

Vanuatu

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The year 1995 did not see any amendments to the Constitution of Vanuatu, originally brought into force at the time of independence on 30 July 1980, but the year did produce some items of constitutional interest.

Head of State

The Constitution of Vanuatu provides for the Head of State, termed the President, to play a basically non-political role, similar to that of the Queen in England, the general function of the President being stated to be to "symbolise the unity of the nation". In May 1995 Vanuatu mourned the passing of a former Head of State, Frederick Kalomuana Timakata. Frederick Timakata was born into a chiefly family on the island of Emae in the Shepherds Group in 1937 and, like many leaders of Vanuatu independence, began his working life as a church minister. After some years as a Presbyterian pastor, Frederick Timakata became involved in pre-independence politics as a leading member of the Vanuaaku Party, and became Deputy Prime Minister in the first government after independence, under the Prime Ministership of Father Walter Lini. He subsequently held the position of Speaker of Parliament, and from 1989 to 1994 he held the post of President. During this period his health deteriorated and he died in 1995.

The current Head of State, President Jean-Marie Leye Lenelcau, was the subject of some controversy in 1994 when at his request some 21 prisoners and the captain of a seized Taiwanese fishing boat were released from custody. One of the specific powers conferred upon the President by the Constitution of Vanuatu is the power to exercise the prerogative of mercy and to "pardon, commute or reduce a sentence imposed on a person convicted of an offence". Although the Constitution provides that Parliament may provide for a committee to advise the President in the exercise of his function, in fact such committee has been established.

However it has been the practice of Presidents over a number of years to mark the anniversary of independence on 30 July by a release of prisoners, usually after consultation with a group of officials from the Police and the

Attorney-Generals office. The exercise of this prerogative of mercy in 1994 gave rise to some public outcry and expressions of concern from government, and eventually the Council of Ministers agreed that proceedings should be brought to test the validity of the President's actions: *Attorney-General of Vanuatu v President of Vanuatu* Civil 124/1994 (unrep). A former Chief Justice of Australia Sir Harry Gibbs, was in April 1995 appointed to hear the case to ensure the utmost independence. He ruled that the letter sent by the President requesting that the necessary steps be taken to release the prisoners was not an exercise of the power of pardon, which could only be exercised by formal instruments published in the Gazette. Accordingly it should not have been treated by the police as an authorisation to release the prisoners, as in fact they had done. A declaration was made "that the letter of 29th of July 1994 signed by the President was not a pardon within article 38 of the Constitution."

Other interesting issues raised in the case were whether the President could be sued in the courts of Vanuatu or whether he had some immunity as Head of State from court process, and also whether the Attorney-General of Vanuatu could bring proceedings against the President of Vanuatu. As regards the first, the Supreme Court held that the President has no immunity from court proceedings, and as regards the second, the Court held that the Attorney-General could bring civil proceedings against the President.

The Constitution of Vanuatu confers a specific power on the President to refer any bill passed by Parliament to the Supreme Court for its opinion, if when it is submitted to him for his assent, he considers that it is unconstitutional. In 1993 the President had submitted several bills for the opinion of the Supreme Court. In 1995 he stated that he would submit for the opinion of the Court the Registration of Religious Bodies Bill, as to whether it was unconstitutional in that it impeded the right to freedom of religion recognised and endorsed by the Constitution - although the President decided against this referral and signed the bill into law.

General Elections

On 30 November 1995 general elections were held in Vanuatu to select the members of the 50 seat Parliament for the next five years. The three main parties contesting the elections were: the major partner in the previous coalition government, i.e., the Union of Moderate Parties (LIMP), headed by Mr Serge Vohor, the opposition Unity Frant (UF) headed by Mr Donald Kalpokas, the opposition National United Party (NUP) headed by Father

Walter Lini, and the opposition Melanesian Progressive Party (MPP) headed by Mr Barak Sope. In addition, there were several minor parties including the minor partner in the previous coalition government, i.e., the Peoples' Democratic Party, headed by Mr Sethy Reganvanu, the Independent Front, consisting of some members of UMP who had not received official party endorsement as UMP candidates, Vanuatu Labour Party, Vanuatu Women in Politics, Nagriamel Party, and Fren Melanesia Party, as well as some independent candidates. The results of the polling showed that most seats were obtained by Unity Front (20), followed by UMP (17), NUP (9), Fren Melanesia (1), Nagriamel (1), and independents (2) .

Clearly no one party had an overall majority and a coalition would be necessary. Early in December 1995 an agreement was arrived at between UMP and UF, but soon after this, some members of UMP began negotiations with NUP, and when Parliament met on 18 December 1995 a coalition between UMP and NUP was confirmed, and Serge Vohor was elected as Prime Minister, Father Walter Lini as Deputy Prime Minister, and Maxime Carlot Korman, the former coalition PM and a powerful figure in the UMP, as Speaker.

It was clear that there were a number of divisions in the UMP party, and these had manifested themselves before the elections when a serious dispute arose as to which candidates were endorsed by the party. One list of candidates had been submitted to the Electoral Office by the Prime Minister Maxime Carlot Korman, but a different list was submitted by the executive committee of the party headed by Serge Vohor. The dispute was referred to the Supreme Court for resolution and the Court held in favour of neither of the contestants' lists. Instead it held that according to the Constitution of the UMP it was the Congress of the party which determined who were the official party candidates, and so the candidates approved by the Party Congress at an extraordinary meeting held in September 1995 were held by the Court to be the official party candidates.

Provincial Affairs

In 1994 Parliament enacted the *Decentralisation Act* which abolished the existing eleven local government districts and councils which corresponded with the eleven main islands in the archipelago, and replaced them with six provincial districts and councils, which were based upon groupings of the islands. This change was designed to make the organs of local government more powerful and more effective.

Late in 1994 elections for the new provincial councils were held and the three main political parties in the country, the Union of Moderate Parties, the National United Party and the Unity Front, acquired control of two each of the councils in 1995. In 1995 some administrative and financial difficulties emerged with regard to the council of the second largest town, Lugainville. The Minister of Local Government called for a report, and in September 1995 exercised his statutory power to suspend the Lugainville Municipal Council for six months, and an administrator was appointed for the town.

Ombudsman

The Constitution of Vanuatu has since 1980 provided for the appointment of an Ombudsman but it was not until July 1994 that the first appointment was made and Mrs Marie-Noelle Ferrieux-Patterson was appointed to the post.

The responsibilities of the Ombudsman of Vanuatu comprise not only investigating the actions of the "public service, public authorities and ministerial departments", subject to some exceptions, but also investigating complaints from citizens who feel they are not receiving proper services of the public officials.

In September 1995 Ms Ferrieux-Patterson submitted her first Special Report on Multilingualism as well as her Annual Report. Later in the year, the Ombudsman submitted a highly publicised report relating to the establishment and operation of a notorious bottle store which was owned by the Minister of Finance. In this report, the Ombudsman was highly critical of the actions of the Minister, who responded by issuing court proceedings claiming that he had not been allowed a reasonable time to respond to the allegations in the draft report, a claim subsequently upheld by the Supreme Court.

During the year the Ombudsman was assisted by advice provided from the office of the Ombudsmen Commission of Papua New Guinea, and she began also preparing a leadership code for enactment by Parliament.

Courts

A number of cases of constitutional interest came before the courts in Vanuatu during 1995. Two such cases have already been referred to above - one relating to the President's power of pardon and the other relating to the selection of official candidates of the UMP political party. One other case of constitutional interest was a decision by the Supreme Court on the impact of

the fundamental rights and freedoms guaranteed by the Constitution upon customary law. In *John Noel v Obed Toto* Civil Case 18/1994, Santo, the Supreme Court (Kent J) held that income derived from customary land was to be divided equally between male and female family members, notwithstanding that under custom females would have lesser rights than males. Kent J also expressed the opinion that although the Constitution explicitly states that rules of custom shall determine rights to ownership of land, this was to be read subject to the fundamental right to non-discrimination on grounds of sex provided for in s 5 (1) of the Constitution.

Another court case which attracted much media and public attention in 1995 was the criminal prosecution arising out of the murder of a well-known Italian builder, Franco Picchi. For several months after the discovery of his battered body in his truck in late 1994, no suspects could be found, and his grieving widow and son left to return by yacht to Italy. However, the police uncovered evidence linking the widow with the killing, and in 1995 she was extradited from Singapore, where she was located in her friend's yacht. The trial was a very lengthy one lasting some eight weeks, and resulted in the widow's conviction for murder and sentence to life imprisonment, with lesser sentences being administered to the two ni-Vanuatu men whom she had hired to kill her husband, and to the ni-Vanuatu housemaid who had assisted in removing the traces of the murder.

Members of the judiciary were also much in the news in 1995. In the early part of the year, two Australian lawyers, Robert Kent QC and Rowan Downing, who had been recruited as judges of the Supreme Court under Australian aid, departed abruptly and in some controversy, one of them, Robert Kent, submitting to Government a lengthy report, portions of which he discussed in the media alleging lack of independence and integrity on the part of the Chief Justice, Charles Vaudin d'Imecourt. This led to calls by the leaders of the opposition National United Party (Father Walter Lini) and Vanuaaku Party (Mr Donald Kalpokas) for the Chief Justice to resign or be terminated. These statements were repeated in the course of the run-up to the general election and it was stated that if these parties were successful the contract of the Chief Justice would not be renewed when it expired in early 1996. In the event, however, despite the fact that NUP became a minor partner in the coalition government formed in December 1995, the Chief Justice was not removed, and indeed in February 1996, Father Walter Lini, as Deputy Prime Minister and Minister of Justice in the coalition government,

announced that the Chief Justice's contract had been renewed for another two years.

This year 1995 thus saw a number of developments of constitutional interest, some of which continued into the following year and brought further changes of constitutional significance which will be discussed in next year's Yearbook.