REPUBLIC OF VANUATU OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON THE

IMPROPER APPOINTMENT OF MALE NURSE PETER YUNAK

Preamble

"He that hath no rule over his own spirit is like a city that is broken down and without walls" Proverbs Ch 25 v 28

This reports concerns a matter of the greatest betrayal of trust, and the indulgence of wicked appetites at the expense of innocent and helpless victims. It is a very sad reflection on the lack of morals fibre and trustworthiness, not only on the part of the assailant but on those who schemed to put him back into a position where he had clearly shown himself unable to control his shameful desires. This type of exploitation must be stamped out by making wise and appropriate appointments to positions of responsibility.

Summary

The Ombudsman conducted an inquiry following a complaint received from a concerned citizen that a male nurse convicted of raping a young female patient and of escaping from prison had been reappointed into the Public Service.

During the investigation, it was discovered that Mr Charles Nako, the Minister responsible for prisons had acted contrary to law by releasing his cousin, Mr Peter Yunak, on licence from prison. Mr Nako then re-employed him as a Staff Nurse through the <u>illegal</u> exercise of his power of making temporary appointments as Acting Prime Minister.

Mr Yunak remains as a member of temporary staff in a dispensary in Santo. He continues to work without supervision or restriction and was recently provided training in the area of sexual health!

The facts indicate that former Directors of Heath, Mr Niowenmal and Mr Wabaiat, were aware of the situation but failed to take any steps. The Ombudsman recommends that if Director General Johnson Wabaiat delays further in reviewing Mr Yunak's appointment and position, his conduct be considered a matter for the PSC disciplinary board.

The Ombudsman also recommends that Mr Yunak's appointment be reviewed in light of its invalidity and that his nursing responsibilities be immediately changed so that he does not attend to female patients unsupervised nor does he work or receive training in the fields of sexual or reproductive health. Further, the Ombudsman recommends that the Health Department develop a policy where male health practitioners in the Public Service do not undertake intimate examinations of female patients except in the presence of a third party.

Development of public, written criteria and procedures for the early release of prisoners as well as counselling and treatment for imprisoned sex offenders to assist in rehabilitation is also recommended by the Ombudsman.

The Ombudsman also recommends that facts and findings in reports be considered by PSC if either Mr Niowenmal or Mr Nako applies for a position in the public service, and further that Mr Nako not be reappointed to the Council of Ministers in the event that he is re-elected to Parliament in future.

PUBLIC REPORT ON THE IMPROPER APPOINTMENT OF MALE NURSE PETER YUNAK

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1. JURISDICTION

1.1 Under the Constitution and the Ombudsman Act, I have jurisdiction to inquire into the conduct of government and related bodies, which includes the conduct of the Acting Prime Minister, the Minister of Home Affairs (Responsible for Prisons) and the Directors of Health. I also have jurisdiction to inquire into possible breaches of the Leadership Code. Mr Charles Nako, as Acting Prime Minister, was a leader under the Constitution at the time of these events.

2. PURPOSE, SCOPE OF INVESTIGATION and METHODS USED

- 2.1 The purpose of this report is to present my findings in accordance with Article 63 of the Constitution and Section 24 of the Ombudsman Act.
- 2.2 The scope of this investigation is to ascertain the relevant facts with respect to the appointment of Peter Yunak and to determine in effect whether the conduct of Mr Nako in releasing Mr Yunak from jail on license and reappointing him was proper, the conduct of Directors of Health Messrs Niowenmal, Kalorib and Wabaiat was proper; and if Mr Nako breached the Leadership Code.
- 2.3 In particular, I wanted to determine whether the former Acting Prime Minister Mr Nako illegally reinstated Mr Peter Yunak to the position of Nurse, and whether the former Director of Health Mr Niowenmal improperly continued Mr Yunak's appointments, without following proper recruitment procedures and despite the fact that Mr Yunak had been convicted of two serious criminal offences.
- 2.4 Also, I wanted to establish whether the former Minister responsible for Prisons, Mr Nako acted illegally by releasing Mr Yunak on Licence for a term of less than the unexpired portion of his prison sentence.
- 2.5 Part of my investigation was to also determine the circumstances of Mr Yunak being trained in Sexual Health for the Community despite his conviction for rape of a patient.
- 2.6 This Office acquires relevant information and documentation by informal request, summons, correspondence, personal interviews and research.
- 2.7 This report was conducted following a complaint received from a concerned citizen.

3. OUTLINE OF EVENTS

- 3.1 In June 1984, the Public Service Commission appointed Mr Yunak as a nurse in the Department of Health.
- On 7 January 1988, Mr Yunak was reprimanded with a warning for his conduct in October of the previous year. It was on 17 October 1987 that Mr Yunak was reported to have approached the Outpatients Ward at the Vila Central Hospital ("VCH"), under the influence of alcohol. Once there, he was reported by Dr. Tavoa to have used bad language, abusive words and alleged to have struck a staff nurse on duty that night.
- On 3 October 1989, Mr Yunak was charged with the rape of a patient. The Supreme Court judgement indicates that Mr Yunak asked a young pregnant woman to have sex with him. When she repeatedly refused, he deceived her by pretending that an act of intercourse was a necessary part of her physical examination, and that he was a doctor. In this manner Mr Yunak raped this naive young woman on two known occasions. Chief Justice Cooke stated in his judgement:

From the demeanour of the girl in the witness box it was obvious to me that she was an innocent girl having her first experience of bearing a child and first experience visiting a clinic and could well have believed all that the accused

said to her. In my opinion she did not consent to sexual intercourse. She submitted because in her innocence she thought what the accused did to her had to be done as he said all doctors did what he did i.e. insert their penis into patients' vagina.

The full judgement is not attached to this Report due to its explicit nature.

- 3.4 On 27 November 1989, Mr Yunak was convicted of Rape and sentenced to four years' imprisonment by the Supreme Court. Mr Yunak appealed this decision and was released on bail. On 26 October 1990, Mr Yunak's appeal was dismissed by the Court of Appeal. Mr Yunak was admitted to Isangel (Tanna) Prison on 18 November 1990 to begin his sentence of four years. Correspondence from Inspector Taipairangi of the Vanuatu Police in Tafea is attached as Appendix A.
- 3.5 On 18 April 1990, Mr Yunak formally resigned his position by sending a letter to the Director of Health, stating his reasons as the rape charge and conviction. This letter is attached as Appendix B.
- 3.6 While in prison, Mr Yunak escaped from prison. On 12 May 1991, he was convicted of escape and sentenced to three months imprisonment by the Supreme Court. See Appendix A.
- 3.7 On 25 December 1993, Mr Yunak was Released on Licence by then Minister responsible for Prisons, Mr Nako, along with all other prisoners in Vanuatu. At that point, Mr Yunak had served approximately 13 months in prison, with over three years remaining to be served. Mr Yunak was released subject to the conditions that he "keep the peace and be of good behaviour" for a period of two years, ending 25 December 1993. The relevant Order is attached as Appendix C.
- 3.8 On 29 January 1992, Mr Yunak was informed by letter from the Minister of Health, Ms Hilda Lini that his letter of application for re-employment in the Health Department was rejected on the grounds of his previous records of misconduct, and his term of imprisonment. Ms. Lini advised Mr Yunak that according to the rules of the Public Service, he is not entitled to be re-employed by the Public Service until several years have passed.
- 3.9 On 10 December 1993, the then Minister of Health, Mr Nako as Acting Prime Minister appointed Mr Yunak on a temporary basis on a salary scale of P4 as a nurse at the VCH. The appointment was for an indefinite period. Mr Nako's letter also explicitly stated that the appointment was subject to the rules of the Public Service as stipulated in the Public Service Staff Manual. The letter of temporary appointment, dated 6 January 1994 is attached as Appendix D. It is noteworthy that Mr Nako was Acting Prime Minister for only a very short period while the Prime Minister and Deputy Prime Minister were out of the country.
- 3.10 On 2 August 1994, the Director of Health Mr Niowenmal authorised the transfer of Mr Yunak from VCH to the Northern District Hospital in Santo as a staff nurse with immediate effect as from 7 August 1994. Mr Niowenmal informed Mr Yunak on 26 September 1994 that he was transferring him again from the Northern District Hospital to the Tassiriki Dispensary on South Santo with effect as from 3 October 1994. The letters of transfer are attached as Appendices E and F.
- 3.11 One Health Department Staff was advised on 8 August 1996 of our inquiry. The subsequent Director of Health Mr Johnson Wabaiat was directly contacted as a witness from 4 October 1997 and was informed thoroughly of the contents and grounds of our investigation.
- 3.12 According to Mr Wabaiat, Mr Yunak had been later transferred to Fanafo Dispensary on Santo, where he is presently working. Mr Yunak continues to be listed as "Temporary Staff" and is paid a salary of approximately VT 408,696 at level P4.1.
- 3.13 Mr Wabaiat confirmed to us in February 1998 that he would take action to remedy the situation. However, despite a further reminder, no steps were taken to nullify Mr Yunak's appointment nor to remove Mr Yunak from a dispensary situation where he practices alone and has no direct supervision.

- 3.14 This Office was recently advised that Mr Yunak had been sent to Vila for training sessions on matters of Sexual Health in the Community. As Mr Wabaiat has yet to take any action on Mr Yunak's appointment or on curtailing his responsibilities, the absurdity of Mr Yunak's selection for this training course was overlooked.
- 3.15 Mr Nako and Mr Yunak are first cousins. Mr Nako signed the Order releasing Mr Yunak from prison in 1991. Despite these facts, Mr Nako wrote to this office stating that Mr Yunak is a distant relative, and that he was not aware of the conviction and penalty. Correspondence from Mr Nako is attached as Appendix G.

4. RESPONSES TO THE PRELIMINARY REPORT

- 4.1 The Preliminary Report in this matter was issued on 14 April 1998 in compliance with Article 62(4) of the Constitution and Section 16(4) of the Ombudsman Act, which require that the person or body complained of be given an opportunity to reply to the complaints made against them. Responses were received from Mr Wabaiat, Mr Kalorib and Mr Yunak.
- 4.2 Mr Wabaiat commented that the delay in taking action was due to the;

transitional period of changes for Directors , together with 1997 financial constraints when I took up office,

as well as the time taken up from his other duties. He also suggests that a transfer of Mr Yunak could not take place until passage of the 1998 Appropriation Bill. The more lengthy discussion in his statement is attached as Appendix H.

- 4.3 Mr Kalorib visited the office to say that he was unaware of the matter, that it was never brought to his attention during his term as Acting Director of Health from August 1996 to August 1997. This is verifiable as this office sent correspondence to Mr Kalorib in October 1997 informing him of our inquiry, a time when he was already out of his office.
- 4.4 In his response to the preliminary report, Mr Yunak does not dispute the facts, indicates that he was not aware that his release and reappointment were contrary to law, and stresses that he has been rehabilitated through a conversion to Christianity (Refer to Appendix I).
- 4.5 In particular, Mr Yunak stresses that at the time,
 - C. Nako foma minista blong home affairs i bin rilisim mifala every prisoners long Vanuatu be ino mi nomo

and

Mi no bin askem minista blong rilisem mi long prison be from we hemi ting se hemi gat raet ia meikem se mifala evrywan i bin release.

Mr Yunak is saying that at the time, he was not the only prisoner released, all other prisoners were also freed. Also, he had never asked Mr Nako to release him because Mr Nako thought he had the authority to order the releases, which meant releasing all prisoners.

We accept that Mr Yunak was not specially selected. However, this does not alter the content of Findings 1 and 2.

4.6 Mr Nako and Mr Niowenmal have not responded and must be taken to agree with the facts as stated in the Report.

5. RELEVANT LAWS

The Prisons (Administration) Act [CAP 20]

5.1 This Act provides for the establishment, maintenance and administration of prisons. In particular, s. 30(1) states that:

The Minister may order the release of any prisoner on licence for the period of the unexpired portion of his sentence subject to such conditions as may be prescribed in the said order.

The Constitution

5.2 Art 66 (1) of the Constitution provides:

Any person who is defined as a leader in art 67 has a duty to conduct himself in such a way both in his public and private life so as not to:

- (a) place himself in a position to in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu

"Leaders" includes "the Prime Minister and other Ministers" (Art 67).

5.3 Art 57 (4) states:

The Prime Minister or the chairman of a Local Government Council, may exceptionally, make provision for the recruitment of staff for a specified period to meet unforeseen needs.

The Public Service Staff Manual

5.4 Art. 1.4 (f) of the Public Service Staff Manual states that throughout its orders,

"temporary officer" or "temporary appointment" means an officer appointed by a Letter of Temporary Appointment, and recruited for a short-term appointment expected to come to an end in a few weeks or months because of the return of the substantive holder of the post or because of the completion of normal recruitment procedures

5.5 Art 2.3 (b) continues that no person may be appointed to an office in the Public Service:

unless he is of good character, but a person with a criminal conviction may be considered for appointment if he has not been convicted of an offence for a period of not less than 4 years, and there is no known reason to suppose that he is not a reformed character and fit for Appointment in the Public Service

5.6 The role of the Public Service Commission and the procedures for appointment of public servants are included in articles 3.5 - 3.19.

[All emphases provided]

6. FINDINGS

- 6.1 FINDING NO.1 MR NAKO THEN MINISTER RESPONSIBLE FOR PRISONS, ACTED ILLEGALLY BY RELEASING MR YUNAK ON LICENCE FOR A TERM OF TWO YEARS
- 6.1.1 The Prisons (Administration) Act allows the Minister responsible for Prisons to release prisoners on licence "for the period of the unexpired portion of his sentence". The unexpired portion of Mr Yunak's sentence was over 3 years. Consequently, Mr Nako acted illegally by granting Mr Yunak a Release on Licence for a period of only 2 years.
- 6.2 FINDING NO.2 THE ADMINISTRATIVE PRACTICE EXERCISED UNDER S.
 30 OF THE PRISONS (ADMINISTRATION) ACT IS
 DEFECTIVE
- 6.2.1 The Minister responsible for Prisons exercises his discretion to remit a portion of prisoners' sentences without the benefit of publicly-available, written criteria and procedures. As a result, we have an arbitrary and confused system of early release. This may be compounded by the parallel powers of the President to reduce sentences, without coordination or communication between the two procedures. This defect in administrative practice, or in the law itself, may be addressed through internal policy or, more effectively, through legislative change.
- 6.3 FINDING NO.3 FORMER ACTING PRIME MINISTER MR NAKO'S TEMPORARY APPOINTMENT OF MR YUNAK WAS CONTRARY TO THE CONSTITUTION AND THE PUBLIC SERVICE STAFF MANUAL
- 6.3.1 According to s. 57(4) of the Constitution, the Prime Minister may recruit staff to the public service only "exceptionally", "for a specified period" and "to meet unforeseen needs". The Public Service Commission is otherwise responsible for all public service appointments (s. 60). Whether or not Mr Yunak's appointment was exceptional and met unforeseen needs, it certainly was not for a specified period. The appointment letter provided for an indefinite period of service, which may be terminated by either party on notice. Mr Nako violated the Constitution by making this appointment. Mr Yunak's appointment was thus contrary to law and ineffective.
- 6.3.2 Mr Yunak's most recent criminal conviction was in May, 1991. Consequently, according to Article 2.3(b) of the Staff Manual, Mr Yunak was not eligible for appointment in the public service until at least May, 1995. The appointment by Mr Nako commencing December 1993, was in violation of the terms of the Staff Manual.
- 6.4 FINDING NO.4 MR NAKO VIOLATED THE LEADERSHIP CODE WHEN RELEASING HIS COUSIN FROM PRISON AND WHEN APPOINTING HIS COUSIN TO THE PUBLIC SERVICE
- 6.4.1 By taking responsibility for decisions which benefited his first cousin, Mr Nako placed himself in a position where there was a conflict of interest and in which the fair exercise of duties might be compromised. He abused his Ministerial powers and his temporary Prime Ministerial powers to gain advantage for a family member. This was a breach of section 66(1)(a) of the Constitution.
- 6.4.2 Mr Nako allowed his integrity to be called into question by signing the Order releasing his cousin (among others) from prison, and by illegally appointing his cousin to the public service in a position where there was opportunity for reoffending in the same manner as before. In so doing he may have placed the women of this country at unnecessary risk. In this way, Mr Nako violated the Leadership Code, section 66(1)(c) of the Constitution.
- 6.4.3 Mr Nako also breached section 66(1)(d) of the Leadership Code by acting in such a manner as to "endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu". His decision to release and subsequently reappoint his cousin, was based on the benefit of his wantok which meant

- endangering female patients. In this way, he has breached the trust and confidence of the people of Vanuatu in the Government.
- 6.4.4 Mr Nako also showed a breach of leadership ethics when he wrote to the Ombudsman that Mr Yunak was a distant relative when in fact he was a first cousin.
- 6.5 FINDING NO.5 FORMER DIRECTOR OF HEALTH MR NIOWENMAL'S CONTINUED TRANSFERS OF MR YUNAK WERE CONTRARY TO THE PUBLIC SERVICE STAFF MANUAL
- 6.5.1 The Staff Manual defines temporary appointments as those expected to end in a matter of weeks or months. The Staff Manual also prescribes proper recruitment procedures, including open, advertised competitions. Mr Yunak could not continue to be considered temporary staff indefinitely, and also could not be considered for public office until 1995 based on his recent criminal conviction as noted above. Mr Niowenmal violated the terms of the Staff Manual by maintaining Mr Yunak's appointment improperly.
- 6.6 FINDING NO. 6 MR WABAIAT'S CONDUCT IN NOT REVIEWING MR
 YUNAK'S APPOINTMENT AND NOT PLACING
 RESTRICTIONS ON MR YUNAK'S NURSING PRACTICE,
 WAS BLATANTLY UNREASONABLE AND DELAYED FOR
 UNJUSTIFIED REASONS
- 6.6.1 Mr. Wabaiat has been aware of this Office's investigation since October 1997 or earlier, and was aware that Mr Yunak had been convicted for the rape of a patient in 1989. Given that Mr Yunak perpetrated two rapes through deception in the exercise of his nursing duties, where he had occasion to examine women alone, it was Mr Wabaiat's responsibility (once aware of the matter) to ensure that other women seeking government-sponsored medical care were protected from such incidents. Yet, Mr Yunak continues to work as a Staff Nurse at Fanafo Dispensary in Santo without supervision, seeing patients on his own.
- 6.6.2 Mr Wabaiat chose not to have the propriety of Mr Yunak's appointment reviewed despite evidence that the appointment appeared to be illegal and hence void. Furthermore, Mr Wabaiat could have immediately ensured that Mr Yunak's nursing practice was restricted: at the very least a convicted rapist should not be permitted to attend upon women patients without supervision, particularly not where intimate examinations may be warranted. Mr Yunak certainly was not an appropriate candidate for training in sexual health! Given the high incidence of recidivism among sex offenders, Mr Wabaiat, along with Messrs Niowenmal and Nako, placed the women of this country at unnecessary risk of manipulation and violation.

7. RECOMMENDATIONS

7.1 RECOMMENDATION NO. 1 THE PUBLIC SERVICE COMMISSION AND THE PRIME MINISTER TO REVIEW THE VALIDITY OF MR YUNAK'S APPOINTMENT IN LIGHT OF FINDINGS 3, 4 AND 5

THE PUBLIC SERVICE COMMISSION TO RECRUIT FOR THE POSITION USING THE PROCEDURES SET OUT IN THE PUBLIC SERVICE STAFF MANUAL, IF MR YUNAK'S APPOINTMENT IS DEEMED A NULLITY AS SUGGESTED BY THE FINDINGS AND IF A 7.2 RECOMMENDATION NO. 2 NURSING VACANCY PROPERLY EXISTS 7.3 **RECOMMENDATION NO. 3** MR WABAIAT TO IMMEDIATELY ENSURE THAT MR YUNAK'S NURSING RESPONSIBILITIES ARE SUCH THAT HE DOES NOT ATTEND TO FEMALE PATIENTS ON HIS OWN AND HE DOES NOT WORK OR RECEIVE TRAINING IN THE FIELDS OF SEXUAL OR REPRODUCTIVE HEALTH **RECOMMENDATION NO. 4** IN THE EVENT OF FURTHER DELAY BY MR 7.4 WABAIAT, THE PSC TO INVESTIGATE THE SITUATION WITH A VIEW TO CONVENING A DISCIPLINARY BOARD HEARING ON THE GROUNDS OF NEGLIGENCE **DISCHARGE OF HIS DUTIES** MR WABAIAT TO ENSURE THE DEVELOPMENT 7.5 **RECOMMENDATION NO. 5** OF AN INTERNAL POLICY STATING THAT MALE HEALTH PRACTITIONERS IN THE PUBLIC SERVICE NOT UNDERTAKE INTIMATE EXAMINATIONS OF FEMALE PATIENTS EXCEPT IN THE PRESENCE OF A THIRD PARTY (ANOTHER HEALTH PRACTITIONER OR THE WOMAN'S FRIEND OR FAMILY MEMBER). THE DIRECTOR-GENERAL OF INTERNAL **RECOMMENDATION NO. 6** 7.6 AFFAIRS, TOGETHER WITH HIS MINISTER AND THE SUPERINTENDENT OF PRISONS, AND WITH THE ADVICE OF THE ATTORNEY GENERAL, TO DEVELOP PUBLIC, WRITTEN CRITERIA AND PROCEDURES FOR THE RELEASE OF PRISONERS UNDER THE PRISONS (ADMINISTRATION) ACT (SS. 30,31), AND TO ENSURE THAT THE PROCEDURES INCLUDE COORDINATION WITH THE EXERCISE OF PRESIDENTIAL POWERS UNDER ART 38 OF THE CONSTITUTION. THE DIRECTORS-GENERAL OF INTERNAL 7.7 **RECOMMENDATION NO. 7** AFFAIRS AND HEALTH, TOGETHER WITH THE SUPERINTENDENT OF PRISONS AND THE DIRECTOR OF HEALTH, TO DEVISE WAYS OF PROVIDING COUNSELLING AND TREATMENT TO IMPRISONED SEX OFFENDERS TO ASSIST IN REHABILITATION. IN THE EVENT THAT MR NIOWENMAL OR MR **RECOMMENDATION NO. 8** 7.8 NAKO APPLIES FOR A POSITION WITHIN THE PUBLIC SERVICE, THE PSC TO CONSIDER THE FACTS AND FINDINGS IN THIS REPORT (AS WELL AS EARLIER OMBUDSMAN REPORTS) MR NAKO NOT TO BE RE-APPOINTED TO THE **RECOMMENDATION NO. 8** 7.9 COUNCIL OF MINISTERS (IN THE EVENT THAT HE IS RE-ELECTED TO PARLIAMENT IN FUTURE)

8. CONCLUSION

- 8.1 In accordance with Article 63(2) of the Constitution and Section 22 of the Ombudsman Act, the Ombudsman requests the Prime Minister and his Director General, the Minister of Internal Affairs and his Director General, the Director General of Health, and the Chairman of the Public Service Commission to consider these recommendations and to put them into effect.
- 8.2 The Office of the Ombudsman must be notified within 21 days of the date of this report outlining the decision and steps proposed to implement the recommendations.

Dated this 11th day of June 1998.

Marie-Noëlle FERRIEUX PATTERSON OMBUDSMAN OF THE REPUBLIC OF VANUATU

Appendix A

RECEIVED
3 0 0CT 1097
OMBUDSMAN

From: A/0078

Tafea Police Station

Isangel Tanna,.

Ref:TPS/01/11 16th Oct 1997. 200

To: Office of the Ombudsman

F.O Box 126 Fort Vila Vanuatu.

BE - FETER MUMAN RELEASED ON LICENOE

1. ITTRODUTTION

This is a brief report for ex-prisoner PETER YUNAK of Lamlu village Middle Bush Tanna.

2. BACKGROUND

Refer

Refer to your letter dated OR Octomber 1997.

DISCUSSION

- 3. It is true that Peter Yunak was convicted of rare. He was sentenced to four (4) years imprisonment on the 27th Movember 1989 by the Supreme Court on Tanna.
- 4. Mr. Peter Yunak made an appeal against the Supreme Court decision. The Supreme Court further granted bail and released on condition to report to the Police Station for once every month.
- 5. On the 26th Octomber 1990, the court of Appeal dismissed the similarion and reordered Peter Yunak back to prison to served the above 3 years.
- 6. He was admitted to Tanna Prison on the 18 November 1990.
- 7. Thile in Frison he escaped from prison. He was further convicted 3 month imprisonment of escape in prison by the Supreme Court on the 12 May 1991.
- 8. On the morning of 35 December 1991, he was released order of the Minister of Home Affairs Mr. Charley Mako.
- 9. Officer Commanding Police Station Panna at that time was Inso F Dini.

Inst T Seru L/CDP3 Tefes Province. Klous

Appendix B

18-04.90 PF/PY FROM: PETER YUNAK 90 TAO JOH TARES JUNIOR SECONDARY SCHOOL RECEIVED APR 7 4 1880 ISANGEL TANK DESCRIPTION OF THE PARTY OF THE ._____ - Pain Mail BAG 009 VILA REI RESIGNATION COTED OF JOB .. Mi gat big bonner blong teken long save blong you binector blong health services, ting ting blong mi long seed blong work. as a heath object. mi save se departement ino saken mi long work inspect long olgeta services we mi stap Kuremaut long distric level hemia long region Hong tylea, but kes blong mi long court now. imaikem se mi lusum Jak blang mi. Long Kes blong millong number 27 Nov 89 , putum resattle se mi ye long kilabus blong 4 yia from cout, fainer se mi repe, long result blong kes, mi bin fainem se Jugement ia irong meikem se mi appeal bayen long court. Não is mi stap ociscea mi wot long court of appeal. Mi wonten tulem son turas from we mi no bin tekem resignement blong mi knick Kaem. Naoia mi askem blong

mi resigne long work blong mi insped long

heath deportment, spos nekis court i victory long bed

blong mi, mi glad blong mi seve apply bagegen long department. Mi son blong livim services blong heatth insaed long distric blong mi, mi wantern meikem: Kliq se mi no bin kat tingting blong livim work wanday but accident, kasem mi meikem se mi lucum work. Mi hope mo_mi kat trust long God nomo blong putum bak mi long ples we me bin shap long hem. Mi gat big hope tu blong winim court blong mi.

wetern olgeta tingting ia, mi wishem you mo ol Staffs blong you throat vanuatu good care mo good health.

wetern algeta tingting in mi askern you director blong acceptem ma putum note in long good situation.

Thank You

Signature : Back



24101 CP/4/1

REPUBLIC OF VANUATU

CHAPTER 20

THE PRISCHERS (RELEASE ON LICENCE) ORDER NO. OF 1991

An Order to provide for the release of the prisoners named in the Schedules hereto.

IN EXERCISE of the powers conferred by rection 30 of the Prisons (Administration) Act [CAP.20], I, CHARLIE NAKO, Minister of Home Affairs and Minister responsible for Prisons, HERREY MAKE the following Order:-

RELEASE OF PRILLIMERS ON LICENCE

1. All prisoners who are currently being held in custody as prisoners in the prison institutions throughout the Republic shall be set free and released from prison on the 25th day of December, 1991 SUBJECT TO THE TERMS AND CONDITIONS set out in section 2 and 3 of this Order.

TER S IND CONDITIONS OF RELEASE

- The following terms and conditions shall apply:-
 - (a) All prisoners shall keep the peace and he of good behaviour for a period commencing on the date of his release being the 25th day of December, 1991 and ending on the 25th day of December, 1993, witch period is hereinafter called "the relevant period".
 - (b) In the event thuc any prisoner should commit a criminal offence ducing the relevant perfor, whicher or not the offence is of a similar nature as that for which his original prison sentence was ordered by the Court or, the Court before which he appears for such new offence orders a prison sentence, the prisoner shall automatically be recalled and recurred to prison.

PROCEDURES RELATING TO VIOLATIONS OF CONDITIONS OR RELEASE,

- RECALL TO PRISON, ETT.

 1. In every case where the provisions of paragraph (a) of section 2 apply, the following procedures shall apply:
 - (a) where the Minister is satisfied that a prisoner has violated the terms and conditions set out in section 2 the Minister shall issue a Notice in writing directing that the prisoner be returned to custody forthwith;



- A Notice issued by the Minister shall be served on (b) the prisoner directing him to return to prison at such time and on such day as specified in the Notice;
- The prisoner when returned to prison in accordance (c) with this section shall be obliged to serve the unexpired term of his original sentence which he would have had to serve if he had not been released in accordance with this Order;
- The prisoner when returned to prison in accordance (d) with this section is not entitled to have part of his original unexpired term of sentence remitted.

COMMISSIONER OF POLICE AND SUPERINTENDENT OF PRISONS

TO ENFORCE DIRECTIONS OF THE MINISTER

The Commissioner of Police and Superintendent of Prisons shall take all lawful measures required or necessary to enforce every Direction or Notice issued by the Minister under this Order.

COMMENCEMENT

This Order shall come into force on the 25th day of December, 1991.

, 1991. December day of 24th MADE at Port Vila, this



Minister of Nome Affairs and Minister responsible for Prisons

SCHEDULE 1

PORT VILA PRISON

t.	ALLAN DAVID	48.	EALORAN KALTOTAU Z
2.	J. MARK OSCAR	162	HALIN ABBERTA
з.	G. LEWAUA	50.	WILLIAM NEMAFA -
4.	LUI IAPATU /	51.	CLEMENT CHAPLY
5.	WILLIE AINE J	52.	JEAN MATIAS -
6.	E. THOMAS DICK	53.	B. KALSAL (DAVID)
7.	JEFFREY HOSES	54.	R. TABISUKU
в.	JIMMY DILLAY	55.	RUVEA TOMAKI ✓
9.	INAS WARKON -	50.	ATTH MALIT
10.	ROLAND RITE -	57.	JOB LUI -
11.	HENT Y KALFAU?	58.	JOEL ABEL
12.	UAT TO KALTALO	59.	JAQUE KAREP V
13.	ATSON WORLK	60.	
14.	ROY SEREKANU /	61.	SHEN RARUA
15.	SILAS NOA	62.	KALOWIA KALTERIKIA
16.	JJM KKKE Y	63.	CHRISTIAN SAH
17.	P. JACOB EDWARD /	64.	E. LUI /
18.	JOHN TABILED /	65.	SIMEUN LASSALU
19.	A MINIT WHOL	66.	WESLY MUSES
20.	BEN MORRIS	67.	BRUCE LAURU
21.	ROY PAROA Y	66.	WEN JIJIKIN
22.	DAVID KALOPAT	69.	SAUL PETER /
23.	TOURANA PATAS		PTHOM TERMS.
2	J. NOUKOUT L. VPERA		
25.	PASCAL PALA		
26.	JEAN PAUL COUDIN		
27.	PAKOA LOKIN -		
2 .	FRED LONISY		
29.	TAUN LEMAIA		
30.	JERUN TARI		
31.	WILLIAM SAME		
32.	TOLOKE TAIMIA		
33.			
34.	ANDRE RAPRAP		
35.	KALTONG KALON		
	KALTONG JIMNY		
36.	PIERRE ATAMAS /		
17.	JUN JACOB >		
34.	TOMY SALO		2
79. 40.	GEORGE FIRIAN		
41.	BOR KAUTENG		
42.	JOHNNY TABI ~		
43.	KILLION LUKE		
44.	FICKLAN STAKA		
45.	PHILLE MAKE		
7.7.	FULLIC SIAKI		

46.

47.

TONY RODINEY -

RUNNIE ROBERT

SCHEDULE 2

SANTO PRISON

1.		ARMEL R	19.	THEVOR LEE
2.		FERNAND PALAUD	20.	TAPALE LULU
3.		POYER HALLU	21.	EBWIN WALTER
4.		AUGISTINA MALTU	22.	SAMSON KERKER
5.		MULI TALASIA	23.	THOMAS TABL
6.		ZACHEUS TINGIRG	24.	HOLL MERIKA
7.		WILLIAM NANU	25.	FTALY VAKALTITI
13.		ALFRED SOPE	26.	PHILLIP PALE
9.		FRANCOIS POINTY	27.	HILER PALE
10.		CHRISTIN WORLY	28.	JOSEPH LALES
11.		APETNICO JONAS	24.	MARTIN LALES
12.		SAMSON LUNCY	30.	ARDRE PALE
13.		DUNSTAN BUTU	31.	SYLIVAN PALE
14.		SITANGTANG NAGROMERI	32.	HOE MENIER
15.	3	PHILIP MAKI	33.	HACEL SOSO
16.		MICHAEL WOLEG	34.	SIMON LEG
17.		KEVIN NGIGINA	35.	MANSBAIL ARU
18.		JOEL TAVIANTO	36.	WILSON TART

SCHEDULE 4

1SANGEL (TANNA) PRISON

1.	KALORIS BOUA
2.	MELKSON G.
3.	PETER YUNAK
4.	MARIPEN PEAU
5.	KASSO STANLEY
6.	KOBINISON SI
7	PATIA

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Appendix

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GOUVERNEMENT DE LA RÉPUBLIQUE DE VANUATU

BUREAU DU PREMIER MINISTRE

GOVERNMENT OF THE REPUBLIC OF VANUATU

OFFICE OF THE PRIME MINISTER

N/Ref.: PM/301/1/025/CN/93

M Peter YUNACK Hopital Central de Port Vila Département de la Santé

Port Vila le 6/01/94

Objet : Lettre de récrutement l'emporaire

Monsieur.

Soyez avisé de votre récrutement temporaire au poste d'"Infirmier" Hopital Central de Port Vila, Département de la Santé a compter du 10 Decembre 1993.

Cette affectation pourra cesser à l'initiative de l'une des deux parties concernées ; suite à un mois de préavis.

Le grade de renumération est en P.4 dans l'écheille salariale de la Fonction Publique, dont le salaire annuel est à hauteur de VT 370.704 avec un supplement de VT. 51 000 par an. En tant qu' Agent temporaire, vous ne pouvez bénéficier d'aflocations familiales ni d'indemnites de logement, etc.

Vous êtes sujet aux règles et usances de la Fonction Publique en matière d'emploi, ainsi stipulé dans le règlement intérieur de la Fonction Publique (Staff Manual).

Agréer Monsfeul, appression de mes salutations distinguées.

palme en palme o palme

Charles NAKO Premier Ministre par Intérim Fork, 26381

++ : Arthony

Copies : - Directrice , Département de la Fonction Publique

- Bureau du Premier Ministre

- Directeur Général des Finances

- Premier Secretaire, Ministère de la Sante

- Département de la Santé

- Matron, Hopital Cantral de Port Vila

- Service Gestion de la Fonction Publique

- Auditor Général

- Attorney General's Chamber

Appendix E

THE GOVERNMENT OF THE REPUBLIC OF VANUATU
GOUVERNEMENT DE LA RÉPUBLIQUE DE VANUATU

Your Ref. : Our Ref. : PF / PY

0 9 AUG 1994

DEPARTMENT OF HEALTH
DÉPARTEMENT DE LA SANTÉ
PMB 009
PORT VILA
2/08/94

Mr Peter YUNACK Staff Nurse Vila Central Hospital PORT VILA

Dear Mr Yunack,

RE: YOUR TRANSFER TO NORTHERN DISTRICT HOSPITAL

I wish to advice you that from today, I have taken the decision to transfer you from Vila Central Hospital to Northern District Hospital, Santo.

Due to the present situation regarding Staff Development in Northern District Hospital, the Department is aware and took note under consideration, as it is essential for the Department of Health to effect this transfer.

Your transfer is effective from 7th August, 1994. Please arrange with your immediate superiors and necessary travel arrangements.

Your new position will be Staff Nurse in Northern District Hospital and will include any other duties directed by your immediate superiors.

On your arrival in Luganville, Santo, please report to Mrs Racheal Kalmos, Matron, NDH for your orientation briefing.

By copy of this letter, PAO and Accounts Section is informed to make any Administrative matters necessary to meet your

May I take this opportunity to thank you for the Service you offered at Vila Central Hospital and wish you well in your new posting.

Yours sincerek

TVES NIOWENMAL (Mr)

cc: Ministry of Health

Acting DHS/ND

: Matron/VCH : PAO/NHO

Personnel Officer/NHO

: PNO/VCNE



Appendix F

PF/PDO Yourack

THE GOVERNMENT OF THE REPUBLIC OF VANUATU
GOUVERNEMENT DE LA RÉPUBLIQUE DE VANUATU

Your Ref.: Our Ref.: PF/PY + HD 07/1/2-ET/sm DEPARTMENT OF HEALTH DEPARTEMENT DE LA SANTÉ PMB 009 PORT VILA

26/09/94

Mr Peter Yanak
Staff Nurse
Northern District Hospital
P.O. Box 53
LUGANVILLE
Santo

Dear Mr Peter,

RE: YOUR TRANSFER TO TASSARIKI DISPENSARY, SOUTH SANTO

I wish to advice you that from today, I have taken the decision to transfer you from Northern District Hospital to Tassariki Dispensary, South Santo.

Due to the present situation regarding Staff Development in Northern District, the Department is aware and took note under consideration, as it is essential for the Department of Health to effect this transfer.

Your transfer is effective from 3rd October, 1994. Please arrange with your immediate Superior any necessary travelling arrangements.

Your position will be Staff of Tassariki Dispensary, and will include any other duties directed by your immediate superior.

Prior to your arrival to Tassariki Dispensary, please report to Mr Y. Bororoa, Acting District Health Supervisor for your orientation briefing.

By copy of this letter, Matron, Mrs Rachel Kalmos, is informed to make any Administrative necessary to meet your transfer.

May I take this opportunity to thank you for the service you offered at Northern District Hospital and wish you well in your new posting.

A.,

Yours sincerely. Director of

Ministry of Health Ag. DHS, ND Matron, NDH cc:

cc:

cc: Personnel Section, NHO cc:

PNO, NHO cc:

. .

Appendix G

GOUVERNEMEŇT DE LA RÉPUBLIQUE DE VANUATU

MINISTÈRE DE LA SANTÉ



GOVERNMENT
OF THE
REPUBLIC OF VANUATU

MINISTRY OF HEALTH

Port Vila, le 15 juillet 1997

Madame La MEDIATRICE

Reference: VOTRE LETTRE OMB 1697/01/03 DU 30/6/97

Madame,

Suite à votre lettre citée en reférence, j'ai l'honneur de vous faire parvenir les réponse ci-dessous;

- 1 La nommination temporaire de M. P Yunak a été demandé par le département de la Santé pour palier à un manque de personnel.
- 2 Je n'etais pas au courant de sa condamnation et de la peine purgée
- 3 C'est effectivement un cousin éloigné.
- 4 Sa mère est du centre brousse d'où je suis moi-même originaire.
- 5 En l'absence du Premier Ministre, j'assurais l'interim du poste. C'est tout naturellement que j'ai signé le recrutement temporaire car, à l'époque cette tâche incombait au Premier Ministre seul.
- 6 Son recrutement n'était que réponse à une demande urgente.

Je tiens tout de même à faire remarquer que les recrutements temporaires se faisaient en accord avec les services concernés et la direction de la fonction publique. A aucun moment, je n'ai eu écho d'un quelconque avis contraire.

.../...

Egalement, depuis que P. Yunak est employé. La direction du sce de Santé est trés satisfaite de la qualité du travail qu'il fournit.

Ch. NA

Health Services

Ministry of Health Private Mail bag 042 Port Vila

15 July 1997

Ref: Your letter OMB 1697/01/03 of 30.06.97

Dear Madam,

With reference to your letter I wish to provide the following responses:

- Mr. P. Yunak's temporary appointment was requested by the department of Health to compensate for staff shortages.
- I was not aware of his conviction and the penalty he served.
- He is actually a distant cousin of mine.
- His mother is from Middle Bush, the same area I came from.
- 5. I became Acting in the absence of the Prime Minister, therefore, it was only natural that I sign the temporary recruitment letter considering that at that time such responsibility was incumbent upon the Prime Minister himself.
- His recruitment was only a response to an urgent request.

I wish to point out however, that the temporary recruitments were made in agreement with the departments concerned and the Public Service Department. I have never received any complaints against the appointment made.

Furthermore, since P. Yunak's recruitment, the Department of Health had been contented with the quality of work that he was providing.

Yours faithfully,

(Sgd.)

C. Nako

rippendix

GUUVERNMENT DE LA REPUBLIQUE DE VANUATU

MINISTERE DE LA SANTE Sac Postal Confidential 042 Vanuatu (Pacific Sud Ouest)



GOVERNMENT OF THE REPUBLIC OF VANUATU

MINISTRY OF HEALTH Private Mail Bag 042, PORT VILA, VANUATU, (South West Pacific)

Date: 27th April 1998.

11.1

Mrs. Marie-Noelle Ferieux Patterson Ombudsman of the Republic of Vanuatu P.O. Box. 126, Port Vila.

Dear Madame.

RECEIVED 2 9 APR 1998 OMBUDSMAN

RE: PRELIMINARY REPORT ON THE ALLEGED IMPROPER APPOINTMENT OF MALE NURSE PETER YUNAK.

Further to the preliminary report received from your office dated 14th April 1998 on the above subject, I wish to respond to some of the items in the referred report as follows:

- 1. In considering the matters and facts outlined in the report from points 8.1 3.14 and the Findings referred to in points 9.4 9.5, this seemed to be more or less an account of procedures that should be followed and action required to be taken. I think you will also agree with me that there are several reasons that have contributed to the delays for immediate action. These being that the Department of Health had gone through a transitional period of changes for Directors, together with 1997 financial constraints when I took up office.
- 2. When the Department of Health was first informed on that matter (18/5/96), this was during the period when my predecessor, the then Acting Director of Health, Mr. Daniel Kalorib was in charge and I only came in to assume the responsibility of Director of Health on Monday 2nd June 1997. Therefore I think it would be fair to consider the transitional disadvantage of the Department together with the budgetary constraints that impacted on expected immediate changes for transfers, or termination of services for the referred member of staff.
- 3. My response following the summons referred to also made reference to the above as well as my active involvement in the Public Service Comprehensive Reform Program of which I am a member of the Restructuring Committee (G7 Committee) and the G9 Committee.

- 4. The information provided when questioned on the posting (transfers) of the officer in question was also provided as advised by the Personnel section of the Department. However, the decision concerning transfer of the said officer to FANAFO was carried out in February 1997 and the transfer was not done under my directorship.
- 5. In regards to the section 8.13 of the report, it was made known at the summon then that I would cooperate to look into the matter for transferring the said officer to a place where he would work under supervision, however, this has not eventuated due to 1997 budget constraints and that it would only be effected once the 1998 budget is approved. This is due to the fact that transfer of any staff from their station (posting), or from one island to the other would also require posting allowances and the Department meeting all transportation expenses of spouse and dependent children. Such expenditures can only be made once the 1998 budget is approved.
- 6. In section 8.14 of the report it stated that despite my knowledge of the said officer's case being investigated, approval was granted for his nomination to participate in the Sexual Health in Community Workshop recently held in Vila. The reporting was not correct and that the selection was done independently by the organisers of the workshop "Family Health Australia" (NGO) and the Department of Health was not part in the process, therefore it is untrue to state that I have agreed and approved the concerned officers participation.
- 7. Based on the above comments I do feel that the finding No.4 and No.5 need to be reworded to take account of the officers who where actually involved. For instance in finding No.4, I have not made any transfers for the concerned officer when I was informed of the subject matter in question and I made firm commitment that I would take up the matter and take appropriate action. Again its all subject to appropriation bill to be passed by the Parliament. This was then of the assumption that all would go well, unfortunately came the dissolution of Parliament which made our situation even worst where appropriation bill is further deferred.
- 8. I found Finding No.5 concerning my directorship very destructive or deformative since I was no part in the selection of participants to the Sexual Health workshop. Had my office been informed of the concerned officer's participation I would have stopped that as I stated to cooperate with your office, unfortunately the selection and organisation was made independently by Family Health Australia. If I was part of the selection and ignored the matter in question by making such decisions, then it would be fair that I be held responsible. Therefore such statements need to be corrected.

- 9. Any transfer/termination action that have not eventuated from 1997 can only be made effective after the appropriation bill is passed. However, with due respect of the employment status of the concerned officer, the Department can only make recommendations to the Public Service Commission for onward submission to the Prime Minister for appropriate action based on the current Public service Act. Thus the prolongation of warrant for public expenditure till the appropriation bill is passed, and since the Department would be responsible for severance payments with the introduction of Program Budget this year 1998, the Department would be making recommendation to the Public Service Commission for the Prime Minister decision.
- 10. To conclude while I appreciate your report for corrective measures and appropriate decisions to be taken on such matters, I also feel that your office recognises the difficulties that this department is experiencing as regards to financial constraints and the bureaucratic delays in recruitment of qualified personnel to fill in vacant positions. This is also the same for those positions which were vacated during the industrial action of 1993. Had the Health Department be fully staffed within Hospitals, Health Centres and Dispensaries, the services would not have been adversely affected and the recruitment of such officers may not be deemed necessary.
- 11. The Department also shares your concerns for the well-being of the mothers whose health and live are at risk and is devising an appropriate mechanism for the restructuring implementation to be reflected. This will eventually result in the unwanted, unqualified officers to be referred to the Public Service Commission's transition unit for their redundancy. While on the other hand recruitment of officers being laid off may take place to fill in vacant positions should they submit their applications where selection will be based on merits. I trust that the above comments would give you a better understanding of the current health situation.

Yours sincerely.

DIRECTOR

HOUSEAL

Johnson Wabaiat

Director General of Health.

Appendix I

Date: 15/5/98		Mr Peter Yunack
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	2 5 MAY 1998	
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Mrs Marie Noëlle Fox	RIEUX PATERSO	N
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