

VANUATU

Introduction

Vanuatu gained its independence on 30 July 1980, after 74 years of joint colonial rule as the Anglo-French Condominium of the New Hebrides. Its Constitution provides for a republican political system headed by a President with largely ceremonial powers, elected by a two-thirds majority in an electoral college consisting of members of Parliament and the presidents of Regional Councils. The President's term of office is five years. The Prime Minister, who is the head of Government, is elected by a majority vote of the Parliament. The Prime Minister appoints the Council of Ministers, whose number may not exceed one-quarter (13) of the total parliamentary members.

Parliament is a 52-member unicameral house elected by all persons over 18 years old and normally sits for a four-year term, unless dissolved by a majority vote of no-confidence or a directive from the President on the advice of the Prime Minister. The National Council of Chiefs, called the *Malvatumauri*, is elected by district councils of chiefs and advises the Government on all matters concerning Ni-Vanuatu custom and tradition.

Vanuatu's 83 islands are inhabited by indigenous Melanesians (94%) plus Europeans, Asians and other Pacific Islanders. The country's total population is around 220,000 including about 35,000 who live in the capital, Port Vila on the island of Efate, and another 10,000 in Luganville on the northern island of Santo. The remaining roughly 80 percent of the population resides in the rural areas, following a predominantly subsistence lifestyle, including the production of cash crops. While Vanuatu has experienced significant economic growth over the past few years (averaging 5.6% per year), it still struggles to adequately meet the needs of its people. The country suffers from a low standard of literacy (34%) compared to other Pacific Island countries. The cost to families for educating their children is high and the infrastructure to enable rural farmers to increase their income is lacking. Allocating resources to provide basic services and for development purposes is, therefore, a major focus in the country's political debate, with competition between the rapidly growing urban centres and the rural majority a major issue.

A significant feature of Vanuatu's predominantly Melanesian population is its cultural diversity. Ni-Vanuatu speak over 100 indigenous languages plus Bislama, the local pidgin lingua franca and designated national language, and English and French. Ni-Vanuatu take pride in their cultural diversity, but an effect is that politics is entangled in a struggle to develop policies for the greater good of the nation in competition with what can be narrow-minded island and regional interests. Likewise, the country is still working through the problem of power



sharing between traditional custom chiefs, embodied in the *Malvatumauri*, and elected members of Parliament. There is still a significant gulf in the degree of understanding of what constitutes acceptable custom law in Vanuatu of the 21st century vis-à-vis the country's legal framework as guaranteed under the Constitution.

As Vanuatu's leaders struggle to deal with this array of political issues, they have also been hamstrung over the past two decades by instability resulting from the advent of government by coalition. This began in 1991 after a decade of relatively stable two-party government following independence. Instead of dealing with the issues of governing, politicians and their parties have had their attention diverted to the ongoing problem of securing and maintaining political power. Even those individuals committed to achieving the greater good find themselves having to compromise on policies or ignore corruption and maladministration among their coalition partners in order to remain in power. While it is still early, there is evidence that the coalition that emerged from the most recent election held on 2 September 2008 may embody strengths that will bring about an improvement in Vanuatu politics in the future.

The Constitution provides for the establishment of a Leadership Code,¹ but it was only passed by Parliament in 1998, following the establishment of the Office of the Ombudsman in 1995. The Code covers the behaviour of both elected and appointed leaders of both national and local governments. The Ombudsman is empowered to investigate and report any breaches to the Public Prosecutor, the Prime Minister and the Commissioner of Police, who investigates criminal offenses. Upon receiving the reports, the Public Prosecutor has the responsibility to decide whether there are sufficient grounds to prosecute the leader concerned. Proceedings against a leader are conducted in the same way as any other criminal proceedings. If found guilty, a leader may be fined or dismissed from office, which disqualifies the individual from standing for election or being appointed to a leadership position for a period of 10 years.

Section 1:

Principle 1 – Respect for the Law and the System of Government

- i) Respect for upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature:
 - a) Allow for the peaceful and lawful transfer of power;

Elections in Vanuatu are held at regular, prescribed intervals and their results, following occasional challenges regarding the conduct of certain candidates, are accepted without question. The transfer of power, when dictated by election results, has always occurred peacefully. National elections were held in September 2008. They were conducted for the most part peacefully and without incident, though there have been several challenges relating to the tactics used by successful candidates which violate the electoral law. Candidates are prohibited under the law from providing gifts to prospective voters during and immediately after the campaign – one candidate was disqualified for doing so in the 2008 election and, as a result, lost her seat, necessitating a by-election.²

¹Constitution of the Republic of Vanuatu ch 10, arts 66-68.

²Daily Post (Vanuatu), 16 December 2008.





There is no legal requirement for candidates to reveal the sources of their campaign funds with the result that access to money definitely influences the ability of certain individuals and parties to run successful campaigns. For the first time in 2008, one of the successful independent candidates published all his major campaign contributors in the local news paper.³

The use of the provision of the Constitution (ch 7) which allows the Parliament to pass a 'vote of no confidence' in the Prime Minister is an example of the upholding of the provisions of the Constitution allowing for a peaceful transference of power.⁴ Several motions of 'no confidence' were tabled in 2008, but did not pass.

- b) **Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament and ensure that the judiciary and Parliament are free from unlawful interference by the executive.**

The autonomy of the Judiciary and Parliament are assured through financial provisions in the national budget. There is no evidence of unlawful interference in the operation of either the Judiciary or Parliament by the Executive.

ii) **Upholding a just, fair and honest government through:**

- a) **Respect for and enforcement of the decisions of the courts and independent tribunals;**

One of the most positive aspects of Vanuatu's political culture, which has emerged over the past three decades since independence is a respect for 'the rule of law'. Indeed, the institution of government which seems to function with little controversy is the Judiciary. Among members of the public and political leaders, there is an acceptance that the courts are the appropriate place to deal with disputes when a problem cannot be solved or an accusation of wrong-doing is made, and there is seldom any dispute or open hostility expressed when the judgments are handed down.

An example is a December 2008 case concerning a court decision against a successful candidate in the recent election, who was found to have been guilty of cheating and bribery.⁵ The candidate lost her seat and a by-election was ordered.⁶ While there were comments by many that the practices she was found guilty of were common to most candidates, the decision was accepted without widespread complaint.

- b) **Enforcement of lawful instructions and lawfully created policies; and**

Political leaders, while accepting the rule of law in general, do not always follow the letter of the law in carrying out their duties.

A widely publicised case in 2008 concerned the building of a fish processing plant on the outskirts of Port Vila. The project was very controversial because of what many in the community felt was its threat to the natural environment – important, it was said, because of the significance of tourism to Port Vila.⁷ It was discovered that the Government had simply authorised construction of the plant, which was funded from Chinese sources, without following rigorous environmental protection procedures. Only after the buildings were complete and the filing of an injunction in court by a concerned group of citizens to halt the opening of the plant has a call gone out for an environmental impact study.

³Regenvanu discloses his campaign money source', *Daily Post* (Vanuatu), 10 September 2008.

⁴*Constitution of the Republic of Vanuatu* c 7, art 43(2).

⁵*Daily Post* (Vanuatu), 4 December 2008

⁶*Daily Post* (Vanuatu), above n 2

⁷*Daily Post* (Vanuatu), 9 April 2008



- c) **Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

Refer to instances reported in section b) above.

- d) **Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**

A major concern over the past few years, including in 2008, has been the failure of the Government to act on cases of maladministration.

One of the ministers in the previous Government was involved in numerous accidents involving government vehicles and several others were accused of vehicle misuse, but none were ever disciplined.⁸ The argument presented by the Prime Minister was that stability in government was his Government's priority – disciplining a minister could have led to a split in the coalition, leading to its collapse.⁹

In a report from the Ombudsman concerning a breach in the Leadership Code by a Government minister – i.e. he had held and continued to hold more than one public office for which he received financial remuneration – it was noted that the Prime Minister remained silent and did not revoke the appointments of the minister concerned. The report noted that this failure to act on the part of the Prime Minister 'may have demeaned his office as well as allowing his integrity, as a leader, to be called into question' by having breached the Leadership Code himself.¹⁰

- e) **Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;**

Reports of pressuring public servants seldom make it into the public eye. Nevertheless, interviews with various leaders, including politicians, revealed that the practice was widespread, reflecting the expectation among many individuals that they could use their status or traditional kin or island relationships to request or demand special treatment. Special mention was made of pressure put on customs officials at the international airport trying to carry out their job of monitoring the importation of goods.

- f) **Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;**

Under Chapter Four of the Constitution, Members of Parliament enjoy full immunity of expression in Parliament and are not subject to arrest during the period of a parliamentary sitting.¹¹ Otherwise, they do not enjoy any other special immunity.

- g) **Establishing and empowering bodies, such as the Ombudsman Commission, to independently investigate public complaints against government actions;**

A major problem exists in Vanuatu with regard to the office of the Ombudsman. Since the appointment of the first Ombudsman in 1995, numerous reports have been published revealing widespread fraud and corruption among Vanuatu's political leaders – noting clear violations of the country's Leadership Code



⁸*Daily Post* (Vanuatu), 26 June 2008; 29 June 2008

⁹*Daily Post* (Vanuatu), 1 July 2008

¹⁰Vanuatu, Office of the Ombudsman, *Public Report on the Alleged Breach of Section 25 of the Leadership Code Act No. 2 of 1998 by Mr. Patrick Crowby Manarewo Report* No 5167/2008/05 (2008).

¹¹*Constitution of the Republic of Vanuatu* ch 4, art 27(1).





– but with few exceptions, the Government has taken no action to deal with the accusations.

In 1997, Parliament passed an amendment to the Ombudsman Act, which removed the power of the Ombudsman to appeal to the Supreme Court to implement recommendations of the Ombudsman made in relation to a violation of human rights or to a breach of the Leadership Code. The result of this bill was to remove any means by the Ombudsman to initiate action against those individuals accused of leadership violations. The Ombudsman is now required to report to the Public Prosecutor and, when the complaint involves criminal misconduct, to the Commissioner of Police, who then reports to the Public Prosecutor following formal investigations. However, it is then up to the Public Prosecutor to follow up – and the situation remains to this day.

An example of the weakness of the institution of the Ombudsman is a current case involving the Mayor of Port Vila and others in which they are alleged to have been bribed in the sale of a piece of valuable waterfront land. The Office of the Ombudsman investigated and a report published confirming the accusation, but as yet no action has been taken by the Public Prosecutor's Office.¹² A provision to investigate matters considered in public welfare is provided for under the *Commissions of Inquiry Act [Cap. 28]*.

h) Ensuring that the Auditor-General reports directly and in a timely manner to Parliament/Congress;

Under Article 25, the Constitution establishes the role of an independent Auditor.¹³ The *Public Finance and Management Act*,¹⁴ which elaborates on the role, function and responsibilities of the Auditor-General, requires that the Director General of Finance submit an annual statement of Government transactions affecting the Public Fund to the Auditor-General. The Auditor-General then sends this statement together with an audit report to the Speaker of Parliament for tabling in Parliament. This has not happened for five years.

Institutional incapacity is the main reason for this failure to comply with the law. The office of the Auditor-General is under-staffed and the person in the position has not been able to improve the situation on her own. More important is the failure of the Government to recognise the problem and to act to rectify what is a clear breach of the Constitution.

iii) Protection of fundamental human rights:

On the whole, Vanuatu has the reputation internationally of respecting the human rights of its citizens. The Constitution offers extensive protection on 'fundamental rights and freedom of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex'.¹⁵ The right of the individual covers life, liberty, security of the person, protection of the law, freedom from inhuman treatment and force labour, freedom of conscience and worship, of expression, assembly and association, and movement. Privacy of home and property as well as equal treatment under law is the other rights set out in the Constitution. There are no reports that the Government or its agents have been involved in such acts as unlawful killings, politically motivated disappearances, arbitrary arrest or detention. There have

¹²*Daily Post* (Vanuatu), 4 April 2008; Vanuatu, Office of the Ombudsman, *Public Report on the Sale of the Port Vila Municipal Council Land at Fatumaru Bay Title No. 11/OE21/024 Report No 5080/2008/03* (2008); see below Section 9.

¹³*Constitution of the Republic of Vanuatu* c 4, art 27(4-6).

¹⁴*Public Finance and Economic Management Act* (Vanuatu) pt 6(25).

¹⁵*Constitution of the Republic of Vanuatu* pt 1.



been problems, however, in some areas: poor prison conditions, arrests without warrants, a slow judicial process, government corruption and violence and discrimination against women.¹⁶

While the Government would argue that it strongly upholds the principle of protecting human rights, examples of weak administration and traditional attitudes towards women have had the effect of undermining the rights of certain groups of Vanuatu's citizens. While official rhetoric emphasises a commitment to supporting the rights of women and children – Vanuatu has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention of the Rights of the Child (CRC) – some would argue that the Government has not lived up to the agreements, resulting in the violation of basic rights guaranteed under the Constitution. The year 2008 heralded a major achievement for the women of Vanuatu by the passage of the *Family Protection Act*,¹⁷ which was enacted in March 2009. Drafted in 1997, the Act had been hotly debated by politicians, church and traditional leaders and women's groups. It creates a specific domestic violence offence, allows police to intervene in instances of domestic violence and excludes bride price payments as a ground for defence in domestic violence cases. Its first reading in Parliament was in 2005.¹⁸

Women's groups and NGOs had campaigned for 11 years to see legislation put in place to protect women against spousal abuse. The Bill became a long-standing symbol of women's struggle for freedom from violence in Vanuatu. However, opposition from chiefs and leaders of various churches that it violated Vanuatu custom and Christian principles delayed passage. Even after passage by Parliament, the Vanuatu Council of Churches appealed to the President of Vanuatu to investigate the constitutionality of the government-draft bill.¹⁹ It remains to be seen to what extent police authorities will be prepared to intervene when violations occur and it will be almost impossible to monitor the degree to which the rights of women and children will be adequately protected in rural areas, where the power of local chiefs to maintain peace and stability dominates.

One of the most controversial events to take place in 2008 was the mass escape of prisoners from the main prison, who in the process, proceeded to set fire to the building and its contents – the result, it is commonly believed, of the mistreatment of prisoners. Complaints about the conditions in the prison have been ongoing for years, but bringing about improvements was not a high priority of Government officials. During 2008, however, the Government did negotiate an aid agreement with the New Zealand Government to build a new prison and upgrade personnel in charge of the prisoners, i.e. transferring responsibility for the prison from the Police to a new Correctional Services. The project was delayed due to a dispute over the land on which the new prison is to be built. The Government, however, made no effort to deal with the deteriorating conditions in the old prison (despite hosting a National Crime Summit in May 2008) and as a result, throughout 2008 – and in particular after the deployment of new Correctional Services staff – the number of prisoner escapes escalated (a total of four times), creating frustration among the Police and the Vanuatu Mobile Force, whose job it was to recapture them.

Alleged violence by Police towards prisoners was regularly reported in the newspapers prior to this time, which only increased as the situation escalated. A



¹⁶U.S. Department of State, *2008 Human Rights Report: Vanuatu*

¹⁷*Family Protection Act 2008* (Vanuatu).

¹⁸*Daily Post* (Vanuatu), 20 June 2008; 26 June 2008;

'President Won't Sign FPO', *Daily Post* (Vanuatu), 5 July 2008.

¹⁹'Churches Should Play a Bigger Role Under Family Protection Act: VCC', *Daily Post* (Vanuatu), 17 July 2008.





number of prisoners were physically abused in their recapture – i.e. limbs broken and cases of gunshot wounds.²⁰ The Government has not adequately dealt with this ongoing issue, which it has been argued reflects a violation of human rights and an increasing culture of police brutality.

Section 2:

Principle 2 – Respect for Cultural Values, Customs and Traditions

i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

The importance of *Kastom* (Custom) is recognised in Chapter 5 of the Constitution through the provision to provide for the establishment of a National Council of Chiefs – the *Malvatumauri* – which has the ‘general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.’²¹ It ‘may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before parliament.’²²

The *National Council of Chiefs Act No. 23 of 2006* stipulates that ‘Custom chief means a person who is recognised by a community as entitled under the custom of that community to hold the position of chief.’²³ The term ‘chief’ is used throughout the country, but a degree of ambiguity exists as to who actually has the right to be called ‘chief’. Several years ago the *Malvatumauri* decided to draw up a list of those it entitled to be designated chiefs, but the task became too politically divisive, it was never completed. The issue remains a problem to this day.

Section 3:

Principle 3 – Respect for Freedom of Religion

ii) Respect for religious belief and practice:

‘Freedom of conscience and worship’ is guaranteed under the Constitution.²⁴ ‘*Long God Yumi Stanap*’ (In God We Trust) is emblazoned on the coat of arms of Vanuatu. In the preamble, it is proclaimed that the Republic of Vanuatu is ‘founded on traditional Melanesian values, faith in God, and Christian principles’. The overwhelming majority of the population profess to be Christian, belonging to various denominations, but non-Christian groups also exist without any apparent discrimination – e.g. Muslim and Baha’i Faith.

Church denomination and political orientation among indigenous Ni-Vanuatu were linked at the time of independence in 1980. Protestants were predominantly Anglophone and pro-independence and Catholics were predominantly Francophone and in favour of a delayed independence – but the lines have become less defined in recent years.

Religious denomination is important among voters – i.e. election results often show that it is common for voters of a particular denomination to favour like candidates – but the issue ceases to be of significant importance among those elected in carrying out their duties.

²⁰*Daily Post* (Vanuatu), 22 September 2009; 17 December 2008.

²¹*Constitution of the Republic of Vanuatu* ch 5, art 30(1).

²²*Constitution of the Republic of Vanuatu* ch 5, art 30(2).

²³*National Council of Chiefs Act No. 23 of 2006* pt 1(1).

²⁴*Constitution of the Republic of Vanuatu* ch 2, art 5(f).



However, in 2008, the issue of religion in Vanuatu became a divisive issue in relation to the passage of the Family Protection Bill.²⁵ One of the arguments used by certain religious leaders to oppose the bill was that, as proclaimed in the preamble to the Constitution, Vanuatu is a Christian country and that the Family Protection Bill is against Christian principles and should, therefore, be considered unconstitutional.²⁶

Section 4:

Principle 4 – Respect for People on whose behalf Leaders Exercise Power

i) Proper use of official powers:

Ministers in Government possess discretionary powers with regard to policies approved through legislation, which have on occasion been abused.

One of the most controversial issues concerns the power of the Minister of Lands to approve leases when there is a dispute with regard to ownership.²⁷ This power was provided as part of the country's land reform policies introduced at independence, to ensure that former freehold title holders of valuable national assets (e.g. coconut plantations, cattle stations) could gain leases. When there was a dispute regarding custom ownership at independence, all freehold land returned to custom ownership, but determining ownership proved to be very difficult after decades of alienation.

This power has never been rescinded, despite the fact that such disputes associated with custom ownership and the granting of leases for developed properties are no longer a major issue. Nowadays, land disputes are common, but they are most often over undeveloped land and occur when one part of a land-owning group or individual wants to lease the land out to an investor and the other half does not. The Minister of Land's continued use of his discretionary power to grant leases when a dispute has had the effect of depriving many individuals and groups of their land rights.²⁸

The power of Chiefs extends primarily over communities in rural areas, which constitute around 80% of the population – a fact that is recognised by central government authorities and can be useful in maintaining peace and stability, but also creates problem. There is nothing in the Constitution that grants such authority over individual Ni-Vanuatu, but certain spheres of authority have over time been carved out through legislation passed in Parliament.

Chiefs, for example, have been given authority to participate in the newly established Customary Land Tribunal system, which was designed to provide a means to settle land disputes involving individuals, with the knowledge and recognised authority to be able to achieve a resolution. The following can be signalled: after several years in operation, the system does not appear to have been very successful, the reason for which is yet to be understood. Most of the problems have arisen due to the dissatisfaction among those disputants who have lost their cases.²⁹

Chiefs in rural areas and the urban centres have also assumed the authority to



²⁵See above n 17 and accompanying text.

²⁶*Daily Post* (Vanuatu), above n 19.

²⁷Minister of Lands bribery allegations, *Daily Post* (Vanuatu), 28 February 2008; Transparency International Vanuatu, PM and Land Minister, *Daily Post* (Vanuatu), 7 March 2008.

²⁸Land Minister and Luganville Land, *Daily Post* (Vanuatu), 11 March 2008; 16 June 2008.

²⁹*Daily Post* (Vanuatu), 8 April 2008.





deal with offensive behaviour ‘through *kastom*’, when under Vanuatu statutes, individuals may have broken the law and committed criminal offences. The following can be signalled about this system: cases of rape are especially contentious; while the male offenders and their families may prefer to settle the matter through *kastom*, which involves an apology and the presentation of certain valued items, the female victims continue to suffer.³⁰

The misuse of public money has been reported on a number of occasions over the years. In 2008, the Ombudsman handed down a report pointing out how the Port Vila Municipal Council Councillors had misused public monies by approving certain allowances for themselves during their terms as councillors. The report recommended that the Minister of Internal Affairs, who is responsible for the Municipal Councils, lodge an official complaint to the Police requesting them to carry out an investigation into the matter and that it be forwarded to the Public Prosecutor for prosecution.³¹ To date, no action has been taken. The current Minister for Internal Affairs was Mayor of the Port Vila Municipal Council at the time of the alleged misuse of funds.

ii) **Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:**

Government officials are slow to acknowledge mistakes or to correct misleading information.

iii) **Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:**

Government officials are slow to publicise their mistakes, reflecting the cultural tendency to avoid dealing with problems until forced to do so. A recent exception occurred when an official in the President’s office wrote an unauthorised letter under the presidential letterhead to an overseas businessman, promising that the State Office would propose him as special envoy from Vanuatu to USA, Canada and South America. When discovered, the incident was made public and the official suspended and instructed to ‘refrain from doing any further action, which will bring the office of the President into ridicule or question’. The Office of the President also wrote to the businessman concerned explaining that the letter had been written without authorisation.³²

iv) **Giving priority to official duties over private interests:**

No reported cases. The Leadership Code requires leaders, as defined in Article 67 of the Constitution, to behave in public and private life so as not to place themselves in a position that would give rise to a conflict of interest or which would compromise the fair exercise of their duties, demean their office or position, call in to question their integrity or endanger the integrity of the Government of Vanuatu.

v) **Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:**

No reported case.

vi) **Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:**

Under Vanuatu’s Leadership Code,³³ all Members of Parliament (MPs) and those

³⁰Interview.

³¹Office of the Ombudsman, Government of Vanuatu, *Public Report on the Breach of the Leadership Code Act by the Former Port Vila Municipal Council*, Report No 5174/2008/02 (2008).

³²‘Edgell suspended, told to explain’, *Daily Post* (Vanuatu), 28 August 2008.

³³*Leadership Code Act* (Vanuatu) pt 1(7).



defined as leaders by the Constitution, are required to disclose any conflicts of interest with regard to matters under their responsibility. The Code states clearly to whom leaders should report, but this is not monitored and it is known that there is considerable laxity in adherence to this requirement among many.³⁴

Under Vanuatu's Leadership Code,³⁵ every leader must complete an Annual Return for the preceding year, setting out details of the leader's assets and liabilities, and give it to the Clerk of Parliament. Very few leaders comply with this requirement. The Clerk warns the leader concerned that he/she is in breach of the Leadership Code and subsequently publishes in the Gazette a list of all leaders who have not complied with this requirement. It is the Ombudsman's role to investigate breaches in the Leadership Code, which results in the publications of a Public Report listing by name all those who have not complied. In January 2008, the Ombudsman reported that out of 185 leaders, 177 were in breach of the Leadership Code for failing to file their 2006 annual returns.³⁶

vii) Ensuring that public facilities are used only for public purposes, and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:

The degree to which political leaders are open and transparent in their use of public resources is mixed. On one hand, a very positive practice is the debate which occurs each year in Parliament, where the national budget is presented by the Minister of Finance and questions fielded by all members. On the other, a controversial practice involves the use made by MPs of their annual allocation of two million vatu (over A\$25 000) intended for projects in their constituencies. Each MP is required to present an accounting of the expenditures each year to the Speaker of the House. In 2008, only one MP met that requirement, claiming to be the first to do so in a long time.³⁷ There does not appear to be any mechanism to deal with those who fail to adhere to this legal requirement.

The misuse of government vehicles is an ongoing problem, which is constantly reported in the media and reflects badly on the country's leaders. Government vehicles, which should only be used on official business, are commonly seen after hours and on weekends in places which clearly involve personal use.³⁸ During 2008, one minister in particular, was involved in numerous accidents caused by driving under the influence of alcohol for which he was never disciplined by the then-Prime Minister.³⁹

Section 5:

Principle 5 – Respect for Members of the Public

i) Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:

The Constitution states that every person, including MPs, has the duty to respect and to act in the spirit of the Constitution.⁴⁰ In a country with over 100 different languages and cultural groups, it is inevitable that differences and stereotypes exist and can be heard expressed in casual conversation. However, in Vanuatu culture, it is important to avoid insult and confrontation as much as possible, thus negative

³⁴Interview.

³⁵*Leadership Code Act* (Vanuatu) pt 4.

³⁶Office of the Ombudsman, Government of Vanuatu, *Public Report on the Failure of 177 Leaders Who Failed to File 2006 Annual Returns*, Report No 6162/2008/01 (2008).

³⁷*Daily Post* (Vanuatu), 16 August 2008.

³⁸*Daily Post* (Vanuatu), 1 July 2008.

³⁹*Daily Post* (Vanuatu), 6 February 2008; 26 June 2008.

⁴⁰*Constitution of the Republic of Vanuatu* ch 2, pt II, article 7.





references to different groups are seldom expressed in public and almost never by political leaders.

Nevertheless, such cultural groupings are usually associated with particular islands – a reality which lends itself to regular accusations by the public that political leaders show favouritism towards one island or region over another, a practice commonly referred to as ‘islandism’ or ‘*wantokism*’.

At the same time, political leaders are well aware that in order to maintain a strong coalition government, they need to balance their distribution of portfolios and political appointments, thus the islands or regions are usually fairly evenly represented as can be seen in the new Government formed after the 2008 election.⁴¹

Free expression of views is guaranteed under the Constitution and practiced in Vanuatu. It is important to note that there is a cultural tendency to refrain from extreme confrontational rhetoric, which has the effect at times to restrain strong discussion and debate. A new development in the lead-up to the 2008 election was the introduction of a political talk-back radio program (*Traem tingting smol*) by one of the candidates.⁴² The program proved popular and, at the same time, somewhat controversial because of the forthright nature of the presentation by the candidate, who accused his opponents by name as being corrupt. This elicited an initial call by some that the program should be suspended, but nothing was done. One of the individuals on the receiving end of the criticism threatened to sue for libel, but chose not to in the end.⁴³

Another example of a more open discussion was the institution during the election of leadership forums; organised gatherings of candidates in which they presented themselves and their positions on various issues and fielded questions from the audience.⁴⁴

Most leaders would argue that Vanuatu allows freedom of the press, but incidents have occurred over the years and in 2008, which indicate that some leaders are not able to accept public criticism, reflecting the cultural disposition to avoid open confrontation. Following a number of strong editorials criticising the newly established Correctional Services, which had taken over control of the prisons, for its inability to prevent prisoner escapes,⁴⁵ a group of officers physically attacked the publisher of the *Daily Post* in his office.⁴⁶

Section 6:

Principle 6 – Economy and Efficiency

i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:

There is evidence that Vanuatu’s political leaders have problems managing the country’s economic resources. A major problem is the inability to balance the country’s budget – in 2008, as in previous years, the Government found it necessary to introduce a supporting appropriations bill to cover expenses of VT 255 million, much of which was allocated towards the purchase of new ministerial vehicles, as well as for the Melanesian Spearhead Group meeting in Port Vila in

⁴¹*Daily Post* (Vanuatu), late September – early October 2008.

⁴²*Daily Post* (Vanuatu), 11 August 2008.

⁴³*Daily Post* (Vanuatu), 30 August 2008.

⁴⁴Radio and television broadcasts, *Vanuatu Broadcasting and Television Corporation*, July-August 2008.

⁴⁵*Daily Post* (Vanuatu), 4 October 2008.

⁴⁶*Daily Post* (Vanuatu), 19 January 2009.



May/June 2008.⁴⁷ Most important to note is that these supporting appropriations bills are approved after the expenditure has occurred. Budget planning and prioritising is also a weakness with new ministerial cars prioritised over service delivery.

In addition to problems in working within the budget, some Government departments have great difficulty in monitoring the supply and distribution of materials. Under the Minister in the Government prior to the election, the Department of Health regularly ran out of supplies, including drugs, and was incapable of organising adequate maintenance of vital equipment. In contrast, there are some departments that have made significant improvement in their management strategies – the Customs Department, in particular, has built a reputation for being up-to-date in its use of appropriate computer equipment and programs and in promoting a strong sense of discipline among its staff members with good revenue management.⁴⁸

There is evidence that the new Government has begun to act to improve efficiency in economic and financial matters. It has put in place a Government Four-Year Matrix – a policy framework – which sets out priorities for ministries and a work program to which they are to be held accountable. It is hoped that this will enable coalition partners to focus on achieving long-term goals for the country rather than disputing among themselves over access to and the use of Government resources.⁴⁹

The use of political advisers in Government is considered by many as wasteful and a misuse of public funds, in that the positions are mainly used to provide rewards to political supporters. Political advisers do not hold public service positions, but are simply paid for from Government funds on an *ad hoc* basis. The appointments are normally for only a few months to advise the Prime Minister and Ministers, and then the advisers are replaced, which allows for the largesse to be spread around. The number per ministry has recently been increased from three each to six.⁵⁰ The Constitution however recognises the use of political advisers and explicitly excludes and denies political advisers security of tenure.

Section 7:

Principle 7 – Diligence

i) Exercise of proper diligence, care, and attention:

Key statutory bodies regularly demonstrate commitment to their Constitutional mandate. The Vanuatu Christian Council appealed to the President to investigate the alleged unconstitutionality of the Family Protection Bill following its passage by Parliament in June 2008. The President of Vanuatu, as per his office, ensured that the case was taken to the Supreme Court with an eventual ruling in December 2009 that the Bill was constitutional.⁵¹

The Ombudsman's Office investigates allegations of breaches of the Leadership Code, as well as those of corruption within Government. Transparency International, however, claim that this Office could be investigating more than it does.⁵²



⁴⁷ *Daily Post* (Vanuatu), 23 May 2008; 31 May 2008; 3 June 2008; 19 June 2008.

⁴⁸ Interviews.

⁴⁹ Interview.

⁵⁰ Interview.

⁵¹ *Daily Post* (Vanuatu), above n 19.

⁵² *Daily Post* (Vanuatu), 1 April 2008; No Ombudsman's Reports, *Daily Post* (Vanuatu), 18 April 2008; *Daily Post* (Vanuatu), 19 December 2008; 21 June 2008.





In 2008, the Government appointed an independent Commission of Inquiry to investigate the situation of prisoners within the Department of Correctional Services. However, there is also some evidence that there is limited adherence to due process for major proposals to Government:

An incident was reported in which the Prime Minister signed an agreement with an outside businessman relating to a proposed development project in Vanuatu, which would have cost the Government 10 billion vatu (US\$100 million). The deal was called off at the last minute, when it appeared that the proposal was a scam. Of most concern was the fact that the whole thing had been done without apparent Cabinet discussion or approval – a clear lack of transparency. The Prime Minister later acknowledged that the appropriate background research had not been undertaken, as was due process; however the Opposition threatened to stage a motion of no confidence due to the Prime Minister's decision.⁵³

The Prime Minister also accepted a commitment from the People's Republic of China to fund an e-Government project in Vanuatu, enabling links between provincial Government offices and the capital. The company appointed to manage the project was not selected according to the *Government Contracts and Tenders Act No. 11, 2001*.⁵⁴

The Director of Correctional Services was found to have acted outside of his authority in permitting the contentious temporary release of prisoners in contravention of the authority of his office.⁵⁵

ii) Always seeking to achieve high standards of public administration:

Criticism of government inefficiencies in planning and execution of policies are justified, but there is evidence that more effort is being made to improve the ability of leaders to better fulfil their roles. Training programs for MPs – some sponsored through donor funding – have increased with the aim of improving awareness of their role and work responsibilities. Performance management and appraisal systems have been established. A major issue with regard to the performance quality of MPs is the problem of low levels of education for some. Limited literacy means that some MPs do not read or understand the legislation before them.⁵⁶

In 2008, after years of falling into disrepair, public radio improved its technical capabilities and increased geographical coverage from 15% to 70% through donor funding. However, it remains under-utilised by Government officials in providing information in their areas of responsibility.

In early 2008, a prominent Vila-based businessman was arrested in Australia and charged with tax evasion scams. Subsequently, the Australian Federal Police (AFP) raided his Vila office, causing political debate over the legality of this action and accusation of threats to Vanuatu's sovereignty. The Prime Minister eventually announced to the media that an existing agreement between Vanuatu and Australia had been approved by Parliament two years earlier, which enabled the AFP to carry out such investigations in Vanuatu. The Government, in its attempts to keep the finance sector clean of money laundering had agreed to the legislation prior to this event, which reflects Vanuatu's international obligations. The case caused a re-surfacing of issues around Australia's 'big brother' approach and Vanuatu's sovereignty.⁵⁷

⁵³*Daily Post* (Vanuatu), 8 March 2008; 15 March 2008; 22 March 2008; 17 April 2008.

⁵⁴*Daily Post* (Vanuatu), 16 May 2008.

⁵⁵*Daily Post* (Vanuatu), 11 June 2008; 22 June 2008.

⁵⁶Interview.

⁵⁷*Daily Post* (Vanuatu), 7, 8, 12, 14, 16 May 2008; 9, 21, 26 July 2008; 6 August 2008.



Section 8:

Principle 8 – National Peace and Security

i) Promotion of peace, security and harmony:

The Vanuatu Government actively cooperates with neighbouring countries to strengthen its and the Pacific region's security. Vanuatu has contributed military personnel to the UN operation in East Timor and to the Regional Assistance Mission to the Solomon Islands (RAMSI). Vanuatu is a member of the Pacific Islands Forum and agreed to host the headquarters for the Melanesian Spearhead Group, which was opened in May 2008.⁵⁸ In addition, a prominent MP agreed to participate in the group to oversee developments in Fiji related to electoral reform.⁵⁹

A state of emergency owing to a natural disaster, to prevent a threat to or to restore public order is declared by the President on the advice of the Council of Ministers. This also includes a state where the country is at war. No state of emergency was declared in 2008.

The Vanuatu Government, having passed legislation in 2006 authorising Government officials to work with the Australian Government on issues relating to money laundering and tax fraud, agreed to a visit by members of the AFP to collect evidence related to a case of tax fraud by certain Australian citizens involving a prominent accountant operating in Vanuatu. The episode created great controversy among the public, accusing the Government of caving into pressure from the Australian Government, while failing to understand that the operation was legal as provided under legislation passed in 2006.⁶⁰

The Vanuatu Government has agreed to adopt a number of international conventions, though there is not always strong support to implement the required mandates nationally. In 2008, the Parliament ratified the Convention on the Protection of Persons with Disabilities. In addition, Vanuatu has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention of the Rights of the Child (CRC), but as noted above, has been slow in bringing out legislation to protect these rights in the form of the Family Protection Bill, which was finally passed in 2008 and enacted in March 2009.

ii) Refusal to give or obey an illegal order to use force against another citizen:

No reported case.

Section 9:

Principle 9 – Respect for Office

i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:

There is a tendency among some political leaders in Government to act without adequate consultation, resulting in the creation of confusion and outright hostility within the community – the result; it would seem, of rushing through legislation despite the existence of a set process.

⁵⁸ *Daily Post* (Vanuatu), 23 May 2008.

⁵⁹ *Radio Vanuatu*, July 2008.

⁶⁰ *Daily Post* (Vanuatu), 29 April 2008; 7 May 2008; 26 July 2008.





For example, the passage in November 2008 of what is known as the *Employment Act Amendment of 2008*, created widespread controversy among local businessmen.⁶¹ The Bill legislated for a significant increase (400%) in severance pay for employees. A number of local businessmen threatened to dismiss most of their employees before the Bill came into effect. There was widespread outrage that there had been almost no consultation by the Government prior to the introduction of the Bill. The Bill for the Employment (Amendment) Act was passed, but then came under such vocal criticism from some members of the public that it was not allowed to be gazetted.⁶²

Likewise, there is regular criticism from local bus and taxi owners regarding the continuing issuance of new licenses by the Government without any apparent regard for the effect of the increased number on the ability of existing drivers to cover their costs and make a living – the result, it is said, of a lack of consultation. Similarly, lack of enforcement of reserved industries legislation under the Vanuatu Investment Promotion Authority (VIPA) sparked major protests from land transport providers.

In another case, it took seven years to gazette the important act to regulate the kava industry – a vital new source of income to rural farmers.

Several significant cases surfaced during 2008, which indicate a lack of transparency in the exercise of authority of some leaders. The Minister of Lands was in court to defend himself against the accusation that he had taken a bribe in the process of approving a lease.⁶³ He was acquitted due to the fact, according to the judgment, that the key witness against the Minister was also alleged to have been involved.⁶⁴ Given the problem over the issue of the power of the Minister of Lands to sign leases under dispute, this incident did little to assure the public of improving transparency.

The Ombudsman reported that in May 2006, the Port Vila Municipal Council decided to sell a piece of valuable waterfront land at a price lower than that offered by the highest bidder. It was reported that the Lord Mayor did not inform the Council of the higher bid.⁶⁵ It recommended that the Public Prosecutor instigate prosecution against the Lord Mayor for bribery, having discovered an unaccounted for 2 million vatu deposit into his account at the National Bank of Vanuatu.⁶⁶ It was also recommended that the charge of bribery be instigated against the then-Chairman of Air Vanuatu, who was also involved in the allegedly corrupt transaction.⁶⁷

ii) Seek to strengthen the integrity of a leader's Office and its effectiveness:

The current President has regularly sought to exercise leadership as provided through his office in commenting publicly on the effectiveness of Vanuatu's Constitution. There have been several official reviews, but the reports have never been made public or acted upon. He has on several occasions suggested that a more effective form of government for Vanuatu might be a Presidential system.⁶⁸

⁶¹*Daily Post* (Vanuatu), 25, 26, 28, November, 2008; 4 December 2008.

⁶²Interview.

⁶³*Daily Post* (Vanuatu), 9 May 2008.

⁶⁴*Daily Post* (Vanuatu), 11 August 2008.

⁶⁵Office of the Ombudsman, Government of Vanuatu, *Public Report on the Breach of the Leadership Code Act by the Former Port Vila Municipal Council* Report No 0097/2008/04 (2008).

⁶⁶*Ibid.*

⁶⁷*Ibid.*

⁶⁸*Daily Post* (Vanuatu), 6 October 2008.



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Radio Vanuatu

Vanuatu Broadcasting and Television Corporation

