

**The Birth and Rebirth of Law Reform Agencies:  
The Establishment of Vanuatu's Law Reform Commission**  
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Thank you for the opportunity to speak here today on the topic of law reform in Vanuatu. It is in fact an exciting time for law reform in Vanuatu as we are currently in the process of constituting the country's first Law Commission and it is therefore timely, and very much appreciated, that we have been given this opportunity to hear and discuss the different experiences and perspectives of law reform agencies within the region.

In order to understand the current law reform challenges and opportunities in Vanuatu it is important to first understand the origins of Vanuatu's legal system and its sources of law. Similar to our Pacific neighbours, Vanuatu's colonial legacy has played a key role in shaping the country's legal system as it is known today, and arguably it is this legacy that demands the need for a dedicated body to keep under review the laws of this country to ensure that they are appropriate, consistent and effective.

From 1906 until Independence on 30 July 1980, Vanuatu, then known as the New Hebrides, was a condominium territory jointly administered by Britain and France. During this time, British laws applied to British nationals and other nationals who 'opted' to be subject to them. Similarly French laws applied to French nationals and any other national who 'opted' to abide by the French system. All other residents and indigenous New Hebrideans were governed by laws and regulations made jointly by the British and French Resident Commissioners' and these were known as the joint laws.

At the time of Independence in 1980 a unified legal system was created from the dual French and British systems. The Constitution of the Republic of Vanuatu became the Supreme source of law, followed by statutes created by the Vanuatu Parliament. However under the Constitution of Vanuatu all British and French laws, including the joint regulations, in existence at the time of Independence remain in force until they are repealed by the Vanuatu Parliament. This includes Acts of Parliament, subsidiary legislation and English common law and equity.

In summary, Vanuatu's legal system is a common law system that consists of the French and British law that was applicable prior to independence and legislation and case law that has evolved in Vanuatu since 1980. The Constitution also recognises customary law.

In terms of effective law reform, and further the creation of appropriate legal structures and frameworks for a young emerging nation such as Vanuatu, the first challenge faced through this hybrid system are the received laws themselves.

At the time these laws were adopted in Vanuatu a number of them were already antiquated in their original jurisdiction and subsequently have been substantially

amended or replaced in the United Kingdom and elsewhere. Similarly, much of the received common law has been modified or replaced by statute. Cut off dates prevent such legislative reforms and common law developments applying in Vanuatu, which I should note is of course appropriate for an independent sovereign nation, however with limited resources and competing priorities Vanuatu has not been able to review and reform such legislation at the same pace. It also takes time for young countries such as Vanuatu to identify deficiencies with such legislation before the need for change becomes apparent.

A good example of this is the Dangerous Drugs Act which is currently under review. This statute commenced on 1 December 1939 and was adopted in 1980. It contains only a few basic offence provisions and has one catch all penalty provision. Further the schedule to the Act contains lists of pharmaceuticals as well as illicit drugs however this does not include “modern” drugs such as amphetamine based drugs. A steering committee within the Vanuatu Government therefore is currently developing a discussion paper on Vanuatu’s Drug Laws that will recommend reforms to ensure the framework is appropriate in the current domestic environment as well as ensure that Vanuatu is meeting international obligations under treaties and UN Conventions regarding drugs.

Following the received laws at the time of Independence the next category of laws that create a challenge for law reformers in Vanuatu is the body of legislation that was enacted relatively quickly either at the time of independence or shortly thereafter.

This legislation largely created the institutions that make up the Vanuatu Legal Sector and included institutions created by the Constitution such as the Courts, the Ombudsman and the Public Prosecutor’s Office. The original statutes for these institutions were succinct and drafted quickly to provide a transitional structure that would allow the legal institutions to function smoothly and without disruption in the period immediately after independence. These statutes however have slowly, and in a somewhat ad hoc manner, required amendment to ensure they fully set out the appropriate functions and compositions within the cultural and economic environment in which they apply.

Similarly other early enactments of the Vanuatu Parliament were modeled on earlier legislation from other jurisdictions and require modification to suit contemporary local conditions. This is happening overtime but resourcing and appropriate skills base provide another major challenge. Examples in this category include statutes such as the Matrimonial Causes Act and other family law related statutes. These were based on other common law countries at the time (which again have now substantially changed) and failed to take into account the traditional and customary aspects of family law in Vanuatu and whilst reform is underway in this arena, it takes time.

This category, for want of a better term, I call “legal transplants”.

New laws in all jurisdictions are often inspired by foreign experiences and examples however I personally feel, and I am sure my Pacific colleagues will agree, that in developing countries “legal transplants” or imported laws are common practice. Whilst

well intentioned, donors and law reformers need to avoid the trap of drafting new laws to effect change and overcome loop holes or deficiencies with current systems without fully appreciating and understanding the role of custom traditions and the way institutions and enforcement agencies functions and are resourced. New laws do not solve problems simply by virtue of the fact they exist and laws and regulations that are overly complex or fail to take local context into account will not be effective and can in fact create more problems than they solve.

This situation is illustrative of the final challenges that I wish to point out when discussing law reform in Vanuatu. Vanuatu is a developing nation. We have limited human and financial resources and do not yet have the required local expertise in all sectors to enable specialised and effective law reform in all arenas – these factors seriously compounds the challenge of law reform. We therefore often require support and assistance from donors, NGO's and other bodies to support reform initiatives and whilst this assistance is appreciated, the priorities of these bodies sometimes compete with the priorities of our own government or place undue pressure on local enforcement agencies or institutions such as my office who is responsible for legislative drafting. All stakeholders therefore need to work together to find appropriate and sustainable solutions to law reform in Vanuatu and it is this way forward that I will now briefly discuss.

Law reform in Vanuatu is slowly taking place. At the moment it is achieved via parliamentary inquiries, ad hoc commissions and various government steering committees. However in acknowledgement of the challenges that I have just highlight, the Vanuatu Council of Ministers has recently identified the need to constitute the Vanuatu Law Commission to ensure that a dedicated body is constantly reviewing and recommending changes to laws that are antiquated, inconsistency and inappropriate. The body will also recommend new laws to ensure that Vanuatu is responding to social and economic issues, expanding access to justice and addressing new international standards and obligations. The agency will also play a key role in coordinating input from external assistance providers.

Ironically the statute creating the Vanuatu Law Commission falls into one of the categories discussed earlier. It was enacted at the time of Independence; it is very succinct and was modeled off early legislation in other jurisdictions. As a result, among other deficiencies, it does not clearly specify how references should be received, the qualification of members or how the Commission will be supported administratively and it is for this reason, coupled with earlier resourcing restraints, that the body has not been constituted to date. Now however with the impetus for change, and commitment from the Vanuatu government, a steering committee headed by the Ministry of Justice is currently working on a policy paper that will recommend changes to the current legislation and will propose appropriate support structures for the effective functioning of the Commission.

This paper looks closely at the powers and functions of the commission and advocates strongly that Vanuatu's laws should reflect the cultural and moral will of its people. It discusses the need for the Commission to undertake extensive research and wide

community consultation to ensure the melding of legal tradition with cultural norms and to this extent it recommends close involvement by the Vanuatu Council of Chiefs, including through membership on the Commission, and the circulation of Issues and Discussion Papers. It recommends that the Minister for Justice is responsible for initiating the work of the Commission and also provides that the Commission itself may recommend references to the Minister for consideration. In addition the paper confirms the importance of retaining current statutory provisions that allow the Commission to provide comments and recommendations on any published bill before it is debated in Parliament. It also discusses corporate governance issue and matters such as remuneration and conditions of Members.

I note that members of the steering committee are present at this conference, and as I mentioned earlier, the opportunity to participant in this forum and to share experiences with other jurisdictions will be extremely valuable in contributing to the establishment of Vanuatu's first dedicated law reform agency. To this end we welcome any comments or discussions that any of you may have to offer. We hope to have the paper finalised by the end of the year, with Vanuatu's Law Commission functioning in early 2009.

So, on a final note, I would like to reiterate that legal reform is an ongoing and incremental process that involves numerous stakeholders and is something that is strongly influenced by a country's particular history.

In any new republic it takes time for the government and the legal system to find its feet and determine what is effective, necessary and appropriate. And as we have heard and will continue to hear thought this conference, the ultimate challenge for all of us is to continue to find appropriate ways to examine our laws and the manner in which our legal institutions function, to ensure that we meet the needs and expectations of our community and the people who live in it.

Vanuatu acknowledges that sound legal frameworks are prerequisites for economic growth and social development and is committed to effective and coherent legal reform and I trust that next time we meet I will be describing to you Vanuatu's comprehensive and sustainable approach to law reform that avoids importing "models" and transplanting laws that are inconsistent with national legal, customary and socioeconomic norms.

Thank you

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