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“Tradition and Modern Parliamentary Democracy”

Acknowledgements

I am both privileged and delighted to be here among you in Wellington and to make a short presentation, hopefully to make us more familiar with the operation of the PNG adopted Westminster System and how it entwines with our traditions of 'wantoks' and big man culture.

Let me begin by saying how much I value the Sixth Pacific Parliamentary Retreat gathering, as it allows me to re-invigorate myself back into the Parliamentary arena after years of retirement. I personally believe that it is through a medium like this that virtual amicable solutions are found to Regional problems associated with the style of democracies and traditions in our joint quest to hold onto and enhance their values making governance more transparent, inclusive and participatory.

New Zealand, of course, is a prominent country in our region with whom we all enjoy close and friendly relations and one which does take bold initiatives in spearheading reforms in Electoral processes and fair Proportional Representation. Gender, I imagine, is probably not an issue here when you look at those occupying constitutional positions in various arms of Government.

Introduction – The Story

Perhaps, it’s best if I begin by telling a short story of my own experience and encounters in the Birth of Democracy in Papua New Guinea.

Six years after Independence in 1981; I made my second visit to the United Kingdom (first after Independence). I addressed a luncheon, hosted by the Royal Commonwealth Society in London and told the audience that PNG measures the value of our membership in the Commonwealth – that it was no small matter for a former colony to be able to sit down with its colonisers, and to do so in trust and friendship and as an equal colleague, we did not choose our colonisers, but given that there was no way that we could have hoped to escape the inevitable trend of colonisation prevalent at that time, we could have fared much worse. Our colonial experience had its indignation and its injustices, but we certainly escaped the excesses inflicted upon many others.

History, Colonisation and Influences

I allude to this because most of us here are former colonies, ruled systematically for decades, often influenced by the Administering Powers. That is obvious – the adopted Westminster or Presidential is to a great extent dictated; they were the only modern systems we knew. In PNG’s case, it was never likely possible to go presidential under Aussie Westminster.
Looking back, all of us except the Kingdom of Tonga were franchised through Plebiscites, Referendums or through Commissions of Inquiry, Constitutional Planning Committees – seeking views from the people to come up with “Home Grown” Constitutions. I hasten to say, in the case of Papua New Guinea, the Constitution incorporated many flavours of traditions, cultures, inbuilt land tenure and justice features – they often clash with the modern nomenclature and definition of human rights, social, gender equality and inclusiveness. In the end – “it was better to choose the devilish system we knew than the new untested system we didn’t know.”

If the history of colonisation can be expressed in a few words, then I would choose these …nations of strength doing things to, and not always for, people of relative weakness. Colonisation, no matter how benign, is usually carried out against the wishes of those being colonised.

I do not talk about the methods of colonisation and I wish others had suffered as little violence and brutality as we did. I say all these to draw comparisons and experiences from all of us – in the making of our Nations.

If Papua New Guinea is sometimes cited as an example of the good intentions of its coloniser, then I feel bound to say … with absolutely no malice … that it would be refreshing from time to time to be held up as an example of an already democratic people who found no great difficulty in combining the old with the new, who successfully adopted a workable system of government, and who did so with minimal disruption to traditional systems and values.

British influences in Papua New Guinea go back to the days when Papua New Guinea was split between Britain and Germany around 1885. The British influence has been significant in two ways – directly, when Papua was transferred in 1901 to Australia, itself moulded by its strong social and cultural orientation towards British styles and practices.

While we are certainly not a nation of little “Britishers” or little “Australians”, in no small way we are what we are today because of that influence.

**Traditions, Leadership & Structures**

The emergence of systems of Law began when the German New Guinea restructured Leadership Systems around 1900 appointing village Luluais and their assistants, Tultuls to keep peace. This form of Government began the disintegration of the traditional power structure whilst Missions influence had already stopped some customs and traditions.

Forms of Government began to emerge after World War I and the first Legislature and Executive Councils were established in the mandated Territory of New Guinea. It was in 1949 the Australian Parliament passed a Bill that made one Australian Administration responsible for the Territory of Papua New Guinea. Of course, throughout 1942–1945, during World War II Japanese imperial occupation – until 13th December 1946 Australia became the Administering Authority under UN Trusteeship.

The Australian Territory of Papua and Trust Territory of New Guinea were gradually joined together to become one Administration of Papua and New Guinea. This was the period when controlling mechanisms and some type of organizations were forged to administer the rule of Law.

**Transition, Nation Building and Democracy**

In 1950 Local Government Councils were introduced to provide grassroots, elected village representatives to speak on behalf of their voters. This then really was the birth of Democracy in the modern sense.
I thought it worthwhile to bring all these out to show how strenuous it was in the process of pulling together over 860 tribes, of predominantly traditional and distinct authoritative structures with varied cultures and beliefs, submitting to unimaginable adjustments under different Administering Powers, that finally led us the final steps to self Government in December 1973 and Independence in September 1975.

Unlike the British Parliament were all Laws, Legislature and Executive descended from the Crown and the Monarch then, had absolute power, reduced overtime by documents such as the Magna Carta, Bill of Rights extending Liberties to the people, Papua New Guinea Parliament obtains its authority from the Constitution. The process of forming and adopting the Constitution took up most of our time between 1973 –1975, through consultation with the Constitutional Planning Committee.

The Constitution was finally adopted by the Constituent Assembly and the date set for Independence. The only significance I can gather of choosing 16th September 1975 was very much a matter of convenience, perhaps to secure the availability of Prince Charles’ attendance. However, some historians tie it to the particular period around 11th – 16th September 1943, when the Allied Forces recaptured Salamaua and Lae from the Japanese.

Each country has its real and special meaning for selecting dates for Independence – PNG did not but as a side interest, the significance of the United States Independence Day carries interesting anomalies. July 4th, the day the Continental Congress adopted Jefferson’s declaration, rather than July 2nd, the day it adopted Richard Henry Lee’s (delegate from Virginia) Resolution for Independence was confirmed by a Member of the Committee of five, John Adams who wrote to his wife (Abigail) “The second day of July 1776 will be the most memorable in the history of America …”. I think the Great Declaration which Jefferson wrote contained the natural rights philosophy underlying the American Revolution and elevated the war of Independence to a war of Liberation. He completely swayed everyone when he calmly told the world “We hold these truths to be self-evident … that all men are created equal, that they are endowed by their Creator with certain inalienable rights …”. These powerful phrases just swept the 4th of July as the “Anniversary” Day.

This simply shows how sometimes we can be moved by eloquence and sentiments in the construction of our Democratic Institutions and how in the excitement of seeing Freedom at hand – timing was more of convenience than significance.

*The Constitution, Parliament and Ethics*

Papua New Guinea's Constitution is a very legalistic and complex document, where the framers, including international constitutional experts and academics failed to comprehensively construct the statutes leaving too many loopholes for open interpretation and challenges - which has been a regular occurrence over the life of our Nation. Built into the Constitution is the Ombudsman Commission and Leadership Code.

This is an “Independent Watch Dog” with exclusive powers – a rare inclusion to keep check on elected and other qualified Leaders. This may have flowed on from the suspicious nature of the traditional big man with sole decision-making authority – in distribution of wealth and priority favouring 'wantoks'. Unfortunately, it appears the drafters of our Constitution may have become too academic in making the Ombudsman Commission a powerful monster, a super power – an institution above all other institutions – to act as investigator, prosecutor and judge – Decisions of the Tribunal set up by it are non-judicable. I said unfortunately because, its existence portrays elements of distrust in ourselves. Justifiably, perhaps as many of the Leaders have been charged and dismissed from office, and by law, ineligible to stand for Public office for three years.
I think it is wrong for any Constitution to create sentiments of distrust – I believe this element of distrust continues to plaque the Leaders and their performance – even to encourage those in power, who are spending a lot of time finding ways to evade Codes of Conduct and Potential Conflicts on technical grounds.

For costs and to a great extent, avoidance of duplication, Papua New Guinea adopted a unitary system with General Elections every five years. Unlike the British or Australian system, the Prime Minister is physically voted in by 109 Members of Parliament. For the seven General Elections held in 30 years, all Governments formed have been of multi-Parties or Coalitions. The Constitution fixed the total number of Ministers, all elected including the Prime Minister to 28. In order to provide or accommodate political demands that are prevalent in any coalition, Parliamentary Secretaries were considered.

However, the Government today has opted for Vice Ministers. This is one way of keeping numbers to defeat Votes of No Confidence under Section 145 of the Constitution which the Prime Minister can be voted out of office after the 18 month period of grace. The mandatory grace period is supposed to provide stability. At Independence, the grace period was six months. Last year, Prime Minister Michael Somare attempted to extend the grace period to 3 years which caused a big split in the Coalition Partners – hence they are all-over at present with Party Members sitting in Government and on Opposition benches. Moreover, the Morauta Government, two years ago passed a controversial Integrity of Political Parties Act which is supposed to regulate excessive fluidity in the movement of Party Members.

This Law, in my view impinges on the right of Members of Parliament to have conscience votes. Anyway, the application of this Law is presently non-existent and resulted in more splits of Parties in our Parliamentary history.

My view of the grace period, whether it is 6 or 18 months is that any mandatory powers bestowed unchecked are extremely dangerous and overpowering the Prime Minister with unlimited authority to command at Will. Our Constitution does not regulate or limit powers during the grace period – it simply says “A Vote of No Confidence cannot be moved for 18 months”.

The Prime Minister can run the country with an iron fist, he/she can even sack the Governor General, Chief Justice or any person in Government – quite illegally – and there is nothing anyone can do. The Attorney General/Public Prosecutor can do nothing because the Prime Minister cannot be removed except by a Vote of No Confidence which the Constitution stipulates can only be moved after 18 months. Our Constitution unintentionally then provides protection for a specified period even for a dictator, terrorist or even a stupid insane person in office for such a period.

The Democratic procedure enabling Parliamentary debates is in tune with the Melanesian consultative processes in decision-making. The conflict is in power sharing, particularly in the administration and implementation, between Cabinet, Elected Members, checks and balances between the three arms of government and the Bureaucracy.

This is one grey area which constantly provoked judicial interventions in the appointment of ‘wantoks’ (same clan/area) or sacking of professional Public Servants who refuse to comply with illegal Ministerial directions. This is the “boiling pot” of interaction of the old and the new – trying to find common ground for each other in the decision-making process – “autocratic versus natural justice.”

Reforms and Empowerment
If there is one thing that can be said of transition from a Traditional to a Democratic System of Government, Papua New Guinea must top the list. I don’t mean it tops the list of perfection but for vibrancy and excitement.

- We have used all our Melanesian ways of consensus to cater for the four Regions who speak over 860 languages, to evolve to a decentralised and more autonomous Provincial Government System, empowering 20 Provinces to have their own elected Representatives. This was the result of fierce demands by Bougainville at Independence under the operation of the Organic Laws.

- In 1995, substantial Reforms by way of amendment to the Organic Law on Provincial and Local Level Governments providing greater decentralising authority to Provincial and Local Level Governments – giving officers who are responsible in providing services to the people at the grass-roots, to be able to do so in a completely fair and unbiased manner. The Government simultaneously guarantees the provision of “District Support Grants” to the Joint District and Budget Priorities Committee in each Open Electorate, for the purpose of funding both Rural Action Programmes and Urban Rehabilitation Programmes. This is the beginning of the so-called “bottom up” planning – where villages themselves set their own priorities.

- Two years ago, the operation of the Integrity of Political Parties Law was passed to reduce fluidity in movement of endorsed Party Members and; provides for Party registration with approved Constitution. Previously few Members could get together over a few drinks, or other bargaining influences, to form a Party within the seven days notice required for the Vote of No Confidence, these groups can be most powerful in bargaining and lobbying for Ministerial positions – often with substantial monetary exchanges. Admittedly, this Act is still finding its way and experiencing teething problems and as I speak, there are strong challenges of the Speaker’s authority.

**Observations:-**

I think the Parliamentary system of Government in PNG and the Pacific Islands Countries:

- Is largely at risk if its proper role as guardian or custodian of public interest is eroded;

- Must maintain a high level of integrity and independence from outside influence, including the Executive or the Government of the day;

- In PNG, and indeed with most Pacific Islands Countries, the general tendency is towards the BLURRING of the distinction between Parliament and the Executive;

- In most cases, the Executive or the Government of the day find it very difficult to resist the temptation to manipulate parliamentary procedures to suit a political agenda;

- Greater effort and recognition need to be given to the essential inter-relationship between the three pillars of Government: the Executive, the Judiciary, and the Legislature; and

- The Speaker of the Parliament has an onerous responsibility to safeguard the independence of the Legislature.

**Some Options:-**
• Enhance or strengthen the impartiality of the Speaker’s Office with a bipartisan approach to the nomination and selection of the Speaker;

• Bipartisan practice in the appointment of the Speaker similar to the House of Commons is worth some consideration;

• Appointment of a non-elected Speaker under the provision for a nominated Member of Parliament under the Papua New Guinea Constitution where four nominated positions are provided;

• Standing Orders need to be strengthened so as to make them less vulnerable to manipulation by extra-parliamentary influence;

• Strengthen the Committee System to ensure an active role for all Members of Parliament. Backbenchers, Independent Members and Opposition Members of Parliament can play an important role to ensure that the Legislation submitted to Parliament takes a better account of the interest and views of a wider section of society; and

• Asking well-researched and penetrating difficult questions and facilitating good open debate remains the most important role of Members of Parliament and the Speaker.

Our Views and Future

We must continue to strive for a Parliamentary System which encourages openness, social justice and human rights, transparency, and accountability; which allows for open debates, discussions and constructive criticisms on issue of public importance which also relies on the notion that those who govern, and those who are governed, must be equal participants in the decision-making process.

I fear after all attempts in reforming our Constitution – good governance and best practise principles of parliament are still clearly absent in PNG and I attribute that to weak Leadership. The quality of governance by whatever systems we have adopted has a significant effect on the well being of Pacific people, just as it does on others around the world.

Good governance inspires confidence among citizens and partners and must be carried out in ways that are meaningful to Pacific societies and people. There is often tension between inherited structures and pre-existing cultural traditions. We have to guard against both in order to achieve more relevant, responsive and accountable patterns of governance.

Papua New Guinea has not been alone in trying to accommodate inherited structures to suit local realities – and then adjusting to them. Like every other independent country, PNG is emphatically determined to maintain and preserve our democratic Institutions and our nationhood.

In fact, our Region has been a global pioneer in devising and gaining acceptance of quite novel kinds of Constitutional arrangements. As in other parts of the World, the framework in which the Pacific Island Countries have become democratic and independent has been consistent with International Law including mutual respect for the unity, integrity and sovereignty of States.

Recently, we the Eminent Persons Group proposed to the 16 Country Leaders “A Pacific Vision” – in it, we believe the Pacific can, should and will be a Region of peace, harmony, security and economic prosperity, so that its people can lead free and worthwhile lives. We propose a new, more intensified form of regional co-operation, which we call “The Pacific Plan”.
But first, we must make Democracy work and it is not easy in the words of Winston Churchill who said, “Democracy is the worst system devised by wit of man, except for all the others”.

In the end, Parliament is only as great as the people who are elected to serve. Earlier, I mentioned Abigail, the wife of John Adams, founding brothers and President of the United States, who criticised her husband’s rival, Thomas Jefferson – “Like a willow bent with every breeze” and she described her husband Adams, “Like an oak, he may be torn up by the roots and he may break but he may never bend.” If only our elected Members are made of Adam’s fibre and who realise that the price of greatness is responsibility – we are on the right course.