

# Understanding Judicial Independence in Vanuatu



Australian  
National  
University

MIRANDA FORSYTH

SSGM DISCUSSION PAPER 2015/9

## Introduction

The problem of corruption among political leaders, government officials and even some traditional leaders is popularly considered to be widespread in Vanuatu.<sup>1</sup> Indeed, former prime minister Natuman observed in November 2014 (Makin 21/11/2014) that: 'There are too many allegations of corruption such that it has become commonplace.' Yet the research conducted for this paper suggests that the higher levels of the Vanuatu judiciary have, by and large, managed to create and uphold a reputation for impartiality and incorruptibility, and are respected by the other organs of government and the legal fraternity. This is exemplified by occasions such as a 2013 decision of the Supreme Court on the legality of a motion of no confidence in the government brought by the opposition. The Chief Justice finished writing his judgment in the early hours of the morning and went to the court house to hand it down. He read out his decision to a packed audience, clearly spelling out his reasons in both English and the local Melanesian pidgin (Bislama). The decision had fundamental repercussions for the continuation of the government's term in office, meaning the stakes were high and the potential for conflict clearly present. Yet, at the end of the reading of the judgment, the members of the crowd both inside and outside the courtroom turned to one another, shook hands, and slowly dispersed. This illustrates widespread recognition of the court's legitimacy as a final arbiter and check on executive and legislative power.

In marked contrast, the position of the court is far more tenuous in a number of other countries in the region. For instance, in Papua New Guinea in 2011 the government refused to recognise the authority of a Supreme Court decision, resulting in two governments reigning for seven months (*Re Reference to Constitution section 19(1) by East*

*Sepik Provincial Executive (ESP Case)* [2011] PGSC 41 (12 December 2011), [9]). Further, in 2014 the government of Nauru deported the Chief Justice and magistrate. The current level of independence in Vanuatu is also under considerable scrutiny at the time of writing, with the headline of the daily newspaper on 16 June 2015 stating 'Opposition Fears Gov't Will Interfere in Judiciary' (Binihi 16/6/2015:1), making this a timely moment to consider the factors that have led to the current levels of confidence in the judiciary in Vanuatu today. This paper has a particular focus on the informal networks that have a significant, although often overlooked, impact on the judiciary's independence.

This paper is intended to fill a gap in the literature concerning the Vanuatu judiciary, as this topic is rarely addressed other than in reports by international non-government organisations, such as Transparency International and its local chapter, Transparency International (Vanuatu), or bilateral donors and multilateral organisations engaged in law and justice work (which is often unpublished). The paper also identifies potential sources of influence that threaten judicial independence, and reflects upon what insights Vanuatu's experiences may provide into the influence of informal networks on judicial independence more broadly. The paper also raises a number of unanswered questions relating to broader questions about the sources of respect for the judiciary in Vanuatu and the role of culture in relation to this respect.

Judicial independence has numerous important ramifications for Vanuatu. It is crucial in terms of democratic accountability, maintaining the rule of law and in keeping the country together in the face of considerable political instability.<sup>2</sup> This is most recently



exemplified by the situation in June 2015 whereby the courts are required to adjudicate on a bribery case against 19 members of parliament, all on the government side, and including seven members of Cabinet (Makin 13/6/2015), as well as the legality of the dissolution of parliament by the Speaker that prevented the hearing of a motion of no confidence against the current government. From a broader political perspective, it is particularly relevant that Vanuatu is a young nation. The court is often required to decide fundamental constitutional issues, making its independence essential to the establishment of the legal foundation of the state. Given the relative underdevelopment of civil society and the media, the courts are the prime mechanism to hold political authorities accountable, and their independence is essential to their ability to do so. For example, the courts have presided over numerous reviews of parliamentary processes, including the pre-emptive closure of parliament (*Republic v Carcasses* [2009] VUCA 46), motions of no confidence (see, for example, *Vanuaroroa v Republic of Vanuatu* [2013] VUSC 102; *Natapei v Wells* [2013] VUSC 43), and very recently, a motion to suspend 16 members of parliament (*Carcasses v Boedoro* [2014] VUSC 155; *Boedoro v Carcasses* [2015] VUCA 2).<sup>3</sup> This role is expressed by the Chief Justice as follows:

Vanuatu continues to grow its constitutional and democratic foundations and developments. The judicial pronouncements contribute to this process of constitutional growth under the supremacy of the rule of law. It must be encouraged and sustained. (*Vanuaroroa v Republic of Vanuatu* [2013] VUSC 102)

From an economic perspective, judicial independence is critical to the maintenance of good governance and a strong legal system, which is essential to positive development and the country's ability to attract investors. For instance, in the context of interviews discussed below, one leading local lawyer stated that the assurance they will be able to get a fair hearing before the courts is a factor that he stresses to investors considering investing in Vanuatu.

## Vanuatu and Its Legal System

Vanuatu is an archipelagic country in the south-east Pacific Ocean, with a population of approximately 250,000 people dispersed over 64 of its 83 islands and speaking over 100 different languages. Only six islands have populations of more than 10,000 people, making the reach of the state extremely limited outside the two main urban centres of Port Vila and Luganville and the various provincial headquarters. As a result, many populations rely heavily on customary forms of dispute resolution and governance by the local chiefly system.<sup>4</sup> Customary dispute resolution varies enormously in form throughout the archipelago, but can be said to involve community-based decision-making in which local leaders mediate between the parties and arrive at a resolution that takes the interests of the community as a whole into account, as well as those of the parties directly concerned. Resolutions often involve the payment of fines of money, food and prestige items to different parties involved, formal apologies, and a ceremony in which the parties drink kava and eat together.<sup>5</sup> Vanuatu achieved independence from its joint colonial powers, France and England, in 1980. Today it follows a Westminster-type parliamentary system with a constitution as the supreme law, setting out the separation of powers between the Executive, Legislature and the Judiciary.<sup>6</sup>

The Vanuatu judiciary is composed of four levels: the Court of Appeal, constituted by judges from Australia, New Zealand and other Pacific islands countries as well as the Vanuatu Supreme Court justices; the Supreme Court, with seven judges, three ni-Vanuatu, one from New Zealand, one from Fiji, one from Africa who is also the first female Supreme Court judge, and one from the United Kingdom, all of whom are based in Port Vila;<sup>7</sup> the Magistrates Court, with five magistrates in Port Vila, the capital, and four on three other islands;<sup>8</sup> and the Island Courts, which are established under the *Island Courts Act 1983*, and today operate on 11 of the larger and more populated islands and partly operate on two others (Evans et al. 2010:8). Island Courts have limited jurisdiction, as set out in their warrants of establishment, and are presided over by lay justices who are knowledgeable in custom (see Jowitt 1999).

The research for this paper is largely based upon semi-structured qualitative interviews conducted in Vanuatu in October 2014. Most informants were members of the legal profession, but also included a journalist, members of Transparency International (Vanuatu), and local legal academics.<sup>9</sup> Transparency International also released a National Integrity System Assessment in 2014 (Jowitt 2014),<sup>10</sup> which was an excellent source of reference. In 2013 Transparency International (Vanuatu) also produced a Vanuatu Judicial Monitoring System Research Report that provided important input (Transparency Vanuatu 2013). Finally, relevant case law was identified through searches of the online repository, PacLII (PacLII n.d.).

There are important limitations on the research that was done for this paper: the lowest level of the court system, the Island Courts, were not interviewed, nor were the magistrates currently residing outside the main township of Port Vila. The research also lacks input from the general public, which would have added another dimension to the perspectives being expressed by those within the legal profession. In partial compensation, this author has previously worked for a year in the Vanuatu Public Prosecutor's office and had taught at the University of South Pacific Law School in Port Vila, Vanuatu, for eight years. This research is consequently also informed by a myriad of informal sources in casual conversations both over the two weeks of fieldwork and in the previous nine years in-country. Due to these limitations, this paper is largely limited to the Supreme Court and Court of Appeal. It is also relevant that the legal profession in general is trained to be deferential to the judiciary, and this may be a factor influencing their impressions.

### 1. How Independent is the Judiciary in Vanuatu Today?

Before discussing the factors that contribute to, and threaten, judicial independence in Vanuatu, or confidence in the judiciary more broadly, it is useful to first set out the evidence about the degree of independence the judiciary in Vanuatu currently holds. Independence is taken in this discussion to mean freedom from undue influence

of all sorts, including economic, political, religious, and customary or cultural. The focus here is on the actual independence of individual members of the judiciary, as opposed to the institutional structure within which the judiciary is positioned that limits or supports this independence, such as processes for appointing and removing judges and the funding of the judiciary.<sup>11</sup> This approach originates from recent work on judiciaries that has shown that analysis of formal institutional roles and arrangements only tells part of the story (Helmke 2005; Kapiszewski 2012; Popova 2012; Staton 2010). Attention is also needed as to how informal arrangements function to both support and undermine judicial independence.

It is, however, helpful to briefly outline these formal structures at the outset. The Chief Justice is appointed by the President of the Republic after consultation with the Prime Minister and the leader of the Opposition (Article 49(3) Constitution of the Republic of Vanuatu). Other judges are appointed by the President acting on the advice of the Judicial Services Commission which is composed of the Chief Justice, the minister responsible for Justice (who serves as the Chair), the Chairman of the Public Service Commission and a representative of the National Council of Chiefs.<sup>12</sup> Judges have tenure until retirement and can only be dismissed in the event of conviction and sentence on a criminal charge or a finding by the Judicial Services Commission of an act of gross misconduct or on the grounds of incapacity or professional incompetence (*ibid.*). Judges do not fall under the *Ombudsman Act 1998*, nor under the *Leadership Code Act 1998*. Prior to this year, there was no clear avenue for a member of the public to make a complaint about the judiciary. However, a new judicial complaints mechanism was developed in 2014. This establishes a procedure and a guide to handle complaints against judges and court staff. This was an initiative of the court itself, supported by the Pacific Judicial Development Programme, designed to ensure greater transparency around complaints, rather than something imposed from outside.<sup>13</sup>

The informants in this study were unanimously of the opinion that the Supreme Court is extremely independent. One Supreme Court judge commented that he has never even experienced

‘a whiff of an attempt to bribe,’ and the officers at Transparency International (Vanuatu)’s Advocacy and Legal Advice Centre stated that they had not had any complaints about lack of judicial independence at any level of the courts.<sup>14</sup> Not a single respondent expressed an opinion other than utter confidence in the judiciary, and there have been no official reports or complaints about lack of judicial independence for over a decade. Since the dismissal of the former Chief Justice in 1996 as discussed below, there has not been any instance of the government dismissing a judge. Of course, assessing independence is difficult because an alternative explanation is that the lack of independence is extremely well covered up. However, this explanation is less convincing in the context of the small scale of Vanuatu and the thick social ties among its legal elite, which tends to mean that secrets are hard to keep. In addition, as the judiciary are relatively poorly paid, any unexpected increases in wealth or privilege are likely to be noticed. Since 1996 two judges and at least one magistrate have resigned following requests from the Chief Justice to ‘do the honourable thing’ after their involvement in conduct unbecoming their judicial role,<sup>15</sup> but no judicial officer has been dismissed through political interference.

The vast majority of informants also expressed confidence in a high level of independence of the magistracy, although there were some concerns that corruption may be creeping in at this level. As discussed below, a contributing factor may be that the magistrates are no longer housed together with the judiciary following the tragic burning of the Vanuatu Court House in 2007.<sup>16</sup>

This finding of a high level of independence is confirmed by a number of recent relevant reports. Transparency International’s 2014 National Integrity Report (Jowitt 2014:15) found that ‘The judiciary is one of the strongest institutions of the Vanuatu National Integrity System ... This study shows that it is largely independent, although it lacks some resources.’ Later, the report (ibid.:60) states that ‘Vanuatu’s judicial system is generally respected as being impartial, independent and fair, even though there are few legal mechanisms to ensure the integrity of judges.’<sup>17</sup> In its 2013 report,

Transparency International (Vanuatu) also found that there was not much evidence of corruption in the sense of misuse of position for personal gain, and no reports of judiciary or court staff accepting bribes. However, it did also state that there were ‘some instances where *conflicts of interest* appeared to affect actions of police, prosecutors and judges.’ One case was noted where there was a perception that a magistrate was unwilling to be involved in the prosecution of a political leader (Transparency Vanuatu 2013:7, 19). The Pacific Judicial Development Programme also reported in a 2012 report that the Vanuatu judiciary is regarded highly — as ‘fair, independent and of integrity’ (Ehmann 2012:3). The 2015 Index of Economic Freedom states that Vanuatu has a ‘largely independent judiciary’ (The Heritage Foundation 2015). Finally, in 2013 a small survey conducted among 25 lawyers and legal office staff by Transparency International (Vanuatu) found that 21 of these staff were confident that the judiciary is impartial (Transparency Vanuatu 7/2/2014).

Confidence in these high levels of respect for judicial independence and fairness can also be taken from the equally high numbers of complaints that were made during the research conducted for this paper about delays in the judicial system, in particular regarding the writing of judgments. This tends to discount the possibility that no complaints were made about judicial independence because of fear or intimidation, because if this was the case then it is unlikely that the same informants would have been so outspoken about their frustration at cases of delay. On this subject, as noted below, there have been recent improvements. A further supporting factor is the reasonably low level of cases where bias and apprehended bias have been argued and established before the courts. While sporadic reporting of cases makes any quantitative analysis of case law difficult, a search of the PacLII database for cases of judicial bias since 1997 reveals that there have been 24 reported cases where bias has been alleged. In six of these cases reasonable apprehension of bias was found. Of these, 12 involved island court justices (apprehended bias found in three cases), three involved magistrate justices (apprehended bias found in one case) and eight involved Supreme Court judges (apprehended

bias found in two cases: *Matarave v Talivo* [2010] VUCA 3; *Avock v Government of the Republic of Vanuatu* [2002] VUCA 44). The higher number of cases in the Supreme Court is likely to be attributable to the fact that higher court cases are far more consistently uploaded onto the PacLII database than for the lower courts.

This broad consensus about a high level of independence is, however, inconsistent with the findings of the Global Corruption Barometer 2013, which found that public perceptions of corruption within the judiciary are increasing (Transparency International n.d.). Some of the data presented in this report are troubling. For example, it reports that 9 per cent of respondents reported paying a bribe to the judiciary in the previous 12 months, and that 42 per cent considered the judiciary to be corrupt or extremely corrupt (*ibid.*). The research for the Global Corruption Barometer was done using computer-assisted telephone interviewing with 505 respondents by researchers located outside the country (Transparency International 2013:27, 30). It may be that problems of translation or miscommunication are responsible for the discrepancies between those findings and the results of this study. It may also be that the perceptions of lack of independence by the general public are different to those held by members of the legal profession, who were the basis of the current research. This is also suggested by a street survey conducted by Transparency International (Vanuatu) in 2014 that found that only 22 per cent of the 50 respondents stated they were confident the judiciary was impartial (*Vanuatu Daily Post* 24/2/2014). Although initially appearing to be inconsistent with the broad consensus about independence, further analysis of the findings suggests that a number of respondents included as ‘lack of impartiality’ other reasons to distrust the courts. These included the nature of the introduced justice system as a whole (comments indicated that some people thought the system was only for the rich, or not for the average ni-Vanuatu), and delays in going to court and the issuing of judgments. Only six of those who responded negatively to the question of whether they were confident in the impartiality of the judiciary cited judicial bias (although not all who responded

negatively provided explanations) (Transparency Vanuatu 7/2/2014). Further, the different levels of the judiciary were not distinguished between in the survey, which may further explain the findings. The fact that lawyers as officers of the court are less likely to be overtly critical of the courts than the general population is also another possible explanatory factor. This discrepancy should be further examined by conducting further research into the experiences of the general population about the judiciary, carefully distinguishing between different levels of judiciary. The new complaints mechanism may provide a useful initial repository of data for conducting such research.

## 2. The Independence of the Judiciary in Context

This section briefly contextualises the independence of the judiciary along three different axes: compared with other organs of government; compared with the court’s own previous history; and compared with other countries in the region.

### The Integrity and Independence of Other Organs of Government

As mentioned above, Vanuatu currently experiences high levels of concerns about the corruption of political leaders,<sup>18</sup> and many senior public servants. As one informant stated, ‘every other institution is so tarnished with manipulation’. This can be seen in the steady stream of ombudsman reports that reveal ongoing corruption by political leaders, particularly (until recently) regarding the leasing of land (McDonnell 2013). In its 2014 report (Jowitt 2014:35), Transparency International (Vanuatu) found that ‘Public trust in members of parliament is low’. There are also concerns about corruption in other parts of the justice system, in particular the office of the public prosecutor and the police (Radio New Zealand 17/5/2005).<sup>19</sup> Finally, there is a growing concern in regard to the lack of independence by chiefs and chiefly institutions (Jowitt 2014:189–99), although it must be noted that independence per se is not a feature of Vanuatu’s customary dispute management system.

It is beyond the scope of this paper to go into detail about the levels of corruption in other institutions of government. The aim is just to make two points: the first is that corruption and

undue influence is a common problem in many aspects of Vanuatu's governance (both state and non-state) today; the second is that informants frequently compared the independence and trust in the judiciary with trust in the other organs of government. For example, the Director General of Justice stated:

When you look at the pillars of governance in Vanuatu, traditional governance, parliament and the executive, all are corrupted. The only thing that holds the country together is the judiciary, it is the only thing that is respected now. Everyone runs to the courts — politicians, chiefs — when they have troubles they run to the court.<sup>20</sup>

This observation that the court is used regularly as a place to resolve differences by political leaders and community leaders (primarily in relation to disputes over chiefly title and land) was echoed by many other informants. This in turn raises the question of whether this is due to respect for the constitution, a view that the courts are the ultimate forum for dispute settlement, respect for judges' individual *mana*, or something else.

### The Independence of the Court in the Past

The Vanuatu judicial system has not always had such a high reputation for independence. Following independence, there have been two previous chief justices,<sup>21</sup> both foreign, until the present ni-Vanuatu Chief Justice Vincent Lunabek. Former Chief Justice, Vaudin d'Imecourt, from Mauritius, served from 1992 to 1996. While there is limited material available on which to draw credible conclusions about his independence, a number of informants who were involved in the legal system at that time made the observation that he did not give confidence that he was entirely free from influence, especially in regard to political influence. There were also contemporary allegations made concerning this.<sup>22</sup> There are also suggestions from the Court of Appeal at the time that he may have become too investigative and inappropriately stepped out of his role as independent arbiter (see *Picchi v Public Prosecutor* [1996] VUCA 9). In all events, political influence led to the deportation of Chief Justice d'Imecourt from the country in 1996,<sup>23</sup> an event that had a powerful impact upon

the current Chief Justice as is discussed below. Again, the scope of this paper does not permit a detailed historical essay on the independence of the court during the decades prior to 1996. The main point is that when the current Chief Justice was appointed as Acting Chief Justice in 1996, it was not to a judiciary that was widely seen as being independent. On the contrary, it had just had its dependence on the executive most graphically demonstrated.

### The Independence of the Courts in the Region

The final axis of comparison is in regard to other countries in the Pacific islands region. Again, a detailed consideration of this is beyond the scope of this paper. However, while overt encroachments into judicial independence are not apparent in some countries in the region, such as Cook Islands, Solomon Islands and Samoa, in other countries there have recently been a number of incursions of political, economic and other influence. For example, in Nauru the Chief Justice was expelled from the country in 2014, and in 2007 Fiji's Chief Justice was suspended following the coup that overthrew the Qarase Government.<sup>24</sup> In 2011 the Chief Justice of Papua New Guinea was arrested on sedition charges (Blackwell 13/3/2012) and in 2014 there was another set of disagreements between the PNG judiciary and the government. This led to the Prime Minister refusing to comply with an arrest warrant issued against him by the courts and him accusing the judiciary of being 'politically compromised' (News.com.au 17/6/2014).

### 3. What Factors Threaten Judicial Independence in Vanuatu?

The aim of this section is to set out the different factors that have the potential to undermine judicial independence, and some of which actually *have* undermined it in certain cases. The particular emphasis is on the role of informal networks that have a real or potential impact upon judicial independence.

#### Family/Islandism/Wantokism

The first potential factor to undermine independence is what is sometimes called wantokism (from the Bislama term *wantok*

meaning member of the same language group) and sometimes islandism. This is a common phenomenon found throughout Melanesia and involves a 'kinship-derived system of obligation and support' (Brigg 2009). In customary systems the chief's relationships with the members of his community are absolutely central to their claims to legitimacy and ability to mediate a satisfactory customary resolution to disputes. However, in the context of the state legal system, it is often seen as problematic in that it could lead judges or court staff to give preferential treatment to members of their own clan or tribe. There is a risk of a perception of wantokism whenever there is a significantly higher number of people from the same *ples* in the same workforce or institution. This is less of a factor for the Supreme Court and Court of Appeal as currently constituted than the lower courts at present, owing to the large number of expatriate judges on the bench as outlined in the introduction. A number of informants raised concerns over the possible influence of 'islandism' in the Magistrates Courts, but no actual instances were cited. In one reported decision, however, the Supreme Court appeared to accept a claim of bias on the basis that 'the Magistrate knew the complainant well, had been to his house and had helped with his son's brideprice' (*Reuben v Public Prosecutor* [2003] VUCA 30).

There are often assumptions made by the parties to court cases that the *wantok* system will exert influence in the state judicial system, and for that reason judges and magistrates often recuse themselves from cases where this issue arises. However, given the small size of the judiciary, judges have to be careful with this mechanism and do not always use it where there are no concerns raised. For example, a magistrate commented that he has two new domestic violence cases a day, making it difficult to always ensure no family or clan connection. The Chief Registrar stated 'we have developed to a stage where it is not important where a judge comes from'<sup>25</sup> and confirmed that judges were regularly assigned to hear cases from their home island. However, it is likely that this will remain an area where robust debate will need to continue in order to ensure that perceptions of lack of judicial independence are adequately addressed.

The appropriate balance between independence and wantokism also remains a very live issue in relation to island court judges, and those serving on custom area land tribunals,<sup>26</sup> whose primary value lies in the fact that they are very much part of their community and are meant to perform a role that links customary justice with the state legal system.

The only (reported) attempt to unduly influence the Chief Justice, recounted by numerous informants, involved a politician from the Chief Justice's home island of Malekula. The incident occurred in 2013 while the Chief Justice was on tour in Malekula, during the hearing of a case concerning a post-election assault. Just prior to the closing of the case, the politician involved approached the Chief Justice's secretary to ask her to tell the Chief Justice that he wanted to have a shell of kava with him. The secretary reported the matter to the Chief Justice who had her swear an affidavit about the incident and he then summonsed the politician to court, gave him a very public lecture about the importance of judicial independence, made him apologise to the court, and alerted the media to the story.<sup>27</sup> This incident demonstrates both the potential influence of wantokism, and also the use of public shaming to deter attempts made to influence judges on the basis of wantokism.

### National Political Influence

The Vanuatu judiciary has managed to achieve considerable administrative independence from the government through the passage of the Judicial Services and Courts Act in 2003. Prior to this piece of legislation, the executive controlled the support staff in the courts as they were employed as public servants through the public service commission, and hence were accountable to the government and not the judiciary. The Chief Justice explains his dissatisfaction with the previous state of affairs as follows:

The fact that the courts were largely managed by the government, whose representatives are most frequently litigants before the courts, created a potential for interference. The Head of the Judiciary experienced anxiety about having to go to the government in order to remedy deficiencies in administrative

resources which impacted upon the operations of the court. (Lunabek 2010)

Today the judiciary manage and control their own staff and own budget. However, the government still votes on the overall court budget each year. In other words, there is no requirement that the courts be allocated a particular percentage of the annual general budget. As such, in the words of the Director General for Justice, the government still 'holds them by the tail'.<sup>28</sup> As mentioned above, there was one reported case where a politician attempted to organise a private meeting with the Chief Justice over a shell of kava, but this was the only incident mentioned in my research. Political influence was also only mentioned in one case of claimed bias that is reported, and this was found not to be substantiated by the Court of Appeal.<sup>29</sup> The 2013 report by Transparency International (Vanuatu) also discusses one case where a magistrate was allegedly apprehensive about taking on a case involving a politician (Jowitt 2014:17). In general, politicians are seen to respect the judiciary, as indicated by the frequency with which motions of no confidence, challenges to election results and other processes are brought before the courts for adjudication.<sup>30</sup> Although there was one occasion in 2004 when the prime minister of the time used parliamentary privilege to make highly derogatory statements about the court and the Chief Justice in particular, this has not been repeated (see *Vohor v Public Prosecutor* [2004] VUCA 23). The only concerns raised by informants concerning political interference was that politicians seemed able to have their cases heard promptly, in contrast to other matters. This concern has been addressed by the Chief Justice himself on a number of occasions, explaining that it is important that disputes paralysing parliament or the government be dealt with quickly, for everyone's sake.

A previous potential threat to political independence came from the fact that the current Chief Justice was appointed as an Acting Chief Justice, a position that had no guarantee of tenure, for a full six years. This left him in a precarious position when he was working to push through changes to court administration in the form of the Judicial Services and Courts Act, which involved robust negotiations with the government.

A final incident demonstrating the potential for interference from other organs of government occurred in 2010 when an expatriate New Zealand judge, Justice Dawson, was the subject of death threats from the Vanuatu Mobile Force, the country's paramilitary force (Gould 6/4/2010). This followed the judge's writing of a report following a coronial inquiry into the recapture and beating to death of an escaped prisoner by the police. This incident was dealt with by the provision of increased security for the judge and ultimately the judge stayed out his two-year term with no further incidents. However, the recommendations in his report have yet to be acted upon and there was no statement from the government condemning the threats. While this was a report and not a judgment, it could portend similar serious threats to judges if police or Vanuatu Mobile Force violence comes up as an issue in cases before them.

#### **Economic Influence (Bribery)**

The potential for economic influence comes from the relatively small salaries that judges earn, compared with the amounts that can be earned by lawyers in private practice.<sup>31</sup> This point was commented upon by a number of informants and identified by the Director General of Justice as a major factor in the ongoing problems of filling judicial vacancies with suitable candidates. The only incident of alleged bribery reported in this study occurred in 1999 in a case involving Julian Moti, the former Attorney General of Solomon Islands, who was charged with sexual offences relating to an underage girl when he was resident in Vanuatu. The magistrate dismissed the case and was later claimed by the Australian Federal Police to have been acting corruptly, allegedly having had his law studies funded by Moti in exchange.<sup>32</sup> As a result of these allegations, the magistrate later resigned, but no formal findings were ever made concerning the incident.

#### **International Political Influence**

Vanuatu is classified internationally as a Least Developed Country with a low GDP (gross domestic product) and limited exports and is therefore heavily reliant on international donor assistance. A potential source of undue influence



therefore comes from foreign governments, although there is no evidence of this to date. As one informant observed, 'closeness to aid donors can have a negative impact on the community's and politician's ideas about the independence of the judiciary'. Such a risk is one that the judiciary has been extremely cognisant of under the leadership of the current Chief Justice. Seen from this perspective, the greatest potential threat in this regard is Australia, which is a major contributor to various legal sector strengthening programs. At the same time, many of the cases that ultimately find their way before the courts involve Australian interests, for example, those involving Australian investors attracted by Vanuatu's tax haven status. There have been a number of occasions in the past when allegations of Australian interference have been made, although these have never been actually proven. In 2003 members of the Australian Federal Police were forced to leave Vanuatu after facing accusations of spying and interference in Vanuatu internal affairs (ABC News 10/5/2012); and in 2011 two Australian advisers in the State Law Office were deported following allegations they were 'spying' for the Australian Government (Thomas 25/5/2011).

To date, the Vanuatu judiciary have maintained an extremely independent stance in relation to Australian aid, refusing virtually all direct assistance, although important assistance is provided indirectly through the Pacific Judicial Development Programme as discussed below. Some informants suggested that this approach was too extreme and unnecessary, one calling it 'reverse paranoia'. In the past year, however, there has been a significant turn around, with the court 'opening the door' to the Australian *stretem rod blong jastis* [smoothing the road towards justice] program (DFAT 2011). The reason given for this change in direction was that the court now considers that it has a sound system in place that ensures judicial independence.<sup>33</sup> A contributing factor is likely to be the loss of the court house following the arson attack. The lack of suitable alternative accommodation provided by the government has meant that such assistance has become a necessity for the court to continue to function effectively.

### Church Networks

Christianity is widespread in Vanuatu. It stands to reason that many judges and magistrates are deeply Christian and some are leaders in their church community. Judges and magistrates in Vanuatu belong to a variety of different churches, including Anglican, Baptist, Seventh-day Adventist and the Apostolic Church. As one judge observed, attending church is one of the sole social activities a judge can freely do, and another commented that the types of personalities that judges have also often draws them towards actively participating in church. It was also frequently commented that Christianity supports judicial independence as it contributes to moral thinking and belief in community service and selflessness. Other benefits of attending church and being a Christian for judges are said to be that it involves judges with the community, it allows them to talk in language the population understands, and it makes the population respect judges more when they are regularly seen attending church.

However, there are two potential negative impacts it may have on judicial independence. The first is in relation to potential and actual conflicts of interest when deciding cases involving members of their own congregation. In relation to this, one judge said that he tells his congregation that he is their pastor, but if they break the law then he will judge them according to the law. No examples of such cases were raised by any informants, but there is one reported judgment where the issue arose. In *Matarave v Talivo* [2010] VUCA 3, the applicants claimed that the Supreme Court's decision in an appeal from the Island Court on an issue of land should be reviewed due to bias. The particular complaint was that the judge was a member of the same church as one of the parties, had attended a church function with one of the parties in his capacity as leader of the church, and had resided for two days with the parties during the ceremony. The Court of Appeal found that the test for apprehended bias was satisfied and declared the decision void. Importantly, however, the court stressed that 'the mere attendance of the judge in his role as leader of the church at the opening ceremony and his participation in formal celebrations would not be sufficient to give rise to a reasonable apprehension of bias'.

The second issue is in regard to whether or not a judge's religious beliefs will influence his or her decision in a particular case, about which there was a variety of opinion. Most judges did not consider that it would impact upon their decisions, although one reflected that he had never had a case involving homosexuality or abortion, but that such cases would be testing for someone with his beliefs. Only one case has arisen in the past where religious beliefs could be said to have had an influence, a case involving a charge of witchcraft, and that decision was reversed on appeal (*Malsoklei v Public Prosecutor* [2002] VUCA 28).

### Sorcery

One judicial informant raised the issue of a fear of sorcery, or *nakaemas* as it is called in Bislama, as being a potential threat to judicial independence. He recounted an incident whereby he had an incest case before him in which the chiefs intervened and asked if they could deal with the matter in their *nakamal* (customary court).<sup>34</sup> In the course of having their request refused, the chiefs indirectly threatened the judicial officer and the prosecution with *nakaemas* if they proceeded. In my own experiences working in the Public Prosecutor's Office as a legal officer, I also observed occasions where prosecutors were afraid to prosecute certain cases where the threat of *nakaemas* existed. Given the widespread belief in, and fear of, *nakaemas* even by the most senior government officials (see Forsyth 2006), this may therefore be a potential source of interference by customary authorities wishing to retain control over cases they consider fall under their jurisdiction.

### Cronyism within the Legal Profession

Cronyism between judges and lawyers is a potential factor given the smallness of the legal profession in Vanuatu. It was mentioned as a potential threat by some informants, but no specific examples were given and it does not appear to be significant at present.

### Mismanagement and Delays of Court Workload

The final potential threat to judicial independence is case mismanagement, and delays in cases being listed and judgments being delivered, both

commonly noted by informants. One informant noted that this can be a bed for corruption to grow in, particularly as lawyers become desperate to find some way to make the courts take action with regard to their cases. However, there are currently active efforts to overcome these problems, in particular new case-management procedures being implemented,<sup>35</sup> which suggests that it is not being deliberately used as a cover-up for undue influence.

## 4. What Factors Account for the Current High Levels of Confidence in the Judiciary?

This section discusses the factors that have enabled the judiciary to enjoy the current levels of confidence in light of the factors that threaten it and the relative levels of corruption elsewhere in the country. Relevantly, evidence from many developing democracies suggests that previous confidence in the courts as champions of liberty is being revised and less positive accounts are surfacing (see Ellett 2013; Hammergren 2007; and Popova 2012).

### Personal Leadership of the Chief Justice

The most significant factor promoting judicial independence in Vanuatu nominated by almost every informant in this study was Chief Justice Lunabek's personal leadership.<sup>36</sup> The Chief Justice is constantly reminding the other judges, the court staff, and the magistrates about the importance of judicial independence, and the need to remain vigilant in preserving it. His personal behaviour is also taken as an important role model for other members of the judiciary. One magistrate commented 'The Chief Justice has tried his best to maintain the integrity of the court by the way he conducts himself. Looking at him helps us to also conduct ourselves in a way that the integrity of the court is maintained.' The Chief Justice also lectures politicians about the importance of judicial independence at the official opening of the court each year, when he has their full attention as they are seated publicly in rows before him (Lunabek 2014). His attitude was stated by one informant to be 'a barrier to corruption'.

The Chief Justice himself explains his commitment to judicial independence by reference to his personal history in the court. He commenced

in the court as a clerk of the Magistrates Court in 1991 and the next year was appointed as a magistrate. After a period of international postgraduate education he was appointed Senior Magistrate in 1995. In 1996 he was appointed to the Supreme Court. It was in that year that Chief Justice d'Imecourt was deported, as referred to above. The current Chief Justice was served with an order prohibiting him from seeing Justice d'Imecourt, who was taken to the airport. Chief Justice Lunabek explained:

That was the factor that convinced me to do all the things I did to ensure judicial independence. I was a child in the court and I saw what happened. I knew when I was educated in Commonwealth countries the values were the same as in Vanuatu and so it shouldn't have been able to happen the way that it did. This is when I started to lobby and to search for a model to ensure institutional judicial independence. I had my network with the judiciary, I had the support of fellow judges, especially the federal court of Australia. I as a person started to have a close relationship with members of the federal court, I got into their institutions and saw how they worked. I was looking for models and I found one in South Australia led by Chief Justice Doll who advanced judicial independence in its extreme form.<sup>37</sup>

Chief Justice Lunabek also observed that he has come to the conclusion that to be a chief justice in a small jurisdiction it is essential to be committed to the principle of judicial independence. He stated, 'the only hope for the people is that they can rely on the judiciary. This means an everyday commitment for the judiciary. You need to watch, need to ensure the integrity of the judicial system on a daily basis.' By all accounts, he has been extremely successful in executing these beliefs, and time and again informants reiterated the importance of his leadership. One judge stated, 'we all live under his aura in that sense'. This achievement is particularly impressive given the history of the court he took over, meaning that in the words of one informant, when he came in he had to 're-establish people's confidence in the judiciary'.

The Chief Justice's commitment to independence is shared by other Supreme Court judges, who are also extremely careful with whom they socialise, a fact recognised by many non-judicial informants. One judge stated 'They see our independence, they read about it and hear about it and we live it. We choose our friends, our kava drinking mates carefully. We keep it closed shop. Even on social occasions we keep to ourselves.' In a country as small as Vanuatu this means an extremely restricted social life, another factor that discourages potential judges from applying for the role.

### Judicial Networks

Two types of judicial networks are relevant to preserving judicial independence: internal (or national) and international ones. In terms of internal judicial networks, the Supreme Court judges have informal lunches together each Tuesday, which is an opportunity for them to discuss any difficult issues that have come up, including challenges to judicial independence. This was highlighted as an important support system. It also gives the Chief Justice the opportunity to reinforce the importance of the 'ten commandments' of judicial ethics that he has developed.<sup>38</sup> Each quarter, there are also judicial training days when judges and magistrates all come together. Since the burning of the court house, these are now the only opportunities for the magistrates to mix with the judiciary. A number of informants noted the need to further strengthen the informal ties between judges and magistrates. Although the magistrates also have their own informal support network, this appears an area that needs further strengthening. It is potentially critical as many magistrates enter the court at a very junior level, some straight from law school, and therefore require considerable guidance and support from senior colleagues.

International judicial networks were also indicated by the majority of informants as being of central importance to the preservation of judicial independence and the building of a strong jurisprudence. Vanuatu has regular Court of Appeal judges from Australia and New Zealand, and at times also from Fiji, Solomon Islands and Papua New Guinea. These judges play a crucial role in putting pressure on the court to maintain high

standards of judicial integrity, and their position as outsiders exerts at times a necessary additional impartiality that can be of use in such small jurisdictions. This occurs both through the delivery of appeal judgments and informally as they discuss the matters afterwards with the judges involved. In recent years a habit has formed whereby as many Supreme Court judges as possible sit on the Court of Appeal benches, and it has been reflected that this is an excellent learning opportunity for them and also the lawyers involved. It would be perhaps valuable to explore whether a similar type of procedure may be created for magistrates with regard to the Supreme Court. However, it should be noted that as magistrates do not have the same rank as judges, involving them in such a procedure may be considerably more original and complicated, although a related precedent does exist in relation to assessors sitting on the Supreme Court.<sup>39</sup>

A final point in regard to this type of support is that in a post-colonial context there is the clear potential for external judges to erode, rather than to support, local confidence in the judiciary. For example, it could lead to the perception that such visits are necessary in order to monitor or oversee the local bench. Fortunately, in recent years at least, the particular individuals who have been involved in this capacity have participated in a positive manner and have often committed to long-term relationships with the court. Once again this demonstrates the critical importance of individuals in this field.

Another type of judicial support network is the relationships between judges in the region. In this respect, the Pacific Judicial Development Programme run through the Australian Federal Court, and the Australian Federal Court itself, have been of considerable importance in providing support to the Chief Justice and the court in general. This is done formally through technical assistance (for example, regarding case management), the provision of temporary judges, and training programs and opportunities. More than this, however, considerable support is gained through personal friendships and relationships that have been created between the members of the judiciary around the region. This in turn creates a feeling of comradeship and belonging

to an international judicial society on the basis of commitment to a shared system of values and principles. Although intangible, such support is critical for what can otherwise be an extremely isolated position, particularly for the Chief Justice but also for other members of the judiciary.

### Respect and Relationship with the Population

In general there is a mutual respect between the local bar and the judiciary. The main problem with the judiciary from the local lawyer's perspective is tardiness of judgments, not lack of independence. The respect of the bar is central to the popular perception of the courts, as the way that members of the bar discuss the judges influences how their clients regard the judiciary. One way this relationship is fostered is through ad hoc judicial conferences organised by the court that aim to provide an open forum whereby the judiciary and the lawyers can freely discuss matters of joint concern. While one informant was concerned that these may diminish the necessary separation between the bench and the bar, others cited these as beneficial opportunities to ask questions and provide feedback.

The respect of the population for the court was also cited as an important factor in supporting judicial independence. One magistrate stated 'When you walk in the streets and go back to the community the people look at you and give you the greatest respect, so that also helps you respect yourself and conduct yourself ... to give loyalty to the institution of the courts.' This respect is created by a number of factors. Aside from the reputation of the court, another factor is the fear of public shaming. Several informants stated that people are afraid to try to bribe the judiciary as they know it will not be accepted and that any attempt to do so will be brought to the public's attention, as happened in the case involving the Chief Justice and the politician discussed above. The highly Christian nature of the society also plays a role; the Protestant churches tend to teach that government, as such, is in place by God's will, an attitude which must imbue judicial robes with some added gravitas. Another factor is the wearing of wigs and gowns by members of the judiciary, which is said to assist in providing separation between judges and the general population.

Although these are foreign imports, ni-Vanuatu society respects people of stature, and wigs and gowns help to create such stature. They also contribute to the ritual of the court processes, which also resonate with the linkages between authority and ritual in traditional practices in Vanuatu.

This last point raises an interesting question concerning the role that ni-Vanuatu culture plays in supporting or undermining judicial independence. The notion of judicial independence is undoubtedly foreign and was imported into Vanuatu through colonialism. In *kastom*, as noted above, the chief is part of the community and it is expected that his understandings about the political, economic and social imperatives for his community as a whole will influence his decision. However, many informants identified culture as an important factor supporting judicial independence, explaining that traditionally people respect leadership; for example, they respect chiefs, so by tradition people respect authority. There is also another possible interpretation I wish to suggest, while acknowledging that it is purely speculative. This is that in some parts of Vanuatu leaders achieved status through the performance of a series of rituals that gave them access to higher and higher rank. As the men obtain higher rank they gradually withdraw from society, even to the extent of only eating from the fire designated for the men of that particular rank, their *tambu faea* [sacred fire] (Deacon 1934; Leggatt 1906; Sebbelov 1913). This withdrawal from society correlates with the leader's acquiring or gaining access to spiritual powers, which can be utilised 'in their attempts to control the political aspirations of those beneath them' (Allen 1981:24). My hypothesis is that this traditional practice of the most powerful men withdrawing from society in order to obtain powers to regulate that society resonates with the way in which judges distance themselves from society. It is perhaps relevant that the Chief Justice is from the Big Nambas area of Malekula where this practice was the most pronounced. Perhaps for these reasons, and perhaps for others that still need to be identified, it appears that in Vanuatu today judicial independence has been able to be mapped onto existing respect and authority for chiefs and *kastom*.

## Conclusion

The main conclusion of this paper is that there is a high degree of confidence by the executive and the legal profession in the top two layers of Vanuatu's court system. This confidence, which is related to, but broader than just independence, is an important factor in maintaining the country's political stability and the rule of law, and in underpinning its ability to attract foreign investors and tourists, on whom the economy depends. Of course, there is also an element of chicken and egg in this situation: Vanuatu's relative political stability also supports judicial independence, in contrast to the stresses imposed on it by more unstable countries in the region such as Papua New Guinea. This raises the issue of how robust and resilient the current levels of independence are, and whether they would be maintained in far more threatening circumstances, a question that needs further consideration over time.

The high levels of judicial independence and confidence in the institution are not a result of tight institutional regulation, but are rather largely due to self-regulation that comes from the personal integrity and convictions of judiciary and court house staff, many of whom have given decades of service. The leadership of the current Chief Justice—with his vocal and repeated references to the importance of judicial independence—appears to be the central factor in contributing to this current environment. While this reliance upon self-regulation has served the court well to date, there are also risks going forward if the same levels of personal integrity in the members of the judiciary are not present. In these circumstances, the development of complementary mechanisms, such as the new complaints procedure discussed above, and a Code of Conduct as recommended in Transparency International (Vanuatu)'s report, is of importance (Jowitt 2014).

The main threats to judicial independence differ depending upon the level of judiciary that is under consideration. In regard to the Magistrates Court, the major threats are economic influence and the undue influence of wantokism and family. These threats could be better countered by housing the magistrates together with the Supreme Court judges and developing further opportunities for the judges to act as role models and mentors for their

junior colleagues. In regard to the Supreme Court, the biggest threats come from the control over the court budget by the government of the day. The influence of the Australian aid program is also one that will need to continue to be transparent and at arms length. The remuneration of the judiciary and their workload is a factor that cuts across all levels of the court system and carries with it significant consequences for the quality of the judiciary, an issue that is likely to become more pressing as current members of the judiciary retire and replacements with the same levels of commitment and integrity are required. The government should therefore be encouraged to set more realistic benchmarks for judicial remuneration.

This discussion of judicial independence in Vanuatu also gives rise to a number of broader reflections about judicial independence generally. First, the reputation and history (both short and long term) of an institution such as a court can have a powerful norm-generating influence, and in and of itself should be considered an important source of regulation. In the context of Vanuatu, the court's reputation creates an environment whereby attempts at corruption are discouraged, which is perhaps even more effective than any formal complaints mechanism may be. Associated with this point is the critical influence that a single individual, such as the current Vanuatu Chief Justice, can play in creating such a history and reputation. This also raises the point that succession planning is essential to ensuring the continuation of such an influence, although fortunately the Chief Justice is currently far off retirement age. Second, the interaction between cultural practices and introduced concepts such as judicial independence may not play out in easily predicted ways. In the case of Vanuatu, for the present, traditional cultural practices of respect for authority have been able to be successfully channelled into respect for judicial independence. Third, this discussion has shown that smallness of jurisdiction is not a necessary limit on judicial independence, and in some respects it can increase it as it makes instances of its breach more visible. Finally, it is clear that for such small and relatively isolated jurisdictions, the formal and informal support of external judicial networks can play an important moral as well as

practical role. Donors should be encouraged to continue supporting such networks.

### Author Notes

Miranda Forsyth is a fellow with SSGM.

### Endnotes

- 1 The problem is regularly commented upon in newspapers, local communities and anti-corruption non-government organisations such as Transparency International. See, for example, Makin (16/1/2015); YACV (n.d.); Transparency Vanuatu [website](#); and The Heritage Foundation (2015).
- 2 For example, only 18 months after the 2012 elections there had already been three changes of prime minister. See further McLeod and Morgan (2007) and Jowitt (2014):69–70.
- 3 For a summary of the history of no confidence motions in Vanuatu since independence, see Transparency International Vanuatu (18/6/2015).
- 4 For a detailed description of the relationship between the state and the customary justice systems in Vanuatu, see Forsyth (2009).
- 5 Kava is a local drink made with the roots of the kava plant, a variety of pepper. It is not fermented but contains both sedative and anaesthetic properties, producing a relaxing but not intoxicating effect. It is a fundamental part of ni-Vanuatu culture and today *nakamals* (places where people drink kava) are an important part of Port Vila legal and political culture.
- 6 Section 39(1) of the Constitution of the Republic of Vanuatu actually invests the executive power in the Prime Minister and 'Executive Council' (cabinet), *not* the President. Rather than a substitute for the Crown, the President's role is more clearly symbolic than in most Westminster-based systems (s.33). So the separation is more between the executive and legislative arms on the one hand and the judicial arm on the other.
- 7 There was a judge based in Luganville, Santo, the other main urban centre, but he was relocated to Port Vila in 2014.
- 8 There are two in Santo, one in Malekula and one in Tanna.
- 9 The informants comprised the Chief Justice, two other Supreme Court judges, the Chief Registrar, three members of the local bar, a magistrate, two officers at the Transparency International (Vanuatu) office, a former ombudsman, the Director General of Justice, and a long-time journalist. I was also able

- to present my preliminary findings at a seminar at the Vanuatu campus of the University of the South Pacific where the law school is housed and I obtained valuable feedback from legal academics and others.
- 10 This evaluates key 'pillars' in a country's governance system, both in terms of their internal corruption risks and their contribution to fighting corruption in society at large.
  - 11 These structural elements are extensively detailed in Jowitt (2014) and Lunabek (2010).
  - 12 *Judicial Services and Courts Act 2000*, section 2; Article 47(2) Constitution of the Republic of Vanuatu.
  - 13 Research was not conducted into the extent to which this plan is operational and being implemented, and this is an area where further investigation is required.
  - 14 It should be noted, however, that there has been some turnover of officers in this office prior to the research.
  - 15 See, for example, the comments about the magistrate's behaviour in *Tula v Mofreser* [2010] VUSC 76.
  - 16 The permanent court house was burnt by arsonists in 2007 and the court has been without a proper court building ever since, being housed in a variety of temporary locations.
  - 17 See also USDS (2013), which found that 'The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice.' The Pacific Judicial Development Programme found in a 2012 report that 'the judiciary and institution [of the courts] is regarded highly as fair, independent and of integrity' (Ehmann 2012:64).
  - 18 As recently as 21 November 2014 the government lodged a motion against the Leader of the Opposition alleging that he had paid 14.2 million vatu into the accounts of various MPs in order to bring them to the opposition's side (Makin 21/11/2014).
  - 19 Some informants also made comments about this.
  - 20 Interview with Director General of Justice, Port Vila, Vanuatu, 9 October 2014.
  - 21 These were Chief Justice Frederick Cooke and Chief Justice Vaudin d'Imecourt.
  - 22 Several written reports were compiled about Chief Justice d'Imecourt, one by Robert Kent when he was serving as a judge and one by the Judicial Service Commission. These are referred to in the judgment *d'Imecourt v The President* [1998] VUSC 59 (PacLII n.d.).
  - 23 Some of the details behind the deportation are discussed in *In re Civil Contempt of Court, de Robillard* [1997] VUCA 1, and *d'Imecourt v The President* [1998] VUSC 59.
  - 24 He is now sitting on the Vanuatu Supreme Court.
  - 25 Interview with Chief Registrar, Vanuatu, October 2014.
  - 26 See the *Custom Land Management Act 2013*.
  - 27 Interview with Chief Justice, Vanuatu, October 2014.
  - 28 Interview with Director General of Justice, Vanuatu, October 2014.
  - 29 The claim was that 'the overall impression that one gets from the evidence is that there were political matters in the background'. But this was rejected in *Public Service Commission v Isom* [2010] VUCA 9.
  - 30 See, for example, *Carcasses v Boedoro* [2014] VUSC 155; *Carcasses v Boedoro* [2014] VUSC 113; *Vanuaroroa v Republic of Vanuatu* [2013] VUSC 102; *Natapei v Wells* [2013] VUSC 43.
  - 31 Judges salaries are set out in schedule 1 to the *Judicial Services and Courts Act 2000*.
  - 32 A newspaper report in 2009 states 'The AFP resurrected the charges, alleging Mr Moti bribed the Vanuatu magistrate who dismissed the charges by paying him to study in Sydney and offering him a job. In an interview with *The Australian* in February 2007, Mr Moti admitted his Port Vila law firm had offered the magistrate a job and paid for him to study in Sydney "without my knowledge"' (McKenna and Elks 16/12/2009).
  - 33 Interview with Chief Justice, Vanuatu, October 2014.
  - 34 The transfer of cases between the state and *kastom* systems is discussed in Forsyth (2009).
  - 35 Federal Court of Australia (n.d.); Vanuatu Court Improvement Plan 2012–2015.
  - 36 This vision is elaborated in his 2014 speech at the opening of the court (Lunabek 2014).
  - 37 Interview with Chief Justice, Vanuatu, October 2014.
  - 38 Said to be a mixture of judicial codes of ethics from elsewhere and the Chief Justice's own ideas.
  - 39 Article 51 of the constitution allows parliament to appoint as assessors people 'knowledgeable in custom' to sit on the higher courts. Pursuant to this, Part VIII of the Criminal Procedure Code (Cap 136) provided for assessors to sit in the Supreme and Magistrates' courts alongside the judiciary to assist in their determination of the guilt of the accused. Assessors were formally abolished by the *Criminal Procedure (Amendment) Act 1989*.

## References

- ABC News 10/5/2012. [AFP Thrown out of Vanuatu](#).
- Allen, M. 1981. Rethinking Old Problems: Matriliney, Secret Societies and Political Evolution. In M. Allen (ed.). *Vanuatu: Politics, Economics and Ritual in Island Melanesia*. Sydney: Academic Press, 9–34.
- Binihi, R. 16/6/2015, Opposition Fears Gov't Will Interfere In Judiciary. *Vanuatu Daily Post*, 1.
- Blackwell, E. 13/3/2012. [PNG Court Drops Chief Justice Case](#). *Sydney Morning Herald* (online).
- Brigg, M. 2009. Wantokism and State Building in the Solomon Islands: A Response to Fukuyama. *Pacific Economic Bulletin* 24(3):148–61.
- Deacon, A.B. 1934. *Malekula: A Vanishing People in the New Hebrides*. C. Wedgewood (ed.). London: George Routledge and Sons, 346–48.
- DFAT (Department of Foreign Affairs and Trade) 2011. [Stretem Rod Blong Jastis: Vanuatu Law and Partnership Design Document](#). Canberra: DFAT.
- Ehmann, J. 2012. [PJDP Phase 2: Judicial Administration Diagnostic Project Regional Registry Systems and Processes Report February 2012](#). Australia: Pacific Judicial Development Programme.
- Ellett, R. 2013. *Pathways to Judicial Power in Transitional States: Perspectives from African Courts*. London: Routledge.
- Evans, D., M. Goddard and D. Paterson 2010. The Hybrid Courts of Melanesia: A Comparative Analysis of the Village Courts of Papua New Guinea, Island Courts of Vanuatu and Local Courts of Solomon Islands. *Justice and Development Working Paper Series* No. 13. Washington, DC: World Bank.
- Federal Court of Australia n.d. [International Programs: Activities in Vanuatu](#).
- Forsyth, M. 2006. Sorcery and the Criminal Law in Vanuatu. *LAWASIA* 1–27.
- Forsyth, M. 2009. *A Bird that Flies with Two Wings: State and Kastom Justice Systems in Vanuatu*. Canberra: ANU E Press.
- Gould, E. 6/4/2010. [New Zealand Judge, Family Receive Death Threats in Vanuatu](#). Impunity Watch Law Journal at Syracuse University College of Law.
- Hammergren, L.A. 2007. *Envisioning Reform: Improving Judicial Performance in Latin America*. College Park: Pennsylvania State University Press.
- Helmke, G. 2005. *Courts under Constraints: Judges, Generals, and Presidents in Argentina*. Cambridge: Cambridge University Press.
- Jowitt, A. 1999. [Island Courts in Vanuatu](#). *Journal of South Pacific Law* 3.
- Jowitt, A. 2014. [National Integrity System Assessment Vanuatu](#). Vanuatu: Transparency International Vanuatu.
- Kapiszewski, D. 2012. *High Courts and Economic Governance in Argentina and Brazil*. Cambridge: Cambridge University Press.
- Leggatt, W. 1906. Malekulan Images. *Science of Man* 8(1):6–8.
- Lunabek, V. Chief Justice 2010. Institutional Judicial Independence — Differing Models of Judicial Independence in the Pacific: Vanuatu Experience. Paper presented at the 19th Pacific Regional Judicial Conference, 7–10 November, Tumon, Guam (copy on file with author).
- Lunabek, V. Chief Justice 2014. [Speech: 2014 Official Opening of the Courts of Vanuatu](#). Pacific Islands Legal Information Institute (PacLII) website.
- Makin, B. 21/11/2014. [Natuman Gov't Lodges Motion](#). Vanuatu Daily Digest.
- Makin, B. 16/1/2015. [Leadership Code Ignored](#). Vanuatu Daily Digest.
- Makin, B. 13/6/2015. [Bribery Charges Adjudgment](#). Vanuatu Daily Digest.
- McDonnell, S. 2013. [Exploring the Cultural Power of Land Law in Vanuatu: Law as a Performance That Creates Meaning and Identities](#). *Intersections: Gender and Sexuality in Asia and the Pacific* 33.
- McKenna, M. and S. Elks 16/12/2009. [Moti Case Thrown out as Judge Slams AFP over Witness Payments](#). *The Australian*.
- McLeod, A. and M. Morgan 2007. An Incomplete Arc: Analyzing the Potential for Violent Conflict in the Republic of Vanuatu. *Pacific Affairs* 80(1):67–86.
- News.com.au 17/6/2014. [Papua New Guinea Prime Minister Peter O'Neill Pursued by Australian Investigators and Judge](#).
- PacLII (Pacific Islands Legal Information Institute) n.d. [PacLII Databases](#).
- Popova, M. 2012. *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*. Cambridge: Cambridge University Press.
- Radio New Zealand 17/5/2005. [Vanuatu TI Concerned about Lack of Public Prosecution](#).
- Sebbelov, G. 1913. The Social Position of Men and Women among the Natives of East Malekula, New Hebrides. *American Anthropologist* 15(2):273–80.



- Staton, J.K. 2010. *Judicial Power and Strategic Communication in Mexico*. Cambridge: Cambridge University Press.
- The Heritage Foundation 2015. [2015 Index of Economic Freedom: Vanuatu](#).
- Thomas, H. 25/5/2011. [The 'Spy' Who Came in from the Heat Ari Jenschel Denies Vanuatu Claims](#). *The Australian*.
- Transparency International 2013. *Global Corruption Barometer 2013*. Berlin: Transparency International.
- Transparency International n.d. [Global Corruption Barometer 2013: Vanuatu](#).
- Transparency International Vanuatu 18/6/2015. [Vanuatu's History of No Confidence Motions against Prime Ministers since 1980](#). tivnews: A Transparency International Vanuatu Weblog.
- Transparency Vanuatu 2013. [Vanuatu Judicial Monitoring System Research Project, Backlog of Cases Report, August 2013](#). Report prepared by Transparency Vanuatu's Advocacy and Legal Advice Centre.
- Transparency Vanuatu 7/2/2014. [Press Statement](#).
- USDS (United States Department of State, Bureau of Democracy, Human Rights and Labor) 2013. [Vanuatu 2013 Human Rights Report](#). Country Reports on Human Rights Practices for 2013. USDS.
- Vanuatu Daily Post* 24/2/2014. [Public Confidence in the Judiciary?](#)
- YACV (Youth Against Corruption Vanuatu) n.d. [Facebook](#).

- 2012/1 Tobias Haque, The Influence of Culture on Economic Development in Solomon Islands
- 2012/2 Richard Eves, Christianity, Masculinity and Gender-Based Violence in Papua New Guinea
- 2012/3 Miranda Forsyth, Tales of Intellectual Property in the South Pacific
- 2012/4 Sue Ingram, Building the Wrong Peace: Re-viewing the United Nations Transitional Administration in East Timor Through a Political Settlement Lens
- 2012/5 Henry Tadap Okole, A Critical Review of Papua New Guinea's Organic Law on the Integrity of Political Parties and Candidates: 2001–2010
- 2012/6 Patrick Vakaoti, Mapping the Landscape of Young People's Participation in Fiji
- 2012/7 Jane Anderson, 'Life in All Its Fullness': Translating Gender in the Papua New Guinea Church Partnership Program
- 2012/8 Michael Leach, James Scambary, Matthew Clarke, Simon Feeny and Heather Wallace, Attitudes to National Identity Among Tertiary Students in Melanesia and Timor Leste: A Comparative Analysis
- 2012/9 Sarah Logan, Rausim!: Digital Politics in Papua New Guinea
- 2012/10 Nicholas Coppel, Transition of the Regional Assistance Mission to Solomon Islands
- 2013/1 David Chappell, Recent Challenges to Nation-Building in Kanaky New Caledonia
- 2013/2 Simon Feeny, Lachlan McDonald, May Miller-Dawkins, Jaclyn Donahue and Alberto Posso, Household Vulnerability and Resilience to Shocks: Findings from Solomon Islands and Vanuatu
- 2013/3 Debra McDougall, Spiritual Capacity? Overseas Religious Missions in RAMSI-era Solomon Islands
- 2013/4 Rochelle Bailey, Ni-Vanuatu in the Recognised Seasonal Employer Scheme: Impacts at Home and Away
- 2013/5 Satish Chand, Building Peace in Bougainville: Measuring Recovery Post-Conflict
- 2013/6 Stewart Firth, Political Status and Development: The Implications for Australian Foreign Policy Towards the Pacific Islands
- 2013/7 Marianne Pedersen, Conservation Complexities: Conservationists' and Local Landowners' Different Perceptions of Development and Conservation in Sandaun Province, Papua New Guinea
- 2013/8 Brij V. Lal, The Strange Career of Commodore Frank Bainimarama's 2006 Fiji Coup
- 2013/9 Joseph Ketan, Political Governance and Service Delivery in Western Highlands Province, Papua New Guinea
- 2013/10 Tobias A. Haque, Economic Transition in Solomon Islands
- 2014/1 Richard Eves, Nicole Haley, R.J. May, Philip Gibbs, John Cox, Francesca Merlan and Alan Rumsey, Purging Parliament: A New Christian Politics in Papua New Guinea?
- 2014/2 Louise Vella, Translating Transitional Justice: The Solomon Islands Truth and Reconciliation Commission
- 2014/3 Diana Glazebrook, Papua New Guinea's Refugee Track Record and Its Obligations under the 2013 Regional Resettlement Arrangement with Australia
- 2014/4 Denise Fisher, Tjibaou's Kanak: Ethnic Identity as New Caledonia Prepares its Future
- 2014/5 Sue Ingram, Political Settlements: The History of an Idea in Policy and Theory
- 2014/6 Romitesh Kant and Eroni Rakuita, Public Participation & Constitution-Making in Fiji: A Critique of the 2012 Constitution-Making Process
- 2014/7 Jenny Munro, Papuan Perspectives on Family Planning, Fertility and Birth Control
- 2014/8 Gordon Peake, Lia Kent, Andrey Damaledo & Pyone Myat Thu, Influences and Echoes of Indonesia in Timor-Leste
- 2014/9 Guy Powles, The Tongan Monarchy and the Constitution: Political Reform in a Traditional Context
- 2014/10 Priya Chattier, Measuring Poverty as if Gender Matters: Perspectives from Fieldwork in Fiji
- 2015/1 Lia Kent, Remembering the Past, Shaping the Future: Memory Frictions and Nation-Making in Timor-Leste
- 2015/2 Tim Sharp, John Cox, Ceridwen Spark, Stephanie Lusby and Michelle Rooney, The Formal, the Informal, and the Precarious: Making a Living in Urban Papua New Guinea
- 2015/3 Greg Fry, Recapturing the Spirit of 1971: Towards a New Regional Political Settlement in the Pacific
- 2015/4 Julien Barbara, John Cox and Michael Leach, The Emergent Middle Classes in Timor-Leste and Melanesia: Conceptual Issues and Developmental Significance
- 2015/5 Stephanie Lawson and Elizabeth Hagan Lawson, Chiefly Leadership in Fiji: Past, Present, and Future
- 2015/6 Graham Baines, Solomon Islands Is Unprepared to Manage a Minerals-Based Economy
- 2015/7 Richard Eves and Miranda Forsyth, Developing Insecurity: Sorcery, Witchcraft and Melanesian Economic Development

*For a complete listing of SSGM Discussion Papers, see the SSGM website*





The State, Society & Governance in Melanesia Program (SSGM) is a leading centre for multidisciplinary research on contemporary Melanesia and Timor-Leste. SSGM represents the most significant concentration of scholars conducting applied policy-relevant research and advancing analysis on social change, governance, development, politics, and state-society relations in Melanesia, Timor-Leste, and the wider Pacific.

State, Society and Governance in Melanesia  
Coral Bell School of Asia Pacific Affairs  
ANU College of Asia and the Pacific  
The Australian National University  
Acton ACT 2601

Telephone: +61 2 6125 3825  
Fax: +61 2 6125 9604  
Email: [ssgm@anu.edu.au](mailto:ssgm@anu.edu.au)  
URL: [ssgm.bellschool.anu.edu.au](http://ssgm.bellschool.anu.edu.au)  
Twitter: @anussgm



Submission of papers

Authors should follow the Editorial Guidelines, available from the SSGM website.

All papers are peer reviewed unless otherwise stated.

The State, Society and Governance in Melanesia Program acknowledges the generous support from the Australian Government for the production of this Discussion Paper.

*The views, findings, interpretations and conclusions expressed in this publication are those of the authors and not necessarily those of the SSGM Program. The Government of Australia, as represented by the Department of Foreign Affairs and Trade (DFAT), does not guarantee, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any information herein. This publication, which may include the views or recommendations of third parties, has been created independently of DFAT and is not intended to be nor should it be viewed as reflecting the views of DFAT, or indicative of its commitment to a particular course(s) of action.*