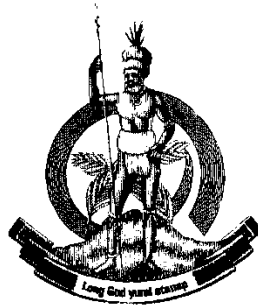


**REPUBLIC OF VANUATU**  
**COUNTRY REPORT**



**31<sup>st</sup> PACIFIC ISLANDS LAW OFFICERS  
NETWORK MEETING  
(PILON)**

**(Kokopo, Papua New Guinea, October 2012)**

## 1. Public Law Agencies

The important public legal institutions in Vanuatu are the State Law Office, Public Solicitors Office, Public Prosecutors Office, Law Commission and Ombudsman's Office.

### State Law Office

The *State Law Office Act* [CAP 242] establishes the State Law Office ("SLO") formerly referred to as the Attorney General's Chambers. It also provides for the appointment of legal officers of the State and outlines their duties, functions and responsibilities.

The principal functions of the SLO are:

- (a) to provide advice to, and represent the Government on, legal matters that may be referred to it by the President, the Council of Ministers, the Prime Minister, a Minister, a director-general of a ministry, or a director of a department; and
- (b) to provide legislative drafting services to the Government.

The Act further provides that the Attorney General is the head of SLO and is appointed by the President of Vanuatu on the advice of the Judicial Services Commission for a period of 3 years.

In managing and administering the SLO, he is assisted by the Solicitor General, Parliamentary Counsel, Corporate Service Unit Manager and the Financial Intelligence Unit Manager.

The SLO consists of the Solicitor General's Unit, Parliamentary Counsel's Unit, Financial Intelligence Unit, Advisory Unit and the recently established Policy Unit.

Currently the SLO comprises of 20 lawyers and 18 support staff.

### Public Solicitors Office

The *Public Solicitors Act* [CAP 177] establishes the Public Solicitors Office ("PSO").

The principal functions of the PSO are to provide legal assistance:

- (a) to needy persons; or
- (b) to any person when so directed by the Supreme Court.

The Public Solicitor is the head of the PSO. The Public Solicitor is appointed in accordance with Article 58 of the Constitution of Vanuatu, which expresses that he or she is appointed by the President of Vanuatu on the advice of the Judicial Services Commission.

The Public Solicitor is assisted by the legal officers who are appointed by the Judicial Services Commission.

The PSO is based in Port Vila, the country's capital town. However, they have also established offices on the islands of Santo, Malekula and Tanna. This is done to ensure that the services they dispense to people in the urban areas are likewise available to people residing in the rural areas of Vanuatu.

Currently the PSO comprises of 9 lawyers and 7 support staff. This year they were fortunate to retain the services of an Australian technical legal advisor appointed under the AUSAID funded Law and Justice Programme.

### Public Prosecutors Office

The *Public Prosecutors Act* [CAP 293] establishes the Public Prosecutors Office ("PPO").

The Act provides that the principal functions of the Public Prosecutor are:

- (a) to institute, prepare and conduct preliminary enquiries;
- (b) to institute, prepare and conduct on behalf of the State, prosecutions for offences in any court;
- (c) to institute, prepare and conduct, on behalf of the State appeals in any court in respect of prosecutions;
- (d) to conduct, on behalf of the State as respondent, any appeal in any court in respect of prosecutions;
- (e) if requested by the Attorney General to do so, to institute, prepare and conduct on behalf of the State, or be a party to, proceedings under legislation dealing with proceeds of crime, mutual assistance or extradition;
- (f) to discontinue prosecutions regardless of who instituted them;
- (g) if requested to do so, to give advice to members of the Vanuatu Police Force and any other investigators in relation to investigations, proposed prosecutions or prosecutions;
- (h) to provide assistance in obtaining search warrants;
- (i) to prosecute breaches of the Leadership Code [Cap. 240]; and
- (j) such other functions that are conferred on the Public Prosecutor by the Act or any law.

The Public Prosecutor is the head of the PPO. The Public Prosecutor is appointed in accordance with Article 55 of the Constitution of Vanuatu, which expresses that he or she is appointed by the President of Vanuatu on the advice of the Judicial Services Commission.

In managing and administering the PPO, the Public Prosecutor is assisted by a Deputy Public Prosecutor, Assistant Public Prosecutors and State Prosecutors. State Prosecutors usually comprise of members of the Vanuatu Police Force, a person employed in the Public Service or a legal practitioner. All of whom are appointed in writing by the Public Prosecutor.

Similarly, the PPO is based in Port Vila, however, they have also established offices on the islands of Santo, Malekula, Tanna and Ambae. These offices are manned by Assistant Public Prosecutors and State Prosecutors.

Currently the PPO comprises of 8 lawyers, 12 State Prosecutors (all members of the Vanuatu Police Force) and 8 support staff.

### Law Commission

The *Law Commission Act* [CAP 115] establishes the Law Commission of Vanuatu.

The principal functions of the Law Commission are to study and keep under review the laws of Vanuatu with a view to recommending reforms and in particular:

- (a) the removal of anachronisms and anomalies;
- (b) the reflection in the law of the distinctive concepts of custom, the common and civil law legal systems and the reconciliation where appropriate of differences in those concepts; and
- (c) the development of new approaches to and new concepts of the law in keeping with and responsive to the changing needs of Vanuatu Society, of groups within that society and of individual members of that society.

The Law Commission comprises of a Chairman and four other members who are appointed by the Minister of Justice for a term of not more than 3 years. Further, the Act also provides for the appointment of a Secretary to the Law Commission who is also appointed by the Minister of Justice.

The Secretariat of the Law Commission comprises of the Secretary and 2 legal researchers and an administration officer. There is also a technical legal advisor appointed under the Australian Youth Ambassadors Development Programme.

### Ombudsman

The *Ombudsman Act* [CAP 252] establishes the office of the Ombudsman.

The principal functions of the Ombudsman are:

- (a) to enquire into any conduct on the part of any government agency;

- (b) to enquire into any defects in any law or administrative practice appearing from any matter being enquired into;
- (c) to enquire into any case of an alleged or suspected discriminatory practice by a government agency;
- (d) in respect of conduct of a leader occurring on or before the 1<sup>st</sup> day of July 1998, to enquire into any case of alleged or suspected breach of Chapter 10 (Leadership Code) of the Constitution;
- (e) in respect of conduct of a leader occurring after 1<sup>st</sup> July 1998, to conduct an investigation in accordance with Part 5 of the Leadership Code [Cap. 240]; and
- (f) to undertake mediation in accordance with section 13 of the Act.

The Ombudsman may exercise his or her functions on the complaint of a person or body referred to in Article 62(1)(a) or (b) of the Constitution or on his or her own initiative.

The Ombudsman is appointed in accordance with Article 61(1) which provides that he or she is appointed by the President of Vanuatu after consultation with the Prime Minister, the Speaker of Parliament, leaders of the political parties represented in Parliament, Chairman of the National Council of Chiefs, President of the Provincial Governments, Chairmen of the Public Service Commission and the Judicial Service Commission.

The Ombudsman is appointed to hold office for period of 5 years.

## **2. Major Law and Justice Sector Achievements**

This year the law and justice sector in Vanuatu has grown from strength to strength given the various accomplishments the different public legal institutions have achieved.

The major achievements this year are summarised as follows:

### **State Law Office**

- The SLO has conducted client awareness workshops in 4 different government offices and will continue to visit other departments. During these sessions we have representatives from all six units in the SLO presenting their respective functions and explaining how they can assist each government ministry/department with their queries. It is also an opportunity for the clients to meet our State Counsels in person and to discuss any specific issues they may have. For some organisations, it is an opportunity for clients to request state counsels to explain their functions pursuant to their specific Act and to review

their functions and ensure their operations meet the requirements stipulated in their respective Acts.

- SLO legal officers and support staff undertake various courses at the University of the South Pacific, Emalus campus, which are sponsored by the AUSAID funded Law and Justice Programme.

#### Public Solicitors Office

- The establishment of a new Public Solicitors Office on Tanna island and the appointment of a legal officer to administer the office;

#### Law Commission

- The appointment of two new legal researchers to assist the Secretary of the Law Commission.
- The development of a new website and brochures for the Law Commission.
- The resignation of Russell Nari as the Chairman of the Vanuatu Law Commission.
- The Law Commission has endorsed rules and procedures as to the manner in which the Secretariat of the Law Commission should function.
- The Law Commission issued requests for proposals to undertake law reform reviews. They have received requests submitted by 3 Government departments.

#### Ombudsman

- The appointment of an Acting Ombudsman appointed after the sudden death of the former Ombudsman.

#### Judiciary

- The appointment of a new female Supreme Court judge from Gambia, Africa.

#### Vanuatu Law and Justice Programme

- The inception of the AUSAID funded Vanuatu Law and Justice Programme also known as the “Stretem rod blong jastis” project.
- The appointment of a new project co-ordinator for the Vanuatu Law and Justice Programme.
- The appointment of a new technical legal advisor with the Public Solicitors Office appointed under the Vanuatu Law and Justice Programme.

### **3. Significant Court Decisions**

Two important decisions that were delivered by the Court of Appeal are:

*Terra Holdings Limited v Barak Sope & Ors*; CAC 4 of 2012

[http://www.paclii.org/cgi-bin/disp.pl/vu/cases/VUCA/2012/16.html?query=terra holdings](http://www.paclii.org/cgi-bin/disp.pl/vu/cases/VUCA/2012/16.html?query=terra%20holdings)

The underlying issue was the grant of approval by the Minister of Internal Affairs to the Appellant under the *Foreshore Development Act* [CAP 90] to carry out development that includes reclaiming seabed and excavating a channel in part of Kawenu cove, Fatumaru Bay, Port Vila. The Respondent had previously obtained interim orders preventing the development from continuing because they were custom owners of the sea bed or land beyond the mean high water mark.

The Appellant appealed the interim orders, however, the Court held that the grant of approval to the Appellant for foreshore development purported to authorise an unjust deprivation of property; hence custom owner guaranteed protection under Article 5 of the Constitution would be contravened by the development. Despite the fact that the *Foreshore Development Act* does not confer on the Minister a duty to consult with custom owners before granting a foreshore approval. The Court has held that impliedly there is a need for the Minister to consult with custom owners or claimants prior to granting a foreshore approval in order to prevent unjust deprivation of property.

The Court went on to express that in a case such as this, where the proposed dealing will lead to major changes in the physical and legal characteristics of the land, the Minister of Lands has an added responsibility under s.8(2)(c) of the *Land Reform Act* [CAP 123] to take all necessary measures to conserve and protect the land on behalf of the customs owners. The Minister's paramount legal duty must be to respect the requirements of Article 73 of the Constitution and to conserve and protect the land both for the custom owners and for their descendants.

*Sanma, Malampa & Penama Local Government Councils v Hon. George Wells, Minister of Internal Affairs & Attorney General*; Civil Appeal Case No's 15, 16 & 17 of 2012

<http://www.paclii.org/cgi-bin/disp.pl/vu/cases/VUCA/2012/12.html?query=sanma>

The appeals alleged that:

1. The Minister of Internal Affairs' purpose in suspending the Local Government Councils ("LGC's") was not for a purpose within the *Decentralization Act* [CAP 230] and therefore it was an improper purpose;
2. The Minister failed to accord natural justice to the LGCs before suspending them; and
3. The Minister's decision to suspend the LGCs was irrational (not raised in the Supreme Court).

In relation to each ground of appeal, the Court held that it was satisfied that:

1. the Ministerial suspension of the LGCs was not for any improper purpose and rejected this ground;

2. before the Minister made his suspension decision, the LGCs knew of the substance of his concern which gave rise to the decision and had a chance to express their view about those concerns thus this ground failed; and
3. the decision to suspend was one reasonably open to the Minister and was not irrational.

Further as discussed at paras 43-48 of the judgment, the Court reached its conclusion that procedural fairness did not require the Minister to give notice to the LGCs of his decision to suspend as it was a **preliminary decision only**, to conduct an inquiry and to suspend in the short term. It reiterated at para. 46 that the suspension in this case is a short term measure to facilitate inquiry only.

The Court dismissed the appeals and awarded the Respondents costs.

#### **4. Significant Legal Reform**

The Government has begun significant reform of Vanuatu's company law with Parliament's passing in August 2012 of the *Companies Act* No. 25 of 2012. This Act has not yet been brought into force as there are a further 3 Bills consequential to the new *Companies Act* that must be passed. The life of the current legislature has ended and the country is going to general elections on 30 October 2012. Therefore the 3 outstanding Bills await attention by the next Parliament.

#### **5. Summary of Significant Issues affecting Law and Justice Sector in Vanuatu**

The major setbacks that affect the law and justice sector are:

##### *Limited Finance*

The distribution of public funds to the SLO, PSO and PPO is insignificant compared to the output and delivery of services these offices provide.

##### *Shortage of lawyers in Public Legal Institutions*

Inadequate funding to the SLO, PSO and PPO is evident by the lack of lawyers available employed to tackle the huge influx of cases they receive.

##### *Low wages paid to public lawyers*

Another issue which correlates with limited finance is the low wages public lawyers receive. For this reason many experienced and skilled public lawyers opt to venture into the lucrative private practice.

##### *Lack of technical expertise*



During the period of the VLSSP, technical advisors were seconded to the SLO, PPO and PSO. The purpose of their secondment was to transfer skills and train local lawyers in those offices. This initiative proved to be somewhat positive and productive for the offices. However, since the conclusion of the VLSSP, all the technical advisors and mentors have left, along with their technical skills and expertise.

#### *Lack of space*

Given the ever increasing number of cases which the SLO, PPO and PSO deal with and the huge paper work most of them accumulate, the spacing in their buildings has decreased. However, due to their limited funding, a new building or an extension to the current one is an unlikely priority.

### **6. Significant Initiatives/Projects involving Vanuatu and its law and justice sector**

Significant initiatives/projects undertaken this year involving Vanuatu and its law and justice sector are:

#### State Law Office

- The different units within SLO conducted workshops with several Government Ministries and Departments.

#### Vanuatu Law Society

- The Vanuatu Law Society successfully hosted the Vanuatu Law Week from 6 to 10 August 2012. The law week was an ideal opportunity for all legal officers (both in private and public practice) to be able to integrate with the community and provide awareness on relevant issues that relate to law and justice in Vanuatu.
- The Vanuatu Law Society managed to secure funding from the Pacific Leadership Program to set up a Vanuatu Law Society secretariat to administer the affairs of the organisation.

### **7. Reflect on how the issues outlined in the country report relate to the PILON 2012 Annual Meeting theme of 'Challenges and Strategies to Enhance Democratic Governance and the Rule of Law'.**

The upholding of the rule of law requires good governance in a country. That can prevail only with the support of the Government and the effectiveness of the law and justice sector in Vanuatu.

The Government has committed itself to strengthening the law and justice sector with assistance from regional and international donors. However, despite such assistance, the Government has not yet been able to fully accommodate the needs of each organisation within the law and justice sector.

## 8. Attachment A: Summary of relevant training attended by officers

Date of training	Name of training	Where the training was held and what organisation hosted the training	Who attended the training (name of officer/s and agency)
19 – 23 March 2012	PILON Advanced Skills Programme 2012	Auckland, NZ Meeting hosted by the New Zealand Crown Law Office, New Zealand Law Society and the New Zealand Ministry of Foreign Affairs	Frederick Gilu, Solicitor General's Unit, State Law Office  Florence Williams-Reur, Solicitor General's Unit, State Law Office

## Attachment B: Summary of major regional meetings attended

Date of meeting	Name of meeting	Where the meeting was held	Who attended the meeting (name of officer/s and agency)
28 – 30 March 2012	Maritime Boundary Negotiations with Fiji	Nadi, Fiji Meeting hosted by Ministry of Foreign Affairs, Fiji	Alatoi Ishmael Kalsakau, Attorney General  Avock Godden, Solicitor General's Unit, State Law Office
6-9 June 2012	National Bank of Vanuatu Share Restructuring Meeting	Sydney, Australia Meeting hosted by International Finance Corporation	Chris Tavo, Advisory Unit, State Law Office
5 – 7 July 2012	Australia-New Zealand Society of International Law (ANZSIL) conference	Wellington, New Zealand Meeting hosted by ANZIL	Viran Molisa Trief, Solicitor General
7 – 22 July 2012	Asia Pacific Group on Money Laundering Plenary	Brisbane, Australia Meeting hosted by APG	Floyd Mera, Manager, Financial Intelligence Unit
10-28 July 2012	Maritime Boundary Delimitation-Affirmation of Vanuatu's submission in relation to continental shelf	New York, USA	Avock Godden, Solicitor General's Unit, State Law Office
22-28 July 2012	3 <sup>rd</sup> Meeting of the Pacific Legislative Drafters Forum	Nadi, Fiji	Angelyne Saul, Parliamentary Counsel  Jane Jereva,

			Parliamentary Counsel's Unit
31-3 August 2012	Melanesian Spearhead Group Sub-Committee on Legal and Institutional Issues Meeting	Port Vila, Vanuatu Meeting hosted by MSG Secretariat	Chris Tavoia, Advisory Unit
20-21 September 2012	Negotiation on the Indefeasible Rights of Use Agreement between Government of Vanuatu and Interchange Limited.  Meeting concerns the underwater submarine cable.	Sydney, Australia Meeting hosted by Ashurst International Law Firm	Chris Tavoia, Advisory Unit, State Law Office

### Attachment C: Contact information for all law and justice agencies

Name of Agency	Contact person and position	Contact phone number and email
State Law Office	Angelyne SAUL, Acting Attorney General.	+678-22362 <asaul@vanuatu.gov.vu>
Public Solicitor's Office	Jacob KAUSIAMA, Public Solicitor.	+678-23450 <jkausiama@vanuatu.gov.vu>
Public Prosecutor's Office	Kayleen TAVOA, Public Prosecutor.	+678-22271 <ktavoia@vanuatu.gov.vu>
Law Commission	Bertha PAKOASONGI, Secretary.	+678-26229 <bpakoasongi@vanuatu.gov.vu>
Ombudsman's Office	Alain Molgos, Acting Ombudsman	+678-27200 <ombud.vt@vanuatu.com.vu>