

**REPUBLIC OF VANUATU  
OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**on**

**LEADERSHIP MISCONDUCT**

**by**

**RT HON SERGE VOHOR, HON BARAK  
SOPE AND HON VINCENT BOULEKONE  
over attempted transfer of Land and  
Citizenships to Volani International (Limited  
foreign company)**

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## PREAMBLE

*"Folly is joy to him that is destitute of wisdom; but a man of understanding walketh uprightly"* Prov. 15 V21.

This public report, as the findings set out below will show details once again how senior officials of Vanuatu (in this case the Interim Prime Minister, Hon Serge Vohor and the interim Trade, Commerce and Industry Minister, Hon Barak Tame Sope) ignored the Constitution, the laws of the country and the advice of the Attorney General in order to sign an illegal contract with an Italian company, Volani International Limited ("**Volani**") registered in Gibraltar.

Despite requests by the Vanuatu Attorney General, this company has still not remitted its audited accounts, even though the contract was executed by the Prime Minister around the end of October 1997, overseas, and witnessed by Mr Sope (see Appendix 5).

Under the terms of this agreement, in return for carrying out a feasibility study on the practicability of building an international airport on Santo Island, Volani would receive from the Vanuatu Government among other things:

- 100 hectares of land (not leasehold but full ownership) (Clause 5.2(a));
- 500 residency permits capable of being transformed into citizenship within one year (Clause 5.2 (b)(iii));
- Guarantee that no provision could render the agreement null and void;
- No laws of Vanuatu was to control this contract;
- No respect of the Financial Regulations on Tender.

These "payments" above are illegal as are these provisions of the contract.

Foreign and non indigeneous ni-Vanuatans cannot "own" land in Vanuatu, they can only hold leasehold titles over it. Also, Vanuatu citizenship is only available to those foreigners who have lived in Vanuatu for ten years. Both Mr Vohor and Mr Sope know this. They do not and certainly should not require the Attorney General's advice on these points.

It should be stated in late November 1997 (about a month after he had signed the agreement), Mr Vohor advised Caisse Française de Développement (CFD) who were working on a comprehensive upgrading project for Vanuatu airports paid by grants that the agreement with Volani did not receive the agreement of either the Council of Ministers or the Attorney General and he added *"I can assure you that it (the Volani agreement) will not be enforced"*.

However to date, the situation is still very confused as opposite messages have been given by the Council of Ministers ("**COM**") (approving the project), the Prime Minister, Mr Vohor (successively approving and disapproving the project/stating that approval of the COM had been approved and had not been approved) the Minister of Finance, Mr Boulekone still promoting the Volani project on 11.02.98 after the Prime Minister had stated on 27.11.97 that it would not be enforced.

Mr Sope still appears to be enforcing the contract attempting to transfer land to Volani in December 1997 and January 1998, and stating in February to the Ombudsman that the contract was going ahead with the cooperation of the Attorney General, even though the Attorney General states today he knows nothing about it.

Mr Kilman, Minister of Lands had to be stopped by official letter by the Prime Minister to issue any lease on 09.01.98 to stop the transfer of Lands to Volani.

Another aspect of concern is that this "agreement" with Volani may prejudice a pre-existing arrangement made with various aid donors and a development bank who had already completed a full feasibility study at no cost to Vanuatu. This feasibility study concludes that an airport taking Boeing 737s (135 persons) can be sustained on Santo. A 747 airport (747s carry about 400 persons) on Santo based on the study done already makes no economic sense. As one person interviewed by the Ombudsman's Office said *"it is like building a supermarket in a place where there are no customers"*.



At the end of the day one is left wondering what may be the actual purpose behind the Volani contract. What are these "free zones (industrial, commercial and financial) including free bank licences"? What is the necessity for 100 hectares freehold land to be transferred and "500 resident permits to be transformed in citizenship during one year". All these things appear most unusual for a contract to do a study on building an airport.

## 1 SUMMARY

- 1.1 This Report is about an attempt to contract between the Republic of Vanuatu and an Italian company called Volani International Limited.
- 1.2 Without any authority or required deliberation by the National Planning Office or the Tenders Board, in October of 1997, Trade Commerce and Industry Minister Barak Sope and Prime Minister Serge Vohor attempted to bind the Republic of Vanuatu to an agreement with Volani International. As noted in the preamble this agreement purported to dispose of 100 hectares of freehold land and 500 residencies that would become 500 citizenships in one year (instead of the 10 years required by the Constitution). Both these aspects of the agreement are illegal
- 1.3 There are numerous other problems with the conduct of Mr Vohor and Mr Sope and their dealings with this purported agreement. Mr Vohor and Mr Sope must consult the National Planning Office before taking steps to approve infrastructure type projects, such as an international airport or feasibility study about an international airport. A comprehensive and full report had been undertaken by a reputable company called BCEOM chosen by the Vanuatu Government. The final draft of this feasibility study was presented to National Planning Office in December 1997. It concluded that the best use was to upgrade the three airports as follows:
  - Tanna to take planes up to the size of an ATR 42 or Saab 2000 (approximately 50 people)
  - Bauerfield airport to take fully laden 737 planes (135 passengers) and in the future partially laden 767 planes (200 persons)
  - Santo airport to take up to 737 planes partially laden (135)
- 1.4 One of the effects of the findings of the BCEOM feasibility study was that the infrastructure in these islands was not developed enough for it to be economic or feasible to take planes larger or more fully laden than those mentioned above. In other words the effect of the report was that 747s were not feasible. Despite this detailed report the Council of Ministers wanted to have 747s land in Santo and were "determined" to do so in the words of Finance Minister Boulekone. It is for this reason that Mr Sope says that they turned to Volani, a company about which very little is known.
- 1.5 If any disbursements are to be made of government property exceeding 1,000,000 Vatu then the Central Tender Board is the government organisation which is to award the contract. Mr Vohor and Mr Sope never consulted the Central Tender Board.
- 1.6 Mr Vohor and Mr Sope entered into an agreement for a feasibility study valued at over 450,000,000 Vatu with Volani concerning an international airport in Santo. However, as recently as June of 1997, an extensive evaluation of Vanuatu airport by BCEOM was concluded at no cost to Vanuatu with a company that the Government chose freely. The final draft of the report has only just been completed and given to NPO in December 1997.
- 1.7 By entering this agreement Mr. Vohor and Mr. Sope were turning their backs on the possibility of a 600,000,000 Vatu grant from French donors. Instead of receiving a grant, which does not cost Vanuatu even 1 Vatu, Mr. Vohor and Mr. Sope are seeking to give away land and citizenships (valued by them at 450,000,000 Vatu) for a study which already exists and which they ordered themselves, duplicating the work.

- 1.8      Fortunately for the people of Vanuatu, because Mr Vohor and Mr Sope did not have the authority to bind Vanuatu to Volani International, the agreement between Volani International and Vanuatu is likely to be void. Likewise, the country must give thanks to its Attorney General and his officers who refused to approve this agreement.
- 1.9      At present, Mr. Vohor appears to have seen the errors of this contract, as he has declared the attempted Volani contract finished. However, Mr. Sope continues to try to give away Vanuatu land in accordance with agreement that the Prime Minister has stated "unenforceable" via letter of 27.11.97.

## **2      JURISDICTION**

- 2.1      Pursuant to Article 62 of the Constitution and Section 14 of the Ombudsman Act No. 14 of 1995, the Ombudsman has jurisdiction over alleged breaches of the Leadership Code. Both Mr Sope, Mr Vohor and Mr Boulekone are leaders because they are both MPs and Ministers who are included as "*leaders*" under article 67 of the Constitution. Political secretaries are also within the Ombudsman's jurisdiction as "*leaders*".

## **3      PRELIMINARY REPORT**

- 3.1      A secret preliminary report was issued to:
- Prime Minister Vohor
  - Minister Sope
  - Consulting European Engineering
  - Minister Bangabiti
  - Minister Samson Bue
  - Minister Vincent Boulekone
  - Minister Lango
  - Minister Kilman
  - Mr Lionel Kaluat, First Secretary to the Ministry of Lands
  - Mr Edward Bani, First Secretary to Ministry of Trade, Industry and Commerce
  - Volani International (for any comments)
  - National Planning Office
  - Department of Finance (for information)
  - Mr Ham Bulu, Attorney General (for information))

## **4      RELEVANT LAWS**

**The Prime Minister did not have the ability to enter into this contract without approval from the Tenders Board and the National Planning Office.**

- 4.1      Section 24 of CAP 117 provides in relevant part the following:
- (1)      The Minister (Minister of Finance) may by order make regulations not inconsistent with the provisions of this Act for carrying out the provisions hereof and without prejudice to the generality of this provision such regulations may provide for-
- (a)      the collection, receipt, custody, issue, expenditure, due accounting for, care and management of all public monies and the guidance of all persons concerned therewith;

- (d) the purchase, safe custody, issue, sale or other disposal or writing-off of public stores and other property of the Government and the proper accounting for and stocktaking of such stores and property;

- 4.2 The Finance Regulations requires a Tenders Board to review and award certain purchases of goods and services. Specifically, purchases of goods and services in excess of 1 million Vatu must pass through the Tenders Board. At least 3 written quotations must be obtained, if possible, and these quotations are submitted to the Tenders Board for evaluation and awarding of the contract (Section 361 (3) Financial Regulations).
- 4.3 The National Planning Office is now under the control of the Department of Finance and was under the Prime Minister's Office until recently. The National Planning Office was created to ensure that requests and plans are carried out in the best interests of Vanuatu. When a project is proposed and requires financing on behalf of Vanuatu the National Planning Office reviews the proposal and monitors the development of the project.

**The Prime Minister did not have the authority to enter into the contract thus the contract is voidable**

- 4.7 It is a basic premise of contract law that those who enter into a contract must have the authority to enter into that contract. To allow otherwise, would be to create contractual chaos and contracts unable to be enforced. Thus, Mr Vohor needed to be in proper possession of the authority to enter into the Volani contract when he signed the same.

**Outright Ownership of Land by Foreigners is Illegal.**

Vanuatu Law

- 4.8 Article 73 of the Constitution of Vanuatu states that:

All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.

- 4.9 Article 75 of the Constitution of Vanuatu states that:

Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.

The Volani Contract

- 4.10 Article 5.2 of the Volani Contract states:

*"The payment of such fee shall be made in the following form:*

- (a) *100 hectares of land free of any liens and encumbrances in full and valid ownership under the laws of the Republic of Vanuatu...thereby establishing the identity for each single project..."*

- 4.11 The laws of Vanuatu do not allow for land ownership to persons other than indigenous Vanuatu citizen. The clause is therefore illegal. The best Volani could obtain is a 75 year lease.

**The Citizenship Act, not Mr. Vohor Mr. Sope or Volani International, Governs the Granting of Citizenship**

Vanuatu Law

- 4.12 Section 12 of the Citizenship Act [CAP 112] outlines the requirements to becoming a citizen. Included in the list of requirements is that a citizen needs to be a resident

for a period of 10 years, is of good character, has respect for the culture and the ways of life of Vanuatu, has a reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of a citizen. Being in Vanuatu continuously for 10 years is not guarantee of automatically getting citizenship. It has to be approved by the Citizenship Commission. The Prime Minister has no say in this. **Finally, citizenships are not for sale.**

#### The Volani Contract

- 4.13 Article 5.2 of the Volani Contract states:

*"The Payment of such fee shall be made in the following form:*

- (b) (iii) 500 resident permits to be transformed in citizenship during one year....

**The Constitution, and not Mr. Vohor, Mr. Sope or Volani International, is the Supreme Law of Vanuatu**

#### Vanuatu Law

- 4.14 The Constitution is the Supreme Law of Vanuatu. (Article 2).

#### Volani Contract

- 4.15 Section 10.2 of the attempted contract has the following to say about the law of Vanuatu:

*"....No general or special legal provision, be it contained in laws regulations or decrees of a general or administrative nature, or any other disposition of such type enacted by the central or local Government Authorities of the Republic of Vanuatu, may render this Agreement null and void in any way, replace or modify its content, prevent due and effective fulfilment of these provisions..."*

- 4.16 Despite the clear desires of Volani and Messrs Vohor and Sope evident in this clause, one cannot contract out of the laws of the land. The laws of Vanuatu apply to all in Vanuatu. A contract cannot change the laws of Vanuatu. That is the job of Parliament alone.

## **5 BACKGROUND**

### **What is a feasibility study**

- 5.1 When we ask the question is something "feasible"? we are asking whether it is possible, practical or suitable. In other words is this a good idea? Does it make common sense?
- 5.2 A "study" is something we do if we want to learn about something; if we want to find out more information. Therefore a "feasibility study" is done to find out if something is possible, whether an idea we have is common sense and whether it will work in practice or what is the best way to do it.
- 5.3 Feasibility studies are used to look at different projects or ideas that the Government may have with the goal of trying to improve the life of its people or the economic or for any economy project by private companies involving important sums of money.
- 5.4 Feasibility studies finish with a report. The report is a written document that records all the questions that were asked and the answers that those doing the study have come up with. The report explains also how the questions were answered. The



report will finish with recommendations about what is the best way to do something. It may give a number of options that are considered to be "*feasible*". In other words the report will say what will work and what will not work in practice. The person receiving the report is then able to make a wise decision based on what has been learnt from the feasibility study.

### **Airports and planes**

- 5.5 As we all know Vanuatu has a number of airports. Planes are an important form of transport within Vanuatu because Vanuatu is made up of lots of islands and it is not possible to go by truck all places in Vanuatu to another. Planes also deliver goods and other cargo from one place to another.
- 5.6 The importance of planes to Vanuatu is not only within the islands of Vanuatu but also with other countries, Australia, Fiji, New Caledonia, and New Zealand. Planes going and coming from these countries bring in tourists and products we need. They also take out Vanuatu's products to its overseas markets, which include the four countries just mentioned.
- 5.7 Planes and airports are therefore very important to the economy of Vanuatu. The tourists that come to spend their money in Vanuatu and the products we fly out earn more money for the people in Vanuatu who make or produce those goods. Those people who get the money from the tourists and those from selling their goods then will buy other goods from other people within Vanuatu. Some of this money also will end up back with the Government through duties and other fees that the Government charges for certain things.
- 5.8 The Government runs the country for us and this costs money. Therefore the Government depends in part on tourists coming to the country and ni Vanuatu selling their products to people who live overseas to pay for the running of the country. If more tourists come and more products are sold then the Government will obtain more money. This means the Government will have more money to spend on things like Health and Education which are the basic necessities important to the people of any country. However the answer is not simply to build the biggest airport in the World in Vanuatu. What is needed is the best type of airports for the conditions in Vanuatu taking into account the number of hotel rooms we have and how much product such as kava and copra people are making.

### **The question for the Government about airports**

- 5.9 To be able to earn the tourist vatu and money from its products Vanuatu therefore depends on planes and airports. The question for the Government and the country is then what are the best types of airports and planes for the islands of Vanuatu so that we can reach the goals of getting tourists and selling our products.
- 5.10 When we ask this question we have to look at how much product we have to sell overseas and how many tourists we can look after properly when they come. In other words we cannot sell all of our kava overseas otherwise there will be none left to sell to the nakamals within Vanuatu itself. Nor can we bring in 5000 tourists every week if we only have 1000 beds to put them in. There are other questions that have to be asked like how much will it cost to build a certain type of airport and how much it will cost to run certain types of planes.
- 5.11 There are further technical questions that have to be asked and answered. To get all these questions answered and to get good advice you have to get help from specialists in this area; in other words you ask people or companies who are experienced in this area. These specialists can only give this advice once they have looked at very closely and studied the local conditions.

**BCEOM feasibility study for airports in Vanuatu**

- 5.12 The Vanuatu Government through the National Planning Office asked a large French organisation called Caisse Francaise de Développement ("CFD") to give help to it in planning and paying for its airports in Vanuatu. It also asked for help from a development bank called the Investment Bank of Europe ("EIB"). CFD was asked to help because it is very experienced in helping countries like Vanuatu in development projects. It gives money for free to pay for these projects (called "grants"). EIB also is very experienced in development projects. EIB is quite similar in its operations to the World Bank. It does not give grants but does offer very cheap loans (ie the interest rate is very low, such as 1.5%). EIB recently was involved with lending money for the building of Tonga's airport.
- 5.13 CFD in response to the Vanuatu Government's request for help financed a large French company called BCEOM to carry out a feasibility study on airports for Vanuatu. This company was selected by the Vanuatu Government. BCEOM is a specialist consultant in doing feasibility studies for large development projects and in particular for airports. National Planning Office approved for BCEOM to carry out the feasibility study. The cost of the report was US\$100,000. However CFD paid for the feasibility study on behalf of the Vanuatu Government.
- 5.14 BCEOM's feasibility study was completed in phases starting in November 1996 and ending in a report which was given to NPO in December 1997. BCEOM's study covered not only the airport at Santo (Pekoa) but also those at Tanna and Port Vila (Bauerfield). BCEOM's study says that the best option for the Santo (Pekoa) airport is for it to be upgraded to take partially laden 737s (carrying about 135 persons). Anything more than this, such as a 747 (carrying about 400 persons) is not feasible because there is not enough hotels or other things to look after this number of tourists. Nor is it considered that there is a big enough supply of goods to sell from Santo to overseas. A 747 airport would cost more to build and run. To build an airport bigger than this to take planes bigger than 737s is not feasible for Santo according to the BCEOM report. If it was done then Vanuatu would lose money. As one person interviewed by the Ombudsman's Office said to build a 747 airport at Santo now would be like building a *"supermarket at a place where there were no customers"*.
- 5.15 The story in the report is also that if a 737 airport is successful and lots of tourists come to Santo and more products are sent overseas then may be in the future it will be possible to upgrade the airport to take bigger planes. This step by step approach is common sense.

**CFD, AUSAID and European Investment Bank and European Union's offer to fund the upgrades of airports on Tanna, Efate and Santo**

- 5.16 The upgrade of Tanna airport has almost been completed. This was free of charge to Vanuatu. It was paid for by a grant from CFD.
- 5.17 The upgrades to Bauerfield airport and facilities at Port Vila and Pekoa airport at Luganville are proposed to be paid for by grants from CFD, AUSAID and European Union, a generous loan at only 1.5% interest over 40 years from European Investment Bank ("EBI") and also a contribution by Vanuatu itself.
- 5.18 The BCEOM study has accepted that the three airports can be run by a company or body based on the model of CAAF (Fiji) the company of people who run the airports in Fiji. It is understood by the Ombudsman's Office that a new law will have to be passed in Parliament to do this and then persons appointed to a board of the new body for Vanuatu's airports. The board members will be taken from experienced businesspeople from the private sector.
- 5.19 The Ombudsman understands that binding agreement has to be received from the Vanuatu Government to the creation of this body to run the airports before the project to finish the airports can be paid for.



## 6 CHRONOLOGY OF FACTS WITH COMMENTARY

- 6.1 On 1 August 1996, a 5 person delegation from a company headquartered in Rome, Italy arrived in Vanuatu. This delegation represented a company named Consulting European Engineering (CEE).
- 6.2 Between 2 August 1996 and 5 August 1996, CEE met with then Minister of Foreign Affairs Amos Bangabiti, then Prime Minister Maxime Carlot, President Jean-Marie Lenelcau, then Minister of Tourism and Civil Aviation Albert Ravutia, and then Minister of Finance Barak Sope.
- 6.3 On 6 September 1996, Henri Taga, then First Secretary to the Ministry of Home Affairs, received official commercial information that **Volani International is a small company**. The letter continued to state that **the reputation of Volani International was a company of small size with a trust factor inferior to the average, and with risks superior to the average, had limited liquidities and that Italy Volani International would only be able to obtain bank loans equivalent to 36,000,000 Vatu**. This information suggests that Volani could not finance construction of an airport. The upgrade to Tanna alone has cost about VT300,000,000 almost ten times the amount of money it is alleged that Volani could borrow from banks.
- 6.4 On 24 October 1996, Mr Sope wrote a letter to Dott Francesco Del Maestro directing him to proceed with discussions on the preparation of feasibility reports including the construction of a 747 International Airport. It is unclear from this letter where Mr Sope gained the authority to direct Mr Del Maestro to negotiate feasibility reports on behalf of Vanuatu. A copy of the letter (and transcript) from Mr. Sope ill advisedly granting to Mr Del Maestro the right to proceed with discussions on behalf of Vanuatu is annexed here as "1".
- 6.5 A letter dated 13 November 1996 written by Samson Bue to the Foreign Affairs Minister of Italy indicates that at this time there were already agreements in place with Volani International and Vanuatu. A copy of the letter (and transcript) from Mr. Bue is annexed here as "2". Specifically, Mr Bue states:  
*"We have nominated a Company of Knight of Labour Mariano Volani, Italy as a leader of a pool of Italian companies to carry out those major Developments. We have reached various agreements on the same with the said Company of the Knight of Labour Mariano Volani."*
- 6.6 In November 1996, on behalf of Caisse Francaise de Developpement ("CFD") a Phase A Preliminary Report titled Evaluation of the Airport Development Program in the Republic of Vanuatu was completed. This report was revised and updated in February 1997.
- 6.7 In June 1997, a Phase B second report titled Evaluation of the Airport Development Program in the Republic of Vanuatu was issued by CFD. This is the approved feasibility study by NPO.
- 6.8 CFD has a history of assisting Vanuatu. Presently, CFD is nearing completion on a 300,000,000 Vatu grant to update and upgrade the Tanna airport.
- 6.9 It is estimated that CFD has another approximate 600,000,000 Vatu earmarked as a grant for the updating and upgrading of the Bauerfield and Pekoa airport. However, should Mr. Sope and Mr. Vohor choose to enter into business with Volani, Vanuatu may well lose this assistance.
- 6.10 On 10 October 1997 Etienne Kombe wrote to Mr Sope (now Minister of Trade & Industry) and Mr Lango confirming Council of Ministers Decision 187. Decision 187 allowed Volani International to proceed with an economic feasibility study for a privatised international airport in Santo accommodating a 747 airplane. This decision also states that, *"if the report proves economically viable to then proceed with the complete project agreement with the same group"* (that is Volani and Partners). Therefore the **same company** that is creating the feasibility study, is the



**same company** being granted the authority to complete the airport. The Council of Ministers is not seeking an impartial feasibility study as was already created just four months earlier in June of 1997 by CFD. Instead, the Council of Ministers is asking Volani to decide if an International Airport on Santo is a good idea, the same Volani would get an increase in its business by building an International Airport on Santo. The Volani feasibility is therefore not independent. A copy of Mr. Kombe's 10 October 1997 letter is annexed here as "3".

6.11 20 October 1997, Mr Kombe wrote to Mr Sope and Mr Lango informing the same of Council of Ministers Decision 203. Decision 203 purportedly authorized Mr Vohor and Mr Sope to sign the contract. It is unclear from this language if the Council of Ministers is only authorising Volani to **prepare for the feasibility study** creation or if Volani is authorized to **create the feasibility study** but probably the latter. A copy of Mr. Kombe's 20 October letter is annexed here as "4".

6.12 On or about 30 October 1997 the Ombudsman understands that an undated contract between the Republic of Vanuatu and Volani International Limited was signed by Mr Vohor as representing Vanuatu. The agreement has also been witnessed and signed by Mr Sope. In this contract, Volani was to create a feasibility study for various projects including: Santo International Airport, Tourist Resort on Santo, VIP Housing Project, Low Cost Housing Project, shipping routes, creation of "Free Trade, Industrial and Financial Zone" in Luganville, and as a second phase of study appropriate health and education facilities. A copy of this contract is annexed here as "5". In return for this study, the Republic of Vanuatu was purported to give:

- (a) Accommodations for 10 engineers for the study (clause 4.1(a));
- (b) A vehicle to be used in Port Vila and Luganville for the engineers (clause 4.1(b));
- (c) Free air travel between Port Vila and Luganville for 10 engineers (clause 4.1(c));
- (d) a fee equal to 4,000,000 U.S. Dollars made in the following form:
  - (i) 100 hectares of land free of any liens and encumbrances in full and valid ownership under the laws of the Republic of Vanuatu;
  - (ii) all appropriate licenses and concessions relative to:
    - free zone (industrial, commercial and financial) including bank licenses
    - real estate licenses for resorts casinos and VIP residential villas
    - 500 resident permits to be transformed in citizenship during one year
    - other licenses as and when necessary to the project. (Clauses 5.1 and 5.2)

6.13 In respect to the land clause 5.3 stated:

**The ownership and the property of the land, the permits and the other licenses will be transferred to a company which will be purposely constituted in United Kingdom**

(my emphasis added)

6.14 On 13 November 1997, Minister of Finance, Vincent Boulekone, and Mr. Sope met and discussed among other things, the Volani feasibility study. Mr. Boulekone later sent a letter to Mr Sope letter approving the Volani project. Besides being a letter of

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concurrence with the attempted Volani contract, Mr. Boulekone's letter places the date on which the attempted contract was entered as, 30 October 1997. Annexed here "6" is the letter dated 14 November 1997 from Mr. Boulekone to Mr. Sope.

- 6.15 On 13 November 1997, Mr. Sope was reported as announcing in a press statement that **he** (ie not Mr Vohor) had signed an agreement with Volani International for a: luxury hotel and casino, free trade zone and airport accommodating 747 aircraft. Mr. Sope is reported as speaking in glowing generalities in this press statement. In the press statement, he fails to mention the illegal and unfavourable terms of the agreement and instead attempts to downplay foreign involvement. He fails to mention that a price had to be paid. Mr. Sope fails to mention the Vanuatu land that was agreed to be given away. He failed to mention the Vanuatu citizenships that were agreed to be given away. Mr. Sope also failed to mention the Vanuatu economic control that he agreed to give away affecting not only Santo, but all the islands of Vanuatu. A copy of the media article reporting on Mr Sope's announcement is annexed as "7".
- 6.16 According to a 15 November 1997 letter from Mr. Kombe to Mr. Sope, on 14 November 1997, the Council of Ministers issued Decision No. 233 endorsing and approving the Adviser Engineering Contract between the Republic of Vanuatu and Volani International Limited. A copy of the letter 15 November 1997 letter is annexed here as "8".
- 6.17 On 27 November 1997, a letter was issued from the Prime Minister to CFD. In this letter, Mr. Vohor indicated that he is fully committed on behalf of the Vanuatu Government of the grant from the French agencies, rather than paying large amounts of land and passports to Volani International. In his letter, Mr. Vohor also states *"that paper was NOT approved by the COM nor by the Attorney General, and I can assure you that it will not be implemented"* (my emphasis). A copy of the letter from Mr. Vohor to CFD is annexed here as "9".
- 6.18 On 11 December 1997, the Office of the Ombudsman received a phone call from Mr. Vohor. At this time, Mr. Vohor stated that the Volani contract was finished, and that no agreement with Volani was to have effect. In effect, at this time, Mr. Vohor was confirming the facts as presented above in his letter to CFD. He also wrote to Lands Minister Kilman instructing him to suspend any applications Land *"for lease or Sale"*. A copy of this letter is annexed as "10".
- 6.19 At this point, it appears as if Mr. Vohor and Mr. Sope are no longer acting in concert. Mr. Vohor appears to regard the Volani attempted contract as the less favourable option. Whereas, Mr. Sope appears to be seeking to spend Vanuatu money and enter into contracts with a company that is spoken officially of a company of small dimension with a level of trust inferior to the average and a level of risk superior to the average.
- 6.20 From sometime in December 1997 to 10 January 1998, owners or employees of Volani International visited Vanuatu to press their interests. One of the purposes of their trip to Efate and Santo was to acquire the 100 hectares of land as per the agreement Mr. Vohor classified as finished. Mr. Sope is presently assisting the owners of Volani International in attempting to acquire 100 hectares of land.
- 6.21 Mr Lionel Kaluat told the Ombudsman's Office that he was on a flight to Santo in the middle of December 1997 with Minister Louis Carlot, Education Minister and a French professor. They were going on a trip to Matevulu College. Also on the same flight was Mr Sope, Mr Volani, other representatives of Volani, Mr Edward Bani and Mr Clarence Marae (both political appointees of Mr Sope's). Mr Kaluat said that during this trip the plane spent several hours flying over Santo showing the Mr Volani and his colleagues different pieces of land on Santo. Mr Kaluat says after the flight he went on his business to Matevulu College. On finishing this business he says that his party met up with Mr Sope's party back at the airport. Mr Kaluat states that he heard Mr Volani telling Mr Sope and his party that the land near the airport to be given to Volani was too big and that Volani wanted smaller blocks close to the coastline.





- 6.22 Mr Kaluat also stated that on 23 and 24 of December 1997, Mr. Edward Bani, appeared at the Lands Department. Apparently this occurred in Vila in accordance with staff from the Lands Department. At the Lands Department Mr Kaluat states that Mr Bani on behalf of Mr Sope and Volani directed that the 100 hectares of Santo land to be partitioned for Volani International. Accordingly, the Santo Lands Department plotted on maps a partition 85 hectares of Vanuatu land, as per the directions of Mr. Sope and Volani via Mr Edward Bani. Annexed here as "11" are copies of the plans that were drawn up. Mr Kaluat also stated that these events followed many weeks of visits from Mr Bani to his office to pressure him to direct the surveyors to draw up the plans..
- 6.23 Because the Santo land only amounted 85 hectares, Mr. Sope is presently seeking to give away 15 hectares more for Volani International. The Ombudsman's Office understands that Mr. Sope is or was seeking this land near Korman Stadium in Port Vila.
- 6.24 Mr. Sope appears to be the central figure regarding the Volani agreement. Mr. Sope was involved in negotiations with Volani. He witnessed the attempted agreement between Volani and Mr. Vohor being signed. To the present, Mr. Sope is still involved.

## 7 REPLIES

- 7.1 Four replies were received from those who received the preliminary report. These were from Mr Bangabiti, Mr Kaluat and from Ministers Sope and Boulekone. A response was also obtained from Mr Ham Bulu, Attorney General in relation to certain allegations Minister Sope made against Mr Bulu. Those who did not exercise their constitutional right of reply have therefore raised no objection to the facts and allegations as presented in the preliminary report. The conclusion that I draw from this is that they are in agreement.

### Reply of Mr Bangabiti

- 7.2 Below is the full reply of Mr Bangabiti

I met with Mr Volani as is stated in the Ombudsman's preliminary report. This was a courtesy visit before negotiation on the Volani contract took place.

By the time the two Council of Ministers' decisions were taken to proceed with negotiations and the contract I was out of Cabinet due to a reshuffle in the Government. I therefore have no knowledge as to what happened after I lost my Ministerial portfolio.

- 7.3 I accept Mr Bangabiti's explanation that as he was no longer a Minister at the time the crucial decisions allowing the contract took place his conduct is not in issue.

### Reply of Mr Kaluat

- 7.4 Mr Kaluat is the former First Secretary of the Ministry of Lands. He attended the Ombudsman's Office in person to provide his reply orally. This was typed up. The full text is reproduced below:

**REPLY OF LIONEL KALUAT  
FORMER FIRST SECRETARY IN MINISTRY OF LANDS  
AND FORMER ASSISTANT SECRETARY GENERAL AND MEMBER OF MPP PARTY**

1. MY NAME IS LIONEL KALUAT. I AM MAKING THIS AS MY REPLY AND COMMENTS TO THE OMBUDSMAN'S REPORT ON THE VOLANI CONTRACT.
2. I WAS PREVIOUSLY THE FIRST SECRETARY IN THE MINISTRY OF LANDS TO MINISTER SATO KILMAN. I RESIGNED FROM THE MPP PARTY ON 12 DECEMBER 1997 BOTH AS ASSISTANT SECRETARY GENERAL AND MEMBER. I RECEIVED A TERMINATION LETTER ON 27 DECEMBER 1997 FROM MY POST AS FIRST SECRETARY FROM THE PRIME MINISTER RT HON SERGE VOHOR FOLLOWING A RECOMMENDATION FROM THE MINISTER OF LANDS AFTER HE RECEIVED VERBAL INSTRUCTIONS FROM TRADE MINISTER BARAK SOPE, CHAIRMAN OF THE MPP. I HAD BEEN WITH THE MPP FROM THE START OF THE PARTY.



3. I AM MENTIONED AT PARAGRAPH 5.21 OF THE OMBUDSMAN'S PRELIMINARY REPORT. IT IS CORRECT THAT ON 23 AND 24 DECEMBER 1997 I REQUIRED SURVEY OFFICERS IN THE LAND'S DEPARTMENT TO WORK LONG HOURS ON BEHALF OF MESSRS SOPE AND VOLANI. I WOULD LIKE TO EXPLAIN THE BACKGROUND TO THIS.
4. I WAS AWARE OF THE TERMS OF THE VOLANI CONTRACT BEFORE MR SOPE AND THE ATTORNEY GENERAL HAM BULU WENT ON AN OVERSEAS TRIP. BEFORE THEIR DEPARTURE I BELIEVED THAT THE TRANSFER OF LAND THAT WAS STATED IN THE VOLANI CONTRACT WAS ILLEGAL. BEFORE THE AG LEFT I SPOKE TO HIM ABOUT MY CONCERNS THAT THE CONTRACT WAS ILLEGAL. I TOLD THE AG THAT MR SOPE HAD WANTED ME TO ARRANGE MY MINISTRY AND THE LANDS DEPARTMENT TO PREPARE TRANSFER DOCUMENTS FOR 100 HECTARES OF LAND ON SANTO. MR SOPE HAD WRITTEN TO ME TO THIS EFFECT AND HAD CALLED ME TO HIS OFFICE TO GIVE ME THIS MESSAGE IN PERSON TWICE. THE AG MR BULU ADVISED ME TO PREPARE A COVERING LETTER TO GIVE TO MR SOPE BEFORE HE WENT AWAY OVERSEAS ON HIS TRIP BUT NOT TO PREPARE ANY DOCUMENTS FOR LAND TRANSFER. I THEN PREPARED THE COVERING LETTER WITH A MAP OF THE PROPOSED AREA AND AFTER I CHECKED WITH THE AG HE AGREED. I FOLLOWED THE AG'S ADVICE AND GAVE THE MAP AND THE COVERING LETTER TO MR PAKOA KALTONGA MR SOPE'S SECOND SECRETARY.
5. THE OTHER THING I DID WAS TO BRIEF THE OFFICERS IN THE LANDS AND SURVEY DEPARTMENTS THAT ANY LAND DEALINGS WERE TO BE DONE ACCORDING TO THE MANUAL AND LEGAL PROCEDURES. THIS APPLIED TO VOLANI OR ANY OTHER DEAL. IF THEY RECEIVED ANY PRESSURE FROM MR BANI THEY WERE TOLD BY ME TO AVOID THOSE INSTRUCTIONS AND REPORT THE MATTER TO ME.
6. WHEN MR SOPE CAME BACK HE WAS VERY KEEN AND EXCITED ABOUT THE VOLANI PROJECT. MR BANI THEN REGULARLY CAME TO THE LANDS DEPARTMENT AND STARTED HASSLING AND PRESSURING THE SURVEY OFFICERS AND LANDS DIRECTOR TO PREPARE PLANS FOR 100 HECTARES OF LAND FOR VOLANI. I LEARNED OF THIS FROM THE SURVEY OFFICERS AND HAD WORDS WITH MR BANI. I FELT THAT THE WHOLE THING WAS ILLEGAL. I WAS ALSO LOSING CONFIDENCE IN MR SOPE BECAUSE THIS DEAL SEEMED TO GO COMPLETELY AGAINST THE MPP'S MOTTO "MY LAND, MY LIFE". MY MINISTER MR KILMAN ALSO DID NOT LIKE THE DEAL VERY MUCH EITHER.
7. I ALSO LEARNED THAT THE AG HAD DONE A REPORT THAT HAD COME OUT VERY STRONGLY AGAINST THE VOLANI CONTRACT AND THAT HE WAS MOST LIKELY NOT GOING TO GIVE HIS APPROVAL WHICH WAS REQUIRED UNDER THE CONTRACT. MR BANI CONTINUED TO COME TO MY OFFICE REGULARLY AND PRESSURING ME INTO GETTING THE PLANS NEEDED DRAWN UP.
8. IN THE MIDDLE OF DECEMBER ON A SATURDAY I WENT TO SANTO WITH THE MINISTER OF EDUCATION MR LOUIS CARLOT AND A FRENCH PROFESSOR. WE WERE DOING A SITE VISIT TO MATAVULU COLLEGE IN CONNECTION WITH PLANS TO BUILD A FRENCH UNIVERSITY. ON THE SAME FLIGHT WAS MR SOPE, MR VOLANI, THREE VOLANI REPRESENTATIVES, EDWARD BANI AND CLARENCE MARAE. DURING THIS FLIGHT THE PLANE SPENT A COUPLE OF HOURS FLYING ALL AROUND SANTO SHOWING THE VOLANI PEOPLE DIFFERENT PIECES OF LAND ON SANTO.
9. THE TWO PARTIES WENT THEIR SEPARATE WAYS. I WENT UP TO MATAVULU WITH MR CARLOT. ON OUR RETURN TO SANTO. MR VOLANI AND HIS REPRESENTATIVE WERE SHOWN THE BLOCK OF LAND ON THE PLAN WE HAD PREPARED FOR MR SOPE ON HIS TRIP TO EUROPE. THIS LAND IS SITED NEAR THE PEKOA AIRPORT KNOWN AS GARDELL IN LUGANVILLE. BOTH MEN SAID THE LAND WAS TOO BIG. MR VOLANI LOOKED QUITE CONFUSED. THEY SAID THEY WANTED SMALLER BLOCKS CLOSE TO THE COAST LINE.
10. BACK IN VILA MR BANI CONTINUED TO VISIT ME AND ASK FOR THE PLANS. I EVENTUALLY GAVE IN TO THE PRESSURE AND ASKED THE SURVEYORS TO START WORK ON A PLAN ON AVAILABLE GOVERNMENT (PUBLIC LAND) IN SANTO. I DID NOT THINK THERE WAS ANY REAL HARM BECAUSE I KNEW THAT THE DIRECTOR OF LANDS AND SURVEY WAS AWAY ON LEAVE AND ANY PLAN THAT WAS PRODUCED WAS NOT OFFICIAL AND OF NO USE UNTIL THE DIRECTOR HAD SIGNED IT. I DID NOT THINK THAT HE WOULD SIGN IT. SECONDLY, I WAS OF THE OPINION THAT MR BULU WAS NOT GOING TO APPROVE THE CONTRACT SO THAT THE DEAL AND TRANSFER WOULD NOT GO AHEAD.
11. SO FOR 'TWO DAYS' SOLID THE SURVEYORS AND MYSELF WORKED ON THE PLANS TO SATISFY MR BANI AND MR SOPE. MR BANI IN FACT STAYED WITH US FOR THE SECOND DAY TO MAKE SURE WE GOT IT DONE AS QUICKLY AS POSSIBLE. WE DID NOT FINISH UNTIL 8.30PM ON CHRISTMAS EVE. WE WERE ANGRY BECAUSE WE COULD NOT BE WITH OUR FAMILIES AND WERE NOT ABLE TO DO OUR LAST MINUTE SHOPPING. I WAS ALSO ANGRY BECAUSE I FELT THAT WHAT WE WERE DOING WAS ILLEGAL AND NOT RIGHT. I TOLD MR BANI IN FRONT OF EVERYONE THAT THAT WAS THE LAST TIME I WOULD BE DOING ANYTHING LIKE THIS AGAIN. LOOKING BACK ON IT NOW I WISH THAT I HAD NOT AGREED TO TAKE PART IN THIS BUSINESS. THIS SITUATION WAS ONE OF THE REASONS THAT I RESIGNED FROM MPP. I AM HAPPY THAT THE OMBUDSMAN HAD LOOKED INTO THIS VOLANI DEAL BECAUSE IT IS NOT RIGHT TO TRANSFER OUR LAND TO FOREIGNERS.

LIONEL KALUAT

- 7.4 Whilst I recognise Mr Kaluat integrity in taking the stand he has in resigning from his political party because of his beliefs I do not consider he acted correctly. I consider that he should not have bowed to the pressure he says that was put on him.
- 7.5 His explanation is that since the Director of Lands would never sign the survey plans as official and the Attorney General approve the Volani contract there was no real risk that the land would be transferred to Volani. This misses the point. Mr

Kaluat knew what was going on was wrong but relied on others to take the strong stand and not himself. He did say however that if he was faced with the identical situation again he would not agree to direct the workers in the Lands Department to carry out Mr Sope's instructions given to him by Mr Edward Bani. I hope that this is so.

#### **Reply of Mr Edward Bani**

- 7.6 Mr Bani, Mr Sope's secretary wrote a one sentence reply to the preliminary report. He denies that he was present on the days in which Mr Kaluat says that he and the land surveyors were instructed to prepare the land survey plans for the Volani agreement. This was because the Ombudsman's Office had originally understood this occurred in the Santo Office. Lands Department officers advise that occurred in Port Vila.

#### **Reply of Finance Minister Boulekone**

- 7.7 Mr Boulekone provided a written reply. It is in French. His reply and a translation into English is attached as "A".
- 7.8 Below is a summary of the main points of Mr Boulekone's reply with my comments underneath:

- (a) Mr Boulekone complains that I annexed his letter to Mr Sope dated 14 November 1997 (appendix 7) because it says "confidential" on the top and because it talks about other things. Later in his letter Mr Boulekone asks me to consider keeping it confidential from the public.

##### Comment

I later agreed to this request and everyone will see that certain parts of the letter have been blacked out. The full letter was put in the preliminary report because preliminary reports of the Ombudsman are secret and not available to the public.

- (b) He then makes a general statement that he is honest and that my report is close to defamatory (this means that it is spoiling his reputation.)

##### Comment

Actions speak louder than words. It is over to the public to make their own assessment of Mr Boulekone. The Ombudsman's Office simply carries out its duties according to the Constitution and the Act based on facts, documents and testimony and other information given by witnesses.

- (c) Mr Boulekone then says that the Pekoa airport is a government priority and that the Government is determined to go ahead and everyone must know this. He also then says that the Santo airport project is occurring in an unfavourable international climate with Australia and France not wanting to see the project to go ahead. Mr Boulekone then says that he think that this is part of a plot to keep Vanuatu dependent on foreign aid without allowing it to develop its own economic independence.

##### Comment

Mr Boulekone's paranoid beliefs do not answer the report (to be paranoia is to be afraid of things that are not there or real). The report is not about some international plot that exists in Mr Boulekone's dreams. The report is about leaders not following the Constitution and the laws of the country; it is about leadership misconduct. Other than to show Mr Boulekone in a foolish light and a blind determination to have his own way whatever the law might say his statements are irrelevant and do not answer the report.



- (d) Mr Boulekone says that the French CFD report did not suit the Vanuatu Government or private sector. CFD propose a 737 airport when Mr Boulekone thinks that Vanuatu needs a 747 airport. For this reason he alleges Mr Vohor and Mr Sope went to find another partner and came up with Volani.

Comment

Again these comments are of little relevance. The Ombudsman's report is not concerned with matters of national policy. It is concerned with leaders breaking the law and thus the Leadership Code. Mr Boulekone does not answer the main issues which are the giving away of land and citizenships in an illegal way, and other illegal doings such as the non respect of the Financial Regulations.

- (e) Mr Boulekone then makes statements praising the actions of Mr Vohor and Mr Sope and how they acted efficiently because Vanuatu needs development fast.

Comment

I disagree. I think that Messrs Sope and Vohor conducted themselves against the laws of Vanuatu and that is why the Ombudsman's Office wrote the report.

- (f) Mr Boulekone then returns to his conspiracy theory. He says that because the Government strongly want to go ahead foreign forces have started a campaign through the Attorney General and my report to stop their plans. He says that because the contract might have to be changed this does not mean that it is no good.

Comment

I repeat that this type of statement does not answer the issues raised in the report which are illegal grant of freehold land and illegal grant of 500 citizenships.

- (g) Mr Boulekone ends by saying that the Ombudsman is challenging government policy in doing the report and accuses the Ombudsman of playing politics.

Comment

I disagree. What Mr Boulekone says is not true. As stated before the report is not worried about Government policy. What it raises is illegal conduct by leaders. Nowhere does Mr Boulekone answer the real issues of illegal conduct. The Ombudsman is concerned not with politics but with political leaders who break the Leadership Code.

### **Reply of Minister Barak Sope**

- 7.9 Mr Sope sent a written reply dated 11 February 1998. A copy of it is annexed as "B". When the statements made by Mr Sope in his letter are examined my opinion is that it has been deliberately drafted to mislead the People of Vanuatu. Much of the letter uses lots of big words that sound good but do not actually mean anything. People sometimes use big words to confuse or impress the person reading the letter. I believe that is what Mr Sope does in much of this letter. I now summarise the subjects and statements made by Mr Sope and then comment on them.

- (a) Mr Sope starts with what describes as two general points. First he talks about CRP and new procedures. Secondly, he says that because Vanuatu is in transition, procedures are not clear (to him).

### Comment

These statements are made by Mr Sope to sound impressive but they have nothing to do with report.

- (b) Mr Sope then addresses the statements that appear in the report concerning the relevant law. In particular in relation to the two relevant issues about the Volani contract he says the following:
- (i) The Tenders Board did not need to approve the award of the feasibility study to Volani because *"ever since independence, the Tenders Board is not involved in awarding contracts for feasibility studies"*.
  - (ii) He says that the Volani agreement only gave leasehold land; and quotes the clause from the agreement which states *"100 hectares free of any liens and encumbrances in full and valid ownership under the laws of Vanuatu"*; (Mr Sope's underlining)
  - (iii) He says that the reason the 500 citizenships were said to be available after one year and not ten years was because the Attorney General made a mistake.

### Comment

The first important point to note is that Mr Sope is not a lawyer nor has he any qualifications in law. Because of this his opinion on what he thinks the law is of little or no weight. However, my comments are as follows:

- (i) Re need for Tenders Board's Approval refer paragraph 4.2 above. Regulation 361(3) requires 3 written quotations. That is the law. It is irrelevant whether or not the practice alleged by Mr Sope was in place. Even if it was, it cannot contradict the law. I therefore reject Mr Sope's explanation on this point and remain of the opinion that the Council of Ministers acted outside the law.
- (ii) I do not accept that Mr Sope believed that Volani were only going to get a leasehold. I consider that Mr Sope knew all along and intended that Volani was to receive 100 hectares of land in full ownership. This was the effect of the information of Mr Kaluat. he was opposed to the project because he knew what was going on was illegal. Secondly, the fact that clause refers to *"under the laws of Vanuatu"* does not alter what is said at the start of the clause. that is *"free of any liens and encumbrances in full and valid ownership"*. The fact that what Volani and Messrs Vohor and Sope were trying to do was illegal, does not hide their true intent to transfer land if they could get away with it. Indeed if one looks at clause 10.2 which Mr Sope fails to mention in his reply it states that *"No general or special legal provision . . . may render this Agreement null and void in any way, replace or modify its content, prevent due and effective fulfilment of these provisions."* What this means is that Volani and Messrs Vohor and Sope were attempting to say that the laws of Vanuatu would not apply to the agreement or affect its contents. Therefore, clause 10.2 attempts to say that full ownership of land under clause 5.2(a) cannot be affected by the Constitution which does not allow for foreign ownership of land. Finally, I add that the Attorney General advised that he explained to Mr George Borugu, Mr Sope's first Secretary that this provision was not legal (along with a number of others).
- (iii) The Attorney General advised the Ombudsman's Office that the draft of the Volani contract that he was asked to examine did not refer to residencies becoming citizenships after one year but only after 10 (ten) years. He states that the Volani contract that was signed have been redrafted without his knowledge. He further states that Mr Borugu was told by him that ten years was correct in the Agreement and that no shorter period was permissible. I prefer the explanation of Mr Bulu over

that of Mr Sope. I therefore reject Mr Sope's excuse and consider that he knew that this term of the Agreement was illegal, especially as the 10 years clause is included in the Constitution.

- (c) Mr Sope then makes comments on the chronology of facts on page 3. With the exception of a couple of facts, Mr Sope does not answer the specific facts set out in the chronology. Rather he proceeds to make general statements that have nothing to do with the report. He says that:
- (i) The Attorney General was involved right from the beginning. In other words he and the other Ministers were getting legal advice from the Attorney General's Office;
  - (ii) He did not act without Council of Ministers' approval; and
  - (iii) He was not present in Santo with Mr Bani to force those in the Lands Department to draw up the plans for the Volani 100 hectares and that it was the Council of Ministers who approved the transfer of 100 hectares.

#### Comment

- (i) The Attorney General Mr Bulu states that he was not involved "*right from the beginning*". Mr Bulu says that he first learnt of the project on 1 October 1997 at the time when the Council of Ministers approved the project. In other words it was approved without Mr Bulu having the opportunity to properly consider the matter or at all.
  - (ii) The fact that the Council of Ministers approved the project and the signing is irrelevant. Mr Sope and Mr Vohor were carrying out illegal instructions. The Council of Ministers cannot approve illegal actions. Would Mr Sope have committed murder if the Council of Ministers approved it. His argument is just plain nonsense and I reject it accordingly.
  - (iii) The same observation applies for Mr Sope's third point. The Council of Ministers cannot approve transfer of full ownership of land to a foreign company. Interestingly in Mr Sope's answer he talks of transfer when earlier in his reply he tried to say it was a leasehold. As to his presence Mr Kaluat states that Mr Sope was not there in the Lands Office in Santo but that Mr Bani, Mr Sope's second Secretary was acting on Mr Sope's instructions.
- (d) Mr Sope then addresses the findings that were made in the preliminary report. He maintains in this part of his reply that the contract for the feasibility study did not have to be approved by the Tenders Board because the "*procedure . . . is not a legal one and does not involve the Tenders Board when it deals with foreign governments or organisations*". As stated above already Mr Sope is mistaken and the law applies equally to all wherever they come from. The other comments he has to make are as follows:
- (i) He disagrees with finding no 2 that the Volani contract duplicate earlier studies and was therefore a waste of money. Mr Sope says this is because the other study dealt with 737 aircraft and not 747 aircraft.
  - (ii) The figure of US\$4 million is "*just something that we have negotiated because I stressed to Volani that the government does not have the money to pay 4 million dollars (USA)*." Mr Sope says that the land and citizenships were not worth that much.
  - (iii) Mr Sope says that the Council of Ministers are going to vary the original contract and that "*we have already negotiated with the Attorney General*".

Comment

- (i) The CFD feasibility study did not consider 747 aircraft as well as 737s. This was because it was appreciated that a 747 airport was not feasible. It did not need a feasibility study to find that out. That is why when the Vanuatu Government set the terms of reference as to what they wanted studied by CFD they told the National Planning Office only to look at 737s and not 747s. Afterwards it seems they changed their minds and now wanted a study looking at 747s. Secondly, the CFD funded study cost the Government nothing and was concerned with **three** airports whereas the Volani is valued at US\$4 million. The more sensible plan would have been for the Government to have asked CFD to also look at the feasibility of 747s when it was looking at 737s; particularly since the work by BCEOM was free to the Vanuatu Government as it was paid for by CFD.
  - (ii) The statement Mr Sope makes about the price is unclear. While the Volani Agreement says the services to be provided by Volani are worth US\$4 million Mr Sope says they are not worth this much. His statement is meaningless. If the Vanuatu Government does not proceed with its obligations Volani could sue the Government for US\$4 million. Mr Sope fails to understand this very obvious point.
  - (iii) Re Variation: I note that clause 10.2 states that "*this Agreement cannot be . . . cancelled, replaced or modified other [sic] it expressly agreed in writing between the parties in this respect*". Mr Sope provides no proof to support his statement that Volani have agreed to vary the signed agreement that Volani already has with the Government. Mr Bulu denies that anyone has been negotiating with him a variation. Mr Bulu states that he has advised the Ministry of Trade, Commerce and Industry (Mr George Borugu) that the Agreement was illegal in present form on this point of land transfer. It is not a matter of negotiation with the Attorney General by Mr Sope and his colleagues as to what parts of Vanuatu law are going to apply and which will not. The law is the law; it is not negotiable.
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- (e) Mr Sope then returns to giving a legal opinion. Mr Sope says that he thinks that the issue of Leadership Code is one for the Courts and not the Ombudsman's role is.

Comment

Mr Sope is not a lawyer and is just plain wrong. Both the Ombudsman Act and the Constitution confer on the Ombudsman responsibility for investigating alleged breaches of the Leadership Code. This was confirmed by the Supreme Court in the *Air Vanuatu* case by the acting Chief Justice and also in an earlier case involving Mr Sope himself when he attempted to stop the Ombudsman from publishing the report called *Multiple Breaches of the Leadership Code by Hon Barak T Sope and Other Unlawful Conduct*. Mr Sope seems to think that he knows the law better than the Chief Justice. Naturally he does not and all his bold comment does, in my opinion, is to reveal him to be unknowledgeable. The reality appears to be that Mr Sope is annoyed that his conduct as a leader is the subject to investigation and inquiry by the Ombudsman. Like it or not, the law is the law and Mr Sope is subject to the law like anyone else.

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- (f) Mr Sope sent me a book that the Volani people had given him. This book had lots of photos of buildings in it

Comment

The book was of no use. It contained no information or figure or accounts in it other than to suggest that Volani had built 26 buildings in different countries in Europe. Certainly Mr Sope says in his reply that is what he believed from looking at the book. The problem with the book is that there is no information about who are the people behind the company. No names are mentioned let alone any information detailing



the experience of the directors and no audited financial statements to give an independent picture of the company. Because Volani is registered in Gibraltar (a tax haven like Vanuatu) it is very difficult to get information on who are the people behind it. Even if it is true that Volani built all the buildings in the book it appears that it has not built any airports as there are no pictures of airports in its book. So even on its own book it appears that Volani has no previous experience in this special field. The fact that Mr Sope was influenced by the book shows, in my opinion, that he is lacking in any basic commercial judgment.

- (g) Mr Sope at the end of the letter then alleges that before he and Mr Vohor went into business with Volani he received a "supporting letter from the government of Italy", a "bank reference from a Bank in Europe on Volani International" and that he had "checked with private sector companies on the experiences and the expertise that Volani International in the construction of such projects". Mr Sope did not send me copies of these documents nor anything showing the checks he says he did. The Ombudsman's Office therefore telephoned and wrote to Mr Sope's Ministry and requested that these documents be provided by 12 noon Tuesday 17 February 1998 otherwise it would be a s s u m e d t h a t Mr Sope did not have them to provide. But we understand that there exists a letter in vague terms from a Minister of the Italian Government.

#### Comment

Despite a written and an oral request and a reminder telephone call to him and his Office Mr Sope did not provide the documents he said he had. I am therefore unable to take them into account.

#### **Response of Attorney General Mr Bulu to allegations of Mr Sope on 16.02.98**

- 7.10 The effect of much of Mr Sope's reply to the preliminary report was to blame Mr Bulu. Mr Sope was saying that any problems with the Volani agreement were because Mr Bulu "did not perform".
- 7.11 Because of what Mr Sope had alleged I provided Mr Bulu with a copy of Mr Sope's response and asked him for his comments. Mr Bulu's overall comment was that Messrs Sope and Vohor and the Council of Ministers did not listen to his advice. Mr Bulu stated that right from his first involvement on 01.10.97 when the Ministers eventually decided to proceed with the Volani project, he never advised them to sign the Volani Agreement that was signed at a later stage. Mr Bulu states that his advice to Mr Sope was that he considered that the whole agreement was unsuitable and that he would like his Office to redraft the Agreement so that it complied with the laws of Vanuatu. He said that Mr Sope was agreeable to do this but that he was not given enough time to do this and that because of the Minister's tight schedule of his trip to Europe Mr Bulu was not given this opportunity
- 7.12 Mr Bulu stresses that he was never asked by the Council of Ministers to approve the Volani Agreement and has not done so. Mr Bulu states that he did look over one draft with Mr Borugu and had a number of meetings with Mr Borugu. He states that he told Mr Borugu as well that there were problems with the document and that Mr Borugu understood what Mr Bulu was telling him. In particular Mr Bulu notes:
- (a) The draft he saw did not state that Citizenship could be obtained after 1 year. The draft he saw referred to 10 years. Mr Bulu assumes that someone must have prepared another draft after the one he was shown;
  - (b) He told Mr Borugu that the transfer of land proposed under the Agreement was not legally possible because it was not consistent with the Land Leases Act;
  - (c) He says that he had long arguments over the whole idea of having a same company doing both the feasibility study and constructing the airport as this lacked independence; and

- (d) When Mr Bulu and Mr Sope returned from Europe Mr Bulu states that he specifically asked Mr Sope to provide him with audited accounts for Volani International. Mr Bulu says that he told Mr Sope that wanted these before he looked at any new proposed agreement. Mr Bulu states that he still has not received these audited accounts for Volani International from Mr Sope.

## 8 FINDINGS AND OBSERVATIONS

### **FINDING NO. 1 - The Prime Minister did not have the ability to enter into this contract without approval from the Tenders Board and the National Planning Office.**

- 8.1 The Minister of Finance can make regulations regarding the disposal of Government or public property. A financial regulation has been created which states that before an outlay worth US\$4,000,000 (over VT400,000,000) can be made by the Vanuatu Government the Tenders Board must be consulted to advertise, collect, review and analyse all Tenders for the project in a fair manner. The Tenders Board was never informed of the Volani contract. Instead Mr. Sope and Mr Vohor sought approval from the Council of Ministers, and used this approval to act as they pleased, to enter into contract with Volani. The Council of Ministers under article 39(1) of the Constitution must act under the law.
- 8.2 Mr Vohor is the Prime Minister and should know the procedures requiring disbursements of money or government property. Mr. Sope, as the primary mover behind this large project, should have found out the correct channels through which approval of this attempted contract must follow. However, both men ignored these procedures and entered into a contract that had never been officially reviewed. No audited accounts were received from Volani so that no one could check its financial health and ability to be able to build an airport, or proceed with a 4 million dollars feasibility study.
- 8.3 Plans which involve the infrastructure of Vanuatu are funnelled through the National Planning Office which *"is responsible to the Prime Ministers Office for coordinating the government's development program"* (Vanuatu Government Development Manual 84 [March 1996])
- 8.4 An international airport in Santo certainly can be classified as a project requiring review by the National Planning Office. Mr Vohor and Mr. Sope never consulted the National Planning Office before signing the Volani International contract.

### **FINDING NO. 2 - The Volani International Feasibility Study is duplicative, expensive and unnecessary for Vanuatu**

- 8.5 According to the National Planning Office, an extensive feasibility study regarding airports in Vanuatu, including Santo, had been conducted **prior** to the Volani attempted contract. This earlier feasibility study was valued at US\$100,000. However, it did not cost the Republic of Vanuatu any money because the money was donated. Still, Mr. Vohor and Mr. Sope attempted to commit Vanuatu to costs equalling US\$4 million for a duplicative study. More than mere money, Mr Vohor and Mr. Sope agreed to give outright 100 hectares of Vanuatu land and citizenship to 500 foreigners, as well as, to supply cars, accommodation and plane flights for up to 10 engineers.
- 8.6 As noted already CFD funded a study regarding the feasibility of airports in Vanuatu including airport development in Santo. This study was performed by BCEOM on behalf of the National Planning Office in accordance with terms of reference given by the Vanuatu Government. This study set out in two volumes and concerned airports in Tanna, Efate and Santo. This study used forecasting and economic modelling under a variety of different assumptions to come to conclusions.



- 8.7 There are two extensive volumes outlining the concerns and requirements of airports in Vanuatu. These volumes indicate that an international airport in Santo should be proceeded with very cautiously. Specifically, the study indicates that any development is best started with mere runway improvements on Santo, so that Santo could handle 737 flights. Even at this limited improvement scale, such investment is described as economically risky.
- 8.8 Mr Vohor and Mr. Sope ignored the earlier study and attempted to enter into another feasibility study. But this study is different. This study comes with a 4 million U.S. Dollar price tag paid in the form of Vanuatu land, citizenship, and other licenses. This study is not being performed by an impartial party. Instead, this study is being performed by Volani. Volani stands to benefit by a positive feasibility study in the form of future contract work surrounding the airport and other construction work. Volani is not able in these circumstances to provide a truly independent and unbiased report

**FINDING NO. 3 - The Prime Minister did not have the authority to enter into the contract thus the contract is voidable and also illegal.**

- 8.9 Mr Vohor never went through the appropriate channels regarding the Volani contract. Even though the Council of Ministers approved Mr Vohor to enter into the Volani contract, Mr Vohor needed more. Mr. Vohor according to the law needed the Tenders Board to award the contract to Volani International, as well as, approval from the Council of Ministers.
- 8.10 Because the Tenders Board did not award the feasibility study contract to Volani International the mere approval by the Council of Ministers does not validate Mr Vohor actions. Mr Vohor never had the authority to enter into the Volani International contract. If Volani had knowledge or in the circumstances understood that Mr Vohor could not contract in this way then the contract between Volani International and Vanuatu is voidable. Further it contains illegal terms such as the provisions relating to land and citizenship. These things are not legally possible and therefore they are illegal. Volani cannot enforce an illegal contract. He himself stated in his letter of 27.11.97 to CFD that the project had not received the agreement of the Council of Ministers. Why did Mr Vohor sign an agreement which could not be changed, cancelled or modified in October 1997, one month before.

**FINDING NO. 4 - Questionable Terms in the Volani Contract.**

- 8.11 The attempted contract has a number of questionable terms which do not appear to be in the best interest of the country or even legal.
- 8.12 Article 2.1 refers to Volani providing a "full and complete Report" covering the projects. However, no standards of investigation and reporting are outlined. Simply the term "full and complete Report" are too vague, and could lead to inadequate reports being produced. Article 3.1 appears to attempt to quantify the extent of Volani's consideration. Article 3.1 states that a Preconstruction report shall include a marketing of the external and local conditions, preliminary technical and architectural designs, and feasibility studies for each project including investment tables, management profiles and schedules of completion. Again these terms are vague and when contracting for an amount equivalent to 450,000,000 Vatu it would be worthwhile to have the terms and duties of Volani explicitly spelled out.
- 8.13 Article 4.1 provides that Vanuatu will incur additional expenses in addition to the approximate 450,000,000 Vatu fee. This article states that suitable accommodation be supplied by Vanuatu for up to 10 engineers, a vehicle for use by the engineers, and air transportation between Port Vila and Luganville. These terms are not clear if each engineer is to receive a suitable accommodation. Additionally, it is up to debate and speculation about what constitutes a suitable accommodation for Volani Engineers. The contract could be interpreted as requiring one car per each engineer or one car for all ten engineers. Because cars are required in Port Vila and



Luganville it is conceivable that Vanuatu would have to supply up to 20 cars within the terms of this contract. Article 4.1 also mentions air transportation between Port Vila and Luganville be provided. How many flights and how often these flights take place is mentioned nowhere in the contract.

- 8.14 Article 4.3 appears to be language commonly used with agreements to agree. If this clause is an agreement to agree then likely this agreement is still not at the contract stage, and thus not enforceable.
- 8.15 Article 10 of the contract elects English law to govern the contract. In effect, Mr. Vohor and Mr. Sope are agreeing that another system adjudicate matters which affect Vanuatu should there be a dispute.

**FINDING NO. 5 - Outright Ownership of Land by Foreigners is Illegal.**

- 8.16 Article 5.2 is a real concern for the people of Vanuatu. Despite this, Mr Sope tries to argue after the fact that the clause indicates that Mr. Vohor and Mr. Sope are attempting to transfer the ownership of Vanuatu land. Mr. Vohor and Mr. Sope are seeking a contract that cannot be completed under the laws of Vanuatu, because these do not allow for full ownership of land by non citizens - only up to 75 year leases.

**FINDING NO. 6 - The Citizenship Act, not Mr. Vohor, Mr. Sope and Volani International, Governs the Granting of Citizenship**

- 8.17 The attempted agreement allows Volani the ability to transform 500 resident permits in citizenship during one year. Volani does not, can not, and will not ever have the authority to control Immigration into Vanuatu. But that is what is sought by Mr. Vohor, Mr. Sope and Volani.
- 8.18 Ignoring the fact that under the contract Volani could allow citizenship to whomever it wanted, be it gangsters, child molesters, or terrorists, this provision is simply against the law of Vanuatu. This clause is an additional reason this agreement is voidable. However, we must question the Leadership of men who are supposed to govern on the peoples behalf, but instead, attempt to give away land and citizenship.

**FINDING NO. 7 - The Constitution, and not Mr. Vohor, Mr. Sope or Volani International, is the Supreme Law of Vanuatu**

- 8.19 Article 10.2 is perhaps the most disturbing provision of this attempted contract. By signing the attempted contract, Mr. Vohor, the Prime Minister, and Mr. Sope, the Minister of Trade, are agreeing that no laws of Vanuatu can control this contract. Mr. Vohor is attempting to transfer land and citizenship of Vanuatu to non citizens, and stating in the agreement at the same time that the law and principles and Constitution of Vanuatu do not apply. These are elected leaders, the Prime Minister and Minister of Trade, Industry and Commerce.

**FINDING NO. 8 - Mr. Vohor, Mr. Sope, Mr. Boulekone and Mr Bani breached the principles of the Leadership Code**

**Leadership Code**

- 8.20 The Leadership Code states that leaders should not act in a way which causes their integrity to be called into question, demean his office or position, diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu. A leader shall not use his office for personal gain or enter into any transaction that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duties in concert with the Leadership Code.

**Messrs Vohor and Sope**

- 8.21 If Messrs Vohor and Sope knew of the reputation of Volani yet still entered into the agreement the integrity of Mr Sope and Mr Vohor is called into question. If they did not know of the reputation of Volani, yet still entered into the agreement the professionalism of the offices of the Minister of Trade and Prime Minister has been demeaned. If Mr Vohor entered into the contract not knowing the contract required the approval of the Tenders Board again the professionalism of the office of the Prime Minister has been demeaned. If Mr Vohor knew the contract required the approval of the Tenders Board but bypassed the same, then doubts are raised as to whether he was carrying out duties true to the principles under the Leadership Code.
- 8.22 Mr. Sope's conduct in connection with the Leadership Code requires further examination. Mr. Sope not only negotiated with Volani International, but Mr. Sope had Mr Bani direct the Lands and Survey Department to partition Santo land on behalf of non citizens. Mr. Sope presently seeks to partition Efate land on behalf of non citizens as well. Mr. Sope is actively seeking to act on this contract Mr. Vohor declared finished. Mr. Sope seeks to transfer away Vanuatu citizenship rights as well as Vanuatu Land on an unlawful basis. It is hard to imagine a greater breach by a government Leader than to give away what he is sworn to protect.
- 8.23 Finally, I again note that Mr. Vohor has mitigated his position somewhat. When Mr Vohor realised the problems with the Volani contract he has apparently taken a stand against it. Since end of November 1997 he has portrayed himself as against Volani and in favour of Caisse Francaise de Développement while Mr Sope has continued enforcing this agreement with Volani in December 1997 and January 1998.

**Mr Boulekone**

- 8.24 The conduct of Mr. Boulekone is questionable under the Leadership Code. It does not appear as if Mr. Boulekone actively participated in the attempted Volani contract. However, Mr. Boulekone in his letter to Mr. Sope dated 14 November 1997, appears to concur in approving the Volani agreement. A Minister of Finance should be versed in such matters as agreements regarding land and large finances. He is in fact the guardian of the financial procedures. Thus, his approval of such an illegal and financially unsound document diminishes respect for and confidence in the integrity of the Government of Vanuatu, his office and for him as a leader.
- 8.25 This criticism may also apply to those members of the Council of Ministers that approved for Messrs Vohor and Sope to proceed down this economically foolish and illegal road. The Council of Ministers approved the contract. The Ombudsman summonsed the documents regarding these Council of Ministers' approvals. However, the Secretary General of the Council of Ministers Mr. Etienne Kombe, states that he has been directed by Mr. Vohor not to turn these documents over to the Ombudsman. The Ombudsman wished to discover whether the Council of Ministers were mere "yes" men to Mr. Vohor and Mr. Sope, or, whether the Council of Ministers deliberated on their own and reached an impartial decision that the attempted Volani contract was legal and in the best interests of Vanuatu, as that is what their vote to approve must imply.

**Mr Edward Bani**

- 8.26 Mr Bani acted was the willing right hand man to Mr Sope in requiring the Lands and Survey Department to carry out illegal instructions from his political master. By following orders that he knew from Mr Kaluat's concerns was unlawful Mr Bani fell below the standard expected of responsible leaders.

## 9 RECOMMENDATIONS

### **Recommendation 1: Messrs Vohor and Sope not to be appointed to any position holding positions of public responsibility or to positions involving public money**

- 9.1 I do not consider that these men can be trusted to look after the assets of Vanuatu. They showed through their conduct in this case that they were prepared to sell the birthright of ni Vanuatu citizens, land and citizenship, to foreigners in breach of the Constitution and the Vanuatu laws. They also demonstrated commercial naivety in signing a contract that was both hugely expensive compared to the CFD study (\$100,000 for the CFD study on three airports versus US\$ 4,000,000 for a study on one airport) and without enough independent checks being made.
- 9.2 I therefore repeat the identical recommendation made in the past concerning these two leaders. That is that they should not be appointed again in the future to any position where they have any decision making power over the assets of this country. Had I not in the past recommended for Mr Vohor to resign I would not have made this recommendation this time given his last minute decision to remove his support for the illegal Volani agreement.

### **Recommendation No 2: Messrs Vohor, Sope and Boulekone to publicly apologise to the People of Vanuatu**

- 9.3 I recommend that Mr Vohor, Mr Sope and Mr Boulekone apologise to the people of Vanuatu for breaching the trust that was put in them by the People.

### **Recommendation No 3: Attorney General to give written notice formally confirming to Volani that agreement of 30 October 1997 of no legal effect**

- 9.4 I recommend that the Attorney General write to the directors of Volani to formally advise them that due to the illegalities contained in the agreement and the lack of authority of the Prime Minister to contract in the fashion he did with Volani that the Vanuatu Government does not recognise the Volani agreement as enforceable or valid.
- 9.5 If Volani does not accept the notice then it will be over to the directors of Volani to issue legal proceedings in the Vanuatu Courts to seek to enforce it.

### **Recommendation 4: Mr Bani not to be placed in a position of public responsibility for one year**

- 9.6 As noted, Mr Bani acted as the willing right hand man to Mr Sope in requiring the Lands and Survey Department to carry out illegal instructions from his political master. Mr Bani must not be appointed again in the next 12 months to a position of public responsibility in view of his willingness to ignore the law. Party politics is below the law not above it. I hope that after a year's thought Mr Bani can use his skills once again but placing the People of Vanuatu and the law as his top considerations and not politics.
- 9.7 I add that had not Mr Kaluat so freely admit the errors of his part in following the instructions that were passed to him from Mr Bani he too would have received a similar recommendation. He showed genuine sorrow for his role. A repeat of conduct in breach of the Leadership Code could not be viewed so lightly in the future.

**Recommendation 5: To contact a professional company to obtain a sound and independent study on a 747 airport**

- 9.8 If the Government wants to go ahead with such a project, a professional company should be approached like BCEOM chosen originally by the Government to obtain an independent advice and the company volunteering to proceed with the project should be well identified and be a company of good repute with international experience.

Dated 20 February 1998



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



THE UNIVERSITY OF CHICAGO

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Government of the Republic of Vanuatu  
Ministry of Finance  
PMB 058  
Port Vila

Ref: MOF/1/1/5.57/98/VB/ct

11th February 1998

Mrs. Marie-Noëlle Ferrieux Patterson  
Ombudsman of the Republic of Vanuatu

Dear Madam,

**Re: Your Preliminary report on Volani and the construction of the  
747 international airport on Santo**

Thank you for your preliminary report concerning the Santo Pekoa airport contract with the Volani company.

I wish to make the following comments on the report:

The publication in your report of a letter addressed to the Honourable Barak Sope, classed as confidential, as provided by the State Secrecy Act, is clearly a violation of this law. For the sake of principle, I am asking you to withdraw this letter from the report.

1. Your reports are published and read not only by the Vanuatu public. Competent or not, we are not little children and there should be a limit to such reports!
2. Why do you insist on publishing letters that are classed as confidential? Only one paragraph in the said letter concerns the issue you mentionned. Are you sure you are not involuntarily manipulated yourself? In such a period of instability as we are currently living in, such behaviour could appear to be totally immature:
3. I am very surprised that you did not make a point of consulting me about the nature of the said confidential letter. I would be grateful if you would also inform the public about this.
4. On the other hand if you had contacted me, I would have told you about another letter I sent to Mr. Mariano Volani informing him about my opposition to the current form of the project.

My motto, in terms of my political career, is honesty and the public knows about this. I always strive to do the best I can in carrying out my duties as a Member of Parliament and Government Minister. Your judging me is entirely arbitrary and it comes close to defamation.

On the other hand, and in terms of the substance of the VOLANI case, I wish to convey to you my view and political understanding of the matter. People have the right to know the following:

- a. The Santo Pekoa international airport is still one of the Government's priorities, if not the Government priority.

A

DE : PANASONIC FAX/TEL

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GOVERNEMENT  
DE LA  
RÉPUBLIQUE DE VANUATU  
—  
MINISTÈRE DES AFFAIRES  
DU COMMERCE  
ET DE L'INDUSTRIE  
—



GOVERNMENT  
OF THE REPUBLIC  
OF VANUATU  
—  
MINISTRY OF TRADE,  
COMMERCE  
AND INDUSTRY  
—  
24 October, 1996

Actu : Dott Francesco Del Maestro

RE: COUNCIL OF MINISTERS APPROVAL  
PROPOSAL FOR AN ECONOMIC DEVELOPMENT PACKAGE  
FOR NORTHERN VANUATU

I am pleased to inform you of the Council of Ministers decision on the above mentioned project.

The Council of Ministers, during its meeting on Tuesday 22nd October, 1996 approved that the proposal of establishing an Economic Development Package for the Northern Region of Vanuatu.

I hereby advise you on behalf of the Government of the Republic of Vanuatu to proceed with further discussions for the preparation of feasibility reports on the listed development projects within the various sectors of the economy in particular for the Construction of a 747 International Airport, Construction of Hotels and Tourist Resorts, Tourism Infrastructure, Investment and Development of Agricultural Projects, Construction of Highways and Dispersed, Construction of Secondary Schools, Development of Petroleum and Mineral Explorations and the Development of a National Housing Package for Port Vila and Santo.

Your cooperation is most sincerely appreciated.

Yours most sincerely,

Honourable Serek T. Sopa, MP  
Deputy Prime Minister  
Minister of Trade, Commerce & Industries

Deputy Prime Minister  
& Minister of Trade,  
Commerce, Industry  
& Cooperative

- cc: Honourable Serek T. Sopa, MP, Prime Minister  
Honourable Serek Nakan, MP, Minister of Finance  
Honourable Willie Jimmy, MP, Minister of Foreign Affairs & Immigration  
Honourable Vincent Boulikson, MP, Minister of Agriculture, Forestry & Fisheries  
Honourable Jeffrey Laya, MP, Minister of Lands, Energy & Rural Water Supply  
Honourable Samuel Doe, MP, Minister of Transport  
Honourable Albert Ravutia, MP, Minister of Tourism & Civil Aviation  
Honourable Robert Karia, MP, Minister of Home Affairs



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GOUVERNEMENT  
DE LA  
REPUBLIQUE DE VANUATU

MINISTÈRE DES  
AFFAIRES ÉTRANGÈRES  
ET DE L'IMMIGRATION



GOVERNEMENT  
OF THE  
REPUBLIC OF VANUATU

MINISTRY OF  
FOREIGN AFFAIRS  
AND IMMIGRATION

13th November, 1996

*Ant*  
VANUATU

Your Excellency,

Greetings to you and through you, your Government and people.

The Government of the Republic of Vanuatu is in the process of embarking on a major Economic and Infrastructural Development in the country. We have nominated a Company of Knights of Labour Mariano Tolani, Italy as a leader of a pool of Italian companies to carry out these major Developments. We have reached various agreements on the same with the said Company of the Knight of Labour Mariano Tolani.

Our Prime Minister Honourable Rishith Serge Vohor is currently attending the F.A.O. Summit in Rome. He would be grateful if a meeting could be arranged with you for Friday 15 November 1996 or Saturday 16 November 1996 to discuss the Development Agreements with the Company of the Knight of Labour Mariano Tolani and other areas of cooperation between our two countries and peoples.

Honourable Rishith Serge Vohor will be in Rome at Hotel NOVIA ROMA, ROMA Tel: No. (06) 396-(397) 32953 from 12 November 1996 and he may be contacted there to confirm an appointment or meeting with you.

We would be grateful if you could allow Doctor Del Mastro Francesco whom we have been asking through to coordinate and arrange all meetings between our Prime Minister and yourself.

Accept your Excellency the assurance of my highest considerations.

*Jac*  
James BUS MP.  
Acting Minister of Foreign Affairs



His Excellency Lamberto Dini  
Minister of Foreign Affairs  
Government of the Republic of Italy  
Rome, Italy.

2

13 November 1996

Your Excellency,

Greetings to you and through you, your Government and people.

The Government of the Republic of Vanuatu is in the process of embarking on a major Economic and Infrastructural Development in the country. We have nominated a Company of Knight of Labour Mariano Volani, Italy as a leader of a pool of Italian companies to carry out these major Developments. We have reached various agreements on the same with the said Company of the Knight of Labour Mariano Volani.

Our Prime Minister Honourable Rialuth Serge Vohor is currently attending the F.A.O. Summit in Rome. He would be grateful if a meeting could be arranged with you for Friday 15 November 1996 or Saturday 16 November 1996 to discuss the Development Agreements with the Company of the Knight of Labour Mariano Volani and other areas of cooperation between our two countries and peoples.

Honourable Rialuth Serge Vohor will be in Rome at Hotel Nova Domus, Rome Tel: No. (06)396-(397) 32935 from 12 November 1996 and he may be contacted there to confirm an appointment or meeting with you.

We would be grateful if you could allow Doctor Del Maestro Francesco whom we have been dealing through to coordinate and arrange all meetings between our Prime Minister and yourself.

Accept your Excellency the assurances of my highest considerations.

Samson BUE M.P.  
Acting Minister of Foreign Affairs

*Excellency*  
His Excellency Lamberto Dini  
Minister of Foreign Affairs  
Government of the Republic of Italy  
Rome, Italy

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10th October, 1997

Honourable Barak T. SOPE (MP)  
Acting & Deputy Prime Minister  
Ministry of Trade, Industry, Tourism and  
Business Development,  
Government of Vanuatu  
PORT-VILA

And

Honourable Dennis LANGO (MP)  
Minister of Civil Aviation, Telecommunication and Postal Services  
Government of Vanuatu  
PORT VILA

Honourable Ministers,

Subject: Decision No.187 of the Council of Ministers Meeting No.24/01/10/97

International Airport.

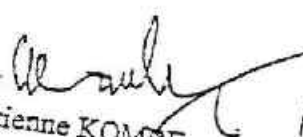
The Council of Ministers, in its meeting of 01/10/97 approved;

1. The Processing with the option to privatize Vanuatu's International Airport if found economically viable for the Nation.
2. To invite Volani International and its partners to prepare a complete economical study on Santo in compliance with his request in the above mentioned proposal and if the report proves economically viable to then proceed with the complete project agreement with the same group (that is Volani and Partners).
3. An Agreement contract to proceed with the complete study (called the Preconstruction Services) is to be drafted and approved by Attorney General and sign between the Government and Volani or Government and another Company.
4. That Santo be another site of the International Airport to accommodate plane of 747 or over.



5. For other companies to be included to submit their plan for the development of Santo International Airport for aircraft 747 or over after 120 days.

Yours sincerely,

  
Etienne KOMBE  
Secretary General  
Council of Ministers



cc: Honourable Prime Minister  
: Honourable Minister of Justice  
: All Honourable Ministers  
: Attorney General.

GOUVERNEMENT DE  
LA RÉPUBLIQUE DE VANUATU

LE SECRÉTAIRE GÉNÉRAL



GOUVERNEMENT DE  
LA RÉPUBLIQUE DE VANUATU

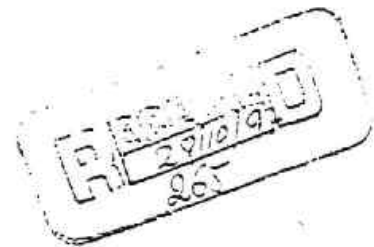
SECRETARY-GENERAL

20th October, 1997

Honourable Barak T. SOPE (MP)  
Minister of Trade, Industry, Tourism  
and Business Development

And

Honourable Demis LANGO (MP)  
Minister for Civil Aviation, Telecommunication  
and Postal Services and Meteorology  
Port-Vila



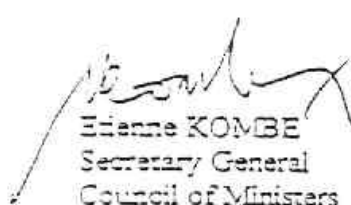
Honourable Ministers,

Subject: Decision No.203 of the Council of Ministers Meeting No.26/16/10/06

Information paper on the contract for undertaking feasibility study for the International Airport on Santo and related projects.

The Council of Ministers, at its meeting of 20th day of October 1997 endorsed the contract to enable the Prime Minister and the Deputy Prime Minister to sign the contract to allow the proposed investors to proceed with the preparation of the feasibility study.

Yours sincerely,

  
Etienne KOMBE  
Secretary General  
Council of Ministers



cc: Honourable Prime Minister  
Honourable Minister of Justice  
All Honourable Ministers  
Attorney General



# ADVISOR ENGINEERING CONTRACT

between

THE REPUBLIC OF VANUATU

represented by

("The Government")

AND

VOLANI INTERNATIONAL LIMITED

("The Contractor")

5

ADVISOR ENGINEERING CONTRACT

BETWEEN

THE REPUBLIC OF VANUATU, represented herein by its Prime Minister Hon. Rialuth Serge Vohor (hereinafter called "the Government")

AND

VOLANI INTERNATIONAL Limited, having its registered office at 57/63 Line Wall Road, P.O. Box 199, Gibraltar; and head office in Italy, Via Chiocchetti 8, 38068 Rovereto (TN), phone +39-464-461-121, fax +39-464-462-256, represented herein by its President, Mr. Mariano Volani (hereinafter called "the Contractor")

WHEREAS

A The Government represented by the Council of Ministers of Vanuatu has approved (Decision No. 187 of 1997) the Undertaking of a Feasibility Study for the eventual investment in specific projects, namely respectively:

1. Santo International Airport and facilities ("Airport Project");
2. Tourist Resort on Santo ("Hotel Project");
3. VIP Housing Project and Low Cost Housing Project;
4. To create Free Trade, Industrial and Financial Zone within Luganville area;
5. Investigation of the possible establishment of shipping routes to promote tourism development and the Free Trade, Industrial and Financial Zone and related structures (Free Trade, Industrial and Financial Zone Project);
6. *(Development of appropriate health and education facilities) - Second Phase.*

(hereinafter collectively called "The Projects")





Article 3  
CONTENTS OF THE PRECONSTRUCTION REPORT

3.1 It is agreed by both parties that the contents of the Preconstruction Report shall include:

- a) marketing of the external and local conditions necessary for each single project;
- b) preliminary technical and architectural design for each single project;
- c) feasibility study for each single project, including investment table, management profile and schedule of completion.

Article 4  
ADDITIONAL OBLIGATIONS

4.1 After the execution of this Agreement the Contractor agrees to open a Representative and Technical Office in Port Vila (Vanuatu), offices made available by the Government for this purpose. A resident Area Manager will be appointed with the necessary administrative and secretarial staff as well as the technical staff which may be required to carry out the actions for the due and diligent performance of the obligations set forth in this Agreement. The Area Manager will be vested with all the necessary powers, including those required for the supervision and co-ordination of the actions required under the Agreement and the co-operation between the Government and the technical staff of the Contractor.

On the other part for the duration of the Preconstruction Study, the Government agrees to provide gratuitously:

- a) suitable accommodation for engineers not exceeding 10 in number;
- b) a vehicle for use by the engineers in Port Vila and Luganville; and
- c) air transportation between Port Vila and Luganville.

4.2 Upon delivery of the Preconstruction Report, the Government, within and no later than 30 (Thirty) days from the date of its delivery, as above, shall notify (in writing) the Contractor of its decision to proceed with the entire Project or with a portion of the same.

In the latter event, the Government shall indicate in the same letter of notice whether the decision to proceed concerns the Airport Project and/or the

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Such pledge will be set up by an English Public Notary by making all the relative formalities, and it will be automatically cancelled when the Public Notary has been noticed of the consignment of the Preconstruction Report.

5.4 The Government's obligation set out in this Article shall not be enforceable by the Contractor until and unless this Agreement is approved and agreed by the Vanuatu Council of Ministers and the Attorney General of Vanuatu.

#### Article 6 DELIVERY OF THE PRECONSTRUCTION REPORT

6.1 The Preconstruction Report will be delivered to the Governmental Authorities within 120 days from the coming into force of this Agreement as provided in Article 12.

#### Article 7 CONDITIONS FOR THE CONTRACT

7.1 The Parties acknowledge that it is not the intention of the Government to pay for the realization of the Project or any part thereof.

7.2 It is agreed that the realization of the Projects will be carried out as stated hereunder:

a) international airport and facilities - B.O.T. (Build, Operate and Transfer) 25 Years, after which the Project will be transferred to the Government free of charge.

b) other projects - with investment and international management companies procured by the Contractor.

7.3 Any Government's obligation arising from this Article shall not be enforceable by the Contractor until and unless this Agreement is approved and agreed by the Vanuatu Council of Ministers and the Attorney General of Vanuatu.

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Article 8  
DEFAULT

8.1 If one of the Parties, for reasons within his control, is in breach or default of any of its obligations under this Agreement, the interested party shall promptly give notice in writing requiring the other party to make good such default.

If the party in default fails to take reasonable steps or comply with this notice over a period of 30 (thirty) days, the Parties shall meet in an effort to find a satisfactory solution. If a solution cannot be found within a further period of 15 (fifteen) days, then either party can terminate this Agreement as set forth in Article 9 or commence the arbitration proceedings under Clause 11 of this Agreement. Any alleged default that has not been duly notified in accordance with the above shall within 10 (ten) days from its discovery be considered as having been duly cured with no further effect under this Clause.

Article 9  
TERMINATION

9.1 Either party may terminate this Agreement by written notice to the other party upon the occurrence of a "Termination Event". For the purposes hereof a Termination Event shall mean one of the following events:

a) the other Party has failed to perform any of its obligations under this Agreement, provided that such failure to perform is not due to a force majeure event and the failure to perform has not been remedied within 15 (fifteen) days after notice by the non defaulting party to such breaching party specifying such breach and requiring that it be remedied;

b) the other party is unable to carry out any of its obligations under this Agreement as a result of the occurrence of a force majeure event and such force majeure event has continued unremedied for a period of 1 (one) month;

c) the hardship event as set forth in Article 10.

9.2 At any time a party is willing to early terminate this Agreement by enforcing the provisions of this Article, such a party shall address a notice to the other party stating the event on which such termination notice is grounded. The above termination notice shall be in writing and addressed to the other party to its head office. Such termination notice of termination shall be effective 15 (fifteen) days after the forwarding date.

9.3 The rights and remedies granted herein to the parties shall not affect the right of a non-defaulting party to claim from the other party any damage, cost,





loss or expense actually suffered by the non-defaulting party as a consequence of the other party's default.

#### Article 10 GOVERNING LAW

10.1 This Contract is governed by the English law

10.2 The Contract sums up the obligations validly taken on by the parties.

No general or special legal provision, be it contained in laws regulations or decrees, of a general or administrative nature, or any other disposition of such type enacted by the central or local Government Authorities of the Republic of Vanuatu, may render this Agreement null and void in any way, replace or modify its content, prevent due and effective fulfilment of these provisions. This Contract cannot be cancelled, replaced or modified other it unless expressly agreed in writing between the parties in this respect.

10.3 Should the economic benefits expected by the parties after the entry in the force of this Contract be negatively compromised follow the enactment of any new law regulation or decree of the Republic of Vanuatu, or as consequence of eventual amendments, modifications or new interpretation of any pre-existing law of the Republic of Vanuatu, the parties shall immediately consult each other and shall use every possible effort in order to effect those modifications and implementations which may become necessary to maintain and safeguard the economic benefits deriving to each of the parties in connection with this Contract, as if such enactments of new laws or amendments modifications or new interpretation of the existing laws had not have been made.

Should an agreement in such respect not be reached, such events will be considered as a case of hardship and shall entitle either party to ask for the termination of the Agreement according to what is provided in Article 9, subject to the right to claim compensation for eventual damages.

#### Article 11 ARBITRATION

11.1 All disputes arising in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.



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Article 12  
COMING INTO FORCE

12.1 This Agreement shall come into force only upon completion of the following formalities:

- a) its approval by the Vanuatu Attorney General;
- b) its approval by the Vanuatu Council of Ministers, and
- c) the transfer of property on land to the Contractor as set forth in Article 5.





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SIGNED BY:

THE REPUBLIC OF VANUATU

Represented by:

THE HONOURABLE RIALUTH SERGE VOHOR,  
PRIME MINISTER



Witnessed by:

THE HONOURABLE BARAK TAME SOPE,  
MINISTER OF TRADE, INDUSTRY, COMMERCE,  
TOURISM AND BUSINESS DEVELOPMENT



THE SEAL OF THE COUNCIL OF  
MINISTERS is hereunto affixed



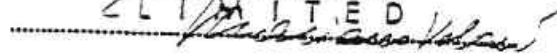
AND

VOLANI INTERNATIONAL LIMITED

Represented by:

KNIGHT OF LABOUR MARIANO VOLANI,  
PRESIDENT

VOLANI  
INTERNATIONAL  
LIMITED



Witnessed by:



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■  
GOUVERNEMENT DE LA  
RÉPUBLIQUE DE VANUATU  
MINISTÈRE DES FINANCES



GOVERNMENT OF THE  
REPUBLIC OF VANUATU  
MINISTRY OF FINANCE

■  
Sac Postal Réserve No. 058, Port-Vila

■  
Private Mail Bag 058, Port Vila

REF: MOF/3/3/1/91.97/VB/an

■  
Telephone (678) 25032

DATE 14th November 1997

CONFIDENTIAL

Hon. Barack T. SOPE  
Minister of Trade and Industry  
PMB 056  
Port-Vila

Dear Minister and colleague,

Following our meeting of the 13th november 1997, please let me confirm in writing the main terms of our discussion.

However let me say how I appreciated it and thank you to have come.

You informed me that the agreement has been signed by you and the Prime Minister in London the 30th october 1997 in respect of the Pekoa 747 airport.

[REDACTED]

[REDACTED]

I have also informed you again about the projects I am trying to implement in respect of the - Caisse Vanuataise des Dépôts et Consignations -.

[REDACTED]

I was very pleased of your support for these projects and wish that we strengthen our solidarity within the government.

Your acceptance of [REDACTED] will allow these projects to be complementary.

I was very pleased to receive your confirmation that MPP will continue to work within the government and the Parliament with UMP and will fortify the coalition until 1999 general elections.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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15-DEC-97 MON 09:55 MINISTRY OF FINANCE

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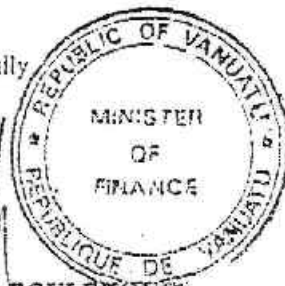
P.03

[REDACTED]  
[REDACTED]  
I will present very soon a recommendation to the Council of Ministers [REDACTED]  
I will submit it to you before it comes through in order for that paper to be presented together  
in the Council.

However, you will have to note that in respect of the airport the door of the CFD has not been  
closed and we still await the official proposal endorsed by the executive committee of the  
CFD.

I remain at your disposal to discuss further these matters with you.

Yours Faithfully



Hon. Vincent BOULEKONE  
Acting Prime Minister  
Minister of Finance

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## Vanuatu-airport

Vanuatu snubs French, Australian aid for direct access to Asian tourism market

PORT VILA, 13 Nov (AFP) - Vanuatu's Trade minister Barak Sope Thursday announced a multi-million project on the archipelago's biggest island, including the construction of the country's first B-747 airport that clashes with a current aid project funded by France and Australia.

In a press conference here Thursday back from a trip in Europe, Sope said he had signed an agreement with a Italy-based "Volani International" consortium for a multi-faceted project on Santo island (250 kilometers north of here).

The project would include the construction of a luxury tourist resort featuring a casino and hotel, a free trade, industrial and finance zone, and the first airport able to accommodate Boeing 747-type aircraft.

A first team of experts is to arrive in Vanuatu next month for a feasibility study, Sope said.

"Just like other Pacific islands, Vanuatu has the potential to attract Asian tourists. Our traditional markets are Australia and New Zealand, but now we're looking into the Asian market, Japan, Taiwan, Singapore", he told AFP.

The airport would help Vanuatu to gain access directly to the Asian market.

"It's closer to fly to Vanuatu from Tokyo than to New Caledonia or Fiji. By having our own 747 airport, we'll be able to compete".

However, foreign aid is currently involved in a 13 million US dollars revamp of both Santo (5.5 million dollars) and Port Vila (7.5 million dollars) airports.

In Santo, CFD would be ready to fund some 3.5 million dollars, Australia 1.7 and the European Bank of Investment, the European Union and Vanuatu's government for the remainder. Both strips would be extended and a new lighting, navigation and approach systems installed, but only to allow landing of regional, 30-50 seats and Boeing-737-size aircrafts to land in Santo.

The capital's Bauerfield airport (which already accommodates B-737s) can't be extended.

"Or else you'd have to move mountains on either end (of the strip)", Australian High Commissioner Allan Edwards told AFP, adding a study had just been completed by a team of European Bank of Investment (EBI) and French Caisse Francaise de Developpement (CFD).

"There was a study to come up with the most adapted solution to accommodate the government's wishes to develop its tourism industry and financial constraints", Vanuatu-based CFD regional director Odile des Deserts told AFP.

The study, which was approved by the Vanuatu government, predicts an optimistic yearly six percent growth in tourist arrivals.

Asked about a possible clash with French and Australian help, Sope said Vanuatu had "waited too long".

"They should have started in 1995. Nothing has been done. We've been sitting around for years and Australian and French advisors have told us

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we would get Asians tourists from New Caledonia. They've been lying to us. We now know the tourists will only come here if we have direct flight."

Des Deserts explained the delay saying there had been a heavy debate between the preliminary report in 1996 and the final recommendations in February this year.

"It is important for such costly investments to take time to consider all the options", she said, adding she was "surprised" at Sope's announcement.

"(Sope's) project is not compatible with the one being discussed with the Vanuatu government for several months. There's no room for two airports on Santo", she told AFP.

"But it will be difficult to maintain our offer if we don't get the government's confirmation on the option it chose last May".

"The Santo project lapsed because the previous Vanuatu government never met its deadlines in taking up the loan and grant package that was offered to them. That would have been several million dollars", Edwards said.

"And this year, all our funds are committed to health, education and rural water supply. These are the priorities, not the Santo airport, the Vanuatu government itself established."

Australia was actively involved in trying to develop the tourism market in Vanuatu.

"We would welcome anything to develop the tourism industry in Vanuatu. It's certainly not a threat to Australia, when you consider the number of tourists that come here and those to Australia", he said.

French-speaking Prime minister Serge Vohor, who is currently in Vietnam, has been away from Vanuatu for the last six weeks.

"It's the government of Vanuatu that should decide. We're not here to be dictated by the French or Australian governments what airport we should built. And maybe after building this airport, we won't ask money from the French and the Australian", Sope said.

dpa

GOUVERNEMENT DE  
LA RÉPUBLIQUE DE VANUATU

LE SECRÉTAIRE GÉNÉRAL



GOUVERNEMENT DE  
LA RÉPUBLIQUE DE VANUATU

SECRETARY-GENERAL

15 November, 1997.

Honorable Barak T. SOPE (MP)  
Minister for Trade  
Government of Vanuatu  
Port-Vila


Honorable Minister,

Subject : Decision No. 233 of the Council of Ministers. at its Meeting  
No. 28/14/11/97

Execution of Advisor Engineering Contract between the Republic of Vanuatu and  
Volani International Limited.

The Council of Ministers at its meeting of 14 november, 1997, endorsed and approved  
the Advisor Engineering Contract between the Republic of Vanuatu and Volani  
Internazional Limited in order to facilitate the preparation of the preconstruction report  
for the further approval by Council.

Yours Sincerely,

  
Etienne KOMBE  
Secretary General  
Council of Ministers



cc. Honorable Prime Minister  
Honorable Minister of Justice  
All Honorable Ministers  
Attorney General  
File





BUREAU DU PREMIER MINISTRE

OFFICE OF THE PRIME MINISTER

Port-Vila, le 27 Novembre, 1997

**Madame Odile Des DESERTS**  
**Directeur de l'Agence Régionales**  
**pour les Etats du Pacifique**  
**Caisse Française de Développement**  
**PORT-VILA.**

**Objet : Programme de Développement aéroportuaire de Vanuatu.**

Madame le Directeur,

Nous avons bien reçu votre lettre, du 18 Novembre 1997, relative au développement aéroportuaire du Vanuatu. Nous vous en remercions.

Nous avons bien noté qu'un concours de 20 millions FF pourrait être consenti, sous forme de subvention si la décision intervient d'ici la fin de l'année c'est à dire par votre comité le 11 Décembre prochain.

Dans cette optique, je suis heureux de vous confirmer au nom du Gouvernement de la République de Vanuatu,

- 1) que, conformément à la décision prise par le conseil des Ministres en Mai 1997 et à l'ordre de service donné le 6 Mai au consultant de poursuivre l'étude du projet sur ces bases, le Gouvernement de Vanuatu a décidé de réaliser le projet de développement aéroportuaire sous la forme proposée dans la phase du rapport BCEOM. Concernant le contrat avec la société italienne VOLANI dont vous ont été parvenu les échos, des récentes déclarations à la presse du Ministre du Commerce, Mr Barak Tamo SOPE et dont vous avez sûrement déjà pris connaissance du contenu, la situation est la suivante:
  - a) Ce n'était autre chose qu'un Accord d'Intention pour une étude sur des futures, projets d'investissements privés à long terme, couvrant entre autres, l'éventuel deuxième phase du développement aéroportuaire de Pékoa.
  - b) Ce document n'a pas reçu ni l'aval du Conseil des Ministres ni celui de " L'Attorney General" et je peux assurer qu'il ne sera pas mis en vigueur.
  - c) Il est à noter que la réalisation du projet aéroportuaire est une question de priorité pour le Gouvernement actuel. Donc tout délais supplémentaire à cette réalisation ne fera qu'encourager les spéculations des politiques politiciennes et financières.

2. *Example*



- 2) L'accord du Gouvernement sur les modifications apportées au programme d'investissement pour permettre le bouclage au point 2.2.2. et à l'annexe 1 de votre aide-mémoire. Les services du Plan, en liaison avec ceux de l'Aviation Civile et des Travaux Publics, vous soumettront dès que possible le projet finalisé sur ces bases et le plan de financement correspondant.
- 3) Que le Gouvernement a pris des mesures nécessaires pour assurer le bouclage du plan de financement du projet, notamment en ce qui concerne sa propre participation financière. D'ores et déjà, le Gouvernement a décidé d'inscrire la somme de Cent Cinq millions de Vatus ( 105.000.000 VT) au budget de l'année 1998. Le complément sera inscrit au budget de l'année 1999.
- 4) L'engagement du Gouvernement de procéder à la création d'une entité de gestion autonome et commerciale des trois principaux aéroports sous une forme jugée acceptable par la CFD.

Nous sommes désormais dans l'attente de la réception officielle de la décision du Comité d'engagement de la CFD.

Dans l'attente, je vous prie d'agréer, Madame, l'expression de nos salutations distinguées.

  
**L'Honorable RIALUTH Serge VOHOR**  
**Premier Ministre**  
**Gouvernement de Vanuatu**



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To: Mrs Odile des Déserts  
CFD

27 November 1997

**RE: VANUATU AIRPORT DEVELOPMENT PROGRAM**

Madam

This is to acknowledge receipt from your letter of 18 November 1997 concerning the above subject. We thank you for it.

We duly note that a grant of 20 million FF could be awarded if a decision is made before the end of the year, meaning at your Committee meeting of 11 December next.

With this in mind, I am pleased to confirm, on behalf of the Government of the Republic of Vanuatu,

- 1) That in accordance with May 1997 COM's decision, and with service order given on May 6 to the consultant to carry on the review of the project on such basis, the Government of Vanuatu has decided to implement the airport development project in the form submitted in the phase (sic) of the BCEOM report. As far as the contract with the Italian firm VOLANI is concerned, and of which you became aware through various reports, including recent statements to the press by the Minister of Commerce, Mr Barak Tame Sope, the situation is as follows:
  - a) This was but a mere Agreement of Intention for the study of future long term private investments covering, among other things, the possible second phase of the Pekoa Airport development.
  - b) That paper was NOT approved by the COM nor by the Attorney General, and I can assure you that it will not be implemented.
  - c) It is worth noting that implementation of the airport development project is treated as top priority by the present Government. Therefore, any additional delay in its implementation cannot but encourage political as well as financial speculations.
- 2) That the Government agrees with the changes brought to the investment program in order to allow for completion at point 2.2.2 and at appendix 1 of your memorandum. The Planning Office, together with the Civil Aviation and Public Works departments will submit to you, as soon as possible, the project as finalized on such basis as well as the relevant funding plan.
- 3) That the Government has taken the necessary steps in order to complete the funding plan of the project, in particular with reference to its own financial participation. As of now, the Government has already decided to appropriate One hundred and five million Vatu (105.000.000Vt) to the 1998 Budget. The balance will be appropriated in the 1999 Budget.
- 4) That the Government is committed to the creation of a commercial and autonomous management entity for the three main airports under a format acceptable to CFD.

We are now looking forward to the formal receipt of the CFD Commitment Committee decision.

Salutations.

R. S. Vohor  
Prime Minister



Office of the Ombudsman  
Bureau du Médiateur  
Ofis blong Ombudsman



RE: OMB 6161/97/30

25 November 1997

Minister Barak Sope  
Ministry of Trade & Commerce  
PMB 056  
Port Vila, Vanuatu

Dear Mr Sope:

RE: **Volani International and a Proposed Santo Airport**

Pursuant to Article 62 of the Constitution and Section 16 of the Ombudsman Act No. 14 of 1995, this office has commenced an inquiry into the above-referenced matter. Specifically, we are concerned with the procedure regarding the Volani contract and the character of the Volani Organization.

To assist this office in this investigation, we hereby request that you provide to us all documents, papers, record or other materials in your possession or control relevant to the above-referenced matter, including but not limited to the following:

1. All documents relating to Volani International or its principles.
2. All documents and feasibility studies connected to the Santo Airport.
3. Any other documents or information that you consider relevant to this matter.

Please provide these items to us within five (5) days from the date of this letter

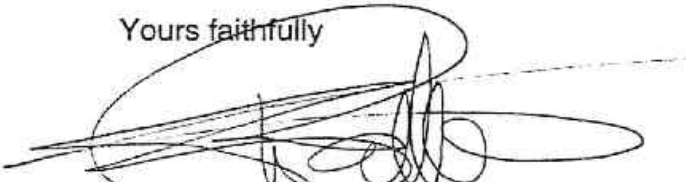
Additionally, it would be appreciated if you could come to our office on Wednesday 26 November 1997 at 2:00 p.m., so that we can review this matter with you.

Please be advised that, under Section 17 of the Ombudsman Act, failure to produce the above required documents in response to this letter can result in our issuing a summons compelling you to appear and produce the documents.

**Warning:** Inquiries of the Ombudsman remain strictly confidential until the public report stage. You must therefore keep this matter to yourself. If you do not do so, you could be fined or jailed. Please contact this office if you have any questions about this warning, which reflects Article 62(5) of the Constitution and Section 20 of the Ombudsman Act.

Please contact me if you have any questions. Thank you in advance for your assistance in this matter.

Yours faithfully

  
**MARIE-NOELLE FERRIEUX PATTERSON**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**

## REPUBLIC OF VANUATU • REPUBLIQUE DE VANUATU

I. LUGANVILLE SANTO

03/OH63/006

Titre Titre

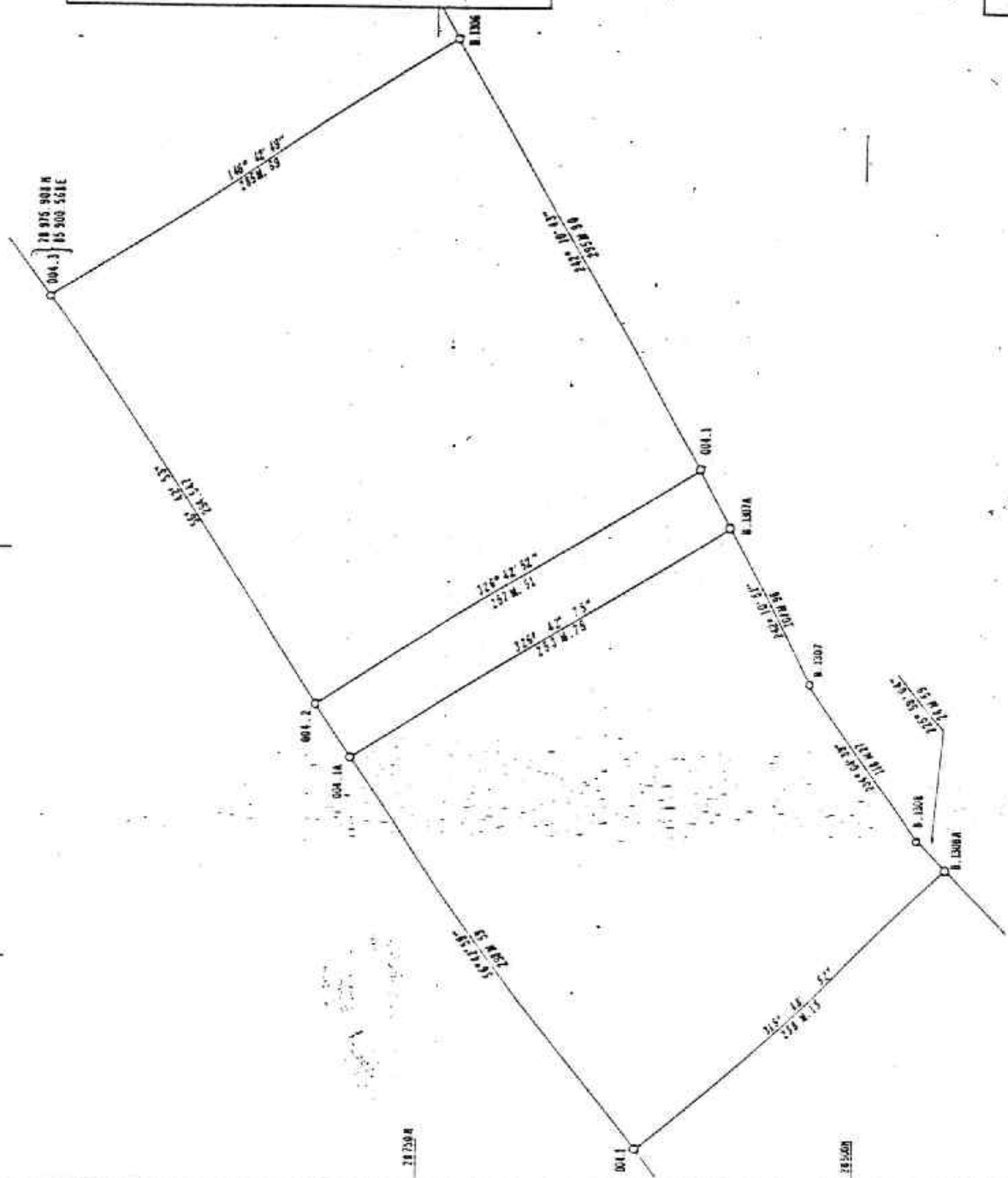
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Nom de la Propriété

Area Superficie 14ha 80a 06ca

REPUBLIC OF VANUATU  
SURVEY DEPARTMENT  
PLAN APPROVED  
E. ARTHUR  
COMMISSIONER OF LANDS

Date 24 DEC 87

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- b. This airport has begun to become a real sea snake that goes into hiding and reappears every now and again. Nonetheless, the Government's political will is steadfast and everyone should know that.
- c. This seems to be taking place in an unfavourable international environment: It is not in France's interest, in New Caledonia, to enable Vanuatu to provide competition against the airport in Noumea - Tontouta. Neither is it really in Australia's interest to allow the same as the current situation creates a guaranteed income for the Australian company, Qantas.

Such an environment consists of a kind of Malthusian policy of retaining aid in order to maintain foreign presence in Vanuatu, and therefore disallowing it to be really economically independent.

A project was proposed to us by France through the *Caisse Française de Développement*.

Unfortunately, this proposal suited neither the Government's choice nor the private sector's wishes.

An airport catering for 737 aircrafts was proposed to us whereas we need one which would cater for 747 aircrafts: all the Club Med needs to set up a village in Vanuatu, for instance, is an airport catering for 747 aircrafts.

- 5. The Prime Minister and Minister of Commerce have since tried to find a private partner: it was then that Volani International proposed a solution such as you are aware of and a preliminary contract was signed, witnessed by the Attorney General.

The intentions of the Prime Minister and the Minister of Commerce are entirely commendable, even if more negotiations should have been conducted.

These leaders aimed for efficiency because our country badly needs development immediately.

As such, other international aid proposals suddenly started queuing up. These new proposals did not really satisfy anyone - neither the private sector nor the Government. However, as we still firmly intend to succeed, the foreign powers are getting into motion. Throughout their network of influence which may be referred to as an interference network, some barriers have been set up to prevent Volani International from building the airport. A campaign has been set in motion, across the press, through advice given to the Attorney General and of course in your report, Madam Ombudsman.

- 6. Whether or not there is any part of the contract to readjust or renegotiate does not mean that we should abandon the idea of obtaining our airport as we wish, when we want to and with the private partner we choose.

Madam, nobody in this world is God. Therefore it is difficult to judge the outcome of such and such a Government decision. Or should we consider you as part of the above-mentioned network?

What counts is the intentions: It does not seem necessary to question the commendable intentions of the Prime Minister and the Minister of Commerce.

It could otherwise be seen as either an intentional or a political move.

REF: MOF/1/1/5.57/98/VB/ct  
DATE: 11 février 1998



■  
Telephone (678) 23032

Mme Marie-Noëlle FERRIEUX  
PATTERSON  
MEDIATEUR de la  
REPUBLIQUE de VANUATU

**Objet: Votre Pré-rapport sur VOLANI  
et la Construction d'un aéroport  
international 747 à Santo.**

Madame le Médiateur,

Votre rapport préliminaire relatif au contrat pour l'aéroport de Santo Pékoa avec la société VOLANI m'est bien parvenu et je vous en remercie.

Ce rapport préliminaire, m'amène à vous faire les remarques suivantes :

La publication dans votre rapport d'une lettre que j'ai adressée à l'Honorable Barack SOPE, classée confidentielle en vertu de la Loi sur le Secret d'Etat, est clairement une violation de cette loi. Pour le principe, je vous demande de la retirer du rapport.

1. Vos rapports sont publiés et ne sont pas lus seulement par le public de Vanuatu. Compétents ou non, nous ne sommes pas de petits enfants et un minimum est à respecter !
2. Pourquoi tenez-vous tant à publier des correspondances classées confidentielles? Un seul paragraphe de ladite lettre concerne l'affaire que vous citez. Etes-vous, vous mêmes sûre de ne pas être involontairement manipulée à votre tour ? En période d'instabilité telle que nous la vivons, cette façon d'agir peut paraître totalement immature :
3. Je suis très surpris que vous n'ayez pas pris la peine de me consulter au sujet du caractère confidentiel de ladite lettre. Je vous serais reconnaissant de bien vouloir aussi informer le public de cela.

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By publishing my response in full and withdrawing the disputed parts of my confidential letter, you would be showing that you were not biased and that, I believe, would earn you respect.

Yours faithfully,

(Sgd)

Hon. Vincent Boulekone  
Minister for Finance and Economic Development

4. D'autre part si vous m'avez contacté, je vous aurais dit qu'une lettre a aussi été adressée par moi à Monsieur Mariano VOLANI afin de lui indiquer mon opposition au projet dans sa forme actuelle.

La Devise de ma carrière politique est l'honnêteté et le public le sait. Je me suis toujours efforcé de faire le mieux que je pouvais durant mes fonctions de Membre de Parlement et de Ministre d'Etat. Votre façon de me juger est tout à fait arbitraire et se rapproche de la diffamation.

Par ailleurs, et sur le fond du dossier VOLANI, je souhaite vous apporter ma vision et ma compréhension politique de cette affaire. Le Peuple a le droit de savoir ce qui suit :

a. L'aéroport international de Santo Pékoa est toujours une, sinon la priorité du gouvernement.

b. Cet aéroport commence à devenir un véritable serpent de mer qui se cache et réapparaît périodiquement. Cependant, la volonté politique du gouvernement est inébranlable et chacun doit le savoir.

c. Il semble que cela se passe dans un environnement international défavorable: la France en Nouvelle-Calédonie, n'a pas intérêt à ce que le Vanuatu fasse de la concurrence à l'aéroport de Nouméa - La-Tontouta. L'Australie n'a pas non plus, au fond, intérêt à ce que cela se fasse car la situation actuelle crée pour Qantas - la compagnie australienne - une véritable rente de situation.

Le résultat de cet environnement consiste en une espèce de politique malthusienne de retenue de l'aide pour maintenir la présence étrangère au Vanuatu, sans pour autant lui permettre réellement d'être indépendant économiquement.

Un projet nous a été proposé sous l'impulsion de la France par la Caisse Française de Développement.

Malheureusement, cette proposition ne correspond ni aux choix gouvernementaux, ni aux aspirations du secteur privé.

On nous propose un aéroport pour un avion 737 alors que nous avons besoin d'un pour 747 : par exemple, le Club-Med n'attend qu'un aéroport pour 747 pour construire un village au Vanuatu.

5. Dès lors, le Premier Ministre et le Ministre du Commerce ont tenté de rechercher un Partenaire privé : c'est ainsi que VOLANI International a proposé la solution que vous connaissez et qu'un pré-contrat a été signé en présence du Conseiller d'Etat.

Les intentions du Premier Ministre et du Ministre du Commerce sont tout à fait louables, même si de nouvelles négociations auraient dû être conduites.

Ces responsables ont visé à l'efficacité parce que notre pays a grand besoin de développement et tout de suite.

Et c'est alors que, comme par enchantement, d'autres propositions d'aides internationales se sont bousculées. Ces nouvelles propositions ne satisfont, dans le fond, personne, ni le secteur privé, ni le gouvernement. Mais comme nous avons toujours la ferme intention d'aboutir, alors les forces étrangères se sont mises en branle. Au travers de leur réseau d'influence que l'on pourrait appeler réseau d'ingérence, des barrières se sont levées pour empêcher que VOLANI International ne construise notre aéroport. Une campagne s'est mise en route au travers de la presse, de conseils au Conseiller d'Etat et bien sûr de votre rapport Madame le Médiateur.

6. Qu'il y ait des éléments à adapter ou à renégocier dans ce contrat ne signifie pas qu'il faille renoncer à obtenir notre aéroport comme nous le souhaitons et quand nous le voulons, avec le partenaire privé que nous choisirons.

Madame, personne sur cette terre n'est Dieu. Donc il est difficile de juger de l'opportunité de telle ou telle décision du gouvernement. Ou alors, il faut que nous vous considérons comme un des éléments du réseau cité plus haut ?

Ce qui importe avant tout, ce sont les intentions : les louables intentions du Premier Ministre et du Ministre du Commerce ne me semblent pas devoir être remises en causes.

Autrement, on pourrait penser à un procès d'intention ou à une manoeuvre politicienne.

En publiant l'intégralité de ma réponse et en supprimant les passages contestés de ma lettre confidentielle, vous démontreriez que vous n'avez aucun préjugé et cela je crois, serait tout à votre honneur.

Veuillez agréer, Madame le Médiateur, l'expression de ma considération distinguée.



**Hon. Vincent BOULEKONE**  
**Ministre des Finances et du**  
**Développement Economique**

JM  
GOUVERNEMENT DE LA  
REPUBLIQUE DE VANUATU  
MINISTÈRE DES AFFAIRES  
DU COMMERCE, TRADE ET  
DE L'INDUSTRIE

Sac Postal Confidential 056  
Port Vila Vanuatu



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GOVERNMENT OF THE  
REPUBLIC OF VANUATU  
MINISTRY OF TRADE,  
COMMERCE AND  
INDUSTRY

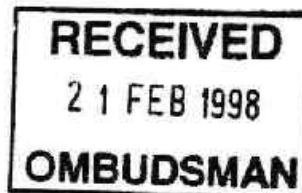
116  
Private Mail Bag 056  
Port Vila, Vanuatu

Telephone (678) 25675  
Fax (678) 25677

Ref: 103/1

Date: 1998-02-11

Mrs Noelle Ferrieux Patterson,  
Ombudsman,  
Office of the Ombudsman,  
P.O. Box 126,  
Port Vila



Dear Mrs Patterson,

Thank you for your letter of January 27, 1998, and the copy of the Preliminary Report that you submitted on the Volani International, the Santo Airport and the conduct of Mr Vohor and Mr Sope.

There are two general points that I wish to raise with you which you should also consider in relation to some of the allegations that you have made:

1. The Government has adopted through the CRP a new approach to promoting increased economic development and growth, which is through a private sector-led growth policy. The successful implementation of this policy requires the government to establish appropriate planning procedures, policy guidelines and legal framework within which to facilitate increased private sector development. One of the most immediate effect of this is that the planning procedures that were used previously no longer apply. This is the reason for the changes that Council of Ministers has undertaken last year to the procedures that should now be followed in regards to the submission of papers to Council for their consideration. It is the Prime Minister that now approves the agenda for Council meetings.

Other such changes to both planning and administrative procedures will be implemented over the next twelve months to ensure that government does provide a facilitating role in promoting a private sector-led growth development. My Ministry is in the process of finalising drafts for such guidelines for use by sectoral Ministries to facilitate the processing of



Finding No 5:

If you can read English, the Contract states very clearly that the transfer of the land will be in accordance with Vanuatu laws.

Finding No 6:

If you had correct facts you would have realised that the Council of Ministers has already changed this and Volani International has already agreed to this change.

Finding No 7:

This section is included in the Variation Contract that we have already negotiated with the Attorney General.

Finding No 8:

(a) The issue of the Leadership Code is a matter for the Courts to decide on because even your appointment as Ombudsman of Vanuatu is also questionable under the Leadership Code of Vanuatu.

(b) The issue of the land is an interesting one because you cannot compare 100 ha with the 8,000 ha of the Belmol Cattle Project, the 4,000 ha of the Metenesel Project, the 1,000 ha of the Tanna Coffee Project, and the land that Port Vila Municipality occupies.

I enclose for your information a copy of brochure that we received from Volani International of the projects that the company has undertaken over the last years.

Council of Ministers is because the Attorney General failed to advise Volani International lawyers that the one year period is illegal. This applies to all sections that are contrary to Vanuatu laws. The whole reason for requesting the Attorney General to accompany me to Europe is so that he would be available to advise directly on legal matters. He did not perform in this respect.

## ***2. Chronology of Fact:***

- (a) It is very obvious from your report that you do not have any concret evidence against the Prime Minister and myself to qualify your claims that what we have done is both illegal and corruptious. You present in this section of the report a list of events or activities that were undertaken as part of the normal process of encouraging foreign investors to invest in Vanuatu and the letters that we as Ministers have to send to investors to provide assurance of government support of their proposed investment proposal.
- (b) Your report is also based on incomplete information of the activities that the government undertook towards securing the interest of Volani International in the development of the international airport in Santo. You have failed to acknowledge the fact that the Prime Minister and I have not in anyway undertaken to act on our own behalf without Council of Ministers approval. We have also right from the beginning involved the Attorney General in the process. It is the Attorney General who has not provided us with the support that we have requested from his office.
- (c) You should be ashamed of what you accused me of doing in Section 5.21 of the report because this is a lie. Mr Edward Bani and myself have never been to the office of the Department of Lands in Santo and forced them, on behalf of Volani International, to partitioned the 85 hectares for Volani International. It was the Council of Ministers that approved the transfer of the 100 ha to Volani International as payment for the feasibility studies.

## ***3. Preliminary Findings:***

### **Finding No 1:**

Contracts or agreements that are entered into between the government of the Republic of Vanuatu and a foreign government or organisation are usually signed by the Prime Minister, Minister of Finance, Minister of Foreign Affairs or another sectoral Minister. The procedure for processing the undertaking of feasibility studies is not a legal one and does not involve the Tenders Board.

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For your information, I have also received the following information on the Volani International Project:

- (a) Supporting letter from the government of Italy;
- (b) Bank reference from a Bank in Europe on Volani International;
- (c) Checked with private sector companies on the experiences and the expertise that Volani International has in the construction of such projects; and
- (d) For your information also, Volani International also submitted an offer for the purchase of Belmol Cattle property. Their offer was the highest.

I hope that what I have submitted is sufficient for your purposes.

Yours sincerely,



Barak Tame Sope,  
Minister for Trade, Industry, Tourism and Business Development.



■  
GOUVERNEMENT DE LA  
RÉPUBLIQUE DE VANUATU  
MINISTÈRE DES FINANCES

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REF: MOF/13/13/11/151.VB/an  
DATE: 8 Décembre 1997



GOVERNMENT OF THE  
REPUBLIC OF VANUATU  
MINISTRY OF FINANCE

Private Mail Bag 058, Port Vila

■  
Telephone (678) 23032

A 1

**Monsieur le Premier Ministre  
PMB 053  
PORT-VILA**

Monsieur le Premier Ministre,

Veillez trouver, ci-joint, la copie de la lettre que j'adresse ce jour à Monsieur Mariano VOLANI.

Certaines parties du contrat, notamment celle relative à l'attribution de citoyenneté automatique devaient être rectifiées.

Le Ministre du Commerce n'ayant pas procédé aux rectifications, je me vois dans l'obligation de prendre une position négative au regard de ce dossier jusqu'à ce que de nouveaux développements interviennent.

En conséquences, les autorisations précédentes ont été retirées et je souhaiterais, Monsieur le Premier Ministre, que vous annuliez ce dossier jusqu'à ce que les zones d'ombre du contrat soient éclaircies.

Veillez agréer, Monsieur le Premier Ministre, l'expression de mes respectueuses salutations.



**Hon. Vincent BOULEKOS**  
Ministre des Finances

PJ: 1

CC: Hon. Ministre du Commerce

N. N.

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■  
GOUVERNEMENT DE LA  
RÉPUBLIQUE DE VANUATU  
MINISTÈRE DES FINANCES

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DATE: 8 Décembre 1997



GOVERNMENT OF THE  
REPUBLIC OF VANUATU  
MINISTRY OF FINANCE

Private Mail Bag 058, Port Vila

■  
Telephone (678) 23032

"Z"

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PERSONNEL  
et CONFIDENTIEL

Volani International Ltd  
Head Office  
Via Chiocchetti 8,  
38068 Rovereto (TN)  
ITALIE  
Par fax: 0 039 464 462 256

A l'attention de Monsieur  
Mariano VOLANI

Monsieur,

Par la présente, je tiens à vous informer de mon désaccord au regard du projet de contrat pour l'aéroport de Santo Pékoa.

Notamment, son paragraphe 5 - 2 -b- iii est anticonstitutionnel et illégal.

Donner la citoyenneté au terme d'un an est inacceptable.

En conséquences de quoi, la présente vaut annulation de tout consentement préalable que j'avais pu vous indiquer et de tout accord de ma part concernant ce dossier.

Par ailleurs, je souhaiterais que vous m'indiquiez par retour à quoi correspond le titre de "chevalier du travail" que vous portez.

Dans l'attente, veuillez croire, Monsieur, à l'expression de mes sentiments distingués.



Hon. Vincent BOULEKONE  
Ministre des Finances





1 2 3 4 5 6 7 8 9 10 11 12

MINISTRY OF DEFENCE  
GOVERNMENT OF INDIA  
NEW DELHI

SECRET  
CONFIDENTIAL

Minister of Defence  
New Delhi  
12th November 1957  
10.00 AM

Reference is made to the letter of the Ministry of Defence dated 12th November 1957.

The Ministry of Defence is pleased to inform you that the letter of the Ministry of Defence dated 12th November 1957 is being forwarded to you for your information.

The Ministry of Defence is also pleased to inform you that the letter of the Ministry of Defence dated 12th November 1957 is being forwarded to you for your information.

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12th November 1957  
10.00 AM