‘Fourteen Jailed’: Politics and Justice in Vanuatu

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On 9 October 2015, 14 members of the Vanuatu parliament (out of 52) were sentenced to between three and four years jail for the crimes of corruption and bribery of officials (*Public Prosecutor v Kalosil* [2015] VUSC 149). Five were ministers, two others held Cabinet rank, and all formed part of the government. This In Brief summarises the three main judgments concerned and their implications for the separation of powers and operation of the judicial system in Vanuatu. The still-unfolding political context of these events will be the subject of later In Briefs.

The origins of the prosecutions date to November 2014 when the Opposition tabled a motion of no confidence, leading to the ousting of prime minister Joe Natuman. It brought to power the government of Sato Kilman, with Moana Carcasses as deputy prime minister. Motions of no confidence are extremely common in Vanuatu, but this motion was alleged to have been paid for by bribes of VT1,000,000 (AU$12,678) from Carcasses to 15 other MPs in late 2014. A criminal investigation was initiated by a complaint by former prime minister Natuman. Unlike other similar investigations that were diverted along the way, in this case a critical mass of judicial, political and public support appears to have dissuaded any attempt to derail the process.

In August 2015, 16 government MPs were therefore charged with offences under both the Penal Code Act and also Bribery and Acceptance of Loans under the Leadership Code Act (LCA). One MP (veteran Finance Minister Willie Jimmy) pleaded guilty, and the 15 others were tried in a trial commencing 7 September. A person convicted under the LCA can be dismissed from office and disqualified from standing for election for 10 years. In contrast, convicted MPs only cease being members of parliament for offences under the Penal Code if sentenced to more than two years imprisonment. The LCA requires the ombudsman to conduct an investigation and then, if he or she considers that the Act has been breached, to send a copy of the report of the investigation to the public prosecutor and to the police if the complaint involves criminal misconduct.

The charges under the LCA were challenged by the defendants in a constitutional petition. They claimed the constitution requires those under investigation be given an opportunity to reply to adverse findings *before* the ombudsman’s report is sent to the public prosecutor. That did not occur in this case. The ombudsman contended that the constitutional right was satisfied by the defendants’ rights to respond to the allegations during the prosecution or court hearing. The day before the main trial, Justice Fatiaki found that the defendants’ rights had been infringed and therefore declared the ombudsman’s special preliminary report invalid (*Nari v Republic of Vanuatu* [2015] VUSC 132). This continues a tradition of under-use of the LCA to prosecute leaders in Vanuatu (Forsyth 2003).

At the main trial the next day, Justice Sey decided not to proceed with the charges under the LCA on the basis of Justice Fatiaki’s findings. All the defendants except one, Robert Bohn, elected not to give evidence in their defence, and all except him were convicted. Evidence was given by a number of prosecution witnesses that as MPs they had been approached by either Moana Carcasses or his associate and offered bribes to support the motion of no confidence against the government. The other compelling evidence was bank account details of the payments to the MPs made by Carcasses. These payments were ostensibly for the MPs to ‘develop further their communities’ but the judge found that they were in fact corrupt payments made to influence the MPs to vote in favour of the motion of no confidence (*Public Prosecutor v Kalosil* [2015] VUSC 135).

However, the fight was not yet over. The day following their conviction, one of the convicted politicians, the speaker of parliament, then acting president, purported to use the presidential powers of pardon under the constitution to pardon himself and the 13 other politicians found guilty, claiming

it was in the interests of maintaining peace and unity in Vanuatu. The president arrived back in Vanuatu the next day, and several days later revoked the pardon. The day before this revocation, the Opposition leader and several others sought a declaration in the Supreme Court that the instrument of pardon was unconstitutional. The day of the revocation, the speaker and others also filed a constitutional application, seeking an order that the revocation be declared unconstitutional. Justice Saksak heard both cases together and on 21 October held in favour of the first applicants, finding that the purported pardon was unconstitutional (*Natuman v President of the Republic of Vanuatu; Vohor v President of the Republic of Vanuatu* [2015] VUSC 148). His Honour held the powers of pardon must be used in a principled, transparent and consistent way, meaning there should have been some advice and/or consultation before its exercise. In addition, the pardon involved a conflict of interest and demeaned the office of president and therefore was in breach of art. 66 of the constitution.

On 22 October, Justice Sey delivered her sentence for the bribery convictions, imposing periods of between three and four years imprisonment on all the defendants except MP Jimmy, who was given a suspended sentence. Her Honour stressed that 'unsavory acts of corruption and bribery need to be weeded out in Vanuatu' and that the sentence of imprisonment was both to punish and 'to deter other like-minded leaders in positions of authority from committing similar offences'.

Subsequently, 6 of the 14 convicted MPs appealed to the Court of Appeal (CA) and an appeal was also made against the pardoning decision. All the appeals were dismissed on 20 November, although the CA's findings differed in certain respects from the reasoning of the court below. The CA held that Justice Fatiaki had been incorrect in holding the ombudsman's enquiry was a prerequisite to the laying of a charge under the LCA, an important clarification for future cases. In the event, however, these charges were dismissed by consent. In relation to the presidential pardon, the CA also clarified that the speaker *had* had the power to grant the pardon and that the power to pardon *could* be exercised before sentence. However, their honours agreed that granting the pardon in the circumstances breached s. 66 of the constitution.

Overall, this episode demonstrates the continued reliance by the politicians on the court as the final arbiter on issues of political import (Forsyth 2015). In fact, a constant stream of related cases have recently been brought before the courts. Apart from one report of an attempt to deport Justice Sey, there have not been any public statements seeking to undermine the authority or role of the court system, even by those convicted. Quite the contrary, there has been considerable praise for the courts and for Justice Sey, a female expatriate judge. The public also demonstrated a preparedness to allow the courts to implement the law, with no civil unrest following the decisions despite the huge interest evidenced by overflowing crowds at the courthouse. The Supreme Court's policy of publicly reading their judgments aloud and making them almost immediately available online possibly contributed to this by adding transparency and awareness-raising.

The judicial system has played a critical part in providing a strong framework to manage these complex issues of governance and politics in a peaceful manner. Also of importance was the coalescence of strong moral authority from a number of different sources, particularly the president in his public addresses; the National Council of Chiefs, who have made several strong statements about the need for calm and respect for the law; and the Vanuatu Christian Council. Overall, although there are still many questions about the possibility of ending the abuses of power documented in these recent cases, it has been shown that the Vanuatu judiciary can be relied upon to provide an element of stability and accountability.

Author Notes

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References

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