

**REPUBLIC OF VANUATU  
OFFICE OF THE OMBUDSMAN**

PMB 9081  
Port Vila  
Vanuatu

**PUBLIC REPORT  
ON THE  
DETENTION OF A 12-YEAR-OLD  
CHILD IN SANTO PRISON**

24 February 2003

0114/2003/02

**PUBLIC REPORT ON THE  
DETENTION OF A 12 YEAR OLD  
CHILD IN SANTO PRISON**

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## 1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government and related bodies including police and prison authorities. The Ombudsman can also look into defects in laws or administrative practices, including the conditions under which citizens are detained in custody.

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

- 2.1 The purpose of this paper is to present the Ombudsman's findings as required by the Constitution.
- 2.2 The scope of this investigation is to establish the facts about the detention of the then 12-year-old Parmabet Tuia in Santo Prison awaiting his trial and determine the legality of the detention practices adopted in his case.
- 2.3 For clarity, the Ombudsman wishes to state that the scope of this investigation does *not* include:
- The decision of the police to arrest Parmabet Tuia;
  - The decision of the Court not to grant bail; or
  - The conviction or sentence handed down by the Court at his trial.

## 3. RELEVANT LAWS, REGULATIONS AND RULES

- 3.1 Relevant parts of the following laws are reproduced in **Appendix C**.

CONSTITUTION OF THE REPUBLIC OF VANUATU  
OMBUDSMAN ACT NO.27 OF 1998  
CONVENTION ON THE RIGHTS OF THE CHILD (RATIFICATION) ACT NO.26  
OF 1992  
CONVENTION ON THE RIGHTS OF THE CHILD

## 4. OUTLINE OF EVENTS

- 4.1 In September 1999, when aged 12 years, Parmabet Tuia killed a nine-year-old child in his village.
- 4.2 He was taken by police to court, charged and remanded in custody. He was not granted bail.
- 4.3 While in custody awaiting trial, he was held in Santo prison for five months in the same cells as other, adult, prisoners.
- 4.4 On 2 March 2000, Parmabet Tuia appeared before the Supreme Court and was found guilty of unintentional harm causing death. He was sentenced to 8 months imprisonment, less five months he had already served, and the remaining three months was suspended for two years.

## 5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Responses from Sgt. Peter Dini and Cpl. Wycliff Tarilenga are reproduced in **appendices A and B**.
- 5.2 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. No responses were received to the working paper.

## 6. FINDINGS

6.1 **Finding 1:** **The Ombudsman finds that the detention of Parmabet Tuia in the same cells as adult prisoners breached Vanuatu's international obligations under the Convention on the Rights of the Child.**

6.1.1 Article 37(c) of the Convention on the Rights of the Child states that children held in custody must be separated from adults unless it is in the best interests of the child not to do so. There were no countervailing interests of the child in this case.

6.2 **Finding 2:** **The Ombudsman finds that no suitable facilities exist in Santo nor in the country as a whole for detention of children.**

6.2.1 Accordingly, police and prison officers cannot be blamed for the decision to place Parmabet Tuia in prison with adult prisoners.

6.3 **Finding 3:** **The Ombudsman notes previous reports by this office that have found prison conditions in both Port Vila and Santo to be grossly unacceptable and in breach of Vanuatu's obligations under various international treaties and conventions relating to human rights.**

## 7. RECOMMENDATIONS

7.1 The Ombudsman is aware of continuing efforts by various governments and the Ministry of Internal Affairs to obtain internal or donor funding for new prison facilities in Port Vila and Luganville. Given that the maladministration detailed in this report was principally caused by lack of proper detention facilities and that there is an acknowledged lack of funds for new facilities, the Ombudsman can only recommend that Government continue its efforts to attract much needed funding.

7.2 In the on-going effort above, relevant authorities should consider alternative means of detention of children and minor offenders.

Dated the 24<sup>th</sup> day of February 2003.



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

**8. INDEX OF APPENDICES**

- A** Copy of letter dated 1 August 2001 from Mr Peter Dini, Commander TORBA Province, to the Ombudsman.
- B** Copy of letter dated 4 April 2002 from Cpl. Wycliff Tarilenga, Prosecution Department, to the Ombudsman.
- C** Relevant laws.

*for ATAX*

RECEIVED  
7 SEP 2001  
OMBUDSMAN

TORBA Police Station  
Torba Province  
SOLA.

The Ombudsman Office  
P.O.Box 126  
PORT VILA.

1/8/2001.

THE TWELVE YEARS OLD TWIN.

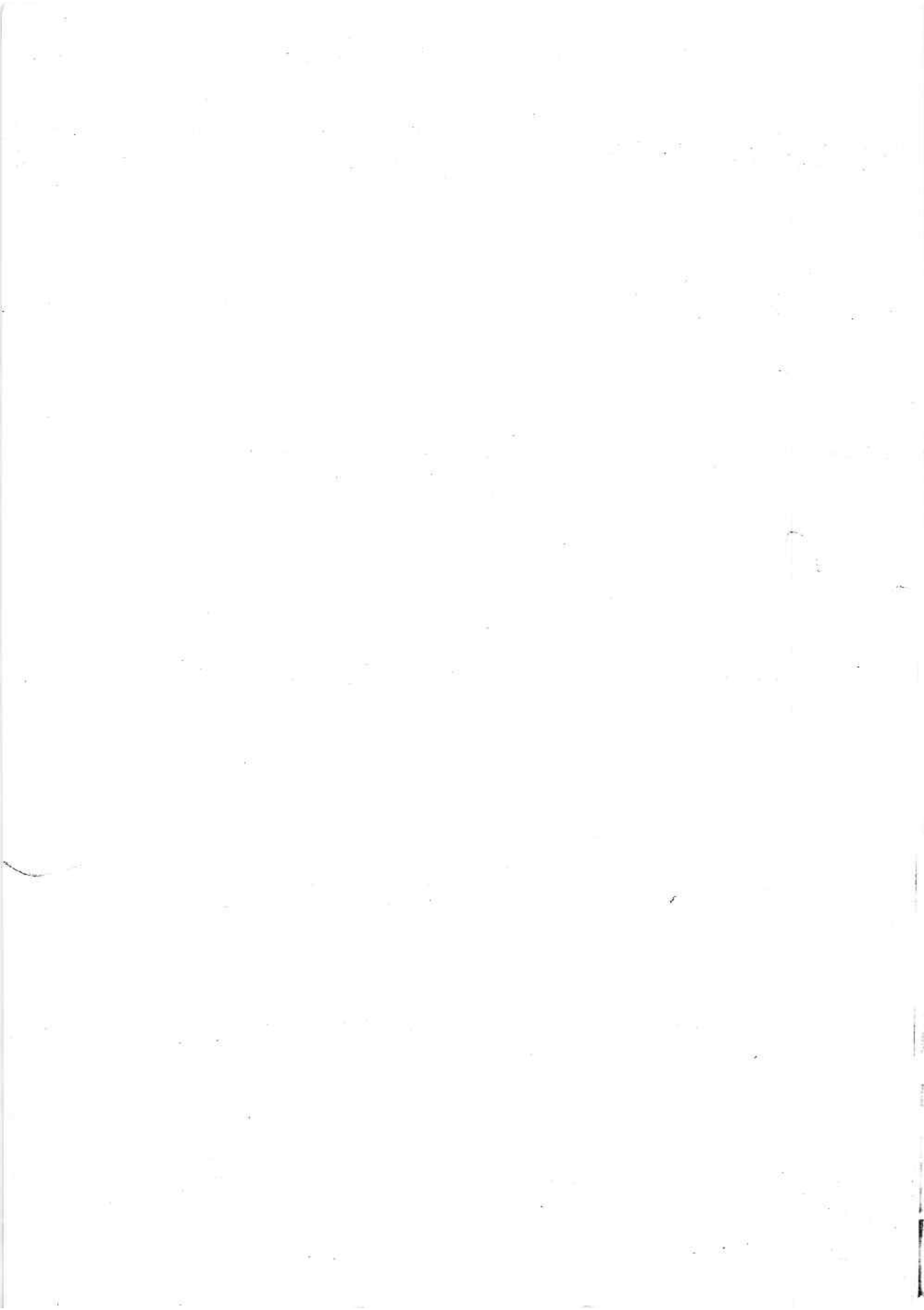
Refrence to your report 50266/0114/L43/PD, I am sorry that prison matter still address to me even I noted you before leaving the Prison Service. Other than that, I still willing to assist on one way or another, but only on documents. Santo prison have them not me in Sola.

The CID dealt with the case and found there was a case and a charge against Paramabet to answer in court. They had him delivered to prison with detainsion warrant, and we kept him with other inmates, as there was no cell for such age to be kept. As the Country dont have what known as Children/Youth correction service or seperate building to use for such gruping, we have to keep him with older inmates. On his date of release and other documents to such, please consult Santo for recording should you require.

This is all the explanation I could give in relation to your enquiry on the case.

*[Handwritten signature]*

Peter DINI  
(Commander TORBA Province).



RECEIVED  
08/04/02



**PROSECUTIONS DEPARTMENT**

Tel: (678) 36456  
P.O Box 221  
Fax: (678) 36456

Luganville, Santo  
South West Pacific

To: Mr. Ian Byles  
Officer in Charge  
Ombudsman Office  
Luganville Santo

From: CPL Wycliff Tari  
Prosecution's Dept.  
Luganville, Santo

4<sup>th</sup> April 2002

Dear Sir,

**RE: INCARCERATION OF THE TWELVE YEARS OLD PARMABETR TULA  
AMONG OLDER CONVICTS.**

As of your letter ref. SO123/0114/L04/wt dated 22<sup>nd</sup> March 2002 of the above subject, I hereby reply to your inquiry.

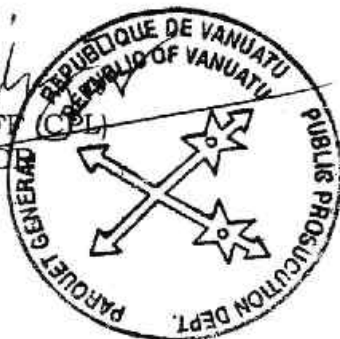
Having confirmed from the Court, I wish to certify that the young Defendant had appeared before the Supreme Court on the 2<sup>nd</sup> of March 2000, before Judge Oliver Saksak.

The defendant was found guilty of the offence of Unintentional Harm Causing Death and convicted.

The defendant was sentenced for 8 Months Imprisonment, but less of 5 Months imprisonment and 3 Months imprisonment suspended for 2 years.

Of this letter, I hope it help you in your inquiry.

  
TARILENGA WYCLIFF (CPL)  
STATE PROSECUTOR







## Appendix C - Page 1 of 2

### CONSTITUTION OF THE REPUBLIC OF VANUATU

#### ENQUIRIES BY OMBUDSMAN

- 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) This Article shall apply to all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.

### 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;
- (4) To avoid doubt, conduct on the part of any officer, employee, member or agent of a government agency in his or her capacity as an officer, employee, member or agent of the government agency is taken to be conduct on the part of the government agency.

### CONVENTION ON THE RIGHTS OF THE CHILD (RATIFICATION) ACT NO. 26 OF 1992

#### RATIFICATION

- 1(1) The Convention on the Rights of the Child signed in New York on the 23<sup>rd</sup> day of September, 1990 which is set out in the Schedule hereto is hereby ratified.
- (2) The Convention referred to in subsection (1) shall be binding on the Republic of Vanuatu in accordance with the terms thereof.

### CONVENTION ON THE RIGHTS OF THE CHILD

#### ARTICLE 1

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

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### ARTICLE 2

States Parties shall respect and ensure the rights set forth in the present Convention to *each child within their jurisdiction* without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

### ARTICLE 3

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

...

3 States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of staff, as well as competent supervision.

### ARTICLE 37

States Parties shall ensure that:

...

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;