

OFFICE OF  
THE  
*OMBUDSMAN*

OFIS  
BLONG  
*OMBUDSMAN*

BUREAU  
DU  
*MÉDIATEUR*

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**FIRST ANNUAL REPORT**

TO

**PARLIAMENT**

BY THE

***OMBUDSMAN***

OF

**THE REPUBLIC OF VANUATU**

**1995**

## 1. INTRODUCTION

It is with mixed feelings that I submit this first report of the experience of Ombudsman from my appointment on July 15th 1994 until August 30th 1995 in accordance with Article 63(5) of the Constitution.

This being the first year of the first such appointment by the Government of Vanuatu, it was only to be expected that the impact was likely to be considerable, and would produce a mixed range of reactions.

The experience of other countries has indicated that while the public in general has welcomed the participation of an Ombudsman on their behalf, many Government institutions have tended to feel threatened, and as a result reluctant to co-operate in investigations into complaints against their departments.

I have been very conscious of the honour conferred upon me by the President of the Republic of Vanuatu in selecting me after consultation with the highest authorities of the country, a woman and a non-indigenous Vanuatu citizen, to steer this new ship they have courageously launched, and I have been appreciative of the help and encouragement offered by some in positions of authority.

I have endeavoured to keep before my mind constantly the realisation that many of the leaders of our newly-independent Republic have had little previous experience of the demands of statesmanship and administration, and my awareness of this has perhaps predisposed me to take a more patient and lenient view of shortcomings than might have been otherwise justified.

Therefore let me state at the outset that there has been one constantly recurring characteristic in the reactions to my enquiries regarding the conduct of various unsatisfactory matters, and that is the serious lack of official guidelines and procedures to be scrupulously followed in the making of decisions.

As a result, many questionable actions are initiated and approved for inappropriate reasons, and sometimes sadly for reasons that have more to do with personal gain or preference than the consistent demands of justice and statesmanship.

Therefore by far the most serious and important recommendation that I can make after a year in office is that there must be urgent steps taken to train and teach administrators - and politicians - in the respect for and adherence to principles and methods of operating that are not rooted in mere guesswork or a desire to win friends or promotions.

The fifteen years of independence has not yet produced a significant body of people skilled in administration and management, nor is an easily comprehensible manual of instruction available emphasising the details of the duties which ought to attach to each public position.

As a result, it is natural and easy for the holders of positions to begin to feel they are accountable to nobody, or to nothing but their own opinions, rather than to principles and procedures which have been tested and tried over many years in countries with longer experience of the demands of self-regulation and democratic participation.

As a result it is to be expected that the best of these men and women experience frustration at the endless delays in processing documents, and in the loss of papers and files, and complain of the inaccessibility of their superiors, who appear to be often preoccupied with activities which are unrelated to their appointment and responsibilities, causing them to be often absent from their posts. There is clearly insufficient delegation of responsibility and the processes are clogged as a result.

All these things I have experienced repeatedly for myself over this past year, and I have been confronted again and again by angry members of the public who are disillusioned by the inefficiencies of both their appointed and elected representatives.

The frequent dismissal or changing of appointees to posts, simply adds to this problem, and there is a widespread bitterness about the habit of "Wan-tok" - that is, the preference given to relatives and friends in filling, or even creating, posts.

It has often been argued that this custom is a necessary part of the "Melanesian Way", but I have found little support for or approval of this practice among those ni-Vanuatu members of the public who feel alienated from all the processes of Government.

I have deliberately tried in this part of my recommendations to give a general picture of what I have experienced in this post, while leaving details available of my activities to other sections for those interested, and I have not deemed it necessary to enlarge on the less pleasant side of the reactions to my work.

However, suffice it to say that I have not always been received courteously or been assisted readily. There have been personal attacks regarding my gender, and my colour, and on occasions I, and my family, have been threatened with harm unless I abandoned particular investigations.

I have received the expected quota of accusations of prejudice, bias, melodramas and intemperateness, but thankfully the Ombudsman of Vanuatu does not yet have to travel armed, nor protected by an armed bodyguard, as my colleagues in Papua New Guinea for example have to endure. Compared with many places, Vanuatu is still closer to "Paradise".

I shall close this part of my Report by expressing my regret that I have not yet been provided with the promised appropriate office premises, nor the appropriate staff, nor the promised budget to operate with acceptable efficiency. It is not difficult to visualise that, as a result, my small efforts of this first year would have been even less, had it not been for the generosity and help of other agencies.

Finally, it is my hope that this First Report may cause the readers to ponder what standards of conduct and performance they wish from their leaders, and how effective they wish their Ombudsman to be in protecting the public's interests.



MARIE-NOELLE FERRIEUX PATTERSON  
OMBUDSMAN OF THE REPUBLIC OF VANUATU



## 2. DEFINITION OF THE ROLE OF THE OMBUDSMAN

### 2.1 HISTORICAL BACKGROUND

The dictionary definition of the word Ombudsman is "an independent person to whom an individual citizen can appeal if she/he has a complaint against the administration". This in a nutshell defines the role of the Vanuatu Ombudsman.

The First Ombudsman was appointed in Sweden in 1809 with the job of supervising the public administration and investigating public complaints about wrong doing by officials. The Ombudsman reported to Parliament not to the Monarch.

More than a century passed before the world's second Ombudsman was appointed in Finland in 1920 and a further 35 years before the third Ombudsman was appointed again in Europe, in Denmark in 1955.

It was not until 1962 that the first Ombudsman outside Scandinavia was appointed, this time much closer to our part of the world, in New Zealand.

From the early 1960s the Ombudsman concept spread rapidly and, by 1991, 48 national Ombudsmen had been appointed throughout the world. Many more Ombudsmen operating at regional and local levels and more recently in specialised fields (Armed Forces - Banking - Insurance).

#### Vanuatu Constitution

The Constitution of Vanuatu provides for an Ombudsman and for a Leadership Code.

*"The Ombudsman is appointed for five years, by the President of the Republic after consultation with the Prime Minister, the Speaker of Parliament, the leaders of the political parties represented in Parliament, the President of the National Council of Chiefs, the Chairmen of the Local Government Councils, and the Chairmen of the Public Service Commission (Article 61 (1) of the Constitution)."*

The Ombudsman Act (No.14 of 1995) has added a dimension to the Constitution by appointing the Ombudsman as the person responsible for the enforcement of the Leadership Code.

Following Independence in 1980, and the implementation of the new Constitution, all of the Constitutional posts were filled except the post of Ombudsman. This vacancy continued for the next fourteen years.

This changed with my appointment on 15th July 1994 as the first Ombudsman of the Republic of Vanuatu. Fourteen years after Independence the Nation finally had its first Ombudsman.

From the earliest days of my appointment, it was very apparent that almost no one, whether complainant or interviewee, or indeed members of Parliament and Ministry officials, had a clear idea of what the role of the Vanuatu Ombudsman is.

## **2.2 OMBUDSMAN FUNCTIONS**

### **2.2.1. Inquiries on Maladministration**

Maladministration is the first key concept in understanding the work of Ombudsmen.

The principal function of the Ombudsman is to safeguard the interests of citizens by ensuring that Government administers society according to the law and in a fair way.

The Ombudsman investigates at the request of individuals (or at her own initiative) the way in which a particular administrative decision was taken, and whether the individual concerned was treated unjustly as a result. If the Ombudsman decides that an injustice did occur, he recommends remedies, in other words, ways of putting matters right.

One of the most important duties falling to me is to ensure that decisions made by the Government are based on clear guidelines and not for arbitrary reasons by any public servant or official or politician involved in the process.

### **2.2.2. Fields of complaint**

Enquiries conducted by the Ombudsman will be in the following categories:

- general complaints about the administration's actions, Government actions or laws generally (Constitution, art. 62) ;
- Leadership Code (Constitution, art. 66);
- complaints concerning Multilingualism (Constitution, art.64)

### **2.2.3. Access to information**

Besides being independent, Ombudsmen have extensive powers to send for persons and papers. These enable them to investigate as widely and as deeply as a particular case requires. They can demand to see all the relevant files and can interview any officials involved in an attempt to uncover the truth of what has happened.

It may be argued that the importance of the role of the Ombudsman in a fairly recently independent country such as Vanuatu is all the greater, considering that we do not yet have a history of established independent newspapers, magazines, televisions and radio stations, and no serious investigative journalism, among other checks and balances that are fundamental parts of most democracies.

### **2.2.4. Publicity and Enforcement powers**

The Ombudsman's powers are:

- to make recommendations, suggesting changes in government action or legislation,
- recommending improvements in the administration of government,

- a mandatory requirement of the Constitution to make public her reports and recommendations on her inquiries and to submit them to the Prime Minister and other relevant bodies who have to decide upon the findings,
- to refer a case to the Public Prosecutor or another authority, to commence criminal proceedings or disciplinary action,
- to apply to the Court for an order that her recommendations be enforced.

### **2.2.5. Leadership Code**

In Vanuatu, the Ombudsman's jurisdiction extends to the enforcement of the Leadership Code. The Ombudsman may enquire into the conduct of leaders and assess if there has been misconduct or breach of duties and responsibilities under the Leadership Code [articles 66 (1) (2) of the Constitution].

### **2.2.6. Independence**

The second key concept is 'independence'. Ombudsmen are constitutionally independent of other institutions of the State and Government, and cannot be controlled by them; for instance, an investigation cannot be halted because it might embarrass or inconvenience a Minister or the Government. Ombudsmen are not part of a Government department. The Ombudsman is an independent and presumed impartial arbiter between Government and the members of the public.

Article 65 of the Constitution guarantees the independence of the position:

*"The Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions".*

## **3. ACTIVITIES AND SETTING UP THE OFFICE**

On the date of my appointment as first Ombudsman of the Republic of Vanuatu, nothing else, quite literally nothing else, existed that was required for this Constitutional post to function properly.

"Mr Soon", whose arrival had been eagerly anticipated for many years, had indeed been appointed but no other preparations of any sort had been done to allow the Ombudsman to operate at all, let alone effectively.

By this I mean, there were:

- no office premises
- no office furniture
- no office equipment
- no staff
- no vehicle
- and no budget to provide any of these items.

Some of these matters relating to the setting up of the Office have not yet been resolved, and have as a result been occupying most of my time as Ombudsman since I was appointed.

### 3.1 SUCCESSSES AND FAILURES

From the start, my aim was to establish a solid foundation for a professional and respected national office that my staff, the country and my successors Ombudsmen would be proud of. I proceeded to secure funds from the Government for the basic needs of the creation of the Office and to acquaint bilateral assistances (ie: foreign aid donors) with our existence, purpose and need and to enlist their support.

Over that past year the results of these activities were:

#### 3.1.1. The slow but steady growth of the Ombudsman's capacities and capabilities:

- \* a temporary office
- \* clerical staff (hired on a daily-rated basis)
- \* short term consultants
- \* a vehicle
- \* bilateral assistance for equipment (computers, printer and photocopying machine,etc...)
- \* bilateral assistance for the funding of the expenses of the main Conference of the Pacific Region for Ombudsmen (Australasia and Pacific Ombudsmen Conference in Hong Kong New Zealand).
- \* the drafting of the Ombudsman Act
- \* professional development technical assistance mainly through P.N.G.
- \* implementing legislation for the Ombudsman and for part of the Leadership code
- \* investigations being processed (approximately 60 separate matters)
- \* assistance program of PNG with the arrival of an adviser of the PNG Ombudsman Commission for 18 months starting on 1/8/95
- \* drafting a 5 year plan for the Office's objectives, organisation (staffing and working procedures), and resources with the assistance of the Pacific Operations Centre of the UN Economic and Social Commission for Asia and the Pacific (ESCAP). This plan will hopefully help bilateral agencies to accept to fund the training of the newly recruited investigators who will be appointed in the next few months as well as demonstrating the utility of such a plan to other branches of the Government.

#### 3.1.2. The following objectives were not reached:

- \* funding by the Vanuatu Government of the costs relating to the creation of a permanent office (VT 6,000,000 for setting up the permanent office

premises, furniture and basic facilities needed to operate an office which had never existed before)

- \* permanent office premises
- \* passage of the Leadership Code Act in Parliament
- \* appointment of permanent staff
- \* provision of facilities to the adviser from PNG in accordance with the terms of the M.O.U. signed by both Governments.

### 3.2 MEMORANDUM OF UNDERSTANDING

On 13.10.94, the Prime Minister of Papua New Guinea, the Honourable Sir Julius Chan, K.B.E. and the Honourable Prime Minister of Vanuatu, Maxime Carlot Korman, signed a Memorandum of Understanding in Port Moresby.

Under the terms of this agreement, the Ombudsman Commission of Papua New Guinea would:

- assist in the setting up of the Vanuatu Ombudsman's Office
- help in the drafting of the Ombudsman Act Legislation
- provide the Vanuatu Ombudsman's office with an adviser from the P.N.G. Commission to give practical assistance.

Phase I of the M.O.U was to be the drafting of the legislation and its presentation to Parliament.

Phase II of the M.O.U is the assistance of an advisor in the Office of the Ombudsman and the training of 2 or 3 officers from Vanuatu to be sent to the PNG Commission over a period of 6 to 12 months.

In exchange for this, the Vanuatu Government undertook to provide the PNG Officer in Vanuatu with:

- office accommodation and facilities
- support staff
- rent free accommodation
- motor vehicle
- other basic facilities as requested by the Officer to effectively carry out his duties.

The assistance program has been a success in its objectives todate:

- the two pieces of legislation were drafted and one was passed by Parliament in August 1995
- the adviser from PNG started work in Vanuatu on 01.08.95
- now that the legislation has been gazetted, the Ombudsman will be in a position to hire the investigators who will be trained under Phase II of the M.O.U.



- the Ombudsman Commission of PNG is ready and waiting to train 2 or 3 newly appointed Investigators.

However certain practical aspects of the responsibilities of the Vanuatu Government under the M.O.U have not been implemented as promised, for example:

- basic office facilities (support staff, etc...)
- vehicle.

### 3.3 FUNDING OF THE OFFICE / BUDGET

Obtaining the required funding for the Office is probably the major hurdle we have been encountering throughout the previous year.

Although the political will was there to appoint the first Ombudsman of Vanuatu, without appropriate funding the office cannot carry out the Constitutional mandate effectively.

The Honourable Prime Minister assured Parliament in August, 1995, that supplementary funding for the setting up of the Office was coming and had been approved by the Minister of Finance (Vt. 6,000,000). But according to the Department of Finance, the release of the funds has not yet been signed by the Minister of Finance.

For the year 1995:

- |   |               |
|---|---------------|
| An annual regular budget of Vt 7,000,000 was granted for: |               |
| - Established staff and current charges:                  | VT 3,660,230  |
| - To run the Office:                                      | VT 3,309,770. |

For the year 1996:

- A proposed budget will be presented to the Prime Minister in accordance with the new Ombudsman Act that should allow the Office to function properly and to train investigators and officers in Papua New Guinea.
- The proposal budget for the Office of the Ombudsman will represent .5% (half of a percent) of the total Government budget.

### 3.4 OFFICE PREMISES AND HOUSING ACCOMMODATION

The matters of personal and office accommodation could and should have been resolved within a matter of weeks, not months.

Many of these problems arose as a consequence of a failure to have the practical matters decided upon prior to the appointment of an Ombudsman.

If these practical issues that I have spent so much of my time trying to resolve had been addressed promptly in the first place, I would have been able to function far more effectively and to actually spend my time conducting the sort of inquiries that my post was created for.

### **3.4.1. Office Premises:**

As mentioned, no office premises were planned when the Ombudsman was appointed, I therefore began by renting one fully equipped and furnished temporary office and am still in temporary accommodation where the Ministry of Agriculture used to be. The Office of the Ombudsman continues to operate from those premises, despite:

- dozens of phone calls between the Ombudsman and various administrative offices;
- 28 letters from the Ombudsman to the administration
- 10 letters from officers of the Prime Minister's Office;
- 7 meetings.

The space was rented fully equipped and serviced because there was no budget provision for furniture, equipment, etc...

Without supplementary funds to equip and furnish an office for the Ombudsman, the Office could not possibly move to permanent premises located elsewhere. Most commercial premises for rent in Port Vila have the following characteristics:

- no partitioning
- no air-conditioning
- no furniture
- no telephones
- no floor covering.

As of this report, my Office is still unable to move to permanent premises because of this lack of funds, even though premises have been selected in accordance with the advice given by the P.N.G delegation and agreed to by the Prime Minister's Office, namely, in Phoenix House opposite the Central Post Office.

### **3.4.2. Housing Accommodation for the Ombudsman:**

The normal choice for senior officials is between a government house and rental accommodation in the private sector. This matter should have been straightforward and quickly resolved, however it took approximately 21 letters from the Office of the Ombudsman, 15 letters from the Administration, 6 meetings, and numerous phone calls, totalling countless hours of my time and of the public servants' time which could easily have been used more productively.

This matter was finally resolved in April 1995 in a satisfactory manner by granting me a special housing allowance because of the shortage of government houses. This was what was proposed to me less than one month after my appointment; for some reason it took nine more months to be implemented.

What occurred in this situation was a first-hand example of maladministration of the very type my Office is repeatedly called upon to investigate by complainants.

The lack of coordination in the advice given by those officers to the Prime Minister was exemplified by, for example the letter of the Housing Officer instructing me to move immediately to a house that was actually occupied by another government official, and which remained occupied for 3 months after that, and worse still, had already been earmarked to be sold. Another example

were the letters from the Prime Minister and Deputy Prime Minister advising that the same house was ready and renovated, when in fact nothing at all had been done, and the house was in a terrible condition, as photographs taken at the time show. As planned, the house was sold.

### 3.5 APPOINTMENT OF STAFF

#### 3.5.1. Requirement of independence of staff

My Office functioned for 6 months with noone other than myself. From February 1995 I employed, on a casual basis, some secretarial staff and I expect to hire permanent staff (Senior investigator/Accountant and Senior Investigator/Lawyer) within weeks of the Ombudsman Act being gazetted.

The main reason for this situation is that nothing was done to accommodate my basic requirement: ie: to have employees independent of the Public Service Department, Ministry and Commission.

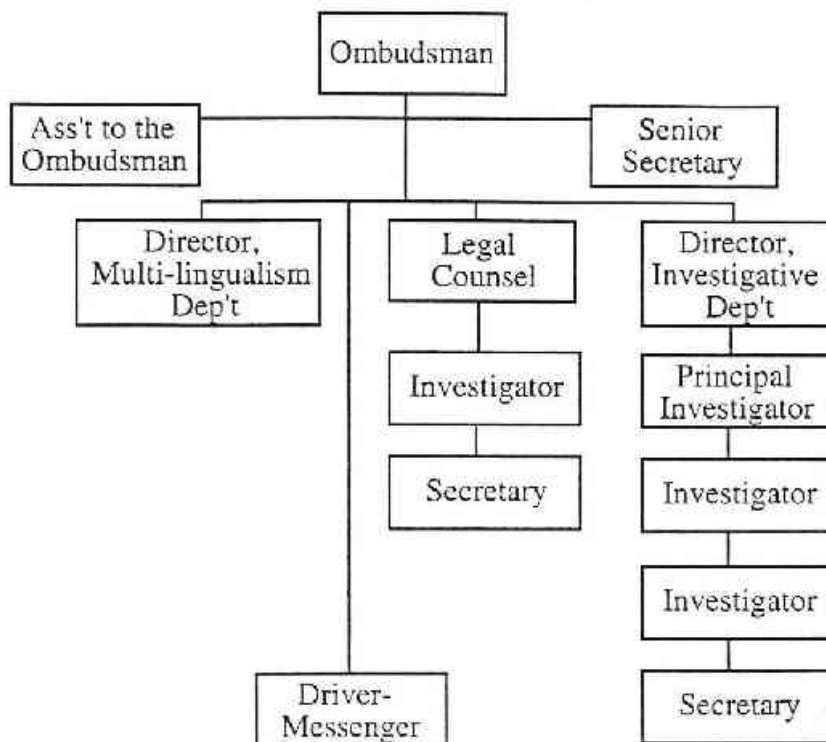
The P.N.G. Ombudsman Commission which has been requested by the Prime Minister of Vanuatu to assist me in this field recommended not to have public servants because it poses the obvious difficulty of maintaining genuine independence and impartiality.

The P.N.G. representatives said that it was important to hire staff independently who are not members of the Public Service in order to be free of dependency and intimidation, considering that the majority of my work involves investigating the alleged misconduct of public servants.

It is absolutely vital that my staff have as little connection as possible with the Public Service. This is a basic requirement of Ombudsman staff throughout the world.

This matter was resolved under the new legislation: The Ombudsman can appoint her permanent officers to such terms and conditions as the Ombudsman feels appropriate after consultation with the Public Service Commission.

### 3.5.2. Anticipated Staffing Pattern For 1996 - 1997



For 1995-1997 it is envisaged that the Legal Department will be headed by an international consultant Legal Counsel recruited under bi-lateral assistance programs. From 1998, following training both overseas and under a consultant, a Ni-Vanuatu investigator is expected to begin serving as Legal Counsel and manage the Legal Department.

The Department of Investigations will initially be headed by a Principal Investigator, who after training and experience, will be eligible for promotion to director. Several trainee investigators will be recruited during 1995 for assignment to the Department. These trainees, with perhaps another trainee from another Department, will be trained in PNG, and possibly other countries.

The Department of Multi-lingualism will be headed at first by the Ombudsman, and supported by trainee investigators and consultants as needed. It is expected that one investigator will be able to manage the department from 1997.

### 3.6 ESTABLISHMENT OF A FIVE YEAR CORPORATE PLAN FOR THE OFFICE

In order to plan properly for the development of this new Office, a 5 year plan has been prepared to give the people of Vanuatu and their representatives a set of objectives for the development of the Office. This was done with the help of the P.N.G. adviser and the Pacific Operations Centre of ESCAP, and is now ready.

### 3.7 LEGISLATION

#### 3.7.1. Ombudsman Bill



The Ombudsman Bill was originally drafted in Vanuatu by the Legal Counsel of the P.N.G. Ombudsman Commission and was later amended by the Attorney General as he saw fit and following official advice.

The bill was submitted to Parliament on August 3rd 1995 and was approved in second reading in Parliament by a vote of 30 for the bill and 13 abstentions.

The abstentions came from members of the Opposition who by not voting expressed their disappointment in the changes from the original P.N.G. draft.

### **3.7.2. Leadership Code Bill**

The Constitution requires that *"Parliament shall by law give effect to the principles of this Chapter"* (article 68)

Originally, the drafter from the P.N.G. Ombudsman Commission presented in his report two acts: the Ombudsman Bill and the Leadership Code Bill.

The document proposed is a properly worded Leadership Code along the Papua New Guinean line including the remittance of the leaders' annual statements to the Ombudsman and appropriate Constitutional amendments which will allow the setting up of independent Leadership tribunals to hear and to question allegations of misconduct in office and allow the notion of dismissal of leaders.

From the discussions the P.N.G. delegation had with the Government and Opposition representatives, they felt that this Code was universally desired and they prepared it accordingly.

It is hoped that the Council of Ministers will soon decide on the principle and instruct the Attorney General's Chambers to finalise the proposed bill.

## **4. STATISTICAL REPORT ON COMPLAINTS**

The following report is to indicate the number and variety of complaints received and investigated by the Office of the Ombudsman since July 1994. I wish to report that the majority of our people have yet to hear about or realise the importance of the role and function of the Ombudsman. This is because this is its first year of operation in Vanuatu.

### **4.1. COMPLAINTS STATISTICS**

For the period of July 1994, to September 1995, I received complaints and initiated inquiries as follows;

4.1.1. A total of 62 complaints were received.

4.1.2. The type of Complainants were;

1.	Government Employees	6
2.	Private Persons	39
3.	Private Business	nil
4.	Minister	nil
5.	Member of Parliament	1
6.	Provincial Member	nil
7.	Own Initiative	16

#### 4.1.3. The above complaints were received in the following manner

1.	By Visit made to the Ombudsman	19
2.	Visit made by the Ombudsman	16
3.	Letters to the Ombudsman	11
4.	Telephone to the Ombudsman	nil
5.	Own Initiative inquiries	16

#### 4.1.4. Jurisdiction

From the 62 complaints received the Office of the Ombudsman had the jurisdiction to consider 59 complaints, whilst the remaining 3 complaints were not within my jurisdiction.

#### 4.1.5. The Complaints were disposed of in the following manner

1.	Files opened for inquiries	53
2.	Declined to investigate	09

In accordance with section 16 of the Ombudsman Act the reasons for not investigating these complaints were as following:

1.a)	No jurisdiction	3
1.b)	Trivial or without good faith	nil
1.c)	Other remedies available	6
1.d)	Complainant's interest in not related	nil
1.e)	Matter too long delayed	nil
1.f)	Complainant has lost interest	nil
1.g)	other matters more worthy	nil
1.h)	insufficient resources	nil

#### 4.1.6. From the above 53 complaints that were received and investigated, three (3) of the cases were closed

#### 4.1.7. Distribution Of Complaints Against Agency (in alphabetical order)

Ministerial Services	5
National Govt. of Vanuatu	1
Finance Ministry	3
Transport Ministry	1
National Government Departments	39
Finance Department	2
Health Department	5
Home Affairs Department	2
Immigration Department	5
Labour Department	1
Police	4
Prison	16
Prime Ministers Department	2
Public Service Department	1
Public Works Department	1

Constitutional Institutions	5	
Public Service Commission		4
Supreme Court		1
Public Authorities/Statutory bodies	9	
Vanair		1
National Housing Corporation		2
Registrar of Companies		1
Unelco		1
Vanuatu National Provident Fund		3
Vulcan Company		.1
Provincial Governments	2	
Shefa		1
Torba		1
Provincial Departments	nil	
Members of Parliament	nil	
Members of Provincial Assembly	nil	
Local Government Council		nil
Tertiary Institution	nil	
Public Servants	nil	
Private Firms		1
Private Persons		1
Others (General Queries)		1

#### **4.1.8. Province where complaints of conduct occurred**

1.	Shefa	61
2.	Malampa	nil
3.	Penama	nil
4.	Torba	1
5.	Sanma	nil
6.	Tafea	nil

#### **4.1.9. Category of complaints**

1.	Unfair Decision/Action	19
2.	Administrative Error	4
3.	General Mal-Administration	29
4.	Abuse of Power	1
5.	Discrimination	nil
6.	Corruption	6
7.	Other (No jurisdiction)	3

## 4.2 CASES OF INTEREST UNDER INVESTIGATION

In this section of the report I wish to report to Parliament some of the cases of interest that are of concern for the public as a result of which I conducted inquiries on my own initiative.

It is my view that as elected representatives of the People of the Republic of Vanuatu, it is the duty of the parliament to respect the Laws that have been enacted in Parliament and to enforce these laws accordingly to ensure a society free of corruption.

The following cases amongst others investigated by my Office are those that I feel should also receive the attention of the Parliament.

### **4.1.1. Department of Police (Prisons)**

#### *Conditions of Prisoners*

As part of own initiative inquiry, I visited the Port Vila Prison to see the prisoners, to receive their complaints and assess their living conditions and the State of the Prison environment.

I should express here that prisoners are wards of the State and are serving their term or sentence as ordered by the Courts. The Court decided that they are unfit to live within their community and as such ordered that they be separated from their families and the community for a specified term. Because of such an order, their welfare and livelihood in prison are at the pleasure and expense of the State.

Article 5(1) (d), (e) and 5(2)(g) of the Constitution ensures the detainees full protection of the Law and freedom from inhuman treatment. These provisions ensure the State is responsible for the protection of the detainees, their welfare during imprisonment, and ensure that they are not unduly over punished and provide for their rehabilitation.

My enquires uncovered the State's and the Department's inability to manage the above responsibilities due to the general attitude that the detainees are out of sight and therefore out of mind.

This was indicated by a severe lack of funds being allocated for Prison Management and lack of vision to rehabilitate and educate the detainees to be able to return to their communities and integrate into society.

My inquiry is continuing and an appropriate report will be made for further consideration by the Police Headquarters, The Prime Minister and the Parliament.

### **4.1.2. Department of Health**

#### *Administration of patients and the Hospital*

Another important service in this country is the Department of Health and the Hospital.



After hearing complaints from citizens on the services provided at the Hospital, I made an own initiative inquiry into the administration of patients and the Hospital.

My inquiries revealed that there is a general lack of control over the administrative system within the Vila Central Hospital to the point of severely compromising the management of the Hospital. It was found that there were conflicts amongst the Hospital personnel but little or no action taken to investigate or resolve these problems. Of great concern to me is the apparent victimisation by the Department and Hospital management of certain staff senior hospital staff members for maybe no other reason than their incrimination of others through their testimony to me. It must be remembered at all times that it is a Constitutional obligation for witnesses to appear before me and testimony is given under oath. It is unjust and illegal for managers or employers to take reprisal against those involved in my enquiry.

Another problem is the lack of appropriate authority to assess or establish a code of ethics for the Doctors to observe and the staff, nor is there a procedure provided to address any disagreements.

Such problems are inevitably detrimental to consistent medical care of the patients.

This matter is also still under investigation and in due course a report will be made available for comments and further consideration.

#### **4.2.3. Department of Finance**

##### *Liquor licences*

The Office of the Ombudsman also initiated own inquiries into matters relating to the granting of Liquor Licences, the granting of Special Hours Licences and the enforcement of the Liquor Trading hours as specified by the Liquor Licensing Act.

This matter is still under investigation and a report will be made available for the Ministers responsible, the Prime Minister, the Parliament's consideration, and the Public.

##### *Granting commercial licences to public servants*

Public servants have apparently been granted licences to operate businesses on a commercial basis in contradiction to the very strict rules of the Public Service Manual (Chapter 9) and of the Constitution(art.57.1) :  
*"Public servants owe their allegiance to the Constitution and to the people of Vanuatu".*

My office initiated an inquiry. Certain information has been requested from the Ministry of Finance, but no answer has been received yet. The investigation will proceed and has received the support of the Public Service Commission.

#### **4.2.4. National Housing Corporation**

##### *General Administration and Staff Manual*

The Office of the Ombudsman also made own initiative enquiries into the general administration of the employees of the National Housing Corporation and the Corporation's respect and application of any Staff Manual.

#### *Building of Pre Fab Homes*

This Office was also advised that there was lack of consultation and consideration given before the Pre Fab Homes venture was approved. There are allegations that Tender procedures were ignored or set aside.

This matter is still under investigation and a report will eventually be made.

#### **4.2.5. Vanuatu National Provident Fund**

##### *Alleged abuse of Loan procedures*

The Office of the Ombudsman upon hearing allegations that the Loans procedures of the Vanuatu National Provident Fund have been abused to satisfy prominent members of the Parliament and political associates, commenced an own initiative investigation.

Vanuatu National Provident Fund was requested to furnish specific documents for my examination however to date there has been no response and the matter is still outstanding. But now that the Ombudsman's legislation is in place, the enquiry will continue on clearer legal bases.

The establishment of the Vanuatu National Provident Fund for the purpose of providing old age pensions for the working population of Vanuatu is a worthy concept. It should therefore be guarded against any form of mismanagement of the funds.

In this case, unscrupulous mismanagement of the Funds of the people to satisfy political associates could amount to misappropriation and misconduct in Office and contrary to the provisions of Article 66 (Leadership Code) of the Constitution.

#### **4.2.6. Commission of Inquiry cases**

In August 1994 the Deputy Prime Minister handed over to me 12 cases that were investigated by the Commission of Inquiry under the Chairmanship of Mr Clarence Marae but were not completed.

The referred cases were taken note of however due to the current lack of manpower facilities and resources faced by my Office, these cases were set aside for proper assessment when my Office is fully operational.

### **4.3 CASE SUMMARIES**

#### **4.3.1. Case 1**

The Office of the Ombudsman received a complaint from a Prisoner who complained that he was not given access to the Telephone at the Prison to receive telephone calls from his family overseas. It appears that his family were calling from overseas to speak to him but the prison authorities refused to allow him to talk with them.

In addition, he was feeling unwell and therefore wanted to undergo a medical examination.

His complaint was brought to the attention of the department of Police and the Department of Health. The Police (Prison) allowed him to receive calls from his family overseas and the Department of Health conducted a medical examination, diagnosed his sickness and placed him on medication.

The President of the Republic of Vanuatu warded him a commutation of his sentence and he was released and repatriated to his country of origin. Due to his release his complaint was closed.

#### **4.3.2. Case 2**

A Ni-Vanuatu prisoner complained to this Office about the conditions of the prison buildings. He claimed there are cracks showing on the walls and the ceiling of the prison buildings. At one stage the rain leaked from the roof through the ceiling onto the floor of the cells. The matter was reported to the department of Police but no action was taken.

This Office wrote to the Department of Public Works and requested for an engineer to inspect the prison building and report back to us. The Department of Public Works immediately conducted its inspection and made a report of its findings.

Because this matter is being addressed in a wider investigation this personal complaint was closed.

#### **4.3.3. Case 3**

Another Prisoner complained to this Office that he was not happy with the quality of food being cooked at the Prison and that the food lacked essential nutritional value.

This matter was referred to the Department of Health to investigate and report back to us of their findings.

Because this matter is being addressed in the wider investigation on Prisons the case was closed.

#### **4.3.4. Case 4**

Another prisoner complained that each weekend 5 prisoners are allowed their once every 2 or 3 month visit from family members and relatives. He claimed that the prisoners were only allowed to spend 30 minutes with their visitor. He claimed that this was unfair, and wanted the number of prisoners allowed to receive visitors be increased to 10 per weekend and the time limit to be extended.

This Office wrote to the Department of Police and the request was considered. The number of Prisoners allowed to receive visits was increased to 10 each weekend. However the time allowed with their visitors was not extended and will require further enquires with the Police Department and the Prison Authorities.

This matter is amongst the matters being looked into in the major investigation and therefore this complaint was closed and set aside.

## **5. ACTIONS FOR 1996**

### **5.1 MEDIA**

I intend to embark on a Public Relations and Awareness programme to explain to the people of Vanuatu the importance of the role and function of the Office of the Ombudsman, to them as citizens and the administration of the public service in Vanuatu. To ensure that the programme can reach the maximum audience I intend to use the facilities of television, Radio Vanuatu and the local newspapers to publish the role and function of the Ombudsman. Through these programmes I also hope to hear and receive complaints from the public.

In doing so I will also be able to assess their problems, make inquiries to assess the effectiveness of the administrative system of the Public Service and through statistics be able to report back to the Parliament in later reports on whether our people are receiving an adequate level of service from the Government.

I also hope to develop the expectations of the public towards their servants and help ensure that public servants are aware of the consequences of improper use of their responsibilities and authorities.

### **5.2 MEETINGS WITH PUBLIC SERVANTS**

As soon as the staffing situation of my Office is satisfactory, I will start visiting the departments and ministries and other bodies to explain my role to them in order to be better understood by the public servants. By doing this I hope to be able to have a preventive role in order to reduce the number of complaints arising in the first place.

### **5.3 VISITS TO OTHER ISLANDS**

Attention will be given to the islands to explain the Office of the Ombudsman.

## **6 RECOMMENDATIONS**

### **6.1 SETTING-UP OF THE OFFICE OF THE OMBUDSMAN**

We recommend that the Office of the Prime Minister and the Ministry of Finance finalise all the financial steps to set up the Office of the Ombudsman:

- release the promised supplementary funds of VT6,000,000



- help the Ombudsman as soon as possible to obtain through the diplomatic channels an overseas adviser for Legal Counsel
- implement their responsibilities under the M.O.U. with P.N.G. (car etc..)

## 6.2 CONSIDER LEADERSHIP CODE BILL

As mentioned above, the Leadership Code Bill prepared by the P.N.G. advisory delegation should be considered by the Council of Ministers and be presented to Parliament to enforce and respect the Melanesian Spirit of the project of cooperation between the two countries.

## 6.3 AWARENESS OF MULTILINGUALISM

A separate report has been prepared to present to Parliament on the attitudes toward multilingualism. However I would like to recommend all the Departments and Ministries to continue to be fully aware of their Constitutional obligation to respect Multilingualism in their relations with the Public and in the preparation of forms to be used by the public.

## 6.4 ENFORCEMENT OF DISCIPLINARY BUDGET PROCEDURES

I wish to recommend the Government that they give their full support to the Director of the department of Finance in his attempts in rationalising the budget requests for 1996 and in limiting the access to supplementary funds to urgent and unforeseen expenditure only.

Substantial authorisations of supplementary expenditure have been granted this year which are likely to produce a budget deficit and increased borrowing, accentuated by decreased revenue due to the sale of producing revenue assets.

The Finance Department is advising all the ministerial departments to produce a technically sound budget for 1996, one which is accurately compiled to reflect the complete plans for 1996, justifying logically all the expenses instead of taking the budget of the previous year and increasing it by a percentage without appropriate consideration.

## 6.5 CHARTER OF PUBLIC DUTIES FOR THE PUBLIC SERVICE

The purpose of the Office of the Ombudsman and the enquiries made by the Office is to contribute to an improvement of the Public Service generally.

Official guidelines generally do not seem to exist to outline the standard of conduct required of the public services.

As a basis of reference and discussion, this Office would recommend the approval by the Public Service of a Charter and individual Charters to raise the standard of public services, make them more responsive to their users and outline what can be expected from both departments and individual public servants.

Such principles can be: the definition of standards, information and openness, choice and consultation, courtesy and helpfulness, putting things right, value for money.

## 6.6 DECLARATION ON HUMAN RIGHTS

As Vanuatu is a member of the United Nations, I would like to recommend the formal endorsement by the Government of Vanuatu of international texts, treaties such as the Universal Declaration on Human Rights and the adoption of the U.N standard minimum rules for treatment of prisoners.

## 7. *HIGHLIGHTS OF THE YEAR*

- 15.07.94: **Appointment of the First Ombudsman** of the Republic of Vanuatu for a period of five years.
- 23.08.94: **Assistance of Australian High Commission**  
Letter from the Australian High Commission advising the Office of the Ombudsman that, following the urgent request of the Ombudsman, they have accepted to finance part of computer equipment and the trip of the Ombudsman to the regional Ombudsmen Conference.
- 3/7.10.94 **Australasian and Pacific Ombudsmen Conference in New Zealand**  
The Ombudsman of Vanuatu met all her regional colleagues and in particular the Ombudsmen from Papua New Guinea to discuss matters of cooperation.
- 13.10.94: **M.O.U between Vanuatu and PNG**  
Signature between the Prime Ministers of Vanuatu and Papua New Guinea of Memorandum of Understanding to assist the Vanuatu Ombudsman to properly set the Vanuatu Office and to provide an Act for Parliament.
- 07.02.95: **First visit of delegation from Ombudsman Comm. of PNG**  
Arrival in Vanuatu of the first Official delegation from the Ombudsman Commission of Papua New Guinea including their Legal Counsel, Mr Toop, and the Ombudsman, Mr Joe Waugla to assess the situation and prepare the legislation.
- 05.03.95: **Finalisation of Ombudsman's Act**  
Legal Counsel from Papua New Guinea finalised the legislation.
- 28.04.95: **Major assistance of the French Government**  
Letter of the French Embassy advising the Ombudsman of Vanuatu that "Fonds de Coopération pour le Pacifique Sud" has agreed to provide financial aid to the Vanuatu Office partly for equipment and partly for financing overseas missions.
- 09.05.95: **Second visit of the PNG delegation**  
Official visit of the High Commissioner of Papua New Guinea, the Ombudsman Joe Waugla and Greg Toop from Papua New Guinea to present the report of the First Phase of assistance rendered to the Vanuatu Ombudsman by the Papua New Guinea Ombudsman

Commission and the Draft Ombudsman Act and the Leadership Code Act in accordance with the Memorandum.

The President of the Republic of Vanuatu bestowed his chiefly title to the Ombudsman of P.N.G., MR Joe Waugla **Nora Lenelcau**.

01.08.95: **Arrival of adviser from Ombudsman Commission of PNG to assist the Vanuatu Ombudsman**

Arrival in Vanuatu of Mr Peter Kape, Assistant Director with the Ombudsman Commission of Papua New Guinea to assist the Vanuatu Ombudsman for 18 months as agreed in the Second Phase of the Assistance Program between the two countries.

04.08.95: **Vote in Parliament of the Ombudsman Act.**

## **8. ACKNOWLEDGEMENTS**

Firstly I would like to thank the President of the Republic of Vanuatu, His Excellency Jean-Marie Leye Lenelcau Manatawai, for having selected me for this important position. I would also like to thank the Government for their political will to appoint the first Ombudsman in the history of the country.

Special thanks must be given for the help and financial assistance provided to my office by the following:

- the French Government and his Excellency, the French Ambassador, Mr Jean Mazéo and His Excellency, Mr Jean Bressot, Permanent Secretary, of the Fonds Français de Coopération pour le Pacifique Sud,
- the Australian Government and his Excellency High Commissioner, Mr Peter Shannon,
- The Papua New Guinean Government and his Excellency High Commissioner Mr Joseph Aissago, the Chief Ombudsman of the P.N.G. Commission Mr Simon Pentanu, and the Ombudsman Mr Joe Waugla, and his officers the Legal Counsel Mr Greg Toop and their adviser Peter Kape,
- The Economic & Social Commission for Asia and the Pacific (ESCAP/UNITED NATIONS) and Mr Charles G. Kick, Regional Advisor.