Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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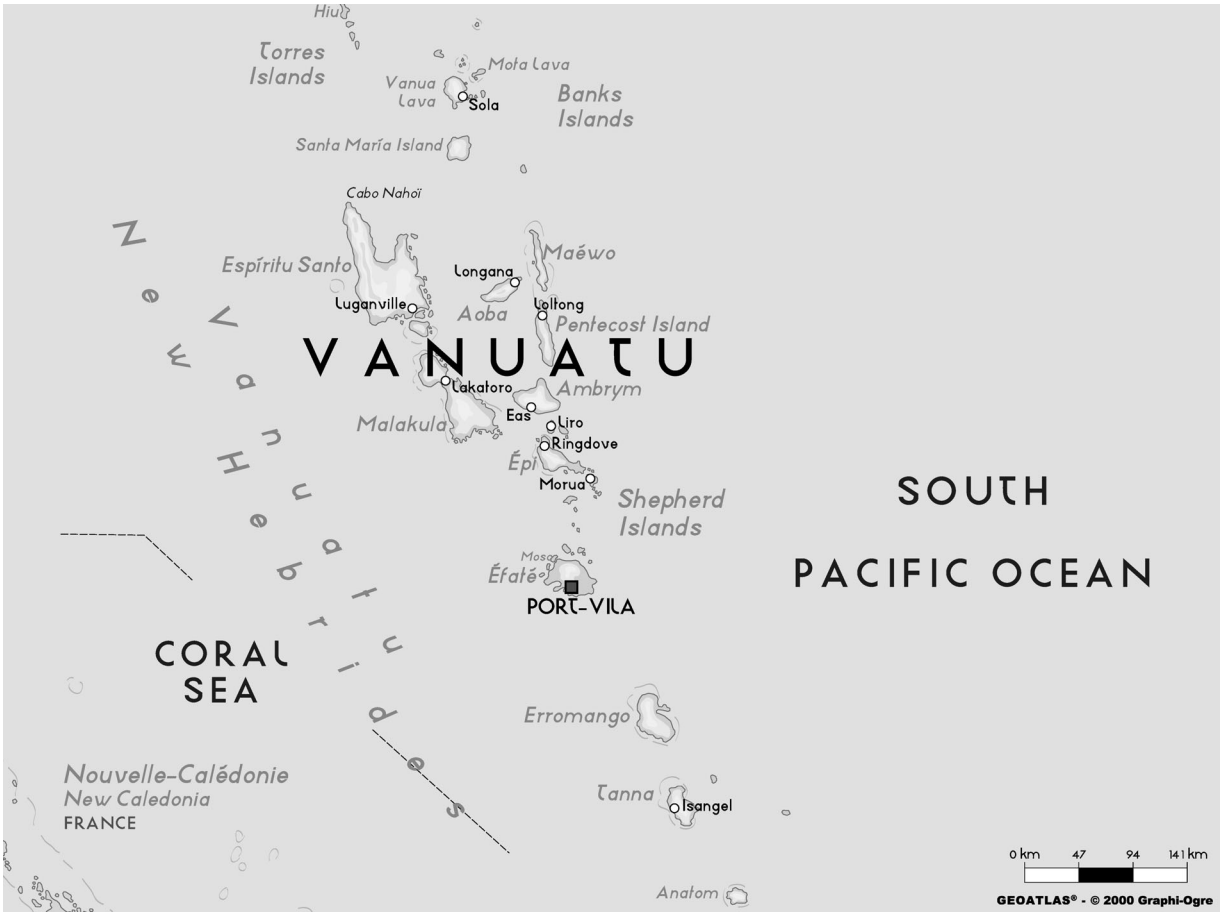
Labour Laws and Industrial Relations in Vanuatu: An Appraisal

Mohammed L Ahmadu

Introduction

Workers play a significant role in any economy whether developed or developing. In fact, without the productivity of workers being realised, no country can sustain any appreciable level of gross national product or gross domestic product. In short, workers are the bedrock of any economy and are the generators of national wealth. To that extent therefore, an understanding of their rights and what should be the standards of their working conditions are vital to industrial peace and good labour relations that a country should enjoy.

It is against this background that this brief paper examines the principal laws that govern workers' rights and working conditions in Vanuatu. In doing so, it starts by examining the geo-political profile of Vanuatu as a sovereign country. The paper then examines the principal labour laws operating in the country before analysing the practice of these laws. The paper also offers a snapshot of some labour events in historical context and concludes



Construction site in Port Vila (Credit: Jill Awa)

by discussing the way forward for workers and labour in Vanuatu.

As a caveat however, it may be mentioned that this paper only presents an outline of the basic issues on labour, workers' rights, and working conditions. It is not an exhaustive treatise on the subject. Furthermore, the words 'workers' and 'employees' are used interchangeably.

Geo-political profile

The official designation of the country is the Republic of Vanuatu. In terms of its territorial sovereignty, Vanuatu comprises 83 islands forming a Y-shaped archipelago. It lies in the South-West Pacific. It has a total area of approximately 12,190 square kilometres. It has an oceanic-tropical climate and on some of the rocky islands, the vegetation is thickly forested. The capital city is Port Vila with another major town, Luganville. The population of the country stands at about 169,000 (1995 estimate) and population density is 13.5 per square kilometre. The national language is Bislama. French and English are also official languages. The time is 11 GMT. Literacy level is about 70 percent.

Vanuatu operates a republican constitution based on the British parliamentary system of government. It has a unicameral legislature elected on the basis of universal adult suffrage since independence in 1980 from France and Britain. (The Commonwealth Yearbook, 1998, 402-405)

Being a constitutional democracy, the three tiers of government-executive, legislature, and judiciary maintain and enjoy relative independence in the discharge of their responsibilities. In particular, the President acts as a ceremonial Head of State. The Cabinet is headed by a Prime Minister and the parliament by the Speaker. The judiciary is headed by the Chief Justice and is served by Island Courts, Magistrates' Supreme Court, and the final appellate court is the Court of Appeal. With the exception of Island Courts, all other courts entertain both civil and criminal cases. The Supreme Court has unlimited civil and criminal jurisdiction in civil and criminal matters while the Court of Appeal hears appeals from the Supreme Court. The laws of Vanuatu are historically derived from English and French legal systems but the applicable laws in the courts have their origin in English law.

Extant labour laws

The primary laws affecting labour and employment in Vanuatu are as follows:

- Employment Act, Cap 160 Laws of Vanuatu
- Trade Union Act, Cap 161 Laws of Vanuatu
- Trade Disputes Act, Cap 162 Laws of Vanuatu
- Minimum Wage and Minimum Wages Board Act, Cap 182 Laws of Vanuatu

These laws have been amended on a number of occasions, taking into account the exigencies of the time. This paper incorporates these amendments in the discussions that follow without necessarily having to specifically list all the legal texts of the amendments.

Employment Act

This is the principal law governing matters affecting employment. It is divided into 13 parts, each consisting of

distinct but interrelated subject areas. For the purpose of this paper however, only the significant aspects of law as they affect working conditions and workers' rights will be discussed.

The Commissioner of Labour has the general superintendence of the law. The Commissioner is assisted by a Deputy Commissioner and other duly appointed Labour Officers in ensuring that the law is implemented as it should be both in its spirit and letter.

In particular, it is mandatory for employers of labour to ensure a safe and sanitary working environment. No compulsory or forced labour is allowed. Gender discrimination is prohibited in all categories and at all levels of employment. By way of example, section 8 (1) provides that where a woman is employed on like work with a man in the same employment, she shall be entitled to remuneration at the same rate as the man.

Workers who have fulfilled the terms of employment must accordingly be remunerated commensurately and as agreed with their employers. Deductions from workers' wages by employers shall only be made in accordance with law and the circumstances of the prevailing conditions of employment. The employer cannot engage in arbitrary deductions that fall foul of the law.

The law makes provision for permitted hours of work and for payment of overtime rates where this is applicable. An employee shall not be required to work in any undertaking for more than 44 hours or six days in any week or for more than eight hours in any day exclusive of the time allowed for meals and tea breaks. Except for workers in essential services, other workers cannot be compelled to work on public holidays unless they voluntarily undertake to do so.

Female workers are entitled to maternity leave subject to the condition that an authenticated medical certificate indicates that confinement is likely to be within six weeks. Such workers are not permitted to work within the period of six weeks preceding the confinement. This is meant to safeguard both the health and well-being of the expectant worker as well as the child.

The Employment Act mandates paid maternity leave and where such worker returns to work after confinement and is nursing a child, then, a compulsory half an hour nursing break, twice during the working period per day, must be granted to the worker to attend to the child's needs.

Allied to the issue of maternity leave is the requirement of the law that no employer can terminate a female worker who has been absent from work for a period extending up to three weeks, provided that a duly authenticated medical certificate is produced showing that the absence was due to pregnancy or confinement, whether post- or ante-natal.

The Employment Act prohibits the employment of persons below the age of 12 years except in family agricultural businesses. Even then, the nature of work prescribed by law must be light and should not cause harm to the young person. The rules may apply to persons below the age of 14. However, persons under the age of 15 are not to be employed in any industrial undertaking, except with the express permission of the Commissioner for Labour. No such person is to be employed on any ship. As a corollary, no person under the age of 18 years is to be employed in industrial work at night. This restriction may be waived with the written consent of the Labour Officer.

The Law makes it mandatory for employers to provide safe working conditions for workers in their establishments, is dealt with below. It casts a duty on the employer to report accidents or illness arising from work to the labour office as soon as possible. The employer must also provide free first aid treatment on the premises and shall, as prescribed by the Minister for Labour, provide medical care to the employees and where necessary their families. A major weakness of this part of the law is that the duty of the employer to ensure safe working conditions is only remedial in nature and is not prescriptive. For instance, an illustration of this gap in the law is offered by section 45 (1) of the Employment Act. It provides that every employer shall take appropriate steps as soon as possible to remedy any working conditions that may be dangerous to the health or welfare of the employees. This provision has not laid down any standards of working conditions that the employer must in the first place maintain. The absence of an occupational safety law in Vanuatu at present makes its necessary for this aspect of the law to be improved. The case that attracted some attention, at least as raised in court, is Laurent Tsiabon v Deou Motors Limited (Supreme Court Vanuatu, Civil case No. 111 of 2000) where the plaintiff alleged that the illnesses he had suffered in 11 years of employment arose because of the nature of his job. He

was an assistant manager with the defendant's company, which is a motor dealer. Apart from the employee's usual office duties, he had on a number of occasions been asked by the employer to also help in towing broken down vehicles. The Court found no evidence that this was in any way a contributory factor to his illnesses.

The Employment Act also regulates the termination of contract for workers. Specified notice has to be given by the employer to the employee, depending on the terms of employment and the nature of the contract-whether oral, written, or by conduct. The law empowers the employer to dismiss an employee in instances of alleged misconduct. There are exceptions to when this power may be exercised by the employer. However, the power to dismiss an employee under such circumstances may be open to abuse by the employer. To fully protect workers, additional procedural safeguards should be included in any reform of the Employment Act by the Parliament. For example, section 50 (1) provides to the effect that in the case of serious misconduct by an employee, it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice. It is surprising that the law has not defined what amounts to 'serious misconduct'. The absence of any such definition grants authoritarian leeway to employers to dismiss workers on capricious or ill-motivated grounds.

Employers who fail to comply with the provisions of the Employment Act shall be subject to criminal penalties ranging from fine to imprisonment or both should the circumstances so dictate.

There are a few judicial decisions that exemplify the operations of section 50 of the Employment Act. In Jean Paul Virelala v Air Vanuatu Limited (Supreme Court Vanuatu, civil case No. 29 1997) the court held that the defendant cannot terminate the plaintiff's employment in disregard of the terms of contract of employment. The plaintiff was appointed as managing director in 1993 for a five-year period. The court ruled that the defendant is in breach of his obligations and the terms of contract in failing to provide any proper reasons for the purported suspension from duties.

But in the case of Lydia Sepa & Alice Esika v Brain Metamele & Santo East School, (Supreme Court Vanuatu, civil case No. 12 1997) the court held that where the plaintiffs were guilty of financial impropriety, they could be dismissed by the employer for acts of misconduct.

The case of Anna Samson v Don Teileur (Senior Magistrate's Court No. 1 Port Vila) also establishes the principle that termination of employment without the statutory notice is invalid. The plaintiff was employed as a seamstress for six years by the defendant, from 1980-1986. Because of lack of notice, the court held that she was therefore entitled to her accumulated holidays.

Trade Union Act

This is another primary law affecting the rights of workers and their capacity to unionise and be protected by the law. Industrial democracy is a key to a healthy economy. Trade unions and the freedom of workers to associate for the advancement of their individual and collective labour rights is the hallmark of any genuine democratic state.

As a precursor to evaluating the Trade Union Act, it is pertinent to state from the outset that the Constitution of the Republic of Vanuatu firmly endorses the freedom to association as a right of every resident within its territory. The discussion on this law should therefore be seen against this background.

The Trade Union Act consists of seven parts, and the schedules. In general, it provides for registration of trade unions, the conditions for such registration, and the powers of the registrar of trade unions. The law also provides for grounds under which registration of trade unions may be cancelled and the effects of suspension of registration.

Trade unions are expected by law to abide by some general rules in relation to unfair industrial practices. There are also provisions dealing with internal matters of unions such as voting, membership, changes of name and membership, registered office and postal address, accounts, and application of funds. Other provisions of the law deal with amalgamation and dissolution of trade unions and the transfer of liabilities after dissolution.

Of particular import to labour and issues affecting workers' rights in this regard are following matters.

By section 50 of the Trade Union Act, workers who are members of a duly registered trade union in Vanuatu cannot affiliate to outside bodies without the consent of the Minister of Labour. The intent of the law is to protect

the integrity of labour unionism in the country and to also ensure that national security is not in any way jeopardised through foreign affiliations or membership. It is difficult to kick against the merit of this provision of the law. However, there are legal issues in the same context of this provision that should be re-examined. For instance, section 50 has not laid down any procedures by which the Minister of Labour is to determine the suitability or otherwise of any intended affiliations or memberships of foreign bodies. Furthermore, the section has not provided ways by which such powers of the Minister are to be challenged by aggrieved trade unions.

By section 19 trade unions duly registered, are granted immunity for actions committed in civil wrongs. This immunity is waived where the trade union engages in acts of negligence, nuisance, or breach of duty resulting in personal injury etc. This means that in exercising their rights to unionise as a constitutionally granted freedom, workers must abide by all public order laws. Similarly, trade unions are protected from any legal proceedings instituted against them to recover damages for breach of agreement. It must be noted that no such immunity is granted in similar circumstances to a trade union where it commits a crime or engages in criminal activity. What is clear also is that the immunity in section 19 is granted to the trade unions as registered entities and not to the workers as individuals or even in their capacities as officials of the trade union. For individual workers or officials of trade unions to be immune from tortuous liability, their acts must be in furtherance or contemplation of trade disputes.

The Trade Union Act does not prohibit trade unions from combining for the study and defence of their interests.

Trade Disputes Act

Industrial relations and peaceful coexistence between labour and management can satisfactorily be attained if the law sets out mechanisms for resolution of disputes between workers and their employers and vice versa. The aim of the Trade Disputes Act is provide a legal framework where disputes can be thrashed out to settlement. In this context, we should not always view the Trade Disputes Act as a confrontational forum for workers and their employers. The emphasis on the law is towards better industrial peace and harmony.

The Trade Disputes Act of Vanuatu consists of mainly six parts. It covers in broad terms, the procedures for settling individual disputes between employers and workers; conciliation and arbitration in trade disputes; trade disputes affecting essential services; strikes and other forms of industrial actions etc.

In case of non-trade disputes between an employer and workers, the role of the labour officer in facilitating settlement of the dispute is also highlighted by the law. Conciliation may lead to a formal memorandum.

In the case of trade disputes however, the Commissioner for Labour is to facilitate settlement. This may be through conciliation or arbitration as the case may be. When arbitration is deemed expedient, the Minister for Labour may set up the board of arbitration. An important point here in connection with workers' rights is provided by section 20 of the Trade Disputes Act. Communications in arbitrations and conciliation are privileged. This means that the evidence adduced by both parties is confidential and can only be disclosed under due process of law. This provides significant protection to trade unions and workers involved in the dispute in that such communications cannot later be unilaterally used against them by the employers. This also helps to minimise worker intimidation by overzealous employers who may have lost out in the trade dispute resolution processes.

What may need some attention in the Trade Disputes Act is section 34 dealing with the powers of the Minister to order the deferment or discontinuation of industrial action by trade unions or workers. The Minister may make an order directing that during the period for which the Order remains in force, no person or a member or a class of persons mentioned in the Order is permitted to participate in an industrial action or lock out etc. The section removes the immunity given to trade union or workers where the Minister makes an Order deferring or prohibiting an industrial action or lock out. This section is couched in very wide terms. There seem to be no checks embedded in the section to guard against politically motivated use of this power. The phrases- 'national security' and 'public disorder' etc. have been used by the section in an omnibus manner without guidelines or standards being provided in the law against which such ministerial powers may be weighed.

Minimum Wage and Minimum Wages Board Act

The quality of life and to an extent the productivity of workers is to be measured by the standard of remuneration received in the course of their employment. The wages of high-level employees are in most cases adequately protected by individual written contracts of employment. The problem often is in respect of medium, but most significantly in case of lower level workers who need statutory protection for their wages. This brings to the fore the necessity of prescribing a low wage benchmark to guard against exploitative and unscrupulous wage practices by employers. In a developing country like Vanuatu the need for such a law cannot be overemphasised. It is against this background the above law is discussed.

The Minimum Wage and Minimum Wages Board Act is made up of four parts. Some segments of the law deal with the standard minimum wage for workers and the Minister's power to increase the minimum wage; the Minimum Wages Board - its constitution and powers; the appointment of wage officers; and offences that may be committed pursuant to the law.

There is no doubt that the basic objective of the law is a noble one. If the powers given to the Minister, as well as to the wages board were to be prudently utilised, a substantial number of workers in Vanuatu would benefit from their exercise. However, a general observation on this law may reveal the following trend.

There is stiff opposition from employers of labour to accede to any form of increment in wages beyond the existing minimum benchmark. Their concerns may be valid but what has often been ignored is the multitude of workers in the informal sectors of the economy that are unrepresented by trade unions. The currently prescribed minimum wage is not generally enforced in rural employment. For workers in urban-based employment the average cost of living in Vanuatu, (which is relatively high even by global standards), has a significant impact on their take-home pay and purchasing power. This militates against the rights of workers at the bottom of the pay scale to enjoy commensurate wages for work done.

The practice of labour laws and conditions of employment

The combined effects of the foregoing laws help to create the working environment needed to facilitate good industrial relations in the country. In general, these laws have helped in guarding against blatant disregard of workers' rights by both the State authorities in case of public servants, and by employers in the private sector. One cannot but admit that the present state of workers' rights and conditions of employment can be improved if the following measures are considered.

There is the need for parliament to pass an occupational health and safety law to protect workers and enhance their rights to the award of compensation against work-related injury, disability, or death. At present only sections 4, 45, 46, and 47 of the Employment Act cover this area. These sections are inadequate to deal with all facets of occupational health and safety in industries, factories, and other hazardous work places. There is the need for a specific and comprehensive law to be passed in this area in Vanuatu.

The present compensatory allowances and procedures for work-related injuries, diseases, and disabilities are inadequate. In fact, at present, there is no direct law governing compensation to workers. The matter is left to individuals to pursue on their own, and sometimes with the help of the Labour Office. The absence of a definite statutory backing to work-related compensation greatly impairs the rights of workers to fair treatment for harm suffered during employment.

Gender discrimination in employment is dealt with by section 8 of the Employment Act. The text of the law in this area is good. But how effective can this be in a society that is sometimes influenced by tradition and culture? There is no monitoring mechanism or body to ensure that gender parity or equality is always complied with in practice. Maybe an 'equal employment commission' or similar regulatory agency may be needed in the future. The effects of gender on employment prospects need further and thorough sociological and statistical studies to determine the reality of the employment situation.

In view of the general level of education and literacy particularly of rural and informal sector workers, there may be the need for a law setting up an 'informal workers training institute' or something to that effect. This would assist in disseminating beneficial information on labour matters to the wider population of workers. It could also serve as a skills training centre outfit in appropriate technology, work ethics, and practices to rural workers.

The parliament should also consider setting up a special industrial tribunal whose sole task is adjudicating trade disputes awards, unfair dismissal, and claims for compensation etc. arising in the course of employment or otherwise between employers and workers. The tribunal could possess equivalent powers as the Supreme Court staffed by judges with special competence in industrial and labour matters. This would speed up the disposal of labour and industrial cases and ensure quicker and effective dispensation of justice to workers and employers alike.

Major labour events in historical context

The major event that significantly affected labour relations and industrial harmony was the demand for improvements in wages, housing, medical care, and better conditions of employment by the public servants dating back to the mid 1990's. (Kaloris, 2002)[1] This resulted in strike action by civil servants and the consequent dismissal of a number of civil servants from their posts. When normality was restored a number of the civil servants were re-employed. One cannot isolate any particular case study here because of the mass dismissals that were implemented by the then government. The reinstatements were also done in large numbers as well.

When the government recently also embarked on the public sector reorganisation (comprehensive reform programme) a number of civil servants were equally declared redundant. Surprisingly there was no mass workers' movement to demonstrate against the action, which was generally seen as donor-driven. The good thing about the redundancies was the generous compensation that went with it. That may have satisfied the yearnings of labour. Because of the large number of employees affected there are no specific case studies to mention here.

The dismissal of some workers of the state-owned television and radio corporation in 2001/2 by the board of the corporation, though insignificant, needs to be highlighted. The Union stepped in to vigorously canvass for their reinstatement with varying degrees of success. Here the union helped the workers get back their jobs collectively. There is also no known celebrated case.

The current state of industrial harmony and labour relations, at least, from the point of view of government is cordial. The union and the state enjoy good working relationship (Kaloris, 2002).[2] There has been no major labour upheaval in the country in the last five years, except for brief sporadic riots by workers who demanded refunds of their contributions from the Vanuatu National Provident Fund. The situation was diffused with mass provident contribution refunds by the Government.

Conclusion

The foregoing discussion on labour laws and conditions of employment in Vanuatu is to be seen in the context of Vanuatu as an emerging developing economy. There is still room for improvement in the areas of workers' rights, employment conditions, safety and occupational health, and in the general welfare of workers. Higher standards in terms of these rights can be attained by workers and by their union if they take a prudent and proactive stance on labour or industrial issues affecting the country as a whole. The Government can also compliment these efforts by putting in place appropriate laws that would guarantee workers' rights and enhance their productivity and participation in all facets of the economy. To this end, a number of concluding observations may be made.

It is true that a central labour union representing all classes of workers in the different occupations is usually considered as a strong mouthpiece and advocate of workers' rights. This is certainly the case with the position in Vanuatu. But what is now becoming clear is that a number of occupations with insignificant number of workers are not fully represented by the central union in their quests for greater rights in respect of their specific

occupations.[3] Maybe it is time for the different occupations to consider forming occupation-based trade unions but under a central umbrella. In this way both vertical and horizontal unionisation of workers would be achieved. This is something for the present union, its officials, and workers in general to consider as the way forward.

Vanuatu is at present not a member of ILO. Moves are being made by the Government to facilitate membership. One may say that non-membership deprives the country and its workers of essential benefits that flow from participation in the ILO. Workers may take this point up as a pressure group to the Government and the Parliament.

The central labour union that currently represents all workers in Vanuatu needs to institute educational labour programmes for workers as a nationwide undertaking. It has the primary responsibility of enlightening its workers on national, regional, and global labour trends and issues. Collective bargaining and co-determination i.e. the representation of workers on management boards and decision-making structures in organisations employing workers are key issues that workers need to be enlightened about.

To enhance the general welfare of workers in Vanuatu, the Government should by promulgating legislation, compel employers to set up a national social welfare scheme and specialised insurance schemes for workers in hazardous employment who may be prone to life-threatening work-related injuries, diseases, disabilities, or death. At the moment there are no such special schemes. The Vanuatu National Provident Fund is only a superannuation scheme. It is not and cannot be a satisfactory substitute to a comprehensive welfare scheme.

At present the Labour Department is the regulatory authority that is charged with the responsibility of ensuring that employers comply with the requisite laws affecting employment conditions and workers' rights. The practice is slightly different. It is becoming apparent that more labour officers and safety inspectors need to be recruited. They also need specialised training in compliance and enforcement procedures. Probably the best way forward here is for an autonomous statutory board to be established having representatives of government, employees, and employers. It should be charged with all compliance and enforcement functions on labour matters. Importantly, it should by law be vested with power to institute and conduct legal proceedings against defaulting employers.

It is equally a matter for concern that meritorious cases of unfair labour practices by employers have gone unchallenged in courts because a number of workers are insufficiently knowledgeable of their basic rights. Special legal workshops are therefore necessary as a long-term strategy of creating civic awareness in the minds of such workers.

Lastly, law should mandate employers to take out public liability insurance cover in high-risk work places. Normal insurance cover is usually taken up by employers. This should not be confused with public liability insurance where, in the case of Vanuatu, there are few such workplaces. But as a growing economy, this is an area that needs some attention.

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Notes

1. Personal interview with Mr Edwin Kaloris, Deputy Labour Commissioner of Vanuatu on 26 July 2002 at 9.30 a.m.
2. *Ibid.*
3. The only and central trade union representing all workers in Vanuatu is called the Vanuatu National Workers Union.