



# Pacific Judicial & Court Reform Resource Collection

## Volume 5: Accountability and Transparency





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Keywords: Judicial reform, court reform, judicial orientation, judicial mentoring, judicial decision-making

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

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## Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

The Partner Courts are: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

PJSI was delivered by the Federal Court of Australia on behalf of the New Zealand Ministry of Foreign Affairs and Trade.

## Toolkits

Through their practical, step-by-step guidance these toolkits have supported partner courts to implement their reform and development objectives locally. As the PJSI reaches its conclusion, it is hoped that these resources will continue to be of value to law and justice sectors and development practitioners globally.



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Annual Court Reporting Toolkit  
Toolkit for Review of Guidance on Judicial Conduct  
Toolkit for Building Procedures to Handle Complaints about Judicial Conduct





# Pacific Judicial Development Programme

## ANNUAL COURT REPORTING TOOLKIT

May 2018



PJDP is funded by the Government of New Zealand and managed by the Federal Court of Australia





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Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

Version 3 of this Toolkit published in March 2018. © New Zealand Ministry of Foreign Affairs and Trade.

Prepared by Cate Sumner for the Federal Court of Australia.

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## PJDP TOOLKITS

### Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

### Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- *Access to Justice Assessment Toolkit*
- *Toolkit for Public Information Projects*
- *Enabling Rights & Unrepresented Litigants Toolkit*
- *Judges' Orientation Toolkit*
- *Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs*
- *Toolkit for Review of Guidance on Judicial Conduct*
- *Family Violence/Youth Justice Workshop Toolkit*
- *Time Goals Toolkit*
- *Reducing Backlog and Delay Toolkit*
- *Judicial Decision-making Toolkit*
- *Toolkit for Building Procedures to Handle Complaints about Judicial Conduct*
- *Project Management Toolkit*
- *National Judicial Development Committee Toolkit*
- *Human Rights Toolkit*
- *Gender and Family Violence Toolkit*
- *Judicial Orientation Session Planning Toolkit*
- *Efficiency Toolkit*
- ***Annual Court Reporting Toolkit (2018 UPDATE)***

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

### Use and support

These toolkits are available on-line for the use of partner courts at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>. We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: [pjdp@fedcourt.gov.au](mailto:pjdp@fedcourt.gov.au)



## **Your feedback**

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage

Team Leader,

Pacific Judicial Development Programme

May 2018

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Annex 2: PowerPoint Presentations for Those Using the Toolkit to Develop Annual Reports.....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-2.pdf>

Annex 3: Annual Report Planning Template - A Guide to Who, What, When .....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-3.pdf>

Annex 4: Annual Report Template.....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-4.pdf>

Annex 5: Chart Creator Excel Template.....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-5.xlsx>

Annex 6: Chart Creator (Excel Format): Step-by-step guide on how to use (based on Excel 2010)..

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-6.pdf>

Annex 7: Guide to making charts for an annual report (based on Excel 2007) .....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-7.pdf>

Annex 8: Example from the Republic of Palau of a Client Satisfaction Survey.....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-8.pdf>

Annex 9a: CourtTools Access and Fairness Implementation Guide.....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-9a.pdf>

Annex 9b: CourtTools Access and Fairness Survey Excel Template .....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-9b.xls>

Annex 10: Indicator Questionnaire.....

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Annual-Court-Reporting-Toolkit-AD-Annex-10.pdf>

Annex 11: Data Collection for Family Law Cases and Violence Cases.....

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Annex 12: Tokelau Data Spreadsheet .....



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Annex 13: Sex Disaggregated Data Chart Creator

[http://www.fedcourt.gov.au/\\_data/assets/excel\\_doc/0020/50195/Annex-13-Chart-Creator-Sex-Disaggregated-Data-v3.1-with-DVRO-Data.xlsx](http://www.fedcourt.gov.au/_data/assets/excel_doc/0020/50195/Annex-13-Chart-Creator-Sex-Disaggregated-Data-v3.1-with-DVRO-Data.xlsx)

Annex 14: Juvenile Disaggregated Data Chart Creator

[http://www.fedcourt.gov.au/\\_data/assets/excel\\_doc/0003/50196/Annex-14-Chart-Creator-Juvenile-with-Blank.xlsx](http://www.fedcourt.gov.au/_data/assets/excel_doc/0003/50196/Annex-14-Chart-Creator-Juvenile-with-Blank.xlsx)

Annex 15: Checklist for the collection, analysis and presentation of sex, age and disability inclusive data in an Annual Report

[http://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0005/50198/Annex-15-Checklist-for-Sex,-Age-and-Disability-Inclusive-Data-in-Annual-....pdf](http://www.fedcourt.gov.au/_data/assets/pdf_file/0005/50198/Annex-15-Checklist-for-Sex,-Age-and-Disability-Inclusive-Data-in-Annual-....pdf)

Annex 16: Survey on Family Law and Family Protection Act cases (Palau Judiciary draft survey)

[http://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0007/50200/Annex-16-Palau-Family-Law-and-Family-Protection-Act-Survey.pdf](http://www.fedcourt.gov.au/_data/assets/pdf_file/0007/50200/Annex-16-Palau-Family-Law-and-Family-Protection-Act-Survey.pdf)

Annex 17: Taking steps to make a court more accessible for people living with a disability

[http://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0009/50202/Annex-17-Taking-Steps-to-make-a-Court-more-Accessible-for-People-living-....pdf](http://www.fedcourt.gov.au/_data/assets/pdf_file/0009/50202/Annex-17-Taking-Steps-to-make-a-Court-more-Accessible-for-People-living-....pdf)

Annex 18: Fiji Courts Cases on PacLII 2011-2017

[http://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0011/50204/Annex-18-Fiji-Courts-2011-2017-Cases-on-PacLII.PDF](http://www.fedcourt.gov.au/_data/assets/pdf_file/0011/50204/Annex-18-Fiji-Courts-2011-2017-Cases-on-PacLII.PDF)





## ABBREVIATIONS

CoCP	-	Court of Common Pleas
CRPD	-	Convention on the Rights of Persons with Disabilities
CSO	-	Civil Society Organisation
FSM	-	Federated States of Micronesia
ICAAD	-	International Center for Advocates Against Discrimination
IFCE	-	International Framework for Court Excellence
MFAT	-	New Zealand Ministry of Foreign Affairs and Trade
MSC	-	Managing Services Contractor – Federal Court of Australia
NC	-	National Coordinator
NGO	-	Non-Governmental Organisation
NJDC	-	National Judicial Development Committee
PacLII	-	Pacific Islands Legal Information Institute
PIC	-	Pacific Island Country
PJDP	-	Pacific Judicial Development Programme
PJSI	-	Pacific Judicial Strengthening Initiative
PNG	-	Papua New Guinea
RMI	-	Republic of the Marshall Islands
SGBV	-	Sexual and Gender Based Violence
UNICEF	-	United Nations Children's Fund

## Foreword

*In Apia, Samoa in March 2012, Chief Justices endorsed the recommendations in the Regional Justice Performance Framework in which the Chief Justices of the countries participating in the Pacific Judicial Development Programme agreed to progressively build the capacity of their judicial and court staff colleagues to publish court Annual Reports. This followed a meeting of Chief Justices in Rarotonga, in the Cook Islands, in mid-2011 where a range of possible court performance measures were considered before the Chief Justices agreed upon the 15 Cook Island Indicators that are discussed in more detail in this Toolkit.*

*The Cook Island indicators were chosen by PJDP Chief Justices as they represented essential data that jurisdictions, whether large or small, should ideally have the capacity to collect, analyse and present in their annual reports. As can be seen in Part 1 of this Toolkit, the capacity of courts to collect, analyse and report on court performance data has been considerably strengthened over the implementation period of PJDP and the first year of PJSI. Over time, this list of indicators may be extended in line with the ability of more courts to collect, analyse and report on court performance data in more complex ways.*

*This third edition of the Annual Reporting Toolkit presents a wealth of experience and ideas that have been generated over the last seven years interacting with the 14 PJDP PICs. The Chief Justices and their colleagues in the Cook Islands, the Republic of the Marshall Islands, the Republic of Palau, Papua New Guinea and Tokelau have contributed considerably to many of the tools and checklists that are part of this Toolkit and a great debt is owed to all PJDP Chief Justices for their generous contributions over the last seven years.*

*Reflecting on the last seven years, one of the most striking observations is that excellent Annual Reports are constantly evolving and reflect the dynamism and innovations being introduced by the courts during the reporting year.*

*This Toolkit complements the work of many other advisers and the Toolkits they have developed under PJDP and the Pacific Judicial Strengthening Initiative.*

Cate Sumner

Annual Reporting Adviser

Pacific Judicial Strengthening Initiative

28 February 2018

## Ideas for Improving Annual Reports – Does Your Court Tick all 10 Boxes?

This Toolkit is the 3<sup>rd</sup> edition of the Annual Reporting Toolkit. Take the 10-point tick test to see whether there is something new in this Toolkit that may be valuable for your court.

Can your Court tick yes to the following?		YES	NO
1	Has your court published an Annual Report on PaCLII and/or a court website for each of the last five years?	<input type="checkbox"/>	<input type="checkbox"/>
2	Does your court look at the way other courts present information in their Annual Reports? It is helpful to review the Annual Reports of similar courts but also approaches taken by courts in other regions or by a different jurisdiction.  If not, look at the links to other PJDP jurisdictions Annual Reports in Part 1.	<input type="checkbox"/>	<input type="checkbox"/>
3	Does your Court Annual Report assess performance against standards that have been set by your Court, and, if the court has not achieved those performance standards, explain why and what steps the court is taking to remedy this?  If not, look at Part 3 of this Toolkit and the links to other Toolkits that may be helpful.	<input type="checkbox"/>	<input type="checkbox"/>
4	Does your Court Annual Report present trends in performance over a 3-5 year period?  If not, look at the Chart Creator section in Part 3 and the relevant Chart Creator Annexes to this Toolkit.	<input type="checkbox"/>	<input type="checkbox"/>
5	Does your Court Annual Report present the Court's performance against a range of quantitative performance indicators?  If not, look at Part 3 of this Toolkit.	<input type="checkbox"/>	<input type="checkbox"/>
6	Does your Court Annual Report include disability disaggregated data?  If not, look at Part 3 of this Toolkit.	<input type="checkbox"/>	<input type="checkbox"/>



7	Does your Court Annual Report include sex and age disaggregated data?  If not, look at Part 3 of this Toolkit.	<input type="checkbox"/>	<input type="checkbox"/>
8	Does your Court Annual Report present the Court's performance against a range of qualitative performance indicators from court user surveys, regular court stakeholder dialogues, or other evaluations conducted by the court and demonstrate how this information is being used to improve court performance?  If not, look at Part 4 of this Toolkit.	<input type="checkbox"/>	<input type="checkbox"/>
9	Does your Court Annual Report analyse the Court's performance in the context of environmental factors during the last year that may have contributed to better or poorer than usual performance?	<input type="checkbox"/>	<input type="checkbox"/>
10	Does your Court Annual Report use plain language, relevant diagrams and a clear format to illustrate and add emphasis?  If not, look at Part 5 of this Toolkit listing a number of tools that have been developed to assist Courts with presenting information in their Annual Reports.	<input type="checkbox"/>	<input type="checkbox"/>

## 1 APPROACH TO DRAFTING AN ANNUAL REPORT

The Annual Report is part of a broader picture of court performance. The Chief Justices at their leadership meeting in Apia, Samoa in March 2012 endorsed the recommendations in the 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:
  - court performance data and results against the 15 indicators and Recommendations presented in the PJDP Baseline Report;
  - court performance standards for each level of court and annual results against those standards;
  - a summary of the key findings from any court stakeholder / potential court user surveys and dialogues that have taken place in the previous year; and
  - financial statements, including Court budget execution statements.

The discussion on judicial monitoring and evaluation issues with Chief Justices of the participating PJDP countries has focussed on building more effective and robust monitoring and evaluation of court performance in the following five key areas through supporting national courts to:

- i. collect court performance results, including on the 15 Cook Island indicators<sup>1</sup>;
- ii. analyse and evaluate court performance results over a number of years to obtain trend data;
- iii. set realistic and appropriate court performance standards based upon the court performance data collected;
- iv. undertake, on a periodic basis, court user and potential court user surveys to better understand what matters to actual and potential court users in the delivery of quality court services; and
- v. report annually on court performance in Annual Reports and publish Annual Reports on PacLII or national websites.

A number of countries participating in the Pacific Judicial Development Programme have identified Annual Reports as an area that they would like further technical support from PJDP. This Court Report Toolkit shares

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<sup>1</sup> The 15 Cook Island indicators were developed by the PJDP partner courts and are elaborated in: PJDP 2011 Court Baseline Report (2012) at p21.

the experience that has been gained working with Chief Justices, judicial officers and court staff in a majority of the 14 PJDP countries. As part of the PJDP Court Annual Report Activity the ability of courts to report on 15 court performance indicators has been assessed and can be reviewed in:

- i. PJDP 2011 Court Baseline Report and
- ii. PJDP 2012 Court Trend Report.
- iii. PJDP 2014 Court Trend Report<sup>2</sup>

These changes can be summarised as follows:

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<sup>2</sup> The 2011 Baseline Report as well as 2012 and 2014 Trend Reports can be accessed on the PJDP website:  
<http://www.fedcourt.gov.au/pjdp/materials-developed>

**Table A** Percentage of the 14 PJDP countries that report on the indicator in the 2011 Baseline year and 2014 fourth year of trend data.

Indicator		Percentage of the 14 PJDP countries that report on the indicator in the 2011 Baseline Report	Percentage of the 14 PJDP countries that report on the indicator in the 2014 Trend Report
1	Clearance rate	64% (9 of 14)	86% (12 of 14)
2	Average duration of a case from filing to finalisation	14% (2 of 14)	71% (10 of 14)
3	The percentage of appeals	57% (8 of 14)	86% (12 of 14)
4	Overturn rate on appeal	21% (3 of 14)	79% (11 of 14)
5	Percentage of cases that are granted a court fee waiver	21% (3 of 14)	86% (12 of 14)
6	Percentage of cases disposed through a circuit court	50% (7 of 14)	71% (10 of 14)
7	Percentage of cases where a party receives legal aid	14% (2 of 14)	57% (8 of 14)
8	Documented process for receiving and processing a complaint that is publicly available	21% (3 of 14)	43% (6 of 14)
9	Percentage of complaints received concerning a judicial officer	21% (3 of 14)	79% (11 of 14)
10	Percentage of complaints received concerning a court staff member	14% (2 of 14)	79% (11 of 14)
11	Average number of cases per judicial officer	57% (8 of 14)	86% (12 of 14)
12	Average number of cases per member of court staff	43% (6 of 14)	84% (12 of 14)
13	Court produces or contributes to an Annual Report that is publicly available in the following year	7% (1 of 14)	71% (10 of 14)
14	Information on court services is publicly available	29% (4 of 14)	64% (9 of 14)
15	Court publishes judgments on the Internet (court website or the Pacific Legal Information Institute)	93% (13 of 14)	93% (13 of 14)

5 or less PJDP countries can report on the indicator.

6–9 PJDP countries can report on the indicator.

10 or more PJDP countries can report on the indicator.

**Table B** 14 PJDP countries that currently report on the 15 indicators

PJDP Countries		Cook Islands	FSM	Kiribati	Marshall Islands	Nauru	Niue	Palau
2011 Baseline Report		1	1	4	14	2	1	11
2012 Trend Report		10	6	5	15	2	12	14
2014 Trend Report		12	12	15	15	2	12	15
Type	Indicator							
1	Case Management Information: Case finalisation/clearance rate							
2	Case Management Information: Average duration of a case							
3	Appeals: The percentage of appeals							
4	Appeals: Overturn rate on appeal							
5	Access: Percentage of cases that are granted a court fee waiver							
6	Access: Percentage of cases disposed through a court circuit							
7	Access: Percentage of cases where party receives legal aid							
8	Complaints: Documented process for receiving and processing a complaint that is publicly available							
9	Complaints: Percentage of complaints received concerning a judicial officer							
10	Complaints: Percentage of complaints received concerning a court staff member							
11	Human Resources: Average number of cases per judicial officer							
12	PacLII: Average number of cases per court staff							
13	Judicial Transparency: Court procedures or contributes to an Annual Report that is publicly available							
14	Judicial Transparency: Information on court services is publicly available							
15	Judicial Transparency: Judgments on PacLII							

Can report on the indicator    
 Cannot report on the indicator/judgments online but not for the previous 2 years    
 Judgments online but not available for the previous year/produces an Annual Report but not clear how the public can access it.



PJDP Countries			PNG	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
2011 Baseline Report			6	1	3	5	5	9	6
2012 Trend Report			3	5	3	10	12	1	6
2014 Trend Report			11	12	11	12	15	2	13
Type	Indicator								
1	Case Management Information	Case finalisation/clearance rate							
2	Case Management Information	Average duration of a case							
3	Appeals	The percentage of appeals							
4	Appeals	Overturn rate on appeal							
5	Access	Percentage of cases that are granted a court fee waiver							
6	Access	Percentage of cases disposed through a court circuit							
7	Access	Percentage of cases where party receives legal aid							
8	Complaints	Documented process for receiving and processing a complaint that is publicly available							
9	Complaints	Percentage of complaints received concerning a judicial officer							
10	Complaints	Percentage of complaints received concerning a court staff member							
11	Human Resources	Average number of cases per judicial officer							
12	Human Resources	Average number of cases per court staff							
13	Judicial Transparency	Court procedures or contributes to an Annual Report that is publicly available							
14	Judicial Transparency	Information on court services is publicly available							
15	Judicial Transparency	Judgments on PacLII							

Can report on the indicator    
 Cannot report on the indicator/judgments online but not for the previous 2 years    
 Judgments online but not available for the previous year/produces an Annual Report but not clear how the public can access it.

When PJDP embarked on the Court Annual Reporting activity in 2011, three jurisdictions had sought assistance under PJDP with the aim of improving their court performance reporting through Annual Reports. These jurisdictions were Palau, Papua New Guinea and Tokelau. What emerged over PJDP was a willingness from the majority of PJDP jurisdictions to embrace the idea of Annual Reporting in some form or other through using the Court Annual Reporting Toolkit.

Some reflections on the journey so far:

- I. **Improved Transparency:** In the baseline year of 2011, only the judiciaries of the Marshall Islands and Vanuatu published an annual report each year and only the Marshall Islands judiciary produced an Annual Report that was publicly available through the court's website or PacLII. In 2015, judiciaries in 12 of the 14 PJDP countries produce or contribute to an Annual Report. Ten of the 14 PJDP countries (71%) produced an Annual Report<sup>3</sup> in the year immediately following the reporting period and nine of these Annual Reports are published on the internet.
- II. **Improved Consistency:** In 14 of the 15 Cook Island court performance indicators, there is a trend improvement in the number of PJDP countries able to report on the indicator over the PJDP programme (see Table A above).
- III. **Increased Reporting:** From 2011-2014, seven of the 14 PJDP judiciaries issued their first judiciary Annual Report Number: Cook Islands, FSM, Kiribati, Niue, Palau, Tokelau and Tonga. During this time the judiciaries in the Cook Islands, Niue and Tonga commenced the practice of issuing a separate Annual Report that provided a much greater level of court performance information than had previously been included in the annual reports prepared by the Ministry of Justice or Department of Justice, Lands and Survey in their country. The experience of the Cook Islands and Tokelau in compiling their first court annual report is presented in Section 4 of this Toolkit.
- IV. **Improved Public Access to Court Annual Reports:** In the 2011 Baseline Report, only one of the 14 PJDP countries produced or contributed to an annual report that was publicly available in the following year. In 2015, 10 of the 14 (71%) PJDP countries have produced or contributed to an annual report that is now publicly available in the following year. This represents a significant improvement in the accountability and transparency of judiciaries in the Pacific. PacLII continues to play an important role in facilitating accountability and transparency in justice systems across the Pacific through its publication of judgments and annual reports from the 14 PJDP jurisdictions.

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<sup>3</sup> Annual Report includes the Statements made by the Chief Justices of Kiribati and the Solomon Islands at the beginning of the new legal year that summarise the performance of the court in the previous year.

- V. **Smallest PJDP Jurisdictions Promote Increased Transparency:** In the 2011 Baseline Report, only two of the 14 (14%) PJDP countries were able to report on 10 or more of the 15 Cook Islands court performance indicators. In 2015, 12 of the 14 PJDP countries are able to report on ten or more of the Cook Island indicators.
- VI. **Increased presentation of Trend Data in Annual Reports:** The PJDP Excel Chart Creator was a tool created by PJDP in late 2013 and allows courts to enter trend data over a number of years on most of the Cook Island indicators. Recent Annual Reports from a number of PJDP judiciaries include trend data presented in clear charts and tables using the PJDP Excel Chart Creator Tool.
- VII. **Continued Commitment to Client Surveys and Feedback Mechanisms:** Client satisfaction surveys allow judiciaries to understand the degree to which clients are satisfied with the services provided by the court and receive feedback on the areas where clients think the court could improve their service. Section 4 of this Toolkit shows how the following two PJDP jurisdictions have conducted client satisfaction surveys to obtain feedback on the quality of service provided by the Court:
- Supreme Court of the Republic of Palau Access and Fairness Survey 2011, 2012 and 2014.
  - Republic of the Marshall Islands Judiciary Access and Fairness Survey 2012, 2014, 2016.

In April 2018, an overview of all 14 PJSI jurisdictions was presented to Chief Justices at their Leadership Meeting in Apia that reviewed:

- whether courts had published or contributed to a Ministry of Justice Annual Report for each of the last five years. See Table C below updated.
- if sex, age and disability disaggregated data was included in this Annual Report. See Table D below updated.

Kiribati presented some excellent sex disaggregated data that presented trend data for the years 2012-2014. The Cook Islands, FSM, Kiribati, RMI and Palau presented data on juvenile cases and no jurisdiction presented disability disaggregated data or mentioned strategies to respond to clients with different impairments seeking services at the court. This revised Toolkit has new sections (3.5, 3.6 and 3.7) that provide guidance on how these disaggregated data may be collected, analysed and presented in Annual Reports.



Table C: <i>PJSI Annual Reports – Public Accountability (as of April 2018)</i>							
	2011	2012	2013	2014	2015	2016	2017
<i>Cook Islands</i>	<i>No Annual Report.</i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.justice.gov.ck/">http://www.justice.gov.ck/</a></i>	
<i>Federated States of Micronesia</i>	<i>No Annual Report for the FSM judiciary.</i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report produced but it is not published on the FSM Judiciary or PacLII websites.</i>	<i>Annual Report can be accessed at: <a href="http://fsmsupremecourt.org/">http://fsmsupremecourt.org/</a> and <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>No Annual Report for the FSM judiciary.</i>	<i>No Annual Report for the FSM judiciary.</i>	
<i>Kiribati</i>	<i>No Annual Report.</i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Kiribati advised that the 2015/ 2016 Annual Report is expected in June 2018.</i>		



<i>Nauru</i>	<i>No Annual Report</i>	<i>No Annual Report</i>	<i>No Annual Report</i>	<i>No Annual Report</i>	<i>No Annual Report</i>	<i>No Annual Report</i>	
<i>Niue</i>	<i>No Annual Report</i>	<i>Department of Justice Annual Report 2011/2012 can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>High Court Land Division Annual Report 2012/2013 can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>High Court Annual Report 2013/2014 can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>High Court Land Division Annual Report 2014/2015 in draft format but not finalised.</i>	<i>No Annual Report</i>	
<i>Palau</i>	<i>No Annual Report for the Palau judiciary.</i>	<i>No Annual Report for the Palau judiciary.</i>	<i>Annual Report can be accessed at: <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a> and <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a> and <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a> and <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Annual Report can be accessed at: <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a></i>	<i>Annual Report can be accessed at: <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a></i>



<i>PNG (National and Supreme Courts)</i>	<i>Annual Report drafted but cannot be accessed by the public</i>	<i>Annual Report drafted but cannot be accessed by the public</i>	<i>Annual Report drafted but cannot be accessed by the public.</i>	<i>Annual Report drafted but cannot be accessed by the public.</i>	<i>Annual Report drafted but cannot be accessed by the public</i>		
<i>Republic of the Marshall Islands</i>	<i>Annual Report can be accessed at: <a href="http://rmicourts.org/">http://rmicourts.org/</a></i>	<i>Annual Report can be accessed at: <a href="http://rmicourts.org/">http://rmicourts.org/</a></i>	<i>Annual Report can be accessed at: <a href="http://rmicourts.org/">http://rmicourts.org/</a></i>	<i>Annual Report can be accessed at: <a href="http://rmicourts.org/">http://rmicourts.org/</a></i>	<i>Annual Report can be accessed at: <a href="http://rmicourts.org/">http://rmicourts.org/</a></i>	<i>Annual Report can be accessed at: <a href="http://rmicourts.org/">http://rmicourts.org/</a></i>	
<i>Samoa</i>	<i>Ministry of Justice and Court Administration Annual Report</i>	<i>Ministry of Justice and Court Administration Annual Report 2011/2012 on</i>	<i>Ministry of Justice and Court Administration Annual Report 2012/2013 on</i>	<i>Ministry of Justice and Court Administration Annual Report 2013/2014 published</i>	<i>Ministry of Justice and Court Administration Annual Report 2014/2015</i>	<i>Ministry of Justice and Court Administration Annual Report 2015/2016 published</i>	<i>Ministry of Justice and Court Administration Annual Report 2016/2017 published but not available</i>



	<i>Report 2010/2011 on Parliament website</i>	<i>Parliament website</i>	<i>Parliament website</i>	<i>but not available online.</i>	<i>published but not available online.</i>	<i>but not available online.</i>	<i>online.</i>
<i>Solomon Islands</i>	<i>No Annual Report.</i>	<i>Annual Report published but not available at: <a href="http://www.paclii.org">www.paclii.org</a></i> <i>Opening of the Legal Year 2013 presentation by the Chief Justice of developments in 2012 available at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Opening of the Legal Year 2014 presentation by the Chief Justice of developments in 2013: not available at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Opening of the Legal Year 2015 presentation by the Chief Justice of developments in 2014: not available at: <a href="http://www.paclii.org">www.paclii.org</a></i>	<i>Opening of the Legal Year 2016 presentation by the Chief Justice of developments in 2015: not available at: <a href="http://www.paclii.org">www.paclii.org</a></i>		



<i>Tokelau</i>	<i>No Annual Report.</i>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report 2015/2016 in draft.</i>	
<i>Tonga (Superior Courts)</i>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a> .	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>  <i><u>Magistrates Court data included for the first time</u></i>	<i>Annual Report can be accessed at:</i> <a href="http://www.pacii.org">www.pacii.org</a>
<i>Tuvalu</i>	<i>No Annual Report.</i>	<i>No Annual Report.</i>	<i>No Annual Report.</i>	<i>No Annual Report.</i>	<i>No Annual Report.</i>	<i>No Annual Report.</i>	





Vanuatu	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>	Annual Report can be accessed at: <a href="http://www.paclii.org">www.paclii.org</a>
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A snapshot of the capacity of PJDP jurisdictions to present sex, age and disability disaggregated data was prepared for the April 2018 Chief Justices' Leadership Meeting based upon a review of the latest court Annual Reports and is set out below.

Table D: *Disaggregated Court Data in Annual Reports – Public Accountability (as of April 2018)*

	<i>Sex Disaggregated Data</i>	<i>Juvenile Disaggregated Data</i>	<i>Disability Disaggregated Data</i>
<i>Cook Islands</i>	<i>Some sex disaggregated data.</i>	<i>Data in Annual Report does not cover all children under the age of 18 years.</i>	<i>No disability disaggregated data.</i>
<i>Federated States of Micronesia</i>	<i>No sex disaggregated data in the Annual Report.</i>	<i>The State Courts Of Pohnpei, Chuuk and Yap presented case data disaggregated to show juvenile cases</i>	<i>No disability disaggregated data in the Annual Report.</i>
<i>Kiribati</i>	<i>The 2012-2014 Annual Report contains details of the number of High Court criminal cases involving violence against women and girls (pages 34 and 117) and Magistrates Court cases involving women (page 45 with details in the Annexures).</i>	<i>The 2012-2014 Annual Report contains details of the number of cases involving children from 2012-2013 (page 45).</i>	<i>No disability disaggregated data in the 2015 Annual Report.</i>
<i>Nauru</i>	<i>No sex disaggregated data presented to the</i>	<i>There is no case data disaggregated to show</i>	<i>No disability disaggregated data</i>

	<i>public as there is no Annual Report.</i>	<i>all cases involving children under the age of 18 presented to the public as there is no Annual Report.</i>	<i>presented to the public as there is no Annual Report.</i>
<i>Niue</i>	<i>There is no sex data disaggregated as the 2014/2015 Annual Report does not contain criminal or civil cases but only refers to land cases.</i>	<i>There is no data disaggregated to show all cases involving children under the age of 18 as the Annual refers to Land cases.</i>	<i>No disability disaggregated data in the 2014/2015 Annual Report for the Land Division of the High Court.</i>
<i>Palau</i>	<i>Sex disaggregated data is in the 2016 Annual Report.</i>	<i>The Palau judiciary presented case data disaggregated to show juvenile cases heard in the Supreme Court and Court of Common Pleas in the 2016 Annual Report.</i>	<i>No disability disaggregated data in the 2016 Annual Report.</i>
<i>PNG (National and Supreme Courts)</i>	<i>No sex disaggregated data in the Annual Report.</i>	<i>There is no case data disaggregated to show all cases involving children under the age of 18 years in the Annual Report.</i>	<i>No disability disaggregated data.</i>
<i>Republic of the Marshall Islands</i>	<i>Sex disaggregated data presented in the 2016 Annual Report for both</i>	<i>Juvenile disaggregated data in Annual Report refers to children under</i>	<i>No disability disaggregated data.</i>

	<i>criminal and civil cases.</i>	<i>18 years of age.</i>	
<i>Samoa</i>	<i>No sex disaggregated data in the Annual Report.</i>	<i>There is no data disaggregated to show all cases involving children under the age of 18.</i>	<i>No disability disaggregated data.</i>
<i>Solomon Islands</i>	<i>No sex disaggregated data presented to the public as there is no Annual Report.</i>	<i>There is no case data disaggregated to show all cases involving children under the age of 18 presented to the public as there is no Annual Report.</i>	<i>No disability disaggregated data presented to the public as there is no Annual Report.</i>
<i>Tokelau</i>	<i>Some sex disaggregated data presenting sex of offenders in criminal cases.</i>	<i>Juvenile disaggregated data in 2014/ 2015 Annual Report refers to children 16 years and under.</i>	<i>No disability disaggregated data in the 2014/ 2015 Annual Report.</i>
<i>Tonga</i>	<i>No sex disaggregated data in the 2016 Annual Report.</i>	<i>There is no case data disaggregated to show all cases involving children under the age of 18 years in the 2016 Annual Report.</i>	<i>No disability disaggregated data.</i>
<i>Tuvalu</i>	<i>No sex disaggregated data presented to the public as there is no Annual Report.</i>	<i>There is no case data disaggregated to show all cases involving children under the age</i>	<i>No disability disaggregated data presented to the public as there is no Annual</i>

		<i>of 18 presented to the public as there is no Annual Report.</i>	<i>Report.</i>
<i>Vanuatu</i>	<i>No sex disaggregated data in the 2017 Annual Report.</i>	<i>There is some case data disaggregated to show juvenile cases in the 2017 Annual Report.</i>	<i>No disability disaggregated data.</i>

## 2 PURPOSE OF AN ANNUAL REPORT

*Excellent courts use a set of key-performance indicators to measure the quality, efficiency, and effectiveness of their services. Courts should, at the very least, collect and use information on the duration of proceedings and other case-related data. Excellent courts aim at shifting their data focus from simple inputs and outputs to court customer satisfaction, quality of service, and quality of justice.*

**International Framework for Court Excellence (IFCE 2013), p29**

*4.5 The judiciary should regularly address court users' complaints, and publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.*

***Measures for the Effective Implementation of the Bangalore Principles***

These two statements taken from the International Framework for Court Excellence (IFCE) and Measures for the Effective Implementation of the Bangalore Principles indicate recent trends that have seen Courts around the world collect data on qualitative and quantitative performance indicators and present a summary of the Court's performance in their Annual Report.

The primary purpose of an annual report will vary from country to country. However most of the courts participating in PJDP will publish their annual reports for one or more of the following reasons:

- i. accountability to the people through the Parliament;
- ii. information provided to the public, the Parliament, other stakeholders, educational and research institutions, and the media about the performance of Courts in relation to services provided;
- iii. as a key reference document and a document for internal management, Annual Reports form part of the historical record;
- iv. court Budget Statements set out the proposed allocation of resources to achieve agreed performance outcomes. Annual reports report on the achievement of those targets. Court Budget Statements and Annual Reports provide the Government and the Parliament with detailed information about the actual performance of courts and forecasts future needs and expectations; and
- v. reporting and analysis in an Annual Report as a document of record supports the judicial principles of transparency and accountability through the availability of information through the Internet.<sup>4</sup>

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<sup>4</sup> Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies, Department of Prime Minister and Cabinet, 25 June 2015, Approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the Public Service Act 1999 [www.dpmc.gov.au/guidelines/index.cfm](http://www.dpmc.gov.au/guidelines/index.cfm) adapted from pp 3-4.

### Features of Good Annual Reports

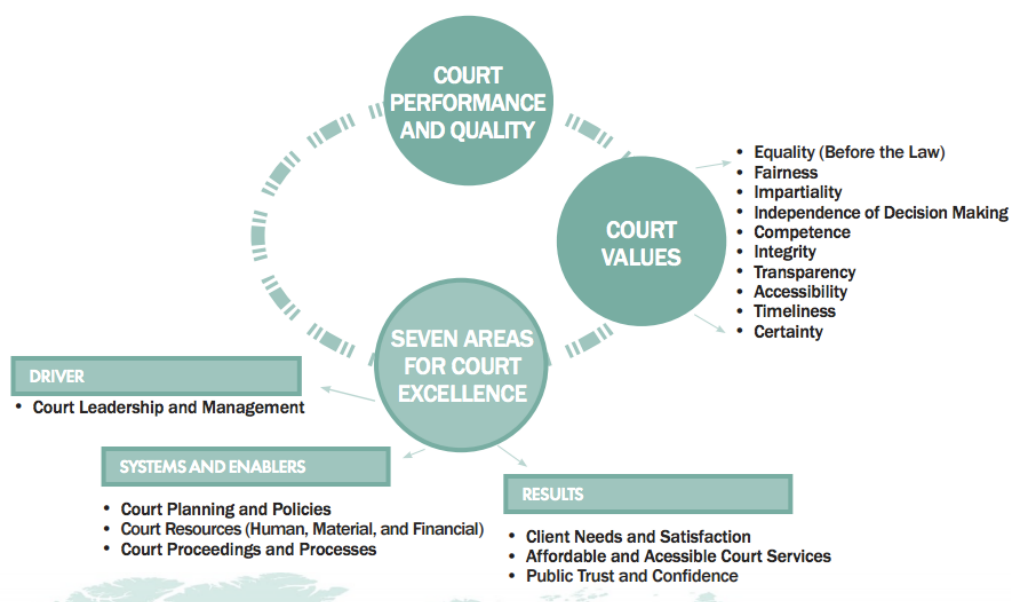
- Assesses performance against standards and targets set by the Court.
- Presents trends in performance over 3-5 years.
- Analyses a court's performance in the context of a range of factors.
- If the court has not achieved the performance standards, the annual report explains why and what steps the court is taking to remedy this.
- Presents qualitative information from surveys, other evaluations or court stakeholder dialogues conducted by the court and demonstrates how this information is being used to improve court performance.
- Uses plain language, relevant diagrams and a clear format to present court performance information in an accessible way to the public.

## 2.1 INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE AND THE COOK ISLAND INDICATORS

The 2008 International Framework for Court Excellence identified seven areas of court excellence and ten values set out in the Figure E below<sup>5</sup>.

Fig E: Seven Areas of Court Excellence (IFCE)

### Framework for Court Excellence



<sup>5</sup> A 2013 version of the Framework incorporates developments in international court improvement strategies.

The IFCE ten core values are reflected in the PJDP/ PJSI Cook Island indicators as shown in Table F below.

**Table F:** Comparison of IFCE Ten Core Values and PJDP/ PJSI Cook Island indicators

	IFCE Ten Core Court Values	PJDP/ PJSI Cook Island indicators
I	Equality before the law	Cook Island indicators 5-7
II	Fairness	Cook Island indicators 8-10
III	Impartiality	Cook Island indicators 8-10
IV	Independence of decision-making	Cook Island indicators 8-10
V	Competence	Cook Island indicators 3-4 & 8-10
VI	Integrity	Cook Island indicators 8-10
VII	Transparency	Cook Island indicators 13-15
VIII	Accessibility	Cook Island indicators 5-7
IX	Timeliness	Cook Island indicators 2
X	Certainty	Cook Island indicators 3-4

The three results areas of the International Framework for Court Excellence are:

**CLIENT NEEDS AND SATISFACTION** Research has consistently shown that the perceptions of those using the courts are influenced more by how they are treated and whether the process appears fair, than whether they received a favourable or unfavourable result. Thus, **one of the important aspects of the quality approach and the 'search for excellence' is that it takes the needs and perceptions of court users into account.** Court users include members of the public and businesses making use of the services of the courts (e.g., litigants, witnesses, crime victims, those seeking information or assistance from court staff) and professional partners (lawyers, public prosecutors, enforcement agents, governmental agencies, court experts, and court interpreters). Accordingly, measures must address not only the level of satisfaction with the outcome of the court proceeding, but also the level of satisfaction with how the parties, witnesses, and lawyers were treated by the judges and the court staff. The (perceived) expertise of the judges and staff and the fairness and ability to understand court procedures and decisions should also be measured. This information should be used to improve the quality and processes provided by the courts.



**AFFORDABLE AND ACCESSIBLE COURT SERVICES** Excellent courts are affordable and easily accessible for litigants. Court fees do not prevent members of the public from accessing the judicial process; cumbersome procedures and requirements do not drive up litigation expenses; and forms and comprehensible basic information about court processes are readily available.

**Physical access is easy and comfortable.** Court users can easily reach the public visitors area of courtrooms; directions in the courts are clearly displayed; and a central information point guides court users through the court. Safety is guaranteed, but excessive safety measures do not prevent litigants from feeling comfortable.

Courts use information technology to enable self-represented court users to navigate the courts (through general information on the court, court proceedings, and court fees), electronic filing, and use of video conferencing.

**PUBLIC TRUST AND CONFIDENCE** In general, a high level of public trust and confidence in the judiciary is an indicator of the successful operation of courts. Lack of corruption, high quality judicial decisions, respect for the judges, timely court proceedings and transparent processes will increase public trust in the judiciary. A high level of public trust will enhance voluntary compliance with court orders, strengthen respect for the rule of law and increase support for the provision of resources to meet court needs. Excellent court organizations systematically measure the level of public trust and confidence in the judiciary and court staff. Without public trust a court is hampered in its ability to function as an effective court<sup>6</sup>.

## 2.2 ANNUAL REPORTS: THE PLANNING, MONITORING & REPORTING FRAMEWORK FOR LEADING COURTS

Courts can also use Annual Reports as one part of an accountability dialogue with the public on the court's plans for innovation and reform of its services. Annual Reports form part of a continuous cycle of strategic planning and policy formulation, piloting and implementation, monitoring and reporting as can be seen in Fig. G below.

Annual Reports are documents of public record. However, in order to produce Annual Reports in a timely fashion courts will benefit from having monthly and quarterly reporting processes in place that provide the Chief Justice and Court Leadership Team with internal reports on court performance by jurisdiction and by judge.

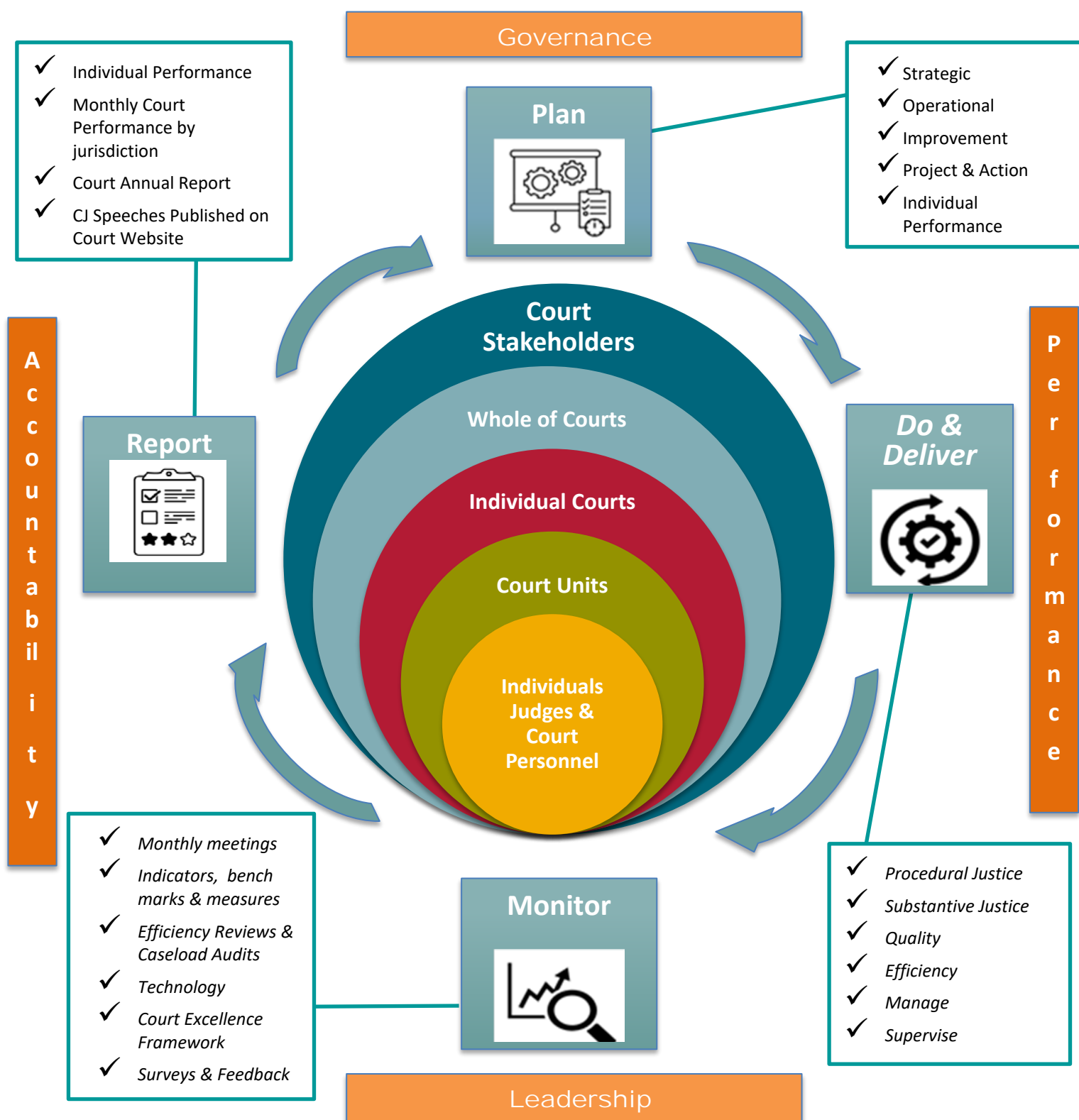
Fig G: Leading Courts: Planning, Monitoring and Reporting

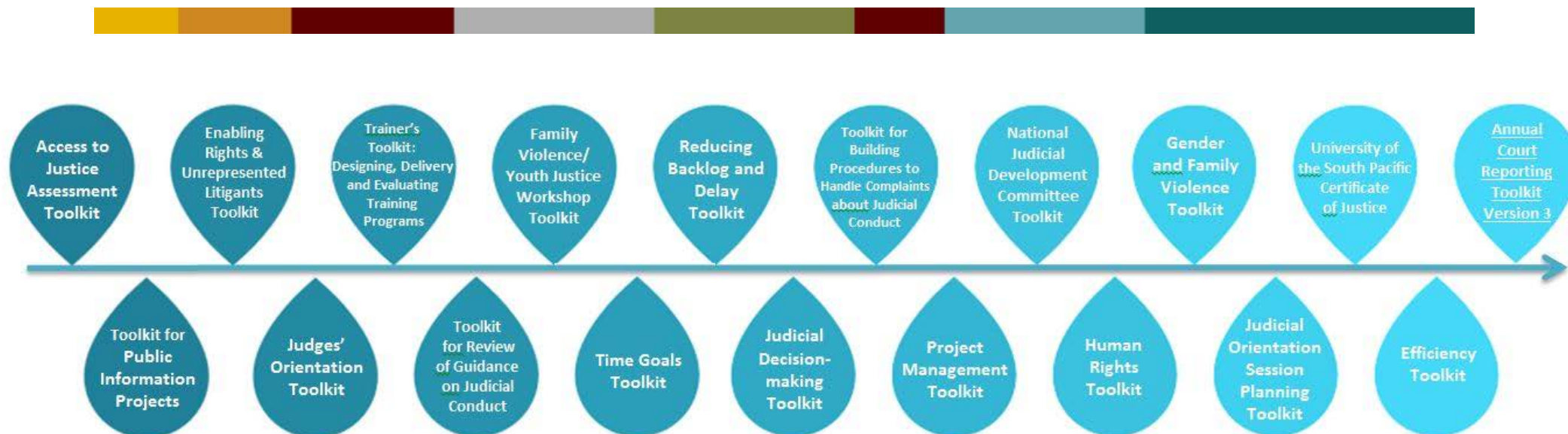
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<sup>6</sup> IFCE (2013) pp15-16

# Leading Courts: Planning, Monitoring and Reporting

The Goal of the Pacific Judicial Strengthening Initiative is to build fairer societies by supporting the Court in 14 Pacific Island Countries to develop more accessible, just, efficient and responsive justice services.





### 3 METHODOLOGY FOR DRAFTING AN ANNUAL REPORT

A Court will consider the following issues when preparing to publish its Annual Report:

#### 3.1 WHO SHOULD BE INVOLVED IN DRAFTING AN ANNUAL REPORT AND WHY?

- i. Chief Justice and Deputy Chief Justice(s);
- ii. Justices involved in managing Court committees;
- iii. Chief Judges or Chief Magistrates that lead courts that will be included in the Annual Report;
- iv. Chief Registrar of each of the levels of courts that will be included in the Annual Report;
- v. other members of the senior management team; and
- vi. other court staff members responsible for managing an area of the Court's business such as Client Services.

#### 3.2 WHAT ARE REALISTIC TIMELINES FOR THE DRAFTING OF AN ANNUAL REPORT?

Many countries have statutory requirements that set a deadline within which time the Annual Report must be submitted to the responsible Minister for tabling in Parliament. An example of this is the requirement that Australian government departments and federal agencies (including Federal courts) present a copy of their annual report to each House of the Parliament on or before 31 October in the year in which the report is given.<sup>7</sup> As the financial and reporting year in Australia runs from 1 July to June 30, Federal Courts have four months in which to prepare and table their annual report for the previous financial year. In New Zealand, a Department has two months after the end of the financial year to forward its annual financial statements, statement of service performance and its annual report to the Auditor-General to review that report before providing the audit report that is required to be included in the annual report when it is presented to the House of Representatives.<sup>8</sup>

If there is not a statutory requirement, it will be in the court's interest to publish its annual report within twelve months of the end of the reporting period. All courts operate on an annual budget cycle. It is critical that courts maintain high standards of transparency and accountability in relation to the funds provided by the state for the operation of the courts. Annual reports are the vehicle through which courts report on (i) the financial resources received and (ii) performance results of the court.

#### 3.3 WHO IS THE AUDIENCE FOR THE ANNUAL REPORT?

It is important for the Chief Justice to consider the audience for the annual report. In the Regional Justice Performance Framework, Chief Justices participating in PJDP agreed that they would share their experience through the publication of their annual reports on the Internet, either on their own court websites or through the Pacific Islands Legal Information Institute ([www.PacII.org](http://www.PacII.org)). It is important to consider that a range of

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<sup>7</sup> Ibid p 2.

<sup>8</sup> s 44 and s 45D Public Finance Act 1989.

international, Pacific as well as national stakeholders will have an interest in reading court annual reports from the PJDP countries.

- Who are the different court stakeholders?
  - general public;
  - executive and parliament;
  - Pacific courts interested in sharing experience;
  - international and Pacific regional agencies e.g. UNICEF, UN Women, regional non-governmental organisations;
  - national and regional educational institutions;
  - non-governmental/ civil society organisations;
  - media; and
  - donors.
- What do they want to know? (Discussed in Section 3.4 below)
- How can information in the Annual Report best be presented for these groups?
  - use clear, concise, non-legal language;
  - use diagrams and charts to show court performance trends;
  - include a table of contents and an alphabetical index – covering the contents of any appendixes as well as the contents of the main body of the report;
  - provide a glossary to make clear the meanings of any abbreviations and acronyms used;
  - specify who the contact officer(s) to whom enquiries are to be addressed for further information and their details (e.g., title, telephone, facsimile, e-mail address); and
  - include the address of the Internet homepage for the Court, and the Internet address for the annual report (on PacLII or the Court's website).

### 3.4 WHAT SHOULD BE INCLUDED IN AN ANNUAL REPORT?

Each Court is best able to determine what should be included in its Annual Report based on its intended audience and national statutory requirements that outline the issues that should be addressed in an Annual Report. Most PJDP jurisdictions produce an Annual Report that covers the operation of all the courts in that country. However, the largest country in the Pacific, PNG, has historically had the National and Supreme Courts drafting one Annual Report and the Magisterial Services producing its own Annual Report.

At the PJDP National Coordinators Leadership Meeting held in the Cook Islands in June 2011, the key court performance areas were considered and a list developed that was then sent to Chief Justices for their review and comment. 14 indicators of court performance were outlined during these exchanges and a further 15th indicator added following the Leadership Workshops of Chief Justices and National Coordinators held in Vanuatu in October 2011. The 15 indicators selected were chosen by PJDP judicial counterparts as they

represented essential data that jurisdictions, whether large or small, should ideally have the capacity to collect, analyse and present in their annual reports. For several of these indicators, jurisdictions that were able to capture data disaggregated by the gender of court clients or their age (juvenile/non-juvenile clients) were requested to present this additional level of information. However, as presented in the PJDP 2011 Court Baseline Report most courts do not capture gender and age disaggregated data or do not present this information in their annual reports. Over time, the PJDP judicial counterparts may wish to extend this list of indicators in line with the ability of more courts to collect, analyse and report on court performance data in more complex ways.

As can be seen in Tables A and B above, 12 of 14 (86%) PJDP countries are able to report on 10 or more of the 15 Cook Island indicators. For those courts that are able to report on most of the Cook Island indicators Part 3 of this Toolkit shows how these courts may wish to focus on:

- i. including information from court users and stakeholders on their perception of bringing cases before the courts - this information is usually collected through surveys and other stakeholder feedback processes;
- ii. juvenile disaggregated data on cases;
- iii. sex disaggregated data on cases; and
- iv. pending Caseload (through the chart creator).

The Courts' own statements of their goal/mission/vision are set out in the opening pages of the PJDP 2014 Court Trend Report and reflect the qualities that are commonly considered to be integral to the judicial function. The 15 indicators present an overview of court performance against these core or essential characteristics of the judicial function. The PJDP 2014 Court Trend Report contains a detailed discussion of the 15 Cook Island indicators and how each PJDP country reports on these indicators.


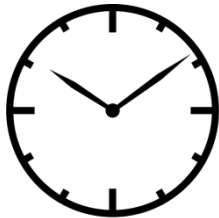
The following is a selection of issues that have been included in Annual Reports on court performance from the Asia-Pacific region. The checklist below includes the 15 Cook Island indicators endorsed by PJDP Chief Justices at their leadership meeting in Apia, Samoa in March 2012 through the Regional Justice Performance Framework.

**Table H:** Checklist of Components that may be included in an Annual Report

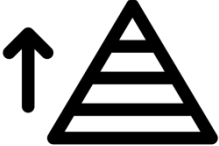


	Components of an Annual Report	Rationale for the component's possible inclusion
1.	<b>Year in Review/ Introductory Statement:</b> <ol style="list-style-type: none"> <li>i. Statement from the Chief Justice</li> <li>ii. Implementation of the Court's Strategic Plan or any new initiatives.</li> <li>iii. Summary of significant issues and developments.</li> </ol>	This section allows the Chief Justice to provide a first person account of what he or she feels most proud of achieving in the last year and some of the challenges facing the court in delivering the level of service it would like to clients.



2	<b>Organisational review:</b> <ol style="list-style-type: none"> <li>Overview of the Courts and their jurisdiction/ role and functions</li> <li>Court Mission, Vision and Values</li> <li>Organisational structure</li> </ol>	<p>This section provides an overview of the different courts and what types of cases they handle. The Mission, Vision and Values of the court as well as what services the Court intends to provide. The organisational structure shows the governance arrangements and how the courts and staff interact.</p>
3.	<b>Court results</b> <ol style="list-style-type: none"> <li>Court achievements in the reporting period</li> <li>Court workload</li> <li>Court performance against Key Performance Indicators (15 Cook Island indicators):</li> </ol>	<p>The results section of the Annual Report outlines what has been achieved by the court in the reporting year and compares this with trend data from the previous 3-5 years.</p> <p>The Excel Chart Creator (attached as <b>Annex 6</b>) is a tool developed to assist courts in presenting trend data over a number of years in relation to the Cook Island indicators.</p> <p>Many courts present an overview of the court's work by presenting trends in relation to the work of different jurisdictions such as:</p> <ul style="list-style-type: none"> <li>• Civil;</li> <li>• Family;</li> <li>• Juvenile;</li> <li>• Family violence;</li> <li>• Criminal; and</li> <li>• Appeal divisions of the court.</li> </ul> <p>For those courts that collect and analyse sex, age and disability disaggregated data these data should also be included in the Annual Report or in Court public information materials such as press releases. A checklist of how these disaggregated data may be included together with examples from Pacific countries is included in Part 3.7 below.</p>








	<p><b>Indicator 1: Clearance Rate</b></p> <p>The result against this indicator is obtained by dividing cases finalised by cases filed.</p> 	<p>In the 2014 Trend Report, 12 of 14 PJDP countries (86%) were able to present data in a form that will permit a clearance rate to be calculated for one or more level of court jurisdiction.</p> <p>The judiciaries of Kiribati, Palau, RMI and Tonga all present 3-5 years of trend data for clearance rates in their Annual Reports.</p> <p>A clearance rate of 100 per cent or higher indicates that a Court is able to keep up with its new work and prevent a backlog of pending cases.</p> <p><b>For More Ideas on Clearance Rate Goals See: PJDP Toolkits on Time Standards, Backlog Reduction and Efficiency</b></p>
	<p><b>Indicator 2: Average Duration of a Case</b></p> <p>The result against this indicator is obtained by totalling the days for each case from the date the case is filed to the date it is finalised and then dividing this by the number of cases finalised.</p> 	<p>In the 2014 Trend Report, 10 of 14 PJDP countries (71%) were able to collect data on the average duration of a case in their court.</p> <p>The judiciaries of the Republic of the Marshall Islands (2016 Annual Report), Federated States of Micronesia (2014 Annual Report) and Tonga (2017 Annual Report) all refer to a time standard for the hearing of different types of cases in their Annual Reports.</p> <p>Many of the PJDP courts mention in their court mission and vision statements that they aspire to the efficient resolution of disputes in their country. It is not possible for courts to determine whether cases are being resolved efficiently if they are unable to collect and analyse data on the average duration of the cases that come before the courts.</p> <p><b>For More Ideas on Time Goals See: PJSI Efficiency and Time Goals Toolkits</b></p>
	<p><b>Indicator 3: Percentage of Appeals</b></p> <p>The result against this indicator is obtained by dividing the number of cases appealed to a higher court in which the lower court decision is overturned in whole or in part by the number of</p>	<p>In the 2014 Trend Report, 12 of the 14 PJDP countries (86%) were able to collect data on the number of cases appealed as a percentage of the number of cases filed in a particular year for one or more level of court jurisdiction.</p>

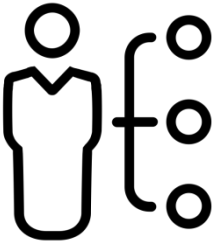




	<p>cases finalised in the level of court jurisdiction from which the appeal is made.</p> 	<p>It is considered important for courts to monitor overall appeal trends to identify: (i) what resources will be required to handle the appeal cases in an efficient manner, (ii) what percentage of cases are being referred to appeal courts, (iii) the duration of an appeal case from the time an appeal is filed to the date of the appeal judgment and/or (iv) whether judgements from particular judges are being referred to appeal courts at a higher rate than the national level.</p>
	<p><b>Indicator 4: Overturn Rate on Appeal</b></p> <p>The result against this indicator is obtained by dividing the number of appeal cases in which the lower court decision is overturned by the total number of appeals.</p> 	<p>In the 2014 Trend Report, 11 of 14 PJDP countries (79%) were able to collect data on the percentage of appeal cases in which the lower court decision is overturned by the appellate court.</p> <p>It is important to track the overturn rate on appeal to establish if certain types of cases are overturned on appeal at a higher rate than the national average.</p>
	<p><b>Indicator 5: Percentage of Cases that are Granted a Court Fee Waiver</b></p> <p>The result against this indicator is obtained by dividing the number of cases that are granted a court fee waiver by the total number of cases filed.</p> 	<p>In the 2014 Trend Report, 12 of the 14 PJDP countries (86%) could present data on the percentage of cases that were granted a court fee waiver.</p> <p>For those courts that collect data on the waiver of court fees in civil cases it is valuable to present sex disaggregated data on the number of men and women who (i) apply for and (ii) are granted a court fee waiver for their civil case.</p> <p>With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, courts should provide clear documentation for all court users on the process for waiving a court fee in civil cases.</p>
	<p><b>Indicator 6: Percentage of Cases Disposed Through a Circuit or Island Court</b></p> <p>The result against this indicator is obtained by dividing the number of cases finalised through a circuit or island court by the total number of</p>	<p>In the 2014 Trend Report, 10 of 14 PJDP courts (71%) were able to provide data on the percentage of cases heard through a circuit court.</p> <p>For those courts that collect data on cases disposed through a circuit or island court it is valuable to present</p>


	<p>cases filed.</p> 	<p>sex disaggregated data on the number of men and women who have a (i) civil or family law matter or (ii) family violence or domestic violence restraining order matter resolved through a circuit court.</p> <p>With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, courts should provide clear information for all court users on the process for registering and hearing cases through circuit courts.</p> <p>In countries where a significant proportion of the population live in remote areas, it is important for courts to collect data on the demand for circuit courts so that it may present a financial argument for appropriate resources to deliver court services to its population through circuit courts to remote areas.</p>
	<p><b>Indicator 7: Percentage of Cases Where a Party Receives Legal Aid</b></p> <p>The result against this indicator is obtained by dividing the number of cases where a party receives legal aid by the total number of cases received.</p> 	<p>In the 2014 Trend Report, eight of 14 PJDP countries (57%) were able to collect data on the percentage of cases in which a party receives legal aid.</p> <p>For those courts that collect data on cases where a party receives legal aid it is valuable to present sex disaggregated data on the number of men and women who benefit from legal aid services for (i) civil or family cases that they initiate (ii) domestic violence restraining order applications or (iii) criminal cases in which they are the defendant.</p> <p>With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, PJDP courts should collect information at the time the case is filed on whether a party will receive legal aid. This is particularly important in criminal matters as many PJDP jurisdictions require a defendant to be represented by a lawyer in serious criminal matters or where the defendant is a juvenile.</p>
		<p>In the 2014 Trend Report, six PJDP countries (43%) have a documented process for receiving and</p>



	<p><b>Indicator 8: Documented Process for Receiving and Processing a Complaint That is Publicly Available</b></p> <p>To show results against this indicator a documented process for receiving and processing a complaint should be accessible to the public.</p> 	<p>processing a complaint. Three other PJDP countries have a documented process for receiving and processing a complaint in relation to court staff members that are public servants.</p> <p>Including a section in the annual report on the number of complaints received related to judicial officers and court staff members demonstrates that the court is prepared to be transparent in relation to its complaint handling procedures. A proportion of these complaints will relate to dissatisfaction with the outcome of the case or a misunderstanding in relation to court or legal procedures. However, a proportion of complaints will highlight shortcomings in court administrative procedures and suggest areas for improvement in the delivery of court services. The annual report could also report those areas where the court has made improvements or changes over the past year in relation to information received through client feedback and complaints processes.</p> <p>For More Ideas on Complaint Handling Mechanisms See: PJDP Toolkit on Toolkit for Building Procedures to Handle Complaints about Judicial Conduct</p>
	<p><b>Indicator 9: Percentage of Complaints Received Concerning a Judicial Officer</b></p> <p>The result against this indicator is obtained by dividing the number of complaints received concerning a judicial officer by the total number of cases filed.</p> 	<p>In the 2014 Trend Report, 11 of 14 PJDP countries (79%) presented information on the percentage of complaints received concerning a judicial officer.</p>

	<p><b>Indicator 10: Percentage of Complaints Received Concerning a Court Staff Member</b></p> <p>The result against this indicator is obtained by dividing the number of complaints received concerning a court staff member by the total number of cases filed.</p> 	<p>In the 2014 Trend Report, 11 of 14 PJDP countries (79%) presented information on the percentage of complaints received concerning a court staff member.</p>
	<p><b>Indicator 11: Average Number of Cases Per Judicial Officer</b></p> <p>The result against this indicator is obtained by dividing the total number of cases received by the number of judicial officers.</p> 	<p>12 of the 14 PJDP countries (86%) have one or more courts that are able to present data on the average number of cases for each judicial officer presiding in that court.</p> <p>These data are relevant to other performance indicators such as clearance rates (indicator 1), average duration of cases (indicator 2) and percentage of complaints against judicial officers (indicator 9).</p>
	<p><b>Indicator 12: Average Number of Cases Per Court Staff</b></p> <p>The result against this indicator is obtained by dividing the total number of cases received by the number of court staff.</p> 	<p>In the 2014 Trend Report, 12 of the 14 PJDP countries (86%) have one or more court that is able to present data on the average number of cases for each court staff/ registry staff member involved in the processing of cases from the date of filing to finalisation.</p>

	<p><b>Indicator 13: Court produces or contributes to an Annual Report that is publicly available in the following year</b></p> <p>This indicator is demonstrated through the publication of an annual report in the year immediately following the year that is the subject of the annual report.</p> 	<p>In the 2014 Trend Report, 12 of the 14 PJDP countries produce or contribute to an Annual Report. Ten of the 14 PJDP countries (71%) produced or contributed to an Annual Report that is publicly available in the year immediately following the reporting period.</p>
	<p><b>Indicator 14: Court Services Information</b></p> 	<p>In the 2014 Trend Report, nine of the 14 PJDP countries (64%) present information on court services on their websites or through the provision of brochures</p> <p>With approximately one quarter of the population in the PJDP PICs having an income that falls below the basic needs poverty line in that country, and with the majority of court clients appearing in court without legal representation, it is important for Courts to consider how best to convey information on court services to potential court users. The internet is an effective way of presenting information to a range of court stakeholders who may assist disadvantaged groups to access the courts. However, direct engagement with potential court users through posters in health clinics and government offices, radio bulletins or other means is also important as a way of informing potential clients of how they may access the courts for their legal issues.</p>
	<p><b>Indicator 15: Publication of Judgments</b></p> <p><b>Court publishes judgments on the Internet (through PacLII or their own website).</b></p>	<p>In the 2014 Trend Report, 13 of the 14 PJDP countries (93%) publish judgments on the internet using the Pacific Legal Information Institute (PacLII) website with 11 of the 14 countries (79%) publishing judgments online for the previous year.</p>

		<p>Courts should consider showing in their Annual Report for Supreme and District/ Magistrate Court jurisdictions:</p> <ul style="list-style-type: none"> <li>▪ The number and percentage of <b>criminal</b> cases finalised in the last reporting year that were published on PacLII or a court website</li> <li>▪ The number and percentage of <b>family</b> cases finalised in the last reporting year that were published on PacLII or a court website</li> <li>▪ The number and percentage of <b>civil</b> cases finalised in the last reporting year that were published on PacLII or a court website</li> </ul> <p>For an example of transparency of cases on PacLII or a Court Website by case type and jurisdiction see the Fiji Courts 2011-2017 Example in Annex 18.</p>
	<p>At the Chief Justices' Leadership Meeting held in Auckland in April 2018, Chief Justice's agreed that courts should take steps toward being able to collect and present data on the following five matters:</p>	
	<p><b>Indicator 16: Average Age of the Pending Case Load</b></p>	<p>This indicator is demonstrated through Courts:</p> <ol style="list-style-type: none"> <li>Setting a time goal for the hearing of cases.</li> <li>Tracking those cases that are not finalised within the time goal.</li> <li>Noting in the Annual Report the average age of the pending caseload by jurisdiction (civil, criminal, family, juvenile etc) for the cases that are pending at the end of the reporting period.</li> </ol>
	<p><b>Indicator 17: Percentage of complaints that have been handled within an agreed timeframe</b></p>	<p>This indicator is demonstrated through Courts keeping a record of the date a complaint is received and the date it is finalised. Courts will need to agree upon and publicise a timeframe within which complaints will be handled.</p>
	<p><b>Indicator 18: Total number of compliments</b></p>	<p>This indicator is demonstrated through Courts keeping</p>

	and positive feedback received by the court.	a record of the number of compliments or positive feedback received in the reporting period.
	<b>Indicator 19: The range of training and development opportunities</b> provided to judicial officers and court staff and numbers attending these programmes during the reporting year.	This indicator is demonstrated through Courts keeping a record of the different training and professional development opportunities provided each year to judicial officers and court staff and the positions and sex of those who attend these programmes.
	<b>Indicator 20: The percentage use rate of courtrooms:</b>  This indicator is demonstrated through obtaining a total number of hours a courtroom is used and dividing this by the total available hours for that courtroom.	An example would be if the court is in session from 10am – 1pm then from 2pm-5pm, this amounts to 6 hours a day during which a court may be in session or 30 hours a week. The Chief Registrar will be able to calculate the number of weeks that courts are in session each year taking into account court recess and holidays. This may be 46 weeks a year x 30 hours = 1380 hours a year.  This indicator is demonstrated through Court staff keeping a record of the times a judge hears a case in court and calculating it as a percentage of the total time.
	iv. Trend data for the past 3-5 years, where possible.	Courts that display high levels of judicial transparency and a commitment to improving the delivery of their court services present annual and trend court performance data in their annual reports as well as a statement on whether the court has met their performance standards or targets for the year.  The judiciaries in Kiribati, Palau, the Republic of the Marshall Islands and Tonga all present trend data for the previous 3-5 years in their Annual Reports.
	v. The number of cases being heard at different levels in the national courts, disaggregated by (i) the type of case and (ii) whether a victim or perpetrator is a child.  	Data on cases disaggregated to indicate whether the case involves children as perpetrators or victims of crimes are important in order to deliver better justice services to children.  See the Checklist in Part 3.7 below for more information on the data fields required in a case management system in order to collect, analyse and present age disaggregated data in Annual Reports.

	<p>vi. <b>The number of cases being heard at different levels in the national courts, disaggregated</b> by (i) the type of case (civil, family, family violence, domestic violence restraining order applications, sexual violence, violence against the person) and (ii) sex of the defendant as well as victim/ survivors).</p> 	<p>There is a global movement to End Violence against Women and Girls that has been endorsed by Governments across the Pacific. Court Annual Reports should include data on the number of domestic violence cases and protection order applications commenced by women each year as data on these cases is critical to national efforts to End Violence against Women and Girls.</p> <p>See the Checklist in Part 3.7 below for more information on the data fields required in a case management system in order to collect, analyse and present sex disaggregated data in Annual Reports.</p>
	<p>vii. <b>Factors, events or trends influencing court results.</b></p>	<p>In some years, it is not possible for a court to meet its performance targets due to a particular event or set of circumstances. These may relate to a natural disaster or a shortfall in the number of judges or court staff working in a particular year or other factors. It is important for Annual Reports to explain these events or circumstances.</p>
3.	<p>Interaction with Key Court Stakeholders/ How has the court engaged with key stakeholders over the year to obtain feedback on the level of service provided to clients?</p> 	<p>This section presents the ways in which the Courts interact with key court stakeholders to identify any barriers to accessing the court's services or to address areas where court services might be improved.</p> <p>Refer to any social justice/ social inclusion initiatives of the court.</p> <p>This section can include a narrative of the specific services provided by courts for women and girls who are survivors of violence, as well as those services that are undertaken in collaboration with Government agencies and/or Civil Society Organisations.</p> <p>This narrative can also highlight multi-sectoral working meetings that the court leadership has arranged on family law and violence against women and children issues with key government agencies and CSOs to seek feedback on how the current procedures are working and barriers faced by women, children and other vulnerable groups in accessing the courts for</p>



		<p>their cases.</p> <p>For an example see the 2016 Palau Judiciary Annual Report and their inclusion in the Court Highlights Section of the Courts engagement on: <b>16 Days of Activism in Palau to End All Forms of Violence 25 Nov - 10 Dec 2016</b></p>
4.	<p>Management accountability</p> <ul style="list-style-type: none"> <li>i. Annual Financial Accounts for the Reporting Period</li> <li>ii. Senior management committees and their roles</li> <li>iii. Strategic and Management Plans</li> <li>iv. Training and development opportunities for court staff</li> <li>v. Management of court infrastructure</li> </ul>	<p>This section outlines the main corporate governance practices in place in the court related to the court's accountability for the management of financial, human and infrastructure resources.</p>
5	<p>Appendices</p> <ul style="list-style-type: none"> <li>i. Organisational Chart</li> <li>ii. List of all court personnel</li> <li>iii. Map of fixed court buildings as well as circuit court locations.</li> <li>iv. List of contact details for court registries.</li> </ul>	<p>This section allows a court to provide a range of information to court stakeholders.</p>

### 3.5 SEX, AGE AND DISABILITY DISAGGREGATED REPORTING IN ANNUAL REPORTS

From 2011 to 2015, PJDP courts made significant improvements in the collection, analysis and publication of court performance data in their Annual Reports. Seven PJDP Courts produced their first judicial Annual Report during this period and the number of courts that could report on 10 or more of the 15 Cook Island indicators increased to 12 of the PJDP jurisdictions. However, as can be seen in Table D, at the end of PJDP only 4 of the 14 PJDP jurisdictions presented sex disaggregated data in their Annual Reports that included gender and family violence cases and only 6 PJDP jurisdictions presented disaggregated data in their Annual Reports showing juvenile cases.

Table I: Court Annual Reporting 2011-2015

Court Annual Reporting 2011 – 2015		
In 2011, the PJDP Chief Justices approved 15 court performance indicators: the Cook Island Indicators. Four years later, significant improvements have taken place in the 14 PJDP jurisdictions in court performance reporting and the transparency of this information.		
2011 Baseline Report		2014 Court Trend Report
1	Number of PJDP courts that can produce an Annual Report in the year immediately following the reporting period that is published on the internet	10
2	Number of PJDP Courts that can report on 10 or more of the 15 Cook Island Indicators	12
0	Number of PJDP Courts that have included gender disaggregated data on family law and family violence cases in their Annual Report	4
2	Number of PJDP Courts that have included juvenile disaggregated data in their Annual Report	6
–	Number of PJDP Courts that have issued their first judiciary Annual Report since 2011	7

Most of the PJDP Courts Mission and Vision Statements include the principle of courts being accessible for all. The integrity of these Court Mission and Vision Statements depends upon the Court's ability to demonstrate that they have identified vulnerable groups and:

- Recognise the barriers they face in accessing courts through research, feedback mechanisms, dialogues with court stakeholders and/or court user surveys;
- Have addressed the barriers in consultation with court stakeholders/ CSOs/ DPOs and included this in Court policies and Strategic Plans; and
- Collect disaggregated data to evaluate if the strategies put in place improve access to the courts for vulnerable groups.

Since the commencement of PJDP in 2011 there have been a number of policy developments and reports in the Pacific that Courts may wish to consider when compiling their Annual Reports, including:

- The Pacific Leaders Gender Equality Declaration (2012 and reaffirmed in 2015);
- UNICEF Pacific Baseline Studies (2009-2014);
- Convention on the Rights of Persons with Disabilities; and
- An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence (SGBV) Cases in the Pacific Island Region<sup>9</sup> (2015).

Table J: Recent Pacific Policy Documents and Reports

The Pacific Leaders Gender Equality Declaration (2012 and reaffirmed in 2015)	Actions Courts May Consider
<b>Gender Responsive Government Programmes and Policies:</b> Support the production and use of sex disaggregated data and gender analysis to inform government policies and programmes;	<ul style="list-style-type: none"> <li>• Courts can strengthen their capacity to provide sex- disaggregated data in Annual Reports, particularly in relation to family law and gender and family violence cases, presenting trends over 3-5 years</li> </ul>
<b>Ending Violence against Women</b> <ul style="list-style-type: none"> <li>• Implement progressively a package of essential services (protection, health, counselling, legal) for women and girls who are survivors of violence.</li> <li>• Enact and implement legislation regarding sexual and gender based violence to protect women from violence and impose appropriate penalties for perpetrators of violence</li> </ul>	Court can report on: <ul style="list-style-type: none"> <li>• services provided by courts for women and girls who are survivors of violence as well as those services that are undertaken in collaboration with Government agencies and/or Civil Society Organisations</li> <li>• penalties imposed on perpetrators of violence and analyse the outcomes of gender and family violence cases brought to court.</li> </ul>
<b>UNICEF Pacific Baseline Studies (2009-2014)</b>	<b>Actions Courts May Consider</b>
The United Nations Children's Fund (UNICEF) has published child protection baseline reports for Kiribati, Solomon Islands and Vanuatu in 2009, Palau, the Republic of the Marshall Islands and Samoa in 2013 and the Federated States of Micronesia in 2014.  The baseline reports that have been completed by UNICEF follow a similar format for each of the	Court can report disaggregated data relating to children's cases (Including the outcome of the case and any sentence that may be imposed) presenting trends over 3-5 years.  When referring to children's cases Court's should clarify that the definition of a child under the Convention on the Rights of the Child is a person under 18 years of age.

<sup>9</sup> ICAAD and DLA Piper (2015) An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence (SGBV) Cases in the Pacific Island Region

seven PJDP/ PJSI countries. The reports include performance indicators for the courts in relation to juvenile justice matters. One of these indicators relates to the systematic recording and reporting of disaggregated data relating to children's cases (Including the outcome of the case and any sentence that may be imposed).	
<b>Convention on the Rights of Persons with Disabilities</b>	<b>Actions Courts May Consider</b>
Ten of the 14 PJDP countries (Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, Republic of the Marshall Islands, Samoa, Tuvalu and Vanuatu) have ratified or acceded to the Convention on the Rights of Persons with Disabilities (CRPD) 2007, as at March 2017. The CRPD requires that parties support each other to implement the CRPD, including through ensuring that all persons are equal before the law and are entitled, without discrimination, to the equal protection of the law. This requires that people living with a disability are able to access justice systems for their cases as well as not face discrimination if they apply to work in the administration of justice <sup>10</sup> .	<p>Court can consider:</p> <ul style="list-style-type: none"> <li>• Collecting disability disaggregated data through their case management system and report on this data in their Annual Reports.</li> <li>• Reporting on meetings held through the year with CSOs working with people living with a disability to identify how to make the services of the court more disability-inclusive.</li> <li>• Annex 17 of this Toolkit includes ideas that courts may consider for making their court more accessible for people living with a disability.</li> </ul>
<b>An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence (SGBV) Cases in the Pacific Island Region (2015)</b>	<b>Actions Courts May Consider</b>
<p>The Analysis and proposed sentencing database will allow Chief Justices to monitor how judges in their courts are handling SGBV cases and, in particular, whether:</p> <ul style="list-style-type: none"> <li>• contentious factors were raised during the hearing by a judicial officer or defence counsel</li> <li>• the contentious factors lead to a sentence reduction</li> <li>• average sentence for a SGBV case</li> </ul>	<p>Courts can ensure that:</p> <p><i>Sexual and Gender Based Violence cases are sent to PacLII, including Magistrates Court/ District Court cases as well as those SGBV cases decided at Supreme or High Court levels.</i></p>

<sup>10</sup> Commonwealth of Australia, DFAT, Development for All 2015–2020: Strategy for strengthening disability-inclusive development in Australia's aid program, May 2015, p5. CPRD Articles 2, 3, 5, 12 and 13.

### 3.6 CHART CREATORS FOR THE PRESENTATION OF TREND COURT DATA

Version 1 of the chart creator allowed PJDP jurisdictions to collect and present trend data on 11 of the 15 Cook Island indicators (Annexes 5 and 6 of this Toolkit)

During PJSI, two new chart creators have been developed to assist with collecting and analysing sex and age disaggregated data (Annexes 13 and 14 of this Toolkit).

The new version of the chart creator supports the collection and analysis for internal purposes of a range of sex disaggregated data on family law and Family Protection Act cases. The new chart creator was trialled in Palau with the Court of Common Pleas (CoCP) and the 2016 sex disaggregated data analysis is presented below.

The Palau Judiciary issued a Press Release that presented the new analysis of data undertaken with the Chart Creator that can be accessed on the Palau Judiciary website: [Press Release #115: Palau Judiciary Reviews Family Protection Act cases 2014-2016](#)

[http://www.palausupremecourt.net/news\\_main.cshtml](http://www.palausupremecourt.net/news_main.cshtml)

#### Chart Creator for Family law and Family Protection Act cases

Sheet Number in Chart Creator	Presents Data on:	2016 sex disaggregated data analysis by the Court of Common Pleas in Palau
Sheet 1a: Divorce cases filed by year	Disaggregated by the court (CoCP or Supreme Court) and the sex of the applicant	18 cases filed in 2016 of which women file 78%.
Sheet 1b - Divorce Cases (combining Child Support and Child Custody)	Disaggregated by the court (CoCP or Supreme Court) and the sex of the applicant	15 cases filed in 2016 of which women file 80%.
Sheet 2 - Child Support Cases Filed in the CoCP	Disaggregated by the sex of the applicant	3 cases filed in 2016 of which women file 100%.
Sheet 3 – Total number of Family Cases filed	Disaggregated by the court (CoCP or Supreme Court) and the sex of the applicant	43 cases filed in 2016 of which women file 84%.
Sheet 4 - Civil Domestic Abuse Restraining Order FPA (Filed by Victim) in the Supreme	Disaggregated by the sex of the applicant. Data also presents (i) the number and percentage of temporary restraining orders	60 Restraining Orders were filed in 2016 of which women file 77%. 94% of these temporary

Court and CoCP	granted or not granted and (ii) the number and percentage of Protective Orders granted or not granted.	restraining orders are granted
Sheet 5 - Child Custody Cases Filed	Disaggregated by the sex of the applicant	6 cases filed in 2016 of which women file 100%.
Sheet 6 - Family Protection Act Criminal Charges (Filed by the Republic of Palau)	Disaggregated by the court (CoCP or Supreme Court)	28 cases filed in 2016 of which 96% are filed in the CoCP.

A new chart creator has been developed and trialled with the Palau Court of Common Pleas that supports the collection and analysis for internal purposes of a range of age disaggregated data that the Court of Common Pleas and Supreme Court of Palau currently collects in excel format year by year. The Palau Judiciary issued a Press Release that presented the new analysis of data undertaken with the Chart Creator that can be accessed on the Palau Judiciary website: [Press Release 116 entitled: Palau Judiciary and Juvenile Cases 2010-2016 that presented data collected, analysed and published on juvenile cases.](http://www.palausupremecourt.net/news_main.cshtml)

[http://www.palausupremecourt.net/news\\_main.cshtml](http://www.palausupremecourt.net/news_main.cshtml)

Chart Creator for Juvenile cases		
Sheet Number in Chart Creator	Presents Data on:	2016 sex disaggregated data analysis by the Court of Common Pleas in Palau
Number of juvenile citation cases filed in the Court of Common Pleas	Disaggregated by the sex of the juvenile offender,	34 juvenile citation cases filed in 2016 involving 31 boys and 3 girls.
Number of juvenile citation cases in which the deferred adjudication procedure was used.	Disaggregated by the sex of the juvenile offender,	In 30 of these juvenile cases the deferred adjudication procedure was used involving 27 boys and 3 girls.
Number of juvenile citation cases	Disaggregated by the sex of	In 2016, the three

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adjudicated and the outcome: (i) Adjudicated and penalty includes incarceration, (ii) Adjudicated and penalty does not include incarceration and (iii) Case Dismissed, Warrant Outstanding, Pending.	the juvenile offender,	cases adjudicated all involved boys and lead to two cases of incarceration and one of probation.
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### 3.7 CHECKLIST FOR THE COLLECTION, ANALYSIS AND PRESENTATION OF SEX, AGE AND DISABILITY INCLUSIVE DATA IN AN ANNUAL REPORT

A checklist has been developed from working with PJSI courts to assist with the collection, analysis and presentation of sex, age and disability inclusive data for an Annual Report.

The data fields identified below and in Annex 15 of the Toolkit will need to be adjusted to take into account how cases are classified in each jurisdiction.



### Checklist for the collection, analysis and presentation of sex, age and disability inclusive data in an Annual Report

The data fields identified below will need to be adjusted to take into account how cases are classified in each jurisdiction.

It is helpful to be able to present at least five years of court data for each data field to enable the reader to understand court trends.

Data Fields	Is this captured in the case management system?	Is this data presented in Annual Reports now?	Notes
<b>Disaggregated data - Civil cases</b>			
1 Numbers of women and men that are applicant parties in family law and selected civil cases (e.g. divorce cases, property, child custody, child maintenance, adoption, inheritance).	<input type="checkbox"/>	<input type="checkbox"/>	
2 Number of children under the age of 18 years in			This is relevant to ensure that adequate





	divorce cases that are brought to the court.	<input type="checkbox"/>	<input type="checkbox"/>	provision is made for child custody and maintenance.
3	Number of women and men that request other orders (e.g. property, child custody, child maintenance) as part of their divorce petition to the court in a family law case	<input type="checkbox"/>	<input type="checkbox"/>	This is relevant in those jurisdictions where the applicant may make a number of applications relating to divorce, property, child custody, child maintenance within a single divorce case. It is important to be able to see the full range of orders sought from the court through the case management system.
4	Number of women and men who obtain the orders they sought in their family law application.	<input type="checkbox"/>	<input type="checkbox"/>	Possible drop down menu options in the case management system: Yes all orders granted/ No application for orders rejected/ Yes some orders granted – specify those granted
5	Numbers of divorce cases initiated by women where the woman states that they have experienced domestic violence (refer to different forms of violence).	<input type="checkbox"/>	<input type="checkbox"/>	Possible drop down menu options in the case management system and family law application forms: Yes experienced physical violence/ Yes experienced sexual violence/ Yes experiences psychological violence/ Yes experiences financial violence [note: insert forms of violence



referred to under national legislation].

6	Number of Family Protection Order/ Restraining Order applications where the applicant/ survivor/victim is a woman, child or man	<input type="checkbox"/>	<input type="checkbox"/>	Distinguish between interim and final protection orders.
7	Number of Family Protection Order/ Restraining Order applications granted/ not granted disaggregated by the sex of the applicant party.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Disaggregated data - Criminal cases</b>				
8	Numbers of criminal domestic violence cases disaggregated by the sex of the accused	<input type="checkbox"/>	<input type="checkbox"/>	
9	Numbers of women/ men/ girls (0-17 years of age)/ boys (0-17 years of age) who are victim/ survivors in violence cases	<input type="checkbox"/>	<input type="checkbox"/>	
10	Numbers of women/ men/ girls/ boys who are the accused in violence cases	<input type="checkbox"/>	<input type="checkbox"/>	
11	The average final sentence in violence cases in which the survivor/ victim is a woman or child disaggregated by the type of offence: murder/ manslaughter/ rape/	<input type="checkbox"/>	<input type="checkbox"/>	Drop down menu options to include sentencing options common in violence cases. For custodial sentences include a field for the number of months the offender



sexual assault

is sentenced so that an average final sentence can be obtained for different types of cases.

- 12 The number of violence cases in which the survivor/ victim is a woman or child in which the offender appeals the decision?

☐
☐

- 13 The number of violence cases in which the survivor/ victim is a woman or child that are the subject of appeal and the finding of guilt is overturned and/or the sentence is reduced.

☐
☐

Possible drop down menu options in the case management system: Appeal rejected in full/ Appeal granted in relation to a finding of guilt/ Appeal granted in relation to sentence/ Appeal granted in relation to a finding of guilt and in relation to sentence/ include data field on number of months sentence is reduced/ augmented.

#### Cook Island Indicator 5: Court fee waiver

- 14 Number of female/ male applicants that **request** a court fee waiver in their civil cases.

☐
☐

- 15 Number of female/ male applicants that are **granted/ not granted** a court fee waiver in their civil cases.

☐
☐



### Cook Island Indicator 6: Circuit/ island court sittings

- 16 Numbers of family and other civil cases disposed of at a circuit/ island court indicating where the applicant party is a woman or a man.

☐
☐

- 17 Number and percentage of criminal cases/ disposed of at a circuit/ island court indicating where the defendant is a woman or a man.

☐
☐

### Cook Island Indicator 7: Legal Aid

- 18 Number and percentage of criminal cases where the defendant receives legal aid, disaggregated by man/ woman/ boy (0-17 years). Girls (0-17 years).

☐
☐

- 19 Number and percentage of family cases where the applicant party receives legal aid disaggregated by the sex of the applicant party.

☐
☐

- 20 Number and percentage of other civil cases where the applicant party receives legal aid disaggregated by the sex of the applicant party.

☐
☐

- 21 Cook Island Indicator 9: Percentage of Complaints received concerning a judicial officer.



	Number and percentage of Complaints received concerning a judicial officer disaggregated by the sex of the judicial officer.	<input type="checkbox"/>	<input type="checkbox"/>	
22	<p><b>Cook Island Indicator 10: Percentage of Complaints received concerning a member of court staff.</b></p> <p>Number and percentage of Complaints received concerning a member of the court staff disaggregated by the sex of the staff member.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
23	<p><b>Cook Island Indicator 14: Court Information</b></p> <p>Information on court services that is publicly available, including information on how to bring:</p> <ul style="list-style-type: none"> <li>Family Law Cases</li> <li>Family Protection Orders/ Restraining Orders</li> </ul>			How is this information published: on noticeboards, on court websites, in health centres, libraries?
<b>Disability inclusive Courts</b>				
24	<p>Number of women and men appearing before the court who have special needs disaggregated by type of case and in what capacity the party living with a disability is appearing before the court in the case:</p> <ul style="list-style-type: none"> <li>Applicant (civil case)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Possible drop down menu options in the case management system: What type of special assistance does the client require from the court:</p> <ul style="list-style-type: none"> <li>To locate, enter and move about the court-room</li> </ul>



- Defendant (criminal case)
- Witness/ Victim/ survivor (criminal case)

- To read a document
- To submit a written application
- To hear what is being said in court
- To understand what is happening in the court as well as what preparation may be required before the court hearing day

## Cook Island Indicator 15: Judgments online

25	Number and percentage of criminal judgments (by year) uploaded to PacLII or a court website	<input type="checkbox"/>	<input type="checkbox"/>	Show this for each court jurisdiction: e.g. Supreme Court, Magistrates Court, Island Court
26	Number and percentage of family law cases redacted/ anonymised and uploaded to PacLII or a court website	<input type="checkbox"/>	<input type="checkbox"/>	Show this for each court jurisdiction: e.g. Supreme Court, Magistrates Court, Island Court
27	Number and percentage of civil law cases redacted/ anonymised and uploaded to PacLII or a court website	<input type="checkbox"/>	<input type="checkbox"/>	Show this for each court jurisdiction: e.g. Supreme Court, Magistrates Court, Island Court

## 4. How to make an Annual Report Better

It is easy to keep doing things the same way. Courts that are striving toward excellence in their service will review how they present information to external stakeholders and change and update this from time to time. The Introduction to this Toolkit lists 10 ideas for improving Annual Reports – Does Your Court Tick all 10 Boxes?

### 4.1 COURT USER SATISFACTION SURVEYS IN COURT ANNUAL REPORTS

As can be seen in Table K below, three PJSI jurisdictions have undertaken court user perception surveys: Palau, Papua New Guinea and the Republic of the Marshall Islands.

*Table K: PJSI jurisdictions have undertaken court user perception surveys*

Country	2011	2012	2013	2014	2015	2016	2017
RMI		✓		✓		✓	
Palau	✓	✓	✓	✓			
PNG <sup>11</sup>	✓						

**Palau:** The Palau Judiciary has undertaken four court user surveys from 2011-2014 and the results for the last two surveys are included in their Annual Reports available on the Palau Judiciary website.

<http://www.palausupremecourt.net/>. The questionnaire prepared by the Palau Judiciary for these court user surveys is attached at Annex 8 to this Toolkit.

In August 2017, a Survey on Family Law and Family Protection Act cases heard by the Palau Judiciary was drafted and a methodology for its implementation discussed in collaboration with the Senior Judge of the Court of Common Pleas.

The Palau Judiciary has conducted a review of the Family Protection Act cases from 2014-2016 and it shows that women initiate 8 out of 10 domestic violence restraining order cases and 7 out of 10 family law cases.

If the survey is undertaken in Palau, women and men who have filed family law or family protection cases and/or been a victim/ survivor in a Family Protection Act criminal matter would be interviewed with the aim of improving both access to the courts and the quality of service received by court clients.

<sup>11</sup> The PNG court user perception survey asked lawyers and clients for their views on the quality and impact of mediation services conducted in the National Court of PNG during May-December 2011.

The survey aims to learn from parties' recent experience with the Palau justice system with a focus on family law matters and violence against women and children. The survey would be voluntary and undertaken on a confidential basis. A copy of the proposed survey instrument is attached at Annex 16 to this Toolkit.

**Republic of the Marshall Islands:** The RMI judiciary undertakes court user surveys every two years and the results are available on the RMI Judiciary website. <http://rmicourts.org/>. The 2016 Annual Report of the RMI Judiciary states that:

*Over two weeks from August 15 to 26, 2016, the Judiciary conducted an access and fairness survey at both the Majuro Courthouse and the Ebeye Courthouse. The Majuro Courthouse had 43 survey participants, and the Ebeye Courthouse had 18. The survey results are included in the RMI 2016 Annual Report.*

*We were pleased to learn that, as in past years, court users rate the Judiciary high on both access and fairness. For example, in response to the questionnaire prompt "I was able to get my court business done in a reasonable amount of time," 97.67% of Majuro respondents said yes. In response to the questionnaire prompt "Court staff paid attention to my needs," 97.62% of the Majuro respondents said yes. In response to the questionnaire prompt "I was treated with 7 courtesy and respect," 100% of the Majuro respondents said yes. The results in Ebeye were similar.*

*Generally, court users gave the Judiciary high marks in timeliness, safety and security, responsiveness to information requests, respect, clear signs, fair and reasonable outcomes, equality of treatment, and clarity in delivery of services. However, the Ebeye responses indicate that the Ebeye Courthouse should be expanded and should include a waiting area for customers. Initial steps have been taken to address this issue. A blue print for a new Ebeye Courthouse (including office space for the Attorney General and Public Defender) has been provided by the Ministry of Public Works. On March 28, 2017 the Judiciary's management team and Majuro District Court judges met with two of the Kwajalein senators to review the blue print and discuss land and funding for the project.*

**PNG:** The PNG court user perception survey asked lawyers and clients for their views on the quality and impact of mediation services conducted in the National Court of PNG during May-December 2011. A summary of results is included in the 2011 PJDP Court Baseline Report [Judicial Monitoring and Evaluation: 2011 Court Baseline Report \(2012\) \(PDF\)](#)

## 4.2 FOUR CASE STUDIES FROM THE PACIFIC REGION

- A Tokelau
- B Cook Islands
- C Republic of Palau
- D Republic of the Marshall Islands



This section explores four examples of national courts that have introduced ways of either providing more information to court stakeholders on the work of the courts or processes to better understand the views of court users on the level of service provided by courts. The first and second case studies (A and B) focus on how the Cook Islands and Tokelau judiciaries produced a court annual report for the first time during 2012. The third (C) and fourth (D) case studies document how the Republic of Palau and the Republic of the Marshall Islands judiciary have both undertaken a survey of court clients to evaluate their level of satisfaction with the services provided by the courts. The access and fairness survey undertaken by these courts was designed and implemented by the courts independently and within existing court budgets with PJDP assisting in the presentation and analysis of key survey findings in the first access and fairness survey undertaken in each country. The subsequent access and fairness surveys were undertaken, analysed and presented in the court Annual Report by the courts themselves.

## CASE STUDIES A & B

### Annual Reports of Tokelau and the Cook Islands

In the first year since the publication of the 2011 PJDP Baseline Report on Court Performance, three of the 14<sup>12</sup> PJDP judiciaries published an annual report for the first time presenting information on the work of courts in these countries. This section considers the experience of Tokelau and the Cook Island judiciaries in developing their first court annual report.

#### Tokelau

**In the 2011 PJDP Baseline Report on Court Performance, Tokelau was able to report on four of the 15 court performance indicators. In the 2014 PJDP Trend Report Tokelau is able to report on 12 of the 15 court performance indicators.**

Tokelau issued its first court Annual Report in late 2012 and was involved in piloting the PJDP toolkit on court Annual Reports. The Tokelau Annual Report covers the July 2011 to June 2012 reporting period. In less than six months, the judiciary in Tokelau was able to (i) compile, analyse and present court performance data in its Annual Report, (ii) translate the document from the Tokelauan language into English in order to discuss the first court annual report with the Chief Justice of Tokelau who is resident in New Zealand and (iii) present the court Annual Report to its Parliament.

An initial meeting was arranged in June 2012 to consider how judicial stakeholders could compile case data and other information about the judiciary from the three islands comprising Tokelau. The workshop participants were drawn from the Law Commissioners, Law Clerks, Police as well as members of the Village Council (Taupulega) and NGO representatives. The participants agreed that they could present the information in the Annual Report clustered around the 5 main themes of the Law and Justice Key Objectives in the Tokelau National Strategic Plan 2010-2015:

To enhance community safety. To improve access to justice. To institute principles of good governance and enhance integrity in the institutions of law and justice. To improve information

<sup>12</sup> The Federated States of Micronesia also published a Court Annual Report for the first time.

and human resource management in the law and justice sector. To improve national border management. (Tokelau National Strategic Plan 2010-2015: Law and Justice Key Objectives)

By the end of the June workshop, the participants had outlined the different sections of the Annual Report, identified who was responsible for the first draft as well as the next steps of consultation and editing. Tokelau's first Annual Report for the judiciary was tabled before the Cabinet and Parliament (General-Fono) in October 2012.

Table L: Timeframe for drafting the first Tokelau Court Annual Report

Time frame	Action
June 2012	Initial workshop with Tokelauan Law Commissioners, Law Clerks, Police as well as members of the Village Council (Taupulega) and NGO representatives.
By mid- July	All sections of the Annual Report to be e-mailed to Tokelau National Coordinator.
July	Review court workload data from the quarterly reports from each of the three law clerks.
August	Tokelau National coordinator compiles inputs from the three islands, produces the first draft of the Tokelau annual report and sends it to the villages for consultations.
September	Tokelau National coordinator (i) provides a draft of the annual report to the Ulu of Tokelau to review and amend and (ii) translates the document into English.
October	Ulu of Tokelau tables the annual report of the Tokelau judiciary before the Cabinet and parliament (General-Fono).
November	Foreword by the Chief Justice of Tokelau received and translated.
December	Tokelau National coordinator arranges for the publication of the Tokelau judiciary annual report and its distribution to interested parties:
March 2013	Tokelau Annual Report published on <a href="http://www.paclii.org">www.paclii.org</a>

Tokelau's National Coordinator reported that the first Tokelau court Annual Report had met with very positive feedback from Members of Council, the Administrator of Tokelau, General Fono Members, and members of the community. The Foreword written by the Chief Justice of Tokelau is included in Box M.

**Box M: FOREWORD to First Tokelau Court Annual Report**

The rule of law underpins the freedom and safety of everyone. But it is fragile. It is not safe in any society unless the men and women of the community support the law and the system of justice which upholds it. It is difficult for anyone to support the law or the system of justice unless they are known.

In Tokelau, the laws are published and available to be read by everyone. But until now the system of justice and how it operates has not been well understood. When I was privileged to make my first visit to Tokelau as Chief Justice in May 2011, it was difficult even for me to find out about the system of justice. It was only after talking to the Law Commissioners, to the Taupulega, and to the Women's Groups on Nukunonu, Fakaofu, and Atafu that I began to get a proper understanding. There was no written explanation or description available to me. That gap has now been filled by this excellent publication.

The first Tokelau Judicial Annual Report describes the legal system of Tokelau. It is immediately clear that, even in the sixteen months since I visited, there has been great effort to make judicial service more accessible and better understood. Much has happened in the last year, particularly in the training and organisation of the police. A comparison of the judicial work in the three villages, which is undertaken in this report, provides standards against which future improvements can be measured. Such measurements improve access to justice and equality of treatment. They are also a great help to the Law Commissioners in responding to the needs of their communities. Most importantly, they allow the people of Tokelau to understand the administration of justice and to take ownership of it. As I have already suggested, without that ownership and the community commitment it leads to, the rule of law is at risk.

So I congratulate those who have compiled this report. I look forward to similar annual publications. And I offer my very best wishes to all who work for justice in Tokelau.

Rt Hon Dame Sian Elias  
Chief Justice of Tokelau

**Cook Islands**

In the 2011 PJDP Baseline Report on Court Performance, the Cook Islands were able to report on one of the 15 court performance indicators. In the 2014 PJDP Trend Report the Cook Islands are able to report on 12 of the 15 court performance indicators.

The Cook Islands issued their first court Annual Report in May 2013. Paragraph 1 of the Cook Islands Annual Report states:

Para 1: This is a Report on the operations of the Court of Appeal and High Court of the Cook Islands for the period 1 July 2011-30 June 2012 (corresponding with the Ministry's financial year). It has been prepared by reference to:

- Ministry of Justice, Business Plan 2011-12, prepared by Claudine Henry-Anguna, Acting Head of Ministry;
- Pacific Judicial Development Programme (PJDP), 2011 Court Baseline Report.

The Cook Islands Court Annual Report states that it “is prepared for the purposes of Government, Court users, the media and funding bodies.” It is available to the public as it is published on both the PaCLII and the Cook Islands Ministry of Justice website.

The Annual Report presents an interesting model for the Pacific as it is collaboration between the Court and the Ministry of Justice to provide greater information to the people of the Cook Islands on the work of the court system. The Annual Report is signed by the Chief Justice of the Cook Islands, the Head of the Ministry of Justice and the Registrar. The Foreword written by the Prime Minister and Minister of Justice of the Cook Islands is included in Box N. The report states in its opening section that, “the intention is that from now on there should be annual reports prepared no later than May in the year following the relevant financial year. As electronic data capture becomes more reliable, it is anticipated that this report will include greater detail...”

The concluding remarks of the Cook Islands court annual report include the following:

The court is reliant, in part, on external funding and it is the expectation of such bodies that a court should provide an annual report. The PJDP, in particular, has been assisting Pacific courts to provide appropriate reporting details and their assistance is gratefully acknowledged.<sup>13</sup>

#### Box N: FOREWORD to first Cook Islands Court Annual Report

Access to justice is a fundamental human right in any democratic society. This is reflected in Articles 64 and 65 of the Constitution of the Cook Islands.

Despite the challenges of an ever-changing society, and the numerous constraints we face as a small Island nation, the Ministry of Justice has continued to maintain access to justice as one of its main core functions.

In this first report on the operations of the High Court and Court of Appeal, I am pleased that steps are being taken to improve the provision of court services to the people of the Cook Islands. The Government will continue to provide the necessary resources and support to ensure that the right of any individual to access justice is not adversely affected, or denied.

I am also thankful for the Pacific Judicial Development Program, for its continued support in providing training for members of the Judiciary and court staff.

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<sup>13</sup> Paragraph 49, Government of the Cook Islands Court Annual Report 2011-2012.

This report is testimony to the valued contributions and professionalism of the staff involved in upholding the priority of Law and Order in our community.

Kia Manuia Hon. Henry Puna  
Prime Minister and Minister of Justice

## CASE STUDY C

### Findings from Palau Judiciary Access and Fairness Survey

The Supreme Court of the Republic of Palau implemented an access and fairness survey over two weeks in February and March 2011.

The inspiration for undertaking the access and fairness survey came from one of the three associate justices of the Supreme Court attending an Asia-Pacific meeting on the International Framework for Court Excellence (IFCE) in Singapore in 2010. The Associate Justice was responsible for working with court staff on the implementation of the survey.

The survey used was developed by the Supreme Court of Palau and based upon questions used in the IFCE self-assessment questionnaire and a number of surveys from other courts around the world. The survey questionnaire has eleven questions related to access to the court and four questions related to issues of fairness.

The Palau judiciary undertook this survey without consultants or trainers but by thinking through each step of the survey process. Court staff met with the Supreme Court judge coordinating the survey and, using a checklist approach, discussed how to approach people who were visiting the court during the two-week period that the survey was undertaken. Court staff asked people whether they would be prepared to complete the survey, answered any questions they may have and received the completed questionnaire from them when they had finished.

The Clerk of Courts then reviewed the survey questionnaires and entered the data into Excel format. 269 people who attended the Supreme Court in its two locations in Koror (229 surveys) and Melekeok (40 surveys) completed the survey over the two-week survey implementation period in February/March. This represents over 1% of Palau's population. A detailed analysis of the Palau Judiciary access and fairness survey is included in Part 5 of the PJDP 2011 Court Baseline Report.

In general, the Supreme Court received overwhelmingly positive responses from court users. However, there were a few areas where clients have suggested improvements. In many of these areas the court has already taken steps to implement the suggestions made.

The Palau Judiciary has undertaken further access and fairness surveys of court users published in 2012, 2013 and 2014.

## CASE STUDY D

### Findings from Republic of the Marshall Islands Judiciary Access and Fairness Survey

The Republic of Marshall Islands implemented an access and fairness court survey over two weeks from April 9-20, 2012 at both the Majuro and Ebeye courthouses. Majuro had 101 survey participants and Ebeye had 4 survey participants. In 2012, Majuro had 259 High Court cases filed and 3214 District Court cases filed (total: 3473 cases) and Ebeye had 34 High Court cases and 349 District Court cases (total 383 cases).

The survey questionnaire was based upon questions used in the International Framework for Court Excellence (IFCE) self-assessment questionnaire and a number of surveys from other courts around the world. The Supreme Court of Palau had trialled a similar access and fairness survey in 2011. The survey questionnaire had eleven questions related to access to the court and four questions related to issues of fairness.

Over two thirds of survey respondents who visited the courthouse interacted with court staff in order to file papers/deliver documents, obtain information, search court records/obtain documents or make a payment. Registry court-staff provide the first impression of service standards in a court. Many court clients will have a greater degree of interaction with court staff rather than with judicial officers. For this reason it is important to have effective training programmes for registry court staff as well as complaint/ feedback mechanisms so that the public can comment on the service they receive at court registries.


A detailed analysis of the Republic of Marshall Islands Judiciary access and fairness survey is included in Part 5 of the PJDP 2012 Court Trend Report.

The Republic of Marshall Islands Judiciary has undertaken further access and fairness surveys of court users published in 2014 and 2016.

### 4.3 ADDITIONAL CONTENT FOR ANNUAL REPORTS

PJSI Courts may wish to consider including other sections in their Annual reports such as the following areas that have been discussed with courts participating in PJSI:

- I. **Results of client satisfaction surveys** undertaken and any changes the Court may introduce in the light of the survey findings. Survey questionnaires and implementation guides are included at **Annexes 8, 9 and 16** of this Toolkit. Software such as Survey Monkey ([www.surveymonkey.com](http://www.surveymonkey.com)) can be used to create an electronic or paperless version of the access and fairness survey that court clients could complete on a tablet or smart phone.
- II. **Juvenile disaggregated data** that shows whether the case involves children as perpetrators or victims of crimes are important in order to deliver better justice services to children. Part 6 of the PJDP 2014 Court Trend Report looks at these issues in more detail. A new age disaggregated data chart creator has been added at **Annex 14** of this Annual Reporting Toolkit.

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- III. **Sex disaggregated data:** Annual Reports of courts should include data on the number of domestic violence cases and protection order applications commenced by women each year, an average duration for the finalisation of these cases and an indication of whether the case is resolved in favour of the applicant party for the protection order. Part 7 of the PJDP 2014 Court Trend Report looks at these issues in more detail. A new age disaggregated data chart creator has been added at **Annex 13** of this Annual Reporting Toolkit.
- IV. **Disability inclusive disaggregated data:** Annual Reports of courts should include disability disaggregated data collected through their case management system as a way of demonstrating the commitment to the principles contained in the Convention on the Rights of Persons with Disabilities (CRPD) 2007. **Annex 15** of this Annual Reporting Toolkit includes a Checklist for sex, age and disability inclusive data in Annual Reports and **Annex 17** includes issues for the court leadership to consider when drafting a protocol for their court on how to make courts more accessible for people living with a disability.

## 5. Tools developed for drafting Annual Reports

During 2011-2018, a number of Annual Report tools have been developed. These are listed below and can be accessed on the PJDP website. The Tools have been developed as a result of working with the majority of the PJDP countries on their Annual Reports.

	Tool	Function
1	Workshop Objectives, Session Outlines and Programme	For Courts organising workshops court staff and external court stakeholders on how to prepare an Annual Report.
2	PowerPoint presentation	For Courts organising workshops to develop Annual reports.
3	Annual Report Planning Template – A Guide to Who, What, When	A table that lists the different sections of the Annual Report and who will be responsible for drafting each section by when.
4	Annual report Template	A template for the narrative text of an Annual Report incorporating the 15 Cook Island indicators
5	Chart Creator – Excel Format	An Excel template that allows Courts to present trend data over several years for the 15 Cook Island indicators
6	Chart Creator – Step by Step Guide	Step-by-step guide on how to use the Chart Creator (based on Excel 2010)
7	Guide to Making Charts for an Annual report	Step-by-step guide on how to use the Chart Creator (based on Excel 2007)
8	Example of a Client Satisfaction Survey	Republic of Palau Judiciary Access and Fairness Questionnaire as adapted from the CourTools Access and Fairness Survey
9	CourTools access and fairness survey	CourTools access and fairness survey and implementation guide
10	Annual Indicator Questionnaire to Update Chart Creator	This questionnaire lists the annual data to be compiled and entered into the chart creator
11	Data Collection Questionnaires for family	Two questionnaires that focus on collecting gender disaggregated data on family law and family violence cases



	law and family violence cases	
12	Tokelau data spread sheet (example average duration)	A simple spread sheet for collecting case data that will capture the duration of a case as well as age and gender disaggregated
13	Sex Disaggregated Data Chart Creator	An Excel template that allows Courts to present trend data over several years for family law and Family Protection Act cases
14	Juvenile Disaggregated Data Chart Creator	An Excel template that allows Courts to present trend data over several years for juvenile cases and diversionary juvenile justice systems
15	Checklist for the collection, analysis and presentation of data in an Annual Report	Checklist
16	Survey on Family Law and Family Protection Act cases	Draft survey developed with the Republic of Palau Judiciary Court of Common Pleas
17	Taking steps to make a court more accessible for people living with a disability	Issues for the court leadership to consider when drafting a protocol for their court on how to make courts more accessible for people living with a disability.
18	Overview of Cases Published on PacLII 2011-2017 by the Fiji Courts	An example of how a Pacific Court publishes judgments from different court jurisdictions on PacLII and records the number of cases published each year.

## References

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and Reproductive Health Experiences: Kiribati, the Solomon Islands and Tonga, Joanna M. Spratt. Suva, Fiji: United Nations Population Fund Pacific Sub-Regional Office

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## Court Annual Reports Reviewed from PJSI Jurisdictions:

Cook Islands: <a href="http://www.pacii.org">www.pacii.org</a>
Federated States of Micronesia <a href="http://fmsupremecourt.org/">http://fmsupremecourt.org/</a> and <a href="http://www.pacii.org">www.pacii.org</a>
Kiribati <a href="http://www.pacii.org">www.pacii.org</a>
Nauru No Annual Report
Niue <a href="http://www.pacii.org">www.pacii.org</a>
Palau <a href="http://www.palausupremecourt.net/">http://www.palausupremecourt.net/</a> and <a href="http://www.pacii.org">www.pacii.org</a>
Papua New Guinea (National and Supreme Courts) Annual Report drafted but cannot be accessed by the public
Republic of the Marshall Islands <a href="http://rmicourts.org/">http://rmicourts.org/</a>
Samoa <a href="http://www.palemene.ws/new/parliament-business/annual-reports/ministry-of-justice-and-courts-administration/">http://www.palemene.ws/new/parliament-business/annual-reports/ministry-of-justice-and-courts-administration/</a>
Solomon Islands <a href="http://www.pacii.org">www.pacii.org</a>
Tokelau <a href="http://www.pacii.org">www.pacii.org</a>
Tonga

(Superior Courts)

[www.pacii.org](http://www.pacii.org)

Tuvalu

No Annual Report

Vanuatu

[www.pacii.org](http://www.pacii.org)

<https://courts.gov.vu/bi/services/downloads>





# *ANNUAL COURT REPORTING TOOLKIT - ADDITIONAL DOCUMENTATION*

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>



Toolkits are evolving and changes may be made in future versions. For the latest version of this Additional Documentation please refer to the website – Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstance.

## ANNEX 1: COURT REPORTING WORKSHOP OBJECTIVES, SESSION OUTLINES AND PROGRAMME

### Court Reporting Workshop

#### Workshop Objectives:

In relation to the drafting of an Annual Report for the [insert country] judicial system, by the end of workshop participants should be able to:

- I. explain the purpose of an annual report;
- II. list the different court stakeholder groups and what they will be interested to see included in the Annual Report;
- III. describe the different categories of information to be included in the Annual Report;
- IV. explain who should be involved in the process of drafting an Annual Report and their roles; and
- V. draw up a timeline of steps to be taken to publish an Annual Report in the following year.

#### Session Outline and Objectives:

Session Outline		Session Objectives: By the end of the following sessions participants will be able to:
Session1	<b>Purpose of an Annual Report</b> <b>Who is the audience for the Annual Report?</b> <ul style="list-style-type: none"> <li>Who are the different court stakeholders?</li> <li>What do they want to know?</li> <li>How can information in the Annual Report best be presented for these groups?</li> </ul>	Explain the purpose of an annual report. List the different court stakeholder groups and what they will be interested to see included in the Annual Report.
Session 2	<b>What should be included in an Annual Report?</b>  <b>Who should be responsible for drafting what in the Annual Report?</b>	Describe the different categories of information to be included in the Annual Report Explain who should be involved in the process of drafting an Annual Report and their roles.
Session 3	<b>Annual reporting on domestic violence and children's cases.</b>	<ol style="list-style-type: none"> <li>i. Explain why the [insert PJDP country] Annual Report should include data on:</li> <li>ii. the number of domestic violence cases and protection order applications commenced by women each year and an indication of whether the case is resolved in favour of the applicant party for the protection order and</li> <li>iii. the number of children's cases including the outcome of the case and the type of sentence that may be imposed.</li> </ol>
Session 4	<b>How to make an Annual Report Better?</b>	Critically assess your current Court Annual Report to see if it: <ol style="list-style-type: none"> <li>i. assesses performance against standards that have been set by your Court, and, if the court has not achieved the performance standards, explain why and what steps the court is taking to remedy this?</li> <li>ii. presents trends in performance over a 3-5</li> </ol>



		<p>year period?</p> <ul style="list-style-type: none"> <li>iii. analyses the court's performance in the context of environmental factors;</li> <li>iv. presents the Court's performance against a range of quantitative performance indicators;</li> <li>v. presents the Court's performance against a range of quantitative performance indicators from surveys, other evaluations or court stakeholder dialogues conducted by the court and demonstrates how this information is being used to improve court performance; and</li> <li>vi. uses plain language, relevant diagrams and a clear format to illustrate and add emphasis.</li> </ul>
Session 5	What are realistic timelines for the drafting of an Annual Report?	<p>Present a timeline of steps to be taken to publish the [insert PJDP country] Annual Report in the following year, including who is responsible for what and by when.</p> <p>Present draft sections of the [insert PJDP country] Annual Report.</p>

#### Participants:

The participants in the workshop will depend on whether the Annual Report is presented only for the Court or whether court data will be integrated into a wider Justice Sector / Law Ministry Annual Report

#### Possible workshop representatives may be:


- Judges
- Registry / Court staff
- Government justice stakeholders
- NGO justice stakeholders (particularly working on gender and juvenile issues).

**Facilitators:** The person who is responsible for the publication of the Annual Report may facilitate the workshop.

### Workshop Programme:

	Day 1	Day 2
9am – 10.30am	Opening of the workshop Introductions from Facilitators/Participants  Pre-Workshop Evaluations (Expectations from Workshop)	Session 3: <b>Annual reporting on domestic violence and children's cases.</b>
10.30am – 11.00am	Morning tea	Morning tea
11.00am – 12.30pm	Session 1: What is the purpose of an Annual Report?  <b>Who is the audience for the Annual Report?</b> <ul style="list-style-type: none"> <li>• Who are the different court stakeholders?</li> <li>• What do they want to know?</li> <li>• How can information in the Annual Report best be presented for these groups?</li> </ul>	Session 4: <b>How to make an Annual Report Better?</b>
12.30pm – 1.30pm	Lunch	Lunch
1.30pm – 3.00pm	Session2:  <b>What should be included in an Annual Report?</b>  <b>Who should be responsible for drafting what sections in the Annual Report?</b>	Session 5: <b>What are realistic timelines for the drafting of an Annual Report?</b>
3.00pm- 3.30pm	Afternoon Tea	Afternoon Tea
3.30-5pm	Session 2 Continued	<b>Workshop closing and next steps</b>

ANNEX 2: POWERPOINT PRESENTATIONS FOR THOSE USING THE TOOLKIT TO DEVELOP ANNUAL REPORTS



## *ANNUAL COURT REPORTING TOOLKIT - ADDITIONAL DOCUMENTATION*

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Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstance.

1

PJDP is funded by the Government of New Zealand and managed by the Federal Court of Australia



# PACIFIC JUDICIAL DEVELOPMENT PROGRAMME

## Court Reporting Workshop

16-18 October, 2013 Brisbane

Cate Sumner,  
PJDP Judicial Monitoring and Evaluation Adviser  
Leisha Lister  
Co-Facilitator



2

PJDP is funded by the Government of New Zealand and managed by the Federal Court of Australia

## PJDP Goal



Strengthened governance and rule of law in Pacific Island Countries through enhanced access to justice and professional judicial officers who act independently according to legal principles.

3

## Outset of PJDP: Findings:



- No court baseline data exists that can be applied across the region.
- There is no clear understanding about how judicial and court baseline data can be used to improve the administration of justice across the region.
- There is an unquantified number of marginalised/ disadvantaged prospective court users facing a range of barriers in accessing the courts.

4

## ***18 Month Target set by PJDP:***



- The majority of PJDP courts have baseline data against which changes can be measured, and
- a Regional Justice Performance Framework endorsed by Chief Justices that courts will work to achieve with capacity building support from PJDP.

5

## **15 Cook Island Indicators**

### **Case management issues.**



Indicators developed in the Cook Islands in 2011 by PJDP Chief Justices and National Coordinators:

- Case finalisation or clearance rate.
- Average duration of a case from filing to finalisation.
- The percentage of appeals.
- Overturn rate on appeal.

6

## **15 Cook Island Indicators**



Affordability and Accessibility for court clients.

- Percentage of cases that are granted a court fee waiver.
- Percentage of cases disposed through a circuit court.
- Percentage of cases where a party receives legal aid.

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## **15 Cook Island Indicators**



Published procedures for the handling of feedback and complaints.

- Documented process for receiving and processing a complaint that is publicly available.
- Percentage of complaints received concerning judicial officers.
- Percentage of complaints received concerning court staff members.

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## 15 Cook Island Indicators

### Resources and Transparency



- Average number of cases per judicial officer.
- Average number of cases per member of court staff.
- Court produces or contributes to an Annual Report that is publicly available.
- Information on court services is publicly available.
- Court publishes judgments on the Internet (own website or on PacLII)

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## Workshop Objectives



By the end of this workshop participants should be able to:

- i. Explain the purpose of an annual report.
- ii. List the different court stakeholder groups and what they will be interested to see included in the Annual Report;
- iii. Describe the different categories of information to be included in the Annual Report.

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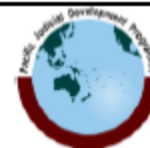
## Workshop Objectives cont.



- iv. Explain who should be involved in the process of drafting an Annual Report and their roles;
- v. Draw up a timeline of steps to be taken to publish an Annual Report in the following year.
- vi. Present a draft Annual Report plan to their Chief Justice in relation to the next Annual Report to be published in their country that includes how their current Annual Report could be improved.

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## Objective: Session 1



By the end of the sessions participants will be able to:

- I. Explain the purpose of an annual report.
- II. List the different court stakeholder groups and what they will be interested to see included in the Annual Report.

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## Why do we have an Annual Report?



“Annual reports represent the vehicle through which courts take **ownership** of the work they have completed during the year and present to the public their annual **results** against key performance indicators. In doing so they win the **trust** of the public and are **accountable** to the citizens they serve”.

2011 PJDP Baseline Report

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## Annual Report Purpose



*“Excellent courts use a set of key-performance indicators to measure the quality, efficiency, and effectiveness of their services. Courts should, at the very least, collect and use information on the duration of proceedings and other case-related data. Excellent courts aim at shifting their data focus from simple inputs and outputs to court customer satisfaction, quality of service, and quality of justice”.*

- International Framework for Court Excellence p33

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## Annual Report Purpose



*#4.5 – “The judiciary should regularly address court users’ complaints, and publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system”.*

- Measures for the Effective Implementation of the Bangalore Principles

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## Annual Report Purpose



1. Good governance, accountability, & transparency.
2. Informs the Parliament, external stakeholders (eg. educational, research institutions, media, NGO's & the general public) about the performance of Courts.
3. They are a key reference document
  - For internal management
  - Strategic planning & performance
  - Form part of the historical record of the court

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## Annual Report Purpose Cont.



### 4. They set out Court Budget Statements:

- The allocation of resources to achieve Government outcomes
- The performance information targets
- The achievement (or not) of these performance & financial targets.

### 5. They enable the court to:

- Establish a culture of reporting, planning & management of services
- Respond to external concerns & pressures eg. Client survey results, new projects
- Report on achievements & successes
- Explain the purpose of the court – “what you can & cannot do”

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## What is the value of an annual report?



- Reporting has an internal value
  - Strengthens the delivery of services for clients – shows where the court is not performing well
  - Improves ability to obtain budget increases
  - Allows the court to make changes to case processes based on trend data
- External value
  - Accountability to government, the public and to clients which strengthens confidence in the courts
  - Shows that the court is responsive to client feedback and needs

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## Who is the audience?



Annual Reports may be written for:

- External audience
  - Parliament/Minister
  - Lawyers/clients/service providers
  - The public
  - NGOs & representative bodies (eg. UNICEF, UN Women, NGOs, women's & men's groups)
  - Educational institutions & researchers
  - Other courts (local & international)
- Internal audience
  - Judiciary, management, staff

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## What do stakeholders want to see?



Stakeholders want:

- Clear, concise, relevant, consistent & accurate information
- Reports that present an honest & balanced snapshot of the courts achievements
- Results, targets and trends over time (the good, the bad & the ugly)
- Information as to why a target/performance was not reached & what the court is doing about it
- Information presented in plain language, in an easy to read format preferably supported by charts, diagrams & pictures

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## What is the purpose of an Annual Report?

### \*\*Group Exercise:

- Are there statutory responsibilities to issue an Annual Report in your country? If yes, what are these?
- Does the court have to publicly account for state budget resources that it receives?
- If there is not a statutory responsibility, what are the benefits of issuing an Annual Report?
  - For the court.
  - For court stakeholders
- Who are the 'stakeholders' for your Court's annual report? What would they want to know?



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## Objective: Session 2

By the end of the sessions participants will be able to:

- I. Describe the different categories of information to be included in the Annual Report
- II. Explain who should be involved in the process of drafting an Annual Report and their roles as well as timelines.



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## How to Approach an Annual Report?



Use the 'Annual Report Template' as a guide & for each of the following sessions note for your country:

- Discuss what aspects of your court's work should be included in the Annual Report and why?
- Who should be responsible for drafting different sections in the Annual Report?
- Who should approve the content of the Annual Report?
- What is the timeline for completion of each section and the whole Annual Report?

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## Framework for an Annual Report



### I. An introduction to the court.

- Statement from the Chief Justice
- Court Mission, Vision and Values
- Implementation of the Strategic Plan/ New initiatives
- What does your Court feel most proud of achieving in the last year?
- What challenges has the court faced in delivering the level of service to clients it would like?
- Overview of the Courts and their jurisdiction
- Introduction to Judges and Court Staff and their roles
- Court locations

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## Framework for an Annual Report



### II. Court results

- » Court achievements in the reporting period
- » Court workload
- » Court performance against Key Performance Indicators (15 Cook Island indicators)
- » Showing trend data for the past 3-5 years, where possible.

### III. Interaction with Key Court Stakeholders/ How has the court engaged with key stakeholders over the year to obtain feedback on the level of service provided to clients?

### IV. Annual Accounts for Reporting Period

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## Cook Island Indicators 1 to 4 - Case Management



1. Case finalisation or clearance rate.
2. Average duration of a case from filing to finalisation.
3. The percentage of appeals.
4. Overturn rate on appeal.

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## 1: Case finalisation or clearance rate



- A: List Courts
- B: List Case types that are currently differentiated by your court.
- C: Calculate number of cases filed in the reporting period disaggregating by A and B.
- D: Calculate number of cases finalised in the reporting period disaggregating by A and B.
- E: Clearance rate (%) =  $\frac{\text{finalised cases}}{\text{cases filed for the reporting period}} \times 100$

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## 2: Average duration of a case from filing to finalisation



- A: List Courts
- B: List Case types that are currently differentiated by your court.
- C: List cases finalised in the reporting period disaggregating by A and B.
- D: For list of cases in C, subtract date of filing from date of finalisation to obtain the number of days per case (use excel)
- E: For C, add the number of days per case and divide by the number of cases to obtain the average duration of a case.

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## Trend Data: RMI criminal cases 2011



### c. Average Duration of Cases Cleared in 2011

Also, for Majuro cases filed in the past five years (2007-2011), the average durations of cleared cases were as follows:

- for 27 of 29 cases filed in 2007 and cleared as of the end of 2011 the average duration was 355.30 days;
- for 26 of 27 cases filed in 2008 and cleared as of the end of 2011, the average duration was 239.25 days;
- for 17 of 17 cases filed in 2009 and cleared as of the end of 2011, the average duration was 150.82 days;
- for 26 of 34 cases filed in 2010 and cleared as of the end of 2011, the average duration was 121.71 days; and
- for 19 of 53 cases filed in 2011 and cleared as of the end of 2011, the average duration was 123 days.

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## Trend and Disaggregated Data



### Aim to:

- show data for the clearance rate and average duration of a case over a 3-5 year time frame,
- Disaggregate by type of case: civil, criminal, land
- Disaggregate by age: juvenile criminal cases
- Disaggregate by important classes of case: family violence/ Interim Protection Orders/ Violence against women and children cases.

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## Trend Data: Vanuatu criminal cases 2011

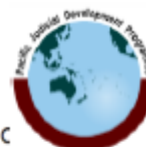


### Comments

1. Criminal Cases completed = 215 cases
2. Civil Cases completed = 197 cases
3. Cases completed involving drugs = 39 This represents 18.1% of cases completed by the Supreme Court
4. Cases completed which are of sexual nature = 86, this represents 40% of cases completed by the Supreme Court
5. The oldest Civil case pending in the Court system is from 1997
6. The oldest Land Appeal Case pending in the Supreme Court is from 1993
7. 96.7% of pending cases are from 2004 to 2011
8. There are 59 Cases pending delivery of Judgment in the Supreme Court system

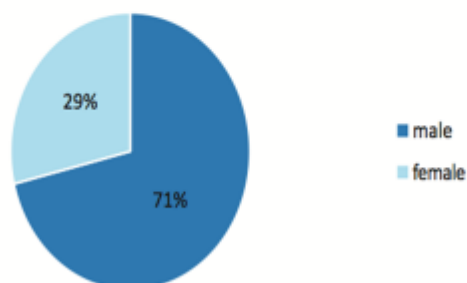
31

## Trend Data: Tokelau criminal cases 2011 gender disaggregated



The gender breakdown of the accused in the 46 Atafu cases is 29% female and 71% male.

**Atafu Cases 2011-2012:  
Gender of Accused**



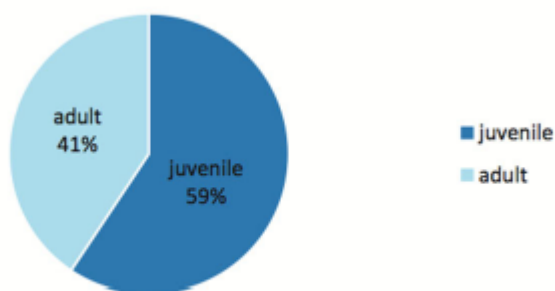
32

### Trend Data: Tokelau criminal cases 2011 AR – age disaggregated



59% of the accused in the 25 Fakaofu cases are under the age of 18.

#### Fakaofu cases 2011-2012: Data on juvenile accused



33

### Indicators 3 & 4 - Appeals.



# 3 - The percentage of appeals.

# 4 - Overturn rate on appeal.

Calculate by:

- List Courts and number of first instance cases finalised in the reporting period;
- List cases appealed from one level of court to another.
- List number of cases in which the appeal is allowed in whole or in part.
- Percentage of appeals =  $b/a$
- Overturn rate on appeal =  $c/b$

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## RMI: Appeals 2011 AR



### d. Appeals

In addition to measuring case management efficiency, it is important to review the quality of judgments. The quality of judgments can be measured in two ways: the percentage of cases appealed and the percentage of cases overturned on appeal.

In 2011, the number and percentage of High Court cases appealed remained very low. There were two appeals and one petition of High Court civil decisions to the Supreme Court: three out of 257 cases filed, or 1.17%.

Furthermore, in 2011, no High Court cases or decisions were overturned on appeal. The Supreme Court denied the one petition and at the end of the year the two appeals remained. Also in 2011, appellants withdrew two civil appeals from previous years, and the Supreme Court denied a civil appeal from 2010. That is, in 2011, no High Court civil cases from 2011, or from previous years, were over turned on appeal.

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## Cook Island Indicators 5 to 7 - Affordability and Accessibility



- Percentage of cases that are granted a court fee waiver.
- Percentage of cases disposed through a circuit court.
- Percentage of cases where a party receives legal aid.

Cost - Distance – Knowledge of the law/ rights

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Table 3.1 Pacific Island Country Profiles

Country	Population <sup>9</sup>	GDP per capita (\$US) 2011 <sup>10</sup>	GNI per capita PPP (\$US) 2011 <sup>11</sup>	GNI per capita (\$US) 2009 <sup>12</sup>	HDI Rank 2011	Population living under the International Poverty Line (%) <sup>13</sup>	Internet Users (Per 100 people) <sup>14</sup>
Cook Islands	17,791 <sup>15</sup>	20,452.00	15,813.30	9,748.90	–	–	36
Federated States of Micronesia	107,000 <sup>16</sup>	2,803.00	2,900.00	2,598.00	116's	31.2% (2000)	20
Kiribati	105,000	1,593.00	2,110.00	1,617.40	122	38% (1996)	9
Marshall Islands	55,000	2,891.00	3,910.00	3,385.70	–	20% (1999)	0
Nauru	10,200	6,928.00	–	5,322.10	–	–	6
Niue	1,625 <sup>17</sup>	10,358.00	–	–	–	–	0
Palau	20,800	8,730.00	7,250.00	10,228.60	49	–	0
Papua New Guinea	7,034,000	1,900.00	1,480.00	1,047.30	153	37% (2002)	1
Samoa	187,820 <sup>18</sup>	3,472.00	3,190.00	2,838.30	99	5.5% (2002)	7
Solomon Islands	552,000	1,578.00	1,110.00	1,313.10	142	–	5
Tokelau	1,411 <sup>19</sup>	\$1000 <sup>20</sup>	–	–	–	–	–
Tonga	103,036 <sup>21</sup>	4,221.00	3,580.00	3,336.50	90	24% (2004)	12
Tuvalu	11,300	3,202.00	5,010.00	2,749.00	–	17.2% (1994)	25
Vanuatu	258,000	3,105.00	2,870.00	2,367.70	125	26% (1998)	8



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Table 3.2 Basic Needs Poverty Line<sup>22</sup>

Country	Basic Needs Poverty Line (BNPL) <sup>23</sup>		Percentage of Population Under the BNPL <sup>24</sup>		Court Costs	
	Weekly Adult per capita BNPL	Weekly BNPL per Household in the Lowest 3 Deciles	Individual (National Average) <sup>25</sup>	Household	Civil Case Cost	Civil Case Cost as percentage of Weekly Adult BNPL
Cook Islands <sup>28</sup>	\$80.69	\$366.43	28 %			
Federated States of Micronesia <sup>29</sup>	US\$23.12	US\$193.56	31%	22.4%		
Kiribati <sup>30</sup>	AUS16.09	AUS112.80	22%	17%		
Marshall Islands					\$25.00 <sup>31</sup>	108%
Nauru <sup>32</sup>			25%		\$30.00 <sup>36</sup>	
Niue		NZ\$55.00				
Palau <sup>33</sup>	\$58.05	\$244.67	25%	18.4%	\$50.00 <sup>34</sup>	86%
Papua New Guinea <sup>35</sup>			28%		K50.00 <sup>36</sup>	
Samoa <sup>37</sup>	SAT53.59	SAT493.02	27%	20.1%	SAT36.60 <sup>38</sup>	68%
Solomon Islands <sup>39</sup>	SBD47.37	SBD265.77	23%	18.8%		
Tokelau					No fee/ \$0	0%
Tonga <sup>40</sup>	T\$49.73	T\$337.52	23%		\$82.00 <sup>27</sup>	165%
Tuvalu <sup>41</sup>			26%		AU\$6.00 <sup>42</sup>	
Vanuatu <sup>43</sup>	US\$15.20		13%	21.6%	VT8,000 <sup>44</sup>	577%

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### Cook Island Indicators 5-7: Affordability and Accessibility



- a. For each court list the number of cases finalised in the reporting period;
- b. For each court list the number of cases where the court fee is waived (civil cases);
- c. For each court list the number of cases finalised at a circuit court location;
- d. For each court list the number of cases where one or party receives legal aid in the case;
- e. Percentage of cases that are granted a court fee waiver =  $b/a \times 100 = \text{total}\%$
- f. Percentage of cases disposed through a circuit court =  $c/a \times 100 = \text{total}\%$
- g. Percentage of cases where a party receives legal aid =  $d/a = \text{total}\%$

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### RMI 2011 AR: Affordability and Accessibility



#### e. Accessibility: Fee Waiver; Cases Heard on Circuit; and Legal Aid

To ensure accessibility to justice, the Judiciary does not impose fees on criminal defendants at the trial level. On appeal, a defendant can apply for a fee waiver. Also, to ensure accessibility, criminal cases are heard on circuit and criminal defendants have access to free legal counsel.

Of the 56 criminal cases filed in 2011, three cases (5.36%) were Ebeye circuit cases. Of the 39 criminal cases cleared in 2011, five cases (12.82%) were Ebeye circuit cases.

In 2011, as in other years, most criminal defendants were represented by the Office of the Public Defender, the Micronesian Legal Services Corporation, or an attorney paid for by legal aid funds. In 2011, the defendants received legal assistance at no cost in 33 of 56 cases (58.93%). In 2010, the figure was 34 of 39 (87.18%), and in 2009, the figure was 23 of 27 (85.19%). The percentage of defendants using publicly funded legal assistance is lower in 2011 than in previous years, because several of the defendants in the 2011 government fraud cases retained private attorneys.

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## Trend Data



### Aim to:

- show data affordability and accessibility indicators over a 3-5 year time frame,
- Disaggregate by type of case: civil, criminal, land
- Disaggregate by age: juvenile criminal cases
- Disaggregate by important classes of case: family violence/ Interim Protection Orders/ Violence against women and children cases.

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## Percentage of the 14 PJDP countries that currently report on the indicator



Indicator	Percentage of the 14 PJDP countries that currently report on the indicator in the 2011 Baseline Report	Percentage of the 14 PJDP countries that currently report on the indicator in the 2012 Trend Report
1 Clearance rate	64% (9 of 14)	64% (9 of 14)
2 Average duration of a case from filing to finalisation	14% (2 of 14)	21% (3 of 14) ▲
3 The percentage of appeals	57% (8 of 14)	50% (7 of 14) ▼
4 Overturn rate on appeal	21% (3 of 14)	43% (6 of 14) ▲
5 Percentage of cases that are granted a court fee waiver	21% (3 of 14)	43% (6 of 14) ▲
6 Percentage of cases disposed through a circuit court	50% (7 of 14)	57% (8 of 14) ▲
7 Percentage of cases where a party receives legal aid	14% (2 of 14)	43% (6 of 14) ▲

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## Palau



- Court fee waiver provisions.
- <http://www.palausupremecourt.net>
- Click Fees Tab
- Scroll to base of document where you see:
- Note that fees may be waived by the court of proper jurisdiction if the Plaintiff or Petitioner files a request form. The form is available [online or at the Clerk of Courts](#) .(Form in materials for participants).
- A Supreme Court Order was signed in December 2011 amending the Civil Procedure Rules to include a fee waiver.

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## Vanuatu



- Family Protection Act No 28 of 2008
- Section 41: No Application Fees
- Despite the provisions of any other Act or law, no fees or charges are payable to a court or an authorised person in relation to the making of an application for a family protection order (for example, there can not be any court filing fees for the application).

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## RMI



- <http://www.rmicourts.org>
- 
- Click on Court Rules
- 
- Click on Schedule of Court Costs and Fees November 2011
- 
- VIII In Forma Pauperis Anyone who is unable to pay the fees set forth in this rule may petition the court to proceed in forma pauperis pursuant 29 MIRC 136

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## Cook Island Indicators 8 to 10

### #8. Documented Complaint Handling & Feedback



- Documented process for receiving & processing complaints in the annual report
- Judicial Code of conduct may form the basis
- Underpins accountability & transparency
- Opportunity to report against a performance standard i.e standard for responding to complaints
- Publically available – internet, brochure, complaint & feedback box
  - Kiribati
  - RMI
  - Palau

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## Cook Island Indicators 8 to 10

### #8. Example: RMI Annual Report



"To Be Independent, Fair, Efficient, and *Accountable*" is the first goal of the Judiciary's strategic plan. To enhance its transparency and accountability, the Judiciary has adopted internationally recognized standards for judicial and attorney conduct. These standards are available to the public as are the procedures for lodging complaints against judges, attorneys, and court staff.

With respect to judicial conduct, the Judiciary has adopted the Marshall Islands Code of Judicial Conduct 2008 (revised February 16, 2012). The Code is based upon the Bangalore Principles and the American Bar Association Code of Judicial Conduct. A copy of the Judiciary's code can be found on its website, [www.rmicourts.org/](http://www.rmicourts.org/) under the heading "The Marshall Islands and Its Judiciary." Provisions for lodging and processing complaints against judges starts on page 12 of the code. In 2011, no complaints were lodged against judges.

In the past five years, only three complaints have been lodged against judges. Those three complaints, lodged by related self-represented parties against a single judge, were dismissed as without merit. The proper remedy for parties who are dissatisfied with a judge's decision is to appeal the judge's decision. Dissatisfaction with a judge's decision is not grounds for filing a complaint against the judge. Over the past five years, the percent of complaints per case filed has been less than 1% for all courts and all judges.

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## Cook Island Indicators 8 to 10

### #8. Example: FCoA Complaint Handling Performance Standards



#### Client feedback and complaints management

The Family Court is committed to responding effectively to feedback and complaints, and to complying with Australian Standard AS 4269-1995 (Complaints handling) and the Commonwealth Ombudsman's Good Practice Guide for Effective Complaint Handling.

The Court's client feedback management system allows all areas of the Court to efficiently and consistently manage complaints and client feedback, while also identifying clients' issues and monitoring trends.

The Court has:

- a complaints and feedback policy
- a judicial complaints procedure, and
- a complaints and feedback fact sheet.

The judicial complaints procedure and the fact sheet explain how clients can make a complaint or provide feedback to the Court. These can be found on the Family Court website [www.familycourt.gov.au](http://www.familycourt.gov.au) and accessed via the feedback link in the 'Quick Links' section of the home-page.

Clients can address complaints or feedback to the Court in writing, orally, or by email to [clientfeedback@familycourt.gov.au](mailto:clientfeedback@familycourt.gov.au). Complaints made about judicial delays or judicial conduct will be referred to the Judicial Complaints Adviser.

The Court aims to acknowledge receipt of a complaint within five working days and, where possible, to send a formal response within 20 working days of receipt of the complaint.

During 2011-12, the Family Court recorded:

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## Cook Island Indicators 8 to 10

### # 9. Percentage of Judicial complaints per total cases



- Most often relate to:
  - Delay in the delivery of a judgment
  - Judicial conduct
- NOT about dissatisfaction of the outcome in a case
- Important to report as it shows that the Court:
  - take complaints seriously
  - are accountable & transparent
- Provides an opportunity for the Court to detail complaint handling process.
- Calculate: number of complaints received about a judicial officer divided by the total number of cases filed multiplied by 100 which will provide the percentage

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## Cook Island Indicators 8 to 10

### # 9. Example: Complaint Handling – Judicial Officers



#### iii. Complaint Handling Mechanism for Tokelau Judiciary and Police

At present there is no established complaint handling mechanism for the Tokelau Judiciary and Police. While the Police and Judiciary hear that there are people who are not satisfied with their services there were no formal complaints received.

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## Cook Island Indicators 8 to 10

### #9. EXAMPLE: Complaint Handling Judicial



At 65, the number of administrative complaints represented 0.36 per cent of all applications received. Combined with 45 judicial complaints (see the section 'Judicial services complaints' for more detail) complaints represented 0.6 per cent of applications received, thus achieving against the KPI (for complaints to be no more than one per cent of applications received).

Figure 3.26 provides a breakdown across 10 categories of administrative complaints issues in 2012–12.

During 2011–12, the Court also recorded 132 complaints about such matters as family law legislation, matters in other jurisdictions, family assessments and reports prepared by family consultants for judicial proceedings, and the conduct and outcomes of judicial proceedings. These are matters that may not be addressed by the administration of the Court as they concern matters of law reform on the one hand, and the conduct of specific judicial proceedings on the other.

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## Cook Island Indicators 8 to 10

### #10. Percentage of complaints about Court Staff per cases filed



- Provides an opportunity for the court to:
  - Show that it takes the complaint seriously
  - Is responsive to concerns from the public
  - Detail the types of complaints received and the internal changes that may occur as a result i.e changes to forms in the FCoA
  - Explain what the court can & can not do – i.e. FCoA complaints about legal vs procedural advice

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## Cook Island Indicators 11 to 12

### #11. Average number of cases per judicial officer



- Indicator details the average number of cases per judicial officer
- Important because it details ratio of cases per judge/per region i.e is there adequate judicial officers/equity/performance
- Need to consider how data is collected and reported when there is more than 1 judicial officer presiding in a case (e.g. panel of 3 judges)
- Calculate: divide the total number of cases filed by the number of judicial officers

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## Cook Island Indicators 11 to 12

### #12. Average number of cases per court staff



- Indicator looks at the average number of cases per court staff member
- Important because it:
  - Shows ratio (too small in some regional areas/courts – redirect resources)
  - High ratio may impact on efficiency and performance – affect timelines & result in complaints
- Allows the court to develop performance standards
- Calculate: divide the total number of cases received by the number of court staff (non-judicial)

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## Cook Island Indicators 13 to 15

### Transparency



- Court produces or contributes to an Annual Report that is publicly available.
- Information on court services is publicly available.
- Court publishes judgments on the Internet (own website or on PacLII)

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### Transparency Cont.



#### Group discussion in country groups:

- Does your Court produce or contribute to an Annual Report that is publicly available?
- Is the publication of your Court Annual Report coordinated with other agencies such as the MoJ? Does this have an impact?
- Is your Annual Report published in the year following the reporting period?
- Is the Report Publicly available? On PacLII? On National court or MoJ website?
- Other issues affecting publication of an Annual report?

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## Cook Island Indicators 13-15: Transparen



**Table 4.13.1** Court produces or contributes to an Annual Report that is publicly available for the previous year – Year 2 Trend Data

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Annual Report Available online (First court Annual Report)	Annual Report available online (First court Annual Report)	Data available in the speech by the Chief Justice at the opening of the new legal year is available online.	Annual Report available online	Data unavailable	Annual Report Available online	Data unavailable
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
Data unavailable	2011-2012 Annual Report is published but not available online	Data available in the speech by the Chief Justice at the opening of the new legal year is available online	Annual Report available online (First court Annual Report)	Annual Report available online	Data unavailable	Annual Report available online

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## Information on court services is publicly available.



**Table 4.14.1** Information on court services that is publicly available – Year 2 Trend Data

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
Case lists are published via email to parties and the media and placed on a public notice board. Relevant pamphlets are published and made available. Website: <a href="http://www.justice.gov.ck">www.justice.gov.ck</a>	Information court services is available on the FSM court website	No information available on how to bring a case to court or other court services	Information on the RMI courts is available on the website: <a href="http://www.micocourts.org">www.micocourts.org</a>	Data unavailable	No information available on how to bring a case to court or other court services.	Information on the Palau courts is available on the website: <a href="http://www.palaujudiciary.net/">http://www.palaujudiciary.net/</a>
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
<b>Supreme Court and National Court</b> National and Supreme Courts of PNG limited information on <a href="http://www.pngjudiciary.gov.pg">http://www.pngjudiciary.gov.pg</a> <b>Magistrates Court</b> <a href="http://www.magisterialservices.gov.pg">www.magisterialservices.gov.pg</a>	Data unavailable	Data unavailable	No information available on how to bring a case to court or other court services.	No information available on how to bring a case to court or other court services.	Data unavailable	No information available on how to bring a case to court or other court services.

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## Court publishes judgments on the Internet (own website or on PacLII)

**Table 4.15.1** Court publishes judgments on the Internet (through PacLII or their own website) – Year 2 Trend Data

Cook Islands	Federated States of Micronesia	Kiribati Islands	Marshall Islands	Nauru	Niue	Palau
PacLII: November 2012 Court of Appeal & High Court	PacLII: April 2010 FSM Supreme Court Website Supreme Court & State Court Decisions	PacLII: April 2013 Court of Appeal, High Court and Magistrate Court decisions	PacLII: December 2011 Court Website: 2011 Supreme Court, selected High Court and Traditional Rights Court decisions	PacLII: March 2012 Supreme Court & District Court	PacLII: October 2010 High Court decisions	PacLII: May 2013 Supreme Court
Papua New Guinea	Samoa	Solomon Islands	Tokelau	Tonga	Tuvalu	Vanuatu
PacLII: May 2013 Supreme Court National Court & District Court decisions	PacLII: April 2013 SamLII: May 2013 Court of Appeal, Supreme Court and District Court	PacLII: May 2013 Court of Appeal, High Court and Magistrates Court decisions	No judgments published.	PacLII: May 2013 Court of Appeal, Supreme Court and Land Court decisions	PacLII: December 2012 Court of Appeal and High Court	PacLII: May 2013 Court of Appeal, Supreme Court, Magistrate Court and Island Court decisions

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## Percentage of the 14 PJDP countries that currently report on the indicator

8	Documented process for receiving and processing a complaint that is publicly available	21% (3 of 14)	21% (3 of 14)
9	Percentage of complaints received concerning a judicial officer	21% (3 of 14)	36% (5 of 14) ▲
10	Percentage of complaints received concerning a court staff member	14% (2 of 14)	29% (4 of 14) ▲
11	Average number of cases per judicial officer	57% (8 of 14)	71% (10 of 14) ▲
12	Average number of cases per member of court staff	43% (6 of 14)	71% (10 of 14) ▲
13	Court produces or contributes to an Annual Report that is publicly available in the following year	7% (1 of 14)	64% (9 of 14) ▲
14	Information on court services is publicly available	29% (4 of 14)	36% (5 of 14) ▲
15	Court publishes judgments on the Internet (court website or the Pacific Legal Information Institute)	93% (13 of 14)	93% (13 of 14)

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## Cook Island Indicators 13-15: Transparency



Discuss in country groups:

- What prevents case judgments being uploaded quickly to PacLII?
- What court information do court stakeholders need access to:
  - Lawyers
  - Clients
  - Witnesses
  - Victims of Crime
  - How can this be presented to them?
  - Examples: PNG? Family Court of Australia?

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## Reporting on family violence and children's cases.



Discuss in Country Groups:

- Why should Annual Reports include data on:
  - the number of family violence cases/ protection order applications commenced by women / other VAW cases?
  - The number of children's cases including the outcome of the case and the type of sentence that may be imposed.

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## Juvenile Cases



- Data on cases disaggregated to indicate whether the case involves children as perpetrators or victims of crimes are important in order to deliver better justice services to children. In the 2011 PJDP Baseline Report, the Republic of the Marshall Islands was the only PJDP country to include juvenile justice data in its Annual Report.

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## Juvenile Cases Cont.



The United Nations Children's Fund (UNICEF) has published baseline reports for Kiribati, Solomon Islands and Vanuatu in 2009 and the Republic of Palau and the Republic of the Marshall Islands in 2013. Baseline reports for Samoa and the Federated States of Micronesia are currently being prepared.

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## Juvenile Cases: 2012 Trend report



**Table 6.2** UNICEF baseline reports: checklist for compliance

	Core component	Not compliant	Part compliant	Fully compliant
1	A mechanism (such as an inter-agency working group) exists for collaborative planning, implementing and monitoring by all justice sector agencies (police, prosecutors, lawyers, judges, and prison officials) and with social welfare agencies.	X (Palau, RMI)	X (Kiribati, Solomon Islands)	X (Vanuatu)
2	There is a clearly articulated structure for roles, responsibilities and accountabilities within individual justice agencies and across the system.	X (Kiribati, Solomon Islands, Vanuatu)	X (Palau, RMI)	
3	There is an information management mechanism across the sector including a case file management system to reduce delays and ensure efficient flow of cases through all stages of the justice system from arrest to adjudication, including a mechanism to flag and expedite all cases involving children.	X (Kiribati, Palau, RMI, Solomon Islands, Vanuatu)		

## Juvenile Cases: 2012 Trend Report



### Key finding

In the five PJDP countries where UNICEF has completed its baseline report, none have an information management mechanism across the sector including a case file management system to reduce delays and ensure efficient flow of cases through all stages of the justice system from arrest to adjudication, including a mechanism to flag and expedite all cases involving children. The Republic of the Marshall Islands is the only PJDP country to present juvenile justice data in its Annual Report.

## Annual Report: Marshall Island

As shown below, the five-year clearance rate for juvenile cases is 100%. The High Court's goal is to maintain a clearance rate for juvenile cases of 100% per over the most recent two years, and/or to dispose of juvenile cases within six months of filing.

JUVENILE	CY 2007 CASES				Status in CY 2008		Status in CY 2009		Status in CY 2010		Status in CY 2011	
	Filed	Cleared	Pending		Cleared	Pending	Cleared	Pending	Cleared	Pending	Cleared	Pending
Island	1	1	0	0	0	0	0	0	0	0	0	0
Majuro	0	0	0	0	0	0	0	0	0	0	0	0
Ebeys	0	0	0	0	0	0	0	0	0	0	0	0

JUVENILE	CY 2008 CASES				Status in CY 2009		Status in CY 2010		Status in CY 2011	
	Filed	Cleared	Pending		Cleared	Pending	Cleared	Pending	Cleared	Pending
Island	2	2	0	0	0	0	0	0	0	0
Majuro	0	0	0	0	0	0	0	0	0	0
Ebeys	0	0	0	0	0	0	0	0	0	0

JUVENILE	CY 2009 CASES				Status in CY 2010		Status in CY 2011	
	Filed	Cleared	Pending		Cleared	Pending	Cleared	Pending
Island	3	3	0	0	0	0	0	0
Majuro	0	0	0	0	0	0	0	0
Ebeys	2	1	1	1	0	0	0	0

JUVENILE	CY 2010 CASES				Status in CY 2011	
	Filed	Cleared	Pending		Cleared	Pending
Island	1	0	1	1	0	0
Majuro	0	0	0	0	0	0
Ebeys	0	0	0	0	0	0

JUVENILE	CY 2011 CASES			
	Filed	Cleared	Pending	
Island	0	0	0	0
Majuro	0	0	0	0
Ebeys	0	0	0	0

During the 5-year period (2007-2011):  
Total Cases Filed: 6  
Total Cleared: 6  
Total Pending: 0  
Clearance Rate: 100%  
\*As of 20/1/2011

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## Vanuatu Annual Report

### Out of the completed criminal cases:

- 10 involved children of 15 years or younger as victims of sexual offending representing a 5% of total completed criminal cases in 2009.
- Total number of offenses of sexual nature is 132 representing a 70% of total completed criminal cases in 2009. It is important to note the geographical spread of these case: 90 of these offenses of sexual nature were completed in Port Vila, while 31 were recorded in Luganville, and 11 in the Isangel registry.
- 34 involved offenses under the Dangerous Drugs Act, representing 18% of total completed criminal cases in 2009.
- 12 were offenses of Intentional Homicide, Intentional Assault causing death and Careless driving causing death, representing 6 % of total completed criminal cases in 2009

## Annual Report: Juvenile Data



- Review Data for the last annual reporting period and:
  - List the number of children's cases (children as a victim of a crime or as an accused)
  - The finding in the case (guilty/ not guilty)
  - The sentence in the case
  - The duration of the case

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## Gender Disaggregated Data: 2012 Trend Report



### Key finding

In its 2011 Annual Report, the Republic of the Marshall Islands presented Gender Disaggregated Data for criminal cases (1 of 14 PJDP countries). Gender Disaggregated Data are particularly relevant for greater understanding of family law and family violence cases.

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## Gender Disaggregated Data: 2012 Trend



### Recommendation

There is a global movement to End Violence against Women and Girls that has been endorsed by governments across the Pacific. Annual Reports of courts should include data on the number of domestic violence cases and protection order applications commenced by women each year, an average duration for the finalisation of these cases and an indication of whether the case is resolved in favour of the applicant party for the protection order.

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## Annual Reporting: Gender Considerations



- Review Data for the last annual reporting period and:
  - List the number of (i) domestic/ family violence cases and (ii) protection order applications commenced by women each year,
  - an average duration from filing to finalisation for these cases, and
  - an indication of whether the case is resolved in favour of the applicant party for the protection order.

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## Objective: Session 4



### How to make an Annual Report Better?

By the end of the session participants will be able to:

- Identify areas where the Annual Report can be improved.
  - I. Present a timeline of steps to be taken to publish the Annual Report in the following year, including who is responsible for what and by when.
  - II. Present a draft Table of Contents of the Annual Report (including examples of tables).

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## How does your Annual Report measure up?



- Critically assess your current Court Annual Report against the following criteria rating it from 1 (poor) to 5 (excellent). Does the Annual Report :
  - assess performance against standards that have been set by your Court, and, if the court has not achieved the performance standards, explain why and what steps the court is taking to remedy this?
  - presents trends in performance over a 3-5 year period?

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## How does your Annual Report measure up?



- present the Court's performance against a range of quantitative performance indicators?
- present the Court's performance against a range of quantitative performance indicators from surveys, other evaluations ?
- use plain language, relevant diagrams and a clear format to illustrate and add emphasis?

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## Approach



Take the Table of Contents developed for the Annual Report in Session 2 and show:

- A date for when each section should be completed
- Who will be responsible for drafting it.
- When a consolidated draft Annual Report will be sent to stakeholders for their input.
- When a draft final Annual Report will be sent to the Chief Justice/ Chief Magistrate/ Minister.
- Estimated date for tabling the Annual Report in Parliament.
- How the Annual Report will be published: on-line/ print

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## ANNEX 3: ANNUAL REPORT PLANNING TEMPLATE - A GUIDE TO WHO, WHAT, WHEN

# Annual Report Template

---

DRAFT ONLY – To be discussed with the Chief Justice/Chief Magistrate

Country:

---

## Reporting period & Proposed Publication Date – To be discussed with Chief Justice/ Chief Magistrate

[insert dates here] e.g. January- December or July-June and proposed date to be published by]

## Table of Contents

[List the contents of your current Annual Report as it exists now, then make suggestions on how to include the 15 Cook Island Indicators and other information that you think should be added. This will form a draft for discussion with your Chief Justice/ Chief Magistrate.]

1. –
2. –
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12. –
13. –
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15. –
16. –

## Draft Annual Report Plan – (For discussion purposes with CJ/CM)

Action:	Responsibility: Who will be responsible?	Timeline: When will we begin?	Target: When will it be completed by?
Indicate here each key area that your court may wish to include in its annual report. These actions should be sensible, targeted and achievable. You should focus on setting achievable and measurable goals for improving the annual report over time. They can be ambitious but must be achievable. If your Court has an existing annual report in place you may wish to focus on more ambitious areas to show the courts effectiveness.	Allocate responsibility for each key area. The Court may elect to assign responsibility to specific person or to a central coordinating area.	Use month/year format (e.g. Dec. 2013). This date should generally be based on the achievement or completion of each action.	Indicate a date that each item must be completed by in order to have that section of the annual report completed by. Milestones can be used if full completion of an action spans beyond the current annual plan.
1.			
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11.			
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15.			
16.			

## ANNEX 4: ANNUAL REPORT TEMPLATE



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Figure 16: Violence against Women and Children/ Family Protection Act/ Interim Protection Order Cases .....	

# Introduction

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## Mission and Vision

### MISSION

[INSERT INFORMATION]

### VISION

[INSERT INFORMATION]

## Message from Chief Justice

## Message from Administrative Director

# Overview of the Judiciary

---

## About the Courts

### Court of Common Pleas

[INSERT INFORMATION]

### Land Court

[INSERT INFORMATION]

### Supreme Court (Trial Division and Appellate Division)

[INSERT INFORMATION]



# Cook Island Indicators

---

## Indicator 1 – Case Management – Clearance Rate

Figure 1: Clearance Rate

[INSERT TABLE]

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

Figure 2: Average Duration of a Case

[INSERT TABLE]

## Indicator 3 – Case Management – Percentage of Appeals

Figure 3: The Percentage of Appeals

[INSERT TABLE]

## Indicator 4 – Case Management – Overturn Rate on Appeal

Figure 4: Overturn Rate on Appeal

[INSERT TABLE]

## Indicator 5 – Accessibility of Courts – Court Fee Waiver

Figure 5: Court Fee Waiver

[INSERT TABLE]

## Indicator 6 – Accessibility of Courts – Circuit Courts

Figure 6: Circuit Courts

[INSERT TABLE]

## Indicator 7 – Accessibility of Courts – Legal Aid

Figure 7: Legal Aid

[INSERT TABLE]

## Indicator 8 – Complaint Handling and Feedback Mechanism

Figure 8: Complaint Mechanisms

[INSERT TABLE]

## Indicator 9 – Complaint Handling and Feedback – Judicial Officers

Figure 9: Complaints Received in relation to Judicial Officers

[INSERT TABLE]

## Indicator 10 – Complaint Handling and Feedback – Court Staff

Figure 10: Complaints Received in relation to Court Staff

[INSERT TABLE]

## Indicator 11 – Judicial Resources

Figure 11: Average Number of Cases per Judicial Officer

[INSERT TABLE]

## Indicator 12 – Court Staff Resources

Figure 12: Average Number of Cases per Court Staff Member

[INSERT TABLE]

## Indicator 13 – Transparency – Annual Report

Figure 13: Publication of an Annual Report by the Court

[INSERT TABLE]

## Indicator 14 – Transparency – Court Services Information

## Indicator 15 – Transparency – Publication of Judgments

Figure 14: Number of Cases published on PacLII or Court's Own Website (Higher levels of Courts)

[INSERT TABLE]

## Juvenile/ Children's Cases – Disaggregated Data

Figure 15: Children's Cases

[INSERT TABLE]

## Violence against Women and Children - Disaggregated Data

Figure 16: Violence against Women and Children/ Family Protection Act/ Interim Protection Order Cases

[INSERT TABLE]

## Judicial Services

## Transparency

## Facilities

## The Annual Budget

## Organizational Chart

## Court Personnel

## ANNEX 5: CHART CREATOR EXCEL TEMPLATE

1 - Clearance Rate				
Year	Total Cases Filed	Total Cases Finalised	Total Cases Pending	Clearance Rate as a %
Insert Year				
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Insert Year			0	
Total:	0	0	0	#DIV/0!

[illegible]

[illegible][illegible]

[illegible][illegible]

[illegible]

**9 - Complaint Handling (Judicial Officers) - Percentage of Complaints Received Concerning a Judicial Officer**

[illegible]



[illegible][illegible]

### 12 - Court Staff Resources - Average Number of Cases per Court Staff

## ANNEX 6: CHART CREATOR (EXCEL FORMAT): STEP-BY-STEP GUIDE ON HOW TO USE (BASED ON EXCEL 2010)

# Chart Creator

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Entering Data – Legal Aid .....	13
Entering Data – Complaint Handling.....	14
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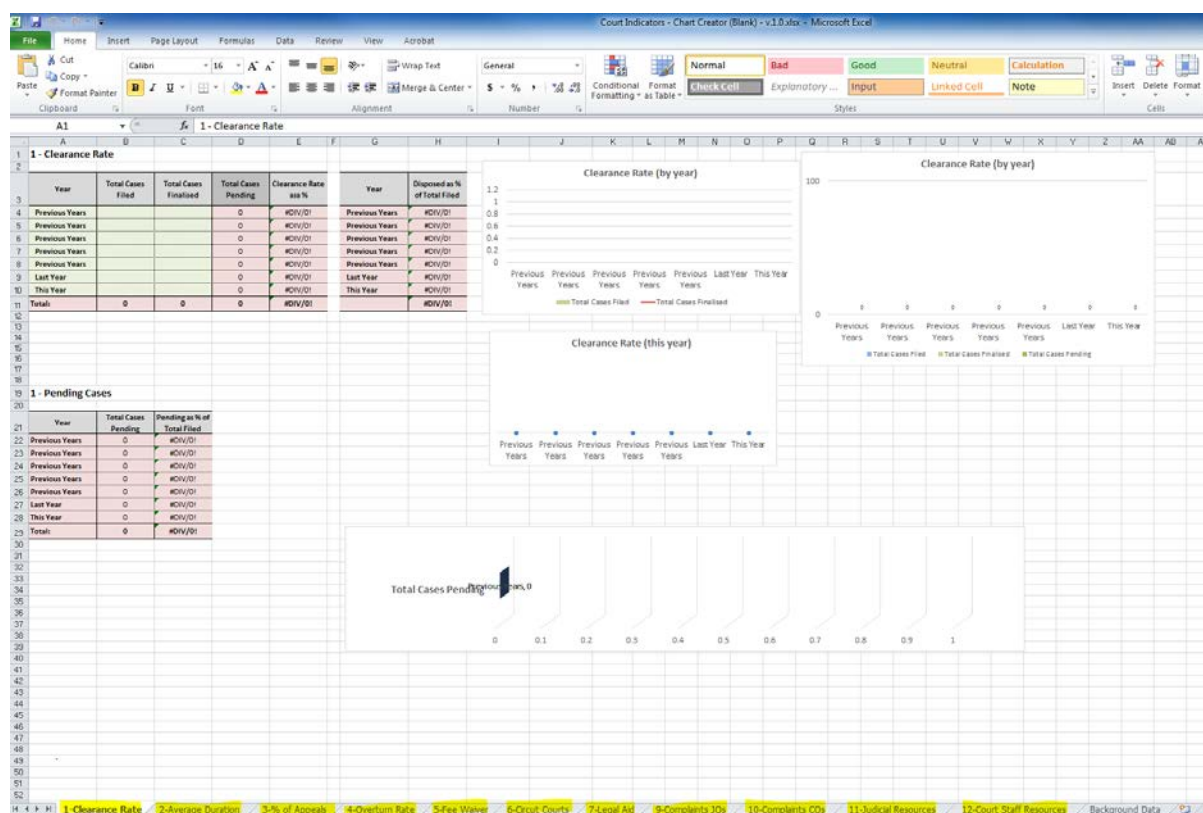
The Chart Creator is to be used for each division eg. Criminal, Civil, Land etc and each level of jurisdiction eg. Magistrate, Supreme court.

The most up-to-date version of this document can be found on the PJDP website as part of the Toolkit for Court Annual reports.

## Opening Page

The Excel Court Indicators Chart Creator has been designed to assist with creating charts for court annual reports that show trend changes over a number of years. All of the algorithms for each of the indicators has been calculated within excel, therefore only the data needs to be entered.

Upon opening the Chart Creator you will see a page that looks like the following. At the bottom of the page you will note that there are 12 Tabs, each representing a different Cook Island Indicator (see highlighted in yellow below).



When you first start using the Chart Creator you will need to insert the years that you have data for. For example, in the illustration below, we have data dating back to 2011. I therefore added the year 2011 at line 4, 2012 at line 5, 2013 at line 6 and 2014 at line 7 etc. To enter the year, you click on the relevant box, delete the words and enter the year. When you have entered all of the years, remember to save the file.

File Home Insert Page Layout Formulas Data Review View Acrobat									
Clipboard		Font				Alignment			
A10 2017									

## Entering data – Clearance Rate

### Data

To calculate a graph for the Clearance Rate, you will need to enter the following information into the Chart Creator:

1. **Total Cases filed** – this is the total cases that have been filed in the year (either January-December or July-June depending on how your reporting period is covered in your court). In the example below, there were 100 cases filed in the court in 2011. The number 100 was therefore

entered at line 4, column b. In 2012, 100 cases were filed and therefore 100 was entered at line 5, column b etc.

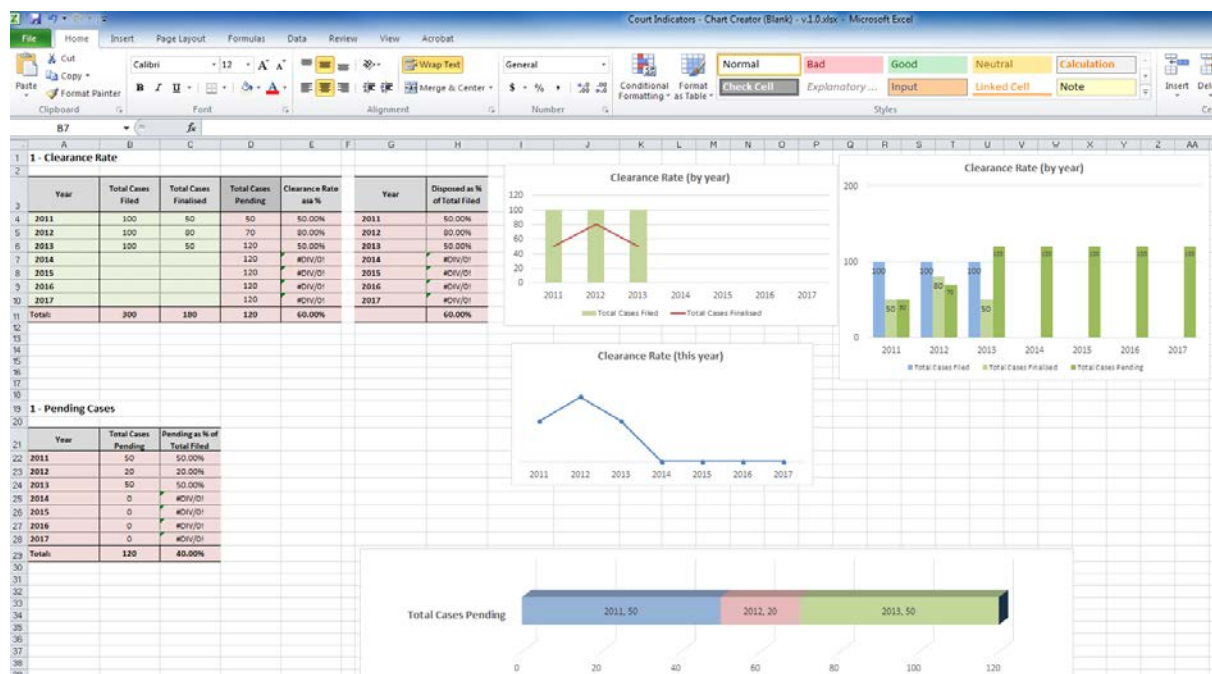
2. **Total Cases Finalised** – this is the total number of cases finalised in the year, regardless of when the case was filed. In the example below, the court finalised 50 cases in 2011. The number 50 was therefore entered at line 4 column c. In 2012, 80 cases were finalised in that year, therefore 80 was entered at line 6, column c etc.

B7							
1 - Clearance Rate							
Year	Total Cases Filed	Total Cases Finalised	Total Cases Pending	Clearance Rate as a %	Year	Disposed as % of Total Filed	
2011	100	50	50	50.00%	2011	50.00%	
2012	100	80	70	80.00%	2012	80.00%	
2013	100	50	120	50.00%	2013	50.00%	
2014			120	#DIV/0!	2014	#DIV/0!	
2015			120	#DIV/0!	2015	#DIV/0!	
2016			120	#DIV/0!	2016	#DIV/0!	
2017			120	#DIV/0!	2017	#DIV/0!	
Total:	300	180	120	60.00%		60.00%	
1 - Pending Cases							
Year	Total Cases Pending	Pending as % of Total Filed					
2011	50	50.00%					
2012	20	20.00%					
2013	50	50.00%					
2014	0	#DIV/0!					
2015	0	#DIV/0!					
2016	0	#DIV/0!					
2017	0	#DIV/0!					
Total:	120	40.00%					

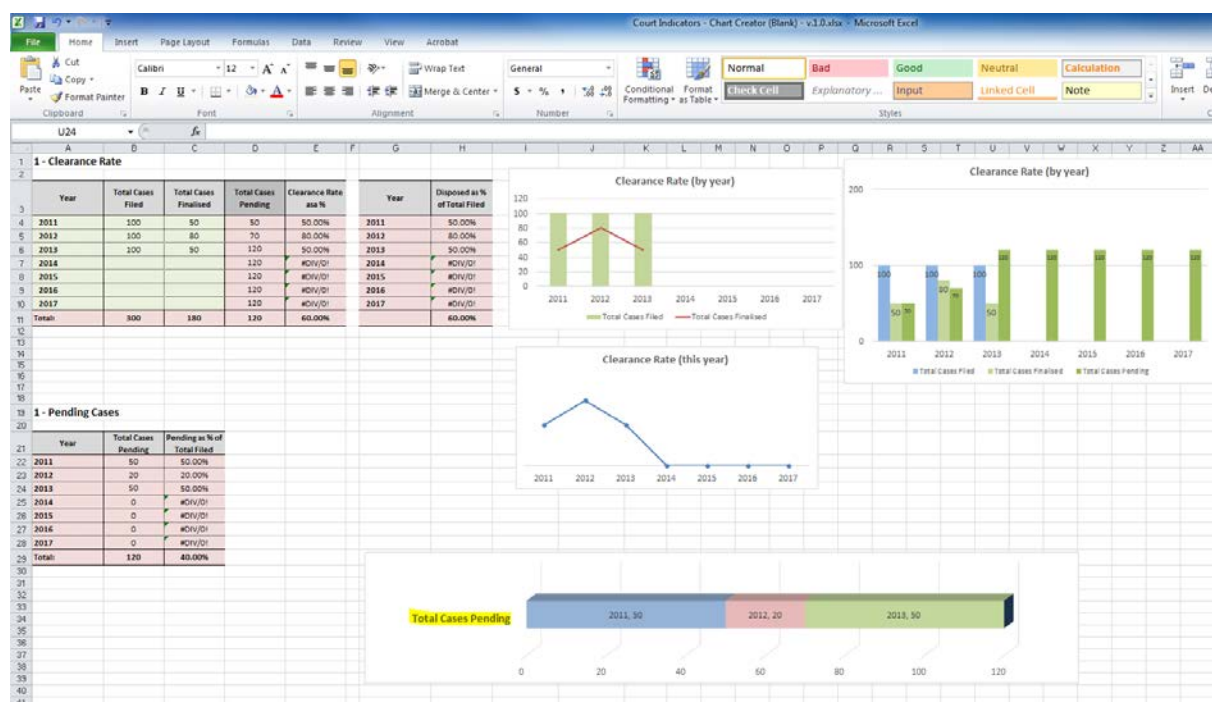


## Graphs

After entering the data, you will see that the graphs to the right of the page will automatically be created from the data entered. Each of the graphs depicts the same information just in a different format. When placing these charts in a court annual report, use one chart that best illustrates the data.



The Chart Creator will also display the number of pending cases. This chart is important as it shows the number of cases that the court is yet to finalise. When data is added over a number of years, it illustrates the trend of pending cases as to whether it is increasing or decreasing. See below the example highlighted in yellow.

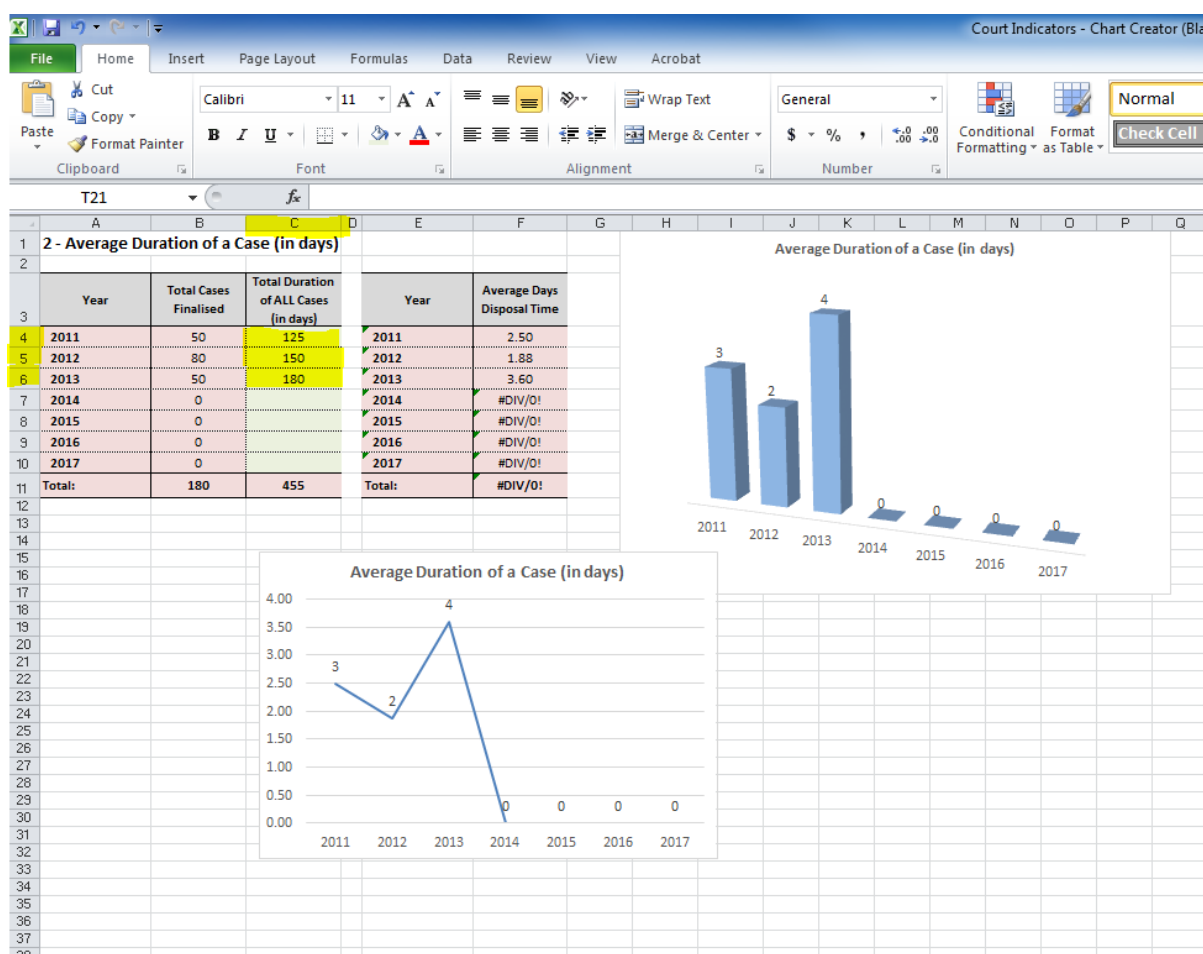


## Entering data – Average Duration of a Case

### Data

To enter the data for the Average Duration of a Case:

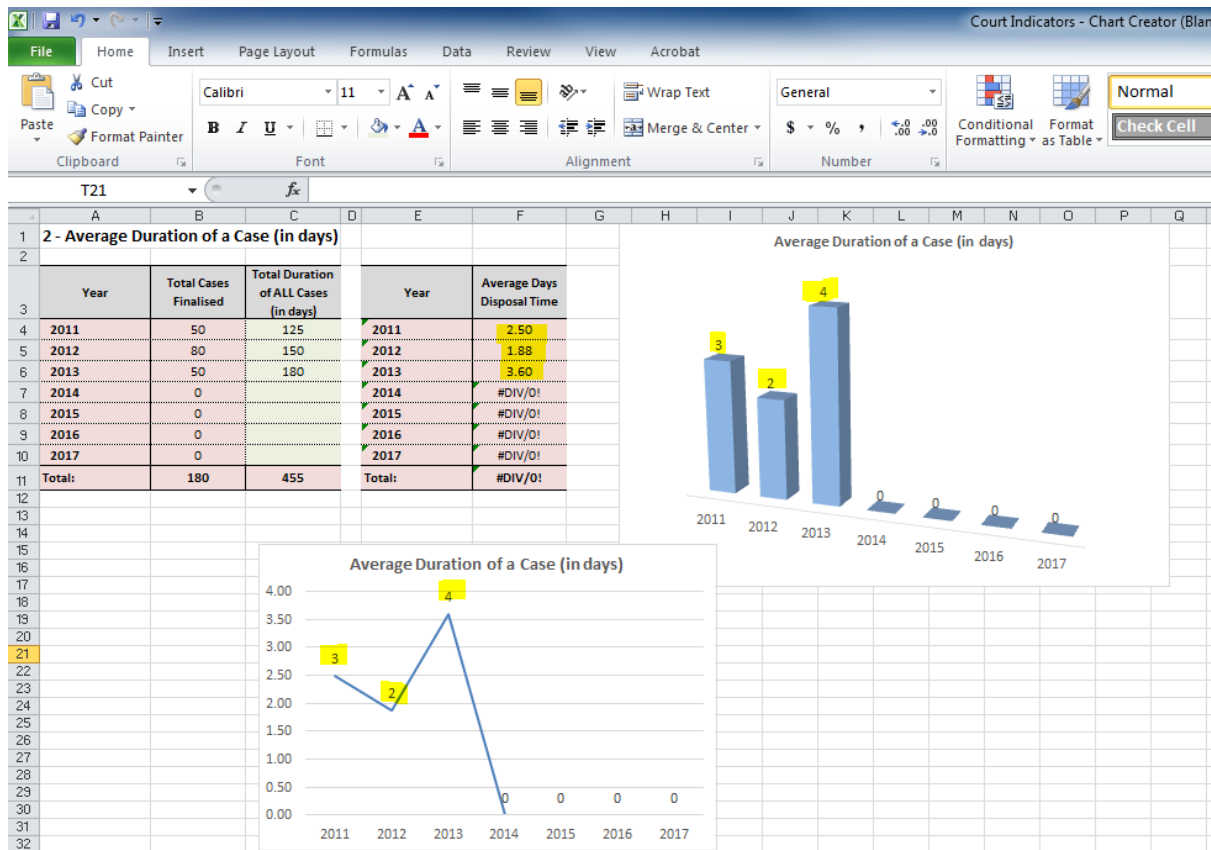
1. Click on the tab at the bottom of the Excel Worksheet marked 2-Average Duration
2. Calculate the total number of days of all finalised cases in the year for your court. For example, in 2011 there were 50 finalised cases. Of these cases, 25 took 3 days and 25 took 2 days each. Therefore the total duration of ALL cases [in days] was  $(25 \times 3) + (25 \times 2)$  which equates to  $75 + 50 = 125$ .
3. Next enter 125 at line 4, column C



### Graphs

As you enter the data, you will note on the right side of the page the graphs are automatically created from the data entered. In the example below, you will see that the total duration of ALL cases has been entered for 2012 and 2013 to provide trend data and the Average Duration of a Case is automatically calculated. For example, in 2011 it was 2.5 days, in 2012 it was 1.88 days and in 2013 it was 3.6 days which has been rounded up.





## Entering Data – Percentage of Appeals

### Data

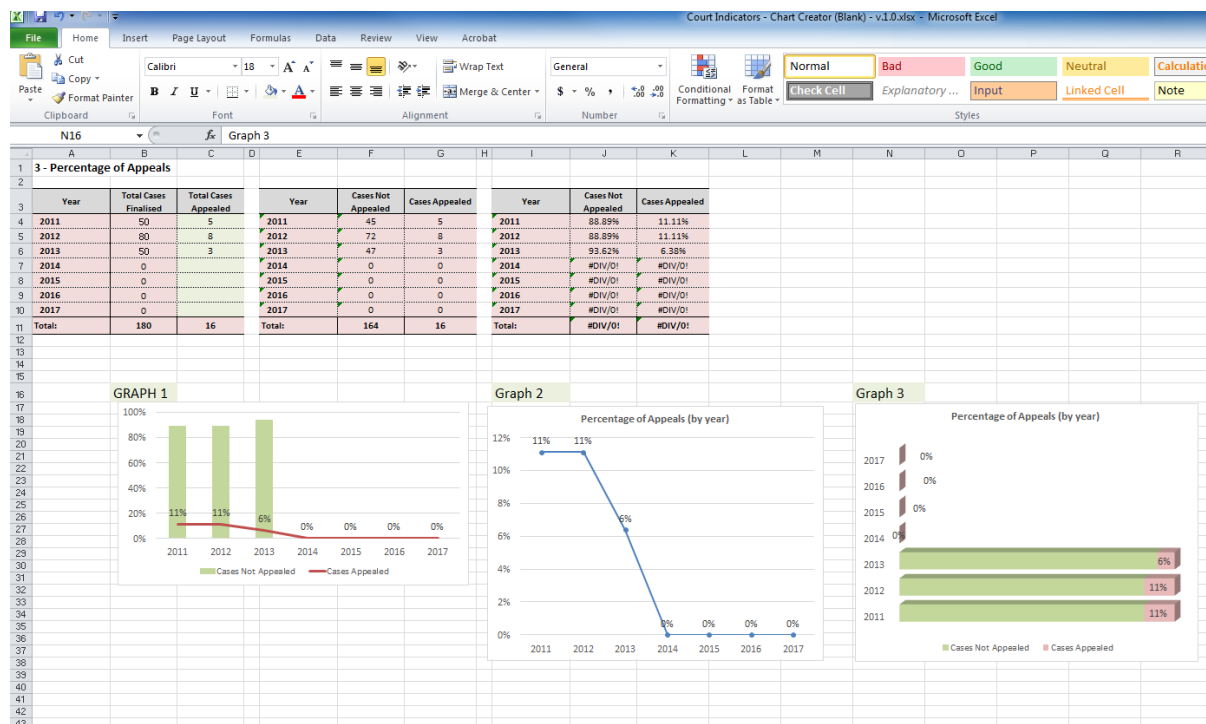
To enter the data for Percentage of Appeals:

1. Click on the tab at the bottom of the Excel Worksheet marked 3-% of Appeals
2. Enter the number of cases for which an appeal has been lodged in the reporting year. For example, as highlighted in yellow below there were 5 cases appealed in 2011, 8 cases in 2012 and 3 cases in 2013.

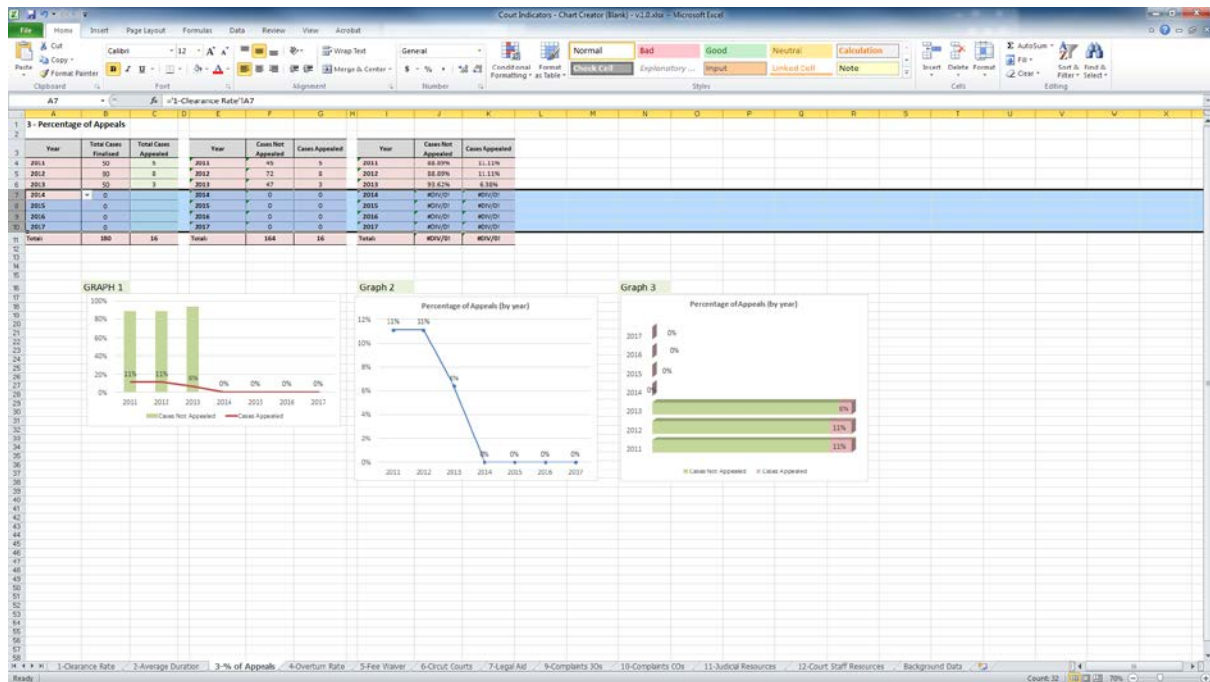
Court Indicators - Chart Creator (Blank)									
File Home Insert Page Layout Formulas Data Review View Acrobat									
Clipboard Font Alignment Number Conditional Formatting									
A16									
3 - Percentage of Appeals									
Year	Total Cases Finalised	Total Cases Appealed	Year	Cases Not Appealed	Cases Appealed	Year	Cases Not Appealed	Cases Appealed	
2011	50	5	2011	45	5	2011	88.89%	11.11%	
2012	80	8	2012	72	8	2012	88.89%	11.11%	
2013	50	3	2013	47	3	2013	93.62%	6.38%	
2014	0		2014	0	0	2014	#DIV/0!	#DIV/0!	
2015	0		2015	0	0	2015	#DIV/0!	#DIV/0!	
2016	0		2016	0	0	2016	#DIV/0!	#DIV/0!	
2017	0		2017	0	0	2017	#DIV/0!	#DIV/0!	
<b>Total:</b>	<b>180</b>	<b>16</b>	<b>Total:</b>	<b>164</b>	<b>16</b>	<b>Total:</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	

## Graphs

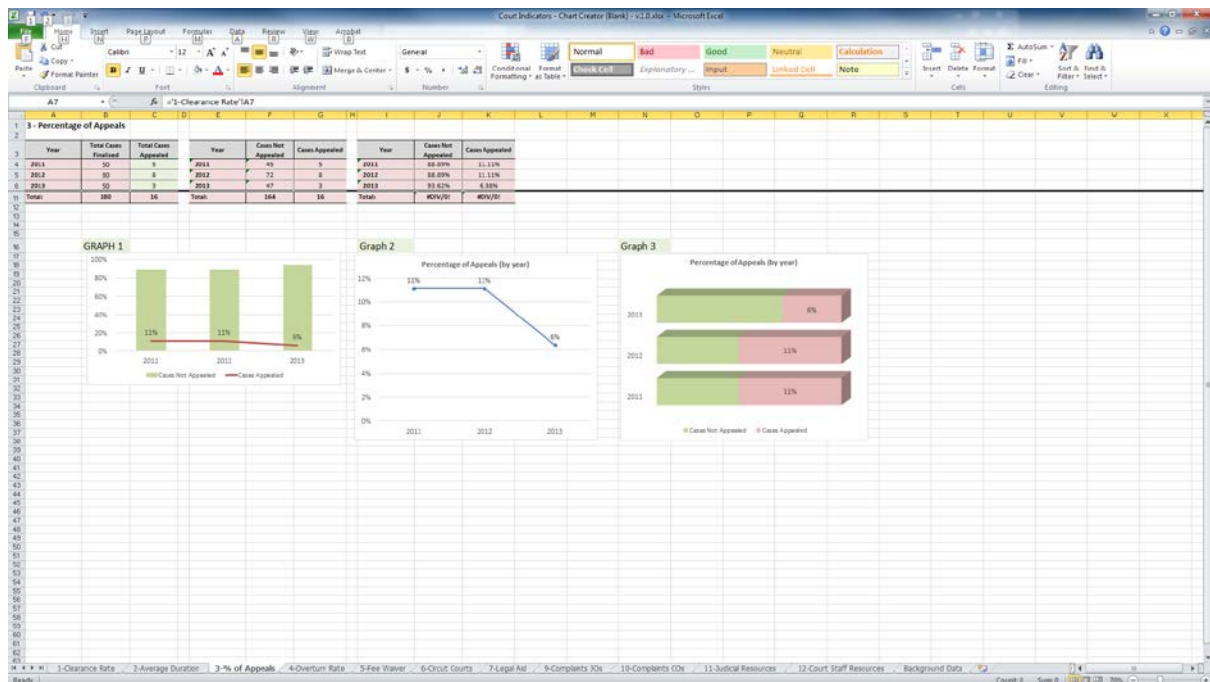
1. The graphs to the right of the page will automatically populate and provide a graph that can be placed in the annual report.
2. Graph 1 & 3 illustrate the rate of appeal against the total cases appealed. Graph 1 also shows the trend of appeals over time.
3. Graph 2 illustrates just the percentage of appeal over time. It is best not to use all of the graphs in the annual report rather a decision should be made by the court as to which one best illustrates the rate of appeal.



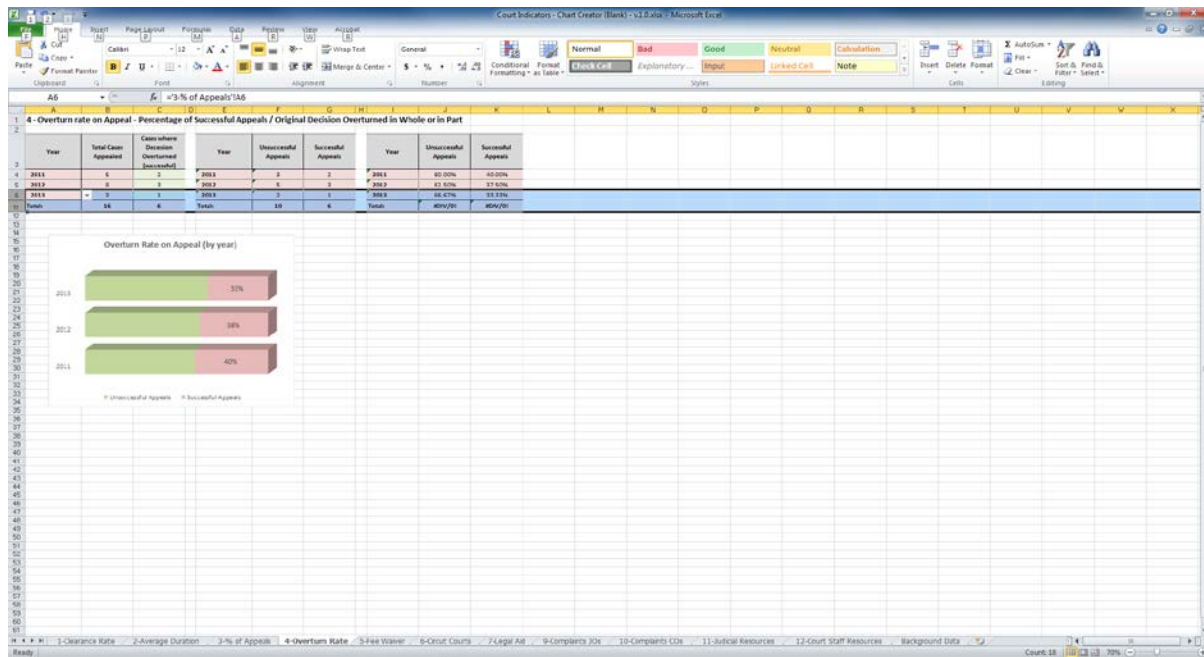
To remove the additional columns where there is no data, select the lines (as displayed below) then right mouse click and select "hide Lines".



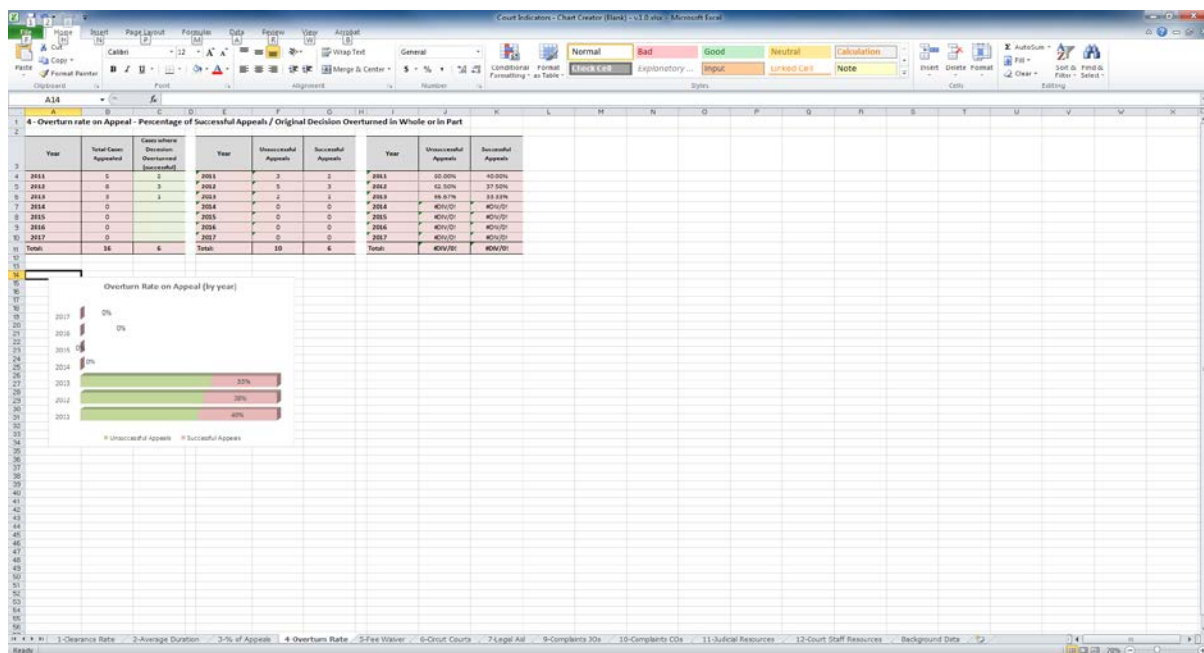
The chart will then only show the data that has been inserted. See below:



To "unhide" the lines click on the lines again (row 6 & 11), right mouse click and select "unhide".



The lines will reappear as below:



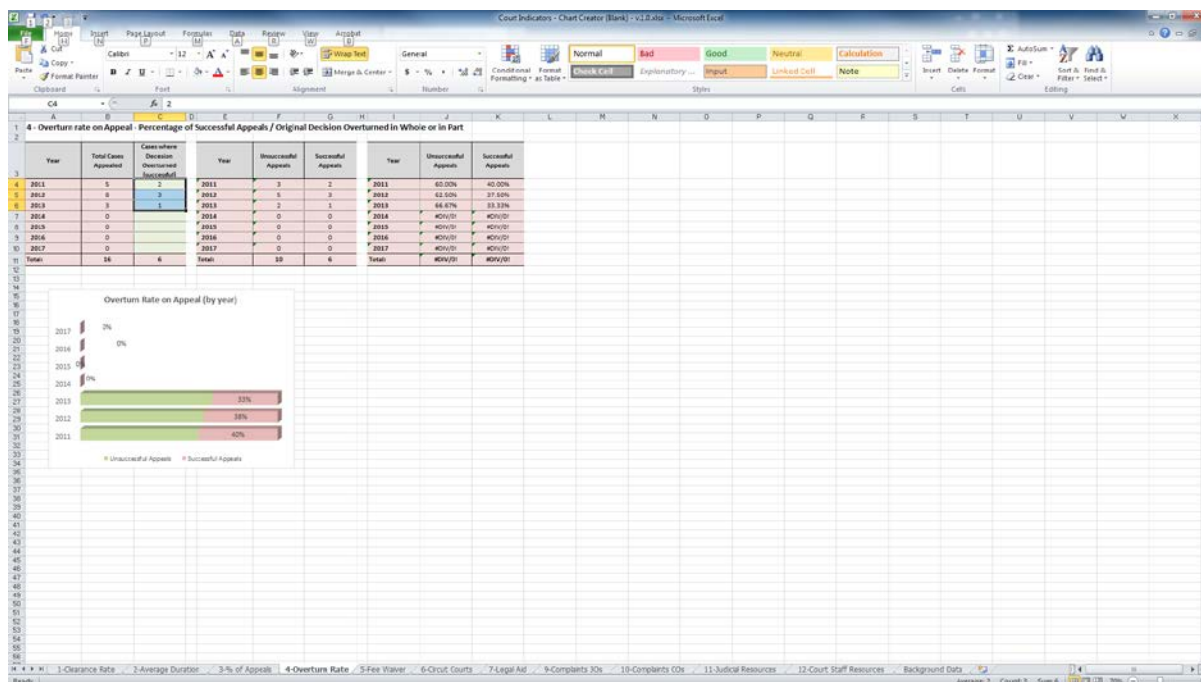
## Entering Data – Overturn Rate on Appeal

### Data

To enter the data for the Overturn Rate on Appeal:

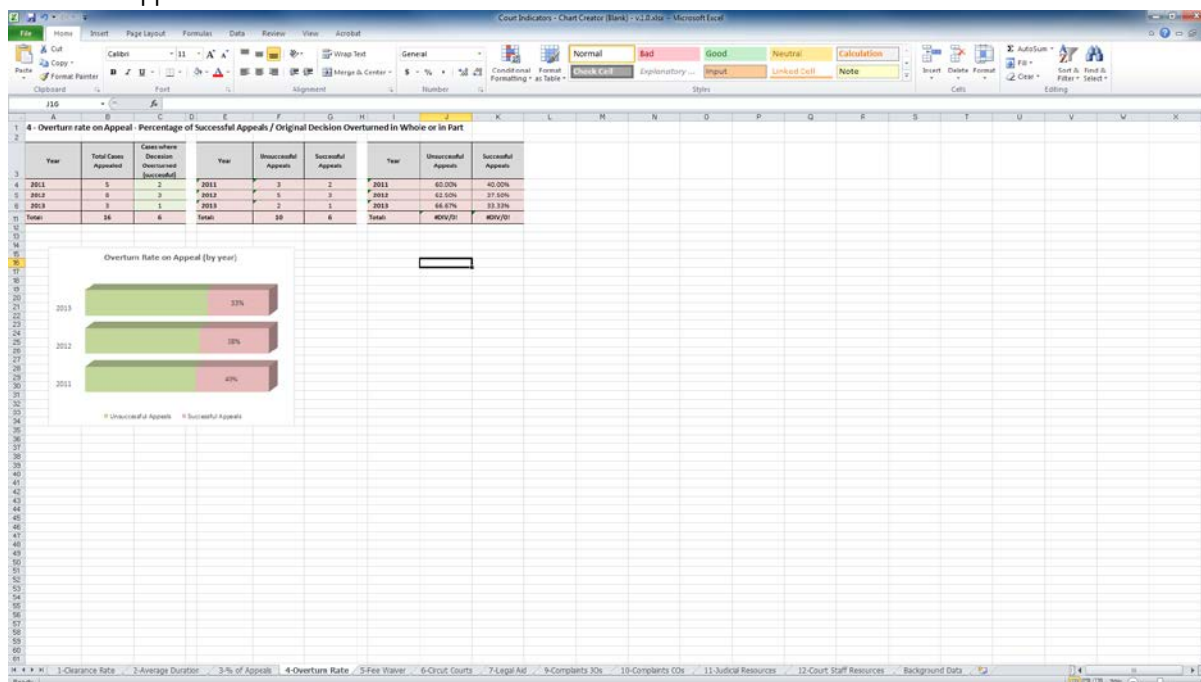
1. Click on the tab at the bottom of the Excel Worksheet marked 4-Overturn Rate
2. Enter the number of cases that were successful, that is, where the original decision was overturned in whole or in part by the court. For example, as highlighted below there were 5 cases appealed in 2011 and of these cases 2 were successfully overturned on appeal. Enter 2 in column C line 4. In

2012 there were 8 cases appealed and of these 3 were successfully overturned – enter 3 in column C line 5. In 2013 there were 3 cases appealed and 1 was successful – enter 1 in column C line 6.



## Graphs

1. The graphs to the right of the page will automatically populate and provide a graph that can be placed in the annual report.
2. To remove the additional columns where there is no data, select the lines then right mouse click and select "hide Lines". The graphs will then only highlight the data that has been entered.
3. To "unhide" the lines select both lines 6 and 11, right mouse click and select "unhide". The lines will reappear.



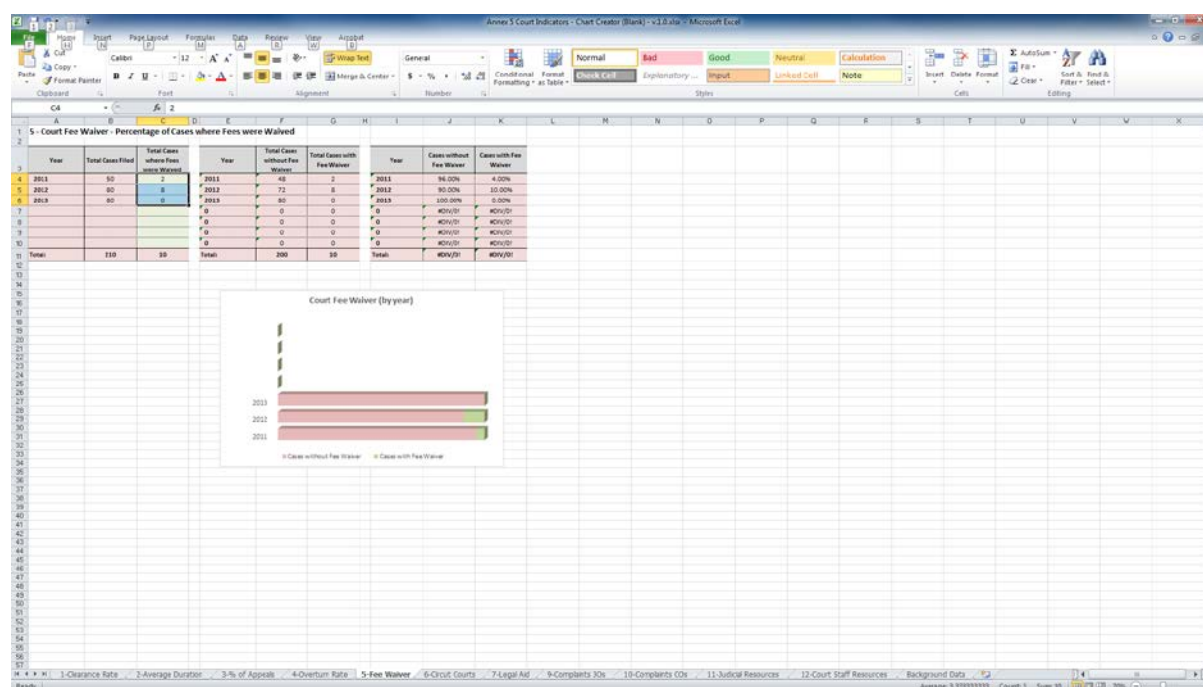


## Entering Data – Fee Waiver

### Data

To enter the data for the Percentage of Cases where fees were waived:

1. Click on the tab at the bottom of the Excel Worksheet marked 5-Fee Waiver.
2. Enter the number of cases where the fees were waived. If no fees were waived please enter 0. As highlighted below in the example, in 2011, there were 2 cases where the fees were waived. Enter 2 in column C line 4. In 2012, 8 cases had the fees waived. In column C line 5. Enter 8. In 2013, no case had its fees waived – enter 0 in column C line 6.



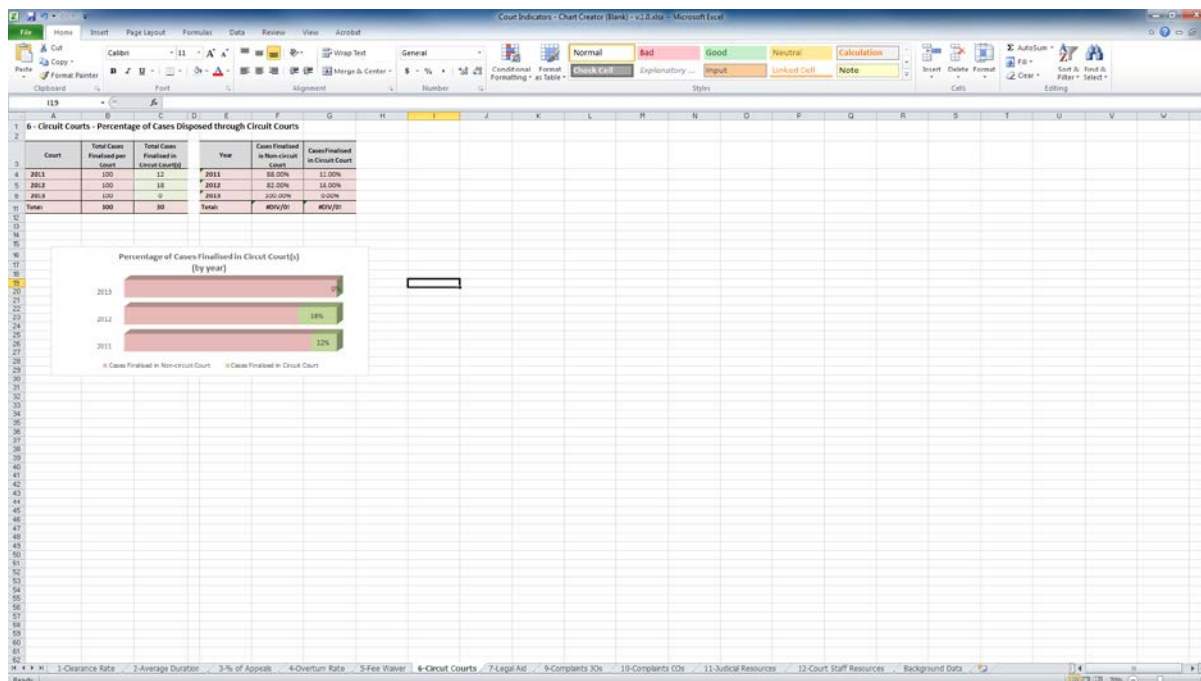
### Graphs

1. The graphs will automatically populate and provide a picture that can be placed in the annual report which illustrates the percentage of cases where fees have been waived. See above.

## Entering Data – Circuit Courts

To enter the data for the Percentage of Cases Disposed through Circuit Courts:

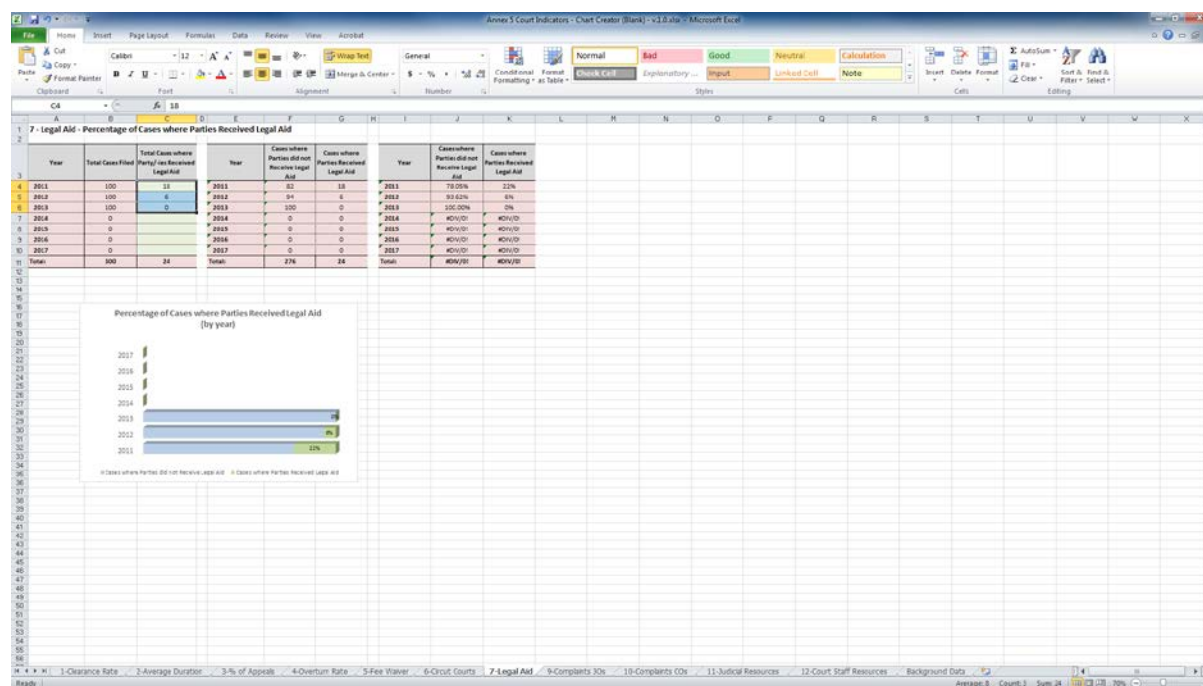
2. Click on the tab at the bottom of the Excel Worksheet marked 6-Circuit Courts.
3. Enter the total number of cases finalised in a circuit court. If there is more than one circuit location, calculate all cases heard at circuit locations and enter that total. If no cases were heard on a circuit location, enter 0.
4. As highlighted below in the example, in 2011, 12 cases were heard at circuit locations. Enter 12 in column C line 4. In 2012, 18 cases were heard at a circuit location. In column C line 5, enter 18. In 2013, no cases were heard at a circuit location. Enter 0 in column C line 6.
5. To remove the additional lines where there is no data, select the lines then right mouse click and select "hide Lines". The graphs will then only highlight the data that has been entered.



## Entering Data – Legal Aid

To enter the data for the Percentage where parties received legal aid:

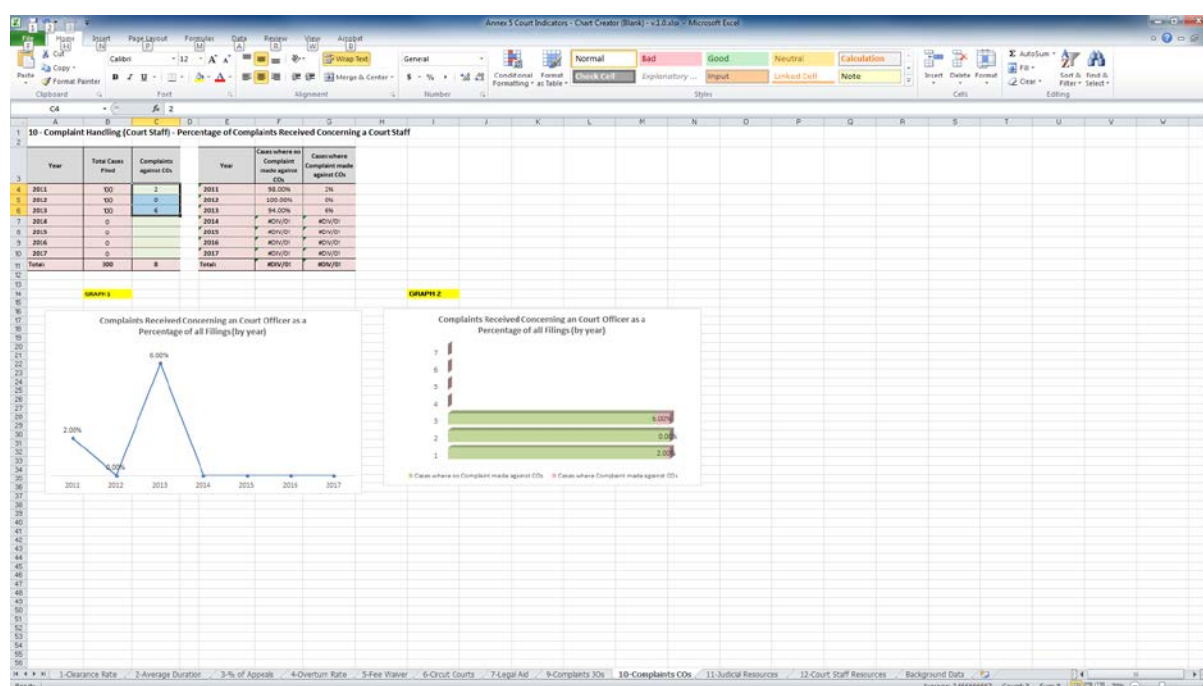
1. Click on the tab at the bottom of the Excel Worksheet marked 7-Legal Aid.
2. Enter the total number of cases where parties received legal aid. If no cases received legal aid enter 0.
3. As highlighted below in the example, in 2011 9 cases received legal aid. Enter 9 in column C line 4. In 2012, 8 cases received legal aid. In column C line 5, enter 8. In 2013, no cases received legal aid. Enter 0 in column C line 6.



## Entering Data – Complaint Handling

To enter the data for Complaint Handling (either Judicial Officers or Court Staff):

1. Click on the tab at the bottom of the Excel Worksheet on the Tab marked either 9-Complaints JOs (for Judicial Officers) or Tab 10-Complaints Cos (for Court Staff).
2. Enter the total number of complaints received about Court Staff (Tab 10) (or if you are completing the data entry for Judicial Officers, select Tab 0). If there were no complaints received enter 0.
3. As highlighted below in the example, in 2011 2 complaints were received about Court Staff. Enter 2 in column C line 4. In 2012, there were no complaints, so enter 0 in column C line 5. In 2013, 6 complaints were received by the court about Court Staff. Enter 6 in column C line 6.



## Graphs

1. The table will automatically calculate the percentage of complaints received regarding Court Staff (or a Judicial Officer) against the number of cases filed and a chart will display the data which will provide an illustration that can be placed in the annual report. See above.
2. Both charts contain the same information but illustrate it differently. For example: Graph 1 (a Line Graph) illustrates the trend regarding complaints received while Graph 2 (a bar graph) illustrates the number of complaints received as a percentage of filing. The court can determine which of the two graphs best represents the data and is therefore best to use in the annual report.

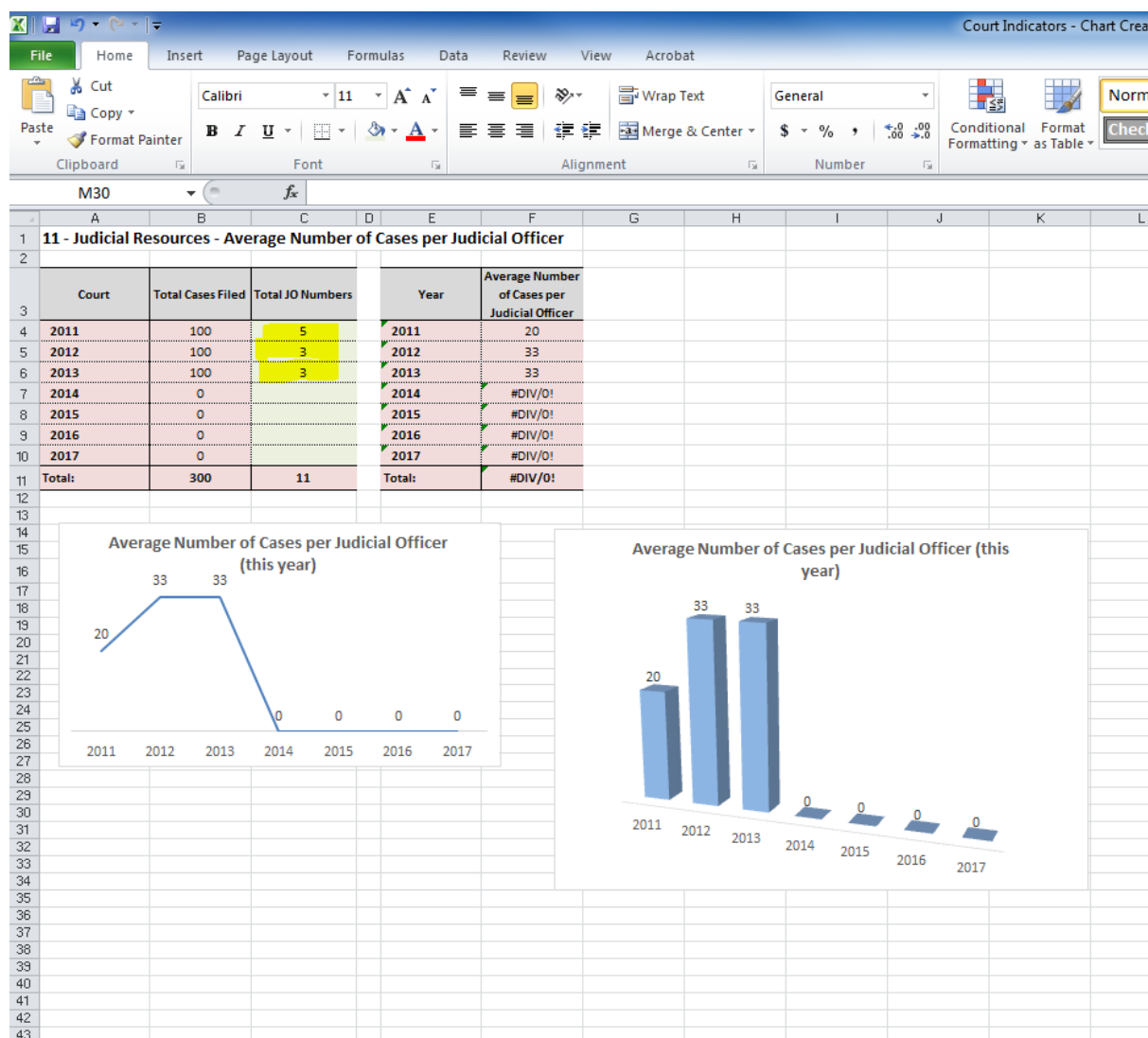
## Entering Data – Court Resources

To enter the data for Resources (either Judicial or Court Staff):

1. Click on the tab at the bottom of the Excel Worksheet marked either 11-Judicial Resources (for Judicial Officers) or Tab 12-Court Staff Resources (for Court Administrative Staff).
2. Enter the total number of Judicial Officers (Tab 11) (or if you are completing the data entry for Court Staff, select Tab 12). If there were no complaints received enter 0.



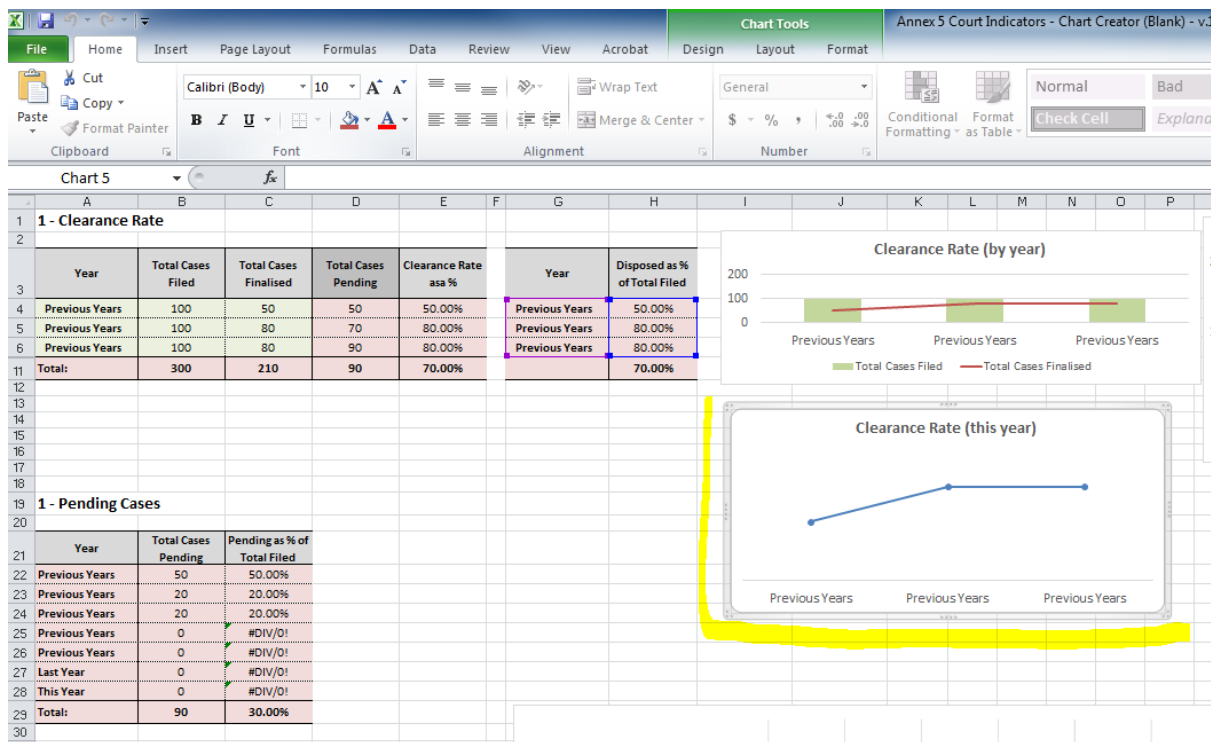
- As highlighted below in the example, in 2011 there were 5 Judicial Officers, in 2012 there were 3 and there still 3 in 2013. Therefore enter 5 in column C line 4; enter 3 in column C line 5 and enter 3 in column C line 6.
- To remove the additional lines where there is no data, select the lines then right mouse click and select "hide Lines". The graphs will then only highlight the data that has been entered
- The table will automatically calculate the average number of cases per judicial officer (or Court Staff) against the number of cases filed.
- A chart will display the data which will provide an illustration that can be placed in the annual report. Both charts contain the same information but illustrate it differently. The court can determine which of the two graphs best represents the data.



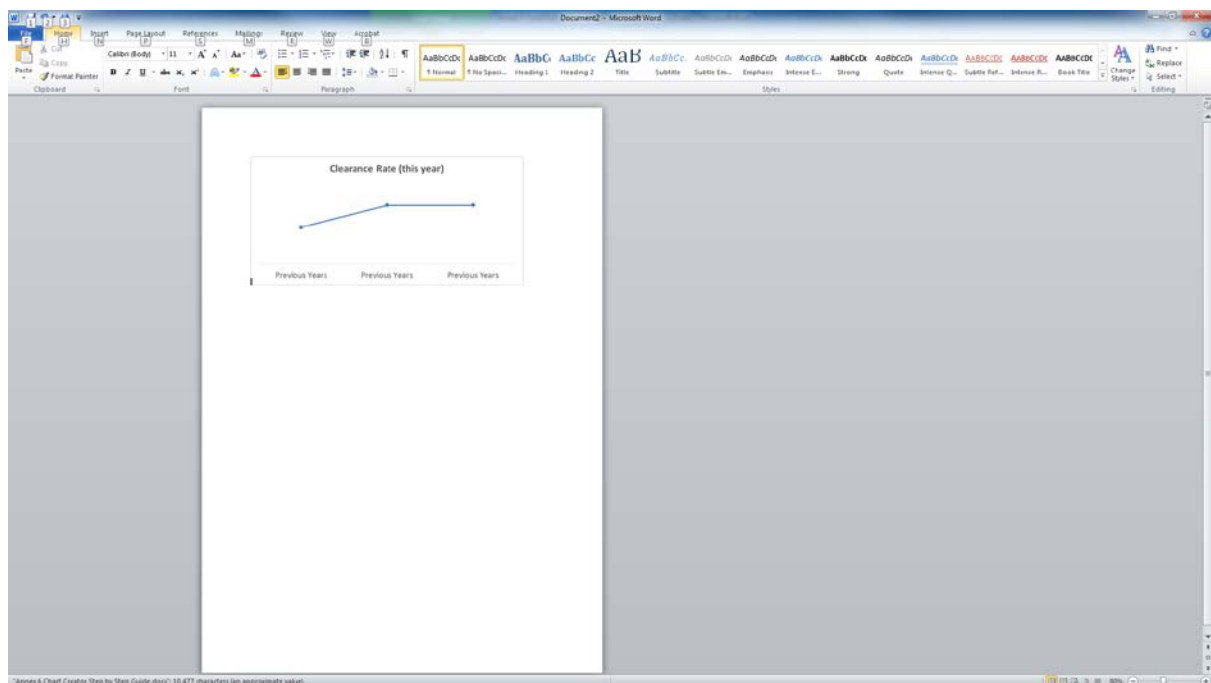
## Copying graphs to the annual report

To copy a graph to a word document (annual report) you need to:

- Locate the graph to be placed in the annual report
- Right mouse click on the graph so that a box appears around it
- Select Copy



- Open the word document (annual report)
- Right mouse click on the page and select paste. Remember to paste the graph as a picture as this will reduce the overall size of the document. You can do this by selecting "paste special" then selecting "picture".



## ANNEX 7: GUIDE TO MAKING CHARTS FOR AN ANNUAL REPORT (BASED ON EXCEL 2007)

### STEP-BY-STEP GUIDE FOR MAKING CHARTS FOR THE RMI ACCESS AND FAIRNESS SURVEY

This guide was made using Excel 2007. Older or newer versions of Microsoft Excel may vary slightly

#### BAR GRAPH GUIDE

1. Enter all raw survey response data into an excel spreadsheet.

Section I: When you came to the Courthouse today:			
	Yes	No	N/A
1 Finding the Courthouse was easy	95	4	0
2 Getting to the court was easy	90	8	1
3 Forms I needed were clear and easy to understand	84	2	12
4 I felt safe in the Courthouse	95	5	0
5 I was able to get the information I needed	88	0	5
6 I was able to get my court business done in a reasonable amount of time	92	6	1
7 Court staff paid attention to my needs	96	2	0
8 I was treated with courtesy and respect	97	0	1
9 I easily found the courtroom or office I needed	88	4	9
10 I checked the Court's website and it was useful	49	13	35
11 The Court's hours of operation made it easy for me to do my business	91	3	4

Section II: If you saw a judge today:			
	Yes	No	N/A
1 My case was handled fairly?	52	5	35
2 Judge listened to my side of the story before he/she made a decision?	49	3	35
3 I was treated the same as everyone else?	62	1	25

2. In extra columns, input data on the total number of yes and no responses (do not include 'not applicable' answers or questions that have been missed by the respondent), as shown in column K below. Next, calculate the percentage of 'yes' responses by dividing the number of 'yes' responses by the total number of responses. For example, in Question 1 below, 95 'yes' responses divided by 99 total responses equals 0.96. This can be done in excel by entering a simple text formula into the cell: =95/99 and then pressing enter. Complete the same steps with the data for 'no' responses into the next column. To ensure calculations are correct, in the 'total %' column add together the results together (eg, =0.96+0.4 and press enter).

Access Survey Results Majuro (version 1) REAL - Microsoft Excel non-commercial use

Home Insert Page Layout Formulas Data Review View

Clipboard Font Alignment Number Styles Cells Editing

Calibri 11

Number \$ % + -

Conditional Formatting as Table Styles

Insert Delete Format

AutoSum Fill Clear Sort & Find Filter Select

L6 =H6/K6

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	
1																	
2	Survey conducted from April 9-13 & April 16-20, 2012 (10 days)																
3	Total Participants: 101																
4																	
5	Section I: When you came to the Courthouse today:							Yes	No	N/A	total responses	yes %	no %	total %			
6	1	Finding the Courthouse was easy						95	4	0	99	0.96	0.04	1.00			
7	2	Getting to the court was easy						90	8	1	98	0.92	0.08	1.00			
8	3	Forms I needed were clear and easy to understand						84	2	12	86	0.98	0.02	1.00			
9	4	I felt safe in the Courthouse						95	5	0	100	0.95	0.05	1.00			
10	5	I was able to get the information I needed						88	0	5	88	1.00	0.00	1.00			
11	6	I was able to get my court business done in a reasonable amount of time						92	6	1	98	0.94	0.06	1.00			
12	7	Court staff paid attention to my needs						96	2	0	98	0.98	0.02	1.00			
13	8	I was treated with courtesy and respect						97	0	1	97	1.00	0.00	1.00			
14	9	I easily found the courtroom or office I needed						88	4	9	92	0.96	0.04	1.00			
15	10	I checked the Court's website and it was useful						49	13	35	62	0.79	0.21	1.00			
16	11	The Court's hours of operation made it easy for me to do my business						91	3	4	94	0.97	0.03	1.00			
17	Section II: If you saw a judge today:							Yes	No	N/A							
18	1	My case was handled fairly?						52	5	35	57	0.912281	0.087719298	1			
19	2	Judge listened to my side of the story before he/she made a decision?						49	3	35	52	0.942308	0.057692308	1			
20	3	I was treated the same as everyone else?						62	1	25	63	0.984127	0.015873016	1			

Access & Fairness Survey Majuro Ebeye Results majuro charts Sheet1 ebeye charts

Ready

100%

11:27 AM 3/12/2012

- Once all response data have been entered, highlight the cells as below, right click within the selected area then click 'Format Cells'.

Access Survey Results Majuro DECEMBER 2012 - Microsoft Excel non-commercial use

Home Insert Page Layout Formulas Data Review View

Clipboard Font Alignment Number Styles Cells Editing

Calibri 11

Number \$ % ' & #

Conditional Formatting as Table Cell Styles Insert Delete Format

AutoSum Fill Clear Sort & Find & Filter Select

L6 =H6/K6

Section I: When you came to the Courthouse today:				N/A	total responses	yes %	no %	total %
1	Finding the Courthouse was easy	0	99	0.96	0.04	1.00		
2	Getting to the court was easy	1	98	0.92				
3	Forms I needed were clear and easy to understand	12	86	0.98				
4	I felt safe in the Courthouse	0	100	0.95				
5	I was able to get the information I needed	5	88	1.00				
6	I was able to get my court business done in a reasonable amount of time	1	98	0.94				
7	Court staff paid attention to my needs	0	98	0.98				
8	I was treated with courtesy and respect	1	97	1.00				
9	I easily found the courtroom or office I needed	9	92	0.96				
10	I checked the Court's website and it was useful	35	62	0.79				
11	The Court's hours of operation made it easy for me to do my business	4	94	0.97				
Section II: If you saw a judge today:				N/A	total responses	yes %	no %	total %
1	My case was handled fairly?	35	57	0.912281	0.087719298	1		
2	Judge listened to my side of the story before he/she made a decision?	35	52	0.942308	0.057692308	1		
3	I was treated the same as everyone else?	25	63	0.984127	0.015873016	1		
4	As I leave the court, I know what to do next about my case?	26	61	100%				

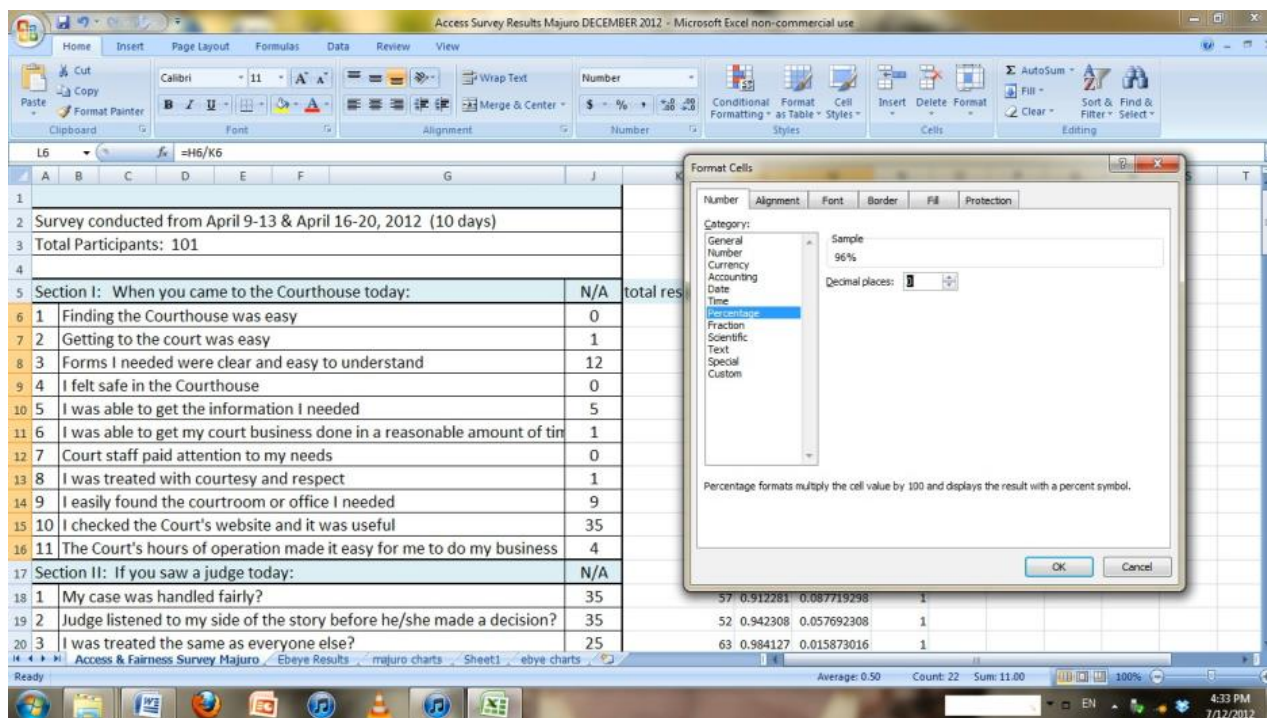
Access & Fairness Survey Majuro Ebye Results majuro charts Sheets ebye charts

Ready Average: 0.67 Count: 33 Sum: 22.00 100%

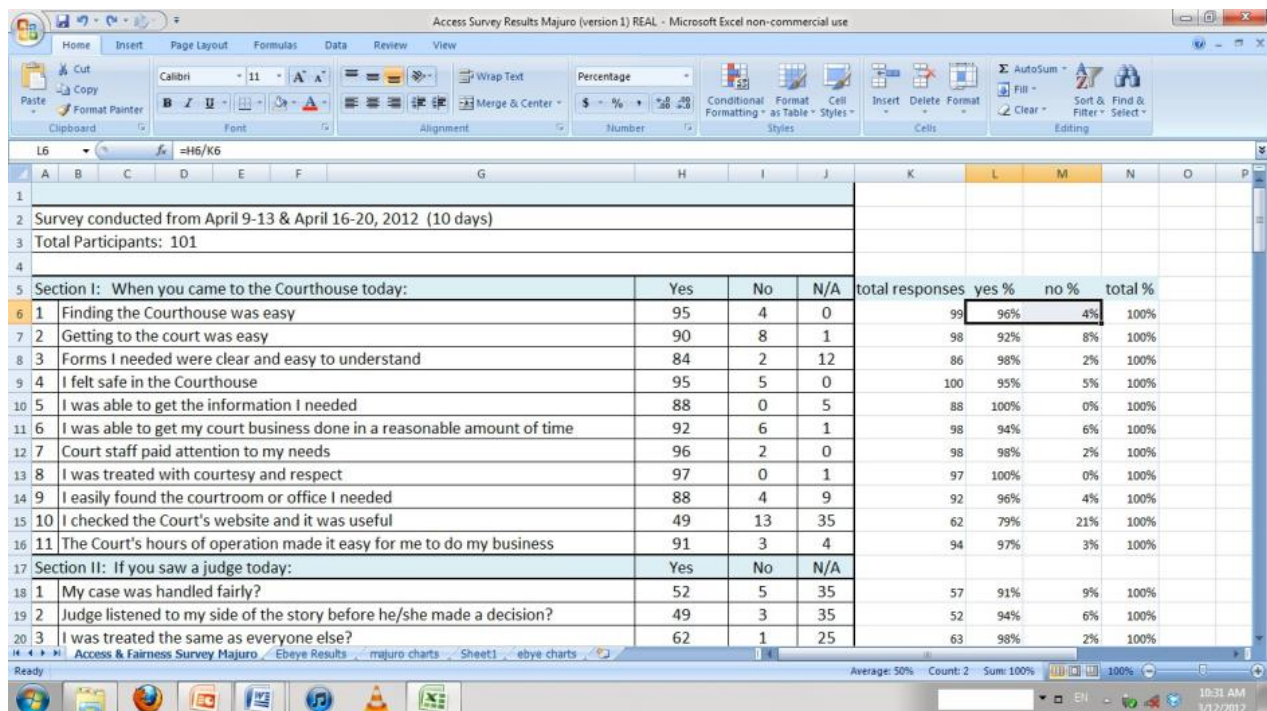
4:37 PM 7/12/2012



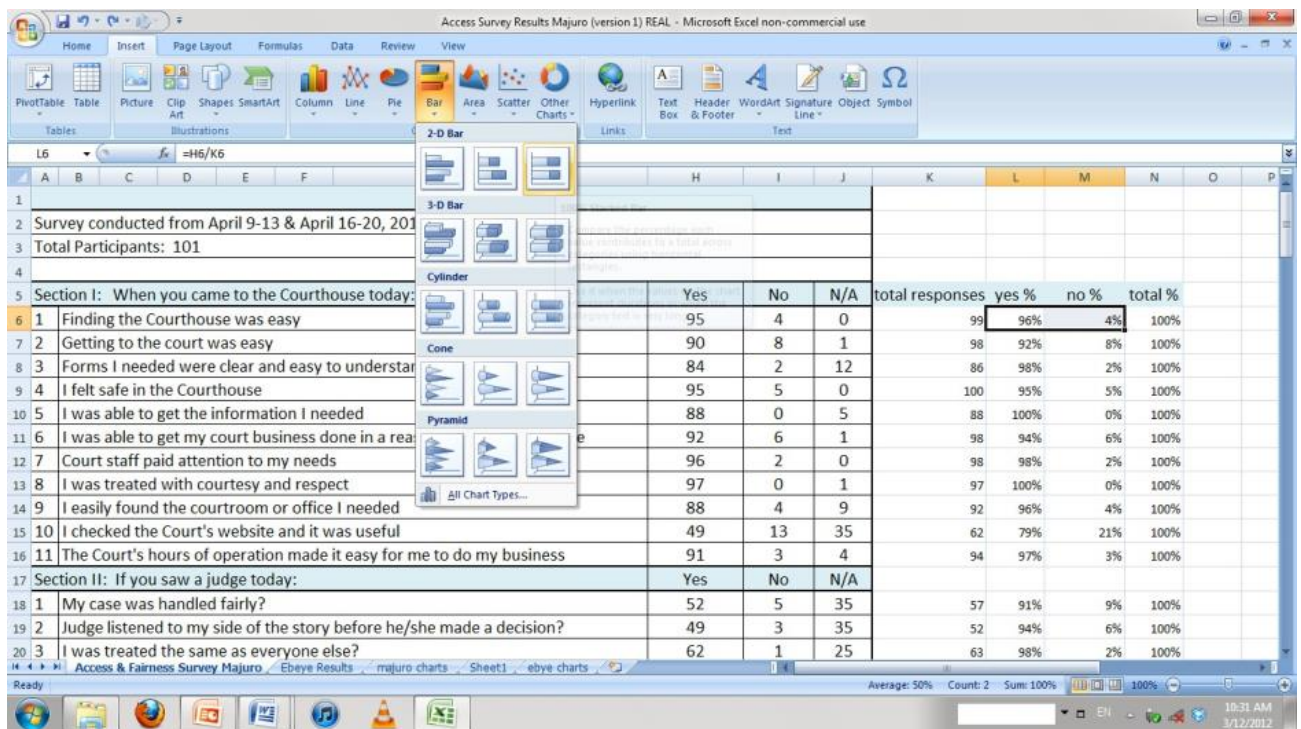
- Click on 'Percentage', and then click on the down arrow next to 'Decimal Places' to zero. Click OK.



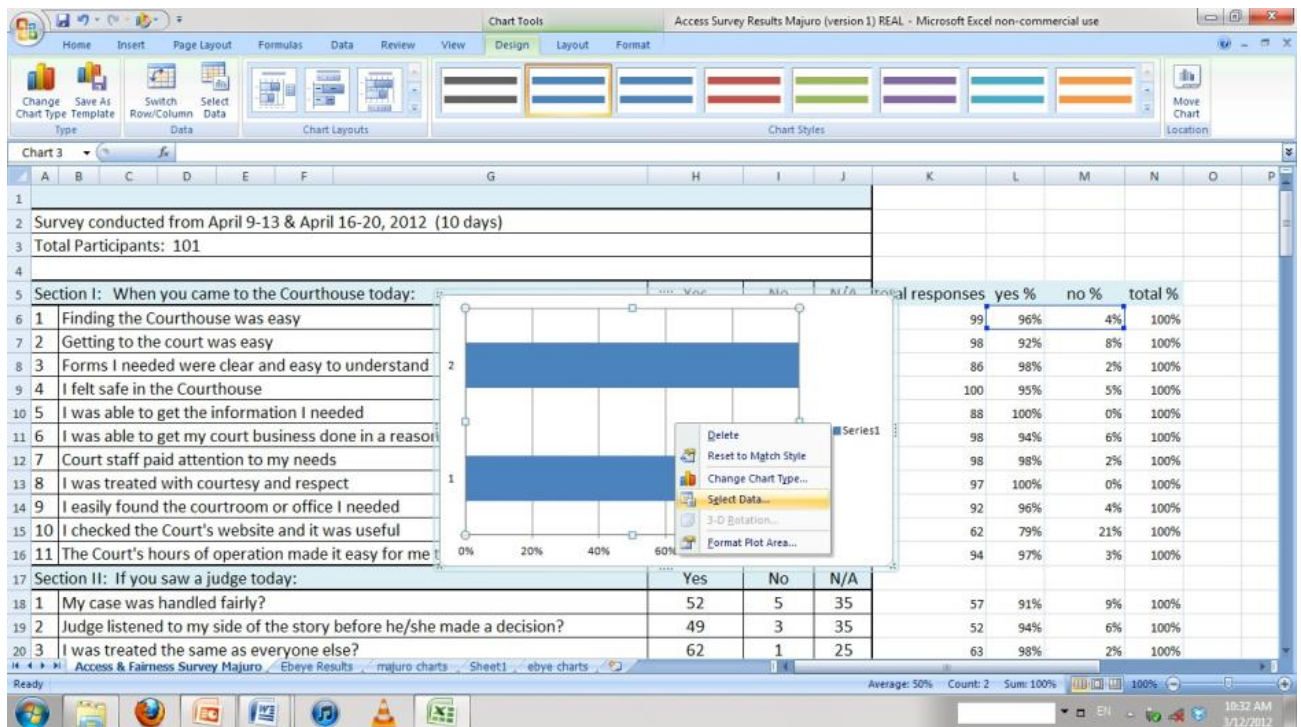
- Select the cells for the 'yes %' and 'no %' responses for a survey question.



- Select the 'Insert' tab at the top of the screen, then 'Bar' for the type of chart, then '100% Stacked' for the type of bar chart. A graph will pop on to the screen.

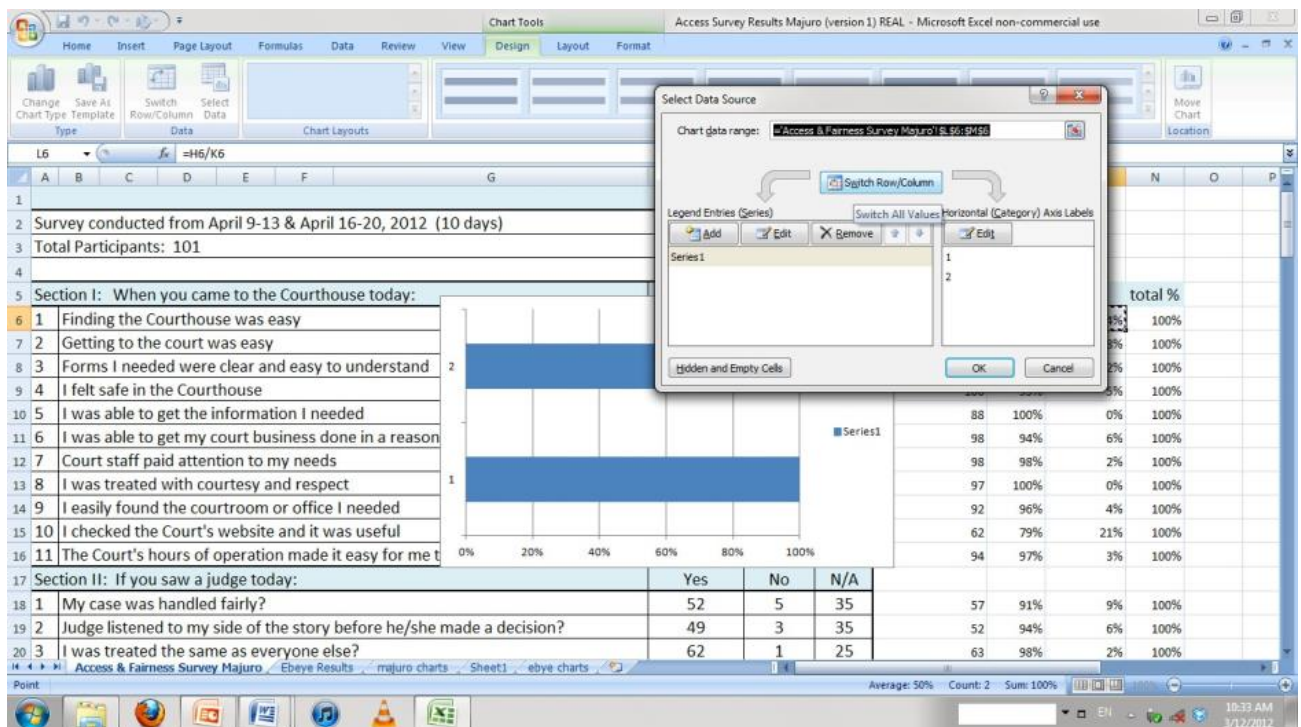


- Right click within the chart area and click on 'Select Data'.

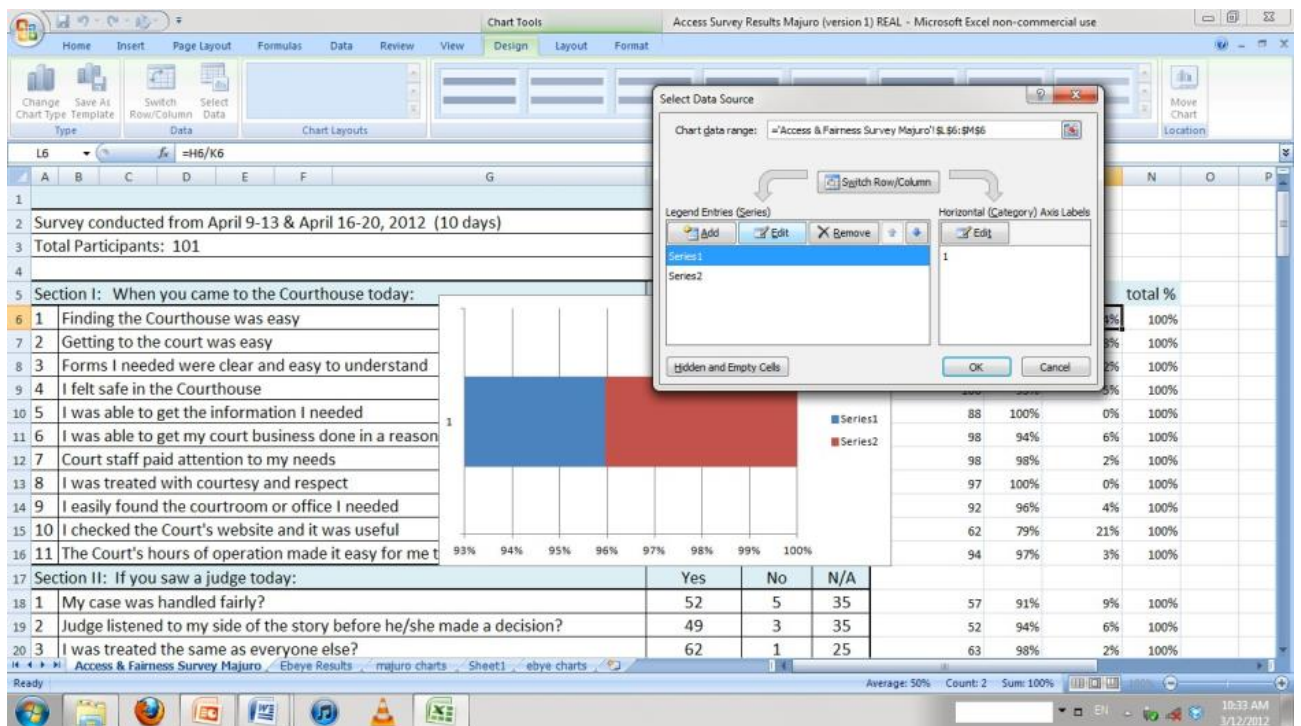




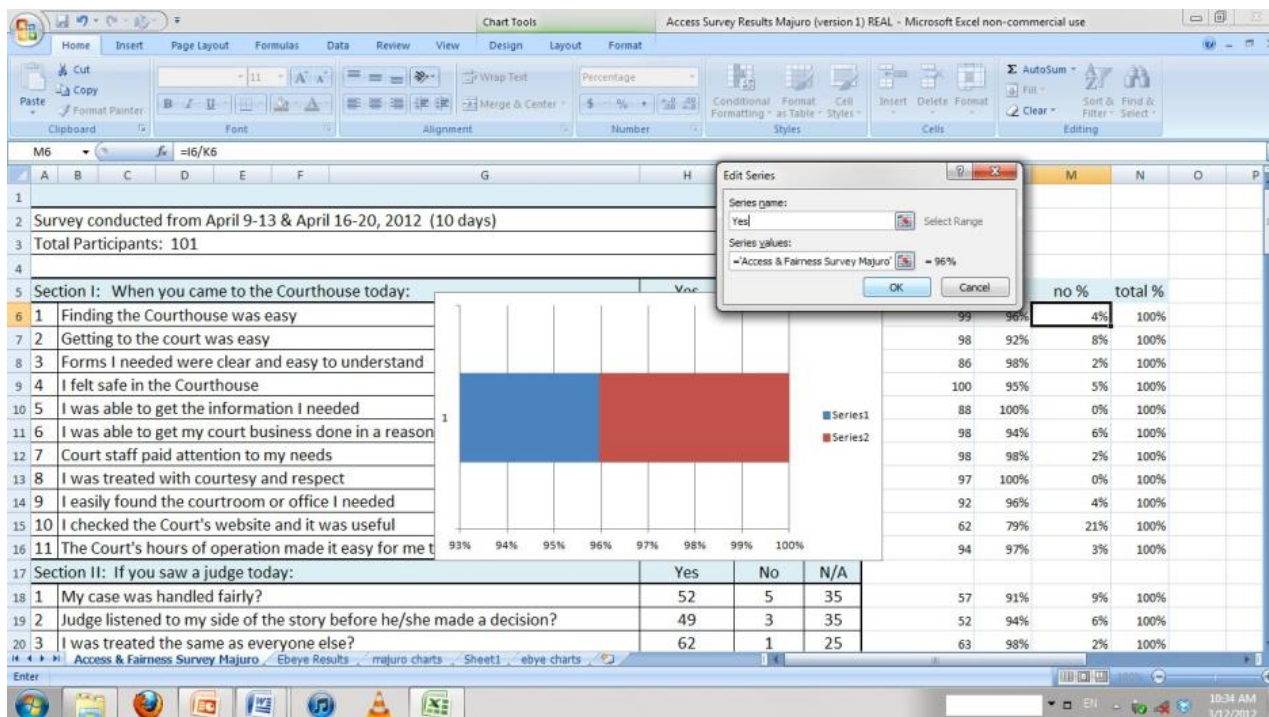
8. In the centre of the pop-up window, click 'Switch Row/Column'.



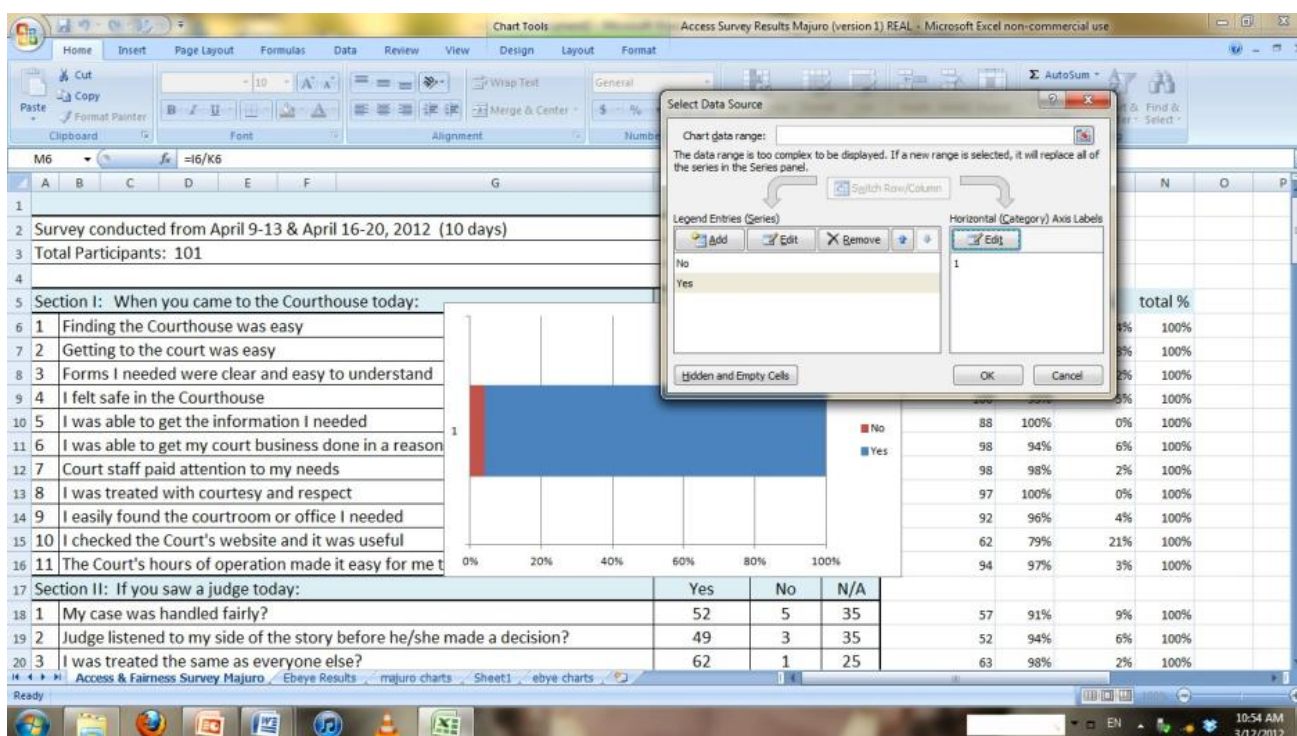
9. Click on 'Series 1' in the 'Legend Entries' box (centre, left), then click on 'Edit'



- Enter the survey answer to which the data corresponds to (in this case, 'Yes' is to be typed into the 'Series name' box). Click OK. Complete the same steps to rename 'Series 2'.

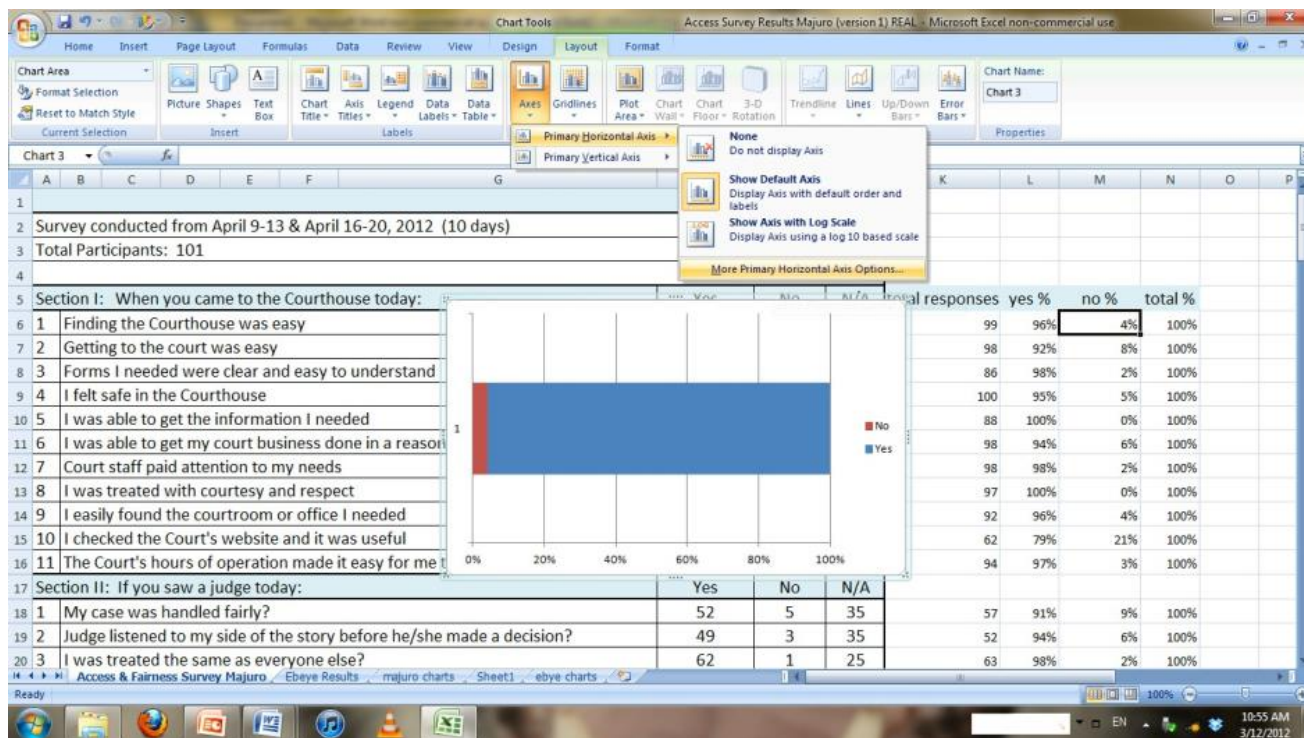


- As you can see above, the axis is only starting at 93% rather than 0%. To fix this, click the up or down arrow in the 'Legend entries' box once, which should shift the axis to a starting point of 0%. Click OK.

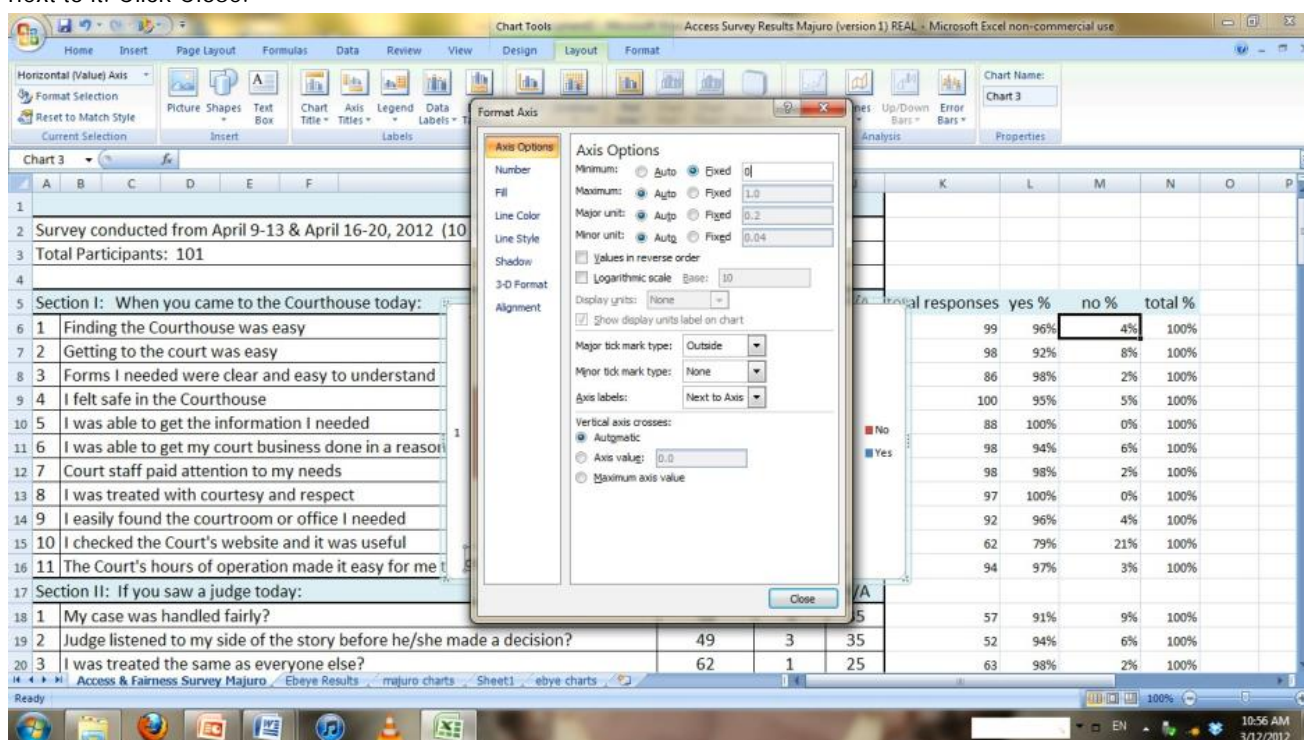




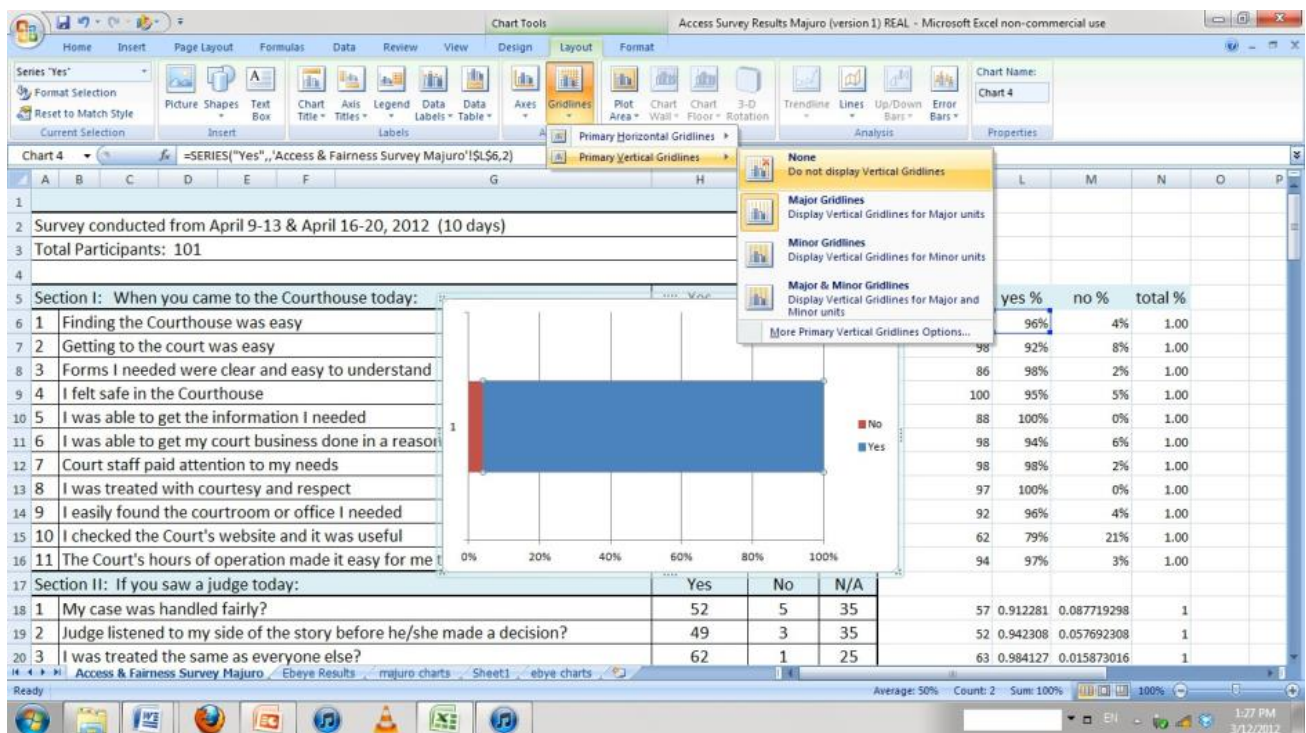
- 11A. Only complete 11A & 11B if step 11 did not work. In the 'Layout' tab of the chart tools at the top of screen, click 'Axis', then hover over 'Primary Horizontal Axis', then click 'More Primary Horizontal Axis Options'.



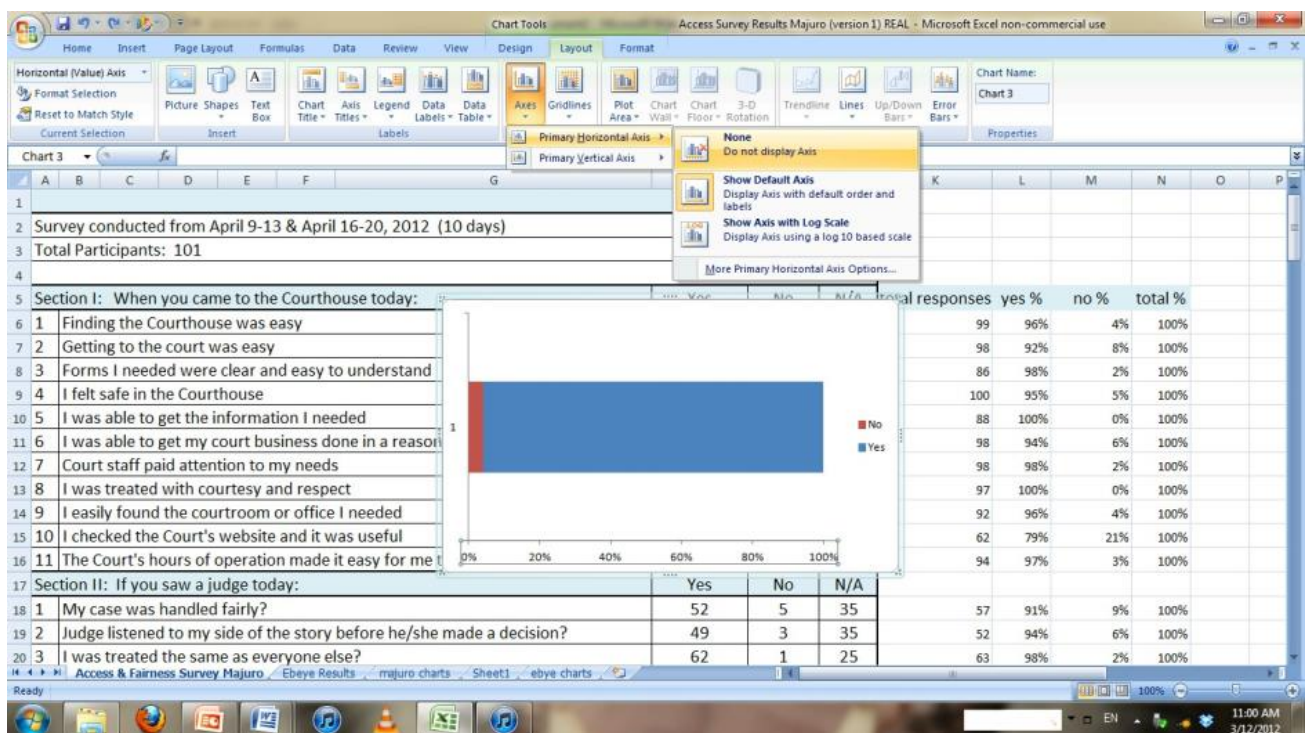
- 11B. In the pop up screen under 'Axes Options', change the 'Minimum' to 'Fixed' and then type 0 into the box next to it. Click Close.



12. To remove the gridlines, in the 'Layout' tab click 'Gridlines', hover over 'Primary Vertical Gridlines', then click 'None'.

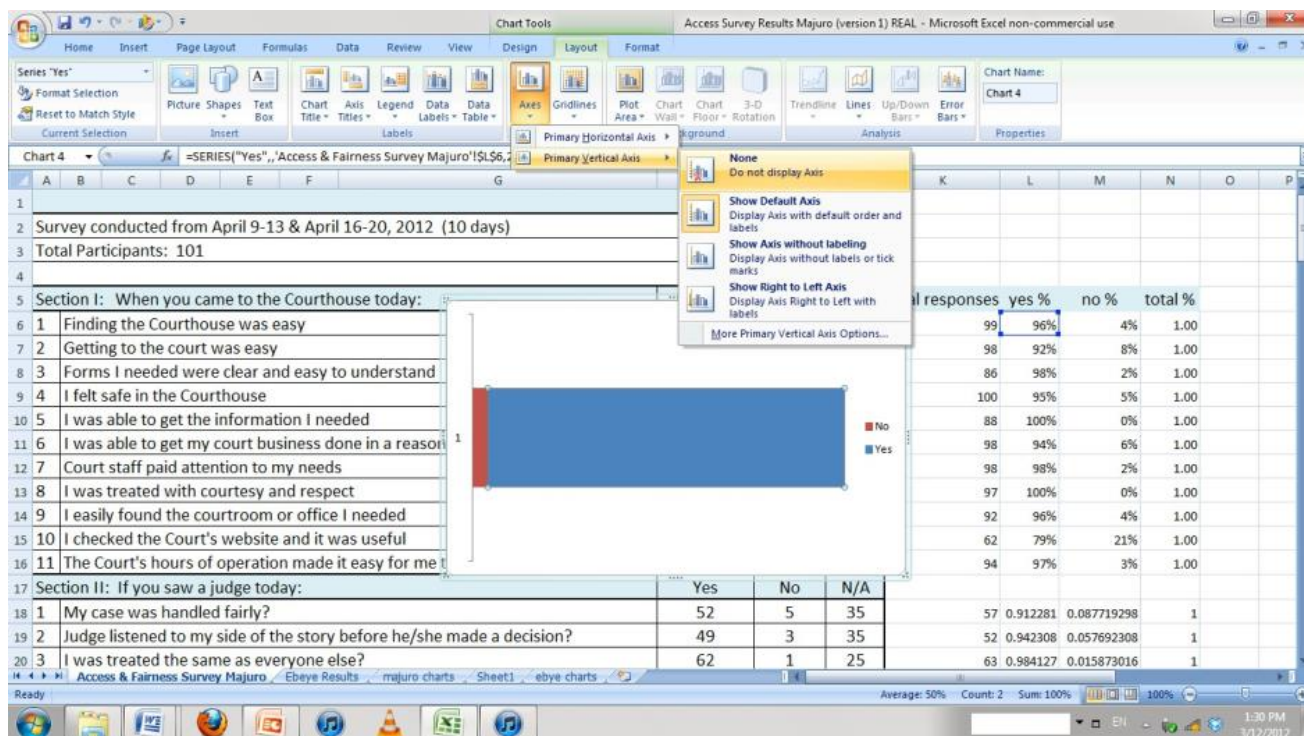


13. Click on 'Axes' in the 'Layout' tab, hover over 'Primary Horizontal Axis' and click 'None'.

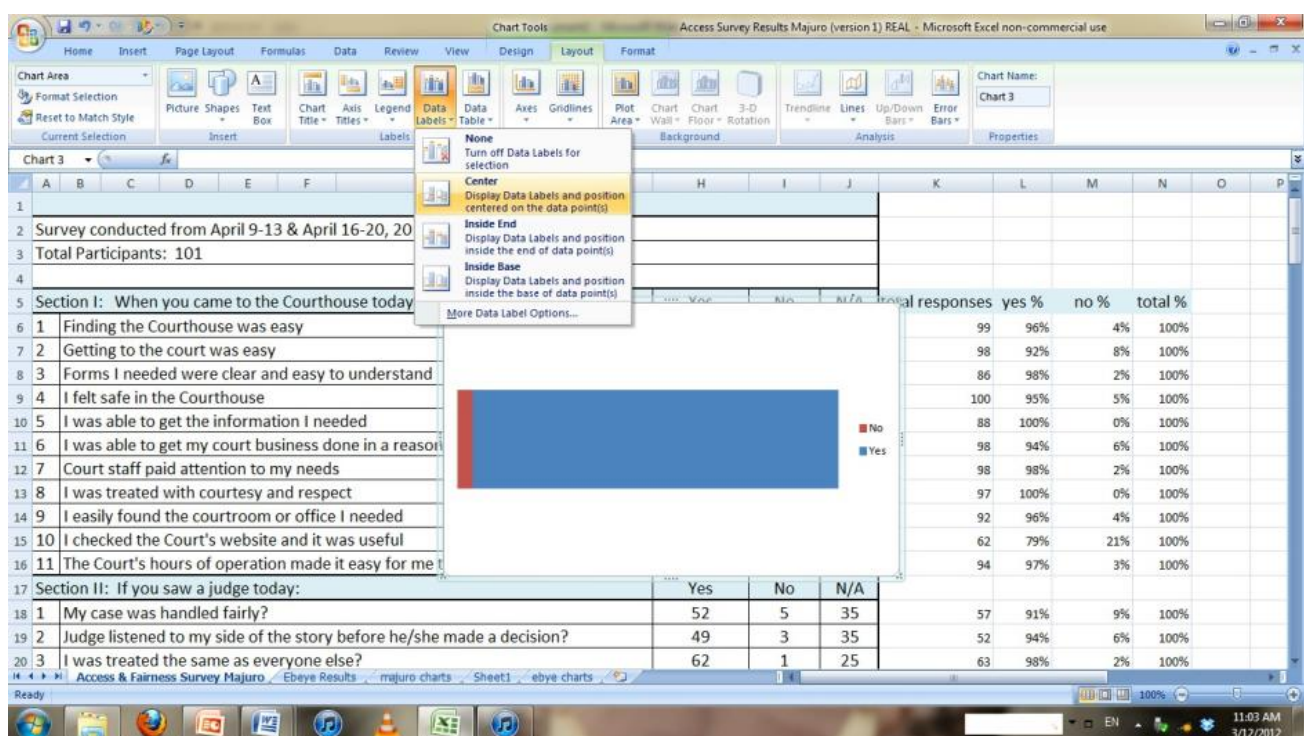




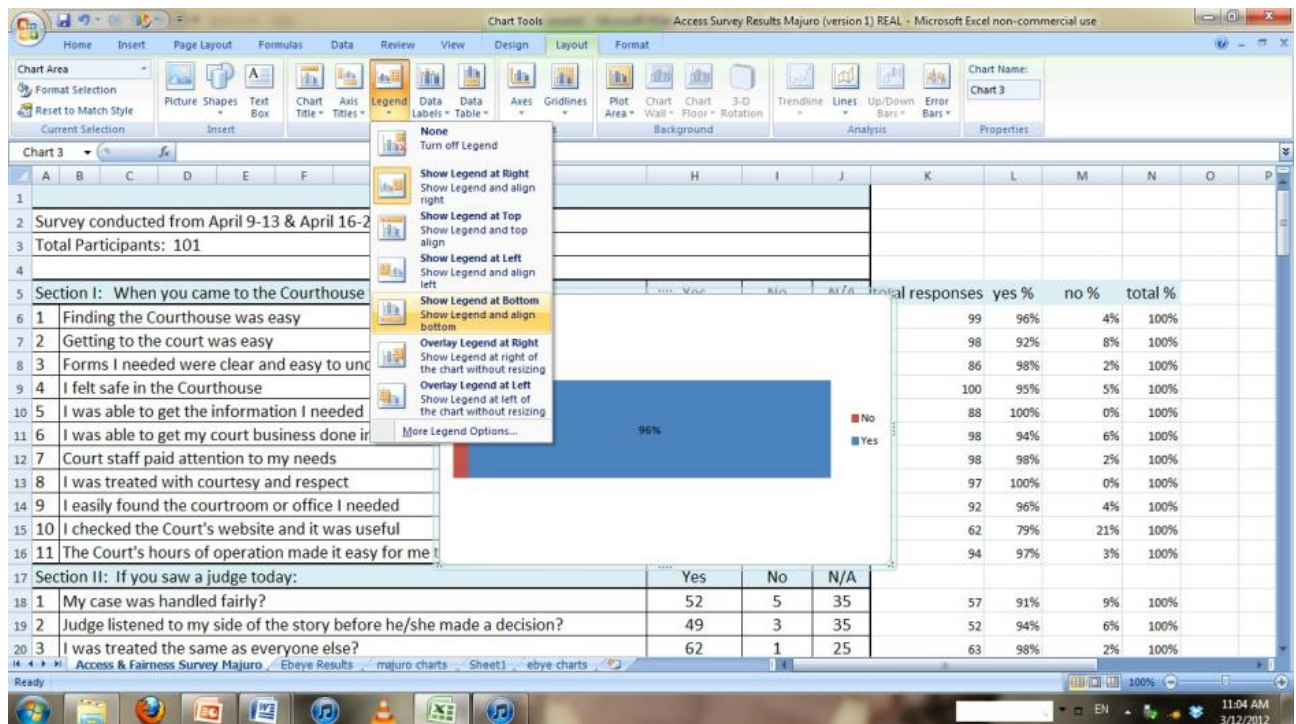
14. Click on 'Axes' again in the 'Layout' tab, hover over 'Primary Vertical Axis' and click 'None.'



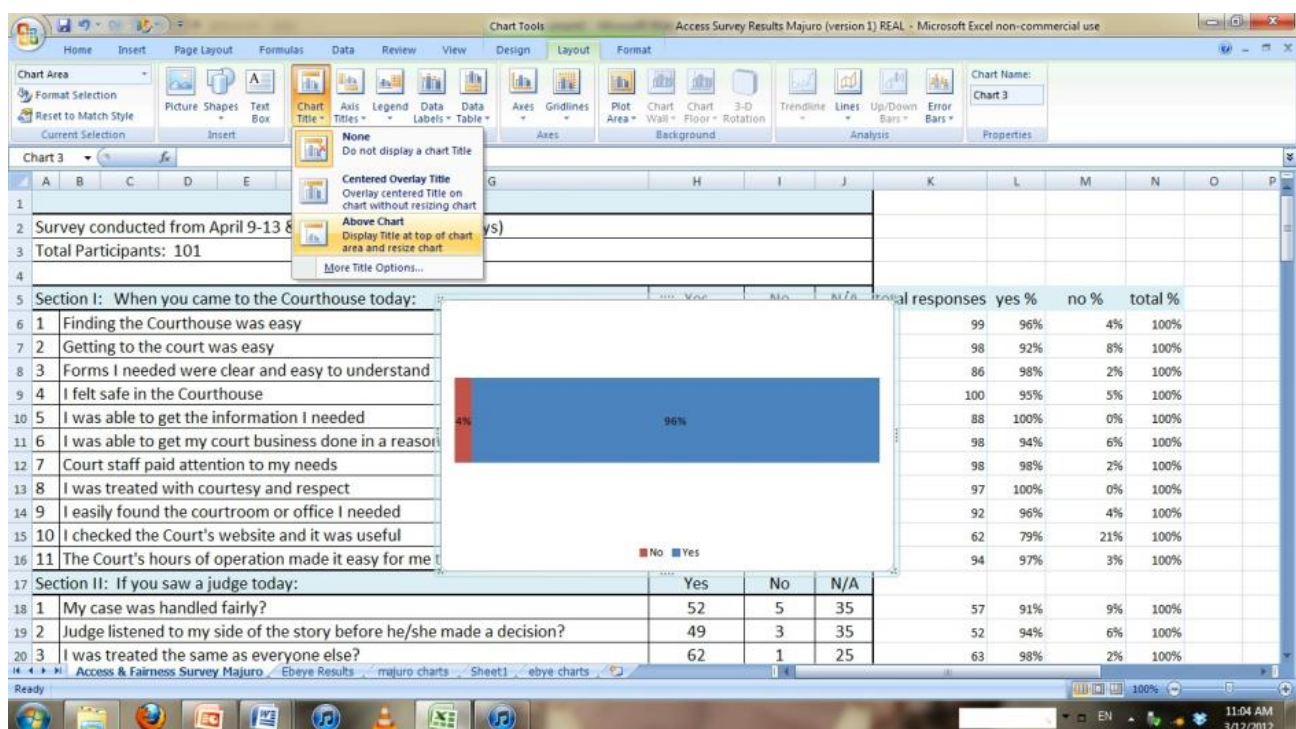
15. In the 'Layout' tab, select 'Data labels' then click 'Center'. This will display the percentage amounts for each section within the chart.



16. To re-locate the legend, in the 'Layout' tab, select 'Legend', then click 'Show Legend at Bottom' (or whichever location you'd like the legend in).

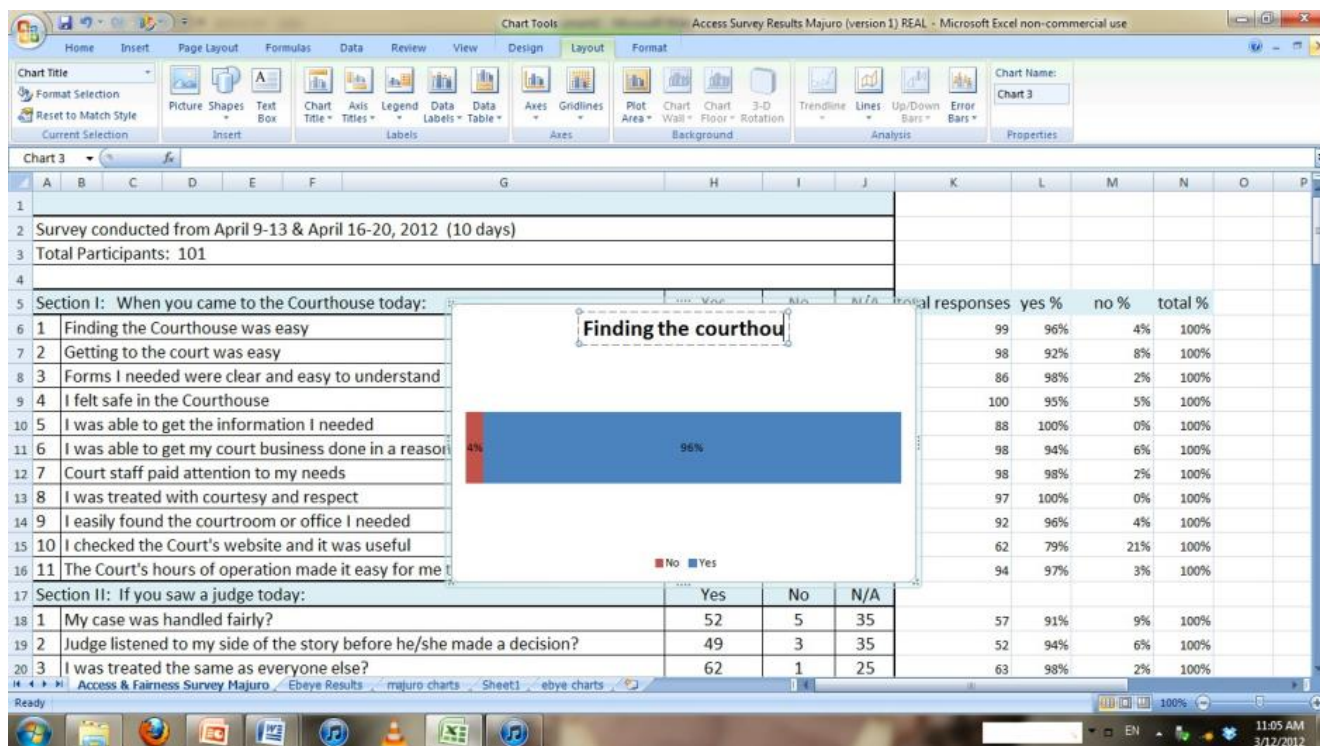


17. To insert a name for the chart, in the 'Layout' tab, click on 'Chart title', then 'Above Chart' and a text box will appear.

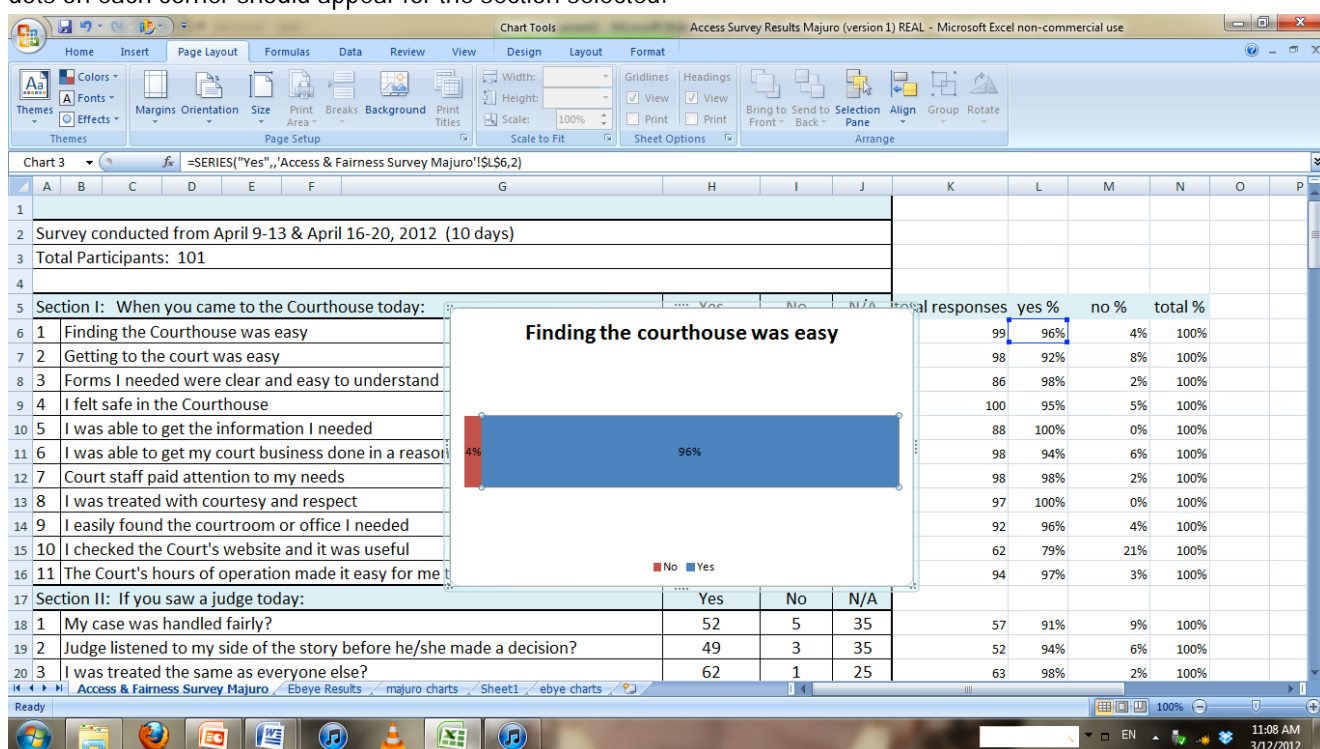




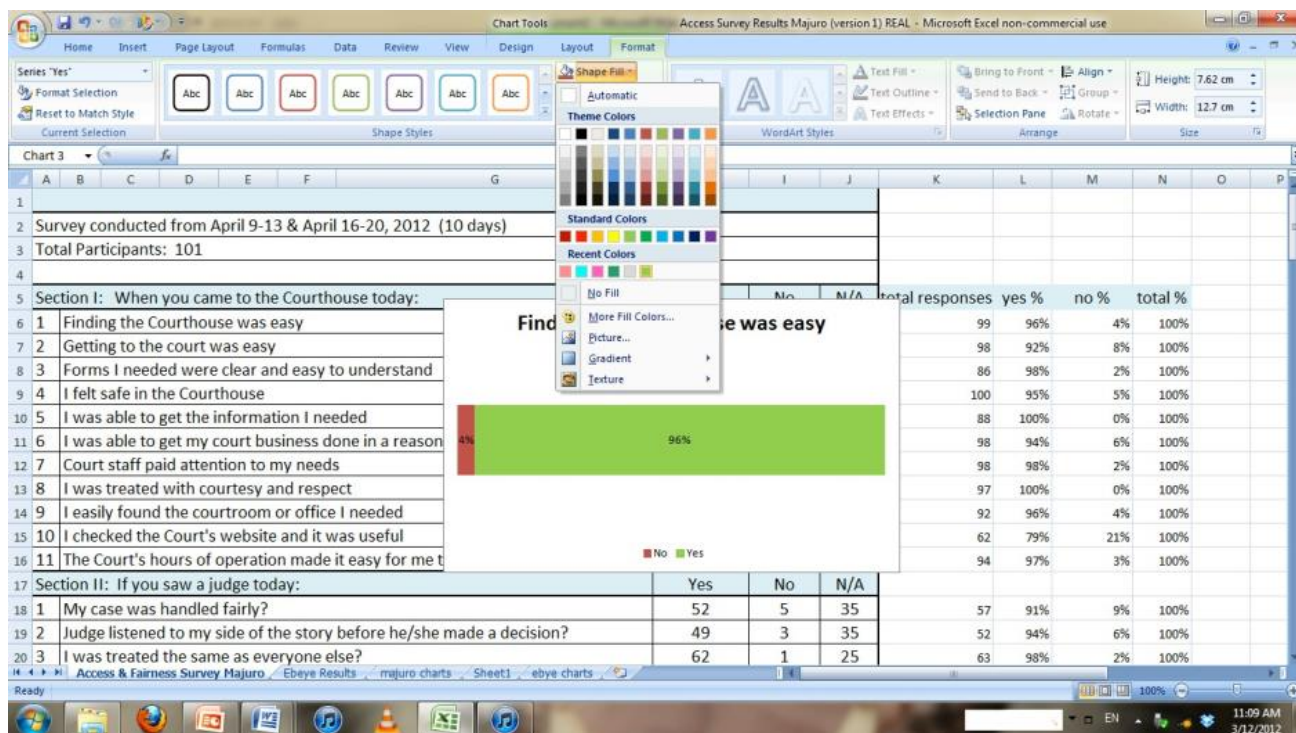
18. Replace the text within the text box with the wording of the survey question. Font size and style can be adjusted in the 'Home tab'.



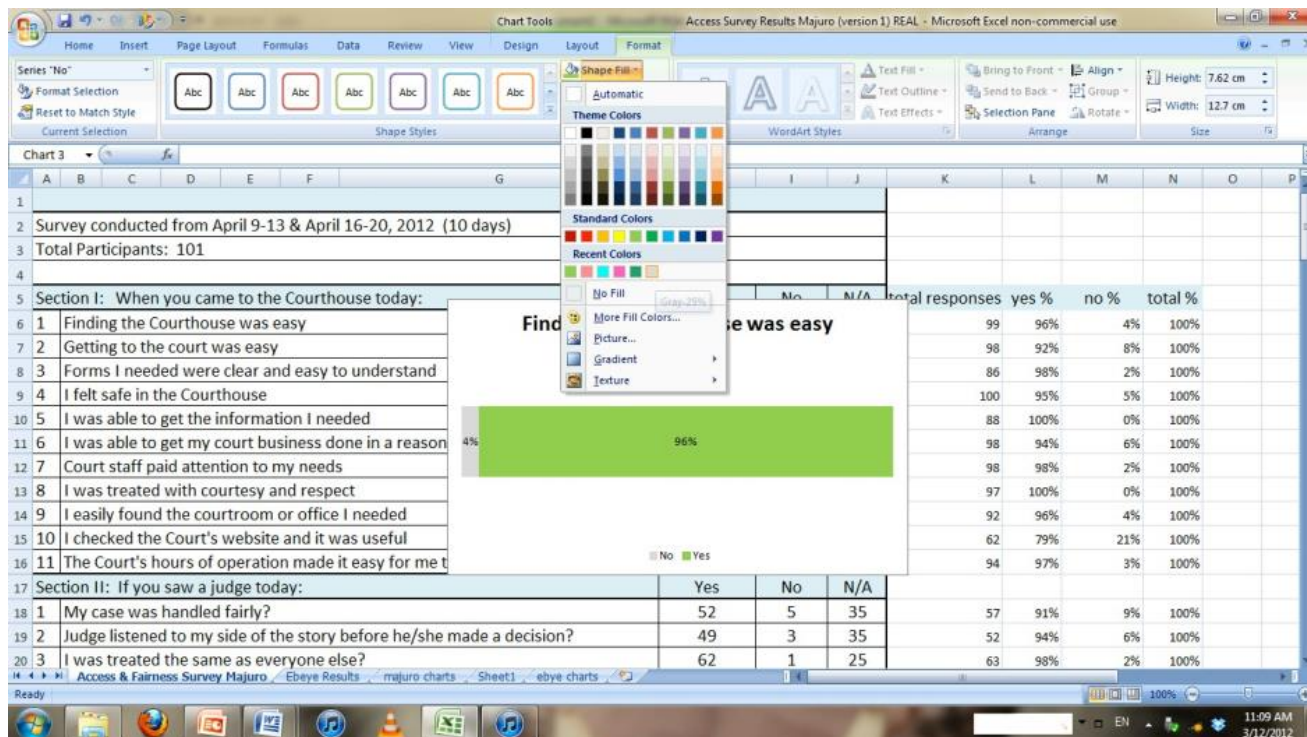
19. To change the colours in the graph for each section, click the section you would like to change first. Small dots on each corner should appear for the section selected.



20. Under the 'Format' tab of the Chart Tools, click on 'Shape Fill' and select a colour.

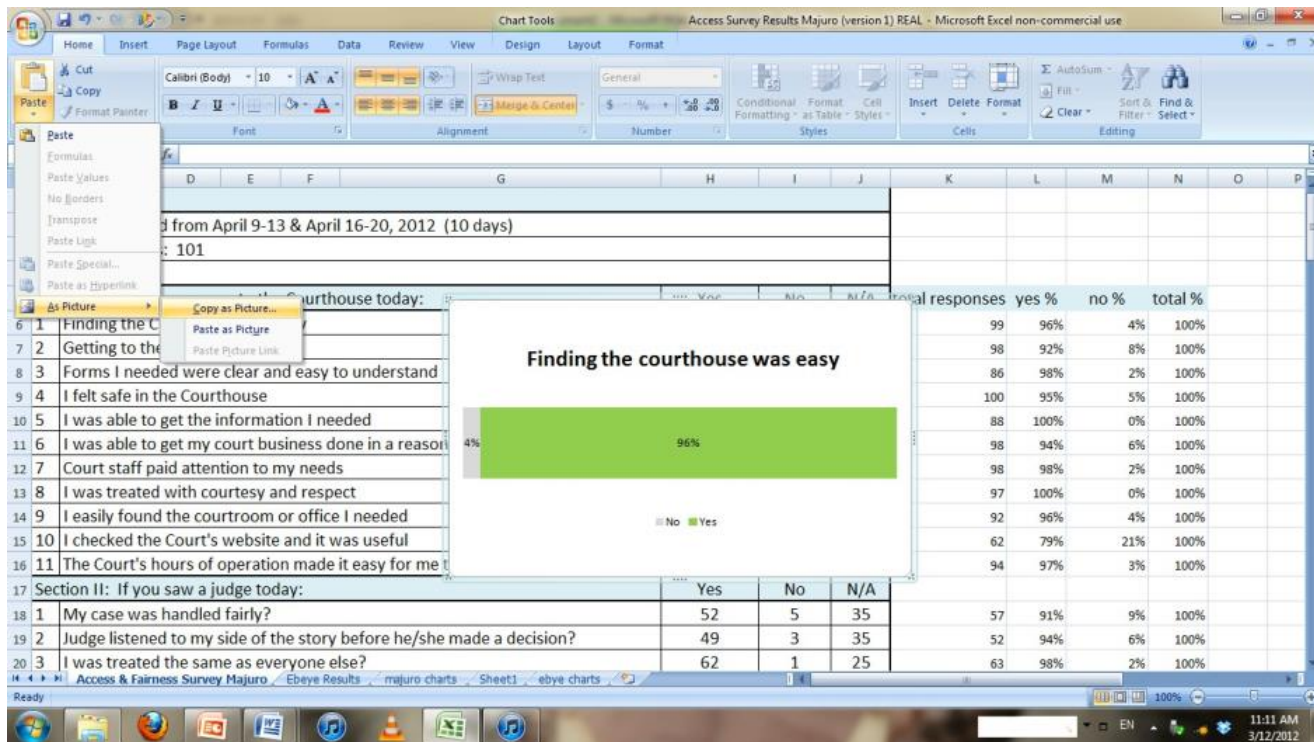


21. Complete the same steps for the remaining section of the chart to be re-coloured

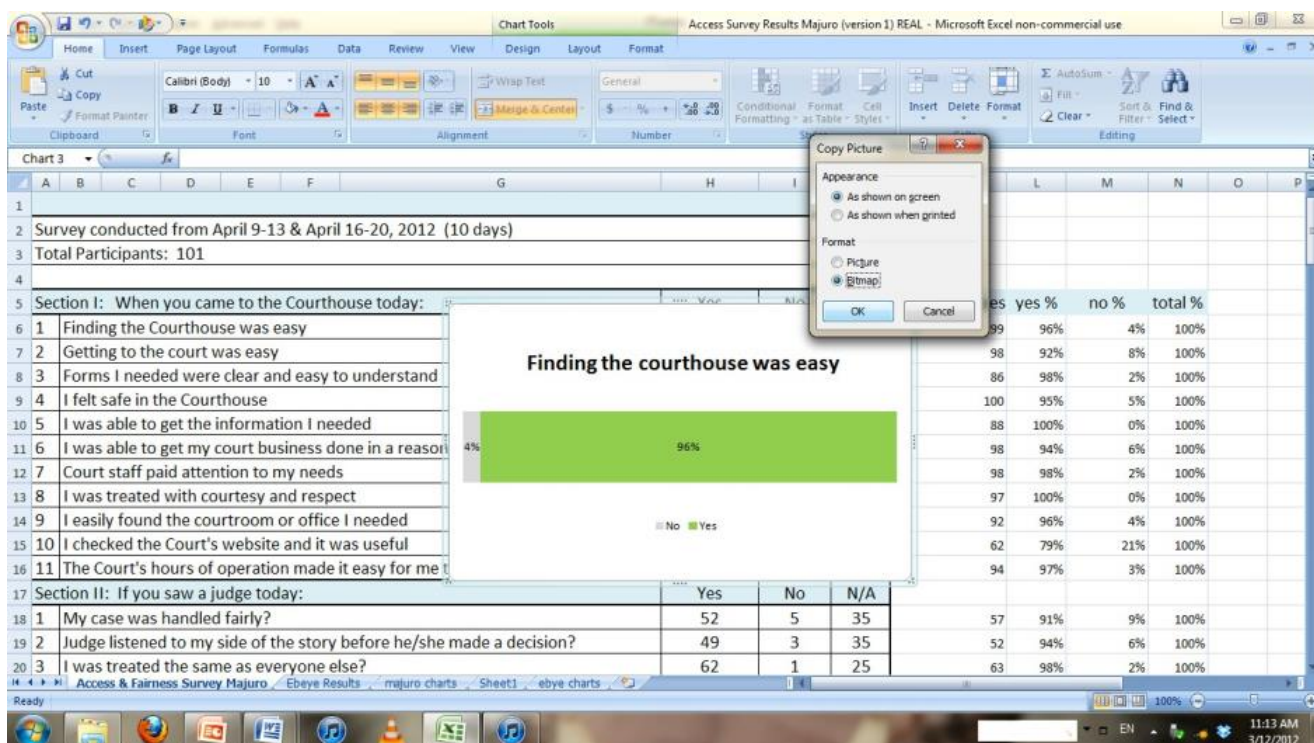




22. When the chart is complete, if you would like to place it into a word document or PowerPoint slide, click on the 'Home' tab, then click the arrow below the 'Paste' clipboard, hover over 'As picture' and select 'Copy as picture'.

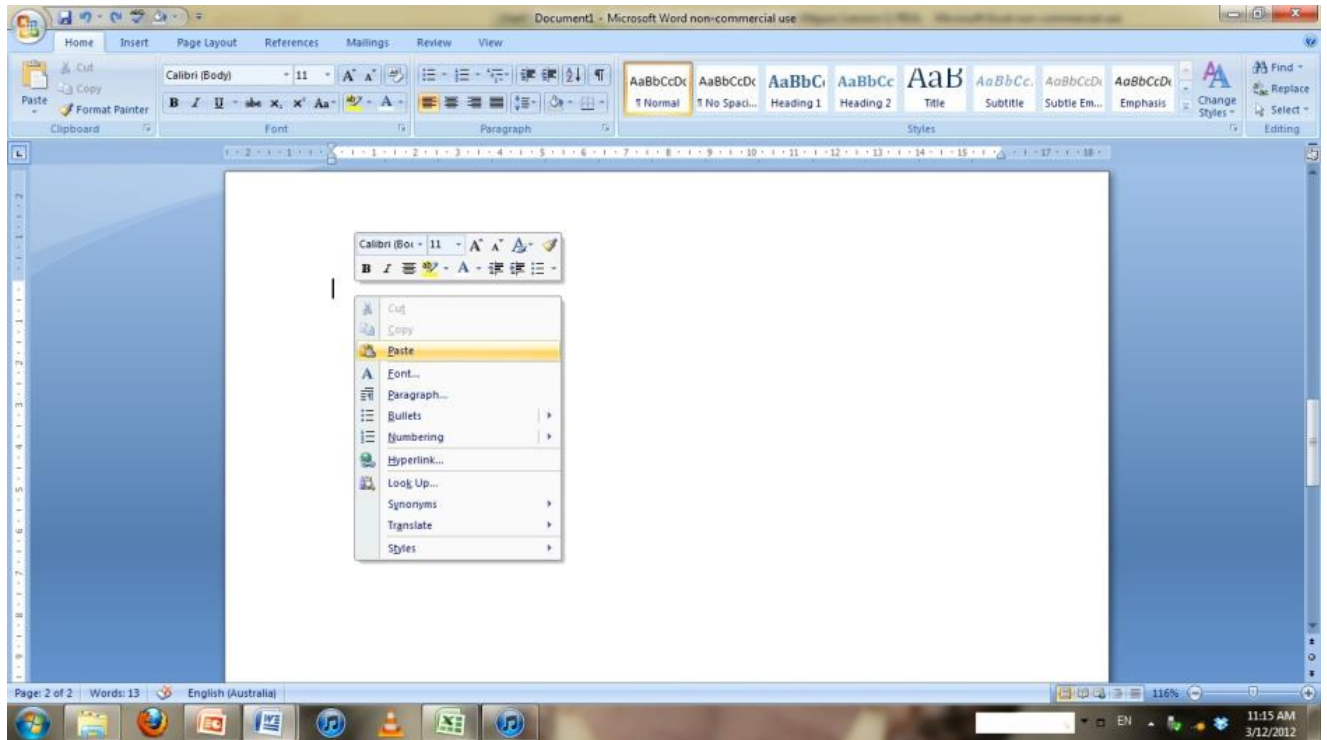


23. In the pop-up box, select 'As shown on screen' for Appearance, and 'Bitmap' for Format. Click OK.

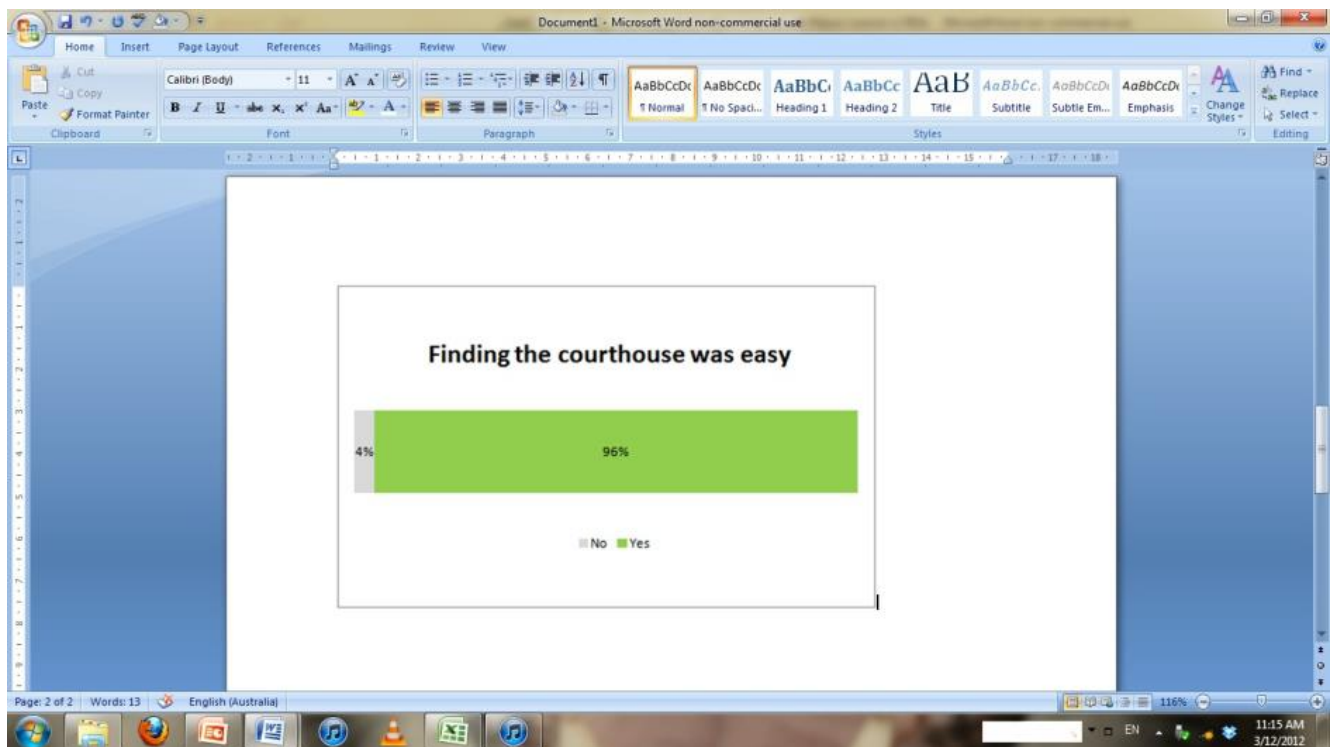




24. In a word document or Power Point slide, right-click to paste the graph.



25. Now that the chart is in a new program, it is a picture file. It can be resized, though it may lose some quality. Size changes are best made beforehand in the excel sheet. Any changes to the data or chart design will need to be done in excel, and a new copy of the chart pasted into the document.



Finished.

## Column Graph Guide

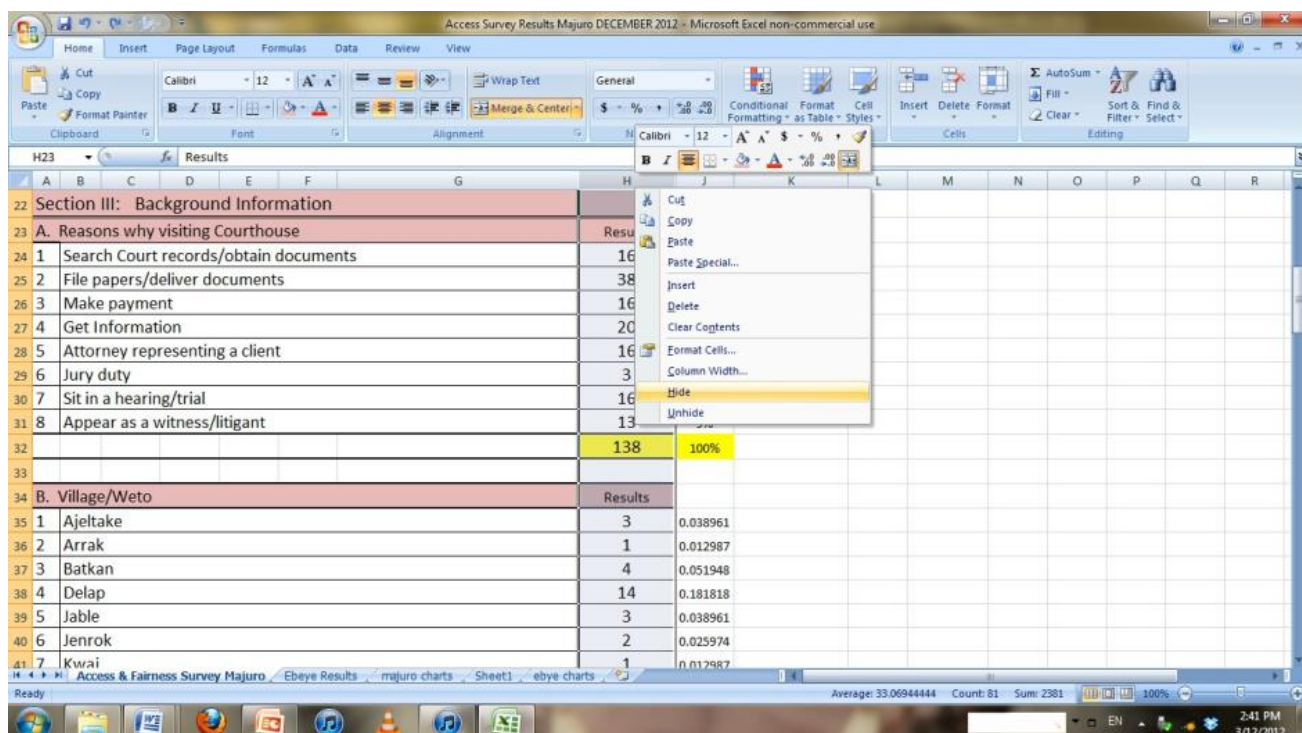
1. Enter all raw survey response data into an excel spreadsheet. In the bottom cell (highlighted in yellow), use the 'AutoSum' button to calculate the amount of total responses.

Section III: Background Information		Results
A. Reasons why visiting Courthouse		
1	Search Court records/obtain documents	16
2	File papers/deliver documents	38
3	Make payment	16
4	Get Information	20
5	Attorney representing a client	16
6	Jury duty	3
7	Sit in a hearing/trial	16
8	Appear as a witness/litigant	13
		138
B. Village/Weto		Results
1	Ajeltake	3
2	Arrak	1
3	Batkan	4
4	Delap	14
5	Jable	3
6	Jenrok	2
7	Kwai	1

2. In an extra column, calculate the proportion of each response to the total by dividing the number of responses to an option by the total number of responses. For example, in Question 1 below, 16 responses to 'Search court records' divided by 138 total responses equals 0.1159. This can be done in excel by entering a simple text formula into the cell: =16/138 and then pressing enter.

Section III: Background Information			
A. Reasons why visiting Courthouse		Results	Results %
1	Search Court records/obtain documents	16	0.1159
2	File papers/deliver documents	38	0.2754
3	Make payment	16	0.1159
4	Get Information	20	0.1449
5	Attorney representing a client	16	0.1159
6	Jury duty	3	0.0217
7	Sit in a hearing/trial	16	0.1159
8	Appear as a witness/litigant	13	0.0942
		138	1
B. Village/Weto		Results	
1	Ajeltake	3	0.038961
2	Arrak	1	0.012987
3	Batkan	4	0.051948
4	Delap	14	0.181818
5	Jable	3	0.038961
6	Jenrok	2	0.025974
7	Kwai	1	0.012987

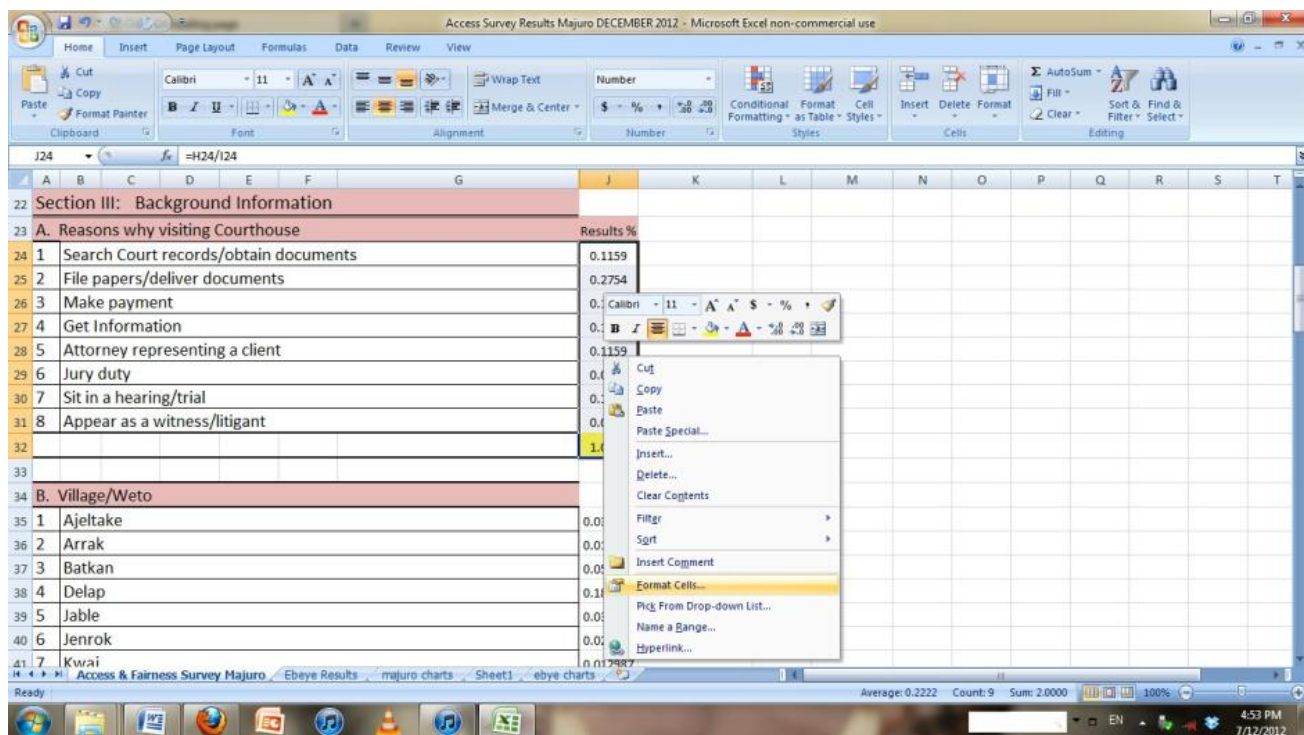
- Right-click the letter at the top of the sheet that corresponds with the 'Results' column (in this case, 'H'), then click 'Hide'. NB: After completing graphs, if you would like to bring this column back on the screen, right-click in between 'H' and 'I' (or whichever letters are on either side of the hidden column), then select 'Unhide' and the column will be visible again.



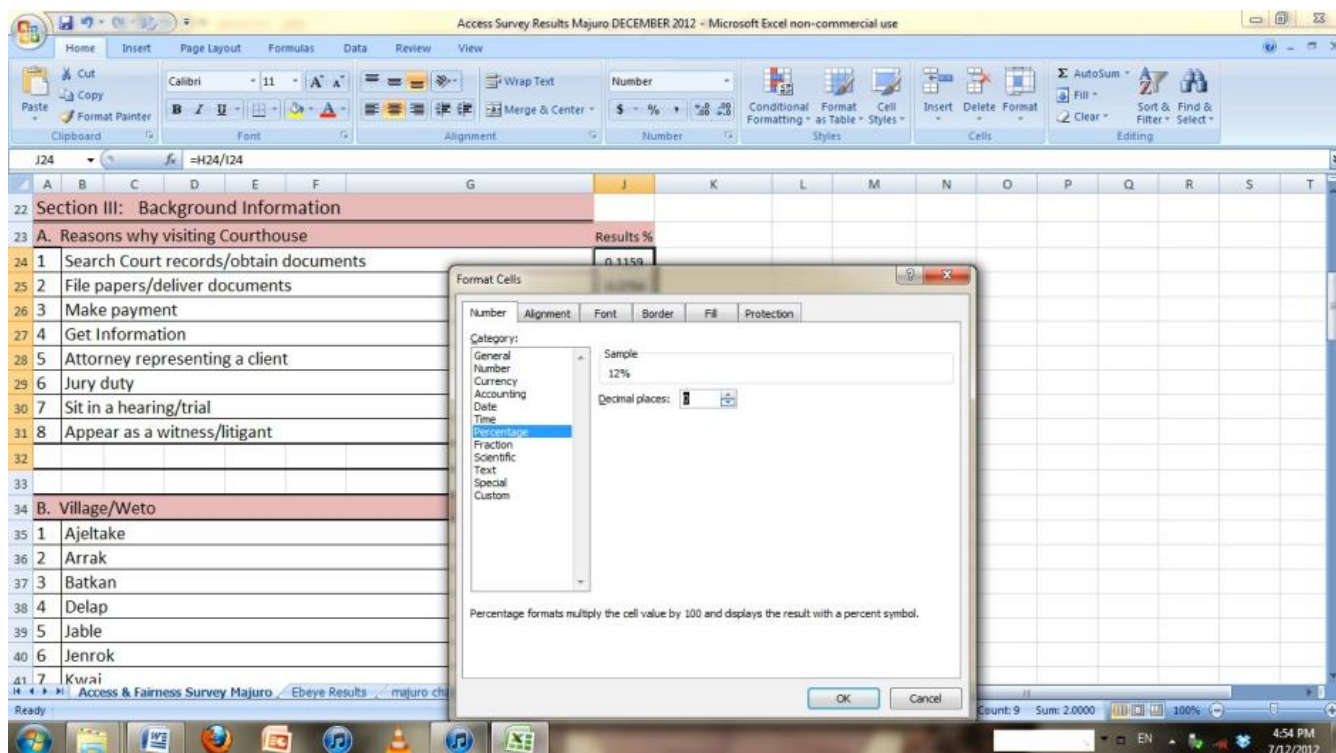
Section III: Background Information			
A. Reasons why visiting Courthouse		Results	Results %
1	Search Court records/obtain documents	16	0.1159
2	File papers/deliver documents	38	0.2754
3	Make payment	16	0.1159
4	Get Information	20	0.1449
5	Attorney representing a client	16	0.1159
6	Jury duty	3	0.0217
7	Sit in a hearing/trial	16	0.1159
8	Appear as a witness/litigant	13	0.0942
		138	100%
B. Village/Weto		Results	
1	Ajeltake	3	0.038961
2	Arrak	1	0.012987
3	Batkan	4	0.051948
4	Delap	14	0.181818
5	Jable	3	0.038961
6	Jenrok	2	0.025974
7	Kwai	1	0.012987



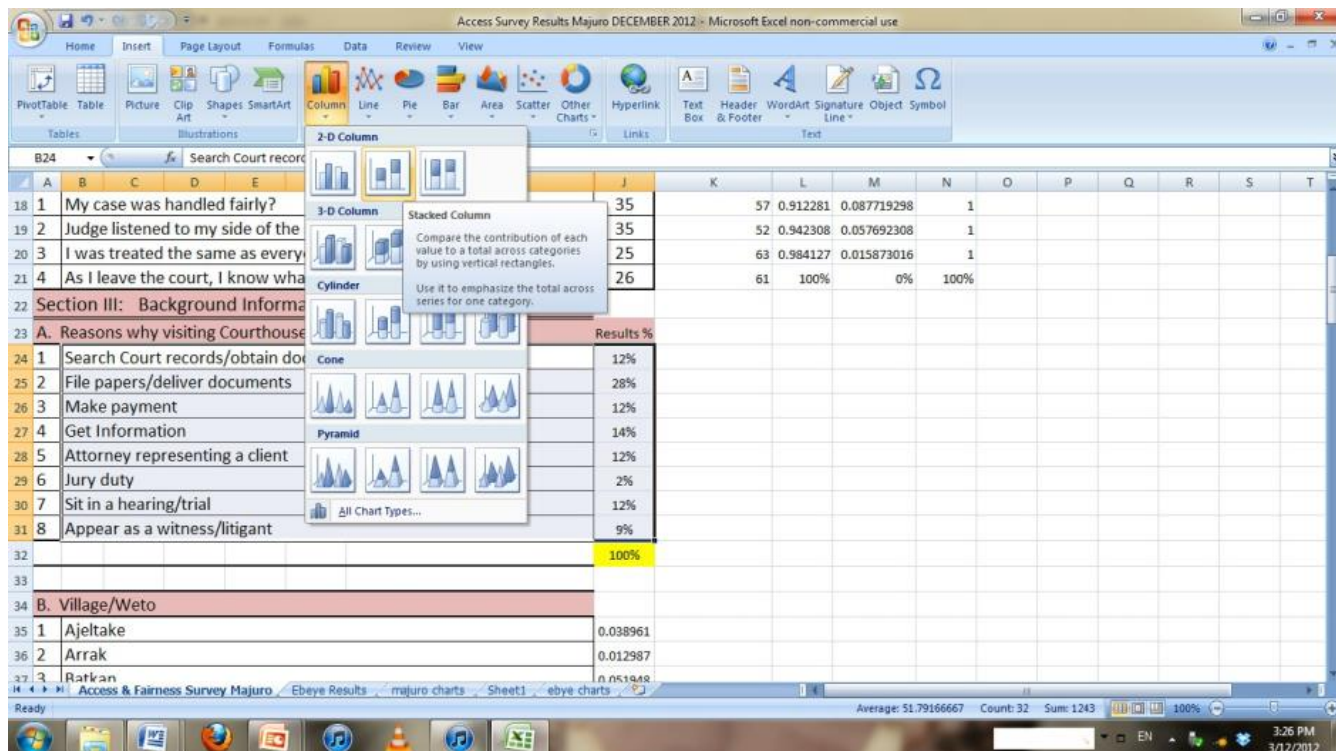
4. Highlight the data in the 'Results %' column, right-click in the selected area, and click 'Format Cells'.



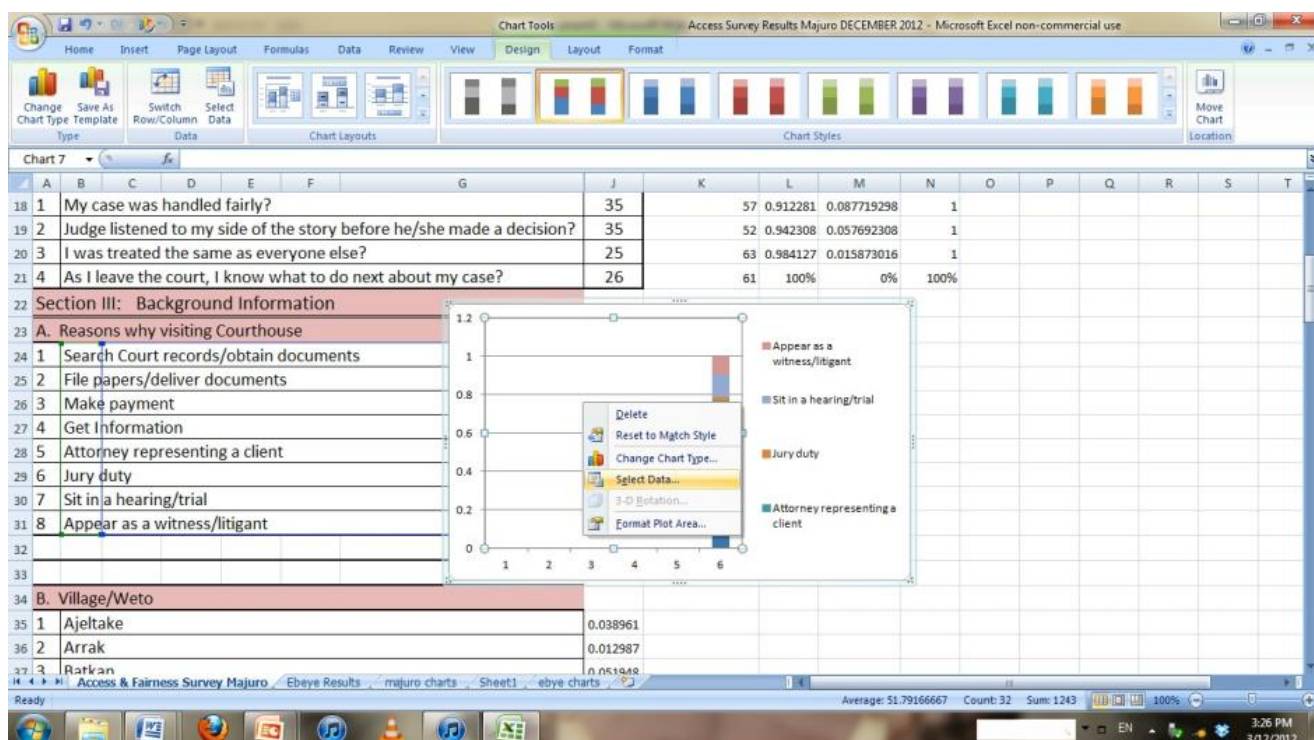
5. Click on 'Percentage', and then click on the down arrow next to 'Decimal Places' to zero. Click OK.



- Highlight data in the 'Results %' column and the options respondents have selected by clicking and dragging (make sure not to include the question numbers on the left or total % at the bottom). Click on the 'Insert' tab, then click on 'Column' for chart type, then select 'Stacked Column'.

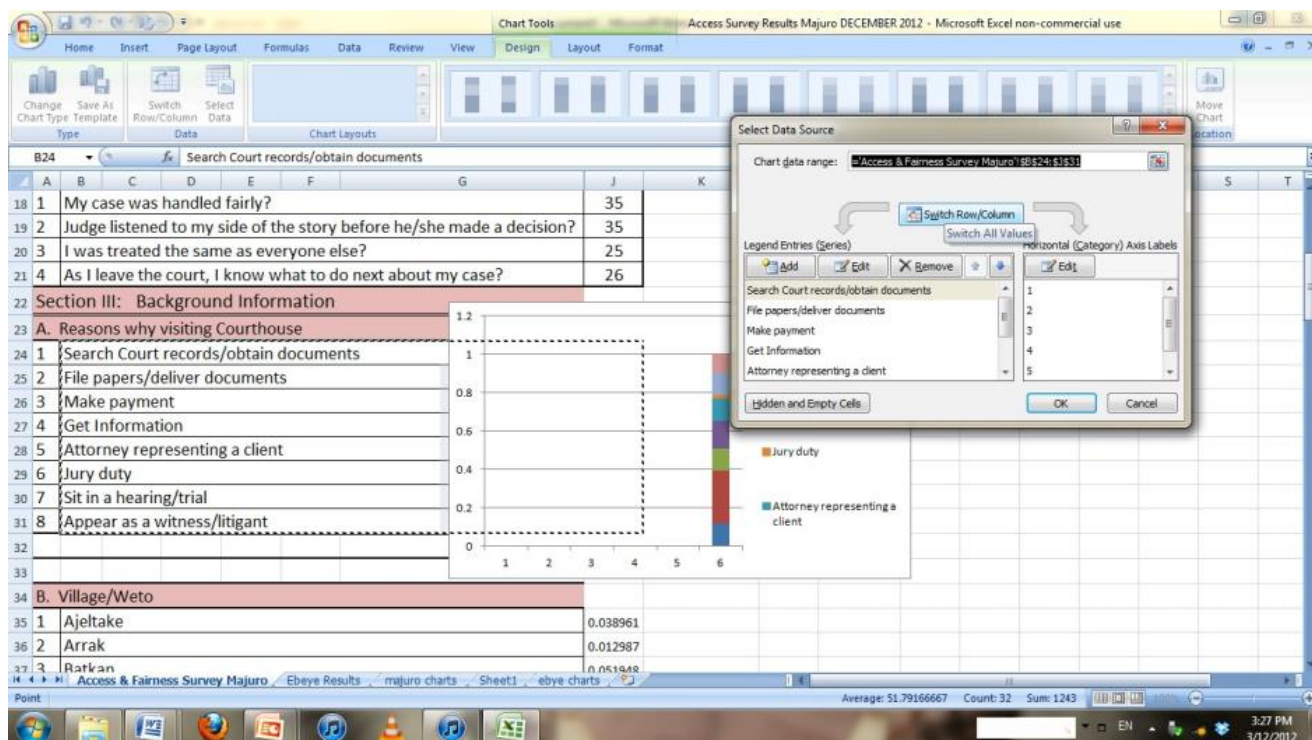


- Right click within the chart area and click on 'Select data'.

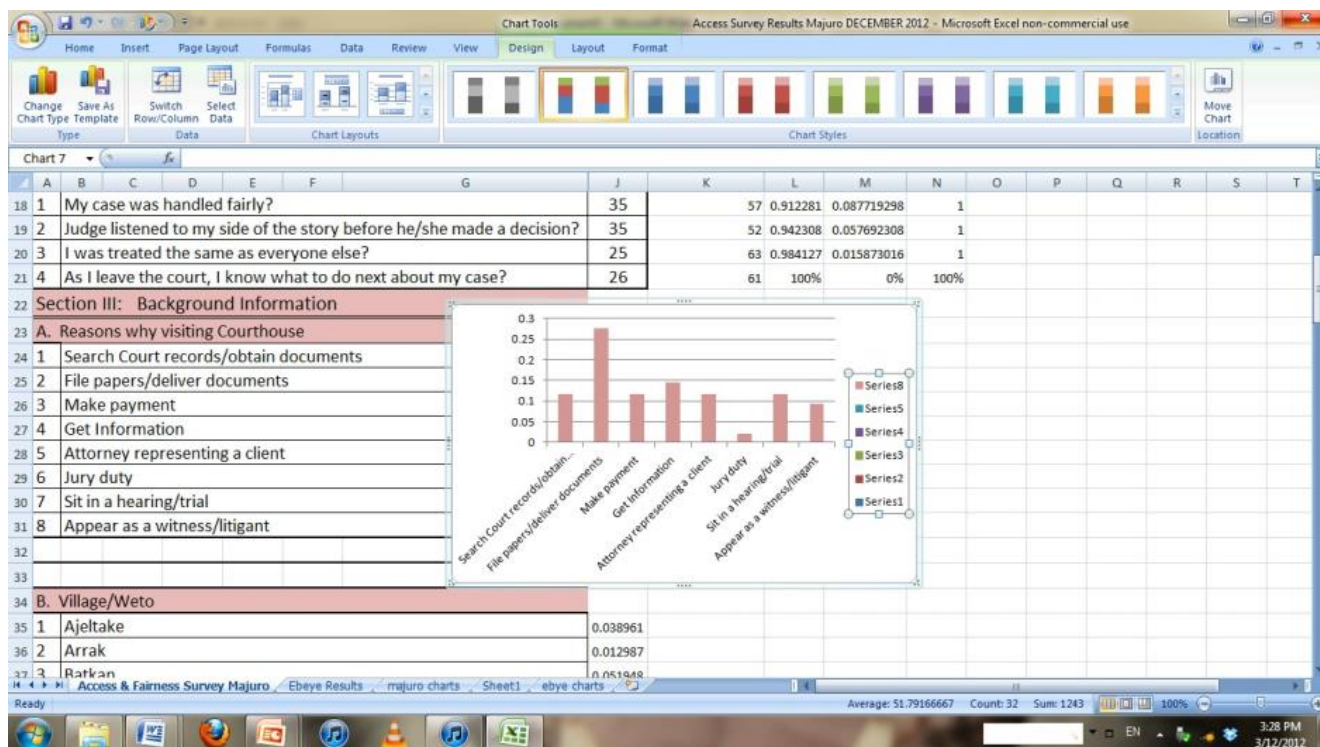




8. In the centre of the pop up window, click 'Switch Row/Column'.

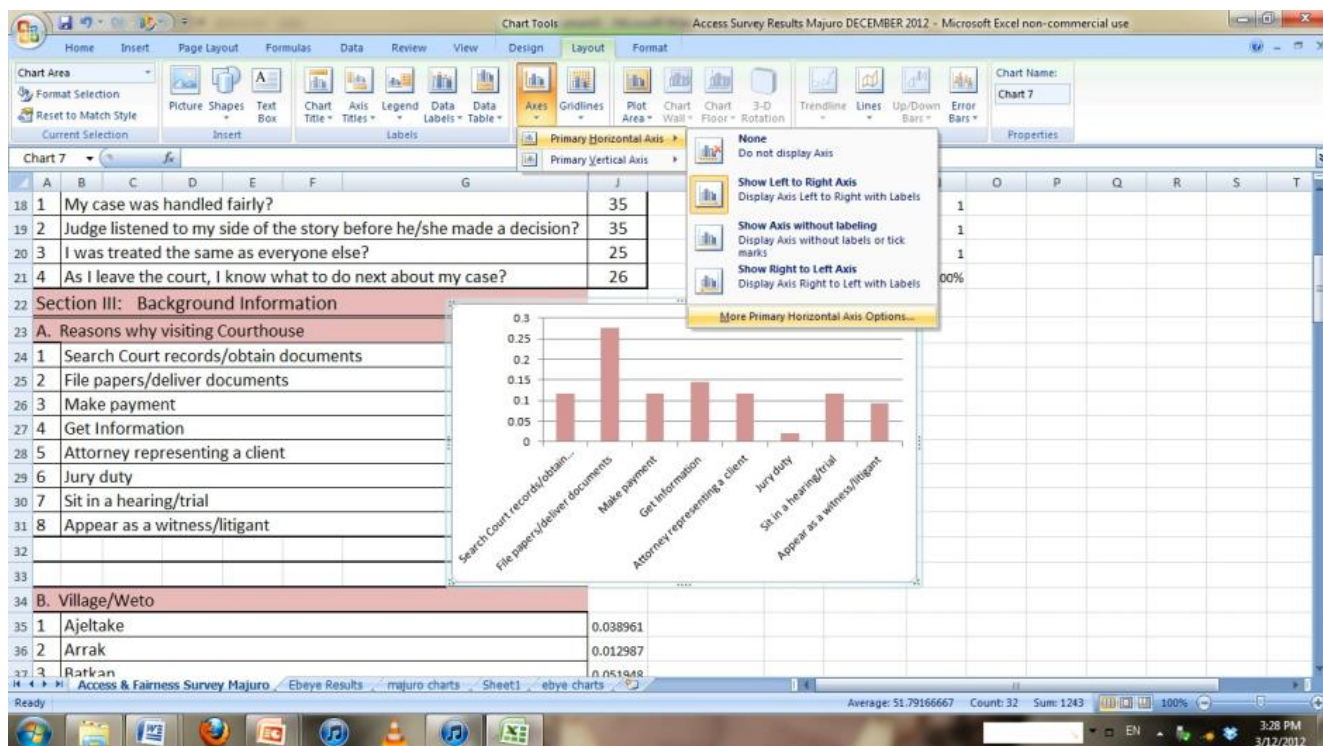


9. Click on the legend so that a border with dots in each corner appears, then press Delete.

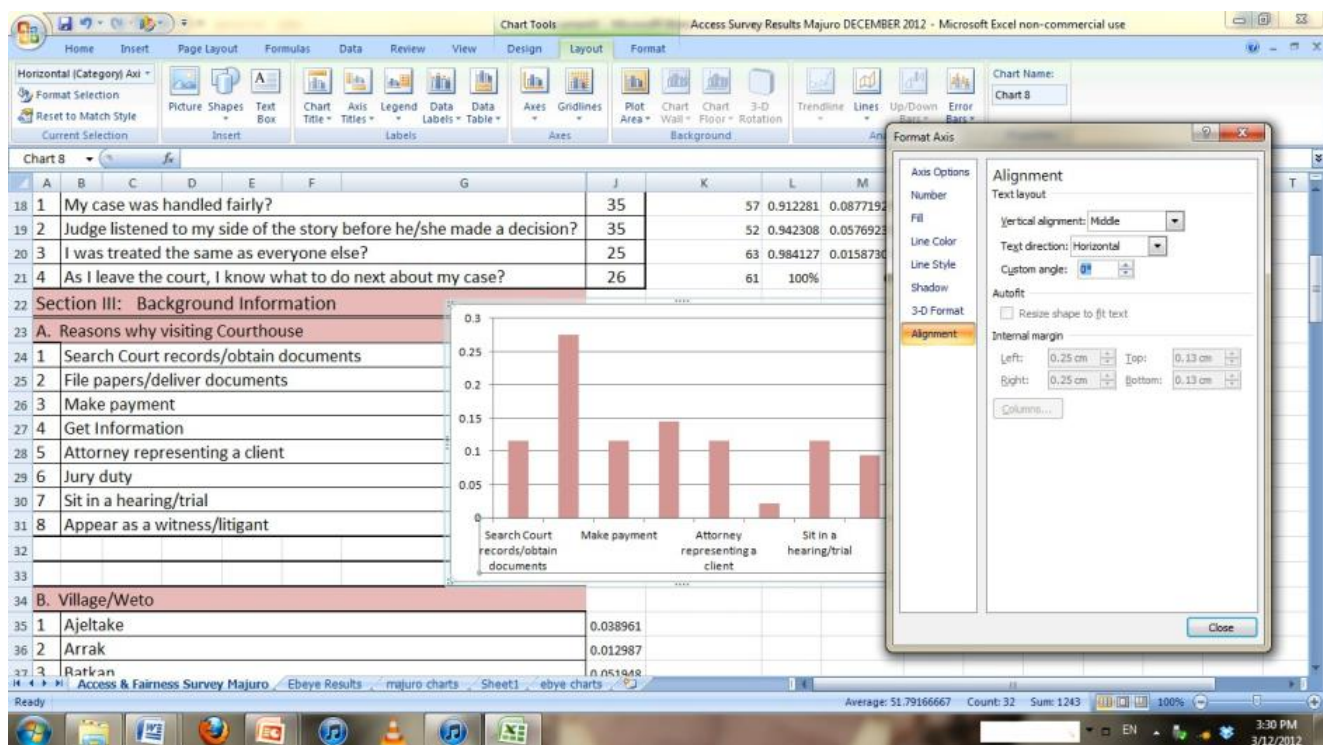




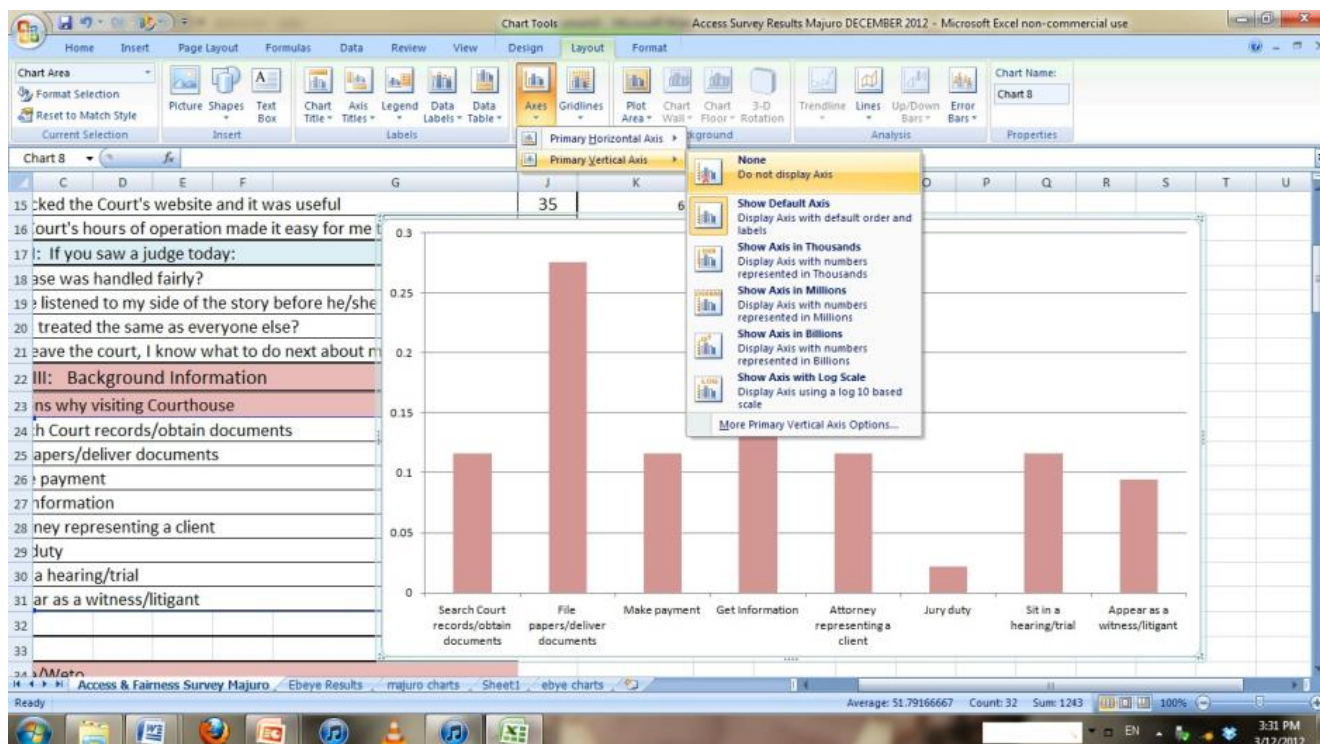
10. In the 'Layout' tab of the chart tools, click on 'Axes', hover over 'Primary Horizontal Axis', then click 'More Primary Horizontal Axis options'.



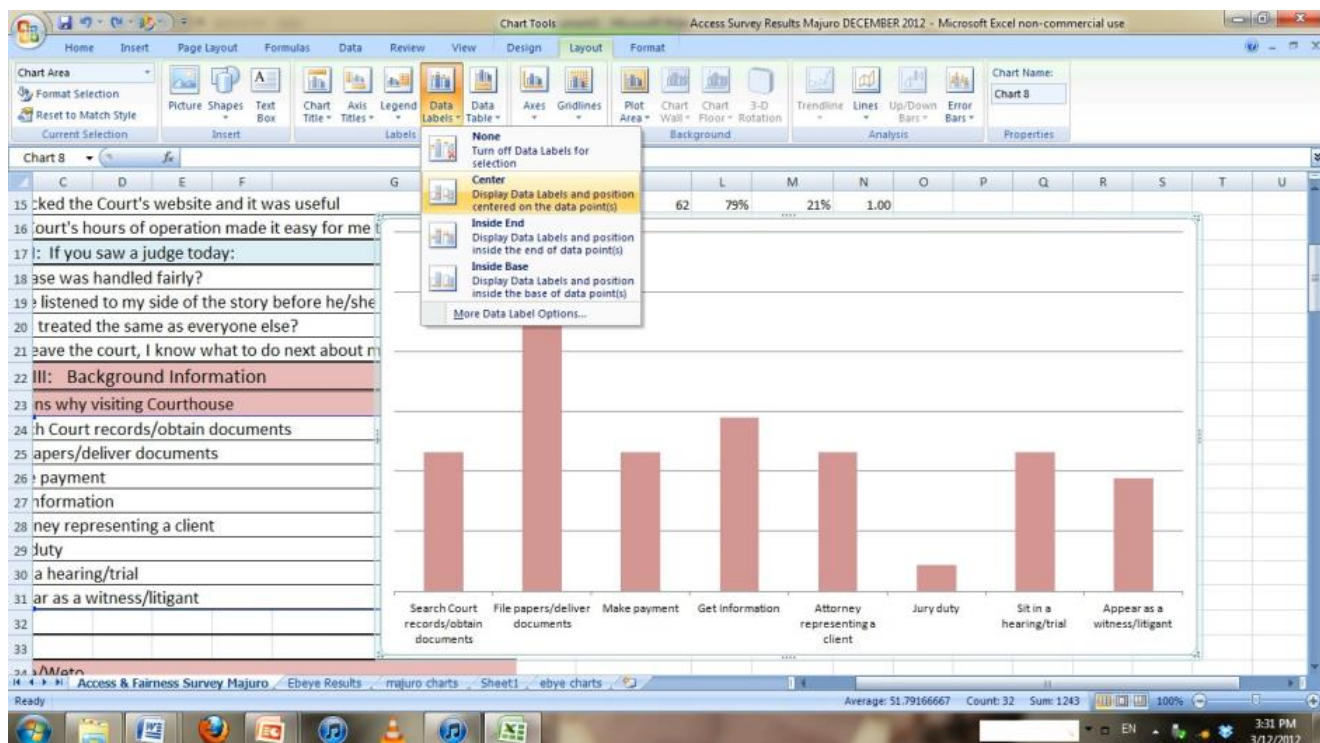
11. In the left hand panel of the pop up box, click on 'Alignment'. Make sure 'Text direction' is set to horizontal, then in the 'Custom Angle' box, click the small arrows up or down (even if the box is blank) until the box says '0'. Click Close.



12. Click on 'Axes' in the 'Layout' tab, hover over 'Primary Vertical Axis' and click 'None'.

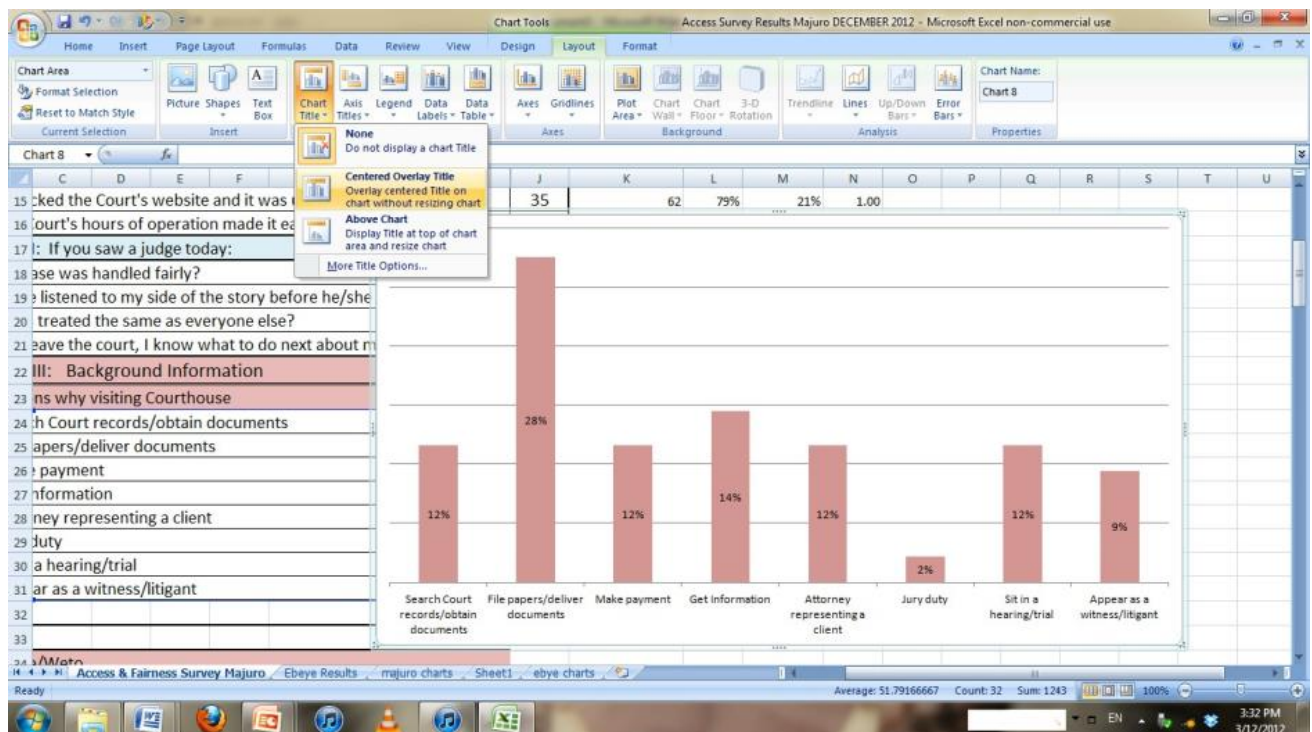


13. In the 'Layout' tab, select 'Data Labels' then click 'Center'. This will display the percentage amounts for each section.

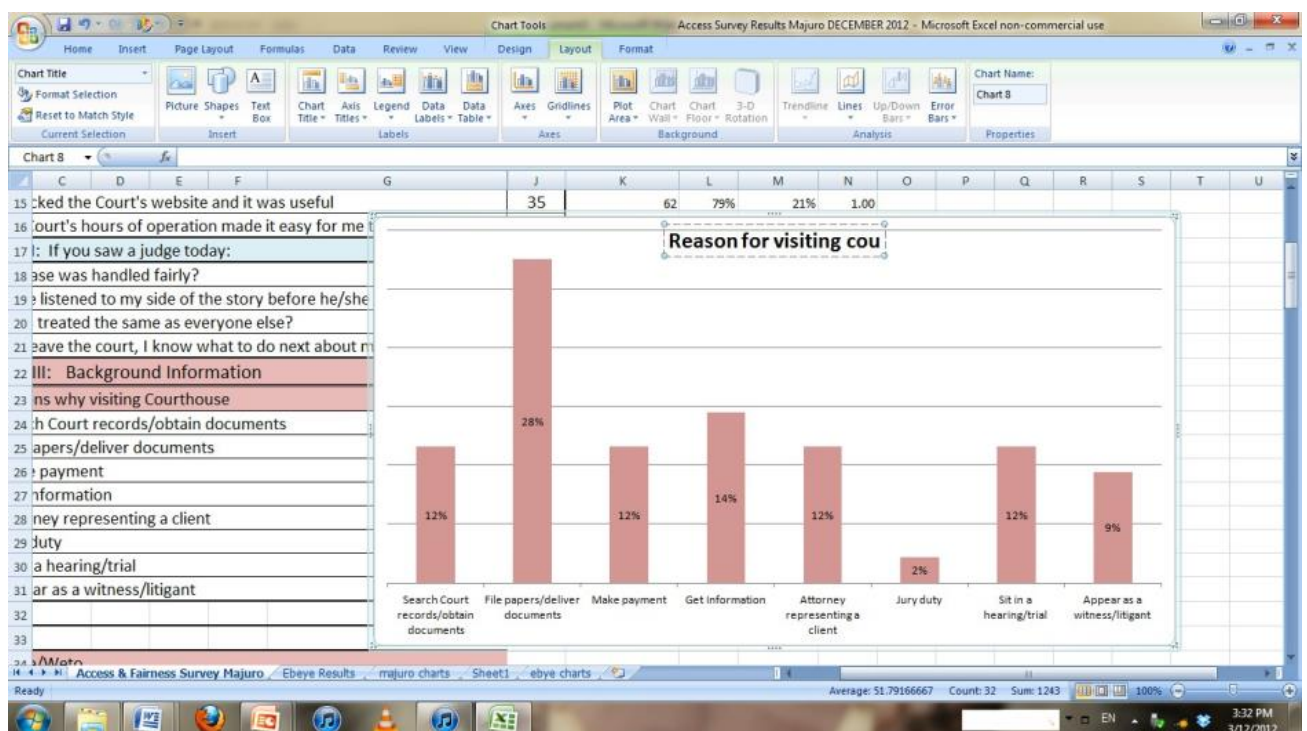




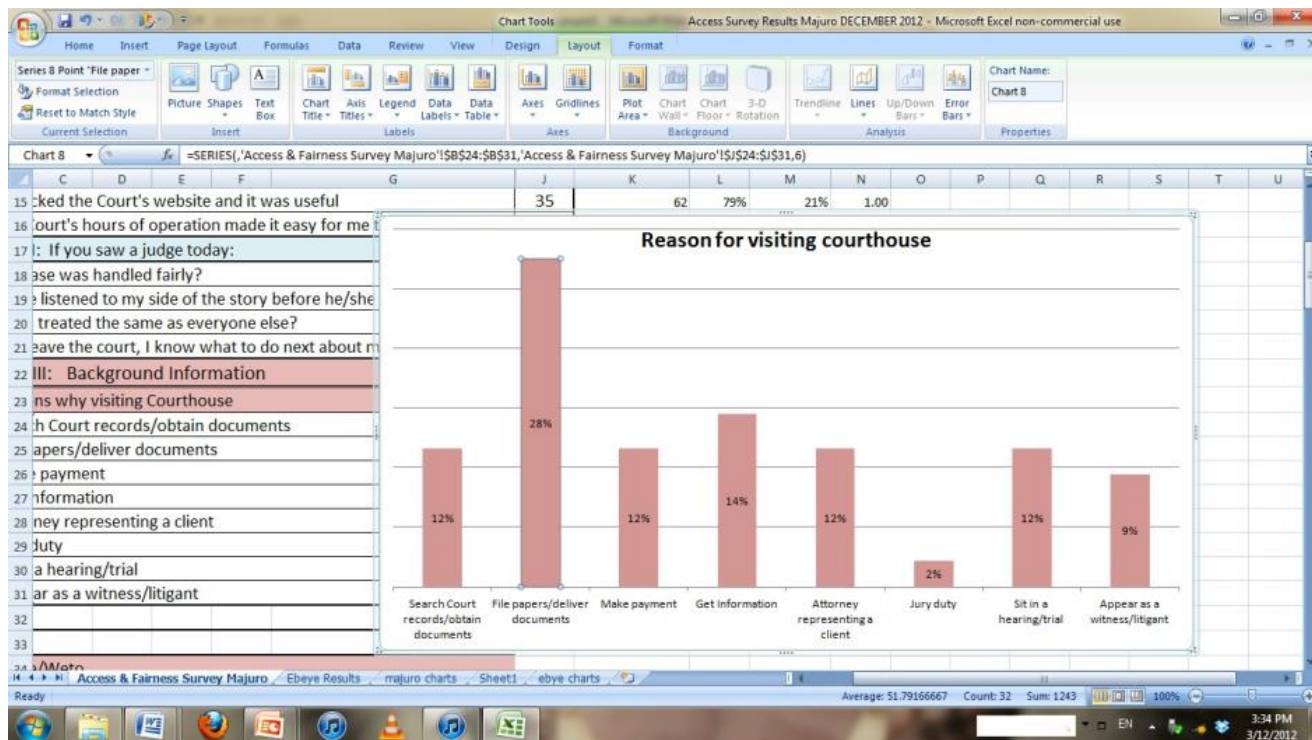
14. To insert a name for the chart, in the 'Layout' tab, click on 'Chart Title', then 'Centered Overlay Title' and a text box will appear.



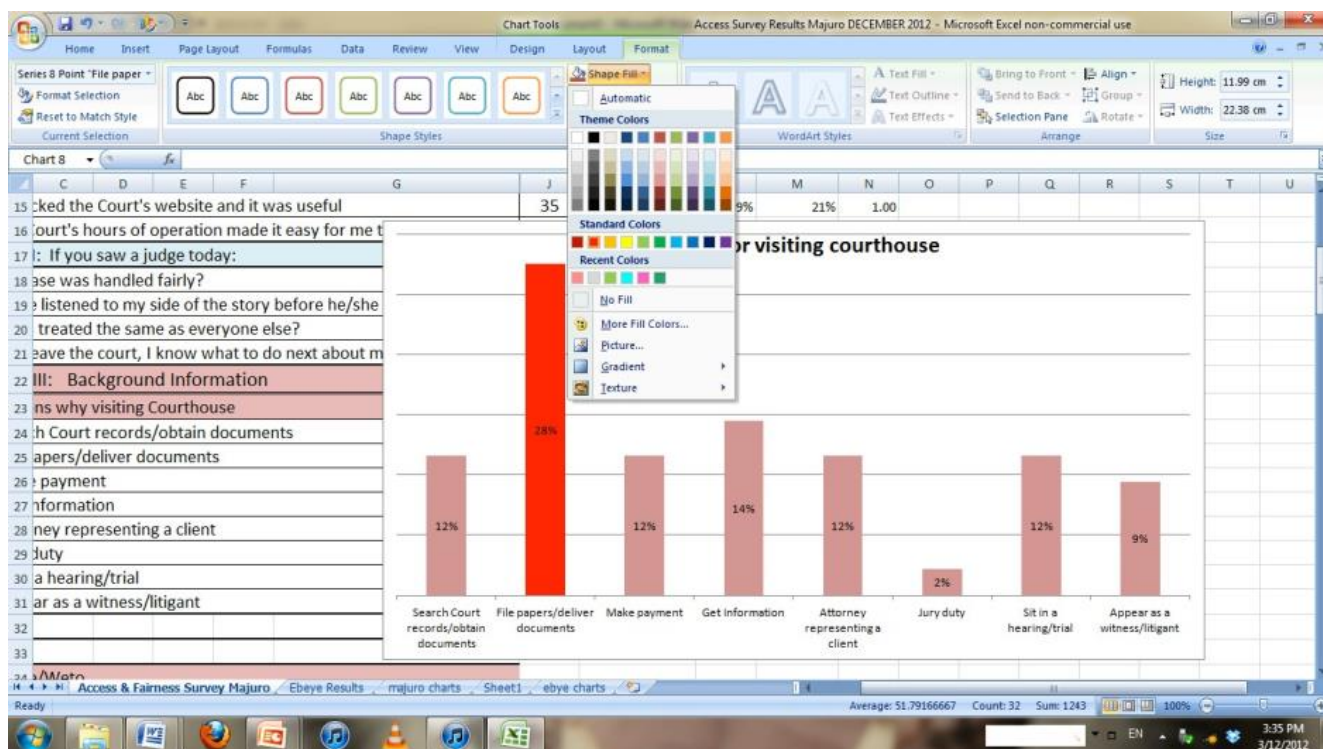
15. Replace the text within the text box with the wording of the survey question. Font size and style can be adjusted in the 'Home' tab.



16. To change the colours in the graph for each column, click the column you would like to change first (You may have to click twice to select just one column, rather than all the columns). Small dots on each corner should appear for the column selected

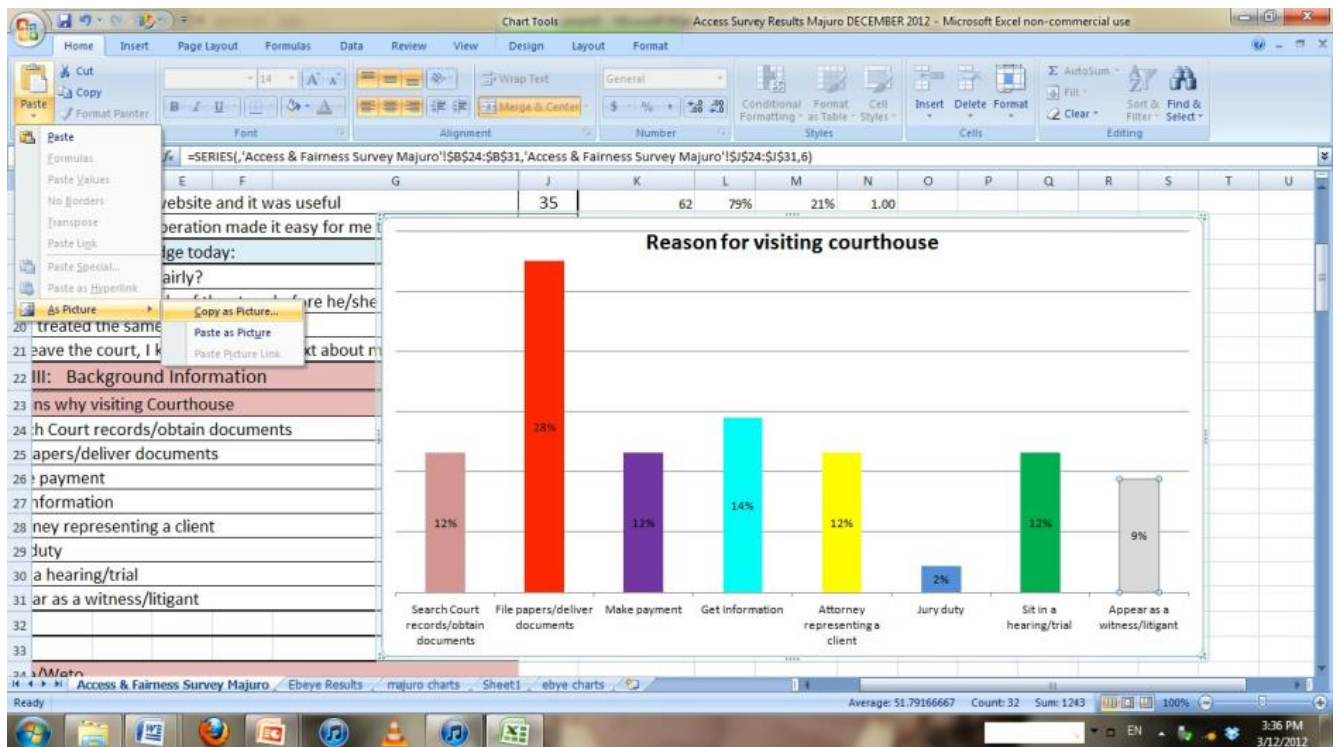


17. Under the 'Format' tab of the Chart tools, click on 'Shape fill' and select a colour.

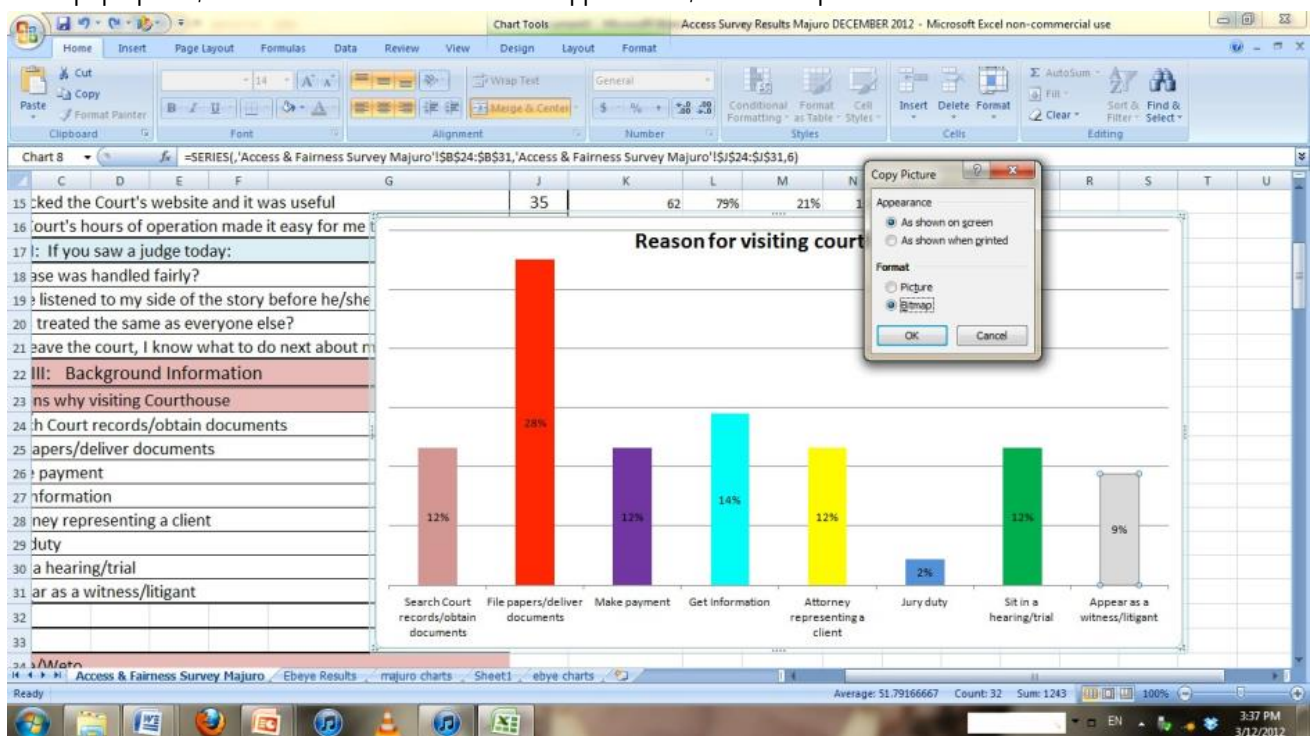




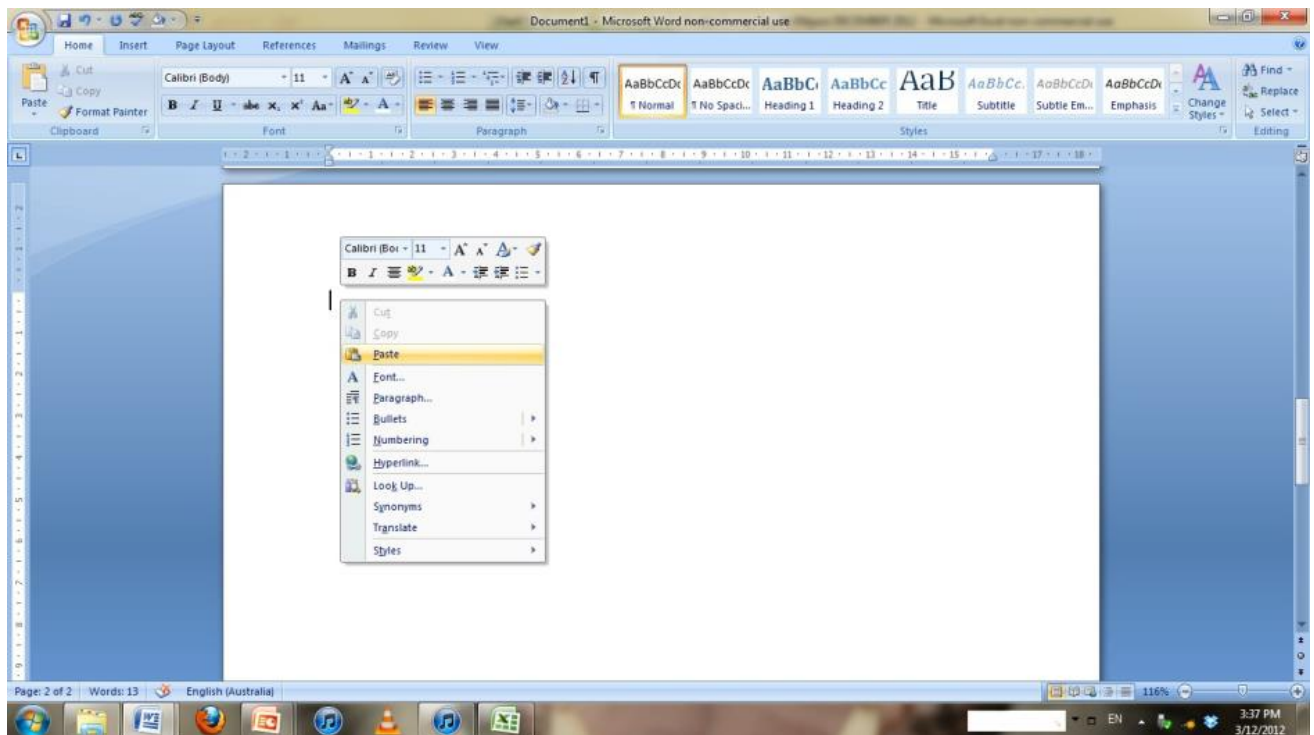
18. Once you've recoloured all the columns, if you would like to place the chart into a word document or PowerPoint slide, click on the 'Home' tab, then click the arrow below the 'Paste' clipboard, hover over 'As picture' and select 'Copy as picture'.



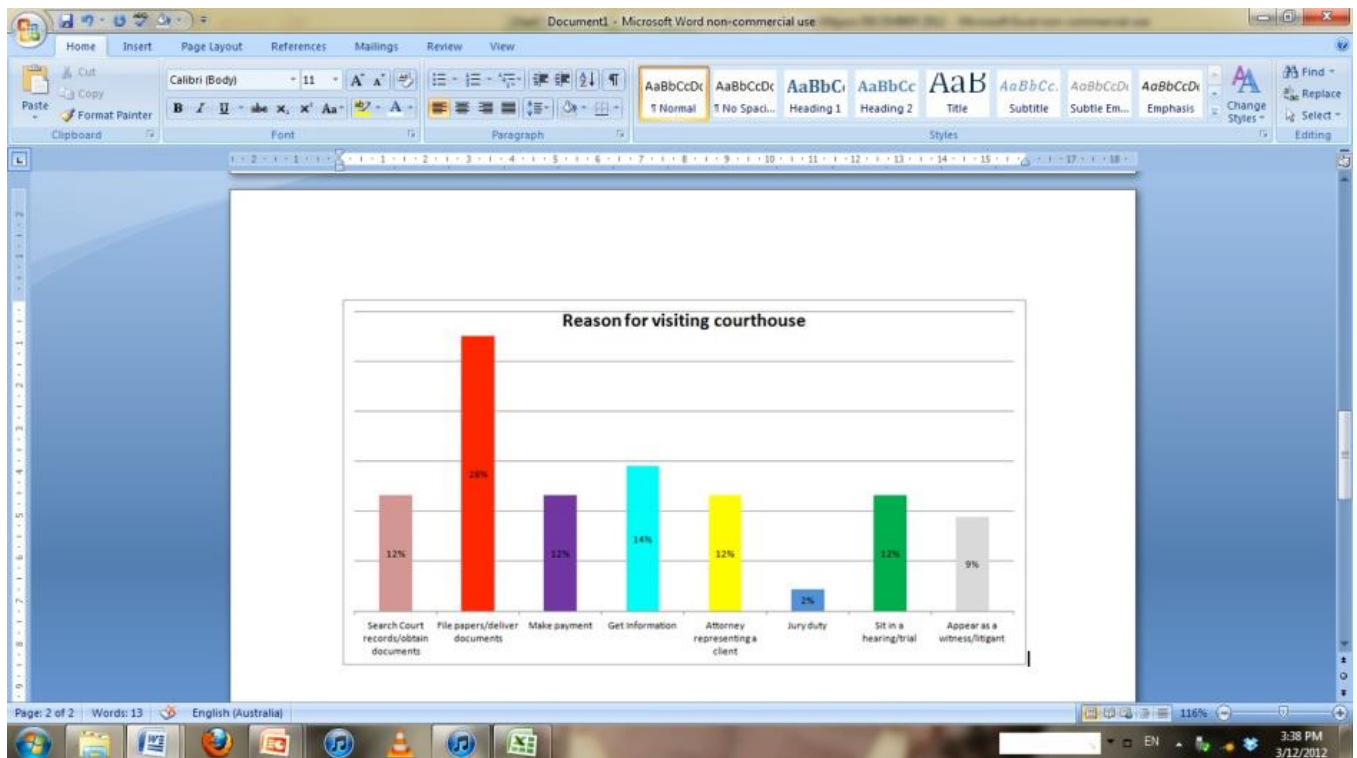
19. In the pop up box, select 'As shown on screen' for Appearance, and 'Bitmap' for Format. Click OK.



20. In a word document or PowerPoint slide, right click to paste the graph



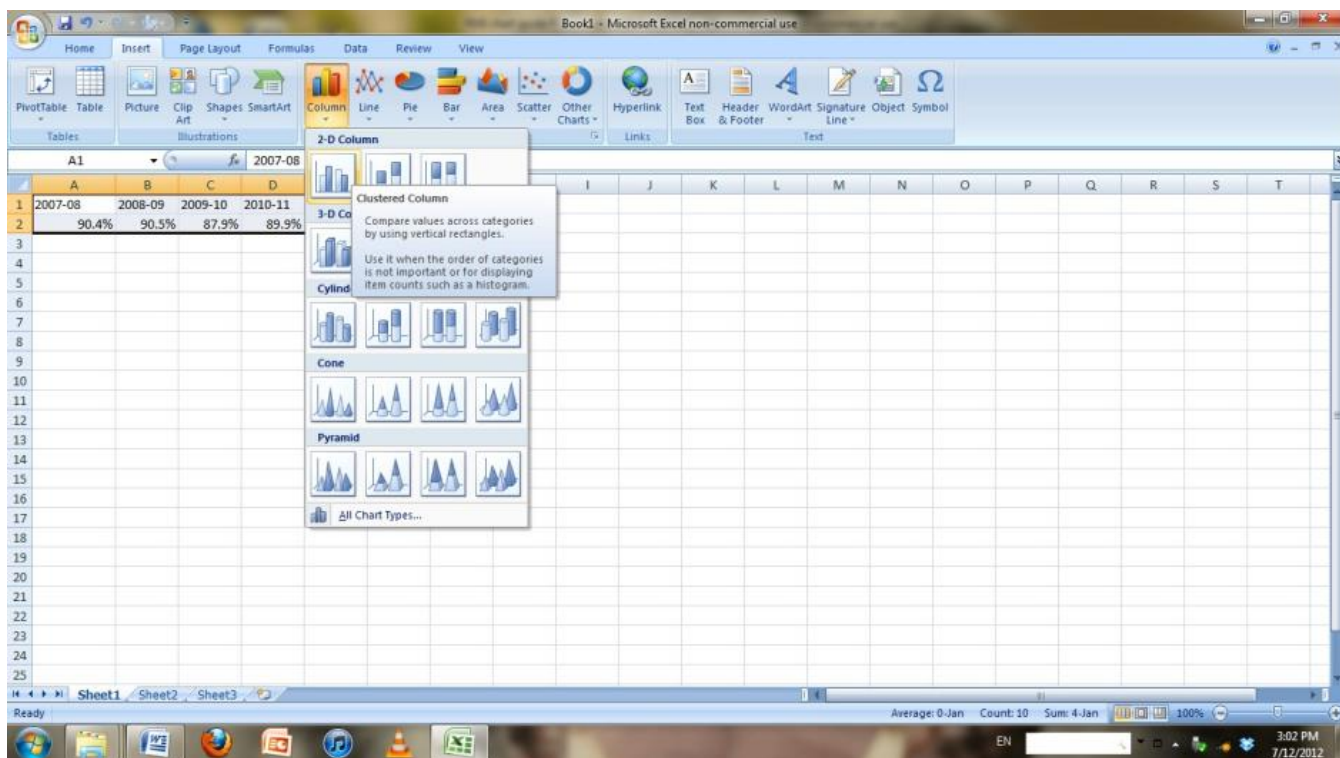
21. Now that the chart is in a new program, it is a picture file. It can be resized, though it may lose some quality. Changes are best made beforehand in the excel sheet. Any changes to the data or chart will need to be done in excel, and a new copy of the chart pasted into the document.



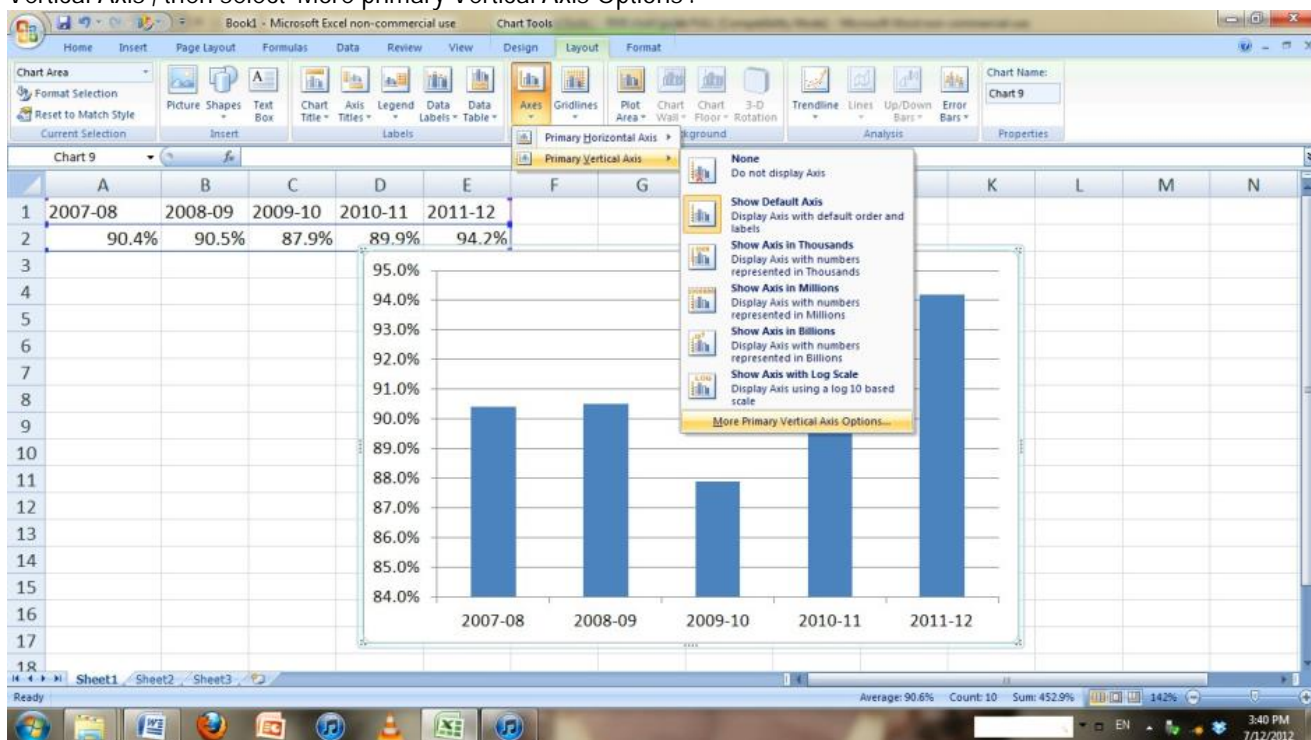


## FCA Annual Report Column Chart Guide

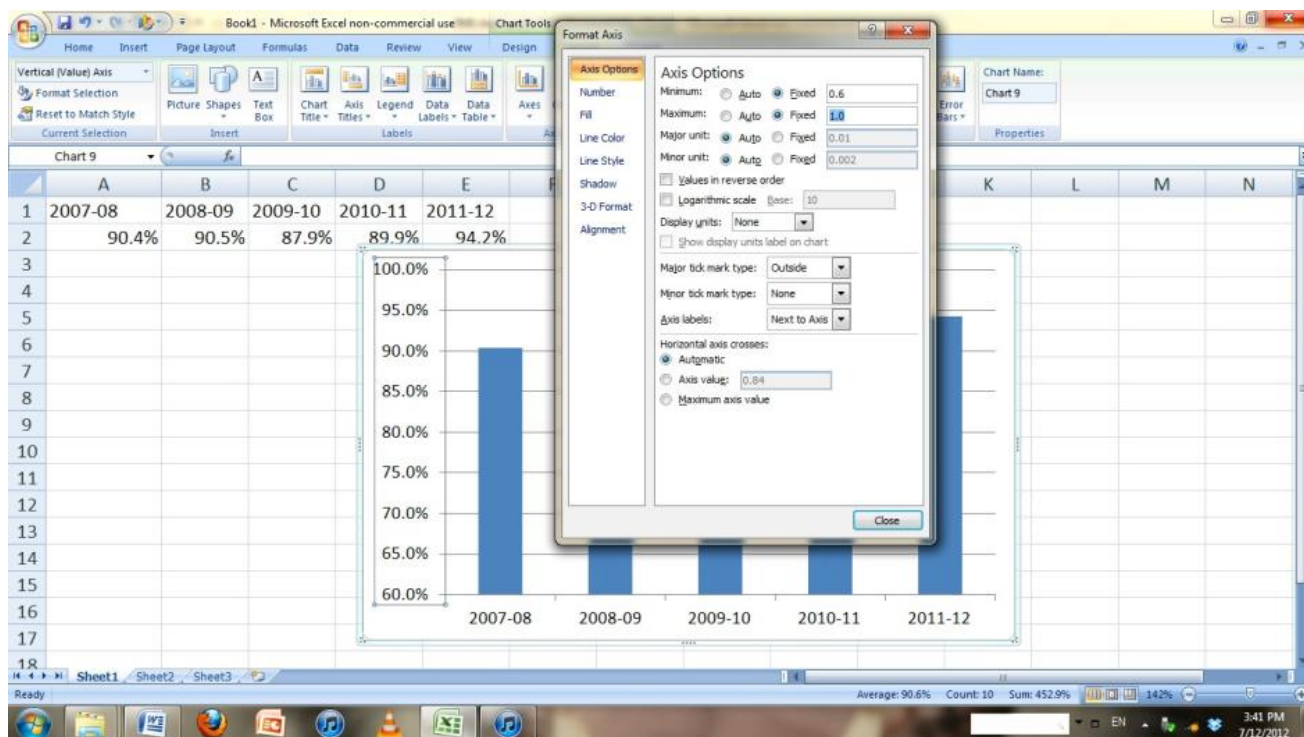
- Once data has been entered, on the Insert tab, select 'Column' for chart type, then 'Clustered Column'. Complete step 8, as shown above in *Column Graphs Guide* to remove legend.



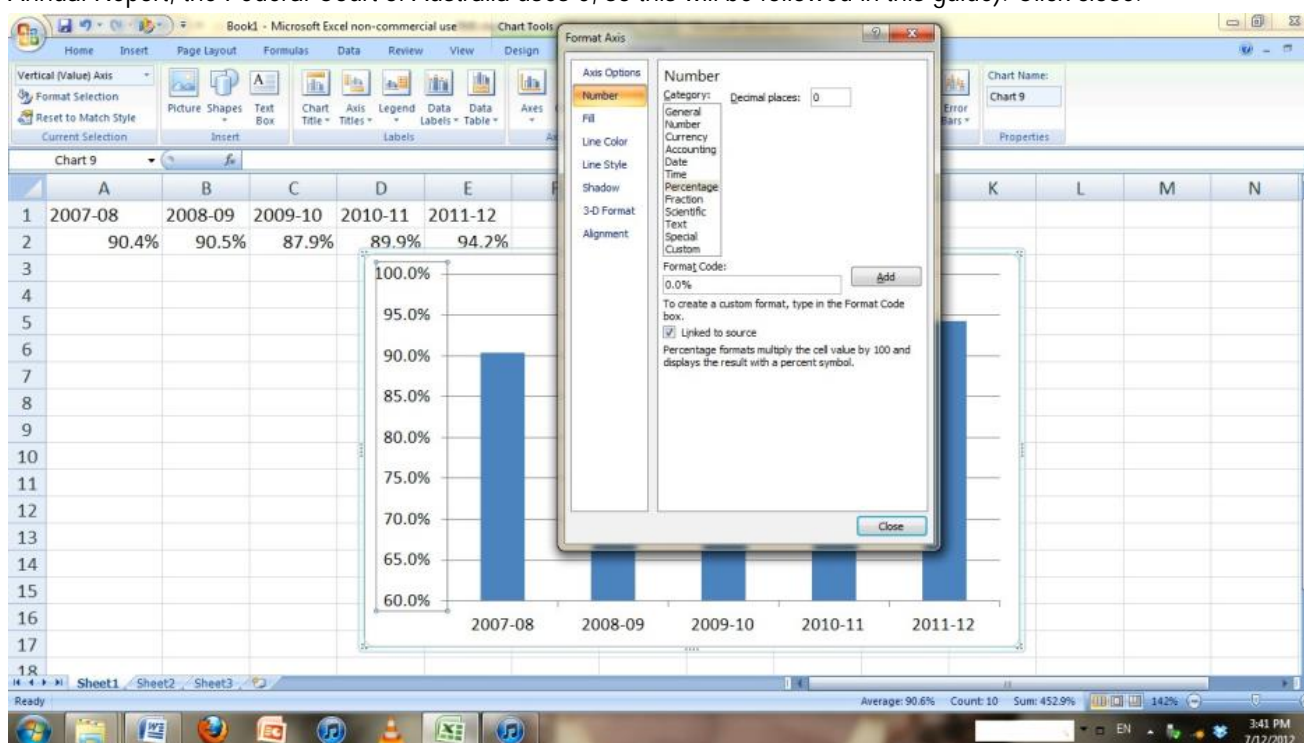
- To format the vertical axes, in the Chart Tools select the 'Layout' tab, then 'Axes', then hover over 'Primary Vertical Axis', then select 'More primary Vertical Axis Options'.



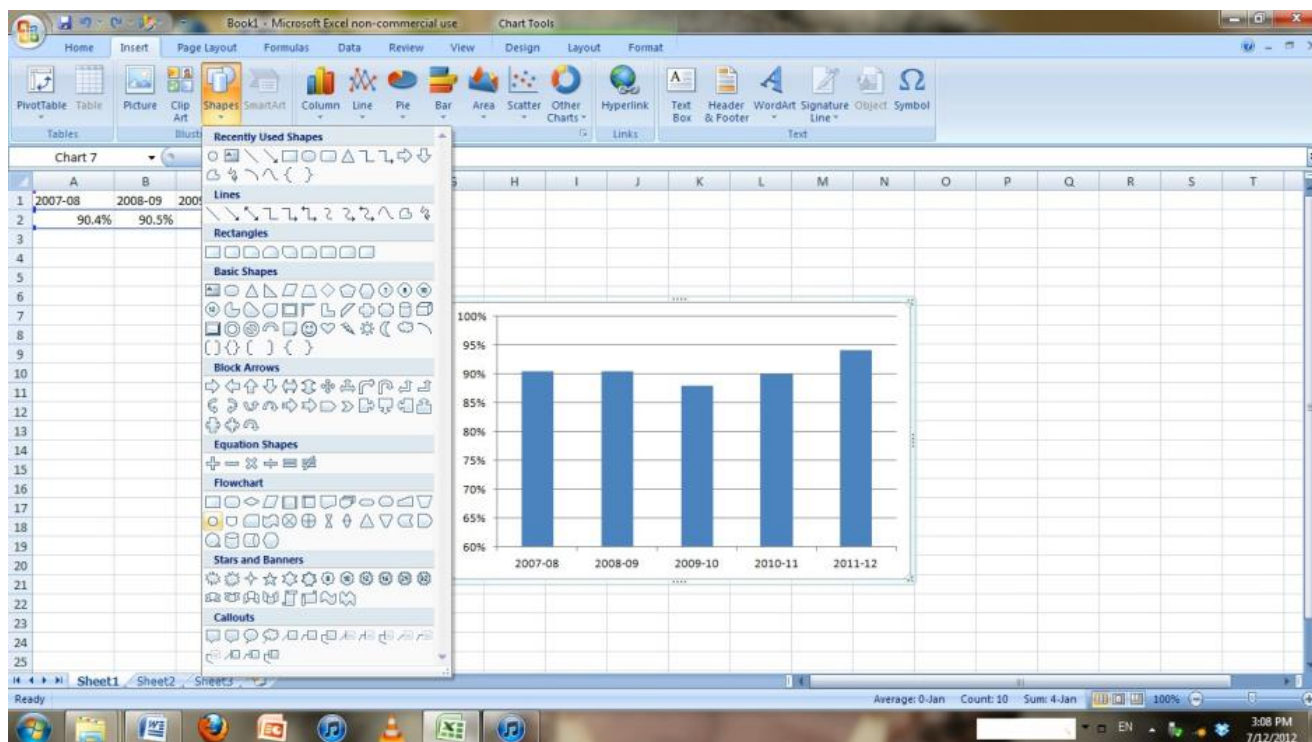
- In the pop-up window, under 'Axis Options' select the 'Fixed' boxes next to 'Minimum' and 'Maximum', and set the axis by typing the parameters in their respective text areas.



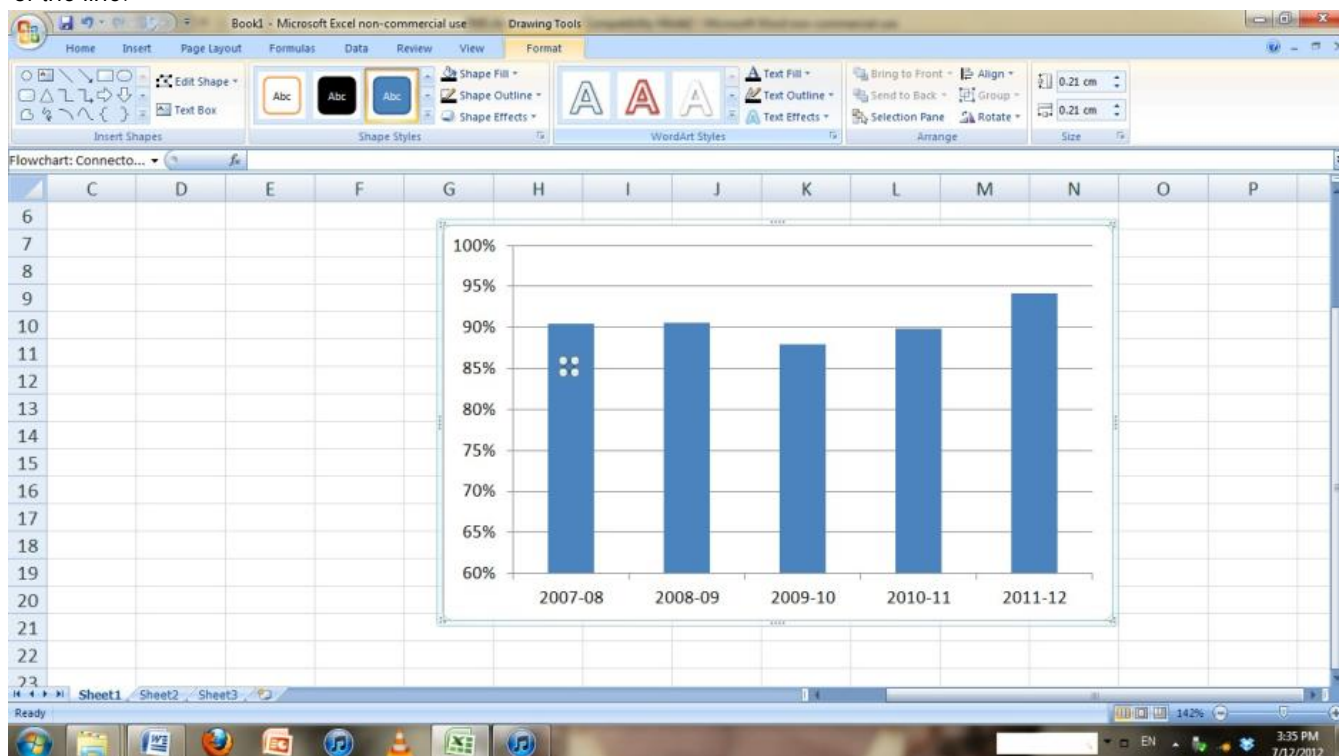
- To adjust the amount of decimal points displayed in the vertical axis, select the 'Number' tab on the left pane of the pop-up box, and in the space next to 'Decimal places' type in the desired amount to be displayed (In its Annual Report, the Federal Court of Australia uses 0, so this will be followed in this guide). Click close.



5. Under the 'Insert' tab, select 'Shapes', and then select the shape you wish to use.

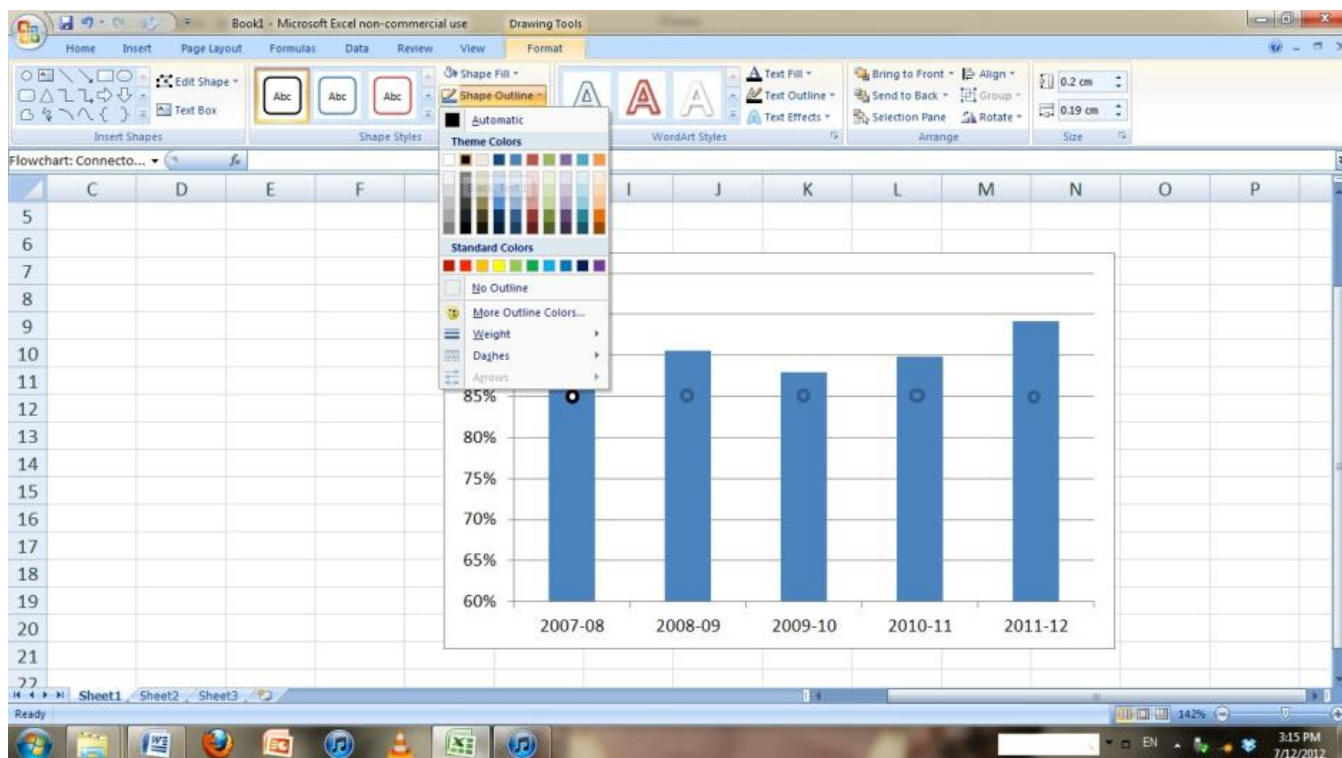


6. From this point on, it may help to zoom in on your graph to make the shapes and lines uniform and accurately placed. Using the cursor, draw the shape in the centre of the first column at the 85% gridline. Complete this step for each column. At this point, don't worry too much if the shapes are little off the middle of the line.

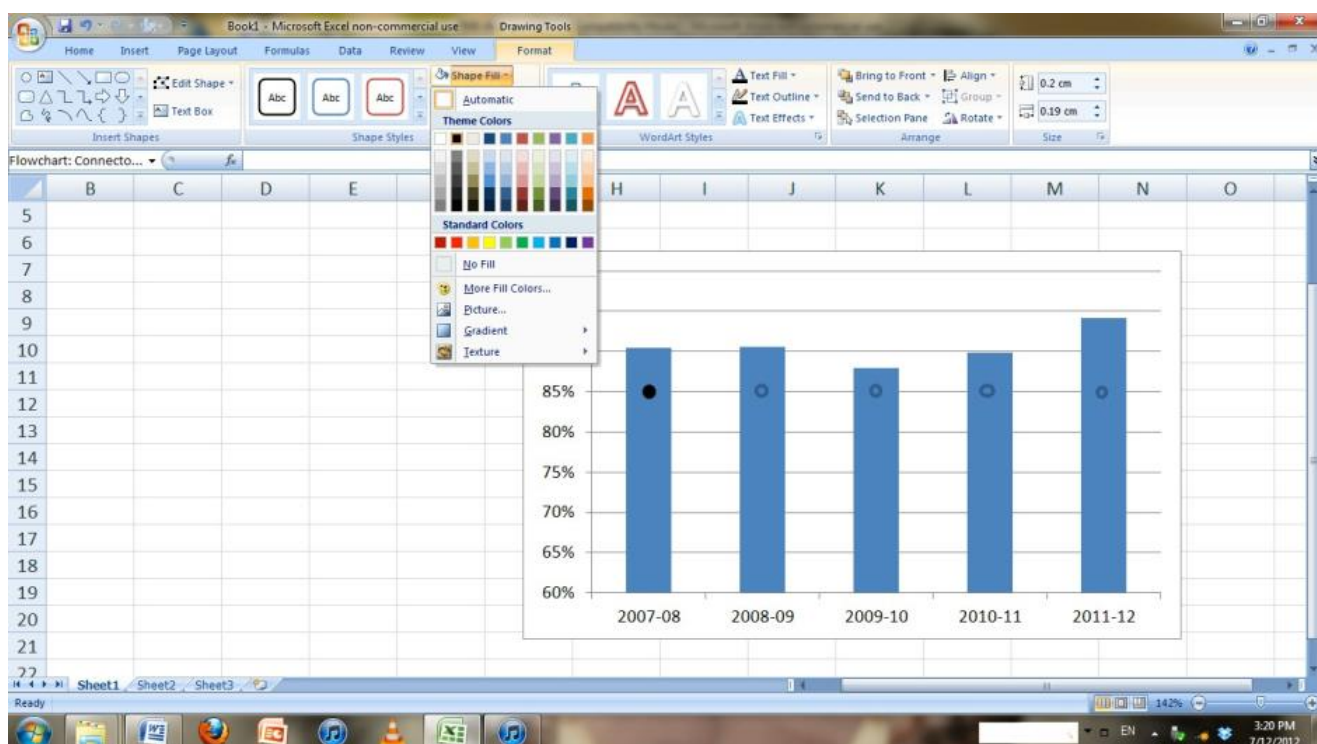




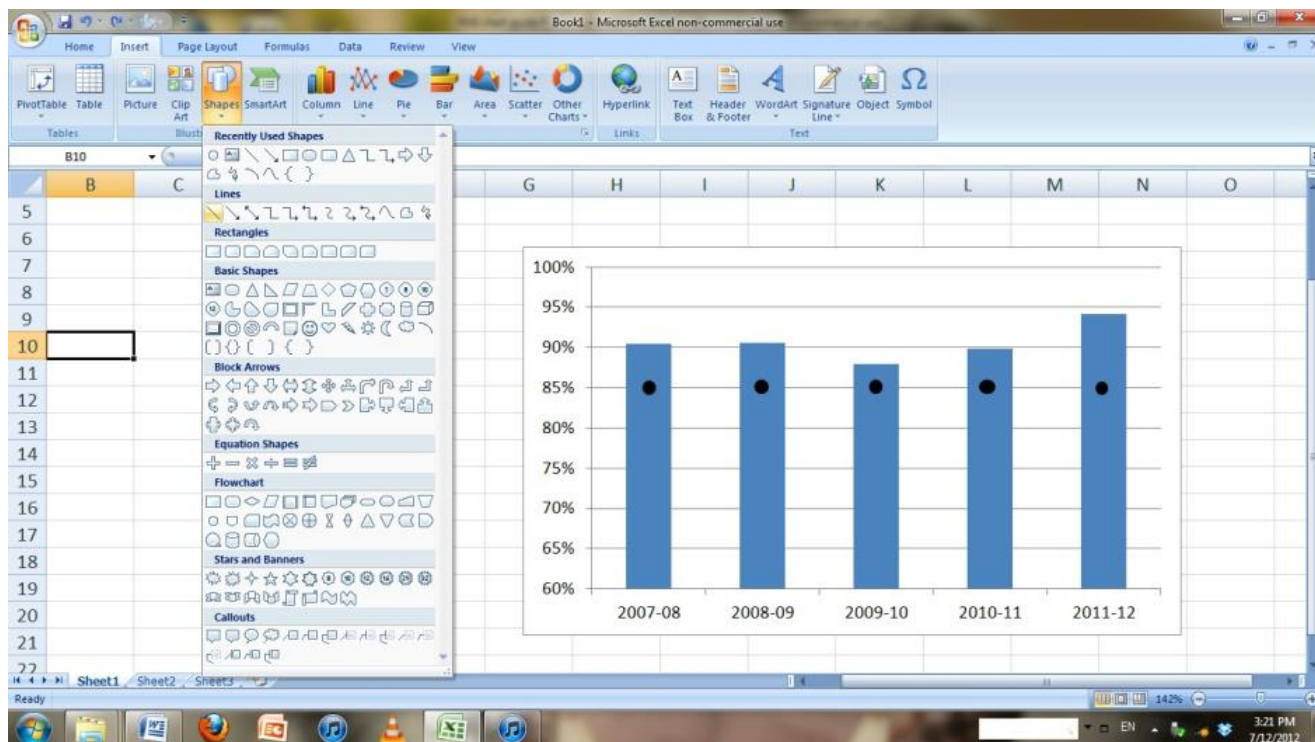
7. To change the colour of the shapes, select the first shape, and click on the 'Format' tab of the Drawing Tools. Select 'Shape Outline', then choose a colour.



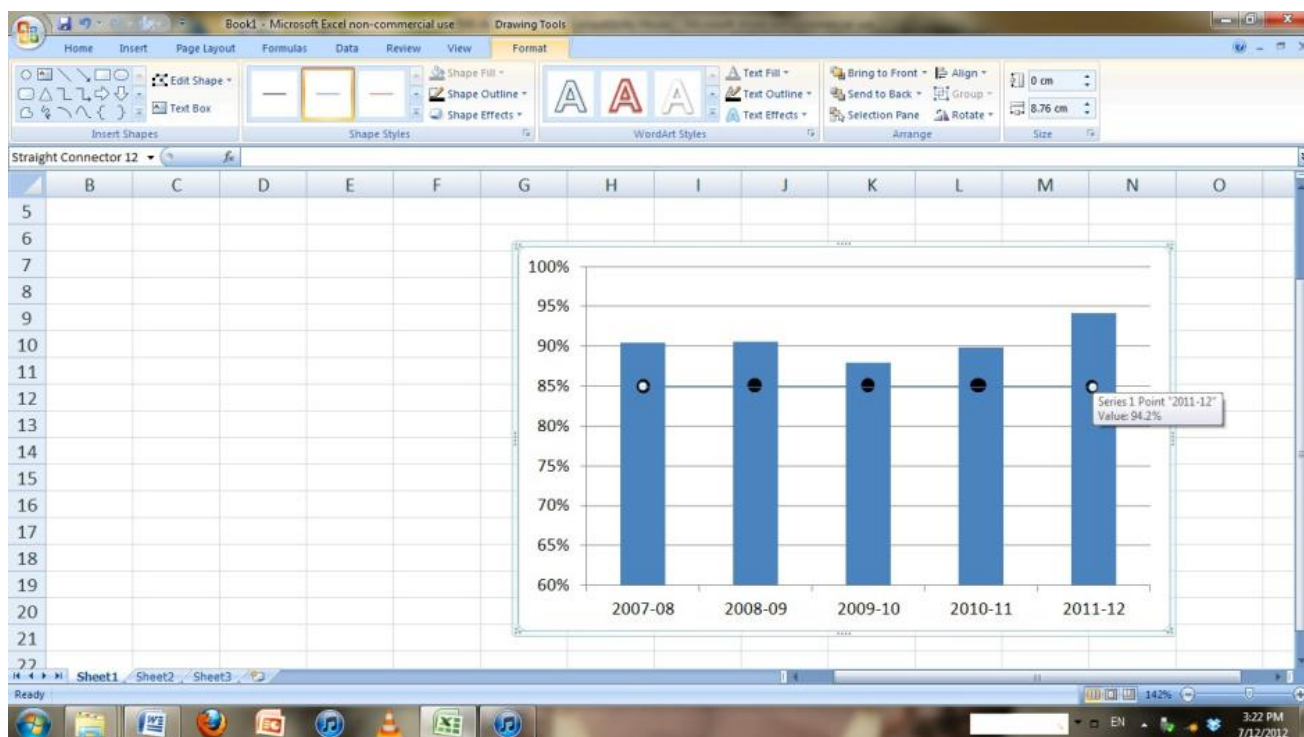
8. Under the 'Format' tab of the Drawing Tools, click 'Shape Fill', and select a colour. Complete this for each of the shapes.



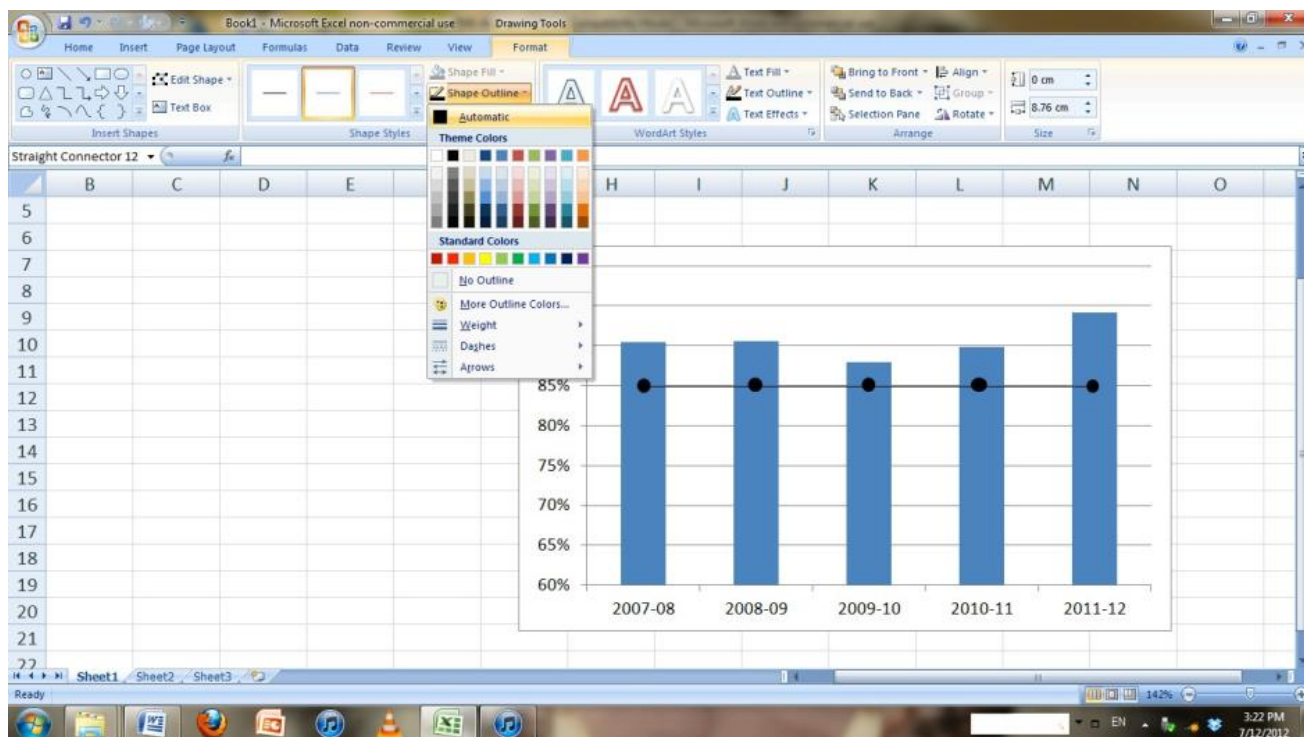
9. Click on the 'Insert' tab then select 'Shapes', and then the straight line from the options.



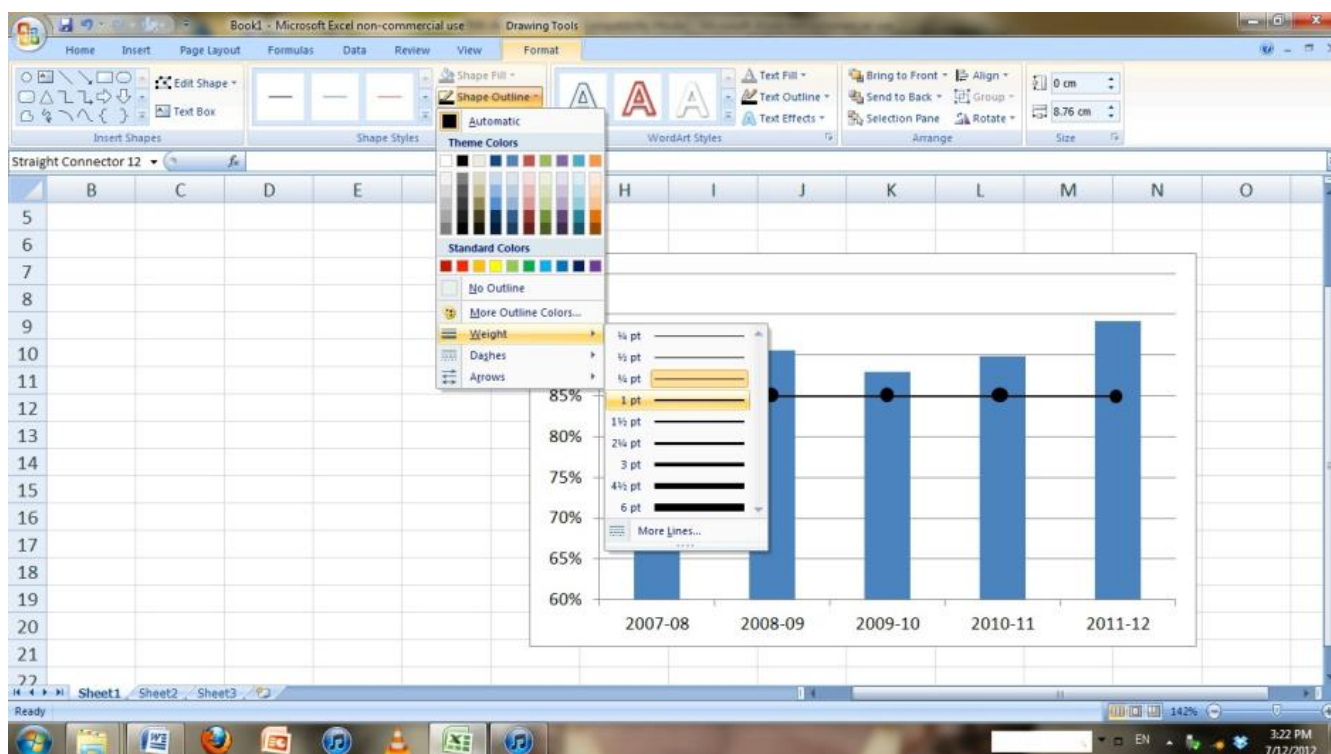
10. Click and drag the cursor from the middle of the first column directly over the 85% gridline to the middle of the last column directly over the 85% gridline.



11. To change the colour of the line, in the Drawing Tools select 'Format', then 'Shape Outline', and select which colour you would like the line to be.

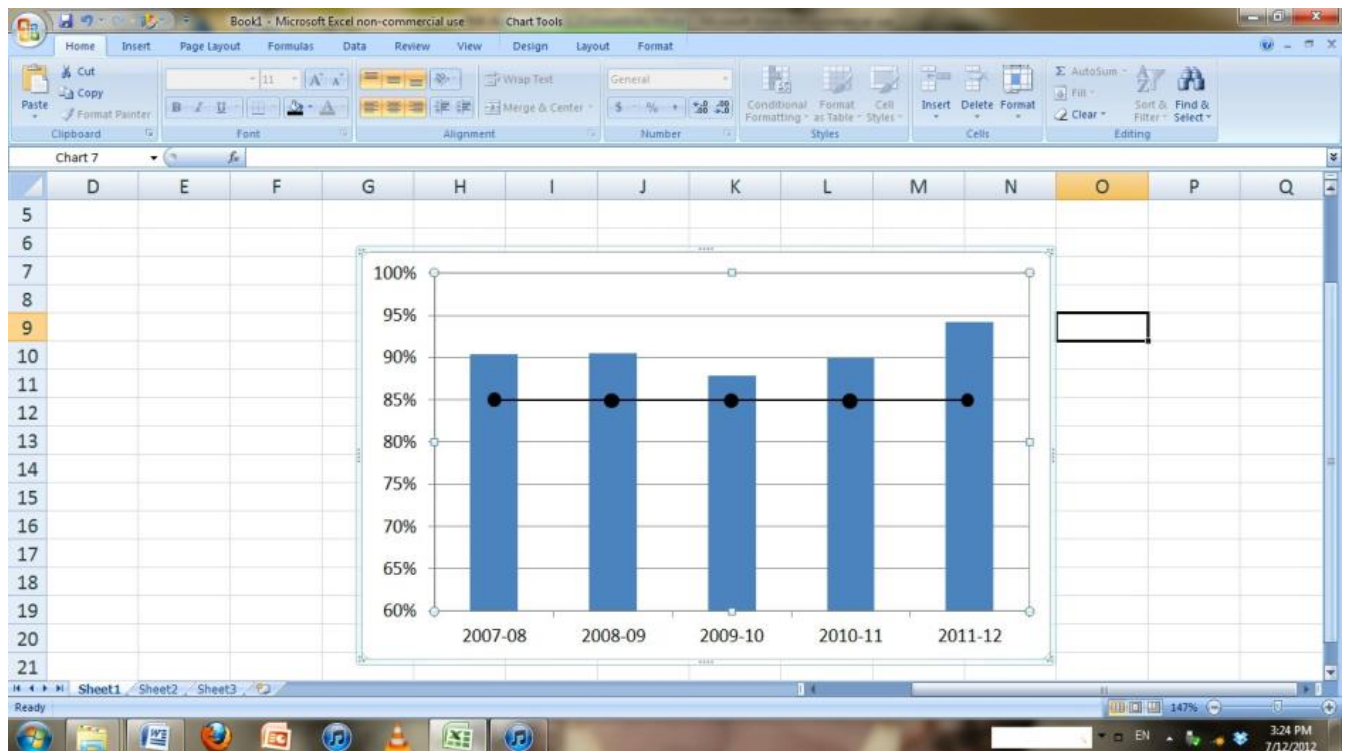


12. To change the width of the line, in the Drawing Tools select the 'Format' tab, then click 'Shape Outline', hover over the 'Weight' option, and select a thickness.





13. At this point, it will be easier to adjust your shapes to be centred over the line. Without selecting the first shape, hover the cursor over the shape until the cursor shows arrows in 4 directions. Click and drag the shape to the place you want it. Again, by zooming in on your chart you will be able to place the shape more accurately on the middle of the column and the middle of the line.



Once completed, to change the design or colours of the chart, see steps 15 and 16 in Column Graphs Guide

## ANNEX 8: EXAMPLE FROM THE REPUBLIC OF PALAU OF A CLIENT SATISFACTION SURVEY

1. Strongly disagree
2. Disagree
3. Neither agree nor disagree
4. Agree
5. Strongly agree

### ACCESS AND FAIRNESS SURVEY

#### Section 1: ACCESS TO THE COURT

1. The forms needed were clear and easy to understand	1	2	3	4	5	n/a
2. I was able to get my business done in a reasonable amount of time	1	2	3	4	5	n/a
3. Court staff paid attention to my needs.	1	2	3	4	5	n/a
4. I was treated with courtesy and respect.	1	2	3	4	5	n/a
5. I easily found the courtroom or office I needed.	1	2	3	4	5	n/a
6. The court's website was useful.	1	2	3	4	5	n/a

#### Section 2: FAIRNESS

1. The way my case was handled was fair.	1	2	3	4	5	n/a
2. I was treated the same as everyone else.	1	2	3	4	5	n/a
3. The judge listened to my side of the story before he or she made decision.	1	2	3	4	5	n/a
4. The judge had all the information necessary to make good decision about my case.	1	2	3	4	5	n/a
5. As I leave the court, I know what to do next about my case.	1	2	3	4	5	n/a

#### Section 3: WEBSITE SURVEY

1. I checked the website Yes No
2. If no, then you need not fill out any more answers
3. If Yes:
  - a. Was the website useful Yes No
  - b. What were you looking for: \_\_\_\_\_
  - c. Did you like it? Yes No
  - d. Where did you go on the website? (list icons/windows)
 

____ 1. What's New	____ 7. Rules & Other Publications
____ 2. Forms	____ 8. Cases & Judgements
____ 3. Fees	____ 9. Statistics
____ 4. Calendar	____ 10. Palau Bar
____ 5. Organisation	____ 11. History of Judiciary
____ 6. Services	____ 12. FAQ
  - e. Suggestions to improve the website? \_\_\_\_\_

---

## Section 4: BACKGROUND INFORMATION

What did you do at the court today?  
court today?

- ☐ Search court record/obtain documents
- ☐ File papers
- ☐ Make payments
- ☐ Get information
- ☐ Appear as witness
- ☐ Attorney rep. Client
- ☐ Attend hearing or trial

How do you identify yourself?

- ☐ Palauan
- ☐ Chinese
- ☐ Bangladesh
- ☐ Philippines
- ☐ American
- ☐ Other: \_\_\_\_\_

What type of case brought you to the

- ☐ Traffic
- ☐ Criminal
- ☐ Civil Matter
- ☐ Juvenile Matter
- ☐ Small Claims
- ☐ Other: \_\_\_\_\_

What is your gender?

- ☐ Male
- ☐ Female

### Access and Fairness

#### Measure

**Definition:** Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.

**Purpose:** Many assume that "winning" or "losing" is what matters most to citizens when dealing with the courts. However, research consistently shows that positive perceptions of court experience are shaped more by court users' perceptions of how they are treated in court, and whether the court's process of making decisions seems fair. This measure provides a tool for surveying all court users about their experience in the courthouse. Comparison of results by location, division, type of customer, and across courts can inform and improve court management practices.

**Method:** Everyone in the court on a "typical" day is asked to fill out a brief self-administered survey as he or she exits the courthouse. People are asked to rate their level of agreement with each item, using a 1-5 scale. The survey should be conducted on a periodic basis, for example, annually. The individuals surveyed would include litigants and their families and friends, victims and witnesses, attorneys, law enforcement officers, representatives of social service agencies, and individuals doing record searches or having other business at the clerk's office, among others. Because the survey is designed to assess the views of the court's customers, judges and court staff are excluded.

#### Step 1: Prepare Survey

The survey asks questions on access and fairness, along with background information about the respondent. The survey questions are concise and clear statements that get right to the point, producing *actionable* data. They require only seconds to understand and rate, so the survey may be completed in 5 minutes or less. The goal is to provide the court with the information needed to make informed decisions, and do so in the shortest amount of time possible.

An open-ended question or two may prove beneficial for some courts, to give customers the opportunity to address their own particular concerns. The data can be used to verify findings and improve future surveys.

#### Recommendations

- Use the questions as worded in this survey.
- Adopt a standard survey to make reliable comparisons across locations, divisions, and courts.
- Limit demographic questions to those that will actually be of use.
- Keep the survey short and focused.

#### Step 2: Choose a "Typical" Day

The questionnaire is given to *all* the individuals who use the court (i.e., are physically in the courthouse) on a typical day. If the day is typical of most days at the courthouse then it can be assumed that responses will be received from a broad cross-section of those using the court. Common survey problems related to adequacy of response rate and representativeness of the sample are avoided with this method.



### Step 3: Gather Needed Materials

The size of the team to hand out surveys and facilitate completion and return will vary according to the maximum number of individuals exiting the courthouse during any hour of the day. Tables and chairs should be placed around the exits of the courthouse to accommodate the maximum number of survey respondents filling out questionnaires at the peak of courthouse use. Signs posted conspicuously around the entrances to the facility announcing the survey (e.g., “Your Opinion Counts: Tell Us How We Are Doing”) and similar preparations do much to increase survey participation.

When there are multiple court sites for a jurisdiction, a court may wish to include each site in the survey. The sites need not all be surveyed on the same day, as long as the days chosen are typical for each site.

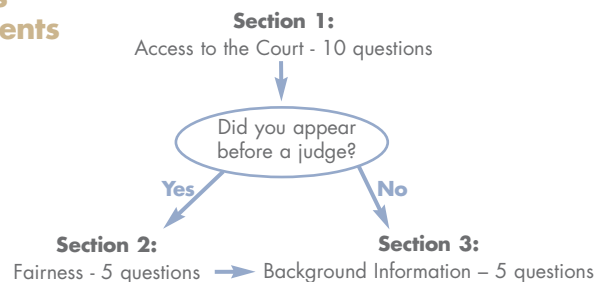
### Step 4: Assemble and Train Survey Team

Survey success depends to a large degree on the skills and demeanor of the staff members assembled to administer the survey and on the care taken with preparations. Criteria for staff selection might include friendliness, bilingual skills, and poise. An orientation session and walk-through of arrangements should precede the data collection. Arrangements should be made to rotate staff through the assignment in staggered intervals to avoid fatigue while maintaining continuity.

### Step 5: Administer Survey

The survey should be administered to enhance participation by the greatest number of potential respondents. Factors that may inhibit response rates include fears about anonymity and confidentiality, apathy, and skepticism that the court will follow through on improvements. A well-trained survey team and appropriate survey procedures (e.g., to ensure anonymity, respondents place completed questionnaires in a sealed drop box) help increase participation. Remember, given the focus on court customers, no surveys should be given to court employees or judges.

#### Which Questions Should Respondents Answer?



*No information is requested that allows the court to identify the respondent (e.g., name, case number, etc.); thus, responses cannot influence the outcome of a respondent's legal matter and confidentiality is preserved.*



## Access and Fairness Survey

### Section I: Access to the Court

Circle the Number.

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	Not Applicable
	1	2	3	4	5	n/a
1. Finding the courthouse was easy.	1	2	3	4	5	n/a
2. The forms I needed were clear and easy to understand.	1	2	3	4	5	n/a
3. I felt safe in the courthouse.	1	2	3	4	5	n/a
4. The court makes reasonable efforts to remove physical and language barriers to service.	1	2	3	4	5	n/a
5. I was able to get my court business done in a reasonable amount of time.	1	2	3	4	5	n/a
6. Court staff paid attention to my needs.	1	2	3	4	5	n/a
7. I was treated with courtesy and respect.	1	2	3	4	5	n/a
8. I easily found the courtroom or office I needed.	1	2	3	4	5	n/a
9. The court's Web site was useful.	1	2	3	4	5	n/a
10. The court's hours of operation made it easy for me to do my business.	1	2	3	4	5	n/a

If you are a party to a legal matter and appeared before a judicial officer today, complete questions 11-15:

### Section II: Fairness

11. The way my case was handled was fair.	1	2	3	4	5	n/a
12. The judge listened to my side of the story before he or she made a decision.	1	2	3	4	5	n/a
13. The judge had the information necessary to make good decisions about my case.	1	2	3	4	5	n/a
14. I was treated the same as everyone else.	1	2	3	4	5	n/a
15. As I leave the court, I know what to do next about my case.	1	2	3	4	5	n/a

### Section III: Background Information

What did you do at the court today?

(Check all that apply)

- ☐ Search court records/obtain documents
- ☐ File papers
- ☐ Make a payment
- ☐ Get information
- ☐ Appear as a witness
- ☐ Attorney representing a client
- ☐ Jury duty
- ☐ Attend a hearing or trial
- ☐ Law enforcement/probation/social services staff
- ☐ Party to a legal matter

What type of case brought you to the courthouse today?

- ☐ Traffic
- ☐ Criminal
- ☐ Civil matter
- ☐ Divorce, child custody or support
- ☐ Juvenile matter
- ☐ Probate
- ☐ Small Claims
- ☐ Other: \_\_\_\_\_

How do you identify yourself?

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Hispanic or Latino
- ☐ Native Hawaiian or Other Pacific Islander
- ☐ White
- ☐ Mixed Race
- ☐ Other: \_\_\_\_\_

How often are you typically in this courthouse?

(Choose the closest estimate)

- ☐ First time in this courthouse
- ☐ Once a year or less
- ☐ Several times a year
- ☐ Regularly

What is your gender?

- ☐ Male
- ☐ Female





## Access and Fairness

### Measure

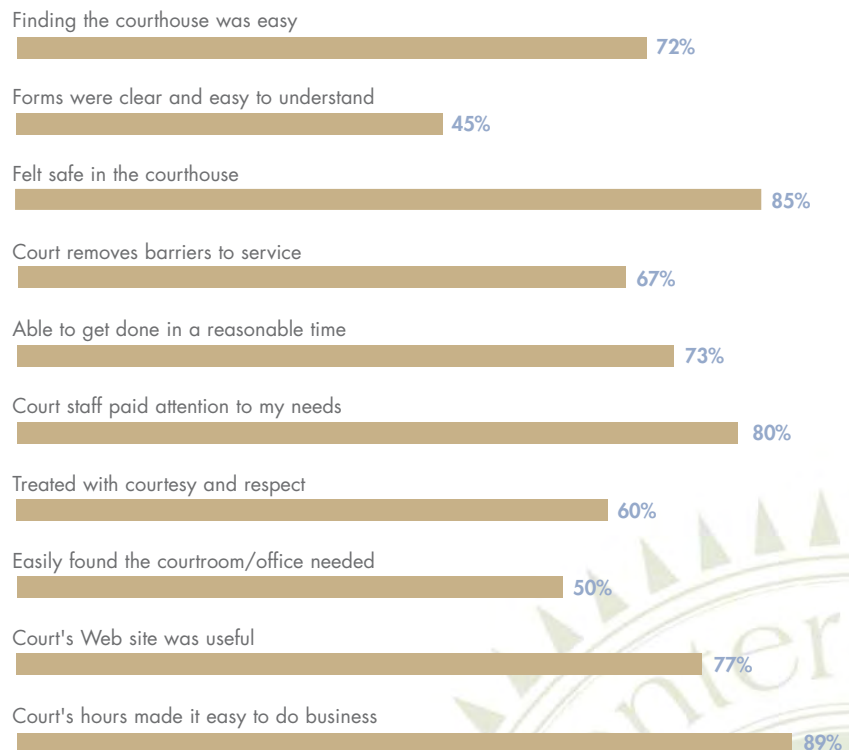
### Analysis and Interpretation

Compile the survey data to summarize:

- 10 items that capture respondents' opinions about access to court services
- 5 questions related to procedural fairness, completed by parties to a legal proceeding
- 5 items that capture background information about the respondent

Overall attitudes about access and fairness are the first level of analysis. Court managers may decide that a rating of at least 4 or better means that the court is meeting its performance goal. In this case, responses would be grouped together for those who "Strongly Agree" and those who "Agree" into an "Agree" grouping. The total number of these responses can be converted into a percentage of all valid responses. The results for all questions can be shown in a single graph. As the graph below shows, court users were especially positive about safety and hours of operation; conversely, they were least satisfied with finding courtrooms and forms.

#### Percent reporting they strongly agree/agree with each Access question:



Enter the responses from each respondent into a spreadsheet or database to record and summarize the results. The figure shows a sample summary spreadsheet for the five fairness questions. Note that the court surveyed 100 respondents, but that the number of valid responses for each question is not necessarily 100. If people did not answer the question, or answered “Not Applicable” on a question, their answers are not counted for that question.

### Computing the Average Fairness Scores

Respondent Number	Q11 Case handled fairly	Q12 Judge listened	Q13 Judge had information	Q14 I was treated the same	Q15 I know what to do next
10001	3	5	–	3	2
10002	–	2	2	2	1
10003	–	4	3	1	1
10004	1	0	5	3	–
10005	2	4	2	3	1
⋮	⋮	⋮	⋮	⋮	⋮
⋮	⋮	⋮	⋮	⋮	⋮
⋮	⋮	⋮	⋮	⋮	⋮
10100	3	4	3	3	2
<b>Total Score</b>	363	337	307	240	168
<b>Total Respondents</b>	100	100	100	100	100
<b>Total Valid Responses</b>	98	99	99	100	99
<b>Average</b>	3.7	3.4	3.1	2.4	1.7

$363 \div 98 = 3.7$

### Creating an Index Score

A court may also wish to construct an overall rating of access and an overall rating of fairness. By summing the average scores for each question, an index is created. However, the index scores for each section are easier to interpret and compare when placed on a 100-point scale. Because the number of questions between the access and fairness sections varies, this step involves a different multiplier for each section. There are 5 questions in the fairness section, with a maximum score of 5 points each, for a total maximum score of 25. Multiplying the summed averages by 4 gives a score on a 100-point scale. For the 10 access questions, the total maximum score is 50, so the multiplier is 2.

### Constructing the Overall Fairness Index Score

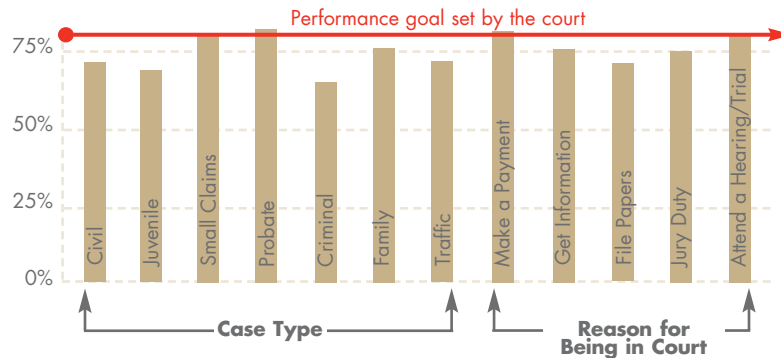
	Average score
11. The way my case was handled was fair.	3.7
12. The judge listened to my side of the story before he or she made a decision.	3.4
13. The judge had the information necessary to make good decisions about my case.	3.1
14. I was treated the same as everyone else.	2.4
15. As I leave the court, I know what to do next about my case.	+ 1.7
	14.3
	x 4

Overall Fairness Index Score = 57.2



Assessments of access and fairness may vary by case type, reasons for being in the courthouse, frequency of courthouse use, and demographic characteristics that might be associated with differential treatment or ability to access court services. The graphs below indicate that court users' perceptions of staff vary by the type of case that brought them to the court and by reasons for being in the courthouse. Staff and management can seek the reasons behind these numbers as they strive to meet the goals they have set for themselves.

**Percentage of those who agree they were treated with courtesy and respect by staff varies by...**



The court should establish a baseline, set its own performance goals for access and fairness, and seek to improve over time. Comparisons of survey results over time and across the court can be a useful basis for identifying trends or successful improvement strategies.

Different locations or divisions might be compared, for example, on the percent of users who felt that they were treated with courtesy and respect. Follow-up queries can then be made that probe the comparisons. Why do one or more locations/divisions seem to be more successful than others? What are they doing that the other locations/divisions are not? Why are some locations/divisions more successful at communicating what litigants need to do next? Posing these simple questions to staff in both the most successful and least successful locations can help to identify effective customer service and communications practices.

## Terms You Need to Know

**Index:** A single number used to summarize a set of data, providing an overview.

**Judicial Officer:** A judge, commissioner, referee, magistrate, or hearing officer.

**Mean:** The average value of a set of numbers, equal to the sum of all values divided by the number of values.

**Party:** A person making or responding to a claim in a court proceeding, e.g., plaintiff, defendant, petitioner, respondent, cross-complainant, but not a witness, juror, or attorney.

**Valid Responses:** Responses that should be counted for purposes of analysis. For example, missing, "not applicable," or nonsensical responses are not included.



# CourTools

Developed by the NCSC Court  
Performance Community of Practice.

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## ANNEX 9B: COURTTOOLS ACCESS AND FAIRNESS SURVEY EXCEL TEMPLATE

### Measure 1 Access and Fairness Survey



CourtTools

#### Worksheet Instructions

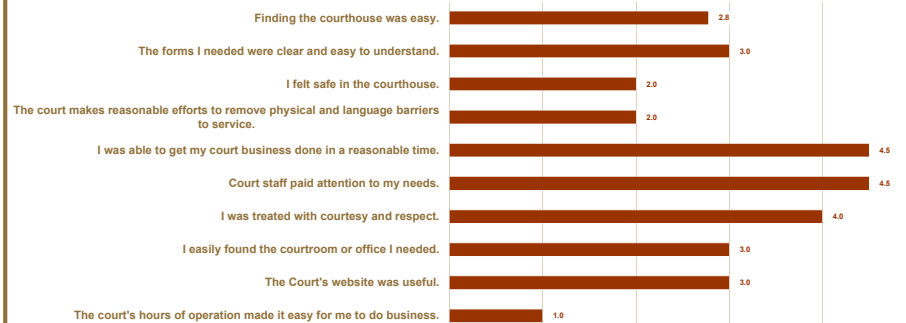
- Use this spreadsheet to enter survey responses; as data are entered, average scores are generated and automatically plotted.
- Up to 25 surveys can be entered.
- Data may only be entered in the gray cells. An acceptable input will change the cell color from gray to white and the input text color will turn to maroon.
- All white colored cells with black text are locked.

Question	Access and Fairness Survey	N Size For Each Question	Average Scores	Enter: 1=Strongly Disagree; 2=Disagree; 3=Neither Agree nor Disagree; 4=Agree; 5=Strongly Agree																								
				1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.
<b>Section I: Access</b>																												
1	Finding the courthouse was easy.	9	2.8	1	2	3	4	5		4	3	2	1															
2	The forms I needed were clear and easy to understand.	3	3.0	2		4	3																					
3	I felt safe in the courthouse.	1	2.0		2																							
4	The court makes reasonable efforts to remove physical and language barriers to service.	3	2.0	3				1	2																			
5	I was able to get my court business done in a reasonable time.	2	4.5	4					5																			
6	Court staff paid attention to my needs.	2	4.5	5						4																		
7	I was treated with courtesy and respect.	2	4.0	5								3																
8	I easily found the courtroom or office I needed.	2	3.0	4									2															
9	The Court's website was useful.	1	3.0	3																								
10	The court's hours of operation made it easy for me to do business.	1	1.0	1																								
<b>Overall Average Access Score</b>			3.0																									
<b>Overall Access Index Score (100 point scale)</b>			59.6																									
<b>Section II: Fairness</b>																												
11	The way my cases was handled was fair.	5	3.0	1	3	2	5	4																				
12	The judge listened to my side of the story before he or she made a decision.	3	3.7	2					5	4																		
13	The judge had the information necessary to make good decisions about my case.	3	2.0	3							1	2																
14	I was treated the same as everyone else.	1	4.0	4																								
15	As I leave the court, I know what to do next about my case.	1	1.0										1															
<b>Overall Average Fairness Score</b>			2.7																									
<b>Overall Fairness Index Score (100 point scale)</b>			54.7																									
<b>Section III: Background</b>																												
	What did you do at the court today? (enter 1-10)	10		1	1	9	10	3	4	5	6	7	8															
	How often are you typically in this courthouse? (enter 1-4)	10		1	1	2	2	3	3	1	1	1	1															
	What type of case brought you to the courthouse today? (enter 1-8)	10		1	2	3	4	5	6	7	8	1	2															
	What is your gender? (enter 1 or 2)	10		1	2	1	1	1	1	1	2	1	2															
	How do you identify yourself? (enter 1-8)	10		1	2	3	4	5	6	7	8	1	2															
<b>Total Number of Surveys</b>		10																										

#### Graph Interpretation

- The graphs in the subsequent worksheets automatically update as the survey inputs are completed in this worksheet.

### Access Survey - Average Response Scores

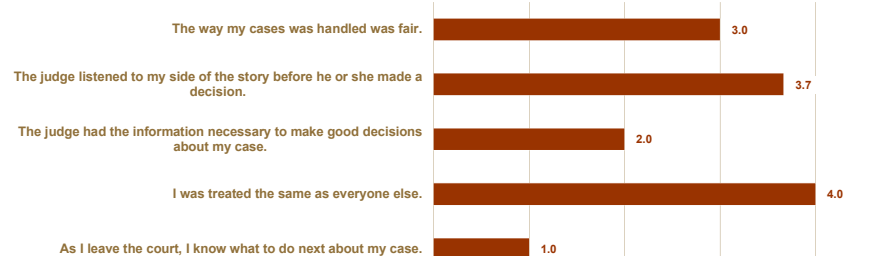


Average Response Score

### Access Survey - Number of Responses for Each Survey Question

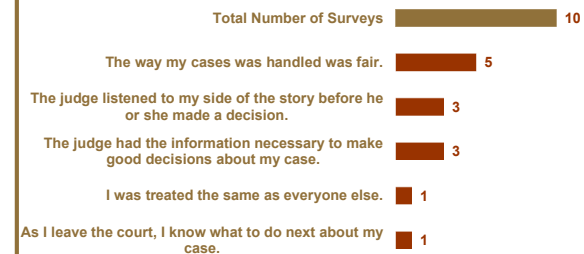


### Fairness Survey - Average Response Scores

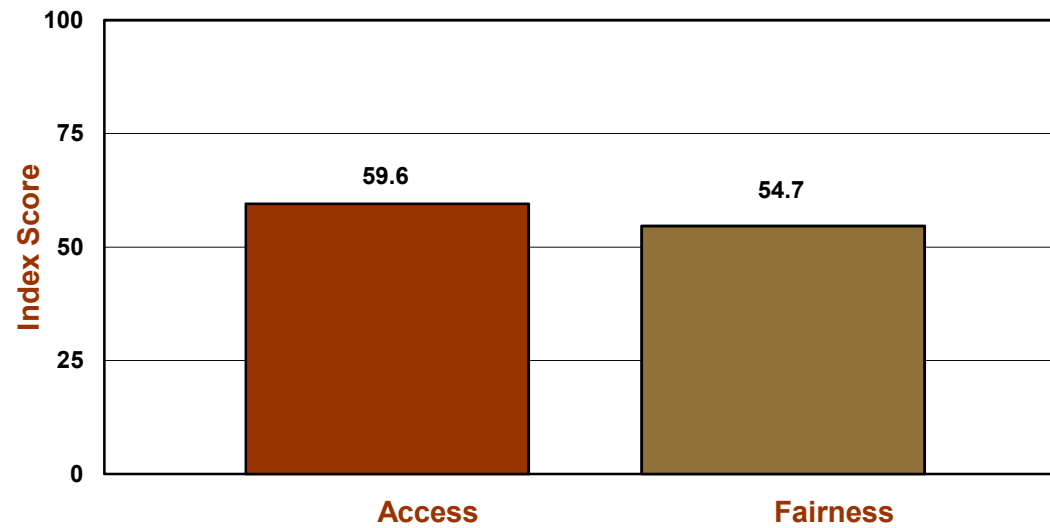


Average Response Score

### Fairness Survey - Number of Responses for Each Survey Question

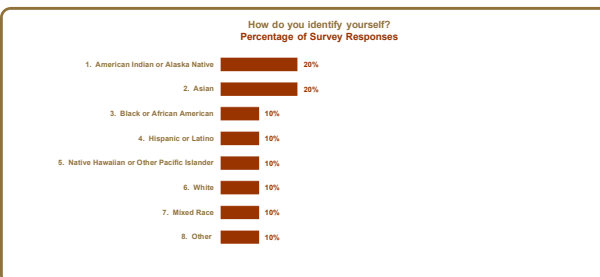
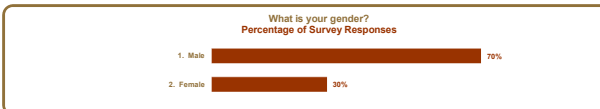
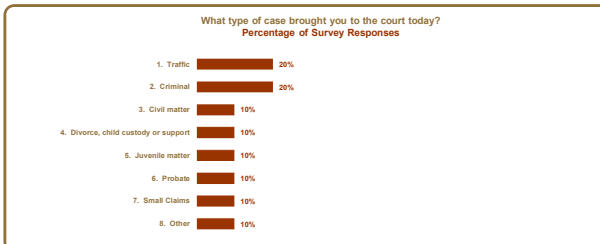
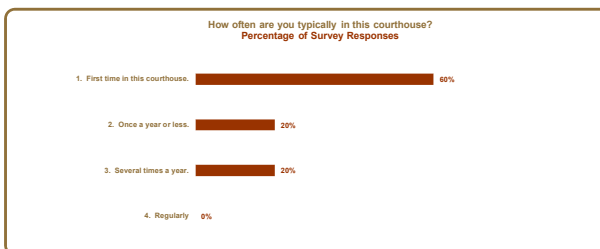
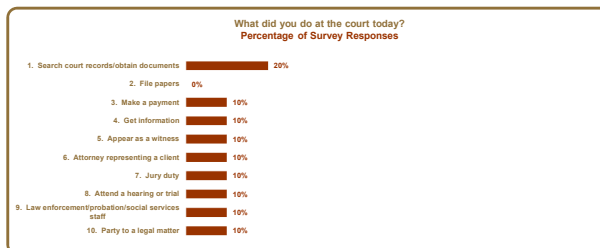


### Access and Fairness Survey - Index Score



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ANNEX 10: INDICATOR QUESTIONNAIRE

**Fill in one of these forms for each level of court (e.g. Magistrates Courts, High Court, Supreme Court) and where there are separate divisions (e.g. Land cases, Family cases, Criminal cases, Juvenile Cases, Probate Cases)**

Indicator	Last Reporting Year eg. 2012-13	Year before e.g. 2011-12	Year before e.g. 2010-11
How many cases were pending at the start of the 2010-11 Reporting Period? *	NOT APPLICABLE	NOT APPLICABLE	
How many cases were filed for this reporting period? *			
How many cases were finalised in this reporting period? *			
What was the total number of days in duration of ALL cases finalised? *			
Total all the days for each case from date of filing to date of finalisation			
How many appeal cases were filed in this reporting period? *			
Of the cases appealed in this			

reporting period, how many decisions were overturned (successful)? *			
How many cases filed in this reporting period had their fees waived? *			
How many cases were finalised at a circuit court? *			
Number of cases filed in this reporting period where legal aid was provided *			
In this reporting period, how many complaints were received concerning a Judicial Officer?			
In this reporting period, how many complaints were received concerning Court Staff? *			
How many Judicial Officers were there in this period? *			
How many Court Staff were there in this period?			

ANNEX 11A: DATA COLLECTION FOR FAMILY LAW CASES

**Fill in one of these forms for each level of court (e.g. Magistrates Courts, High Court, Supreme Court) and enter the following data for family law cases.**

Indicator	Last Reporting Year	Year before	Year before
How many cases were pending at the start of the 2010-11 Reporting Period? *			
Total cases filed for this reporting period? *			
Of the total filed cases how many were filed by women?			
Of the total filed cases how many were Divorce Applications?			
Of the total cases filed how many were Property Cases?			
Of the total cases filed how many were Child Custody?			
Of the total cases filed how many were Maintenance cases?			

Of the total cases filed how many were for the dissolution of a customary marriage?			
How many cases were finalised in this reporting period? *			
What was the total number of days in duration of ALL cases finalised? *			
Total all the days for each case from date of filing to date of finalisation			
How many appeal cases were filed in this reporting period? *			
Of the cases appealed in this reporting period, how many decisions were overturned (successful)? *			
How many cases filed in this reporting period had their fees waived? *			

How many cases were finalised at a circuit court? *			
Number of cases filed in this reporting period where legal aid was provided *			
In this reporting period, how many complaints were received concerning a Judicial Officer?			
In this reporting period, how many complaints were received concerning Court Staff? *			
How many Judicial Officers were there in this period? *			
How many Court Staff were there in this period?			



ANNEX 11B: DATA COLLECTION FOR VIOLENCE CASES

Fill in one of these forms for each level of court (e.g. Magistrates Courts, High Court, Supreme Court) and enter the following data for family violence/family protection cases.			
Indicator	Last Reporting Year	Year before	Year before
How many cases were pending at the start of the Reporting Period? *			
Total cases filed for this reporting period? *			
Of the total filed cases how many were filed by women^? (^ Are the applicants the police of the woman?)			
Of the total cases filed what is the relationship between the victim & perpetrator? (insert relationship categories from the Act).			
What was the age of the applicant/victim?			
Of the total cases filed, number living in Urban area & Number living in Rural area.			
Of the total cases filed how			

many were for interim protection orders?			
Of the total cases filed how many were for permanent protection orders?			
Of the total cases filed how many were for family violence cases?			
Of these family violence cases what was the breakdown for: (Insert categories of FV from the Act)			
How many cases were finalised in this reporting period? *			
What was the total number of days in duration of ALL cases finalised? *			
Total all the days for each case from date of filing to date of finalisation			
How many appeal cases were filed in this reporting period? *			
Of the cases appealed in this reporting period, how many			

decisions were overturned (successful)? *			
How many cases filed in this reporting period had their fees waived? *			
How many cases were finalised at a circuit court? *			
Number of cases filed in this reporting period where legal aid was provided *			
In this reporting period, how many complaints were received concerning a Judicial Officer?			
In this reporting period, how many complaints were received concerning Court Staff? *			
How many Judicial Officers were there in this period? *			
How many Court Staff were there in this period?			

## ANNEX 12: TOKELAU DATA SPREADSHEET

### Law Clerks' Report

#### Cases at First Instance - Criminal

CASE NUMBER	DATE CASE FILED	OFFENCE COMMITTED (REFER TO SECTION NO.)	HAS THE ACCUSED PLEADED GUILTY OR NOT GUILTY (G OR NG)	NAME OF ACCUSED	GENDER OF ACCUSED M/F	AGE OF ACCUSED	DATE OF CASE HEARING	DATE CASE FINALISED	FINDING (GUILTY OF NOT GUILTY)	IF FOUND GUILTY, WHAT SENTENCE WAS IMPOSED.	DURATION OF CASES
26/13	17/09/2013	AB 6.6	G	Opea Hope	m	40	18/09/2013	18/09/2013	G	fined 2 units	1
27/13	17/09/2013	TC 22 & 23	G	Lomi Kuresa, Alofaaga Hakai	1 m, 1 f	Lomi-60, Alofaaga 52	18/09/2013	18/09/2013	G	fined 3 units each	1
28/13	17/09/2013	TC 52, 15, 45, 54, 80	G	Lua O'Brien	m	52	18/09/2013	18/09/2013	G	4 units	1
29/13	17/09/2013	TC 22,23	G	Lomi Kuresa, Alofaaga Hakai	1m, 1f	Lomi-60, Alofaaga 52	18/09/2013	18/09/2013	G	3 units each	1
30/13	17/09/2013	TC 38, 27	G	Halai Kalolo	f	37	18/09/2013	18/09/2013	G	2 units	1
31/13	17/09/2013	TC 16, 50	G	Iele Telemia, Feleti Lopa, Sale Lotomau, Venise Rochelle Amituanae, Feuku Kalolo, Mili Toleafoa	5m, 2 f	Iele-17, Feleti 16, Sale 15, Venise-16, Mili-16	18/09/2013	18/09/2013	G	fined 2 units each	1
32/13	17/09/2013	AB22	G	Filo Filo	m	18	18/09/2013	18/09/2013	G	fined 2 units	1
33/13	17/09/2013	TC 54	G	Samasoni Ulia, Sivi Toleafoa	2m	Sam-43, Sivi-46	18/09/2013	18/09/2013	G	fined 3 units each	1
34/13	22/11/2013	TC22	G	Betty Tuilotolava, Alipapa Lafitaga	1m, 1f	Betty-29, Alipapa-32	26/11/2013	26/11/2013	G	3 units each	4
35/13	25/09/2013	TC27	G	Leapi Temo	m	36	30/04/2014	30/04/2014	G	2 units	217
36/13	25/09/2013	AB16.7	G	Peni Teaku, Tene Aluia, Mataio Peau, Tala Maea, Lua Obrien, Mapusaga Taumanu	6m	Peni-69, Tene-59, Mataio-42, Tala-31, Lua-52, Mapusaga-24	30/04/2014	30/04/2014	G	1 unit each	217
01/14	11/02/2014	TC49	G	Afeleti Tonia, Filo Filo, Kitiona Ioane, Steve Toleafoa	4m	Afeleti-20, Filo-18, Kitiona -16, Steve-47	30/04/2014	30/04/2014	G	3 units each	78
02/14	11/02/2014	TC36, 52	G	Tufoua Nouata	1m	20	30/04/2014	30/04/2014	G	2 units	78
03/14	11/02/2014	TC36	G	Mohe Reuelu	m	61	30/04/2014	30/04/2014	G	1 unit & reparation of damages	78
04/14	11/02/2014	TC24	G	Temo Jnr Lopa	m	24	30/04/2014	30/04/2014	G	1 unit	78
05/14	11/02/2014	TC52, 46,45, 50	G	Tui Teloloma	m	17	30/04/2014	30/04/2014	G	2 units	78
06/14	11/02/2014	TC50	G	Ioapo Pelesa	m	18	30/04/2014	30/04/2014	G	1 unit	78
07/14	11/02/2014	TC15, 45, 81	G	Fatasi Filo, Mele Filo, Mapusaga Taumanu	2m, 1f	Fatasi-37, Mele-38, Mapusaga-26	30/04/2014	30/04/2014	G	1 unit each	78
08/14	11/02/2014	AB32.5	G	Taukifaga Etueni	m	18	30/04/2014	30/04/2014	G	1 unit	78
09/14	11/02/2014	TC52, 38	G	Taukifaga Etueni	m	18	30/04/2014	30/04/2014	G	2 units	78
10/14	1/05/2014	TC46, 52, 45, 15	G	Matagofie Lopa	f	28	14/05/2014	14/05/2014	G	2 units	13
11/14	1/05/2014	TC50	G	Temo Lopa, Sosaite Sosaite, Matagofie Lopa, Loto Siose, Fola Valoaga	4m, 1f	Temo-24, Sosaite-32, Matagofie-28, Loto-20, Fola-20	14/05/2014	14/05/2014	G	1 unit each	13
12/14	1/05/2014	AB16.7, TC50	G	Meleke Filo, Tehakalo Kalolo	2m	Meleke-20, Tehakalo-19	14/05/2014	14/05/2014	G	1 unit each	13
13/14	1/05/2014	AB16.7, TC50	G	Talimu Filo	m	17	14/05/2014	14/05/2014	G	1 unit	13
14/14	1/05/2014	TC 52, AB 32.5	G	Meleke Filo	m	20	21/05/2014	21/05/2014	G	3 units	20
15/14	1/05/2014	TC52, 45, 15,78 & AB 5	G	Fatasi Filo	m	38	21/05/2014	21/05/2014	G	4 units	20
16/14	1/05/2014	TC27, 46, 52	G	Maka Galuega	m	23	14/05/2014	14/05/2014	G	2 units	13
17/14	1/05/2014	TC 44	G	Mohe Reuelu, Savaka Galuega	2m	Mohe-61, Savaka-68	14/05/2014	14/05/2014	G	1 unit each	13
18/14	1/05/2014	TC50	G	Ekesa Toma	f	36	21/05/2014	21/05/2014	G	2 units	20
19/14	15/05/2014	TC 46, 52	G	Opea Hope	m	47	21/05/2014	21/05/2014	G	2 units	6
20/14	15/05/2014	AB16.7	G	Nouata Jnr, Nouata, Teve Sakaio, Patrina Sili	2m, 1f	Nouata-21, Sakaio-19, Patrina-21	21/05/2014	21/05/2014	G	fined \$30 each	6
21/14	15/05/2014	TC 44, 52	G	Tehakalo Kalolo, Fola Valoaga	2m	Tehakalo-19, Fola-20	21/05/2014	21/05/2014	G	2 units each	6
22/14	15/05/2014	TC 50	G	Feuku Koro	m	17	21/05/2014	21/05/2014	G	1 unit	6
23/14	15/05/2014	TC40 & AB32	G	Pelesa Pelesa	m	24	21/05/2014	21/05/2014	G	fined \$30	6
24/14	19/05/2014	TC44	G	Mesepa Taumanu, Soana Taumanu	2f	Mesepa-28, Soana-21	21/05/2014	21/05/2014	G	1 unit each	2
25/14	19/05/2014	TC 50	Pending	Kitiona Lipua	m	16					
26/14	19/05/2014	AB 32	Pending	Helau Mamoe	m	56					
27/14	19/05/2014	TC 44	G	Lipua Toma, Elisaia Aloni	2m	Lipua-42, Elisaia-34	21/05/2014	21/05/2014	G	1 unit each	2
28/14	19/05/2014	TC45, 46	G	Moelani Hakai	f	26	21/05/2014	21/05/2014	G	fined \$30	2
29/14	19/05/2014	TC 44	G	Mehepa Taumanu, Moelani Hakai	2f	Mehepa-26, Moelani-26	21/05/2014	21/05/2014	G	fined \$30 each	2
30/14	20/05/2014	TC 50	G	Tiu K Fao	m	44	21/05/2014	21/05/2014	G	2 units	1

1325

33 average days per case

total for duration of cases

40 cases for 2013/2014

## ANNEX 13: SEX DISAGGREGATED DATA CHART CREATOR

1 - Divorce Cases Filed by Sex CoCP							
Year	Total Divorce Cases Filed by Women	Total Divorce Cases Filed by Men	Total Divorce Cases Filed Jointly	Total Divorce Cases Filed	% of Divorce Cases Filed by Women	% of Divorce Cases Filed by Men	% of Divorce Cases Filed Jointly
2013	21	9		30	70.00%	30.00%	0.00%
2014	9	7		16	56.25%	43.75%	0.00%
2015	16	8		24	66.67%	33.33%	0.00%
2016	26	7		33	78.79%	21.21%	0.00%
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Total:	72	31	0	103	69.90%	30.10%	0.00%

1 - Divorce Cases Filed by Sex CoCP							
Year	Total Divorce Cases Filed by Women	Total Divorce Cases Filed by Men	Total Divorce Cases Filed Jointly	Total Divorce Cases Filed	% of Divorce Cases Filed by Women	% of Divorce Cases Filed by Men	% of Divorce Cases Filed Jointly
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Insert Year							
Total:	0	0	0	0	#DIV/0!	#DIV/0!	#DIV/0!

2 - Child Support Cases Filed by Sex in the CoCP					
Year	Total Maintenance Cases Filed by Women	Total Maintenance Cases Filed by Men	Total Maintenance Cases Filed	% of Maintenance Cases Filed by Women	% of Maintenance Cases Filed by Men
2013	3	0	3	100.00%	0.00%
2014	1	0	1	100.00%	0.00%
2015	2	0	2	100.00%	0.00%
2016	3	0	3	100.00%	0.00%
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Total:	9	0	9	100.00%	0.00%

3 - Sex of Offender in Rape Cases					
Year	Rape Cases Filed where Alleged Perpetrator is Female	Rape Cases Filed where Alleged Perpetrator is Male	Total Rape Cases Filed	% of Rape Cases Filed where Alleged Perpetrator is Female	% of Rape Cases Filed where Alleged Perpetrator is Male
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Total:	0	0	0	#DIV/0!	#DIV/0!



4 - Civil Domestic Abuse Restraining Order FPA (Filed by Victim) in the CoCP																			
Year	Total Restraining Order Cases Filed by Women	Total Restraining Order Cases Filed by Men	Total Restraining Order Cases Filed by Multiple Victims Male and Female	Total Restraining Order Cases Filed	% of Restraining Order Cases Filed by Women	% of Restraining Order Cases Filed by Men	% of Restraining Order Cases Filed by Multiple Victims Male and Female	Temporary Restraining Order Cases Granted	Temporary Restraining Order Cases Not Granted	Total Restraining Order Cases Decided	% of Temporary Restraining Order Cases Granted	% of Temporary Restraining Order Cases Not Granted	Total Temporary Restraining Order Terminated by Petitioner and/or Lapsed	Total Protective Orders Granted	Total Protective Orders Not Granted	Total Protective Order Cases Finalised	% of Temporary Restraining Order Terminated by Petitioner and/or Lapsed	% Protective Orders Granted	% Protective Orders Not Granted
2013	0	0		0	0	0	0	0	0	0	0	0				0	0	0	0
2014	26	3		29	89.66%	10.34%	0.00%	28	1	29	96.55%	3.45%				0	0	0	0
2015	26	4		30	86.67%	13.33%	0.00%	34	3	37	91.89%	8.11%				0	0	0	0
2016	31	6		37	83.78%	16.22%	0.00%	42	4	46	91.30%	8.70%				0	0	0	0
Insert Year																			
Insert Year																			
Insert Year																			
Insert Year																			
Insert Year																			
Insert Year																			
Total:	83	13	0	96	86.46%	13.54%	0.00%	104	8	112	92.86%	7.14%	0	0	0	0	#DIV/0!	#DIV/0!	#DIV/0!

5 - Child Custody Cases Filed by Sex of the Applicant Party

Year	Total Child Custody Cases Filed by Women	Total Child Custody Cases Filed by Men	Total Child Custody Cases Filed	% of Child Custody Cases Filed by Women	% of Child Custody Cases Filed by Men
2013	4	0	4	100.00%	0.00%
2014	4	0	4	100.00%	0.00%
2015	2	0	2	100.00%	0.00%
2016	6	0	6	100.00%	0.00%
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Total:	16	0	16	100.00%	0.00%

6 - Family Protection Act Criminal Charges (Filed by the ROP)

Year	Family Protection Act Criminal Charges Filed by the RoP in the Supreme Court	Family Protection Act Criminal Charges Filed by the RoP in the CoCP	Total Family Protection Act Criminal Charges Filed	% of Family Protection Act Criminal Charges in the Supreme Court	% of Family Protection Act Criminal Charges in the CoCP
2013	1	0	1	100.00%	0.00%
2014	13	23	36	36.11%	63.89%
2015	3	8	11	27.27%	72.73%
2016	1	30	31	3.23%	96.77%
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Insert Year					
Total:	18	61	79	22.78%	77.22%

## ANNEX 14: JUVENILE DISAGGREGATED DATA CHART CREATOR

4 - Juvenile Cases and Diversionary Process in the Court of Common Pleas																
Year	Juvenile Cases filed and heard in the CoCP where the alleged perpetrator is a boy(s)	Juvenile Cases filed and heard in the CoCP where the alleged perpetrator is a girl(s)	Juvenile Cases filed and heard in the CoCP where the alleged perpetrator includes both a boy and a girl	Total Juvenile Cases filed in the CoCP	% of Juvenile Cases filed in the CoCP involving boys	% of Juvenile Cases filed in the CoCP involving girls	% of Juvenile Cases filed in the CoCP involving boys and girls	Deferred Adjudication (Diversionary Process)	Adjudicated (No Diversionary Process) and penalty includes incarceration	Adjudicated (No Diversionary Process) and penalty does not include incarceration	Dismissed, Warrant Outstanding, Pending	Total Juvenile Cases Finalised	% of Juvenile Cases handled through Deferred Adjudication	% of Juvenile Cases Adjudicated and penalty includes incarceration	% of Juvenile Cases Adjudicated (No Diversionary Process) and penalty does not include	% of Juvenile Cases Dismissed, Warrant Outstanding, Pending
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Insert Year																
Total:	0	0	0	0				0	0	0	0	0				

## ANNEX 15: CHECKLIST FOR SEX, AGE AND DISABILITY INCLUSIVE DATA IN ANNUAL REPORTS



### Checklist for the collection, analysis and presentation of sex, age and disability inclusive data in an Annual Report

The data fields identified below will need to be adjusted to take into account how cases are classified in each jurisdiction.

It is helpful to be able to present at least five years data for a data field to enable the reader to understand trends.

Data Fields	Is this captured in the case management system?	Is this data presented in Annual Reports now?	Notes
Disaggregated data - Civil cases			

1	Numbers of women and men that are applicant parties in family law and selected civil cases (e.g. divorce cases, property, child custody, child maintenance, adoption, inheritance).	<input type="checkbox"/>	<input type="checkbox"/>	
2	Number of children under the age of 18 years in divorce cases that are brought to the court.	<input type="checkbox"/>	<input type="checkbox"/>	This is relevant to ensure that adequate provision is made for child custody and maintenance.
3	Number of women and men that request other orders (e.g. property, child custody, child maintenance) as part of their divorce petition to the court in a family law case	<input type="checkbox"/>	<input type="checkbox"/>	This is relevant in those jurisdictions where the applicant may make a number of applications relating to divorce, property, child custody, child maintenance within a single divorce case. It is important to be able to see the full range of orders

				sought from and delivered by the court through the case management system.
4	Number of women and men who obtain the orders they sought in their family law application.	<input type="checkbox"/>	<input type="checkbox"/>	Possible drop down menu options in the case management system: Yes all orders granted/ Yes some orders granted/ No application for orders rejected
5	Numbers of divorce cases initiated by women where the woman states that they have experienced domestic violence (refer to different forms of violence).	<input type="checkbox"/>	<input type="checkbox"/>	Possible drop down menu options in the case management system and family law application forms: Yes experienced physical violence/ Yes experienced sexual violence/ Yes experiences psychological violence/ Yes experiences financial violence [note: insert forms of violence referred to under national



					legislation].
6	Number of Family Protection Order/ Restraining Order applications where the applicant/ survivor/victim is a woman, child or man	<input type="checkbox"/>		<input type="checkbox"/>	Distinguish between interim and final protection orders.
7	Number of Family Protection Order/ Restraining Order applications granted/ not granted disaggregated by the sex of the applicant party.	<input type="checkbox"/>		<input type="checkbox"/>	
<b>Disaggregated data - Criminal cases</b>					
8	Numbers of criminal domestic violence cases disaggregated by the sex of the accused	<input type="checkbox"/>		<input type="checkbox"/>	
9	Numbers of women/ men/ girls (0-17 years of age)/ boys (0-17 years of age)				

who are victim/ survivors in violence cases	<input type="checkbox"/>	<input type="checkbox"/>
10 Numbers of women/ men/ girls/ boys who are the accused in violence cases	<input type="checkbox"/>	<input type="checkbox"/>
11 The average final sentence in violence cases in which the survivor/ victim is a woman or child disaggregated by the type of offence: murder/ manslaughter/ rape/ sexual assault	<input type="checkbox"/>	<input type="checkbox"/> Drop down menu options to include sentencing options common in violence cases. For custodial sentences include a field for the number of months the offender is sentenced so that an average final sentence can be obtained for different types of cases.
12 The number of violence cases in which the survivor/ victim is a woman or child in which the offender appeals the decision?	<input type="checkbox"/>	<input type="checkbox"/>

13	The number of violence cases in which the survivor/ victim is a woman or child that are the subject of appeal and the finding of guilt is overturned and/or the sentence is reduced.	<input type="checkbox"/>	<input type="checkbox"/>	Possible drop down menu options in the case management system: Appeal rejected in full/ Appeal granted in relation to a finding of guilt/ Appeal granted in relation to sentence/ Appeal granted in relation to a finding of guilt and in relation to sentence/ include data field on number of months sentence is reduced/ augmented.
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**Cook Island Indicator 5: Court fee waiver**

14	Number of female/ male applicants that <b>request</b> a court fee waiver in their civil cases.	<input type="checkbox"/>	<input type="checkbox"/>
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15	Number of female/ male applicants that are <b>granted/ not granted</b> a court fee waiver in their civil cases.	<input type="checkbox"/>	<input type="checkbox"/>
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**Cook Island Indicator 6: Circuit/ island  
court sittings**

16	Numbers of family and other civil cases disposed of at a circuit/ island court indicating where the applicant party is a woman or a man.	<input type="checkbox"/>	<input type="checkbox"/>
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17	Number and percentage of criminal cases/ disposed of at a circuit/ island court indicating where the defendant is a woman or a man.	<input type="checkbox"/>	<input type="checkbox"/>
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**Cook Island Indicator 7: Legal Aid**

18	Number and percentage of criminal cases where the defendant receives legal aid, disaggregated by man/ woman/ boy (0-17 years). Girls (0-17 years).	<input type="checkbox"/>	<input type="checkbox"/>
19	Number and percentage of family cases where the applicant party receives legal aid disaggregated by the sex of the applicant party.	<input type="checkbox"/>	<input type="checkbox"/>
20	Number and percentage of other civil cases where the applicant party receives legal aid disaggregated by the sex of the applicant party.	<input type="checkbox"/>	<input type="checkbox"/>
21	<b>Cook Island Indicator 9: Percentage of Complaints received concerning a judicial officer.</b>  Number and percentage of Complaints received concerning a judicial officer	<input type="checkbox"/>	<input type="checkbox"/>

disaggregated by the sex of the judicial officer.

**22 Cook Island Indicator 10: Percentage of Complaints received concerning a member of court staff.**



Number and percentage of Complaints received concerning a member of the court staff disaggregated by the sex of the staff member.

**23 Cook Island Indicator 14: Court Information**

Information on court services that is publicly available, including information on how to bring:

- Family Law Cases
- Family Protection Orders/ Restraining Orders

How is this information published: on noticeboards, on court websites, in health centres, libraries?

**Disability inclusive Courts**



24	<p>Number of women and men appearing before the court who have special needs disaggregated by type of case and in what capacity the party living with a disability is appearing before the court in the case:</p> <ul style="list-style-type: none"> <li>▪ Applicant (civil case)</li> <li>▪ Defendant (criminal case)</li> <li>▪ Witness/ Victim/ survivor (criminal case)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Possible drop down menu options in the case management system: What type of special assistance does the client require from the court:</p> <ul style="list-style-type: none"> <li>▪ To locate, enter and move about the court-room</li> <li>▪ To read a document</li> <li>▪ To submit a written application</li> <li>▪ To hear what is being said in court</li> <li>▪ To understand what is happening in the court as well as what preparation may be required before the court hearing day</li> </ul>
<p><b>Cook Island Indicator 15: Judgments online</b></p>				
25	<p>Number and percentage of criminal judgments (by year) uploaded to PacLII or a court website</p>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Show this for each court jurisdiction: e.g. Supreme Court, Magistrates Court, Island Court</p>

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26	Number and percentage of family law cases redacted/ anonymised and uploaded to PacLII or a court website	<input type="checkbox"/>	<input type="checkbox"/>	Show this for each court jurisdiction: e.g. Supreme Court, Magistrates Court, Island Court
27	Number and percentage of civil law cases redacted/ anonymised and uploaded to PacLII or a court website	<input type="checkbox"/>	<input type="checkbox"/>	Show this for each court jurisdiction: e.g. Supreme Court, Magistrates Court, Island Court.

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## ANNEX 16: PALAU FAMILY LAW AND FAMILY PROTECTION ACT SURVEY

### Palau Family Law and Family Protection Act Survey [draft 25 August 2017]

A review of the Family Protection Act cases from 2014-2016 shows that women initiate 8 out of 10 domestic violence restraining order cases and 7 out of 10 family law cases.

The aim of this survey is to improve access to the courts with a focus on family law matters and violence against women and children.

#### Question 1

We would like to learn from your recent experience with the Palau justice system. We will do this on a confidential basis and not store your name. The survey will take 15-20 minutes to complete. Would you be willing to answer some questions on your experience with the Palau justice system?

- Yes
- No

Qu 2. What issues did you go to the police or courts? [options in drop-down menu – can tick any that are appropriate]

1. an act of violence by a partner or family member
2. your child experienced an act of violence committed by a family member
3. Domestic violence Restraining order
4. Want a divorce
5. Want custody of children from a relationship
6. Want child support
7. Other\_\_\_\_\_

For this matter have you been to the:

- police
- courts
- both police and courts

Qu 3: when did you first experience these violence or family law issues that you went to the police or courts about? Insert date: \_\_\_\_\_

Qu 4: When did you decide to go to the police or courts? Insert date: \_\_\_\_\_

Qu 5: Did you go to other people or organisations to seek help before you went to the police or courts?

- Yes
- No

- If yes, who did you approach? [tick any options below that apply]
  - ☐ Spouse or partner
  - ☐ Family member
  - ☐ Friend
  - ☐ Church or faith-based organisation
  - ☐ Village leaders
  - ☐ Safe house
  - ☐ Another institution [name organisation:\_\_\_\_\_]
  - ☐ Health clinic/ medical services [name:\_\_\_\_\_]
  - ☐ Counselling services [name organisation:\_\_\_\_\_]
  - ☐ Women's organisation [name organisation:\_\_\_\_\_]
  - ☐ Other NGO [name organisation:\_\_\_\_\_]
  - ☐ Micronesia Legal Services Corporation
  - ☐ Private lawyer
  - ☐ Other \_\_\_\_\_

Did this resolve the issue? Answer options

- Fully
- Partially
- Not at all

Qu 6: Who or what made you decide to go to the police or courts?

- ☐ Family member
- ☐ Friend/ word of mouth
- ☐ Referral from another organisation [name organisation:\_\_\_\_\_]
- ☐ website [name of website:\_\_\_\_\_]
- ☐ social media [name:\_\_\_\_\_]
- ☐ poster
- ☐ newspaper article
- ☐ Radio
- ☐ TV
- ☐ Court presentation

Qu 7: What did you want to happen as a result of going to the police or courts?

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Qu 8: What has happened after going to the police or courts? Tick any options that apply:

1. Restraining Order application Successful
2. Restraining Order application Unsuccessful
3. Child Support - Obtained
4. Child Support - Unsuccessful -
5. Custody of children - Received a court order
6. Custody of children - Unsuccessful in receiving a court order

7. Divorce – successful
8. Divorce – unsuccessful
9. Criminal violence charges filed
10. Other \_\_\_\_\_

Qu 9: Did going to the police or courts produce the result you wanted?

- Yes,
- No,
- In part

Qu 10: Did you face difficulties in going to the police or Courts?

- Yes,
- No,

If yes, what difficulties did you face?

1. Fear of physical attack
2. Fear of stigma
3. Did not know where to go
4. Did not know court process
5. Police told me to resolve the issue within the family/ village rather than take it to them
6. Police delayed responding when I called 911
7. Police insulted me
8. Police didn't take what I said seriously
9. Police delayed serving the domestic violence restraining order
10. Other [State what other difficulties you faced]

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Qu 11: How would you recommend overcoming the difficulty that you faced? How could things be easier for someone else in your situation?

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Qu 12: Were you impressed by some particularly good service offered to you by the police or courts?

- Yes,
- No,

If Yes, describe this good service.

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Qu 13 For your case in court please rate the following from:

Strongly disagree	Disagree	Neither disagree or agree	Agree	Strongly agree	N/A
1	2	3	4	5	

Finding the courthouse was easy for me

The forms I needed were clear and easy to understand.

I felt safe in the courthouse

The court makes reasonable efforts to remove physical and language barriers to service.

I was able to get my court business done in a reasonable time.

Court staff provided clear information on the court process for my case.

I was treated with courtesy and respect by court staff

I was treated with courtesy and respect by judicial officers

The Court's website was useful.

The court's hours of operation made it easy for me to do business.

The court alerted my client and I if a hearing was postponed.

Qu 14: For your case in court please rate the following from:

Strongly disagree	Disagree	Neither disagree or agree	Agree	Strongly agree	N/A
1	2	3	4	5	



The way my case was handled was fair.

The judge listened to my side of the story before he or she made a decision.

The judge had the information necessary to make good decisions about my case.

I was treated the same as everyone else.

When I left the court, I knew what to do next about my case.

### Demographic data

Qu 15 Sex

- Male
- Female

Qu 16 Age

- 0-17
- 18-29
- 30-39
- 40-49
- 50-59
- 60-69
- 70 +

Qu 17 How do you identify yourself?

- Palauan
- Chinese
- Bangladesh
- Philippines
- American
- Other: \_\_\_\_\_

Qu 18 Marital Status

- Never Married/ Single
- Married
- Divorced/ Separated
- Widow
- Other (please specify)

Qu 19 Do you have children?

- Yes
- No

Qu 20 Employment Status

- Employed- Full Time
- Employed- Part Time
- Self employed
- Unemployed
- Retired

## ANNEX 17: TAKING STEPS TO MAKE A COURT MORE ACCESSIBLE FOR PEOPLE LIVING WITH A DISABILITY

**Taking steps to make a court more accessible for people living with a disability makes courts more accessible for everyone.**

**Who should consider these issues from a policy perspective?** Chief Court Administrator, Chief Registrar, Chief Justice and judges of the courts

Take the time to consider the five points below and draw up a protocol for your court on how to make courts more accessible for people living with a disability.

When a client files a case at court, court staff members should ask whether they will need any assistance to do any of the following?

### **I. To locate, enter and navigate court proceedings within the court-room.**

**Issues for court staff members to consider where a court client has a mobility impairment:**

- is the court room on the ground floor or, if not, is it accessible by a lift?
- If the courtroom is not accessible for people with a mobility impairment has the court identified another room that they will use for hearings in these cases?
- If the courtroom is on the ground floor, is the courtroom access stair-free or are there ramps for any steps?
- Can the door width accommodate wheelchairs?
- Where can a party who uses a wheelchair sit in the courtroom or when they are giving evidence/ being examined/ cross-examined?
- Is there enough space for wheelchair users to move around the courtroom?
- Are court hallways wide and clear of furniture or debris?
- Is there a wheelchair accessible toilet available?

**Issues for court staff members to consider where a court client has a visual impairment:**

- Do all court staff know that a guide dog may enter the courtroom?
- Will court staff assist with directions and/or or walk with the client to the courtroom?
- Do elevators have braille buttons or a sound system to announce the floors?

Issues for court staff members to consider for all court users:

- Is courtroom signage clear?

**II. to read a document**

**Issues for court staff members to consider where a court client has a visual impairment:**

- Can the document be emailed to the client as one that can be “read” by someone with a computer that uses visual impairment appropriate software?

**III. to hear what is being said in court**

**Issues for court staff members to consider where a court client has a hearing impairment:**

- Sign interpreter, hearing loop in court
- Answer any questions on what will happen on the day through a TTY phone or some other service.

**IV. to understand what is happening in the court hearing as well as what preparation may be required before the hearing day**

**Issues for court staff members to consider where a court client has an intellectual impairment:**

- What steps need to be taken to ensure that a court client with an intellectual impairment will be assisted to understand the proceedings.

**V. to feel safe at court:**

Court leadership and staff members should have discussed the arrangements that the court will make to ensure the safety of parties appearing before the court as well as all court personnel, including people living with a disability.

Given the prevalence of sexual and family violence experienced by women and children in the Pacific, where possible, the court should endeavour to obtain the resources necessary to enable a separate waiting area for women and children who are appearing before the court and have experienced sexual or family violence.

## ANNEX 18: FIJI COURTS 2011-2017 CASES ON PACLII

Balancing the Scales  
Improving Fijian Women's Access to Justice

### Cases Published on PacLII

	2011	2012	2013	2014	2015	2016	2017*	
Supreme Court Criminal Case	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJSC/">http://www.paclii.org/fj/cases/FJSC/</a>
Number of cases published on PacLII	6	13	13	10	29	39	10	
Court of Appeal Criminal Case	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJCA/">http://www.paclii.org/fj/cases/FJCA/</a>
Number of cases published on PacLII	21	52	81	184	137	139	61	
High Court Criminal Case	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJHC/">http://www.paclii.org/fj/cases/FJHC/</a>
Number of cases published on PacLII	342	344	389	512	525	567	241	
High Court Family Cases	●	●	●	●	●	●	●	Not on PacLII as the cases are not yet anonymised or redacted to remove the parties' names.
Number of cases published on PacLII	0	0	0	0	0	0	0	
Magistrates Court Criminal Cases	●	●	●	●	●	●	●	
Number of cases published on PacLII	115	247	296	114	116	208	67	
Magistrates Court Family Cases	●	●	●	●	●	●	●	<a href="http://www.paclii.org/fj/cases/FJMC/">http://www.paclii.org/fj/cases/FJMC/</a>
Number of cases published on PacLII	0	0	0	0	0	0	0	Not on PacLII as the cases are not yet anonymised or redacted to remove the parties' names.

\*Until August 2017





# Pacific Judicial Development Programme

## *ANNUAL COURT REPORTING TOOLKIT*

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>






# Pacific Judicial Development Programme

## *TOOLKIT FOR REVIEW OF GUIDANCE ON JUDICIAL CONDUCT*

September 2014





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Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

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## PJDP TOOLKITS

### Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

### Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- Judges' Orientation Toolkit
- Annual Court Reporting Toolkit
- ***Toolkit for Review of Guidance on Judicial Conduct***
- National Judicial Development Committee Toolkit
- Family Violence and Youth Justice Project Workshop Toolkit
- Time Goals Toolkit
- Access to Justice Assessment Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

### Use and support

These toolkits are available on-line for the use of partner courts at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>. We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: [pjdp@fedcourt.gov.au](mailto:pjdp@fedcourt.gov.au)

### Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage  
Team Leader,  
Pacific Judicial Development Programme

September 2014

## PREFACE

In 2011, with the aim of developing individual understanding and awareness of the ethical principles and strengthening the integrity of the judiciary as whole, Pacific judiciaries resolved to ensure that every judge has access to simple, clear and relevant guidance on conduct in his or her own language. This toolkit is intended to help your judiciary to achieve that. It describes the processes of reviewing existing guidance, developing new guidance and planning training to introduce new guidance. It discusses some of the issues which may arise along the way.

But, who is to conduct the work? We cannot tell you who that should be, because as an independent entity, your judiciary must be responsible for its own organisation, training and development. In some small jurisdictions the largest part of that responsibility will fall on the Chief Justice with the support of other judges or administrative staff. It may well be necessary for the task of revision to be delegated. The important thing is that judicial independence is not compromised. Guidance on conduct is effective because the judiciary adopt it as a statement of the principles according to which they, individually and collectively, should conduct themselves. It is for the judiciary concerned to determine the process for adopting the finished guidance.

Whether you are a Chief Justice or someone delegated to co-ordinate the process of revising your jurisdiction's guidance on conduct, we hope you will find some of the 'tools' in this toolkit useful.

We believe that you and those of your judiciary who participate in the revision process will find it a rewarding exercise. Judges spend a great deal of their working lives working alone; revising your guidance on conduct will provide an opportunity to collaborate with your judicial colleagues.

PJDP 2012

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## ABBREVIATIONS

CJs	-	Chief Justices
CoJC	-	Code of Judicial Conduct
ICCPR	-	International Convention on Civil and Political Rights
JIG	-	Judicial Integrity Group
MFAT	-	New Zealand Ministry of Foreign Affairs and Trade
MSC	-	Managing Services Contractor - Federal Court of Australia
NGO	-	Non-Government Organisation
NJDC	-	National Judicial Development Committee
PEC	-	Programme Executive Committee
PIC	-	Pacific Island Country
PJDP	-	Pacific Judicial Development Programme ('Programme')
RTT	-	Regional Training Team

## INTRODUCTION

### 1.1 WHY?

In October 2011 the National Coordinators, the Programme Executive Committee (PEC) and 9 Chief Justices (CJs) adopted the following recommendations:

- 1. The project should encourage PICs to review their current guidance regarding judicial conduct with the aim of ensuring that every judge has access to simple and clear guidance in his own language which addresses the particular issues that he is likely to encounter. Particular consideration should be given to those judges at the lowest levels and in the subordinate courts. Where necessary the project should support:
    - a. the revision of codes, and*
    - b. the translation of codes into native language.**
- 2. The project should support and facilitate the provision of local training designed to explore and reinforce conduct guidelines. Priority being given to those judges at the lowest levels and in the subordinate courts. This training will need to be delivered in local language.*
- 3. The project should work with CJs to foster a sense of judicial community.*

The principal aim of this document is to help you address the first of those recommendations; however it includes some discussion of the opportunities you will have to incorporate training and development in the review process. The review process will provide an opportunity for members of your judiciary to come together and discuss what it means to be a judge and a member of the judicial community.

*"Every judge has access to simple, clear and relevant guidance on conduct in his or her own language."*

## 1.2 WHAT IS THE POINT OF GUIDANCE ON CONDUCT?

Most judges want to perform their duties well, and appropriate guidance can provide support, helping them to understand and fulfil their judicial role, building their confidence and their effectiveness in court. Guidance is likely to be most needed by those working in remote locations with few training or development opportunities and by newly appointed judges especially if they are not legally qualified<sup>1</sup>. That is why the first recommendation set out above suggests that in formulating guidance particular regard should be paid to those judges working at the lowest levels and in the subordinate courts.

The Pacific Island Countries participating in PJDP have very different judiciaries. Some have a number of highly trained and experienced judges whereas others have only one or two legally qualified judges. In all but two PICs the judges of the lower courts are not legally qualified and in most countries geographic isolation has made training difficult and expensive to organise. These are just the circumstances in which guidance on conduct can be of most help.

Whilst the primary reason for formulating guidance on judicial conduct is to strengthen judicial integrity, there are additional benefits to be gained if the guidelines are made available to the public. By doing so the judiciary will earn the respect of the community, because it shows that the judiciary recognises that it must behave consistently and with integrity. By accepting that it should be accountable in this way the judiciary will safeguard its independence.

## 1.3 WHAT DO WE MEAN BY A TOOLKIT?

During 2011 the judiciaries of Niue, Tuvalu and Kiribati each developed and adopted a new code of judicial conduct (CoJC) with support provided by PJDP. The three codes are similar in that each is consistent with general principles set out in Bangalore<sup>2</sup> but each is different because it reflects the judiciary which developed it.

This toolkit aims to support your jurisdiction in the process of reviewing, and, if necessary, revising the guidance regarding conduct provided for your judiciary so as to fulfil the projects aims of ensuring that every judge has access to simple, clear and relevant guidance on conduct in his or her own language and that every judge receives training in relation to that guidance. It incorporates the experience gained in Niue, Tuvalu and Kiribati, together with examples and reference materials which you may find of use. There is today a wealth of material available via the internet but we are aware that not everyone has ready access to that resource.

We call this a toolkit because it describes various techniques (tools) which could be used to carry out a review of your existing guidance on conduct and if necessary revise it or draft new guidance. You won't need them all. It is for you to choose which suit your purpose depending on the problems or challenges you face.

In assembling this we are mindful that not everyone who leads a review of guidance on conduct will necessarily be a judge or have had the opportunity to consider guidance on conduct in great depth prior to embarking on the present exercise. Therefore we have tried to identify and explain the principal issues and

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<sup>1</sup> It could be argued that there is little point in setting out guidance on conduct for legally qualified judges because judges should know how to behave however there is evidence that in some parts of the world judiciaries are routinely corrupt and, where that is the case, it is often despite the existence of a Code of Conduct. Those judges know they are doing wrong and the way to address their behaviour is through criminal sanctions. (see *Corruption in the Judiciary*. Global Corruption Report 2007, Transparency International, available at:

[http://www.transparency.org/whatwedo/pub/global\\_corruption\\_report\\_2007\\_corruption\\_and\\_judicial\\_systems](http://www.transparency.org/whatwedo/pub/global_corruption_report_2007_corruption_and_judicial_systems)).

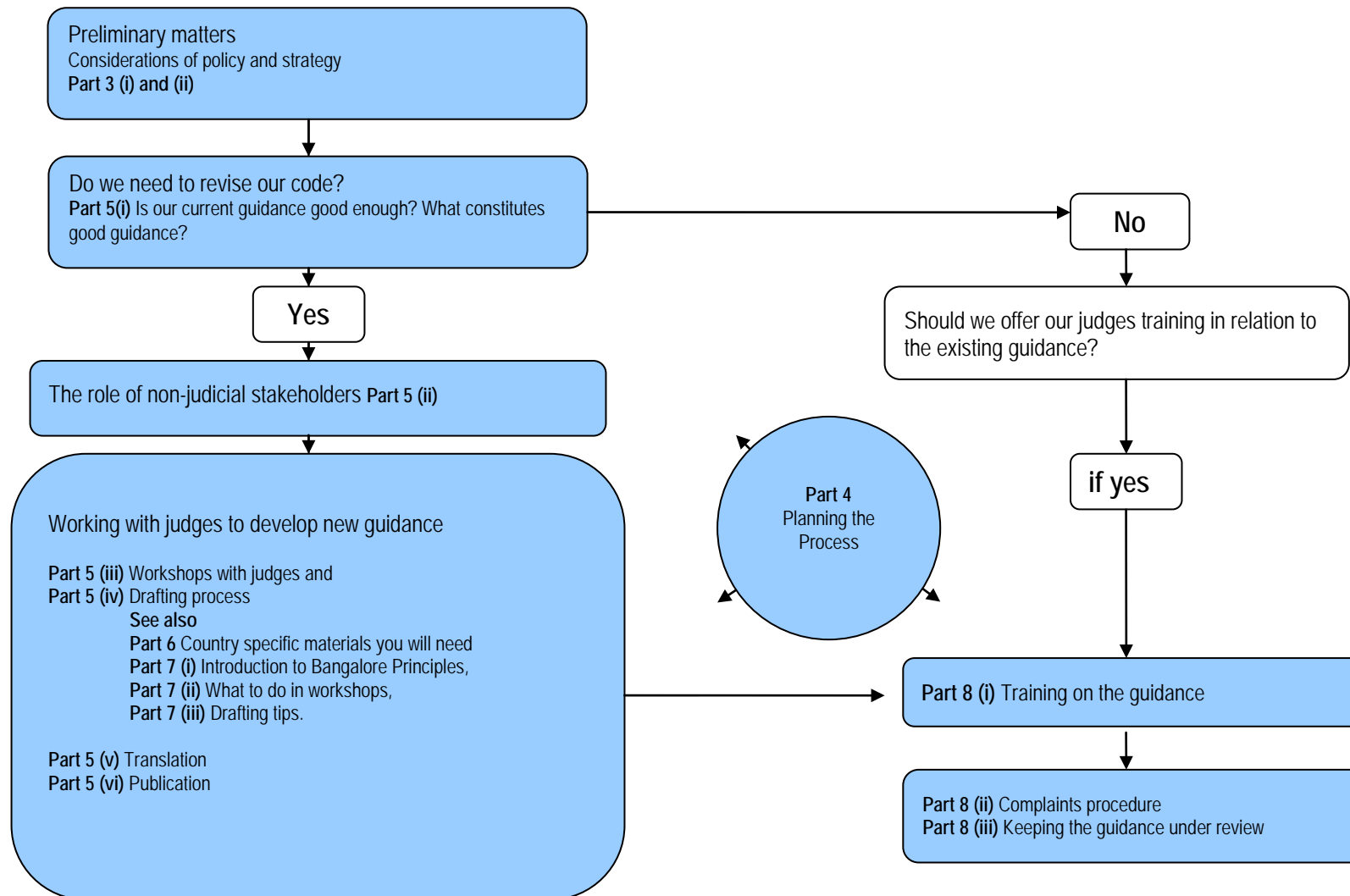
<sup>2</sup> You will find these three codes and the Bangalore Principles in the annexures.

indicate the considerations which will arise along the way. But, please bear in mind this is not an academic work, its aim is to provide only enough information for you to do the job at hand.

## **1.4 HOW TO USE THE TOOLKIT?**

If you are reading this the chances are your jurisdiction is considering whether to revise its current guidance and you are either leading or involved with that revision. Please remember we don't know who you are or what your experience is. You may well be familiar with some of the concepts explained here. You won't necessarily need everything in the kit and you certainly don't need to have read and absorbed everything before you begin. Start with the overview; you will then have an idea of which materials will be of use to you and where it will be helpful to read in more depth.

## 2 OVERVIEW OF TOOLKIT



### 3 PRELIMINARY MATTERS

#### 3.1 SHOULD WE USE THE WORD 'CODE'? WHAT'S IN A NAME?

*"What's in a name? That which we call a rose by any other name would smell as sweet."*  
Romeo and Juliet. Act II, Scene II. W. Shakespeare

The principle of judicial independence means that judges cannot be bound except by law. Guidance on conduct, be it a code or otherwise, takes effect because the judiciary agrees to adopt it and to follow it.

So far we have drawn no distinction between 'Guidance on Conduct' and a 'Code of Conduct' and perhaps there is little material difference in practice. This is illustrated in the introduction to the United Kingdom Supreme Court Guide to Judicial Conduct (2009) in which the President of the Supreme Court<sup>3</sup> says:

*Every court should have a Code of Judicial Conduct that sets out the standards of ethical conduct to be expected of the Court. Such a Code serves a number of purposes. It provides guidance to the members of the Court. It informs those who use the Court of the standards that they can reasonably expect of its judges. It explains to members of the public how judges behave and should help to secure their respect and support for the judiciary. This Guide has been prepared by and for the Justices of the Supreme Court and has the approval and support of each of us.*

Where a distinction is drawn the difference lies in the degree to which the subject is bound. In common usage guidance is understood to be advisory but not necessarily binding, whereas a code is generally regarded as binding even though, if in so far as it states principles, there may be room for discretion when it comes to their application. If we look to the dictionary definition<sup>4</sup>:

**Guidance:** Advice or information aimed at resolving a problem or difficulty, especially as given by someone in authority.

**Code:** A systematic collection of laws or statutes - a set of conventions or moral principles governing behaviour in a particular sphere.

The origin of the word code is explained as follows: "*Middle English: via Old French from Latin codex. .... The term originally denoted a systematic collection of statutes made by Justinian or another of the later Roman emperors.*"

#### Does it matter?

Those with experience in civil law jurisdictions are more likely to regard the difference as material and the name chosen may affect the way in which the public expect the principles to apply. The section entitled "Preface / Purpose" in the New Zealand Guidelines for Judicial Conduct explains:

*[2] The application of the principles in practice to circumstances as they arise every day is not always as clear cut as agreement on the general principles might suggest. The application of a principle may be novel or may be affected by changing community values. In some cases, whether the principle is engaged at all in the particular circumstances may be a matter of reasonable differences of view. In other cases there may be reasonable differences of opinion as to whether particular conduct by a judge affects the judicial function or whether it is private.*

*[3] For these reasons, the guidance provided in these statements and comments is not intended to be a code of conduct. It does not identify judicial misconduct. It is advice. The advice is designed*

<sup>3</sup> The Right Honourable Lord Phillips.

<sup>4</sup> <http://oxforddictionaries.com>



*to assist judges to make their own choices informed by a checklist of general principle and illustrations drawn from experience.*

The preface / purpose goes on to explain that the guidelines are not intended to form the basis of disciplinary action against individual judges and that to use it for that purpose may undermine the independence of the judiciary.

*[4] There is a further reason why a statement such as this should be seen as advisory only. A judge can be removed from office for gross misconduct by Parliament (in the case of judges of the High Court or Court of Appeal) or the responsible Minister (in the case of other judicial officers). These guidelines are not, however, principally concerned with the sort of misconduct which would justify removal from office. They are concerned with the promotion of higher standards of conduct. No system of discipline to impose and support a code of conduct for judicial officers exists in New Zealand or comparable jurisdictions for good reason. It would undermine the fundamental principle of judicial independence. The independence of the judiciary is essential to the balances in our constitutional arrangements. It is not a protection for judges. It is a protection for the people of New Zealand. It is secure only if each judge is free to decide cases impartially according to law, without external pressure and without fear of the consequences. A system of discipline according to a code of conduct, whether imposed by executive government or judicial self-regulation, is inconsistent with judicial independence.*

### What should you do?

It may be that the difference in choice of words is due to slightly different modern usage of the English language. English is used differently in the different parts of the world which have made it their own. In the Pacific jurisdictions any guidance or code is likely to be translated and it is unlikely that local language will allow direct translation of either term. In the end the choice is for you. If you chose "Code" you may wish to include a caveat similar to that in the Niuean code which states at the outset:

*This code is issued for guidance of judges and to inform the people of Niue as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.*

In the Pacific a number of countries have used the term 'code' and the PJDP use the term 'code'. You may find the following list of titles used by non-Pacific countries of interest:

United Kingdom:	Guide to Judicial Conduct
New Zealand:	Guidelines for Judicial Conduct
Australia:	Guide to Judicial Conduct
United States:	Model Code of Judicial Conduct
Canada:	Guidelines
Kenya:	Code of Conduct
Namibia:	Code of Conduct
South Africa:	Code of Conduct for Magistrate

### 3.2 GROUND RULES FOR THE REVIEW PROCESS

In planning your review of guidance you will have to make decisions based on the practicalities and limitations of your particular situation. There will be balances to be determined and compromises to be made. The ground rules are matters which should guide you in the development of your plan. They are:

1. The review process should be inclusive;
2. The review process should constitute a judicial development activity (*i.e. be equivalent to a training exercise*), and
3. The review process should respect judicial independence.

#### Inclusivity

This means you should include as many of your judiciary as is reasonably possible and, at the very least, a representative proportion of your judiciary. The principle aim of the exercise is to *ensure that every judge has access to simple, clear and relevant guidance on conduct in his or her own language*. Therefore the review process should involve as many judges as possible, so as to:

- ensure that the language used is appropriate, and that
- the examples given are realistic and representative of the experience of the judges to whom the advice is directed.

Inclusivity extends beyond the judiciary to other stakeholders. Court users should clearly be included, but everyone has an interest in the fair administration of the law so your consultations may include other representative groups. Judicial independence must be respected and this limits the role stakeholders can play in the process. Their observations can be helpful in understanding how the judiciary is perceived and particularly in identifying specific issues which may need to be addressed in examples. The time to consult stakeholders is before you embark on workshops so that your workshops can be informed by what you have learnt and you can put issues raised to the judges. By including stakeholders in the process you will further PJDP's stated aim of *increasing public understanding of the judicial role*.

Consultations might include: the parties to civil disputes, defendants to criminal charges, prosecutors, defenders, the victims of crime, the public at large and organisations which represent groups within society or which promote the recognition of rights, such as court users groups, women's groups, rights workers.

#### What constitutes a representative proportion of the judiciary?

There can be no absolute answer to this. In the three jurisdictions which revised their guidance in 2011 the number of judges directly involved in the drafting process were as follows:

- Niue all 6 of 6 local judges = 100% + CJ Savage and visiting Judge Isaac (by email).
- Tuvalu 33 of 88 local judges = 38% + Senior Magistrate Afele Kitiona and CJ Sir Gordon Ward (by email).
- Kiribati 18 of 140 local judges = 13% + Senior Registrar Tetiro Semilota + Deputy Registrar + CJ Sir John Muria.

Niue is a small single island and it was therefore easy and inexpensive to bring the local judges together. Tuvalu has 88 local judges across 9 atolls as compared to Kiribati which has 140 judges spread over 32 atolls and 1 island. In Tuvalu inter-island travel is always by boat and sailings are subject to last minute changes making planning difficult. In Kiribati most atolls can be reached by small plane but once again timetables are subject to last minute changes.

In Niue most of the local judges had access to email and it was therefore possible to contact them between workshops. That was not the case in Tuvalu or Kiribati where contact with the High Court and central administration was usually mediated through a local court clerk.

You will have to decide how many of your judges can be involved depending on how many judges you have, where they are, local transport facilities and your means of communicating with them. You should be prepared to be flexible and creative!

### **The review process should constitute training in itself**

For all but the most highly trained judges participation in a well designed workshop is likely to be a developmental experience. Workshops provide an opportunity to meet other judges and to discuss with them the values identified in Bangalore together with the principles and the application of those principles. Many judges will not have had the opportunity to investigate issues of conduct in any great depth and they are likely to find the experience useful. By including as many judges as possible in the process you will:

- *increase judges' awareness of the principles of judicial conduct, and to*
- *foster a sense of judicial community.*

### **Respect for Judicial Independence**

Judges are independent; their conduct is governed only by the law and by their oath. Any guidance on conduct only takes effect because the judiciary voluntarily adopts it. Your approach should be to help the judiciary to develop its own guidance, by so doing you will demonstrate a respect for judicial independence. Furthermore you will be sure that there is genuine consensus as to the guidance and lay the foundations of a common understanding.

*"The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution and laws of a country. It is the duty of all governments and other institutions to respect and observe the independence of the judiciary."*

United Nations Basic Principles on the Independence of the Judiciary. <sup>5</sup>

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<sup>5</sup> S/RES/40/32/of 29 November 1985

## 4 PLANNING THE PROCESS

Planning your own revision process is important because by thinking through what you are going to do, and discussing it with others involved, you will make the best use of the time and resources you have. We use the word 'resource' to describe anything you need to conduct the review and redrafting process, from people, to pens and paper, not forgetting money.

Before you start planning you will need to have a clear view of your aims and to have thought through everything you will need to do to achieve them. We have to start somewhere, so planning is discussed before we examine the stages in the review process. We suggest that you read this part and at least glance through the section entitled '**The stages in the process**' before you try to make any firm plans.

We appreciate that funding a review exercise is likely to be difficult since many Pacific judiciaries work on very limited budgets. You may be able to get support from PJDP either for the whole exercise or part of it through the Responsive Fund. If you are unsuccessful there it may be worth approaching other NGOs for sponsorship. It will help if you have a clear plan to show them.

When it comes to planning your workshops, by all means follow the example of workshops you have attended but don't be afraid to do something different if you think it will work better. Your aims will be different and the situation in which you deliver the workshop may be very different depending on how remote you are. You may well have to work with minimal equipment; a little flexibility and ingenuity will go a long way to make up for any want of state-of-the-art equipment and has the additional advantage of keeping your costs to a minimum.

### Building a team

We are assuming that you are working either in the judiciary or in some capacity related to the court service or court administration and that your work in relation to initiating a review of guidance on conduct falls within your professional remit, (in other words your time is already paid for).

We recommend that you identify a team to work with you, and in building a team you will need to bear in mind the cost. Will the individuals you wish to involve require payment or reimbursement of expenses?

There is a lot to be said for a small team so focus on the skills you will need:

- legal training and experience
- drafting competence
- English, and
- local language
- knowledge and familiarity with the working of the local courts.

You will also need administrative support to organise the practical aspects of visits and workshops from travel to refreshments. Your existing court administration service may well be able to provide this.

We hope you can identify a small team from within your jurisdiction who together have the necessary skills. If that is not possible you may need to ask for support from outside. In Niue, Kiribati and Tuvalu the National Coordinator and the PJDP Adviser had, between them, the necessary skills. Administrative support was provided by the central court administration and, in remote locations in Kiribati and Tuvalu, by the local court clerk.

It might just be that a single individual possesses all the necessary skills but there is a lot to be said for two individuals working together. As a general rule workshops are more successful with two facilitators, and when it comes to drafting two people working together are sometimes better than one.

If you need additional support it may be that you can arrange for someone from a neighbouring Pacific jurisdiction to join your team or for one of the National Coordinators who has already been through the process to mentor you, even if only by email or Skype.

## Getting started

You may find the following series of questions a useful check:

**Step 1.** Does our existing guidance need revision?

if Yes    Go to Step 2  
if No     Go to Step 4

**Step 2.** Can our judges be easily brought together in one place?

if Yes    Go to Step 5  
if No     Go to Step 3

**Step 3.** What is the minimum number of places we would have to visit in order to involve a representative proportion of our judiciary in the development exercise? Work out logistics of getting to them.

.....and    Go to Step 6

**Step 4.** Do our judges need training development with respect to conduct matters?

if Yes    Go to Step 2  
if No     No action is needed.

**Step 5.** Work out logistics of bringing judges together for workshop.

.....and    Go to Step 6

**Step 6.** Plan your workshops: See sections 5(iii) Workshops with judges, 7(ii) What to do in workshops and 7(iii) Drafting tips.

Build team > establish clear aim for workshop activities > plan workshops > schedule workshops > notify participants > conduct workshops > prepare draft > refine > translate > publish.

You may find it helpful to tabulate the resources you will need and the costs you will incur. Your table might look something like this:

Resources	Explanatory notes	Estimate of cost where appropriate	Estimated Total Cost \$\$\$
National Coordinator	Is this work properly considered part of their existing role? Additional expenses if incurred. Usual <i>per diem</i> if absent from home over night.		\$
Full time salaried local judge	Is this work properly considered part of their professional role? Additional expenses Usual <i>per diem</i> if absent from home over night.		\$
Part-time local judges: paid only when required to work or attend training	It would be fair and reasonable to pay part-time workers for extra hours during which they are involved in the review process.	rates paid estimate hours of input (\$/hour x number of hours) N.B. Sometimes rates paid differ according to role. e.g. president of local court may be paid more.	\$
Travel fares - overnight expenses	e.g visits to outer islands or remote courts to conduct workshops / development sessions.	Ferry, plane overnight car or other local transport, food.	\$
Equipment for workshops Copies of documentation White board flip chart or 'poster' paper pens stapler clips to hang up 'posters' Reference materials Draft code (?) Refreshments	.....list all documentation you will need to provide. e.g. Handouts such as the Bangalore Values.		\$          \$
Translation back-translation	note this requires two individuals see Section 5 (v).		\$
Printing and distribution			\$
Launch event			\$
Training events			\$
Publicity			\$



## 5 THE STAGES IN THE PROCESS

In this section we will look in more detail at the different steps in the process of reviewing and revising guidance on conduct. They are as follows:

- i. What guidance do judges need? Is our current guidance good enough? Does your existing guidance need revision?

**And if you decide you need to draft new guidelines .....**

- ii. Talking to non-judicial stakeholders
- iii. Workshops with judges
- iv. Drafting
- v. Translation
- vi. Publication.

### 5.1 IS OUR CURRENT GUIDANCE GOOD ENOUGH?

If your jurisdiction already provides guidance for its judiciary it is worth considering whether it could be improved. Perfectly good guidance may become dated if the language used is inappropriate or if the examples used are no longer relevant.

During the last 12 years we have seen the formulation and development of the Bangalore Principles of Judicial Conduct <sup>6</sup> by the Judicial Integrity Group.<sup>7</sup> The discussions around the Bangalore Principles have developed our thinking and this has led many jurisdictions to refine the guidance they give. For example, in England 20 years ago it would have been acceptable for a son or nephew to appear as a legal representative in a court in which his parent sat as judge; today that would no longer be considered appropriate.<sup>8</sup>

#### **Who should decide if the current guidance is good enough?**

Respect for judicial independence dictates that the judiciary should decide. This is a decision your Chief Justice might take on behalf of the judiciary, alternatively your judiciary may have an established procedure for making such decisions. Where it is practical to do so, it would be good to involve as many judges as possible in making the decision since being involved will cause them to revisit your existing guidance. If you can contact your judiciary by email it will be a relatively simple matter to use a questionnaire to find their views. Where your judges are more remote you may be able to gather responses through an intermediary such as the court clerk.

#### **What characterises good guidance?**

PJDP has adopted the aim of ensuring that every judge has access to simple, clear and relevant guidance on conduct in his or her own language. Relevant means that the guidance should address the particular issues that judge is likely to encounter. The project further endorsed the recommendation that in preparing guidance particular consideration should be given to those judges at the lowest levels and in the subordinate courts because they are the judges most likely to need and benefit from guidance on conduct.<sup>9</sup>

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<sup>6</sup> See Part 7

<sup>7</sup> See Part 7

<sup>8</sup> See The Guide <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf>

<sup>9</sup> See The Introduction - What is the point of guidance on conduct? at page 3

The starting point is to establish what guidance, if any, is actually available to your judges. This is not always as simple as it sounds. In the past different organisations have supported good governance projects involving Pacific jurisdictions; schemes have developed materials, but for want of continuity or resources, these have not always been distributed or made available to the judges. So, for example, some time ago a handbook was developed for Kiribati magistrates but it was never distributed because it could not be satisfactorily translated into local language.

The need for guidance to be appropriate has led some judiciaries <sup>10</sup> to formulate different guidance for different levels of judges. This has the advantage of allowing the advice given to be tailored to slightly different needs. Other jurisdictions adopt a unified approach which safeguards against any possibility of there being any apparent difference in the principles applying to different parts of the judiciary.

### **Consistency with Bangalore**

The Bangalore Principles are now very widely accepted. At PJDP's Chief Justices' Workshop in Vanuatu <sup>11</sup> the 9 Chief Justices who were able to attend reaffirmed those principles. Your guidance on conduct should therefore reflect the 6 values identified in Bangalore and be broadly consistent with the principles which explain how each applies.

That does not mean that your guidelines must be in the same format or that you must cut-and-paste from Bangalore. What is most important is that you develop guidelines which will be meaningful to your judges. When it comes to examples illustrating the application it is vital that they reflect the experience of your judges and that the guidance takes account of the practical realities of their circumstances. In Kiribati, Niue and Tuvalu we found that it was difficult to express some of the concepts from Bangalore in local language. If it is necessary to simplify things it is important that you convey the spirit of Bangalore as best you can.

If you decide to draft new guidance you will find there are some difficult decisions to be taken. For instance; where does the balance lie between the ideal, which requires that a judge should be wholly impartial and have no knowledge of any party to a dispute, and the practical reality in the Pacific, which is that many judges work within small and isolated communities where they know everyone and are related to many? In deciding what guidance is appropriate it might be borne in mind that those contributing to commentaries on Bangalore may not have envisaged circumstances such as those in the Pacific. Judiciaries are of course bound by the law and the terms of their appointment but otherwise judicial independence dictates that it is for each judiciary to formulate its own guidelines as to conduct.

### **Is your guidance accessible?**

If guidance is to be meaningful it must be accessible to its intended recipients. It must be presented in a language they can easily understand and written simply and clearly so as to be easily followed.

You will know your judges, how many and where they work. In order to fit your guidance to their needs, you may need to find more about their level of training, background education and in particular what language or languages they are familiar with.

The geography of the Pacific jurisdictions means that communication is not always an easy matter; you will have to think about how and in what format guidance should be made available if judges are to have ready access to it.

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<sup>10</sup> For example PNG has different guidance for its judges and magistrates. See <http://www.paclii.org/pg/Manuals/Magistrates/Part1Chap1.htm>

<sup>11</sup> October 2011, The CJs of Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

In deciding whether you should revise your current guidance you might find it helpful to consider the questions set out below:

### Appraising your existing guidance on judicial conduct

1. How many judges are there in the lower or subordinate courts of your jurisdiction?
2. Are there any hybrid courts, traditional tribunals or quasi-courts i.e. decision making bodies recognised by the state where decision makers occupy judicial or quasi-judicial roles? If so how many 'decision makers'?
3. What provisions relating to the conduct of judges exist in the Constitution, any statute and/or terms of appointment?
4. What guidance or CoJC is available in your jurisdiction regarding judicial conduct?
5. Does it reflect the six principles enunciated in Bangalore?
6. Is the guidance on judicial conduct available to the judges in the lowest or subordinate courts?\*
7. Does each of those judges have his or her own copy?\*
8. Is the guidance provided in the first language of those judges?\*
9. Is the guidance expressed in clear and simple terms?\*
10. Is the level of complexity appropriate for those judges?\*
11. Are the illustrations of its application genuinely relevant to those judges?\*
12. Does it cover situations they are unlikely ever to face?\*
13. Has every judge received training in the application of the guidelines?\*
14. What is a judge advised to do when he or she is uncertain in relation to a conduct issue?
15. Is the guidance on judicial conduct made available to the public?
16. Are court users aware of the guidance?†
17. Have complaints been received (or made in the press/media) with regard to judicial conduct? If so what is complained of?
18. How do the public regard judges in terms of the fairness of proceedings in court? †

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\* The answers to these questions might best be obtained by issuing a short and simple questionnaire to a representative sample of the judges. Alternatively, the answers could be gathered orally by a court officer at a time when the court is sitting.

† A simple survey of court users might answer these questions.

## 5.2 TALKING TO NON-JUDICIAL STAKEHOLDERS

If you decide to draft new guidance you should consider talking to individuals or groups outside the judiciary who have an interest in the fair administration of justice.

### **Your aim:**

To build a picture of judicial conduct as perceived by those with an interest in proceedings in court and to identify examples of the ways in which conduct issues confront judges.

Stakeholders include: the parties to civil matters, defendants, victims, witnesses, prosecutors, legal representatives, court staff, and public interest groups (e.g. court users, women, youth, rights groups).

### **Why?**

We are not always the best judges of our own behaviour and therefore it is good for the drafting process to be informed by the public perception of the judiciary and judicial behaviour.

The guidance you draft will become a public document. Well drafted guidance has a valuable secondary function in helping the public to understand the judicial role and in helping court users have realistic expectations.

### **What?**

Clearly, any consultations should be conducted sensitively and should invite only constructive criticism. Bear in mind it may be difficult for stakeholders, particularly those personally involved in the outcome of cases, to be objective.

It may be that some useful information has already been gathered in court surveys or in a record of complaints made to the court. You may have gathered some useful responses during the review process. (Discussed in Part 5 (i))

Do the court users believe that court proceedings are conducted:

- fairly,
- efficiently,
- politely,
- with appropriate gravity,
- without unnecessary delay, and that
- procedures were explained clearly, and
- the decision was explained clearly?

### **How?**

Once you have identified the information you have already, you will need to decide how to collect any additional information. Your choice is between questionnaires of some sort, or interviewing court users in groups or individually.

Questionnaires have the advantage that you can ask specific questions whereas the more open structure of an interview is more likely to reveal issues that you have not foreseen. In gathering information you should be very careful to make your aims clear and not to give the impression that you are checking up on your judges. If you meet directly with stakeholders, what shape should your meetings take? We would suggest that you keep these meetings open and relatively unstructured. If particular issues are raised then you can talk them through.

Once you have your responses you may find it helpful to look at how they relate to the 6 Bangalore values:

1. Independence
2. Impartiality
3. Integrity
4. Propriety
5. Equality
6. Competence and Diligence.

You may decide that some points raised should be put to the judges during workshops others may simply inform your approach to different issues.

### 5.3 WORKSHOPS WITH JUDGES

The number of workshops you plan will depend on the size of your judiciary, the geography of your jurisdiction and the resources at your disposal. If you have a large judiciary you may decide to build your draft over a series of workshops, each with different judges. If you have only a few judges it may be that you will get them all together on one or more occasion to develop your new guidance. It is for you to decide. The size of your workshops may be dictated by the number of judges in a particular area, but where you have a choice we would advise you to keep groups small <sup>12</sup> if you can. When it comes to reviewing and finalising your proposed draft a larger group may serve your needs better.

In Niue we worked with all six local judges in two half day sessions. In Tuvalu we ran three whole-day workshops each with approximately 11 magistrates (there are 5 Island Court and 6 Island Lands Court magistrates on each atoll). The first two workshops were conducted on two of the outer islands and used to formulate a draft. The final workshop in Funafuti was used to review it. A similar approach was adopted in Kiribati.

Once you have decided how many workshops you will run and how many judges will attend, you need to set clear aims for each workshop. A suggested overall aim is set out below, but you may wish to break it down so that you address only part in any single workshop, or focus on different Bangalore values or principles with different groups.

**Overall aims for workshops:**

**To consider the application of the Bangalore principles within the context of the courts of your jurisdiction and to identify the circumstances in which the Bangalore values are most often put in issue.**

**And**

**To formulate guidance on judicial conduct that is simple, clear and relevant.**

#### **Planning a series of workshops**

We will look at the detail of planning individual workshops in Part 7 (ii). At this stage you should think about how you might progress your work through a series of workshops. In order to see the bigger picture it may be helpful to tabulate what you hope to achieve in each workshop as in the example on the next page. This example assumes you are working with three different groups, each progressing the work done earlier.

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<sup>12</sup> The smaller the group the more intense the work; a group of 6 - 8 might be optimum for drafting although anything up to 15 should be manageable.

Workshop 1 - Drafting	Workshop 2 - Drafting	Workshop 3 - Finalising
<ul style="list-style-type: none"> <li>• Introductions</li> <li>• participants experience in years</li> <li>• Introduce Bangalore</li> <li>• The 6 Bangalore values</li> <li>• working through each value in turn (as many values as time allows)</li> <li>• examples of where it arises in our lives as judges</li> <li>• draft simple statements explaining application.</li> </ul> <p>Afterwards: refine draft and print up for next group.</p>	<ul style="list-style-type: none"> <li>• Introductions</li> <li>• participants experience in years</li> <li>• Introduce Bangalore</li> <li>• The 6 Bangalore values</li> <li>• review progress made in first workshop</li> <li>• continue to work through remaining values.</li> </ul> <p>Afterwards: refine draft and print up for next group.</p>	<ul style="list-style-type: none"> <li>• Introductions</li> <li>• participants experience in years</li> <li>• Introduce Bangalore</li> <li>• The 6 Bangalore values</li> <li>• review progress so far</li> <li>• Distribute draft code</li> <li>• Have group work through scenarios which raise issues of conduct with reference to the draft code.</li> <li>• Identify any omissions or necessary amendments.</li> </ul> <p>Afterwards: Circulate draft for consideration and feedback, or alternatively, issue draft as provisional for use in trial period before finalisation.</p>

In Part 7 (ii) you will find some examples of simple workshop plans, some hints on designing and conducting workshops. We hope you will find these materials useful. If you have access to a member of the PJDP Regional Training Team (RTT) they may well be able to help you.

## 5.4 DRAFTING YOUR GUIDELINES

Be guided by the aim to produce simple, clear and relevant guidance. The golden rule must be to use simple unambiguous language and to keep guidance relevant but as short as possible. This means you must resist the temptation to cover every eventuality. Your judges are more likely to read and refer to the guidance if it is concise and deals with the kind of situations they meet in their work.

If your team have the necessary language skills you may be able to develop your guidance simultaneously in local language and English. If you are able to do this you may find that working in two languages helps to keep your expression straightforward. Never include a phrase or sentence just because it sounds good or, worse still legalistic. The test must always be, "Do these words help to convey what I am trying to say?"

You will be constructing the first draft of your guidelines with the judges during your workshops. You should take responsibility for the overall structure at this stage as you encourage your judges to formulate guidance explaining the application of each Bangalore value in simple clear statements.

### Checklist for writing clearly

However experienced we are, we all do well to remind ourselves of the following tips for writing clearly:

- Plan what you want to say and follow a logical sequence,
- keep sentences short,
- keep your language simple and appropriate for your readers,



- prefer the active voice,
- use lists where appropriate, and
- avoid anything which may interrupt, distract or confuse your reader.

### Structure and sequence

Your first consideration should be the overall structure of your document. If you choose to adopt a similar structure to Bangalore your job will be relatively easy. You will not be alone; many jurisdictions have adopted the same approach. All good pieces of writing have a beginning, a middle and an end; guidance on conduct is no different.

### The Beginning

As the head of your judiciary, your Chief Justice may wish to write something to introduce the guidance and explain its purpose. This might be entitled either foreword or preface. The distinction is that prefaces are usually by the author or editor, and forewords are not. Prefaces and forewords are usually give page numbers in Roman numerals (i, ii, iii, iv etc.) so as to indicate they are before and outside the main work. The inclusion of a foreword or preface does not mean you cannot also have an introduction as part of the guidance which explains more about what follows. The introduction might briefly set out the context in which the judiciary works referring to the constitution, relevant statutes and the judicial oath. It may also be appropriate to explain that in final responsibility for deciding how to behave lies with the judge and the judge alone.

<b>Foreword:</b>	<b>noun</b> - a short introduction to a book, typically by a person other than the author.
<b>Preface:</b>	<b>noun</b> - an introduction to a book, typically stating its subject, scope, or aims.
<b>Introduction:</b>	<b>noun</b> - a thing preliminary to something else, especially an explanatory section at the beginning of a book, report, or speech. <sup>13</sup>

### The Middle

Your guidance and examples of its application will make up the middle, which will be the main part of your document. You will see that in Niue, Kiribati and Tuvalu we followed the approach adopted in the Bangalore Principles. We devoted a section to each of the 6 Bangalore Values. Each section had the same basic structure:

- a) Value - identify the value.
- b) Principle - set out the basic principle which judges should apply in giving expression to the value.

Application - examples to illustrate how the principle might apply in the kind of situation which your judges encounter.

#### Example from Kiribati

##### 3. Integrity

*Through all his or her public and private life a Judicial Officer should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.*

- 3.1 Judicial Officers make decisions that affect peoples' lives, therefore it is important that a Judicial Officer should demonstrate a good and moral character so that he or she displays an image of a judge that can be trusted and respected.
- 3.2 A Judicial Officer must be true to the judicial oath.

<sup>13</sup> Definitions from <http://oxforddictionaries.com>. A useful free resource.

## Ending your document

In conclusion you may wish to reiterate important points from the introduction and to explain what a judge can do if he or she is still not sure how to behave in a particular circumstance<sup>14</sup>. By allowing questions to be referred for the future you will learn how your guidance can be improved when it is next revised.

### Example from Kiribati

#### Cases of doubt

In any case where a Judicial Officer is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

### Example from Tuvalu

#### 3. Integrity

*Through all his or her public and private life a magistrate should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.*

- 3.1 By conducting themselves with integrity magistrates will sustain and enhance public confidence in the Judiciary.
- 3.2 A magistrate must be honest in his public and private life so that people will know that the magistrate can be trusted.
- 3.3 A magistrate must be true to the judicial oath.

## 5.5 TRANSLATION

If you have developed your guidance in English you will need to have it translated into local language if it is to be accessible to your judges. Even if you employ a professional translator you should check the translation. This is done by back-translation.

Back-translation requires someone who is fluent in both languages but who is not familiar with the document who will translate it back to the language in which it was created. This is particularly necessary if the original translation was undertaken by someone who has no knowledge of the courts or the law.

This exercise is best done orally with the back-translator reading the translated text back to the person primarily responsible for the drafting. Between them they will identify and refine any passages where the original meaning has not been conveyed clearly in the translation.

Even if you developed your guidance simultaneously in English and your home language, you may do well to double check that the two documents are saying exactly the same when read by someone who has not seen the documents before.

<sup>14</sup> Typically this is to seek guidance from the Chief Justice.

## 5.6 PUBLICATION

When your code is complete and has the approval of your judiciary, it would be nice to produce it in a booklet form for distribution to judges and the public. You may have what is needed to do this in-house; if not you might get help through the PJDP Responsive Fund.

The important thing is to get the guidance to its intended readers and you could achieve this by making it available to judges and court users in the court houses. If formal publication is delayed judges can be given photocopies. If you 'pilot' the guidance in this way it will give your team an opportunity to make any necessary amendments before investing in formal publication.

There is a lot to be said for arranging a formal launch to give the guidelines some publicity, and recognition to the judicial community. In Kiribati the Chief Justice and High Court organised a Magistrates' Conference at which the guidance was launched. Some 110 magistrates attended from a total of around 140. The conference provided training in relation to the guidance and other matters. In Niue a formal launch was organised to coincide with a visit from their Chief Justice. In Tuvalu the logistics of inter-island transport made it more practical for the Senior Magistrate to 'launch' the guidance at each court in turn as he made his regular circuit.

## 6 IDENTIFYING COUNTRY SPECIFIC MATERIALS

You guidelines must be consistent with the laws of your country. You will need to identify the relevant materials. The table below is intended as a reminder of some of documentation you may need to have to hand.

### 6.1 A CHECKLIST OF THE LOCAL MATERIALS YOU WILL NEED TO FIND

Checklist of reference materials you will need	
Document	How might it be relevant?
Your country's constitution	<ul style="list-style-type: none"> <li>usually sets up the judiciary and reaffirms separation of powers</li> <li>usually only deals with appointment of judges for the higher courts</li> <li>provision for removal of judges</li> <li>often includes a statement of human rights.</li> </ul>
The statute or statutes creating lower courts and governing the appointment of their judges, eg. you may have a Magistrates Court Act.	<ul style="list-style-type: none"> <li>often includes provisions regarding the term of appointment and removal from office.</li> </ul>
The judicial oath sworn by your judges (usually in the Magistrates Court Act or equivalent).	<p>In swearing the oath of office the judge will have undertaken to:</p> <ul style="list-style-type: none"> <li>serve in accordance with the constitution and the law</li> <li>do right<sup>15</sup> by all manner of men without fear or favour, affection or ill will.</li> </ul>
Any other statute which purports to apply to the judiciary	For example: Tuvalu has a Leadership Code Act which specifically applies to judges and judicial officers.
Written terms of appointment, if any	It seems most Pacific countries do not have written contracts for any of their judges.
A list of international treaties or conventions to which the country is a signatory.	Confirms rights to be accorded to individuals by the court.

<sup>15</sup> Within the context of the oath 'to do right' might be paraphrased as 'to administer justice'.

## 7 REFERENCE AND RESOURCE MATERIALS

In this part you will find:

- i. An Introduction to The Bangalore Principles
- ii. Planning workshops
- iii. Drafting tips
- iv. Useful references.

### 7.1 AN INTRODUCTION TO THE BANGALORE PRINCIPLES

The Bangalore Principles were developed over a number of years by an international group of very senior judges. The group started as an ad hoc group but has now become established as the Judicial Integrity Group (JIG)<sup>16</sup>.

The group started its work in 2000<sup>17</sup> with the vision of developing,

*"A universally acceptable statement of judicial standards which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced at the national level by the judiciary, without the intervention of either the executive or legislative branches of government."*<sup>18</sup>

#### 2002: The Bangalore Principles

After a great deal of consultation involving the judges of more than 70 countries the Bangalore Principles were adopted in 2002. They identify 6 judicial values and the principles governing their application in practice. The 6 values are:

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence and diligence.

The full text of the Bangalore Principles is provided in **Annex 1**.

#### 2007: Commentary on the principles

In 2007, JIG produced an extensive commentary on the principles. This long document explains the history of JIG, the development of the Bangalore Principles<sup>19</sup> and discusses the application of each principle at length. The commentary finishes with a review showing how the principles accord with the moral codes of the principal religions of the world. This is an extremely interesting document for anyone who wants to read in more depth, but it is too long to reproduce here. It can be found on the JIG website.

In telling the story of the development of The Bangalore Principles the commentary identifies the judges involved and the many national codes, regional and international instruments that the group considered

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<sup>16</sup> <http://www.judicialintegritygroup.org>

<sup>17</sup> April 2000 Vienna: Judicial Group on Strengthening Judicial Integrity. (JIG) sponsored by UN Centre for International crime prevention (Global Programme Against Corruption).

<sup>18</sup> Dr Nihal Jayawickrama: 2009 talking about JIG's work at the conference on Ethics for the Prevention of Corruption in Turkey held in Ankara.

<sup>19</sup> See pages 9 to 18.

before drawing up the principles. These include the Universal Declaration of Human Rights (UDHR) where Article 19<sup>20</sup> states:

*"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

This right was later incorporated into The International Convention on Civil and Political Rights<sup>19</sup> (ICCPR). Article 14 of which says:

*"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."*

In commenting on the preamble to The Bangalore Principles the commentary touches on the concepts on which constitutional democracies are founded, such as the Rule of Law and the Separation of Powers, and the principles such as Judicial Independence which derive from them. The discussion concludes with the following seminal quote on why it is necessary for the judiciary to set standards for the behaviour of its members:

*"We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations."<sup>21</sup>*

When you come to discuss the application of The Bangalore Principles in workshops some of these concepts are bound to arise. If you are working with judges who do not have a legal training you may need to investigate and explain some basic theory. We will discuss this further in the following section.

### **2010: Measures for the effective implementation of the principles**

This document looks at the different roles and responsibilities of The Judiciary and of The State in the administration of justice. We shall return to it in the section discussing complaints and disciplinary proceedings. It is reproduced in **Annex 2**.

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<sup>20</sup> Sited in the preamble to The Principles.

<sup>21</sup> J B Thomas, Judicial Ethics in Australia.



## 7.2 WHAT TO DO IN WORKSHOPS - PLANNING IN MORE DETAIL

The ground-rules for the revision process which we looked at in Part 3(ii) stated that the process should be conducted so as to be a developmental activity for the judges who participate. It is important not to lose sight of that part of the overall aim for your workshops stated in Part 5 as:

**To consider the application of the Bangalore Principles within the context of the courts of our jurisdiction and to identify the circumstances in which the Bangalore values most often need to be considered.**

**And**

**To formulate guidance on judicial conduct that is simple, clear and relevant.**

We suggested that you set out in a table what you hope to achieve in each of the workshops you plan to hold. As you develop your plans you will need to think in more detail about what you will do in each session.

You will find it helpful to produce a more detailed written plan for each workshop which sets out your aims, what you will do in order to achieve them, how you will use the time available and what resources you will need.

On the following pages we describe the revision process as it was in Tuvalu where the first two workshops were conducted with Island judges on Nukufetau and Vaitupu, two atolls in Tuvalu. These are remote islands accessible only by boat. We took with us a white board, flip chart paper, pens, sticky tape, Blu-Tack and the prepared materials for the exercises (the hand-outs were translated into Tuvaluan). We also took a laptop and a camera. Neither of those was essential but the laptop facilitated note taking, and the camera helped keep a record of the workshop by photographing things written on the white board.<sup>22</sup> This is what we did:

Each workshop lasted a whole day. We started at 9am and finished at about 3.30pm. We deliberately chose not to make the day too long. Why? Because we would be asking our participants to work hard at something new to them and when people are doing something different they get tired more quickly than when they are doing something familiar. Workshops cease to be productive if people are tired. We organised refreshments including lunch. Whilst our budget was modest it is important to show respect and gratitude for the participants and the contribution they are making by looking after them well.

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<sup>22</sup> With the benefit of hindsight we might have not taken the white board; you can manage with flip chart paper and you can keep it for the record.

Materials used in Workshop:

CODE OF CONDUCT WORKSHOP FOR ISLAND COURT MAGSTRATES AND ISLAND LAND COURT MAGISTRATES

	Activity	Objectives
9am start 1 hour	<p>Introductions</p> <p>What guidance would you like from code of conduct?</p>	<p>Explain what we are here for. <b>10 mins</b></p> <p>Who I am? <b>5 mins</b></p> <p>Who are the magistrates? <b>2 mins each x 10 participants = 20 - 25mins</b></p> <p>Establish Island Magistrates needs and expectations. <b>about 20 mins discussion</b></p> <p><i>Objective for first session = Establish mutual respect and confidence for exercise</i></p>
<b>Short Break</b>		
1 ½ hours	<p>Explain activity - <b>10 min</b></p> <p>Groups 3+4+4</p> <ul style="list-style-type: none"> <li>• They do it &lt;30 min</li> <li>• Report back - <b>15 min</b> (flipchart paper)</li> <li>• Discuss &lt;30 min</li> </ul> <p>Are there any missing values?</p>	<p>Examine the six values and place in order of importance.</p> <p><b>Materials = 3 sets of "Bangalore Values" (1 value per A4 sheet)</b></p> <p><b>Clips, pins and or blue-tack to pin up flip chart paper around room</b></p> <p>Discuss differences, Identify areas of overlap, Discuss meaning of each</p> <p><i>Objective for session = Agree list of values</i></p>
<b>Lunch 1 hour</b>		
1 ½ hours	<p>What do the principles mean in practice?</p> <p>3 groups differently constituted explain - <b>10 min</b></p> <p>Each Group to writes an explanation for chosen value or values - <b>40 min</b></p> <p>Discuss and refine - <b>40 min</b></p>	<p>To gather judges' expression and interpretation of what those principles they identify mean in practice.</p> <p><b>Flip chart paper + pens sufficient for participants</b></p>
<b>Short Break</b>		
1 hour	Conduct	<p>Practical session considering scenarios</p> <p><b>prepared scenarios</b></p>

## CODE OF CONDUCT

### What is this code for?

This code is issued for guidance of judges and to inform the people of Tuvalu as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

The judge's primary duty is to administer justice by applying the law. This is reflected in the oath in which the judge swears to serve *"in accordance with the constitution and law."*

"I swear by Almighty God that I will well and truly serve Our Sovereign Lady Queen Elizabeth, her Heirs and Successors, as a Judicial Officer and I will do right to all manner of people after the laws and usages of Tuvalu, without fear or favour, affection or ill will. So help me God."

Hand out for first session

## INDEPENDENCE

Judicial independence is essential to the rule of law and the fair conduct of trials.

A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Values - session 2

## IMPARTIALITY

Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial function.

Values - session 2

## **INTEGRITY**

Through all his or her public and private life a judge should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.

Values - session 2

## **EQUALITY**

A judge should ensure that every one is treated with respect and courtesy and with equality according to the law.

Values - session 2

## **PROPRIETY**

A judge must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.

Values - session 2

## **COMPETENCE AND DILIGENCE**

A judge must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.

Values - session 2

## The first workshop in Tuvalu – Nukufetau

### The First Session, 9am - 10am

During the first session we explained our aims and who we were (very important if you are not already known to the participants). We then asked each participant to tell us something about him or herself, in particular how many years they had held the office of magistrate. Whilst they were talking we added up the total years of magisterial experience in the group as a whole. In Nukufetau we shared 84 years of experience and in Vaitupu 122. Those findings allowed us to talk about how valuable that experience was and to establish a basis for our discussions. We made it clear that this would be an open discussion with no right or wrong answers. We looked at the hand-out and the oath and talked about what the participants expected from guidance on conduct. Some direct quotes:

*"to do justice"....."honestly and properly do the job"....."to do according to the law"....."work well and honestly".*

### First workshop - Second session, 10.30am - 12 noon

The objective of this session was to examine the six values and principles identified in Bangalore and decide whether they were appropriate for Tuvaluan magistrates. We approached this by providing each of three groups with a set of values and asking them to put them in order of importance. There is, in our view, no particular right order but the process of choosing one caused the judges to discuss the different values at length. By the end of the session the participants agreed that the Bangalore Values captured the judges' role and they were happy to adopt them as the basis for their code.

### First workshop - Third session, 1pm - 2.30pm

During this session each group worked on a different value and wrote on a sheet of flip chart paper examples of how the related principle would apply in the context of their work. We then discussed and refined each group's suggestions with the whole group.

### First workshop - Fourth Session 2.45pm - 3.45pm

During this session we worked through some examples of situations the magistrates might have to deal with; in some cases acting out the appropriate reactions. The intention was that this session should be relatively active and fun, whilst helping the participants think about how they might react to different situations and challenges.

## The second workshop in Tuvalu - Vaitupu

This was run along similar lines except that we modified the second session to look at the work that had been done in Nukufetau which allowed us to progress to the third session earlier and spend more time on that exercise.

A draft was then completed based on the materials generated by the two workshops. The third workshop was conducted back in Funafuti where we gave participants the draft Code of Conduct and asked them to review it and then apply it to a series of problem scenarios. The objective for this workshop was to further refine the draft code, which was subsequently submitted to the Chief Justice for approval.

## Outline of the Third Workshop in Tuvalu

Session 1 9.00 - 10.30	Introducing ourselves and the code of conduct Copies of the code in English and Tuvaluan
Session 2 11.00 - 12.30	Applying the code of conduct Case studies (Printed copies in Tuvaluan)
Session 3 1.30 - 3.00	Reviewing the code of conduct Discussion: Are amendments needed?
Session 4 3.30 - 4.35	Decision making. Moses's Case - A case study provided in Tuvaluan - This was a response to requests from magistrates. The case study was designed to raise some issues of conduct.

### Timing in workshops

Estimating the time activities take is always difficult especially if it is new to you; we all have a tendency to underestimate how long we need to do things. Do allow sufficient time for a proper introduction unless you know the group very well already. You should set aside time to introduce yourself and for you to find out about the experience and concerns of the individuals who make up the group.

You must expect to spend a significant part of your time in these workshops introducing the Bangalore Values and explaining the principles regarding the application of each value because that is the starting point for the discussion. This is especially true if you are dealing with judges who do not have any formal legal training.

### Flexibility

Sometimes things do not go as planned. A particular exercise may simply not work as you anticipated, participants may know more, or less, than you expected. Some purely practical problem may interfere. Be ready to be flexible and modify or change your plans whilst keeping focussed on your objectives.

### Some Dos and Don'ts for workshops

#### Do allow time for 'house keeping'

This shouldn't take long but your participants need to know what they will be doing throughout the day. This includes a brief overview of the workshop, the timing of sessions, when there will be breaks, where the bathrooms are, when and where refreshments will be available, and, if relevant, when they will receive any allowance payable in respect of attendance, and, if appropriate, safety provisions such as fire exits.

#### Do allow enough time for introductions

With a lot to do it is tempting to think a quick hello might suffice but this is time to find out about your participants. They are your major resource; you need to learn something of their experience and to build mutual confidence. Make it clear that their contributions are valuable and that all ideas are welcome, nothing is wrong.

**Do demonstrate your respect for your participants and their experience**

Learn and use their names. You could issue badges or folded paper place names. As they introduce themselves you can note their names on a bit of paper in the order in which they are sitting, as an aid to your memory.

**Do think about the way the room is set up**

Place chairs in a ring or informal groups to facilitate the activities you plan.

**Don't place chairs in rows like school or the theatre!**

**Do set a clear aim for every session**

Doing so will help you to plan the session and your participants to know what they are expected to achieve.

**Do make sure you give clear and complete instructions for any exercise you ask them to perform**

Participants will feel uncomfortable if they are not sure what they should be doing.

**Do allow thinking time**

If you have carefully constructed an exercise to focus your participants' minds on a particular issue, don't spoil it all by cutting short the time you allow for them to discuss and work on the task you have set.

Whilst they work you should move through the room 'hovering' to check that groups are making progress and prompting or directing where necessary. As a general rule you might divide the time you allow for an exercise roughly as follows:

20% = introduction to session aims and explanation of activity.

50% = participants do the activity you set.

20% = participants report back - comments, discussion and feedback.

10% = Summing up conclusions.

**Do try to keep to the timing you planned**

It is easy to get side tracked by an interesting question or persistent questioner; be friendly but firm about keeping on track. "Perhaps we could talk about that at lunch."

**Don't lecture**

Keep your spoken inputs short and succinct, and avoid the temptation to talk at length. Generally peoples' attention falls away rapidly after the first ten minutes.

**Do learn from your mistakes**

It will not always go to plan, think about why not and, if you can, prevent it from happening again.

**Don't give up!**





Arrival with Whiteboard - Nukufetau



Workshop - Nukufetau



Nukufetau Workshop 31 May 2011



Lunch - Nukufetau



Workshop in North Tarawa - Kiribati



Arrival in Abaiang - Kiribati



Workshop in Abaiang - Kiribati



Group Photo in Abaiang - Kiribati

## How adults learn

Your workshops should be developmental for the participating judges, providing them with an opportunity to reflect on the ethical principles which govern judicial conduct. It is therefore important that you bear in mind the following points about how adults learn.

**Relevance:** Each adult will have developed his or her own learning style, but a common is that adults like to be able to 'attach' new learning to the framework of things they already know. That is why it is important to relate the material you seek to introduce to the experience of your students, helping them to see its relevance.

**Learning styles:** The academic study of teaching formally identifies a number of different learning styles. Most adults adopt a mix of styles and any group will certainly comprise individuals favouring different styles. What you need to know is that when you design your workshops you should try to include activities which will appeal to different styles of learning. So whilst some of us like to read or merely listen, others are more visual learners, some will learn more through discussion and others through activities which require them to apply their new learning. In your workshops try to create a mix:

- Write and draw things on the board or flip chart,
- use handouts,
- get your participants to write things on the board,
- get participants to discuss points, and to explain them to each other,
- illustrate points with diagrams or pictures,
- use practical illustrations, and
- set realistic practical exercises.
- Be imaginative!

### Skills

How did you learn to ride a bicycle?

How did you learn to swim?

What does that tell you about how you would best help someone develop his or her judicial skills?

*We doubt you learned to ride or swim by sitting down learning in theory! That is why practical exercises which give the opportunity to practise are of particular importance when you want to help someone learn a new skill or develop an existing one. Conducting oneself as a judge involves more than just knowing the rules and the law, it involves a complex range of skills including reasoning, vocal skills and interpersonal skills.*



### 7.3 DRAFTING TIPS

We looked at structure when we discussed the drafting process in 5(iv). That was the first point in the checklist for writing clearly.

#### Watch points for writing clearly

However experienced we are, we all do well to remind ourselves of the checklist:

- Plan what you want to say and follow a logical sequence;
- Keep sentences short;
- Keep your language simple and appropriate for your readers;
- Prefer the active voice;
- Use lists where appropriate; and
- Avoid anything which may interrupt, distract or confuse your reader.

#### Keeping sentences short and your language simple

It has been suggested<sup>23</sup> that 20 words is a good length for a sentence in English. Longer sentences are likely to incorporate several ideas in a number of sub-clauses which can make them difficult for the reader to follow, particularly in a culture where most people are predominantly oral.

By way of example the last sentence had 33 words. Why not write?

Long sentences often incorporate several ideas in a number of sub-clauses. Such sentences can be difficult to follow. This is especially so in an oral culture.

Whilst short is generally best, English has a very rich vocabulary and it is almost always possible to find an alternative way of expressing an idea. Our experience suggests that local language may sometimes require more words. This is because it may require the formulation of a phrase just to capture the meaning of a word like 'integrity' or 'propriety'. We found that neither i-Kiribati nor Tuvaluan had a direct equivalent for either word. So the advice might be better stated as follows: use as many words as you need to convey your meaning clearly and try not to use any unnecessary words.

Simple language does not mean childish language. It means thinking about what you want to say and saying it clearly. It also requires us to think about our readers and choose language appropriate to them. As a general rule it is good to avoid the use of acronyms and jargon, but if you have to refer to something frequently throughout a document it may be useful to give it a short title.

e.g. The Pacific Judicial Development Programme (PJDP)

#### Should you use the second or third person?

Many authorities advise that you address your audience as if you were with them. This toolkit uses that approach. If you followed this advice you might write:

"You should make sure that you have heard all the evidence and considered the relevant law before you make your decision." (Second person)

rather than,

"A judge must make his or her decision on the basis of the facts, as proven by the evidence, and the relevant law." (Third person)

A quick glance at the guidance drafted for Niue, Kiribati and Tuvalu will show that we did not follow that advice. That is because the guidance is intended not just for the judiciary but for public information. The

<sup>23</sup> The Plain English Campaign see <http://www.plainenglish.co.uk>. A valuable and free resource.

guidance should have a sense of gravity. In all the circumstances we decided to adopt the convention of talking in the third person.

### Accurate language

#### A note on the use of the words: must, shall, should, could, can and may.

In everyday use we are sometimes lax in our choice of words but in the context of guidance on conduct we must be particularly careful. In stating principles the imperative may be appropriate but generally there will be some room for the judge to decide the appropriate response in any particular situation and our language should reflect that.

The words 'must' and 'shall' are imperative; whatever they refer to has to be done there is no room for choice or discretion.

'Should' is advisory suggesting the best or expected course of action.

'Could' and 'can' refer to what the subject is able to do.

'May' is permissive; to be done if the subject chooses.

### The active voice

Generally speaking the active voice is more direct and easily understood than the passive.<sup>24</sup> In the active voice the subject of the sentence does the action that the verb describes. Your reader will naturally focus on the subject of the sentence which is the judge in the examples of the active voice set out below. You might choose to use the passive form in a situation where what is happening to the case is more important than what a particular judge is doing, for example, if you were writing about the judicial oath or fairness in court proceedings.

Active	Passive
The subject is doing the action in the verb. The subject is active.	The action in the verb is being done to the subject. The subject of the sentence is passive i.e. inactive
A judge must be true to the judicial oath.	The judicial oath must be observed at all times.  (Note: In this sentence the person doing the action is not identified but is understood to be the judge.)
A judge should not hear a case which involves a close family member, close friend, or workmate.	A case which involves a judge's close family member, close friend, or workmate should not be heard by the that judge.
A judge who thinks his decision would be affected, or might appear to be affected he should not sit and hear a case.	A case should not be heard by a judge who thinks his decision might be affected or might appear to be affected.
Another judge should hear the case.	The case should be heard by another judge.

- Subject
- Verb

<sup>24</sup> For more advice see: <http://owl.english.purdue.edu>. Free website. Easily followed advice on writing simply and clearly with lots of examples.

## Things which may distract your reader:

### The forward slash

If you use the forward slash it interrupts the reader's flow. It is often used instead of the word 'or' or the words 'and, or'.

Say what you mean, so instead of:

judges / magistrates .....write ..... judges and, or magistrates

and / or..... write.....and, or

he / she.....write.....he or she

### Gender

Most Pacific countries have legislation regarding interpretation which provides that the male includes the female (and vice versa) unless the contrary is expressly provided. However current concern to promote the equality of the sexes has led to the convention that we specifically include both male and female.

e.g. A judge must make his or her own decision. (Please, not his / her)

Some writers are tending to use the word 'their' instead of 'he or she', to do so is incorrect and may be confusing since 'their' is plural. You could write, "Judges must make their own decisions", but it would not be quite as precise as, "each judge must make his or her own decision."

'May' is permissive; to be done if the subject chooses.

### Layout

Poor layout can distract or confuse. Think about the layout of your document; keep it simple and consistent.

Font: **Chose a clear font** and DON'T be tempted to use **too many techniques** in attempting to give emphasis!

Font size: Most people can easily read 12pt script you may choose a larger font size and, or bold script for headings

- 10pt is a bit small for some people
- 12pt, is ok, but
- 14pt may be good for older eyes.

Clearly you won't want to write a long document in large print unnecessarily, but if you are preparing handouts for workshops you may only have a little to write, so enlarge the script.

Alignment: We suggest you align text to the left. Fully justified text may look neater from a distance but there is a great deal of evidence that readers find it easier to navigate when the line lengths vary on the right of the page.

Break it up: Use paragraphs, headings and sub-headings to separate topics and ideas.

Check for inconvenient page breaks.

## 7.4 USEFUL REFERENCES

There is a great deal of useful information available free on the internet. We have already indicated some websites in footnotes here are some more you might find helpful. We are not suggesting you should visit them all!

### Law of Pacific Island Countries

Pacific Islands Legal Information Institute (PacLII)  
<http://www.pacii.org>

**Judicial conduct and related matters (sites where you will find examples of actual guidance are separately listed below)**

Judicial Conduct Commissioner, New Zealand  
<http://www.jcc.govt.nz/>

Judicial Integrity Group (JIG) <http://www.judicialintegritygroup.org>  
This site has all the JIG documents referred to in this toolkit but also offers links to many of the principle sites concerned with judicial integrity.

Preventing Corruption in the Judiciary System - a practical guide <http://judicialintegritygroup.org/resources/documents/gtz2005-en-corruption-in-judiciary.pdf>

Beijing Judicial Independence  
<http://lawasia.asn.au/objectlibrary/147?filename=Beijing%20Statement.pdf>

Transparency International  
<http://www.transparency.org>

Transparency International's Global Corruption Report 2007 Corruption in the Judiciary available from Council of Europe at  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07\\_complete\\_final\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07_complete_final_EN.pdf)

LegislationOnline  
<http://www.legislationonline.org>

For sites of judicial complaints authorities see section 8(ii).

### Examples of guidance on Judicial Conduct

Australian Institute of Judicial Administration Guide to Judicial Conduct free download at  
<http://www.aija.org.au/online/Pub%20no82.pdf>

Canada - Ethical Principles for Judges  
[http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf)

England and Wales  
<http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/how-the-judiciary-is-governed/guide-to-judicial-conduct/>



New Zealand

<http://www.courtsofnz.govt.nz/business/guidelines/guidelines-for-judicial-conduct/>

PNG Magistrates Manual

<http://www.paclii.org/pg/Manuals/Magistrates/Part1Chap1.htm>

United Kingdom Supreme Court

[https://www.supremecourt.uk/docs/guide-to-judicial\\_conduct.pdf](https://www.supremecourt.uk/docs/guide-to-judicial_conduct.pdf)

United States Courts

<http://www.uscourts.gov/rulesandpolicies/codesofconduct/codeconductunitedstatesjudges.aspx>

American Bar Association Model Code

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html)

### **Workshops and training**

ASSET a European project to develop teaching skills for those teaching adults

[http://www.assetproject.info/learner\\_support/introduction.htm](http://www.assetproject.info/learner_support/introduction.htm)

Continuing education at about.com, Part of the New York Times Group, some useful information (if you can ignore the adverts).

<http://adulted.about.com/od/teachers/a/teachingadults.htm>

## 8 FOR THE FUTURE

- i. Training on guidance
- ii. A complaints procedure? Complaints procedures as distinct from disciplinary proceedings
- iii. Keeping guidance under review.

### 8.1 TRAINING ON GUIDANCE

If your team has just drafted new guidance a significant proportion of your judges will have been involved in the process and if you have organised a well-publicised launch, all of your judiciary should be aware of the new guidance. When you publish your new guidance each judge should be given a copy as soon as reasonably possible and you should take steps to ensure that all your judges become familiar with the new guidance through participation in training activities. In order to determine what kind of activities those might be, we should look at more closely at the aim of making judges familiar with the guidance.

We want judges to know what the new guidance says and to have thought about the principles it spells out. There is no better way to get your judges to read and think about the guidance than to get them to use it as they discuss how they might react to different situations.

As adults we generally absorb information best when it is immediately useful to us. You can encourage your judges to read the guidance if you ask them say what they would do in a particular situation.<sup>25</sup> Perhaps the best way to do that would be in a workshop. After a relatively short introduction you could ask judges to work in small groups or pairs discussing several short scenarios before feeding back in a plenary session.

Alternatively you might set up a role play. A role play involves several participants acting out a scenario. Some participants may be given quite detailed instructions as to their roles. Others play the part of the judges with little or no instruction, their job is to behave as they would in court. Their reaction to the situation can then be discussed by the whole group with reference to the guidelines.

Setting up workshops can be very expensive in the Pacific because of some of the practical difficulties we looked at earlier.<sup>26</sup> If you do not have the resources to provide workshops for your judges you could at least provide them with a study pack. That could be quite simple; it might take the following form:

- Copy of the new guidance
- A set of written scenarios raising conduct issues
- space to write what they would do
- The commentary of a senior judge in relation to each scenario<sup>27</sup>
- A simple self-test to see what has been learned.

If you have a suitable individual, perhaps a court clerk, who could organise a group session. The same exercises could be undertaken by a group of local judges working together. The court clerk could note any issues that the group are unable to resolve between them. Such questions might be referred to your group or the Chief Justice for an opinion. If several groups get stuck on the same issue it might be an indication that your guidance is insufficient in a particular respect and needs amendment.

In **Annex 4** we have reproduced some of the materials which were used in the training for magistrates in Kiribati.

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<sup>25</sup> You will need to develop some scenarios which raise questions about judicial conduct. You may find it useful to refer back to the workshops you ran in developing the code for examples of testing situations.

<sup>26</sup> Geographic separation, lack of reliable regular transport, difficulties with communication etc.

<sup>27</sup> Judges should be encouraged to try to reach their own conclusion before looking at these.

## 8.2 SHOULD YOUR JURISDICTION HAVE A COMPLAINTS PROCEDURE?

In order to protect their independence, judges' terms of appointment typically give security of tenure and prevent their removal from office other than in very particular circumstances. If a judge becomes unfit to perform his or her duties, either through ill health or through misconduct so serious that he or she can no longer be considered fit to act in a judicial capacity, the relevant law usually provides for action which may lead to removal from office. Not every failure to follow guidance on judicial conduct will be sufficiently serious to warrant disciplinary action. Some departures will be slight and no action will be needed. Others may merit some kind of intervention ranging from a word of advice from a senior judge all the way to an investigation which may lead to disciplinary action.

It is appropriate for the judiciary to acknowledge that the community it serves has the right to expect certain standards of professionalism from its judges, and that judges should be accountable for their behaviour, when and if it falls below the expected professional standard. Furthermore the judiciary make decisions which affect peoples' lives and it is important that those people have confidence in the integrity of the individuals making those decisions.

The advantage of a complaints procedure is that it allows anyone aggrieved by a judge's behaviour to put their complaint to an independent authority for consideration. Many jurisdictions now have complaints procedures. An important function of the complaints authority has proven to be identifying properly founded complaints. It is not unusual for individuals to be confused and attempt to commence a complaint procedure in relation to a matter which should have been brought before the court by means of an appeal or judicial review. Other complaints amount to nothing more than dissatisfaction with a properly made decision. It seems likely that the complaints system plays an important part in explaining the role of the judge.

At the Chief Justices' Workshop in October, 2011 one Chief Justice expressed his reservations about linking a complaints procedure to the introduction of new guidance on conduct. He argued persuasively that the prime function of guidance should be to educate by developing judicial thinking with regard to issues of conduct. If a complaints procedure is attached and presented at the same time judges may merely feel threatened and the effect might be to stultify learning. That is why we have included this discussion under the heading 'for the future'.

In reaching its decision a judiciary should bear in mind the ever-stronger insistence that those occupying positions of authority should be accountable. This constitutes a strong argument for instituting a complaints procedure.

In the commentary on the Bangalore Principles JIG gives the following warning as regard the independence of the judiciary:

*"If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain the high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. When that happens, the principle of judicial independence upon which the judiciary is founded and by which it is sustained, is likely to be undermined to some degree, perhaps seriously. <sup>28</sup>"*

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<sup>28</sup> Commentary on the Bangalore Principles 2007 at page 28.

In describing the role of the judiciary<sup>29</sup> JIG says:

*"The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary where no provision exists for the reference of such complaints to a court."*

In relation to the functions of the state JIG sets out at some length the safeguards which should be put in place. The full text can be found in **Annex 2**. The major points which emerge are set out on the next page.

It will be seen that the procedure proposed provides for a preliminary consideration of complaints. Claims which do not allege a breach of judicial conduct are filtered out to protect judges from unfounded disciplinary proceedings brought by disappointed litigants in respect of properly made decisions.

Whilst most complaints procedures are in line with JIG's recommendations, jurisdictions have adopted slightly different procedures. Most larger jurisdictions have appointed an independent authority to receive and handle complaints, with the power to convene panels to conduct hearings and where necessary make a recommendation to the authority with statutory power to discipline the judge. Typically panels are comprised of nominated retired judges and members of the public or civil society who are independent of the legislature and the administration. A structure of a 'typical' complaints procedure is represented in the diagram on page 63.

## Summary of major points in the Judicial Integrity Group's recommendations as regards disciplinary actions against a judge

### Discipline of Judges

- Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings.
- Disciplinary proceedings against a judge may be commenced only for serious misconduct. The law applicable to judges may define conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.
- A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain.
- A specific body or person should be established for:
  - receiving complaints,
  - obtaining the response of the judge,
  - and for considering in the light of such response whether or not there is a sufficient case against the judge to call for disciplinary action, and
  - when appropriate referring the matter to the disciplinary authority.
- The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive.

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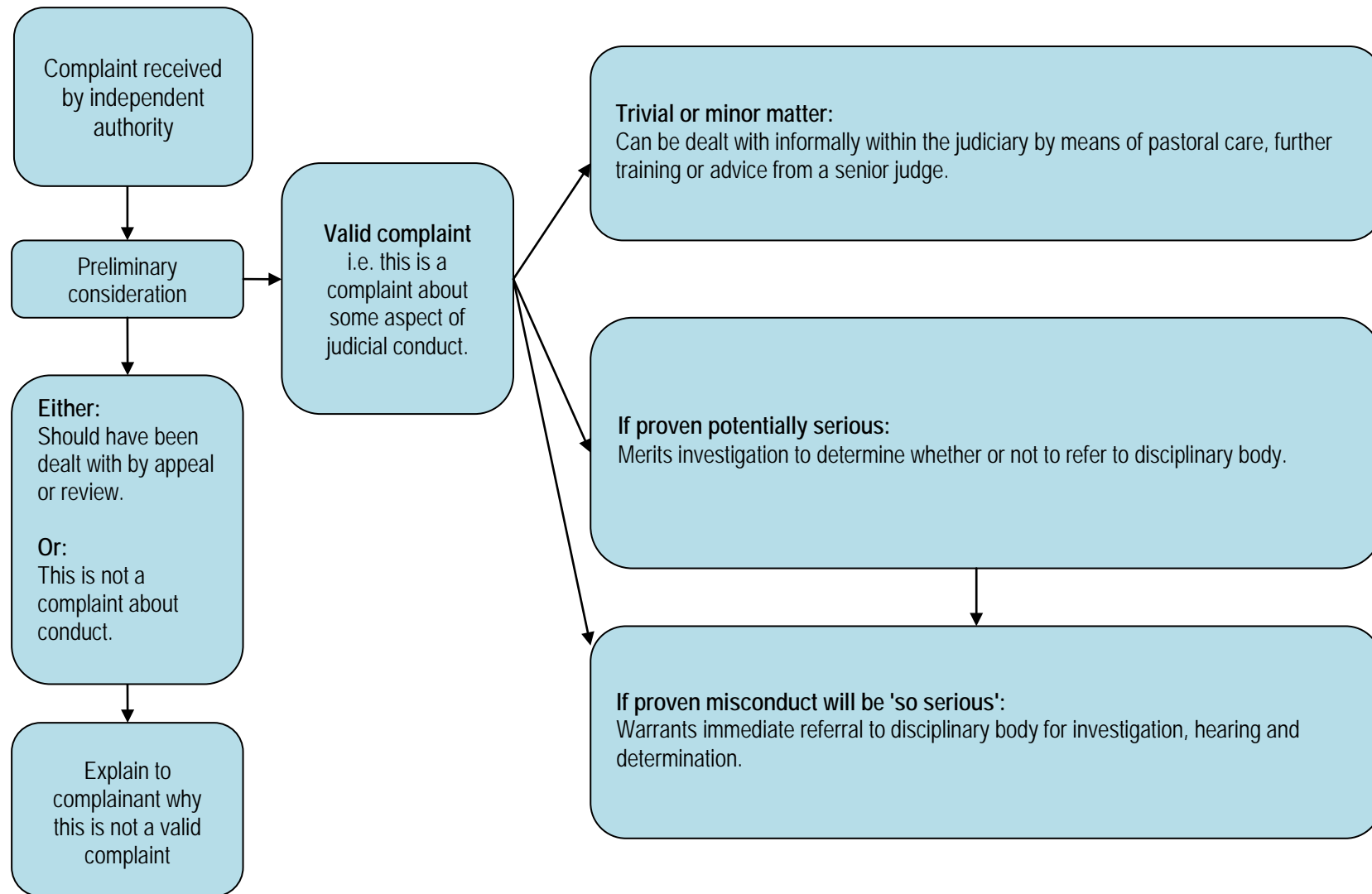
<sup>29</sup> Measures for the effective implementation of The Bangalore Principles of Judicial Conduct - Lusaka - 2010 at page 6 - See Annex 2.

- Disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with the principles of a fair hearing.
- There should be a right of appeal from the disciplinary authority to a court.
- Where a sanction is imposed as a result of disciplinary action the decision should be published.

#### **Removal of Judges from Office**

- A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.

### Structure of a 'typical' complaints procedure



The following table shows you where to find more detailed information regarding the complaints procedures of different jurisdictions

Jurisdiction	Complaints made to:	Web addresses
Australia - Federal Court	Chief Justice	<a href="http://www.fedcourt.gov.au/feedback-and-complaints/judicial-complaints">http://www.fedcourt.gov.au/feedback-and-complaints/judicial-complaints</a>
Australia - Federal Circuit Court	Chief Federal Magistrate	<a href="http://www.federalcircuitcourt.gov.au/html/complaints.html">http://www.federalcircuitcourt.gov.au/html/complaints.html</a>
Australia - New South Wales	Judicial Commission of NSW	<a href="http://www.judcom.nsw.gov.au/complaints">http://www.judcom.nsw.gov.au/complaints</a>
Canada	Canadian Judicial Council	<a href="http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_complaint_en.asp#wcymaca">http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_complaint_en.asp#wcymaca</a>
England and Wales	Office of Judicial Complaints	<a href="http://judicialcomplaints.judiciary.gov.uk/">http://judicialcomplaints.judiciary.gov.uk/</a>
New Zealand	Judicial Complaints Commissioner	<a href="http://www.jcc.govt.nz">http://www.jcc.govt.nz</a>
Kiribati	Judicial Ethics Committee	Reproduced in <b>Annex 3</b> .
USA - Federal Court	Varies according to court district in which judge is based	<a href="http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/jud_conduct_and_disability_procedure.pdf">http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/jud_conduct_and_disability_procedure.pdf</a>
USA - New York State	Commission on Judicial Conduct	<a href="http://www.scjc.state.ny.us/overview.htm">http://www.scjc.state.ny.us/overview.htm</a> and see also: <a href="http://www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state">http://www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state</a>



## WEB-SITE OF JUDICIAL CONDUCT COMMISSIONER FOR NEW ZEALAND<sup>30</sup>

### WELCOME

The Office of the Judicial Conduct Commissioner was established in August 2005 to deal with complaints about the conduct of Judges.

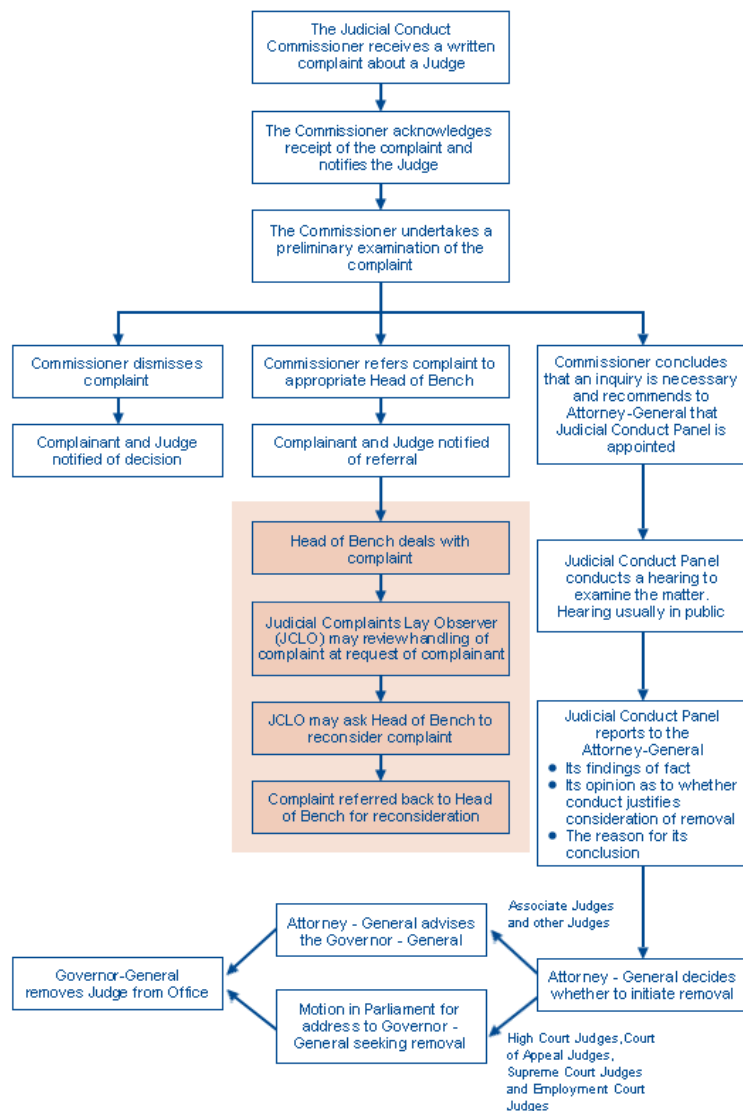
The purpose of the Judicial Conduct Commissioner is to:

- enhance public confidence in, and
- protect the impartiality and integrity of the judicial system.

Complaints may be made against Judges of the various Courts set out in Section 5 of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, including temporary, associate, and acting Judges but not retired or former Judges.

However, the Judicial Conduct Commissioner cannot challenge the legality or correctness of a Judge's decision in relation to any legal proceedings.

The present Commissioner is Sir David Gasgoigne.



<sup>30</sup> Reproduced with kind permission of the Office of the JCC.

### 8.3 KEEPING GUIDANCE UNDER REVIEW

As we noted at the start of this toolkit our expectations as regards conduct change with time and yet the fundamental values and principles which guide judicial conduct have remained more or less constant throughout history. It is our interpretation of the application of those principles which changes and that can very often be attributed to changes in society or the circumstances within which society operates.


An example might be as regards propriety; whether we like it or not, it is impossible to deny that society is becoming ever more relaxed about what is regarded as proper behaviour. It follows that what would be regarded as acceptable out of court behaviour by a judge has changed during the last 20 years. What is regarded as proper behaviour also varies across different communities and different societies.

The environment within which a judiciary operates may also affect where the balance lies between two competing interests. The principles relating to impartiality make it clearly preferable for a judge to refrain from adjudicating in any case in which a member of his or her family has an interest, however small or indirect. However the interest of justice demands that any unnecessary delay should also be avoided. In a large jurisdiction with many judges it should be an easy matter to find another judge whose impartiality is not compromised but in a small jurisdiction where judges are few and families are extended it may not be so easy. This conundrum constantly confronts judges working in the geographically isolated areas of the Pacific. In the small isolated communities of the Pacific a similar conflict arises for judges between the need to remain independent and the need to be a part of the community which they serve.<sup>31</sup> These issues gave rise to interesting discussions at the PJDP National Coordinators Meeting in the Cook Islands in June 2011. Further such discussions can only be useful, although it ultimately remains for each jurisdiction to formulate the advice it gives as to these difficult issues.

It would be appropriate for each jurisdiction to review its guidance periodically as well as keeping it under informal continuing review by means of monitoring such sources of information as court surveys, requests for advice from judges and, where it exists, the record of complaints received.

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<sup>31</sup> See The Commentary on Bangalore Principles at page 40.



# *TOOLKIT FOR REVIEW OF GUIDANCE ON JUDICIAL CONDUCT - ADDITIONAL DOCUMENTATION*

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>



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## **ANNEX 1: BANGALORE PRINCIPLES**

### **Bangalore Principles of Judicial Conduct**

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge,

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law,

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions,

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice,

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law,

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society,

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system,

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country,

AND WHEREAS the Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary and are addressed primarily to States,

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge.

## Value 1 - Independence

### Principle

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

### Application

- 1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge has to adjudicate.
- 1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions that the judge is obliged to make independently.
- 1.5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

## Value 2 - Impartiality

### Principle

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

### Application

- 2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3. A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

- (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- (b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or
- (c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;
- (d) provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

### **Value 3 - Integrity**

#### **Principle**

Integrity is essential to the proper discharge of the judicial office.

#### **Application**

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

### **Value 4 - Propriety**

#### **Principle**

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

#### **Application**

- 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.



- 4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgement as a judge.
- 4.9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11. Subject to the proper performance of judicial duties, a judge may:
  - (a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - (b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
  - (c) Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - (d) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12. A judge shall not practise law while the holder of judicial office.
- 4.13. A judge may form or join associations of judges or participate in other organizations representing the interests of judges.
- 4.14. A judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

## **Value 5 - Equality**

### **Principle**

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

## **Application**

- 5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## **Value 6 - Competence and Diligence**

### **Principle**

Competence and diligence are prerequisites to the due performance of judicial office.

### **Application**

- 6.1. The judicial duties of a judge take precedence over all other activities.
- 6.2. A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to judges.
- 6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

### **Implementation**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

### **Definitions**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

**"Court staff"** includes the personal staff of the judge, including law clerks;

**"Judge"** means any person exercising judicial power, however designated;

**"Judge's family"** includes a judge's spouse, son, daughter, son-in-law, daughter-in-law and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household;

**"Judge's spouse"** includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

## ANNEX 2: MEASURES OF THE EFFECTIVE IMPLEMENTATION OF THE PRINCIPLES

### Measures for the effective implementation of the Bangalore Principles of Judicial Conduct (The Implementation Measures)

#### INTRODUCTION

The Bangalore Principles of Judicial Conduct identify six core values of the judiciary - Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence. They are intended to establish standards of ethical conduct for judges. They are designed to provide guidance to judges in the performance of their judicial duties and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand the judicial role, and to offer the community a standard by which to measure and evaluate the performance of the judicial sector. The Commentary on the Bangalore Principles is intended to contribute to a better understanding of these Principles.

The section on "Implementation" in the Bangalore Principles of Judicial Conduct states that:

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

In some jurisdictions mechanisms and procedures are already in existence, having been instituted by law or rules of court, to establish ethical standards of conduct for judges. In others they are not. Accordingly, this statement of measures is offered by the Judicial Integrity Group as guidelines or benchmarks for the effective implementation of the Bangalore Principles.

This statement is in two parts. Part One describes the measures that are required to be adopted by the judiciary. Part Two describes the institutional arrangements that are required to ensure judicial independence and which are exclusively within the competence of the State. While judicial independence is in part a state of mind of members of the judiciary, the State is required to establish a set of institutional arrangements that will enable the judge and other relevant office holders to enjoy that state of mind. The protection of the administration of justice from political influence or interference cannot be achieved by the judiciary alone. While it is the responsibility of the judge to be free of inappropriate connections with the executive and the legislature, it is the responsibility of the State to establish the institutional arrangements that would secure the independence of the judiciary from the other two branches of government.<sup>1</sup>

In preparing this statement of measures, reference was made to several national constitutions and to regional and international initiatives to ensure that they reflect a broad national and international consensus. The latter include:

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<sup>1</sup> In its General Comment No.32 (2007), the Human Rights Committee states that the requirement of independence in article 14(1) of the International Covenant on Civil and Political Rights refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. Accordingly, States are required to take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary and disciplinary sanctions taken against them.

1. The Draft Principles on the Independence of the Judiciary (“Syracusa Principles”) formulated by a representative committee of experts in 1981;
2. The Minimum Standards of Judicial Independence adopted by the International Bar Association in 1982;
3. The United Nations Basic Principles on the Independence of the Judiciary 1985;
4. The Draft Universal Declaration on the Independence of Justice 1988 (the “Singhvi Declaration”);
5. Recommendation No.R (94) 12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges, 1994;
6. The Beijing Statement of Principles of the Independence of the Judiciary adopted by a conference of Chief Justices of the Asia-Pacific region in 1995;
7. The European Charter on the Statute for Judges adopted in 1998;
8. The Universal Charter of the Judge adopted by the International Association of Judges in 1999;
9. The Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence for the Commonwealth adopted in 2001;
10. Opinions of the Consultative Council of European Judges (CCJE):  
  
Opinion No.1 (2001): Standards concerning the Independence of the Judiciary and the Irremovability of Judges;  
  
Opinion No.2 (2002): Principles and Rules governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality;  
  
Opinion No.3 (2003): Appropriate Initial and In-Service Training for Judges at National and European Levels;  
  
Opinion No.10 (2007): A Council for the Judiciary.
11. The Blantyre Rule of Law/Separation of Powers Communique issued by representatives of all three branches of government in the Southern African Development Community (SADC) region in 2003;
12. The Cairo Declaration on Judicial Independence adopted by the participants of the Second Arab Justice Conference held in 2003;
13. The Suva Statement on the Principles of Judicial Independence and Access to Justice adopted at a judicial colloquium in 2004.
14. “Justice Matters” - the report of the Irish Council for Civil Liberties on Independence, Accountability and the Irish Judiciary, 2007;
15. General Comment No.32 (2007) of the Human Rights Committee on Article 14 of the International Covenant on Civil and Political Rights.

16. The Venice Commission Report on Judicial Appointments, 2007;
17. The United Nations Office on Drugs and Crime (UNODC), Draft Guide on Strengthening Judicial Integrity and Capacity, October 2009.

## Part One RESPONSIBILITIES OF THE JUDICIARY

### 1. Formulation of a Statement of Principles of Judicial Conduct

- 1.1 The judiciary should adopt a statement of principles of judicial conduct, taking into consideration the Bangalore Principles of Judicial Conduct.
- 1.2 The judiciary should ensure that such statement of principles of judicial conduct is disseminated among judges and in the community.
- 1.3 The judiciary should ensure that judicial ethics, based on such statement of principles of judicial conduct, are an integral element in the initial and continuing training of judges.

### 2. Application and Enforcement of Principles of Judicial Conduct

- 2.1 The judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct.<sup>2</sup>
- 2.2 The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges, but should preferably include sufficient lay representation to attract the confidence of the community. The committee should ensure, in accordance with law, that protection is accorded to complainants and witnesses, and that due process is secured to the judge against whom a complaint is made, with confidentiality in the preliminary stages of an inquiry if that is requested by the judge. To enable the committee to confer such privilege upon witnesses, etc., it may be necessary for the law to afford absolute or qualified privilege to the proceedings of the committee. The committee may refer sufficiently serious complaints to the body responsible for exercising disciplinary control over the judge.<sup>3</sup>

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<sup>2</sup> In many jurisdictions in which such committees have been established a judge may request an advisory opinion about the propriety of his or her own conduct. The committee may also issue opinions on its own initiative on matters of interest to the judiciary. Opinions address contemplated or proposed future conduct and not past or current conduct unless such conduct relates to future conduct or is continuing. Formal opinions set forth the facts upon which the opinion is based and provide advice only with regard to those facts. They cite the rules, cases and other authorities that bear upon the advice rendered and quote the applicable principles of judicial conduct. The original formal opinion is sent to the person requesting the opinion, while an edited version that omits the names of persons, courts, places and any other information that might tend to identify the person making the request is sent to the judiciary, bar associations and law school libraries. All opinions are advisory only, and are not binding, but compliance with an advisory opinion may be considered to be evidence of good faith.

<sup>3</sup> In many jurisdictions in which such committees have been established, complaints into pending cases are not entertained, unless it is a complaint of undue delay. A complaint is required to be in writing and signed, and include the name of the judge, a detailed description of the alleged unethical conduct, the names of any witnesses, and the complainant's address and telephone number. The judge is not notified of a complaint unless the committee determines that an ethics violation may have occurred. The identity of the person making the complaint is not disclosed to the judge unless the complainant

### 3. Assignment of Cases

- 3.1 The nomination of judges to sit on a bench is an inextricable part of the exercise of judicial power.
- 3.2 The division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined arrangement provided by law or agreed by all the judges of the relevant court. Such arrangements may be changed in clearly defined circumstances such as the need to have regard to a judge's special knowledge or experience. The allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process.
- 3.3 A case should not be withdrawn from a particular judge without valid reasons. Any such reasons and the procedures for such withdrawal should be provided for by law or rules of court.

### 4. Court Administration

- 4.1 The responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel should vest in the judiciary or in a body subject to its direction and control.
- 4.2 The judiciary should adopt and enforce principles of conduct for court personnel, taking into consideration the Principles of Conduct for Court Personnel formulated by the Judicial Integrity Group in 2005.
- 4.3 The judiciary should endeavour to utilize information and communication technologies with a view to strengthening the transparency, integrity and efficiency of justice.
- 4.4 In exercising its responsibility to promote the quality of justice, the judiciary should, through case audits, surveys of court users and other stakeholders, discussion with court-user committees and other means, endeavour to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process with a view to remedying them.
- 4.5 The judiciary should regularly address court users' complaints, and publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.

### 5. Access to Justice

- 5.1 Access to justice is of fundamental importance to the rule of law. The judiciary should, within the limits of its powers, adopt procedures to facilitate and promote such access.
- 5.2 When there is no sufficient legal aid publicly available, the high costs of private legal representation make it necessary for the judiciary to consider, where appropriate and desirable, such initiatives as the encouragement of *pro bono* representation of selected litigants by the legal profession of selected litigants, the appointment of *amici curiae* (friend of the court), alternative dispute resolution, and community justice procedures, to protect interests that would otherwise be unrepresented in court proceedings; and the provision of permission to appropriate non-qualified persons (including paralegals) to represent parties before a court.

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consents. It may be necessary, however, for a complainant to testify as a witness in the event of a hearing. All matters before the committee are confidential. If it is determined that there may have been an ethics violation, the committee usually handles the matter informally by some form of counselling with the judge. If the committee issues a formal charge against the judge, it may conduct a hearing and, if it finds the charge to be well-founded, may reprimand the judge privately, or place the judge on a period of supervision subject to terms and conditions. Charges that the committee deems sufficiently serious to require the retirement, public censure or removal of the judge are referred to the body responsible for exercising disciplinary control over the judge.



- 5.3 The judiciary should institute modern case management techniques to ensure the just, orderly and expeditious conduct and conclusion of court proceedings.<sup>4</sup>

## 6. Transparency in the Exercise of Judicial Office

- 6.1 Judicial proceedings should, in principle, be conducted in public. The publicity of hearings ensures the transparency of proceedings. The judiciary should make information regarding the time and venue of hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the hearing.<sup>5</sup>
- 6.2 The judiciary should actively promote transparency in the delivery of justice, and ensure that, subject to judicial supervision, the public, the media and court users have reliable access to all information pertaining to judicial proceedings, both pending and concluded, whether on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence, but affidavits or like evidentiary documents that have not yet been accepted by the court as evidence may be excluded.
- 6.3 To facilitate access to the judicial system, the judiciary should ensure that standard, user-friendly forms and instructions, and clear and accurate information on matters such as filing fees, court procedures and hearing schedules are made available to potential court users.
- 6.4 The judiciary should ensure that witnesses, other court users and interested members of the public have access to easily readable signs and publicly displayed courthouse orientation guides. Sufficient court personnel should be provided to respond to questions through public information services. They should be available close to court entrances. Customer service and resource centres should be provided in an accessible place. Court users should have access to safe, clean, convenient and user-friendly court premises, with comfortable waiting areas, adequate public space, and amenities for special-need users, such as children, victims, and the disabled.

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<sup>4</sup> Traditionally, the parties to a dispute control the movement of a case, with judges and court personnel merely acting as facilitators. It is now recognized in many jurisdictions that the judiciary should actively monitor and control the progress of a case, especially in the original courts, from institution to judgment, including the completion of all the post-judgment steps. The active management by the court of the progress of a case is designed to encourage the just, orderly and expeditious resolution of disputes. This may involve the case being handled by the same judge from beginning to end; the early fixing of a near-immutable trial date; the judge himself fixing the timetable and giving relevant directions in the pre-trial period; and the same judge trying the case if it goes to trial. The active involvement of the judge enables him or her to deal effectively with the critical areas of litigation, such as defective pleadings, excessive discovery of documents and other techniques frequently employed to delay the proceedings. It may also facilitate the continuous hearing of a case instead of short and incomplete hearings spread over several weeks or months.

<sup>5</sup> The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

- 6.5 The judiciary should consider initiating outreach programmes designed to educate the public on the role of the justice system in society and to address common uncertainties or misconceptions about the justice system.<sup>6</sup>
- 6.6 The judiciary should afford access and appropriate assistance to the media in the performance of its legitimate function of informing the public about judicial proceedings, including decisions in particular cases.

## **7. Judicial Training**

- 7.1 To the full extent of its powers, the judiciary itself should organize, conduct or supervise the training of judges.
- 7.2 In jurisdictions that do not have adequate training facilities, the judiciary should, through the appropriate channels, seek the assistance of appropriate national and international bodies and educational institutions in providing access to such facilities or in developing the local knowledge capacity.
- 7.3 All appointees to judicial office should have or acquire, before they take up their duties, appropriate knowledge of relevant aspects of substantive national and international law and procedure. Duly appointed judges should also receive an introduction to other fields relevant to judicial activity such as management of cases and administration of courts, information technology, social sciences, legal history and philosophy, and alternative dispute resolution.
- 7.4 The training of judicial officers should be pluralist in outlook in order to guarantee and strengthen the open-mindedness of the judge and the impartiality of the judiciary.
- 7.5 While it is necessary to institute training programmes for judges on a regular basis, in-service training should normally be based on the voluntary participation of members of the judiciary.
- 7.6 Where the language of legal literature (i.e. law reports, appellate judgments, etc) is different from the language of legal education, instruction in the former should be provided to both lawyers and judges.
- 7.7 The training programmes should take place in, and encourage, an environment in which members of different branches and levels of the judiciary may meet and exchange their experiences and secure common insights from dialogue with each other.

## **8. Advisory Opinions**

- 8.1 A judge or a court should not render advisory opinions to the executive or the legislature except under an express constitutional or statutory provision permitting that course.

## **9. Immunity of Judges**

- 9.1 A judge should be criminally liable under the general law for an offence of general application committed by him or her and cannot therefore claim immunity from ordinary criminal process.

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<sup>6</sup> In a departure from the traditional belief that judges should remain isolated from the community to ensure their independence and impartiality, judicial outreach now involves proactive measures by judges and direct interaction with the communities they serve. Experience suggests that increased public knowledge about the law and court processes promote not only judicial transparency but also public confidence. Recent outreach approaches have included town hall meetings, the production of radio and television programmes, and the dissemination of awareness-raising materials such as court user guides in the form of short pamphlets providing basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

- 9.2 A judge should enjoy personal immunity from civil suits for conduct in the exercise of a judicial function.
- 9.3 The remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals or judicial review.
- 9.4 The remedy for injury incurred by reason of negligence or misuse of authority by a judge should lie only against the State without recourse by the State against the judge.
- 9.5 Since judicial independence does not render a judge free from public accountability, and legitimate public criticism of judicial performance is a means of ensuring accountability subject to law, a judge should generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts.

## Part Two

### RESPONSIBILITIES OF THE STATE

#### CONSTITUTIONAL GUARANTEE OF JUDICIAL INDEPENDENCE

- 10.1 The principle of judicial independence requires the State to provide guarantees through constitutional or other means:
  1. that the judiciary shall be independent of the executive and the legislature, and that no power shall be exercised as to interfere with the judicial process;
  2. that everyone has the right to be tried with due expedition and without undue delay by the ordinary courts or tribunals established by law subject to appeal to, or review by, the courts;
  3. that no special ad hoc tribunals shall be established to displace the normal jurisdiction otherwise vested in the courts;
  4. that, in the decision-making process, judges are able to act without any restriction, improper influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and exercise unfettered freedom to decide cases impartially, in accordance with their conscience and the application of the law to the facts as they find them;
  5. that the judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature, and that no organ other than the court may decide conclusively its own jurisdiction and competence, as defined by law;
  6. that the executive shall refrain from any act or omission that preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision;
  7. that a person exercising executive or legislative power shall not exercise, or attempt to exercise, any form of pressure on judges, whether overt or covert;
  8. that legislative or executive powers that may affect judges in their office, their remuneration, conditions of service or their resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular judge or judges;
  9. that the State shall ensure the security and physical protection of members of the judiciary and their families, especially in the event of threats being made against them; and

10. that allegations of misconduct against a judge shall not be discussed in the legislature except on a substantive motion for the removal or censure of a judge of which prior notice has been given.

## **11. QUALIFICATIONS FOR JUDICIAL OFFICE**

- 11.1 Persons selected for judicial office should be individuals of ability, integrity and efficiency with appropriate training or qualifications in law.
- 11.2 The assessment of a candidate for judicial office should involve consideration not only of his or her legal expertise and general professional abilities, but also of his or her social awareness and sensitivity, and other personal qualities (including a sense of ethics, patience, courtesy, honesty, commonsense, tact, humility and punctuality) and communication skills. The political, religious or other beliefs or allegiances of a candidate, except where they are proved to intrude upon the judge's performance of judicial duties, should not be relevant.
- 11.3 In the selection of judges, there should be no discrimination on irrelevant grounds. A requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory on irrelevant grounds. Due consideration should be given to ensuring a fair reflection by the judiciary of society in all its aspects.

## **12. The Appointment of Judges**

- 12.1 Provision for the appointment of judges should be made by law.
- 12.2 Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office.
- 12.3 In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment.
- 12.4 One mechanism which has received particular support in respect of States developing new constitutional arrangements consists in the creation of a Higher Council for the Judiciary, with mixed judicial and lay representation, membership of which should not be dominated by political considerations.
- 12.5 Where an independent council or commission is constituted for the appointment of judges, its members should be selected on the basis of their competence, experience, understanding of judicial life, capacity for appropriate discussion and appreciation of the importance of a culture of independence. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism.
- 12.6 The promotion of judges, when not based on seniority, should be made by the independent body responsible for the appointment of judges, and should be based on an objective appraisal of his or her performance, having regard to the expertise, abilities, personal qualities and skills required for initial appointment.
- 12.7 The procedure in certain states of the Chief Justice or President of the Supreme Court being elected, in rotation, from among the judges of that court by the judges themselves, is not inconsistent with the principle of judicial independence and may be considered for adoption by other states.

### 13. Tenure of Judges

- 13.1 It is the duty of the State to provide a full complement of judges to discharge the work of the judiciary.
- 13.2 A judge should have a constitutionally guaranteed tenure until a mandatory retirement age or the expiry of a fixed term of office.<sup>7</sup> A fixed term of office should not ordinarily be renewable unless procedures exist to ensure that the decision regarding re-appointment is made according to objective criteria and on merit.
- 13.3 The engagement of temporary or part-time judges should not be a substitute for a full complement of permanent judges. Where permitted by local law, such temporary or part-time judges should be appointed on conditions, and accompanied by guarantees, of tenure or objectivity regarding the continuation of their engagement which eliminate, so far as possible, any risks in relation to their independence.
- 13.4 Because the appointment of judges on probation could, if abused, undermine the independence of the judiciary, the decision whether or not to confirm such appointment should only be taken by the independent body responsible for the appointment of judges.
- 13.5 Except pursuant to a system of regular rotation provided by law or formulated after due consideration by the judiciary, and applied only by the judiciary or by an independent body, a judge should not be transferred from one jurisdiction, function or location to another without his or her consent.<sup>8</sup>

### 14. Remuneration of Judges

- 14.1 The salaries, conditions of service and pensions of judges should be adequate, commensurate with the status, dignity and responsibilities of their office, and should be periodically reviewed for those purposes.
- 14.2 The salaries, conditions of service and pensions of judges should be guaranteed by law, and should not be altered to their disadvantage after appointment.

### 15. Discipline of Judges


- 15.1 Disciplinary proceedings against a judge may be commenced only for serious misconduct.<sup>9</sup> The law applicable to judges may define, as far as possible in specific terms, conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.

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<sup>7</sup> National practice appears to favour a specified retirement age for judges of superior courts. The constitutionally prescribed retirement age for judges of the highest court ranges from 62 in Belize, Botswana and Guyana to 65 in Greece, India, Malaysia, Namibia (with the possibility of extension to 70), Singapore, Sri Lanka and Turkey, 68 in Cyprus, 70 in Australia, Brazil, Ghana, Peru and South Africa, to 75 in Canada and Chile. In some jurisdictions (for example, Belize and Botswana), provision exists to permit a judge who has reached retirement age to continue in office "as long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age".

<sup>8</sup> The transfer of judges has been addressed in several international instruments since transfer can be used to punish an independent and courageous judge, and to deter others from following his or her example.

<sup>9</sup> Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings. However, the breach of professional standards may be of considerable relevance, where such breach is alleged to constitute conduct sufficient to justify and require disciplinary sanction.

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- 15.2 A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action.
- 15.3 A specific body or person should be established by law with responsibility for receiving complaints, for obtaining the response of the judge and for considering in the light of such response whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action. In the event of such a conclusion, the body or person should refer the matter to the disciplinary authority.<sup>10</sup>
- 15.4 The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive, and which is composed of serving or retired judges but which may include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive.
- 15.5 All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence.
- 15.6 There should be an appeal from the disciplinary authority to a court.
- 15.7 The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published.
- 15.8 Each jurisdiction should identify the sanctions permissible under its own disciplinary system, and ensure that such sanctions are, both in accordance with principle and in application, proportionate.

## **16. Removal of Judges from Office**


- 16.1 A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.
- 16.2 Where the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of the independent authority vested with power to discipline judges.
- 16.3 The abolition of a court of which a judge is a member should not be accepted as a reason or an occasion for the removal of the judge. Where a court is abolished or restructured, all existing members of that court should be re-appointed to its replacement or appointed to another judicial office of equivalent status and tenure. Where there is no such judicial office of equivalent status or tenure, the judge concerned should be provided with full compensation for loss of office.

## **17. Budget of the Judiciary**

- 17.1 The budget of the judiciary should be established in collaboration with the judiciary, care being taken that neither the executive nor legislature authorities is able to exert any pressure or influence on the judiciary when setting its budget.
- 17.2 The State should provide the judiciary with sufficient funds and resources to enable each court to perform its functions efficiently and without an excessive workload.

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<sup>10</sup> Unless there is such a filter, judges could find themselves facing disciplinary proceedings brought at the instance of disappointed litigants.

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- 17.3 The State should provide the judiciary with the financial and other resources necessary for the organization and conduct of the training of judges.
- 17.4 The budget of the judiciary should be administered by the judiciary itself or by a body independent of the executive and the legislature and which acts in consultation with the judiciary. Funds voted for the judiciary should be protected from alienation and misuse.

## DEFINITIONS

In this statement of implementation measures, the following meanings shall be attributed to the words used:

**“irrelevant grounds”** means race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes.

**“judge”** means any person exercising judicial power, however designated, and includes a magistrate and a member of an independent tribunal.



## ANNEX 3: EXAMPLE CODES FROM NIUE, KIRIBATI AND TUVALU

### Code of Judicial Conduct for Niue

#### What is this code for?

This code is issued for guidance of judges and to inform the people of Niue as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

The judge's primary duty is to administer justice by applying the law. This is reflected in the oath in which the judge swears to serve *"in accordance with the constitution and law."*

This means that in deciding any case the judges must identify the applicable law and base their decision on a consideration of only those matters and facts which the law says are relevant; the judges must not take anything else into consideration.

#### Why is there a code?

Upon appointment to the High Court of Niue Commissioners and Justices of the Peace swear the following:

"I swear by Almighty God that I will well and truly serve Her Majesty as the Head of State of Niue, Her heirs and successors, in accordance with the Constitution and the law, in the office of (Commissioner or Justice of the Peace); and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God."

In performing their judicial role judges make decisions which affect peoples' lives, it is important that the people affected by judicial decisions and those who may one day come before the court, have confidence that every case will be heard and decided fairly in accordance with the law.

If the respect and confidence of the public in the justice system is to be upheld Commissioners and Justices of the Peace must respect and comply with the law in their public and private lives, conducting themselves in a manner which will not bring themselves or their office into disrepute.

The following six principles or values are recognised in almost every judicial code of conduct.

However the principles are not to be neatly confined, they overlap and blend one into another.

Each principle is stated below and followed by guidelines as to its scope and application.

#### **Definitions**

**"Judge"** is used in its widest sense to include any Judge, Commissioner or Justice of the Peace.

**"Appearance"** is to be judged from the view point of a reasonable member of the community.

In determining what a reasonable, fair minded and informed member of the community might think a judge may take account of his or her knowledge of the community's values and customs.

## 1. INDEPENDENCE

*Judicial independence is essential to the rule of law and the fair conduct of trials. It is for the judges alone to interpret and apply the law and in doing so they should be seen to be free from any external influence. A judge should do nothing in public or private that might undermine his or her individual independence, the institutional independence of the judiciary, or the appearance of independence.*

### Scope and application

- 1.1 Good governance requires that the judiciary must operate independently and free from influence by the Cabinet and public servants (the executive) or the Assembly (the legislature). This independence is fundamental to democracy and protected by the constitution.
- 1.2 A judge must however be independent and free from any and all influence other than those considerations required by the law, and to that end should:
  1. firmly reject any attempt to influence his or her decisions in any matter before the Court outside the proper process of the Court;
  2. not allow public opinion or fear of public disapproval to affect the decision making process
  3. encourage and uphold arrangements and safeguards to maintain and enhance the independence of the Judiciary;

## 2. Impartiality

*Judges must be impartial, and appear to be impartial in both the decision and the decision making process.*

*Judges should make sure that their conduct, both in and out of Court, maintains and enhances confidence in their impartiality and that of the Judiciary.*

*If, in any particular case, a judge recognises that his or her impartiality is compromised he or she must not sit. The proper cause of action is for the judge to disqualify (recuse) him or her self.*

### Scope and application

- 2.1 Particular aspects of conduct relating to impartiality are discussed below. In considering these it should be born in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community both are important aspects of the judicial role. In deciding cases the law requires judges to evaluate the credibility of evidence, and in some cases to decide what is reasonable, such decisions require knowledge of local mannerisms and customs. Nevertheless, as much as is reasonably possible a judge should conduct his or her personal and business affairs so as to minimise the occasions on which it will be necessary to be disqualified from hearing cases.
- 2.2 The duty to be impartial touches on several areas of judicial conduct and overlaps to a considerable extent with the principles of independence, integrity, propriety and equality.
- 2.3 A judge's conduct in and out of court should maintain and enhance confidence in his or her impartiality.
- 2.4 A judge must not allow his or her decisions to be affected by, or appear to be affected by bias or prejudice.
  1. Conflicts of interest or bias may arise both from personal interests and relationships and from financial interests and relationships.

2. Prejudice may be against a group or section of the population but may also occur at personal level against individuals based on their personal characteristics or prior contact. Judges must be alert to guard against prejudice where ever it may arise whether in themselves or in others.
- 2.5 Upon appointment a judge should review his or her membership of any commercial, social and political groups and withdraw from any involvement that could compromise his or her judicial position.

Judicial demeanour should demonstrate impartiality

- 2.6 Whilst acting decisively, maintaining firm control of the process and ensuring cases are dealt with quickly, a judge should treat everyone before the Court with equal respect and courtesy.

Civic and charitable activity

- 2.7 Judges are free to participate in civic, charitable and religious activities, subject to the following considerations:
  1. A judge should avoid any activity or association that could reflect adversely on his or her impartiality or interfere with the performance of judicial duties.
  2. A judge should not solicit funds (except from judicial colleagues or for appropriate purposes) or lend the prestige of the judicial office to such solicitations.
  3. A judge should avoid involvement in causes and organisations that are likely to be engaged in litigation.
  4. A judge should not give legal or investment advice.

Political activity

- 2.8 All political activity must cease upon appointment. Judges should refrain from conduct that could give rise to the appearance that they are engaged in political activity. Judges should refrain from:
  1. membership in political parties and political fundraising;
  2. attendance at political fundraising events;
  3. contributing to political parties or campaigns;
  4. taking part publicly, in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the Judiciary or fundamental aspects of the administration of justice;
  5. signing petitions to influence a political decision.
- 2.9 Members of a judge's family have every right to be politically active. Sometimes this may adversely affect the public perception of the judge's impartiality. In any case before the Court where there could reasonably be such a perception, a judge should not sit.

Conflict of interest

- 2.10 A judge must disqualify him or her self in any case in which he or she will not be able to judge impartially, or where that appears to be the case. Generally a judge should not preside over a case where the accused or witness is a
  1. is a near relative; (ie. A member of your immediate family: parent, spouse, sibling, child including adopted or step child, Grandparents.)

2. is a close friend;
  3. is an employer or employee; or
  4. has a close business relationship with the judge.
- 2.11 A judge should not preside over a case where he or she has or may appear to have preconceived or pronounced views relating to:
1. issues;
  2. witnesses; or
  3. parties.
4. A judge should strive to avoid making any assumptions in relation to the foregoing and should make a decision based only on the evidence.
- 2.12 It is **not** appropriate for a judge to disqualify him or herself if:
1. the matter giving rise to a possibility of conflict is insignificant or a reasonable and fair-minded person would not be able to make an argument in favour of disqualification;
  2. no other Commissioners or Justices of the Peace are available to deal with the case and then only if, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

*NOTE: Niue is a very small country and if judges were to disqualify themselves in every case where they know of one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that judges are careful not to disqualify themselves too readily. Inevitably judges will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and the judges should explain their decision clearly. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*The Niuean people are used to the idea that individuals may "wear a number of different hats" and the judges must make it clear from the way they conduct themselves, that with the judicial hat comes impartiality.*

- 2.13 Where the circumstances are evenly balanced the consent of the party or parties after full disclosure in open court may be relevant, however care should be taken to identify any possibility that consent is not freely given. For instance a party may feel that he or she cannot bear the delay of waiting for a trial with a differently constituted bench.

### 3. Integrity

*Through all his or her public and private life a judge should demonstrate soundness of moral character through consistency of action, values, honesty and truthfulness. By conducting themselves with integrity judges will sustain and enhance public confidence in the Judiciary.*

#### Scope and Application

- 3.1 By exhibiting and promoting respect for the law and high standards of conduct in his or her professional and private life a judge will reinforce public confidence in the judiciary.
- 3.2 This means judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed members of the community. Judges should encourage and support their judicial colleagues to observe these high standards.

#### 4. Propriety

*A judge must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.*

##### Scope and Application

- 4.1 A judge must act with propriety in order to uphold the dignity and authority of the judicial office. A judge's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works.
- 4.2 A judge should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Judges should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.
- 4.3 It is improper for judges to use their judicial office to obtain any favour or advancement and judges must avoid any conduct which might give the appearance of so doing.

##### Gifts

- 4.4 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to curry favour a Judge must not accept.

##### Confidential Information

- 4.5 A judge should not discuss or disclose any confidential matters learnt of by reason of his or her office which includes the deliberations of judges in reaching their decisions. It is however proper for judges to discuss with other judges issues arising during the conduct of cases in the interest of developing good practice.

#### 5. Equality

*A judge should ensure that every one is treated with respect and courtesy and with equality according to the law.*

##### Scope and Application

- 5.1 It is the duty of the judges to ensure that people attending court proceedings, in whatever capacity, are treated as equal before the law.
- 5.2 Judges should:
  - 1. ensure that the trial process is fair and that all parties are given an equal opportunity to put their case and to answer any evidence put against them;
  - 2. carry out their duties with appropriate consideration for all persons be they parties, witnesses, court personnel, observers or judicial colleagues, and without discrimination;
  - 3. strive to be aware of and understand and accommodate differences arising from, for example, gender, race, religious conviction, culture, ethnic background or disability;
  - 4. avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;

- 5.3 A judge should disassociate him or herself from, and make clear his or her disapproval of clearly irrelevant comments or improper conduct by court staff, counsel, or any other person in court. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

## 6. Competence and Diligence

*A judge must be prepared to engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.*

### Scope and Application

6.1 This means judges should:

1. be conscientious in fulfilling their judicial duties, which include not only the conduct of cases in court, but other judicial tasks essential to the Court's operation;
2. bring to each case a high level of competence and ensure that they are sufficiently informed to provide adequate reasons for each decision;
3. take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for their role;
4. not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

6.2 Decisions should be delivered as quickly as circumstances permit; usually this will be immediately. This means judges must be familiar with common offences, jurisdiction and procedure; and prepare before sitting in Court.

### Cases of doubt

In any case where a judge is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

## CODE OF CONDUCT FOR JUDICIAL OFFICERS OF THE REPUBLIC OF KIRIBATI

### i) PREFACE

The conduct of Judicial Officers (and in Kiribati, by this term I mean Judges, Commissioners of the High Court, Chief Registrar, Magistrates, Justices of the Peace and other persons carrying out judicial functions in Kiribati) has always been a matter of public concern and interest.

In addition, apart from the provisions of the Constitution, governing the removal of Judges for misconduct, there is no formal machinery available to members of the public for the processing of complaints against Judicial Officers for any alleged misconduct.

This new Code of Conduct and the accompanying mechanism for the handling of complaints against Judicial Officers have been voluntarily adopted by the entire membership of the Judiciary and will henceforth bind all serving Judicial Officers.

The overall objectives are threefold:

1. To ensure public confidence in the administration of justice;
2. To enhance public respect for the institution of the Judiciary; and
3. To protect the reputation of individual Judicial Officers and of the Judiciary as a whole.

It is hoped that members of the public will support and cooperate with the Judiciary as it seeks, for the first time in its history, to regulate the conduct of its members in the interest of all concerned.

SIR JOHN BAPTIST MURIA  
CHIEF JUSTICE  
OCTOBER 2011



## CODE OF CONDUCT FOR JUDICIAL OFFICERS OF THE REPUBLIC OF KIRIBATI

### ii) PURPOSE

The purpose of this Code is to establish standards for ethical conduct of Judicial Officers. It is designed to provide guidance to Judicial Officers and to afford the judiciary a framework for regulating judicial conduct. It is also intended to assist Government operatives, Parliamentarians, legal practitioners and the public in general to better understand and support the judiciary.

The principle enshrined in this Code presupposes that Judicial Officers are accountable for their conduct to the appointing authorities and the general public. The Code is therefore to supplement and not substitute or derogate from existing rules of law and conduct which bind Judicial Officers.

The Judicial Officer's primary duty is to administer justice by applying the law. This is reflected in the oath in which the Judicial Officer swears:

*"I,....., do swear by Almighty God that I will well and truly serve the Independent and Sovereign Republic of Kiribati as a judicial officer, and will do right to all manner of people after the laws and usages of Kiribati, without fear or favour, affection or ill will. So help me God."*

### iii) PREAMBLE

**WHEREAS** the Constitution of Kiribati enshrines the fundamental principles of freedom, democracy and justice;

**AND WHEREAS** an independent, strong, respected and respectable Judiciary is indispensable for the impartial administration of justice in a democratic state.

**AND WHEREAS** at the annual conference of the said members/justices the draft Code was discussed, approved and unanimously adopted the draft Code.

**WE THE MEMBERS OF THE JUDICIARY OF KIRIBATI** hereby freely and voluntarily accept to be guided and bound by this Code of ethics.

## 1. INDEPENDENCE

*Judicial independence is essential to the rule of law and the fair conduct of trials.*

*A Judicial Officer should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

- 1.1 A Judicial Officer must not be actively involved in government or politics. This means a Judicial Officer should not be a member of the village council.
- 1.2 Judicial Officers can be involved in village activities such as the Maneapa but it is important those activities should be in compliance with the law.
- 1.3 A Judicial Officer must make his or her decisions from the evidences before the court in accordance with the law without the interference or influence from bodies outside the court.

## 2. IMPARTIALITY

*Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.*

Note: Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires Judicial Officers to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.

- 2.1 A Judicial Officer must not be biased
- 2.2 A Judicial Officer must not appear to be biased. (In the eyes of the community)
- 2.3 A Judicial Officer should not sit and hear a case that would give him or his family benefits. This applies whether the benefit is direct or indirect and includes money, lands and any other benefit.
- 2.4 A Judicial Officer should not hear a case which involves a close family member, close friend, or workmate
- 2.5 If he feels his decision would be affected, or appear to be affected a Judicial Officer should not sit and hear a case. He or she should withdraw and let another Judicial Officer hear the case
- 2.6 A Judicial Officer should not recuse him or her self merely because he or she knows a person involved in the case. In a small community it is inevitable that the Judicial Officers will know the people.

*NOTE: Kiribati is a small country and the island jurisdictions are very small. If Judicial Officers were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice.*

*Therefore, the interest of justice requires that Judicial Officers are careful not to disqualify themselves too readily. Inevitably Judicial Officers will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly. The Judicial Officers should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*It is for the Judicial Officers to make it clear from the way they conduct themselves, that when they are sitting as Judicial Officers they will always be impartial.*

## 3. INTEGRITY

*Through all his or her public and private life a Judicial Officer should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.*

- 3.1 Judicial Officers make decisions that affect peoples' lives, therefore it is important that a Judicial Officer should demonstrate a good and moral character so that he or she displays an image of a judge that can be trusted and respected.
- 3.2 A Judicial Officer must be true to the judicial oath.

#### 4. **PROPRIETY**

***A Judicial Officer must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.***

- 4.1 A Judicial Officer's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. Judicial Officers should encourage respect the court and the rule of law.
- 4.2 A Judicial Officer should make sure that everything he or she does is in compliance with the law and so far as possible with the customs of the community.
- 4.3 A Judicial Officer should not use his or her judicial power or position in an improper way to get any benefit and Judicial Officers must avoid any conduct which might give the appearance of so doing.
- 4.4 A Judicial Officer should avoid any relationship with people in the community that could put him or her in an awkward position in trying to do their duty. In particular Judicial Officers should avoid developing close social relationships with the police and with lawyers or others who regularly represent parties in court.

##### Gifts

- 4.5 A Judicial Officer should not accept any kind of gift, favour or benefit that could influence his or her judicial decisions.

##### Confidential Information

- 4.6 A Judicial Officer should not release or say anything regarding a decision of the court before it is published. A Judicial Officer should not discuss details of individual cases outside court.
- 4.7 A Judicial Officer should not release information about the Judicial Officers' discussions when making their decisions.

#### 5 **EQUALITY**

***A Judicial Officer should ensure that every one is treated with respect and courtesy and with equality according to the law.***

- 5.1 Every proceeding should be conducted fairly.
- 5.2 The court must ensure that all persons appearing before it are given equal treatment without regard to their position, behaviour or any preconceptions.
- 5.3 The court must ensure that the parties are given the opportunity to present their case.
- 5.4 The court must ensure that all parties are given the opportunity to hear all the evidences and arguments from all sides. A Judicial Officer must not discuss the case with any party outside court.
- 5.5 The court must recognise and uphold all those rights given by law to individuals.

#### 6. **COMPETENCE AND DILIGENCE**

***A Judicial Officer must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.***

- 6.1 Magistrates are created by statute (Magistrates' Courts Ordinance CAP 52 1977) and the powers of Magistrates are limited by statute. All Judicial Officers must take care not to exceed the authority given to them.
- 6.2 A Judicial Officer should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Kiribati.
- 6.3 A Judicial Officer should participate in such training as is available.
- 6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.
- 6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.
- 6.6 The Judicial Officers should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

### **Cases of doubt**

In any case where a Judicial Officer is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

## **7. ESTABLISHMENT OF JUDICIAL ETHICS COMMITTEE**

7.1 The Chief Justice shall, for the purposes of this Code appoint a Committee to be called the Judicial Ethics Committee.

The Committee shall consist of -

1. the Chief Justice of the High Court who shall be chairman;
2. a Justice of the Court of Appeal; and
3. the Chief Registrar of the High Court.

The Chief Registrar shall act as Secretary to the Committee.

### **7.2 Functions of Judicial Ethics Committee**

1. Any person who has a complaint relating to the conduct of a Judicial Officer other than the Chief Justice in respect of the officers conduct may send the complaint in writing to the Chief Justice who shall, after determining whether there is merit in the complaint, refer it to the committee for investigation.
2. Where the complaint is in respect of the conduct of the Chief Justice, the complainant shall submit the complaint in writing to the most senior Justice of the Court of Appeal.

### **7.3 Procedures of Judicial Ethics Committee:**

1. Subject to this Code, the Committee shall adopt its own procedures for the investigation of complaints;
2. Where the complaint is in respect of the conduct of a Magistrate, the committee shall co-opt the most senior Magistrate to take part in its deliberations but such Magistrate shall not vote on any decision to be taken by the Committee;
3. All meetings of the committee shall be convened by the Chairman or at the request of the Chief Justice.
4. The quorum for a meeting of the Committee shall be two.
5. The committee may, if it thinks necessary, require the Complainant to appear before the committee but shall give an opportunity to the Judicial Officer against whom the complaint is made to be heard.

6. After conducting an investigation, the Committee shall decide whether any allegations made in the complaint have been proved and if it so decides it shall:
  1. Inform the Chief Justice accordingly making any recommendations, it thinks fit;
  2. Inform the complainant and the Judicial Officer whose conduct was investigated, of its findings.
7. Any recommendation made to the Chief Justice shall state whether the conduct of the Judicial Officer is of such gravity that the matter should be referred to the Judicial and Legal Service Commission.
8. The Chief Justice shall cause to be kept a register in which shall be recorded all complaints investigated by the Committee and the outcome of such complaints.

## 8. INTERPRETATION

In this Code:-

words importing the masculine gender include female;

words in the singular include the plural and words in the plural the singular, "family" means the spouse and children of the Judicial Officer;

"Judicial Officer" means the Chief Justice, a Judge of the Court of Appeal, a Judge of the High Court, a Judge Advocate, the Registrar of the High Court, the Registrar of the Court of Appeal, any Deputy Registrar, a Magistrate or any Justice of the Peace performing the functions of a Magistrate;

"Committee" means the Judicial Ethics Committee established by the Chief Justice under paragraph 6.1.

## 9. COMMENCEMENT

This Code shall come into force on [            ]

## COMPLAINTS

**ALL COMPLAINTS AGAINST JUDICIAL OFFICERS COVERED BY THIS CODE OF CONDUCT SHOULD BE ADDRESSED TO:**

**"THE JUDICIAL ETHICS COMMITTEE  
HIGH COURT OF KIRIBATI  
P O BOX 501  
BETIO, TARAWA  
REPUBLIC OF KIRIBATI**

**TEL: (686) 26451  
FAX: (686) 26149**

## **CODE OF JUDICIAL CONDUCT FOR TUVALU**

This code is issued for guidance of magistrates and to inform the people of Tuvalu as to the role of the magistrates. It should be read and interpreted in conjunction with the Leadership Code Act 2006.

The magistrate's primary duty is to administer justice by applying the law. This is reflected in the oath in which the magistrate swears:

"I swear by Almighty God that I will well and truly serve Our Sovereign Lady Queen Elizabeth, her Heirs and Successors, as a Judicial Officer and I will do right to all manner of people after the laws and usages of Tuvalu, without fear or favour, affection or ill will. So help me God."

### **1. Independence**

*Judicial independence is essential to the rule of law and the fair conduct of trials.*

*A magistrate should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

- 1.1 A magistrate must not be actively involved in government or politics. This is why the Islands Court Act says a member of the Kaupule may not be a magistrate.
- 1.2 Magistrates are also members of the community and may properly take their part as members of the Falekaupule, where they may vote on policy and in the election of members of the Kaupule.
- 1.3 In deciding cases a magistrate must make his or her decisions according to the law and the evidence and without fear or influence from the Kaupule, central government, anyone or anything outside the proper process of the court.

### **2. Impartiality**

*Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.*

- 2.1 Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires magistrates to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.
- 2.2 A magistrate must be impartial.
- 2.3 A magistrate must also appear to be impartial, which means that a reasonable and fair minded member of the community knowing all the circumstances would believe that the magistrate is impartial.
- 2.4 In any case where there might be a reasonable doubt about a magistrate's impartiality he or she should recuse him or her self and let another magistrate hear the case.

- 2.5 A magistrate should not sit in any case involving a person with whom the magistrate has a close relationship, and should not sit in any case involving the magistrate's
1. immediate family (i.e. parent, spouse, brother or sister, child including an adopted or step child.)
  2. close friend
  3. workmate

This guideline applies whatever the capacity in which the person is involved; whether the person is a defendant, victim, witness, complainant or party to a civil case.

- 2.6 A magistrate should not sit on a case where he or his family might benefit from the outcome. This applies whether the interest is direct or indirect and includes:
1. a financial interest, or
  2. an interest in land,
  3. an interest in other property
- 2.7 In a land case a magistrate ought not to decide a case concerning land which belongs to a Kaitasi of which he or she is a member.
- 2.8 A magistrate should not sit on any case where he or she has or may appear to have preconceived or pronounced views relating to:
1. issues;
  2. witnesses; or
  3. parties.
- 2.9 A magistrate should strive to avoid making any assumptions and should make a decision based only on the evidence.
- 2.10 If the Island Magistrates believe their impartiality would be compromised because of the high social standing of the individual concerned it may be appropriate to refer a case to the Senior Magistrate. e.g. a case involving the Pule ote Fenua, Pule ote Kaupule, the pastor or his wife.
- 2.11 A magistrate should not recuse him or herself merely because he or she knows a person involved in the case. In a small community it is inevitable that the magistrates will know the people.

*NOTE: Tuvalu is a small country and the island jurisdictions are very small. If magistrates were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that magistrates are careful not to disqualify themselves too readily. Inevitably magistrates will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and only on the evidence. The magistrates should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

***It is for the magistrates to make it clear from the way they conduct themselves, that when they are sitting a magistrates they will always be impartial.***

### **3. Integrity**

***Through all his or her public and private life a magistrate should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.***

- 3.1 By conducting themselves with integrity magistrates will sustain and enhance public confidence in the Judiciary.



- 3.2 A magistrate must be honest in his public and private life so that people will know that the magistrate can be trusted.
- 3.3 A magistrate must be true to the judicial oath.

#### 4. Propriety

***A magistrate must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.***

- 4.1 A magistrate's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. By their behaviour individually and collectively magistrates should teach people to respect the court and the rule of law.
- 4.2 Whatever a magistrate does he must do properly, according to the law and with respect for the customs and traditions of the people.
- 4.3 It is improper for magistrates to use their judicial office to obtain any favour or advancement and magistrates must avoid any conduct which might give the appearance of so doing.
- 4.4 A magistrate should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Magistrates should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.

#### Gifts

- 4.5 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to gain favour, a Magistrate must not accept.
- 4.6 A magistrate does not accept any gift, benefit or advantage whatsoever that might influence the conduct of his official duties or which might give the appearance of so doing.  
( N.B. Specific guidance regarding traditional gifts can be found in The Leadership Act)

#### Confidential Information

- 4.7 A magistrate should not discuss or disclose any confidential matters learnt of by reason of his or her office. The deliberations of magistrates in reaching their decisions are confidential. It is proper for magistrates to discuss with other magistrates issues arising during the conduct of cases in the interest of developing good practice. A magistrate must never seek the opinion of any person, even another magistrate, other than those hearing the case in question as to the appropriate decision.

#### 5 Equality

***A magistrate should ensure that every one is treated with respect and courtesy and with equality according to the law.***

- 5.1 It is the duty of the magistrates to ensure that every court hearing is fair. This means that everyone participating in court proceedings must be treated:
  - 1. equally, no matter high or low, and
  - 2. with respect and courtesy, and
  - 3. without prejudice or hatred.

AND that parties to a case must be:

4. given the same voice in order to put their case to the court.
5. present during proceedings to hear the case against them and the evidence submitted in support of that case.
6. given an opportunity to answer anything said against them
7. given the opportunity to put their own evidence before the court.

5.2 The court must recognise and uphold all those rights given by law to individuals.

## **6. Competence and Diligence**

***A magistrate must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.***

- 6.1 The Island Magistrates are created by statute (the Island Courts Act and The Native Lands Act) and the powers of magistrates are limited by statute. Magistrates must take care not to exceed the authority given to them.
- 6.2 A magistrate should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Tuvalu.
- 6.3 A magistrate should participate in such training as is available.
- 6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.
- 6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.
- 6.6 The magistrates should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

### **Cases of doubt**

In any case where a magistrate is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the Senior Magistrate or the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

## ANNEX 4: EXAMPLE OF TRAINING MATERIALS

### Examples of materials used in Kiribati

The workshop format can be simple. Small groups might be asked to work together to consider some simple scenarios which raise conduct issues. When they have had time to decide what they would do, answers are discussed in plenary session.

Here are some scenarios which were used in Kiribati.

1. You are due to hear a case about an assault the accused person wants to call a witness who is your neighbour. What is the correct course of action?
2. A land case is brought before you. You do not know either owner but you realise that your uncle leases part of the land over which there is dispute. He uses the land for his boat building business which employs several family members. Is there anything you should do?
3. Next week you will try a case of wife beating. The husband's mother sends you a gift of some very fine pandanus mats. What should you do?
4. You are asked to determine a debt case; Manu is accused of failing to repay \$50 he borrowed from Leonard. You remember that Manu borrowed money from your friend last year and that it took him a long time to pay the money back. Can you hear the case?
5. Everyone is talking about the fact that the magistrate on the neighbouring island regularly throws large parties where there is a lot of drinking and noise until late at night.
6. You are about to hear a case about the sale of a canoe, ownership is disputed. The village head comes to talk to you and asks about the case..... what do you tell him?
7. A case of theft is due to be heard by your court, a leading member of the village council tells you that the council has known for a long time that the defendant is dishonest and a troublemaker and thinks it would be a good thing if he was locked up for a very long time. As a magistrate, are you going to consider this information?
8. Your son runs a small business importing goods to your island. As part of an application for a loan he requires a person of good standing in the community to certify that he is of good character. He is in a hurry to send the document off on this evening's ferry and asks you to sign for him. Are you going to sign it?
9. On your way to Court, you meet one of your village members who is also on his way to the Court. You have heard that his case is listed for hearing that same day. He offers you a ride. Are you going to accept it?
10. During a break between cases you go out for a short break. Some of the parties are smoking in the office's veranda. They offer you a smoke. Do you accept?
11. After delivering your decision in a money lender's case you decide to have a drink with your fellow magistrates as it is the weekend. You do not have enough cash with you. Would it be proper for you as a magistrate to borrow money from the moneylender whose case you had just decided?





# Pacific Judicial Development Programme

## *TOOLKIT FOR REVIEW OF GUIDANCE ON JUDICIAL CONDUCT*

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>







# Pacific Judicial Development Programme

## *TOOLKIT FOR BUILDING PROCEDURES TO HANDLE COMPLAINTS ABOUT JUDICIAL CONDUCT*

April 2015





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Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

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## PJDP TOOLKITS

### Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

### Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- Judges' Orientation Toolkit
- Annual Court Reporting Toolkit
- Toolkit for Review of Guidance on Judicial Conduct
- National Judicial Development Committee Toolkit
- Family Violence and Youth Justice Project Workshop Toolkit
- Time Goals Toolkit
- Access to Justice Assessment Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs
- Judicial Decision-making Toolkit
- Enabling Rights & Unrepresented Litigants
- Toolkit for Public Information Projects
- Reducing Backlog and Delay Toolkit
- ***Toolkit for Building Procedures to Handle Complaints about Judicial Officers***

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

PJDP is now adding to the collection with this new ***Toolkit for Building Procedures to Handle Complaints about Judicial Conduct***.

### Use and support

These toolkits are available on-line for the use of partner courts at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>. We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: [pjdp@fedcourt.gov.au](mailto:pjdp@fedcourt.gov.au)

### Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage  
Team Leader,  
Pacific Judicial Development Programme

April 2015

## PREFACE

This toolkit builds on PJDP's existing '*Developing codes of judicial conduct toolkit*', which is available at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-Codes-of-Judicial-Conduct-CoJC-Toolkit.pdf>.

If you are reading this the chances are your jurisdiction is considering the introduction of complaints handling procedures and you are involved in the process. Please remember we don't know who you are or what your experience is. You may well be familiar with some of the concepts explained here. You won't necessarily need everything in the kit and you certainly don't need to have read and absorbed everything before you begin. Start by skimming through and taking an overview; you will then have an idea of which materials will be of use to you and where it will be helpful to read in more depth.

The aim of this toolkit is to help your judiciary to set up an appropriate mechanism for handling complaints about the conduct of judicial officers. It highlights the key issues in complaints handling that you will have to resolve and the principles that will guide you in their resolution. It introduces examples from other jurisdictions and directs you to where you may find more detailed information. The suggested methodology is for the Chief Justice to select a group of judges to develop draft regulations which are then issued in draft form for wider consultation.

The toolkit was piloted in Vanuatu during July 2014. The three judges who comprised the Working Group reported that reading the toolkit before they commenced their work had alerted them to the major issues and prepared them for the development process. An account of the pilot can be found in Section 7. The draft procedures for receiving and handling complaints can be found in the additional documentation together with the accompanying Users' Guide.

The principal concern of a judicial complaints handling procedure is to encourage the highest standards of judicial conduct. By establishing a system for receiving and handling complaints the judiciary demonstrates that it recognises it is accountable to the people it serves.

The power to discipline judges is usually reserved to the state upon representations by the elected parliament but for reasons set out in this toolkit, it is for the judiciary to establish and manage the procedures for handling complaints and it is for your judiciary to formulate procedures for receiving and handling them. The procedures you put in place will depend on the resources available to you.

Do not be surprised if you encounter difficulty in resolving some issues. It is only comparatively recently that judiciaries have begun to introduce procedures for receiving and determining complaints against judges. The degree to which matters should be confidential is difficult, there are very good reasons to safeguard the reputation of the judiciary and therefore a very understandable reluctance to wash judicial 'dirty linen' in public.

It should be noted that conduct, in the context of complaints handling procedures, is not generally concerned with corruption or criminal wrongdoing by judges. Such allegations must be referred to the police or other anti-corruption agency for investigation. Where a judge is convicted of criminal wrongdoing, the conviction may well merit action by the disciplinary authority.

Finally, judicial misconduct is rare and it is very, very rare for a judicial officer to be removed from office for misbehaviour.

**NOTE:** Throughout this toolkit the word judge is used in its widest possible sense to include all judicial officers. Thus judges, magistrates, land court magistrates are all included, whether or not they are lay or law trained, and whether or not they are formally accorded the title 'judge'.

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Additional Documentation - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/Complaints-Handling-Toolkit-AD.pdf>

Annex 1: Complaints Handling Procedures Manual.....

## ABBREVIATIONS

- JCIO - Judicial Conduct Investigations Office
- JIG - Judicial Integrity Group
- JSC - Judicial Services Commission
- MFAT - New Zealand Ministry of Foreign Affairs and Trade
- MSC - Managing Services Contractor - Federal Court of Australia
- PIC - Pacific Island Country
- PJDP - Pacific Judicial Development Programme ('Programme')

## 1 INTRODUCTION

Judges are expected to be independent and impartial, to treat those appearing in court as equal before the law and to work with both diligence and competence. They are expected to act with integrity and propriety both in and out of court.

In 2002 the Judicial Integrity Group (JIG) identified and explained those values in the *Bangalore Principles* which have gained virtually universal acceptance and been endorsed by the United Nations<sup>1</sup>. JIG<sup>2</sup> is now an established body, working to strengthen judicial integrity. JIG has encouraged jurisdictions to develop their own guidance on judicial conduct reflecting the Bangalore Principles. PJDP has recently supported four Pacific jurisdictions<sup>3</sup> to develop such guidance and a PJDP toolkit has been produced for use by any jurisdiction wishing to review its current guidance or develop new guidance on conduct. Most Pacific jurisdictions now have guidance on conduct for their judges which reflects these principles.

### *The Bangalore Principles*

*"a universally acceptable statement of judicial standards which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced at the national level by the judiciary, without the intervention of either the executive or legislative branches of government."*

The vision of the Judicial Integrity Group as later described by one of its founder members, Dr Nihal Jayawickrama at the Conference on Ethics for the Prevention of Corruption in Turkey. Ankara 2009

Guidance on judicial conduct is an important aid to judges, particularly those with less experience, and non-law trained judges. It is also a valuable guide to inform the public of the judicial role and what standards of behaviour those involved with the courts can expect of judges. The judiciary makes decisions which affect peoples' lives and it is important that the public have confidence in the integrity of the individuals making those decisions; by publishing guidance on judicial conduct a judiciary acknowledges that the community it serves has the right to expect certain standards of professionalism from its judges.

BUT, inevitably the question arises as to how to deal with an allegation that a judge's behaviour has fallen short of the expected standard.

The aim of this toolkit is to help your judiciary to set up an appropriate mechanism for handling complaints about the conduct of judges.

<sup>1</sup> The United Nations Social and Economic Council, by resolution 2006/ 23.

<sup>2</sup> [www.judicialintegritygroup.org](http://www.judicialintegritygroup.org)

<sup>3</sup> Niue, Tuvalu, Kiribati, - 2011. Samoa - 2013.

## 2 WHAT CHARACTERISES AN EFFECTIVE COMPLAINTS PROCEDURE?

The Pacific jurisdictions which constitute PJDP vary enormously in size and complexity. Some have significant numbers of law trained judges whilst others depend almost entirely on non-law trained local judges or magistrates. The resources available to the different judiciaries are likewise varied. These very practical considerations are likely to affect what is appropriate in any jurisdiction and what it can do with the personnel and resources available. It is therefore appropriate that we look at the generic features of effective complaints handling procedures before looking in more detail at the stages in the procedure.

### 2.1 OBJECTIVES

The objective of a complaints handling procedure is to receive and determine complaints regarding judicial behaviour and thereby to:

- promote high standards of judicial conduct;
- enhance the public's confidence in the judiciary; and
- increase understanding of the judicial process and the judicial role.

### 2.2 CHARACTERISTICS

An effective complaints handling procedure clearly sets out the procedures for receiving and determining an allegation that an individual judge's conduct fell short of the appropriate professional standard, and

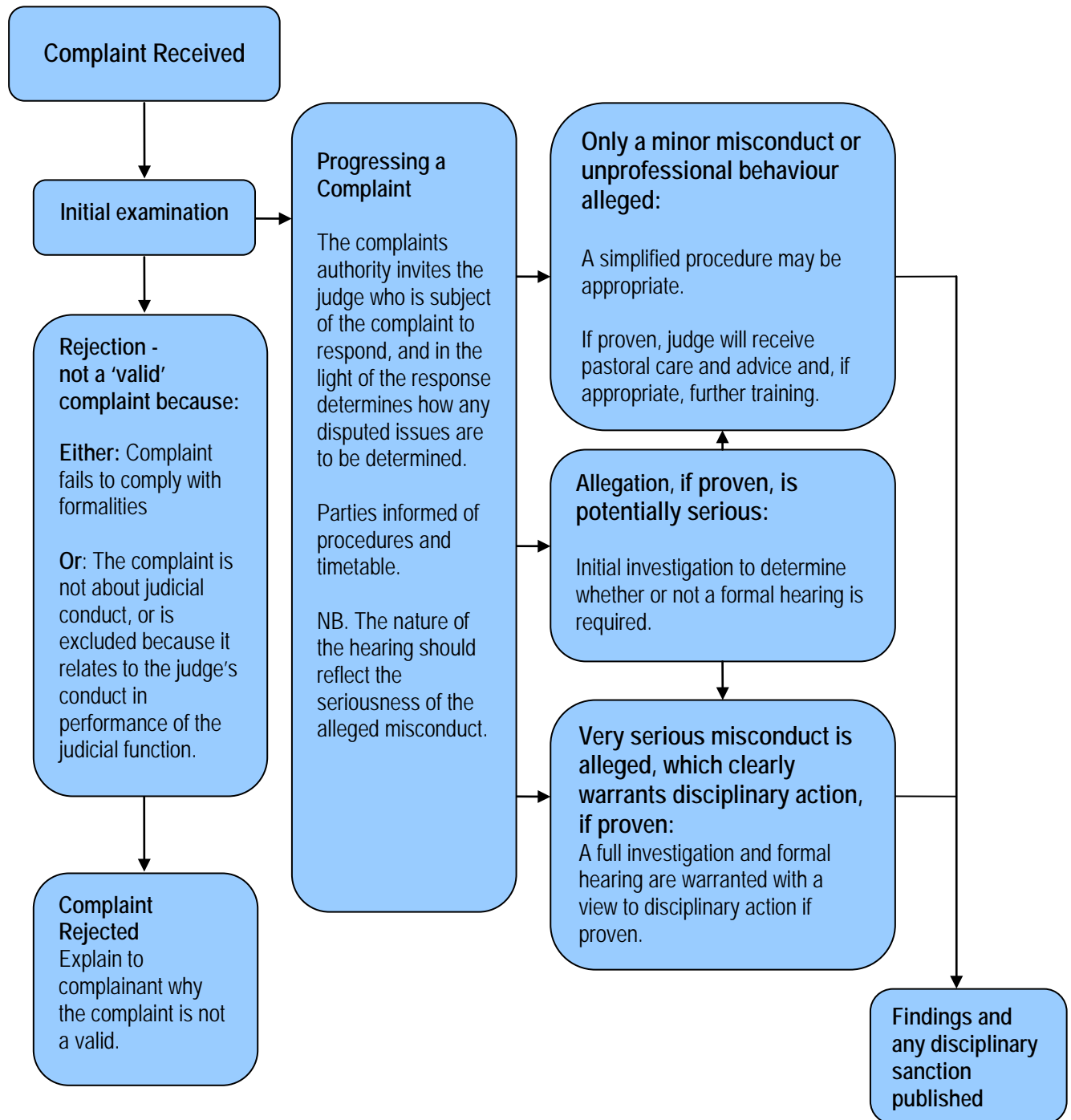
- the procedures and the complaints authority are recognised as being transparent, objective and fair.
- the complaints authority must be seen to be independent from the judge who is the subject of the complaint, and
- complaints are dealt with promptly, and
- multiplicity of litigation is avoided. i.e. the complaints handling procedure does not duplicate or offer an alternative to an appeal or the right to review, and
- the procedures are simple, clear and proportionate (i.e. can be adjusted according to the seriousness of alleged misconduct), and
- because the aim is to correct improper behaviour in judges a complaints handling procedure does not provide a 'remedy' or redress for the complainant, and
- where it is proven that a judge's conduct fell short of the appropriate professional standard the outcome or sanction imposed is proportionate to the seriousness of the misconduct, and
- decisions are clearly explained and published, and
- determinations are generally final.

In addition, it should be noted that no charge is made for the registration of a complaint. This reflects the fact that the focus is on internal quality assurance; the complainant cannot gain any remedy or compensation as the result of making a complaint.

### 2.3 WATCH POINTS

- Judicial independence is respected and safeguarded.
- The procedures must be designed so as to dovetail with the law relating to the discipline and removal from office of judges.
- Judges are neither intimidated nor overburdened by the process but are informed and accorded a hearing and due process.
- Unfounded or vexatious complaints should be quickly identified and dismissed.

### 3 THE ELEMENTS OF A 'TYPICAL' COMPLAINTS PROCEDURE





## 4 PUTTING COMPLAINTS PROCEDURES IN CONTEXT

Jurisdictions which have set up complaints handling procedures report that a large proportion of the complaints they receive are misfounded in that they are based either on an assertion that the judge made the wrong decision, or that the judge was wrong in the way he or she managed the case or the hearing. The complainants' understanding of the judicial role and the administration of justice will be improved by a careful explanation of why their complaint cannot be entertained. Whilst he or she may not like the decision it is important that each complainant is reassured that they have been treated fairly. Where the complaints handling body reports publicly on its work, its report will serve to educate court users and to encourage more realistic expectations.

### 4.1 DO COMPLAINTS PROCEDURES THREATEN JUDICIAL INDEPENDENCE?

The independence of both the judiciary as an institution and each judge as an individual is fundamental to the rule of law and the administration of justice. Judges are used to being accorded great respect and are not used to having the way they perform their job examined or called into question; they may therefore be disquieted or even affronted by the prospect of the introduction of procedures which appear to invite complaints about their conduct. It is not unusual for those who do not immediately welcome the new transparency to suggest that the introduction of procedures for receiving and determining complaints threatens judicial independence.

#### 4.1.1 Judicial independence and immunity from suit

To protect and ensure judicial independence judges are generally given security of tenure and are given immunity from any liability with respect to the exercise of their judicial duties. A judicial decision can only be challenged in accordance with the specific rights of appeal or review given by law. Judicial immunity from suit is however limited to actions done in the execution of the judicial function; judges remain subject to the law in respect of their non-judicial activities and private lives.

#### 4.1.2 Degrees of misconduct - from minor failure to disciplinary matter

The terms upon which most judges are appointed provide that a judge may be removed from office for incapacity or misbehaviour. In this context misbehaviour has to be some kind of misconduct so serious as to render the judge unfit to hold judicial office. Conduct that is sufficiently serious to give rise to disciplinary sanctions must be distinguished from a lesser failure to observe professional standards<sup>4</sup>. All judges should of course aim to exemplify best practice and to comply with guidance on conduct, but no judge is likely to be perfect. When judges do fall short, most failures will not be sufficiently serious to justify disciplinary proceedings; some minor slips may not merit any action at all or may be best addressed through pastoral advice and, where appropriate, additional training.

#### 4.1.3 The duty of the judiciary to ensure it merits the respect and confidence of the public

A complaints procedure allows an individual to call into question a judge's behaviour when it allegedly falls below the expected standard even though it may not be 'so serious' as to warrant disciplinary action.

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<sup>4</sup> Delay in issuing decisions is a common cause of complaints; in England decisions show that such conduct may result in the judges receiving 'formal advice'. In Canada when a judge who admitted delay in publishing her decision, apologised and explained personal circumstances which had caused the delay, no further action was deemed necessary; the Judicial Council also took into account an excellent prior record. Removal from office is very rare but in England in 2014 a Recorder and Fee paid judge Miss Constance Briscoe was removed from office following her conviction for perverting the course of justice. Records show that judges sometimes choose to retire when faced with an investigation; the investigation then ceases as the judge no longer holds office.

By making individual judges accountable for such misconduct we do not challenge their independence, rather we make sure that they live up to their part of the bargain and act with integrity.

*"No one doubts that judges are expected to behave according to certain standards both in and out of court. Are these mere expectations of voluntary decency to be exercised on a personal level, or are they expectations that a certain standard of conduct needs to be observed by a particular professional group in the interests of itself and the community? As this is a fundamental question, it is necessary to make some elementary observations. We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations"*<sup>5</sup>

#### 4.1.4 A protection for judicial independence - preserving the separation of powers

Rather than challenging judicial independence the adoption of complaints procedures may protect it by preempting any interference by either the legislature or the executive.

*"If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain the high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. When that happens, the principle of judicial independence upon which the judiciary is founded and by which it is sustained, is likely to be undermined to some degree, perhaps seriously."*<sup>6</sup>

In 2010 JIG identified the instigation of mechanisms for handling complaints of unethical conduct as a responsibility of the judiciary.

*"The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary where no provision exists for the reference of such complaints to a court."*

Measures for the effective implementation of The Bangalore Principles of Judicial Conduct  
JIG - Lusaka - 2010

## 4.2 WHO IS THE DISCIPLINARY AUTHORITY?

The provisions you draft will have to take into account, and be consistent with, the provisions in your constitution and other legislation relating to the appointment, tenure and removal from office of judges.

Judges are usually given security of tenure until retirement age. In most jurisdictions the law provides that a judge can only be removed from office for proven incapacity or misbehaviour. The law relating to removal from office will also specify who can exercise this power (i.e. the disciplinary authority). Very often that is the State at the request of Parliament.

<sup>5</sup> Thomas - Judicial Ethics in Australia, 2<sup>nd</sup> edition (1997)

<sup>6</sup> Commentary on the Bangalore Principles 2007 at Page 28

By way of example in Australia judges of the Federal Court are appointed by the Governor-General by commission and *"shall not be removed except by the Governor-General, on an address from both Houses of the Parliament in the same session, praying for his or her removal on the ground of proved misbehaviour or incapacity"*<sup>7</sup>.

Misbehaviour must be very serious if it is to warrant removal from office. Most often the behaviour which forms the subject of a complaint will be at most unprofessional or inappropriate and will fall far below the threshold where removal from office might be considered. In such cases the Chief Justice will have power as head of the judiciary to advise the judge in question.

In structuring your procedures it is very important to bear in mind that before any disciplinary action can result from a complaint the matter will have, at some stage, to be referred for consideration by whomever the law identifies as the disciplinary authority. Some complaints systems provide for the authority in charge of the complaints process to transfer the matter to the disciplinary authority as soon as it becomes clear that there may have been serious misconduct e.g. New Zealand. Others provide that the complaints authority should conduct an inquiry and make a recommendation to the disciplinary authority e.g. Canada.

In the examples given below in 5.1, it can be seen that the New Zealand Judicial Conduct Commissioner acts as a preliminary filter. If he identifies a potential disciplinary matter he must refer it to the Attorney General with a recommendation that a conduct panel be convened. In Canada the Judicial Council conducts the investigation and inquiry and makes a recommendation to Parliament regarding disciplinary action. In England the Lord Chancellor and Lord Chief Justice are responsible for the entire complaints process and have disciplinary power over judges.

Whilst the hand-over to the disciplinary authority is very significant as regards constitutional principle and the independence of the judiciary it is unlikely to be of great concern to the complainant, whose interest will be in whether or not the judge is found to have misconducted him or herself and in whether any sanction is to be imposed.

### 4.3 CONFIDENTIALITY

You will have to consider the extent to which complaints are to be confidential. In many jurisdictions everything other than formal disciplinary proceedings is treated as confidential<sup>8</sup>, but in some jurisdictions<sup>9</sup> disciplinary hearings are held routinely in public. In the interest of transparency cases which result in the imposition of disciplinary sanctions should be reported and the judge named. However it is probably not appropriate to name the judge where the complaint is dismissed for want of substance or where the matter is sufficiently minor to be dealt with pastorally or through additional training. Most jurisdictions report such matters generically identifying the nature of the complaint and the overall numbers of judges who received re-training or pastoral advice. It is important that anyone involved in handling complaints understands that the existence and nature of any complaint should be kept confidential unless the rules otherwise state.

Both Canadian Judicial Council and the Judicial Commission of New South Wales include anonymous case histories in their annual reports these are very instructive.<sup>10</sup>

<sup>7</sup> The Australian Constitution [http://www.apf.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Constitution](http://www.apf.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution) and The Federal Court of Australia Act 1976 – Part 11 [http://www.comlaw.gov.au/Details/C2013C00644/Html/Text#\\_Toc369251397](http://www.comlaw.gov.au/Details/C2013C00644/Html/Text#_Toc369251397)

<sup>8</sup> New South Wales seems to favour confidentiality but even there provisions allow that disciplinary hearings **may** be public. see <http://www.judcom.nsw.gov.au/complaints>

<sup>9</sup> e.g. Canada

<sup>10</sup> CJC [http://www.cjc-ccm.gc.ca/english/about\\_en.asp?selMenu=about\\_main\\_en.asp](http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_main_en.asp) and JCNSW <http://www.judcom.nsw.gov.au/about-the-commission/annual-reports>

#### 4.4 THREE GUIDING PRINCIPLES FOR COMPLAINTS HANDLING PROCEDURES

From all of this we can identify the following principles which should guide the development of your complaints handling procedures.

1. Only the disciplinary authority identified by law can impose a disciplinary sanction.
2. Judges should be judged by judges. Judicial independence requires that the judiciary takes responsibility for promoting high standards of conduct and ensuring that complaints are dealt with.
3. As Head of the Judiciary, the Chief Justice is in a position to counsel the judiciary with regard to its duties and responsibilities.

## 5 CREATING YOUR COMPLAINTS PROCEDURE

Your procedures for receiving and handling complaints should be clearly set out in writing. In describing how to make a complaint it is important to use simple clear language free from ambiguity and from any unnecessary legal jargon because these instructions will be used by court users with no formal legal training. The procedures will need to be well publicized and information explaining how to make a complaint should be readily available to all court users<sup>11</sup>.

### 5.1 MAPPING THE STRUCTURE OF YOUR COMPLAINTS AUTHORITY

Practical considerations are likely to play a large part in what suits your jurisdiction. The size of the judiciary and the resources it commands will be a primary consideration; what you can do will depend on your budget. You may find it helpful to illustrate the structure you propose as a flow chart or in a step by step analysis such as the one described below in the account of the pilot of this toolkit in Vanuatu during July 2014<sup>12</sup>.

There is a great deal to be learned from looking at the complaints systems of other jurisdictions. Many can be found on the internet, see below. These websites explain the procedure for making complaints and usually have links to annual reports as well as relevant sources of law. But in looking at what other jurisdictions have done it is important to look carefully at the responsibilities and the powers associated with the role of different title holders. Some large jurisdictions have set up independent statutory bodies<sup>13</sup> to receive and manage complaints<sup>14</sup>. Typically the legislation creates an office for the person in charge of the complaints authority<sup>15</sup>. It should be noted that these statutory bodies are primarily administrative in function and whilst they may conduct initial inquiries, substantive decisions are directed to judges or to conduct panels and where appropriate to disciplinary panels composed predominantly of senior judges acting under the authority of those with disciplinary power. This is consistent with the independence of the judiciary.

Here follows a review of the structures adopted in four major jurisdictions. These are the 'bare bones', a lot more information can be obtained through their websites.

#### Canada

**The Judges Act 1985** creates the Canadian Judicial Council which is charged with investigating complaints against any federally appointed judge. <http://laws-lois.justice.gc.ca/eng/acts/J-1/index.html>

The membership of the Canadian Judicial Council is prescribed by statute and includes the most senior judges and is chaired by the Chief Justice of Canada.

In the most serious cases an Inquiry Committee is convened to investigate and hear the complaint where it finds the judge guilty of misconduct the committee may recommend to parliament that the judge be removed from office.

The website of the Canadian Judicial Council is exemplary in its clarity.

[http://www.cjc-ccm.gc.ca/english/conduct\\_en.asp?selMenu=conduct\\_main\\_en.asp](http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp)

<sup>11</sup> The responsibilities of the judiciary as regards providing information for court users are examined in the PJDP toolkit on Public Information <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

<sup>12</sup> See section 7 below The Vanuatu experience.

<sup>13</sup> e.g. New Zealand - Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 and in England and Wales, The Head of the Judicial Conduct Investigations Office.

<sup>14</sup> It should be noted that this does not preclude the involvement of judges in investigating and determining complaints.

<sup>15</sup> In New Zealand this is the office of Judicial Conduct Commissioner. The current Commissioner, Sir David Gascoigne, KNZM CBE LL.M. is a lawyer from private practice.

## Australia - Federal Court

**The Federal Court of Australia Act 1976** contains provisions which authorise the Chief Justice to handle complaints or to authorise other judges to handle complaints individually or as a complaints handling body. [http://www.comlaw.gov.au/Details/C2013C00644/Html/Text#\\_Toc369251397](http://www.comlaw.gov.au/Details/C2013C00644/Html/Text#_Toc369251397)

Where appropriate a Conduct Committee of senior judges can be formed to investigate a complaint.

If the Chief Justice is satisfied that grounds for removal exist he or she may refer a matter to the Attorney General or reference to parliament.

Website: <http://www.fedcourt.gov.au/feedback-and-complaints/judicial-complaints>

## England and Wales

In England and Wales the **Constitutional Reform Act 2005** gives the Lord Chancellor and the Lord Chief Justice powers to discipline judges, make regulations and lay down procedures for the investigation of complaints. <http://www.legislation.gov.uk/ukpga/2005/4>

Delegated legislation then creates the Judicial Conduct Investigations Office (JCIO) and the procedural rules for the conduct of investigations.

[Judicial Discipline \(Prescribed Procedures\) Regulations 2013](#)

[Judicial Conduct \(Judicial and other office holders\) Rules 2013](#)

But note: Most decisions are made by judges whether as a Nominated Judge, Investigating Judge or a member of a Disciplinary Panel; only judges can make a finding of misconduct.

Website: <http://judicialconduct.judiciary.gov.uk>

## New Zealand

In New Zealand the **Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004** provides for the appointment of a Judicial Conduct Commissioner by the Governor-General on the recommendation of the House of Representatives. The house is be advised by the Attorney-General who must consult the Chief Justice about the proposed appointment.

<http://www.legislation.govt.nz/act/public/2004/0038/latest/whole.html#DLM293588>

The Commissioner may decide to take no action or dismiss a complaint; otherwise his powers are limited to referring the matter to the relevant Head of Bench or recommend to the Attorney General that a Judicial Conduct Panel be convened. (see the overview in Schedule 1 of the Act)

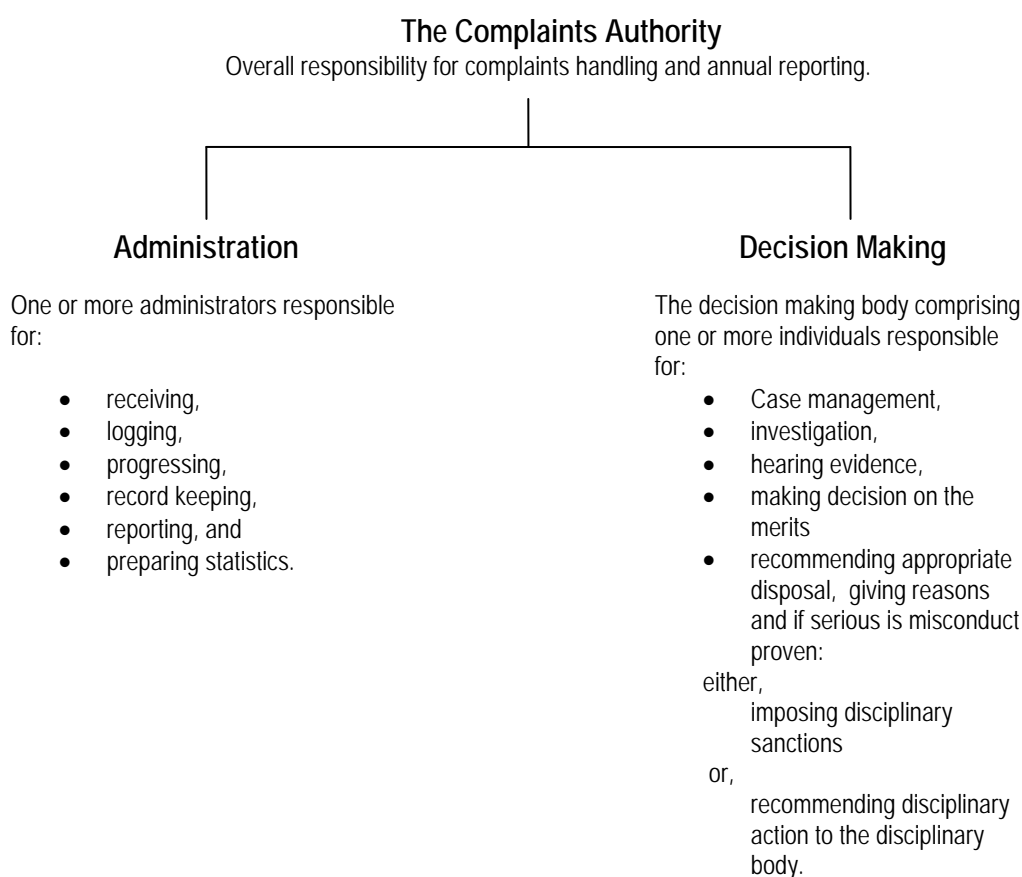
Website: <http://www.jcc.govt.nz>

If your jurisdiction has very few senior judges and is likely to struggle to find the human and other resources for complaints handling you will need a simpler system than any of the above but the essential elements will be the same. In the examples above legislation was passed. It is however possible for a judiciary to set up complaints handling procedures without legislation as was the case in Kiribati.

What is important is that the individual in charge of your complaints handling process is trusted and perceived as independent and capable of being objective and that the procedures ensure that parties are accorded a fair hearing. In smaller jurisdictions the obvious choice may well be the Chief Justice, but this may not always be practical, an alternative may be for another senior judge or perhaps an ethics committee to handle complaints under the authority of the Chief Justice.

Decisions on the merits must be made judicially. You may well decide to make provision for a small panel to consider the more difficult cases. The panel can be constituted on a case by case basis and should comprise individuals who can act independently in a judicial capacity. The majority should probably be active or retired judges but you could permit the inclusion representatives from civic society so long as they are not closely associated with government or the legislature. The rules of the Federal Court of Australia permit the inclusion of judges from other commonwealth jurisdictions. In drafting your procedures you may wish to consider giving the panel the power to co-opt, as an advisor, a member of the judiciary working at a similar level to the judge to whom the complaint relates. Of course such a person should have no significant connection with the complainant or the judge who is the subject of the complaint.

Given the number of possible structures this toolkit will use the term **Complaints Authority** to refer compendiously to the individual or group with power to handle and determine complaints.





## 5.2 WHO SHOULD RECEIVE COMPLAINTS AND MANAGE THE COMPLAINTS PROCEDURES?

You will need to identify someone who is responsible for the day-to-day administration of the system; receiving complaints, ensuring they are progressed and managing records. This might be someone from the permanent staff of the registry and need not necessarily be a lawyer provided they are offered adequate training.

## 5.3 RECEIVING COMPLAINTS

Receiving and logging complaints is a purely administrative task. Information on how to make a complaint and to whom it should be sent will need to be clearly set out stating:

1. What constitutes a complaint – Guidance for potential complainants should explain that:
  - a. the objective of the complaints process is to ensure that judges adhere to the standards of personal conduct expected of a judge. Therefore the complaints procedures only deal with allegations of improper or inappropriate conduct and will not entertain complaints regarding the exercise of judicial function.
  - b. the decision of the complaints process cannot alter the outcome or decision of any case. If unprofessional conduct or misconduct is identified the only outcome will be a warning or sanction imposed on the judge in question.
  - c. if the complaint relates to behaviour which would found an appeal or an application for review, that is the appropriate course to follow if the complainant is seeking to overturn the decision. This is because the appeal or reviewing court can overturn or set aside a decision. This is most likely to arise in relation to case management and the conduct of the hearing.
  - d. if the complaint alleges criminal wrongdoing by the judge it should be addressed to the police.
2. How a complaint should be made (orally, written, on-line) - where and to whom the complaint should be delivered.
3. Formalities - every complaint should clearly identify:
  - a. the complainant – name address – contact details, and
  - b. the judge to whom the complaint relates, and
  - c. the occasion when the misconduct is alleged to have occurred – date – time – place, and
  - d. the behaviour complained of must be described clearly and fully.
4. The time limit for making a complaint.
5. What happens next, i.e. information on what the complainant can expect after lodging a complaint including:
  - a. time within which receipt of the complaint will be acknowledged,
  - b. time within which a substantive response or explanation of future action will be given, and
  - c. what happens next – an explanation of the procedures for progressing and, where necessary, investigating a complaint.

## 5.4 INITIAL EXAMINATION - COMPLIANCE WITH FORMALITIES - SUBSTANCE

Once a complaint is received the first step will be to check whether it is valid:

- Is it made within the time limit?
- Does it comply with required formalities?
- Is it a complaint about inappropriate behaviour by a judge rather than the way in which the judge managed the case or the judge's decision and the outcome of a case?
- Is it neither frivolous nor vexatious?

This first examination of the complaint is analogous to the need to establish a *prima facie* case and should be straight forward and quick to undertake. Complaints which do not meet the requirements for validity should be quickly rejected with a full and careful explanation of why. It may be appropriate to include a procedure permitting the officer responsible for this decision to ask the complainant for further more detailed information before making a determination.

By framing the requirements for validity clearly and without ambiguity it is to be hoped that this stage can be kept simple and uncontentious.<sup>16</sup>

This initial examination might be delegated to administrative staff so long as they receive adequate training and very clear guidance and oversight. Provision should be made allowing any case of doubt to be taken forward for further consideration.

## 5.5 PROGRESSING COMPLAINTS – CONSIDERING THE MERITS

As has been seen at 5.1 above some jurisdictions have put in place a tiered system which allows complaints to progress from simple initial consideration to more formal investigations and 'trial like' hearings according to their complexity and, or the seriousness of the misconduct alleged<sup>17</sup>. Simple matters can thus be determined quickly and with the minimum of formality. But if your jurisdiction is small, practical considerations may necessitate a simpler approach; an example of such can be found in Kiribati. The complaints procedure was drafted by the Chief Justice Sir John Muria and appended to the Kiribati Code of Judicial Conduct when it was published in 2011. A copy is included in the Additional Documentation to this toolkit. Examples of more complex sets of procedures can be found in the regulations applicable in New Zealand and those for England<sup>18</sup>. What is described below is a generalised simple one step approach.

Once the decision that the complaint merits consideration has been taken, the judge to whom the complaint relates should be informed and invited to make a response<sup>19</sup>. This can be a written process subject to reasonable time limits. The judge's response will identify whether there are disputed issues which need to be investigated and resolved. The complaints authority will then be able to determine the appropriate way forward in order to ensure that the procedure adopted reflects the severity of the allegation and accords with natural justice.

At this stage the complaint will fall into one of the following categories:

- Minor misconduct i.e. unprofessional behaviour with no dispute as to facts.
- Allegation potentially serious but requires investigation.
- Clearly serious and requiring disciplinary action i.e. suspension, removal from office or formal reprimand.

<sup>16</sup> cf the decision of the judicial conduct commissioner for NZ in the case of three complaints against Justice Wilson. Available as a download at <http://www.jcc.govt.nz/>

<sup>17</sup> In England a complaint can progress from initial consideration by the Judicial Investigations Office to a nominated judge and from a nominated judge to either an investigating judge or a disciplinary panel.

<sup>18</sup> <http://www.jcc.govt.nz> and <http://judicialconduct.judiciary.gov.uk>

<sup>19</sup> This can be a written process subject for which you will need to determine reasonable time limits.

## 5.6 MINOR MISCONDUCT

A minor misconduct is one which is not sufficiently serious to warrant disciplinary action. Judges are not infallible and will from time to time fail to meet the exacting standards expected of them. If the judge does not dispute either the facts or that the behaviour complained of was unprofessional then the complaints authority will have to decide what course of action, if any, should be taken. These minor shortcomings are usually addressed through pastoral care and advice and additional training where a training need has been identified. In practice where judges realise that they have behaved inappropriately they often resolve the matter by apologising to the complainant.

## 5.7 ALLEGATION MERITS AN INVESTIGATION

In those cases where it is not immediately clear from the complaint whether the misconduct alleged is sufficiently serious to warrant disciplinary action the complaints authority will have to investigate in order to establish the facts; likewise if the judge's response indicates that material facts are disputed. The complaints authority's investigation and hearing must accord with the rules of procedural fairness (natural justice) which require that the subject of the complaint should be fully informed of all the evidence being considered and be given the opportunity to submit evidence and make submissions to the complaints authority. Provisions may allow for evidence and submissions to be received in writing but the complaints authority should retain the discretion to call for oral evidence and submissions where that seems appropriate.

The complaints authority decision will be one of the following:

- Dismiss as unproven or as frivolous and vexatious.
- Minor misconduct no further action required.
- Minor misconduct merits further training or pastoral advice.
- Serious misconduct has taken place and disciplinary action is required<sup>20</sup>.

In practice, where it becomes clear that there is a serious issue to be investigated, the judge under investigation often chooses to retire<sup>21</sup>. For the judge this has the advantage that pension rights are preserved and once the judge is no longer a judge the complaints authority has no jurisdiction to continue proceedings. The matter is thus often resolved informally.

## 5.8 CLEARLY SERIOUS AND REQUIRING DISCIPLINARY ACTION

If the complaint is that the judge has been convicted of an offence and the conviction is final and proved<sup>22</sup> to the satisfaction of the complaints authority, the matter can be referred directly to the disciplinary stage. The appropriate action will be determined by the severity of the offence. The judge should be given the opportunity to make representations regarding the conviction or the appropriate sanction at a hearing. Whilst some minor offences, such as speeding, may be overlooked, a judge who repeatedly disregards the law is clearly unfit for office as is one who commits an offence of dishonesty or violence. Some jurisdictions produce schedules of those offences that will lead to disciplinary sanctions being considered<sup>23</sup>.

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<sup>20</sup> In a 'tiered system' the recommendation may be that a further, more formal hearing is required before the matter can be decided.

<sup>21</sup> This is evident from the reports issued by complaints authorities.

<sup>22</sup> i.e. beyond further challenge by the judge

<sup>23</sup> e.g. England and Wales - Judicial Conduct (Judicial and other Office Holders) Rules 2013 Part 3 Summary Process <http://judicialconduct.judiciary.gov.uk/rules-and-regulations.htm>

## 5.9 DISCIPLINARY ACTION

If the Complaints Authority also has disciplinary authority over the judge in question then it can impose the disciplinary sanction directly. More often the Complaints Authority will have to report its findings and recommendations to a separate disciplinary authority, which will then proceed in accordance with the relevant legislation. It may be that the law gives a judge who faces removal or suspension from office a right to a further 'disciplinary hearing' at which he or she can make submissions as to why the recommended sanction should not be imposed.

## 6 NOTES FOR GUIDANCE

### 6.1 INFORMING THE SUBJECT OF THE COMPLAINT - WHEN SHOULD THE JUDGE BE TOLD?

Clearly natural justice<sup>24</sup> requires that the judge be informed as soon as the allegation against him or her is being taken forward. It is for you and your judiciary to decide whether judges should be informed of complaints against them which are rejected as invalid. On the one hand a judge may wish to know but on the other, since summary rejection indicates that there is no case to answer, there is something to be said for the argument that there is nothing to tell.

### 6.2 FINALITY V FAIRNESS

The law identifies grounds upon which judicial decisions can be reviewed or appealed. An appeal or review is instigated by one of the parties and is primarily concerned with ensuring a just outcome for the proceedings.

The legitimate exercise of judicial discretion and the decision a judge reaches on the evidence and the law are clearly not aspects of judicial conduct. There are however some aspects of judicial behaviour which whilst capable of founding either an appeal or a review might also constitute misconduct. By way of example a procedural unfairness might arise because the judge lost his or her self control or became angry. It is not unusual for an appeals or reviewing court to be quite blunt in pointing out just where the trial judge went wrong and we must hope that judges heed the advice implicit in such comments.

#### Example

*"Whereas we entirely endorse robust case management and the importance of ensuring that all court time is used sensibly, we are bound to say we consider that the exchanges between the judge and counsel, especially on the first day, betray a rudeness and discourtesy of which the judge should be ashamed."*

Cordingley (2007) EWCA Crim 2174.

The law favours both consistency and finality and therefore recognizes that a multiplicity of actions in respect of the same matter is to be avoided<sup>25</sup> and further that a complainant should not be allowed to relitigate<sup>26</sup> the same issue in the hope of getting a different decision.

If the judicial behaviour complained of could constitute grounds for an appeal or review and the complainant has either not taken or has exhausted that course, it may be vexatious to attempt to reopen matters or avoid the time limit for appeal by lodging a complaint.

#### Example

*If a complaint is received about matters that are, or were, capable of being dealt with by an appeal or any other application to a court, the Chief Justice will write to the person who has made the complaint advising that person that the matter cannot be dealt with under the complaints procedure.*

Federal Court of Australia website

<sup>24</sup> i.e the rules of procedural fairness

<sup>25</sup> *Union Steamship Co of New Zealand Ltd v The Caradale* [(1937) 56 CLR 277 at 281]

<sup>26</sup> To do so is generally considered an abuse of process cf *Henderson v Henderson* (1843) 3 Hare 100.

**Example****A matter for appeal of a complaint?**

*In brief, the Canadian Judicial Council investigates complaints about an individual judge's inappropriate conduct, not a judge's decision in a court case.*

*Every year, judges in Canadian courts make hundreds of thousands of decisions on matters ranging from procedural issues to determining important points of law. When one party in a legal dispute thinks the judge made the wrong decision, the justice system allows that person to appeal to a higher court. For example, if you think that a judge of the Ontario Superior Court of Justice reached the wrong decision in your case, you can appeal the decision to the Ontario Court of Appeal.*

*Judges can make mistakes. An appeal court can reverse or vary the decision made by the judge who heard the case. The fact that an appeal court overturns a judge's decision does not mean that the judge's conduct was improper or that the judge should be removed from office. It simply means that the appeal court believed the judge made a mistake about the law or the facts of the case.*

*All judges are expected to uphold a high standard of personal conduct, both inside and outside the courtroom. So, aside from the decision the judge reaches in your case, the judge must be impartial when hearing your case, be respectful and courteous throughout the proceedings, and maintain a high standard of integrity. For example, it is appropriate for members of the public to ask the Council to investigate complaints about judges who are thought to have shown biases based on race, gender, or religion. Complaints can arise from judges' comments in the courtroom, from speeches or interviews given outside the courtroom.*

*If you are concerned about the conduct of a federally appointed judge, think carefully about the kind of action you may take:*

- *If you believe the judge made the wrong decision in your case, consider appealing your case to a higher court.*
- *If you believe a judge's conduct was improper, either during your case or in public, consider making a complaint to the Canadian Judicial Council.*

**Canadian Judicial Council Website**

In the interests of finality your jurisdiction may choose to provide that the final decision of the complaints process is unappealable.

In New Zealand appeal lies from a Judicial Conduct Panel to the Court of Appeal whereas in England there is no appeal, although alleged procedural failings may be subject to review<sup>27</sup> by the Judicial Appointments and Conduct Ombudsman.

<sup>27</sup> England <http://judicialconduct.judiciary.gov.uk/not-satisfied-with-service.htm> and <http://www.justice.gov.uk/about/jaco>

## 7 THE VANUATU EXPERIENCE - A CASE STUDY

### 7.1 THE PILOT

This toolkit was piloted in Vanuatu during July 2014.

Chief Justice Vincent Lunabek selected three judges to form a working group to develop procedures for receiving and handling complaints. They were Judge Oliver Saksak, Senior Magistrate Nesbeth Wilson and Magistrate (now Senior Magistrate) Hannaline Nalau Ilo. The members of the Working Group prepared for their work by reading this toolkit.

At our first meeting we discussed the group's remit and how work would be progressed. The group identified times when it could meet. It was agreed that the important work of the group was to discuss how complaints should be processed and to decide exactly what procedures should be put in place. It was agreed that, in order to minimize the number of court sittings which would be cancelled due to meetings, one person (myself<sup>28</sup>) would undertake the drafting<sup>29</sup>.

The group went on to discuss the legislative provisions regarding the discipline of judges and how the procedures should relate to the statutory provisions<sup>30</sup>; in particular at what point should a complaint be passed to the disciplinary authority<sup>31</sup>?

The group spent some time considering whether or not the procedures should admit a complaint where the behaviour complained of could have founded an appeal or review. The group favoured the simpler option of allowing no overlap. Taking the view that if a court conducting an appeal or review identified misconduct by a judge, it would say so and if the matter was sufficiently serious the disciplinary body could initiate steps. The group put this to the Chief Justice for his view and it was agreed to proceed on this basis whilst being prepared to review the matter in the future and in the light of experience.

Meetings progressed over the next two weeks with the group deciding what provisions should be made and my producing a draft for their consideration and amendment or further development at the next meeting. During those meetings the group decided it should produce a 'Users' Guide' to be available for anyone wishing to make a complaint.

#### 7.1.1 Can you have a complaints procedure in the absence of guidance on conduct?

This was a question which arose in Vanuatu. In theory it is technically possible but could be problematic because the individual or group handling complaints would have to decide what is and is not acceptable conduct on a case by case basis; guidelines would effectively evolve as precedents developed. Furthermore, it is hard to answer the objection that it is not fair to criticize judges if they get it wrong when they have not the benefit of guidance. The Vanuatu team was firmly of the view that judges should have clear guidance on conduct before any complaints procedures are introduced.

When the working group submitted the draft procedures and the users' guide to Chief Justice Lunabek for his comments, he explained that he felt that the existing guidelines on conduct were not sufficiently specific for non-law trained judges and he was therefore reluctant to apply the new procedures to the Island Court Justices without providing them with clearer guidance on the standards of conduct expected of them.

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<sup>28</sup> i.e. Kerin Pillans, the author of this toolkit. I visited Vanuatu to participate in piloting the toolkit.

<sup>29</sup> It is probably more efficient to appoint one individual to produce a preliminary draft which can then be refined by the group.

<sup>30</sup> The Judicial Services and Courts Act 2006

<sup>31</sup> The Judicial Services Commission



The judges who work in the courts of first instance are the principal face of justice. Their courts are the courts where most people have their only meeting with the justice system and where the justice system is itself judged. It is important that these judges meet the highest standards. I was concerned that to exclude them from the operation of the procedures would be a mistake because it might suggest that they are less than full members of the judiciary; not quite 'proper' judges! Accordingly we set about drafting guidelines for the Island Court Justices.

The completed draft Guidelines on Conduct for Island Court Justices were considered by the members of the Working Group. As a supervising magistrate with responsibility for overseeing the work of Island Courts, Senior Magistrate Nesbeth was particularly qualified to identify the most troublesome issues.

### **7.1.2 The matter which caused most difficulty**

The group undoubtedly encountered most difficulty in working through the interrelation between the complaints procedures and the existing disciplinary provisions which are in The Constitution of the Republic of Vanuatu and The Legal Services and Courts Act 2006.

The legislation establishes the Judicial Services Commission (JSC) which is given responsibility for ensuring the quality of judicial service, for producing guidelines on conduct and powers to investigate disciplinary matters. Where it finds gross misconduct, incapacity or professional incompetence it can recommend suspension or removal from office to the President of the Republic.

The problems in the past have been firstly, the want of any procedure for raising a matter with the JSC and secondly, that it is not clear to whom a complaint about some minor misconduct which could not warrant disciplinary action should be directed. The result has been that dissatisfied individuals write letters of complaint to just about anyone they think might listen to them; some of these complaints raise issues relating to judicial conduct. Some complaints reach the Chief Justice or the Registrar and can be progressed but others may go nowhere because they are directed to someone with no authority to address them. So long as complaints are not collected in one place it is impossible to ensure that they receive a response and impossible to conduct any kind of analysis as to the nature of complaints received. The Working Group clearly could not limit the powers given to the JSC but the procedures do provide a clear mechanism for receiving and sorting complaints so that all can be logged and those which merit referral can be passed to the JSC. The Chief Justice will be in a position to counsel judges if their conduct has fallen below the expected standard and to identify any issues which merit a more general intervention, such as a programme of training or additional guidance.

In Vanuatu the JSC has all the powers necessary to put in place procedures to receive complaints regarding disciplinary matters. The membership which is prescribed by legislation includes the Chief Justice<sup>32</sup>. When the draft procedures are shown to the Commission it may choose to adopt them as an appropriate mechanism for ensuring that it receives those complaints which require its attention.

## **7.2 INTRODUCING THE PROCEDURES**

The Chief Justice has circulated the Draft Complaints Procedures and the Users' Guide to the judiciary for comment. At present the procedures are being considered by the judges and magistrates for feedback and comment. Once they are confirmed, the Chief Justice plans to write to the principal court user groups to notify them of the new procedures. Notices will also be put up in court where the Users' Guide will be available on request. Two notices were drafted which could be used to announce the introduction.<sup>33</sup>

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<sup>32</sup> The members are the Minister for Justice, the Chief Justice, The Chairman of the Public Services Commission and a nominated member of the National Council of Chiefs.

<sup>33</sup> See below

### 7.3 THE DOCUMENTS PRODUCED

The draft Procedures and Users' Guide are included in the Additional Documentation. During the early stages of the development process the following step by step analysis<sup>34</sup> was produced initially to provide an easy cross-check on the effect of procedures as they were drafted. Its greatest value proved to be in its uncompromising instance on a 'yes/no' answer; in the process of constructing the key you have to consider the order in which groups can be identified or eliminated, you must also rank your questions according to how unambiguously they can be put and how effective they will be in separating the categories you wish to separate. This helped the Working Group ensure that the procedures effectively identify and quickly dispose of those complaints which were without foundation<sup>35</sup> whilst identifying and quickly progressing those that raise issues of concern.

The group was concerned to set appropriate time limits, in the first instance it decided to allow six months for the complaint to be made. This was to take account of the fact that the procedures are new however the group recognizes that it should review the time limit in the future when the procedures have had time to bed in.

#### 7.3.1 The procedures step-by-step

Complaint to CJ



Is it procedurally complete? ► **NO** ►► **REJECT + Notice explaining rejection**



**YES**



Is it within 6 months of date of alleged behaviour? ► **NO** ►► **REJECT+ Notice explaining rejection**



**YES**



Would the behaviour complained of found an appeal or review? ► **YES** ►► **REJECT+ Notice explaining rejection**



**NO**



Is the complaint about CONDUCT and not about the legitimate exercise of the judge's function in case management and decision making? ► **NO** ►► **REJECT+ Notice explaining rejection**



**YES**



Is it frivolous or vexatious? ► **YES** ►► **REJECT+ Notice explaining rejection**



**NO**



**CONDUCT ENQUIRY COMMENCED** ►► + **Notice explaining what will happen next**



Subject of complaint notified ►► Response invited within 28 days



Upon response or lapse of time for response



<sup>34</sup> Note that the analysis presents a series of 'questions which all have only 2 possible answers true / false or yes / no

<sup>35</sup> It will be noted that the first two questions are purely factual and could be handled by an appropriate administrator; the third and fourth questions require some legal knowledge but could perhaps also be delegated.

Are disciplinary proceedings merited? ► **YES** ► **File passed to Judicial Services Commission**

▼ + **Notice to subject and complainant explaining why and what next**

**NO**

▼

Are facts admitted ► **YES** ► **CJ determines outcome (Retains power to refer up to JSC)**

▼ ► **Decision + Notice to subject and complainant explaining decision**

▼

**NO**

▼

CJ may conduct proportionate hearing to establish facts and determine appropriate decision

(Retains power to refer up to JSC)

► **Decision + Notice to subject and complainant explaining decision**

### 7.3.2 Summary of time limits

The group wanted to allow a realistic time for complainants and for responses from the subject of the complaint whilst ensuring complaints are dealt with in good time and that there is no undue delay. It should also be noted that if a matter is referred to the Judicial Services Commission (JSC) the group had no power to prescribe time limits.

TIME LIMITS	EVENT
Complaint must be filed not more than <b>6 months</b> from incident to which complaint relates	<b>Alleged misconduct</b>
Start Date	<b>Complaint Received</b> <b>Chief Justice opens record</b>
Not more than 28 days	<b>Preliminary Examination</b> Summary rejection possible
Not more than 28 days	<b>Conduct Enquiry commenced</b> Judge invited to respond Early reference to JSC possible
Not more than 56 Days	<b>Decision, or</b> <b>referred to JSC, or</b> <b>CJ's hearing if necessary to determine disputed facts.</b>
Max 112 days (4 months) from Start Date	<b>Final determination issued</b>

**Note:** this document represents work in progress; it was produced to focus discussion and does not necessarily reflect the final position.

### 7.3.3 Draft letter to Law Society, Public Prosecutor, Public Solicitor, etc.

Dear .....

#### Procedures for receiving and handling complaints about the conduct of judicial officers

The Chief Justice has put in place new procedures for receiving and handling complaints about the conduct of judicial officers.

Up until now there has been no set procedure for receiving complaints. In consequence complaints have been sent to different people and not always reached individuals who can deal with them. Because of this it has been impossible to know how many complaints were made and if, or how, they were resolved.

The new procedures will ensure that in future every complaint can be recorded and dealt with in an appropriate and timely fashion.

In future all complaints should be marked "**Complaint – Confidential**" and addressed to the office of the Chief Justice.

#### An overview of the new procedures

The procedures require that a complaint be made **within 6 months** of the behaviour complained about and that the complaint be particularised. The complaint will be acknowledged on receipt and a Complaint Number allocated, the complainant will receive a **preliminary response within 28 days** that will say how the complaint will be progressed. If the complaint is out of time, incomplete or does not raise an issue of judicial conduct, it may be summarily rejected at this point.

Potentially **serious matters** will be referred to the Judicial Services Commission which has statutory powers to conduct disciplinary investigations and hearings. Where the conduct alleged is clearly **not sufficiently serious** to warrant disciplinary action the Chief Justice may institute a Conduct Enquiry.

**The objective of the complaints procedure** is to ensure the highest standards of conduct amongst the judiciary. A complaint alleging serious misconduct can lead to disciplinary action. In less serious cases, if a judicial officer is found to have fallen below the expected standard of conduct, he or she may receive advice or further training; the complainant may receive an apology.

The complainant should note that the complaint process can never affect the outcome of a case. The complaints procedures are **not an alternative to an appeal or review**; if the matter complained of might have founded an appeal or review that is the course the complainant should take. Whilst complaints can be made about behaviour both in and outside court, complaints about the exercise of the judicial function, such as case management or a judicial officer's decision will not be considered.

The procedures aim to resolve all complaints within 4 months of receipt; however a resolution may well take longer if the matter is referred to the Judicial Services Commission for a disciplinary enquiry.

A **Users' Guide to making a complaint about judicial behaviour** which explains the procedures in more detail is available at courts.

### 7.4 FEEDBACK FROM THE WORKING GROUP

Members of the Working Group were invited to write a short report for the PJDP newsletter. They wrote:

*The 'Procedures for Handling Complaints about the Conduct of Judicial Officers', 'The Users' Guide' and "The Guidelines on Conduct for Island Court Justices of Vanuatu" are the product of three meetings of a small committee made up of a judge and two magistrates. Our main source of assistance was the draft Toolkit*

developed by PJDP and published in December 2013 without which the committee would have found it difficult to begin their work. During three working meetings the judge chaired and welcomed comments and ideas from the other two members in order to formulate the first draft. The committee is indebted to the assistance of Ms Kerin Pillans who was responsible for drafting provisions as directed by the committee. All drafts were discussed and changes were made prior to an agreed draft being circulated to our fellow judges and magistrates for feedback.

During the final meeting members of the Working Group were asked for feedback on their experiences:

- *"At first I had concerns about exposing ourselves" "there has never been anything like this ever since I have been a magistrate"*  
*"It is good to know whether or not you are doing the right thing" "We want respect"*  
*"People don't tell you" It's good to be transparent"*  
*"I want feedback but there is no way to ask for it" - This might help me know if I am out of line"*
- *"Court is different from other jobs – society expects judicial officers to conduct themselves well. I was concerned that we might be opening up a door to criticism people might focus more on our conduct. I have been reassured to some extent by the toolkit and as we developed the procedures. On the other hand we should be accountable. "*
- *"I felt some discomfort when the Guidelines on conduct were introduced several years ago, but as time went on I felt better. The guidelines help me judge myself and made me think about the way I conduct myself. These procedures are just the next step. I want to see what happens when other judicial officers are invited to consider the procedures - will they be discomforted? Will they take up positions?"*
- *"It will be interesting to see if people start to understand the judge's role better; at present some people complain because they don't like the decision."*
- *"If people understand what they can complain about and what not there will be fewer complaints."*
- *"Complaints will be addressed to the right place so they can be dealt with."*
- *"The procedures should boost peoples' confidence in the courts because they will see that we take responsibility."*
- *"We judge people we should be able to judge ourselves."*
- *"It will be more professional people can see that complaints are acknowledged and dealt with."*
- *"Boosting judicial integrity is the most important outcome. We must address complaints transparently so that people can see we are responsible. It will promote the integrity of the institution."*
- *"It will help judicial officers to be more careful now that complaints can be made – we should not feel above the law."*

## 7.5 FOLLOW UP VISIT

The Chief Justice later requested help in designing the administrative processes necessary to implement the procedures; lack of the time and resources necessary to set up an office system had proven to be an obstacle to their introduction. It was agreed that there should be a follow up visit in March 2015. The arrival of cyclone Pam interrupted that visit. Despite time being very short two important steps were taken towards introducing the procedures: Firstly, a meeting was held at which, after full consideration and discussion, the Supreme Court Justices endorsed the introduction of the procedures. Secondly, the Chief Justice and I were able to work through exactly how the procedures should be administered in the office on a day-to-day basis. A simple system for the creation and maintenance of records relating to complaints was devised; the Chief Justice decided that the principal record would be a paper file with a computer log providing a back-up.

The discussion with the Justices of the Supreme Court produced several minor amendments which have been incorporated into the procedures.

Subsequently, working from my discussion with the Chief Justice, I put the substantive and administrative procedures together in a '**Complaints Handling Procedures - Manual**'. The manual is in three sections:

**Section 1** sets out the administrative procedures step by step

**Section 2** includes supporting materials such as file cover-sheets, and various *pro forma* letters and notices.

**Section 3** consists of the revised Complaints Handling Procedures and Users Guide

I also produced the basis of a simple computer log to act as a back-up to the paper filing system and, to capture information regarding the kinds of complaints received, time taken and the manner of their disposal. The information necessary for annual reporting should be easily retrievable from the log. A range of suggested tables for inclusion in an annual report was also produced.

The manual has been included in the annex to this toolkit

At the time of writing only two months have passed since Vanuatu was devastated by cyclone Pam and there has unsurprisingly been as yet no further progress with regard to implementation of the complaints procedures. It is to be hoped that when life eventually begins to return to normal the court will be able to complete the implementation of the procedures.

## 8 IN CONCLUSION


If your judiciary decides to embark on the design of complaints handling procedures, bear in mind that this is all very new. In response to the ever growing insistence on transparency and accountability in public office, Judiciaries are slowly acknowledging that they should be accountable. This toolkit has highlighted some of the conflicts that you will have to resolve where different principles impinge on one another. This will not always be an easy task<sup>36</sup>.

We do suggest you look at the websites established by those jurisdictions which have already set up procedures, however these are mainly large very well resourced jurisdictions and some of the structures they put in place would be unwieldy, unrealistic and inappropriate in a small Pacific Jurisdiction.

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<sup>36</sup> The Judicial Commission of New South Wales gives an account of its development including how some difficult issues were resolved in *From controversy to credibility: 20 years of the Judicial Commission of New South Wales*. This short pdf publication is a reassuring read. <http://www.judcom.nsw.gov.au/about-the-commission/judcom-20years-web.pdf/view>





# *TOOLKIT FOR BUILDING PROCEDURES TO HANDLE COMPLAINTS ABOUT JUDICIAL CONDUCT - ADDITIONAL DOCUMENTATION*

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>



Toolkits are evolving and changes may be made in future versions. For the latest version of this Additional Documentation please refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstance.

# Complaints Handling Procedures Manual

This manual sets out what is to be done at each step in progressing a complaint. Its aim is to ensure that the record is maintained and that the complaint is progressed within time limits and without delay.

Two records are to be kept, a paper file system and a computer log. Cases received in any calendar year will be allocated a sequential number preceded by the year of receipt.

## The file – the primary record

A paper file will be created for each complaint received. This will be the principal record comprising the original complaint together with copies of all correspondence. The files are confidential and are to be kept in the office of the Chief Justice (CJ). Access is limited to the CJ and any person specifically authorised by the CJ.

A cover sheet has been designed for the paper file on which to record the essential details and the dates set for the file to be considered by the CJ (or his delegate).

## The log – this provides a backup and captures information for monitoring and reporting

The computer log will record the complaint and its progress thus providing a backup reference to the paper file system.

The log will also record generalised information regarding the nature of the complaint, the outcome and final disposal for the purposes of monitoring the operation of the complaints handling procedures and creating an annual report.

## Pro forma notices

A series of *pro forma* notices have been prepared to support the handling of cases. The language has been kept simple. At every stage the complainant should be helped to understand what is happening, why and what will happen next.

## What you will find in this Manual

### Section 1 - Complaints handling

Each pair of facing pages in this manual is set out as follows:

<b>Notes:</b> Explanatory notes are included where appropriate.	<b>Trigger event</b> The event which should trigger activity	
	<b>What must be done</b> .....	
	<b>Time limits</b>	
	<b>Log</b> What must be recorded on the log .....	<b>File</b> What must be recorded on the file .....

### Section 2 - Supporting documentation

### Section 3 – The Procedures and Users' Guide

## Contents

### Section 1

#### The Administrative Procedures for Handling

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### Section 2

#### Supporting Materials

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.....	Summary Rejection 6c. Not a judicial officer .....	SRC6c
.....	Summary Rejection. 6d. Not 'behaviour' within the procedures .....	SRC6d
.....	Summary Rejection 6e. Allegation of criminal behaviour (untried) ...	SRC6e
.....	Summary Rejection 6f. Could found appeal or review .....	SRC6f
.....	Summary Rejection 6g. Frivolous or vexatious .....	SRC6g
.....	Notice of Referral to Conduct Enquiry - Complainant .....	RCEC
.....	Notice of Referral to Conduct Enquiry – Subject.....	RCEJ
.....	Referral to Judicial Services Commission - Complainant.....	RJSCC
.....	Referral to Judicial Services Commission – Subject.....	RJSCJ
.....	Decision – no dispute as to fact – Complainant.....	DIC
.....	Decision – no dispute as to fact – Subject.....	D1J
.....	Directions for further submissions oral or written – facts in issue.....	DFSCJ
.....	Decision – after further submissions – Complainant.....	D2C
.....	Decision – after further submissions – Subject.....	D2J

*NOTE: the draft notices printed in blue above have not been reproduced here.*

### Section3

#### The Procedures

Page 11.....	The Procedures
Page 15.....	Users' Guide

# Section 1

The administrative procedures for handling complaints

## NOTES

The notice of acknowledgement must give:

1. The Complaint Number
2. The date by which the claimant will receive notice of the outcome of the PE
3. Explain what will happen next

For the purposes of analysis and reporting the computer log records the nature of all complaints received, whether or not they fall within the rules, under the following generalised categories:

- Conflict of interest,
- Conviction,
- Criminal behaviour,
- Delay,
- Discrimination,
- Inappropriate behaviour/comment in execution of judicial function,
- Inappropriate behaviour in private life
- Judicial decision case management,
- Misuse of judicial status,
- Not specified (i.e. the behaviour is not particularised)
- Not fulfilling judicial duty (other than delay),
- The subject is not a judicial officer,
- Miscellaneous

The form for acknowledgement is form A1C – page

### Trigger event

### Complaint received

#### What must be done

1. Create log entry
2. Make up file
3. Set and diarise date for Preliminary Examination
4. Send Notice of Acknowledgement to the Complainant

#### Time limits

The Complainant must be informed of the outcome of the Preliminary Examination within 28 days of the receipt of the complaint. The date set for the PE should ideally be within 14 days of receipt to allow ample time for the notice to be received. It must be set in the CJ's diary so that time is allocated in which the complaint will be considered.

#### Log

1. Complaint Number
2. Name and address of complainant
3. Name and office of subject
4. Date of alleged misconduct
5. If related to legal action: case number
6. Deadline for informing complainant as to outcome of PE
7. Date for PE – set and diarised
8. Date Notice of Acknowledgment sent
9. Categorise subject matter of complaint (see note)

#### File

1. Complaint Number
2. Name and address of complainant
3. Name and office of subject
4. Date of alleged misconduct
5. If related to legal action: case number
6. Deadline for informing complainant as to outcome of PE
7. Date for PE – set and diarised
8. Copy of Notice of Acknowledgment
9. Confirm notice sent

## NOTES

If at any time it appears to the Chief Justice that a complaint raises matters which should be considered by a disciplinary tribunal the matter should immediately be referred to the Judicial Services Commission

### Forms

Referral to Judicial Services Commission  
RJSC – C and J

Summary Rejection under paragraph 6 of The Procedures

SRC6a - Out of time para 6.a

SRC6b - Incomplete para 6b

SRC6c - Not a judicial officer Para 6c

SRC6d - Not 'behaviour' within the procedures para 6d

SRC6e - Allegation of criminal activity (untried) para 6e

SRC6f - Could found appeal or review. para 6f

SRC6g - Frivolous or vexatious para 6g

Referral for Conduct Enquiry

RCE C - Notice to complainant

RCE J - Notice to Judge

Paragraph 6 of The Procedures states:

A complaint will be summarily rejected if

- it is incomplete, or
- it is received more than six months after the incident alleged to constitute misconduct, or
- the subject is not a judicial officer, or
- it is not a complaint about judicial conduct within the meaning of these rules, or
- the complaint alleges criminal behaviour, or
- the alleged conduct constitutes grounds for an appeal or review, or
- it is frivolous or vexatious

### Trigger event

## Preliminary Examination

(Diarised date arrives)

### What must be done

- Decide whether or not this is a complaint that can proceed to Conduct Enquiry

At this point the complaint is checked for compliance with:

- time limit
- information required by the procedures
- rules regarding what kind of conduct can found a complaint.

**If NO - Summary Rejection**

**If YES - Referred for Conduct Enquiry (Consider direct reference to JSC)**

- Send Notice to Complainant of outcome (either rejection or referral to CE )
- If referred to CE:
  - Notice to judge who is subject of complaint
  - Set deadline for subject's response
  - Diarise date for Conduct Enquiry Management (CEM) reconsideration of file

### Time Limits:

- Complaints must be received within 6 months of the alleged misconduct
- Notice to complainant of outcome of PE within 28 days of receipt of complaint.
- If referred for Conduct Enquiry time limit of 28 days for subject's response starts to run
- The Complainant should receive notice as to what happens next within 14 days of the deadline for subject's response.

The deadline for the final determination is 56 days from deadline for response.

### Either: Summary Rejection

Log	File	
1. Rejection	1. Rejection	3. Copy of Notice of rejection
2. Reason for rejection under para 6	2. Reason for rejection under para 6	4. Confirm notice served.
3. Date of final disposal		5. Date of final disposal
		6. Archive file

### Or: Referred for Conduct enquiry

Log	File
1. Record decision	1. Record decision
2. Record deadline for response	2. Record deadline for subject's response
3. Record date set for Conduct Enquiry Management (CEM) decision (shortly after deadline for response).	3. Set and record date for Conduct Enquiry Management (CEM) decision (shortly after deadline for response).
4. Record deadline for final determination	4. Record deadline for final determination
	5. Copy of notice to complainant
	6. Copy of notice to subject
	7. File note confirming service

## NOTES

If it appears to the Chief Justice having considered the complaint and any response form the subject that matters are raised which should be considered by a disciplinary tribunal the matter should be referred to the Judicial Services Commission

### Forms

Referral to Judicial Services Commission - RJSCC and RJCJ

No dispute as to facts - Final determination - D1C and D1J

Where there is no dispute as to fact and the CJ is able to make a final determination.

The notice to the complainant and subject must explain the decision including any action to be taken by reference to paragraph 11 of The Procedures. Which provides:

### Paragraph 11

Where the subject of the complaint admits behaviour which in the opinion of the Chief Justice constitutes a minor misconduct insufficient to warrant disciplinary action, the Chief Justice will determine the appropriate disposal. He may:

- Determine that there was no misconduct, or
- Take no further action on the basis that the misconduct was very minor or trivial, or
- Give pastoral advice, and, or
- Recommend further training, or
- Issue a warning.
- In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

The Complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

Outstanding issues – facts disputed - DFSCJ

Paragraph 12 of the procedures provides that:

Where the subject of the complaint contests matters alleged in the complaint, the Chief Justice may take whatever steps he deems appropriate to determine whether any misconduct took place always provided that such steps shall be appropriate, fair and proportionate to the seriousness of what is alleged.

**The notice to the complainant and subject must:**

- identify the issue or issues which need to be resolved before a decision can be made
- explain the procedure according to which the CJ shall determine those issue/s
- Set a date for consideration of further submissions or for an oral CE Hearing (if appropriate set interim dates) if necessary extending the time-limit for final decision.

### Trigger event

## Conduct Enquiry Management

(Diarised date for CEM arrives)

### What must be done

- CJ to consider the complaint in the light of any response from the subject and decide:
  - whether the matter should be referred to the JSC? or
  - can the matter be determined forthwith (i.e. no substantial dispute as to fact)? If so, make final determination.
  - are there any disputed issues which need to be determined? If so decide how. Written or oral submissions? Should there be a timetable for submissions? Set the date when they will be considered or heard i.e final disposal.
- Send notice of decision to the complainant (including, where applicable an explanation of the procedure according to which any disputed issues will be resolved + date set)
- Send notice of decision to the subject (including, where applicable an explanation of the procedure according to which any disputed issues will be resolved + date set)
- Where further submissions are invited, diarise date set for final disposal.

### Time Limits:

- The Complainant should receive notice as to disposal or what happens next within 14 days of the deadline for subject's response.
- Where there further submissions or a hearing is considered appropriate the deadline for the final determination is 56 days from deadline for the subject's response.
- The CJ should extend the 56 day deadline if procedural fairness requires it.

### Either: Matter determined forthwith

Log	File
1. Decision including any action taken	1. Record decision
2. Date of final disposal	2. Record what if any action is taken with reference to Para 11
	3. Copies of notices to complainant and subject.
	4. File note confirming notices served.
	5. Close and archive file.

### Or: CJ to determine facts

Log	File
1. Decision	1. File Note: Identifying issue/s in need of resolution and setting out the procedure for determining them.
2. written submissions or oral hearing	2. Time table set for submissions (if applicable).
3. Enter date set for CE Hearing or consideration of written submissions	3. Copies of notices to complainant and subject.
	4. File note confirming notices served.
	5. Record –Date set and diarised for final disposal.



## NOTES

If it should become apparent to the Chief Justice that matters are raised which should be considered by a disciplinary tribunal the matter should be referred to the Judicial Services Commission

### Forms

#### **D2c and D2J - Chief Justice's decision after consideration of further submissions**

The notice to the complainant and the judge should explain the CJ 's decision as regards any disputed fact and his decision as to the appropriate action by reference to paragraph 12 of the procedures which provides that:

Having determined the matter he may:

- a. Dismiss the complaint
- b. Take no further action
- c. Give pastoral advice
- d. Recommend further training
- e. Issue a warning in more serious cases
- f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

Provided that at any time the Chief Justice may refer the matter to the JSC if it becomes clear that the matters alleged are more serious than at first appeared and disciplinary proceedings are therefore warranted.

The complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

### Trigger event

**Date diarised for Conduct Enquiry - consideration of further submissions written or oral**

### What must be done

1. Determine the disputed facts in accordance with procedure set at CEM
2. Determine appropriate action by reference to Para 12
3. Notify complainant and Subject of decision
4. close file

### Time Limits

Within 56 days of deadline for subject's response.

## Section 2

### The Supporting Materials

The following documents are suggested forms for the various notices they can and should be adapted to the circumstances of each complaint.

The aim should be to provide a clear explanation of any decision and to explain clearly what will happen next.

**Note:** the draft notices have not been reproduced here

## Complaints Procedure File

Office of the Chief Justice

**CONFIDENTIAL**

Case Number

Complainant

Family Name

Forenames

Address

House

Road

Town

Island and region

Complainant's Language

Date	Progress	Notes	Date set in DIARY
	Complaint received		
	Preliminary Examination		
	Conduct Enquiry Management		
	Conduct Enquiry Consideration of further submissions (Written or Oral)		
	Referred to Judicial Services Commission		
	File closed		

## Complaints Procedure File

## Office of the Chief Justice

### Inner file sheet - CONFIDENTIAL

Subject

Family Name

Forenames

Judicial Office held

Date of alleged misconduct

Address

House  
Road  
Town  
Island and region

Where the complaint relates to a case  
Case number

### Complaint Progress Checker

Computer Log	Date + initials	Progress	CHECK	Date + Initials
Initial details entered		Received and acknowledged		
		Preliminary Examination		
Updated after PE		Summarily Rejected – Notice to Complainant		
		Summarily Rejected – Notice to Subject*		
		Referred for CE – Notice to Complainant		
		Referred for CE – Notice to Subject		
		Response received from Subject		
		Time for Subject's response lapses		
Updated after CEM		Conduct Enquiry Management		
		Referred to JSC Notice to Complainant		
		Referred to JSC Notice to Subject		
		Final Decision – Notice to Complainant		
		Final Decision – Notice to Subject		
		Directions for further submissions sent to Complainant		
		Directions for further submissions sent to Subject		
Updated after CE		Conduct Enquiry – Consideration of further submissions (written or oral)		
		Decision sent to Complainant		
		Decision sent to Subject		

\* if it is decided that Subject should be notified when complaint is first received

Form A1C

Office of the Chief Justice  
Supreme Court of Vanuatu  
[The Court Crest]

Complaint No: [20xx/xxx]

[DATE]

**PRIVATE AND CONFIDENTIAL**

To:

[Name of Complainant]

[Address Complainant]

**Notice of Acknowledgement - Complaint Number: [20xx/xxx]**

I write to acknowledge that I have today received your complaint which has been allocated the Complaint Number which appears on this notice. Your complaint will now be subject to **Preliminary Examination**. You will be informed as to the outcome of that examination within 28 days. That is on or before [Insert deadline for notification of outcome of preliminary examination]

The purpose of Preliminary Examination is to confirm that your complaint is within the time limit, includes all the information required by the rules and that your complaint relates to the kind of conduct that can be considered under these procedures. If that is so, a **Conduct Enquiry** will be commenced and the notice you receive will explain what happens next.

If you have not provided sufficient information or if the matter you raise is out of time or relates to behaviour which cannot be considered under these procedures your complaint will be summarily rejected. The notice you receive will explain why your complaint was rejected.

Please note that in all future correspondence you should identify this matter by reference to the Complaint Number.

[signature]

[Name]

On behalf of the Chief Justice

**IMPORTANT NOTICE:** The complaints procedures are designed to ensure that all complaints about judicial conduct are brought to the attention of the Chief Justice so that they can be dealt with swiftly and fairly. The procedures are concerned to ensure high standards of judicial conduct; a complaint cannot alter the outcome of any case nor can any compensation be awarded.

If it becomes apparent that the misconduct alleged may be sufficiently serious to warrant disciplinary proceedings the Chief Justice will immediately refer the matter to the Judicial Services Commission which has the power to deal with such matters.

## Section 3

The procedures  
and  
Users' guide

## PROCEDURES FOR RECEIVING AND HANDLING COMPLAINTS ABOUT THE CONDUCT OF JUDICIAL OFFICERS

### Introduction

These procedures set out how complaints regarding judicial conduct will be received and determined by the Chief Justice. Through these procedures the Chief Justice aims to promote high standards of judicial conduct and to enhance the public's confidence in the judiciary by ensuring that complaints are determined swiftly and fairly.

These procedures cannot be used to call into question a judge's conduct in exercising his or her discretion and powers in relation to case management, decision making or sentencing. No complaint will be accepted in any case where the conduct complained of gives grounds for an appeal or review, regardless of whether or not the time for appeal or review has lapsed.

These procedures are not appropriate to deal with any allegation of criminal activity. Judges must obey the law and if you believe a judge has broken the law you should report the matter to the police.

The procedures provide for the receipt and preliminary determination of complaints regarding the conduct of any judicial officer and for the matter to be referred to the Judicial Services Commission as soon as it becomes clear that disciplinary action might be warranted.

These procedures do not affect the powers of the Judicial Services Commission to initiate an enquiry into any matter.

### Definitions

**"Judicial Officer"** - Includes the Chief Justice, Supreme Court Judges, Chief Magistrate, Senior Magistrates, Magistrates and Island Court Justices

**"The Subject"** refers to the judicial officer who is the subject of the complaint under consideration.

**"Conduct"** refers to the behaviour of a judicial officer both in and out of court but does not include the exercise of proper judicial function in hearing and deciding a case.

**"misconduct"** is conduct or behaviour which is inappropriate for a judicial officer and which might lessen the respect of observers for the individual judge or the judicial office.

**"Disciplinary matter"** Means a matter in which the alleged misconduct could found the removal or suspension of a judicial officer as provided for by the Constitution and The Judicial Services and Courts Act. "Disciplinary action" and "disciplinary proceedings" should be interpreted accordingly.

### Who may complain?

1. Any person who observes misconduct by judicial officer may report that conduct to the Chief Justice for investigation. The Chief Justice may appoint an administrative officer to receive complaints on his behalf. Any complaint alleging misconduct by the Chief Justice should be addressed to the next most senior Judge who may receive it and progress it under these rules,

### The form of the complaint

2. A complaint must be in writing and it must:
  - a. Give the full name and address of the complainant, and
  - b. Identify the judicial officer who is the subject of the complaint, and
  - c. Give full particulars of the behaviour alleged to constitute misconduct including:



- i. The date, time and place, and
  - ii. A description of exactly what it is alleged that the subject did, and
  - iii. Where the alleged misconduct took place during a hearing, the name and number of the case, and
- d. Set out the evidence upon which the complainant will rely, and
- e. Be addressed to the Chambers of the Chief Justice and clearly marked "Complaint – Confidential."

#### **Time limit for making a complaint**

3. A complaint must be received by the Chief Justice within 6 months of the date on which the alleged misconduct took place. Save that the Chief Justice may exceptionally admit a complaint out of time if he believes the interest of justice requires him to do so.

#### **Record**

4. Upon receipt all complaints will be recorded and allocated a unique Complaint Number. The complainant will receive an acknowledgment giving the date received and the allocated Complaint Number. The record will be updated to record progression and disposal of the complaint.

#### **Preliminary examination**

5. Upon receipt of the complaint the Chief Justice or his delegate will conduct a preliminary examination of the complaint which may be
  - a. summarily rejected, or
  - b. referred for a conduct enquiry

#### **Rejection**

6. A complaint will be summarily rejected if
  - a. it is incomplete, or
  - b. it is received more than six months after the incident alleged to constitute misconduct, or
  - c. the subject is not a judicial officer, or
  - d. it is not a complaint about judicial conduct within the meaning of these rules, or
  - e. the complaint alleges criminal behaviour, or
  - f. the alleged conduct constitutes grounds for an appeal or review, or
  - g. it is frivolous or vexatious

#### **Conduct enquiry**

7. The complaint will be referred for a conduct enquiry where the matters alleged would, if proven, amount to misconduct, provided that if in the opinion of the Chief Justice the matters alleged are sufficiently serious to warrant disciplinary action the matter shall be immediately referred to the Judicial Services Commission.

#### **Time for the preliminary examination**

8. Within 28 days of the date on which the complaint was received the complainant should receive a notice as to the result of the preliminary examination:
  - a. Where the complaint is summarily rejected the notice will give the reasons why, and
  - b. where the complaint is referred for a Conduct Enquiry the notice will set out what will happen next.

#### **Subject of complaint to be informed of conduct enquiry**

9. Where it is determined that grounds exist for a conduct enquiry the subject of the complaint will immediately be informed to that effect, provided with a full copy of the complaint and advised as to the form of the enquiry and the possible outcomes. No further action will take place until either,
  - a. the subject of the complaint has given his or her response to the allegation, or

- b. 28 days have elapsed and the subject has made no response.

### **Disciplinary matters to be passed to the Judicial Services Commission**

10. Upon receipt of the subject's response the Chief Justice shall consider whether disciplinary proceedings are warranted either

- a. on the basis of the admitted facts or
- b. on the basis of facts alleged in the complaint and contested by the subject of the complaint.

Where disciplinary proceedings are warranted the Chief Justice will immediately refer the matter to the Judicial Services Commission with his reasons. The subject and complainant will be informed.

### **Minor misconduct - behaviour admitted**

11. Where the subject of the complaint admits behaviour which in the opinion of the Chief Justice constitutes a minor misconduct insufficient to warrant disciplinary action, the Chief Justice will determine the appropriate disposal. He may:

- a. Determine that there was no misconduct, or
- b. Take no further action on the basis that the misconduct was very minor or trivial, or
- c. Give pastoral advice, and, or
- d. Recommend further training, or
- e. Issue a warning.
- f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

The Complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

### **Minor misconduct - behaviour disputed**

12. Where the subject of the complaint contests matters alleged in the complaint, the Chief Justice may take whatever steps he deems appropriate to determine whether any misconduct took place always provided that such steps shall be appropriate, fair and proportionate to the seriousness of what is alleged. Having determined the matter he may:

- a. Dismiss the complaint
- b. Take no further action
- c. Give pastoral advice
- d. Recommend further training
- e. Issue a warning in more serious cases
- f. In addition to any of the above he may advise the subject to make a written apology to the complainant if one has not already been made.

Provided that at any time the Chief Justice may refer the matter to the JSC if it becomes clear that the matters alleged are more serious than at first appeared and disciplinary proceedings are therefore warranted.

The complainant and the subject of the complaint will be informed of the Chief Justice's decision in writing. This will normally be within 56 days of the day upon which the period for the subject's response expired.

### **Finality**

13. The decision of the Chief Justice with respect to a complaint about judicial conduct is final.

### **Confidentiality**

14. Prior to its determination the complaint, the name of the complainant and the name of the subject are confidential information. Any officer or employee of the court who receives or handles the complaint receives the information in confidence. A record of all complaints and their determination will be kept and the Chief Justice will prepare an annual report identifying the nature of each complaint, reporting its determination and any action taken.

Where the matter is referred to the JSC for disciplinary proceedings the matter will be reported.

## USERS' GUIDE TO MAKING A COMPLAINT ABOUT JUDICIAL BEHAVIOUR

The Chief Justice has put in place procedures for receiving complaints about the behaviour of judicial officers. These procedures are designed to ensure that all such complaints are dealt with quickly and fairly.

### **Who is a judicial office holder?**

The procedures apply to all judges, all magistrates and all island court justices.

### **The objectives of the procedures are**

- to ensure that judicial office holders conduct themselves in a manner appropriate to their office and
- to demonstrate that the judiciary recognises that the public is entitled to expect high standards of personal conduct from judicial office holders and is prepared to be held accountable when conduct falls short of expectations.

### **Who can complain?**

Anyone who observes misconduct on the part of a judge may make a complaint.

### **What can you complain about?**

Judicial Conduct refers to the personal conduct of the judicial officer both in and out of court but does not include conduct in the course of case management or decision making.

The following are some examples of the kind of thing which might form the subject of a complaint. Complaints could be made about:

- Rudeness
- Offensive language
- Derogatory remarks, or behaviour, based on race, gender or disability
- Delay or omission in relation to judicial duties
- The use of the judicial office or status to gain personal advantage
- A conviction - If you believe the judicial officer has been convicted of a criminal offence which should result in his or her removal from office.

### **What cannot be raised as a complaint?**

- **Judicial decisions** - You cannot complain about the judge's behaviour in the exercise of his or her judicial function that means his or her decisions with respect to case management, the outcome of a case, the sentence or any finding of liability or award of damages.
- **Allegations of criminal behaviour** - If you wish to allege that a judge has committed a criminal offence, the matter must be reported to the police for investigation.
- **Matters subject to appeal or review** - If an appeal or review can or could have been founded on the basis of behaviour about which you wish to complain a complaint will not be entertained. This is to prevent the restrictions which the law puts on appeals being circumvented and also to prevent the same matter being considered more than once.

### **What are the possible outcomes?**

The resolution of a complaint about judicial conduct cannot alter decision or outcome of any case.

The procedures are designed to be fair to both you as the complainant and to the judge against whom you complain. The judge will be invited to respond to your complaint and if necessary the Chief Justice will consider evidence before deciding if the complaint is made out.

If the judicial officer is found to have committed any misconduct you will be notified.

- You may receive an apology
- The judge in question may receive such advice or further training as the Chief Justice believes is necessary to prevent reoccurrence of the error.

**Serious misconduct** - If your complaint is found to allege serious misconduct it will be referred to the Judicial Services Commission (JSC) for disciplinary proceedings. The JSC is given statutory authority to conduct disciplinary proceedings where grounds may exist for the JSC to recommend the removal of a judicial officer in accordance with the provisions of the constitution.

## **Making a complaint**

### **Time limit**

A complaint must be received by the Chief Justice within 6 months of the date on which the alleged misconduct took place.

Exceptionally the Chief Justice may admit a complaint out of time if he believes the interest of justice requires him to do so.

### **Complaints must be in writing**

If you wish to make a complaint you must do so in writing; your complaint must:

1. Give your full name and address, and
2. Identify the judicial officer who is the subject of your complaint, and
3. Give full particulars of the behaviour you allege constitutes misconduct including:
  - a. The date, time and place, and
  - b. A description of exactly what it is alleged that the subject did, and
  - c. Where the alleged misconduct took place during a hearing, the name and number of the case, and
4. Set out the evidence upon which you will rely, and

You should mark your complaint “**Complaint – Confidential**” and address it to the Chambers of the Chief Justice. If your complaint relates to the Chief Justice then you should address your complaint to the next most senior Judge.

### **What will happen next?**

Immediately your complaint is received you will receive an acknowledgment and notice of the Complaint Number assigned to your complaint.

Within 28 days of your complaint being received you will receive notification of the outcome of the preliminary examination.

At this stage your complaint may be summarily rejected on the grounds that it is

- a incomplete, or
- b out of time, or
- c is not about a judicial officer, or
- d is not about judicial conduct within the meaning of the procedures or does not allege any misconduct, or
- e alleges criminal activity, or
- f is about behaviour which could have founded an appeal or review, or
- g is frivolous or vexatious

Where a complaint is summarily rejected you will receive an explanation of why with the notification.

### **Conduct enquiry**

Provided your complaint is not rejected it will be referred for a Conduct Enquiry. The judge who is the subject of your complaint will be notified of your complaint and given 28 days in which to respond to your allegations. After that time the Chief justice will decide whether the complaint raises issues which are so serious they must be referred to the JSC in which case a referral will be made and you will be notified to that effect.

In cases where only minor misconduct is alleged the Chief Justice will determine how any disputed issues should be resolved and will normally provide a decision within 56 days of the date when the period for the subject's response lapsed.

### **Overall time**

In all cases you should receive an acknowledgement and the result of the Preliminary Examination within 28 days of your complaint being received.

Where the misconduct is not serious enough to warrant reference to the JSC you will receive notice of the Chief Justice's final determination this will normally be within 4 months of your complaint being received by the Chief justice.

Where the misconduct is sufficiently serious to be referred to the JSC you will normally receive notification of referral within 56 days of the receipt of your complaint.







# Pacific Judicial Development Programme

## *TOOLKIT FOR BUILDING PROCEDURES TO HANDLE COMPLAINTS ABOUT JUDICIAL CONDUCT*

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

