



VANUATU JUDICIAL MONITORING SYSTEM RESEARCH REPORT



VANUATU JUDICIAL MONITORING SYSTEM RESEARCH PROJECT

TRANSPARENCY VANUATU

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BACK LOG OF CASES REPORT

August 2013

PROJECT COORDINATION

Transparency Vanuatu

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August 2013. Nevertheless, Transparency Vanuatu cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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EXECUTIVE SUMMARY

Limited enquiries in response to complaints received by Transparency Vanuatu suggest that over the last 10 years the operation of the judicial system, and particularly the courts, has deteriorated to the point where hundreds of cases have not been dealt with in any depth, judgments never given, and the management of cases has come to halt for unexplained reasons. The objective of this project was to investigate why cases have not progressed nor been finalised in a timely manner.

The project used a combination of case studies from ALAC case files, interviews, and court observations to compile information. It also attempted to follow up on a list of cases compiled in 2011 by the Ministry of Justice based on complaints from lawyers and the public in respect of cases that were either delayed, pending or struck out or not relisted.

The research did not find much evidence of corruption, in the sense of misuse of position for personal gain. For instance, there were no reports of judges, court staff or prosecutors accepting bribes in order to delay cases. There were, however, some instances where *conflicts of interest* appeared to affect actions of police, prosecutors and judges.

There is also a *very significant problem with delays* which renders the court system dysfunctional in some cases. This dysfunction results in justice being so delayed that it is effectively denied. The court system is so dysfunctional in respect of its handling of some cases that it is corrupted, in the sense that it does not effectively uphold the law and deliver justice. This can undermine public confidence in the court system.

It should be remembered that complaints do not “tell the whole story”. Court observations also revealed that some cases do progress quickly through the courts.

The responsibility for delays is not solely that of the judiciary. Numerous parties, including private lawyers, public lawyers, prosecutors, the police and registry staff contribute to delays, at times. Parties to cases also often contribute to delays. Unfortunately the court system is not robust enough to consistently control manipulation of the court process by various parties through the use of delaying tactics.

The apparent inability of the court system to control manipulation via delays raises the issue of *lack of accountability*. Whilst parties and their lawyers should be accountable to the judge through active case management, this does not always operate effectively. Further, there is no effective way for clients to complain if their lawyers fail to act professionally and there is no robust system of disciplining lawyers. There is also no mechanism for complaining about judges. If cases do not progress, it is possible to file a constitutional petition in court, but this is somewhat tautological as constitutional petitions are also, often, delayed within the

court process. The lack of accountability mechanisms can also undermine public confidence in the court system and, more broadly, the justice system.

An associated issue that can also undermine public confidence in the court system is *lack of transparency*. Statistics on court cases, backlogs and delays are not easily available. Judgments are not always published. The researchers found that requests for information as to the status of cases or reasons for delays were frequently ignored.

In summary specific issues identified were:

- Perceptions of conflicts of interest
 - Police/prosecutors
 - Judges
- Lack of accountability
 - Judges & court staff
 - Lawyers
- Lack of transparency:
 - Magistrates Court judgments not published
 - Data on case backlogs and clearance times not readily available
 - Information on dates of hearing, decision and judgment not always clearly stated in written judgments
- Delays in court processes due to a number of reasons, including:
 - Delays in issuing decisions
 - Delays in listing cases for hearing or conference
 - Non-attendance, failure to comply with directions or other deficiencies by lawyers
 - Registry staff acting as gatekeepers and not assigning cases to judges
 - Errors in pleadings
 - Failures of lawyers to attend hearings
 - Absence of Magistrate
 - Absence of assessors in appeals from Island Court to Magistrate's Court
 - Failures of prosecution staff to attend court hearings
 - Delays in preparing sentencing reports
 - Lack of Resident Magistrate
 - Non attendance by accused due to correctional staff failure
 - Lack of legal representative being appointed in criminal cases
 - Lack of resources in state legal services

This report does not systematically identify how frequently each of the above deficiencies occurs. It does, however, detail specific instances in which the various deficiencies have caused problems in the administration of individual cases.

It concludes with a number of recommendations that relevant agencies should consider further.

INTRODUCTION

Project background

In 2011 Transparency Vanuatu joined with the Ministry of Justice to work through perceived problems with the court system. A number of complaints in this area had been lodged with Transparency Vanuatu's Advocacy and Legal Advice Centre (ALAC). The complainants were advising that matters they were involved in were either being delayed, struck out, or were proceeding to trial but then courts were not issuing final judgments.

The Ministry of Justice asked lawyers and members of the public to report cases that had been delayed, and a list of over 150 cases was compiled. The response to the Ministry of Justice's request for reports of cases that had been delayed indicated that there was a significant problem with cases being delayed. It should be recognized that this list was not comprehensive, as many private lawyers declined to provide their backlog of cases for inclusion in the Ministry of Justice list.

Court delays present a major issue for the rule of law as a whole, as justice delayed is, all too often, justice denied. Delays mean that the court is failing in its duty to uphold the law and act as a check on the illegal actions of both citizens and other branches of government. Further, for complainants to bring a case which then has no outcome brings discredit to the legal system and undermines public respect for the law, as there is no effective way for individuals to enforce legal rights.

When the Minister of Justice changed in 2011 due to a change of government the incoming Minister of Justice in 2011 did nothing with the list of delayed cases and the matter was shelved. ALAC then developed this project to further issues raised during the compilation of the Ministry of Justice list of delayed cases.

Aims of the project

The project activity report, attached as **appendix 3**, details the development of the aims of the project. The aims of the project became:

- To collect information that can be used to raise awareness of the issue of delays in the court system by documenting delays and demonstrating how delays affect people's right to justice;
- To identify some causes of delays within the court system; and
- To make recommendations for reform.

Methods

Four methods of research were used to gather information:

- Review of the list of Ministry of Justice files
- Review of ALAC case files to create case studies
- Court observations
- Interviews with key informants

The latter two activities took in Port Vila and Santo. The data presented in the report is organised by the method of gathering information. Further discussion of the methods is contained within the body of the report.

LIST OF CASES DELAYED, PENDING AND STUCK IN THE VANUATU COURTS FROM A LIST PROVIDED BY MINISTRY OF JUSTICE & COMMUNITY SERVICES COMPILED IN 2011

The Ministry of Justice & Community Services being the Ministry responsible for the portfolio for Judicial Services and the Courts in Vanuatu has continuously received complaints from members of the public, persons who are parties in court cases, civil society organizations, media organizations, legal practitioners and the community at large that cases registered in the various courts take too long to complete. Their complaints stem from the fact that time delays in their cases and prolonged periods of court procedures are causing them to incur high costs, not just economical, but social and psychological costs also.

In 2011 the Ministry of Justice and Community Services began to address this matter by commissioning an exercise to collect information from legal practitioners, persons who are parties in court cases and other institutions offering assistance to court users. As a result of this exercise 38 civil cases listed in the Supreme Court were reported. A further three cases were directly reported to ALAC for addition to the list. The table (with the additional cases reported directly to ALAC) is contained as **appendix 1**. The information contained in this table was collected by consent from those sources as mentioned. A list of 120 pending criminal cases was also developed by the Ministry of Justice. The table is contained as **appendix 2**. A number of lawyers did not provide details of their backlog of cases due, in some cases, to concern that they would face negative repercussions if they raised issues.

Progress on cases

As part of this project research was undertaken to attempt to ascertain progress on cases and reasons for delay. Whilst requests were made to the Chief Justice and court staff to discuss the research, it was not possible to get interviews. As a result, in order to track progress the first thing that was checked was whether judgments on any of the cases had been reported on PacLII. Further follow up was done with individual lawyers in some cases.

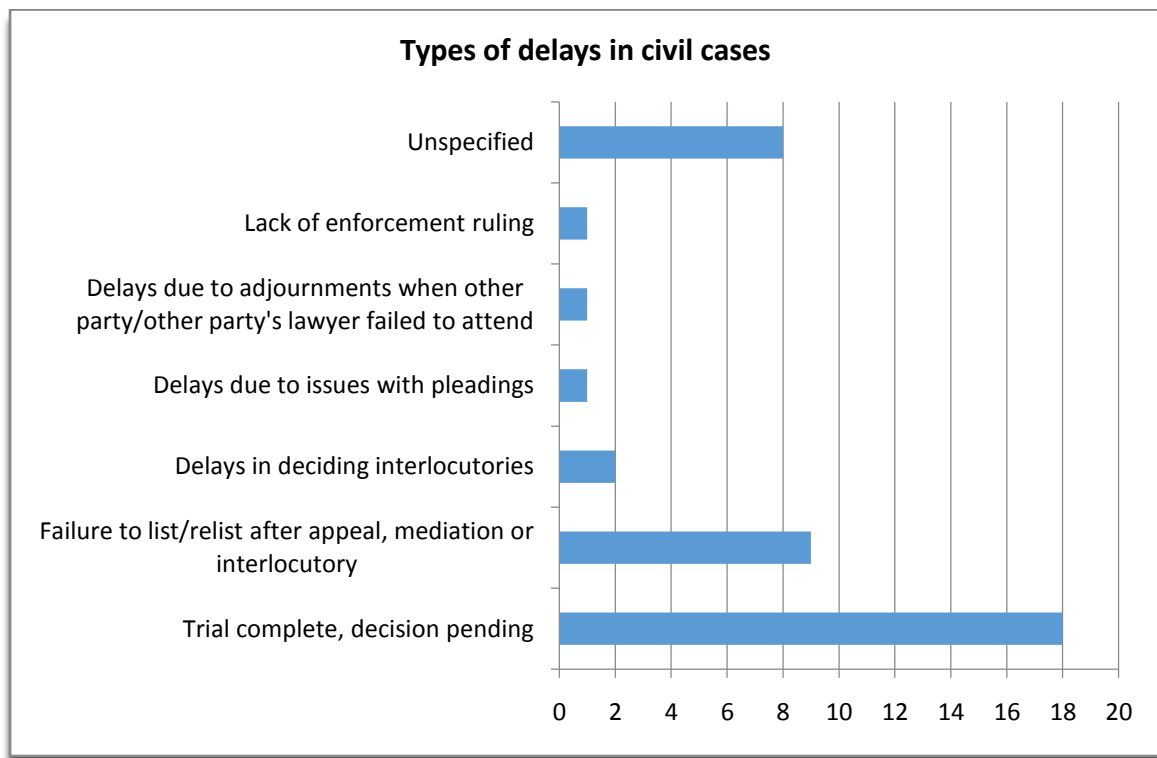
No judgments were published on PacLII in respect of any of the criminal cases.

In respect of civil cases, since the list had been compiled in two cases constitutional applications on the basis of denial of justice had been lodged with the Supreme Court in 2012. However, neither of these applications had been listed for hearing by June 2013.

Judgments on four cases (Burke v Air Vanuatu (Operations) Limited; Silas v Public Service Commission; ANZ Bank (Vanuatu Ltd) v Hehei; Hapsai v Family Albert) had been published. In one further case one of the lawyers involved reported that a decision had been issued (Sine v Ministry of Agriculture). However, no judgment is published yet.

Types of delays

As the table below indicates, the main type of delay complained of to the Ministry of Justice in respect of civil cases was that decisions were pending.



Of the 18 cases that reported delays in issuing decisions to be an issue, as of June 2013 the length of delay in issuing decisions following hearings ranged from 9 months to 14 years and 4 months, with the average delay being 4 years and 7 months.

The decision in *ANZ v Hehei* is particularly revealing in causes for delays in that case as the first three paragraphs provide a chronology of events:

History and Chronology of Events - Part One

This case has a long and winding history. It started back on 23rd February 1999 when the first affidavit was filed. However the originating summons dated 16th May 2000 was filed only 17th May 2000. A defence and Counterclaim was filed by the First Defendant on 28th March 2001. The originating summons was amended and filed on 6th June 2001. The Court held a Conference hearing on 20th July 2001. Direction Orders were issued on 1st August 2001. On 4th October 2001 the Court issued a ruling on the Claimant's application for strike out of defence heard on 2nd October 2001. On 25th July 2002 the First Defendant filed for Judgment in Default of Appearance. On 19th November 2002 the Court issued further directions. On 10th

February 2003 an application was filed seeking powers of sale. On 14th February 2003 the Order for Power of Sale was granted. On 14th April 2003 the Court issued an Enforcement Warrant which expired on 31st December 2003. On 12th March 2004 the First Defendant applied for leave to appeal out of time and for an Order to suspend the Enforcement of the Power of Sale dated 14th February 2003. Leave was refused. The First Defendant appealed to the Court of Appeal on 3rd June 2004. His appeal was allowed by the Court of Appeal on 11th June 2004. The Court of Appeal issued the following Orders:-

"(1) Leave to appeal is granted and the appeal is allowed.

(2) The judgment of 14th February 2003 is set aside including the orders as to costs.

(3) Leave is granted for the appellant to file his defence and counterclaim out of time under the new rules. This must be done by 1st July 2004. Within the same time the correct entitling must be attended to.

(4) A conference should be convened in the Supreme Court as soon as possible thereafter to determine the future conduct of the hearing.

(5) Each party to meet their own costs."

That is the first leg of the history.

Part Two

Now for the second leg, no defence and counterclaim were filed by the First Defendant on 1st July 2004 being the expected date of the Court of Appeal Order. On 26th July 2004 Ridgway Blake Lawyers wrote to the Registrar seeking a relisting. On 28th July 2004 the Registrar responded advising counsel their file was being transferred to Santo. On 23rd August 2004 counsel wrote to the Registrar in Santo to enquire about the matter. There being no response counsel wrote follow-up letters on 3rd September 2004, 21st December 2004, 24th March 2005, 7th June 2005 and 20th July 2005. On 21st September 2005 the Registrar issued a Notice of Conference returnable on 3rd October 2005. On 3rd October 2005 the Court sat and issued further directions requiring the First Defendant to file his defence and counterclaim within 14 days. On 28th October 2005 counsel filed a Reply and Reply to the Defendant's Counterclaim. On 5th December 2005 the Court issued further directions requiring the Claimant to file sworn statements within 21 days and allocated a return date for 20th February 2006. On that date the Court sat and fixed the hearing date for 6th April 2006 and ordered the parties to pay for their trial fees. On 27th February 2006 both parties paid their trial fees of VT15,000 each. The Court files do not held any record of what occurred on 6th April 2006 and the intervening period until on 29th May 2008 when the Claimant filed a Reply to the Amended

Defence and Counterclaim. On 17th June 2008 the Registrar issued a further Notice of Hearing returnable on 9th July 2008. On that date the First Defendant filed his sworn statement in response to the sworn statement of Dudley Wai dated 28th March 2008. There was a hearing on that date and further directions were issued returnable on 7th October 2008. This hearing was vacated at the request of the Claimant made in their letter of 6th October 2008. The Court responded by letter dated 7th October 2008. Claimant's counsel wrote further letters on 14th and 22nd October 2008 and 5th November 2008 seeking trial dates. The last letter they wrote in 2008 was on 15th December 2008 expressing listing difficulties and seeking a listing in April 2009. Counsel wrote again on 18th March 2009 seeking a listing on 4th May 2009. On 31st March the Registry issued Notice of Mention returnable on 4th May 2009. On that date the Court sat and adjourned the matter for trial to 4th August 2009. Counsel wrote letters on 29th and 31st July 2009 concerning the listing on 4th August 2009 as they were having difficulties reaching the Second Defendant Rasa Louis and sought for the matter to be stood over. Our files do not hold any record of what occurred on 4th August 2009 and in the intervening period until 17th February 2011 the Court on its own motion issued a Notice of Pre-trial Conference returnable for 26th April 2011. The Public Solicitor wrote a letter on that date seeking an adjournment. The Court sat on that date without the defendants or their counsel and adjourned the conference to 18th May 2011. On 24th March 2011 Mr. Leo informed counsel for the Second Defendant he had entered appearance on behalf of Rasa Louis. On 29th March 2011 Mr. Leo was served by Mr. Johnny La'au with a number of documents. Mr. La'au filed sworn statement as to service on 16th May 2011. On 17th May 2011 Mr. Leo filed a defence on behalf of the Second Defendant, and on 18th May 2011 counsel filed a sworn statement by his client Mr. Rasa Louis. On 18th May 2011 the Court sat. The First Defendant was not present either personally or by counsel. Further directions were issued and the case was adjourned to 15th June 2011. On that date neither the defendants nor their counsel were present. Mr. Morrison, counsel for the Claimant proposed to draft a timetable order and submit it to the Court for endorsement. No such draft order was ever submitted. The Court then again on its own Motion issued a Notice of Mention on 14th October 2011 returnable on 9th November 2011. This listing was vacated. The matter was next called by the Court on 14th February 2012 when trial started. The Second Defendant and his counsel were not present therefore the trial was adjourned part-heard to 21st February 2012 to allow Mr. Leo and his clients to appear. On 28th February 2012 the trial continued when the First and Second Defendants presented their defences and evidence. At the end of the trial Mr. Leo indicated he would file written submissions. Counsel for the Claimant and the First Defendant were to present oral submissions on 1st March. However on 1st March 2012, in the absence of Mr. Leo's written submissions and for the judge having had to convene a Parole Board Meeting that day, it was mutually agreed that all counsel

be allowed time to do written submissions and to submit them by 12th March 2012 (for the Defendants) and responses (by Claimant) by 15th March 2012. Despite those directions the Claimant filed their written submissions on 1st March 2012 and the First Defendant filed his written submissions on 6th March 2012.

3. From February 1999 to 11th June 2004 when the Court of Appeal allowed the First Defendant's appeal, the case had journeyed for some 5 years. And from June 2004 to 28th February 2012 it has been some 8 years. Altogether the matter has taken some 13 years from February 1999 to February 2012.

This tortuous case history reveals a number of causes of delays, including delays in filing documents by parties' lawyers, delays in court registry staff in responding to requests from parties' lawyers, non attendance by lawyers and parties, failures to comply with timelines provided by judge's directions and difficulties in getting hearing dates. It exemplifies that types of problems experienced in many long-outstanding cases, where the cause of the problem is something other than failure by the judge to deliver a decision.

The reasons for delays in criminal cases were less clear, and often not stated in the list provided by the Ministry of Justice. The Office of the Public Prosecutor was not available to comment on the cases included in the list. It can be observed that in 2008 41 cases were struck out by the Magistrates Court for failure to prosecute. A further 11 cases were included on the list as a result of delays due to failures to issue warrants of arrest.

Issues/recommendations arising

Issues relating to delays

1. Delays in issuing decisions

The main cause of delay reported to the Ministry of Justice was delays in issuing decisions. It is unclear what the cause of delay is. Vanuatu's civil procedure rules allow judges to delay issuing decisions and judgments. There is no specific time limit set on the maximum permissible delay.

- It is recommended that consideration be given to revising the Civil Procedure Rules to set time limits for issuing decisions and written judgments.
- It is further recommended that consultations with the judiciary be undertaken to identify whether lack of training is the cause of delays, or whether there are other causes that can and should be addressed.

2. Delays in listing cases for hearing

This is another significant cause of delays. Again it is unclear what the cause of this is. In addition to accountability mechanisms discussed below:

- It is recommended that any active case management system developed and implemented by the courts includes specific measures to deal with delays in listing of cases for hearing.

3. Delays caused by non-attendance, failure to comply with directions or other deficiencies by lawyers

In addition to accountability mechanisms discussed below:

- It is recommended that judges develop and implement guidelines on cost penalties that can be implemented in the event that lawyers fail to attend hearings or comply with directions.

Issues relating to accountability

1. Accountability of the judiciary & court staff

Currently, if the judiciary fails to progress cases the only recourse is a constitutional application to the court. The Ombudsman is currently not empowered to receive complaints regarding the performance of the judiciary. Previous research has suggested that the Ombudsman's power be extended to take complaints in relation to the judiciary (Edward R Hill, A Structural Analysis of the Ombudsman of Vanuatu, LLM Thesis, USP, January, 2004).

- It is recommended that further consultation is undertaken on whether it is desirable to have the judiciary fall within the scope of the Office of the Ombudsman, or whether an alternate complaints mechanism should be developed and implemented.
- It is also recommended that consideration be given to using a "customer service" style feedback form at court houses, with feedback monitored by a third party such as the Ministry of Justice.
- It is recommended that constitutional petitions be heard within a prescribed delay by law, as the delay might be the final way to block any complaint against judicial inaction.

2. Accountability of lawyers

Cases may be delayed due to poor practice by a lawyer involved. However, there is currently no adequate mechanism to discipline lawyers or deal with complaints by clients. No known cases of discipline of lawyers under the Legal Practitioners Act [Cap 119] have occurred in the last 20 years.

- It is recommended that a robust procedure for taking client complaints and disciplining lawyers be established.
- It is recommended that continuing legal education be made a requirement of renewing practicing certificates.

Issues relating to transparency

1. Data collection and reporting

The list provides some rough case study data on the types of delays experienced and the length of delays experienced. In order to gain a more accurate picture of the extent of issues with delays:

- It is recommended that more accurate data on court workloads, clearance rates, the length of time taken to clear cases and reasons for delays should be maintained by the courts as a matter of course. This data should show not only data by level of court, but also by location of court.
- It is also recommended that data on court workloads, clearance rates, the length of time taken to clear cases and reasons for delays by both level and location of court be published in annual reports that are made easily available to the public via publication on PacLII.

This recommendation is largely in accordance with the provisions of section 51(2) of the Judicial Services and Courts Act [Cap 270], which requires annual reports to contain data on:

S 51 (2)(b) details of the number of cases by type and court, and total:

- (i) at the start and end of the year; and
- (ii) pending at the start and end of the year; and
- (iii) registered during the year; and
- (iv) finalised during the year;

S 51(2)(c) details by type and court, and total of:

- (i) the average time from registration to finalisation for cases finalised during the year, whenever they commenced; and
- (ii) the average costing per case.

The recommendation that data on the types of delay be provided extends the legal requirements as to the types of information that should be provided in annual reports.

The recommendation in this report as to the type of data that should be provided is also largely in accordance with recommendations made under the Pacific Judicial Development Programme (PJDP) (Catherine Sumner, PJDP Phase 2: Judicial Monitoring and Evaluation Project, Draft Baseline Report, March 2012). The PJDP report also recommends publication of annual reports on websites.

It is acknowledged that annual reports of the courts do provide some data on the number of cases registered, cleared and pending in each level of the court system, so do currently partially comply with the recommendations in this report and legislative requirements. Annual reports do not, however, provide information on the length of time taken to clear cases, despite the fact that legislation requires this information to be provided. Nor are annual reports consistently published on PacLII.

There also appears to be some delay in producing annual reports. Transparency Vanuatu applied in January 2013 to have a written copy of the annual report read at the opening of the Court by the Chief Justice but were told that it was being printed. However 8 months later no such report is available. The same occurred in 2012.

2. Publication of judgments

One difficulty in following up criminal cases was that it is likely that some of these were Magistrates Court matters, but few Magistrates Court decisions are published. The most recent published Magistrates Court decision dates from February 2011. Vanuatu's Civil Procedure Rules provide 'A copy of the judgment must be given to the parties and made available to the public' (Rule 13(1)(4)). The Vanuatu Magistrates Court Benchbook provides useful guidance on how to write a judgment.

- It is recommended that, in compliance with civil procedure rules, consideration is given to the timely publishing of Magistrates Court judgments on PaCLII.

3. Contents of judgments

Another issue researchers encountered when trying to track the extent of delays between hearing, decision and judgment was that whilst some judgments stated dates of hearing and dates of judgment, this was not done consistently.

- It is recommended that in order to increase transparency on the time taken between hearings, decisions and judgment, all written judgments should state information on the date(s) of hearing, the date of providing an oral decision, and the date of issuing the written judgment.

REVIEW OF ALAC CASE FILES

Introduction

The purpose of these case studies is to draw attention to some existing complaints brought to ALAC and to attempt find out why these cases have not been successful and why they have not been progressed through the Court system or where the systemic failure(s) have occurred. The case studies also consider whether there has been:

- A denial of justice to the parties
- Any misconduct conduct on the part of civil servants, police, lawyers, court officials or others which has resulted in delays and /or cases not proceedings to court at all

Case study 1: Criminal Case 234 of 2009

A complaint was filed against MP Willie Reuben Abel for intentional assault. The matter was then prosecuted and charges were laid against the accused, Mr. Willie Reuben for Intentional Assault.

The case was listed for pleading in the Magistrate Court on 2nd December 2009. Unfortunately the case was not heard. There was a perception on the part of the complainant that the reason for not hearing the case was that the Magistrate was unwilling to be involved in the prosecution of a political leader. After the case had been adjourned at least 3 times, on 11 June 2010 the case was withdrawn for the want of prosecution.

ALAC, through correspondence, has requested the Chief Registrar, the Chief Registrar's assistant, and the Public Prosecutor for a response as to why this case was withdrawn. ALAC asked why this case has not yet been relisted but all communications with government offices have failed to provoke a response. There appears to be no accountability and transparency in this case on the part of the prosecution or the court.

Case study 2: Criminal Case 78 of 2011

The complainant and the other parties had been involved in a longstanding dispute over the ownership of a piece of customary land. The matter had been to several levels of court, including the Court of Appeal. In February 2010 a Land Tribunal decision was handed down, and in July 2010 the Complainant obtained a restraining order.

A riot ensued on the 19th of August 2010, after which the defendants were charged by the Public Prosecutor with offences of unlawful assembly, assault, intentional damages to property. This matter was listed for hearing on the 21st September 2011 at the Magistrate Court circuit on the Island of Ambrym.

The matter did not progress on 21 September 2011 because:

- There was no summons made by the prosecutor to the opposing party to come to the hearing;
- The state prosecutor was not present at the hearing;
- The Magistrate “struck off” the case on the basis of want of prosecution;

It can be noted that under the Criminal Procedure Code criminal cases are not “struck off”, so it is not clear whether the magistrate intended to withdraw the case, allowing prosecution to be brought at a later date.

The complainant decided to appeal the case, and the Magistrate then agreed to rehear the case.

In June 2012 summonses were sent to the other parties but the Magistrate then postponed the case without given reasons.

On 12 September 2012 the matter was again listed for hearing. The responsible Police Officers in Ambrym Island did not serve the summons on the accused and therefore the hearing was adjourned to be heard this year 2013.

The Complainant lodged this case with ALAC in September 2011. So far there has been delays of two years now – no final court hearing and no judgment yet delivered.

The complainant has informed ALAC that one reason for the continuous adjournment of the case appears due to the failure of the State Prosecutor to summons the Defendants to the Court and this resulted in a want of prosecution. There are (unproven) allegations that the accused have the support of chiefs, who in turn have talked with police, and that this may be delaying the summons being issued.

Case study 3: Unprosecuted criminal case

The victim was seriously assaulted by her husband, who attacked her with an axe and injured both of her arms and her abdomen. The matter was reported to the Port Vila Police, who have lost the axe used in the assault. After two Magistrates’ Court notices the case was dismissed because of the absence of the Police Prosecutor. The Police Prosecutor later admitted that he did not attend Court as he had a conflict of interest with the accused. The conflict of interest was that the Police Prosecutor was related to the accused. This is corruption in the sense of misuse of position for private gain.

The file was apparently meant to be referred to the Office of Public Prosecutions but this Office later stated that they had never registered such a file.

The Office of Public Prosecutions referred the victim to the Public Solicitor and she is now pursuing a civil claim. Her file was opened with the Public Solicitor in February 2011, but as

of August 2013 it has not progressed to court and the complainant has now sought advice from a private lawyers.

Case study 4: Civil Case 41 of 2008

The complainant is the owner and entitled to the possession of leasehold premises located at Captain Cook Avenue, First Lagoon, Port Vila known as “The Retreat Seaside”. On 14th of October 2003 the Port Vila Municipal Council sent a letter to the Complainant’s lawyer issuing an Enforcement Notice pursuant to Schedule 2 of the Physical Planning Act [Cap 193].

This Enforcement Notice required that the Complainant halt all building work at the Retreat Seaside and to resubmit an application for the grant of a new permit covering the claimant’s existing development at The Retreat. The Complainant’s lawyer advised the Complainant to halt all building works at the Retreat Seaside in compliance with the Enforcement Notice.

The case was brought to Court on 7th December 2007. His Honour Justice Tuohy declared in favour of the Claimant that:

- The action of the Municipal Council in requiring the Complainant to immediately stop work was *ultra vires* and unlawful; and
- That the requirement stated in the letter requiring the Complainant to re-submit an application for the grant of a new permit covering the Claimant’s existing development was wrong in law.

In 2008 the complainant made an application to the Supreme Court (Civil Case No. 41) seeking compensation from the Municipal Council and George Vasaris & Co for the loss suffered. An amended claim was filed in May 2009. This case was adjourned multiple times, with a hearing finally occurring in May 2012. Whilst the case was meant to be scheduled for a reserved decision no decision has been issued yet.

Pursuant to section 29 (2) (b) of the Judicial Services and Courts Act [Cap 270] all cases must be listed for hearing and must be determined as soon as possible. The delays in delivering this judgment need to be addressed. The failures to deliver a judgment within reasonable time have resulted in ongoing stress and costs for the claimants. The lack of compensation for what the court has already ruled to be an *ultra vires* action is also a denial of justice.

Case study 5: Civil Case 204 of 2004

This is a land case that has a long history. Various hearings have occurred within the customary land tribunal structure, where there have been many delays and changes in

decisions. There is a wider concern that land officers have issued contradictory advice and the various attorney generals have also not dealt consistently with the matter.

The part of the complaint discussed here relates to Civil Case No 204 of 2004, which was lodged in the Supreme Court. This case sought rectification of leases.

In 2004 the case was listed with then Justice Ham Bulu. The Public Solicitor's Office then sought leave to relieve Bulu, J. on the grounds of conflict of interest as the judge owned a lease in the area. Bulu J then excused himself.

On 18 October 2007 the matter was listed before Justice Oliver Saksak. No decision was issued. In 2008 the claimant sought leave to relieve Saksak, J. on the grounds of conflict of interest, as the judge is an active preacher at a church established in the contested area. Saksak J. excused himself.

Since then at least 5 conference calls have been scheduled but postponed. The case was listed with an expatriate judge, Dawson, J. but he left Vanuatu.

Case study 6: Rural Residential Lease Title 09/1542/005

The complainant contends that the lessors of Land Title No 09/1542/005 were occupants of an area of land they owned. As such they had the lease registered under their name despite not being the rightful custom owners.

The timeline is:

- 15/05/97: local land committee declares that one group of families (Family Vanusoksok et al) were the custom land owners
- 2/07/10: essentially the same local land committee declares that another family (Family Koubak) are the custom land owners
- 19/08/10: appeal lodged with the Malekula Area Land Tribunal
- 9/02/11: lease approved by Minister of Lands, with Family Koubak as lessors
- 14/02/11: lease registered
- 10/03/11: Supreme Court hearing to prevent dealings with the lease
- 13/07/11: Matter heard with South Malekula Land Tribunal
- 23/7/11: Appeal lodged with Island Land Tribunal (Malvetenvanu)

By a letter dated 13th February 2012 to the Supreme Court, the Chairman, Chief Owen Rion of the Malmetenvanu apologised for the delay of hearing the matter and acknowledges that he did not inform the Supreme Court and the other claimants to be aware of this appeal case of Family Lockvaro. He also confirmed that the reason for delaying the matter was that they have other commitments in the office which made it impossible to hear the matter at a reasonable time. Further, having receiving the appeal, the Malmetenvanu decided to first

hold a conference with the parties concerned before accepting the appeal case but this conference was never held. Finally, there was a change of the office bearers of the Malmetenvanu early this year which contributed to the delay of hearing the matter.

Further issues/recommendations arising

In all of the case studies complainants have experienced denial of justice. In addition to issues of delays in issuing decisions and delays in holding hearings, both already discussed in the previous section, these case studies indicate there is also a problem with perceptions of conflict of interest.

Conflicts of interest

1. Police and prosecutors

There were two cases (case study 2 and case study 3) where there was perceived conflict of interest at the level of police/prosecutors. Conflicts of interest can lead to people misusing their position for their benefit. This is corruption.

- It is recommended that measures to identify conflicts of interest amongst police and prosecutors are identified and implemented in order to avoid situations that may lead to corruption. In particular, an “active case management system” for police and prosecutors should be explored. Such a system should ensure that conflicts of interest are identified and managed properly, investigations are carried out in a timely manner, evidence is managed properly, files are transferred to prosecutors and recorded as having been transferred, and prosecution files are managed appropriately.

2. Judges

There were two cases (case study 1 and case study 5) where there were perceived conflicts of interest by judges. In the civil matter (case study 5) if the conflict had been identified earlier delays may have been reduced.

- It is recommended that consideration be given to revising Civil Procedure Rules so that issues of conflict of interest must be raised at the first conference.
- It is also recommended that a judicial code of conduct be issued.
- It is recommended that where conflicts are likely to arise, or where cases have “dragged on” for a long time, resulting in perceptions of possible conflicts of other misconduct, then cases should be reassigned to expatriate judges, who are possibly brought in for the sole intention of clearing long-standing cases.

In the criminal matter (case study 1) the perception arises out of concern that “big men” may be treated differently. The root of this perception is lack of transparency.

- It is recommended that consideration be given to issuing and publishing written judgments in all cases where a leader, as defined by the Leadership Code Act, is prosecuted.

This will increase transparency, so even if cases are dismissed there is a publically accessible document showing actions that were taken.

Additional causes of delays

1. Registry staff acting as gatekeepers

Case study 6 indicates that one of the causes of delay was that before the appeal was accepted for hearing a conference was called. The issue of registry or administrative staff acting as gatekeepers and deciding whether there is sufficient evidence to assign file numbers and present cases to judges has also occurred in recent complaints to ALAC. It is clearly not the role of administrative staff to assess cases on their merits. Recent complaints to ALAC also indicate that registry staff sometimes fail to communicate with applicants if a document is missing, thereby effectively blocking the progress of a case. This is particularly problematic in respect of urgent applications.

- It is recommended that additional training be provided to registry staff to ensure that they are not acting as “gate keepers” and delaying the processing of complaints.

COURT OBSERVATIONS

Introduction

This section reports on court observations conducted between March and May 2013 in the Magistrates and Supreme Courts in Port Vila and Luganville. In total 22 court observations were completed. The table below indicates the number of observations by location, level of court and type of case.

Location	Court	Type of case	# of observations
Port Vila	Magistrates	Civil	2
		Criminal	2
	Supreme	Civil	1
		Criminal	4
Luganville	Magistrate	Civil	1
		Criminal	8
	Supreme	Criminal	4

Court observations focused on criminal cases, in part because information on issues experienced in civil cases had been derived from other forms of data gathering. This section discusses key issues in relation to delays experienced in observed cases.

Civil cases

Four civil trials were observed. Brief summaries of the four observations are provided. A discussion of issues arising from the observations is then provided.

Observation 1: Port Vila, Supreme Court 12/3/13

Nature of case: Breach of contract

History of proceedings: 14 May 2012 conference held
3 Dec 2012 conference held, lawyer for defendant failed to attend
12 March 2013, trial date listed

Outcome of hearing observed:

The judge:

- Declared that the lawyer of the claimants should amend or re –plead the statement of claim again because the pleading was inadequate;
- Noted that the new pleading should clearly pleaded the terms of the oral contract that was being breached;
- Noted that the new pleading should clearly plead the loss suffered and who suffered the loss;
- Noted that there must be evidence to support the new claim;
- Ordered that the new pleading should be filed and served at the defendant’s registered office;

The judge also directed that a conference was to be held at 8am on the 11 April 2013 to enable the judge to actively manage the proceeding.

Observation 2: Luganville, Magistrate Court 25/4/13

Nature of case: Compensation for property damage

History of proceedings: Prior proceedings unknown
25/4/13, listed for mention

Outcome of hearing observed:

The matter was adjourned until 29 April 2013.

The adjournment was due to the fact that the lawyer for the respondent failed to appear. The lawyer for the respondent was from the Public Solicitor’s Office. She was attending a meeting in Vila and as there is only one legal counsel in the Luganville Public Solicitor’s Office no one else was available to be present in court.

Observation 3: Port Vila, Magistrate Court 8/5/13

Nature of case: Breach of contract

History of proceedings: 16/4/13, first listed for hearing, but adjourned as magistrate was on circuit
8/5/13, listed for mention

Outcome of hearing:

The matter on the 8th May was heard in Chambers and only the lawyer of the claimant appeared on behalf of the claimant. They were a few failures that were identified. These were:

- There was no appearance from the defence lawyer;
- The defendant had not filed a defence;
- The defendant had not shown any process to defend the claim;

Because of these failures the Magistrate made a decision to extend the matter again.

The magistrate:

- Issued a direction to allow the defendant another 14 days to file their defence;
- Directed that there is no response from the defendant within 14 days, then the magistrate will hold a conference between the parties to further discuss the matter;
- If there is no appearance from the defendant and/or the defendant's lawyer at the conference then the claimant can request a default judgment.

Observation 4: Port Vila, Magistrate Court 7/5/13

Nature of case: Chiefly title, appeal from Island Court ruling

History of proceedings: Proceedings not listed or published, but it was noted that the dispute has been continuing in court for more than 3 years

7/5/13, appeal hearing

Outcome of hearing:

The matter was adjourned. The reason for the adjournment was:

- There was no assessors in the court even though there were advised to come to court. The Island Courts Act [Cap 167] requires that any appeals from the island court to the magistrate court must appoint two or more assessors knowledgeable in custom to sit in the court. This must be strictly followed. Because of the absence of the assessors the matter was again adjourned.

There were also no parties present in court. It was observed that the parties live at the North of Efate. The continuous adjournment of the case sometimes causes frustration and also leads to increased costs. Financial constraints make it difficult to the parties to attend court.

It was decided by the senior magistrate that:

- Both lawyers of the parties should make written submissions to the court and the court will look at the written submissions and then will deliver a judgment based on the submissions;
- All submissions must be submitted before the end of this month and a decision will be given either on the 30th or 31st of May 2013

No decision has been published on PacLII, so the researchers are unaware of whether this case has finally been resolved.

Civil cases: further issues/recommendations arising

Additional causes of delays

In addition to issues of delays arising due to non-attendance of lawyers, discussed previously, these case studies indicate that there are additional causes of delays and reasons for absences. Absences also give rise to issues of accountability, already discussed. These issues are not restated here.

1. Errors in pleadings

In observation 1, more than a year after the initial conference the hearing occurred and the matter was delayed due to errors in pleadings. Further, neither party's lawyer attended the pre-trial conference, which would also have provided an opportunity to detect deficiencies in pleadings.

Part 6 of the Civil Procedure Rules deal with conferences. These rules state that parties need not attend, unless they are ordered by the judge to do so. However, there is no explicit requirement that lawyers attend conferences.

- It is recommended that consideration be given to amending the Civil Procedure Rules to make this (implied) requirement explicit.
- It is also recommended that consideration be given to strengthening the wording in relation to the first conference, in order to ensure that sufficient detail is given to ensuring that pleadings are correct during the early stages of proceedings.

2. Failures of lawyers to attend hearings

In observation 2 the lawyer from the Public Solicitor's Office was not present because she was at a meeting in Vila and there is only one lawyer in the office.

- It is recommended that the Ministry of Justice considers increasing human resources stationed at the Public Solicitor's Office in Luganville.

3. Absence of Magistrate

In observation 3 one of the earlier hearings had been adjourned due to the planned absence of the Magistrate, who was on circuit.

- It is recommended that personnel attending circuits are decided well in advance, and that registry staff who set hearings are made aware of plans regarding circuits.

4. Absence of assessors in appeal from Island Court to Magistrate's Court

- It is recommended that further research be undertaken to identify whether failure to attend by assessors is a systematic problem which slows down the process of appeals from Island Courts to Magistrates Courts.
- If a systematic problem is identified it is further recommended that consideration be given to changing the requirement of having assessors sit on appeals.

Criminal cases

The observations (summarised in the following tables) indicate that, at all levels, observed criminal cases usually proceeded well. A variety of issues did occur, that either delayed proceedings slightly or made it not possible to follow up on the case. However, much of the day to day criminal work of the courts appeared to be well managed, with cases being decided in a timely manner. This raises an important point: *whilst other sections of the report indicate that there are problems with delays in the criminal justice system, once day to day practices, as well as complaints, are taken into account, then it can be seen that some cases do progress quickly through the courts.* This point does not detract from the validity of complaints. However, the criminal justice system is **not** totally dysfunctional in all cases.

Tables of criminal cases

Note: Throughout these tables, in some matters the name of the accused is not stated. This is either because the matter was withdrawn or that there is no indication that the matter has progressed passed preliminary inquiry.

Port Vila Magistrates Court							
Name	Offence	Date of offence	Timeline of proceedings	Judgment published?	Total time to complete	Comments	Issues observed
A	Theft	Beginning of 2013	Prelim. enquiry: 30/4/13; adjourned to 14/5/13; adjourned to 28/5/13.	No – may not be applicable	Unknown	No observation occurred after 14/5. It is unknown if this matter has progressed past preliminary enquiry.	Prelim. enquiry delayed twice due to non- attendance of state prosecutor.
Not stated	Harbouring escaped prisoners	Not specified – proceedings started in 2012	Date of sentencing: 14/5/13	No	Unknown	Accused had earlier pleaded guilty and attended court for sentencing.	State prosecutor failed to attend and the case was dismissed because of this.

Port Vila Supreme Court							
Name	Offence	Date of offence	Timeline of proceedings	Judgment published?	Total time to complete	Comments	Issues observed
James	Sexual intercourse without consent	3/11/12	Prelim. enquiry: Nov 12 Plea hearing: 5/2/13 – pleaded not guilty Date of trial: 18/2/13 Verdict: 7/3/13 Sentencing hearing: 12/4/13 Date of sentencing: 17/4/13	Yes. Both verdict and sentence on PacLII	5 months	An example of ideal practice.	
William	Sexual intercourse without consent	Not stated	Plea hearing: 12/3/13 – pleaded not guilty Date of trial: 10/4/13 Date of sentencing: 10/4/13	No	Unknown	Information on trial/sentencing based on interview with staff of public prosecutor.	Slight delay between plea hearing and trial/sentencing due to trial being held in Tafea circuit court.
Albert	Sexual intercourse without consent	Reported March 2013	Preliminary enquiry 5/4/13; adjourned to 18/4/13 Plea hearing: 13/6/13 – pleaded guilty Written judgment issued 13/8/13	Yes. Sentence published	5 months		Preliminary enquiry adjourned due to failure of corrections to escort accused to court on time. Lawyer for accused also not in attendance.
Noal	Reckless driving causing death	15 Dec 2012	Guilty plea Sentencing hearing 14/4/13; adjourned to 24/5/13; adjourned to 4/6/13.	Yes. Sentence published	6 months		Reason for adjournment of sentencing no pre-sentence report due to lack of cooperation by family of accused.

Luganville Magistrates Court							
Name	Offence	Date of offence	Timeline of proceedings	Judgment published?	Total time to complete	Comments	Issues observed
Jack & Ors ; Tabir & Ors	Escape from correctional centre		Date of trial 24/4/13; adjourned to 26/4/13 Verdict/sentence listed for 8/5/13	No		No observation occurred after April so it is unknown whether verdict and sentence was issued.	At first hearing lack of evidence presented by correctional officer so case adjourned. All evidence presented at 2 nd hearing.
Bulesa	Possession of cannabis	Unknown	Bail hearing: 26/4/13	No	Unknown		Not represented by lawyer, but informed of right to be represented in S Ct.
Simon	Possession of cannabis	21/4/13	Bail hearing: 26/4/13 Plea hearing: 14/5/13 – pleaded guilty Sentence: 20/5/13	Yes. Sentence reported	1 month	Represented by Public Solicitor's Office in S Ct hearing.	Not represented by lawyers, but informed of right to be represented in S Ct.
X	Possession of cannabis		Prelim. enquiry 22/4/13			Case withdrawn due to insufficient evidence.	
Y	Possession of cannabis		Prelim. enquiry 22/4/13			Case withdrawn due to insufficient evidence.	

Luganville Magistrates Court							
Name	Offence	Date of offence	Timeline of proceedings	Judgment published?	Total time to complete	Comments	Issues observed
Silas & Ors	Possession of cannabis	Unknown	Bail hearing: 26/4/13	No	Unknown		No representation by lawyers. Two of the accused had family in court and were granted bail. Other two informed of right to lawyer and given opportunity to present bail application on 29/4/13.
Vanua	Unlawful entry & theft	Crime occurred Sept 2012.	24/4/13 – guilty plea.	No	Unknown		Long delay, whilst remanded in custody. Reason, no senior magistrate. Accused not represented by lawyer.
Z	Sexual intercourse without consent		Prelim. enquiry 24/4/13				Matter discharged due to insufficient evidence.

Luganville Supreme Court							
Name	Offence	Date of offence	Timeline of proceedings	Judgment published?	Total time to complete	Comments	Issues observed
Kalran	Possession of cannabis	Arrest 7 Jan 2013	Plea hearing: 4/4/13 Sentence: 30/4/13	Yes	3 months	Non appearance of public prosecutor did not delay sentencing. Submissions had been filed.	Non appearance by public prosecutor, who was away in Australia.
Kalsakau	Possession of cannabis	Arrest 20 Dec 2012	Plea hearing: 5/4/2013 – guilty plea entered Sentence: 30/4/13	Yes	4 months	Non appearance of public prosecutor did not delay sentencing. Submissions had been filed.	Non appearance by public prosecutor, who was away in Australia.
Richard	Not stated	Unknown	Sentence: 30/4/13; adjourned to 14/5/13	No	Unknown	As nothing is published on PacLII and there were no observations after 30/4 it is not known what occurred.	Non appearance by public prosecutor – sentencing adjourned.
Columbus	Not stated	Unknown	Sentence: 30/4/13; adjourned to 14/5/13	No	Unknown	As nothing is published on PacLII and there were no observations after 30/4 it is not known what occurred.	Non appearance by public prosecutor – sentencing adjourned.

Criminal cases: further issues/recommendations arising

Particular issues observed were:

- In the only case with a significant delay, the delay was caused by the fact that for some time Luganville had no senior magistrate
- Non-attendance by State (police) prosecutors or staff of the Office of the Public Prosecutor may delay proceedings
 - In Luganville resource issues mean that there is only one lawyer in the Office of the Public Prosecutor, so if that officer is away this may cause problems for smooth flow of cases
- Cases may be dismissed due to non-attendance of prosecutors
- Having cases heard in circuit courts may necessarily lead to some delays, as these courts are not permanently operating, but only sit at certain times
- Adjournments can occur if correctional services staff fail to escort the accused to court
- Lawyers were not always appointed during preliminary stages at Magistrates Court level, although judges did always take care to inform the accused of their right to a lawyer
- If lawyers have not been appointed Magistrates appear to be willing to provide some direction and allow small adjournments to give the accused time to prepare for hearings dealing with preliminary matters such as bail
- Magistrates also appear to be willing to provide some direction and allow small adjournments for the purposes of better compiling and presenting evidence during trial
- Lawyers for the accused were not always present
- Lack of cooperation by third parties in the preparation of sentencing reports can delay sentencing
- Judgments were not consistently published on PacLII

Whilst these issues did occur in some cases, the only systematic recurrence of any one particular issue was the failure of Magistrates Court decisions to be published.

Recommendations stated earlier in the report

Recommendations relating to transparency and accountability (that all judgments be published on PacLII, that disciplinary procedures for lawyers be developed) have all been made previously. They equally apply to issues identified here. Some reasons for delays revealed in these case studies (such as absence of lawyers for the accused) have also already been discussed. These observations also reveal additional causes of delays.

Further reasons for delays

1. Failures of prosecution staff to attend

Non attendance of prosecutions can delay hearings. If cases are failing due to non-attendance by prosecutors this is a significant problem. The problem may be caused by weaknesses in practice of lack of ethics on the part of individual prosecutors. The problem may also be caused (as in the case of Luganville) by there only being one officer in the Public Prosecution and State Prosecution offices.

- It is recommended that the Public Prosecutor's Code of Practice and Ethics (s required by s 29 of the Public Prosecutors Act) should be finalised as a matter of urgency, and that this Code also provides clear measures for disciplining any breaches of the Code.
- It is recommended that consideration be given to providing additional human resources for prosecutions in Luganville.

2. Delays in preparing sentencing reports

In one case the sentencing report was delayed due to non-cooperation by the accused's family.

- It is recommended that consideration be given to measures to increase cooperation with officers during the preparation of sentencing reports. These measures may include education and the power to compel participation in interviews.

3. Lack of Magistrate

For some time the Luganville Magistrates Court did not have a resident Magistrate.

- It is recommended that there is always sufficient resource allocation to provide for a resident Magistrate to be stationed at Luganville.

4. Non attendance by accused due to correctional staff failure

In one observation correctional services staff had not escorted the accused to court.

- It is recommended that accountability mechanisms such as the institution of disciplinary measures for correctional services staff who consistently fail to perform their duties be considered.

5. No legal representative appointed

Magistrates appear to delay cases by allowing small adjournments to enable parties to "sort out" their cases, particularly in the absence of legal representation. So long as such adjournments remain small, such a practice should be commended as a way of helping to ensure that the right to a fair trial, in the broad (non-technical) sense of those words, is upheld.

INTERVIEW MATERIAL

Luganville Public Solicitor's Office – Interview with Jane Tari

Santo island is the largest island In Vanuatu. The main Legal Institutions are the Public Solicitors Office , the Prosecution office, the State Prosecution office and the Supreme Court, Magistrate court and the Island court.

Criminal cases which are brought before the Supreme Court in Santo are very manageable. The cases are heard at the earliest instances and in a reasonable time. There is no backlog of criminal cases at the moment because management of the cases is really good.

In regards to the criminal cases that are brought before the Magistrate Court, there is a backlog of cases which are delayed and pending hearing in the Magistrate court. The reasons are that:

- In the last two years , there was no magistrate permanently stationed in Santo. Fortunately Senior Magistrate Rita Naviti was appointed to be stationed in Santo this year.
- Geographical constraints delay investigation when a crime is committed and sometimes when a charge is laid, as it can be very hard to locate the. This leads to further delays associated with summoning the accused to come to court.
 - Lack of human resources because Police are only centered in Town and lack of transport or vehicles exacerbate this problem. In some instances, the police work very hard to locate the accused and witnesses to come to court.

Other matters that hinder the process of the work in Santo are:

- Communication- In Santo it is sometimes very difficult to contact the accused and clients and difficult to reach them because telephone reception is not always clear and there are sometimes breakdowns of the telephone network and internet. As such delays occur to inform clients about the status of their cases. There are some instances where the delay in this results in a lapse of time to prosecute the matter in court.
- Lack of resources/Human Resources
 - In Santo , The Public Solicitor's Office has only one lawyer who is responsible for the taking up the cases in Penama Province and Torba Provinces. She is overloaded with the cases.
 - The office also has one Secretary who she is filling tasks of the receptionist, clerical officer and typist.
 - The office has only one vehicle and one driver. The vehicle is not capable of going on the rough roads in remote areas. This sometimes leads to civil and criminal courts documents not being properly served and sometimes not served within the required time. This can lead to delays in civil cases, issuing

of default judgments which are later overturned and difficulties with enforcing judgments.

These matters hinder the work of the courts, the Public Prosecutor's Office and Public Solicitor's Office.

Luganville State Prosecution Office – Interview with Rexton Langon

The State Prosecution in Luganville currently have only one State Prosecutor, Sgt Rexton Langon.

In Sanma Province the total registered cases to the courts from January to December 2012 were 366. This figure includes Supreme Court cases, Magistrate Court case and Custom's Cases in Santo. The majority of the cases are heard in the Magistrate court. Currently there is a high number of the pending cases in the Magistrate court. This results from the fact that Magistrate Jimmy Garae had retired and was not immediately replaced. Fortunately this year 2013 Senior Magistrate Rita Navity was appointed to be the Magistrate in Lugainville to oversee and hear Magistrate cases and such pending cases.

There are quite a number of cases which are still outstanding from 2011 and 2012 as shown in the table below:

Total cases registered in State Prosecution office from Police records which are pending	
<i>Source: State Prosecution Office, SANMA Annual Report for 2012</i>	
2011	2012
74	131

In order to carry its work effectively and efficiently there are a few challenges faced by the State Prosecution office that delays the work to be done. Some of these difficulties and obstacles are:

- Lack human resources- so far there is only one state prosecutor who is drafting charges, takes the matter to court, serving summons etc. Lack of human resources does contributes that the work is not carried out effectively and effieciently. One state prosecutor is overburdened with the workload and thus cases are delayed and charges are not drafted at the required time.
- Limited facilities to carry out the work effectively
 - Office Building and Asset-For the time being the State prosecution office has occupied a small office space at the Police station building near the Municipal Town Hall

- Stationery – State Prosecution office at all material times depends on stationery at the Public Prosecution office. Sometimes the use of printing court documents are printed at the PPO.
- Difficulty in the serving of summons. This results if there is a shortage of fuel. Sometimes the Police assist in the serving of summons using their fuel but if there is no fuel then sometimes summons are not served. In some instances, the State Prosecutor has paid for the fuel at his own expense and a receipt sent to the authorities concern to reimburse /refund the money but no response to refund has been received.

Such consistent difficulties and obstacles means that some cases are not prosecuted because of the lapse of time. This is especially in the case of offences which is punishable by imprisonment for 3 months or less or by fine only. (Section 15 (c) of the Penal Code [Cap 135])

Port Vila Public Solicitor's Office & Public Prosecutor's Office – Interview with Eric Molbaleh

The burden to progress matters once they are before the courts is not of that of the courts alone but is a burden shared by all those who play a role in the justice system including civil servants employed within the courts and the Ministry of Justice, barristers/solicitors (as officers of the Courts and Legal representatives), police and prosecutors personnel (in criminal matters) and the parties to proceedings – either as plaintiffs/respondents in civil matters and victims and accused persons in criminal matters.

In criminal cases:

- The charges are filed by the state prosecutors and are known as provincial charges. Once files are charged then the police have 14 days to investigate the matter for further evidence. If 14 days elapse and more investigation is still needed then prosecutors have to come to the court to seek further time for investigation. Sometimes in this procedure there are delays to lodge the matter in court and delays to file the charges because time is needed to obtain evidence and sometimes charges are discharged because of lack of obtaining evidence.
- If there is prima facie case and the offence is triable before a Magistrate court or a Supreme court, then the magistrate or the judge:
 - Has to set a date of the plea hearing and if there are plenty cases to be heard then this can result in delay in getting a date for hearing the matter within a reasonable time;

- If there is a plea of not guilty from the accused then the court will set a date for the trial. Sometimes there can be delays in getting trial hearing dates due to the existing heavy caseloads and backlog of cases to be heard;
 - If there is a conference sometimes the lawyers for both parties or one of the lawyers for the prosecution or defense may not be present at the court conference and this leads to the postponement of cases and as such the cases may not progress quickly;
 - Sometimes a lawyer may ask the magistrate or the judge to extend court conferences /hearings because of not enough time to get further instructions from clients;
 - If a trial date has been scheduled then at the trial date sometimes the prosecutor might not appear or the defense lawyer might not appear in court. When this happens the case can be adjourned given the difficulty of getting timely hearing dates adjournments might be significant. This can lead to delays in hearing the matter and the case may not progress as expected
- If there is a plea of guilty the court can set dates for verdict and sentencing. The dates for verdict and sentencing depends entirely again on the court listings and can be delayed if there has already been court listing. For such reason the dates for verdict and sentencing can be extended for a week or a month.
- Other reasons that might cause delays are:
 - sometimes lawyers might not be present in court.
 - the accused might not be present in court while being out on bail. This is seen in the case of Criminal case of 7/13-PP v. *Philip T, Joseph P & Ors* where sentencing was adjourned to a later date because there were no appearances from the accused in court while being on bail. There was a misunderstanding on the date and as such the accused did not attend court at this date.
 - delays in producing a sentencing report from the probation officers within the 14 days. For instance this is seen in the case of *PP v Tony Noel*, where there had not been a pre sentence report from the probation officers because of the accused father not wanting to cooperate with the probation officers. Because of that failure the judge then adjourned the matter. Such minor mistakes can prolong the case for a week or month.

In regards to civil cases, there are certain procedures that need to be adhered to. Sometimes if they are not being strictly followed then default judgments can be entered or cases struck out. However, the Civil Procedure Rules also give considerable discretion to judges to extend times or allow adjournments. Some common causes of delays are:

- If there is no appearance from the lawyers of one of the parties to attend a conference and the judge adjourns the conference;
- When a lawyer ceases to act for one of the parties;

- When the parties fail to appear in court leading to adjournments;
- Difficulties in allocating a party if he or she relocates to another island;
- When the lawyer fails to attend court.

As processes give rise to difficulties, and different types of cases have different processes, it may be good to have a division of different courts such as

- Family Division which will deal only on matters of family issues;
- Land Division which will deal only with issues in relation to land have magistrates and judges who are knowledgeable only to hear land matters
- Civil Division which deals only with issues in relation to contracts, employments, company law, etc..
- Criminal Division which only deals with criminal matters

Having such divisions may result in more effective and efficient management of cases.

The Public Solicitor's Office is provided for by article 56 of the Constitution with the function to provide legal assistance to needy persons. Specific difficulties encountered by the Public Solicitor's office-Port Vila occur due to the high demand for legal assistance. Obstacles and difficulties are:

- Shortage of human resource as to lawyers in Port Vila and other provinces where the Public Solicitor's office is located;
- Not enough office space to accommodate more human resources and working environment. This particularly in Port Vila and other provinces

Further issues/recommendations arising

The interviews serve to confirm many of the issues discussed previously. They also emphasise one further issue.

Further reasons for delays

1. Lack of resources

The interviews all indicate that lack of human resources (i.e. no magistrate, only one prosecutor in an office, not enough solicitors) can have drastic effects on the efficient processing of cases through the Public Solicitor's Office, the Office of the Public Prosecutor and State Prosecutors. Lack of other resources (i.e. transport, fuel, stationery, adequate office space) can also have a drastic effect on the efficient processing of cases.

- It is recommended that a thorough assessment of resource shortages in both the civil and criminal justice systems be undertaken and that the Ministry of Justice then acts to address shortages.

RECOMMENDATIONS

Support for development and implementation of active case management measures

Before consolidating other recommendations, a number of overarching recommendations are made. These recommendations deal with active case management. For many years the courts have acknowledged the need for active case management, and have tried to implement some measures to ensure this. Further activity is currently underway in this area. This is clearly crucial. This report recognizes that dysfunction within the court system is not solely the responsibility of the judiciary. Numerous parties, including private lawyers, public lawyers, prosecutors, the police and registry staff contribute to delays. Parties to cases also often contribute to delays. All stakeholders also need to contribute to systemic solutions. In particular:

- All stakeholders must support development and implementation of stronger systems of active case management.
- Progress on the development and implementation of active case management systems must remain transparent.
- Stakeholders who wish to make input into the development and implementation of active case management systems should be given the opportunity to do so.

Currently judges are expected to spend a significant amount of time managing cases and this affects workload and potentially slows issuing of decisions. In order to ensure that cases are actively managed but that judges are not “weighed down” consideration should be given to options (such as the creation of a body of Masters of the Court) that assist judges by bearing some responsibility for case management.

Summary of other recommendations

Recommendations have been made throughout the report. This section consolidates recommendations. Further detail regarding issues and recommendations is found in the body of the report.

Issues relating to delays

It should be noted that not all delays result in denials of justice. In particular Magistrates appear to delay cases by allowing small adjournments to enable parties to “sort out” their cases, particularly in the absence of legal representation. So long as such adjournments remain small, such a practice should be commended as a way of helping to ensure that the right to a fair trial, in the broad (non-technical) sense of those words, is upheld. However, where delays result in denial of justice they must be addressed.

1. Delays in issuing decisions

The main cause of delay reported to the Ministry of Justice was delays in issuing decisions. It is unclear what the cause of delay is. Vanuatu's civil procedure rules allow judges to delay issuing decisions and judgments. There is no specific time limit set on the maximum permissible delay.

- It is recommended that consideration be given to revising the Civil Procedure Rules to set time limits for issuing decisions and written judgments.
- It is further recommended that consultations with the judiciary be undertaken to identify whether lack of training is the cause of delays, or whether there are other causes that can and should be addressed.

2. Delays in listing cases for hearing

This is another significant cause of delays. Again it is unclear what the cause of this is in all cases. In addition to accountability mechanisms discussed below:

- It is recommended that any active case management system developed and implemented by the courts includes specific measures to deal with delays in listing of cases for hearing.

3. Registry staff acting as gatekeepers

In some cases Registry staff have requested more statements on substance. It is clearly not the role of administrative staff to assess cases on their merits. Registry staff also sometimes fail to communicate with applicants if a document is missing, thereby effectively blocking the progress of a case. This is particularly problematic in respect of urgent applications.

- It is recommended that additional training be provided to registry staff to ensure that they are not acting as "gate keepers" and delaying the processing of complaints.

4. Delays caused by non-attendance, failure to comply with directions or other deficiencies by lawyers

In addition to accountability mechanisms discussed below:

- It is recommended that judges develop and implement guidelines on cost penalties that can be implemented in the event that lawyers fail to attend hearings or comply with directions.
- It is recommended that the Ministry of Justice considers increasing human resources stationed at the Public Solicitor's Office in Luganville.

5. Errors in pleadings

Ideally errors in pleading should be detected early in the course of proceedings and rectified. This will minimise delays. Part 6 of the Civil Procedure Rules deal with conferences. These rules state that parties need not attend, unless they are ordered by the judge to do so. However, there is no explicit requirement that lawyers attend conferences.

- It is recommended that consideration be given to amending the Civil Procedure Rules to make this (implied) requirement explicit.
- It is also recommended that consideration be given to strengthening the wording in relation to the first conference, in order to ensure that sufficient detail is given to ensuring that pleadings are correct during the early stages of proceedings.

6. Absence of Magistrate

In one observation one of the earlier hearings had been adjourned due to the planned absence of the Magistrate, who was on circuit.

- It is recommended that personnel attending circuits are decided well in advance, and that registry staff who set hearings are made aware of plans regarding circuits.

7. Absence of assessors in appeal from Island Court to Magistrate's Court

- It is recommended that further research be undertaken to identify whether failure to attend by assessors is a systematic problem which slows down the process of appeals from Island Courts to Magistrates Courts.
- If a systematic problem is identified it is further recommended that consideration be given to changing the requirement of having assessors sit on appeals.

8. Failures of prosecution staff to attend

Non attendance of prosecutions can delay hearings. If cases are failing due to non-attendance by prosecutors this is a significant problem. The problem may be caused by weaknesses in practice of lack of ethics on the part of individual prosecutors. The problem may also be caused (as in the case of Luganville) by there only being one officer in the Public Prosecution and State Prosecution offices.

- It is recommended that the Public Prosecutor's Code of Practice and Ethics (s required by s 29 of the Public Prosecutors Act) should be finalised as a matter of urgency, and that this Code also provides clear measures for disciplining any breaches of the Code.
- It is recommended that consideration be given to providing additional human resources for prosecutions in Luganville.

9. Delays in preparing sentencing reports

In one case the sentencing report was delayed due to non-cooperation by the accused's family.

- It is recommended that consideration be given to measures to increase cooperation with officers during the preparation of sentencing reports. These measures may include education and the power to compel participation in interviews.

10. Lack of Magistrate

For some time the Luganville Magistrates Court did not have a resident Magistrate.

- It is recommended that there is always sufficient resource allocation to provide for a resident Magistrate to be stationed at Luganville.

11. Non attendance by accused due to correctional staff failure

In one observation correctional services staff had not escorted the accused to court.

- It is recommended that accountability mechanisms such as the institution of disciplinary measures for correctional services staff who consistently fail to perform their duties be considered.

12. No legal representative appointed

Right to legal representation in respect of serious criminal offences is provided in the Constitution.

- It is recommended that the Ministry of Justice review human resource levels with a view to ensuring that this constitutional right can be fulfilled in all cases.

13. Lack of resources

The interviews all indicate that lack of human resources (i.e. no magistrate, only one prosecutor in an office, not enough solicitors) can have drastic effects on the efficient processing of cases through the Public Solicitor's Office, the Office of the Public Prosecutor and the Office of State Prosecutions. Lack of other resources (i.e. transport, fuel, stationery, adequate office space) can also have a drastic effect on the efficient processing of cases.

- It is recommended that a thorough assessment of resource shortages in both the civil and criminal justice systems be undertaken and that the Ministry of Justice then acts to address shortages.

Issues relating to accountability

1. Accountability of the judiciary & court staff

Currently if the judiciary fails to progress cases the only recourse is a constitutional application to the court. The Ombudsman is currently not empowered to receive complaints regarding the performance of the judiciary.

- It is recommended that further consultation is undertaken on whether it is desirable to have the judiciary fall within the scope of the Office of the Ombudsman, or whether an alternate complaints mechanism should be developed and implemented.

- It is also recommended that consideration be given to using a “customer service” style feedback form at court houses, with feedback monitored by a third party such as the Ministry of Justice.
- It is recommended that constitutional petitions be heard within a prescribed delay by law, as the delay might be the final way to block any complaint against judicial inaction.

2. Accountability of lawyers

Cases may be delayed due to poor practice by a lawyer involved. However, there is currently no adequate mechanism to discipline lawyers or deal with complaints by clients. No known cases of discipline of lawyers under the Legal Practitioners Act [Cap 119] have occurred in the last 20 years.

- It is recommended that a robust procedure for taking client complaints and disciplining lawyers be established.
- It is recommended that continuing legal education be made a requirement of renewing practicing certificates.

Issues relating to transparency

1. Data collection and reporting

The list provides some rough case study data on the types of delays experienced and the length of delays experienced. In order to gain a more accurate picture of the extent of issues with delays:

- It is recommended that more accurate data on court workloads, clearance rates, the length of time taken to clear cases and reasons for delays should be maintained by the courts as a matter of course. This data should show not only data by level of court, but also by location of court.
- It is also recommended that data on court workloads, clearance rates, the length of time taken to clear cases and reasons for delays by both level and location of court be published in annual reports that are made easily available to the public via publication on PaCLII.

2. Publication of judgments

One difficulty in following up criminal cases was that it is likely that some of these were Magistrates Court matters, but few Magistrates Court decisions are published.

- It is recommended that, in compliance with civil procedure rules, consideration is given to the timely publishing of Magistrates Court judgments on PaCLII.

3. Contents of judgments

An issue researchers encountered when trying to track the extent of delays between hearing, decision and judgment was that whilst some judgments stated dates of hearing and dates of judgment, this was not done consistently.

- It is recommended that in order to increase transparency on the time taken between hearings, decisions and judgment, all written judgments should state information on the date(s) of hearing, the date of providing an oral decision, and the date of issuing the written judgment.

Conflicts of interest

Conflicts of interest can lead to misuse of position for private gain. This is corruption. In order to ensure that there is confidence that the court, and wider justice system, is not corrupt, measures should be put in place to detect and respond to potential conflicts of interest.

1. Police and prosecutors

There were two cases where there was perceived conflict of interest at the level of police/prosecutors.

- It is recommended that measures to identify conflicts of interest amongst police and prosecutors are identified and implemented in order to avoid situations that may lead to corruption. In particular, an “active case management system” for police and prosecutors should be explored. Such a system should ensure that conflicts of interest are identified and managed properly, investigations are carried out in a timely manner, evidence is managed properly, files are transferred to prosecutors and recorded as having been transferred, and prosecution files are managed appropriately.

2. Judges

There were two cases where there were perceived conflicts of interest by judges. In the civil matter if the conflict had been identified earlier delays may have been reduced.

- It is recommended that consideration be given to revising Civil Procedure Rules so that issues of conflict of interest must be raised at the first conference.
- It is also recommended that a judicial code of conduct be issued.
- It is recommended that where conflicts are likely to arise, or where cases have “dragged on” for a long time, resulting in perceptions of possible conflicts of other misconduct, then cases should be reassigned to expatriate judges, who are possibly brought in for the sole intention of clearing long-standing cases.

In the criminal matter the perception arises out of concern that “big men” may be treated differently. The root of this perception is lack of transparency.

- It is recommended that consideration be given to issuing and publishing written judgments in all cases where a leader, as defined by the Leadership Code Act, is prosecuted.

This will increase transparency, so even if cases are dismissed there is a publically accessible document showing actions that were taken.

APPENDIX 1: LIST OF CIVIL CASES SUPPLIED BY THE MINISTRY OF JUSTICE IN 2011, PLUS CASES REPORTED DIRECTLY TO ALAC FOR INCLUSION IN THE LIST

Note: When complaints were collected confidentiality issues were not discussed. As there was no clear authorization to make the details of the complaints public, only the case number of names of cases are provided.

Civil Case No. (CC)	Name of Case
64/2008	C. Karie vs Toyota Tsusho (Vanuatu) Limited T/as Asco Motors
103/2008	E. Toara v Airports Vanuatu Limited
41/2008	Cyclamen Ltd v PVMC & George Vasaris & co
120/2008	D. Dinh V Estate of F. Kalpoi & Ors
120/2008	Dominique Dinh -v- Sand and Salt Ltd
167/2009	Burke v Air Vanuatu (Operations) Limited
36/2001	Tarilongi v. Ministry of Health
205/2003	Silas Hakwa v. Guy Bernard
112/1999 & 91/1999	Wong v. Hue
85/1997 & 104/1997	Ombudsman v Jimmy & Ors
6/2008	Bohn v. Government of Vanuatu
116/1994	Claimant: Frazer Sine
31/2008 & 24/2005	Abel Nako v. Public Service Commission
121/1997	Fujitsu v. GPC, IBS & Jan Pozdena
157/2002	Francois Marchand v. SPIE
186/2002	Marie Celine Chane Si Yin v. Government
42/2007	Molvatol v Boetara Trustees Ltd
44/2008	Joseph v Natu
17/1999	ANZ Bank (Vanuatu) v Hehei
50/2006	Not provided
36/2006	Beckenburg Lim Boon Kee trading as SPI Sandalwood Vanuatu v Director of Forests
111/2007	Willie Kalo –v-Sandy Kalo and Temar Albert
294/2004	No case name supplied.
188/2006	Eddie Silas – v – Public Service Commission
3/2009	Philmon Nala – v –Jimmy Namtengas
64/2009	No case name supplied.
229/2004	No case name supplied.
14/1993	Hapsai v Family Albert
76/2007	No full case name supplied.
7/2009	No full case name supplied.
158/2009	No full case name supplied.
63/2005	No full case name supplied.
63/2001	No full case name supplied.
62/2009	Johnny Nakapoi v TRA Ltd & Tom Kapalu
114/2005	Michael Kalourai - v -The Government

51/2009	Pacific Autronics Ltd -v- Spectrum Investment Ltd
102/2010	Family Farm Developments Limited v. Rene Laurent and Government of the Republic of Vanuatu and Ors
150/2010	Radcliffe /Others (re Oyster Island, Santo)
06/2010	B v B
94/2010	D v T
59/2011	DVT v CDM

APPENDIX 2: LIST OF CRIMINAL CASES SUPPLIED BY THE MINISTRY OF JUSTICE IN 2011

Note: As some of these cases may have been withdrawn names have been removed.

Criminal Case No. (CR)	Nature of Case and/or issues raised
219/2006	Request for a copy of Judgment from the Registrar of the Supreme Court as it was not available on PacLII. Court Judgments are available to the public. ALAC's numerous letters to the Supreme Court Registrar have gone unattended.
287/2008	Criminal Cases struck out in December 2008 by the Magistrate Court. Allegedly for failure to prosecute these cases by the Office of the Public Prosecutor.
	<i>General comment:</i> 41 Criminal Cases were struck out in December 2008 by the Magistrate Court allegedly for failure to prosecute these cases by the Office of the Public Prosecutor. Why have the PP failed to Prosecute? The accused where not summoned for serious criminal charges such as Rape, theft, assault etc Does such omission mount to negligence? What disciplinary procedures are in place to deal with such occurrence?
11/2003	Failure of the Public Prosecutions Office and Vanuatu Police Force to issue a warrant of arrest for 11 Criminal Cases. What is the status of each criminal case and why the delay for getting the cases to court for judgment?
121/2009	
37/2005	
36/2007	
24/2009	
6/2006	
15/2005	
89/2009	
67/2007	
79/2008	
37/2009	
234/2009	- The case was listed for hearing in the Magistrates Court on 2 December 2009 but the presiding female Magistrate refused to hear the matter. - Why wasn't the case relisted by the Court Staff if it had been deferred or rescheduled to a later date?
45/2007	The complainant of the case advised in a letter to Prosecutor Eric of the Public Prosecutor's Office the day after the Magistrate verdict, to appeal the ruling due to the fact that most of their evidence was not introduced and served therefore not accepted by the Court. Why hasn't the Prosecution lodged an appeal to the Court?
127/2009	
126/2009	
25/2002	Criminal Case No. 25 of 2002 File No. 03 of 2002. Complainant has not received any compensation to date. Had a final trial, but no enforcement ruling
107/2008	Careless driving
20/2008	Theft
143/2007	Forgery

	Theft
160.2007	Intentional assault
173/2007	Intentional assault Abusive language
114/2008	Theft
176/2008	Careless driving causing accident Driving under influence of alcoholic liquor
26/2008	Assault
5/2008	Threats to Kill
295/2007	Careless Driving
41/2007	Rape
156/2007	Sexual intercourse without consent
6/2007	Careless driving
169/2008	Careless driving
104/2007	Threat to kill a person Threats to kill a person Threats to kill a person
185/2007	Threats to kill a person Abusive language
127/2005	Kidnapping Abduction
146/2008	Theft
148/2008	Theft
151/2008	Attempted theft
144/2008	Criminal trespass Intentional assault
115/2008	Theft
108.2008	Theft Removal of import good w/o authorization
112/2008	Intentional Assault
104/2008	Theft
	Unlawful entry Theft
117/2008	Intentional assault
119/2008	Unlawful entry Theft
26/2008	Intentional assault
23/2008	Damage to property
41/2008	Intentional assault
35/2008	Intentional assault
36/2008	Careless driving
306/2007	Fail to maintain.
39/2008	Careless driving Under influence of alcoholic liquor Driving w/o valid driver's license
42./2008	Unlawful entry Theft
22/2008	Theft
24/2008	Idle & Disorderly Damage to property

25/2008	Threatening
27/2008	Intentional assault
29/2008	Intentional assault
32/2008	Intentional assault
33/2008	Intentional assault
34/2008	False pretence
38/2008	Careless driving Driving under influence of alcoholic liquor Driving w/o driver's license
47/2008	Theft
48/2008	Damage to property Drunk & Disorderly
49/2008	Damage to property Drunk & disorderly
50/2008	Unlawful entry Theft
51/2008	Intentional assault
232/2007	Intentional assault
228/2007	Intentional assault
239/2007	Threatening
294/2007	Careless driving
201/2007	Careless driving
296/2007	Careless driving
302/2007	Ideal & disorderly Intentional assault
304/2007	Fail to keep dangerous dog
336/2007	Obtaining money by deception
293/2007	Theft
336/2007	Theft
292/2007	Intentional assault
287/2008	Intentional assault
286/2008	Intentional assault
289/2008	Idle & disorderly
292/2008	Theft
293/2008	Intentional assault Damage to property
302/2008	Fail to keep dangerous dog
290/2008	Intentional assault
291/2008	Threatening Gestures
294/2008	Attempted assault
295/2008	Theft Theft
296/2008	Careless driving causing accident
297/2008	Careless driving causing accident
298/2007	Possession of dangerous drugs
299/2008	Careless driving causing accident
300/2008	Careless driving causing accident
301/2008	Reckless driving causing accident
165/2007	Escape from lawful custody

163/2007	Theft
159/2007	Damage to property
153/2007	Damage to property
167/2007	Intentional assault
171/2007	Intentional assault
154/2007	Intentional assault
155/2007	Criminal trespass Intentional assault
156/2007	Intentional assault
161/2007	Intentional assault
162/2007	Intentional assault
164/2007	Intentional assault
289/2007	Criminal Trespass Intentional assault
285/2007	Taking & driving away vehicle w/o consent Careless driving causing accident
147/2007	Theft
148/2007	Unlawful entering dwelling house Theft
146/2007	Attempted false pretences
149/2007	Theft Aiding & abetting theft Unlawful entry
143/2007	Careless driving Driving under influence of alcoholic liquor
145/2007	Malicious damage to property Unlawful entry Theft
283/2007	Careless Driving
286/2007	Driving under influence of alcoholic liquor Careless driving causing accident Driving w/o a valid driver's license
288/2007	Rape
287/2007	Driving under influence of alcoholic liquor Careless driving causing accident

APPENDIX 3: PROJECT ACTIVITY REPORT

VANUATU JUDICIAL MONITORING SYSTEM (VJMS)

INITIAL PROJECT PROPOSAL

The initial proposal stated that the aims of the project were:

Reporting on hearing of court cases:

- The project will aim at **listening and** reporting on trials to ensure they comply with international human rights standards and with the national laws with some interviews of the Court users. This will be the major focus of the project;
- It will also attempt to find out why **some Cases are not progressing** in the courts and record their failures; and
- It will **review the judicial processes** of the Courts in Vanuatu through the case recordings:
 - (a) To consider and recommend legally sound and practically feasible measures to improve the judicial processes by
 - (i) To assess the effective functioning of the judicial courts;
 - (ii) To identify obstacles and difficulties encountered by the institutions;
 - (iii) To ensure UNCAC requirements are being implemented;
 - (iv) To ensure a cross section of Court users are sampled.

The researcher will also look at judicial independence and education including:

- The researcher will also extend to legislative analysis and if necessary to proposals of Law amendments from identified areas where failures have occurred.
- The researcher of the project will also be to produce some publications to feed some outreach activities and workshops, disseminating information legal research and analysis through a variety of media, advocacy and promoting understanding of judicial rights and the rule of law throughout the communities in the different regional centres in Vanuatu and Press releases on cases monitored by the project will also be cited in the national newspaper in TV weekly page and will disseminate information on judicial developments through a variety of media, dissemination of information resulting from VJMS.

- The project will assist to highlight problems faced by the judicial system and make some proposals.

Assistance to the Victims: through the court recording the project will also review whether victims can have access to Justice: the role of law and lawyers in facilitating this access and the human rights implications of access to justice as for example women, whether corruption or bribery comes into play in matters failing to reach court, whether the present supports through the Government, hospitals ,Police, Prosecutor and NGO's fulfil the requirements and to provide legal assistance via ALAC to assist victims where there are elements of corruption

DEVELOPMENT OF AIMS

Once funding was granted Sam Railau was engaged as researcher and a project advisory team established. One of the priority tasks of the project advisory team was to assist the Researcher by developing terms of reference for the researcher to undertake to complete the tasks identified. The project advisory team comprised of:

- Stephanie Mahuk – Lawyer
- Hardison Tabi - Lawyer (ALAC)
- Bob Cartledge - Lawyer (external)
- Marie-Noelle Ferrieux Patterson, Lawyer/Transparency Board Member

The project advisory team established the following four (4) stage methodology:

1. Attend and observe court events and report on compliance with international human rights standards and with the National laws;
2. Interview (to the extent possible) court personnel, members of the judiciary, solicitors, prosecutions personnel and clients/claimants to ascertain the extent of concern amongst stakeholders and within the community, with the adequacy of the justice system.
3. Review of administrative processes by checking selected cases against a checklist structured around the Civil Procedure Rules and Criminal Procedure Code. This checklist is attached as **appendix 3.1**.

Outcomes of the project were determined to be:

- Prepare a report on the findings
- Report the review findings to all partners/stakeholders
- Disseminate information throughout the community consistent with the objective of encouraging community reporting of concerns, failures in the justice system

- Finalising audit and reporting to TIS

RESEARCHER ACTIVITIES

Between April and May the researcher undertook court observations in Vila and Santo. He also interviewed staff of the Office of the Public Prosecutor, the Public Solicitor's Office and the State Prosecutor in Vila and Santo. These observations used the checklist developed by the project advisory team to a limited extent. The checklist is included as **appendix 3.1** as it may be useful to use in future projects.

Despite requests judicial and court staff were not available for interview.

The researcher also reviewed selected ALAC files and reviewed cases that had been provided by the Ministry of Justice to try to identify reasons for delays. These reviews were done as they aligned with the intention of the project to 'to ascertain the extent of concern amongst stakeholders and within the community, with the adequacy of the justice system.' This review process also allowed for some interviewing of complainants.

No specific examination of compliance with national or international laws was undertaken although, where possible, recommendations relate to national law.

Reasons for deviation from terms of reference

Given this was the researcher's first time in undertaking a research of this nature, it was expected the project advisory team would offer more guidance than they did but they were unable to provide regular detailed input when difficulties arose with the research.

There was also insufficient time for one person to do court observations successfully (including observing adjourned hearings) and the lack of cooperation from judicial and court staff made follow-up via interview difficult.

As a result the researcher used different methods to achieve similar outcomes that were particularly focused on detailing case examples and highlighting issues and concerns of users of the court system.

An external reviewer, Anita Jowitt, was engaged in July to assist the researcher to complete the report content. However, her feedback was also delayed, which meant that there was very little time to correct gaps identified in the research.

FINAL OUTCOME

The research report has used different methods to identify specific problems and can be used to effectively 'shine a light on' the issues surrounding delays in the judiciary. The focus of the report on case studies allows it to be used particularly effectively in community outreach and advocacy activities.

Whilst the research report does not focus strongly on legislative analysis, with the aim of identifying gaps in laws and administrative practice, this is done to a limited extent. Transparency Vanuatu is currently undertaking a National Integrity Systems study, and this study will comprehensively examine gaps in law and make recommendations in this area. As such, when situated in the current research programme of Transparency Vanuatu the lack of focus on legislative analysis in the VJMS research report is not a critical gap.

Project Coordinator: Sam Railau
Report Reviewer: Anita Jowitt
August 2013

APPENDIX 3.1

Check List – Civil matters	
1.	Lodging of Cases in Court. For guidance see also diagram on structure of Magistrates and Supreme court proceeding in the CPR
(i)	Was the client/applicant legally represented (and if so by whom)?
(ii)	Was the Claim prepared in the compliance with the Civil Procedure Rules?
(iii)	Was the Claim filed in compliance with the Civil Procedure Rules?
(iv)	Did the client pay the courts fees?
(v)	Was the Claim filed?
(vi)	When was the Claim filed?
(vii)	Was the claim served in compliance with the Civil Procedure Rules?
(viii)	Was an affidavit of service filed?
(ix)	If the claim was not served within 3 months, was it renewed?
(x)	Did the Respondent file a defence?
(xi)	Did the court set down a first return date (if so what date)?
(xii)	Did both parties and/or their legal representatives attend court the first return date?
(xiii)	Were any Directions/Orders made?
(xiv)	How many other court ordered events were listed by the court?
(xv)	What was the date of the last court event?
(xvi)	Has the person who complained to ALAC sought to have the matter relisted (if so when)

Check List – Criminal matters	
(i)	Was there a charge being laid on the accused
(ii)	Was there is enough evidence for the Prosecutors to Prosecute
(iii)	Was the charge (complaint) being laid immediately by the Prosecutors after receiving the files from the Police
(iv)	Was the charge (case) filed in Court
(v)	Was the case listed for hearing
(vi)	Was the accused prosecuted within a reasonable time
(vii)	Was there a delay to prosecute within a reasonable time
(viii)	Was the Prosecutor failed to lay the charge within a reasonable time
(ix)	Is there any progress made by the Prosecution
(x)	Has the case being struck out
(xi)	Why it has been cancelled
(xii)	Was the accused remanded in custody
(xiii)	Was there a Plea Hearing
(xiv)	Has the accused pleaded guilty
(xv)	Was there any Bail applications
(xvi)	Was there a court Date for the trial
(xvii)	Was there any second Court hearing
(xviii)	Was the matter adjourned
(xix)	Is there any court order
(xx)	Has the Court order carried out
(xxi)	Has the Police carried out the Court Order
(xxii)	Has the matter struck out on the want of prosecution
(xxiii)	Has there been a failure of the Warrant of Arrest by the Police
<i>Other points to ponder</i>	
2. Inaccessibility	
(i)	The judicial system is highly dilatory, expensive and in civil matters, beyond the reach of many citizens. Ordinary citizens find it hard to seek redress, as litigation is expensive and extra money is often required to ‘oil the wheels’ of the system

3. Slow and inefficient
(i) Many cases drag on for years. An often cited excuse is the lack of staff, but the judicial process itself is unnecessarily complicated and inefficient.
4. Judges and Magistrates
Allegations of:
(i) external pressure or threats resulting in the delay of hearing of cases
(ii) acceptance of 'incentives' or inducements
(iii) judicial incompetency resulting in the failure to complete cases
5. Prosecutors
Allegations of:
(i) Prosecutors accepting or seek gifts or bribes not to prosecute any cases
(ii) Prosecutors allowing threats or improper inducements to influence decisions about when to prosecute
(iii) Prosecutor failing to prosecute because of family ties
(iv) Prosecutors failing to summon defendants to come to trial
(v) Prosecutors withholding evidence to weaken arguments in support of conviction or penalty.
(vi) Prosecutors not disclosing all/enough evidence even though there is a strong case.
(vii) Incompetency of Prosecution to prosecute cases.
6. State Prosecutors
(i) State Prosecutors fail to cause proper investigation because the offender is a family, close friend, co-worker and an employee.
(ii) State Prosecutors don't lay charges because the offender is a relative/family member or co-worker.

7. Lawyers
Allegations of:
(i) intentionally delaying filing of courts documents
(ii) accepting gifts, bribes or inducements.
(iii) failing to attend court ordered events; unnecessarily seeking adjournments due to their lack of preparation, or for their own convenience or personal gain.
(iv) charging additional fees without consulting or forewarning client of likely costs – results in the delay of hearings
(v) failing to complete certain Court Documents which resulted in the failure of case to proceed
(vi) Delay in filing of claims and appeals within statutory time limits resulting case not proceeding/being statute barred.
8. Parties (Individuals/clients and/or Business/Entities)
Allegations/concerns that parties have:
(i) Improperly influenced the decisions of judges, whether by words, acts of violence or the paying of bribes
(ii) Failed to filing pay fees
(iii) Failed to pay legal representatives
(iv) Failed to attend Court Ordered events
(v) Failed to comply with Court directions/interim orders
(vi) Failed to notify the courts and legal representatives of any change of address or contact details.
9. Hearing Postponed
(i) Hearing Postponed to later dates and pending hearing. This results in the delay of hearing

10. Witnesses
<p>Allegations of:</p> <p>(i) Witnesses being threatened or manipulated through promises of payment to give favourable testimony or withhold evidence</p>
11. Management of Cases
<p>Allegations that the backlog of cases in the courts is attributable to:</p> <p>(i) There not being enough Magistrates and Judges</p> <p>(ii) Inadequate numbers of properly trained Court Administration personnel.</p> <p>(iii) Inadequate resources, including facilities/infrastructure and computing resources.</p> <p>(iv) Failure by Court Administration personal to maintain proper, accurate or complete records</p> <p>(v) Corrupt practices, including harassment and intimidation of Court Administration personal.</p>