

**2016 SPEECH
OFFICIAL OPENING OF THE COURTS
OF VANUATU**

THE HONOURABLE CHIEF JUSTICE LUNABEK

- **His Excellency Baldwin Lonsdale, President of the Republic of Vanuatu**
- **Hon. Sato Kilman Livtunvanu, Care taker Prime Minister of the Republic of Vanuatu**
- **Hon. Judges of the Supreme Court of Vanuatu and Spouses**
- **Magistrates of the Republic of Vanuatu and Spouses**
- **Care Taker Ministers of the Government**
- **Excellencies Members of the Diplomatic Corps**
- **Attorney General (Acting)**
- **Ombudsman**
- **Public Prosecutor**
- **Public Solicitor**
- **Director Generals and Directors of Government Departments**
- **Commissioner of the Police (Acting)**
- **President of the National Council of Chiefs**
- **Members of the Legal Profession**
- **Members of the Law Faculty**
- **Registrar of the Supreme Court, Court officers and Staff**
- **Representative of Women**

- **Representative of the Press/Media**
- **Representative of the Churches**
- **Ladies and Gentlemen, Big Men and Women, Pikinini mo
People blong Vanuatu**

I bring Greetings from the Judges, Magistrates, Island Court Justices and courts support staff of the Judiciary of the Republic of Vanuatu. On behalf of the Judiciary, I extend a warm welcome to all of you to this Year's Opening of the Legal Year. It is my privilege and pleasure to address you on this special occasion of the opening of 2016 legal year and I thank you all for coming.

As always we need to ponder and look back to the good things, the bad things and the challenges Vanuatu and its people have gone through in the past legal years. We must then reflect back on the achievements, values, strengths and weaknesses. We must learn from our mistakes and weaknesses and set new directions for the future. Again, I do this by reminding us as I did during the past legal years about the direction set for the Judiciary in its vision, policy statement and judicial reform missions. I believe the needs of the judiciary for reform and consolidation as an institution must be undertaken as part of a national reform effort with the scope of enhancing its independence and core functions to enable the Judiciary become a modern judiciary on the basis of the following vision:

"VISION OF THE ADMINISTRATION OF JUSTICE

A Judiciary that is independent, effective and efficient, and worthy of public trust and confidence, and a legal profession that provides quality ethical, accessible and cost-effective legal service to our people and is willing and able to answer the call to public service."

Elaborating on this vision is the policy statement of this vision, which enunciates the following:

"POLICY STATEMENT

The Judiciary, as the constitutional designated arbiter of all legal disputes in our democratic system of government, must, at all times, maintain its independence and remain immune from undue influence, not at the cost, however, of sacrificing comity with the co-equal branches of the Government. It is essential that the Judiciary and the members of the legal profession, as officers of the Court, be of utmost competence and unassailable integrity.

As the Judiciary is meant to serve the people through the dispensation of justice, the Bench must be fully accountable to the public by remaining transparent, yet not betray those aspects of the judicial process, which require utmost confidentiality. Members of the Judiciary and court personnel must always adhere to the constitutional precept

that public office is a public trust. Dishonesty, incompetence, inefficiency and any form of unbecoming conduct are impermissible and will not be tolerated in the Judiciary or in the legal profession.

The system of administration of justice must be geared to achieve the goal of delivering fair, impartial and swift justice. Therefore, the core values of the rule of law, equal justice, judicial independence and the pursuit of excellence should be preserved and at all times be predominant.”

2016 is a new legal year. We must prepare and look forward for it. I must say from the outset that 2015 was certainly an important historical year for the law and the Courts in this Republic.

On this special occasion, I invite you to reflect with me on the impact of the law on the community, and on the roles of the Judiciary and the legal profession within it.

Vanuatu society puts important value on the concept of the rule of law as a cornerstone or pillar in our community. It is important to understand Vanuatu’s legal system and how justice is administered. I say that because, conceptually, this is after all the purpose of the law. Vanuatu’s legal system is mainly based on the common law, some aspects of french law and judicially declared customary law.

Fairness, transparency and access to justice are also the foundational characteristics of Vanuatu's legal system.

It is important to say that the Key players include those who are most intimately connected with the law's operation, the courts and the legal profession, but of considerable importance is also the understanding and acceptance by everyone especially those with influence or power (among whom is of course the government and all those within it), the purpose of the law.

The law is there to facilitate the well-being of the people of Vanuatu and society. It is not to be seen as somehow obstructing them.

Some basic fundamentals are necessary. Laws regulate the activities and the often complex interactions between persons or institution. The object is to enable Vanuatu people and their families to realise their ambitions as best as possible, and to achieve mutual respect between all those within the community. To realise these objects, it is necessary to have in place an infrastructure to ensure that those objects can be fulfilled.

The infrastructure of the law starts with the important requirement that all laws must conform to certain constitutional norms and requirements.

The Constitution is the Supreme law of the Republic of Vanuatu (art.2). All laws in Vanuatu must conform to the Constitution. As you all know, the Constitution sets out fundamental rights and freedoms which are constitutionally protected. Chapter 2 - Part II of the Constitution sets out the vast majority of such rights and freedoms (Article 5):

“ 5.

(1) The Republic of Vanuatu recognizes, that, ... all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination...:

(a) life;

(b) liberty;

(c) security of the person;

(d) protection of the law;

(e) freedom from inhuman treatment and forced labour;

(f) freedom of conscience and worship;

(g) freedom of expression;

(h) freedom of assembly and association;

(i) freedom of movement;

(j) protection for the privacy of the home and other property and from unjust deprivation of property;

(k) equal treatment under the law ...

(2) Protection of the law shall include the following –

(a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;

(b) everyone is presumed innocent until a court establishes his guilt according to law;

- (c) everyone charged shall be informed promptly in a language he understands of the offence with which he is being charged;*
- (d) if an accused does not understand the language to be used in the proceedings he shall be provided with an interpreter throughout the proceedings;*
- (e) a person shall not be tried in his absence without his consent unless he makes it impossible for the court to proceed in his presence;*
- (f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed;*
- (g) no-one shall be punished with a greater penalty than that which exists at the time of the commission of the offence;*
- (h) no person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial*

Article 95 of the Constitution also contains provisions that help define Vanuatu's system of law. It says:

(1) Until otherwise provided by Parliament, all Joint Regulations and subsidiary legislation made thereunder in force immediately before the Day of Independence shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.

(2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the Day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.

(3) Customary law shall continue to have effect as part of the law of the Republic of Vanuatu.

Article 26 of the Constitution also makes reference to the ratification by Parliament of Treaties negotiated by Government, among other matters, when they affect the status of people. Treaties include International conventions. Vanuatu has ratified the International Covenant on Civil and Political Rights (ICCPR) which shall be implemented through Vanuatu's laws. It is to be noted that many of the rights I have referred to earlier are to be found in the ICCPR as well.

In examining the content and substance of the rights contained in the convention, one must have regard to recognised international jurisprudence. One such rights is equality before the law.

The concept of equality is key to an understanding of Vanuatu's system of law. It is important to understand that the law applies equally to every person. No one person or institution is above the law and the application of the law. Therefore, the Government are subject to the law in precisely the same way as everybody else.

No special group, institution or person is above the law and equal application of the law.

Equality is a fundamental component of the rule of law. The proper understanding and acceptance of this means a proper respect for the rule of law.

This brings me to the role of the Court in our community. The Courts only become active when legal disputes require adjudication. This may be in a criminal context when the guilt of a person has to be determined. It may be in a civil context when civil rights, commonly about money or property, have to be resolved. It may be in a public context which engages not only the rights of the parties actually before the courts, but more importantly, the public interest as a whole. I will say more about public law cases and constitutional and judicial review later.

The constitutional role of the courts is clear from the Vanuatu Constitution and the courts are to act independently. The

independence of the Judiciary is enshrined in the constitution (article 47). Much has been said about the independence of the Judiciary but it always bears repetition to say that an independent Judiciary is pivotal to the existence of the rule of law.

I move onto that part of the infrastructure that represents the practice of the courts. This is the day to day activity of the courts: what judges do in dispensing justice, how we do it and how litigants access justice.

The determination of legal disputes by the courts is a constitutional responsibility. I emphasize the term “legal disputes” because the business of the courts is to determine disputes in accordance with the law. The types of dispute coming to the courts for determination arise from a variety of circumstances and the motives behind the cases brought in our courts also vary a great deal. Be that as it may, as far as the courts are concerned, it is only the legal outcome of the dispute that is relevant. As has been pointed out on numerous occasions, the courts only deal with the legal questions that arise for consideration. This is after all the concept of justice itself: the adherence to the law, legal principle and the spirit of the law.

In the handling of legal disputes, judges must give fair consideration to the viewpoints of all parties. Fairness – one of the principal characteristics of the system of law in operation in Vanuatu, I have

earlier identified – requires that everybody who comes to court will have their arguments fully and properly considered. It is sometimes said that all litigants should have “their day in court”, but it is more accurate to say that each party has a right to be heard. This is the essence of a fair hearing. The disputes before the courts are often complex, requiring different viewpoints to be carefully analysed before a just outcome can be reached. Sometimes, hearings can be lengthy and this is reflected in the judgment of the court, but the reason for this is almost always indicative of the complex nature of the dispute and, more important, the need to deal carefully and fairly with the arguments before the court. This is an indication to the public that the court has come to a properly considered view and has acted fairly. A losing party is entitled to be assured that a fair hearing is always guaranteed by the courts.

It is important that the work of the courts and the way cases are handled by judges is open for all to see. Openness is an objective indicator to test the effectiveness and fairness of our legal system; if you like it is a measure of the rule of law operating in practice. Transparency in the judicial process becomes critical in our legal system, and this takes the form of almost all court proceedings being open to the public or in the publication of almost all the written judgments of the courts. I say “almost all” to exclude those few cases

where the subject matter is of such sensitivity that it would not be in the public interest to make them public.

Transparency in the activity of the courts accordingly provides useful objective tool to measure the effectiveness of the legal infrastructure I have described earlier. But there must also be access to justice - the last of the three characteristics of our legal system. The existence of user – friendly and effective court procedures contributes to this and was one of the main reasons for the Civil Justice Reform, which came into operation nearly fourteen years ago since 2002. This can be measured objectively. Objectivity is important. Many people have different points of view – and they are entitled to them – but in the final analysis, the only way properly to assess these views, positive or negative, is to do so objectively.

Access to justice can also be measured by reference to the existence of legal assistance through public legal institutions. Legal assistance has over the years provided the necessary access to justice for many litigants. These have included people who have suffered serious injuries, their families, those persons who have had matrimonial problems and other people who have needed the protection of the law but who did not have the private means to engage legal representation. It is to public law cases and judicial review I now turn.

For the public, it is in this type of case where the three important characteristics of fairness, transparency and access to justice can best be seen and tested. Public law case, very often with constitutional principles at stake, involve by definition the public interest. Thus, since 1980 Vanuatu courts have had to deal mainly with many important constitutional and public law issues.

Public law cases on the whole involve the very rights and liberties that are protected by the Constitution and which, as are enjoyed by every member of the community. They reflect fundamental societal values. A greater awareness of rights and liberties means that in the public sphere, proper responsibility and accountability for decisions affecting every aspect of life and activity in Vanuatu are now expected by the community. Proper responsibility and accountability in the public sphere is called good governance, and good governance is another term for an adherence to the requirements of the law and to its spirit. In other words, it embodies the concept of the rule of law. This is the essence of that type of case known as constitutional challenge and or judicial review and, most often, this types of case involves the Government or a department within the Government, although it can also involve other public bodies. In judicial review or constitutional case, the public interest is always engaged and the effects of a decision of the court in this type of case will almost always affect sections of the public beyond the immediate parties in court.

Sometimes, the whole community is directly affected. A decision of the court in public law litigation will often serve as a guide to good governance, whether looking at events in the past or perhaps more importantly, the future. Although there may occasionally be inconvenience, constitutional challenges and or judicial review overall serve the public interest and facilitate the well-being of our society. This status should properly be recognised.

It is precisely because of the public interest being engaged in this way that in dealing with constitutional application and or judicial review cases, the court will be anxious to ensure that all proper legal arguments are permitted to be ventilated before a decision is made. Owing to the fact that in public law case, reliance is often placed on various rights and liberties that operate in different directions, the court is faced with difficult and complex arguments. As in any type of case, a judge must fairly hear all proper point of view. I have earlier referred to the aspect of fairness as being a characteristic of justice in the courts. Constitutional applications and Judicial review cases are certainly to be treated in no different a way. It cannot be otherwise when the public interest is engaged.

It is inevitable given, the nature of the type of case that is involved in a constitutional or judicial review that political, economic and social factors form a part of the background to such cases. However, as

other Judges and I have said on numerous occasions, the court is only involved in the legal questions which arise. It is usually simply irrelevant to enquire into the motives, political or otherwise, of the parties before the court: what matters are the legal merits. To be preoccupied with the motives of the parties before the court will not be helpful in reaching a proper legal outcome. I reiterate this point: that judicial reviews are all about legality and not the merits or demerits of a political, economic or social argument.

It is for this reason that in judicial review or constitutional cases, the court is required to be particularly astute in ensuring that only proper cases ought to be considered. Unlike most other types of claim processes, the permission of the court is required before any constitutional application or application for judicial review can be instituted. Where the required standard is satisfied, a court will proceed to consider the arguments in the same way as any other cases to arrive at a result that is in accordance with the law. The infrastructure of the law is there to ensure such a result.

And it is open for all to see and ultimately to judge for themselves.

The importance of the law in Vanuatu makes it imperative that the quality of our Judiciary should be of the highest possible standard. Recent judicial appointments have reflected this with the support and

assistance from the Commonwealth Secretariat [Justice David Chetwynd and Master Cybelle]. I express our thanks to the Commonwealth Secretariat for their assistance. I also take the opportunity to thank the New Zealand Government for its continuing assistance to the Judiciary of Vanuatu with the provision of a Judge of the Supreme Court. Justice Harrop's terms will come to an end at the end of March and his replacement will begin March 2016.

There is, however, a continuing need to be aware of practicalities as well. For this reason, following a detailed internal review, the Judiciary has written to the Government within proposals to improve the conditions of service of judges. These matters are of considerable importance to the community to ensure and encourage recruitment of the best lawyers to the Judiciary. The maintenance and improvement of the caliber of the Judiciary is key to the judicial functions I have earlier described.

The Government has over the years fully supported the needs of the Judiciary, and we acknowledge and are grateful for this support. The Judiciary has for some time also been discussing with the Government its mid- and long-term accommodation requirements since June 2007 (date of destruction of the Supreme Court building by the fire) and the Government has also shown much support initially for this.

However, since the destruction of the Court House by the fire on 7 June 2007, the Hall of Justice project was put at hold. I ask the Government to revive this important national project for the benefit of the community in this country.

I have attempted today to give a brief overview of the way justice is administered in Vanuatu. No doubt improvements can be and will be made but I believe that structure to be sound. I welcome the public's greater awareness of our legal system, for therein lies the key to its continuing utility and acceptance.

I now provide you with the summary of events for the past year 2015.

SUMMARY OF EVENTS 2015

- As we reflect on 2015, it is hard to remember such a year confronted by us all, not only with the destruction caused by Cyclone Pam, but also seeing the Rule of Law being so evident to so many of us during the latter part of 2015.
- In addition to those external factors, we have also welcomed Justice Chetwynd and Master Cybelle (a Deputy Master will be appointed very soon), a new Court Management System, and issued many Practice Directions with the over-arching goal of delivering a justice system, to all of our community, in a timely manner, with confidence that each case is treated with the time and commitment needed.

- From a statistical point of view, there are some indicators that suggest we have some work to do in 2016, and with the judiciary, and the administration, we are committed to working on these critical aspects of case management.
- As you will see from the following information, areas such as timeliness, reserved judgements, pending/unacceptable backlog and the status of each case – is paramount to us – as we strive for case management that delivers for all concerned.
- Whilst our Clearance Rate did not achieve our target of 100% (or more), I am confident that by addressing such things as ‘over conferencing’, we can reduce the number of events/attendances need to finalise our cases, and make it a more efficient and timely system for all.
- Reserved judgments are something every court is well aware of, and the recent Practice Directions will be our target for 2016, and am confident that we can improve on this aspect, which I know has been an issue for many of you awaiting the delivery of such.
- Under the stewardship of the Chief Registrar, all of our jurisdictions, from the Court of Appeal, to the Island Courts, are up and running with a new Court Management System. I have been assured, that it in itself will not make our cases run any faster, but if it helps us, the judges and magistrates – run our case load with more information and management capability, then that can only be a good thing.
- This new system, for the very first time, allows me, and others to reflect on the overall situation of the Court, no matter the location, the jurisdiction, and the case itself. It is our priority over time to

provide appropriate information to 'all of you', and increase the transparency of where each and every case is up to.

- And for the record, each new case in the Supreme and Magistrates Court here in Vila – all material is being scanned and is available to each and every judicial officer in electronic form, as well as the paper form
 - Maybe in my time – I may yet see a 'paper-less' court, or at the very least - a 'less-paper' court.
- In summary, we have some key priorities for the coming year, namely reserved judgments, a growing pending #, cases that need to be brought under control, and improving/reducing the number of attendances that a case needs to be resolved.
 - With the support and engagement of the profession, and additional resources, I and my fellow judges of the Supreme Court are confident that we can achieve much this year.

2015 HIGH LIGHTS

- Appointment of Master – with discreet case load e.g. enforcement.
- Issuing of Practice Directions.
- New Court Management System (CMS) – providing greater management of cases and efficiencies for all.
- Appointment of Justice Chetwynd.
- Treating Enforcement as a separate application – directed to Master.
- All this while recovering from Cyclone PAM, and dealing with the largest political case seen in this country (including the Appeals).
- Overall concerns:

1. Not making in-roads into # of Pending cases, and Age of Pending naturally growing
2. Judicial output – as calculated by disposals/full time JO – continues to fall from 2012/2013
3. Many cases (close to 300) – with no Further Listings – these need addressing as a priority in early 2016
4. Reserved Judgments – especially in SC – still not down to acceptable levels

ALL OF THESE WILL BE OF THE HIGHEST PRIORITY FOR 2016

KEY OBSERVATIONS

- **Court of Appeal**
 - 2015 **registrations and disposals** slightly up on previous years
 - The CoA continues to maintain very close to 100% **clearance rate** every year
 - **Timeliness** of Civil Appeal matters continues to grow, versus criminal matters which are typically disposed in just over a month
 - More work to be done in 2016 in ensuring **outcomes** are consistently recorded
 - Civil Appeals – almost 50/50 split between allowed and dismissed
 - Criminal Appeals – further work to be done on the outcomes before commentary is made.

- **Supreme Court**
 - SC **filings** have fallen from 773 to 722
 - SC **disposals** have fallen 672 to 683

- **Pending** has grown from 915 to 1038 (and from 815 at end of 2013)
 - **PDR (Pending to Disposal Ratio)** has grown from 1.4 to 1.66 – a worrying sign
 - Potential 400 cases in excess of ideal position – equating to a lot of judicial resource and/or improved case disposal rates
 - **Clearance rate** below 100% - for the year – 88%
 - **Timeliness** for criminal matters – still good at an average of 219 days, and civil – 650 days to complete a case
- **Magistrates Court**
 - **MC filings** are stable at 2205 compared to 2210 last year
 - Criminal on the way up but DV on the way down
 - **SC disposals** have fallen 2366 to 2084
 - **Pending** has grown from 1306 to 1482
 - **PDR** has grown from .6 to .7
 - Potential 300 cases in excess of ideal position – equating to approximately one Magistrate
 - **Clearance rate** below 100% - for the year – 95%
 - **Timeliness** for criminal matters – higher than the Supreme Court – 255 days, and civil increasing – now at 694 days to complete a case.
 - **Island Courts**
 - All case load for the Island Courts – from 2013 – is now on the new system, except for four locations
 - Filings in 2015 significantly down from 2014 – 331 as compared to 601 cases in 2014

– Clearance rates still under review

It is my pleasure to declare the Courts' doors open to the public for this 2016 legal year.

I wish you all better justice and God's blessings for 2016.