

2020 OFFICIAL OPENING OF THE COURTS OF VANUATU

THE HONOURABLE CHIEF JUSTICE LUNABEK

- **His Excellency Pastor Obed Moses Tallis, President of the Republic of Vanuatu**
- **Hon. Charlot Salwai, Prime Minister of the Republic of Vanuatu and Madame Salwai.**
- **Hon. Speaker of Parliament of the Republic of Vanuatu**
- **Hon. Judges of the Supreme Court of Vanuatu and Spouses**
- **Magistrates of the Republic of Vanuatu and Spouses**
- **Hon. Don Ken, Minister of justice and Communities services**
- **Other Hon. Ministers of the Government of the Republic**
- **Hon. Ishmael Kalsakau, Leader of opposition in the Government of the Republic**
- **Excellency Members of the Diplomatic Corps**
- **Public Prosecutor**
- **Attorney General**
- **Public Solicitor**
- **Ombudsman**
- **Director General of Justice and Directors of Government Departments**
- **Commissioner of the Police**
- **President of the National Council of Chiefs**
- **Members of the Legal Profession**
- **Members of the Law Faculty**
- **Registrar of the Supreme Court, Court officers and Staff**
- **Representative of Women**
- **Representative of the Press/Media**
- **Representative of the Churches**
- **Ladies and Gentlemen, Big Men and Women, Pikinini mo People blong Vanuatu**

I bring to you all, Greetings from the Judges, Masters and Magistrates, Island Court Justices and courts' officials and support staff of the Judiciary of the Republic of Vanuatu.

On behalf of the Judiciary, I extend a warm welcome to all of you to the Opening of the Legal Year. It is my privilege and pleasure to address you on this special occasion of the opening of 2020 legal year and I thank you all for coming.

As we begin a New Legal Year 2020, we need to ponder on the workload and performances of the courts in the past legal years and look back to the good things, the bad things and the challenges Vanuatu and its people have gone through with the work of the courts, the development of the law in general and all developments in our society as to how they impacted on the life of our people and Vanuatu as a nation. We must then reflect back on the achievements, values, strengths and weaknesses. We must learn from our mistakes and weaknesses so as to ensure that we set new directions for the future.

I believe that the direction for the future must be set on the basis of an overall vision. Vanuatu as a nation will be 40 years this year July 2020.

The needs of the judiciary for reform, as an institution, are an on-going process. They must be undertaken as part of a national reform effort with the scope of enhancing its independence and core functions to enable the Judiciary to become a modern Judiciary. And I, as your Chief Justice and a humble servant of this Republic, I have set that vision back in 2006 in the following:

“VISION OF THE ADMINISTRATION OF JUSTICE

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

That is our vision.

To elaborate this vision the following policy statement is made which enunciates the following:

“POLICY STATEMENT

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

As the Judiciary is meant to serve the people through the dispensation of justice, the Bench (Judges) must be fully accountable to the public by remaining transparent, yet not betraying those aspects of the judicial process, which require utmost confidentiality. Members of the Judiciary and court personnel must always adhere to the constitutional precept that public office is a public trust. Dishonesty, incompetence, inefficiency and any form of unbecoming conduct are impermissible and will not be tolerated in the Judiciary or in the legal profession.

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

I now provide you with the works of the courts in the year 2019 in review.

THE WORKS OF THE COURTS OF THE YEAR 2019 IN REVIEW

As in previous years, 2019 has proven to be a challenging year for the courts, with each jurisdiction having their own unique factors affecting both what occurred in 2019, and what is planned for 2020.

Resources, be they human resources (judicial #s) or financial resources (to undertake circuits etc.), needed to provide the services we, and the community expect, is one of these key challenges.

With the departure of Justice Fatiaki, and soon, Justice Felix, and the arrival of Justice Viran Trief, the Supreme Court will be effectively down one judicial officer for the early part of 2020, and given our workload, and pending #s, will put increased pressure on my Supreme Court judges.

Our ability to reflect on the performance of the courts on a monthly, quarterly and yearly basis is a credit to the Chief Registrar and his team, and as I have mentioned in previous years, our ability to present to you, the Government and the Community, our 2019 performance analysis within the month of January is testament to the work of many.

We now have at our disposal more court performance indicators which allow us to assess the operation, impact and efficiency of our case management protocols. A key international indicator that we are now using on a regular basis is called the Attendance Rate indicator, that is, the number of times a matter appears before the court before being finalized. This indicator provides an insight into the impact and cost to the parties e.g. more attendances - more cost/more impact to the parties.

The Court of Appeal continues to provide by world standards such as timeliness and clearance rates, an excellent service to this country. Despite more cases being filed, the CoA still managed to finalize all of the cases – within an average of 5 months from filing. There has been a greater percentage of Supreme Court cases being appealed. This is now running at approximately 13% - or 1 in 8 cases from the Supreme Court are appealed to the CoA. This has major implications for not only the workload of the CoA in its scheduled sittings throughout the year, but the flow-on effect to the workload of the Supreme Court justices in their normal workload.

The commitment that the Supreme Court shows to the criminal workload has ensured that the timeliness of cases to be finalized, the attendance rates, and the relatively low number of pending cases reflects a positive outcome for this work in 2019.

However, as I outlined last year, additional judicial resources are needed immediately, and I will canvass options with the Government and donors in the 1st quarter of this year for assistance. Without such assistance, I have doubts as to whether we can address many of the issues I have raised in a timely manner.

We still want to reduce our pending caseload down to approximately 900 cases, a reduction of 320 – and this will require significant effort and resources from all of us.

With Civil cases, we are seeing higher than desired Attendance Rates which as I mentioned earlier, has direct impact and cost to the parties. Many of our Civil pending #s are also subject to no further/visible listings, which we need to address immediately - internally. If parties are unaware of their next court appearance, delay creeps in, along with uncertainty.

The Enforcement matters in the Supreme Court have even higher Attendance Rates than Civil and will be investigated in the first part of the year, along with the issue of many of our Enforcement matters not being finalized which affects our overall performance. I will personally discuss these issues with the Masters.

While Reserved Judgments have greatly reduced over the years, I am well aware that several of the 22 judgments (down from 40 a year ago) have been outstanding for some time, and this needs to be rectified as soon as possible.

From an Island Court perspective, this is now of considerable concern to me, to see such a reduction in filings in the court, especially around Maintenance matters. In addition, not only have we seen a reduction in filings, but we have been unable to finalize cases and the pending numbers have risen considerably – along with the age of these pending cases.

As a Court typically seen as one for easy access, and quick resolution of matters, this is not the case with the Island Court today, and we must restore confidence and the usage of the Island Court in 2020.

Resources needed to service this jurisdiction is much needed.

Finally, with respect to the Magistrates Court, as mentioned earlier the Clearance Rate of 90% was well below our target, and this has resulted in an increased pending caseload.

The productivity of disposals per Magistrate continues to drop and I will raise this with the Acting Chief Magistrate to better understand and address the causes of this.

There is now clear evidence in the shift/mix of filings (lodgments) between the two main court locations namely, Port Vila and Luganville. This has implications for the resourcing of the respective court locations and I will be discussing this with the Magistracy in the coming weeks.

The previous drop in criminal filings over years 2016-2018 appears to have stopped, with Police/SPD/OPP filing more cases in 2019.

Finally, as we reflect on the performance of cases dealt with across the four jurisdictions, we will continue to drill into more specifics such as who appears before us – their age, gender for example, as well the orders and outcomes associated with the cases. The 2019 detailed analysis will appear on the website within the week.

As I have been reminded – being in a position to open the Legal Year – and reflect on the year just gone, reflects the hard work of so many around the court, and for that – we have greater transparency about the performance of the courts, and insights into case management.

The detailed analyses of the cases in different courts are contained in separate documents relating their respective data information. They will be published in the Courts Website.

I now give an overview of events and issues of 2019 – 2020

OVERVIEW OF EVENTS AND OR ISSUES IN THE JUDICIARY 2019 – 2020

1. Courts

Court of Appeal

- Pending court of appeal cases are increased calling for the 4 sessions of the Court of Appeal per year since 2018. This requires additional court of appeal funding resources appropriated in 2019 for 2020

Supreme Court

- Justice Andree Wiltens appointment extended to 26 March 2021
- Master Cybelle appointment extended for a further term of 2 years effective 30 March 2020
- Judge Felix resignation effective 2nd February 2020
- Judge Fatiaki term as Judge of Supreme Court Judge ended 30 September 2019
- Active Supreme Court Judges now - 5 Judges
- Pending land appeal will continue to be heard in 2020

Magistrate Court

- 10 Magistrates active - 2020

2020 focus for Magistrate Court

- Transfer of 1 Magistrate to Tanna
- Movement of 1 Magistrate to assist in Santo every two months
- Approach to complete old cases in the Magistrate Court in 2020

Island Court

- Movement of Nailyne from Saratamata to Port Vila due to volcano – movement to Ambae again early 2020
- Program of Certificate of Justice program extended to Malekula 2020

2. Human Resource office

- Finalisation of the Judiciary staff Manual 2020(including Finalisation of Human Resources Policy 2020)

Pending to recruit in 2020

- Replacement of Fatiaki Judge
- Replacement of Felix Judge (Ongoing and continued efforts are undertaken by the Vanuatu Judiciary and New Zealand Government, a second New Zealand Judge will be appointed to the Supreme Court for a relatively short period of say 5 weeks in the Easter 2020 and another New Zealand Judge will be appointed for several months

after the term of the first waiting for a long-term appointment to be sorted out).

- Recruitment of Banks/Torres IC Clerk
- Recruitment of HRO
- Recruitment of Assistant Registrar of MC Santo
- Recruitment of Accountant
- Recruitment of Deputy Sheriff
- Recruitment of Cleaner
- Recruitment of Administrative assistant to the office of the Chief Justice
- Recruitment of Accountant in 2020

Retirements - 2020

- Retirement of Shirley George
- Retirement of Wilma Manmelin
- Retirement of Anita Simon

Library

- More Judgments are being uploaded into the court website in a short period of time with regular updates
- Acquire of 1 20ft container in 2019 to be used as storage
- Budget approval of 2,500,000 allocated, the library will be able to acquire more books in 2020

3. Assets

Court Buildings

- Approval of VT 5 million from SRBJ project for Renovation of Tanna Court in 2020
- Plans for renovation of Ambrym and Epi IC to be done in 2020

Building that need repair – focus 2020 and beyond

- Renovation of CR residence
- Improvement on Epi Court facility
- Improvements on Ambrym court facility
- Renovation on Banks/Torres court facility
- Renovation of Clerk residence, Tanna

- Renovation of Magistrate residence, Tanna
- Renovation of Magistrate residence, Malekula.

2. Ongoing activities :

- A one day workshop has been organized for the lawyers on the techniques and methodologies of cross examination in criminal trials yesterday 23rd January 2020 and facilitated by Justice Gus Wiltens and the Law Council of Vanuatu Committee.
- The CERTIFICATE OF JUSTICE PROGRAM which is provided by the University of the South Pacific (USP) and under the coaching/ supervision of the Pacific Judicial Strengthening Initiatives (PJSI) and funded by the New Zealand Government. 8 Justices of the Island Courts on Efate were under this program in 2019. 5 justices of Efate Island court were graduated with Certificates of Justice in December 2019. I commended the work of the Vanuatu National Judicial Training Coordinator (Mrs Wendy Raptigh) who coordinated the Certificate of Justice Program and also provided tutorials to them. This year 2020, the judiciary expanded this program to 7 Justices of Island Courts on the Island of Malekula. This certificate is to enable those Justices of the Island Courts with the legal skills and knowledge to deal with unrepresented litigants they have in the Island Courts almost every day.
- As part of the processes of enabling rights and access to justice to unrepresented litigants and those unfamiliar with their legal rights and the function of courts who may otherwise suffer barriers to justice, consultations were undertaken from 18 March to 29 March 2019, in 3 – 5 remote communities and/or islands in order to identify and assess the legal needs of these vulnerable persons such as women, children and disabled including the uneducated ones. This was undertaken and involved 1 week consultations conducted by a representative of the PJSI, identifying the legal needs of these persons, provided report on findings; Workshops was held and a court guide for unrepresented litigants will be issued and translated into French,

English, Bislama and local languages if possible. The work is on progress.

- At the beginning of the year 2019, the Domestic Violence Plan of activities for the Magistrates courts have been launched. Implementations are on going.

3. Following are some of the major steps for the Judiciary and courts in 2020 and beyond:-

In pursuing the stated vision of enhancing and maintaining public trust and confidence in the Vanuatu's system of justice, and improving the contribution of the judicial system to socio-economic development and global competitiveness, any reform program will adopt and work toward fulfilling the following missions:

(A) SPEEDY AND FAIR DISPENSATION OF JUSTICE TO ALL

The Judiciary will strive to consolidate and optimize the gains from the judicial reform process towards improving the speed of delivery of judicial services and ensuring the fair dispensation of justice throughout the Islands of the Republic.

(B) JUDICIAL AUTONOMY

Judicial autonomy or independence from undue political or otherwise of interference in the exercise of judicial functions and decision making will be achieved if the Judiciary will attain autonomy in the generation of its resources (human, physical, financial) as well as in the management of their utilization and development. The achievement of the administrative and financial management independence of the Judiciary is one of the most important aspects of the reform process.

(C) IMPROVED ACCESS TO JUDICIAL AND LEGAL SERVICES

Reforming substantive law, jurisdictional structure of the Court, judicial system and procedures, legal education, as well as the

institutional processes and resource generation strategies will be geared toward consolidating gains that will increase geographical as well as financial access to judicial services particularly by the poor and other disadvantaged sectors and Islands of Vanuatu.

(D) IMPROVED QUALITY OF EXTERNAL INPUTS TO THE JUDICIAL PROCESS

The judicial system does not and cannot operate in a vacuum. Reforming the judicial system requires that the external systems that feed into the judicial process must satisfy the efficiency, quality and speed requirements of judicial decision making. This means that corresponding reforms in the systems of criminal justice investigation, evidence gathering, apprehension, correction, witness protection, and alternative dispute resolution must be pursued and put in place. The Judicial Reform Program will adopt a holistic and integrative approach that will address both the internal and external components of the judicial reform process.

(E) EFFICIENT, EFFECTIVE AND CONTINUOUSLY IMPROVING JUDICIAL INSTITUTIONS

The reform program will give utmost priority to the establishment of institutional structures, systems and procedures, and the generation of resources that will enhance the efficiency of the courts and support operations of judicial institutions; the capacity to achieve goals and performance targets; the capability to monitor and review performance and to plan for the short and medium terms; and the ability of judicial institutions to continuously assess and improve themselves.

(F) A JUDICIARY THAT CONDUCTS ITS BUSINESS WITH DIGNITY, INTEGRITY, ACCOUNTABILITY AND TRANSPARENCY

The enhancement and maintenance of public trust and confidence in the system of justice hinges on the dignity,

integrity, accountability and transparency with which the institutions, the Justices and Judges, as well as all personnel conduct them. The Judicial Reform Program will pursue reforms that will provide an environment and culture that exudes respect, honesty, integrity and probity.

(G) My last observation today will relate to the Supreme Court Hall of Justice

I am informed by the Government of Vanuatu that the Supreme Court Hall of Justice funding is ready. The launching and design process of work to be implemented this year 2020 and also construction started. This is very good news for the people of Vanuatu after the destruction of the Supreme Court old building by the fire on 7 June 2007 some 13 years have passed.

Back in 2008, I have given observations on the design philosophy of the Supreme Court Hall of Justice and I ask that the Government of Vanuatu and others which assist the Vanuatu Government will pay attention to these observations which I set them again:-

The details set out in the Supreme Court Hall of Justice Project Initiation Document form the basis of the User Requirement Brief to construction service to provide accommodation for the Supreme Court of Vanuatu, the Court of Appeal and the Supreme Court National Administration and Corporate Services with include all courts. It is called the Supreme Court Hall of justice.

The Constitution of Vanuatu mandates the Judiciary to administer Justice according to the Constitution and the law.

Constitutionally, the position of the Judiciary within the Democratic Society of Vanuatu is as the third arm of Government. As such, the building proposed for Supreme Court Hall of Justice in the national Capital City of Port-Vila, has a very symbolic function to perform in respect to the position and history of the Court and Vanuatu's system of justice and democracy.

The law of Vanuatu continues to adjust in ways which reflect changes in our society. It is important that the architectural design and functionality respond to this central issue. A society looks to a law court to personify that community's own state with respect to matters of justice. The institution is expected to uphold the law; to demonstrate independence; and to reflect the sovereignty of the people. While a sense of serious purpose and respect for the past is essential, so too is a realisation that the future is most important. So too it is important that the public feel welcome without intimidation. Accountability and transparency are important characteristics, as is accessibility.

It is important that the architecture and interior design establish a symbolism and functionality appropriate to this significant building type. The dignity of the building should speak of its importance, yet it must also have the ability to allow its users and occupants to undertake their business as calmly as possible. To this end, it must be easy to understand, it must reveal itself and encourage the public to witness the work of the works.

Beyond this, the building must add to the physical expression of Vanuatu environment and culture – our beliefs in an optimistic future, the values of accessibility, respect, honesty, fairness and a hard days work.

The building must also be flexible, efficient and functional, providing a safe and refreshing environment for all occupants, users and visitors. Opportunities for natural lights and external views of the beautiful bay of Port-Vila should be shared by all. The optimum use of these qualities contributes to the effect of transparency and clarity, offering a sense of calm, and providing an atmosphere which enables long periods of concentration without tension.

The architecture and functional layout and design must facilitate collegiality and good working relationships and the building should provide for the needs of litigants in addition to other users.

The design should be reflective of a Vanuatu identity and strongly relate to its site and context of the Joint Court area of Port-Vila, with investigation into the possibility of substantial use of shade, verandas, shutters and other devices. These should be used naturally and not self-consciously.

The material used should be Vanuatu material wherever practicable and all other things being equal, there is a preference for distinctively Vanuatu timbers and other finishes of Vanuatu origin.

The ability to respond to advances in information technology, particularly in regard to court room performance requirements, is an important consideration for the court energy efficiency and sound management practices to ensure that ongoing efficiency is maintained are also issues requiring address. In addition, environmentally sustainable design measures should be investigated for the building.

The new Supreme Court Hall of Justice will be the first building purposely built to accommodate a modern Court since the Condominium period. It will capture the cultural and functional objectives of modern Court for 50 – 100 years to come.

It must cater specific environmental consideration e.g. wind, water, sunlight and earth frequency and strength. Sustainability and maintenance are two considerations that are integral to the planning and building stages.

In terms of the funding, I am glad to see that the multilateral approach has been the principle insisted upon.

A project governance structure to oversee the development of each of stages of the project cycle which will transform the concepts, philosophies and aspirations contained in the Design Concept document into implementation has been appointed by Vanuatu Government including a technical committee.

I want to see an overall Vanuatu government leadership in this important national project and a positive assistance from our valued Development Partners being Australia and New Zealand and may be more.

I have nominated a Judge of the Supreme Court and the Chief Registrar to represent the Judiciary in the respective committees.

I now hereby declare that that the court session for 2020 is officially open.

I thank you for your attention.