



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE UNFAIR AND IMPROPER
SUSPENSION OF THE DIRECTOR OF
LANDS DEPARTMENT**

24 November 2011



REPUBLIC OF VANUATU

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PUBLIC REPORT ON THE UNFAIR AND IMPROPER SUSPENSION OF THE DIRECTOR OF LANDS DEPARTMENT

SUMMARY

Outline of events (see further page 4)

Mr Jean-Marc Pierre is currently the Director of Lands Department and at the time of writing, he was serving his second suspension by his Director General, Mr Joe Ligo as from 19 September 2011. The Public Service Commission was yet to deliberate on this latest suspension.

For the purposes of this public report, Mr Pierre's suspension of 12 March 2010 was investigated by the Ombudsman on the allegation that it was not executed in accordance with the principles of natural justice. Mr Pierre was suspended by Mr Ligo on 11 charges of negligence, inefficiency or incompetence as per Section 36(1)(c) of the Public Service Act [CAP 246]. About a week after Mr Pierre's suspension, the Public Service Commission were then requested by the Acting Minister of Lands and at the same time, the Deputy Prime Minister, Honourable Sato Kilman, to conduct an investigation into the allegations against the Director.

The PSC's investigation found that Mr Pierre's conduct did not warrant his dismissal from Office, that all charges against him be dismissed, and that he be reinstated to his post.

Findings (see further page 12)

- Finding 1: Mr Jean-Marc Pierre's fundamental right to protection of the law was denied when he was suspended on March 12, 2010.
- Finding 2: Section 2.2 (d) of Chapter 6 of the Public Service Staff Manual contravenes Article 5 (1) (d) of the Constitution and Article 14 and 16 of the International Covenant on Civil and Political Rights
- Finding 3: The Director General of Lands failed to fulfil his duty under Section 35 of the Public Service Act [CAP 246] to resolve the differences between then Minister of Lands and the Director of Lands
- Finding 4: Mr Ligo's action to deny Mr Pierre's right to protection of the law amounts to a breach of Section 13 of the Leadership Code Act

Recommendations (see further page 12)

The Ombudsman recommends:

- That Mr Jean-Marc Pierre consider taking legal action against the Director General of Lands, Mr Ligo for wrongful suspension and breach of his right to natural justice.
- That the Public Service Commission takes immediate steps to amend the relevant sections in the Public Service Staff Manual so as to avoid the contravention to the Constitution the International Covenant on Civil and Political Rights and also allow a proper interpretation of the Public Service Staff Manual.
- That the Public Service Commission issue a directive to all heads of departments to liaise with the Public Service Commission on all disciplinary matters prior to taking any measures against any public servant.

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1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act and the Leadership Code Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the Minister of Lands and the Director General of the Ministry of Lands.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The scope of this investigation is to establish the facts about the suspension of the Director of Lands, Mr Jean-Marc Pierre and to determine whether the Minister of Lands' conduct, the Director General of Lands' conduct and the Public Service Commission's conduct in processing Mr Pierre's suspension was proper.
- 2.2 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS

- 3.1 Relevant parts of the following laws are reproduced in **Appendix 1** for ease of reference:

Constitution of the Republic of Vanuatu

Public Service Act [CAP 246]

Leadership Code Act [CAP 240]

Land Leases Act [CAP 163]

Land Surveyors Act [CAP 175]

Public Service Staff Manual

International Covenant on Civil and Political Rights

4. OUTLINE OF EVENTS

- 4.1 On 5 March 2010, then Minister of Lands, Mr Paul Telukluk ("Mr Telukluk") wrote to the Director General of Lands, Mr Joe Ligo ("Mr Ligo"), instructing him to remove the Director of Lands from his position for insubordination, failure to act or take appropriate action to deal with important issues complained of by the Department's clients and lack of leadership. He was also asked to request the Public Service Commission ("PSC") investigation on whether the Director of Lands, Mr Jean-Marc Pierre ("Mr Pierre") was fit to lead the Department (please refer to **Appendix 4**)
- 4.2 Mr Michael Mangawai was then appointed on 5 March 2010 by Mr Telukluk as the Acting Director of Lands Department (refer to **Appendix 5**). Mr Telukluk's letter was copied to the Prime Minister, the Deputy Prime Minister, the Ministry of Lands and the Public Service Commission.
- 4.3 On 12 March 2010, Mr Pierre was then issued with a suspension letter by Mr Ligo (see **Appendix 6**). Copies of the suspension letter were sent to then Acting Prime Minister, Mr Sato Kilman, the Minister for Lands, Mr Paul Telukluk, Mr Telukluk's First Political Advisor, Mr Jean Tranut, the Chairman and the Secretary of the Public Service Commission and the Acting Director of Lands Department. Mr Ligo stated that he was suspending Mr Pierre on instruction by the Minister of Lands, Mr Paul Telukluk.
- 4.4 In addition to Mr Telukluk's reasons for disciplinary action against Mr Pierre, Mr Ligo also stated that they were in addition to his (Mr Pierre's) handling of eleven (11) different issues, details of which are provided below.

4.4.1 Sarakata Hydro Power Project Case

Mr Pierre was accused of failing to act by ensuring that a Customary Lands Tribunal be established for the rehearing of the land disputed where this project is situated. Apparently, the former Director General of Lands, Mr Russell Nari and the Director of the Energy Unit, Mr Leo Moli, signed an agreement stating that the Vanuatu Government had made a mistake in paying the wrong family an amount of VT21,432, 909 for the land where this project is located. Both heads of departments agreed to rectify this situation.

4.4.2 In his response to this accusation, Mr Pierre informed the Ombudsman that as the Director, he was never involved in the deed of release and had he been provided with an opportunity to respond to this allegation, then Mr Ligo and Mr Telukluk would have uncovered the truth.

4.5.1 Oyster Island Resort – Supreme Court Case

The Oyster Island Resort (located in Santo) was leased by late Mr Giovanni Stelio. His son, Mr Gaetan Giovanni wanted the lease to be transferred to his name as it was discovered that the lease was forged. Mr Pierre was accused of failing to take any action to prevent any new dealings with this lease and also for failing to seek legal advice and assistance from the State Law Office on this matter. As a result, the complainant was considering suing the Government for financial losses and other damages.

4.5.2 Mr Pierre responded to this allegation saying that he did obtain legal advice twice from the State Law Office who stated that he inform the client to bring the matter to Court as only the Court can issue an order to cancel a lease. Mr Pierre said that Mr Gaetan Giovanni's request for him to cancel the lease was unlawful and he was obliged to disregard Mr Giovanni's wishes. Mr Johnson Wabaiat as DG of Internal Affairs, was also advised of the same. As Director, Mr Pierre only has the power under section 99 of the Land Leases Act [CAP 163] to correct clerical errors in leases but not to alter leases in such cases as alleged fraud. Documents cited here are attached as **Appendix 7**.

4.6.1 Beach Club Investments Limited and Westpac Bank Mortgage Over 14 Land Titles

In February 2010, Beach Club Investments Limited wrote to the Minister of Lands, Mr Paul Telukluk to say that the mortgage of these titles should not have been registered by Mr Pierre because they had not been duly stamped and also because it was alleged that the first page of the instrument may have been interfered with. Because the leases had not been stamped, the Government had made a considerable financial loss and they were due to face legal action.

4.6.2 In this case, Mr Pierre says that normally, leases are not registered if no stamp fee has been paid and this is a requirement. Mr Pierre says that it was improper to blame the Department of Lands, Survey and Records just because the Vanuatu Financial Services Commission had not received any stamp duty.

4.6.3 This inquiry has found that stamp duty *had* been paid (see **Appendix 19**). Further, Mr Pierre affirmed that the document had been signed by the parties to the agreement before it was received by his department. His argument is that if the client felt that there was any fraud involved, the appropriate avenue for addressing this would be via the Courts alone to decide.

4.7.1 Complaint by Mr Patrice Riviere

For this matter, Mr Pierre was accused of taking no action to respond to Mr Patrice Riviere's ("Mr Riviere") concerns regarding the alleged fraudulent registration of a lease which had been transferred from Mr Riviere's name to Mr Gene Wong's name.

4.7.2 Mr Pierre informed the Ombudsman that this case was purely a private matter between Mr Riviere and Mr Api Toara and was not the responsibility of his Office.

4.7.3 The Ombudsman's inquiry has revealed that Mr Riviere's concerns were not responded to by Mr Pierre as he was not in office at the time. The matter was handled by another officer acting in his place.

4.8.1 Rectification of Lease Issue Lodged by Teouma Holdings Ltd

Teouma Holdings Ltd felt that certain leases overlapped and needed to be rectified by the Director of Lands. Because Mr Pierre failed to rectify the lease, Teouma Holdings then took the matter to the Supreme Court. At this point, the Director of Lands then agreed to rectify the lease. Teouma Holdings was complaining that they had incurred legal costs of VT6,792,450 million which the Government now has to pay to the company.

4.8.2 Mr Pierre explained that the Supreme Court had never ordered that the Government pay VT6,792,450 to Teouma Holdings as it was merely a request by the company's lawyer (see **Appendix 8-1**). He also said that the lease was not rectified and court costs are normally something that is set by the parties to the dispute and in this case, there were two other defendants apart from the Government. Mr Ligo was made aware of this by the State Law Office in a letter dated 2 March 2010 (refer to **Appendix 8-2**). Mr Pierre claims that Mr Ligo knew this but used this matter as a reason to suspend him.

4.9.1 Failure to Advise the Minister of Lands on the Sale of *Marina Motel*

Mr Pierre was accused of failing to advise the Minister of Lands on whether the appropriate procedures for sale of this property had been abided with.

4.9.2 Mr Pierre in his response said that he had no involvement in the sale of *Marina Motel*. Mr Pierre said that at the time, he had been suspended. The sale was overseen by the Acting Director at the time, so he was wrongfully penalised for something that he had not even done.

4.9.3 Upon making inquiries, the Ombudsman found that Mr Pierre's defence is admissible. The application to register the land title and its subsequent transfer were executed by others, including Mr Peter Pata, who was acting then as Director of Lands. (Refer to **Appendix 22** and **Appendix 23**).

4.10.1 Failure to Respond to ALAC Vanuatu Concerns

The Director General of Lands informed Mr Pierre that one of the reasons behind his suspension was because he failed to respond or explain why the Land Management Planning Committee (LMPC) declared the area near the former court house as government property and then approved, sold and transferred several leases at low prices.

4.10.2 Mr Pierre said that the Planning Section of the Lands Department is the secretary for the LMPC. Because of their failure to respond to ALAC queries, he was wrongfully blamed and thus suspended.

4.10.3 Mrs Marie-Noëlle Ferrieux Patterson informed the Ombudsman that in all their correspondence with Mr Pierre and others on this matter, no responses were received. Mrs Patterson provided copies of the letters sent to those concerned.

She said that ALAC had written to Mr Pierre, so they (ALAC) were expecting a response from him (Mr Pierre) and not from the Secretary of the LMPC directly. ALAC expect that in his response to them, he should reply to their questions, inform them that the Secretary of the LMPC would be responding and also that it was being referred to the Minister for further instructions and reply.

- 4.10.4 Mr Pierre said that the applicant's application was not successful because the Government had informed the LMPC that it wanted to acquire the whole area for a State Complex. At the time, there were already leases issued for land within the area. He also added that the allegation that the land were sold at low prices is based on assumptions by Mr Ligo and therefore are inconsistent with section 32C & 32D of the Land Leases Act (Amendment) Act No.11 of 2004. Mr Pierre provided a copy of the LMPC's meeting minutes which confirm that the LMPC decision's to decline the application was based on the reason that this property would remain under the ownership of the Government. He also submitted a copy of the LMPC's letter to ALAC's client about their decision. A copy of the client's letter is attached as **Appendix 9**.

4.11.1 White Grass Airport & Lonorore Airport Land Acquisition Process

Another reason why Mr Pierre was suspended was because the acquisition process of White Grass Airport and Lonorore Airport had to be repeated because staff of the Department of Lands failed to observe the appropriate procedures.

- 4.11.2 Mr Pierre's defence is that Mr Ligo abused the Public Service Rules to use this as a reason to suspend him. He said that he had acted on the advice of the State Law Office to redo the notices in accordance with the law but there were no funds available for lands officers to travel and serve the notices. He was therefore suspended for something that was out of his control.

4.12.1 Complaint by Silas Hakwa on Rectification of Land Titles

On December 2009 and March 2010, Mr Silas Hakwa ("Mr Hakwa") acting on behalf of his client as lawyer wrote to the Director of Lands Department to rectify land titles affected by the Blacksands Fish Factory. Mr Pierre was accused of failing to respond and was thus entertaining risks of costs to the Government.

- 4.12.2 In response to the first working paper on this matter, Mr Hakwa expressed his client's desire that his comments be made for the purposes of the inquiry alone and not for any other purposes whatsoever. Firstly, he said that the matter was not documented properly in the working paper.

- 4.12.3 Secondly, he said that as the working paper makes reference to findings on specific allegations against the Director of Lands, he did not know whether his comments would be of any assistance in the inquiry.

- 4.12.4 Another point he noted was that the working paper did not cover the fact that Mr Pierre as Director of Lands, Survey and Registry was personally responsible for the registration of all the leases and other instruments which were the subject of his client's complaint.

- 4.12.5 Mr Hakwa provided more details about his client's complaint which came about because the Government had on three occasions in 2005, 2007 and 2011 issued new leases which either included part of his client's title or all of it. Mr Hakwa is adamant that these mistakes were repeatedly pointed out by way of correspondence and a meeting with the Director General of Lands, Mr Joe Ligo, but nothing has been done to date to resolve or rectify the leases. Mr Hakwa also said that his client applied for a caution in March 2010 over the part of his land which Government had issued a new lease over, but the application remains outstanding and the Director of Lands has neither acknowledged receipt of the various correspondence nor

responded in any way. He did not provide copies of these documents but said that they could be obtained from the Department of Lands.

4.12.6 Mr Hakwa stated that his client has given notice to the Government that it will issue proceedings in the Supreme Court for orders to cancel the leases and his client will also claim for damages against the Government.

4.12.7 Mr Pierre informed the Ombudsman that this matter was an administrative issue that did not warrant his suspension. He added that he was never advised of which titles to rectify. Further, this was a one off incident which he felt did not give his superiors the right to suspend him. Mr Pierre said that “...*Mr Hakwa’s client does not have any lease over the land...*” so “...*There was no risk whatsoever to the Government...*” He said that Mr Ligo was again assuming that if he failed to rectify the lease, that it would cost the Government in public funds.

4.13.1 Complaints from Mele Maat Community and Sarginson Family of Epi Island

The Minister of Lands received written complaints from the Mele Maat Community and the Sarginson Family of Epi Island that there were discrepancies and questionable practices by the LMPC and the Lands Department for certain land titles and the Director was incompetent in resolving these issues.

4.13.2 For the Sarginson Family’s case, the Director of Lands, Mr Pierre responded in his defence that their lease was not executed because their representative failed to abide by the Department’s procedures. He said that the Custom Owner Declaration forms was meant to be completed by the Chief of the community of Epi island, but instead it was completed and signed by certain chiefs and elders of Epi residing in Port Vila. Mr Pierre felt that this was not an appropriate and professional reason for Mr Ligo to suspend him as he was being blamed for the client’s failure to abide by the Department’s procedures.

4.13.3 Mr Pierre clarified that the Mele-Maat leases were registered in 2005 when the Lands Records Office was a separate department from the lease processing and execution unit which were under the sole control and management of the Lands Department. Once a lease was received by Lands Records Office and it was seen to be in order, it would then be registered. There was no knowledge of the issues over the lease. Mr Pierre says:

Under the Torrens System of Land Registration, a registered lease whether acquired properly or not, remains valid until proven by a court of law to have been obtained through fraud and/or mistake. This is the principle of “indefeasible title” which states that however a lease is acquired, it cannot be easily annulled or forfeited unless by due process of the law.” (See **Appendix 16**).

4.14.1 Failure to Advise the Minister of Lands on National Land Reform Programs

Mr Pierre was also charged with being negligent, careless, in-efficient or incompetent by failing to advise and brief the Minister of Lands on the national land reform program, in particular, the launching of the Zoning Program for Port Vila, Luganville and other provincial centers and areas of Vanuatu. Mr Pierre was accused of inviting the Acting Prime Minister at the time, Mr Sato Kilman, the Minister for Internal Affairs and the Lord Mayor of Port Vila without informing or advising the Minister of Lands, Mr Paul Telukluk.

4.14.2 Mr Pierre rebutted this allegation by saying that at the time, Mr Telukluk was not available; therefore Mr Kilman who was also acting Minister of Lands was invited in Mr Telukluk’s place. Further, Mr Pierre stated that a few days before the launching, the full Department of Lands team met with the Minister, the Director General and their delegation and they were fully briefed on the program. Mr Pierre added that Paul Gambetta who is responsible for zone planning also briefed Mr Kilman.

- 4.15 On 16 March 2010, Mr Pierre wrote a letter to Mr Ligo in response to his suspension. A copy of Mr Pierre's letter is attached as **Appendix 10**. In his response, Mr Pierre stated that Mr Ligo had denied him the right to a fair hearing. Mr Pierre stated in his letter that Mr Ligo had verbally informed him on the telephone prior to his suspension that he would apply the Principle of Natural Justice to deal with the Minister's allegations, but this did not transpire. Mr Pierre also pointed out that the allegations against him were all administrative issues which did not warrant his suspension. He argued that in accordance with the Public Service Act and Staff Manual, a suspension is only issued when an officer has committed a serious misconduct such as sexual harassment, assaulting a colleague officer or theft and misappropriation. Further, Mr Pierre stated that Mr Ligo should have consulted with him first as per the Public Service rules so as to better determine the appropriate action to take against him. Copies of Mr Pierre's letter were also made available to the Deputy Prime Minister (Honourable Sato Kilman) and at the same time Acting Minister for Lands and his then first political advisor, the Public Service Commission and the Acting Director of Lands Department, Mr Michael Mangawai.
- 4.16 On 18 March 2010, the Deputy Prime Minister and at the same time the Acting Minister for Lands, Mr Sato Kilman, issued a letter to the Chairman of the Public Service Commission, Mr Sam Dan Avock, requesting that an investigation into the allegations against Mr Pierre be done and a report made available to the Public Service and the Government (refer to **Appendix 11**). Mr Kilman's letter was copied to then Minister of Lands, Mr Telukluk.
- 4.17 On 15 April 2010, the Ombudsman received a complaint from Mr Pierre regarding his suspension. Mr Pierre believed that his suspension was not done in accordance with the Public Service Rules.
- 4.18 The Ombudsman then wrote to Mr Telukluk, Mr Ligo and the Public Service Commission to give them an opportunity to respond to the allegation against them. In particular, the allegations stated to them were that
- The suspension of Mr Pierre was done in contravention to Section 19A, 19B and 35 of the Public Service Act, as well as Chapter 6 Paragraph 2.1(c) and 2.3 of the Public Service Staff Manual.
 - That the suspension was not done in accordance with the principles of natural justice as Mr Pierre was never given an opportunity to respond to the allegations against himself before disciplinary action was applied.
 - That the Public Service Commission's decision to set up an investigation panel was not warranted in the circumstance.
- 4.19 On 4 May 2010, then Acting Secretary of the Public Service Commission, Mr Sumbe Antas wrote to Mr Pierre advising him that the Commission had met on 1 April 2010 to discuss Mr Telukluk's official complaint and Mr Ligo's letter of suspension regarding the allegations against him. The allegations against Mr Pierre were listed and detailed and Mr Pierre was advised that an investigation panel had been set up pursuant to section 19B of the Public Service Act [CAP 246] to assist the Commission on taking a decision on the matter. Mr Sumbe quoted that as per Section 19B (2) (c) of the Public Service Act [CAP 246], Mr Pierre should respond to the allegations against himself within 21 days of the date of his letter. Mr Pierre was advised that he was to remain suspended from duty. (See **Appendix 12**). Copies of Mr Antas' letter were also sent to then Minister of Lands and the Director General of Lands.
- 4.20 On 7 June 2010, then Acting Secretary of the Public Service Commission, Mr Thomas Felix wrote to Mr Pierre stating that at the Public Service Commission

Meeting No.9 of 4 June 2010, the Commission had deliberated over the investigation panel's report and that the Commission had decided to dismiss the allegations against him (see **Appendix 13**). The letter stated that

In arriving at its decision, the Commission considered the findings of the investigation report and was satisfied your conduct in all eleven (11) charges do not warrant your removal from office under the Public Service Act.

Mr Pierre was then advised that he was to resume duties with immediate effect. The letter was copied to all authorities concerned.

- 4.21 Then Secretary of the Public Service Commission, Mr Sumbe Antas wrote to the Ombudsman in a letter dated 21 June 2010 to respond to the Ombudsman's letter which had pointed out the allegations being investigated (see **Appendix 14**). In his letter, Mr Antas said that Mr Pierre failed to provide a response to the allegations against himself but they did note his response in his letter of 16 March 2010 (refer to **Appendix 10**).
- 4.22 Mr Antas said that their belief was that they did have grounds to investigate Mr Pierre's conduct because they did receive the Minister's complaint against Mr Pierre and as per Section 19B of the Public Service Act [CAP 246], this gave them the basis to investigate Mr Pierre's conduct.
- 4.23 Mr Antas also states that Mr Pierre was given a right to respond to the allegations against himself in the letter of 4 May 2010 but he did not respond. He adds, "*He may have also been interviewed by the Investigators.*"
- 4.24 Mr Pierre responded to Mr Antas' remark by saying that he never received the Public Service Commission's letter in time to respond to them. He said that the letter was delivered to the Department of Lands and remained there until the time frame to respond had almost lapsed. Mr Pierre provided evidence to this Office which shows that the letter was delivered to him on 20 May 2010 by one Naelo Tosso and Caroline Assial from the Department of Lands at 9:15 am. The envelope was stamped "URGENT" and bears the stamp of the Public Service Commission (see **Appendix 2**)

5. RESPONSES TO THE FIRST WORKING PAPER

- 5.1 On 28 January 2011, a working paper was issued on this matter in which the following findings were made:
- The Director General of Lands and then Minister of Lands may have breached Section 19A(1), Section 19(B) of the Public Service Act [CAP 246] and Section 2.2 (d) of Chapter 6 of the Public Service Staff Manual in dealing with Mr Pierre's suspension.
 - The Public Service Commission may not have acted fairly as a good employer in deliberating on Mr Pierre's case thereby violating Article 8 of the Constitution, Section 8(1)(d) and 15(2) of the Public Service Act [CAP 246].
 - Mr Pierre's fundamental human right to natural justice as provided for under Article 5 (1) (d) of the Constitution and Article 7 of the United Nations Declaration on Human Rights was denied by the Director General of the Ministry of Lands and then Minister of Lands.
 - The Director General of Lands may have failed to fulfil his duty under Section 35 of the Public Service Act [CAP 246] to resolve a dispute between then Minister of Lands and the Director of Lands

- 5.2 The Ombudsman also made two recommendations:
- The Public Service Commission, the Director General of Lands, Mr Joe Ligo and the former Minister of Lands, Mr Paul Telukluk each issue a formal apology to the Director of Lands, each for the respective reasons of mishandling of his suspension of 12 March 2010, for mistreating him and for offending him publicly via the media.
 - The Ombudsman also recommends that the Public Service Commission issue a reminder to all Directors, Director Generals and Ministers on the appropriate procedures for dealing with disciplinary matters against Directors of Departments.
- 5.3 Responses were received from
- Mrs Marie-Noëlle Ferrieux-Patterson (Chairman of Transparency Vanuatu – Advocacy and Legal Advice Centre (ALAC) Vanuatu (see **Appendix 15**)
 - Mr Jean-Marc Pierre (the Director of Lands Department) (refer to **Appendix 16**)
 - Mr Silas Hakwa (Lawyer for client who complained regarding leases in the Blacksands Fish Factory area) (attached as **Appendix 17**).
 - Mr Sumbe Antas (then Secretary of the Public Service Commission – see **Appendix 18**). Mr Antas makes reference to a civil case involving the removal of the Director of Southern Health Care Group by the PSC and the DG of Health. The court judgement on this case is attached as **Appendix 3**.
 - Mr George Andrews (the Commissioner of the Vanuatu Financial Services Commission – attached as **Appendix 19**)
 - Mr Gene Wong (see **Appendix 20**).
- 5.4 All responses were incorporated into this public paper which has affected the findings as made below.

6. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

- 6.1 Before compiling this report, the Ombudsman notified all people or bodies complained of and gave them the right to reply. The Ombudsman sent copies of the Working Paper on this matter to all persons mentioned in the Outline of Events and Findings to give them an opportunity to respond and make any amends where possible.
- 6.2 No responses were received from those with findings against them. Instead, responses were received from the following:
- The CEO of VIPA, Mr Smith Tebu informed the Ombudsman’s Office that VIPA could not provide any further information to what his Office had already supplied to assist the inquiry.
 - Chief Albea David and Mr Emil Mael¹ visited the Ombudsman’s Office and presented a letter in response to Appendix 10 of the Working Paper (Mr Jean-Marc Pierre’s response to Mr Ligo about his suspension). A copy of the Chief’s letter is attached as **Appendix 24**. The duo claim that Mr Pierre provided false information to the Ombudsman, that in their land dispute between Maat Community and others, Mr Pierre knew very well that the land in question was not to be registered, but proceeded with registration regardless.

¹ Mr Mael was a member of the Land Management Planning Committee in the “ALAC Concerns” issue – see section 4.10.1 of this report

- Mr Silas Hakwa, acting on behalf of his client, responded that his client's Constitutional rights have also been breached and that this report should also include the Land Surveyors Act [CAP 175] as amended in its "Relevant Laws". He also says that Mr Pierre has powers to rectify the registry and this was what they wanted done so as to amend the situation, but Mr Pierre has never responded to their requests by way of any correspondence. He says that for Mr Pierre to suggest that he had responded to Mr Hakwa's client is false and cannot be substantiated. Mr Pierre has acted in contravention to the Constitution, the Land Surveyors Act [CAP 1725] as amended, the Land Leases Act [CAP 163] and the Public Service Act no.11 of 1998 as amended. Please refer to **Appendix 25** for a full brief on extracts from Mr Hakwa's response.
- Mr Pierre provided two different responses on two occasions which are attached as **Appendix 26-1** and **Appendix 26-2**. The amendments to the Working Paper have been accepted by the Ombudsman and incorporated into this report. Mr Pierre also rejects Chief Albea's response that he had knowledge that the land in question should not have been registered. He states that he does not have the legal authority as determined by a Court Case to investigate a registrable lease, and that Mr Emil Mael as a Lands Officer had the opportunity to assist his community but failed to do so.
- With regard to Mr Hakwa's response to the Working Paper, Mr Pierre still maintains that he lacks the appropriate means to warrant an amendment of the registry, simply because Mr Hakwa's client does not own a registered lease over the land that he is claiming. As Mr Hakwa's client is pursuing the matter in court, Mr Pierre admits that he accepts this and looks forward to a decision on the matter.
- Appendix 27 is a copy of the response from Mr Jean-Michel Russet. Mr Russet confirms that Mr Pierre was not involved in any of the Marina Motel lease dealings.

7. FINDINGS

7.1 Finding 1: **Mr Jean-Marc Pierre's fundamental right to protection of the law was denied when he was suspended on March 12 2010**

7.1.1 Article 5 (1) (d) of the Constitution provides for the protection of the law for all citizens. Protection of the law means that all persons have the same access to the law and courts and they must be treated equally by the law and the courts in both procedures and in the substance of the law. *"It is akin to the right to due process of the law, but in particular applies to equal treatment as an element of fundamental fairness."*²

7.1.2 The right to protection of the law is also a fundamental human right. Laitia Tamata cited a human rights definition in Volume 4-2000 of the Journal of South Pacific Law under his article titled; *"Application of Human Rights Conventions in the Pacific Islands Courts"*³

Human rights are those rights that every human being possesses and is entitled to enjoy by virtue of being human.⁴ Human rights are the birthright of all human beings. The protection of human rights is the first responsibility of governments. Human rights are based on the fundamental principle that all persons possess inherent human dignity. People are entitled to enjoy rights

² Refer to "Legal-Explanations.com" © 2004-2007, <http://www.legal-explanations.com/definitions/equal-protection-of-the-law.htm>, accessed on 29/6/2011

³ Refer to http://www.vanuatu.usp.ac.fj/journal_splaw/working_papers/Tamata1.html accessed on 29/6/2011

⁴ Schule and Thomas Eds: 1997, 8

regardless of national origin, colour, language, race, sex, and class or religious or political beliefs.

7.1.3 The Ombudsman finds in this inquiry that the Director General of the Ministry of Lands, did not provide Mr Pierre with an opportunity to respond to the allegations against him, prior to issuing him with his suspension letter. Mr Pierre testifies that Mr Ligo had informed him that the principle of natural justice would be maintained in the matter, but he failed to ensure this fundamental right. The Public Service Commission have argued that...*"The allegations highlighted in the complaints against the Director could be deemed to be serious misconduct as they relate to the performance of the Director's duty under the job description as well as the Land Leases Act..."* and therefore qualified him to be suspended immediately without being given an opportunity to be heard⁵. The Public Service Commission's comment is in error. Regardless of the circumstances requiring immediate suspension, Article 5 of the Constitution says that everyone is presumed to be innocent until they are proven to be guilty in a Court of Law. The Constitution is the supreme law governing this country and its provisions are superior to that of the Public Service Staff Manual. Further, Mr Pierre's conduct amounting to "serious misconduct" was misinterpreted by the Director General of Lands and the Public Service Commission.

7.2 **Finding 2: Section 2.2 (d) of Chapter 6 of the Public Service Staff Manual contravenes Article 5 (1) (d) of the Constitution and Article 14 and 16 of the International Covenant on Civil and Political Rights**

7.2.1 Section 2.2 (d) of Chapter 6 of the Public Service Staff Manual ("PSSM") states:
In the case of a Director who has committed a serious misconduct, his or her Director-General may immediately suspend the officer on half pay and immediately inform the Secretary of the Commission. In such cases, the matter is to be dealt with in accordance with section 19A and 19B of the Public Service Act.

Section 2.1 and 2.2 of Chapter 6 of the PSSM states that serious disciplinary offences requiring immediate suspension are:

Theft, fraud, misappropriation of funds, serious misuse of Government property, assault, and sexual harassment.

They also include failure to follow a lawful and reasonable instruction, dishonesty, inability to carry out work due to consumption of non prescription drugs, kava or alcohol, breach of confidentiality, insubordination, insolence, violence, harassment or breach of implied duties such as fidelity and trust. In all these circumstances, evidence is needed to back up the offences. The rules of natural justice require us to obtain all sides of the story, especially when one side's human dignity is being called into question.

7.2.2 The Ombudsman reiterates that Article 5(1)(d) of the Constitution entitles every citizen of Vanuatu to the observance of the principles of natural justice. This means that everyone facing an allegation before a tribunal must be given a fair hearing. Or, the person who stands accused is innocent until proven guilty.

7.2.3 In this instance, Mr Pierre was suspended *before* an investigation panel was convened by the Public Service Commission to investigate the allegations and provide Mr Pierre with an opportunity to respond. According to Section 2.2 (d) of the Public Service Staff Manual, this is acceptable if the misconduct is of a serious nature. 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. Further, the PSC investigation found that the charges laid against Mr Pierre for which he was suspended for did not warrant his removal from office. There is a

⁵ See Appendix 18, page 2

valuable lesson to learn from this, and that is that in future, all disciplinary cases, whether against an ordinary civil servant or the head of department must be dealt with in accordance with the principle of natural justice. The Constitution of Vanuatu requires this and therefore, the Public Service Staff Manual must be written in line with the Constitution and leave no room for misinterpretation.

7.2.4 Furthermore, as Vanuatu has ratified the International Covenant on Civil and Political Rights, it must adhere to Article 14 and 16 which recognise natural justice as a fundamental human right.

7.2.5 From the evidence that has been reviewed both by the PSC and the Ombudsman, the allegations levelled against Mr Pierre by then Minister Telukluk and Director General, Mr Ligo were either baseless or were pure administrative matters that did not require a suspension, even if Mr Pierre had been given an opportunity to respond before any disciplinary action was applied. If the principle of natural justice was upheld, then what would have transpired was a reproach by the Director General to Mr Pierre to respond to his mail and or discussions between Director Pierre and Mr Ligo on the allegations against Mr Pierre at first hand, before any disciplinary action were to be considered.

7.3 **Finding 3: The Director General of Lands failed to fulfil his duty under Section 35 of the Public Service Act [CAP 246] to resolve the differences between then Minister of Lands and the Director of Lands**

7.3.1 Then Minister of Lands, Mr Telukluk saw the need to suspend with the intension of eventually removing Mr Pierre as Director of Lands Department for reasons stated in his letter to Mr Ligo (see **Appendix 3**).

7.3.2 Mr Ligo had a duty under Section 35 of the Public Service Act [CAP 246] to hear the dispute between the Director of Lands, Mr Jean-Marc Pierre and then Minister of Lands, Mr Paul Telukluk. In fact, Mr Pierre states that Mr Ligo did inform him that he was in receipt of complaints directed against Mr Pierre and that he would ensure that the principles of natural justice were applied. Instead, Mr Ligo went against his word and proceeded to issue Mr Pierre with his suspension letter without providing Mr Pierre with an opportunity to respond to the complaints against him.

7.4 **Finding 4: Mr Ligo's action to deny Mr Pierre's right to protection of the law amounts to a breach of Section 13 of the Leadership Code Act**

7.4.1 Mr Ligo's failure to abide by Section 35 of Public Service Act [CAP 246] amounts to a breach of his duties as a Leader under section 13 of the Leadership Code Act [CAP 240]. As a Leader, the Director General is obliged to comply with and observe the law.

7.4.2 Because Mr Ligo failed to carry out his duty as a Leader to resolve the dispute between the Minister and the Director of Lands, the matter was never-the-less brought before the attention of the Public Service Commission.

7.4.3 Mr Ligo's credibility in assessing the allegations against Mr Pierre can also be called into question. Section 13 of the Leadership Code Act [CAP 240] requires that a Leader observe and comply with the fundamental principles of leadership contained in Article 66 of the Constitution. Article 66 (1) (c) of the Constitution states that a Leader must not allow his integrity to be called into question when carrying out his/her official duties as well as conducting him/herself in his/her private life. Under **Appendix 16 (page 1)**, Mr Pierre pledges that Mr Ligo knew of and understood the Oyster Island issue when he was formerly the Chief Executive Officer of the Vanuatu Investment Promotion Authority. He adds that a VIPA Board meeting (which he is a

member of) had been satisfied with his proposal that the complainant seek a remedy via the Courts. The Ombudsman has received confirmation from the VIPA office that Mr Pierre's statement is correct. The matter was in fact raised several times between 2007 and 2008 (refer to **Appendix 21**). The question remains as to why Mr Ligo ignored this fact and used this as a basis for suspending Mr Pierre.

- 7.4.4 In addition, Mr Ligo wrongfully accused Mr Pierre of something that he was not involved in when he said that Mr Pierre failed to brief then Minister of Lands about the Marina Motel lease. At the time (August 2009), Mr Pierre was under suspension and Mr Peter Pata was Acting Director (see **Appendix 22 & Appendix 23**).

8. RECOMMENDATIONS

- 8.1 That Mr Jean-Marc Pierre may consider taking legal action against the Director General of Lands, Mr Ligo for wrongful suspension and breach of his right to natural justice.
- 8.2 That the Public Service Commission takes immediate steps to amend the relevant sections in the Public Service Staff Manual so as to avoid the contravention to the Constitution the International Covenant on Civil and Political Rights and also allow a proper interpretation of the Public Service Staff Manual.
- 8.3 That the Public Service Commission issue a directive to all heads of departments to liaise with the Public Service Commission on all disciplinary matters prior to taking any measures against any public servant.

Dated this 24th day of November 2011.

Pasa TOSUSU
OMBUDSMAN OF THE REPUBLIC OF VANUATU

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