



Niue High Court Annual Report 2013-2014

PREPARED BY TIARA TUKUNIU AND DARREN TOHOVAKA OF THE DEPARTMENT OF JUSTICE, LANDS AND SURVEY WITH THE SUPPORT OF THE PACIFIC JUDICIAL DEVELOPMENT PROGRAM AND ENDORSEMENT OF THE NIUE HIGH COURT CHIEF JUSTICE PATRICK J. SAVAGE – NOVEMBER 2014.

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Introduction

Mission and Vision

MISSION

To ensure the effective and efficient administration of the Niue High Court and to provide and maintain a high level of support and advice to the Niue High Court and court users.

VISION

To be neutral, well managed and respected, reflecting not only the importance of the work we do but also to guarantee that the independence of the Court is maintained and it follows the confidence of the public in the Court system.

Message from the Chief Justice

NIUE HIGH COURT REPORT

Last year we were able to produce a report for the people of Niue on the activities of the Land Division of the High Court of Niue. This report deals with the High Court in all of its three divisions, (Land, Civil and Criminal) and the Niue Court of Appeal. It describes the way justice is delivered in Niue, who makes those decisions and also how the system is supported by the administration.

For most people in most societies Courts are somewhat remote and mysterious. It is important for the people of Niue that they have some understanding of their Court. The Court is an inherent and necessary part of a democratic society which must have an independent judicial system in which the rule of law prevails.

The people of Niue, in broad terms, have a fully developed independent and adequately supported judicial system in which they can have confidence and pride.

As with all human endeavours we must be watchful to ensure systems do not falter or degrade. The problems in the Niue High Court which I will discuss shortly, are not inherent or structural problems. They can be remedied if resources and management systems are provided.

THE LAND DIVISION

There is an increase in the number of cases filed in the Land Division and these cases are not being finalised for a number of reasons. It appears, that in the year under discussion in this report, 260 cases were filed but only 150 resolved. If this issue is not addressed in the immediate future there will be unfortunate consequences.

One of the reasons is that applications are filed by Niueans living overseas and they do not or cannot progress the application. It lingers in the system unaddressed and constitutes a significant portion of a backlog. It is my intention, after discussions with my brother and sister judges, that in cases where no steps have been taken over the last two years they will be set down for hearing to decide whether they can be dismissed. Parties of course have the right to explain that delay and dismissal will not be inevitable. Dismissal will not prevent an application being filed later when parties are realistically able to proceed.

Another fact is that staffing in the High Court is inadequate. Niue is receiving support from the Pacific Judicial Development Programme and training has been provided from that source to our staff, our Justices of the Peace and our Land Commissioners. Our staff also receive help from the Māori Land Court in New Zealand. So it is not an issue of competence but simply it seems to be that there are not enough staff. Our staff are loyal, industrious and knowledgeable but they are small in number and we would face extreme difficulty if staff were lost. We are vulnerable to a loss of corporate memory.

If there is increased staffing we will expect a greater flow of work with files being prepared in a greater volume so they can be put before a Judge and a hearing conducted. Your Judges are ready to provide more Judge time. If hearing weeks are held at the times when there are two flights a week in to Niue, then it may be possible to get 6 to 8 more Judge days in every year.

HOUSING THE REGISTRY

We are reaching the point where the registry has become inadequate and unworkable. The registry is a small transportable home. Staff work in extremely confined conditions. We have situations where those who come to the Court need privacy which is simply unavailable.

The Court consistently runs under budget. Other jurisdictions in the Pacific have decided that any budget under spent could be used to provide a further working area for Court staff. In another jurisdiction in the Pacific, filing fees were retained by the Court and after a number of years the amount available was sufficient to expand the registry.

MAINTAINING THE RECORD

Land title records are not properly cared for. They sit in a hot shipping container. They are exposed to high humidity and exposed to insects. Some of the documents are old and nearly crumbling to dust when handled.

Proper land title and survey records are crucial to and underpin the Land Court. The Land Court could not function without them and chaos would ensue.

We should also never forget that evidence given many decades ago is a cultural treasure and part of the heritage of the Niuean people. It is urgent that the record be transferred to electronic storage and appropriately backed up to ensure it is never lost.

CONCLUSION

Having drawn those matters to your attention, as is my duty, our Justices of the Peace, Land Commissioners', High Court Judges and our staff work with integrity and enthusiasm.

It is intended that this report be produced annually. I hope that it is widely viewed and gives insight into the way in which your judicial system works and highlights areas where particular attention is required.

Fakaue lahi

Monuina mai he Atua

P J Savage
CHIEF JUSTICE OF NIUE

Overview of the Judiciary

About the Courts

The Niue High Court is a court of first instance – meaning all applications filed in the Niue High Court Registry at the Department of Justice, Lands and Survey at Fonuakula, Alofi are first heard in the Niue High Court when it sits on Niue or when matters are referred to the Judges in New Zealand.

The Judiciary of the High Court of Niue consists of Judges, Commissioners and Justices of the Peace.

The Judges are Chief Justice Patrick Savage, Judge Wilson Isaac, Judge Craig Coxhead and newly appointed Judge Sarah Reeves.

The resident Civil and Criminal Commissioners are Mr. Desmond Hipa, Mrs. Sifaole Ioane and Mrs. Taumalua Jackson. Justices of the Peace are Ms. Paese McMoore and Mrs. Francis Lui-Valiana.

The newly appointed resident Land Commissioners are Mrs. Rheumatic Alapaki, Mrs. Maihetoe Hekau, Mr. Robin Hekau, Mr. Hale Ikitule, Mrs. Leliviika Liumaihetau and Mr. Saukia Tukuitonga.

All High Court Judges are also presiding Maori Land Court Judges in New Zealand and one of these Judges travels twice a year to the Niue High Court – they preside for one week on each occasion and hear all civil, criminal and land cases listed for that week.

The resident Civil and Criminal Commissioners and Justices of the Peace sit as a panel of 3 (1 Commissioner and 2 JPs) once every month. Only criminal cases are currently being heard at these monthly sittings but there may be an opportunity for them to preside on civil matters in 2015.

The resident Land Commissioners are expected to participate in a local orientation workshop currently being organized for January 2015 and are expected to sit sometime thereafter in 2015.

The Niue Court of Appeal is held approximately every 3 years. The last Court sitting was held in March 2012 by Chief Justice Patrick Savage, Justice Craig T Coxhead, Justice Norman Smith and Justice Wilson W Isaac. The Court of Appeal hears all matters on appeal and will sit next in the week of 21-27 March 2015.

Niue has its own Judicial Association that provides the judiciary with the opportunity to meet and discuss issues relating to the administration of the Law.

The Pacific Judicial Development Program and the Maori Land Court provide valuable assistance with the development of the knowledge, skills and attitudes of the Niue Judiciary and improvement of Court Registry processes and procedure.

The Land Division has the largest number of cases filed annually in the Registry, followed by the Criminal Division and the Civil Division.

Niue High Court (Civil)

This Division hears cases twice a year when a Judge is presiding and these civil case lists form part of the weekly sitting schedule on those two occasions. As a matter of practice civil cases are the first matters heard by a Judge and they are normally listed for the morning of the first day of the scheduled sittings.

The majority of civil cases are Petitions for Divorce. As a matter of practice, all civil cases are dealt with by a Judge.

Niue High Court (Criminal)

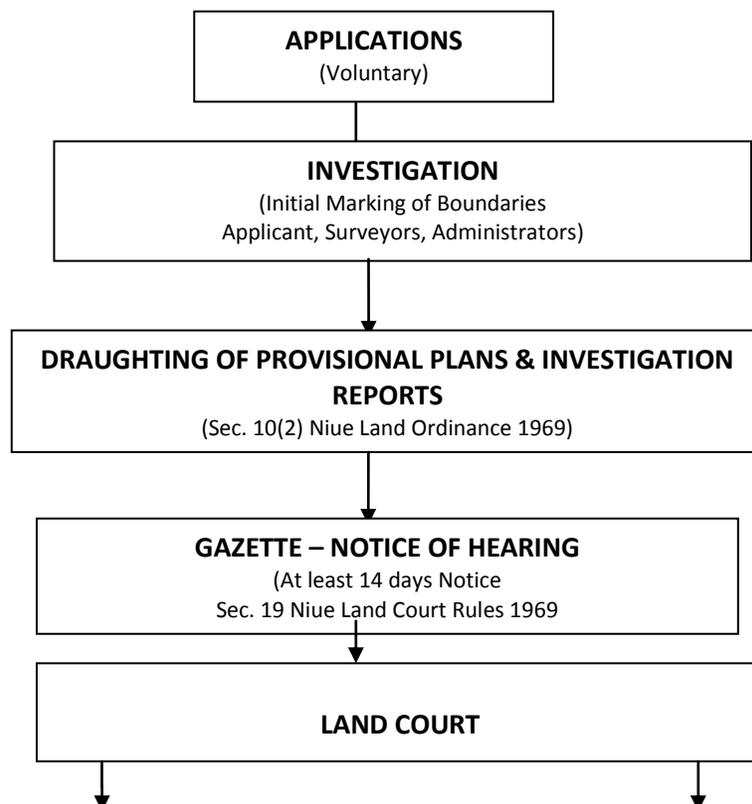
This Division schedules monthly one-day sittings for the resident Commissioner and JPs and twice a year Judges hear criminal cases during their weekly sessions. The Commissioner and JPs have jurisdiction to hear misdemeanor cases. More serious criminal matters are heard by judges.

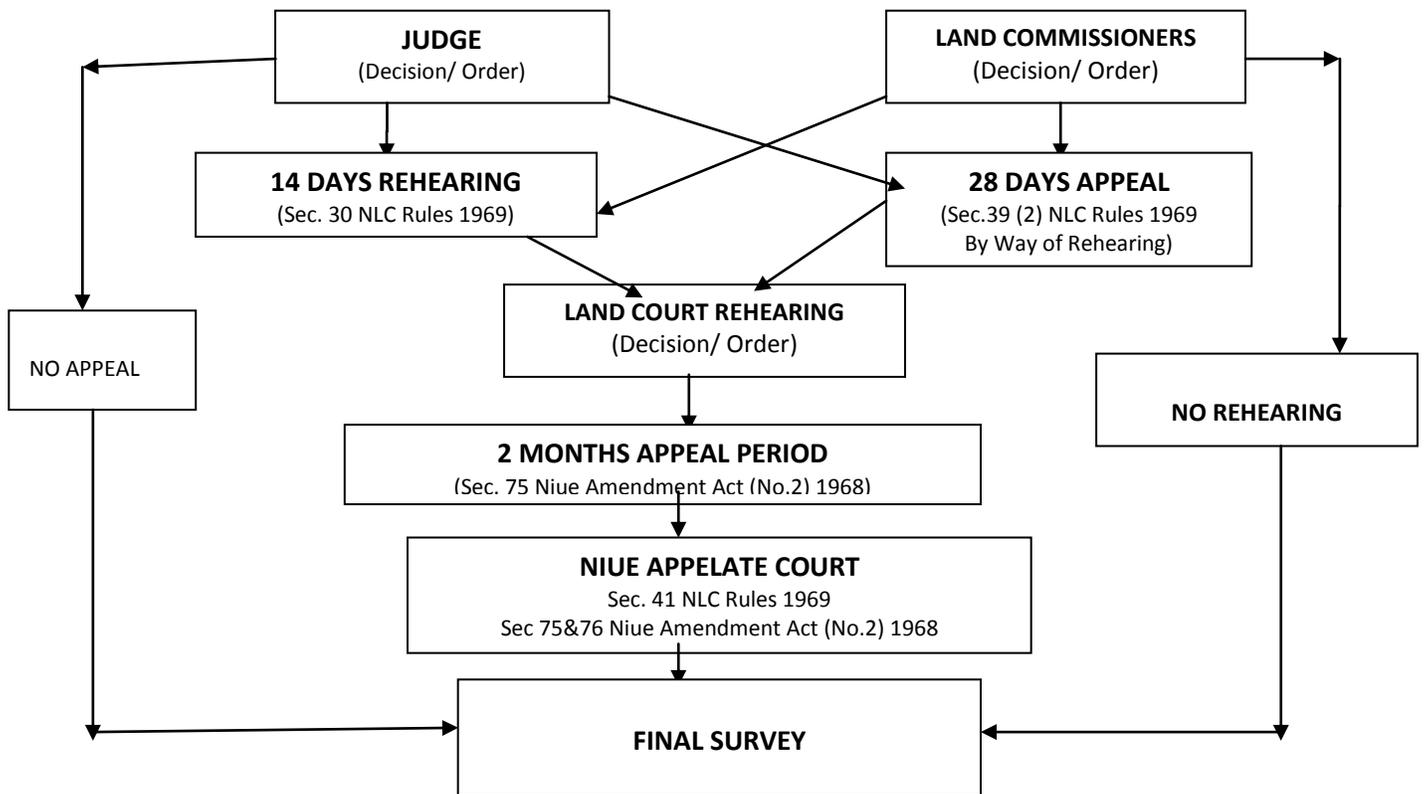
Niue High Court (Land)

This Division hears cases twice a year when a Judge is presiding and these land case lists form part of the weekly sittings scheduled. As a matter of practice land cases take up a substantial amount of time and therefore are afforded priority and normally take up 4 of the 5 days of these scheduled bi-annual sittings.

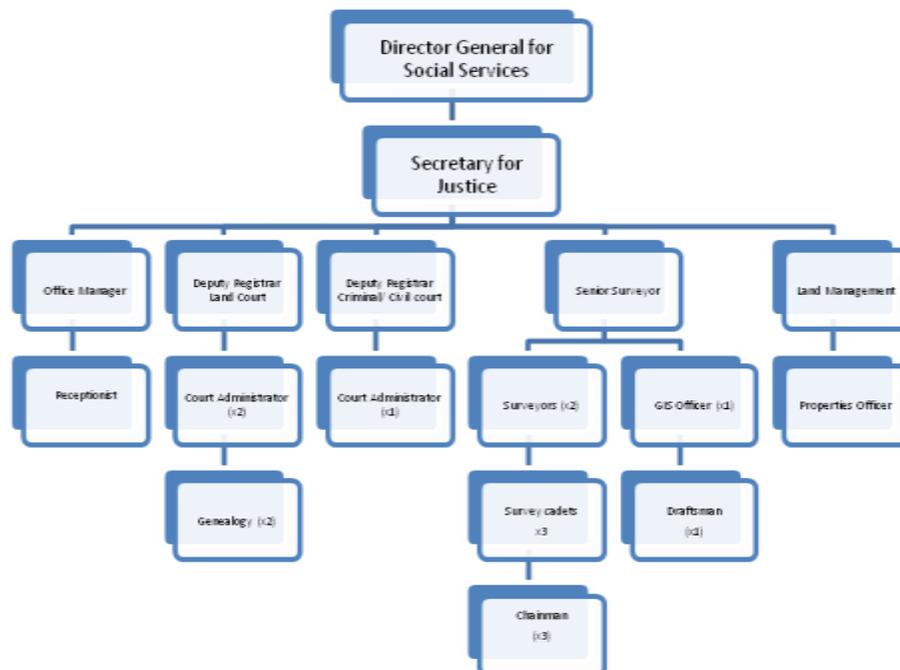
There is a legal requirement that these cases are publicized in the Government Gazette at least two weeks before the sittings.

Figure 1: Land Titling Process





Niue High Court Organisational Chart



The Niue High Court and Niue Court of Appeal is supported by the Secretary to Justice and Registrar Hubert Kalauni, Deputy Registrar (Civil/Criminal) Darren Tohovaka, Deputy Registrar (Land) Celina Tiakia and 4 other Court Administrators. The Niue High Court Registry is an integral part of the Department of Justice, Lands and Survey of the Government of Niue and is a Department under the Ministry of Social Services headed up by Director General Mrs. Gaylene Tasmania.

The operation of the Niue High Court and Court Registry is effectively administered by Deputy Registrars Darren Tohovaka and Celina Tiakia respectively. The Registrar of the Niue High Court delegates statutory authority to the Deputy Registrars who then perform the daily duties of the Registrar in the three Divisions.

Cook Island Indicators

The Pacific Judicial Development Program (PJDP) is supported by the New Zealand aid programme and works with partner courts in 14 Pacific Island Countries.

In June 2011, Chief Justices and National Coordinators from the 14 PJDP Pacific Island Countries met in the Cook Islands and agreed upon 15 key court performance areas (“The Cook Island Indicators”). The Chief Justices at their leadership meeting in Apia, Samoa in March 2012 endorsed the following Regional Justice Performance Framework:

The Chief Justices of the countries participating in the Pacific Judicial Development Programme agree to progressively build the capacity of their judicial and court staff colleagues so as to publish court Annual Reports:

- I. on national and Pacific regional websites,*
- II. within one year of the end of the reporting period,*
- III. that include:*
 - a. court performance data and results against the 15 indicators and Recommendations presented in the PJDP Baseline Report,*
 - b. court performance standards for each level of court and annual results against those standards,*
 - c. a summary of the key findings from any court stakeholder/potential court user surveys and dialogues that have taken place in the previous year,*
 - d. financial statements, including Court budget execution statements.*

Indicator 1- Clearance Rate

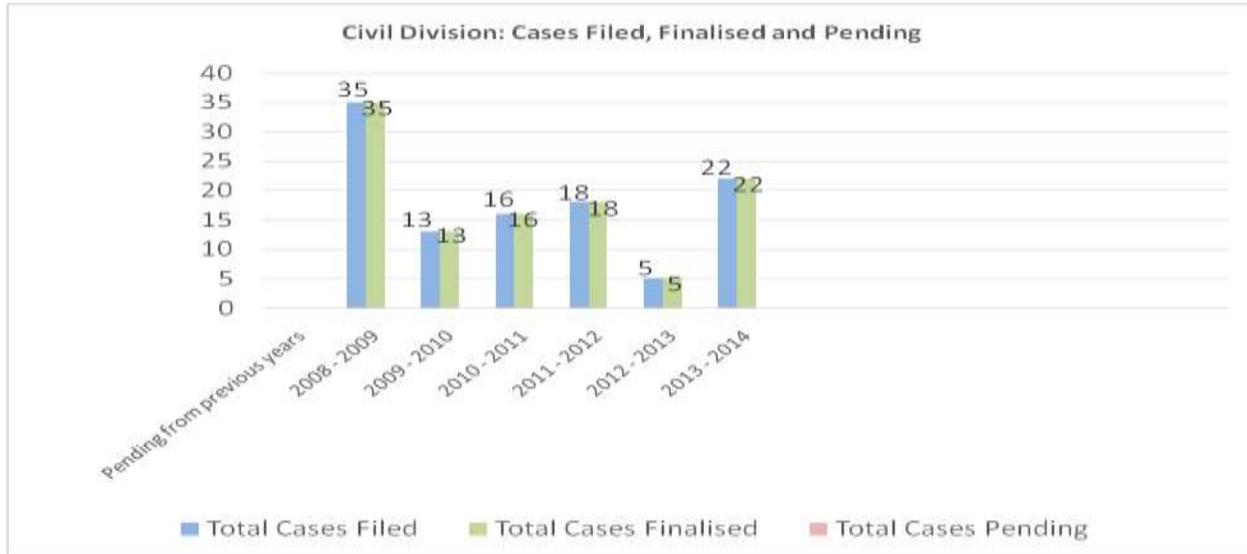
The Clearance rate is obtained by dividing cases finalized by cases filed.

Civil Court

In 2013 – 2014, 22 cases were filed and finalized in the civil jurisdiction. In 2012 and 2011, 5 and 17 cases were filed.

Figure 2 below shows that the Civil Division of the Niue High Court has disposed all of its cases filed over the last 6 years. This means that the Niue High Court is able to finalize the same number of cases that it receives each year.

Figure 2: Civil Division Clearance Rate



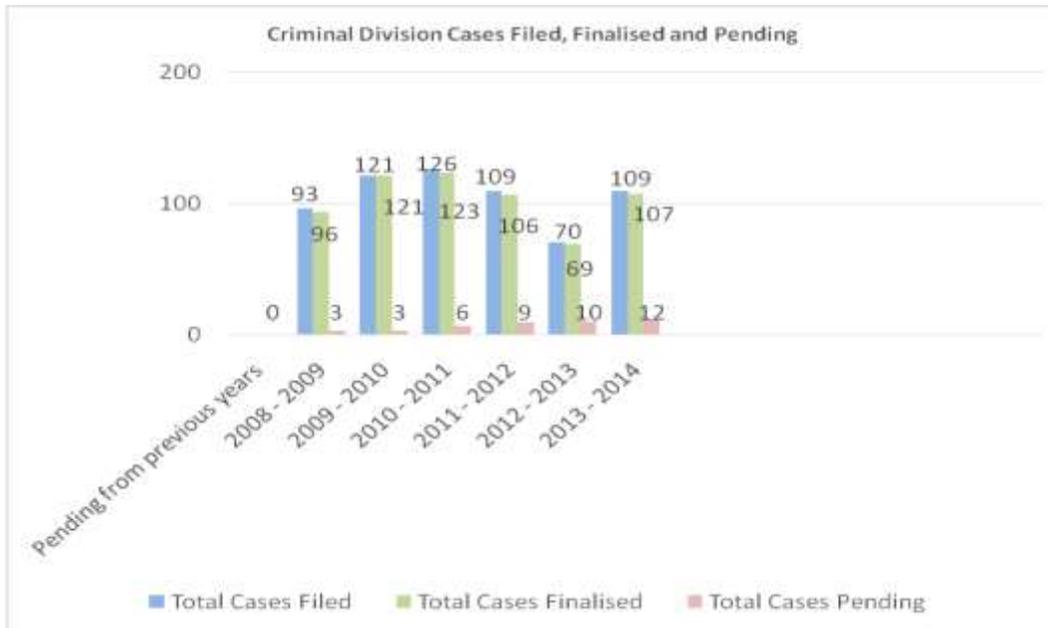
The trend is that the total number of civil applications filed annually is decreasing. It would be beneficial for the Niue High Court to maintain and improve existing court registry processes and procedures and to identify if any barriers restricting access to justice exist and what can be done to counter these barriers.

Criminal Court

In 2013 – 2014, 109 cases were filed in the criminal jurisdiction and 107 cases were finalized. In the two previous reporting periods, 70 and 109 cases were filed.

Figure 3 below shows that the Criminal Division of the Niue High Court is able to finalize on average about 98% of the cases that it receives each year.

Figure 3: Criminal Court Clearance Rate



The trend shows that the total number of cases filed annually, on most years, fluctuates between 100 to 130 cases and that there is a small but increasing annual pending caseload. It would be beneficial for the Niue High Court to maintain and improve court registry process, court data entry and collections processes and also identify if any barriers restricting access to justice exist and to remove these barriers.

Land Court

Figure 4 below shows that during the 2013-2014 reporting period, there were 260 cases filed in the Land Division of the Niue High Court and 151 cases were finalized. Figure 4 below shows that over a six year period from 2008 to 2014 the average number of cases filed is 213 cases and the average number of cases finalized is 137. The figure of 480 pending cases at the end of 2013-2014 does not include cases that were pending from the years before 2007-2008. It is estimated that this could amount to an additional 1000 pending cases. The clearance rate indicates that the Land Division of the Niue High Court is currently receiving more applications than they are finalizing, this is leading to an increase to the pending caseload. This trend is highlighted in Figure 4 below.

Figure 4: Land Court: Cases Filed, Finalised and Pending

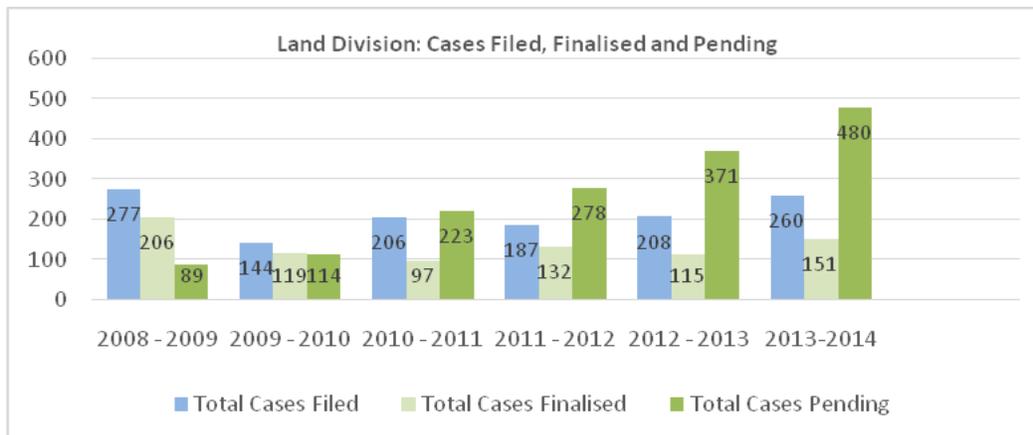
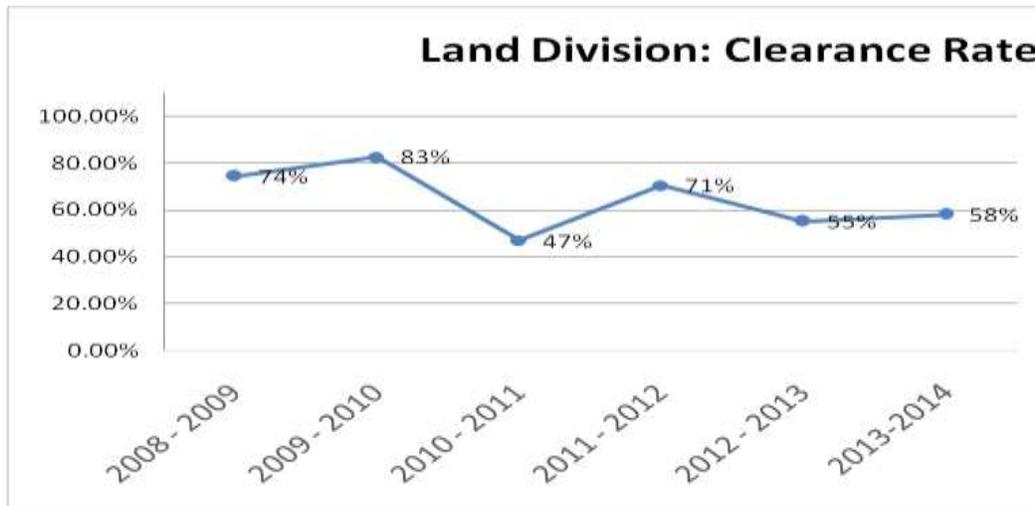


Figure 5: Land Division Clearance Rate



There are various reasons why the disposal rate is low for cases in the Land Court. For example, the majority of applications filed within the office are Niuean citizens living overseas. This means that it is often easy for them to file an application but difficult for them to process the application as some families support it and some do not as some families do not want to get involved in land disputes. Many of these applications therefore remain open. The Court issues reminder letters and emails to each applicant and in most cases the Court is advised to leave the application pending as they will proceed with the application at the next court sitting.

In order to reduce the backlog of pending and inactive land cases, the Niue Land Division will list at its session in March 2015 all land cases filed between March 2008-2013 that have not been heard during the last two years. Cases in which the parties cannot show why their cases have not been pursued over the last two years may be dismissed.

Indicator 2 - Average Duration of a Case

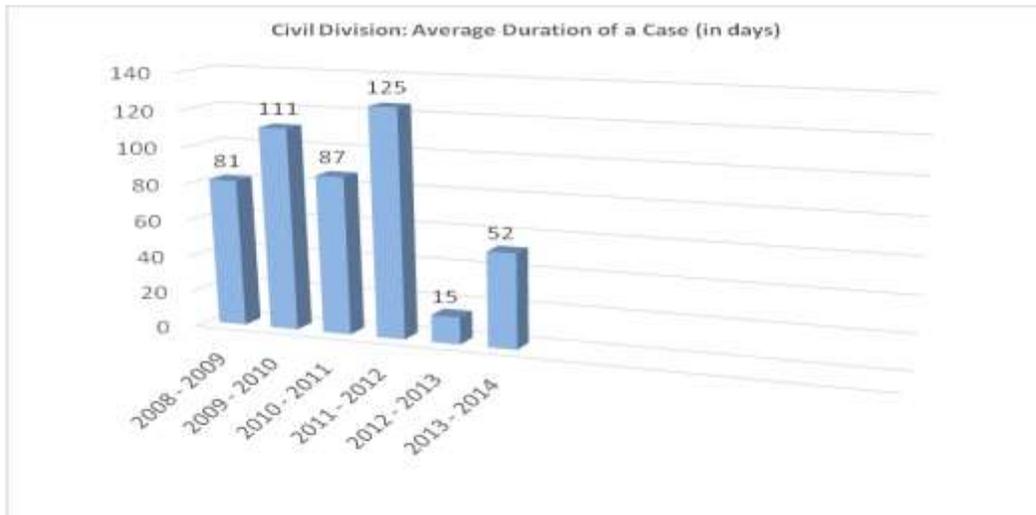
The average duration of a case is calculated as an average number of days from the date of filing to the date of finalization for all cases finalized in the reporting period.

The Niue High Court does not have a time standard for the average duration of a case in any of its Divisions.

Civil Court

In 2013-2014 the average duration of a civil case, from the date of filing to when it was finalized, was 52 calendar days. Figure 6 below shows that the average duration of a civil case has fluctuated significantly over the last six years from 81 in 2008-2009, 111 in 2009-2010, 125 in 2011-2012 and 15 in 2012-2013.

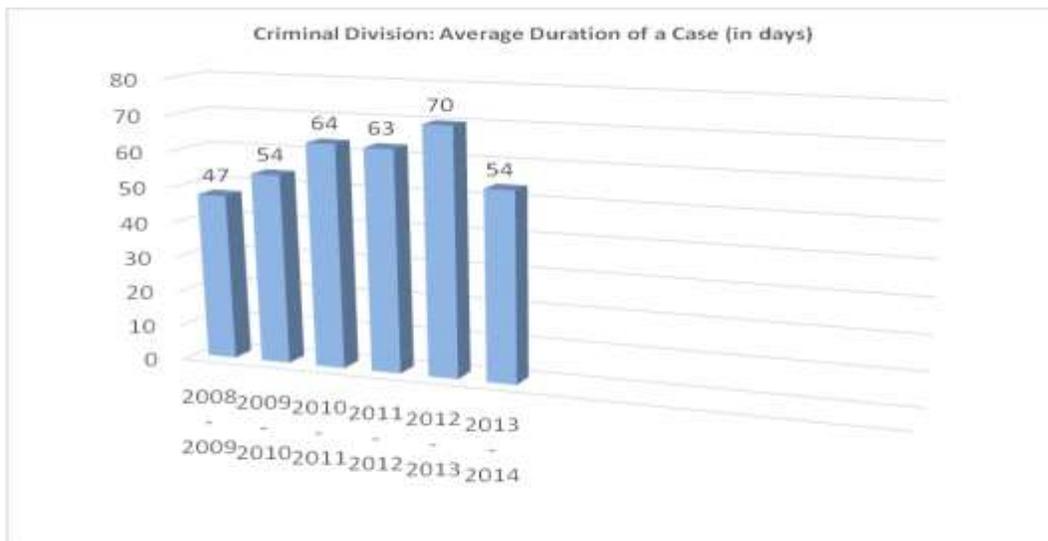
Figure 6: Civil Court - Average Duration of a Case



Criminal Court

In 2013 - 2014 the average duration of a criminal case, from date of filing to when it was finalized, was 54 calendar days. Figure 7 below shows that the average duration of a criminal case has been constant over the last six years.

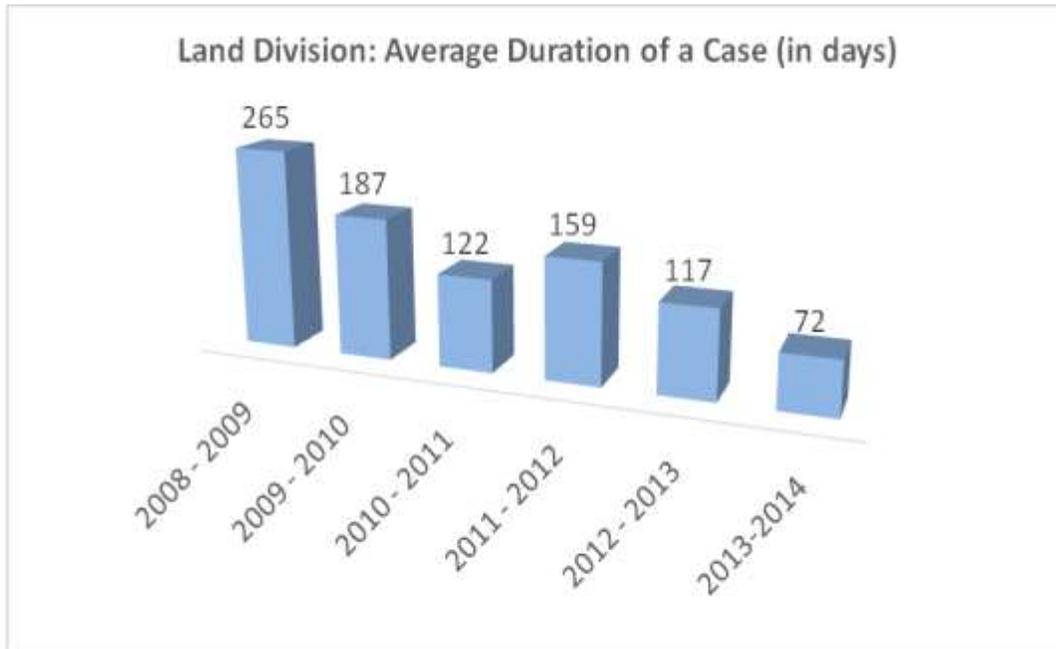
Figure 7: Criminal Court - Average Duration of a Case



Land Court

In 2013-2014 for cases finalized, the average duration of a land case, from the date of filing to when it was finalized, was 72 days. Figure 8 below shows that the average duration of a civil case has decreased significantly over the last six years from 265 days to 72 days.

Figure 8: Land Court - Average Duration of a Case



Indicator 3 - Percentage of Appeals

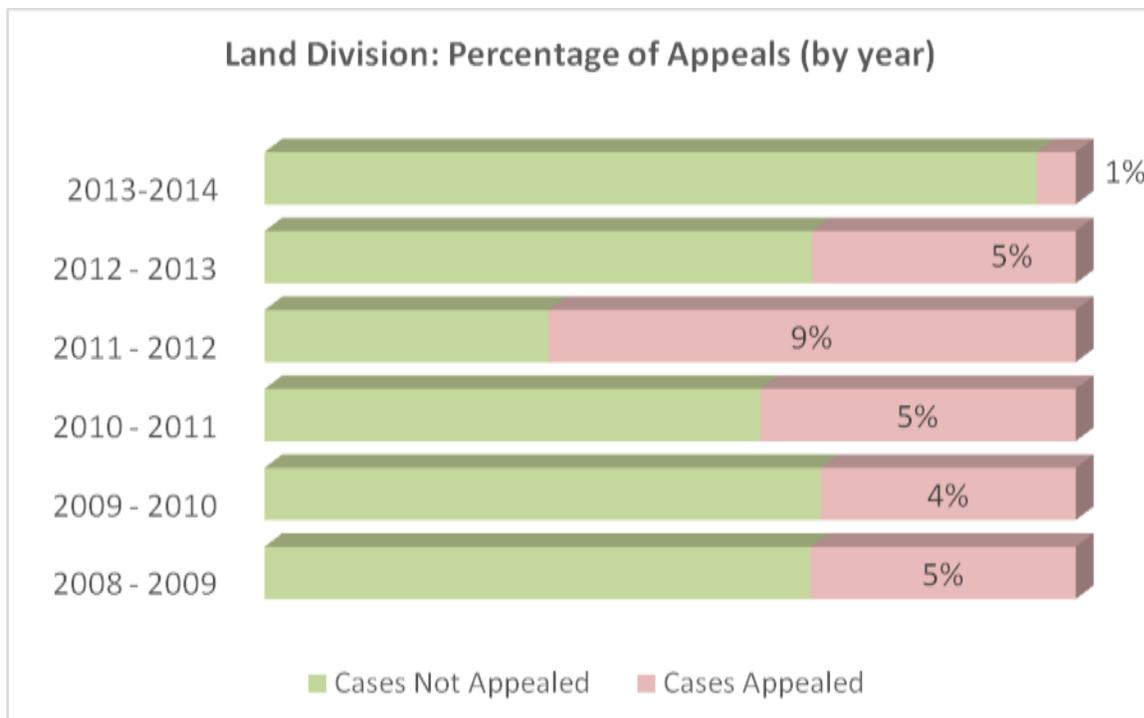
The percentage of appeals is calculated by dividing the number of cases in which an appeal is brought by the number of cases finalized in the level of court jurisdiction from which the appeal is made.

There were no cases on appeal in the Civil Division during 2013 – 2014. The only appeals filed in the last 6 years were filed in 2011 - 2012, there were 3 appeals filed which calculates to about 17% of the cases finalized during that period.

There were no cases on appeal in the Criminal Division during 2013 – 2014. The only appeals filed in the last 6 years were filed in 2011 – 2012 there were 5 appeals filed which calculates to about 5% of the cases finalized in that period.

There was one case in the land division that was the subject of an appeal during 2013-2014. Figure 9 below shows the percentage of appeals in the Land Division.

Figure 9: Percentage of Appeals



Indicator 4 – Case Management – Overturn Rate on Appeal

The Overturn rate on appeal is obtained by dividing the number of appeal cases in which the lower court decision is overturned by the total number of appeals.

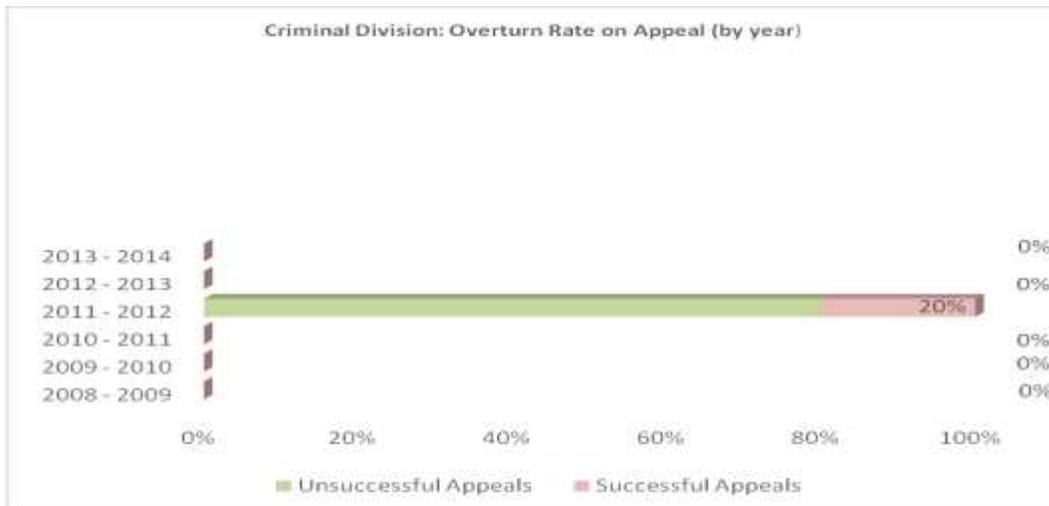
Civil Court

Of the 3 civil cases that were the subject of an appeal in 2011-2012 2 cases were dismissed and the remaining appeal had had not been determined at the time of this report.

Criminal Court

Figure 10 below shows the overturn rate of appeal in the Criminal Division. One of the five criminal cases that were the subject of an appeal in 2011 – 2012 was overturned in part on appeal.

Figure 10: Percentage of Appeals



Land Court

Figure 11 below shows the overturn rates of appeal in the Land Division. Two of the five land cases that were the subject of an appeal in 2012-2013 were overturned on appeal and one of the five land cases in 2009-2010.

Figure 11: Overturn Rate on Appeal



Indicator 5 – Accessibility of Courts – Court Fee Waiver

The Civil, Criminal and Land Divisions of the Niue High Court do not currently have a formal Court Fee Waiver policy in place to meet the needs of those who are unable to pay for the cost of filing. No fee waivers were issued in 2013-2014.

Indicator 6 – Accessibility of Courts – Circuit Courts

The Niue High Court does not conduct circuit courts. Most court sittings take place at the Government Building conference room. On occasion the Registrar may preside on criminal bail applications.

Indicator 7 – Accessibility of Courts – Legal Aid

There is no specific legal aid program in Niue however there are a number of volunteers from the legal profession in Christchurch who assist litigants in the Niue courts. The High Court would like to thank Philip Allen, Dr Gerard McCoy QC, Kim McCoy and Michael Starling for the time and resources they devote to providing free legal advice to parties during the two weeks each year when judges hear cases in Niue.

Indicator 8 – Complaint Handling and Feedback Mechanism

There is no complaint handling process for Judicial Officers.

There is a complaint handling process that is applied to the public servants working in the Niue High Court Registry. This process is detailed below in figure 12.

Figure 12: Complaints Process for Niue Public Servants



Indicator 9 – Complaint Handling and Feedback – Judicial Officers

No complaints were received for this reporting period in relation to Judicial Officers.

Indicator 10 – Complaint Handling and Feedback – Court Staff

No complaints were received for this reporting period in relation to Court Staff.

Indicator 11 – Judicial Resources

The average number of judicial resources is obtained by dividing the total number of cases received by the number of judicial officers.

As Niue does not have Judges working full-time, this has been calculated on the basis of average number of cases filed per sitting day.

During 2013-2014, there were 8 sitting days for Judges and 9 sitting days for the Commissioner and JPs and Registrar. During 2013-2014, 391 cases were filed in the Niue High Court. This is an average of 23 cases filed for each of the 17 days when judicial officers heard cases in Niue.

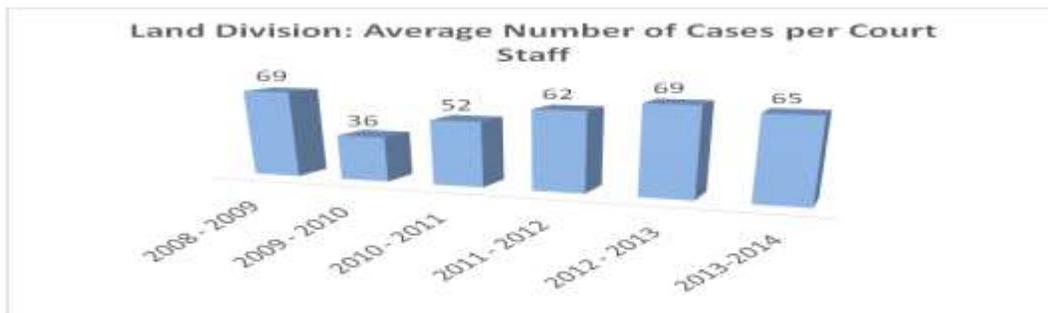
Indicator 12 – Court Staff Resources

The average number of judicial resources is obtained by dividing the total number of cases received by the number of court staff members.

During 2013-2014, 391 cases were filed in the Niue High Court. There was six court staff in the Niue High Court. This is an average of 65 cases filed for each of the six court staff in the Niue High Court.

For the Land Division, that has the largest number of cases, there were four court staff members handling these cases. Figure 13 below shows the average number of cases for each court staff member in the Land Court.

Figure 13: Average Number of Cases per Court Staff



Indicator 13 – Transparency – Annual Report

The Niue High Court's Annual Report is made publically available on the PaCLII website (www.paclii.org).

Indicator 14 – Transparency – Court Services Information

There is currently no publicized information on how the Niue High Court provides its court services. The Niue High Court does not have a website however work is underway to establish a website for the Niue High Court.

Indicator 15 – Transparency – Publication of Judgments

No decisions have been published on PaCLII since 2010. There is an intention to publish more cases on the website.

Juvenile/ Children’s Cases – Disaggregated Data

The Court does not currently capture data about the age of persons who appear in Court so therefore cannot report on the percentage of criminal cases filed and disposed of annually that involve a child or juvenile (person less than 18 years of age).

The Court can capture this data by asking the Police to include in the informations they file with the Court Registry details about age, gender, occupation and nationality and this can then be formalized either by way of a Practice Notice by the Chief Justice or by some other legal mechanism.

As Niue is a party to the International Convention on the Rights of a Child it is therefore important that all data about criminal cases which involve children should be reported against to ensure the rights of children on Niue are intact.

Violence against Women and Children - Disaggregated Data

The Court does not currently capture data about the age or gender of persons who have violence inflicted upon them as a result of a criminal offence so therefore cannot report on the percentage of criminal cases filed and disposed of annually that involve violence against either women or children.

The Court can effectively capture this data by asking the Police to include in the informations they file with the Court Registry details about the number of victims and their age and gender and this can be formalized either by way of a Practice Notice by the Chief Justice or by some other legal mechanism.

Facilities

The Niue High Court Registry Office consists of a two story residential house located at Fonuakula, Alofi. The Office does not have sufficient floor space and is not suitable for the operational needs of the Court Registry.

Court files as a consequence of the limited floor space are stored in aluminum filing cabinets housed in two sheltered shipping containers. The files contained in these containers require regular cleaning and care and the paper documents in many of the older files are deteriorating at a rapid rate under those conditions.

The Court sittings are convened at the conference room of the main Government Building at Fonuakula, Alofi and when that room is not available a hall is hired.

The recommendation to the Niue Government would be that they place the building of a new Court House and Facilities as an urgent national priority.

The Annual Budget

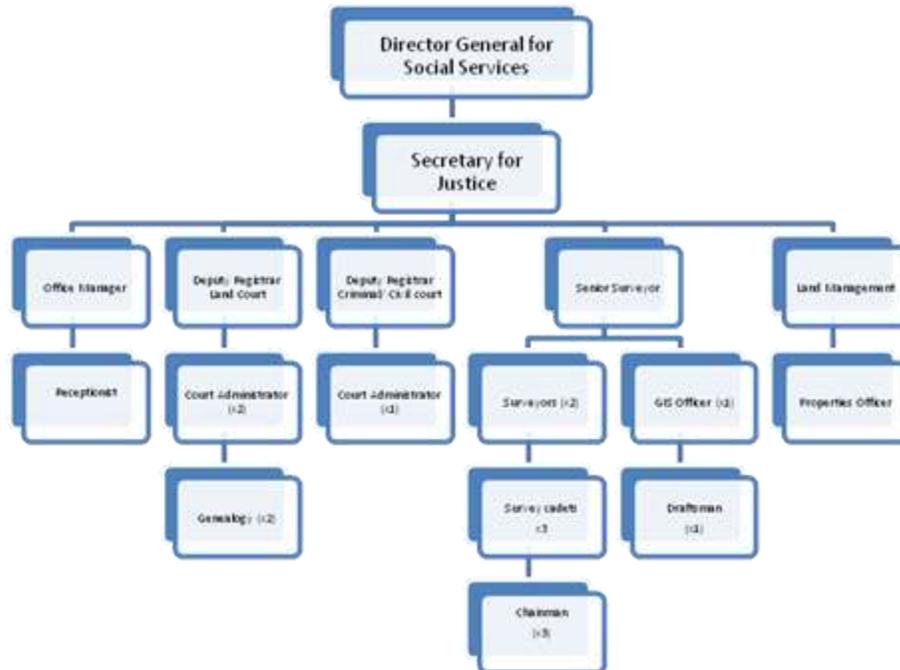
At the time of this report this was the information that was readily available. There is an intention to expand on these details in the next Court Annual Report.

Figure 14: Department 2013/2014 Budget

Expenditure	2012/2013 Voted	2013/2014 Voted	2013/2014 Actual
Administration	133,000	210,000	134,356
Civil/Criminal Court	67,000	71,000	38,224
Land Court	50,000	81,000	78,000
Land Management	247,000	336,000	210,837
TOTALS	597,000	698,000	462,350
Revenue	2012/2013 Voted	2013/2014 Voted	2013/2014 Actual
Administration	15,000	15,000	14,418
Civil/Criminal Court	10,000	10,000	7,455
Land Court	10,000	10,000	12,089
Land Management	23,000	23,000	41,852
TOTALS	58,000	58,000	75,813

Organizational Chart

The Chart below sets out the restructuring occurring in the Transformation Process of the Niue Government. The Director General (DG) position is a new position and the DG is responsible for several Government Departments - the Department of Justice is one of four other Departments in the Ministry of Social Services (MoSS).



Court Personnel

The Secretary for Justice Hubert Kalauni is also the Registrar of the Niue High Court and Court of Appeal of Niue.

Deputy Registrar Darren Tohovaka has one female Court Assistant in the Civil and Criminal Divisions namely Lili Laufoli.

Deputy Registrar Celina Tiakia has two female Court Administrator staff in the Land Division namely Valentine Mautama and Keta Poitua.

Tiara Tukuniu and Goretti Poumale also play major supporting roles within the Court Registry.