

Thursday 13th February, 1997.

ACTING CHIEF JUSTICE SPEECH  
1997 COURT OPENING SESSION

His Excellency, Mr Jean Marie L  y   Lenelcau, President of the Republic of Vanuatu and Madame Lenelcau,

Right Honourable Rialuth Serge Vohor, Prime Minister of the Republic of Vanuatu and Madame Vohor,

Honourable Edward Natapei, Speaker of Parliament, and Mrs Natapei,

Honourable Donald Kalpokas, Deputy Prime Minister, Minister for Education and Mrs Kalpokas,

Honourable Father Walter Hayde Lini, Minister for Justice, Culture and Women's Affairs and Mrs Lini,

Honourable Ministers of Government,

Honourable<sup>Mr</sup> Justice Kalkot Mataskelekele and Mrs Mataskelekele,

Honourable Maxime Carlot Korman, Leader of Opposition and Madame Carlot,

Honourable Members of Parliament,

Honourable Chief Noel Mariasua, President of the National Council of Chiefs (and Mrs Mariasua),

Honourable Members of the Diplomatic Corp,

Members of the Judicial Service Commission,

Members of the Legal Profession,

Honourable Chief Registrar, Mrs Rita Bill Naviti and Mr Naviti,

Senior Magistrate Reggett Marum,

Magistrate Jerry Boe,

Magistrate Steve Bani,

members of the Court Clerical staff and families,

Members of USP Law faculty and Law students,

Members of Private Sector, Members of the Press, Ladies and Gentlemen, Big Men, Big Women mo pikinini blong Vanuatu.

I am very pleased and greatly honoured to have this opportunity to speak to a such distinguished and expert company during the opening of the Court session for this year 1997. Though aware of my shortcomings and inadequacy in doing full justice to the task entrusted to me, I must confess I readily accepted my appointment as Acting Chief Justice of the Republic of Vanuatu because of my deep commitment to the cause of Judicial Independence which is essential not only for the adjudication on individual cases, but the protection of the Constitution itself and the fundamental values of the rule of law, natural justice, equality and democratic process; also because of my deep commitment to the cause of access to justice for all ni-Vanuatu and other members of the communities living in this country.

Ladies and Gentlemen, I take this opportunity to speak to you about issues which affect the Judiciary of the Republic of Vanuatu and some of the possible answers to these concerns.

Traditionally, Judges have chosen not to speak publicly on issues which affect them, but rather to let their judicial decisions speak for them. The consequence of such a self - imposed silence by judges is that the Public is left with the impression of a judiciary remote from the problems of society. Some countries have attempted to overcome the problem by establishing a commission and/or committee to make report about these issues on behalf of the Judiciary.

In Vanuatu context, we have no such commission and/or committee, therefore, I will talk to you about the issue affecting Vanuatu Judiciary, not as a Judge of the Supreme Court of Vanuatu, but I will talk to you as the Head of the Department of the Judiciary.

In or about May 1996, Mr Justice Kalkot Mataskelekele and myself were appointed Judges of the Supreme Court of Vanuatu. At the time of our appointment, there were 3 judges of the Supreme Court. At the present time, we are only two Judges of the Supreme Court, adjudating cases throughout the Republic. I have to stress the point that the number of cases listed for hearing in particular, in Port Vila Supreme Court Registry is considerably increasing. It is not possible for one Judge only to deal with all the cases. There is urgent need to appoint at least one more Judge to the Supreme Court in order to help disposing of the workload within the Supreme Court (in Port Vila). There may be potential candidates amongst the Members of the Vanuatu Local Bar... But the difficulty is that the salaries offered for the position of the Judge of the Supreme Court is too low compared to the level of Salaries offered or reasonably expected to get in a private legal firm. There is great disparity. So it is difficult to find qualified and experienced lawyers for the position, if the level of salaries offered at the present time is maintained.

Equally, ni-Vanuatu qualified lawyers, within the public sector left the Government services and joined private Legal firms or other legal institutions which offer them good salaries or attractive "remuneration package".

In order to get top quality Judges, it is necessary for the Government to fix adequate salaries. Remuneration must be sufficiently high to attract lawyers of superior calibre from the practising bar. There is need to establish a pension scheme for Judges. The level of income and pension benefits should be such that the appointed judges can live in reasonable comfort, enjoying a lifestyle commensurate with that of an experienced member of the Bar and not labour under anxiety about financial conditions or retirement income. These comments are equally applicable to the Magistrates of the Republic of Vanuatu.

At the current time, the Court system is staffed, supplied and managed by the Public Servants who report to the Senior Government Officials, and not to the Judiciary. The fact that the Courts are largely managed by the Government, whose representative are the most frequent litigants in the Courts creates a potential for interference.

It is to be noted that, the Head of the Judiciary has always experienced anxiety about having to go to Government, in order to remedy deficiencies in administrative resources which impact on the operation of the Courts and the ability of the Judiciary to provide the high level of Justice which the public expects and deserves.

Institutionally speaking, Judicial independence means that the Judiciary must have its own administration separate from unwarranted intrusions by, or even intertwinning with, the legislative and executive branches of the Government.

At the present time, Court staff are placed in difficult positions. As there are no separate managing staff and facilities, the Court staff rely on the Public Service Department which is subject to the executive branch of the Government.

There is a danger for Government to regard Judges and Court Staff as a branch of the Public Service Department, particularly when the Government exercises control on the administrative life of the Courts and when Court staff report directly to Civil Servants and not to the Judiciary. If the Judiciary lacks control over its own process, it will appear subservient to those who control the process.

Government policies imposed on Court staff can impact on the operation of the Courts.

For example: The Judiciary has lots of vacancies. We are in the process of recruiting new staff as the Judiciary is more and more expanding its services of dispatching justice throughout the remote islands of the Republic. Surprisingly, we received circulars/instructions from the Public Service Department freezing any recruitment until further notice.

Attempts were made by the Judiciary through the Supreme Court Registry to explain to the Head of Public Service Department that Judges and Magistrates are not subject to Public Service Instructions and/or Directions; That the Court Clerks are appointed by the Judicial Service Commission and, thus, not subject to Public Service directions. But I must say with regret that the direction of the Public Service ignored these considerations.

However, it is important to understand that the administration of justice should not be brought to a halt by reason of Government policy. This constitutes a clear interference and/or intrusion within the effective operation of the Courts. The cumulative impact of such intrusions on daily basis, can be both significant and serious.

Under the Constitution, the power of the purse is with the Government. The expenditure of Public funds must always be approved by the legislature. At the same time, in order to maintain institutional independence, the full control of the Court administration must be vested in the Judiciary.

It is fundamentally important to note that the status of Judges/Magistrates is necessarily different from that of the Civil Servants. For the effective discharge of the Judicial functions, there must be a distinct and separate administration of the Courts from the Executive and Legislature. They must operate in fact and in law, at arm's length. I must stress again, that the independence of the Judiciary is not for the protection of Judges/Magistrates but for the protection of the general public. The public is entitled to impartial and independent court which decides legal issues solely on the basis of law. For others to attempt to interfere with the independent administration of justice is a violation of the rule of law. The public has a right to expect that no outside pressures deflect the Judges/Magistrates from the due application of law.

Ladies and Gentlemen, the Institutional independence of the Judiciary is implicit under the Constitution of Vanuatu. It is of necessity to get a **JUDICIAL SERVICES ACT** in order to establish distinct and separate administration for the Courts.

The purpose of this Act is to redefine and clarify the role of the Judicial Service Commission, to create a Department of Justice who will employ Judicial Administrators who will be directly answerable to the Head of the Judiciary. This Act will have provisions for Judges/Magistrates and supporting Court Staffs' recruitment, salaries, promotion, transfer, suspension and discipline etc...

It will also be the responsibility of the Judicial Administrators to negotiate and establish special pension scheme for the Judges/Magistrates and other Court Staffs.

It is important for a small sized jurisdiction like ours to have such specific and separate Court administration from other branches of the Government to be implemented, the judicial behaviour required for a judicial officer in Vanuatu is much higher than those required in other Commonwealth Jurisdictions.

The Minister of Justice and Members of the Judicial Service Commission were informed and have given their approval for the Judicial Act to be

drafted. So far, I am still seeking for assistance in that regard. I hope that the Judicial Act will be submitted to Parliament sometime this year 1997.

Ladies & gentlemen, institutional independence of the Judiciary is important but it is not the last objective to be achieved by the Judiciary. The second element of the Judicial independence is the independence of the individual Judge/Magistrate. The institutional independence cannot be guaranteed unless the independence of individual Judge/Magistrate is guaranteed. In order to secure the independence of individual Judge/Magistrate, the first and foremost requirement is that the appointed Judges/Magistrates, must be persons of high quality, integrity who would be able to resist any attempt direct or indirect, from internal as well as external forces, to interfere with decision making; for if such pressures influence the decision, impartiality would be sacrificed.

In Vanuatu, one of the methods to get quality and competent people in the Judiciary is through an adequate Training Scheme Program. To have an adequate Training Program, it is important to establish a FORMALISED Training Scheme for Judicial Officers of the Republic through the establishment of a Judicial Committee for Judicial Education for Vanuatu. It will be the responsibility of that Committee for Judicial Education to determine the objectives and standards of the Judicial Education in Vanuatu, the levels of the Judicial Education required.

Judicial Education and Training should consist primarily of Judges with expertise in the subject matter and who are capable of preparing and presenting Educational Materials efficiently.

However, as Judges with such higher expertise are not found in the country, law Professors, Lawyers and people with special expertise, knowledge will be utilised to contribute to enhance the goals of the Judicial Education Programs for this country.

Ladies & Gentlemen, on 17 February 1997, 5 members of the Court staff will start a Magisterial Certificate Course at the USP Law Faculty.

This is a pilot training course for our Trainee Magistrates and Lay Magistrates leading to a Certificate in Magisterial Studies.

The Course will be completed at the end of June 1997. Some of these five members of the Court Staff are Magistrates, others will be hopefully appointed and be readily available to be posted in the islands of the Republic.

Initially, it is our plan that after the qualification of our trainees and lay Magistrates, they will be dealing with customary land disputes, as a matter of priority. It is unfortunate that we could no longer carry out that plan due to the fact that although we made budgetary submissions for that purpose, the Parliament of Vanuatu allocates 0 vatu for the hearing of Land cases.

Coming back to the Training of the Court staff, the next category of Court staff to be trained are the clerical staff and the Justices of the Island Courts.

Though aware of the limited resources of the Republic, the committee for Judicial Education for Vanuatu cannot effectively operate unless it can liaise with other Judicial Education body of the South Pacific Small Nation Jurisdictions and create a South Pacific Regional Judicial Education Body. By this way, there is a greater chance to get financial assistance from aid Donors and thus, training and continuing Judicial Education through Judicial Conferences, Seminars, workshops etc.... could be undertaken for our respective Judicial Officers in order to meet their needs at all stages of their careers, and address them on the substantive law, skills training and current social issues.

After the training of the Judicial Officers they will expect to be supported in their newly Judicial functions with independent learning opportunities such as Bench books, texts, relevant legislation such as for example the law of Evidence and the Rules of Procedure of the Courts.

Ladies & Gentlemen, since 1980 till today, Vanuatu has no law of evidence. This situation constitutes a grey area where lawyers spent lots of time in Courts arguing about which Law of Evidence to be applied by the Court: English, Australian, New Zealand etc... through the technics of interpretation. This constitutes a terrible headache for Judges. We therefore need our own law of evidence including relevant legislations to be drafted and passed by Parliament.

Equally, there is need to review and simplify the Court Rules.

As far as Island Court Rules are concerned, questions have to be asked. Island Court is composed of 3 Justices one of whom must be custom chief. It has jurisdiction to deal with custom.

Do Island Court Procedures give any room to custom.

Although the Constitution provides that the Customary Law is part of the Law of the Republic (Article 92(3)) there is in practice a defacto Regime of Divergence between the Customary Law and the written law.

Therefore, how best can we marry Customary Law and written law. How best can we utilise our customary law of settlement into a formalised way of dispute resolution process.

I am personally convinced that there are interesting studies to be undertaken there in order to see whether we can formalised the customary dispute settlement as an alternative dispute resolution methodology.

The Magistrates Courts (civil procedure) Rules dated back from 1976.

These rules have to be simplified with simple, clear and precise language for the lay person in this country to understand and be able to use them before these Courts.

The Supreme Court of Vanuatu utilise the High Court (Civil Procedure) Rules of 1964. Suffice to say that there are lots of anachronism and anomalies in these rules. There is big need in drafting new Supreme Court Rules in simple, clear and precise language so that lay people could understand. These comments are equally applicable to the Court of Appeal Rules.

A Law Reform Commission is necessary to be established or the Law Commission under Chapter 115 of the Laws of the Republic of Vanuatu can be revived and members be appointed to undertake research studies in these areas in order to come up with proposals.

I urge upon you members of the local bar to submit your suggestions to the Law Commission or the Law Reform Commission if one is established to that effect, or you can submit your suggestions including models of Evidence Act or Courts Rules within the Acting Chief Justice Chambers.

The last but not the least, I will address you on the issue of Community Legal Awareness or Legal Education for the Community.

In order to educate the public, about their basic rights & freedoms, the Courts Procedures or broad policy issues or specific issues which arise from the regular course of business in the Courts, a Joint Committee composed of representatives of the Media, Members of the Bench, support staffs and representatives from the local bar can be established. This can be done through the radio as well as under the form of booklets written in familiarised way for the general public. I am sure that such committee could be the potential of offering a site for communication which is effective and less problematic for Judiciary. It will also constitute a benefit for both members of the Judiciary and the Media to get together to participate in Conferences or Seminars on issues concerning publicity of proceedings for the best interest of the public and at the same time the legitimacy of the Courts will be advanced by Judges conscientious participation.

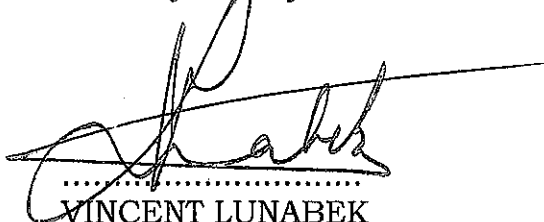
I have more to say about the development of the Judiciary in this country. But the time has come that I must stop. Just to remind all of us that :

Judiciary hem nidim Government mo Parliament blong maintainem mo protectem independence blong Judiciary mo blong ansarem olgeta concern blong hem. Hemia long best interest blong public we hemi consuma blong Justice Service.

Judge/Magistrate oli gat duti mo obligation blong upholdem Constitution mo Laws blong Republik.

With these final words, I hereby declare that the Court Session for 1997 is now open.

Thank you for your attention.



VINCENT LUNABEK  
Acting Chief Justice.