



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



**SPECIAL REPORT TO PARLIAMENT
CONCERNING
THE OBSERVANCE OF MULTILINGUALISM
2016**

**This document is presented to Parliament by
the Ombudsman of the Republic of Vanuatu**

The Constitution states that the Ombudsman shall, each year, make a special report to Parliament concerning the observance of multilingualism and the measures likely to ensure its respect.

Date: 17th August 2017

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1.0 INTRODUCTION

The Ombudsman makes this Special Report to Parliament Concerning the Observance of Multilingualism 2016 as required by **Article 64(3)** of the Constitution which states:

"The Ombudsman shall, each year, make a special report to Parliament concerning the observance of multilingualism and the measures likely to ensure its respect."

The main objective and purpose of producing a report on the observance of Multilingualism is to provide a general view on what languages public servants use to deliver services or communicate to the general public as well as within government agencies. The purpose of the report is also to identify any breaches of the provision of language rights and to suggest proposed remedies to make sure the Vanuatu administration complies with the Constitution and law.

The purpose and objective of language pluralism and national linguistic identity of the Republic of Vanuatu is ensured in the provisions of **Article 3** of the Constitution which provides:

"3. National and official languages

(1) The national language of the Republic of Vanuatu is Bislama. The official languages are Bislama, English and French. The principal languages of education are English and French.

(2) The Republic of Vanuatu shall protect the different local languages which are part of the national heritage, and may declare one of them as a national language."

1.1 Article 64(1) of the Constitution protects the right of a citizen to receive from "the administration of the Republic of Vanuatu" any services in any of the official languages that he or she uses. It states that *"A citizen of Vanuatu may obtain, in the official language that he uses, the services which he may rightfully expect from the administration of the Republic of Vanuatu."*

1.2 As one of its function, the Ombudsman is responsible to investigate any complaints, whether from citizens or on his or her own initiative regarding breaches of Language Rights (or Multilingualism) in accordance with **Article 64(2)** of the Constitution which states: *"Where a citizen considers that there has been a breach of sub-article (1) he may make a complaint to the Ombudsman who shall conduct an enquiry in accordance with Articles 62 and 63"*.

It must be noted that even though Article 64(3) of the Constitution requires the Ombudsman to make a report on the usage of

Multilingualism in the administration of the Republic of Vanuatu, the content of this report will only cover the observance and respect of the three official languages which are Bislama, English and French in the Public Services as mentioned in Article 64(1) of the Constitution. This is to clarify any doubts about the definition of the term "Multilingualism" which in Vanuatu can easily refer to the use of any of the local languages or vernacular as our society is comprised of many different languages. In fact, as stated in Article 3(2) of the Constitution, our local languages form our national heritage and we as a people should always protect them.

2.0 OVERVIEW

Language is the fundamental way of communication as it contributes to the unity, education and the development of a society. In Vanuatu, language represents not only our National identity but also our island or village or tribal identity. With its diverse multiple cultures, Vanuatu has more than 100 local languages spoken in different islands of the country.

- 2.1 With its colonial history, Vanuatu adopted two foreign languages, English from the British administration, English-speaking missionaries and English-speaking schools, and the French language from the French government, the French-speaking mission and French-speaking schools. These two (2) languages are the principal languages of education throughout Vanuatu at the present time.

- 2.1.1 Bislama, the national language has been recently mentioned to be used with local vernacular as the language of teaching at kindergarten and pre-school level most likely in urban areas up to grade 3. The Ministry of Education 2012 Vanuatu National Language Policy at page 2 says:

"2.1 Language of Instruction

Schools and teachers must:

- a) *Teach in either French or English in all schools. However, in the first two years of school, Bislama or a local vernacular can be used while either French or English is introduced by the second semester of Year 3. "*

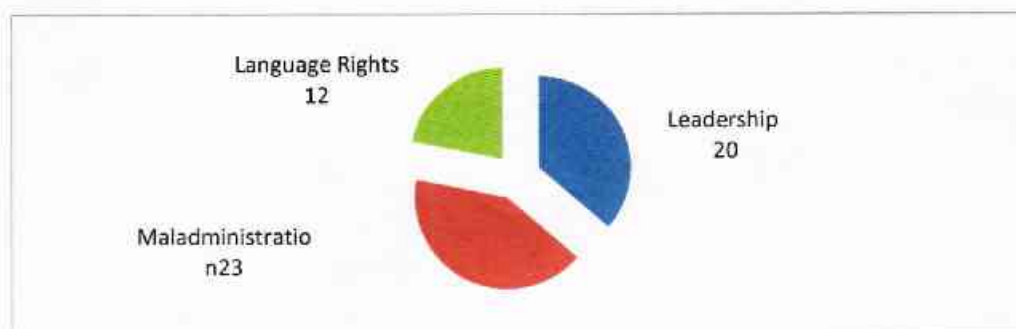
- 2.1.2 In the Public as well as in the Private sectors, the three official languages are commonly used. Generally the use of the English language has been the dominant language in official documents in the administration of the Republic. In recent years, the increase in the use of the French language has been due to the increase of Francophones in the public service. However in the private, business and social sectors the French language continues to be used widely. Because of its lack of technical terms and undeveloped and inconsistent vocabulary and grammar, Bislama is less used in printed official Government documents as well as

printed material in the private sector. The limited range of Bislama makes the translation of French and English official documents into Bislama very difficult and often produces inexact or inappropriate results. For example it is very difficult, but not impossible, to translate the laws of Vanuatu into Bislama. However, in most government ministries and departments, Bislama is commonly spoken as the language of communication.

2.2 This year 2016, the office of the Ombudsman decided to adopt a different and strict approach in dealing with cases that are in breach of language rights provisions in the Constitution. In fact, as stated in our 2015 special report, the position of the Senior Language Rights Investigator/Officer had just been filled in June 2015 which tried to look at new ways to monitor very closely all departments and agencies of the Government in their usage of the three official languages. This year the Ombudsman has dealt with more cases of Language Rights than last year and probably even more than the past few years. This is due to the fact that the Ombudsman has decided to investigate not only advertisement of vacancies but any other publications from government offices and agencies. The Ombudsman Office sent out a reminder notice in the three official languages in March 2016 concerning the requirement and interpretation of Article 64(1) of the Constitution [please refer to paragraph 4.3.7 for more details] to all government agencies.

2.2.1 The investigation of breach of language rights is quite difficult as the office does not have a full team of language rights investigators who can work effectively to ensure that one of the important roles of the Ombudsman is realized, that is to protect and encourage the use of the three official languages in the Public Service. The office hopes to recruit more language rights investigators in future.

2.2.2 With the recruitment of the Senior Language Rights Officer in June 2015, the Office of the Ombudsman has continued to reaffirm his commitment in protecting the use of Vanuatu's official languages. This year the number of case concerning language Rights has increased compared to 2015. The graph below shows the statistics of the types of complaints received in 2016:



Types of complaints received by the Ombudsman in 2016

3.0 HOW TO MAKE A COMPLAINT

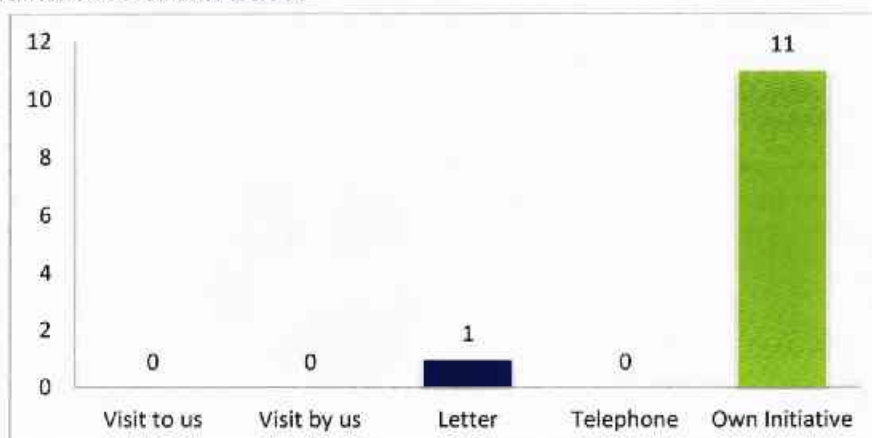
Members of the public can make complaints concerning language rights in different ways.

3.1 The office of the Ombudsman receives complaints from members of the public, government bodies or private bodies concerning breach of language rights through the normal procedure of lodging a complaint and that is:

- Telephone the office on (+678) 27200; or
- Write to the Ombudsman or the Senior Language Rights Officer at Ombudsman Haus, PMB 9081, Rue Pasteur; or
- Email to ombudsman@vanuatu.gov.vu , or
- Visit the Ombudsman office and fill out a complaint form in one of the official languages. A complainant may also speak with the Language Rights Officer or an investigator and provide details with relevant documents concerning his/her complaint.

4.0 INVESTIGATIONS

Most language rights complaints in 2016 were started by own motion complaints concerning not only publications of advertisements but all written communication or services delivered to the public being made only in either one or two of the official languages. This year, the Office has adopted a different approach by tracking down every single publication (refer to requirements of Article 64(1) of the Constitution paragraph 4.3.8) from government offices or agencies whether published in the local newspapers or in the Vanuatu Government Network. Apart from own motion complaints, the Ombudsman Office received only one complaint from a public servant against a government agency. The graph below shows the statistics of the methods of complaints received in 2016:



Methods of complaints received by the Ombudsman in 2016

4.1 Working cases/current investigations

The Ombudsman's Office has decided this year to identify any breaches of language rights from every single government ministries agency. The following government agencies published their "services" or communications only in either one or two of the official languages, in contravention of Article 64(1) of the Constitution:

(i) Ministry of Trade, Tourism, Commerce, Industries & Ni-Vanuatu Business

- Department of Tourism
- Office of Cooperatives and Business Development Services

(ii) Ministry of Justice and Community Services

- Supreme Court of Vanuatu
- Office of Public Solicitor
- Department of Women's Affairs

(iii) Ministry of Foreign Affairs & International Cooperation

- Department of Foreign Affairs and International Cooperation

(iv) Ministry of Internal Affairs

- Department of Labour & Employment Services
- Department of Immigration & Passport
- Department of Local Authority
- Department of Provincial Affairs
- Police Service Commission
- Department of Civil Status
- Port Vila Municipality

(v) Ministry of Youth & Sport & Ministry of Education and Training

- Department of Youth & Sport
- Vanuatu National Youth Council
- Vanuatu Qualification Authority

(vi) Ministry of Climate Change Adaptation, Meteorology, Geo-Hazards, Environment & Energy

- National Disaster Management Office(NDMO)
- Department of Environment Protection and Conservation
- Department of Energy

- Vanuatu Coastal Adoption Project (VCAP)
- (vii) Ministry of Health
 - Corporate Services
 - Office of the Director General
- (viii) Ministry of Infrastructure and Public Utilities
 - Department of Public Works
 - Air Vanuatu
 - Vanuatu Airport Limited
- (ix) Ministry of Finance and Economic Management
 - Department of Customs & Inland Revenue
 - Director General's Office within the Ministry of Finance
 - Vanuatu National Statistics Office
 - VNPF and MFSL (subsidiary company under VNPF)
 - National Bank of Vanuatu
 - Reserve Bank of Vanuatu
- (x) Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity
 - Department of Fisheries
 - Department of Forestry
 - Department of Biosecurity
 - Department of Agriculture
 - Department of Livestock
 - Project Management Unit (PMU)
- (xi) Ministry of Prime Minister
 - Public Service Commission Secretariat
 - Office of the Prime Minister
 - Utilities Regulatory Authority (URA)
 - Vanuatu Project Management Unit
 - Office of the Government Remuneration Tribunal
 - Telecommunications and Radiocommunications Regulator (TRR)
 - Office of Chief Information Officer (OGCIO)
 - Parliamentary Management Board (PMB)
- (xii) Ministry of Lands and Natural Resources
 - Department of Water Resources
 - Lands Department

4.1.1 This year, the Ombudsman also decided to monitor closely the government network as many government offices send out their own agency publications. In line with that, the Senior Language Rights Officer

advised the OGCI (Office of Government Information Officer) to reinforce the requirement of publishing in all three official languages. The Ombudsman Office had formal discussions with some of the above government agencies to settle the complaints against them. Some agencies had responded to the Ombudsman's letters of enquiry by providing reasons for non-compliance and agreed to comply with Article 64(1) in future publications. The investigation of some of these government agencies is still in progress but some of them are in the process of being completed.

4.2 Cases closed/completed investigations

During the year the Language Rights unit completed or closed four case files which had been received and dealt with since 2015 apart from those mentioned in paragraph 4.1. There were different reasons for non-compliance by government offices relating to -

- the misinterpretation and requirement of Article 64(1) of the Constitution, and
- financial constraints in terms of costs of publishing translations of documents, and
- time factor in terms of carrying out translations of documents.

The following are government agencies that were subject to Ombudsman's enquiry and who took steps to make sure that future publications were made in all three official languages:

1. Ministry of Climate Change, Ministry of Trade, Department of Correctional Services and Department of Forestry: Advertisement of vacancies by these agencies were initially made only in English language without the two other linguistic versions. The Senior Language Rights Officer met and discussed this issue with two officers of the Department of Geo-Hazard in 2015 in which they agreed that all future publication will be made in all official languages.

In fact some of these departments are subject again to enquiry by the Ombudsman. This is one issue the Language Rights Officer has encountered while dealing with government offices - that is, they assured the Ombudsman Office to have all their services and written communications done in all official languages, however the next time they repeated the same failure again by breaching the language rights provisions.

2. Utilities Regulatory Authority, Electoral Office and Vanuatu Financial Services Commission: These three agencies also advertised positions only in English and had their own interpretation about the legal requirement of Article 64(1) which the Ombudsman Office provided them (refer to paragraph 4.3.8). But still the agencies continued to publish in one official language (see list in 4.1). The VFSC and the Electoral Office had some doubts about the legal

interpretation of Article 64(1) and have been given the notice (see 4.3.8) for perusal.

3. Telecommunications & Radiocommunication Regulator and National Bank of Vanuatu: Failing to comply with Article 64(1) in advertising only in English, the TRR and NBV were surprised to be notified by the Ombudsman as they believed they were independent from the Government. But the Ombudsman Office informed them that statutory bodies, even though they are independent from government are still subject to investigation by the Ombudsman in their administrative functions under the Constitution Article 62(2) and their Executive Officers, Directors and Board Members are covered by the Leadership Code Act section 5. Usually, statutory bodies formed by an Act of Parliament, and government fully or partly owned companies, are all subject to the jurisdiction of the Ombudsman. Both agencies were reminded about the requirement of Article 64(1) of the Constitution.
4. Government Remuneration Tribunal and Department of Energy: These two agencies both also published advertisements only in English like many other government agencies and promised to make all future advertisements in all official languages. But they also again failed to comply with the provisions of language rights (see list 4.1).

4.3 Findings

Following the advice and assistance of the Senior Language Rights Officer the Ombudsman makes the following findings concerning the use of the official languages in the public administration of the Republic of Vanuatu in 2016 [some of the findings could be referred to 4.2]:

4.3.1 Language used in documents

In terms of writing official projects, documents and procedures, generally the English language is mostly used. Important documents are translated into French however Government documents are not usually translated into Bislama.

4.3.2 Documents for public scrutiny

Only when an official document is produced for public scrutiny, such as job advertisements or public notices will they be translated to either French or English and in some cases Bislama.

4.3.3 Lengthy documents

In cases where the public document is very lengthy, it becomes exceptional that the document is only written in either English or French, and the need to produce a concurrent translation is considered restrictive and therefore unnecessary. Local judicial decisions and overseas project documents are examples of this.

4.3.4 French language

The French language is rarely used in correspondence in the public administration of Vanuatu. This may be due to the general dominant use of English in the public administration. It may be also due to the fact that many Ni-Vanuatu Francophones are bilingual and understand and speak English, whereas many Anglophones do not read, understand or speak French.

4.3.5 Financial constraints

Government Ministries and Departments find it financially difficult to translate all their public advertisements, notices, and other official documents, in all three official languages. Lengthy and complicated documents using technical terms are usually in English or French only. The publications of advertisements and other government documents in the local newspapers are also very expensive particular if they are in all three official languages.

4.3.6 Language Services Department

Even though the Language Services Department provides translation of all documents into the three official languages, they are often short-staffed and over-loaded to service the entire Public Administration with translation services. Experience has shown that translation delays have prolonged to weeks and months before they are ready for collection.

4.3.7 Own translators

Many institutions of the Government use the expertise of their own staff members to translate short documents that do not need to be forwarded to the Language Services Department. However, this may pose questions of whether such staff members are qualified to do translation services as well as issues of the accuracy of translated documents.

4.3.8 Interpretation and Requirements of Article 64(1)

In investigations on breaches of languages rights, the Senior Language Rights Officer has come to notice that some government agencies and statutory bodies have a different legal interpretation of the requirements of Article 64(1) of the Constitution. The Language Rights Officer did provide some explanations and interpretation of the legal requirement of Article 64(1) in meetings and by letters to government agencies to clarify these doubts however the agencies continued to follow their own interpretation of Article 64(1). In fact, some government agencies still continued to overlook the requirements of Language rights even though they have assured that future publication would be made in all official languages. The Ombudsman Office provided the notice (issued on the 24th of May 2016 in the Government Network) of the requirements and interpretation of Article 64(1) of the Constitution in the **Appendix**.

5.0 RECOMMENDATIONS

From the findings mentioned in paragraph 4.3 above the Ombudsman makes the following recommendations:

- 5.1** That all agencies of the administration of the Republic of Vanuatu including the Parliamentary services, the Judiciary, Ministries, Departments, statutory bodies and government companies, including the government electronic media, must respectively follow the requirements of Article 64(1) of the Constitution however, difficult or costly that may be to issue every document, or provide all oral or electronic verbal communication in all 3 official languages, if not concurrently then within a reasonable time.
- 5.2** That the Office of the Prime Minister as the Ministry directly responsible for the Language Services Department and the effectiveness of its operation urgently allocate to that Department as a matter of priority, such budgetary contribution and staff and material support as it requires to provide quality and timely language services to all agencies and institutions of the administration of the Republic of Vanuatu.
- 5.3** That each ministry provide appropriate budgetary support for at least one officer fluent in all the three official languages to be posted in the ministry and or in their respective departments and agencies as a means to helping those ministries, departments and agencies meet the important requirements of Article 64(1) of the Constitution for the benefit of Vanuatu citizens and members of the public.
- 5.4** That it is the duty and responsibility of heads of departments and agencies (Directors General, Directors, CEOs, Managers and Supervisors) to direct and ensure that all their publications and written communications are made in the three official languages, as they will be held accountable for any oversight or negligence.
- 5.5** That all the service commissions of the Vanuatu administration, namely the Public Service Commission, the Judicial Service Commission, the Police Service Commission, and the Teaching Service Commission, as head employment institutions of all Ministries, departments and agencies of the administration of the Republic of Vanuatu should notify all departments and agencies under their respective authorities to strictly comply with the requirement of Article 64(1) of the Constitution.

6.0 CONCLUSION

The requirements under Article 64(1) of the Constitution are very clear as it requires that all services from the administration of the Republic of Vanuatu must be made in all three official languages. This includes written or spoken communication, including communication by the government electronic media.

6.1 The three official languages have been used very differently in government agencies in the public administration of Vanuatu.

6.1.1 Bislama is spoken by all public servants but it is not usually used in official documents or reports.

6.1.2 The English language is used most in official documents and reports within the administration of Vanuatu.

6.1.3 The French language is also used in official documents but its use is more restricted than the English language. However it is widely used for verbal communication between Francophone administrators within the administration.

6.3 The Ombudsman with the assistance of the Senior Language Rights Officer / Language Rights unit in the Ombudsman Office puts forward the above findings and recommendations to enhance the observance of Multilingualism in the administration of the Republic of Vanuatu as required by the Constitution, no matter the human difficulties or the financial costs.



Kalkot MATASKELEKELE
OMBUDSMAN OF THE REPUBLIC OF VANUATU

APPENDIX



Office of the Ombudsman Bureau du Médiateur Ofis blong Ombudsman



NOTICE

Requirements of Article 64(1) of the Constitution on Language Rights

The Office of the Ombudsman publishes this notice to remind all agencies of the administration of the Republic of Vanuatu about the requirements of Article 64(1) of the Constitution.

Article 3(1) of the Constitution states:

"(1) The national language of the Republic of Vanuatu is Bislama. The official languages are Bislama, English and French. The principal languages of education are English and French."

Article 64(1) and (2) of the Constitution state that:

"(1) A citizen of Vanuatu may obtain, in the official language that he uses, the services which he may rightfully expect from the administration of the Republic of Vanuatu.

(2) Where a citizen considers that there has been a breach of subarticle (1) he may make a complaint to the Ombudsman who shall conduct an enquiry in accordance with Articles 62 and 63."

Please note the following in relation to Article 64(1) –

- The phrase **“the administration of the Republic of Vanuatu”** refers to the collection of bodies mentioned in Articles 62 and 63 of the Constitution which includes the Parliament, the National Council of Chiefs, State and government institutions, Ministries, Departments, offices, statutory entities, provincial and municipal authorities and other public authorities.
- Although **“the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies”** are exempted under Article 62(2) from enquiry by the Ombudsman into their legal functions, however, while carrying out their administrative functions in terms of putting out advertisements, declarations, judgments, orders, public notices, or providing other **“services”**, they are also required to comply with Article 64(1) of the Constitution.
- The expression **“services”** includes, but is not limited to, advertisements , announcements, circulars, decisions, declarations, instructions, media releases, newsletters, notices, reports, reviews, statements, survey questionnaires and warnings, whether they are published in the public media or within the administration.
- Some agencies tend to hold the view that the words **“may obtain”** means that a service provided need not be given in all three official languages simultaneously but that agencies have the discretion, for example, to advertise a job vacancy in one official language only but keep unpublished copies of the advertisement in the other two official languages in their office where a citizen has access to them.

It must be noted that the discretion to **“obtain”** or **“rightfully expect”** a service from the administration of the Republic of Vanuatu is a discretion that belongs to the citizen but not to the administration, therefore advertisements and other services, when made by the administration, **must be provided and published simultaneously in the three official languages** by all agencies of the administration of the Republic of Vanuatu, however incongruous, difficult or costly that responsibility may be.

For further information or clarification concerning this matter, please do not hesitate to write to or contact the Office of the Ombudsman through the Language Rights Officer,

Mr Tevanu Beranger
Senior Language Rights Officer
Ombudsman Haus
Rue Pasteur
PMB 9081
Port Vila
Republic of Vanuatu
Phone: 27200, Voip: 2760
Email: ombudsman@vanuatu.gov.vu .

Dated the 23rd day of May 2016.


Kalkot Mataskelekele
OMBUDSMAN

