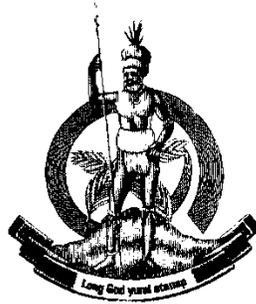


REPUBLIC OF VANUATU

COUNTRY REPORT



**30th PACIFIC ISLANDS LAW OFFICERS
NETWORK (PILON) ANNUAL MEETING**

4-6 December 2011, Auckland, New Zealand

1. Public law agencies

Vanuatu's public law agencies are the State Law Office, Public Solicitor's Office, Public Prosecutor's 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 State Law Office constitutes of the Solicitor General's Unit, Parliamentary Counsel's Unit, Financial Intelligence Unit, Advisory Unit and the soon to be established Policy Unit.

Currently the SLO comprises of 18 lawyers and 14 support staff.

Public Solicitor's Office

The *Public Solicitor Act* [CAP 177] establishes the Public Solicitor's 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 and Malekula in the hope of ensuring that the services they dispense to urban dwellers are also be received by rural dwellers.

Currently the PSO comprises of 8 lawyers and 4 support staff.

Public Prosecutor's Office

The *Public Prosecutor Act* [CAP 293] establishes the Public Prosecutor's 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, all of whom are appointed in writing by the Public Prosecutor. State Prosecutors usually comprise of members of the Vanuatu Police Force, a person employed in the Public Service or a legal practitioner.

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 (mostly 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.

Ombudsman's Office

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 1st 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 1st 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 law agencies have achieved.

The major achievements this year are summarised as follows:

State Law Office

- The re-appointment of the current Attorney General.
- The establishment of the Policy Unit and the appointment of a Senior State Counsel to administer the unit.

Public Solicitors Office

- The appointment of a new Public Solicitor.
- The establishment of a new Public Solicitors Office on Malekula island and the appointment of a legal officer to administer the office.

Law Commission

- The appointment of a new Secretary to the Law Commission.

Ombudsman

- The appointment of a new Ombudsman.

Judiciary

- The appointment of a new Supreme Court judge.
- The appointment of 3 new Magistrates.
- The admission of 53 lawyers to the Supreme Court.
- The posting of magistrates to work in the islands of Malekula and Tanna.

Vanuatu Legal Sector Strengthening Project

- The completion of the Vanuatu Legal Sector Strengthening Project (“VLSSP”) after several years of providing expertise assistance, training and capacity building to the public legal sector.

3. Significant Court decisions

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

Peter Colmar v Rose Vanuatu & Ors; Civil Appeal Case No. 6 of 2011

The appeal arose as a result of a Supreme Court judgment dated 19 March 2011 that concerned the registration of lease title 04/2624/001 (from which emanates derivative lease title 04/2624/003). At the Court of first instance the primary judge held that the registration of lease title 04/2614/001 and subsequent registration of lease title 04/2624/003 to the benefit of Aljan Limited did not amount to fraud or mistake.

In the appeal, the Appellant alleged that inference can be drawn to suggest that:

1. Aljan Limited, the proprietor of lease title 04/2624/001, were aware that their agent Robinson Toka attended to the Department of Lands and persuaded the officers in the Department to remove cautions (caveats) placed by the Appellant over the title;
2. Aljan Limited, were aware that the duration of lease title 04/2624/001 was about to lapse. Hence, had knowledge that their agent Robinson Toka, attended to the Department of Lands to ensure that the caution in favour of the Appellant against lease title 04/2624/001 is removed and the lease is registered to the benefit of Aljan Limited. This is to ensure that upon registration of lease title 04/2624/001, Aljan Limited can then surrender the lease for the creation and registration of lease title 04/2624/003; and

3. That the actions of Aljan Limited, through their agent Robinson Toka are fraudulent and they cannot be considered bona fide purchasers for valuable consideration.

The Court of Appeal allowed the appeal and held that:

The fraudulent conduct of Aljan's agent placed Aljan in the position of a fiduciary, as trustee of a constructive trust in favour of Valele Trust. The principle is that Aljan should not be entitled to retain the fruits of its (imputed) fraud against Valele Trust. Aljan will receive reimbursement for any outgoings it has incurred in obtaining and maintain lease title 04/2624/003 but Valele Trust is entitled to take its benefit.

What will happen allows Valele Trust the opportunity to fulfil its earlier ability to negotiate a lease on the same terms as did Aljan. It lost its earlier opportunity as a result of adverse (but ultimately unsuccessful) claims to its title: first from Rose Vanuatu and then from Aljan. Thus its lost opportunity is converted into something that is (at least) reasonably possible to attain, after negotiation.

**Hon. Meltek Sato Kilman Livtuvanu (MP) v Hon. Edward Natapei & Ors;
Constitutional Appeal Case No. 16 of 2011**

This was an appeal from the judgment of the Chief Justice delivered on 16 June 2011 in respect of an amended urgent Constitutional Application filed by the First and Second Respondents challenging the election of the Appellant as Prime Minister.

The incumbent Prime Minister was the only contender for Prime Ministership on 2 December 2010 after the former Prime Minister had been voted out. For such reason, the Speaker proceeded to declare him as Prime Minister elected unopposed.

Six months later, the ousted Prime Minister challenged the election on the basis that it had not been made in accordance with the Constitution. In particular, that a secret ballot was never conducted by the Speaker as required by the Constitution during the election of a Prime Minister.

The Court of first instance held that it was regrettable that the challenge occurred six months after since many important decisions on behalf of the Government had been made which had consequences for the life of the government and people of Vanuatu. However, the Court of first instance proceeded to rule that the election of the Prime Minister on 2 December 2010 was unconstitutional therefore all decisions emanating as a result thereof were deemed unlawful.

The Hon. Meltek Sato Kilman Livtuvanu appealed the Chief Justice's decision. The Court of Appeal upheld the appeal by referencing the doctrine of "*de facto Office*" which states:

Where a person has exercised powers and functions of a public office which involve the interests of the public and third persons, with colour of right, the exercise of those powers and functions is accorded validity even if there has been a defect or irregularity

in the manner of the appointment of that person such that the appointment was not a valid one.

4. Significant legal reform

The Bill for the ratification of the Protocol on the Accession of Vanuatu to the World Trade Organization is before the current extraordinary session of Parliament. In recent months, the accession has proved somewhat controversial amongst civil society but it appears the Government is determined it will not be derailed from completing the last steps of the accession process.

In relation to violence against women, the Department of Women's Affairs has begun its pilot project in Tafea Province on the implementation of the *Family Protection Act* No. 28 of 2008. This involves training and appointing authorised persons responsible for making, on application, temporary protection orders.

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 law agencies

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 more 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.

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 limited funding, a new building or an extension to the current one is an unlikely priority.

Political instability

From December 2010 to June 2011, Vanuatu had about 8 changes of government, constituting the most politically unstable period in its history.

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 Parliamentary Counsel's Unit conducted a legislative drafting workshop with the staff of the Vanuatu Correctional Services.
- The Parliamentary Counsel's Unit conducted a workshop with Members of Parliament.

Public Prosecutors Office

- The Public Prosecutors Office hosted the Annual Pacific Public Prosecutors Workshop attended by present PILON member states.

Ombudsman

- The Ombudsman investigated and released a Report on the unlawful suspension of the Director of Lands by the Director General of Lands.

Judiciary

- The Supreme Court hosted a judicial conference for both judges and lawyers.

7. Reflect on how the issues outlined in the Country Report relate to PILON 2011 Annual Meeting theme of 'Legal Challenges and Strategies to Enhance Pacific Sustainable Economic Development'.

Sustainable economic development requires that the rule of law prevail through the support of and effective working of the law and justice sector. Government commitment and effort to address the significant issues affecting Vanuatu's law and justice sector will

assist the sector to in turn contribute to and facilitate Vanuatu's and the region's sustainable economic development.

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)
6 March-16 May 2011	Bar Readers Course	Australia - VLSSP	Christine Lahua, SLO.
22-26 August 2011	Cyber Crime Workshop	Samoa - Telecom Regulator Authority (TRA)	Alain Frederick Obed, SLO.
18-22 July 2011	APG plenary	India - APG	Floyd Mera, SLO.
26-29 September 2011	Workshop on Alcohol and Tobacco	Fiji -	Louis Georges, SLO.

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)
12-13 October 2011	UNEP Preparatory meeting for world congress	Malaysia	Jason Pakoasongi, SLO.
25-26 October 2011	Tax Exchange Annual Meeting	France	Floyd Mera, SLO.
31 October-4 November 2011	Consultant Workshop	Fiji	Kent Ture Tari, SLO.
17-18 November 2011	Seminar for the Commonwealth on Pacific region on Integrity in Public Life	New Zealand	Chris Tavoia, SLO.
28 November-2 December 2011	Meeting on regional consultations on advancing a Pacific regional human rights	Fiji	Jane Bulesa, SLO.

	mechanism		
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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	Alatoi Ishmael KALSAKAU, Attorney General.	+678-22362 <aikalsakau@vanuatu.gov.vu>
Public Solicitor's Office	Jacob KAUSIAMA, Public Solicitor.	+678-23450 <jkausiamo@vanuatu.gov.vu>
Public Prosecutor's Office	Kayleen TAVOA, Public Prosecutor.	+678-22271 <ktavoa@vanuatu.gov.vu>
Law Commission	Bertha PAKOASONGI, Secretary.	+678-26229 <bpakoasongi@vanuatu.gov.vu>
Ombudsman's Office	Pasa TOSUSU, Ombudsman.	+678-27200 <ombud.vt@vanuatu.com.vu>