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## COMMENTS OF PRESIDING JUDGE OF APRIL 29, 2010

There seems to be some misunderstanding as to where the Court is going with regard to this long unresolved appeal. So that there is no misunderstanding by anyone we summarise the position.

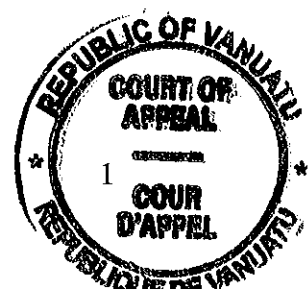
Mr Koilo was charged, tried and convicted of very serious offences. He was sentenced to a lengthy term of imprisonment.

His challenge to the convictions has been disposed off. The question of his appeal against what was effectively a 10 years imprisonment sentence has not been able to be dealt with because of matters which have intervened since that time.

Mr Koilo escaped from prison obviously he had no right to do so. In doing so he committed an offence and he has subsequently been charged with that, pleaded guilty, and been sentenced for it.

While he was an escapee he made arrangements and voluntarily went with his father to surrender himself. At that point the problems relating to his being an escapee has come to an end. He had to face the consequences of the Courts.

But the uncontroverted evidence which was given in the presence of the Commissioner of Police, the Head of the Vanuatu Mobile Force and the Director of the Correctional Department, is that after he had surrendered he was subjected to the most sustained beating from which he will suffer consequences for the rest of his life.



Mr Koilo like everybody else is subject to rights and responsibilities under the Constitution. He must abide by the laws passed by Parliament. But no one had a right to take the law into their own hands and to punish him in the way he was treated. For reasons which are beyond our comprehension the authorities have done nothing about that. It is as if those in authority think that what happened to him was allowable or acceptable behaviour. The persons who did it have been identified. There is no argument about what happened. What the Judges do not understand is why people have not been charged in the criminal court and in police disciplinary tribunals for their breaches of the Constitution and the laws of this land.

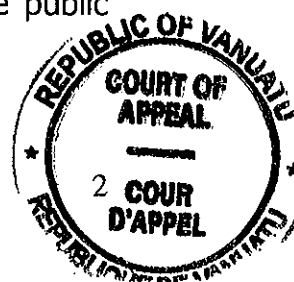
While the Court was trying to get to the bottom of this first problem and a seriously injured Mr Koilo remained confined in prison, there was a further incident. The uncontroverted evidence before us given again in the presence of the three Heads of the relevant authorities is that Mr Koilo was taken to the police station, interviewed about an escape by other people but in respect of which he was not implicated, and yet again seriously assaulted.

When we inquired as to what has been done about this, we are told as there had been no formal complaint made the police can do nothing.

The judges find that submission nonsensical. There is publicly available sworn testimony as to what occurred. Nobody in this country is exempt from the provisions of the Constitution and the laws which Parliament has made.

There is overwhelming evidence that Mr Koilo has sustained serious wrongs on two occasions and nothing has been done about it.

A constitutional petition was filed and we were told settled but we do not know of the terms. Clearly the Court must know of the arrangements and we will need to be persuaded why in a free and democratic society the public should not know about it also.



Also of relevance to the August 2009 incident is the fact that when a person is sent to prison, the State through the Courts is taking away that person's right to liberty. The Government however must guarantee the safety of imprisoned persons. In the case of Mr Koilo that has been seriously breached on two occasions.

The question which the Court must now ask is "can we be sure that if Mr Koilo continues to be a prisoner he will not be subject to such wrongs again?"

Finding the proper, just and lawful answer is no simple knee jerk matter. This man has committed serious criminal activities. The community is entitled to be protected from him. But he is entitled to be protected from those who are under the control of the State. That has not been happening. We have to balance the competing matters one against the other.

Although we publicly acknowledge and applaud the information provided today, as there appears to have been some misunderstanding as to the nature of the Court's concern we are going to take the extraordinary step of adjourning this one final time so that the State can have the opportunity to explain what has been done to call to account those who had done wrong to Mr Koilo. Equally and as importantly we are interested to know more about the implementation of the protocols and arrangements to ensure that such wrongs do not happen in the future.

