

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PUBLIC REPORT

(Pursuant to art 63(3) of the Constitution)

**ON THE
CONDUCT OF HON WILLIE JIMMY,
HON AMOS BANGABITI AND
MR AIMÉ MALÉRE
IN THE
SALE OF THE M.V SAVIN FANA**

This report contains the findings of fact, opinions, views and of unlawful conduct and the recommendations of the Ombudsman pursuant to the Constitution of the Republic of Vanuatu and the Ombudsman Act No.14 of 1995.

26 June 1997

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PREAMBLE

"How long will ye judge unjustly and accept the persons of the wicked? Defend the poor and fatherless do justice to the afflicted and needy: rid them out of the hand of the wicked" Psalm 82 v 2

This report on the matter of the motor vessel "SAVIN FANA" is yet another example of a prolonged mixture of inefficiency of officials, misuse of powers and dishonest scheming to circumvent the proper processes of responsibility and duty. The evidence shows a lack of care for the assets of the people of Vanuatu given to them by the Australian and International Development Assistance Bureau (AIDAB).

Successive disreputable actions by people entrusted with the care and use of a vessel worth over 23 million vatu which was finally "sold" for approximately half a million vatu to one of their own party members. There can be no excuse for this systematic manipulation of a situation in such a way as to deprive the people of Vanuatu once more of what could have been and should have been a major asset.

However, from the very beginning it is clear that insufficient research and preparatory investigation was done into how this asset could most profitably be used for the good of Vanuatu and important lessons must be learned from this. Competent advisers were not enlisted to give the necessary training and instruction and instead people with no valid experience whatever were permitted free rein. Sadly, this is not a unique situation but one which is constantly appearing in our investigations into numerous complaints. Those who are unable to justify their inappropriate actions must be made responsible for the loss of these large sums of money in a way acceptable to legal principles.

1 SUMMARY

- 1.1 In December 1995 I commenced an enquiry into the conduct of the former Minister of Finance Mr Willie Jimmy, the former Minister of Public Works Mr Amos Bangabiti, the former Chairman and Government representative in Unelco, Mr Aimé Maléré, and the Government Tender Board, relating to the sale and purchase of the MV Savin Fana.
- 1.2 My enquiry into the sale of the government vessel, the M.V Savin Fana, disclosed a prime example of bureaucratic incompetence. The Government, not only took more than three years to sell the ship, but it also managed the whole process so badly that several firm offers in excess of Vt 3 Million were completely ignored. The ship was finally "purchased" by a group of strong UMP supporters for the sum of Vt 500,000.
- 1.3 This sale once again shows that the very people charged with protecting the assets of Vanuatu either have no concept of their responsibilities, or consider such responsibilities to be less important than political favours. Ultimate responsibility for the Government's failure in this case must be accepted by the former Minister of Finance, Mr Willie Jimmy, who was responsible under the Public Finance Act [Cap 117] for the disposal of Government assets. Mr Willie Jimmy not only failed to ensure that the proper tender procedures were followed, but he personally negotiated the final "sale" to the group of UMP supporters for an incredibly low price. This was completely in breach of Chapter 18 of the Financial Regulations Act. He and Mr Bangabiti deliberately by-passed the Tender Board to do a private deal with Mr Aimé Maléré, a senior UMP member behind closed doors. Mr Jimmy has shown very poor leadership in this case. It is also difficult considering the evidence to avoid reaching the conclusion that Mr Jimmy acted corruptly.

2 JURISDICTION

- 2.1 This enquiry was conducted in accordance with art 62 of the Constitution and s14 and 17 of the Ombudsman Act No.14 of 1995 ("**Act**"). Under art 62 of the Constitution the Ombudsman is empowered to enquire into matters either on her own initiative or upon receiving complaints from any person affected as a result of a particular conduct or action by another person. The Ombudsman may also enquire into matters on request by a Minister, a member of Parliament, the National Council of Chiefs or a Local Government Council.
- 2.2 Messrs Jimmy and Bangabiti, as Ministers, are leaders under the Constitution. Messrs Pakoa and Hamish are public servants and as such fall within my jurisdiction similarly. I am also able to enquire into ministerial departments and public authorities. Therefore I am able to enquire into the Health Department and the National Planning Office. Mr Aimé Maléré at the time of the transaction was appointed as the Government representative in Unelco. He was occupying the post of Chairman in the Board of Management for Unelco from 18.05.92 to 29.04.96. He therefore falls within my jurisdiction, by reason of s14(2)(h) of the Act which provides that chairmen appointed to statutory organisations of the Government and corporations in which the Government has a share are leaders subject to the jurisdiction of the Ombudsman.

3 SCOPE OF INVESTIGATION

- 3.1 The aims of this enquiry were:
- (a) To establish the procedures followed leading up to the sale of the vessel;
 - (b) To determine whether the Government Tender Rules were followed as outlined in the Financial Regulations;
 - (c) To determine if the Government obtained the best value for its asset; and
 - (d) To determine where the proceeds of the sale were receipted.

4 ESSENTIAL FACTUAL BACKGROUND

- 4.1 In July 1985 the M.V Savin Fana was delivered to Vanuatu at a cost of \$A270,932.00 (approximately Vt 23,300,000) (Appendix "A").
- 4.2 The boat was donated by Australian International Development Assistance Bureau ("**AIDAB**"). The purpose of the boat was to deliver maternal and child health services ("**MCH**") to the outer islands of Vanuatu by Save the Children Fund Australia ("**SCFA**"). Under the exchange of letters for the vessel, AIDAB/SCFA agreed to initially meet all operating costs. From 1 May 1987 the Government was required to start contributing to the operational costs of the vessel. This contribution was to increase by 25% each year up to May 1990. After May 1990 the Government would provide 100% of its operational costs and take over ownership of the vessel.
- 4.3 In February 1987, the vessel sustained major damage during cyclone Uma. She was towed to the Solomon Islands in 1988 for repairs and fitting of a new engine. She returned in 1988 and re-commenced the touring program. In December 1990 the vessel became the property of the Vanuatu Government.
- 4.4 A review of the MCH project undertaken in 1991 by an AIDAB Review Team recommended that the vessel be sold. This was because the Government had not contributed to its operational costs, but had continued to rely on funding by AIDAB. This recommendation was supported by AIDAB, the managing agent of SCFA, the Department of Health, and the Government.

- 4.5 In April 1991 the first Tender Notice was published in the Vanuatu Weekly (issue no. 334 of 13 April 1991). Offers were received for its purchase. However, she was not sold.
- 4.6 In July 1992, a second Tender Notice was published in the local paper (18 July 1992). A further offer was received (after the closing date) and, again, she was not sold. In October 1993 a third Tender Notice was published in the local paper (16 October 1993) and again offers were received for its purchase.
- 4.7 During these years the following were the best and highest offers which were received by the Government for the purchase of the Savin Fana.

1991	Mr T.K., P.D, D.H A.S. Ltd	AUD 32,500 (Vt 2,800,000)
1992	Mr H.S.	Vt 2,000,000
1993	Mr B.A.	Vt 2,500,000

- 4.8 She was finally sold to a group of four Ni-Vanuatu ("**purchasers**") in 1994 for a sum of Vt 500,000. The purchasers never tendered for the vessel when it was advertised for sale in October 1993. They have since changed its name to M.V Sowides. It is now operating as a cargo boat. The names of the four "purchasers" are:

- * Mr Seth Shadrack;
- * Mr Charles Maléré;
- * Mr Adrien Maléré; and
- * Mr Aimé Maléré.

- 4.9 Apart from Mr Seth Shadrack (of whom I have no knowledge of his political position), the other three men were active members of the UMP Party.

Mr Charles Maléré	- an active member of UMP Party on Malekula
Mr Adrien Maléré-	member of the UMP Party National Executive
Mr Aimé Maléré	- Coordinator of the UMP Party National Executive.

- 4.10 At the time of the purchase of the M.V Savin Fana, Mr Adrien Maléré was Second Secretary in the Ministry of Agriculture, Forestry and Fisheries. Mr Aimé Maléré was the Government representative occupying the position of Chairman on the Board in Unelco. He was up to recently the Vanuatu Consul in New Caledonia.

5 **METHOD OF INVESTIGATION**

- 5.1 Relevant documents were obtained from departments responsible and other different sources pursuant to powers vested in the Ombudsman under art 62(3) and s17 of the Act. These laws empower the Ombudsman to obtain evidence and information by informal request from those able to assist. Accordingly, I obtained the relevant documentation and conducted interviews under oath.
- 5.2 The methods used and applied by those responsible for the sale of the Savin Fana were compared to the Government's set procedures and rules set out in the Financial Regulations.

6 **ISSUE OF AND PURPOSE OF MY PRELIMINARY REPORT**

- 6.1 The purpose of issuing my preliminary report is to outline the Ombudsman's preliminary findings of facts and of wrong conduct or defective administration. The Ombudsman sets out a date line, for those who have been involved in the matter, to make comments on the Ombudsman's findings. In this case I gave 14 days from the date they received the report. My report was dated 15 September 1996.

6.2 My preliminary report was issued to the following:

- | | |
|----------------------|--|
| - Mr Aimé Maléré | - Vanuatu Consul, New Caledonia |
| - Mr Charles Maléré | - Esqual Vila Limited |
| - Mr Norris Hamish | - Director, Ports and Marine Department |
| - Hon Willie Jimmy | - Former Minister of Finance |
| - Mr X | - Vanuatu Police Force (Tenderer) |
| - Mr Harry Collins | - Rates & Tax Department |
| - Mr George Manuiri | - Director of National Planning Office |
| - Mr Amos Bangabiti | - Former Minister of Public Works |
| - Mr Y | - Tenderer |
| - Mr Rod Manere | - Save the Children Fund, Port Vila |
| - Mr George Pakoa | - 2nd Secretary, Ministry of Agriculture |
| - Mr Daniel Kalorib | - Acting Director of Health Department |
| - Mr Setrack Meltope | - Esqual Vila Limited. |

6.3 The Ombudsman has received replies from five of the people listed, namely:

- Mr Rod Manere (Appendix "B")
- Mr George Pakoa (Appendix "C")
- Hon Willie Jimmy (Appendices "D", "D1", "D2", "D3")
- Mr Norris Hamish (Appendix "E")
- Mr Seth Shadrack (Appendix "F").

6.4 The other people did not answer and must be assumed to agree with the report when it concerns them. My comments to the replies which I received are set out as follows.

Rod Manere's Reply (Appendix B)

6.4.1 As far as the reply from Rod Manere is concern, I do not have any comments to make as it is self explanatory. There was no delegation made against him or Save the Children Fund.

George Pakoa's Reply (Appendix C)

6.4.2 In his reply to my Preliminary Report, Mr George Pakoa stated; inter alia; that: *"I cannot remember having dealt with the subject of the sale of the Savin Fana but the normal procedure for the sale of any asset of such high value is to set out the recommendations of the Tenders Board in a Council of Ministers' paper and request the Council to give a final decision as to which bidder should purchase the asset. The Ombudsman must also realise that there could also be other factors contributing to the non-action such as, political sackings etc..."*

Ombudsman's Comments

6.4.3 The letter from AIDAB to Mr Pakoa was in May 1991. The Tender Board at the time accepted the offer of Mr T. K.; P.D.; D.H., of A.S. Ltd for (\$A32,500) VT 2.8 million.

6.4.4 Mr Pakoa stated that he cannot remember having dealt with this matter, however the letter was addressed to him was from AIDAB. As he knew the procedure for the sale of such high value assets as set out in his reply, he failed to act on the Board's decision to have the matter put to the Council of Ministers for a decision.

6.4.5 As first secretary in the Ministry of Finance at the time, he should have acted on the decision of the Board and follow the procedure from there.

6.4.6 Although there was "political sacking" at the time, he should have acted on the letter and followed the procedure of writing off this asset. This cannot be used as a reason for not acting on the request. Public officers are appointed to these positions to carry out the duties vested on them. Failure in carrying out their duties will cost the Government at a later stage. This was exactly the case with the M.V Savin Fana.

Mr Jimmy's Reply (Appendix D, D1, D2, D3)

- 6.4.7 Mr Jimmy said that: *"This is the 3rd time I have been requested to respond to the question relating to the sale of M.V Savin Fana. Your letter dated 29th May and 17th June 1996 respectively, which I replied to them on 5th June and 24th June should have been considered as my response to this matter".*

Ombudsman's Comments

- 6.4.8 His letters on these two dates were in response to my normal letters to him when I was enquiring into the sale of M.V Savin Fana and requesting information but I will include them as answers as suggested by Mr Willie Jimmy.
- 6.4.9 On 05.06.96 Mr Jimmy replied to my letter of May 1996 when I was inquiring into the sale of the M.V Savin Fana and especially the payment of Vt 500,000. In his letter of 24.06.97 Mr Jimmy stated that:

"How and why the price was reduced to Vt 500,000, the Tender Board and the Minister responsible, Amos Bangabiti may have the answer whose authority, I assume the Board and the Minister".

Ombudsman's Comments

- 6.4.10 Since the inquiry into the payment of the ship, I have established the payment and that it has been receipted by the Finance Department.
- 6.4.11 I find this comment from Mr Jimmy to be untrue. The price was reduced because he himself and Mr Bangabiti suggested that Mr Maléré make an offer of how much he (Maléré) was prepared to pay for the ship. When the offer of Vt 500,000 was made, they both accepted it and Mr Maléré then issued a cheque for this amount. The blame on Mr Bangabiti and the Board is cowardly.
- 6.4.12 Mr Jimmy did not reply to my Preliminary Report. He did not dispute the fact that he was responsible for selling the M.V Savin Fana behind closed doors. He also did not explain the reason for interfering with the Tender Board responsibility.
- 6.4.13 As Minister of Finance, he was to ensure that Government assets are disposed of in a proper and lawful manner. He must show that he safeguards the Public Finance Regulations which he himself signed it in 1993. In my opinion his letter of 26.11.96 raises nothing of any substance.

Captain Hamish Norris' Reply (Appendix E)

- 6.4.14 In his reply to my Preliminary Findings, the Director of Ports and Marine, Captain Hamish Norris stated that there was not much for him to add; however he made the following comments:
1. *Mr Oli Simon's offer of Vt 2,000,000 (para 7.8) was not considered by the Board because it was received prior to the third Tender Notice going out (para 7.10, 7.13). If the above statement is correct, then I feel (para 7.18) is invalid.*
 2. *Under normal procedures, the boat cannot be repaired by the new owner unless and until it was paid for. It is believed that the special ceremony (para 7.24) was not in April but possibly in February 1994. We seemed to remember that the vessel M.V Savin Fana was towed to the Star Wharf, on the request of Mr Maléré, only after a phone conversation with Mr Van Weerdenburg who informed that the M.V Savin Fana has been purchased by Mr Maléré for VT 500,000. Mr Van Weerdenburg also confirmed then that it was a decision taken by the two Ministers concerned.*

Ombudsman's Comments

- 6.4.15 There appeared to be a confusion in the date of tenders of the applicant.

Mr Oli Simon's offer was for Vt 2,000,000. This was in respect of the third Tender Notice which was put out on Vanuatu Weekly news paper on 16.10.93. Mr Simon maintained to purchase the ship at Vt 2,000,000 since 10.02.93 when he first showed interest on it.

- 6.4.16 Regulation 322 in the Financial Regulations makes it very clear that items sold whether by auction, tender, or at fixed price, must not be removed by the buyer until he has paid for them in full.
- 6.4.17 In his statement to the Ombudsman on 15.02.96, Mr Maléré stated that they had carried out the repair work on the ship before 18.04.94 when the cheque of Vt 500,000 was issued as payment for the ship. He claimed that he offered to pay for the ship for this amount was because he spent Vt 14 million in repairing it. This is not true. This cost is not only for repairing the ship, it also included the cost of a new engine and propeller and the renovation of the cargo hold.
- 6.4.18 The payment was made on 18.04.94 during a ceremony in the Ministry of Finance where the Minister of Finance (Mr Willie Jimmy) was present as well as the Minister of Public Works & Transport (Mr Amos Bangabiti). There is no doubt that both Ministers made the decision at the time to sell the ship to Mr Maléré. This is confirmed by Mr Maléré's statement to the Ombudsman on 15.02.96.

Mr Seth Shedrack's Reply (Appendix F)

- 6.4.19 Mr Shedrack said in his reply that; inter alia:

"The AGC provided VT 4,500,000 to pay for the cost of an engine ordered from the USA. An additional VT 400,000 was paid out by AGC towards the cost of a propeller ordered from USA. Furthermore AGC also paid the insurance which was VT 1,000,000. The ship was inspected by the Harbour Master in Palekula and Melcoffee in Santo at a cost of approximately VT 1,200,000. The total expenses incurred by SOWILEG company was about VT 12,600,000. It was not true as mentioned in your letter that M.V Savin Fana was in good condition when sold by the Vanuatu Government. In fact M.V Savin Fana was moored at Irririki by the Ports and Marine Department for 3 or 4 years without any consideration for maintenance during that period".

Ombudsman's Comments

- 6.4.20 Mr Aimé Maléré and company did not buy the ship before they started carrying out the repairs. They only purchased the ship after they had carried out the repairs as per his interview statement with the Ombudsman.
- 6.4.21 The tender notices which were published in 1992 and 1993 were very clear. They state, *"as is where is basis"*. This means the ship is to be sold in the condition and state she was in where she was moored. In addition, Mr A. Maléré and company did not tender for the ship.
- 6.4.22 I consider that the comments made by Mr Shedrack are without foundation and unjustified.

7 FINDINGS OF FACTS

- 7.1 The findings of facts of the Ombudsman are set out in this chapter. The findings of wrong conduct and maladministration set out in section 8 of this report are based on these findings of facts. The issues arising from the actual tender process are detailed first. The findings relating to the sale and payment of the Savin Fana follow.

Sale by Tender

1991

- 7.2 The Government had no formal system or written regulations in place for tender procedures from 1980 to May 1993. Tender Boards were set up on an *ad hoc* basis only. This was the case in 1991 when the Tender Board met and decided to sell the Savin Fana. The Interim Financial Instructions which were issued in 1985 never included any regulations covering tendering procedures.
- 7.3 There was no formal valuation of the Savin Fana undertaken in 1991 by a Board of Survey to determine a realistic value for the boat prior to its advertisement for sale in the Vanuatu Weekly paper No.334 of 13 April 1991. The decision to sell the vessel followed an AIDAB review of the project in early 1991.
- 7.4 The Tender Board that met in May 1991 was made up of the following people:
- | | | |
|--------------------------|---|--|
| Leith Nasak | - | Ports and Marine Department (Chairman) |
| Andrew Moses | - | Finance Department |
| Roy Fey | - | Deputy Director of Health Department |
| Evan Lindsay Smith | - | SCFA |
| Ed Peek/Victoria Hillman | - | AIDAB. |
- 7.5 At that time the Board accepted the highest offer (\$A32,500) equivalent to VT 2.8 million of the two tenders received which was from Mr A, B, C of Z Ltd. It agreed that the vessel be sold as quickly as possible. Following the Board's decision, AIDAB, by letter dated 30 May 1991, requested Mr George Pakoa, the first secretary of Finance, for the Government to formally accept the offer in accordance with the Board's decision. The First Secretary, Mr Pakoa did not reply to this letter. There was no any further follow up made by the Chairman of the Tender Board on its decision. In his reply to my preliminary report on this matter, Mr Pakoa stated that he cannot remember dealing with the sale of M.V Savin Fana (Appendix "C").
- 7.6 On 30 December 1991, Mr Albert E. Adams (AESOP Volunteer) who was working on a fisheries project in Port Vila, wrote to the then Minister of Finance, Mr Willie Jimmy. Mr Adams said that he was interested in buying the vessel and would use it as a private yacht. He offered to pay Vt 3 million on an "as is where is" basis. There is no further correspondence on the matter from Mr Willie Jimmy or his Ministry in respect to Mr Adam's offer. (Appendix "G")

1992

- 7.7 In January 1992, the Director of Ports and Marine, Mr Norris Hamish, wrote to Mr Jimmy, referring to Mr Adams' offer. Mr Hamish informed Mr Jimmy that if the vessel was to be sold on a fixed price basis, it was recommended that it be sold at a minimum value of Vt 6 million and a maximum of Vt 10 million. Mr Jimmy did not reply to this letter. (Appendix "H")
- 7.8 In July 1992, a second public notice was published in the Vanuatu Weekly paper (18 July 1992) for the sale of the Savin Fana. The following was stated in the tender notice:
- (a) The vessel will need some major repairs before she can be brought back to seaworthy condition;
 - (b) The minimum sale value was Vt 3.5 million; and
 - (c) All tenders must be accompanied by a bank draft as guarantee.

No tenders were received in response. However, an offer was received after the closing date from Mr H.S. for Vt 2 Million.

- 7.9 On 26.03.92, the Board of Survey met in the Ministry of Finance under the chairmanship of the Second Secretary in the Ministry of Finance, Mr Harry Collins. The purpose of the meeting was to inspect and make recommendations regarding the Savin Fana, presumably about its sale. There are no records of the Board of Survey's minutes on matters that were discussed at the time.

1993

- 7.10 In February 1993, Mr X wrote to the Director of Ports and Marine, Mr Norish Hamish, repeating his interest in the Savin Fana. Following a private survey of the ship Mr X offered to buy the vessel for Vt 2 million. A copy of the report was enclosed with Mr X's letter of offer. The marine surveyors valued the vessel at Vt 2 million on an "as is where is" basis. They estimated that the cost of bringing the vessel back into a seaworthy condition, not including any improvements or alteration, would be about 3 - 4 million vatu.
- 7.11 Also in February 1993 Mr Hamish wrote to Mr Collins informing him that the department had not received any tenders by the closing date of the second tender notice. However, it noted that it had received a bid from Mr H.S. (after the closing date). There is no further correspondence on the matter from Mr Collins.
- 7.12 In March 1993, the then Minister of Transport & Public Works, Mr Amos Bangabiti again wrote to Mr Jimmy on the matter asking for his opinion regarding the same, i.e. Mr X's offer of Vt 2 million. Again, there was no reply from Mr Jimmy on the subject. (Appendix "I")
- 7.13 In April 1993, Mr Bangabiti followed up with Mr Jimmy about Mr X's offer. Yet again Mr Jimmy did nothing. (Appendix "J")
- 7.14 In October 1993, the third Tender Notice was put up for the purchase of the Savin Fana in the Vanuatu Weekly paper dated 16/10/93. The minimum price was now down to Vt 2 million. The closing date for tenders was 25.10.93. Following the tender notice the following submitted written tenders for the purchase of the vessel:-
- | | | |
|--|---|-------------------------------|
| Messrs X and Z | - | Vt 2.000.000 |
| Mr Y | - | Vt 2.300.000 |
| Mr D | - | Vt 2.500.000 |
| Messrs Charles Maléré and Seth Maltape | - | Vt 2.000.000 (received late). |
- 7.15 On 12.11.93 the Tender Board met and considered the tenders that had been received. The Board was made up of:
- | | | |
|---------------------------|---|-----------------------------|
| Mr Anderson Garae | - | Ministry of Transport |
| Mr Captain Norris Hamish | - | Ports and Marine Department |
| Mr Martin Van Weerdenburg | - | Department of Finance. |
- 7.16 The Tender Board resolved and accepted the highest bid from Mr D. It instructed Mr Hamish, the Director of Ports and Marine to advise Mr D of the Board's decision and to allow him a week to make payments. Mr Hamish telephoned and told him, but Mr D did not respond within the time given to him.
- 7.17 On 17.11.93 Mr Hamish wrote to Messrs Maléré and Maltape. Mr Hamish told them that because their tender was received (28.10.93) after the closing date (25.10.93), the Board had not considered their tender application.
- 7.18 On 22.11.93 Mr Hamish told Mr Y that the Board had accepted his bid as the second highest. Mr Y did not make payment in the time given to him: 4.30 p.m on 24.11.93. He was advised in the same letter that should he fail, the third successful bidder, Mr X, would be contacted.

Ombudsman questions tenderers

- 7.19 During an interview with him in May 1996, Mr Y informed the Ombudsman that:
- (a) He received the letter from the Director of Ports and Marine dated 22.11.93 on 23.11.93;
 - (b) The deadline given was 24.11.93 and that he should make the payment before 4.30 p.m;
 - (c) The time allocated was too short for him to try and secure funds from his banker;
 - (d) Had he been given a week, he would have sought other financial assistance to buy the boat;
 - (e) On receiving the letter he went and spoke to Mr Hamish and told him that the time given to him was not enough; and
 - (f) Because of the short deadline he just gave up. He did not contact Mr Hamish about the boat again.
- 7.20 In June 1996, Mr X said in his evidence:
- (a) **He was never contacted by the Tender Board regarding his tender;** and
 - (b) He was never given any option to purchase the boat following his tender.

Purchase of the M.V Savin Fana by the Malérés and Mr Seth Maltape

- 7.21 The purchasers had not tendered for the boat as required by the Tender Notice published in the Vanuatu Weekly paper in October 1993. Mr Charles Maléré and Mr Seth Maltape had submitted a tender for Vt 2 million. As noted above (7.14 and 7.17) their tender was rejected by the Tender Board because it was after the closing deadline of 25.10.93. There is nothing on record to show how these purchasers actually came to buy the boat.
- 7.22 Mr Aimé Maléré clearly stated in his interview with the Ombudsman that neither Minister ever raised the issue of proper tender procedures.

Purchase Price

- 7.23 Mr Aimé Maléré said to the Ombudsman that they purchased the boat for the total sum of Vt 500,000 (Appendix "K"). He says that a cheque was handed over for this amount to the Minister of Finance, Mr Willie Jimmy and the Minister of Transport and Public Works, Mr Amos Bangabiti in a special ceremony in the Ministry of Finance in or around April 1994. In addition to the handing over of the cheque, a bottle of champagne was presented to each Minister.
- 7.24 Mr Maléré said that during this meeting the two Ministers asked him to make an offer of how much he **preferred** to pay for the boat. He then proposed an offer of Vt 500,000 which they accepted. A cheque was then made out to the Government of Vanuatu for this amount. I am unable to find any section of the Financial Regulations which allows this particular method of selling government assets.
- 7.25 Mr Maléré justified the payment of only Vt 500,000 for the Savin Fana by stating that:

"I only paid Vt 500,000 because I had heard that the former Prime Minister had sold the Aquitaine for nothing and that Q (a leader) had also bought a boat for a mere Vt 300,000."

Repairs to the boat

- 7.26 Information gathered by the Ombudsman from the purchasers showed that they carried out repairs to the boat prior to it being purchased. In other words, they were repairing a ship which they had not yet purchased. Only after having carried out the repairs did they then approach the above Ministers with a purchase offer.

- 7.27 The purchasers claim to have spent Vt 14 million in repairing the vessel (Mr Seth Shadrack put it at VT 12.6 million). However, this is both irrelevant and not true. This cost not only related to repairs but also included renovating the original hold into a single area to hold cargo. The major part of the quoted cost of "repairs" was actually for upgrading the ship, not repair. This is supported by the fact that;
- (a) When Messrs Claes J.O.Bjornum and J.Gee surveyed the boat on behalf on Mr X on 01.02.93 they estimated that the cost to bring the ship back into a seaworthy condition was 3 - 4 million vatu;
 - (b) When the Director of Ports and Marine Department wrote to the third Secretary in the Ministry of Transport in April 1993 he stated that the repairs would cost around Vt 5 million; and
 - (c) A note from the Director of Ports and Marine, Mr Norris Hamish on 03.05.94 showed that there were alterations and modification carried out on the M.V Savin Fana. A sketch of the ship shows these alterations in the cargo hall (Appendix "L").
- 7.28 The main argument used by the purchasers to buy the boat for only Vt 500.000 was that they had already incurred huge costs on repairing it. This was stated to the two Ministers during the meeting in the Finance Ministry referred to in 7.23 above. This reason is both unacceptable and irrelevant. The Tender Notice which was published in the Vanuatu Weekly paper was very clear. It said that tenders are invited from interested public for the purchase of the M.V Savin Fana presently moored in Port Vila on an **"as is where is basis"**.

Board of Survey

- 7.29 As I have stated earlier in a recently published report on M.V Yasur, the Government had no formal tender procedures in place from 1980 to May 1993. All tender boards were appointed on an *ad hoc* basis. This also was the case in appointing a Government Board of Survey. The duty of the Board of Survey is to survey the asset and make its own report on it to the Director General of Finance.
- 7.30 Although a Board of Survey met to discuss the Savin Fana on 26.03.92 under the chairmanship of the second Secretary Mr Harry Collins, there is no record of the decision of the Board.

Removal of the M.V Savin Fana from anchorage

- 7.31 Mr Aimé Maléré informed me that in February 1994 with the assistance of Ports and Marine the boat was towed ashore for him to start repairing it. At the time the boat had not yet been sold.
- 7.32 There is nothing on record to show what authority was given for this arrangement. It is a normal practice, whether in or outside of Government, that purchases made by tender must be first paid in full on an "as is, where is" basis before the buyer can remove the asset to carry out repairs, or alterations.

Sale by Tender Rules

- 7.33 The procedures in respect of sale of Government assets whether by auction, tender or at fixed price are set out in Chapter 18 Regulation 320 to 322 of the Finance Regulations.
- 7.34 If a sale is to be by tender, the matter should be passed on to the Tender Board. If the sale is to be at a fixed price, it shall be the Board of Survey's responsibility to fix the prices. **Regardless whether an item is sold by auction or tender, or at a fixed price, the item cannot be removed by the buyer until he has paid the full cost.** An official Government receipt for the payment must be issued which must be

shown to the person responsible for the asset before it is removed. The Tender Board had delegated the authority to the Director of Ports and Marine to deal with the tenderers regarding payment for the ship. Captain Norris Hamish, the Director of Ports & Marine was responsible for the ship. He allowed removal of the boat without sighting a receipt for payment.

Tender Notice

- 7.35 The public tender notice which was published in the Vanuatu Weekly issue dated 16/10/93 was inadequate because it did not have sufficient information. The Tender Notice did not advise the tenderer of his obligation to honour the contract if his tender was accepted by the Tender Board, or the maximum time allowed for payment.
- 7.36 In normal circumstances the accepted tenderer is obliged to pay for the asset on the date that he or she is notified. A tender submission is in itself a contractual offer, and if the tender is accepted, as in this case, the tenderer is legally bound to honour the contract. Failure to honour the tender is likely to be a breach of the contract.

Outstanding debt to the Government

- 7.37 When Mr Aimé Maléré was repairing the Savin Fana prior to purchase, he hired a Government welding machine from the Department of Public Works. An invoice was sent to him on 26.04.95 for Vt 49,000, being the hiring fee. Mr Maléré did not settle the fee when it was due for payment. He was reminded of his outstanding debt on three occasions in 1995 **but still has not paid this charge.**
- 7.38 Under Regulation 63 & 65 of the Financial Regulations, the accountable officer is responsible for ensuring that invoices issued by the Government are settled within seven (7) days after the original payment date. In the event that this is not settled,

the accountable officer shall arrange within thirty (30) days of the original payment date, a personal interview with the debtor at which the latter shall be asked for immediate payment.

In this case no interview was conducted.

Inadequate Planning 1991 AIDAB Review Report

- 7.39 In 1991 AIDAB carried out a review of the Primary Health Care Project. The review also covered the ship Savin Fana which was used by the Health Department to carry out the MCH programme. The following were some of the matters mentioned in the report regarding the Savin Fana:

- "(a) The objectives of the Savin Fana have not been clearly defined and as a result, the precise nature of the health activities to be delivered and the remote locations to be visited have not specifically identified;*
- (b) From 01.05.87 the Vanuatu Government was required to start contributing to the operational costs and that this contribution was to increase by 25% each year up to 01.05.90. As from 01.05.90 the Vanuatu Government would provide 100% of the operational costs. However, the Department of Health only provided 25% of the operating costs in its 1990 budget;*
- (c) There is doubt as regard to the Department of Health's capacity to sustain the operation of the Savin Fana in the future. Because of this it is clear that by retaining the vessel would not be cost effective;*
- (d) Due to continuing mechanical and electrical problems the actual utilisation and achievement of planned schedules could not be carried out fully. In 1988 and 1989, 56% of the days available were spent in Port Vila;*

- (e) *The Savin Fana was found to be capable of providing the required services but its appropriateness to provide an effective service was questionable on the grounds of habitability and seakindliness. The crew accommodation is cramped and ventilation is inadequate for the climate in Vanuatu;*
- (f) *The vessel is only 15.34 metres in length and is at the low end of the scale for vessels operating in the open sea. Travelling on the vessel is uncomfortable, even in normal sea conditions to both the crews and touring officers;*
- (g) *It would be cheaper to charter Government own vessels and especially the Alize II to carry out the MCH programmes."*

7.40 From the above and numerous other points mentioned in the Review Report it is clear that there was inadequate prior planning for acquiring this vessel. The following were not considered:

- (a) the type of vessel to suit Vanuatu conditions;
- (b) the objectives of acquiring the vessel were not clearly defined; and
- (c) the additional costs to be borne by the Government either directly or indirectly when AIDAB ceased funding its costs.

7.41 The final point is, in my opinion, the most important. All too often the Vanuatu Government fails to adequately plan for the recurrent budget costs that arise when donor funding of projects cease. As a consequence of this, assets are not maintained and deteriorate rapidly, and services slowly are allowed to lapse.

7.42 This kind of situation is avoided by adequate planning **before** the acceptance of new aid projects. In certain cases it may be preferable to reject aid projects that cannot be supported by the Vanuatu Government in the long term, rather than waste aid funds that could be more usefully employed in other areas.

8 FINDINGS OF WRONG CONDUCT & DEFECTIVE ADMINISTRATIVE PRACTICES

MESSRS JIMMY AND BANGABITI

FINDING NO.1: **The former Minister of Finance, Mr Willie Jimmy, and the former Minister of Transport, Mr Amos Bangabiti, both breached the provisions of Chapter 18 of the Finance Regulations relating to the sale of government property.**

- 8.1 The interference by the two Ministers in the tender process is a clear breach of the Finance Regulations given that the sale was subject to the due process of a tender board.
- 8.2 The Finance Regulations were drafted to ensure that proper procedures were followed for the sale of government assets. Despite the fact that these regulations were gazetted by Minister Willie Jimmy himself, he chose to deliberately breach their provisions in the case of the sale of the Savin Fana.
- 8.3 **The Ministers deliberately by-passed the Tender Board to do a private deal with Mr Aimé Malere, a well known senior UMP member.**

FINDING NO.2: Mr Jimmy was responsible for gross maladministration by failing to act on at least two earlier offers to purchase the Savin Fana.

- 8.4 The two definite offers to purchase the Savin Fana for the amounts of Vt 3 Million and Vt 2 Million were both referred to the Minister for his advice. Due to the Minister's inaction both these offers lapsed and the ship was allowed to deteriorate thereby causing further loss to the Government of Vanuatu.

FINDING NO.3: Messrs Jimmy and Bangabiti have caused the Government of Vanuatu (and therefore the people of Vanuatu) to suffer a large financial loss through their interference in the tender process.

- 8.5 As Ministers and elected to Parliament by the people of Vanuatu, Messrs Jimmy and Bangabiti owe the people a duty to look after the nation's assets. They also must act within the law in carrying out this and their other duties.
- 8.6 By wrongfully and illegally interfering with the due processes of the Tender Board these Ministers, in my opinion, have breached the duty they owe to the people. By their interference the two Ministers have prevented the Tender Board from dealing with a valid tenderer who was willing to pay Vt 2 Million for the Savin Fana and also have accepted the Malérés to reduce their original offer from Vt 2 million to Vt 500,000.
- 8.7 The Ministers have therefore caused a direct loss of at least Vt 1.5 Million (ie not taking into account the first offer of Vt 3 million) to be suffered by the Government and therefore the people.

FINDING NO.4: Breach of Leadership Code, Willie Jimmy and Amos Bangabiti

- 8.8 Mr Jimmy and Bangabiti have breached the Leadership Code in chapter 10 of the Constitution. They have demeaned their Office and position held by arranging a private deal with a Government asset with a friend in the same political party. Their conduct in my opinion suggests they considered the M.V Savin Fana was their own private property. In my opinion, they have demonstrated that they are not fit to hold any public office.
- 8.9 Mr Willie Jimmy has been shown before to be in breach of several laws.

In our public report on Nambawan Bottle Shop of 20.08.96 we found that Mr Willie Jimmy was in breach of the following laws:

- Section 4(2) of the Business Licence Act (False Declaration)
- Section 5(1) of the Business Licence Act (Non-Registration of Business Names)
- Section 3(1) of the Liquor Licensing Act (Cap. 52) (No-Licence)
- Section 2(1) of the Business Names Act No. 6 of 1990
- Land Leases Act (Cap. 163)
- Leadership Code Art 66 of the Constitution (1)(A)(B)(C) (conflict of interest, exercise of his public or official duties, demean office, integrity called into question)
- Leadership Code Art 66(2) (use of the Office for personal gain).

In our public report on Illegal Ex-Gratia Payments to 23 1988 former MPs dated 04.06.97, Mr Willie Jimmy was found in breach of the following laws:

- Section 2(1) of the Public Finance Act
- Leadership Code in the Constitution Art 66(1)(a) and (2)
- Section 2(1) and Section 18 of the Public Finance Act
- Regulation 176 of the Government Financial Regulations.

MR AIMÉ MALÉRE

FINDING NO.5: Mr Aimé Maléré has deliberately taken advantage of his position as a senior UMP member and a Government representative in Unelco to pursue personal gain at the expense of the Government of Vanuatu.

8.10 My opinion is that A. Maléré has used his political influence to cause the Government of Vanuatu financial loss as follows:-

- (a) Despite the fact that he was not a valid tenderer he has prevented the Tender Board dealing with a valid tenderer who had offered a price **four times** that offered by his syndicate;
- (b) He has failed to pay a debt due to the Government for equipment used in the repair of the Savin Fana;
- (c) He took possession of the Savin Fana and carried out work on it in the full knowledge that he had never paid for the ship; and
- (d) He has tried to justify his actions by referring to alleged similar wrong actions by previous government members.

8.11 In my opinion, this demonstrates a lack of morality, or respect for the public by Aimé Maléré.

CAPTAIN HAMISH NORRIS

FINDING NO.6: The Director of Ports and Marine, Capt. Hamish Norris, was negligent in allowing Aimé Maléré to take possession of the Savin Fana without first ensuring that he had a valid right of ownership.

8.12 I am unable to determine if the Director was subject to direct influence from the Minister of Transport to allow Aimé Malere to take possession of the M.V Savin Fana. However, in the absence of any written objection by the Director, I must conclude that he has been at least negligent and is guilty of maladministration in allowing Mr Maléré to take the boat.

MR GEORGE PAKOA

FINDING NO.7: The former First Secretary of Finance, Mr George Pakoa, was negligent and caused financial loss to the government by failing to approve the original sale by tender of the Savin Fana.

8.13 If Mr George Pakoa had properly carried out his duties as first secretary, this whole saga would have been avoided. The Government would have received a fair price for the ship and would not have wasted so much of its scarce management capacity on trying to sell the ship over the next two years.

8.14 This is a clear example of how the inefficiency and incompetence of political appointees costs the Government of Vanuatu and therefore the people so much. Unfortunately, most of the cost of this inefficiency remains hidden.

HEALTH DEPARTMENT AND NATIONAL PLANNING OFFICE

FINDING NO.8: **The Department of Health and National Planning Office failed to adequately plan for the financial impact of the Savin Fana project.**

- 8.15 The Department of Health never had the financial capacity to pay for the recurrent costs of the Savin Fana once the project support finished. Yet they, and the National Planning Office, signed an aid agreement which obliged the Government of Vanuatu to contribute significant future expenditure to the project.
- 8.16 All too often aid projects are undertaken which result in high recurrent expenditure being incurred by the Government without adequate planning or consideration of the Government's ability to fund such obligations. The subsequent failure of these projects are not only a waste of scarce aid funds by Vanuatu but also reflect a sad lack of financial planning ability within the departments concerned and the National Planning Office.

9 RECOMMENDATIONS

- 9.1 In view of the nature of the findings and the responses received from those concerned, the Ombudsman makes the following recommendations:

Recommendation No.1

Messrs Jimmy and Bangabiti must be made responsible for the loss of Vt 1.5 million to the Government

- 9.2 As noted in 8.3 I consider that Messrs Jimmy and Bangabiti acted unlawfully and caused loss to the Government and therefore the people. I note that this is Mr Bangabiti's second such incident of misconduct causing loss (refer to the report on the Bauerfield Airport Cleaning Contracts). I recommend that Messrs Jimmy and Bangabiti compensate the people by paying Vt 1.5 million into the General Government Revenue within one month of the date of this report.
- 9.3 Falling payment, I recommend that the Attorney General, on behalf of the Government, consider suing Messrs Bangabiti and Jimmy for recovering of this money. The claim could be based in tortious (wrongful) interference with economic relations and/or fraud, and/or under Financial Regulation 397(3).

Recommendation No.2

No position of Leadership for Mr Willie Jimmy, Mr Amos Bangabiti and Mr Aimé Maléré

- 9.4 Minister of Finance, Willie Jimmy, former Minister of Public Works, Amos Bangabiti and former Government representative in Unelco, Aimé Maléré having breached the Financial Regulations and the Leadership Code and have shown themselves to be unworthy to hold any position in the Government in my opinion.
It is not the first time that we have found Mr Willie Jimmy in breach of the laws and it is not the first time that we have recommended for him not to hold a Ministerial position.
- 9.5 Messrs Jimmy and Bangabiti have treated a Government asset as their personal asset and sold it behind closed doors to a friend in the same political party.
- 9.6 Mr Aimé Maléré on the other hand used his position as Government representative in Unelco and Coordinator of the UMP Party National Executive (who was in power) to buy the M.V Savin Fana behind closed doors without tendering for it in the first place.

- 9.7 These attitudes show a total disrespect for the people of Vanuatu that they are supposed to represent for the best of the people's interest. They have deprived the right of others who tendered for the M.V Savin Fana and followed the proper tender procedures. They have cheated the people of Vanuatu.

Recommendation No.3**Prime Minister is responsible for all Ministers and political appointees**

- 9.8 All Ministers and political appointees are appointed directly by the Prime Minister. He must therefore accept responsibility for the conduct of all his ministers and political appointees.
- 9.9 The Prime Minister and his Office must ensure that all ministers and political appointees are made aware of their responsibilities and duties at the very beginning of their appointments.
- 9.10 It is unacceptable to have Ministers, as in this instance, and political appointees acting illegally, by abusing their powers and positions in matters over which they have no jurisdiction, as Mr Jimmy and Bangabiti have done. Advice to this effect should be included in the circular referred to in 9.15 below.

Recommendation No.4**Additions to Financial Regulations**

- 9.11 The regulations must be amended to ensure that valid tenders are enforceable against the tenderers. At the moment many tenders are a farce, with the chosen tenderer either walking away from their tender or being unable to fund their offer when contacted by the tender board.
- 9.12 The Minister of Finance in consultation with the Attorney General must ensure that these additions be made to Chapter 22 of the Financial Regulations:
- (a) Assets valued at Vt 2 million and above must be advertised outside Vanuatu in regional magazines. This is because often there is not enough demand within Vanuatu to ensure that the Government receives the best possible price.
 - (b) That tender notices must state that payment is to be made immediately on acceptance of a tender - (i.e this will have contractual force) by the Tender Board.
 - (c) Where the Government is selling a unique or 'one off' asset such as a government owned vessel, a proper independent valuation must be undertaken by a reputable valuer. This would assist the Tender Board in ensuring that the Government received fair value of the asset as well as providing a professional document that could be used in marketing the asset.
 - (d) The Minister of Finance must take steps to include the following as an addition to Regulation 363.

The advertisement must state that submission of a tender amounts to an irrevocable offer to purchase the said asset. Where any fixed asset owned by the Republic of Vanuatu that cost or was valued at or in excess of Vt 2,000,000 at the time of purchase or time first taking of ownership is to be sold the following provisions mandatorily apply:

- (1) Prior to offering the asset for sale or tender an independent valuation must be obtained from an independent and reputable valuer.
- (2) Where the registered value of the asset equals or exceeds Vt 2,000,000 the asset must be advertised for sale by tender on three separate

occasions on successive fortnights in at least 3 newspapers and/or magazines having wide circulation in the Australasian and South Western Pacific Region.

- (3) Advertisement of the sale by tender of asset within Vanuatu is to also occur in terms of regulation 363 subject to modification of the notice period in regulation 363(1) to allow for advertising on three separate occasions on successive fortnights as per regulation 363(2).

These additions be considered by the Minister within 42 days of the date of this report.

Recommendation No.5

Prime Minister to issue circular that Public Officers on political and permanent appointment must not interfere in the tender process

- 9.13 The Minister responsible for the Public Service (the Prime Minister) should remind all public officers of their duties. Both permanent and political appointees must not interfere on any tender. The responsibility should only rest with the appointed Tender Board.
- 9.14 I recommend that the Prime Minister issue a circular on this within 42 days of the date of this report. Should any political or permanent appointee interfere with any tender process, he/she should be disciplined by the Prime Minister and the Public Service Commission respectively according to the law.

Recommendation No.6

Government Financial Regulations must be strictly followed

- 9.15 The procedures set out in chapter 22 of the Financial Regulations regarding the Tender Board and its responsibilities must be strictly followed in future. Since the M.V Savin Fana has been sold four times lower than the tendered price, it is very important that the sale of such a high value assets should be carefully and thoroughly considered in future.

Recommendation No.7

That the Department of Public Works follow the Financial Regulations procedure to recover this debt

In view of the fact that the debt of Vt 49,000 has not yet been settled by Mr Maléré despite having been reminded by the Department of Public Works, I recommend that Public Works Department take necessary steps as per Regulation 68 and 69 of the Financial Regulations and recover this money through legal means within 21 days of the date of this report.

10 CONCLUSION

- 10.1 In accordance with art 63(1) of the Constitution and s22 of the Ombudsman Act No.14 of 1995, the Ombudsman requests the Prime Minister and the Minister of Finance to put the above recommendations into effect, and also the President of the Republic of Vanuatu to look at the breaches of the Leadership Code and write to the persons concerned.
- 10.2 The above persons are required to notify this Office within 21 days of the date of receipt of this report and recommendations outlining what steps have been taken by them to implement the recommendations.

Dated this 26th day of June 1997.


MARIE-NOËLLE FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU.

