

REPUBLIC OF VANUATU

COUNTRY REPORT



**36th PACIFIC ISLANDS LAW OFFICERS
NETWORK (PILON) ANNUAL MEETING**

Majuro, Marshall Islands 18 – 20 October 2017

PILON COUNTRY REPORT 2017-VANUATU

1. Structure and governance of the Ministry of Justice

1.1 Pursuant to a Council of Ministers Meeting on 6 August 2008 the Ministry of Justice and Social Welfare (subsequently rename the Ministry for Justice and Community Services) was established. The Ministry is responsible for the following Agencies as established under the Constitution and or relevant legislations:

- a) Judicial Services Commission
- b) Public Prosecutor
- c) Public Solicitor
- d) Auditor General
- e) Vanuatu Correctional Services
- f) Office of the Valuer General
- g) Office of the Ombudsman
- h) Law Commission
- i) Department of Women's Affairs (desks within the Department focus on children and Disability)
- j) Customary Land Management Unit
- k) Vanuatu National Council of Women
- l) Vanuatu National Children's Committee

1.2 Institutions such as the State Law Office headed by the Attorney General, the Police Department, reports to the Prime Minister's office and the Ministry of Internal affairs respectively, although their function or activities are much related to agencies held responsible under the Ministry of Justice and Community Services.

2. Major law and justice sector achievements

July 24th of every year is national children's day in Vanuatu. This year July 24th 2017 was unique, saw parents, caregivers, teachers, Government Ministers, Director Generals and Directors, Non-Government Organisations and members of the public join the children to celebrate the day. The theme for that day was the *Right of the Child to Safety and Protection at All Times and At all Levels of the Society – Home, Community, Province and National.*

Children gave their speeches, asking parents and everyone to protect them at all levels.

In June 12th – 23rd the Ministry of Justice and Community Services in Partnership with the Ministry of Youth Development and Sports and UNICEF organised and

conducted 2 meetings purposely to share progress of complementing the Family and Traditional Child Protection System that was developed by the Ministry of Justice and Community Services, which recognises that good traditional beliefs and values are a solid foundation for sustainable community level child protection systems. It will give community and church leaders, chiefs, youth leaders, parents and caregivers the knowledge and skills to identify problems that children face and methods to work together to address those problems.

This year the law and justice carried out some of the activities envisaged under the Strategy plan. Some of these activities include:

- Continuing, development progress in relation to the case management system from Lexis Nexis within the Courts, the State Law Office, Office of the Public Prosecutor, State Prosecution Department and the Ombudsman's office;
- the New Zealand High Commissioner opened the women's handicraft market situated at the sea front which was funded by the New Zealand Government;
- The opening of the Malvatumauri National Council of Chief Nakamal (meeting house) that was destroyed by tropical cyclone Pam;
- The passing and or approval of Bills by the Parliament to laws to have Vanuatu voted out from the Grey list with regards to Money Laundering, Proceeds of Crime and the like issues.

3. Significant court decisions

Recent notable Court decisions that relates to the exercise of power in Vanuatu are:

3.1 Pipite v Public Prosecutor [2017] VUCA 13; Criminal Appeal Case 583 of 2017 (7 April 2017)

- a. This is a Criminal Appeal against the judgment of the Supreme Court issued in the matter of *Public Prosecutor v Pipite* [2016] VUSC; Crim Case No.138 of 2016. In the last PILON report at the meeting in FSM we note that the Supreme Court in that matter had found the former members of Parliament guilty of conspiracy to defeat, obstruct or prevent the course of justice between 9 and 11 October 2015 when they asked for and arranged for pardons to be granted by Mr Pipite (who was also a defendant who at that time attempted to exercise the power of the President as then Speaker of Parliament when he was performing the President's function while the President was overseas). However, given the findings of the Supreme Court above, the former Members of Parliament having not satisfied with the judgment of the Supreme Court appealed the said finding to the Court of Appeal, and the Court of Appeal quashed their convictions and ordered a re-trial at the discretion of the Public Prosecutor. The significance of this case

was that as the Court of Appeal found- it was not right for a judge to make findings on any offence without first satisfied himself or herself on each and every elements of the offence even if there are more than one offender. He or she has to satisfied on the facts to establish the elements of the offence in relation to each and every individual offender. A finding on one offender cannot be used to hold the other offence with such finding. Each offenders has different involvement to the commission of the offence.

3.2 *Kalosil v Republic of Vanuatu* [2017] VUCA 9; Civil Appeal Case 3797 of 2016 (7 April 2017)

a. This matter was brought about by way of an appeal from the Supreme Court to the Court of Appeal and in the last PILON meeting it was reported the matter was still pending before the Supreme Court. In that matter in the Supreme Court the former members of Parliament invoked a breach of their rights under Article 27 of the Constitution of the Republic of Vanuatu. This case has a consequential effect on the criminal proceedings that was dealt with by the courts relating to the issues of bribery and the conspiracy to defeat, obstruct or prevent the course of justice.

b. Article 27 of the Constitution of Vanuatu provides:

(1) No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.

(2) No member may, during a session of Parliament or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of Parliament in exceptional circumstances.

c. The Applicants case was that their prosecution was in violation of Article 27 of the Constitution for reasons that while Parliament was in session towards the end of 2014 and in 2015, the Public Prosecutor proceeded to initiate criminal proceedings against them. They alleged that while Parliament is on session, they are immune from prosecution. The Supreme Court found that the prosecution of the Applicants does not violated their Constitutional rights under Article 27 of the Constitution.

d. The Applicants having not satisfied with the judgment of the Supreme Court appeal the said judgment to the Court of Appeal, and the Court of Appeal having not satisfied with the Applicants submissions dismissed their appeal with costs.

4. Significant legal reform

Constitutional Amendment

- 4.1 A committee was set up to oversee the need to amend the current Constitution and at current there are no current amendments as yet on the said Constitution as reported in our last meeting.
- 4.2 Another significant reform currently approved and passed by Parliament is the Right to Information Act No. 13 of 2016. It intends to regulate right to information from government and private entities and the manner how such information is sought and what are the exceptions to the right to information
- 4.3 Additional reform is the Income Tax Bill which was in its draft form and is currently under the drafting process. It intends to secure funding for the operations of the Government of Vanuatu and to provide a fair, effective and transparent taxation system that will allow all members of the community to contribute to the advancement of the Vanuatu in light of the Constitution.
- 4.4 Another significant reform is the approval and passing of the Bills relating to the Vanuatu Intelligence Unit on issues of Money Laundering, Proceeds of Crime and the like. These Bills include:

First Phase -

1. Proceeds of Crime (Amendment) Bill
2. Counter-Terrorism and Transnational Organised Crime (Amendment) Bill
3. United Nations Financial Sanctions Bill
4. Government (Amendment) Bill [*related to UN Financial Sanctions Bill*]
5. Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Bill
6. Dealers in Securities (Licensing) (Amendment) Bill
7. International Banking (Amendment) Bill
8. Casino (Control) (Amendment) Bill
9. Company and Trust Service Provider (Amendment) Bill
10. International Companies (Amendment) Bill
11. Penal Code (Amendment) Bill
12. Copyright and Related Rights (Amendment) Bill
13. Firearms (Amendment) Bill

Second Phase -

1. Bill for the Financial Institutions (Amendment) Act No. of 2017
2. Bill for the Foundations (Amendment) Act No. of 2017
3. Bill for the Charitable Associations (Incorporations)(Amendment) Act No. of 2017

4. Bill for the Vanuatu Interactive Gaming (Amendment) Act No. of 2017
5. Bill for the Mutual Funds (Amendment) Act No. of 2017
6. Bill for the Insurance (Amendment) Act No. of 2017
7. Bill for the Gaming (Control)(Amendment) Act No. of 2017
8. Bill for the Lotteries (Amendment) Act No. of 2017
9. Bill for the E-Business (Amendment) Act No. of 2017
10. Bill for the Credit Unions (Amendment) Act No. of 2017
11. Bill for the Cooperative Societies (Amendment) Act No. of 2017
12. Bill for the Companies (Amendment) Act No. of 2017
13. Bill for the Mutual Assistance in Criminal Matter (Amendment) Act No. of 2017

(see the attached note from the Director of the Financial Intelligence Unit of Vanuatu on this reform)

5. PILON Legal Policy Agenda - Update

(a) Cybercrime

Vanuatu had engaged in drafting a bill for the Cybercrime Act intended to go before Parliament at the Parliament's next sitting sometime next year 2018. It intends to provide necessary substantive criminal law provisions to enable prosecution of cybercrimes such as illegal access, data interference, computer related fraud and cyber stalking. It also provides for authorised officers with powers necessary to investigate cybercrime such as necessary procedures for search and seizure of stored computer data (including production orders), and real-time collection of computer data and the powers necessary to investigate cybercrimes. It further recognises acts done in or outside of Vanuatu.

(b) Environmental Crime & Corruption

Another prominent steps in compacting corruption, the Prime Minister pursuant to the Government Act, established by order, an Anti-Corruption Committee on 12 October 2016 whose primary responsibility is to oversee recommendations from the United Nations Convention against corruption and to develop and have oversight of the Vanuatu National Anti-Corruption strategic framework that would ensure the promotion of the rule of law and the proper management of public affairs, public property, integrity, transparency and accountability.

(c) Sexual and Gender Based Violence

- (i) Since the commencement of the Family Protection Act, the Vanuatu Police Force had established a Family Protection Unit intended to receive complaints and to process criminal conducts that may be regulated under the Family

Protection Act. It also expanded its responsibilities to cater for issues that may relate to matters arising out of the Family Maintenance Act [CAP 42]. Domestic violence is a great challenge in Vanuatu and one of these challenges relates to the input or resources made available to well equip the Family Protection Unit or the Vanuatu Women's Centre to have advocate against these form of violence.

- (ii) Some statistics from the Family Protection Unit alone in 2015 for the month from January to March 2015 records that there was a total of 165 cases reported. This is indicative of the fact that domestic violence remains a huge problem in Vanuatu that needs well financed resources to tackle it. On the backdrop of this data itself, it is also an indication that despite the cultural setting of the society based on traditional practices, more women are now aware of their rights that they are now stepping forward to lodge complaints against this form of violence.

6. Legislative Framework(s) for criminal deportees.

- 6.1 Under section 50(1)(d),(e),(f),(g),(h) of the Immigration Act No.17 of 2010 provides that a person who is convicted of an offence, in or outside Vanuatu, and is sentenced to a term of imprisonment of 12 months or more, life imprisonment or the death penalty, or a person who is or is likely to be involved in the commission of an offence against the Counter Terrorism and Transnational Organised Crime Act [CAP 313] , or a person who is a terrorist within the meaning of the Counter Terrorism and Transnational Organised Crime Act [CAP 313]; or a person whose presence in Vanuatu is a risk to the security or defence of Vanuatu, or to public order in Vanuatu or a person who is wanted in another country by the relevant authorities in that country in relation to the commission of an offence in that country, are regarded as prohibited Immigrant and are liable to be removed by the Minister pursuant to section 53 of the Immigration Act.
- 6.2 However, under the Immigration Act there are no statutory provisions that would require disclosing criminal histories of a deportee or issuance of notices between countries relating to the criminal deportee.

7. Legislative Framework(s) for receiving evidence from expert witness

- 7.1 ~~Vanuatu does not have an Evidence Act that would regulate the manner in which evidence are deposed in Court. There was an attempt of introducing a Evidence Bill back in 2004 but then the idea was put aside although extensive consultation was made between the Parliamentary Counsel's Unit within the State Law Office with private law firms and other law enforcement agencies to have their input on the proposed Evidence bill.~~
- 7.2 Currently with all civil proceedings, legal practitioners are only guided by the Civil Procedure Rules which provides for the giving of evidence by an expert

witness (Rule 11.12) chosen by respective parties and or one appointed by Court.

8. Summary of significant issues affecting the law and justice sector (including issues for discussion within PILON) and options to address these issues.

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 Pubic Legal Institutions

Inadequate funding to the SLO, PSO and PPO leads to shortage of lawyers in these government institutions to carry out their work effectively.

Low wages paid to public lawyers

Inadequate funding to the SLO, PSO and PPO also leads to the low wages public lawyers receive.

Lack of space

The SLO, PPO and PSO are dealing with huge paper work within a limited space. This issue also relates to limited finance required to build an adequate building that could provide sufficient space.

9. Technical legal assistance

The Ministry of Justice through the Australian Aid funded *Stretem Rod Blong Jastis* Partnership has been liaising with the Victorian Bar to offer legal advocacy courses. The Victorian Bar has agreed to offer two courses, that is, the intermediate course and the advanced course which will be offered in Port Vila in December 2014. An invitation has been sent to all lawyers and prosecutors to attend the advocacy training.

10. Significant initiatives/projects involving Vanuatu and its law and justice sector

The most significant are:

- the Stretem Rod Blong Jastis Vanuatu Law and Justice Partnership programme funded by AusAID; and
- a Memorandum of Understanding arrangement between the Vanuatu Supreme Court and the Federal Court of Australia in relation to technical assistance regarding case management.

Contact information for all law and justice agencies

Name of Agency	Contact person and position	Contact phone number and email
State Law Office	Arnold Kiel LOUGHMAN, Attorney General.	+678-22362 <akloughman@vanuatu.gov.vu>
Public Solicitor's Office	Jacob KAUSIAMA, Public Solicitor.	+678-23450 <jkausiamo@vanuatu.gov.vu>
Public Prosecutor's Office	Josaia Naigulevu, Public Prosecutor.	+678-22271 <jnaigulevu@vanuatu.gov.vu>
Law Commission	Bertha PAKOASONGI, Secretary.	+678-26229 <bpakoasongi@vanuatu.gov.vu>
Ombudsman's Office	Kalkot MATASKELEKELE, Ombudsman	+678-27200 <ombud.vt@vanuatu.com.vu>

Provide list of regional and international Organisations currently working on projects in your country

Name of Organisation	Contact person and contact details (phone number/email)	Project type
Australian Aid	Natalie David, Partnership Coordinator, 5333110, 7775579, <dnatalie@vanuatu.gov.vu>	Stretem Rod Blong Jastis part of Policing and Justice Support Programme
Australian Aid	Russell Nari, Director, 5645157, <rnari@landequity.com.au>	Mama Graon, Vanuatu Land Programme



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29 June 2017

PRESS STATEMENT

FIU RELATED NEW LEGISLATION AND AMENDMENTS

In the current ongoing efforts to satisfy and exit the "Financial Action Task Force grey list" (FATF grey list), the Vanuatu Financial Intelligence Unit ("FIU") is inclined to announce the official gazettal of thirteen (13) Acts, having been successfully enacted through the National Parliament and consented to by His Excellency Late President and published on 16th June 2017.

This is a timely and necessary achievement for Vanuatu in its gradual progression towards getting off the FATF grey list. Hereon, the FATF review team are monitoring and will test Vanuatu's implementation and will determine the effectiveness of the implementation efforts. As Vanuatu aspires to being removed from the FATF grey list, the next phase of focus is the implementation of the new legislation and amendments, the monitoring and testing of which, will determine Vanuatu's future status with FATF.

The thirteen (13) pieces of legislation, which are consequential to the FATF's action plan for Vanuatu, comprise of one (1) newly introduced Act and twelve (12) Amendments to existing Acts of Parliament.

The new Act is the United Nations Financial Sanctions Act No. 6 of 2017. The other twelve (12) Amendments pertain to the following existing Acts, namely are:

- Government (Amendment) Act No. 7 of 2017;
- Company and Trust Services Providers (Amendment) Act No. 8 of 2017;

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- Proceeds of Crime (Amendment) Act No. 9;
- Penal Code (Amendment) Act No. 10 of 2017;
- Dealers in Securities (Licensing) (Amendment) Act No. 11 of 2017;
- International Banking (Amendment) Act No. 12 of 2017;
- Casino Control (Amendment) Act No.13 of 2017;
- International Companies (Amendment) Act No. 14 of 2017;
- Counter Terrorism and Transnational Organised Crime (Amendment) Act No. 15 of 2017;
- Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act No. 16 of 2017;
- Copyright and Related Rights (Amendment) Act No. 17 of 2017; and
- Firearms (Amendment) Act No. 18 of 2017.

Of all the above mentioned Acts, emphasized attention is required on the seven (7) legislations below, due to relevance to reporting entities:

1. United Nations Financial Sanctions Act No. 6 of 2017;
2. Company and Trust Services Providers (Amendment) Act No. 8 of 2017;
3. Dealers in Securities (Licensing) (Amendment) Act No. 11 of 2017;
4. International Banking (Amendment) Act No. 12 of 2017;
5. Casino Control (Amendment) Act No.13 of 2017;
6. International Companies (Amendment) Act No. 14 of 2017; and
7. Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act No. 16 of 2017.

Supervisory Authorities and Government Agencies administering these Acts will be enforcing the new/amended set of laws.


 Floyd Ray Mera
 Director FIU



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