

BUREAU
DU
MEDIATEUR

OFFICE OF
THE
OMBUDSMAN

OFIS
BLONG
OMBUDSMAN

2nd ANNUAL GENERAL REPORT

TO
PARLIAMENT

1996

BY THE
OMBUDSMAN
OF
THE REPUBLIC OF VANUATU

THIS REPORT IS ISSUED PURSUANT TO ARTICLE 63(3) OF THE CONSTITUTION
OF THE REPUBLIC OF VANUATU
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1 MESSAGE TO THE PEOPLE

"... There is a conspiracy of her prophets in the midst thereof, like a roaring lion devouring the prey; they have taken the treasure and precious things; her princes are like wolves ravaging the prey to get dishonest gain ..." Ezekiel 22 v. 25 - 27.

1.1 This second Annual report from the office of Ombudsman is published at a time of considerable instability and concern in the country of Vanuatu following the multiple changes of Government in 1996 and the disturbances caused by the military forces during the last two months. As a result I have decided that, instead of commenting in this introduction on specific misdemeanours, I shall outline what have emerged as the most important factors leading to this decline. I have chosen to avoid any "diplomatic double-speak" but speak frankly, so that no doubts will be left in the minds of the public as to what these vital factors are.

1.2 In this last year, the welfare of this country has taken second place to prolonged political manoeuvring by leaders. Our leaders have jockeyed for position and power at the expense of the legitimate interests of the people they are expected to represent. This atmosphere of irresponsibility and neglect of duty inevitably spread to all sectors of the public service, ending in the damaging recklessness of the Vanuatu Mobile Force.

1.3 As a result, the reputation of Vanuatu in overseas countries has been harmed, and revenues and investments lost. Tourists have cancelled their proposed visits and businesspeople re-considered their plans to invest because of the political unrest as well as the obstructiveness and delays which are becoming an increasing reaction encountered from officials whose duties have not been adequately defined or supervised, leading to mismanagement and arrogance.

1.4 Altogether, the position of Vanuatu at this time is both frustrating and dangerous. I find myself caught in the hard position of whether the public's interests will be better served at this moment by expressing exaggerated confidence in future improvement, or by emphasising the very grave dangers into which the country has been led by much irresponsible and incapable leadership.

1.5 Complaints at all levels have poured into the Ombudsman office regarding arrogance, folly, ignorance, spite and incompetence on the part of Government representatives, and we have a huge backlog awaiting investigation.

1.6 Complaints are received regularly from potential investors of petty-minded harassment, of unexplained delays, broken appointments and ill-mannered treatment from ill-informed public servants. Some of them apparently see their roles as being as

arrogant as possible and making it difficult for foreigners to come and settle here with their assets. This leads to loss of jobs and revenue for the people of Vanuatu.

1.7 "Wishful thinking" will not cure these matters, nor will attempting to make scapegoats out of the media or "foreign oppressors", or making flowery political speeches and promises to a public who have lost trust and respect for their leaders. Foolish and frantic attacks on the character or ability or gender or colour or birth of the Ombudsman will serve no useful purpose at this time of internal disruption, regardless of how attractive such a target may seem to offended miscreants. The truth and the reality of the situation is gradually and remorselessly emerging, and it will no longer suffice to blame the big, bad world outside for Vanuatu's ills.

1.8 The worst exploitation of the people of Vanuatu is not carried out by foreigners, as is so often alleged, but by fellow Ni-Vanuatu who put personal profit before duty, and greed before service. This corruption must stop if the present rot is to be effectively resisted. Bad habits have been learnt and their consequences ignored. The public should now be on the alert every time a leader tries to invoke the spectre of "foreign boogeymen" to explain some new blunder or error. Many of our investigations so far have clearly indicated that most of these "exploitations" arise from the greed of officials who want a "cut" from deals which they should never have approved in the first place. These deals are against the actual needs and priorities of the people.

1.9 Therefore at the risk of being attacked yet again for not being a "true Vanuatu citizen", I wish to emphasise the overwhelming importance to Vanuatu of foreign contributions and foreign businesses. **For every one vatu the Government spends running and developing the country foreign aid donors give one vatu** - ie half the cost of running this country is met by the generosity of other countries wanting to help the people of Vanuatu. If the people wish Vanuatu to return to being a country of bush-dwellers and small subsistence farming, then that is a perfectly honourable option for them to follow. It can easily be argued that they might be a happier people as a result. In a country whose entire population of approximately 150,000 is less than many small towns in other countries, Vanuatu is blessed with a kind climate and soils which grow excellent food, not yet poisoned by techniques and developments which have plagued more "highly-developed" countries.

1.10 However, if the people of Vanuatu - and especially its youth - wish to share in the kind of life-style which they see presented in the media and the lives of foreigners, this can only be done by abandoning the old harmful grievances and prejudices against people and things "foreign". Instead of these grievances we need to accept gladly and gratefully whatever aid, or guidance, or investment by foreigners that may be offered to achieve this end. Hostile speeches and actions against those who are able to contribute what Vanuatu needs can only be destructive. This kind of misplaced arrogance will surely in the end reap its inevitable results, which we are glimpsing in some leaders' actions at this very moment.

1.11 It is true that in every country and community there are greedy people, but it should be acknowledged that in Vanuatu many leaders have been falling over themselves to join the ranks of these "misfits". Business is essentially about making profits, and the record of successive Government attempts to run businesses is a source of bitter amusement to the population as one "nationalised" enterprise after another degenerates into bankruptcy and dishonour.

1.12 Another disquieting result of lack of leadership and decisiveness has been the rise in crimes of theft and violence which have been reported to the Ombudsman's Office. Strictly speaking, these offences do not fall within the jurisdiction of the Ombudsman and are rightly referred to the appropriate legal body for actions. Increasing numbers of foreign expatriates are complaining of theft and break-ins to their homes, as well as increasing verbal abuse from young men who are apparently unemployed and who see expatriates as their enemy, as the result of irresponsible provocation by speeches of various "leaders". It is easier for leaders to provoke these unfortunate young people by selecting wrong targets for their frustration, hopelessness and disillusion than it is to take measures that may improve their education, training and prospects rather than arouse envy and hatred for others seen to be "better off".

1.13 It is not made clear to these young people that foreigners may only enter Vanuatu to live or to do business if they bring in very large sums of money with them. If they borrow additional money here, it is from foreign-owned banks whose money comes from foreigners overseas. Vanuatu has very few financial resources to lend to foreigners, and if the behaviour of Ni-Vanuatu leaders is not changed, Vanuatu banks will have no money whatever to lend to its own citizens.

1.14 It is vital for the public to face the fact that it is foreign money which constitutes the only hope in Vanuatu's present financial crisis. Foreign aid from such countries as Australia and others makes up almost 50% of Vanuatu's entire budget (recurrent plus development). This aid is in danger of being drastically reduced as a result of the irresponsible antics of some leaders here. It is therefore vital for us citizens to be aware of who our best friends are, and who are actually our biggest enemies and drawbacks.

1.15 It would be careless of me to fail to mention one other aspect of life in Vanuatu which arises more and more often in complaints to the Ombudsman. That is the increasing threat to the prosperity and harmony of Vanuatu families of the increased facilities for gambling their hard-earned wages away in the sad delusion of becoming rich. The Ombudsman's Office is at this moment engaged in investigating the means by which various parties were able to secure licences. The first evidence to emerge is very disquieting, and suggests improper behaviour on the part of some of those responsible. Perhaps the Churches could review their scope for effective intervention in this regrettable and harmful development.

1.16 I expect to be attacked again for attempting to "lecture" the public, but I make no apology for sounding out these warnings in an attempt to secure the enlightenment and education of the public in these important matters. It is of course one of the specific duties of the Ombudsman to inform the public of what is done "officially" in their name. It is not a political revolution that is needed in my opinion, but a moral and ethical one.

1.17 Religious teachings over the years have made the public aware of the individual and shared responsibilities that we all have. These principles ought to safeguard the true interests of the people. However, these precepts are being increasingly ignored by people in high places, and Vanuatu is becoming a more lawless and less welcoming country as a result.

1.18 One of the most disturbing aspects of this is how easily people who are appointed to lucrative positions in the public service, or on Government Boards, can be manipulated and bullied by Ministers and others into making decisions and taking actions which everyone concerned knows to be wrong. Sometimes they claim that their failure to take an honest stand arises from actual physical fear of being harmed by their manipulators. However, more often it turns out to be fear of losing their well-paid jobs if they do not go along with the wishes of the "big men".

1.19 More often than not, people are appointed (or elected) into positions which they are not fitted by training or experience or discipline to hold effectively. There is not an effective system to train these novices to fulfil their duties adequately. People can be promoted instantly from employment (or even unemployment!) in undemanding jobs to posts which make them responsible for understanding or enforcing complex legislation or programmes.

1.20 Often, too, those who have had better training or experience are reluctant to get involved in membership of those political parties which get into power. As a result, people whose only qualification is being subservient or faithful "party men" are rewarded by inappropriate power and salaries.

1.21 There is also considerable disquiet expressed by the public over the extraordinarily high salaries paid to those in these positions. It is also difficult to understand how these decisions about suitable "reward" are arrived at, in view of the lack of qualifications and abilities in those who would find it difficult to obtain and hold an executive position in any private company. I have often been astonished at the low level of grasp and understanding of relatively simple matters by some of these people.

1.22 In addition, there are many complaints of Ministers and others being appointed to more than one salaried position in addition to their Parliamentary salary, and also of other favoured "party members" drawing more than one salary. Sometimes, it is difficult to assess their suitability for any particular job, and of course for men accustomed to earning low wages, or even no wages, the enormous jump to the huge

salaries and expense accounts of these posts naturally cause enormous pressure and temptation to conform to the wishes of their political "bosses". They know that the short period of their likely stay in power will be their only real opportunity of "getting rich quick" at public expense.

1.23 Many of these undesirable "customs" have been known to members of the public before the Ombudsman investigations began into the details. It is to be hoped that the powers given to the Ombudsman to act on behalf of hurt people will help to put an end to these practices.

1.24 In order to facilitate this it is hoped that there will shortly be an endorsement of an effective Leadership Code, and an effective procedure to deal with offenders found guilty by the Court. There is, at the moment, a regrettable tendency of some Ministers and officials to utilise public money to retain lawyers, to attempt to thwart the work of the Ombudsman by invoking small legal technicalities in the apparent hope of blunting the effectiveness of the charges against them. I hope that this practise will be disallowed, and that only their own private funds be used for these purposes. Better still, it would be helpful if all representatives of whatever status will cooperate readily with the Ombudsman in pursuing the public good. It will help, if they make themselves totally familiar with the powers as well as the duties of the Office of Ombudsman.

1.25 It is my hope one year from now that we will be able to look back on this dark period as the beginning of more open and honest representative government, and a gradual move into a more prosperous and contented era.

2 THE OFFICE OF THE OMBUDSMAN'S YEAR 1995/96

2.1 Highlights of the year September 1995 To November 1996

DATE	EVENT
September 1995	TV interview on TV Vanuatu: The Ombudsman was interviewed about what the role the Ombudsman could play in issues and problems concerning women in Vanuatu.
October 1995	Round table conference on prisons: The Ombudsman met with representatives of the Police, Public Prosecutor, Public Solicitor, National Planning Office, Attorney General and UNESCAP about issues concerning the prison. As will be seen later in this summary and elsewhere in the report, some

improvements have been made.

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|---------------------------|---|
| October 1995 | Australasian and Pacific Ombudsman Conference in Hong Kong: The Ombudsman was able to make and improve contacts with other Ombudsmen in the region and in South East Asia. |
| October 1995 | Ombudsman Act No 14 of 1995: The passing of this law provided further explanation of the Ombudsman's constitutional role and gave various powers and responsibilities to assist the Ombudsman in carrying out her role. |
| December 1995 | Press release re Christmas present requests by public servants to the private sector: It was brought to the Ombudsman's attention that some public servants had been contacting private businesses asking for presents. This is a dangerous and unhealthy practice in a democracy. After the Ombudsman highlighted this by a press release fortunately the practice stopped. |
| March 1996 | Visit by PNG's Chief Ombudsman: Mr Simon Pentanu paid a visit to monitor the progress of PNG's attache to Vanuatu's Ombudsman's Office and was satisfied with that country's contribution. |
| March 1996 | British Foreign and Commonwealth Office invited visit: I was invited by this organisation to go to England and meet with the British Parliamentary Ombudsman, other Ombudsmen and other officials who protect the citizen. This showed to me that other countries care about and want to help Vanuatu. I also learnt much, including about the possibility of introducing a Charter for Public Servants. |
| April 1996 | Budget increase: The Government continued its support for the Ombudsman's office increasing the budget from VT7 million to VT 21 million |
| May to August 1996 | Local staff employed: Due to the budget increase I was able to employ the staff so desperately needed. In this period four investigators, two lawyers and a further secretary were employed. |
| June 1996 | CUSO aid - appointment of Mr Raymond Aupy: One of the Ombudsman's very important jobs is to protect the three official languages of Vanuatu. Mr Aupy is a bilingual translator from Canada and has worked previously in Vanuatu and is now assisting my office with the enforcement of my constitutional |

duty to ensure the respect of multilingualism. This is a great benefit to the people of Vanuatu.

August 1996

Women's prison opened: Following the Ombudsman's recommendation to the Commissioner of Police a separate women's prison was opened with some female jailers. This was an improvement on the previous situation where men and women were housed in the same prison with only male jailers.

August 1996

Joint British and Australian aid - Computer: My Office was assisted with the provision of funds to buy a computer. This, of course, makes things more efficient and increases my office's work capacity.

September 1996

Commonwealth Secretariat aid - appointment of Mr Kalev Crossland: Mr Crossland has joined the office from New Zealand as legal counsel.. He will assist in the training of the Ni Vanuatu lawyers and investigators. He will also provide the Office with legal advice.

September 1996

Leadership Code Bill: This was originally planned to be in the 30th September session and will be now voted on in December. This proposed law sets out specific rules for leaders that reflect the general principles of the leadership code in the Constitution.

June to October 1996

Radio interviews: My director, my Ni Vanuatu lawyers and myself were interviewed by Radio Vanuatu at different times about the Office's role and public reports the Office has issued. These opportunities were very valuable both for the Office and I hope for the people in increasing knowledge about the Ombudsman's Office.

October 1996

International Ombudsmen Institute Conference in Buenos Aires: I was very fortunate to be able to attend this conference with all the Ombudsmen in the World present. I was only able to attend because of the special help I received from the Danish Ambassador to Australia, HE Mr Kris Lund-Jensen and the very kind generosity of the Danish Government who funded my trip. This conference only occurs once every four years. I was able to meet many Ombudsmen and learnt much from them and the seminars that I attended. I also was able to plan some cooperation programs.

November 1996

Vanuatu Government assistance - car for PNG attache: The Government, under the MOU with the PNG Government,

provided a car for the PNG attache.

November 1996

Appointment of Mr Peter Bong as acting Police Commissioner: It was a great honour for the Office that the Government chose an investigator from the Ombudsman's Office to act in this important position. We shall all miss this very valuable executive but we know he will continue to help the people of Vanuatu in his new job.

November 1996

New Zealand aid - photocopier: The Ombudsman's reports are becoming more and more popular and are increasingly going to the grassroots in outer islands. This has put much pressure on the Office to make enough copies on the present machine. Through the kind help of the New Zealand High Commission in Port Vila, New Zealand has greatly assisted the Office in its job to report to the public about its enquiries into how the country is run by providing a new photocopier.

Current Staffing

2.2 The staff of the Ombudsman numbered 17 at the end of November 1996 and comprised the following positions:

- The Ombudsman
- Secretary to the Ombudsman and Office Supervisor
- Director of General Complaints
- Principal Legal Investigator
- Legal Counsel to the Ombudsman (Commonwealth Secretariat)
- Director of Language Rights/Multilingualism (CUSO)
- Legal Investigator
- PNG's Ombudsman's Commission's attache
- General Investigator (seconded police officer)
- Health Investigator
- Lands investigator
- Accounting investigator
- Bipartite Investigator and Administrative Assistant
- Secretaries/Clerks (3)
- Cleaner

2.3 The staff is a very healthy mix of people from different islands throughout Vanuatu and three expatriates from Canada, PNG and New Zealand. The Office can draw on a wide range of training, work experience and life experience. There

is also a reasonable age range and balance between the sexes, both numerically and in terms of the hierarchy.

Office premises

2.4 The wish of the Office has always been to obtain permanent offices in the Central Town location. This was recommended by the PNG delegation from the Ombudsman Commission with their role as defined in the MOU signed by both Prime Ministers.

2.5 All previous attempts to obtain funding for this move have failed even though promises were made by the former Prime Minister Hon Maxime Carlot Korman in Parliament that VT 6 Million was available. This matter is increasingly urgent because of the increasing number of staff that grew from 5 to 17 in the last 2 years. The Office is now fully staffed and the present Offices are too small.

2.6 It is very frustrating for our Office to have government's promise to fund the move and then not do so. The funds required for this move are repeatedly excluded from our previous budgets. As of the date of this report, the Vanuatu Government has not provided money for office equipment, office furniture, and the cost of installing the Office in permanent premises (partitions, electricity, telephones, airconditioning). Given the political disruption of the last year (3 changes of government plus ministerial reshuffles), it is perhaps understand that such a "practical" matter was not a priority.

However it remains an urgent need and the present unsatisfactory situation needs to be resolved. My Office continued to look at alternative premises and have one or two suitable places in mind. Unfortunately nothing can be confirmed without the allocation of funds to secure it.

2.8 The Office of the Ombudsman does not want to repeat the embarrassing situation that occurred with Phoenix House opposite the Post Office. Following the promise of the former Prime Minister in Parliament on 20/8/96, steps were taken by us to enter into the lease agreement. After several months, we had to give up the project as the funds were not released by the former Minister of Finance.

2.9 My Office wants to move, and needs to move.

Performance To 1995-1996 Corporate Plan

2.10 As I made known in my report last year a 5 year corporate plan (1995-1999) was prepared in September 1995. The purpose of the corporate plan was so that the office had a map of where it needed to go to meet its Constitutional responsibilities. I am happy to report that a number of goals set in the corporate plan have been met.

Legislation

2.11 The Ombudsman's Bill and the Leadership Code Bill were two goals. The first is now law and the second is now before Parliament. This is encouraging progress. These laws are explained later in this report at paragraph 2.21-2.29.

Staffing & training

2.12 Because of the Government's support and help from other countries I have been able to staff my office as planned for in 1996-97. I have got local investigators, a Legal Counsel and a Director of Multilingualism.

2.13 Training of the staff, another goal in the plan, has commenced. Because the Office has been so busy this has all been "on the job" training. This has been very useful and I have seen some great improvements. Building on this practical experience some of the staff will receive both in house seminar training and attend external courses.

Office procedures

2.14 Office procedures are presently being developed. To date, and again because of the heavy work loads, this has been an *ad hoc* process. This however is not a bad thing because of the youth of the Office and the value in learning from experience. Procedures are presently being formalised and recorded by the PNG attache to eventually become a manual. This topic will be reported on in my annual report next year.

Office facilities

2.15 As noted in the highlights the Office now has computer facilities and two photocopiers. The goal to set up a fully functioning and stand alone office has still not been reached. As I explained in the last section (2.4 - 2.9) above the Ombudsman's Office is still in temporary fully furnished rented accommodation and does not have much of its own office furniture. This is unsatisfactory.

M.O.U. With Papua New Guinea

2.16 On 13th October 1994 the Government of Vanuatu entered into a Memorandum of Understanding ("MOU") with the Papua New Guinea Government to provide technical assistance to draw up the legislation for an Ombudsman Act and assist the establishment of the Ombudsman Office. The MOU was to expire on 14th October 1996.

2.17 The Government of PNG delegated this task to the Ombudsman Commission of PNG who sent their Legal Counsel to Vanuatu to assist draw up the Ombudsman Act

Bill. While the Bill was before the Parliament the PNG Ombudsman Commission seconded one of their senior officers for attachment to the Vanuatu Ombudsman Office to assist in the next phase of the MOU. His prime responsibility is to establish the investigative procedures of the Ombudsman. The Parliament of the Republic of Vanuatu approved the Bill as law in August 1995.

2.18 Since August 1995 the PNG officer attached to the Office of the Ombudsman has drawn up procedures of investigations as required under the Ombudsman Act No 14 of 1995. He has also given investigative advice and assistance to the Ombudsman Office.

2.19 The Office of the Ombudsman now has Ni-Vanuatu Officers and staff who are familiar with the requirements of the Ombudsman Act. They also have learnt investigative processes required to address the people's complaints. This goes towards ensuring that the aspirations of the people, their rights under the Constitution and the relevant administrative laws are respected.

2.20 The MOU from my point of view has been a success. As a result there is an intention by the Government to extend the MOU in the light of the current Leadership Code Bill now pending before the Parliament.

Legislation - The Ombudsman Act No 14 Of 1995 & Leadership Code Bill

The Ombudsman Act No 14 of 1995

2.21 The Ombudsman's Act became law in October 1995. It is linked to the Constitution and tells how the Ombudsman is to use her powers to help the grassroots Vanuatu citizen when affected by Government and State decisions and conduct. This law also gives the Ombudsman powers to enforce the leadership code from the Constitution.

2.22 Many of my reports this year have been about the conduct of leaders. Leaders include all elected politicians (Ministers and MPs), politically appointed secretaries, local government members, Board members of public bodies (eg Vanuatu National Provident Fund who look after the country's retirement money) and bodies owned or controlled by the Government (eg National Bank of Vanuatu). By making sure our leaders are aware of the law and the people told when the leaders break the law, democracy becomes stronger.

2.23 To help the Ombudsman do her constitutional job the Ombudsman's Act gives her officers to assist. These officers include investigators and lawyers. The Ombudsman's Act allows the Ombudsman and her officers to request or require leaders and other people who can help to give the Office information. This means that the Ombudsman can get a full picture about a complaint.

2.24 So that everything is fair and just the Ombudsman must give the leader or body, who is the subject of the investigation, an opportunity to reply to the complaint. The Ombudsman's Act also says that when people reply the Ombudsman must put the reply (or describe the main parts of it) in the public report. Those who have read my reports will see at the back of the reports copies of these replies. Sometimes the reply is discussed in the report itself.

2.25 The Ombudsman's Act says that the Ombudsman is to open regional offices. I hope to open an office in Santo some time in 1997 if the budget will allow this.

Leadership Code Bill

2.26 This is a proposed law (a proposed law is called a Bill). It went to the Council of Ministers on 30 September. The Council of Ministers will put it before the Parliament when it sits in early December for a vote. If more than half of the MPs vote in favour it will become the law.

2.27 The Bill's purpose is to help the leaders of Vanuatu reach the standards laid down in the Leadership Code in the Constitution. The way to understand the relationship between the Leadership Code in the Constitution and the Leadership Code Bill is that the first is the bones or skeleton and the second is the flesh.

2.28 One of the main ideas of the Bill is to make sure that our leaders lead Vanuatu for the good of us all and not use public office for private purposes. The Bill does this in a number of ways, including:

- A leader must tell the Ombudsman within three months of becoming a leader what property and money he or she and his or her family has. Each year this information has to be given again. This way if the leader is getting rich from public office the Ombudsman can enquire and tell the people if it is illegal.
- A leader can not be involved in private business actively or by shareholding in a business. This law is because a leader's business is the honour of helping lead the country. Of course, politicians do receive a good salary and allowances, including in many cases housing and a car.
- A leader cannot give his or her spouse and family any benefits directly or indirectly because of the leadership position held.
- A leader can not grant favours to other people in return for gifts to the leader or spouse or family. This law will make sure everyone is treated equally when, for example, bidding for a Government tender.

2.29 If a leader does not follow the laws inside the Leadership Code Bill the Ombudsman is to enquire. If the Ombudsman finds that there is a case to answer the

case is referred to the Public Prosecutor who may take the case for prosecution before a special court called the Leadership Tribunal. The Leadership Tribunal will have three former or current Judges or Magistrates sitting on it. The Tribunal at the end of a hearing if it considers that the leader has breached the law can **recommend** a number of things, including:

- reprimand
- fine of up to Vt 1,000,000
- Pay up to VT 500,000 into a bank account and promise not to act against the law as a leader again. After twelve months of good behaviour the money is returned to the leader.
- Pay compensation to another person
- Dismissal from office.

3 AREAS OF CONCERN

Vanuatu's Precarious Financial Situation

Overview

3.1 My office has investigated several cases this year relating to financial maladministration and has various ongoing inquiries of a similar nature being carried out at present. Financial maladministration is one of the most serious problems facing Vanuatu today. The effects of past actions by some of our leaders have caused a situation where government departments are facing a 20% cut to their budgets for the 1997 year. This will have a serious impact on the ability of key departments such as Health and Education to deliver the level of services required by the people of Vanuatu.

3.2 I therefore intend to pursue with every resource available to me any reported case of financial maladministration.

3.3 Several of the reports by my Office this year have dealt with issues of both actual and potential financial losses by the Government of Vanuatu or certain other Government and semi governmental bodies. This is a particular concern of my Office because an increasing number of Pacific Island Nations are facing bankruptcy (Solomon Islands, Cook Islands, Nauru), or are struggling to avoid harsh controls being imposed by international lenders (PNG, Fiji).

3.3 The major causes of the financial crises in other Pacific Island countries are all present in Vanuatu today, namely;

- Excessive borrowing to fund uneconomic development projects. (as Prince II, Korman Stadium)
- Uncontrolled recurrent government spending. (eg: Overseas Missions)
- Excessive numbers of Public Servants. (eg: Political Appointees)
- Cost of paying 3 months' notice to all political appointees even if they are appointed for a few days. (In 1996, because of the numerous changes of government, this cost reached VT 71.000.000). This cost was not budgeted for and not approved by Parliament.
- Inefficient and/or corrupt Public Service and Political Appointees
- Government investment in risky private sector investments. (eg: Cybank)
- Loss making Government owned companies (eg: Vanuatu Holdings Ltd, Development Bank, National Bank of Vanuatu)
- Involvement in a scam as a result of the Government's desperation to raise finance (US\$100 Million Guarantee). The Bank Guarantees Scam might still represent a present danger, as notarised copies are likely to be still circulating and the whole extent of the damage will only be fully known at the maturity date of the guarantees on April 1998. .

3.4 I am sad to note that all the above examples indicate that some of the leaders of Vanuatu have failed to learn the lessons that can be so easily drawn from our near neighbours. Whether through ignorance or arrogance, many of our leaders seem determined to drive Vanuatu to the same levels of financial despair that are being experienced in most Pacific Island nations today.

3.5 This is a tragedy as Vanuatu today is struggling to provide adequate levels of **Health** and **Education** for its growing population. Every Vatu raised by the Government is important and cannot be wasted as it has been in many instances.

3.6 Due to the financial mismanagement of both the current and past governments, Vanuatu finds itself in a situation today where the Government is expected to have a **deficit** (or loss) of more than **750 million Vatu** for the 1996 year. This is more than 11% of the original budget.

3.7 Unless dramatic action is taken to reduce the size of the Public Service and to control the growth in the Government Debt, the complete revenue of the Government will be used to pay these two expenses, leaving nothing left to pay for other essential services.

3.8 Urgent action is also required to improve the Government's revenue collection. Budgeted revenue for many departments is never achieved and significant numbers of people refuse to pay the debts due by them to the Government.

3.9 Because of the decrease in revenue collection, and the allegations of misuse of power by the Ministry of Finance, the Ombudsman's Office has decided to look into all duty exemptions granted over the last few years.

Government debt

3.10 The Government debt has increased by approximately 40% over the last four years. The Government is currently negotiating projects which will significantly increase the debt of Vanuatu again. The rapid increase in the level of debt, caused mainly by the borrowing of VT 1.3 Billion for SPIC (Development) projects, now means that approximately 12% (VT 751 Million) of the annual budget is used to repay debt. This figure is more than double the level of debt repayment in 1994 (VT 364 Million) and will increase even more over the next few years.

3.11 After many years of relatively low debt levels it is disturbing to see the recent push by politicians to borrow heavily, especially when the borrowed funds are used on projects of questionable economic value such as many of the SPIC projects. An example of this is that the VT 400 Million borrowed to build the Korman Stadium. That project is costing VT 32 Million a year in interest payments even before any provision is made to repay the capital borrowings. **This is more than the annual operating costs of many departments.**

Public Service reform

3.12 The need to reform the Public Service is urgent. For the 1996 year, salary costs will use 64% of the annual budget (compared to approximately 50% in 1992). If the Public Service continues to grow at a similar rate as the last few years, then almost 70% of the 1997 annual budget available for departments will be spent on salaries for public servants.

3.13 This is totally unacceptable. The blame for this state of affairs must lie directly with the Prime Minister as head of the Public Service. The Prime Minister's Office must make the rationalisation of the Public Service one of his key priorities as failure to reverse recent trends will result in the bankruptcy of the country, in a similar manner to that of the Cook Islands.

3.14 Sadly the trend appears to be that the Prime Minister's office is responsible for the majority of what is termed "temporary appointments". This has caused much of the current inefficiency in the Public Service.

Compensation Payments

3.15 I am becoming increasingly concerned about the continual payment of compensation by the Government of Vanuatu to various individuals. For example, the 1994 compensation act for VT200 Million was fully spent and has now been followed with a current proposal to present a new bill to Parliament to allow further compensation payments for the same issue. These compensation payments appear to be increasing in frequency

Perhaps one compensation payment to consider is that proposed for the former Prime Minister, Father Walter Hayde Lini (now Minister of Justice). Parliament is to consider passing a law that will compensate Fr Lini **VT110,000,000**. This is for the stroke that Fr Lini suffered in Office. No one would wish to grudge the Father of Independence the comfort and support in his advancing years and health difficulties. However perhaps it should be born in mind that Father Walter Hayde Lini has been receiving his full parliamentary salary and continues to earn the salary of a Minister. Therefore it is difficult to justify a payment of this magnitude. It would be interesting to hear how such a payment could be justified given the poor economic state of the country. Parliament will no doubt wish to debate this thorny problem. Perhaps realistic pension schemes might be considered.

There are certain disturbing trends that are common to most payments;

- The major share of any compensation payment seems to end up in the pockets of a small group of "Big Men" who use their position to reward themselves excessively for some real or imaginary past loss.
- These compensation payments are rarely based on a planned policy. They appear to be more "spur of the moment" reactions to either political pressure or political opportunism. Therefore there tends to be no budgetary provision for the payments.
- Without budgetary provision for the payment of compensation the Government often has been forced to borrow money to pay the compensation. These borrowings must be repaid with interest over many years. They therefore reduce the money available to the Government to spend on the provision of urgently needed services in Health and Education.
- In summary, the payment of compensation seems to merely enrich a few at the cost of the majority of Ni Vanuatu.

3.16 This matter is being investigated by the Ombudsman. In the case of the proposed payment of VT 198 Million compensation to the 1993 Public Service

strikers, I am of the opinion that this represents one of the worst examples of how compensation is used by politicians to avoid responsibility for their past actions. If this compensation is a valid claim against the Government of Vanuatu then surely the politicians who caused this tremendous loss to be incurred must accept responsibility and resign from any position of current or future authority.

3.17 In many countries anyone responsible for losses of this magnitude would face the strongest sanctions. In Vanuatu today, many leaders seem to have no concept of responsibility for their actions, and the people have no ability to require their leaders to accept the level of responsibility that goes with positions of leadership. This lack of responsibility at the higher levels of Government has serious knock-on effects on the attitudes of the general public service and is an area where my office will be actively involved in trying to ensure that improvements are effected at all levels of the public service.

Termination payments for political appointees - VT 71,000,000

3.18 I am also shocked by the successive payments made to political appointees during 1996 as a result of the constant changes to the Government. Payments totalling VT 71,000,000 have been made to date to political appointees who were terminated due to a change in Government. Many of those terminated political appointees are now back in office despite receiving termination payments. This practice is a cancer feeding off the limited financial resources of the country.

3.19 I intend looking into the nature of these payments to ensure that they were justified and only paid to people who were legally entitled. My initial reaction is that the people of Vanuatu have once again rewarded irresponsible political leaders by paying them large sums of compensation for changes that occurred as a result of their own political decisions.

3.20 I firmly believe that the political appointees accept their position in the knowledge that they can be removed at any time due to political change. If this is so then it is unfair that they can then demand large termination payments when they are removed.

3.21 The VT 71,000,000 paid to political appointees this year could have been put to far better use. The public needs more money in Health and Education. This would help all Ni-Vanuatu and make the nation stronger rather than the same group of politicians who put personal gain before the well being of the people of Vanuatu.

Sale of Government assets.

3.22 The Government's lack of financial control has been hidden from the public over the last few years by the sale of certain key government assets, in particular:

- the sale of shares in the Banque d'Hawaii Vanuatu Ltd

- the sale of government houses to politicians and political appointees
- the sale of government land at unacceptably low prices to people without following the financial regulations .

3.23 The sale of these assets has reduced the size of past government deficits. However, there is a limit to the available assets that can be sold by government. The time is fast approaching when excessive spending will not be able to be covered by the selling of government assets. Money and assets do not grow on trees.

3.24 A particular concern is the Government sale of its shares in the Banque d'Hawaii. This was a low risk, dividend paying investment. Yet when Mr Barak Sope was Minister of Finance, he actively proposed to invest a similar amount in a comparatively high risk venture such as Cybank.

3.25 In general, the proceeds from the sale of government assets should be used either to reduce government debt or to reinvest in low risk assets necessary for the proper functioning of the government.

3.26 The two last matters are under investigation at the Office of the Ombudsman.

Public Service

Introduction - The Problem Of Poor And Unacceptably Low Standard Of Public Service

3.27 The Public Service is the main machinery of the Government. Its job is to provide services to the Public such as Education, Health, and Agriculture.

3.28 Since the Vanuatu Public Servants Association (VPSA) strike in 1993, the standard and quality of services provided by the public service has dropped dramatically. The strike led to mass sacking of qualified and very experienced public servants leaving behind this sorry state of affairs in the Public Service. As a result of this action the Public are not being provided the services reasonably expected from the Public Service. It is now to a very low and poor standard. The Public are witnessing this situation today with their own eyes.

The Cause Of The Problem - Recruitment Of People Without The Necessary Qualifications And Experience

3.29 After the sackings the Government filled these important positions left vacant with people who do not have the necessary qualifications or the experience to provide the services required. For example, it recruited a mechanic and bus driver to take up positions in the Dental Department and in the Health Department. Nurse aids took up the positions of qualified nurses. In this particular example, people's lives are potentially being put at risk.

3.30 Untrained teachers have taken up teaching in schools requiring the services of qualified teachers around the country. According to the Department of the Education records the total of such teachers stood at more than ninety (90).

3.31 The Public Service needs people who have the qualifications, the experience and have been properly trained to provide the best service to the public. That is the reason why the Government spends a big portion of its budget each year on education. That money is wasted if the people who are trained at this great cost to the country are then not used or are sacked in large numbers.

3.32 One of the great causes of the situation in the Public Service today is the political instability of Vanuatu. Understandably, public servants do not feel secure in their positions because of the changes in the Government since the December 1995 election. This has greatly affected the administration of the Government in that departments cannot 'make' definite departmental plans for their activities because of political uncertainties. Newly appointed Governments have completely new policies that greatly affect the departmental administration and their programmes. The constant reshuffle of political secretaries adds to this problem.

Public Service Commission

3.33 The Public Service Commission ("Commission") is a constitutional institution whose function is laid down in Article 60 of the Constitution of Vanuatu and the Public Service Act (Cap 129).

3.34 Appointments, promotions, transfers and disciplining of public servants is **the sole responsibility of the Commission**. The Commission is required to function independently, without fear, favour and interference. Article 60(4) of the Constitution states:

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

3.35 In recent years the Commission has not appeared to be independent in its function and decisions. In this period an illegal and unconstitutional practice has occurred whereby applications for positions in the Public Service made to the Public Service were always submitted to the Prime Minister's Office for screening. **They are supposed to go to the Commission**. The Prime Minister's Office should not be involved.

3.36 The Commission is supposed to make its own assessment of the applications. The recent practice is directly in breach of article 60(4) of the Constitution because it is a clear interference in the functioning of the Commission.

3.37 As a result of this policy, the people in the Office of the Prime Minister were selecting the candidates who were supporters of their political party or their 'wantoks'

or friends. In other words the Commission was just acting like a 'rubber stamp' on decisions and selections already made in the Office of the Prime Minister by someone else.

3.38 The Public Service and the Public Service Commission should not be used as a 'dumping ground' for retired politicians and members of Parliament who want to pursue their political career. The Commission must not only claim to be independent in its functions but **must be seen in the eyes of the public to be independent.**

3.39 The Commission must select candidates based on qualification, experience and their ability to provide the services to the public and citizens of Vanuatu.. However, this situation appears to be changing as some Civil Servants are taking a stand against unfair and illegal administrative. This is most encouraging.

Political Pressures On The Public Service

3.40 The Public Service has its own internal rules set out in the Public Service staff Manual. These rules are the procedures and guidelines the public servants must follow. In addition, there are other regulations and sets of instructions such as the Financial Regulations, the Public Finance Act and the Public Service Act.

3.41 The Public Service is still experiencing political pressure from senior politicians. Public servants get terminated without proper grounds. As I have already mentioned they get appointed without possessing the necessary qualifications into the Public Service. Because of these pressures many public servants are illegally acting on illegal instructions. They do this in the fear that they will lose their job and their future.

Prerequisite Conditions To Improvements In Public Service

3.42 I understand that there are several projects being considered for reviewing the Public Service with the help of United Nations (UNDP) and Australian Aid (AUSAID).

3.43 It does not seem logical for the Government to embark on these fairly costly and lengthy projects if the fundamental independence of the Public Service is not affirmed and guaranteed. As noted at 3.34 the Constitution states that the Public Service Commission must "*not be subject to the direction or control of any other person or body in the exercise of its function*". The Government should not interfere in the appointment of Civil Servants. Public Service appointments should be done on merit more than any other reason.

3.44 The Prime Minister, who is also the Minister of Public Service, should not be intervening at all stages of the appointment of Public Servants. The new practice that was introduced in recent years of using his power of appointing temporary employees should only be done as instructed by the Constitution; ie for "*unforeseen needs*" and

for a "*specified period*". (Art 57 (4) of the Constitution) and not for the ulterior purpose of giving jobs to friends and political supporters.

3.45 I repeat what I said above at 3.37. At present it occurs frequently that the most qualified and experienced person for any job is by-passed in favour of a relative or party supporter or friend. This ensures the continuation of the damaging process which is already dislocating the process of Government, whereby experienced people are replaced in a change of Government or even a change of Minister, and a novice put in place. The appointing of people to posts on the basis that they come from the same island or family can only eventually drain the life-blood from Vanuatu's economy. It serves only to undermine the country's entire social fabric, as incompetence and lack of ethical integrity leads to its inevitable result of chaos and poverty. This has already happened in some other Pacific countries.

Statutory Bodies

Overview

3.46 Political pressure is not only experienced within the Public Service but also in the various Government institutions. Directors or Managers have been terminated without good grounds and people appointed who have very little knowledge and lack of training in those specific areas. Institutions such as the Vanuatu National Provident Fund, the National Tourism Office, the National Bank of Vanuatu, the Provincial Local Government Councils and the Vanuatu Commodities Marketing Board all suffer from this disease of unlawful political interference. The members of the Boards are mainly made up of people who play important roles in political parties in power with little knowledge and sense of their main function and understanding of the acts.

Lack Of Understanding Of Law By Board Members

3.47 It is obvious that many people who have been appointed to the various boards lack the understanding of their functions and roles. Worse still they are ignorant of their own Acts. In certain instances, these appointed board members or elected representatives deliberately make decisions outside the laws.

3.48 An example of this is revealed in Ombudsman's recent report on the maladministration of the Shefa Province. The elected councillors have voted to grant the President of Shefa Province and themselves huge salary and allowances, outside the rate specified in the relevant Act of Parliament. Other examples will be revealed later in various institutions which are currently being enquired into by my Office.

3.49 Many political appointees also lack the understanding of laws and rules governing the administrative functions of the Government, such as the Financial Regulations, Public Finance Act, and the Public Service Staff Manual. Examples of these are revealed in my public reports on the Cleaning Contract of the Bauerfield

Terminals and the Sale of the MV Yasur. They are not to act as the puppets of the particular Minister that appointed them or their political party

3.50 It is important that those selected to various boards of Government statutory bodies have an understanding of the relevant laws together with the necessary experience and qualifications. Such Boards can then make wise and independent decisions based upon the relevant facts (ie not political considerations or pressure) and the laws for the benefits of the public and not just for a few.

Lack Of Cooperation

3.51 It is also observed that many individual leaders especially of statutory bodies call upon solicitors to obstruct investigations. Whilst this Office would never deny a person's right to legal representation, frequently this results in unnecessary time and public money spent wastefully.

Too Few Parliamentary Sittings

3.52 I make the following comments with the greatest of respect to Parliament. Over this last year it has been observed that many decisions have been taken by Ministers and the Council of Ministers that require the ratification of Parliament. Article 21 (1) of the Constitution provides:

Parliament shall meet twice a year in Ordinary Session.

3.53 Apart from the rare extraordinary session, Parliament, in fact, only sits for a few days each year. It is often said that Government is only as good as its Opposition. There are two effects of Parliament sitting for so few days.

(a) The Executive Government (Council of Ministers) cannot have matters quickly and properly approved by Parliament.. This has two further effects:

- breaches of the law
- Governmental actions are not exposed or tested by the examination of the opposition through questions and debate.

(b) Distances a Government from the people and makes the actions of Executive Government appear secret. It is my view that in any democracy an open and fully accountable Government must be the best Government.

3.54 I urge the Parliament to consider amending the Constitution to provide for more sittings or to have longer sittings. This will ensure that the business of Government is properly considered and dealt with.

4 PROPOSED EDUCATIONAL PROGRAMMES

4.1 Set out below is a brief description of the programmes of education for parliamentarians and the public that are proposed by the Ombudsman's Office for the coming year.

Seminars for Parliamentarians

4.2 One of the Ombudsman's other important jobs is the responsibility to help educate parliamentarians about those principles fundamental to democracy and good and transparent governance.

4.3 Drawing on the available Papua New Guinean, Australian, New Zealand and local parliamentary practice materials a framework of topics has been started by the Office. The anticipated topics are:

- Leadership principles under the Constitution
- Fundamental human rights
- The notion of the rule of law and democratic principles
- The Constitution of Vanuatu and Standing Orders
- Debating in the House and the role of the Speaker
- Parliamentary practices and procedures
- The Leadership Code and the Ombudsman
- The Executive, the Parliament and the passage of law

4.4 I consider these seminars to be particularly important and have been prompted by a number of reasons including:

- Many Leaders have expressed some doubt about what the Leadership Code actually means and how it is to be interpreted and applied
- It is increasingly being recognised throughout the World and by the United Nations Commission on Human Rights, that Ombudsmen play an important part in helping to ensure that human rights are protected and enforced where necessary.
- In the Ombudsman Act of Vanuatu, specific reference is made to the importance of human rights.

4.5 Over the past 12 months it has also become apparent that members of the Public Service do not know and realise fully what the role of the Ombudsman is. It is hoped that training material can be introduced to the training courses run for Public Servants.

Raising Public Awareness

Introduction

4.6 A further and most important area of education is for the people of Vanuatu to know precisely what is the role of the Ombudsman and how the Office of the Ombudsman may assist people as mediator between themselves and Government.

4.7 The Office wants to raise public awareness in Vanuatu beyond Port Vila. There are three strategies to achieve this goal. These are:

- (a) Circulation of the Ombudsman's reports to selected community leaders throughout Vanuatu;
- (b) A weekly radio programme; and
- (c) Travelling "roadshows" and "boatshows" in 1997.

Circulation of reports

4.8 These will be circulated to community leaders (ie Chiefs, Ministers of religion, teachers, the Police) throughout all the Islands of Vanuatu. It is hoped that these community leaders will hold meetings and explain to all people who are interested by the contents of my reports.

Weekly radio programme

4.9 As an aid to education in these matters, there be a weekly or fortnightly programme on Radio Vanuatu. This is the only way that effective communication can be made with many people. I believe that to educate people of their rights is to empower them to protect and enforce their rights. Through this the people of Vanuatu will have a better and more accountable and responsive Government.

4.10 The make-up of the initial programmes will have a heavy emphasis on the fundamental human rights and duties entrenched in Chapter 2 of the Constitution. Discussion of democratic principles, the rule of law and the concept of government are also to feature prominently. By looking at these topics the grassroots can better understand my reports.

Travelling Roadshows and Boatshows

4.11 The two previous strategies (circulation of reports and the radio programme) have been designed to enhance this third strategy. The Office proposes carrying out series of meetings/seminars in villages and communities around Efate and then throughout the country. The purpose of these trips is two fold:

- (a) To educate and raise public awareness about many of the topics that the politicians ; and
- (b) To reveal any instances of administrative or other conduct warranting investigation by the Ombudsman and officers.

4.12 Assuming funding is feasible the first series of trips (to the northern islands) will take place in approximately April 1997 after conclusion of the Cyclone season. The second series of trips to the southern islands could take place in August 1997.

5 STATISTICAL REPORT ON COMPLAINTS

Introduction

5.1 The following report covers the period of 1st September 1995 to 31st August 1996. The number of complaints received has increased very significantly.

5.2 In my first Annual Report for period July 1994 to August 1995, I reported having received 62 complaints. This year I received 208 complaints. This is an increase of 185%.

5.3 Furthermore in the 1995 report I reported having opened 53 cases for investigation. From those 53 cases, I have now closed 3 cases, leaving me with 50 old cases to carry into the 1996 reporting year. In 1996 I opened a further 94 (an increase of 153%) cases for investigation which brought my 1996 work load to 144 cases under formal inquiries. I have however concluded and closed 20 of these cases and as of the date of this report, I now have 124 cases still pending completion. These cases will be taken forward to the 1997 reporting year.

Complaints Statistics

5.4 From September 1995 to 31st August 1996 I received complaints and initiated own inquiries as follows:

1. *Total complaints*

A total of 208 complaints were received and registered.

2. *Type of Complainants*

1.	Government Employees	40
2.	Private Persons	84

3.	Private Business	12
4.	Minister	1
5.	Member of Parliament	nil
6.	Provincial Member	nil
7.	Own Initiative	71

3. *Method of Receipt of Complaint*

The above 208 complaints were received by the Office of the Ombudsman in the following manner:

1.	By visits made to the Ombudsman	45
2.	Visits made by the Ombudsman	42
3.	By letters to the Ombudsman	45
4.	By telephone to the Ombudsman	5
5.	Own initiative inquiries	71

4. *Jurisdiction*

From the 208 complaints received the Office of the Ombudsman had the jurisdiction to consider 181 complaints, whilst the remaining 27 complaints were not within my jurisdiction.

5. *Category Of Complaints*

All the complaints received were categorise as follows:

1.	Unfair Decision/Action	41
2.	Administrative Error	7
3.	General Maladministration	104
4.	Abuse of Power	16
5.	Discrimination	3
6.	Corruption	7
7.	Other (No jurisdiction)	30

6. *Disposal of Complaints*

All the complaints received were considered and disposed of in the following manner:

1.	Files opened for enquiries	72
2.	Declined to investigate	115

Whilst I declined to investigate 115 complaints, I assisted 113 complainants with the following;

(i)	Preliminary enquiries	27
(ii)	Gave advice only	45
(iii)	Referral to another authority	41

The reasons for declining to conduct a formal investigation into some of the complaints received were due to the following:

S 16 (1) (a)	No jurisdiction	27
S 16 (1) (b)	Trivial or without good faith	1
S 16 (1) (c)	Other remedies available	64
S 16 (1) (d)	Complainant's interest not related	19
S 16 (1) (e)	Matter too long delayed	1
S 16 (1) (f)	Complainant has lost interest	2
S 16 (1) (g)	other matters more worthy	nil
S 16 (1) (h)	insufficient resources	3

Multilingual Enquiry Cases	21
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7. *Closed Cases*

From the total complaint cases of 124 being investigated, including the 72 complaints of 1996, 20 of the cases were concluded and closed. The result of these cases were as follows:

1.	Complaint found justified and resolved;	1
2.	Complaint found not justified under S.16(1)(b);	5
3.	Investigation halted without any findings, due to;	
	(i) S.16(1)(a) No jurisdiction	2
	(ii) S.16(1)(c) Other remedies available	2
	(iii) S.16(1)(f) Insufficient interest on the case	9
	(iv) S.16(1)(h) Insufficient resources	1

8. *Distribution Of Complaint Against Agency (in alphabetical order)*

Ministerial Services 23

Ministry of Agriculture	1
Ministry of Education	2
Ministry of Finance	4
Ministry of Foreign Affairs	2
Ministry of Home Affairs	2
Ministry of Lands	1
Ministry of National Resources	1
Office of the Prime Minister	8
Ministry of Tourism	2

Constitutional Institutions 13

Electoral Commission	2
Judicial Services Commission	4
Parliamentary Services	2
Public Service Commission	3
Public Solicitors Office	1
Supreme Court	1

National Government Departments 110

Agriculture, Livestock & Fisheries Dept.	1
Attorney General's Chambers	1
Co-operative Dept.	4
Education Dept.	3
Environmental Unit Dept.	2
Finance Department	1
Foreign Affairs Dept.	1
Forest Dept	1
Health Department	14
Immigration Dept.	1
Industry, Trade & Commerce Dept.	1
Labour Department	1
Lands Dept.	9
Language Services Dept.	2
Meteorological Dept.	2
National Planning Dept.	1
National Statistical Dept.	1
Police Department	21
Police Department (Prison)	23
Postal Services Dept.	2
Provincial Affairs Dept.	1
Public Service Dept.	7
Public Works Dept.	5
Scholarship Unit Dept.	1
Vanuatu National Disaster Management Office	1

Public Authorities 17

Air Vanuatu	1
Development Bank of Vanuatu	1
National Bank of Vanuatu	3
National Housing Corporation	2
National Tourism Office	1
Noumea Consulate	1
Police Services Commission	1

Teaching Service Commission	2
Vanuatu Broadcasting/ Television Corp.	1
Vanuatu C.M.B	1
Vanuatu National Provident Fund	3

Privatised Authorities 3

Telecom. Vanuatu Limited	2
Vanuatu Holdings	1

Provincial Governments 2

Shefa	1
Torba	1

Provincial Departments nil

Members of Parliament 9

Hon. MP Alfred Maseng	1
Hon. MP Amos Bangabiti	1
Hon. MP Barak Sope	3
Hon. MP Faratia Thomas Brothy	1
Hon. MP Maxime Carlot Korman	1
Hon. MP Paul Telukluk	1
Hon. MP Willy Jimmy	1

Members of Provincial Assembly nil

Local Government Council nil

Tertiary Institution nil

Public Servants 7

Private Firms 9

Private Persons 7

Others (General Queries) 5

9. *Province Where Conduct Complaint Of Occurred*

1. Shefa	187
2. Malampa	3
3. Penama	nil

4.	Torba	3
5.	Sanma	11
6.	Tafea	4

The above figures show that most of the complaints received originated from the Shefa Province which is where Port Vila is located. Due to lack of resources we were not able to visit the Islands. Despite this the Ombudsman's Office was able to receive complaints correspondence from the Islands as indicated above. I hope to improve on this next year.

Non Reported Actions By The Ombudsman

5.5 The Ombudsman's Office is involved in other matters that are not the subject of public reports. Such actions include the day to day requests that the Office receives for assistance. In many cases the Ombudsman's Office has been able to get a result by telephoning or writing to the body concerned.

5.6 These situations are those where the Ombudsman brings an unfair practice or action to the attention of the body concerned. Most often the body will respond favourably once the facts are pointed out to the body. The person who has complained is usually able to get a favourable result immediately. Below I have set out summaries of some of these types of cases. I hope that the people, by reading these examples, will understand that the Ombudsman's Office is not just responsible for investigating Leadership breaches but also is there to help people in their everyday contact with Government.

Department of Cooperation Non reimbursement of 50% of officer's airfares.

5.7 In April 1996 the Ombudsman's Office received a complaint from an Officer of the Department of Cooperation concerning the Department's rejection of his application claim for 50% reimbursement of airfares that he paid when proceeding on his 1995 annual leave.

5.8 The Officer complained that in December 1995 he took his second annual leave of 2 months and travelled from Port Vila to Norsup to Santo and back to Norsup before returning to Port Vila. Upon resuming duty he submitted an application through his superiors for refund 50% of the airfares. However his application was arbitrarily rejected by the Deputy Director of the Department on the basis that he failed to travel to Ambrym Island, which the Deputy Director claimed to be his home island.

5.9 The complainant explained that although his parents are from Ambrym Island, he was born in Santo and his family had lived there since before his birth. In 1993 he took his first annual leave with the Department and returned to his family in Santo. After that leave he submitted his airfare coupons to the Department and was refunded 50% of the Airfares as required under the Public Service Staff Manual.

5.10 The Ombudsman wrote to the Director of the Department of Cooperative and pointed out the provisions of Chapter 11.3 of the Public Service Staff Manual. This provision clearly states that an officer of the Public Service is entitled to the 50% reimbursement of his airfares on annual leave. Here the State declares payment of 50% airfares as part of an employee's entitlement.

5.11 The Ombudsman view of the law applied to the facts was that an officer's home is where his family is. In this case that was Santo. The fact that in 1993 the Department accepted Santo as his home Island and had approved and reimbursed him the 50% airfares for his leave to Santo was also very significant. I therefore considered it unfair of the administration to deny his right to be reimbursed to visit his parents in Santo which would in this case be his home.

5.12 In mid 1996 the Ombudsman's Office received a response from the Director of the Department concerned advising that the decision of his Deputy Director was rescinded and the claim was referred to the Salary Section for payment.

5.13 The complainant also wrote a few days later to the Ombudsman's Office of the actions taken on his claim. He confirmed that he received an amount of VT 9,800 at the end of July 1996, being the payment of his claim. He expressed his gratitude to the Office of the Ombudsman for the assistance given.

South Pacific Disaster Project - Unpaid Seminar Monies

5.14 A request was received by telephone from the South Pacific Disaster Project Office requesting assistance to resolve a long standing problem between them and the Bank of Hawaii arising from monies paid in respect of a regional seminar in Vila. Because of some difficulties arising between the parties, there was a breakdown in communication.

5.15 Following this request, our officer met with the Director of the National Disaster Management Office and arranged for a telephone conference with the UN Organisation in Suva. During this conference, it was agreed to ensure that the Director would check his records and provide the required information to Suva to allow the UN Organisation to settle their problem with the Bank of Hawaii.

5.16 This occurred the same morning and the matter is now resolved there by preventing a deterioration in relations with one of Vanuatu's important Aid Donors

Dismissal of VULCAN employee

5.17 In March 1995 the Office of the Ombudsman received a complaint from a Civil Servant against VULCAN company. He alleged that in 1988 he was dismissed from Office without formal notification. In addition to that he was not paid any severance pay upon dismissal. He asked the Office of the Ombudsman to investigate the matter.

5.18 The Ombudsman's Office declined to assist because:

- The delay was too great between the event and the making of the complaint (7 years)
- The resources available to the Ombudsman's Office were not sufficient to investigate

Dismissal of teacher by Teaching Service Commission

5.19 The Office of the Ombudsman received a complaint from a teacher against the Teaching Service Commission for alleged improper termination of his services.

5.20 The teacher started work for the Teaching Service as a primary school teacher in 1978. By November of 1995 he had been a teacher and an employee of the Teaching Service Commission for 17 years. At the time of his termination he was the headmaster of his school.

5.21 He explained that in mid 1995 his primary school underwent major renovations to its school buildings. The teacher closed the school and sent the children home. Before closing the school he sought and got permission from the Regional Education Officer ("REO") in Port Vila.

5.22 While the renovations were still going on he learnt that his cousin brother and Custom Chief of Paamal Village, South East Ambrym was very sick and dying. Because of their close relationship he had to leave school to visit him before he died. He therefore contacted the Office of the REO to seek permission to leave school and visit his dying relative. He was accordingly granted leave.

5.23 Upon his return to the school a few weeks later he duly submitted his leave of absence application to the Office of the REO and carried on with his duties. All the buildings were completed and the school was reopened at the end of July 1995 to continue classes.

5.24 In October 1995 the Teaching Service Commission issued him with a suspension notice, charging him with unauthorised absences. He unsuccessfully appealed against the decision of his suspension. He was then issued with a disciplinary notice dismissing his service effective in January 1996.

5.25 On the basis of the above he found the decision of the Teaching Service Commission too severe in that the Office of the REO was well aware and advised of his leave of absence. The REO also gave their verbal approval. Furthermore, the school was closed for renovation of all its buildings so his absence did not interrupt the education of the children. He therefore believed that his case could have been treated with some compassion and understanding.

5.26 The complainant's documents were observed and assistance was given to him to properly set out his appeal. He was then referred him to the Teaching Service Commission Disciplinary Board who heard his case and upheld his appeal. He was reinstated with a new Teaching position and the 3 months suspension without salary was reimbursed to him. The complainant was finally satisfied.

5.27 It appears that there was a break down in communication from the teacher level to the REO and then to the Teaching Service Commission. We believe that before any suspension action is taken against a teacher, the Provincial Education Officer should be consulted and then actions taken. Had TSC approached the PEO the Office is sure that the matter would have died a natural death.

Unpaid debt of Vanuatu Post owed to Australian manufacturer

5.28 In January 1996 the Office of the Ombudsman received a batch of documents through the fax from an overseas company in Sydney, Australia.

5.29 The company said that in February 1995 Vanuatu Post ordered six postage franking machines. These machines were supplied at a cost of AUD \$8,800.02. The company sent its invoice to Vanuatu Post in May 1995 but no payment was forthcoming. Because of the delay in settling this account they referred this matter to the Ombudsman's Office.

5.30 The Ombudsman's Office telephoned the Department of Postal Services and asked it to explain why it had not paid its bill. The Deputy Director gave appropriate explanation of the delay. It appeared that upon the Office's intervention the duplicate invoice from the company was located. The outstanding bill was paid in early February 1996.

5.31 The Department of Postal Services later wrote enclosing a copy of the cheque made out to the above company concerned. This Office in response thanked the Department for their prompt action and cooperation in settling this matter. The Department of Postal Services also sent a letter of apology to the company concerned for the unfortunate delay.

Prisons

Introduction

5.32 My office makes regular visits to the prisons in Port Vila. My officers regularly receive complaints amount general living standards. As the cases below show the Ombudsman's Office has been able to assist inmates to improve conditions within a short time. Other complaints are about people's fundamental rights. The first case below is such a case.

Alleged improper imprisonment.

5.33 On 29.05.96 officers of the Ombudsman visited the Port Vila Central Prison and were approached by a remand prisoner. He complained that he was being unlawfully held in custody.

5.34 During his arrest he lost his passport and as such would not have been able to leave the country to go back to Fiji to continue his education. The inmate said that he had appeared before the Supreme Court in March 1996. The Supreme Court had found him and his friends guilty of breaking, entering and stealing and sentenced them to two years suspended sentence. Whilst his friends were released to serve their sentence outside the prison, he was sent to the prison to await for airline tickets to be purchased for him to go to Fiji to continue his schooling.

5.35 He therefore saw his imprisonment contrary to the suspended sentence ordered by the Supreme Court. He was further understandably upset because his co-offenders were released at the Court house while he was taken to prison.

5.36 The Office of the Public Solicitor was immediately contacted to visit the inmate concerned and give appropriate legal assistance. Nine days later we were informed that the complainant was released from Prison.

5.37 I wish to comment that the State in this case was unnecessarily exposed to a compensation suit if the complainant ever thought of taking out legal action for unlawful imprisonment.

Improper detention of remand prisoner

5.38 In August 1996, a mother and daughter, approached the Office of the Ombudsman and made a complaint against the Department of Police and the Chiefs of their Village. They alleged that they were forced to make false statements to the Police about an alleged father and daughter affair.

5.39 As a result of these statements the father was arrested by the Police. He was brought over to Port Vila from their Island home and remanded in custody at Port Vila Central Prison to await further appearances before the Court. He had already appeared before the Court on 4 occasions but there was not enough evidence to prove his case.

5.40 The mother stated that after having come to Vila and having questioned her daughter she was certain that her husband was innocent. She approached the Police Department to withdraw her statement but the Police refused.

5.41 After their visit to the Ombudsman's Office, the women went to the Office of the Public Solicitor with their respective statements as to the truth of the whole

matter. A few days later the complainant, the mother and her husband came to the Office of the Ombudsman to express their heart felt gratitude to the Ombudsman for the help and advice given to them which resulted in the case being dismissed. In parting the complainant's husband said "*God i blesem yufala blong gudfala help wea yufala i givim long mi mo famili blong mi*".

Privileges for female inmates

5.42 During a prison visit by the Ombudsman in June 1995 to the Port Vila Prison a woman complained that her requests for privileges (set out below) had been unreasonably refused:

- Telephone communication with her family at Santo Island;
- Request for transfer to Santo Prison
- Request for refund of National Provident Fund contribution.

5.43 Upon receipt of the complaint the Office of the Ombudsman wrote to the Commissioner of Police, held discussions with the Prison authorities and communicated with the Vanuatu National Provident Fund.

5.44 As a result the Police Department instructed to the prison authorities to allow her access to the prison telephone once a month to communicate with members of her family.

5.45 The Prison authorities were of the view that her transfer request was not possible due to lack of facilities for female prisoners in Santo to accommodate her. In addition, Santo Prison is a small establishment with a small prison force.

5.46 The National Provident Fund advised that the National Provident Fund Act does not provide for early refund of VNPF contributions. Refund of contributions can be made upon reaching the retirement age of 55 years.

5.47 The complainant was advised of all the above during our next prison visit and the matter was closed due to the fact that the Office have looked into all her complaints.

6 RECOMMENDATIONS

6.1 There are four classes of recommendations made. These are directed to:

- Conduct (3)
- Law (4)

- Administration/Financial (3)
- General (3)

Conduct

Recommendation No 1

Leaders and all in Government and State controlled bureaucracy to follow the law and the Constitution.

Recommendation No 2

Public servants to be appointed on **merit**. The Prime Minister's Office and other Ministries to not interfere with Public Service Commission's role of appointing Public Servants.

Recommendation No 3

The Council of Minister's to follow the advice of the Attorney General.

Law

Recommendation No 1

Parliament to ratify the Universal Declaration on Human Rights (Paris 1948) and the Basic Principles for the Treatment of Prisoners and Standard Minimum Rules for the Treatment of Prisoners into the domestic law of Vanuatu.

Recommendation No 2

Parliament to consider amending the Constitution to provide for more sittings or to have longer sittings. This will ensure that the business of Government is properly considered and dealt with.

Recommendation No 3

The Attorney General to submit to the Council of Ministers and Parliament the following legislation:

- (a) **Trustee Act** - providing for the duties, responsibilities, and liabilities of trustees/fiduciaries and trustee boards (and their directors) and all entities who look after property, money and other investments on behalf of and/or belonging other persons (eg VNPF)

- (b) **Disclosure and Regulation of Political Contributions Act** - Such legislation to limit the amount of money or other benefits to political parties and require full public disclosure of such contributions in the interest of open and transparent Government
- (c) **Provincial Government Act** - Following what occurred in the provinces, one of the purposes of this legislation is to avoid a repeat of the theft of public money (being considered in this coming parliamentary session).
- (d) **Prohibition of State Investment in International Companies** - There be a law totally prohibiting Government (national and provincial) and Government controlled corporation or other entity from having any interest of any kind in a company incorporated under the International Companies Act 1993.

Recommendation No 4

The Financial Regulations to be reviewed and amended to make liability for breach of them clearer, including financial and criminal sanctions.

Administrative/Financial

Recommendation No 1

In any review of the Public Service the Ombudsman's Office to be actively involved.

Recommendation No 2

The Government to not spend more money than the country has. In particular, to achieve this goal:

- No more compensation/ex gratia payments for historical events and political mistakes
- No more termination payments for political appointees
- No more arbitrary duty exemptions
- Reduction in Government funded overseas' travel and numbers of people going
- Government to collect its outstanding debts from all.

Recommendation No 3

The Immigration Department with help from the Attorney General (and the Ombudsman's Office if requested) prepare a Manual setting out powers, duties and responsibilities of the Department and its officers in the exercise of their function.

General

Recommendation No 1

A new prison to be built.

Recommendation No 2

The Government pay for the Ombudsman's Office to move into and set up in new office premises.

7 ACKNOWLEDGEMENTS

7.1 There are many people and organisations who have assisted the Office of the Ombudsman in a variety of ways. It is difficult for me to list everyone as they are numerous. I do wish however to single out some for special mention whose contribution has made a real difference to my officers and myself discharging our constitutional duties.

7.2 I thank the **HE President of the Republic of Vanuatu, Mr Jean-Marie Leye Lenelcau Mantawai** for his continuing support and interest. I also salute him for the courage and tenacity that His Excellency has shown in his own role in trying and difficult times. My thanks are extended to the **Government of Vanuatu** for its financial support on my recurrent budget. The Government is also showing some political will to accept criticism, often harsh, from my Office and has started to follow some of my recommendations. Together with the **Government of Papua New Guinea** and the **PNG Ombudsman's Commission** my Office has been assisted greatly through the MOU between these two Melanesian countries.

7.3 I wish to thank the Vanuatu Christian Council of Churches for their support for the work of this Office.

7.4 Most recently, the PNG Ombudsman's Commission has prepared the bulk of the Leadership Code Bill presented to Parliament on 30 September now to be voted on in the next session in December 1996. I also recognise the special contribution of

the former Prime Minister, **Hon Maxime Carlot Korman** for promoting and finally putting the Leadership Code Bill in the first place to Parliament and to our new Prime Minister **Hon Serge Rialuth Vohor** for maintaining it on the list of legislation to be considered before Parliament.

7.5 The Commonwealth, both at governmental and non governmental level has made an irreplaceable impact on the continued existence and growth of the Ombudsman's Office. My Office and myself are greatly indebted to both **CUSO** and the **Commonwealth Secretariat** for providing technical assistance in the form of my Director of Multilingualism, asolicitor (due to arrive next month) and my Legal Counsel (and computer), respectively. I would have been very hard pressed to fulfil all that I wanted to this year without the assistance that I am now able to draw on.

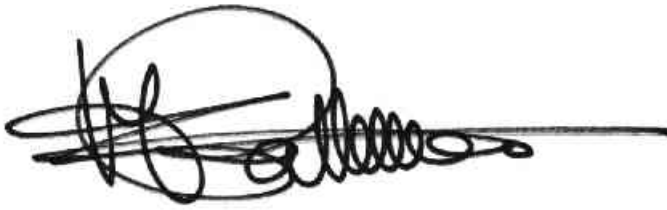
7.6 The **British Government** invited me to visit my counterpart in the United Kingdom and others involved in administrative investigation. By funding my visit I was able to increase my own knowledge base as a result of this trip. I owe thanks again to the British who along with the **Australian Government** funded the purchase of a computer. Obviously this has made the Office more efficient and increased the work capacity. The **New Zealand High Commission** in Port Vila are thanked for securing funding from the **New Zealand Government** for the purchase of a substantial photocopier. With the increasing demand for the Office's public reports are present machine was not coping. The second photocopier goes a long way to better informing the people of Vanuatu about their government and democracy.

7.7 It is a further enhancement to **Denmark's** reputation as one of the most philanthropic and world community minded nations that its government funded my trip to attend the quadrennial International Ombudsmen Institute Conference in Buenos Aires in October. This was a rare opportunity to make invaluable contacts with other Ombudsmen and be exposed to eminently qualified and experienced speakers on topics directly relevant to issues facing Vanuatu and my role. A special thanks must go to the Danish Ambassador to Australia, **HE, Mr Kris Lund-Jensen**. In the space of 10 days, Mr Lund-Jensen's personal efforts resulted in my trip becoming a reality. I also should note that the day following news of Denmark's funding, the New Zealand High Commission confirmed with an identical offer.

7.8 I am further grateful to the **New Zealand law firm of Russell McVeagh McKenzie Bartleet & Co**, for their most generous donation of law texts, law reports and journals. These books form the nucleus of a law library that the Office will endeavour to establish. I also thank **Mr Charles G Kick**, the regional adviser for The Economic & Social Commission for Asia and the Pacific (ESCAP/UNITED NATIONS), continued his support from last year with expert advice on Office and task managementsystems.

7.9 Finally, I acknowledge the **people of Vanuatu**. The "grass roots" support for my labours has given me real heart and encouragement. I look forward to serving the Public for the coming year.

Long God Yumi Stanap

A handwritten signature in black ink, featuring a large, stylized initial 'M' followed by a series of loops and a long horizontal stroke extending to the right.

MARIE NOELLE FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU

MONDAY 25 NOVEMBER 1996

Wm. H. Hall