

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PMB 9081
Port Vila
PORT VILA

PUBLIC REPORT
ON THE
LOSS OF CASE FILE IN PUBLIC
PROSECUTOR'S OFFICE,
LUGANVILLE

26 May 2003

0221/2003/09

PUBLIC REPORT ON THE
LOSS OF CASE FILE
IN PUBLIC PROSECUTOR'S OFFICE

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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 government agencies.
- 1.2 The Ombudsman can also look into defects in laws or administrative practices, including practices within the office of the Public Prosecutor.

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 the Ombudsman Act.

3. RELEVANT LAWS

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

OMBUDSMAN ACT NO.27 OF 1998.

4. OUTLINE OF EVENTS

- 4.1 On 12 or 13 March 1999 Mr Eugene Tabi was driving his Toyota Hilux, registered no. 4236, when it was involved in a collision with a taxi at the airport turn-off outside Luganville, Santo.
- 4.2 In the days immediately following the accident, police took a statement from Mr Tabi and a report on the incident was prepared by Sgt. Obi Ken, OIC Traffic, Luganville.
- 4.3 Staff in the Public Prosecutor's office in Luganville subsequently opened a prosecution file relating to the accident, containing Sgt. Obi Ken's report.
- 4.4 The Santo office no longer has any record of the file and it is claimed that the file was transferred to the office of the Public Prosecutor in Vila.
- 4.5 The Vila Office of the Public Prosecutor has no record of receiving a file relating to Mr Tabi or the collision.

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 this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 No responses were received to the working paper.

6. FINDINGS

- 6.1 **Finding 1: The system for tracking files and file transfers in the Luganville Office of the Public Prosecutor was inadequate during 1999.**
- 6.1.1 The Luganville office does not have records to show conclusively whether the case file was sent to Vila or, if it was, when.
- 6.1.2 Correspondence from the Public Prosecutor's office acknowledges that at least one other file is known to have gone missing from the Santo office (see **Appendix A**).
- 6.2 **Finding 2: The office of the Public Prosecutor is presently implementing an improved administration system in the Luganville office.**

6.2.1 The Public Prosecutor has informed the Ombudsman that an officer is presently working in the Luganville office to establish a proper administration system (see **Appendix B**). This is to be commended.

6.3 **Finding 3: The Ombudsman is unable to make any findings on the system for tracking file in the Public Prosecutor's Vila office.**

6.3.1 Because of the lack of system then in place, it is possible that the case file in question was never sent to Vila, in which case the Vila office's records showing the file did not arrive would be accurate.

6.3.2 The Ombudsman also notes the Public Prosecutor's assurance that the Vila office has strict rules relating to recording incoming files and accepts this statement as accurate (see **Appendix A & B**).

6.4 **Finding 4: The Ombudsman notes that the Public Prosecutor's office in Santo is insecure, without proper locks on windows and doors.**

7. RECOMMENDATIONS

7.1 **Recommendation 1:** The work being undertaken in the public prosecutor's office to implement a full system for keeping track of file movements should continue.

7.2 **Recommendation 2:** Security should be improved in the Public Prosecutor's Santo office to ensure that files cannot be lost through theft.

7.3 **Recommendation 3:** The Ombudsman is aware of a donor-funded Legal Sector Strengthening Project being undertaken in the Office of the Public Prosecutor and expresses the hope that this project will assist the Public Prosecutor's office to design and implement proper administrative system for its branch office in Luganville.

Dated the 26th day of May 2003.



Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. **INDEX OF APPENDICES**

- A Copy of letter dated 7 May 2002 from Office of the Public Prosecutor to the Ombudsman.
- B Copy of letter dated 2 August 2002 from Office of the Public Prosecutor to the Ombudsman.
- C Relevant laws.



RECEIVED
04/06/02

OFFICE OF THE PUBLIC PROSECUTOR

Tel. 22271 & 26166
Fax. 26168

PRIVATE MAIL BAG 035
PORT VILA, VANUATU
SOUTH WEST PACIFIC

Tuesday 7 May, 2002

Ian Byles
Ombudsman Office, Luganville
P O Box 378
Luganville
SANTO
SANMA PROVINCE

Dear Sir

RE: LOST PROSECUTION FILE – EUGENE TABI

I refer to your letter of March 25, 2002 on above matter.

Please provide more details so we can assist you.

Who is Eugene Tabi?
Who did he collide with?
Was there any death?
If so give name of decease?

If the File is missing how can we assist you without the File, the only Santo Traffic matter that has gone missing relates to deceased Willie Bovoni. The File was in fact sent to Vila for assessment and supposed to have come back to Santo with Kayleen Tavoia. This File did not get missing in Vila but in Santo due to poor window and door that cannot be securely locked.

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Tuesday 6 May, 2002

Ian Byles
Ombudsman Office, Luganville
Luganville

During my term the lost Files seem to happen in Santo but not Vila where we keep very strict track of movement of File.

I hope this information assists your investigation.

Yours Sincerely



Heather Lini Leo
Acting Public Prosecutor



THE GOVERNMENT OF THE REPUBLIC OF VANUATU.
THE OFFICE OF THE PUBLIC PROSECUTOR.

TEL: 22271, 26166
FAX: 678 26168

PRIVATE MAIL BAG 035
PORT VILA, VANUATU.

Date: August 2, 2002

Mr. Ian Byles
Officer in Charge,
Ombudsman's Office Branch
P.O Box 378
LUGANVILLE

Dear Sir

RE: LOST PROSECUTION FILE-EUGENE TABI

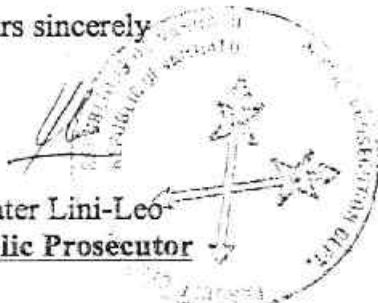
I refer to your letter dated June 24 2002 in relation to your earlier question posed in your letter of June 7 2002

Our records do not reveal a file in the name of Eugene Tabi being sent from Santo to Vila. We in Vila do not know anything about it and have never heard about the case file. In fact the Vila Office has very strict rules regarding incoming files so we know who has the file or what happens to the file now or five years later.

As you may be aware the Officer responsible for registration of all files in Vila has been in Santo for the last nine months trying to establish a proper administration system as in Vila. This is because previously we were led to believe every thing was in order and running well in Santo

Yours sincerely

Heater Lini-Leo
Public Prosecutor



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OMBUDSMAN ACT NO. 27 OF 1998

DEFINITIONS

- 1 "conduct" except in relation to enquiries conducted by the Ombudsman into the conduct of a leader includes:
- (a) any action or inaction relating to a matter of administration; and
 - (b) any alleged action or inaction relating to a matter of administration;
- 1 "government agency" means:
- ...
 - (d) a department, agency or instrumentality of the Government or a local government council or a municipal council; or
 - ...
 - (f) a public authority;

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;