

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PUBLIC REPORT
ON
ALLEGATIONS OF
POLICE VIOLENCE ON SANTO

11 August 2003

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**PUBLIC REPORT ON
ALLEGATIONS OF POLICE VIOLENCE ON SANTO**

SUMMARY

This report encompasses four allegations of police violence that the Ombudsman office received, all relating to alleged Police and VMF violence in Santo during 2000 – 2001. In none of these cases could sufficient medical or other evidence be found to justify a recommendation that criminal charges be laid, however the Ombudsman believes that there is reasonable evidence of a pattern of violence and other unlawful action by Police and VMF officers based in Luganville during this period.

Given that the Ombudsman has been unable to find evidence that is likely to secure a prosecution in any of these cases, no prosecutions are recommended.

However, the Ombudsman recommends that the Commissioner of Police review the material presented in this report and discuss with senior officers ways to control unlawful conduct and eliminate the culture that allows such conduct to become accepted police practice.

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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 government agencies. This includes the Vanuatu Police Force.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution and the Ombudsman Act.
- 2.2 The scope of this investigation encompasses four allegations of police violence that the Ombudsman received relating to the period 2000 – 2001. In none of these cases could sufficient medical or other evidence be found to justify a recommendation that criminal charges be laid, however the Ombudsman believes that the combined effect of the complaints constitutes reasonable evidence of a pattern of unlawful police action, including violence, by police based in Luganville during the period mentioned.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS

Relevant parts of the following laws are reproduced in **Appendix A**.

CONSTITUTION OF THE REPUBLIC OF VANUATU PENAL CODE [CAP 135]

4. OUTLINE OF EVENTS

- 4.1 This section deals with each of the four allegations in turn.

Allegation 1 – Klinim Not 2000

- 4.2 The Ombudsman received a complaint that alleged widespread police brutality during "Operation Klinim Not". Specific allegations included beatings, assaults and sexual assaults on people already held in custody, as well as detention without charge, in relation to approximately 50 individuals. As these matters were the subject of a private legal action, the Ombudsman declined to investigate, however the case was decided by the Supreme Court in favour of the majority of complainants and damages awarded to them.

Allegation 2 – Assault and threats with firearm

- 4.3 The Ombudsman received a complaint that, on 8 January 2000, VMF officers entered a house outside Luganville to arrest a man, however in the process of doing so they assaulted his father without jurisdiction – breaking three of his front teeth – kicked him and threatened him with a firearm. At the time, the officers were said to have covered their faces with cloth, making it impossible for the victim to identify them.

Allegation 3 – Assault, detention and exceeding jurisdiction

- 4.4 The Ombudsman received a complaint that, on 14 January 2000, VMF officers intervened in a private, civil dispute, namely the separation of a husband and a wife. Although there was no evidence of criminal conduct by either party and no criminal complaint had been laid with the police, officers allegedly attended the husband's house, ordered him to attend the police station and then assaulted him, compelled him to perform sexually degrading acts before the officers and threatened him with further action unless he took back his wife.

- 4.5 Subsequently, on 17 January 2000, officers again took the husband to the police station, swore at him, assaulted him – leaving him with a bleeding nose and bodily bruising – and threatened to throw him from the upper floor of the police station building unless he took back his wife.
- 4.6 It was also alleged that a senior police officer subsequently attempted to intervene to prevent island chiefs from meeting to resolve issues surrounding the marital separation.

Allegation 4 - Assault

- 4.7 The Ombudsman received a complaint that, on 8 January 2001, police officers attended a village in South Santo in response to a complaint, then proceeded to assault six men alleged to have been involved. The assaults allegedly took the form of kicking and beating on various parts of the body.
- 4.8 In this case, the police officers allegedly involved were identified and interviewed. Although the use of excessive force was denied, one officer then stated that police do use excessive force in order to deter people from committing offences.

5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 No responses were received in relation to the working paper.

6. FINDINGS

- 6.1 **Finding 1: The Ombudsman finds that there is reasonable evidence of a pattern of unlawful behaviour amongst some police and VMF officers in Santo during 2000 – 2001.**
- 6.1.1 Actions mentioned in these complaints, if proven in a court of law, would violate the fundamental rights of all people under article 5 of the Constitution and also breach various provisions of the Penal Code [CAP 135].

7. RECOMMENDATIONS

- 7.1 Given that the Ombudsman has been unable to find sufficient proof and evidence that is likely to secure a prosecution in any of these cases, no prosecutions are recommended in this report.
- 7.2 However, the Ombudsman believes that these investigations show reasonable evidence of a pattern of conduct within the Police and VMF at the time that involved unlawful use of force against citizens.
- 7.3 The Ombudsman recommends that the Commissioner of Police review the material presented in this report and discuss with senior officers, ways to control unlawful conduct and eliminate the culture that allows such conduct to become accepted police practice. No one is above the Law.

Dated the 11th day of August 2003.



Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

A Relevant laws

CONSTITUTION OF THE REPUBLIC OF VANUATU

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

5.(1) The Republic of Vanuatu recognises, that, subject to any restrictions 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, language or sex but subject to respect 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 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 presence;
- (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;
- (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.

PENAL CODE [CAP 135]

INTENTIONAL ASSAULT

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

Penalty:

- (a) if no physical damage is caused, imprisonment for 3 months;
- (b) if damage of a temporary nature is caused, imprisonment, for 1 year;
- (c) if damage of a permanent nature is caused, imprisonment for 5 years;

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- (d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years.

FALSE IMPRISONMENT

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

Penalty: Imprisonment for 3 years.

ABUSIVE OR THREATENING LANGUAGE

121. No person shall in a public place use threatening or abusive words, or threatening gestures, towards any other person or persons.

Penalty: Imprisonment for 3 months.