



**Office of the Ombudsman
Bureau du Médiateur
Ofis blong Ombudsman**



**SPECIAL REPORT TO PARLIAMENT
CONCERNING
THE OBSERVANCE OF MULTILINGUALISM
2018**

**This document is presented to Parliament by
the Ombudsman of the Republic of Vanuatu**

The Constitution states that the Ombudsman shall, each year, make a special report to Parliament concerning the observance of multilingualism and the measures likely to ensure its respect.

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1.0 INTRODUCTION

The Office of the Ombudsman is proud to release another Special Report on the Observance of Multilingualism for the year 2018 as prescribed by **Article 64(3)** of the Constitution.

The report outlines the uses of the three (3) official languages French, English and Bislama by all government agencies throughout Vanuatu. The observance and monitoring of the use of the official languages in government services deliveries includes advertisements, notices, newsletters, reports, memorandums and other services intended for the general public. The report also contains allegations of breach of languages rights by certain government agencies and how the Office of the Ombudsman has dealt with them according to the Constitution and respective governing laws.

- 1.1 As a reminder, the Ombudsman wishes to make it clear about the importance of our language pluralism as an essential aspect of our national identity and that it is protected by the provisions of **Article 3 of the Constitution** which provides:

“3. National and official languages

(1) The national language of the Republic of Vanuatu is Bislama. The official languages are Bislama, English and French. The principal languages of education are English and French.

(2) The Republic of Vanuatu shall protect the different local languages which are part of the national heritage, and may declare one of them as a national language.”

- 1.2 On that note, the Ombudsman would also like to remind and stress the right of a citizen to receive from “the administration of the Republic of Vanuatu” any services in any of the official languages that he or she uses as provided by **Article 64(1)** of the Constitution.

- 1.3 **Article 64(2)** of the Constitution empowers the Ombudsman to investigate breaches of Language Rights whether from citizens or on his or her own initiative which states: *“Where a citizen considers that there has been a breach of sub-article (1) he may make a complaint to the Ombudsman who shall conduct an enquiry in accordance with **Articles 62 and 63**”*.

2.0 INVESTIGATIONS

During the year 2018, the Office of the Ombudsman has not received any new complaints by individuals or the Ombudsman has not commenced any enquiry on his own initiative. This is a positive indication that government agencies have gradually realised the

importance of Article 64(1) of the Constitution and the need to produce information in all the three official languages to the general public. However, the Office of the Ombudsman continues to strictly monitor the uses of the official languages in government services deliveries.

Also this year, the Ombudsman continues to handle outstanding cases of the last two years 2016 and 2017 [refer to paragraph 2.2 for more details]. The Office of the Ombudsman would like to stress that the investigation of Language Rights is quite a difficult task for the reasons that will be outlined below. This report is a result of the Ombudsman's investigation of language rights complaints and the observations he has made during the course of the year 2018.

2.1 Enquiries and Complaints Processing

The Ombudsman's Office receives and process complaints of people who have been denying the language they speak and understand in government services delivery. The Ombudsman's cases that deal with breaches of language rights are mostly commenced on his own initiative. The Ombudsman however, encourages members of the public to report breaches of language rights [Refer to appendix A for more details] to ensure that all government agencies treat all people fairly and equally.

2.2 Complaints Handled /Direct Investigations

The Ombudsman's Office has continued to work closely this year with government ministries and agencies to encourage and protect the use of the three official languages in the public services. As mentioned earlier, the 2018 mission was to monitor all the government agencies that the Office has investigated in the last two years in their services delivery. The Office did not receive or start any enquiries on its own initiative regarding breaches of language rights but instead dealt with few outstanding cases of 2016 and 2017. The Ombudsman, however, will not reveal details of the government agencies it investigated due to its confidentiality policy. Moreover, the fact that there were no complaints received or started by the Ombudsman on his own initiative in 2018 is indicative of a positive approach by government agencies in accepting the requirement of providing services in all three official languages.

2.3 Outcome of Investigations and Inquiries

This year, the Ombudsman, through the Language Rights unit completed and closed two case files which had been received and dealt with in 2016 and 2017. There were varying reasons for non-compliance by government offices complained of, being that: -

- Article 64(1) of the Constitution was misinterpreted; and

- Financial constraints hindered publication of documents in French and Bislama.

The Ombudsman settled the issues with both government agencies and both cases are now closed.

2.4 Findings and Challenges

As breach of languages rights by government agencies is not necessarily punishable by law, it is quiet common to see that these government agencies will often repeat exactly the same thing in not complying with Article 64(1) of the Constitution in their future publications or services.

Government agencies particularly “statutory bodies” which are established under an Act of Parliament are all subject to Ombudsman’s investigation. Some agencies such as the National Bank of Vanuatu (NBV) and Air Vanuatu (under the Ministry of Infrastructure and Ministry of Finance) believe that they are independent entities (organisation) and that the government particularly the Ombudsman has no right in investigating them. The Ombudsman, however, provided some clarification that any entity established under an Act of Parliament or which the government is one of the stakeholders is subject to the Ombudsman’s jurisdiction to enquire into their administrative operations complained of.

The Ombudsman also noticed in his investigation that some government agencies believed publishing information in one language (English) or two languages (French & English) only is a common practice which become accepted as standard rule. The Ombudsman also clarified to them that a practice is not a law and is also subject to the Constitution.

Some government agencies raised important points on how Public Service Commission (PSC) and Office of the Government Chief Information Officer (OGCIO) internal regulations and policies affected their offices in terms of using the language of publication. Some Heads of Agencies complained of reiterated that they were just following PSC “standard practice” which is to publish only in French and English languages. The Ombudsman’s view is that PSC only approves for a position to be advertised but publications of vacancies (and the translations) are the responsibility of each agency. It appeared that some agencies just put the blame on PSC (or OGCIO) to avoid the responsibility of complying with the language rights provision of the Constitution.

In investigating this matter, the Ombudsman came across an interesting concept on how government agencies comply with PSC regulations and policies and their view on the Constitution concerning the use of the

three official languages. Nowhere in the PSC Staff Manual does it say that Agencies may use only 2 official languages to advertise or send out notices. The exercise of translation and publishing positions is within each ministry and department's own budget and not the Office of PSC. The PSC only approve that a position can be advertise but it is each office responsibility to make sure that advertisement are produced in all 3 official languages as required by the Constitution.

The Ombudsman also noticed during its investigation that changes in leadership can affect the work and agreement the Ombudsman may have had with previous heads of agencies. The Ombudsman had encountered one such incident where an understanding was reached between a particular agency head and the Ombudsman but when there was a change in leadership, the whole process of explanation and understanding had to be repeated to avoid reoccurrence of breaching Article 64(1) of the Constitution.

3.0 PUBLICITY AND EXTERNAL RELATIONS

The Ombudsman's Office organised awareness programs to inform people about the work that it does as a "Watch Dog" for malpractices in government. Awareness is also the chance to educate people about malpractices, corruptions and other violations of governing law by government and encourage them to come forward to report these injustices. This year, the Office had organised a live Television broadcast and Radio talk back show on the National Television and Radio Vanuatu about the different duties and functions of the Office. It was an opportunity to encourage as well as clarify the legal requirement of Article 64(1) of the Constitution to every viewers and listeners. The Office also had the chance to promote and inform the public about Ombudsman's work during the PSC day organised at the Convention Centre.

3.1 Transparent Government and Access to Information

The introduction of Right to Information Act is in line with the Government's policy to openness and accessibility of information by the public. This policy reflects on language, as an individual's right to obtain information in the language that he/she understands. The information and documents requested by individuals from government agencies should always be in the language the individual understand.

4.0 RECOMMENDATIONS



The Ombudsman makes the following recommendations based on his findings from 2018 and previous financial years. The Ombudsman's Office kindly asks the Prime Minister and Parliamentarians to act on

those recommendations mentioned in the Ombudsman 2015, 2016 and 2017 Language Rights Reports:

- 4.1** That all agencies of the administration of the Republic of Vanuatu including the Parliamentary services, the Judiciary, Ministries, Departments, statutory bodies and government agencies, including the government electronic media, must respectively follow the requirements of Article 64(1) of the Constitution however, difficult or costly that may be to issue every document, or provide all oral or electronic verbal communication in all 3 official languages, if not concurrently then within a reasonable time.
- 4.2** That the Office of the Prime Minister as the Ministry directly responsible for the Language Services Department and the effectiveness of its operation urgently allocate to that Department as a matter of priority, such budgetary contribution and staff and material support as it requires to provide quality and timely language services to all agencies and institutions of the administration of the Republic of Vanuatu.
- 4.3** That each ministry provide appropriate budgetary support for at least one officer fluent in all the three official languages to be posted in the ministry and or in their respective departments and agencies as a means to helping those ministries, departments and agencies meet the important requirements of Article 64(1) of the Constitution for the benefit of Vanuatu citizens and general members of the public.
- 4.4** That it is the duty and responsibility of heads of departments and agencies (Directors General, Directors, CEOs, Managers and Supervisors) to direct and ensure that all their publications and written communications are made in the three official languages, as they will be held accountable for any oversight or negligence.
- 4.5** That all the service commissions of the Vanuatu administration, namely the Public Service Commission, the Judicial Service Commission, the Police Service Commission, and the Teaching Service Commission, as head employment institutions of all Ministries, departments and agencies of the administration of the Republic of Vanuatu should notify all departments and agencies under their respective authorities to strictly comply with the requirement of Article 64(1) of the Constitution.
- 4.6** That each government agency amend or revise its policies to meet the requirement of Article 64(1) of the Constitution and not continue with the practices and “customs of doing things” which has been the norms in most of the Public institutions. Furthermore, amendments should be made to the PSC Application form and particularly the “recruitment process check list” in order to insist on the usage of the 3 official languages in government agencies publications.

5.0 CONCLUSION

- 5.1 This year's special report reflects positive steps taken by government agencies in providing services in all three official languages as more of them come to understand the requirement of Article 64(1) of the Constitution. There is however, more awareness and work yet to be done on the subject matter.
- 5.2 The report helps strengthen the right of access to information for all citizen whether in the Public Service or in different community in the society with the introduction of Right to Information Act (RTI). It also encourages the use of official languages that were not frequently used in the public sector.
- 5.3 As the goal of this report, recommendations proposed by the Ombudsman are in order to address issues raised, as well as the availability of solutions to address, facilitate, encourage and protect usage of official languages in accordance with the Constitution in this diversely linguistic and cultural setting which is Vanuatu.



Hamlison Bulu

OMBUDSMAN OF THE REPUBLIC OF VANUATU

APPENDIX A

Who Can Make a Complaint to the Ombudsman Office

Any person can make a complaint to the Ombudsman against any:

- government ministry
- government department or agency
- public servant
- leader in the government including provincial councils, municipalities & statutory bodies and their Board of Directors
- The Ombudsman can also commence an investigation on his/her own initiative

How to Lodge a Complaint with the Ombudsman Office

A complaint can be lodged with the Ombudsman Office by completing a complaint form a copy of which can be downloaded from this website, or through telephone, email, in person or anonymous / own initiative.

How does the Ombudsman Deal with Complaints

The Ombudsman will provide an opportunity for all parties to respond to the allegations made against them and will attempt to resolve the complaint by mediating between parties in any complaint. Should the complaint cannot be resolved then the Ombudsman will issue a preliminary report with recommendations on how to resolve the issues and a public report will be issued after.

What Happens after an Investigation?

For maladministration issues, an attempt is made to resolve the issue and if the matter cannot be resolved, a public report will be issued. For Leadership Code Issues, a public report is issued with recommendations for the Public Prosecutor to prosecute. If the public prosecutor feels that the evidence contained in the public report is not sufficient to conduct any proceedings against a Leader or persons involved in a leadership code case then the Public Prosecutor is required to direct the Commissioner of Police to conduct an investigation against the said leaders or persons. Police must investigate within 60 days and forward evidence to the Public Prosecutor and the public prosecutor is to decide within 3 months where there are sufficient grounds to prosecute.

What can't the Ombudsman Do?

The Ombudsman can't investigate the President or members of the Judiciary. The Ombudsman cannot enquire into a matter previously investigated by the Ombudsman, the reasons why a recommendation by the Ombudsman was not followed, the action taken by a leader or person in charge of a government agency to give effect to a recommendation of the Ombudsman.

How can you assist the work of the Ombudsman?

You can inform your friends and families about the work of the Ombudsman. You can also lodge complaints to the Ombudsman concerning an issue related to the work of the Government or conduct of leader or the Municipality. You can strive to possess good leadership qualities as leaders of the country