

# 2021 OFFICIAL OPENING OF THE COURTS OF VANUATU

## THE HONOURABLE CHIEF JUSTICE LUNABEK

- His Excellency Pastor Obed Moses Tallis, President of the Republic of Vanuatu and the First Lady;
- Hon. Bob Loughman, Prime Minister of the Republic of Vanuatu and Madame Loughman;
- Hon. Speaker of Parliament of the Republic of Vanuatu and spouse;
- Hon. Judges of the Supreme Court of Vanuatu and Spouses;
- Hon. Ishmael Kalsakau, Deputy Prime Minister and Minister of Internal Affairs of the Republic and Mrs Kalsakau;
- Hon. Esmon Simon, Minister of Justice and Communities services and Mrs Esmon;
- Hon. Ministers of the Government of the Republic;
- Magistrates of the Republic of Vanuatu and Spouses;
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- 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;**
- **Representatives of the Churches;**
- **Ladies and Gentlemen, Big Men and Women, Pikinini mo People blong Vanuatu**

I bring to you all, Greetings from the Judges, 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 2021 legal year and I thank you all for coming.

As we begin a New Legal Year, we need to pause and reflect 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 the laws impacted on the life of our people and Vanuatu as a nation. We must then reflect back on these achievements, values, strengths and weaknesses. We stand and continue with our vision of:

*“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.”*

## THE WORKS OF THE VANUATU COURTS OF THE YEAR 2020 IN REVIEW

### 2020 Covid-19 Pandemic crisis

- Globally around the world, the Covid-19 pandemic was a dramatic crisis with devastating effects on the health of millions of men and women and children around the world including particularly millions of deaths.
- Pacific Islands Countries (PICs) face strong head winds from the Covid-19 crisis, despite to date having experienced few cases of Covid-19. Vanuatu had experienced 1 confirmed Covid-19 case. It was

successfully dealt with by the government authorities with support assistance. We thank the government to take drastic measures such as the closure of international travel and lockdowns to curb the spread effect of Covid-19 pandemic. But it has serious impacts on employment, international labour mobility, and livelihood in the country.

- The World Bank Report (December 2020), on the Pacific Island Countries in the ERA OF COVID-19: Macroeconomic Impacts and job prospects, shows that tourism-dependent PICs have seen a major blow to their economy. Vanuatu and others saw a near stop in international visitor arrivals during several months of the year. In Vanuatu, for instance, the number of employees in the tourism industry contracted by about 64 percent during the Covid-19 crisis.
- In terms of the work of the courts around the world globally, the common general trend is that the number of cases filed and registered in 2020 were dropped and this also include cases disposed of by courts in 2020.

### **Vanuatu situation is a special one**

- 2020 is the best year statistically since 2014 for Vanuatu courts in the four (4) jurisdictions we

administer – Supreme Court, Court of Appeal, Magistrate’s Courts and Island Courts.

- 2020, as the previous years, has proven to be a challenging year for the Vanuatu courts, and despite COVID-19 pandemic and the effect of TC Harold in the northern region, the number of cases filed and registered were up from 2019, and in 3 of the 4 jurisdictions, we were able to achieve over 100% clearance rate – a great achievement in 2020!
- As a result, our pending case numbers have reduced in each jurisdiction, overall a reduction of 22% (as at end of 2019, total pending was 2988 cases, and as at end 2020 – total pending is now 2324 across the 4 jurisdictions.
- The effect and repercussions of COVID-19 has prevented an appointed Judge of the Supreme Court of Vanuatu to take up his judicial role in Vanuatu and the appointment of another judge leaving the Supreme Court effectively down by two judicial officers for the entire 2020.
- 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 2020

performance analysis within the month of January is testament to the work of many.

- Further, I can say that while other countries within the Pacific Island judiciaries have data, they cannot interpret the data into information for their use by these courts, governments and respective people. I can inform you that we have data and our court local team (Chief Registrar Joel Shemi, National judicial Training and coordinator Wendy Raptigh and System Officer of Strem Rod blo Justis, Emma Scadeng) is able to make commentaries, interpret the data into intelligible information for their use by the Courts, the Government and the people of Vanuatu.
- We have at our disposal more court performance indicators which allow us to assess the operation, impact and efficiency of our case management protocols.
- We continue to use the key international indicator on Attendance Rate on a regular basis as a tool to assess effective management of cases, especially assessing 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 the attendance rate - 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 4 months from filing.
- There has been a lesser percentage of Supreme Court cases being appealed - now running at approximately 7% - or 1 in 15 cases from the Supreme Court are appealed to the CoA. Out of all appeals, 45% were dismissed, 34% were withdrawn and 20% allowed.
- The commitment that the Supreme Court shows to the criminal workload has ensured 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 2020.
- Additional judicial resources will be needed immediately to capitalize on the amazing job done by the Supreme Court in 2020 to maintain the momentum.
- The Supreme Court has managed to reduce the pending caseload from 1223 down to 806 cases, a reduction of 417 – a collective effort of 5 hardworking judges and the 2 Masters.

- With Civil cases, we are still seeing higher than desired Attendance Rates due to completion of many old cases which has direct impact and cost to the parties. Most of our current pending cases are under judicial management and we are working to ensure each case has a future listing date.
- The Enforcement matters in the Supreme Court has seen Attendance Rates similar to Civil but is still high, preferring to see the rates lower and will be looked at in the first part of the year.
- I am aware Reserved Judgments in the Supreme Court now stands at 23 and 14 of these cases are older than 90 days (since submissions etc. received) and will continue to be a focus for Judges in 2021.
- From an Island Court perspective, while clearance rate was not 100%, resources allocated to the Island Court resulted in a positive turnaround in registration and finalization of case reflecting confidence building up in the Island Courts.
- Finally, with respect to the Magistrates Court, as mentioned earlier the Magistrate Court record a Clearance Rate of 102% in 2020, a positive increase from last year. Pending has decreased by 17% with additional cases closed from previous years.



- The productivity of disposal per Magistrate increased due to closing of old cases and diligent work in 2020.
- Workload in Luganville is equivalent to the load in Port Vila which warrants reconsideration of allocation of resources and I will be discussing this with the Magistracy in the coming weeks.
- Over the last 3 years, filing of Preliminary Inquiry (PI) and criminal cases are relatively consistent with Police/SPD/OPP filing cases in 2020.
- 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 – for example the age, gender, as well as the orders and outcomes associated with the cases. The 2020 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.

## **OVERVIEW OF EVENTS AND OR ISSUES IN THE JUDICIARY 2020 – 2021**

## 1. Courts

### Court of Appeal and Supreme Court

- Vanuatu Court of Appeal experienced the use of remote hearing successfully to conduct COA hearing in May, July and November session through Video and telephone conference facilities. The connection was done to compose the COA with overseas judges and connection with remote lawyers with the support of Office of the government Chief Information Office (OGCIO).
- The Court has proactively moved to introducing and using 'video and Telephone conferencing facilities' in particularly during the COA sessions and specific management of cases remotely in the Supreme Court.
- April 2020, COVID-19 Court arrangements issued by the Office of the Chief Justice restricting movement of court officials and promoting remote court hearing through telephone and video conferencing.
- July 2020, the Office of the Chief Justice issued a revised court arrangement relaxing movement of court officials allowing court circuits to continue.

- **In the Supreme Court, there are 5 active Judges and 2 Masters.** One overseas Judge was appointed in June 2020; the restrictions imposed by COVID 19 prevented the Judge from taking up his office in Vanuatu.
- There is a good progress in our discussions underway with the Government of New Zealand to extend the appointment of Justice Gustaaf Andree Wiltens for a further term of 2 years. As of today, I can now say that New Zealand has been very pleased to be able to provide a judge to serve on Vanuatu's Supreme Court. New Zealand is supportive of extending the current secondment into 2022 and we are working together on how to make this happen. There is also discussion with New Zealand government through the District Court of New Zealand to send a second secondment Judge, to be further reconsidered in 2021.

### **Magistrate's Courts**

- 9 Magistrates active – 2020
- 1 Magistrate was removed from bench in 2020
- Transfer of Magistrate Jessica Palo to Tanna
- Transfer of Magistrate Setariki Waqanitoga to Luganville, Santo

### **2021 focus for Magistrate's Courts**

- Recruitment of 1 Magistrate
- Temporary arrangement of 1 Magistrate to support Luganville, Santo 2 times in 2021

## **Island Courts**

- Return of Ambae Island Court Clerk, Nailyne from Port Vila back to Ambae as a result of back to normal and acceptable volcanic activities.
- Two Transfers of Clerks in 2020 - to Epi Island Court the other to Banks/Torres Island Court.
- Certificate of Justice Program was completed in Malekula with 6 completing the program and ready to graduate to improve the quality of Justice in Malekula IC.
- Appointment of Supervising Magistrates to existing Island Court to supervise, revise and enforce Island Court decisions
- Training, appointment and swearing in of 19 Ambrym/Paama Island Court Justices.
- Training, appointment and Swearing in of 20 Ambae/Maewo Island Court justices.

## **2. Human Resource office**

- Finalisation of Human Resources Policy delayed to 2021

### **Retirements and Recruitment in 2020/2021**

- Retirement of Shirley George, Assistant Registrar of Supreme Court in Santo.
- Retirement of Wilma Manmelin, Filing Clerk of Supreme Court
- Retirement of Anita Simon, Clerk of Magistrate Court in Malekula in February 2020.
- Recruitment of Human Resource Officer
- Recruitment of Deputy Sheriff of Supreme Court
- Recruitment of Assistant Registrar of MC Santo
- Recruitment of Assistant Registrar of Supreme Court in Santo
- Recruitment of Filing Clerk of Supreme Court
- Recruitment of Cleaner

### **Library**

- More Judgments are being uploaded into the court website in a short period of time with regular updates
- Acquire of 120ft container in 2021 to be used for storage
- New Supreme Court library books acquired in 2020 have arrived.

## **3. Assets - Court Buildings**

- Renovation of Tanna Court building is underway should be completed in early 2021

### **Building that need repair – focus 2021 and beyond**

- Renovation of Chef Registrar 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

#### **4. Ongoing activities :**

- 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), funded by the New Zealand Government, seen five (5) justices of Efate Island court have graduated with Certificates of Justice in December 2019. In 2020, the Activity was extended to Malekula with seven (7) justices enrolled and 6 completed the program. This certificate is to enable those Justices of the Island Courts with the basic appropriate 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, a Pamphlet committee was formed to help address the issue. Eight (8) Pamphlets were produced and translated into the three official languages and would soon be launched for public use, to specifically targeting the unrepresented litigants. The 8 pamphlets are on civil and criminal processes in each court and specifically the DV process in the Magistrate court and Child maintenance in the Island courts.
- In 2019, the Domestic Violence Plan of activities for the Magistrates courts has been launched. In 2020 due to COVID-19 challenges, only one activity had been on progress and that is the draft DV guide for the Magistrate court, aiming at making sure perpetrators must be punished.
- For The 'Judicial Management Improvement Plan' (JMIP) 2020, 69% of its activities were successfully carried out and others still of impotence would be rolled over to 2021. The 2021 Plan would be launched shortly. These JMIP Plans contained the prioritized activities of the Judiciary per annum and is being implemented

alongside the Annual Court Calendar of events that contains all the court circuits and Trainings.

- The Sheriff Guide/ Manual (draft) is being piloted causing positive effect to the enforcement processes.
- There would be continuous trainings and appointments of new Island court justices in all provinces, last year 2020 Ambrym/ Paama and Ambae/Maewo were targeted. In 2021, we are looking to Pentecost, Epi and Erromango.
- I note the commitments of the Vanuatu Government and the Donor Support Agencies (Australian Government and New Zealand Government) to start building the Supreme Court Hall of Justice and to begin in 2021. I appreciate the commitments and the people of this country want the commitments to translate into actions.

### **Disciplinary Complaints against Members of legal profession**

**As part of our vision, it is also of note that the practice of the law is honourable and that people, courts and everyone expect from lawyers who practise law: “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.”*

- **The Record shows that there are a total of 25 complaints submitted and all dealt with by the Disciplinary Committee (DC) of the Law Council of Vanuatu.**
- **Out of the 25 complaints 7 of them were against one legal practitioner.**
- **The first complaint was dated 11 November 2013 and only up until 2018 when the DC was composed and started to consider the complaints.**
- **Offences ranging from, misuse of trust money, unethical and unprofessional behaviours, Practitioners acting as enforcement officers, Demand of upfront huge amount for legal fees without doing any work, and use of contemptible language against Supreme Court Judge.**
- **The decisions were from, imposing fines, suspension, and struck off from legal practice of Vanuatu Legal Profession.**

**Need for on-going training and education for lawyers**

- **The Public lawyers (State Law officers, Public Prosecution officers and Public Solicitor officers) are encouraged to continue with their Intensive Advocacy Skills Workshops;**
- **The Law Council in its educational section has to continue to play its role in educating public and private lawyers in the absence of an effective Law Society (for the private lawyers). There is an immediate need for the Law Council to negotiate for funding and set up training programs for lawyers;**
- **These are ideas. May be we need to seek for Legal Practitioners Act amendment in order to make those mandatory.**

### **Some reflections on Post Covid-19 justice needs**

- We need to have a different mental set or mentality in order to deal with the justice needs of the ordinary people of this country.
- The question we should ask is how the post-pandemic justice system will look different and how it might even emerge from the current crisis better than before.
- Most importantly I sense the use of digitalization will become the norm in short matters such as restraining

orders protecting domestic violence victims, child protection determinations, bails applications – All by way of remote proceedings by telephone and videoconference.

- Lawyers need to reflect on the Civil Procedure Rules (CPR) whether there is a need for new amendments to adapt to the new situations.
- We need to focus on the Criminal procedure Code Act, whether any amendments are required to facilitate the post Covid-19 criminal justice needs.
- Finally, I will invite you again to think of an Evidence Bill (Civil and Criminal) to encompass the Post Covid-19 Justice needs of the ordinary people with lesser costs involved.
- Apart from the Court of Appeal and the Supreme Court in some instances, Vanuatu Courts Administration will equip some of our court centres with Telephone and Videoconference facilities in 2021 so that we can trial out some of these ideas.

I need to stop. I thank you for your attention.

I declare the court sessions for 2021 officially open.