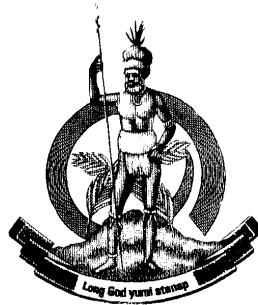


# REPUBLIC OF VANUATU

## COUNTRY REPORT



### PACIFIC ISLANDS LEGAL OFFICERS NETWORK

(PILON)

**(Port Vila, Vanuatu, 5-8 December 2008)**

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## **1. Introduction**

The Vanuatu Country Report will be a follow up of our last Country Report that was presented in the PILON meeting which was held in the Cook Islands earlier this year.

This year's report will again focus on the recent developments within the State Law Office units, namely the Corporate Service Unit, the Financial Intelligence Unit, the Solicitor General's Unit, the Parliamentary Counsel's Unit, and a Consolidation of Laws update report, and additionally Office reports from the offices of the Public Solicitor and Public Prosecutor.

## **2. Government**

Vanuatu recently held its National General Elections on 9 September 2008. The Vanuaaku Party (VP) is leading the current coalition government with VP President, Edward Nipake Natapei as Prime Minister. This has seen a shift of power from the last government headed by President of the National United Party (NUP), and former Prime Minister, Ham Lini Vanuaroroa who survived 5 motion of no confidence vote and enjoyed a relatively stable government which generated good economic growth rate for the country in the last 4 years as revealed by the Reserve Bank of Vanuatu in their annual report. VP and NUP have maintained their successful partnership in government with NUP President, Ham Lini Vanuaroroa holding on to the position of Deputy PM. They have been joined by Serge Vohor and his Union of Moderate Party (UMP). So far, Prime Minister Natapei has survived 2 motions of no confidence vote since becoming Prime Minister on September of this year

## **3. State Law Office Unit Reports**

### **Corporate Services Unit**

Over the last year the Corporate Services Unit of the State Law Office in collaboration with the Office of the Public Solicitor and the Public Prosecutor have collectively with the assistance of the Australian government funded Vanuatu Legal Strengthening project, embarked on a joint corporate plan for the three offices. The Corporate plan aims to improve service delivery within the offices by the sharing of resources and in so doing, minimising costs incurred by each office.

With the Corporate plan now in place and the main objectives of the three offices outlined, each of the three offices is now tasked with

drawing up its own business plan to achieve its objectives under the corporate plan and to collectively work to achieve the common goal of strengthening the Vanuatu Government's legal institution.

Currently the Unit is reviewing of the State Law Office Staff Manual with the need for a revised and improved manual in perspective. The unit plans to have the staff manual revised and in use within the next three years.

We reported in our last Country Report that the Government increased the much needed financial assistance to the State Law Office in 2005. This year we are pleased to report that there has been further improvement in financial resources with the State Law Office, the Public Solicitor's Office and the Public Prosecutor's Office. This came about by way of the Government increasing payroll for all lawyers and staff of the three offices with increase funds for operational costs.

### **Appointments and Resignation since last PILON**

- Louis George has been appointed a State Counsel with the Drafting Unit of the State Law Office at the beginning of this year increasing the number of legal drafters to 4, working under the supervision of Parliamentary Counsel, Angelyn Saul. Mr. George is a francophone and his appointment with the State Law office has been beneficial especially in the areas of interpreting and drafting of French text of Vanuatu laws.
- John Stephens, Assistant Senior State Counsel resigned to take up a senior position with the Vanuatu Financial Service Commission in July of this year.
- Tom Joe Botleng, Senior State Counsel took up attachment with the Pacific Aviation Security Office.

In July of this year a few State counsel were also admitted as Barristers and Solicitors to the Supreme Court of the Republic of Vanuatu.

The Supreme Court unconditionally admitted the following in recognition of their good works as officers of the court:

**Unconditionally admitted:**

- Senior State Counsel Tom Joe Botleng
- Senior State Counsel Viran Molisa Trief
- Assistant Senior State Counsel John Stephens Tougon
- State Counsel Frederick Sam Loughman

**Conditionally admitted:**

- State Counsel Jason Kalfau Pakoasongi
- State Counsel Florence Williams Reur
- State Counsel Avock Godden
- State Counsel Justin Ngwele

**Financial Intelligence Unit (FIU)**

The FIU has recently recruited a data input officer, Kela Belam to increase the number of FIU staff to 3, comprising of the Financial Analyst, Floyd Mera, Compliance Officer, Kevin Tari. The FIU staff are assisted and by three FIU lawyers appointed by the Attorney General, Senior State Counsel Viran Molisa Trief, State Counsel Florence Williams Reur, and State Counsel Frederick Sam Loughman.

The Vanuatu government, through its Financial Intelligence Unit is a member of the following key institutions:

- The Asia Pacific Group on Money Laundering;
- The Egmont Group of Financial Intelligence Units worldwide

Vanuatu is also among 7 other Pacific Island countries who will be the first to benefit from an AusAID-funded regional project designed to upgrade their database systems in order to produce quality, and accurate reports to their respective governments, and between the region's FIUs.

The Country's Financial Intelligence Unit has so far, had a good and cooperative working relationship with Financial Institutions in the country established under the FTRA and other similar institutions in the Pacific region and around the world. This is essential in order to share information and to effectively combat Money Laundering and Financing of Terrorism.

The government's concern in this regard is necessary because the safeguarding of financial systems in a country is vital in the stability of

any national government. We have been conscious of situations in other parts of the world where governments and nations become corrupt as a result of their corrupt financial systems, and the government through the FIU sees it a priority to guard this nation against such situations.

Whilst we are fully aware of our limited resources to support our domestic initiatives against financial crimes and other illegal activities, we have and will continue to work closely with our partners in the region and around the world to provide the necessary tools to support the operations of the Financial Intelligence Unit.

The government has also taken an active role in undertaking to fully consult with all stakeholders, in particular the financial institutions, when new legislation and amendments to existing legislation are drafted for consideration by Parliament. The government also expects the private sector to be genuine and constructive partners in the process.

The government has also indicated that the amendment of the FTRA, which has been withdrawn from Parliament twice, will be tabled at the next session of parliament before the end of the year, 2005, to ensure that Vanuatu maintains the integrity of our financial system and honours its international obligations under the Act.

There are important legislations that are currently in force in the country which complement the FTRA. These are:

- The Proceeds of Crime Act No. 13 of 2002
- Mutual Assistance in Criminal Matters Act No. 14 of 2002
- International Convention for the Suppression of Financing of Terrorism Act No.

### **Solicitor General's Unit**

The Solicitor General's Unit which is responsible for advising and representing the government in Court has had a difficult year especially with two senior State Counsels leaving the office to work elsewhere. This has placed pressure on the remaining litigators who have to manage with increasing workload. There is also the problem of office space within the litigation unit which has contributed to the delay in appointing people to the vacant posts within the unit.

The State Law Office through the Solicitor General's Unit has had some experience of defending cases that were filed in Court due to government decisions made without firstly seeking proper legal advice from the Office. Such incidents were proving costly for the government and in an

attempt to prevent similar instances from happening again, the Solicitor General and Litigators took an initiative to conduct workshops with clients, namely the government departments who have the most cases appearing before the Courts.

With the current shortage of staff, the Unit has been unable to conduct any further workshops in 2007. Nevertheless, the Unit plans to conduct further workshops with other government departments.

The feed back to these workshops was generally good and a lot of questions were asked by those attending the workshops which reflect upon some of the ignorance of the general client-lawyer relationship and proved the need for the Unit to conduct further workshops.

The Unit will also be looking at expanding these workshops to government centres in the outer islands, namely Luganville, on the Island of Santo, and possibly Lakatoro on the Island of Malekula, and Isangel on Tanna.

The Unit hopes that these workshops will create a better awareness and establish a better working relationship between government officers and the litigators and hopefully will result in lesser matters filed against the government in the courts.

### **Summary of Cases**

This report also intends to give a summary of some of the major cases that the government was involved in and the Court's ruling in these cases over the last year

An important case which was that the State Law Office dealt with is Constitutional Case No.6 of 2008 regarding the Bill for the Family Protection Act.

Initially the President referred the Bill to the Supreme Court on July 16, 2008 to determine whether certain sections of the Bill were consistent with the Constitution.

The Supreme Court decision was handed down on November 22 2008.

The Referral by the President concerned specific provisions in the Bill which included Section 4 (1) (a); Section 13 (d); Section 15 (1) (c); Section 32; and Section 7.

Throughout the course of the case, both Counsels assisted the Court with agreed statements of issues to be determined by the Court

The first one was for them to help determine the extent and meaning of the Preamble and inconsistency with the Preamble of the Constitution.

The relating questions to the first issue were; Is the Preamble a part of the Constitution? Is the Preamble “a provision of the Constitution” within the meaning of the Article 16 (4) of the Constitution?; and if so, is Section 14 (1) (a) of the Bill inconsistent with the Preamble of the Constitution?

The other two issues related to whether particular sections were inconsistent with the Constitution and issue of severability.

On whether Section 4 (1) (a) of the Bill intended to prohibit the exercise of genuine parental discipline, the Chief Justice ruled that he did not think so.

He said there is nothing in the Bill which prohibits the exercise of genuine parental discipline.

He further ruled on this particular section that the term “assault” was not defined in the Bill nor was it defined in Section 107 of the Penal Code.

The Chief Justice said in both, the meaning of “assault” was supplied by the common law.

He stated; “The common law recognizes the exception of lawful chastisement where a parent delivers reasonable corporal punishment to a child. Such punishment does not amount to an assault at common law and so would not amount to an assault under the Penal Code or the proposed Family Protection Act No. 28 of 2008.”

Therefore, he ruled that Section 4 (1) (a) of the Bill was not inconsistent with Article 5 (1) (f) of the Constitution.

In answer to the questions posed before the Court over the Preamble the Chief Justice said the Preamble was part of the Constitution.

He said recourse could be had to the Preamble to interpret an enacting provision of the Constitution when it is ambiguous, but when an enacting provision of the Constitution was clear, there was no need to have a recourse to the Preamble as an aid to interpreting an enacting provision of the Constitution.

In the second question of whether the Preamble was a provision of the Constitution within the meaning of Article 16 (4) of the Constitution, the answer was no.

The Chief Justice ruled that Section 4 (1) (a) of the Bill was not inconsistent with the Preamble of the Constitution, neither was it inconsistent with Article 5 (1) (f) of the Constitution.

The findings of the Supreme Court also showed that the other sections of the Bill that were put forward were not inconsistent with the Constitution.

The Court was not required to provide an answer to the issue of severability because the severability question did not eventuate in that particular reference.

The President was then invited to sign the Bill for the Family Protection Act.

President Kalkot Mataskelekele following the ruling has stated that no decision has been taken at this stage to appeal the decision of the Supreme Court in Constitutional Case No.6 of 2008 regarding the Bill for the Family Protection Act.

The President said any decision on appealing rests on the advice of the lawyer representing the State Office.

But as President, he said he accepted fully the judgement of the Supreme Court and respected the decision handed down by Chief Justice Vincent Lunabek.

### **Parliamentary Counsel's Unit**

There is a lack of legislative drafting capacity at the State Law Office at the moment. The Parliamentary Counsel is supported by 4 other State Counsels engaged in drafting legislation for the Government. The Unit recruited Mr. Louis George, a recent USP Law graduate earlier to bring the number of drafters to 4. Nevertheless, this does not bring the Unit to its full capacity to meet the demands of the work load.

This has proven to be a problem because each year the Government's legislative priority increases. The office needs to employ more legislative drafters but is restricted because of budget constraints and spacing problems within the office.

A significant development in the area of legislative drafting for Vanuatu is the continued appointment of Ni Vanuatu to the position of Parliamentary Counsel after years of having this position unfilled within the State Law Office.

Legislative Drafting is a fairly young area of law that is still developing in our Pacific Island jurisdictions in terms of local expertise. Indeed there is a need for more training to acquire skills necessary in this area of law.

Vanuatu was fortunate to have benefited from the assistance of the Australian Government through the Vanuatu Legal Sector Strengthening Project, whose technical advisors have over the last few years been able to transfer valuable knowledge and skills in this field of legislative drafting to the Parliamentary Counsel and two other drafters.

We have in our previous Country Report the Parliamentary Counsel's Unit, through the Attorney General and the State Law Office of the Republic of Vanuatu, given the present circumstances of legislative drafting in the region, proposed that the PILON meeting give regard to developing this area of law within the region.

Whilst PILON has organised Litigation Skills Programme for litigators in the region in the past, it has not organised similar workshops for legislative drafters, and the Unit proposed that PILON should organise a PILON Legislative Drafters Skills Workshop for the legislative drafters in the region.

We would like to reiterate this point and seek PILON's endorsement of the same.

Similarly the region through its different organisations like the Pacific Islands Secretariat should look at organising Conferences to be held for legislative drafters. This would be an opportunity for legislative drafters within the region to get together, know each other and share their knowledge in this field. It is also an opportunity for legislative drafters in the region to be updated on the recent developments in legislative drafting in the region and the world. Other jurisdictions like Australia do that for their legislative drafters.

This would be an important and positive step towards the development of legislative drafting in the region.

#### **4. Consolidation of Laws Report**

Vanuatu Laws require the consolidation of laws to be in both English and French, the two official languages in Vanuatu. The process of consolidation of the English text of Vanuatu laws has been completed with funding by the British Government. Over 236 Acts have been consolidated and approved by the Attorney General. The State Law Office

in collaboration with the Ministry of Justice are working together to set a date to mark the official launching of the consolidation of the English texts for public use.

The French consolidation is in its final stages and should be out before next year.

## **5. Public Prosecutor's Office Report (PPO)**

### **Latest Developments**

The office has employed an additional Assistant Public Prosecutor since November 2007 and is expected to employ another Assistant Public Prosecutor this year.

We reported in the last PILON, the problem of case backlogs and as such the Office has recruited an additional officer to assist the Case Manager with the filing of cases which helps reduce case backlogs and the serving of summons when required.

An Australian Advisor has also been assisting the Office since July 2006 through the ongoing Australian Government funded Vanuatu Legal Sector Strengthening Program.

### **Downfalls and challenges**

#### *Shortage of legal officers*

We reported in our last PILON that the office faces a problem of shortage of legal officers. This problem still exists with the Office even though there have been appointments of new legal officers within the last year. The problem has always been due to legal officers leaving the office for private practise which is lucrative in Vanuatu. On a positive note, the Vanuatu Government, through the Government Remuneration Tribunal has over the last year determined a new salary scale which has seen a dramatic increase of salary for all government lawyers.

#### *Limited Finance*

The PPO's annual budget has seen an improvement since the previous year with an increase in salary for all government legal officers, support staff and the Judiciary. However, Office budget for operational costs is the same as last year 2007, and with the increased case load both in the urban and outer island centres, this means that there has to be a selection of which cases had priority to be dealt with and the need to

meet the costs of witnesses and PPO Officers' subsistence costs, including travelling and other operating expenses.

#### *Case backlog & service of summons*

It is essential that in all criminal matters, the witnesses and accused persons receive notice about the trial dates, and without a means to serve summons, this meant cases were adjourned to a next suitable date. The obvious result was a backlog of cases following several adjournments eventually leading to a direction by the PP to the Court and Police and general public that no new prosecutions would be registered. It created a situation of frustration from expectant families of victims who felt that there was nothing that could be done by the authorities to ensure justice was done, and also from accused persons who were uncertain when their case would be dealt with. Bail applications were not objected to even though some involved serious matters as it was uncertain when the Prosecution would commence with all persons being present.

#### *Proper case recording*

PPO has not been able to properly register all the cases that have been registered, mainly due to poor case control and oversight. The case file manager for both Port Vila and Luganville Santo has just recently started implementing a proper system to record all matters into the computer however given other responsibilities in the office, the availability to find time to carry out the recordings is an ongoing challenge. There also needs to be some short computer training with the PPO staff to enable them to carry out proper registration to assist the case file managers.

### **Major Cases**

#### *Case of Interest*

This report is concentrated on serious criminal offences that have been prosecuted by the office of the Public Prosecutor in the month of May to June 2007 the government of Vanuatu defrauded to the amount of Vt42,000,000. This has resulted in the prosecutions of various members of Parliament and Political appointees. One member, of Parliament was convicted, one political appointee was convicted and three members of civil society. The person who masterminded this scheme is Mr Salendra Sen Sinha a Fijian citizen. He is yet to be brought to Vanuatu for this case, and a the counterfeit of the vatu currency.

Of these cases four of the Defendants sentences have been appealed by the recent sitting of the Court of Appeal.

Since the beginning of this year 2008, Vanuatu has been hit by a number of murders of expatriates living in Port Vila. These matters are before the Supreme Court for Trial. They have taken a number of months to appear for trial as defendant have escaped from custody frequently that the government had to intervene by appointing the police to undertake the duty of the Vanuatu Correctional Services. In addition to this a habitual offender who was involved in a murder of a business man five years ago has now been alleged to have committed the murder of a Chinese business woman in Port Vila.

The defendant involved in the arson of the Court House has been convicted and sentenced to 7 years imprisonment. Since burning of the Court House some criminal cases have yet to be call for plea and those on trial at that time will be reheard by the judge appointed to the case.

The Court of Appeal retrial of a murder in Santo is yet to be given a date and a judge to hear the retrial.

Majority of Supreme Court matters dealt with relate to these types of offences and most of the defendants are young and unemployed, and close family members including parents and grandparents. Most of the victims are of a young age mostly between 13 to 16 years. There have been a few gang rape matters.

Most of the these matters have led to custodial sentences, however there is the ongoing pressure on PPO by families of both defendants and victims to withdraw matters following customary settlements, which is often resolved following meetings with the legal officers.

### *Drug offences*

PPO recently has been prosecuting drug offences mainly involving cultivation and possession, leading to suspended sentences and custodial sentences.

There is however sometimes the difficulty to impose what may otherwise be a suitable sentence as there is often poor analysis by the police, and there is often the need to re-emphasis the importance of proper recording and analysis of the drugs.

There is a noticeable increase of drug related cases and as from the beginning of this year just under ten matters have been dealt with, which is a big increase to previous years when on average of under five were dealt with annually.

## **6. Public Solicitor's Office Report**

### **Latest Developments**

At present the Office has recruited two new legal Officers who have just completed their Professional Diploma in Legal Practice at the Institute of Justice and Applied Legal Services in Suva Fiji, namely Andrew Bal and Kevin Natan in addition to the three legal officers already working with the Public Solicitor in Luganville and Port Vila. The new recruits have been working with the Office since September of this year. Kevin Natan has been posted to the Public Solicitor's Office in Luganville, Santo where he is working with Chris Tavoia who has been singly posted to head the Santo Office since August of 2006. The new recruits to the office are currently working on a six month contract and subject to their performance, should be made permanent staff at the end of their contract. The Office hopes to recruit another legal officer this year to assist the legal officer based in Luganville, Santo.

### **Research and Library Facilities**

The Public Solicitor's Office has no library. Researches have had to be done using the USP Law library. This assistance is further enhanced with a twinning scheme arranged with the DPP of New South Wales' library.

### **Headquarters**

The Public Solicitor's Office has always been based in Port Vila, even though it was earlier realised that there is a need to expand the services to ensure its availability to the wider community. We are pleased to report that since August 2006 the Office has opened a sub-office in the Northern Town of Luganville, which is fully operated by Chris Tavoia, a full time lawyer permanently based in Santo for the Northern Region of the Archipelago. Mr. Tavoia is assisted by recent law graduate, Kevin Natan along with a receptionist, a secretary, and a driver/messenger.

### **Office Data Base of Cases**

It is also the Public Solicitor's wish to set up a data base to assist in the tracking of cases the Office is handling. The need has arisen due to public awareness of the Office's services and the increase in the number of clients and cases reaching the Office as against the small number of personnel available to keep track by manual monitoring.

So with the establishment of the IT Section of Government this is now being realized.

### **Future and ongoing Incentives**

- Recruit More Assistant Legal Officers
- Change Salary Structures;
- Revive Duty Solicitor with Court House;
- Create More Opportunities For Junior Lawyers Such As:
  - In House Training;
  - Workshops & Seminars;
  - Over Seas Placements & Training

### **7. Legal Sector Reforms – Vanuatu Legal Sector Strengthening Project (VLSSP)**

The Vanuatu government legal sector has continued to benefit from the Australian Agency for International Development (AusAID) funded project which was established in May, 2000 to promote good governance. The project which is purposely aimed at enhancing the capacity of the three government legal offices, namely the State Law Office, the Public Solicitor's Office, and the Public Prosecutor's Office, has been working well and has proven quite successful over the last four years.

The VLSSP support to date has focussed on the management of office operations, professional development of staff, establishment and maintenance of administrative systems, development of relationships with other relevant agencies, review of the legislative framework affecting the legal sector and assessment of efficiency gains from co-locating offices and sharing resources.

So far the VLSSP has provided significant benefits to the three Public Legal Offices through:

- improvement in legal practice, litigation management and drafting;
- improvement in administrative systems;
- improvement in the professional status of the working environment;
- increased capacity of legal staff to progress casework and court appearances;
- establishment of the Community Legal Clinic; and
- increased institutional linkages with relevant Australian organisations for on-going information and advice.

Currently, there are three Australian Legal advisers funded under the programme who have been attached with the three Offices of the Public Solicitor, Public Prosecutor, and the State Law Office. Two of the legal advisers attached with the State Law Office and the Public Prosecutor's Office are on a two year contract and have been with each respective Office since July 2006.

Having said this, this Vanuatu report would like to acknowledge the support of both the Governments of Australia and New Zealand who have continued to provide aid in support of Legal training and education in Vanuatu and through out the region. We hope that with our good working relationship, Vanuatu and others in the region will continue to grow from strength to strength towards establishing a strong government legal sector.