

REPUBLIC OF VANUATU  
OFFICE OF THE OMBUDSMAN

PUBLIC REPORT  
ON THE  
SARATAMATA POLICE INACTION  
IN CONNECTION WITH THE  
DESTRUCTION OF GARDENS  
IN LOLOVENUE VILLAGE  
AT NORTH AMBAE

3 July 2003

9104/2003/17

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## SUMMARY

On 4 May 1998 a group of youths backed by chiefs of Lolomanganda and Lovuitungu allegedly went through the food gardens belonging to the people of Luvuigevege, Loqaruiqatu and Lovuitogohui and ransacked everything in the gardens. The Police at Saratamata were immediately informed about the incident but did nothing about it. It wasn't until the affected villagers hired a vehicle for them to visit the gardens that they responded.

On 27 May 1998 Mr. Japin Tari, Manager of NBV in Luganville, Santo, informed the Police Commissioner, Mr. Peter Bong, about the above-mentioned incident. As the Police has not acted on such a report, Chief McKenzi Haga then lodged a complaint to the Ombudsman on 9 October 1998.

According to Sergeant E Taga's report dated 30.03.99, the former Officer Commanding Police Station (OCPS), Senior Inspector Basil Melchior, took the disputing parties together at Saratamata in an attempt to solve the long-standing land dispute. During the meeting

Mr. Melchior advised the parties involved that the land dispute would be in the hands of the Council of Chiefs, whereas the extent of damage to the gardens would be left to the Police in order to submit a report to the Prosecution's Office. The land dispute was eventually resolved by the Council of Chiefs.

However, Chief McKenzi Haga said in a letter dated 15 November 2002 that it was "resolved" by two political chiefs from Lombaha, namely councilor Jackson Garae and Mr. Benuel Garae. And as it stands it is probable that such a decision would likely be challenged in the Land Tribunal.

The Ombudsman finds that the Police authority at Saratamata including the former Police Commissioner, Mr. Peter Bong may have breached section 4(1-2) of the Police Act [CAP 105] in not ensuring the production of offenders before the Courts. The Saratamata Police may have breached section 35 (3) of the Police Act [CAP 105] by not promptly obeying and executing the orders and also by not collecting and communicating intelligence affecting the public peace and apprehending all persons that they are legally authorised to apprehend and for whose apprehension sufficient ground exists. They may have also breached the Police Force Standing Order No.E5 which says that all police officers will make every effort to secure mutual confidence and cooperation between the public and the police.

In the light of the above findings the Ombudsman recommends that the Police Commissioner should exercise his special powers as provided under section 62(1-3) to discipline the police officers involved in the investigation. He should also report the non-performance of duty and insubordination of certain senior police officers to the Police Service Commission in order to inquire into the truth of the charge and impose punishments as per section 67(2) of the Police Act [CAP 105]. The Police Commissioner should formally advise police officers of their responsibilities and duties in criminal matters by way of a Standing Order or Circular.

## **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 state service of Police Department. The Ombudsman can also look into defects in laws or administrative practices, including the functions, organization and administration of the Police Force under the Police Act [CAP 105].

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

- 2.1 The scope of this investigation is to establish the facts about the alleged police inaction regarding the destruction of gardens in Lolovenue Village at North Ambae.
- 2.2 This Office collects information and documents by informal request, summons, letters, interviews and research.

## **3. RELEVANT LAWS, REGULATIONS AND RULES**

- 3.1 The Constitutional and statutory provisions relevant to this report are reproduced in **Appendix D** of this public report.

## **4. OUTLINE OF EVENTS**

- 4.1 On 4 May 1998 at Lolovenue Village, North Ambae, an incident occurred which involved the damage to about 12 gardens which, according to the complainant, was worth about one million vatu (Vt1,000,000).

A group of youths backed by chiefs of Lolomanganda and Lovuitungu allegedly went through the food gardens belonging to the people of Luvuigevege, Loqaruigatu and Lovuitogohui and ransacked everything in the gardens (**Appendix A**). The Police at Saratamata were immediately informed about the incident on 4 May 1998 but did nothing about it. It wasn't until the affected villagers hired a vehicle for them to visit the gardens that they responded.

- 4.2 On 27 May 1998 Mr. Japin Tari, who is from Lovuigevege village and then Manager of NBV in Luganville, Santo, informed the Police Commissioner, Mr. Peter Bong, about the above-mentioned incident. He said:

"Very sad to note Mr. Commissioner, is that after the police visit financed by the villagers there was no report ever completed or filed by the police on the extent of the damage or made any move to solve the problem.

This incident is serious, and I believe if you or I were in the shoes of those who were badly affected by the incident would resort to all sorts of unlawful actions. Hence, I am writing to stress the urgent need to establish normalcy in Lolovenue village by having your officers act urgently in an appropriate manner to solve the mental attitude present amongst the villagers right now.

I believe the most effective means of action is to make certain ARREST and warn the culprits not to engage in similar action in future.

In the event of a prolong non action by the police would likely result in two scenarios.

- (a) The situation will die down and will soon be forgotten OR
- (b) The situation will get worse by more people taking the law into their own hands".

- 4.3 On 9 October 1998 the Office of the Ombudsman received a complaint from Chief McKenzie Haga, who is from Lovuitogohui village, about the alleged inaction of the Police in dealing with the incident.

- 4.4 Despite the fact that the affected villagers together with Mr. Japin Tari notified the Police about their complaint and requested an explanation for inaction from several police sources, no one from the Police has been able to explain this delay.
- 4.5 On 16 December 1998 the Ombudsman informed the Police Commissioner, Mr. Peter Bong, about the complaint from Chief McKenzie in connection with the destruction of the gardens. The Police Commissioner was informed about the Ombudsman's intention to open an investigation under Article 62 of the Constitution. The Ombudsman also requested that Police Commissioner answer respective questions relating to the incident (**Appendix B**).
- 4.6 On 14 May 1999, Superintendent Saling Stephens sent a copy of Sergeant Edward Taga's report dated 30.03.99 on the matter to the Ombudsman. According to the report, the former Officer Commanding Police Station (OCPS), Senior Inspector Basil Melchior, took the disputing parties together at Saratamata in an attempt to solve the long-standing land dispute. During the meeting Mr. Melchior advised the parties involved that the land dispute would be in the hands of the Council of Chiefs, whereas the extent of damage to the gardens would be left to the Police in order to submit a report to the Prosecution's Office.

#### 4.7 **LAND DISPUTE**

In an attempt to solve the land dispute, the suspects, members of the Council of Chiefs and the police attended a meeting but the complainants did not arrive. This is despite the fact that the Police offered to pick them up. As a result the meeting was called off.

- 4.8 According to a report submitted by Sergeant Edward Taga the land dispute was eventually resolved by the Council of Chiefs. The former OCPS Basil Melchior, the former Corporal Paul Tari and Police Constable John Joe witnessed the meeting, which resolved that:
1. The suspects in this case were the real customary landowners of the disputed land.
  2. The complainants, who claimed to be the rightful landowners, lost the land claim and were ordered by the Council of Chiefs to plant food crops but not fruit trees on the land.

However, Chief McKenzie Haga would say in a letter dated 15 November 2002 that it was "resolved" by two politicians from Lombaha, namely councilor Jackson Garae and Mr. Benueel Garae. Not originating from Lolovenue district, they do not know about the history of the land and tribes of the people thereon. It is also alleged that prior to giving out judgement on 8 August 1998 in favour of the suspects, the political chiefs had secret meetings with them. And as it stands it is probable that such a decision would likely be challenged in the Land Tribunal.

#### 4.9 **EXTENT OF THE DAMAGE**

It wasn't until the affected villagers hired a vehicle for police to visit the gardens did they respond. Police Constable John Joe was the officer who attended to the scene of the damage and compiled a report including statement of witnesses as well as of those of the complainants.

Despite making several requests to the Police authority in Vila and Sergeant Edward Taga at Saratamata to submit a copy of the report being compiled by PC John Joe, nothing was done about it.

#### 4.10 **ACTION BY THE POLICE**

In his report on the matter dated 30.03.99, Sergeant Taga said that the case file was sent to Prosecution's Office in Santo.

However, when the Ombudsman requested the State Prosecutor, Inspector Wilson Garae, to confirm the above information, Mr. Garae said in a letter dated 13.08.99 that upon talking to Police Constable John Mark on the matter, the latter reiterated that the file was still in their office at Saratamata because of the lack of transport to go out and carry out the investigation (Appendix C).

## 5. RESPONSES BY THOSE MENTIONED IN THE REPORT

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of, including those whom the Ombudsman made no findings against and gave them the right to reply. Prior to this public report, the Ombudsman has also sent copies of the working paper that outlines a description of the facts, relevant laws and the preliminary findings on this inquiry to the subsequent people to give them another opportunity to respond or comment. No responses were received from:

PC John Joe  
Japin Tari  
Sergeant Edward Taga  
Arthur Caulton

Saling Stephens  
Corporal Paul Tari  
Basil Melchior  
PC John Mark

A response was received from Chief McKenzie Haga. Commenting on the fact of land dispute resolution, Chief McKenzie Haga would say that the land dispute was not deliberated upon by a Council of Chiefs but instead by two politicians from Lombaha, North Ambae, namely councilor Jackson Garae and Mr. Benuel Garae. Chief McKenzie Haga wants to reiterate here that since they (Garaes) are not from Lolovenue district, they do not know about the history of the land and tribes of the people thereon. On some occasions prior to the land dispute meeting held on 8 August 1998, the two politicians had secret meetings through the night with the suspects while drinking kava and finally ruled in favour of the suspects.

## 6. FINDINGS

- 6.1 **Finding 1:** The Police authority at Saratamata may have breached section 4(1-2) of the Police Act [CAP 105] in not ensuring the production of offenders before the Courts.

When the villagers informed the Police authority at Saratamata about the destruction of gardens, they did not do anything to enforce the laws of Vanuatu. The Police should have enforced section 133 of the Penal Code [CAP 135] which states that *"no person shall willfully and unlawfully destroy or damage any property which to his knowledge belongs to another"* by producing a complete report on the incident to the Public Prosecutor for possible court proceedings against the offenders. The Police also failed to enforce section 144 of the same Act.

- 6.2 **Finding 2:** The Police Commissioner, Mr. Peter Bong, may have also breached section 4 (1-2) of the Police Act [CAP 105] by not giving orders to the officers concerned to act promptly on the report and produce the offenders before the Courts.
- 6.3 **Finding 3:** The Police at Saratamata may have breached section 35 (3) of the Police Act [CAP 105] by not promptly obeying and executing the orders and also by not collecting and communicating intelligence affecting the public peace and apprehending all persons that they are legally authorised to apprehend and for whose apprehension sufficient ground exists.



- 6.4 **Finding 4:** **The Police at Saratamata may have breached the Police Force Standing Order No.E5 which says that all police officers will make every effort to secure mutual confidence and cooperation between the public and the police.**

In this case, despite the submission of the report by the affected villagers, the Police have not, at the time of preparing this report, completed their investigation on the incident. Four years and 5 months (to 1.10.02) have elapsed and the offenders have not yet been produced before any court of law. This is likely to bring disrepute and distrust upon the Police Force, especially the officers stationed at Saratamata.

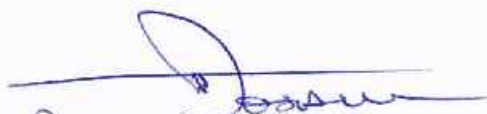

## **7. RECOMMENDATIONS**

**Recommendation 1:** For disciplinary proceedings against subordinate officers at Saratamata involved in this investigation, the Police Commissioner should exercise his special powers as provided under section 62(1-3) to discipline the police officers concerned.

**Recommendation 2:** For disciplinary proceedings against senior officers, the Police Commissioner should report the non-performance of duty and insubordination of certain police officers to the Police Service Commission in order to inquire into the truth of the charge and impose punishments as per section 67(2) of the Police Act [CAP 105].

**Recommendation 3:** The Police Commissioner should formally advise police officers of their responsibilities and duties in criminal matters by way of a Standing Order or Circular. This will assist officers in carrying out their duties without undue delay and insubordination.

Dated the 3<sup>rd</sup> day of July 2003.

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

**8. INDEX OF APPENDICES**

- A** Copy of letter dated 27 May 1998 by Japin Tari.
- B** Copy of letter dated 16 December 1998 by Ombudsman.
- C** Copy of letter dated 13 August 1999 by Wilson Garae.
- D** Relevant laws, regulations and rules.



# APPENDIX "A"



To : Mr. Peter BONG  
Police Commissioner  
Police Headquarter  
PORT VILA

(b) The situation will get worse by more people taking the law into their own hands.

From : Japin TARI - Manager NBV - Luganville,

Date : 27<sup>th</sup> May 1998

Subject : INDECISIVE ACTION BY POLICE AT SARATAMATA

A serious incident happened on Monday 4<sup>th</sup> May 1998 at Lolovenue Village, East Ambae which involved the total damage to about 12 gardens worth about VT 2 million.

The youth backed by chiefs of Lolomangada and Lovuitungu went through the food gardens belonging to the people of Luviugevige, Loqaruiqatu and Lovuitogohui ransacked everything from the gardens. (You can refer to Trading Post Issue no.344).

The Police at Saratamata were immediately informed about the incident but did nothing about it until only after the affected villagers hired a vehicle for them to visit the gardens, did they then moved.

Very sad to note Mr. Commissioner, is that after the police visit financed by the villagers there was no report ever completed or filed by the police on the extent of the damage or made any move to solve the problem.

This incident is serious, and I believe if you or I were in the shoes of those who were badly affected by the incident would resort to all sorts of unlawful actions. Hence, I am writing to stress the urgent need to establish normalcy in Lolovenue village by having your officers act urgently in an appropriate manner to solve the mental attitude present amongst the villagers right now.

I believe the most effective means of action is to make certain ARREST and warn the culprits not to engage in similar action in future.

Appendix "A"

# APPENDIX "A"

2

In the event of a prolong non action by the police would likely to result in two scenarios.

(a) The situation will die down and will soon be forgotten.

Or the consequence

PORT VILA

(b) The situation will get worse by more people taking the law into their own hands.

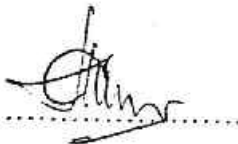
From : Japin Tari - Manager NBY - Laga  
I am concerned that situation (b) will suffice with much more serious consequences which would be even more expensive and complicated for the police to handle.

Please could something be arrange immediately ensuring no further related unwanted action take place.

IMMEDIATE ACTION REQUIRED  
A police control over the situation right now is important for its reputation in the eyes of the public at large. ACTION!!

A serious incident happened on Monday

which involved the police to about 12



Japin C TARI

Concerned community member of Lolovenue Village.

cc: Port Headquarter	- Gen
: Jf Oliver Duruhi	- Lolovenue Ambae
: Jf McKenzie Huga	- Lolovenue Ambae ✓
: President - Penama Province	- Salamata Ambae

APPENDIX "A"



# APPENDIX "B"

## Office of the Ombudsman Bureau du Médiateur Ofis blong Ombudsman



Our Ref: 5948/9104/L01/pb  
(Please quote this reference on all correspondence)

16 December 1998

Mr Peter BONG  
Police Commissioner  
Police Headquarters  
PMB 014  
Port Vila

Dear Sir

### INACTION BY POLICE AT SARATAMATA

We have received a complaint from Chief McKenzie Haga about the alleged inaction of the Police in Lolovenue Village, at East Ambae having caused the destruction of 12 gardens.

I understand that you received a similar complaint from Japin Tari dated 27.05.98 (copy enclosed).

It appears that the Police failed to enforce the law properly and breached s 4(1) of the Police Act (CAP 108) (enforce the law, detect and prosecute, protect life and property).

I have therefore decided to open an investigation under article 62 of the Constitution and I would be grateful if you could answer the following questions:

1. Did you obtain a report after the problem was brought to your attention through Mr Tari's letter in May 1998 and can we get a copy of it?
2. What action have you taken to remedy the situation? Give us the detail;
3. Did you answer the complainant, Mr Tari? Could you please forward to us a copy of this letter?
4. Did you take any disciplinary action?

Please forward an answer to us within 20 days of the date of this letter.


I understand that you are taking a 2 weeks leave, but I trust that you will forward my letters to the Deputy Police Commissioner who will be acting while you are away.

### Please note:

1. Under Section 17 of the Ombudsman Act, failure to respond to this letter can result in our issuing a summons compelling you to appear to surrender the required information.
2. The Ombudsman Act continues to apply to this case as if it had not been repealed (in accordance with s. 11 of the Interpretation Act [CAP 132]), since the investigation began while the Act was in effect.
3. Inquiries of the Ombudsman remain strictly confidential until the public report stage. Please contact this Office if you have any questions about this warning which reflects Article 62 (5) of the Constitution and s. 20 of the Ombudsman Act.

Please contact me if you have any questions. Thank you in advance for your assistance in this matter.

Yours faithfully

  
**Marie-Noëlle FERRIEUX PATTERSON**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**

enda : 1

# Appendix "B"



# APPENDIX "C"

## THE STATE PROSECUTIONS DEPARTMENT



TEL: 36456 P.O Box 221  
FAX: (678)36456

Luganville-Santo,  
Vanuatu  
South West Pacific

13<sup>th</sup> AUGUST 1999

TO: Mr Alfred Maho  
Director of Leadership Code  
Office of the Ombudsman,  
Port Vila

RE - DESTRUCTION OF FOODGARDEN AT LOLOVENUE VILLAGE EAST AMBAE

Dear Sir !!

Your letter of 13<sup>th</sup> July 1999 had just received .

I wish to confirm to your high office that our department had received no files as such from Saratamata Police

I rang Police Constable John Mark and he told me that the file is still in their office because no transport is made available to do investigation. I understand the suspects are living above Vureas high school which is not far from Saratamata Police post, which the investigation will take half day to complete

Further to that our department is arranging criminal court tour to Penama Province on October of this year 1999 should you assist us to chase them up to sent us the file.

Regards

INSP WILSON D GARAE  
STATE PROSECUTION  
LUGANVILLE, SANTO

APPENDIX "C"

## **APPENDIX 'D'**

### **RELEVANT LAWS, REGULATIONS AND RULES**

#### **FUNCTION OF THE FORCE**

Under section 4(1) of the Police Act [CAP 105], it is stipulated that "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 the maintenance of order;
  - (b) the protection of life and property;
  - (c) the enforcement of law
  - (d) the prevention and detection of offences and the production of offenders before the Courts; and
  - (e) such other duties as may be expressly provided for by law.

#### **GENERAL POWERS AND DUTIES OF MEMBERS OF THE FORCE**

Section 35 provides that:

- (1) Every member shall exercise such powers and perform such duties as are by law conferred or imposed upon him, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the Force.
- (2) Every member shall be considered to be on duty at all times and may at any time be detailed for duty in any part of Vanuatu.
- (3) It shall be the duty of every member to promptly obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice and to apprehend all persons that he is legally authorised to apprehend and for whose apprehension sufficient grounds exists.

#### **SPECIAL DISCIPLINARY POWERS OF THE COMMISSIONER**

- 62 (1) The Commissioner may, when a record of an inquiry has been forwarded to him in accordance with section 61 impose any of the punishments prescribed by that section or any of the following punishments –
- 6. dismissal from the Force; or
  - 7. reduction in rank; or
  - 8. loss of seniority; or
  - 9. a fine not exceeding 15 days pay.
4. The Commissioner may in respect of any findings made by a senior officer under the provisions of section 59(1) whether or not he has received an appeal –
- (a) confirm, vary or quash any finding or punishment imposed as the result of such inquiry; or
  - (b) order the holding of a fresh inquiry by a senior officer other than the officer who held the original inquiry.

- (3) The Commissioner shall not increase any punishment imposed at the conclusion of the original inquiry without giving the defaulter the opportunity of being heard.

#### **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.
- (c) The Commission, if it finds the charge proved, may impose on the defaulter 1 of the following punishments –
- (a) dismissal from the Force;
  - (b) reduction in rank;
  - (c) loss of seniority;
  - (d) a fine not exceeding 15 days; or
  - (e) a reprimand.
- (3) The punishments prescribed by subsection (2) are sufficient in themselves and only 1 such punishment may be awarded for each offence against discipline.

#### **PENAL CODE [CAP 135]**

Section 133 of the Penal Code [CAP 135] states that "No person shall willfully and unlawfully destroy or damage any property which to his knowledge belongs to another".

Section 144 (a) of the Penal Code [CAP 135] provides that "No person shall enter into or upon any property in the possession of another with intent to intimidate, insult or annoy any person lawfully in possession of such property".

#### **RELATIONS WITH THE PUBLIC (FORCE STANDING ORDER NO.E5)**

1. Every police officer is required to assist all members of the public in his police capacity at all times whether on or off duty.
2. All police officers will make every effort to secure mutual confidence and cooperation between the public and the police. All persons are to be treated with civility, forbearance, impartiality and good temper and it is these ingredients that will lead to better relations with the public and so enhance the good name of the Force.
3. Every police will attend to any complaint, report, request or enquiry without any unreasonable delay and he must take whatever initial action is required. He will not tell the person concerned to go to the police station and make his report. Occasionally, a member of the public may request the assistance of a police officer which is outside the sphere of his normal police duties. In such instances, the officers should explain tactfully that the matter is beyond his responsibility and should direct the person concerned to the appropriate body or authority.
4. It is essential that if a mistake is made by a police officer it should be admitted and, as far as possible, rectified without any delay.