

REPUBLIC OF VANUATU  
OFFICE OF THE OMBUDSMAN

PUBLIC REPORT  
ON THE  
DISCRIMINATORY CRITERIA OF THE  
VANUATU NATIONAL EXAMINATIONS  
BOARD FOR ADMISSION TO YEAR 7

13 August 1999

7156/9/13

**PUBLIC REPORT ON THE  
DISCRIMINATORY CRITERIA OF THE VANUATU NATIONAL EXAMINATIONS  
BOARD FOR ADMISSION TO YEAR 7.**

*“Know ye not that they which run in a race run all, but one receiveth the prize? So run, that ye may obtain”.*  
Corinthians 9 v 24

In circumstances which as in Vanuatu, educational facilities do not exist in sufficient quantity to enable every one, regardless of ability to continue an extended schooling program, painful decisions have to be made as to who shall be selected to qualify. Whatever method of selection is used, there will inevitably be those who are hurt and feel ill treated.

Some children develop and mature at an earlier stage than others because of genetic and other factors in their growth patterns. In a situation of shortage of opportunity, it is obvious that the size of a pupil should not be the criterion.

The opportunity should be given first to those who are likely to benefit most – namely those whose academic performance has indicated that they are the most promising student.

Therefore, although all children may begin the “race” in the early stages, not all will find it possible to be allocated a place in the later stages. This is the inescapable fact of educational opportunity in Vanuatu today. Therefore it is absolutely essential that the process of selection must be seen to be open and free of inappropriate favouritism, and as fair as possible.

**SUMMARY**

Due to the limited places available for students in Year 7, the Vanuatu National Examinations Board uses a selection criteria (“criteria”) to choose which students will pass from Year 6 to Year 7. The current criteria is as follows :

- Age (up to 14)
- Number of repetitions
- Marks in the National Primary Examination
- Number of places available

Vanuatu does not presently have the financial resources to make secondary education available and accessible to all children. However, until there are places available for every capable student, the Convention on the Rights of the Child (which is binding in Vanuatu) and our Constitution require that children be given the available places on the basis of equal opportunity.

This means that every child should have the same opportunity to earn a place in Year 7, with the only distinctions being based on merit or ability. The number of repetitions and marks received in the National Primary Examinations are indicators of a student’s ability; age is not. Restrictions based on age are unjustly discriminatory, and may prevent highly capable “older” students from continuing their education simply because they started school later or missed some years of schooling when younger. The Government of Vanuatu must treat a 15 year old student (for example) the same as a 13 year old student – both can be assessed on their marks or other measure of ability to succeed in Year 7, but not on the basis of age.

The Ombudsman therefore after due enquiry concludes that: **The Vanuatu National Examinations Board criteria for the admission of students from year 6 to Year 7 discriminates on the basis of age. This is unjust, contrary to our Constitution, and contrary to the Convention on the Rights of the Child which is binding in Vanuatu.**

The Ombudsman recommends that the Minister of Education and the Vanuatu National Examinations Board ensure that the criteria for entry to Year 7 be changed so that the limited number of places are distributed based only on students' merit and ability, and not on age.

## TABLE OF CONTENTS

<b>SUMMARY .....</b>	<b>2</b>
<b>1. JURISDICTION .....</b>	<b>5</b>
<b>2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED .....</b>	<b>5</b>
<b>3. RELEVANT LAWS, REGULATIONS AND RULES.....</b>	<b>5</b>
<b>4. OUTLINE OF EVENTS.....</b>	<b>6</b>
<b>5. RESPONSES BY THOSE INVOLVED.....</b>	<b>6</b>
<b>6. FINDINGS .....</b>	<b>7</b>
<b>7. RECOMMENDATIONS .....</b>	<b>7</b>
<b>8. INDEX OF APPENDICES .....</b>	<b>8</b>

## 1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow me to look into the conduct of government, related bodies, and Leaders. I can also look into allegedly discriminatory or defective administrative practices, including those of the Vanuatu National Examinations Board.

## 2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present my findings as required by the Constitution and the Ombudsman Act.
- 2.2 The scope of this investigation is to establish the facts about the criteria used by the Vanuatu National Examinations Board ("VNEB") in selecting students from year 6 to year 7 and to determine whether this administrative practice is proper and just.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

## 3. RELEVANT LAWS, REGULATIONS AND RULES

### 3.1 CONVENTION ON THE RIGHTS OF THE CHILD (RATIFICATION) ACT No 26 of 1992

#### RATIFICATION

- 1.(2) The Convention... shall be **binding on the Republic of Vanuatu** in accordance with the terms thereof.

#### CONVENTION ON THE RIGHTS OF THE CHILD

##### Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

##### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, **administrative authorities** or legislative bodies, the **best interests of the child shall be a primary consideration.**

##### Article 28

1. States Parties recognize the rights of the child to education, and with a view to achieving this right progressively and **on the basis of equal opportunity**, they shall, in particular:

- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

### 3.1 CONSTITUTION OF THE REPUBLIC OF VANUATU

#### FUNDAMENTAL RIGHTS AND FREEDOMS

- 5.(1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all person are entitled to the following fundamental rights and freedoms of the individual... subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –
- (k) **equal treatment under the law or administrative action...**

#### 4. **OUTLINE OF EVENTS**

- 4.1 The structure of the Education System in Vanuatu includes two or three years of pre-school (kindergarten) education, followed by 6 years of primary level with four years of lower secondary education and ending with three or four years of upper education. Most children attend Primary School, and there are enough spaces and adequate numbers of schools for most children to attend. However, according to the Education Master Plan, only about 32% of children attend Lower Secondary, and 6.5% attend Upper Secondary.
- 4.2 The major drop in attendance from Primary to Lower Secondary, or Year 6 to Year 7, is at least partially due to the limited places in the available Lower Secondary schools. Every student who passes the National Primary Examination does not necessarily get accepted to a Lower Secondary school.
- 4.3 As a result, the Vanuatu National Examinations Board has established a criteria. The VNEB uses the criteria to determine which students will be selected from year 6 to year 7.
- 4.4 This enquiry began on the basis of a complaint received about these criteria. In 1996 the VNEB criteria excluded children over 13 from entering Year 7. The policy was changed in 1997, and now excludes children over 14 from entering Year 7.
- 4.5 **The current criteria used by VNEB for choosing which students go on to Grade 7 are based on:**
- **Age**
  - **Number of repetitions**
  - **Marks in the National Primary Examination**
  - **Number of places available**
- See Appendix A.
- 4.6 At present Vanuatu does not presently have the financial resources to make secondary education available and accessible to all children. This is a goal which is required by the Convention on the Rights of the Child.
- 4.7 However, **until there are places available for every capable student, the Convention and our Constitution require that children be given the available places on the basis of equal opportunity.** This means that every child should have the same opportunity to earn a place in Year 7, and the only distinctions that can be made must be based on **merit or ability**. Only the number of repetitions and marks received in the National Primary Examinations are assessments of a student's ability; **age is not**.

#### 5. **RESPONSES BY THOSE INVOLVED**

- 5.1 The working paper for this report was issued twice, May 1998 and June 1999. Responses were received from the former Ministers of Education, Messrs Donald Kalpokas (see enclosed) and Louis Carlot, the current Minister of Education Honourable Joe Natuman, and the Director General of Education and at the same time the Chairman of Vanuatu National Examination Board (VNEB), Mr Georges Andrews. (Refer to appendices B, C, and D)
- 5.2 The successive Ministers acknowledge the age based -criteria and all defend it on the basis of necessity, limited funding and places and the need to accommodate the younger students in priority to the small number of older students affected by the policy.
- 5.3 In his reply Mr Natuman also adds that the Ministry is aware of this issue but has taken an adequate step to remedy it with the implementation of the Education Master Plan. He assures the Office of the Ombudsman that if the Ministry is given adequate resources, all children will have equal access to education and training.

- 5.4 Mr Andrews, the Director General of the Ministry of Education, states in his response that the current criteria is not unfair and disagrees with the fact that the admission system discriminates against some children on the basis of age. He states that children are given the opportunity to repeat twice their year 6 class at the primary level.
- 5.5 **Comment:** The Ombudsman has considered these response and concluded that criteria of selecting students from year 6 to year 7 should not be based on the age as it discriminates children's right to education. The Vanuatu National Examination Board should allocate students based on merit and ability and not on age, taking into account their past schooling results.

## 6. FINDINGS

6.1 **Finding 1:** **The Vanuatu National Examinations Board selecting criteria for students from year 6 to Year 7 discriminates on the basis of age. This is unjust, contrary to our Constitution, and contrary to the Convention on the Rights of the Child which is binding in Vanuatu.**

6.1.1 The criteria for admission to Year 7 is based partially on merit and ability (examination marks and repetitions), and partially on age. Fairness, as well as the law and our Constitution, require that this criteria be based only on merit and ability. Restrictions based on age are unjustly discriminatory, and may prevent highly capable "older" students from continuing their education simply because they started school later or missed some years of schooling when younger.

6.1.2 Equal treatment under administrative action is one of the fundamental rights in our Constitution. Decisions about who can and cannot enter Year 7 is an "administrative action" by VNEB, and therefore these decisions must be made without undue discrimination. Similarly, the Convention on the Rights of the Child requires that education be available on the basis of equal opportunity. Therefore, both laws require the Government of Vanuatu to treat a 15 year old student (for example) the same as a 13 year old student – both can be assessed on their marks or other measure of ability to succeed in Year 7, but not on the basis of their age.

## 7. RECOMMENDATIONS

### Recommendation 1:

The Minister of Education and the Vanuatu National Examinations Board ensure that the criteria for entry to Year 7 be changed so that the limited number of places are distributed based only on students' merit and ability, and not on age.

Dated the 13th day of August 1999



**Marie-Noëlle FERRIEUX PATTERSON**  
**ACTING OMBUDSMAN**  
**OF THE REPUBLIC OF VANUATU**

Handwritten signature or scribble, possibly containing the word "الله" (Allah).



**8. INDEX OF APPENDICES**

**A Criteria of Selection (September 1997)**

**B** Extract of Mr Kalpokas' letter

**C** Extract of Mr Carlot's letter

**D** Extract of Mr Natuman's letter

A-

FAX IN  
10/12/98

YANUATU NATIONAL EXAMINATION BOARD  
CRITERIA FOR SELECTION OF STUDENTS FOR YEAR 7

1. Criteria for Selection : Candidates shall be promoted from Year Six to Year Seven on the basis of :

1.1. An age of not more than 13 years on 31st December in the year in which they sit the National Primary Examination,

- a) An age of less than 14 years on 1st January in the year in which they enter Year 7.
- b) An age of 14 years and not repeated Year 6.
- c) Having repeated Year 6 once and comply with a)

1.2. Not having repeated Year Six, (With the full implementation of automatic Promotion, even one repetition in any lower classes will be allowed only in exceptional circumstances).

1.3. The total of scale marks obtained in the National Primary Examination;  
(A normalised, 15 point scale will be employed and no subjects will be weighted).

1.4. The Total number of places available in Year Seven classes.

Distribution to Secondary Schools : Candidates selected for places in Year Seven shall be distributed to available places in Secondary Schools as follows :

2.1. On the basis of parental choice (1st, 2nd, 3rd choices may be indicated), competition for places in particular schools being decided on the basis of the total of scale marks obtained by the selectee.

2.2. Where selectees can not be offered a place in any of the schools of their choice (all available places having been filled by candidates with higher scores), they will be distributed with reference to religious affiliation and to Province.

2.3. Provisional lists prepared on the above basis may be scrutinised, and changes may be suggested, at a selection meeting of the Vanuatu National Examination Board.

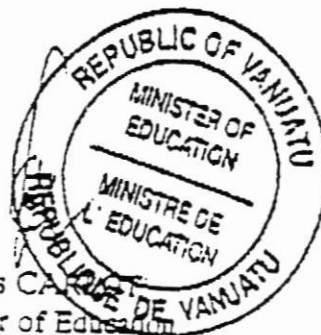
2.4. Final lists shall be published as soon as the VNEB approves them.

Admission of unselected candidates : The Board takes note that schools have sometimes admitted students in Year Seven in addition to those selected. Such admissions of students who have failed to meet the criteria for selection is unfair and are unacceptable cost to the Government. Where extra places may become available, these shall be filled from a reserve list of candidates held by the Examinations Office.

Prepared by  
Vanuatu National Examinations Board [VNEB]  
Date : 15th September 1997

Approved by

Date : 18 September 1997



Louis CAHILL  
Minister of Education  
Government of the Republic of Vanuatu

The Ministry of Education is working vigorously in doubling the intake of 1994 by the year 2002. This itself is indicative of the Government's respect for the right of children under the age of 18 as stated in the convention.

4) The National Examination Board's selection procedures of taking in only those under 13 years though unfortunate, is necessary in order to accommodate only those we have places for.

As Minister responsible, I could revoke the Board's decision, but this will not help those students effected because there aren't any places for them. Either I revoke the Board's decision and take them in and move out those who are already in, or leave them out and keep those already in. Unfortunately we can't do both at this point of time.

5) May I reiterate again here and say that the age 13 factor is a funnelling process to select sufficient students to fit into available places we have nationally not directly for financial reasons. Hopefully this funnelling process will expand as more places become available for year 7-10 students in the forthcoming years. It is true too, that we do not have enough money and we need to increase our education budget. However I would like to highlight some very important factors beyond my control that are restricting us to satisfactorily fulfilling our priorities in education.

5.1 The national population growth outrides the national economic growth. This important factor if allowed to continue will drain all the national financial resource and leads Vanuatu into national bankruptcy. This will not only violate the children's right, but the rights of many other citizens of the country. Another factor that is happening here is the "thinning" out of financial resource. This means drop in quality of performance. The Ministry of Education over the past few years had been through this unfortunate stage thus depriving the children of Vanuatu of the best of education. Increasing quantity without quality is fictious and only produce disillusionment.

5.2 Fair distribution of the limited financial resources of the nation. Education is not the only service that the Government is committed to give to the population of Vanuatu. As it is now education already received the biggest share of the nation's revenue - over 20%. As much as we value and respect the rights of children, let us not forget that they are part of the wholistic right of the whole of creation. To enhance only one to the detriment of others is injustice. May be the Government needs to consolidate more in its general administration policies and take some tougher measures in order to procure savings in order to achieve more for education. We are hopeful that this will be done by the work of the Comprehensive Reform Programme that is currently in progress.

5.3 The National political mentality that is causing instability in the nation of Vanuatu. Instability in the Government is caused by wrong political mentality, that of using political powers for personal, or group advantages. It is currently essential that any national reform, should consider not only the public, economic and legislative sectors but also psychological sector of the human resources of the country. This political and

national instability slows down economic developments and inflict unnecessary spending on the limited financial resources the country desperately needs to provide essential services to the peoples of the nation.

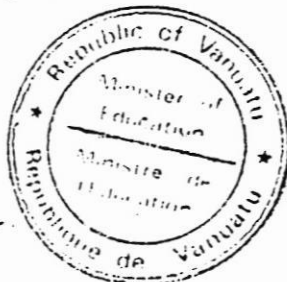
Madam, most of these national issues, you are already well aware of. I inserted them here not for the sake of argument, but to substantiate realities I have to struggle with through the Ministry of Education.

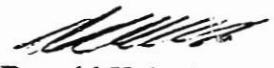
6) As far as the breaching of the Convention on children or the national constitution of the Republic is concern, I will leave that with your office to decide upon the light of the national situation I just barely touched on in this letter. I feel that in the present national situation substance and form has to be clearly identified and facilitated into our interpretation.

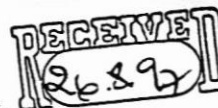
I am convinced that intentionally, what we are doing is to uphold the national constitution of Vanuatu as well as to implement to its fullest the ratified convention on children's right. However the reality of life circumstances may sometimes deterred us from satisfying everyone and this can be interpreted as breaching certain legal documents we have to guide us. This is unfortunate, but this is where we use our scale to weigh wrong in order to identify the lesser from the greater, and act in accordance with the lesser wrong.

Madame, I hope that I explain the matter to your satisfaction. I realise that it is not always easy to explain things by letter without producing volume of writing that sometimes confusing. However should you require further clarifications on some issues stated in this letter, please do not hesitate to forward your queries to me.

Yours faithfully



  
Donald Kalpokas  
Deputy Prime Minister and Minister of Education



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MINISTRE DE L'EDUCATION

MINISTRY OF EDUCATION

O/ref.: ME/CAB/401/21/97/CL/re

à Mme Marie Noëlle FERRIEUX PATTERSON  
Médiateur de la République de Vanuatu  
Bureau du Médiateur

Port-Vila, le 28 Juillet 1997

**OBJET: Enquête en Cours**

Madame,

En référence à votre correspondance du 25 Juillet 1997 relative à l'objet ci-dessus, je vous soumetts ses premiers points de clarifications suivants:

1. Enquête sur l'interdictions d'accueillir les enfants de 13 ans en Septième Année:

Comme vous l'avez cité dans votre lettre, l'intention de mon Ministère est de révoquer non pas l'interdiction d'accueillir les enfants de 13 ans en 7ème Année mais l'un des critères de sélection des enfants de la 6ème Année à la 7ème Année.

Les critères de sélection du Conseil National des Examens de Vanuatu (CNEV) sont en cours de révision et la copie vous sera transmise dès qu'elle sera approuvée.

En ce qui concerne les enfants qui n'ont pas pu entrer en 7ème Année en Février 1997 sont toujours soumis à la réalité de la situation, d'une part, le manque de la capacité d'accueil et, d'autre part, ces enfants ne sont sanctionnés que pour l'âge mais aussi d'autres critères tel que triplement.

A savoir que lorsque les critères de sélection de la Constitution du CNEV sont en vigueur, ils restent applicables si aucune modification n'est faite.

Quand à la révocation citée antérieurement, ne sera mis en vigueur qu'en fin 1997 pour remédier et minimiser les contraintes du passé ainsi que d'autre critères tel que redoublement et triplement.

Permettez-moi de vous préciser que mon Ministère ne se soucie pas que minorité qui on plus de 13 ans mais de la masse qui ne peut pas accéder à la 7ème Année soit en 1997.

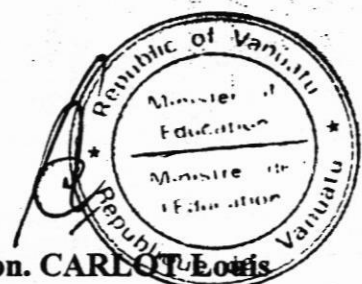


Inscrits aux Examens :  
Orientation en 7ème Année :

Enfin mon Ministère se concentre sur l'ensemble de l'éducation de Base pour minimiser ce pourcentage de déperdition à la 6ème Année qui devient alarmante et critique pour le développement de la Jeunesse de ce pays.

*Olyechif 2010*

Dans l'espérance de vous apporter des informations requises, je vous prie d'agréer, Madame le Médiateur, l'expression de mes sentiments distingués.



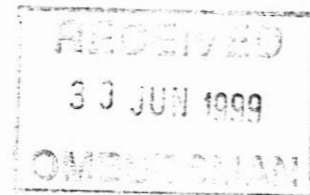
**Hon. CARLOT Louis**  
**Ministre de l'Éducation.**

GOVERNMENT OF THE  
REPUBLIC OF VANUATU



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MINISTER OF EDUCATION,  
YOUTH AND SPORTS

O/Ref No. 284/99 JN/im  
MEYS/CAB/400/26.8



The Ombudsman  
Office of the Ombudsman  
P.M.B. 081  
**PORT VILA**

29<sup>th</sup> June, 1999

Dear Ombudsman,

**RE : WORKING PAPER ON ALLEGED IMPROPER SELECTION CRITERIA OF STUDENTS FROM YEAR 6 TO YEAR 7.**

Thank you for forwarding me a copy of your Preliminary Report on the Selection Criteria used by the Vanuatu National Examination Board (VNEB) for selecting students from year 6 to year 7 and for affording me the opportunity to say something on this issue which had occurred in this Ministry before my time.

I think the two former Ministers of Education Kalpokas and Carlot have provided you with extensive responses as to the reason why it was seen necessary for VNEB to apply such a criteria in its selection process. And I see no point in having to repeat what they had told you.

I only wish to say that such a system was devised because of the problem of access. This is not an easy problem to deal with given that the annual population growth rate is 2.9% while the economy only grew 0.2% in 1998. This does not mean that Government is not doing something about the access problem. We are doing something. We are embarking on a Master Plan for Education in Vanuatu and we will be dealing with the problem of access. But this is a problem which will require long term solutions give the state of the national economy.

As we commence on the implementation of the Comprehensive Reform Programme (CRP), I intend to see that the Education Master Plan and the structure that will be put in place, while providing for quantity, will at the same time ensure that there is quality and equity in the education system at all levels. In this connection, if there are any discriminatory practice or criterion in the current education system, it will be eliminated.

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Finally, let me assure your office that, if given adequate resources, this Ministry would continue to endeavour in its mission to ensure that every children in this Country irrespective of language, Island/Country of Origin, race, gender, religion and age are given equal opportunity to education and training.

Yours Sincerely,



**Joe NATUMAN**  
**Minister of Education, Youth and Sports**