

The background features three blue 3D circular shapes. One is large and positioned in the upper right. Another is smaller and located below it, also to the right. The third is the largest, positioned in the lower right corner. Two thin blue diagonal lines cross the page: one from the top left towards the center, and another from the top right towards the center, intersecting near the middle of the page.

ANNUAL REPORT OF THE SUPERIOR COURTS OF TONGA

1 JANUARY – 31 DECEMBER 2014

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1. INTRODUCTION

This report is for the period commencing 1 January 2014 to 31 December 2014. It covers the work of the Superior Courts of Tonga namely the Court of Appeal, Supreme Court and the Land Court. The Magistrates Court produces its own report.

It also covers the trainings and workshops offered by the Pacific Judicial Development Programme (PJDP) whereby the Courts send representatives to represent Tonga. This report will also highlight the appointment (for the first time) of 19 Justices of Peace under the *Magistrates Courts Act* which was funded by the PJDP.

2. STAFF OF THE SUPERIOR COURTS

1	Lord Chief Justice	Mr. Michael D. Scott (end 28 November 2014)
2	Judge	Mr. Charles B. Cato
3	Judge	Vacant
4	Registrar	Mr. Similoni Tu'akalau (commenced January 2014)
5	Assistant Registrar	Ms. Fatima Fonua
6	Assistant Registrar	Mr. Reimen Hii, Australian Volunteer for International Development (AVID)
7	Personal Assistant to Chief Justice	Mrs. Nehusita Tu'uholoaki
8	Assistant Court Interpreter	Miss. Salote Koloamatangi (study leave)
9	Assistant Court Interpreter	Mrs. 'Elenoa Takataka
10	Assistant Court Interpreter	Mr. Viliami Fotu
11	Assistant Court Interpreter	Ms. June Ropati
12	Computer Operator Grade II	Mrs. Malia Taufu (commenced March 2014)
13	Computer Assistant	Mrs. Fololeni Vaiangina
14	Computer Assistant	Mrs. Mele Kulikefu (commenced April 2014)
15	Clerk Class II	Mrs. Siutaisa Na'a Helu
16	Clerk Class II	Vacant
17	Clerk Class III	Mrs. 'Ana Vainikolo
18	Clerk Class III	Ms. Sylvester Tu'iono
19	Clerk Class III	Ms. Salote Veikune
20	Official Translator (Daily-Paid)	Mr. Chen Touhuni
21	Clerk Class III (Daily-Paid)	Ms. Sesilia Vunipola
22	Cleaner	Mr. Masungu Kafoa

2.1 END OF TENURE

Hon. Michael Dishington Scott's tenure in office as a Lord Chief Justice of the Supreme Court came to an end on 28 November 2014. His Honour has been engaged as a Third Judge on a part-time basis commencing in February 2015. Hon. Justice Cato was appointed Acting Chief Justice until the commencement of the new Lord Chief Justice on January 2015.

Assistant Registrar Reimen Hii who is an Australian Volunteer for International Development (**AVID**) contract also came to an end on 22 November 2014. We wish Mr. Hii the very best in all his future endeavours.

2.2. PROMOTION

The following officers were promoted during this reporting period:

- Mr. **Similoni Tu'akalau** was promoted from the position of Magistrate to the position of Registrar with effect from July 2014 having been acting on the post since January 2014;
- Ms. **Fatima Fonua** was promoted from the position of Legal Officer, RGO to the position of Assistant Registrar with effect from September 2014 having been acting on the post since December 2013;
- Mrs. **Malia Taufu** joined the Supreme Court having been promoted from the post of Computer Assistant in the Magistrates Court to the post of Computer Operator Grade II in the Supreme Court with effect from March 2014;
- Mrs. **Mele Kulikefu** was promoted from the post of Clerk Class II to the post of Computer Assistant with effect from April 2014.

2.3. NEW RECRUITMENT

The following officers were recruited during the reporting period:

- Ms. **June Ropati** joined the Supreme Court as an Assistant Court Interpreter with effect from March 2014 replacing Mrs. Hortenzie Ngalu who had resigned from the public service in September 2013;
- Mrs. **Siutaisa Na'a Helu** returned to the Ministry and was appointed as a Clerk Class II and joined the Supreme Court with effect from January 2014;
- Ms. **Sesilia Vunipola** joined the Supreme Court as a Daily Paid Clerk Class III with effect from January 2014 replacing Miss Caroline Palu who had resigned from the public service in December 2013;
- Mr. **Chen Touhuni** was recruited as an Official Translator with effect from February 2014.

2.4. STUDY LEAVE

During the first half of this reporting period, Miss. **Salote Koloamatangi** remained on leave pursuing her Bachelor of Laws. Upon resuming to the Supreme Court in July 2014, she was transferred to the Office of the Registrar General as an Acting Legal Officer.

2.5. AVERAGE NUMBER OF CASES PER STAFF MEMBER

The number of court registry staff that are involved in a case from filing to finalization in this reporting period is 17. Hence the average number of cases per staff member of the Superior Courts in this reporting period was 42.

2.6. COMPLAINT HANDLING AND FEEDBACK

During this reporting period, 0 complaints were received against Judicial Officers and 2 complaints were received against court officers.

3. TRANSPARENCY AND COURT SERVICES INFORMATION

3.1 TONGA LAW REPORTS

The latest compiled Tonga Law Reports is for 2011 which became available by end of November 2014 and is now being sold at the Ministry of Justice.

3.2 PACLII

The transfer of judgments to PacLII continues with monthly emails being sent to PacLII attaching reportable decisions identified by the Judges. Available on PacLII are 256 Court of Appeal decisions on PacLII with the latest decisions of this reporting year, 718 Supreme Court decisions with the latest decision of 3 October 2014 and 58 Land court decisions with the latest decision of 6 June 2014.

Annual reports are also available on PacLII websites. It is noted that only the 2011 Annual Report is available on PacLII, however, the Superior Courts have continued to send and update PacLII on its annual report with the latest annual report of July – December 2013 sent to them.

3.3 ARCHIVE

All files which have been finalized are transferred to the archive after 12 months from its date of finalization. This also applies to files that are dormant and disposed of¹ which having been declared dormant, are transferred for storage at the archives room.

However files as well as the registers have been subject to wear and tear hence the hope that they will become digitized in due course not only for the convenience of the court services but to ensure that those records are maintained.

3.4 RADIO ANNOUNCEMENTS

The superior courts have, in this reporting period, started using the radio to announce cases mainly for circuit courts. For both the Vava'u circuits held in this reporting year, the information was made available to the public via radio announcements. It is anticipated that this will continue to be used in the future.

3.5 WEBSITE

Funds are currently sought by the Administration Office of the Ministry of Justice to update the existing website of the Ministry which includes the superior courts.

¹ Pursuant to Practice Direction 2 of 2012 (Reclassification of Dormant Proceedings), cases in which no step had been taken in over 12 months during this reporting period 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.

4. ROLL OF LAW PRACTITIONERS

By virtue of the *Law Practitioners Act*, the Lord Chief Justice is to enroll a person on the Roll of Law Practitioners and the Registrar of the Supreme Court is to keep that Roll of Law Practitioners. Such certificates as may be issued by the Court are to be renewed annually.

Below is a table that summarizes the number of law practitioner's certificate that were renewed during this reporting period as well as the number of newly enrolled practitioners to the Roll of Law Practitioners.

Year	Certificates Issued	Senior Counsel	Fully Qualified	Locally Qualified	Newly Enrolled
2014	80	10	54	16	10

All newly enrolled law practitioners during this reporting period are all fully qualified law practitioners.

5. JUSTICES OF PEACE

The highlight of this reporting period is the appointment of the Justices of Peace under the *Magistrates Court Act*. 19 Justices of Peace (4 female and 13 male) were appointed by the King at the recommendation of the Lord Chief Justice.

Under the section 94A of the Act² the Justices of Peace have the following powers:

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

The table below shows a list of the appointed Justices of Peace for the period of 1 July 2014 to 30 June 2015:

No.	Name	District	Island
1.	'Amelia F. L. Helu	Fangaloto	Tongatapu
2.	'Ofa-Ki-Levuka Guttenbeil-Likiliki	Kolomotu'a	Tongatapu
3.	Siale (Salote) Afuhia Fukofuka	Ma'ufanga	Tongatapu
4.	Sioape Tu'iono	Nukuhetulu	Tongatapu
5.	Tevita Kaufana Fakatou	Tatakamotonga	Tongatapu
6.	Semisi Veatupu Tongia	Te'ekiu	Tongatapu
7.	Viliami Pasikala	Neiafu,	Vava'u
8.	Haniteli Fa'anunu	Hahake District	Vava'u
9.	Moleni Fe'aomoeata Taufa	Matamaka	Vava'u

² Magistrates Court Act [CAP 11]

10.	Mele Kafo'atu Taufateau	Neiafu	Vava'u
11.	Salesi Kauvaka	Neiafu	Vava'u
12.	Sione Palu	Foa Island	Ha'apai
13.	Kisione Taulani	Nomuka	Ha'apai
14.	Me'ite Fukofuka	Nomuka	Ha'apai
15.	Sione Siotonu Fakahua	Pangai	Ha'apai
16.	Siosaia Hausia	'Ohonua	'Eua
17.	Sione Feingakau 'Iloa		Niuaotupapu
18.	'Aisea Ta'ofi		Niuaotupapu
19.	'Inoke Tuaimel'api	Petani	Niuafo'ou

6. PACIFIC JUDICIAL AND DEVELOPMENT PROGRAM (PJDP)

The Pacific Judicial Development Program (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.

During this reporting year, the Judiciary is grateful for the opportunities presented by the PJDP where workshops are continue to offer

6.1 WORKSHOPS

During this reporting period, several workshops were offered by the Pacific Judicial Development Programme (PJDP) and were attended by the following delegates:

1. **Sixth National Coordinators Workshop** – Assistant Registrar, Fatima Fonua attended this workshop which was held at Rarotonga, Cook Islands on 21 – 23 October 2014. The aim of the workshop was to introduce and provide an overview the eight published toolkits of the PJDP to the participants. These toolkits varied from Judges Orientation to Time Goals Toolkits. The most attractive one that is used by the Superior Courts of Tonga is the Annual Reporting Toolkits.
2. **Court Annual Reporting Workshop** – Assistant Registrar, Fatima Fonua also attended the workshop on Annual Reporting which was also held at Rarotonga, Cook Islands on 24 – 25 October 2014. The participants at this workshop came together to discuss the progress made in developing their respective Annual Report and included practical training in the use of the Chart Creator and other tools developed by the PJDP.

7. COURT OF APPEAL OF TONGA

During this reporting period, there were two sessions of the Court of Appeal. The first session was held for two (2) weeks commencing on 31 March 2014 to 11 April 2014. The second session was held also for two (2) weeks commencing on 20 October 2014 to 31 April 2014. A special sitting of the court was also called on 20 November 2014 to deal with an urgent appeal hearing.

In both sessions of the court, the Registrar and Assistant Registrars of the Supreme Court in their roles as Registrars of the Court of Appeal continue to provide administrative support to the Court of Appeal.

7.1 JUDICIAL OFFICERS

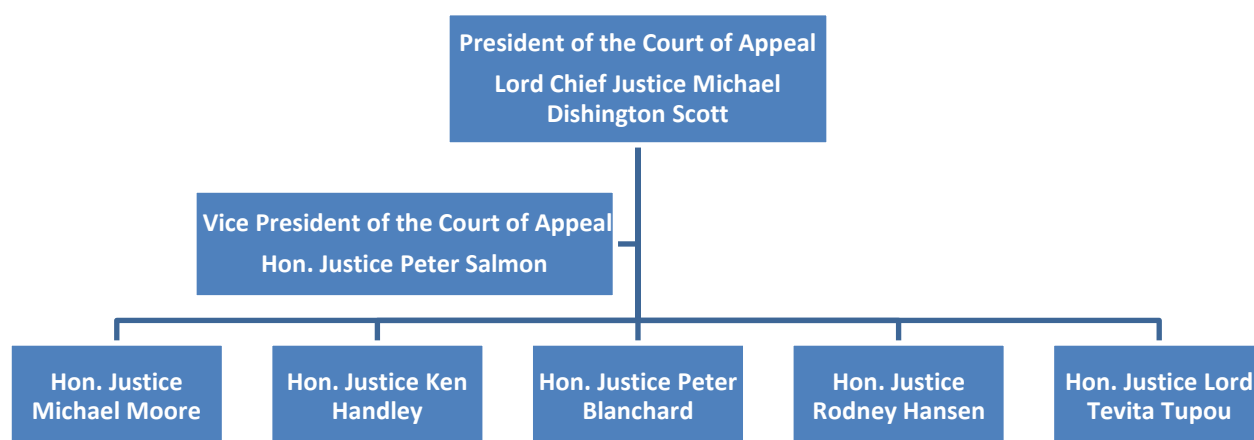
The Lord Chief Justice remains the President of the Court of the Appeal with Hon. Justice Peter Salmon as Vice-President.

For the first session of the Court of Appeal, the Vice-President together with Rt Hon. Justice Sir Peter Blanchard and joined by a new member of the Court of Appeal, Hon. Justice Sir Gordon Ward formed the members of the Court of Appeal.

For the second session of the Court of Appeal, the Vice President together with Hon. Justice Ken Handley were joined by two new members of the Court of Appeal – Hon. Justice Rodney Hansen and Hon. Justice Lord Tevita Tupou. Hon. Justice Tupou is a Resident Judge and is the first Tongan to sit as a Judge of the Court of Appeal of Tonga.

During this reporting year, a special sitting of the Court was held on 21 November 2014 to hear an appeal regarding a judgment of the Supreme Court. The Lord Chief Justice presided as President of the Court of Appeal together with Hon. Justice Peter Salmon as Vice-President and Hon. Justice Rodney Hansen.

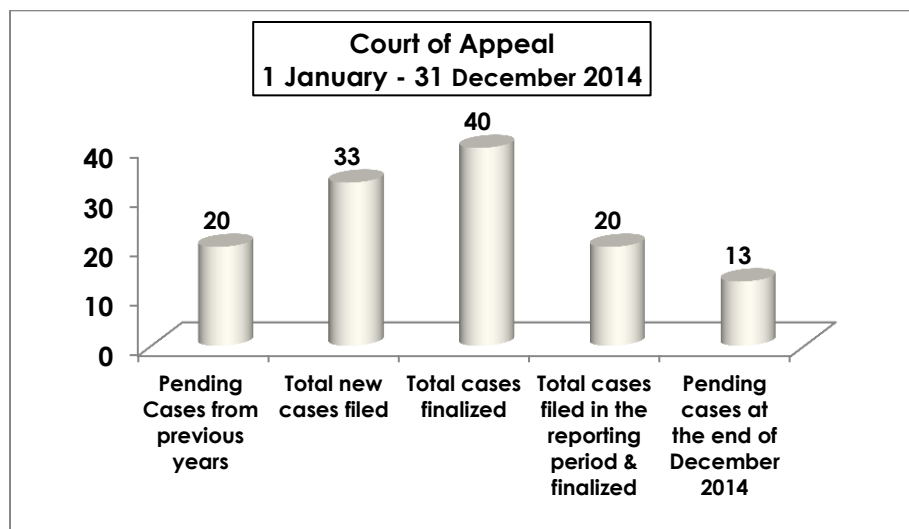
The average number of cases per Judicial Officers in this reporting period is 5.



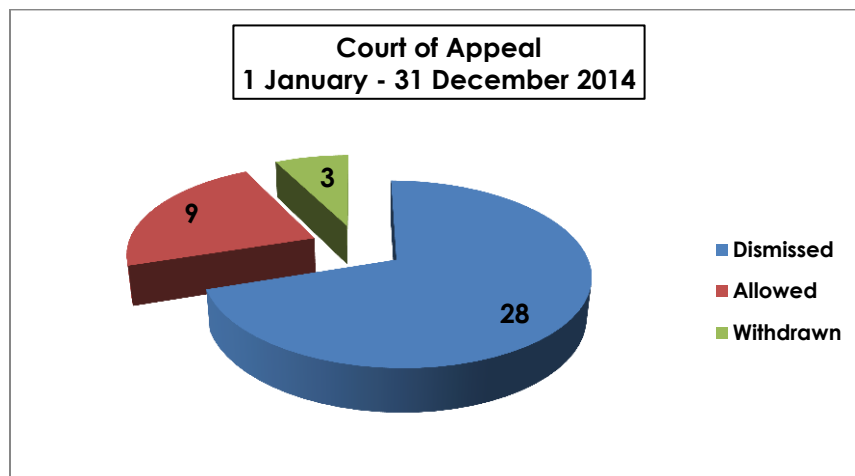
4.2. CLEARANCE RATE

During this reporting period there were a total of 20 cases that were pending from previous years and 33 new cases were filed. A total of 40 cases were finalized during this reporting period leaving a total of 13 cases pending resulting in a clearance rate of 121%.

A summary of the work conducted by the Court of Appeal during this reporting period is shown on the graph below:



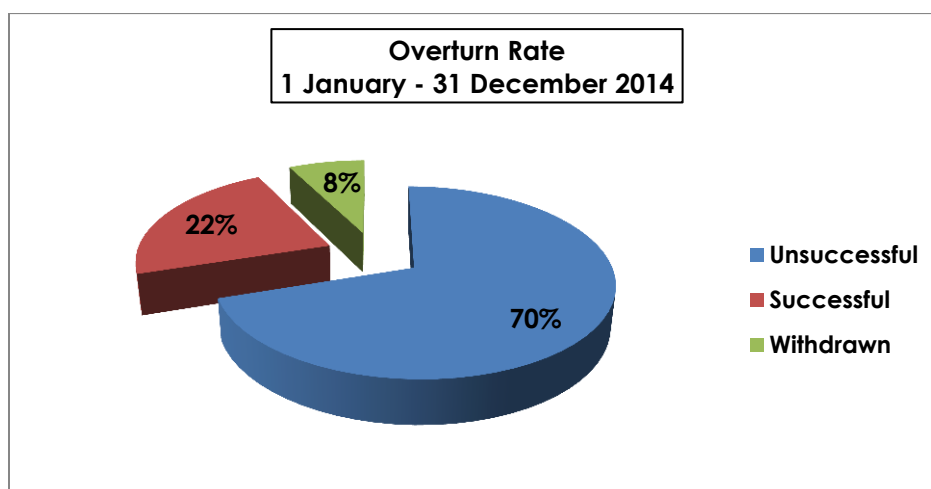
Of the 40 appeal cases dealt with in this reporting period, 28 cases were dismissed, 9 cases were allowed and 3 cases were withdrawn.



4.3. OVERTURN RATE

Of the 40 appeal cases finalized in this reporting period, 70% of those appeals were unsuccessful, 22% of those appeals were successful and 8% of appeal cases were withdrawn. This shows a decrease from 25% success rate on appeal from the June 2012 – July 2013 report to the 20% success rate in this reporting period.

A summary is shown below:



4.4. PERCENTAGE OF APPEALS

There were 33 appeal cases from the Supreme Court and the Land Court in this reporting year from a total of 669 cases finalized in both courts. Therefore the percentage of appeals from the Supreme and Land Courts to the Court of Appeal is 5%.

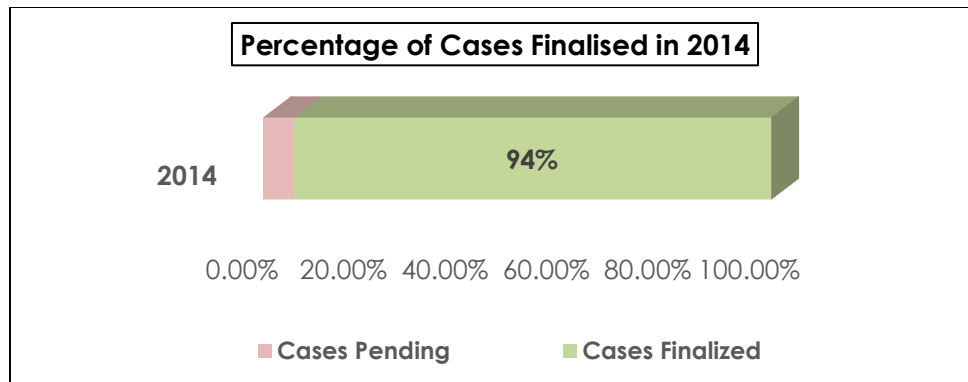
8. SUPREME COURT OF TONGA

The Supreme Court is composed of the Hon. Lord Chief Justice Michael Scott, and the Hon. Justice Charles Cato. The Chief Justice continues to deal with the bulk of the civil, family, appellate and probate and administration matters, 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.

8.1 SUMMARY

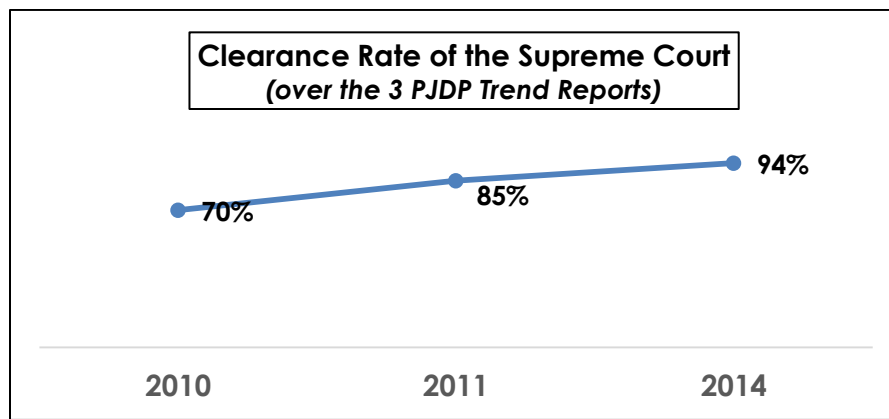
A total of 1206 cases were dealt with by the Supreme Court during this reporting period. These 1206 cases include the 517 pending cases from previous years and 689 new cases filed during this reporting period. As there are only two Judicial Officers, the average number of cases per Judicial Officer in this reporting period was 345.

A total of 647 cases were finalized during this period resulting in a clearance rate of 94% of the total cases filed as shown below:



8.2 CLEARANCE RATE

With a clearance rate of 94% in this reporting year, this shows an improvement in the clearance rate of the Supreme Court over the three PJDP trend reports in 2010, 2011 and 2014 as shown below:



There are five main divisions of the Supreme Court and are as follows:

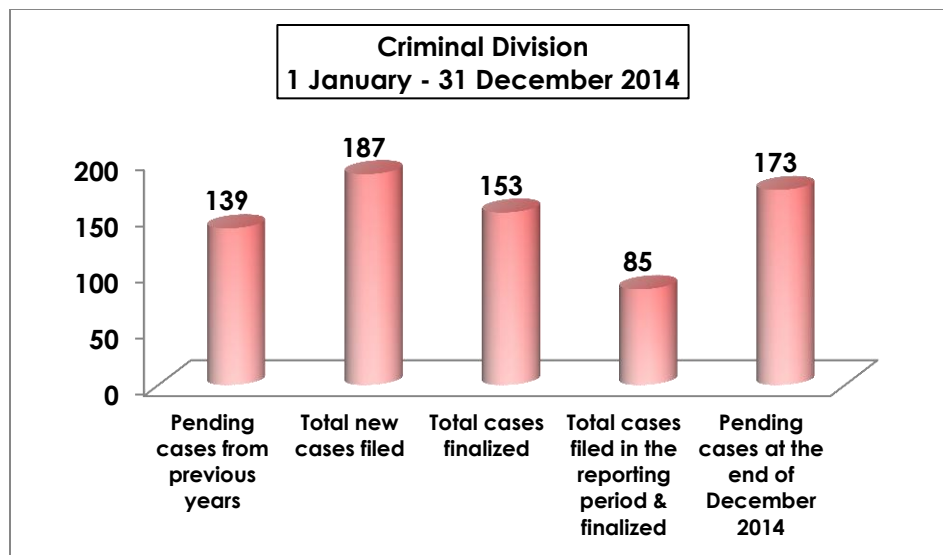
- 1) ***Criminal Division***
- 2) ***Civil Division***
- 3) ***Family Division***
- 4) ***Probate & Administration Division***
- 5) ***Appellate Division***

The highest clearance rate of the Supreme Court in this reporting year is the Divorce section of the Family Division with a clearance rate of 114% and the lowest clearance rate is the Wedlock section of the Family Division with a clearance rate of 75%.

A breakdown of the work carried out by these divisions of the Supreme Court is shown below:

8.3 CRIMINAL DIVISION

A summary of the work carried out by the Criminal Division of the Supreme Court of Tonga for this reporting period is shown on the graph below:



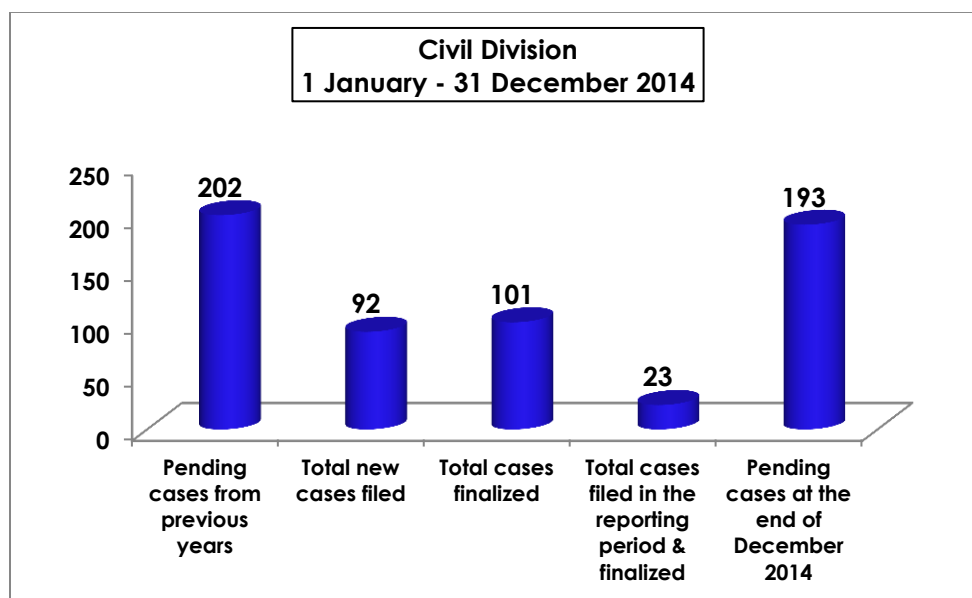
During this reporting period, there were a total of 326 criminal cases before this division. Of those cases, 153 cases were finalized of which 85 cases are cases that were filed and finalized during the reporting period. This results in a clearance rate of 82%. The average duration of a criminal case is 80 days.

8.3.1 PERCENTAGE OF CRIMINAL APPEALS

Of the total 153 criminal cases finalized in this reporting year, a total of 5 criminal cases were appealed resulting in a 3% appeal rate of a criminal case.

8.4 CIVIL DIVISION

A summary of the work carried out by the Civil Division of the Supreme Court of Tonga is shown on the graph as follows:



During the reporting period, there were a total of 294 civil cases before this division. Of those cases, 101 cases were finalized either through which a decision was made or has been left dormant and disposed of³ leaving a total of 193 cases pending at the end of December 2014.

This results in a clearance rate of 110%. The average duration of a civil case is 111 days.

8.4.1 PERCENTAGE OF CIVIL APPEALS

Of the total 101 civil cases finalized in this reporting year, a total of 6 civil cases were appealed resulting in a 6% appeal rate of a civil case.

8.5 FAMILY DIVISION

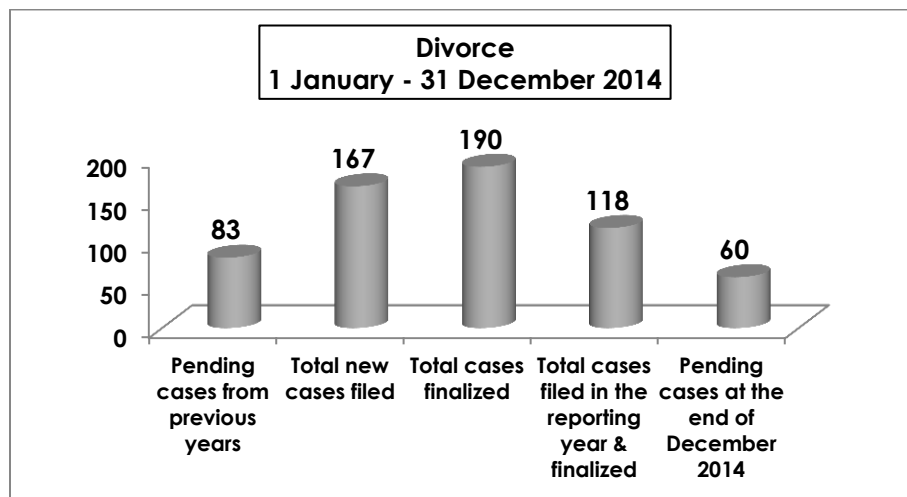
There are four main sections of the Family Division and are as follows:

- 1) ***Divorce Section;***
- 2) ***Adoption & Legal Guardianship Section;***
- 3) ***Custody Section;***
- 4) ***Wedlock Section.***

8.5.1 DIVORCE SECTION

There were a total of 250 cases before the Divorce Section of which 190 cases were finalized either through which a decision was made or it was dormant and disposed of⁴. This results in a clearance rate of 114%. At the end of December 2014, only 60 cases were pending in the Divorce Section.

A summary is shown below:



³ As in note 1

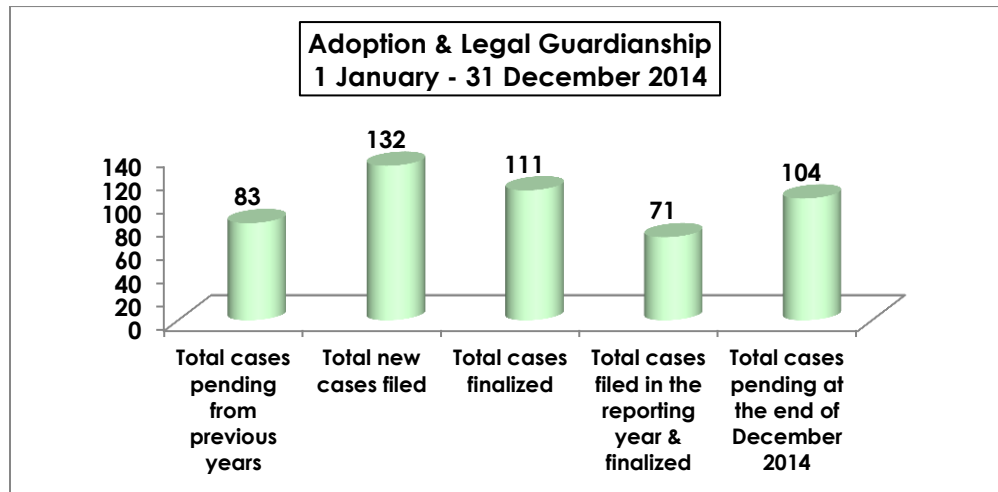
⁴ As in note 1

8.5.2 ADOPTION & LEGAL GUARDIANSHIP SECTION

During this reporting year, there were 223 cases for letters of adoption and guardianship orders in this section of the Family Division. 83 of those cases were the pending cases from previous years and 140 were the cases filed in the reporting year. 135 cases were finalized resulting in a clearance rate of 84%.

The majority of the pending cases are because the Court is still awaiting the report of the *Guardian Ad Litem* before it can make an informed decision.

A summary is shown on the graph below:



8.5.3 CUSTODY SECTION

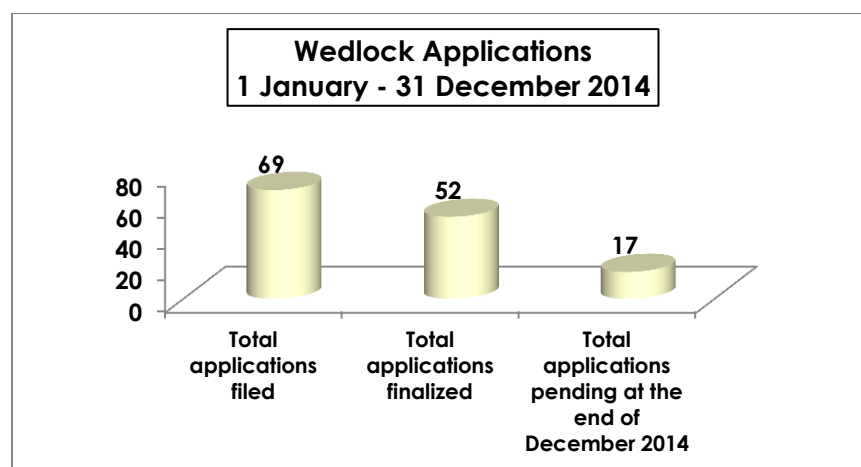
During this reporting year, the court had no pending custody cases from previous years and 4 new cases were filed. These cases were all finalized resulting in a clearance rate of 100%.

8.5.4 WEDLOCK SECTION

At the commencement of this reporting period, the application by a married woman to register an illegitimate child or what is normally referred to as a 'wedlock application', was transferred back from the Office of the Registrar General to the Supreme Court.

This is an application made under Regulation 6 of the *Registrar General's Births and Deaths Regulations 1972* which states that "a married woman may not register her child as illegitimate until a Supreme Court order to this effect has been made". Accordingly, a new section of the Family Division was established to deal with such applications. The majority of the applications during this reporting period were dealt with by the Lord Chief Justice.

A summary of the work carried out in this section is shown below:

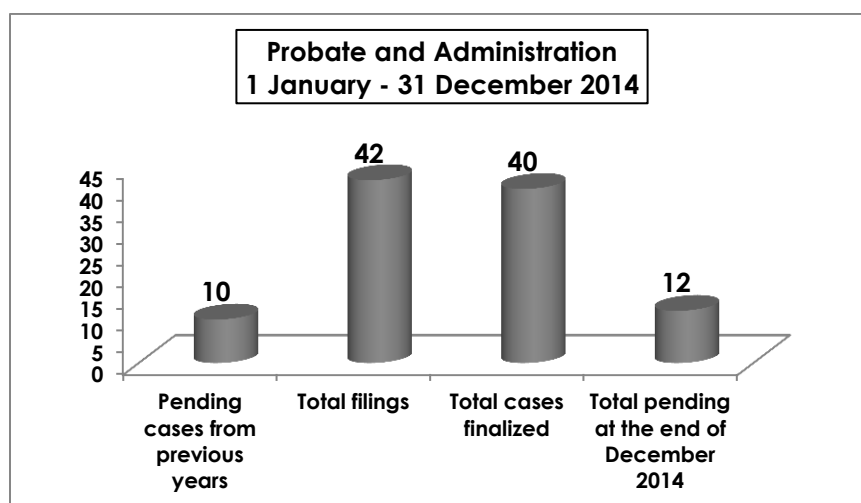


The applications that are pending are mainly because the applicants have not fulfilled the requirements for the application.

YEAR	TOTAL FILINGS	CASES FINALIZED	PENDING CASES	CLEARANCE RATE IN PERCENTAGE
2014	69	52	17	75%

8.6 PROBATE AND ADMINISTRATION DIVISION

Applications for Probate and Letters of Administration increased during the reporting period with a total of 42 cases being filed in the reporting period and 40 cases were disposed of. At the end of this reporting period, only 12 cases were pending with the majority awaiting further requirements from the applicants.



YEAR	TOTAL PENDING FROM PREVIOUS YEARS	TOTAL FILINGS	CASES FINALIZED	PENDING CASES AT THE END OF DECEMBER 2014	CLEARANCE RATE IN PERCENTAGE
2014	10	42	40	12	95%

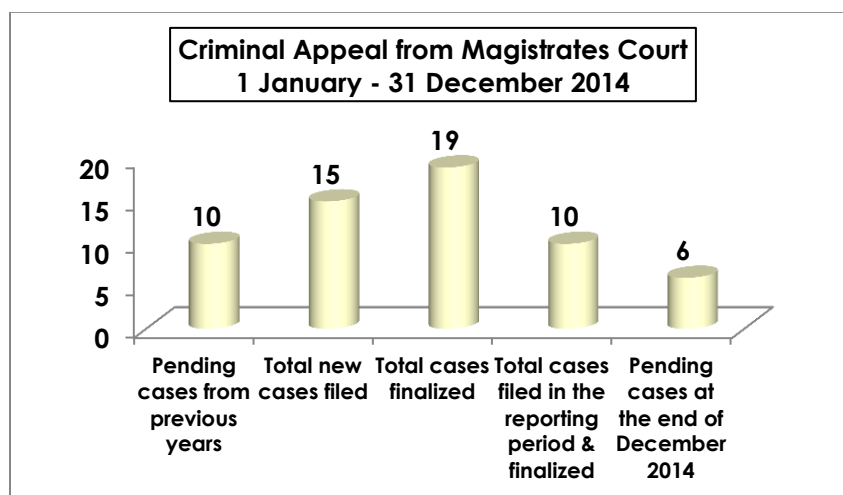
8.7 APPELLATE DIVISION

Appeals filed in this reporting period were predominantly from the Magistrates Court and other appeals from the Tribunals such as the Tonga Law Society Disciplinary Tribunal and the Tax Tribunal. For years the Supreme Court have suffered a back-log of appeal cases from the Magistrates Court mainly because they have not been translated by the translation staff so that the Judges may hear the appeal in a timely manner. In this reporting year, the Supreme Court employed an Official Translator who was tasked mainly with translating these appeals. This has caused a significant increase in the clearance rate of this Division of the Supreme Court.

A break-down is shown below:

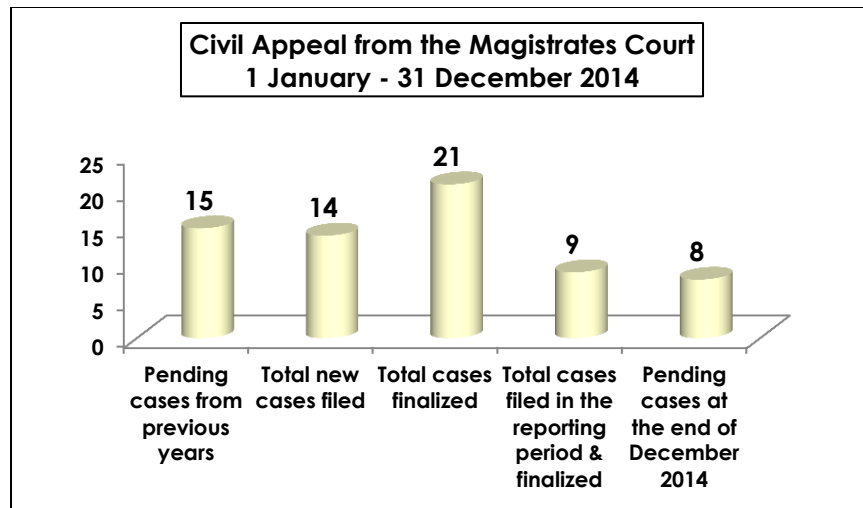
8.7.1 CRIMINAL APPEALS

There were a total of 15 criminal cases that were the subject of an appeal from the Magistrates Court to the Supreme Court in this reporting year whereby 19 appeal cases were finalized. This results in a clearance rate of 127%.



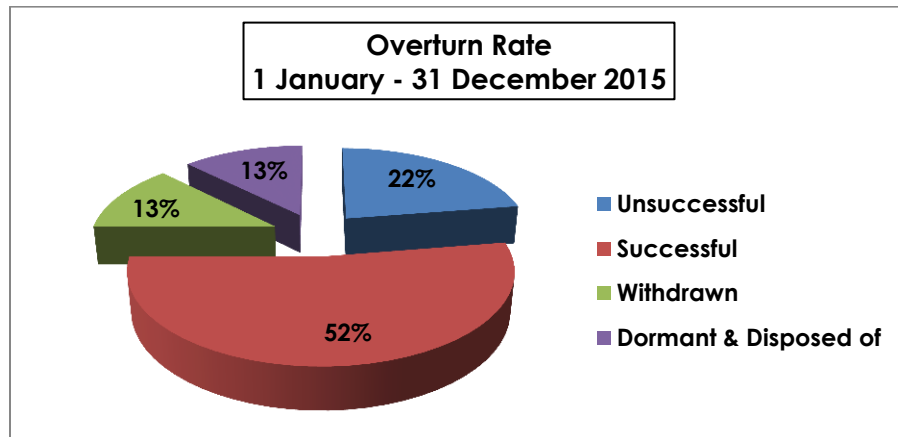
8.7.2 CIVIL APPEALS

There were a total of 14 civil appeal cases filed from the Magistrates Court in this reporting period. 21 cases were finalized leaving only 8 cases pending at the end of December 2014. This results in a clearance rate of 150%.



8.7.3 OVERTURN RATE

As shown on the graphs below, 52% of the appeals filed with the Supreme Court were successful and only 22% were unsuccessful.

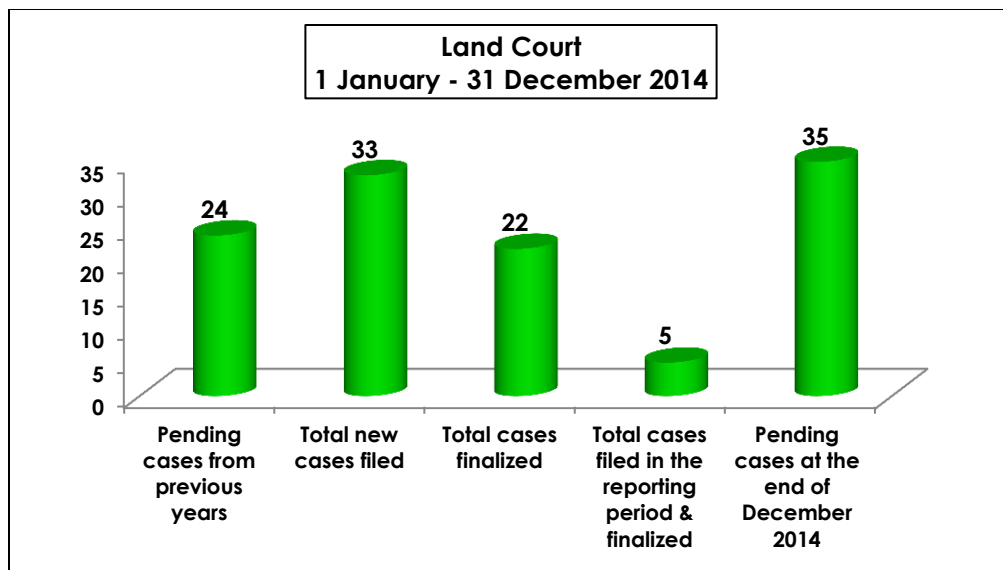


9. LAND COURT

All Land matters in this reporting period were dealt with by the Judges assisted where required by a Land Court Assessor under the *Land Act*.

During this reporting period, there were a total of 33 new cases filed and a total of 22 cases finalized including 1 case finalized at circuit court sitting in this reporting period.

This results in a clearance rate of 67%. The average duration of a land case is 129 days.



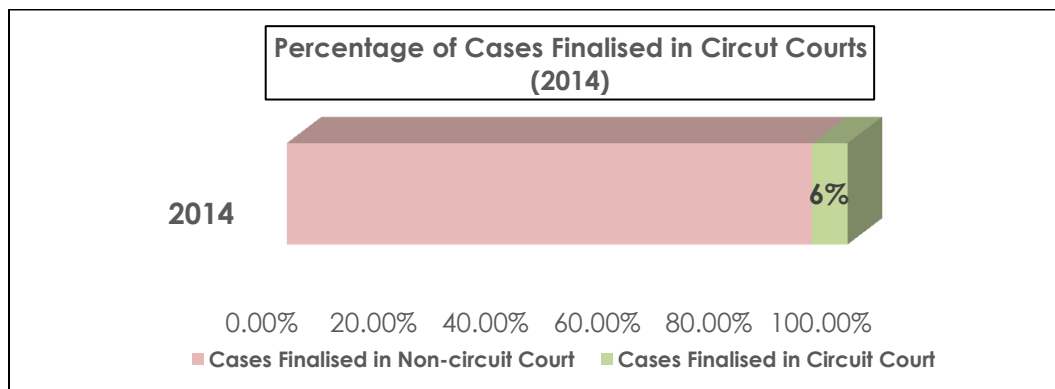
8.7.4 PERCENTAGE OF LAND APPEALS

Of the total 22 land cases finalized in this reporting period, a total of 4 land cases were appealed resulting in a 18% appeal rate of a land case.

10. COURT ON CIRCUIT

During this reporting period, the court travelled on two circuits both to Vava'u. The first circuit was held on 4 – 8 August 2014 for one week and the second circuit was held on 6 – 17 October 2014 for two weeks. Hon. Justice Cato travelled on both circuits to Vava'u together with one Registrar, one Interpreter and two Clerks.

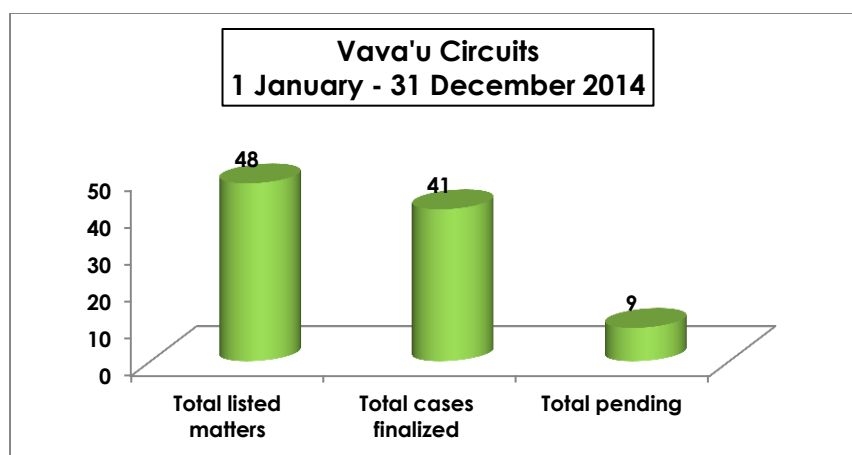
A summary of the cases that were finalized by court circuit is as follows:



As shown in the graph, 6% of all Supreme Court cases, including 23% of adoption and guardianship cases were heard by the Supreme Court at circuit court sitting in Vava'u during 2014. The details are shown below:

10.1 VAVA'U CIRCUITS

As stated above, the court conducted two circuits to Vava'u during this reporting period and a report of the cases dealt with by the court is shown below:



As shown in the graphs a total of 48 matters were listed to be dealt with in both circuits of which 41 cases were finalized resulting in a clearance rate of 85%.

The table below is a breakdown of the various case types:

Case Types	Listed Matters	Finalized	Pending
Criminal	3	2	1
Civil	2	-	2
Family – Divorce	13	12	1
Family – Adoption & Guardianship	27	26	3
Probate & Administration	1	-	1
Land	2	1	1

11. FEE WAIVER

Court fees are set by the *Court Fees (Amendment) Act 2010* 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.

12. CASES WHERE A PARTY RECEIVES LEGAL AID

As stated in our annual report of 2012-2013, 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. At the time of writing this report, this Bill has not been tabled in the Law Programme and has been deferred since 2012.