

ATTACHMENT GUIDANCE NOTE NO. 01 OF 2020

VANUATU COURT OF APPEAL GUIDANCE NOTE FOR REMOTE HEARINGS (VIDEO – CONFERENCING FACILITIES) DUE TO COVID – 19.

INTRODUCTION

1. This Guidance Note for Remote Hearing for the Court of Appeal of Vanuatu is an addition to the Court Arrangement protocols, the Chief Justice has issued in 2020 due to Covid-19.
2. Because of the Covid-19 pandemic, two (2) Overseas Panel Members of the Vanuatu Court of Appeal Judges and any locally temporary admitted foreign counsel could not participate in the session as they normally do due to the closing of International Borders in Vanuatu and in their own respective countries (Australia and New Zealand or any other country).
3. The unprecedented challenge to the operation of the court in the current Covid-19 pandemic, with serious public health concerns, does not allow the court to operate in the usual manner. This requires the use of alternative modes of hearing so as to maximize the continued and safe operation of the justice system while maintaining social distancing and reducing the risk of Covid-19 spreading in the community as far as possible. It is of paramount importance that justice is duly administered continuously and effectively without compromising public health and safety.

COURT OF APPEAL REMOTE HEARINGS: RATIONALES

4. In the exceptional circumstances of the current public health crisis, the Vanuatu Court of Appeal shall conduct its proceedings and hearings by way of remote hearings through Video Conferencing Facilities ("VCF") so that the two (2) overseas Appeal Panel Members could participate actively and fully. This will also apply to any foreign Counsel that has been temporarily admitted pursuant to section 13 of the Legal Practitioners Act [Cap119].
5. This Guidance Note is issued to set out the practice for remote hearings by electronic means by Videoconferencing of cases during the Court of Appeal sessions or sittings.

6. The Vanuatu Court of Appeal's VCF installed for the purpose uses the Government's technology arrangement that is set up by the Office of the Government Chief Information Officer (OGCIO) within the Government networks; it is logistically feasible and appropriately secure and it will allow applicable court rules and procedures. The OGCIO will technically assist the Court of Appeal during its remote hearings in its session or sitting.
7. Whatever technology is employed for remote hearings will require the flexible application of the guidance.
8. The essence is to replicate as closely as practically possible the core requirements of court hearings. The ultimate question is one of fairness, it being understood that standards of fairness are not immutable and the requirements of fairness are flexible and closely conditioned by the legal and administrative context.
9. Remote hearings using video technology preserve most of the benefits of an oral hearing, allowing parties and their legal representatives and the court to interact with each other on a real-time basis. Parties and their legal representatives will be expected to focus their submissions (and evidence, if applicable) so as to promote the efficient use of the technology within the shortest possible appropriate time. As even remote hearings may require some persons to be physically present in the same place, the duration of hearings should be limited to reduce public health risk to those present. All participants should keep in mind the wider public interest of maintaining social distancing as a strategy to combat the pandemic spreading.
10. Insofar as the conduct of remote hearings might impact the open justice principle, it is settled law that different balances may be struck with regard to different aspects of open justice being subject to restrictions when other competing fundamental rights are engaged. The court will be astute to ensure the appropriate balance is struck, for example by the continued public dissemination of reasoned decisions as it is always the practice of the Vanuatu Court of Appeal.
11. All participants in remote hearings will need to be sympathetic to the technological and other difficulties which might be experienced by other participants, in the setting up of and in the conduct of remote hearings.
12. As the hearing will be listed to be heard in open court, even though conducted as a remote hearing, robes should be worn by the barristers and/or solicitor advocates appearing, as well as by the Judges. All court rules and practice on court etiquette will continue to apply (save that standing at the beginning and end of hearings will not be

necessary or standing when making submissions not required except if the microphones at the Bar Table are set for standing only).

13. Subject to the direction of the Judges, a remote hearing will be conducted openly where public and media can attend physically. However, in the exceptional circumstances of the threat to public health caused by the current pandemic, the impossibility of public or media access to a hearing should not ordinarily prevent the remote hearing taking place. The decision whether, how, and to what extent, to permit public or media access to a remote hearing rests with the Judges conducting the hearing.
14. The costs of the use of VCF and any other services and/or materials used in conjunction with them will form part of the costs of the proceedings (if any), and will be subject to such costs orders as the court thinks fit.

PRACTICAL CONSIDERATIONS

BEFORE STARTING A VIDEO CONFERENCE, PLEASE NOTE THE FOLLOWING:

- The parties and their representatives shall notify in writing the appeal conference judge, the registrar of the court of appeal of the engagement of an admitted foreign counsel, his or her location address and contact details.
- The parties and their representatives shall attend the remote hearing by way of the Court's video-conferencing facilities.
- No person may take any form of recording of the remote hearing, other than the Court, if required (through the TrueConf Feature).
- The remote hearing shall take place at [time] on [date] with a time estimate of [length].
- The remote hearing shall be conducted by the Court from Supreme Court Room No.1 at Dumbea, Port Vila, Vanuatu.
- The Court of Appeal usually begins proceedings at 9:00 a.m. in the morning and again 2.00p.m in the afternoon and usually a call over of appeal cases was held on the first Monday of the session at 9.00 am.

- However, since the Court of Appeal July session 2020, the call over of appeal cases was no longer necessary because the appeal conference judge allocated directly a date and a time for the hearing of each case at the end of the review conference of each appeal case. It proved to be efficient and cost effective. This new experience is to be continued, improved and strengthened in the future Court of Appeal sessions or sittings.
- It is noted that any abandonments of appeals, changes in time estimates, delays because of new developments, failures to file in documents on time, and last minute additions, and other set of circumstances have to be accommodated by pre-allocations by the appeal conference judge or when it is relevant because of a likely final disposition of an appeal by at least two judges sitting together prior to the first Monday of the session (or sitting) or exceptionally a call over before the judges of the Court of Appeal on the Monday before the appeal hearings begin (if circumstances justify) in accordance with Part B. 4 (v) of the Practice Direction for Appeals.
- There is, however, a need to adapt or adjust the starting time of hearing considering the time difference between Australia, New Zealand or any other place. Technical staff at the Court of Appeal room must be available to assist at this hour.
- If there is a real time difference, it has to be considered and taken into account for the starting time of the hearings of the Court of Appeal in the session or sitting.
- The court generally requires at least time in advance for videoconferencing for testing purposes before a hearing begins.
- The test must be conducted in the Court room and with the system that will be used for the scheduled hearing and checked with the remote judges' and or lawyers' location sites in Australia, New Zealand or any other place, if everything is alright. It is recommended that technical staff and someone from the court be present for the test.
- To ensure a seamless experience on each day of court sitting, it is important that the court room and judges' rooms or lawyer(s)' locations in Australia, New Zealand or any other place are free of clutter and noise.

ON THE DAY(S) OF THE VIDEOCONFERENCE, PLEASE NOTE THE FOLLOWING:

- The court will connect the videoconference at least 15 minutes before the start of the scheduled hearing to allow time to work through any unexpected connection problems. The court will also test all microphones and camera angles. It is important that technical staff at the court room site be present at this time.
- While the proceeding is in progress, technical staff at the court room site must remain available by telephone in case of a problem.
- As the Court of Appeal session is scheduled for 2 weeks (multiples days), the court will connect at least 15 minutes early each day or each time required.

FINAL NOTE

- A telephone conference link is also set up as a stand-by or backup system in the Courtroom (if necessary).
- Another video conference link is set up in the Supreme Court conference room at the Supreme Court Registry Office with a telephone conference link set up as its backup for the judges' communications and discussions during the appeal period.

15. This Guidance Note is effective on 4 May 2020. It may be subject to amendment and will continue until further notice.

DATED at Port Vila, this 17th day of September, 2020


Vincent Lunabek
Chief Justice

