

2016 REPORT OF THE JUDGES



The Independent State of Papua New Guinea

SUPREME COURT & NATIONAL COURT OF JUSTICE

2016 Report of the Judges



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Cover Photo: Attendees at the Pacific Judicial Conference
12th - 16th September 2016

2016 REPORT OF THE JUDGES

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**For the year 1 January to 31 December
to the
Head of State**

**for presentation to the Parliament
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Every person has the right to the full protection of the law: Constitution Section 37(1)

To provide equal access to an independent, fair and just Judicial Service to all people: The Judiciary's Mission Statement.

1 EXECUTIVE OVERVIEW

This Report adopts the same practice as last year's report in that all statistics reported are based on the total caseload from all years of cases still outstanding, and show the size of the backlog problem. In the body of the report a chart graphically demonstrates the tripling of the Court filings and workload that has occurred in the years 2008-2016. The Government proposal to introduce a 3 tier Court structure which will add 6 weeks to sitting time for National Court Judges is thus urgently required.

The total number of Judges ceiling continues to be 40 (excluding the Chief Justice and the Deputy Chief Justice). The actual number in 2016 was 40 including the Chief Justice and the Deputy Chief Justice. 13 Judges were resident in Port Moresby, two non-residents except for Supreme Court sittings and the balance resident in the provinces.

The Judiciary's appropriation for the year was K147,328,200. Funds of K20.6 million were carried forward from 2015 making total funds available K167,941,632. Total expenditure was K144,968,302. Apart from recurrent expenditure the main area of expenditure was infrastructure development. Funds also continue to be expended on computer-based case management and information management systems as international studies have shown that these systems together with professional assistance to the Judges shortens the length of time it takes to dispose of a case (see the OECD paper *Judicial Performance and Its Determinants: A Cross-Country Perspective*).

Supreme Court pending caseload for 2016 was 1460 of which 403 cases were completed giving a clearance rate of 27.6%.

The National Court pending caseload was 29,107 of which 5393 cases were completed achieving a completion rate of 18.5% leaving 23,714 cases at the end of the year. Of those at least 2957 matters are dormant civil matters and 5396 are criminal matters with outstanding bench warrants which the Court cannot attend to until the Police arrest and bring the defendants to Court. Over 2000 dormant civil cases were disposed of by summary determination. This program of summary determination of dormant matters will continue into 2017.

During the year, for their more efficient disposal, all matters in which the State is involved as a party were separated out into a separate track managed by a Judge. The total caseload of State matters was 5822 or a little under 20% of the National Court's total civil workload.

In 2015 386 new Human Rights Cases were filed in 2016, in contrast, 664 new cases or almost 59% more cases than in 2015, were filed. A completion rate of 23.2% was achieved and 1054 cases carried over to 2017. Unfortunately, a number of the significant cases determined in 2016 involved untoward conduct by Police resulting in judgements against the State of damages of varying amounts, one judgement for more than 10 million Kina for multiple plaintiffs.

The Judicial Complaints Committee established in 2014 is becoming more widely known by the public and its total workload for 2016 amounted to 52 complaints which puts both Judges and staff of the National Judicial Staff Service on notice that they are under scrutiny by members of the public and parties to court proceedings.

A number of memoranda of understanding were entered into or renewed with Australian branches of the judiciary during 2016 to share their knowledge and processes. Previously the New South Wales Judicial Commission wrote and established a Sentencing Database for Papua New Guinea which has been operating for several years and is of great assistance to Judges when sentencing. In late 2015 the Commission created a database program for tracking criminal matters from first arrest until disposal of the case by acquittal or conviction and sentence. This has been established under an interagency committee led by the Office of the Chief Justice. Some staff training has been conducted and trial sites were established at Waigani, Lae and Wewak in 2017 to start entering data. System operators for those centres have already been identified.

The Court's own "homegrown" database system, the Case Docketing System underwent 28 individual changes during 2016 to assist in producing management reports such as those annexed in this Report.

Planning and tender preparation for an integrated finance and human resources management and reporting system was carried out in 2016 and it is expected the successful tenderer will commence data loading into the system during 2017 with the live implementation of the system towards the end of that year.

2 JUDGES

There were 40 Judges sitting in the National Court in 2016 of which 34 were citizens and 6 non-citizens. The names of the Judges and the places at which they were sitting at the end of the year are set out at Appendix 18.15 together with details of appointments and other changes during the year. 13 Judges were resident in Port Moresby, two non-residents and the balance resident in the provinces. The two non-resident Judges each also hold commissions as Judges of the Federal Court of Australia. They attend at Waigani for Supreme Court sittings. By arrangement between the Papua New Guinea and Australian governments, they receive no additional judicial salary from Papua New Guinea, only travel and accommodation expenses.

The Judges appointed or re-appointed in 2016 are:

- (a) Justice Derek Hartshorn was *reappointed* a Judge of the National & Supreme Courts for 3 years from 13th February 2016.
- (b) Justice David Lionel Cannings CBE was *re-appointed* a Judge of the National & Supreme Courts for 3 years from 24th June 2016.
- (c) Justice Leka Nablu was appointed a Judge of the National & Supreme Courts for a term of ten (10) years from 9th February 2016.
- (d) Justice Robert Lee Lindsay was appointed a Judge of the National & Supreme Courts for a term of ten (10) years from 3rd March 2016. (date of swearing in).
- (e) Justice William Neill, was appointed a Judge of the National & Supreme Courts for a term of three (3) years from 7th April 2016.
- (f) Justice Terrance Harold Foulds, was appointed a Judge of the National & Supreme Courts for three (3) years from 16th December 2016.

- (g) Ravunama Auka was *re-appointed* Acting Judge of the National Court for a term of twelve (12) months from 2nd November 2016.
- (h) Danajo Douglas Salee Koeget was *re-appointed* Acting Judge of the National Court for a term of twelve (12) months from 2nd November 2016.
- (i) Daniel Yale Liosi was *re-appointed* Acting Judge of the National Court for a term of twelve (12) months from 2nd November 2016.
- (j) Thomas Anis was *re-appointed* Acting Judge of the National Court for a term of twelve (12) months from 2nd November 2016.

The appointment of Mr. Mark Pupaka as Acting Judge was revoked on 6th June 2016. He was not sworn in and did not commence his judicial responsibilities.

Justice John Kawi retired early on medical grounds as of 5th February 2016.

Justice Catherine Davani died in office in November 2016.

3 APPROPRIATION AND EXPENDITURE

Except for 2007, over the years, the Judiciary's budget estimates continue to suffer reduction. In 2015, the Judiciary's estimates submitted by the Chief Justice for 2016 was reduced without opportunity given to Parliament by the government through the Treasurer to be informed of the proposed reduction and opportunity for debate. The Judiciary's estimates for recurrent activities for 2016 was K195,688,428. which was reduced by K48,360,228 in the appropriation. For the second time since 2004, the Judiciary suffered a reduction in the actual recurrent appropriation from the previous year by K2,668,200. A breach of s 210 of the Constitution continues to occur.

Year	Estimates K.	Appropriation K.	Increase/Reduction K.
2004	34,649,000	27,375,000	7,274,000
2005	38,882,632	30,000,000	8,882,632
2006	39,487,773	35,000,000	4,487,773
2007	38,811,625	38,812,000	375 (increase)
2008	47,188,024	44,000,000	3,188,024
2009	50,465,000	46,640,000	3,825,000
2010	73,898,503	50,224,300	23,674,203
2011	90,654,354	69,652,000	21,002,354
2012	123,502,768	73,831,300	49,671,468

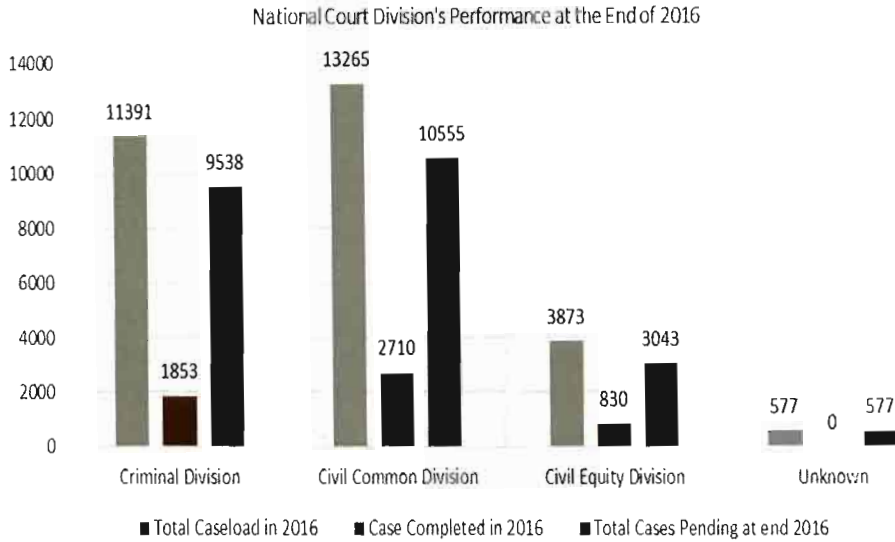
2013	122,142,171	75,116,500	47,025,671
2014 <i>Initial</i>	129,334,431	<i>76,994,000</i>	
2014 <i>Supplementary</i>		<i>52,000,000</i>	
2014 Total		128,994,400	340,031
2015	160,305,709	149,994,400	10,311,309
2016	195, 688,428.	147,328,200	48,360,228

Total recurrent appropriation for 2016 was K147,328,200 against expenditure of K139,100,673. Funds of K20.6 million were carried forward into 2016 from reserves and allocated to the development of Court infrastructure. The appropriation plus savings carried forward was therefore K167, 941,632 and total expenditure was K144, 968,302 or 86%. Recurrent Appropriation expenditure by activity is shown in Appendix 18.16. A Judicial Audit Committee oversees expenditure and accounting for it and the Accounts of the Judiciary are audited annually by the Auditor General.

4 NATIONAL COURT

After adjustment for data cleaning the number of cases brought forward from 2015 to 2016 was 22,625 (increased by 798 from the figure reported in the 2015 Report). 6482 cases were filed in 2016 (an increase from 6112 in 2015) giving a total caseload for the year of 29,107. 5393 cases were completed leaving 23,714 cases to be brought forward to 2017. This gave a clearance rate in 2016 of 18.5% overall compared with 18.7% in 2015.

The number of cases completed is broken down as follows, 1853 criminal cases were completed, 2710 common law cases were completed and 830 Equity division cases were completed, as demonstrated in the bar chart below, which also shows the number of cases pending at the end of 2016 by major division.



4.1 NATIONAL COURT CIVIL PERFORMANCE OVERVIEW

The National Court civil jurisdiction had 14,007 cases carried over from 2015, 3709 cases were filed in 2016 (3591 in 2915) giving a total workload for 2016 of 17,716 cases, of which 3540 were completed, leaving a balance carried over to 2017 of 14,176, or an average completion rate of 20%. The performance by individual type of case is shown in the Appendix at 18.1.

4.2 DORMANT CIVIL MATTERS

Dormant matters are those matters in which the originating document has been filed and no other step has been taken in the proceedings for more than 2 years. In 2015 the number of dormant matters exceeded 5000. However, Judges made a concerted effort to bring forward these matters and after giving the plaintiff an opportunity to justify the delay, strike out matters where the delay could not be justified or the plaintiff was no longer interested in the proceedings. At the end of 2016 the number of dormant matters had fallen to 2957.

4.3 COMMON LAW MATTERS

This is the ordinary civil jurisdiction of the court where the bulk of matters are commenced by writ of summons. 10,796 matters pending at the end of 2015 were brought over into 2016. 2469 new cases were filed in 2016. This gave a total caseload for the 2016 of 13,265. The number of cases completed in 2016 was 2710

giving a completion rate of 20.4% and leaving 10,555 cases to be carried over into 2017. The breakup by type of matter appears at Appendix 18.2.

4.4 APPEALS AND REVIEW MATTERS

A total of 1298 cases were brought forward from 2015 into 2016, 347 cases were filed in 2016 bringing the total caseload for that year to 1645. 350 cases were completed giving an overall completion rate of 21.3% and leaving 1295 cases to be brought forward into 2017. See Appendix 18.3 for the statistics broken down into type of matter.

4.5 COMMERCIAL TRACK

594 matters were brought forward into 2016 from 2015. 219 new matters were filed in 2016 (cf. 197 in 2015) giving a caseload for the year of 813. 147 matters were completed giving a completion rate of 18.1% in 2016 and leaving 666 matters to be brought over to 2017. For figures broken down into the types of commercial matter see the bar chart at Appendix 18.4.

4.6 ELECTION PETITION MATTERS

The total caseload of election petition matters for 2016 was 14, consisting of 14 matters brought over from 2015. 7 cases were completed in 2016 giving a completion rate against the total of 50% and leaving 7 cases to be taken over into 2017. Those 7 cases were brought over from the 2002 and 2007 National Elections. The bar chart at Appendix 18.5 shows the figures.

4.7 HUMAN RIGHTS MATTERS

Human rights issues continue to be a growing area of interest for litigants. 664 new cases were filed in 2016 (a significant increase from 386 in 2015) and together with the 709 cases carried over from 2015 made a total caseload of 1373. 390 matters were completed giving a completion rate of 23.2% and leaving 1054 cases to be carried over to 2017. Of the matters completed 114 were either summarily dismissed or withdrawn. The breakup by type of matter is shown in the bar chart at Appendix 18.6. Judgements against the State arising out of actions by the Police which caused injury to persons or damage to property in an unauthorised manner resulted in judgements against the State for damages in various amounts, one judgement of which exceeded 10 million Kina for multiple plaintiffs.

4.8 ALTERNATIVE DISPUTE RESOLUTION MATTERS

160 matters were brought over from 2015, 94 new cases were filed, giving a total workload for 2016 of 254 cases of which 78 were completed, leaving 176 to be carried over to 2017 and giving an overall completion rate of 30.7%. The bar chart at Appendix 18.7 shows the figures broken down into matter by case type.

4.9 STATE MATTERS

In June 2016 a decision was taken to group all civil State matters together into one track under the management of a specific Judge for the more efficient management of those matters. The lawyers from the private and public sector were consulted before introducing this new Court track.

This means all civil matters in which the State is a party (other than those matters assigned to special tracks), whether as plaintiff or defendant, have been brought together in one list to be administered by the State Matters Judge. It was found that there were a total 4447 matters in which the State was involved at the beginning of 2016, a further 1375 matters were filed during 2016 giving a total caseload of 5822 of which 748 matters were disposed of in the year and 5074 matters taken over into 2017. Detailed statistics are in the Appendix 18.8.

As the new track develops, special Court rules may be developed to better manage the cases. The track should also be able to generate data and reports on the cases handled by the track.

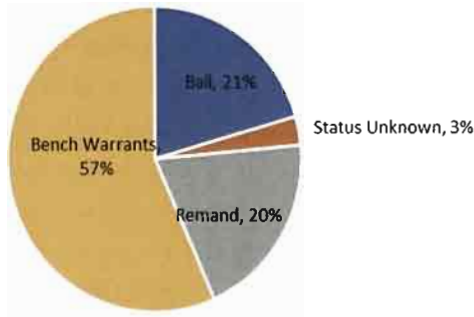
4.10 CRIMINAL MATTERS

8618 (data cleansing reduced this figure from 8633 shown in the 2015 Report) cases were brought forward from 2015. 2773 cases were filed in 2016 bringing the total caseload in 2016 to 11,391. 1853 cases were completed in 2016, a decrease from 1998 completed in 2015, leaving 9538 cases to be carried forward to 2017, an increase of approximately 10.6% over 2015. The completed cases represented a clearance rate of 16.3% of the total workload. See Appendix 18.9 for detailed statistics broken down into types of criminal matter and location of proceedings.

4.11 BENCH WARRANTS

Bench warrants, that is warrants issued by the Court for arrest of persons who have not turned up to Court for mention or trial of their matter, continues to be a large and troubling issue in the overall context of disposal of criminal matters, as the pie chart next appearing shows. It represents more than 50% of all outstanding criminal matters. Bench warrant matters also increased significantly in 2016 to 6493

from 5083 at the end of 2015. Also see Appendices 18.10 and 18.11. While Judges can and do take into account the prospects of an accused person not attending Court when required, it is also necessary to take into account the situation in remand facilities which are mostly overcrowded. The only likely long-term solution is more resources for both Correctional Services and Police.



The average number of days to complete a criminal case from committal for trial until judgement was 585 or 20 months.

4.12 FRAUD & CORRUPTION MATTERS

It was mentioned in the 2015 report that the Court had established a special track for significant fraud and corruption related criminal matters, so that they could speedily dealt with. In 2016 747 cases were waiting to be heard at the beginning of the year, 247 cases were filed during the year. 235 cases were heard and completed, giving a clearance rate of 23.6% percent leaving 759 cases to be brought over into 2017. This has been a successful and important development which has seen fraud and corruption cases dealt with quickly, while witnesses were available, which might otherwise languish in the criminal list and eventually be difficult to prosecute because of the absence of witnesses. See the Appendix 18.11.1

4.13 RESERVED DECISIONS

Sometimes the facts of a case are complex or the law is complex or both and more time is required to examine the evidence, find the facts and apply the law. In those situations, a decision is reserved. The Judiciary's policy guidelines for the delivery of reserved decisions is that the decision should be delivered within three to six months after the case is heard. 449 reserved decisions were carried over from 2015. 563 decisions were reserved in 2016 giving a total caseload of 1012 in 2016. 340 reserved decisions were delivered in 2016, leaving 672 reserved decisions carried

over to 2017. The age and number of reserved decisions are shown in Appendix 18.12.

5 SUPREME COURT

5.1 TOTAL WORKLOAD AND CLEARANCE RATE

1081 cases were brought forward in the Supreme Court from 2015 and 379 new cases were filed in 2016 giving a total caseload for 2016 of 1460. Cases completed in 2016 were 403 giving a clearance rate of 27.6% with 1057 cases carried over into 2017. The statistics broken down into different types of Supreme Court matters appear in Appendix 18.13.

5.2 SUPREME COURT RESERVED DECISIONS

74 reserved decisions were carried over from 2015, 160 added in 2016 and 234 reserved decisions delivered in 2016 leaving 76 reserved decisions carried over to 2017. Appendix 18.14 shows the breakup of reserved decisions by year.

6 AN OVERVIEW OF THE COURTS' PERFORMANCE

6.1 PROBLEMS AFFECTING COURT PERFORMANCE IDENTIFIED IN THE 2015 REPORT

On pages 2 -13 of our report for 2015, we identified ten (10) main contributing factors for low case disposition output measured from total cases pending in the year against the total number disposed of in the year. We also suggested some ways for remedying those factors. In 2016, some progress was made in respect of those factors which we report below.

We start with a statistical overview of the increase in the workload of the two Courts.

6.2 STATISTICAL OVERVIEW

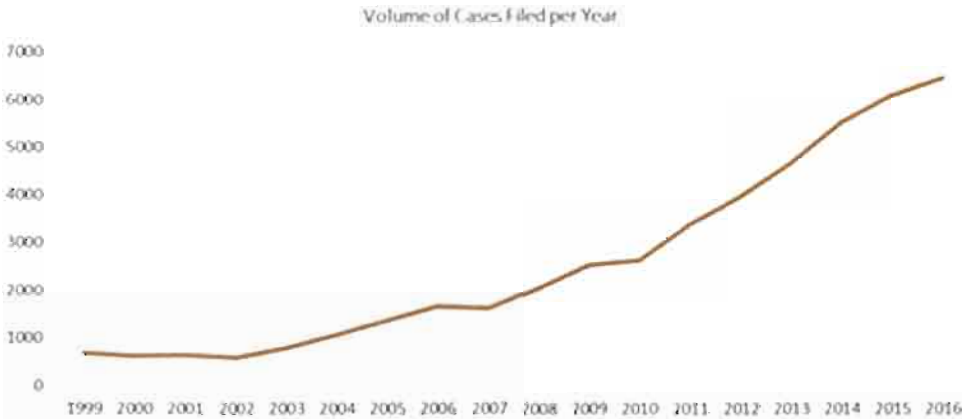
The Supreme Court's caseload increase in case filing has been steady between 250 to over 300 per year. This trend is shown by case filing for a five-year period from 2012 to 2016:

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Year	Cases Filed
2012	278
2013	366
2014	323
2015	328
2016	380

With 35 Supreme Court Judges panelled to sit throughout the year, and with improved pre-hearing listing of cases, the increased workload has been managed satisfactorily. The result has been that the preparation of cases for hearing by the parties has now become a concern. A number of sittings were affected with light listings resulting in waste of resources to bring Judges to hear those cases. The Court responded by increasing its summary list to dispose a record number of cases in 2016 (over 200 cases dismissed for want of prosecution).

The National Courts' caseload increase over the years is a different story. Significant increase has been experienced. The Chart below shows the increase since 1999:



The number of cases filed in each year for the two courts continues to increase. In 2013 there were 4636 new cases filed, in 2014 there were 5402 new cases (a 16.5% increase), in 2015 there were 6112 new cases (a 13% increase) and in 2016 there were 6482 new cases (a 6% increase). As significantly less than one hundred percent of cases filed in each year is completed in each year the difference is added to the ever-increasing backlog. More Judges are needed to deal with the National Court caseload.

6.3 INADEQUATE NUMBER OF JUDGES AND THE NEED TO INCREASE THE NUMBER OF JUDGES

In 2016, three (3) new Judges were appointed: Justice William Neill, Justice, Justice Robert Lindsay and Terrance Harold Foulds. The total number of Judges increased from 38 in 2015 to 40 in 2016.

6.4 JUDGES SERVING DUAL COMMISSIONS AS TRIAL JUDGES AND APPELLATE JUDGES AND THE PRESSING NEED TO RESTRUCTURE THE HIGH COURTS TO SEPARATE THE SUPREME COURT FROM THE NATIONAL COURT AND INTRODUCE A COURT OF APPEAL IN BETWEEN.

A significant contributor to achieving greater output of cases in both the National Court and the Supreme Court is the complete separation of the National Court from the Supreme Court and the creation of an intermediate Court of Appeal. It was disappointing that the Government's attempts to achieve passage of the necessary constitutional amendment was not successful in 2016. It is to be hoped that this most important and significant restructure for the future of the Courts is achieved in 2017. That will add 6 weeks of sitting time a year to each of the National Court Judges' calendar as they will no longer be required to sit in the Supreme Court.

6.5 INACTIVE OR DORMANT PENDING CIVIL CASES

Summary disposal of dormant civil matters is a quick way of reducing unheard case numbers. In the National Court a dormant matter is usually regarded as a matter in which the originating process has been filed and no other document has been filed for two years after, indicating that in all likelihood the originating process has not been served within the time allowed by the Rules. As the Case Docketing System tracks each document filed, a report can be generated identifying the cases where no document is filed subsequent to the originating document. As mentioned elsewhere the number of such cases in 2015 was over 5000. By regular summary disposal hearings during 2016 that number has now been reduced to a little over 2900 at the end of the year. A program of regular summary disposal hearings will continue in 2017. Similarly, in the Supreme Court, over 200 matters were summarily disposed of during 2016.

6.6 BACKLOG OF UNEXECUTED BENCH WARRANTS

In 2015, 5,083 Bench Warrants were pending. The number increased to 5,396 in 2016. Poor return on executed bench warrants by the Police remains a concern.

6.7 UNDER-RESOURCED OFFICERS OF LAW OFFICE SUPPORTING THE COURTS-OFFICES OF THE PUBLIC SOLICITOR, PUBLIC PROSECUTOR AND SOLICITOR -GENERAL

The Public Prosecutor and Public Solicitor reported to the Courts throughout the year that their court circuit operations were hindered by lack of funds. The Solicitor-General also faced shortage of lawyers to defend/prosecute claims involving the State. As a result, some court circuits were delayed. There were also instances of judgements being entered by default against the State, its officers or other agencies for want of an appearance or due filing of a defence. There is a need to adequately resource those offices.

6.8 EFFICIENT CASE MANAGEMENT: COURTS & PARTIES PREOCCUPATION WITH PRELIMINARY HEARINGS RESULTING IN BACKLOG OF CASES

Reduction in the amount of time spent with preliminary hearings before the trial would improve the output of cases. One way which could be trialled is to give the case a firm date for trial at an early stage after close of pleadings, thus confining the parties to the time between the setting of the trial date and the trial date for any preliminary applications. Delivering reserved judgements by the date specified by the Court at the end of the trial would introduce certainty for the parties and discipline for the Court. Efficient management of judicial time so that Judges spend as much time as possible sitting in court hearing cases would also improve throughput. To effectively implement some of these actions may require implementation of automatic reminders in the Case Docketing System.

6.9 LONG LIST OF DELAYED JUDGMENTS

In 2016 the disposition of reserved decisions improved. The Supreme Court cleared 46 (60%) out of 74 reserved judgments from previous years. The National Court cleared 123 (27%) out of 449 reserved judgments from previous years. The administration took measures to impress upon Judges to give priority to disposing of reserved decisions before conducting hearings of new cases.

6.10 JUDGE-TIME IN COURT

Judges are encouraged to spend more time in court as that is the only way to move cases. The present ability to do this is constrained by the limited number of judges and the need to complete reserved judgements.

6.11 CASES FILED BY PARTIES WITHOUT EXHAUSTING ALTERNATIVE STATUTORY OR OTHER AVENUES FOR RESOLVING THE CONFLICT

The Courts increased Court User Forums (CUF) by holding them in a number of locations for the first time. The Judges discussed other awareness programs in the reporting year. A CUF project team chaired by Justice Ellenas Batari was tasked to develop and implement other awareness programs.

6.12 UNDER-UTILIZED MEDIATION SERVICES OFFERED BY THE NATIONAL COURT

The uptake of mediation services by litigants continues to be very low. The Court Rules relating to mediation contemplate that the Court can intervene in litigation at an early stage, after close of pleadings, and then determine whether or not the case should be sent to mediation. The Court may be driven to this interventionist approach if parties and lawyers do not show more enthusiasm for this modern effective method of dispute resolution.

The Judiciary's long-term target is to achieve an international norm of 60% of civil cases being disposed of by mediation. Before the Court can take a strict interventionist approach to directing cases to mediation it would have to ensure that there were adequate mediation services available. Probably 200 to 300 resident mediators would be required throughout the country, properly trained, certified and registered. The current number of mediators at the end of 2016 was 116. Of this, 38 were fully accredited Mediators (16 overseas and 22 local), and 78 were provisionally accredited Mediators (all local). The bulk of of them are provisionally registered and require further training and experience. The target is to have over 200 fully accredited Mediators before the Court will consider whether to introduce compulsory mediation.

6.13 OTHER METHODS OF ALTERNATIVE DISPUTE RESOLUTION

In addition to resolution of cases through formal mediation, in 2016, the Judiciary increased its efforts to encourage Judges to guide Lawyers and Litigants to enter into out of court settlement negotiations and settlement. The Judiciary increased the number of Judges assigned to the ADR/Mediation track to assist Judges and parties ((Justice Kandakasi & Justice Shepherd). As a part of this exercise, the Courts utilized other forms of alternative dispute resolution (ADR) namely, early neutral evaluation of cases, expert appraisals and judicial dispute resolution (JDR). Through early neutral evaluations and expert appraisals, a Judge has evaluated a large number of cases before the Court in a number of locations. Using this process, the Judge, as a neutral and independent third party has highlighted the strengths in both the plaintiff's and defendant's cases which has enabled the parties

to enter into meaningful settlement discussions and resolved many of the cases. In other cases, a judge has been able to use JDR. Through this process, the Judge has been able to get the parties to enter into meaningful out of court settlement negotiations and where they fail to settle, obtain the parties' consent for them to briefly present their arguments on the points in dispute between them, which the Judge considers and issues a binding opinion. Through these processes, over 500 cases have been resolved, without being referred to formal mediation or drawn out trials. This has saved a lot of time and expense in addition to expedited and final outcomes for the parties. More training in the efficient and effective use of these ADR and JDR processes will enable Judges and hence the Judiciary to dispose of more cases expeditiously in less time at less costs.

7 IMPORTANT CASES DECIDED IN 2016

In 2016 a number of cases decided or clarified important points of law. A brief note on some of them is below:

Marape v O'Neill (2016) SC1487 individual policemen appearing as parties in Court in their official capacity must obtain the approval of the Attorney-General to be represented by counsel other than the Office of the Attorney-General.

Namah v Pato (2016) SC1497 the amendment to the Constitution affecting liberty of a person failed to meet the requirements of Section 38 of the *Constitution* was unconstitutional and consequently the establishment of the Refugee Detention Centre was unconstitutional.

State v Elu (2016) SC1599 the Police Commissioner cannot review his own disciplinary decisions but those decisions are amenable to judicial review.

Semoso v Sohia (2016) SC1509 if an election petition is accepted and registered by the Registrar without checking if the fee was paid, where the fee was offered in cash and rejected, that does not affect the validity of the filing.

Namah v Poole et al. (2016) SC1516 if the Chief Justice is in a conflict of interests he "is unable ... to act" within the meaning of Section 169(4) of the Constitution. The administrative appointment of members of a Tribunal to deal with a matter where the Chief Justice was an alleged victim of an allegation of misconduct in office and a potential witness, did not place him in a conflict of interests' situation.

Somare v Zurenuoc (2016) N6308 the damage, dismantling and removal of cultural property at the Parliament was unlawful.

Tomscoll v Mataio (2016) N6200 a citizen with dual nationality from birth who did not, through ignorance, renounce her foreign citizenship before age 19 and was culturally a PNG citizen should not be deported but afforded the opportunity to apply for PNG citizenship.

Willie v Kaupa (2016) N6533 police raids on villages resulted in damage to property, liability being established by default judgement. Compensatory damages ordered against the State in the sum of K10,029,215.

8 PROPOSALS FOR LAW REFORM

In 2010, the Judiciary initiated a proposal for Court structure reform that would see the establishment of a three-tier Court structure. In our earlier reports since 2010, we have reported on the need for the reform. In 2016, the Constitutional Amendment Bill for the court restructure passed the first and second readings in Parliament. The third and final reading was delayed for reasons known to the government and the Parliament. The Judiciary is concerned over the delay.

9 LEADERSHIP TRIBUNAL REPORT

9.1 OVERVIEW

A total of four cases were in the Leadership Tribunal track at the start of 2016. All of these cases were pending matters carried over from 2014 & 2015, and no new cases were registered in 2016. Out of these four matters pending in the Leadership Tribunal for 2016, one was completed and three carried over to 2017. These cases are as follows:

9.2 COMPLETED MATTERS

9.2.1 Constitutional Officeholders Rights Tribunal of Mr. Vela Konivaro, Clerk of Parliament (LT 1 of 2015)

The Leadership Tribunal of Mr. Vela Konivaro, Clerk of Parliament was appointed on the 23rd of January 2015. The tribunal was appointed to inquire into 12 allegations of misconduct in office by the leader. Eight of the allegations were

dismissed and on four he was found guilty. The tribunal on the 21st of November 2016 heard submission on penalty and made recommendations to the Appointing Authority (NEC) on the 15th of December 2016, that he be dismissed from Office. The leader on 29th of December 2016 applied to review the decision of tribunal in the National Court, seeking leave to review the decision of the tribunal and have recommendations made by tribunal restrained in the interim. The Court heard the matter, on the 3rd of January 2017 and decided that matter be granted leave for Judicial Review. But on the issue of restraining the recommendations of the tribunal, the Court refused. The Court also made additional orders that the matter be set for trial on a date to be advised by court. The matter will go for trial on the 9th of June 2017.

9.3 PENDING MATTERS

9.3.1 Leadership Tribunal of Hon. Patrick Pruaitch (LT 2 of 2010)

The Leadership Tribunal of Hon. Patrick Pruaitch, Member for Aitape - Lumi was appointed on the 6th January 2010. The tribunal did not progress beyond the appointment of the tribunal members, as the leader appealed his referral by the Ombudsman Commission in the National Court. The matter was heard in the National Court and refused. The leader then appealed and sought a stay in the Supreme Court after being refused in National Court.

On 31st March 2010 the Supreme Court quashed the decision of the National Court and reinstating the matter. On June 14th of 2010 the matter went before the National Court, and the court made directions for that matter to return to the Supreme Court for mention by way of SCA 1 of 2015. The matter came before Supreme Court and court directed that the National Court matter, OS 34 of 2010 be stayed until the hearing and determination of the Supreme Court appeal to be heard in 2017.

9.3.2 Leadership Tribunal of Hon. Peter O'Neill (LT 4 of 2014)

The Leadership Tribunal of Hon. Peter O'Neill CMG, Prime Minister & Member for Ialibu – Pangia was appointed on the 27th of November 2014. Tribunal was appointed to inquire into three allegations of misconduct in office of the Prime Minister.

However, the appointed tribunal did not convene on the scheduled date and time of the 26th of January 2015. The Prime Minister's lawyer filed an application on the 20th of November 2014 to have the matter stayed on grounds that the tribunal be added as defendant on the Prime Minister's Application in the National Court, OS (JR) 810 of 2014. The application was granted by the court and the tribunal was

stayed until the completion of the review. On the 17th of October 2014 a stay was also granted in a related proceeding of OS (JR) 383 of 2014, staying OS(JR) 810 of 2014, until questions referred to in the Supreme Court relating to OS (JR) 383 of 2014 were determined in SCREF 7 of 2014. The Supreme Court determined certain questions of law pertinent to this referral in *Special Reference by the Attorney General Pursuant to Constitution Section 19* (2016] SC 1534. These matters will continue into 2017.

9.3.3 Leadership Tribunal of Hon. Belden Namah (LT 6 of 2015)

The Leadership Tribunal of Hon. Belden Namah, Member for Vanimo – Green was appointed on the 9th of October 2015. The tribunal was appointed to inquire into 13 allegations of misconduct in office by the leader. The leader made an application for review in the National Court before the commencement of the tribunal, questioning his referral and asking that the tribunal to be stayed. The National Court granted the application, stating that there were sufficient grounds for the matter to proceed in the National Court, but on the issue of staying the tribunal, the court refused, holding that staying the tribunal before the commencement date was premature. The leader then amended the application and went before the National Court again seeking a stay against the tribunal and also that matter be referred to Supreme Court for interpretation, the Court refused the application.

However, the leader again further amended the application and went before the National Court and this time was granted consent orders in terms of his application. The Reference in the Supreme Court went before a three Judge bench for interpretation. The Court ruled in the negative for the question seeking interpretation and sent the matter back to the National Court. The National Court in *Namah v Poole* (2016) N6397 dismissed the tribunal's application to dismiss the leader's proceedings as an abuse of process, found that the appointment of the tribunal by the Chief Justice did not give rise to a reasonable apprehension of bias on the part of the Chief Justice nor was he in a conflict of interests situation but that the conduct of the members of the leadership Tribunal did give rise to a reasonable apprehension of bias and a permanent injunction was granted to restrain the tribunal members from proceeding in the inquiry.

10 ADMINISTRATIVE IMPROVEMENTS

10.1 THE CASE DOCKETING SYSTEM (“CDS”)

The Case Docketing System was mentioned in the 2015 report as one of the Courts important management tools. The system is constantly under development and 28

improvements were implemented in 2016 with the assistance of a consultant from Japan. The moment a new matter is filed in court it is entered into the CDS database and any development in respect of the matter is also subsequently entered, such as date fixed for hearing, hearings, documents filed, decisions reserved, decisions delivered et cetera. Any Judge can consult CDS at any time to see the list of cases to be heard, the cases part heard or the dates to which they have been adjourned, cases heard and decisions reserved and cases completed. In bar chart format a Judge can see how his or her productivity performance compares with other judges in the court in terms of case disposal numbers.

Other activities conducted in the Registries to provide electronic records for the Court included uploading of scanned documents to the Case Docketing System, scanning all files on record both closed and pending. In late 2016 the Registry commenced moving scanned documents of all live files to the CDS, this will continue in 2017. The Supreme Court achieved 100 % scanning of all its files at the end of December 2016. In 2015 scanning commenced of files in archives and this will continue into 2017.

10.2 INTEGRATED CRIMINAL CASE MANAGEMENT SYSTEM DATABASE (“ICCS”)”)

In 2014 a memorandum of understanding was signed between the Courts and justice sector agency heads to establish a project named the National Criminal Process Improvement Project with a Secretariat to oversee the full implementation of a database system of criminal matters from the earliest point and to ensure that all recommendations of interagency discussions are implemented in the system. Office of the Chief Justice is the lead agency. ICCSD will run through the criminal justice sector agencies collecting data on criminal matters from first arrest right through to disposal of the case by conviction or acquittal. Its aim is to improve collaboration between criminal justice sector agencies, provide reliable information and efficient processing between agencies and improve policy development, resource planning and cross agency impact analysis capability to provide coordinated service delivery. As mentioned below under MOU activities the software has been developed by the New South Wales Judicial Commission and will be ready for trialling in 2017.

10.3 JUDICIAL SERVICES INTEGRATED MANAGEMENT SYSTEM (“JSIMS”)”)

A Project Steering Committee was established to determine how best to improve financial control and reporting and to gather information on human resources matters and make that information available countrywide. It was decided that the Court required an Enterprise Reporting Program. A detailed requirements

document was prepared and circulated to all software service providers and responses evaluated by the Project Steering Committee. It is expected that a contractor will be selected and implementation of the system and data loading commence in 2017. JSIMS will be automating a large number of manual processes in Finance and Human Resources providing more accurate, transparent and timely information and reporting to the Chief Justice, Judges and NJSS Management, and substantially reducing the reliance on paper records.

11 MEMORANDUM OF UNDERSTANDING ACTIVITIES

In 2016 the following MOU activities were undertaken by the Courts:

11.1 MOU WITH QUEENSLAND SUPREME COURT

Pursuant to an MOU the NJSS policy and planning team was sent to work with the Policy and Planning team of the Queensland Supreme Court. This was to assist us develop our policy and planning development capacity. An e learning program was initiated with Queensland TAFE through the MOU and was successfully carried out by four officers. A team of officers also visited to review data management and reporting protocols. The experience gained assisted our team to assess CDS data and create appropriate management reports.

11.2 MOU WITH FEDERAL COURT OF AUSTRALIA.

Activities continued under original MOU. A new annex to the existing MOU was signed in September 2016, this continued activity commenced under the earlier MOU to encourage innovation that leads to improve service delivery efficiencies including the cutting of red tape and to assist with the development of a framework for organising, managing and administering court directed mediation activities.

11.3 MOU WITH THE SHERIFF OF NEW SOUTH WALES

An MOU was signed with the Sheriff of New South Wales to assist the Sheriff of PNG develop its capacity. Activities under this MOU were to commence in 2017

11.4 MOU WITH NEW SOUTH WALES JUDICIAL COMMISSION

An updated MOU was signed in May. The Integrated Criminal Case Management System Database ("ICCSDB") project was launched in September 2016. Under this MOU signed earlier the Integrated Criminal Case Management was developed and will be ready for a pilot project to commence in 2017. Initial training for the

Registrar and two senior National Criminal Process Improvement Project (“NCPIP”) officers was done in Sydney and the first training for Wewak and Lae NCPIP and Law and justice sector officers was done in Lae in December. Further training will be conducted in NCD in early 2017 for roll out of pilot program in 2017. Prior work performed by the New South Wales Judicial Commission under MOU was the establishment of the Criminal Sentencing Database.

11.5 SHERIFF MOU WITH POLICE COMMISSIONER

A MOU was signed between the Police Commissioner, Sheriff and Chief Justice particularly to coordinate enforcement activities required by the duties of the Sheriff. Activities under this MOU commenced in 2016. The MOU was necessitated by the fact that Commissioned Police Officers are also the Sheriff’s Officers.

12 PUBLICATIONS

In 2016 the Judges published 431 National Court judgements and 83 Supreme Court judgements on the Internet. Six hardbound volumes of law reports were published. A book on practice and procedure in the National Court authored by the Chief Justice and retired Judge Lay was also published.

13 PACIFIC JUDICIAL CONFERENCE

Between 12th to 16th September 2016, the PNG Judiciary hosted a major judicial conference of the Pacific region. Chief Justices or their delegates from 24 countries including Australia and New Zealand attended the conference. The theme of the conference was ‘Quality of Justice in the Pacific: Myth or Reality?’ The Conference was opened by the Hon Prime Minister of PNG, Peter O’Neill. Papers were presented by delegates sharing their experiences and challenges facing Pacific judiciaries in dispensing justice and upholding the rule of law in the Pacific. The Conference also gave the PNG Judiciary the opportunity to showcase initiatives undertaken to enhance the quality of justice delivered in PNG including -

- The Judiciary embracing the Law & Justice Sector (LJS) "sectoral approach" through NCM (Meeting of all LJS Sector Agency Heads including the Judiciary, Chaired by Secretary for the Department of National Planning), to address the courts’ capacity issues including decentralization of the National Court to the provinces, increase in the number of Judges and infrastructural development

- Through the NCM, the establishment of an integrated criminal justice data management system (ICCSA) that would track criminal cases from the point of arrest to imprisonment or acquittal and provide reports and recommendations for improvement
- Increase in number of judges
- Provincial expansion 2008 – 2016 and beyond
- Initiating proposal for Court Structure Reform
- Rules Reform
- Introduction of Specialised Court
- Reform of case management system from registry-based to Judge-based under new system called Case Docketing System (CDS)
- Introduction of advanced Information and Communications Technology (ICT) systems to improve case management to support new case management system (CDS)
- Customary Law Codification Project commencing with Manus Province Pilot Project
- Partnership with other judiciaries and relevant institutions through MoUs such as those of the MoU with the Australian Federal Court, Supreme Court of Queensland, The Judicial Commission of New South Wales and the Sheriff of New South Wales

14 PACIFIC REGIONAL CENTRE FOR JUDICIAL EXCELLENCE (PICCJE)

The regional conference of Chief Justices attending the PJC endorsed the PNG Judiciary's bid to develop a regional centre for judicial excellence. This is a major decision that will significantly change the way judicial education and training is addressed in PNG and the Pacific. We explain the background to this decision in detail.

Judiciaries of the Pacific region acknowledge that an *“independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice”*: Part IV of The Commonwealth Latimer House Principles of Government (2003); Harare Commonwealth Declaration (1991).

For many years, Pacific judiciaries have been running education programs under *ad hoc* arrangements. The programs have been well supported by their nearest developed neighbours, Australia, New Zealand and the United States as well as, on occasion, the Commonwealth Magistrates’ and the Judges’ Association and the Commonwealth Secretariat.

Pacific judiciaries have received immense benefit from regional judicial education and training programs since 2000 under the generous assistance of our two advanced Pacific jurisdictions, Australia and New Zealand under the program initially known as Pacific Judicial Education Program (PJEP), later known as Pacific Judicial Development Program (PJDP) and now Pacific Judiciaries Strengthening Initiative (PJSI). The current five year program under PJSI runs from 2016 to 2020.

In 2006, PNG Judiciary initiated proposal to develop a regional centre for judicial excellence that would deliver structured judicial education programs for PNG Court officers - Judges, Magistrates, Court officers and officers of the Law and Justice Sector (LJS). The goPNG accepted the proposal and incorporated the idea in a government policy paper on Law and Justice issued in 2007. In 2010, the Chief Justice, Chief Magistrate and Secretary, Department of Justice and Attorney General entered into a MOU which paved the way for the establishment of the PNG Centre for Judicial Excellence (PngCJE). By 2016, PngCJE was convinced that it was ready to build on its experience to take on a regional role in offering programs for other Pacific Islands. After necessary consultations with stakeholders within PNG and the forum of Pacific Chief Justices held under the PJSI framework, a decision was made by PJSI country Chief Justices in a meeting held in Port Moresby in September 2016, to endorse the proposal to set up PicCJE in PNG. The proposal was later endorsed by in a wider meeting of Chief Justices from the Pacific at the Pacific Judicial Conference (PJC) held in Port Moresby in the same week. PicCJE will be developed over a four (4) year period (2017-2020).

15 COURT FACILITIES DEVELOPMENT

The Judiciary continued to implement its capital works program. Projects undertaken in 2016 appear in Appendix 18.17.

16 COMPLAINTS HEARINGS

In 2014 a mechanism was established to receive, hear and determine complaints concerning the administration of the Court. As the existence of the Committee has become better known, the number of complaints received by it has increased. While the committee does hear and deal with complaints of delay, it does not deal with complaints concerning the results of any judicial hearing, which are more properly dealt with by appeal or review proceedings.

A summary of proceedings before the Committee in 2016 appears in Appendix 18.18.

17 RECOMMENDATIONS

17.1 CONSTITUTIONAL RESTRUCTURE OF THE COURTS

The highest recommendation of the Judiciary is that the passage of the constitutional amendments to give effect to restructure of the courts be effected as soon as possible.

17.2 CHIEF JUSTICE'S ESTIMATES TO BE TREATED IN ACCORDANCE WITH CONSTITUTION SECTION 210

The Constitution contemplates that if the Executive Government is planning to reduce, in the Appropriation Bill, the estimates submitted by the Chief Justice to the Prime Minister, there should be an opportunity on the floor of Parliament to vote as to whether the Judiciary Appropriation be reinstated to the level of the Chief Justice's estimates. The Judiciary recommends that the Chief Justice's estimates not be reduced unless this procedure is followed.

17.3 ADEQUATE RESOURCES FOR THE OFFICE OF THE PUBLIC PROSECUTOR, PUBLIC SOLICITOR AND SOLICITOR-GENERAL

As mentioned in the body of the report inadequate resources for these important government institutions has been given as one reason for lack of action which has interrupted the workflow of the Court. It also has adverse consequences for the Executive Government, particularly when cases with large financial consequences are not adequately defended or not defended at all.

17.4 FURTHER RESOURCES FOR THE POLICE TO EXECUTE BENCH WARRANTS

More than half of the criminal cases outstanding are cases which the courts cannot advance because the Police have not brought the defendant before the court pursuant to a bench warrant. The Police urgently need more resources to improve their performance in this area.

17.5 FURTHER RESOURCES FOR CORRECTIONAL SERVICES

Human Rights Applications demonstrate a general lack of resources for Correctional Services, overcrowding, poor hygiene standards, poor food control. There appears to be a need both for additional training for Commanding Officers to understand their responsibilities and to have the wherewithal to provide detainees with the human rights guaranteed to them and legislated for in the *Correctional Service Act* and regulations.

18 APPENDICES

18.1 NATIONAL COURT CIVIL JURISDICTION PERFORMANCE BY CASE TYPE

CIA ARE APPEALS FROM THE DISTRICT COURT, CR MATTERS ARE CRIMINAL APPEALS FROM THE DISTRICT COURT; EP (OS) = ELECTION PETITION ORIGINATING SUMMONS; HR, HR MP, HR OS, HR WS, HRA AND HR OI ALL RELATE TO HUMAN RIGHTS PROCEEDINGS; LA = LAWYERS' ADMISSION APPLICATIONS, LT = LEADERSHIP TRIBUNAL MATTERS; MC = MATRIMONIAL CAUSES; MP = MOTIONS AND PETITIONS; OS = ORIGINATING SUMMONS; WPA = WILLS PROBATE AND ADMINISTRATION; WS = WRIT OF SUMMONS.

National Court - Civil Performance at the End of 2016

Civil Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
CIA	642	119	761	192	569	25.23%
CR (APP)	152	59	211	74	137	35.07%
CR (APP) (FC)	1	1	2		2	0.00%
EP	14		14	7	7	50.00%
EP (OS)	0	9	9	2	7	22.22%
HR	14	2	16	4	12	25.00%
HR (MP)	24	5	29		29	0.00%
HR (OS)	20	20	40	16	24	40.00%
HR (WS)	77	279	356	9	347	2.53%
HRA	359	349	708	226	482	31.92%
HRC	80	7	87	59	28	67.82%
HROI	6	1	7	2	5	28.57%
LA	19	93	112	85	27	75.89%
LT	5		5	1	4	20.00%
MC	153	29	182	18	164	9.89%
MP	372	55	427	45	382	10.54%
OS	3288	904	4192	876	3316	20.90%
WPA	242	103	345	67	278	19.42%
WS	8538	1674	10212	1857	8355	18.18%
Total	14006	3709	17715	3540	14175	20.0%

18.2 COMMON-LAW TRACK PERFORMANCE IN 2016

National Court - Common Law at the End of 2016

Civil Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
CIA	56	24	80	33	47	41.25%
LA	19	93	112	85	27	75.89%
MC	115	29	144	18	126	12.50%
MP	143	12	155	18	137	11.61%
OS	2445	650	3095	714	2381	23.07%
WPA	186	103	289	67	222	23.18%
WS	7832	1558	9390	1775	7615	18.90%
Total	10796	2469	13265	2710	10555	20.4%

18.3 APPEALS AND JUDICIAL REVIEW TRACK MATTERS IN 2016

National Court - APP & JR at the End of 2016

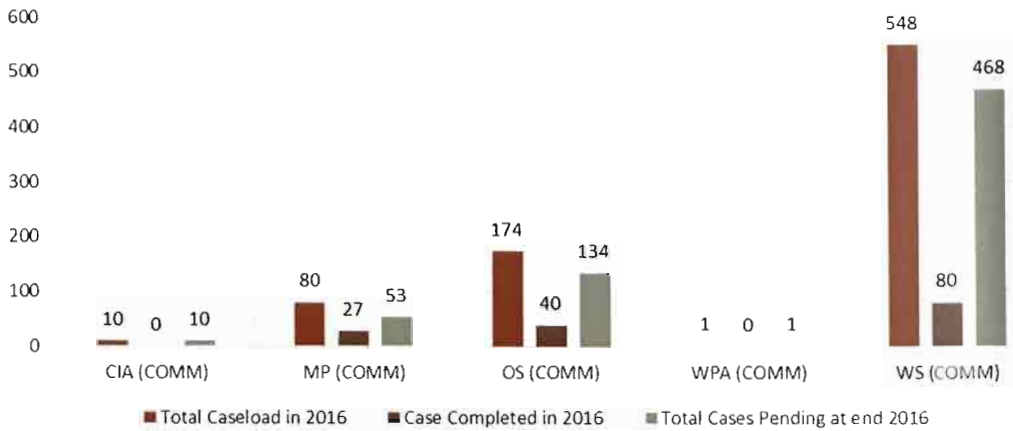
Civil Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
CIA	580	91	671	159	512	23.70%
CR (APP)	152	59	211	74	137	35.07%
CR (APP)(FC)	1	1	2		2	0.00%
MP	4		4		4	0.00%
OS	561	196	757	117	640	15.46%
Total	1298	347	1645	350	1295	21.3%

18.4 NATIONAL COURT COMMERCIAL TRACK MATTERS 2016

National Court - COMM Track at the End of 2016

Civil Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
CIA (COMM)	6	4	10	0	10	0.00%
MP (COMM)	37	43	80	27	53	33.75%
OS (COMM)	117	57	174	40	134	22.99%
WPA (COMM)	1		1	0	1	0.00%
WS (COMM)	433	115	548	80	468	14.60%
Total	594	219	813	147	666	18.1%

2016 Performance of Commercial



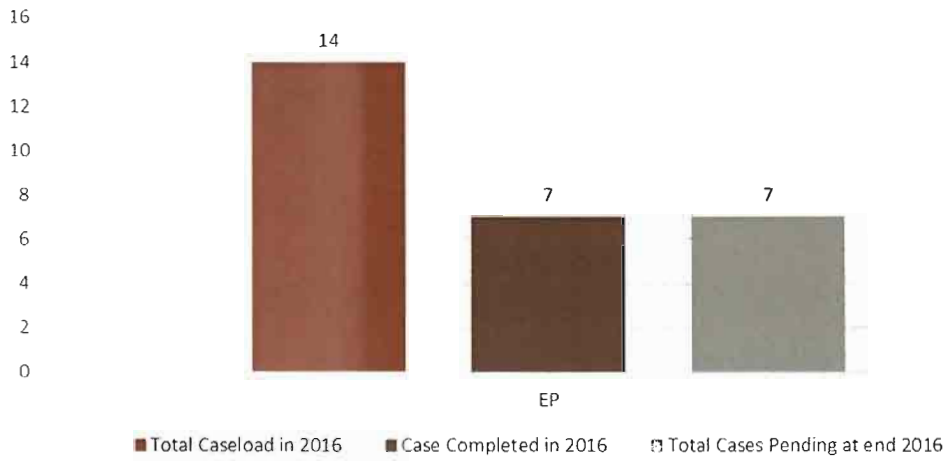
18.5 ELECTION PETITION TRACK MATTERS IN 2016

National Court - EP Track at the End of 2016

Civil Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
EP	14	0	14	7	7	50.00%
Total	14	0	14	7	7	50.0%

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2016 Performance of EP



18.6 HUMAN RIGHTS TRACK MATTERS IN 2016

National Court - HR at the End of 2016

Civil Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
HR	14	2	16	4	12	25.00%
HR (MP)	45	5	50	0	50	0.00%
HR (OS)	40	20	60	17	43	28.33%
HR (WS)	165	280	445	11	434	2.47%
HRA	359	349	708	226	482	31.92%
HRC	80	7	87	59	28	67.82%
HROI	6	1	7	2	5	28.57%
Total	709	664	1373	319	1054	23.2%

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18.7 ALTERNATIVE DISPUTE RESOLUTION TRACK MATTERS 2016

Civil Case Code	Pending Pre- 2016 Cases Brought Forward	New Cases Assigned in 2016	Total Assigned in 2016	Cases Mediated (Completed) in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
CIA	2	1	3	0	3	0.00%
CR (APP)	0	0	0	0	0	0.00%
HR (OS)	0	1	1	0	1	0.00%
HRA	1	1	2	0	2	0.00%
MC	1	1	2	0	2	0.00%
MP	3	1	4	3	1	75.00%
OS	54	22	76	18	58	23.68%
WPA	0	1	1	1		100.00%
WS	99	66	165	56	109	33.94%
Total	160	94	254	78	176	30.7%

18.8 NATIONAL COURT CLAIMS IN WHICH THE STATE IS A PARTY

State Claims at the End of 2016

Fraud Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load	
CIA		126	15	141	14	127	9.93%
EP		1		1	1		100.00%
EP(OS)		0	8	8	2	6	25.00%
HR		5		5	1	4	20.00%
HR(MP)		15	5	20		20	0.00%
HR(OS)		7	13	20	7	13	35.00%
HR(WS)		46	252	298	4	294	1.34%
HRA		165	235	400	111	289	27.75%
HRC		34	5	39	13	26	33.33%
HROI		1	1	2		2	0.00%
LT		1		1	1		100.00%
MP		208	2	210	6	204	2.86%
OS		1072	364	1436	211	1225	14.69%
WPA		29	45	74	25	49	33.78%
WS		2730	430	3160	351	2809	11.11%
Total		4440	1375	5815	747	5068	12.8%

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18.9 NATIONAL COURT CRIME STATISTICS – TOTALS

Criminal - End of 2016

Pending Pre 2016 Case Brought Forward	New Cases Filed in 2016	Total Caseload in 2016	Cases Completed in 2016	Pending Cases Brought Forward to 2017	Clearance Rate
8618	2773	11391	1853	9538	16.3%

18.10 NATIONAL COURT CRIME STATISTICS – BENCH WARRANTS, BAIL, REMAND

Bail, Remand and Bench Warrants - End of 2016

Year	Bail	Remand	Bench Warrants	Status Unknown	Total
2016	1958	1896	5396	288	9538

18.11 NATIONAL COURT CRIMINAL CASE STATISTICS BY LOCATION (BENCH WARRANT, BAIL AND REMAND)

Criminal Locations - End of 2016

Location Code	Pending Pre 2016 Case Brought Forward	New Cases Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Pending Cases Brought Forward to 2017	Clearance Rate as a % of total case load
ALO	296	89	385	173	212	44.9%
BKA	319	84	403	31	372	7.7%
CEN	75	27	102	30	72	29.4%
DRU	142	80	222	94	128	42.3%
GKA	528	127	655	114	541	17.4%
HGN	855	96	951	45	906	4.7%
KAV	212	107	319	68	251	21.3%
KER	85	18	103	32	71	31.1%
KIM	461	291	752	136	616	18.1%
KND	351	132	483	81	402	16.8%
KPO	392	215	607	142	465	23.4%
LAE	1738	410	2148	329	1819	15.3%
MAD	585	214	799	185	614	23.2%
MAN	86	40	126	1	125	0.8%
MDI	341	94	435	8	427	1.8%
MNJ	22	31	53	9	44	17.0%
POP	260	134	394	48	346	12.2%
TRI	38	13	51	8	43	15.7%
VAN	104	26	130	9	121	6.9%
WAB	308	94	402	17	385	4.2%
WGN	956	297	1253	240	1013	19.2%
WWK	464	154	618	53	565	8.6%
Total	8618	2773	11391	1853	9538	16.3%

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18.11.1 National Court Fraud and Corruption Related Matters

Criminal - FCOT at the End of 2016

Fraud Case Code	Pending Pre 2016 Case Brought Forward	New Case Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Total Cases Pending at end 2016	Clearance Rate as % of total case load
CR (FC)	742	221	963	217	746	22.53%
CR (AP)(FC)	4	26	30	18	12	60.00%
OS (POC)(FC)	1		1		1	0.00%
Total	747	247	994	235	759	23.6%

18.12 NATIONAL COURT RESERVED DECISIONS

National Court - Reserve Decisions at the End of 2016

Case Hearing Year & Decision Reserved	Total Number of Reserved Decision as at the end of 2015	Decision Reserved in 2016	Total Number of Reserved Decision in 2016	Decision Delivered in 2016	Decision Pending as at the end of 2016
2016		563	563	217	346
2015	215		215	82	133
2014	77		77	15	62
2013	41		41	6	35
2012	18		18	5	13
2011	25		25	1	24
2010	27		27	7	20
2009	16		16	2	14
2008	4		4	2	2
2007	1		1	1	0
2006	3		3	0	3
2005	8		8	0	8
2004	1		1	0	1
Year Unknown	13		13	2	11
Total	449	563	1012	340	672

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18.13 SUPREME COURT PERFORMANCE IN 2016

Supreme Court Performance - End of 2016

Case Code	Pending Pre 2016 Case Brought Forward	New Cases Filed in 2016	Total Caseload in 2016	Case Completed in 2016	Pending Cases Brought Forward to 2017	Clearance Rate as a % of total case load
SCA	564	186	750	181	569	24.1%
SCAPP	42	21	63	23	40	36.5%
SCCOS	5	3	8	5	3	62.5%
SCM	110	36	146	57	89	39.0%
SCOS	2		2		2	0.0%
SCRA	156	68	224	47	177	21.0%
SCREF	10	6	16	10	6	62.5%
SCRES	0	1	1		1	0.0%
SCREV	182	56	238	68	170	28.6%
SCREV (EP)	10	2	12	12		100.0%
Total	1081	379	1460	403	1057	27.0%

18.14 RESERVED DECISIONS IN THE SUPREME COURT IN 2016

Case Hearing Year & Decision Reserved	Total Number of Reserved Decision as at the end of 2015	Decision Reserved in 2016	Total Number of Reserved Decision in 2016	Decision Delievered in 2016	Decision Pending as at the end of 2016
2016		160	160	112	48
2015	39		39	22	17
2014	18		18	11	7
2013	5		5	5	0
2012				0	0
2011	4		4	3	1
2010				0	0
2009				0	0
2008	1		1	1	1
2007	3		3	3	0
2006				0	0
2005	1		1		1
2004	2		2	1	1
2003	1		1	1	0
2002				0	0
2001				0	0
Total	74	160	234	158	76

18.15 SITTING JUDGES AND THEIR RESIDENT LOCATIONS AS AT DECEMBER
2016

1. Chief Justice Sir Salamo Injia Kt GCL, Waigani
2. Deputy Chief Justice Sir Gibuma Gibbs Salika KBE, CSM, CBE,
Waigani
3. Justice Sir Bernard Sakora, KBE CSM CBE - Waigani
4. Justice Nicholas Kirriwom CMG, Wewak-Judge Administrator
5. Justice Les Gavara-Nanu, OBE CSM, Waigani
6. Justice Ambeng Kandakasi CBE, Waigani
7. Justice Ellenas V Batari, MBE, Kimbe
8. Justice Salatiel Lenalia CSM ML, Kokopo-Judge Administrator
9. Justice Panuel Mogish, CSM, Waigani
10. Justice Catherine Davani, Waigani
11. Justice David Cannings, CBE, Madang
12. Justice George Manuhu, Waigani
13. Justice Allen David, Waigani
14. Justice Derek Hartshorn, ML, Waigani
15. Justice Joseph Yagi, Goroka- Judge Administrator
16. Justice Colin Makail, Waigani
17. Justice Ere Kariko MBE, Waigani
18. Justice Don Sawong MBE, Lae - Judge Administrator
19. Justice Stephen Kassman, Mendi- Judge Administrator
20. Justice Jacinta Murray, Lae
21. Justice Berna Joan Collier, Waigani for Supreme Court
sittings
22. Justice John Alexander Logan RFD, Waigani for Supreme
Court sittings

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23. Justice Goodwin Poole, Mt Hagen- Judge Administrator
24. Justice Iova Geita, Wewak- Judge
25. Justice Peter Toliken, Alotau- Judge Administrator
26. Justice Martin Ipang, Tari- Judge Administrator
27. Justice Lawrence Kangwia, Kavieng- Judge Administrator
28. Justice Sir Kina Bona, Buka- Judge Administrator
29. Justice Terence Higgins QC AO, Kokopo
30. Justice Hitelai Polume-Kiele, Waigani
31. Justice Frazer Pitpit, Lae
32. Justice Kenneth Frank, Mt Hagen
33. Justice Leka Nablu, Waigani
34. Justice Robert Lee Lindsay, Mt Hagen
35. Justice William Neill, Goroka
36. Justice Terrance Harold, Foulds, Mt Hagen
37. Acting Justice Ravunama Auka, Wabag- Judge Administrator
38. Acting Justice Daniel Liosi, Kundiawa- Judge Administrator
39. Acting Justice Danajo Koeget, Daru/Kerema-Judge Administrator
40. Acting Justice Thomas Anis, Kokopo

18.16 TOTAL RECURRENT APPROPRIATION FOR 2016 AND 2015 SAVINGS

Activity	Activity Code	Current Appropriation	CFC Auth.	Total Expend.
Judges	1101	10,616,770	11,212,044	9,865,421
Supreme Court Division	1102	563,200	482,885	337,060
National Court Division	1103	4,008,950	2,384,930	2,099,690
Court Reporting Division	1104	2,066,400	2,944,144	2,039,987
Library & Archives Division	1105	1,789,250	875,072	358,005
Human Resources Division	1106	62,339,800	39,751,009	75,523,968
Admin & Finance Division	1107	6,647,250	25,492,290	8,074,718
Information & Technology	1108	4,524,150	4,158,321	2,985,318
Building & Property Division	1109	2,810,900	11,247,771	3,619,753
Security Division	1110	1,160,000	1,485,500	1,044,415
Leadership Tribunal	1111	500,000	613,006	102,347
Alternative Dispute Resolution	1112	4,503,000	1,400,081	1,075,061
Sheriff Execution Division	1113	1,429,750	814,200	444,399
NJSS Appeals Tribunal	1114	519,800	1,016,000	810,004
Election Petitions	1115	612,100	37,755	32,199
Commercial Track	1116	100,000	-	-
Human Rights Track	1117	100,000	3,000	2,551
Centre for Judicial Excellence	1118	6,657,000	3,468,766	2,511,084
Office of the Chief Justice	1119	5,219,790	7,032,950	6,764,128
Internal Audit	1120	555,800	592,581	350,562
Court Room Services	1121	357,600	231,638	112,625
Goroka Imprest	1201	2,061,100	1,761,000	1,107,187
Mount Hagen Imprest	1202	2,015,180	2,246,000	1,854,151
Kimbe Imprest	1203	2,580,600	2,460,000	2,157,597
Kokopo Imprest	1204	2,615,900	2,515,000	1,965,788
Lae Imprest	1205	3,731,600	2,049,400	1,486,309
Madang Imprest	1206	1,376,510	1,635,000	1,397,003
Wabag Imprest	1207	1,349,000	1,357,000	964,770
Mendi Imprest	1208	2,492,990	1,295,400	1,011,723
Kundiawa Imprest	1209	1,543,060	1,476,200	1,004,128
Alotau Imprest	1210	2,048,800	1,554,000	1,297,573
Wewak Imprest	1211	3,942,030	2,110,000	1,403,949
Buka Imprest	1212	1,291,320	1,310,000	886,461
Kavieng Imprest	1213	1,838,720	1,158,000	688,847
Tari Imprest	1214	1,359,880	1,164,000	885,985
Daru Imprest	1215	-	-	-
Pacific Judicial Conference	1301	-	3,487,700	2,835,908
Infrastructure Development	1309	20,613,432	20,613,432	5,867,630
Totals		167,941,632	163,436,075	144,968,302
Recurrent		147,328,200	142,822,643	139,100,673
Infrastructure Development		20,613,432	20,613,432	5,867,630
Total Recurrent and Infra Development	Totals	167,941,632	163,436,075	144,968,302

The Judiciary appropriation is a single line in the National Budget comprising Recurrent which is used for operations and Capital Expenditure which is used for infrastructure development. Each of the two components are strictly segregated. The figures provided are for recurrent operations only, which the Judiciary appropriates according to the Annual Plan and the

Judiciary's priorities as well as in line with the day-to-day operational requirements.

18.17 INFRASTRUCTURE PROJECTS COMMENCED OR CARRIED OUT DURING 2016

MOROBE PROVINCE

Minor works upgrade to Lae courthouse with a budget of K993,816 was 70% complete at the end of the year. A new court house on a new site (the old airport) is proposed for the future. The site has been obtained. A storage facility for the Sheriff was in progress of building at the end of the year with a budget of K76,897 on that new site. The site has been fenced and some site clearance and compaction works done at a cost of K590,280. One of the Judges residences in Lae was reroofed at a cost of K55,315.

MADANG PROVINCE

An upgrading to the Madang courthouse with a budget of K1.2 million was completed in 2016.



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EAST SEPIK PROVINCE

Towards the end of the year a contract was awarded in the sum of K16,716,596 for the construction of a new Court in Wewak. Construction is expected to commence in early 2017.



NEW IRELAND PROVINCE

Construction of a new One-stop Kavieng Court complex was completed in 2016 and nearing completion at the end of 2016 at a cost of K7 million. National Court and District Court staff moved into the new building in 2016.

EAST NEW BRITAIN

Design for the new Kokopo Regional One-Stop Court Complex was 90% completed in 2016. The complex is estimated to cost K70 million. If funds are allocated in the 2017 budget, the construction contract can be tendered in 2017.

WESTERN HIGHLANDS PROVINCE

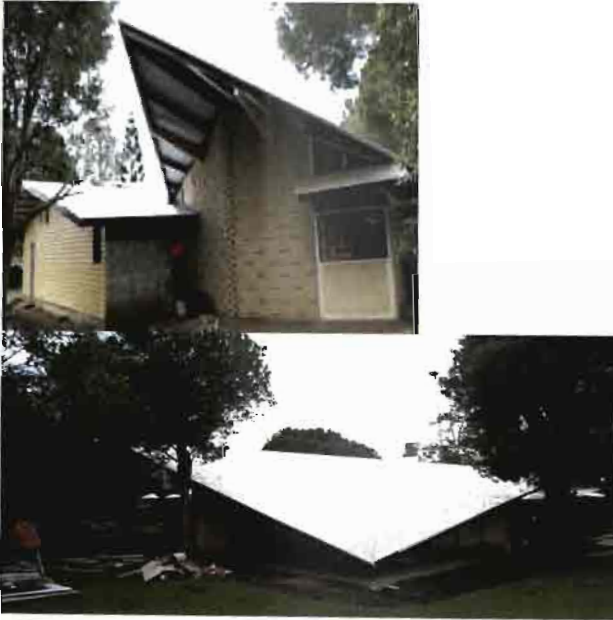
In partnership with the Western Highlands Provincial Government which is taking the lead, a major new Court Centre is proposed for Mount Hagen, on the existing court site. Temporary buildings to house court facilities will be built on adjacent vacant land. The Court will provide funding of K9 million

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for these temporary buildings. In the fourth quarter cyclone fencing and a signboard had been completed for the temporary site, cyclone fencing completed for the existing court site and maintenance to the existing court rooms 1 to 5, which had been vandalised, completed. Further progress depends on funding availability. Western Highlands Provincial Government has obtained donor funding from the Government of India in the sum of K100 million which is the projected cost of the building.

JIWAKA

K390,345 was spent on general maintenance and renovation works including upgrade of the existing District Court Registry and Magistrates chambers to be suitable for a Judges Chamber, construction of a new toilet and kitchenette and a new roof, front entrance and new floor tiling. This work was 100% completed in 2016.



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HELA PROVINCE

Upgrading works to the Tari Courthouse involving the renovation and extension works to the existing District Court house to accommodate the functions of a National Court at a cost of K1, 488, 284 was approximately 70% complete in the fourth quarter of 2016. Photographs below show new retaining wall and security fence and the interior of the court room.



ENGA PROVINCE

Design of a new Court House in Wapenamanda was completed in 2015. The works were tendered in 2016 and in the fourth quarter awarding of a contract by CSTB was awaited. Artist impression of the street view shown below.



WAIGANI COURT COMPLEX

The contract was awarded in the sum of K469,700,000 for the main court complex. The contractor commenced mobilisation on site in December 2016. Establishment fees of 7% of the contract value had been paid. The project will cater for courts for the National Court, the (proposed) Court of Appeal and the Supreme Court.

To make way for the new court complex the existing temporary administration building and the District Court complex had to be demolished. To provide facilities for the administration of the higher Courts and courthouses for the District Court early works were required to relocate the District Court from the Waigani National Court site to land adjacent annexed to the Magisterial Services by the higher Courts including construction of 4 court rooms, Magistrates Chambers, Registry, holding cells and staff support offices. These works were being performed at a cost of K2,994,134 and were approximately 80% complete at the end of 2016.

The relocation of the National Courts Administration Staff Services facilities involves the construction of new temporary facilities and the consolidation of services housed in outbuildings into one functional staff facility. The construction of these buildings was completed in 2016 at a cost of K8 million. The facility holds two Commercial Courtrooms, ADR/Mediation Centre and four administrative blocks.

On completion of the new Waigani Court complex the Judiciary plans to dismantle the substantial demountable temporary buildings and have them reassembled at locations which require further facilities.

Over page photo of the interior of the Personnel Office in one of the new temporary building at Waigani



Above the 2 new temporary buildings at Waigani nearing completion

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Above the new permanent public car park for the Courts at Waigani. Below the new staff car park also showing one of the temporary administration buildings.



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18.18 JUDICIARY COMPLAINTS PROCEDURE
2016 Annual statistical Report

NATIONAL JUDICIARY SERVICES – JUDICIAL COMPLAINTS PROCESS – REPORT 2016										
Year	Total Complaints	Staff Category	Complaint type	Number of Complaints	Investigated or not investigated	Allowed or dismissed by JCC Secretariat	Allowed or dismissed by JCC	Dismissed or byallowed by Disciplinary Authority (chief Justice, Secretary (NISS) (Discretionary))	Final Outcome by Internal Disciplinary Authority (Chief Justice, Secretary (NISS, Discretionary))	Outcome by External Disciplinary Authority (JLSC, Police, OC or NEC)
2016	52	JUDICIAL	Delayed judgement	6	Only 5 investigated	3 dismissed by JCC Secretariat as complaints forms not properly filled and not properly particularised.	Allowed 3 Dismissed 2 as decisions were delivered	Allowed by Chief Justice 3	Respective Judges delivered judgements upon receiving letters from Chief Justice	
	Total Complaints (including 4 complaints carry over from 2015)		Dubious circumstance in acquiring land	1	Not investigated	Submitted to JCC	Dismissed by JCC as it was outside JCC's jurisdiction to			

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		Marital issue 1	Not investigated	Submitted by JCC	Dismissed by JCC as it was outside JCC's jurisdiction to		
		Conflict of interest in court matter	Not investigated	Submitted by JCC	Dismissed by JCC as they concern court proceedings		
		Grievances in court decision	Not investigated	Submitted by JCC	Dismissed by JCC as complaints		

					concern court decisions		
		Misplacement of court file	Investigated	Submitted by JCC	JCC dismissed complaints as both files were located		
		Deteriorated state of court building	All Investigated	Submitted to directly Chief Justice	Allowed by Chief Justice	Refurbishment of Wabag National Court	
NON-JUDICIAL 34 complaints		Contempt of Supreme Court Order	Investigated	Submitted by JCC	Allowed by JCC, referred to Chief Justice	Person charged for contempt of court order	

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Dubious Purchase of NISS asset (boat)	1	Investigated	Submitted JCC	to JCC, referred to Chief Justice	Report with Chief Justice				
Abuse of office/position	3	All Investigated	All Submitted to JCC	1 dismissed JCC 2 Allowed by JCC referred to NISS	Allowed by NISS Secretary	Appropriate Disciplinary actions taken			
Allegation of fraud at National Court Trust Account	2	Investigated	All submitted JCC	JCC required further information. Currently under further investigations by Secretariat					
Receiving money under false pretense	1	Investigated	Submitted JCC	Allowed by JCC but shelved as staff voluntarily left job with NISS					
Receiving goods and services under false pretence	6	All Investigated	All Submitted to JCC	Allowed by JCC, referred to Chief Justice & NISS Secretary	Allowed by Chief Justice & NISS Secretary	Appropriate Disciplinary actions taken	Referred to Police Fraud Squad (outcome pending)		

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				1 submitted to JCC. 1 yet to submit to JCC at time of reporting	Allowed by JCC, referred to NJSS Secretary	Allowed by NJSS Secretary	Appropriate Disciplinary actions taken
Committing NJSS to business without management approval	2	All investigated	1 submitted to JCC.	Submitted to JCC at time of reporting	JCC dismissed the complaint		
Unauthorised leave (1 month)	1	Investigated	Submitted to JCC				
Unauthorised Altering of court order by associate	1	Investigation in progress (needs further information)					
Undue delay in setting date for matter	3	All Investigated	Submitted to JCC		JCC dismissed all as dates were set for court proceedings		
Misuse of NJSS properties	4	1 investigated 3 dismissed by Secretariat for not being properly particularised	1 submitted to JCC	1 submitted to JCC	1 Allowed by JCC, referred to Secretary	Allowed by NJSS Secretary	Appropriate Disciplinary actions taken
Misplacement of court files by Registry Officers	5	All Investigated	All submitted to JCC	All submitted to JCC	All dismissed by NJSS as files were located		

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			Undue delay in allocating a judge for court matter	2	All investigated but withdrawn by the complainants						
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