

**REPUBLIC OF VANUATU  
OFFICE OF THE OMBUDSMAN**

PMB 081  
Port Vila  
Vanuatu

**THE PUBLIC REPORT**

**ON THE**

**ALLEGED ILLEGAL APPOINTMENT  
OF  
A CHIEF'S REPRESENTATIVE  
TO THE  
PENAMA PROVINCIAL COUNCIL**

**13.06.2001**

**8011/2001/03**



**PUBLIC REPORT  
ON THE  
ALLEGED ILLEGAL APPOINTMENT  
OF  
CHIEF REPRESENTATIVE  
TO THE  
PENAMA PROVINCIAL COUNCIL**

**TABLE OF CONTENTS**

<b>SUMMARY .....</b>	<b>3</b>
<b>1. MAIN ISSUES IN THIS REPORT .....</b>	<b>4</b>
<b>2. JURISDICTION .....</b>	<b>4</b>
<b>3. PURPOSE, SCOPE AND METHODS USED IN THE INVESTIGATION</b>	<b>4</b>
<b>4. RELEVANT LAWS, REGULATIONS AND RULES .....</b>	<b>4</b>
<b>5. OUTLINE OF EVENTS .....</b>	<b>4</b>
<b>6. FINDINGS .....</b>	<b>5</b>
<b>7. RECOMMENDATIONS .....</b>	<b>6</b>
<b>8. INDEX OF APPENDICES .....</b>	<b>8</b>

## **SUMMARY**

The Ombudsman has decided to publish this report as an example how "party politics" may influence and interfere in the legal process to nominate and appoint persons as members of Provincial Government Councils. Such practices show that leaders at the national, provincial and community levels may fail to observe and follow the rule of law and allow other political interest to divert the cause of justice.

This enquiry was made after the Ombudsman received a complaint about the appointment of the Maewo Chief Representative to the Penama Provincial Council. Chief Cyril Aru was appointed in 1996 as Chief's Representative of Maewo in the Penama Provincial Council. The appointment is pursuant to the Decentralization Act No.1 of 1994 which provides for Local Government Councils.

The Ombudsman found that Chief Cyril Aru was nominated by political parties and appointed by the Minister to hold the position in the Penama Provincial Council. His nomination was not made by the proper legal and authorized entity provided by law. The authorized entity to nominate the Chief's Representatives to be appointed to the Provincial Councils is the Island Council of Chiefs.

The Ombudsman found that the following persons were responsible for the alleged illegal appointment of Chief Cyril Aru. They were: Mr Paul Ren, NUP Coordinator, (now Member of Parliament), Mr James Adin Tamata, former MP for Maewo Constituency and Mr Roger Boe, Assistant Secretary General, Penama Provincial Council.

The Ombudsman therefore recommends that: Chief Cyril Aru's appointment be held as been done illegally and not in accordance with the Act (his term ended in 2000). The Penama Provincial Authorities should from now on, seek legal advice from their appropriate Ministry or the State Law Office on such matters before they make nominations and appointments of members to avoid legal and procedural errors; and, there should be public awareness of this issue on Maewo Island to stop such mal-practices from happening again in future.

## **1. MAIN ISSUES IN THIS REPORT**

- 1.1 Alleged illegal appointment of Chief's Representative to the Penama Provincial Council.

## **2. JURISDICTION**

- 2.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government related bodies and leaders. In this report, the Constitution and Ombudsman Act give power to the Ombudsman to inquire into the alleged improper appointment of Chief Cyril Aru as Chief's Representative to the Penama Council from 1996 - 2000. In this report, the persons involved, the staff of the Penama Provincial Council, the officers of the Department of Internal Affairs and the Minister of Internal Affairs come under the jurisdiction of the Ombudsman to investigate if a complaint is received against them.

## **3. PURPOSE, SCOPE AND METHODS USED IN THE INVESTIGATION**

- 3.1 The purpose of this report is to establish whether the nomination and appointment of Chief Cyril Aru as Maewo Chief Representative in the Penama Provincial Council from 1996 - 2000 followed the provisions of Section 7(1)(a) of the Decentralization and Local Government Regions Act.
- 3.2 The objective of this public report is to inform the Chiefs and politicians throughout Vanuatu to have respect for and observe the rule of law.
- 3.3 This Office collects information and documents through informal request, summons, letters, interviews and research.

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

A brief summary of the laws are hereby provided in this section whilst the full text is attached as **Appendix "E"**.

### **4.1 Constitution:**

The Constitution defines who is a leader and lists the duties and conduct expected from a leader.

### **4.2 Decentralization and Local Government Regions Act No.1 of 1994.**

The Act provides for the appointment of members of the Local Government Councils, including the nomination of the Chief's Representatives.

## **5. OUTLINE OF EVENTS**

- 5.1 The people of Penama Province went to the polls for the election of the new Provincial Council in November 1996. The Decentralization and Local Government Regions Act provides for the nomination of the Representative of the Chiefs to the Provincial Council to be made by representative bodies of the Chiefs. The nomination is sent to the Provincial Council, then to the Minister of Internal Affairs to affirm the appointment.
- 5.2 Section 7(1)(a) of the Act states that, the body of Chiefs shall nominate a Chief Representative to the Council. The body referred to in this case is the Maewo Island Council of Chiefs. The Act gives the Maewo Island Council of Chiefs (Matgamal Tagaro) a legal obligation to make the nomination of the Chief's representative to the Penama Provincial Council.

- 5.3 However, this enquiry confirmed that during the 1996 Penama Provincial Election, the Vanuaku Party (VP) and National United Party (NUP) supporters in Maewo made a political agreement to nominate the Chief Representative to the Council. Therefore, based on this agreement, Chief Cyril Aru's name was nominated to the Provincial Council outside of the legal requirement specified by the Act (Refer to No. 7 in **Appendix A**). This endorsement by the NUP and VP was confirmed by the former VP Member of Parliament for Maewo Constituency, Mr James Adin Tamata, in an interview with the Ombudsman.
- 5.4 Mr Paul Ren claimed that the Executive Body of the Island Council of Chiefs on Maewo was dissolved during the 1996 election period (Refer to No.1 in **Appendix A**). He stated that he made this claim as a member of the Chief Executive Body. However, the information received by the Ombudsman indicated that Mr Ren at that time was a Coordinator of NUP on the island of Maewo.
- 5.5 Despite the claim made by Mr Ren that the Chief Executive Body was dissolved, the Secretary of the Maewo Island Council of Chiefs, Mr Elton Boe, confirmed through the Office of the Malvatumauri that, the members of the Island Council of Chiefs met to elect their representative to the Penama Provincial Council in 1996, as provided for by Section 7(1)(a) of the Act. The majority of the members during that meeting, nominated Chief Steven Aru as their Chief Representative to the Provincial Council (Refer to **Appendix B**)
- 5.6 Mr Ren continued to dispute the nomination of Chief Steven Aru made in the meeting held by the Council of Chiefs. He claimed that the meeting was held illegally on the basis that the Chief's Executive Body was dissolved (Refer to paragraphs No.1, No.6 & No.10 in **Appendix A**). The information received confirmed that the Acting Chairman of Matgamal Tagaro, Chief Ini Lini and the Secretary, Chief Boe were present in that meeting where Chief Steven Aru was nominated.
- 5.7 The Penama Provincial Council accepted Chief Cyril Aru's nomination as proper and endorsed his name to the Minister of Internal Affairs for final approval (Refer to No.8 in **Appendix A** and **Appendix C**). The Penama Provincial Council was run by the National United Party after the 1996 Provincial elections.
- 5.8 In January 1997, Chief Cyril Aru's name was gazetted on the Official Gazette after his appointment by the Minister of Internal Affairs (Refer to **Appendix D**).
- 5.9 On 18 August 1997, Chief Steven Aru lodged a complaint to the Office of the Ombudsman. He alleged that he was appointed as Chief's Representative to the Penama Province by the Maewo Island Council of Chiefs and asked why Chief Cyril Aru's appointment was made by VP and NUP supporters. The Penama Provincial Government which was run by NUP endorsed Chief Cyril's nomination.

#### **RESPONSES:**

This office confirms that Penama Province held another election in 2000 to elect new members to the Council. The preliminary report was issued prior to this election. The Maewo Island Council of Chiefs was allowed to meet without any political interference and nominated Chief Stephen Aru as their Chief's Representative in the Penama Provincial Government.

#### **6. FINDINGS**

**The Ombudsman has made the following findings in this case:**

**6.1 Finding 1: Alleged breach of the Section 7(1)(a) of the Decentralization Act & Leadership Code under the Constitution by former MP James Adin Tamata**

This enquiry found that Mr Tamata, as a Vanuaku Party Member of Parliament was a leader under Article 67 of the Constitution at the time of the incident. As such, he may have influenced the decision to choose the Chief's representative to the Penama Provincial Council outside of the proper and legal procedures mentioned in Section 7(1)(a) of the Act. He is found in this report to have used his office and status for personal gain. As such, he may have demeaned his position and allowed his integrity to be called into question. In addition to allegedly breaching Section 7(1)(a) of the Decentralization Act, which provides for Local Government Councils, as a leader at that time of the complaint, he may have breached the Leadership Code under the Constitution.

**6.2 Finding 2: Alleged breach of section 7(1)(a) of the Decentralization Act by Mr Paul Ren**

This enquiry found that Mr. Ren breached section 7(1)(a) of the Decentralization Act which provides for Local Government Councils. As a National United Party Coordinator on the Island of Maewo at that time, he may have influenced the decision to nominate Chief Cyril Aru outside the normal and legal procedures to be Chief's Representative to the Council. It was also found that his claim made against the meeting held by the chiefs to elect Chief Steven Aru to the Council was unjustified. That meeting was properly held in accordance with the provisions of the Decentralization Act.

**6.3 Finding 3: Chief Cyril Aru's appointment was in breach of Section 7(1)(a) of the Decentralization Act**

This enquiry has found that Chief Cyril Aru's appointment was in breach of Section 7(1)(a) of the Decentralization Act. Due to this, his appointment may be held as being done illegally and not done in accordance with the Act.

**6.4 Finding 4: The Penama Province Administration may be held responsible for this illegal appointment.**

In this enquiry, it was found that Mr. Roger Boe, Assistant Secretary General of the Penama Province may be held responsible for the illegal appointment of Chief Cyril Aru. He was found to have been aware of the agreement between VP and NUP to nominate Chief Cyril Aru outside the legal body constituted by section 7(1)(a) of the Act to nominate a Chief's representative to the Council. By accepting Chief Cyril Aru's illegal nomination and forwarding it to the Minister for approval, his actions may have violated section 7(1)(a) of the Act.

## **7. RECOMMENDATIONS**

Since the complaint was partly solved, the Ombudsman has decided to use this report to raise public awareness of the issue and to encourage all citizens of Vanuatu to observe and follow the rule of law in Vanuatu.

The Ombudsman recommends that:

- 7.1 The future Ministers of Internal Affairs ensure that before making appointments of nominated members of the Provincial Councils, the provisions of the Act for making such appointments were observed and followed.**
- 7.2 The Penama Provincial Council Administration must also ensure that its officers understand the laws governing the elections of elected and nominated members of the Council.**

- 7.3 The Penama Provincial Council Administration and the Ministry of Internal Affairs carry out public awareness on the Island of Maewo, to avoid such practices from happening again.
- 7.4 Political parties should not interfere with the customary and traditional establishments of Chiefs in the islands of Vanuatu. Institutions of Chiefs should be allow to operate on merit.

Dated the 13<sup>th</sup> day of June 2001



Hannington G. ALATOA  
OMBUDSMAN OF THE REPUBLIC OF VANUATU



**8 INDEX OF APPENDICES**

- A The Penama Provincial Council information letter to confirm its position on Chief Cyril Aru's appointment**
- B The document that confirms that Matgamal Tagaro did met to nominate Chief Stephen Aru as their Chief Representative to the Council**
- C The document from the Penama Provincial Government endorsing Chief Cyril Aru's nomination to the Minister for approval**
- D Copy of the Official Gazette of appointed and nominated members of Penama Provincial Council.**
- E Laws, Regulations and Rules**

REPUBLIC OF VANUATU

REPUBLIQUE DE VANUATU



PENEMA PROVINCIAL GOVERNMENT  
COUNCIL SARATAMATA  
AMBAE  
VANUATU

TELEPHONE: 38342

CONSEIL PROVIINCIAL DE PENEMA  
SARATAMATA  
AMBAE  
VANUATU

OUR REF : PPG - 4/1/10/RB/st/97

To : Ombudsman Office  
P.O. Box 126  
Vila  
Republic of Vanuatu.

19/08/97

Attention : Alfred MAHO

From: Assistant Secretary  
Provincial Office  
East Ambae.

Re : Reconfirmation of Chief Cyril Aru, to become Chief's Representative  
in the Provincial Government.

Dear Sir,

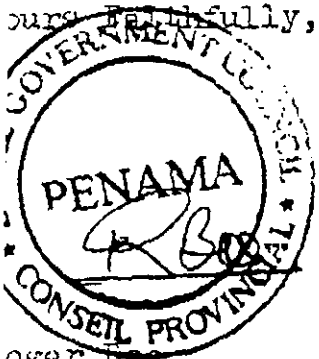
I had contacted Paul Ren, a member of Maewo Chief Executive Body, on the matter concerned above and were presented with the following points :

1. In the month of December, 1996, the Chief Executive Body was dissolved.
2. Chief Cyril was replaced by Joseph Balango to become a village chief of Kaiokwo.
3. Chief Stephen had faced serious problem with a widow of late Elder Reuben Sale and still awaits judgement and heavy fines.
4. Other Chiefs went to him and asked him to step down, due to his problem with the widows. eg : Chief Richard (Asanvari)  
Chief Mathew (Kerepei)
5. Public is loosing <sup>trust</sup> on him, and even his village people.
6. A meeting was held later after the dissolution of the Chief Executive Body, and elected Stephen Aru; this is illegal.
7. The endorsement of Chief Cyril Aru was through the political understanding between NUP and VP, Members of Chiefs in the villages concerned.
8. Provincial Office accepted Chief Cyril's Name as officially proper, and endorsed to Minister of Home Affairs for final consideration.
9. Refer to letter PPG - 4/1/10/SG/st/96 attached.

"A"

- 10. That illegally, Chief Stephen was elected outside Chief Executive Body when it was already dissolved, as told by Paul Ren, a Member of Executive Body.
- 11. Paul Ren's view was that in the mean time Chief Cyril Aru should secure his present seat.

Yours faithfully,



oger Lee  
Assistant Secretary

"B"

PARAMOUNT CHIEFS  
MALVATUMAURI

RT

République de Vanuatu

Republic of Vanuatu

From : NATIONAL COUNCIL OF CHIEFS  
CONSEIL NATIONAL DES CHEFS  
PRIVATE MAIL BAG 047  
PORT VILA  
TEL : (678) 22474 - FAX : (678) 27743



Our Reference :

To :  
Officer of the Ombudsman  
PMB.081  
Port Vila

Date :

C

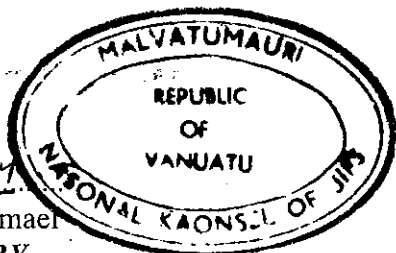
Dear Sir,

**IMPROPER APPOINTMENT OF CHIEFS REPRESENTATIVE CHIEF  
CYRIL ARU TO PENAMA PROVINCIAL GOVERNMENT**

Referring to your letter Ref. 4874/8011/L43/JN dated 5<sup>th</sup> July 1999 concerning the above subject matter.

I did contact Chief Elton Boe of Maewo to inquire about Cyril Aru's nomination. In his respond he said the Matgamal Tagaro- Council of Chiefs nominated Chief Stephen Aru to go into the Provincial Government with the Majority of the Council members present in the meeting voted for.

Chief Cyril Aru was handpicked outside this meeting due to his Political affiliation. With due respect it would be proper to expelle Chief Cyril Aru and have Chief Stephen Aru replacing him since he's been elected through the proper way.



Sandy B Ishmael  
**SECRETARY**  
National Council of Chiefs

REPUBLIC OF VANUATU

PENAMA PROVINCIAL (DISSOLVED)  
GOVERNMENTP.O. BOX 08, LOLOWAI  
SARATAMATA, AMBAE

TELEPHONE: 38348

REPUBLIQUE DE VANUATU

CONSEIL PROVINCIAL  
DE PENAMABOITE POSTALE 08, LOLOWAI  
SARATAMATA, AMBAEFAXIN  
19.8.97

Our ref.: PPG - 4/1/10/SG/st/96.

Your ref:

Date: 18th November, 1996.

To : The Honourable Minister,  
Mr. Robert Karié,  
Ministry of Home Affairs,  
PORT VILA.

Attn: Mr. Keith W. Garae

Dear Sir,

RE: NOMINATED MEMBERS TO PENAMA COUNCIL

I hereby forward to your office proposed names for the above mentioned subject.

Please note that names enlisted below had been forwarded to our office and are therefore presented accordingly.

Since places are limited for seven (7) nominated members, it is thus the sole responsible of your office to finally consider and approve of the seven names concerned from these names :-

AMBAE : Chief : Alickson Kwai - Tavolavola - North Ambae  
 Women : Esther Bani (Vavine Bulu) - Lolomatui - East Ambae  
 Youth : Wilson Tarirure - Loquirutaro - East Ambae  
 Church : Fr. James Mwera - Nagea - East Ambae  
 Wilson Tarisevuti - Walaha - West Ambae.

MAEWO : Chief : Cyrel Aru - Kaiovo - North Maewo  
 Women : (Esther Bani represents them)  
 Youth : John Spencer - Talise  
 Church : Aron Natu - Betarara

PENTECOST : Chief : Tabinok Luke Bulekolo - Loltona

"C"

Women : Estelle Gihiala - (Kitbilvavine) - Lolong  
 Youth : Christopher Siro - Abwatunbulira - North Pentecost  
 Church : Ps. Shedrach Sali - Fangi - South Pentecost.

Should it be considered, the Council of Women in Penama had requested through this office an increase in the number of their representatives to the Council, as presented above ; Estelle Gihiala to represent Kitbilvavine in Pentecost and Esther Bani from Vavine Bulu for Ambae/Maewo respectively.

Yours Sincerely,



STEVEN GARAE  
 SECRETARY GENERAL,  
 PENAMA PROVINCIAL GOVT.

CC: Dept. of Provincial Affairs.

Sapi Natonga

**LAW COMMISSION**

**Law Commission Act [CAP 115]**

**Consists of a chairman and four other members, appointed by Minister resp for Justice**

**Not more than 2 members may be public officers, not less than one member shall be entitled to practise as a legal practitioner**

**LAW COUNCIL**

**Legal Practitioners Act [CAP 119]**

**Consists of Chief Justice (chairman), Attorney General, and one legal practitioner appointed for 2 years by the Minister resp for Justice**

**Establishes disciplinary committees by order**

**LOCAL GOVERNMENT COUNCILS**

**Decentralization and Local Government Regions Act No. 1 of 1994  
Councils for Tafea (15 seats), Shefa (25), Malampa (19), Penama (15), Sanma (17), Torba (4)**

**Include elected members and appointed members**

**Local Government Region Executive Officer appointed by Pm after consultation with the Minister**

Appointed members from 30 January 1997:

Shefa

Leiwia Thelma

Morris Loliu

Chief Andrew Jacob

Chief Robea John Taripoaliu

Chief Kolou Wass

Elder Malau Kalkot

Appointed members from 25 July 1997:

Penama

Simon Garae Lolo

Wilson Tari

Wilson Tari Sevuti

Cyrel Aru

Estelle Gihiala Replaced with Moriel Tari Tambeana, 12 Jan 1999

Christopher Siro

Shedrach Sai

Appointed members from 12 January 1999:

Malampa

Roy Morrison

Kalsi Kallowon

Stevens Bong kakae

Vaty Frederick

Sael Sikoma

Issac Fred

Sivie Seake

Jeremy Batick

Naomi Malau

Mrs Mermer Alexandra

Rosie Patterson

Sanma

Anna Lurn

Elizabeth Hosea

Pierre Cyriaque

# Appendix "E"

## RELEVANT LAWS, REGULATIONS AND RULES

### 1. CONSTITUTION OF THE REPUBLIC OF VANUATU

#### CONDUCT OF LEADERS

- Article 66.(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to-
- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
  - (b) demean his office or position;
  - (c) allow his integrity to be called into question; or
  - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub article (1).

#### DEFINITION OF A LEADER

- Article 67 For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies, the Ombudsman, a person appointed to a statutory authority or cooperation, a director appointed by the Government to a cooperation or company or organization and other officers as may be prescribed by law.

### 2. DECENTRALIZATION ACT (CAP 127) (LOCAL GOVERNMENT COUNCIL)

#### APPOINTMENT OF MEMBERS OF THE LOCAL GOVERNMENT COUNCILS

7. (1) The Minister may by Order provide for appointed members of each Local Government Council in respect of its Local Government Region and such members shall consists of :
- (a) **chiefs appointed by the Minister from among persons nominated by representative bodies of chiefs**