REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PMB 081
Port Vila
Vanuatu

PUBLIC REPORT

ON THE DEPORTATION OF THE PUBLISHER OF THE TRADING POST MARC-NEIL JONES FROM VANUATU

31.10.2001

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SUMMARY

The Ombudsman conducted an enquiry into the deportation of the publisher of the Trading Post newspaper, Marc-Neil Jones (Mr. Jones), from Vanuatu on 19 of January 2001. This was an enquiry instigated at the Ombudsman's own initiative as the matter raised important issues of breaches of procedural fairness and infringements of Constitutional and civil liberties on the part of the Government. The matter also suggested that there may be breaches of the Leadership Code Act on the part of the government leaders involved, however it was decided that this enquiry would focus strictly on the detention and removal of Mr. Jones from Vanuatu.

Briefly, the facts are as follows. On January 19 2001 at 5:30 a.m the Principal Immigration Officer (PIO), Lesley Garae and members of the police force, awakened Mr. Jones at his residence at Melemaat just outside Port Vila. The PIO informed Mr. Jones that he was under arrest and was to be taken immediately to the airport to board the 7:00 a.m. flight to Brisbane. The PIO showed Mr. Jones copies of the Detention and Removal Orders which were signed by the Minister of Internal Affairs, the Honorable Barnabas Tabi, who was acting at the request of the Honorable Prime Minister, Barak Sope.[1]

Mr. Jones was brought to the airport but was not allowed to take any clothes, medicine or money with him. At the airport, the British High Commissioner, Mr. Michael Hill, and John Malcolm, Mr. Jones' lawyer attempted to intervene, but both were informed by the PIO that he was following orders issued by the government. Mr. Jones was then taken by the police and the PIO and forced aboard the aircraft.

Later that morning, his lawyer obtained an *ex-parte* Interim Order from the Supreme Court. The Court ordered that the government issue or extend a permit to allow Mr. Jones to return to Vanuatu and not interfere with his rights to live and work in the country. Upon learning of the Court Order, the PIO directed his immigration officers to allow Mr. Jones to re-enter the country. Mr. Jones returned to Vanuatu on Sunday, January 21, 2001.

Findings

The Ombudsman found that:

9. The removal order issued by the Minister of Internal Affairs, Barnabas Tabi, was unlawful and in breach of Sections 3, 17 and 25 of the Immigration Act.
10. The Minister of Internal Affairs and the Principal Immigration Officer denied Marc-Neil Jones his right to liberty and security of the person guaranteed under Article 5 of the Constitution by forcibly confining him and removing him at short notice from Vanuatu.
11. The Principal Immigration Officer's assertion that he was simply following orders was in breach of his duty and obligations as Principal Immigration Officer under Section 3(3) of the Immigration Act of Vanuatu.

Recommendations

The Ombudsman recommends:

6 The Minister of Internal Affairs be aware of the limitations of his jurisdiction and powers under the Immigration Act, and not sign a clearly unlawful removal order.

7 The Minister of Internal Affairs consult with the Attorney General, who is the legal advisor to the government before signing a removal order.

8 The Attorney General or delegate not succumb to political pressure and draft illegal removal orders at the request of politicians.

9 The PIO consider his enabling legislation and ensure that any removal order is issued lawfully, taking due consideration the time frame for notice and for appeal.

[1] The government of Barak Sope was defeated in a motion of no confidence debated by Parliament on Friday 13 April 2001. However, all references to the government in this report are to the former government under Prime Minister, Barak Sope.

10 Section 3 of the Immigration Act [Cap 66] be amended to reflect that the duty and obligation of the PIO is to uphold the Immigration laws of Vanuatu, and not to any other body to which he may have been seconded.

11 The Prime Minister and the Minister of Internal Affairs be fully familiar with international instruments to which Vanuatu is a signatory, particularly those relating to human rights, to avoid any future embarrassment to the government and the citizens of Vanuatu.

1. JURISDICTION

1.1 The Constitution, the Ombudsman Act and the Leadership Code Act allow me to look into the conduct of government, related bodies, and Leaders. This includes the Department of Immigration and other government agencies involved in the removal of Marc-Neil Jones (Mr.Jones) from Vanuatu pursuant to the relevant provisions of the Vanuatu Immigration law and the Constitution.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

2.1 The purpose of this investigation was to provide a confidential working paper so that those with allegations against them had an opportunity to respond, and if possible to resolve outstanding issues before a public report was issued. Following the issuance of the working paper, there was no attempt by the government to resolve any of the issues raised, so the Ombudsman proceeded to issue this public report.

2.2 The scope of this investigation is to establish the facts about the removal of Mr. Jones, publisher of the Trading Post, from Vanuatu on January 19 2001. It will also establish whether the order signed by the Minister of Internal Affairs (responsible for Immigration) was made according to the laws of Vanuatu and whether the Principal Immigration Officer (PIO) and accompanying police officers acted within the law when executing the removal order. While there were many issues that suggested breaches of the Leadership Code, this report focuses strictly upon maladministration and breach of law within the Ministry of Internal Affairs.

2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

The full text of all relevant laws are attached at the end of this report in "**Appendix P**"

CONSTITUTION OF THE REPUBLIC OF VANUATU
THE OMBUDSMAN ACT NO 27 OF 1998
THE IMMIGRATION ACT [CAP 66]
UNIVERSAL DECLARATION OF HUMAN RIGHTS

4. OUTLINE OF EVENTS

The Directive from the Office of the Prime Minister

4.1 On January 12, 2001, Prime Minister Barak Sope sent an urgent letter to the Minister of Internal Affairs, Barnabas Tabi, instructing him to deport Mr. Jones immediately from Vanuatu. Prime Minister Sope cited the reason for this deportation was because Mr. Jones had "caused damage to the country in his false reporting." (See **Appendix "A"**)

4.2 On January 18 2001, the publisher of the Trading Post, Mr. Jones made a telephone call to Dinh Van Than[2]. Mr. Jones advised him that the newspaper was going to publish a story on the government's attempts to convince the Reserve Bank to issue USD50 million in government bonds to Mr. Amarendra Nath Ghosh, Vanuatu's Honorary Consul to Thailand.

[2] A wealthy local businessman and patriarch of the Vietnamese community in Vanuatu.

The Delegation to the Office of the Principal Immigration Officer

4.3 On January 18 2001, at approximately 6:15 p.m., a delegation consisting of Police Commissioner Peter Bong, Assistant Police Commissioner Paul Willie Reuben, and First Political Advisors David Esrom, (CRP), Lionel Kalwat, (Lands), and Clifford Bice (Infrastructure and Public Utilities) attended at the office of the PIO, Lesley Garae.

4.4 The purpose of their visit was to instruct the PIO to execute a **removal** and a **detention** order issued and signed earlier that day and signed by the Minister of Internal Affairs, Mr. Barnabas Tabi. (See **Appendices "B" and "C"**)

The Execution of the Detention and Removal Orders

4.5 On January 19, 2001, at approximately 5:30 a.m. Jenny Simeon, Mr. Jones' partner, was awakened at their residence near Melemaat Village, north of Port Vila, by the sound of two vehicles driving into the yard. She looked out the window to see the PIO accompanied by the police.

4.6 Jenny Simeon awoke Mr. Jones and advised him that the police wanted to see him. Opening the door he was advised by the PIO that he was under arrest, and was to be taken immediately to the airport for deportation. Mr. Jones asked to see the papers and was shown copies of both the detention and removal orders.

4.7 Mr. Jones asked the PIO to take him to the police station to allow him time to consult his lawyer. The PIO refused saying that there was no time, as the flight to Brisbane was departing at 7:00 a.m.

4.8 Mr. Jones advised the PIO that what he was doing was illegal. He stated that the PIO berated him for writing stories about the Prime Minister and that he deserved to be deported. The PIO stated at that time that he was only following orders.

4.9 Jenny Simeon then informed the PIO that Mr. Jones was an insulin dependent diabetic and that he needed medication. Mr. Jones claimed that the police officers would not allow him to take the insulin with him from his refrigerator and told him to buy insulin in Australia.

4.10 Mr. Jones then told the PIO that he was a British passport holder and had been paying an immigration bond to be repatriated to England in the event of deportation. According to Mr. Jones the PIO would not entertain such an idea and kept repeating that he was following orders.

4.11 Mr. Jones was then taken from the house and placed in one of the police vehicles. He claimed only to be carrying a small insulin pen and Vt5000. He was not allowed to take any clothes or medication with him.

4.12 At that time, Mr. Jones instructed Jenny Simeon to contact his business partner Gene Wong, and his lawyer. She went to the phone and asked the two police officers who remained inside the house if she could use the telephone. According to Jenny, they were intimidating and asked her why she wanted to use the phone. She claimed she was too frightened by the officers to make a phone call.

Arrival at Bauerfield International Airport

4.13 At the international terminal at Bauerfield airport Mr. Jones ran into the departures area and shouted that he was the publisher of the Trading Post newspaper and the Government was deporting him because it did not like the news he was reporting. Mr. Jones said this was a violation of his human rights.

4.14 It was alleged at this time people attempted to assist Mr. Jones by using the telephone but that airport security prevented people from using the telephones and cut TVL telephone lines.

4.15 The PIO surrounded Mr. Jones with the police officers and escorted him into a room in the immigration area. After further altercations with the PIO Mr. Jones reported that he

broke down and wept. He asked the PIO why he was doing this and the PIO responded that he was only following orders.

4.16 Mr. Jones's lawyer, John Malcolm came into the immigration room and advised the PIO that the removal order was in breach of the law and he needed time to get a court order to prevent the deportation. The PIO refused, stated again Mr. Jones had to go immediately, and that John Malcolm must leave.

4.17 Jenny Simeon came in to the immigration room and told the PIO that Mr. Jones needed his diabetes medication. The PIO told her she had no right to be there.

4.18 According to Mr. Jones, the British High Commissioner, Michael Hill, came into the room and asked to speak with the Minster for Internal Affairs, Barnabas Tabi. The PIO claimed he did not know the number. The Commissioner advised the PIO that his action was a breach of human rights but the PIO reiterated that he was only following orders. The British High Commissioner stated that this was likely to cause a major diplomatic incident.

Boarding the Aircraft

4.19 The PIO stated that Mr. Jones had to board the aircraft. Mr. Jones reported that he refused, stating "I am not moving. I have my rights which are not being honoured by you. This has nothing to do with following orders. This is bullshit and you will have to carry me to the aircraft kicking and screaming as I am not going." The British High Commissioner advised Mr. Jones to go quietly.

4.20 As he was boarding the aircraft, Mr. Jones reported that he shouted up to the gathering crowd "My rights have been abused. I am being deported with no clothes, no possessions, no money." He further reports at that time he was manhandled by security.

4.21 Upon arrival in Brisbane, Marc-Neil Jones was assisted by the British High Commission, which provided funds for accommodation, meals, telephone calls and clothing.

4.22 At the same time, Marc-Neil Jones's lawyer, John Malcolm, wrote to the Minister of Internal Affairs, Mr. Barnabas Tabi and requested that he cancel the orders against his client. He did not receive a response. (See "**Appendix D**").

4.23 Later that morning Mr. Malcolm obtained an *ex-parte* Interim Order signed by the Acting Chief Justice Lunabek. This was an application for leave to the Court for orders of prohibition[3], mandamus[4] and other orders. This Interim Order named the Attorney General, Mr. Ham Lison Bulu, and the PIO, Mr. Lesley Garae as the first and second defendants, respectively. (See **Appendix "E"**).

4.24 The Court ordered that the Government issue or extend a permit to allow Mr. Jones to enter, reside and work in Vanuatu. The Court prohibited the Government from any way interfering with Mr. Jones' rights and privileges to live and work in Vanuatu, and ordered that the government allow him to move freely in and out of the country. The Court further ordered that the government release any detention order or removal order issued against Mr. Jones under the Immigration Act.

4.25 Upon learning of the Court order, and confirmation of Mr. Jones's return flight to Vanuatu on Sunday, January 21, 2001, the PIO directed his immigration officers to allow Mr. Jones to re-enter Vanuatu.

4.26 On January 21 2001, Mr. Jones returned to Vanuatu and was reportedly welcomed by a crowd of supporters including immigration officers. He advised that there had been

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[3] A prohibition order is a court order which is used to prevent a tribunal from exceeding its jurisdiction, or acting contrary to the principles of natural justice, and also to control a minister in the exercise of his quasi-judicial functions.

[4] An order of mandamus is used to compel the performance of a public duty. In this case, the Minister had a duty to act according to the Immigration Act.

an attempt to prevent him from boarding the plane in Brisbane. Mr. Jones stated that he was informed by Mr. Maxwell Cain, the Brisbane Manager of Air Vanuatu that there were moves from "higher up" to prevent him from boarding the aircraft. Mr. Jones was advised to book through Qantas to avoid any problems.

4.27 According to Mr. Jones this was confirmed later by Jean Paul Virelala, the General Manager of Air Vanuatu. Mr. Virelala allegedly advised that it was someone "high up" in government who tried to prevent Mr. Jones from boarding the plane in Brisbane.

4.28 On Monday, January 22, 2001 Mr. Jones attended the Office of the Ombudsman to lodge an official complaint about the actions of the Minister of Immigration, Mr. Barnabas Tabi, and the PIO, Mr. Lesley Garae.

4.29 That same day, the Office of the Ombudsman served a Notice to a Witness[5] to the Minister of Internal Affairs, Mr. Barnabas Tabi, and the PIO, Mr. Lesley Garae pursuant to Article 62 (3) of the Constitution, and Section 22 of the Ombudsman Act. These notices required the Minister and the PIO by law, to come to the Office of the Ombudsman on January 23, 2001 and provide information about the removal of Mr. Jones from Vanuatu. (See **Appendices "F" and "G"**).

4.30 On the afternoon of January 22, 2001, the Office of the Ombudsman received a call from Jeanette Bolenga, Acting Director General of the Ministry of Internal Affairs. She stated that she was calling to postpone the time of the Minister's appearance and said their office would contact the Office of the Ombudsman to arrange another time.

4.31 On January 23 2001, the Office of the Ombudsman received a call from the Attorney General, Mr. Ham Lison Bulu regarding the notice to the Minister of Internal Affairs. The Attorney General advised that following the deportation of Mr. Jones and the *ex-parte* Interim Order, the matter was now the subject of the Court. He further stated that all interested parties, including the Office of the Ombudsman, should refrain from making any investigations until further notice by the Court. Any enquiries into this issue may be in contempt of this Order. He further advised that he would confirm this in writing. (See **Appendix "H"**).

4.32 The Office of the Ombudsman responded to the Attorney General's directive. This response outlined the jurisdiction of the Ombudsman, who is not subject to the direction or control in the exercise of his function by any other body. This includes the Attorney General. As such, there was no legal basis for the Attorney General to issue directives to the Office of the Ombudsman. The office reiterated its request that the Minister of Internal Affairs attend to the office as required by law. (See **Appendix "I"**).

4.33 The PIO attended at this office as required on January 23, 2001. He confirmed that he was approached at his office on January 18 2001 by a delegation from the Prime Minister's Office, consisting of first political advisors Mr. David Esrom (CRP), Mr. Clifford Bice (Infrastructure and Public Utilities) and Mr. Lionel Kalwat (Lands). These political advisors were accompanied by Mr. Peter Bong, Commissioner of Police, and the Assistant Commissioner, Mr. Paul Willie Reuben. They handed the PIO copies of the detention and removal orders and told the PIO to execute the orders the following morning.

4.34 When asked why he carried out what appeared to be an unlawful removal order the PIO replied that there was no time to examine the Immigration Act. He was told to put Mr. Jones on the plane early the next morning.

4.35 The PIO was questioned further about his responsibility as the Principal Immigration Officer. When asked if it was not his duty to fully inform himself of the laws governing his office and to be aware of the proper procedures to be followed in the execution of a removal order, the PIO responded that he had no choice, he was just carrying out his orders and instructions. The PIO added that, as a police officer, he would not disobey

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[5] A Notice to a Witness under the Constitution and the Ombudsman Act is basically the same as a summons to appear. The penalty, upon application to the Court for failing to attend as required may not exceed VT100.000.

the order given by the high ranking Commissioner of Police, Mr. Peter Bong because he would be subject to the charge of an offence against discipline.

4.36 The PIO was asked if he was aware that the Attorney General had approved and drafted the orders. He replied that he believed that the Attorney General had been briefed beforehand.

4.37 He was then questioned about his duty as a police officer and his duty as the Principal Immigration Officer, as there seemed to be a conflict between the two. He responded clearly that in Vanuatu there is some confusion about the two positions. The PIO is seconded from the police force to act as the head of the Immigration Department. He added that he is a police officer first, and as such must obey the orders of his commanding officer, the Commissioner of Police.

4.38 When asked if he prevented Mr. Jones from carrying his medication for diabetes, he responded that he did not know if it was true that Mr. Jones was a diabetic. He said that on the morning he went to Mr. Jones' house Mr. Jones went to the ice-box to remove some medicine but he was cross, and did not take it out. He stated that he did not prevent him from taking the medicine with him.

4.39 When questioned about whether he denied Mr. Jones access to his lawyer, the PIO replied that there was no time at the house to allow Mr. Jones to make a telephone call. He further stated that neither he, nor his officers denied Jenny Simeon the right to make a telephone call to the lawyer.

4.40 At the airport, when lawyer John Malcolm attempted to assist Mr. Jones, the PIO explained that he was in a restricted area and had no business there, and that he did not have any identification which would allow him to remain. The PIO explained that if a person enters a restricted immigration area without authorisation or identification, the PIO will ask that person to leave. In this case, the PIO was in the middle of executing his orders and did not want any obstruction from others. John Malcolm provided a statement attached as **"Appendix J."**

4.41 The PIO explained that the British High Commissioner was allowed in to see Mr. Jones because he possessed an identification card to grant him access to this restricted area. The PIO said that Mr. Hill began to argue with him and attempted to incite Mr. Jones to further outbursts. (*"Alle hemi mekem olsem se hemi nao hemi causem Marc-Neil Jones hemi kam ap moa wild antap long Airport"*) The PIO stated that the British High Commissioner was a diplomat, representing his government. He should have gone through the proper procedures of diplomacy and should not have argued with the PIO and attempted to obstruct the execution of his orders. The PIO further added that he was ashamed (embarrassed) to witness a diplomat representing his country acting in that manner. The PIO stated that the British High Commissioner should not have tried to encourage Mr. Jones to resist but should have tried to convince him to sort matters out through diplomatic channels after.

4.42 The Ombudsman attempted to verify this information with the British High Commissioner. However, Mr. Hill stated in a telephone call on January 29 2001 to the Office of the Ombudsman that he did not want to make a statement as it might be construed by the government as political interference. He advised that he would contact his superiors in London and then confirm with the Ombudsman. (*Mr. Hill's response to the working paper can be found in part 5 of this report.)*

4.43 On 5 February Mr. Hill delivered a letter to the office referring the Ombudsman to his Diplomatic Note dated January 2001 delivered to the Department of Foreign Affairs. The note was not attached. (See **"Appendix K"**)

4.44 The PIO was asked if he tried to intimidate Mr. Jones or Jenny Simeon. He said he was in the middle of an operation where anything might happen and the safety of everyone involved and the proper execution of the orders was very important. The PIO added that at the airport he had to control Mr. Jones during his outbursts to ensure that he did not escape, nor cause a disturbance.

4.45 When asked, under the circumstances, whether Mr. Jones's reaction was that of a normal human being, in that he was being illegally and forcibly removed from his home, and deported to a foreign country with very little money, the PIO responded in the affirmative. He added that he thought Mr. Jones should have realized that he would be able to sort this out afterwards with the government.

4.46 The PIO was asked if he mistreated, abused or assaulted Marc-Neil Jones, or if he allowed any other officer to do so while in his custody, other than the reasonable use of force necessary to execute his order. He emphatically denied mistreating, abusing or assaulting Marc-Neil Jones or allowing any other officer to do so.

4.47 The PIO emphasized at the end of his interview that he was only following orders. He said it was not a personal operation on his part as he was simply executing direct orders from the government.

RESPONSE FROM THE MINISTER OF INTERNAL AFFAIRS

4.48 On January 29, 2001, the Ombudsman received a response from the Minister of Internal Affairs, Mr. Tabi, that he would not appear before the Ombudsman to give evidence, as the matter was before the Court. (See "**Appendix L**").

The Vanuatu Police Force

4.49 The Commissioner of Police, Mr. Peter Bong was interviewed on January 30 2001. Mr. Bong said that he was aware that Mr. Jones was going to be deported but he had not had any official notice before Thursday, January 18 2001, when he was requested to attend at the PIO's office

4.50 The Police Commissioner expressed his concern with Mr. Jones' reporting, and said that it was neither responsible nor balanced. He particularly expressed concern with the reports against the police force. He claimed to have advised the Minister of Internal Affairs that it was no good to issue a fourteen day removal order, rather it would be better to compile a case [criminal] against Mr. Jones. However, he advised the Minister that should he, together with the Prime Minister and Attorney General require police assistance, then they would assist them.

4.51 Commissioner Bong confirmed that he was asked to attend at the office of the PIO with the delegation from the Prime Minister's office. He examined the orders and asked if the Attorney General agreed with them. The Police Commissioner was advised by the three political advisors that the State Law Office was consulted. He asked who they consulted and was told it was Arthur Faerua, Legal Officer. The Commissioner said in his opinion the orders were drafted according to law and looked convincing. He then advised the delegation to bring the orders to the PIO and ask him if he wanted to give any instructions to the police.

4.52 When questioned about the PIO's allegiance to the Police Force or to the Minister of Internal Affairs, Commissioner Bong was adamant in saying that the PIO has his own enabling legislation to guide him, and does not take direct orders from the police. He emphasized this in a press release on 24 January 2001. (See "**Appendix M**").

4.53 On January 30 2001 three of the accompanying police officers were interviewed separately by the Office of the Ombudsman. The three officers were Arthur Coulton, Willie Vira, and Captain Bongran Kalshem. They all stated they were acting under the direction of the PIO, and that the PIO was the only one involved in making the arrest and removal of Marc-Neil Jones. Captain Bongran provided a written statement about the involvement of the police. (See "**Appendix N**").

First Political Advisors

4.54 On January 31 2001 Mr David Esrom, First Political Advisor (CRP) was interviewed. He confirmed that he was part of the delegation to the PIO's office and was acting on the direct order of the Prime Minister.

4.55 On February 1 2001, Mr Lionel Kalkat, First Political Advisor (Lands) was interviewed. He also confirmed that he was part of the delegation and was following the instructions of the Prime Minister.

The Honorable Prime Minister, Barak Sope

4.56 Despite repeated attempts by the Ombudsman on January 31, February 1 and 2 to contact the Honorable Prime Minister to obtain his position on this issue, the Prime Minister did not return the Ombudsman's telephone calls, nor did he make any arrangements to meet with him.

4.57 The Prime Minister outlined his position in a press release on 19 January 2001, and in a radio and television interview reported on January 24, 2001. The Prime Minister stated that Mr. Jones's style of reporting is "a threat to the country and the government won't allow a foreigner like him to come in and de-stabilise the country." (See **Appendix O"**).

4.58 In response to the working paper the Prime Minister replied that a report would be a waste of government resources as the implementation of the recommendations would be unrealistic. He further added that the Ombudsman should disqualify himself from the investigation as he is aware that Mr. Jones is a personal friend of his and as such, the Ombudsman has a conflict of interest. **(**See **Appendix P)**

5. RESPONSES

5.1 The Honorable Prime Minister, Barak Sope responded to the working paper. He advised the Ombudsman against issuing the Public Report because it would be unrealistic. In addition, the Prime Minister said that because Mr. Jones was a "personal friend" of the Ombudsman, the Ombudsman "should disqualify [himself] from the case due to [a] conflict of interest." (See **Appendix P**).

5.2 In his response to the working paper Commissioner Bong reiterated that the police and the PIO were acting on what they believed to be a genuine legal order signed by the Minister of Home *[sic]* Affairs. He said that they were assured that the order was drafted by the Attorney General in consultation with the Acting Prime Minister, Commissioner Bong stated that the Commissioner of Police can not influence the PIO or instruct him in any way to execute these orders. (See **Appendix Q**).

5.3 In response to the working paper Mr. Hill stated that he was not asked by the Office of the Ombudsman to "verify the information." Neither was he informed of the remarks of the PIO, but had he been, he would not have attempted to dignify them with any comment. Finally, the British High Commissioner advised that he did not recall saying bluntly that he did not want to give the Ombudsman a statement but before responding substantively he would have to consult London in case such a statement could be construed as political interference. Mr Hill took issue with the drafting of these passages which, he said, gave the impression of unhelpfulness, when in effect, he was trying to be the opposite. (See **Appendix R).**

5.4 There was no response from PIO, Mr. Garae, to the working paper.

5.5 There was no response from TVL upon receiving a copy of this working paper to the allegation that the phone lines had been cut.

5.6 There was no response from Air Vanuatu to the allegations that Marc-Neil Jones had been prevented from boarding the aircraft in Brisbane by someone "higher up."

Settlement of Marc Neil Jones' deportation

Because this issue of deportation was brought to court for determination of its legality by Mr. Jones, the Ombudsman was informed through a letter written to Mr. Jones by his legal representative dated 3 September 2001 that the Government agreed to an out of court settlement of the matter. See **Appendix S** for the agreed terms of settlement.

On October 25, 2001, the Ombudsman obtained a Consent Order from the Supreme Court stating the terms that were agreed upon between the government and Marc Neil Jones to settle this matter. (See **Appendix T**).

6. FINDINGS

Finding 1: **The Ombudsman finds that the removal order issued against Marc-Neil Jones was unlawful and in breach of section 17 (1A) of the Immigration Act.**

6.1 The Ombudsman finds that the Minister of Internal Affairs was in breach of the law by not complying with this section because he did not give notice, in writing, to Mr. Jones that he was going to make the order.

The Immigration Act was amended in 1998 by the late Father Walter Hadye Lini, then Minister of Internal Affairs. The Act was amended to fall into line with the provisions of natural justice and procedural and administrative fairness.

In summary, the amended section 17 (1A) provides that before making a removal order, the Minister "must give the person notice in writing" that the Minister is going to make the order, the reasons for the order, and that the person has fourteen days from the date of the notice to make written representations stating why they should not be removed from Vanuatu. (emphasis supplied.)

Finding 2 **The Ombudsman finds that the Minister of Internal Affairs, Barnabas Tabi was in breach of section 17 (1B) of the Immigration Act.**

6.2 Section 17 (1B) of the Immigration Act provides a directive to the Minister that he must consider the representations of the affected individual before making a removal order (emphasis supplied). Minister Tabi did not give Marc-Neil Jones any notice that a removal order was going to be made against him. Nor did he afford Mr. Jones the opportunity to be heard, a fundamental principle of any administrative action. The Minister acted illegally in issuing the removal order without hearing any representations from the individual affected by the action.

Finding 3: **The Ombudsman finds that the Minister of Internal Affairs, Barnabas Tabi, was in breach of section 17 (1C) of the Immigration Act.**

6.3 Section 17 (1C) clearly states that if the Minister makes a removal order he must record this decision in writing and include the reasons for the order. The Minister must provide copies of the order and the reasons to the individual and, if the individual was issued with a permit by the Foreign Investment Board (FIB), to the FIB within 48 hours of making the order. While the Minister provided a copy of the order to Mr. Jones within 48 hours of its issue, he did not provide him with any written reasons as required by law, and is therefore in breach of section 17 (1C) of the Immigration Act.

In an administrative action, when reasons are required by statute, a decision that is not accompanied by reasons can be set aside as erroneous in law upon judicial review. The Vanuatu Supreme Court obviously concurs with this view as lawyer John Malcolm successfully had the orders set aside upon application to the Court.

Finding 4: **The Principal Immigration Officer Lesley Garae and the Minister of Internal Affairs, Barnabas Tabi are in breach of section 21(5) of the Immigration Act by refusing to allow Marc-Neil Jones the right of appeal granted to him under this section.**

6.4 Section 21(5) of the Immigration Act clearly provides that an individual who is issued with a removal order may, within 14 days of receiving the order, appeal to the Supreme Court of Vanuatu which has jurisdiction to hear the appeal. Section 21(8) provides that the Court may confirm or revoke the Minister's decision, or make such other order as

the Court thinks fit. By issuing a detention and removal order to be executed within 24 hours there was obviously no attempt on the part of the Minister or the PIO to allow Mr. Jones to exercise his statutory right of appeal under this section. Therefore, both the Minister and the PIO were in breach of their obligations under the Act.

THE CONSTITUTION

Commentary

Chapter 2 of the Constitution of Vanuatu provides for the fundamental rights and duties of the individual. Article 5 provides for fundamental rights and freedoms to be afforded to all persons, subject only to any restrictions imposed by law on non-citizens.[6] These rights are subject to the respect for the rights and freedoms of others and the legitimate public interest in defence, safety, public order, welfare and health.

Finding 5: **The Ombudsman finds that the Minister of Internal Affairs and the Principal Immigration Officer blatantly denied Marc-Neil Jones his constitutional rights under Article 5 of the Constitution.**

6.5 Article 5 of the Constitution lists the fundamental rights and freedoms extended to all persons in Vanuatu subject only to restrictions imposed by law on non-citizens. In Vanuatu, a person has the right to liberty, security of the person, protection of the law, freedom of expression and equal treatment under the law or administrative action. As outlined above, the Minister and the PIO denied Mr. Jones his constitutional rights to liberty and security of the person by illegally and forcibly confining him and removing him from Vanuatu. Mr. Jones was not afforded protection of the law as he was denied reasonable access to his lawyer who would likely have obtained an interim order to prevent his deportation. He was denied freedom of expression in that the reason given for his removal was ostensibly for unbalanced reporting of leaked government documents.

Mr. Jones was denied equal treatment under administrative action when the Minister and the PIO acted illegally and in direct conflict with the provisions of the amended Immigration Act which gave him the right to be heard and to be given reasons for the action taken against him. Mr. Jones was denied equal treatment under the law by the Minister and the PIO's refusal to allow him to appeal the decision and remain in the country pending the decision of the Court.

The Ombudsman finds the Minister and PIO to have acted in breach of the Constitution, the supreme law of Vanuatu.

Finding 6: **The Ombudsman finds the explanation given by the PIO that he was simply following orders as a police officer and subject to disciplinary action if he did not execute an order from his commanding officer, Commissioner Bong in breach of his duties and obligations under sections 3 and 4 of the Immigration Act.**

6.6 Mr. Lesley Garae is a police officer appointed as Principal Immigration Officer and as such, has his own enabling legislation, the Immigration Act. For him to argue that he is subject to the command of Commissioner Bong is a direct breach of his duty as PIO.

Furthermore, it is noted that the detention and removal orders were signed by the Minister for Internal Affairs, to whom the PIO looks to for direction, and not the Commissioner of Police. Therefore, the Ombudsman finds that the PIO was acting under the direction of the Minister and not the Commissioner as was claimed.

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[6] While the Constitution does not detail these restrictions an example might be the minimum amount of vatu a foreign investor was expected to invest in Vanuatu, or the expectation that an individual would leave the country upon expiry of his tourist visa.

Finding 7: **The Ombudsman finds that by executing a clearly unlawful order the PIO was in breach of his duties and obligations under the Immigration Act.**

6.7 It is the duty of all government officers to be aware of their enabling legislation. To say that there was no time to examine the Act, as the PIO reported, to determine whether the orders were unlawful is blatantly unreasonable and contributed significantly to the illegality of the action.

BASIC HUMAN RIGHTS PROVISIONS

Commentary

Vanuatu is a member of the United Nations, and as such has international obligations. As a member of the United Nations, Vanuatu has pledged to promote universal respect for and observance of human rights and fundamental freedoms.[7] While the Universal Declaration of Human Rights (adopted by the General Assembly of the UN in 1948) has no binding legal effect on States Parties, it has an undeniable moral force, and provides practical guidance to States in their conduct. Its value rests upon its acceptance by a large number of States, and it then becomes declaratory of broadly accepted principles of human rights within the international community.[8] Thus the following articles have no legal weight in Vanuatu, but are generally accepted as international human rights norms.

THE UNIVERSAL DECLARATION ON HUMAN RIGHTS

Finding 8: **The Minister for Internal Affairs and the Principal Immigration Officer did not observe Vanuatu's international obligations and breached Marc-Neil Jones's human rights under Article 3.**

6.8 Article 3 provides that everyone has the right to life, liberty and security of the person. By illegally and forcibly removing Mr. Jones from his residence and deporting him to Australia, the Minister and the PIO did not observe Mr. Jones's right to liberty and security of the person.

Finding 9: **The Minister for Internal Affairs and the Principal Immigration Officer did not observe Vanuatu's international obligations and breached Marc-Neil Jones's human rights under Article 7.**

6.9 Article 7 states that [a]ll are equal before the law and are entitled without any discrimination to equal protection of the law. The Minister and the PIO denied Mr. Jones equal treatment under the law by refusing to notify him that an order was going to be made against him, and refusing to give him written reasons why the order was going to be made. They denied him protection under the law by not affording him time to exercise his statutory right to appeal to the Court.

Finding 10: **The Minister for Internal Affairs and the Principal Immigration Officer did not observe Vanuatu's international obligations and breached Marc-Neil Jones's human rights under Article 8.**

6.10 Article 8 provides that [e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. By denying him the right to appeal against the removal and detention orders, the Minister and the PIO were in breach of Mr. Jones' basic human right under Article 8.

Finding 11: **The Minister for Internal Affairs and the Principal Immigration Officer did not observe Vanuatu's international obligations and breached Marc-Neil Jones's human rights under Article 9.**

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[7] *The Universal Declaration of Human Rights* Adopted by the United Nations General Assembly December 1948.

[8] *Human Rights A Compilation of International Instruments (Vol 1 First Part)* United Nations: New York and Geneva, 1994, xii.

6.11 One of the most basic principles of human rights is reiterated in Article 9, [n]o one shall be subjected to arbitrary arrest, detention or exile. It could certainly be argued that the Minister and the PIO acted arbitrarily in the arrest, speedy removal and deportation of Mr. Jones. There were other avenues available to the Minister and the PIO. If they truly believed that Mr. Jones was a threat to national security they could have detained him in prison and followed proper procedures under the law.

Finding 12: The Minister for Internal Affairs and the Principal Immigration Officer did not observe Vanuatu's international obligations and breached Marc-Neil Jones's human rights under Article 19.

6.12 The right to freedom of opinion and expression is fundamental in a democratic country. Article 19 states that [e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Mr. Jones is the publisher of a newspaper which publishes articles critical of government policy. The Prime Minister and others have publicly stated that he had to be removed because of unbalanced reporting. Therefore, Mr. Jones's right to hold an opinion and express it through the Vanuatu Trading Post was not being upheld by the Prime Minister and his accomplices, the Minister of Internal Affairs and the PIO.

7. RECOMMENDATIONS

7.1 The Minister of Internal Affairs be made aware of the limitations and boundaries of his jurisdiction and powers under the Immigration Act, and not sign a clearly unlawful removal order.

7.2 The Minister of Internal Affairs consult with the Attorney General, who is the Chief Legal Advisor to the government before signing a removal order.

7.3 The Attorney General or delegate not succumb to political pressure and draft illegal removal orders at the request of politicians.

7.4 The PIO consider his enabling legislation and ensure that any removal order is issued lawfully, taking due consideration the time frame for notice and for appeal.

7.5 Section 3 of the Immigration Act [Cap 66] be amended to reflect that the duty and obligation of the PIO is to uphold the Immigration laws of Vanuatu, and not to any other body to which he may have been seconded.

7.6 The Prime Minister and the Minister of Internal Affairs be fully familiar with international instruments to which Vanuatu is a signatory, particularly those relating to human rights, to avoid any future embarrassment to the government and the citizens of Vanuatu. This could be done in the form of a booklet containing a list of all instruments ratified by the Parliament of the Republic of Vanuatu.

Dated the 31st day of October 2001

HANNINGTON G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

APPENDIX A.

Premier Ministre
République de Vanuatu

Prime Minister
Republic of Vanuatu

URGENT

Hon. Barnabus Tabi
Minister of Internal Affairs
Government of the Republic of Vanuatu
PMB 036
PORT VILA

January 12th, 2001

Dear Hon. Tabi,

RE: INSTRUCTION FOR DEPORTATION OF MR. MARK NEIL JONES FROM VANUATU

With reference to the Leaders' decision of 6th January 2001 and the information received from the Minister of Foreign Affairs, referenced MOFA/PM/8/01/SV.wt, and regarding the above person's continuous false information about Vanuatu to both local and foreign media has tarnished the image of Vanuatu.

In view of the long term consequences of such false information to the economic development and the stability of the country, by such persons the country cannot afford the continue to accept such person to abuse the freedom that the Government and people have kindly given him over the last 10 years.

I am more than convinced that Mr. Jones has from a number of occasions caused damage to the country, in his false reporting. Therefore I am instructing you with this letter to issue Deportation Order and appropriate instruments for Mr. Jones to be deported immediately from Vanuatu.

Your Sincerely,

REPUBLIC OF VANUATU
PRIME MINISTER, MINISTER FOR FA, CRP & PUB. SERV
PREMIER MINISTRE, MINISTRE DES AE, RG & FP
REPUBLIQUE DE VANUATU

Barak T. Sope Maautamate, MP
Prime Minister

Meeting 15/01/00

Cc: All Ministers
Commissioner of Police
Director of Immigration

MA
A/DG
AG
CP
PIO

AG - Advises:- Move collective evidence.
CP - Conduct investigations PNG
Further more evidence.
Media Information - Move Neil Jones

PIO 15/01/001

APPENDIX. B.

REPUBLIC OF VANUATU

SCHEDULE 6

(Regulation 6)

IMMIGRATION ACT [CAP. 66]

ORDER OF REMOVAL FROM VANUATU

It is hereby ordered that you **MARC NEIL JONES** shall within or on the expiry of fourteen days after service of this notice be removed from and remain out of Vanuatu indefinitely.

Dated at Port Vila the ....18.... **day of** ....January...., **2001.**

REPUBLIC OF VANUATU
MINISTER OF INTERNAL AFFAIRS
MINISTRE DES AFFAIRES INTERIEURS
REPUBLIQUE DE VANUATU

HON. BARNABAS TABI
Minister of Internal Affairs and
Minister responsible for Immigration

Executed by Supt L. Garae 19/01/001 0530 hrs
Witness by KARL. B.

APPENDIX. C.

REPUBLIC OF VANUATU

IMMIGRATION ACT [CAP. 66]

DETENTION ORDER

I, **BARNABAS TABI**, Minister of Internal Affairs and Minister responsible for Immigration **HEREBY DIRECT** pursuant to section 17(3) of the Immigration Act [CAP. 66] that **MARC NEIL JONES** be kept in prison or in police custody while awaiting his removal from Vanuatu and while being conveyed to the place of departure pursuant to the Order for his Removal from Vanuatu dated the day of , 2001.

Dated at Port Vila the 18 **day of** January **2001.**

REPUBLIC OF VANUATU
MINISTER OF INTERNAL AFFAIRS
MINISTRE DES AFFAIRES INTERIEURS
REPUBLIQUE DE VANUATU

HON. BARNABAS TABI
Minister of Internal Affairs and
Minister responsible for Immigration

Executed by Supt L. Gavae 19/01/001 0530hrs
Witness by KARL B Thompson

APPENDIX D.

By this letter I hereby appeal the orders on behalf of Mr Neil-Jones and require to be provided with full reasons for the decision (in the event it is not revoked) as above.

Refusal to provide reasons will result in applications for certiorari and mandamus. I hereby give notice that today I will be seeking orders on an interim basis for habeus corpus and injunction.

I believe the plane arrives at Brisbane at about 10.00 a.m., Vanuatu time. I request a decision prior to then.

Yours faithfully
GEOFFREY GEE & PARTNERS

John C Malcolm

cc: Prime Minister

cc: Principal Immigration Officer

cc: Commissioner of Police

APPENDIX. D

Geoffrey Gee & Partners

BARRISTERS, SOLICITORS AND NOTARIES PUBLIC

Second Floor, Raffee House, Kumul Highway
PO Box No.782, PORT VILA, VANUATU, SOUTH WEST PACIFIC
Telephone : (678) 22067, 23573. Fax : (678) 23710
E-mail: geoffgee@vanuatu.com.vu

Our Ref: 556/JCM/ka

URGENT

19 January 2001

The Minister of Internal Affairs
PMB 036
PORT VILA

BY FAX No: 27064

BY HAND

Dear Sir

RE: MARC NEIL-JONES

I have been instructed to act for the above detained, arrested and deported this morning.

During the course of events various unlawful and unconstitutional actions were imposed upon Mr Neil-Jones including assault in front of numerous witnesses.

Since 1988 each and every time such an event has occurred it has resulted in injunction and legal action against those involved and has cost the Government many millions of vatu for the natural justice breaches which are part of such action. As a result up to now this practice had fortunately ceased.

The wider problem caused is that investors may want nothing to do with Vanuatu as a result of their fear as to security. Mr Neil-Jones is a long term resident investor, owns a business and a home and is involved with various people. People wishing to come here invest in houses, business or the country generally will not do so and those already investing will attempt to pull out to protect their security.

On the above basis alone I ask you to cancel the orders by this correspondence.

In the alternative Mr Neil-Jones has been provided no reasons and no hearing for the decision. He is not facing any criminal charges and has no criminal past. Pursuant to S.17 of the Act the minimum period for such an Order is 14 days. Mr Neil-Jones was given 1 hour at 6 o'clock in the morning.

The 14 day period also is for the appeal purpose and the provision of reasons.

(5)

APPENDIX. E.

Civil Case No. 2001

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)

BETWEEN: **MARC NEIL-JONES** of Port Vila, a businessman

Plaintiff

AND: **THE ATTORNEY-GENERAL** representing the Republic of Vanuatu, and the Honourable Minister of Immigration

First Defendant

AND: **THE PRINCIPAL IMMIGRATION OFFICER** of Port Vila

Second Defendant

EX PARTE INTERIM ORDER

UPON HEARING Mr John Caldwell Malcolm for the Plaintiff, **AND UPON READING** the Affidavit of **GENE WONG** the **UNDERTAKING AS TO DAMAGE, THE STATEMENT OF CLAIM AND MOTIONS** and **UPON READING THE MEMORANDUM OF COUNSEL** filed herein **IT IS HEREBY ORDERED:**

1. Granting leave to the Plaintiff to bring an application for leave pursuant to Order 61, rule 2 for orders of prohibition, mandamus and other orders:

   (a) directing the first defendant and second defendant forthwith to issue and/or extend a permit, to enter and reside and work in Vanuatu to **MARC NEIL-JONES.**

   (b) prohibiting the defendant, his servants or agents, from any way interfering with the full rights and privileges of the Plaintiff.

   (c) releasing or prohibiting any custodial order pursuant to S.17(3) of the Immigration Act.

APPENDIX. E.

2. Pending the hearing of the application for orders referred to in order 1 above directing the first and second defendants forthwith:

(a) to issue and/or extend a permit, to enter and reside and work in Vanuatu, to **MARC NEIL-JONES** the above named Plaintiff to work and reside in Vanuatu.

(b) prohibiting the defendant, his servants or agents, from in any way interfering with the full rights and privileges of the Plaintiff to remain, reside, work, leave, return and more in or out of the Republic of Vanuatu pursuant to any passport or permit issued.

(c) releasing or prohibiting any custodial order pursuant to S.17(3) of the Immigration Act.

(d) releasing or prohibiting any removal order pursuant to S.17 of the Act.

(e) releasing or refusing any order prohibiting Marc Neil-Jones entering Vanuatu.

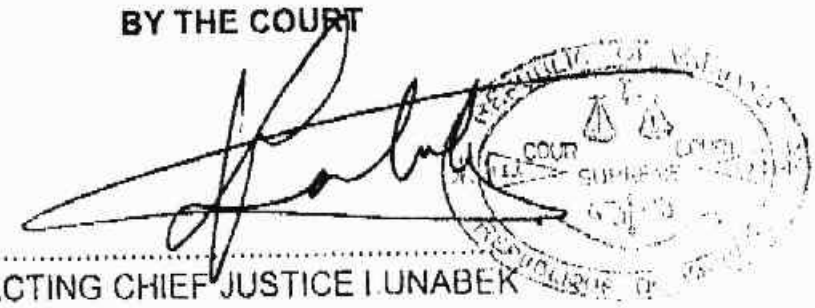
3. Fixing costs of and incidental to this application.

4. Costs reserved.

5 Return date on 9/2/01 at 9.00 o'clock

DATED at Port Vila this 19th day of January 2001.

BY THE COURT



ACTING CHIEF JUSTICE I UNABEK

OFFICE OF THE
OMBUDSMAN

APPENDIX . F.

OFIS BLONG
OMBUDSMAN

BUREAU DU
MEDIATEUR

PMB 081, Port Vila, Vanuatu
Tel: (678) 27200 / 26757
Fax: (678) 27140

(section 22)

NOTICE TO A WITNESS IN THE MATTER OF:

An enquiry by the Ombudsman of Vanuatu under the Constitution and Ombudsman Act No. 27 of 1998.

TO: THE MINISTER OF INTERNAL AFFAIRS
MR. BANABAS TABI

Pursuant to Article 62 (3) of the Constitution and section 22 of the Ombudsman Act No. 27 of 1998, You, being a person who in the opinion of the Ombudsman is able to give information relating to a matter that is being enquired into by the Ombudsman **ARE REQUIRED** to attend in person at the office of the Ombudsman at Pilioko House, Port Vila, second floor, on the **23rd** day of **JANUARY** 2001 at **9:00** o'clock in the .morning **AND UNTIL YOU ARE EXCUSED** from further attending, to give evidence in a **CONFIDENTIAL** matter being enquired into by the Ombudsman namely:

THE DEPORTATION OF MARC NEIL JONES, PUBLISHER OF THE TRADING POST

FURTHERMORE YOU ARE REQUIRED pursuant to Article 62 (3) of the Constitution and section 22 of the Ombudsman Act No. 27 of 1998 to bring with you and produce the following documents or papers you have in your possession or control, these being documents or papers which in the opinion of the Ombudsman, relate to a matter being enquired into by the Ombudsman and that may be in your possession or control:

1. A copy of the Deportation Order.
2. Copies of any other instructions issued to you from any other source
3. All other documents or papers relevant to this matter

TAKE NOTICE that if, having been given this notice to attend the office of the Ombudsman, you fail without reasonable excuse to attend the office of the Ombudsman or to produce any documents or papers in your custody or control that you may have been required by the notice to produce, you will be guilty of an offence under section 49 of the Ombudsman Act No. 27 of 1998 and be liable upon prosecution to a penalty of Vt 100,000 or imprisonment for 6 months or both, for each offence.

Given under the hand of the Ombudsman this 22 day of January 2001.

.....
ALFRED MAHO
Director of Leadership Code
per HANNINGTON G ALATOA
OMBUDSMAN

Our reference: 1106

OFFICE OF THE
OMBUDSMAN

APPENDIX G.

BUREAU DU
MEDIATEUR

OFIS BLONG
OMBUDSMAN

PMB 081, Port Vila, Vanuatu
Tel: (678) 27200 / 26757
Fax: (678) 27140

(section 22)

NOTICE TO A WITNESS IN THE MATTER OF:

An enquiry by the Ombudsman of Vanuatu under the Constitution and Ombudsman Act No. 27 of 1998.

TO: MR LESLEY GARAE, PRINCIPAL IMMIGRATION OFFICER

Pursuant to Article 62 (3) of the Constitution and section 22 of the Ombudsman Act No. 27 of 1998, You, being a person who in the opinion of the Ombudsman is able to give information relating to a matter that is being enquired into by the Ombudsman **ARE REQUIRED** to attend in person at the office of the Ombudsman at Pilioko House, Port Vila, second floor, on the **23 rd** day of **January** .2001 at **10:00** o'clock in the ..morning, **AND UNTIL YOU ARE EXCUSED** from further attending, to give evidence in a **CONFIDENTIAL** matter being enquired into by the Ombudsman namely:

THE DEPORTATION OF MARC NEIL JONES, PUBLISHER OF THE TRADING POST ON FRIDAY JANUARY 19, 2001

FURTHERMORE YOU ARE REQUIRED pursuant to Article 62 (3) of the Constitution and section 22 of the Ombudsman Act No. 27 of 1998 to bring with you and produce the following documents or papers you have in your possession or control, these being documents or papers which in the opinion of the Ombudsman, relate to a matter being enquired into by the Ombudsman and that may be in your possession or control:

1. A copy of the deportation order.
2. Copies of all instructions and directions issued to you by the Minister or any other individual.
3. All other documents or papers relevant to this matter

TAKE NOTICE that if, having been given this notice to attend the office of the Ombudsman, you fail without reasonable excuse to attend the office of the Ombudsman or to produce any documents or papers in your custody or control that you may have been required by the notice to produce, you will be guilty of an offence under section 49 of the Ombudsman Act No. 27 of 1998 and be liable upon prosecution to a penalty of Vt 100,000 or imprisonment for 6 months or both, for each offence.

Given under the hand of the Ombudsman this 22 day of January 2001.

Médiateur
Ombudsman

ALFRED MAHO
DIRECTOR OF LEADERSHIP CODE
Per HANNINGTON G ALATOA
(OMBUDSMAN)

11:05 pm
22/01/01

Our reference: 1106

GOVERNMENT OF THE REPUBLIC OF VANUATU

Private Mail Bag 048
Port Vila
Vanuatu
South West Pacific

Telephone : (678) 22362
Fax : (678) 25473

APPENDIX - H.

Our Ref: AG / /HB-cnt

STATE LAW OFFICE

January 23, 2001

Mr. Hannington G. Alatoa
The Ombudsman
Office of the Ombudsman
PO Box 126
PORT VILA

Dear Sir

Re: Enquiries into Deportation of Marc Neil Jones, Publisher of Trading Post

I have been informed that you have commenced an enquiry into the matter referred to above. I wish to make the following comments –

(a) Deportation of Marc Neil Jones from Vanuatu is now the subject of legal proceedings before the Supreme Court of Vanuatu;

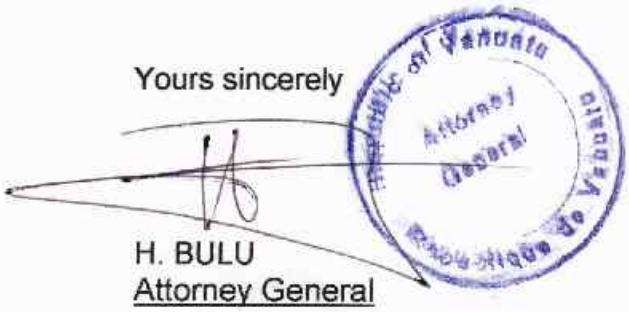
(b) Further hearing of the matter is scheduled for 9 February 2001;

(c) Continuation with the enquiry could amount to contempt of proceedings before the Supreme Court and could set a bad precedent;

(d) Continuation of the enquiry could raise Leadership Code questions as well while the matter is still before the Courts.

It seems to me that the proper position in the circumstances is to let the Courts deal with the matter and not interfere with it.

Yours sincerely



H. BULU
Attorney General

APPENDIX . I

Office of the Ombudsman
Bureau du Médiateur
Ofis blong Ombudsman

Our Ref: 1526/1106/L77/ag
(Please quote this reference in all correspondence)

January 24, 2001

MR HAM LISON BULU
Attorney General for Vanuatu
State Law Office
Port Vila

Dear Sir:

RE: REQUEST TO THE OFFICE OF THE OMBUDSMAN TO CEASE ALL INVESTIGATIONS IN THE CASE OF MARC NEIL JONES' DEPORTATION

We are writing with respect to the above matter.

You advised this office on Tuesday, January 23, 2001 that the Office of the Ombudsman was to cease all investigations into the deportation of Marc Neil Jones, publisher of the Trading Post, because the matter is now *sub judice*.

While this seems to be accepted practice, with respect, we can find no legal basis for this direction from your office. As you know, Article 62 (2) of the Constitution states that the Ombudsman may enquire into the conduct of all public authorities and departments, including the Office of the Attorney General. The Ombudsman can not look into the conduct of the President, the Judicial Service Commission, the Supreme Court and other judicial bodies. The word conduct in relation to enquires of the Ombudsman is defined in the Ombudsman Act as "any action or inaction, or alleged action or inaction relating to a matter of administration." However, our investigation is not looking into the conduct of the Supreme Court, nor is it examining the basis for a judicial decision. We are simply investigating the alleged maladministration on the part of the Principal Immigration Officer and the Minister for Internal Affairs in issuing the deportation order against Marc Neil Jones, something that is well within our jurisdiction to investigate.

Article 65 provides that the Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions. As outlined above, because the Ombudsman has the power to investigate the office of the Attorney General it can certainly be argued that there is no legal basis on which this office must act upon a directive from the Attorney General.

P.O.Box 126, Port Vila, Vanuatu Tel: (678) 27200 / 26575 Fax: (678) 27140
Email: ombud.vt@vanuatu.com.vu

APPENDIX I.

Section 18 of the Ombudsman Act gives the Ombudsman discretion to investigate certain complaints. However, section 19 specifically prohibits enquiries by the Ombudsman into matters that have previously been investigated; the reasons why a recommendation has not been followed or the action by a leader or agency to give effect to a recommendation of the Ombudsman. If it was the intent of the legislature to specifically exclude the Ombudsman from conducting an investigation into a matter that was concurrently before the court, then this should have been clearly provided for in the Ombudsman Act.

Section 22 of the Ombudsman Act states that evidence in proceedings before the Ombudsman is not admissible in any court, except in cases of perjury, or under Part 6 of the Leadership Code Act No 2 of 1998. Therefore, our findings are not admissible in evidence, and as such will not prejudice the case of either party before the court.

We respectfully submit these arguments for your consideration. Until we receive clarification or directions from a higher body, including a firm legal basis for your request, we are obliged to continue with our investigation in the deportation of Marc Neil Jones. To this end, we expect that Minister Tabi will attend at our office as required under his duly served Notice to a Witness.

Thank you for your consideration. We look forward to your response.

Yours faithfully

Alfred Maho
Officer In Charge and Director of Leadership Code
for Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

APPENDIX .J.

File Note

Statement of John Caldwell Malcolm

Date: 19th January 2001

RE: MARC NEIL-JONES

File Ref: 556

I was telephoned at 6.00 a.m. this morning and advised by Gene Wong, Neil-Jones had been arrested, dragged out to the airport and was being deported at 7.00 a.m.

I advised Mr Wong I doubted I could do anything in the short time and at that hour but would go out to the airport to try and see Neil-Jones.

I drove out immediately getting there at about 6.15 a.m. I walked into the airport and saw people I knew at the cafeteria - there was Margaret McFarlane with Robert Bohn and some others, next to them was Liz and Greg Pechan.

I asked them as a group if they had seen Neil-Jones. Margaret told me he was in the security area behind the screen you go through at customs to leave the country.

Margaret also said she had rung the British High Commissioner and that she'd seen Marc Neil-Jones being assaulted as he was dragged through the airport in front of everyone there. I walked behind the screen and there were two men in the customs desks one a small man with a uniform on.

I asked them if Marc Neil-Jones was there and could I see him. I told him I was his lawyer. They pointed to the door beside them.

I went to the door knocked and entered. Marc Neil-Jones was being kept standing in a corner. Between us was Lesley Garae and one other officer.

APPENDIX. J.

Marc Neil-Jones was in a bad state. He was dishevelled, crying and extremely upset. I could see no evidence of any injury.

He started shouting at me about Ghosh. I said calm down, told Lesley Garae I had been asked to act as Marc Neil-Jones lawyer. I asked Marc Neil-Jones if he had his shot for diabetes he said yes. Marc Neil-Jones continued to shout and I told him to be quite and asked if he had any papers. He gave me the deportation and the arrest orders.

I read them. The other officer let. I told Lesley Garae the documents were unlawful as Marc Neil-Jones was entitled to 14 days. Garae pointed to the order and said it meant within 14 days and was immediate.

I asked him to not deport immediately. That he could take Marc Neil-Jones to No.6 and hold him while I clarified it or got a Court Order.

He said no and started getting angry and up set. I was trying to stay calm.

He was shouting at me who was I to tell him what to do. I had no authority. His orders were from Commissioner Bong.

I said calmly I wasn't trying to order him I was just asking. Then I asked if we could ring Commissioner Bong to clarify it.

He said again I was ordering him and I said no just asking. I said I would pay for the telephone call and he accused me of bribing him. He was shouting I was ordering him around and what was I doing in a security area.

The small man with the uniform on outside had come in behind me. I am not sure when. Suddenly he was also shouting at me demanding to see a security pass. I said I was Marc Neil-Jones lawyer. He grabbed my arm and both he and Garae were shouting at me to leave or I would be arrested. I decided to leave.

I walked out and Garae followed me then he grabbed the papers off me and said they were not mine and jumped back into the room slamming the door before I could get the documents back. The little officer continue to push me out.

APPENDIX - J.

I went to Margaret to ask if she had a phone card I could borrow - no. She said she had borrowed the cafe phone.

I went up stairs to borrow Air Vanuatu's phone but it was locked. I went to the cafe and they said no so I went to the downstairs phone.

Joseph Laloyer was there and I said not to let Marc Neil-Jones on the plane - he shrugged and said he couldn't do anything but leant me his phone.

I tried the Court, the Police, Commissioner Bong the Court again there were no answers. I assumed I would be doing an urgent injunction.

I went home and contacted Donna McMillan the visa lady at the High Commission and advised they would have a problem on their hands. That I didn't think he had a passport with him.

I subsequently obtained an injunction at about 12.00 noon.

Dated 19th January 2001.

.....
John C Malcolm

556JCMSTM

MM

GOUVERNEMENT
DE LA
REPUBLIC DE VANUATU

GOVERNMENT
OF THE
REPUBLIC OF VANUATU

MINISTERE DE L'INTERIEUR

MINISTRY OF INTERNAL AFFAIRS

APPENDIX. L.

RECEIVED
29 JAN 2001
OMBUDSMAN

Our ref: MIA/701/12/BT/am

January 23rd 2001

Mr.Hannington G.Alatoa
The Ombudsman
Office of the Ombudsman
PO Box 126
PORT VILA

Dear Sir

Re: Deportation of Marc Neil Jones, Publisher of Trading Post

Your Notice of 22 January 2001 requiring me to appear before the Ombudsman in the matter of March Neil Jones refers.

I regret to advise you that the matter is pending before the Supreme Court. As such I am not in a position to provide you with any information or documents relating to the Removal of Marc Neil Jones from Vanuatu or appear before you as requested. To do so may amount to contempt of Court proceedings.

Yours sincerely

REPUBLIC OF VANUATU
MINISTER OF INTERNAL AFFAIRS
MINISTRE DES AFFAIRES INTERIEURS
REPUBLIQUE DE VANUATU

BARNABAS TABI
Minister of Internal Affairs

P.M.B 036, PORT VILA - TELEPHONE (678) 22252 - FAX (678) 27064 - TELEX 1040 VANGOV

APPENDIX - K.

British High Commission
Port Vila

KPMG House
Rue Pasteur
Port Vila
Vanuatu
PO Box 567

Telephone: (00 678) 23100
Fax: (00 678) 23651
Email: Michael.Hill@Vila.mail.fco.gov.uk

5 February 2001

Mrs Maureen McDowell
Office of the Ombudsman
Port Vila

Dear Mrs McDowell

MARK NEIL-JONES

1. You asked for a statement about the deportation of Mark Neil-Jones.

2. I can only refer you to our Diplomatic Note dated 23 January 2001 delivered that day to the Department of Foreign Affairs which describes our view of the event.

Yours sincerely

M T Hill

M T Hill

 INº 618 VTP : 24·01·01

PM wields axe over unfaithful civil servants

The Prime Minister has announced a clampdown on Civil servants who leak out state secrets or confidential Government information to the media.

The Prime Minister warned that what they are doing is illegal and they will dismiss those caught.

Investigations are now taking place by the police to find out the names of the civil servants who continue to leak out official confident information to the media, particularly Trading Post.

The police have even called up Trading Post to ask them how they get to have access to certain information which even the majority in Government are not aware of.

Having access to such information is done through what is called "investigative reporting".

It is a normal practice in the media industry to carry out investigative reporting when the information needed is not readily available.

It is a practice used throughout the democratic world.

Meanwhile the Prime Minister's latest warning to civil servants has sent shivers down the back of each and everyone of them.

It is going to make the task of the reporter all the more difficult to have access to information which are of public interest.

Bong replies to deportation

Police Commissioner Peter Bong said there are certain facts that should be clarified concerning the role of the Police in the deportation of Mark Neil Jones.

He said: "The authority for the removal of a person from this country rests with the Minister for Immigration.

"The Principal Immigration Officer (PIO) and his officers are responsible for enforcing the Immigration Act. He is not required to, nor does he report to the Commissioner of Police concerning his decisions."

In relation to the deportation of Neil Jones, Bong said the police were requested by the PIO to provide police escorts following the issuing of the Deportation Order signed by the Minister for Immigration. They did so acting on that request.

Commissioner Bong said, "Given that this matter is currently before the courts it would be improper to make further comment".

On Ghosh

On Amarendra Ghosh's dealings with Government, Bong said: " There has been much speculation and comment both in the media and the community about the activities of Mr Ghosh and his dealings with the Government.

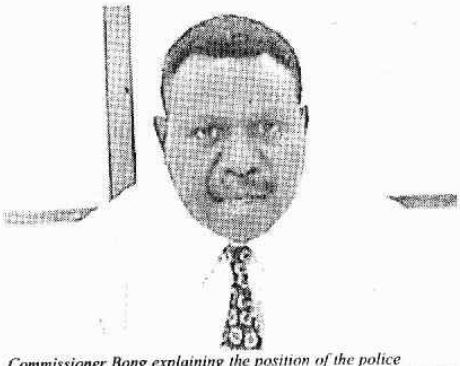
Commissioner Bong said, "The Police role in such matters is quite clear. We have a responsibility to act on allegations of criminal activity when made.

"At this point in time no allegations of criminal conduct have been made concerning the activities of Mr Ghosh in Vanuatu. The nature and detail of negotiations between Mr Ghosh and the government are of a commercial nature and as such are not a matter for the police to become involved in unless specifically requested to do so.

He said: "It must be remembered that mr Ghosh has been appointed by the current Government as a Consul General for Vanuatu.

"This allows Mr Ghosh certain privileges as a diplomatic representative of this government. Such an appointment however does not provide him with immunity from investigation or prosecution but it does allow him to be treated with a certain degree of diplomacy as a government appointee.

"It is therefore appropriate that any dealings with Mr Ghosh follow normal government protocol which would require the police to advise the Police Minister of any intended police investigation".



Commissioner Bong explaining the position of the police

He said the Vanuatu Police Force (VPF) has very good access to international law enforcement intelligence and they have been active in this area.

Where appropriate that intelligence has been passed to the government so that it can be considered in any proposed dealings they may wish to have with Ghosh. The Commissioner said, "The Government passed legislation last year to allow for the investigation of matters relating to money laundering and other high level suspected financial criminal activity.

"The legislation provided for the creation of a Financial Intelligence Unit that has since been formed and operates within the State Law Office of the Attorney General's Department".

Bong said he understands that the Prime Minister has requested the State Law Office review aspects of the current negotiations. He said the police are prepared to assist in any such inquiry if requested by the Government and will respond immediately to any reports of alleged criminal activity that may result.

Another suicide

Another suicide has been committed, this time by a young Santo woman- taking her own life after an overdose.

Dr Timothy Vocor, at the Northern District Hospital, said the actual tablets are not known.

The girl, in her early 20's, was said to have taken the tablets due to domestic problems.

"That is not the way to solve our problems," Dr Vocor said. He said young people should seek advice when they have a problem.

"There are pastors, medical people, and counsellors whom you can go to."

"You never know, your best friend might help you out."

According to a Pacific Youth Report of 1998, The Pacific has the highest youth suicide rates in the world.

While the male suicide rates tend to exceed those for females, the Pacific also holds the global record for the highest suicide rates among young women.

In Vanuatu, although there is little data available, among the reported cases of youth suicide, 90 percent of suicide attempts were among young women.

The reported and suspected causes of suicide in the Pacific most frequently reported in suicide notes or disclosed after failed attempts, is feelings by the young person that there is no one to turn to, to discuss his or her emotions- whether broken love, anger or frustration and alienation.

APPENDIX. M

MM

APPENDIX . N .

To : The Ombudsman
Mr. Hannington. Alatoa
Office of the Ombudsman
Port Vila.

From: CAPT. Bongran. Kalshem
Plans Officer
Joint Command Head Quarters
PMB 014, Port Vila

References; A. Deportation of Mark. N. Jones
B . Your Notice dated 29th January 2001

RE- DEPORTATION OF MARK.N. JONES

It is with the highest respect to your good office that this statement is submitted following your notice as per reference B above. This is to acknowledge having received your notice this morning.

As this matter is currently under investigation from your office, I believe that all information provided in my statement are given to the best of my knowledge and recollection of what happened.

It was on Thursday that I have been made aware of the instruction of the deportation of Mr. Mark. Neil. Jones. The deportation instruction has been read out to us by the Principal Immigration Officer at the VANSEC House at about 1800-1900 hours on the evening of Thursday the 18th January 2001.

We then execute the order singed by Minister. Barnabus Tabi at the early hours of Friday the 19th January 2001 at Mr. Mark. Neil. Jones home residence at Mele Maat Village.

There are about five of us who executed this order.

At the moment I have no copies of those orders in my possession as all copies of orders are with the Principal Immigration Officer, SUPT. Leslie. Garae.

This is all I can say to assist you in your investigations.

KARLSHEM. BONGRAN
CAPT
PLANS OFFR
JPOC

29 JANUARY 2001

JPOC JOINT PLANNING & OPERATION CENTRE

APPENDIX . O

GOUVERNEMENT
DE LA REPUBLIQUE
DU VANUATU

BUREAU DU PREMIER MINISTRE

GOVERNMENT
OF THE REPUBLIQUE
OF VANUATU

OFFICE OF THE PRIME MINISTER

OFFICE OF THE PRIME MINISTER
PRESS RELEASE
JANUARY 19TH, 2001

Vanuatu Government's patience runs out

Trading Post publisher, Mr. Marc Neil Jones is being deported, as the Government of Vanuatu's patience runs out.

Despite numerous attempts and reminders by the Government on balance reporting and media freedom, Trading Post publisher continues to publish unbalanced reports that have reflected negatively on various governments of Vanuatu, including this Government.

This Government has taken the decision to deport Trading Post publisher based on various negative and baseless reporting made recently some of which are:

Trading Post publisher has been investigating the Government of Vanuatu in almost every activity. Our information has revealed that the Trading Post Publisher has some sources in Government who have been providing state secret to him. He seemed to be getting access to confidential reports and continues to publish these reports despite being labeled 'state secret'.

His permit does not allow him to be involved in Vanuatu's internal politics of which, he has been heavily involved, not only during this Government.

His unbalanced and negative reporting continues to instigate instability and is detrimental to investor's confidence in Vanuatu.

He seemed not to appreciate that Vanuatu's culture must be respected even in media freedom.

Telephone: (678) 22413 - Private Mail Bag 053, Port Vila - Fax: (678) 22863

APPENDIX - O.

Plan refuse

Vanuatu is a sovereign nation and as such, Vanuatu's national interest is paramount. It's state secret must be protected. It's laws must be respected. It's Government must be accorded with respect.

This Government has been very lenient in that it had issued numerous warnings to him, on balance reporting. However, when these warnings are ignored, then this Government must act to protect its interest and its sovereignty.

OFFICE OF THE PRIME MINISTER

REPUBLIC OF VANUATU PRIME MINISTER'S OFFICE BUREAU DU PREMIER MINISTRE REPUBLIQUE DE VANUATU

POST VANUATU
ISSUE NO. 615 JANUARY 24 2001
Weather mostly Fine 30°

APPENDIX O.

NEIL-JONES "UNDESIRAB IMMIGRANT

Prime Minister Barak Sope will not back down from his Government's position to deport Trading Post Publisher, Marc Neil Jones.

If necessary they will look at changing the laws to give the Government the power to deport him again, he said.

Sope labelled Neil Jones an "undesirable immigrant" saying, a foreigner like him is not welcomed in the country.

The Prime MInister told television blong Vanuatu and Radio Vanuatu that Neil Jones' style of reporting is a "threat to the security of the country" and the Government won't allow a foreigner like him to come in to destabilise the country.

Neil Jones has been reporting on the Government 's alleged attempt to force the Reserve Bank of Vanuatu to issue $US50 millions worth of government bonds to the country's controversial honourary consul, Mr Amarendra Nath Ghosh. It was allegedly part of an agreement to allow a total of $US300 million worth of bonds to Ghosh over a certain period.

The request was rejected by the governor of the reserve bank, Mr Andrew Kausiana saying, it was illegal.

Sope said Neil Jones' reporting is unbalanced, not factual and irresponsible. Since state secrets are not for public consumption, he said Neil Jones has also broken the law by having access to such documents.

He said they already have the names of those civil servants who have leaked out confidential information to Trading Post. They will be dismissed.

Sope rubbished the Leader of Opposition who called for his immediate dismissal.

He said Natapei could not be serious, calling on leaders to disclose confidential information.

Furthermore, he asked if either Neil Jones or Natapei can employ the civil servants he is going to dismiss.

Or if they have the wealth to donate two garbage trucks, donate vt.10 million to Mateli Bai tidal wave victims, and pay the Police and VMF Outstanding Allowances.

So far Ghosh donated two garbage trucks, donated vt.10 million towards the Mateli Bay tidal wave victims, donated medicine to the hospitals and is the sole business man behind the money the Government relieves to pay out the outstanding entitlements belonging to the Police and VMF.

Meanwhile, Neil Jones cannot speak for himself as he was admitted to Vila Central Hospital this morning, suffering from emotional trauma.

His close friends advised that Neil Jones was tired, emotionally stressed, and mentally drained as a result of the Deportation Affair and the subsequent address to the public last night by the Prime Minister Barak sope.

Neil Jones hospitalised

His staff confirmed that he suffered a major breakdown at his home this morning after returning from having coffee with friends in town.

An ambulance rushed him to the hospital where he received emergency treatment.

Doctors have refused all visits to his private room except for his partner, Jenny. Neil Jones is a diabetic.

At time of TP going to press, his condition was reported as "becoming stable".

By Len Garne

PM Sope: We can no longer tolerate a foreigner like Marc Neil-Jones in

APPENDIX P

~~AAA~~/HGA

GOUVERNEMENT
DE LA REPUBLIQUE
DU VANUATU

BUREAU DU PREMIER MINISTRE

GOVERNMENT
OF THE REPUBLIQUE
OF VANUATU

OFFICE OF THE PRIME MINISTER

Mr. Hannington Alatoa
Ombudsman of the Republic of Vanuatu
PMB 081
Port Vila

February 15, 2001

Dear Sir:

RE: WORKING PAPER ON THE DEPORTATION OF THE PUPLISHER OF THE TRADING POST MARC-NEIL JONES FROM VANUATU

I had received and read your working paper on the above subject matter dated 7th February 2001. Ihad also noted the content of your report with much interest.

As the Prime Minister, the legal advice given by the Government lawyer as contained in your working paper, constitute the position of this Government. Hence, I see no necessity of a report as the matter is pending court decision. Besides your report would be a waste of Government resources since the implementation of the report would be deemed unrealistic.

Furthermore, I am fully aware that Mr. M N Jones is a personal friend of yours. As such, you should disqualify yourself from this case due to conflict of interest that could definitely amount to bias investigation and reporting.

Thank you for your kind understanding

Yours Sincerely

Barak T Sope Maautamate, MP
Prime Minister

Telephone: (678) 22413 - Private Mail Bag 053, Port Vila - Fax: (678) 22863

Mr. Hannington Alatoa
Ombudsman of the Republic of Vanuatu
PMB 081
Port Vila

February 15, 2001

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Thank you for your kind understanding

Yours Sincerely

Barak T Sope Maautamate, MP
Prime Minister

APPENDIX Q

HGA AM/MM

OFFICE OF THE POLICE COMMISSIONER
VANSEC HOUSE
P.M.B 014 - PORT VILA

REPUBLIC OF VANUATU

Telephone : (678) 26570
Fax : (678) 22800

The Honorable Ombudsman
Mr. Hannington ALATOA
Port-Vila

Our Ref: 01/02/26
Date: 12th February 2001

Dear Sir,

Re: WORKING PAPER ON THE DEPORTATION OF THE PUBLISHER OF THE TRADING POST MR. MARC NEIL JONES FROM VANUATU

We refer to your confidential working paper on the above subject matter.

Our first comment related to para 2.2. of the working paper. It would be appropriate for your office to reflect on part of Mr. Arthur VIRUA on behalf of the Attorney Géneral. We feel it is not appropriate to implicate the PIO and the Police as they were acting on an instrument singed by the Honorable Minister of Home Affairs. It was our belief . the PIO and the police were executing a genuine legal order sign by the Honorable Minister of Home Affairs. Furthermore, we were assured by those responsible that the order was drafted by the office of the Attorney General with consultation with the Acting Prime Minister.

Had the Minister or the government acted on the recommendations of the Police or Immigration Department we would have accepted being party to the case and will certainly have a good base to defend our self.

Secoundly, in para. 4.3 and 4.4 is misleading as Police Commissioner. is not a party to influencing the PIO or instructing him in any way to execute these orders. either than convey information to his knowledge being the truth from Government officials.

The orders was drafted in the usual Attorney General format and signed by the Minister of Home Affairs and to our knowledge then was a genuine instrument. The PIO acted upon an instruments which he believed to be genuine and lawful as assured by the political secretaries appeared in this report. He was not influence or instructed by the Police Commissioner in any way either than advised to execute the instrument

The police and the PIO have proved to be law abiding citizen to allow Mr. Mark Neil Jones, into Vanuatu, based on an interim legal documents from the court.

APPENDIX Q

2/2

Therefore, it is our views that police and PIO actions, were provoked by the Government.

According to our understanding the issue here is merely between Mr. Mark Neil Jones and the Prime Minister on behalf of the Government of the Republic of Vanuatu.

Peter BONG
Police Commissioner

COMMISSIONNER OF POLICE
VANUATU POLICE FORCE

APPENDIX R

MM

1/3

British High Commission
Port Vila

KPMG House
Rue Pasteur
Port Vila
Vanuatu
PO Box 567

Telephone: (00 678) 23100
Fax: (00 678) 23651
Email: Michael.Hill@Vila.mail.fco.gov.uk

12 February 2001

Mr Hannington Alatoa
The Ombudsman
Office of the Ombudsman
Port Vila

Dear Hannington

YOUR DRAFT REPORT INTO THE DEPORTATION OF MR MARK NEIL-JONES

1. Thank you for sending me a copy of your draft report for my comments, (although the standard letter sent seeking my comments is perhaps inappropriate). I am sorry I have not been able to reply before now but I have been away on Santo.

2. I have one or two comments, regarding paras 4.41, 42 and 43. Firstly, re 4.42, I was not asked by your office to "verify the information" in para 4.41. I was not informed of the PIO's remarks but had I been I would not have dignified them with any comment and nor do I propose to do so now, apart from to refer you to the final sentence of para 4.19 of the draft report. I would like to say however that all British Missions abroad have a duty to protect the interests and rights of British citizens in distress. When both I and my Acting Deputy High Commissioner attended at the airport it was in the pursuance of this consular duty. Further, it is Article 36, para 1 of the Vienna Convention on Consular Relations to which Vanuatu is a party, which affords consular officers the right to have access to and to assist their own nationals in detention, not the possession of an airport pass! I attach a copy of this Article for your reference.

3. In addition, with further reference to para 4.42, I do not recall saying bluntly that I did not want to give you a statement, but rather to the effect that before responding substantively I would have to consult London and revert in case such a statement could be construed as being political interference. The way the paragraph is drafted at the moment gives the impression of unhelpfulness when actually, in making the offer to consult London, I was trying to be the opposite. My letter to your office of 5 February is the result of my consultations.

APPENDIX R

2/3

4. Finally, regarding para 4.43 and its reference to my letter of 5 February, in referring you to the diplomatic Note delivered to the Department of Foreign Affairs, I assumed you would consult the Note itself, through the DFA. As the Note gives our view of the deportation, I hope you will still be able to do so.

5. Please let me know if you wish to seek my comments on any amendments you may make to the draft.

Regards

Michael Hill

M T Hill

APPENDIX R

3/3

EXTRACT FROM THE VIENNA CONVENTION ON CONSULAR RELATIONS (VCCR)

ARTICLE 36

Communication and contact with nationals of the sending State

1. With a view of facilitating the exercise of consular functions relating to nationals of the sending State.

(a) consular officers shall be fre to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State:

(b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expresly oposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the priviso, however, that the said laws and regulations must enable full effect to be given to the pruposes for which the rights accorded under this Article are intended.

FAXIN 04/9/01

APPENDIX 5

JURIS OZOLS & ASSOCIATES
ATTORNEYS

3 September 2001

Mr Marc Neil Jones
Managing Director
The Trading Post Limited
PO Box 1292
PORT VILA
VANUATU

FACSIMILE NO: 24111
NO OF PAGES: 2 *(including this page)*

Dear Marc,

RE: MARC NEIL JONES -v- THE ATTORNEY GENERAL
Civil Case No 01 of 2001

We appeared before Chief Justice Lunabek this morning and before going in to see him George Nakou of the State Law Office advised that they were prepared to make a counter offer of VT 250,000 in payment of general damages.

You will recollect that was the last outstanding item from their offer of settlement of 20th July, 2001.

We have accepted their offer and he estimates that it might take them a couple of weeks to make the payments.

Thus the final terms of the settlement are as follows:

1.	Airfare and accommodation and miscellaneous expenses	Agreed
2.	Telephone calls Vila to Brisbane	Agreed
3.	Legal fees paid to Geoffrey Gee and Partners	Agreed
4.	Medical fees for Marc Neil Jones	Agreed
5.	General damages of VT 250,000	Agreed
6.	Legal costs for me of VT 200,000	Agreed

APPENDIX S

7. Public apology for publication in all three papers Agreed

I have told George Nakou that I will draft up some Consent Orders and it would be helpful if I could let him have a draft of the public apology at that time. Perhaps you could do a first draft of that.

I look forward to hearing from you.

Yours faithfully
JURIS OZOLS & ASSOCIATES

Juris Ozols
Our Ref. JO/1003

APPENDIX T

CF

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

CIVIL JURISDICTION

CIVIL CASE 1 OF 2001

BETWEEN: **MARK NEIL JONES** C/- The Trading Post Limited, P O Box 1292, Port Vila, Vanuatu

Plaintiff

AND: **ATTORNEY GENERAL,** representing the Republic of Vanuatu, and the Honourable Minister of Immigration

First Defendant

AND: **THE PRINCIPAL IMMIGRATION OFFICER** of Port Vila

Second Defendant

CONSENT ORDER

With the Consent of Counsel for the Plaintiff and Counsel for the First and Second Defendants **IT IS HEREBY ORDERED**:

1. The First and Second Defendants pay the Plaintiff the sum of VT 412, 030 in damages;

2. The First and Second Defendants pay the Plaintiff his legal costs which are agreed at VT 1,010,545;

3. The payment referred to in Orders 1 and 2 above shall be made by no later than 15 November 2001

4. The First and Second Defendants are to publish the public apology annexed hereto in the next Saturday edition of the Trading Post and the Vanuatu Weekly.

5. The matter is hereby discontinued.

APPENDIX T

Dated at Port Vila this 19 day of October, 2001

JURIS OZOLS
Counsel for Plaintiff

HAMILSON BULU
The Attorney General

BY ORDER OF THE COURT

VINCENT LUNABEK
CHIEF JUSTICE

APPENDIX U.

CONSTITUTION OF THE REPUBLIC OF VANUATU

CONSTITUTION SUPREME LAW

ARTICLE 2 The Constitution is the Supreme law of the Republic of Vanuatu.

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

ARTICLE 5 (1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by the law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, places of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interests in defence, safety, public order, welfare and health-

(a) life;
(b) liberty;
(c) security of the person;
(d) protection of the law;
(e) freedom from inhuman treatment and forced labour;
(f) freedom of conscience and worship;
(g) freedom of expression;
(h) freedom of assembly and association;
(i) freedom of movement;
(j) protection for the privacy of the home and other property and from unjust deprivation of property;
(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of women of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.

(2) Protection of the law shall include the following-

(a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;
(b) everyone is presumed innocent until a court establishes his guilt according to law;
(c) everyone charged shall be informed promptly in a language he understands of the offence with which he is being charged;
(d) if an accused does not understand the language to be used in the proceedings he shall be provided with an interpreter throughout the proceedings;
(e) a person shall not be tried in his absence without his consent unless he makes it impossible for the court to proceed in his absence;
(f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed;

APPENDIX U

OMBUDSMAN ACT NO.27 OF 1998

FUNCTIONS OF THE OMBUDSMAN

11. (1) The Ombudsman has the following functions:

(a) to enquire into any conduct on the part of any government agency;

(b) to enquire into any defects in any law or administrative practice appearing from any matter being enquired into;

(2) The Ombudsman may exercise his or her functions:

(c) on his or her own initiative.

IMMIGRATION ACT CAP 66

PRINCIPAL IMMIGRATION OFFICER AND OTHER OFFICERS

3. (3) The Minister may from time to time give to the Principal Immigration Officer directions of a general nature, not inconsistent with the provisions of this Act, as to the exercise of any powers, directions or functions or the performance of any duties under this Act, and the Principal Immigration Officer and other immigration officers shall comply with any such directions.

POWER TO REMOVE PERSONS FROM VANUATU

17. (1) Notwithstanding any other provisions of tis Act, the Minister in his discretion may make an order in the form prescribed under this Act that any person, whether or not he is unlawfully present in Vanuatu, shall, on the expiry of 14 days or such longer periods as the Minister may specify from the date of the service of the order on such person or on the completion of any sentences of imprisonment which he may be serving be removed from and remain out of Vanuatu, either indefinitely or for a period to be specified in that order.

NO SUIT OR DAMAGES MAINTAINABLE FOR THINGS DONE IN GOOD FAITH UNDER THIS ACT

20. (1) No suit or other legal proceedings for damages shall be instituted in any court of law against the Minister or the Principal Immigration Officer or any other officer or any other person for or on account of or in respect of any act, matter or thing done

APPENDIX U

(g) no-one shall be punished with a greater penalty than that which exists at the time of the commission of the offence;

(h) no person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial.

ENFORCEMENT OF FUNDAMENTAL RIGHTS

ARTICLE 6

(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.

(2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce that right.

ENQUIRIES BY THE OMBUDSMAN

ARTICLE 62 (1) The Ombudsman may enquire into the conduct of any person or body to which this article applies-

(a) upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;

(b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Local Government Council; or

(c) of his own initiative.

(2) The Ombudsman may request any Minister, public servant, administrator, authority concerned or any person or person likely to assist him, to furnish him with information and documents needed for his enquiry.

(3) The Ombudsman shall grant the person or body complained of an opportunity to reply to the complaints made against them.

APPENDIX U

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 3

Everyone has the right to life, liberty and security of person.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

APPENDIX U

or omitted to be done or purported to be done or omitted to be done, in good faith, in the performance or exercise of any duty or power imposed or conferred by or under this Act; and the provisions of this section shall extend to the protection from liability as aforesaid of any person deputed by delegation under this Act or under any other law for the time being in force to perform or exercise any such duty or power aforesaid.

IMMIGRATION (AMENDMENT) ACT NO. 13 OF 1998

AMENDMENT TO SECTION 17 – POWER TO REMOVE PERSONS FROM VANUATU

17. (1A) Before making an order under subsection (1), the Minister must give the person notice in writing:

(a) that the Minister proposes to make the order; and

(b) the reasons why the Minister proposes to make the order; and

(c) that the person may, within 14 days- from the date of the notice, make written representations to the Minister stating why the person should not be removed from Vanuatu.

(1B) The Minister must consider the representations before making an order under subsection (1).

(1C) If the Minister makes an order under subsection (1), the Minister must:

(a) record the decision in writing and the reasons for making the order; and

(b) give a copy of the order and the reasons:

(i) to the person; and

(ii) if the person was issued with a permit under section 9A,9C or 9D – to the Foreign Investment Board;

within 48 hours of making the order.

SECTION 21 – APPEALS

(4) A Person against whom a removal order has been made may, within 14 days of receiving the order, appeal to the Supreme Court against the order.

(5) The Supreme Court has jurisdiction to hear and determine the matter.

(6) On an appeal against a removal order, the Court may:

(a) confirm or revoke the Minister's decision; and

(b) make such other order as the Court thinks fit.