

**2015 SPEECH
OFFICIAL OPENING OF THE COURTS
OF VANUATU**

THE HONOURABLE CHIEF JUSTICE LUNABEK

- **His Excellency Baldwin Lonsdale, President of the Republic of Vanuatu**
- **Right Hon. Joe Natuman, Prime Minister of the Republic of Vanuatu and Mrs Natuman**
- **Hon. Philip Boedoro, Speaker of Parliament**
- **Hon. Judges of the Supreme Court of Vanuatu and Spouses**
- **Magistrates of the Republic of Vanuatu and Spouses**
- **Hon. Alfred Carlot, Minister of Justice and Community Services and Mrs Carlot**
- **Hon. Ministers of the Government**
- **Hon. Moana Carcasses Kalosil, Leader of the Opposition**
- **Hon. Members of Parliament**
- **Excellencies Members of the Diplomatic Corps**
- **Attorney General**
- **Ombudsman**

- **Public Prosecutor**
- **Public Solicitor**
- **Director Generals and Directors of Government Departments**
- **Commissioner of the Police**
- **President of the National Council of Chiefs**
- **President of Vanuatu Law Society**
- **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**

Good Morning.

I bring Greetings from the Judges, Magistrates, Island Court Justices and courts support staff of the Judiciary of the Republic of Vanuatu. Happy new year to all of you. It is my privilege and pleasure to address you on this special occasion of the opening of the Courts' session for the year 2015.

2015 is a new legal year. As always we need to ponder and look back to the good things, the bad things, the challenges and the trying times 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 with this 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 judiciary process, which require utmost confidentiality. Members of the Judiciary and court personnel must unerringly 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. Hence, 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.”

In a society like the Republic of Vanuatu, which is committed to the rule of law, and organized as a constitutional parliamentary democracy, the role of the judiciary is crucially fundamental in upholding and enforcing the Constitution, resolving disputes between citizens, or between departments of governments, or between citizens and governments, in respect to their rights and obligations and to administer criminal justice.

It is important to remind ourselves of the above mentioned fundamental principles and to understand and appreciate their *raison d'être*. Developments in the other part of the world and most notably the Pacific region show that all years of conscientious and hard work to build up public trust and confidence in the Judiciary can be destroyed in less than a day. It is very fragile.

It is therefore, the responsibility of the government, parliament, judiciary, men, women, all citizens of this country to respect and uphold the core values of the rule of law, equal justice, and judicial independence.

After more than 30 years of independence, Vanuatu has come a long way in its economic, social and political development. Along with all these developments, Judiciary of Vanuatu, since 2006 has embarked on a reform program. In 2011, the Judiciary placed itself under intense scrutiny from an independent assessor. As a result, a diagnostic report was produced and a strategic plan was devised. We still continue in this process.

The current steps being under taken by the Judiciary are in terms of case management. There has been an assessment of actual case file in the Supreme Court. There has been a testing of the integrity of the data collected by the Supreme Court and there has been improvements of basic micro soft excel files to make the data information on these files becoming useful case management tools for the daily management of cases by the judges.

In the central registry of the Supreme Court in Port Vila, there are no files sleeping because after reorganization a case file is randomly allocated to a Judge's docket as soon as it is filed and a date for first conference is issued. Case management in the Supreme Court is now where it should be – With the Judges. The excel file containing all the cases on a particular Judge's docket is available, in a confidential way, to the judge and to the judge's secretary. So that the judge knows

exactly the status of each of their case daily. The case management process in the Supreme Court will continue. Assistance was needed and will be required.

COURT ACTIVITIES 2014 AND WAY FORWARD

Key Messages – for the Supreme Co

- I am pleased to say that we have been able to reflect and analyse our case management registers (spreadsheets) for 2014, and are now able to draw some key conclusions for 2014 and develop our priorities for 2015.
- Our overall clearance rate of 90% (always endeavouring to achieve 100% or greater), when taking into consideration judicial impacts from some extended leave, transitioning into new roles and locations, we feel it was a reasonable year from a case disposal perspective.
- We have been able to deliver some old reserved judgments, but recognise that there is still more work needed during 2015 to ensure there no unacceptable delays in delivering judgments, and it is one of our highest priorities.
- The shift of Justice Saksak from Santo back to Port Vila, while assisting greatly with work here in Vila, has meant that the usual disposal rate of cases in Santo has dropped. It is one of our highest priorities in 2015 to turn this situation around by ensuring more weeks scheduled in Santo by the collective

group of judges, and to make greater use of video conferencing facilities (to deal with preliminary and urgent matters) which are we pursuing with OGCIIO and SRBJ.

- Through our detailed analysis of the stages where current cases are up to, and the weekly lists, it will come as no surprise that we are spending too much time ‘conferencing’, particularly with Civil cases. This has a direct impact on cost and inconvenience to parties. Internationally, it is known as the Attendance rate – that is – how many times do we come to court to have the matter resolved. With the help of SRBJ, we will be analysing the causes of the adjournments etc., and working with you – the profession, aim to reduce the conference #s to a more manageable level, and thus improve the delivery of cases in a timely manner.
- I am extremely hopeful that our judicial numbers will be bolstered in 2015, and the early part of 2105, with another judge provided by the Commonwealth Secretariat, and the appointment of a Master.
- In summary, we have some key priorities for the coming year, namely reserved judgments, Santo cases and our conferencing situation, but 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.

Key Messages – for the Magistrates Court

- Similar analysis has also been carried out for the Magistrates Court as we have done for the Supreme Court, and I am pleased to say that it has been a very good year for the Court, particularly in light of the sudden death of Senior Magistrate Wilson, and the retirement of Senior Magistrate Naviti.
- It is a credit to all within the Magistrates Court that despite these impacts, that while the volume of work was increasing, the volume of disposals increased at even a great rate, and they have achieved a clearance rate of just over 100%. This is a significant improvement from previous years, and augurs well for 2015.
- We now have established permanent presence in Tanna, and with two magistrates now resident in Santo, and with Magistrate Pollen in Malekulah, we are very confident that the delivery of service to those away from Port Vila will not be any less than here.
- This not to say that there are not going to be challenges for 2015, and with the Chief Magistrate, we will be looking closely at a number of aspects, including a tranche of cases that currently have no future listings, which we all know is not good case management. Additionally, in support and conjunction with the priorities in dealing with gender based

violence, we will be ensuring our magistrates are well prepared and aware of the options available in dealing with such cases.

- In summary, the Chief Magistrate and I have some key priorities for the coming year, and following on from such an excellent year in 2014, we are confident of the continuing contribution that the Magistrates Court, as the Peoples Court, makes to the overall justice sector/community.

Supreme Court

- Overall **registrations** (National) 710 – up from 691 the previous year – a small increase of 2.7%
 - Vila – 571 and Santo – 120 (remaining from other locations)
 - Civil – 44% (includes Company & excludes Probate, Judicial Review etc.)
 - Criminal – 28% (excludes Bail applications and Criminal Appeals)
- Overall **completions** 637 – down from 741 – an decrease of 14%
 - Vila – 605, and Santo – 25 (remaining from other locations)
 - And Santo disposals significantly down on 2013

- Average **age** of cases disposed:
 - Civil – 691 days (was 527 days)
 - Criminal – 250 days (was 183 days)
 - Overall – 473 days (was 390 days)
- **Clearance** rate (Completions/Registrations) – 90% - down from 107% the previous year
- **Pending** – total cases pending – 915 (up from 815 at end December 2013)
 - Civil 69%
 - Criminal 12%
 - 35% of cases – from 2012 or older
 - LAST YEAR - 34% of cases – from 2011 or older
 - PDR – Pending to Disposal Ratio – 1.4, and target is 1 – or approximately 640 cases in total (which equates to approximately 270 additional cases to dispose = approximately 2 judges)
 - LAST YEAR – 1.2 PDR
 - Civil PDR = 1.9 – highlights where focus for delay reduction program needs to focus
 - Criminal PDR = .8

Observations

- A clearance rate of 90% given the removal of the permanent judge from Santo (thus affecting disposals in Santo), coupled by the absence of one Judge in Vila for an extended period, plus the transition of the New Zealand judicial support. is a reasonable result across the year
- While the PDR has grown (in line with an increased number of pending cases, and slightly reduced disposal rate), the extent of unacceptable backlog is around 260 cases which is the equivalent of two judges' yearly disposals
 - Assistance from overseas, and the appointment of a Master should be a matter of urgency for the Court
- Reserved Judgments, and the age of some, still remains a concern, and while there have been a number of old judgements handed down during 2014, approximately 50 remain open, and at least half of these are more than 1 year old, and at least 20 are greater than 2 years old
- The age of disposed cases (e.g. from filing to disposal) has grown, but this is often the case when a court is addressing old cases and should not be seen as a negative
- While Attendance Rate (that is – the number of times parties appear before the court to have their matter resolved) is not specifically known, it can be seen from the high % of civil cases in the Conference Stage – that attention and analysis

needs to undertaken to understand why so many cases have multiple Conference listings

Magistrates Court

- Overall **registrations** (National) 2258 – up from 2089 the previous year – an increase of 9.5%
 - PV/Tanna – 1467 – slightly down on 2013 (PV – 1359, Tanna – 108)
 - Santo – 577 – substantially up on 2013
 - Malekula – 234 – substantially up on 2013
- Overall **completions** (National) 2272 – up from 1766 – an increase of 29%
 - PV/Tanna – 1646 – substantially up on 2013 (PV – 1485, Tanna – 161)
 - Santo – 433 – substantially up on 2013
 - Malekula – 193 – substantially up on 2013
- **Clearance** rate (Completions/Registrations) – 101% - substantially up from 84% the previous year
- Average **age** of cases disposed (Vila only):
 - Civil – 528 days
 - Criminal – 331 days
 - Overall – 236 days
- **Pending** – total cases pending (National) – 1306
 - Civil – 448 cases - 34%

- Criminal including PI – 639 cases – 49%
- Domestic Violence – 152 cases – 12%
- 30% of cases – from 2012 or older
- PDR – Pending to Disposal Ratio – .6, and target is .5 – or approximately 1150 cases in total (which equates to approximately 150 additional cases to dispose = approximately .5 Magistrate)

Observations

- A very good year – with an overall clearance rate of just over 100%, which is almost 20% improvement from last year
- While some individual dockets for Magistrates need some detailed analysis for why there are so many cases with ‘No Future Listing’, the overall volume of pending is very close to what would be expected for the Court
- Similar to the Supreme Court, it would be advantageous to better understand the Attendance Rate of cases, and what might be causing so many adjournments etc.

2014 SC Criminal Case Analysis - Sex cases

Case type	TOTAL Finalised cases	
Civil	326	51%
Other	174	27%
Criminal	137	22%

Other cases	79	58%
Drug cases	10	7%
Sex cases	48	35%

Dismissed/acquitted	16	33%
Nolle	4	8%
Guilty	28	58%

Imprisonment	18	64%
Community Work	3	11%
Suspended Sentence	5	18%
Other	2	7%

2014 SC Criminal Case Analysis - Drug cases

Case type	TOTAL Finalised cases	
Civil	326	51%
Other	174	27%
Criminal	137	22%

Other cases	79	58%
Drug cases	10	7%
Sex cases	48	35%

Dismissed/acquitted	2	20%
Nolle	0	0%
Guilty	8	80%

Imprisonment	0	0%
Community Work	4	50%
Suspended Sentence	4	50%
Other	0	0%

2014 MC (Port Vila) Criminal Case Analysis - Domestic Violence

cases

Case type	TOTAL Finalised cases	
Protection Orders	544	37%
Other	201	14%
PI	190	13%
Criminal	550	37%
Other cases	524	95%
DV cases	26	5%
Withdrawn (want of prosecution)	16	62%
Dismissed/transferred	6	23%
Guilty	4	15%
Imprisonment	0	0%
Community Work	0	0%
Suspended Sentence	0	0%
Fine	4	100%

2014 MC (Port Vila) Criminal Case Analysis - PI (Preliminary Inquiry) cases

Case type	TOTAL Finalised cases	
Protection Orders	544	37%
Other	201	14%
PI	190	13%
Criminal	550	37%
Other cases	135	71%
Sex cases	55	29%
Withdrawn (want of prosecution)	8	15%
Dismissed/transferred	6	11%
Committed to SC	41	75%

Summary of the analysis for sex and drug cases

- SC – Sex cases
 - Overall timeliness of disposals of approximately 170 days is excellent by any international standard
 - Close to 60% of the 48 cases were found guilty, and of those
 - imprisonment orders were made in 2/3^{rds} of these matters.
- SC – Drug cases
 - It is early days for this jurisdiction, and with only 10 cases disposed during 2014, it is too early to try and draw too many conclusions
- MC – DV cases (excludes Protection Orders)
 - A surprising low number of DV matters are presented at court, only 5% of the criminal caseload, and disappointingly, of the 26 cases – over 60% were withdrawn for want of prosecution.
 - And of those eventually found guilty (4) – fines were imposed in all cases
- MC – sex cases proceeding as PI cases
 - Close to 30% of all PI matters are of a sex-based offence, and the majority of these were committed to the Supreme Court
 - The timeliness of these cases, similar to sex cases in the Supreme Court have been disposed in a very timely manner (average days less than 2 months – at 52 days)

Summary of Island Court

Nature of Case	Total Registered	Total Complete	Total Pending
Civil	371	201	170
Criminal	270	270	0
Land Case	69	19	50

THE STATUS QUO

The current work being undertaken with court records and file management is of the most basic level of the re-organisation required in the Supreme Court Registry. It is akin to rebuilding a house and starting again with the foundations. It is essential as it will provide more accurate assessment of the work and more efficient keeping of the files but it will not necessarily affect significantly the flow of work or its quality. That still depends on judges hearing cases and deciding them. The record keeping and the file management is of fundamental importance but it is just beginning of what is required to ensure that the Supreme Court is able to deal with its responsibilities in a timely, effective and judicious way.

As part of this process, now that there is no residing judge in Luganville Santo, we must increase the number of Santo Court visits and we will use technology by means of video conferencing to manage Santo cases and especially criminal cases.

There is a need to reorganize the registry system of the Supreme Court to gain efficiency and cost effectiveness. There will be one central registry office of the Supreme Court in Port Vila. There will be


one central random allocation of cases to judges. This will mean a central numbering system.

The court management system (CMS) is in good progress. I hope we will implement it this year 2015.

The following are Projects Areas for the Judiciary for consideration and support:

- The new court house (The Hall of Justice Project)
- Repair and renovation of court buildings and offices:
(Magistrate court – Port Vila, Tanna, Tongoa, Sola Banks)
- Urgent need for new court rooms in Port Vila to match with the increase number of judges of the Supreme Court
- A review of the support services for the Judiciary
- A review of the management structure of the courts of Vanuatu
- A review and consolidation of the Practice Notes
- The review of the Civil Procedure Rules
- The support of the Law Society

Any one of the those projects will require substantial judicial involvement and oversight to ensure that the outcome is what is required for a modern judiciary. Franckly, it is beyond the ability for either me as CJ or any other judges with a full workload to attend to without risking overload and creating undue stress.



What is required is that the office of the Chief Justice must be strengthened and supported with assistance by someone who takes responsibility of these projects for the Chief Justice leaving the Chief Justice to attend to his general CJ duties.

Such assistance could best be provided by a person with significant judicial experience and has an in-depth knowledge of and experience of the Vanuatu justice system as well as life in Vanuatu, someone who has the respect of the agencies and individuals with whom he or she would have to work, an ability to get various agencies and individuals to work together towards settling the design, implementation and completion of these projects, and someone who the Chief Justice can trust to do this.

I consider that what is required is a judge with those certain qualities who can devote himself or herself primarily to these projects apart from hearing cases in order to deal with the current busy workload in the Supreme Court of Vanuatu.

Again in 2014, the process of recruitment and appointment of a qualified and experienced Master of the Supreme Court will be finalized to assist with the workload of the Supreme Court.

A Magistrate will be recruited in 2015 to replace late Magistrate Nesbeth Wilson in the Magistrate Courts.

It is to be noted that the details of activities undertaken in 2014 will be provided in the Judiciary Annual report towards the end of March 2015.

His Excellency the President, Distinguished guests, ladies and gentlemen and people of Vanuatu, it is now my honor to declare the Courts Sessions for 2015 officially open.

Thank you for your kind attention.