

REPUBLIC OF VANUATU

OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE CONDUCT OF THE
PUBLIC SERVICE COMMISSION IN**

- 1. FAILING TO HOLD A COMPETENT
DISCIPLINARY HEARING FOR FORMER
FOREIGN AFFAIRS DIRECTOR
MR JEAN SESE**
- 2. APPOINTING MR SESE DIRECTOR-
GENERAL OF THE PRIME MINISTER'S
OFFICE WITH DISCIPLINARY ACTION
OUTSTANDING**

9 July 1998

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PREAMBLE

*"These are the things that ye shall do, speak ye every man the truth to his neighbour, execute the judgment of truth and peace in your gates, and let none of you imagine evil in your hearts against his neighbour, and love no false oath for all these are things - that I hate, said the Lord -
Zechariah 8 v 16 and 17.*

1 SUMMARY

- 1.1 This report is about the Public Service Commission's appointment of Mr Jean Sese to the post of Director-General of the Prime Minister's Office.
- 1.2 In two recent public reports the Ombudsman found that Mr Sese had been grossly incompetent as Director of Foreign Affairs. The second report found that during a five year period Mr Sese allowed the improper issue of about sixty diplomatic and official passports. Two of the more notable examples are Jae Yong (Richard) JUNG, a convicted criminal from South Korea and fugitive from justice and Peter Harold Swanson, the person later convicted of multiple fraud charges relating to the US\$100 million Bank Guarantee Scam. As a result of her findings, the Ombudsman recommended that Mr Sese face disciplinary action.
- 1.3 The Public Service Commission followed the recommendation. A Disciplinary Board hearing sat and convicted Mr Sese. However, because that Disciplinary Board had not received (nor requested) any adequate instructions, guidance or help from anyone it failed to follow the proper procedures required for the hearing. This resulted in the decision being quashed on advice from the Attorney General who considered that proper procedure had not been followed.
- 1.4 Since that time, the Public Service Commission has not reconvened a properly constituted Disciplinary Board to hear the case against Mr Sese with the proper calling of evidence and other procedures. To date, Mr Sese has not yet been held accountable for his conduct in relation to the improper issue of diplomatic and official passports. It should also be noted that Ministers, against whom, far more serious findings were made also have not been held accountable as yet. I recommended criminal investigation by the Police but this has not resulted in any action that I have been informed of being taken to date.
- 1.5 The Ombudsman's investigations into the matter of Mr Sese's appointment have raised serious concerns about the transparency of appointments made by the Public Service Commission, who could give no adequate explanation as to why this appointment was made while the issue of the illegal passports was still to be dealt with.
- 1.6 For avoidance of doubt, I wish to make it clear that the new Prime Minister (Rt Hon Kalpokas), the Office of the Prime Minister and the new Council of Ministers did not interfere with the processes of the Public Service Commission.

2 JURISDICTION

- 2.1 The Office of the Ombudsman is established under the Constitution. The role of the Ombudsman is set out under article 62(1) as follows:

62.(1) The Ombudsman may enquire into the conduct of any person or body to which this Article applies—

- (a) upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;
 - (b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Local Government Council; or
 - (c) of his own initiative.
- (2) This Article shall apply to all public servants, **public authorities** and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.

(Emphasis added)

- 2.2 The Public Service Commission is a public authority because it has authority over the Public Service (see below in section relevant laws). The Public Service Commission therefore falls within the jurisdiction of the Ombudsman.

3 RELEVANT LAWS

Functions Of Public Service Commission

- 3.1 Article 60 of the Constitution states:

- (1) **The Public Service Commission shall be responsible for the appointment and promotion of public servants, and the selection of those to undergo training courses in Vanuatu or overseas.** For such purposes it may organise competitive examinations.
- (2) **The Commission shall also be responsible for the discipline of public servants.**
- (3) The Commission shall have no authority over the members of the judiciary, the armed forces, the police and the teaching services.
- (4) **The Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.**

(emphasis added)

- 3.2 The Public Service Act [Cap 129] adds to the functions of the PSC, including the reviewing of the machinery of Government (section 3(1)(a)), acting as a personnel authority (section 3(1)(f)) and obtaining consultancy services and advice for efficient work practices in the Public Service (section 3(1)(h)).

Disciplinary hearings

- 3.3 Section 11 of the Act prescribes certain conduct and behaviour by public servants as disciplinary offences. Mr Sese as former Director of the Department of Foreign Affairs is a public servant subject to section 11.
- 3.4 Sections 12 to 16 and the Public Service Disciplinary Board (Procedure) Rules set up the machinery and procedures for the consideration and determination of disciplinary offences by a Public Service Disciplinary Board ("**PSDB**") and the PSC itself. The PSDB is made up of 5 members (section 12(1)). These are a PSC Commissioner, two public servants and two other persons. The PSC Commissioner is to be the chairman of the PSDB.
- 3.5 The PSDB operates very much like a Court in that it formally charges a public servant (rules 4 and 5) who then pleads (rule 8). The PSDB proceeds to hear

evidence (section 15 and rule 6) and the public servant can be represented by a lawyer. The evidence is to be recorded in writing and forms part of the record (rule 18).

- 3.6 Section 14 allows a right of appeal to a public officer exercisable within 15 days of the PSDB decision.

4 FACTUAL BACKGROUND AND COMMENTARY

Introduction

- 4.1 The members of the Public Service Commission involved in this matter were:

- Mr Joseph Kalo, Chairman, retired school teacher, public servant and former MP (UMP)
- Mr Edwin Basil, Member, Taxi driver and previously printery machinist and sales representative
- Mr Kalbovi Mangawai, Member, Director of Youth and Sports.

- 4.2 The members of the Public Service Disciplinary Board who sat for Mr Sese's hearing were:

- Mr Edwin Basil, Chairman (details above)
- Mrs Annie Rose Bahn, Member, Accountant at Ports and Marine Department
- Mr Noah Sacksack, Managing Director for the Vanuatu Credit Union Leagues
- Mr Tom Tally, Member, Pastor of Presbyterian Church opposite Independence Park.

- 4.3 There was an interview panel whose task it was to interview a short list of candidates for the positions of Director-General to head government departments. The Panel then made comments to the Public Service Commission on the quality of the candidates and recommended for each post which candidate (if any) should be appointed. The members of the Interview Panel were:

- Mr Joseph Kalo, Chairman of the PSC
- Mr Kranklin Kere, former senior Vanuatu Government Official
- Ms Susanna Tuisawau, a senior public servant from Fiji, President of the Fijian Teachers Association

Chronology Of Events

Date	Event
03.12.97	Ombudsman sends first passports report making adverse findings against Mr Sese ¹ to Public Service Commission (PSC). Recommends disciplinary hearing.
16.12.97	PSC sits and decides to suspend Mr Sese "for an allegation of selling Vanuatu passports".
23.12.97	PSC (Mr Boe) gives written notice to Mr Sese of his suspension. Copies notice to Attorney General.

¹ Ombudsman's Public Report on appointment of Resort Las Vegas Group as agent for "Immigration Scheme for Vanuatu" and on the conduct of Prime Minister Rt Hon Serge Vohor and Foreign Affairs Minister Hon Vidal Soksok in assisting the grant of citizenship and issue of ordinary and official passports to Mr Jae Yong (Richard) Jung, 3 December 1997

11.01.98	Mr Sese applies for post of Director General in Prime Minister's Office.
19.01.98	AG (Mr Kalsakau) cautions PSC (Mr Boe) over its suspension of Mr Sese "out of an allegation of the selling of passports on his part." ²
26.01.98	Mr Sese served with summons to attend PSDB hearing on 05.02.98.
27.01.98	PSC sits . Reconsiders its suspension of Mr Sese. PSC maintains suspension of Mr Sese
27.01.98	Mr Sese forwards CV to Public Service Department (Mr Job Boe).
02.02.97	Mr Sese writes to PS Disciplinary Board (" PSDB ") raises " <i>preliminary legal concerns</i> " about the PSDB and his suspension. Also states Ombudsman's Office and PSDB " <i>corroborating with each other concerning my case.</i> "
05.02.98	PSDB holds hearing and finds charge proven against Mr Sese.
09.02.98	PSC formally advise Mr Sese in writing of PSDB decision.
16.02.98	Mr Sese forwards CV to Public Service Commission (Mr Kanam Wilson)
18.02.98	Mr Sese files appeal against PSDB decision.
24.02.98	PSC sits and receives Mr Sese's appeal. Decides to hear it at next meeting.
27.02.98	Director General Interview Panel interview Mr Sese for post of DG.
28.02.98	DG Interview Panel recommend Mr Sese for post of DG.
10.03.98	PSC sits . Sese attends. Advises 2 grounds of appeal; Basil should not be on PSDB; and no witnesses called. PSC defer case pending legal advice from AG.
13.03.98	Ombudsman sends second passport report making adverse findings against Mr Sese ³ to PSC. Recommends disciplinary hearing.
15.03.98	Mr Kalo alleges Mr Boe told him to drop the whole case against Mr Sese.
17.03.99	PS Office (K. Wilson) submits paper to PSC re DG candidates; says defer appointment of Mr Sese.
17.03.98 2pm	PSC meets to consider PSDB decision. PSC sends PSC secretary Bebe for legal advice from AG.

² It should be noted that the Ombudsman has never made any finding that Mr Sese sold passports. Rather the Ombudsman stated in her reports that Mr Sese had issued passports unlawfully and improperly.

³ Ombudsman's Public Report on the improper and unlawful issue of diplomatic and official passports to "Honorary Consuls", "Trade Commissioners" and other "Special " Vanuatu representatives and Ministerial "Advisers" by Mr Jean Sese and the Department of Foreign Affairs on the improper and unreasonable instructions of Prime Minister Rt Hon Serge Vohor, Foreign Affairs Minister Vidal Soksok, former Prime Minister Hon MC Korman & former Foreign Affairs Minister Hon Willie Jimmy & former Finance Minister Hon Barak Sope, 13 March 1998

17.03.98 3pm	Mr Bebe obtains oral legal advice from AG Bulu and Mr Kalsakau. Advice is to quash decision because process wrong; reinvestigate matter properly and consider bringing other charges.
17.03.98 ?pm	PSC Chairman Kalo, meets with Mr Sese and exchanges apologies. Also present Job Boe and Bergmans Bebe. See annexure 1 .
24.03.98	PSC meets and repeats quashing of PSDB decision against Mr Sese. Defers appointment of Sese as DG.
31.03.98	PSC minutes note Sese appointed as DG but minutes also state appointment deferred. Minutes unclear.
31.03.98 approx.	Mr Boe gives Prime Minister, Rt Hon Kalpokas, list of Director Generals for information.
02.04.98	Committee of Ministers receives list of appointed Director-Generals.
To date	The PSC has not opened a new disciplinary hearing or other enquiry to look at the matters of fact found against Mr Sese in the Ombudsman's reports.

Public Service Disciplinary Board ("PSDB") decision

- 4.4 In my opinion, the PSC was correct to quash the PSDB decision. The PSDB decision was based on a hearing that was procedurally defective. Moreover, there was no proper hearing. This was because, amongst other things no evidence was presented from witnesses and therefore the charge could not have been proved. The PSC's quashing of the decision did not amount to an acquittal for Mr Sese. What happened was the equivalent of a mis-trial by a Court. In such circumstances, an Appeal Court usually will order a fresh trial. In my opinion, this is what the PSC should have done - order a new disciplinary board hearing.
- 4.5 The PSDB did not seek any legal assistance from the Attorney General's chambers in preparing for the disciplinary hearing or in preparing the charges. Likewise, the PSDB did not seek any legal assistance during the hearing. Indeed, the hearing of what might have been expected to take a number of days only took a few hours. The PSC Board members did not think to suggest that legal advice be sought. Nor did the acting secretary for the PS Office, Mr Job Boe, take the initiative and arrange for help for the PSDB members and its secretary Mr Bebe.
- 4.6 In quashing the decision, the PSC was following the advice of the Attorney General in part. The PSC however chose to ignore the other part of the advice from the Attorney General and that was that the case of Mr Sese should be started again. This advice was logical and consistent with the fact that the PSC had in the first place decided to hold a disciplinary hearing. All that had happened was that the PSDB had not run the hearing properly. The procedural errors made by the PSDB does not take away the reason for having Mr Sese face the substantive charges.

Meetings of the Public Service Commission Board ("PSC") re appointment and discipline of Mr Sese

- 4.7 In the evidence that was given under oath, the following information was given by the witnesses:
 - (a) One of the PSC Board members, Mr Kalbovi Mangawai, stated that from December 1997 he had on a number of occasions told his colleagues on the PSC Board that a mere disciplinary hearing before a PSDB was inadequate for Mr Sese's case. Mr Mangawai says he called for a full scale enquiry to be commenced because of the seriousness of the issues raised in the Ombudsman's reports.

- (b) Mr Mangawai also states that after Mr Sese submitted his appeal he agreed that the PSDB decision could not stand. However, he also states that he emphasised to Messrs Basil and Kalo that Mr Sese's appeal was just against the process and that the facts of the case still had to be investigated.
- (c) Mr Kere says that the Interview Panel which interviewed Mr Sese on 27 February was not informed by Mr Boe or the PSC Board about the Ombudsman's first report let alone provided with a copy. This is to be contrasted with Mr Boe's request to the Ombudsman for information about another candidate, X. X was not successful in obtaining one of the D-G positions. Ms Tuisawau in a letter states "*I was informed that he was being investigated by your office and that there was a case against him but which he had already lodged an appeal.*" Mr Kere says that he learnt of the case after the interview.
- (d) Mr Bebe says that, when the PSC took the decision to quash the PSDB decision, he repeated to Mr Kalo that the legal advice was that the case had to be started again. He states that Mr Kalo ignored him. An officer from the Attorney General's Office subsequently confirmed what Mr Bebe had said the advice was.
- (e) Mr Bebe was present when Mr Kalo and Mr Sese exchanged apologies on 17 March (noted in the chronology) in Mr Kalo's office. Both Messrs Kalo and Bebe stated that Mr Sese apologised to the PSC in part for the 'hardness' of his appeal and in part for the situation that had occurred in the Foreign Affairs Department with the issue of passports as detailed in the Ombudsman's two reports. Mr Kalo also said that Mr Sese had asked him to cancel the case against Mr Sese. Refer **annexure 1**.
- (f) Mr Kalo was adamant in stating that the idea to drop the whole case against Mr Sese was the idea of Mr Boe. Mr Boe was equally adamant in denying that this was his idea and that Mr Kalo was trying to shift the blame. Mr Kalo was re-interviewed. Mr Kalo stuck by his story and said that Mr Boe had an official line and an unofficial line. He further stated that Mr Boe telephoned about two days before the apology incident and had him visit Mr Boe in Mr Boe's office. Mr Kalo alleges that when he went to Mr Boe's office Mr Boe told him to drop the case.
- (g) Another Board member, Mr Edwin Basil, stated that the manner in which the case against Mr Sese was put to one side and his appointment made was Mr Kalo's idea. He said that Mr Boe and a consultant adviser to the Board, Mr Mick Mimnaugh, supported this. Messrs Boe and Mimnaugh denied this. Mr Basil was reinterviewed on this point and maintained his story.
- (h) Mr Basil also attributed statements to Mr Mick Mimnaugh that were generally dismissive of the contents of the Ombudsman's reports, stating words to the effect: "*Anyone can write a report. What does it prove? Where's the proof? The Board does not have to take any account of these reports*". Mr Mick Mimnaugh, like Mr Boe, admitted to not having read the Ombudsman's reports. Mr Mick Mimnaugh denied the statements but also said that he repeated the oral advice that the Attorney General had given to him at a meeting he had had with the Attorney General. That was that the PSC Board did not have to rely on the Ombudsman's findings but should make their own investigation.
- (i) In answer to arguments from Mr Mangawai and Mr Bebe that it would be better for the PSC Board to wait until Mr Sese had faced another disciplinary hearing, Mr Basil alleged that Mr Boe told the PSC Board that the Prime Minister, Rt Hon D Kalpokas had approved Mr Sese for the position in his Office. Rt Hon Kalpokas was interviewed. The Prime Minister denied this allegation. The Prime Minister's evidence was given in a truthful and open fashion and is accordingly accepted by me as such. Mr Basil was re-interviewed in the face of Mr Boe's denial that he had said the Prime Minister had approved Mr Sese. Mr Basil stood by his earlier evidence that Mr Boe had made the statement.

(j) As noted above already, Messrs Boe and Mr Mimnaugh both denied supporting a decision to ignore the disciplinary matter of Mr Sese and other allegations that members of the Board made against them in interviews. Mr Mimnaugh further stated that:

- (i) his understanding was that Mr Sese had not been appointed and that his appointment had been deferred. The PSC Board minutes of 24 and 31 March 1998 are consistent with what Mr Mick Mimnaugh says;
- (ii) with Mr Boe, he tabled a memorandum dated 17 March 1998 to the PSC Board, prepared by Mr Kanam Wilson (director of the PS Office) with his assistance that recommended deferral of the appointment of Mr Sese. Again what he says is supported by the document itself on page 2:

The nominee for Director General for the Prime Ministers Ministry currently has a disciplinary case before the Commission and no action should be taken on this recommendation until this matter has been resolved.

- (iii) there may have been communication difficulties because he spoke English with some basic Bislama and the PSC Board members were all francophone. However, Mr Boe was present and he speaks fluent Bislama and English.

Role of Mr Mick Mimnaugh and Mr Boe

- 4.8 What also became clear after interviewing was that the PSC Board were closely assisted in their decision making by Mr Boe and Mr Mimnaugh. Unusually, their presence is not recorded in the minutes of the PSC Board. This is despite the fact that the minutes have a place for recording those present. The minutes are therefore misleading in this respect. It also became clear that the minutes do not set out fully all of the discussion that went on over Mr Sese. The inadequacy of the minutes explains in part why the witnesses were able to come up with differing accounts of what occurred on identical topics.
- 4.9 Mr Mick Mimnaugh came to Vanuatu on 14 January 1998 with ten years of experience in Papua New Guinea. As explained by him, his role is connected to the performance improvement in the public sector under the Comprehensive Reform Program ("CRP").
- 4.10 Mr Boe is the recently appointed Secretary of the Public Service Office (previously called the Public Service Department). Mr Boe is an important link between the management of the Public Service and the PSC Board, the decision maker. His job is to administer the decisions of the PSC Board, which are directed at personnel matters. He also helps ensure the smooth running of the Public Service. The Public Service is responsible for administering and providing many of the services made available to the people of Vanuatu.
- 4.11 Mr Mick Mimnaugh and Mr Boe therefore worked closely together in the Public Service Office and, in turn, with the PSC Board. It was explained that Messrs Mimnaugh and Boe started attending meetings of the PSC Board shortly after Mr Mick Mimnaugh arrived in Vanuatu. Mr Mimnaugh states that he and Mr Boe came to the first meeting sometime in February at the oral invitation of the PSC Board. After the first attendance Mr Mimnaugh says that the PSC Board asked them to come to every meeting thereafter.
- 4.12 According to them, all three Board members were influenced by what Messrs Boe and Mr Mimnaugh said. Moreover, it was clear from the manner in which they gave their evidence at the Ombudsman's Office that they felt that they were put under some pressure. This pressure appeared to come from two factors:
 - (a) The PSC Board members saw Messrs Boe and Mr Mimnaugh as better qualified than they; and

- (b) Messrs Boe and Mr Mimnaugh were key facilitators of the Government backed Comprehensive Reform Program and the appointment of Director-Generals was part of that process. To be seen to be standing in the way of the appointment of Mr Sese may have been seen to be standing in the way of the CRP.

4.13 Whatever the true picture, it appears that, at times, there was an uneasy relationship between the PSC Board members and Messrs Boe and Mimnaugh. Mr Mimnaugh thought that there might have been some ill feeling between the Board and Mr Boe. Certain comments made by some of the PSC Board members were consistent with that. Mr Mick Mimnaugh also speculated that the Ombudsman's Office's difficulty in trying to find out how Mr Sese's appointment went through could have been caused by a Melanesian cultural approach in taking responsibility for decisions.

Disputed facts and undisputed facts

4.14 It is clear from the above that there was disagreement between the witnesses about who said what. Some of the contradictory statements are difficult to resolve. However, there are some key facts that are not in dispute which I consider to be most important. These are:

- (a) Whatever the various witnesses may say were the events leading up to his appointment, Mr Jean Sese **is** apparently and presently holding the post of the permanent Director-General in the Office of the Prime Minister;
- (b) Mr Sese's appointment **was** made by the PSC Board and at the end of the day it is the PSC Board who is responsible for the decision;
- (c) On 17 March 1998 before the appointment of Mr Sese, Messrs Kalo and Sese exchanged apologies (refer annexure 1). This was confidential as indicated on the record of the apologies.
- (d) No-one gave the Interview Panel a copy of the Ombudsman's first report on the issue of passports before it interviewed Mr Sese on 27 February 1998; and
- (e) As at the date of this report, the PSC has not recommenced disciplinary action for what, on any objective analysis, are very serious instances of gross maladministration as documented in the Ombudsman's two reports.

4.15 There was one other area where there was little dispute. Messrs Kalo, Basil, Mangawai, Bebe and Boe all conceded under oath that the appointment of Mr Sese in the circumstances was not transparent and secondly that he had not yet been made accountable. In view of the fact of Mr Sese's appointment this is a remarkable concession. The question that then arises is why the appointment was made. No satisfactory answer to this question was received from anyone in the interviews.

A wider concern, independence of the PSC and transparency

4.16 In addition to these two problems (appointment and lack of disciplinary action) that have occurred with the Sese case is another, wider concern. This concern is the potential for prejudice to the independence of the PSC Board. The legal framework that provides for the independence of the PSC and makes it of paramount importance is set out above and reflected elsewhere in the Public Service Commission Act.

4.17 It is now known that previous governments did not fully observe the function of the PSC as the body solely responsible for appointments to the Public Service. Indeed, a number of Ombudsman's reports revealed clear examples of interference by the Prime Minister's Office in the PSC's appointment function. Some have commented that the Ombudsman's reports contributed to the momentum that led to the CRP. Amongst the CRP principles is one that requires appointments based on merit and ethically sound grounds and not based on irrelevant considerations such as politics or wantokism.

- 4.18 What has emerged from this case is not a case of overt political interference of the nature seen in the past. Rather, it is of a more subtle type. It appears that in the enthusiasm that has grown out of the positive and worthy features of the CRP, the independence of the PSC on this occasion has been diminished in the face of this policy or, alternatively, the quality of its decision making process adversely affected.
- 4.19 One motivation in this particular case may have been to push through a candidate who has strong educational qualifications and presents well, to keep up with the CRP timetable and the desire to fill the posts. In this regard it is appropriate to note Ms Tuisawau comment in her letter which suggests that the decision to appoint could have been deferred:

We did discuss with the Chairman of Public Service Commission whether we could go on with the interview and because it was thought that his case was still not fully resolved or conclusively clear at that point in time we would make the recommendations anyhow as he was extremely outstanding. However, I recollect that there was also an understanding that one other - ie. the next highest scoring one on the interview had to be identified as the one to be recommended should J Sese not be acceptable to Government because of his case.

(My emphasis on Ms Tuisawau's quote)

The documents provided by the PS Office show that a second candidate was not submitted to the PSC despite what Ms Tuisawau said was the understanding made.

- 4.20 Another motivation that I do not discount is that there could be an element of favouritism towards Mr Sese. Mr Boe stated that he and Mr Sese have known each other for about ten years and share the same Ambae language. It is difficult to know whether or not this connection affected the approach of Mr Boe. The problem that does arise for Mr Boe is that the appointment being pushed through in a hurry gives rise to at least the perception of *wantokism*. This is because of the absence of any logical reason being given by anyone for appointing Mr Sese without first allowing his disciplinary case to be dealt with. Indeed, when squarely faced with the issue, all of the Board members, Mr Boe and Mr Bebe agreed that it was not transparent and could not justify the decision.
- 4.21 However, I repeat that at the end of the day it is the Public Service Commission Board that is the final decision maker. It is not appropriate to try and shift the blame onto Mr Boe or Mr Mick Mimnaugh, even if it is true that pressure was put on Mr Kalo and the other two members (and I expressly make no finding on the point). It is the PSC Board therefore that must face criticism. This is what this report has done.
- 4.22 There is another problem that is potentially created by the PSC Board's conduct in failing to proceed again with Mr Sese's disciplinary case. That problem is that disciplinary procedures will be seen to apply to some but not all public servants. It is unrealistic to expect junior public servants to respect the decisions of the PSDB if some departmental heads receive preferential treatment when their cases or appeals are dealt with. It is a fundamental right in Vanuatu under our Constitution that the law is applied equally to all no matter one's rank, status, origin or sex.

5 PRELIMINARY REPORT AND REPLY RECEIVED

Issue and circulation of confidential preliminary report

5.1 On or about 11 May 1998, a confidential preliminary report was circulated to the following persons:

1. **Mr Joseph Kalo, Former PSC Chairman**
2. **Mr Kalpovi Mangawai, PSC Member**
3. **Mr Edwin Basil, PSC Member**
4. **Mr George Pakoasongi As Current Chairman Of PSC**
5. **Mr Job Boe, PS Office Secretary**
6. **Mr Mimnaugh**
7. **Mr Bergmans Bebe**
8. **Mr Jean Sese, D-G Of PM's Office**
9. **Rt Hon D Kalpokas, Prime Minister**

5.2 The letters that went with the preliminary reports invited comment from those sent the report, either orally or in writing. The letters requested a reply within 15 days, that is on or about 26 May 1998. The Ombudsman's Office had a request from one of the recipients for an extra time to reply. That request and a further oral request was granted but no reply subsequently received. This put the due date for this report in final form out to 9 June 1998.

Mr Pakoasongi, PSC Chairman

5.3 On 19 June 1998 I received a letter dated 25 May 1998 from the current PSC chairman Mr Pakoasongi suggesting that he would reply once he had received written legal advice from the Attorney General. A copy of that letter is annexed to this report as annexure 2.

5.4 On 25 June 1998, despite the lateness of receipt of Mr Pakoasongi's letter, I agreed to allow him further time for a short period. In my letter, I also did two further things. First, I raised with him comments the Trading Post on 3 June quoted him as saying, namely:

the former Director of Foreign Affairs, Jean Sese who was suspended by the former Vohor Government, had been cleared by the PSC Disciplinary Board after finding no evidence that he was implicated in the sale of Vanuatu passports as alleged in the Ombudsman's report.

5.5 In my letter, I stated to Mr Pakoasongi as follows:

On this Office's information this statement is incorrect. First, the report in question did not say Mr Sese had sold passports. The finding against Mr Sese in the report was orientated to a failure to follow the law as regards to proper issue of an official passport to JY Jung. Secondly, the PSC Disciplinary Board made no such finding nor could they since no evidence was properly called; such fact, being one

of the reasons for the subsequent enquiry by this office. I am surprised that no correction has subsequently been published by the Trading Post. Have you sought to have the Trading Post correct these misstatements?

If the PSC Board has in fact "cleared" Mr Sese at another hearing after the issue of my preliminary report can you please send me a copy of the decision and record of proceedings. I note that these are public hearings and thus a matter of public record.

5.6 Secondly, I stated to Mr Pakoasongi as follows:

If the PSC was to convene a properly constituted and briefed Disciplinary Board to properly and fully adjudicate the charges against Mr Sese it is open to our Offices to resolve the matter without proceeding with a public report.

5.7 By 3 July 1998, Mr Pakoasongi had not provided a reply to the preliminary report or my letter of 25 June 1998. A telephone call was placed by the Ombudsman's Office to the Public Service Commission to secure a response from Mr Pakoasongi. Our telephone call was not returned. A copy of my letter dated 25 June 1998 to Mr Pakoasongi is annexed as 3.

Reply of Mr Bebe

5.8 There was one reply from the nine persons who received the report. This came from Mr Bebe. The substance of each of the points made by Mr Bebe are set out below with my comments.

- (a) **(paragraph 1.2 above):** Mr Bebe replied that the Ombudsman accused Mr Sese of selling passports. Secondly, Mr Bebe said that sections 1 and 2 of the Diplomatic and Official Passports Act [CAP 179] provided that it was the Minister's decision whether or not passports were issued. *"The Minister has the final say"* Thus, in effect, the role of the Department of Foreign Affairs is to obey the Minister.

Comment:

The issue of the legality of Mr Sese's actions in issuing passports following instructions from the Minister of Foreign Affairs is not the subject of the report. The conduct criticised in this report is the failure of the PSC to properly convene a properly prepared PSC Disciplinary Board hearing and to appoint Mr Sese before that matter had been substantively heard.

The reports referred to do not contain any allegation that Mr Sese sold passports. He is criticised for allowing them to be issued. Hence the recommendation that he face disciplinary action that deals with his conduct substantively. I do not understand why Mr Bebe is seeking to defend Mr Sese before a proper disciplinary board hearing has been convened. His comments appear to show a bias and thus may make it unsuitable for him to be further involved.

As far as it may be relevant to address the point, section 2 of the Diplomatic and Official Passports Act [CAP 179] states as follows:

- (1) Subject to the provisions of this Act, an officer authorised in that behalf by the Minister may issue Vanuatu diplomatic and official passports.
- (2) Diplomatic and official passports shall be issued in the name of the Minister responsible for the foreign affairs of the Republic of Vanuatu and shall be in such forms as are prescribed by the Minister.
- (3) No fee shall be charged for the issue of diplomatic and official passports.

There is no power for the Foreign Affairs Minister to issue diplomatic or official passports in this law. The Minister's power is restricted to appointing the officer from

the Foreign Affairs Department. It is that officer who is to issue these passports not the Minister. Mr Bebe therefore is wrong in what he says. The Minister does **not** have the final say. Passports of this type are issued **subject to** the provisions of the Act not to the Minister's **say**.

- (b) Mr Bebe commented that it was the PSC Disciplinary Board normal procedure to suspend a public servant pending his or her hearing on disciplinary charges.

Comment:

I have no comment.

- (c) (Paragraphs 1.3 and 4.5) Mr Bebe accepted that he did not see the Attorney General for legal advice before proceeding to arrange the disciplinary hearing for Mr Sese. He however suggested that he had obtained legal advice beforehand. He said that he had obtained this from one of the lawyers at the Ombudsman's Office. Mr Bebe said that he was advised that the PSCDB could go ahead with the hearing without a specific plaintiff.

Comment:

Mr Bebe is correct in part about what he was told at the Ombudsman's Office. When he came to pick up documents that the PSC had asked for from the Ombudsman needed for Mr Sese's hearing he asked to speak to a lawyer at the Ombudsman's Office. One of the lawyers saw Mr Bebe. Mr Bebe said that Mr Job Boe refused to appear as the plaintiff at the hearing because Mr Boe had said that he did not know much about the case of Mr Sese. Mr Bebe was told that since the matter was a disciplinary hearing (not a civil action) it was not a matter of having a specific person as a plaintiff but rather a hearing before the Board. Mr Bebe confirmed later that this advice was consistent with advice he had once been told before by a previous Attorney General. However, they proceeded without presenting any evidence at the hearing.

Having asked one question while at the Ombudsman's Office picking up documents does not amount to the legal advice that was necessary for proper preparation of the case. What was needed was for the Attorney General's Office to have been fully briefed and for one of its officers to draw up the charges, supervise the gathering of evidence and preparation for the hearing and to assist the Board at the hearing. I note Mr Bebe's comment that he copied documents relating to the Sese disciplinary hearing to the Attorney General. On further query by myself, Mr Bebe later said that he made a mistake in not getting the advice. He explained that he did not do so because he believed that the Sese matter was a straightforward case.

- (d) (Paragraph 4.3, chronology): Mr Bebe disagreed that the minutes of 24.03.98 and 31.03.98 were unclear over whether or not Mr Sese's appointment had been made or deferred.

Comment:

They were unclear to me.

- (e) (Paragraph 4.7(c) above): Mr Bebe responds to my statement that Mr Kalo ignored the advice that Mr Bebe passed onto Mr Kalo from the Attorney General's Office that the disciplinary hearing should be recommenced after the quashing of the PSCDB hearing. Mr Bebe says that the PSC is made up of commissioners and that the decision was one of the whole board.

Comment:

Mr Bebe is correct that the decision was a decision of the Board as a whole. That was not the point of paragraph 4.7(c). In his sworn evidence the point that Mr Bebe was getting across was that the former Chairman, Mr Kalo, was not interested in hearing or considering the advice that he had obtained from the Attorney General's advice.

- (f) (Paragraph 4.8 above): Mr Bebe responds to my criticism about the minutes not recording all the persons present at the meetings. Mr Bebe replied that he

could not write down all the details of what was said at the meetings. Mr Bebe said that he was legally only required to take down the main points.

Comment:

This explanation is very weak. Noting which persons attend an official meeting is one of the first things a minute taker will (should) write down.

- (g) (Paragraph 4.20): Mr Bebe says that he did not agree that the appointment was not transparent nor that he could not justify the decision. He reasoned that the PSC's decision was good because they spent time on it and studied the recommendations of the Selection Board closely.

Comment:

Mr Bebe's sworn evidence was taped. I stand by what is in the report.

- (h) (paragraphs 4.8-4.13): Mr Bebe generally disagreed with these paragraphs as they relate to Mr Boe and Mr Mimnaugh saying that they were a "false interpretation". He says that the men simply explained and translated to the commissioners the work of the Selection Committee.

Comment:

Mr Bebe is entitled to his opinion of events as seen through his eyes. Others that were interviewed gave evidence that suggested a different story to this Office. The interpretation placed on events in this report was based on all the evidence that was given. What was particularly apparent in the interviews were statements made by some witnesses to shift blame to others.

Conclusion

- 5.8 I am grateful to Mr Bebe for spending time and closely reading the preliminary report and taking time to consider and reply to it. Mr Bebe also pointed out some mistakes in detail which resulted in corrections appearing in this final report.
- 5.9 It is significant that Mr Bebe did not take any issue with the confidential apology incident that occurred on 17 March 1998 between Messrs Sese and Kalo. This is perhaps one of the central events in this matter that so damages the reputation of the PSC as an independent and even handed body.
- 5.10 Having considered the one reply I received, the findings made in the preliminary report remain unaltered. These appear in the next section.

6 FINDINGS

FINDING NO 1: THE PSC BOARD (MESSRS JOSEPH KALO, EDWIN BASIL AND KALBOVI MANGAWAI) FAILED TO ENSURE THE PSDB WAS PROVIDED WITH LEGAL ADVICE FOR THE PURPOSE OF PREPARING AND RUNNING ITS (PSDB) DISCIPLINARY HEARING. THUS, ITS SUPERVISORY PRACTICE IN THIS INSTANCE OF THE PSDB WAS DEFECTIVE AND UNSATISFACTORY.

FINDING NO 2: THE PSC BOARD'S (MESSRS JOSEPH KALO, KALBOVI MANGAWAI AND EDWIN BASIL) DECISION TO ABANDON MR SESE'S DISCIPLINARY CASE WAS BLATANTLY UNREASONABLE.

FINDING NO 3: THE PSC BOARD'S (MESSRS JOSEPH KALO, EDWIN BASIL AND KALBOVI MANGAWAI) DECISION TO APPOINT MR SESE

AS DIRECTOR-GENERAL IN THE PRIME MINISTER'S OFFICE WAS BLATANTLY UNREASONABLE AND BASED ON AN ERROR OF FACT (IN THAT NO REASONABLE EXPLANATION COULD BE POINTED TO) AND OR WAS BASED ON IRRELEVANT CONSIDERATIONS.

- 6.1 The memo prepared by Mr Kanam Wilson dated 17 March 1998 recommended that any decision to appoint Mr Sese be deferred. Mr Kalo in his evidence accepted that he ignored that recommendation and was unable to give any reason as to why he ignored the recommendation. Mr Kalo was unable to explain or justify the appointment of Mr Sese other than to say Mr Boe told him to do it who was supported by Mr Mimnaugh (denied by them).

FINDING NO 4: THE PSC BOARD'S DECISIONS GAVE RISE TO INCONSISTENCY AND POTENTIAL UNJUSTNESS TO OTHER POTENTIAL APPLICANTS. OVERALL, THE PSC BOARD'S CONDUCT IN APPOINTING MR SESE LACKED TRANSPARENCY AND HIS APPOINTMENT IS THEREFORE COMPROMISED.

- 6.2 Additionally, the failure to give the Interview Panel a copy of the Ombudsman's report where Mr Sese was named was a defective exercise of its powers, particularly when Mr Kalo sat on both the PSC Board and the Interview Panel as chairperson.

FINDING NO 5: THE PRACTICE OF KEEPING MINUTES BY THE PSC BOARD AND ITS SECRETARY, MR BERGMANS BEBE OF THE PSC BOARD MEETINGS WAS INADEQUATE AND DEFECTIVE.

7 RECOMMENDATIONS

RECOMMENDATION NO 1: THE PSC CONVENE A PSC DISCIPLINARY BOARD TO SUBSTANTIVELY HEAR THE DISCIPLINARY CASE OF MR SESE.

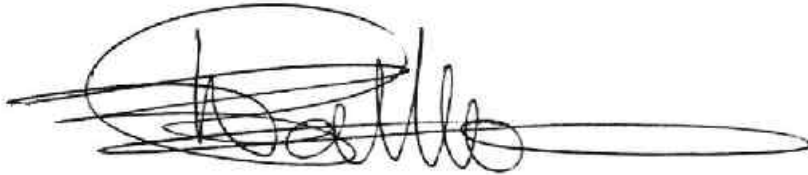
- 7.1 The PSC initially followed the recommendations in the two reports that that Mr Sese face disciplinary action. The original decision of the PSC Disciplinary Board was quashed because it did not follow the correct procedures and no evidence was called. This is the equivalent of a mis-trial.
- 7.2 This does not mean that the substantive case "goes away". It should be started again. There can be no logical reason for abandoning the course already taken. This time however, I strongly recommend that the Board be given full legal assistance from the Attorney General's Chambers, both in preparation and at the hearing.
- 7.3 This is a practice I recommend for all disciplinary hearings.

RECOMMENDATION NO 2: IN FUTURE, THE PSC CONSIDER ADOPTING A POLICY OF DEFERRING PENDING APPOINTMENTS OF PUBLIC SERVANTS WHO ARE FACING DISCIPLINARY ACTION UNTIL COMPLETION OF SUCH ACTION.

- 7.4 The above is self-explanatory. Moreover, it is noted that this is what one of the Selection Committee members noted as having been agreed in the appointment of Mr Sese.

**RECOMMENDATION NO 3: THE PSC CONSIDER HAVING A SHORTHAND
NOTE TAKER RECOD FULL MINUTES OF ITS
MEETINGS.**

Dated this 9th day of July 1998.

A handwritten signature in black ink, appearing to read 'Marie-Noelle', followed by a long horizontal flourish.

**Marie-Noelle FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU**

8 ANNEXURES

1. PSC Minutes of Meeting dated 17.03.98
2. Letter from Chairman of PSC, Mr George Pakoasongi to the Ombudsman dated 26.05.98
3. Letter from the Ombudsman to Mr George Pakoasongi dated 25.06.98.

REPUBLIQUE DE VANUATU

COMMISSION DE LA
FONCTION PUBLIQUE

Sac Postal Privé No. 017
Port-Vila



1
OF THE
REPUBLIC OF VANUATU

PUBLIC SERVICE
COMMISSION

Private Mail Bag No. 017
Port Vila

From : Public Service Commission
Port-Vila

CONFIDENTIAL

Date : 17.03.98

Re : Case n°001/98 - Mr. Jean SESE

ANNEX 1

Chairman mo Secretaries of PSC, long miting blong olgeta wetem
Jean SESE, tufala party i bin aknowledgem ol failure blong tufala.

Mo tu long fes blong Chairman mo Secretaries, Mr. Jean SESE i bin
mekem wan APOLOGY long Commission long hardness blong appli blong
hem mo tu ol samting we hemi mekem.

Nao oda i kam se PSC i rivokem PSDB decision long Demotion blong
Mr. Jean SESE mo reinstatem hem long normal duty blong hem mo
backdatem salary blong hem accordingly, as from 1st April 1998.

Members :

Mr. Joseph GILC
Mr. Kalpovi MANGAWAI
Mr. Edwin BASIL



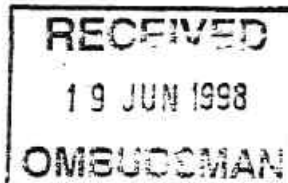
MEMORANDUM

ANNEX 2

Your Ref. _____
V/Ref. _____
Our Ref. _____ Date 26th May 1998
N/Ref. PSC. 08126/98/69

From du Public Service Commission

to
à Ms Marie-Noelle Ferrieux PATTERSON
Ombudsman
PMB 081
PORT-VILA



Dear Madam,

RE : PUBLIC REPORTS CONCERNING THE PUBLIC SERVICE COMMISSION

Thank you for sending me your preliminary report detailing your findings on the handling of the Jean SESE case by the Public Service Commission.

After our meeting of 29th April 1998 we arranged to meet with the Attorney General. We floated a few questions in regards to Mr Sese's case for some legal opinions as to what other steps if any, that the Commission could or should take and as mentioned during our telephone communication, I am still waiting for their written advice.

Please be rest assured that I will write to you once I am in receipt of their advice. I also need to be very very clear in my own mind prior to making any commitments on paper as I presently feel as if I were standing between two rival factions with each one telling me that that other is wrong while the other is adamant that their view is right. I hope that you can bear with me until I can see my way clear on this issue.

In as far as my refusal to your office's request to be furnished with the Commission's minutes of its meetings, I would like to reiterate that this was done following oral advice from the Attorney General's Office who are this Commission's legal advisors. Again, I am still waiting to have this advice from them in black and white and we will

be communicating with you on this when received.

In reply to the second last paragraph of your letter regarding the seven (7) page document detailing a list of your reports and recommendations, I would like to inform that we have set the ball rolling on some of them, namely:

a) AUDITOR GENERAL

This position was advertised on 12th May, 1998.

b) VILA CENTRAL HOSPITAL - GYNAECOLOGIST

The Commission at its meeting of last week approved the recruitment of a Gynaecologist for the Central Hospital.

c) PSC SUBMISSION FORMS

These forms have been re-drafted as recommended.

d) APPOINTMENTS ON MERIT

The new Public Service Act of the Staff Manual incorporates appointment procedures that are based solely on merit.

e) SALE OF GOVERNMENT HOUSES AND THE HEALTH WORKERS CASE

Your reports on the above cases which were sent to the PSC were just read/seen by me 27th April, 1998. A memo was directed to the PSC Secretariat for them to carry out investigations into them and to advise the Commission on what to do. Also included were eight (8) other outstanding cases which I have so far identified.

The Commission has also endorsed that an Investigation Unit be set up to carry out investigations into these outstanding cases as well as those that were brought up by your officer's reports.

We are in the process of researching the possibility of recruiting somebody with a legal background to head the Investigating Unit. If and when ready, they will be making calls to your office to compare notes on findings.

I will be contacting your office on a regular basis to let you know how we are progressing but in the meantime I would like to thank you for acknowledging the fact that these problems were inherited but that I will do my best to address as much as I can given my present work schedule under the Restructuring & Rightsizing of the Public Service (over 4700 persons) in which the Commission is required to be involved in every level of its process.

Yours sincerely,



GEORGE PAKOASONGI
Chairman



ANNEX 3



Office of the Ombudsman Bureau du Médiateur Ofis blong Ombudsman



8511/2571/L17/PSC Chairman

25 June 1998

Mr George Pakoasongi
Chairman
Public Service Commission
PORT VILA

PRIVATE & CONFIDENTIAL

Dear Mr Pakoasongi

PRELIMINARY REPORT ON THE CONDUCT OF THE PUBLIC SERVICE COMMISSION ("PSC") FAILURE TO HOLD A COMPETENT DISCIPLINARY HEARING FOR AND APPOINTMENT OF MR J SESE AS DIRECTOR GENERAL OF PRIME MINISTER'S OFFICE

1. I refer to my letter of 11 May accompanying the above report and seeking a response from you in 15 days. Your letter dated 26 May 1998 (but received 19 June) shows a delay which is not a reasonable excuse to postpone our work as required by the Constitution. My feeling is that I have allowed ample time for you to be able to take whatever advice you deem fit and provide a response on behalf of the Public Service Commission.
2. Notwithstanding the stated desire to provide a response to the preliminary report I note that you have been reported in the media making comments in connection with the subject matter of the above report. In particular, I am referring to an article entitled "PSC Head says Sese was cleared" appearing on page 3 of the Trading Post No 351, 3 June 1998. In the article you are attributed with the following statement:

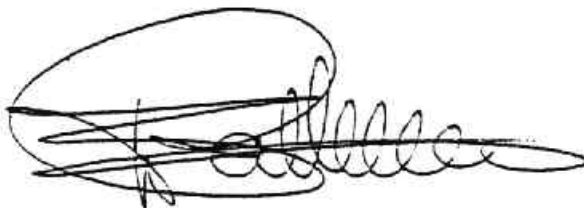
the former Director of Foreign Affairs, Jean Sese who was suspended by the former Vohor Government, had been cleared by the PSC Disciplinary Board after finding no evidence that he was implicated in the sale of Vanuatu passports as alleged in the Ombudsman's report.

3. On this Office's information this statement is incorrect. First, the report in question did not say Mr Sese had sold passports. The finding against Mr Sese in the report was orientated to a failure to follow the law as regards to proper issue of an official passport to JY Jung. Secondly, the PSC Disciplinary Board made no such finding nor could they since no evidence was properly called; such fact, being one of the reasons for the subsequent enquiry by this office. I

am surprised that no correction has subsequently been published by the Trading Post. Have you sought to have the Trading Post correct these misstatements?

4. If the PSC Board has in fact "cleared" Mr Sese at another hearing after the issue of my preliminary report can you please send me a copy of the decision and record of proceedings. I note that these are public hearings and thus a matter of public record.
5. In any event, the main purpose of this letter is to inform you that I am proceeding to issue the final report on this matter at the end of this week or early next week. Accordingly, I be would be most appreciative to be able to consider any specific comments (if any) you may have on behalf of the Public Service Commission. If the PSC was to convene a properly constituted and briefed Disciplinary Board to properly and fully adjudicate the charges against Mr Sese it is open to our Offices to resolve the matter without proceeding with a public report.
6. Finally, I must say how encouraged I am to learn from your letter of the PSC's proposal to hire a legally qualified person to head an investigating unit. This could also be a real help to the PSC's Disciplinary Board. I look forward to hearing from you on how this develops.
7. I have also noted and thank you for your advices in reference to other matters reported on by this Office.

Yours sincerely



Marie-Noelle FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU