

# Mistake Of Law?

The Vanuatu Seditious Trial, Port Vila  
20 February - 7 March 1989

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Report of I.C.J. Australian Section Trial Observation

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Published by International Commission of Jurists

Australian Section

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ACKNOWLEDGEMENT

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## INTRODUCTION

The International Commission of Jurists, Australian Section, appointed barrister Stuart Littlemore, a member of the Section's Executive Council, to observe and report on the Vanuatu sedition trial which began on 20 February 1989.

Observation of the trial followed the protocol issued by the I.C.J. Geneva as "Guidelines for ICJ Observers to trials".

The Observer's Report on the Vanuatu trial was presented to the Australian Section's Executive Council meeting on 11 March 1989, and adopted by the Council on 12 March 1989.

David Bitel

Secretary General

International Commission of Jurists, Australian Section.

Copies of this publication can be obtained from the Honorary Treasurer, Australian Section, International Commission of Jurists, GPO Box 173 Sydney NSW 2001 Australia, at a cost of \$10.00 (Australian).

1. BACKGROUND TO THE TRIAL

The Republic of Vanuatu (population 140,000) was the last condominium in the world. The French and British colonial powers granted independence to Vanuatu in July 1980.

Father Walter Lini, an Anglican priest and leader of the Vanu'aku Pati, has been the Republic's Prime Minister since Independence. He was re-elected to that position by the parliament after the general elections of 1983 and 1987.

The founders of the Vanu'aku Pati included Walter Lini, Barak Sope and Ati George Sokomanu.

In May 1988 a demonstration in Port Vila, the capital, turned violent. One man was killed and property damage of some A\$2M was done. The demonstration was ostensibly concerned with land rights, and Barak Sope is said to have had a close involvement with some of those protesting.

The May 16 riot is generally seen as the beginning of a major conflict between Sope (who was then a Minister in the Lini government) and the Prime Minister.

Sope has, since then, led a faction of disaffected Vanu'aku Pati members, and has twice unsuccessfully

challenged the party's leadership.

The faction's parliamentary rebellion led to the expulsion of 23 M.P.'s - half the Parliament - and a series of constitutional challenges in the Supreme Court which have not resolved the conflict.

In October 1988, the Prime Minister announced that by-elections to fill the parliamentary vacancies would be held on 12 December.

Mr. Sokomanu, who had, upon Independence, been appointed President by Father Lini, asserted publicly that a general election was necessary in the interests of national unity. His views were rejected by the Prime Minister, and the by-elections were held.

Vanuatu's Third Parliament was scheduled to begin its second session in Vila on Friday 16 December 1988. As usual, the President was to open the session.

President Sokomanu, whose speech was broadcast live on Radio Vanuatu, began by speaking of the problems facing the country. He then made three declarations:

- that he had decided to dissolve parliament forthwith;
- that he had decided to call a general election in February 1989; and
- that he was going to form an interim government

until the results of the new election were known.

President Sokomanu did not remain at Parliament to take tea with the M.P.'s and diplomatic corps.

Prime Minister Lini spoke when parliament re-assembled, repudiating the purported dissolution, and ordinary business on the budget session was conducted that afternoon.

On 18 December 1988 (a Sunday) President Sokomanu, in the presence of his bodyguard, an Australian television crew, a Presbyterian pastor and his private secretary, purported to swear in as the interim government of the Republic of Vanuatu Barak Sope (as Prime Minister), Maxim Carlot (as Deputy), Dr. Frank Spooner, Willy Jimmy and John Naupa.

After the swearing in (at which the 'interim government' merely pledged allegiance to the Republic and swore faithfully to perform the duties imposed on them) the President, with some help from his private secretary, John Kalotiti, prepared a 'circular' for publication to the Vanuatu Police Force and the Vanuatu Mobile Force (the paramilitary VMF).

Mr. Kalotiti was arrested while attempting to distribute

the circular at the Vila VMF Barracks, at about 4.45 p.m. on Sunday. Mr. Kalotiti, a public servant for 27 years, is a very big man. It took six troopers fifteen minutes to arrest him.

The circular, the ostensible purpose of which was to ensure the loyalty of police and troops to the Interim Government, was an important exhibit in the trials, and is an annexure to this report.

The seven accused men were arrested on Monday 19 December and taken into custody (President Sokomanu was initially under house arrest, but later joined the others in Vila Gaol). They have been refused bail at all times since.

The accused were committed for trial on a number of counts relating to sedition, conspiracy, incitement to mutiny and taking seditious oaths. The preliminary inquiry was completed in January 1989.

At no time has any Ni-Vanuatu (i.e. Vanuatu national) lawyer been available to defend any of the accused. There are very few such people; and most are employed in the public service. The balance could not accept the brief because of personal embarrassment.

The New Zealand lawyer who had represented them in their constitutional challenges was deported on 14 December.



The use of the power to deport by South Pacific States is by no means uncommon.

A Papua New Guinea lawyer was asked to represent one of the accused, but - when the trial started - his application for admission had not been processed.

Two days before the trial began, a team of French advocates from New Caledonia arrived in Vila to conduct the defence of all seven accused.

The accuseds' application (on 13 February) for an adjournment - on the grounds that their Counsel had insufficient time to prepare - was rejected by the Supreme Court.

The hearing duly began shortly after 10.00 a.m. on Monday 20 February 1988.

## 2. THE ACCUSED

Ati George Sokomanu

Home: Mele

President of the Republic from Independence to 12 January 1989.

Co-founder of the Vanu'aku Pati in 1972, former M.P. and Minister.

Barak Sope

Home: Ifira

Co-founder of the Vanu'aku Pati, M.P. and  
Minister until expulsion from Parliament.

Maxim Carlot

Home: Erakor Village, Efate

Former Opposition Leader (until expulsion),  
Secretary-General of Union of Moderate Parties.  
Parliament's first Speaker, and former Minister  
for Home Affairs.

John Naupa

Home: Erromango

President of the National Democratic Party,  
former Minister for Transport, Civil Aviation  
and Public Works;  
Treasurer of the Presbyterian Church (2/3 of  
Ni-Vanuatu are said to be Presbyterian).

Frank Spooner

Home: Ambae Island

Medical Practitioner, Former National Democratic  
Party M.P.

Willy Jimmy

Home: Tongoa Island

Treasurer of Union of Moderate Parties and M.P.

(until expulsion);

twice elected to represent Port Vila constituency. Businessman in coastal shipping and trade.

John Kalotiti

Home: Pango

Public Servant for 27 years;

President's Private Secretary since 1986.

### 3. THE TRIBUNAL

The trial was heard in the Supreme Court of Vanuatu in the Vila courthouse.

Mr. Justice Ward of the Supreme Court of the Solomon Islands was sworn in as a Judge of the Vanuatu Court at 8.00 a.m. on 20 February. This was not his first such Commission - he had heard the constitutional cases (at first instance) referred to above.

Ward J. is an Englishman who was Chief Magistrate in Fiji for many years.

Pursuant to the Vanuatu Criminal Procedure Code, he was joined on the bench by two assessors. The assessors were appointed from a small panel of laymen. It was suggested to the writer that many of the people on the panel did not wish to serve on this trial, given its political

sensitivity, and, indeed, the defence objected to one of the original assessors (he was the brother of the Speaker of the Vanuatu parliament) and he was replaced.

In January, the Chief Justice (Mr. Justice Cooke) disqualified himself from presiding at the trial, telling the accused in open Court that it was because "you are all my friends".

The role of the assessors, under local law, is to participate in the fact-finding process, but they do not return a verdict, and the judge may enter a verdict with which both assessors disagree.

No transcript or official sound recording is made of the evidence, and the judge keeps his own note.

In this particular trial, the judge had been provided beforehand with copies of all exhibits, statements made by the accused and records of their interrogation by police, police statements and the proofs of evidence of all prosecution lay witnesses. He had those documents (where appropriate) in their original form and English translations. When documents were tendered, they were admitted and given the numbers already allocated in the judge's file.

4. THE ADVOCATES

The prosecution was conducted by Mr. J. Baxter-Wright, an English lawyer in the service of the Government of Vanuatu.

The defence team, led by M. Jean Louzier, were French avocats from New Caledonia (his juniors were M. Gustave Tehio and M. Christian Boisserie). They were instructed by Miss Susan Bothmann, an Australian solicitor resident in Port Vila. Miss Bothmann worked with the Fitzroy Legal Service in Melbourne and the Public Interest Advocacy Centre in Sydney (both Legal Aid organisations) before coming to Vanuatu six years ago.

5. THE CHARGES

The information preferred against the accused is Annexure A to this Report. Minor and insignificant amendments were made to the document during the hearing.

Count 4 (being present at the administering of an unlawful oath) was stated by the prosecutor to be an alternative to Count 3 (administering an unlawful oath).

The defence argued as a preliminary point that the 1981 Penal Code impliedly repealed the (pre-Independence) 1974 Public Order Act where the earlier legislation covered the same ground as the code (notably in counts 5 and 6).

The argument was rejected by the judge, who ruled that - as the Code contained certain express repeals - no repeal could be implied.

6. THE LAW

The relevant parts of the Vanuatu Constitution, Penal Code, Criminal Procedure Code and Public Order Act are Annexure B to this Report.

7. THE PROSECUTION CASE

The prosecutor opened this case to the Court:

President Sokomanu's purported dissolution of parliament, his decision to call a general election, and his purported appointment of an interim government were all unlawful, being beyond his constitutional power (Article 26(3) only granting a discretion to terminate parliament on the advice of the Council of Ministers).

Mr. Sope had, on the afternoon after the President's speech, telephoned the office of the Clerk of the Parliament, asking for a message to be relayed to the Speaker (who was then presiding in the Chamber) to the effect that "Parliament must stop. The President has dissolved Parliament. The village people are angry, and if Parliament doesn't stop they will come".

The President and Mr. Sope had phoned Radio Vanuatu in an attempt to obtain air time for the President to make

a further address to the nation. They were refused, but presented themselves at Radio Vanuatu later, still seeking air time.

On the following Sunday (18.12.88) an unlawful swearing-in of the 'Interim Government' had taken place - with all seven of the accused present, in the morning.

The five politicians had each taken an unlawful oath, signed it in written form, and had been given instruments of appointment as Ministers (a typical written oath is annexure CI and an instrument of appointment is Annexure C2).

In the afternoon, John Kalotiti had attempted to distribute to the police headquarters staff and the paramilitary barracks a Presidential Circular (Annexure D to this Report).

He was placed under arrest at the Barracks.

All accused were arrested within the next few days. All except Barak Sope were interrogated while in custody - twice.

Search warrants were executed, and produced the 'Interim Government' documents, copies of the President's speech of 16 December, and documents concerned with the purchase of military weapons. The latter (which the

prosecution conceded bore 1985 dates only) were in a filing cabinet in Mr. Sope's offices.

The prosecutor said the relevance of the lastmentioned documents was that they were "consistent with the accuseds' intention to form and arm another force (than the paramilitary), if necessary".

In essence, the facts were not in dispute.

A number of matters had been reduced to statements of agreed facts, and those were duly put into evidence. Importantly, it was agreed that the President was not acting on the advice of the Council of Ministers on 16 December where he purported to dissolve Parliament.

The evidence called by the prosecutor substantiated his opening, although the Sope phone call was only proved after notable leading, to which no objection was taken. It was contended in cross-examination that the call was not made by the accused.

#### 8. THE DEFENCE CASE

There were four stages to the defence:

(1) Before the accused were arraigned.

M. Louzier made submissions on the following, which he described as preliminary issues:

- broadcasts on the government - controlled



Radio Vanuatu News had described the judge's function, even before the trial began, as "only deciding on the sentence to impose", and nominated the accused as "political prisoners";

- police and paramilitary forces had set up roadblocks on all approaches to the courthouse, turning away all but lawyers and the immediate families of the accused, and the trial was - therefore - not being held in an open court;
- the President had a constitutional right to dissolve parliament and - because all the charges were based on the illegality of his conduct - none of the charges could be sustained; and
- the President was, by reason of his Constitutional powers, immune from prosecution.

Ward J. took appropriate action on the first point (he had the Acting Director of Radio Vanuatu warned as to contempt of Court);

he expressed disapproval of the security arrangements in so far as they denied public access to the trial (and the roadblocks were removed the same afternoon); and

he rejected the third argument as going to a defence, not a preliminary issue, and depending on evidence.

The judge ruled that the last point (immunity from prosecution) was properly taken as a threshold matter. Having heard further argument (no authority was cited by either side) he rejected it, and the trial began.

(ii) During the prosecution evidence.

Each of the defence counsel conducted cross examinations.

No substantial issues were raised with the Clerk of the Parliament, but a foundation was laid for proving that none of the Republic's two prior dissolutions of Parliament was done on the advice of the Council of Ministers.

Issue was taken with the secretary who swore she took the phone call from Mr. Sope, asking that the speaker be told to stop Parliament.

The Acting Director of Radio Vanuatu agreed in cross examination that, if the President had wanted to broadcast on any "political subject"

he would refer it to the Prime Minister. He revealed that certain of his original statement had been changed (when he gave evidence) because police had shown him the statement of his superior - who was not called. This evidence went to the date of the phone calls seeking air time for the President, which was in issue.

A policeman who saw John Kalotiti distributing the Presidential Circular at the Vila Police station agreed that he had not seen Kalotiti read it, and that Kalotiti had not referred to its contents.

Another policeman claimed to have heard Kalotiti say it was "a memo I and the President have prepared".

The acting commander of the Vanuatu Mobile Force, Andrew Simon, said Kalotiti had only distributed the circular to three men at the barracks gate.

The statements of the accused (there was none from Mr. Sope) were not objected to. All were either exculpatory or not probative of mens rea.

No attack was made by the Defence upon the tender of the armaments documents - although

their relevance was not apparent, given the fact that none was shown to be more recent than 1985. It seemed that the prosecution sought to exploit the highly prejudicial nature of the material, and was fortunate not to be called upon to justify its admission as probative of any of the offences.

(iii) At the close of the prosecution case.

Submissions were made of No Case to Answer; on the following grounds:

Count 1 (seditious conspiracy to overthrow the Lini Government)

- there had been adduced no evidence of any agreement
- Sokomanu's two interrogations asserted that the dissolution was his idea alone; and he had had no prior meetings or discussions on the subject with any of the co-accused;
- the first meeting of the alleged conspirators was two days after the purported dissolution;
- all accused who made statements denied that they had met, or had any notice of their proposed role in the interim government, before the President summoned them to the State House on the

Sunday morning;

- any agreement between the accused was to establish an interim administration. So far as they were concerned, the Lini Government had already been dismantled.

Count 2 (incitement to mutiny)

- there had been adduced no evidence that any persons other than Sokomanu and Kalotiti had any knowledge of the Presidential Circular, so Sope, Carlot, Naupa, Spooner and Jimmy could not be found guilty. They had shared no common purpose with the President in writing or sending the circular;
- Kalotiti was entitled to claim the s.22 defence (employee acting under superior's direction) because the document was not "manifestly unlawful" as required by the proviso;
- Sokomanu, against whom the actus reus was indisputable, was not proved to have the requisite mens rea: plainly, he acted under a mistake of law (that Article 26(3) empowered him) - which negated criminal intent.

Count 3 (Administering an unlawful oath)

- the oath was lawful: it was simply an oath of allegiance to the Republic and Constitution; and faithfully to perform the

duties bestowed on him (which duties were not in evidence). More importantly, it is an essential element of the Public Order Act offence that the oath purports to bind (the taker) to engage in (sedition) or to obey unlawful orders. "Purports" means 'on the face', not 'as a consequence'... and this oath, on its face, has no purport other than allegiance - which is neither seditious nor illegal.

Count 4 (the alternative to Count 3)

- same argument as Count 3:  
the oath is not proved to other than lawful; it does not purport to bind the taker to any seditious enterprise (and the definitions of 'seditious enterprise' do not include faithful performance of duty).

Count 5 (taking an unlawful oath)

- the 'purport' argument applies.

Count 6 (making a seditious statement)

- 'purporting to bind to...(sedition)' is also an essential element of the offence, thus the same argument applies;
- irrespective of the above point, this offence is subsumed within Count 5 (which Ward J. had already ruled had not been impliedly repealed by the Penal Code's enactment).

(iv) The defence evidence:

Mr. Sokomanu gave evidence that, on his interpretation of Article 26 of the Constitution and on past practice, he believed (and still believes) the Head of State had discretionary power to dissolve Parliament on his own motion. He had not had the advice of the Council of Ministers when he dissolved Parliament in 1983 and 1987 (the only general elections since Independence). The 1988 dissolution was his own decision, and none of the co-accused asked him to do it. He thought it was his duty to do so, because of the state of the nation's economic, social and political development. Human rights abuses were also influential in his decision, he said. He gave evidence that the Presidential Circular was drafted, typed, photocopied and distributed only after all the Interim Ministers had gone their separate ways. He was cross examined at very great length (on occasions by the judge and prosecutor) but never challenged on his evidence that - at the time he purported to dissolve the parliament - he honestly believed he was empowered to do so. Most of the cross examination was an entirely inappropriate debate between the public prosecutor and the accused on the accused's present belief that he had a discretion to terminate the government. Without objection from the defence, or

interruption from the bench, the exchanges degenerated into a "what's your authority for that?" wrangle.

NOTE: The writer had to return to Sydney on 26 February 1989, so the following notes on the defence evidence are based on information provided by Miss Bothmann and the Australian Associated Press Journalist's full reports.

On Monday 27 February, Mr. Sokomanu concluded his evidence by asserting that he had acted in the role of a Chief under customary law, as recognized by the Constitution.

Mr. Sope's evidence, which followed, was that he had no knowledge of, and took no part in President Sokomanu's plan to dissolve the parliament and force a general election. He had no prior knowledge of the Interim Government plan, took no part in creation of the Presidential Circular, and indeed did not see it until after he was arrested. Mr. Sope denied that it was he who telephoned the office of the Clerk of the Parliament on 16 December.

On the subject of the armaments documents, Mr. Sope's evidence was that in 1985, Prime Minister



Lini authorised him to negotiate on the Government's behalf with Chinese and Taiwanese interests for the purchase of weapons and military equipment. The documents, he said, were State secrets, and had nothing to do with last year's political events.

Mr. Naupa gave evidence on 1 March. He said that he had been "tricked" into joining the Interim Government in the belief, fostered by the President, that it was a legal government of national unity. "I was assured (by the President) that what he was doing was under his jurisdiction and that the Vanu'aku Pati was going to join the Interim Government". Mr. Naupa adopted the word "tricked" when it was suggested to him by Ward J. He said he would not have joined the Interim Government if he had known it was illegal.

Dr. Spooner and Mr. Jimmy gave evidence to the same effect: that they had trusted the President in good faith as "the guardian of the Constitution".

John Kalotiti was the last witness (only the accused were called). He said he was acting under the President's orders when he photocopied and distributed the Presidential Circular. "It

was not my duty to question the President's orders", he said.

The Public Prosecutor did not call any evidence in reply, and - in particular - no attempt was made to rebut what Mr. Sope had said about the armaments documents.

Evidence was completed on 1 March, and counsel addressed.

9. THE DECISIONS

(a) On the "No Case to Answer" Submissions:

Ward J only called upon the prosecutor to respond to the submissions on Count 2 (and then only in respect of the politician defendants). He then rejected all the submissions, holding that there was "some evidence on which they could be convicted" and expressing the view that - because questions of the weight of evidence were involved - he wished to have the advice of his assessors before reaching a verdict.

(b) On all the evidence:

The assessors decided as follows:-

Count 1 (Conspiracy)

- Guilty: Sokomanu, Sope, Carlot and Jimmy.

Count 2 (Incitement to mutiny)

- Guilty: None.

Count 3 or 4 (administer unlawful oath)

- Guilty: Sokomanu.

Count 5 (take unlawful oath)

- Guilty: Sope, Carlot and Jimmy.

Count 6 (make seditious statement)

- Guilty: None.

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The verdict, delivered by Ward J on 8 March,  
was as follows:-

Count 1 (Conspiracy)

- Guilty: Sokomanu, Sope, Carlot and Jimmy.

Count 2 (incitement to mutiny)

- Guilty: Sokomanu, Sope and Carlot.

Count 3 (administer unlawful oath)

- Guilty: Sokomanu.

Count 5 (take unlawful oath)

- Guilty: Sope, Carlot and Jimmy.

Count 6 (make seditious statement)

- Guilty: Sope, Carlot and Jimmy.

(Spooner, Naupa and Kalotiti were  
acquitted on all counts.)

10. THE SENTENCES

ATI GEORGE SOKOMANU - total 6 years' imprisonment

1. Conspiracy - two years
2. Incitement - four years
3. Administer unlawful oath - two years (concurrent with first sentence)

BARAK SOPE - total five years' imprisonment

1. Conspiracy - two years
2. Incitement - three years
5. Take oath - two years (concurrent with first sentence)
6. Make statement - two years (concurrent with first sentence)

MAXIM CARLOT - total five years' imprisonment

1. Conspiracy - two years
2. Incitement - three years
5. Take oath - two years (concurrent with first sentence)
6. Make statement - two years (concurrent with first sentence)

WILLIE JIMMY - total two years' imprisonment

1. Conspiracy - two years
5. Take oath - two years (concurrent with first sentence)
6. Make statement - two years (concurrent with first sentence).

11. THE CONDUCT OF THE TRIAL

The trial began in circumstances that were unfavourable to the accused.

Facing charges carrying maximum sentences, in some cases, of life imprisonment, they were impeded in the preparation of their defences in the following way:

- (a) they were refused bail, solely because of the gravity of the charges, when it is assumed that appropriate bail conditions could have been imposed to satisfy any requirement of security;
- (b) the advocate of their choice (a Vanuatu resident) was deported;
- (c) another advocate was deterred by immigration restrictions from seeking entry to the country to defend them;
- (d) a third advocate was admitted to Vanuatu, but had not been permitted to practise by the time the trial started; and
- (e) their counsel were denied an adjournment which they told the Court was necessary for proper preparation of the case.

On the first day of hearing, the public were denied access to the courtroom or the precincts of the court. When the accused were escorted to the verandah outside the courtroom, Mr. Sokomanu loudly protested at the denial of public access to the court. Upon orders from their officers, troops standing within 10 metres of the



Ati George Sokomanu, MBE, former President of the Republic of Vanuatu. Sentenced on 7 March 1989 to six years' imprisonment.

On the following page:

above: the Supreme Court building, Port Vila, Vanuatu  
below, left to right: Dr Frank Spooner, acquitted on all counts;  
Willie Jimmy, sentenced to two years' imprisonment;  
John Kalotiti, acquitted on all counts; and  
Barak Sope, sentenced to five years' imprisonment.



accused loaded and cocked their automatic rifles, and the accused were taken into the court. Once the troops were withdrawn, no fewer than 100 people crammed into the courtroom on each day of hearing (some 50 standing or sitting on the floor) and stayed throughout every session, listening intently.

Throughout the evidence, the translation into French of English evidence and arguments (for the defence team) was not of a uniformly high standard.

The defence team was totally unfamiliar with the English procedures adopted by the Court. Objections were not taken to inadmissible evidence, no voir dire was conducted (least of all on the armaments documents), and questions were disallowed without any guidance as to simple rephrasing which would have avoided the problem. The disallowed questions had not been the subject of prosecution objection.

There can be no question that Ward J. conducted a patient and courteous trial.

Criticism can, however, be made of certain aspects of the procedure he adopted.

The Judge (the ultimate Tribunal of fact) had access to all the prosecution evidence, proofs and statements



since before the trial started. On occasions, he corrected a witness from his own copy of a document. It is not known if the same conditions applied to the original assessors.

The Judge accepted none of the arguments based on French law, and approved expressly of English precedents cited to him by the English prosecutor - although French jurisprudence is equally significant in terms of the Common Law of Vanuatu. At one stage, when M. Louzier expressed some frustration at the English law orientation of one of Ward J.'s remarks and commented that, "This is Vanuatu, not England", the Judge responded:

"We'll have to find out what the Vanuatu law is".

In presentation of its own case, the prosecution was unexceptionable, in that the conduct of the public prosecutor could not be objected to as anything other than a vigorous and resourceful attempt to place the strongest available case before the Court.

When he was testing the defence case, however, the prosecutor took advantage of the unfamiliarity of the accuseds' counsel with English-style procedure. He misrepresented evidence given in chief, asked questions which linked valid assumptions with matters not in evidence, and appeared to be trying to trap Mr. Sokomanu into adopting his misstatements. The Judge remained

silent throughout and joined in cross examination on three occasions, apparently to fill gaps that he thought the prosecutor had left open.

The writer was not present to observe whether this technique was persisted in after the first defence witness. At no time in the taking of four days' evidence was either assessor seen to take a note.

12. COMMENTS

(a) On the conduct of the trial.

Except for the matters highlighted earlier in this Report, the management of the trial was, generally, fair.

Such criticisms as may legitimately be made of the judge's management of the hearing probably did not, in the circumstances, prejudice the accused in any material way.

(b) On the judge's decisions.

The No Case to Answer decision:

It is respectfully contended that the judge was in error, and that the result was a miscarriage of justice, irrespective of the final outcome of the trial. At that stage, the accused lost a chance of acquittal. There was no evidence

capable of proving beyond reasonable doubt the conspiracy alleged (to overthrow the Lini government);

the 'purport' argument was correct, and well supported by English authority which was cited to the Court, but rejected without any statement of reasons;

both Kalotiti and Sokomanu had valid defences to the charge of incitement to mutiny (Kalotiti S.22, Sokomanu absence of mens rea): and there was no evidence at all that any other accused had any knowledge of the existence of the Presidential Circular before it was published.

#### The Verdicts

They defy logical analysis.

The prosecution evidence against the five politicians (Sope, Carlot, Naupa, Jimmy and Spooner) was identical - and identically inadequate.

If Naupa and Spooner were not guilty on any of the charges, it would be perverse to hold that Sope, Carlot and Jimmy could be guilty on the same charge - unless, in their own cases, the three lastnamed had provided evidence of their own guilt. I am informed that such did not happen (see earlier notes on their cases).

It would appear that the judge made a fundamental error in his approach. He stated in his judgment (on the conspiracy count, in particular) that he "did not believe" the evidence of the accused when they denied any meeting or agreement prior to the 16 December speech by the President. He has leapt from that disbelief - rejection of the defence evidence - to a positive finding, and beyond reasonable doubt, that there was a prior meeting and agreement. Such a leap is impermissible, and betrays a fundamental misconception of the state of the evidence. There was never any evidence from which a conspiracy could be inferred.

So far as the writer can judge, Ward J would explain his conviction/acquittal decisions on the basis that he believed Spooner's and Naupa's denials of criminal intention, but rejected those of the convicted men. This would apply to the conspiracy and incitement to mutiny charges.

It is also worth noting that the assessors were not persuaded beyond reasonable doubt of the guilt of any of the accused on either the incitement or 'make seditious statement' counts - and this on the directions of the judge. How Ward J could hold, as he must have done, that no reasonable tribunal of fact could entertain a doubt as to the guilt of the accused is impossible to explain.

One is, in attempting to explain the paradoxical verdicts (paradoxical because they were against the evidence, against the findings of the assessors, or incompatible internally) forced to acknowledge that the four convicted men are effectual and important political leaders, while the acquitted men are of lesser political significance.

Sokomanu's significance is self-evident;  
Sope's is as the challenger for the post  
of Primè Minister;  
and Carlot and Jimmy were the leaders of  
the main Opposition Party.

To expand a little:

1. the conspiracy charge

- there was insufficient evidence to find  
beyond reasonable doubt that Sope, Carlot or Jimmy  
had conspired with Sokomanu. The evidence  
tendered by the prosecutor was that the accused  
stated they had not conspired; and they said  
as much on oath.

Even had the tribunal of fact not accepted  
their evidence, there was still no contrary  
evidence, and nothing on which to convict  
them.

2. the incitement to mutiny

- the evidence was that only Sokomanu and  
Kalotiti even knew of the Presidential Circular  
at any relevant time.

- Kalotiti's defence was accepted, but did not  
relate to that of any other accused.

- while Sokomanu could properly have been  
convicted on the incitement charge - on the  
basis that his word was disbelieved, and the  
letter could justify an inference of mens rea -  
his evidence (that he made a mistake of law  
and therefore lacked the mental element for  
guilt) was not challenged by the prosecutor.

The prosecutor (and judge) had both attacked the former President on his assertion in the witness box that his belief in his entitlement to dissolve parliament pursuant to Article 26(3) was correct.

That debate (it could hardly be called evidence or cross examination) was entirely irrelevant to the issues in the trial. The inference is that it was not unimportant in the verdict.

- again, on this count Sope, Carlot and Jimmy's guilt or innocence was indistinguishable (on the evidence) from that of the acquitted men.

3. the unlawful oath charges

- it was, simply, a complete error to convict any of the accused in respect of the oaths they took. The oral oaths were not seditious within the meaning of the Act (they were oaths of allegiance); and the written statements were scarcely different.

The acquittal of half the oath-takers makes a legal nonsense of the verdict.

In total, it is respectfully suggested that - whatever convicted the four men, it certainly was not the evidence tendered against them.

### The Sentences

It could not be said that any of the individual sentences is excessive.

Criticism may be made of the judge's failure to order that all sentences be served concurrently. This was a case where the allegedly criminal conduct was all part of the same transaction, and all committed at a single time.

For that reason, ordering that the incitement sentences be served separately is inappropriate, and against principle.

It is probably notable that the sentences reflect the judge's view that to incite mutiny among the armed forces is a graver offence than the conspire to overthrow a lawfully-elected government.

Some of the remarks made upon sentence are equally illustrative of the trial judge's thought processes in reaching the guilty verdicts. He spoke of the conduct of the convicted men as "sordid", and some "to achieve positions of power". They were "driven by personal ambition" for positions to which the community had "refused to elect them". (On this last point alone, he was quite wrong.)

A matter that loomed large in the judge's remarks on sentence was the potential consequence of the accused's conduct, had they succeeded in winning the loyalty of the armed forces.

Ward J was of the view that Vanuatu had been brought to the brink of civil war.

These were, by their nature and vehemence of articulation, unlikely to be thoughts that had occurred to the judge in the short period between verdict and pronouncement of sentence.

It would be a matter of real concern if the tribunal of fact had taken into consideration, in assessing guilty, the entirely irrelevant and prejudicial consideration of potentially grave consequences of the accuseds' actions.



13. APPEAL

(a) the appeal available:

ordinary avenues of appeal are available to the four convicted men, and any appeal will be heard by two (or more) judges of the Supreme Court of Vanuatu, sitting as the Court of Appeal.

It is assumed that Chief Justice Cooke will not be one of them.

(b) Appeals are to be made by all four men.

(c) The defence assessment of the prospects of success on appeal:

the writer understands that the appeals are likely to be conducted by a Queens Counsel from Australia or New Zealand; and that the defence solicitor is confident that a correct application of the authorities will result in all convictions being quashed.

14. THE OBSERVATION OF THE TRIAL

The writer arrived in Port Vila on 19 February 1989, and spoke then to the defence attorney.

Before the hearing commenced, the Observer was introduced to the Public Prosecutor and all the accused.

For the first five days of the hearing (which embraced the entire prosecution case and Mr Sokomanu's evidence) the Observer occupied a prominent position in the court (in the row behind the accused) and maintained a full note of the evidence and arguments.

The Observer was introduced to the trial judge by the Registrar of the Court on the first afternoon of the hearing.

Stuart Littlemore  
Sydney 8 March 1989

INFORMATION  
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IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU  
(CENTRAL DISTRICT)

I N F O R M A T I O N  
(Sect. 152 PCP)

The ..... day of January 1989 the Court is informed by the Public Prosecutor that ATI GEORGE SOKOMANU, BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER, WILLIE JIMMY and JOHN KALOTITI are charged with the following offences :-

COUNT 1. Statement of offence

SEDITIONOUS CONSPIRACY - Contrary to sect. 64 Penal Code Act N°7 of 1981.

Particulars of offence

ATI GEORGE SOKOMANU, BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER, and WILLIE JIMMY sometime between 16th and 18th December 1988 in Vila, did enter into an agreement to carry into execution a seditious intention to overthrow the lawful government of Father Walter Lini.

COUNT 2. Statement of offence

INCITEMENT TO MUTINY - Contrary to sect. 60 Penal Code Act N°7 of 1981.

Particulars of offence

ATI GEORGE SOKOMANU, JOHN KALOTITI, BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER and WILLIE JIMMY did on 18th December 1988 at Vila for some traitorous or mutinous purpose, endeavour to seduce persons serving in the Police Force of Vanuatu and Vanuatu Mobile Force from their duty and allegiance to the Republic.

COUNT 3. Statement of offence

ADMINISTERING THE TAKING OF AN UNLAWFUL OATH - Contrary to sect. 5 (1) (a) Public Order Act N°11 of 1974.

Particulars of offence

ATI GEORGE SOKOMANU did sometime on 18th December 1988 in Vila, administer an oath to BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER and WILLIE

# INFORMATION.

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JIMMY to engage in a mutinous and seditious enterprise.

COUNT 4.

Statement of offence

BEING PRESENT AT THE ADMINISTERING OF AN UNLAWFUL OATH - Contrary to Section 5 (1) (a) Public Order N°11 of 1974.

Particulars of offence

ATI GEORGE SOKOMANU, sometime on 18th December 1988 at Vila was present at and consented to, the administering of an oath to BARAK SOPE, MAXIME CARLOT JOHN NAUPA, FRANK SPOONER and WILLIE JIMMY purporting to bind the said BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER and WILLIE JIMMY to engage in any mutinous or seditious enterprise.

COUNT 5.

Statement of offence

TAKING AN UNLAWFUL OATH - Contrary to Section 5 (1) (b) Public Order Act N°11 of 1974.

Particulars of offence

BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER and WILLIE JIMMY sometime on Sunday 18th December 1988 at Vila, you did take an oath to engage in a mutinous or seditious enterprise.

COUNT 6.


Statement of offence

MAKING A SEDITIOUS STATEMENT - Contrary to sect. 65 (1) Penal Code Act N°7 of 1981.

Particulars of offence

BARAK SOPE, MAXIME CARLOT, JOHN NAUPA, FRANK SPOONER and WILLIE JIMMY sometime on Sunday 18th December 1988 at Vila, you did make a written statement expressing a seditious intention, in that you did sign a written form of oath of allegiance purporting to bind you to an unlawful interim government.

Port Vila, this 12<sup>th</sup> day of January 1989

  
.....  
PUBLIC PROSECUTOR

# CONSTITUTION OF THE REPUBLIC OF THE NEW HEBRIDES

## CHAPTER 4 PARLIAMENT

**Privileges of  
members.**

25. (1) No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.
- (2) No member may, during a session of Parliament or of one of its Committees, be arrested or prosecuted for any offence, except with the authorisation of Parliament in exceptional circumstances.

**Life of Parliament.**

26. (1) Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election.
- (2) Parliament may at any time decide, by resolution supported by the votes of an absolute majority of the members at a special sitting when at least three-fourths of the members are present, to dissolve Parliament. At least one week's notice of such a motion shall be given to the Speaker before the debate and the vote on it.
- (3) The President of the Republic may, on the advice of the Council of Ministers, dissolve Parliament.
- (4) General elections shall be held not earlier than 30 days and not later than 60 days after any dissolution.
- (5) There shall be no dissolution of Parliament within 12 months of the general elections following a dissolution under paragraph (2) or (3).

## CHAPTER 6 HEAD OF STATE

<b>President of the Republic.</b>	31.	The head of the Republic shall be known as the President and shall symbolise the unity of the nation.
<b>Election of President.</b>	32.	The President of the Republic shall be elected, in accordance with Schedule 1, by secret ballot by an electoral college consisting of Parliament and the Presidents of the Regional Councils.
<b>Qualifications for election as President.</b>	33.	Any indigenous New Hebridean citizen qualified to be elected to Parliament shall be eligible for election as President of the Republic.
<b>Term of office and removal of President.</b>	34.	(1) The term of office of the President of the Republic shall be 5 years. (2) The President of the Republic may be removed from office, only for gross misconduct or incapacity, by the electoral college provided for in Article 32 on a motion introduced by at least one-third of the members of the college and passed by at least two-thirds of its members, when at least three-fourths of its members, including at least three-fourths of the Presidents of the Regional Councils, are present. (3) At least two weeks notice of the motion provided for in paragraph (2) shall be given to the Speaker. (4) If there is no quorum at the first sitting as provided in paragraph (2), the electoral college may meet and vote on the motion provided for in paragraph (2) a week later even if there is only a quorum of two-thirds of the members of the college.
<b>Speaker to act as President.</b>	35.	When there is a vacancy in the office of the President of the Republic or the President is overseas or incapacitated, the Speaker of Parliament shall perform the functions of the President. In the event of a vacancy in the office of the President of the Republic, elections to that office shall be held within 3 weeks of the vacancy arising.
<b>Presidential powers of pardon, commutation and reduction of sentences.</b>	36.	The President of the Republic may pardon, commute or reduce a sentence imposed on a person convicted of an offence. Parliament may provide for a committee to advise the President in the exercise of this function.

ANNEXURE B.2

Penal Code

22. No criminal responsibility shall attach to an act performed on the orders of a superior to whom obedience is lawfully due, unless such order was manifestly unlawful or the accused knew that the superior had no authority to issue such order.

...

33. Any accomplice or co-offender in the commission or attempted commission of an offence shall be equally responsible for any other offence committed or attempted as a foreseeable consequence of the complicity or agreement.

...

60. No person owing allegiance to the Republic shall... for any traitorous or mutinous purpose -

...

(b) incite any person (serving in the forces of the Republic or any member of the police force) to commit an act of mutiny or an act of treason.

Penalty: imprisonment for life.

...

63. (1) A seditious intention is an intention -

(a) to... excite disaffection against the Government of the Republic...

(b) to incite the public or any persons... to attempt to procure otherwise than by lawful means the alteration of any matter affecting the Constitution, laws, or government of the Republic;

...

(f) to show disrespect towards the Government ... in such manner or circumstances as causes or is likely to cause a breach of the peace;

but the act... is not seditious by reason only that it intends -

(a) to show that the Government has been misled or mistaken in any of its measures;

(b) to point out any errors or defects in the Government... with a view to the remedying of such errors or defects;

etc.

penal Code continues...

64. No person shall enter into any agreement between two or more persons to carry into execution any seditious intention.

65. (1) No person shall make or publish... any statement expressing any seditious intention.

Public Order Act

5. (1) Any person who -

(a) administers, or is present at and consents to the administering of, any oath... purporting to bind the person who takes it to act in any of the ways following, that is to say -

(i) to engage in a mutinous or seditious enterprise;

...

shall be guilty of an offence.

Criminal Procedure Code Act

164. (1) If, when the case for the prosecution has been concluded, the Judge rules as a matter of law that there is no evidence on which the accused person could be convicted, he shall thereupon pronounce a verdict of not guilty.



ER

*Office of the President*

*State House,  
Port Vila,  
Republic of Vanuatu*

INTERIM GOVERNMENT OF THE REPUBLIC OF VANUATU .

OATH OF ALLEGIANCE .

YOUR EXECELENCY ,

I , ... BARAK T. SOPE ... DO HEREBY SWEAR ,

THAT I WILL UPHOLD THE CONSTITUTION OF THE REPUBLIC OF VANUATU  
AND THE DUTIES YOU HAVE BESTOWED UPON ME AND THAT I WILL CARRY  
OUT THESE DUTIES WITHOUT PREJUDICE AND WITH IMPARTIALITY ,

SO HELP ME GOD .

.....  
BARAK TAME SOPE .

18 / 12 / 88



ANNEXURE C.2



EIA

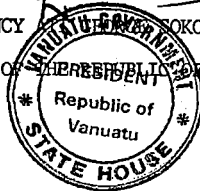
*Office of the President*

*State House,  
Port Vila,  
Republic of Vanuatu*

INSTRUMENT OF APPOINTMENT

I , ATI GEORGE SOKOMANU , DULY ELECTED PRESIDENT OF THE REPUBLIC OF VANUATU , DO HEREBY APPOINT MR. BARAK TAME SOPE AS PRIME MINISTER AND MINISTER RESPONSIBLE FOR FOREIGN AFFAIRS , JUSTICE AND IMMIGRATION ON THIS 18TH DAY OF DECEMBER , 1988 .

*Sokomanu*  
HIS EXCELLENCY ~~ATI GEORGE SOKOMANU~~ SOKOMANU , MBE  
PRESIDENT OF ~~THE REPUBLIC OF VANUATU~~ THE REPUBLIC OF VANUATU .



ANNEXURE D



OFFICE OF THE PRESIDENT  
STATE HOUSE  
PORT VILA  
REPUBLIC OF VANUATU

PRESIDENTIAL CIRCULAR .

18 / 12 / 88

To : All members of the Police Force ,  
All members of the Vanuatu Mobile Force .

I write to you in my capacity as President of the Republic of Vanuatu and Head of State and as the upholder of the Constitution and symbol for unity of our nation .

On Friday, 16th December, 1988 ,in accordance with article 26.(3) of the Constitution I dissolved Parliament . On Sunday 18th December , 1988 , I formed the Interim Government whose paramount objective is to take the country to a general election. Mr. Barak Sope is the Leader of the Interim Government with Mr. Maxime Carlot , Mr. John Naupa , Mr. Willie Jimmy , and Doctor Frank Spooner .

If the former Parliament Members wish to challenge my decision , they can only do so thru the Supreme Court in accordance with Article 51 of the Constitution. Now they are no longer members of Parliament and have no legal right to continue the sitting of Parliament nor remain in Government .

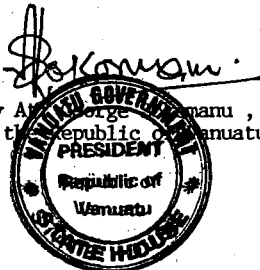
Your continued support and allegiance to the dissolved Lini administration is illegal and may result in your dismissal .

You have 24 hours in which to make your decision and if I do not receive any answer by then , I will be seeking military help from outside to dismantle and disarm the Police force and the Vanuatu Mobile Force .

If you decide to co-operate you will remain in your present capacity , otherwise another police and paramilitary force will be formed that will be fully armed if necessary .

With all sincerity , I ask you for your consideration and co-operation .

Thankyou .



His Excellency *George Manu* ,  
President of the Republic of Vanuatu .