how intent the current government was to pursue the investigation of alleged bribery involving a number of members of Parliament (MPs) dating back to the previous year (VDP, 2 Jan 2015). Indeed, the bribery case dominated the news throughout 2015, making it the most politically unsettled year since Vanuatu’s independence in 1980.

In early November 2014, the local press reported that the leader of the Opposition, Moana Carcasses, had deposited a check for 35 million vatu in his personal account at a local bank and subsequently transferred sums of money ranging from 500,000 to 1 million into the accounts of a number of MPs [around US$91 in 2015]. Ten days later, the prime minister, Joe Natuman, and deputy prime minister, Ham Lini, lodged a motion in Parliament to suspend sixteen Opposition MPs on charges of alleged bribery, based on provisions in the Leadership Code that leaders in government should conduct themselves so as to avoid demeaning their office or the integrity of the Republic of Vanuatu. The next day, Carcasses tabled a motion of no confidence against the Natuman government.

Speaker of Parliament Phillip Boedoro ruled that the two motions should be dealt with in the order they were received; thus the bribery case against sixteen Opposition MPs was debated first. Carcasses denied the allegation of bribery, claiming instead that he had offered the money as “loans” to any MP—either Opposition of Government—who was willing to “pledge their allegiance to him.” On 25 November, however, Parlia-
ment voted for suspension of sixteen MPs on the basis that the Leadership Code specifically states that “a leader must not accept a loan (other than on commercial terms from a recognized lending institution) and only if the leader satisfies the lending institution’s usual business criteria” (Leadership Code Act [Cap 240], part 3—Breaches of Leadership, section 21).

The sixteen MPs left Parliament and remained absent for the rest of the session. Carcasses, however, turned to the Supreme Court for redress, arguing that “only the court has the right to punish anyone and not parliament” (VDP, 26 Nov 2014). The court ruled in favor of the sixteen MPs, stating that the motion “to suspend the Petitioners from Parliament amounts to breaches of their Constitutional rights and is therefore invalid, void and of no effect” (VUSC 2014). The accused MPs were, therefore, reinstated. The Speaker, however, called for a judicial review, arguing that the court’s decision had “intruded” in the affairs of Parliament—that it “interfered with the separation of powers between the legislature and the judiciary under the constitution of the country . . . [and] that the Parliament had a duty to act to protect its integrity by deciding to discipline those members concerned” (VDP, 4 Dec 2014).

Realizing they did not have the numbers to proceed, the Opposition allowed the motion of no confidence to lapse. Nevertheless, Prime Minister Natuman responded to the accusations that had been leveled against him as part of the motion. In particular, he focused on the airport concession agreement signed by the Carcasses-led government, which an ad hoc committee engaged to investigate the project had concluded “did not favor the government, the people and Vanuatu but ‘only foreigners and it could cause a catastrophe’” (Van Trease 2015, 546–547, 554–556). Natuman cautioned that “there were people around trying to get the Opposition to return to government to reopen the agreement” (VDP, 5 Dec 2014). Whether or not there was a link between the airport project and the alleged bribing of MPs remains to be seen, as the whole incident has yet to be fully investigated—in particular, the original source of the VT35 million.

The Public Prosecutor’s Office began preparing a case against those alleged to have been involved in the bribery, which it was expected to present in court around mid-March 2015. The investigations were disrupted, however, due to the devastation inflicted on the country on the night of 13–14 March by Super Tropical Cyclone Pam—a category 5 hurricane. Maximum sustained winds reached 270 kilometers/hour (167 mph) in the capitol of Port Vila—making Pam one of the worst hurricanes in Vanuatu’s recorded history. The storm passed down the eastern side of the Vanuatu chain, veering westward as it neared the central Shepherd group and the main island of Efate, where Port Vila is located, and continuing in a southwestward direction, passing over the islands of Erromango and Tanna. The islands directly affected by the hurricane suffered immense devastation. Homes and government facilities, such as schools and hospitals, were destroyed or severely damaged. Most significant was the loss of food gardens and water supplies for those
people on the outer islands affected by the cyclone. Compounding the problem has been the onset of an El Niño weather pattern over the western Pacific, which brought severe drought to Vanuatu. Replanting of gardens began everywhere after the storm, but limited rain meant very slow and limited growth.

Port Vila itself survived somewhat better, though most small corrugated-iron houses lost their roofs or collapsed completely. Electricity was knocked out, with estimates of Vt200 million in damages and restoration costs (VDP, 27 March 2015), but was restored throughout the urban area within a month. A representative of the International Labor Organization present in Port Vila estimated that Pam caused Vt48.5 billion in economic loss to the country (VDP, 5 June 2015).

Recovery around Port Vila was quicker due to the close proximity of building supplies and transportation links through which aid from the outside arrived. Eleven people lost their lives—but the number could have been far greater if not for the early warnings provided by the Vanuatu Meteorological Service and awareness among the country’s population of what to expect and how to protect themselves when a hurricane strikes (VDP, 19 March 2015).

Countries from around the world offered their assistance with Vanuatu’s traditional aid donors—Australia, France, and New Zealand—providing immediate donations of food and materials for reconstruction. All three committed their military air, sea, and ground forces to transport supplies into the country and to assist in its distribution to the outer islands. The United Nations and most of the major international nongovernmental organizations offered assistance and many sent representatives to oversee its distribution and work with local communities.

The Vanuatu National Disaster Management Office was up and running from day one and put in a tremendous effort to deal with the crisis. It was soon clear, however, that the biggest problem was not in attracting enough aid, but managing its distribution (VDP, 20–24 March 2015). Rumors circulated around Port Vila of heated discussions between the director, who was determined to insure that Vanuatu officials and organizations should maintain oversight and control over the dispatching of relief supplies, and representatives of some aid organizations.

The Opposition picked up on this issue when it finally broke its silence two weeks after the hurricane, Carcasses accusing the disaster management office of lacking transparency and not providing “guarantees that any shipment will be received by [the institution or organization] to whom it is being consigned” (VDP, 28 March 2015)—the implication being that certain groups were being favored for political advantage. The response from Prime Minister Natuman was that members of the Opposition were merely trying to “capitalize on a situation and exploit the people’s misery and suffering for their own political gains” (VDP, 30 March 2015).

For the most part, however, politics remained quiet following Cyclone Pam until early May, when it was announced that Prime Minister Natu-
man had decided to reshuffle his cabinet, replacing the existing minister of youth and sport, Don Ken (National United Party member for Malakula), with John Lum (Nagriamel member for Santo). It was said that Nagriamel had requested the move and the prime minister declared that it was only fitting that the two parties—Nagriamel and Vanua’aku Pati—should be working together, as they both had been prominent in the struggle for independence (vdp, 6 May, 8 May 2015). That they had been on opposite sides of the rebellion seems to have been forgotten and reflects possible changing political alliances.

A few days later, the “elephant in the room” suddenly made itself known again. After more than five months—on 8 May—the Court of Appeal handed down its decision on the case, which Speaker Boedoro had lodged against the decision of the Supreme Court to reverse the action of Parliament on 25 November 2014 to suspend the sixteen MPs (see above). The presiding judges ruled in favor of the MPs, concluding that the decision to suspend them infringed their constitutional rights and was “invalid, void of no effect” since no criminal offense had been proved (vdp, 11 May 2015).

The judges went on to say, however, that they accepted “that Parliament is legitimately concerned about conduct of members outside Parliament where their conduct might damage the integrity of Parliament” and that if allegations of misconduct have been established and the facts proved, “Parliament is then free to act as it thinks appropriate on the facts established by the courts” (vuca 2015a). The Court of Appeal, in effect, did not dismiss the charges out of hand, only the basis on which they had been made.

While Opposition MPs may have felt a sense of relief, their problems were far from over, as the police were still investigating the bribery charges. This, most likely, explains the decision of Carcasses to again lodge a vote of no confidence against the government, which coincided with the termination of two additional ministers in the Natuman-led government—Sato Kilman (foreign affairs) and Alfred Carlot (justice)—who were replaced by two members from the Opposition—Kalvao Moli and Hosea Nevu. Natuman explained to the press that the main reason for Kilman’s removal was that he had misrepresented the collective position of the government on a recent visit to Indonesia with regard to West Papua, when he suggested that Vanuatu was preparing to open an embassy in Jakarta. Vanuatu governments on both sides of the political divide had long supported the West Papuan struggle and had taken a strong stand recently in favor of West Papua membership in the Melanesian Spearhead Group. Kilman’s comment appeared to be sending the wrong signal.

Likewise, Natuman related how Kilman, on a recent visit to Russia, had made contact with a so-called foreign minister of Abkhazia, when the firm position of the Vanuatu government was that Abkhazia is a part of Georgia with whom the government has bilateral relations (vdp, 5 June, 10 June 2015). It would seem that Kilman continued to maintain links with representatives of Abkhazia dating back to late 2011, when he was prime minister and authorized
recognition of the breakaway province involving questionable payments of money to Thi Tam Goiset, who had been appointed Vanuatu’s roving ambassador to Russia and other eastern European countries (Van Trease 2014, 529).

The reasons given for the no-confidence motion included removal of the Opposition MPs from Parliament, which was claimed to be unconstitutional; unfair distribution of funds and supplies relating to Cyclone Pam; alleged misuse of funds relating to the visa scheme operating in China; and claims that the prime minister was leading the country in the wrong direction with regard to economic development. Subsequently, the two dismissed ministers, along with several of their supporters in the government, moved to the Opposition when the first ordinary session of Parliament convened the next day, providing the majority necessary to topple the Natuman government. Sato Kilman, president of the People’s Progressive Party, became the new prime minister, with Moana Carcasses (Greens) as deputy (VDP, 6, 8, 9, and 12 June 2015).

In response, less than twenty-four hours after losing the government, the new Opposition tabled a motion of no confidence against the Kilman-led government, which the existing Speaker, Philip Boedoro, ruled in order. When Parliament met again on 16 June, the new government voted to replace Boedoro with Marcellino Pipite from the Vanuatu Republican Party—one of the sixteen MPs under investigation for bribery. Having taken over the Speaker’s position, Pipite then ruled that the motion of no confidence was not in order and closed Parliament (VDP, 17 June 2015).

In response, the new Natuman-led Opposition filed an urgent constitutional application with the Supreme Court, seeking a declaration from the Court that Speaker Pipite’s closing of the first ordinary session of Parliament on the 16th was unconstitutional. The grounds given in the application were that the original motion of no confidence against Kilman had been ruled in order and, therefore, could not be ignored—that is, that the decision to adjourn Parliament without allowing the motion to be debated had denied the applicants their constitutional rights (Vusc 2015b). Subsequently, the Supreme Court upheld the Opposition application and declared that Parliament was still open and that the decision by Pipite to close Parliament was unlawful and in breach of the constitutional rights of the applicants (VDP, 18, 19, and 25 June 2015).

Pipite countered with an appeal against the decision (VDP, 29 June 2015), and a stay order was issued, extending the date for reconvening Parliament to 2 July (VDP, 30 June 2015). When Parliament met, the Opposition withdrew its motion for lack of numbers needed to topple the Kilman government (VDP, 3 July 2015). Some three weeks later, the Court of Appeal handed down its judgment relating to Pipite’s appeal, ruling in favor of the Speaker (Vuca 2015b). The argument given was that Speaker Boedoro did not comply with Article 43 (2) of the Vanuatu Constitution by listing the motion of no confidence for debate on 18 June 2015, less than a week after he received it. According to the constitution, “At
least 1 week’s notice of such a motion shall be given to the Speaker.” Pipite’s response was to demand an apology from Boedoro during the next sitting of Parliament (VDP, 28 July 2015).

The bribery case itself was adjourned by the Magistrate Court to 23 June, due to the ongoing First Session of Parliament (VDP, 13 June 2015) and again to 14 July (VDP, 24 June 2015), due to delays in the preparation of necessary documents. Meanwhile, the prosecution made an application to prevent the defendants from interfering in the work of police investigators—that they be prohibited from “interfering ‘directly’ and ‘indirectly’ with prosecution witnesses” (VDP, 24 June 2015).

Just at this complicated juncture, the nation was shocked to learn of the sudden death of one of its senior politicians, the leader of the Opposition, the Honorable Edward Nipake Natapei, who passed away at the age of sixty-one due to a sudden illness. Natapei was from the island of Futuna in the southern islands and began his political career in 1983, representing the Vanua‘aku Pati as the constituency’s elected member of Parliament. In 1988, he was asked by the party to move to the Port Vila constituency, where he was elected and served a total of eight terms. During his time in Parliament he had held the position of prime minister three times, Speaker of Parliament and, since 1999, president of the Vanua‘aku Pati (VDP, 29 July 2015).

On 7 August, a preliminary court hearing finally took place during which the acting public prosecutor, John Timakata, brought charges under the Leadership Code Act and Penal Code Act against eighteen members of Parliament, of whom seven were ministers of state. Those charged included the deputy prime minister, Moana Carcasses Kalosil (Port Vila, Green), who was alleged to have corruptly offered loans of up to VTI million to individual MPs. Other ministers alleged to have offered or taken bribes included Iauko Group members Thomas Laken (Tanna), Tony Nari (Pentecost), and Hosea Nevu (Santo). Two members of the Reunification Movement for Change included Paul Telukluk (Malakula) and Stephen Kalsakau (Efate). Willie Jimmy (Port Vila) was a member of the Vanuatu Liberal Democratic Party, and Serge Vohor (Santo) was a member of the Union of Moderate Parties (UMP). Members of Parliament also listed included UMP members Silas Ratan (Tanna) and Tony Wright (Port Vila); Kalvau Moli (Luganville, Independent); John Amos (Tonga, People’s Progressive Party); Green members Arnold Prasad (Santo) and Jean Yves Chabot (Port Vila); Sebastien Harry (Tanna, Iauko Group); Marcellino Pipite (Santo, Vanuatu Republican Party); Jonas James (Paama, Natatok); and Robert Bohn (Epi), member of the Vanuatu Progressive Development Party. In addition, longtime businessman Thomas Bayer—the nineteenth individual in the case—was charged with alleged complicity in bribery and corruption under the Penal Code Act (VDP, 7 Aug 2015). The accused were placed on bail pending their plea appearance the following week.

When Supreme Court Justice Mary Sey announced the start of the trial—scheduled to last for two weeks, beginning on 2 September—she noted that
the number of defendants had been reduced from 18 to 16 due to the decision of the Public Prosecutor to grant immunity to two of the charged who had agreed to provide evidence—MPs Kalvau Moli and Hosea Nevu, both from Santo. Two additional MPs, who had not been charged, were also given immunity.

When the Court convened, the minister of finance, Willie Jimmy, pleaded guilty to the two charges laid against him: one count of corruption and bribery of officials contrary to section 73 of the Penal Code (Cap 135) and one count of acceptance of loans contrary to section 21 of the Leadership Code Act (Cap 240). He had provided a written statement to police prior to the convening of the trial (VDP, 3 Sept 2015).

All sixteen remaining defendants, who were divided into two groups—the “givers and receivers” of the alleged bribes—pleaded not guilty to the charges. Tom Bayer, the only non-MP, was charged with one count of complicity to bribery contrary to section 21 of the Leadership Code Act and one count of complicity to corruption and bribery contrary to section 73 of the Penal Code Act. The court granted permission to separate his trial from that of the others, which would be dealt with following the conclusion of the main trial (VDP, 3 Sept 2015).

Opposition leaders Joe Natuman and Ham Lini spoke out strongly against the unfolding situation. They pleaded in a news conference for Prime Minister Kilman to cease his overseas travel and attend to the constitutional crisis facing the nation—the undermining of the “integrity of the institutions and the offices we hold.” They described the scene in which ministers and MPs arrived in their black cars, flying national flags, to face charges against them of bribery and corruption, “as a mockery of the lowest grade and detestable in the eyes of the law. Such is unheard of anywhere in the world.” As one of the defendants, Deputy Prime Minister Moana Carcasses, dismissed a plea from the Opposition for Prime Minister Kilman to reshuffle his cabinet and remove all those involved in the case, labeling the charges against him and his colleagues as “politically motivated” (VDP, 5 Sept 2015).

The trial, which lasted for two weeks, was presided over by Supreme Court Justice Mary Sey, who is from Gambia and had been seconded by the Commonwealth Secretariat to Vanuatu in September 2014 from the High Court in Swaziland. On the first day of the trial, Judge Sey began by formalizing the conviction of Finance Minister Willie Jimmy. She announced to him that he was convicted on his own guilty plea and, since he had done this at his earliest opportunity, she was mandated to give him a “substantial reduction in whatever sentence is meted out to you. You have not wasted the Court’s time and you have shown remorse” (VDP, 8 Sept 2015).

The prosecution presented twenty-four witnesses, including a Westpac Bank representative who testified to an inward transaction of US$500,000 from China Construction Bank Corporation Limited in Hong Kong via banks in the Netherlands and the United States to the account of the Pacific International Trust Co Ltd (PITCO), owned and operated by Tom Bayer. It was further revealed that
Bayer authorized conversion of the money into Vatu (VT48.9 million) of which “VT35 million was paid through a check by the PITCO Vatu trust account to Moana Carcasses on 28 October 2014.” The Westpac representative confirmed the transfer of VT1 million to the accounts of two of the accused MPs, and an ANZ Bank representative confirmed—the result of a search warrant the bank had received—that large sums were also transferred to the accounts of the other twelve MPs charged (VDP, 9 Sept 2015).

The prosecution’s case then focused on the purpose of the money transfers and the conditions under which the loan agreements were signed. Kalvao Moli—one of four MPs who had been granted immunity for providing information—provided key evidence. He testified that Moana Carcasses, then leader of the Opposition, had “made known to him of a loan scheme that MPs could borrow from . . . but Moana said he is offering VT1 million as the loan on the condition that he is made Prime Minister” (VDP, 10 Sept 2015). The prosecution also called a number of MPs to testify, who claimed to have turned down the offer of money in return for a signature on a motion of no confidence against the Natuman government (VDP, 11, 12, 14, and 15 Sept 2015).

The defense case was short and tried to establish that the money was intended as a loan to MPs to use in their constituencies. MP Hosea Nevu—another MP who had been granted immunity—testified that the agreement was “between myself and the Green Confederation Development Fund . . . [and] to my understanding, the loan agreement had nothing to do with the motion of no confidence.” Moreover, he stated that, as an Opposition MP, “it was his duty to sign any motion against the government” (VDP, 16 Sept 2015). In addition, the various defense councils presented submissions to the court on behalf of their clients that there was “no case to answer” and that the “evidences are irrelevant to their clients.” Judge Sey rejected the submissions, ruling that “the accused persons have a case to answer” (VDP, 17 Sept 2015).

As part of her ruling, Sey explained that the accused were entitled to defend themselves by calling witnesses or to give evidence themselves, or they could choose to remain silent. All of the fifteen accused facing criminal charges had pleaded not guilty, but at this point only Robert Bohn, MP for Epi, decided to speak in his own defense. He explained his understanding of the loans as being provided to a select group of MPs to use “for good works and development in the constituencies of Vanuatu and it is the people that would benefit from these good works.” He stated that the agreement was verbal between him and MP Carcasses, without any conditions. Moreover, he noted that he had known Carcasses for “25 years, as a friend, a business associate, and more recently, as a colleague in Parliament”—the implication being, that such a loan would not have been unusual or improper (VDP, 18 Sept 2015).

Judge Sey handed down her verdict on the 9th of October (VDP, 10 Oct 2015). The Court found Carcasses guilty of eighteen counts of offering a bribe; thirteen of the defendants guilty
of accepting a bribe in breach of 73 (1) and (2) of the Penal Code; and one of the defendants, Robert Bohn, not guilty (vusc 2015e). Following his conviction, Deputy Prime Minister Carcasses announced that he respected the verdict and appealed for calm.

It is significant to note that on the day prior to the handing down of the verdict, Supreme Court Justice Daniel Fatiaki ruled that the ombudsman had not made a proper inquiry and report into the conduct of the members of Parliament who had been convicted of bribery under the Leadership Code, nor had he given them the “opportunity to reply to the complaints made against them” (vusc 2015a). As a result, Judge Sey decided that the charges of breaches of the Leadership Code would be set aside and the defendants would only be tried for breaches of the Penal Code Act (vusc 2015e).

Then, unbelievably, the people of Vanuatu were shocked to learn the following day, 10 October 2015, that the Speaker and acting president, MP Marcellino Pipite, had signed an instrument of pardon for himself and thirteen other MPs (including Carcasses), who had been convicted of bribery the previous day. The document was gazetted by the State Law Office on Sunday, 11 October 2015. Willie Jimmy, who had pleaded guilty, was not included. Pipite, as Speaker of Parliament, had assumed the position of acting president during the absence of President Baldwin Lonsdale from the country, as provided for in the Vanuatu Constitution (chapter 6, section 37[1]). As such, he took the action to pardon himself and his fellow convicted MPs, based on the provision in the constitution that states: “The President of the Republic may pardon, commute or reduce a sentence imposed on a person” (chapter 6, section 38).

Citing political disturbances that had occurred in the past in Solomon Islands and Papua New Guinea, Pipite explained in a press conference that “as leader, symbol of peace and unity, I do not want to see a similar situation happening in Vanuatu.” It is significant to note that everything was peaceful and calm in Port Vila. Pipite’s announcement was clearly uncalled for and could have had precisely the opposite effect, undermining order and stability. The mood in Vanuatu was one of shock, but there were no public disturbances. In any case, given the fact that none of the convicted MPs had been sentenced, it is doubtful whether a pardon was legally possible at that point (vdp, 12 Oct 2015).

MP Pipite also used his new position of power to suspend the ombudsman, Kalkot Mataskelekele. Claiming gross misconduct, Pipite’s action followed the ruling by Judge Fatiaki (as noted above) against the ombudsman regarding his alleged failure to conduct an adequate inquiry or produce a proper report as required under the Leadership Code. The ombudsman responded by requesting the State Law Office to appeal the judgment (vdp, 9 Oct, 13 Oct 2015). The issue of the alleged violation of the Leadership Code was especially important to the convicted MPs due to the provision therein that would bar a leader from holding office for ten years if convicted of a criminal act.

On his return to Vanuatu, President Lonsdale expressed his deep sorrow...
for what had been affecting the country, noting that “the important institutions of the country continue to deteriorate and operate outside the Constitution... no one is above the law... it is my duty to remind every citizen that the Constitution is the Supreme Law, and everything that we do in this country must be guided by it” (VDP, 13 Oct 2015). On 15 October 2015, the president revoked the pardons.

The following day, Speaker Pipite and ten other convicted MPs and their four lawyers—the group who met and conspired to have themselves pardoned—were arrested and charged without bail on suspicion of “conspiracy to defeat the course of justice.” Prime Minister Sato Kilman, who had finally returned from overseas travel, removed MPs Paul Tulukluk, Tony Nari, Tony Wright, and Thomas Laken from their ministerial portfolios (VDP, 17 Oct 2015). Willie Jimmy continued on for the moment as minister of finance. All those arrested were released several days later on strict bail conditions.

Both the Opposition bloc and the convicted MPs launched judicial reviews, which were joined and dealt with together by the Supreme Court. In his judgment, Justice Oliver Saksak made the point that the case was incomplete, as sentences had yet to be delivered, and noted that “a pardon granted under Article 38 of the Constitution does not acquit a person of a conviction, but redeems a person from a sentence.” He surmised that the haste with which the pardon document was drawn up—signed, sealed, and published in the Official Gazette over a single weekend—could indicate an attempt by the Speaker and other convicted persons to “stop Criminal Case no. 73 (Bribery case) from proceeding towards its end, when sentences would be handed down on 22 October.” The Court ruled that the pardon by convicted MP and Speaker of Parliament, Marcellino Pipite, was void and of no effect (VUSC 2015c; VDP, 21 Oct, 22 Oct 2015).

Needless to say, the Opposition welcomed the convictions, proclaiming that “convicts have no place in public affairs,” and called for the Kilman government, which still held power despite the conviction and imprisonment of fourteen of its members, to step aside for the good of the country. “The prime minister’s continued silence in the face of calamity brought about by the El Niño-induced drought and the nation’s brush with anarchy, demonstrates his incapability in running national affairs any longer” (VDP, 12 Oct, 14 Oct 2015).

The problem they faced, however, was that Kilman refused to move aside and simply juggled the portfolios of the discredited members of his parliamentary majority. The Opposition finally lodged a motion of no confidence, but it was declared out of order when it failed to secure the required twenty-seven signatures needed to call a special session of Parliament (VDP, 20 Oct 2015). When Parliament is in session, only seven signatures (one-seventh of the fifty-two members) is required on a motion.

Sentencing of the convicted MPs finally took place on 22 October 2015. Carcasses was sentenced to four years in prison, Toni Nari to three and a half years, and the remainder to three years each. They were imme-
Immediately incarcerated and remained in prison for the rest of the year. Willie Jimmy, who had pleaded guilty, was sentenced to twenty months’ imprisonment, suspended during good behavior (\textit{VUSC 2015f}). The Court of Appeal rejected the appeals by the defendants, upholding both the convictions and the sentences in their entirety (\textit{VUCA 2015c; VDP, 20 Nov 2015}).

In early November, prior to the appeal ruling and with the fourteen MPs in jail, a delegation of chiefs from Sanma, Malampa, Penama, Shefa, and Tafea provinces suddenly appeared in Port Vila, announcing that they had come to perform a “customary reconciliation” ceremony using high-value custom pigs known as ravwe and traditional mats, which they had brought with them. The rumor around Port Vila was that the trip and attempt at intervention had been organized by the brother of one of the convicted MPs and paid for by the Board of Directors of the Northern Islands Stevedoring Company Ltd (\textit{NISCOL}). They apparently hoped to influence the president to grant pardons to the convicted MPs.

The delegation asked Chief Seni-mao Tirsupe, the president of the Malvatuma Council of Chiefs, to facilitate a meeting with President Lonsdale as the head of state. Echoing the feeling of many leaders, Chief Tirsupe received them respectfully but resisted their move to become involved, noting that “there is a time for everything and as such things must happen at their appropriate time.” Likewise, the leader of the Opposition, Joe Natuman, cautioned the chiefs that “the Head of State must be allowed to make his decision based on his free will and not due to pressure” and sent them a letter explaining that the legal appeals process must first be completed before any reconciliation ceremonies could take place. The chiefs never met with the president and returned home (\textit{VDP, 2, 3, 4, and 6 Nov 2015}).

Contributing to the political stalemate was the fact that, although the fourteen convicted MPs had been removed to jail after sentencing on 22 October 2015, they were still not required to vacate their seats in Parliament. They were counted as part of the sitting Kilman government and continued to receive their salaries. Under the Members of Parliament (Vacation of Seats) Act, an MP convicted of a crime is allowed thirty days to appeal before being obliged to relinquish his or her seat. They would, therefore, continue to hold their seats at least until 21 November, when the thirty-day window lapsed, depending on the outcome of their appeals. The same applied to MP Willie Jimmy, who was free on good behavior. As a result, following the convictions, Prime Minister Kilman continued to hold onto power, commanding a majority of 28 out of a total of 52 MPs, which included the 15 convicted MPs. Parliament was not in session, so the fact that they could not take their seats made no difference for the moment.

Attempts by the Opposition during this period to persuade Kilman to hand over power or form a government of national unity failed. Indeed, Kilman was successful in winning over two Opposition bloc members, Don Ken and Isaac Hamariliu, by offering them ministerial portfolios (\textit{VDP, 24 Oct, 28 Oct 2015}). After 21 Novem-
ber, when their appeals were dismissed and the 15 convicted MPs officially vacated their seats, Parliament’s number was reduced to 37, made up of 13 government MPs and 24 Opposition, who then commanded the majority.

Nevertheless, the political stalemate continued, as Kilman refused to authorize the recall of Parliament for the constitutionally mandated Second Ordinary Session. The first session had taken place in May/June, but a second session had never been convened. Kilman clearly had no intention of summoning Parliament, since the Opposition with their new majority would easily have defeated his minority government in a vote of no confidence. Moreover, it should be noted that the failure of Parliament to meet deprived Kenneth Natapei (Vanua’aku Pati)—who had recently won a by-election to replace his father in one of the Port Vila seats—the opportunity to be sworn into office (see above). This would have added another member to Opposition numbers and was an issue that they would include in a subsequent court challenge of the president’s decision to dissolve Parliament (VUSC 2015d).

The other option was a dissolution of Parliament, which Kilman actually favored and the Opposition opposed. Delegations from both the government and the Opposition had met with the president at the end of October and discussed the situation. It was reported over Radio Vanuatu that Kilman had asked President Lonsdale to dissolve Parliament—a power vested in the president alone—in response to a request from the Council of Ministers. Despite the fact that on 16 October the Council of Ministers had agreed to request a dissolution, the president did not act. His position was that there was still time for the parties to reach an agreement and dissolution would be a “last resort” (Vanuatu Daily Digest, 26 Oct 2015). It would seem that the president preferred to wait until the appeals of the fifteen convicted MPs had been heard. If the appeals were upheld, the MPs would resume their posts and a dissolution would not be necessary (Vanuatu Daily Digest, 31 Oct 2015).

On 20 November, the day on which the Court of Appeal announced that the appeals of the fifteen convicted MPs had been rejected, the Opposition filed an urgent constitutional application with the Supreme Court to order the Speaker to call the Second Ordinary Session of Parliament for 2015 (VDP, 20 Nov 2015). However, before the Court had met, Acting Speaker Samson Samsen announced that Parliament had been scheduled to meet on 14 December (VDP, 23 Nov 2015). It came as a surprise, therefore, when the president announced the next day that he had dissolved Parliament—especially since a resolution to the political impasse was at hand with the announcement of a date for the Second Parliamentary Session.

The president gave as his reasons the need to reestablish a strong functioning government due to the delay in dealing with the aftermath of Cyclone Pam and a decline in service delivery. Likewise, he pointed to the unnecessary costs of holding by-elections for the fifteen convicted MPs (the fourteen imprisoned plus Willie Jimmy), given the fact that the national election was not scheduled to be held until late 2016. He mentioned that he was
aware of the decision to recall Parliament but decided as he did due to the long period of unstable government that had occurred and for “the welfare of the public of Vanuatu” (VDP, 25 Nov 2015).

The following day, the Opposition filed a case against the decision of the president, requesting that it be declared null and void (VDP, 26 Nov 2015). The submission questioned the delay between the request by the Council of Ministers for a dissolution and the decision of the president—over five weeks—at a time when the prime minister was running a minority government. It also questioned the issue of the composition of the council on the day the decision was made, “as only ten (10) members attended the meeting instead of all the Ministers [13 . . . and] that five of the ministers who attended the meeting were convicted in the bribery case [and] were yet to be sentenced” (VUSC 2015d).

The possibility of bias and conflict of interest was also raised, noting that the president had accepted a custom ceremony from the prime minister involving an exchange of a pig and he giving one in return, leading to the suspicion that the government was receiving special treatment. Council for the president argued that under the Vanuatu Constitution (paragraph 28 [3]), the president has unfettered authority to make such a decision. The Supreme Court agreed and dismissed the case (VUSC 2015d).

The decision to dissolve Parliament coincided with rumors circulating that the president was about to pardon the jailed MPs, which his office firmly denied, noting the legal process that would be required and the current political circumstances: “It is too early to consider such, as it will make a mockery of the justice systems in Vanuatu” (VDP, 27 Nov 2015).

The main issue for the Opposition regarding a dissolution was that it would leave Kilman and his ministers in power as a caretaker government to continue what they viewed as corrupt practices. For example, there were rumors that the new minister of lands, Paul Telukluk, was intending to intervene in a case against Lands Department staff who were issued state land leases by the former minister of lands, Steven Kalsakau, without tendering for land and assets valued greater than Vt15 million (VDP, 16 July, 17 July 2015).

While awaiting the court decision on the challenge to the president’s decision to dissolve Parliament, the Electoral Commission went ahead and announced that a “snap” election would be held on 22 January 2016 (VDP, 4 Dec 2015). The Electoral Commission moved quickly, as the constitution (paragraph 28 [4]) requires that an election must take place not earlier than thirty days and not later than sixty days following the dissolution of Parliament.

Another unexpected development occurred at this time, concerning the application of the Leadership Code in relation to the Penal Code Act. As noted above, the Leadership Code stipulates that a conviction under the Penal Code Act is automatically a breach of the Leadership Code and makes the individual concerned liable to dismissal from office and disqualified from appointment to public office for a period of ten years. The interpretation of the link between the Leader-
ship Code and the Penal Code was what led to the dismissal of charges of bribery and the suspension of MPs in December 2014—that is, that the defendants had not been found guilty of bribery before being suspended from Parliament.

Judge Sey had been careful to charge the accused MPs under the Penal Code, leaving the issue of breaches under the Leadership Code to be dealt with later. This followed a ruling by Judge Fatiaki on 9 October—the day before Judge Sey handed down her judgments for the fifteen MPs (as noted above)—that there had been a breach of the Ombudsman’s Act related to the production of an official report by the ombudsman. Subsequently, however, the Court of Appeal ruled that Judge Fatiaki’s judgment was “not binding on Judge Sey” and that she “should have proceeded to determine the Leadership Code Act charges despite the decision of Justice Fatiaki” (VDP, 4 Dec 2015).

As a result of this clarification, the newly appointed public prosecutor, Josiah Naigulevu, applied to the Supreme Court for a ruling in view of the convictions handed down under the Penal Code. Judge David Chetwynd ruled that he was “satisfied beyond any doubt that the breaches were and are serious” and confirmed orders “dismissing all the Defendants from office and disqualifying them from standing for election or being appointed as a leader of any kind for a period of 10 years.” He also ruled that the defendants were not entitled to “payments or allowances” since their dismissal and that disbursements that may have been paid prematurely should be recovered—that is, the defendants were “ordered . . . to repay them forthwith” (VUSC 2015g; VDP, 8 Dec 2015). Thus, after a tangled series of judicial procedures, the fate of the accused MPs had been resolved—at least for the moment—though the issue of reduced sentences or pardons would continue to be discussed.

There was, however, unfinished business relating to the bribery case that would have to wait until the following year: Quite significant was the “conspiracy to pervert the course of justice” case involving ten of the convicted members of Parliament who had conspired with their four lawyers for Marcellino Pipite, as acting president, to issue a pardon for all the convicted MPs including himself—excluding MP Willie Jimmy, who had pleaded guilty. Yet to be heard was the “complicity to bribery” case related to the source of the large amounts of money loaned by Carcasses to members of Parliament, the source of which was traced to PITCO and its manager, local businessman and financier Thomas Bayer (Paterson 2015).

Also on the immediate agenda for 2016 was the national election, scheduled for 22 January. By mid-December, prospective candidates were lodging their documents with Electoral Office officials and unofficially beginning to campaign. There were rumors that the fourteen jailed former MPs were trying to manipulate their followers from inside, and several were said to be planning to run—expecting most likely a miracle or Christmas gift in the form of a pardon, which the president had made clear was not going to happen anytime soon (VDP, 22 Dec 2015).

The political chaos that began in late 2014 and continued to unfold
in 2015 was unprecedented in the short history of Vanuatu, and yet life remained remarkably peaceful throughout. For example, following the death of senior politician Edward Natapei, a by-election was held in mid-October 2015 for his Port Vila constituency, which coincided with the announcement of the guilty verdicts and Pipite’s illegal pardoning of convicted MPs. The turnout was low, which is not unusual for Port Vila—around 10,236 out of 38,324 registered voters cast their ballots—but the poll took place peacefully, as is the normal practice. Kenneth Natapei, representing the Vanua’aku Pati, was elected with 4,281 votes to replace his father, and the election results were announced on the day that the government MPs and their lawyers were arrested following the cancellation of the illegal pardons. The elections of the Luganville Municipal Council and the Sanma Provincial Government also took place during 2015 without issues or problems.

Vanuatu gained its independence a mere thirty-six years ago, accompanied by a rebellion that involved violence and divided the population. It is, perhaps, the remembrance of that painful experience—and a desire that it should never be allowed to happen again—that has led the people of Vanuatu over the years to develop a confidence in the work of the judiciary and the rule of law. This was clearly evident during 2015, when unprecedented challenges to Vanuatu’s institutions of government were overcome through the patient work of the court system—achieved without any public violence or social unrest.

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References


Vanuatu Daily Digest. News blog. vanuatudaily.wordpress.com/Category/the-news-digested/


