

# **SUPERIOR COURTS OF TONGA ANNUAL REPORT 2017**



**COURT OF APPEAL, SUPREME COURT AND THE  
LAND COURT OF TONGA**

## **Contents**

<b>From the Lord Chief Justice</b> .....	3
<b>Executive Summary</b> .....	5
<b>The Courts and the Judiciary</b> .....	7
<b>The Court of Appeal</b> .....	8
<b>The Supreme Court</b> .....	10
<b>The Land Court</b> .....	12
<b>The Legal Profession</b> .....	13
<b>The Cook Island Indicators</b> .....	15
<b>Indicator one – clearance rate</b> .....	15
Court of Appeal .....	15
Supreme Court .....	17
Land Court .....	21
<b>Indicator two - average duration of case from filing to finalisation</b> .....	22
Court of Appeal .....	22
Supreme Court .....	22
Land Court .....	24
<b>Indicator three – percentage of appeals</b> .....	25
Court of Appeal .....	25
Supreme Court .....	25
Land Court .....	27
<b>Indicator four – overturn rate on appeal</b> .....	27
Court of Appeal .....	27
Supreme Court .....	28
Land Court .....	29
<b>Indicator five - percentage of cases where fee waivers are given</b> .....	30
All Superior Courts .....	30

<b>Indicator six – percentage of cases disposed of through Circuit Courts</b> .....	31
Court of Appeal .....	31
Supreme Court and Land Court .....	31
<b>Indicator seven – percentage of cases where a party receives legal aid</b> .....	32
All Superior Courts .....	32
<b>Indicator eight – documented processes for handling a complaint</b> .....	32
All Superior Courts .....	32
<b>Indicator nine – percentage of complaints against Judicial Officers</b> .....	33
Court of Appeal .....	33
Supreme Court and Land Court .....	33
<b>Indicator ten - percentage of complaints received concerning Court Staff</b> .....	34
All Superior Courts .....	34
<b>Indicator eleven - average cases per Judicial Officer</b> .....	34
Court of Appeal .....	34
Supreme Court .....	34
Land Court .....	36
<b>Indicator twelve – Average number of cases per member of Court Staff</b> .....	37
All Superior Courts .....	37
<b>Indicator thirteen – Court produces an annual report that is available in the following year.</b> .....	38
<b>Indicator fourteen - Information on Court services is publically available</b> .....	38
<b>Indicator fifteen - Court published judgments on internet and/or Paclii</b> .....	39
<b>Justices of the Peace</b> .....	40
<b>Judicial Training</b> .....	40
<b>Clearance Certificates</b> .....	42
<b>Appendix</b> .....	43

## **From the Lord Chief Justice**

I am pleased to present this annual report for the Superior Courts of the Kingdom of Tonga.

I wish to express the deep sadness of myself and all the Court Staff at the recent tragic loss of the Chief Executive Officer for Justice Miss Susana Faletau. Susana was an effective and efficient Chief Executive Officer and a great supporter of the Courts. She was also an active advocate for increasing access to justice and was advancing many initiatives to realise her vision that all people of Tonga, regardless of race, gender or status, would have equal and equitable access to the Courts for resolution of their disputes. She will be greatly missed.

This year I have taken a more direct role in preparing the annual report. This report focuses on the 15 Cook Island Indicators. I am hoping that it is informative and gives an accurate reflection of the work of the Superior Courts. I am also intending that it will serve as a template for annual reports in future years and that we will be able to progressively include further qualitative and quantitative data which is not presently available.

The data in this annual report indicates that the Superior Courts had another productive year and that they are keeping up with their workloads. There appears also to be a high level of satisfaction with the decisions of the Superior Courts. As always there are things that can be improved and they are noted and will be addressed

I have identified throughout the report that there are access to justice concerns in Tonga particularly in relation to women, youth, disabled persons and people charged with criminal offences. The Judges of the Superior Courts are aware that many people do not have access to lawyers and face substantial barriers in accessing justice. By way of example, it is a concern that there is no legal aid in Tonga even for youth and adult offenders facing trial on the most serious criminal charges. Similarly, much could be done to develop a youth diversion scheme and a Youth Court perhaps modeled on the Youth Courts that operate so successfully in New Zealand and other jurisdictions.

The Superior Courts can do only so much to address these issues. Ultimately it is up to the community and the Government to recognise access to justice as a national priority and to allocate funding for initiatives to improve it. It is pleasing that some progress is already being made. I note the recent opening of a legal aid centre for victims of domestic violence which was driven by the Minister, Mr. Vuna Fa'otusia, and Ms Susana Faletau with the assistance of SPC-RRRT. This will hopefully be a shining example of what can be achieved to increase access to justice for the people of Tonga.

I am grateful to the Registrar of the Supreme Courts, Miss Fatima Fonua, for her constant support and assistance and to the Minister of Justice, Superior Court Judges, Magistrates and Staff of the Courts for their dedicated service.

O G Paulsen  
**Lord Chief Justice of Tonga**

## Executive Summary

This has been another productive year for the Superior Courts which is notable for the following matters:

- There continues to be an increase in the number of Law Practitioners in the Kingdom but a need for more legally qualified Law Practitioners to work in private practice (rather than in Government) to adequately service the public's needs.
- All of the Superior Courts achieved clearance rates of greater than or very near to 100% indicating that they are keeping up with their workloads. It was identified that there was a lower clearance rate in this reporting period for criminal cases, the causes of which are being investigated.
- All of the Superior Courts are finalising their caseloads within acceptable timeframes.
- The percentage of appeals from decisions of the Supreme Court are very low. There is a higher rate of appeals from the Land Court.
- The percentage of decisions overturned on appeal from decisions of the Supreme Court and the Land Court is broadly consistent and is at an acceptable level. This indicates that the quality of the decisions of the Superior Courts remain high.
- The number of complaints against Judicial Officers and Court Staff is very low.
- The average number of cases dealt with per Court Staff and Judicial Officer has remained broadly consistent with previous years.
- The Ministry of Justice has been proactive to make available to the public information about the Courts functions and services. The decisions of the Superior Courts are now widely distributed and available to the public.

- There has been ongoing emphasis on Judicial Training for both Judicial Officers and senior Court Staff principally with the support of the New Zealand Government through its funding of the Pacific Judicial Strengthening Initiative and the Pacific Participation Fund.
- In this reporting period the Lord Chief Justice and Registrar implemented procedures for processing applications for clearance certificates to Election candidates which proved very effective and will be used and adapted for future General Elections.

## **The Courts and the Judiciary**

The Judiciary is the third arm of government along with the Legislature and the Executive. Its principal functions are to interpret and apply the laws of the Kingdom, which have most often been enacted by the Legislative Assembly, and to review the policies and decisions of the Executive. The Judiciary is independent of the two other arms of government (clause 83A of the Constitution).

The head of the Judiciary is the Lord Chancellor who has primary responsibility for the administration of the Courts, all matters relating to the Judiciary and the maintenance of the Rule of Law (clause 83B of the Constitution).

The Lord Chancellor is Mr. Albert Harrison Waalkens Esq KC QC (interim).

The professional head of the Judiciary is the Lord Chief Justice (clause 86 of the Constitution).

The Lord Chief Justice is Lord Chief Justice Owen Godfrey Paulsen.

The judicial power of the Kingdom is vested in the Superior Courts, namely the Court of Appeal, the Supreme Court and the Land Court. There is also a Subordinate Court called the Magistrate's Court. This report is concerned only with the Superior Courts. The Magistrate's Court prepares its own annual report.

The Judiciary of the Kingdom in the Superior Courts comprises the following:

The Lord President of the Court of Appeal and the Judges of the Court of Appeal;

The Lord Chief Justice and the Judges of the Supreme Court; and

The Lord President and the Judges of the Land Court.



## **The Court of Appeal**

The Court of Appeal hears all appeals from the Supreme Court and from the Land Court except appeals from the Land Court relating to the determination of hereditary estates and titles (clause 92 of the Constitution).

There is no right of appeal from the decisions of the Court of Appeal. It is the highest court in the Kingdom except in respect of appeals from the Land Court on matters concerning hereditary estates and titles. Those appeals are heard by His Majesty in Privy Council.

The Court of Appeal sits at Nuku'alofa twice a year for up to two weeks each session. The sessions are usually in March/April and September. The rulings of the Court are delivered at the end of each session.

There is a panel of Judges of the Court of Appeal. The Judges are appointed by His Majesty in Privy Council (clause 85 of the Constitution).

All Court of Appeal Judges are presently appointed on fixed term contracts.

The selection of which Judges will sit during each session of the Court is made by the Lord President of the Court of Appeal (often in consultation with the Vice President).

The Lord President of the Court of Appeal is Lord President Owen Godfrey Paulsen.

The Vice President in the reporting period was Hon. Justice Michael Moore.

There were two resident Judges of the Court of Appeal in the reporting period namely the Lord President Owen Godfrey Paulsen and Lord Tevita Tupou. The other Judges reside overseas. The overseas Judges are all eminent jurists who have held high judicial office in their own countries.

The overseas Judges that sat on the Court of Appeal in this reporting period were:

Hon. Justice Michael Moore (Australia) (Vice President);

Hon. Justice Kenneth Handley (Australia);

Hon. Justice Sir Peter Blanchard (New Zealand); and

Hon. Justice Rodney Hansen QC (New Zealand).

## **The Supreme Court**

The Supreme Court has jurisdiction to hear all cases arising under the Constitution and the Laws of the Kingdom except those cases concerning titles to land which are within the exclusive jurisdiction of the Land Court (clause 90 of the Constitution). It also hears appeals from the Magistrate's Court (section 74 of the Magistrate's Court Act).

Appeals from decisions of the Supreme Court are made to the Court of Appeal.

The Judges of the Supreme Court are appointed by His Majesty in Privy Council (clause 86 of the Constitution).

The Supreme Court Judges are presently appointed for fixed terms. They hold office during good behavior (clause 87 of the Constitution).

The Judges in the Supreme Court in the reporting period were:

The Lord Chief Lord Justice Owen Godfrey Paulsen;

Justice Charles Bentley Cato; and

Justice Michael Dishington Scott (part time until September 2017).

The Supreme Court sits primarily at Nuku'alofa but also undertakes circuits in the Outer Islands. In the reporting period the Court undertook two circuits to Vava'u, and one circuit to each of 'Eua and Ha'apai.

There are no cases pending in the Niuas and no circuit was undertaken to that Island Group in this reporting period.

The Supreme Court's workload broadly covers the following areas (referred to as divisions) namely:

Criminal;

Civil;

Appellate (from the Magistrate's Court including civil and criminal cases);

Family (including custody and access, divorce, adoptions and wedlock applications); and

Estate Administration.

## **The Land Court**

The Land Court has a broad jurisdiction to hear and determine disputes, claims and questions of title concerning land in the Kingdom (section 149 of the Land Act).

The Judges of the Land Court sit with Assessors whose role it is to assist the Judge with explanations and advice regarding Tongan usages and customs. However, the ruling of the Court is formulated and announced by the Judge alone and the Assessors have no voice in the decisions of the Court (section 146(1) of the Land Act).

Appeals from the Land Court are generally to the Court of Appeal except in cases where the appeal relates to the determination of hereditary estates and titles in which case the appeal is to His Majesty in Privy Council (section 162 of the Land Act).

The Judges of the Land Court are appointed by His Majesty in Privy Council and hold office during His Majesty's pleasure (section 146 of the Land Act).

The Judges in the Land Court in the reporting period were:

President Owen Godfrey Paulsen;

Justice Charles Bentley Cato; and

Justice Michael Dishington Scott (part time until September 2017).

The Land Court sits primarily at Nuku'alofa but undertakes circuits to the Outer Islands. In the reporting period the Court undertook two circuits to Vava'u but did not sit in Ha'apai, 'Eua or the Niuas as there were no cases ready to be heard in those Island Groups.

## The Legal Profession

The Registrar of the Supreme Court is responsible to keep the Roll of Law Practitioners in the Kingdom (section 4 of the Law Practitioners Act). The Lord Chief Justice may enroll Law Practitioners who are of suitable character and have sufficient knowledge and experience and training in the law (section 5 of the Law Practitioners Act). Law Practitioners are required to apply for and be issued with a Law Practitioners Practising Certificate in each calendar year (section 7 of the Law Practitioners Act).

The table below shows the total number of Law Practitioners that were issued with Practising Certificates in this and the previous two reporting periods. It also breaks down the totals between different categories of Law Practitioner.

<b>Year</b>	<b>Total Certificates issued</b>	<b>Kings Counsel</b>	<b>Senior Counsel</b>	<b>Fully Qualified</b>	<b>Locally Qualified</b>	<b>New Law Practitioners</b>
2017	87	1	8	65	14	6
2016	83	1	8	60	14	7
2015	83	1	8	58	16	9

Fully qualified Law Practitioners have obtained a law degree and satisfied the requirements for admission as a lawyer in another Commonwealth jurisdiction. Locally qualified Law Practitioners do not hold a law degree but have satisfied the Lord Chief Justice that they are suitable persons to be engaged in the practice of the law in the Kingdom's Courts.

There were five fully qualified Law Practitioners and one locally qualified Law Practitioner enrolled in this reporting period. The locally qualified Law Practitioner was restricted to practice only in the Magistrate's Court.

It is pleasing to see an increase in the number of legally qualified Law Practitioners. However, it is a concern that most legally qualified Law Practitioners (including those recently enrolled) are employed in Government. There is a significant

shortage of Law Practitioners offering services to the public. This is an access to justice concern.

It was reported that one former Law Practitioner was practicing without a licence and that another Law Practitioner who was employed in Government was also working for the public in breach of clause 24 of the Constitution. Those matters have been referred to the Tonga Law Society for investigation.

During this reporting period the Lord Chief Justice conducted monthly trainings for Law Practitioners focusing on common types of application and basic advocacy skills. The training was well attended and is continuing.

## **The Cook Island Indicators**

In March 2012 the Chief Justices of 14 South Pacific Island Countries participating in the Pacific Judicial Development Programme (which includes Tonga) met in Suva, Samoa and agreed to progressively build the capacity of their Judicial and Court Staff to publish annual reports which included Court performance data and results against 15 indicators. These 15 indicators are known collectively as the Cook Island Indicators.

A description of the Cook Island Indicators is in the Appendix.

The collection and analysis of this data over a number of years allows the Courts to evaluate their performance year by year, identify trends, allocate resources efficiently and set realistic and appropriate Court performance standards.

The reporting of this data to stakeholders and to the public promotes accountability and transparency of the Judiciary.

What follows is the performance data for the Superior Courts against each of the 15 Cook Island Indicators.

Where applicable (and data is available) performance is compared with results in the previous two reporting periods (that is the 2015 and 2016 years) and against the standards set for the Superior Courts in the Annual Management Plan.

### **Indicator one – clearance rate**

#### **Court of Appeal**

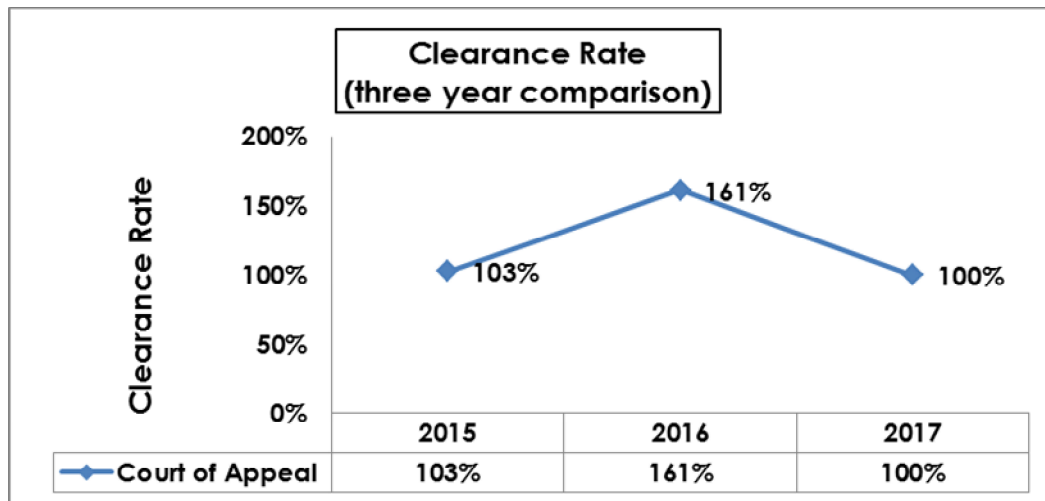
At the beginning of this reporting period there were seven cases pending for hearing in the Court of Appeal. A further 15 appeals were filed in the reporting period. The Court finalised 15 appeals leaving seven appeals pending at the end of the reporting period.

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



The table and line graphs below are a summary of the work of the Court of Appeal in the last three reporting periods. It should be noted that there are some minor anomalies caused by corrections made in the Case Management System after the conclusion of reporting periods. These do not materially affect the results achieved by the Court in this or other reporting periods.

Court of Appeal	Pending at Start of Reporting Period	New Cases Filed	Cases Filed and Finalised in this Reporting Period	Total Appeals Finalised	Pending at End of Reporting Period
2017	7	15	8	15	7
2016	17	18	12	29	6
2015	13	32	15	33	12



It will be observed that there was a lower clearance rate on the previous reporting period. This is not of concern and is the result of two factors. First, there were a significant number of cases pending from 2015 (12) which were finalised in the 2016 year. The clearance rate in that year was therefore unusually high. Secondly, a proportionately large number of appeals were filed late in the year and the Court

had no opportunity to hear them before the end of the reporting period. They will be finalised in 2018.

In each of the last three reporting periods the Court of Appeal has cleared any backlog of cases and kept up with all new work.

## **Supreme Court**

In the Ministry of Justice's Annual Management Plan the baseline for this indicator was a clearance rate of 106% and the target was to increase the clearance rate in the reporting period to 110%.

At the beginning of this reporting period there were 417 cases pending in the Supreme Court. A further 727 cases were filed in the reporting period. The Supreme Court finalised 795 cases. There were 349 cases pending at the end of the reporting period.

The Supreme Court's clearance rate in this reporting period was 109%.

The large majority of pending cases, both at the beginning and end of the reporting period, were family division cases. Cases that are pending are either not ready for hearing, have already been allocated a hearing date or have been heard and are awaiting the issue of a written ruling. Many family cases cannot be finalised because applications are incomplete or because the applicant has not undertaken some necessary step, such as serving the application on an affected party. The Court provides direction to applicants as to what is required to advance their applications but is reliant upon them to comply with those directions before hearing cases.

The table below is a summary of the work of the Court in this and the previous two reporting periods.

<b>Supreme Court</b>	<b>Pending at Start of Reporting Period</b>	<b>New Cases Filed</b>	<b>Cases Both Filed and Finalised in the Reporting Period</b>	<b>Cases Finalised</b>	<b>Pending at End of Reporting Period</b>
2017	417	727	448	795	349
2016	454	817		858	417
2015	598	751		926	423

The summary for this reporting period is broken down by division in the tables below. The workload of the family law division is further broken down between the different kinds of application that are made to the Court.

The first table provides the numbers of cases pending, filed and finalised in the reporting period by division of the Court. The second table shows the clearance rate by division of the Court.

<b>Supreme Court</b>	<b>Pending at Start of Reporting Period</b>	<b>New Cases Filed</b>	<b>Case both Filed and Finalised in the Reporting Period</b>	<b>Cases Finalised</b>	<b>Pending at End of Reporting Period</b>
Criminal	48	150	89	127	71
Civil	65	59	21	68	56
Criminal Appeal	6	10	9	14	2
Civil Appeal	2	9	8	9	2
Divorce	99	213	149	234	78
Adoption	79	71	36	105	45
Legal Guardianship	61	65	28	82	44
Wedlock	46	89	61	101	34
Custody	3	4	2	5	2
Estate Administration	8	57	45	50	15
<b>TOTAL</b>	<b>417</b>	<b>727</b>	<b>448</b>	<b>795</b>	<b>349</b>

<b>Division</b>	<b>Clearance Rate</b>
Criminal	<b>85%</b>
Civil	<b>115%</b>
Criminal Appeal	<b>140%</b>
Civil Appeal	<b>100%</b>
Divorce	<b>110%</b>
Adoption	<b>148%</b>
Legal Guardianship	<b>126%</b>
Wedlock	<b>113%</b>
Custody	<b>125%</b>
Estate Administration	<b>88%</b>
<b>TOTAL</b>	<b>109%</b>

It will be observed that with the exception of criminal and estate administration each division of the Court had a clearance rate of more than 100%.

The criminal division had a clearance rate which was less than 100%. That means that more cases have been filed than were finalised in the reporting period. There were also a lower number of criminal cases finalised in the reporting period than in the 2016 year. The reasons for this may include more accused electing trial (rather than pleading guilty), lengthier trials and unexpected adjournments of trials scheduled for hearing. This will be investigated to identify steps that can be taken to raise the clearance rate in later reporting periods.

The relatively low clearance rate in estate administration cases is the result of applicants failing to complete applications and is not of concern. All estate administration applications are dealt with upon the submission of complete applications.

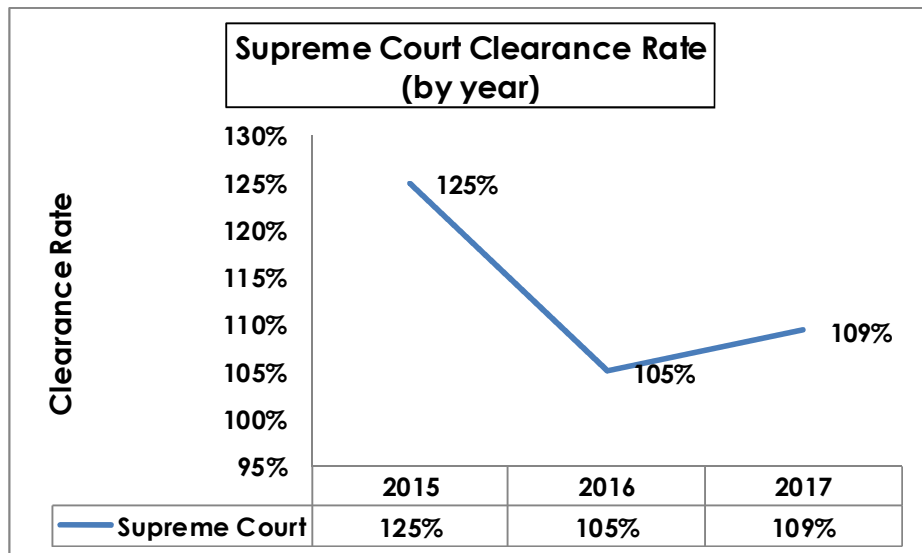
The clearance rates for all cases heard in Circuit Courts in this reporting period are shown in the table below.

<b>Circuit</b>	<b>New Cases Filed</b>	<b>Finalised</b>	<b>Clearance Rate</b>
Vava'u	61	48	79%
Ha'apai	12	12	100%
'Eua	6	6	100%
<b>TOTAL</b>			<b>83%</b>

The Court attempts to finalise all pending cases when visiting the Outer Islands. However some applicants, particularly in family cases, file late applications which cannot be dealt with until the following circuit. This explains the lower clearance rate of cases in Vava'u.

Overall the Supreme Court has improved its clearance rate on the previous reporting period. This is shown in the line graph below.

The results confirm that the Supreme Court is keeping up with its workload.

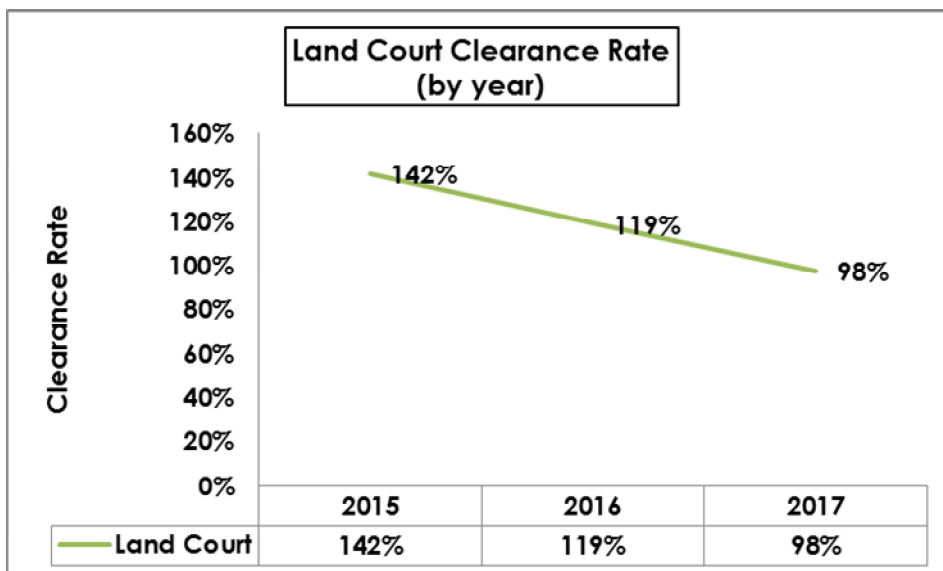


## Land Court

At the beginning of this reporting period there were 38 cases pending in the Land Court. A further 45 cases were filed in the reporting period. The Land Court finalised 44 cases. There were 39 cases pending at the end of the reporting period.

The Land Court's clearance rate in this reporting period was 98%.

The clearance rate is lower than in the two previous reporting periods. This is shown in the line graph below. As a result the number of pending cases has increased by a small margin. This is shown in the table below.



Pending cases by Year	2015	2016	2017
Land Court	22	35	39

The lower clearance rate in this reporting period is the result of three factors. First, there are lengthy delays in progressing cases because the Ministry of Lands' records cannot be obtained. As a result the Crown Law Office is unable to obtain instructions from the Minister and cases cannot be progressed. There is an urgent need for the records of the Ministry of Lands to be digitized to ensure they are

complete, accurate and promptly assessible. Secondly, in this reporting period there was one case that required 19 hearing days and took the Judge many weeks to write his decision (*Siasi Tokaikolo 'Ia Kalaisi v Pohiva Tu'I'onetoa* ors LA 22 of 2015). In the time taken to hear this one case the Land Court would ordinarily have finalised six or more cases. Thirdly, there are many cases that do not proceed as scheduled because of late applications for adjournments by Counsel. Unfortunately this is often because Counsel are not prepared. In future the Court will be less inclined to agree to adjournments to avoid the waste of precious judicial resources.

The clearance rate at 98% remains satisfactory. The Land Court is keeping up with its workload.

## **Indicator two - average duration of case from filing to finalisation**

### **Court of Appeal**

The average duration of an appeal from filing to finalisation in this reporting period was 110 days.

### **Supreme Court**

In the Ministry of Justice's Annual Management Plan the target for this indicator is that all criminal cases should be finalised within 1 year of filing (taken as 365 days) and all civil actions should be finalised within 15 months of filing (taken as 455 days). These targets were exceeded in the reporting period.

The average disposal time in all cases was 292 days.

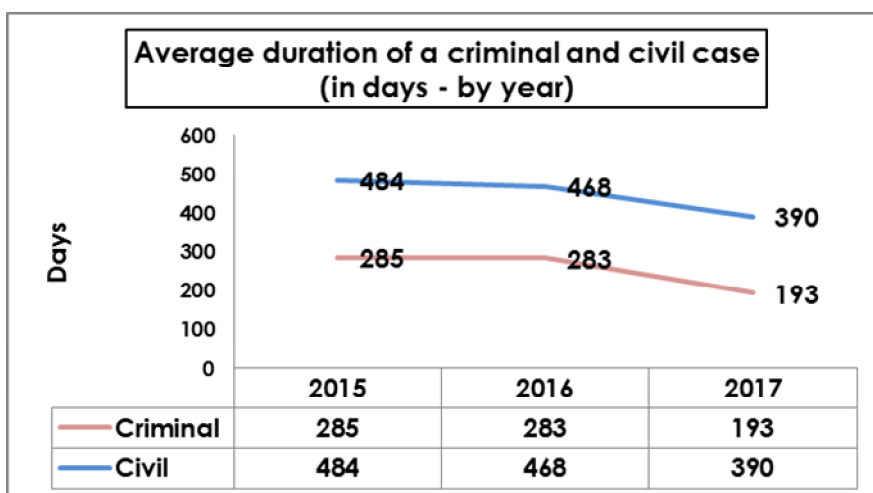
The average duration of cases (in days) from filing to finalisation in each of the last three reporting periods by division of the Supreme Court is shown in the table below. It should be noted that some data is not available in previous reporting periods.

<b>Division</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Criminal	285	283	193
Civil	484	468	390
Criminal Appeal	Not reported	Not reported	148
Civil Appeal	Not Reported	Not Reported	109
Divorce	Not Reported	Not Reported	165
Adoption	Not reported	Not reported	249
Legal Guardianship	Not reported	Not reported	215
Wedlock	Not reported	Not reported	95
Custody	Not reported	Not reported	96
Estate Administration	Not reported	Not reported	96
<b>TOTAL AVERAGE</b>	<b>385 days</b>	<b>376 days</b>	<b>198 days</b>
<b>TOTAL AVERAGE FOR ONLY CRIMINAL AND CIVIL CASES</b>			<b>292 days</b>

There is a trend for civil and criminal cases to be finalised more quickly than in previous reporting periods. This is represented in the line graph below.

The quicker disposal of cases is due, at least in part, to greater case management including earlier identification of issues, strict timetabling and allocation of early hearing dates. Such practices promote early finalisation of cases by ruling or settlement.





Previous annual reports have not included figures for the average disposal days of cases heard in Circuit Courts. Those figures are in the table below. In future years this data will be included allowing for trends to be identified.

The average disposal time in all cases in Circuit Courts was 142 days.

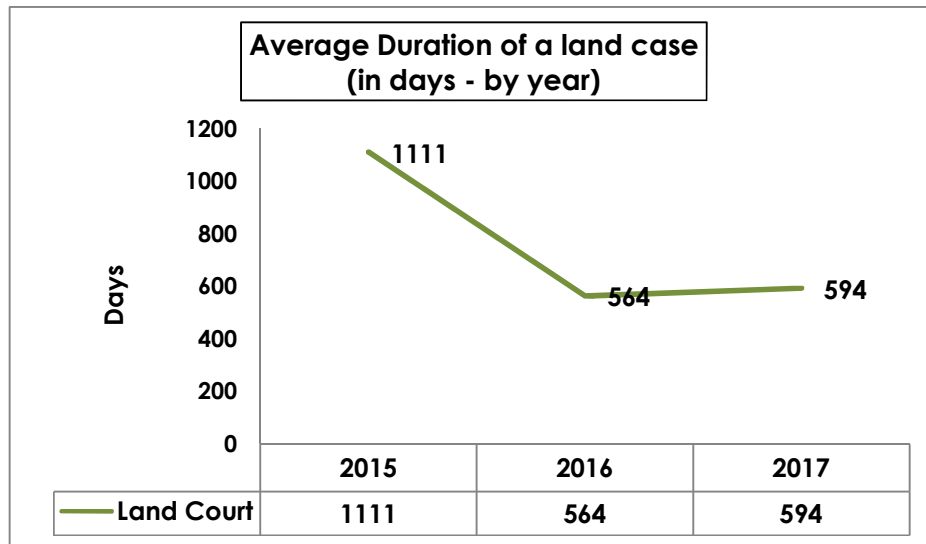
Circuit	Total Cases Finalised	Total Days	Average Days Disposal Time
Vava'u	48	7015	146
Ha'apai	11	1347	122
'Eua	6	841	140
<b>TOTAL</b>	<b>65</b>	<b>9203</b>	<b>142</b>

## Land Court

The average duration between filing and finalisation of Land Court cases in this reporting period was 594 days. This is represented in the line graph below.

The reasons for the increase on the previous reporting period are the delays in obtaining records from the Ministry of Lands, late adjournment applications by Counsel and an unusually long land trial in this reporting period. The Land Court

sets all cases down for hearing when they are considered ready for hearing. There is no delay in allocating hearing dates.



### Indicator three – percentage of appeals

#### Court of Appeal

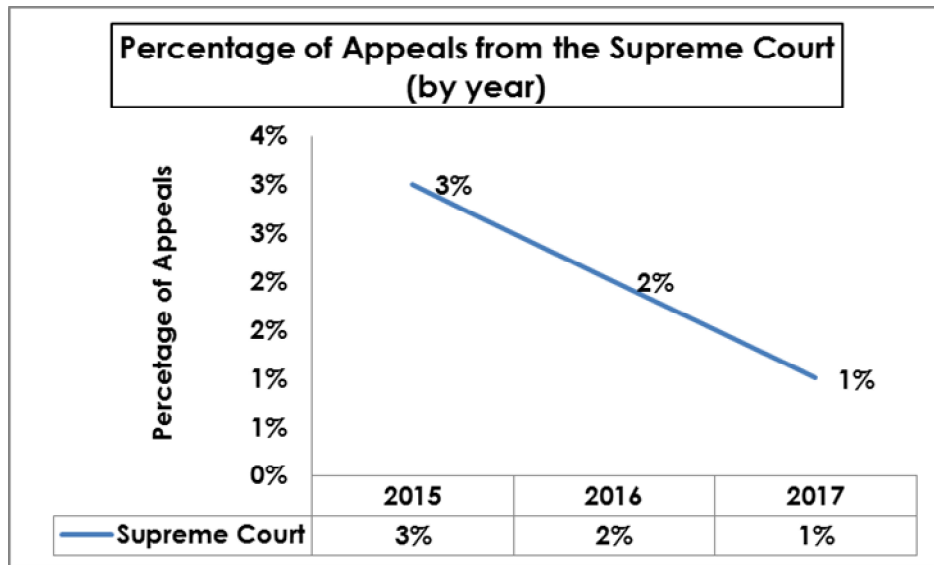
There are no appeals from decisions of the Court of Appeal.

#### Supreme Court

In the Ministry of Justice's Annual Management Plan the target for this indicator is that the percentage of appeals not exceeds 2% of all cases finalised in the Supreme Court. There is a trend of fewer appeals from decisions of the Supreme Court.

The percentage of appeals from all cases finalised in the Supreme Court in the last three reporting periods is shown in the following table and line graphs.

Court	2015	2016	2017
Supreme Court	3%	2%	1%



The percentage of cases appealed by division of the Supreme Court in this reporting period is shown in the table below.

Division	Total Cases Finalised	Number of Cases Appealed	Number of Cases Not Appealed	% of Cases Appealed	% of Cases Not Appealed
Criminal	127	2	125	2%	98%
Civil	68	7	61	10%	90%
Criminal Appeal	14	0	14	0%	100%
Civil Appeal	9	1	8	11%	89%
Divorce	234	0	234	0%	100%
Adoption	105	0	105	0%	100%
Legal Guardianship	82	0	82	0%	100%
Wedlock	101	0	101	0%	100%
Custody	5	0	5	0%	100%
Estate Administration	50	0	50	0%	100%
<b>TOTAL</b>	<b>795</b>	<b>10</b>	<b>785</b>	<b>1%</b>	<b>99%</b>

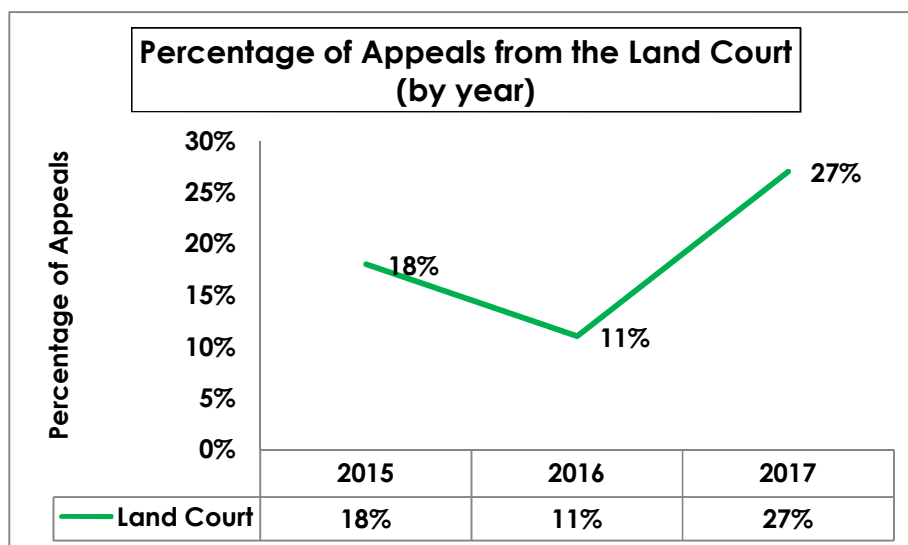
The appeals from decisions of the civil division of the Supreme Court, although statistically significant, are still both few in number and low as a percentage of all cases finalised.

This data suggests a high degree of satisfaction with the quality of the rulings of the Supreme Court across all divisions.

## Land Court

There have been a higher percentage of appeals from decisions of the Land Court than from decisions of the Supreme Court. The percentage of appeals from all cases finalised in the Land Court in the last three reporting periods is shown in the following table and line graph. The percentage of appeals in this reporting period appears high compared to previous years but includes applications for leave to appeal and in some cases there has been an appeal and cross-appeal in one case and both have been counted separately.

Court	2015	2016	2017
Land Court	18%	11%	27%



## Indicator four – overturn rate on appeal

### Court of Appeal

There are no appeals from the Court of Appeal and no decisions overturned on appeal.

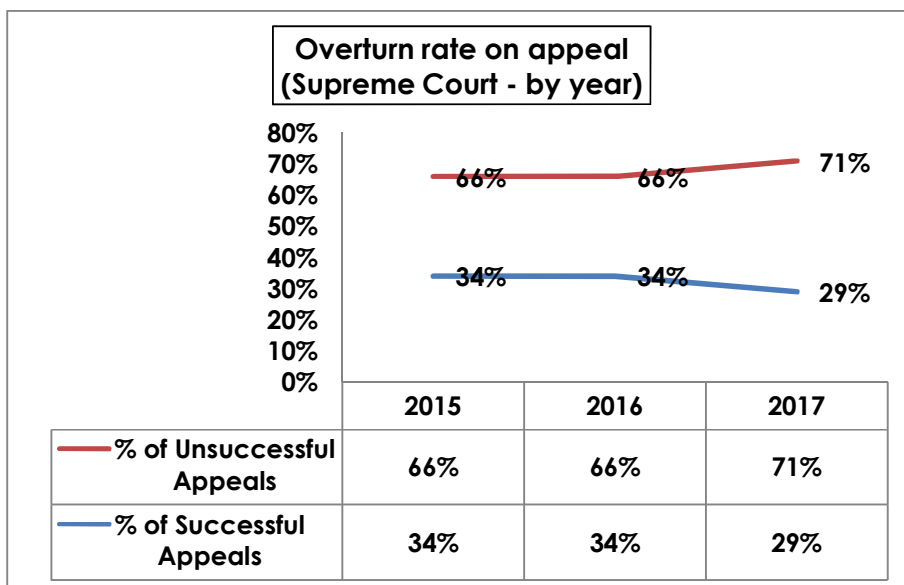
## Supreme Court

In the Ministry of Justice's Annual Management Plan the target for this indicator is that the percentage of cases overturned on appeal should not exceed 30-40%. The overturn rate of cases on appeal from the Supreme Court is set out in the table below and is lower than in previous reporting periods. The percentage of cases that were overturned on appeal was 29%. This means that 71% of appeals finalised were unsuccessful or were withdrawn.

Division	Total Cases Finalised	Number of Cases Appealed	Pending	% of Successful	% Unsuccessful
Criminal	127	2	2	0%	N/A
Civil	68	7	0	29%	71%
Criminal Appeal	14	0	0	0%	N/A
Civil Appeal	9	1	1	0%	N/A
Divorce	234	0	0	0%	N/A
Adoption	105	0	0	0%	N/A
Legal Guardianship	82	0	0	0%	N/A
Wedlock	101	0	0	0%	N/A
Custody	5	0	0	0%	N/A
Probate & Administration	50	0	0	0%	N/A
<b>TOTAL</b>	<b>795</b>	<b>10</b>	<b>3</b>	<b>29%</b>	<b>71%</b>

The percentage of cases overturned on appeal in the last three reporting periods is shown in the table and line graph below.

YEAR	% of Successful appeals	% of Unsuccessful appeals
2015	34%	66%
2016	34%	66%
2017	29%	71%



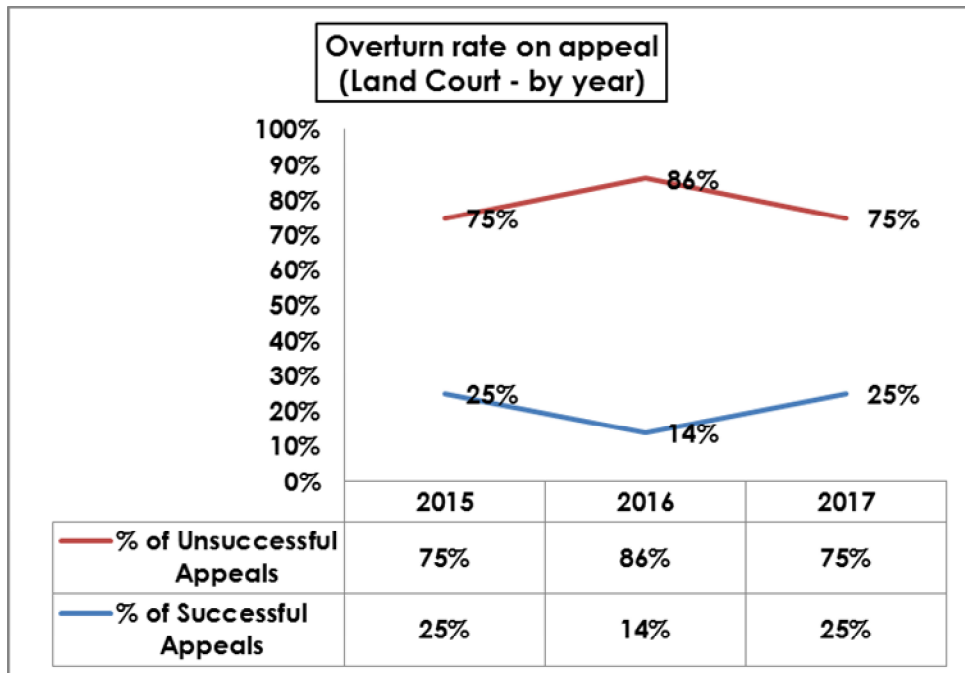
It will be observed that in the two previous reporting periods the percentages of cases overturned on appeal had remained steady at 34% but in this reporting period it has reduced to 29%.

### Land Court

A breakdown of the percentage of cases overturned on appeal from decisions of the Land Court are set out in the table and line graph below. The percentage of cases that were overturned on appeal was 25% with 75% of appeals being unsuccessful or withdrawn.

The percentage of cases overturned on appeal is consistent with the Supreme Court. The higher percentage of appeals filed may reflect social attitudes to land ownership and the fact that most claims are family disputes where the parties have a strong emotional investment in the outcome.

Year	No. of Appeals Filed	Appeals Allowed	Appeals Dismissed	% of Appeals Dismissed
2015	4	1	3	75%
2016	7	1	6	86%
2017	12	2	6	75%



**Indicator five - percentage of cases where fee waivers are given.**

**All Superior Courts**

There is presently no statutory authority for the Superior Courts to grant fee waivers. There were no applications for fee waivers in this reporting period. The percentage of cases where fee waivers are given is therefore 0%.

The fact that no applications were made for fee waivers should not be thought to indicate that there is no need for fee waivers. It is likely no applications are made because it is understood that they cannot be granted. There are cases where fee waivers should be given.

There is a proposal to amend the Court Fees Act to make Court fees more equitable, increase access to justice for disadvantaged persons and to allow the Lord Chief Justice to grant fee waivers in the exercise of his discretion. It is understood the proposals are presently with the Ministry of Justice.

## Indicator six – percentage of cases disposed of through Circuit Courts

### Court of Appeal

The Court of Appeal sits only Nuku'alofa. It does not undertake circuits. The percentage of cases disposed of by the Court of Appeal through Circuit Courts is 0%.

### Supreme Court and Land Court

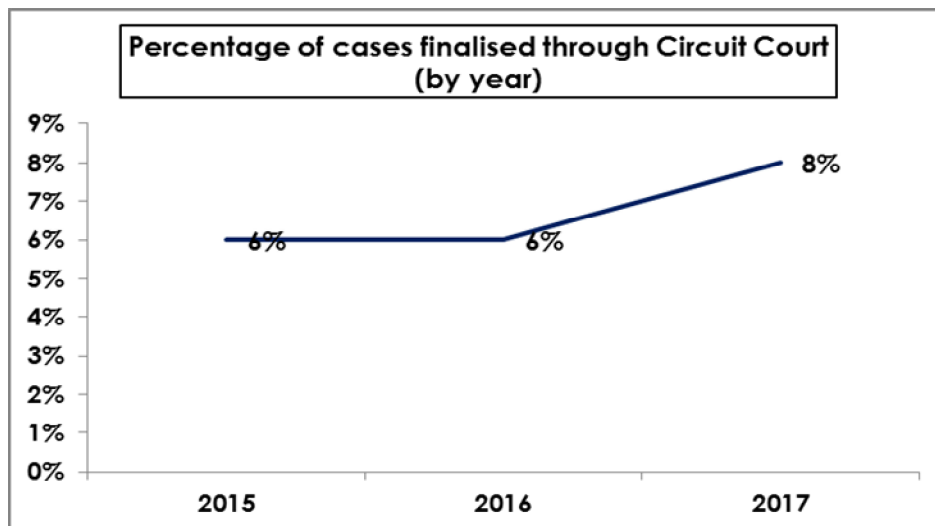
All Judges of the Supreme Court are also Judges of the Land Court. When going on circuit the Judges may sit in both the Supreme Court and the Land Court. In this reporting period there were no land cases finalised in Circuit Courts. Although this was unusual parties living in the Outer Islands do at times choose to have their cases heard in Nuku'alofa as that may be more convenient and costs efficient for them.

A breakdown of the cases finalised in Circuit and non-Circuit Courts in the Supreme Court (broken down by division) and in the Land Court is set out below.

Division	Total Cases Finalised	Total cases finalised by Circuit	% of cases finalised in circuit	% of cases finalised in non-circuit
Criminal	127	6	5%	95%
Civil	68	1	1%	99%
Criminal Appeal	14	0	0%	100%
Civil Appeal	9	3	33%	67%
Divorce	234	18	8%	92%
Adoption	105	19	18%	82%
Legal Guardianship	82	12	15%	85%
Wedlock	101	6	6%	84%
Custody	5	0	0%	100%
Probate & Administration	50	0	0%	100%
<b>TOTAL SUPREME COURT</b>	<b>795</b>	<b>65</b>	<b>8%</b>	<b>92%</b>
<b>TOTAL LAND COURT</b>	<b>44</b>	<b>0</b>	<b>0%</b>	<b>100%</b>



The total percentage of all cases finalised in Circuit Courts has increased on the two previous reporting periods from 6% to 8%. This is shown in the line graph below. Most of these are family division cases in the Supreme Court. The Ministry advertises Circuits to the public and this often results in a number of family cases being filed.



### **Indicator seven – percentage of cases where a party receives legal aid**

#### **All Superior Courts**

There is no legal aid in Tonga. Anecdotally, it is not uncommon for Law Practitioners to work on a *pro bono* or contingent fee basis but there is no data available in relation to this. The lack of legal aid, particularly in criminal and youth cases, is an access to justice concern.

The percentage of cases where a party receives legal aid is 0%.

### **Indicator eight – documented processes for handling a complaint**

#### **All Superior Courts**

There are documented processes for handling complaints against Judicial Officers.

Formal complaints are made to the Judicial Appointments and Discipline Panel. The procedures by which such complaints are handled are set out in the Discipline Procedure Order 2017.

There is another complaint process that is available to the public which is displayed at the Ministry of Justice and the Supreme Court offices. A number of complaints are received in this way. These are either dealt with by the Ministry (often in consultation with the Lord Chief Justice) or in serious cases they can be reported to the Judicial Appointments and Discipline Panel.

## **Indicator nine – percentage of complaints against Judicial Officers**

### **Court of Appeal**

There were no complaints received against Judges of the Court of Appeal in the reporting period.

The percentage of complaints against Judicial Officers of the Court of Appeal was 0%.

### **Supreme Court and Land Court**

There were two complaints against Supreme Court Judges in the reporting period. This was an increase on the previous two years when no complaints were received.

Of the two complaints made, one was withdrawn upon the request of the complainant. The second complaint was referred to the Judicial Appointments and Discipline Panel and was dismissed.

The number of complaints received against Judicial Offices of the Supreme Court and Land Court as a percentage of all cases filed was 0.16%.

## **Indicator ten - percentage of complaints received concerning Court Staff.**

### **All Superior Courts**

The Superior Courts share the same staff. Staff are expected to work on any case whether it is filed in the Court of Appeal, the Supreme Court or the Land Court. There were no complaints received concerning Court Staff in the reporting period. The percentage of complaints received concerning Court Staff is 0%.

## **Indicator eleven - average cases per Judicial Officer**

### **Court of Appeal**

As noted earlier there were seven cases pending at the beginning of the reporting period and a further 15 appeals filed making a total of 22 cases before the Court. In the reporting period three Judges sat on the Court in each session. The average number of cases per Judicial Officer in this reporting period was therefore 7.

### **Supreme Court**

There were two full-time and one part-time Judicial Officer in the reporting period. The part time Judge, Justice Scott, was working almost entirely in the Land Court. He did undertake some work in the Supreme Court and for reporting purposes it is being assumed that no more than 15% of his time (or the equivalent of just .15 of a full time Judge) was spent by him on Supreme Court cases and 85% in the Land Court on land cases. The data below proceeds on the basis that there were the equivalent of 2.15 full time Judicial Officers in the Supreme Court in the reporting period.

The work of the Court was broadly divided amongst the Judges by division. Whilst there was some overlap Lord Chief Justice Paulsen was responsible for the civil, civil appeal, family and estate administration cases. Justice Cato was responsible for the criminal and family cases. Justice Scott (the part time Judge) did some family cases and one civil appeal. A breakdown of the number of cases finalised by Judge are set out in the table below.

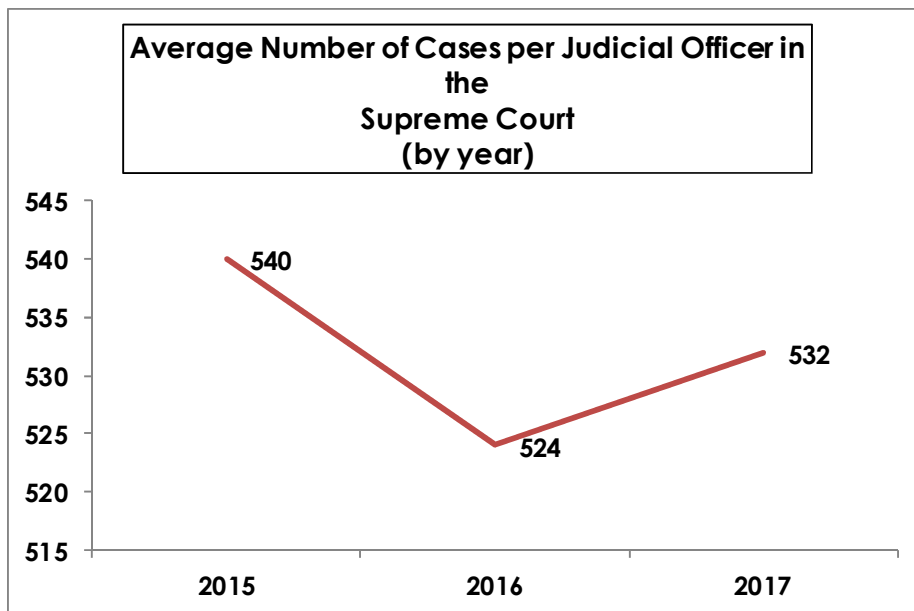
<b>Division</b>	<b>Total Cases Finalised</b>	<b>Paulsen CJ</b>	<b>Cato J</b>	<b>Scott J</b>
Criminal	127	9	118	0
Civil	68	68	0	0
Criminal Appeal	14	0	14	0
Civil Appeal	9	8	0	1
Divorce	234	147	71	16
Adoption	105	81	24	2
Legal Guardianship	82	60	16	4
Wedlock	101	79	22	0
Custody	5	5	0	0
Probate & Administration	50	49	1	0
<b>TOTAL</b>	<b>795</b>	<b>506</b>	<b>266</b>	<b>23</b>

The total number of cases dealt with (including those finalised) by the Supreme Court in the reporting period was 1144 which is broken down by division in the following table.

<b>Division</b>	<b>Total Pending</b>	<b>Total new cases filed</b>	<b>Total Pending and new cases</b>
Criminal	48	150	198
Civil	65	59	124
Criminal Appeal	6	10	16
Civil Appeal	2	9	11
Divorce	99	213	312
Adoption	79	71	150
Legal Guardianship	61	65	126
Wedlock	46	89	135
Custody	3	4	7
Probate & Administration	8	57	65
<b>TOTAL</b>	<b>417</b>	<b>727</b>	<b>1144</b>

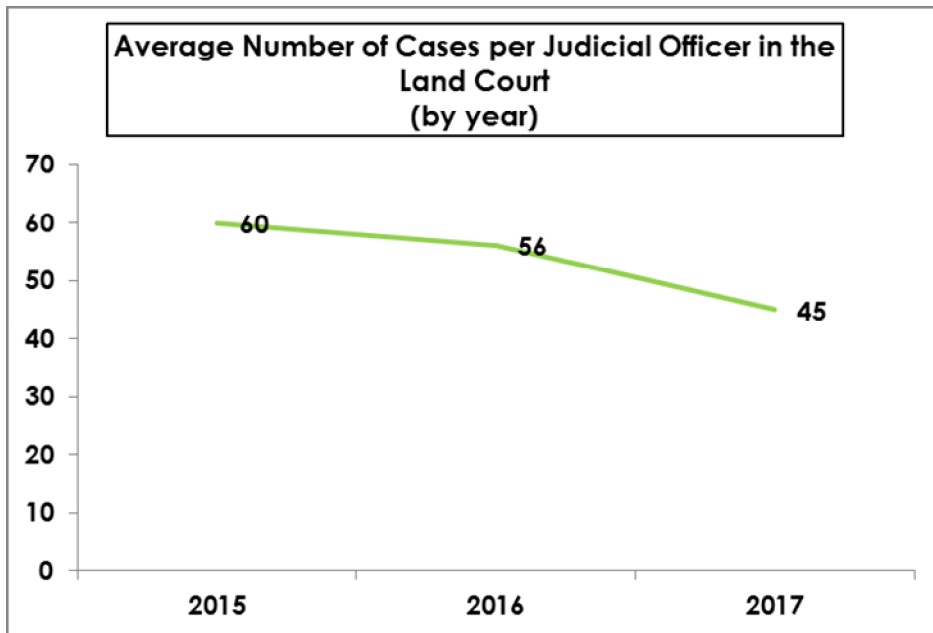
The average number of cases per Judicial Officer in this reporting period was 532. This was broadly consistent with the results in the previous two reporting periods. This is shown in the table and line graphs below.

Year	Average number of Supreme Court cases per Judicial Officer
2015	540
2016	524
2017	532



### Land Court

The total number of cases dealt with (including those finalised) by the Land Court in the reporting period was 83, made up of 38 cases pending at the beginning of the reporting period and 45 further cases filed. Based on there being the equivalent of 1.85 Land Court Judges in the reporting period (Justice Cato did not do any work in the Land Court and Justice Scott spent .85 of his time in the Land Court) the average number of cases per Judicial Officer was 45. This is shown in the line graph below.



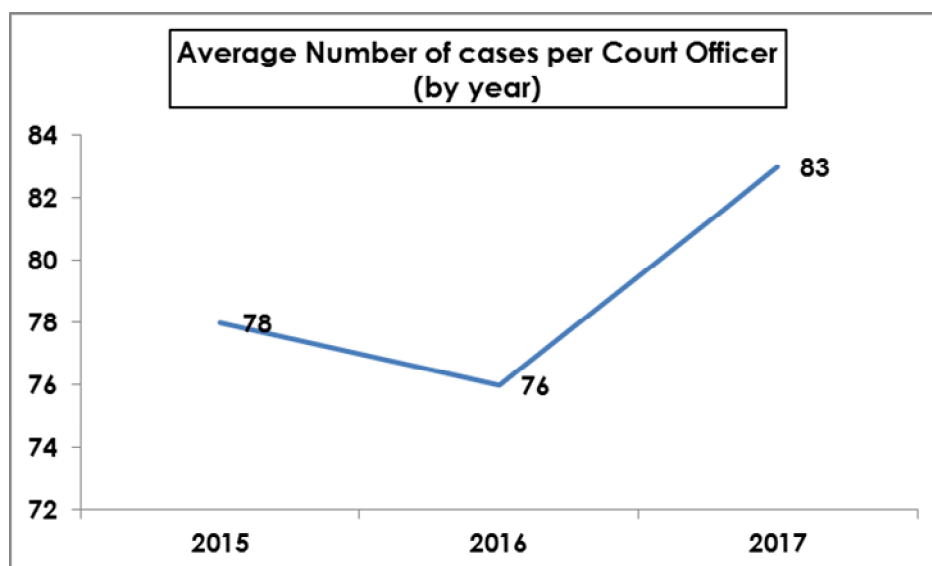
**Indicator twelve – Average number of cases per member of Court Staff**

**All Superior Courts**

In the Superior Courts staff may work on any file of the Court of Appeal, Supreme Court or Land Court. By way of example, the Registrar of the Supreme Court is responsible for processing appeals to the Court of Appeal, preparing transcripts, preparing appeal case books and allocating hearings. The Registrar works closely with the Lord President in the performance of these duties. Staff who act as clerks and typists for the Court of Appeal are all working in the Supreme Court and in the Land Court and take on extra duties during periods that the Court of Appeal is sitting.

In the reporting period the average number of cases per member of Court Staff was 83. This is set out in the attached table with a comparison in the last two reporting periods in the following line graph.

Court	Total Pending	Total new cases filed	Total Pending and new cases	Average Number of Cases per Court Officers
Supreme Court	417	727	1144	76
Land Court	38	45	83	6
Court of Appeal	7	15	22	1
<b>TOTAL</b>	<b>462</b>	<b>787</b>	<b>1249</b>	<b>83</b>



**Indicator thirteen – Court produces an annual report that is available in the following year.**

The Court does produce an annual report that is available on the Ministry of Justice website.

**Indicator fourteen - Information on Court services is publically available**

Under the guidance of the Chief Executive Officer, Ms Susana Faletau, a great deal of work has been done to provide information to the public of the services available from the Courts.

The Courts have continued using the radio to announce cases mainly for Circuit Courts. In all the circuits held in this reporting year, the information was made available to the public via radio announcements.

The Courts, through the Ministry of Justice, have conducted television programs aimed at educating the public on their services and functions. A representative of the Court has been present in several television programs providing information about such matters as the location of the Courts in Tonga, the requirements for different applications that may be filed with the Court and the fees involved in doing so.

The Supreme Court also conducted special television programs on the Probate Act and the functions of Justices of the Peace. These were delivered by the Assistant Registrar, Tevita Fukofuka, and Principal Assistant Secretary, Adi Talanaivini Mafi, from the Leadership and Policy Division of the Ministry of Justice.

Meetings and consultations are still ongoing to develop the website of the Ministry of Justice where it is intended that information relevant to the services and decisions of the Courts will be published and made available to the public through the internet.

### **Indicator fifteen - Court published judgments on internet and/or Paclii**

The judgments of the Superior Courts are widely published and available to the public. All judgments of the Court are now published on the Crown Law website [www.ago.gov.to](http://www.ago.gov.to) within days of being issued by the Court.

The judgments of the Superior Courts are also sent to Paclii for publication. In this reporting period the Superior Courts identified 84 judgments that were of significance for reporting purposes but only 60 of those were reported on Paclii. Improved processes have been put in place to ensure all judgments are sent to Paclii at the time they are issued.

The Superior Court's judgments are reported each year in the Tonga Law Reports. The Tonga Law Reports are available up to and included 2016.



In addition, all judgments are distributed electronically upon being issued to the print and radio media, some government departments and individuals who have expressed an interest in receiving them. In 2018 all judgments of the Superior Courts will be distributed to any Law Practitioners who requests them.

## **Justices of the Peace**

The Chief Justice appointed 14 people to be Justices of the Peace for the period of 1 July 2017 to 30 June 2018. The Justices of the Peace are appointed under the section 94 of the Magistrates Court Act and perform duties set out in subsection 4 of that provision which are as follows:

*“(4) Justices of the Peace shall have the powers specified in their warrants of appointment, which may include the power –*

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

There is presently no centralized data maintained of the work of the Justices of the Peace. The Chief Justice requires the Justice of the Peace to provide details of their work before re-appointing them each year and this will continue.

## **Judicial Training**

The Pacific Judicial Strengthening Initiative (PJSI) and Judicial Pacific Participation Fund (JPPF) continue to be the major suppliers of training and mentoring opportunities for Judges/Magistrates and Court Officers of Tonga.

Both programmes are funded by the New Zealand Ministry of Foreign Affairs and Trade.

PJSI is implemented by the Federal Court of Australia. JPPF is implemented by the New Zealand Institute of Judicial Studies.

The following PJSI workshops/trainings/meetings were held during this reporting period:

- ❖ **Project Management and Evaluation Workshop:** Ms. Fatima Fonua and Mrs. Malia Taufu attended this workshop which was held at Port Vila, Vanuatu from 20-24 February 2017.
- ❖ **Chief Justice's Leadership Workshop:** The Lord Chief Justice attended this workshop which was held in Apia, Samoa from 3-5 April 2017.
- ❖ **Initiative Executive Committee (IEC) Meeting:** The IEC is the governing body of PJSI and comprises a nominated Chief Justice from each of the three Pacific sub-regions, a representative each of the Lay Judiciary and Court Officers and a representative from MFAT. The Lord Chief Justice and the Registrar of the Supreme Court, Ms. Fatima Fonua, are members of the IEC. The Committee meets to hear reports of PJSI's progress and provides strategic direction to the Technical Director (Livingston Armytage) and Team Leader (Lorry Metzner). Its second meeting was held on 6 April 2017 at Apia, Samoa and was attended by the Lord Chief Justice and Ms. Fatima Fonua.
- ❖ **Training of Trainers Workshop:** Mr. Viliami Folaumahina attend this workshop which was held in Rarotonga, Cook Islands from 12-23 June 2017. Mr. Folaumahina completed the workshop and was certified a National Trainer.
- ❖ **Lay Judicial and Court Officer's Orientation Training:** Senior Magistrate Tuita, Magistrate Kaufusi and Magistrate Ma'u attended this training at Honiara, Solomon Islands from 20-24 November 2017. Ms. Fatima Fonua was also invited to attend as a faculty member to deliver trainings on Customer Service and Case Registry Management.

The following trainings/mentoring programmes were provided under JPPF during this reporting period:

- ❖ **Manukau District Court Mentoring Program:** Chief Magistrate, Principal Magistrate Tatafu and Ms. Fatima Fonua attended a mentoring program with the Manukau District Court on 20-24 March 2017.
- ❖ **Registrar's Training on Decision Making:** Ms. Fatima Fonua and Mr. Tevita Fukofuka attended the Registrar's Training on Decision Making at the Auckland District Court, Auckland, New Zealand from 14-16 June 2017.
- ❖ **Solution Focussed Sentencing:** The Lord Chief Justice attended training on solution focused sentencing in criminal cases in Wellington on 5-6 October 2017.

In addition to the above the Lord Chief Justice attended training funded by the Council of Europe on Cybercrime at Singapore on 27 February 2017 to 1 March 2017.

## **Clearance Certificates**

Prior to the General Election of 16 November 2017 the Supreme Court received 102 applications for clearance certificates from prospective candidates under Clause 65 of the Constitution and Section 9 (4) of the Electoral Act. The Lord Chief Justice and Registrar implemented forms and procedures for handling these applications (in the Supreme and Magistrate's Courts). All clearance certificates were provided promptly in accordance with the procedures that were adopted. The same procedures will be able to be used or adapted for future elections.

## **Appendix**

### **Indicator 1 - Clearance rate**

The clearance rate is the cases finalised in a year as a percentage of the number of cases filed. The result of this indicator is obtained by dividing the cases finalised by the cases filed. A clearance rate of 100% or more indicates that a Court is keeping up with its new work and is not creating or increasing a backlog of pending cases.

### **Indicator 2 –Average duration of a case from filing to finalisation**

This indicator measures the average period that it takes from the date a case is finalised to the date that the Court issues a ruling on the merits. The result of this indicator is obtained by totalling the days for each case from the date the case is filed to the date it is finalised and then dividing that total by the number of cases finalised. This is a measure of the Courts efficiency in resolving its caseload.

### **Indicator 3 – percentage of appeals**

This indicator measures the percentage of appeals filed from decisions of each division and circuit of the Court. The result against this indicator is obtained by dividing the number of cases in which an appeal is filed by the total number of cases filed.

This indicator is relevant for planning resources to handle the expected level of appeals in an efficient manner, to monitor any trends in the levels of appeals and identify whether appeals from particular divisions or particular judges are outliers and for what reasons.

### **Indicator 4 – Overturn rate on appeal**

This indicator is the percentage of appeals for each division and circuit. The result of this indicator is obtained by dividing the number of cases in which an appeal is filed by the total number of cases filed.

### **Indicator 5 Percentage of cases that are granted a Court fee waiver.**

This indicator refers to the percentage of cases by division and circuit where the Court has granted a fee waiver. It is considered a measure of the degree to which

the jurisdiction promotes access to justice for people in need. The result of this indicator is obtained by dividing the total number of cases by division and circuit by the number of cases in which a fee waiver is granted.

**Indicator 6 – Percentage of cases disposed of through Circuit Courts**

This indicator refers to the percentage of cases per division that are finalised through a circuit court as a percentage of the total number of cases filed. The result of this indicator is obtained by dividing the number of cases finalised through any circuit court by the total number of cases filed. The indicator is considered relevant so for the efficient allocation of resources to handle the Circuit Courts workloads and to measure access to justice in remote areas.

**Indicator 7 – Percentage of cases where party receives legal aid**

This is self explanatory but no figures can be provided as there is no legal aid in Tonga.

**Indicator 8 – Documented process for receiving and processing a complaint**

This is self explanatory and the annual report documents the relevant processes.

**Indicator 9 – Percentage of complaints received concerning a judicial officer**

The result of this indicator is obtained by dividing the number of complaints received concerning a Judicial Officer by the total number of cases filed.

**Indicator 10 - Percentage of complaints received concerning Court Staff**

The result of this indicator is obtained by dividing the total number of cases by the number of complaints received about Court Staff.

**Indicator 11 – Average number of cases per Judicial Officer.**

The result of this indicator is obtained by dividing the total number of cases filed by the number of Judicial Officers.

**Indicator 12 – Average number of cases per member of Court Staff**

The result of this indicator is obtained by dividing the total number of cases received by the number of Court Staff.

**Indicator 13- Court produces an annual report that is publically available in the following year**

This is self explanatory and no statistics are required.

**Indicator 14 Information on court services is publically available**

This is self –explanatory and no statistic are required.

**Indicator 15 – Court publishes judgments on the internet and/or Paclii.**

The result of this indicator is the total number of rulings issued by the Court that were sent to Paclii, the total number of rulings that appear on Paclii and the total number of rulings that otherwise appear on websites other than Paclii.