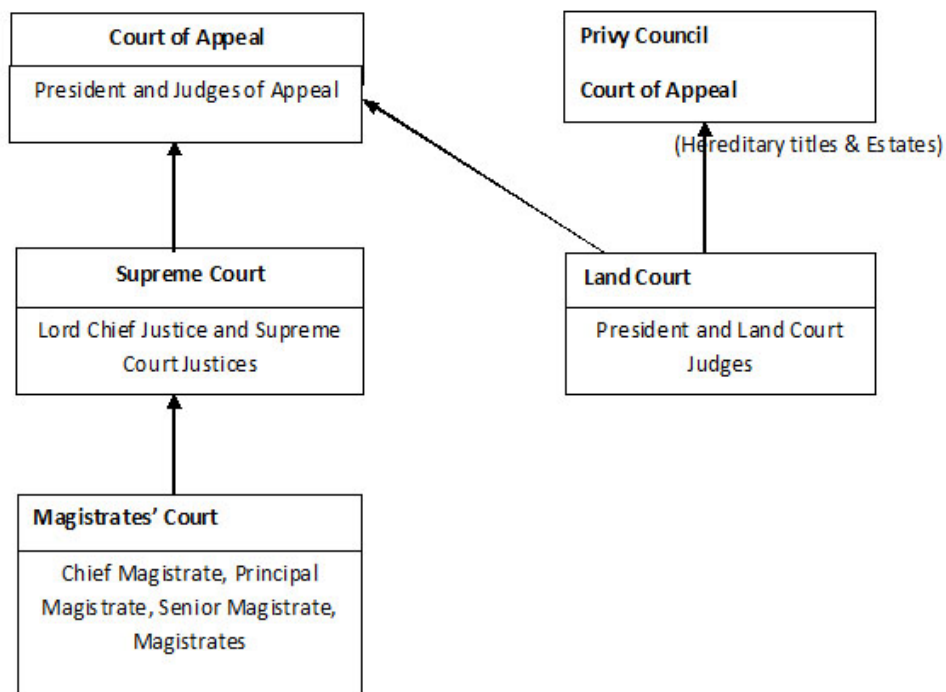


2011 TONGA COURT REPORT

B. STRUCTURE OF THE COURTS



2. REPORT OF THE SUPERIOR COURTS

2.1 Introduction

This report is for the year beginning 1st January 2011 to 31st December 2011. It covers the work of the Court of Appeal, the Supreme Court and the Land Court.

2.2 Court of Appeal of Tonga

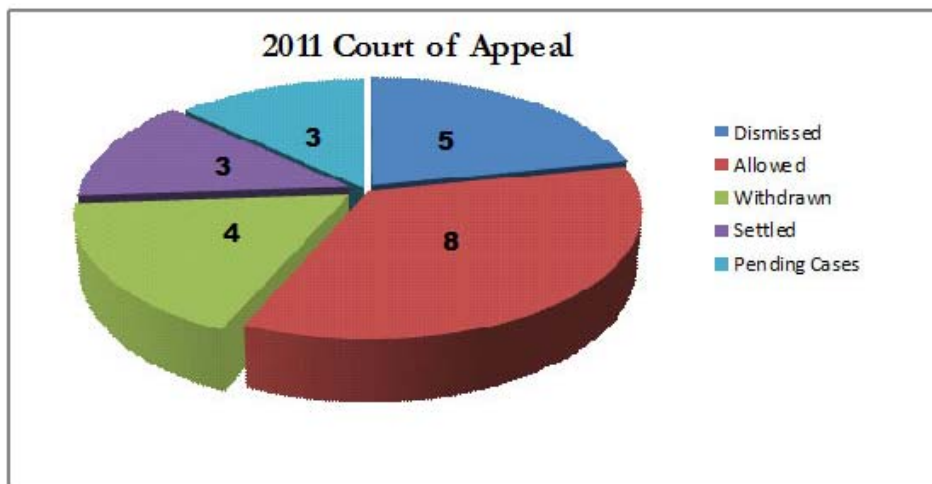
The President of the Court of Appeal is the Lord Chief Justice. The other members of the Court in 2011 were Hon. Mr. Justice James Burchett, Hon. Mr. Justice Peter Salmon and Hon. Mr. Justice Michael Moore.

For the first time the Court of Appeal sat in two separate sessions in the reporting year. Government had introduced the second session to reduce waiting time for parties and reduce pressure on the Court. The first session was in April (1 week) and the second session was in September (2 weeks).

The core support staff for the Appeal session was fewer in numbers but transcription work required all officers from the Translation Unit to assist. A major difficulty facing the Court is the want of properly functioning recording equipment which is required for transcription.

The following table is a breakdown of the cases that were decided by the Court of Appeal in its 2011 sessions:

YEAR	Total Filings	CASES DISPOSED OF	PENDING	DISPOSAL RATE IN (%)
2011	23	20	3	86%



2.3 Supreme Court

The Lord Chief Justice presides over the Supreme Court which, in 2011 had only one other member, Hon Mr. Justice Robert Shuster. One position of Puisne Judge was vacant throughout 2011.

Beginning in 2011 the division of work was reviewed whereby the Chief Justice assumed primary responsibility for the Civil, Appellate and Family jurisdictions while Hon Justice Shuster predominantly dealt with Criminal matters. There were a few cases transferred across this division for one reason or another but overall cases were assigned according to jurisdiction. Registrars were as a result dealing in a particular jurisdiction rather than a particular Court.

The volume of work in the Supreme Court shows an increase in the Criminal jurisdiction but a marked fall in the new cases filed in the Civil jurisdiction in 2011. At the end of the reporting year there were 137 criminal cases pending although 298 cases of total pending cases for the year were disposed of.

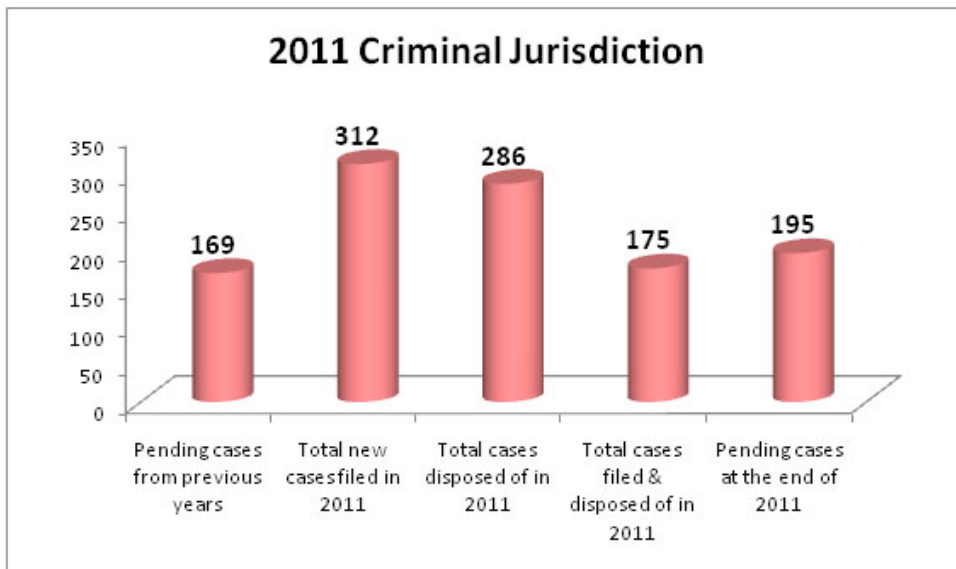
In the Family (Divorce) jurisdiction there was a slight increase in new cases filed for 2011 but with relatively less dealt with. For other family matters (Adoption and Legal Guardianship) there were 143 matters filed compared to 134 from the previous year. A total of 81 cases from pending cases were finalized with 61 remaining from 2011.

New appeals from Magistrates Court remained at about the same level for the reporting year. There was focus on improved rate of disposal for these matters which is reflected in outcome for 2011 when there were only two Criminal appeals outstanding by end of 2011, however, Civil appeals were comparable to previous year's performance. The standard of appeal papers needs to be improved to allow appeals to be disposed of more expeditiously.

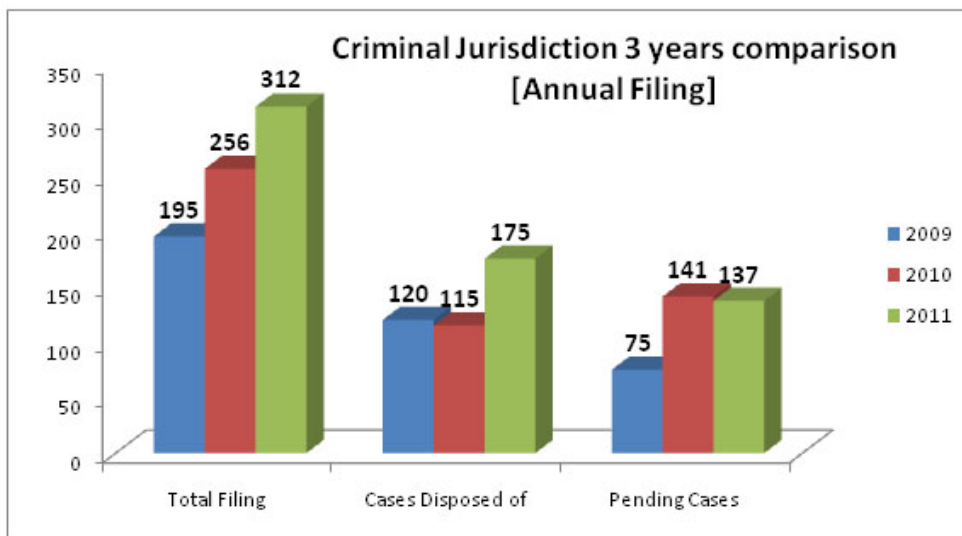
The major cause of delay in disposing of the Supreme Court business is want of prosecution of cases commenced. Short of adopting a strict time-based case management system the Court is only able to hear and dispose of those matters which are brought to readiness for trial by the parties' lawyer. Where actions are ready for trial a date for the trial can usually be made available within 2 months.

The Court Dates List for 2011 set out amongst other things the timetable for Circuits to the outer-islands. Circuits to Vava'u proceeded as scheduled with 3 weeks sessions in May and October 2011. There was no Circuit to the rest of the island districts owing to lack of cases to be heard by the Supreme Court in those districts.

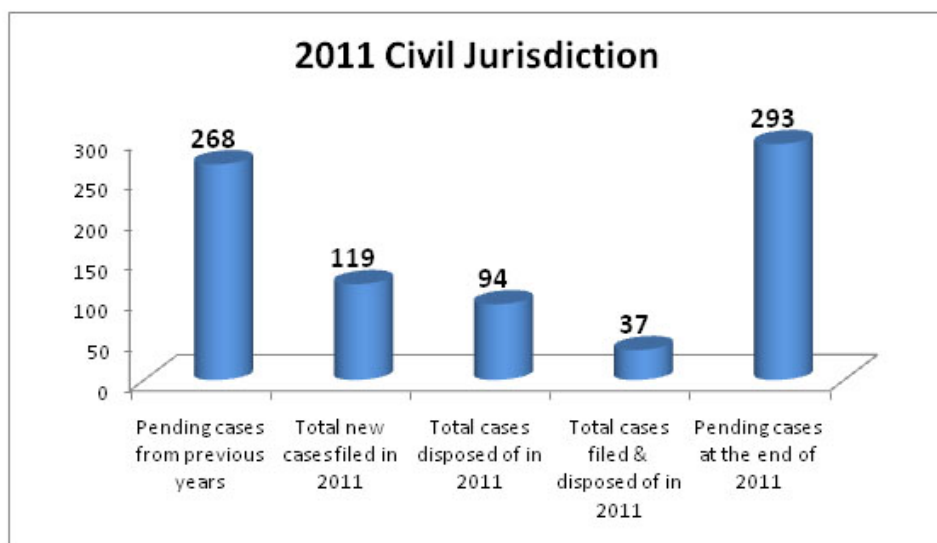
A summary of the work carried out by the Supreme Court of Tonga for the year ending 31 December 2011 is as follows:



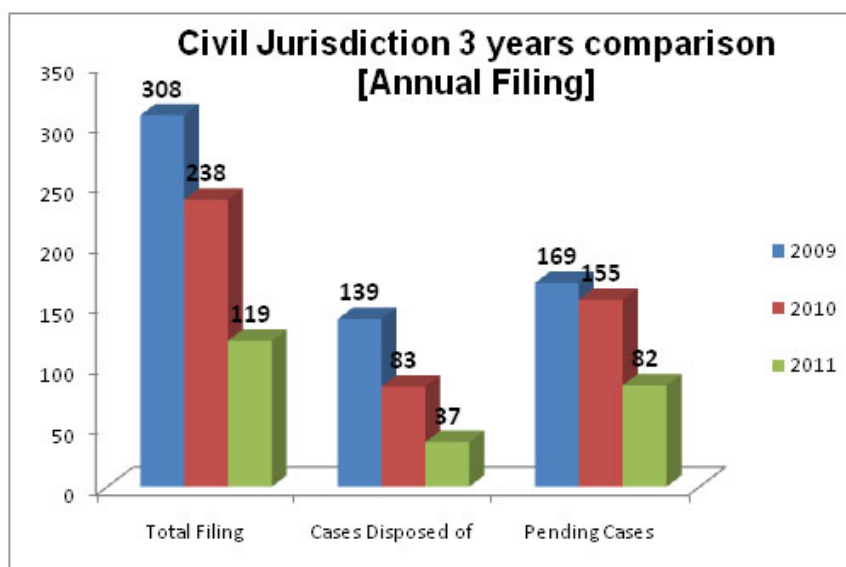
From this figure, there were 312 total criminal cases filed in the reporting year, 169 were cases pending from the previous years and of all those cases 286 of those cases were disposed of in the reporting year 2011. 175 were cases filed and disposed of in 2011 and we're left with 195 cases still pending for the year 2012. The disposal rate of the reporting year was 59%.



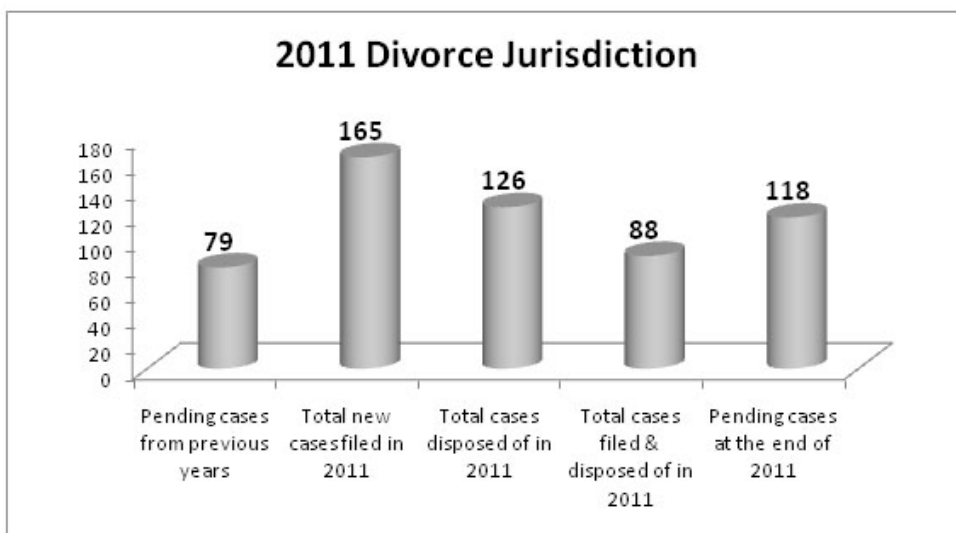
This figure is a comparison of years 2009, 2010 and 2011 in the Supreme Court Criminal Jurisdiction



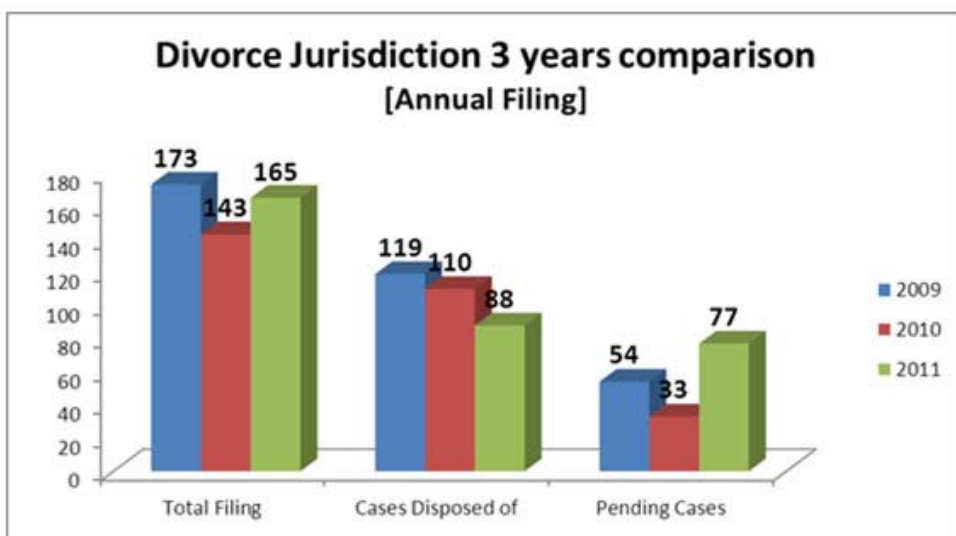
From this figure, there were 119 total civil cases filed in the reporting year, 268 were cases pending from the previous years and of all those cases 94 of those cases were disposed of in the reporting year 2011. 37 were cases filed and disposed of in 2011 and we're left with 293 cases still pending for the year 2012. The disposal rate of the reporting year was 24%.



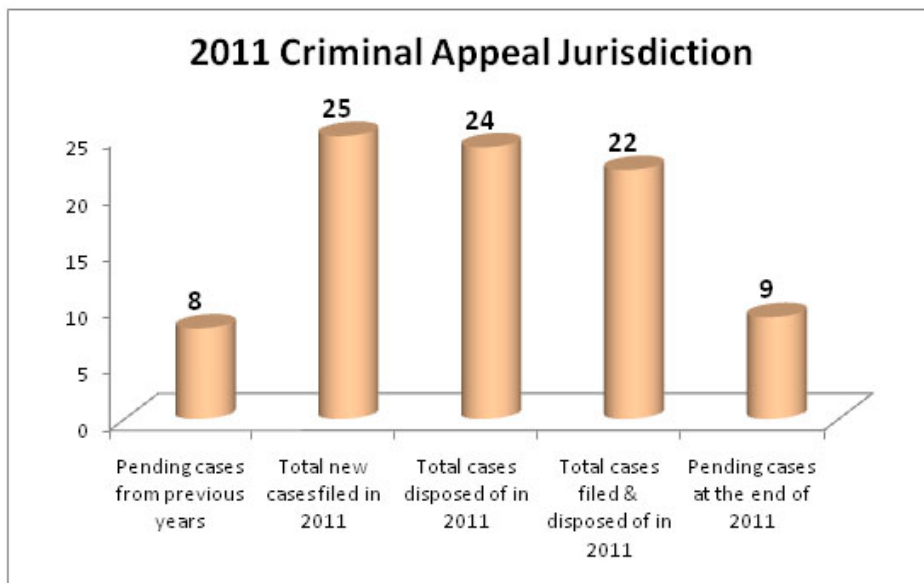
This figure is the comparison of years 2009, 2010 and 2011 in the Supreme Court's Civil Jurisdiction



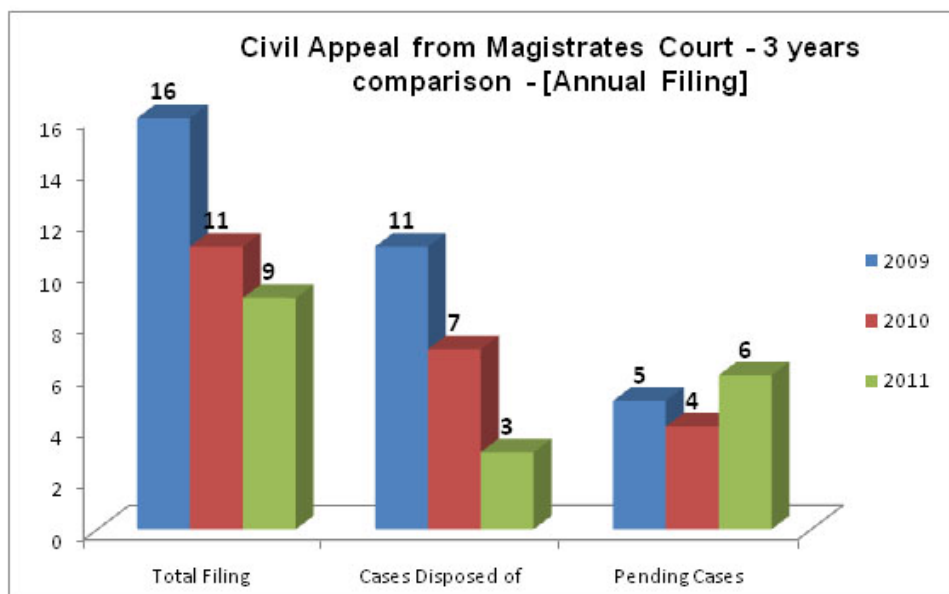
From this figure, there were 165 total divorces cases filed in the reporting year, 79 were cases pending from the previous years and of all those cases 126 of those cases were disposed of in the reporting year 2011. 88 were cases filed and disposed of in 2011 and we're left with 118 cases still pending for the year 2012. The disposal rate of the reporting year was 52%.



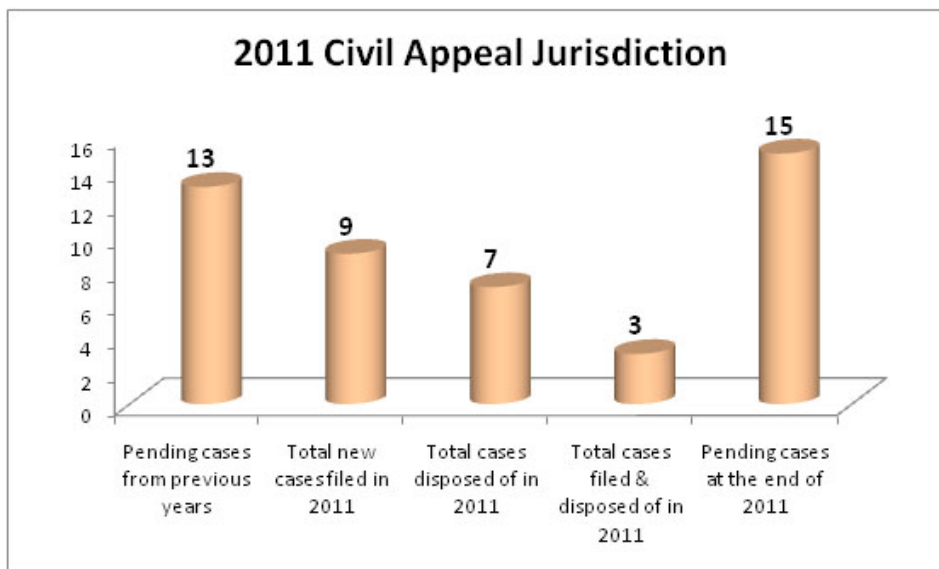
This figure is the comparison of years 2009, 2010 and 2011 in the Supreme Court Divorce Jurisdiction.



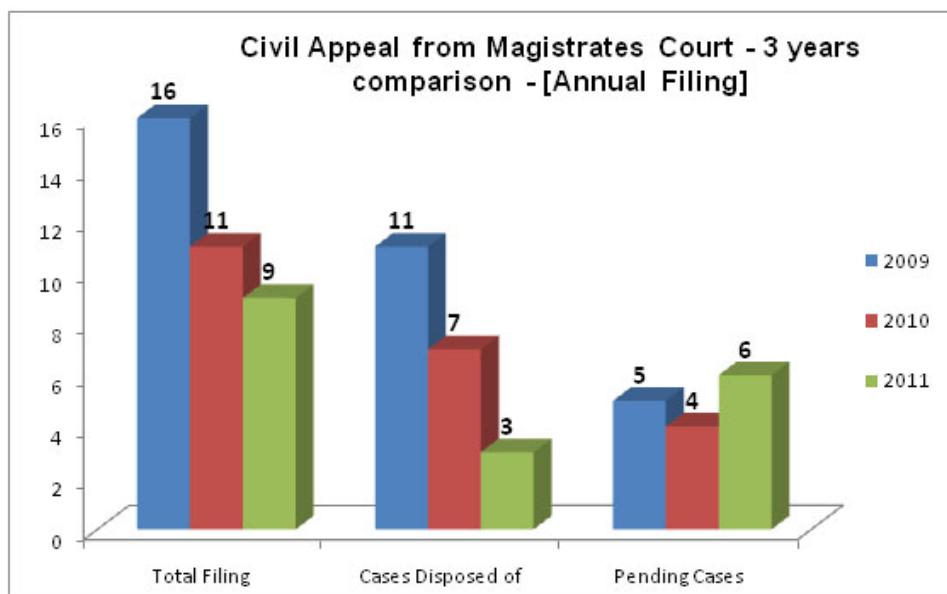
From this figure, there were 25 total criminal appeal cases from the Magistrates filed in the reporting year, 8 were cases pending from the previous years and of all those cases 24 of those cases were disposed of in the reporting year 2011. 22 were cases filed and disposed of in 2011 and we're left with 9 cases still pending for the year 2012. The disposal rate of the reporting year was 73%.



This figure is the comparison of years 2009, 2010 and 2011 Criminal Appeal from the Magistrates Court to the Supreme Court.



From this figure, there were 9 total civil appeal cases from the Magistrates Court filed in the reporting year, 13 were cases pending from the previous years and of all those cases, 7 of those cases were disposed of in the reporting year 2011. 3 were cases filed and disposed of in 2011 and we're left with 15 cases still pending for the year 2012. The disposal rate of the reporting year was 32%.

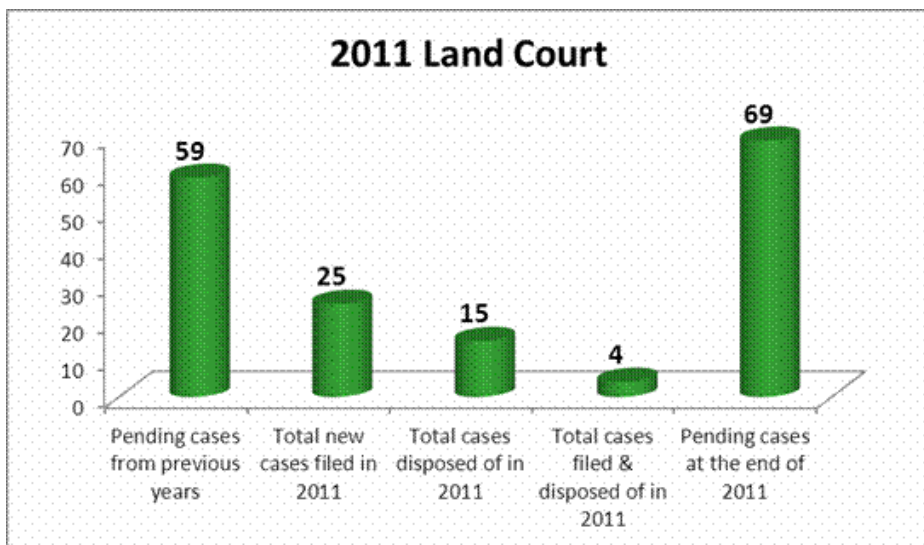


This figure is the comparison of years 2009, 2010 and 2011 Civil Appeal from the Magistrates Court to the Supreme Court.

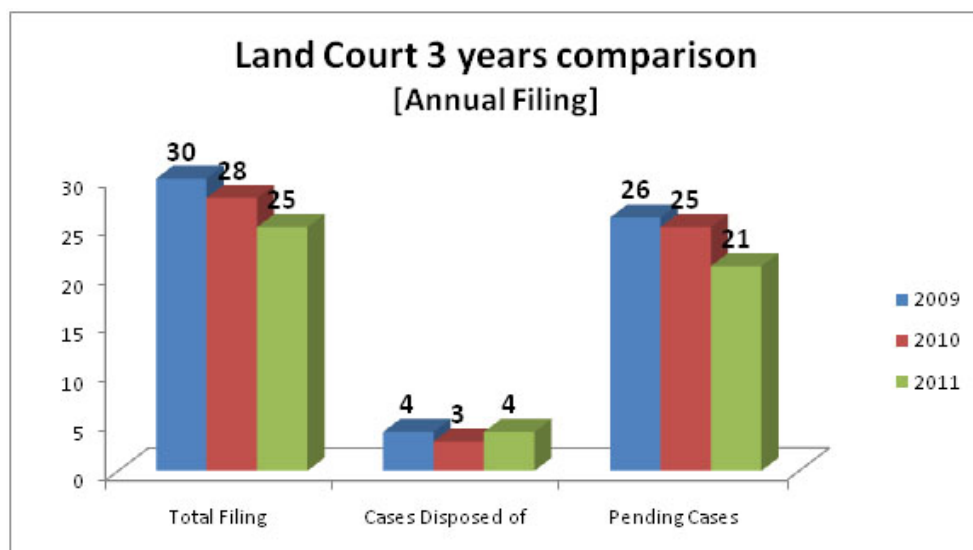
2.4 Land Court

All Land matters in 2011 were dealt with by the President of the Court, assisted, where required by the Land Act by one of the Land Court Assessors. The Assessors for 2011 were Mr. George Blake, Mrs Lola Koloamatangi, Mrs Fuiva Kavaliku, Mr Sinilau Toumo'ua and Lord Fakatulolo. All are for the district of Tongatapu. This is the first year in which women have been appointed to the panel of Assessors.

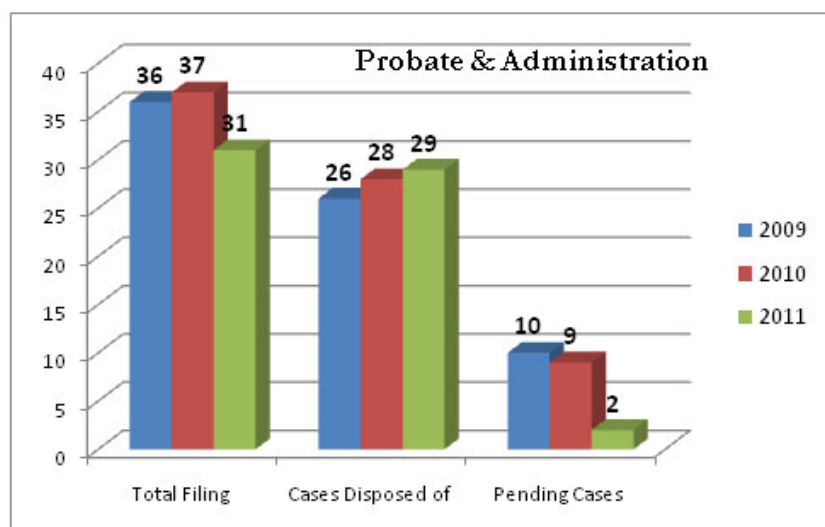
The disposal rate for land cases continued to be low in comparison with other jurisdictions. The main reasons for this are first, the complexity of the cases, secondly the difficulty of gathering the necessary evidence and thirdly the fact that in many cases the parties are related. In such circumstances compromise is a highly desirable objective even though disposal delay is the inevitable consequence. A review is being undertaken to ascertain how many of the long dormant pending cases have in fact been abandoned.



From this figure, there were 25 total land cases filed in the reporting year, 59 were cases pending from the previous years and of all those cases 15 of those cases were disposed of in the reporting year 2011. 4 were cases filed and disposed of in 2011 and we're left with 69 cases still pending for the year 2012. The disposal rate of the reporting year was 18%.



This figure is the comparison of years 2009, 2010 and 2011 in the Land Court.



2.5 Probate & Administration

The applications for Probate and Letters of Administration saw an decrease in 2011. Most of these cases were finalized during the same year. The pending applications are mostly due to requirements being awaited or the cases have been abandoned.

2.5.1 Probate & Administration

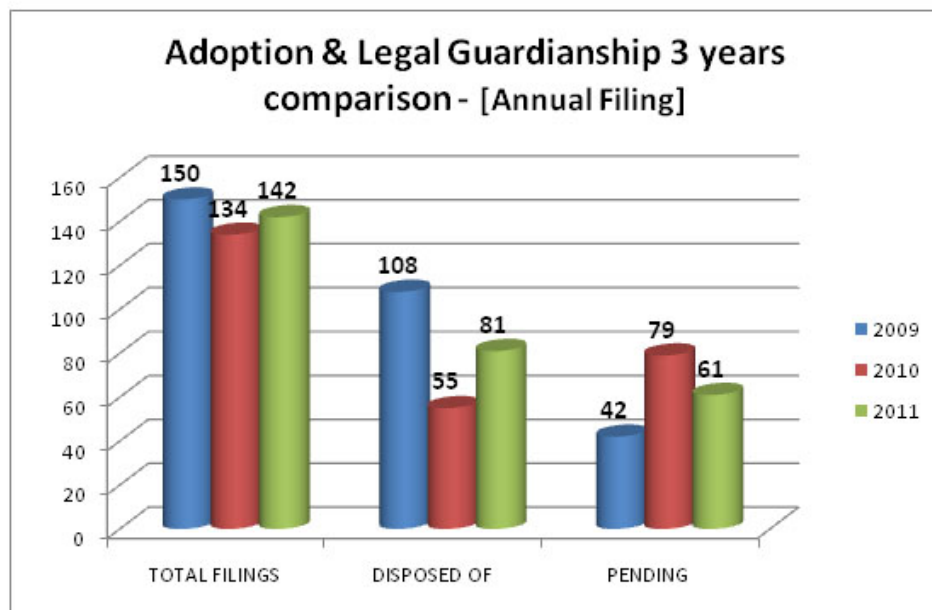
YEAR	TOTAL FILINGS	CASES DISPOSED OF	PENDING CASES	DISPOSAL RATE IN PERCENTAGE
2011	31	29	2	93%
2010	37	28	9	75%

2.5.2 Legitimation

YEAR	TOTAL FILINGS	PENDING	DISPOSED OF	DISPOSAL RATE IN PERCENTAGE
2011	28	6	22	75%
2010	30	9	21	70%

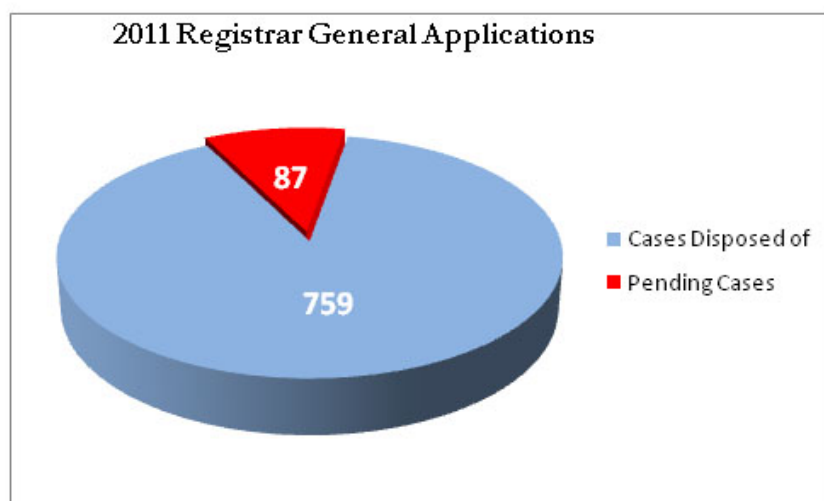
2.5.3 Adoption & Legal Guardianship

YEAR	TOTAL FILINGS	DISPOSED OF	PENDING	DISPOSAL RATE IN PERCENTAGE
2009	150	108	42	72%
2010	134	55	79	41%
2011	142	81	61	57%



2.6 Registrar General's Department

In 2011 there were less Registrar General applications filed than in previous years. There were 759 applications all together and 87 remained pending at the end of the year. These consisted of new applications lodged towards end of year, 'abandoned' applications and those awaiting further documents to be filed.



2.6.1 Lawyers Licences issued for 2011

YEAR	NO OF LICENCES ISSUED	SENIOR COUNSEL	FULLY QUALIFIED	LOCALLY QUALIFIED	UNQUALIFIED
2011	65	11	43	11	0
2010	71	10	53	17	2

2.6.2 2011 Nuku'alofa Marriage Statistics

YEAR	NO OF LICENCES ISSUED	NO OF LICENCES REVOKED	NO OF MARRIAGES IN 2011 RETURNED FOR REGISTRATION	NO OF MARRIAGE LICENCES STILL WITH CHURCH MINISTERS
2011	922	1	864	57
2010	881	Nil	840	41

2.7 Staffing

There were only 2 Courts sitting in the Supreme Court and Land Court Jurisdictions for the entire 2011. They were supported by 15 permanent staff members who were also responsible for Court of Appeal and Registrar General Department.

The introduction of 3 months maternity leave did have a noticeable impact on support staff in 2011. This was compounded both by staff members being required to dispose of leave from the old system of leave entitlements and exchange of leave for unpaid overtime work particularly leave earned during Court of Appeal preparations.

3. MAGISTRATES' COURT'S REPORT

The Magistrates Court is headed by the Chief Magistrate, Mr. Sione Folau Lokotui assisted by two (2) Principal Magistrates, Mr Salesi Mafi and Mr. Paula Tatafu, two (2) recalled Magistrates, Mr. Petelo Soakimi and Mr. Masao Paasi and one (1) Relieving Magistrate / Acting Magistrate, Mr. Similoni Tu'akalau.

Mr. Paula Tatafu is the Magistrate for Vava'u. Ha'apai has no Magistrate since 2009, as their resident Magistrate, Mr. Vaha'ai Foliaki is away on scholarship studying for his Bachelor of Law (LLB) at Waikato University, New Zealand. There has been no replacement for Mr. Foliaki due to shortage of Magistrates.

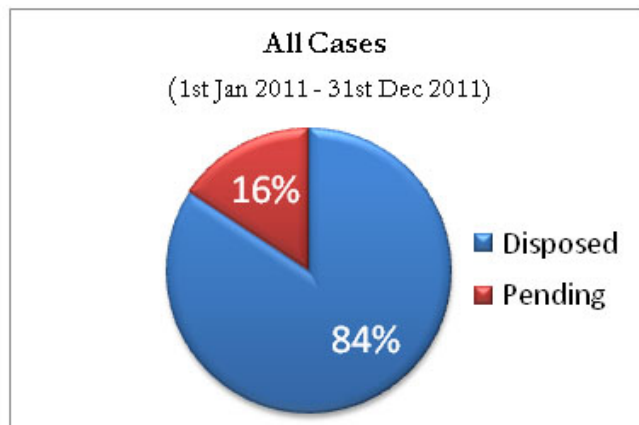
Magistrate Court circuits to deal with cases in Ha'apai and 'Eua are conducted every two months from January to December every year by visiting Magistrate from Nuku'alofa.

3.1 Tongatapu Court's Report

Table 1 : All Cases

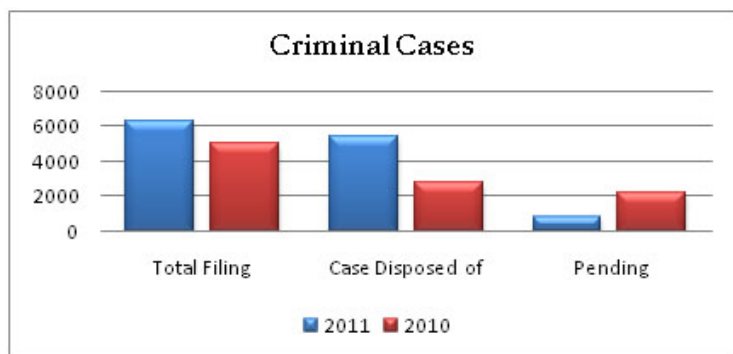
Year	Total Cases	Total Disposed Cases	Pending	Disposal rate (%)
2011	14612	12322	2290	84.3%

Graph 1



There were 14612 total cases filed in the reporting year. From this figure, 12322 were cases disposed of in the same year. The disposal rate for cases filed in reporting year was 84.3%.

Graph 2

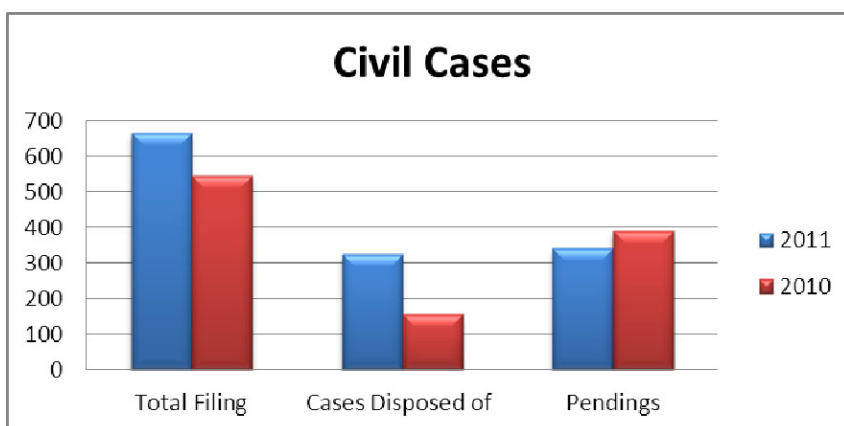


There were 4021 total criminal cases filed in the reporting year. 2249 were cases from previous years. For 2011 the overall disposed rate for Criminal Cases (pending cases from 2010 plus new filing 2011) in Tongatapu is 84%.

Table 3 : Civil Cases

			Cases Withdrawal/Struck out	Committed to Supreme Court	Action Allowed	Action Declined		
2011	390	276	237	0	32	55	43%	342
2010	180	367	42	0	100	15	28.7%	390

Graph 3



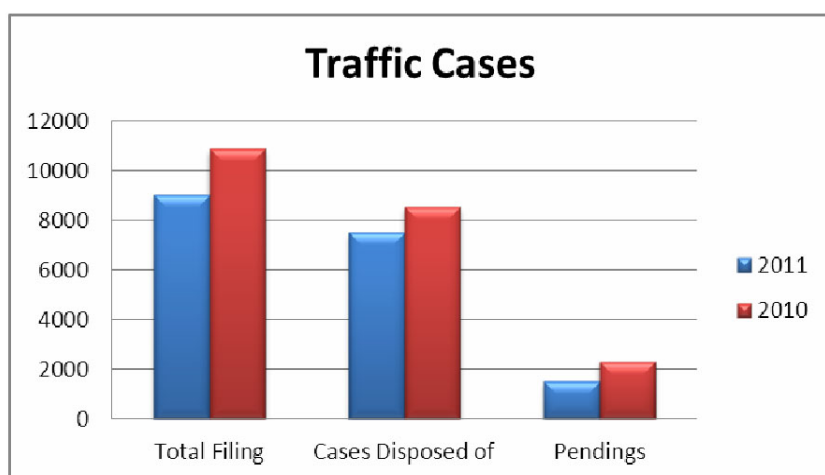
There were 276 total civil cases filed in the reporting year. 390 were cases from previous years. For 2011 the overall disposed rate for Civil Cases (pending cases from 2010 plus new filing 2011) in Tongatapu is 43%.

Table 4: Traffic Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted	Convicted		
2011	2316	6725	4150	3	25	3343	83%	1520
2010	941	9930	3809	12	253	4481	78.7%	2316

There were 6725 total traffic cases filed in the reporting year. 2316 were cases from previous years. For 2011 the overall disposed rate for Civil Cases (pending cases from 2010 plus new filing 2011) in Tongatapu is 87% .

Graph 4



In 2011, there were a total of 14,162 new cases submitted to the Tongatapu Magistrate Court for execution 12322 cases disposed and 2290 case pending to 2012. The clearance rate in the magistrate court is 84.3%. From 14,162 cases, 4021 are criminal cases, 216 civil cases and 6,725 are Traffic cases as shown by table 1,2,3 and 4.

Table 2 shows that 87% or 5447 of the total 6270 criminal cases filed and pending during 2011 were executed. Within the same category, 55.6% or 2822 out from a total of 5071 cases were executed during 2010. With that figure, it shows that there was a slight increase in the number of cases

disposed of during 2011, by 2625 cases, compared to 2010. With civil cases as shows by table 3 and indicated by graph 3, there were a total of 276 cases submitted in 2011 together with a total of 390 pending cases from 2010. Of all these cases, 324 cases were disposed of in 2011 and 342 cases pending to be executed during 2012. Further, table 4 shows that there were 6,725 new traffic cases filed during 2011 plus 2,316 pending traffic cases from 2010. Of these 9041 cases 83.2% were dealt with and 1,520 remain to be dealt with in 2012.

As shown by the graphs above there is an increase in the cases disposed of in 2011 as compared to that of 2010. This is attributable to the fact that two retired Magistrates were brought out of retirement to assist the Court in the last quarter of 2010, Similoni Tu'akalau was appointed a relieving Magistrate and Salesi Mafi returned to duty after successfully completing his LLM.

3.2 Ha'apai Court's Report

Table 1 : Criminal Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted	Convicted		
2011	42	146	31	1	1	94	67.6%	61
2010	15	114	1	2	10	74	67.4%	42

There were 146 total criminal cases filed in the reporting year. 42 were cases from previous years. For 2011 the overall disposed rate for Criminal Cases (pending cases from 2010 plus new filing 2011) in Ha'apai is 67.6%.

Graph 1

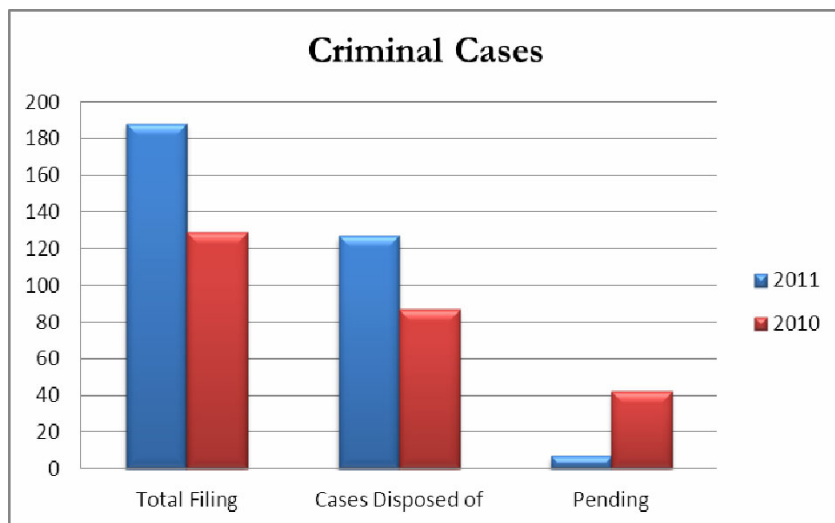


Table 2 : Civil Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Action Allowed	Action Declined		
2011	2	4	2			1	50%	3
2010	Nil	9	3			4	77.8%	2

There were 4 total civil cases filed in the reporting year. 2 were cases from previous years. For 2011 the overall disposed rate for Civil Cases (pending cases from 2010 plus new filing 2011) in Ha'apai is 50%.

Graph 2

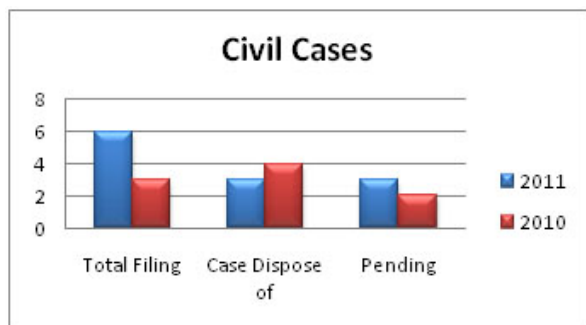


Table 3 : Traffic Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of			Disposal rate in %	Pending	
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted			Convicted
2011	10	169	16		1	149	94.4%	3
2010	9	39	4			34	79.2%	10

There were 169 total traffic cases filed in the reporting year. 10 were cases from previous years. For 2011 the overall disposed rate for Traffic Cases (pending cases from 2010 plus new filing 2011) in Ha'apai is 92.3%.

Graph 3

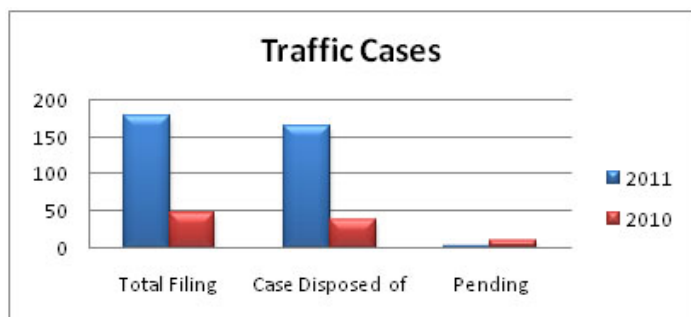


Table 1 shows the number of criminal cases that were filed at the Ha'apai Magistrate Courts during 2011. During 2011, there were a total of 319 new cases filed at the Ha'apai Magistrate Court of which 146 were criminal cases, 4 civil cases and 169 traffic cases. Amongst those 188 criminal cases, there were 127 cases altogether or 67.6% of all cases which were able to be disposed of or be heard and 61 cases are pending to be heard in 2012. With the 4 civil cases filed in 2011 together with 2 cases pending from 2010, 50% or 3 cases were able to be disposed of during the year. Lastly, there were 169 traffic cases filed in 2011 together with 10 cases pending from 2010. With those 179 cases, 166 cases or 94.4% of all cases were able to be disposed of during the year.

As shown by the graphs above there is an increase in the cases disposed of in 2011 as compared to that of 2010.

3.3 Vava'u Court's Report

Table 1 : Criminal Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted	Convicted		
2011	302	623	122	8	50	408	64%	337
2010	281	516	53	18	18	406	62.1%	302

Graph 1



There were 623 total criminal cases filed in the reporting year. 302 were cases from previous years. For 2011 the overall disposed rate for Criminal Cases (pending cases from 2010 plus new filing 2011) in Vava'u is 64%.

Table 2 : Civil Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Action Allowed	Action Declined		
2011	147	67	16		11	29	29.0%	158
2010	131	75	25			34	28.6%	147

Graph 2

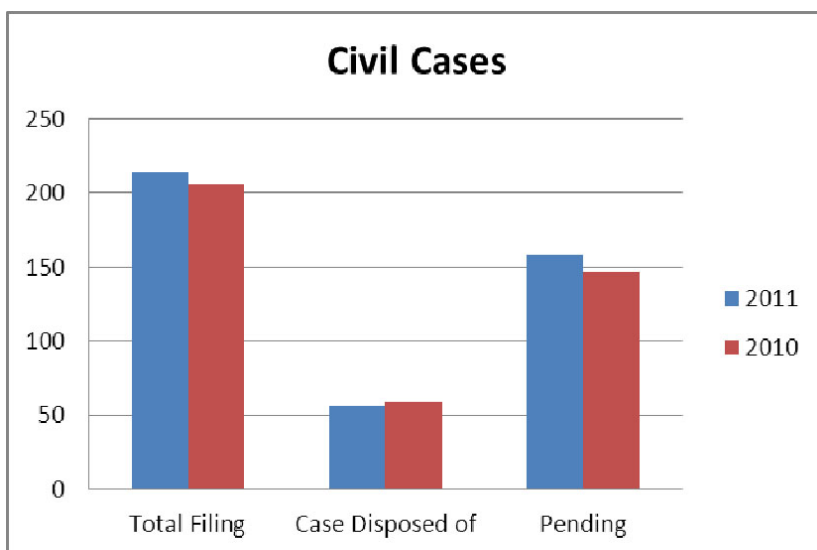


Table 3 : Traffic Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of	Disposal rate in %	Pending
2011					
2010					

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted	Convicted		
2011		1171	212		12	941	99%	6
2010		455	156		3	296	100%	

Graph 3

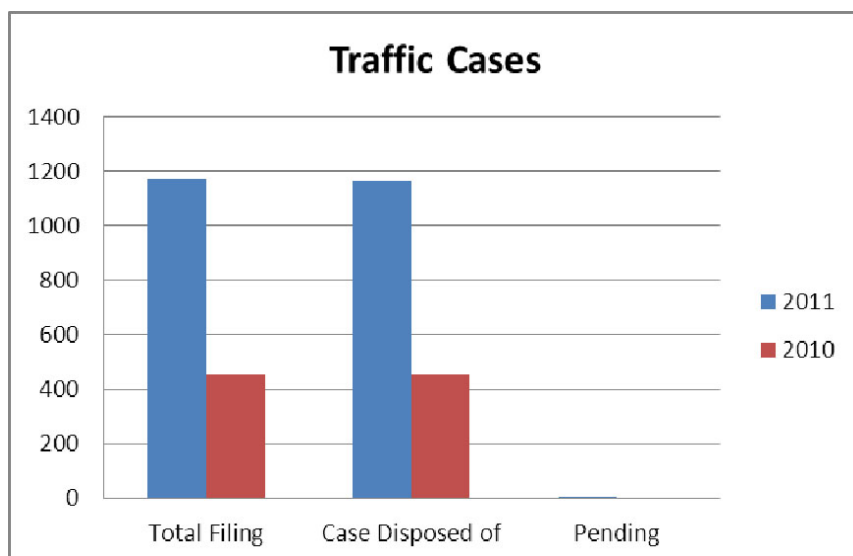


Table 1 and table 2 indicated that the progress of execution of Court cases within the Vava'u Court is not as effective as that of the neighbouring island, Ha'apai. In comparison, the average percentage of all cases that were disposed of within 2010 and 2011 at the Vava'u Court was 63.6% for Criminal and 28.7% for Civil. The Ha'apai Court was 67.6% for criminal and 50% for civil cases. This is just a comparison in terms of percentages but in reality, the number of cases filed within each jurisdiction is incomparable since there are more cases filed in the Vava'u Court than at the Ha'apai Court.

Table 3 indicates that the Vava'u Court addressed traffic cases as a priority, followed by criminal cases and civil cases. Traffic cases as indicated by both table 3 and graph 3 have a 99% disposal rate, criminal cases an average of 64%, and civil cases a disposal rate of below 29%. It is significant to note that civil cases form a very small percentage of cases filed in Vava'u. The low rate of case disposal in Vava'u may be attributable to the shortage of staff in the Vava'u Court for the number of traffic, criminal and civil cases filed thereat.

3.4 'Eua Court's Report

Table 1 : Criminal Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted	Convicted		
2010	13	91	1	0	0	84	19	
2011	19	150	18	41	5	87	18	

Table 2 - Civil Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of	Disposal rate in %	Pending

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Action Declined	Action Declined		
2010	2	1	0	0	1	0	2	
2011	2	2	0	0	0	0	4	

Table 3 : Traffic Cases

Year	Pending from previous years	Total Filings	Cases Disposed Of				Disposal rate in %	Pending
			Cases Withdrawal/Struck out	Committed to Supreme Court	Acquitted	Convicted		
2010	2	204	1		1	178	26	
2011	26	53	27			47	5	

The above comparison has revealed different needs that require addressing at each of the Districts where the Magistrates Courts are situated. These needs include (1) the need to increase the number of Magistrates to address the ever increasing number of cases brought to the Courts. There is currently no presiding Magistrate in Ha'apai and 'Eua so the Tongatapu Magistrates' Court has to provide Magistrates therefrom, to undertake circuits to Ha'apai and 'Eua every 2 months. When these circuits are held, court cases in Tongatapu have to be re-scheduled. The Ministry during the last two to three years has continuously advertised the post of Magistrate, but only very few suitable applications are received. The Ministry is part of a review committee to address (inter alia) the problems of recruiting Magistrates.

During the year report, there were six Magistrates on post at the Tongatapu jurisdiction and that includes three permanent Magistrates, two relieving Magistrates and one acting Magistrate. On average each Magistrate has to deal with a total of 2,748 cases per year or 229 cases per month (using the 2010 figures).

Secondly, there is a need for further on-the-job-training as well as overseas trainings for the current Magistrates. At present, there is one Magistrates currently on further study for his degree in Law at the Waikato University in New Zealand. Further, Magistrates need continuous on-the-job training and if necessary overseas training attachments to ensure that they are up-to-date with all new legal and judicial developments within the Judiciary.

3.5 Magistrates Annual Conference 2011

The Magistrates Annual Conference was not held during 2011. The Lord Chief Justice had recommended that the Conference was re-scheduled to a time when the Court of Appeal was sitting in order that one of the Court of Appeal judges would be available to participate and lend his expertise to the Magistrates in their deliberations. It was also noted that funding was required to provide a facilitator for the Judgment writing workshop and it was recommended that foreign aid be sought for this requirement.

3.6 Vital Statistic Office's Statistics

REGISTRAR GENERAL BIRTHS 2011 (JANUARY 2011- DECEMBER 2011)							
A. TONGAN	TONGATAPU	HA'APAI	VAVA'U	'EUA	NIUATOPUTAPU	NIUAFO'OU	TOTAL
Total Registered	1977	91	343	42	3	3	2459
(a) Legitimate	1709	79	315	36	3	3	2145
Male	948	32	159	22	2	2	1165
Female	761	47	156	14	1	1	980
(b) Illegitimate	268	12	28	6			314
Total	1977	91	343	42	3	3	2459

	TONGATAPU	HA'APAI	VAVA'U	'EUA	NIUATOPUTAPU	NIUAFO'OU	TOTAL
B. NON TONGAN							
Total Registered	24						
NB: The total number of Non Tongan births is excluded from the number of births in Tongatapu							
(a) Legitimate	23						23
Male	6						6
Female	17						17
(b) Illegitimate							
Total	23						23
DEATHS 2011 (JANUARY—DECEMBER)							
A. TONGAN							
Total registered	290		63	25	1	2	381
Births Exceeded Deaths by	1687	91	280	17	2	1	2078
MARRIAGES 2011 (JANUARY- DECEMBER)							
A. TONGAN							
Total registered	850		143	32	6		1031

8. Finance

The 2011/12 Financial Estimates was \$2,699,000.00 for expenditure and a forecast of revenue collection set at \$700,000.00 (for one Financial Year). The total of \$2,200,603.00, (82% of the budget) was for salary and salary related expenditure with 18% assigned as operational expenditure.

The total revenue collection for January 11 – December 11 was \$647,253.66. (NB That the target revenue of TOP\$700,000 is set for 30 June, 2012 (end of the Financial Government Year). This indicates that the Ministry has achieved collection of more than half the revenue which was forecast for the Financial year within the first 6 months of the FY.

Details of the revenue collection for periods 01 January 2011 to 31 December 2011.

i.	Sales of Legal documents	\$7,250.00
li	Court fees	\$133,086.99
lii	Fines and charges	\$281,889.50
lv	Registration fees	\$190,393.90
v	Marriage and divorce	\$34,633.27
	Total	\$647,253.66

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. Registration fees are revenue collected from charges on copies of birth, death and marriages certificates issued at the Vital Statistic Office.