Institutional and Fiscal Analysis of Lower-level Courts in Solomon Islands

The World Bank

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This synthesis report was prepared by Linn Hammargren and Deborah Isser with assistance from Daniel Evans, Doug Porter and Philippa Venning for the World Bank’s Justice for the Poor Program. It is based on input reports prepared by Jennifer Ehmann, David Craig, Richard Williams and Matthew Zurstrassen. The findings, interpretations, and conclusions expressed herein are those of the authors alone and do not necessarily reflect the views of the World Bank, its Executive Directors, or the governments they represent. The World Bank does not guarantee the accuracy of the data included in this work.
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1. Introduction

1.1 Justice Delivered Locally

Justice interventions in Solomon Islands over the last decade have focused largely on assisting Honiara-based state institutions in the form of a variety of capacity-building programs. This has included a heavy reliance on expatriate expertise positioned in central justice agencies. The National Judiciary has benefited significantly from this support, although to date the direct effects of increased assistance have not been felt in most parts of the country. In part this has been because of a heavy focus on processing the vast amount of criminal cases emanating from the 1998-2003 period of civil conflict, locally referred to as the tension. Matters related to the tension have occupied the time and resources of Honiara-based justice institutions, particularly the courts.

As tension investigations and trials have subsided there has been a growing recognition of the limits of the capacity-building approaches adopted to date (see Cox, Duituturaga and Scheye 2012). Government, together with donor partners, has been grappling with future spaces and modalities of support. Since 2010, the World Bank Justice for the Poor (J4P) program has supported the “Justice Delivered Locally” (JDL) initiative of the Solomon Islands’ Ministry of Justice and Legal Affairs. The JDL initiative is aimed at reinvigorating local-level justice services to meet the demands of the 80% of the population living outside the capital, Honiara.

The present study, a synthesis report of an Institutional and Fiscal Analysis of the local-level courts of Solomon Islands, is part of the series of analytical work and technical assistance activities (see box 1) that have sought to examine the following questions:

- What are the justice needs of rural citizens – what are the main disputes and grievances that communities are dealing with?
- What are the existing systems for dispute management in place to meet citizen’s justice needs, how are they functioning, how are they perceived by users, and what is their source of authority and resources?
- To what extent are unmet justice needs contributing to fragility and tension and/or constraining development?
- In what ways can institutions – state and non-state, justice sector and beyond – be developed to better meet justice needs in a manner that is sustainable and contextually relevant.
Box 1: Justice Delivered Locally Reports and Activities

**Hybrid Courts:** A comparative analysis of hybrid courts in Melanesia examined the Village Courts of Papua New Guinea, Island Courts of Vanuatu and Local Courts of Solomon Islands (Evans, Goddard, and Paterson 2011). This was followed by a community justice workshop in Honiara in 2011 involving practitioners working with or in hybrid courts from Solomon Islands, Vanuatu, Papua New Guinea, Philippines, and Sierra Leone.

**Field Research on Local Justice Needs and Experiences:** A literature review of historical and contemporary approaches to dispute resolution in Solomon Islands (Goddard 2010), was followed by extensive qualitative research in five provinces on local perspectives around disputation, and the institutions in place to address them (Allen et al. 2013). The resulting report, *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands* (Allen et al.), was published in 2013.

**Community Governance and Grievance Management:** J4P evaluated the RSIPF Community Officers pilot (Dinnen and Haley 2012). On the basis of this evaluation, the World Bank is working with the Ministry of Provincial Government and Institutional Strengthening to prepare the ‘Community Governance and Grievance Management Project’ which aims to strengthen community grievance management capabilities and enhance the effectiveness of linkages with government in targeted communities. The project will commence in 2014.

**Land and Resource Related Governance and Contest:** Two short briefing notes dealing with public land governance (Williams 2011) and women, land and state law (Monson 2010) have been produced, containing recommendations for policy makers in these areas. Forthcoming is a briefing note on logging deals, discussing the implications of Solomon Islands’ logging experience for a transition to mining.

**Learning from Logging: Toward Equitable Mining in Solomon Islands:** This briefing note reviews Solomon Islands’ experience with logging and examines implications from these lessons for the mining sector, focusing on how deals are made and benefits are shared.

**Toward more Effective and Legitimate Institutions to Deliver Justice in Solomon Islands:** This policy note summarises key lessons and conclusions from Justice for the Poor’s engagements in Solomon Islands since 2009. It discusses key justice concerns, how they are being handled and implications for development partners and Solomon Islanders.

1.2 Institutional and Fiscal Analysis: Purpose, Method and Limitations

1.2.1 Purpose

The research presented here looks exclusively at lower-tier courts of the National Judiciary – Local Courts, Customary Land Appeals Courts (CLACs) and Resident Magistrates’ Courts and Circuits. These courts are primarily responsible for providing state justice services to Solomon Islands’ rural population. This work builds upon the five-province field research which had two key sets of findings. The first key set of findings concerns the nature of disputes, which we refer to here as ‘justice needs.’ The research identified three

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1 All of the documents mentioned here are available at [www.worldbank.org/justiceforthepoor](http://www.worldbank.org/justiceforthepoor).
2 Further information on the workshop is available at: [http://go.worldbank.org/1G0IW2N2T0](http://go.worldbank.org/1G0IW2N2T0).
main categories of inter-related disputes, each of which have significant gender, ethnic and generational dimensions:

(1) **Social order.** Includes a range of social and familial disputes as well as criminal acts – most commonly assault and gender-based violence. These disputes tend to be exacerbated by consumption of alcohol, including *kwaso*, an illegally produced intoxicant.

(2) **Land and natural resources.** Includes common land and border disputes, and more corrosive disputes arising from logging operations. In fact, the presence of logging strongly correlates with instances of local conflict and grievance.

(3) **Development funds.** Includes disputes arising from the allocation and use of both donor and government funds at the local level.

The second key set of findings concerns the effectiveness of existing mechanisms for managing these disputes. While there is considerable variation across the country, three common conclusions stand out:

(1) All three forms of local justice institutions – state, *kastom* and church – are both separately and collectively unable to meet justice demands.

(2) Despite its major shortcomings, citizens express demand for a more present, active and effective state justice system. In doing so, citizens commonly look to the past – the colonial and immediate post-colonial period – as a model of effective and legitimate state presence.

(3) Across the provinces there is ongoing innovation and adaptation of forms of governance and grievance management, although it is unclear as yet which of these will prove durable and effective.

The present study hones in on one form of local justice institution – the courts – with the aim of analyzing the extent to which their performance can be improved to better meet local justice needs. It provides an analysis of the use and performance of local-level state courts; of the constraints (structural, organizational, financial, and political) to their efficient and effective provision of services; and of how these constraints might be overcome to enhance their performance. Particular attention is paid to unmet justice needs – as set out above – that are the most problematic (i.e., those disputes that either individually or collectively challenge community stability or development).

Little has been documented publically about local-level courts in Solomon Islands. This has resulted in confusion around fundamental issues such as caseload, geographic reach, staffing and budget. A derivative objective of this work has been to shine a light on these areas with the hope that government and development partners have a better understanding about the functioning of courts when making policy decisions and allocating resources. It is hoped that this study will contribute to evidence-based policy discussions and the development of external programming and support.
1.2.2 Methodology

The methodology for this study involved four related lines of inquiry conducted over 2012/2013:

1. **An institutional analysis of provincial Magistrates’ Court and Court Circuits.**\(^3\) Excluding Honiara, there are four permanent Magistrates’ Courts across Solomon Islands. The analysis of these courts focused on three court districts – Western (Gizo), Eastern (Kirakira) and Malaita (Auki).\(^4\) It relied on analysis of available statistics on caseloads and of sample case files. Data was also collected from the Central Magistrates’ Court located in Honiara. In total, 626 case files were examined in Kirakira and Gizo. Court lists provided by the court in Auki were used to extract data for Malaita District. Interviews and observations were also used. In addition, the analysis focused on Magistrates’ Court circuits. Internal circuits refer to circuits conducted by resident Magistrates’ Courts within their District. Magistrates’ Court circuits refer to circuits conducted by Honiara-based Magistrates across the provinces in accordance with a six-monthly schedule. Data concerning the frequency of these circuits as well as reasons for cancellations were analyzed.

2. **An institutional analysis of Local Courts and Customary Land Appeals Courts.**\(^5\) These two courts are the lowest in the judicial hierarchy of Solomon Islands (see figure 1). The analysis of these courts used available quantitative data provided by the courts and drawn from returns compiled by the National Coordinator for Local Courts, court lists compiled by local clerks in the districts visited, and various secondary sources. It also relied on qualitative analysis, in particular observation of Local Court and CLAC sittings in Auki (Malaita Province) and of the Local Court in Taro (Choiseul Province), as well as interviews with parties, justices, court clerks and other interested stakeholders. Interviews so far as possible were related to specific cases.

3. **A Fiscal Analysis of the National Judiciary.**\(^6\) This involved an analysis of expenditure of the National Judiciary, with a specific focus on the various courts under review for years 2008-2012 and estimation of future resources to fund justice delivery. It was primarily quantitative, based on government expenditure data, triangulated with interviews with key government officers. Data collection for the fiscal analysis took place exclusively in Honiara.

4. **A Development Trajectory Analysis.**\(^7\) This analyzed the institutional drivers, prospects and relevance of courts in Solomon Islands. It sought to understand where courts sat within the country’s ‘political landscape’ and what role they may play in the future given the current

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\(^3\) This part of the study was led by Jennifer Ehmann, a justice development and court management and administration specialist.

\(^4\) The fourth resident Magistrates’ Court is located in Lata. This court was not included in the study as there is currently no resident magistrate.

\(^5\) This part of the study was led by Matthew Zurstrassen, a law and justice consultant.

\(^6\) This part of the study was led by Richard Williams, a public finance consultant.

\(^7\) This part of the study was led by David Craig, a political sociologist and Associate Research Professor at the University of Otago, Dunedin, New Zealand.
uncertainty around the centre and provincial relationship and various economic transitions currently taking place within the country.

The analysis was conducted by a group of researchers, who are specialists in their fields. The work was undertaken in both provincial locations and Honiara. In addition, other studies as detailed in box 1 above have also contributed to this work.

### 1.2.3 Limitations

A critical limitation to this research is the quality and availability of data. Poor record keeping impeded the analysis of the Magistrates’ Court, Local Courts and CLACs. Some records were simply not available. Files for matters listed or disposed in internal court circuit locations were largely not located. Data from files that could be found (e.g., Noro and Munda circuits in March 2012) and police records were used to fill some gaps.

Similarly, the fiscal analysis experienced problems with data collection. Available data across agencies and ministries was limited and inconsistent from year to year. For example, different budget templates are used for court circuit costing. A number of administrative changes in the National Judiciary and subsequent budgetary changes have limited the ease of undertaking time series comparisons. The new Chart of Accounts (CoA) established for the 2013 budget removed specific line items for Local Courts and CLACs. These are disaggregated into a number of categories but without reference to the type of court system they fund (for example, one budget line item is used to fund travel allowances across Local Courts, CLACs and the Magistrates’ Court).

The accuracy of reported expenditure data also varies. The previous CoA allowed for a range of activities to be accounted for within one line item code, limiting the ability to draw firm conclusions from past expenditure data. Combined with capacity constraints, oversight on past expenditure reporting (to ensure resources are allocated to the correct line item) has been mixed.

Data on the non-appropriated donor expenditure (expenditures of donor money that are not handled through national systems) is opaque. In addition, it is very difficult to estimate which donor funding has directly contributed to service delivery (for example, through funding in-line Magistrates’ positions) as opposed to capacity building or program support costs.

Second, it needs to be recognized that this work largely focused on rural courts with only minimal analysis of the Central Magistrates’ Court and the High Court which are housed in the capital. The former court has the highest workload of all courts and largely serves Honiara and the greater Honiara area. The latter is important as it inevitably deals with appeals, particularly natural resource related appeals, which frequently relate to matters commencing in rural locations. Accordingly, this analysis does not purport to cover all of Solomon Islands. This is an important rider as frequently many cases that commence in rural locations will end up in courts located in Honiara.

Third, it is acknowledged that state courts are only one actor involved in delivering justice services across the country. It is unlikely that the judiciary will be, or indeed should be, called upon to resolve the majority of disputes that rural Solomon Islanders face. This is due to factors including:
• challenges of geography, resourcing and capacity;

• the array of non-state actors involved in dispute management, including churches, kastom actors (particularly chiefs), the police, and various government officials and bodies. In many instances these actors are seen to be more responsive, cheaper and contextually relevant;

• the nature of various justice problems that citizens face, many of which are not amenable to local court-based adjudication alone, but rather are symptomatic of broader processes of social and political change (e.g. substance abuse), and/or rooted in national and supranational relations (e.g. natural resource related disputes).

While this study focuses on the courts, we examine the role of other institutions and mechanisms in mediating and managing disputes and grievance elsewhere.8

2. A Brief Historical Background of Local-Level Courts

Solomon Islands is a difficult country in which to provide public services of any kind, including justice services. It is an archipelago nation, comprising roughly 900 islands, and while it has a small population (just over half a million) it is dispersed over nine multi-island provinces and four judicial districts. It is also a segmented nation. There are roughly 75 language groups, and individual identities are highly localized. Interactions are characterized by wantokism, or relationships of mutual obligation and support between near and distant kin and those sharing other kinds of social and geographical associations.

Solomon Islands was a British protectorate for eighty-five years before achieving independence in 1978. The British used a system of indirect rule which penetrated to the village level by acknowledging or creating ‘chieftaincies.’ During the 1920s and 1930s ‘native courts’ evolved on an ad hoc basis to deal with local customary disputes. Informally allowed to function by the British Administration, they were eventually formalized in 1942 through the Native Courts Ordinance. The courts were given express powers to deal with ‘native customs’ and had complete jurisdiction over matters related to customary land. Initially the operation of these courts varied from district to district, although throughout they were staffed by Solomon Islanders with oversight provided by British colonial officers.

Native Courts became Local Courts upon independence, essentially a change in name only, with their jurisdiction still encompassing minor village related infringements and matters of kastom, including land disputes. Oversight for the courts was assigned to the lowest tier of government, area councils, with area constables operating as prosecutors. By 1985, owing to staff shortages, area councils had returned their responsibilities for the management of the courts to the National Judiciary (Premdas and Steeves 1985, 101). Following this transition was a process of centralization of responsibilities, rationalization of court numbers, and formalization of proceedings as part of the National Judiciary. This reduced their

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8 See reports listed in box 1.
accessibility for rural citizens. At independence, there were 65 courts in operation. By 1986, new warrants had been issued by the Chief Justice reducing the number to 33. It is more difficult to obtain details on the quality of services provided, including the numbers and types of cases they were dealing with. Some have suggested local courts may have dealt with up to 1800 cases in some years in the 1980s (Takoa 1988). In 1998, area councils were suspended, accelerating what has been referred to as the “retreat of the state.” Continuing trends that had begun earlier, state agencies became concentrated in Honiara and to a lesser extent in provincial centers. As area councils disappeared, so too did most Local Courts. During the period of civil conflict and in its aftermath (1998 to 2010) Local Courts were virtually dormant. Today only 14 are operational.

Local Courts sit at the bottom of the judicial hierarchy. Customary land cases are appealed to the Customary Land Appeals Courts (CLACs), which also have original jurisdiction over timber rights hearings; all other cases are appealed to the Magistrates’ Courts. Magistrates’ Court and CLAC decisions are appealed to the High Court, with final appeal to the Court of Appeal, which is staffed largely by foreign judges visiting biannually. The court system follows the common law tradition, as adopted from England and further influenced by Australia and New Zealand. By budget and personnel, half of the justice sector (including courts, police, public defence and prosecution) is located in Honiara. Even those agencies located in provinces do not penetrate far. Most court sittings, including those of Local Courts, are held in the judicial district headquarters, often requiring those who file complaints to travel long distances in order to attend hearings.9

The tension was quelled by the arrival of the Regional Assistance Mission to Solomon Islands (RAMSI), a coalition of 15 states led by Australia that was deployed in July 2003. Following RAMSI’s arrival, external support to the state justice system and the police increased to unprecedented levels. In mid-2013, the non-security component of RAMSI, including its law and justice pillar, transitioned to Australia’s bilateral aid program.

RAMSI undertook important work in helping to rebuild a justice system that had verged on collapse during the tension. In particular, it provided substantial assistance for the investigation and prosecution of militants, rogue police, and former politicians involved in tension-related crimes. However, in many respects, the centralized nature of the assistance provided did nothing to counter rural people’s perceptions of declining state presence and effectiveness. Several concerns have been expressed about post-tension assistance and policy responses in relation to the courts, including: the dependence on long-term international advisors to make all parts of the system function; a focus on administrative and organizational functions with little consequent impact on the quality and effectiveness of services, particularly for remote populations; and, in general, the durability and sustainability of outcomes achieved given the sheer scale of assistance provided by RAMSI (Cox, Duituturaga and Scheye 2012).

9 Solomon Islands has nine provincial governments which nominally provide citizens with the most proximate presence of the state. In addition, the country is divided into four judicial districts for the purposes of service delivery – Malaita, Central, Eastern and Western. Respectively, the headquarters of these districts are the provincial capitals of Auki, Honiara, Kirakira and Gizo.
Figure 1: Court Hierarchy and Locations

3. Findings

This section introduces the various courts under analysis and summarizes key findings in relation to operations of (i) Local Courts, (ii) CLACs, and (iii) Magistrates’ Courts, and (iv) the financial management processes and costing of the National Judiciary. In order to understand how cases progress, and where to best direct future resources, information is presented on aspects of the Central Magistrates’ Court and the High Court, both of which are located in the capital, Honiara.
3.1 Local Courts

Box 2: Key Findings: Local Courts are no longer local and barely function

- Local Courts are a shadow of what they were; today there are only 14 across the country, sitting in provincial capitals and hearing almost exclusively land cases, despite having broad criminal and civil jurisdiction.
- Centralization of the administration of Local Courts has turned them into poor cousins of the Magistrates’ Courts, rather than a community-oriented lay court.
- Local Courts have manageable caseloads, yet there are significant backlogs, delays and cancellations. Substantive decisions are rarely made – only 4 trials were held in 2011/2012.
- Citizens are filing cases in Magistrates’ Courts instead of Local Courts; 30% of the cases filed in the Magistrates’ Courts are within the jurisdiction of Local Courts.
- Local Courts are costly to operate and have trouble executing their budget: The cost per sitting in Eastern District in 2012 was SBD$96,058 (USD$12,872); while SBD$1.5 million (USD$186,000) was budgeted in 2011, most was subject to a virement to Magistrates’ Courts.

3.1.1 Jurisdiction, Composition and Administration

Local Courts are established under the Local Courts Act. In theory, their jurisdiction is broad – they may hear criminal cases with penalties of up to 6 months imprisonment or a fine of up to SBD$200 (USD$27), and civil disputes involving damages of less than SBD$1000 (USD$135). They also have exclusive jurisdiction over all civil matters in connection with customary land, and it is these cases that make up nearly their entire caseload today. Customary land cases submitted to the Local Courts are required to be reviewed first by local authorities (meaning a body of chiefs).

Local Courts are composed of lay justices from the geographic area in which the court is located, who are appointed by the Chief Justice. A hearing requires the presence of at least three justices from the relevant jurisdiction. Justices receive a sitting allowance when hearings take place. The operation of Local Courts is the responsibility of the Honiara-based Chief Magistrate. Local Court clerks, based in the Central Magistrates’ Court in Honiara and in other provincial Magistrates’ Courts, support their administration. Financial and administrative control rests with the Chief Magistrate who also has the responsibility to advocate for additional finances or ensure adequate funding under budgetary processes. Final budgetary

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10 A detailed overview of the historical evolution of Local Courts and aspects of their contemporary operation can be found in Evans, Goddard and Paterson (2010, 10) available at www.worldbank.org/justiceforthepoor.
11 Sentences of over two months imprisonment are to be confirmed by a Magistrate.
12 Under s254 of the Land and Titles Act [CAP 133] customary Land is land held according to kastom. Approximately 87 percent of land in Solomon Islands is said to be held according to customary tenure. Access to and control over customary land depends largely on social norms, hierarchies, and kinship systems. In Solomon Islands, large territories are very often associated with a kin group, and particular areas within those territories (notably land for gardening or housing) is more firmly associated with particular individuals or families.
allocations for the courts ultimately rest with the Executive Management Team of the National Judiciary and the Ministry of Finance and Treasury.

As noted in Section 2, the number of Local Courts has decreased dramatically since 1978. Presently (table 1), only fourteen Local Courts are operational. Local Courts sit irregularly and usually in the provincial capitals, alongside Magistrates’ Courts. Sittings are often scheduled to coincide with Magistrates’ Court circuits from Honiara. While this is ostensibly so that training can be done for justices simultaneously, it is a significant limitation. This is an important contrast to earlier periods when they sat in village communities and were organized by local level authorities. The centralization of the administration of Local Courts has had a major impact on their caseload and functionality. Scheduled sittings of Local Courts are frequently cancelled due to the failures of central administration. Court clerk tasks are largely determined and dictated by the Central Magistrates’ Court, rather than the needs of Local Courts. As seen in table 3, of the 86 sittings scheduled for 2011 and 2012 only 20 were held. This means that parties and witnesses may travel to the court at their own expense only to find that their matter will not proceed. This may discourage them from attending subsequent planned sittings contributing to a vicious circle of backlogs.

The centralized location of Local Courts and frequent cancellations further contributes to their limited use. Despite their broad jurisdiction, today Local Courts hear almost exclusively customary land cases, with a small number of civil cases and virtually no criminal matters. As will be seen below, 30 percent of the cases filed in Magistrates’ Courts fall within the jurisdiction of Local Courts, indicating that people are choosing not to file in Local Courts. Other criminal, civil and domestic cases are presumably resolved locally by non-state actors or left unattended.

Table 1: Established CLACs and Local Courts

<table>
<thead>
<tr>
<th>Judicial District</th>
<th>Province</th>
<th>CLAC</th>
<th>Local Court Operational</th>
<th>Not Operational</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Outer</td>
<td>Temotu</td>
<td>Eastern</td>
<td>Santa Cruz, Reef Islands</td>
<td>Vanikoro, Duff Island &amp; Utupua</td>
</tr>
<tr>
<td>Eastern Inner</td>
<td>Makira-Ulawa</td>
<td>Makira Ulawa/Ugi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malaita</td>
<td>Malaita</td>
<td>Malaita</td>
<td>Malaita</td>
<td></td>
</tr>
<tr>
<td>Central</td>
<td>Guadalcanal</td>
<td>Guadalcanal</td>
<td>Guadalcanal, Honiara</td>
<td>Isabel</td>
</tr>
<tr>
<td></td>
<td>Isabel</td>
<td>Isabel</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Central</td>
<td>Central Islands</td>
<td>Russell/Savo, Ngella</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rennell/Bellona</td>
<td>Rennell/Bellona</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western</td>
<td>Western Province</td>
<td>Western CLAC</td>
<td>Ghorena, New Georgia Shortlands</td>
<td>Laura</td>
</tr>
<tr>
<td></td>
<td>Choiseul</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: National Judiciary
3.1.2 Local Court Case Typologies

Most pending lists do not provide information on the types of cases filed with the Local Court. There is some detail on types of cases filed in Malaita. A 2007 list for Malaita includes a paragraph summary on each of the 67 cases filed with the court. The following categories exist:

- Almost 60 percent of cases involved claims of land ownership. These cases involved not only ownership claims between competing land ownership groups but also a number of claims within families relating to fragmentation of customary land or disputes relating to co-ownership. They also incorporate a number of related trespass claims.
- 24 percent of cases involved claims relating to logging. These claims normally also are related to ownership as different interests contest ownership in order to exercise rights in relation to logging.
- Boundary disputes represent almost 10 percent of cases.
- Similarly almost 10 percent of cases involved disputes on land relating to access for commercial, government or church infrastructure.

**Table 2: Pending Cases by Year Filed (Malaita): Local Courts, CLACs and Magistrates’ Court**

<table>
<thead>
<tr>
<th>Cases Pending (date filed)</th>
<th>&lt;99</th>
<th>00-04</th>
<th>05-09</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land (ownership, boundary, genealogy)</td>
<td>21</td>
<td>11</td>
<td>36</td>
<td>9</td>
<td>7</td>
<td>17</td>
<td>101</td>
</tr>
<tr>
<td>Civil (taboo site, bride price, sorcery)</td>
<td>8</td>
<td>4</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>Customary Land Appeal Court</td>
<td>19</td>
<td>3</td>
<td>22</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>52</td>
</tr>
<tr>
<td>Magistrates’ Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auki - Criminal Matters</td>
<td>58</td>
<td>201</td>
<td>71</td>
<td>107</td>
<td>127</td>
<td></td>
<td>564</td>
</tr>
<tr>
<td>Atori (substation) – Criminal</td>
<td>16</td>
<td>30</td>
<td>2</td>
<td>2</td>
<td>7</td>
<td></td>
<td>57</td>
</tr>
<tr>
<td>Malu’u (substation) – Criminal</td>
<td>36</td>
<td>35</td>
<td>14</td>
<td>2</td>
<td>3</td>
<td></td>
<td>90</td>
</tr>
<tr>
<td>Maka (substation) – Criminal</td>
<td>3</td>
<td>34</td>
<td>0</td>
<td>11</td>
<td>1</td>
<td></td>
<td>49</td>
</tr>
</tbody>
</table>

*Source: data prepared by Malaita Court*

A study of case files in Malaita and Makira undertaken in 2008 provides additional perspectives to this categorization (see Krone 2008). First, overlapping with the categories outlined above there are procedural claims parties make when filing matters in the Local Courts. These claims predominantly cover: differing interpretations of kastom; issues relating to conduct of panels of chiefs; failure to observe previous court decisions; and failure of parties to attend a panel of chiefs.

Second, in some instances the categorization does not reflect the underlying cause of the dispute. In particular, several ownership cases appear to be driven by disputes relating to logging agreements. Validating these agreements requires a determination of ownership in the first instance. As a result the logging claim may not be apparent in a case categorized as an ownership dispute. Judging from the case file analysis of Malaita and Makira, these instances do exist but do not appear to drive the majority of cases. This is substantiated by the fact that the number of pending cases is distributed proportionally across the different jurisdictions (see table 3 below) despite logging being more prevalent in particular provinces.
Third, a significant number of the cases involve long-standing, ongoing disputes that have included frequent representations to courts, numerous efforts by chiefs to mediate and fragmentation into smaller disputes. Almost 30 percent of cases filed have involved some form of application to the High Court at some point in relation to the land in question or a larger parcel of land that also comprises the claim in question. This does not mean that the disputes are impacting parties on a daily basis, but rather that they flare up, lead to some action, are managed and then re-emerge again at a later date, in some cases years or even decades later. In any case the underlying dispute remains and feeds into subsequent claims.

Information obtained over the course of this research in other provinces anecdotally substantiates the above information, with some caveats. It is likely that there will be some variation by province in terms of types of land disputes. In particular, the proportion of logging-related disputes varies significantly across geographic areas. Anecdotally, it would also appear that a more sizeable proportion of disputes are related to boundary issues.

Across the country, there are a small number of civil disputes being filed with the local courts. In terms of relative numbers these disputes are minor compared to land disputes. For example, about 20 percent of matters pending before the Malaita Local Court involve civil claims. Similarly, 10 percent of Eastern Inner Local Court cases in 2011 appear to have been civil. In the case of Malaita, these civil claims are almost exclusively related to customary matters: destruction of taboo sites, bride price and sorcery. Very few other civil claims are referred to the local courts.

Table 3: Sittings, Local Court Cases Heard and Pending Matters per Court District (2011-12)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Outer</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Eastern inner</td>
<td>8</td>
<td>2</td>
<td>80*</td>
<td></td>
<td>5</td>
<td>2</td>
<td>65</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>Malaita</td>
<td>36</td>
<td>2</td>
<td>1</td>
<td>48</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>21</td>
<td>124#</td>
</tr>
<tr>
<td>Central</td>
<td>10</td>
<td>5</td>
<td>19</td>
<td></td>
<td>5</td>
<td>3</td>
<td>19^</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>20</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>132@</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>11</td>
<td>25</td>
<td>9</td>
<td>410</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Local Court KPI Annual Reports

* includes 72 land and 8 civil cases
# includes 23 civil cases
@ pending figures for Western from KPI Return
^ Figure for Central 2012 is unclear and may represent double counting from 2011

The criminal jurisdiction of Local Courts is dormant. There is no evidence of a criminal case having been filed with local courts in the recent past. In the past, district constables had authority to arrest people and prosecute them before the local court. Once area councils ceased to exist so did this authority. In theory, the authority could have been transferred to the police but this has not occurred. It is unclear if this was the result of a policy decision not to use the criminal jurisdiction of local courts or it just became accepted practice that matters were referred to the magistrate’s court (or not dealt with).
3.1.3 Caseload and Listings

Despite the accumulation of cases from a period of relative inactivity, the Local Courts’ caseload is low. While land cases are often said to ‘overwhelm’ the courts, that seems unlikely given the low quantity of matters being heard. Nonetheless, the Local Courts are characterized by long delays and an accumulating backlog. When sittings are held, they produce few decisions and most are procedural rather than substantive (i.e. a definitive ruling).\textsuperscript{13} In 2011 and 2012, only four trials were heard nationally.

The arbitrary case listing process contributes to the low rates of dispositions. In relation to procedural matters, the local court clerk puts together a list of cases. In theory, the clerk should follow a protocol for selecting cases. This could involve starting with the oldest cases and working forward or vice-versa or it could involve focusing on particular types of cases. In Makira, it appears the clerk undertook a form of initial assessment to determine which cases would be most appropriate to list. Elsewhere, the clerk appears to have identified cases purely by determining how easily the parties involved can be contacted. Parties they know, or who happen to be luckily (or unluckily as the case may be) walking down the street on that day are added to the list.

Notably, much of the backlog is old: over 70 percent of land cases were filed over eight years ago, with approximately 20 percent filed at least 15 years ago. A concerted effort to clear the old backlog could lead to several scenarios. One is that improved service delivery from local courts will lead to increases in the number of cases being filed. Numbers of cases filed have declined over recent years as people have had little confidence that their case would be heard in a reasonable period of time. As people hear that the courts are becoming increasingly operational, this may lead to an increased number of cases being filed. The table above, for example, shows a spike in number of cases filed in 2012. It is possible that this has occurred as people respond to sittings that took place in 2011, although another plausible explanation is that parties were re-filing claims that were struck out on procedural grounds.

Another scenario is that returns on progress will become less obvious as procedural matters are dealt with. The number of pending matters will decrease significantly and the courts will need to focus on more substantive issues, such as trials, that they have, to date, not necessarily been capable or willing to deal with.

\textsuperscript{13} The two main types of procedural decisions relate to: (1) s12 of the Local Court Act, which requires parties to provide that a decision of the chiefs was sought but could not be reached, prior to using the court. Courts strike out cases if there is no statement confirming this or the statement is incomplete; and (2) s14 of the Act, which enables parties to record decisions of chiefs with the court. In a number of cases the courts had concerns about the authenticity of the decision, referring the matter back to the chiefs through the parties.
Box 3: Initiatives to Reduce the Backlog

In 2011, there was an initiative to address the backlog of cases in Makira-Ulawa Local Court. The initiative was organized by the resident magistrate. Funding was made available through the Central Magistrate’s Court. Two sittings were held in 2011. In one sitting, 64 pending cases were called over. The Local Court struck out 25 of those cases on the grounds that s14 of the Act had not been complied with. Another 26 matters were struck out for not being consistent with s12.

This process immediately leads to a significant reduction in the backlog of pending cases. However, the process needs to be undertaken with care. Parties have paid filing fees and tolerated lengthy delays to have their cases heard. Striking out these cases in an arbitrary manner creates further injustices. This is particularly the case when the court bears some responsibility for the procedural weaknesses that lead to cases being struck out. For example, where cases have consistently been filed without sufficient information about chiefly decisions, the court has some responsibility for either accepting the files or failing to adequately notify the parties. Similarly, where parties have waited years for their case to be heard, a random court notice a week before a case requiring parties to appear and subsequent striking out where parties fail to appear is likely to reflect poorly on the court.

Parties should be provided with sufficient upfront notice. Decisions should also be ‘without prejudice’, allowing parties to re-file matters.

For land-related cases, especially for resource extraction related disputes, some parties may welcome delay as a failure to decide the matter may allow contested use of the land to proceed. However, for smaller cases, with a limited number of parties, delay and uncertain outcomes generally only have disadvantages. Land cases of either type are likely to involve significant financial costs for the parties since they pay transport, accommodation and food costs for disputants and witnesses. Similarly, the effects of delay on social dynamics – whether it reduces tensions or aggravates them – are uncertain. Arguments from observers go in both directions, but the lack of an alternative comparison makes it difficult to determine whether it is more beneficial for social order to resolve disputes determinatively in an efficient manner or to allow them to simmer over a period of time.

3.1.4 Finances

Financial constraints do not appear to be a significant indicator of performance either. This is explored more fully below. Use of budgets for local courts is an ongoing problem. Local court budgets form part of the budgets of each district magistrates’ court. In recent years, expenditure for the local courts has been well below budget allocations. In 2011, SBD$1.49 million (USD$184,760) was budgeted for local courts but only SBD$180,888 (USD$22,430 or 12 percent of the total) was spent. Similar rates exist for 2009 and 2010. As a result, although approximately 10 percent of the overall budget of the National
Judiciary has been allocated for local-level court activities, in recent years less than two percent of the total budget\textsuperscript{14} was spent on Local Courts (see Williams 2013).

The main reason for the under expenditure is a lack of capacity to deal with financial administration. Local Court clerks draft budgets for sittings in their district and submit these to the National Coordinator in Honiara. The 2013 budget bid, for example, ranged from SBD$179,436 (USD$24,403) for Eastern Inner Local Court to SBD$307,630 (USD$41,837) for Western Local Court. On most occasions, the funds are not forthcoming, primarily for two reasons. First, there is insufficient forward planning by staff in the Central Magistrates’ Court. Requests for funding are submitted in an ad hoc manner and often quite late. Second, court staff struggle with imprest accounts, through which funds are made available. Funds can only be made available once previous disbursements are acquitted, yet these acquittals frequently remain outstanding.

It must be emphasized that increasing expenditure will not automatically result in improved performance. Actual expenditure increased considerably in 2012 to SBD$663,468 (USD$88,904), over three times the expenditure for 2011.\textsuperscript{15} For the first time since 2009, expenditure for Local Courts was above the initial budget allocation (by over 20 percent). Despite this, as shown in table 3 above, there was actually a decrease in Local Courts’ sittings. While 2012 included two trials, which are expensive, this alone does not account for the increase in overall expenditure.

Local court sittings are costly in their current format. The estimated cost to the court of a 5-day sitting is approximately SBD$35,000 (USD$4,725). This is significantly more than a sitting of the magistrates’ court. Almost 60 percent of these costs go towards travel (18 percent) and accommodation (39 percent), which are high given the geographic and supply constraints in Solomon Islands. Budget flexibility is low given that sitting, subsistence and accommodation allowances are all prescribed by legislation.

\textit{Table 4: Comparison of Local Court costs per sitting (2011 & 2012)}

<table>
<thead>
<tr>
<th>Local Courts</th>
<th>No of Sittings</th>
<th>Budget Cost SBDS (USDS)</th>
<th>Cost Per Sitting SBDS (USDS)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2011</td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>2</td>
<td>$32,224 ($3,996)</td>
<td>$16,112 ($1,998)</td>
</tr>
<tr>
<td>Malaita</td>
<td>2</td>
<td>$11,384 ($1,411)</td>
<td>$5,692 ($706)</td>
</tr>
<tr>
<td>Central</td>
<td>5</td>
<td>$134,126 ($16,631)</td>
<td>$26,825.2 ($3,326)</td>
</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>$3,155 ($391)</td>
<td>$1,577.5 ($196)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2012</td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>2</td>
<td>$192,116 ($25,744)</td>
<td>$96,058 ($12,872)</td>
</tr>
<tr>
<td>Malaita</td>
<td>4</td>
<td>$154,712 ($20,731)</td>
<td>$38,678 ($5,183)</td>
</tr>
<tr>
<td>Central</td>
<td>3</td>
<td>$237,606 ($31,839)</td>
<td>$79,202 ($10,613)</td>
</tr>
<tr>
<td>Western</td>
<td>0</td>
<td>$79,034 ($10,590)</td>
<td>N/A</td>
</tr>
</tbody>
</table>

\textit{Source: Williams 2013.}

\textsuperscript{14} Using figures that include central costs of headquarters.

\textsuperscript{15} The 2012 budget was considerably lower than 2011. The budget in 2011 included a substantial one-off allocation for training to reduce the backlog in local courts that eventually was not used.
3.1.5  Key Factors related to Performance

Several factors contribute to the Local Courts’ deficient performance. Notably, these do not include insufficient numbers of personnel. Although the numbers of Local Court justices are lower than they were twenty years ago, they are not unreasonable considering their caseload. Staffing numbers are depicted in table 5 below. The number of clerks is less problematic than the way they are used. First, their location does not appear to be matched to need; it is inexplicable why there are five clerk positions in Malaita for 30 justices while there are 2 clerks for 87 justices in Western, and no clerk positions in Eastern Inner. Second, the physical location of clerks likely contributes to lesser demand since filing a case often requires travel to provincial capitals for potential court users. Third, and most significantly, the tasks of clerks are determined by priorities set in the Central Magistrates’ Court rather than needs of Local Courts or the geographic areas they serve.

Perhaps the main factor in their poor performance is that the Local Courts are no longer local. While justices do come from throughout each judicial district, they only meet in provincial capitals on a relatively unpredictable sitting schedule. Clerks act on instructions from the Central Magistrates’ Court, which does not prioritize Local Court and user needs. Overall responsibility lies with the Chief Magistrate who also has a range of other issues to deal with. Responsibility is delegated to others who, although committed, lack experience and authority to be able to pursue the administration of the Local Courts. Local Court clerks across the country have limited authority and efforts to show initiative invariably come up against administrative barriers. The guidance provided to staff is ad hoc and generally focused on addressing immediate needs rather than planning ahead.

The Local Court process is formalistic, with decisions dependent on guidance from Honiara. There are indications of Local Court justices primarily following directives of individual magistrates in administrative hearings and those directives may vary from province to province depending on the resident or visiting magistrate. The negative impacts of an emphasis on process over substance include a tendency to strike out cases for technical reasons which the parties may not understand. When sittings do proceed there is also a perverse incentive for Local Court justices, who are paid a daily allowance, to string out hearings. The Local Courts have a broad jurisdiction, most of which is not being used. Thus, they are not serving what was once their primary purpose of providing justice in an accessible, timely and equitable fashion. However, this partial usage (predominantly for customary land cases) is also a result of court users voting with their feet. Getting them to use the Local Courts for non-land cases would require overcoming whatever is influencing their current choices, most likely all the problems listed above, plus, in the case of criminal matters, the fact that police no longer appear in Local Courts to prosecute matters. Poor record keeping makes it impossible to say whether Local Courts deal better with non-land cases, and this would merit more exploration.

Several lessons can be drawn from the experience of similar local level courts in Pacific countries. First, local courts in Solomon Islands are not alone in their struggles to function effectively. Local-level courts in a number of other countries are either inactive or have an uncertain future. Those that are active provide services that are in demand, either from the population itself or by local government.
Second, only the local courts in Solomon Islands and the island courts in Vanuatu do not sit at an accessible, local level. All of the other courts are located in villages and can be accessed at reasonable costs. In some instances (Papua New Guinea, Samoa), the courts sit in village buildings or in a communal village location. Elsewhere (Tuvalu, Federated States of Micronesia) they are provided sitting rooms by the local government.

Third, only courts that have ownership from parties beyond the judiciary continue to function. The most active courts draw a significant degree of their legitimacy from non-judicial sources. The village Fono in Samoa is a customary hearing that exists in every village and deals with a range of matters covering judicial, executive and legislative powers. The Fono’s primary source of ownership is from villagers themselves. The Village Fono Act acknowledges this, with government providing the Fono with broad areas of responsibility. The local courts in Pohnpei and Tuvalu provide services to local government in enforcing by-laws and maintaining social order. In return the local governments provide salaries for judges (in Pohnpei), courtrooms and manage administration of the courts. In Papua New Guinea, the Village Courts are part of the Department of Justice but are administered by staff responsible to district governments. These multiple sources of ownership are crucial to the courts continued existence.

**Table 5: Local Court Justices and Clerks and CLAC Justices per District**

<table>
<thead>
<tr>
<th></th>
<th>Justices Male</th>
<th>Justices Female</th>
<th>Number trained 2011</th>
<th>Number trained 2012</th>
<th>Clerk (filled)</th>
<th>Clerk (vacant)</th>
<th>CLAC 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eastern Outer</strong></td>
<td>17</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td><strong>Eastern inner</strong></td>
<td>57</td>
<td>2</td>
<td>12</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td><strong>Malaita</strong></td>
<td>30</td>
<td>0</td>
<td>12</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td><strong>Central</strong></td>
<td>32</td>
<td>1</td>
<td>7</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Western</strong></td>
<td>81</td>
<td>0</td>
<td>14</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td><strong>National</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>36</td>
</tr>
</tbody>
</table>

Sources: Local Court (2012); Evans (2010); Maina (2011); Customary Land Appeals Court (2012).

### 3.2 Customary Land Appeals Courts (CLACs)

**Box 4: Key Findings: Customary Land Appeals Courts hear mainly timber rights appeals**

- CLACs are underutilized: there are 6 CLACs across most province capitals but together they disposed of only 28 cases in 2011.
- CLACs mostly hear appeals from province government administrative timber rights hearings, although they also have jurisdiction to hear appeals from Local Court decisions on land.
- The number of hearings is restricted by requirements for a magistrate to be on the panel.
- There is no management structure below the Chief Magistrate which specifies who is responsible for the operations of CLACs. This partly explains the very poor data available, but it is clear that sittings are expensive.
3.2.1 Jurisdiction, Administration and Caseload

CLACs are established under the Land (Amendment) Ordinance (1972) to hear appeals from Local Court decisions involving customary land (e.g. decisions relating to boundaries, ownership, use or interest in customary land).\(^{16}\) CLACs also hear appeals of provincial government administrative timber rights hearings regarding, inter alia, authorization to landowners to negotiate for the disposal of timber rights for purposes of logging on customary land.\(^{17}\) Court hearings require a panel of at least five local lay justices and one magistrate – typically the resident magistrate, or a Principal Magistrate on circuit from Honiara. Given that there are only 7 magistrates in Solomon Islands, this requirement creates some challenges for the operation of CLACs. Over time the sitting magistrate has also come to act as the clerk for that case. As with Local Courts, justices receive a sitting allowance. CLAC sittings are conducted in provincial capitals, in this case logically, to coincide with a magistrate’s availability and most often rely on magistrates travelling from Honiara. Again, magistrates appear to play the central role in how cases are heard and what decisions are taken. However, some interviewees indicated that justices have more say when issues of kastom are involved.

It is even more difficult to make sense of the current operations of CLACs in comparison to Local Courts. Although the Chief Magistrate is ultimately responsible for their operations, no one is tasked to ensure their operation on a day-to-day basis. Other magistrates and clerks become involved at different times. These tasks are in addition to their normal priorities and are generally undertaken in an ad hoc manner. Below the Chief Magistrate there are no positions tasked with ensuring the overall effective performance of the CLACs.

While data on caseload is unreliable and inconsistent, it is clear that most of the workload in the recent past has been focused on hearing appeals from timber rights hearings. After all, only a very limited number of Local Court trials occur which would make appeals from these decisions to the CLACs rare. It is claimed that of the 68 cases currently pending with the Eastern CLAC, 59 are appeals from timber rights hearings. Most cases being appealed from timber rights hearings question the ownership rights of the parties receiving licenses to undertake logging. These issues focus either on whether the individuals seeking to obtain licenses have authority to negotiate on behalf of their tribe or whether those tribes actually have land ownership claims over the land. Although these matters involve complex issues of kastom, they also are often driven by disputes over the distribution of royalties and other fees paid by logging companies (Allen 2013).

Data on current sittings is highly inconsistent, but it is safe to say that sittings are minimal. Figures from the Central Magistrates’ Court for 2011 indicate that five sittings took place across the country, disposing of 28 cases.\(^{18}\) The Annual Report for 2012 outlined only eight matters having been heard by CLACs, all in Malaita.\(^{19}\)

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\(^{16}\) S256 of the Land and Titles Act.

\(^{17}\) S10 of the Forest Resources and Timber Utilization Act.

\(^{18}\) It is not clear how this figure was determined. There do not appear to have been sittings for Western over this period. A number of cases were heard in Eastern Inner, but an actual list of completed cases has not been sighted. Three cases were completed in Malaita. Several sittings appear to have occurred in Central, but it is difficult to differentiate between pending and completed cases.

\(^{19}\) As discussed above, this figure appears not to include hearings of the CLAC in Eastern in 2012.
Of these matters only six were resolved. Yet, it is claimed that one sitting in Makira alone, in 2012 disposed of eight cases, all involving appeals from timber rights hearings (See Ehmann 2012).

3.2.2 Finances

The budget for CLACs is approximately one percent of the overall National Judiciary expenditure, not including overhead costs. Expenditure was SBD$44,568 (USD$5,571) in 2009, and SBD$30,305 (USD$3,758) for 2011. In 2012 expenditure increased significantly to SBD$204,347 (USD$27,382), but has not resulted in more sittings or a greater number of cases being resolved.

The primary expenditure items from the CLACs’ budgets are accommodation, travel, and subsistence and sitting allowances. As with Local Courts, the cost per sittings for CLACs is expensive, with a five-day sitting averaging SBD$25,845 (USD$3,489).

3.2.3 Factors Affecting Performance

There is a lack of clear accountability for the functioning of the CLACs. Both magistrates and clerks are asked to support the CLACs. However, managing CLACs is not their primary responsibility. As with the local courts, their support is driven by centralized decision-making rather than planned to address the needs of parties pursuing cases across the country.

A more substantive issue that is identified above is the relationship between magistrates and justices on the CLACs. Based on the cases observed, the magistrate tends to play a dominant role in most aspects of the cases. This may be a case of experienced lay justices deferring to the education and public status of magistrates and it may vary depending on the type of cases. It is not necessarily a problem to have magistrates driving a case and use lay-justices to provide social legitimacy to the final decision. There are costs involved, but there are also benefits. There may, however, be additional benefits to considering how the system can be re-crafted to encourage greater ownership of the CLACs by the lay justice.

Finally, the functioning of the CLACs faces the same types of administrative challenges that constrain the Local Courts. These constraints include financial and capacity issues in managing caseloads. But they also include the divergent incentives of different actors. The needs of the Court tend to be prioritized with insufficient consideration of the consequences on the parties.

3.3 Provincial Magistrates’ Courts

3.3.1 Jurisdiction, Composition and Location

Magistrates’ Courts have first instance jurisdiction in criminal and civil matters not specifically reserved for Local Courts or the High Court. This means they are limited to minor criminal cases and civil cases not including land ownership and boundary disputes (for which Local Courts have exclusive jurisdiction). They have no appellate jurisdiction.

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20 These cases were not documented in the annual reporting process.
21 The only exception is a recent policy change, whereby land acquisition cases are now referred to them.
The Magistrates’ Courts (Amendment) Act 2007 established the office of the Chief Magistrate and retained three levels of Magistrates which date back to the colonial period – Principal, First Class, and Second Class. These levels correspond with experience and affect the jurisdiction and sentencing powers as seen in tables 6 and 7 below. Only Principal Magistrates must have a law degree. The Judicial and Legal Services Commission is responsible for the appointment of Magistrates, their removal and disciplinary control (Constitution of Solomon Island, S 118). Magistrates who reside in provincial centers are called Resident Magistrates. Magistrates may be assigned or transferred by the Chief Magistrate to any particular court district.

**Box 5: Key Findings: Limited access and significant delays lead to limited demand**

- The three functioning Magistrates’ Courts outside of Honiara handle mostly criminal cases.
- The workload of Resident Magistrates can be handled well within current resourcing, but backlogs are significant and clearance rates are low.
- 30 percent of cases filed in Magistrates’ Courts could be filed in Local Courts, indicating greater accessibility and/or confidence in Magistrates’ Courts.
- 26 percent of cases filed in Magistrates’ Court require a Principal Magistrate and are therefore held back for Court Circuits.
- Staffing remains a significant problem: Presently seven magistrates cover the whole country, three of whom are second class, with limited jurisdiction.
- Court Circuits are frequently cancelled due to unavailability of magistrates and lawyers, lack of police preparation and administrative problems, leading to significant costs, delays and frustration.

**Table 6: Criminal Sentencing Powers of Magistrates According to Class**

<table>
<thead>
<tr>
<th>Class of Magistrates</th>
<th>Maximum imprisonment and/or fine</th>
<th>Maximum – 2 or more offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Magistrates</td>
<td>5 yrs and/or SBD$50,000 (USD$6,750)</td>
<td>10 yrs and/or SBD $100,000 (USD$13,500)</td>
</tr>
<tr>
<td>First and Second Class Magistrates</td>
<td>1 yr and/or SBD$10,000 (USD$1,350)</td>
<td>2 yrs and/or SBD$20,000 (USD$2,700)</td>
</tr>
</tbody>
</table>

**Table 7: Civil Jurisdiction of Magistrates According to Class**

<table>
<thead>
<tr>
<th>Contract or tort cases</th>
<th>Maximum value of property, debt or damage claimed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Magistrates</td>
<td>SBD$50,000 (USD$6,750) (or if parties agree, up to SBD$100,000 / USD$13,500)</td>
</tr>
<tr>
<td>First and Second Class Magistrates</td>
<td>SBD$20,000 (USD$2,700)</td>
</tr>
<tr>
<td>Cases between landlords and tenants</td>
<td>Maximum annual value or rent</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Principal Magistrates</td>
<td>SBD$50,000 (USD$6,750) (or if parties agree, up to SBD$100,000 / USD$13,500)</td>
</tr>
<tr>
<td>First Class Magistrates</td>
<td>SBD$20,000 (USD$2,700)</td>
</tr>
<tr>
<td>Second Class Magistrates</td>
<td>SBD$5,000 (USD$675)</td>
</tr>
</tbody>
</table>


There are five permanent Magistrates’ Courts located across the country: Honiara (Central District), Auki (Malaita District), Gizo (Western District), and Kirakira and Lata (Eastern District). There are currently seven Magistrates across the entire country: four principal magistrates and three second class magistrates. In Honiara there are three principals (including a Chief Magistrate) and a second class magistrate. In Auki there is one principal magistrate. Gizo and Kirakira have one second class magistrate each.22 Resident Magistrates also conduct “internal circuits” which entails the Resident Magistrate travelling to places within the district where he or she is posted. Honiara-based Magistrates also conduct Court Circuits across the Central District, as well as to other districts to hear cases that are beyond the jurisdiction of the Resident Magistrate.

3.3.2 Caseload and Listings

The caseload of the Magistrates’ Courts is largely – over 80 percent – criminal. While data is insufficient to generate a reliable breakdown of cases, the following points can be made, based on a sample caseload of 2011 and 2012 files in Gizo Magistrates’ Court and general observations:

- Liquor related crimes are the single most common offense. In Gizo, they comprised 50 percent of the caseload in 2011 down to 25 percent in 2012.
- In Gizo, family disputes and violence against women increased to approximately 20 percent of the 2012 caseload. This is a positive trend, but still perceived as insignificant compared to the incidence of domestic violence reportedly occurring in the community. All family violence defendants were male.
- Other common offense types include common assault, intimidation, theft, property damage and nuisance.
- Many matters heard by Magistrates’ Courts – an estimated 30 percent of their caseload – could be heard by Local Courts. Local Courts’ delays, limited reach and long periods of inactivity may motivate people, including the police, to turn to Magistrates’ Courts.
- Serious criminal cases require committal proceedings to the High Court. In the years 2008-2012, committals have only come from Gizo and Honiara, despite serious indictable sexual violence cases pending in other jurisdictions. This is likely due to the presence of a permanent public solicitor in Gizo, while other districts require deployment from Honiara for committal proceedings.

22 SIG is currently trying to recruit eight more magistrates.
Civil cases are far less frequent and are composed largely of domestic and debt matters. The following observations can be made based on files sampled in Gizo:

- Twenty percent of cases are very small claims; sixty percent of cases relate to claims over SBD$3,000 (USD$387).
- Debt cases include: recovery of shop credit, telecommunications debt recovery, dishonored cheque recovery, compensation for damage to crops and trees, and civil compensation for criminal acts.
- Domestic cases include primarily maintenance and garnishee orders.

**Figure 2: Incoming Workload – Civil**

![Bar chart showing civil registrations for Auki, Makira, and Gizo in 2011 and 2012, with data on debt and domestic cases.

Source: Malaita data from RAMSI Adviser; Makira data obtained through CFA at Makira Magistrates’ Court from electronic records; Gizo data obtained through CFA at Gizo Magistrates Court from registers. NB: Auki figures are estimates based on analysis of pending caseload and disposals. Blank columns indicate no data disclosed. Data from Malaita for 2011 is not available.

The performance of Magistrates’ Courts varies across districts, but despite a reasonable caseload, their aging lists are indicative of an accumulating backlog. As seen in figure 3 below, criminal workloads for resident Magistrates are not insignificant (taking into account that, except in Honiaria, they rely on a single Magistrate). However, even the relatively higher numbers of new filings in Gizo are not so large as to exceed the reasonable ability of a single Magistrate to handle them.
While data is unreliable, pending caseload for both criminal and civil matters in three judicial districts is depicted in table 8 below.

**Table 8: Pending Civil and Criminal Caseloads**

<table>
<thead>
<tr>
<th>Location</th>
<th>Pending Criminal</th>
<th>Pending Civil Debt</th>
<th>Pending Civil Domestic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gizo (Western District)</td>
<td>154(^{23})</td>
<td>53</td>
<td>45</td>
</tr>
<tr>
<td>Malaita (Malaita District)</td>
<td>399(^{24})</td>
<td>25</td>
<td>n.d.</td>
</tr>
<tr>
<td>Makira (Eastern District)</td>
<td>202(^{25})</td>
<td>63</td>
<td>55</td>
</tr>
</tbody>
</table>

Source: National Judiciary

Malaita District, which has the heaviest pending caseload, would need to dispose of two cases per day, plus the incoming caseload of one case per day in order to reach maximum efficiency. Adjudicating the equivalent of three criminal cases per day is within the capacity of a permanent full time resident and visiting Principal Magistrate.

On the basis of available data, clearance rates were also calculated for 2011 and 2012. A clearance rate is a measure of efficiency used to determine whether the system is keeping up with demand. It is simply the ratio of cases disposed of to entering cases. When it is 100 or more it shows that the court is not falling behind (i.e. ratios in excess of 100 indicate that courts are disposing of backlogged cases). One caveat

\(^{23}\) As at February 2013 and including registered outer island cases (e.g. Noro, Seghe, Munda).

\(^{24}\) As at December 2012, including Malu’u, Atori, Maka and Auki.

\(^{25}\) As at December 2012 not including outer island cases.
should be noted as regards civil cases. Given delays, many of these may be settled out of court, but unless withdrawn will be reflected in the clearance rates as undisposed. In some systems (e.g. the U.S.) out-of-court settlement is encouraged by judges and regarded as a success when it occurs. However, given that it may only be a result of unconscionable delays in Solomon Islands, it should not be regarded so positively absent more information.

Although performance varies in the three districts reviewed, Western (Gizo) is an outlier both as regards caseload and performance. Gizo receives over four times the number of incoming civil cases, and twice the number of incoming criminal cases as Malaita, although the later has 44 percent more population. Gizo also has a higher clearance rate than the other courts and does not have a significant backlog, although its clearance rates (under 100) suggest it may be accumulating one. Gizo has three times as many disposals per day as Makira. Part of Gizo’s success may be a low level of adjournments, an average of less than four per case for case files sampled. Other factors include a lower percentage of cases from the outlying islands as compared to Makira and Malaita, and a higher number of court circuits (10 for Gizo in 2012 as compared to three for Makira). Also, Gizo had additional support from RAMSI; four of its 10 circuits included RAMSI-supported (e.g. international) Principal Magistrates. Finally, Gizo has a permanent office of the Public Solicitor to support committal proceedings (to the High Court) whereas Makira requires the deployment of a Public Solicitor from Honiara.

### 3.3.3 Finances

As funding for Magistrates’ Court Circuits comes from the budget of the Central Magistrates’ Court, it is difficult to provide an accurate picture of expenditure against allocations for the operations of province Magistrates’ Courts alone. Magistrates’ Courts expenditure overall increased significantly in 2012. The highest proportion of expenditure is for payroll and allowances (62 percent in 2012). Non-payroll funding allocations, which cover travel and accommodation costs associated with Court Circuits, vary widely for Magistrates Courts across the different districts.

Circuit Court costs are considerably higher than the permanent Magistrates’ Court sitting costs. The main costs for these circuits are for accommodation and travel. One circuit sitting could amount to SBD$40,000 (USD$5,400) when police, prosecutor and other agencies’ costs are included. The frequent adjournment of cases and cancellation of circuits affects budget execution rates and of course has further costs for parties who may have travelled to court locations. The total cost of a five-day sitting for a permanent province Magistrate court is approximately SBD$8,423 (USD$1,137), significantly less than a Local Court sitting (SBD$35,000 / USD$4,725).

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26 Parties may be more systematic about withdrawing cases in the U.S., but there is still a black statistical hole there as to how many of them settle. Those who have studied it (Kritzer 1986; Eisenberg and Lanvers 2009) suggest that the settlement rate is less than 100 percent and most probably about 60.

27 Backlog is a relative term but was considered here as a function of pending to disposal ratio, with 80 percent as the upper limit. If civil and criminal are disaggregated, Gizo does have a backlog in the former, but taken together the ratio is lower.
3.3.4 Factors Affecting Performance of Magistrates’ Courts

The relatively low caseloads in Magistrates’ Courts may well be related to delays, backlogs and lack of satisfaction with performance. Police frequently commented that it is not worth their trouble to file new charges, act on warrants or issue summons in light of delays and frequent circuit cancellations. Solomon Islanders’ may well avoid using the courts after seeing adjournments and cancellations, especially when it involves significant expense to travel to the court in the first place. Key obstacles to effective performance include:

Contraction and Centralization of Services

At the macro political and social levels, the progressive centralization and growth of central government functions has occurred in tandem with the progressive withdrawal of court services in the provinces. The post-colonial dismantling of Resident Clerks at the village level and decommissioning of the Magistrate’s Court in Lata in Outer Eastern District provide lucid examples of how services contracted.

In former times Makira had 11 resident clerks deployed around the island, in addition to clerks located in Kirakira. Whilst these clerks were principally occupied by Local Court activities, they supported the organization of Magistrates’ Courts circuits and issued relevant process. In this structure, the presence and coverage of the court at the village level was constant and services were well within the physical reach of the entire population of the island of Makira. The following diagram indicates coverage of Makira, which is only one of the islands of Eastern Inner Court District.

Figure 4: Contraction of Services in Makira

Source: Information from interviewee at Makira.
It is understood that restructuring was expected to create a less costly judiciary by eliminating permanent clerks and some of the regular courts with larger, better managed district centres, better able to provide economies of scale through increased servicing from central Honiara. The removal of clerks sought also to lessen problems associated with conflicts of interest that abound in small villages and rural communities and the potential of corruption. For citizens of the island of Makira, the benefits of this strategy are not tangible, particularly for those on the Weather Coast, which have not seen any court presence since the withdrawal of Court Clerks.

Most Magistrates’ Court sittings are held in provincial capitals and because of the infrequency of internal court circuits the delays in hearings for those located a long distance from the capital may be extensive. Accordingly, parties either must wait or file their case for hearing in the provincial capital where the court is located. Thirty-eight percent of people live in provinces which do not have a resident Magistrate (Table 9).

**Table 9: Population & Resident Magistrate Locations**

<table>
<thead>
<tr>
<th>Provinces without a Resident Magistrate</th>
<th>Population</th>
<th>Court Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Choiseul</td>
<td>26,372</td>
<td>Western District, Gizo</td>
</tr>
<tr>
<td>Temotu</td>
<td>21,362</td>
<td>Outer Eastern District</td>
</tr>
<tr>
<td>Isabel</td>
<td>26,158</td>
<td>Central District, Honiara</td>
</tr>
<tr>
<td>Central</td>
<td>26,051</td>
<td>Central District, Honiara</td>
</tr>
<tr>
<td>Rennell-Bellona</td>
<td>3,041</td>
<td>Central District, Honiara</td>
</tr>
<tr>
<td>Guadalcanal</td>
<td>93,613</td>
<td>Central District, Honiara</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>196,597 (38% of population)</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Provinces with a Resident Magistrate</th>
<th>Population</th>
<th>Court Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaita</td>
<td>137,596</td>
<td>Malaita</td>
</tr>
<tr>
<td>Makira-Ulawa</td>
<td>40,419</td>
<td>Inner Eastern District, Kirakira</td>
</tr>
<tr>
<td>Western</td>
<td>76,649</td>
<td>Western District, Gizo</td>
</tr>
<tr>
<td>Honiara</td>
<td>64,609</td>
<td>Central District, Honiara</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>319,273 (62% of population)</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Source: Solomon Islands 2009 Population and Housing Census, court literature*

**Jurisdictional Limits, Circuits and Cancellations**

Even where there is a Magistrate Court, the disparity of sentencing powers means that many cases filed in districts are adjourned until a Principal Magistrate based in Honiara with sufficient sentencing powers arrives on court circuit. Data from Magistrates’ Courts based in Kirakira and Gizo indicate that this practice adds unnecessary delays because the fines or prison sentences applied rarely exceed those that a First or Second Class Magistrate could impose. In short, 26 percent of cases are held back for review by a Principal Magistrate for the sake of the two to five percent of matters where he or she will apply a higher penalty. Kwaso production, for example, is beyond the jurisdictional capacity of a Second Class Magistrate. This has been a significant concern in Malaita province in particular given the prevalence of kwaso-related offenses across much of the province and a history of only having second class magistrates posted there.

The Magistrates’ Courts undertake court circuits across Solomon Islands in accordance with a schedule devised
every six months in Honiara. A court circuit typically involves a Honiara-based Magistrate travelling to defined provincial locations, usually provincial capitals, together with a court clerk, a public solicitor and a police prosecutor.\textsuperscript{28} Usually a court circuit will last a week and deal with only criminal matters.\textsuperscript{29} Owing to the limited time available, only criminal matters in which defendants plead guilty are likely to proceed, with trials rarely progressing. During the Justice Delivered Locally research a police officer at Buala Police Station, Isabel province, noted that the only way to deal with defendants who plead not guilty was to try and negotiate with their lawyers in order to secure a guilty plea. In 2011, out of some 60 scheduled court circuits only half went ahead, a marginal improvement over earlier years, when over half the circuits were cancelled.\textsuperscript{30}

As discussed, in addition to magistrates travelling from Honiara, in those locations where full-time Resident Magistrates are located (i.e. Auki, Gizo, and Kirakira) ‘internal’ court circuits also take place. This entails the Resident Magistrate travelling to places within the district in which he or she is posted. No information was available on the number or frequency of internal circuits, but they are rare.

There are two principal sources of dissatisfaction with Magistrates’ Court circuit practices. The first involves the frequent cancellation of planned circuits, and the second, the lack of certainty as to the date of the next circuit. Complaints about cancelled court circuits were recorded from court personnel, the international community, the police and from citizens. Cancellations are costly to the state which may already have invested significant resources in notifications and in some cases in sending officials to the circuit location, and for the public, especially when they receive notice too late and have already traveled to attend their hearing. They also, as noted, may discourage police from pursuing or listing cases, and may encourage defendants and parties who have already attended not to return on any rescheduled date. Cancellations are not entirely the courts’ fault, and the police are given equal responsibility for delays due to their failure to complete investigations, summon parties and disclose files in time (see figure 5 below).

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{image5.png}
\caption{Figure 5: Reasons for Cancelled Court Circuits}
\end{figure}

\begin{verbatim}
Source: Police Prosecution Department Honiara
\end{verbatim}

\textsuperscript{28} Police prosecutors travel from Honiara despite there being police prosecutors located in the provinces.
\textsuperscript{29} At the time of this research, plans were being made to increase the length of court circuits to two weeks. However, as of September 2012, the vast bulk of court circuits lasted only one week.
\textsuperscript{30} A case study documenting problems with Magistrates circuits to Buala, Isabel Province, can be found at page 50 of Allen et al (2013).
Box 6: Consequences of Cancelled Court Circuits

“According to Munda Police Officers spoken to on the phone summons were served, notification to witnesses served, and cases were prepared for the court circuit. Complainants who did not hear about the court circuit cancellation turned up at Munda Police station. Complainants were angry and unhappy about the cancellation.

According to the Police officers while there are monetary costs of court circuit cancellation, the major cost is the anger and growing distrust of the Police by communities when court circuit cancellation occur. Such circuit court cancellation put a lot of stress on Police-community relations.

Cost Incurred by Munda Police in preparation for cancelled court circuit

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost Incurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fuel</td>
<td>SBD$3200.00 (USD$435)</td>
</tr>
<tr>
<td>Fuel</td>
<td>SBD$640.00 (USD$87)</td>
</tr>
<tr>
<td>Manpower</td>
<td>SBD$16.00 per litre</td>
</tr>
<tr>
<td>Preparation</td>
<td>- 4 Officers x 2 days serving summons.</td>
</tr>
<tr>
<td>Preparation</td>
<td>- 5 officers x 10 working days preparing summons and case documents”</td>
</tr>
</tbody>
</table>

Source: Report of the Officer in Charge of the Police Prosecution Services, New Georgia, 1 March 2013

Case Assignment and Listing Systems

Out of necessity, all matters are listed before the Resident Magistrate who initially reviews the case as to jurisdiction and as to whether recusal due to conflict of interest is appropriate. Examination of the pending case load in Kirakira indicates that 5-10 percent of cases involve conflicts of interest and require the Resident Magistrate to adjourn the matter to a future unknown date before another magistrate.

For criminal cases, many problems are explained by police-court relations and the police and prosecution’s control of court listings. The process for listing cases is not transparent, which when combined with delay, leads to considerable speculation as to the integrity of both the court and the police. What is clear is that the police are in control of what cases are listed and are accountable to no one for their decisions. This was verified by multiple interviewees and is a major contributor to system dysfunctions. As one Magistrates’ Court informant noted: “We ask them [the police] to prepare lists of old cases to tell us the old cases. But this does not happen. They might withdraw, as they can’t locate defendants, as they are behind.” This also affects circuits as they “all depend on what cases the police are preparing.” What is also very apparent is that this is considered the operating norm and that there are underperforming (or no) drivers at work to change the status quo. Beyond occasional conversations between the court and the police, there is no apparent policy, cross-agency strategy and consultation to change or redress current listing deficiencies and the subsequent build-up of inactive cases in the courts’ caseload.

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31 Resident Magistrates live in small local communities and are well known citizens, increasing the potential for conflicts of interest to arise.
3.4 Fiscal Analysis of the Judiciary

Box 7: Key Findings: Funding is sufficient, but poorly managed

- The judiciary’s share of the national budget has remained constant over recent years at less than 1.25 percent excluding donor contributions. Comparative international figures suggest that this is reasonable.
- Government and donor spending on the National Judiciary is slowing against an uncertain economic future. Future expenditures from both sources will have to be programmed and prioritized carefully.
- A large part of the aggregate underspend in the National Judiciary occurred in Local Courts and Customary Land Appeal Courts. Consequently, money allocated to them in the budget is often transferred to other activities within the National Judiciary.
- Local Courts and Customary Land Appeal Court sittings are comparatively the most expensive for the National Judiciary to fund. Only three or four Local Court sittings per year can occur in each of the four court districts.
- Poor performance in delivering justice at the local level, including poor budget execution and court circuit cancellations, are partly explained by the weaknesses of public financial management (PFM) within the National Judiciary.

3.4.1 Fiscal Environment for the Judiciary – 2008-2017

High economic growth rates since 2008 led to increased revenue and expenditures across the Solomon Islands Government (SIG). This is reflected in recurrent expenditures in the National Judiciary which grew from SBD$7 million (USD$917,000) in 2008 to SBD$26.5 million (USD$3.55 million) in 2012. The judiciary’s share of the budget remained constant – less than 1.0 percent if donor contributions (across the board) are included, and 1.25 percent if not. While comparative figures on judicial budgets are among the hardest statistics to gather, those available suggest 1.25 percent is reasonable, although at the low end of the normal range. The amounts and percentages for the Ministry of Justice and Legal Affairs (MJLA) and the Ministry of Police, National Security, and Correctional Services (MPNSCS) are higher.

This rosy picture is not expected to continue since growth – of the economy, the budget and thus the National Judiciary allocation – is slowing. Following extensive flooding on Guadalcanal in April 2014, World Bank projected growth figures for 2014 have been revised down to 0.1 percent from pre-flood baseline

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32 Based on Williams (2013).
33 The best available statistics are from CEPEJ (2012) covering forty-seven European countries. CEJA (2005) includes some data from Latin America whose judiciaries, surprisingly, enjoy exceptionally high shares of the public sector budget – although for some of the worst judicial performers. Data from both sources are questionable as they depend on country submissions with no means to verify them. Also comparison is difficult as what is included in the “judicial budget” varies considerably from country to country. It could be argued that very small countries might require a higher percentage because they enjoy few economies of scale. However, this is equally true of most of the other expenditure categories with which courts compete.
projections of around four percent. Also, there is an anticipated decrease in donor contributions to the entire public sector. In justice, they have until recently been higher than SIG contributions.

Figure 6: Total Expenditure in National Judiciary 2008-2013

Source: SIG Budget Estimates are used for recurrent and SIG development expenditure and Williams’ calculations using RAMSI data have been used for donor non-appropriated estimates.

Estimating the precise level of donor assistance to the National Judiciary, including the amount directly contributing to service delivery is very challenging. The Development Budget estimates are highly inaccurate reflecting time lags in reporting as well as a lack of transparency in the data.\(^{34}\) This limits the National Judiciary’s ability to understand the extent that current levels of service delivery are dependent on donor assistance, and to plan for a decline. Estimates for this study were based on RAMSI reported expenditure, but they are also limited as they represent both resources spent on direct service delivery (for example, in-line Magistrates) as well as capacity building activities.\(^{35}\)

Donor contributions will not disappear, but between the anticipated cutbacks, and the slowdown in economic growth, it is evident that expenditures from both sources will have to be programmed and prioritized carefully. As the following analysis shows, there is considerable room for improvement. This is fortunate because unless the National Judiciary is prioritized by SIG at the expense of other ministries or funds are used more efficiently, the National Judiciary will not be able to maintain current service levels let alone significantly expand it.

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\(^{34}\) For example, they ranged from SBD$130 million (USD$16.5) in the 2008 Budget (an over-estimate) to SBD$0 million in 2012, reflecting significant time-lags in updating these estimates. The challenges with the Development Budget estimates are not confined to the National Judiciary and reflect wider issues around donor reporting as well as capacity issues within MDPAC.

\(^{35}\) Program management costs have been excluded. For a comprehensive study into donor funding and service delivery in the Solomon Islands, focused on the police sector rather than the National Judiciary, see, Gouy and Harding (2011).
3.4.2 Overview of National Judiciary Expenditure

As shown below, non-payroll expenditures account for a significant portion of the recurrent category (except in 2010 when wage increases raised the payroll portion). Payroll portions are high as compared to the rest of the SIG, but this is not unusual for courts as they are labor intensive. In fact, comparative statistics often show payroll as well over 50 percent of recurrent costs. It is the “other category” that comparatively speaking is unusually high for a judiciary, but it responds to the logistical challenges of service delivery. Development expenditures also increased in recent years due to improved project implementation and a large one-off housing project.

Table 10: National Judiciary Expenditure 2008-2013

<table>
<thead>
<tr>
<th>SBD (US$)</th>
<th>2008 Actual</th>
<th>2009 Actual</th>
<th>2010 Actual</th>
<th>2011 Actual</th>
<th>2012 Actual</th>
<th>2013 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurrent</td>
<td>8,504,726</td>
<td>($1,114,119)</td>
<td>10,096,070</td>
<td>($1,262,008)</td>
<td>12,196,317</td>
<td>($1,463,558)</td>
</tr>
<tr>
<td>Payroll</td>
<td>3,671,716</td>
<td>($480,995)</td>
<td>4,486,036</td>
<td>($560,755)</td>
<td>6,370,249</td>
<td>($764,430)</td>
</tr>
<tr>
<td>Other Charges</td>
<td>4,833,009</td>
<td>($604,126)</td>
<td>5,610,034</td>
<td>($701,254)</td>
<td>5,826,068</td>
<td>($699,128)</td>
</tr>
<tr>
<td>Payroll as % Recurrent</td>
<td>43%</td>
<td>44%</td>
<td>52%</td>
<td>42%</td>
<td>38%</td>
<td>39%</td>
</tr>
<tr>
<td>SIG Developmen t Budget</td>
<td>26,730</td>
<td>($3,502)</td>
<td>344,415</td>
<td>($43,052)</td>
<td>240,884</td>
<td>($28,906)</td>
</tr>
</tbody>
</table>

*includes budget support  
Source: SIG Budget Estimates

Budget execution has been poor as compared to the rest of the public sector, but it improved recently. This is partly a function of reallocation of funds programmed for service delivery to other categories. Poor budget execution can be a result of several factors: unrealistic revenue estimates (by MoFT when setting the budget); poor planning by National Judiciary; a lack of capacity to execute expenditure; a lack of expenditure...
control; and waste or misdirection of resources. Continued poor execution indicates that the formal budget is weak in providing its fundamental function of planning and allocating resources to identified service needs.

3.4.3 Expenditure Analysis by Division

This analysis focuses on the divisional performance of the National Judiciary since an administrative reorganisation in 2009. The expenditures by division are not, however, a true representation of where services are delivered. For example, Magistrates’ Court circuits that involve a Magistrate travelling from Honiara (Central District) to Western District are attributed to Magistrate Central (not Western). The table below shows the general breakdown of expenditures by major divisions. All divisions benefitted from the overall increase in spending from 2008, with the proportion of spend by each division remaining similar.

![Figure 8: Expenditure by Division in the National Judiciary, 2009-2013](source: SIG Budget Estimates)

Headquarters (HQ) and administration account for the largest component of expenditure (47 percent in 2012). Non-payroll expenditures account for over half their recurrent expenditures; the major items are: utilities (around 30 percent), rental (around 35 percent) and overseas workshops (12 percent). Compared to other SIG ministries of similar size, HQ expenditure is high although similar to that of MJLA.

Disaggregation of the above figures provides further insights into the expenditure pattern and the problems it may present. Payroll makes up the highest proportion of expenditure for the High Court (42 percent in 2012) and an even larger share for the Magistrates’ Courts (62 percent in 2012). A significant portion of payroll costs (around 20 percent in both the High Court and Magistrates’ Court) is used on “allowances,” which incorporate various non-wage items (from clothing allowances to overtime). Available data does not reveal which allowances are most prevalent, although stakeholder interviews

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36 New divisions were created for the MCs by district, under the Magistrates Court (Amendment) Act 2007. This created various National Judiciary cost centers: HQ and Admin, High Court Registry, High Court Judges and separate divisions for Magistrate Central, Eastern, Malaita and Western.
emphasized that housing allowances were substantial and could lead to officers at the same level receiving significantly different amounts.\textsuperscript{37}

The main non-payroll costs in the High Court and Magistrates’ Court are the Court of Appeal and Local Courts respectively, at around 30 percent of their total expenditure in 2012.\textsuperscript{38} Office expenses in the High Court account for 18 percent of total expenditure. In the 2013 Budget, conferences and seminars along with overseas travel are also significant items.

The 2013 Budget shows important differences between the Magistrates’ Court based in Central District (Honiara) and the other districts, with more Central District costs being allocated to the Magistrates’ Court as opposed to Local Courts and Customary Land Appeal Courts. This is driven by the greater volume of activity for the Magistrates’ Court in Honiara as well as the expenditure on court circuits to other districts. Use of circuit court funding does mean that a greater proportion of Magistrates’ Court Central District costs are spent on direct service delivery (rather than operational costs). However, the composition of spend among all Magistrates’ Courts is similar, with the majority being spent on “local other” (for example, subsistence and sitting allowances for court officials, service messages and venue hire) and on “local fares”.\textsuperscript{39}

\begin{figure}[h!]
\centering
\includegraphics[width=\textwidth]{figure9.png}
\caption{Estimates of Selected Line Item Non-payroll Expenditure by Court Activity in 2013 for Magistrates’ Courts (Eastern, Western, Malaita) and Magistrate Central}
\end{figure}

\textit{Source: 2013 Budget estimates}

\textsuperscript{37} These allowances are examined in an unpublished RAMSI Law and Justice study into payroll in the justice sector. Housing allowances are not a usual judicial expense, but are common in countries (like Solomon Islands) where adequate housing is scarce and expensive, especially outside the capital.

\textsuperscript{38} For the Magistrates’ Court the major type of non-payroll expenditure is labeled in the budget documents as “other charges and services” but the majority of this is expenditure on Local Courts.

\textsuperscript{39} These results conflict with those from the bottom-up costing in the next section, suggesting accommodation is the most costly component of an average Local Court circuit. One possible explanation is that only officials’ accommodation is counted as accommodation costs, with Local Courts and Customary Land Appeal Courts justices’ accommodation accounted under “other”.

36
Budget execution by division is varied with particularly poor performance in those courts delivering justice at the local level. Execution ranged from a 79 percent underspend by Magistrates’ Court Eastern District in 2009 to a 167 percent overspend by the High Court Registry in 2010. The Registry overspend was driven by large increases in payroll and an under budgeting on utilities. All Magistrates’ Court divisions from 2009-2011 were significantly underspent (by 35 to 80 percent of original budget allocations), performing significantly worse than the overall rate for the National Judiciary. This is consistent with the frequent cancellations of Magistrates’ Court circuits and Local Court and Customary Land Appeal Court sittings.

A large part of the aggregate underspend occurred in Local Courts and Customary Land Appeal Courts. Consequently, money allocated to them in the budget is often transferred to other activities through the use of “virements.” Virement activity accounts for about 10 percent of the allocated budget. The vast majority of virements occur in the third quarter of the year as National Judiciary staff adjusts budgets based on expenditures to date. This was particularly the case in 2011 where a large increase in funding to clear the backlog of Local Court cases did not materialize. Even in 2012, significant sums (SBD$30,000 / USD$4,020) relative to their overall budget allocation were vired out of Local Courts in Western and Eastern Districts, largely to be used for local staff travel in Magistrate Central. Such virements may not indicate a lack of prioritization of Local Courts and Customary Land Appeal Courts but rather insufficient capacity to spend allocations.

Other notable virement beneficiaries included large increases in capital equipment throughout the National Judiciary in 2011 (particularly High Court Judges, the High Court Registry and Magistrates’ Court Central Divisions, housing rental and overseas travel). In 2012 there was a major reallocation to cover Court of Appeal costs and “conferences/seminars” in the High Court divisions, partly funded by house rental allocations in Headquarters and Administration. There were also increases in staff travel and transport allocations (particular in Headquarters and Magistrates’ Court Central District) in part funded through a decrease in office expenses, maintenance and capital equipment expenditure.

3.4.4 Estimates of Expenditure by Type of Court Activity

Historically, the High Court, including the Court of Appeal has been allocated significantly more resources than the Magistrates’ Courts (even when including costs associated with their jurisdiction over Local Courts and Customary Land Appeal Courts) although this gap has closed in recent years. Disaggregating the type of court activity further, the High Court and Magistrates’ Court are the highest recipients, followed by the Court of Appeal and then by Local Courts and Customary Land Appeal Courts.

If overhead and payroll costs are excluded, the Court of Appeal is the single most expensive court activity, despite sitting far less regularly than the other courts – twice a year. More importantly given the focus of

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40 Virements are readjustments in budget allocations during the course of the year – in other words, changes in the amount that could be spent against each line item. If one line item increases there would be a corresponding decrease elsewhere.

41 The Pacific Judicial Conference took place in Honiara in 2012.

42 One area that further analysis could explore is to match these funding reallocations with expenditure by RAMSI to determine if any substitution has taken place.
this analysis, annual expenditure on Local Courts, when these costs are excluded, was higher in 2012 than that allocated to Magistrates’ Courts. This highlights their expensive running costs (as with the Court of Appeal largely related to travel) given their lower workloads than the Magistrates’ Courts.

Historically, annual expenditure on non-payroll activities in Local Courts (for example, travel and accommodation associated with Local Court sittings) has been far less than Magistrates’ Courts, but it experienced a rapid rise in 2012 across all Districts. Magistrates’ Courts expenditure outside of the Central District (which also accounts for circuit courts across the country) has remained fairly constant. However, Magistrates’ Court Central District saw a large increase in non-payroll expenditure in 2011 onwards, as a consequence of more circuits being held (or fewer being cancelled).

Table 11: Non-Payroll Expenditure by Magistrate, Local and Customary Land Courts

<table>
<thead>
<tr>
<th>SBD ($USD)</th>
<th>2009 Actual</th>
<th>2010 Actual</th>
<th>2011 Actual</th>
<th>2012 Actual</th>
<th>Estimates of expenditure 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Magistrate Central</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customary Land Appeal</td>
<td>4,143</td>
<td>3,777</td>
<td>0</td>
<td>61,877</td>
<td>63,028</td>
</tr>
<tr>
<td></td>
<td>($518)</td>
<td>($453)</td>
<td></td>
<td>($8,292)</td>
<td>($8,572)</td>
</tr>
<tr>
<td>Local Courts</td>
<td>122,555</td>
<td>86,498</td>
<td>134,126</td>
<td>237,606</td>
<td>242,027</td>
</tr>
<tr>
<td></td>
<td>($15,319)</td>
<td>($10,380)</td>
<td>($16,631)</td>
<td>($31,839)</td>
<td>($32,916)</td>
</tr>
<tr>
<td>Magistrate Court</td>
<td>174,653</td>
<td>186,477</td>
<td>452,449</td>
<td>422,935</td>
<td>659,210</td>
</tr>
<tr>
<td></td>
<td>($21,832)</td>
<td>($22,377)</td>
<td>($56,104)</td>
<td>($56,673)</td>
<td>($89,653)</td>
</tr>
<tr>
<td><strong>Magistrate Eastern</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customary Land Appeal</td>
<td>1,200</td>
<td>0</td>
<td>12,523</td>
<td>87,769</td>
<td>64,022</td>
</tr>
<tr>
<td></td>
<td>($150)</td>
<td></td>
<td>($1,553)</td>
<td>($11,761)</td>
<td>($8,707)</td>
</tr>
<tr>
<td>Local Courts</td>
<td>0</td>
<td>10,212</td>
<td>32,224</td>
<td>192,116</td>
<td>140,138</td>
</tr>
<tr>
<td></td>
<td></td>
<td>($1,225)</td>
<td>($3,996)</td>
<td>($25,744)</td>
<td>($19,059)</td>
</tr>
<tr>
<td>Magistrate Court</td>
<td>89,403</td>
<td>71,918</td>
<td>71,022</td>
<td>71,123</td>
<td>81,273</td>
</tr>
<tr>
<td></td>
<td>($11,175)</td>
<td>($8,630)</td>
<td>($8,807)</td>
<td>($9,530)</td>
<td>($11,053)</td>
</tr>
<tr>
<td><strong>Magistrate Malaita</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customary Land Appeal</td>
<td>39,225</td>
<td>25,086</td>
<td>0</td>
<td>35,881</td>
<td>38,005</td>
</tr>
<tr>
<td></td>
<td>($4,903)</td>
<td>($3,010)</td>
<td></td>
<td>($4,808)</td>
<td>($5,169)</td>
</tr>
<tr>
<td>Local Courts</td>
<td>103,285</td>
<td>22,218</td>
<td>11,384</td>
<td>154,712</td>
<td>163,867</td>
</tr>
<tr>
<td></td>
<td>($12,911)</td>
<td>($2,666)</td>
<td>($1,412)</td>
<td>($20,731)</td>
<td>($22,286)</td>
</tr>
<tr>
<td>Magistrate Court</td>
<td>42,322</td>
<td>48,491</td>
<td>73,115</td>
<td>40,258</td>
<td>88,561</td>
</tr>
<tr>
<td></td>
<td>($5,290)</td>
<td>($5,819)</td>
<td>($9,066)</td>
<td>($5,395)</td>
<td>($12,040)</td>
</tr>
<tr>
<td><strong>Magistrate Western</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customary Land Appeal</td>
<td>0</td>
<td>0</td>
<td>17,782</td>
<td>20,782</td>
<td>39,292</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($2,205)</td>
<td>($2,785)</td>
<td>($5,344)</td>
</tr>
<tr>
<td>Local Courts</td>
<td>24466</td>
<td>31151</td>
<td>3,155</td>
<td>79,034</td>
<td>149,423</td>
</tr>
<tr>
<td></td>
<td>($3,058)</td>
<td>($3,738)</td>
<td>($391)</td>
<td>($10,591)</td>
<td>($20,322)</td>
</tr>
<tr>
<td>Magistrate Court</td>
<td>97465</td>
<td>96668</td>
<td>82,738</td>
<td>70,380</td>
<td>96,717</td>
</tr>
<tr>
<td></td>
<td>($12,183)</td>
<td>($11,600)</td>
<td>($10,260)</td>
<td>($9,431)</td>
<td>($13,154)</td>
</tr>
</tbody>
</table>

Source: Team calculations from official records
Comparing the above annual expenditure data to case file data highlights the current vagaries of justice delivery in Solomon Islands. Table 11 below shows that the cost per sitting and per case disposed differs greatly, with an annual budget cost per sitting ranging from SBD$1,576 (USD$195) to SBD$96,058 (USD$12,872). Further, despite higher Local Court expenditure in 2012, the number of sittings and case disposals fell. For example, for Local Courts in Western District SBD$79,034 (USD$10,591) was spent despite no sittings being recorded. This variation is explained by the costs of training local justices as well as the costs involved in Local Court sittings that are then cancelled or adjourned (that are not included in the sittings data).

Table 12: Fiscal Performance Measures of Local Courts

<table>
<thead>
<tr>
<th>Local Courts</th>
<th>No of Sittings in</th>
<th>No of case Disposals (of which confirmed trials)</th>
<th>Budget Cost</th>
<th>Cost Per Sitting</th>
<th>Cost Per Case Disposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>2</td>
<td>80</td>
<td>32,224</td>
<td>16,112</td>
<td>403</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($3,996)</td>
<td>($1,998)</td>
<td>($50)</td>
</tr>
<tr>
<td>Malaita</td>
<td>2</td>
<td>49 (1)</td>
<td>11,384</td>
<td>5,692</td>
<td>232</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($1,412)</td>
<td>($706)</td>
<td>($29)</td>
</tr>
<tr>
<td>Central</td>
<td>5</td>
<td>19</td>
<td>134,126</td>
<td>26,825</td>
<td>7,059</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($16,632)</td>
<td>($3,326)</td>
<td>($875)</td>
</tr>
<tr>
<td>Western</td>
<td>2</td>
<td>20</td>
<td>3,155</td>
<td>1,576</td>
<td>158</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($391)</td>
<td>($195)</td>
<td>($20)</td>
</tr>
<tr>
<td>2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern</td>
<td>2</td>
<td>65</td>
<td>192,116</td>
<td>96,058</td>
<td>2,956</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($25,744)</td>
<td>($12,872)</td>
<td>($396)</td>
</tr>
<tr>
<td>Malaita</td>
<td>4</td>
<td>24 (3)</td>
<td>154,712</td>
<td>38,678</td>
<td>6,446</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($20,731)</td>
<td>($5,183)</td>
<td>($864)</td>
</tr>
<tr>
<td>Central</td>
<td>3</td>
<td>19</td>
<td>237,606</td>
<td>79,202</td>
<td>12,506</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($31,839)</td>
<td>($10,613)</td>
<td>($1,676)</td>
</tr>
<tr>
<td>Western</td>
<td>0</td>
<td>0</td>
<td>79,034</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>($10,591)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Team calculations from official records

There is significant variation in the cost of court sittings (both Magistrates’ Court Circuits and Local Courts) depending on their location, length of sitting and personnel present. For example, estimates for a five day Magistrates’ Court circuit range from SDB$3,923 (USD$530) in Malaita to SDB$11,378 (USD$1,536) in Western District. For the purpose of this analysis average costings have been used, as set out in table 13.44

43 The vast majority are decisions which are essentially procedural in nature.
44 Analysis was also conducted to estimate the cost of sittings through bottom-up costing, focusing on the costs of the activities and components that constitute each court session. The results are different from those above as they are calculated on the basis of real input costs, not on the amounts allocated in the budgets or possibly spent despite a sitting’s cancellation.
Table 13: Comparative Summary of Court Costs

<table>
<thead>
<tr>
<th>Court Type</th>
<th>Non-payroll Costs – 5 Day Sitting</th>
<th>Non-payroll Costs – 10 Day Sitting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent Magistrate Court Sitting (with Principal Magistrate)</td>
<td>3,556 ($345)</td>
<td>8,423 ($1,137)</td>
</tr>
<tr>
<td>Magistrate Court Circuit (w/o Clerk traveling) with Magistrate from Honiara</td>
<td>5,304 ($716)</td>
<td>9,013 ($1,217)</td>
</tr>
<tr>
<td>Magistrate Court Circuit (with Clerk) with Magistrate from Honiara</td>
<td>10,508 ($1,149)</td>
<td>13,289 ($1,794)</td>
</tr>
<tr>
<td>Magistrate Court Circuit (w/o Clerk but with PSO and Prosecutor costs)\footnote{46} with Honiara Magistrate</td>
<td>25,304 ($3,416)</td>
<td>33,656 ($4,544)</td>
</tr>
<tr>
<td>Magistrate Court Circuit (with Clerk and PSO Prosecutor)\footnote{47} with Honiara Magistrate</td>
<td>39,579 ($5,343)</td>
<td>47,932 ($6,471)</td>
</tr>
<tr>
<td>Local Court with Clerk from Provincial HQ\footnote{48}</td>
<td>19,146 ($2,585)</td>
<td>20,206 ($2,728)</td>
</tr>
<tr>
<td>CLAC with Magistrate from Honiara</td>
<td>21,740 ($2,935)</td>
<td>27,040 ($3,650)</td>
</tr>
</tbody>
</table>

Source: Team calculations from official records

As Table 13 shows,\footnote{49} Magistrates’ Court circuits cost considerably more than sittings at permanent Magistrates’ Court. The main additional costs for these circuits are for the accommodation and travel of the magistrate and clerk. The total cost to the state of Magistrates’ Court circuits when other agency expenditures (for example, the police prosecutor and public solicitor) are included are substantial (in excess of SBD$40,000 / USD$5,400).

Local Courts and Customary Land Appeal Court sittings are comparatively the most expensive for the National Judiciary to fund.\footnote{50} Accommodation costs are again the most significant expense although subsistence and sitting allowances are also important. With expected annual budget expenditure of around SBD$160,000 (USD$21,600) per district and a normal sitting lasting 10 days only three or four Local Court sittings per year can occur in any district (or 16 in the country). Even this may be optimistic given the additional costs for training of justices, estimated to be as much as SBD$25,000 (USD$3,375) per session and funded from Local Court budgets.

When compared to historic annual expenditure data it is clear that costs are being accounted to Local Courts that do not lead to actual justice being delivered. These figures also highlight how expensive the high rates of adjournments and cancellations (in both the Magistrates’ Court and Local Courts) are to the state, with budgets quickly dwindled without cases being disposed. High costs are also borne by others who travel to proceedings such as witnesses and interested parties.

\footnote{45} All magistrates’ allowances have been costed at Principal Magistrate level.
\footnote{46} Note that the majority of these costs are not paid by the National Judiciary.
\footnote{47} Note that the majority of these costs are not paid by the National Judiciary.
\footnote{48} LC sittings normally last for 10 days, but a five day cost has been provided for comparison.
\footnote{49} These are average costs of each activity, ignoring the probably large variations depending on where the sitting is held.
\footnote{50} While the total cost to the state for MCs is higher, a significant amount of these costs - for the prosecutor and public solicitor – is not funded by the National Judiciary.
Some of these costs are unavoidable; the geographical nature of Solomon Islands combined with high infrastructure costs and uncompetitive markets (travel, accommodation, etc.) makes service delivery outside of Honiara expensive. However, given the forecast reduction in resources available to the National Judiciary, strategies that seek to limit the costs of delivering justice outside of Honiara will be important.

### 3.4.5 Budgetary Management

Poor performance in delivering justice at the local level, including poor budget execution and court circuit cancellations,\(^{51}\) are partly explained by the weaknesses of PFM within the National Judiciary.\(^{52}\) PFM focuses on the effectiveness with which a state raises, manages, and expends its public resources. Here two aspects of PFM are examined – National Judiciary management and expenditure of public resources. The key issues identified can be broadly grouped into the three categories discussed below.

**Budgetary Formulation**: Formulation of budgets for Local Courts and Customary Land Appeal Courts is not regarded as a major issue by most stakeholders, with the SBD$200,000 (USD$27,000) allocated to each district considered “enough”. However, as highlighted in the preceding analysis, this allocation has consistently been underused suggesting that the budget is not aligned with the level of commitment and/or capacity within the National Judiciary. National Judiciary planning documents set out objectives in fairly broad terms with an absence of clear targets and measurable indicators (see, SIG, National Judiciary 2011).

It is not clear on what basis budgetary allocations are determined. There is little evidence of work-based assessments or discussion of competing priorities. There appears to be no formal method within the National Judiciary Executive Management Team (EMT) for prioritization of new activities by type of court, with the process being conducted through informal discussions and reliant on historical allocations. Some actors – particularly in the Magistrates’ Court – feel excluded, viewing the process as top-down and divorced from the workings of the court. Significantly, each District (outside of Central) receives near identical allocations despite variable unit costs (travel and accommodation) and workloads.

Limitations in budgetary planning are not unique to the National Judiciary; they are commonplace throughout SIG. They are, in part, a consequence of an input, cash based budget that is simply rolled over each year discouraging prioritization by activity or function within an agency.\(^{53}\) Another problem has been the lack of alignment between the establishment (the approved positions within each ministry) and budget allocations.\(^{54}\) For example in 2011 and 2012 budget allocations were provided to Local Courts based on additional Local Court clerks being hired which did not occur.

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\(^{51}\) The execution of MC circuits did, however, improve considerably in 2012, with 32 out of 42 planned circuits undertaken.

\(^{52}\) For a study of PFM processes within the National Judiciary see RAMSI (n.d.).

\(^{53}\) This is likely to change over the medium term. From 2013, budgets are now based on actual expenditures rather than the previous years budgeted figures creating a more realistic baseline. The new Chart of Accounts also provides for accounting by activity and forward estimates have started to be included in the budget. However, evidence from other countries suggests this process will take a long time and smaller line ministries such as National Judiciary are unlikely to be emphasized.

\(^{54}\) The Ministry of Public Service, MDPAC and MoFT are now meeting line ministries together with the aim to enhance harmonization among the three budgets. See Solomon Islands, MTF, Budget Strategy and Outlook 2013.
Budgetary Execution and Cash Management: Numerous stakeholders reported problems with circuits (of all types) being cancelled or delayed due to a lack of resources (i.e. cash). This reflects deficiencies in the financial practices in the National Judiciary as well as wider organizational problems that accentuate their effects.

There are a number of cash management challenges in the National Judiciary. There is little cash management forecasting. If a court circuit calendar was developed at the start of the year and adhered to, it should be possible to construct a simple cash forecast tool that would include major outlays in the National Judiciary (i.e. Magistrates’ Court circuits). Second, there is a reliance on the use of standing (for Magistrates Court circuits) and special (Local Courts/Customary Land Appeal Courts) imprests to fund activities (see box 8 for more information on imprests).

**Box 8: A Note on Imprests**

A **standing imprest** is for a specific, but on-going, reason and can be replenished from time to time, or retired. A standing imprest is used to make small, frequent payments that are not practical or convenient to pay through the Treasury. The current limit for standing imprests is SBD$50,000 (USD$6,750). There are six standing imprests held by the National Judiciary for separate functions (e.g. HC, MCs, HQ and admin, etc.).

A **special imprest** is advanced for a specific purpose with an amount that corresponds to that purpose, for example to run a Local Court, to a named officer and must be accounted for in full within the period allowed or when the purpose has been fulfilled, whichever occurs first.

*Source: Solomon Islands Financial Instructions.*

The reliance on imprests is a symptom of a failure of planning. Circuits are either not known (subject to constant change) and/or the administration does not adequately plan for them in time. This limits officials’ ability to organize payments to suppliers (for example airlines, accommodation, per diems etc.) through the central payment system avoiding the use of imprests. Imprests are appropriate in certain cases. For example, costs below the central payment limit (SBD$5,000 / USD$675) and/or for suppliers in rural areas that will only accept cash (for example, the allowances paid to members of Local Courts and Customary Land Appeal Courts). Further, while the Ministry of Finance should process payment requests within two weeks, issues with compliance or general administrative problems may delay this, making it a somewhat riskier process than the use of imprests (especially if the dates of MC/LC sittings are not known well in advance).

The major problem is that imprests currently do not function as intended. Special imprests are not retired as funds are not fully acquitted. A number of reasons account for this including a lack of capacity and

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55 MJLA and the Police prosecutor noted that they often pay for accommodation once back in Honiara from a circuit, so reducing the need for larger sums of cash to be accessed beforehand.
commitment to hold imprest holders to account, a lack of training for those who hold special imprests (such as Local Court clerks) and the challenges of the Local Court clerk organizing the court, acting as a clerk and ensuing the adequate management of cash. However, whilst not perfect, both the Public Solicitor’s Office and the Police Prosecutions Directorate reported the system as relatively straightforward, suggesting broader deficiencies within the National Judiciary.

Organizational Leadership: While PFM issues are important, they are partly a result of wider planning and management dysfunctions within the National Judiciary. For example, the court calendar is confusing and subject to regular changes. Key staff are sometimes absent and lack direction. There appears to be poor communication between the Magistrates’ Court and other divisions. This has led to poor understanding and ownership regarding financial responsibilities. Executive Management Team meetings appear to occur on an irregular basis and a number of external stakeholders have suggested that there has been a reluctance to accept outside assistance to core functions of planning and financial management.

A broader driver of some of these challenges is the National Judiciary’s difficulty in transitioning to greater financial autonomy. This manifests at a macro level as confusion among some stakeholders over where financial accountability lies between the Ministry of Justice and Legal Affairs and the National Judiciary. There is also less experience in financial management within the National Judiciary as some functions were previously held by the Ministry. Somewhat paradoxically as financial autonomy has increased for the National Judiciary overall, it appears to have decreased for the districts. Although the districts hold their own standing imprest, most decisions affecting how they might be used are taken at the central level.

4. Conclusion: Key Findings and Options for Reform

4.1 Summary of Key Findings

There is a striking lack of reliable data on the performance of local-level courts. This means that our interpretation of available data must be treated with caution. But while reasonable people may interpolate the data in different ways, we are confident about two conclusions. First, the three main categories of disputes experienced by rural Solomon Islanders – grievances around social order, land and natural resources, and development funds – are not being adequately managed by church, kastom or state justice institutions. Second, the considerable efforts to augment the funding and reform state justice institutions over recent years are not translating into better justice services in rural areas. This study points to several reasons for this.

56 The decision by MoFT to start to dock the salaries of those holding outstanding imprests may increase incentives in this regard. However, a consequence of not issuing imprests to officers who already hold them has already led to a culture of asking/coercing others to apply for an imprest on behalf of someone else, creating a number of accountability issues.

57 RAMSI was monitoring absenteeism and while improvements occurred it remains a significant challenge.

58 This appeared to be changing under RAMSI assistance to support the financial functions of the National Judiciary.
• **Structural issues.** The increasingly centralized structure of the National Judiciary means that local-level courts are dealing with fewer issues in rural areas. The number of Local Courts has dropped by a third since 1988 and sittings of both Local Courts and CLACs are few and far between and are primarily heard in province capitals. CLACs need to compete for the time of magistrates to sit on their panels and many province capitals do not have a resident magistrate. Province Magistrates’ Courts hold more sittings but their performance is constrained by impractical jurisdictional limits given the limited availability of first class magistrates. All local-level courts find that centralized management means that administration of their operations does not reflect local realities.

• **Organizational issues.** Workforce planning is a significant issue for local-level courts. Sometimes this means there is a lack of court personnel, but it often means that they are not distributed around the country in accordance with need. Coordination between police and Magistrates’ Courts is weak and relations are made more difficult with the frequent cancellation of Court Circuits due to poor organization.

• **Financial constraints.** Budget allocations are reasonable but budget execution is constrained by structural and organizational issues. There is no clear evidence that years when budgets have been better executed result in more sittings being held. Significantly, Local Courts and CLAC sittings are so expensive that a substantial increase in their caseload would make their services unaffordable for government.

However, the study does not illuminate other key issues which would be needed to assess the extent to which local-level courts are meeting justice needs of rural Solomon Islanders. For example:

• **Just outcomes?** We are unable to make judgments about the quality of outcomes of cases which come before local-level courts. We do not know, for example, whether CLACs help to promote province governments’ compliance with the timber rights process. We do not know whether filing a land case with a Local Court reduces conflict around land even if a substantive resolution is not reached. We do not know how satisfied specific users are with any outcomes of proceedings. We know that many criminal cases before the Magistrates’ Courts are guilty pleas but we do not know the justice implications of this finding.

• **Nature of demand?** We have evidence from the *Justice Delivered Locally* study that rural Solomon Islanders want a more present and effective state justice system. But we are unable to corroborate this – for instance, it is not clear that the backlog of cases in local-level courts indicates that there may be unmet demand. Unreliable data notwithstanding, the number of cases brought by rural Solomon Islanders in any local-level courts is undeniably low. Most demand comes from within the state legal system itself, from police and prosecutors, for criminal matters to be heard before the Magistrates’ Courts. We do not know the nature of unmet demand nor whether better performing local-level courts would lead to an increase in demand.

More research could be done on these gaps. However, this study has found more fundamental issues. The ability of the state justice system to affordably resolve grievances around land and natural
resources and development funds and less serious social order issues is extremely limited. As it currently performs, the local court system is not cost effective. Increasing its accessibility and affordability, and improving the quality and reliability of its performance would require an increased scale of funding. This would be a difficult case to make, especially as competition from other sectors and services will increase as national revenue flows flatten off.

The study finds that the primary use of local-level courts is for criminal issues heard by Magistrates’ Courts. This is where most funding and reform efforts have been, and continue to be, channeled, yet there is much room for improvement in the performance of the Magistrates’ Courts. Reasons for this need to be addressed in any attempts at reform, as discussed below.

### 4.2 A Realistic Framework for Reform Efforts

It would be a simple task to list technical fixes, especially in relation to improving Magistrates’ Court performance. But as scholars and practitioners now agree, technical solutions that are not carefully moulded to the context are not of much use. Building on the emerging consensus about effective engagements for institutional reform (see Andrews 2013, Kelsall 2011, and Unsworth 2010), this study’s recommendations are grounded in three principles:

1. **Problem-oriented.** The aim of reform is not to build the court system for the sake of itself, but rather to address key ‘unmet justice needs’ of Solomon Islanders. Thus improvements to the courts should be undertaken where these can be linked to concrete justice outcomes for users. The JDL research highlighted three primary justice concerns: social order (including crime, family issues and substance abuse); land and natural resource related disputes (primarily in areas affected by forestry, and prospectively, mining); and grievance in relation to development spending (from both donors and SIG). This study has found that in the near and medium term courts will not be the principal locus for managing most of these justice concerns. Recommendations thus focus on those aspects for which the courts may be a (partial) solution.

2. **Realistic and doable.** Reforms should not be based on an ideal of what a court system should look like (best practice), but rather on what a court system in the particular context of Solomon Islands could look like (best fit). Thus recommendations must be grounded in the very real constraints facing Solomon Islands, which include:

   - **Geography and demographics.** Solomon Islands enjoys extraordinary social and linguistic diversity, but coupled with its scattered geography and low density of settlement patterns, this imposes especially high costs on linking people across the country to negotiate and sustain collective agreements between citizens and their government.
   - **Fiscal constraints.** The prevailing formal structures and systems of government therefore remain only partially in place, their reach is highly uneven, and is often contested. But any renewed

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59 For example, SIG is currently trying to recruit eight more magistrates.
efforts to ‘bring government closer to the people’ are likely to be constrained; the costs of government are already high, and growth in government revenue is likely to flatten off (International Monetary Fund 2014, 3).

- **Capacity limitations.** Serious limitations in professional capacity have led to the placement of international actors in in-line roles in the judiciary. The difficulty SIG has experienced in increasing the number of magistrates beyond the current seven demonstrates the severity of human capacity constraints, and there is no easy solution to this, making seemingly small reforms beyond reach.

3. **Tractable.** Beyond the above ‘hard’ constraints, reforms need to take into account the contours of the political space for reform. Investment in justice institutions is not isolated from, but is rather an inherent and important part of, the broader governance landscape. The recommendations thus aim to align with the broadest possible set of incentives and constituents so as to be tractable and sustainable. Among key features of the political space for reform are:

- **Clientilistic governance.** Solomon Islands’ nominally Westminster-style government is belied by a more deeply embedded political logic, based on short-term individual relations and deals. This undermines the credibility of policy commitments, and corrodes the performance of public sector institutions by destroying the links between political choices, policy, budget and expenditure and performance.

- **Impact of extractives-based economy.** The political and economic predominance of the logging industry has profoundly shaped how government performs and this continues to undermine the willingness of political and business leaders to invest in creating representative, fair and accountable national or local public authorities.

- **Dependency on external aid.** Since the RAMSI intervention in 2004, dependence on external aid has increased and many core state agencies rely on both formal and tacit agreements, typically with the Australian government, to ‘co-produce’ these functions. Experience shows that this can make some sectors perform well (such as health and education), but has in other sectors (including the judiciary and police) weakened the domestic political incentives to reform and created alibis for under-performance by Solomon Island officials.

### 4.3 Reform Priorities

There is a need to improve the management of serious crimes cases that originate in the provinces.

Serious criminal cases – those for which a maximum penalty exceeds five years imprisonment or SBD$50,000 (USD$6,750) – are beyond the jurisdiction of even Principal Magistrates. Such cases are first submitted to Magistrates’ Courts for committal proceedings to the High Court. Yet, in the years 2008-
2012, committals have only come from Gizo and Honiara, despite serious indictable cases, including sexual violence cases, pending in other jurisdictions. One possible explanation of this is the absence of a permanent public solicitor, which is needed for committal proceedings, outside Gizo and Honiara.

Further examination is needed to analyze the nature and number of serious criminal cases, reasons for the lack of committal proceedings, and the impact of this on people’s lives, in order to consider options for reform. Improving the performance of the National Judiciary on these cases would not only promote justice and due process, but also add public credibility to local forms of authority.

Efforts to improve access to and efficiency of local-level courts should be incremental, and experimental, following credible actions by the government and National Judiciary.

The menu of technical reforms aimed at improving the quality and efficiency of the judiciary includes technical assistance, training and additional resources (especially staffing) for the following:

- Case management systems for better flows of information and oversight;
- Budgeting, programming and planning capacities of the National Judiciary, including to reduce the percentage of circuit and court sittings that are cancelled;
- Productivity and performance management of judicial personnel; setting and enforcing targets for case dispositions;
- Rationalized case listing procedures to reduce any tendency toward arbitrariness or favoritism in the selection of cases to be heard;
- Human resource management, including the physical placement of court personnel as well as their existing terms and conditions, including considering raising jurisdictional levels of Resident Magistrates;
- Financial management, including analyzing bottlenecks in financial flows and determining if there is scope for the possible devolution of budget control to provincially-based Magistrates Courts.

The National Judiciary deserves credit for moving on some of these topics over the past years. These include establishing a separate imprest account for Local Courts and CLACs, creating a secretariat to administer these courts, and efforts to improve the terms of engagement of magistrates and recruit additional magistrates. Other issues, however, have seen little movement, including case listing procedures and planning improvements. And to reach impact on results, coordination is needed with other institutions, including most prominently the police, which has remained a very weak link despite significant assistance from RAMSI.

To the extent government and the National Judiciary continue to move forward on parts of this agenda to improve Magistrates’ Courts, donors should be prepared to provide support in incremental ways that encourage, rather than blunt government incentives to invest. Effective support should aim to deliver tangible results to end users through experimentation at the point of service delivery, rather than through wholesale institutional reform at the top end. And here it is important to remember the caveats above – there is no guarantee that improved efficiency will lead to improved quality or to meeting significant unmet justice demands.
With regard to Local Courts, a preoccupation with measures to improve their efficiency should not divert attention from the larger question of whether they could play an effective role in today’s Solomon Islands. People commonly refer with nostalgia to the system inherited at independence and through the late 1980s, in which dozens of easily accessible Local Courts adjudicated a wide range of disputes in ways that corresponded with community concerns and norms. Decisions, of course, would tend to be aligned with how power, privilege and exclusion were locally ordered, but, by and large, Local Courts provided quick and ongoing venues to contest issues peaceably and reach working resolutions of local justice problems.

Today these courts are neither local, nor acting as courts (i.e. they are not bringing disputes to resolution). Can these courts be restored to what they once were? This is highly unlikely. First, the fiscal constraints that prompted state ‘retreat’ from rural areas through centralization are still there, making increased sittings and locations difficult, even if there is significant room to increase the efficiency of expenditure. More importantly, though, the broader political and administrative apparatus in which Local Courts used to function is no longer there. To the extent Local Courts were seen as both legitimate and effective had much to do with the fact that they were part of a system of legislative and executive power – local assemblies called Area Councils and District/Area executive government and policing, backed by credible coercive powers of the central State. Moreover, while their primary function in earlier times was to deal with a range of social order problems, the land issues for which they now have exclusive jurisdiction are mainly related to the impacts of commercial investment, which is beyond their ability to manage. The current proposal for new fora to take over the customary land jurisdiction of the Local Courts, the Tribal Land Dispute Resolution Panels proposal, has been on the agenda, with no movement, for years, indicating that it would face the same problems.

Local-level courts are not the best available venue to contest and resolve disputes for the bulk of social order issues or grievances around land, natural resources and development funds.

In respect of the local-level courts, several factors have combined to draw this conclusion. Local-level courts deliver low returns on investment; there is no reason to believe returns to additional investment would be higher. Lower-level courts are in large part irrelevant to the concerns and priorities of political and business leaders. For the most part, they are able to settle their disputes through other means and venues, and thus are unlikely to mount or sustain demands for government to invest political and administrative capital in improved performance by the judiciary. It is not clear that the recommended remedial measures (as above) would automatically guarantee local-level courts would become more responsive, or that user demand or satisfaction would increase. The current proposal for new fora to take over the customary land jurisdiction of the Local Courts, the Tribal Land Dispute Resolution Panels proposal, would likely face the same problems.
5. References


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