



NIUE HIGH COURT – LAND DIVISION- Annual Report -July 2012 – June 2013

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Contents

Mission and Vision 4

 MISSION 4

 VISION 4

Message from Chief Justice 5

Overview of the Judiciary of the High Court of Niue 6

About the Courts..... 7

Organizational Chart 8

 Niue High Court- Land Division 8

 Court Personnel – (Land Division)..... 8

 Niue Court of Appeal..... 9

Indicator 1 – Case Management – Clearance Rate 9

Indicator 2 – Case Management – Average Duration of a Case 10

Indicator 3 - Case Management – Percentage of Appeals..... 10

Indicator 4 – Case Management – Overturn Rate on Appeal..... 11

Indicator 5 – Accessibility of Courts – Court Fee Waiver 11

Indicator 6 – Accessibility of Courts – Circuit Courts 11

Indicator 7 – Accessibility of Courts – Legal Aid 12

Indicator 8 – Complaint Handling and feedback policy 12

 Complaint Process..... 13

Indicator 9 – Complaint Handling and feedback – Judicial Officers 13

Indicator 10 – Complaint Handling and feedback – Court Staff 13

Indicator 11 – Judicial Resources 13

Indicator 12 – Court Staff Resources 14

Indicator 13 – Transparency – Annual Report 14

The 2011/2012 Annual Department Budget 15

Figure 1: Clearance Rate	9
Figure 2: Clearance Rate Trend.....	9
Figure 3: Average Duration of a Case.....	10
Figure 4: Percentage of Appeals	11
Figure 5: Overturn Rate on Appeal	11
Figure 6: Complaint Process for Public Servants in Niue	13
Figure 7: Average number of cases per judicial officer	14
Figure 8: Average number of cases per court administrator officer	14

Introduction

Mission and Vision

MISSION

To be an independent body that is responsible for interpreting and applying the laws made by the Assembly of Niue. Develops and interprets case law and resolves disputes of fact and law between individuals and between individuals and the state.

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 Chief Justice

This report describes the work of the Land Division of the Niue High Court from July 2012 to June 2013.

In August last year I commented quite fully on the administration of justice in Niue when the previous report was published. I do not want to go over the points that I made then at any length, because they remain just as relevant now.

In all Polynesian societies land and family relationships are closely linked and are major elements in the way society is structured and functions. It is therefore critical for freedom, security and orderly development that land issues in Niue are dealt with promptly and in accordance with the rule of law. The rule of law should never be taken for granted. It has an inherent fragility in societies under stress as we see in events all around the world. It must be cherished and nourished. Niue has an inherently stable legal system and the rule of law is respected.

In my previous report I referred to the work done by local members of the judiciary in Niue, the Court staff and legal volunteers from New Zealand. All of these people give tirelessly and ensure that the legal system runs as it should. I want again to thank those who give so much in this regard.

The High Court continues to sit twice a year and all of the Judges now, are members of the New Zealand Māori Land Court. We have a new Judge, Judge Sarah Reeves, who I know is looking forward to coming to Niue and working with you.

I want finally to congratulate those who have compiled this report. It is an important publication in that it communicates with the people of Niue and advises them of the work done by the Land Division of the High Court of Niue.

P J Savage

CHIEF JUSTICE

Overview of the Judiciary of the High Court of Niue

The bench of the High Court of Niue consists of Judge Wilson W. Isaac, Judge Craig T Coxhead and Chief Justice Patrick Savage. The recent passing of Judge Norman Smith Wednesday 24th July 2011 has created a vacancy on the bench that was filled by Judge Sarah Reeves who was officially sworn in on 28 March 2014 in Wellington.

All High Court Judges are based in New Zealand and most often circuit to the Niue High Court every six months. The Court of Appeal may be convened either in Niue or New Zealand depending on the matters before that court.

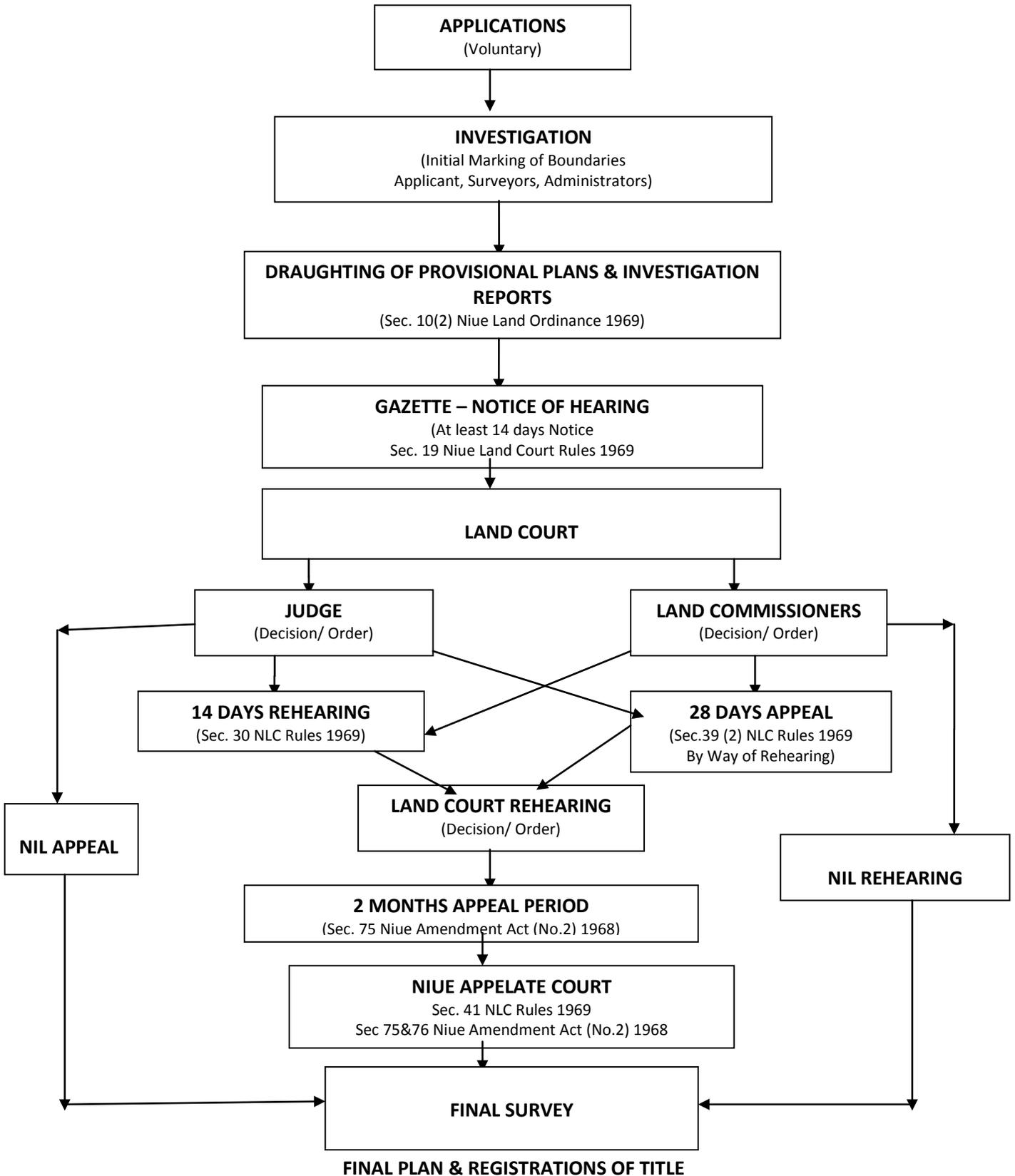
The High Court Land Commissioners was newly appointed on the 30th January 2014 are Mrs. Rheumatic Alapaki, Mrs. Rubina Morrisey, Mrs. Maihetoe Hekau, Ms. Liliwika Liumaihetau, Mrs. Taumalua Jackson, Mr. Robin Hekau, Mr. Saukia Tukuitonga and Mr. Hale Ikitule.

The Niue based judicial officers have established their own association i.e. the Niue Judicial Association, which provides the judiciary with the opportunity to meet and discuss issues that are relevant to the administration of the law. The Department endeavors to assist the association in its aims to strengthen the capacity of the local judicial officers by attending the meetings of the association and giving advice and clarification to any questions or concerns raised by the members of the association.

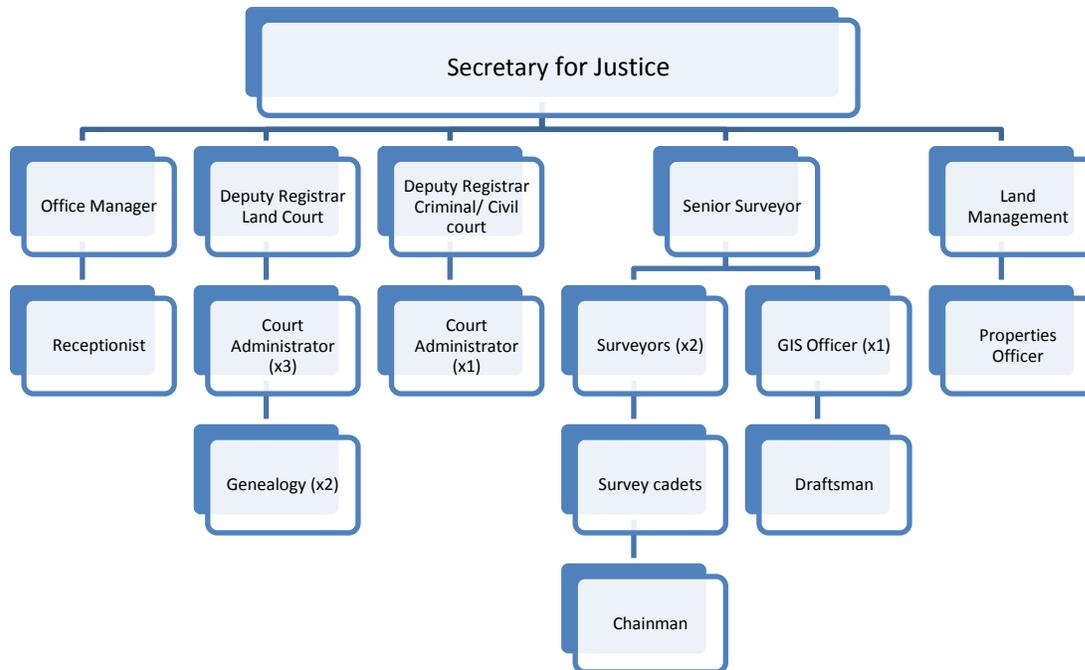
Other capacity building assistance is provided to the Judiciary through the Pacific Judicial Development Program and the Maori Land Court.

About the Courts

LAND TITLING AND LAND REGISTRATION PROCESS FLOW CHART



Organizational Chart

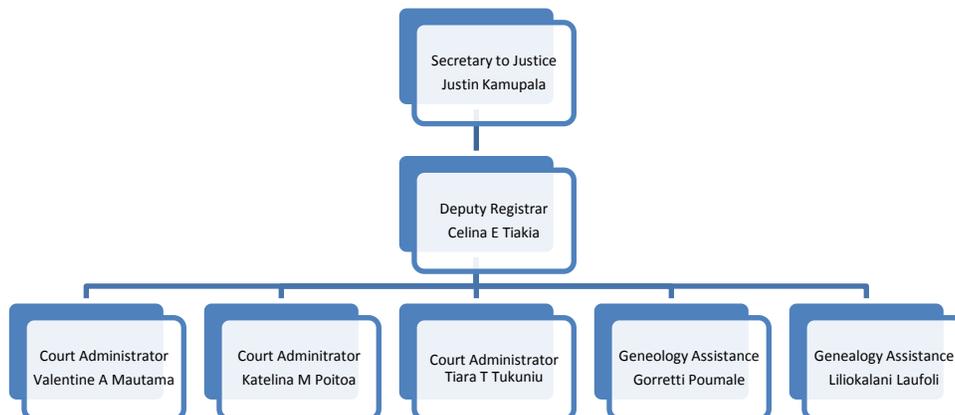


Niue High Court- Land Division

The Niue High Court is presided over by the Chief Justice and held twice a year with one of the four judges sitting. From July 2012 to June 2013, two High Court sittings were conducted. A special sitting was arranged for the Criminal Division to be held from the 16th to 20th July 2012, unfortunately, did not proceed as schedule. The High Court Land division did proceed with a list of 27 cases of which 17 cases were finalized and 12 cases adjourned to a future court sitting.

The High Court Sitting for November 2012 was cancelled due to health concerns related to an outbreak of dengue fever on the island. In March 2013, two Judges over a 5 day sitting each listed a total of 233 cases for hearing. Of these 233 cases, a total of 106 cases were finalized, 9 cases were dismissed and the 120 adjourned to a future sitting.

Court Personnel – (Land Division)



Niue Court of Appeal

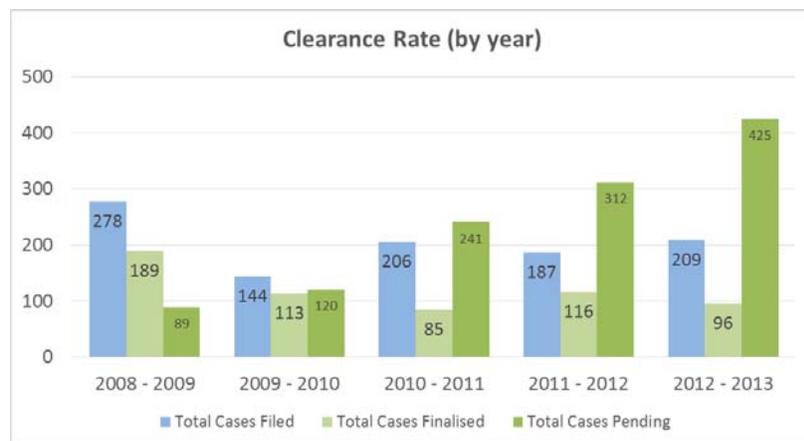
The Niue Court of Appeal is held approximately every 3 years. The last Court sitting was held in March 2012 by Chief Justice Patrick Savage, Justice Craig T Coxhead, Justice Norman Smith and Justice Wilson W Isaac for cases where the latter's decision was not the subject of appeal. The next Niue Court of Appeal sitting should be scheduled in 2015, depending on budget issues and the confirmation of the election date. Once these are confirmed the Niue Court of Appeal sitting dates will be noted and funding included in the 2014/2015 budget.

The Cook Islands Indicators

Indicator 1 - Case Management - Clearance Rate

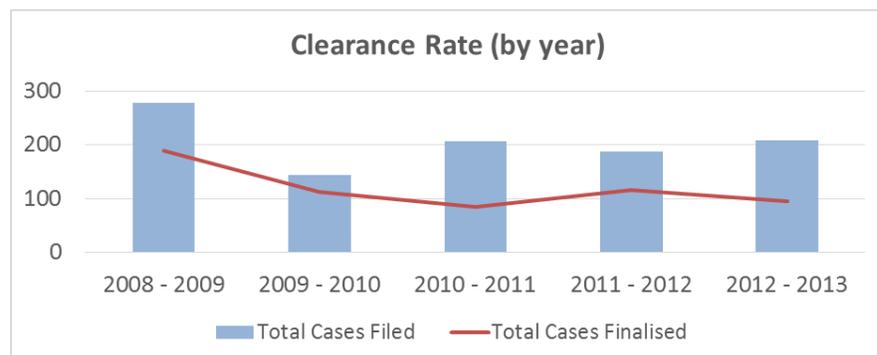
Figure 1 below shows that there were 209 cases filed in the Land Division of the Niue High Court during the 2012-13 financial years. Of these 209 cases, 96 cases were finalized leaving a pending list of 425 cases (this does not include cases pending prior to 2008).

Figure 1: Clearance Rate



The clearance rate indicates that the Land Division of the Niue High Court is currently receiving more applications than they are disposing of, meaning that there is more work coming in than going out. This trend is highlighted in Figure 2 below.

Figure 2: Clearance Rate Trend



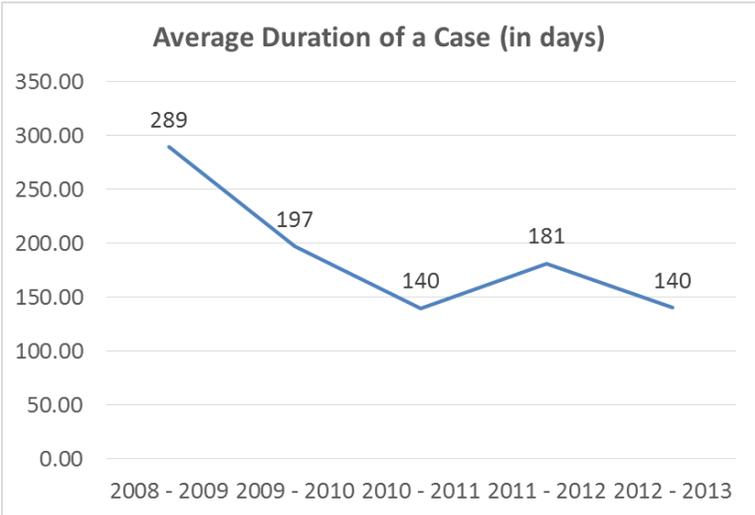
There are various reasons why the disposal rate is low for cases in the Land Court. For example, the majority of applications filed within the office are Niuean citizens living overseas. This means that it is often easy for them to file an application but difficult for them to process the application 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. Often at the next court sitting parties seek an adjournment or they agree to withdraw their application.

The number of pending cases is also affected by the fact that the Land Division of the Niue High Court has reestablished its Land Commissioners but they have yet to conduct a hearing and is reliant upon Judges from New Zealand to travel to Niue to conduct hearings twice a year.

Indicator 2 – Case Management – Average Duration of a Case

The average duration of a case shows how long each case takes on average to finalize in the Land Division of the Niue High Court. Figure 3 below indicates that the average time a case spends in the system is reducing. It currently takes on average 140 days, a drop from 289 in 2008-09. The Land Division of the Niue High Court does not have a current time standard for the average duration of a case.

Figure 3: Average Duration of a Case



Indicator 3 - Case Management – Percentage of Appeals

The current rate of appeal in the Land Division of the Niue High Court is five per cent, for instance, for every 100 decisions, five decisions are appealed. Figure 4 below shows the trend in relation to appeals in the Land Courts.

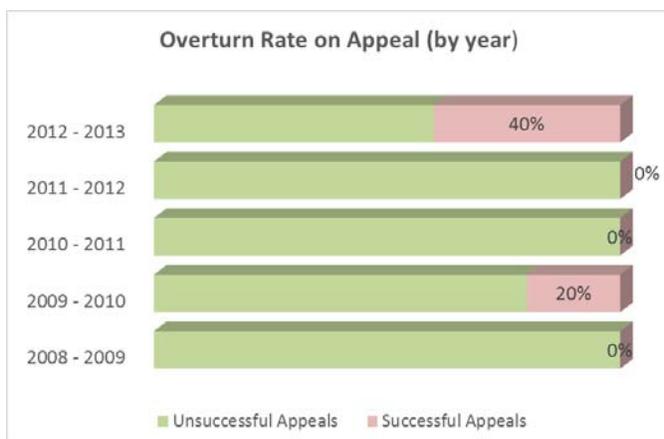
Figure 4: Percentage of Appeals



Indicator 4 – Case Management – Overturn Rate on Appeal

Of the five cases appealed in the 2012-13 financial year, only two were successful whereby the original decision was overturned and a new decision was ordered see below.

Figure 5: Overturn Rate on Appeal



Indicator 5 – Accessibility of Courts – Court Fee Waiver

The Land Division of the Niue High Court does not currently have a formal Court Fee Waiver policy to meet the needs of those who are unable to pay for the cost of filing. The Land Court did however waive the costs of two applications in 2010-11 because the applicant family was faced with unforeseen circumstances and were unable to pay the costs associated with filing the application.

Indicator 6 – Accessibility of Courts – Circuit Courts

The Land Division of the Niue High Court does not conduct circuit courts. All applications and court sittings take place at the Government Building conference room. On occasion, a hall may be hired if the government building is already in use.

Indicator 7 – Accessibility of Courts – Legal Aid

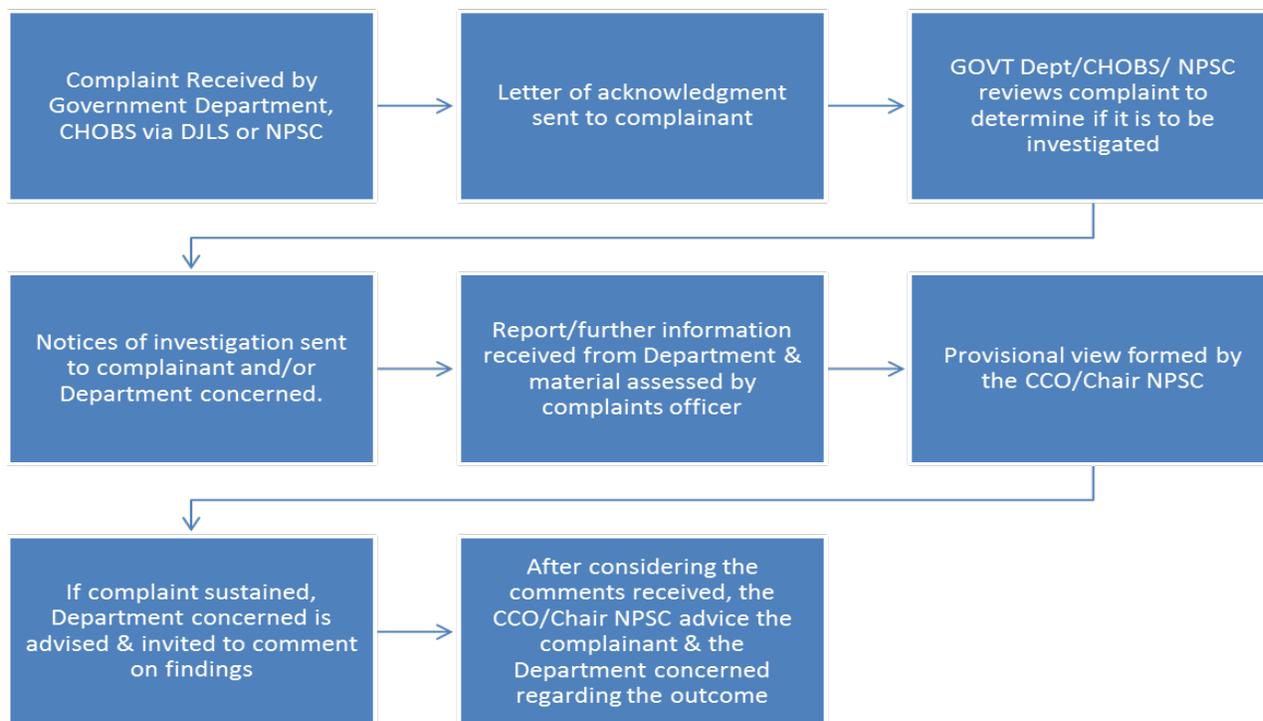
Niue does not have a specific legal aid program however there are presently three volunteers from the New Zealand legal profession who assist litigants in this Court.

Indicator 8 – Complaint Handling and feedback policy

The complaint handling process is applied to public servants working in the Niue Land Court. Judicial Officers are not subject to this process. The process applied in relation to complaints regarding public servants can be seen in the detailed process below in figure 7.

Complaint Process

Figure 6: Complaint Process for Public Servants in Niue



Indicator 9 – Complaint Handling and feedback – Judicial Officers

No complaints were received regarding judicial officers of the Niue Land courts this financial year.

The department of Justice also received complaints from the General Public – regarding the changes of the Court Sitting Dates.

Indicator 10 – Complaint Handling and feedback – Court Staff

Three complaints were received by the Registrar regarding staff of the Niue Land Courts this represents less than 1.5 per cent of total filing in the Niue Land Courts.

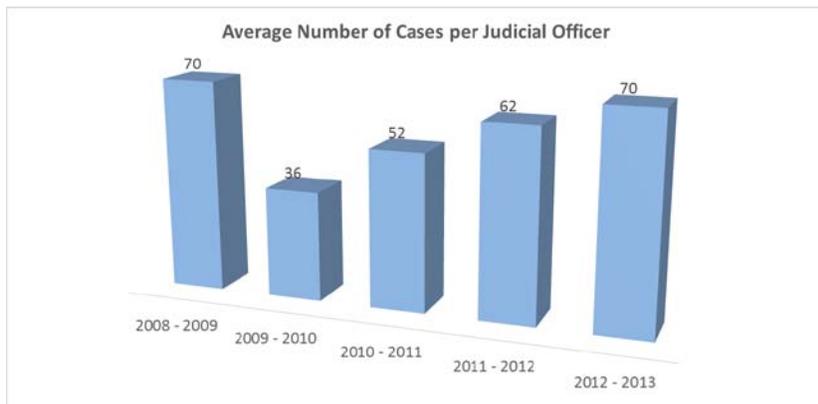
Indicator 11 – Judicial Resources

There are presently four Judges in the High Court of Niue consisting of Judge Wilson W. Isaac, Judge Craig T. Coxhead, and Judge Sarah Reeves. The current Chief Justice is the Honorable Patrick Savage. All are Judges of the Māori Land Court of New Zealand and have experience in the area of Polynesian land

issues. The chart below indicates that in the 2012-13 financial year, the average number of cases per judge was 70 cases, and increase on previous years.

It is critical that the Niue High Court maintains four Judges in order to ensure that there are three judges to hear appeals from a decision of the fourth judge.

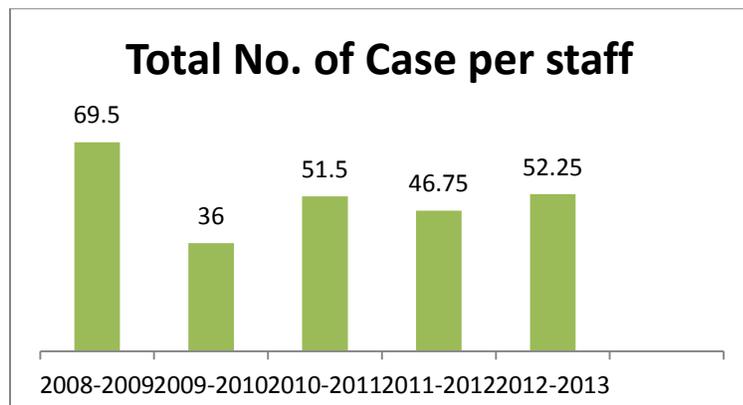
Figure 7: Average number of cases per judicial officer



Indicator 12 – Court Staff Resources

In year 2012-2013, 209 new applications were filed in the Niue Land Court. During the financial year, there were 4 court administration officers tasked with processing these applications which equates to a total of 52 applications per staff member.

Figure 8: Average number of cases per court administration office



Indicator 13 – Transparency – Annual Report

The Niue Land Court’s annual report is contained within the Departmental of Justice, Lands and Survey annual report. The public may request a copy of the Department’s annual report after it has been approved by Cabinet. The Department’s annual report is also publically available on the PaCLII website. Additionally, all information regarding the services of the court is publicly available at the Department of Justice, Lands and Survey.

The 2011/2012 Annual Department Budget

Expenditure	2011/2012 Voted	2012/2013 Voted	2012/2013 Actual
Administration	172,000	233,000	165,178
Civil/Criminal Court	72,000	67,000	38,834
Land Court	68,000	50,000	74,894
Land Management	196,000	247,00	195,517
TOTALS	508,000	597,000	474,423

<u>Revenue</u>	<u>2011/2012 Voted</u>	<u>2012/2013 Voted</u>	<u>2012/2013 Actual</u>
Administration	15,000	15,000	11,860
Civil/Criminal Court	10,000	10,000	18,373
Land Court	10,000	10,000	7,028
Land Management	23,000	23,000	24,966
TOTALS	58,000	58,000	62,226