

**REPUBLIC OF VANUATU  
OFFICE OF THE OMBUDSMAN**

PMB 081  
Port Vila  
Vanuatu

**PUBLIC REPORT  
ON THE  
DELAY IN GAZETTING LEADERS  
2001 ANNUAL RETURNS  
BY  
MR LINO BULEKULI dit SACSAC  
CLERK OF PARLIAMENT**

7 June 2002

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**ON THE**  
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**SUMMARY**

The Ombudsman is issuing this Public Report to illustrate how some leaders in the Vanuatu Government, may fail to observe and follow the law. This report is made about the Clerk of Parliament, Mr Lino Saksak who failed to comply with the provisions of the Leadership Code Act to gazette and publish the names of leaders who have submitted their Annual Returns and those who failed to submit their Annual Returns.

Section 32 (3) of the Leadership Code (Amendment) Act No.7 of 1999 states that **"the Clerk must publish in the Gazette on or before 14 March in each year the list of the leaders who have given or failed to give the Clerk their Annual Return"**. The list must set out the leader's name and the position the leader holds.

The Ombudsman commenced an enquiry into this issue of why there has been a delay in publishing and gazetting of the 2001 Annual Returns before 14 March 2001.

The Ombudsman found that the Clerk of Parliament failed to publish and gazette the 2001 annual returns of the leaders by 14 March 2001 as specified by s. 32(3) of the Code.

The Ombudsman also found that the delay to publish and gazette the 2001 Annual Returns was due to shortage of staff in the Parliament Chambers and shortage of budget.

The Ombudsman also found that the Clerk of Parliament Mr. Sacsac failed to comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution. He had a duty, obligation and responsibility to ensure that he complied with Section 32 (3) of the Leadership Code (Amendment) Act No.7 of 1999.

The Annual Returns were only gazetted and published in the Official Gazette on 17 May 2002. This was 14 months after it was due.

The Ombudsman therefore makes the following recommendations:

- The Public Prosecutor must decide within 3 months of receiving the report, whether there are sufficient grounds or evidence to support a prosecution under this Code.
- Part 4 of the Leadership Code Act be amended so that the provisions of the Annual Returns is administered by the Leadership Section in Office of the Ombudsman.
- The Government must make available sufficient budget each year to the Leadership Section to administer and enforce the Leadership Section.

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**TABLE OF CONTENTS**

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

## 1. JURISDICTION

- 1.1 The *Constitution* and the *Leadership Code Act* (LCA) allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the Speaker of Parliament, Mr. Lino Sacsac. The LCA gives authority to the Ombudsman to enquire in the conduct of the Speaker of Parliament, Mr. Sacsac who delayed in publishing and gazetting the list of leaders who have given or failed to give their annual return to be published in the Official Gazette. Failure or delay in publishing or gazetting of 2001 annual returns is in breach of s.32 (3) of the Leadership Code Act.

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

- 2.1 A preliminary report was sent out to those implicated in this report to provide an opportunity for them to respond to its contents. However, as there was sufficient grounds to indicate that the Clerk failed to observe and follow the provision of s.32(3) of the LCA the Ombudsman has decided to issue this public report.
- 2.2 The scope of this investigation was to establish the facts that the Clerk of Parliament failed to carry out his responsibilities as outlined in s.32(3) of the LCA, in publishing and gazetting of the list of leaders who submitted and those who failed to submit their annual returns on or before 14 March 2001. This is also to determine whether the Clerk of Parliament's conduct was in breach of the Leadership Code. The Ombudsman has made recommendations in this report following this misconduct and would like to request that the relevant authorities mentioned implement these recommendations.
- 2.3 This Office collected information and documents by informal request, summon, letters, interview and research.

## 3. RELEVANT LAWS, REGULATIONS AND RULES

### 3.1 CONSTITUTION OF THE REPUBLIC OF VANUATU

#### Constitution

Chapter 10 of the LCA, Articles 66 & 67 of the Constitution specifies the conduct of leaders and gives a definition of a leader. This can be viewed in **Appendix A**.

#### Leadership Code Act

Section 5 of the LCA No.2 of 1998 extends the list of leaders referred to in Article 67 of the Constitution. The full text of this section can be viewed in **Appendix B**.

#### Duties of Leaders

A leader has a duty, obligation and responsibility to observe and follow the fundamental principles of leadership outlined in section 13 (1) of the Act. This section of the law can be viewed in **Appendix C**.

#### Annual Returns

The Clerk of Parliament has an obligation to comply with section 32(3) of the Leadership Code Act as amended which states that, **the Clerk must publish in the Gazette on or before 14 March in each year a list of the leaders who have given or failed to give the Clerk an annual return. The list must set out the leader's name and the position the leader holds**".

#### 4. OUTLINE OF EVENTS

- 4.1 On **23 March 2001**, the Office of the Ombudsman opened an enquiry into this case due to the Clerk of Parliament's failure in fulfilling his duty, obligation or responsibility as specified in s.32(3) of the LCA that says:

"All annual returns must be given to the Clerk of Parliament by 1 March each year or within two months of becoming a leader. The Clerk must publish in the official Gazette on or before 14 March each year a list of the leaders who have given or failed to give the Clerk an annual return".

- 4.2 On **19 September 2001**, the Ombudsman wrote to Mr. Sacsac, about this alleged failure to observe and follow the law.
- 4.3 On **12 and 31 October 2001**, the Ombudsman sent reminder letters to Mr Sacsac but there was no response.
- 4.4 On **13 November 2001**, the Office of the Ombudsman wrote to Mr. Ham Bulu, Attorney General. Mr Bulu confirmed the State Law Office has not yet received any report about the annual returns from the Office of the Clerk of Parliament (see **Appendix D**).
- 4.5 On **21 November 2001**, the Office of the Ombudsman sent another reminder letter to about the annual returns to Mr. Sacsac.
- 4.6 Following this letter, the Ombudsman contacted the Parliament Secretariat on the phone several times to find out information about the publishing and gazetting of the annual returns but the Clerk was either has not called in the office yet or was busy.
- 4.7 On **21 December 2001**, Mr. Sacsac, Clerk of Parliament was summoned to the Office of the Ombudsman to give information about the publishing and gazetting of the list of leaders who submitted and those who failed to file their annual returns. (Refer to Statement of Interview in **Appendix E**).
- 4.8 On **22 January 2002**, the Office of the Ombudsman contacted the Office of the Clerk of Parliament again about the matter. The Office of the Clerk of Parliament advised that one of their officers was delegated by Mr. Sacsac to deal with the matter. However, there was no information about whether the list of leaders were published and gazetted.
- 4.9 On **23 January 2002**, the Office of the Ombudsman sent a 5<sup>th</sup> letter to the Clerk of Parliament on the alleged delay in publishing and gazetting of the list of leaders who submitted and those who failed to submit their 2001 annual returns. The Ombudsman reminded him about Section 32 (2) of the Leadership Code Act which gives him a legal obligation, duty and responsibility to publish and gazette the list of leaders (see copy of the Ombudsman's 5<sup>th</sup> letter in **Appendix F**).
- 4.10 On **19 March 2002**, the Office of the Ombudsman was advised by Parliament secretariat that the list of leaders' annual returns will be submitted to State Law Office.
- 4.11 This report is published as the result of the delayed process in publishing and gazetting of the list of leaders who submitted and those who failed to submit their 2001 annual returns. It is an alleged breached of Section 32(3) of the Leadership Code Act.

## 5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 A Working Paper was issued on this matter on 18 April 2002 to those concerned. Article 62(4) of the Constitution states that *"the Ombudsman shall grant the person or body complained of an opportunity to respond to the findings made against them."*

On 6 May 2002, the Ombudsman received a response from Mr. Donald Kalpokas, Care-taker Speaker of Parliament. He stated that:

*"I don't have much to say about the incident except to say that I came in to the Office of the Speaker 15<sup>th</sup> May, 2001. This was well over two months after the date of the Annual Returns. I might add that during the time of Annual Returns the Parliament itself was unstable. The Clerk was involved in a series of court cases.*

*Thank you for your information and recommendation."*

On 16 May 2002, the Ombudsman received a response from Mr. Lino Bulekuli dit Sacsac, Clerk of Parliament. He stated that:

*"with reference to the above mentioned Working Paper, we say that we have no specific response to make to the same as the Ombudsman is by law required to make any report as he/she deems fit.*

*As far as the List of Leaders who have given the Clerk an Annual Return and that of those who have failed to give the Clerk an Annual Return in 2001 are concerned, they were submitted to the Acting Attorney General on 29<sup>th</sup> April 2002 for Gazetting.*

*We do hope your office will make a good use of them when they are notified in the Official Gazette."*

Mr Sacsac indicated in his response to the Ombudsman's enquiry that the Annual Returns were submitted to the State Law Office on **29 April 2002**.

The State Law Office gazetted the Annual Returns on 17 May 2002. This is 12 months from the date it should have been gazetted.

## 6. PRELIMINARY FINDINGS

- 6.1 **Finding 1: THE CLERK OF PARLIAMENT, MR LINO BULEKULI dit SACSAC BREACHED SECTION 32 (3) OF THE LEADERSHIP CODE (AMENDMENT) ACT NO.7 1999.**

- 6.1.1 The Ombudsman found that the Clerk of Parliament failed to publish in the Official Gazette on or before 14 March 2001 as stated in Section 32(3) of the Leadership Code, the list of the leaders who have given or failed to give the Clerk their annual returns. The list must set out the leader's name and the position the leader holds.

- 6.2 **Finding 2: THE CLERK OF PARLIAMENT, MR LINO BULEKULI dit SACSAC BREACHED THE LEADERSHIP CODE UNDER ARTICLE 66 (1) (c) OF THE CONSTITUTION.**

- 6.2.1 As a leader, Mr Sacsac has a duty and responsibility to observe and follow the fundamental principles of leadership contained in Article 66 (1)(c). His uncooperative attitude in not responding to the Ombudsman's correspondences has allowed his integrity to be called into question because such attitude has delayed the Ombudsman's investigation into the publishing and gazetting of the list of leaders who submitted and those who failed to file their Annual Returns in 2001.



**6.3 Finding 3: THE CLERK OF PARLIAMENT, MR LINO BULEKULI dit SACSAC BREACHED SECTION 13 (1) (a) & (c) OF THE LEADERSHIP CODE ACT.**

As a leader, he failed to comply with Section 13 (a)&(c) of the Leadership Code Act that specifies for him to comply with and observe the law and comply with and observe the duties, obligation and responsibilities established by this Code, to ensure that the list of the leaders who submitted and those who failed to submit their Annual Returns were published and gazetted in the official Gazette on or before 14 March 2001.

**7. RECOMMENDATIONS**

**Recommendation 1:** The Public Prosecutor must decide within 3 months of receiving the report, whether there are sufficient grounds or evidence to support a prosecution under this Code.

**Recommendation 2:** Part 4 of the Leadership Code Act be amended so that the provisions of the Annual Returns is administered by the Leadership Section in Office of the Ombudsman.

**Recommendation 3:** The Government must make available sufficient budget each year to the Leadership Section to administer and enforce the Leadership Section.

Dated the 7<sup>th</sup> day of June 2002.



**Hannington G ALATOA**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**

**8. INDEX OF APPENDICES**

- A.** Articles 66 & 67 of the Constitution
- B.** List of leaders
- C.** Duties of Leaders
- D.** Mr Ham Bulu, Attorney General's response to our letter dated 13 November 2001
- E.** Statement of Interview
- F.** Copy of the Ombudsman's 5<sup>th</sup> letter to the Clerk of Parliament



## **Appendix A**

### **3.1 CONSTITUTION OF THE REPUBLIC OF VANUATU**

#### Constitution

Articles 66 & 67 of the Constitution specifies the conduct of leaders and gives a definition of a leader consecutively can be viewed in **Appendix A**.

#### Leadership Code Act

#### **CONDUCT OF LEADERS**

- 66.(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to-
- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
  - (b) demean his office or position;
  - (c) allow his integrity to be called into question; or
  - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

#### **DEFINITION OF A LEADER**

67. For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

## Appendix B

### The Leadership Code Act No.2 of 1998

#### Leaders

5. In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders:
- (a) members of the National Council of Chiefs;
  - (b) elected and nominated members of local government councils;
  - (c) elected and nominated members of municipal councils;
  - (d) political advisors to a Minister;
  - (e) directors-general of ministries and directors of departments;
  - (f) members and the chief executive officers (however described) of the boards and statutory authorities;
  - (g) chief executive officers or secretaries-general of local governments;
  - (h) the town clerks (or their equivalent in name) of municipal councils;
  - (i) persons who are:
    - (i) directors of companies or other bodies corporate wholly owned by the Government; and
    - (ii) appointed as directors by the Government;
  - (j) the Attorney General;
  - (k) the Commissioner and Deputy Commissioner of Police;
  - (l) the Solicitor-General;
  - (m) the Public Prosecutor;
  - (n) the Public Solicitor
  - (o) the Ombudsman
  - (p) the Clerk of Parliament**
  - (q) the Principal Electoral Officer;
  - (r) the Auditor-General;
  - (s) the Chairperson of the Expenditure Review Committee;
  - (t) the Chairperson when acting in that capacity of the Tenders Board;
  - (u) members of the Public Service Commission;
  - (v) members of the Teaching Service Commission;
  - (w) members of the Police Service Commission;
  - (x) members of the Electoral Commission;
  - (y) the Commander of the Vanuatu Mobile Forces.

## **Appendix C**

### **DUTIES OF LEADERS (LCA NO.2 OF 1998)**

S.13 (1) A leader must:

- (a) comply with and observe the law;
- (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;
- (c) comply with and observe the duties obligations and responsibilities established by this Code or any other enactment that affects the leader.

GOVERNMENT OF THE REPUBLIC OF VANUATU

Appendix D

Private Mail Bag 9048  
Port Vila  
Vanuatu  
South West Pacific

Telephone: (678) 22362  
Facsimile: (678) 25473  
E-mail: att.gen@vanuatu.com.vu



Our Ref: AG./JPS



STATE LAW OFFICE

18<sup>th</sup> November 2001

Mr Alfred B Maho  
Director of Leadership Code  
Office of the Ombudsman  
PMB 048  
Port Vila

Dear Sir,

**Re: Official Gazette on Leaders 2001 Annual Return**

We refer to the above matter.

We wish to confirm to you that our office does not receive any report on the above matter as yet.

Thank you for raising this issue to our attention and we will provide you with the information as soon as the information is at hand.

Please consult our office should you require more information concerning the matter.

Yours faithfully,

H. Bulu  
Attorney General

## STATEMENT OF INTERVIEW

DATE:	21 December 2001
TIME:	8:30am
PLACE:	Ombudsman's Office, Port Vila

NAME:	Mr Lino Sacsac
ADDRESS:	Parliament Chambers, PMB 052, PORT VILA
TELEPHONE:	22229
OCCUPATION:	Clerk of Parliament
EMPLOYER:	Vanuatu Government

I hereby declare that my statement is true to the best of my knowledge and belief, and is made by me knowing that I am liable to be taken to Court<sup>1</sup> if I willfully give information that I know to be false or do not believe to be true.

Signature.....

1. Have all leaders filed their Annual Return as required by section 31 of the Leadership Code Act?

Leaves notices on 30 January 2001.  
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2. If yes, have you forwarded a list of all the leaders who have given or failed to give their annual returns to the Attorney General's Office to be published in the Official Gazette as required by section 32 of the Leadership Code Act?

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 Peen name i stop  
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 General

3. If yes, when was it published?

<sup>1</sup> To face criminal charges

4. If no, why have you not carried out this duty required of you by the Leadership Code Act?

5. Are you aware that you may be in breach of section 32 of the Leadership Code Act for failing to provide the required documents to the Attorney General's Office?

Awore se mi breachin fra.

6. When will the information be published in the Official Gazette?

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7. Please provide any other information or documents that you think are relevant to this case.

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~~the~~ expense time we wifol a se bin  
budget from. Since yumi admenem here, blong

I have read this statement. It is true to the best of my knowledge and belief, and is made by me knowing that I am liable to be prosecuted if I wilfully give information that I know to be false or do not believe to be true. I have been able to correct, add, or alter anything I want.

Conkrom  
name is  
all under


Signed:



Date:

21/12/01

Received by:

 21/12/01





Office of the Ombudsman  
Bureau du Médiateur  
Ofis blong Ombudsman



Our Ref: 0146/1143/L34/lbs  
(Please quote this reference in all correspondence)

23 January 2002

Mr Lino B Sacsac  
Clerk of Parliament  
Parliament Chamber  
PMB 052  
PORT VILA

Dear Sir

**ALLEGED DELAY IN GAZETTING LEADERS 2001 ANNUAL RETURNS**

In our Interview dated 21 December 2001, you indicated that the information on the above subject will be published in the Official Gazette before the end of year 2001. Our records show that we have not yet received a copy of the Official Gazette on the Annual Returns. Please confirm whether or not this has been done.

Section 32 (3)(amendment) No 7 of 1999 of the Leadership Code Act says that:

"The Clerk must publish in the Gazette on or before 14 March in each year a list of the leaders who have given or failed to give the Clerk an annual return. The list must set out the leader's name and the position the leader holds."

Section 32 (2) gives you a legal obligation and duty to perform this task, however, if you failed it would be held as a breach of the leadership code.

Please respond to this letter. Please quote our reference number above in any correspondence.

Thank you for your assistance in this matter

Yours sincerely

Hannington G ALATOA  
OMBUDSMAN OF THE REPUBLIC OF VANUATU