

A large, light gray map of Vanuatu serves as the background for the lower two-thirds of the page. The map shows the main islands and the surrounding archipelago. The island of Vanuatu is highlighted in a darker gray, and the surrounding waters are a light blue.

NATIONAL INTEGRITY SYSTEM ASSESSMENT VANUATU 2014

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LIST OF ACRONYMS

AusAID	Australian Agency for International Development
CBOs	Community Based Organisations
CEO	Chief Executive Officer
CRP	Comprehensive Reform Programme
CSOs	Civil Society Organisations
DCO	Development Committee of Officials
EU	European Union
ERA Act	Expenditure Review and Audit Act
GCTA	Government Contracts and Tenders Act
GDP	Gross Domestic Product
HDI	Human Development Index
INTOSAI	International Organisation of Supreme Audit Institutions
JSC Act	Judicial Services and Courts Act
MAV	Media Association of Vanuatu
MOU	Memorandum of Understanding
NGOs	Non-Government Organisations
OAG	Office of the Auditor General
PAC	Public Accounts Committee
PacLII	Pacific Islands Legal Information Institute
PACMAS	Pacific Media Assistance Scheme
PEO	Principal Electoral Officer
PJDP	Pacific Judicial Development Programme
PSC	Public Service Commission
UK	United Kingdom
UMP	Union of Moderate Parties
UN	United Nations
UNDP	United Nations Development Programme
US	United States
VANGO	Vanuatu Association of Non-Government Organisations
VAPP	Vanuatu Australia Police Project
VAT	Value Added Tax
VBTC	Vanuatu Broadcasting and Television Corporation
VCCI	Vanuatu Chamber of Commerce and Industry
VFSC	Vanuatu Financial Services Commission
VIPA	Vanuatu Investment Promotion Authority
VMF	Vanuatu Mobile Force
VNPF	Vanuatu National Provident Fund
VP	Vanua'aku Party/Pati
VPF	Vanuatu Police Force
VT	Vatu

I. FOREWORD

It gives me great satisfaction and pride to introduce this report for Transparency International Vanuatu.

Vanuatu's first National Integrity System report was released in 2004, with an update published in 2006. Transparency International Vanuatu is pleased to release our third National Integrity System report.

Unfortunately, as Vanuatu has developed over the past three decades, so too has corruption in the various levels of government and related institutions. This has had widespread damaging effects on the country's political, economic and social development. The ongoing debilitating effects of entrenched corruption was the driving force that compelled us, after a gap of some eight years, to ask for this third National Integrity System report to be done, which is more far reaching than the previous two studies.

This corruption manifests itself in many ways including: hiring and dismissing public officials based on political cronyism, "islandism" and nepotism; fabricating costly "deeds of release" to settle invented law suits against the government; passport sales; by-passing proper procedures; and the widespread illegal acquisition and sale, for personal benefit, of state assets, especially public land, by certain leaders. Although these shocking abuses have been widely reported in the media and in ombudsman's public reports going back to the mid 1990s, very little has ever been done to punish or prosecute the wrongdoers or to recover for the public what has been in effect stolen from them.

This lack of action has prompted corrupt leaders and other officials to believe that they are in fact above the law, in effect exempt from due legal process. This feeling of "immunity" has led to a mentality of "impunity".

This 2014 National Integrity System report adopts the new methodology developed by the Transparency International movement. In addition to the standard pillars associated with the Transparency International National Integrity System approach, TI-V has added a fourteenth pillar, customary authorities. This has been done because traditional *kastom* remains a large influence in Vanuatu, with the Malvatumauri Council of Chiefs having constitutional recognition, and consultative authority in terms of legislative reform and policy development.

Transparency International Vanuatu is fortunate to have retained the services of the lead researcher who was involved in all three National Integrity System reports, and as such commenced the project fully versed in the project content, process and intention. This historical expertise proved extremely useful.

A full National Integrity System report takes on average two years to complete, however, due to financial and time limitations Transparency International Vanuatu has completed this work in less than thirteen months and this is to be commended.

Transparency International Vanuatu would like to thank all those involved in this project, and in particular recognise the support of Transparency International's head office in Berlin for making the funds available to undertake the project.

This was truly a team effort, and I would like to acknowledge all Transparency International Vanuatu team members. Whether directly involved or not, every team member played a role in ensuring the success of this project.

I would also like to acknowledge the outstanding commitment of all external members of the advisory group, as well as all those involved in the consultative processes which have led to the completion and recommendations contained within this report.

Without their tireless contribution, this report would not have been possible.

Our hope is that this report will be a useful instrument for both the leaders and employees within official institutions, and the public, to help everyone understand and assess the various authorities within the country, so that we can all work together to restore integrity to all levels of government and build a better, stronger and happier Vanuatu, not just for ourselves but for our children.

Marie-Noelle Ferrieux-Patterson

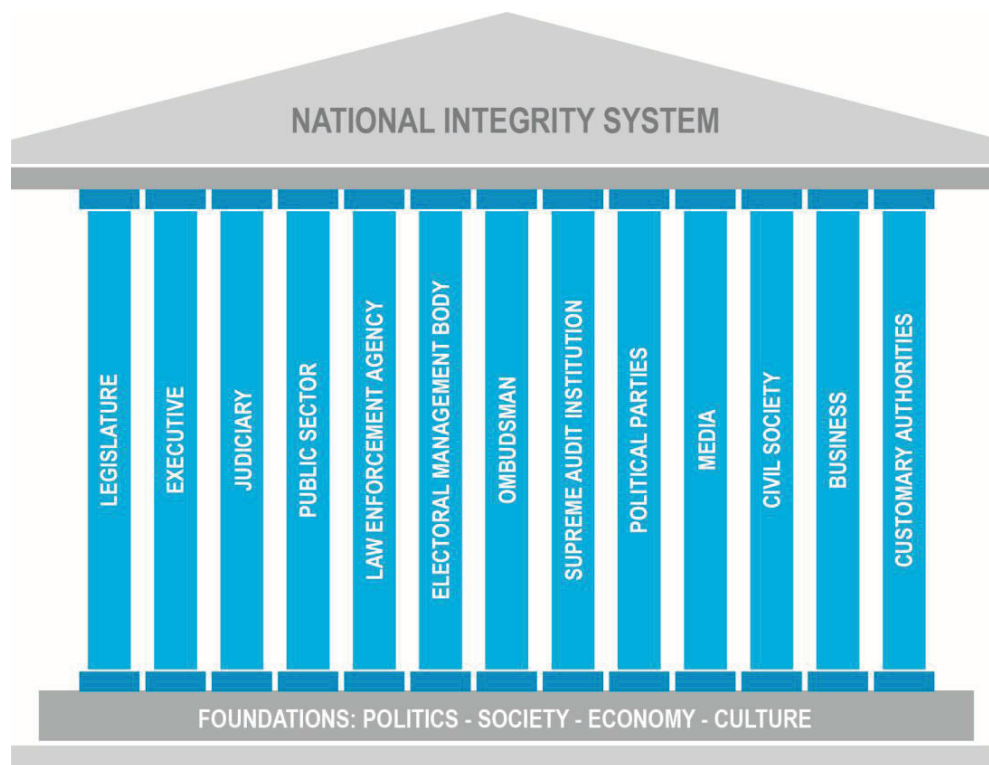
Chairperson

Transparency International Vanuatu

(until June 2014)

II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

Definitions

The definition of “corruption” used by Transparency International is as follows:

‘The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.’¹

“Grand corruption” is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’² “Petty corruption” is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’³ “Political corruption” is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’⁴

The Vanuatu National Integrity System Advisory Group decided that it needed a simple definition of “National Integrity System” to help explain what, ideally Vanuatu’s National Integrity System should be. The definition that was agreed to is:

‘A system where all institutions cooperate and support each other to fulfil their roles effectively, efficiently and with accountability and transparency.’

Objectives

The key objectives of the National Integrity System Vanuatu assessment are to generate:

- an improved understanding of the strengths and weaknesses of Vanuatu’s National Integrity System within the anti-corruption community and beyond.
- momentum among key anti-corruption stakeholders in Vanuatu for addressing priority areas in the National Integrity System.

The primary aim of the assessment is therefore to evaluate the effectiveness of Vanuatu’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Vanuatu to advocate for sustainable and effective reform.

Methodology

In Transparency International’s methodology, the National Integrity System is formed by 13 pillars representing all key public and private institutions in a country’s governance system. In Vanuatu’s assessment, to pay due attention to the importance of custom, it was decided to add an additional pillar, “Customary Authorities”. This pillar looks specifically at the role of the Malvatumauri Council of Chiefs within the National Integrity System.

The Vanuatu assessment addresses 14 pillars:

¹ Transparency International, *The Anti-Corruption Plain Language Guide* (Berlin: Transparency International, 2009) 14.

² Ibid, 23.

³ Ibid, 33.

⁴ Ibid, 35.

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Anti-corruption agencies*
Executive	Law enforcement agencies	Media
Judiciary	Electoral management body	Civil society
	Ombudsman	Political parties
	Supreme audit institution	Business
		Customary authorities

As Vanuatu does not have any anti-corruption agencies, as defined by Transparency International, this pillar is not assessed as part of the Vanuatu report. Instead a short discussion of the potential role of such an agency is presented.

Each of the other 13 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfil their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the “foundations” – in which the 14 pillars operate (see Chapter IV Country Profile: Foundations for the National Integrity System).

POLITICS	SOCIETY	ECONOMY	CULTURE
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The National Integrity System assessment is a qualitative research tool. It is guided by a set of “indicator score sheets”, developed by the Transparency International secretariat. These consist of a “scoring question” for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions used by Transparency International worldwide for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Vanuatu assessment, but, when appropriate, the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.⁵

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts and street surveys. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is, people “in the field”, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

As there is limited research on corruption in Vanuatu, a series of street surveys was conducted in Port Vila. Each survey had a small number of respondents (usually 50) and used a convenience sample, with the researcher approaching people in the street. These methodological limitations mean that the street survey data must be treated with caution. This data does, however, provide a valuable “public perspective”, and raises issues that can be researched more thoroughly in the future.

The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level. The three dimension's scores are then averaged to arrive at the overall score for each pillar, which provides a general description of the system's overall robustness.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

⁵ www.transparency.org/policy_research/nis/methodology [accessed 21 December 2013].

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

Consultative approach and plausibility of findings

The assessment process in Vanuatu had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

The consultative approach drove data gathering. Interviews and street surveys engaged both key stakeholders and the public. There were four other main parts to consultations: an advisory group, information to stakeholders and the public via media and public meetings, discussion papers, and a national integrity validation workshop.

NATIONAL INTEGRITY SYSTEM ADVISORY GROUP		
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Bryan Death (until Decr 2014), Tourism Councillor Vanuatu Chamber of Commerce and Industry	Steve Namali, National Custom Land Officer Malvatumauri Council Of Chiefs	Pastor Shem Them, Secretary Vanuatu Christian Council
Bob Makin, Freelance journalist	Jeff Joel Patunvanu, Private Secretary of Leader of the Opposition (at the time the report was written)	Evelyn Toa, President Media Association of Vanuatu
Viran Molisa, Solicitor General	Rebecca Solomon, Vanuatu National Youth Council	

The members of the advisory group met six times (31 July 2013, 19 September 2013, 19 November 2013, 17 December 2013, 6 March 2014 and 17 April 2014). At the meetings, extensive feedback was given by the advisors to the lead researcher on the methodology (for example, identifying interviewees and street survey questions) and findings. Each section of the draft report was critically reviewed and indicator scores were validated by the advisory group. As peer reviewer, Dr Tess Newton Cain also provided comments on the draft report.

Discussion papers were released to the public and preliminary findings were regularly published in the newspaper from August 2013. In April 2014 a public meeting on the National Integrity System

Assessment was held in Port Vila. Feedback on the press releases, discussion papers and feedback given at the public meeting all contributed to revisions of the report.

In April and May a number of key stakeholders were re-interviewed to confirm recommendations and in May 2014 the assessment process culminated in a consultative national integrity validation workshop where the findings of the evaluation were discussed among key stakeholders and recommendations for priority actions were finalised.

The assessment of each pillar went through a series of internal and external reviews. The Transparency International secretariat and the advisors reviewed drafts and agreed upon or adjusted the preliminary scores assigned by the lead researcher. Several draft chapters were reviewed by representatives of the institutions under assessment to correct errors of fact. The draft report was updated with the outcomes of the national integrity workshop. The full report was reviewed by the Transparency International Secretariat, the advisory group, and one external academic reviewer who provided an extensive set of comments and feedback.

A number of interviewees have changed positions between the time of the interview and the publication of the report. Notes record the position that the person held at the time of the interview.

Limitations

As discussed in this report, political instability is a major challenge for Vanuatu. Two days after the validation workshop was held in May 2014 there was a successful vote of no confidence and the government changed, with Joe Natuman becoming the new Prime Minister in replacement of Moana Carcasses. In a number of places the guiding questions on the indicators score sheets ask for assessments of the current executive or the current government. This report reflects activities of the Carcasses led government, which was in place at the time of writing the report.

Further, report deadlines meant that it was not possible to re-validate findings with representatives of the new government. That said, the opposition which is now in government was represented on the advisory group and senior public servants and official office holders which were involved in the validation workshop have not changed since the change of government.

While the methodology is developed to be robust and replicable, it does not claim to cover the full spectrum of issues on integrity and governance in Vanuatu. Applying a global assessment framework means that, necessarily, questions are not tailored to the Vanuatu context. Due to the prescribed approach of the assessment and time and budget limitations, research has been centred on Port Vila.

Assessments of performance are somewhat subjective. In some areas there were competing views as to what the main issues were. This report represents a consensus position, with the consensus having been agreed through a series of consultative processes. This leaves scope for ongoing discussion about the assessment.

This assessment does not pretend to be complete in all aspects, but should be considered as a resource for determining steps to take in strengthening the National Integrity System of Vanuatu. It can also be used as a benchmarking tool to measure progress over time.

III. EXECUTIVE SUMMARY

National Integrity System: A system where all institutions cooperate and support each other to fulfil their roles effectively, efficiently and with accountability and transparency.

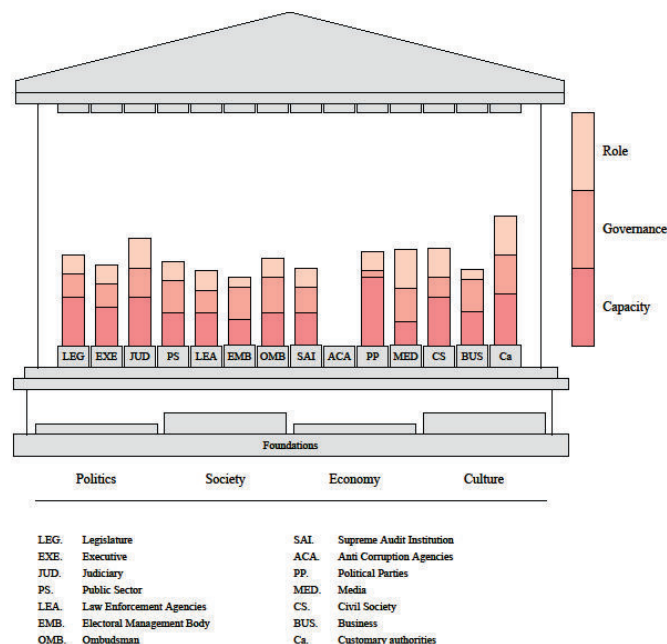
Definition by Vanuatu National Integrity System Advisory Group

In 2013, Transparency International Vanuatu commenced a National Integrity System assessment. This is the third National Integrity System assessment that has been done in Vanuatu, with previous assessments occurring in 2004 and 2006. The assessment focuses on an evaluation of the key public institutions and non-state institutions in a country's governance system with regard to (1) their overall capacity, (2) their internal governance systems and procedures, and (3) their role in the overall integrity system. The assessment examines both the formal legal framework of each pillar and the actual institutional practice. The analysis highlights discrepancies between the formal provisions and reality on the ground, making it clear where there are gaps in the integrity system.

It is Transparency International's hope that the Vanuatu assessment will generate a set of concrete recommendations for the country's key institutions and other local stakeholders to pursue in order to strengthen transparency, accountability and integrity. It should also provide a set of good governance benchmarks for the citizens of Vanuatu to hold their government and elected officials to account through public dialogue, policy engagement and voting.

Overall assessment of the National Integrity System

The following diagram visualises the scores for the pillars and illustrates their relative strength. The overall score for each pillar is made up of the quantitative assessment of the three dimensions: capacity, governance and role. The foundations represent the country profile analysis of the political-institutional foundations, socio-political foundations, socio-economic foundations and socio-cultural foundations.



Whilst the diagram shows that there are weaknesses across all pillars, it should be remembered that Vanuatu is a developing country that has been independent for less than 35 years. The scores within the National Integrity System framework are not, however, adjusted to take these factors into account. Instead, the National Integrity System framework presents ideal standards for all countries. As such they are aspirational.

Vanuatu is currently in a position where it is able to act to achieve these aspirational standards. The country rests on solid socio-cultural foundations. Despite weaknesses in the state widespread civil unrest is not currently a feature of life. Human rights are protected in law and usually respected in practice. Traditional governance helps to ensure order throughout the country and the traditional economy helps to ensure that most people have access to food, water and shelter.

It can also be observed that the 2014 Vanuatu National Integrity System assessment found that almost every pillar is currently undertaking activities to strengthen various aspects of capacity and governance. If all of these activities are completed then it can be expected that the next assessment of Vanuatu's National Integrity System will show considerable improvements.

National Integrity System pillars

The **judiciary** is one of the strongest institutions of the Vanuatu National Integrity System. This finding is very important as it shows that the institution entrusted to provide oversight and uphold the rule of law has relatively high levels of integrity. This study shows that it is largely independent, although it lacks some resources. In order for the judiciary to effectively act as a check, however, cases must be brought before it. Weaknesses in other agencies mean that this does not always happen. For example, even when and recommendations of the Office of the Ombudsman and the Office of the Auditor General are effectively issued, the lack of prosecutions means that the judiciary cannot act to uphold the rule of law.

The **media** is another institution that performs better than most. Whilst capacity for sustained investigative journalism is limited, it is active in reporting on allegations of corruption. The media is also active in informing the public about government activities. As such it helps to bring a degree of transparency to government operations.

The assessment reveals that there are particular concerns about the political and electoral processes in Vanuatu. The **electoral management body** should be mentioned first because of its pivotal role in safeguarding the integrity of the electoral process. Vanuatu's electoral roll has long been acknowledged to be inaccurate and there are concerns about the degree to which the Electoral Office can operate independently. There are also frequent allegations of wrongdoing by candidates during elections and election petitions are regularly brought to court following national elections. Prosecutions for electoral misconduct do not, however, occur. No agency has oversight of electoral campaign financing.

Weaknesses in the electoral process are of particular concern given the governance challenges facing **political parties**. Whilst political parties "score high" this is because they can operate very independently. There are no checks on political party financing and no other external mechanisms to ensure accountability or integrity. There is also an increasing number of political parties contesting national elections. Political parties often rely on support for individual leaders, rather than a shared philosophy or commitment to a particular policy platform. The increasing number of independent candidates contesting national elections is, maybe, a reflection of this dynamic.

The increasing number of political parties is a sign of the increasingly fragmented nature of politics. Government is by coalition. The **executive** changes frequently in attempts to maintain power balances and support from coalition members. Motions of no confidence in the prime minister are frequent, but are usually opportunistic rather than policy driven. As both the legislature and the executive frequently have their attention diverted by "horse-trading" their roles as central

accountability mechanisms and developers of sustainable national policy initiatives are undermined. Some issues relate to lack of capacity, and increased training and support for members of the legislature would help them to fulfil their ideal roles better.

The **ombudsman** and the **supreme audit institution** both have limited human resource capacity to act effectively as watchdogs. There is also, often, little follow up by the legislature, the executive and other agencies in response to reports issued by these bodies. Another problem which undercuts the ability of these pillars to hold leaders to account is that, although leaders are required to file annual returns disclosing assets and liabilities, the law does not permit routine scrutiny of these returns. These weaknesses undermine the integrity of a number of pillars within the National Integrity System.

Law enforcement, in respect of the key anti-corruption law, the Leadership Code Act, is weak. There has never been a prosecution under the Leadership Code Act. The Office of the Public Prosecutor has not been functioning well and in 2013 the public prosecutor resigned rather than face a commission of inquiry. Some investigations and prosecutions of misappropriation offences do occur and the Department of Customs is becoming more active in detecting crimes in relation to tax avoidance. These prosecutions are not, however, directed at leaders.

The **public sector** does have a code of conduct and regularly processes disciplinary complaints. However, there are currently no ongoing programmes to encourage ethical behaviour by public servants. Nor does the public sector have a defined role in respect of educating the public about corruption. The public sector is sometimes undermined by strong influence of the executive on appointments in the sector.

Civil society organisations are able to operate freely and some are active in promoting national integrity. This sector suffers from lack of capacity and lack of coordination, however. Internal governance is also a challenge for many civil society organisations. Whilst civil society organisations can and do, at times form successful partnerships with government agencies on policy advocacy and public awareness, there is a perception that civil society organisations are not consistently viewed by the government as relevant stakeholders in the policymaking process.

Business is not usually perceived within Vanuatu as having a clear role to play in upholding national integrity. Whilst businesses support civil society organisations in areas such as sports and provision of health services, ongoing business partnerships supporting anti-corruption activities are lacking. Few businesses have voluntary codes of good corporate practice. In general there is a reactive approach regarding integrity issues, with businesses responding to government initiatives that would potentially impact on the operation of the private sector.

Traditional authorities operate throughout the entire country quite independently of the state and are central to community governance, particularly outside of the urban areas. There is integration of traditional authorities and the state through the Malvatumauri Council of Chiefs. This body has limited resources, which hinders its activities, although recent constitutional amendments increase its ability to act as a check on the legislature in respect of making laws affecting aspects of custom.

Vanuatu does not have an independent anti-corruption institution. Such an institution is recommended in the United Nations Convention against Corruption, which Vanuatu is a party to.

Policy themes and recommendations

The Vanuatu National Integrity System assessment has yielded a number of concrete recommendations to address the weaknesses identified through the research and to strengthen the anti-corruption safeguards in the country. Pillar-specific recommendations are presented at the end of each pillar assessment. Common themes in issues across pillars are:

The functioning of most pillars is weakened by failures within the legislature and executive to play their role in the “cycle of accountability” and to maintain a stable policy direction. These failures largely stem from lack of **POLITICAL INTEGRITY**. Unless lack of political integrity is addressed it will be impossible to consistently develop laws, policies and practices that support national integrity.

There are significant gaps in the legal frameworks for **ACCOUNTABILITY** of institutions and individuals and the practical implementation of those frameworks. Accountability mechanisms act to reduce the gap between law and practice. Unless accountability mechanisms are strengthened laws will continue to have little impact on practice.

Laws and practices tend not to support **TRANSPARENCY** of actions by institutions and individuals. Transparency increases detection of bad behaviour, which in turn enhances accountability. Unless transparency is improved it will remain difficult to hold institutions and individuals to account and to develop public will for change.

In many instances it would be unfair to attribute weak performance to intentional corruption. Instead technical knowledge and, more fundamentally, an embedded understanding of roles, responsibilities and good practice is often lacking. This indicates a lack of **HUMAN RESOURCE CAPACITY**. As well as developing specific human resource capacity, all reforms and strategies to strengthen national integrity should be designed to be achievable within Vanuatu’s resource constraints.

National integrity ultimately rests on each person’s internal ethical foundation. This gives rise to an embedded understanding of roles, responsibilities and good practice. **AWARENESS** to engage both “hearts and minds” is critical. Whilst it is easier to build knowledge of rules, systems and behaviours, developing internal ethical awareness that is appropriate to a modern democracy must not be overlooked.

These themes also suggest a number of priorities amongst recommendations. The main pillars involved with political integrity are: political parties, which should be at the heart of developing political groupings based on shared philosophies and policy platforms; the electoral management body, which administers the system by which political leaders are selected; the legislature, where elected representatives should make laws and monitor activities in accordance with the political philosophies and policies that they were elected to further; and the executive which should develop and implement policy for the good of the Republic of Vanuatu as a whole.

When all of these pillars work well there is a bridge between the public and national political processes and public confidence that elected representatives act with integrity. When these pillars do not work well public confidence in the political system is undermined. The political system can end up being perceived as a system in which political leaders can and do act in their own self-interest, rather than the national interest. This perception is reinforced by lack of effective accountability mechanisms.

Vanuatu is currently facing a crisis in political integrity. Fragmentation of political parties, ongoing instability in government and serious deficiencies in the electoral system are some of the problems that are openly acknowledged by both the government and the opposition to be issues that must be addressed as a matter of urgency. The apparent political will to take steps to address issues of political integrity is an encouraging sign.

The following five priority recommendations will help to establish better frameworks within which political integrity can be (re)established.

In order to enhance political integrity the government must take action as soon as possible to:

1. develop laws to regulate political parties and independent candidates for election, and in particular party finances and campaign finances.
2. implement an accurate electoral roll and voting system which is not subject to abuse.
3. revise the Standing Orders of Parliament, regulation of members' allocations and rules about the use of motions of no confidence.
4. revise the Ombudsman Act and Leadership Code Act to expand the Ombudsman's powers and ensure that there are consequences for breaches of the Leadership Code.
5. enact the Right to Information Bill and revise the Government Act to ensure transparency of the executive.

All of these changes should be made in a transparent and consultative manner which builds both awareness of roles, responsibilities and good practice within a democracy and public and political will for change. This is particularly important as some of these changes may require amendments to the Constitution which will need to be supported by a public referendum.

A large number of more specific recommendations lie behind these five priority recommendations. Most of these recommendations are not new, but have instead been talked about for a decade or more. Vanuatu needs to move beyond talk, and take action. In order to continue momentum that currently exists in Vanuatu's political environment and which has been developed whilst undertaking this National Integrity System assessment, the key activities for taking the recommendations in this report forward are:

1. The Vanuatu government must establish a national integrity committee made up of both government and non-government representatives. The national integrity committee must develop and implement a plan for strengthening national integrity, using the outcomes of this report as a starting point for this plan.
2. The government should declare 2015 to be the Year of National Integrity and the national integrity committee should use this as a focus for implementing changes.

IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

The political, social, economic and cultural foundations of the Republic of Vanuatu, formerly known as the New Hebrides, are particularly affected by two factors. First, Vanuatu has only been independent for 33 years. Vanuatu was grouped into a single administrative area by English and French colonial authorities who commenced colonial administration (in law, if not in practice) in 1906. Vanuatu gained Independence in 1980. The indigenous population did not form a single state or a homogeneous ethnic grouping prior to colonisation. Traditional authority was not centralised. Instead societies were clan or village based. The communitarian values these small scale societies were based on are very different to the values of a modern representative democracy.⁶ As a result in contemporary Vanuatu the operation of a democratic nation state is confronted by the lack of connection between the system of governance established on Independence and traditional forms of authority. It has been observed that, 'Prior to Independence, authority was either exercised by force by the two colonial powers or else was traditional and achieved its legitimacy through belief in the sanctity of traditions, *kastom* and obedience to community leaders ... At Independence there was a sudden shift to a different type of authority and a different, legal-rational basis of legitimacy.'⁷

Second, Vanuatu's population of approximately 250,000 people⁸ is dispersed over 64 islands. Only six islands have a population of more than 10,000 people (Efate, Espiritu Santo, Tanna, Malekula, Pentecost and Ambae).⁹ 'Geographical considerations combined with resource considerations means that many parts of state legal systems are concentrated in urban areas, and simply do not have a presence in "the outer islands" or rural areas.'¹⁰ As a result, 'many people see the state government as a remote concept with little impact on their lives'.¹¹ The absence of state authority in many areas complicates the challenge of developing a sense of nationhood, the values associated with democratic governance and an effective National Integrity System.

Politics

Score: 25

TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Civil and political rights are protected by law and generally respected. Representative democracy is also embedded in law, but democratic processes are not always followed in social practice. This contributes to political instability, which undermines the quality and

⁶ William FS Miles, *Bridging Mental Boundaries in a Postcolonial Microcosm* (Hawaii: University of Hawaii Press, 1998) chapter 2; Amitai Etzioni, 'Law in Civil Society, Good Society and the Prescriptive State' (2000) 75(2) *Chicago Kent Law Review* 355, 355.

⁷ Miranda Forsyth, *A Bird that Flies with Two Wings: The kastom and state justice systems in Vanuatu* (Australia: ANU E Press, 2009) 10.

⁸ Vanuatu National Statistics Office, *2009 National Census of Population and Housing Summary Release 2010* (Port Vila: Vanuatu National Statistics Office, 2010) iii.

⁹ Vanuatu National Statistics Office, *2009 National Population and Housing Census Basic Tables Report, Volume 1* (Port Vila: Vanuatu National Statistics Office, 2011) 12-13.

¹⁰ Anita Jowitt, 'The Future of Law in the Pacific' (2008) 12(1) *Journal of the South Pacific Law* 43, 44-45.

¹¹ Forsyth, 2009: 10, 12-13.

consistency of leadership. This in turn undermines development of an effective and consistent National integrity System.

A range of civil and political rights, including freedom of expression, freedom of association and freedom from discrimination are enshrined in the Constitution.¹² If constitutional rights are violated individuals have redress in the Supreme Court.¹³ The United States Department of State observed that Vanuatu does have a 'freely elected government'¹⁴ and did not observe issues with the violation of civil liberties or political rights such as the freedom of association and freedom of speech in 2012. The Brookings Institute index of 141 weak states assesses states on their economic, political, security and social welfare performance. Vanuatu scores well, with an overall score of 7.7 out of 10, which places it in the top quintile of countries.¹⁵ Vanuatu faces a number of human rights concerns, however. The United States Department of State observes that a number of human rights abuses are present, including 'violence against women ... police violence, poor prison conditions, arrests without warrants, an extremely slow judicial process, government corruption, and discrimination against women.'¹⁶ Violations of the rights of women are particularly pervasive.

Notwithstanding its constitutional form and generally positive civil and political rights record, the Vanuatu political environment is somewhat unstable, which leads to weaknesses in governance. The current political environment is becoming increasingly fragmented.¹⁷ Since the election in 1991 no one party has garnered enough seats to be able to govern on its own, resulting in the necessity of government by coalition.¹⁸ There are currently sixteen parties and four independents in parliament.¹⁹ Large coalitions are inherently unstable and there are frequent changes in cabinet, coalition and government. For instance, between the 2008 and 2012 elections the prime ministership changed seven times, with four of these changes subsequently being voided by court action.²⁰ The need to maintain coalitions may also lead to political compromises that undermine "good governance". Van Trease observes that the last prime minister to survive a full four year term, Ham Lini, 'managed to do so because he refused to take action ... or make decisions that could jeopardize the coalition. Maintaining political stability was his prime objective.'²¹

Increasing fragmentation within politics has, to a degree, been influenced by traditional culture and the traditional "big man" model of authority. Power under the "big man" model of authority may be obtained through, amongst other things, developing influence through exchange.²² The development of influence through exchange affects the perception of the role of political leaders and the operation of the democratic process. At election time, candidates tend not to attract support on the basis of clearly articulated policy positions and are not expected to act as a voice for those policy positions within parliament. Instead, members of parliament are 'expected to provide access to resources and "development" funds. Indeed, all members of parliament act as central nodes in networks of distribution and exchange focused on access to state resources.'²³ The legal structure facilitates this dynamic. As discussed in the legislature pillar members of parliament are provided a representation allowance VT387,167 (US\$3,870) per month.²⁴ This allowance combines their "salary" and an

¹² Article 5, Constitution of the Republic of Vanuatu.

¹³ Article 6, Constitution of the Republic of Vanuatu.

¹⁴ US Department of State, *Vanuatu 2012 Human Rights Report 2012* (New York: US Department of State, 2012), 1.

¹⁵ Susan E Rice and Stewart Patrick, *Index of State Weakness in the Developing World* (Washington DC: Brookings Institute, 2008) 42.

¹⁶ US Department of State, 2012: 15.

¹⁷ Michael G Morgan, 'The Origins and Effects of Party Fragmentation in Vanuatu' in Roland Rich, Luke Hambly and Michael Morgan (eds), *Political Parties in the Pacific* (Australia: ANU E Press, 2006), 117.

¹⁸ *Ibid.*, 127-130.

¹⁹ www.pacificpolicy.org/blog/category/vanuatu-election-2012/ [accessed 25 November 2013].

²⁰ For details of changes see Anita Jowitt, 'Vanuatu Political Review' (2004) 16(2) *The Contemporary Pacific* 401.

²¹ Howard Van Trease, 'Vanuatu Political Review 2009' (2010) 22(2) *The Contemporary Pacific* 467, 467.

²² Marshall Sahlins, 'Poor Man, Rich Man, Big Man, Chief: Political types in Polynesia and Melanesia' (1963) 5(3) *Comparative Studies in Society and History* 285.

²³ Michael G Morgan, 'Political fragmentation and the policy environment in Vanuatu, 1980-2004' (2004) 19(3) *Pacific Economic Bulletin* 40, 45.

²⁴ Parliament (Members' Expenses and Allowances) Amendment Act 2012.

annual allocation of VT2 million (US\$20,000) to be spent in their constituency.²⁵ There is no requirement that members of parliament account for the constituency allocation in any way.

This dynamic undermines the operation of policy or values based politics. It also creates an incentive for destabilising coalition governments. Because government, and particularly cabinet, positions allow members of parliament greater access to resources with which to provide returns to their constituencies, a situation occurs in which 'members of parliament are forced into frantic efforts to join government and gain access to the state's funds. This... [diverts] the attention of members of parliament from their institutional roles as law makers, overseers of government, and representatives.'²⁶

The nature of the instability within Vanuatu's political institutions affects continuity of policy and the ability of the executive to implement consistent policy. It also affects the law making role of the legislature and its ability to act as a check on the executive. These things reduce the ability to implement changes that would enhance the National Integrity System.

Society

Score: 50

TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE OF AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Vanuatu is ethnically and linguistically diverse. Violent "inter-island" disputes have risen on occasion, particularly in urban areas. The main group that experiences socially rooted political exclusion is women. A growing source of tension is the relationship between indigenous ni-Vanuatu and non-indigenous citizens and residents but this tension is currently not so pronounced as to be destabilising.

About 95% of the population is indigenous ni-Vanuatu.²⁷ Although the indigenous population is broadly Melanesian, the cultural environment is diverse. Over 100 linguistically distinct cultures exist, leading a former President of Vanuatu to observe that Vanuatu is 'like 100 nations inside one country.'²⁸ This diversity reduces the potential for large scale race based conflict because there is no single dominant race that stands in opposition to one or more minorities.

Conflicts between different indigenous ethnic groups do sometimes break out. These particularly occur in urban areas, where a diverse population comes together and jealousies between communities may exist. There are also weaker customary authority systems to help maintain order. Most notably, in 2007 a violent conflict between Ambrym and Tanna communities living in Port Vila led to a state of emergency being declared. There were three deaths and a number of hospitalisations. A number of properties were also burned.²⁹

The ethnic diversity, as well as reducing a sense of nationhood, also fosters a political environment of patronage. As discussed in the politics section above, parliamentarians tend to have a patron-client relationship with their constituencies. Part of the reason for this is the extreme cultural diversity, coupled with the fact that customary social systems continue to be an important aspect of social ordering. 'Kinship ties, often referred to as the wantok system, are central to custom, and are

²⁵ www.facebook.com/notes/vote-against-merging-of-vanuatu-mp-allocation-and-salary/email-from-mp-ralph-regenvanu/140403422677768 [accessed 19 February 2014].

²⁶ Michael G Morgan, 'Political fragmentation and the policy environment in Vanuatu, 1980–2004' (2004) 19(3) *Pacific Economic Bulletin* 40, 45.

²⁷ Vanuatu National Statistics Office, *The 1999 Vanuatu National Population and Housing Census: Main report* (Port Vila: Vanuatu National Statistics Office, 2000) 19; Vanuatu National Statistics Office, *2009 National Population and Housing Census Basic Tables Report, Volume 1* (Port Vila: Vanuatu National Statistics Office, 2011) 27.

²⁸ Kalkot Mataskelekele quoted in Forsyth, 2009: 21.

²⁹ Anita Jowitt, 'Vanuatu review 2007' (2008) 20(2) *The Contemporary Pacific* 475, 475.

the basis of political groupings, which tend to be small and localised.³⁰ These factors can lead to “islandism” within politics, with political leaders acting in the local, rather than national, interest.

The links between politicians and communities mean that civil society, in the sense of non-government organisations (NGOs), does not necessarily play a mediation role between the political system and the public. Instead, civil society tends to be active in mediating between “introduced” values such as human rights and democracy and traditional culture.

A further division in society is the “Anglophone/Francophone” divide. One legacy of Vanuatu’s colonial history is a dual education system, with some educated in French and some in English. For the first 12 years post-Independence, government was Anglophone, with the opposition being Francophone. While the proliferation of parties and the attendant growth of coalition government has resulted in the Anglophone/Francophone divide being less obvious, changes between Francophone and Anglophone dominated ministries can create instability and inefficiency as staffing, policies and programmes may shift to favour one linguistic group over the other. The most notable area that Anglophone/Francophone politics and policy shifts affects is education, as Vanuatu maintains a dual English/French education system.

Although Melanesian societies can be either matrilineal or patrilineal, Vanuatu society is patriarchal and ‘there is an enormous division among ni-Vanuatu based on gender.’³¹ Violence against women is endemic. A 2011 survey found that ‘over half of ever-partnered women (51%) experienced some type of physical violence in their lifetime, and one in three (33%) were physically abused in the last 12 months.’³² This survey also found that violence against women is viewed as normal or acceptable by women. Three in five women (60%) agreed with at least one justification for a man to beat his wife. More than half of the women interviewed (53%) believe that if bride price is paid, a woman becomes the husband’s property.³³

Women are underrepresented in politics, with only 17 of the 346 candidates contesting the 2012 national election being female. ‘Since Independence in 1980, only 5 women have ever been elected to Vanuatu’s National Parliament.’³⁴ There is awareness of this issue, however, and in 2013 Parliament passed an amendment reserving 30% of seats in municipal councils for women.

There is, maybe, growing resentment towards non-indigenous Vanuatu citizens. Former Prime Minister Moana Carcasses, who was in position at the time that this report was being researched and written, is a naturalised citizen and has been publically attacked on this basis.³⁵ An amendment to the Representation of the People Act in 2012, which attempted to require rural candidates to either be indigenous to their electorate or adopted into their electorate, was ruled to be unconstitutional as creating race-based discrimination.³⁶ Families who have been in Vanuatu for generations are not always recognised as “local”, particularly if they of Asian descent. More generally anti-Asian sentiment is growing.³⁷ The tensions between “foreign” and “local” are part of wider post-colonial issues as to the extent to which development can fit with local culture,³⁸ particularly if it poses a threat to customary land ownership.³⁹ They also reflect reactions to historical exploitation during the colonial period.⁴⁰ It is somewhat telling that a book on minority rights

³⁰ Anita Jowitt, Yoli Tom’tavala and Joseph Foukona, *Customary law and public health* (Technical paper prepared for Model Public Health Law for the Pacific Islands Project, Melbourne: La Trobe University, 2009) 3.

³¹ Miranda Forsyth, 2009: 13.

³² Vanuatu Women’s Centre in partnership with the Vanuatu National Statistics Office, *Vanuatu National Survey on Women’s Lives and Family Relationships* (Port Vila: Vanuatu National Statistics Office, 2011), 56.

³³ Ibid, 55.

³⁴ www.pacwip.org/current-elections/vanuatu.html [accessed 18 February 2014].

³⁵ See, for example, ‘Letter to the editor’ *Vanuatu Daily Post Online*, 29 May 2013.

³⁶ *Bohn v Republic of Vanuatu* [2012] VUSC 42.

³⁷ See, for example, ‘Letter to the editor’ *Vanuatu Daily Post Online*, 26 September 2013.

³⁸ See, for example, Antony Hooper, ‘Introduction’ in Anthony Hooper (ed), *Culture and Sustainable Development in the Pacific* (2000) 1, 1.

³⁹ See, for example, Lara Daley, ‘Hijacking development futures: “Land development” and reform in Vanuatu’ in Tim Anderson and Gary Lee (eds), *In Defence of Melanesian Customary Land* (Australia: Aidwatch, 2010) 34, 38.

⁴⁰ For a discussion of colonial exploitation see Ati George Sokomanu, ‘Government in Vanuatu: The Place of Culture and Tradition’ in Ron Crocombe et al (eds), *Culture and Democracy in the Pacific* (1992) 49, 51.

in the Pacific does not recognise non-indigenous citizens of non-Pacific descent as being “minorities”, despite the fact that they are numerical and political minorities and have no right to own land.⁴¹

Economy

Score: 25

TO WHAT EXTENT IS THE SOCIO-ECONOMIC SITUATION OF THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Vanuatu has a small formal economy, which limits the resources available for government programmes. There is a divide between resources in rural and urban areas. There is also a divide between people engaged in the cash economy and those who are not. The presence of a strong informal traditional economy in rural areas means that “poverty” in the form of starvation and destitution are not significant problems for Vanuatu. Rather mainstream poverty analysis raises concern about lack of opportunity to access goods such as education. Poverty has a particular impact on women.

Vanuatu is on the UN list of least developed countries, primarily because its economy is small and remote and is vulnerable to natural shocks and trade shocks.⁴² Part of the reason for this is that Vanuatu's economy relies on agriculture and tourism and both of these sectors are vulnerable to natural disasters including cyclones, earthquakes, volcanic eruptions and tsunamis. The vulnerability of agriculture to shifts in world commodity prices and the vulnerability of tourism to the economic performance of its major tourism markets (currently Australia and New Zealand) are other factors outside of Vanuatu's control that contribute to the vulnerability of the economy.⁴³ Political instability has also, at times, resulted in mismanagement and hindered foreign investment, particularly in the 1990s.⁴⁴ Conversely, relative political stability has been used to partially account for periods of economic growth.⁴⁵

Economic growth is further hindered because the development of local business is limited by weak infrastructure, particularly outside of urban areas. Grid electricity supply is primarily limited to the urban areas.⁴⁶ Inter-island shipping is not always reliable, access to airstrips is limited and flights between islands are very costly. Road networks are poor.⁴⁷ These factors limit access to the primary domestic markets for goods and services. As a result business activity is almost entirely urban based. Costs of production are also high. This is, in part, because many goods used in the process of production need to be imported⁴⁸ and Vanuatu's remoteness makes transportation costs associated with importation high.⁴⁹ Similarly, the cost of exporting goods by ship or by plane is a hindrance to the development of export markets.⁵⁰

⁴¹ Joshua Castellino and David Keane, *Minority Rights in the Pacific Region: A Comparative Analysis* (London: Middlesex University, 2009) 28-29.

⁴² United Nations Conference on Trade and Development, *The Least Developed Countries Report 2011*, (New York and Geneva: United Nations Conference on Trade and Development, 2011) iii.

⁴³ TK Jayaraman, 'Being least developed' *Fiji Times online* 3 February 2009. For an overview of Vanuatu's national economy, see Cynthia Ala and Philip Arubilake, 'Chapter 1: Domestic Economy' in Simeon Athy & Ferdinand van der Walle (eds), *20 Years of Central Banking in Vanuatu* (2000) 12; David Cowen, Alexander Wolfson & Jian Ming Ni, *Vanuatu Country Report* (US: International Monetary Fund, 2002).

⁴⁴ Ala and Arubilake, 2000.

⁴⁵ Marcus Cox et al, *The Unfinished State Drivers of Change in Vanuatu* (Port Vila: AusAID, 2007) 15.

⁴⁶ Vanuatu National Statistics Office: 2000, 181.

⁴⁷ Vanuatu National Statistics Office: 2000, 77-83.

⁴⁸ In February 2012 the balance of trade was -VT2051 million (-US\$21 million). Vanuatu National Statistics Office, *Vanuatu: Statistics Update: Overseas Trade February 2012 Highlights* (Port Vila: Vanuatu National Statistics Office, 2012).

⁴⁹ Cox et al, 2007: 41.

⁵⁰ Ala and Arubilake, 2000: 40.

In terms of human development, in 2011 Vanuatu was in the bottom third of medium development countries on the UN human development index (HDI), with a rank of 125 out of 197 countries.⁵¹ The HDI ranks countries based upon life expectancy at birth, the average number of years of education people over the age of 25 have received and Gross Domestic Product (GDP) per capita.⁵² The 2011 HDI stated that income per capita was US\$3,950 (2005, purchasing power parity).⁵³ Since 1985 life expectancy has increased 16.6% to 71 years and average years of education has increased 13%.⁵⁴ Functional literacy, which requires that a person be able to read and write, was estimated in 1999 to be 30% for women and 37% for men.⁵⁵ The 2009 census data stated that the percentage of the population who could read and write a simple sentence (so have basic literacy, which may not be the same as functional literacy) was 84.8%.⁵⁶ Functional literacy is further complicated by the dual education system that Vanuatu maintains, with both English and French schools being provided by the State. When considering literacy by language, 64% of the population can read and write a simple sentence in English, 37% can read and write a simple sentence in French and 74% can read and write a simple sentence in Bislama,⁵⁷ a pidgin that is the national language of Vanuatu.⁵⁸

The state does not fund social security benefits such as old age, unemployment or disability benefits. Instead the continuation of traditional lifestyles within the informal economy provides a “social safety net” that mitigates against poverty. The majority of the labour force operates within the informal economy, with 2009 census data indicating that about 61% of the labour force engages in subsistence agriculture, unpaid family work or “subsistence plus surplus” activities that involve producing some goods for sale at markets, as their principal economic activity. The fact that the Constitution protects customary land ownership has helped to ensure the continuation of traditional economic structures.

In rural areas, where people primarily reside on their customary land ‘ni-Vanuatu still live in “subsistence affluence”, enjoying plentiful natural resources in an unspoilt environment.⁵⁹ Whilst ‘lack of economic opportunity and growing demand for the trappings of modern life are placing stresses on rural communities⁶⁰ these stresses are different from those experienced in urban areas, where many people are immigrants from other islands, so do not have “free” customary land on which to dwell. Ninety-two per cent of the rural population, as compared to 41% of the urban population has free access to customary land.⁶¹ In contrast urban dwellers often live in densely populated settlements that restrict opportunities to engage in subsistence activities and require more cash for food and other basic needs such as housing, water and cooking fuel.⁶² The basic needs poverty line reflects this, with the estimated poverty line in Port Vila being almost four times higher than the poverty line in rural Vanuatu.⁶³

The social safety net provided by the traditional economy means that households below the poverty line are unlikely to be starving. Instead, in Vanuatu, poverty relates more to poverty of opportunity, with households faced with hard choices between for example, spending money on power, water, schooling and clothing.⁶⁴ It can be observed that in rural areas, where state services such as healthcare and education and physical infrastructure such as central water and electricity supply are

⁵¹ <http://hdrstats.undp.org/images/explanations/VUT.pdf> [accessed 11 November 2012].

⁵² Ibid, 1.

⁵³ Ibid, 2.

⁵⁴ Ibid, 2.

⁵⁵ United Nations Development Program, *Pacific Human Development Report 1999* (New York: United Nations Development Program, 1999) 105.

⁵⁶ Vanuatu National Statistics Office, 2000: v.

⁵⁷ Ibid.

⁵⁸ Article 3(1), Constitution of the Republic of Vanuatu.

⁵⁹ Cox et al, 2007: 4.

⁶⁰ Ibid.

⁶¹ Vanuatu National Statistics Office and Malvatumauri, *Alternative Indicators of Well-being for Melanesia Vanuatu Pilot Study Report, 2012* (Port Vila: Vanuatu National Statistics Office and Malvatumauri, 2012) 21.

⁶² Marcus Cox et al, 2007: 16-17.

⁶³ Vanuatu National Statistics Office, 2012: v.

⁶⁴ Vanuatu National Statistics Office, *Vanuatu: Analysis of the 2006 Household Income and Expenditure Survey Report on the Estimation of Basic Needs Poverty Lines, and the Incidence and Characteristics of Poverty in Vanuatu, 1 January 2006* (Port Vila: Vanuatu National Statistics Office, undated) [128], 46.

often minimal or entirely absent, poverty of opportunity exists even if income far exceeds the basic needs poverty line.

Aid is an important source of income for the country. In 2010 overseas development assistance accounted for 16% of gross national income.⁶⁵ The tax base has, in the past, been largely dependent on taxes on international trade, which in 2009 accounted for 38% of tax revenue.⁶⁶ In 2012 Vanuatu joined the World Trade Organisation and there is some concern that obligations created by membership will lower tax revenue.⁶⁷ Vanuatu has also suffered tax revenue losses through its participation in the Melanesian Spearhead Group Trade Agreement. It has been observed that ‘financing continued public investment while preserving low debt will require additional tax revenue measures’.⁶⁸ Whilst the Vanuatu government is exploring ways to strengthen its tax base, a fragile business sector and low rates of participation in the cash economy by much of the population poses particular challenges.

This socio-economic environment hinders the development of an effective National Integrity System in a variety of ways. Government has limited resources to commit to policy initiatives to strengthen integrity and limited options for increasing revenue. Households who are struggling to pay bills are more likely to forego educating their children. Low education levels reduce informed debate, which in turn can reduce demand for change. Low income households are also less likely to be able to afford to participate in debates about national issues that are, maybe, far removed from their daily realities, as radios, newspapers, transport to meetings all take money. In general, Vanuatu citizens are economically weak and thus their focus is on day-to-day living. They are not afforded the luxury of time and the resources to attend to broader societal issues, instead needing to focus on the need to provide food and shelter to their families.⁶⁹ Inequality and lack of opportunity is also a potential driver of unrest and crime, which can divert resources into basic law and order maintenance functions.

Culture

Score: 50

TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES OF SOCIETY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Recent data suggests that two-thirds of the population values honesty. However, there is a low level of trust that others are acting in accordance with local values. There is also a perception that “things are getting worse”. A previous National Integrity System study identified a culture of fear of confronting leaders and more recent data supports this finding.

Surveys such as the World Values Survey, conducted by the World Values Survey Association, and the Global Barometer, conducted by the Globalbarometer network, which measure levels of public trust or “public-mindedness” have not been conducted in Vanuatu. However, the Alternative Indicators of Well-being for Melanesia Vanuatu Pilot Study Report 2012 provides some data on how culture affects integrity. This study asked respondents how important ten “Melanesian values” were to them personally and how important they thought each value was to others in society. The table below reports both whether people think the value is important for themselves and whether they think other people in society see it as an important value.⁷⁰

⁶⁵ <http://data.worldbank.org/indicator/DY.ODA.ODAT.GN.ZS> [accessed 19 February 2014].

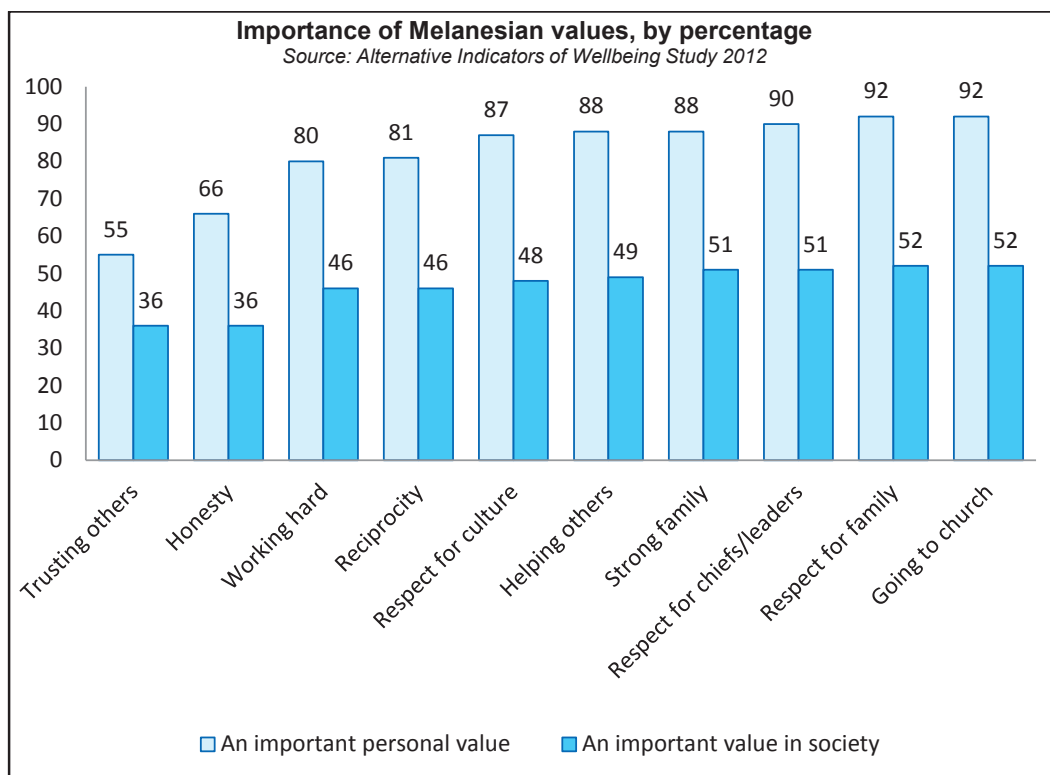
⁶⁶ Kai Schlegelmilch, *VANUATU Options for promoting Environmental Fiscal Reform in EC Development Cooperation Country case study Vanuatu 2010* (Paper commissioned by the European Commission, 2010), 3.

⁶⁷ <http://dangay.files.wordpress.com/2011/07/van-wto-pipp-130711.pdf> [accessed 19 February 2014].

⁶⁸ Mary Swires, ‘IMF Recommends Increased Taxes for Vanuatu’ *Global Tax News* 26 June 2013.

⁶⁹ Interview of Program Support Co-ordinator at Vanuatu Red Cross Society Dickinson Tevi with Jessica Kim, Port Vila, 20 January 2014.

⁷⁰ Vanuatu National Statistics Office and Malvatumauri, *Alternative Indicators of Well-being for Melanesia Vanuatu Pilot Study Report, 2012* (Port Vila: Vanuatu National Statistics Office and Malvatumauri, 2012).



As the table above indicates, honesty, whilst important to two-thirds of respondents, was not as widely valued as being respectful. Reciprocity was also more valued, as was a strong family. This data is consistent with commentary in the 2004 Vanuatu National Integrity System study that found, 'One obvious source of conflict [between the national integrity system and culture] is the Melanesian notion of gift giving, which to Western eyes can appear as bribery. The *wantok* system, which is a system of relationship and reciprocity between kin and villagers, is also blamed for nepotism within the public service.'⁷¹

It is also interesting to note that respondents' perceptions of others value systems indicated a lack of faith that values were well respected by others. This is consistent with the finding that only 30% of respondents had a high level of trust in their neighbours.⁷² It is also consistent with the finding that perceptions of the level of community co-operation were not high, with only 22% of urban dwellers and 46% of rural dwellers reporting community co-operation to be strong.⁷³

Respondents also perceived that the cultural environment had deteriorated over the past two to three years: positive values of respectfulness, family priority, co-operation and faithfulness were perceived to have gotten weaker by the majority of respondents (70%, 64%, 61% and 58% respectively). At the same time negative values of dishonesty, and greed and selfishness were perceived to have gotten stronger (by 72% and 78% of respondents respectively).⁷⁴ This data suggests that in Vanuatu there is widespread mistrust that others are "doing the right thing".

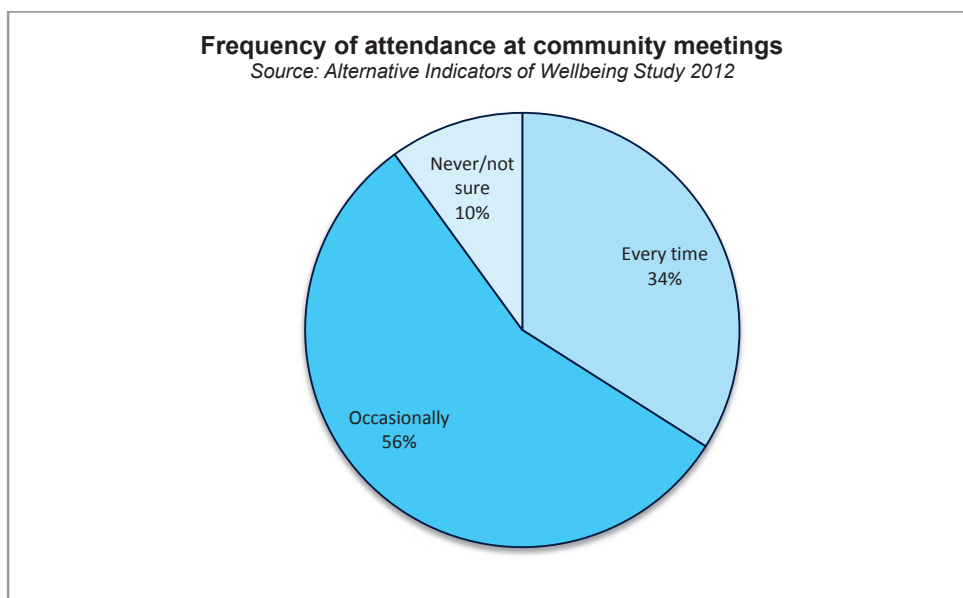
Whilst this study did not directly address levels of participation and apathy in state governance, it did measure participation in community governance. As the chart below indicates, the majority of respondents did attend meetings.

⁷¹ Tess Newton Cain and Anita Jowitt, *Vanuatu National Integrity Systems Country Study 2004* (Blackburn: Transparency International Australia, 2004) 12.

⁷² Vanuatu National Statistics Office and Malvatumauri, 2012: 63.

⁷³ Ibid, 76.

⁷⁴ Ibid, 74-77.



Of those that attended meetings, 67% actively participated by speaking sometimes or always. Whilst attendance and participation was lower for females and young people,⁷⁵ this data indicates that, at a community level, “public mindedness” is present. It also suggests that developing a stronger (two-way) link between community governance structures and national governance structures may be a mechanism to both build awareness of issues and increase public participation.

Another aspect of culture that affects the operation of the National Integrity System is fear. Respect for leaders and family may, at times, be closely associated with unquestioning acceptance. The 2004 National Integrity System Study reported that, ‘People may rather live with the consequences of poor and corrupt government than face the hazards of confrontation with those in power. Th[e] fear of Black Magic is deeply entrenched ... This belief greatly reduces the courage required for people to stand up for what is right in the political and social spheres’.⁷⁶ The Alternative Indicators Study supports the presence of this fear, with 65% of respondents being very or slightly afraid of black magic.⁷⁷ There is a more general sense of personal insecurity, with 58% also being afraid of violent personal attack.⁷⁸ This study does not explore the extent to which confronting those with authority creates fear of negative consequences. Anecdotes of people who saw corruption but were too afraid of negative consequences (not only violence and black magic) to do anything were collected during the course of this research, which suggests that there is, to a degree, a cultural dynamic that reinforces silence at times.

⁷⁵ Ibid, 56-57.

⁷⁶ Newton Cain and Jowitt, 2004: 12-13.

⁷⁷ Vanuatu National Statistics Office and Malvatumauri, 2012: 68.

⁷⁸ Ibid.

RECOMMENDATIONS

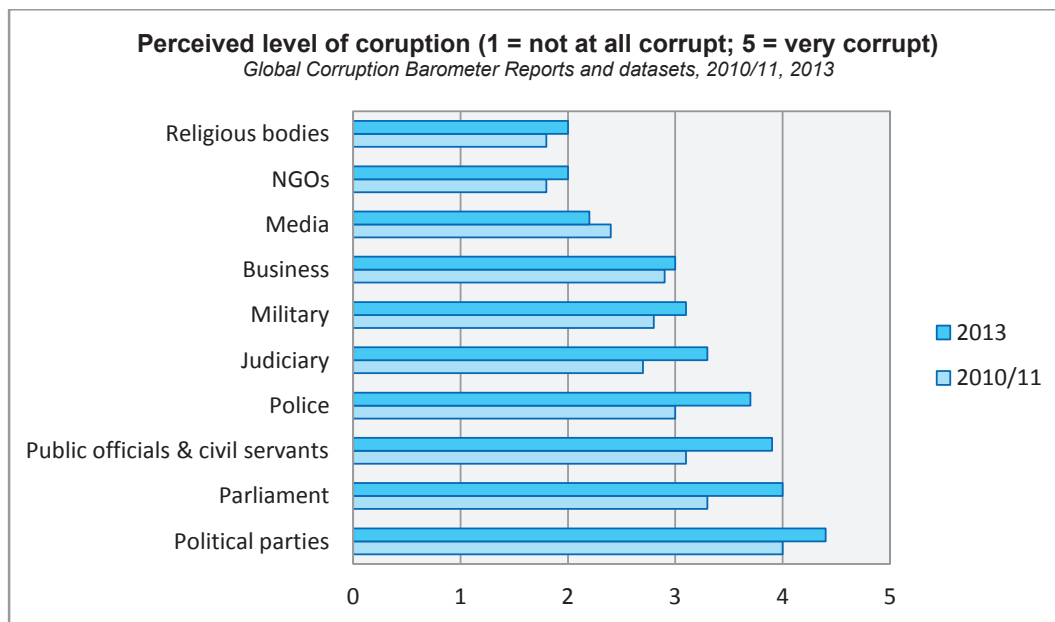
Each pillar assessment concludes with specific recommendations. When implementing pillar recommendations foundations should not be overlooked. The following four general foundational recommendations should be borne in mind when implementing any and all of the specific pillar recommendations.

1. **Politics** are affected by clientelistic relationships, which are not conducive to developing a policy-led democratic political system. The members of parliaments' allocations reinforce clientilism as does the system of political appointees, discussed later in the section on the executive. Clientilism (or more broadly the *wantok* system) affect other pillars also. When implementing reforms to pillars, the potential impact of clientilism and ways in which clientilism may be reduced should always be considered.
2. Vanuatu's **society** is patriarchal. Gender imbalances affect women in a number of ways, including through underrepresentation in politics. When implementing reforms to pillars, increasing gender equity, particularly in the political sphere, should always be considered.
3. Vanuatu's domestic **economy** is limited, and this contributes to inequality of service delivery. All measures to build national integrity and address corruption should bear in mind the need to promote a strong domestic economy and reduced inequality of service delivery.
4. Vanuatu's traditional **culture** remains strong, and community governance engages many people. The potential for working with community governance structures (including women's groups, youth groups, religious/faith based groups and chiefly structures) to build commitments to national governance should be taken into account when developing all measures to build national integrity and address corruption.

V. CORRUPTION PROFILE

Vanuatu has been included in two Transparency International Global Corruption Barometer reports, in 2010/11 and 2013. These reports indicate that the majority of people in Vanuatu think that corruption is a problem. In 2013 63% of Vanuatu respondents indicated that corruption was a serious problem, 23% indicated it was a problem and 12% said it was a slight problem.⁷⁹ There is also an increasing perception that corruption is getting worse, with 79% in 2013 responding that corruption had increased in the past two years.⁸⁰ This can be compared with 2010/11 data, where only 64% said that corruption had gotten worse in the past 3 years.⁸¹ In 2013 13% of respondents stated they had paid a bribe in respect of a government service in the past 12 months.⁸² Again this is an increase on 2010/11, where only 10% reported having paid a bribe.⁸³

Increasing perceptions of corruption affect almost all institutions. As the table below indicates, in this survey all institutions in Vanuatu were perceived to be affected by corruption to some degree. Between 2010/11 and 2013 the perceived level of corruption in all institutions except for the media increased.



There is little faith that the government is effective in combating corruption, with 56% of respondents in 2013 indicating that government efforts to respond to corruption were ineffective, and a further 13% indicating efforts were neither effective nor ineffective.⁸⁴

There are few other studies which go into depth about corruption in Vanuatu. Vanuatu is a developing country with limited human resource capacity. As such it is not surprising that there is only a small body of academic research. Official reports by government agencies and grey literature, including material produced by aid donors and NGOs contributes more to understandings about corruption in Vanuatu.

⁷⁹ www.transparency.org/gcb2013/country/?country=vanuatu [accessed 10 May 2014].

⁸⁰ Ibid.

⁸¹ www.transparency.org/country#VUT_PublicOpinion [accessed 10 May 2014].

⁸² Transparency International, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013) 34.

⁸³ www.transparency.org/country#VUT_PublicOpinion [accessed 10 May 2014].

⁸⁴ www.transparency.org/gcb2013/country/?country=vanuatu [accessed 10 May 2014].

The need for “good governance” gained prominence in Vanuatu’s development agenda with the introduction of the Comprehensive Reform Programme (CRP) in 1997.⁸⁵ It was popularly understood that the CRP was needed because mismanagement and corruption had driven Vanuatu to ‘the verge of bankruptcy’,⁸⁶ although the CRP documentation suggests instead that Vanuatu was not bankrupt but instead the catalysing issue was a ‘crisis in confidence in [the] government.’⁸⁷ This crisis in confidence had been driven, in part, by increasing political instability,⁸⁸ an issue that continues today. Another factor which contributed to this crisis in confidence was that Vanuatu appointed its first ombudsman in 1995 and this office had begun to uncover corruption by political leaders.⁸⁹ In Vanuatu there is literature around all three of these areas: the CRP and subsequent government development agendas;⁹⁰ political instability;⁹¹ and the Office of the Ombudsman.⁹² There is also literature around specific areas that appear to be particularly susceptible to corruption, such as land leasing,⁹³ and literature that focuses on specific pillars (which has been referenced in the foundations and each pillar chapter, as appropriate). The literature does not necessarily directly discuss corruption, however.

A major milestone in the discussion of corruption throughout the Pacific was the National Integrity Systems Pacific (NISPAC) project, conducted in 2003/2004.⁹⁴ The NISPAC project conducted National Integrity System studies across 12 Pacific countries, including Vanuatu.⁹⁵ The 2004 Vanuatu National Integrity System Report⁹⁶ was the first holistic assessment of corruption issues and integrity across the key institutions of governance. A further Vanuatu National Integrity System assessment, updating the 2004 report, was conducted in 2006.⁹⁷

The previous National Integrity System reports focussed on the performance of the central government and state institutions, although as the 2004 Vanuatu National Integrity System Report observes, ‘corruption occurs in all levels of society.’⁹⁸ In particular it is acknowledged that local level governance, including municipal and provincial councils is particularly subject to mismanagement and corruption.⁹⁹

Types of corruption occurring in Vanuatu, which have been identified in the past include: political appointments; conflicts of interest; and not following formal procedures,¹⁰⁰ although both this national integrity assessment and previous national integrity assessments identify a wide range of misbehaviour. All these stem from a fundamental ‘lack of respect for the rule of law or a wilful refusal

⁸⁵ Vanuatu Office of the Prime Minister, *Comprehensive Reform Programme* (Port Vila: Vanuatu Office of the Prime Minister, 1997).

⁸⁶ Russell Nari, *Comprehensive Reform Programme in the Republic of Vanuatu: A major challenge, through the eyes of a ni-Vanuatu* (ANU Asia Pacific School of Economics and Government, Update Papers, June 2000) 3.

⁸⁷ Vanuatu Office of the Prime Minister, 1997.

⁸⁸ Anita Jowitt, ‘Vanuatu political review’ (2000) 12(2) *The Contemporary Pacific* 519.

⁸⁹ Nari, 2000: 2-3.

⁹⁰ See for example, Eric Wittersheim, ‘Paradise for Sale: The sweet illusions of economic growth in Vanuatu’ (2011-2012) 133 *Journal de la Société des Océanistes*, 310; John Salong, ‘Vanuatu: Failing to catch the tide of the Paris Declaration’ in Brian Tomlinson (ed) *Democratic Ownership and Development Effectiveness: Civil Society Perspectives on Progress since Paris* (Philippines: Ibon Books, 2011) 227; Cox et al, 2007.

⁹¹ See Foundations chapter; also Benedicta Rousseau, “‘Vot Long Stret Man’: Personality, Policy, and the Election of Ralph Regenvanu, Vanuatu 2008’ (2012) 24(1) *The Contemporary Pacific* 98.

⁹² See references in ombudsman chapter.

⁹³ Eric Wittersheim 2012: 312-314; Milena Stefanova, Raewyn Porter and Rod Nixon, *Towards More Equitable Land Governance in Vanuatu: Ensuring Fair Land Dealings for Customary Groups* (World Bank Justice for the Poor Discussion Note, May 2012).

⁹⁴ See Peter Larmour, *Interpreting Corruption Culture and Politics in the Pacific Islands* (Hawaii: University of Hawaii Press, 2012).

⁹⁵ Peter Larmour and Manuhia Barcham, *National Integrity Systems Pacific Islands Overview Report 2004* (Blackburn South: Transparency International Australia, 2004).

⁹⁶ Newton Cain and Jowitt, 2004.

⁹⁷ Anita Jowitt and Krista Lee Jones, *National Integrity Systems Transparency International Country Study Report Vanuatu Update 2006* (Port Vila: Transparency International Vanuatu, 2006).

⁹⁸ Newton Cain and Jowitt, 2004: 13.

⁹⁹ Jowitt and Lee Jones, 2006: 55-56.

¹⁰⁰ Jowitt and Lee Jones, 2006: 32.

to be bound by the rules',¹⁰¹ which facilitates a wide range of corrupt behaviours. This, coupled with lack of enforcement,¹⁰² indicates one of the central causes of corruption.

Other causes of corruption identified in the 2004 and 2006 National Integrity System reports include: the lack of examples of good leadership; mismanagement due to lack of capacity; and low pay within the public sector.¹⁰³ Each of these causes "feeds off" each other and reinforces an environment of poor practice. Lack of will to change or lack of a sense of personal responsibility due to gaining benefits from current weaknesses in national integrity is another cause that affects both political leaders and those who benefit from political leaders.¹⁰⁴ Lack of will to change is exacerbated by weak political parties that do not articulate and promote clear policies,¹⁰⁵ which in turn can help to drive voter awareness and strengthen the notion of accountability to the people via electoral processes.

Lack of outrage at misbehaviour by leaders can appear to be acceptance of the status quo,¹⁰⁶ a behaviour that is reinforced by cultural norms of not publically challenging leaders.¹⁰⁷ It should be observed, however, that street surveys conducted as part of the 2014 Vanuatu National Integrity System study suggest that there is public will to change laws that provide personal benefit but weaken integrity.¹⁰⁸ A survey on bribery in elections indicate that people think that both those who give and receive bribes should be punished.¹⁰⁹ A follow up survey¹¹⁰ of 25 people carried out in January 2014 indicated that 36% of people would report bribery if they saw it happening.

Street surveys also suggest lack of knowledge about how to complain and/or fear of consequences, rather than apathy, account for apparent acceptance of the status quo. For instance, lack of knowledge about how to complain to the ombudsman reduces complaints.¹¹¹ Of the 64% that would not report bribery in the follow up street survey on bribery in elections, all said that they do not know where to report to and would also be worried about getting in trouble themselves or getting other people in trouble. None said that they would not report because they did not think agencies would do anything.

Whilst these surveys suggest that there is some public will to change, the 2006 report observes that 'petty corruption is generally perceived as being acceptable',¹¹² and that this perpetuates corruption. The use of go-betweens with personal connections to facilitate transactions between government and business that may otherwise take time was noted in 2004, and was largely accepted as a cost of living in a fairly small country.¹¹³ In a number of areas in this report it was noted that personal connections can make a big difference to how matters are handled.

The difficulty of defining corruption, and in particular separating out behaviours that are acceptable in custom but not acceptable in a modern democracy were also discussed as causes of corruption in the 2004 Vanuatu National Integrity System Report, although this report was careful to note that Melanesian culture 'does not condone behaviour that benefits that individual at the expense of the community. Instead there is a mismatch between introduced notions of corruption and local culture'.¹¹⁴ An example of this mismatch is where cultural values of reciprocity and respecting family, discussed in the foundations section, may clash with the concept of nepotism in appointments.

¹⁰¹ Ibid.

¹⁰² Jowitt and Lee Jones, 2006: 28.

¹⁰³ Newton Cain and Jowitt, 2004: 11-12.

¹⁰⁴ Newton Cain and Jowitt, 2004: 11.

¹⁰⁵ Newton Cain and Jowitt, 2004: 12.

¹⁰⁶ Ibid.

¹⁰⁷ Newton Cain and Jowitt, 2004: 12-13.

¹⁰⁸ See discussion of MPs allocations in the legislature pillar.

¹⁰⁹ Transparency International Vanuatu Press Release 13 September 2013.

¹¹⁰ Unpublished, data with author.

¹¹¹ Transparency International Vanuatu Press Release 23 August 2013.

¹¹² Jowitt and Lee Jones, 2006: 30.

¹¹³ Newton Cain and Jowitt, 2004: 12.

¹¹⁴ Ibid.

The mismatch between custom and democratic politics was discussed in more detail in the 2006 report, with political leaders acting more as “big-men” in a patron-client relationship with their constituencies.¹¹⁵ As discussed in the foundations chapter of this report, commentators indicate that as fragmentation of political parties has increased, so too has this instability driven “big-man” politics.

Costs of corruption noted in the 2004 and 2006 Vanuatu National Integrity System reports include: loss of government revenue, which in turn leads to the inability to carry implement government services and projects; appointment of people for reasons other than merit, which undermines service delivery; lack of investor confidence; lack of respect by the international community and donors; and political instability.¹¹⁶

Whilst, as discussed in the next section on anti-corruption activities, a number of positive changes are currently in progress, the impact of these changes is yet to be assessed. It can be observed, however, the Global Corruption Barometer 2013 recorded that 80% of Vanuatu respondents thought that corruption had increased over the past two years.¹¹⁷ Fifty-six per cent (56%) of respondents thought that government’s actions against corruption were ineffective.¹¹⁸

¹¹⁵ Jowitt and Lee Jones, 2006: 28-30.

¹¹⁶ Newton Cain and Jowitt, 2004: 13-14; Jowitt and Lee Jones, 2006: 31-32.

¹¹⁷ www.transparency.org/gcb2013/country/?country=vanuatu [accessed 25 April 2014].

¹¹⁸ Ibid.

VI. ANTI-CORRUPTION ACTIVITIES

Whilst Vanuatu does not have an anti-corruption strategy good governance is included as a priority strategy within the Vanuatu Priorities and Action Agenda (PAA), which is the national development plan. The priorities of the PAA 2006-2015 included adequately resourcing the Office of the Ombudsman and the Office of the Auditor General and reviewing the Ombudsman Act to increase prosecutions following reports.¹¹⁹ The 2012 review of the PAA includes 'promot[ion of] political stability through constitutional changes, political parties legislation, and other changes to support stability'¹²⁰ as a strategy in relation to achieving good governance. Specific indicators relating to this strategy include 'Registration of political parties legislation designed and approved by Parliament; Government act amendments drafted and approved by Parliament; People's Representation act amendments drafted and approved by Parliament'.¹²¹ Strengthening the Office of the Ombudsman and the Office of the Auditor General remain strategies for achieving good governance.¹²²

Since the last national integrity assessment in Vanuatu many anti-corruption activities have been implemented. One change that affects a number of pillars is that in 2010 Vanuatu ratified the UN Convention against Corruption.¹²³ In 2013 it was subject to its first country review pursuant to this Convention. The review focussed on compliance with chapter 3 of the UN Convention Against Corruption and has identified a number of challenges for implementation and areas where technical assistance is required.¹²⁴ Another change impacting upon a number of pillars is that in November 2011 the government established the Office of the Government Chief Information Officer (OGCIO).¹²⁵ The OGCIO has the role of facilitating the development of information and communication technology use by government agencies, with the aims of both enhancing efficiency and service delivery by government and improving transparency and accountability.¹²⁶ As the work of the OGCIO progresses it is expected that more information, including annual reports and corporate plans, from a wide number of government agencies, will become available. The government also completed a Right to Information Policy in December 2013.¹²⁷ Implementation of this policy is expected to see an increase in transparency across a number of pillars.

A number of positive changes in **capacity** of some pillars can be seen. For instance, the United Nations Development Programme (UNDP) is assisting parliament to strengthen capacity in relation to the operation of committees, in particular the Public Accounts Committee.¹²⁸ The judiciary is implementing a wide scale improvement plan that will, amongst other things, improve capacity of judges and court support staff.¹²⁹ The Vanuatu Police Training College has continued to be strengthened through the Vanuatu Australia Police Project.¹³⁰ In 2011 914 police officers underwent training at this facility.¹³¹ In 2012 the Vanuatu Institute of Public Sector Administration and Management, which provides training the public servants, was established.¹³² Since the last National

¹¹⁹ Government of the Republic of Vanuatu, *Priorities and Action Agenda 2006 – 2015* (Port Vila: Ministry of Finance and Economic Management, 2006) 23.

¹²⁰ Government of the Republic of Vanuatu, *Priorities and Action Agenda 2006 – 2015 2012 Update* (Port Vila: Prime Minister's Office, 2013) 34.

¹²¹ Ibid.

¹²² Ibid, 35.

¹²³ United Nations Convention against Corruption Act 2010.

¹²⁴ United Nations Convention against Corruption Implementation Review Group, 'Executive Summary Vanuatu' CAC/COSP/IRG/2013/CRP.19 (25 November 2013).

¹²⁵ www.ogcio.gov.vu/index.php/about-us/foundation-documents [accessed 28 April 2014].

¹²⁶ Office of the Government Chief Information Officer, *OGCIO Corporate and Business Plan 2013 – 2014* (2012) 6.

¹²⁷ Office of the Prime Minister, *Vanuatu National Policy on the Right to Information Vision 2013 – 2018* (Port Vila: Office of the Prime Minister, December 2013).

¹²⁸ Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

¹²⁹ Judiciary of the Republic Of Vanuatu, *Improvement Plan 2012 – 2015* (Port Vila: Judiciary of the Republic Of Vanuatu, March 2012).

¹³⁰ <http://aid.dfat.gov.au/countries/pacific/vanuatu/Pages/law-init1.aspx> [accessed 18 April 2014].

¹³¹ <http://aid.dfat.gov.au/countries/pacific/vanuatu/Pages/default.aspx> [accessed 28 April 2014].

¹³² Glenda Shing, 'Kilman launches Institute of Public Administration' *Vanuatu Daily Post Online* 31 July 2012.

Integrity System report in 2006 the Vanuatu Institute of Technology has instituted certificate and diploma programmes in journalism.¹³³

There are also positive changes to **governance** of some pillars. For instance, in 2013 parliament started to broadcast sessions live over the internet and television, enhancing transparency.¹³⁴ A number of laws relating to financial transactions, which enhance transparency and accountability of the private sector, have been passed.¹³⁵ In 2013 the government signed an agreement to implement an independent police complaints authority, which will enhance accountability of police officers.¹³⁶ The Office of the Auditor General is undertaking reforms in order to comply with international accounting standards, which will enhance the integrity of the office.¹³⁷ Regulatory authorities have been established to oversee the delivery of key services in the areas of utilities and telecommunications by private sector entities.¹³⁸ The Vanuatu Association of NGOs is developing a five year plan that includes producing a manual for board governance.¹³⁹

This assessment found wide agreement that some pillars were generally beginning to improve. For instance, the Office of the Auditor General has begun to clear long-standing backlogs of audit reports.¹⁴⁰ The judiciary is implementing changes to case management to increase efficient processing of disputes.¹⁴¹

One of the main drivers of reform initiatives has been aid donor programmes, and in particular, Australian Aid. Australian Aid has a number of multi-year programmes in areas such as education, health, infrastructure development, governance, and law and justice¹⁴² that align with the Government Priorities and Action Agenda and help to provide a degree of policy stability in the face of political instability. Conversely, however, externally driven projects may lack stakeholder buy-in and be unsustainable in the long-term.¹⁴³

Not all anti-corruption activities are externally driven. In the 2012 national elections some parties campaigned on anti-corruption platforms.¹⁴⁴ The former government led by Moana Carcasses attempted to position itself as “anti-corruption” through measures such as releasing a 100 Day Plan when it first gained power. Example actions on this list that had an anti-corruption focus included establishing a public concerns monitoring group, extending the legal powers of the ombudsman and consultation with political parties on reform of the political system.¹⁴⁵ Whilst none of these actions have been completed, the development of the 100 Day Plan suggests that “being anti-corruption” is now seen as a useful political position to assume. Growing awareness in the area of anti-corruption has, maybe, helped to contribute to moves by a number of political parties both within the government and the opposition to begin to publically discuss political integrity.¹⁴⁶ The government established in May 2014 following the ousting of Carcasses has indicated that it is committed to continuing the political integrity agenda.¹⁴⁷

¹³³ PACMAS, *Vanuatu State of Media and Communication Report 2013* (Port Vila: PACMAS, 2013).

¹³⁴ <http://stream.parliament.gov.vu/> [accessed 28 April 2014].

¹³⁵ Vanuatu Financial Intelligence Unit, *Annual Report 2010 – 2012* (Port Vila: Vanuatu Financial Intelligence Unit, 2013).

¹³⁶ Interview of Australian Aid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

¹³⁷ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

¹³⁸ Utilities Regulatory Act 2007; Telecommunications and Radiocommunications Regulation Act 2009.

¹³⁹ Glenda Shing, ‘Weak Governance within VANGO Board’ *Vanuatu Daily Post Online* 10 December 2013.

¹⁴⁰ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

¹⁴¹ Judiciary of the Republic Of Vanuatu, *Improvement Plan 2012 – 2015* (Port Vila: Judiciary of the Republic Of Vanuatu, March 2012).

¹⁴² <http://aid.dfat.gov.au/countries/pacific/vanuatu/Pages/default.aspx> [accessed 18 April 2014].

¹⁴³ Cox et al, 2007.

¹⁴⁴ <http://pacificpolicy.org/blog/2012/11/07/summary-analysis-of-party-political-platforms-english-version/> [accessed 26 February 2014].

¹⁴⁵ <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list/> [accessed 27 February 2014].

¹⁴⁶ Thompson Marango, ‘Political Leaders to Discuss Stability Today’ *Vanuatu Daily Post* 5 February 2014, 2.

¹⁴⁷ Len Garae, ‘Prime Minister asks for qualified people’ *Vanuatu Daily Post* 26 May 2014, 1.

VII.1. LEGISLATURE

SUMMARY

Overall pillar score: 38.9			
Dimension	Indicator	Law	Practice
Capacity 62.5	Resources	50	50
	Independence	100	50
Governance 29.2	Transparency	25	25
	Accountability	50	25
	Integrity	50	0
Role 25	Executive oversight	25	
	Legal reforms	25	

A new Clerk of Parliament assumed his position in June 2013 and the management of parliament is undergoing some change. The operation of Vanuatu's Parliament has become more open, with video now being broadcast live over the internet. Recordings are also available on the parliament website. The backlog of Hansards has also been reduced and a number of other plans to strengthen the functioning of committees with the assistance of agencies such as UNDP and the Parliament of Queensland are underway. The administration of parliament does, however, suffer from lack of human resources.

Whilst the administration of the legislature is developing there is considerable concern about the performance of members of parliament. Parliament is currently comprised of representatives of 16 political parties and four independent members. This necessarily means government is a coalition. Coalitions are unstable and motions of no confidence are frequent. The causes of instability are discussed further in the foundations section, and are, in large part, a reflection of the socio-cultural environment in which democracy operates. As such, instability is not able to be simply cured by law reforms.

Internal politicking, including changes in executive positions, occurs in order to maintain coalitions or succeed in motions of no confidence. This weakens the ability for the legislature to play its role as the central accountability mechanism for public entities and expenditure. It also distracts members of parliament from their role as representatives of the people. Members do little to inform their constituencies about the work of parliament or represent their concerns in parliament. There is also little public information about Bills, or opportunities for the public to contribute to discussion associated with legislative changes. Public trust in members of parliament is low.

STRUCTURE AND ORGANISATION

Vanuatu's constitutional form is a representative democracy. Parliament is formed through national elections which occur at intervals of no more than four years.¹⁴⁸ Parliament is unicameral and is comprised of 52 members. Once parliament is elected the members of parliament collectively form the legislature. The executive is drawn from parliament, with members voting to elect the prime minister,¹⁴⁹ who then appoints his (Vanuatu has only ever had male prime ministers) cabinet.¹⁵⁰ The speaker of parliament and one or more deputy speakers are elected by parliament.¹⁵¹ Two ordinary

¹⁴⁸ Article 21(1), Constitution of the Republic of Vanuatu.

¹⁴⁹ Article 41, Constitution of the Republic of Vanuatu.

¹⁵⁰ Article 42, Constitution of the Republic of Vanuatu.

¹⁵¹ Article 22, Constitution of the Republic of Vanuatu.

sessions of parliament are held each year, in March and August. Extraordinary sessions can be called outside of these times.¹⁵²

There are currently eight standing committees of parliament: the Standing Orders Review Committee; the Institutions Committee; the Privileges Committee; the Committee on Economic Policy; the Public Accounts Committee; the Committee on Social Policy; the Committee on the Members of Parliament Ethics and Integrity; and the Committee on Foreign Affairs and External Trade.¹⁵³ Each is made up of seven members of parliament, selected by the prime minister and the leader of the opposition. No members of standing committees can be ministers. As discussed in the foundations and executive sections, frequent changes in ministers mean that committees are largely comprised of new members of parliament and less prominent backbenchers.

The Parliament (Administration) Act came into force in 2006 and outlines the administrative structure of parliament. This Act establishes a four member Parliamentary Management Board, comprised of the speaker of parliament, the prime minister, the leader of the opposition and the parliamentary counsel.¹⁵⁴ The Parliamentary Management Board has the responsibility for overseeing the management of parliament, including parliamentary committees.¹⁵⁵ The primary administrator is the clerk of parliament, who is appointed by the president on advice of the Parliamentary Management Committee.¹⁵⁶ The Act requires four assistant clerks to be appointed,¹⁵⁷ along with other staff as is necessary.¹⁵⁸ There is also provision for the speaker to directly appoint staff to assist him.¹⁵⁹

ASSESSMENT

Capacity

Resources (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE THAT PROVIDE THE LEGISLATURE WITH ADEQUATE FINANCIAL, HUMAN AND INFRASTRUCTURE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

Members set their own levels of allowances. However, there are few statutory requirements as to administrative support that must be provided to the legislature.

Section 22(1) of the Parliament (Administration) Act provides that 'prior to each fiscal year, the Board must direct the clerk of parliament to prepare an estimate of the sums that Parliament will be required to provide for the payment of the expenses of parliament and its Members.' The clerk must also 'prepare the estimate for Parliament within the ceiling established for Parliament for the fiscal year by the Council of Ministers.'¹⁶⁰ By law members of parliament set their own allowances, including representation and travel allowances.¹⁶¹ The estimate provided by the clerk of parliament must include these statutorily determined sums.

¹⁵² Sections 3-6, Parliament (Administration) Act [Cap 306].

¹⁵³ www.parliament.gov.vu/Committees/Committees.html [accessed 26 February 2014].

¹⁵⁴ Section 12, Parliament (Administration) Act [Cap 306].

¹⁵⁵ Section 10, Parliament (Administration) Act [Cap 306].

¹⁵⁶ Section 15, Parliament (Administration) Act [Cap 306].

¹⁵⁷ Section 16, Parliament (Administration) Act [Cap 306].

¹⁵⁸ Section 17, Parliament (Administration) Act [Cap 306].

¹⁵⁹ Section 20, Parliament (Administration) Act [Cap 306].

¹⁶⁰ Section 22(2), Parliament (Administration) Act [Cap 306].

¹⁶¹ Parliament (Members Expenses and Allowances) Act [Cap 109].

In terms of human resources the law requires the appointment of a clerk of parliament and four assistant clerks.¹⁶² Whilst other staff can be appointed there is no statutory requirement that they be appointed, although there is an assumption, in law, that parliamentary counsel will exist.¹⁶³

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE HAVE ADEQUATE RESOURCES TO CARRY OUT ITS DUTIES IN PRACTICE?

Although individual members are provided with adequate allowances, the efficient administration of parliament is hindered by resource issues.

The operations of parliament are hindered in part by lack of staff and in part by issues relating to management of staff.¹⁶⁴ Whilst parliament does maintain a library there is currently no mechanism to ensure that copies of all reports tabled in parliament get placed in the library.¹⁶⁵ Observation indicates that much of the material in the library is out of date.¹⁶⁶

There is particular inadequacy in the area of committee resources. Whilst financial resources are committed for the sitting of committees and for committees to conduct activities, human resource support is lacking. One assistant clerk is responsible for all committees.¹⁶⁷ The work of the committees is further hindered by frequent changes in the executive and government, as these result in the composition of committees changing. UNDP is currently supporting Vanuatu parliament to employ a technical advisor to support the work of the Public Accounts Committee (PAC).¹⁶⁸ The functioning of committees has also been a particular focus of support via a parliamentary twinning programme with the Parliament of Queensland.¹⁶⁹

Summarised proceedings have not been published regularly. However, a new clerk was appointed in mid-2013 and he is working with the Hansard division to clear this backlog and improve reporting. Proceedings from 2007 to 2010 were published in August 2013.¹⁷⁰ Improvements to the parliamentary sound system and recording should help to ensure the production of Hansards. The latest improvements, introduced after July 2013, include facilities to broadcast parliament live over the internet and television, as well as radio. The November 2013 sitting of parliament was the first to be broadcast in this manner.¹⁷¹ This project has been implemented by the New Caledonia Congress with the assistance of the Agence de Développement Economique de la Nouvelle-Calédonie.

Each member of parliament is provided with an office equipped with computer facilities. There is one legislative counsel to support the 52 members of parliament. In practice she supports the executive.¹⁷² Political factions do not maintain their own parliamentary researchers or support staff although, as discussed in the section on the executive, members of the executive are supported by political advisors. Members of parliament set their own representation and travel allowances which ensures their adequacy. Members of parliament are currently provided a representation allowance

¹⁶² Part IV, Parliament (Administration) Act [Cap 306].

¹⁶³ Section 12, Parliament (Administration) Act [Cap 306].

¹⁶⁴ Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

¹⁶⁵ Interview of Leiwia Moli, Parliament Librarian with Anita Jowitt, Port Vila 18 October 2013.

¹⁶⁶ Observation by Anita Jowitt, 18 October 2013.

¹⁶⁷ Interview of Leon Teter Assistant Clerk, Parliamentary Committees with Anita Jowitt, Port Vila, 28 August 2013.

¹⁶⁸ Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

¹⁶⁹ Interview of Leon Teter Assistant Clerk, Parliamentary Committees with Anita Jowitt, Port Vila, 28 August 2013.

¹⁷⁰ Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

¹⁷¹ www.parliament.gov.vu/Home%20Page%20Page%20Archived/2013/Parliament%20Debate%20Streaming%20Live%20Online.html [accessed 27 February 2014].

¹⁷² Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

of VT387,167 (US\$3870) per month.¹⁷³ This allowance combines their “salary” and an annual allocation of VT2 million (US\$20,000) to be spent in their constituency.¹⁷⁴ There is no requirement that members of parliament account for the constituency allocation in any way. There are also, apparently, proposals to raise the this allocation to VT10 million (US\$100,000) for some, or all, members of parliament.¹⁷⁵ As discussed in the foundations section, there is a concern that this leads to clientelistic politics, where candidates for election to parliament are voted for based on what they can give to their supporters, rather than what policies they advocate for national development.

Street survey research conducted by National Integrity System researchers in late 2013 indicated that 90% of the 50 respondents thought that members of parliament were corrupt. Forty per cent (40%) wanted to see changes to the members of parliaments’ allocation.¹⁷⁶ A follow up survey in January 2014 with a further 50 respondents indicated that 80% of respondents thought that members of parliament’ allocations were not allocated fairly, with a further 8% being unsure if allocation was fair or not. The main reasons why allocations were seen to be unfair were that people perceived that members of parliaments’ allocations were distributed only to voters/political supporters, or distributed only to families and friends (including *wantoks* and communities that were directly related to the member of parliament).¹⁷⁷ A smaller survey was then conducted to find out if dissatisfaction was due to not receiving allocations. Of those that thought the allocation was unfair, 61% had received goods or money from a member’s allocation.¹⁷⁸ This suggests that people perceive the system as being flawed, even if they are personally benefitting from it.

Concern has been expressed over the extent to which all members of parliament fully understand their duties.¹⁷⁹ There have been calls to change the educational qualifications required to be eligible to stand as a candidate.¹⁸⁰ A street survey carried out by researchers as part of the National Integrity System research indicates that there is considerable public support for this proposal.¹⁸¹ The issue was also debated in Vanuatu’s youth parliament in November 2013, with youth parliamentarians voting in support of a mock Bill to increase the educational qualifications required to be eligible to stand as a candidate for election.¹⁸² Training of members of parliament is limited. Whilst induction programmes have been conducted for new members following the 2008 and 2012 national elections, these programmes take place over a week, so are necessarily superficial.

Independence (law)

Score: 100

TO WHAT EXTENT IS THE LEGISLATURE INDEPENDENT AND FREE FROM SUBORDINATION TO EXTERNAL ACTORS BY LAW?

There are comprehensive laws seeking to ensure the independence of the legislature.

Parliament has a fixed life of four years and can only be dissolved earlier by the vote of an absolute majority of members of parliament when three-quarters of members are present or by the president of the Republic of Vanuatu acting on the advice of the Council of Ministers. If parliament is dissolved

¹⁷³ Parliament (Members’ Expenses and Allowances) Amendment Act 2012.

¹⁷⁴ www.facebook.com/notes/vote-against-merging-of-vanuatu-mp-allocation-and-salary/email-from-mp-ralph-regenvanu/140403422677768 [accessed 27 February 2014].

¹⁷⁵ Opposition Office Press Statement, 4 February 2014.

¹⁷⁶ www.dropbox.com/s/m7hza7n0j36axb6/Press5.pdf [accessed 11 March 2014].

¹⁷⁷ Transparency International Vanuatu Press Release 14 March 2014.

¹⁷⁸ Ibid.

¹⁷⁹ Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013; Michael G Morgan, *Integrating Reform: Legislative Needs Assessment, Republic of Vanuatu* (Technical Report for UNDP, March-April 2001).

¹⁸⁰ Transparency Vanuatu, *2012 Vanuatu General Election, Election Observer Team Report* (Port Vila: Transparency Vanuatu, 2013).

¹⁸¹ www.dropbox.com/s/2vi2oag1q3s7spy/Press2.pdf [accessed 11 March 2014].

¹⁸² www.parliament.gov.vu/Home%20Page%20Archived/2013/Youth%20Parliament's%20role%20in%20Political%20Partiy%20reform%20highlighted.html [accessed 27 February 2014].

early then, once a new parliament is established following elections, it cannot be dissolved in the first 12 months of its life.¹⁸³

In addition to the two ordinary sessions each year extraordinary sessions can be held at any time on the request of the speaker, the prime minister or the majority of members of parliament.¹⁸⁴ In the event that the speaker refuses to call an extraordinary session the matter can, and has, been taken to court.

The clerk prepares the agenda for each sitting day of parliament, although the speaker can add items.¹⁸⁵ The speaker and deputy speakers are elected by parliament.¹⁸⁶ Parliament also controls the establishment of parliamentary committees and the appointment of members to these committees.¹⁸⁷ The committees can include standing committees and ad hoc committees.¹⁸⁸

As stated in the section on structure above, the Parliamentary Management Board is comprised of the speaker of parliament, the prime minister, the leader of the opposition and the parliamentary counsel. Administrative staff of parliament are appointed by this board, either directly or, in the case of the clerk, by the president on the advice of the board.

Whilst police do not require special permission to enter parliament, 'No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.'¹⁸⁹ Further, no member may be arrested or prosecuted for any offence during a session of parliament or one of its committees, unless authorised by parliament.¹⁹⁰

Independence (practice)

Score: 50

TO WHAT EXTENT IS THE LEGISLATURE FREE FROM SUBORDINATION TO EXTERNAL ACTORS IN PRACTICE?

Whilst boycotts and other tactics can be used to attempt to undermine the legislature, the judiciary is active in ensuring that the Standing Orders of Parliament are adhered to. However, internal politicking undermines the separation of the executive and the legislature.

In practice the president rarely exercises his power to dissolve parliament on the advice of the Council of Ministers. This last occurred in May 2004, when the prime minister was facing a motion of no confidence. In June 2011, when there were ongoing issues relating to the position of the prime minister¹⁹¹ there was some discussion of whether the president would dissolve parliament. This did not, however, occur.

On a number of occasions the speaker has attempted to close sessions of parliament, or not call extraordinary sessions. This is often done to avoid debates on motions of no confidence either in the government or the speaker. In these instances matters can be referred to the court to ensure that parliamentary process is followed. Another common tactic to avoid the progress of debates is for factions to boycott sittings, thereby ensuring no quorum can be established.

The executive (Council of Ministers) dominates the agenda of the legislature. In the past five years all Bills have originated with the government. Whilst there are sometimes complaints that Bills are

¹⁸³ Article 28, Constitution of the Republic of Vanuatu.

¹⁸⁴ Section 6, Parliament (Administration) Act [Cap 306].

¹⁸⁵ Order 17(1), Standing Orders of Parliament.

¹⁸⁶ Article 22(1), Constitution of the Republic of Vanuatu.

¹⁸⁷ Article 23, Constitution of the Republic of Vanuatu.

¹⁸⁸ Part VIII, Standing Orders of Parliament.

¹⁸⁹ Article 27(1), Constitution of the Republic of Vanuatu.

¹⁹⁰ Article 27(2), Constitution of the Republic of Vanuatu.

¹⁹¹ See judiciary section for further details.

presented late, the unstable and frequently changing nature of Vanuatu's executive means that it is not accused of undue interference. However, there are concerns about the lack of separation of the executive and the legislature.¹⁹² One way in which this is indicated is by the lack of debate on many Bills. It is not uncommon for a Bill to pass through all stages of the legislative process in one or two days.¹⁹³

The unstable nature of Vanuatu's executive provides a significant threat to the independent functioning of the legislature. Motions of no confidence are frequent. Even if the prime minister does not change, changes in ministerial positions in order to alter the balance of power within governing coalitions are also frequent. When attention is focussed on internal politicking either legislative business does not proceed, or matters are not properly scrutinised.

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE?

Despite the constitutional requirement that proceedings of parliament are to be held in public, other rules relating to the operation of parliament do not support transparency.

The Constitution states that, 'Unless otherwise provided proceedings of Parliament shall be held in public.'¹⁹⁴ The Standing Orders provide that 'visitors may be admitted only to such places as may be reserved for them by the speaker. Visitors shall be properly dressed and they shall remain seated and silent.'¹⁹⁵ The speaker may also 'order the withdrawal of visitors in special circumstances'¹⁹⁶ although special circumstances are not defined.

The clerk is required to send members a list of Bills at least 15 days prior to the commencement of an ordinary parliamentary session.¹⁹⁷ Copies of Bills, in English and French, must be made available to members at least 10 days prior to the session at which they are to be debated.¹⁹⁸ There is no requirement that either the list of Bills or copies of Bills be made available to the public. Whilst documents to be tabled are provided in the daily agendas¹⁹⁹ and tabled documents are to be recorded in the Minutes,²⁰⁰ again there is no requirement that daily agendas be made public.

The law does not require verbatim recordings of sessions to be made. Nor does the law require that voting records must be made public. There is no provision on the Standing Orders for the public to directly submit written questions to the legislature. Whilst the issue of reviewing the Standing Orders was identified as a priority during the Comprehensive Reform Programme initiated in the late 1990s, revised Standing Orders still have not been introduced.

Proceedings of standing committees are not open to the public other than during the hearing of evidence. Reports of standing committees are also confidential until they have been presented in parliament.²⁰¹

¹⁹² Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

¹⁹³ Based on a review of Hansards by the author.

¹⁹⁴ Article 24, Constitution of the Republic of Vanuatu.

¹⁹⁵ Order 53(1), Standing Orders of Parliament.

¹⁹⁶ Order 53(2), Standing Orders of Parliament.

¹⁹⁷ Order 12(4), Standing Orders of Parliament.

¹⁹⁸ Order 26(2), Standing Orders of Parliament.

¹⁹⁹ Order 17, Standing Orders of Parliament.

²⁰⁰ Order 20, Standing Orders of Parliament.

²⁰¹ Rules 36(1) and (2), Procedural Guidelines Standing Committees.

There is no legal requirement that parliament provides annual reports in respect of its operations. Nor is there any requirement that members of parliament account for their representation allowances.

Transparency (practice)

Score: 25

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE IN PRACTICE?

Whilst it is possible to view parliamentary sessions now, it is not easy to gain information prior to parliament sitting. There is also very little transparency in respect of the use of members' representation allowances.

As discussed above, major improvements with public access to parliament have occurred in late 2013. Facilities to broadcast parliamentary sessions over the television and the internet have been installed. The November-December session of parliament was broadcast on radio, television as well as over the internet. The videoed sessions are archived on parliament's website and available for anyone to access.²⁰²

In the past there have been significant delays in the publication of Hansards, so the public has not been able to get timely access to records. Hansards, which are summarised records, are now available for sessions up to 2010.²⁰³ These contain brief voting records, in that members who vote against the Bill or abstain are recorded. Many Bills are passed unanimously, and records do not state which members were present during the vote. They also do not contain information on documents that have been tabled, although it is unknown if this is because documents are not tabled.²⁰⁴

Gaining information prior to sessions is difficult. Whilst parliament does publish lists of Bills on its website, the Bills themselves are not made available to the public. Nor is information on documents to be tabled made available. Whilst the media reports on activities within parliament, this often is done after debates have taken place. As a result of being unable to access information prior to parliamentary sessions, media is unable to assist in generating public debate on matters that will be arising.²⁰⁵ In order to get Bills before sessions, reliance must be placed upon personal contacts. It is not usual for members of parliament to hold public meetings or consultations on matters, although this does sometimes occur. A notable instance prior to the November 2013 session of parliament was a series of public consultations by the Minister of Lands on proposed changes to land laws. It is not usual for members of public to submit questions via their elected representatives to be asked during legislative question time.

Budgets of parliament are published as part of the annual government budget. There is no subsequent public reporting of how this budget is used.

Whilst a small number of members of parliament have voluntarily published a statement of how they have spent their representation allowances, this is the exception, rather than the rule.

²⁰² <http://stream.parliament.gov.vu/> [accessed 10 January 2014].

²⁰³ Interview of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

²⁰⁴ Review of 2006-2009 Hansards by Anita Jowitt, November 2013.

²⁰⁵ Interview of Bob Makin, freelance journalist with Anita Jowitt, Port Vila, 7 December 2013.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE LEGISLATURE HAS TO REPORT ON AND BE ANSWERABLE FOR ITS ACTIONS?

Whilst parliament is accountable to the courts for the constitutionality of its decisions and must consult with the public on some amendments to the Constitution, accountability of individual legislators to other bodies such as the Office of the Auditor General and the Office of the Ombudsman is extremely limited.

The only regular review of legislative activities is conducted by the auditor general as part of his general duty to audit and report to parliament and the government on public accounts.²⁰⁶ However, as discussed in the section on transparency above, there is no auditing of how individual members use their representation allowances. This is because they are paid as a “salary” so the powers of the auditor general only extend to ensuring that allowances have been paid to members.

The Supreme Court has the authority to review any Bill that has been passed by the parliament.²⁰⁷ This usually happens when Bills are referred by the president to the Supreme Court prior to their promulgation. However the Supreme Court can also review Acts that have been brought into force.

The only time that public consultation is required by law is when a Bill to amend ‘a provision of the Constitution regarding the status of Bislama, English and French, the electoral system, or the parliamentary system’ is passed by parliament. Such a Bill can only come into law if it is supported by a public referendum.²⁰⁸ Following a constitutional amendment in December 2013 the Malvatumauri Council of Chiefs must be consulted on “any question relating to tradition and custom and land in connection with any bill before Parliament.”²⁰⁹

The ombudsman is tasked to handle complaints regarding breaches of the leadership code and maladministration. The powers of the ombudsman are discussed further in the ombudsman section of this report. It can be observed that the ombudsman only has the power to make recommendations. As discussed in the judiciary section of this report, the judiciary is also active in overseeing the activities of the legislature, and, in particular, adherence to the Standing Orders.

Accountability (practice)

Score: 25

TO WHAT EXTENT DO THE LEGISLATURE AND ITS MEMBERS REPORT ON AND ANSWER FOR THEIR ACTIONS IN PRACTICE?

Accountability to the court occurs when matters are placed before it. Little proactive accountability via other mechanisms occurs.

There is very little consultation of the public by the legislature, either as a group or through individual legislators. Whilst standing committees are established to debate various issues, debate is often limited to the members of committees and does not enter the public domain. Indeed a recent survey

²⁰⁶ Article 25(5), Constitution of the Republic of Vanuatu.

²⁰⁷ Article 16(3), Constitution of the Republic of Vanuatu.

²⁰⁸ Article 86, Constitution of the Republic of Vanuatu.

²⁰⁹ Article 30(2), Constitution of the Republic of Vanuatu.

conducted by Transparency International Vanuatu indicated that improving consultations was the main measure that the public wanted the legislature to undertake.²¹⁰

Whilst the public can make complaints to the ombudsman, as discussed in that section, very little action occurs as the result of ombudsman's reports. This may have contributed to the decline in the number of public complaints being made to the ombudsman.

There is no regular reporting of the legislature either to the public, or to state bodies. However, Bills are regularly presented to the Supreme Court to determine their constitutionality. Further, as discussed in the section on the judiciary, active oversight of adherence to the Standing Orders occurs when cases are brought before the court.

Constitutional immunity provisions in respect of liability for statements made during parliamentary debate are not often used. The last instance occurred in 2004, when the then prime minister was prosecuted for contempt of court for comments made during a parliamentary debate on a motion of no confidence. It was held that privilege applied.²¹¹

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE LEGISLATURE?

The Leadership Code Act is fairly comprehensive although the lack of legal provisions relating to public disclosure or other regular scrutiny of annual returns weakens their effectiveness as an accountability mechanism.

The two main sources of integrity rules are the Standing Orders of Parliament and the Leadership Code Act. The Leadership Code Act generally requires that, 'A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership.'²¹² Leaders include, but are not limited to, members of parliament.

Whilst members of parliament cannot hold public office²¹³ there is no specific restriction on private sector activities. The Standing Orders do, however, require members of parliament to inform the speaker of political party affiliations and of 'all companies, businesses or other organisations in which he has any pecuniary interest of any kind whether direct or indirect as owner, employee, partner, shareholder or otherwise.'²¹⁴ The speaker is required to keep records of all private sector interests²¹⁵ and members are prohibited from participating in any debate or vote without first disclosing their interests.²¹⁶ The Leadership Code Act also contains provisions relating to conflict of interest. Leaders must disclose personal interests,²¹⁷ must divest themselves of assets likely to create conflict with their duties²¹⁸ and must not act in any matter where they have a conflict of interest.²¹⁹ They are also restricted in accepting loans²²⁰ and limited in having beneficial interests in government contracts.²²¹ There are, however, no post-employment restrictions.

²¹⁰ www.dropbox.com/s/rhkjosbau0b7r20/Press3.pdf; www.dropbox.com/s/m7hza7n0j36axb6/Press5.pdf [accessed 11 March 2014].

²¹¹ *Vohor v Public Prosecutor* [2004] VUCA 23.

²¹² Section 3, Leadership Code Act [Cap 240].

²¹³ Section 25, Leadership Code Act [Cap 240].

²¹⁴ Order 52(1)(b), Standing Orders of Parliament.

²¹⁵ Order 52(2), Standing Orders of Parliament.

²¹⁶ Order 52(4), Standing Orders of Parliament.

²¹⁷ Section 16, Leadership Code Act [Cap 240].

²¹⁸ Section 18, Leadership Code Act [Cap 240].

²¹⁹ Section 24, Leadership Code Act [Cap 240].

In order to help ensure that leaders are not using their positions for personal gain they are required to make annual returns that disclose all major assets, liabilities, income, and major positions held.²²² These annual returns must also be filed for their spouse, children and trusts of which they are beneficiaries.²²³

These returns should record gifts and hospitality. Further, there is provision in the Act to regulate the receipt of gifts to the state,²²⁴ although no such regulations have been made. Accepting gifts under custom is not a breach if done openly and follows traditional practice.²²⁵ There is no requirement that a record of contact with lobbyists is kept. Annual returns are provided to the clerk of parliament who must keep them confidential, although they can be released to other parties (in particular the ombudsman) pursuant to an investigation or prosecution of breaches of the law.²²⁶ The law does not require them to be subject to regular scrutiny and the ombudsman is not permitted to scrutinise them in order to determine whether an investigation should be launched. The clerk must also publish in the Gazette, by March of each year, a list of those who have filed annual returns and those who have failed to do so.

Breaches of the Leadership Code Act are criminal offences and can be prosecuted.

Integrity (practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF LEGISLATORS ENSURED IN PRACTICE?

There is a complete absence of enforcement of the Leadership Code Act.

Lists of leaders who have filed or not filed annual returns are not consistently published in the Gazette. Even when leaders fail to file returns and the list is published, no further action is taken. The last ombudsman's public report on this topic was published in 2009 and related to 188 leaders who had failed to file annual returns in 2007.²²⁷

Nobody is empowered in law to scrutinise the content of these returns unless an investigation for a breach of the Leadership Code Act has been commenced, and as a result there is no regular scrutiny of the content of annual returns. Therefore, even if they are filed, they are ineffective in practice as an accountability mechanism.

Despite a number of ombudsman reports recommending that further action be taken due to apparent breaches of the Leadership Code Act, no prosecutions have been initiated. In the past five years reports which have recommended prosecution of members of the legislature for breaches of the Leadership Code Act have included: a report on former member of parliament for breaches of the Leadership Code Act associated with his involvement in abetting forgery;²²⁸ a report on a then member of parliament for breaches of the Leadership Code Act associated with his conviction for abetting an assault;²²⁹ a report on the Prime Minister and his cabinet for breaches of the Leadership

²²⁰ Section 21, Leadership Code Act [Cap 240].

²²¹ Section 26, Leadership Code Act [Cap 240].

²²² Section 32(4), Leadership Code Act [Cap 240].

²²³ Section 31, Leadership Code Act [Cap 240].

²²⁴ Section 10(2), Leadership Code Act [Cap 240].

²²⁵ Section 10(1), Leadership Code Act [Cap 240].

²²⁶ Section 32, Leadership Code Act [Cap 240].

²²⁷ Office of the Ombudsman, *Public Report on the Failure of 188 Leaders who failed to Submit Annual Returns for 2007 19 August 2009* (Port Vila: Office of the Ombudsman, 2009).

²²⁸ Office of the Ombudsman, *Vanuatu: Public Report on the Breach of the Leadership Code Act by Malon Hospmander and Andre Lesines 15 October 2010* (Port Vila: Office of the Ombudsman, 2010).

²²⁹ Office of the Ombudsman, *Vanuatu: Public Report on the Impeachment of the Leadership Code Act by Honourable Harry Iauko, and Jay Ngwele through their convictions at the Magistrate Court 21 October 2011* (Port Vila: Office of the Ombudsman, 2011).

Code Act associated with not complying with the Government Contracts and Tenders Act,²³⁰ reports, in 2007, 2008 and 2009 recommending prosecution for leaders who have failed to file annual returns under the Leadership Code Act,²³¹ and a report on misuse of personal office for private gain by the then Speaker of Parliament.²³²

Role

Executive oversight

Score: 25

TO WHAT EXTENT DOES THE LEGISLATURE PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

Whilst the legislature has some power to scrutinise the executive, it is not consistent in fulfilling this role. Internal politicking and weak committee structures hinder the legislature from acting as an effective check on the executive.

The legislature does not have the power to establish commissions of inquiry. Instead this power is vested in the minister of justice.²³³ The legislature can, however, establish ad hoc committees to investigate Bills or matters raised in motions.²³⁴ It can also establish a standing committee 'in order to examine, enquire or consider any business, question or matter related to a ministry, department or service of the Government or the Republic of Vanuatu.'²³⁵ Although a number of standing committees are established they do not release regular reports which indicates the extent to which they provide effective oversight of the government.

Whilst the legislature approves the national budget through Appropriation Acts, it is not very effective in scrutinising public expenditure. This is largely due to weaknesses in the functioning of the PAC and lack of parliamentary action when the PAC does report. Whilst the Parliament (Administration) Act requires all ministers to prepare an annual report for parliament²³⁶ recent Hansards have not recorded any public debate on these reports. Some decisions are, however, challenged. In mid-2013 the opposition sought judicial review over an agreement that the government had signed with a private company.²³⁷ Whilst the review was unsuccessful parliament has established an ad hoc committee to investigate the agreement. The opposition is not provided with counsel, and instead must engage private law firms to take actions for judicial review. This is costly, and reduces the extent to which judicial review is used. The absence of opposition counsel also means that the opposition is not routinely provided with independent technical advice on Bills.²³⁸

The main mechanism for controlling the executive is the motion of no confidence. However, as discussed in the foundations section and the section above on independence, Vanuatu's political

²³⁰ Office of the Ombudsman, *Vanuatu: Public Report on the Breaches of the Government Contracts and Tenders Act, The Leadership Code Act And Financial Regulations in Relation to Vanuatu Holdings* 2 May 2008 (Port Vila: Office of the Ombudsman, 2008).

²³¹ Office of the Ombudsman, *Vanuatu: Public Report on the Failure of 156 Leaders who Failed to File Annual Returns for 2005* 23 March 2007 (Port Vila: Office of the Ombudsman, 2007); Office of the Ombudsman, *Vanuatu: Public Report on the Failure of 177 Leaders who Failed to file 2006 Annual Returns* 11 January 2008 (Port Vila: Office of the Ombudsman, 2008); Office of the Ombudsman, *Vanuatu: Public Report on the Failure of 188 Leaders who Failed to Submit Annual Returns for 2007* 19 August 2009 (Port Vila: Office of the Ombudsman, 2009).

²³² Office of the Ombudsman, *Vanuatu: Public Report on the Breach of Leadership Code in using Public Office for Personal Gain by Honourable Sam Dan Avock Speaker of Parliament and the Abuse of Section 3 of the Official Salaries Amendment Act 1989 by the Honourable Prime Minister* 14 May 2007 (Port Vila: Office of the Ombudsman, 2007).

²³³ Section 1, Commissions of Inquiry Act [Cap 85].

²³⁴ Order 48, Standing Orders of Parliament.

²³⁵ Order 49, Standing Orders of Parliament.

²³⁶ Section 23, Parliament Administration Act [Cap 306].

²³⁷ *Vanuarorua v Republic of Vanuatu* [2013] VUCA 41.

²³⁸ Comments of Ham Lini, Leader of the Opposition at public meeting on the National Integrity System study, 3 April 2014.

environment is very unstable. Motions of no confidence, or rumours of motions of no confidence, are frequent. In this environment, where members of parliament stand to gain by shifts in the government and executive posts, motions of no confidence are largely seen as a self-serving device, rather than a device to hold the executive to account.

Legal reforms

Score: 25

TO WHAT EXTENT DOES THE LEGISLATURE PRIORITISE ANTI-CORRUPTION AND GOVERNANCE AS A CONCERN IN THE COUNTRY?

Whilst a major international Convention in the area of anti-corruption has been ratified, there is no clear programme of developing national laws to respond to issues of corruption.

The UN Convention against Corruption was ratified in 2010.²³⁹ However, no specific legislative reforms have occurred in furtherance of compliance with this Convention. Changes in government make it difficult for the legislature to embark on and adhere to a comprehensive anti-corruption law reform agenda, and also make it difficult to assess the degree to which there is commitment for such an agenda. The Carcasses government released a “100 day plan” when it first came into power. This plan contained a list of actions, some of which had a clear anti-corruption focus. Example actions included establishing a public concerns monitoring group comprised of both government and non-government representatives, extending the legal powers of the ombudsman, revising some provisions in the Leadership Code Act, and consultation with political parties on reform of the political system.²⁴⁰ None of these actions were completed, however. That said, whilst the Carcasses government was ousted by a motion of no confidence in May 2014 the new Prime Minister Joe Natuman has indicated that the need to continue activities to reform the political system and enhance political stability remains a policy priority.²⁴¹

Whilst a number of positive law reforms are listed in the anti-corruption activities section, there have also been some reforms that appear to facilitate corruption. Somewhat controversial reforms include changes to passport laws. Vanuatu has historically been embroiled in a number of passport scandals, particularly relating to diplomatic passports. A new Passports Act was introduced in 2009 and a number of diplomatic passports were cancelled after this new law.²⁴² However, in 2010 it was reported in the Daily Post that more non-citizens held diplomatic passports than citizens.²⁴³ In 2011 the Passports Act was amended to allow non-citizens to hold Vanuatu diplomatic passports and this was seen by some as facilitating the corrupt sale of diplomatic passports.²⁴⁴

Changes to laws surrounding election petitions have also been controversial. Whilst it has always been the case that election petitions on the grounds of improper conduct will only be successful if the improper conduct affected the result of the election, the law also used to provide that if a candidate were convicted of an election offence, then his or her election would be declared invalid. This provision was removed in 2012 and replaced with a much narrower provision relating to spending or allocating money during a set period around elections.²⁴⁵

²³⁹ United Nations Convention against Corruption (Ratification) Act 2010.

²⁴⁰ <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list/> [accessed 27 February 2014].

²⁴¹ Len Garae, ‘Prime Minister asks for Qualified People’ *Vanuatu Daily Post* 26 May 2014, 1.

²⁴² ‘New Agency to Stamp Out Illegal Passport Trade in Vanuatu’ *Radio Australia Online* 14 October 2009.

²⁴³ Godwin Ligo, ‘More foreigners holding diplomatic passports than ni-Van holders’ *Vanuatu Daily Post Online* 30 October 2010.

²⁴⁴ ‘New Zealand Urged to Investigate Vanuatu Passport Office’ *Pacific Islands Report* 21 December 2009.

²⁴⁵ Section 13, Representation of the People (Amendment) Act 2012.

RECOMMENDATIONS

1. Parliament should be the “hub” of accountability, with other agencies reporting to it. It should also be a source of information on activities, via annual and other reports presented to parliament. Currently it does not serve this function. Further, there is little communication between members of parliament and the public, and little public information on matters going before parliament. This may be, in part, due to the absence of a requirement in the Standing Orders that information, including copies of Bills be made publically available. Short time frames between when members receive Bills and parliament sits also hinder opportunities for consultation. It is recommended that the Parliamentary Management Board takes action to ensure that:
 - a. Standing Orders are reviewed to include a requirement that lists of documents to be tabled, as well as Bills, are issued prior to parliamentary sessions, and that this list and all Bills be published to both members of parliament and the public. It is recommended that the Standing Orders be reviewed to ensure members have adequate time to consult (with technical advisors, the public and other stakeholders) on Bills.
 - b. Procedures of parliament are reviewed to require that every report tabled in parliament is to be made available through the parliament library unless matters of national security require otherwise.
 - c. Parliamentary committees are reviewed and strengthened to allow them to fulfil their role as an accountability mechanism.
2. There is very limited training for members of parliament and little technical support. It is recommended that measures to increase both training of and technical support for parliamentarians be implemented. Training should include components related to ethics and integrity for members of parliament, as well as more mechanical training on processes and procedures. Technical support could be modelled on the Parliamentary Institute of Cambodia, an NGO that reviews all Bills and provides briefing papers to both government and opposition.
3. There is concern about the extent to which members of parliament account for their own allowances. There has also been dissatisfaction at increases in members’ allowances. It is recommended that:
 - a. An independent body to set the allowances (including salaries and sitting allowances) of members of parliament is established. This could possibly be modelled on New Zealand’s law.
 - b. The matter of representation allowances, and how to control them, are reviewed. Options to consider include:
 - i. Requiring members to publically account annually for their representation allowances.
 - ii. Removing the distribution of representation allowances from the control of members and instead giving members a role as conduits of project proposals that are forwarded to the Parliamentary Management Board or another body to decide upon.
 - iii. Providing allowances to political parties, rather than individual members, to distribute.
4. In practice integrity mechanisms are almost entirely dysfunctional. In addition to recommendations made in the ombudsman’s pillar it is recommended that:
 - a. The Leadership Code Act is revised to ensure that annual returns are scrutinised on an annual basis.
 - b. Automatic penalties (such as ceasing to be paid salary) are implemented for leaders who fail to file returns.
5. There is public interest in changing the law to require higher educational qualifications for candidates standing for election as members of parliament. The government should publically consult on whether it is appropriate to amend the eligibility criteria for candidates contained in the Representation of the People Act.

6. Whilst the opposition acts as a check on the government (executive) to a degree, the opposition is not provided with legal support to do this. If it wants to challenge decisions by using judicial review processes it must engage private sector lawyers, which is costly. This limits the extent to which the legislature can act as a check on the executive. It is recommended that the Parliamentary Management Board develops and institutes a new position of opposition counsel.

VII.2. EXECUTIVE

SUMMARY

Overall pillar score: 34.7			
Dimension	Indicator	Law	Practice
Capacity 50	Resources	--	50
	Independence	75	25
Governance 29.2	Transparency	25	25
	Accountability	50	25
	Integrity	50	0
Role 25	Public sector management	25	
	Legal system	25	

The executive or Council of Ministers is seriously affected in its operations by the instability that plagues the legislature. Frequent changes make it difficult to assess the extent to which the executive as an institution (rather than any individual Council of Ministers) fulfils its roles in respect of public sector management and development of a legal system that supports public accountability and anti-corruption. One concern regarding the operation of the executive is that political advisors who provide advice to the Council of Ministers and are also one of the main bridges between ministers and their ministries are not required to have any particular qualifications or expertise.

There are also serious weaknesses in respect of transparency of decision making within the executive, accountability for decision making and integrity mechanisms. Some of these weaknesses relate to performance gaps in other institutions, such as the legislature, the supreme audit institution, law enforcement agencies and the ombudsman. As the executive is the institution that has the ultimate power to strengthen the performance of these institutions, this suggests that there is a lack of political will to implement change.

STRUCTURE AND ORGANISATION

The executive branch of Vanuatu is made up of the prime minister and the Council of Ministers. The Council of Ministers is appointed by the prime minister. The total size of the executive cannot exceed a quarter of the number of members of parliament.²⁴⁶ In practice there are 12 ministries. Ministers are supported in their work by political advisors, who act as liaisons between, and monitors of, ministries. Political advisors also provide an important policy advice role to the Council of Ministers via the operation of the Development Committee of Officials (DCO), a body largely comprised of director generals and political advisors.

²⁴⁶ Article 40, Constitution of the Republic of Vanuatu.

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE EXECUTIVE HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

Whilst the Council of Ministers has sufficient financial resources and secretarial support, weaknesses within the political advisor system undermine the quality of technical support to the council.

The Council of Ministers is supported by a secretary, who is appointed by the PSC and who is responsible for council minutes, keeping a register of council decisions²⁴⁷ and other administrative tasks.²⁴⁸ This level of secretariat support is adequate.²⁴⁹

Technical support for decision making is provided by the DCO. This body is comprised of the director general of the prime minister's office, each director general of each ministry, a political advisor from each ministry, the director of the Department of Strategic Management and the secretary to the council.²⁵⁰ The DCO can also require that the attorney general and the chair of the PSC attend meetings and provide advice.²⁵¹ Submissions will usually only be accepted for consideration by the DCO if there has already been consultation with other ministries and the submission has the support of the first political advisor from the ministry making the submission,²⁵² although these requirements can be waived if the matter is urgent.²⁵³

The quality of the advice provided by the DCO is dependent upon the quality of the political advisors and director generals who comprise it. Whilst director generals are public servants,²⁵⁴ and are therefore subject to rules regarding appointment on merit and clear criteria (as discussed in the pillar on the public service) they are now appointed and terminated directly by the Prime Minister.²⁵⁵ This lack of independence may limit the extent to which director generals are willing to give advice which goes against the desires of their ministers. Further, political advisors are not public servants and are not subject to the same rule regarding appointment on merit. The Government Act provides that the Council of Ministers must convene a committee for determining the necessary qualifications for a political advisor²⁵⁶ and that this committee must approve political advisors before they can be appointed by a minister.²⁵⁷ However, this committee has not established clear criteria for the appointment of political advisors.²⁵⁸ This undermines the quality of technical advice given by political advisors as a whole, with quality varying considerably depending upon the individual.²⁵⁹ Concerns have also been expressed about the lack of educational qualifications of members of parliament²⁶⁰

²⁴⁷ Section 10, Government Act [Cap 243].

²⁴⁸ Section 11, Government Act [Cap 243].

²⁴⁹ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 12 February 2014; interview of Mark Bebe, former Director General of Justice with Kibeaon H Nimbwen, Port Vila, 13 February 2014.

²⁵⁰ Section 13(1), Government Act [Cap 243].

²⁵¹ Sections 13(3) and (4), Government Act [Cap 243].

²⁵² Section 13(6), Government Act [Cap 243].

²⁵³ Section 13(7), Government Act [Cap 243].

²⁵⁴ Section 18, Public Service Act [Cap 246].

²⁵⁵ Public Service (Amendment) Act 2011.

²⁵⁶ Section 21(1), Government Act [Cap 243].

²⁵⁷ Section 21(3), Government Act [Cap 243].

²⁵⁸ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 12 February 2014; interview of Mark Bebe, former Director General of Justice with Kibeaon H Nimbwen, Port Vila, 13 February 2014.

²⁵⁹ Ibid.

²⁶⁰ Transparency Vanuatu Press Release 13 September 2013.

and, as the executive is drawn from members of parliament, there is some concern about the capacity of ministers. This can result in the Council of Ministers acting as a “rubber stamp” for decisions that have already been made by the particular minister.²⁶¹

The law does not require all submissions to the council to go through the DCO, although before submissions can be considered by the council they must have advice from the attorney general on legal implications and advice from the director general of the Ministry of Finance and Economic Management on the financial implications.²⁶²

There is usually sufficient budget for Council of Ministers meetings. However, in 2013 two Council of Ministers meetings were held in the provinces. The additional costs were unbudgeted for and as a result were financed from the operational budgets of different ministries and departments.²⁶³ Holding Council of Ministers meetings outside of Port Vila is an expensive exercise. Having Council of Ministers meetings in the provinces increases the connection between the central administration and the rural population. However, ministers (and other members of parliament) are meant to use their travel allowances to travel throughout the country and undertake consultations on particular ministry projects and activities. As such it is difficult to justify the cost of holding Council of Ministers meetings in the provinces at the expense of conducting projects and activities in the provinces.²⁶⁴

Whilst the executive has sufficient financial resources, considerable resources are consumed by political advisors and political appointees. Each minister is usually permitted three political advisors, although this can be increased to four if a genuine need can be demonstrated. The deputy prime minister is permitted four political advisors and the prime minister is permitted five political advisors.²⁶⁵ Whilst the council committee on political advisors is meant to set terms and conditions of them,²⁶⁶ there is no set salary scale for political advisors and other political appointees. The law was changed in 2008 to allow political advisors to receive a higher salary than director generals.²⁶⁷ These positions can be seen as a sinecure for political supporters.²⁶⁸ Each minister also has a number of political appointees, including an office supervisor, two secretary/typists, a housemaid and a gardener.²⁶⁹ There are no legal limits on the number of political appointees, and salaries are set by the prime minister through regulations made pursuant to the Official Salaries Act. Again these positions can be seen as sinecures for political supporters.²⁷⁰

Independence (law)

Score: 75

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT BY LAW?

There are a number of reasonable limits on independence of the executive, including laws to prevent individual ministers being affected by conflicts of interest and checks by the judiciary and the executive. There are, however, few limits on when the legislature can check the executive via the use of motions of no confidence.

²⁶¹ Interview of Mark Bebe, former Director General of Justice with Kibeen H Nimbwen, Port Vila, 13 February 2014.

²⁶² Section 15, Government Act [Cap 243].

²⁶³ Jane Joshua, 'Some highlights of the 2nd Extraordinary Parliament Session of 2013 (Aug 21-30 2013)' *Vanuatu Daily Post* 16 September 2013, 10.

²⁶⁴ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeen H Nimbwen, Port Vila, 12 February 2014.

²⁶⁵ Section 17(2), Government Act [Cap 243].

²⁶⁶ Section 21(1), Government Act [243].

²⁶⁷ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeen H Nimbwen, Port Vila, 12 February 2014; interview of Mark Bebe, former Director General of Justice with Kibeen H Nimbwen, Port Vila, 13 February 2014; Government (Amendment) Act 2008.

²⁶⁸ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeen H Nimbwen, Port Vila, 12 February 2014; interview of Mark Bebe, former Director General of Justice with Kibeen H Nimbwen, Port Vila, 13 February 2014.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

The prime minister has the sole responsibility for establishing the executive and assigning their duties.²⁷¹ The executive is not completely unfettered in the exercise of its powers. The judiciary provides a check to ensure that the actions of the executive comply with the law. The executive is also collectively responsible to parliament.²⁷² The executive requires the confidence of parliament in order to pass government Bills. The ultimate check that the parliament has on the executive is a motion of no confidence.²⁷³ These legal checks are consistent with the principles of the separation of powers, although it can be observed that the only limit on the use of a motion of no confidence is that it must have been signed by one-sixth of the members of parliament in order to be accepted.²⁷⁴

Other laws to protect the independence of the executive address the actions of individual ministers. The Leadership Code Act requires ministers to disclose conflicts of interest to the Council of Ministers. Ministers are not allowed to vote on matters where they have a conflict of interest.²⁷⁵ Section 18(1) of the Leadership Code Act also provides that a person who becomes a leader in an area in which he or she has interests, either in a business or a personal capacity, which is likely to conflict with the leader's official duty or duties then he must divest himself of those interests or resign from that position of leader. Financial accountability laws for individual ministers, as discussed below should, in theory, act as a deterrent on interference via the payment of bribes.

There are no limits on lobbying the executive.

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT IN PRACTICE?

Independence of the executive is defined as the executive being free to develop and implement policy that is in the national interest, rather than individual ministers being free to act in their own interests. The political environment in which the executive operates affects the ability of the executive to independently develop and implement policy that is in the national interest.

The biggest challenge for the operation of the executive is that government is comprised of an unstable coalition. Motions of no confidence are common and usually reflect a desire to gain power, rather than concern about the policies and actions of the government. In order to maintain coalition relationships and avoid motions of no confidence shuffles in ministries are common. To illustrate, following the national election in October 2012 Sato Kilman became Prime Minister. In December there was a reshuffle to secure support of an independent candidate for the government.²⁷⁶ In March 2013 six backbenchers and two government ministers, Thomas Laken and Marcellino Pipite, crossed the floor and Kilman resigned in order to avoid a vote of no confidence.²⁷⁷ A new government was formed with Moana Carcasses as Prime Minister. Both Laken and Pipite were given positions in Carcasses' cabinet, although neither retained the same ministries.²⁷⁸ In the first four months of the Carcasses government three ministers were sacked.²⁷⁹ New appointment and reshuffles meant that in these four months four different people held the position of minister of justice.²⁸⁰

²⁷¹ Article 42, Constitution of the Republic of Vanuatu.

²⁷² Article 43(1), Constitution of the Republic of Vanuatu.

²⁷³ Article 43(2), Constitution of the Republic of Vanuatu.

²⁷⁴ Article 43(2), Constitution of the Republic of Vanuatu.

²⁷⁵ Section 17, Leadership Code Act [Cap 240].

²⁷⁶ http://en.wikipedia.org/wiki/Cabinet_of_Vanuatu [accessed 27 February 2014], (sources verified).

²⁷⁷ 'Vanuatu MPs select Greens' leader as new prime minister' *Radio New Zealand International Online* 23 March 2013.

²⁷⁸ http://en.wikipedia.org/wiki/Cabinet_of_Vanuatu [accessed 27 February 2014], (sources verified).

²⁷⁹ Ibid; 'Vanuatu PM Sacks Finance Minister Willie Jimmy' *Radio Australia News Online* 13 May 2013.

²⁸⁰ http://en.wikipedia.org/wiki/Cabinet_of_Vanuatu [accessed 27 February 2014], (sources verified); comments of Mark Bebe, National Integrity System Advisory Group Meeting 17 December 2014.

In February 2014 a motion of no confidence in the Carcasses government was announced.²⁸¹ The motion was withdrawn after Carcasses 'made an offer of four ministerial positions to members of parliament in the Opposition bloc.'²⁸² This move was defended by the minister of lands as 'being better than bribing people with money'.²⁸³ He did, however, acknowledge that, 'To become a minister is an enticement for an MP, because you get an increase in salary, and you get to employ people, and of course you get to implement your policies.'²⁸⁴ This reinforces the perception that the Council of Ministers does not act on consensus and in furtherance of national policy, but instead ministers are able to act in their own self-interest.²⁸⁵ It also supports the perception that signing a motion of no confidence can be an opportunistic move providing leverage to negotiate different benefits, rather than a clear signal that the person will vote in support of the motion.²⁸⁶

These threats to the independence of the executive as a policy driven body are internal, arising from the political economy of the legislature and the executive. A further issue affecting independence is the extent to which Vanuatu is dependent on aid. Whilst this can both affect operation of ministries and the direction of government policy, aid from major bilateral donors, including Australia, is related back to the overarching government policy statement, the Priorities and Action Agenda.²⁸⁷ This external influence provides a degree of policy stability so is a positive constraint on independence.

There is a perception that "Chinese money" and other money from international sources is used to fund motions of no confidence and other activities aimed at destabilising the executive.²⁸⁸ Such claims are not new.²⁸⁹ As there is no transparency in respect of funding to political parties or ministers, or decision making of the executive, it is not possible to assess the extent to which independence is affected by lobbying and/or bribes.

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE TO ENSURE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE?

There are few legal mechanisms in place for ensuring transparency of the executive, although there is limited transparency, in law, of government expenditure.

The Government Act requires the secretary to the Council of Ministers to keep a written record of each council meeting.²⁹⁰ The Act further provides that the decisions of the council shall be recorded in writing and a copy provided to each minister and every ministry, department, state appointed office, agency, instrument, authority or corporation of government affected by or charged with the responsibility of implementing a decision.²⁹¹ There is, however, no requirement that the cabinet meeting minutes are made available to the public. Nor are there freedom of information laws that permit the public to gain access to cabinet meeting minutes. Indeed, if the government changes, the

²⁸¹ Godwin Ligo, '27 Sign Motion' *Vanuatu Daily Post* 18 February 2014, 1.

²⁸² Godwin Ligo, 'Gov't Plays Trump Card with Four Ministries' *Vanuatu Daily Post* 25 February 2014, 1.

²⁸³ 'Vanuatu Prime Minister Moana Carcasses avoids no-confidence vote after opposition MPs defect' *Radio Australia Online* 27 February 2014.

²⁸⁴ Ibid.

²⁸⁵ Comments of Mark Bebe, Bob Makin, National Integrity System Advisory Board, 17 December 2014.

²⁸⁶ 'Wilson's Word' *The Independent* 22 February 2014, 7.

²⁸⁷ <http://aid.dfat.gov.au/countries/pacific/partnership/Pages/vanuatu.aspx> [accessed 20 April 2014].

²⁸⁸ Lynn J Tane, 'Can we Control Foreign Influence in Politics?' *The Vanuatu Times* 7–13 March 2014, 1; 'Reports of foreign interference: Claims Opposition camp was "bankrolled"' *The Independent* 1 March 2014, 2; Jonas Cullwick, 'Opposition paid bills for camp' *Vanuatu Daily Post* 5 March 2014, 3.

²⁸⁹ See, for example, Anita Jowitt, 'Vanuatu' in Transparency International, *Global Corruption Report 2006* (Pluto Press: London 2006) 278.

²⁹⁰ Section 7(1), Government Act [Cap 243].

²⁹¹ Section 7(2), Government Act [Cap 243].

law prohibits the new cabinet from accessing previous council minutes unless the composition of the councils is substantially the same.²⁹² Whilst the Parliament Administration Act requires ministers to provide an annual report to parliament, there is no requirement that these documents be tabled in parliament, or otherwise be made public.²⁹³

The Public Finance and Economic Management Act provides for the budget process. Not less than 14 days prior to the introduction of an Appropriation Bill the minister must provide to council for the budget year, and the two years following, a program of expenditure including the details of the estimated revenue of the state, the details of the expenditure estimates for each ministry and government agency, the state's debt management responsibilities and where necessary the details of a financial plan to meet those responsibilities.²⁹⁴ The Council of Ministers is then required to return a fiscally responsible budget to the Ministry of Finance and Economic Management.²⁹⁵ As budgets must be passed by parliament, via an Appropriation Act²⁹⁶ they are public documents. At the end of each financial year financial statements should also be made public, as the Public Finance and Economic Management Act requires them and a report of the auditor general to be tabled in parliament.²⁹⁷

Whilst the Leadership Code Act requires ministers and political advisors to make annual returns to the clerk of parliament disclosing their assets, as discussed in the section on the legislature these returns are not made public. Nor are they routinely scrutinised.

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE IN PRACTICE?

Whilst budgets are published, there is little other transparency in the actions of the executive, although individual ministers act transparently at times.

Minutes of Council of Ministers meetings are not made public. Nor are decisions routinely communicated to the public. Assets of ministers and political advisors are not routinely disclosed to the public. Indeed, the list of political advisors is not publicised, although it is available on request from the office of the prime minister.²⁹⁸ Nor does the Government of Vanuatu website provide a current list of ministers or ministries, with most ministry pages last having been updated in 2011.²⁹⁹ Annual reports of ministries are not routinely available to the public. Nor do all ministers report to parliament as required by the Parliament Administration Act.³⁰⁰ Some of these deficiencies have recently been acknowledged by the government and there are plans to improve online information of ministries by 2015.

Budgets are made public, with budgets for 2010 to 2013 being available for download from the Government of Vanuatu website.³⁰¹ However, as discussed in the section on the auditor general, financial statements and reports on the use of government money are not readily available.

Whilst there is no transparency of the executive as a whole, individual ministers or ministries do, at times, act transparently. A recent example of this was widespread public consultations by the

²⁹² Section 7(4), Government Act [Cap 243].

²⁹³ Section 23, Parliament (Administration) Act [Cap 306].

²⁹⁴ Section 23, Public Finance and Economic Management Act [Cap 244].

²⁹⁵ Section 23(2), Public Finance and Economic Management Act [Cap 244].

²⁹⁶ Part 8, Public Finance and Economic Management Act [Cap 244].

²⁹⁷ Section 25, Public Finance and Economic Management Act [Cap 244].

²⁹⁸ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeon H Nimbwen, Port Vila, 12 February 2014.

²⁹⁹ www.gov.vu/index.php/government [accessed 27 February 2014].

³⁰⁰ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeon H Nimbwen, Port Vila, 12 February 2014.

³⁰¹ www.gov.vu/index.php/publicationdocuments/budget [accessed 27 February 2014].

minister of lands on proposed land reforms,³⁰² although they have been criticised as not having been too rushed, and too “Vila-centric”, with reforms developed in the capital being explained to people in the outer islands rather than being consulted upon.³⁰³

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT MEMBERS OF THE EXECUTIVE HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

Whilst the Leadership Code Act does provide a number of laws to punish leaders for wrongdoing, there are no requirements requiring members of the executive to account for their decisions to the public.

The main accountability measure is the requirement that ministers must provide an annual report to parliament. These reports are then forwarded to the relevant parliamentary committee, but, as stated above, there is no requirement that these documents be tabled in, or debated by, parliament.³⁰⁴ There is no requirement that members of the executive give reasons for their decisions, or that they consult with the public or other special interest groups when proposing Bills or making other decisions.

Whilst all legislation must be approved by parliament, many Acts give considerable powers to ministers to make subordinate legislation (regulations and orders). The only check on this law making power is that the Supreme Court can rule subordinate legislation to be unconstitutional.

Commissions of Inquiry are another measure that can be used to hold members of the executive to account. These commissions are established by the minister for justice³⁰⁵ and have powers to compel attendance of witnesses.³⁰⁶ Reports are not binding nor are they required to make recommendations. Instead reports contain findings and reasons for conclusions.³⁰⁷ The Standing Orders of Parliament also permit parliamentary committees to be established to inquire into any matter, including the conduct of ministries.³⁰⁸

As discussed in the section on the supreme audit institution, laws provide for annual audits of all public expenditure and also allow for performance audits.

Accountability (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE OVERSIGHT OF EXECUTIVE ACTIVITIES IN PRACTICE?

There are numerous failures in the implementation of accountability mechanisms although judicial review of decisions of ministers occurs at times.

In practice, accountability mechanisms have little effect. As discussed in the sections on the legislature, the ombudsman and law enforcement, the Leadership Code Act is not enforced. As discussed in the section on the supreme audit institution, financial accountability mechanisms are

³⁰² www.facebook.com/pages/Graon-mo-Jastis-Pati/151819348218590 [accessed 10 May 2014].

³⁰³ See, for example, comments on <http://pacificinstitute.anu.edu.au/outrigger/2014/03/04/better-protection-for-custom-owners-key-changes-in-vanuatus-new-land-legislation/> [accessed 10 May 2014].

³⁰⁴ Section 23, Parliament (Administration) Act [Cap 306].

³⁰⁵ Section 1(1), Commissions of Inquiry Act [Cap 85].

³⁰⁶ Section 9, Commissions of Inquiry Act [Cap 85].

³⁰⁷ Section 10, 11, Commissions of Inquiry Act [Cap 85].

³⁰⁸ Order 49(1), Standing Orders of Parliament.

not functioning effectively and there are insufficient resources to conduct detailed performance audits of ministries. As discussed in the section on transparency above, ministers do not always report to parliament. Further, if reports are made, parliamentary standing committees are ill equipped to scrutinise such reports.³⁰⁹

Internal discipline of ministers by the prime minister is also weak. For instance, when Minister Harry Iauko was convicted for his role in the assault of a journalist³¹⁰ he remained in the executive. Similarly, Minister Don Ken was charged with assault. Although he was not convicted of a criminal offence,³¹¹ criminal conviction is not necessary in order to face internal discipline. However, he remained on the executive. Ministers who are the subject of ombudsman's reports are not routinely disciplined by the prime minister.

Whilst, as discussed in the judiciary section, the opposition and individuals affected by decisions can, and sometimes do, take judicial review cases to court, this form of oversight is reactive and limited.

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE EXECUTIVE?

A number of integrity mechanisms are contained in law, although the generic code of conduct is not entirely comprehensive and there is no specific code of conduct for members of the executive.

The generic integrity framework for all leaders, provided under the Leadership Code Act applies. Provisions of this Act include that leaders must not be involved in the misuse of public moneys,³¹² exercise undue influence over others,³¹³ have or seek a beneficial interest in government contracts,³¹⁴ and must comply with all laws that impose duties or responsibilities on leaders.³¹⁵ Compliance with laws relating to the public service, public finance, expenditure review and government contracts and tenders is specifically emphasised.³¹⁶ They are required to disclose any conflicts to the prime minister and are not permitted to vote in the Council of Ministers on matters in which they have an interest. There is no separate, specific code of conduct for ministers. Breaches of these provisions are punishable by a fine not exceeding VT5 million (US\$500,000) and/or imprisonment for a period not exceeding 10 years.³¹⁷ As discussed in the section on the legislature, leaders are also required to file annual returns.

There are no limits on post-ministerial employment. However, there is limited "big business" in Vanuatu so ministers moving to appointments within industry are not a feature of Vanuatu's political landscape. Nor are there any provisions that explicitly seek to protect whistle-blowers, although the law does prohibit ministers, including the prime minister, from attempting to interfere with public service employment and in the employment issues relating to the Teaching Service Commission, the Judicial Service Commission or the Police Service Commission.³¹⁸

³⁰⁹ Interview of Leon Teter, Assistant Clerk Parliamentary Committees with Anita Jowitt, Port Vila, 28 August 2013.

³¹⁰ 'State Minister could face up to 5 years in prison' *Vanuatu Independent* 27 August-2 September 2011, 1.

³¹¹ *Public Prosecutor v Ken* [2012] VUSC 182.

³¹² Section 20, Leadership Code Act [Cap 240].

³¹³ Section 22, Leadership Code Act [Cap 240].

³¹⁴ Section 26, Leadership Code Act [Cap 240].

³¹⁵ Section 28, Leadership Code Act [Cap 240].

³¹⁶ Section 29, Leadership Code Act [Cap 240].

³¹⁷ Section 30(3), Leadership Code Act [Cap 240].

³¹⁸ Section 9(4), Government Act [Cap 243].

The Ombudsman Act also provides for the ombudsman to enquire into any case of an alleged or suspected discriminatory practice by a government agency and in respect of conduct of leader to enquire into any case of alleged or suspected breach of the Leadership Code.³¹⁹

Integrity (practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE EXECUTIVE ENSURED IN PRACTICE?

Without accountability in practice, integrity mechanisms are ineffective.

As discussed above, accountability is almost entirely lacking. In the absence of enforcement of the Leadership Code Act, it is ineffective. In the past year there have been no cases of ministers or former ministers being prosecuted for conflict of interest. Nor have any ombudsman's reports on the conduct of ministers been released in the last year.

Role

Public sector management

Score: 25

TO WHAT EXTENT IS THE EXECUTIVE COMMITTED TO AND ENGAGED IN DEVELOPING A WELL-GOVERNED PUBLIC SECTOR?

There is no consistent monitoring of performance within ministries and nor are there specific incentives to encourage good practice by public servants.

Ministers are not permitted to interfere in employment decisions relating to the public service,³²⁰ although ministers can inform the PSC, in writing, of employment issues that are affecting the implementation of government policy.³²¹ Public servants, including director generals, directors and other public servants are subject to lawful directions of ministers.³²² One of the roles of political advisors is to monitor the extent to which public servants comply with lawful orders.³²³ Ministries are expected to have in place a corporate plan together with a human resource development plan and an individual work performance and development plan for each staff member.³²⁴ Supervisors of staff are expected to have regular meetings to monitor the individual work-plans.³²⁵ This provides the basic framework for ensuring that the executive can effectively supervise the work of the public service.

In practice, however, this framework does not work well. Whether there is effective oversight depends very much on the individual minister and director general.³²⁶ Whilst there should, ideally, be regular performance appraisals of staff and work outputs, with director generals producing reports for ministers, this does not happen consistently.³²⁷ The prime minister has the power to transfer senior public servants,³²⁸ including director generals. It is fairly common for director generals to be

³¹⁹ Section 11(1), Ombudsman Act [Cap 252].

³²⁰ Section 9(4), Government Act [Cap 243].

³²¹ Section 9(5), Government Act [Cap 243].

³²² Section 22, Public Service Act [Cap 246].

³²³ Section 18(2), Government Act [Cap 243].

³²⁴ Public Service Staff Manual 2008, Vanuatu: 5.1.

³²⁵ Public Sector Staff Manual 2008, Vanuatu: 5.2.

³²⁶ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 12 February 2014.

³²⁷ Ibid.

³²⁸ Article 58(2), Constitution of the Republic of Vanuatu.

transferred, leading to instability of senior management. As discussed above, the quality of political advisors is variable and they tend not to be actively involved in oversight of ministerial activities. The prime minister's office did establish a monitoring and evaluation unit in 2006 for monitoring the implementation of policies in ministries, but this is not perceived to be effective.³²⁹

The executive has not developed incentives such as transparency awards, monitoring systems or scorecards for public servants.³³⁰

Legal system

Score: 25

TO WHAT EXTENT DOES THE EXECUTIVE PRIORITISE PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION AS A CONCERN IN THE COUNTRY?

Whilst the previous governing coalition led by Moana Carcasses had prioritised an anti-corruption agenda and early indications appear that the recently installed governing coalition led by Joe Natuman will continue this agenda, instability within government and different priorities of previous governments makes it difficult to score the executive's performance in the area of developing the legal system highly.

As discussed in the section on the legislature, changes in government make it difficult for the executive to embark on and adhere to a comprehensive anti-corruption law reform agenda, and also make it difficult to assess the degree to which there is commitment for such an agenda. The former (Carcasses) government did release a 100 day plan that prioritised a wide number of anti-corruption initiatives.³³¹ Few legislative changes have resulted from this, although significant reforms to land leasing laws, aimed at reducing corruption, were successfully championed by Minister of Lands Ralph Regenvanu.³³² The recently installed (Natuman) government has stated that it is committed to moving forward with reforms aimed at increasing stability within the legislature,³³³ which is a key anti-corruption policy.

The government of Prime Minister Sato Kilman, which came to power in 2011 and remained in power following the 2012 elections did not have a comprehensive anti-corruption plan, he also made various statements against corruption, particularly within the public service.³³⁴ Although the UN Convention against Corruption was acceded to under Kilman's leadership, ratification had already occurred under the previous government led by Edward Natapei.³³⁵ Commentary by Transparency International Vanuatu maintained that in light of numerous reports of corruption within the government in the media such statements were merely lip service.³³⁶

³²⁹ Interview of Mark Bebe, former Director General of Justice with Kibeaon H Nimbwen, Port Vila, 13 February 2014.

³³⁰ Ibid; Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 12 February 2014.

³³¹ <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list/> [accessed 27 February 2014].

³³² Sean Dorney, 'Vanuatu minister takes up fight against corrupt land dealings' *Australia Network News Online* 5 December 2013.

³³³ Len Garae, 'Prime Minister asks for qualified people' *Vanuatu Daily Post* 26 May 2014, 1.

³³⁴ Godwin Ligo, 'Vanuatu PM: Public servants more corrupt than politicians' *Pacific Islands Report* 31 January 2012; Godwin Ligo, 'Govt reiterates stand against corruption' *Vanuatu Daily Post Online* 30 December 2011.

³³⁵ www.undp.org/content/fiji/en/home/presscenter/articles/2011/07/29/un-welcomes-vanuatu-s-accession-to-the-un-convention-against-corruption/ [accessed 20 April 2014].

³³⁶ www.transparency.org/news/pressrelease/20130222_its_business_as_usual_for_the_corrupt_despite_all_the_lip_service [accessed 27 February 2014].

RECOMMENDATIONS

1. There is almost total lack of transparency in the policy direction and decision making of the executive and the operation of ministries. In order to address these issues it is recommended that:
 - a. The Right to Information Bill must be enacted by parliament as soon as possible.
 - b. The Government Act be revised to require that coalition Memoranda of Understanding (MOUs) and policies be made public by the Council of Ministers.
 - c. The Government Act be revised to require that Council of Ministers minutes be made public, unless necessary to keep sections private for public security reasons.
 - d. The Leadership Code Act annual reporting system be revised to include comprehensive declarations that are routinely inspected and made public.
 - e. Annual reports of ministers be made public.
 - f. The current government plan to improve websites be monitored in order to see whether websites contain policy statements, corporate plans that provide a clear statement of outputs and annual reports on outputs achieved, as related to plans.
2. The Council of Ministers relies on the DCO, which is largely comprised of political advisors and director generals, for technical advice. There are, however, no specified requirements as to political advisors' qualifications. It is recommended that minimum qualifications for political advisors be instituted, to ensure that such advisors have sufficient background to be able to provide technical advice.
3. The liberal use of motions of no confidence without sound reasons based on national interests is the mechanism that creates instability with the executive. However, a blanket limitation on motions of no confidence for certain periods of time prevents their legitimate use in cases of bad governance, so is a problematic approach to controlling this problem. In order to address this the following options should be considered by the a body set up to publically develop political integrity laws and regulations:
 - a. For a motion of no confidence to be in order, requiring that it needs to be justified on the basis of political reasons (such as breaches in MOU or breaches of Leadership Code Act).
 - b. Introducing penalties for those who sign an unjustified motion of no confidence (such as a deduction from MPs salaries or losing one's seat and requiring a by-election).
 - c. Developing a party discipline system, including penalties for members who cross the floor without justifiable reason.
 - i. Part of the development of a stronger party system may include funding parties, rather than individual MPs (via the MP allocation), with a discipline mechanism being to be cut off from party funding if the floor is crossed.
4. Whilst laws have been implemented to control the number of political advisors, there are no similar controls on the number of political appointees and it appears that the number of such appointees is growing. It is recommended that laws to control the number of political appointees be developed and implemented.

VII.3. JUDICIARY

SUMMARY

Overall pillar score: 45.8			
Dimension	Indicator	Law	Practice
Capacity 62.5	Resources	50	25
	Independence	100	75
Governance 37.5	Transparency	50	50
	Accountability	25	25
	Integrity	50	25
Role 37.5	Oversight of the Executive	50	
	Corruption prosecution	25	

Vanuatu's judicial system is generally respected as being impartial, independent and fair, even though there are few legal mechanisms to ensure the integrity of judges. The judicial system is active in overseeing the actions of the executive. It is less active in addressing corruption cases, although this is due, in large part, to cases not coming before the court.

There is considerable concern about delays within the court system. These delays do not only affect corruption cases but can also result in parties in a wide range of cases being unable to gain justice via court orders when their rights have been violated. Whilst a range of actors contribute to delays, lack of resources and lack of accountability are specific factors affecting judicial and court staff. Lack of transparency can also affect monitoring of the progress of cases. These issues have been acknowledged by the Vanuatu judiciary and an extensive three year improvement plan was commenced in 2012.

STRUCTURE AND ORGANISATION

Vanuatu maintains a common law judicial system. The court of first instance, with unlimited jurisdiction is the Supreme Court. There are two levels of subordinate courts – the Magistrates Court and the Island Courts. The highest court is the Court of Appeal. The main court registry is located in Port Vila. Additional registries are located in Luganville on Espiritu Santo, Lakatoro on Malekula, Isangel on Tanna, Ambore on Ambae, Loltong on Pentecost, and Sola on Vanua Lava in the Banks Group of Islands. There are currently six supreme court judges, all based in Vila. In 2011 there were nine magistrates. One magistrate is located in each of Luganville, Lakatoro and Isangel, with the others located in Port Vila. Other locations, as well as housing island courts, are served by judges and magistrates going on circuit. The Court of Appeal is comprised of a panel of judges. Justices of the Supreme Court sit on the Court of Appeal. In addition judges from overseas, usually New Zealand or Australia, are appointed to the Court of Appeal.

The chief justice has overall responsibility for the administration of the Supreme Court. Similarly the chief magistrate has specific responsibilities in respect of administration of the Magistrates Courts. They are assisted in these functions by the chief registrar. The Judicial Services and Courts Act (JSC Act) also requires the appointment of a master.³³⁷ Whilst the position of master is that of a court officer, rather than a judicial officer, the master can perform various administration related judicial functions, such as applications for direction on procedure and determination of taxation of costs.

³³⁷ Section 42, Judicial Services and Courts Act [Cap 270].

Island Courts have very limited jurisdiction and are presided over by lay justices who are knowledgeable in custom. They are in turn supervised by supervising magistrates. Island Courts do not have any jurisdiction over corruption related offences.

ASSESSMENT

Capacity

Resources (law)

Score: 50

TO WHAT EXTENT ARE THERE LAWS SEEKING TO ENSURE APPROPRIATE SALARIES AND WORKING CONDITIONS OF THE JUDICIARY?

Whilst there are some laws requiring that the government allocate sufficient resources to the courts, there is no requirement that salaries must be adjusted to allow for inflation.

The JSC Act contains schedules stating the salaries, allowances and benefits for judicial and court staff. These are set by the Judicial Service Commission. The JSC Act provides that the Government Remuneration Tribunal may review salaries, allowance and benefits every two years and make recommendations to the Judicial Service Commission. The Judicial Service Commission can then alter the schedules, although it is not permitted to alter them to the detriment any judicial officer.³³⁸ It is not, however, mandatory that reviews occur. Nor is it mandatory for the Judicial Service Commission to adjust salaries to allow for inflation.

There is no requirement that the judiciary be provided a minimum percentage of the general budget. Instead the JSC Act provides that 'The Government must ensure that there is a sufficient budget allocated for the operations of the Judicial Service and the Vanuatu Courts to enable the Judicial Service to perform its functions and each of the Courts to exercise its jurisdiction and powers as provided for under the Constitution, this Act and any other law'.³³⁹ The budget procedure is provided by the Public Finance and Economic Management Act.³⁴⁰ As part of this procedure budget submissions are prepared and advanced to the Ministers' Budget Committee. 'The Chief Justice has direct responsibility of the financial management of the Courts. His Honour is assisted by the Chief Registrar and the Accountant.'³⁴¹ There are no specified statutory limits on how the budget is to be apportioned.

Resources (practice)

Score: 25

TO WHAT EXTENT DOES THE JUDICIARY HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

There are significant resource gaps in respect of the number of judicial officers, the number of support staff and the adequacy of court infrastructure, including buildings and IT systems.

The court system in Vanuatu faces significant resource challenges. A 2012 report prepared by the Pacific Judicial Development Programme (PJDP) notes that, 'Every court visited suffered in some

³³⁸ Section 67, Judicial Services and Courts Act [Cap 270].

³³⁹ Section 49(1), Judicial Services and Courts Act [Cap 270].

³⁴⁰ Section 49(3), Judicial Services and Courts Act [Cap 270].

³⁴¹ Judiciary of the Republic of Vanuatu, *Annual Report 2009* (Port Vila: Judiciary of the Republic of Vanuatu, 2010).

significant way from a lack of funding, problems with accommodation, and lack of tools and equipment.³⁴² Most critical, maybe, is the fact that in 2007 the Supreme Court building in Port Vila burned down. The Supreme Court and Court of Appeal are still housed in temporary premises. This creates challenges in operations and efficiency. For instance, judges' chambers are too small to comfortably hold records of files assigned to that judge.³⁴³ The court rooms and chambers are in separate locations, so moving from chambers to court takes time.³⁴⁴ In 2011 the court building in Luganville was burned down and was also relocated to temporary accommodation.³⁴⁵

Whilst work is currently underway to computerise the court registry, the registry is currently maintained via uncoordinated and unstandardised individual systems, rather than by a centralised computerised system.³⁴⁶ The operation and reform of the registry is also hindered by the fact that 'the portfolio of the Chief Registrar is simply too large, making it difficult to cope with every day operations and to co-ordinate reform in a methodical way.'³⁴⁷ There is a need for more staff in both the Supreme and Magistrates Court Registries.³⁴⁸

Once cases are assigned to an individual judge he or she assumes administrative responsibility for files. This, however, can create an onerous administrative burden on judges, which in turn reduces the time that judges have to spend on hearing cases and issuing decisions.³⁴⁹ There is a perceived need for strengthening administrative staff supporting judges.³⁵⁰

The position of master exists, but the Chief Justice has faced difficulties in finding a person to fill this position.³⁵¹ The position has been repeatedly advertised but it is thought that the salary is too low to attract applicants.³⁵² No one has occupied this position since 2010.³⁵³

The court has also faced difficulties in recruiting Supreme Court judges. In his 2013 Opening Speech of the Supreme Court, the Chief Justice observed that, 'Judgeship positions have been advertised in the not-too-distant past, but no interest of note was expressed from the members of the local Bar. It has become clear that the position is not attractive. The need of the Judiciary is for the Government of Vanuatu to review the terms and conditions of the office of a Judge to make it attractive.'³⁵⁴ Judicial salaries and conditions were last reviewed in 2006.³⁵⁵ It can, however, be observed as a matter of transparency that salaries and conditions are found in the schedule to the JSC Act. No amendments to this schedule are listed in Vanuatu's legislation and subsidiary legislation indexes.

Currently the development of the courts is being supported by the PJDP. This programme is particularly focussing on improving case management. In addition to strengthening case management infrastructure, by helping to develop a centralised computer system, training for judges and court staff is occurring.³⁵⁶

³⁴² Jennifer Ehmann, *PJDP Phase 2: Judicial Administration Diagnostic Project Regional Registry Systems and Processes Report February 2012* (Australia: Pacific Judicial Development Programme, 2012) 3.

³⁴³ Comments of the Chief Justice at the Workshop for Judges and Lawyers under the Vanuatu Judicial Assistance Programme 28 November 2013.

³⁴⁴ *Ibid.*

³⁴⁵ Judiciary of the Republic of Vanuatu, *Annual Report 2011* (Port Vila: Judiciary of the Republic of Vanuatu, 2012).

³⁴⁶ Jennifer Ehmann, 2012.

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid* and comments of Mr Justice Spear, Madam Justice Sey, Mr Justice Fatiaki at the Workshop for Judges and Lawyers under the Vanuatu Judicial Assistance Programme 28 November 2013.

³⁵⁰ Comment of Marie Noelle Ferrieux Patterson, lawyer and Chairperson of Transparency International Vanuatu.

³⁵¹ Comments of Chief Justice at the Workshop for Judges and Lawyers under the Vanuatu Judicial Assistance Programme 28 November 2013.

³⁵² Interview of Edwin Macreveth, Judicial Training Coordinator with Kibeon H Nimbwen, Port Vila, 5 May 2014.

³⁵³ *Ibid* and Judiciary of the Republic of Vanuatu, *Annual Report 2010* (Port Vila: Judiciary of the Republic of Vanuatu, 2011).

³⁵⁴ Chief Justice's speech at the opening of the Supreme Court 2013.

³⁵⁵ Interview of Edwin Macreveth, Judicial Training Coordinator with Kibeon H Nimbwen, Port Vila, 5 May 2014.

³⁵⁶ Judiciary of the Republic Of Vanuatu, *Improvement Plan 2012 – 2015* (Port Vila: Judiciary of the Republic of Vanuatu, March 2012).

Independence (law)

Score: 100

TO WHAT EXTENT IS THE JUDICIARY INDEPENDENT BY LAW?

There are comprehensive laws seeking to ensure the independence of the judiciary.

The judicial system is provided for in Chapter 8 of the Constitution. As well as establishing the superior court structure, including the Supreme Court³⁵⁷ and Court of Appeal³⁵⁸ the Constitution provides that village or island courts with jurisdiction over customary matters must be established.³⁵⁹ Magistrates Courts are not provided for in the Constitution but are established under the JSC Act.³⁶⁰

The chief justice is appointed by the president after consultation with the prime minister and leader of the opposition.³⁶¹ Appointment of other judges and magistrates is done by the president acting on the advice of the Judicial Service Commission.³⁶² The Judicial Service Commission is a constitutionally established body. Its membership consists of the minister responsible for justice as chairman, the chief justice, the chairman of the PSC and a representative of the National Council of Chiefs appointed by the council.³⁶³ There is no scope for public involvement or the involvement of the legal profession in the process of appointing judges. However, the judiciary does have involvement through the chief justice's membership of the Judicial Service Commission. Requirements for appointment as a judge in the Supreme Court, including the need for judges to hold appropriate academic qualifications, sufficient experience and be of good character or standing are provided in the JSC Act.³⁶⁴ Magistrates must also be appointed on merit but the requirements for appointment only include holding a law degree or having suitable legal training or experience.³⁶⁵

Judges and magistrates are appointed until they reach the age of retirement, although acting appointments can also be made for a fixed time.³⁶⁶ Judges can only be removed if they are convicted and sentenced for a criminal offence, if they have been found by the Judicial Service Commission to have committed an act, or acts, of gross misconduct, or on the grounds of incapacity or professional incompetence.³⁶⁷ The Constitution also prohibits the transfer of judges unless done by the president acting on the advice of the Judicial Service Commission.³⁶⁸

Judges and magistrates cannot be sued for any action done in good faith in exercise of their judicial duties.³⁶⁹ Further, any attempt to unduly influence a judicial officer is a criminal offence that carries a maximum sentence of a fine of VT500,000 (US\$5,000) and/or imprisonment for one year.³⁷⁰

³⁵⁷ Article 49, Constitution of the Republic of Vanuatu.

³⁵⁸ Article 50, Constitution of the Republic of Vanuatu.

³⁵⁹ Article 52, Constitution of the Republic of Vanuatu.

³⁶⁰ Part 3, Judicial Services and Courts Act [Cap 270].

³⁶¹ Article 49(3), Constitution of the Republic of Vanuatu.

³⁶² Article 47(2), Constitution of the Republic of Vanuatu.

³⁶³ Article 48(1), Constitution of the Republic of Vanuatu.

³⁶⁴ Section 33, Judicial Services and Courts Act [Cap 270].

³⁶⁵ Section 18, Judicial Services and Courts Act [Cap 270].

³⁶⁶ Section 23 & section 36, Judicial Services and Courts Act [Cap 270].

³⁶⁷ Article 47(3), Constitution of the Republic of Vanuatu.

³⁶⁸ Article 47(4), Constitution of the Republic of Vanuatu.

³⁶⁹ Section 55, Judicial Services and Courts Act [Cap 270].

³⁷⁰ Section 56, Judicial Services and Courts Act [Cap 270].

Independence (practice)

Score: 75

TO WHAT EXTENT DOES THE JUDICIARY OPERATE WITHOUT INTERFERENCE FROM THE GOVERNMENT OR OTHER ACTORS?

The general consensus is that the judiciary is independent although there has been one recent example of a judge being threatened and there is some concern that conflicts of interest may allow external actors to influence decisions.

According to a recent review by the PJDP in Vanuatu ‘the judiciary and institution [of the courts] is regarded highly as fair, independent and of integrity.’³⁷¹ It can be observed, however, that the Global Corruption Barometer research, discussed in the corruption profile chapter, indicates that public perceptions of corruption within the judiciary are increasing. It is not clear whether these perceptions are related to independence, or other aspects.

Appointed judges are appropriately qualified. There are no recent examples of judges being removed from their positions, transferred or demoted. Nor have there been any changes to the foundations or legal jurisdiction of the Supreme Court.

Although there is no official interference in the operation of the judiciary, attempts at unofficial interference can occur. In April 2010 Justice Nevin Dawson, a New Zealand judge who was, at the time, serving a two year appointment on the Vanuatu bench, received death threats after releasing a coroner’s report that was critical of police and Vanuatu mobile force officers.³⁷² Security measures were increased and he completed his term in Vanuatu.

There have been no prosecutions for attempts to unduly influence judges. Whether this means that undue influence does not occur, or that it does not get reported is unclear. A recent Transparency Vanuatu report on the operation of the judiciary observes that whilst ‘there were no reports of judges, court staff or prosecutors accepting bribes in order to delay cases [...], there were, however, some instances where *conflicts of interest* appeared to affect actions of police, prosecutors and judges.’³⁷³ This matter is further discussed in the section below on integrity mechanisms.

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE JUDICIARY?

Whilst court hearings are usually open and the law requires annual reports to be made publically available, there is little public transparency in respect of appointment and removal processes of judicial officers.

General civil hearings occur in open court, unless the court orders otherwise.³⁷⁴ Election petitions must be heard in open court.³⁷⁵ Constitutional applications are to be held in open court, although the

³⁷¹ Jennifer Ehmann, 2012.

³⁷² Eileen Gould, ‘New Zealand Judge, Family Receive Death Threats in Vanuatu’ *Impunity Watch Online* 6 April 2010.

³⁷³ Transparency International Vanuatu, *Vanuatu: Vanuatu Judicial Monitoring System Project: Backlog of Cases Report* (Port Vila: Transparency International Vanuatu, August 2013) 7.

³⁷⁴ Rule 12.2, Civil Procedure Rules 2002.

³⁷⁵ Rule 2.11(1) & 3.9(1), Election Petition Rules 2003; Rule 2.11(1) & 3.9(1), National Council of Chiefs Election Petitions Rules 2003.

public may be 'excluded from a specific part of the hearing in exceptional circumstances if it is necessary to do so in the interests of the defence, safety, public order, public welfare or public health of Vanuatu.'³⁷⁶ Criminal cases are to be held in open court³⁷⁷ although a 'judicial officer may for reasons of decency, security of the State or where otherwise authorised by law'³⁷⁸ restrict access to the court room. Judgments must be given to the parties and made available to the public.³⁷⁹ They are also to be written down as soon as possible.³⁸⁰

The judiciary is required to provide the minister responsible for justice with an annual report within three months of the end of each financial year that contains information on staffing, court statistics and active committees.³⁸¹ Whilst this report is required to provide 'details of all the positions in the Judicial Service, indicating which were filled and for which parts of the year',³⁸² there is no express requirement that reasons for moving or removing judges be provided. There is also no requirement that this report be released to the public. The Judicial Service Commission is also required to prepare an annual report, which addresses, more broadly, issues related to 'independence and efficiency of the administration of justice ... any action needed to be taken to strengthen the operation of law ... and reforms that may be needed to any laws.'³⁸³ This report must be produced within three months of the end of the year and must be tabled by the minister of justice in parliament.³⁸⁴ Again there is no requirement that these reports be made available to the public.

As discussed in the section on integrity mechanisms below, judges are not required to make asset declarations to the Judicial Service Commission either during the appointment process or at any other time. Nor are judges required to make public asset declarations.

Transparency (practice)

Score: 50

TO WHAT EXTENT DOES THE PUBLIC HAVE ACCESS TO JUDICIAL INFORMATION AND ACTIVITIES IN PRACTICE?

Whilst there is unofficial reporting of superior court judgments there is little reporting of subordinate court judgments. Annual reports of the judicial services and courts have recently been made available online but reports of the Judicial Services Commission are not available.

Court proceedings are generally open to the public. Whilst official law reports are not regularly published, judgements are published on the Pacific Islands Legal Information Institute's (PacLII) website. PacLII publishes laws, cases and legal material from around the region and is maintained by the University of the South Pacific. This is a somewhat ad hoc system that relies on the courts forwarding judgements to be published. Whilst Supreme Court and Court of Appeal judgements are usually published, very few Magistrates Court decisions are available. The Vanuatu judiciary does not maintain its own website.

Until November 2013 the only annual report readily available to the public was the 2009 report. A recent Transparency report on the judiciary recommended that all annual reports be published on PacLII.³⁸⁵ By early December 2013 annual reports for 2010 and 2011 had been published on PacLII, with the 2012 report being published in early 2014.³⁸⁶ A centralised case database is being

³⁷⁶ Rule 2.10(1) & (2); 3.8(1) & (2), Constitutional Applications Rules 2003.

³⁷⁷ Section 26(1), Criminal Procedure Code [Cap 136].

³⁷⁸ Section 26(2), Criminal Procedure Code [Cap 136].

³⁷⁹ Rule 13.1(4), Civil Procedure Rules 2002.

³⁸⁰ Rule 13.2(2), Civil Procedure Rules 2002; Section 95(1), Criminal Procedure Code [Cap 136].

³⁸¹ Section 51, Judicial Services and Courts Act [Cap 270].

³⁸² Section 51(2)(a), Judicial Services and Courts Act [Cap 270].

³⁸³ Section 4(1), Judicial Services and Courts Act [Cap 270].

³⁸⁴ Section 4(2), Judicial Services and Courts Act [Cap 270].

³⁸⁵ Transparency Vanuatu, 2013, 47.

³⁸⁶ www.pacii.org/vu/court-annual-reports/main.htm [accessed 28 February 2014].

developed with the assistance of the PJDP and this is resulting in significant improvements on court statistics, including the number of cases received, finalised and pending for each court.

Reports from the Judicial Service Commission cannot be found in the parliament library. Nor are they recorded in parliamentary minutes as having been tabled in parliament.

Accountability (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE JUDICIARY HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

Judges need to account for their decisions in individual cases. Whilst the Judicial Service Commission has the power to recommend the removal of judges it does not receive complaints from the public and there is no other independent body to receive public complaints about the judiciary.

Judges are required to give reasons for their decisions. In respect of criminal cases, the Criminal Procedure Code provides that judgments 'shall contain the point or points for determination, the decision thereon and the reasons for the decision'.³⁸⁷ The Civil Procedure Code similarly requires judgments to summarise findings of facts, law and give reasons for their decision.³⁸⁸ There are no specific consequences for judges if judgments fail to give reasons for decisions. However, the appeal process is robust and parties to cases would be able to appeal cases to higher courts if reasons were not given. Whilst there is no appeal from the Court of Appeal, the fact that appeals are heard by three judges provides an internal check on the issuing of decisions without reason.

There is no procedure to allow the public to make complaints about the judiciary. The ombudsman does not have the jurisdiction to enquire into the actions of judges. Whilst the JSC Act establishes a Court Personnel Disciplinary Board³⁸⁹ this board only has jurisdiction over registry and other support staff within the court.³⁹⁰ Although there is no public avenue for laying complaints the Judicial Service Commission can recommend that the president suspends or removes magistrates for serious misconduct.³⁹¹ Suspension is of limited consequence as a magistrate must receive full pay whilst on suspension.³⁹² Judges of the Supreme Court can be removed by the president, on the advice of the Judicial Service Commission on the grounds of gross misconduct, incapacity or professional incompetence.³⁹³ There is no provision allowing for suspension of Supreme Court judges.

Accountability (practice)

Score: 25

TO WHAT EXTENT DO MEMBERS OF THE JUDICIARY HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Whilst Superior Court judges, when they issue written decisions, do provide reasons, the Judicial Service Commission is not seen to hold members of the judiciary to account for failures to issue decisions.

³⁸⁷ Section 95(1), Criminal Procedure Code [Cap 136].

³⁸⁸ Rule 13.1(1), Civil Procedure Rules 2002.

³⁸⁹ Section 5 9, Judicial Services and Courts Act [Cap 270].

³⁹⁰ Section 1, Judicial Services and Courts Act [Cap 270].

³⁹¹ Section 23(3) & 23(4)(a), Judicial Services and Courts Act [Cap 270].

³⁹² Section 23(5), Judicial Services and Courts Act [Cap 270].

³⁹³ Article 47, Constitution of the Republic of Vanuatu.

A recent Transparency Vanuatu report that was developed in response to concerns regarding delays within the judicial system noted a number of deficiencies in the operation of judicial services. Whilst a number of parties can cause delays during the court process, one particular issue identified was delays by judges in issuing judgments after trial has completed.³⁹⁴ This is not a new problem and has been openly discussed within the ministry of justice since 2011.³⁹⁵ Judges are not, however, being held to account by the Judicial Service Commission for such delays. This report also observed that the lack of a public complaints mechanism in respect of the judiciary is a significant problem and recommended that 'further consultation is undertaken on whether it is desirable to have the judiciary fall within the scope of the Office of the Ombudsman, or whether an alternate complaints mechanism should be developed and implemented.'³⁹⁶

No particular problems were identified in respect of reasons being given for decisions and Supreme Court and Court of Appeal level. However, as Magistrates Court judgements are not readily available³⁹⁷ it is not possible to assess whether magistrates are providing reasons for their decisions.

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE JUDICIARY?

There is a code of conduct for members of the judiciary but judges are not covered by the broader integrity requirements of the Leadership Code.

Judges are not leaders for the purposes of the Leadership Code Act. As such they are not required to make asset disclosures or annual returns under this Act. Nor are they required to make asset disclosures to the Judicial Service Commission. There are no regulations preventing judges from receiving reimbursements, compensation or honoraria in respect of privately sponsored trips, or regulations governing the hospitality and gifts.

There is a code of conduct for judges, which is based on the values reflected in the Bangalore Principles of Judicial Conduct.³⁹⁸ This code is self-implemented and monitored, and there is no external body to which complaints about breaches of the code can be directed. There currently is no code of conduct for court staff. The JSC Act requires any judge who has a personal interest in proceedings or an actual or perceived bias to disqualify him or herself from proceedings.³⁹⁹ Parties to proceedings can apply to judges to disqualify themselves, and if the judge fails to disqualify him or herself, can appeal that decision.⁴⁰⁰

Judges are prohibited from engaging in any paid work outside of the duties of their judicial offices without the consent of the Judicial Service Commission.⁴⁰¹ There are, however, no post-employment restrictions of judges.

³⁹⁴ Transparency Vanuatu, 2013, 12.

³⁹⁵ Ibid, 9.

³⁹⁶ Ibid, 46.

³⁹⁷ Ibid, 47.

³⁹⁸ Judiciary of the Republic of Vanuatu, *Magistrates Bench Book* (Port Vila: Vanuatu Judiciary, 2004) 60.

³⁹⁹ Section 38(1), Judicial Services and Courts Act [Cap 270].

⁴⁰⁰ Section 38(2) & (3), Judicial Services and Courts Act [Cap 270].

⁴⁰¹ Section 39(2), Judicial Services and Courts Act [Cap 270].

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE JUDICIARY ENSURED IN PRACTICE?

There are some instances of members of the judiciary self-regulating to ensure integrity, but there is increasing lack of public confidence in the judiciary.

A recent Transparency Vanuatu report on the judiciary did refer to one case study in which judges had removed themselves due to conflicts of interest.⁴⁰² Parties do also appeal decisions due to perceived bias where judges have not disqualified themselves.⁴⁰³

Vanuatu's judiciary appears to be very conscious of the need to be seen to maintain professional distance, and self-regulates to maintain integrity. A recent example occurred in 2013, when former Minister of Health Don Ken invited court personnel to kava⁴⁰⁴ prior to a decision involving the prosecution of some of Ken's supporters being given. This kava evening would have given Ken the opportunity to talk with the Chief Justice. The Chief Justice required Ken to apologise in open court and also made it clear that any future attempt to influence the court would result in imprisonment.⁴⁰⁵

Whilst self-regulation is to be lauded, self-regulation to ensure integrity means that, in practice, judicial measures are untransparent. Further, judges do not declare assets and there is no other transparent mechanism to ensure that judges are not receiving gifts and hospitality. It may be this lack of transparency that is leading to increasing public perceptions that the judiciary in Vanuatu is corrupt. The Global Corruption Barometer uses a scale of 1 – 5, with 1 being not at all corrupt and 5 being very corrupt, to rate public perceptions of corruption of particular institutions. In 2010/11 the judiciary rated 2.7. In 2013 this had increased to 3.3.⁴⁰⁶

Role

Executive oversight

Score: 50

TO WHAT EXTENT DOES THE JUDICIARY PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

The judiciary is largely effective in providing oversight of the executive, but is dependent upon cases being brought before it.

The Supreme Court has jurisdiction over the executive.⁴⁰⁷ Applications for judicial review of decisions of the executive are fairly common. For instance, between 2012 and 2013 the Supreme Court published decisions relating to judicial reviews of decisions pertaining to the termination of an appointment to be a roving ambassador,⁴⁰⁸ the transfer of a director general,⁴⁰⁹ the signing of a

⁴⁰² Transparency Vanuatu, 2013, 22.

⁴⁰³ See, for example, *Matavare v. Talivo* [2010] VUCA 3 referred to in [40] of *Taftumol v Lin* [2011] VUCA 30; *Jessop v Public Prosecutor* [2010] VUSC 134.

⁴⁰⁴ Kava is a traditional drink made from the roots of a variety of pepper. Drinking kava together is used in both formal and informal settings to strengthen relationships and share stories.

⁴⁰⁵ <http://vanuatudaily.wordpress.com/vanuatu-daily-news-digest/> [accessed 28 February 2014].

⁴⁰⁶ www.transparency.org/country#VUT_PublicOpinion [accessed 10 May 2014]; Transparency International, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013).

⁴⁰⁷ Government Proceedings Act 2007, renamed State Proceedings Act pursuant to Government Proceedings (Amendment) Act 2010.

⁴⁰⁸ *Goiset v Republic of Vanuatu* [2013] VUSC 84.

⁴⁰⁹ *Bebe v Republic of Vanuatu* [2013] VUSC 190.

concession agreement to build an airport,⁴¹⁰ a refusal to register an applicant as a charitable body⁴¹¹ and the suspension of local government councils.⁴¹² The court also reviews decisions made by others such as the president of the Republic of Vanuatu⁴¹³ and the Electoral Commission.⁴¹⁴

Vanuatu's court is also particularly active in oversight of the proceedings of parliament, particularly in relation to motions of no confidence in the prime minister. As this affects the composition of the executive the court's involvement in this area is an important aspect of executive oversight. A quite extraordinary series of cases occurred in 2011. As these cases both illustrate issues that can occur within parliament and the role of the court in controlling these issues a brief timeline of events is provided.

- December 2010: Edward Natapei is replaced by Sato Kilman as prime minister following a vote of no confidence.
- 24 April 2011: The Supreme Court hears an application filed by Kilman relating to the legality of the Speaker's decision to call an extraordinary session of parliament to debate a motion of no confidence in the Prime Minister and rules the Speaker's decision is legal.⁴¹⁵
- 24 April 2011: The extraordinary session of parliament session takes place. The motion of no confidence is passed and Serge Vohor is elected to replace Kilman as prime minister.
- 30 April 2011: The Supreme Court rules that the Speaker's decision that the vote of no confidence was carried was correct.⁴¹⁶
- 13 May 2011: The Court of Appeal rules that the vote of no confidence was not carried and Kilman was restored as prime minister.⁴¹⁷
- 16 June 2011: The Supreme Court rules that the vote of no confidence in Edward Natapei that occurred in December 2010 was illegal, with the result being that Kilman's election is held invalid and Natapei appointed interim prime minister until a new vote for prime minister can take place.⁴¹⁸
- 17 June 2011: The Supreme Court rules that Kilman's application to have parliament convened immediately is without legal basis.⁴¹⁹
- 21 June 2011: Ministers appointed by Kilman on 2 December 2010 apply to the Supreme Court for an order that they were legitimate state ministers, despite being appointed by a prime minister who was subsequently held to be invalid.
- 22 June 2011: The Supreme Court rules that ministers appointed by Kilman did not legitimately hold their positions.⁴²⁰
- 26 June 2011: Parliament convenes and Kilman is elected prime minister.⁴²¹
- 22 July 2011: The Court of Appeal rules that, in the extraordinary circumstances of this situation, the Supreme Court's order to declare Kilman's election on 2 December invalid and to reinstate Natapei as prime minister is set aside.⁴²²

Since events relating to the position of prime minister in 2011 the court has continued to consider actions relating to parliamentary procedure and motions of no confidence. For example, in August 2013 Prime Minister Kilman again returned to court to challenge a decision by the Speaker to close a session of parliament in order to avoid filing and debate on a motion to remove him.⁴²³ In December 2012 the court again reviewed the decision of the Speaker to refuse to convene an extraordinary session of parliament to debate a motion of no confidence.⁴²⁴ In March 2013 an

⁴¹⁰ *Vanuaroroa v Republic of Vanuatu* [2013] VUSC 182.

⁴¹¹ *Union of Moderate Parties (Inc) v Minister of Finance* [2012] VUSC 164.

⁴¹² *SANMA Local Government Council v Wells* [2012] VUSC 27.

⁴¹³ See, for example, *Steven v Chairman of Electoral Commission* [2013] VUSC 111, relating to a refusal to accept a potential candidate's application to run for election.

⁴¹⁴ See, for example, *Bong v President of the Republic of Vanuatu* [2012] VUSC 157, relating to suspension of the Police Commissioner.

⁴¹⁵ *Kilman v Republic of Vanuatu* [2011] VUSC 39.

⁴¹⁶ *Kilman v Speaker of Parliament of the Republic of Vanuatu* [2011] VUSC 35.

⁴¹⁷ *Kilman v Speaker of Parliament of the Republic of Vanuatu* [2011] VUCA 15.

⁴¹⁸ *Natapei v Korman* [2011] VUSC 72.

⁴¹⁹ *Natapei v Korman* [2011] VUSC 91.

⁴²⁰ *Vanuaroroa v Natapei* [2011] VUSC 92.

⁴²¹ Radio New Zealand International, 'Kilman elected Vanuatu PM – 10 days after ouster by court' *Radio New Zealand International Online* 27 June 2011.

⁴²² *Kilman v Natapei* [2011] VUCA 24.

⁴²³ *Kilman v Korman* [2011] VUSC 227; *Kilman v Korman* [2011] VUSC 228.

⁴²⁴ *Natapei v Wells* [2012] VUSC 260.

application was held relating to the Speaker's decision to close a session of parliament so that debate on a motion of no confidence could not take place.⁴²⁵

Whilst decisions can be appealed, once matters have been finally determined in court, orders are acted upon. However, as indicated by the discussion of political events in 2011 taking matters to court can be used as a delaying tactic to enable the executive to gather sufficient political support for the matter that was first being challenged. This means that once court orders are acted upon, changes in political support mean that the matter is no longer at issue. Further, as discussed below, delays can affect a wide range of cases, including cases involving the review of executive decisions.

Corruption prosecution

Score: 25

TO WHAT EXTENT IS THE JUDICIARY COMMITTED TO FIGHTING CORRUPTION THROUGH PROSECUTION AND OTHER ACTIVITIES?

The judiciary is largely reactive in its contribution to the fight against corruption as it is dependent upon cases being brought before it. It does not often use the "language of corruption" in discussing criminal cases that involve misuse of position for private gain.

Statistics in annual reports do not provide separate information on corruption prosecutions. The judiciary is not actively involved in making recommendations relating to anti-corruption measures and reforms.

The court is reliant on other bodies bringing corruption matters to court. As the Office of the Public Prosecutor is not very active in pursuing corruption cases, particularly against political leaders, the court is unable to be active in showing lack of tolerance for corruption via heavy sentencing. The main area that the court is active in hearing cases relating to corruption is in the area of election petitions, usually raised by unsuccessful candidates challenging the election of others. Although no petitions were successful following the 2012 national election, two petitions were successful following the 2008 national election.⁴²⁶ Whilst successful petitions lead to by-elections, as discussed in the section on the electoral management body, corresponding prosecutions for electoral offences are not presented to the court.

In the past five years only three reported criminal cases have mentioned corruption. In 2013 a businessman was given a 16 months sentence, suspended for two years, for attempting to bribe a Value Added Tax (VAT) officer.⁴²⁷ That same year 13 supporters of member of parliament Don Ken were convicted of criminal offences under the penal code relating to attempts to destroy alleged evidence of corrupt practices during the national election. Offences included unlawful assembly, extortion, assault, threats to kill, false imprisonment and kidnapping. They were sentenced to imprisonment for two to three-and-a-half years depending on offences committed, although one had his sentence suspended due to specific family responsibilities.⁴²⁸ In 2013 the CEO of Air Vanuatu was convicted of nine counts of obtaining money by deception. He was sentenced to 12 months imprisonment, as well as ordered to pay compensation.⁴²⁹ In 2011, following a private prosecution, a lands department officer pleaded guilty to some improper dealings.⁴³⁰ No sentence has been published.

Cases relating to misappropriation and fraud arise in the courts regularly, but usually occur in the context of private sector employees acting improperly, and are not discussed by the courts as corruption.

⁴²⁵ Natapei v Wells [2013] VUSC 43.

⁴²⁶ Sope v Principal Election Officer [2009] VUSC 62; Lop v Isaac [2009] VUSC 23.

⁴²⁷ Public Prosecutor v Chen Jian Lin [2013] VUSC 189.

⁴²⁸ Public Prosecutor v Urinmal [2013] VUSC 95.

⁴²⁹ Public Prosecutor v Joewangeh [2013] VUSC 55.

⁴³⁰ Jessop v Natnaur [2011] VUSC 320.

There is considerable concern about delays within the judicial system.⁴³¹ These delays have a number of causes. Many causes are external to the judiciary and instead relate to the conduct of lawyers and court users. However, the ultimate result is that often justice is denied. These issues are systemic and do not only affect corruption related cases. That said, cases that disappear into the system may involve corrupt actions, but as they “get lost” no remedy is ever available, and no consequences for bad behaviour result. One particular corruption related case that has been caught up in delays is the attempt by the Ombudsman, in 1997, to initiate proceedings against various leaders pursuant to the Ombudsman Act 1995 when others did not act upon her reports. Following various interlocutory matters being heard in 2001,⁴³² the case proceeded to trial in 2004. No decision has ever been issued, however.⁴³³

The judiciary is committed to addressing these issues. The Court Improvement Plan 2012 – 2015 contains a number of measures to improve efficiency. A case delay reduction project is currently being implemented.⁴³⁴ Broad improvements in the judicial system will enhance the processing of all cases, including corruption cases.

RECOMMENDATIONS

1. The issue of delays in service delivery and associated issues of lack of resources, lack of accountability and lack of transparency are being addressed under the Court Improvement Plan 2012 – 2015. The Ministry of Justice should ensure that there is an independent evaluation of the implementation of this plan.
2. There appears to be a public perception that the judiciary is becoming increasingly corrupt. In order to address this the judiciary should:
 - a. Undertake public consultation on whether it is desirable to have the judiciary fall within the scope of the Office of the Ombudsman, or whether an alternate complaints mechanism should be developed and implemented.
 - b. Institute a “customer service” feedback mechanism.
 - c. Introduce a code of conduct for court staff.
 - d. Increase public awareness on the code of conduct for judges.
 - e. Introduce registers for gifts and hospitality.
3. Whilst there is transparency in superior court decisions, there is little transparency in respect of the decisions of subordinate courts. It is recommended that all judgments, including Magistrates Court judgments should be published on PacLII.

⁴³¹ Transparency Vanuatu, 2013.

⁴³² Ombudsman v Jimmy [2001] VUSC 139; Korman v Ombudsman of the Republic of Vanuatu [2001] VUCA 24; Korman v Ombudsman of the Republic of Vanuatu [2001] VUCA 13.

⁴³³ Notes of Vanuatu Judicial Monitoring System Project researcher Sam Railau, made available to Anita Jowitt in July 2013.

⁴³⁴ Interview of Edwin Macreveth, Judicial Training Coordinator with Kibeon H Nimbwen, Port Vila, 5 May 2014.

VII.4. PUBLIC SECTOR

SUMMARY

Overall pillar score: 36.1			
Dimension	Indicator	Law	Practice
Capacity 41.7	Resources	--	50
	Independence	50	25
Governance 41.7	Transparency	25	25
	Accountability	75	25
	Integrity	75	25
Role 25	Public education	25	
	Cooperate with external agencies in preventing/ addressing corruption	25	
	Reduce corruption risks by safeguarding integrity in public procurement	25	

The public sector is widely perceived as facing issues relating to corruption. There is a reasonable legal framework for accountability and integrity of public servants. However, lack of implementation of the legal framework mean that in practice there is little accountability. In the absence of financial accountability mechanisms it is difficult to determine to what extent public service agencies are suffering from shortages of resources in undertaking activities, and to what extent mismanagement and corruption plays a role in limiting service delivery. In likelihood both contribute to weak service delivery by the public service. There are plans to strengthen the very limited extent to which the public service currently educates the public on corruption and cooperates with other agencies in addressing corruption. To date, however, little is done in these areas. Public procurement is not transparent and there are significant loopholes in the laws in this area. As a result public procurement processes are open to abuse.

STRUCTURE AND ORGANISATION

The public service is comprised of a number of line agencies (departments and offices) that operate under the policy direction of the executive, through ministries. The central body for the management of most public servants is the Public Service Commission (PSC). There are other commissions, including the Judicial Service Commission, the Police Service Commission and the Teaching Service Commission which deal with the employment of specific groups of people paid out of public money. The PSC is supported by a secretary, who is appointed by the commission, whose role is to provide secretariat and administrative support to the commission. The secretary is also the administrative head of the office of the PSC, which includes a number of support staff.

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE PUBLIC SECTOR HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

The public service is provided with some financial, human and infrastructural resources. As well as resource gaps, inefficiency in managing resources can lead to ineffectiveness in carrying out public sector duties.

Resource issues within some public sector agencies appear to hamper their work. For instance, in 2010 the Ministry of Health faced a crisis when limited drugs were available. It was later established that budget issues contributed to this issue.⁴³⁵ Limited resources have been used to explain why the Public Works Department is unable to be more active in repairing roads.⁴³⁶ There are also concerns that limited financial resources hinder the PSC from performing its functions.⁴³⁷ In 2012 an issue of shortage of funds for teachers' salaries in the Department and the Ministry of Education was raised.⁴³⁸ In the absence of detailed audit reports, including performance audits, it is difficult to assess the extent to which limited resources, as opposed to mismanagement of resources, hinders the work of public sector agencies.

Wages in the public sector, particularly for low level employees, are low and insufficient to maintain a reasonable standard of living. At mid-range levels wages can make it difficult to attract the best staff to work within the public service.⁴³⁹ However, wage plus benefits packages at higher levels do make public sector packages attractive.⁴⁴⁰ It can also be observed that wages of those employed by the PSC are better than those employed by the Police Services Commission and Teaching Services Commission.⁴⁴¹ The Government Remuneration Tribunal is a legal entity that has the job of determining wages.⁴⁴² One issue with public sector wages is that the Government Remuneration Tribunal has not been very active in recent years, with the last wage review occurring in 2006. It was revitalised in 2013, so may become more effective.

Measures have been introduced recently to increase capacity of public servants through training programmes. In particular the Vanuatu Institute of Public Administration and Management was established in 2011.

The sustainability of public sector wages and public sector activities in general is questionable. As discussed in the foundations section, Vanuatu receives considerable aid support. It has a small private sector, which limits private sector derived tax revenue. If aid levels reduce, Vanuatu may find it difficult to maintain funding for current levels of public sector staffing. With more effective and efficient management, it may, however, be able to maintain current levels of activities. For instance, whilst few auditor general's reports have been produced, they consistently reveal misuse of

⁴³⁵ Godwin Ligo, 'Report on medical drugs shortage completed' *Vanuatu Daily Post Online* 15 June 2011.

⁴³⁶ 'PWD uses new approach to tackle road problems' *Vanuatu Daily Post Online* 14 March 2012.

⁴³⁷ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 13 February 2014.

⁴³⁸ Jean-Baptiste Calo, 'Teachers unpaid salaries estimated at hundreds of millions' *Vanuatu News Online* 29 June 2012; Transparency Vanuatu, 'Accountable Financial Mechanisms can only exist without Political Interference' *Vanuatu Daily Post Online* 23 July 2012.

⁴³⁹ Interview of Mark Bebe, Former Director General of Justice with Sam Railau, Port Vila, 13 February 2014.

⁴⁴⁰ Interview of Laurent Rep, Secretary of the PSC with Sam Railau, Port Vila, 13 February 2014.

⁴⁴¹ Ibid.

⁴⁴² Government Remuneration Tribunal Act [Cap 250].

allowances and benefits, and overspending in this area, across a number of different agencies.⁴⁴³ Better management to prevent, auditing to detect, and law enforcement to recover this misspending (and punish wrongdoers) would enhance the efficiency of use of resources.

A number of people commented on the public service culture of requiring to be paid additional allowances to attend meetings and undertake other tasks which form part of a person's job, for which the person is already being paid. This attitude is not limited to the public sector, but also "infects" other people who are being paid out of public money. This is a matter of lack of integrity, but it is thought to create a significant leakage of public funds.

Independence (law)

Score: 50

TO WHAT EXTENT IS THE INDEPENDENCE OF THE PUBLIC SECTOR SAFEGUARDED BY LAW? ARE LAW ENFORCEMENT AGENCIES INDEPENDENT BY LAW?

While there are some provisions allowing for the independence of the PSC and public sector employees, a number of loopholes exist within the legal framework and these can potentially be used to undermine independence.

The legal framework provides a number of provisions relating to independence of the public sector. The Constitution provides that the PSC 'shall not be subject to the direction or control of any other person or body in the exercise of its functions'.⁴⁴⁴ The Government Act prohibits ministers from interfering in employment decision of the PSC⁴⁴⁵ although, as noted elsewhere, the Constitution gives the prime minister the power to transfer senior public servants to equivalent positions.⁴⁴⁶ The guiding principles of the public service and the PSC include that the service is to be independent and perform functions in an impartial and professional manner and that the PSC is to make employment decisions based on merit.⁴⁴⁷

The PSC is comprised of members (including the chair) who are appointed by the president on the advice of the prime minister for a term of three years.⁴⁴⁸ There is no requirement that the leader of the opposition or any other person be consulted, so the legal framework does not limit the possibility of "stacking" the PSC with political appointments. There are few limits on who can be appointed. Members of parliament of local government and the National Council of Chiefs are prohibited from holding positions on the PSC, as are people holding positions of responsibility within political parties.⁴⁴⁹ People must also be of good character and have experience in public sector management in order to be appointed.⁴⁵⁰

Only the PSC has the power to terminate or demote public servants and must follow strict and detailed procedures laid out in the Public Service Act and Public Service Staff Manual. This protects most employees against political interference. The procedures do, however, require the director general to endorse decisions of selection committees.⁴⁵¹ In 2011 the law changed to give the prime minister the power to hire and fire director generals.⁴⁵² This essentially gives a person who is

⁴⁴³ Office of the Auditor General, *Auditor General's Annual Report to Parliament 2005 - 2009* (Port Vila: Office of the Auditor General, 2012).

⁴⁴⁴ Article 60(4), Constitution of the Republic of Vanuatu.

⁴⁴⁵ Section 9(4), Government Act [Cap 243].

⁴⁴⁶ Article 58(2), Constitution of the Republic of Vanuatu.

⁴⁴⁷ Section 4, Public Service Act [Cap 246].

⁴⁴⁸ Article 59(1), Constitution of the Republic of Vanuatu.

⁴⁴⁹ Article 59(3), Constitution of the Republic of Vanuatu.

⁴⁵⁰ Section 9, Public Service Act [Cap 246].

⁴⁵¹ Public Sector Staff Manual, 3.7; 3.8.

⁴⁵² Sections 17A and 17 C, Public Service Act [Cap 246] as amended by the Public Service (Amendment) Act 2011.

potentially a political appointee power over the appointments process. The Constitution also permits the prime minister to transfer senior public servants to equivalent positions.⁴⁵³

Public service employees' obligations are stated in the Public Service Act to include following lawful orders, behaving honestly and with integrity, taking reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment, not making improper use of information or his or her duty, status, power or authority in order to gain or seek to gain a benefit or advantage for himself or herself or for any other person.⁴⁵⁴

There is no legal regulation of parliamentary lobbying for publicly procured projects in plans, programmes and budgets.

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE PUBLIC SECTOR FREE FROM EXTERNAL INTERFERENCE IN ITS ACTIVITIES?

It is publically perceived that there is widespread political interference in the appointment, suspension and termination process of public servants.

There is considerable public concern about political interference in the public service. In a street survey conducted in January 2014 by the National Integrity System researchers, 86% thought that there was interference. Comments indicated that interference both in appointments and service delivery were perceived to be occurring. The same survey also indicated that 85% of respondents considered nepotism to be a problem, with a further 10% being unsure if it was a problem. 80% also thought that nepotism was worse as compared to three years ago. Employment of siblings and children was seen to be a problem as was the practice of recruiting people from the same village or island to be employed at the same place. There was little confidence that appointments were being done on merit.⁴⁵⁵

Whilst there is no wholesale exchange of public servants following changes in government, the prime minister controls the appointments of director generals, and director generals are able to wield considerable power in the appointments process, as they must endorse all appointment decisions made by selection committees.⁴⁵⁶ Director generals also have the power to suspend staff pending further enquiries. The Ministry of Health, which has a director general and three directors, has provided an ongoing example of interference in appointments, particularly through the misuse of the power to suspend staff. In November 2012 it was reported that the outgoing Director General had suspended or terminated the appointments of all Directors, with political interference alleged to be a motivator.⁴⁵⁷ In December 2012 a new Director General was appointed, but then quickly replaced by a person who had been terminated from employment within the ministry for inappropriate behaviour.⁴⁵⁸ By September 2013, when the ministry was led by a new Acting Director General, he again suspended all the Directors, for allegedly spurious reasons. Other staff, including the Acting Manager of Human Resources, were also suspended.⁴⁵⁹ In December 2013 it was reported that all medical personnel suspended by the Acting Director General were reinstated following a petition to the Prime Minister.⁴⁶⁰

⁴⁵³ Section 58(20), Public Service Act [Cap 246].

⁴⁵⁴ Section 34(1), Public Service Act [Cap 246].

⁴⁵⁵ Data on file with the author.

⁴⁵⁶ Interview of Mark Bebe, former Director General of Justice with Sam Railau, Port Vila, 13 February 2014.

⁴⁵⁷ <http://vanuatudaily.wordpress.com/2012/11/26/vanuatudaily-digest-26-november-2012/> [accessed 4 March 2014].

⁴⁵⁸ 'Vanuatu controversy over health director appointment' *Radio New Zealand International Online* 21 December 2012;

'Vanuatu Health Department Calls to reinstate Director General' *Pacific Islands Report* 23 December 2012.

⁴⁵⁹ Len Garae 'Directors Suspended' *Vanuatu Daily Post Online* 4 September 2013.

⁴⁶⁰ 'All Vanuatu Health Care Suspension Lifted' *Radio New Zealand International Online* 13 December 2013.

Another example is the suspension in later 2012 and again in early 2013 of the Director of Ports and Harbours, allegedly for refusing to allow the yacht Phoea to leave the country in contravention of an order by the Prime Minister.⁴⁶¹ The Phoea had been fraudulently registered and was at the heart of allegations of drug and arms smuggling, which would have given cause to doubt the lawfulness of the Prime Minister's orders, although matters were never fully investigated and the truth of allegations remain unknown.⁴⁶² The Director of Ports and Harbours was subsequently terminated by the PSC.⁴⁶³

Also detailed, in the section on the electoral management body, is the transfer of the Principal Electoral Officer (PEO) at a sensitive time during the lead up to the 2012 national election. This transfer was done by the Prime Minister exercising the constitutional power to transfer senior public servants.

Questions have been raised as to the independence of the PSC due to the appointments process that allows the prime minister to decide the members of the commission.⁴⁶⁴

Whilst the public perception of political interference in the public sector is very negative, the Secretary of the PSC stressed that the public perception does not reflect reality, with appointments being based on merit and disciplinary actions and terminations being based on clear evidence of wrongdoing.⁴⁶⁵

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE AND INFORMATION MANAGEMENT OF THE PUBLIC SECTOR?

Job vacancies must be publically advertised, but there are a number of other significant gaps in laws relating to transparency of activities and information management within the public sector.

In terms of overall reporting on activities of the PSC and public sector agencies, the chairman of the PSC must, within 90 days after the end of each financial year, furnish a report to the minister relating to the operations of the commission for that year. A copy of the report must be laid before the parliament within a set time.⁴⁶⁶ As proceedings of parliament are public,⁴⁶⁷ once reports are tabled in parliament they should be accessible to the public. Nothing is specified in law as to the content of this report. As discussed in the section on the executive, ministers are required to report annually to parliament on activities under their ministries, and it may be assumed that these reports would contain information on activities by all public sector agencies that fall under their ministerial portfolio. There is, however, no requirement that these documents be tabled in parliament, or otherwise be made public.⁴⁶⁸ Director generals are also required to provide corporate plans to the PSC⁴⁶⁹ and to

⁴⁶¹ <http://vanuatudaily.wordpress.com/2013/02/03/vanuatudaily-digest-3-february-2013/> [accessed 10 March 2014].

⁴⁶² 'The Long, Troubled, Glamorous life of Superyacht Phoea' *Pacific Islands Report* 16 November 2012.

⁴⁶³ Godwin Ligo, 'Vanuatu Public Service sacks Bio-security, Port Directors' *Pacific Islands Report* 28 February 2013.

⁴⁶⁴ Comments of Advisory Group, Advisory Group Meeting 6 March 2014.

⁴⁶⁵ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 25 April 2014.

⁴⁶⁶ Section 10, Public Service Act [Cap 246].

⁴⁶⁷ Article 24, Constitution of the Republic of Vanuatu.

⁴⁶⁸ Section 23, Parliament (Administration) Act [Cap 306].

⁴⁶⁹ Section 20(1)(g) Public Service Act [Cap 246].

provide annual reports to the PSC.⁴⁷⁰ Again there is no requirement that these plans and reports be made public.

Whilst a freedom of information law is currently in development there are currently no laws about how records in the public sector are managed and made public. As discussed below, whilst government tenders are usually required to be advertised, there are a number of loopholes that allow this process to be circumvented. There is also no requirement that a publically accessible record of awarded government contracts is made available.

Although there are gaps in transparency at the activity-reporting level and in procurement, processes for appointing staff are somewhat more transparent. The Public Service Staff Manual contains detailed rules for advertising positions and the selection of staff.⁴⁷¹ Positions need to be widely advertised, with closing dates usually being one month after the advert first runs.⁴⁷² Director general positions are only required to be advertised for two weeks, however.⁴⁷³ All unsuccessful applicants must be informed in writing of this outcome,⁴⁷⁴ although reasons why applicants were not successful do not need to be given. There are strict limits on when staff already engaged within the public service can be promoted to positions or converted from casual to permanent staff without advertisement.⁴⁷⁵

Members of the PSC, directors-general of ministries and directors of departments are leaders under the Leadership Code Act.⁴⁷⁶ Whilst the Leadership Code Act requires leaders to make annual returns to the clerk of parliament disclosing their assets, as discussed in the section on the legislature these returns are not required to be made public under the law. Nor is there any legal requirement for them to be routinely scrutinised.

Transparency (practice)

Score: 25

TO WHAT EXTENT ARE THE PROVISIONS ON TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE AND INFORMATION MANAGEMENT IN THE PUBLIC SECTOR EFFECTIVELY IMPLEMENTED?

In practice, other than in respect of job advertisements, gaining information on the activities of the public sector is difficult and depends on goodwill relationships and/or what has been released to the media.

There are significant gaps in information about the public sector in practice. As discussed elsewhere in this report the Leadership Code Act does not require public disclosure of annual returns of leaders and this information is not available in practice. The government website does not include any information about current tenders. A brief internet search only found tender information about projects in Vanuatu that were funded by aid donors such as the New Zealand Aid Programme or Agency Australian Aid. As discussed in the section below on public procurement, in the absence of a register of government contracts or other public information it is not possible to assess the degree to which tenders get advertised. In the absence of freedom of information laws the extent to which public sector agencies will disclose information held on citizens depends entirely on goodwill relationships. Whilst corporate business plans and other reports may be available on request, again this is largely dependent upon goodwill relationships.

There is, however, one transparent area, that of job advertisements for public sector positions. These are advertised in the newspaper and online. As reported in the section on the media both

⁴⁷⁰ Section 20(1)(h) Public Service Act [Cap 246].

⁴⁷¹ Chapter 3, Public Service Staff Manual 2008.

⁴⁷² Chapter 3.3, Public Service Staff Manual 2008.

⁴⁷³ Section 17B, Public Service Act as amended by the Public Service (Amendment) Act 2011.

⁴⁷⁴ Chapter 3.10(d)(i), Public Service Staff Manual 2008.

⁴⁷⁵ Chapter 3.9, Public Service Staff Manual 2008.

⁴⁷⁶ Section 4, Leadership Code Act [Cap 240].

public and private media are also active in reporting on government activities. Whilst this is largely dependent upon the release of information by public sector agencies media does provide some (piecemeal) transparency in respect of government activities. There are also current initiatives to improve provision of information, both in relation to the PSC and in relation to public sector agencies generally, using the internet.⁴⁷⁷

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There are fairly comprehensive legal measures to ensure that individual public servants are accountable for their actions. There are, however, gaps in relation to laws requiring public sector agencies to be accountable.

The Public Service Act provides a comprehensive list of disciplinary offences.⁴⁷⁸ Whilst corruption is not specifically listed as a disciplinary offence, behaviour such as extortion, bribery, corruption and abuse of privileged state information would be considered improper conduct, which is a disciplinary offence. Disciplinary offences are dealt with, in the first instance, at ministerial level.⁴⁷⁹ In the event that the matter cannot be resolved (for instance if it is serious misconduct) then the matter is referred to the PSC, who may choose to dismiss the matter or refer it to a disciplinary board, which then makes recommendations to the PSC. In the event of serious misconduct the PSC also has the power to terminate employment without referring the matter to a disciplinary board.⁴⁸⁰ The board can make a number of recommendations, including to demote, suspend or terminate employment of a worker.⁴⁸¹ Although a recent Public Accounts Committee report recommended that the PSC take action to recover misappropriated money⁴⁸² the PSC does not have the power to apply criminal penalties and cannot require that an offender pay back misappropriated money.⁴⁸³ Instead it can refer matters to the police for investigation and criminal prosecution.

Staff are, in law, subject to regular performance reviews.⁴⁸⁴ Although these reviews relate to the achievement of work plans more than detection of non-compliance with laws, they provide an opportunity for identifying gaps in performance that may signify corrupt behaviour. The requirement for signatures and oversight by the Ministry of Finance before public expenditure is approved⁴⁸⁵ provides an avenue through which misappropriations can be detected. Auditor-general's reports are also vital legally mandated mechanisms for financial accountability. An additional measure to help with the detection of corruption is that any public servant who sees an apparent breach of any law is under an obligation to report it, either to the PSC or his director general.⁴⁸⁶ Such whistleblowers are legally protected from any penalty unless it is proved beyond reasonable doubt that the report was made maliciously.⁴⁸⁷ Public servants who report irregularities in relation to government contracts are also protected from being penalised.⁴⁸⁸

⁴⁷⁷ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 13 February 2014.

⁴⁷⁸ Section 36(1), Public Service Act [Cap 246].

⁴⁷⁹ Chapter 6.2, Public Service Staff Manual 2008.

⁴⁸⁰ Chapter 6.2.4(a), Public Service Staff Manual 2008.

⁴⁸¹ Chapter 6.2.5(k), Public Service Staff Manual 2008.

⁴⁸² Parliament of the Republic of Vanuatu, *Public Accounts Committee Report 2011* (Port Vila: Parliament of the Republic of Vanuatu, 2011).

⁴⁸³ Interview of Laurent Rep, Secretary of the Public Service Commission with Anita Jowitt, Port Vila, August 30, 2013.

⁴⁸⁴ Chapter 5.2, Public Service Staff Manual 2008.

⁴⁸⁵ Section 39, Public Finance and Economic Management Act [Cap 244].

⁴⁸⁶ Section 47(1), Public Service Act [Cap 246].

⁴⁸⁷ Section 47(2), Public Service Act [Cap 246].

⁴⁸⁸ Section 13C(2), Government Contracts and Tenders Act [245].

There is no formal mechanism for the PSC to receive complaints from the public. Instead the ombudsman is mandated to enquire into the conduct of any government agency or public servant,⁴⁸⁹ and this provides a channel for public complaints. Senior public servants are also leaders for the purposes of the Leadership Code Act and can be investigated by the ombudsman for breaches of the Leadership Code.

Although there are fairly comprehensive provisions for ensuring accountability of individual public servants, as discussed above, there are few requirements for public sector agencies to report directly to parliament. The main device for oversight and reporting is the conduct of financial and performance audits by the auditor general.⁴⁹⁰

Accountability (practice)

Score: 25

TO WHAT EXTENT DO PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Disciplinary proceedings for breaches of the employment relationship do occur to some degree, although other accountability mechanisms are not functioning.

Accountability of public servants via disciplinary procedures is occurring to some degree. Whilst complaints are internally generated, in 2013 more than 70 disciplinary cases were received by the PSC.⁴⁹¹ Only serious cases come to the PSC, with less serious cases being dealt with internally in ministries. There are no records of the number of less serious cases handled. There are no statistics on the types of behaviours resulting in disciplinary complaints. Nor are there public records on the outcomes, although some staff were dismissed.⁴⁹² It is not known how effectively whistleblower protections are operating, although there is a perception that there is a lack of moral responsibility on behalf of public servants (and others) to make reports.⁴⁹³ As discussed in the section on procurement at the end of this report, there appears to be little accountability in respect of public procurement. New performance management rules are being developed and, with the PSC expecting to implement them in July 2014 and these should, if properly implemented, enhance accountability.⁴⁹⁴

There have been no prosecutions of public officers for receiving bribes in the past five years. Nor have there been any published decisions relating to prosecution of public officers for misappropriation.

Accountability via the ombudsman's office is limited. Complaints about the operation of government agencies (which may include actions of public servants or political appointees) account for the bulk of complaints received by the Office of the Ombudsman. In 2010 78% of complaints to the ombudsman related to government agencies acting in a poor fashion, as compared to 22% of complaints relating to breaches of the Leadership Code.⁴⁹⁵ In 2011 62% complaints related to government agencies acting in a poor fashion.⁴⁹⁶ Since the beginning of 2010 the Office of the Ombudsman has issued eight reports. None of these dealt with instances of wrongdoing by public

⁴⁸⁹ Article 62, Constitution of the Republic of Vanuatu.

⁴⁹⁰ Section 28, Expenditure Review and Audit Act [Cap 241].

⁴⁹¹ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 13 February 2014.

⁴⁹² Ibid.

⁴⁹³ Interview of Mark Bebe, former Director General of Justice with Sam Railau, Port Vila, 13 February 2014.

⁴⁹⁴ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 25 April 2014.

⁴⁹⁵ Office of the Ombudsman, *Namba tatin (13) Aniul Ripot blong Ombudsman blong Ripablik blong Vanuatu I go long Palemén Januari-Disemba 2010* (Port Vila: Office of the Ombudsman, 2011).

⁴⁹⁶ Office of the Ombudsman, *Namba tatin (13) Aniul Ripot blong Ombudsman blong Ripablik blong Vanuatu I go long Palemén Januari-Disemba 2011* (Port Vila: Office of the Ombudsman, 2012).

servants. Ombudsman's annual reports indicate that a number of complaints in respect of public servants have been dealt with by mediation, with the Office of the Ombudsman helping to correct actions and decisions of public servants.⁴⁹⁷

One ombudsman's report, in 2011, did address the actions of a Director General in using suspension as part of disciplinary proceedings against the then Director of Lands.⁴⁹⁸ The ombudsman's report did not dispute any of the findings of wrongdoing by the Director. Instead, it said it found that natural justice had been breached by suspending the director general prior to a hearing by the PSC or a disciplinary board. Whilst the Public Service Staff Manual permits immediate suspension for serious misconduct, pending further processes, 'The Ombudsman is of the opinion that this provision contradicts the Constitution as it does not take into account the individual's right to natural justice.'⁴⁹⁹ Given that suspension is done prior to a decision-making process that usually involves the right to be heard occurring, it is not clear what this opinion is based on. This report hinders, rather than helps, the PSC and director generals in the use of disciplinary procedures to hold public servants accountable. There are, however, other cases where the PSC has terminated staff without a hearing, so concerns about natural justice are not entirely unfounded.⁵⁰⁰

A number of public servants have been found, by the Office of the Auditor General (OAG), to have committed acts of financial wrongdoing (including receiving overpayments and misappropriating funds) and have faced consequences because of this. However, as the OAG is not up-to-date in conducting audits detection is delayed, which can make recovery or the imposition of penalties difficult.

Integrity (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES?

There are a number of laws that set standards of integrity for public servants. These standards are fairly comprehensive.

Senior public servants who are defined as leaders are required to adhere to the Leadership Code Act. As discussed in the sections on the executive and legislature this contains rules on conflicts of interest.

All public servants are also subject to the provisions of the Public Service Act that provides, in part 5, a code of conduct. This code of conduct prohibits receiving fees or rewards of any kind for performing duties as a public servant.⁵⁰¹ It also requires public servants to take steps to avoid real or apparent conflicts of interest⁵⁰² and not to make improper use of information.⁵⁰³ Public servants are required to make lawful use only of resources and public money.⁵⁰⁴ Misuse of government vehicles is a crime that attracts a spot fine of up to VT20,000 (US\$200). It is also a disciplinary offence.⁵⁰⁵

There is nothing specific in the code about the employment of family members, although if a member of the selection panel who makes recommendations to the PSC discovers that he or she

⁴⁹⁷ Office of the Ombudsman, 2011.

⁴⁹⁸ Office of the Ombudsman, *Public Report on the Unfair and Improper Suspension of the Director of the Lands Department 2011* (Port Vila: Office of the Ombudsman, 2011).

⁴⁹⁹ Ibid, [7.2.3].

⁵⁰⁰ Godwin Ligo, 'Vanuatu Public Service sacks Bio-security, Port Directors' *Pacific Islands Report* 28 February 2013.

⁵⁰¹ Section 33(1), Public Service Act [Cap 246].

⁵⁰² Section 34(1)(i), Public Service Act [Cap 246].

⁵⁰³ Section 34(1)(l), Public Service Act [Cap 246].

⁵⁰⁴ Section 34(1)(j), Public Service Act [Cap 246].

⁵⁰⁵ Section 29B, Public Service Act [Cap 246].

has a personal relationship with any applicant then he or she must step down from the panel.⁵⁰⁶ There are no specific limits on being supervised by a family member. Whilst the Act prohibits public servants from engaging in other employment without permission⁵⁰⁷ there are no post-employment restrictions. Nor are there any laws requiring bidding or contracting documents in relation to public procurement to contain any special anti-corruption clauses.

Both giving and receiving bribes to public officers is a criminal offence, which attracts a penalty of up to 10 years.⁵⁰⁸ If a public servant is convicted of any criminal offence the PSC may dismiss him or her, following standard disciplinary procedures.⁵⁰⁹

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES ENSURED IN PRACTICE?

Despite the presence of integrity mechanisms in law, corruption is perceived to be a problem within the public sector in practice. Work is, however, underway to revise the code of conduct and the methods by which it is communicated to staff.

There is a public perception that corruption within the public service is a problem. Transparency International's Global Corruption Barometer study uses a score scale of 1 to 5, where 1 means not at all corrupt and 5 means extremely corrupt. The results of the Global Corruption Barometer 2013 show that in Vanuatu the perception of corruption in public officials/civil servants was 3.9.⁵¹⁰

Agencies under the control of the Ministry of Lands have been particularly scrutinised for corruption recently. Investigations are currently ongoing in relation to allegations that a former minister of lands sold state owned land at discount rates to some staff of the Department of Lands and associated friends.⁵¹¹ The Ministry of Health has also been subject to scrutiny by a Commission of Inquiry, following a serious drug shortage in 2010. In addition to budget issues, a number of integrity related issues, including 'the supplies system of recording [and] distribution ... performance management, staff transparency, authoritarian management style, lack of reporting mechanisms, as well as understaffing, workplace attitudes and behaviour and language issues'⁵¹² contributed to this problem. Over the last year the crisis within health appears to have been deepening, with a number of changes at the level of director general and director, and the termination of contracts of some medical personnel. These two only serve as examples of perceived corruption within public sector agencies. It is not an overstatement to say that every week there is at least one news story published which alleges corruption or mismanagement within a public entity.

Due to concerns within the PSC as to the effectiveness of the Code of Conduct the PSC is currently working on developing it further.⁵¹³ A former secretary of the PSC commented that, 'the existing code of conduct is not exactly a code of conduct and is not effective. There should be a specific code of conduct for all public sector employees, which must be very specific and clearly outlines how the public sector employees should behave and act.'⁵¹⁴

⁵⁰⁶ Chapter 3.4(h), Public Service Staff Manual 2008.

⁵⁰⁷ Section 33, Public Service Act [Cap 246].

⁵⁰⁸ Section 73 Penal Code Act [Cap 135].

⁵⁰⁹ Section 29A, Public Service Act [Cap 246].

⁵¹⁰ Transparency International, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013) 38.

⁵¹¹ 'Vanuatu leaders defying the rules amid ongoing corrupt land deals' *Radio New Zealand International Online* 15 September 2012; 'Minister asks staff to surrender leases over state land' *Vanuatu Daily Post Online* 19 April 2013.

⁵¹² 'Report on medical drugs shortage completed' *Vanuatu Daily Post Online* 15 June 2011.

⁵¹³ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 13 February 2014.

⁵¹⁴ Interview of Mark Bebe, former Director General of Justice with Sam Railau, Port Vila, 13 February 2014.

There are gaps in training on ethical behaviour. Although the secretary to the PSC reported various training of staff, none of this was specifically related to the code of conduct.⁵¹⁵ There is a haphazard approach to the communication of public sector core values. However, core values (the code of conduct) are included in appointment letters and there are plans to include them in orientation packages for news staff. There are also plans to develop a website for the PSC that employees can access and for this website to include a section on core values.⁵¹⁶

Role

Public education

Score: 25

TO WHAT EXTENT DOES THE PUBLIC SECTOR INFORM AND EDUCATE THE PUBLIC ON ITS ROLE IN FIGHTING CORRUPTION?

Whilst there are piecemeal efforts by some public sector agencies to educate the public about corruption, at the moment there are no widespread public sector activities in this area.

The PSC does not have an education plan to educate the public in order to combat corruption. Nor does it make public information available about how to make complaints about corruption within the public service. As discussed in the section below it does, however, have a plan to increase co-operation with communities. If this plan is implemented it will involve elements of public education.

Some public sector agencies do conduct some public education. The Department of Customs and Inland Revenue runs a regular newspaper column that informs the public of activities and educates the public about laws. Whilst this column does not have a specific anti-corruption focus, it has been used to highlight corruption issues within public revenue gathering, such as the recent prosecution of a person for attempting to bribe a public officer.

The Electoral Office is another public sector agency that has, in the past conducted public education activities in respect of correct behaviour during voting. As discussed in the section on the electoral management body, resource issues currently limit the extent to which the Electoral Office fulfils this role, however.

Co-operate with public institutions, CSOs and private agencies in preventing/addressing corruption

Score: 25

TO WHAT EXTENT DOES THE PUBLIC SECTOR WORK WITH PUBLIC WATCHDOG AGENCIES, BUSINESS AND CIVIL SOCIETY ON ANTI-CORRUPTION INITIATIVES?

There has been little co-operation of public sector agencies with other agencies on anti-corruption activities although there are current plans to build co-operation in this area.

Whilst co-operation between the PSC and others has not been done recent years it is incorporated in the Corporate Plan 2014-2016. This plan includes working with communities, the ombudsman and others on anti-corruption initiatives.⁵¹⁷ As part of this plan community visits occurred in Santo in

⁵¹⁵ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 13 February 2014.

⁵¹⁶ Ibid.

⁵¹⁷ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 13 February 2014.

March 2014, with further plans to undertake visits in Malekula in May 2014, depending upon budgets.⁵¹⁸

Whilst the PSC does follow up on ombudsman's reports, there has been little communication about follow up actions taken in the past. For instance, as noted in the section on the ombudsman, in 2011 the annual report of the office of the ombudsman noted that no action had occurred on one of the public reports issued that year.⁵¹⁹ However, the PSC had in fact taken action in respect of a report detailing improper suspension of the director of the lands department.⁵²⁰

One public sector agency is notable for taking a more co-operative approach, however. As noted in the section above, the Electoral Office is a public sector agency and has, in the past worked with NGOs on public awareness around corruption. It has also allowed NGOs and external agents to act as election observers, as discussed in the section on the electoral management body. The Ministry of Youth and Sport, through the National Youth Council, has also partnered with NGOs on anti-corruption activities.

Reduce corruption risks by safeguarding integrity in public procurement

Score: 25

TO WHAT EXTENT IS THERE AN EFFECTIVE FRAMEWORK IN PLACE TO SAFEGUARD INTEGRITY IN PUBLIC PROCUREMENT PROCEDURES, INCLUDING MEANINGFUL SANCTIONS FOR IMPROPER CONDUCT BY BOTH SUPPLIERS AND PUBLIC OFFICIALS, AND REVIEW AND COMPLAINT MECHANISMS?

Whilst there are some laws in the area of procurement, these contain significant gaps and weaknesses. Further, in the absence of public registers and statistics it is not possible to assess the extent to which good practice in public procurement is occurring.

The Government Contracts and Tenders Act (GCTA) governs contracts with a value of over VT5 million (US\$50,000). Contracts for less than this amount are governed by the Financial Regulations made pursuant to the Public Finance and Economic Management Act. The government contracts process under the GCTA is controlled by the Tenders Board, a body made up of a chairperson, the director general of the ministry that is procuring the goods or services, or his representative; the director general of finance, or his representative; a representative of the ministry responsible for procuring the goods or service who has detailed knowledge of the requirements of the ministry in relation to the contract to be performed; and, where the government contract is of a value of VT10 million (US\$100,000) or more, a person with legal qualifications or experience appointed by the minister after consultation with the chairperson of the board.⁵²¹ The chair is 'appointed by the Prime Minister, after consultation with the leaders of every political party represented in parliament and a recognised representative of the private business sector'.⁵²² Members of the tenders board cannot participate in the tendering process for contracts for which they have a conflict of interest,⁵²³ which helps to protect independence. Although the board 'is not to be subject to interference or influence from any person',⁵²⁴ as discussed in above, director generals can be subject to external interference by their ministers, so the composition of the board means it is not entirely independent of potential government interference. Nor is the board entirely independent of the particular procuring body for any contract.

The GCTA requires that any minister entering a government contract must 'use a competitive and transparent process when deciding who to award the contract to including where applicable, a

⁵¹⁸ Interview of Laurent Rep, Secretary of the Public Service Commission with Sam Railau, Port Vila, 25 April 2014.

⁵¹⁹ Office of the Ombudsman, 2012: 7.

⁵²⁰ Interview of Laurent Rep, Secretary of the Public Service Commission with Anita Jowitt, Port Vila, 30 August 2013.

⁵²¹ Section 10(1). Government Contracts and Tenders Act [Cap 245].

⁵²² Section 11(1). Government Contracts and Tenders Act [Cap 245].

⁵²³ Section 10(5). Government Contracts and Tenders Act [Cap 245].

⁵²⁴ Section 10(8), Government Contracts and Tenders Act [Cap 245].

tender process as may be prescribed by this or any other Act or regulation.⁵²⁵ Open bidding is usually required under the Tenders Regulations 1999,⁵²⁶ with tenders being advertised in the press and on the radio.⁵²⁷ International tenders are required if in the opinion of the board,⁵²⁸ 'when it is unlikely that goods or services being purchased can be supplied at the best price or quality from within Vanuatu.'⁵²⁹ Any person inquiring about a tender must be supplied with key information,⁵³⁰ although there is no requirement that clarifications and amendments during the bidding process to be shared among all bidders. The law does not provide a standard form for tenders. Nor does it require companies to have any code of conduct or any other anti-corruption policies before it can submit a tender.

The Tenders Regulations 1999, made pursuant to the GCTA, provide exceptions to an open process. First, 'the Tenders Board may approve another tender process for projects where a straight open and competitive tender process may not provide the best result in the opinion of the Tenders Board.'⁵³¹ Whilst the Tenders Regulations provide alternative processes⁵³² it is not mandatory to follow any of the alternative processes. If the board has decided that an open process is not appropriate then the only restriction on the process to be used is that it 'must follow any guidelines or instructions issued by the director general of the Ministry of Finance and Economic Management.'⁵³³ Second, the Tenders Regulations provide that 'in the case of emergency expenditure, the Tenders Board may choose to recommend a Government Contract to the Council of Ministers without following the procedure set out in regulations 4 to 8. This may only be done when the urgency of the expenditure does not allow sufficient time for the full tender process to be carried out.'⁵³⁴ This second exception means that the entire tender process, from advertising to evaluation, can be avoided in emergency situations.

In respect of evaluation the usual process is that before the board makes a decision, all correctly submitted tenders are given to 'the appropriate technical officer'⁵³⁵ to be evaluated. There are no further laws for determining who the appropriate technical officer is or the qualifications he or she must hold. The Tenders Regulations provide a list of example evaluation criteria,⁵³⁶ although it is at the discretion of the technical officer as to what evaluation criteria are actually used.⁵³⁷ The technical officer provides a report back to the board. This report requires, amongst other things, a statement of the criteria used, an evaluation of each tender against the criteria and a statement of the technical officer's preferred tender, with reasons why this is preferred.⁵³⁸ The board can then either ask for more information from the technical officer or make a recommendation to the Council of Ministers.⁵³⁹ If the recommendation is declined then the Council of Ministers must give reasons,⁵⁴⁰ with the matter then being referred back to the board.⁵⁴¹

Neither the GCTA nor the Tenders Regulations require procurement award decisions to be made public. They also do not require the maintenance of registers and statistics on contracts. There is no procedure for members of the public or unsuccessful bidders to request a review of procurement decisions, although the Public Accounts Committee does have the records, minutes and decisions of the board.⁵⁴² The GCTA also provides some protections for whistleblowers. Suspected breaches of the GCTA are to be reported to senior personnel within the Ministry of Finance, who must then

⁵²⁵ Section 3(3)(f), Government Contracts and Tenders Act [Cap 245].

⁵²⁶ Regulation 3(2), Tenders Regulations 1999.

⁵²⁷ Regulation 4(1), Tenders Regulations 1999.

⁵²⁸ Regulation 3(7), Tenders Regulations 1999.

⁵²⁹ Regulation 3(6), Tenders Regulations 1999.

⁵³⁰ Regulation 4(3), Tenders Regulations 1999.

⁵³¹ Regulation 3(3), Tenders Regulations 1999.

⁵³² Regulation 3(4), Tenders Regulations 1999.

⁵³³ Regulation 3(5), Tenders Regulations 1999.

⁵³⁴ Regulation 9(1), Tenders Regulations 1999.

⁵³⁵ Regulation 7, Tenders Regulations 1999.

⁵³⁶ Regulation 7(4), Tenders Regulations 1999.

⁵³⁷ Regulation 7(5), Tenders Regulations 1999.

⁵³⁸ Regulation 7(6), Tenders Regulations 1999.

⁵³⁹ Regulation 8, Tenders Regulations 1999.

⁵⁴⁰ Section 12(4), Government Contracts and Tenders Act [Cap 245].

⁵⁴¹ Section 12(1), Government Contracts and Tenders Act [Cap 245].

⁵⁴² Section 18, Government Contracts and Tenders Act [Cap 245].

report the matter to the director general.⁵⁴³ The director general may then report the matter to the auditor general, the public prosecutor or the commissioner of police, although he is under no obligation to do so.⁵⁴⁴ Any whistleblower who is a public servant must not be victimised or discriminated against.⁵⁴⁵ There are no similar protections of whistleblowers who are not public servants, however.

Breaches of the GCTA are criminal offences.⁵⁴⁶ The GCTA also makes it clear that any leader who is convicted of an offence under the GCTA who has also breached the Leadership Code Act is also subject to prosecution under that Act.⁵⁴⁷ There are no administrative penalties within the GCTA (such as losing one's job or being prohibited from holding certain positions) that attach to successful prosecution under the GCTA.

The GCTA only deals with the procurement process. There is no special process for monitoring government contracts. Instead payments must follow the procedures in the Public Finance and Economic Management Act and the associated Financial Regulations. The main monitoring device is audits by the auditor general, although in the past breaches of the GCTA has also been the subject of ombudsman's reports.

The rules for bidding on contracts with a value of less than VT5 million (US\$50,000) are quite lax. 'The Financial Regulations do not currently require an authorised officer to obtain quotations for expenditure under VT100,000 (US\$1,000). Furthermore, quotations are only required "wherever possible" for procurement between VT100,000 (US\$1,000) and VT5 million (US\$50,000). Allowing public procurement without ensuring that multiple quotations have been received increase the chance of corrupt activities and inefficient use of public funds.'⁵⁴⁸ The GCTA does, however, prohibit contract splitting in order to avoid the tendering process.⁵⁴⁹

In the absence of publication of a public tenders register it is difficult to assess the degree to which the law (or good practice, in the event that there are gaps in the law) is being followed. The Transparency International Vanuatu Advocacy and Legal Advice Centre 'has received a number of complaints concerning contracts entered into by the Vanuatu Government that highlight serious deficiencies in the current public procurement laws.'⁵⁵⁰ In 2006, the European Union (EU) conducted a Public Expenditure Financial Assessment and allocated a score of D to procurement controls.⁵⁵¹ An assessment of public procurement in 2010 awarded Vanuatu a score of 0 on many indicators. Often the absence of statistics or data made it impossible to score performance.⁵⁵²

RECOMMENDATIONS

1. The public sector suffers from very negative public perceptions as to its independence and integrity. Whilst these perceptions may not be entirely fair, and may be based on incorrect information, they need to be addressed. The following measures should therefore be implemented:
 - a. The legislature should enact the Right to Information Bill, which will enhance transparency of public sector activities and decision-making.
 - b. The PSC should publish a list of public servants, annually, who have been subject to disciplinary action (including the nature of the misbehaviour and the penalty applied,

⁵⁴³ Section 13C(1) & (3), Government Contracts and Tenders Act [Cap 245].

⁵⁴⁴ Section 13C(4), Government Contracts and Tenders Act [Cap 245].

⁵⁴⁵ Section 13C(2), Government Contracts and Tenders Act [Cap 245].

⁵⁴⁶ Sections 14 and 15, Government Contracts and Tenders Act [Cap 245].

⁵⁴⁷ Section 16, Government Contracts and Tenders Act [Cap 245].

⁵⁴⁸ Transparency International Vanuatu Advocacy and Legal Advice Centre, *Reference to the Vanuatu Law Reform Commission on Public Procurement* (Port Vila: Transparency International Vanuatu, 2013).

⁵⁴⁹ Section 13A, Government Contracts and Tenders Act [Cap 245].

⁵⁵⁰ Transparency International Vanuatu Advocacy and Legal Advice Centre, 2013.

⁵⁵¹ Comments of Francis Bryard on draft Transparency International Vanuatu Advocacy and Legal Advice Centre, *Reference to the Vanuatu Law Reform Commission on Public Procurement*.

⁵⁵² Transparency International Vanuatu Advocacy and Legal Advice Centre, 2013.

- but possibly withholding names to protect privacy) in order to demonstrate that public servants who get caught for misbehaviour do face consequences.
- c. The PSC should actively run public awareness on what it does to ensure independence and integrity as part of its public education activities.
 - d. The Council of Ministers should repeal the change in the law that allowed director generals to be appointed by the prime minister, rather than the PSC as this has created a public perception of political interference in the operation of the public sector.
 - e. As part of the review of the Code of Conduct and ethical obligations of public servants the Public Service Commission should undertake a review of current practices relating to paying additional allowances for sitting on committees and performing other tasks that are part of regular employment.
2. Another measure to address lack of public confidence in the public sector is to strengthen accountability. Strengthening accountability involves, in part, strengthening the Office of the Auditor General and the Office of the Ombudsman. Recommendations in respect of these pillars are discussed in the respective sections of this report. Strengthening accountability via internal public service mechanisms requires both an increase in reporting (which involves building personal integrity) and better enforcement. To achieve these it is recommended that:
 - a. The PSC implements, as part of its orientation and ongoing education and training programmes, more information about the Code of Conduct and obligations to report breaches. It should also consider a reward system for those that actively participate in upholding the code of conduct.
 - b. The PSC establishes a mechanism for the public to complain directly to the PSC about misbehaviour by public servants.
 - c. The PSC is appropriately resourced to handle the processing of disciplinary complaints, terminations of employment and public servant grievances.
 3. Public procurement needs to be addressed. As there are many loopholes in the law a useful starting point would be for the Vanuatu Law Commission to review public procurement laws.

VII.5. LAW ENFORCEMENT

SUMMARY

Overall pillar score: 32			
Dimension	Indicator	Law	Practice
Capacity 41.7	Resources	--	50
	Independence	50	25
Governance 29.2	Transparency	25	50
	Accountability	50	0
	Integrity	50	0
Role 25	Corruption prosecution	25	

Previous National Integrity System reports in 2004 and 2006 observed that the operation of the Vanuatu Police Force (VPF) was undermined by instability and politicisation in the post of the commissioner of police. In 2010 amendments were introduced to reduce the scope for interference in this appointment and there is some confidence that these measures have worked. Another longstanding issue is that police culture has allowed for cronyism in investigations, and brutality to replace sound investigation techniques. In December 2013 the government signed an agreement to establish an independent police complaints authority, which may go some way to addressing these underlying police culture issues.

Whilst there have been positive developments in respect of the police, the Office of the Public Prosecutor is in disarray. In December 2013 the public prosecutor resigned rather than participate in a Commission of Inquiry that had been established to investigate allegations of corrupt practice and poor management. It took until April 2014 for an acting public prosecutor to be appointed. In this period there was a time when the Office of the Public Prosecutor was closed, with all prosecutors acting out of the State Prosecutor's Office.

STRUCTURE AND ORGANISATION

The head of the VPF is the commissioner of police. The commissioner of police is appointed by the president acting on the advice of the Police Service Commission. The VPF includes three arms; Police Headquarters, the Vanuatu Mobile Force (VMF) and the Maritime Wing. Within Police Headquarters there is a Criminal Investigations Department, which has special units for Serious Crimes, Family Protection, Fraud and Drugs.

The Public Prosecutor's Office constitutes part of the Ministry of Justice. The public prosecutor is supported in her work by the deputy public prosecutor, assistant public prosecutors and state prosecutors, who are all appointed by the public prosecutor to conduct and appear in prosecutions on behalf of the public prosecutor.⁵⁵³ Whilst state prosecutors are police officers they are, by law, independent from the police and fall under the supervision of the public prosecutor.⁵⁵⁴

⁵⁵³ Sections 20-23, Public Prosecutors Act [Cap 293].

⁵⁵⁴ Section 24, Public Prosecutors Act [Cap 293].

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING, AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

Law enforcement agencies receive funding through an allocation of a proportion of the annual state budget. Police Headquarters also receives significant support from Australian Aid. The Office of the Public Prosecutor is currently challenged by limited human and financial resources.

The proportion of the budget allocated to law enforcement has been criticised in the past as not reflecting the importance of security. High ranking officers have previously pointed this out as a main constraint to maximising the effectiveness of law enforcement.⁵⁵⁵ In 2013, the overall budget expenditure of the VPF was VT734,759,488 (US\$7,350,000) of which 87% was spent on salaries and allowances. Only 13% was left for operational expenses.⁵⁵⁶ It was further reported that in 2013, the VPF had a debt of more than VT80 million (US\$800,000).⁵⁵⁷ Another issue is that that very little to none of the funding received by the government is being allocated to police stations outside of Port Vila, with officers in the outer islands at times having to ask clients to drive them to places in order to conduct investigations due to a lack of fuel.⁵⁵⁸

There has been no salary increase for the VPF since 1997. Although many receive significant allowances for driving, or the status of inspector and detective on top of their base salary, their wages are poor compared to other public servants.⁵⁵⁹ A salary increase has been pending since October 2012 in response to which the Prime Minister in late 2013 announced that raises to VPF subordinate officers were to be facilitated by January 2014.⁵⁶⁰ However, as there have been no budget increases made to accommodate for this change, the funds will need to come out of the operational budget and further decrease it.⁵⁶¹ Despite low salaries the VPF has not had significant difficulty in attracting staff and currently has over 600 employed officers. Whilst recruitment is strong there are no clear career pathways for police, with set criteria based on education and experience for progressing up the ranks.⁵⁶²

A significant source of out-of-budget funding is from the support of international partners such as the United Nations International Children's Emergency Fund (UNICEF)⁵⁶³ as well as Australian Aid through the VAPP, which aims to provide for the training and professionalisation of the VPF, infrastructure, assets and logistics, workforce renewal, and internal VPF governance.⁵⁶⁴ The VAPP has been providing funding for operational activities that approximately matches the current operational budget, which has been managed through the Australian Federal Police liaison office. It has also been providing significant resource support through training programs for police officers,

⁵⁵⁵ Thompson Marango, 'Separation of VMF Police hinged on budget' *Vanuatu Daily Post Online* 25 May 2013.

⁵⁵⁶ Ibid.

⁵⁵⁷ 'Police debts of 80 million may affect salaries in December' *The Vanuatu Independent* 26 October 2013, 3.

⁵⁵⁸ Interview of Helen Corrigan, Australian Aid Senior Program Manager with Jessica Kim, Port Vila, 30 January 2014.

⁵⁵⁹ Ibid.

⁵⁶⁰ Jane Joshua, 'Prime Minister wants salary increase soon for police subordinates' *Vanuatu Daily Post Online* 17 October 2013.

⁵⁶¹ Interview of Helen Corrigan, Australian Aid Senior Program Manager with Jessica Kim, Port Vila, 30 January 2014.

⁵⁶² Comments by Mark Bebe, Advisory Group Meeting 6 March 2014.

⁵⁶³ Interview of anonymous corporal with Jessica Kim, Port Vila, 31 January 2014.

⁵⁶⁴ www.news4us.com/vanuatu-australia-police-project-continues-its-support-with-training-infrastructure-assets-logistics/228829/ [accessed 24 February 2014].

computer equipment for every province to improve case management systems, as well as building 8-10 new police posts and stations in various islands in the past decade.⁵⁶⁵ Whilst the VAPP assigns advisors to the VFP this has not been without difficulty with 11 advisors being expelled from the country in 2012 in retaliation for a breach of protocol when an aide to the prime minister was arrested whilst travelling through Australia.⁵⁶⁶

Likewise of concern is the severe lack of funding and resources experienced by prosecutors, which hinders their ability to work effectively. Often prosecutors are required to travel to attend court; however, because there has either been no vehicle available or no funds for fuel, there have been instances where they were forced to walk in bad weather conditions carrying all their files.⁵⁶⁷ Furthermore, when the Magistrate and Supreme Courts are undertaking their tri-annual circuits around the country to the remote islands, prosecutors have, at times, been unable to attend court for these cases due to insufficient funds for travel.⁵⁶⁸ Offices are also lacking sufficient computer equipment and general supplies⁵⁶⁹ and because there has been no electronic database system developed for filing cases paper files have been stored in cabinets, which makes it very hard to find and follow up on matters.⁵⁷⁰ During January 2014 both the public prosecutor's office and the state prosecutor's office in Port Vila suffered from a prolonged electricity cut because of a failure to pay electricity bills, which severely affected their ability to continue working. This was not a lone occurrence.⁵⁷¹ Frequently in the past the two offices have shared facilities to accommodate such circumstances.⁵⁷²

The public prosecutor's office and state prosecutors' office have also had difficulty in retaining trained lawyers as they have been tending to move to other legal arms of the government. This is partly attributable to the challenging work environment faced by prosecutors due to the nature of criminal proceedings and partly attributable to poor working conditions and low salaries compared to that being offered elsewhere, such as the State Law Office whose budget is six times larger than the Office of the Public Prosecutor.⁵⁷³ The Office of the Public Prosecutor was provided with some external support from Australian Aid in the past through the provision of some office supplies⁵⁷⁴ and the assignment of external advisors to the public prosecutor's office and to the state prosecutor's office. Many of the staff in the public prosecutor's office have relatively few years of experience.

In December 2013 the Public Prosecutor resigned rather than face a Commission of Inquiry into allegations of mismanagement and inefficiency within the Office of the Public Prosecutor.⁵⁷⁵ An acting public prosecutor was appointed in April.

⁵⁶⁵ Interview of Helen Corrigan, Australian Aid Senior Program Manager with Jessica Kim, Port Vila, 30 January 2014.

⁵⁶⁶ Ibid.

⁵⁶⁷ Interview of Eric Molbaleh, Legal Practitioner with Jessica Kim, Port Vila, 29 January 2014.

⁵⁶⁸ Ibid.

⁵⁶⁹ State Prosecution Office, *Vanuatu: Sanma Annual Report for 2012 25 March 2013* (Port Vila: State Prosecution Office, 2013).

⁵⁷⁰ Interview of Eric Molbaleh, Legal Practitioner with Jessica Kim, Port Vila, 29 January 2014.

⁵⁷¹ 'Public Prosecution Office Power Cut' *Vanuatu Daily Post Online* 8 October 2013.

⁵⁷² Observations by Jessica Kim on visit to Port Vila Office of the Public Prosecutor and brief conversation with Greg Takau, Assistant Public Prosecutor, 28 January 2014.

⁵⁷³ Royson Willie, 'Vanuatu facing difficulties finding Ni-Vanuatu prosecutors' *Vanuatu Daily Post Online* 26 November 2010.

⁵⁷⁴ Interview of Eric Molbaleh, Legal Practitioner with Jessica Kim, Port Vila, 29 January 2014.

⁵⁷⁵ Jane Joshua, 'Public Prosecutor Resigns' *Vanuatu Daily Post Online* 31 January 2014; 'Vanuatu Public Prosecutor Resigns over Commission of Inquiry Plan' *Radio New Zealand International Online* 17 February 2014.

Independence (law)

Score: 50

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT BY LAW?

Whilst laws have been amended to reduce the scope for political interference in the operation of the Police Service Commission there is still scope for interference to occur. Whilst prosecutors are guaranteed independence from external agencies, there is some scope for internal interference in activities.

The law requires that every candidate for appointment to the VPF shall be a citizen of Vanuatu and possess any further qualification prescribed by the minister after consultation with the Council of Ministers.⁵⁷⁶ The Police Rules outline further requirements for recruitment and include criteria related to age, physical and mental fitness and education. There is also a requirement that recruits be of good moral character.⁵⁷⁷ The commission may, acting on the recommendation of the commissioner of police, approve the dispensing of one or more of the above-mentioned criteria when they consider a candidate to have special qualifications of value to the VPF.⁵⁷⁸

The commissioner of police and three deputy commissioners are appointed by the president acting on the advice of the Police Service Commission.⁵⁷⁹ Other senior and subordinate officers are appointed by the Police Service Commission acting on the recommendation of the commissioner.⁵⁸⁰ In 2010 the law was amended to provide criteria that the commissioner of police must meet in order to be eligible for appointment. These criteria include that '(a) the person is a citizen of Vanuatu; and (b) has served in a senior position within the Force for a period of at least seven years; and (c) preferably has a tertiary qualification in the area of policing, military, management or Law.'⁵⁸¹ The citizenship criterion means that it is no longer possible to consider recruiting the commissioner of police from overseas. This limits the pool of possible applicants and may make it harder to find a suitably qualified and experienced individual who is independent. It can, however, be observed that there has been no non-citizen police commissioners in recent history.

The Police Service Commission is comprised of five members who are appointed by the president acting on advice of the prime minister after consultation with the Council of Ministers.⁵⁸² Whilst the chief justice and Public Service Commission each nominate a representative onto the Police Service Commission, as the appointments are determined by the prime minister, this body is not guaranteed independence in law. In 2010 the law was amended to provide that the Police Service Commission is not subject to the direction and control of any other person or body.⁵⁸³ The amendment also provided that 'the Commission must have regard to the policies of the Government as communicated in writing to the Commission from time to time by the Minister.'⁵⁸⁴ Whilst there is some potential for political interference in the operation of the VPF it is a disciplinary offence for members of the VPF to participate in politics.⁵⁸⁵

In contrast the Constitution provides that the public prosecutor shall not be subject to any external influence or control.⁵⁸⁶ The public prosecutor is appointed by the president on the advice of the Judicial Service Commission.⁵⁸⁷ The Judicial Service Commission is also guaranteed independence

⁵⁷⁶ Section 11(2), Police Act [Cap 105].

⁵⁷⁷ Section 3(1), Police Rules 1980.

⁵⁷⁸ Section 3(2), Police Rules 1980.

⁵⁷⁹ Section 7B Police Act [Cap 105].

⁵⁸⁰ Section 10(1)-(3), Police Act [Cap 105].

⁵⁸¹ Section 7A(7) Police (Amendment) Act 2010.

⁵⁸² Section 9(2), Police Act [Cap 105].

⁵⁸³ Section 1B(1), Police (Amendment) Act 2010.

⁵⁸⁴ Section 1B(2), Police (Amendment) Act 2010.

⁵⁸⁵ Section 50, Police Act [Cap 105].

⁵⁸⁶ Article 55, Constitution of the Republic of Vanuatu.

⁵⁸⁷ Section 5(1) Public Prosecutors Act [Cap 293]; Article 55, Constitution of the Republic of Vanuatu.

in the Constitution.⁵⁸⁸ The deputy public prosecutor, assistant public prosecutors and state prosecutors are all appointed by the public prosecutor.⁵⁸⁹ There is no express requirement that the public prosecutor must appoint a deputy, or a minimum number of assistant and state prosecutors.

The only requirements in respect of qualifications of the public prosecutor is that he or she must be a person who has been admitted to practise as a legal practitioner in Vanuatu, or any other country or countries, for a period in total of at least seven years. The deputy public prosecutor must have five years of experience. Assistant public prosecutors must have a law degree.⁵⁹⁰ The law further provides that the appointment must be made on merit following a fair and transparent selection process, but, however, does not specify anything further. There is no legislation or formal procedure by which prosecutors are promoted and as such there is no prosecutorial career based on objective criteria. There is only one public prosecutor's office, which is located in Port Vila, and two state prosecutor's offices, one in Port Vila and one in Luganville. Therefore, there are only a small number of prosecutor positions available and it is often the case that once appointed that person will remain in that position for a long time.⁵⁹¹ For this reason, promotions are rare and it is difficult for prosecutors to progress through the hierarchy.

The law provides that the public prosecutor may issue directions or guidelines with respect to the prosecution of offences to the deputy public prosecutor, assistant public prosecutors, state prosecutors, any other person acting on behalf of the public prosecutor and any person who conducts investigations in relation to offences.⁵⁹² Although these guidelines are advisory in nature and thus not binding,⁵⁹³ if a prosecution in respect of an offence has been instituted by a person other than the public prosecutor, the public prosecutor may take over and assume the conduct of the prosecution,⁵⁹⁴ regardless of whether the person otherwise responsible consents.⁵⁹⁵ The public prosecutor may then decline to proceed further in the prosecution.⁵⁹⁶

Independence (practice)

Score: 25

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT IN PRACTICE?

The independence of law enforcement agencies is often compromised in practice due to both external political interference, internal factionalisation and personal connections.

Although this was not always the case in the past, recently the appointment process of the VPF has generally been perceived to be in adherence with the legal and professional criteria.⁵⁹⁷ However, an area of ongoing concern is the extent of politicisation of the police force. There have been instances of direct external interference, for example, of officers being told by higher authorities not to investigate a case.⁵⁹⁸ Furthermore, there is a longstanding culture of politicisation within the VPF with noticeable divisions amongst members dependent upon allegiances to different senior officers or political powers.⁵⁹⁹ For example, during the transition between former Commissioner Bong and

⁵⁸⁸ Article 48(2), Constitution of the Republic of Vanuatu.

⁵⁸⁹ Sections 20-23, Public Prosecutors Act [Cap 293].

⁵⁹⁰ Sections 6(1), 20(3) and 21(3) Public Prosecutors Act [Cap 293].

⁵⁹¹ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

⁵⁹² Section 11(1), Public Prosecutors Act [Cap 293].

⁵⁹³ Section 11(3), Public Prosecutors Act [Cap 293].

⁵⁹⁴ Section 10(1), Public Prosecutors Act [Cap 293].

⁵⁹⁵ Section 10(3), Public Prosecutors Act [Cap 293].

⁵⁹⁶ Section 10(4), Public Prosecutors Act [Cap 293].

⁵⁹⁷ Interview of anonymous corporal with Jessica Kim, Port Vila, 31 January 2014.

⁵⁹⁸ Ibid.

⁵⁹⁹ Anonymous interviews of external advisors and two senior police officers, Port Vila, January 2014, April 2014 .

current Commissioner Caulton there was a taking of sides amongst members of the VPF that caused internal tensions and hindered their ability to maintain independence in their work.⁶⁰⁰

The appointments of prosecutors have been made on the basis of the prescribed legal criteria. Although political or other external interference is not as profound as with the police, it nevertheless remains a relevant issue. For example in 2011, the Public Prosecutor accused the then Minister of Justice and Daily Post publisher of using blackmail-style tactics to pressure her to allow an independent prosecutor to prosecute a case involving the alleged assault of the Daily Post publisher by the former Minister of Public Utilities and a group of his supporters. She reported being pressured by the Minister to step aside from the case for conflict of interest reasons and claimed she was blackmailed with front page claims on the Daily Post newspaper that she had been having an extra-marital affair with someone who is a very close friend of the accused former Minister of Public Utilities.⁶⁰¹ The Public Prosecutor also maintained that the Commission of Inquiry established to investigate her was an interference with her independence and this is why she chose to resign.⁶⁰² However, it should also be noted that by instituting a Commission of Inquiry the government was following a process which would have allowed fair consideration based upon interviews and investigation before determining whether to terminate the Public Prosecutor.

A recent report by Transparency International Vanuatu into the functioning of the judicial system noted conflicts of interest affected the actions of police and prosecutors in some examined cases, with conflicts leading to non-appearance at court by prosecutors.⁶⁰³ Failures of police to execute summonses are also, sometimes, attributable to conflicts of interest.⁶⁰⁴ In Vanuatu's close knit society it is very easy for personal connections to undermine the independence of law enforcement agents.

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN ACCESS THE RELEVANT INFORMATION ON LAW ENFORCEMENT AGENCY ACTIVITIES?

There are very limited provisions in the law that ensure the transparency of law enforcement agencies and personnel and grant public access to relevant information.

There is no requirement in law for the public disclosure of certain aspects of police or prosecution work. Furthermore, there are no specific legal provisions for victims of crimes to access their case files. The commissioner of police, deputy commissioners, members of the Police Service Commission and the public prosecutor are leaders for the purposes of the Leadership Code Act,⁶⁰⁵ so are required to file annual returns disclosing assets under that Act.

The law does require that the public prosecutor must, within three months after the year's end, prepare and give to the minister of justice an annual report with respect to the operations of the office. The minister must cause a copy to be laid before parliament as soon as possible and the

⁶⁰⁰ Ibid.

⁶⁰¹ Tony Wilson, 'Betrayed and Bullied' *Vanuatu Independent*, 13 June 2011.

⁶⁰² 'Vanuatu Public Prosecutor Resigns over Commission of Inquiry Plan' *Radio New Zealand International Online* 7 February 2014.

⁶⁰³ Transparency International Vanuatu, *Vanuatu Judicial Monitoring System Report* (Port Vila: Transparency International Vanuatu 2013) 18-21.

⁶⁰⁴ Comments by Marie Noelle Ferrieux Patterson, Advisory Group Meeting, 6 March 2014.

⁶⁰⁵ Section 5, Leadership Code Act [Cap 240].

public prosecutor must cause copies to be distributed to the public within three months after it is tabled in parliament.⁶⁰⁶

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF LAW ENFORCEMENT AGENCIES IN PRACTICE?

There is limited public disclosure of the activities and decision-making processes of law enforcement agencies although victims of crimes may be able to gain access to information on files related to their complaint if files proceed to prosecution.

Some disclosure on general activities of the police is being done in practice. The VPF have a media department which publishes news on recent police activities as well as updates on administrative changes in a weekly column via the Daily Post newspaper.⁶⁰⁷ However, widespread access to information remains limited due to the newspapers being circulated primarily only in the urban centres and because there is no alternative source such as a website. It has also been difficult for victims to access their case files from the VPF in practice and the police can use the Official Secrets Act to maintain confidentiality of files.⁶⁰⁸ Allegations of files frequently being intentionally misplaced are common.⁶⁰⁹

In contrast to the VPF the Office of the Public Prosecutor does not independently publish any information on their activities nor do they participate within the media. Annual reports are not made available to the public. The judgements of most cases are available as public documents either on the PacLII website or for receipt upon request to the courts, although this is a function of the judiciary, rather than of the public prosecutor. In practice, if requested by the victim, prosecutors allow them access to their own files.⁶¹⁰

Sometimes journalists attend court and report on high profile matters and The Independent newspaper has recently instituted a regular “court watch” column, although this appears to focus on sexual abuse cases.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There are limited legal provisions to ensure accountability of police and prosecutors.

There is no independent mechanism for citizens to complain about the misconduct of police officers and the only complaint reporting mechanism in this regard is through the Internal Investigations Office, which is a department of the VPF.

In most cases there is no legal requirement for prosecutors to give reasons to relevant stakeholders regarding their decision to prosecute or not. However, if a public prosecutor decides not to

⁶⁰⁶ Section 30, Public Prosecutors Act [Cap 293].

⁶⁰⁷ Interview of anonymous corporal with Jessica Kim, Port Vila, 31 January 2014.

⁶⁰⁸ Interview with Benson Samuel, Acting Deputy Commissioner of Police with Kibeon H Nimbwen, Port Vila, 9 May 2014.

⁶⁰⁹ Anonymous comments from members of the public, January, February 2014.

⁶¹⁰ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

prosecute a Leadership Code case following a recommendation by the ombudsman, she must both notify the prime minister and publish a notice in the Gazette explaining her decision.⁶¹¹

The law permits victims of crimes to take a criminal action to court by way of private prosecution. This provides access to the justice system in the event that the public prosecutor is not able or willing to act.

There is no complaint mechanism for prosecutors specifically. However, pursuant to section 8 of the Legal Practitioner's Act any complaint concerning the conduct of a legal practitioner may be lodged in writing to the secretary of the Law Council containing specific allegations of misconduct that may consist of acts or omissions. The secretary shall investigate and report on the complaint to the Disciplinary Committee who has the power to strike off, suspend, impose a fine or reprimand a legal practitioner.⁶¹²

Corrupt activities engaged in by law enforcement officials who are defined as leaders including the commissioner and deputy commissioner of police, solicitor general, public prosecutor, public solicitor, members of the Police Service Commission and the commander of the VMF, constitute a breach under the Leadership Code Act.⁶¹³ Complaints regarding these allegations can be reported to the ombudsman who then must investigate and report on the conduct of the leader.⁶¹⁴ The public prosecutor must then consider the report and either refer it to the commissioner of police within 14 days of receiving the report, if of the opinion that further investigation is required,⁶¹⁵ or ensure the police force investigates the complaint and forwards the results within 60 days of the complaint being made.⁶¹⁶ The commissioner must then decide, within three months of receiving the report, whether there are sufficient grounds for prosecution, or that the complaint is vexatious, frivolous or trivial. If deciding not to prosecute, the prime minister must be notified within seven days of the decision and a notice published in the Gazette within 14 days stating the decision and its reasons.⁶¹⁷

There is no immunity of law enforcement officials from criminal proceedings. However the law does provide that 'no suit or other legal proceedings shall be instituted in any court of law against the Minister or the Commission or any other member of the VPF ... in respect of any act, matter or thing done or purported to be done or omitted to be done, in good faith, in the performance or exercise of any duty or power imposed or conferred under the Act.'⁶¹⁸

Accountability (practice)

Score: 0

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

In practice there is almost no external accountability of law enforcement agencies for their actions. This issue is widespread across officers and prosecutors of all ranks and is primarily attributable to embedded police culture and a prosecutorial culture that is antithetical to accountability and lack of disciplinary mechanisms.

The lack of an independent complaint reporting mechanism is a serious issue within law enforcement in Vanuatu. Essentially, the only avenue to make a complaint against a police officer is to a police officer, and not surprisingly, this system has not been effective. It has been uncommon for these complaints to progress through to investigation. Instead complaints are sometimes ignored

⁶¹¹ Section 37(3), Leadership Code Act [Cap 240].

⁶¹² Section 9, Legal Practitioners Act [Cap 119].

⁶¹³ Article 67, Constitution of the Republic of Vanuatu; Section 5, Leadership Code Act [Cap 240].

⁶¹⁴ Section 34, Leadership Code Act [Cap 240].

⁶¹⁵ Section 35, Leadership Code Act [Cap 240].

⁶¹⁶ Section 36, Leadership Code Act [Cap 240].

⁶¹⁷ Section 37(1)-(3), Leadership Code Act [Cap 240].

⁶¹⁸ Section 40, Police Act [Cap 105].

or the file intentionally misplaced.⁶¹⁹ Stemming from this is the further issue that most victims make the mistake of not requesting a copy of their complaint statement from the police and as such when the police fail to take action, the victim is unable to provide any material proof of such misconduct.⁶²⁰ This has created an environment where police officers have little to no accountability for their actions in practice. Although some internal discipline is adopted, this normally involves suspension at its most serious, and officers are rarely dismissed or charged in criminal proceedings.⁶²¹

An example of this is the case of escaped prisoner John Bule, who died after sustaining multiple injuries while in police custody following his recapture in March 2009. A coroner's inquest was conducted by New Zealand Justice Nevin Dawson, with the report highlighting abuse by the VMF.⁶²² Intimidation during the inquest including a death threat against Dawson by a senior VMF officer also occurred.⁶²³

In April 2013, the Court of Appeal gave judgment awarding damages to Mrs Dornic, Mr McNicol and Mr Warte for an incident that occurred in late 2001 involving several police officers acting outside of their lawful powers to assist their friend in a private dispute.⁶²⁴ Not only did this take 11 years for final determination in court, as of 2011 the police officers involved were still employed. Further examples of lack of accountability can be found in a recent Transparency International Vanuatu report into police brutality and torture.⁶²⁵

In response to these issues, the VAPP has developed a new initiative to replace the Internal Investigations Office with an independent Professional Standards Unit. This was signed off by the Prime Minister in December 2013 and involves a new name, phone number, email address, office, signage and procedure to promote awareness and greater access by victims. An advisor will be assigned and new policies, training and assistance will be provided to improve accountability measures within the VPF via the Professional Standards Unit.⁶²⁶ It is, as yet, too early to assess the impact that this will have in practice.

There has been longstanding controversy surrounding the independence of the public prosecutor herself. Several complaints were formally conveyed to the then Public Prosecutor Kayleen Tavoia in writing during December 2013 following which a Commission of Inquiry was set up to investigate whether there were grounds to substantiate her removal pursuant to section 18 of the Public Prosecutor's Act. During a preliminary conference when she was asked whether she wished to dispute the complaints or to resign, she chose the latter. Consequently, the Commission of Inquiry deemed her resignation removed the need to advance the complaint⁶²⁷ and no further action was taken. This incident further demonstrates that it is rare for cases of improper conduct by police and prosecutors to be properly investigated or for those allegedly responsible for improper conduct to be brought to justice.

⁶¹⁹ Interview of anonymous police officers, February 2014.

⁶²⁰ Interview of Eric Molbaleh, Legal Practitioner with Jessica Kim, Port Vila, 29 January 2014.

⁶²¹ Interview of anonymous corporal with Jessica Kim, Port Vila, 31 January 2014.

⁶²² Coroner's Report on the Inquest into the Death of John Bule (Coroner's Court of Vanuatu, Post-Mortem Case 29 of 2009).

⁶²³ Discussed further in the section on the judiciary.

⁶²⁴ *Warte v Republic of Vanuatu* [2013] VUCA 10.

⁶²⁵ Anita Jowitt, *Vanuatu: Documenting and reporting human rights abuses (violence against women and torture/ill-treatment) around Efate – Research report* (Port Vila: Transparency International Vanuatu, 2013).

⁶²⁶ Interview of Helen Corrigan, Australian Aid Senior Program Manager with Jessica Kim, Port Vila, 30 January 2014.

⁶²⁷ Jane Joshua, 'Public Prosecutor Resigns' *Vanuatu Daily Post Online* 31 January 2014.

Integrity (law)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF LAW ENFORCEMENT AGENCIES ENSURED BY LAW?

The legal framework does provide for some integrity mechanisms for law enforcement agencies; however, this is not as strong as required, particularly with regard to prosecutors.

There is a VPF Code of Ethics that states that each member shall uphold the law, have high moral values, act with fairness, exercise self-discipline and be responsible for their actions and treat all persons equally regardless of their gender, religion or birthplace, et cetera. This code is provided to officers alongside human rights and ethics training that is undertaken before commencing work as a police officer. However, this code acts as a guideline and there is no formal procedure in place to ensure this is adhered to.

The Police Act does contain certain provisions outlining offences triable by the courts such as mutiny, failure to suppress riot or desertion, for which an officer may be arrested without warrant.⁶²⁸ It also provides for disciplinary offences including engaging in any employment of office other than in accordance with his duties, involvement in a trade union or associated body, participating in a strike, accepting any gift of money or moneys-worth offered as payment for any service rendered or promised, losing or damaging arms and accoutrements and being absent from duty.⁶²⁹ There are no specific rules regarding conflict of interest of police but the Police Rules prohibit any act or omission likely to bring discredit upon the force or any conduct, disorder or neglect to the prejudice of good order and discipline as a disciplinary offence.⁶³⁰ The law also provides that a member of the Police Commission, including the chairperson, must not be involved in any matter before the Police Commission in which he or she has a conflict of interest.⁶³¹

In regards to prosecutors, the law states that after consultation with the Law Society and the Law Council, the public prosecutor is required to issue a Code of Practice and Ethics for Prosecutors and must publish this in the Gazette.⁶³² The public prosecutor's employment may be terminated by the president in accordance with the advice of the Judicial Service Commission if absent for 14 consecutive days in any period of 12 months without approval, engages in practice as a legal practitioner outside the duties of the office or any paid employment without the consent of the minister, or is convicted of an offence for a breach of the Leadership Code.⁶³³ There is also a provision that states that the public prosecutor may make a request to other prosecutors to perform his or her certain functions and powers because of the existence or possible existence of a conflict of interest.⁶³⁴ However, this is not mandatory provided the public prosecutor maintains independence as required by the Act.⁶³⁵

⁶²⁸ Section 46-49, Police Act [Cap 105].

⁶²⁹ Section 51-56, Police Act [Cap 105].

⁶³⁰ Section 57, Police Act [Cap 105]; Section 19(z), Police Rules 1980.

⁶³¹ Section 9E, Police (Amendment) Act 2010.

⁶³² Section 29, Public Prosecutors Act [Cap 293].

⁶³³ Section 18, Public Prosecutors Act [Cap 293].

⁶³⁴ Section 13(2), Public Prosecutors Act [Cap 293].

⁶³⁵ Section 7, Public Prosecutors Act [Cap 293].

Integrity (practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF LAW ENFORCEMENT AGENCIES ENSURED IN PRACTICE?

There is a public perception that existing codes of conduct, conflict of interest policies and integrity bodies have not been effective in ensuring ethical behaviour by law enforcement officials.

Despite the existence of integrity mechanisms for the police in law, they have not been upheld in practice due to a severe lack of accountability. There has been a persistent culture of impunity within the VPF. The public perceptions in that, because improper activities by senior level officers occur, despite new recruits receiving training on human rights, ethics and their duties and responsibilities as a member of the police force, they can become influenced by senior officers who are not modelling good behaviour.⁶³⁶

With regards to prosecutors the laws, policies and training programmes are not as comprehensive. No code of ethics has been gazetted. As indicated by the establishment of a Commission of Inquiry in late 2013 to inquire into the activities of the Office of the Public Prosecutor, there is concern about the integrity of this office. This suggests that the current, limited, laws relating to integrity of the Office of the Public Prosecutor are ineffective.

Role

Corruption prosecution

Score: 25

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES DETECT AND INVESTIGATE CORRUPTION CASES IN THE COUNTRY?

Members of the VPF and the public prosecutor are granted sufficient powers in law to undertake corruption detection effectively; however in practice, there are often political or otherwise external interferences as well as a misuse of power by law enforcement officials themselves, which hinders their effectiveness.

An essential duty of the VPF is to maintain unceasing vigilance for the prevention and suppression of crime.⁶³⁷ They are employed throughout Vanuatu for the preservation of peace and maintenance of order, protection of life and property, enforcement of laws, prevention and detection of offences and the production of offenders before the court.⁶³⁸

Police are granted the use of reasonable force in order to prevent crime or to effect or assist in effecting a lawful arrest; power to take photographs and fingerprints; power to inspect licences, power to lay information before a court and apply for a summons, warrant, search warrant or such other legal process; power to erect barriers and the power to enter premises in the case of threat to life or property.⁶³⁹ Section 12(1) of the Criminal Procedure Code further empowers any police officer to, without an order from a judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence, including corruption-related offences

⁶³⁶ Interview of anonymous corporal with Jessica Kim, Port Vila, 31 January 2014; comments from public in response to discussion paper, April 2014.

⁶³⁷ Section 4(1), Police Act [Cap 105].

⁶³⁸ Section 4(2), Police Act [Cap 105].

⁶³⁹ Section 36, 37, 38, 39, 41 and 42, Police Act [Cap 105].

of corruption and bribery of officials under section 73(1) of the Penal Code Act. The police do not have any power to investigate breaches of the Leadership Code Act until a report by the ombudsman recommending prosecution is issued. Long delays between receiving complaints and issuing reports make it difficult for police to investigate matters. This is a matter that the VPF would like to see addressed.⁶⁴⁰

The functions of the public prosecutor are to institute, prepare and conduct preliminary enquiries on behalf of the state and if requested by the attorney general to do so; to discontinue prosecutions regardless of who instituted them; give advice to any member of the VPF and any investigators in relation to investigations, proposed prosecutions or prosecutions if requested; provide assistance in obtaining search warrants; and prosecute breaches of the Leadership Code Act.⁶⁴¹

There have been several noteworthy prosecutions of corruption-related charges in the past 12 months. In February 2013, through collaboration between the public prosecutor's office and the Department of Custom and Inland Revenue, a prosecutor was allocated to the department to assist in the investigation of cases of bribery, fraudulent evasion of duties and other tax related offences. This resulted in the first charge of bribery being laid with respect of the Value Added Tax Act. The prosecution was successful and the court imposed a VT100,000 (US\$1,000) fine.⁶⁴² Another example is the successful prosecution of the Chief Executive Officer of the Airports Vanuatu Ltd for nine separate charges of obtaining money by deception in breach of section 130B(1) of the Penal Code Act.⁶⁴³ However, despite the numerous allegations of breaches of the Leadership Code Act, to date there have been no prosecutions under this Act.

RECOMMENDATIONS

1. At the time of writing this report the Office of the Public Prosecutor is in some disarray. It is recommended that:
 - a. The government re-establish the Commission of Inquiry to examine the activities of the Office of the Public Prosecutor, with the aim of developing recommendations to improve the processes and functioning of the office and reviewing the relationship between the office and state prosecutors.
 - b. The report of the Commission of Inquiry be made public.
 - c. The implementation of these recommendations be closely monitored by a body to be recommended by the Commission of Inquiry.
2. A code of ethics for prosecutors is required by law and should be developed and gazetted as a priority.
3. Activity to institute a VPF Professional Standards Unit has commenced. Further development of the Professional Standards Unit must be prioritised.
4. Perceptions that political interference in high profile corruption cases results in misuse of police and prosecutorial powers and that personal connections result in misuse of police and prosecutorial powers should be addressed by:
 - a. The VPF developing clear operating procedures for dealing with cases involved political leaders and cases involving potential conflicts of interest.
 - b. The VPF clearly communicating these operating procedures to the public.
5. The VPF is hindered in its ability to investigate breaches of the Leadership Code Act by having to wait until ombudsman's reports have been issued. As part of a review of the Leadership

⁶⁴⁰ Interview with Benson Samuel, Acting Deputy Commissioner of Police with Kibson H Nimbwen, Port Vila, 9 May 2014.

⁶⁴¹ Section 8(1), Public Prosecutors Act [Cap 293].

⁶⁴² Public Prosecutor v Chen Jian Lin [2013] VUSC 189.

⁶⁴³ Public Prosecutor v Henry Tony Joewangeh [2013] VUSC 55.

Code Act (as discussed in the section on the ombudsman) consideration should be given to expanding police powers to investigate criminal breaches of the Leadership Code.

VII.6. ELECTORAL MANAGEMENT BODY

SUMMARY

Overall pillar score: 40.2			
Dimension	Indicator	Law	Practice
Capacity 33.3	Resources	---	25
	Independence	50	25
Governance 41.7	Transparency	75	25
	Accountability	75	50
	Integrity	25	0
Role 12.5	Campaign regulation	0	
	Election administration	25	

The electoral system in Vanuatu faces serious challenges. The main source of these challenges is lack of integrity of the electoral roll, which prevents some legitimate voters from being able to vote and also allows illegitimate votes to be cast. Another major gap, which is discussed further in the section on political parties, is that there is a total absence of regulation of campaign financing. There are also issues with lack of prosecutions for electoral offences. Offences that have allegedly occurred include bribery and threats of violence during elections.

The Electoral Office lacks both financial and human resources. Human resources are also weakened by the fact that there have been changes in the position of the Principal Electoral Officer (PEO) during electoral periods. This is perceived as undermining independence of the Electoral Office. The integrity of staff of the Electoral Office has also been called into question. Whilst the Electoral Commission is under a legal obligation to produce reports after every election, reports are not regularly produced.

None of these problems are new. Ongoing failure to address these problems undermines the extent to which there can be confidence that elections in Vanuatu are “free and fair”.

STRUCTURE AND ORGANISATION

The Electoral Commission is a constitutional body. The Electoral Commission consists of a chairman and two other members appointed by the president of the Republic acting in accordance with the advice of the Judicial Service Commission.⁶⁴⁴ The PEO is also provided for by the Constitution.⁶⁴⁵ The Representation of the People Act further provides for the functions and duties of the PEO in relation to preparing for and conducting elections. He or she has responsibility for the overall administration on the conduct of elections, under the direction of the Electoral Commission.⁶⁴⁶ The PEO heads the Electoral Office.

The Electoral Office is stationed in Port Vila. The approved staffing of the Electoral Office is the PEO, a deputy electoral officer, a compiler, an assistant compiler and the secretary.⁶⁴⁷ In order to assist in voter registration, the PEO ‘appoints provincial and municipal executive officers as

⁶⁴⁴ Article 18(1), Constitution of the Republic of Vanuatu.

⁶⁴⁵ Article 19, Constitution of the Republic of Vanuatu.

⁶⁴⁶ Article 20(2), Constitution of the Republic of Vanuatu.

⁶⁴⁷ Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

registration officers, who through their administrative structures appoint area council secretaries. The area council secretaries appoint their assistants to undertake registrations.⁶⁴⁸

ASSESSMENT

Capacity

Resources (practice)

Score: 25

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The Electoral Office has some resources but lacks human and financial resources to effectively maintain registrations and carry out education functions. Aid donors are currently supporting improvements to the electoral roll and have helped to fund elections in the past.

The Electoral Commission and Electoral Office are financed through an annual appropriation from parliament. Budgets are sometimes not adequate to cover election costs.⁶⁴⁹ For instance, in 2002 the Electoral Commission reported that of the requested VT40 million (US\$400,000) to conduct the national election, only VT25 million (US\$250,000) was approved. Donor funding and direct payments to suppliers funded the shortfall.⁶⁵⁰ Supplementary appropriations are also sometimes made.⁶⁵¹ Budgets are sometimes not adequate for paying provincial registration officers and their assistants, which contributes to provincial electoral rolls not being consistently maintained.⁶⁵²

An ongoing issue has been that the Electoral Office lacks resources and funding to undertake education campaigns.⁶⁵³ In the past, successful partnerships with NGOs have assisted in voter education programmes.⁶⁵⁴ Additional funds from donors to help in undertaking education campaigns are sometimes sought. Voter education campaigns are currently minimal in practice.⁶⁵⁵

The Electoral Office continues to receive support and assistance through the Australian Government and the Australian Electoral Commission through the provision of office equipment and other financial support. In 2012 Australia's contribution to the Vanuatu Electoral officer comprised 10% of the total budget.⁶⁵⁶ The office has also benefited from the Australian Electoral Commission through the establishment of the Generic Voter Registration System. Further upgrading of this system is underway and it is expected that by the 2016 national elections a computerised identification system using thumbprints and photographs will be in place.⁶⁵⁷ It can be noted that the Government of Vanuatu has tried to fund initiatives in this area in the past. In 2002 the Electoral Office was subject to an audit investigation in relation to a contract for the computerisation of the electoral roll. The Vanuatu government had invested over VT37 million (US\$370,000) in this project but the

⁶⁴⁸ Jeanette Bolenga, 'Vanuatu: Limitations to the Independence of the EMB' (Sweden: International IDEA, 2006) 248.

⁶⁴⁹ Interview of Martin Tete, Technical Advisor Electoral Office with Sam Railau, Port Vila, 28 April 2014.

⁶⁵⁰ Electoral Commission, *Republic of Vanuatu: 6th General Elections Report, 2 May 2002* (Port Vila: Electoral Commission, 2002), 2, 44–49.

⁶⁵¹ For example, the 2008 national election required a supplementary appropriation on VT25 million (US\$250,000) (Supplementary Appropriation 2008 Act 2009).

⁶⁵² Electoral Commission, 2002: 30; Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

⁶⁵³ Jeanette Bolenga, 2006: 249.

⁶⁵⁴ Electoral Commission, 2002: 24.

⁶⁵⁵ Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

⁶⁵⁶ www.vanuatu.highcommission.gov.au/files/pvla/2012%20VEO%20joint%20press%20release.pdf [accessed 19 February 2014].

⁶⁵⁷ Interview of Martin Tete, Acting PEO with Sam Railau, Port Vila, 20 September 2013.

computerised electoral roll was never delivered. Whilst this was the subject of an audit report and a Public Accounts Committee report no money has been recovered.⁶⁵⁸

By April 2014 previous vacant positions of deputy PEO, compiler and assistant compiler had all been filled, but even with all posts filled there is insufficient staff to carry out all work.⁶⁵⁹ Advertisements have now been published seeking applicants for the posts of compiler and its assistant.⁶⁶⁰ As discussed in the section on independence below, the position of the PEO has been unstable and this instability has hindered the work of the Electoral Office.

The Electoral Office also lacks support staff in the provinces. Whilst the PEO appoints provincial registration officers who are in practice provincial and municipal executive officers, they in turn appoint their own assistants.⁶⁶¹ When local government councils change there can be problems in maintaining accurate registrations because of lack of knowledge of provincial registration offices and/or their assistants.⁶⁶² This leads to issues with accountability and transparency in provincial voter registration processes.⁶⁶³

The physical office space of the Electoral Office has not been upgraded in years. The Electoral Office is located in a small wooden colonial era building and there are some concerns that it may not be a suitable environment for a computerised operation.

Independence (law)

Score: 50

TO WHAT EXTENT IS THE ELECTORAL MANAGEMENT BODY INDEPENDENT BY LAW?

There is the potential for interference as the Public Service Commission (PSC) controls the appointment of staff and the PEO can either be suspended by the PSC or transferred by the prime minister.

Article 18 of the Constitution provides for a three member Electoral Commission. The chairman and the two members of the Electoral Commission are appointed by the president of the Republic on the advice of the Judicial Service Commission. No candidates for election to, or elected members of, parliament, local governments or the National Council of Chiefs are permitted to be members of the Electoral Commission. 'Any person who exercises any position of responsibility in a political party'⁶⁶⁴ is also prohibited from being a member. These restrictions are designed to ensure independence of the Electoral Commission.

There are no similar guarantees of independence in respect of the position of PEO. The PEO is a public servant,⁶⁶⁵ and there are no special requirements for appointment or safeguards in respect of removal of the PEO. The PEO is therefore subject to suspension or dismissal by the PSC. Law requires appointment, suspension and dismissal to occur on the basis of merit or for cause only, and these processes protect independence. The Constitution provides that, 'Senior public servants in Ministries may be transferred by the Prime Minister to other posts of equivalent rank.'⁶⁶⁶ As the PEO is a senior public servant he or she may be subject to transfer.

⁶⁵⁸ Office of the Auditor General, *Auditor General's Report to Parliament October 2007* (Port Vila: Office of the Auditor General, 2007) 42; Public Accounts Committee, *Report of the Public Accounts Committee Report of the Auditor General Financial Years 2002 – 2007* (Port Vila: Parliament of Vanuatu, 2011) 21.

⁶⁵⁹ Interview of Martin Tete, Technical Advisor Electoral Office with Sam Railau, Port Vila, 28 April 2014.

⁶⁶⁰ Interview of Martin Tete, Acting PEO with Sam Railau, Port Vila, 20 September 2013.

⁶⁶¹ Section 6, Representation of the People Act [Cap 246].

⁶⁶² Electoral Commission, 2002: 30; Interview of Howard Van Trease, historian with Sam Railau Port Vila, 26 September 2013.

⁶⁶³ Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

⁶⁶⁴ Article 18(2)(e), Constitution of the Republic of Vanuatu.

⁶⁶⁵ Article 19, Constitution of the Republic Vanuatu.

⁶⁶⁶ Article 58(2), Constitution of the Republic Vanuatu.

Independence (practice)

Score: 25

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY FUNCTION INDEPENDENTLY IN PRACTICE?

External interference in the position of PEO by the prime minister has occurred. The Electoral Office is perceived to have been politicised and, as a result, is perceived to be unable to carry out its duties without bias.

A comprehensive report on the independence of the Electoral Management Body observes that, 'despite its statutory independence, significant limitations exist, caused by issues of access to budget funds and the recruitment and termination of the appointment of electoral officers'.⁶⁶⁷

Whilst staff of the Electoral Office are public servants and so are somewhat independent from direct interference, the position of PEO is subject to interference. In October 2012 the then PEO, Lawson Samuel, was removed from his position and replaced with an Acting PEO, Lionel Kaluat. In December Kaluat, who was only on short term secondment, was replaced by Etienne Kombe. In July 2013 Martin Tete was appointed Acting PEO.⁶⁶⁸ It was not until September 2013 that a new PEO, Charles Vatu, was appointed.⁶⁶⁹ Samuel was transferred to another post by the Prime Minister in accordance with Article 58(2) of the Constitution. One issue apparently motivating this transfer was the approval of candidates. The same day that Samuel was removed the Electoral Commission had published a list of 274 eligible candidates. Some prominent politicians' names were missing from this list, apparently because they had outstanding debts owed to government agencies.⁶⁷⁰ Following this on 13 October a second candidate list was published, this one containing 345 names.⁶⁷¹

It should be noted that the law provides that the Electoral Commission determines validity for candidature and does not allow for any appeal process. Rather, '[t]he decision of the Electoral Commission that a candidature is valid or invalid shall be final and shall not be questioned in any proceedings whatsoever'.⁶⁷² However, if the Electoral Commission 'considers that a declaration of candidature is invalid by reason of a bona fide error... [it may] request the candidate to resubmit a valid declaration'.⁶⁷³ The PEO is the person who screens names and advises the Electoral Commission as to individuals' eligibility.⁶⁷⁴

Another issue allegedly motivating Samuel's transfer was his control of proxy votes. It was reported that 'prior to Lawson's transfer out of the position of Principal Electoral Officer on the 10th October he had approved less than 100 proxy vote applications, and had refused 100's of applications because they failed to meet the required criteria'.⁶⁷⁵ Subsequently a number of proxy votes were approved and there is a perception that some staff of the Electoral Office and registration officers had been pressured by politicians and had likely conflicts of interest in approving proxy applications.⁶⁷⁶ Proxy votes were critical for the re-election of some candidates and election observer reports noted that proxy votes are particularly subject to vote buying and other abuse.⁶⁷⁷

⁶⁶⁷ Jeannette Bolenga, 2006: 249.

⁶⁶⁸ Thompson Marango, 'Tete appointed Acting Principal Electoral Officer' *Vanuatu Daily Post Online* 13 June 2013.

⁶⁶⁹ Godwin Ligo, 'New Principal Electoral Officer Appointed' *Vanuatu Daily Post Online* 13 September 2013.

⁶⁷⁰ The criteria requiring candidates to have no debts to Government was added to the Representation of the People Act [Cap 146] in 2007.

⁶⁷¹ <http://pacificpolicy.org/blog/2012/10/17/candidates-lists/> [accessed 19 February 2014].

⁶⁷² Section 26(4), Representation of the People Act [Cap 146].

⁶⁷³ Section 27(1), Representation of the People Act [Cap 146].

⁶⁷⁴ Section 25(7), Representation of the People Act [Cap 146].

⁶⁷⁵ 'GJP calls for investigation of all proxy votes cast' *Vanuatu Daily Post Online*, 5 November 2012.

⁶⁷⁶ Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

⁶⁷⁷ Transparency Vanuatu, *2012 Vanuatu General Election Election Observer Team Report* (Port Vila: Transparency Vanuatu, 2013); Norm Kelly, *2012 Vanuatu Election – Election Observer's Report* (Australia: Centre for Democratic Institutions, 2012).

The removal of the PEO on the eve of a national election gives the impression that there is interference in the management of elections by politicians.⁶⁷⁸

This is not the first time that there has been interference in the position of the PEO on the eve of an election. In 2002 the Director General of the Ministry of Internal Affairs attempted to suspend the PEO two weeks prior to the national election. The PEO sought an injunction to prevent this, as it would have been very disruptive to the election.⁶⁷⁹

As discussed in the section on resources, above, the Electoral Commission or PEO does not have control over the appointment of assistants to registration officers. Nor is there any particular criteria for who can be appointed a registration officer, and in practice provincial and municipal executive officers fill these positions.

Governance

Transparency (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE ELECTORAL MANAGEMENT BODY?

There are provisions that require the Electoral Office to provide information on activities and allow members of the public to check that information that the office holds is correct. However, the timeframe for the public to check that the roll information is correct is short.

The law contains provisions for transparency of electoral rolls, candidates, polling stations, vote counting and results. The PEO is responsible for the production, distribution and publication of information to voters and the general public.⁶⁸⁰ The Representation of the People Act contains a number of provisions to ensure that the public get informed on certain activities of the office. Section 16 (1) provide that the Electoral Office must make a list of registered voters (the electoral list) available for inspection by the public for a period of at least two weeks every year. This is a short timeframe and does not necessarily allow for adequate public scrutiny of the roll. Copies are made available via all registration officers and via display in public places, which include local government offices and the Electoral Office. The purpose of opening the list for inspection is to allow people to apply for corrections to the list or electoral cards.

Section 28 requires the Electoral Office to publish the list of candidates for election via display at Provincial Councils, parliament, the Electoral Office and any other places the Electoral Commission may direct. There is no requirement that the Electoral Office publishes the names of individuals whose candidature was declared invalid, or reasons for holding that they were ineligible to be candidates. Once the list of candidates is closed the PEO is required to publish information on the locations of polling stations and the times they will be open for.⁶⁸¹ Public are permitted to be present at the counting of votes.⁶⁸² At the end of the election the Electoral Commission must publish the results for each constituency.⁶⁸³

In Vanuatu the Electoral Office has no role in monitoring party finances. Nor does any other body ensure transparency in this area. This is a critical deficiency and is addressed further in the section on political parties.

⁶⁷⁸ Interview of Howard Van Trease, historian with Sam Railau Port Vila, 26 September 2013.

⁶⁷⁹ Shirley Randall (ed), *Republic of Vanuatu National Elections 2 May 2002: Report of the Elections Observer Group A* Joint Electoral Commission/Transparency International Vanuatu Project (Port Vila: Blackstone Press, 2002) 23.

⁶⁸⁰ Section 2, Representation of the People Act [Cap 146].

⁶⁸¹ Section 29(4), Representation of the People Act [Cap 146].

⁶⁸² Rule 14, Schedule 5, Representation of the People Act [Cap 146].

⁶⁸³ Section 38, Representation of the People Act [Cap 146].

Transparency (practice)

Score: 25

TO WHAT EXTENT ARE REPORTS AND DECISIONS OF THE ELECTORAL MANAGEMENT BODY MADE PUBLIC IN PRACTICE?

Whilst dates for elections, lists of candidates and polling information are well publicised, issues with the electoral roll suggest that the public does not find it easy to access the roll to check that information is correct. Lack of transparency in candidate screening decisions and votes counting processes has also been an issue recently.

There is some transparency in practice. Whilst the Electoral Office does not maintain a website, schedules of dates are made available to the public when election dates are set. Candidate lists and results are also published in government Gazettes. The media (including print media, online blogs and radio) is also active in publishing this information, although media is more active in reporting national election information than local election information.

The period during which the electoral list is open for public inspection is set by law to be a minimum of a 14 day period,⁶⁸⁴ and the list is available at these times. However, as issues in the 2012 national election, relating to voters who had electoral cards but were not on the polling station lists and hence were ineligible to vote, demonstrated, members of the public do not, in practice, check and correct this list.⁶⁸⁵ Nor is there a call centre where voters can, at any time, check their registration status.

In the 2012 national election members of the public were permitted to observe the first count. However, they were not able to observe the recounting process on which the final results were based.⁶⁸⁶

As discussed in the section on independence, above, in the 2012 national election a number of candidates were initially not approved. No reasons were given for declining the candidature of each individual, although as a group it appeared that they were ineligible as they owed debts to the government. It is not clear what process was used to have candidates approved, as there is no legal appeals process.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE ELECTORAL MANAGEMENT BOARD HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

Whilst there are a number of legal lines of accountability, there is no requirement that regular annual reports be produced by the Electoral Office.

The PEO is accountable to the Electoral Commission regarding the exercise of his functions.⁶⁸⁷ The legal framework ensuring transparency as provided under the Representation of the People Act [Cap 146] also helps to ensure accountability. In particular after every election the PEO must, within three months submit a report to the Electoral Commission.⁶⁸⁸

The Electoral Commission shall not more than 3 months after receiving the report of the Principal

⁶⁸⁴ Section 16(1), Representation of the People Act [Cap 146].

⁶⁸⁵ Norm Kelly, 2012.

⁶⁸⁶ Transparency Vanuatu, 2013.

⁶⁸⁷ Article 20(2), Constitution of the Republic of Vanuatu.

⁶⁸⁸ Section 39(1), Representation of the People Act [Cap 146].

Electoral Officer make a report to Parliament concerning the conduct of the election which shall include a statement on the overall cost thereof, information on difficulties encountered and how they were dealt with and recommendations for improvements and changes in procedure for future elections.⁶⁸⁹

There is, however, no express requirement that parliament must debate this report or that anyone else must act on it. There is also no express legal requirement that the Electoral Office produce annual reports.

In terms of financial accounting, the PEO is accountable to the Office of the Auditor General. He or she must also comply with other laws regulating expenditure, including the Government Contracts and Tenders Act. As public servants the PEO and other staff of the Electoral Office are also accountable to the PSC.

Public and candidates also have a mechanism by which the Electoral Office can be held to account. An election petition may be presented by people who are registered to vote at the election to which the petition relates, or by a person claiming him or herself to have been candidate at such election.⁶⁹⁰ Prior to 2012 an election would be held void if corrupt activities or non-compliance with the Act was of such a magnitude that it could reasonably be supposed to have affected the election or if a successful candidate were convicted in court of committing or attempting to commit a corrupt practice.⁶⁹¹

In 2012 the law was amended.⁶⁹² Now, a candidate who has been convicted of committing a corrupt practice under Part 15 of the Representation of the People Act will not lose his or her seat. The 2012 amendment also restricted the times when candidates payments would be considered to be bribery, by including a provision to the effect that an election will be declared invalid if it is proved that a candidate or his or her agent spent or allocated any money in the period between the end of parliament and polling day and that this expenditure or allocation affected the outcome of the election. Some exceptions are also permitted: custom gifts up to a value of VT1,000 (US\$10); entertainment during campaign rallies; and food, drink, transport and accommodation to any person on polling day are allowed. Furthermore, food, drink, entertainment, transport or accommodation to candidates' agents are permitted and there are no limits on the number of agents, or requirements that an approved list of agents be submitted before campaigning. These changes are a significant backwards step, as they provide "legal loopholes" that can be exploited in order to allow bribery outside of set times or affect voting via treating.

Accountability (practice)

Score: 50

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

Whilst candidates can and do petition the Supreme Court when they perceive that electoral irregularities have affected election results and there is oversight of expenditure by the auditor general, the Electoral Office does not regularly produce reports after general elections.

It has been observed that:

⁶⁸⁹ Section 39(2), Representation of the People Act [Cap 146].

⁶⁹⁰ Section 55, Representation of the People Act [Cap 146].

⁶⁹¹ Section 61, Representation of the People Act [Cap 146].

⁶⁹² Section 12, Schedule to the Representation of the People Amendment Act 2012.

There are overlapping and multiple lines for reporting. The PEO reports to the Electoral Commission, the PSC, and the Minister and Director-General of the Ministry of Internal Affairs. These arrangements have had a negative impact on long-term capacity-building and institution-strengthening initiatives because they create confusion and conditions that are conducive to conflict, duplication of effort and political interference.⁶⁹³

Reports on elections are not frequently presented to parliament, with the last official report on a national election being issued in respect of the 2002 election. This is publically available. A report on the 2008 election was prepared but has never been made publically available.⁶⁹⁴ It is understood that there have been advance payments made to two consultants tasked with drafting the report but the 2008 election report was never finalised.⁶⁹⁵ A report on the 2012 national election has been prepared⁶⁹⁶ but as of December 2013 it had not been tabled in parliament so was not publically available. Provincial and municipal election reports are being produced and are forwarded to the minister of internal affairs but are not made public.⁶⁹⁷

As discussed in the section on the supreme audit institution, there are some delays in audits. However, the Electoral Office was subject to a special investigation in 2002, with a follow up in 2007.⁶⁹⁸ In 2012 the PEO was suspended due to not following rules relating to government contracts when he failed to seek three quotes for the printing of ballot papers.⁶⁹⁹ He was subsequently reinstated.

Election petitions occur regularly. Following the 2012 national election at least 11 electoral petitions were heard from different constituencies of Vanuatu. Grounds of petitions ranged from alleged bribery, treating, issues with counting and recording votes and irregularities in the electoral roll. Decisions on election petitions were somewhat delayed because of the number of cases that is listed before the Supreme Court, with judgment on the last petition being issued in May 2014, more than a year after the election took place.

Integrity (law)

Score: 25

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE ELECTORAL MANAGEMENT BODY?

There are few laws that specifically relate to integrity of electoral officers.

Vanuatu lacks a formal code of conduct for electoral officials. The general public service law contains integrity mechanisms that apply to members of the electoral administration. Part V of the Public Service Act provides for a code of conduct governing the actions and behaviour of the staff of the public service. Section 34 establishes general rules of conduct and requires public servants to perform their duties with care and diligence, to behave honestly and with integrity and to observe and comply with all applicable laws. Section 34(i) also provides that public servants must disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment and use resources and public money in a lawful and proper manner. Breaches of the code are grounds for termination of employment.

⁶⁹³ Jeannette Bolenga, 2006: 249.

⁶⁹⁴ Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

⁶⁹⁵ Ibid.

⁶⁹⁶ Interview of Howard Van Trease, historian with Sam Railau Port Vila, 26 September 2013.

⁶⁹⁷ Interview of Lawson Samuel, former PEO with Sam Railau, Port Vila, 1 October 2013.

⁶⁹⁸ Office of the Auditor General, 2007: 42.

⁶⁹⁹ 'Principal Electoral Officer Suspended' *Vanuatu Daily Post Online* 14 December 2011.

Section 52 of the Representation of the People Act creates a number of offences relating to the conduct of electoral officers. These offences include allowing false records to be created, refusing to permit someone to vote and failing to count votes.

Integrity (practice)

Score: 0

TO WHAT EXTENT IS THE INTEGRITY OF THE ELECTORAL MANAGEMENT BODY ENSURED IN PRACTICE?

Despite some identification of wrongdoing by electoral officers there is no consistent sanctioning of misbehaviour.

According to the outgoing Acting PEO there have been issues in regards to the reappointment of staff, which has raised some concern as to the integrity of the electoral officer and the PSC. In 2010 there was a suspension of a senior staff member due to financial irregularities, but prior to the audit report being completed the PSC reinstated the staff member. Similarly, despite a PEO report detailing misappropriation of funds by two staff this matter never reached the PSC disciplinary board.⁷⁰⁰

There have never been any prosecutions for electoral offences by electoral officers, despite issues in this area having been identified. The PEO, during the 2012 national election, conducted an internal inquiry into allegations relating to issuance of duplicate cards and recommended that the director general of internal affairs set up an immediate inquiry into the matter. He also recommended that offences be prosecuted.⁷⁰¹ No public follow up in respect of these recommendations has occurred.

Role

Campaign regulation

Score: 0

DOES THE ELECTORAL MANAGEMENT BODY EFFECTIVELY REGULATE CANDIDATE AND POLITICAL PARTY FINANCE?

Currently there is no law to allow for the Electoral Office, Electoral Commission or any other body to regulate candidate and political party finance.

Under Vanuatu's law the Electoral Office and the Electoral Commission do not have any role to play in regulating candidate and political party finance. Nor does anyone else have a specific role to play in this area. Candidates who held leadership for the purposes of the Leadership Code Act prior to announcing their candidature (for instance because they were political advisors to ministers or members of the previous parliament) would have been required to provide annual returns on income and assets disposed of in accordance with that Act, so some disclosures may have been made as part of this process. However, the intention of providing annual returns under the Leadership Code Act is not to regulate candidate finance.

⁷⁰⁰ Interview of Martin Tete, Acting PEO with Sam Railau, Port Vila, September 20, 2013.

⁷⁰¹ Godwin Ligo, 'Natapei should check his facts before lashing out: Kaluat' *Vanuatu Daily Post Online* 10 December 2012.

Election administration

Score: 25

DOES THE ELECTORAL MANAGEMENT BODY ENSURE THE INTEGRITY OF THE ELECTORAL PROCESS?

Issues with the electoral roll, electoral offences and lack of confidence in the integrity of the Electoral Office significantly undermine the electoral process.

The election process has drawn significant criticism in recent years. Whilst the 2012 national election was labelled “the worst ever” by former Prime Minister Edward Natapei, issues are longstanding.⁷⁰²

One of the main issues is lack of integrity in the electoral roll. It is widely acknowledged to be inaccurate, with deceased people not being removed and a number of people being registered more than once. The inflated roll creates an environment that enables fraud. It is alleged that some candidates use the proxy vote system, in which a person can nominate another voter to cast their vote for them on the election day, to enable deceased voters to vote. It also enables people to vote in more than one constituency.⁷⁰³ These problems are so deeply rooted that the PEO at the time of the 2012 national election recommended that ‘the current electoral roll be completely wiped out and that the Government starts a complete new roll in preparations towards the 2016 General Elections’.⁷⁰⁴

As checking of voter identities is not always thoroughly done at polling stations, some people are thought to be able to vote twice. Whilst a simple system of dipping voters thumbs in ink after voting has been initiated this is not always done.⁷⁰⁵

As well as the roll containing people who should not be there, in 2012 a number of people who should have been present on the roll were not listed or had errors in their voting cards. As there is no allowance for provisional voting in Vanuatu’s electoral laws this prevented some legitimate voters from voting.⁷⁰⁶

Issues at polling stations included lack of facilities for disabled people and lack of secrecy of voting. Whilst initial counting was observed, observers were not permitted at recounting.⁷⁰⁷

Election offences are not prosecuted. Whilst rumours of bribery, treating and other fraud abound, they are not well documented. The 2002 Election Observer Group report observed that 8% of people surveyed in Port Vila were directly offered a bribe, with a further 12% knowing someone who had been offered a bribe. Figures were lower on Tanna. Worryingly this report also identified that about 17% of respondents nationally either had been directly threatened with violence in relation to the election or know others that had been threatened with violence.⁷⁰⁸ A survey conducted by Transparency Vanuatu in 2013 indicates that there is considerable public will for stronger enforcement of these laws, both against those who offer bribes and those who receive them.⁷⁰⁹

Independent observers are not consistently appointed to elections. When observers are appointed they tend to be located in Port Vila. Prior to the election of 2012 a request was made to the Electoral Office by Transparency Vanuatu to be part of an international team of observers. Unfortunately, they were unable to confirm whether or not this approval would be forthcoming. Transparency Vanuatu

⁷⁰² Ibid.

⁷⁰³ These issues are detailed in Transparency Vanuatu, 2013; Norm Kelly, 2012; Electoral Commission, 2002; Shirley Randall (ed), 2002; Jeannette Bolenga, 2006.

⁷⁰⁴ Godwin Ligo, 2012.

⁷⁰⁵ Transparency Vanuatu, 2013.

⁷⁰⁶ Transparency Vanuatu, 2013; Norm Kelly, 2012.

⁷⁰⁷ Transparency Vanuatu, 2013.

⁷⁰⁸ Shirley Randall (ed), 2002.

⁷⁰⁹ Transparency Vanuatu, ‘Electoral Candidates and Integrity’ *Vanuatu Daily Post* 13 September 2013.

was advised a month out from the elections that it is the government who must request international observer teams to come and this request had not been made. It was only at the very last minute that Transparency Vanuatu received agreement from the Electoral Commission allowing Transparency Vanuatu to undertake an observer role as domestic observers.⁷¹⁰ A further international observer was also permitted to observe, but as he was only one person the extent of his observations was limited.⁷¹¹

RECOMMENDATIONS

1. The most critical issue is the integrity of the electoral roll and the related issue of correctly identifying voters. As a matter of urgency the government must take measures to ensure that the content of the roll is accurate and that there is a system in place to ensure that people who present themselves to vote can be correctly identified. It is recommended that the electoral roll and voting system be computerised. It is also recommended that, as the current roll is so corrupt, an entirely new roll is constructed, rather than trying to clean up the existing roll.
2. There are concerns about adequacy of training and control of regional registration officers. It is recommended that before a new roll is constructed, new registration officers must be put in place. Processes for the appointment and training of such staff must be reviewed by the PEO in conjunction with the Electoral Commission in order to develop specific recommendations for reform. These recommendations should include measures for ensuring political independence of registration officers, adequate training and adequate oversight.
3. There should be a review of the Representation of the People Act in order to ensure that the law fully supports fair, transparent electoral processes. The first part of this review should involve collecting and assessing the numerous recommendations that have been made in election reports and election observer reports since 2002. Specific issues to consider in respect of voting and the electoral roll include:
 - a. A review of control of electoral cards and proxy voting, which are seen to be major areas of abuse.
 - b. The absence of provisional voting, which prevents legitimate voters with deficiencies in their registration from being able to vote.
 - c. The question of whether voting should be compulsory.
 - d. Whether a set timeframe by which all electoral petitions must be heard and decided upon is needed.
4. The independence of the Electoral Office can be undermined due to the PEO and other electoral officers being public servants. This can both affect appointments and attempts to discipline staff. It is recommended that the Electoral Commission be given the power to directly recruit and discipline staff of the Electoral Office.
5. Currently, in practice, the only consequence for committing an electoral offence is that a successful candidate may face an electoral petition. It is recommended that:
 - a. Coordination between the Electoral Office, the police and the public prosecutor is strengthened in order to ensure that those committing electoral offences (including candidates, electoral officers, voters and others) are prosecuted.
 - b. Consideration be given to banning a candidate from standing for elections for life if he or she is convicted of an electoral offence.
6. In order to ensure ongoing monitoring of elections:
 - a. The PEO and Electoral Commission should be reminded of their legal obligations to produce election reports in a timely manner. As part of a review of the Representation

⁷¹⁰ Transparency Vanuatu, 2013.

⁷¹¹ Norm Kelly, 2012.

of the People Act it should be made clear that these reports are to become public documents.

- b. The government should, in a timely manner, provide for observer groups comprised of international and domestic representatives at all elections, in order to ensure ongoing monitoring of election processes.

VII.7. OMBUDSMAN

SUMMARY

Overall pillar score: 37.5			
Dimension	Indicator	Law	Practice
Capacity 41.7	Resources	---	50
	Independence	50	25
Governance 45.8	Transparency	50	75
	Accountability	50	25
	Integrity	50	25
Role 25	Investigation	25	
	Promoting good practice	25	

The Office of the Ombudsman was established in 1994. The first Ombudsman Act was passed in 1995, but was repealed in 1998. A new Ombudsman Act, with more restrictive powers, came into force in 1999. The most significant restriction was that the power of the ombudsman to apply to the Supreme Court, for an order that recommendations be implemented in the event that the prime minister failed to act on recommendations within a set time frame, was removed. Since that time there have been a number of reviews and calls to revise and expand the power of the Office of the Ombudsman. The main reason for calls for review is the lack of consistent action in response to ombudsman's reports. No changes have been made to the Ombudsman Act or the Leadership Code Act in response to reviews.

It is not just the issue of legal power that restricts the operation of the Office of the Ombudsman. Staffing levels have been declining and there are limited resources to carry out public awareness functions. The number of public complaints received and the number of reports issued have also been declining.

The fourth Ombudsman passed away in 2012, whilst in office and this has been somewhat disruptive. In March 2013 Kalkot Mataskelekele was appointed as the fifth Ombudsman.

STRUCTURE AND ORGANISATION

The Constitution provides for a single ombudsman who has the power to enquire into the conduct of 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.⁷¹² The Constitution also requires the ombudsman to take complaints related to citizens not being able to obtain government services in their choice of official language and to make reports in respect of multilingualism.⁷¹³

More detail as to the functioning of the Office of the Ombudsman and the ombudsman's powers are defined by the Ombudsman Act and the Leadership Code Act.⁷¹⁴

The Office of the Ombudsman is the secretariat in charge of supporting the activities of the ombudsman. Offices are maintained in Port Vila and Luganville. The office is divided into two

⁷¹² Chapter 9, Part II, Constitution of the Republic of Vanuatu.

⁷¹³ Article 64(2), Constitution of the Republic of Vanuatu.

⁷¹⁴ A useful descriptive overview of the legal framework governing the Ombudsman can be found in Michael Frahm, 'Vanuatu Ombudsman', in International Ombudsman Institute (ed) *Australasia and Pacific Ombudsman Institutions* (Heidelberg: Springer, 2013) 283.

divisions – the leadership code division and the maladministration division. Complaints in respect of multilingualism fall under the leadership code division.⁷¹⁵

ASSESSMENT

Capacity

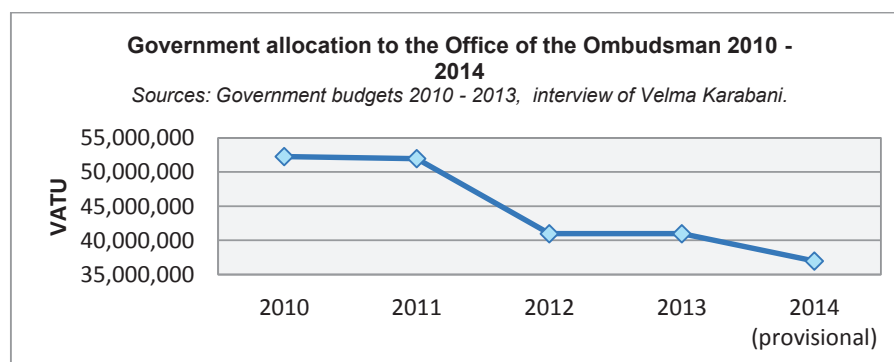
Resources

Score: 25

TO WHAT EXTENT DOES AN OMBUDSMAN OR ITS EQUIVALENT HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS?

Funding levels and staffing levels have been decreasing and this is having a significant negative impact on the operations of the Office of the Ombudsman.

As the chart below indicates, in the past five years government funding of the office has decreased significantly and is continuing to decline. The decrease of approximately VT12 million (US\$120,000) between 2011 and 2012 occurred because allocated money had not been used to fill vacant staff positions. Money was therefore reallocated. The Office of the Ombudsman was anticipating a further VT4 million (US\$40,000) cut in 2014 as they had been told that their budget is capped at VT36,972,000 (US\$370,000) in the 2014 budgeting process.⁷¹⁶ The reason for this cut is the Port Vila Office moved from private premises to government offices in December 2013, which has resulted in a significant rental savings.⁷¹⁷



A number of ombudsman's annual reports have recommended moving the Port Vila Office from private to government premises in order to reduce operational expenses.⁷¹⁸ However, implicit in this recommendation has been the idea that the operations/administration budget should remain at the same level, but that a saving in rental will allow the operations/administration budget to be more effectively utilised for other activities. The 2010 annual report commented that of the 2010 allocation of VT52,260,931 (US\$523,000), VT37,677,922 (US\$377,000) was allocated for staffing and VT14,582,939 (US\$146,000) for administration and operations. Of the operations/administration budget VT5,304,000 (US\$53,000) was spent on rent for offices, leaving just over VT9 million (US\$90,000) for all other expenses and activities.⁷¹⁹ The most significant area affected by the limited

⁷¹⁵ Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013.

⁷¹⁶ Interview of Velma Karabani, Principal Investigator with Anita Jowitt, Port Vila, 10 September 2013.

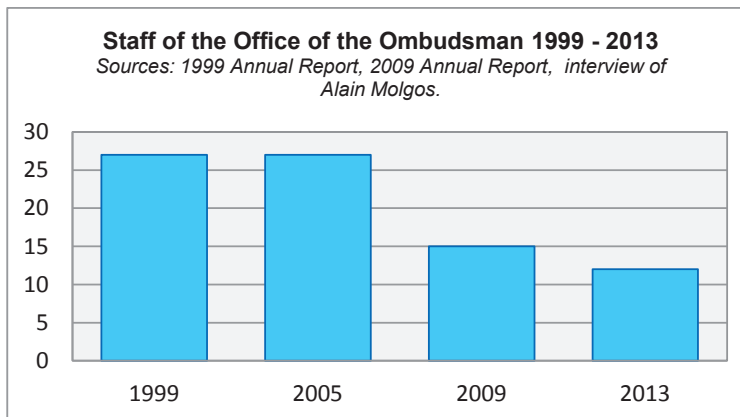
⁷¹⁷ Ibid. Move confirmed by a visit to the Office of the Ombudsman by Anita Jowitt, 27 March 2014.

⁷¹⁸ See for example, Office of the Ombudsman, *Namba tatin (13) Aniul Ripot blong Ombudsman blong Ripablik blong Vanuatu I go long Palemen Januari-Disemba 2010* (Port Vila: Office of the Ombudsman, 2011) 18.

⁷¹⁹ Office of the Ombudsman, *Namba fotin (14) Aniul Ripot blong Ombudsman blong Ripablik blong Vanuatu i go long Palemen Januari - Disemba 2011* (Port Vila: Office of the Ombudsman, 2012) 18.

operations/administration budget is education. There is no budget allocated specifically for education or public awareness activities.⁷²⁰

Staffing of the Office of the Ombudsman has steadily declined over the past 15 years. Currently there are 14 staff.⁷²¹ Whilst some previous ombudsmen have failed to initiate recruitment procedures to utilise their staffing budgets,⁷²² budgetary issues have recently hindered recruiting. Between December 2011 and June 2012 the office had three staff resign. One further staff member (the then Ombudsman) passed away. These staff were entitled to large severance allowances and/or other benefits. There is no provision for planned saving for the payment of allowances on termination within the government budget system.⁷²³ As a result much of the budget for staff in 2012 was spent on termination allowances, rather than recruitment.⁷²⁴



There is some external perception that lack of resources is being used, to a degree, as an excuse for lack of activity.⁷²⁵ Declining numbers of complaints (discussed further below), which in turn leads to fewer investigation files, means that although the total number of staff has decreased the ratio of staff to files has increased since 1999, from 16 lawyers/investigators to 1092 investigations, or 1:68 in 1999, to 6 lawyers/investigators to 217 files, or 1:36 in 2011.⁷²⁶ These figures exclude the ombudsman. The first Ombudsman reported that in the late 1990s she had a budget of about VT30 million (US\$300,000) and still managed to receive the highest level of complaints recorded and to produce the most public reports.⁷²⁷ In 1999 the average time to make an initial response to complaints was one month and 86% of cases were closed within 18 months.⁷²⁸ The 2011 annual report lists the disputes resolved that year by mediation. The average length of time taken was about four years and three months.⁷²⁹ This is despite the fact that it was expected that giving the ombudsman power to mediate would result in quicker resolution of disputes.⁷³⁰

⁷²⁰ Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013; interview of Kalkot Mataskelekele, Ombudsman with Anita Jowitt, Port Vila, 20 August 2013.

⁷²¹ Interview Velma Karabani, Principal Investigator with Kibeon H Nimbwen, Port Vila, 2 May 2014.

⁷²² Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013.

⁷²³ Mark Bebe, comments made at National Integrity System Advisory Group Meeting, Port Vila, 19 September 2013.

⁷²⁴ Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013.

⁷²⁵ Comments of advisory group members made at National Integrity System Advisory Group Meeting, Port Vila, 19 September 2013.

⁷²⁶ Office of the Ombudsman, *Namba twelef (12) Aniul Ripot Blong Ombudsman blong Ripablik blong Vanuatu i go long Palemen Januari – Disemba 2009* (Port Vila: Office of the Ombudsman, 2010).

⁷²⁷ Email from Chairperson of Transparency International Vanuatu, Marie-Noelle Paterson to Anita Jowitt, 25 September 2013.

⁷²⁸ Office of the Ombudsman, *Fifth Annual Report September 1998 – August 1999* (Port Vila: Office of the Ombudsman, 1999) 12.

⁷²⁹ Information is contained in Office of the Ombudsman, 2012: 16-23. The average time has been calculated by the author.

⁷³⁰ Office of the Ombudsman, 1999: 12.

Independence (law)

Score: 50

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT BY LAW?

There are legal regulations governing the appointment and removal of the ombudsman which protect independence; however there are some restrictions on what the ombudsman can investigate and the manner in which he or she can report.

Article 65 of the Constitution guarantees the ombudsman's independence. It provides that, 'The Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions.'

The ombudsman is appointed for a period of five years by the president in consultation with the prime minister, the speaker of parliament, leaders of other political parties represented in parliament, and the heads of the Malvatumauri Council of Chiefs, the local government councils, the Public Service Commission and the Judicial Service Commission.⁷³¹ The requirement for the president to widely consult is intended to ensure that no individual political party can unduly influence the appointment of the ombudsman; although there has been one recommendation, in 2001, for the ombudsman to be appointed by a committee, rather than an individual.⁷³² The Ombudsman Act provides further grounds for appointment, relating to knowledge of ni-Vanuatu culture, integrity, academic qualifications, political independence and high standing in the community.⁷³³ There is no limit on reappointment of ombudsmen.

Under the Constitution the ombudsman can only be removed if he or she becomes disqualified to hold the position.⁷³⁴ Grounds for disqualification in the Constitution are if he or she 'is a member of Parliament, the National Council of Chiefs or a Local Government Council, if he holds any other public office, or if he exercises a position of responsibility within a political party.'⁷³⁵ These grounds aim to ensure the ombudsman's independence. Further grounds for termination are included in the Ombudsman Act. These include bankruptcy, incapacity, conviction of a criminal charge other than a traffic offence, a finding of gross misconduct or a conviction under the Leadership Code Act.⁷³⁶ Incapacity must be supported by two medical certificates, one from a doctor of the president's nomination and one from a doctor of the ombudsman's nomination.⁷³⁷ Findings of gross misconduct must be made by at least three members of a tribunal made up of a representative from the Supreme Court, the attorney general, and two legal representatives, with one nominated by the prime minister and one by the leader of the opposition. The ombudsman must be heard and is entitled to representation in front of such a tribunal.⁷³⁸ The president holds the power to dismiss, but can only exercise it after consultation with the same position holders consulted during appointments.⁷³⁹ These safeguards on termination help to guarantee that the ombudsman can carry out his or her duties without fear of losing his or her job.⁷⁴⁰

His or her salary is determined by the president, in consultation with the PSC, but is statutorily guaranteed to be no less than that of a Supreme Court judge.⁷⁴¹

⁷³¹ Article 61(1), Constitution of the Republic of Vanuatu and section 3(2), Ombudsman Act [Cap 252].

⁷³² Edward R Hill, *A Structural Analysis of the Ombudsman of Vanuatu* (Port Vila: University of the South Pacific, 2004) 24-25.

⁷³³ Section 3(3), Ombudsman Act [Cap 252].

⁷³⁴ Article 61(3), Constitution of the Republic of Vanuatu.

⁷³⁵ Article 61(2), Constitution of the Republic of Vanuatu.

⁷³⁶ Section 8(1), Ombudsman Act [Cap 252].

⁷³⁷ Section 8(3), Ombudsman Act [Cap 252].

⁷³⁸ Sections 8(4) & 8(5), Ombudsman Act [Cap 252].

⁷³⁹ Section 8(1), Ombudsman Act [Cap 252].

⁷⁴⁰ Edward R Hill, 2004: 25.

⁷⁴¹ Section 4(2), Ombudsman Act [Cap 252].

Other aspects of independence that are legally protected are that the ombudsman is entitled to decide how to conduct proceedings⁷⁴² and that the ombudsman and his or her staff are protected from legal liability in respect of any actions carried out in good faith whilst undertaking their jobs.⁷⁴³

Even though the legal framework provides for a number of mechanisms aimed to ensure the ombudsman's independence, there are some shortcomings that might threaten independence and impartiality.

There are legal limits on how an ombudsman can write his or her reports. In particular he or she must not 'produce reports containing inflammatory language not in keeping with the professionalism expected of the office.'⁷⁴⁴ This limit was introduced by the 1998 Act.

There are also limits on what the ombudsman can investigate. The law prohibits the ombudsman from enquiring into 'a matter that has previously been the subject of an enquiry by the Ombudsman; the reasons a recommendation of the Ombudsman has not been followed; and the action taken by a leader or person in charge of a government agency to give effect to a recommendation of the Ombudsman.'⁷⁴⁵ These limits are considerably more restrictive than what was provided in the original Ombudsman Act 1995. Under that Act in response to a report, the prime minister was required to provide information about the steps that were proposed in relation to the ombudsman's recommendations. If there was no response the ombudsman was empowered to apply to the Supreme Court for an order that the recommendations be implemented.⁷⁴⁶

Staff of the Office of the Ombudsman are appointed by the PSC in consultation with the ombudsman, but hold office under terms and conditions decided solely by the PSC.⁷⁴⁷ Prior to 1998 the ombudsman had the direct power to recruit.

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT IN PRACTICE?

Since law changes in 1998, which were political interventions to limit the power of the ombudsman, there has been no indication of overt political interference. However, decreasing budgets may be perceived as covert undermining of the ombudsman. Delays in recruiting staff are largely outside of the ombudsman's control and have significantly affected the performance of the Office of the Ombudsman.

The changes introduced by the 1998 Act have the potential to limit the independence of the ombudsman. Indeed the perceived intention of the 1998 Act was to fetter the ombudsman. In brief, these circumstances leading to the 1998 Act were that political leaders found the first Ombudsman too confrontational and threatening.⁷⁴⁸ The requirement that reports not include inflammatory language can be perceived as an attempt to limit confrontational reports.⁷⁴⁹ Removal of the power of the ombudsman to directly recruit:

...creates the potential for employees of the Ombudsman to be intimidated where their work is critical of or threatens someone who has control over the employment of public servants.

⁷⁴² Section 20, Ombudsman Act [Cap 252].

⁷⁴³ Section 41, Ombudsman Act [Cap 252].

⁷⁴⁴ Section 6(1)(c), Ombudsman Act [Cap 252].

⁷⁴⁵ Section 19, Ombudsman Act [Cap 252].

⁷⁴⁶ Section 30, Ombudsman Act [Cap 252].

⁷⁴⁷ Section 44, Ombudsman Act [Cap 252].

⁷⁴⁸ For a discussion of the first Ombudsman and political reaction to her see Edward R Hill, 'The Vanuatu Ombudsman' in Anita Jowitt and Tess Newton Cain (eds), *Passage of Change: Law Society and Governance in the Pacific* (Canberra: Pandanus Press, 2003) 71.

⁷⁴⁹ Ibid, 78-79.

It was strongly recommended by the advisor from Ombudsman Commission of Papua New Guinea that the hiring of Ombudsman's employees be separate from the Public Service in order to avoid this very possibility.⁷⁵⁰

Removal of the power to enforce recommendations via court action means that there is no mechanism to ensure recommendations are acted upon.⁷⁵¹

Subsequent to the changes in the law in 1998 there have been no examples of overt political interference. The Office of the Ombudsman is currently not subject to direct threats from politicians.⁷⁵² The law restricting inflammatory language in reports has not created problems as reports are based on facts supported by evidence and law.⁷⁵³

Lack of action on recommendations contained in ombudsman's reports is something of a problem. The Office of the Ombudsman has received complaints about a lack of response to reports.⁷⁵⁴ As such the law restricting the ombudsman from enquiring as to why recommendations have not been followed or what actions have been taken in response to recommendations does create a practical restriction on its independence to investigate such complaints.

Recruitment via the PSC can be a long, slow process.⁷⁵⁵ Delays in recruitment have affected the functioning of the Office of the Ombudsman. As an example of delays experienced, six positions (including legal officers, corporate service officers, a cleaner and a secretary) were advertised in August 2012. So far four of these positions have been filled, in December 2012, March 2013 and August 2013 (2 positions). Two positions were offered to candidates but they had found positions elsewhere and declined the offers. One of the positions was filled internally, so out of the August 2012 recruitment round for six staff the office ended up having three unfilled positions.⁷⁵⁶ Whilst there is no suggestion that delays have been a deliberate attempt to interfere with the office, delays in recruitment have had a significant impact on the office. Not recruiting staff in a timely manner also weakens corporate memory. New staff often come into positions that have been left unfilled for quite some time and suffer from lack of handover.⁷⁵⁷ Under the first Ombudsman Act the ombudsman did have the power to recruit and previous ombudsmen have recommended that this power be restored.⁷⁵⁸ Previous reviews have also recommended that the ombudsman's power to directly recruit staff be restored due to the potential for interference with the independent functioning of the ombudsman.⁷⁵⁹ There is also support for this proposal within the PSC.⁷⁶⁰

⁷⁵⁰ Ibid, 78.

⁷⁵¹ Ibid, 79.

⁷⁵² Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013.

⁷⁵³ Ibid.

⁷⁵⁴ Transparency Vanuatu's Advocacy and Legal Advice Centre has received several complaints from clients about lack of action on Ombudsman's reports and has forwarded these complaints to the Office of the Ombudsman, although no action has been able to eventuate.

⁷⁵⁵ Office of the Ombudsman, *Namba twelef (12) Aniul Ripot blong Ombudsman blong Ripablik blong Vanuatu i go long Palemen Januari - Disemba 2009* (Port Vila: Office of the Ombudsman, 2010), 13.

⁷⁵⁶ Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013.

⁷⁵⁷ Ibid.

⁷⁵⁸ See, for example, Office of the Ombudsman, Office of the Ombudsman, 2010: 13.

⁷⁵⁹ The McDowell Committee, in 2002 and the Review Committee, in 2004, both strongly recommended that the Ombudsman should have direct power to recruit (Development Committee of Officials (DCO) Paper Draft paper submitted by Ombudsman on proposals to change Ombudsman Act and Leadership Code Act (Port Vila, undated) Attachment 2: Changes to the Ombudsman Act, 5.

⁷⁶⁰ Interview of Secretary of Public Service Commission Laurent Rep with Anita Jowitt, Port Vila, 30 August 2013.

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE THE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN?

Reports on enquiries generally must be made public. However, no specific information must be disclosed on complaints settled by mediation, and closed but unresolved disputes. Whilst annual reports must be issued, there is no clear deadline by which they must be issued. Nor is there legal regulation of public involvement in the activities of the Office of the Ombudsman.

The Constitution requires that enquiries be carried out in private.⁷⁶¹ The only documents on the ombudsman's activities that are required to be made publicly available are reports on enquiries, although all or part of these can remain confidential on the grounds of national security or public interest.⁷⁶² In order to be able to investigate sensitive topics the ombudsman needs to respect confidentiality so these limits are not an illegitimate hindrance on transparency. The grounds for keeping information confidential are further defined in s 26(2) of the Ombudsman Act, which also helps to ensure that information is not kept confidential without legal justification.

The ombudsman has the power to attempt to resolve disputes by mediation.⁷⁶³ The law is not clear on whether issues resolved by mediation have to be reported on.

Annual reports and other special reports are given to the prime minister for presentation in parliament,⁷⁶⁴ but there is no explicit requirement that these be made publically available. The Act does not provide a specific deadline by which annual reports must be presented.

The ombudsman can establish his or her own proceedings in respect of: the methods by which complaints are acted upon; the scope and manner of enquiries to be made; and the form, frequency and distribution of his or her conclusions and recommendations.⁷⁶⁵ There is no requirement that the ombudsman publish general information on standard procedures developed by the ombudsman in respect of any of these things. Nor does the law establish a public council or regulate requirements for public consultation.

Transparency (practice)

Score: 75

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN IN PRACTICE?

Annual reports containing some data are available on request, but further enhancements as to the data contained in annual reports could be made. Publishing annual reports and other information about the operation of the Office of the Ombudsman would improve public access to information.

⁷⁶¹ Article 62(5), Constitution of the Republic of Vanuatu.

⁷⁶² Article 63(3), Constitution of the Republic of Vanuatu.

⁷⁶³ Section 13, Ombudsman Act [Cap 252].

⁷⁶⁴ Sections 35 and 36, Ombudsman Act [Cap 252].

⁷⁶⁵ Section 20, Ombudsman Act [Cap 252].

The Office of the Ombudsman currently has no website, although this is in the business plan for 2014.⁷⁶⁶ Public information is available on request from the office. Public reports and annual reports can be obtained, for a nominal fee (VT100 (US\$1)) to help cover the costs of printing. Public reports are also available for download from PacLII, a freely accessible legal information site. However, this site is primarily intended for use by legal professionals, so may be difficult for the general public to access.

No annual reports were issued between September 2001 and August 2004.⁷⁶⁷ Since then annual reports have been issued, sometimes with a small delay. For instance, the annual report for the period January to December 2011 was issued in June 2012.⁷⁶⁸ The annual report January to December 2012 has not been issued, as of September 2013. Annual reports are currently released only in Bislama.

Annual reports provide information on the number of complaints received and the types of complaints received. They also contain data on the number of complaints closed, resolved and kept open. Some reports contain information on some of the complaints that were resolved, but there is no information on the grounds for closing complaints. Data is not always consistently presented making it difficult to identify how many active cases the Office of the Ombudsman has.

One issue that the Office of the Ombudsman faces in respect of consistent data collection and presentation is that it has an old case tracking or file management system. It has discussed the need to upgrade the system with the Pacific Ombudsman Alliance (POA) and hopes to be able to implement changes in this area in 2014.⁷⁶⁹ Whether this happens in 2014 is dependent upon the Ministry of Justice, which is implementing a file management system for all offices related to justice.⁷⁷⁰

In recent years few public reports on specific investigations have been issued. Public reports on matters that are closed without being resolved or resolved via mediation are not made, although a brief summary of the nature of resolved issues may be available in the annual report.

General information on processes for making complaints and what happens after complaints are made is not readily available. The University of the South Pacific Community Legal Centre produced a brochure several years ago on how to make a complaint to the ombudsman, but this has not been reprinted recently and is not widely distributed.

The constitutional requirement that enquiries be conducted in private has been interpreted by the Office of the Ombudsman as meaning that third parties (such as lawyers or NGOs) are not permitted to assist individuals to make complaints.⁷⁷¹ This also means that third parties are unable to assist individuals to follow up with the Office of the Ombudsman to find out about progress of their complaints.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE OMBUDSMAN HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

The law does not require reports to be debated in parliament, which weakens the legal accountability framework.

⁷⁶⁶ Interview of Velma Karabani, Principal Investigator with Anita Jowitt, Port Vila, 10 September 2013.

⁷⁶⁷ Office of the Ombudsman, *Namba Naen(9) Aniuol Ripot blong Ombudsman blong Ripablik blong Vanuatu i go long Palem Siptemba 2004 – Okis 2005* (Port Vila: Office of the Ombudsman, undated).

⁷⁶⁸ Office of the Ombudsman, 2012: 24.

⁷⁶⁹ Interview of Velma Karabani, Principal Investigator with Anita Jowitt, Port Vila, 10 September 2013.

⁷⁷⁰ Interview Velma Karabani, Principal Investigator with Kibeon H Nimbwen, Port Vila, 2 May 2014.

⁷⁷¹ Correspondence between Office of the Ombudsman and Transparency Vanuatu Advocacy and Legal Advice Centre, August 2009.

The ombudsman is accountable to the prime minister via annual reports and special reports. The prime minister in turn is required to present these reports to parliament.⁷⁷² There are no specific requirements as to the content of these reports. It is left to parliament's discretion to decide on whether or not to hold debates on the reports presented by the ombudsman.

If the ombudsman is of the opinion that administrative injustice has occurred due to the content of national legislation, he or she must present a report to parliament and the attorney general.⁷⁷³ If apparent injustice has occurred due to the content of local level legislation the report is presented to the head of the local authority and the attorney general.⁷⁷⁴ There is no requirement that any action result from such reports.

The ombudsman is also required to account to the Office of the Auditor General(OAG) in respect of expenditure.⁷⁷⁵

Accountability (practice)

Score: 25

TO WHAT EXTENT DOES THE OMBUDSMAN HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

In practice parliament does not regularly debate reports of the ombudsman. However, there is accountability for expenditure via the Office of the Auditor General.

Whilst reports are tabled in parliament they are not actively debated so the parliamentary accountability mechanism is ineffective. Parliamentary minutes from the past five years do not contain records of any debates on ombudsman's annual reports.

The Office of the Ombudsman is accountable to the OAG for expenditure. A compliance audit completed in 2006 found that the Office of the Ombudsman had overpaid allowances, overspent its budget and had not maintained a fixed asset register. The auditor general's annual report observed that actions had been taken to recover overpaid allowances and establish a fixed assets register.⁷⁷⁶ The review of the auditor general's report by the Public Accounts Committee in 2011 confirmed that an assets register had been established and that overpaid allowances had been recovered.⁷⁷⁷ A further compliance audit of the years 2006 and 2007 was completed in 2010. This audit found significant underspending of the budget.⁷⁷⁸ As discussed above in the section on resources, underspending has resulted in the staffing budget for the office being reduced. The audit report also found that one staff member had been overpaid salary, although there is no comment on whether action had been taken to recover this overpayment.⁷⁷⁹

⁷⁷² Section 35(1), Ombudsman Act [Cap 252].

⁷⁷³ Section 35(2), Ombudsman Act [Cap 252].

⁷⁷⁴ Section 35(2)(a), Ombudsman Act [Cap 252].

⁷⁷⁵ See the section on the Office of the Auditor General for its powers in respect of expenditure of public money.

⁷⁷⁶ Office of the Auditor General, *Auditor General's Report to Parliament October 2007* (Port Vila: Office of the Auditor General, 2007), 46.

⁷⁷⁷ Public Accounts Committee, 2011: 16-17.

⁷⁷⁸ Office of the Auditor General, *Auditor General's Annual Report to Parliament 2005 - 2009* (Port Vila: Office of the Auditor General, 2012), 34.

⁷⁷⁹ Ibid.

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF THE OMBUDSMAN?

Between general integrity laws and specific laws relating to the appointment of the ombudsman, integrity is assured, although there is no requirement that public declarations of assets be made, nor gift registers be kept.

The Ombudsman Act lists requirements for appointment. These include political independence and integrity.⁷⁸⁰ The Ombudsman Act also provides special conditions for employment which include a prohibition on receiving any interest in any state property, or soliciting, accepting or receiving any other benefit in addition to his or her terms and conditions of employment.⁷⁸¹ In addition to specific provisions in the Ombudsman Act the ombudsman is defined as a leader under the provisions of the Leadership Code Act.⁷⁸² As discussed in the section of the legislature, this Act regulates a wide range of behaviours, including conflicts of interest, receiving gifts and misuse of office. Leaders are also required to provide annual returns of assets and liabilities to the clerk of parliament, although these returns are not made public. Breaches of this Act are criminal offences.

Whilst the ombudsman usually investigates breaches of the Leadership Code Act, in the event that there is an allegation of a breach by the ombudsman the attorney general is empowered to investigate the breach.⁷⁸³

Employees within the Office of the Ombudsman are public servants and are therefore subject to the public service code of conduct under the Public Service Act. As discussed further in the section on the public service this code contains broad rules relating to honesty and integrity. Breaches of the code are grounds for termination of employment.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF THE OMBUDSMAN ENSURED IN PRACTICE?

There are no recent examples of the ombudsman being subject to investigations for lack of integrity, but it is difficult to determine whether this is due to the presence of integrity, or systemic failures in applying integrity mechanisms.

Appointments processes are adhered to. The position of ombudsman has never been subject to investigations for breaches of the Leadership Code by the attorney general. There is no requirement that asset declarations under the Leadership Code Act be published and in practice the ombudsman has not voluntarily published asset declarations. As discussed further below, asset declarations are only verified if there are reasonable grounds to believe that there has been a breach of the Leadership Code Act. As such there has been no routine verification of the ombudsman's asset declarations. There have been no recent instances of staff of the Office of the Ombudsman being subject to disciplinary action by the PSC.⁷⁸⁴

⁷⁸⁰ Section 3(3), Ombudsman Act [Cap 252].

⁷⁸¹ Section 6, Ombudsman Act [Cap 252].

⁷⁸² Section 5(o), Leadership Code Act [Cap 240].

⁷⁸³ Section 34(6), Leadership Code Act [Cap 240].

⁷⁸⁴ Interview of Laurent Rep, Secretary of Public Service Commission with Anita Jowitt, Port Vila, 30 August 2013.

The Office of the Ombudsman has internal manuals for both investigators and administrative staff.⁷⁸⁵ These are based on good practice principles and are intended to help to ensure day to day integrity.

Role

Investigation (Law and Practice)

Score: 25

TO WHAT EXTENT IS THE OMBUDSMAN EFFECTIVE IN DEALING WITH COMPLAINTS FROM THE PUBLIC?

A low public profile in recent years has contributed to declining numbers of complaints. Lack of follow up on recommendations by other agencies also significantly hinders the effectiveness of the ombudsman.

Long delays in completing investigations, combined with failures on behalf of other state institutions to act on the recommendations of the ombudsman, undermine the effectiveness of the office in dealing with complaints. Further, the ombudsman's lack of legal powers in respect of inspection of asset declarations made under the Leadership Code Act undermines the effectiveness of the Leadership Code Act as an integrity mechanism. There has also been a significant decrease in public complaints being made to the Office of the Ombudsman.

Complaints from the public can be made by telephone, writing a letter or visiting the office. Complaints also sometimes arise after the office makes public awareness visits to communities.⁷⁸⁶ In 2010 and 2011 the most common method of making a complaint was by visiting the office, followed by writing a letter.⁷⁸⁷ As the ombudsman only has offices in the two urban centres and does not regularly make visits outside of these centres it is possible that complaints from other areas are not being heard. Certainly the data in 2010 and 2011 indicate that the vast majority of complaints arise from Shefa and Sanma provinces, where the two urban centres are located.⁷⁸⁸ However, as the majority of government services are centred in the two urban areas it is also possible that there is simply less perceived corruption in rural areas, due in part to fewer government officials and services being located there.

As discussed above in the section on transparency, current practice prevents NGOs or other actors from assisting complainants to make complaints in respect of maladministration. However, as the ombudsman must investigate all complaints in respect of breaches of the Leadership Code Act⁷⁸⁹ NGOs can assist in making complaints in this area.

As the table below indicates, the number of complaints received by the Office of the Ombudsman has dropped significantly since the first Ombudsman's term expired in 1999.

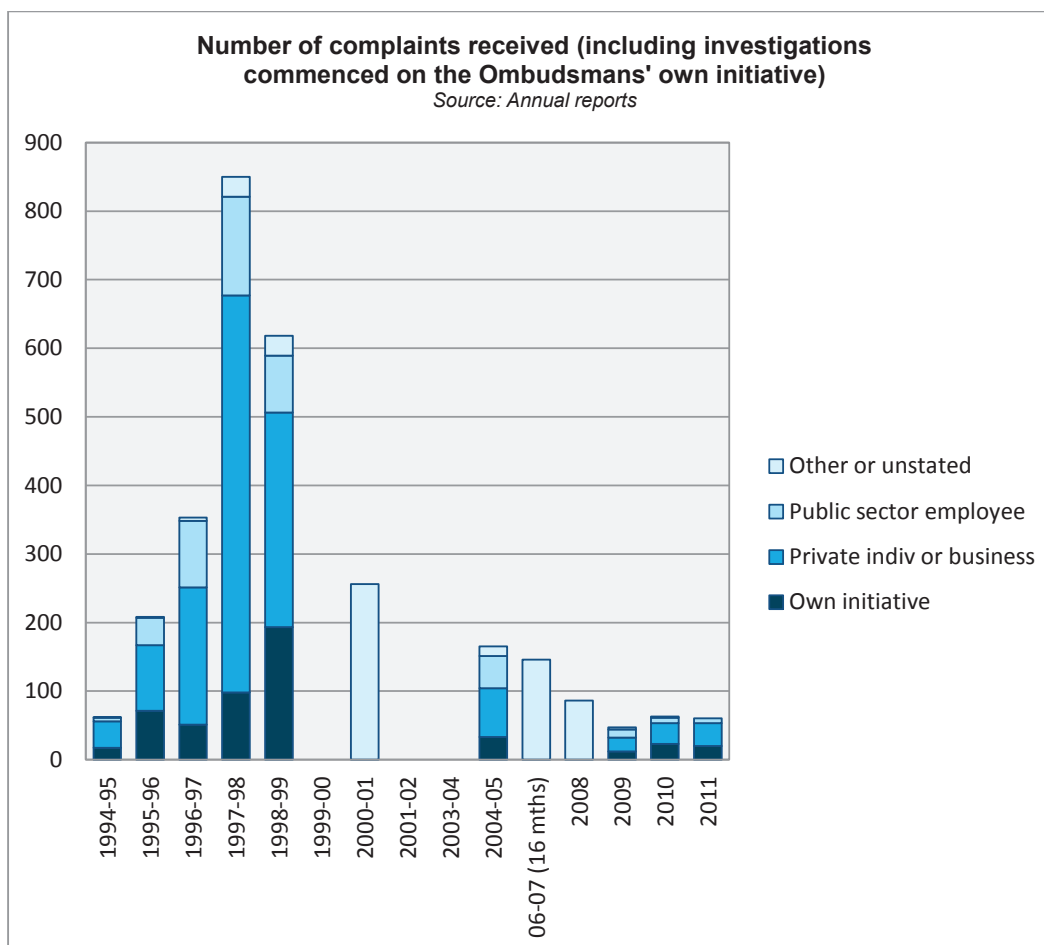
⁷⁸⁵ Interview of Velma Karabani, Principal Investigator with Anita Jowitt, Port Vila, 10 September 2013.

⁷⁸⁶ Office of the Ombudsman, 2012: 4.

⁷⁸⁷ Ibid.

⁷⁸⁸ Ibid, 15; Office of the Ombudsman, 2011: 17.

⁷⁸⁹ Section 34(1)(a), Leadership Code Act [Cap 240].



Part of the reason for this may be lack of public awareness on how to make a complaint. Whilst the procedure is not complicated, a small street survey conducted by the National Integrity System research team in Port Vila in August 2013 with 50 citizens (31 men and 19 women) indicated low levels of public awareness about the work of the ombudsman and how to make a complaint.⁷⁹⁰ Whilst this data is based on a small sample and should be treated with the appropriate caution, it indicates that there is a significant gap in public awareness of this basic information.

Low levels of complaints may also, in part, stem from a perception that there is no point in laying a complaint because the ombudsman cannot do anything.⁷⁹¹ Because of the way that the data is presented in annual reports it is not possible to clearly identify how many complaints received in a year have been investigated. In 2011 of the 40 complaints received from external sources three complaints were not investigated,⁷⁹² although it is not clear from the annual report whether they were not investigated as being outside of the ombudsman's jurisdiction, or for other reasons. Annual reports from the first five years of the operation of the office, which did record reasons for not investigating cases, indicated that lack of jurisdiction and the availability of other remedies were the main reasons for declining to investigate.⁷⁹³

In 2011 the number of active investigation files was 217.⁷⁹⁴ This includes complaints received in years prior to 2011. In 2011 69 complaints were closed. Of these, three were the subject of public

⁷⁹⁰ Transparency Vanuatu Press Release, 23 August 2013.

⁷⁹¹ See, for example, Letter to the editor, 'Closem down office blong Ombudsman mo Auditor General' *Vanuatu Daily Post Online* 23 January 2011.

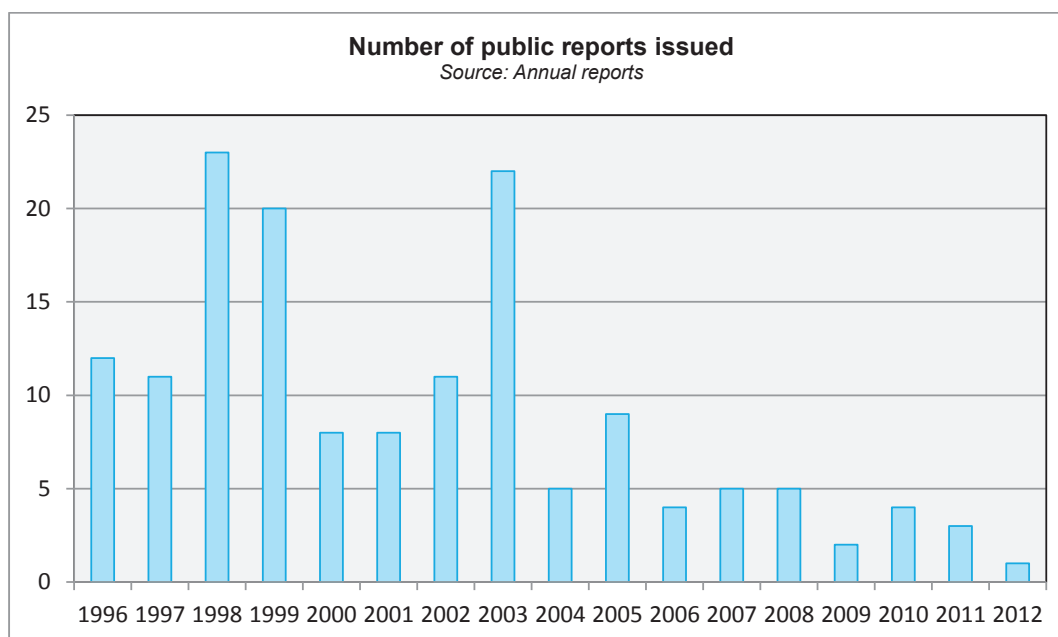
⁷⁹² Office of the Ombudsman, 2012: 14.

⁷⁹³ Office of the Ombudsman, 1999: 22.

⁷⁹⁴ Office of the Ombudsman, 2012: 6.

reports and 18 complaints were resolved.⁷⁹⁵ The annual report contains a table briefly detailing 14 complaints that were resolved.⁷⁹⁶ It can be assumed that the other four were legitimately kept confidential. The average length of time taken to resolve these complaints was about four years and three months.⁷⁹⁷ There is no further breakdown of reasons for why the other 48 complaints were closed.

In the early years of operation of the Office of the Ombudsman, a high public profile was maintained through controversy generated by the issuing of many ombudsmen's reports.⁷⁹⁸ As the table below indicates, the number of public reports issued has declined. This has had some impact on the public profile of the office.



It should be remembered that the lack of reports does not mean that the Office of the Ombudsman is not doing its job.⁷⁹⁹ Part of its job is to resolve complaints, and matters resolved through mediation do not result in public reports being issued. Indeed, given that a significant problem is the lack of follow up on public reports by government agencies, it could be considered strategic to put limited resources into complaints that can be resolved via mediation.

The ombudsman is required to present public reports to the prime minister, the head of the agency concerned and the complainant.⁸⁰⁰ The prime minister or the head of the agency concerned must, within a reasonable time, notify the ombudsman in writing of any actions to be taken in respect of recommendations. The prime minister and/or the head of the agency concerned can also issue a written notice that no action is to be taken. No reasons need to be given for deciding not to act.⁸⁰¹

Where allegations of criminal wrongdoing are made the report is also presented to the commissioner of police and the public prosecutor.⁸⁰² If the report identifies there has been a breach of the Leadership Code, the public prosecutor must decide within three months whether there is sufficient

⁷⁹⁵ Office of the Ombudsman, 2012: 14.

⁷⁹⁶ Office of the Ombudsman, 2012: 16-23.

⁷⁹⁷ Based on the author's own calculations.

⁷⁹⁸ See Edward R Hill, 'The Vanuatu Ombudsman' in Anita Jowitt and Tess Newton Cain (eds), *Passage of Change: Law Society and Governance in the Pacific* (Canberra: Pandanus Press, 2003) 71.

⁷⁹⁹ Interview of Velma Karabani, Principal Investigator with Anita Jowitt, Port Vila, 10 September 2013.

⁸⁰⁰ Section 29(2), Ombudsman Act [Cap 252].

⁸⁰¹ Section 32, Ombudsman Act [Cap 252].

⁸⁰² Section 31(1)(b), Ombudsman Act [Cap 252].

evidence to prosecute.⁸⁰³ If the public prosecutor decides not to prosecute he or she must publish a notice in the Gazette stating the reasons for not prosecuting.⁸⁰⁴ The only reasons for not prosecuting are lack of evidence or that a prosecution would be frivolous or vexatious.⁸⁰⁵ Where breaches of the Public Service Act have been identified the report is also presented to the PSC.⁸⁰⁶

In 2011 the annual report observed that it was the first time that a recommendation to prosecute leaders for breaches of the Leadership Code Act has been acted on by the public prosecutor.⁸⁰⁷ No case eventuated as there was some concern that the person had already been prosecuted for the same action under the Penal Code, so bringing a subsequent action under the Leadership Code Act may have been perceived by the court to be an abuse of process.⁸⁰⁸ There have still never been prosecutions under the Leadership Code Act. Nor have there been notices published in the Gazette explaining reasons for not prosecuting.

An interview with the Public Prosecutor indicated that part of the reason that criminal prosecutions, either under the Penal Code or the Leadership Code Act do not eventuate is that there needs to be sufficient evidence to prove matters beyond reasonable doubt.⁸⁰⁹ The Ombudsman Act provides that no statements given during the course of an ombudsman's investigation can be used in a court of law.⁸¹⁰ Whilst informants may be willing to talk to the ombudsman under conditions of confidentiality, when files have been referred by the public prosecutor to the police for further investigation, police have at times experienced difficulties in being able to gather evidence.⁸¹¹

The issue of lack of action on ombudsmen's reports is not new and was addressed in three external review reports of the Office of the Ombudsman issued between 2001 and 2004. Since 2009 four ombudsman forums have been held to identify strategies to respond to the issue. These strategies included improving coordination between the Vanuatu Police Force, the Office of the Public Prosecutor and the Office of the Ombudsman and amending the Leadership Code Act to clarify offences and processes. A proposal to introduce a new body – a Leadership Code Tribunal – to deal with less serious breaches and with the power to award disciplinary penalties has also been raised. This proposal has received support within ombudsman's forums.⁸¹² One advantage it has over the current criminal prosecution approach is that the standard of proof could be lower.⁸¹³ However it is not the only option. The alternative of expanding the power of the ombudsman in a similar manner to that found in Papua New Guinea under the Organic Law on the Ombudsman Commission 1998 was advocated by one interviewee as being a better approach. Other interviewees also commented on the need to explore further options.

In 2011, the annual report of the Office of the Ombudsman noted that no action had occurred on one of the public reports issued that year.⁸¹⁴ However, the PSC had in fact taken action in respect of a report detailing improper suspension of the Director of the Lands Department,⁸¹⁵ so sometimes lack of communication about responses to reports rather than lack of response may be an issue. However, the other 2011 report, recommending that the Labour (Work Permits) act be revised, has not resulted in any law change.

In addition to investigation complaints from the public the ombudsman investigates breaches of the Leadership Code Act and can commence investigations if he or she has formed a view on

⁸⁰³ Section 37(1), Leadership Code Act [Cap 240].

⁸⁰⁴ Section 37(3)(b), Leadership Code Act [Cap 240].

⁸⁰⁵ Section 37(2), Leadership Code Act [Cap 240].

⁸⁰⁶ Section 31(1)(a), Ombudsman Act [Cap 252].

⁸⁰⁷ Office of the Ombudsman, 2012: 7.

⁸⁰⁸ Interview of Kayleen Tavoia, Public Prosecutor with Anita Jowitt, Port Vila, 29 August 2013.

⁸⁰⁹ Ibid.

⁸¹⁰ Section 22(7), Ombudsman Act [Cap 252].

⁸¹¹ Interview of Kayleen Tavoia, Public Prosecutor with Anita Jowitt, Port Vila, 29 August 2013.

⁸¹² Development Committee of Officials (DCO) Paper Draft paper submitted by Ombudsman on proposals to change Ombudsman Act and Leadership Code Act (Port Vila, undated) Attachment 1, 5 - 12.

⁸¹³ Ibid.

⁸¹⁴ Office of the Ombudsman, 2012: 7.

⁸¹⁵ Interview of Laurent Rep, Secretary of Public Service Commission with Anita Jowitt, Port Vila, 30 August 2013.

reasonable grounds that a leader may have breached the Code.⁸¹⁶ One of the key forms of accountability under the Leadership Code Act is that leaders must file annual returns.⁸¹⁷ However, annual returns are filed with the clerk of parliament. The clerk is under a legal obligation to keep returns confidential unless an investigation has been launched.⁸¹⁸ This means that the Office of the Ombudsman is unable to examine annual returns to identify whether there are reasonable grounds for launching an investigation for a suspected breach of the Leadership Code Act. The clerk of parliament is required to publish lists in the Gazette of leaders who have given or failed to give returns, so the ombudsman would be able to launch investigations of the leaders who did not file returns.⁸¹⁹ This list is not always published.

Promoting good practice

Score: 25

TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN RAISING AWARENESS WITHIN GOVERNMENT AND THE PUBLIC ABOUT STANDARDS OF ETHICAL BEHAVIOUR?

Limited public awareness activities take place due to resource constraints.

Whilst annual reports recognise that promoting public awareness is part of the role of the ombudsman it is not specifically listed as a function of the office in legislation. Nor is the office provided with a specific budget to conduct education activities.⁸²⁰ In recent years the office has not been very active in raising public awareness.

In 2013 talks were given at four secondary schools and also Correctional Services in Santo.⁸²¹ The 2011 annual report indicated that the Luganville office made presentations about the work of the office and the Leadership Code Act at five different secondary schools. The office in Port Vila took part in awareness activities on Anti-Corruption Day. Meetings were also held with the Port Vila and Luganville Municipal Councils to raise awareness of good conduct.⁸²²

No public awareness activities were detailed in the 2010 annual report. In 2009 the only public awareness activities listed were a radio show in July⁸²³ and participation in Law Week, which is a regular event organised in part by the Vanuatu Law Society and involving many legal actors. Law Week activities took place in Vila and Tanna.⁸²⁴

There are also no systematic awareness activities aimed at promoting standards of ethical behaviour within government.⁸²⁵ Whilst public reports may raise some awareness of specific issues, and mediation of complaints may help agencies to identify correct behaviour in specific circumstances, there is no promotion of, for instance, the duties and obligations of leaders or ethical conduct of public servants. The Office of the Ombudsman and the PSC do not regularly liaise or work together to promote ethics within the public service.⁸²⁶ The Office of the Ombudsman has, however, been involved in the recent (2012) induction programme for new members of parliament, by contributing a session on the leadership code.⁸²⁷ In 2013 the Office of the Ombudsman participated in a joint Transparency Vanuatu/Vanuatu Parliament Youth Parliament, by providing

⁸¹⁶ Section 34(1)(b), Leadership Code Act [Cap 242].

⁸¹⁷ Part 4, Leadership Code Act [Cap 242].

⁸¹⁸ Section 32(2), Leadership Code Act [Cap 242].

⁸¹⁹ Section 32(3), Leadership Code Act [Cap 242].

⁸²⁰ Interview of Kalkot Mataskelekele, Ombudsman with Anita Jowitt, Port Vila, 20 August 2013.

⁸²¹ Interview Velma Karabani, Principal Investigator with Kibeon H Nimbwen, Port Vila, 2 May 2014.

⁸²² Office of the Ombudsman, 2012: 7-9.

⁸²³ Office of the Ombudsman, *Namba tuelef (12) Aniul Ripot blong Ombudsman blong Ripablik blong Vanuatu i go long Palemen Januari - Disemba 2009*, (Port Vila: Office of the Ombudsman, 2010) 16.

⁸²⁴ *Ibid.*, 7-9.

⁸²⁵ Interview of Alain Molgos, Director Leadership Code Investigation with Anita Jowitt, Port Vila, 10 September 2013.

⁸²⁶ Interview of Laurent Rep, Secretary of Public Service Commission with Anita Jowitt, Port Vila, 30 August 2013.

training to the 52 youth parliamentarians. The Office of the Ombudsman also participates in other NGO programmes by invitation.

RECOMMENDATIONS

1. There are significant issues with the lack of action in response to ombudsman's reports and recommendations. One reason for these issues is that gaps in the law allow recommendations to be ignored. The Ministry of Justice should follow up on existing proposals and recommendations to strengthen the law so as to ensure that concrete action on recommendations arises. Issues that should specifically be considered include:
 - a. Whether power should be given to the ombudsman to refer matters to court if recommendations are not responded to.
 - b. Whether establishing a new body – a Leadership Code Tribunal - is appropriate.
 - c. Whether expanding the powers of the Office of the Ombudsman so that it becomes a commission, with police and prosecutorial powers, is appropriate.
 - d. Whether the law should allow statements given during the course of ombudsman enquiries to be used as evidence in court.
 - e. Whether the law should be amended to ensure that full copies of all annual returns provided by leaders under the Leadership Code Act be provided to the Office of the Ombudsman and/or scrutinised by a joint body including the ombudsman, the auditor general and the clerk of parliament.
2. A reason for lack of action on recommendations is that there are weak links between the ombudsman and other agencies. Weak links with other agencies also hinders efficient public awareness activities.
 - a. In order to facilitate successful criminal prosecutions, coordination between the Office of the Ombudsman, the police and the public prosecutor should be improved.
 - b. In order to facilitate successful disciplinary actions against public servants and improve awareness amongst public servants, coordination between the Office of the Ombudsman and the PSC should be improved.
 - c. In order to facilitate public awareness and ensure efficient use of resources, co-operation between the Office of the Ombudsman and CSOs working in the field of good governance should be improved.
3. The number of complaints received by the Office of the Ombudsman is declining and one of the causes of this is lack of education. The office also has no formal education or public awareness programme. In order to strengthen the education role of the Office of the Ombudsman:
 - a. The Ombudsman Act should be revised to specifically list education as one of the roles of the office.
 - b. Resources should be specifically allocated in a separate budget line for conducting education activities by the Ministerial Budget Committee.
 - c. In order to ensure that resources are well utilised and agencies (including CSOs) are not duplicating education activities, coordination and co-operation between agencies who carry out public education activities in the broad field of integrity/anti-corruption/legal literacy/ civic education should be strengthened.
 - d. Co-operation between the PSC and the Office of the Ombudsman to strengthen awareness of integrity amongst public servants should be developed.
4. Some investigations take a very long time to conclude. The Office of the Ombudsman should develop and publish expected timeframes for processing disputes. As investigations vary in complexity these will only be guidelines, but they will help complainants to monitor progress on complaints.
5. Reporting of activities by the Office of the Ombudsman should be strengthened:

- a. Resources and technical support to update the file management/case tracking database should be provided, either by the government, aid donors or other partners, as this will make it easier to collect data.
 - b. Resources and technical support for the Office of the Ombudsman to develop and maintain a website should be provided, either by the government, aid donors or other partners.
 - c. The law should be revised to further specify the required contents of annual reports. This will help to ensure that desired information is consistently provided.
 - i. The annual report should include clear data on the number of complaints received in a reporting year, the number of received complaints not investigated and the reasons for not investigating.
 - ii. Annual reports should also provide clear data on the number of current complaint files being processed in the office, the number of complaint files closed and the reasons for closure, the number of complaint files resolved, the method of resolution and the time taken to resolve the complaint.
 - iii. Brief summaries of disputes resolved by mediation should also be provided, if there are no issues of confidentiality.
 - d. The PacLII website currently publishes public reports, which makes them easily and freely available to the public. The Office of the Ombudsman should also supply annual reports to PacLII for publication.
6. A cross cutting issue affecting both the OAG and the Office of the Ombudsman is the potential for interference or delays in staffing matters by the PSC. This issue has also been faced by other constitutional offices, and the solution has been to give other constitutional offices the direct power to recruit. The State Law Office Act provides an example of legislation that allows this. The law should be revised (possibly using the State Law Office Act or the Ombudsman Act 1995 as a model) to give the Office of the Ombudsman the power to directly recruit staff.

VII.8. SUPREME AUDIT INSTITUTION

SUMMARY

Overall pillar score: 33.3			
Dimension	Indicator	Law	Practice
Capacity 41.6	Resources	---	25
	Independence	50	50
Governance 33.3	Transparency	25	25
	Accountability	50	0
	Integrity	75	25
Role 25	Effective financial audit	25	
	Detecting & sanctioning misbehaviour	25	
	Improving financial management	25	

The Office of the Auditor General (OAG) is severely hindered by lack of staff. Less than a third of approved technical staff positions are filled. This has been a problem for a number of years and has led to backlogs in the conduct of audits. It has also limited the extent to which the OAG can undertake special investigations. Between August 2008 and November 2009 the position of auditor general was vacant.

Despite the lack of staff, since the appointment of the new Auditor General in 2009 a number of positive changes have occurred. In 2011, with technical assistance from the EU, the OAG produced a Corporate Plan 2012 – 2016. This technical assistance also saw the development of a draft audit manual. The OAG is also provided with support by Australian Aid by way of an operating grant and funding an external advisor through the Pacific Technical Assistance Mechanism program. It is through this grant that the OAG are able to undertake training activities for staff, contract audits out to external firms and receive other forms of technical assistance. For example, in 2013 TeamMate software was reinstated and staff trained in its use. In 2012 the OAG presented an annual report covering the years 2005-2009 to parliament. This was the first such report produced since 2007. A report covering 2010-2012 is currently under preparation.

Another significant problem for the OAG is that in order for its recommendations to be acted upon there needs to be a strong Public Accounts Committee (PAC) and/or other mechanisms to ensure recommendations are implemented. However, as discussed in the legislature section, the PAC does not operate consistently, and when it does produce reports, these recommendations are also not acted upon. As such the “accountability cycle” is incomplete.

STRUCTURE AND ORGANISATION

The OAG is provided for in the Constitution.⁸²⁸ Further detail as to the functioning of the OAG is found in the Expenditure Review and Audit Act (ERA Act). This Act was passed in 1998 and amended in 2000. As well as detailing the operation of the OAG, this Act also covers the operation of the parliamentary PAC.

⁸²⁸ Article 25, Constitution of the Republic of Vanuatu.

The OAG is empowered to audit the central government, including constitutional agencies, ministries and departments, local level government, statutory bodies, state owned enterprises, statutorily established national councils and government operated tertiary (technical) educational institutions. It also audits donor funded projects and conducts special audit reviews or investigations into specific issues. Subjects for special audit reviews or investigations may be referred to the OAG by the PAC and can also be instituted directly by the auditor general. The ERA Act provides that the OAG must contract out at least 20% of its audits to external agents. At present all project audits and some financial audits are contracted out to private local accounting firms.

The ERA Act provides that, 'The Auditor-General must employ two competent external audit advisors for just that time necessary to offer advice and assistance in the discharge of the Auditor-General's functions including confirming adherence to standards, who together with the Auditor-General will collectively be known as the Audit Commission.'⁸²⁹ Although no Audit Commission has ever been established, in recent years technical advisors have been provided to the OAG by the EU and Australian Aid and these advisors have provided the support which was, maybe, envisaged by parliament to be provided by the Audit Commission.

ASSESSMENT

Capacity

Resources (practice)

Score: 25

TO WHAT EXTENT DOES THE SUPREME AUDIT INSTITUTION HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The OAG is managing to carry out some of its work. However, less than half of the technical staff positions are filled. Without aid donor support the OAG would not be able to perform one of its core operations, which is to contract out at least 20% of audit work.

The auditor general and all staff of the OAG are public servants appointed by the PSC. One office is maintained. The Corporate Plan provides for a staffing level of 23 technical staff, including the auditor general.⁸³⁰ The Corporate Plan provides that the technical staff are to be organised into three audit teams comprised of a senior auditor, two auditors, two assistant auditors and two trainee auditors. These teams work under the principal auditor and the auditor general. The most significant issue that the OAG faces is a lack of staff. Whilst there is approval for 23 technical staff, only nine technical staff are appointed.⁸³¹ There has never been sufficient budget allocated for 23 staff.⁸³² Of those appointed, two are on study leave and are due to complete studies within the next two years.⁸³³ Between August 2008 and November 2009 the position of auditor general was vacant.⁸³⁴ As a result of staff shortages only one audit team operates.

Limited financial resources are not the primary reason for staff shortages. Staff shortages are largely due to lack of skills in the market. Only citizens can be appointed to permanent positions within the

⁸²⁹ Section 21(4), Expenditure Review and Audit Act [Cap 241].

⁸³⁰ Office of the Auditor General, *Corporate Plan 2012 – 2106* (Port Vila: Office of the Auditor General, 2011), 9.

⁸³¹ Ibid and interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸³² Written comments from Brendan Toner, Systems Accounting Specialist to Anita Jowitt, 10 September 2013.

⁸³³ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸³⁴ Office of the Auditor General, *Auditor General's Annual Report to Parliament 2005 - 2009* (Port Vila: Office of the Auditor General, 2012), 6.

public service⁸³⁵ and there is a shortage of accounting degree qualified local staff. There is also a severe shortage of professionally qualified accountants.⁸³⁶ In May 2011 four positions were advertised (for two trainee auditors, one auditor and one senior auditor) but there was a lack of suitably qualified applicants for the positions.⁸³⁷ As a result not all positions that have been allocated funding are filled. Until these positions are filled government budgeting rules means that the government is not able to increase the already under-utilised staffing budget.⁸³⁸

Lack of financial resources does, however, impact on the ability to attract staff. There is a perception that salaries within the OAG are not competitive for qualified or even partially qualified staff. The private sector tends to offer salaries which are higher than those found in the public sector.⁸³⁹ Whilst it is possible to recruit overseas staff on short-term contracts under the Public Service Staff Manual,⁸⁴⁰ expatriate staff are unlikely to be attracted by public (as opposed to private) sector salaries.

The lack of staff prevents the OAG from being able to undertake audit activities in a timely manner. It also hinders the effective transfer of skills through technical assistance.⁸⁴¹

The OAG does not have the power to apply directly to parliament for additional resources. Instead the ERA Act provides that the PAC shall, after consultation with the auditor general, report to parliament on resources required by the OAG and advise whether additional resources are required.⁸⁴² If the PAC is not active in this role it can effectively block allocation of sufficient resources. In practice the PAC does not currently function effectively to advocate for resource allocations.⁸⁴³

Aid donor support allows the OAG to contract out some of its work to external agents and undertake other activities to assist in strengthening the office. Examples of activities undertaken with aid support was the reinstallation and training on the latest audit management software in 2013 and ability for the OAG to contract out a highly sensitive investigation of the Vanuatu National Provident Fund (VNPF) in 2012. Australian Aid is also currently funding one technical advisor who is working with local staff to conduct audits.⁸⁴⁴

Between 2010 and 2011 an EU funded consultant provided corporate support, which included the development of the Corporate Plan 2012 – 2016 and the development of an audit manual.⁸⁴⁵

Independence (law)

Score: 50

TO WHAT EXTENT IS THERE FORMAL OPERATIONAL INDEPENDENCE OF THE SUPREME AUDIT INSTITUTION?

The legal framework provides some measures to ensure political independence of the OAG, however there is the potential for interference as the PSC controls staffing.

⁸³⁵ Article 57(2), Constitution of the Republic of Vanuatu; Public Service Staff Manual 2008, chapter 3.5, 3.13.

⁸³⁶ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013; written comments from Nikunj Soni, founder of Institute of Public Policy to Anita Jowitt, August 21, 2013; written comments from Brendan Toner, Systems Accounting Specialist to Anita Jowitt, September 10, 2013.

⁸³⁷ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸³⁸ Written comments from Ralph Regenvanu, Minister of Lands to Anita Jowitt, 28 September 2013.

⁸³⁹ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁴⁰ Public Service Staff Manual 2008, chapter 3.4, 3.13.

⁸⁴¹ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁴² Section 14(2)(f), Expenditure Review and Audit Act [Cap 241].

⁸⁴³ Interview with Leon Teter, Assistant Clerk of Parliament with Anita Jowitt, Port Vila, 26 August 2013.

⁸⁴⁴ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁴⁵ Ibid.

The Constitution provides that the auditor general 'shall not be subject to the direction or control of any other person or body in the exercise of his functions.'⁸⁴⁶

The auditor general is appointed by the PSC. Specific merit related criteria for appointment are stated in the ERA Act.⁸⁴⁷ His or her appointment is not subject to any specified set term. He or she can be removed by the PSC, in consultation with the PAC and the Council of Ministers, for 'incompetence, disability, bankruptcy, neglect of duty or misconduct.'⁸⁴⁸

Other staff of the OAG are also appointed by the PSC. The PSC is legally empowered to set the job classifications and salary and allowance structure for staff of the OAG.⁸⁴⁹ This has the potential to interfere with the independence of the OAG as it directly affects the OAG's ability to recruit and retain staff.

The ERA Act provides, 'No employee of the Office of the Auditor-General shall undertake, perform or engage in any duty or function that shall be inconsistent with the performance by the employee of the duties or functions imposed on that person pursuant to this Act.'⁸⁵⁰ This broad provision is intended to restrict all political or other activities which may interfere with staff of the OAG being able to act with neutrality.

The OAG has the right to set its own programme and methods, although the PAC has the power to consider this programme and report to parliament. The PAC can direct the OAG to investigate specific issues, but does not have the express power to alter the OAG's self-directed programme.⁸⁵¹

The OAG currently has draft legislation to replace the current ERA Act. The new legislation will effectively separate the PAC from the OAG and allow the OAG to separate itself from the PSC in order to enable more effective recruitment and retention of qualified resources.⁸⁵²

Independence (practice)

Score: 50

TO WHAT EXTENT IS THE SUPREME AUDIT INSTITUTION FREE FROM EXTERNAL INTERFERENCE IN THE PERFORMANCE OF ITS WORK IN PRACTICE?

External interference takes the form of inaction (difficulties in getting positions reclassified) rather than direct attacks or political interference.

There are no examples of political interference in the activities of the OAG. Nor are there examples of political engagement by staff of the OAG. Whilst the power of the PAC could, in theory, be used in a non-partisan manner to direct the OAG to undertake specific investigations, in practice the PAC does not interfere with the functioning of the OAG.⁸⁵³

The fact that the PSC, rather than the OAG, controls job grades and salary structures for staff of the OAG is perceived to be something of a challenge to independence in the sense that the PSC could, in theory, block the recruitment and advancement via defined career pathways of suitable staff. Whilst the PSC has not interfered in the operation of the OAG by, for instance, removing staff without justification, there is a perception that the involvement of the PSC in recruitment processes

⁸⁴⁶ Article 25(6), Constitution of the Republic of Vanuatu.

⁸⁴⁷ Section 26, Expenditure Review and Audit Act [Cap 241].

⁸⁴⁸ Section 23, Expenditure Review and Audit Act [241].

⁸⁴⁹ Chapter 2, Public Service Staff Manual 2008.

⁸⁵⁰ Section 29, Expenditure Review and Audit Act [241].

⁸⁵¹ Section 14(2), Expenditure Review and Audit Act [Cap 241] outlines the specific functions of the PAC and section 15, outlines the PAC's powers.

⁸⁵² Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁵³ Ibid.

is a hindrance.⁸⁵⁴ Changes in job grades have been put forward to the PSC, however financial implications of reclassification of job grades has resulted in requests not being approved by the Ministry of Finance.⁸⁵⁵ It should be emphasised that even if positions were re-graded, skills shortages in the field of accounting in Vanuatu mean that there will still be difficulties in recruiting staff. It can also be noted that even if the OAG had the direct power to recruit, this would not necessarily solve the issue of the Ministry of Finance not approving positions.

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE RELEVANT ACTIVITIES AND DECISIONS BY THE SUPREME AUDIT INSTITUTION?

Whilst there are requirements that the OAG makes audit reports available to relevant agencies, there is no legal provision for audit reports to be made public.

The ERA Act provides that the OAG is required to report on all reviews, audits, inquiries and investigations to the minister of finance (who has responsibility for the OAG), the PAC and the head of the agency that is the subject of the report.⁸⁵⁶ It is also required to make an annual report to parliament.⁸⁵⁷

There is, however, no express requirement that any reports be made available to the public.

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISIONS OF THE SUPREME AUDIT INSTITUTION IN PRACTICE?

Whilst annual reports provide useful information they are infrequent and are not easily accessible through a website or in libraries. Audit reports are not released to the public as a matter of course. The PAC does not produce regular reports.

Whilst the 2012-2016 Corporate Plan includes public relations and communications (audit awareness) as a goal of the OAG⁸⁵⁸ currently little activity has occurred in this area. Occasionally media carries stories in relation to high-interest special investigations⁸⁵⁹ and the OAG has reacted to press releases issued by Transparency Vanuatu.⁸⁶⁰ No systematic plan to regularly report on its activities is currently in place.⁸⁶¹ The OAG does not maintain a website.

Annual reports have been produced infrequently. The most recent annual report covering the years 2005-2009 was presented to parliament in April 2012. Prior to that, the last annual report covering

⁸⁵⁴ Ibid.

⁸⁵⁵ Interview of Laurent Rep, Secretary Public Service Commission with Anita Jowitt, Port Vila, 30 August 2013.

⁸⁵⁶ Section 32, Expenditure Review and Audit Act [Cap 241].

⁸⁵⁷ Section 33, Expenditure Review and Audit Act [Cap 241].

⁸⁵⁸ Office of the Auditor General, 2011: 22 – 24.

⁸⁵⁹ See, for example, Ricky Binihi, 'Vanuatu National Provident Fund Subject of Auditor's Probe' *Pacific Islands Report* 13 August 2012; <http://vanuatudaily.wordpress.com/2012/07/27/talemaot-archive-lack-of-action-by-prime-minister-sato-kilman-at-vanuatu-broadcasting-television-corporation/> [accessed 19 February 2014]; 'VNPF Report Findings' *Vanuatu Daily Post Online* 13 September 2013.

⁸⁶⁰ 'Auditor General Says he Supports Transparency' *Vanuatu Daily Post Online* 27 August 2013.

⁸⁶¹ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

the years 1998-2004 was presented in November 2007. An annual report covering the years 2010-2012 is currently under preparation. Annual reports are available on request from the OAG and are also distributed by the Ministry of Finance to all partners once they are approved.⁸⁶² Whilst annual reports contain summaries of audit reports produced, the individual audit reports are not easily publicly available.

Because there is no requirement that reports of special investigations be made available to the public there can be some confusion about whether these reports should be accessible by the public after they are tabled in parliament. This confusion is exacerbated by the fact that parliament does not make public a list of documents that have been tabled. Further, debate of reports by the PAC and in parliament is lacking.⁸⁶³ Meetings of the PAC are open to the public,⁸⁶⁴ however this fact is not widely known and dates of meetings are not well publicised. Whilst the PAC reports contain useful information on the investigations of the OAG, only four reports have been produced since independence, in 1980.⁸⁶⁵

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE SUPREME AUDIT INSTITUTION HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

Whilst the OAG is required to report annually to parliament and the PAC, there are some gaps in the law in areas such as the content of annual reports, the time by which annual reports must be delivered and the process for debating annual reports.

The OAG is required to present annual reports to the speaker of parliament, who is legally obliged to present these reports to parliament and to call for debate on them.⁸⁶⁶ There are no specific guidelines on what is to be contained in these reports. Nor is there a specific deadline by when annual reports must be submitted.

All reports are also presented to the PAC. The PAC's duties include reviewing and reporting to parliament on the adequacy of the OAG's audit planned programme and external audit arrangements.⁸⁶⁷

There is no specific provision allowing agencies to appeal or challenge audit results. However, when audit reports are considered by the PAC it calls for written statements from agencies involved in reports and also takes oral evidence from them before reaching conclusions and presenting PAC reports.⁸⁶⁸ This effectively acts as an appeal process.

At present law does not provide for the OAG to be audited by an external auditing agency.

⁸⁶² Written comments from Nikunj Soni, Chair of the Pacific Institute of Public Policy to Anita Jowitt, 21 August 2013.

⁸⁶³ Interview of Leon Teter, Assistant Clerk of Parliament with Anita Jowitt, 28 August 2013.

⁸⁶⁴ Ibid.

⁸⁶⁵ Public Accounts Committee, 2011: 9.

⁸⁶⁶ Section 33(1), Expenditure Review and Audit Act [Cap 241].

⁸⁶⁷ Section 14, Expenditure Review and Audit Act [Cap 241].

⁸⁶⁸ Public Accounts Committee, 2011: 10-13.

Accountability (practice)

Score: 0

TO WHAT EXTENT DOES THE SUPREME AUDIT INSTITUTION HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

Annual reports have not been produced regularly and weaknesses in the functioning of the PAC and parliament mean that there is little accountability in practice.

In practice accountability mechanisms do not function. The OAG has only produced two annual reports since 1999. Parliamentary debate on the reports did not occur.⁸⁶⁹ The PAC is largely inactive. As mentioned above, it has only produced four reports since independence. The most recent report, issued in December 2011, reviewed all twelve audit reports that were issued between 2002 and 2007.⁸⁷⁰ This report did not make any comment of the functioning of the OAG. It did however produce recommendations in respect of ten of the audit reports. These recommendations supported the content of audit reports. The other two audit reports did not result in recommendations of the PAC as the PAC was satisfied with responses during the accountability phase.

Integrity (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE SUPREME AUDIT INSTITUTION?

Both general and specific integrity laws apply to the OAG, although the law regulating the OAG does not provide for a detailed specific code of ethics.

The ERA Act provides, 'No employee of the Office of the Auditor-General shall undertake, perform or engage in any duty or function that shall be inconsistent with the performance by the employee of the duties or functions imposed on that person pursuant to this Act'.⁸⁷¹ There are no further specific codes of ethics or rules of conduct regulating the OAG contained in the ERA Act. There is, however, an audit manual which includes ethical guidelines for the conduct of audits.⁸⁷²

The ERA Act requires that, '[T]he Auditor-General shall ... establish, review and regulate the procedures of the Office of the Auditor-General in accordance with generally accepted auditing practice'.⁸⁷³ As such it is expected that the OAG is governed by international auditing standards, which sets out the code of ethics that auditors should abide by. Ongoing training is required to ensure all staff are aware and follow the auditing standards.

General integrity laws apply to the OAG. The auditor general is defined as a leader under the provisions of the Leadership Code Act,⁸⁷⁴ so must comply with the provisions of this Act. This Act regulates a wide range of behaviours, including conflicts of interest, receiving gifts and misuse of office. Leaders are also required to provide annual returns of assets and liabilities to the clerk of parliament. Breaches of this Act are criminal offences. The content of this code and its implementation in practice are discussed in further detail in the Legislature and Ombudsman pillars.

The auditor general and other employees within the OAG are public servants and are therefore subject to the public service code of conduct under the Public Service Act. This code contains broad

⁸⁶⁹ Interview of Leon Teter, Assistant Clerk of Parliament with Anita Jowitt, Port Vila, 28 August 2013.

⁸⁷⁰ Public Accounts Committee, 2011: 41.

⁸⁷¹ Section 29, Expenditure Review and Audit Act [Cap 241].

⁸⁷² Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁷³ Section 30(1), Expenditure Review and Audit Act [Cap 241].

⁸⁷⁴ Section 5(r), Leadership Code Act [Cap 240].

rules relating to honesty and integrity. The content of this code and its implementation in practice are discussed in further detail in the public sector pillar.

There are no specific post-employment restrictions provided in law, either under the Public Service Act or the Leadership Code Act.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF THE SUPREME AUDIT INSTITUTION ENSURED IN PRACTICE?

Whilst general integrity laws are not well enforced, the OAG, through its association with the International Organisation of Supreme Audit Institutions (INTOSAI), is actively working in a systematic and comprehensive manner to enhance compliance with international accounting standards. This work is in progress.

A cross cutting issue affecting all pillars is that the Leadership Code Act is not effectively enforced (see discussion in the ombudsman section). The public service code of conduct is also not consistently enforced (see discussion in the public sector section). There have been no recent cases within the OAG of violations of codes of conduct or ethical standards which resulted in sanctions being applied.

Despite the weak implementation of general integrity laws, the OAG, through its membership of the INTOSAI, is active in enhancing internal integrity and ensuring that staff are aware of, and trained in, issues of ethics for auditors.⁸⁷⁵ INTOSAI provides international audit standards, which include ethical standards relating to issues such as confidentiality and conflicts of interest.⁸⁷⁶ As part of international harmonisation activities, in March 2013 Vanuatu completed a report identifying the extent to which its audit practices comply with international standards.⁸⁷⁷ INTOSAI has anticipated that smaller and more resource-limited countries may not be able to comply fully with international standards, so it permits countries to provide national auditing guidelines in areas where compliance is lacking. Implementing the strategy will involve developing national auditing guidelines for Vanuatu.⁸⁷⁸ Activities in this area are being done in conjunction with the Pacific Association of Supreme Audit Institutions.⁸⁷⁹

⁸⁷⁵ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013, also see Office of the Auditor General, 2011: 24.

⁸⁷⁶ www.intosai.org/issai-executive-summaries/view/article/issai-200-general-standards-in-government-auditing-and-standards-with-ethical-significance.html [accessed 19 February 2014].

⁸⁷⁷ Ibid.

Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁷⁹ See, generally, www.pasai.org/ [accessed 19 February 2014].

Role

Effective financial audit

Score: 25

TO WHAT EXTENT DOES THE SUPREME AUDIT INSTITUTION PROVIDE EFFECTIVE AUDITS OF PUBLIC EXPENDITURE?

Whilst there have been improvements in the audit of public expenditure recently, lack of human resources and lack of education or awareness within government entities about audit procedures make it very difficult for the OAG to provide timely and effective audits.

When the current Auditor General assumed his position in late 2009 the most recent audit opinion, released in 2007, covered consolidated government accounts from 1998 to 2004.⁸⁸⁰ The inherited backlog was not the fault of the Ministry of Finance, which had submitted consolidated accounts to the OAG. The audit of the 2005-2009 consolidated government accounts was released in early 2012, with a disclaimer that it was not a full audit.⁸⁸¹ The auditor general's annual report indicated that auditing five years together was done in order to best manage limited resources and enable the OAG to focus on auditing the more recent 2010 and 2011 financial statements.⁸⁸² By all accounts the current Auditor General is doing a creditable job of clearing backlogs in respect of consolidated government accounts.⁸⁸³ There is also a considerable backlog in auditing other entities outside of the central government. In August 2011 there was a back log of 277 outstanding audits.⁸⁸⁴

Current audit practice does not have the OAG auditing individual ministries and departments that are included within the consolidated government accounts and this means that audit opinions do not thoroughly examine all levels of government.⁸⁸⁵

The work of the OAG in auditing other bodies (including local authorities, statutory bodies and state owned enterprises) is hindered by a lack of awareness of what is required by these bodies and a lack of capacity to produce financial statements to be audited.⁸⁸⁶

Audits of the consolidated government accounts are also hindered by information not being provided by third parties and ministries. Whilst financial data is available on the government financial information system, hard copy evidence is sometimes not produced on request.⁸⁸⁷ Whilst laws require that material be disclosed to the OAG, compliance with the law is lacking. This may be due to lack of awareness/education and cultural factors, rather than any deliberate attempt to obstruct the OAG, but it does hinder the ability of the OAG to perform its audit functions.⁸⁸⁸

⁸⁸⁰ Office of the Auditor General, *Auditor General's Report to Parliament October 2007* (Port Vila: Office of the Auditor General, 2007).

⁸⁸¹ Office of the Auditor General, *Auditor General's Report to Parliament 2005-2009* (Port Vila: Office of the Auditor General, 2012), 2-3.

⁸⁸² Ibid.

⁸⁸³ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013; written comments from Nikunj Soni, Chair of the Pacific Institute of Public Policy to Anita Jowitt, 21 August 2013; written comments of Brendan Toner, Systems Accounting Specialist to Anita Jowitt, 10 September 2013.

⁸⁸⁴ Office of the Auditor General, 2011: 12.

⁸⁸⁵ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁸⁸⁶ Ibid; Alistair Brown, 'The milieu of government reporting in Vanuatu' (2011) 23(2) *Pacific Accounting Review* 165.

⁸⁸⁷ See, for example, 'Vanuatu auditor calls for key government agency to submit financial statements' *Radio New Zealand International Online* 13 February 2013.

⁸⁸⁸ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013; Alistair Brown, 'The milieu of government reporting in Vanuatu' (2011) 23(2) *Pacific Accounting Review* 165.

There is little confidence that the PAC and/or parliament reads or acts upon audit recommendations and this undermines the practical effectiveness of any reports that are produced.⁸⁸⁹

Detecting and sanctioning misbehaviour

Score: 25

DOES THE SUPREME AUDIT INSTITUTION DETECT AND INVESTIGATE MISBEHAVIOUR OF PUBLIC OFFICEHOLDERS AND CONDUCT INVESTIGATION ACCORDING TO DETECTED FACTS?

Whilst the OAG does (within resource constraints) detect misbehaviour, lack of follow up by other agencies including the PAC means that implementation of recommendations is not consistent.

There is no express statutory power for the OAG to take complaints or reports of irregularities directly from the public. Instead, this power is given to the PAC.⁸⁹⁰ The PAC can direct that special investigations occur. The auditor general can also institute special investigations.⁸⁹¹ Detection of misbehaviour also occurs during compliance audits.⁸⁹²

Since the current Auditor General assumed his position in late 2009 two special investigations (into the Department of Quarantine and Inspection Services and into the Vanuatu Broadcasting and Television Corporation (VBTC)) have been publicly reported.⁸⁹³ Both of these reports made a number of recommendations, but it is unclear what action, if any, has resulted from these recommendations. Another special investigation (into the VNPF) has recently been completed.⁸⁹⁴

The 2005-2009 annual report also details irregularities arising from compliance audits of the Department of Civil Status, the Office of the Ombudsman, the State Law Office Trust Fund, the Vanuatu Agriculture College, the Department of Quarantine and Inspection Services and the Malvatumauri Council of Chiefs.⁸⁹⁵

The OAG does not have the power to sanction misbehaviour, but it can make reports containing recommendations. It has no specific statutory power to compel other bodies to act upon its recommendations. Instead, the process is that the OAG reports to the minister of finance and the PAC. The OAG also reports to the person in charge of the body subject to the report and may require a response to be given within 14 days. The PAC then has the power to conduct further enquiries if necessary and make a further report to the person in charge of the body subject to the report. This person must respond with written comments within 28 days. The PAC then also reports to parliament on its activities. Within six months, or longer if the PAC authorises, the person in charge of the body subject to a report must provide an update on action that was taken to rectify the problem, or reasons no action was taken.⁸⁹⁶ As noted earlier, significant downfall in recent times is that the PAC has not been operating effectively if at all. Further, when the PAC did produce a report in December 2011 no written responses to its recommendations were received within the timeframes provided by law.⁸⁹⁷

⁸⁸⁹ Comments in response to discussion paper.

⁸⁹⁰ Section 14(2)(h), Expenditure Review and Audit Act [Cap 241].

⁸⁹¹ Section 27, Expenditure Review and Audit Act [Cap 241].

⁸⁹² Office of the Auditor General, 2011: 13-14.

⁸⁹³ Office of the Auditor General, *Auditor General's Report to Parliament 2005-2009* (Port Vila: Office of the Auditor General, 2012), 28-30.

⁸⁹⁴ 'VNPF Report Findings' *Vanuatu Daily Post Online* 13 September 2013.

⁸⁹⁵ Office of the Auditor General, 2012: 32-37.

⁸⁹⁶ Section 16 (3A), Expenditure Review and Audit Act [Cap 241].

⁸⁹⁷ Interview of Leon Teter, Assistant Clerk of Parliament with Anita Jowitt, Port Vila, 28 August 2013.

Annual reports of the OAG observe that on some occasions public servants have been dismissed, but misappropriated money has not been recovered.⁸⁹⁸ The fourth report of the PAC made some recommendations which indicated that the PSC should ensure public servants who had misappropriated funds were criminally prosecuted and that as part of the criminal prosecution misappropriated money should be recovered.⁸⁹⁹ However, the PSC does not have the power to prosecute breaches of the Penal Code. Instead, this is a function of the Office of the Public Prosecutor. Nor does the PSC have the power to demand repayment of misappropriated funds during disciplinary procedures.⁹⁰⁰

Improving financial management

Score: 25

TO WHAT EXTENT IS THE SUPREME AUDIT INSTITUTION EFFECTIVE IN IMPROVING THE FINANCIAL MANAGEMENT OF GOVERNMENT?

Whilst audit reports contain, where relevant, recommendations on how to improve financial management there is little systematic follow up by the PAC on whether recommendations are implemented.

As already discussed, the lack of staff numbers within the OAG translates into fewer audit opinions being issued and capacity building efforts being hindered. Currently the focus is on compliance audits, not performance audits, which would address efficiency in the use of state money,⁹⁰¹ although compliance audits do address performance to a degree.⁹⁰² Further, effectively improving financial management of government can only occur when the audit reports and recommendations are being tabled, debated and acted upon in a timely manner. Whilst the PAC remains ineffective and other agencies also do not consistently act in response to audit reports the “cycle of accountability” does not function and the effectiveness of the OAG is undermined.

RECOMMENDATIONS

1. Staffing issues within the OAG need to be addressed as a matter of urgency:
 - a. Long-term measures need to be introduced to address skill shortages within Vanuatu, which are the underlying cause of the inability to recruit staff. Scholarships for tertiary study need to be directed to areas of specific need, including accounting.
 - b. Until local skill shortages are addressed, the recruitment of non-citizens and increased contracting out of audits should be explored.
2. A major problem is the lack of consistent action on audit reports. Addressing this problem may require better coordination between stakeholders. It may also require some legislative reform. The Corporate Plan 2012 – 2016 includes a proposal to introduce a National Audit Act. There is already draft legislation in this area. Before this legislation is finalised there should be consultation between the OAG, the PAC (including support staff), the PSC, the public prosecutor and other stakeholders as to whether further reforms are needed to the draft legislation or other Acts to ensure that recommendations of the OAG will be acted upon, particularly when criminal activities have been identified.

⁸⁹⁸ See, for example, special audit reviews of Lycee Louis Antoine de Bouganville, Rural Water Supply Unit, Santo East Junior Secondary School, Office of the Auditor General, *Auditor General's Report to Parliament October 2007* (Port Vila: Office of the Auditor General, 2007), 41-42.

⁸⁹⁹ See for example, comments of the Audit Report of 2005 in respect of the Rural Water Supply Unit, Public Accounts Committee, 2011: 22-23.

⁹⁰⁰ Interview of Laurent Rep, Secretary Public Service Commission with Anita Jowitt, Port Vila, 30 August 2013.

⁹⁰¹ Interview of Beulah Daunakamakama, Office of the Auditor General Technical Advisor with Anita Jowitt, Port Vila, 20 August 2013.

⁹⁰² Office of the Auditor General, 2011: 14.

3. Current audit practice means that only consolidated government accounts are being audited and financial compliance audits are not being carried out at individual ministry and department level. Further performance audits are not being regularly carried out. Bearing in mind resource constraints the OAG should implement measures to ensure a rolling programme of compliance audits and performance audits of individual ministries and departments.
4. The PAC's roles include monitoring the performance of the OAG and ensuring that the OAG has adequate resources. The PAC should play a more active role in ensuring that adequate resources and technical support are provided to the OAG to assist it to comply with international audit standards as developed by INTOSAI and other goals as set out in the Corporate Plan 2012 – 2016. The PAC should also more actively monitor the implementation of this plan and effective use of resources within the OAG.
5. There is currently little public awareness of the work of the OAG or the recommendations it makes. Lack of transparency weakens accountability as it reduces both public awareness of the importance of correct management of public funds, and public demand that changes occur in response to recommendations. Any new law, or amendment to the existing law, should:
 - a. Strengthen transparency of the OAG by clarifying when and how audit reports, annual reports and special investigation reports are to be made available to the public.
 - b. Strengthen public involvement in the detection of financial irregularities by allowing the OAG to directly receive complaints from the public.
6. Establishing a website for the OAG will help to improve access to information about the OAG and therefore transparency. This website should include audit reports or summaries of recommendations, annual reports, the Corporate Plan and reports on implementation of the plan. It should also include information for the public on what to do if they are aware or suspect irregularities in respect of the use of public money.
7. A cross cutting issue affecting both the OAG and the Office of the Ombudsman is the potential for interference or delays in staffing matters by the PSC. This issue has also been faced by other constitutional offices, and the solution has been to give other constitutional offices the direct power to recruit. The State Law Office Act provides an example of legislation that allows this. The law should be revised (possibly using the State Law Office Act as a model) to give the OAG the power to directly recruit staff.

VII.9. ANTI-CORRUPTION AGENCIES

Vanuatu does not have an anti-corruption institution in the sense of the definition used by Transparency International.

According to the National Integrity System assessment methodology, an anti-corruption agency is:

‘A specialised, statutory and independent public body of a durable nature, with a specific mission to fight corruption (and reduce the opportunity structures propitious for its occurrence in society) through preventive and/or repressive measures.’⁹⁰³

Vanuatu ratified the UN Convention against Corruption (UNCAC) in 2010 and completed accession procedures in 2011. Article 6 of UNCAC prescribes that signatory states should have an independent preventive anti-corruption body or bodies. The activities of this body could include: developing laws and policies relating to anti-corruption; overseeing and coordinating the implementation of anti-corruption policies; increasing and disseminating knowledge about how to prevent corruption; and supporting the development of a government/non-government anti-corruption coalition.

Vanuatu does not have an anti-corruption institution in the sense of Article 6 of UNCAC although, as discussed in the section on the ombudsman this office does carry out some preventive functions in a limited way. Nor does Vanuatu have an anti-corruption institution that fits the broader definition used by Transparency International, which recognises that an anti-corruption institution may also have a repressive role. Again, as discussed in the section on the ombudsman, this office has no power to prosecute alleged corruption so is ineffective as a repressive body.

An independent national anti-corruption agency could be important in providing expertise and advice. The agency could contribute to the comprehensiveness and effectiveness of the National Integrity System of Vanuatu by offsetting weaknesses in the system’s pillars. If a pillar’s own correction mechanisms fail or if other external correction mechanisms, including watchdogs such as the media or civil society, have limitations to effectively push for change, an anti-corruption agency may be able to do so. It would be necessary to clearly distinguish its powers and responsibilities from those of other agencies such as the ombudsman.

However, a new organisational body would only be useful if there is interest on the part of the government and the ministries and political commitment to seeing the body operate effectively. Political support for integrity, adequate empowerment, resources and autonomy to operate are some conditions for an anti-corruption agency to be successful.

In a small developing country like Vanuatu significant resource constraints exist. There are other institutions that could potentially be strengthened to become more effective and play a more active preventive role. Further, political, social and cultural factors mean that there is a significant gap between institutions as they “exist on paper” and institutions as they operate in practice. Vanuatu should therefore be cautious about diverting limited resources into establishing a new anti-corruption institution that may look good on paper but fail to operate in practice before first attempting to strengthen existing institutions and the co-ordination between them.

⁹⁰³ Transparency International, *National Integrity System Toolkit* (Berlin: Transparency International, 2012) Annex 1.

VII.10. POLITICAL PARTIES

SUMMARY

Overall pillar score: 40.2			
Dimension	Indicator	Law	Practice
Capacity 87.5	Resources	100	50
	Independence	100	100
Governance 8.3	Transparency	0	0
	Accountability	0	0
	Integrity	25	25
Role 25	Interest aggregation and representation	25	
	Anti-corruption commitment	25	

Political parties in Vanuatu currently operate without direct state support or regulation. Whilst lack of regulation result in very high scores in respect of independence it also undermines internal governance, as political parties are able to operate without any transparency or accountability in all spheres of their operation. For instance, political parties are not required to disclose income or expenditure, either during or between election periods. Parties tend not to publish policies as a matter of course outside of election years. Nor are party constitutions readily available.

This uncontrolled political party environment is thought to contribute to Vanuatu's increasingly fragmented political party environment. It is also thought to allow corrupt practices to flourish undetected, for instance through payments to political parties in order to influence them.

There are currently activities by both the government and the opposition to develop reforms in relation to political integrity. Many of these reform proposals relate to improving governance of political parties. The recommendations of the 2014 Vanuatu National Integrity System report relating to political parties are, in part, drawn from proposals that have arisen in the course of high-level political discussions in this area.

STRUCTURE AND ORGANISATION

Historically there were two dominant political parties in Vanuatu – the Vanua'aku Pati (VP) and the Union of Moderate Parties (UMP). These parties were dichotomised into the party representing Anglophones (VP) and the party representing Francophones (UMP). VP dominated parliament, winning large majorities until the election in 1991. From the late 1980s these two parties, who have been referred to as the “mother parties”⁹⁰⁴ have become increasingly fragmented. The majority of political parties currently represented in parliament can trace their roots back to VP and UMP.⁹⁰⁵

As a result Vanuatu now has a very fragmented political environment. More than 30 parties and a large number of independents contested the 2012 national election.⁹⁰⁶ A total of 16 parties were successful in having candidates elected, with four members of parliament standing as

⁹⁰⁴ <http://pacificpolicy.org/blog/2012/11/07/summary-analysis-of-party-political-platforms-english-version/#more-2299> [accessed 11 March 2014].

⁹⁰⁵ Anita Jowitt, *Political Parties, National Integrity System Vanuatu Discussion Paper 8* (Port Vila: Transparency Vanuatu, March 2014).

⁹⁰⁶ <http://pacificpolicy.org/blog/2012/11/15/the-waiting-game/> [accessed 11 March 2014].

independents.⁹⁰⁷ The fragmented political party environment means that government is necessarily a coalition.

ASSESSMENT

Capacity

Resources (law)

Score: 100

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO THE FORMATION AND OPERATION OF POLITICAL PARTIES?

There are no significant restrictions on the formation and operation of political parties.

The Constitution provides that, 'Political parties may be formed freely and may contest elections. They shall respect the Constitution and the principles of democracy.'⁹⁰⁸ The Constitution also protects freedom of association.⁹⁰⁹ These provisions have been interpreted as not permitting any laws regulating political parties, although this has never been tested in court. There are no limits on political parties' ideologies, policies or other activities. Nor are there limits on the minimum number of founders or members to establish political parties.

There is no specific legal process for establishing political parties. Instead they are able to register as charitable associations, following the process discussed in the section on civil society organisations. This process requires six members.⁹¹⁰ If the registrar refuses to grant incorporation, the registrar must give reasons⁹¹¹ and the charitable association has the right to appeal to the minister of finance and economic management within 14 days.⁹¹² The minister may either refuse the appeal, or order the registrar to grant incorporation.⁹¹³ This decision can be questioned in court on points of law.⁹¹⁴

There is no state support of political parties or individual candidates although, as discussed in the section on civil society, as charitable organisations they may be able to apply for tax exemptions. Although state funding may help to "level the playing field" and act as a disincentive to seeking funding from external sources that improperly influence political parties, in the current environment there is no accountability for political parties. There is no regulation of political party financing. For instance, there are no limitations on whom parties are allowed to receive funding from. Nor are there any limits on individual donations. In the absence of accountability mechanisms, including audited accounts, state funding of political parties would be a potential avenue for misuse of public money.⁹¹⁵

⁹⁰⁷ Ibid.

⁹⁰⁸ Article 4(3), Constitution of the Republic of Vanuatu.

⁹⁰⁹ Article 5(1), Constitution of the Republic of Vanuatu.

⁹¹⁰ Section 2(1), Charitable Associations (Incorporation) Act [Cap 140].

⁹¹¹ Section 3(1), Charitable Associations (Incorporation) Act [Cap 140].

⁹¹² Section 3(3), Charitable Associations (Incorporation) Act [Cap 140].

⁹¹³ Section 3(4), Charitable Associations (Incorporation) Act [Cap 140].

⁹¹⁴ Section 3(5), Charitable Associations (Incorporation) Act [Cap 140].

⁹¹⁵ Comments of Advisory Group Members, Advisory Group Meeting 6 March 2014.

Resources (practice)

Score: 75

TO WHAT EXTENT DO THE FINANCIAL RESOURCES AVAILABLE TO POLITICAL PARTIES ALLOW FOR EFFECTIVE POLITICAL COMPETITION?

The large number of political parties represented in parliament suggests that even in the absence of state support smaller parties are effectively able to campaign. Human resource constraints limit the extent to which political competition occurs on a considered policy basis.

As discussed above, in Vanuatu political parties operate independently without state support. In the current unregulated environment, this largely avoids the potential for political parties to misuse public money.⁹¹⁶

Sources of funding include fundraising activities by members and investments. For example, the Secretary General of VP confirmed that VP's financial resources derived from a long-term land investment, although VP is thought to be fairly unusual in deriving income from investments.⁹¹⁷ In some parties a portion of MPs' and provincial councillors' salaries are also directed to party activities.⁹¹⁸ Political advisors and political appointees may also direct some of their salary to their political party.⁹¹⁹ Both the Labour Party and the Nagriamel Movement rely on member contributions and fundraisings.⁹²⁰ Fundraising activities are likely to be community based, for instance kava evenings and food sales that bring party supporters together. Parties do not receive funding from aid donors,⁹²¹ although they may be involved in initiating projects that NGOs then carry out.⁹²² No party interviewed admitted receiving private donations.⁹²³ There are, however, frequent rumours of parties receiving private funding and that this funding is used to encourage members of parliament to cross the floor in support of motions of no confidence.⁹²⁴

Whilst considerable reliance on members' fundraising activities suggests a lack of diversity of sources of funding there is considerable diversity of membership. Unlike in Europe, where membership of political parties is declining and, on average, less than 5% of voters are now party members,⁹²⁵ street survey research carried out by the National Integrity System researchers in Vanuatu suggests that parties have a broader membership base. Whilst the sample was small (50 people), 28% indicated that they were members of parties.⁹²⁶

There are no limits on the extent to which members of parliament are able to use their allowances to support political party activities. As a result small parties and newly formed parties without any representatives in parliament are likely to be more financially precarious as compared to those with representatives in parliament. However, in the absence of transparency as to political party accounts this is a supposition.

There is no restriction on parties to access airtime during election campaigns. Nor are any parties provided state support during campaigns. In practice, the right to using media during election

⁹¹⁶ Comments of Advisory Group Members, Advisory Group Meeting 6 March 2014.

⁹¹⁷ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeon H Nimbwen, Port Vila, 22 January 2014.

⁹¹⁸ Ibid.

⁹¹⁹ Comments of Advisory Group Members, Advisory Group Meeting 6 March 2014.

⁹²⁰ Interview of Jeff Joel Patuvanu, Secretary General Nagriamel Movement with Kibeon H Nimbwen, Port Vila, 22 January 2014; Interview of Letty Kaltongga, Labour Party Representative with Kibeon H Nimbwen, 24 January 2014.

⁹²¹ Ibid.

⁹²² Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeon H Nimbwen, Port Vila, 22 January 2014.

⁹²³ Ibid.

⁹²⁴ Lynn J Tane, 'Can we Control Foreign Influence in Politics?' *Vanuatu Times* 7–13 March 2014, 1; 'Reports of foreign interference: Claims Opposition camp was "bankrolled"' *Independent* 1 March 2014, 2; Jonas Cullwick, 'Opposition paid bills for camp' *Vanuatu Daily Post* 5 March 2014, 3.

⁹²⁵ <http://blogs.lse.ac.uk/europpblog/2013/05/06/decline-in-party-membership-europe-ingrid-van-biezen/> [accessed 11 March 2014].

⁹²⁶ Data on file with author.

campaigns is restricted by money, with wealthier parties having better access. There are also some ties between some private media outlets and politicians. For instance, Sabi Natonga of the National Community Association Party owns a newspaper a radio station and a website.⁹²⁷ As discussed in the section on media, public access to and use of media is somewhat limited. This fact, combined with the community based political environment in which personal connections are very influential on determining political party affiliation,⁹²⁸ means that inequities in being able to access media are not a significant outcome on election results.

It is not only financial resources that affect the activities of political parties. As with CSOs, political parties are somewhat constrained by the limited human resource capacity of Vanuatu. This can affect activities such as the development of policy and the internal management of political parties.

Independence (law)

Score: 100

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF POLITICAL PARTIES?

The Constitution protects the free formation of political parties and there are no other specific laws on the monitoring of political party activities.

There are no specific laws relating to state powers to monitor, investigate or dissolve political parties. As political parties tend to register as charitable associations they are subject to the oversight that applies to all such bodies. Whilst the law does not give power to the state to attend the meetings of charitable associations, if an incorporation was obtained by fraud, misrepresentation or mistake or any of the objects of the association become unlawful or the association is discriminating against any person, group of persons or class of persons or is being used for an unlawful purpose, or the association is not functioning properly in practice then the registrar may give the association 30 days to explain why it should not be dissolved.⁹²⁹ If cancellation then occurs the association can appeal the decision to the Supreme Court.⁹³⁰ As the Constitution protects the free formation of political parties so long as they are operating for democratic purposes⁹³¹ any illegitimate interference in the operation of a political party pursuant to the laws on charitable associations would be unconstitutional.

Independence (practice)

Score: 100

TO WHAT EXTENT ARE POLITICAL PARTIES FREE FROM UNWARRANTED EXTERNAL INFLUENCE IN THEIR ACTIVITIES IN PRACTICE?

There are no examples in the last five years of the state dissolving or prohibiting political parties. Nor are there examples of harassment and attacks on opposition parties by state authorities or other examples of state interference in the activities of political parties.

The only recent incident of state interference in the formation of political parties occurred in 2012 when a breakaway faction from UMP was not permitted to register a charitable association under the name of Union of Moderate Parties for Change. This decision was taken by the Registrar pursuant to section 52 of the Charitable Associations Act, which prohibits the issue of a certificate of

⁹²⁷ PACMAS, *Vanuatu State of Media and Communication Report 2013* (Port Vila: PACMAS, 2013) 3 – 5.

⁹²⁸ See, further, foundations chapter.

⁹²⁹ Section 10, Charitable Associations (Incorporation) Act [Cap 140].

⁹³⁰ Section 11, Charitable Associations (Incorporation) Act [Cap 140].

⁹³¹ Article 4(3), Constitution of the Republic of Vanuatu.

incorporation in a name the registrar considers closely resembles that of another incorporated association. The decision was appealed to the Minister of Finance, who upheld the decision. The decision was then appealed to the Supreme Court, who again upheld the decision.⁹³² This incident was not of great significance. The state did not attempt to prevent the new party from forming at all. Instead it intervened in order to reduce confusion that may be created in the minds of voters due to similarity of names. The new party was not prohibited from registering under a different name and became known as the Reunification Movement for Change.

There have been a number of instances in which political party members themselves have referred matters to court due to allegations of breaches of internal rules.⁹³³ As these are internal disputes, in which the court has acted impartially, they are not examples of external interference.

Governance

Transparency (law)

Score: 0

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE THAT REQUIRE PARTIES TO MAKE THEIR FINANCIAL INFORMATION PUBLICLY AVAILABLE?

There are no laws requiring political parties to disclose any financial information.

There are no laws requiring political parties to disclose information on government subsidies or private financing. Nor are there laws on disclosure of campaigning money received or money spent on political campaigns during election periods.

Transparency (practice)

Score: 0

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT FINANCIAL INFORMATION FROM POLITICAL PARTIES?

In the absence of laws requiring transparency of financial transactions it is not possible for members of the public to access financial information from political parties.

Political parties do not make financial information available as a matter of course. Whilst members may be provided with some financial information during congresses⁹³⁴ and some of this may filter to the public, there are no channels for the public to seek financial information from parties. A further issue is that information provided to members and supporters is unlikely to have been audited.⁹³⁵ Some parties may voluntarily provide information upon request, but in the absence of audited accounts it can be difficult for parties to meet requests.

⁹³² Union of Moderate Parties (Inc) v Minister of Finance [2012] VUSC 164.

⁹³³ See, for instance, Natapei v Iauko [2012] VUSC 181; Kalpokas v Electoral Commission [2004] VUSC 6.

⁹³⁴ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 22 January 2014; Interview of Jeff Joel Patuvanu, Secretary General Nagriamel Movement with Kibeaon H Nimbwen, Port Vila, 22 January 2014.

⁹³⁵ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 22 January 2014.

The absence of laws means that it is impossible to verify the extent to which rumours and allegations of private donations to parties and parties making payments to members of parliament in order to cross the floor⁹³⁶ are accurate.

Accountability (law)

Score: 0

TO WHAT EXTENT ARE THERE PROVISIONS GOVERNING FINANCIAL OVERSIGHT OF POLITICAL PARTIES BY A DESIGNATED STATE BODY?

There are no provisions that require political parties to maintain records on their finances and report on them.

No state body is legally empowered to demand financial reports from political parties, either during or between election periods. Political parties are therefore not accountable in law for either donations or expenditures and face no consequences if they do not voluntarily disclose this information.

Accountability (practice)

Score: 0

TO WHAT EXTENT IS THERE EFFECTIVE FINANCIAL OVERSIGHT OF POLITICAL PARTIES IN PRACTICE?

In the absence of laws requiring accountability political parties do not generally self-regulate to ensure accountability in practice.

In Vanuatu, there is no designated state body that receives financial reports during and between elections. However, some parties' constitutions may require the production of audited accounts so there is some self-regulation in this area. For instance, the VP constitution requires the national accounts of the party to be audited annually.⁹³⁷ The extent to which self-regulation is effective is questionable, although in the absence of transparency this comment remains speculative.

Integrity (law)

Score: 25

TO WHAT EXTENT ARE THERE ORGANISATIONAL REGULATIONS REGARDING THE INTERNAL DEMOCRATIC GOVERNANCE OF THE MAIN POLITICAL PARTIES?

The internal constitutional basis of the main political parties requires democratic processes to select party leaders, although candidates for election tend to be selected.

There are no laws regulating internal governance of political parties. However, the "mother parties" follow a model in which party leadership must be elected during party congresses.⁹³⁸ In the absence of constitutions from other political parties it is assumed that these parties have created an exemplar parties that have splintered off from them also follow.

⁹³⁶ See, for example, Lynn J Tane, 'Can we Control Foreign Influence in Politics?' *Vanuatu Times* 7–13 March 2014, 1; 'Reports of foreign interference: Claims Opposition camp was "bankrolled"' *Independent* 1 March 2014, 2; Jonas Cullwick, 'Opposition paid bills for camp' *Vanuatu Daily Post* 5 March 2014, 3.

⁹³⁷ Article 7, Constitution of the Republic of Vanuatu.

⁹³⁸ *Vanua'aku Pati Constitution; Union of Moderate Patis Committee (Inc) v Salwai* [2012] VUSC 179.

Candidates for election are selected in two main ways. Either the party leadership must endorse them, as currently happens with the Graon mo Jastis Pati⁹³⁹ and used to happen with VP,⁹⁴⁰ or Regional Coordination Committees can select them, as happens with VP currently.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE INTERNAL DEMOCRATIC GOVERNANCE OF POLITICAL PARTIES IN PRACTICE?

Leadership of political parties can be beset by internal disputes that undermine democratic governance. Such disputes can also contribute to fragmentation.

Whilst the major political parties do hold party congresses and the leadership of political parties is elected in these, issues of political party leadership are somewhat frequent subjects of court challenges. In the past five years both UMP and VP have been rocked by challenges, in which one faction has claimed that the current party leadership is illegitimate due to internally developed political party procedures not being adhered to.⁹⁴¹ The fact that matters get referred to court indicates a somewhat opportunistic approach towards claiming party leadership and leads to splinter parties when leadership positions cannot be gained through legitimate party processes.

As discussed below many political parties lack technical capacity to develop policies. One result of this is that individual party leaders who have stronger technical capacity are able to capture the policy development process. Members often have little input into policy formation. A street survey of 50 people conducted by National Integrity System researchers in Port Vila in January 2014 indicated that only 14% of respondents who were party members had any input into developing policies.

Role

Interest aggregation and representation

Score: 25

TO WHAT EXTENT DO POLITICAL PARTIES AGGREGATE AND REPRESENT RELEVANT SOCIAL INTERESTS IN THE POLITICAL SPHERE?

The fragmented political party environment, lack of technical capacity within political parties to develop policy statements, and cultural practices that support a clientelistic relationship between political parties and society, all hinder the development of policy based politics.

As discussed above political parties in Vanuatu are fragmented, with many parties being descendants of the two mother parties. The Pacific Institute of Public Policy observes that, 'Many say that most policy platforms of splinter groups are carbon copies – cut and pasted from those of the original 'mother parties' like the Vanua'aku Party (VP) and the Union of Moderate Parties (UMP). In some respects this is true.'⁹⁴² A further hindrance to political parties developing distinct political platforms is that 'apart from a few well-established political parties, many newer ones seem to lack the necessary technical capacity to be able to craft simple, concrete and yet workable policy platforms that capture and address the aspirations and the key needs of the people.'⁹⁴³ Whilst brief

⁹³⁹ <http://www.graonmojastis.org/pati-bakgraon> [accessed 26 February 2014].

⁹⁴⁰ Interview of Sela Molisa, Secretary General Vanua'aku Party with Kibeaon H Nimbwen, Port Vila, 22 January 2014.

⁹⁴¹ Union of Moderate Parties Committee (Inc) v Salwai [2012] VUSC 179; Iauko v Natapei [2012] VUCA 18.

⁹⁴² <http://pacificpolicy.org/blog/2012/11/07/summary-analysis-of-party-political-platforms-english-version/> [accessed 26 February 2014].

⁹⁴³ Ibid.

outlines of key policy points are often to be found on election posters, it is much less common for parties to have fuller written statements of policy.

Rather than there being specific interest groups who dominate political parties, parties can be dominated by prominent charismatic politicians, who have often split from the mother party when they have been unable to assume desired leadership positions. In general, a charismatic leader tends to rely on support for him or her as a person rather than support for policies, which undermines policy-based political parties. Further, as discussed in the foundations section, fragmentation within politics has, to a degree, been influenced by traditional culture and the traditional “big man” model of authority in which power may be gained by developing influence through exchange.⁹⁴⁴ This affects the perception of the role of political leaders. Rather than implementing nationally focused policy, members of parliament are ‘expected to provide access to resources and “development” funds. Indeed, all members of parliament act as central nodes in networks of distribution and exchange focused on access to state resources.’⁹⁴⁵ This clientelistic dynamic undermines the operation of policy or values-based politics.

One advantage of the personalised nature of Vanuatu’s political parties is that members/supporters are more likely to have direct ties (whether family ties or other personal connections) with the political party leadership. As discussed above, a street survey conducted by National Integrity System researchers suggests that political party membership is high. Further, 43% of political party members indicated that they were aware of what their party’s policies were. Whilst this suggests that parties do have a considerable degree of legitimacy, it must also be remembered that in the environment of relatively low education where parties lack the technical capacity to develop sound policy statements, party members may also lack the capacity to assess policy statements from the perspective of national, rather than personal, interest.

There is no formal linkage between political parties and civil society. As discussed in the section on civil society organisations, government tends to view CSOs as “foreign”, or with different agendas. However, some political parties do, at times, work with CSOs. As mentioned above, parties may support the development of CSO projects for donors to fund. When interests align there may also be collaboration in developing policy statements.

Anti-corruption commitment

Score: 25

TO WHAT EXTENT DO POLITICAL PARTIES GIVE DUE ATTENTION TO PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION?

In the absence of clear policy statements it is somewhat difficult to ascertain the extent to which parties are committed to an anti-corruption agenda. Nevertheless, in the 2012 election two parties that won significant numbers of seats did have detailed policies relating to anti-corruption and the current governing coalition also appears to be committed to instigating reforms.

In the absence of published political party manifestos it can be difficult to assess the extent to which political parties prioritise anti-corruption. Further, the coalition government environment means that, often, individual parties are unable to have their policies reflected in government reforms, which are instead based upon compromise and consensus. However, an assessment of political party policies in the lead up to the 2012 national election only identified three parties as having detailed action statements in respect of leadership and corruption.⁹⁴⁶ Policies of these parties included:

⁹⁴⁴ Marshall Sahlins, ‘Poor Man, Rich Man, Big Man, Chief: Political types in Polynesia and Melanesia’ (1963) 5(3) *Comparative Studies in Society and History* 285.

⁹⁴⁵ Michael G Morgan, ‘Political fragmentation and the policy environment in Vanuatu, 1980–2004’ (2004) 19(3) *Pacific Economic Bulletin* 40, 45.

⁹⁴⁶ <http://www.pacificpolicy.org/wp-content/uploads/2012/10/PIPP-political-party-analysis-8pp-web.pdf> [accessed 26 February 2014].

enacting legislation to control political party formation and require political parties to declare their sources of funding; establishing additional anti-corruption agencies; and controlling political advisors and political appointees.⁹⁴⁷

A number of parties also had policies in the area of governance reform. Whilst not all of these policies would be positive anti-corruption measures, they included reconsidering the number of seats in parliament and introducing controls to reduce the likelihood of motions of no confidence.⁹⁴⁸

VP in particular campaigned on a platform of anti-corruption, with posters reflecting that this was their key policy point.

Given the frequent changes in government outside of the election, governing coalitions that have an anti-corruption agenda necessarily make piecemeal changes. A number of reforms have been discussed for years (see, for instance, proposals to reform the laws relating to the ombudsman and Leadership Code discussed in the section on the ombudsman) without any change occurring. However, the former Carcasses government had a large enough majority to be able to pass constitutional amendments and has restarted dialogue on reforming political party regulation.⁹⁴⁹ The current Natuman government has indicated commitment to continuing reforms in this areas and there is some hope that a suite of anti-corruption reforms will be passed.

RECOMMENDATIONS

1. Governance of political parties is particularly weak. It is recommended that the government establish a transparent committee to lead law reform activities to address this issue and ensure transparency of political parties. Once law reform proposals have been developed it is further recommended that the legislature enacts new laws in this area and that the government then implements the new laws. These law reforms should cover, as a minimum, the following:
 - a. Mandatory disclosure of party income and expenditure via annual audited accounts which are made public.
 - b. Mandatory disclosure of all party income and expenditure during the election campaigning period via audited accounts which are made public.
 - c. mandatory filing of policy platforms with a central body, with the central body to provide a public access point to information on policies for the public.
 - d. Mandatory filing of constitutions with a central body, with the central body to provide a public access point to political party constitutions for the public.
 - e. Disclosure rules for independent candidates.
2. Before any consideration can be given to public funding of political parties, accountability mechanisms must be established. Further controls should also be considered. These include setting minimum requirements for eligibility for funding (such as receiving a threshold of 5% of votes in national elections), only reimbursing stated expenses on production of receipts/audited accounts and stopping funding if audited accounts are not received.
3. As technical capacity limits the extent to which parties can develop policy statements and internal governance structures, it is recommended that aid donors, in consultation with political parties and parliament:
 - a. Assess the extent to which technical assistance to develop political parties' capacity in these areas is required.
 - b. Following this assessment, support the provision of relevant technical assistance in this area.

⁹⁴⁷ <http://pacificpolicy.org/blog/2012/11/07/summary-analysis-of-party-political-platforms-english-version/> [accessed 26 February 2014].

⁹⁴⁸ <http://pacificpolicy.org/blog/2012/11/07/summary-analysis-of-party-political-platforms-english-version/> [accessed 26 February 2014].

⁹⁴⁹ Thompson Marango, 'Political Leaders to Discuss Stability Today' *Vanuatu Daily Post* 5 February 2014, 2.

4. The large number of parties and independent candidates contesting elections is contributing to the fragmented and clientelistic political environment. However, restricting the number of parties is undemocratic so is not a good approach to addressing this issue. Instead laws to create disincentives to candidates who do not have considerable popular support from contesting elections should be developed and enacted by the legislature. Law reform options that should be considered include:
 - a. Raising the number of supporters that must endorse a candidate before he or she is eligible to stand for election.
 - b. Raising the fee for candidates.
 - c. Raising the number of members required to establish a political party.

VII.11. MEDIA

SUMMARY

Overall pillar score: 41			
Dimension	Indicator	Law	Practice
Capacity 31.3	Resources	25	50
	Independence	25	25
Governance 41.7	Transparency	25	50
	Accountability	50	50
	Integrity	50	25
Role 50	Investigate & expose cases of corruption	50	
	Inform public on corruption	50	
	Inform public on governance issues	50	

There is considerable diversity within Vanuatu's media landscape and reporting is not dominated by any political perspective. Commercial media frequently publishes corruption related stories, although reporting tends to be superficial. Media is also active in relaying government press releases, which serves to inform the public on governance issues and activities.

However, media faces a number of challenges in being able to fulfil its "watchdog" role within the National Integrity System. There are a limited number of qualified and experienced journalists. Intimidation of journalists occurs regularly. Cultural factors hinder the criticism of leaders. There is no freedom of information law. Licensing laws potentially allow for the minister in charge to impose restrictive conditions on broadcast activities. All of these factors contribute to an environment that discourages investigative journalists. Internal governance is also weak. Whilst there is a voluntary code of media ethics there is no media regulatory body that can enforce ethical standards and practices. As a result there is no way to ensure that transparency, accountability and integrity mechanisms contained within this code affect media practices.

STRUCTURE AND ORGANISATION

Vanuatu's media can be divided into five categories: publically owned local media; commercial local media; community local media; church media; and international media. Publically owned local media consists of one television station and two radio stations. Privately owned media includes two national radio stations, three newspapers, one television station and a number of media websites. A community radio station that broadcasts over parts of Tafea Province also operates. International media, which broadcasts in Vanuatu but does not include locally generated content, includes two television stations (China Central Television and the Australia Network). Church media consists of two television stations maintained by international churches and one church owned radio station.⁹⁵⁰

There is no legislated body that oversees media standards. Whilst the Vanuatu Broadcasting and Televisions Corporation (VBTC) issues licenses for broadcasters, licensing is a revenue gathering activity. The Media Association of Vanuatu (MAV) is an NGO that was formed in 2006. It is a voluntary body that assists in developing media, for instance through development of a media code of ethics.

⁹⁵⁰ PACMAS, *Vanuatu State of Media and Communication Report 2013* (Port Vila: PACMAS, 2013), 3-5, plus personal information.

It can be noted that internationally there is increasing attention on social media and its role in citizen engagement and developing democratic practice. In Vanuatu, where penetration of the internet is currently low and access to the internet is currently expensive, the development of social media strategies has deliberately not been a focus of this section of the report or recommendations.

ASSESSMENT

Capacity

Resources (law)

Score: 25

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO A DIVERSE INDEPENDENT MEDIA?

The law potentially restricts the establishment of both print and broadcast media, but does not regulate for media standards.

There are no particular licensing requirements for print based media. Whilst print media organisations must hold a business license to operate, the process for gaining a business license is the same as for businesses engaged in other activities. The Newspaper (Restriction of Publication) Act prohibits non-citizens from owning or publishing a newspaper within Vanuatu unless they have approval from the minister responsible. This Act does not provide criteria for the minister to consider in deciding whether to grant approval. Nor does it provide an appeal process, although the generic court judicial review process for appealing administrative decisions could be used to appeal a negative decision.

Broadcasters must apply for a specific license from the minister responsible.⁹⁵¹ The Broadcasting and Television Act does not provide any criteria the minister must consider in deciding whether to grant a license. The minister can also impose special conditions as part of the licensing process.⁹⁵² The minister can, at any time vary license conditions⁹⁵³ and can revoke a license on a broad range of grounds.⁹⁵⁴ Again the law does not specify an appeals process, although judicial review through the courts could be used.

Whilst licensing contains potentially restrictive provisions, in other areas there is little regulation. There are no restrictions on acting as a journalist. Nor is there regulation of online media activities. There is no legislated body that oversees issues of media standards, which could help to ensure diverse responsible media.

⁹⁵¹ Section 43, Broadcasting and Television Act [Cap 214].

⁹⁵² Section 45(2)(b), Broadcasting and Television Act [Cap 214].

⁹⁵³ Section 47, Broadcasting and Television Act [Cap 214].

⁹⁵⁴ Section 48, Broadcasting and Television Act [Cap 214].

Resources (practice)

Score: 50

TO WHAT EXTENT IS THERE A DIVERSE INDEPENDENT MEDIA PROVIDING A VARIETY OF PERSPECTIVES?

Whilst there are a variety of media sources, they are centred in Port Vila and social and political interests from outside of Port Vila are underrepresented. The lack of qualified journalists is another practical resource issue.

Whilst there is a considerable diversity of types of media and mixes of ownership (government, commercial, community, church and international) some observations can be made. First, some owners control more than one type of media. For instance, the owners of the Daily Post operate the Vanuatu Daily Post Newspaper, the Daily Post website and Buzz FM Radio. Sabi Natonga is recorded as the owner of the Vanuatu Times newspaper, Capitol FM Radio, and a news website.⁹⁵⁵ Having the same owners of multiple media sources reduces diversity. Second, church media does not carry local news content. Third, the government does not maintain print-based media, so this medium is private sector dominated. If one of the functions of government media is, or should be, to create a journalistic record, then the lack of a government issued newspaper is something of a gap. Fourth, as media production is almost entirely centred in the capital, Port Vila, the social and political interests of those outside of the capital are under-reported.

People outside of urban centres may also have difficulty in accessing media. Only 20% of the population watches television weekly. Twenty-eight per cent (28%) access newspapers weekly.⁹⁵⁶ Distribution of newspapers is a commercial decision and costs versus returns limit the extent to which newspapers are distributed rurally. A recent report observes that, 'One of the biggest challenges in Vanuatu is reaching the dispersed population, especially those who live on the outer islands. This affects broadcasting in terms of reach, and presents challenges in the regular maintenance of equipment.'⁹⁵⁷ Only 44% listen to radio regularly. Internet usage is also currently low, with 8% regularly accessing the internet. There is, however, very good mobile phone coverage, with 76% of households having a mobile phone.⁹⁵⁸

It is not just the spread of ownership that is necessary for a diverse independent media. Well trained journalists are also necessary. Both the 2004 and 2006 National Integrity System reports noted that there was a lack of trained journalists. Since 2006 the Vanuatu Institute of Technology has established certificate and diploma programmes in journalism in an initiative to address this issue. The first graduates of these programmes were produced in 2010.

In the absence of government regulation of media standards, self-regulation is important. To this end, MAV, which grew out of the Port Vila Press Club, was established in 2006. MAV has very limited resources and relies on the support of volunteers.⁹⁵⁹

⁹⁵⁵ PACMAS, *Vanuatu State of Media and Communication Report 2013* (Port Vila: PACMAS, 2013) 3 – 5.

⁹⁵⁶ Intermedia, *Citizen Access to Information in Vanuatu*, 2013 (Port Vila: Intermedia, 2013) 3.

⁹⁵⁷ PACMAS, 2013: 2.

⁹⁵⁸ Intermedia, 2013: 3.

⁹⁵⁹ PACMAS, 2013: 9.

Independence (law)

Score: 25

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF THE MEDIA?

The law potentially allows for significant interference with broadcasters. Further, the law does not promote freedom through measures such as freedom of information, although reforms are currently in progress.

Freedom of expression is enshrined in the Constitution.⁹⁶⁰ However, there are no specific laws protecting media freedom or editorial independence. There are no laws allowing access to information. Whilst a Right to Information Policy was approved by the government in August 2013⁹⁶¹ and the Right to Information Bill was listed for debate in parliament in November 2013, it was withdrawn by the Attorney General for further corrections before it was discussed.⁹⁶² In April 2014 the government Right to Information Policy was officially launched.⁹⁶³ There is an Official Secrets Act which allows the government to restrict access to a wide variety of material.

Censorship is not expressly stated to be illegal. As discussed above, licensing of broadcasters is done at the discretion of the minister concerned. As the minister also has discretion to impose conditions it would be possible for the broadcasting license procedure to regulate content. As the minister can vary conditions and can also suspend or revoke broadcasting licenses, the law effectively allows the government to control the content of broadcasters. Newspapers are not, however, subject to the same licensing controls. Although, as noted above, foreign owned newspapers must be given ministerial permission to operate, there are no provisions to allow the minister to impose conditions on the operations of either foreign owned or locally owned newspapers.

There are no libel statutes. Instead English common law applies to create a civil tort of defamation. Criminal defamation, which requires a malicious intent to expose a person to public hatred, contempt or ridicule, or harm to their reputation, is a crime.⁹⁶⁴

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE MEDIA FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

Whilst incidents are not frequent there is a consistent record of attacks on and threats to journalists. More subtle intimidation also occurs at times.

Although laws relating to broadcasters create the potential for significant interference in broadcast operations through the restriction of licences, in practice no instances of this occurring in the past five years have been reported. Whilst it was reported in January 2013 that the government ordered one of the commercial radio stations, Capitol FM, to stop broadcasting, the reason for this order was that the radio station had not paid its broadcasting licence fee since 2010. Although the Prime Minister had also expressed concerns about broadcasting standards, there was no attempt to impose specific restrictions on the operation of Capitol FM. Commentary from Radio Australia and a

⁹⁶⁰ Article 5, Constitution of the Republic of Vanuatu.

⁹⁶¹ 'Gov't announces right to information policy' *Vanuatu Daily Post Online* 21 August 2013.

⁹⁶² Interview of Bob Makin, freelance journalist with Anita Jowitt, Port Vila, 7 December 2013.

⁹⁶³ Email from Secretary Media Association of Vanuatu, Cathy Nunn to Anita Jowitt 9 April 2014.

⁹⁶⁴ Section 120, Penal Code Act [Cap 135].

New Zealand based media lecturer noted that the issue was about licensing and 'shouldn't be muddled by debate about press freedom'.⁹⁶⁵ Whilst Capitol FM has remained on air it is not clear whether its broadcasting licence has now been paid.

In 2010 some members of MAV campaigned for the publisher of the Vanuatu Daily Post, Marc Neil-Jones, to be denied a broadcasting licence for a new radio station, Buzz FM. The ostensible ground for MAV opposition to this new radio station was that 'indigenous culture needed to be protected',⁹⁶⁶ although MAV has been affected by internal conflicts and disputes and motivations may also have been more personal.⁹⁶⁷ It can be observed that Marc Neil Jones is a naturalised Vanuatu citizen. Despite this opposition, Buzz FM was granted a broadcasting licence.

Although there have been no issues with restrictions of broadcasting licenses, a recent report on media freedom in the Pacific observed that, in Vanuatu 'blatant intimidation [of journalists] continues with near impunity'.⁹⁶⁸ A number of examples of harassment of journalists have been reported in the past five years. In May 2013 a sub-editor of The Independent newspaper, Gratien Tiona, was arrested for the offences of terrorist activity, seditious publication and making threats, following a comment he wrote on a social media site and a subsequent complaint made by the Prime Minister to the police.⁹⁶⁹ The journalist was released without charge after 30 hours. In August 2011 journalists at the VBTC reported that the then Minister of ni-Vanuatu Business had entered the newsroom and demanded that they censor a story, leading to concerns of ongoing intimidation.⁹⁷⁰ In March 2011 the Publisher of the Daily Post was assaulted, with the then Minister for Public Utilities, Harry Iauko, being involved in the assault. In January 2009 the publisher of the Daily Post was badly assaulted by police following press coverage of issues within correctional services.⁹⁷¹ Transparency Vanuatu reported four incidents of threats against staff following news items between 2010 – 2013.⁹⁷² In only one of these instances did any criminal action result. Iauko was convicted for his role in assaulting the Publisher of the Daily Post and made to pay a fine of VT15,000 (US\$150).

Previous National Integrity System reports noted issues with irresponsible reporting. The absence of an enforceable code of conduct means that there is a blurred line between subtle intimidation of the media and legitimate calls for self-regulation. In April 2011 Iauko raised a proposal to make a media code of ethics law.⁹⁷³ The context in which Iauko raised the proposed law reform illustrates subtle intimidation through the threat of introducing laws that could be used to censor the media. The former Carcasses government had made statements about the need for "responsible media reporting" in relation to stories such as rumours of a motion of no confidence and allegations of sale of passports by the government.⁹⁷⁴ Whilst these statements can be perceived as well-intentioned attempts to call for responsibility within the media, they can also be perceived as attempts to shut down news stories that the government sees are damaging to it. It is not only the government that engages in "warning" the media. For example, in 2013 the General Manager of Airports Vanuatu Ltd condemned consultants and the media for reporting that the main international runway was not up to international standards.⁹⁷⁵

The previous National Integrity System reports noted that self-censorship sometimes occurred, either due to fear, or due to cultural factors that discourage public criticism of leaders. As occasional attacks continue to occur it is reasonable to assume that self-censorship remains something of an

⁹⁶⁵ Emma Younger, 'Vanuatu government and radio station in standoff' *Radio Australia Online* 11 January 2013.

⁹⁶⁶ Alex Perrottet and David Robie, 'Pacific Media Freedom 2011: A status report' (2011) (17(2) *Pacific Journalism Review* 148, 173.

⁹⁶⁷ See, for example, 'Journalists Resign From Vanuatu Media Association' *Radio Australia Online* 20 July 2009.

⁹⁶⁸ Alex Perrottet and David Robie, 'Pacific Media Freedom 2011: A status report' (2011) (17(2) *Pacific Journalism Review* 148, 149.

⁹⁶⁹ 'Vanuatu Journalist Arrested Over Social Media Post' *Australia Network News Online* 7 May 2013.

⁹⁷⁰ 'Vanuatu Journalists Fear Ongoing Threats from Political Lead' *Pacific Scoop* 10 August 2011.

⁹⁷¹ Shailendra Singh, 'Investigative Journalism: Challenges, perils, rewards in seven Pacific Island countries' (2012) 18(1) *Pacific Journalism Review*, 83, 91.

⁹⁷² Comments by Stephanie Neilson, Transparency International Vanuatu staff member at NIS Advisory Group Meeting, 17 December 2013.

⁹⁷³ 'Minister Iauko wants to legalise media code of ethics' *Vanuatu News Online* 20 April 2011.

⁹⁷⁴ Godwin Ligo, 'Gov't has 34 MPs: Regenvanu' *Vanuatu Daily Post* 28 March 2013, 1. Jonas Cullwick, 'PM denies gov't sold passports' *Vanuatu Daily Post* 2 November 2013, 2.

⁹⁷⁵ 'Consultants' remark unprofessional: AVL' *Vanuatu Daily Post* 14 August 2013, 3.

issue. Indeed the MAV reaction to Tiona's arrest is indicative of an environment in which self-censorship is rife: 'We as professional media are aware of the risks and dangers of speaking out ... we all have a responsibility to think before we speak and to consider the possible consequences... We urge our media colleagues and all citizen journalists and commentators ... to consider their safety when making public comment.'⁹⁷⁶

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE MEDIA?

There are no laws relating to transparency of ownership, reporting or editorial policies although there are limited provisions in the voluntary Vanuatu Media Code of Ethics and Practice.

There are no specific laws requiring media outlets to disclose their ownership, or other interests, although if they are structured as companies then they must comply with general company laws regarding filing of accounts and other documents.

The MAV Code of Ethics has some provisions relating to transparency. Subterfuge in obtaining information is to be avoided,⁹⁷⁷ editorial⁹⁷⁸ and advertising⁹⁷⁹ content must be clearly distinguished from news reports, and financial interests in stories must, where appropriate, be disclosed to readers.⁹⁸⁰ Whilst other personal interests or conflicts of interest in respect of stories need not be disclosed to the public, journalists must make their editor or supervisor aware of such interests.⁹⁸¹ However, as noted above, this Code of Ethics is not enforceable.

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE MEDIA IN PRACTICE?

Whilst most media outlets do not undertake proactive measures to be transparent, media operates within a small society and in practice, information on ownership and staffing is known. Industry wide editorial policies are available on request.

Although not legally required to do so, the small size of Vanuatu means that ownership of media outlets is public knowledge and can also be found in other places, such as the Vanuatu State of Media and Communication Report 2013, produced by the Pacific Media Assistance Scheme (PACMAS), a 10 year project funded by Australian Aid. Only The Independent newspaper routinely publishes information about its internal staffing. However, print stories are often published with journalists' names in by-lines. Broadcast presenters identify themselves by name.

No media outlets make information on their reporting and editing policies publicly available as a matter of course and tend to use the Vanuatu Media Code of Ethics and Practice rather than having

⁹⁷⁶ 'Vanuatu Journalist released without charge after arrest for online comment' *Vanuatu Times* 10-16 May 2013, 4.

⁹⁷⁷ Section 5, Vanuatu Media Code of Ethics and Practice.

⁹⁷⁸ Section 1(e), Vanuatu Media Code of Ethics and Practice.

⁹⁷⁹ Section 17, Vanuatu Media Code of Ethics and Practice.

⁹⁸⁰ Section 19(b), Vanuatu Media Code of Ethics and Practice.

⁹⁸¹ Section 18, Vanuatu Media Code of Ethics and Practice.

internally developed editorial policies. As at December 2013 this Code is no longer available online, although it is available on request from MAV or individual media outlets.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE LEGAL PROVISIONS TO ENSURE THAT MEDIA OUTLETS ARE ANSWERABLE FOR THEIR ACTIVITIES?

No statute laws are in place to ensure the accountability of media employees. The unenforceable nature of the Vanuatu Media Code of Ethics and Practice limits its effectiveness as an accountability mechanism.

As already noted, the VBTC does not have a statutory role in the regulation of private media.⁹⁸² There is no statutory press council or broadcasting regulatory authority.

The voluntary Vanuatu Media Code of Ethics and Practice requires media outlets to provide a fair opportunity to reply to individuals and organisations that have been the subject of criticism, allegations or editorial comment.⁹⁸³ The Code of Ethics also requires media outlets to correct erroneous information and, if appropriate, publish apologies.⁹⁸⁴ MAV has no complaints procedures established and this Code of Ethics is not otherwise enforceable.

If erroneous information has been published then the media outlet can be subject to a lawsuit for breach of the common law of defamation. As correcting information may defeat a defamation action, threats of a lawsuit may lead to a correction being published.

Accountability (practice)

Score: 50

TO WHAT EXTENT CAN MEDIA OUTLETS BE HELD ACCOUNTABLE IN PRACTICE?

In general, media outlets do not have to answer for their activities, although they actively respect the right of reply.

Although there is a lack of legal accountability mechanisms, print media will often cover stories over several days with other sides giving their position in reaction to the initial story. Letters to the editor are also frequently used to provide a reply. Whilst these actions help to correct erroneous information and help to avoid defamation actions they do not result in individuals or outlets being held to account.

In the last five years only one case involving alleged defamation by a media outlet has been the subject of a published court decision, although the court ruled that no defamation had occurred.⁹⁸⁵

MAV does not advertise itself as a complaints body although it was willing to informally receive a complaint about racism in reporting in late 2013.⁹⁸⁶

⁹⁸² Part 2, Broadcasting and Television Act [Cap 214].

⁹⁸³ Section 2, Vanuatu Media Code of Ethics and Practice.

⁹⁸⁴ Section 1(b), Vanuatu Media Code of Ethics and Practice.

⁹⁸⁵ *Virelala v Kerr* [2010] VUSC 141.

⁹⁸⁶ Interview with complainant, December 2013. Complainant chose to remain anonymous.

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF MEDIA EMPLOYEES?

There are some integrity mechanisms within the voluntary Vanuatu Media Code of Ethics and Practice, but there are no integrity mechanisms in law.

There are no specific integrity mechanisms in law. The voluntary Vanuatu Media Code of Ethics and Practice applies to all members of MAV, and all local commercial and public media outlets have at least one member of MAV. The Code of Ethics contains some integrity measures. As noted above conflicts of interest must be declared to editors or supervisors and financial interests may be required to be disclosed to readers.⁹⁸⁷ Journalists should not allow themselves to be influenced by gifts and must declare gifts to their editor or supervisor.⁹⁸⁸ There are a number of provisions related to integrity in respect of information gathering practices, including prohibitions on using harassment⁹⁸⁹ and subterfuge,⁹⁹⁰ limitations on interviewing children⁹⁹¹ and limitations on paying people involved in criminal activities for stories.⁹⁹² Journalists are required to protect their sources.⁹⁹³ There are also a number of provisions related to integrity in respect of presenting news stories, with the overarching ethical principles being that reports must strive for accuracy, fairness and balance⁹⁹⁴ and must maintain standards of taste and decency.⁹⁹⁵

The Code of Ethics does not discuss in-house mechanisms that media outlets should establish in order to promote ethical conduct. Media outlets are small and in-house ethics committees do not formally exist.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEDIA EMPLOYEES ENSURED IN PRACTICE?

Whilst some work is underway in respect of developing media policy to strengthen integrity mechanisms, currently little is done to ensure integrity of media actors and to sanction misbehaviour.

It is difficult to assess the extent to which journalists follow a code of conduct. Examination of news stories suggests that multiple sources are not consistently used. The Pacific Freedom Forum, a regional body, noted a breach of ethics relating to decency in 2010, when a newspaper contained a photo of a dead child on the front page.⁹⁹⁶ It does not, however, consistently monitor the adherence of media to ethical standards.

MAV is not currently running any training on media ethics for working journalists, although it does provide input into journalism training courses. MAV has also been developing a Media Development

⁹⁸⁷ Section 18(c) and section 19(b), Vanuatu Media Code of Ethics and Practice.

⁹⁸⁸ Section 18(b), Vanuatu Media Code of Ethics and Practice.

⁹⁸⁹ Section 4, Vanuatu Media Code of Ethics and Practice.

⁹⁹⁰ Section 5, Vanuatu Media Code of Ethics and Practice.

⁹⁹¹ Section 8, Vanuatu Media Code of Ethics and Practice.

⁹⁹² Section 12, Vanuatu Media Code of Ethics and Practice.

⁹⁹³ Section 20(a), Vanuatu Media Code of Ethics and Practice.

⁹⁹⁴ Sections 1, 22, Vanuatu Media Code of Ethics and Practice.

⁹⁹⁵ Section 21, Vanuatu Media Code of Ethics and Practice.

⁹⁹⁶ <http://pacificmedia.org/archives/1439> [accessed 10 April 2014].

Policy in conjunction with the government. PACMAS has run some training at a regional level on media ethics.

Role

Investigate and expose cases of corruption practice

Score: 50

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INVESTIGATING AND EXPOSING CASES OF CORRUPTION?

Lack of capacity, interference with media and cultural factors all hinder in-depth investigative journalism on cases of corruption.

Independent print media is the main source of information about cases of corruption. News reports tend to “fill in the facts” of rumours of corrupt activities and there are frequent stories that have a corruption related angle. Whilst this approach has the advantage that a wide range of potentially corruption related activities are uncovered, it has the disadvantage that reporting tends to be quite superficial. As noted in the 2004 National Integrity System report, ‘journalists print stories that are reported to them, rather than uncovering stories themselves.’⁹⁹⁷ There is no established tradition of investigative journalism, in which journalists follow and develop a story over a period of time and synthesise different sources of information and viewpoints into a cohesive and comprehensive story.

There are a number of factors that contribute to the lack of investigative journalism. As discussed above, training for journalists is limited. As journalists do not specialise this limits their ability to develop specific technical knowledge to be able to effectively and correctly report on some issues. Threats against journalists lead to self-censorship and cultural factors also inhibit criticism of leaders. The lack of freedom of information laws can make it difficult to obtain official documents. Further, investigative journalism takes considerable time and media outlets do not have the resources to commit to sustained investigations that may not result in stories.⁹⁹⁸ No local media outlets have a specific focus on investigative journalism.

Inform public on corruption and its impact

Score: 25

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT ON THE COUNTRY?

No media in Vanuatu currently runs specific programmes aimed at educating the public on corruption, its costs and how to curb corruption, although some media supports NGO activities in this area.

Some media organisations support NGO activities aimed at educating the public about corruption. For instance, both the Vanuatu Times and the Vanuatu Daily Post newspapers provide a free weekly newspaper page to Transparency Vanuatu. Transparency Vanuatu also pays for weekly radio broadcasts on Capitol FM. However, there are no specific programmes initiated by the media to educate the public on corruption, its impact on the country, or how to curb it.

As discussed above, media outlets do, however, provide superficial coverage of a wide range of corruption related news stories. Whilst stories do not necessarily explicitly address why behaviour

⁹⁹⁷ Newton Cain and Jowitt, 2004: 25.

⁹⁹⁸ Shailendra Singh, ‘Investigative Journalism: Challenges, perils, rewards in seven Pacific Island countries’ (2012) 18(1) *Pacific Journalism Review*, 83, 91-92.

was corrupt and what the impacts of the behaviour were, the ongoing reporting of incidents does keep corruption in the public eye.

Inform public on governance issues

Score: 50

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON THE ACTIVITIES OF THE GOVERNMENT AND OTHER GOVERNANCE ACTORS?

Both public and privately owned media is active in informing the public on regular activities of the government, although media tends to relay government press statements, rather than actively reporting on issues so coverage is not entirely comprehensive.

Media, rather than official government information sources, is usually the first place to look for information on government activities. The news content of publically owned media is dominated by coverage of government events and activities. Reporting tends to involve relaying government press releases and statements, rather than critical assessment of activities. As such it is reactive rather than proactive, so coverage is not necessarily comprehensive. However, the media is non-partisan and will also broadcast press releases from the opposition. As all public media is broadcast only, a lasting print record of public media coverage of government activities is not produced.

Private print-based media also often runs stories based on official press releases and statements. Again these will often be relayed, rather than actively analysed and reported on. They do, however, create a lasting record of selected government activities.

RECOMMENDATIONS

1. The lack of enforcement hinders the effectiveness of governance mechanisms. It may also contribute to interference in the media due to there being no legitimate mechanism for laying complaints about irresponsible reporting. Government regulation could lead to concerns regarding censorship so self-regulation is preferable. MAV is in the process of developing a complaints mechanism and the government and aid donors should support this. At the same time MAV should support proposals to develop a Pacific-wide media ombudsman as having a regional body to appeal to reduces the risk of intimidation of any locally established media complaints authority.,.
2. The Vanuatu Code of Media Code of Ethics and Practice should be reviewed by an independent expert to ensure that it contains comprehensive provisions in respect of transparency, accountability and integrity.
3. Threats against media freedom are an ongoing issue, with laws potentially allowing interference in broadcasting and physical threats against journalists being somewhat routine. In order to address this, in addition to establishing a complaints mechanism, the following should occur:
 - a. In order to build pressure against government threats, MAV Vanuatu should maintain a record of threats against journalists and build links with international and regional media freedom watchdogs in order to ensure that these threats are publicised internationally.
 - b. The Law Reform Commission should review the Broadcasting and Television Act and the Newspaper (Restriction of Publication) Act with the aim of removing limits and/or clearly specifying ministerial powers in respect of restricting media activities.
4. It has been suggested that building collaborative journalism practices may help to strengthen investigative journalism in an environment where capacity and resources are lacking. The

Vanuatu Institute of Technology should consider including a module on developing collaborative investigative journalism practices in its journalism certificate and diploma courses.

5. The legislature should enact the Right to Information Bill as soon as possible and donors support its effective implementation as this will make it easier for investigative journalists to access information.

VII.12. CIVIL SOCIETY

SUMMARY

Overall pillar score: 41.7			
Dimension	Indicator	Law	Practice
Capacity 62.5	Resources	75	25
	Independence	100	50
Governance 25	Transparency	-	25
	Accountability	-	25
	Integrity	-	25
Role 37.5	Hold government accountable	25	
	Policy reform	50	

There are few civil society organisations (CSOs) in Vanuatu that have a specific anti-corruption mandate, although many of them do address issues of governance more generally. CSOs face challenges due to the general issue of limited human resource capacity within Vanuatu. This affects the ability of CSOs to deliver outputs and also limits the ability of CSOs to operate with good internal governance practices. Internal governance mechanisms are variable and very much depend upon the individual CSO. The geography of Vanuatu also makes it difficult for CSOs to effectively and sustainably engage with communities throughout the country or to mobilise the public to demand that government is held accountable for its actions. Another issue which makes it difficult for CSOs to effectively fulfil their role within the National Integrity System is that there is no forum through which CSOs and government can engage.

STRUCTURE AND ORGANISATION

Faasau-Pasikala classifies CSOs that can be found within Vanuatu as follows:

1. Community-based organisations (CBOs)
2. Charitable associations
3. Companies established for charitable or other useful purposes
4. Other organisations governed by specific laws (including religious associations)
5. International organisations working within Vanuatu (such as Oxfam or Save the Children)⁹⁹⁹

CBOs are usually formed by groups of men, women and youth from the villages. For instance, many villages will have women's groups, youth groups and other community governance groups such as a water supply committee. These represent CSOs that are created by written or oral agreement between its members, but are not registered or incorporated under any statute. They are particularly important for community governance. Religious associations are also very important at the community governance level. Christianity is now intertwined with tradition and in relation to customary social systems '[r]eligious affiliation is second in importance only to kinship and neighbourhood ties.'¹⁰⁰⁰ As a result religious leaders often play a traditional leadership role. Further, CBOs based on religious affiliation are common. Whilst formally registered non-governmental organisations (NGOs) will frequently interact with CBOs and religious associations when carrying

⁹⁹⁹ Amelia Fasi Pasikala Faasau, *Report on Laws Affecting Civil Society in Vanuatu* (Washington, D.C.: International Center for Not for Profit Law, 2004), 4-5

¹⁰⁰⁰ Lamont Lindstrom, 'Vanuatu' in Ember and Ember (eds) *Countries and their Cultures* (USA: Macmillan Reference, 2001) 2391, 2394.

out “grass-roots level” activities, both usually operate outside of the more formalised CSO sector so are not discussed specifically in the analysis of CSO capacity or governance in this report.

Instead, this report focuses on the formalised NGO sector, which is primarily comprised of associations registered under the Charitable Associations Act and includes international NGOs operating within Vanuatu. This formalised sector is primarily Port Vila based. It can be divided into two layers: international NGOs with a local Vanuatu office and “home-grown” NGOs.

The umbrella body for NGOs and CBOs in Vanuatu is the Vanuatu Association of Non-Government Organisations (VANGO). It was formed in 1991 and had 123 registered members in August 2012.¹⁰⁰¹ Its primary role is to help NGOs and CBOs to initiate action, give voice to their concerns and work collaboratively with other development actors for just and sustainable human development.¹⁰⁰² VANGO has, however, suffered from issues of weak governance so has not been active in fulfilling this role in some time. An extraordinary general meeting of VANGO was held in December 2013 as a ‘step forward in the progress of the rehabilitation of VANGO’.¹⁰⁰³

ASSESSMENT

Capacity

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCTIVE TO CIVIL SOCIETY?

The various laws concerning the establishment and operation of CSOs are simple and easy to follow. They also leave significant room for the various organisations to make their own rules and regulate their internal procedures as set out in their constitution or memorandum of association.

The Constitution of Vanuatu recognises that all persons are entitled to the freedom of assembly and association ‘subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health’.¹⁰⁰⁴

The most common type of CSO in Vanuatu is the charitable association, incorporated as a legal entity pursuant to the Charitable Associations (Incorporation) Act. This procedure is simple, quick and inexpensive. A committee of a charitable association, provided there are not less than six members, can apply to the registrar (Vanuatu Financial Services Commission (VFSC)) for a certificate of incorporation as a corporate body.¹⁰⁰⁵ This application must contain an application form that is signed by not less than half the members of the committee and states the name of the committee, a registered office, and the names, addresses and occupations of the members.¹⁰⁰⁶ It must also be accompanied by a signed statement of assets and liabilities and a certified copy of the articles of association.¹⁰⁰⁷ The Charitable Associations (Incorporation) (Fees) Regulation 1982

¹⁰⁰¹ ‘VANGO Announces New Board and Directors’ *Vanuatu Daily Post Online* 24 August 2012.

¹⁰⁰² Ibid.

¹⁰⁰³ Glenda Shing, ‘Weak Governance within VANGO Board’ *Vanuatu Daily Post Online* 10 December 2013.

¹⁰⁰⁴ Section 5(1)(h), Constitution of the Republic of Vanuatu.

¹⁰⁰⁵ Section 2(1), Charitable Associations (Incorporation) Act [Cap 140].

¹⁰⁰⁶ Schedule 1, Section 4(1), Charitable Associations (Incorporation) Act [Cap 140].

¹⁰⁰⁷ Section 4(2), Charitable Associations (Incorporation) Act [Cap 140].

prescribes the fees payable as VT5,000 (US\$500) for an application for incorporation and VT5,000 (US\$500) for a certificate of incorporation.¹⁰⁰⁸

If refusing to grant incorporation, the registrar must give reasons¹⁰⁰⁹ and the committee has the right to appeal to the minister of finance and economic management within 14 days.¹⁰¹⁰ The minister may either refuse the appeal, or order the registrar to grant incorporation.¹⁰¹¹ This decision cannot be questioned in court except on a point of law.¹⁰¹² Alternatively, a CSO can be registered as a company pursuant to the Companies Act. This procedure, being significantly more complex and expensive, is much less common.

There are also other types of associations which are governed by specific laws such as the Vanuatu Red Cross Society Act, the Trade Unions Act, and membership organisations which are established through legislation such as the Legal Practitioner's Act and the Health Practitioner's Act. Furthermore, although there are many international CSOs that operate within Vanuatu, they are not required to register pursuant to any legislation and are established under an MOU with the Government of Vanuatu, or through a bilateral or multilateral agreement which exists between the government and the organisation's home government or head organisation.¹⁰¹³

Vanuatu has no income tax, capital gains tax, or other forms of direct taxation. There is only indirect taxation through the form of Value Added Tax (VAT) and import and custom duties. The Import Duties (Consolidation) Act as amended by the Import Duties (Consolidation) (Amendment) Act 2009 makes an exemption for any goods imported by or donated to the Vanuatu Red Cross Society for their use or for free distribution in emergencies; certain trophies, sports equipment, uniform, medals and decorations; and specified church and school supplies.¹⁰¹⁴ Being the only forms of government taxation, VAT and duties are relatively high and thus, if granted, the exemptions are of significant benefit to CSOs. The authority to determine exemptions rests with the director of customs. VAT is also exempted, where an organisation is eligible for import tax exemptions,¹⁰¹⁵ for the supply of goods or services that are gifted to a non-profit body and are intended for use in carrying out the non-profit body's objectives.¹⁰¹⁶ International CSOs are exempted from VAT and import duties if this is provided for in the MOU signed between the government and that particular organisation.¹⁰¹⁷

Resources (practice)

Score: 25

TO WHAT EXTENT DO CIVIL SOCIETY ORGANISATIONS HAVE ADEQUATE FINANCIAL AND HUMAN RESOURCES TO FUNCTION AND OPERATE EFFECTIVELY?

Diverse funding sources are available to CSOs, however, these are often uncoordinated and short term in nature. Furthermore, the capacity of local CSOs to make efficient and effective use of these financial resources is very limited due to the lack of skilled and experienced staff.

In general, CSOs in Vanuatu are almost exclusively reliant on external funding sources;¹⁰¹⁸ the primary donors being foreign governments and multilateral agencies such as Australian Aid, the

¹⁰⁰⁸ Section 1, Charitable Associations (Incorporation) (Fees) Regulation 1982.

¹⁰⁰⁹ Section 3(1), Charitable Associations (Incorporation) Act [Cap 140].

¹⁰¹⁰ Section 3(3), Charitable Associations (Incorporation) Act [Cap 140].

¹⁰¹¹ Section 3(4), Charitable Associations (Incorporation) Act [Cap 140].

¹⁰¹² Section 3(5), Charitable Associations (Incorporation) Act [Cap 140].

¹⁰¹³ Faasau, 2004: 13.

¹⁰¹⁴ Section 3, Schedule 3, Import Duties (Consolidation) Act [Cap 91] as amended by the Import Duties (Consolidation) (Amendment) Act 2009.

¹⁰¹⁵ Schedule 2, Section 10(3)(b), Value Added Tax Act [Cap 247].

¹⁰¹⁶ Section 10(3)(a), Schedule 1, Value Added Tax Act [Cap 247].

¹⁰¹⁷ Faasau, 2004: 13.

¹⁰¹⁸ Wesley Morgan, 'Overlapping authorities: Governance, Leadership and Accountability in Contemporary Vanuatu' (2013) *Journal of the South Pacific Law* 38.

New Zealand Aid Programme, the EU and various UN agencies. Although there are a relatively large number of donors, it is not uncommon for an organisation to become highly dependent on one source, so that, for example if Australian Aid suddenly decided to cut all funding, many of the CSOs would face serious concerns.¹⁰¹⁹

The extent to which CSOs can rely on local sources is extremely limited and does not amount to any significant proportion of total funding. Whilst some organisations may occasionally receive a small grant of funds from the government, or support through the provision of supplies, there is no formal method of applying for funds nor is there a specific budget allocation for CSOs. As such, this process is governed by informal rules and is generally up to the discretion of the relevant authority.¹⁰²⁰ There are also some private philanthropic donors comprised of groups of business people or certain local companies that provide some direct funding or assistance through fundraising activities. However, this is usually motivated by private interests and is thus focused narrowly on marketable causes such as education or health, and involves only small scale funding or scholarship programs.¹⁰²¹

Some organisations do generate revenue from services, products, or rent from assets. For example, one of the largest and most reputable local CSOs, WanSmolBag, sells CDs, DVDs, scripts and books containing their work and also provides theatre services.¹⁰²² The Vanuatu Red Cross Society has sold donated goods (such as clothing) and held events such as gala nights for fundraising purposes.¹⁰²³ Some organisations such as the Vanuatu National Council of Women also obtain regular income from renting out land or parts of buildings that they own.¹⁰²⁴

Overall, the availability and diversity of funding varies significantly for the different types of organisations. For example WanSmolBag, has Australian Aid and the New Zealand Aid Programme as their core funders, and 20 other organisations as donors for various projects past and present.¹⁰²⁵ In contrast, it would be common for smaller community-based organisations to struggle with funding or be solely reliant on funding channelled through churches or other organisations. Although donors don't necessarily "pick favourites", certain donors and CSOs tend to form strong partner relationships and thus it is common for one organisation to benefit from the continuous support of one or more specific donors whilst others struggle to gain funds.¹⁰²⁶ This is generally based on merit, as understandably, donors prefer organisations that have a track-record of successful projects, good accounting procedures and are reputable within the community.¹⁰²⁷ However, some donors place extremely onerous requirements on CSOs that involve a lot of documentation and technical language that local community organisations may struggle to comply with.¹⁰²⁸

The current system of funding is largely a top-down process.¹⁰²⁹ Organisations compete to make their projects more suitable to what the donors want as opposed to what the people need. This contributes to a lack of co-ordination amongst CSOs and CSOs getting involved in causes that are outside their constitutional mandate in order to gain funding.¹⁰³⁰

¹⁰¹⁹ Interview of Alex Mathieson, Country Director for Oxfam Vanuatu with Jessica Kim, Port Vila, 21 January 2014.

¹⁰²⁰ Interview of Nelly Willie, Vanuatu Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, 21 January 2014.

¹⁰²¹ Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

¹⁰²² www.wansmolbag.org/DynamicPages.asp?cid=4&navID=4 [accessed 27 February 2014]

¹⁰²³ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰²⁴ Interview of Blandine Boulekone, President at the Vanuatu National Council of Women with Jessica Kim, Port Vila, January 21, 2014.

¹⁰²⁵ www.wansmolbag.org/DynamicPages.asp?cid=4&navID=4 [accessed 27 February 2014]

¹⁰²⁶ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰²⁷ Interview of Wesley Morgan, Post-Graduate Researcher for Oxfam International with Jessica Kim, Port Vila, 17 January 2014.

¹⁰²⁸ Interview of Alex Mathieson, Country Director for Oxfam Vanuatu with Jessica Kim, Port Vila, 21 January 2014.

¹⁰²⁹ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰³⁰ Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

Whilst formal NGOs face resource constraints the volunteer and membership base of community based organisations in general is very strong and comprises a valuable resource. Many large scale projects are made possible through the hundreds of volunteers around the country who are actively engaged in community level governance, through structures that often have some degree of customary basis, and the day-to-day work of community based organisations, particularly churches, which have the full support of the people.¹⁰³¹ This environment is fostered by Vanuatu's culture being focused on a strong sense of community and social obligation to others, as well as the very strong commitment that many people place with religious and faith-based organisations. These cultural factors are discussed further in the foundations section.

Despite this, CSOs are significantly restricted in capacity due to a lack of skilled and experienced staff. This stems from a county wide problem where few people who enter the workforce have completed tertiary or even secondary education. Furthermore, CSOs struggle to attract and retain skilled staff in the absence of core funding. Firstly, because most donor funds are allocated to the project and not necessarily to staffing, the pay is often relatively low. Secondly, there is a lack of job security as once a project is completed, there is no guarantee that a newly funded project will take off in its place.¹⁰³² For these reasons it is difficult to attract staff to CSO roles and even more so, it is difficult to retain them as they often decide to move to a better paying agency (typically international organisations but also the public or private sector) once the opportunity arises.¹⁰³³ This issue is a necessary consideration for donors when considering the implementation of projects. It is recommended that donors need to provide core funding in order to ensure that organisations can sustain their advocacy and campaign work to promote long-term impacts. In the absence of this, civil society workers should be compensated for this lack of security with higher pay or further supportive and incentive measures.¹⁰³⁴

Independence (law)

Score: 100

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF CIVIL SOCIETY ORGANISATIONS?

Vanuatu's Constitution provides the ultimate safeguard against unwarranted external interference and there are currently no other laws or regulations to restrict this freedom.

Article 5(1)(h) of the Constitution protects the right to freedom of assembly and association. This right is only 'subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health.'¹⁰³⁵

There are also no regulations governing CSOs including any that stipulate state membership on CSO boards or any that require mandatory state attendance at CSO meetings. As discussed above registration is a straightforward process and there are clear appeals processes if applications are denied. Vanuatu does not have a Privacy Act and there is no law that discriminates against CSOs in respect of privacy. Under the Charitable Associations (Incorporation) Act, the register of incorporated associations and any documents filed therein are available for inspection upon payment of a VT500 (US\$5) fee.¹⁰³⁶ This is similar to provisions under the Companies Act that

¹⁰³¹ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰³² Interview of Nelly Willie, Vanuatu Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, 21 January 2014.

¹⁰³³ Morgan, 2013.

¹⁰³⁴ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰³⁵ Article 5(1), Constitution of the Republic of Vanuatu.

¹⁰³⁶ Section 15, Charitable Associations (Incorporation) Act [Cap 140], Section 1, Charitable Associations (Incorporation)(Fees) Regulations 1983.

permit any person to inspect the register and/or receive a copy of any documents kept by the registrar of companies on payment of a fee of VT3,500 (US\$35).¹⁰³⁷

Independence (practice)

Score: 50

TO WHAT EXTENT CAN CIVIL SOCIETY EXIST AND FUNCTION WITHOUT UNDUE EXTERNAL INTERFERENCE?

CSOs in Vanuatu are relatively free to operate without undue government interference. However there are many invisible or subtle pressures placed on the people that hinder their ability to speak out against the government.

CSOs face little direct government interference. In the past five years there have been no reported cases of CSOs being denied registration as a charitable association. There have been instances of verbal threats being made in response to making public comments or publications expressing criticisms against the government.¹⁰³⁸ These incidents are generally not formally reported as it is unlikely that any proper and impartial investigation will take place. However, it is more often that the government uses subtle methods of interference such as exclusion from the political processes or more generally through ignoring requests and refusing to co-operate.¹⁰³⁹ Any further level of action is extremely rare. In the past five years, there have been no reported cases of detention, arrest, imprisonment, deportation or physical harm by the national government of a civil society actor because of their work.

Despite this, there are many more underlying causes attributable to civil society actors being restricted from speaking and acting out. The most significant of these are cultural influences. CSO employees, members and volunteers are generally made up of Vanuatu citizens whose role within the CSO does not separate them from external relationships and social obligations.¹⁰⁴⁰ Being part of a very small and close-knit community, people often face invisible barriers to speaking out because of consequences that it may have on their personal and social environment. This is a big problem in Vanuatu, as the social obligation to protect your family and community comes before a moral obligation to speak out against wrongs.¹⁰⁴¹

¹⁰³⁷ Section 393, Companies Act [Cap 191], Schedule 7, Companies Act [Cap 191].

¹⁰³⁸ Interview of Nelly Willie, Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, January 21, 2014; and interview of Chairperson of Transparency Vanuatu Marie-Noelle Ferrieux Patterson with Jessica Kim, Port Vila, 22 January 2014.

¹⁰³⁹ <http://report.globalintegrity.org/reportPDFS/2007/Vanuatu.pdf> [accessed 10 April 2014].

¹⁰⁴⁰ Morgan, 2013.

¹⁰⁴¹ Interview of Blandine Boulekone, President at the Vanuatu National Council of Women with Jessica Kim, Port Vila, 21 January 2014.

Governance

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN CIVIL SOCIETY ORGANISATIONS?

Organisations do not make strong efforts to make their information readily available, with constraints on resources and the geography of the country making this very difficult.

Overall, there is very little transparency of CSOs in Vanuatu. Laws do not require annual reports or financial statements to be produced by charitable associations. Although large international organisations such as the Red Cross, Oxfam, Save the Children and Youth Challenge have well-developed websites that provide a comprehensive overview, the section of their site dedicated to Vanuatu specifically is usually very brief and provides only generalised information. Some larger local chapters or organisations such as Transparency International Vanuatu or Wan Smolbag do have websites that provide regular updates on news, projects and publications; however the majority of other organisations do not have a website at all. This can be attributed to the use and access of internet not being widespread across the country and a lack of staff with the technical knowledge to set up and maintain such systems. Some organisations do provide regular updates on their activities to the public through other forums such holding workshops and events, publishing newsletters or a column in the newspaper, and via radio broadcasts. However, due to the geography of the region with majority of the population living in villages on the outer islands, it is very difficult and often not economically practicable to make information easily accessible to the general public.

Annual reports, financial statements, or the composition of boards are not information that is readily available to the public. Some organisations do create annual reports; however they are generally only provided to members,¹⁰⁴² or are only available as hard copies in their office to be provided on request.¹⁰⁴³ Moreover, financial statements are created for the primary purpose of fulfilling an obligation to donors and as such are not seen as necessary to disclose to the public. A further barrier to a more transparent civil society is the competition amongst CSOs for donor funds. This creates an environment where CSOs are reluctant to divulge too much information on projects or funding and hinders effective collaboration.¹⁰⁴⁴

Accountability (practice)

Score: 25

TO WHAT EXTENT ARE CIVIL SOCIETY ORGANISATIONS ANSWERABLE TO THEIR CONSTITUENCIES?

The extent to which CSO boards provide effective oversight of organisational activities varies significantly from one organisation to another. Significant problems arise due to a lack of human resources, inadequate training and ineffective internal procedures for ensuring accountability.

¹⁰⁴² Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

¹⁰⁴³ Interview of Nelly Willie, Vanuatu Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, 21 January 2014.

¹⁰⁴⁴ Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

At present, CSOs are primarily accountable to their donors, as this is where they receive their funding. When funding is based upon specific projects donors are only able to scrutinise those projects and are not in a position to hold the functioning of the CSO as a whole to account.¹⁰⁴⁵

The effectiveness of CSO boards in providing oversight of organisational activities can be described as being highly uneven. Some organisations have board members who are highly knowledgeable, skilled, experienced and engage meaningfully in monitoring activities, whilst others are not even clear on what their role is as a board member.¹⁰⁴⁶ They are often not provided with sufficient knowledge about the organisation's activities,¹⁰⁴⁷ and the extent of their involvement is often not more than the one hour meeting they attend four times a year. This problem arises from a general lack of capable individuals to comprise all the boards of the numerous organisations, a lack of training and clear division of roles between management and the board, and often a lack of incentive for board members to be more active as they are normally taking on their role in a volunteer capacity on top of their normal job¹⁰⁴⁸. Some boards do include members from outside the organisation and it is recommended that having a facility where organisations can draw on experienced external advisors when needed as well as obtain training for their board members and staff would be beneficial, particular to smaller local CSOs.¹⁰⁴⁹

The relationship between boards and members also varies. There are no laws requiring, for example, annual general meetings to be held to elect boards of charitable associations.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEDIA EMPLOYEES ENSURED IN PRACTICE?

There are no regulations that monitor and assess the integrity of civil society as a whole. Some organisations have established internal rules and procedures to self-regulate; however, the existence and effectiveness of such procedures varies per organisation.

There is no sector wide code of conduct for CSOs in Vanuatu.

Most organisations do not have a formal process for self-regulation. However, larger CSOs do have some form of internal rules that govern the duties of staff and a procedure for investigating and sanctioning misbehaviour of staff on integrity issues¹⁰⁵⁰ as well as a procedure for reviewing performance.¹⁰⁵¹ Furthermore, (in large part because it is usually a requirement in order to gain donor funding) most organisations have a chronology and/or strategic plan for each project and adherence to this is monitored as an ongoing process or through an interim and final review.¹⁰⁵²

¹⁰⁴⁵ Interview of Nelly Willie, Vanuatu Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, 21 January 2014.

¹⁰⁴⁶ Interview of Mikaela Nyman, Development Counsellor New Zealand High Commission with Jessica Kim, Port Vila, 23 January 2014.

¹⁰⁴⁷ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰⁴⁸ Interview of Nelly Willie, Vanuatu Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, 21 January 2014.

¹⁰⁴⁹ Interview of Mikaela Nyman, Development Counsellor New Zealand High Commission with Jessica Kim, Port Vila, 23 January 2014.

¹⁰⁵⁰ Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

¹⁰⁵¹ Interview of Nelly Willie, Vanuatu Country Representative of the Pacific Leadership Program with Jessica Kim, Port Vila, 21 January 2014.

¹⁰⁵² Interview of Dickinson Tevi, Program Support Coordinator at Vanuatu Red Cross Society with Jessica Kim, Port Vila, 20 January 2014.

Some larger organisations do undertake formal reviews that assess the integrity of the whole organisation; however, this can only be done every few years due to the high costs associated.¹⁰⁵³

Role

Hold government accountable

Score: 25

TO WHAT EXTENT IS THE CIVIL SOCIETY ACTIVE AND SUCCESSFUL IN HOLDING GOVERNMENT ACCOUNTABLE FOR ITS ACTIONS?

Civil society as a whole is not highly active in its efforts to hold the government accountable for its actions. There are some advocacy and public awareness campaigns however these efforts have seen relatively low success in compelling the government to take positive action.

Overall, the role of civil society in Vanuatu as a public watchdog is not very strongly developed. Although many CSOs may address governance issues as a by-product of their other activities, the main organisations with a focus on targeting issues of corruption are Transparency Vanuatu and Youth Against Corruption.

The government tends to ignore CSOs whenever it can and thus it has been difficult for CSO advocacy to translate into positive government action. This is attributable to the ‘poor working relationship between civil society organisations and government’¹⁰⁵⁴ which is due, in part, to funding being largely sourced from abroad. Because of this CSOs can be seen as having foreign interests and viewed by the government with a general sense of distrust.¹⁰⁵⁵ The lack of an effective ombudsman, as discussed elsewhere in this report, means that CSOs have little recourse if government agencies do not act. However, with enough persistence, concentrated efforts and focused action, it is sometimes possible for CSOs to have an impact.¹⁰⁵⁶

A recent example of a high-profile and successful activity in this regard involves a legal action supported by Transparency Vanuatu that led to a court decision in late 2013 that stopped around 100 cases of “green” public land being unlawfully leased out by the Minister of Lands to related individuals.

Civil society advocacy campaigns, public education and public engagements with regard to anti-corruption occur but, due in part to geographical issues, such activities are often not very widespread or sustained. Public education is often based around elections, with little ongoing civic education between elections. Although there have been successful partnerships between the Electoral Commission and NGOs such as WanSmolbag and Transparency Vanuatu, which have led to widespread education, their “events focus” makes it very difficult to create strong and sustained results. Some CSOs such as Youth Against Corruption and Transparency Vanuatu are beginning to use social media to increase public engagement. However, as noted in the section on media in this report, public use of the internet is still very limited so social media strategies also have limited impact.¹⁰⁵⁷

Another issue that limits the effectiveness of CSO advocacy and education is that outside of people who are already engaged in the broader “donor community”, the role of CSOs may not be well

¹⁰⁵³ Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

¹⁰⁵⁴ Morgan, 2013.

¹⁰⁵⁵ Ibid.

¹⁰⁵⁶ Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

¹⁰⁵⁷ Data on file with author.

understood and CSOs may not be well recognised. A street survey conducted with 50 people in Port Vila in January 2014 by researchers as part of this National Integrity System assessment indicated that whilst 14% responded that they were members of NGOs, knew what NGOs do and had participated in NGO activities in the past year, there was considerably lower awareness amongst non-members of NGOs. Whilst only 14% of non-members had never heard of the term NGOs, only 7% knew what NGOs did, with 86% saying they did not know what the role of NGOs was and a further 7% being unsure of the role of NGOs. Less than 5% of non-members of NGOs had been involved in any NGO activity in the past year.

Policy reform

Score: 50

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVELY ENGAGED IN POLICY REFORM INITIATIVES ON ANTI-CORRUPTION?

In general, CSOs have been unsuccessful in engaging with the government on anti-corruption policy reforms.

VANGO does have an MOU with the government and is the “CSO voice” on some government committees, such as the committee to revise the Priorities and Action Agenda, which is the national development policy.¹⁰⁵⁸ Currently the extent to which VANGO effectively communicates with, and coordinates CSO views is limited, however, and this can leave some CSO’s feeling left out of policy conversations.¹⁰⁵⁹

The development of the right to information policy is the leading example of successful CSO engagement with government on anti-corruption policy. The development of this policy was largely led by the Media Association of Vanuatu, with Transparency International Vanuatu also being a main driver from the outset. CSO activities eventually led to a government/non-government committee being established within the Office of the Prime Minister to develop government policy.¹⁰⁶⁰

Although the development of the right to information policy is an excellent example of successful policy engagement, CSOs face many barriers to engaging in active anti-corruption reform discussions due to a lack of funding and resources, and more significantly due to not being considered by the government as a legitimate stakeholder in the policymaking process.¹⁰⁶¹ Whilst “good governance” is an area that donors are willing to fund projects in, and products of projects may contain recommendations related to law reform, these proposals often seem to be ignored. As discussed in the section on the legislature, the law-making process often does not allow for public engagement on any proposed law reforms, which makes it difficult for civil society to engage in debate on government-led reform initiatives.¹⁰⁶²

A Law Commission has been established as a government agency and Transparency International Vanuatu has submitted a number of proposals for anti-corruption reform to the Law Commission in order to try to encourage the development of an anti-corruption law reform agenda. This body is, however, new and has not yet commenced any specific anti-corruption law reform programme.

There is no national anti-corruption commission that allows civil society and government to collaborate in ongoing discussion of anti-corruption reform. In early 2013 it was announced in the

¹⁰⁵⁸ Interview of Charlie Harrison, Interim Chief Executive Officer Vanuatu Non Government Organisation with Sam Railau, Port Vila, 9 May 2014.

¹⁰⁵⁹ Comments of anonymous NGO worker, May 2014.

¹⁰⁶⁰ Interview of Charlie Harrison, Interim Chief Executive Officer Vanuatu Non Government Organisation with Sam Railau, Port Vila, 9 May 2014.

¹⁰⁶¹ Morgan, 2013.

¹⁰⁶² Interview of Marie-Noelle Ferrieux Patterson, Chairperson of Transparency International Vanuatu with Jessica Kim, Port Vila, 22 January 2014.

media that 'NGOs and CBOs comprising VANGO have united to form a Task Force [called the Vanuatu Corruption Commission] of committed organisations and individuals determined to eliminate political and public service corruption'.¹⁰⁶³ This CSO taskforce is no longer functioning although VANGO is working with Youth Against Corruption to develop training on the United Nations Convention against Corruption.¹⁰⁶⁴

Training and awareness raising on issues of corruption do not directly engage the government on anti-corruption policy reform, but can indirectly affect policy development by increasing conversations about corruption issues and desired policy responses. The work VANGO is currently undertaking with Youth Against Corruption can be considered indirect policy development. Other recent examples of this sort of activity, which involved partnerships with CSOs and government agencies include the Youth Parliament and the Youth Justice Forum. The Youth Parliament, held in October 2013 was a partnership between the Vanuatu parliament, Transparency International Vanuatu and the National Youth Council raise discussion of integrity pledges for members of parliament and qualifications of parliamentarians.¹⁰⁶⁵ The Youth Justice Forum, is an ongoing partnership between WanSmolbag, the University of the South Pacific and the government which aims to both raise awareness amongst youth and generate policy discussion.¹⁰⁶⁶

There are also successful partnerships between CSOs and government on areas that do not have an anti-corruption agenda. These include the Vanuatu Climate Adaptation Network and the Vanuatu Humanitarian Team.¹⁰⁶⁷ Although they are not anti-corruption focussed, such partnerships demonstrate good participatory governance and provide an avenue for CSO input into policy dialogue more broadly.

RECOMMENDATIONS

1. Civil society organisations work more effectively when they work collaboratively. Addressing common issues collaboratively utilises scarce resources efficiently and can help to develop more sustainable and widespread activities. It is recommended that:
 - a. Vanuatu civil society organisations seek to work together collaboratively (and build on existing examples of effective collaboration) to better represent the priorities of their constituents and to engage more effectively with government and other decision makers regarding legislation and policy development and to monitor government service provision and expenditure.
 - b. VANGO works to support non-government organisation and community based organisation collaboration and capacity development through coordination and organisational strengthening activities specifically:
 - i. development of a NGO code of conduct which covers, amongst other things, issues of transparency to the public and accountability to members and works with members to assess adherence to it.
 - ii. Provision of support to smaller local organisations to assist them in meeting the NGO code of conduct in order to help facilitate integrity building as opposed to merely imposing regulations.
 - iii. seeking funding to become an effective and functioning body that supports NGOs to work together.
 - c. Aid donors seek ways to increase collaboration between CSOs when projects are being funded.

¹⁰⁶³ <http://vanuatuqoldwatcher.com/2013/02/01/the-newly-formed-vanuatu-corruption-commission/> [accessed 27 February 2014].

¹⁰⁶⁴ Interview of Charlie Harrison, Interim Chief Executive Officer Vanuatu Non Government Organisation with Sam Railau, Port Vila, 9 May 2014.

¹⁰⁶⁵ Ibid.

¹⁰⁶⁶ www.paclii.org/vu/youth-justice-forum/jan-2014.html [accessed 10 May 2014].

¹⁰⁶⁷ Interview of Megan Williams, Program Quality Advisor Oxfam with Sam Railau, Port Vila, 9 May 2014.

2. Currently there is no clear forum for government/CSO dialogue on anti-corruption initiatives. It is recommended that the Vanuatu Government establish a national integrity committee made up of both government and non government representatives and that this committee develops an anti-corruption/national integrity strategy, using the outcomes of the 2014 National Integrity System report as a starting point for this strategy.

VII.13. BUSINESS

SUMMARY

Overall pillar score: 32.7			
Dimension	Indicator	Law	Practice
Capacity 43.8	Resources	50	50
	Independence	50	25
Governance 41.6	Transparency	50	50
	Accountability	50	50
	Integrity	25	25
Role 12.5	Support for/engagement with civil society	0	
	Anti-corruption policy engagement	25	

Previous National Integrity System reports indicated that the domestic private sector is not really perceived within Vanuatu as a pillar with a role to play in anti-corruption activities. This perception does not mean that private business should not have a role to play in relation to national integrity. The relationship between private business and corruption is multi-layered. For instance, businesses can be affected by lack of integrity in other institutions. As such, a streamlined business environment that reduces the possibility for external interference is desirable. Businesses can also contribute to domestic corruption, for instance by offering bribes to avoid laws or speed up transactions. Whilst there are many allegations of this occurring, particularly in relation to dealings with land, prosecutions for such behaviours are uncommon. As discussed in the sections on the executive and political parties, there is concern that businesses can affect politics through making payments to parties or individual politicians, but there are no laws to help regulate this.

Vanuatu has a sizeable international financial services sector. Private sector business can also contribute to global corruption, through enabling activities such as money laundering. However, as the focus of this report is about Vanuatu internally this section focuses on domestic business operations. There is no separate analysis of Vanuatu's place in the global business environment.

The majority of domestic businesses in Vanuatu are small and do not have publically traded shares. This probably explains why relatively little attention has been given to the corporate governance environment. Many small businesses operate informally and/or are not established as companies so are not subject to the corporate governance regime. This lowers the scoring of Private Business as a whole. It can be observed that if the assessment in this report focussed solely on formal sector companies the scoring may have differed.

STRUCTURE AND ORGANISATION

Business activity in Vanuatu can be stratified into three layers: the formal sector, the informal sector and the sub-informal sector. The private formal sector has been defined as including private sector businesses that have a turnover of VT4 million (US\$40,000) or more and are registered for value added tax (VAT or are VAT exempt).¹⁰⁶⁸ The formal sector can be contrasted with informal sector businesses, which has been defined to be businesses with a turnover of less than VT4 million (US\$40,000). In the informal sector 'typically employee numbers are low and labour is often

¹⁰⁶⁸ Vanuatu National Statistics Office, *Vanuatu 2000 Labour Market Survey Report 2000* (Port Vila: Vanuatu National Statistics Office, 2000) 8.

provided by (sometimes unpaid) family members.¹⁰⁶⁹ Despite their small size informal sector businesses are also meant to hold operating certificates and to adhere to other laws, including employment laws. In addition to the formal and informal sectors there is a “sub-informal sector”. As the 2006 Household Income and Expenditure Survey observes ‘many households in essence operate small businesses selling agricultural and other commodities produced in the home as the goods are marketed and sold on a regular basis. But most of these households would not consider themselves to be operating a business, mostly because they do not have a business license.’¹⁰⁷⁰

Few statistical surveys of the private sector have results which are publically available, with the last labour market survey occurring in 2000. Lack of statistical surveys, coupled with the lack of licensing of all but formal sector businesses makes it difficult to state the proportion of businesses operating within each layer. The formal sector is relatively small and is largely concentrated in the urban areas of Port Vila and Santo. In 2000 about 10,000 workers were employed within the private formal sector and just under 1000 business licenses were issued.¹⁰⁷¹ As noted in the foundations section, the majority of the labour force is engaged in subsistence or subsistence plus surplus agriculture.

All businesses that hold business licenses are automatically members of the Vanuatu Chamber of Commerce and Industry (VCCI). The VCCI is funded by government directing a percentage of business license fees to it. It employs a number of staff. Staff operate under the direction of an elected Council, made up of representatives from different business sectors. This body advocates for business, works to develop the private sector environment and represents business interests in policy debate.

ASSESSMENT

Capacity

Resources (law)

Score: 50

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE OFFER AN ENABLING ENVIRONMENT FOR THE FORMATION AND OPERATIONS OF INDIVIDUAL BUSINESSES?

The ease of establishing and operating a business depends on the size of the business, the structure of the business (company or other) and whether the business is fully owned by a citizen or is partially or fully owned by a foreign investor. The processes for large foreign owned companies with foreign employees, which face the most complicated procedures processes, could be streamlined.

The process for establishing small businesses is straightforward. In 2010 the law changed so that businesses that turnover less than VT4 million (US\$40,000) do not need business licenses. Instead, such businesses must hold a business operation certificate, issued by the local government authority in which the business operates.¹⁰⁷² As VT4 million (US\$40,000) is the minimum business turnover for compulsory VAT registration, most businesses who operate under a business operation certificate do not register for, or pay, VAT. In 2013 the law was again amended to require

¹⁰⁶⁹ Ibid.

¹⁰⁷⁰ Vanuatu National Statistics Office, *Vanuatu Main Report on the Household Income and Expenditure Survey 2006* (Port Vila: Vanuatu National Statistics Office undated) 17.

¹⁰⁷¹ Anita Jowitt, *Improving conditions of work?: the impact of Vanuatu's 2008 employment law reforms* (Paper presented at Regulating for Decent Work Conference, Geneva, Switzerland, July 2013).

¹⁰⁷² Subsection 2A, Business License Amendment Act 2010.

businesses with a turnover of less than VT4 million (US\$40,000) to hold business licenses,¹⁰⁷³ although this law has not yet been gazetted.¹⁰⁷⁴ If these small local businesses operate under a name other than the surname of the owner, then they are meant to register their business name in accordance with the Business Names Act.¹⁰⁷⁵

Businesses with a turnover of more than VT4 million (US\$40,000) are required to have business licenses. For businesses operating within municipalities, the minister of finance (rates & taxes) issues those licenses. Businesses operating in other localities have licenses issued by the relevant provincial authority. Prior to having a business license issued, businesses must register business names with the Vanuatu Financial Services Commission (VFSC). Registering names and obtaining licenses is a simple process, with documentation usually being ready within seven days of the receipt of application forms and the application fees. If a business chooses to incorporate as a company then it must register with the VFSC.¹⁰⁷⁶ If it has employees then it must also register with the Vanuatu National Provident Fund (VNPF).¹⁰⁷⁷ The World Bank Doing Business survey (2013) indicates that there are 8 steps, taking 35 days, to set up a domestic company with domestic employees.¹⁰⁷⁸ This resulted in a rank of 116/185 for ease of setting up a business in this Survey.¹⁰⁷⁹

Foreign investors are also required to have foreign investment approval certificates.¹⁰⁸⁰ These are issued by the Vanuatu Investment Promotion Authority (VIPA). The process is fairly straightforward. The application requires the investor to show that he or she has a certain level of investment in the country. As certain industries are reserved for citizens only, the applicant must also provide a business plan that indicates that he or she is establishing a legitimate business.¹⁰⁸¹ Non-citizen investors must seek residency permits from Immigration.¹⁰⁸² Whilst investors do not require work permits, work permits must be sought from the Department of Labour for non-citizen employees.¹⁰⁸³

Once a business has been established there are some ongoing requirements. Business licenses must be renewed annually. If the business is structured as a local company then it must also submit an annual return and renew its company registration. If turnover is more than VT20,000,000 (US\$200,000) it must also submit a set of audited accounts. VIPA approval certificates, if required, must also be renewed annually. Work and residency permits for non-citizens must also be renewed.¹⁰⁸⁴

The process for going into liquidation or winding down a company is regulated by the Companies Act.¹⁰⁸⁵ The World Bank Doing Business Survey 2013 ranks Vanuatu's insolvency procedures at 57/185, with a recovery rate for investors being 42.7 cents on the dollar.¹⁰⁸⁶

Common law governs contracts and civil procedure rules provide enforcement procedures. The Copyright and Related Rights Act 2000 came into force in 2011, strengthening the legal framework for the enforcement of intellectual property rights.

The Constitution guarantees that only customary land owners can hold land.¹⁰⁸⁷ Non-customary owners can, however, lease land. These leases are tradable under the regime established by the Land Leases Act.

¹⁰⁷³ Business License Amendment Act 2013.

¹⁰⁷⁴ State Law Office, Index of Statutory Orders, 4 April 2014.

¹⁰⁷⁵ Section 2, Business Names Act [Cap 211].

¹⁰⁷⁶ <http://vcci.com.vu/resources/starting-a-new-business/> [accessed 28 April 2014].

¹⁰⁷⁷ Ibid.

¹⁰⁷⁸ World Bank, *Doing Business Survey 2013* (World Bank: Washington DC, 2013).

¹⁰⁷⁹ Ibid.

¹⁰⁸⁰ <http://www.investvanuatu.org/DoingBusiness/viacprocess.html> [accessed 28 April 2014].

¹⁰⁸¹ Ibid.

¹⁰⁸² <http://www.investvanuatu.org/DoingBusiness/respermit.html> [accessed 28 April 2014].

¹⁰⁸³ <http://www.investvanuatu.org/DoingBusiness/workpermit.html> [accessed 28 April 2014].

¹⁰⁸⁴ <http://www.investvanuatu.org/DoingBusiness/factsheet.html> [accessed 28 April 2014].

¹⁰⁸⁵ Part 6, Companies Act [Cap 191].

¹⁰⁸⁶ World Bank, 2013: 4.

¹⁰⁸⁷ Article 73, Constitution of the Republic of Vanuatu.

Resources (practice)

Score: 50

TO WHAT EXTENT ARE INDIVIDUAL BUSINESSES ABLE IN PRACTICE TO FORM AND OPERATE EFFECTIVELY?

Whilst establishing a business is not unduly costly it can take time. Property rights can be insecure and compliance checking is not rigorous.

Records on the numbers of business operating certificates issued are unavailable and it is not known how many small informal businesses comply with the law. Even if such businesses do comply, costs are low (VT10,000 (US\$100) for the initial business name with an ongoing VT5,000 (US\$50) per year to maintain the business name)¹⁰⁸⁸ with business operating certificates being issued for free.

For businesses requiring business licenses the cost of the annual business license varies depending upon the nature of the license and the turnover of the business. As an example of the ranges of license fees, for a D1 Importer license, the fee ranges from VT20,000 (US\$200) per annum for businesses with a gross turnover of between VT4 million (US\$40,000) and VT10 million (US\$100,000), and up to VT1 million (US\$10,000) per annum for businesses with a gross turnover of more than VT200 million (US\$2 million).¹⁰⁸⁹ The cost of registering a local company starts at VT30,000 (US\$300) although businesses do not need to use a company in order to operate.¹⁰⁹⁰ Re-registration fees are paid annually. Initial applications for foreign investment applications, where required, cost VT25,000 (US\$250), with an annual renewal cost being VT10,000 (US\$100).¹⁰⁹¹

In terms of time, prior to having a business license issued, businesses must register business names with the VFSC. Whilst the turnaround time to register a name is meant to take seven working days, in practice it can take several weeks.¹⁰⁹² It takes five days for a business license to be issued.¹⁰⁹³ If foreign investment approval is required, VIPA has instituted procedures to ensure a turnaround of 15 days.¹⁰⁹⁴

Engaging local employees is a straightforward procedure. As Vanuatu does not maintain income tax, only national provident fund contributions must be paid. Work permits for foreign employees cost VT210,000 (US\$2,100) per year, with residency permits costing a further VT57,600 (US\$570) per year.¹⁰⁹⁵

One issue for foreign investors is that, although VIPA approves applications, it is not a “one-stop shop”. Investors still have to deal with the VFSC for registration of business names and company incorporation, rates and taxes for the payment of licenses, immigration for residency permits and labour for work permits for foreign employees.

As discussed in the section on the judiciary, there can be considerable delays in obtaining court decisions. There is no small claims tribunal or other small claims procedure. There is also

¹⁰⁸⁸ <http://www.vfsc.vu/index.php/services/business-name> [accessed 28 April 2014].

¹⁰⁸⁹ <http://vcci.com.vu/resources/starting-a-new-business/> [accessed 28 April 2014].

¹⁰⁹⁰ <http://www.vfsc.vu/index.php/fees-schedule/prescribed-fees> [accessed 28 April 2014].

¹⁰⁹¹ http://www.investvanuatu.org/Factsheets/doingbusiness/Fact%20Sheet_Business%20start-up%20-%20Foreign%20Investment%20approval%20101109.pdf [accessed 28 April 2014].

¹⁰⁹² Anonymous interview of business owner with Anita Jowitt, Port Vila 10 December 2013.

¹⁰⁹³ Section 8(3), Business License Act [Cap 249].

¹⁰⁹⁴ <http://vcci.com.vu/resources/starting-a-new-business/> [accessed 28 April 2014].

¹⁰⁹⁵ <http://www.investvanuatu.org/DoingBusiness/factsheet.html> [accessed 28 April 2014].

considerable confusion as to the process for the enforcement of decisions.¹⁰⁹⁶ This creates insecurity of contract arrangements for companies doing business. Although new intellectual property laws have been brought into force, Vanuatu currently lacks the infrastructure to administer these laws. It is too early to assess whether the intellectual property framework will be effective.

Protection of property rights can also be problematic. Rights in respect of land also create difficulties. Uncertainty about the identification of customary land owners can make it difficult for investors to lease land that has not previously been the subject of a registered lease.¹⁰⁹⁷ Even where registered leases exist, at times customary land owners do not recognise the leaseholders' rights.¹⁰⁹⁸ One reason for this is that the leasing process is an area where corruption may exist. For instance, the wrong people may have been negotiated with and paid for the lease.¹⁰⁹⁹ There have also been many allegations of the ministers of lands improperly issuing leases.¹¹⁰⁰ Another corruption related issue that can create insecurity of leaseholders' property rights is that lease money may not properly be distributed amongst customary land owners, leading to disgruntlement.¹¹⁰¹ In late 2013 significant land reform laws were passed by parliament.¹¹⁰² It is hoped that these will help to address the issues surrounding corruption in the land leasing,¹¹⁰³ although it is too early to assess the impact of these. Amendments to these laws are progressing through the first ordinary session of parliament for 2014.¹¹⁰⁴

Independence (law)

Score: 50

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN ACTIVITIES OF PRIVATE BUSINESSES?

In the event of undue external interference in the operation of a business the main remedy available is to seek judicial review of the administrative decision in court.

Public officials are involved at almost all the stages of business start-up and operation. As noted above, the VFSC is involved in issuing business licenses and registering companies. The Department of Customs and Inland Revenue issues business licenses, administers VAT and administers import duties. The Department of Immigration issues residency permits. The Department of Labour issues work permits. VIPA issues foreign investment approval certificates. The VNPF collects mandatory superannuation payments. Businesses operating in specific areas, such as telecommunications or broadcasting, may also have other requirements to meet. As discussed in the section on Media, broadcasters required licenses from the Vanuatu Broadcasting and Television Corporation in order to operate. The Telecommunications and Radio Communications Regulator (the TRR) issues licenses for telecommunications (phone and internet service providers) radio spectrum and radio apparatus activities.¹¹⁰⁵ Whilst the Utilities Regulatory

¹⁰⁹⁶ Comments of Mr Justice Fatiaki the Workshop for Judges and Lawyers under the Vanuatu Judicial Assistance Programme 28 November 2013.

¹⁰⁹⁷ World Bank, *Enhancing the role of government in the Pacific Island economies* (Washington DC: World Bank, 1998) 14 –15.

¹⁰⁹⁸ Rod Nixon, Leisande Otto and Raewyn Porter, *Wan sip plante kapten: leasing on Tanna island, Vanuatu* (World Bank Justice For the Poor Research Report, May 2012) vii.

¹⁰⁹⁹ Ibid.

¹¹⁰⁰ <http://pacificinstitute.anu.edu.au/outrigger/2014/03/04/better-protection-for-custom-owners-key-changes-in-vanuatus-new-land-legislation/> [accessed 28 April 2014].

¹¹⁰¹ Nixon, Otto and Porter, 2012.

¹¹⁰² <http://pacificinstitute.anu.edu.au/outrigger/2014/03/04/better-protection-for-custom-owners-key-changes-in-vanuatus-new-land-legislation/> [accessed 28 April 2014].

¹¹⁰³ Ibid.

¹¹⁰⁴ <http://vanuatudaily.wordpress.com/2014/05/05/first-ordinary-session-of-parliament-for-2014/> [accessed 6 May 2014].

¹¹⁰⁵ <http://www.trr.vu/index.php/en/telecom-industry/licenses> [accessed 28 April 2014].

Authority (URA) does not issue licenses, it is involved in 'regulating prices, service standards, and market conduct and consumer protection'¹¹⁰⁶ in relation to electricity and water suppliers.

Whilst regulations do not specifically allow businesses to seek compensation in the event of undue external interference, it is possible to seek judicial review of administrative decisions via the courts.¹¹⁰⁷ It is also possible to lay a complaint with the Office of the Ombudsman. The ombudsman has the power to mediate complaints, which may result in compensation, or can issue public reports.¹¹⁰⁸ Public reports are only recommendatory and will not directly result in compensation being paid.

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE BUSINESS SECTOR FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

The legislature can, and does, introduce major law reforms that impact upon the activities of the business sector without any prior discussion. There is also some fear of complaining about abuse of office in case negative consequences to business result.

A survey of hospitality and retail businesses conducted by the Vanuatu Chamber of Commerce and Industry (VCCI) in 2013 indicated that only 6% of businesses identified government corruption as having a significant impact to their operations, with a further 8% identifying commercial legal and contract laws as having a considerable impact.¹¹⁰⁹ Conversely, 52% of businesses identified government corruption as having no impact on their business.¹¹¹⁰

On the other hand, the VCCI survey identified employment laws as being a major concern for the private sector.¹¹¹¹ The cause of the concern about employment laws is an illustration of how the legislature can use its power to introduce changes to the detriment of the private sector. Major reforms introduced in 2008 resulted in an increase in annual leave and maternity leave allowances and an increase of up to 300% in severance allowances.¹¹¹² No prior public discussion of the law changes occurred and the changes appeared to have their roots in the unstable political environment, discussed in the foundations, legislature and executive sections. The government that passed the Employment (Amendment) Act 2008 had formed in late September 2008 and had already been reshuffled to defeat a motion of no confidence in October. By the time of the first reading of the Employment (Amendment) Bill 2008 on 19 November, there had been a number of other rumours of motions that never got as far as a parliamentary vote. On 26 November, six days after the vote of the Employment (Amendment) Bill 2008, then Prime Minister Edward Natapei survived his second vote of no confidence. This led to a suspicion that the Bill was a trade off by the government coalition to support the 2008 reform in order to avoid losing a vote of no confidence. Such a situation is an archetypal illustration of the "horse-trading" that can plague Vanuatu politics and result in 'the attention of members of parliament [being diverted] from their institutional roles as law makers, overseers of government, and representatives.'¹¹¹³

¹¹⁰⁶ http://www.ura.gov.vu/attachments/article/61/URA_Charter_of_Consultation_and_Regulatory_Practice-2008.pdf [accessed 28 April 2014].

¹¹⁰⁷ Part 17, Civil Procedure Rules 2002.

¹¹⁰⁸ Part 3, Ombudsman Act [Cap 252].

¹¹⁰⁹ Vanuatu Chamber of Commerce, *Vanuatu: Members Survey Report April 2013* (Port Vila: Vanuatu Chamber of Commerce and Industry, 2013) 15.

¹¹¹⁰ Vanuatu Chamber of Commerce, 2013: 16.

¹¹¹¹ Vanuatu Chamber of Commerce, 2013: 16.

¹¹¹² Employment (Amendment) Act 2008.

¹¹¹³ Michael G Morgan, 'Political fragmentation and the policy environment in Vanuatu, 1980–2004' (2004) 19(3) *Pacific Economic Bulletin* 40, 45.

Another example of how public officials can exercise their power to the detriment of the private sector is through changes to reserved categories of business licenses. These changes can be done by Ministerial Order and occur without consultation. There have been some concerns expressed by investors that law changes (for instance to the categories of reserved activities) may result in them “losing their businesses”.¹¹¹⁴ It has also been observed that, ‘Expats or foreigners feel that they are discriminated against, and that the attitudes of locals toward them and their hard work are immature and unfounded. They do not feel that the government is doing its job, and they feel strongly that there are many side transactions.’¹¹¹⁵

Whilst it may be maintained that such law changes are not an infringement to the rule of law and are simply the legitimate exercise of political power, the process by which changes are introduced (one without consultation), the retrospective effect of some changes, and the extensive impact of such changes on businesses contribute to a sense of uncertainty in respect of the environment for doing business.

There are anecdotes of businesses being required to pay fines without any legal basis. In instances reported, businesses have succumbed to paying fines as they were concerned about the impact on their business had they pursued further enquiries into complaints.¹¹¹⁶ There have also been instances of companies being deregistered for failing to pay annual renewal fees on time without prior notification. Whilst this is legal, usual practice has been to allow for late payment if a late penalty is paid, so to change usual practice and deregister without prior notification may be perceived as illegitimate interference, rather than simply a change in practice to ensure better compliance with law.¹¹¹⁷

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE BUSINESS SECTOR?

Whilst most company records can be publically searched small companies are not required to provide audited accounts.

The extent to which there is financial transparency depends upon the nature of the business. There are no requirements regarding transparency of sole traders. Partners are required to account to each other but are not required to undertake any particular auditing procedures.¹¹¹⁸

Whilst there is no public stock exchange, companies that operate locally are required to file annual returns with the VFSC.¹¹¹⁹ This gives standard information about the company as at a specified annual date, such as the number of issued shares. If the company’s turnover exceeds VT20 million (US\$200,000) in any year, it must have audited accounts and must file the audited accounts with the

¹¹¹⁴ Interview of Astrid Boulekone, General Manager Vanuatu Chamber of Commerce and Industry with Anita Jowitt, Port Vila, 14 May 2014.

¹¹¹⁵ Robert Davis, Tuna Tiseli and Malama Solomona, *Exploring Entrepreneurship in Developing Countries: The Case of Vanuatu* (Paper presented at the Australian and New Zealand Marketing Academy Conference, 2010).

¹¹¹⁶ Anonymous interview of company owner with Anita Jowitt, Port Vila, 17 December 2014; anonymous interview of business owner with Anita Jowitt, Port Vila, 10 December 2013

¹¹¹⁷ Anonymous interview of company owner with Anita Jowitt, Port Vila, 17 December 2014.

¹¹¹⁸ Section 28, Partnership Act [Cap 92].

¹¹¹⁹ <http://www.vfsc.vu/index.php/services/forming-a-company> [accessed 28 April 2014].

Registrar of Companies.¹¹²⁰ All the above information is available for public inspection at the Registrar's Office.

Until 2010 the Companies Act provided that exempted companies that do not carry out any operations within Vanuatu did not need to be audited nor file annual accounts, and thus could file a simpler annual return.¹¹²¹ In order to gain access to records of exempted companies a court order was needed.¹¹²² In 2010 exempted companies began to operate under the International Companies Act.¹¹²³ Documents held by the VFSC in respect of international companies can be inspected¹¹²⁴ although nothing in this Act requires the filing of annual accounts or returns.

Financial institutions are required to be licensed by the Reserve Bank pursuant to the Financial Institutions Act.¹¹²⁵ They operate under the supervision of the Reserve Bank. The law requires audit reports to be produced each financial year. However, the Reserve Bank has the discretion to waive the requirement if they are satisfied that the report on the annual balance sheet and the accounts of the licensee has been made by an auditor and is in compliance with the relevant laws in the jurisdiction in which they were incorporated.¹¹²⁶ Reports must be published in the Gazette in order that they are publically available.¹¹²⁷

There are no statutory codes of conduct for accountants although it is reported that, 'Vanuatu is currently at Stage II of adopting [International Financial Reporting Standards] IFRS, where the use of IFRS is permitted.¹¹²⁸ Specifically, International Public Sector Accounting Standards are applied to unlisted companies when preparing for their financial statements.¹¹²⁹

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE BUSINESS SECTOR IN PRACTICE?

Companies report to the VFSC and the public can obtain records through them, but companies do not usually take any other measures to report information on corporate responsibility to the public.

Information on local companies including names of directors, contact details and annual reports, is available from the VFSC. The VFSC website also lists auditors who have been approved under the Companies Act to conduct company audits. With the absence of a professional Institute of Chartered Accountants in Vanuatu, this ensures that auditors do possess appropriate qualifications. The VFSC does not routinely verify financial records, but if any audit certificates are qualified, financial records will be investigated further.

The extent to which large corporations report on corporate responsibility and sustainability activities in relation to countering corruption depends on the individual company. Some small companies publish corporate governance statements and financial statements on their websites.¹¹³⁰ However, it is more common to find such statements from regional banking institutions such as Westpac and

¹¹²⁰ Ibid.

¹¹²¹ Part II, Companies Act [Cap 191].

¹¹²² Ibid.

¹¹²³ International Companies (Amendment) Act 2010.

¹¹²⁴ Section 124, International Companies Act [Cap 222].

¹¹²⁵ Section 11, Financial Institutions Act [Cap 254].

¹¹²⁶ Section 23(2A), Financial Institutions Act [Cap 254].

¹¹²⁷ Section 27, Financial Institutions Act [Cap 254].

¹¹²⁸ <http://www.adoptifrs.org/CountryDescription.aspx?CID=228&CC=V> [accessed 3 March 2014].

¹¹²⁹ Ibid.

¹¹³⁰ See, for example, http://www.creditcorporation.com.pg/van_index.html [accessed 3 March 2014].

ANZ, who maintain their headquarters in Australia. It is the exception, rather than the rule, to find companies voluntarily reporting on corporate responsibility and anti-corruption activities.

The URA helps to ensure transparency in respect of electricity and water providers by publishing copies of concession agreements.¹¹³¹ It also maintains an open and consultative approach when undertaking reviews of matters such as electricity pricing and publishes review reports, performance reports and audit reports of regulated utilities on its website. The TRR plays a similar role in helping to ensure transparency of telecommunications and radiocommunications providers, by publishing lists of license holders,¹¹³² and publishing press releases on activities in the sector. It does not, however, publish performance reports or audits on businesses that it regulates.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE RULES AND LAWS GOVERNING OVERSIGHT OF THE BUSINESS SECTOR AND GOVERNING CORPORATE GOVERNANCE OF INDIVIDUAL COMPANIES?

Laws relating to corporate governance are old but require some internal corporate governance. There are also some external oversight mechanisms.

In 2012 a new Companies Act was passed, and in 2013 a Companies (Insolvency and Receivership) Act was passed. Neither have come into force yet, however. Vanuatu's company laws are therefore still based on old laws from the UK.¹¹³³ Before a company can be formed a memorandum and articles of association must be filed, stating the initial directors, share capital and subscribers.¹¹³⁴ Companies can be registered as private companies if they do not intend to invite the public to subscribe for shares or debentures.¹¹³⁵ Private companies do not have to produce a prospectus. If, however, the company is going to offer shares or debentures to the public then it must issue a prospectus, which must first be approved by the minister responsible. The content of the prospectus is defined in statute.¹¹³⁶ Directors' reports to shareholders via annual general meetings and shareholders can also require extraordinary general meetings to be called.¹¹³⁷

There is no public stock exchange and Vanuatu's companies are overseen by the VFSC. The minister can appoint an inspector to investigate a company if there are any allegations of oppression of members or fraudulent activities.¹¹³⁸ If the inspector identifies fraud then the minister can bring a court action on behalf of the body corporate in the public interest.¹¹³⁹ The minister can also appoint an inspector to investigate ownership.¹¹⁴⁰

Regulated utilities are provided with additional oversight via the URA which, amongst other things, monitors compliance with concession agreements and monitors performance.¹¹⁴¹ The TRR provides oversight in its sector. For example, the 2014 workplan includes assessing compliance with quality

¹¹³¹ http://www.ura.gov.vu/index.php?option=com_content&view=article&id=38&Itemid=89&lang=en [accessed 28 April 2014]. http://www.ura.gov.vu/index.php?option=com_content&view=article&id=39&Itemid=109&lang=en [accessed 28 April 2014].

¹¹³² <http://www.trr.vu/index.php/en/telecom-industry/licenses> [accessed 28 April 2014].

¹¹³³ <http://www.lowtax.net/information/vanuatu/vanuatu-company-introduction.htm> [accessed 28 April 2014].

¹¹³⁴ Part II, Companies Act [Cap 191].

¹¹³⁵ Section 38, Companies Act [Cap 191].

¹¹³⁶ Part III, Companies Act [Cap 191].

¹¹³⁷ Part V, Companies Act [Cap 191].

¹¹³⁸ Section 169, Companies Act [Cap 191].

¹¹³⁹ Section 175, Companies Act [Cap 191].

¹¹⁴⁰ Section 178, Companies Act [Cap 191].

¹¹⁴¹ http://www.ura.gov.vu/index.php?option=com_content&view=article&id=99&Itemid=284&lang=en [accessed 28 April 2014].

of service guidelines and coverage maps. The 2014 workplan also includes the development of additional regulatory tools that will increase accountability.¹¹⁴²

Accountability (practice)

Score: 50

TO WHAT EXTENT IS THERE EFFECTIVE CORPORATE GOVERNANCE IN COMPANIES IN PRACTICE?

The VFSC ensures that domestic companies comply with accountability laws in order to continue with registration although the quality of that compliance is not assessed, and some sectors have additional accountability requirements.

Many companies in Vanuatu are either family owned or small private companies, with owners themselves self-managing companies. Corporate governance in such an environment tends to be somewhat informal, although the VFSC does ensure that companies file returns as required.¹¹⁴³ Large corporations tend to be overseas owned and governed by external corporate governance models. There have been no reported examples of inspections for fraud under the Companies Act in the past five years and it appears that annual returns are not subject to checking. Large corporations tend to be overseas owned and governed by external corporate governance models.

The URA and TRR are active in oversight of their respective sectors.¹¹⁴⁴ As utilities are still effectively monopolies although different companies operate in different geographical locations, and telecommunications were, until 2008, a monopoly, additional accountability mechanisms in these sectors is particularly appropriate.

Integrity mechanisms (law)

Score: 25

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF ALL THOSE ACTING IN THE BUSINESS SECTOR?

Whilst there are criminal laws that prohibit bribery within Vanuatu and laws to regulate financial transactions have recently been significantly strengthened, voluntary mechanisms such as codes of conduct are generally absent.

Other than laws related to the reporting of financial transactions, there are no sector wide anti-corruption codes of conduct either entered into voluntarily or created by law. The Government Contracts and Tenders Act does not require bidders for public contracts to have ethics programmes or codes of conduct in place.¹¹⁴⁵ Even in professions that are totally or partially self-regulating, like lawyers and health professionals, there are no written codes of conduct.

The Financial Transactions Reporting Act, the Proceeds of Crime Act the Mutual Assistance in Criminal Matters Act and the Counter Terrorism and Transnational Organised Crime Act together form Vanuatu's suite of laws against money laundering and financing of terrorism. These laws were introduced in 2000 as part of the Comprehensive Reform Programme to address concerns that

¹¹⁴² http://www.trr.vu/attachments/article/254/2014_and_onwards_work_plan_revised_version_22_april_2014.pdf [accessed 28 April 2014].

¹¹⁴³ <http://www.vfsc.vu/index.php/services/forming-a-company> [accessed 28 April 2014].

¹¹⁴⁴ Interview of Astrid Boulekone, General Manager Vanuatu Chamber of Commerce and Industry with Anita Jowitt, Port Vila, 14 May 2014.

¹¹⁴⁵ See, further, discussion of public procurement in the public sector section.

Vanuatu's tax haven was being used as a venue for money laundering. Reforms to the latter three Acts were passed by parliament in 2012 and 'significantly strengthen Vanuatu's AML/CFT legal framework and in particular, explicitly provide for money laundering as a predicate offence and the prosecution of money laundering offence for proceeds of crime generated by a predicate offence.'¹¹⁴⁶ The FTRA requires financial institutions to maintain records and report suspicious transactions to the Financial Intelligence Unit, and acts as a code of conduct for financial institutions in respect of suspected money laundering.¹¹⁴⁷

The Penal Code prohibits the bribery of public officials, with the maximum penalty of imprisonment for 10 years.¹¹⁴⁸ Corporations, as well as individuals, can be held liable for bribery.¹¹⁴⁹ However, the law is only applicable to public officials of the Republic of Vanuatu. There are no laws prohibiting bribery of officials of other countries, either within or outside of Vanuatu.

Whilst some companies have their own codes of conduct (for example, ANZ Bank, Westpac Bank), these are the exception rather than the rule. The URA and the TRR are active in developing codes of conduct and practice standards in their sectors. The TRR has issued guidelines in respect of advertising, quality of service, competition, consumers and consultation.¹¹⁵⁰ The URA has issued performance standards in a number of areas and is active in regulating prices.¹¹⁵¹ Whilst the TRR and the URA do not have "anti-corruption" guidelines per se, good practice underlies all their regulatory activities.

Integrity mechanisms (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF THOSE WORKING IN THE BUSINESS SECTOR ENSURED IN PRACTICE?

Whilst businesses will seek to sanction employee misbehaviour that directly impacts upon them, there are few other indicators of the operation of integrity mechanisms in practice. There have, however, been improvements in the implementation of laws relating to reporting of financial transactions.

In the absence of integrity mechanisms in law, it is difficult to monitor integrity mechanisms in practice. As discussed in the section on the judiciary, misuse of position by private sector employees or office holders for financial gain is regularly prosecuted as misappropriation, fraud or forgery, therefore sanctions for lack of employee integrity that affect businesses directly are applied. Whilst there has been one recent instance of a prosecution for bribery,¹¹⁵² bribery is not regularly detected and prosecuted. The Global Corruption Barometer 2013 reports that 13% of respondents from Vanuatu had paid a bribe to obtain a government service, which suggests that undetected bribery is occurring.¹¹⁵³ However, it is not clear how many respondents were from the private sector.

The lack of integrity mechanisms is a particular concern because of weaknesses in integrity mechanisms in respect of payments to leaders and the absence of integrity mechanisms in relation to electoral campaign financing and political party financing. Whilst some parties do, or have had,

¹¹⁴⁶ Vanuatu Financial Intelligence Unit, *Annual Report 2010 – 2012* (Port Vila: State Law Office, 2013).

¹¹⁴⁷ Part 3, Financial Transactions Reporting Act [Cap 268].

¹¹⁴⁸ Section 73, Penal Code [Cap 135].

¹¹⁴⁹ Section 18, Penal Code [Cap 135].

¹¹⁵⁰ <http://www.trr.vu/index.php/en/public-register/guidelines> [accessed 28 April 2014].

¹¹⁵¹ http://www.ura.gov.vu/index.php?option=com_content&view=article&id=99&Itemid=291&lang=en [accessed 28 April 2014].

¹¹⁵² Public Prosecutor v Chen Jian Lin [2013] VUSC 189.

¹¹⁵³ Transparency International, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013) 34.

close ties with private businesses it is not possible to monitor the extent to which private businesses do, in fact, impact upon other institutions within the National Integrity System.

Despite this, there does not seem to be major public concern with corruption in the private sector. The Global Corruption Barometer 2013 ranks the perception of corruption of various sectors on a scale of 1 – 5. Private businesses rank 3.¹¹⁵⁴ Only NGOs, the media and religious bodies had a better ranking in relation to the extent to which they were perceived to be corrupt.

No solely locally based Vanuatu companies have signed the UN Global Compact or the World Economic Forum Partnering Against Corruption Initiative. However, some multinational companies with branches in Vanuatu that have signed initiatives. For instance, Westpac is a participant in the UN Global Compact.

There have, however, been significant improvements in the implementation of the FTRA since the last National Integrity System report in 2006. Staffing levels of the Financial Intelligence Unit have increased and this law is now being actively implemented.¹¹⁵⁵ The URA and the TRR, both established in 2008, help to ensure integrity of operations in their respective sectors by monitoring performance and issuing guidelines.

Role

Support for/engagement with civil society

Score: 0

TO WHAT EXTENT DOES THE BUSINESS SECTOR ENGAGE WITH/PROVIDE SUPPORT TO CIVIL SOCIETY ON ITS TASK OF COMBATING CORRUPTION?

In general, the business sector does not engage with or provide support to civil society in its task of combating corruption.

There is limited support by businesses to civil society to combat corruption. Transparency International Vanuatu has received some funding from individual businesses, however, such arrangements are not the norm. Instead, business support for civil society activities is focussed on activities such as sports, the ambulance and medical services, and animal welfare. Attempts to seek private sector funding for the Advocacy and Legal Advice Centre have not yet resulted in any private sector donations.

In 2013, Transparency Vanuatu launched the Business Principles for Countering Bribery Project with the Private Sector through a series of workshops and the distribution of CD-ROMs. The workshops were reasonably well attended,¹¹⁵⁶ suggesting that if CSOs engage the private sector in areas not related to financial support the private sector may be somewhat receptive. However, no follow up has yet been conducted to see what impact, if any, the workshops and distribution of CD-ROMs had.

It can be observed that the VCCI in itself acts somewhat like a CSO. All business license holders are members of the VCCI. This body represents and advocates for business interests and is active in training.¹¹⁵⁷

¹¹⁵⁴ Ibid, 38.

¹¹⁵⁵ Vanuatu Financial Intelligence Unit, 2013.

¹¹⁵⁶ Internal Transparency Vanuatu project documentation, unpublished.

¹¹⁵⁷ See, generally, <http://www.vcci.com.vu/> [accessed 28 April 2014].

Anti-corruption policy engagement

Score: 25

TO WHAT EXTENT IS THE BUSINESS SECTOR ACTIVE IN ENGAGING THE DOMESTIC GOVERNMENT ON ANTI-CORRUPTION?

The business sector actively engages with government on a number of issues. Whilst anti-corruption is not a specific area of engagement, good governance that is conducive to a good business environment is an area of central concern.

The VCCI is not a participant in the UN Global Compact, which ‘asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption.’¹¹⁵⁸ Nor are there any companies that operate solely in Vanuatu who are participants in the UN Global Compact.

The VCCI does consider issues of corruption to a degree. Some of its training courses include units on business ethics. It also works to encourage businesses to comply with laws.¹¹⁵⁹ Further, the 2013 members’ survey gauged members concern regarding corruption. However, as reported above, corruption was not perceived to be a large issue and the VCCI currently does not publically engage the government using the “language of corruption”. In part, this may be due to a desire to maintain harmonious relationships with the government.¹¹⁶⁰ Whilst corruption related issues may arise when the private sector engages with the government on particular law or policy initiatives, labelling certain actions as corrupt may be inflammatory and therefore counter-productive to private sector interests. That said, the VCCI is actively represented in a number of government committees and actively lobbies for a good business environment. As corruption is not conducive to a good business environment this lobbying is underpinned by a good governance agenda.¹¹⁶¹

One issue faced by the VCCI is that when it engages with consultation on policy matters there is often little response from government.¹¹⁶² Another issue is that consultation is often a “one-off” event. There is no ongoing discussion to ensure that law reforms reflect the result of the consultation. This can lead to the sense that consultation is being done for the sake of appearances, to show aid donors and others that the private sector has been consulted, rather than a communicative process to develop reforms taking into account a wide range of views. As discussed in the section on the legislature, there is no process to ensure that the public, including business, can easily get copies of bills before they are debated in parliament.

The VCCI nominates a representative or representatives onto a number of statutory boards, including the Vanuatu National Provident Fund, the Vanuatu Agricultural Development Bank, the Vanuatu Investment Promotion Authority and Airports Vanuatu Limited. The presence of an experienced business person should provide benefit to these boards, by ensuring that there is someone with practical business acumen to contribute to discussions. Currently, however, nominees put forward by the VCCI to some boards are being rejected, whether or not there is statutory power for the minister to do so.¹¹⁶³ This limits the ability of business to engage in policy discussion in respect of these specific boards.

¹¹⁵⁸ <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> [accessed 3 March 2014]

¹¹⁵⁹ Interview of Astrid Boulekone, General Manager Vanuatu Chamber of Commerce and Industry with Anita Jowitt, Port Vila, 14 May 2014.

¹¹⁶⁰ Ibid.

¹¹⁶¹ Ibid.

¹¹⁶² Ibid.

¹¹⁶³ Ibid.

RECOMMENDATIONS

1. Business is currently not seen to be having a clearly defined role within Vanuatu's National Integrity System. It is recommended that the VCCI be recognised as a non-governmental partner on all national integrity initiatives.
2. The VCCI should encourage and support local businesses to undertake voluntary anti-corruption initiatives, such as disclosing donations to political parties and developing statements of corporate responsibility.
3. The VCCI has limited resources to engage in sustained policy discussion. In conjunction with the Standing Orders of Parliament being reviewed, which should enhance opportunities for consultation, the VCCI should be provided with sufficient resources to be able to engage in ongoing policy discussion.
4. Where statute provides for a representative of business nominated by the VCCI to be on a board, ministers should accept a minuted recommendation from the VCCI Council as to the business nominee unless there are specific reasons why acceptance would be unlawful.

VII.14. CUSTOMARY AUTHORITIES

INTRODUCTION

This pillar focuses specifically on the constitutionally mandated structures and duties of the National Council of Chiefs or Malvatumauri Council of Chiefs which are developed further in the National Council of Chiefs Act 2006. In December 2013 a number of constitutional amendments affecting the powers and duties of the Malvatumauri Council of Chiefs were passed by parliament.¹¹⁶⁴ The role of the Malvatumauri Council of Chiefs is to 'discuss all matters relating to custom and tradition and ... make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.'¹¹⁶⁵ It must also be consulted on 'any question relating to tradition and custom and land in connection with any bill before Parliament.'¹¹⁶⁶

Under the Constitution there are three other areas where customary authorities are provided a specific role. First, the Constitution requires that, 'Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.'¹¹⁶⁷ In partial fulfilment of this constitutional requirement,¹¹⁶⁸ in 1983 parliament passed the Island Courts Act. This Act provides for the establishment of Island Courts, presided over by 'three justices knowledgeable in custom for each island court at least one of whom shall be a custom chief residing within the territorial jurisdiction of the court.'¹¹⁶⁹ Each court is supervised by a supervising magistrate.¹¹⁷⁰ These are hybrid courts that form part of the judiciary and have jurisdiction over low-level criminal and civil matters within the western legal system, rather than dispensing "custom justice".¹¹⁷¹ As they form part of the judiciary their operation is noted in that pillar.

Second, parliament may 'provide for persons knowledgeable in ... custom to sit with the judges of the Supreme Court or the Court of Appeal and take part in its proceedings.'¹¹⁷² Again this relates to the operation of the judiciary so is not further discussed here.

The final area where the Constitution provides a role for customary authorities is land matters. All land in Vanuatu 'belongs to the indigenous custom owners and their descendants'¹¹⁷³ and 'the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.'¹¹⁷⁴ The Constitution requires that in the event of disputes as to customary ownership, 'Parliament by enactment shall formalise the recognition of appropriate customary institutions or procedures to resolve land ownership or any disputes over custom land.'¹¹⁷⁵ Island Courts originally had jurisdiction over customary land disputes. A more complex customary land dispute resolution structure was established by parliament in 2001, when the Customary Land Tribunal Act was passed.¹¹⁷⁶ In December 2013 the Customary Land Tribunal Act was repealed and a new land disputes structure was introduced by the Custom Land Management Act 2013. This Act was gazetted in February 2014, but amendments are proceeding through the First Ordinary Session of

¹¹⁶⁴ Constitution (Sixth) (Amendment) Act 2013.

¹¹⁶⁵ Article 30(1), Constitution of the Republic of Vanuatu.

¹¹⁶⁶ Article 30(2), Constitution of the Republic of Vanuatu.

¹¹⁶⁷ Article 52, Constitution of the Republic of Vanuatu.

¹¹⁶⁸ Daniel Evans, Michael Goddard and Don Paterson, *The Hybrid Courts of Melanesia* (World Bank Justice and Development Working Paper Series, 2011) 6.

¹¹⁶⁹ Section 3(1), Island Courts Act [Cap 167].

¹¹⁷⁰ Section 2, Island Courts Act [Cap 167].

¹¹⁷¹ See, generally Evans, Goddard and Paterson, 2011.

¹¹⁷² Article 51, Constitution of the Republic of Vanuatu.

¹¹⁷³ Article 73, Constitution of the Republic of Vanuatu.

¹¹⁷⁴ Article 74, Constitution of the Republic of Vanuatu.

¹¹⁷⁵ Article 78(1), Constitution of the Republic of Vanuatu.

¹¹⁷⁶ Customary Land Tribunal Act [Cap 271].

Parliament for 2014. Whilst customary authorities have a significant part to play in custom land management, the law is in flux. It is therefore premature to analyse this area.

SUMMARY

Overall pillar score: 45.8			
Dimension	Indicator	Law	Practice
Capacity 37.5	Resources	50	25
	Independence	50	25
Governance 50	Transparency	50	50
	Accountability	50	50
	Integrity	75	25
Role 50	Demanding accountability from public duty bearers	25	
	Promoting community interests and integrity in local governance	75	

Customary authorities are integral to community governance and help the state to ensure that order is maintained throughout the country. However, customary governance structures are facing challenges caused by changes due to introduced systems. These changes, which are related to factors including the commercialisation of customary land, increasing urbanisation, and people living in nuclear families rather than as part of an extended grouping have created confusion as to who are legitimate customary authority holders, and the extent of their authority.

At a national level customary authority is organised within the Malvatumauri Council of Chiefs. The constitutional role of the Malvatumauri Council of Chiefs in respect of being consulted by parliament has recently been expanded, and this enhances the formal extent to which the Malvatumauri Council of Chiefs will be able to hold the legislature to account. This body faces a number of challenges, however. It lacks resources to be able to fulfil its roles and to support local Councils of Chiefs to develop. It also lacks independence, as the Malvatumauri Council of Chiefs does not determine its own secretariat.

STRUCTURE AND ORGANISATION

The Constitution provides for the establishment of the National Council of Chiefs, or Malvatumauri Council of Chiefs.¹¹⁷⁷ This body is comprised of custom chiefs elected by their peers from district councils of chiefs.¹¹⁷⁸ It has 'general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.'¹¹⁷⁹ Until the 2013 constitutional amendments, consultation with the Malvatumauri Council of Chiefs on Bills before parliament was not mandatory. The 2013 Constitutional amendments made consultation on all Bills relating to land, tradition and custom compulsory. Further detail as to the structure and organisation of the Malvatumauri Council of Chiefs is found in the National Council of Chiefs Act 2006. This Act establishes 20 Island and 2 Urban Councils of Chiefs, which in turn elect the 31 members of the National Council of Chiefs. In addition to its constitutional duties, the National Council of Chiefs Act 2006 provides additional functions for the Malvatumauri Council of Chiefs in respect of maintaining registers of Island and Urban Councils of Chiefs, and providing assistance to these local level councils. The Malvatumauri Council of Chiefs elects its chairman, who is also referred to as the president. The Malvatumauri Council of Chiefs is provided with a secretariat, in the form of a chief executive officer and other staff, all of whom are

¹¹⁷⁷ Part 5, Constitution of the Republic of Vanuatu.

¹¹⁷⁸ Article 29(1), Constitution of the Republic of Vanuatu.

¹¹⁷⁹ Article 30(1), Constitution of the Republic of Vanuatu.

public servants.¹¹⁸⁰ The president maintains an office within the secretariat, which is located in Port Vila.

Whilst the National Council of Chiefs forms the formal national structure, customary authorities work in their communities in accordance with customary practices. These are, usually, not written down. Further, Vanuatu is home to over 100 distinct indigenous cultures, and does not have a single homogeneous “custom”. This means that the structure and organisation of customary authorities at the community level varies. Whilst there is enormous variety, some commonalities can be identified. These include the central importance of kinship ties. Family and supra-family groupings are headed by authority figures, which may be elected or selected, based on personal characteristics.¹¹⁸¹ Positions of authority are, generally, earned rather than inherited.¹¹⁸² Customary order is characterised by ‘the emphasis on peace and harmony in the community, on restoring relationships, on the use of chiefs to facilitate agreement, [and] community involvement in the processes’.¹¹⁸³ In this section customary authorities at the community level are assessed as a whole, in respect of generalities.

ASSESSMENT

Capacity

Resources (law)

Score: 50

IN LAW, DO CUSTOMARY AUTHORITIES HAVE RESOURCES TO DISCHARGE THEIR DUTIES?

The law does provide some resources for the operation of the Malvatumauri Council of Chiefs but does not specify what activities must be funded by the government.

The National Council of Chiefs Act 2006 provides that the funds of the Malvatumauri Council of Chiefs can come from government appropriations and other sources.¹¹⁸⁴ It does not specify that any particular level of support must be provided by the government, or that any particular activities must be funded.

Council members are paid a monthly allowance of 30,000 vatu (US\$300) and a gratuity of 250,000 vatu at the end of their term (US\$2,500). There are also set sitting and subsistence allowances for each day the council sits.¹¹⁸⁵ Chiefs who are on local level Councils of Chiefs but are not on the National Council of Chiefs are not provided with any allowances.¹¹⁸⁶ The president of the Malvatumauri Council of Chiefs receives an annual salary pursuant to the Official Salaries Act [Cap 168].

The law provides that a chief executive officer (CEO) must be appointed by the PSC.¹¹⁸⁷ Other staff can also be appointed, but no other staffing positions are specified in law.¹¹⁸⁸

¹¹⁸⁰ Part 4, National Council of Chiefs Act 2006.

¹¹⁸¹ Anita Jowitt, Yoli Tom'tavala and Joseph Foukona, *Customary law and public health* (Technical paper prepared for Model Public Health Law for the Pacific Islands Project, Melbourne: La Trobe University, 2009) 3-5.

¹¹⁸² Lamont Lindstrom, “‘Big Man’ A Short Terminology” (1981) 83(4) *American Anthropologist* 900.

¹¹⁸³ Forsyth, 2009: chapter 4.

¹¹⁸⁴ Section 20, National Council of Chiefs Act 2006.

¹¹⁸⁵ Section 10, National Council of Chiefs Act 2006.

¹¹⁸⁶ Interview of Steve Namali, National Custom Land Officer Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹¹⁸⁷ Section 15, National Council of Chiefs Act 2006.

¹¹⁸⁸ Section 18, National Council of Chiefs Act 2006.

Resources (practice)

Score: 25

TO WHAT EXTENT DO CUSTOMARY AUTHORITIES HAVE ADEQUATE RESOURCES TO EFFECTIVELY DISCHARGE THEIR DUTIES?

Whilst the Malvatumauri Council of Chiefs receives some support for operations from government and project support from external agencies, resource issues limit the extent to which the central administration can support activities and development throughout the country.

In 2013 the Government Appropriation to the Malvatumauri Council of Chiefs was VT42,485,289 (US\$425,000). Approximately 34% of this amount was used for members' allowances, with 13% being used for funding of Island and Urban Councils of Chiefs, 19% being used for staff of the Malvatumauri Council of Chiefs Office and 3% for capital expenditure. The remainder was used for operational expenses.

There are concerns from within the Malvatumauri Council of Chiefs that resources are insufficient. Current public servants working within the Malvatumauri Council of Chiefs administration are the CEO, one secretary, two drivers, one gardener and one customary land officer, who is engaged on a fixed-term contract.¹¹⁸⁹

In both 2013¹¹⁹⁰ and 2014¹¹⁹¹ the Malvatumauri Council of Chiefs requested the government to provide more financial and administrative support to the office because the present administrative and financial support by the government is inadequate to enable the council to provide effective service delivery to the people and the country. Much of the budget is used for transport to the annual council meeting. There are very limited resources for ongoing communication and support through travel to the islands, phone calls, or even mail.¹¹⁹² This hinders the ability of the central administration to provide support and development for customary authorities operating in the islands. Nor are there any resources for district or area level Councils of Chiefs to operate.¹¹⁹³ The Malvatumauri Council of Chiefs is currently negotiating an agreement with Telecom Vanuatu Ltd that will allow free or reduced cost calls between chiefs and other government agencies to help address some of these issues.¹¹⁹⁴

The 2013 land reforms placed the customary land management office under the Ministry of Lands, despite the Malvatumauri Council of Chiefs wanting the customary land management office to remain under the Malvatumauri.¹¹⁹⁵ It can be noted that these laws are currently in flux, but if these changes occur this will result in further resource limitations for the Malvatumauri Council of Chiefs. The Malvatumauri Council of Chiefs is currently being provided resources under the Australian Aid funded Vanuatu Land Programme to work with fieldworkers from the Vanuatu Cultural Centre to begin to identify "nakamals" as specified under the Customary Land Management Act.¹¹⁹⁶

The Malvatumauri Council of Chiefs does receive technical support from sources other than the government. For instance, the World Justice Project is delivering a Chiefs Legal Education Pilot Programme, which aims to train chiefs in areas such as good governance, customary law,

¹¹⁸⁹ Interview of Steve Namali, National Custom Land Officer Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹¹⁹⁰ Anita Roberts, 'Malvatumauri seeks government support' *Vanuatu Daily Post Online* 2 January 2013.

¹¹⁹¹ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹¹⁹² Interview of Steve Namali, National Custom Land Officer Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹¹⁹³ Ibid.

¹¹⁹⁴ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹¹⁹⁵ Jonas Cullwick, 'Malvatumauri wants to look after Customary Land Management Office' *Vanuatu Daily Post Online* 14 March 2014.

¹¹⁹⁶ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

constitutional law, human rights and drafting by-laws.¹¹⁹⁷ This activity supports Recommendation 6 of the “Malvatumarui Council of Chiefs Roadmap”, a list of resolutions developed in 2011 which provides the current policy direction of the Malvatumauri Council of Chiefs.¹¹⁹⁸

Independence (law)

Score: 50

IN LAW, HOW INDEPENDENT ARE CUSTOMARY AUTHORITIES FROM THE INFLUENCE OR INTERFERENCE OF OTHER AUTHORITIES?

There are some legal protections of independence, but the secretariat is not under the direct control of the Council of Chiefs.

Members of the National Council of Chiefs are constitutionally guaranteed protections that are similar to parliamentary privilege. They may not be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by in the council in the exercise of office and during a session of the council except with the authorisation of the council in exceptional circumstances.¹¹⁹⁹

The process of selecting customary leaders to Councils of Chiefs is left to custom, although there are limits to ensure independence from external influences. In particular a member of a Council of Chiefs, either at National, Urban or Island level is not allowed to hold an executive position in a political party or a senior church position. Another bar to being a member of the Councils of Chiefs is having contested a local or national government election.¹²⁰⁰

Whilst the minister may make regulations relating to the operation of the Malvatumauri Council of Chiefs, these regulations are only to be made on its advice.¹²⁰¹

The CEO and other staff of the Malvatumauri Council of Chiefs are appointed by the PSC so are not under the direct control of the Council of Chiefs.¹²⁰² Further, as discussed in the section on the Public Sector, whilst laws should guarantee that public servants are appointed on merit and should not be subject to interference, some loopholes exist.

Independence (practice)

Score: 25

TO WHAT EXTENT ARE CUSTOMARY AUTHORITIES INDEPENDENT IN PRACTICE?

Because the central secretariat is not accountable to the Malvatumauri Council of Chiefs it can lead to divergence between the views of the chiefs and the actions of the secretariat.

There is concern that the having the CEO being appointed by the PSC undermines the independence of the secretariat. The operational structure is that the Malvatumauri Council of Chiefs is made up of customary leaders selected through customary methods. They in turn select their president and an Executive Council. The CEO of the Malvatumauri Council of Chiefs, as the head of

¹¹⁹⁷ <http://www.worldjusticeproject.org/opportunity-fund/vanuatu-chiefs-legal-education-pilot-program-0> [accessed 2 May 2014].

¹¹⁹⁸ Interview of Steve Namali, National Custom Land Officer Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹¹⁹⁹ Article 32(1)&(2), Constitution of the Republic of Vanuatu.

¹²⁰⁰ National Council of Chiefs Election Regulation Order 2007.

¹²⁰¹ Section 23, National Council of Chiefs Act 2006.

¹²⁰² Sections 15 and 18, National Council of Chiefs Act 2006.

the secretariat, should act on the instructions of the Executive Council and be accountable to it. However, as the CEO is appointed by the PSC the Malvatumauri Council of Chiefs does not have the power to hold the CEO to account. This can lead to divergence between the secretariat, which in practice controls funding, and the Council.¹²⁰³ The structure of having a centralised secretariat based in Port Vila may also undermine the authority of local level Councils of Chiefs, where customary authority should reside. Former President Chief Alguet has stated that the 'Malvatumauri is an "ear" that the government will use to listen to custom. It is not a custom authority therefore it should not be giving orders to custom Chiefs.'¹²⁰⁴ These issues have been recognised and in 2013 a review of the National Council of Chiefs Act commenced.¹²⁰⁵

There is also concern that the Malvatumauri Council of Chiefs can be co-opted for other agendas. This has been particularly apparent in respect of land reforms. Customary land ownership is a very sensitive issue. Following a National Land Summit in 2006 a number of resolutions were made. These were developed into the Vanuatu Land Sector Framework. Pursuant to this in 2011 the Mama Graon Project was launched.¹²⁰⁶ This project, which was funded by AusAID and the New Zealand Aid Programme and implemented by an Australian company, was initially supported by the Malvatumauri Council of Chiefs. Later the former President of the Malvatumauri Council of Chiefs, who was asked to resign as it appeared that he had been receiving too much from the Mama Graon Project,¹²⁰⁷ withdrew his support as he felt he has been misinformed about the project.¹²⁰⁸ There were subsequent criticisms that the Mama Graon Project was 'trying to get Malvatumauri to become another propaganda machine.'¹²⁰⁹

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE CUSTOMARY AUTHORITIES?

There is limited transparency of the Malvatumauri Council of Chiefs in law, but customary practice ensures transparency of customary authorities at community level.

The Council is required to provide an annual report on its activities to the minister,¹²¹⁰ but there is no requirement that this report is made public. Internal rules of the council require Urban and Island Councils of Chiefs to provide quarterly reports to the central administration,¹²¹¹ but again there is no requirement that these are published.

There are no specific written rules on the relationship between Urban and Island Councils of Chiefs and the public. Instead, this follows customary practice. Whilst customary practice varies throughout the country, one feature of customary governance is the use of regular public meetings.

¹²⁰³ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹²⁰⁴ <http://mildamelanesia.org/news/former-malvatumauri-head-makes-u-turn-mama-graon> [accessed 10 May 2014].

¹²⁰⁵ Anita Roberts, 'Role of Malvatumauri Chairman to be reviewed: Minister' *Vanuatu Daily Post Online* 15 May 2013; <http://pidp.eastwestcenter.org/pireport/2013/October/10-10-18.htm> [accessed 10 May 2014].

¹²⁰⁶ <http://aid.dfat.gov.au/countries/pacific/vanuatu/Pages/community-init5.aspx> [accessed 10 May 2014].

¹²⁰⁷ www.vanuatu2u.com/1/post/2013/02/mama-graon-needs-to-be-reminded-not-to-mislead-malvatumauri-in-its-function-says-govt-public-relations-officer-patunvanu.html [accessed 10 May 2014].

¹²⁰⁸ <http://mildamelanesia.org/news/former-malvatumauri-head-makes-u-turn-mama-graon> [accessed 10 May 2014].

¹²⁰⁹ www.vanuatu2u.com/1/post/2013/02/mama-graon-needs-to-be-reminded-not-to-mislead-malvatumauri-in-its-function-says-govt-public-relations-officer-patunvanu.html [accessed 10 May 2014].

¹²¹⁰ Section 22, National Council of Chiefs Act 2006.

¹²¹¹ Interview of Steve Namali, National Custom Land Officer Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

Transparency (practice)

Score: 50

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF CUSTOMARY AUTHORITIES IN PRACTICE?

Whilst formal annual reports are not readily available, customary practice means that customary authorities act in a largely transparent manner in respect of their communities, through mechanisms such as community meetings.

Annual reports are produced for the minister.¹²¹² Some key resolutions or policy decisions are written down and are available on request from the Malvatumauri Council of Chiefs or the relevant Council of Chiefs. Examples of this include the Malvatumauri Council of Chiefs Roadmap¹²¹³ and the Vaturisu Design, a document released by the Vaturisu (Efate Island Council of Chiefs) about land policy.¹²¹⁴

The relationship between customary authorities and communities tends to be quite open. The Alternative Indicators of Wellbeing study indicated that only 22% of surveyed communities in Vanuatu did not have community meetings.¹²¹⁵ Attendance at community meetings is also high, with only 8% reporting that they did not attend meetings.¹²¹⁶ Only 8% reported that they had a low level of trust in community leaders.¹²¹⁷ As trust is built, in part, on having faith that leaders are “doing the right thing”, which in turn relies on some knowledge of what leaders are doing, this level of trust suggests that there is a reasonable level of transparency in the activities of customary authorities. This is further supported by the finding that only 10% of chiefs were not thought to be good at communicating with community members.¹²¹⁸

It can be observed that the Alternative Indicators of Wellbeing study did not specifically ask about the formal Malvatumauri Council of Chiefs structure. However, the Malvatumauri Council of Chiefs is drawn from customary authorities that operate within custom in their communities. As custom is, generally, fairly transparent, it can also be assumed that there is transparency if community members want to ask chiefs about the activities of the Malvatumauri Council of Chiefs. That said, resource issues limit communication from the central administration to local councils and may mean that council members may not always be aware of central activities. This is reflected in the recommendation in the Malvatumauri Council of Chiefs Roadmap to ‘strengthen the consultation process from the national to the village level.’¹²¹⁹

¹²¹² Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹²¹³ Malvatumauri Council of Chiefs, *National Council of Chiefs 2011 Resolutions (the Malvatumauri Roadmap)* (Port Vila: Unpublished, 2011).

¹²¹⁴ [/www.vanuatu2u.com/1/post/2013/07/the-vaturisu-designpolicy-paperon-theme-of-the-2006-land-summit-on-fair-equitable-land-dealings-resolutions-by-malvatumauri-council-of-chiefs-of-2011-levi-tarosa.html](http://www.vanuatu2u.com/1/post/2013/07/the-vaturisu-designpolicy-paperon-theme-of-the-2006-land-summit-on-fair-equitable-land-dealings-resolutions-by-malvatumauri-council-of-chiefs-of-2011-levi-tarosa.html) [accessed 10 May 2014].

¹²¹⁵ Vanuatu National Statistics Office and Malvatumauri, *Alternative Indicators of Well-being for Melanesia Vanuatu Pilot Study Report, 2012* (Port Vila: Vanuatu National Statistics Office and Malvatumauri, 2012) xi.

¹²¹⁶ *Ibid*, 56.

¹²¹⁷ *Ibid*, 63.

¹²¹⁸ *Ibid*, 66.

¹²¹⁹ Malvatumauri Council of Chiefs, 2011.

Accountability (law)

Score: 25

IN LAW, ARE THERE PROVISIONS IN PLACE TO ENSURE THAT CUSTOMARY AUTHORITIES REPORT AND ANSWER FOR THEIR ACTIONS?

The Malvatumauri Council of Chiefs secretariat is required to be accountable to the government but there are no legal requirements that members of the Malvatumauri Council of Chiefs be accountable to their communities.

As stated above, the Malvatumauri Council of Chiefs must provide annual reports to the minister. It is also required to produce annual financial accounts that are subject to annual audits by the Office of the Auditor General.¹²²⁰ Council members are expected to report quarterly, although this is not specified in law.

Council members are elected every five years.¹²²¹ There is no set procedure for this election. The process follows custom,¹²²² and custom varies throughout the country.

There are no specific requirements in law that council members report to their communities. However, it can be observed that, in customary practice, customary leaders rely on widespread support for their positions.¹²²³ Leaders who do not carry out their duties in an appropriate manner will not have support and will therefore lose authority.

Accountability (practice)

Score: 50

TO WHAT EXTENT DO THE CUSTOMARY AUTHORITIES REPORT ON AND ANSWER FOR THEIR ACTIONS IN PRACTICE?

Some formal reporting occurs and some customary mechanisms act to hold customary authorities to account, but it is not clear how accountable customary leaders must be to their communities.

Annual reports and audited financial statements are produced.¹²²⁴ Quarterly reports from local Councils of Chiefs to the secretariat are not always produced.¹²²⁵

In 2012 the President of the Malvatumauri Council of Chiefs stepped down. This decision was reported to have been based on concerns within the council that the President had not acted in accordance with customary values so should, in the appropriately customary manner, humbly withdraw from his position of leadership.¹²²⁶ This suggests that customary accountability mechanisms amongst members of the National Council of Chiefs do operate.

It is less clear to what extent customary accountability mechanisms operate at the community level. Street survey research carried out as part of this National Integrity System assessment indicated that, of 50 respondents, 60% thought that chiefs act in their own interest rather than the community interest. In respect of land disputes 64% thought chiefs act unfairly. Whilst this is a small Port Vila

¹²²⁰ Section 21, National Council of Chiefs Act 2006.

¹²²¹ Section 5(5), National Council of Chiefs Act 2006.

¹²²² National Council of Chiefs Election Regulation Order 2007.

¹²²³ Chief Philip Tepahae, *Chiefly Power in Southern Vanuatu* (State, Society and Governance in Melanesia Project Discussion Paper, 1997).

¹²²⁴ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹²²⁵ Interview of Steve Namali, National Custom Land Officer Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹²²⁶ Harrison Selmen, 'Malvatumauri has new Chairman' *Vanuatu Daily Post Online* 18 May 2012.

based sample, it suggests that there is some dissatisfaction with chiefs. This data can be contrasted with the findings of the Alternative Indicators of Wellbeing survey, which indicated that, nationally, 23% had a high level of trust and 67% had a medium level of trust in community leaders.¹²²⁷ The Malvatumauri Council of Chiefs Roadmap recognises that there is a need to strengthen the custom governance system,¹²²⁸ and this would include strengthening accountability.¹²²⁹

Integrity (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF CUSTOMARY AUTHORITIES?

Integrity mechanisms exist both in state law and customary practice.

Members of the Malvatumauri Council of Chiefs are leaders under the Leadership Code Act. They must behave fairly and honestly in all their official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring their office into disrepute.¹²³⁰ They are also required to file annual returns.

Custom also expects integrity in its chiefs. Chief Tepahae, writing about customary authority on Aneityum, lists the qualities a chief must have, including the ability to listen, respect for others, being humble, not being selfish or greedy, being reserved, and not being quick to anger.¹²³¹ If these qualities are not displayed then the people's trust will be withdrawn and a chief will lose his position. Whilst different islands have different ways of attaining the position of chief and retaining it, as a generalisation the position is founded on respect derived from personal integrity.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF CUSTOMARY AUTHORITIES ENSURED IN PRACTICE?

State laws designed to uphold integrity do not function and customary integrity mechanisms are facing significant challenges due to lack of clarity about who legitimately holds customary authority.

As discussed elsewhere in the report, the Leadership Code Act does not operate well in practice.

The assumed customary integrity mechanisms are also not functioning well at the moment. One of the major challenges facing the Malvatumauri Council of Chiefs is the ascertainment of chiefly titles.¹²³² Identifying customary authorities and restoring them to their rightful place and ascertaining chiefly titles are two of the recommendations of the Malvatumauri Council of Chiefs Roadmap.

As chiefs are defined by place, determining customary titles also relates to identifying customary land boundaries. The commercialisation of land helps to confuse both the identification of chiefs and the role of chiefs. Recent research conducted on Tanna indicates that people would sign customary land owner identification documents as "chiefs", with no verification of the authenticity of this claim

¹²²⁷ Vanuatu National Statistics Office and Malvatumauri, *Alternative Indicators of Well-being for Melanesia Vanuatu Pilot Study Report, 2012* (Port Vila: Vanuatu National Statistics Office and Malvatumauri, 2012) 63.

¹²²⁸ Malvatumauri Council of Chiefs: 2011, recommendation 9.

¹²²⁹ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹²³⁰ Section 3, Leadership Code Act [Cap 240].

¹²³¹ Tepahae, 1997: 1.

¹²³² Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

and that chiefs would sign on apparent behalf of a group of people with no consultation. There were also allegations of chiefs being bribed to sign.¹²³³ This report also noted ‘there is little evidence of fraudsters being called to account through either customary or civil action.’¹²³⁴ These problems are widespread throughout Vanuatu and undermine the integrity of customary authority.¹²³⁵

Role

Community mobilisation to demand accountability from duty bearers and promote integrity

Score: 25

TO WHAT EXTENT DO CUSTOMARY AUTHORITIES PROVIDE SUPPORT TO THEIR SUBJECTS TO DEMAND ACCOUNTABILITY FROM AND PROMOTE INTEGRITY AMONG PUBLIC DUTY BEARERS?

Changes to the Constitution will enhance the ability of the Malvatumauri Council of Chiefs to hold law-makers to account.

It is not clear the extent to which customary authorities should get involved in national politics. Direct involvement by the Malvatumauri Council of Chiefs through mechanisms such as standing in elections and holding political office is not permitted.¹²³⁶ Further, there is a view that, ‘It is not the role of the National Council of Chiefs to tell the government to “pull up its socks”.’¹²³⁷ That said, holding leaders to account “in the custom way” by ‘invit[ing] the government to its nakamal and communicat[ing] matters about custom’¹²³⁸ is seen as a legitimate role and one where the Malvatumauri Council of Chiefs could do more.¹²³⁹ The recent constitutional changes, which make it mandatory for the Malvatumauri Council of Chiefs to be consulted on any law change that may have implications for custom, embeds the requirement for dialogue. Whilst this process will not necessarily help in holding leaders to account if laws are made in opposition to the Malvatumauri Council of Chiefs’ views, the process implicitly suggests that the views of chiefs will be taken into account in the law-making process. There is scope for expanding and clarifying the process for consultation of chiefs by the legislature, to give chiefs more power to hold the legislature to account.

Chiefs do, at times, tell people how to vote in national elections. Street survey research conducted as part of this National Integrity System assessment indicated that 36% of the 50 respondents had been instructed in how to vote, with comments suggesting that this percentage would be higher in rural areas.¹²⁴⁰ Whilst this can be seen as an interference with the democratic process, it can equally be seen as a chief exercising his power to hold politicians to account by withholding support. This is an area where education is needed. As indicated in the discussion on integrity in practice above, introduced systems are placing pressure on customary authorities and the legitimate roles of customary governance and leadership are blurred. Part of establishing clarity in respect of customary leadership involves clarifying the boundaries and intersections between the modern democratic state and customary authority.

¹²³³ Rod Nixon, Leisande Otto and Raewyn Porter, *Wan sip plante kapten: leasing on Tanna island, Vanuatu* (World Bank Justice For the Poor Research Report, May 2012) 21.

¹²³⁴ Ibid, 30.

¹²³⁵ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014; Sarah Kernot and Lai Sakita, *The role of chiefs in Peacebuilding in Port Vila* (State Society and Governance in Melanesia Discussion Paper, 2008).

¹²³⁶ National Council of Chiefs Election Regulation Order 2007.

¹²³⁷ www.vanuatu2u.com/1/post/2013/02/mama-graon-needs-to-be-reminded-not-to-mislead-malvatumauri-in-its-function-says-govt-public-relations-officer-patunvanu.html [accessed 10 May 2014].

¹²³⁸ Ibid.

¹²³⁹ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

¹²⁴⁰ Data on file with author.

Community representation and promotion of integrity in local governance structures

Score: 75

TO WHAT EXTENT DO CUSTOMARY AUTHORITIES REPRESENT COMMUNITY INTERESTS AND PROMOTE INTEGRITY IN LOCAL/COMMUNITY GOVERNANCE STRUCTURES?

At a community level customary authorities are integrally involved with community governance and, when they function well, promote a high degree of integrity.

Customary authorities are integral to providing local governance structures. Outside of the urban areas, where there is very limited presence of the state, customary authorities work with other community structures including women's groups, youth groups and church groups to maintain community governance.¹²⁴¹ As discussed above, consensus derived through community meetings is an integral part of the operation of customary authority, and this consensus nature means that community interests are represented.

This harmonious ideal should not be overstated, however. As discussed in the section on integrity in practice there is considerable confusion as to who the legitimate customary authorities are in many areas and what the legitimate scope of their power is. There is also some lack of trust in customary authorities. Further, when the cash economy intersects with customary governance, for example through transactions involving customary land, customary authorities can act without integrity, which undermines community governance.

RECOMMENDATIONS

1. Customary governance is facing challenges caused by changes due to introduced systems. Until these challenges are addressed customary authorities will suffer from weakened foundations. The government and/or aid donors should ensure that the Malvatumauri Council of Chiefs is provided with sufficient resources to enable travel to allow chiefs to come together and, in the customary way, have discussions to rethink and rediscover customary governance and leadership. This process should include establishing who the correct holders of chiefly titles are.
2. Although the Constitution provides that the Malvatumauri Council of Chiefs should be independent, the current National Council of Chiefs Act 2006 sets down a structure that interferes with independence. The 2013 review of the National Council of Chiefs Act should be acted upon by the government, with the Act being repealed or amended.
3. Urban and Island Councils of Chiefs may lack support or technical capacity to remain accountable and transparent through the filing of quarterly reports, and the central administration lacks resources to provide this support. The government and/or aid donors should provide technical assistance to develop guidelines for reporting and to train Council members in reporting and provide ongoing support for reporting.
4. The constitutional role of the Malvatumauri Council of Chiefs in respect of being consulted by Parliament is being expanded. Guidelines need to be developed, possibly as part of the review of Standing Orders, to ensure that: this consultation is done transparently; that sufficient time is given for consultation; and that, if required, sufficient technical resources are provided to allow the Malvatumauri Council of Chiefs to engage fully on issues referred to it.

¹²⁴¹ Interview of Irene Luan, CEO of the Malvatumauri Council of Chiefs with Anita Jowitt, Port Vila, 9 May 2014.

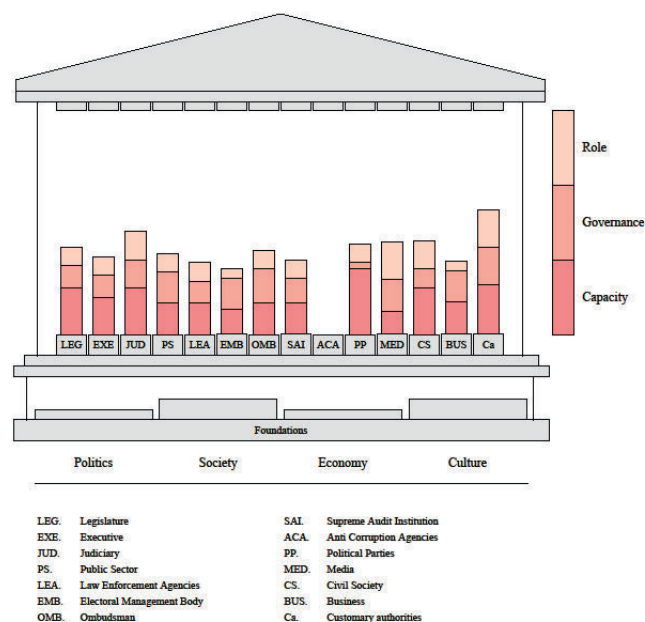
VIII. CONCLUSION

SUMMARY OF SCORES

Each of the pillars of Vanuatu's National Integrity System has been assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfil their assigned role with regards to preventing and fighting corruption

The graphic below shows the aggregate scores of each of the pillars performance in these three areas. This clearly indicates that there are significant weaknesses across all pillars of Vanuatu's National Integrity System.



In some respects this is not surprising. Vanuatu is a developing country that has been independent for less than 35 years. The scores within the National Integrity System framework are not, however, adjusted to take these factors into account. Instead the framework presents ideal standards for all countries. As such they are aspirational. Low scores are **not** about “blaming” any particular institution for underperformance. Instead they should be used to help identify key areas where improvements are needed.

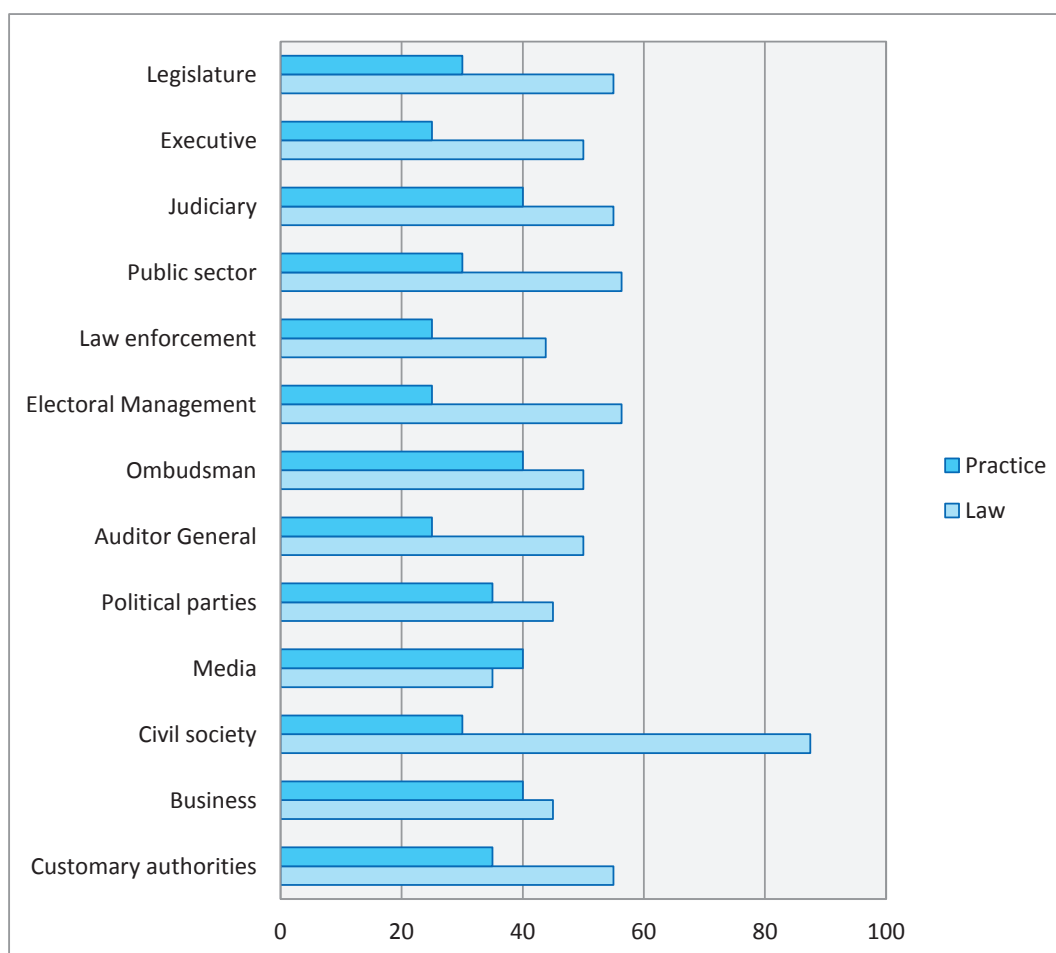
One should be cautious of over-reliance on the aggregate scores. For instance, the aggregate scores appear to indicate that political parties are one of the best scoring pillars. A closer examination shows that this is because political parties score very highly in the area of capacity, which is comprised of assessments of independence and resources. Political parties also score the lowest in respect of governance, which assesses transparency, accountability and integrity. An imbalance of this nature, where there is considerable capacity, but there is almost no governance is

problematic as there is no way to ensure that resources are being managed appropriately and that independence is being exercised responsibly.

The aggregate scores provide a snapshot of performance that may be useful in beginning to identify trend across pillars and can be examined in different ways to identify trends in areas of strengths and weaknesses.

One trend that can be observed is that most pillars score better in respect of their capacity than they do in respect of fulfilling their roles. This is something of a concern it suggests that pillars are not performing to capacity.

The aggregate data can also be examined in other ways. The table below presents the scores by law and by practice.



What this table shows is that, in almost all areas, the legal framework is stronger than the practical situation. This suggests that the question of how to strengthen Vanuatu's National Integrity System is not going to be solved simply by making more laws. Rather, more attention needs to be given to how to improve implementation of and compliance with those laws in practice.

This is not to say that improvements to laws are not needed. The Transparency International scoring framework provides that any score above 40 is moderate:

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

In almost all areas laws are considered to be of moderate strength. Improving practice in conjunction with improving laws is needed.

STRENGTHS, WEAKNESSES AND CHANGES IN PILLARS

The pillar reports allow strengths and weaknesses or areas for improvement in pillars to be identified. As Vanuatu conducted National Integrity System studies in 2004 and 2006 it is also possible to identify key changes. It is important to remember that no pillar stands on its own. Just as low scores are not about blaming pillars for underperformance, low scores are never “the fault” of any one pillar. Instead there are a multitude of complex interactions and externalities that affect each pillar’s performance. The reports allow coordination issues to be identified.

The tables below summarise key strengths, areas for improvement, coordination issues and key changes for each pillar individually. They also relate the pillar recommendations to the areas for improvement and, where coordination issues are addressed within the pillar’s recommendations rather than in the recommendations of another pillar, to the coordination issues. It can also be noted that sometimes coordination issues will be addressed in recommendations arising in relation to other pillars.

Recommendations are found at the end of each pillar section. For ease of reference the full list of recommendations by pillar is also provided at the end of the conclusion.




Legislature

Strengths	<ul style="list-style-type: none"> Individual members of parliament are provided with a range of resources, including offices, computers and travel allowances. The independence of parliament is guaranteed in law. Parliament maintains twinning relationships and other links with a number of overseas legislatures and these relationships are very useful in providing ongoing support and development for the Vanuatu legislature. 	
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Areas for improvement	<ul style="list-style-type: none"> Public consultation by members of parliament is weak. The legislature lacks technical capacity to be able to fulfil its role as the central law making and accountability body, and in particular committee structures do not operate effectively. Members' allocations encourage clientelistic politics. 	<ul style="list-style-type: none"> Rec 1(a); rec 2 Rec 1(c); rec 2; rec 5 Rec 3
Coordination with other pillars	<ul style="list-style-type: none"> The legislature is the hub of accountability and should receive and debate reports from a wide number of agencies. This should also ensure transparency for a wide number of agencies. The legislature currently does not debate reports, nor does it make reports tabled in parliament accessible through its library, which undermines accountability and transparency of a wide number of agencies. Whilst members of parliament are leaders under the Leadership Code Act and should be accountable through the Office of the Ombudsman, weaknesses in law and practice mean that members of parliament are not effectively held to account. Weaknesses in the electoral system undermine the extent to which elections are used to hold mp's to account. The judiciary has a role in overseeing the activities of the legislature and cases are actively brought before it. Motions of no confidence (instability in the executive) undermine activities of the legislature. 	<ul style="list-style-type: none"> Rec 1(a); rec 1(b); rec 1(c); rec 2 Rec 4 Rec 6
Changes since 2004/2006	<ul style="list-style-type: none"> The Parliament Administration Act came into force in 2006, defining internal governance structures. Since November 2013 parliament sittings have been broadcast live over internet and television. In 2010 changes to how members allocations were paid reduced clarity over the use of members allocations. 	<ul style="list-style-type: none"> 😊 😊 😞

Executive

Strengths	<ul style="list-style-type: none"> The Council of Ministers has sufficient financial and secretarial resources. There are, in law, a number of accountability and integrity mechanisms contained within the Leadership Code Act. The Government Act provides a clear structure for the executive to work within. 	
Areas for improvement	<ul style="list-style-type: none"> Technical support for the Council of Ministers largely depends upon political advisors, and there are no specified qualifications required in order to hold this post. There is little transparency in respect of actions of the Council of Ministers or policies of governing coalitions. Fragmentation within the legislature (due in part to increases in the number of political parties) results in coalition governments, which are inherently unstable and frequent motions of no confidence undermine stability of the executive. The number of political appointees appears to be growing. 	<ul style="list-style-type: none"> Rec 2 Rec 1 Rec 3 Rec 4
Coordination with other pillars	<ul style="list-style-type: none"> Whilst the executive are leaders under the Leadership Code Act and should be accountable through the Office of the Ombudsman, weaknesses in law and practice mean that the executive is not effectively held to account. The executive is not active in ensuring implementation of ombudsman's recommendations. 	





Changes since 2004/2006	<ul style="list-style-type: none"> The number of parties represented in coalitions is increasing. Instability within the executive is an ongoing problem and is increasing. The former (Carcasses) Government released a 100 Day Plan containing a number of integrity/anti-corruption initiatives and there appears to be political commitment to continue this agenda. 	  
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Judiciary

Strengths	<ul style="list-style-type: none"> Courts are generally perceived as being impartial, independent and fair (although this may be changing). Courts are active in overseeing the actions of the legislature, executive and other agencies when cases are brought before the court. The Court of Appeal settles cases rapidly. 	
Areas for improvement	<ul style="list-style-type: none"> There is a public perception that courts are becoming increasingly corrupt. There is no mechanism for receiving public complaints about judges or court services. Transparency of decision making in subordinate courts is very limited. Delays in decision making can occur (although this is currently being addressed as part of the Court Improvement Plan). 	<ul style="list-style-type: none"> Rec 2 Rec 2(a) Rec 3 Rec 1
Coordination with other pillars	<ul style="list-style-type: none"> The judiciary relies on other parties to bring cases relating to corruption to court. Weaknesses in law enforcement and the capacity of others to bring decisions for judicial review limits the extent to which the judiciary hears corruption related cases. 	
Changes since 2004/2006	<ul style="list-style-type: none"> In 2007 the court house in Port Vila and in 2011 the court house in Santo burned down. In 2012 a court improvement plan which deals widely with issues of accountability, integrity and service delivery was launched and a number of changes have been implemented. 	 

Public sector

Strengths	<ul style="list-style-type: none"> There is a reasonable legal framework for accountability and integrity of public servants. Some public servants are held accountable via disciplinary actions. The public service is reasonably well resourced. Efficient management of resources is usually more of a priority than allocating more resources. 	
Areas for improvement	<ul style="list-style-type: none"> There are currently no ongoing programmes to encourage ethical behaviour by public servants. There is only limited engagement of the public about corruption by the public sector. There is no public mechanism to make complaints about public servants. Public procurement needs to be addressed in law and practice. Perceptions of political interference, nepotism and lack of integrity in the public service need to be addressed. The allowance structure may encourage lack of integrity. Transparency is hindered by difficulties in accessing information. 	<ul style="list-style-type: none"> Rec 2(a) Rec 1(c) Rec 2(b) Rec 3 Rec 1 rec 2(c) Rec 1(e) Rec 1(a)

Coordination with other pillars	<ul style="list-style-type: none"> Whilst senior public servants are leaders as defined by the Leadership Code Act, weaknesses in both the law and practice of the annual reporting system for leaders undermines the operation of this integrity mechanism. There is a “natural grouping” of the ombudsman, the auditor general and the PSC, as promoters and overseers of good conduct by public servants. There should be regular cooperation between these agencies. 	
Changes since 2004/2006	<ul style="list-style-type: none"> In 2011 the law changed to give the prime minister the power to appoint and terminate director generals. The PSC is currently working to improve the public service code of conduct. There are plans to develop a website for PSC, and for this website to include a section on the core values of PSC as well as the PSC manual, PSC instructions and PSC circulars. In 2012 the Vanuatu Institute of Public Administration and Management was established to provide functional and development training for public servants. 	   

Law enforcement

Strengths	<ul style="list-style-type: none"> Longstanding support of the Vanuatu Police Force by AusAID and other partners has resulted in improvements in training, resources and operational practice. There is a Police Code of Ethics. 	
Areas for improvement	<ul style="list-style-type: none"> A review of the operations of the Office of the Public Prosecutor is urgently needed. Perceptions that political interference in high profile corruption cases and/or personal connections results in misuse of police and prosecutorial powers should be addressed. There is a perception that law enforcement agencies are not held accountable by internal disciplinary procedures. Corruption prosecutions are hindered by the fact that the VPF are not empowered to investigate breaches of the Leadership Code Act in the absence of an ombudsman's report 	<ul style="list-style-type: none"> Rec 1 Rec 4; rec 2 Rec 3 Rec 5
Coordination with other pillars	<ul style="list-style-type: none"> Whilst senior police officers and the Public Prosecutor are leaders as defined by the Leadership Code Act, weaknesses in both the law and practice of the annual reporting system for leaders undermines the operation of this integrity mechanism. Whilst the police came under significant criticism in a 2009 coroner's report and were the subject of an ombudsman's report in 2010, no public action was taken in response to these reports. Prosecutors rely on the courts to manage cases and hear cases in a timely manner, although this usually does not result in problems. 	<ul style="list-style-type: none"> Rec 3

Changes since 2004/2006	<ul style="list-style-type: none"> In 2010 the Police Act was amended to provide that the Commissioner of Police must be a citizen of Vanuatu. 	☹
	<ul style="list-style-type: none"> In 2013 the Government signed an agreement to establish an independent police complaints authority. 	☺
	<ul style="list-style-type: none"> In late 2013 the Public Prosecutor submitted her resignation, and in April 2014 an Acting Public Prosecutor was appointed. 	☹
	<ul style="list-style-type: none"> After a period of instability in the position of police commissioner, in 2013 a Police Commissioner was appointed. 	☺
	<ul style="list-style-type: none"> There have been increases in funding to the VPF to accommodate training and professionalisation of the VPF, infrastructure development and internal VPF governance. 	☺
	<ul style="list-style-type: none"> The Australian Aid Stretem Rod blong Jastis programme provides funds to strengthen the Office of the Public Prosecutor and the VPF. 	☺

Electoral Management Body

Strengths	<ul style="list-style-type: none"> Candidates themselves help to ensure electoral rules are complied with through the liberal use of electoral petitions, although it can be observed that electoral petitions are not always processed in a timely manner. There are a number of legal lines of accountability of the Electoral Office. Despite enormous challenges elections occur, are largely peaceful and, in national elections, there is good voter turnout. 	
Areas for improvement	<ul style="list-style-type: none"> Until the integrity of the electoral roll is ensured it is not possible to say that Vanuatu has free and fair elections. A number of laws, including (but not limited to) laws in relation to proxy voting, laws protecting the independence of the principal electoral officer and laws relating to election petitions need to be reviewed. The Electoral Commission should deliver reports after every election, and these reports should be made public. They should also be scrutinised by parliament, in order to ensure that legal lines of accountability operate in practice. The government should ensure that there is timely provision for international and domestic observers to observe all elections. It can be noted that observers are usually permitted although arrangements can be "last minute". There is no regulation of campaign financing. Training and control of regional registration officers is weak. 	<ul style="list-style-type: none"> Rec 1 Rec 3; rec 4 Rec 6(a) Rec 6(b) Rec 2
Coordination with other pillars	<ul style="list-style-type: none"> Voting in elections is part of civic responsibilities. All pillars and other institutions such as the education system have a role in promoting civic responsibilities. The Electoral Office effectively uses the media to notify people of polling dates, candidate lists and electoral results. Crimes committed under the Representation of the People Act are not prosecuted, which suggests better coordination between the Police, the Office of the Public Prosecutor and the Electoral Office/Electoral Commission is needed. There have been successful partnerships with civil society organisations to deliver voter education programmes. The Electoral Office is subject to external audits by the Auditor General and has been the subject of an audit investigation. 	<ul style="list-style-type: none"> Rec 5

Changes since 2004/2006	<ul style="list-style-type: none"> Changes to the Representation of the People Act in 2012 made it more difficult to succeed in an electoral petition alleging corrupt practices. 	☹
	<ul style="list-style-type: none"> Changes to the Representation of the People Act in 2007 allowed people who reside out of the Port Vila and Luganville municipal boundaries, but work inside of the municipal boundaries to vote within the Port Vila and Luganville constituencies. 	☺
	<ul style="list-style-type: none"> There were changes to the position of the principal electoral officer during the lead up to the 2012 national election, and for a number of months this position was only filled on an acting basis. 	☹
	<ul style="list-style-type: none"> A generic voter registration system is being introduced, with plans to computerise the electoral roll by 2016. 	☺

Ombudsman

Strengths	<ul style="list-style-type: none"> Not subject to direct political interference. Public reports are freely available. The Office of the Ombudsman will work with civil society organisations in conducting public awareness activities. 	
Areas for Improvement	<ul style="list-style-type: none"> Public reports are often not acted upon and there is no mechanism to prevent ombudsman's recommendations from being ignored. File management needs to be improved, in order to address both delays and accurate reporting of activities, although it can be noted that there are plans for the file management system to be upgraded in 2014. The role of the ombudsman is promoting good practice (including providing education and public awareness about how to make complaints with the Office of the Ombudsman) needs to be specifically recognised and endorsed. Whilst the ombudsman is a leader as defined by the Leadership Code Act, weaknesses in both the law and practice of the annual reporting system for leaders undermines the integrity of the office. Transparency could be improved 	<ul style="list-style-type: none"> Rec 1 Rec 4; rec 5(a) Rec 3 Rec 1 Rec 5
Coordination with other pillars	<ul style="list-style-type: none"> The Office of the Ombudsman is hindered by lack of action on recommendations contained in ombudsman's reports from other pillars such as the public prosecutor, relevant government agencies and members of the executive. The functioning of the Office of the Ombudsman has been hindered by slow recruitments by the PSC.. Lack of scrutiny of ombudsman's annual reports by parliament reduces accountability. There is an opportunity for the Office of the Ombudsman and the Public Service Commission to work together to promote ethics in the public service, although currently these agencies do not work together in this area. CSOs can work with the Office of the Ombudsman to promote good governance 	<ul style="list-style-type: none"> Rec 2(a) Rec 6 Rec 2(b); 3(d) Rec 2(c); 3(c)
Changes since 2004/2006	<ul style="list-style-type: none"> There has been a decline in the number of complaints received by the Office of Ombudsman and the number of public reports issued, although it can be noted that some complaints are being resolved via mediation, which does not result in public reports being issued. Staff levels have declined significantly. Annual reporting has improved, although annual reports are still delayed. 	<ul style="list-style-type: none"> ☹ ☹ ☺

Supreme Audit Institution

Strengths	<ul style="list-style-type: none"> • There are no examples of direct political interference in the operations of the OAG. • Changes since 2009 (see changes below) indicate that the OAG is strengthening its operations. • At times audit recommendations have resulted in the public servants having their employment terminated. 	
Areas for improvement	<ul style="list-style-type: none"> • The OAG is severely hindered by lack of staff. This situation reflects a general skills shortage within Vanuatu. • There is a backlog of audits, audit reports and annual reports. • Current audit practice limits the level at which compliance audits are undertaken and limits the number of performance audits undertaken. • There are no express legal provisions in place to allow for audit reports to be made public, or for the public to make complaints directly to the OAG. 	<ul style="list-style-type: none"> • Rec 1(a); rec 4 • Rec 1(b) • Rec 3 • Rec 5; rec 6
Coordination with other pillars	<ul style="list-style-type: none"> • Whilst the auditor general is a leader as defined by the Leadership Code Act, weaknesses in both the law and practice of the annual reporting system for leaders undermines the integrity of the OAG. • The PSC does use audit reports as the basis for staff disciplinary actions, but does not have the power to order recovery of misappropriated money. Misappropriations are instead recovered as part of criminal actions initiated by the Office of the Public Prosecutor. • The OAG relies on a strong Public Accounts Committee, situated within the legislature, in order to ensure that recommendations are acted upon. Currently the Public Accounts Committee does not operate effectively. Further, the Public Accounts Committee relies upon others to act on its recommendations. Little action resulted from the last Public Account Committee report, issued in December 2011. • The OAG relies upon the Ministry of Finance submitting consolidated government accounts. These accounts are up to date. • The OAG relies on the PSC for recruitment of staff. 	<ul style="list-style-type: none"> • Rec 2 • Rec 7
Changes since 2004/2006	<ul style="list-style-type: none"> • In 2009 a new Auditor General was appointed. • Since 2009 technical assistance has improved planning and operations of the OAG. • Backlogs in audits and annual reporting are in the process of being cleared. • The OAG is actively working to ensure compliance with international accounting standards. 	<ul style="list-style-type: none"> ☺ ☺ ☺ ☺

Political Parties

Strengths	<ul style="list-style-type: none"> • There appears to be relatively high levels of political party membership and public involvement in political parties. • Parties operate independently without state support, and the larger number of active political parties that are successful in contesting elections indicates that lack of state support does not create significant barriers. • The state does not restrict the formation of political parties. 	
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Areas for improvement	<ul style="list-style-type: none"> • There are no laws allowing for transparency and accountability in respect of political party financing or campaign financing of both political parties and independent candidates. • Some political parties may lack technical capacity to develop policy statements and internal governance structures. • There are concerns that the increasing number of political parties and independent candidates is contributing to fragmentation and instability, although it should also be noted that direct regulation of the number of political parties interferes with fundamental principles of democracy and any regulation of the formation of political parties must be approached with caution. 	<ul style="list-style-type: none"> • Rec 1 • Rec 3 • Rec 4
Coordination with other pillars	<ul style="list-style-type: none"> • The state does not fund political parties. • The number of political parties represented within parliament directly impacts on the constitution of the government and is thought to contribute to instability of the government. • Political party members themselves refer matters to court in the event of allegations of breaches of internal rules. 	<ul style="list-style-type: none"> • Rec 2
Changes since 2004/2006	<ul style="list-style-type: none"> • There has been an increase in the number of political parties contesting elections and the number of political parties represented in government. • Some political parties have included the need for political party regulation in their policy platforms. • There appears to be an increase in the number of internal governance disputes within political parties. 	<p>☹</p> <p>☺</p> <p>☹</p>

Media

Strengths	<ul style="list-style-type: none"> • There is a wide spread of ownership of print and broadcast media. • The media is active in relaying information about government activities to the public. • The media regularly reports about allegations of corruption. • Media organisations support NGO activities aimed at educating the public about corruption. • There is a voluntary industry code of ethics and practice. 	
Areas for improvement	<ul style="list-style-type: none"> • The Media Association of Vanuatu lacks resources to ensure that there are mechanisms for receiving and responding to complaints about the Vanuatu Media Code of Ethics and Practice. • Investigative journalism needs to be developed further. • There is no right to information law. • The industry code of ethics and practice could be reviewed to ensure that it is sufficiently comprehensive. 	<ul style="list-style-type: none"> • Rec 1 • Rec 4 • Rec 5 • Rec 2
Coordination with other pillars	<ul style="list-style-type: none"> • Media outlets support civil society organisations' anti-corruption activities by providing free publication of public education and awareness material. • Threats to and intimidation of journalists reduce independence of the media. Intimidation of journalists can come from the government. • Media is active in publishing information about government activities. 	<ul style="list-style-type: none"> • Rec 3



Changes since 2004/2006	<ul style="list-style-type: none"> • The Media Association of Vanuatu has formalised its structure and registration. 	😊
	<ul style="list-style-type: none"> • The Vanuatu Institute of Technology has established certificate and diploma programmes in journalism. 	😊
	<ul style="list-style-type: none"> • There has been an increase in the number of media outlets in Vanuatu. 	😊
	<ul style="list-style-type: none"> • A Right to Information Bill has been drafted and was listed for debate in the November 2013 Parliament session, although it was withdrawn to allow for some further review. 	😊
	<ul style="list-style-type: none"> • A Right to Information Policy was adopted by the Government in April 2014. 	😊

Civil Society

Strengths	<ul style="list-style-type: none"> • NGOs are free to operate without undue government influence. • A variety of aid donors operate in Vanuatu to support NGO activities. • NGOs can and do form successful short term partnerships with government agencies to conduct advocacy and public awareness campaigns on specific issues. • NGOs have established groups with formal and informal networks at the community level. 	
Areas for improvement	<ul style="list-style-type: none"> • There is no voluntary or mandatory code of conduct for CSOs in Vanuatu, which could cover matters such as accountability to members and transparency of activities. • There is a lack of overall coordination between NGOs and also between NGOs and government, although there are some good examples of where CSO collaboration and engagement with government has been very effective. • There is no forum where NGOs and government can interact on anti-corruption issues. 	<ul style="list-style-type: none"> • Rec 1(b) • Rec 1(a); rec 1(b)(iii); rec 1(c) • Rec 2
Coordination with other pillars	<ul style="list-style-type: none"> • CSOs should be viewed as a partner in policy development, education and community outreach programmes by all other pillars. 	
Changes since 2004/2006	<ul style="list-style-type: none"> • In December 2013 an extraordinary general meeting to rehabilitate VANGO, the umbrella body for NGOs and community based organisations. 	😊
	<ul style="list-style-type: none"> • There are specific examples of CSO collaboration and coordination which also contribute to effective engagement between civil society and government for example the Vanuatu Climate Adaptation Network (VCAN), the Right to Information Committee and other emerging sector focused networks. 	😊
	<ul style="list-style-type: none"> • In 2012 an attempt was made to set up an NGO Anti-Corruption Committee. Whilst this attempt was short-lived, it stands as a clear expression of will to coordinate to address corruption. 	😊



Business

Strengths	<ul style="list-style-type: none"> • The legal framework in place for the establishment of business is relatively straightforward and allows for some transparency and accountability. • The Vanuatu Chamber of Commerce and Industry provides a consolidated voice for business advocacy. 	
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Areas for improvement	<ul style="list-style-type: none"> • The perception that the domestic private sector is not a partner with a role to play in reducing corruption in Vanuatu needs to change. • Business currently does not undertake any coordinated anti-corruption initiatives. • Whilst private sector development is recognised as being a key driver of national development business lacks resources to be able to engage in sustained policy discussion. 	<ul style="list-style-type: none"> • Rec 1 • Rec 2 • Rec 3
Coordination with other pillars	<ul style="list-style-type: none"> • Business should be represented on the boards of a number of statutory bodies, which provides business with an avenue to engage in policy discussion and assist with stability. • Businesses have to interact with a number of government agencies in order to maintain licenses. These interactions can be inefficient and there is global concern that the need for a large number of interactions can increase opportunities for the payment of “speed money” and other petty forms of corruption. • Business can be impacted by lack of consultation by the legislature during law reform processes and lack of consultation or prior notification by members of the executive when regulations are made. • Business currently does not tend to partner with and support CSOs’ anti-corruption activities. • In the event of undue external interference, it is possible for businesses to seek judicial review of administrative decisions via the courts. 	<ul style="list-style-type: none"> • Rec 4 • Rec 1
Changes since 2004/2006	<ul style="list-style-type: none"> • Regulatory authorities have been established to oversee telecommunications and utilities. • The Financial Intelligence Unit has been significantly strengthened, both in terms of human resources and in relation to legal frameworks. 	 

Customary authorities

Strengths	<ul style="list-style-type: none"> • Customary authorities can and do operate independently of the state and without state support. • Customary authorities are familiar to most in Vanuatu, and are widely respected. • Customary authorities are the basis of much order in Vanuatu, particularly in places where the state has little presence. • The nature of customary authority means that there is a high degree of transparency and accountability built into the exercise of authority at the community level. 	
Areas for improvement	<ul style="list-style-type: none"> • External influences, and in particular the potential for giving customary land monetary value, make it important to clearly establish who are the correct chiefs, and what are the correct authorities of chiefs, in order to minimise potential exploitation and abuse. • The intersection or legitimate relationship between customary authority and state authority is not always clear. • The secretariat of the Malvatumauri Council of Chiefs lacks resources. • The secretariat of the Malvatumauri Council of Chiefs is not appointed by the Council, which raises issues of independence. 	<ul style="list-style-type: none"> • Rec 1 • Rec 1 • Rec 1,3, 4 • Rec 2

Coordination with other pillars	<ul style="list-style-type: none"> At a community level, chiefs coordinate with women's groups, youth groups, religious groups, and others to ensure community governance. The Malvatumauri Council of Chiefs has a constitutional advisory role in respect of the legislature. Chiefs do, at times, instruct people on how to vote in national elections. 	<ul style="list-style-type: none"> Rec 4
Changes since 2004/2006	<ul style="list-style-type: none"> In December 2013 the requirement for the legislature to consult with the Malvatumauri Council of Chiefs was made mandatory in respect of law changes affecting custom and custom land. In December 2013 the Customary Land Management Act was passed, which, once it comes into operation, will change processes in respect of customary land dispute resolution. 	 

POLICY THEMES AND PRIORITY RECOMMENDATIONS

Whilst this report does list recommendations by pillar, addressing recommendations in a holistic manner is necessary to bring about change. Some common themes in issues across pillars can be identified. Common themes are:

The functioning of most pillars is weakened by failures within the legislature and executive to play their role in the “cycle of accountability” and to maintain a stable policy direction. These failures largely stem from lack of **POLITICAL INTEGRITY**. Unless lack of political integrity is addressed it will be impossible to consistently develop laws, policies and practices that support national integrity.

There are significant gaps in the legal frameworks for **ACCOUNTABILITY** of institutions and individuals and the practical implementation of those frameworks. Accountability mechanisms act to reduce the gap between law and practice. Unless accountability mechanisms are strengthened laws will continue to have little impact on practice.

Laws and practices tend not to support **TRANSPARENCY** of actions by institutions and individuals. Transparency increases detection of bad behaviour, which in turn enhances accountability. Unless transparency is improved it will remain difficult to hold institutions and individuals to account and to develop public will for change.

In many instances it would be unfair to attribute weak performance to intentional corruption. Instead technical knowledge and, more fundamentally, an embedded understanding of roles, responsibilities and good practice is often lacking. This indicates a lack of **HUMAN RESOURCE CAPACITY**. As well as developing specific human resource capacity, all reforms and strategies to strengthen national integrity should be designed to be achievable within Vanuatu's resource constraints.

National integrity ultimately rests on each person's internal ethical foundation. This gives rise to an embedded understanding of roles, responsibilities and good practice. **AWARENESS** to engage both “hearts and minds” is critical. Whilst it is easier to build knowledge of rules, systems and behaviours, developing internal ethical awareness that is appropriate to a modern democracy must not be overlooked.

Many good changes are already taking place to advance these policy themes. For instance: the Vanuatu Institute of Public Administration and Management is building human resource capacity within public servants; in February 2014 the then government commenced discussion with political parties regarding building political integrity; ombudsman's forums have developed several law reform options for strengthening accountability; in 2014 the government adopted a Right to Information Policy. All of these activities (and many more positive changes are listed throughout the report) suggest that there is growing awareness of issues, and that individuals are making personal ethical commitments to national integrity.

This National Integrity System assessment should be read as a call to continue ongoing activities and proposals to build national integrity. It is widely acknowledged that Vanuatu is currently facing a crisis in political integrity. Fragmentation of political parties, ongoing instability in government and serious deficiencies in the electoral system are some of the problems that are openly acknowledged by both the government and the opposition to be issues that must be addressed as a matter of urgency. The apparent political will to take steps to address issues of political integrity is an encouraging sign and this National Integrity System assessment add another voice to the call to finally take significant action in this area. Significant action cannot be piecemeal. Instead it requires the holistic reform of political parties, the legislature, the executive, the electoral management body and the ombudsman. As such this report makes the following five priority recommendations:

In order to enhance political integrity the government must take action as soon as possible to:
1. develop laws to regulate political parties and independent candidates for election, and in particular party finances and campaign finances.
2. implement an accurate electoral roll and voting system which is not subject to abuse.
3. revise the Standing Orders of Parliament, regulation of members' allocations and rules about the use of motions of no confidence.
4. revise the Ombudsman Act and Leadership Code Act to expand the Ombudsman's powers and ensure that there are consequences for breaches of the Leadership Code.
5. enact the Right to Information Bill and the Government Act to ensure transparency of the executive.

Building national integrity needs to involve everyone. Even well-intentioned changes are likely to be treated with suspicion if they are made by politicians behind closed doors. Further, public involvement in processes to develop change builds awareness and commitment to the values that the changes intend to support. As such, all of these changes should be made in a transparent and consultative manner which builds both awareness of roles, responsibilities and good practice within a democracy and public and political will for change. This is particularly important as some of these changes may require amendments to the Constitution which will need to be supported by a public referendum.

A large number of more specific recommendations lie behind these five priority recommendations. Most of these recommendations are not new, but have instead been talked about for a decade or more. Vanuatu needs to move beyond talk, and take action. There can be a tendency to establish committees, taskforces and working groups that quickly lose momentum. The advisory group recommended the Year of National Integrity as the principle recommendation in order to capitalise on momentum that has been generated both within and outside of this assessment to take action. This was strongly endorsed at the validation workshop. A Year of National Integrity sends a clear

message that this is something Vanuatu is committed to, as the explicit ethical foundation of the country. It also provides a clear timeframe for action, which creates a degree of urgency.

In order to continue momentum that currently exists in Vanuatu's political environment and which has been developed whilst undertaking this National Integrity System assessment, the key activities for taking the recommendations in this report forward are:

1. The Vanuatu government must establish a national integrity committee made up of both government and non-government representatives. The national integrity committee must develop and implement a plan for strengthening national integrity, using the outcomes of this report as a starting point for this plan.
2. The government should declare 2015 to be the Year of National Integrity and the national integrity committee should use this as a focus for implementing changes.

RECOMMENDATIONS

Recommendations have been listed at the end of each detailed pillar report. They also, briefly, outline the key issues being addressed. It should be remembered that the recommendations only draw out the key issues, and other areas for reform can also be drawn from the text of the pillar reports. The recommendations have been restated in the conclusion for ease of reference, and also to allow readers to compare themes in recommendations across pillars, should they wish to do so.

Foundations

1. **Politics** are affected by clientelistic relationships, which are not conducive to developing a policy-led democratic political system. The members of parliaments' allocations reinforce clientilism as does the system of political appointees, discussed later in the section on the executive. Clientilism (or more broadly the *wantok* system) affect other pillars also. When implementing reforms to pillars, the potential impact of clientilism and ways in which clientilism may be reduced should always be considered.
2. Vanuatu's **society** is patriarchal. Gender imbalances affect women in a number of ways, including through underrepresentation in politics. When implementing reforms to pillars, increasing gender equity, particularly in the political sphere, should always be considered.
3. Vanuatu's domestic **economy** is limited, and this contributes to inequality of service delivery. All measures to build national integrity and address corruption should bear in mind the need to promote a strong domestic economy and reduced inequality of service delivery.
4. Vanuatu's traditional **culture** remains strong, and community governance engages many people. The potential for working with community governance structures (including women's groups, youth groups, religious/faith based groups and chiefly structures) to build commitments to national governance should be taken into account when developing all measures to build national integrity and address corruption.

Legislature

1. Parliament should be the "hub" of accountability, with other agencies reporting to it. It should also be a source of information on activities, via annual and other reports presented to parliament. Currently it does not serve this function. Further, there is little communication between members of parliament and the public, and little public information on matters going before parliament. This may be, in part, due to the absence of a requirement in the Standing Orders that information, including copies of Bills be made publically available. Short time frames

- between when members receive Bills and parliament sits also hinder opportunities for consultation. It is recommended that the Parliamentary Management Board takes action to ensure that:
- a. Standing Orders are reviewed to include a requirement that lists of documents to be tabled, as well as Bills, are issued prior to parliamentary sessions, and that this list and all Bills be published to both members of parliament and the public. It is recommended that the Standing Orders be reviewed to ensure members have adequate time to consult (with technical advisors, the public and other stakeholders) on Bills.
 - b. Procedures of parliament are reviewed to require that every report tabled in parliament is to be made available through the parliament library unless matters of national security require otherwise.
 - c. Parliamentary committees are reviewed and strengthened to allow them to fulfil their role as an accountability mechanism.
2. There is very limited training for members of parliament and little technical support. It is recommended that measures to increase both training of and technical support for parliamentarians be implemented. Training should include components related to ethics and integrity for members of parliament, as well as more mechanical training on processes and procedures. Technical support could be modelled on the Parliamentary Institute of Cambodia, an NGO that reviews all Bills and provides briefing papers to both government and opposition.
 3. There is concern about the extent to which members of parliament account for their own allowances. There has also been dissatisfaction at increases in members' allowances. It is recommended that:
 - a. An independent body to set the allowances (including salaries and sitting allowances) of members of parliament is established. This could possibly be modelled on New Zealand's law.
 - b. The matter of representation allowances, and how to control them, are reviewed. Options to consider include:
 - i. Requiring members to publically account annually for their representation allowances.
 - ii. Removing the distribution of representation allowances from the control of members and instead giving members a role as conduits of project proposals that are forwarded to the Parliamentary Management Board or another body to decide upon.
 - iii. Providing allowances to political parties, rather than individual members, to distribute.
 4. In practice integrity mechanisms are almost entirely dysfunctional. In addition to recommendations made in the ombudsman's pillar it is recommended that:
 - a. The Leadership Code Act is revised to ensure that annual returns are scrutinised on an annual basis.
 - b. Automatic penalties (such as ceasing to be paid salary) are implemented for leaders who fail to file returns.
 5. There is public interest in changing the law to require higher educational qualifications for candidates standing for election as members of parliament. The government should publically consult on whether it is appropriate to amend the eligibility criteria for candidates contained in the Representation of the People Act.
 6. Whilst the opposition acts as a check on the government (executive) to a degree, the opposition is not provided with legal support to do this. If it wants to challenge decisions by using judicial review processes it must engage private sector lawyers, which is costly. This limits the extent to which the legislature can act as a check on the executive. It is recommended that the Parliamentary Management Board develops and institutes a new position of opposition counsel.

Executive

1. There is almost total lack of transparency in the policy direction and decision making of the executive and the operation of ministries. In order to address these issues it is recommended that:
 - a. The Right to Information Bill must be enacted by parliament as soon as possible.
 - b. The Government Act be revised to require that coalition Memoranda of Understanding (MOUs) and policies be made public by the Council of Ministers.
 - c. The Government Act be revised to require that Council of Ministers minutes be made public, unless necessary to keep sections private for public security reasons.
 - d. The Leadership Code Act annual reporting system be revised to include comprehensive declarations that are routinely inspected and made public.
 - e. Annual reports of ministers be made public.
 - f. The current government plan to improve websites be monitored in order to see whether websites contain policy statements, corporate plans that provide a clear statement of outputs and annual reports on outputs achieved, as related to plans.
2. The Council of Ministers relies on the DCO, which is largely comprised of political advisors and director generals, for technical advice. There are, however, no specified requirements as to political advisors' qualifications. It is recommended that minimum qualifications for political advisors are instituted, to ensure that such advisors have sufficient background to be able to provide technical advice.
3. The liberal use of motions of no confidence without sound reasons based on national interests is the mechanism that creates instability with the executive. However, a blanket limitation on motions of no confidence for certain periods of time prevents their legitimate use in cases of bad governance, so is a problematic approach to controlling this problem. In order to address this the following options should be considered by the a body set up to publically develop political integrity laws and regulations:
 - a. For a motion of no confidence to be in order, requiring that it needs to be justified on the basis of political reasons (such as breaches in MOU or breaches of Leadership Code Act).
 - b. Introducing penalties for those who sign an unjustified motion of no confidence (such as a deduction from MPs salaries or losing one's seat and requiring a by-election).
 - c. Developing a party discipline system, including penalties for members who cross the floor without justifiable reason.
 - i. Part of the development of a stronger party system may include funding parties, rather than individual MPs (via the MP allocation), with a discipline mechanism being to be cut off from party funding if the floor is crossed.
4. Whilst laws have been implemented to control the number of political advisors, there are no similar controls on the number of political appointees and it appears that the number of such appointees is growing. It is recommended that laws to control the number of political appointees be developed and implemented.

Judiciary

1. The issue of delays in service delivery and associated issues of lack of resources, lack of accountability and lack of transparency are being addressed under the Court Improvement Plan 2012 – 2015. The Ministry of Justice should ensure that there is an independent evaluation of the implementation of this plan.
2. There appears to be a public perception that the judiciary is becoming increasingly corrupt. In order to address this the judiciary should:
 - a. Undertake public consultation on whether it is desirable to have the judiciary fall within the scope of the Office of the Ombudsman, or whether an alternate complaints mechanism should be developed and implemented.

- b. Institute a “customer service” feedback mechanism.
 - c. Introduce a code of conduct for court staff.
 - d. Increase public awareness on the code of conduct for judges.
 - e. Introduce registers for gifts and hospitality.
3. Whilst there is transparency in superior court decisions, there is little transparency in respect of the decisions of subordinate courts. It is recommended that all judgments, including Magistrates Court judgments should be published on PacLII.

Public sector

1. The public sector suffers from very negative public perceptions as to its independence and integrity. Whilst these perceptions may not be entirely fair, and may be based on incorrect information, they need to be addressed. The following measures should therefore be implemented:
- a. The legislature should enact the Right to Information Bill, which will enhance transparency of public sector activities and decision-making.
 - b. The PSC should publish a list of public servants, annually, who have been subject to disciplinary action (including the nature of the misbehaviour and the penalty applied, but possibly withholding names to protect privacy) in order to demonstrate that public servants who get caught for misbehaviour do face consequences.
 - c. The PSC should actively run public awareness on what it does to ensure independence and integrity as part of its public education activities.
 - d. The Council of Ministers should repeal the change in the law that allowed director generals to be appointed by the prime minister, rather than the PSC as this has created a public perception of political interference in the operation of the public sector.
 - e. As part of the review of the Code of Conduct and ethical obligations of public servants the Public Service Commission should undertake a review of current practices relating to paying additional allowances for sitting on committees and performing other tasks that are part of regular employment.
2. Another measure to address lack of public confidence in the public sector is to strengthen accountability. Strengthening accountability involves, in part, strengthening the Office of the Auditor General and the Office of the Ombudsman. Recommendations in respect of these pillars are discussed in the respective sections of this report. Strengthening accountability via internal public service mechanisms requires both an increase in reporting (which involves building personal integrity) and better enforcement. To achieve these it is recommended that:
- a. The PSC implements, as part of its orientation and ongoing education and training programmes, more information about the Code of Conduct and obligations to report breaches. It should also consider a reward system for those that actively participate in upholding the code of conduct.
 - b. The PSC establishes a mechanism for the public to complain directly to the PSC about misbehaviour by public servants.
 - c. The PSC is appropriately resourced to handle the processing of disciplinary complaints, terminations of employment and public servant grievances.
3. Public procurement needs to be addressed. As there are many loopholes in the law a useful starting point would be for the Vanuatu Law Commission to review public procurement laws.

Law enforcement

1. At the time of writing this report the Office of the Public Prosecutor is in some disarray. It is recommended that:
- a. The government re-establish the Commission of Inquiry to examine the activities of the Office of the Public Prosecutor, with the aim of developing recommendations to improve the processes and functioning of the office and reviewing the relationship between the office and state prosecutors.
 - b. The report of the Commission of Inquiry be made public.

- c. The implementation of these recommendations be closely monitored by a body to be recommended by the Commission of Inquiry.
2. A code of ethics for prosecutors is required by law and should be developed and gazetted as a priority.
3. Activity to institute a VPF Professional Standards Unit has commenced. Further development of the Professional Standards Unit must be prioritised.
4. Perceptions that political interference in high profile corruption cases results in misuse of police and prosecutorial powers and that personal connections result in misuse of police and prosecutorial powers should be addressed by:
 - a. The VPF developing clear operating procedures for dealing with cases involved political leaders and cases involving potential conflicts of interest.
 - b. The VPF clearly communicating these operating procedures to the public.
5. The VPF is hindered in its ability to investigate breaches of the Leadership Code Act by having to wait until ombudsman's reports have been issued. As part of a review of the Leadership Code Act (as discussed in the section on the ombudsman) consideration should be given to expanding police powers to investigate criminal breaches of the Leadership Code.

Electoral management body

1. The most critical issue is the integrity of the electoral roll and the related issue of correctly identifying voters. As a matter of urgency the government must take measures to ensure that the content of the roll is accurate and that there is a system in place to ensure that people who present themselves to vote can be correctly identified. It is recommended that the electoral roll and voting system be computerised. It is also recommended that, as the current roll is so corrupt, an entirely new roll is constructed, rather than trying to clean up the existing roll.
2. There are concerns about adequacy of training and control of regional registration officers. It is recommended that before a new roll is constructed, new registration officers must be put in place. Processes for the appointment and training of such staff must be reviewed by the PEO in conjunction with the Electoral Commission in order to develop specific recommendations for reform. These recommendations should include measures for ensuring political independence of registration officers, adequate training and adequate oversight.
3. There should be a review of the Representation of the People Act in order to ensure that the law fully supports fair, transparent electoral processes. The first part of this review should involve collecting and assessing the numerous recommendations that have been made in election reports and election observer reports since 2002. Specific issues to consider in respect of voting and the electoral roll include:
 - a. A review of control of electoral cards and proxy voting, which are seen to be major areas of abuse.
 - b. The absence of provisional voting, which prevents legitimate voters with deficiencies in their registration from being able to vote.
 - c. The question of whether voting should be compulsory.
 - d. Whether a set timeframe by which all electoral petitions must be heard and decided upon is needed.
4. The independence of the Electoral Office can be undermined due to the PEO and other electoral officers being public servants. This can both affect appointments and attempts to discipline staff. It is recommended that the Electoral Commission be given the power to directly recruit and discipline staff of the Electoral Office.
5. Currently, in practice, the only consequence for committing an electoral offence is that a successful candidate may face an electoral petition. It is recommended that:

- a. Coordination between the Electoral Office, the police and the public prosecutor is strengthened in order to ensure that those committing electoral offences (including candidates, electoral officers, voters and others) are prosecuted.
 - b. Consideration be given to banning a candidate from standing for elections for life if he or she is convicted of an electoral offence.
- 6. In order to ensure ongoing monitoring of elections:
 - a. The PEO and Electoral Commission should be reminded of their legal obligations to produce election reports in a timely manner. As part of a review of the Representation of the People Act it should be made clear that these reports are to become public documents.
 - b. The government should, in a timely manner, provide for observer groups comprised of international and domestic representatives at all elections, in order to ensure ongoing monitoring of election processes.

Ombudsman

- 1. There are significant issues with the lack of action in response to ombudsman's reports and recommendations. One reason for these issues is that gaps in the law allow recommendations to be ignored. The Ministry of Justice should follow up on existing proposals and recommendations to strengthen the law so as to ensure that concrete action on recommendations arises. Issues that should specifically be considered include:
 - a. Whether power should be given to the ombudsman to refer matters to court if recommendations are not responded to.
 - b. Whether establishing a new body – a Leadership Code Tribunal - is appropriate.
 - c. Whether expanding the powers of the Office of the Ombudsman so that it becomes a commission, with police and prosecutorial powers, is appropriate.
 - d. Whether the law should allow statements given during the course of ombudsman enquiries to be used as evidence in court.
 - e. Whether the law should be amended to ensure that full copies of all annual returns provided by leaders under the Leadership Code Act be provided to the Office of the Ombudsman and/or scrutinised by a joint body including the ombudsman, the auditor general and the clerk of parliament.
- 2. A reason for lack of action on recommendations is that there are weak links between the ombudsman and other agencies. Weak links with other agencies also hinders efficient public awareness activities.
 - a. In order to facilitate successful criminal prosecutions, coordination between the Office of the Ombudsman, the police and the public prosecutor should be improved.
 - b. In order to facilitate successful disciplinary actions against public servants and improve awareness amongst public servants, coordination between the Office of the Ombudsman and the PSC should be improved.
 - c. In order to facilitate public awareness and ensure efficient use of resources, co-operation between the Office of the Ombudsman and CSOs working in the field of good governance should be improved.
- 3. The number of complaints received by the Office of the Ombudsman is declining and one of the causes of this is lack of education. The office also has no formal education or public awareness programme. In order to strengthen the education role of the Office of the Ombudsman:
 - a. The Ombudsman Act should be revised to specifically list education as one of the roles of the office.
 - b. Resources should be specifically allocated in a separate budget line for conducting education activities by the Ministerial Budget Committee.
 - c. In order to ensure that resources are well utilised and agencies (including CSOs) are not duplicating education activities, coordination and co-operation between agencies who carry out public education activities in the broad field of integrity/anti-corruption/legal literacy/ civic education should be strengthened.

- d. Co-operation between the PSC and the Office of the Ombudsman to strengthen awareness of integrity amongst public servants should be developed.
- 4. Some investigations take a very long time to conclude. The Office of the Ombudsman should develop and publish expected timeframes for processing disputes. As investigations vary in complexity these will only be guidelines, but they will help complainants to monitor progress on complaints.
- 5. Reporting of activities by the Office of the Ombudsman should be strengthened:
 - a. Resources and technical support to update the file management/case tracking database should be provided, either by the government, aid donors or other partners, as this will make it easier to collect data.
 - b. Resources and technical support for the Office of the Ombudsman to develop and maintain a website should be provided, either by the government, aid donors or other partners.
 - c. The law should be revised to further specify the required contents of annual reports. This will help to ensure that desired information is consistently provided.
 - i. The annual report should include clear data on the number of complaints received in a reporting year, the number of received complaints not investigated and the reasons for not investigating.
 - ii. Annual reports should also provide clear data on the number of current complaint files being processed in the office, the number of complaint files closed and the reasons for closure, the number of complaint files resolved, the method of resolution and the time taken to resolve the complaint.
 - iii. Brief summaries of disputes resolved by mediation should also be provided, if there are no issues of confidentiality.
 - d. The PacLII website currently publishes public reports, which makes them easily and freely available to the public. The Office of the Ombudsman should also supply annual reports to PacLII for publication.
- 6. A cross cutting issue affecting both the OAG and the Office of the Ombudsman is the potential for interference or delays in staffing matters by the PSC. This issue has also been faced by other constitutional offices, and the solution has been to give other constitutional offices the direct power to recruit. The State Law Office Act provides an example of legislation that allows this. The law should be revised (possibly using the State Law Office Act or the Ombudsman Act 1995 as a model) to give the Office of the Ombudsman the power to directly recruit staff.

Supreme Audit Institution

- 1. Staffing issues within the OAG need to be addressed as a matter of urgency:
 - a. Long-term measures need to be introduced to address skill shortages within Vanuatu, which are the underlying cause of the inability to recruit staff. Scholarships for tertiary study need to be directed to areas of specific need, including accounting.
 - b. Until local skill shortages are addressed, the recruitment of non-citizens and increased contracting out of audits should be explored.
- 2. A major problem is the lack of consistent action on audit reports. Addressing this problem may require better coordination between stakeholders. It may also require some legislative reform. The Corporate Plan 2012 – 2016 includes a proposal to introduce a National Audit Act. There is already draft legislation in this area. Before this legislation is finalised there should be consultation between the OAG, the PAC (including support staff), the PSC, the public prosecutor and other stakeholders as to whether further reforms are needed to the draft legislation or other Acts to ensure that recommendations of the OAG will be acted upon, particularly when criminal activities have been identified.
- 3. Current audit practice means that only consolidated government accounts are being audited and financial compliance audits are not being carried out at individual ministry and department

- level. Further performance audits are not being regularly carried out. Bearing in mind resource constraints the OAG should implement measures to ensure a rolling programme of compliance audits and performance audits of individual ministries and departments.
4. The PAC's roles include monitoring the performance of the OAG and ensuring that the OAG has adequate resources. The PAC should play a more active role in ensuring that adequate resources and technical support are provided to the OAG to assist it to comply with international audit standards as developed by INTOSAI and other goals as set out in the Corporate Plan 2012 – 2016. The PAC should also more actively monitor the implementation of this plan and effective use of resources within the OAG.
 5. There is currently little public awareness of the work of the OAG or the recommendations it makes. Lack of transparency weakens accountability as it reduces both public awareness of the importance of correct management of public funds, and public demand that changes occur in response to recommendations. Any new law, or amendment to the existing law, should:
 - a. Strengthen transparency of the OAG by clarifying when and how audit reports, annual reports and special investigation reports are to be made available to the public.
 - b. Strengthen public involvement in the detection of financial irregularities by allowing the OAG to directly receive complaints from the public.
 6. Establishing a website for the OAG will help to improve access to information about the OAG and therefore transparency. This website should include audit reports or summaries of recommendations, annual reports, the Corporate Plan and reports on implementation of the plan. It should also include information for the public on what to do if they are aware or suspect irregularities in respect of the use of public money.
 7. A cross cutting issue affecting both the OAG and the Office of the Ombudsman is the potential for interference or delays in staffing matters by the PSC. This issue has also been faced by other constitutional offices, and the solution has been to give other constitutional offices the direct power to recruit. The State Law Office Act provides an example of legislation that allows this. The law should be revised (possibly using the State Law Office Act as a model) to give the OAG the power to directly recruit staff.

Political parties

1. Governance of political parties is particularly weak. It is recommended that the government establish a transparent committee to lead law reform activities to address this issue and ensure transparency of political parties. Once law reform proposals have been developed it is further recommended that the legislature enacts new laws in this area and that the government then implements the new laws. These law reforms should cover, as a minimum, the following:
 - a. Mandatory disclosure of party income and expenditure via annual audited accounts which are made public.
 - b. Mandatory disclosure of all party income and expenditure during the election campaigning period via audited accounts which are made public.
 - c. Mandatory filing of policy platforms with a central body, with the central body to provide a public access point to information on policies for the public.
 - d. Mandatory filing of constitutions with a central body, with the central body to provide a public access point to political party constitutions for the public.
 - e. Disclosure rules for independent candidates.
2. Before any consideration can be given to public funding of political parties, accountability mechanisms must be established. Further controls should also be considered. These include setting minimum requirements for eligibility for funding (such as receiving a threshold of 5% of votes in national elections), only reimbursing stated expenses on production of receipts/audited accounts and stopping funding if audited accounts are not received.
3. As technical capacity limits the extent to which parties can develop policy statements and internal governance structures, it is recommended that aid donors, in consultation with political parties and parliament:

- a. Assess the extent to which technical assistance to develop political parties' capacity in these areas is required.
 - b. Following this assessment, support the provision of relevant technical assistance in this area.
4. The large number of parties and independent candidates contesting elections is contributing to the fragmented and clientelistic political environment. However, restricting the number of parties is undemocratic so is not a good approach to addressing this issue. Instead laws to create disincentives to candidates who do not have considerable popular support from contesting elections should be developed and enacted by the legislature. Law reform options that should be considered include:
 - a. Raising the number of supporters that must endorse a candidate before he or she is eligible to stand for election.
 - b. Raising the fee for candidates.
 - c. Raising the number of members required to establish a political party.

Media

1. The lack of enforcement hinders the effectiveness of governance mechanisms. It may also contribute to interference in the media due to there being no legitimate mechanism for laying complaints about irresponsible reporting. Government regulation could lead to concerns regarding censorship so self-regulation is preferable. MAV is in the process of developing a complaints mechanism and the government and aid donors should support this. At the same time MAV should support proposals to develop a Pacific-wide media ombudsman as having a regional body to appeal to reduces the risk of intimidation of any locally established media complaints authority.
2. The Vanuatu Code of Media Code of Ethics and Practice should be reviewed by an independent expert to ensure that it contains comprehensive provisions in respect of transparency, accountability and integrity.
3. Threats against media freedom are an ongoing issue, with laws potentially allowing interference in broadcasting and physical threats against journalists being somewhat routine. In order to address this, in addition to establishing a complaints mechanism, the following should occur:
 - a. In order to build pressure against government threats, MAV Vanuatu should maintain a record of threats against journalists and build links with international and regional media freedom watchdogs in order to ensure that these threats are publicised internationally.
 - b. The Law Reform Commission should review the Broadcasting and Television Act and the Newspaper (Restriction of Publication) Act with the aim of removing limits and/or clearly specifying ministerial powers in respect of restricting media activities.
4. It has been suggested that building collaborative journalism practices may help to strengthen investigative journalism in an environment where capacity and resources are lacking. The Vanuatu Institute of Technology should consider including a module on developing collaborative investigative journalism practices in its journalism certificate and diploma courses.
5. The legislature should enact the Right to Information Bill as soon as possible and donors support its effective implementation as this will make it easier for investigative journalists to access information.

Civil society

1. Civil society organisations work more effectively when they work collaboratively. Addressing common issues collaboratively utilises scarce resources efficiently and can help to develop more sustainable and widespread activities. It is recommended that:

- a. Vanuatu civil society organisations seek to work together collaboratively (and build on existing examples of effective collaboration) to better represent the priorities of their constituents and to engage more effectively with government and other decision makers regarding legislation and policy development and to monitor government service provision and expenditure.
 - b. VANGO works to support non-government organisation and community based organisation collaboration and capacity development through coordination and organisational strengthening activities including:
 - i. Development of a NGO code of conduct which covers, amongst other things, issues of transparency to the public and accountability to members and works with members to assess adherence to it.
 - ii. Provision of support to smaller local organisations to assist them in meeting the NGO code of conduct in order to help facilitate integrity building as opposed to merely imposing regulations.
 - iii. Seeking funding to become an effective and functioning body that supports NGOs to work together.
 - c. Aid donors seek ways to increase collaboration between CSOs when projects are being funded.
2. Currently there is no clear forum for government/CSO dialogue on anti-corruption initiatives. It is recommended that the Vanuatu Government establish a national integrity committee made up of both government and non government representatives and that this committee develops an anti-corruption/national integrity strategy, using the outcomes of the 2014 National Integrity System report as a starting point for this strategy.

Business

1. Business is currently not seen to be having a clearly defined role within Vanuatu's National Integrity System. It is recommended that the VCCI be recognised as a non-governmental partner on all national integrity initiatives.
2. The VCCI should encourage and support local businesses to undertake voluntary anti-corruption initiatives, such as disclosing donations to political parties and developing statements of corporate responsibility.
3. The VCCI has limited resources to engage in sustained policy discussion. In conjunction with the Standing Orders of Parliament being reviewed, which should enhance opportunities for consultation, the VCCI should be provided with sufficient resources to be able to engage in ongoing policy discussion.
4. Where statute provides for a representative of business nominated by the VCCI to be on a board, ministers should accept a minuted recommendation from the VCCI Council as to the business nominee unless there are specific reasons why acceptance would be unlawful.

Customary authorities

1. Customary governance is facing challenges caused by changes due to introduced systems. Until these challenges are addressed customary authorities will suffer from weakened foundations. The government and/or aid donors should ensure that the Malvatumauri Council of Chiefs is provided with sufficient resources to enable travel to allow chiefs to come together and, in the customary way, have discussions to rethink and rediscover customary governance and leadership. This process should include establishing who the correct holders of chiefly titles are.
2. Although the Constitution provides that the Malvatumauri Council of Chiefs should be independent, the current National Council of Chiefs Act 2006 sets down a structure that interferes with independence. The 2013 review of the National Council of Chiefs Act should be acted upon by the government, with the Act being repealed or amended.

3. Urban and Island Councils of Chiefs may lack support or technical capacity to remain accountable and transparent through the filing of quarterly reports, and the central administration lacks resources to provide this support. The government and/or aid donors should provide technical assistance to develop guidelines for reporting and to train Council members in reporting and provide ongoing support for reporting.
4. The constitutional role of the Malvatumauri Council of Chiefs in respect of being consulted by Parliament is being expanded. Guidelines need to be developed, possibly as part of the review of Standing Orders, to ensure that: this consultation is done transparently; that sufficient time is given for consultation; and that, if required, sufficient technical resources are provided to allow the Malvatumauri Council of Chiefs to engage fully on issues referred to it.

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