vava'u island group, once in October 2012 and again in April 2013.

While on circuit, the court heard 9 criminal cases, of which 7 were finalised and 2 were adjourned to the next circuit court dates. The court also heard and ruled in 1 civil case, and 1

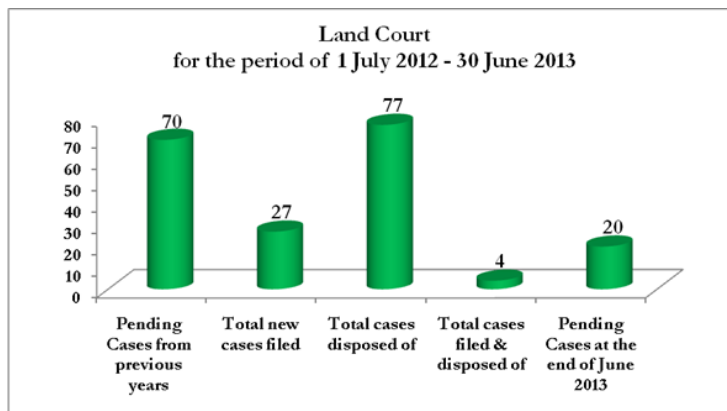
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land case. The court heard and finalised 3 adoption applications, and 11 divorce applications which were filed in the period.

### 4. Land Court

All Land matters in this reporting year were dealt with by the Lord Chief Justice, President of the Court, assisted where required by a Land Court Assessor under the *Land Act*.

In 2013, there were a total of 27 land cases filed with 77 cases being disposed of<sup>2</sup> in the reporting period resulting in a clearance rate of 285% meaning that the court is disposing of more cases per year than those filed. This had the net effect of reducing the pending cases list from 70 in 2012 to a total of 20 in 2013.



### 5. Probate & Administration

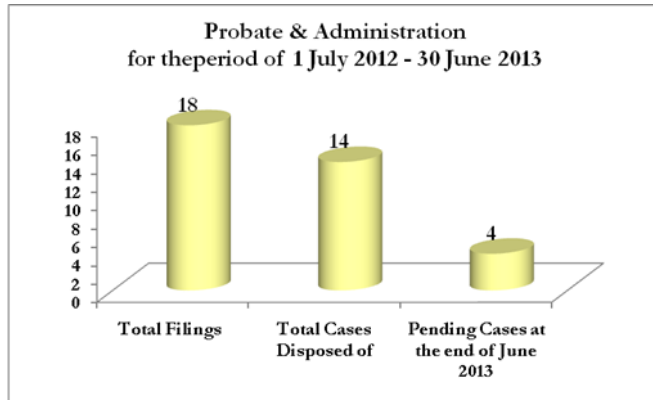
Applications for Probate and Letters of Administration increased during the reporting period though the majority of the cases were also finalized during the same period.

YEAR	TOTAL FILINGS	CASES DISPOSED OF	PENDING CASES	DISPOSAL RATE IN PERCENTAGE
July 2012 – June 2013	18	14	4	77%

<sup>2</sup> Nine cases were marked “dormant – disposed of” as per Practice Direction 2 of 2012 (Reclassification of Dormant Proceedings). See footnote 1 above for further information.



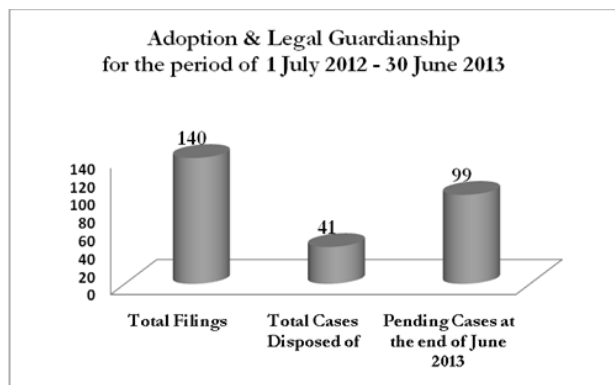
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### 6. Adoption & Legal Guardianship

Applications for Adoptions and Legal Guardianship also increased during the reporting period. The majority of these cases are still pending as they await a report on the children to be filed by the *Guardian Ad Litem* before the court can make an informed decision.

YEAR	TOTAL FILINGS	CASES DISPOSED OF	PENDING cases	DISPOSAL RATE IN PERCENTAGE
July 2012 – June 2013	140	41	99	29%



### 7. Lawyers Licenses issued

The following table illustrates the number of licenses issued during the reporting period.

Year	No. of License issued	Senior Counsels	Fully Qualified	Locally Qualified	Unqualified
2012	80	11	54	14	1

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2011	65	11	43	11	0
2010	71	10	53	17	2

### 8. Pacific Judicial Development Programme (PJDP)

#### 8.1 Training

As indicated in the last annual report,<sup>3</sup> the Pacific Judicial Development Programme (PJDP) continues to be the major provider of training and capacity building initiatives for the Tongan judicial system. The Tongan Judiciary is most grateful to the New Zealand and Australian governments for the continuing assistance provided through the PJDP.

The PJDP is currently focused on building the skills and competency of the judiciary of the various Pacific nations. They have been responsible for funding 3 training workshops in Tonga during the reporting period. These workshops were:

1. The Magistrates' Sentencing Workshop, held on 13 to 15 October 2012 at the Loumaile Lodge, Nuku'alofa;
2. The Bailiff Officers' workshop, held on 6 to 9 December 2012, at the Bailiff Office in Nuku'alofa; and
3. A training workshop on computer and online research methods for magistrates and court officers, held on 16 to 19 December 2012 in Nuku'alofa.

Each workshop was designed and conducted in Tonga by local staff with the assistance and funding provided by the PJDP. Regionally, courtstaff have participated in the following capacity building activities:

1. On 3 to 7 December 2012, 2012 the PJDP held a Lay Orientation Training Workshop at Port Vila, Vanuatu. Tonga sent two delegates to the regional workshop - Sateki Afu and Hotensie Ngalu.
2. On 9 to 15 March 2013, Principal Magistrate Salesi Mafi, Tonga's national coordinator for the PJDP, attended the PJDP's National Coordinators Workshop in Auckland, New Zealand.

Following the Coordinators' workshop, on 16 to 19 March 2013, the Lord Chief Justice Michael Scott attended the Chief Justices' workshop which was also held in Auckland, New Zealand.

#### 8.2 Annual Report assistance

The PJDP has identified the compilation of annual court reports as an area which it will monitor and provide assistance to member countries in an effort to improve systems and processes in the region.

<sup>3</sup> Annual Report of the Ministry of Justice, 2011

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The PJDP has provided the courts in Tonga with a toolkit and assistance to present its annual report in a manner which is relevant and easy to follow and understand. The toolkit highlights 15 indicators<sup>4</sup> which were identified and agreed upon at an annual meeting of Pacific Island Chief Justices' held in 2009 in the Cook Islands.

These respective indicators are:

### Case management issues

- i. Indicator 1: Case finalization or clearance rate
- ii. Indicator 2: Average duration of cases from filing to finalization
- iii. Indicator 3: The percentage of appeals
- iv. Indicator 4: Overturn rate on appeal

### Affordability and accessibility for court clients

- v. Indicator 5: Percentage of cases that are granted a court fee waiver
- vi. Indicator 6: Percentage of cases disposed through a circuit court
- vii. Indicator 7: Percentage of cases where a party receives legal aid

### Published procedures for handling feedbacks and complaints

- viii. Indicator 8: Documented process for receiving and processing a complaint that is publicly available.
- ix. Indicator 9: Percentage of complains received concerning a judicial officer.
- x. Indicator 10: percentage of complains received concerning a court staff member.

### Human resources

- xi. Indicator 11: Average number of cases per judicial officer
- xii. Indicator 12: Average number of cases per member of court staff

### Transparency

- xiii. Indicator 13: Court produces or contributes to an Annual Report that is publicly available.
- xiv. Indicator 14: Information on court services is publicly available.
- xv. Indicator 15: Court publishes judgments on the internet (own website or PacLII).

Overall, the annual reports produced by Tonga are of a high quality with significant amounts of information being made publicly available.

The PJDP 2012 Court Trend Report notes that Tonga's report lacks 6 out of the 15 indicators: 2 (average duration of a case); 5, 6 & 7, (affordability and accessibility for court clients); 8 (documented process for receiving and processing a complaint that is publicly available); and 14 (information on court services is publicly available). The following provides further information in relation to these indicators:

Indicator 2 - Average Duration of a Case - All cases which are disposed of or finalized are now reviewed and the total number of days between filing and disposal are calculated for future reporting. In May 2014, the court began exploring processes to accurately capture the number of days a between when a matter is first filed, and given a hearing date. The court

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<sup>4</sup> The performance of each of the 14 PJDP participating countries viz-a-vis the 15 indicators is available on page 13 and 14 of the PJDP's 2012 Court Trend Report.

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aims to publish the data relating to the average duration of a case data in the next annual report in 2014.

Indicator 5 - court fee waiver - Court fees in Tonga are set by an Act of parliament and there is no express provision for waiver of fees. Nevertheless, the Lord Chief Justice may from time to time waive the court fee for indigent litigants.

Indicator 7 - Percentage of cases where a party receives legal aid - Tonga does not have a formal legal aid scheme although it is not uncommon for many court users to be represented by lawyers on a *pro bono* basis. In the *Legal Aid Bill 2012* which was submitted to parliament for debate in 2012 there is provision for a formal legal aid scheme. At the time of writing the Bill had still not been passed by Parliament.

Indicator 8 - Complaint Handling and Feedback - There has always been an informal complaint and feedback policy in the Courts in Tonga. The Assistant Registrar, Reimen Hii, has drafted a formal notice of the procedure which has been circulated and made publicly available to court users and the legal profession. The Complaint Handling and Feedback process is as follows:

*The Courts of Tonga are committed to providing efficient and courteous service to all users. In an effort to improve and maintain our standards, the Courts wish to clarify the following procedure for making a complaint.*

*If you have a complaint about the way one of our registry staff has handled your matter, then you may ask for an explanation from that officer. If you are not satisfied you may then write to, or ask to see the Registrar.*

*If you have a complaint about the way the Registrar has handled your matter, or If you have a complaint about the way a magistrate has handled your matter, you may send your complaint in writing to:*

*The Chief Justice,  
c/o the Supreme Court Nuku'alofa.*

*If you have a complaint about a judge or the Chief Justice then you should send your written complaint to:*

*The Secretary, Judicial Appointments and Discipline Panel  
c/o Supreme Court, Nuku'alofa*

*Any queries concerning this complaints procedure may be sent in writing to the Registrar,  
Supreme Court, Nuku'alofa.*

There

were no

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complaints received during the reporting period in relation to judicial officers or court staff.

Indicator 14 - Transparency and Court Services Information - Work is currently being done to ensure that the public is made aware of the services provided by the Court such as through posting the information notices in government offices, and through community engagement initiatives such as radio announcements, school visits, and open days.

The courts are looking into re-establishing a website where information can also be found about the courts' services. Currently only the 2011 annual report is available online at PacLII's website, though copies are available at the registry for members of the public to peruse. It is hoped that a copy of annual report will also be made available on the court's website.

### 3. MAGISTRATES COURTS

#### 3.a Tongatapu Courts

##### 3.a1 Criminal Cases

At the beginning of 2013, there were 225 ~~pending~~ criminal cases ~~pending~~ from 2012. A total of 3424 cases were filed in the first half of the year, bringing the total number of criminal cases to 3649. Table 3.1a below details the number of cases disposed of in the said period.

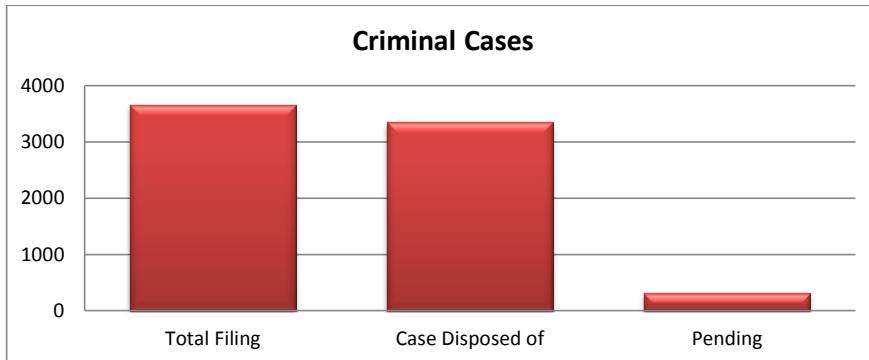
**Table 3.a1 : Criminal Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**

a) No. of cases pending from previous years.					225
b) Total No. of cases filed.					3424
<b>Total No of cases filed plus cases pending from previous years.</b>					<b>3649</b>
No. of cases disposed of	Withdrawn/Struck Out				1086
	Committed to Supreme Court				339
	Acquitted				71
	Convicted				1845
<b>TOTAL</b>		<b>3341</b>	<b>Disposal rate</b>		<b>92%</b>
<b>No. of pending cases</b>					<b>308</b>

Of the ~~disposed~~ cases ~~disposed~~, the highest proportion points to the convicted cases (1845), the withdrawn / struck out follows with 1086. Some other cases that were executed and ~~presented-committed~~ to the Supreme Court came third (339). The acquitted cases record the least percentage. Figure 3.a1 below illustrates the same.

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**Figure 3.a1 A bar graph showing the Criminal Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**



Of these 3649 cases ~~overall~~, a considerable percentage (92%) ~~were~~ ~~was~~ disposed of ~~but~~ ~~very~~ ~~leaving only a~~ negligible percentage of ~~the remaining~~ pending cases ~~are~~ ~~yet~~ to be heard.

### 3.a2 Civil Cases

The beginning of year 2013, records ~~a remaining~~ 92 pending civil cases from 2012. A total of 301 cases were filed in the first half of the year bringing the number of cases to be dealt with to a total of 393. Table 3.a2 shows the details.

**Table 3.a2 : Civil Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**

a) No. of cases pending from previous years.					92
b) Total No. of cases filed.					301
<b>Total No of cases filed plus cases pending from previous years.</b>					<b>393</b>
No. of cases disposed of	Withdrawn/Struck Out				53
	Committed to Supreme Court				0
	Settlement				65
	Convicted				52
<b>TOTAL</b>		<b>170</b>	<b>Disposal rate</b>		<b>43%</b>
<b>No. of pending cases</b>					<b>223</b>

Of those 393 cases, 170 cases were disposed of in the following manner, 53 cases were withdrawn or struck out, 65 cases were settled and 52 cases were convicted. Currently there are 223 pending civil cases in the Magistrates Court. The graph below represents the same.

**Figure 3.a2 A bar graph showing the Civil Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**

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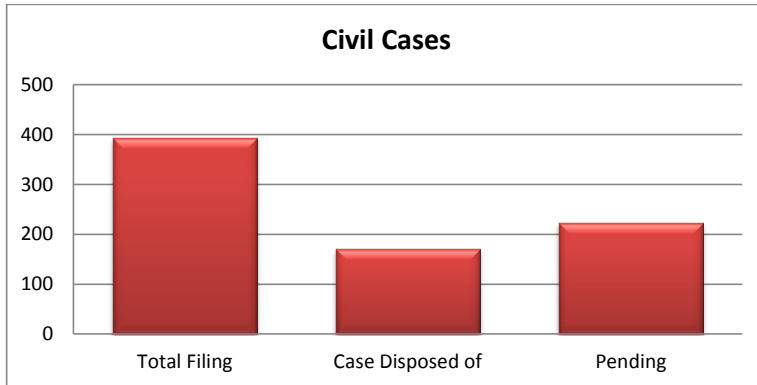


Figure 3.a2 above illustrates that only 43 % of the civil cases were disposed of, slightly less than a half of the total filing cases filed. The remaining 53% of pending cases are just slightly higher than the disposal rate.

### 3.a3 Traffic Cases

There were 1073 pending traffic cases from 2012, at the beginning of year 2013. A total of 6871 cases were filed in the first half of the year bringing the total number of traffic cases to 7944. Table 3.a3 is illustrative on the details.

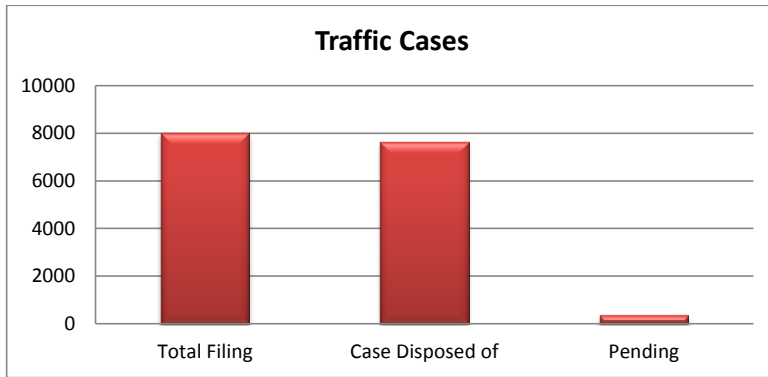
**Table 3.a3: Traffic Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**

a) No. of cases pending from 2012.					1073
b) Total No. of cases filed.					6871
<b>Total No of cases filed plus cases pending from previous years.</b>					<b>7944</b>
No. of cases disposed of	Withdrawn/Struck Out				4376
	Committed to Supreme Court				19
	Acquitted				19
	Convicted				3200
<b>TOTAL</b>		<b>7614</b>	<b>Disposal rate</b>	<b>96%</b>	
<b>No. of pending cases</b>					<b>330</b>

From a total of the 7944 cases 7614 in total, they were disposed of in the following manner: 4376 cases were withdrawn or struck out, 19 cases were committed to the Supreme Court, 19 cases were acquitted and 3200 cases were convicted.

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**Figure 3.a3: A bar graph showing the Traffic Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**



The total percentage of disposed cases is recorded to be 96%. Currently the pending traffic cases in the Magistrates Court is-are considerably minimal.

### 3.b Ha'apai Courts

#### 3.b1 Criminal Cases

Three (3) pending criminal cases were passed on from the previous year. A total of 111 cases were filed in the first half of the year bringing the number of cases to be dealt with to a total of 114. This is displayed in Table 3.b1.

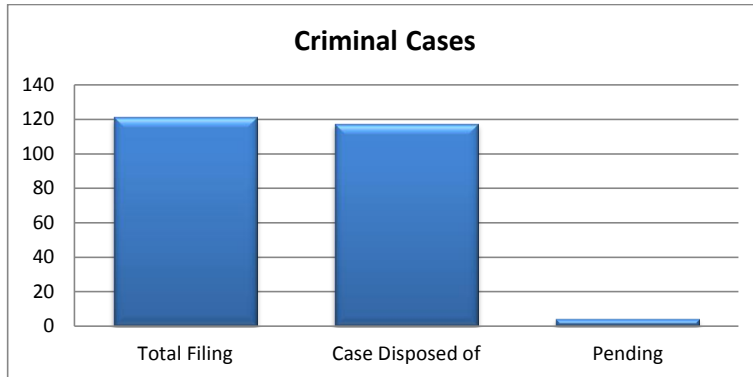
**Table 3.b1 : Criminal Cases for the Period of 1 July 2012 – 30<sup>th</sup> June, 2013**

a) No. of cases pending from 2012.					10
b) Total No. of cases filed.					111
<b>Total No of cases filed plus cases pending from previous years.</b>					<b>121</b>
No. of cases disposed of	Withdrawn/Struck Out				30
	Committed to Supreme Court				2
	Acquitted				1
	Convicted				84
<b>TOTAL</b>		<b>117</b>	<b>Disposal rate</b>		<b>97%</b>
No. of pending cases					4

**Figure 3.b1: A bar graph showing the Criminal Cases for the Period 1 July 2012 – 30<sup>th</sup> June, 2013**



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Of those 121 cases 117 cases (**97% of the total cases**) were disposed of i.e. 30 cases were withdrawn or struck out, 2 cases were committed to the Supreme Court and 84 cases were convicted, and 1 case acquitted. Currently there are 4 pending civil cases in the Magistrates Court.

### 3.b2: Civil Cases

There ~~were was~~ only 1 ~~in total, of pending~~ civil cases ~~pending~~ from ~~the~~ 2012. Fifteen (15) cases were filed during the first half of 2013, bringing the total number of civil cases to 16. This is demonstrated in Table 3.b2 below:

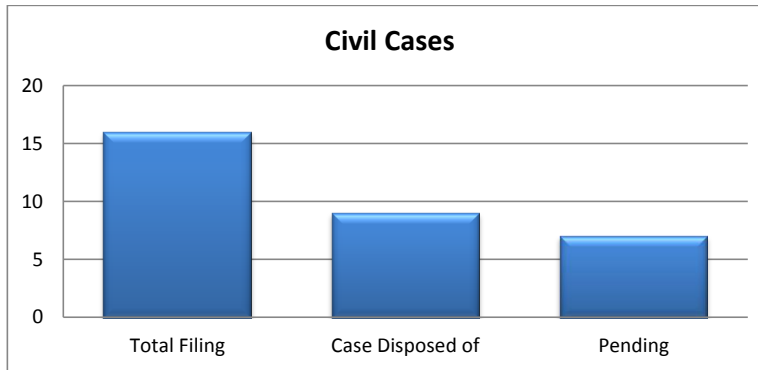
**Table 3.b2: Civil Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.**

a) No. of cases pending from 2012.			1	
b) Total No. of cases filed.			15	
Total No of cases filed plus cases pending from previous years.			16	
No. of cases disposed of				
	Withdrawn/Struck Out		2	
	Committed to Supreme Court		0	
	Acquitted		0	
	Convicted		7	
TOTAL		9	Disposal rate	56%
No. of pending cases			7	

Of those ~~17-16~~ cases, 10 cases were disposed of . ~~Three, (-3)~~Two (2) cases were withdrawn/struck out, ~~-7~~ cases were convicted. Currently there are 7 cases pending in the Magistrate Court.

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**Figure 3.b2** A bar graph showing the Civil Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013.



### 3.b3 Traffic Cases

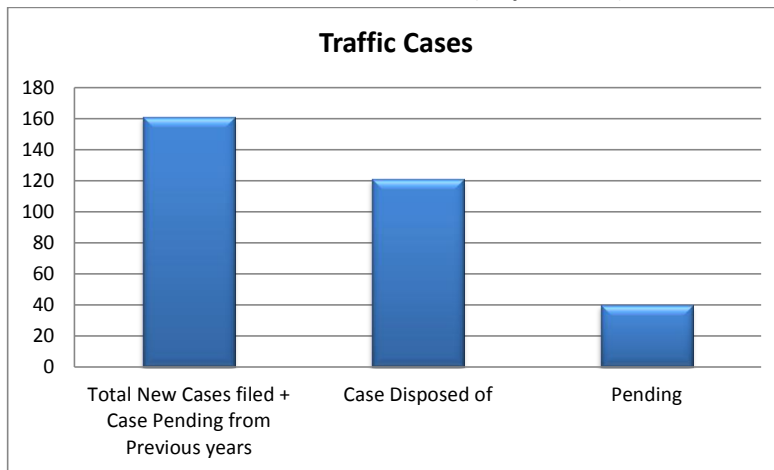
There were 3 ~~total~~ traffic cases pending from ~~the~~ previous year, 158 new cases ~~were~~ filed in the reporting year bringing the total number of Traffic cases to 161 cases to be dealt with. Table 3.b3 below shows this.

**Table 3.b3: Traffic Cases for the Period of 1 July 2012 – 30<sup>th</sup> June, 2013**

a) No. of cases pending from 2012.			3	
b) Total No. of cases filed.			158	
Total No of cases filed plus cases pending from previous years.			161	
No. of cases disposed of				
	Withdrawn/Struck Out	1		
	Committed to Supreme Court	2		
	Acquitted	54		
	Convicted	64		
TOTAL		121	Disposal rate	75%
No. of pending cases			40	

**Figure 3.b3: A bar graph showing the Traffic Cases for the Period of 1 July 2012 – 30<sup>th</sup> June, 2013**

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### 3.c Vava'u Courts

#### 3.c1 Criminal Cases

There ~~were 523 total~~ was a total of 523 criminal cases filed in the reporting year with 22 cases pending ~~eases~~ from ~~the~~ previous years. Table 3.c1 shows this.

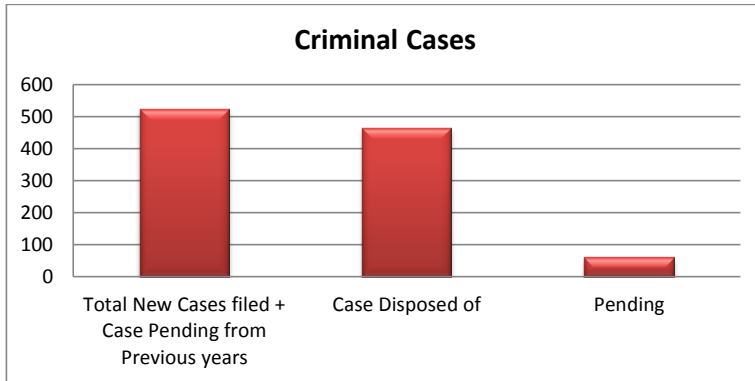
**Table 3.c1: Criminal Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

a) No. of cases pending from previous years.			22	
b) Total No. of cases filed.			503	
Total No of cases filed plus cases pending from previous years.			523	
No. of cases disposed of				
	Withdrawn/Struck Out	52		
	Committed to Supreme Court	11		
	Acquitted	27		
	Convicted	374		
TOTAL		464	Disposal rate	89%
No. of pending cases			59	

The total number of filed cases for the reporting period is 503, with the 22 pending cases this brings the total to 523. ~~A total then of 442~~ A total of 464 cases were ~~able to be~~ dealt with ~~in~~ Court which accounted for ~~87~~89% of the disposal rate.

**Figure 3.c1: A bar graph showing the Criminal Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

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For 2012 the overall disposal rate for Criminal Cases (pending cases from 2012 plus new filing 2013) in Vava'u is 87.89%.

### 3.c2 Civil Cases

From 2012, six (6) pending cases were carried on to the new year, 2013. An overall number of 46 cases were filed in the first half of the year, bringing the total to 52 cases altogether. This is tabulated below.

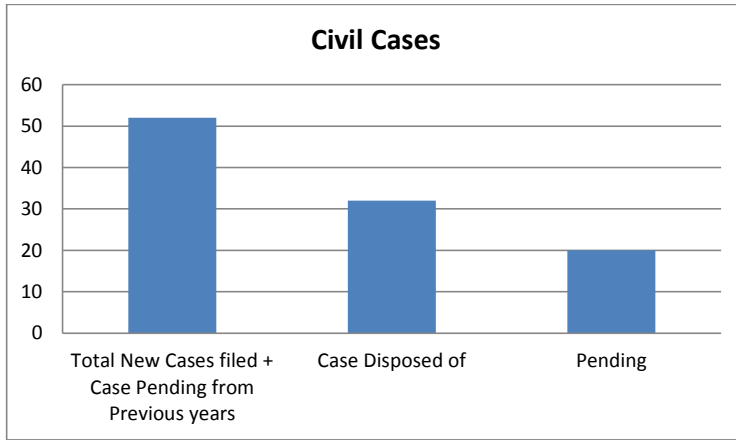
**Table 3.c2 : Civil Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

a) No. of cases pending from previous years.					6
b) Total No. of cases filed.					46
<b>Total No of cases filed plus cases pending from previous years.</b>					<b>52</b>
No. of cases disposed of	Withdrawn/Struck Out				5
	Committed to Supreme Court				0
	Acquitted				6
	Convicted				21
<b>TOTAL</b>		<b>32</b>	<b>Disposal rate</b>		<b>62%</b>
<b>No. of pending cases</b>					<b>20</b>

From the total number of cases that were filed, 32 were dealt with in Court which accounts to accounting for 65% of the disposal rate. The remaining percentage (35%) are the pending cases.

**Figure 3.c2 : A bar graph showing the Civil Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

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### 3.c3 Traffic Cases

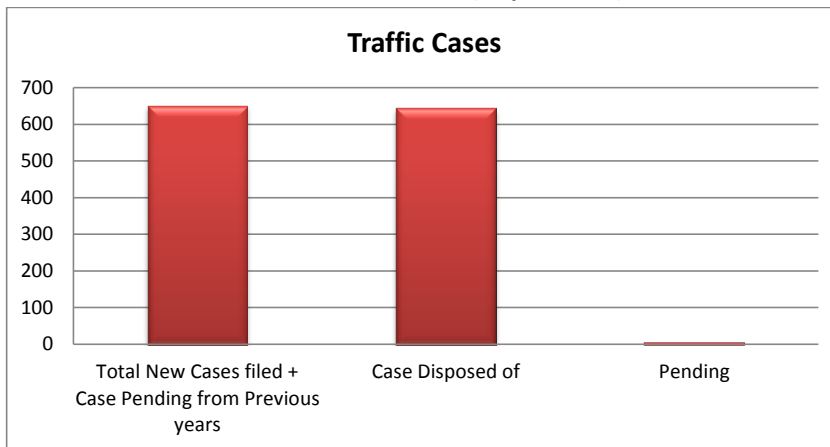
The total number of cases that were filed totalled to 649. There is no record of any pending cases ~~that were inherited~~ from the previous year. This is indicated in Table 3.c3.

**Table 3.c3 : Traffic Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

a) No. of cases pending from previous years.			0	
b) Total No. of cases filed.			649	
Total No of cases filed plus cases pending from previous years.			649	
No. of cases disposed of				
	Withdrawn/Struck Out		127	
	Committed to Supreme Court		1	
	Acquitted		1	
	Convicted		514	
TOTAL		643	Disposal rate	99%
No. of pending cases			6	

**Figure 3.c3: A bar graph showing the Traffic Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

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The record displays a very pleasing record in terms of the disposal rate of 99%.

### 3.d 'Eua Court

#### 3.d1 Criminal / Traffic Cases

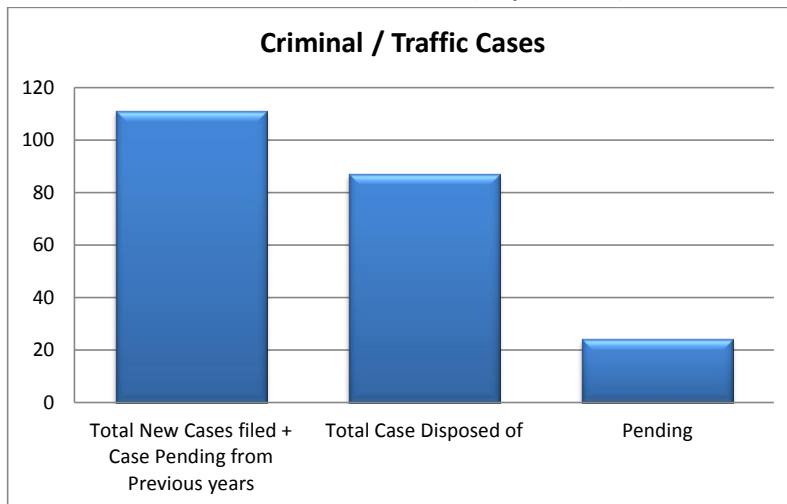
Of the number of filed cases of **84**, an additional **27** pending cases from the previous year increased the total number of cases to **One hundred and Eleven (111)**. These figures are shown in Table 3.d1.

**Table 3.d1 : Criminal / Traffic Cases for the Period 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

a) No. of cases pending from previous years.			27	
b) Total No. of cases filed.			84	
Total No of cases filed plus cases pending from previous years.			111	
No. of cases disposed of				
	Withdrawn/Struck Out		13	
	Committed to Supreme Court		1	
	Acquitted		11	
	Convicted		62	
TOTAL		87	Disposal rate	78%
No. of pending cases			24	

**Figure 3.d1: A bar graph showing the Criminal Cases for the Period of 1<sup>st</sup> July 2012 – 30<sup>th</sup> June, 2013**

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Of the ~~total 111 filed cases~~ 111 cases which were filed, only 87 were able to be disposed of, justifying the 78%. The remaining 22% ~~0% were are~~ still pending.

### 3.d2 Civil Cases

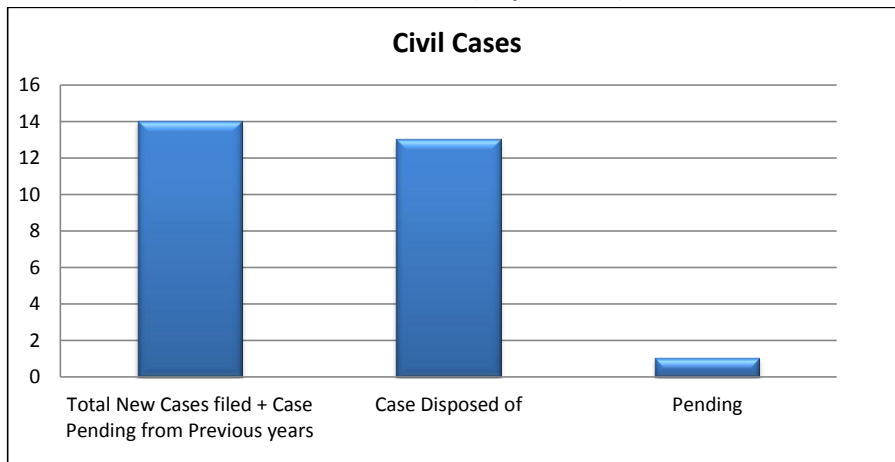
There were a total of only 14 cases that were filed with no pending cases from 2012 ~~inclusive~~.

**Table 3.d2: Civil Cases for the Period of 1<sup>st</sup> July 2012-30<sup>th</sup> June, 2013**

a) No. of cases pending from 2012.			-	
b) Total No. of cases filed.			14	
Total No of cases filed plus cases pending from 2011.			14	
No. of cases disposed of				
	Withdrawn/Struck Out		9	
	Committed to Supreme Court		2	
	Acquitted		-	
	Convicted		2	
TOTAL		13	Disposal rate	92%
No. of pending cases			1	

**Figure 3.d2: A bar graph showing the Civil Cases for the Period of 1<sup>st</sup> July 2012-30<sup>th</sup> June, 2013**

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### 4. REGISTRAR GENERAL'S OFFICE

#### 4.a New Office

The Registrar General's Office (RGO) was re-established and revised under the Births, Deaths and Marriages Registration (Amendment) Act 2012. The new office is independent of the Court and comes directly under the Ministry of Justice with the Hon. Minister acting as the Registrar General (RG).

On 1<sup>st</sup> December 2012, the RGO began operating at its new location within the Ministry of Justice Building, corner of Lavinia Rd and Kausela Rd, Kolofo'ou. Prior to this legislative amendment, the post of Registrar General was held by the Lord Chief Justice. The separation of the office of Registrar General from the Lord Chief Justice and the Supreme Court is a proposal that has been advocated for many years on the grounds of efficiency and cost effectiveness. This proposal has also received support from a recent diagnostic survey of the operations of the Supreme Court



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registry conducted by an expert from the Federal Court of Australia funded by the Pacific Judicial Development Programme in 2012.

### 4.b Composition and Functions

The new RGO comprises of the main Registry on Tongatapu and the five sub-registries in each of the 5 island districts of Vava'u, Ha'apai, 'Eua, Niutoputapu and Niuafo'ou. In Tongatapu, six new sub-registrars (2 on full-time basis) took on the responsibilities for Registrar General applications, issuance of marriage licenses, liaison with stakeholders, conducting training programmes for Church Ministers registered to solemnize marriages and handle enquiries from both local and overseas customers. A support staff of two clerks assisted the sub-registrars. The Vital Statistics unit continues to function with 7 staff members within the Registrar General Office framework. In the other sub-registries the function of the sub-registrar was assumed by a resident Magistrate or Governor or Government Representative as the case may be. Their appointed substitutes acted in their absence and their respective clerks act as support staff for each sub-registry as before.

### 4.c Registrar General Applications (RG App)

The statistics presented in Table 4.c below states the overall summary of cases (for all districts) that were filed during the reporting period. "New" RG APP specifically refers to those applications filed from 1<sup>st</sup> July 2012 to 30<sup>th</sup> June 2013.

**Table4.c1: Applications Filed from 1<sup>st</sup> July 2012 – 30<sup>th</sup> June 2013**

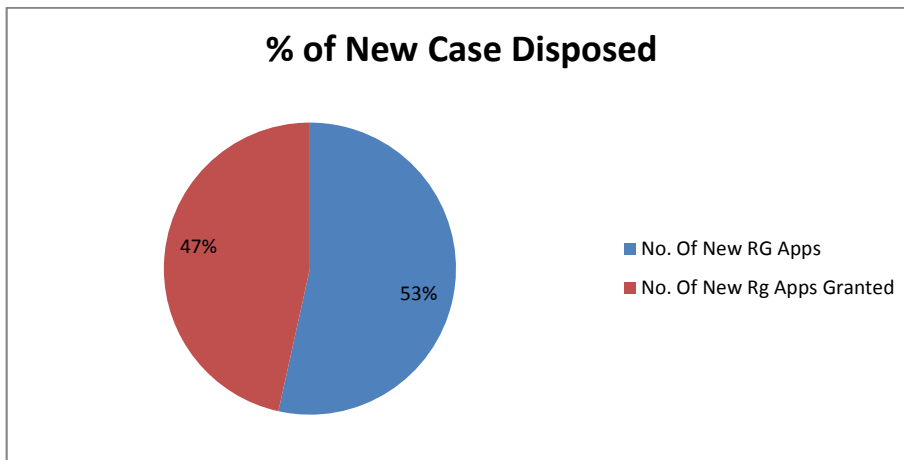
No. Of New RG Apps	No. Of new RG Apps Granted	No. Of new RG apps Refused/withdrawn	Average Rate of Disposal For new RG Apps	No. Of RG Apps pending
<b>1019</b>	<b>887</b>	<b>1</b>	<b>87%</b>	<b>131</b>

Figure 4.c1 below demonstrates the number of new cases disposed as against the number of new RG App filed between 1<sup>st</sup> July 2012 – 30<sup>th</sup> June 2013. By comparison, Figure 4.c2 is indicative of how 'inactive' cases are retained in the system. The overall pending cases are rolled over each year.

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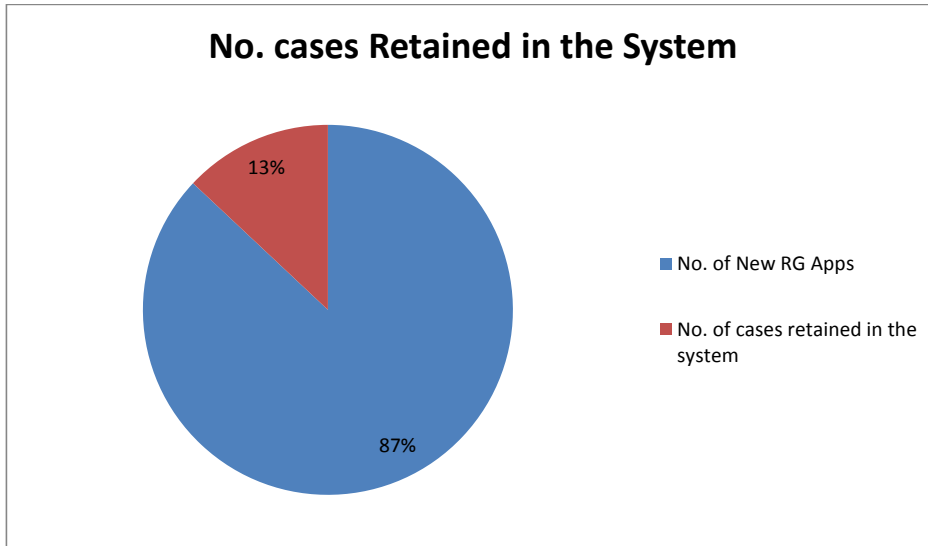
These “pending” cases – are actually cases where clients have taken no further action to complete their applications after their submission to the RGO after a 6 month period or where applications have been refused by the RGO due to an insufficient provision of evidence to substantiate the said claim and the petitioners have not re-filed the said further evidence.

**Figure 4.c1**



**Figure 4.c2**

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For the first time RGO applications have now been separated into RGO Apps (for all districts) by subject matter which assists in identifying the impact of Court decisions on applications EG the R v Schaumkel Case 2012, which is the reason for the marked rise in registration of foreign births through Tongan mothers.

The Change of Name Rule 2011 is responsible for an increase in people seeking Name Registration Certificates (either for change of name or inclusion of alias). Other relatively recent developments such as the ability to hold dual citizenship, introduction of national Id and the new Retirement Benefit Scheme have all contributed to influence current trends in Civil Registration.

For reporting purposes only, Table 4.d reveals statistics relating to various RG Apps for the period 1<sup>st</sup> July 2012 –30<sup>th</sup> June 2013.

**Table 4.d : Registrar General Applications , 1<sup>st</sup> July 2012 –30<sup>th</sup> June 2013**

No.	Category	No. Filed	No. Granted	No. Refused /	No. Pending	No. Filed in 2010
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				Withdrawn		(for comparison)
1	Late Registration of Births	259	233	0	26	207
2	Late Registration of Deaths	21	21	0	0	38
3	Late Registration of Marriages	20	17	0	3	11
4	Tongan Births Abroad	304	284	0	20	273
5	Tongan Deaths Abroad	51	44	0	7	38
6	Amendment of Particulars on BDM certificates	14	9	0	5	43
7	Insertion of Father's name on Birth Certificate	24	18	0	6	20
8	Legitimation	22	17	0	5	6
9	Registration of Illegitimate Births by married women separated from their legal spouse	72	54	0	18	35
10	Filling in Missing Particulars	2	2	0	0	7
11	Leave to use photocopies in RG Apps	60	57	0	3	36
12	Revocation of marriage licenses	2	2	0	0	0
13	Name Registration Certificates	141	103	1	37	36 + 98*
14	Transfer from Non- Tongan Nationality Register to Tongan Nationality register	5	5	0	0	1
15	Cancellation of marriage licences	3	3	0	0	3
16	Special license to marry	19	18	0	1	24

\*Under the old Rule change of name was only with regard to one's surname and there were 36 applications filed. Inclusion of an alias was processed differently with "AKA" being recorded on birth certificates and 98 applications were lodged for alias names to be included.

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Previous categories which are no longer in existence now include addition of correct family names/surnames which had 32 applications filed in 2010. Following the sinking of Princess Ashika, 2 applications were filed for abridgement of time to apply for registration of deaths. There were also 10 applications to dispense with certain standard documents required in other applications. The statistics from 2010 is for comparison only and does not record whether approval was granted nor whether the application was finalized.

It should also be noted that although single applications are recorded each may include several items for registration. For example, a single application to register foreign births may have up to 8 subject children whose births will be registered. The fee for such multiple items is calculated on a per child basis.

There are other categories of RG APP but no applications were received for these in the reporting year.

In general, the average disposal rate depends on the completeness of applications lodged. Where a case is filed with defects or omissions the time taken to put a file in order is very much up to the applicant. Without fixing a return date for all actions, delays will occur and cases are more than likely to be abandoned, especially if applicants are domiciled abroad.

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For reporting purposes, the Vital Statistics section of the Registrar General's Office, which records, maintains, updates and issues true copies of birth, death and marriage certificates for the Kingdom from 1 July 2012- 30 June 2013, notes the registrations for the said Financial Year in the diagram below.

**Table 4.e: Vital Statistics 1 July, 2012- 30 June , 2013**

BIRTHS							
A. TONGAN	TONGATAPU	HA'APAI	VAVA'U	'EUA	NIUATOPUTAPU	NIUAFO'OU	TOTAL
Total Registered	2155	80	344	78	2	3	
(a) Legitimate	1855	71	305	65	2	2	
Male	1049	40	150	38	-	1	
Female	1106	40	155	4	2	2	
(b) Illegitimate	300	9	39	13	-	1	
Total	2155	80	344	78	2	3	
	TONGATAPU	HA'APAI	VAVA'U	'EUA	NIUATOPUTAPU	NIUAFO'OU	TOTAL
B. NON TONGAN							
Total Registered			2				
NB: The total number of Non Tongan births is excluded from the number of births in Tongatapu							
(a) Legitimate	7		2				
Male	5		-				
Female	3		2				
(b) Illegitimate	1						

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Total	8		2				
<b>DEATHS</b>							
A. TONGAN							
Total registered	364	28	73	9	4	7	
Births Exceeded Deaths by	1791	52	271	69	2	4	
<b>MARRIAGES</b>							
A. TONGAN							
Total registered	853	40	119	21	3	4	

NATIONAL CIVIL REGISTRY FOR VITAL STATISTICS COMMITTEE (Vital Statistics Committee)

The division of the Registrar General's Office from the Supreme Court provided an opportune time to review the RGO's membership in the Vital Statistics Committee. The Vital statistics working group was created in 1996 by senior officers of the Ministry of Justice, Government Statistics Department, PMO and Ministry of Health.

The initiative was supported by UNFPA (United Nations Population Fund) to improve civil registration in Tonga. The project activities were mainly community based and inter-department coordination would contribute to the success of the project.

The Committee deals with the collection and coordination of all vital records (births and deaths) that take place in Tonga and these statistics need to be timely and accurate and in some instances (such as the RGO – it also requires the differentiation between those persons born in Tonga who are deemed Tongan subjects and those who are not). These statistics then form the basis of all population statistics and projections of “population growth” for Government.

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In May 2012 the Brisbane Accord Group (which includes SPC, University of Queensland HIS Hub, UNFPA, WHO, UNICEF, PHIN, ABS and the Queensland University of Technology) expressed their desire to work with Tonga under the Pacific Vital Statistics Plan to support ongoing improvements in vital statistics and civil registration. A high-level meeting between the key CRVS stakeholder agencies in Tonga and BAG partner organisation representatives took place in December, 2012.

The meeting provided an opportunity for the Vital Statistics Committee to present relevant health plans, information strategies, vital statistics plans, etc., and approach BAG for development assistance (technical assistance, human resources, funding, etc.) to meet specific needs as identified through these processes.

After this visit the BAG team (Karen Carter, Vital Statistics and Civil Registration Specialist, SPC and Audrey Aumua, Technical Advisor, HIS Hub – University of Queensland), reported that recent changes across government, including the restructure of the Ministry of Justice, the introduction of a national identification system (Lord Privy Seal's office) and the shifting oversight for town and district officers to a new ministry (Ministry of Internal Affairs) have substantially changed the landscape in which civil and vital registration is undertaken in Tonga. They recommended that the Committee should review its role and functions, including the membership and the way forward

The review by the Tongan Vital Statistics Committee of the terms of reference, membership and functions of the VSC (Tonga) was undertaken at a meeting held in Nadi, Fiji, (June, 2013) in conjunction with other similar national organisations throughout the Pacific. National Vital Statistics Groups for the Pacific were aided in this exercise by (SPC, University of Queensland HIS Hub, UNFPA, WHO, UNICEF, PHIN, ABS).

The Tonga team identified that its “Outcome Objective” falls in line with the Outcome Objective 8 of the TSDF “Better Governance by adherence to the principles of good governance, accountability, transparency and rule of law. It was identified in the current



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Budget statement for 2012/13 that Government was committed to reviewing structure and operations on a National Statistics Bureau to improve its operations and to enhance cooperation within Government and other stakeholders for improved data collection for better analysis and policy formulation.

Problematic areas that require resolution in the future were identified as follows:

- That the relevant Ministries (Justice and Health) both need to address urgently issues relating to “confidentiality of personal data information” in relevant legislation – Health have a policy in operation relating to the issuance of death and birth certificates but this is not reflected in the legislation;
- That there is duplication of “forms” and procedures (Justice and Health) in relation to the collection of data on “live births” at the hospital; That this process expands on the margin of error that can occur in data collection – that with proper coordination, this duplication can be avoided and the process streamlined;
- That the RGO has inadequate registration of death records – there are approximately 60,000 death registrations (dating back to the beginning of the RGO records in 1874). The reason is that people only register deaths when there is a requirement for a death certificate eg in inheritance matters of land and personal property (Probate and Administration). The RGO requires all death records in order to reconcile these with birth records and to assist the Electoral Commission in updating their Electoral Roles (as well as the National Identity Card scheme). The Ministry of Health have agreed to assist the Ministry in supplying a copy of their data records on death for the Justice data system.

As a result of the exercise undertaken above, the Tongan VSC re-constituted its membership and expanded it to include other Ministries/Departments that collect or depend on relevant vital data records. The said Committee retains its usual membership but also now includes

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representatives from the Ministry of Internal Affairs (the collection of reports from Town and District Officers), the Lord Privy Seal's Office (the issuance of National ID Cards), the Electoral Commission (the Electoral Role) and the Ministry of Foreign Affairs (Tongan Passport Section).

A first meeting of this group took on Friday 21 June, 2013 at the Ministry of Justice to see whether the other members who have been identified as relevant to the Committee are interested in participating and also to see how the Committee may expand the committee mandate to include any of the new memberships' "data needs".

The chair of the current working group is the Ministry of Justice and the secretariat is also held by this Ministry. The Ministry will be progressing the matters raised above in the coming year.

### **DIGITIZATION PROJECT FUNDED BY COMMONWEALTH SECRETARIAT**

(Registrar General's Office, Ministry of Justice)

The purpose of the project is to strengthen the capacity and to safeguard historical data (Births, Deaths and Marriages) stored at the Vital Statistics Office.

The reason the project is important to the Tongan People and to Government:

Birth certificates are required to get passports, prove Tongan nationality (eg for ownership of land), applying for visas overseas, registering under the National ID scheme to be able to vote in Tonga, to enrol in schools, applying for jobs;

Death Certificates are required for execution of wills – claiming land, accessing bank accounts; claiming assets etc;

Marriage certificates are required as formal evidence that an applicant is married (eg for passports, visas) and even if the applicant wishes to get a divorce.

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The expected outcome of the project is that the Government of Tonga is enabled and able to deliver more effective public centred services.

The RGO started to computerize its birth, death and marriage records in 2011 – so most births that occurred in 2011 onwards are already stored on a written register and also on a computer database.

However, the majority of registration records, pre-2011 are still stored on handwritten registers. Many of those registers are in such a bad state that in a year or so, these records will no longer exist. Tongan original Registers date back to 1874.

The Commonwealth Secretariat has been assisting the Registrar General's Office, as part of a joint project with the Ministry to assist in the preservation of historical data for Births, Deaths and Marriage records.

1) In 2010 (October/November), the Secretariat sent a consultant, Dr Allan Findlay – on a scoping mission to the Kingdom to determine the terms of reference for the project. In brief Dr Findlay reported that:

- the archives/registry – is in a very bad state. He noted that the Register books are not stored properly, the Books are not properly catalogued. This is because there is no proper filing/cataloguing system in place and there is no one with relevant skills to look after the registry properly and train the staff to handle the books with care;
- The records that have been computerized eg from 2011 onwards do not match the original records written in the A3 Register. This is due to lack of proper “auditing” of the computer records.
- That some original records are lost and some are in such a bad state that if nothing is done about it soon, the registers and the information contained there will no longer exist.

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The digitization project concentrates on bullet point 3 above – ie trying to computerize the records from the Register books that are in a very fragile state.

2) In July 2012 – Comsec sent an expert archivist/librarian to Tonga (Fiona Bolt).

From 1 July, 2012, until 30<sup>th</sup> June, Fiona Bolt has taught a 4 member team for the project to:-

- Upload images to the registration database (using 2 methods a) data capture by photography or b) by use of flat bed scanner;
- Digitize and index birth and death registers held in Tongatapu;
- Digitize and index marriage registers;
- Digitize all registers held on Eua;
- Train the Digitization Team staff in the use of Excel;
- Audit and remove semi-current records from the archives

At the end of June 2013, a four member team of the digitization project were proficient to apply the two digitization processes to other records sets in the future. Documentation for training of future staff is in place to support this.

It was projected in June, 2013 that the Ministry was on course to remove the most-accessed original records from daily use in the Vital Statistics Office before August 2013. In order to achieve this goal, 2 additional staff were hired to assist in the project. Work was begun on the reorganization of the archives room and the boxing of the registers. Both of these measures will protect the historical records from further deterioration.

Access to the digital images should be available to all Vital Statistics staff from August, 2013. This will improve the speed of service to the public in the Vital Statistics Office.

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Several hundred incorrect or missing records have been amended or input to the registration database as part of the upload process which will also improve standards of public service and produce more reliable statistical data.

On 11 June, 2013, the Ministry's digitization team was pleased to participate in the Ministry of Information and Communications planning of the first conference for Tonga to mark International Archives Day on 11 June. The Digitization team made a presentation at the said conference to demonstrate archival skills as well as to illustrate how digitization processes protect valuable data for future generations. The aim was to raise awareness of the need for archiving and digitization across Tonga for all its valuable data.

The Ministry is most grateful to the Commonwealth Secretariat for its assistance in this project and its continued support of the Ministry as it strives to strengthen the capacity and to safeguard historical data stored at the Vital Statistics Office

## **5. THE MINISTRY**

### **5.a The Ministry's Programme Structure**

#### **5.a1 Programme 1 -Leadership, Policy Advice and Programme Administration**

To provide quality policy advice to government on the creation and amendment and development of legislation. To provide administrative support services to all the courts in the Kingdom (Court of Appeal, Supreme Court, Magistrates' Courts). To provide general administrative and oversight services to independent bodies and integrity organisations which:- enforce and implement free and fair elections (Electoral Commission), anti-corruption in Government (Anti-Corruption Office), this has not as yet been established, impartial intermediaries between the public and government (Public Relations Commission).

#### **5.a2 Programme 2 - Judicial Services**

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To provide staff and administrative services which promote the effective and timely adjudication of disputes and resolution of questions of law in Courts with appropriate jurisdiction.

### 5.a3 Programme 3 - Enforcement Services

To provide court services which ensure the effective implementation of court operational procedures, and effective enforcement of Court judgments in all court decisions.

### 5.a5 Programme 4 - Civil Registration

To register, maintain and promote the provision of accurate vital statistics records and archiving of births, deaths, marriages, changes of names, etc. in the Kingdom.

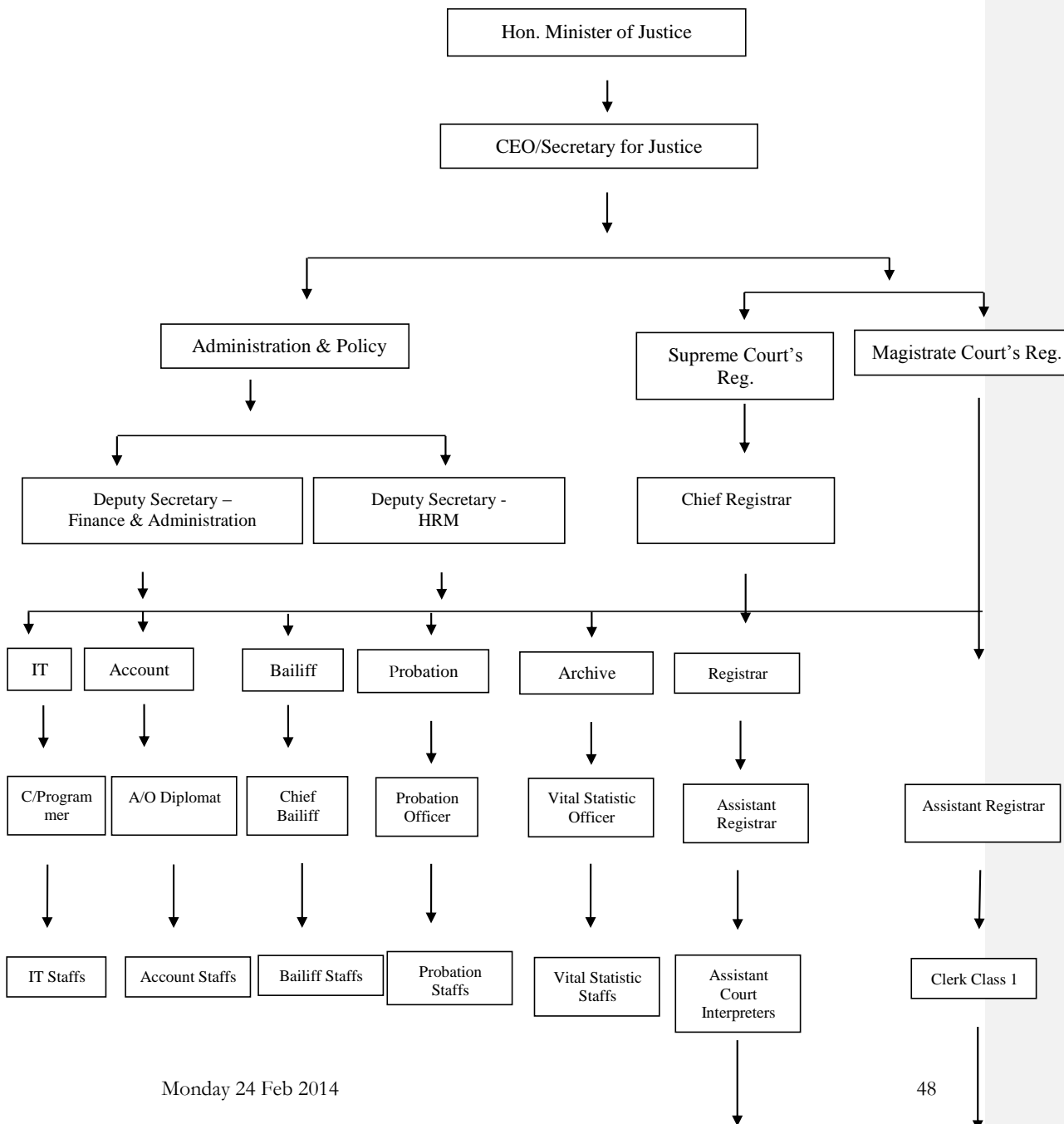
**Table 5.a5: The Ministry's Programme Structure with the Respective Sub-programmes and Activities**

PROGRAMMES	SUB-PROGRAMMES	ACTIVITIES
1. Leadership, Policy Advice and Programme Administration	1.1. Office of the Minister	1.1.2. Minister's Expenses
		1.1.3. Minister's Support Services
		1.2.1. Secretary's Expenses
	1.2. Office of the Secretary	1.2.2. Secretary's Support Services
		1.3.1. Administration Support Services
	1.3 Programme Administration	1.3.2. Accounts Services
		1.4.1 Law Reform Committee Services
	1.4 Law Reform	

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		1.4.2 Consolidation / Revision of Laws of Tonga
2. Judicial Services	2.1 Judicial Services Management  2.2 Privy Council / Court of Appeal  2.3 Supreme Court / Land Court  2.4 Magistrates' Court	2.1.1 Fees and Fines 2.1.2 Direction and Management  2.2.1 Appeal Court Judges  2.3.1 Supreme Court Support services 2.3.2 Court Circuits 2.3.3 Law Reports Production  2.4.1 Chief Magistrates' Support services 2.4.2 Magistrates' Court Administrative services 2.4.3 Magistrates' Court Circuits
3. Enforcement Services	3.1 Bailiff Services  3.2 Probation Services	3.1.1 Execution of Process  3.2.1 Community Services Order
4. Civil Registration	4.1 Births, Deaths and Marriages	4.1.1 Fees and Charges 4.1.2 Registration Services 4.1.3 Vital Statistics Committee support

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Supreme Court  
Staff

Magistrate  
Court Staff

### 6. ESTABLISHMENT

The Ministry's Establishment as on 1<sup>st</sup> July 2012 – 30<sup>th</sup> June 2013.

#### 6.a Minister's Office & Legal Policy Unit

1	Minister of Justice	Hon. William Clive Edwards (1 <sup>st</sup> September, 2011)	TTP
2	Chief Executive Officer	Susana Faletau (2 April, 2012).	TTP
3	Legal Officer	Adi Talaniavini Mafi	TTP
4	Legal Officer	Lady Fatima Fonua	TTP
5	Assistant Secretary Legal Unit	Seniloli K Inoke	TTP
6	Personal Assistant to the Minister	Mrs. Halaevalu Siasau Helu	TTP

#### 6.b Finance, Administration, Human Resources & IT

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1	Deputy Secretary	ACTING D/S from 2 April, 2012) Mr. Folau Lokotui (Mr. Vatulele Tuputupu, suspended from the PS on September 2011)	TTP
2	Deputy Secretary	(ACTING D/S from June 2012 Ms. Jeanett Vea – 30 June, 2013) (Temporary Re-deployment from Public Service Commission)	TTP
	ACCOUNTS DIVISION		
7	Accounting Officer Diplomat	Nai Tonga	TTP
8	Computer Operator Grade II (Accounts)	Holeva Makaafi	TTP
9	Clerk Grade I (Accounts)	Aloma Kauvaka	TTP
	Computer Assistant	Vacant	
	MAIN OFFICE REGISTRY DIVISION		
11	Clerk Grade III (Registry)	Neomai Lavaka	TTP
12	Clerk Grade III (Registry)	Katrina 'Ana Poloniati Tukuafu	TTP
	IT DIVISION		
13	Computer Programmer	Paula Palavilala Latapu	TTP
14	Computer Programmer	'Alipate Cocker	TTP
10	Computer Operator Grade III	Stella Ngahe Tonga	TTP
	MAINTENANCE AND DRIVERS		
15	Technical Officer	'Amanaki Taukei'aho	TTP

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16	VIP Driver	Sione Veamuni Faiva	TTP
17	VIP Driver	Tevita Vehikite	TTP
18	Driver	Ika Fa'aoa	TTP
19	Driver	Penisini Taufu	TTP

#### 6.c Magistrate Court

9	Assistant Secretary	Sateki Afu	TTP
10	Clerk Class 11	Ma'ukava Fifita	TTP
12	Clerk Class 11	Salesi Hafoka	Vv
13	Clerk Class 11	Makalete Kaitapu	HP
14	Clerk Class 111	Paipule Fehoko	HP
15	Clerk Class 111	Satini Palanite Laulotu	TTP
16	Clerk Class 111	Katalina Siena Vaoleti Hu'ahulu	Vv
17	Computer Assistant	Salote Lutua	TTP
18	Computer Assistant	Tlaisaane Fifita	TTP
19	Computer Assistant	Malia K Taufu	TTP
20	Computer Assistant	'Ofakimuli Fotukava	TTP
21	Caretaker	Sitalingi Fa'aoa	Vv
22	Cleaner	Vacant	Vv
23	Caretaker	Makolani Lino Fe'ao	HP

#### 6.d Supreme Court

4	Registrar	Feleti Tuita	TTP
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6	Assistant Registrar	Hortensie Ngalu (Acting Assistant Registrar )	TTP
7	Personal Assistant to Lord Chief Justice, Computer Operator Grade II	Nehusita Tu'uholoaki (Acting/Personal Assistant)	TTP
8	Assistant Court Interpreter	Faka'iloatonga Taumoeofau	TTP
9	Assistant Court Interpreter	Salote Koloamatangi	TTP
10	Assistant Court Interpreter	Hortensie Ngalu (see above)	TTP
11	Assistant Court Interpreter	Elenoa Salt Takataka	TTP
12	Assistant Court Interpreter	Viliami Fotu	TTP
13	Computer Operator Grade II	Nehusita Tu'uholoaki (see above)	TTP
14	Computer Assistant	Tu'ilomoloma Piei Lausi'i	TTP
15	Computer Assistant	Fololeni Hufanga	TTP
16	Clerk Grade II	Mele Kulikefu	TTP
17	Clerk Grade III	'Ana Vainikolo	TTP
18	Clerk Grade III	Salote Veikune	TTP
19	Clerk Grade III	Tevita Tu'iono	TTP
20	Cleaner	Masungu Kafoa	TTP

#### 6.e: Vital Statistics (Registrar General's Office )

1	Deputy Secretary (Registrar General's Office)	Temaleti Manakovi A. Pahulu (1 December 2012)	TTP
2	Vital Statistic Officer	Vacant	TTP

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3	Assistant Vital Statistic Officer	Kafo'atu Mafile'o	TTP
4	Computer Assistant	Meleane Nuku	TTP
5	Clerk Grade III	Me Saa'i 'Aholelei	TTP
6	Clerk Grade III	Lu'isa Paletu'a	TTP
7	Clerk Grade III	'Isileli Kaumavae	TTP
8	Bailiff Officer Grade III	Liniola Manu (transfer from Bailiff Division)	TTP
9	Vital Statistic Clerk Grade III	Sivoki Katoa	TTP
10	Vital Statistics Clerk Grade III	Netatua Telefoni	TTP
11	Vital Statistic Clerk Grade III	Siutiti Funaki	TTP
12	Vital Statistic Clerk Grade III	Nivaleti Paea	TTP

#### 6.f Bailiffs

1	Chief Bailiff Officer	Mr. Paula Fe'aomoeata	TTP
2	Bailiff Officer Grade 1	Mr. Mosese Manufekai	TTP
3	Bailiff Officer Grade 11	Mr. Tau'ili'ili 'Ulupano	Vv
4	Bailiff Officer Grade 11	Mr. Tevita 'Uluheua	TTP
5	Bailiff Officer Grade 111	Mr. 'Aisea Manumu'a	TTP
6	Bailiff Officer Grade 111	Mr. Ngaluma'a Latu	TTP

#### 6.g Probation Services

1	Probation Officer	Mr. Patelesio Pale	TTP
2	Assistant Probation Officer	Henele Telefoni	TTP

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3	Probation Officer Grade 1	Mr. Tito Kivalu	TTP
4	Probation Officer Grade 2	Vacant	TTP
5	Probation Officer Grade 3	Mr. Soane Hupeto Kaitapu	TTP

### LEADERSHIP AND LEGAL POLICY UNIT

*In summary the leadership and legal policy unit during the FY 2012/13 were responsible for progressing and developing the following areas of the Ministry.*

- Policy Documents to Cabinet were prepared by the unit on the following Legislation to be created/amended: Electoral Commission Act, District & Town Officers Act, District and Town Officers Regulations, National Spatial Planning Bill, (Amendments to the Constitution submitted by request from Parliament/Cabinet for: Article 8 (Freedom of Petition); Article 23 (Disabilities of Convicts); Article 50B (Vote of No Confidence).
  - On the transition Phase of the Ministry and the Lord Chancellor's Office. The Ministry provided Government with a written analysis on the current legal framework of the judiciary, the administration of the Courts, the Lord Chancellor's Office and the Ministry of Justice and the procedures and costs associated with these changes and its recommendations and proposals for re-structure and review of the Justice sector;
  - The separation of all functions of the RGO from the Court system and establishment of the RGO as an independent office on 1 December, 2013. This process was carried out with the assistance and cooperation of the Lord Chief Justice. It is envisioned that this will strengthen the administration and services provided by the Supreme Court and the Registrar General's Office and enable proper planning for each of the respective areas to develop and progress at a more efficient and effective rate in the future. The Ministry also led the exercise of re-location of the RGO to the Ministry's building in Fasi and combined its work processes and procedures into one physical location with its subdivision, the Vital Statistics office.

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- The section was responsible for negotiating and commencing with the Commonwealth Secretariat, the CFTC Funded project (requested in 2009) on the Digitization of Birth/Death Marriage Certificates project (refer to the Registrar General's report).
- Assisted Electoral Commission with their legislative issues and administration of their staff;
- Continued to access and utilize funding from the Pacific Judicial Development Programme (PJDP) - a regional court organisation to train the Court administrative staff;
- Organized the physical maintenance and reconstruction repairs to all the Court structures in Tongatapu (Supreme Court as well as 3 Magistrates' Courts) and all outer islands including the Vava'u Magistrates' Court House and the Ha'apai Magistrates' Court House; Re-furnished and redeveloped the main office to house the Ministry's administration (top floor) and the RGO (ground floor);
- Judicial Salaries/Allowances: Implemented at the direction of the King in Privy Council the new Court of Appeal Contracts relating to fees for the said Judges. Negotiated, acquired and implemented Grant Aid Funding from New Zealand for the salary of the new Supreme Court Judge for 3 years.

### ***Challenges/Issues***

***Challenges that faced the Ministry in implementing these programmes included:-***

### **STAFF ISSUES**

- Severe lack of qualified and senior Staff, many of the current staff are unaware of Public Service policies and procedures; a lack of reports being submitted on training workshops made it difficult to review the staff abilities and Ministry capacity in general. It was noted that there was general low morale and a bad attitude towards work discipline as well as a general dissatisfaction with pay;
- Dispersed offices of the Ministry means that supervision is difficult and divisional heads are at junior levels of the PSC salary scale.
- It is very difficult to substitute posts when the incumbent takes maternity leave, particularly when there is insufficient funds to cover the said "acting" posts;
- Lack of sufficient Supreme Court judges and Magistrates to handle the Case load of the Courts;
-

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- RGO is very understaffed and is currently being supported with staff from the Minister's Office, Leadership and Policy Unit, which increases the work load on the said staff.

### PROCEDURAL MANUALS

- Lack of manuals identifying proper processes and procedures to be followed in each of the divisions which led to delays or ineffective and inefficient services and errors to the public;
- Lack of proper procedures established for the coordination of financial issues handled by the Lord Chancellor/JADP, Privy Council and Government;

### BUDGET ISSUES

- Lack of sufficient budget for activities/items;
- Cabinet delegated responsibilities to the Ministry on justice issues (eg negotiation of Court of Appeal judges' raised allowances, higher Land Court Assessor fees) that required further funding, and which was not processed in a timely fashion to the Ministry.
- A revised staff structure for the Ministry, that was put into place in FY 2012/2013 by the Ministry of Finance & National Planning without the approval or consultation of the Ministry of Justice;

### PHYSICAL INFRASTRUCTURE

- Physical Infrastructure issues continue to be a challenge and particularly with the heavy rainfall for Tonga eg. The flooding of the Magistrates' Court (Fasi), meant that court cases had to be delayed for several weeks, this caused a backlog in case disposal and raised court costs;
- A record of badly maintained building and equipment & vehicles over the last few years has led to extra expense in renewing/repairing these buildings/equipment and high maintenance costs;



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### 7. STAFF MATTERS

#### 7.a Staffing

For the reported period, the record shows 88 active, filled positions: 25 senior levels, 63 junior levels. Of these 88 positions, 7 were vacant. Tabulated below, are the staffing distribution, within the various divisions of the Ministry.

**Table 7.a: Divisional Staff Distribution for 1 July – 30 June, 2013**

Hon. William Clive Edwards is the incumbent of the office of the Minister of Justice and this is a political appointment, and the highest senior office in the Ministry.

Susana Faletau is the Chief Executive Officer. Susana was appointed as the permanent CEO for Justice effective as from 02 April, 2012. The Ministry has four positions in the Deputy level - one at the Electoral Commission, one at the Registrar Generals' Office /Vital Statistics, Two with Finance, Administration, Human Resources and IT. Ms. Jeanett Ve'a, Senior Assistant Secretary, was redeployed from PSC. She was Acting D.Secretary, and tasked with human resource matters. Folau Lokotui is the Chief Magistrate but was appointed Acting D/S, on Finance and Administration issues, whilst Vatulele Tuputupu was still on suspension, from PS, September, 2011.

#### STAFF STRUCTURE CONCERNS AT THE MINISTRY

The Staff structure of the Ministry of Justice has been developed and progressed over the years to adapt to the ever changing needs of the Ministry, the Courts and the National Civil Registry. However, one of the problems that has been identified, particularly during this financial year, has been the practice of the Ministry of Finance to remove budget and funding for vital posts, when the said posts have been vacated by post holders. This practice

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has left important senior posts unfilled due to insufficient funding and has weakened the capacity and the structure of the Ministry.

### **7.b New Appointments**

New appointments were made within the period from 1 July, - 30 June, and are as follows:

Tevita Tu'iono, initially contracted on a daily basis, as an Assistant Court Interpreter for the Supreme Court was appointed as a Clerk Class III permanent, with the Supreme Court, August 1<sup>st</sup>, 2012.

### **7.d Returning Scholars**

Adi Talanaivini Mafi, a returning scholar, with a BA/LLB, and Professional Diploma in Legal Practice from the University of the South Pacific, was appointed as Legal Officer, July 2012.

Seniloli Kimbu 'Inoke, Gold Medallist from University of the South Pacific, completed his Bachelors in Politics and Law by December 2012, and was appointed as Assistant Secretary January, 2013.

There were 2 Ministry of Justice Scholarship holders at the end of June, 2013. Salote Koloamatangi, who is completing her law degree at USP and Miss Florence Fineanganofa, a BA (office administration) student studying at USP.

### **7.e Promotions**

The following promotions were made within the reported period:

Viliani Fotu, Computer Operator Grade III, was promoted to the position of Assistant Court Interpreter, 23 November, 2012.

Lady Fatima Fonua appointed as Acting Legal Officer, 25<sup>th</sup> June, 2012 was promoted to Legal officer, 20<sup>th</sup> December, 2012.

Stella Ngahe Tonga, Computer Assistant, was promoted to Computer Operator Grade III, 14<sup>th</sup> June, 2013.

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### **7.f Transfers**

There have been no further transfer from Justice to other government ministries during this period of time.

### **7.g Re-location and Re-designation of Posts**

Temaleti Manakovi A. Pahulu, Chief Registrar of the Supreme Court was transferred laterally to a newly created post of Deputy Secretary, Registrar General's Office on 4<sup>th</sup> December, 2012.

As a consequence of the above decision, it was also agreed that Lu'isa Moala Paletu'a, formerly a staff member of the Supreme Court, was also removed to serve exclusively on RGO matters. She is now serving as Clerk Class III, RGO.

Liniola Manu, Bailiff Officer Grade III, remained relocated to the Digitization project (Registrar General's Office).

### **7.h Redeployment**

Due to staff shortages at the Human Resource Division of the Ministry, the Public Service Commission agreed to temporarily redeploy Senior Assistant Secretary, Jeanett Vea from their Office to undertake relevant duties at Justice, as from 25 June, 2012. Jeanett returned to the Commission on 30 June, 2013.

Vea Havea, Assistant Financial analyst, from Ministry of Public Enterprises, was temporarily re/deployed to the Ministry of Justice, January 2013 for six (6) months. She took up the position of Acting /Personal Assistant to the Hon. Minister of Justice, February 2<sup>nd</sup>, - April 12, 2013. Veas temporary redeployment was terminated by agreement at an earlier date and she returned to the Ministry of Public Enterprises on June 18<sup>th</sup>, 2013.

### **7.i Suspension**

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Vatulele Tuputupu, Deputy Secretary of the Ministry remained on suspension without pay since 12 September, 2011 for misuse of a government vehicle pending a final decision of the Public Service Commission and the outcome of his Court case.

### **7.j Exit from the service through retirement, resignation, dismissal and medical grounds.**

Sione Veamuni Faiva, VIP driver, retired from Public Service on 30<sup>th</sup> June, 2013.

Paipule Fehoko, Clerk Class III, Ha'apai Magistrates' Court was dismissed from the Public Service with effect from 01 March, 2013.

OVERSEAS MEETINGS, CONFERENCES, WORKSHOPS AND TRAININGS

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### 8. FINANCE

Name	Post	Purpose	Date	Venue	Funded by
Sateki Afu	Assistant Secretary, Magistrate Court	(PJDP)Orientation Workshop for Lay Judicial & Court Officers	3-7 December 2012	Port Vila, Vanuatu	New Zealand AID
Hortensie Ngalu	Acting Assistant Registrar, Supreme Court	(PJDP)Orientation Workshop for Lay Judicial & Court Officers	3-7 December 2012	Port Vila, Vanuatu	New Zealand AID
Paula Latapu	Computer Programmer	Training:10264 A: Developing Web Applications Using Microsoft Visual Studio 2010	10-14 December 2012	Auckland, New Zealand	Commonwealth Secretariat (Commonwealth Fund for Technical Cooperation) (Digitisation Project)
Folau Lokotui	Acting Deputy Secretary	Accompanying Minister on official meetings in New Zealand	22-28 February 2013	Auckland, New Zealand	Ministry of Justice
Salesi Mafi	Acting Chief Magistrate	(PJDP)National Coordinators Leadership Workshop	10-13 March 2013	Auckland, New Zealand	New Zealand AID
Folau Lokotui	Acting Deputy Secretary of Justice	Accompanying Minister on official meetings in New Zealand	27 <sup>th</sup> March-3 <sup>rd</sup> April 2013	Auckland, New Zealand	Ministry of Justice
Folau Lokotui	Acting Chief Executive Officer for Justice	Accompanying the Minister on official meetings in New Zealand	26-30 April 2013	Auckland, New Zealand	Ministry of Justice
Tito Kivalu	Probation Officer Gr1	Treatment of Offenders: Focus on Prison and Probation	13 <sup>th</sup> May – 28 <sup>th</sup> June, 2013	Tokyo, Japan	JICA
Susana Faletau	CEO	Meeting: Pacific Leadership Forum on Health Information Systems	3-5 June 2013	Fiji	(SPC, WHO, PHIN, UNIVERSITY OF QUEENSLAND)
Folau Lokotui	Acting Deputy Secretary for Justice	Accompanying Minister on official meetings in New Zealand and China, as part of the Prime Minister's delegation	New Zealand-15/7-20/7 and China-21/7-27/7/2013	New Zealand, China	Ministry of Justice

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### 8.a Financial Estimates and Revenue Forecast

The 2012/13 Financial Estimates was \$2,768,000.00 for expenditure and a forecast of revenue collection set at \$700,000.00 (for one Financial Year). The total of \$2,072,983.00, (75% of the budget) was for salary and salary related expenditure with 25% assigned as operational expenditure.

### 8.b Total Revenue Collection

The total revenue collection for this financial year 2012/13 was \$772,360.00. The projected target revenue of TOP\$700,000 was set for 30 June, 2013 (end of the Financial Government Year). This indicates that the Ministry achieved collection of more than the target revenue forecast. This surplus in the revenue collected is due to an increase in the number of registrations and legal applications which were processed in the Registrar General's Office for this FY as well as an increase in the number of sales of legal documents (Laws of Tonga 1988 Consolidation and Law Reports).

**Table 8.b: Revenue Collection for periods 1st July 2012 to 30 June 2013.**

i.	Sales of Legal documents	\$17,214.00
Ii	Court fees	\$158,665.00
Iii	Fines and charges	\$334,339.00
Iv	Registration fees	\$226,654.00
V	Marriage and divorce	\$35,215.00
Vi	Mediation Fees	\$273.00
	<b>Total</b>	<b>\$772,360.00</b>

### 8.c: Sources of Income

The sources of income for the Ministry are from Court Fees, Court Charges and Court Fines that are levied by the Judges and Magistrates on cases presented before them in Court plus Registration Fees and legal applications processed in the Registrar General's Office.

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### 10. BAILIFF

#### 10.a Bailiff Offices

There are only two branches of the Bailiff division, one operating in Tongatapu and one in Vava'u. The main office is in Tongatapu which also administers the bailiff duties for Ha'apai, 'Eua and the two Niuas. This report covers duties carried out by the main division in Tongatapu and the division in Vava'u.

#### 10.b Functions

Functions of the Bailiff Division are provided for in the Bailiffs Act 2000 (The Act), Section 7 (1) which reads:

- (a) to execute writs, warrants and orders of a Court;
- (b) to serve summonses and other documents or process required to be served by the Rules of any Court;
- (c) to attend any Court when required to do so;
- (d) to perform any other functions required by a Court, or under any other law;
- (e) to ensure the safe keeping of all copies of any document required by the Court to be executed, served or used for any function required by the Court;
- (f) to ensure the safe keeping of all money, goods, chattels or proceeds which are required to be in the custody of the Bailiffs in the performance of their duties and functions until disposed of as ordered by the Court.

The duties of Bailiffs are reflected in the statistics below especially for Tongatapu and Vava'u. No circuits were conducted to Ha'apai, 'Eua and Niua in the reporting period.

#### 10. c Bailiff Statistics for Tongatapu

There were two pending cases from 1<sup>st</sup> January 2012 to 30 June 2012: One writ of distress which was issued from the Supreme Court, that was to the value of \$28,984.60. As executed by the bailiff there was no property to be seized. The other was a distress warrant issued from

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the Magistrates Court that was to the value of \$10,843.00. This was paid out by the bailiff to the judgement creditors.

### 10.c1 Writs and Warrants of Distress 1 July 2012 – 30 June, 2013.

The following table details the writs and warrants of distress that the Bailiff Division received and indicates how the matters were handled.

**Table 10.c1: Total number of Writs and Warrants Received from the Courts**

Court Order	Magistrates Court	Supreme Court
Distress Warrant	86	Nil
Writ of Distress	Nil	12
<b>AMOUNT</b>	<b>\$425,104.28</b>	<b>\$460,699.70</b>

The above statistics shows that the Magistrate Court has ordered the highest number of distress warrants amounting to eighty six (86) and worth \$425,104.28. The Supreme Court issued twelve (12) writs of distress to the value of \$460,699.70. The details of the implemented work for the distress warrant and writ of distress is provided in table 10.c1 and table 10.c2.

**Table 10.c1 : Distress Warrant From Magistrates Court Execution Details**

Result	Total Number of Distress Warrant	Amount Ordered

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No Goods Found	31	\$121,359.38
Paid	10	\$10,317.37
Settled	20	\$86,386.77
Special Seize	11	\$92,736.00
Abroad	4	\$25,429.00
Pending	10	\$88,875.76
<b>Total</b>	<b>86</b>	<b>\$425,104.28</b>

Table 10.c1 shows that the “No goods found” category has the highest number of distress warrants of thirty one (31). This was worth \$121,359.38. In such situations, all distress warrants are returned to the Court and the parties are advised accordingly. Ten (10) distress warrant cases were paid to the Bailiff totalling \$10,317.37 and these were paid directly to the judgement creditors and twenty (20) cases were settled. This meant, both parties negotiated and settled outside of Court. The same record shows that eleven (11) cases which were worth \$92,735 were seized (“special seize”), and were left at the home of debtors to be loaded for auction. Four (4) cases are recorded to be residing overseas (“abroad”). The ten (10) remaining pending cases, resulted from the bailiff, not being able identifying the whereabouts of the debtors.

**Table 10.c2: Writ of Distress from Supreme Court Execution Details**

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Result	Total Number of Writs of Distress	Amount Ordered
No Goods Found	2	\$62409.93
Settle	2	\$12943.42
Good Seized	1	\$166500.00
Transfer to Vava'u.	1	\$1006.70
Pending	4	\$187382.65
<b>TOTAL</b>	<b>10</b>	<b>\$430242.70</b>

Table 10.c2 illustrates the writs of distress that were received from the Supreme Court. It is reported that two (2) cases were returned to court advising that debtors have “No Goods Found”, the sum required for these writs of distress was to the value of \$62,409.93. It is also reported that two cases were “settled” meaning that both parties negotiated a settlement outside Bailiff action. One case (1) was seized goods and ready to auction while another was transferred to Vava'u as the Judgement debtor had migrated thereto. Four (4) cases are recorded to be still pending as the Bailiffs were unable to locate the permanent location of the judgement debtor.

#### 10.c3: Spot Fines and Breathalyzer Summons

This division is also responsible for serving spot fines and breathalyzer summons issued by the Magistrates Court. Tables 10.c3 and Table 10.c4 show the statistics for these tickets.

**Table 10.c3: Details of Spot Fines from Magistrates Court**

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Category	Total Number of Tickets
Number of summons delivered	96
Offenders overseas	29
Summons with fake names	29
Offenders in outer islands	20
<b>TOTAL</b>	<b>174</b>

**Table 10.c4: Details of Breathalyzer Summons from Magistrates Court**

Category	Total Number of Ticket
Number of summons delivered	21
Summons with fake names	3
<b>Total</b>	<b>24</b>

### 10.c5: Summons Received from the Supreme Court

Bailiffs also serve summons that were issued by the Supreme Court. These include subpoenas for witnesses to appear for trial, summons for jurors and others. The statistics of the work implemented are shown on Table 10.c5 below:

**Table 10.c5: Number of Summons from Supreme Court**

	Subpoena	Judgment	Juror	Notice for Inter-pleader

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				Hearing
Delivered	316	184	291	26
Not delivered	30	8	9	2
<b>Total</b>	<b>346</b>	<b>192</b>	<b>300</b>	<b>28</b>

It is shown though that the summonses that have not been delivered are those debtors that have moved to the outer islands or migrated overseas.

#### 10.c6: Monthly Collection

Table 10.e indicates the amount that was paid to the Bailiff Division by the debtors and these monies are then paid out to the respective creditors.

**Table 10.c6: Monthly Collection 1 July 2012 – 30 June , 2013, Tongatapu**

MONTH	AMOUNT
July	Nil
August	\$13,167.37
September	Nil
October	\$900.00
November	\$343.00
December	\$2,193.00
January	Nil
February	Nil
March	\$4,444.00
April	Nil
May	\$3,113.00

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June	Nil
<b>TOTAL</b>	<b>\$24,160.37</b>

#### 10.d: Bailiff Statistics for Vava'u

Tables 10.d and 10.d1 show the work that was implemented by the Bailiff in Vava'u to the pending distress warrants from 1 January 2012 to 30 June 2013. There was no pending cases for writs of distress.

**Table 10.d: Amount Received from Execution of Pending Writs and Warrants**  
1 July 2012 – 30 June, 2013

<b>Court Order</b>	<b>Supreme Court</b>	<b>Magistrate Court</b>
No. Writ of Distress	Nil	Nil
No. Distress Warrant	Nil	2
Amount Received	Nil	9,379.53

**Table 10.d1: Execution Results-Pending Distress Warrant**

<b>Results</b>	<b>Distress Warrant</b>	<b>Amount Ordered</b>
No goods found	2	\$9379.53
<b>TOTAL</b>	<b>2</b>	<b>\$9379.53</b>

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There is one writ of distress worth \$1,006.70 and six distress warrants worth \$16,400.00 that were received by the Bailiff in Vava'u for the reported period. The detail of the execution is provided on Table 10.d2 and Table 10.d3.

**Table 10.d2: Total Number of Distress Warrants / Writs of Distress Received from the Courts**

Court	Number of	Number of Writs of Distress	Amount
Supreme	Nil	1	\$1006.70
Magistrate	6	Nil	\$16400.00

**Table 10.d3: Result of Execution of Writ of Distress**

Result	Number of Writs of Distress	Amount
Fully Paid	1	\$1006.70
TOTAL	1	\$1006.70

Table 10.d3 shows that one writ of distress is paid to the Court. This has already been paid out to the Judgement Creditor. This writ of distress has been transferred from Tongatapu to Vava'u as mentioned in Table 10.c2.

**Table 10.d4: Result of Execution of Distress Warrant**

Result	Number of Distress Warrants	Amount
No Goods Found	4	\$15402.00



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Fully Paid	2	\$998.00
<b>Total</b>	<b>6</b>	<b>\$16400.00</b>

Table 10.d4 indicates the result of the work done to distress warrants, with four (4) cases worth \$15,402 which were returned to the Magistrate Court and two cases were paid to the Court which were paid out to the judgment debtors.

Table 10.d5 shows the amount that was paid to the Bailiff Division by the debtors and these were then paid out to the respective creditors.

**Table 10.d5: Monthly Collection on 1 July 2012 – 30 June , 2013, Vava'u**

MONTH	AMOUNT
July	Nil
August	Nil
September	Nil
October	\$243.00
November	\$1,006.70
December	Nil
January	Nil
February	\$755.00
March	Nil
April	Nil
May	Nil
June	Nil
<b>TOTAL</b>	<b>\$2,004.00</b>

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In carrying out the above duties, the Division faced the following problems:

### **10.e: Searching for Debtors:**

As the writs or warrants of distress would only provide the name and residence of the debtor/s, it is usually the case that the debtor/s would misinform the officers that they are not the debtor/s. People would also provide false information to the officers when asked if they know the debtor/s. Sometimes the debtors have already migrated to outer islands or overseas. This is the reason there are pending cases as occasionally shown in the statistics above.

### **10.f: Storage Room**

The Storage Room that is currently used to keep the seized goods and chattels, is in a bad condition. Broken windows and roof holes mean that when it rains, the goods get wet, thus deteriorating their value. The officers have to continually check on the goods and chattels every week. However, the Bailiff Division has still been able to perform their duties and functions vested by the Act.

## **11 PROBATION**

### **11.a: Philosophy, Values, Beliefs & Principles**

We believe:

- a) every offender has the capacity to change and grow if given the opportunity, support, goodwill and understanding;
- b) officers need to be developed and supported to be competent and innovative individually and as a member of a team
- c) a culture of continual learning and work improvement is necessary if probation is to remain viable;

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- d) mutually beneficial partnership can and will garner support for and wider acceptance of community sanctions from the community and criminal justice agencies.

### **11.b Role**

The fundamental role of the Probation Services is to serve the Courts and the public by:

- Providing the Courts (Magistrate/Supreme) with advice and information on offenders (Social Enquiry Report/Pre-sentencing Report) to assist in the final preparation of its making decisions.
- Implementing community sentences passed by the Courts – supervision offenders in the community.
- Providing information to the Courts on the best interests of the children in family disputes (Guardian ad Litem report).

### **11.c Staff**

The staff of the Probation Service consist of 4 Officers: (1) Probation Officer, (1)Assistant Probation Officer, (1) Probation Officer Grade 1 and (1) Probation Officer Grade 111.

At the beginning of the new time interval for the annual report, the Services started off with 2 officers in the Division which consists of a Probation Officer Grade I and Probation Officer Grade III since the Probation Officer, Patelisio Pale took his Annual Leave from July 2<sup>nd</sup> to July 27<sup>th</sup>, 2012.

### **11.d Training**

An on-going process of training for the rest of the Probation Officers is very much needed for carrying out the future tasks of the Probation Services. Such training would upgrade the capacity of the services to a more proactive and effective manner in the supervision and rehabilitation of offenders.

The Assistant Probation Officer, Henele Telefoni, returned to the service after being away on a 2 year Scholarship for a Diploma in Social Work from the University of the South Pacific through a Scholarship that has been allocated to the Probation Officers (Staff) by the Scholarship Committee of the Ministry of Education, Women's Affairs & Culture in 2010 in the areas as requested by the Ministry of Justice in Social Work and it is sponsored by the New Zealand Government.

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For reporting purposes, and within the time-frame of reporting period, the table below details the various probation related work that the Unit has executed.

**Table 11.d: Probation Services Statistics 1 July 2012 – 30 June, 2013.**

Referral from the Supreme Court and Magistrates Court														TOTAL
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
Criminal Cases Referred	13	21	13	11	21	5	9	12	7	1	4	7		124
PSR reports completed	3	11	24	10	11	9	3	9	8	8	1	8		105
Court Attendance	3	14	21	10	17	19	6	12	5	10	1	4		122
Home/Comm. Visits	3	6	2	1	4	2	0	2	3	2	0	2		27
Probationers Reporting	8	8	10	12	12	10	16	14	14	10	12	8		134
In-Office interview	4	9	17	7	8	16	5	10	3	6	0	2		87
Out-Office Interview	2	2	5	4	1	1	1	2	4	2	1	2		27
Community Work supervision	8	14	13	22	3	61	59	32	16	20	36	41		325
New Probation Orders	0	0	5	1	6	3	2	8	0	3	0	1	Total Ptn Orders	29
c/f existing Probation Orders					NIL									29 C/F
Complete Probation Orders					NIL									
Net Probation		0	0	0	0	0	0	0	0	0	0		Net Ptn	

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Orders													Orders	
New Community Work Order	3	12	3	2	5	11	4	3	0	2	1	1	Total C./Work Orders	47
c/f existing Community Work Orders	87	75	78	76	77	70	77	75	68	66	54	55		
Complete Community Orders	11	9	2	1	12	2	5	9	0	2	0	5		58
Net Community Work Orders	75	78	76	77	70	77	75	68	66	54	55	47	Net C./Work Orders	47 C/F
Failure Community Work Order	4	0	2	0	0	0	0	1	1	10	0	4		22
Failure Probation Order	0	0	1	0	0	2	1	0	1	2	0	0		7

### 11.e: Referrals

According to the Probation Statistic on cases referred from the Supreme Court and Magistrates' Court as from July 2012 – June 2013 a total of 124 new criminal referrals were referred to the Probation Service with 105 reports completed.

The highest numbers of offenders referred were housebreaking and theft charges which amounted to 61.3% (76 out of 124) of the total criminal cases referred and most cases referred were from the Supreme Court. Indecent Assault were increasing tremendously to the 2<sup>nd</sup> place in statistics throughout the reported period compared to previous years, Within this reported period alone there were 14 offenders referred to the Division charged with Indecent Assault included 5 out of 14 of Indecent Assaulted referred were done to minors (female children under the age of 12). There was an increase (compared to former years) in the following Offences of Bodily Harm and Armed Robbery, Possession & Cultivation of Drugs, Assault Occasioning Grievous Bodily Harm, Knowingly Dealing with forged documents, Fraudulent conversion and Obtaining Credit (Money) by false pretences. The Division also received during this period offenders for offences of Embezzlement, Manslaughter, Rape and Incest and property related matters were also referred to the service.

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### 11.f: Records during the period

1. Youngest Offender - 11 years old
2. Oldest offenders - 62 years old

### 11.g: Percentages in categories

Offenders at the ages under 14 years of ages = 4, 7% of the total offenders as at the end of June 2013

Ages between 14 – 30 = 50, 32% of the total offenders as at the end of June 2013.

Ages between 31 - over = 70, 61% of the total offenders as at the end of June 2013.

### 11.h: Community Service Orders

There were a total of 47 new community service orders which were handled by the Division during the year as from 1<sup>st</sup> July, 2012 to 30<sup>th</sup> June, 2013. Eighty percent (80%) of the orders were referred from the Supreme Court and only 20% or less referred from the Magistrate Courts.

### 11.i: Community Service Workers Supervision

There were a total of 325 community supervision that were handled by the Probation Division for the period from 1<sup>st</sup> June, 2012 to July 30<sup>th</sup>, 2013 with 58 Community Service Order satisfactorily completed.

### 11.j: Current Project

Work is currently underway to develop a pamphlet which explains the Probation Services functions and duties to the public. It is understood that lack of public awareness as to the functions of the Service hinders the efficiency of our services and therefore it is hoped that this project could help inform the referred offender to understand why he is referred to us and the important role our services play in the criminal justice system.

### 11.k: Acknowledgement

The Probation Division would like to express its gratitude to its staff for their effort in supervision the majority of the Community Service Orders throughout the stated period. We

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thank you also to Town Officers and Non-government organizations for their Contribution to the supervision of those whose directed to supervise in the community. The sequence of courses offered by the Salvation Army Drug and Alcohol Awareness Clinic was also of valuable help to those of great need. Other Organisations acknowledged include the Centre for Women Children Crisis Centre, Centre for Women and Children, National Reformation Centre and special gratitude to Commissioner of Police and its supporting officer for their contribution to the supervision of those of community works under the Memorandum of Understanding between the Ministry of Justice and the Ministry of Police for The Supervision of Offenders sentenced to Community Service 2013.

It was a substantial step forward in the development of the Division when the Assistant Probation Officer, Mr. Telefoni returned to the service this year with a Diploma in Social Work from the University of the South Pacific in Fiji. This was the opportunity the Probationary Divisions needs to have more of it for the rest of the Officers in the coming years. An On-going process of training is very much needed for the rest of the officers for carrying out the future tasks of the Probation Service.

Finally, this has been a good year for the Probation Division, with amicable working relationship with the Courts, Ministry of Police and other agencies.

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