

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

**PMB 9081
Port Vila
Vanuatu**

**PUBLIC REPORT
ON THE
UNLAWFUL ARREST, ASSAULT
AND DETENTION
OF
MRS ASPIN JACK**

16 December 2002

9158/2002/14

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1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the Police Force and its officers whose duty is to prevent and suppress crime.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this paper is to provide an opportunity for you to respond to its contents and, if possible, to resolve outstanding issues before this Office issues a public report.
- 2.2 The scope of this investigation is to establish the facts of the alleged improper conduct of police officers in regard to the arrest of Mrs. Aspin Jack and to determine whether the conduct of the officers concerned was proper.
- 2.3 This Office collects information and documents by informal requests, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

- 3.1 The Constitutional and Statutory provisions relevant to this report are mentioned in **Appendix M** to this report.
- 3.2 The Constitution provides for the fundamental rights and freedoms of the individual.
- 3.3 The Police Act provides for the preservation of peace and maintenance of order. In executing an arrest, the police officers may use such forces as may be reasonably necessary in order to prevent crime. The same Act also provides for the offences against discipline.
- 3.4. The Penal Code Act provides that no person shall without lawful authority arrest, detain or confine any other person against his will. Intentional assault on the body of another person is also prohibited.
- 3.5 The Criminal Procedure Code Act provides for the disposal of person arrested without warrant by the police officer.
- 3.6 The Force Standing Orders provides for procedures in executing an arrest without warrant.

4. OUTLINE OF EVENTS

- 4.1 On 8 August 1998 between 9 to 10 o'clock in the morning, the police officers arrested Mrs. Aspin Jack at her house and brought her to the Luganville Police Headquarters. At the Police Station, Superintendent Willie Samuel, who was the Officer Commanding Police District (Northern) [OCPD(N)], assaulted her and as a result of which Mrs. Jack sustained bodily injuries: a black eye and a cut on her lower lip. Her medical report is attached as **Appendix A**.

The witnesses to the incident were Inspector Robert Boe, Sgt Wilson Garae and Constable Raymond Brown Wormal.

- 4.2 On 13 August 1998, Mrs Jack was once again arrested at 10.00 pm. She was then brought to the Luganville Police Headquarters where she was detained in the cell No.6 until noon on the following day.

- 4.3 On 31 December 1998, the Ombudsman requested both the Police and the witnesses to provide information regarding the reasons behind the arrest, whether there was a warrant issued, whether a charge had been laid, and whether she was brought before an officer-in-charge of the police station or judicial officer.
- 4.4 In his response to the Ombudsman on 9 January 1999, Inspector Wilson Garae confirmed that the assault took place on 8 August 1998 after Mrs. Jack refused to go to her home island of Ambae on the plane. It was alleged that Mrs. Jack was having extra marital affairs with another person and as a result the chiefs of Santo and Ambae, with the consent of Mr Jack, decided to send her home on 8 August 1998 (**Appendix B**).
- 4.5 On 11 January 1999, Constable Raymond Brown Wormal also confirmed in his statement of witness that the assault actually took place (**Appendix C**: statement of witness). Senior Inspector Robert Boe, who was the Officer-In-Charge of General Duties, also confirmed the fact that Superintendent Willie Samuel assaulted Mrs. Aspin Jack but would say that the injuries were caused by a relative of Mrs. Toleville Kelep Ser, Mr Johnathan from Kole village.

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 On 25 July 2002 the Ombudsman asked the persons mentioned in the working paper to provide their comments on the subject matter of the inquiry:

Superintendent Willie Samuel (OCPD[N])
 Constable Raymond Brown Wormal
 Chief Inspector Robert Boe
 Mr. Holi Simon, Acting Police Commissioner
 Sergeant Wilson Garae
 Mrs. Aspin Jack

To date we only receive verbal comments from both Mrs. Aspin Jack and Sergeant Wilson Garae. However, their comments added nothing constructive to the subject of the inquiry.

6. FINDINGS

- 6.1 **Finding 1:** **The police authority together with the chiefs may have breached Mrs. Aspin Jack's constitutional rights as explicitly stipulated under Article 5 of the Constitution.**
 - 6.1.1 In taking the action to repatriate Mrs. Aspin Jack from Luganville to her home island of Ambae on 8 August 1998, the Police appear to have breached her constitutional rights of liberty and freedom of movement.
 - 6.1.2 Furthermore, upon her refusal to board the plane to Ambae, Mrs. Jack was assaulted by Superintendent Willie Samuel. This very act of assault, which resulted in a black eye and a cut on her lower lip, constitutes breaches of Article 5 (c)(e)(k) of the Constitution.
- 6.2 **Finding 2:** **In assaulting Mrs. Jack, Superintendent Willie Samuel appeared to have breached section 4 of the Police Act in not protecting life and enforcing the laws, and section 107 of the Penal Act.**
 - 6.2.1 Knowing very well that one of the Police functions is to protect life and enforce the laws of Vanuatu, Superintendent Willie Samuel went ahead to commit intentional assault on the body of Mrs. Jack,
- 6.3 **Finding 3:** **Superintendent Willie Samuel, who was in charge of police station appeared to have breached section 118 of the Penal Code Act in unlawfully arresting, detaining or confining Mrs. Jack against her will in cell No.6 on 13 August 1998.**

6.3.1 In arresting, detaining and confining Mrs. Jack against her will in cell No.6, the police officer, who executed the arrest, appeared to have breached section 15 of the Criminal Procedure Code Act.

6.3.2 As the officer in charge of the police station, Superintendent Willie Samuel [OCPD(N)] appeared to have breached section 19 of the Police Rules [Subsidiary - CAP 105] in assaulting Mrs. Jack while she was in his charge on 8 August 1998 and in his custody on 13 August 1998.

6.4 Finding 4: Superintendent Willie Samuel appeared to have breached the Police Force Standing Orders by unlawfully detaining Mrs. Jack from 13 August 1998 to the next day in the afternoon.

6.4.1 It is clearly stated in the Police Force Standing Orders that whenever a Police Officer arrests any person without a warrant that officer shall without unnecessary delay send that person to court or before the Officer in charge of the police station. As a court of law did not sit within 24 hours to hear the charge against Mrs. Jack, Superintendent Willie Samuel [OCPD(N)] should have inquired into the matter and if the strength of the evidence against Mrs. Jack was not substantiated, he (Willie Samuel) should have released her without unnecessary delay.

7. RECOMMENDATIONS

7.1 **Recommendation 1:** In abusing his power, Superintendent Willie Samuel [OCPD(N)] should be disciplined by the Police Service Commission for assaulting Mrs. Jack on 8 August 1998 and for unlawfully detaining her in cell No.6 from 13 August 1998 to the afternoon of the next day when she was released.

7.2 **Recommendation 2:** The Public Prosecutor should consider laying criminal charges against Superintendent Willie Samuel for the unlawful assault and detention of Mrs. Aspin Jack.

Dated the 16th day of December 2002.



Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A.** Copy of medical report
- B.** Copy of letter dated 9 January 1999
- C.** Copy of letter dated 11 January 1999
- M.** Relevant Laws, Regulations and Rules

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'A'

VANUATU POLICE FORCE
MEDICAL REPORT

To: Vanuatu Police

This is to certify that I have on the 28/08/98 at 8AM
(date) (hour)

at the NDH medically examined ASPIN JACK
(Hospital/Dispensary) (Victim)

as requested by the Vanuatu Police.

My findings after medical examination are as follows:

(I) BRUISED RIGHT EYE

(II) INNER LOWER LIP CUT

as a result of these findings, in my opinion, the victim was
victim was ASSAULTED

Dr. Dresser/Nurse ROBERT
Examining Medical Officer

Signature: [Signature]

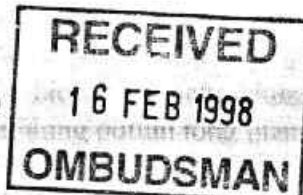
Date: 05/09/98

THE PUBLIC PROSECUTIONS DEPARTMENT



TEL: 36456
FAX: (678)36456

P.O Box 221
Luganville-Santo, Vanuatu
South West Pacific



DATE : 9 JANUARY 1999

OUR REF: 005/PDS/99/GW/tl

TO: MARIE NOELLE F. PATTERSON
OMBUDSMAN OF THE
REPUBLIC OF VANUATU
P O BOX 126
PORT VILA

YOUR REF:

Att: Patricia Kalpokas

Dear Madam,

RE: POLICE ASSAULT

Your ref. 6181/9158/145/wg of 27 January 1999 mi no correspond quickly mi stap long vocational leave, we mi resumed duty long 1 February 1999.

Long inquiries blong investigation blong you concernem wan assault we I tekem ples long 8 August 1998 long Police station long Santo long woman ia Mrs Aspin Jack we hemi alleged se superintendant Willie Samuel I assaultem.

As being a Prosecutor mi wandem talem se long view we mi gat mi luk se assault ia hemi wan act beyond the power of a Senior officer.

Mi been present insaet long investigation department taem we superintendant Willie Samuel I talem long Aspin Jack taem we istap slappem hem wetem left hand blong hem, se Police station ia hemi blong hem mo hemi gat right blong doem any thing I wandem.

Mi save recallem tht slapped ia hemi mo than 6 times we I mekem face blong woman ia swell up, sametime mo igat cuts long lips blong hem.

Back ground blong case ia hemi olsem but bae mi no save go long details tumas forom mi no save good.

Nao Mrs Aspin Jack man blong hem Peter Jack and Aspin ino wandem man blong hem mo stap in love wetem wan chief blong Kole. Mekem se ol chieves long Santo oli

B

holem meeting mo decide se Aspin Jack bae I must go long Ambae we Peter Jack tu I agree wetem decision, hemi blong Aspin istap away long chief blong Kole ia blong hemi no stap kalkal I kam long town forom tufala every one I marries.

Nao man blong woman ia I payem ticket blong plane under long unlawfull order blong chiefs blong sendem woman ia againstem rights blong hem blong go long Island of Ambae.

Woman ia I should fly long namba 8 August 1998 long morning, mo sametime Chief Robert Boe mo sametime hemi Senior Insp. Blong Police hemi chose blong breakem constitution and penal code blong Vanuatu blong orderem Police blong go tekem Aspin long house blong hem blong putum long plane.

Taem Police oli go woman ia I refuse blong ko , mekem se Police I karem hem ikam long Police station mo mekem se Superintendant Willie Samuel I tok long hem forom refusal moslappem hem. All information ia we mi talem ia hemi ia oli cone out taem we mi presence during detention hearing long taem blong assault. Mi lukim assault se ino stret mi should not mekem report ia, but forom name blong mi I been kam out se mi presence we mi confirmem se yes mi presence long time ia.

Mifala I present, igat man blong woman ia Peter Jack, Police constable Brown Womal, Insp Robert Boe. Mifala every one I lukim event a. Afta long hemia Police truck I karem mo Willie Samuel I promise se I must go long Ambae.

And matter ia ino finish yet, some times later Police oli arrestem bakeken mo sareem long namba 6. Full story superintendant Nigel Qwai bae I tale mo Sergeant Frank Aga.

As a prosecutor mi think se detention ia full night and half dayi unlawfull.

Mi requestem name blong mi I strictly covered until full report ikam out, mino favourem any one, but I want the law and justice must prevail at all level , we all time Police I wandem side wetem chiefs we chiefs no save where now road.

Mi ready blong answer any query.

Your servant


INSP. WILSON D. GARAE



PROCESS VERBAL
AUDITION DE TEMOIN
STATEMENT OF WITNESS

Document No:
Public Prosecutor

Station: SANTO
Date: 11/04/99 No: _____ Place: POLICE OFFICE Time: _____
Name: RAYMOND BROWN Surname: WORMALD Nationality: ni-vanuatu
Age: 46 Home Island: MOTALAVA BANKS Statement Taken in: BISLAMA
Son/Daughter of: NASON and of: ALICE Interpreter Yes/No _____
Occupation: POLICE OFFICER Name: _____
Address: LUGANVILLE POLICE HQ. SANTO
Religion: ANGLICAN

I hereby declare that my statement is the expression of the truth to the truth to the best of my knowledge and belief and is made by me knowing that I am liable to be prosecuted Criminally if I wilfully give information which I know to be false or do not believe to be true.

Mi talemout se tok blong mi ia i tru. Mi save se bambae mi go long kot suppose mi tok be mi kiaman, o suppose mi talemout ol ting we mi no ting se oli true.

Signature: 

Mi Raymond BROWN WORMALD, Mi wandem witnesem wan case belong ASSAULT we ASPIN JACK blong West Ambae i mekem againstem SUPT. Willie Samuel, long date ia 18th August, 1998.

Mi wandem talem sei from case ia five (5) Months i pass finis mi stap forgetem finis. Mo mi forgetem sei long wanem day.

But mi save talem sei problem belong ASPIN JACK wetem man belong hem Peter JACK, tufala i still seraot yet i stap nao ia. From sei ASPIN i stap committen Adultery wetem wan man Hog-Harbour East Santo. So i mekem sei Home belong tufala i still brokbrok yet kasem nao ia.

Mo reason ia nao mifala i tekem ASPIN wetem man belong hem i kam long Office long Police Station belong toktok wetem tufala, but mifala i lockim sei ASPIN ino behave nating insaed long Office mo ino soem gud Manner insaed long Office. So i mekem sei SUPT. Willie Samuel i slapem check belong hem two (2) times.

But sipos ASPINE i gat respect mo gud Manner mo behave gud insaed long Police Office bambae samting ia ino save happen long hem.

statement written down by the witness and received by us
 declaration, Faite de la main de temoin et recue nous.

PO. 283

Officer de Police a la Residence
 Police Officer stationed _____

Le _____ a _____ et signed _____
 The 11/01/99 at 06 hrs 30 and signed *RBH*
 after being read over by us and the witness _____

The witness not knowing how to sign, his/her statement was
 read out to him/her in the presence of _____ who
 was signed the present report with us.

Le Temoin/The witness

L'officer de police

Interpreter

L'Interpretar

R.B. WORMALD

APPENDIX 'M'

RELEVANT LAWS, REGULATION AND RULES

3.2 CONSTITUTION

CONSTITUTION OF THE REPUBLIC OF VANUATU

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

5. (1) The Republic of Vanuatu recognises, that, subject to any restriction imposed by 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, place of origin, religious or traditional beliefs, political opinions, languages or sex but subject for the rights and freedoms of others and to the legitimate public interest 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 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 the law...

ENFORCEMENT OF FUNDAMENTAL RIGHTS

- 6 (1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been or 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 the right.

3.3 POLICE ACT [CAP 105]

FUNCTIONS OF THE FORCE

4. (1) It shall be an essential duty of the Force to maintain an unceasing vigilance for the prevention and suppression of crime.
- (2) The Force shall be employed throughout Vanuatu and its territorial waters for:

- (a) the preservation of peace and all the maintenance of order;
- (b) the protection of life and property;
- (c) the enforcement of laws...

USE OF REASONABLE FORCE

36. Any member of the Force may use all such force as may be reasonably necessary in order to prevent crime or to effect or assist in effecting a lawful arrest.

DISCIPLINARY POWERS OF THE COMMISSION

- 67 (1) A charge of an offence against discipline alleged to have been committed by a senior officer shall be reported by the Commissioner without unnecessary delay to the Commission which shall inquire into the truth of the charge.

POLICE RULES

OFFENCE AGAINST DISCIPLINE

- 19 Any member of the Force who -
- (a) is disrespectful in word, act or demeanor to a superior officer;...
 - (k) threatens, assaults, maltreats or neglects any person in his charge or in the custody of the Force;...
 - (z) does any act or makes any omission likely to bring discredit upon the Force or is guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline not elsewhere specified in these rules;

shall have committed an offence against discipline.

3.4 PENAL CODE ACT [CAP 135]

INTENTIONAL ASSAULT

107. No person shall commit intentional assault on the body of another person.

Penalty: (b) if damage of a temporary nature is caused, imprisonment for 1 year;

FALSE IMPRISONMENT

- 118 No person shall without lawful authority arrest, detain or confine any other person against his will.

3.5 CRIMINAL PROCEDURE CODE ACT [CAP 136]

DISPOSAL OF PERSON ARRESTED BY POLICE OFFICER

- 14 A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein contained as to release from custody, take or send the person arrested before a judicial officer or before an officer in charge of a police station.

3.6 FORCE STANDING ORDERS

- B(1) an "arrest" means taking a person into lawful custody to answer a criminal charge before the court.

- F(1) When a Police Officer arrests any person without warrant, that officer shall without unnecessary delay take or send that person, (a) to Court, (b) before Officer in Charge of a police station.
- (2) It is the responsibility of the officer in charge of the Police Station, if the Court is not sitting within 24 hours, to inquire into the case, the officer in charge will consider - the seriousness of the offence, the strength the evidence against the prisoner.
- (3) After inquiry, the officer in charge of the Police station will make one of the following -
- (i) release the person from custody not enough evidence,
 - (ii) release the prisoner on bail,
 - (iii) keep the person in custody.