



OFFICE OF THE OMBUDSMAN

ANNUAL REPORT 2021

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LIST OF ABBREVIATIONS

LCI- Leadership Code Investigation
GCI- General Complaint Investigation
PSC- Public Service Commission
VNPF- Vanuatu National Provident Fund
MESS- Members Education Support Scheme
PR- Public Report
CRM- Case Review Memorandum
CCS- Closing Case Summary
AR- Annual Returns

OMBUDSMAN OVERVIEW



I am delighted to present to you the annual report for the Office of the Ombudsman for the year 2021.

The year featured challenges and achievements for the Office.

Despite the global pandemic, which affected and continues to affect many countries in the world, Vanuatu, a small economy, felt its impact mostly economically, socially and psychologically.

The Vanuatu Government continued to commit significant budget to ensure national response plan is well implemented, isolation wards are well established and equipped, and front line workers are competent to handle confirmed cases and purchased and donated certified covid-19 vaccines are rolled out and reaching many people all possible. We applaud the country's medical experts and workers together with their partners for making sure that our beautiful Vanuatu is still free from Covid-19.

The pandemic also caused the Government to prioritise how the Country's funds are being allocated which also contributed to one of the Office major challenge this year being unable to acquire additional funding to effectively and efficiently carry out its functions.

My Office needed to regularly adjust the way investigations is conducted in order to continue to deal with the challenges as we move forward. For instance, investigators were issued instructions to work in teams instead of handling an investigation file individually, to strategically plan their investigations and use all means for gathering information during a normal investigation process or on a short period of time; we call it "snap short" of particular issue identified.

The Ombudsman for the first time also challenged some matters to court which is costly exercise and requires specific human resource capabilities to accomplish these

functions. Challenges mostly related to cost for filing matters to court, engaging experience lawyers to prepare submissions to court due to lack of human resource capacity and the claims ordered by Court for the Ombudsman Office to meet. Some of these court matters are still ongoing.

The newly vested annual return function of the Ombudsman remains a significant challenge. Not only the government has not financially support the Office to ensure an increase in the office human resources but the list of false fillers to be prosecuted is significant for only one Investigator and one Legal Officer to handle.

This year was highly regarded as a learning period for the Office in slowly implementing some of its powers specifically with taking matters to Court as provided by the Ombudsman Act.

Despite these challenges, the Ombudsman Office successfully closed a total of 46 cases, issued 4 public reports, referred 1 complaint to other authorities and resolved complainant grievance without starting an investigation. We are pleased that some of our recommendations made to government agencies were accepted to improve administration and good governance.

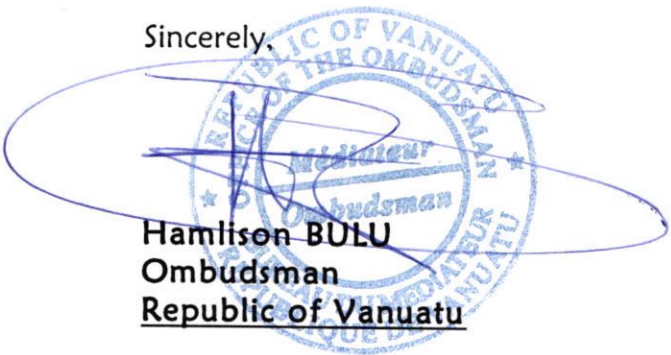
The Ombudsman Office also focuses on up skilling its investigators therefore virtual trainings were conducted throughout the year with the assistance of the New Zealand Office of the Chief Ombudsman and with the support of the New Zealand High Commission's Office in Vanuatu; A partnership that our Office treasures and will continue to look forward for more in the future.

The year ahead will see further work on amending the governing laws; the Ombudsman Act and the Leadership Code Act, to strengthen identified gaps in the Ombudsman dealings, establishment of five years Corporate Plan for the Office, a reinforced organisational structure to support and implement the Office's plans.

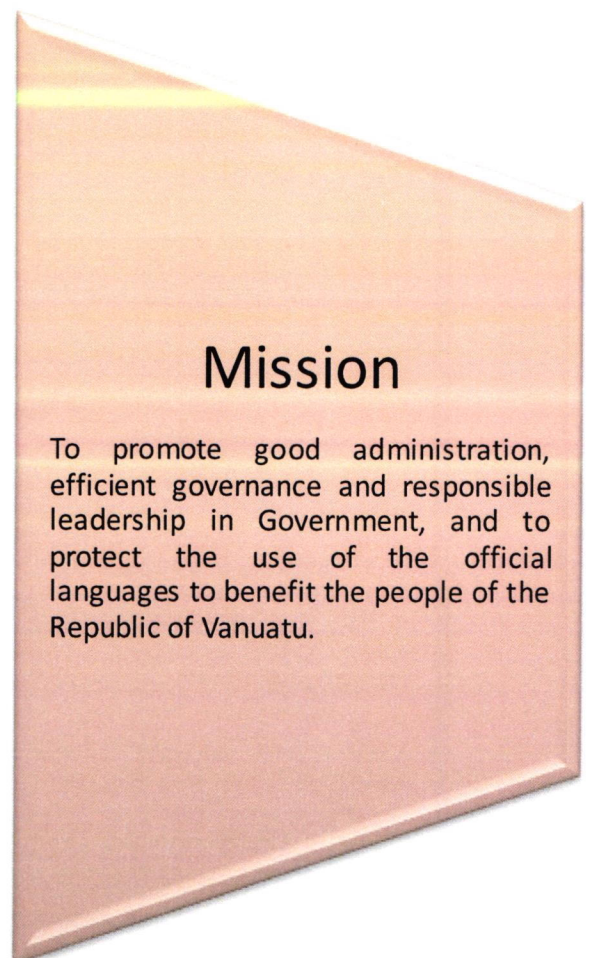
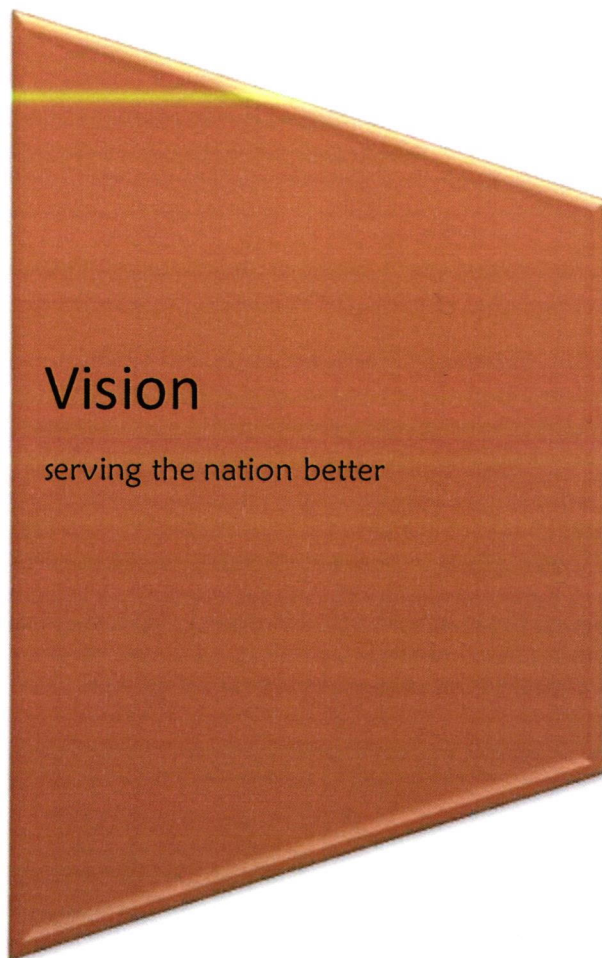
None of the Office's achievements would have be possible without the dedication and hard work of my Executive team and all the staff, whom I thank sincerely for their efforts including the support from our international partners.

Thank you for your consideration and I look forward to another successful year 2022.

Sincerely,



Hamlison BULU
Ombudsman
Republic of Vanuatu



JURISDICTION

The Constitution and Leadership Code Act mandates the Ombudsman to enquire into the conduct of public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service, the Supreme Court and other judicial bodies.

Article 62 directs the Ombudsman to enquire into complaints received from a member of the public, at the request of a Minister, Member of Parliament, the National Council of Chiefs or Local Government Council or at the Ombudsman's own initiative.

Section 34 of the Leadership Code Act, [Cap.240] further echoes Article 62 in commanding the Ombudsman to investigate and report on the conduct of a leader (other than the President) if the Ombudsman receives a complaint against a leader, or the Ombudsman on reasonable grounds believed that a leader has breached the law.

The Leadership Code (amendment) Act of 2020 also gave the Ombudsman an additional function; to administer the Annual Returns filed by leaders. The functions include holding a leader criminally responsible for his or her failure to comply with the Act.

Nevertheless, section 18 of the Ombudsman Act, [Cap. 252] ties the hands of the Ombudsman too from investigating certain complaints. It is not against the law for the Ombudsman to refuse or decline from investigating a complaint received and registered.

Article 64 of the Constitution calls for the right of a citizen of Vanuatu to obtain government services in the official language that he or she uses. Vanuatu has three official languages: Bislama, French and English. A citizen may make a complaint to the Ombudsman if he or she feels that this right has not been fulfilled.

FUNCTIONS

In 2021, the Ombudsman continued to carry out the following functions:

- enquired into any conduct on the part of any government agency;
- enquired into any defects in any law or administrative practice appearing from any matter being enquired into;
- enquired into any case of an alleged or suspected discriminatory practice by a government agency;
- enquired into any case of alleged or suspected breach of Chapter 10 (Leadership Code) of the Constitution;
- to conducted an investigation in accordance with Part 5 of the Leadership Code [Cap. 240];
- to undertook mediation in accordance with section 13 of the Act.

The Ombudsman also exercised his functions:

- a) on the complaint of a person or body referred to in Article 62(1)(a) or (b) of the Constitution; or
- b) on his own initiative.

MEANS OF LODGING COMPLAINTS TO THE OMBUDSMAN

There are different means of complaints made to the Ombudsman;

- I. complainant approach the Ombudsman and lodge a complaint based on the injustice he/she faced in the work place;

- II. phone call complaints are made when complainant lives in a remote place;
- III. Ombudsmen receive reports from other integrity institutions. This forms the basis for an Own Initiative investigation;
- IV. Information received from social media, example, newspaper, Facebook post, radio can form the basis of an Own Initiative Investigation

PROCESS OF HANDLING COMPLAINTS

After I took up the office in July 2019, I noticed a high number+ of backlog cases dated back to 1998 up to 2000. I made my first approach with the help of team leaders to identify the backlog cases pending investigation and close them.

One of the many reasons of backlog cases was no proper assessment of complaints. Complaints were taken on board without proper assessment pursuant to section 18 of the Ombudsman Act.

In 2021, the Office of the Ombudsman developed a new complaint handling process. Main reasons for developing this new process is to;

(a) avoid backlog cases; and

(b) to prepare proper investigation plans before carrying out investigations. Investigations are carried out in accordance with the plan and are expected to be completed within 3 months, 6 months or 12 months.

Nature of cases

Complaints received by way of complaints to the Ombudsman are dealt with through 2 categories of investigations proceeding, according to the nature of the complaint received:

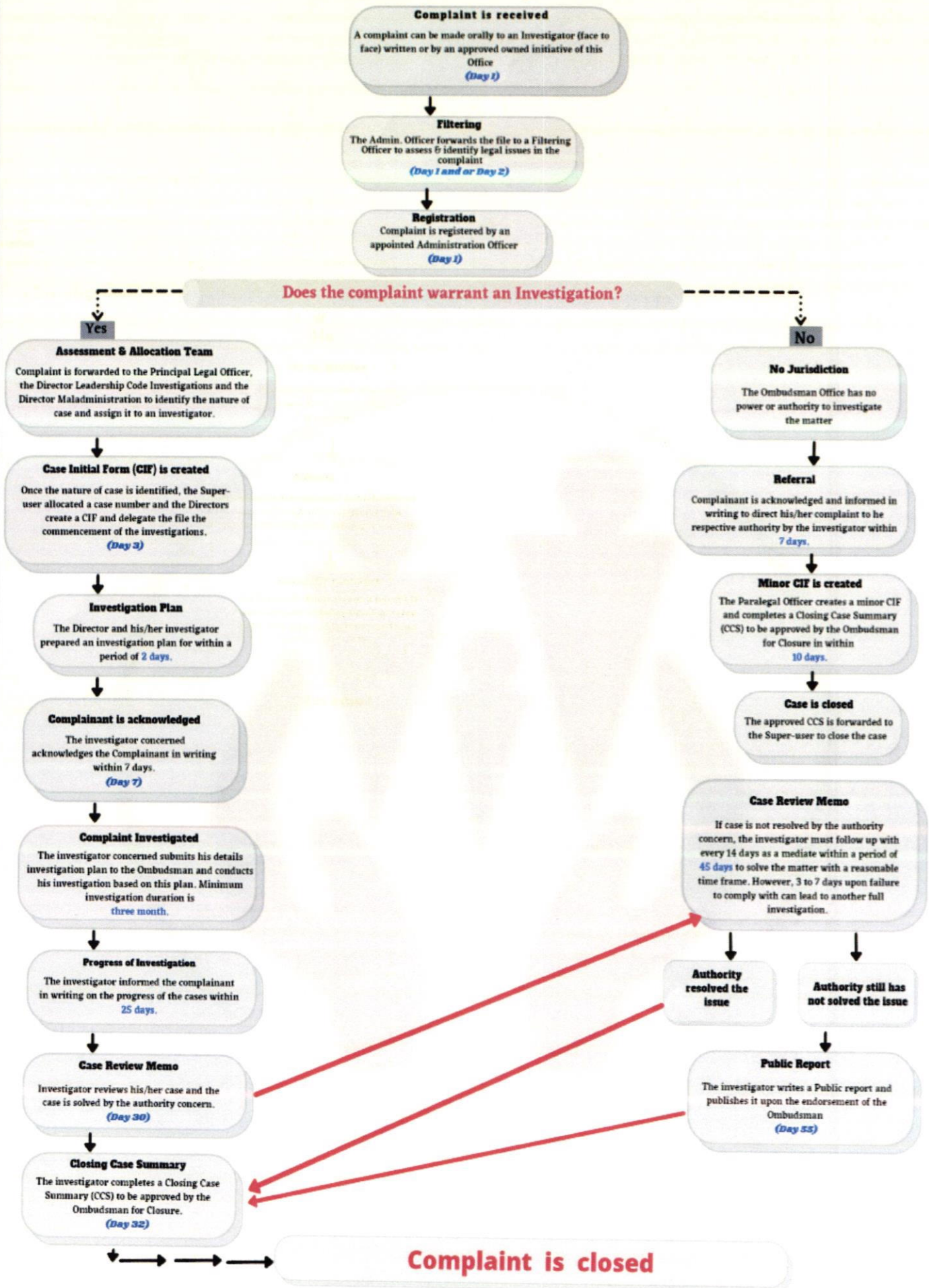
- Civil nature, and
- Criminal nature.

The nature of the offences allegedly committed, triggering a complaint to be made, is determined through a strict scrutiny determination by the Ombudsman Legal Team based on the Ombudsman Act. After the assessment and the nature of the alleged misconduct has been determined the complaint is then delegated to either of the 2 investigation teams.

Complaints of civil nature are investigated by the General Complaints Investigation team while that of criminal nature is investigated by the Leadership Code Investigation team of the Ombudsman's Office.

Matters of civil nature may be resolved by relevant heads of government agencies or ended up in the Civil Courts of law. Matters of criminal nature may end up in the courts as well.

Office of the Ombudsman Complaint Handling Process



WORKLOAD AND STATISTICS

Awareness program in 2021

The Ombudsman outreach or awareness program in 2021 have been successfully conducted through several areas in the Country (refer to picture below).

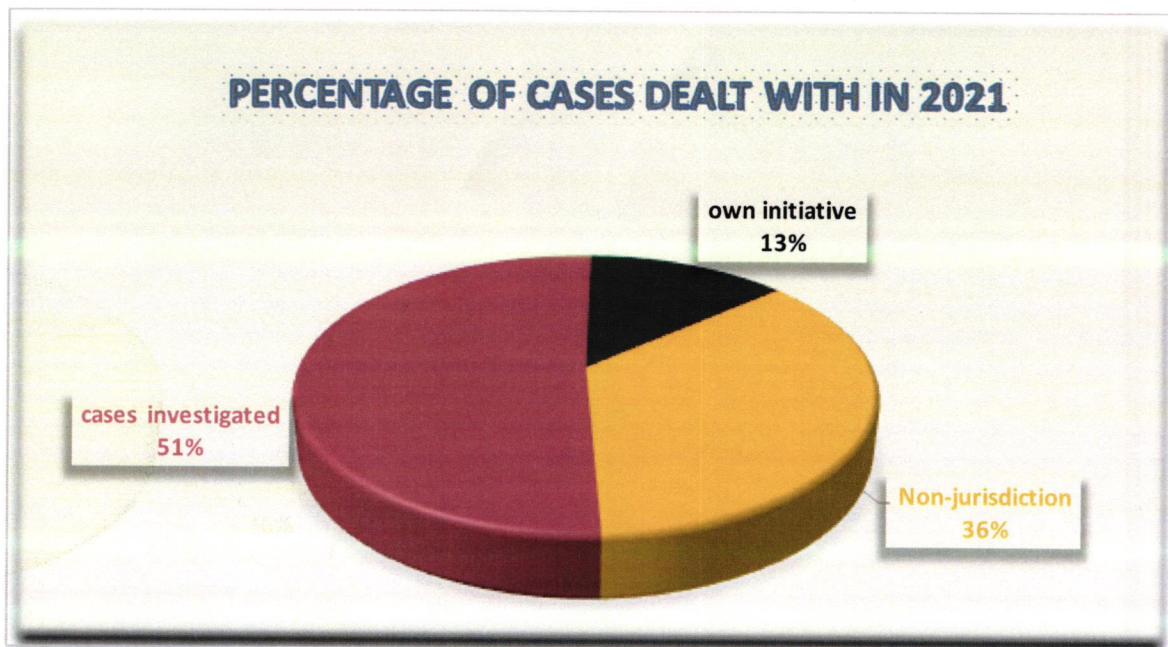


The above picture shows the Ombudsman and staffs conducting awareness during the agriculture show on Tanna

Overall statistics

In 2021, the Ombudsman Office received a total of 59 new complaints. Eight (8) complaints are Own Initiative (OI) complaints pursuant to s20 of the Ombudsman Act. 21 fell in the category of non-jurisdiction after being assessed and closed based on s18 of the same Act, and 30 complaints falls within the jurisdiction.

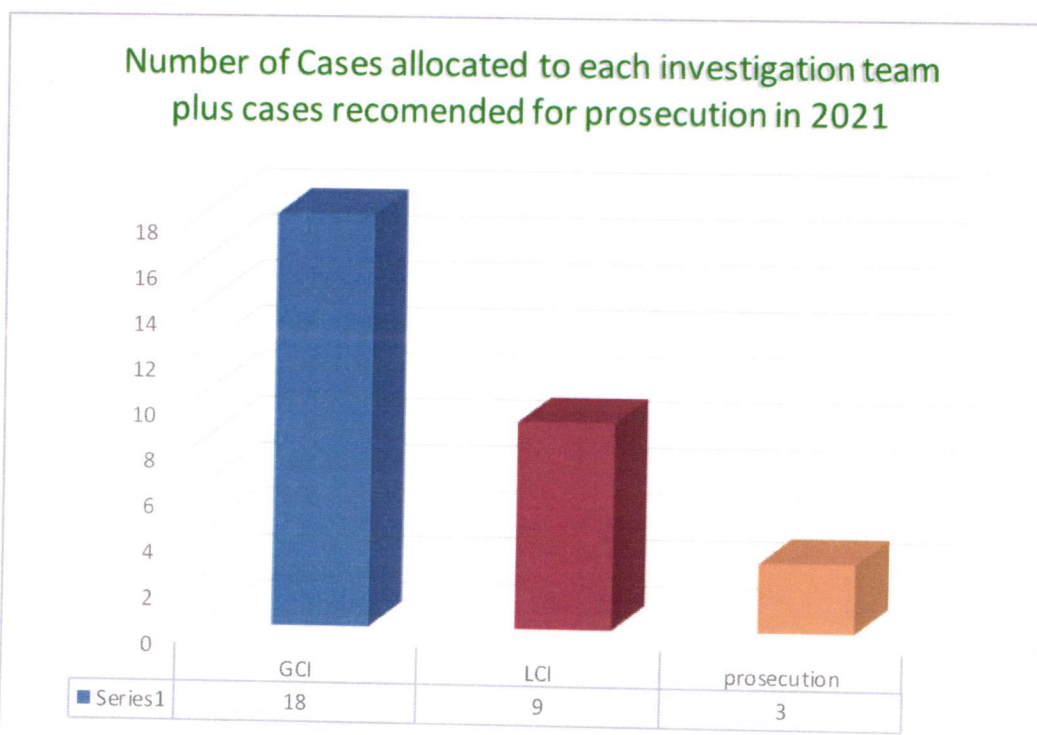
The pie chart below shows the percentage of all new cases dealt with in 2021.



Case allocations

Out of 30 jurisdictional complaints:

- General Complaint Investigations (GCI) investigated 18 cases;
- Leadership Code Investigations (LCI) investigated 9 cases; and
- Investigation cases completed and recommended for prosecution made a total of 3



The above bar graph shows that the Ombudsman’s Office received more maladministration complaints compared to Leadership Code complaints. This is a result of the clarification of the term “maladministration” made during different awareness program conducted by the Ombudsman and his team with different government agencies throughout the Provinces of the Republic of Vanuatu.

Leadership cases are mostly criminal matters complained of against a leader.

The increase number of complaints against government leaders was also recorded as a result of the Office awareness to Government agencies and through the media.

Complaints investigated and completed

The Ombudsman’s Office also closed a significant number of cases in 2021. The table below shows the number of cases closed throughout the year per Investigation team.

General Complaint Investigation	LEADERSHIP Code Investigation	Legal Team(non-jurisdiction)
13	7	21

The above table shows the total number of cases closed in 2021. Some of this cases are dated back to 2019 and 2020

1. Most complaint cases received were closed by the Legal Team. Reasons for closure:
 - Non jurisdiction,
 - Transferred to appropriate authorities.
2. The General complaint investigations closed 13 cases with complaint having jurisdiction. Out of this figure, 4 of these cases closed resulted in Public Reports. The others were resolved during the investigations.
3. Once the public Report (PR) was published, the case files were closed. Two public reports were published against a leader for breaching Ombudsman Act and Maritime Regulatory Act and Leadership code Act.

Annual Return

The Ombudsman has currently the legislative mandate to receive, keep records and assess the annual returns of those defined by the Article 67 of the Constitution, Section 5 of the Leadership Code Act and other laws of the Republic of Vanuatu as leaders.

The Leadership Code Act [CAP.240] was enacted by Parliament in 1998 requiring leaders to file annual returns declaring certain properties, including loans and other

liabilities they have or owe, to the prescribed authority. That prescribed authority was the Clerk of the National Parliament. He administered and enforced the provisions of the annual returns under the Leadership Code Act (Act).

In June 2020, the Parliament of Vanuatu passed the Leadership Code (Amendment) Act No. 1 of 2020. That Amendment transferred to the Ombudsman of Vanuatu the sole duty to ensure that all Leaders file their annual returns in accordance with the requirements of the Act. The Clerk of the National Parliament ceased to perform that function as from the 10th of July 2020.

This is the first time in the history of this Constitutional Office to assume this huge responsibility.

During the enforcement process, the Office of the Ombudsman identified some issues that needs urgent attention. Some will require amendments to be made to the current provisions of the Act to enhance the administration and enforcement of annual returns of leaders.

ISSUES AND CHALLENGES

No assistance to perform new function

The transfer of the powers and functions relating to the administration and enforcement of annual returns of leaders to the Ombudsman was done hastily. No proper plans was put in place to assist the Ombudsman to perform this new function. This include no assistance in monetary terms. The Ombudsman assigned to one of his investigators the responsibility to be in charge of annual returns. This decreased the number of investigators to investigate complaints. The new initiatives taken included –

- (a) an intensive awareness exercise to all leaders on their obligation to file annual returns and to do so within the time set by the Act; and
- (b) search and determine the leaders prescribed in the Constitution, the Leadership Code Act, and other Acts of Parliament; and
- (c) provide assistance to leaders to fill in their annual returns; and
- (d) advise leaders on the dateline that they must meet to file their annual returns on time; and
- (e) continuously seek advice and assistance from senior members of the Ombudsman's Office including the Ombudsman, and the Office of the Attorney General, employers of leaders and others to identify the leaders; and
- (f) Service of notices on all leaders who failed to file their annual returns under section 33 (a) of the Act. This was a difficult exercise as there is no