



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE
POLICE BRUTALITY AT LAKATORO
AND LAMAP POLICE POSTS**

16 November 2010



REPUBLIC OF VANUATU

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PUBLIC REPORT ON THE ALLEGED POLICE BRUTALITY AT LAKATORO AND LAMAP POLICE POSTS

SUMMARY

This public report is issued in regards to Police brutality at Lakatoro and Lamap Police Posts in Malampa Province.

The incidents at both Police Posts occurred back in 2001. However, the Ombudsman issues this report as information to the public that police brutality to civilians is a practice that is still exercised by Police Officers within Vanuatu.

The first incident at Lakatoro Police Post involved Police Officers beating Michael Tabi at the request of Chief August Meltekani of Norsup Village. It was believed that by beating and whipping him, Mr Tabi would learn his lesson as he was seen to be strong-headed and had no respect for his families.

The second incident occurred at Lamap Police Post which saw two civilians; Genevieve Marcotte and Bernadine Dralikon locked up in a room at the Police Post and were whipped and kicked. This came about as Police were questioning them about an incident that involved VMF officer Alfred Bila and a certain chief of Lamap.

After due investigation, the Ombudsman makes the following findings:

- The officers involved have breached section 4(2) (b) of the Police Act and section 19 (k) of the Police Rules
- The actions of Police Officer's involved may have violated the right to life and freedom from inhuman treatment of the civilians concerned

Based on the findings made, the Ombudsman recommends that Police Officer's involved are investigated and disciplined under the Police Rules. It may also be necessary to remind Police Officers of how they use reasonable force on civilians or suspects during interrogation or arrests.

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1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the conduct of Police Officers at Lakatoro and Lamap Police Posts namely Willie Dwight, Erick Bob, VMF Officer Alfred Bila, Greny Gleton, Jean Roger and Jacky Ruben. The Ombudsman can also look into defects in laws or administrative practices, including the Police Act [CAP 105], the Criminal Procedure Code Act [CAP 136] and the Penal Code Act [CAP 135].

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman's findings and recommendations as required by the Constitution and the Ombudsman Act.
- 2.2 The scope of this investigation is to establish the facts about the abuse of power by certain police officers by physically assaulting offenders at Lamap and Lakatoro police posts and to determine whether the conduct of the police officers involved were proper.
- 2.3 The scope of this investigation is also to determine whether the Police Act and the Criminal Procedure Code, the laws that provide power to police to uphold the law in the country were defective.
- 2.4 This Office collects information and documents by informal requests, summons, letters, interviews and research.

3. RELEVANT LAWS

- 3.1 Relevant parts of the following laws are reproduced in **Appendix A**.

Constitution
Police Act [CAP 105]
Penal Code Act [CAP 135]
Criminal Procedure Code Act [CAP 136]

4. OUTLINE OF EVENTS

- 4.1 This report is issued following several complaints made against police officers serving at Lamap and Lakatoro Police posts in Malekula on the issues of assaults. Two separate complaints are amalgamated in this report.
- 4.2 The first incident occurred on 15 January 2001. Mr Michael Tabi (**Mr Tabi**) complained to the Ombudsman that he was physically assaulted by police officers namely Willie Dwight (**Mr Dwight**) who was Officer In Charge and Police Officer William Maltock at the request of Chief August Meltekani at the Lakatoro Police station.

- 4.3 A medical report issued to Michael Tabi revealed that injuries were caused to his eyes and that he felt pain all over his body mainly at the nape of his left neck. A copy of Mr Tabi's medical report is attached as **Appendix B**.
- 4.4 On 29 January 2001, the Ombudsman wrote a letter to Mr Dwight for him to explain the reasons why they have mistreated Mr Tabi.
- 4.5 On 03 April 2001 Mr Dwight called the Ombudsman by phone and confirmed that Mr Tabi had been whipped by him (Mr Dwight) and that Mr Tabi is a stubborn (strong headed) person who does not respect his own relatives or family members. According to Dwight, Mr Tabi sometimes went to the toilet in his own house at Norsup Village. He often did this on a regular basis. On several occasions he had been reported but he continued to behave in that manner. Police thought that by whipping Mr Tabi they were giving him a lesson (to change his behaviour).
- 4.6 The second incident happened on the 9th of August 2001. A certain chief of Lamap had marital problems with his wife and the Village Committee wanted to meet and solve the problem but the chief did not agree to attend the meeting as yet because he had no money to perform a customary fine. The Village Committee then sought the assistance of a VMF officer Alfred Bila to convince the Chief to call for a meeting. The Chief did not agree so VMF Officer Alfred Bila punched the chief on the face and therefore a fight broke out between them. Villagers standing nearby watched them as they fought.
- 4.7 Some of the villagers were trying to defend their chief because the VMF officer was trying to squeeze his neck. A Village Committee member approached them and separated them and the fight ended. While the VMF officer was walking away, one of the villagers named Romeo Draliko shouted to him with words to the following effect, "**man olsem igud blo katem hem nomo**". After the fight, every one minded their own business, some went home and some went to their gardens.
- 4.8 Genevieve Marcotte and Bernadine Dralikone who were implicated in this complaint were on their way home after cutting copra in their plantation. They were approached by Police Officer Eric Bob. He instructed them to go home get dressed properly and go to the Police post (Lamap Police Post).
- 4.9 When they reached the Police Post they were met by the VMF Officer Alfred Bila, Eric Bob and other Police Officers. The Police Officers asked Marcotte and Dralikone to confirm whether any of them had threatened the VMF officer by saying "**man olsem igud blo katem hem nomo**"?
- 4.10 They denied the allegation. This is when the VMF officer and the police officers assaulted them by whipping and kicking them. The Officers kept them for three (3) hours from 6:00pm to 9:00pm. As they were badly assaulted, the Police removed them from the room they were kept in to a police officer's room. In the morning the police officers took Marcotte and Dralikone's statement. On releasing them Police Officer Erick Bob told them not to tell anyone what had happened. The Police Officers involved were Jacky Rueben, Jean Roger, Grenly Glenton, VMF Officer Alfred Bila and Eric Bob.
- 4.11 Marcotte and Dralikone went home but felt more pain on their bodies so they went to a clinic and were admitted. As their condition worsened they were sent to Vila. An arrangement was made by a Catholic Priest, Father Linossier

to transfer Marcotte and Dralikone to the Vila Central Hospital. A copy of Marcotte and Dralikone's medical report is attached as **Appendix C**.

- 4.12 On receipt of the complaint, the Ombudsman wrote to all the officers implicated in this matter and also wrote a letter to the Internal Investigation Office within the Police Headquarters.
- 4.13 Despite every attempt, there was no feedback from the Police Officers at Lamap Police Post and even the Internal Investigation Office of the Police.

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 Before commencing this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to the preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 No response was received from the persons with complaint against them.
- 5.3 The Police Commissioner or the Deputy Police Commissioner has not responded either.

6. FINDINGS

- 6.1 **Finding 1: POLICE OFFICERS WILLIE DWIGHT, MALTOK WILLIAM, ERIC BOB, GRENY GLENTON, JEAN ROGER, JACKY RUBEN, CHRISTIAN MALTOCK AND VMF OFFICER ALFRED BILA HAVE BREACHED SECTION 4(2)(b) OF THE POLICE ACT AND SECTION 19(k) OF THE POLICE RULES**

- 6.1.1 The Ombudsman found that the above mentioned officers' actions amount to disciplinary offences under section 19(k) of the Police Rules and section 4(2)(b) of the Police Act [CAP 105] which provide that one of the function of the Force is to protect life and property of citizen.
- 6.1.2 There is no provision or guideline provided under the Police Rules and Police General Orders to give power to police to whip or assault any detainees at the Police stations and Police posts as a requirement for teaching.

- 6.2 **Finding 2: CRIMINAL ACTION ON CIVILIANS BY POLICE OFFICERS ERIC BOB, GRENY GLENTON, JEAN ROGER, JACKY RUBEN AND VMF OFFICER ALFRED BILA.**

- 6.2.1 The Ombudsman also found that the above officers' action may amount to the criminal offence of intentional assault under section 107 of the Penal Code [CAP 135].
- 6.2.2 Medical reports showed that the Police Officers whipped, kicked, and punched the civilians involved causing them various injuries and harm. As a result they were admitted in a local health clinic and later transferred to Vila Central Hospital. Using force beyond what is necessarily required could become a criminal assault.

6.3 Finding 3: SUBJECTING MARCOTTE AND DRALIKONE TO HARM AND INJURY IN CUSTODY MAY BE OUTSIDE THE PURPOSE OF ARREST

6.3.1 Section 4 to section 19 of the Criminal Procedure Code outlines the general procedure of how and when a Police Officer may arrest with or without a warrant. In this situation, civilians Genevieve Marcotte and Bernadine Dralikone were arrested by the concerned Police Officers Reuben, Roger, Glenton, Bila and Bob and brought to Police posts and subjected them to harm and injury on the belief that either of them said the words to the effect “man olsem igud blo katem hem nomo”

6.3.2 Keeping civilians Genevieve Marcotte and Bernadine Dralikone in custody by Officers Reuben, Roger, Glenton, Bila and Bob and subjecting them to harm and injury may be contradicting section 12(b) of the Criminal Procedure Code Act [CAP 136]. If the duo were kept in custody for wilfully obstructing the Police Officer, were they interrogated to find who wilfully did the obstruction?

6.3.3 The actions of the Police Officers involved are found to be contrary to section 19(k) of the Police Rules.

6.4 Finding 4: VIOLATION OF HUMAN RIGHTS.

6.4.1 The Ombudsman found that the barbaric actions carried out by the police officers at Lamap Police Post is contrary to the right and freedom of the citizens as stipulated by Article 5 of the Constitution of the Republic of Vanuatu particularly Article 5(a) and (e) which is the right to life and freedom from inhuman treatment.

7. RECOMMENDATIONS

7.1 The Ombudsman makes the following recommendations based on the above findings to prevent such similar actions by the Police to reoccur in the future.

Recommendation 1: The Police Commissioner and the Internal Investigation Office (IIO) should impose immediate disciplinary action against VMF Officer Alfred Bila for unlawful action of assault in breach of section 19(k) of the Police Rules.

Recommendation 2: The Police Commissioner transfer the VMF Officer Alfred Bila with immediate effect out of Lamap Police Post because of his unlawful action which brings disrespect on the Force in the eyes of the Community.

Recommendation 3: The Police Commissioner issues warning letters or orders investigation against the actions of Police Officers Willie Dwight, Christian Maltock, Jacky Reuben, Jean Roger, Grenly Glenton and Eric

Bob and that the findings, following the investigation, be submitted to the Police Service Commission for disciplinary actions against the officers.

Recommendation 4 The Officers In Charge (OIC) of Lamap and Lakatoro Police posts inform their subordinate officers working under their supervision to be aware of their duty of arrest as prescribed by law.

Dated this 16th day of November 2010

**Pasa TOSUSU
OMBUDSMAN OF THE REPUBLIC OF VANUATU**

8. INDEX OF APPENDICES

- A.** Relevant laws
- B.** Michael Tabi's Medical Report
- C.** Genevieve Marcotte and Bernardine Dralikone's medical report

APPENDIX A

RELEVANT LAWS AND REGULATIONS

CONSTITUTION OF THE REPUBLIC OF VANUATU

CHAPTER 2 – FUNDAMENTAL RIGHTS AND DUTIES

PART I – Fundamental Rights

5. Fundamental rights and freedoms of the individual

(1) The Republic of Vanuatu recognizes, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defense, safety, public order, welfare and health –

- (a) life;
- (b) liberty;
- (c) security of the person;
- (e) freedom from inhuman treatment and forced labour;
- (g) freedom of expression;
- (k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.

(2) Protection of the law shall include the following –

- (a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;
- (b) everyone is presumed innocent until a court establishes his guilt according to law;
- (f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed;
- (g) no-one shall be punished with a greater penalty than that which exists at the time of the commission of the offence;

POLICE ACT [CAP 105]

4. Functions of the Force

(1) It shall be an essential duty of the Force to maintain an unceasing vigilance for the prevention and suppression of crime.

(2) The Force shall be employed throughout Vanuatu and its territorial waters for –

- (a) the preservation of peace and the maintenance of order;
- (b) the protection of life and property;
- (c) the enforcement of laws;
- (d) the prevention and detection of offences and the production of offenders before the Courts; and

- (e) such other duties as may be expressly provided for by law.

PART 4 – POWERS AND DUTIES

35. General powers and duties of members of the Force

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

36. Use of reasonable force

Any member of the Force may use all such force as may be reasonably necessary in order to prevent crime or to effect or assist in effecting a lawful arrest.

42. Duty of Force to keep order in public places

- (1) It shall be the duty of the Force –
 - (c) to keep order on public roads, streets, thoroughfares and landing places, and at other places of public resort or places to which the public have access; and
 - (d) to prevent obstructions on the occasion of assemblies and processions on the public roads and streets, and in any case when any road, street, thoroughfare or landing place may be thronged or may be liable to be obstructed.
- (3) Any person who contravenes subsection (2) may be arrested without a warrant and detained in accordance with the law unless he gives his name and address and otherwise satisfies the member that he will duly answer any summons or other proceedings which may be taken against him.

72. Power of arrest and confinement

- (1) In this section, the word "offence" shall mean any offence against discipline as well as any offence triable by a court.
- (2) Any member may arrest without warrant any other member not being of his own or higher rank who is accused of any offence under the provisions of this Act.
- (3) Any member effecting an arrest under this section shall immediately bring the accused person before a senior officer or, in the absence of such officer, before the most senior member readily accessible who shall cause the case to be heard without delay.

- (4) Every member arrested for any offence under this Act may be confined to his quarters or in any building set apart as a guard room or cell.

PENAL CODE ACT [CAP 135]

Offences against the Person

107. Intentional assault

No person shall commit intentional assault on the body of another person.

Penalty:

- (a) if no physical damage is caused, imprisonment for 3 months;
- (b) if damage of a temporary nature is caused, imprisonment for 1 year;
- (c) if damage of a permanent nature is caused, imprisonment for 5 years;
- (d) if the damage caused results in death, although the offender did not intend to cause such death, imprisonment for 10 years.

108. Unintentional harm

No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.

Penalty:

- (a) if the damage so caused is purely temporary, imprisonment for 3 months;
- (b) if the damage so caused is permanent, imprisonment for 2 years;
- (c) if the damage so caused results in death, imprisonment for 5 years.

CRIMINAL PROCEDURE CODE [CAP 136]

PART 2 – GENERAL PROVISIONS

Arrest Generally

ARREST HOW MADE

4. (1) The police officer or other person making an arrest shall actually touch or confine the person to be arrested, unless there be a submission to custody by word or action.
- (2) If a person forcibly resists the endeavour to arrest him, or attempts to evade arrest, such police officer or other person may use all means necessary to effect the arrest.
- (3) Nothing in this section shall justify the use of greater force than is reasonable in the particular circumstances in which it is employed, or is necessary for the arrest.

SEARCH OF PLACE ENTERED BY PERSON SOUGHT TO BE ARRESTED

5. (1) If a person acting under a warrant of arrest, or a police officer having authority to arrest has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on

demand of such person acting as aforesaid or such police officer, allow him free entry thereto and afford all reasonable facilities for a search therein.

- (2) If entry cannot be obtained under subsection (1) it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of that place, whether being that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admission duly made, he cannot otherwise obtain admission.

POWER TO BREAK OPEN DOORS AND WINDOWS FOR PURPOSES OF LIBERATION

6. Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

NO UNNECESSARY RESTRAINT

7. A person arrested shall not be subject to more restraint than is necessary to prevent his escape.

SEARCH OF ARRESTED PERSONS

8. Whenever a person is arrested and detained in custody, the police officer making the arrest or, when the, arrest is made by a private person the police officer into whose custody he places the person arrested, may search such person and place in safe custody all articles other than necessary wearing apparel, found upon him.

POWER OF POLICE OFFICER TO DETAIN AND SEARCH BOATS, VEHICLES AND PERSONS IN CERTAIN CIRCUMSTANCES

9. Any police officer may stop, search and detain any vessel, boat, vehicle or aircraft in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained.

MODE OF SEARCHING PERSONS

10. Whenever it is necessary to cause a person to be searched, the search shall be made by a person of the same sex.

POWER TO SEIZE OFFENSIVE WEAPONS

11. The police officer or other person making an arrest may take from the person arrested any offensive weapons which he has about his person and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.

ARREST BY POLICE OFFICER WITHOUT WARRANT

12. (1) Any police officer may, without (1) an order from a judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence.
(2) Without prejudice to the generality of subsection (1) a police officer may without a warrant arrest –

- (a) any person who commits a breach of the peace in his presence;
- (b) any person who wilfully obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (c) any person whom he suspects upon reasonable grounds of being a deserter from the police or defence forces;
- (d) any person whom he finds lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or housebreaking implement;
- (e) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

PROCEDURE WHEN POLICE OFFICER DEPUTES SUBORDINATE TO ARREST WITHOUT WARRANT

13. When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall give the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

REFUSAL TO GIVE NAME AND RESIDENCE

14. (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognisable offence refuses on the demand of such officer to give his name and address, or gives a name and address which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and address may be ascertained.\
- (2) When the true name and address of such person has been ascertained he shall be released on –
- (a) his signing a written undertaking to appear before a court if so required; and
 - (b) if not being normally resident in the Republic he surrenders his passport to a police officer who may retain it for not more than 72 hours.
- (3) Should the true name and address of such person not be ascertained within 24 hours from the time of arrest, or should he fail to sign the undertaking or, if so required, to surrender his passport, he shall forthwith be taken before the nearest court having jurisdiction.

DISPOSAL OF PERSON ARRESTED BY POLICE OFFICER

15. A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein contained as to release from custody, take or send the person arrested before a judicial officer or before an officer in charge of a police station.

ARREST BY PRIVATE PERSON

16. (1) Any private person may arrest any person who commits a cognisable offence, or whom he reasonably suspects of having committed an offence punishable by a term of imprisonment for more than 10 years.

- (2) Persons found committing any offence involving damage to property may be arrested without a warrant by the owner of the property or persons authorised by him.

DISPOSAL OF PERSON ARRESTED BY PRIVATE PERSON

17. (1) Any private person who arrests a person without a warrant shall without unnecessary delay place the person so arrested in the custody of a police officer, or in the absence of a police officer shall take such person to the nearest police station.
- (2) If there is reason to believe that a person placed in police custody under subsection (1) comes under the provisions of section 12 a police officer shall re-arrest him.
- (3) If there is reason to believe that such person has committed a non-cognisable offence and he refuses on the demand of a police officer to give his name and address, or gives a name or address which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 14. If there is not sufficient reason to believe that he has committed any offence, he shall be at once released.

DETENTION OF PERSON ARRESTED WITHOUT WARRANT

18. (1) Subject to subsection (2) when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the State, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of a serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable.
- (2) The officer in charge of the police station may release a person arrested on suspicion of committing any offence, when after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with a prosecution for the offence.

POLICE TO REPORT ARRESTS

19. Officers in charge of police stations shall make a report to the Commissioner of Police about all persons arrested without warrant within the limits of their respective stations, whether such persons have been released from custody or otherwise.