

AUSTRALASIAN LAW REFORM AGENCIES CONFERENCE 10 – 12 SEPTEMBER 2008 USP, PORT VILA, VANUATU.

- Conference Organisers
- Conference Participants
- Distinguished guests
- Ladies and gentlemen

I felt elated and greatly honoured by the invitation from the conference organisers to present this welcome address before this august gathering of judges, lawyers, government officials, leaders of civil society organisations, academic and practitioners from different countries in the Pacific and beyond.

I wish you all a very warm welcome to Vanuatu. Welkam long Vanuatu.

You have arrived in a challenging time in this country: Vanuatu citizens have just exercised their democratic right to elect their representatives in the National Parliament. A new government will be formed to administer the affairs of the country very soon.

Another challenge was the destruction of the Supreme Court building by the fire on 7 June 2007. It is a tragic event in Vanuatu. The consequences of the fire will be felt by the people of this country for a very long time.

The broad theme of your conference is about law reform issues in general and with a special focus on those that have particular relevance to the countries of the Pacific region.

I am asked to say something on whether judges made good law reformers. I am afraid I do not have a yes or no answer to that question. You are all qualified and competent to give the answer to this question.

However, you will agree with me that Law Reform as an expression could have two (2) different meanings. First, it means changing the law for the better. Second, it simply means changing the law. In the context of the Courts, the expression is used commonly in both senses.

It is legitimate to speak of the Court changing the law by their decisions. This is so when Court decisions alter the received understanding of the law, either by changing it, adding to it, or subtracting from it.

This is what is called judicial law-making. The judicial law making is an activity undertaken by the Courts of final appeal and intermediate Courts and in Vanuatu context, respectively the Court of Appeal and the Supreme Court.

However, from time to time, judges at first instance break new ground as they do when they resolve controversial questions of statutory interpretations.

The law-making function of the Courts is therefore not a free-standing activity. There are restraints from the nature of the judicial process itself and within the doctrine of judicial precedent and stare decisis which restrict the capacity of the courts to change the law by departing from previous decisions, although, there is a qualification to the extent that a court is at liberty to depart from its earlier decision if the court is convinced it is plainly wrong.

Vanuatu experience shows that it is not possible for a Court to achieve a comprehensive all-embracing reform of a particular area of the law within the frame of a single decision, in the way that the legislature can achieve such a reform.

Understandably, the law-making is not the role of the Courts. The role of the Courts is to decide cases according to existing law but not on what the law ought to be. Law reform is the role of the governments and law reform agencies.

Most of the countries represented at this conference have established law reform agencies.

In my country, a law commission has been established. Its primary function is to review the laws of Vanuatu and made recommendations of reforms on:

- the removal of anachronisms and anomalies;
- the reflection in the law of the distinctive concepts of custom, the commons and civil law legal systems and the reconciliation where appropriate of differences in those concepts;
- the development of new approaches to and new concepts of the law in keeping with and responsive to the changing needs of Vanuatu society, of group within that society and of individual members of that society.

In Vanuatu, the Law Commission has never been constituted. The change of the laws is undertaken by the Government. In 2006, in my speech to officially open the legal year, I put emphasis on the fact that it is fundamentally important that the citizens of Vanuatu fully contributed to the process of reviewing and modernising legislations. If they are not, then alternative approach reviewing and modernising legislation must be adopted. I indicated that guiding principles are required and the guidance of the Law Commission provides a starting point.

Vanuatu needs assistance in the process of constituting its law commission. However, the process must be driven, owned and guided by the citizens of Vanuatu. This is to ensure that there is a responsible and a sustainable legal and judicial capacity building in this country.

During your discussions and deliberations, it is important that you are aware of the inconsistencies between Pacific custom and human rights. I urge you to reflect on the positive role that custom can play and the importance of taking

account of culture in ways that do not compromise international human rights standards.

There are different areas I could not mention all of them here because of the constraints of time.

Before I depart, let me express what I understand to be the achievements, goals and aspirations of the people of the Pacific and beyond:-

“The constitutions of the countries represented envision a just dynamic social order that will ensure the prosperity and independence of the respective nations and free their people from poverty through policies that provide adequate services, promote full employment, a rising standard of living, and an improved quality of life and the last but not the least is protection of the fundamental human rights of their people living in an open society. Achieving such an open society requires laws that protect the rights of individuals to express their views freely and to come together freely to organise their legitimate and collective interests and aspirations through peaceful and lawful means. This protection shall also cover the right of the people and their organisations to effective and reasonable participation at all levels of social, political and economic decision-making. The freedom of expression, association, and peaceful assembly are the foundation of an open society.” (Extract from my Introductory Address at the Pacific Civil Society Law Conference, September 2007, Port-Vila, Vanuatu).

In parting, I would like to congratulate the conference organisers for this important and historic conference. I would also like to remind you that your discussions and considerations will play a crucial role in the way the leaders in government and the movers of the economy deal with the future of the people of the Pacific and the future of their children.

And for us all, let us accept the challenge.

Thank you and may God continue to give you the fortitude to carry the people's torch of hope.

Thank you for your attention.

Vincent Lunabek
Chief Justice
Vanuatu