

Overall Score:

56 - Very Weak

Legal Framework Score:

59 - Very Weak

Actual Implementation Score:

47 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ~~62~~ Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

The Charitable Associations (Incorporation) Act [CAP 140] enables the formal registration of committees of charitable associations. Charitable purposes includes " objects of a religious, educational, cultural, scientific or sporting nature or for general social welfare and any other object the main purpose of which is not financial profit which the Minister declares to be charitable for the purposes of this Act" (section 1). The focus on eligibility for registration lies in the not-for-profit status rather than the activity focus of an organization.

References:

Charitable Associations (Incorporation) Act [CAP 140]. 1982.
http://www.pacilii.org/vu/legis/consol_act/caa376/

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

All non-government organizations are free to accept funding from any foreign or domestic sources. The Charitable Associations (Incorporation) Act [CAP 140] does not restrict funding sources for anti-corruption/good governance NGOs.

References:

Charitable Associations (Incorporation) Act [CAP 140]. 1982.
http://www.pacii.org/vu/legis/consol_act/caa376/

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | **No**

Comments:

The Charitable Associations (Incorporation) Act [CAP 140] does not require any NGO to disclose their sources of funding. However, section 5 of the Financial Transactions Reporting Act [CAP268], requires financial institutions to report any suspicious transactions to the Financial Intelligence Unit within 24 hours of becoming aware of that transaction (s5B), which would also apply to NGO accountholders. Foreign-source funding exceeding VT1 million (USD10,000) is the threshold for banking institutions to request evidence of source of funding, such as proof of a grant agreement or contract, but public disclosure is not required.

References:

Charitable Associations (Incorporation) Act [CAP 140]. 1982.
http://www.pacii.org/vu/legis/consol_act/caa376/

Financial Transactions Reporting Act [CAP 268]. 2000.
http://www.pacii.org/vu/legis/consol_act/ftra335/

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

92

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

Under the Act, not-for-profit associations are required to write a constitution, elect a governing committee or board, and lodge the completed registration documents and constitution with the Vanuatu Financial Services Commission, along with a fee of VT10,000 (USD100). The VFSC typically approves the registration within a month and the NGO is then free to operate. An official of a long-time good governance NGO indicated that the Vanuatu government has never placed any restrictions on the creation of new NGOs.

During 2013, there were 4 anti-corruption/good governance NGOs in Vanuatu: Transparency Vanuatu, Wan Smolbag, Youth Against Corruption and Women Against Crime and Corruption. In addition there were a number of NGOs who occasionally worked on good governance issues during the period of study without any restrictions from government, such as the Media Association of Vanuatu, the Pacific Institute of Public Policy and Further Arts, a music and arts based NGO that partnered in an anti-corruption campaign with Youth Against Corruption. The Vanuatu Association of NGOs (VANGO) is the umbrella organization for all NGOs, and includes various sector-based advocacy coalitions, such as Vanuatu Education Policy Advocacy Coalition (VEPAC) and Action for CEDAW Today, that play an important role in holding government to account on education and gender issues (Anti-Corruption Advocate, March 3, 2014).

References:

Charitable Associations (Incorporation) Act [CAP 140]. 1982.

http://www.paclii.org/vu/legis/consol_act/caa376/

Interview with NGO representative who requested to remain anonymous. February 22, 2014.

Interview with Anti-Corruption Advocate who requested to remain anonymous. March 3, 2014.

Youth Against Corruption Website.

<http://www.yacv.org/yacv/>

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Non-governmental organizations focused on anti-corruption or good governance engage more frequently in policy-making processes than in political processes. The government regularly invites NGOs to participate in policy development in areas of relevance. The national development plan, the Priorities and Action Agenda 2006-2015 specifically engaged NGOs in the identification of priorities, a practice that continued into 2013. For example, in 2013 the Media Association of Vanuatu played a critical role in progressing Right to Information legislation, collaborating closely with officials within the Prime Minister's Office (MAV representative, February 28, 2014; Islands Business, August 21, 2013).

Social institutions such as the Malvatumauri National Council of Chiefs and the Vanuatu Christian Council play a leading role in shaping public opinion on political matters due to their statutory status and Constitutional recognition respectively. In 2013, the Malvatumauri was a critical political ally in the contentious land law reform process led by the Minister for Lands, Ralph Regenvanu, wielding convening power for the National Land Law Reform Summit in October 2013 that brought together several hundred citizens to debate reform priorities (Vanuatu Daily Post, October 16, 2013).

References:

Interview with NGO representative. February 22, 2014.

Interview with Anti-Corruption Advocate. March 3, 2014.

Interview with representative, Media Association of Vanuatu. February 28, 2014.

Vanuatu Priorities and Action Agenda, 2006 – 2015. Vanuatu Government.

"Vanuatu National Right to Information Policy," Islands Business. August 21, 2013.

<http://www.islandsbusiness.com/news/vanuatu/2529/vanuatu-national-right-to-information-policy/>

"Public Invited to National Land Law Reform Summit," Vanuatu Daily Post, October 16, 2013.

<http://www.dailypost.vu/content/public-invited-national-land-law-reform-summit>

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

The study period, there were no anti-corruption/good governance NGOs were shut down by government for their work related to corruption. While the government's relationship with NGOs can be fractious, such as in response to media-based allegations of corruption and/or regular written enquiries by NGOs such as Transparency Vanuatu, the government did not threaten the closure of any NGO (Anti-Corruption Advocate, March 3, 2014). In December 2013, Transparency Vanuatu celebrated 10 years of Anti-Corruption Day in Vanuatu, highlighting their role in ensuring that government corruption was published in Ombudsman's reports and in the media (Vanuatu Daily Post, December 16, 2013).

There was one occasion in February 2013, when then-government public relations officer, Jeff Joel Patunvanu, strongly criticized the Malvatumauri National Council of Chiefs for commenting on corruption within government. "It is not the role of the National Council of Chiefs to tell the Government to pull up its socks," said Patunvanu (Garae, April 8, 2013). Chief Tirsupe of the Malvatumauri responded that, "the Malvatumauri has a mandate representing 22 Island Councils of Chiefs. It has a legal responsibility to speak out on issues or developments which affect or look set to affect the Government or the people of the country." Following a change in government soon after, the new Prime Minister Moana Carcasses organized a reconciliation with the Malvatumauri to mend relations.

References:

"Transparency Vanuatu Celebrates 10 Years of Anti-Corruption Day," Vanuatu Daily Post, December 16, 2013. <http://www.dailypost.vu/content/transparency-vanuatu-celebrates-10-years-anti-corruption-day>

Interview with Anti-Corruption Advocate who requested to remain anonymous. March 3, 2014.

"PM Corrects Predecessor's Wrong with Malvatumauri," by Len Garae, Vanuatu Daily Post, April 8, 2013. <http://www.dailypost.vu/content/pm-corrects-predecessor%E2%80%99s-wrong-malvatumauri>

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

In the past year, no anti-corruption/good governance NGO activities working on corruption issues were imprisoned. While one arrest was made of senior journalist Gratien Molsoul in April 2013 for comments about the government posted on Facebook, Mr Molsoul was commenting in personal capacity, unrelated to a corruption issue (Ligo, May 8, 2013 and MAV representative, February 28, 2014).

Government representatives may target specific civil society actors in media responses to allegations of corruption, but no arrests were made of anti-corruption activities. There was one occasion in February 2013, when then-government public relations officer, Jeff Joel Patunvanu, strongly criticized the Malvatumauri National Council of Chiefs for commenting on corruption within government. "It is not the role of the National Council of Chiefs to tell the Government to pull up its socks," said Patunvanu (Garae, April 8, 2013). Chief Tirsupe of the Malvatumauri responded that, "the Malvatumauri has a mandate representing 22 Island Councils of Chiefs. It has a legal responsibility to speak out on issues or developments which affect or look set to affect the Government or the people of the country." Following a change in government soon after, the new Prime Minister Moana Carcasses organized a reconciliation with the Malvatumauri to mend relations.

References:

Interview with NGO representative who requested to remain anonymous. February 22, 2014.

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014.

"Journalist arrested," by Godwin Ligo, Vanuatu Daily Post. May 8, 2013.

<http://www.dailypost.vu/content/journalist-arrested>

"PM Corrects Predecessor's Wrong with Malvatumauri," by Len Garae, Vanuatu Daily Post, April 8, 2013. <http://www.dailypost.vu/content/pm-corrects-predecessor%E2%80%99s-wrong-malvatumauri>

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

In the past year, no anti-corruption/good governance NGO activists working on corruption issues were harmed or physically assaulted. While one arrest was made of senior journalist Gratien Molsoul in April 2013 for comments about the government posted on Facebook, Mr Molsoul was commenting in personal capacity, unrelated to a corruption issue, and was unharmed (Ligo, May 8, 2013 and Nunn, February 28, 2014).

There is reasonable public appetite for corruption-awareness activities and good governance NGOs in Vanuatu are well regarded by most sectors of the population (private, public and grassroots). Government representatives may target specific civil society actors in media responses to allegations of corruption, but generally no physical harm occurs. For example, in February 2013, then-government public relations officer, Jeff Joel Patunvanu, strongly criticized the Malvatumauri National Council of Chiefs for commenting on corruption within government. "It is not the role of the National Council of Chiefs to tell the Government to pull up its socks," said Patunvanu (Garae, April 8, 2013). Chief Tirsupe of the Malvatumauri responded that, "the Malvatumauri has a mandate representing 22 Island Councils of Chiefs. It has a legal responsibility to speak out on issues or developments which affect or look set to affect the Government or the people of the country." Following a change in government soon after, the new Prime Minister Moana Carcasses organized a reconciliation with the Malvatumauri to mend relations.

References:

"PM Corrects Predecessor's Wrong with Malvatumauri," by Len Garae, Vanuatu Daily Post, April 8, 2013. <http://www.dailypost.vu/content/pm-corrects-predecessor%E2%80%99s-wrong-malvatumauri>

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014. Source requested anonymity.

"Journalist arrested," by Godwin Ligo, Vanuatu Daily Post. May 8, 2013.

<http://www.dailypost.vu/content/journalist-arrested>

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

In the past year, no anti-corruption/good governance NGO activities working on corruption issues were killed. While one arrest

was made of senior journalist Gratien Molsoul in April 2013 for comments about the government posted on Facebook, Mr Molsoul was commenting in personal capacity, unrelated to a corruption issue, and was unharmed (Ligo, May 8, 2013 and MAV representative, February 28, 2014).

Government representatives may target specific civil society actors in media responses to allegations of corruption, but no physical harm occurred. For example, in February 2013, then-government public relations officer, Jeff Joel Patunvanu, strongly criticized the Malvatumauri National Council of Chiefs for commenting on corruption within government. "It is not the role of the National Council of Chiefs to tell the Government to pull up its socks," said Patunvanu (Garae, April 8, 2013). Chief Tirsupe of the Malvatumauri responded that, "the Malvatumauri has a mandate representing 22 Island Councils of Chiefs. It has a legal responsibility to speak out on issues or developments which affect or look set to affect the Government or the people of the country." Following a change in government soon after, the new Prime Minister Moana Carcasses organized a reconciliation with the Malvatumauri to mend relations.

References:

"Journalist arrested," by Godwin Ligo, Vanuatu Daily Post. May 8, 2013.
<http://www.dailypost.vu/content/journalist-arrested>

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014.

"PM Corrects Predecessor's Wrong with Malvatumauri," by Len Garae, Vanuatu Daily Post, April 8, 2013. <http://www.dailypost.vu/content/pm-corrects-predecessor%E2%80%99s-wrong-malvatumauri>

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Freedom of assembly and association is guaranteed by the Constitution of the Republic of Vanuatu (Article 5(1h)). In 2006, Vanuatu became signatory to the international labour Convention on Freedom of Association and Protection of the Right to Organize, empowering workers to bargain collectively and strike.

Trade Unions are registered under the Trade Unions Act [CAP 161] whose principal objectives include the regulation of relations between workers and employers (TUA, 1). Trade unions are required to register with the Registrar of Trade Unions and Receiver General (currently the Commissioner of the Vanuatu Financial Services Commission) (TUA, 3 and 5). The Registrar may refuse trade union registration if any of the union rules are unlawful or if the trade union is likely to be used for unlawful purposes (TUA, 9(1)). Unregistered trade unions are not recognized until they register (TUA, 16).

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 5.
<http://www.parliament.gov.vu/Constitution.html>

Freedom of Association and Protection of the Right to Organise Convention (Ratification) Act.
2006. <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88507/101224/F924401214/VUT88507.pdf>

Trade Unions Act [CAP 161]. 1983.
http://www.vfsc.vu/Download/laws/trade_unions.pdf

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

While several international reports document five independent trade unions organized under the umbrella of the Vanuatu Council of Trade Unions, which was registered in 2008, in practice only the Vanuatu Teachers Union and the Vanuatu National Workers Union are functioning. In 2013, there were over 2,000 documented union members out of a total (formal and informal) workforce of more than 90,000 people (National Census 2009). Historically, only four collective bargaining agreements have existed in Vanuatu, suggesting that despite supportive legislation, this practice is minimally pursued (ILO 2009: 11).

The Vanuatu National Workers Union is generally active in critiquing/participating in major trade discussions, such as the controversial Pacer-PLUS agreement with Australia and New Zealand and the Melanesian Spearhead Group trade agreements (Makin, May 2013).

During the survey period, collective action was taken in the nursing and hotel industries. In June 2013, the Vanuatu National Workers Union successfully negotiated worker benefits for 213 members at the Warwick Le Lagon Hotel (Binihi, June 2013). Hotel workers went on strike for half a day, protesting unresolved issues relating to overtime wages, night allowances and other work conditions. In December 2013, over a quarter of the 400 nurses under the Vanuatu Nursing Association, signed a petition calling for the sacking of health minister, Serge Vohor over concerns about the proposed health sector reform. They were suspended on half pay for six months. Although this was rescinded after 48 hours, several nurses did not return to work over unresolved grievances (WSWS, Dec 2013).

References:

Freedom of the World 2013 Report. Freedom House. <http://www.freedomhouse.org/report/freedom-world/2013/vanuatu#.Uv7xFEJdW2U>

Vanuatu Daily Digest, by Bob Makin, May 24, 2013. <http://vanuatudaily.wordpress.com/2013/05/24/vanuatu-daily-news-digest-24-may-2013/>

Decent Work Country Programme – Vanuatu. International Labour Organization. 22 April 2009. <http://www.ilo.org/public/english/anniversary/90th/download/events/vanuatu/dwcp.pdf>

"Warwick Le Lagon to pay 213 'no work' employees," by Ricky Binihi, Vanuatu Daily Post. June 24, 2013. <http://www.dailypost.vu/content/warwick-le-lagon-pay-213-%E2%80%9Cno-work%E2%80%9D-employees>

Workers Struggles: Asia, Australia and the Pacific. December 21, 2013. World Socialist Web Site. <https://www.wsws.org/en/articles/2013/12/21/labo-d21.html>

National Population and Housing Census 2009. Vanuatu National Statistics Office. Labor Force Datasets. http://www.vnsso.gov.vu/index.php/component/docman/cat_view/3-census-2009/8-7-labour-force?limitstart=0

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

The Constitution of Vanuatu guarantees freedom of expression (Article 5 (1g)), which encompasses media freedom. There are no restrictions on the media for reporting on government or other affairs.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 5.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Regional State of Media and Communication Report 2013. Pacific Media Assistance Program (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. <http://www.pacmas.org/profile/pacmas-state-of-media-and-communication-report-2013/>

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

The Constitution of Vanuatu guarantees freedom of expression (Article 5 (1g)), which encompasses freedom of speech.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 5.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

94

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The government reserves newspaper publication for ni-Vanuatu citizens (Newspaper Act [CAP 156] of 1982), although non-citizens are permitted to obtain licensing approval from the relevant Ministry on a case-by-case basis (Neil-Jones, Vanuatu Daily Post, October 30, 2013). Other than ownership requirements, print media undergo standard, annual business registration processes. In the case of the Independent newspaper, they have registered under the Charitable Associations Act [CAP 140]. These ownership requirements and annual licensing are not significant barriers to form a print media entity (MAV, February 28, 2014).

However, due to relatively high overhead costs and minimal returns, only three broadsheets were in operation in 2013 (the Independent, the Vanuatu Daily Post and the Vanuatu Times), as well as a monthly magazine, Island Times. In general, print

media has little penetration of the national population: Vanuatu's main daily newspaper, the Vanuatu Daily Post, has an average circulation of 2,000-3,000 per issue, out of a population of 250,000 (PACMAS 2013: 4).

Reflecting on 20 years of running his print media company, the Vanuatu Daily Post Publisher Marc Neil-Jones covered breaking stories, threats to media freedom and the creation of a structured freelance journalism market, but at no point was a print media license delayed, revoked or not renewed (Vanuatu Daily Post, October 30, 2013).

References:

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014. Source requested anonymity.

Newspaper Act [CAP 156] of 1982.

http://www.paclii.org/vu/legis/consol_act/nopa424/

Charitable Associations (Incorporation) Act [CAP 140]. 1982. http://www.paclii.org/vu/legis/consol_act/caa376/

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-Report_FINAL.pdf

"Our newspaper milestones," by Marc Neil-Jones, Vanuatu Daily Post. October 30, 2013. <http://www.dailypost.vu/content/our-newspaper-milestones>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

The Newspaper Act [CAP 156] of 1982 restricts the publication of newspapers in Vanuatu to citizens. Print media licenses are not required for operation in Vanuatu. The only legislation governing media ownership and practice relates to broadcast and television media (Vanuatu Broadcasting and Television Act [CAP 214]). Print media entities typically register under the Business License Act [CAP 294]. Section 12 of the BLA [CAP 294] provides for an appeal process, should a business license be denied. Print media is categorized as a Class B industry "Manufacturing Industries and Trade" under Schedule 1 of the BLA [CAP 249].

References:

Vanuatu Broadcasting and Television Act [CAP 214]. 1992. Amendments in 2002 and 2003. http://www.paclii.org/vu/legis/consol_act/bata258/

Business License Act [CAP 249]. 1998. http://www.paclii.org/vu/legis/consol_act/bla165/

Newspaper Act [CAP 156] of 1982.

http://www.paclii.org/vu/legis/consol_act/nopa424/

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

While the Newspaper Act [CAP 156] reserves print media for ni-Vanuatu citizens, non-citizens are permitted to publish or own a newspaper if the Minister for Media (the Prime Minister) gives approval. "Print media registration is relatively straightforward, with few barriers to entry. You only need a business license," (Media Association of Vanuatu representative, February 28, 2014).

The Department of Customs, Rates and Taxes processes print media licenses (Class "B" industry) as part of regular business licensing procedures. Licenses are renewed annually through the main branch in Port Vila by 31 January each year. A government official has indicated that the process can take 4-6 weeks.

Reflecting on 20 years of running his print media company, the Vanuatu Daily Post Publisher Marc Neil-Jones covered breaking stories, threats to media freedom and the creation of a structured freelance journalism market, but at no point was a print media license delayed, revoked or not renewed (Vanuatu Daily Post, October 30, 2013).

References:

Interview with Media Association of Vanuatu representative. February 28, 2014. Source requested anonymity.

"Our newspaper milestones," by Marc Neil-Jones, Vanuatu Daily Post. October 30, 2013. <http://www.dailypost.vu/content/our-newspaper-milestones>

Interview with government official who requested to remain anonymous, Office of Customs, Rates and Taxes, February 27, 2014.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A print media license is not required by law, although a business license, which includes a media category, is required to be purchased annually from the Department of Customs, Rates and Taxes in Port Vila, the capital city. The cost of the license is calculated based on the annual business turnover and includes a one-time VT20,000 (USD200) registration fee for new businesses. Businesses that make more than VT 4 million (USD40,000) per year must be VAT (Value Added Tax) registered, and in addition to the basic business fee pay 12.5% of revenue to government. There is a penalty fee charge for late renewals, calculated as 10% interest per month on total fees payable. The deadline for renewals is 31 January each year.

Of the three national newspapers, only the Vanuatu Times and the Vanuatu Daily Post operate using a business license. The Independent newspaper is registered as a charitable foundation (not-for-profit), under Independent Foundation, Inc. (PACMAS 2013: 4). Under this category, the Independent is not required to pay an annual permit for operation.

All three national newspapers are located in Port Vila, therefore access to licensing services is not an issue for them, however new non-Vila based print outlets would need to travel to the capital to obtain a license. Generally, operational costs rather than licensing fees can have a more restrictive impact on print media formation. For example, until 2010 the Vanuatu Daily Post was the only newspaper to be printed in Vanuatu, while other newspapers such as the Independent were printed abroad in New Zealand. In 2013, only the Vanuatu Daily Post and the Vanuatu Times had local printing presses. Prior to the period of study, the Ni-Vanuatu newspaper ceased operations in 2012 due to the high cost of operation (MAV representative, February 28, 2014).

References:

Pacific Media Assistance Scheme (PACMAS). Vanuatu State of the Media and Communication Report 2013. Australian Broadcasting Corporation and AusAID. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-Report_FINAL.pdf

"Information for New and Existing Business License Holders," Department Customs and Inland Revenue, November 14, 2013. <http://www.customsinlandrevenue.gov.vu/index.php/inland-revenue/rates-taxes/business-license>

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014.

Interview with government official who requested to remain anonymous, Office of Customs, Rates and Taxes, February 27, 2014.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Formation of broadcast media groups is possible under sections 43 and 45 of the Vanuatu Broadcasting and Television Corporation Act [CAP 214], although applications for licenses can be delayed for long periods of time. In addition, since 2012, the Telecommunications and Radio-communications Regulator (TRR) is responsible for providing radio apparatus licenses, allocating bandwidth for licensed radio broadcasters and collecting associated fees (Official Gazette, November 26, 2012). The Vanuatu Government requires ministerial approval for the creation of a private broadcasting station. The Prime Minister's portfolio includes media, as such approval for broadcast licenses are sought at this level of government. During the period of this study, there were five television stations (one government owned, the rest owned by foreign entities) and six radio stations (two government owned, the rest owned privately, by communities or by religious groups) (PACMAS 2013: 13). Given the relatively small number of broadcasting entities, bandwidth allocation has not yet emerged as an area of concern.

Private media entities have regularly raised concerns about the licensing process and the lack of separation of regulatory and broadcasting functions of the state-owned Vanuatu Broadcasting and Television Corporation (VBTC). In January 2013, CEO of FM107, Arthur Knight publicly commented on "issues with [broadcast] licensing in terms of impartiality, which ... we'd like to raise with the Prime Minister to ensure that the system works better" (Radio Australia, January 16, 2013). The government had issued a shut-down notice to FM 107 for non-payment of licensing fees.

While outside of the study period, media allegations of biased application of VBTC's Broadcast License guidelines abounded during a period of private media expansion in the late 2000s (ABC 2010: 8). Then-member of parliament and former VBTC Board Chair, Patrick Crowby, defended the process saying, "The government has the duty and responsibility to scrutinize all applications for radio or television license, to ensure that the operation of such a service would be for the betterment of the country. It is equally important that those granted a license to operate in the media industry have a very good understanding and highly respect the cultures of our country" (Perrottet, November 2010). However, since 2010, public confidence in the independence of broadcasting regulation has gradually increased with the introduction of the Telecommunications and Radio-communications Regulator's role in 2012 to provide radio apparatus licenses and allocate bandwidths.

References:

Vanuatu Broadcasting and Television Act [CAP 214]. 1992. Amendments in 2002 and 2003.

http://www.paclii.org/vu/legis/consol_act/bata258/

"Radio Apparatus Licence and Spectrum Licence (Fees) Regulation Order no. 153 of 2012." Official Gazette of the Republic of Vanuatu no. 40, November 26,

2012. [http://www.trr.vu/attachments/article/98/Radio%20Apparatus%20Licence%20%20Spectrum%20Fees%20Regulation%20\(Gazetted%20Copy\).pdf](http://www.trr.vu/attachments/article/98/Radio%20Apparatus%20Licence%20%20Spectrum%20Fees%20Regulation%20(Gazetted%20Copy).pdf)

Regional State of Media and Communication Report 2013. Pacific Media Assistance Program (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. <http://www.pacmas.org/profile/pacmas-state-of-media-and-communication-report-2013/>

Vois Blong Yumi Project Progress Report, July – December 2010. Australian Broadcasting Corporation – International Projects. <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/vois-blong-yumi-progress-report-jul-dec10.pdf>

"Vanuatu: Rival media clash in slanging match over radio license," by Alex Perrottet, Pacific Media Watch. November 5, 2010. <http://pacific.scoop.co.nz/2010/11/vanuatu-rival-media-clash-in-slanging-match-over-radio-licence/>

"VBTC Clears Air on Broadcast License Issuance," Vanuatu Daily Post. November 15, 2010. <http://www.dailypost.vu/content/vbtc-clears-air-broadcast-license-issuance>

"Vanuatu radio station says government claims are false," Radio Australia, January 16, 2013. <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/vanuatu-radio-station-says-government-claims-are-false/1074018>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Section 43 (1) of the Vanuatu Broadcasting and Television Act [CAP 214] requires that (1) No person other than the Corporation established under this Act shall maintain a broadcasting station unless such person has obtained a license from the Minister; (2) The Minister may, with the approval of the Council of Ministers, issue any person a license for the establishment and maintenance of a private broadcasting station; and, (3) No license shall be issued by the Minister unless he is satisfied that the person applying for a license has such technical, financial and professional qualifications as may reasonably be required for the purpose of establishing and maintaining a private broadcasting station.

Section 47 affords the Minister the power to revoke a license. Article 48 outlines the grounds on which a license may be suspended or revoked (such as failure to pay annual license fees 48(1)). The VBTA [CAP 214] does not allow for an appeals mechanism if a license is denied or revoked. However, under section 48(2) requires that "The Minister shall before suspending or revoking any license under the provisions of subsection (1), give the licensee notice in writing of his intention to do so and calling upon the person concerned to show cause to him why such license should not be suspended or revoked, as the case may be."

Once a radio broadcast license is obtained, the Telecommunications and Radio Communications Regulation Act [CAP 206] of 2009 empowers the Regulator to "allocate, assign and manage the radio spectrum" (s7(2)). "Any person aggrieved by a decision of the Regulator may invite the Regulator to give reasons for such decision and the Regulator shall, if he has not already provided reasons, comply within a reasonable time" (s51(1)). Any person aggrieved may invite the Regulator to revisit the decision, which the Regulator must do within 30 days of the decision being notified or published (s52(2)). Under section 53(1), "A person aggrieved by a decision of the Regulator may seek judicial review of the decision in the Supreme Court."

References:

Vanuatu Broadcasting and Television Act [CAP 214]. 1992. Amendments in 2002 and 2003.
http://www.paclii.org/vu/legis/consol_act/bata258/

Telecommunications and Radio Communications Regulation Act no. 30 of 2009.
<http://www.trr.vu/attachments/article/53/Telecommunications%20and%20Radiocommunications%20Regulation%20Act%202009.pdf>

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

During the period of this study, the Vanuatu Government did not issue any new broadcast licenses although it processed the renewal of existing licenses within a 1-2 month window. Some media observers attribute this to the lack of new broadcast license applications during 2013 rather than due to the administrative issues.

The last new radio license issued was in October 2012 to 96 BuzzFM, a Vila-based subsidiary of Kilawee Holdings Ltd and Botanical Gardens Ltd (which also own the Vanuatu Daily Post newspaper) (PACMAS 2013: 4; Vanuatu Daily Post, October

2012). This particular license took over two years to obtain approval, in part due to conflict between media houses over ownership issues and in part due to delayed decisions by the Broadcast Licensing Advisory Committee housed within the Vanuatu Broadcasting and Television Corporation (Perrottet, November 5, 2010). While outside of the study period, this case is indicative of the length of time licensing approval may take.

At the time, VBTC General Manager Fred Vurobaravu explained the licensing process, highlighting both the procedural rigor and challenges to efficiency of process (Vanuatu Daily Post, November 15, 2010): "The Broadcasting Licensing Advisory Committee (BLAC) comprises five members representing the government, civil society, the telecom regulator, the Cultural Senta, and VBTC. It is charged with scrutinizing all applications submitted to the Office of the Prime Minister to ensure the applicants conform to the Broadcast Guidelines approved by Government in 2008. Only after BLAC has satisfied itself that the guidelines are met, will it recommend the issuance of a broadcast license. To do otherwise is irresponsible and corrupt. BLAC and the VBTC have resolved to clean up Vanuatu's broadcast industry and free it from political, provincial or other influence which has been synonymous with previous processing of broadcast license applications. In addition, BLAC has adopted a more transparent and stringent system of processing licenses and is adamant to stamp out any unscrupulous and overt attempts to by-pass the vetting process."

According to the Broadcasting Licensing Guidelines, a station must commence operation within a maximum period of six (6) months for the station to commence broadcasting or the license may be revoked on grounds of technical or financial incapability. In January 2013, the Vanuatu Government revoked a second radio broadcast license and a television license issued to Saby Natonga (of Capitol FM 107) on these grounds (Marango, January 10, 2013).

References:

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11-PACMAS_Vanuatu-Country-Report_FINAL.pdf

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014. Source requested anonymity.

"What is 96 BuzzFM," Vanuatu Daily Post. October 3, 2012. <http://www.dailypost.vu/content/what-96-buzz-fm>

"Vanuatu: Rival media clash in slanging match over radio license," by Alex Perrottet, Pacific Media Watch. November 5, 2010. <http://pacific.scoop.co.nz/2010/11/vanuatu-rival-media-clash-in-slanging-match-over-radio-licence/>

"VBTC Clears Air on Broadcast License Issuance," Vanuatu Daily Post. November 15, 2010. <http://www.dailypost.vu/content/vbtc-clears-air-broadcast-license-issuance>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The 2008 Broadcasting License Guidelines provides a cost structure differentiated between community and commercial broadcasting licenses. On average, television license fees are much higher than for radio licenses. The most expensive license is for a commercial television: VT3.2 million (USD32,000) annually. Commercial radio licenses cost VT1.6 million (USD16,000) annually, while community radio licenses cost VT30-100,000 (USD300 " 1,000). A 2012 report by the International Federation of Journalists asserts that "the cost of setting up and running a newspaper or radio station is high due to the licensing costs involved and the annual fee required to be paid under the Business License Act 1998 and the Broadcasting and Television Act 1992 (p53)." In addition, radio broadcasters must obtain a radio license from the Telecommunications and Radio-communications Regulator (TRR), which is free of charge. However, radio broadcasters are required to pay a fee to TRR for radio apparatus licenses (Official Gazette no. 40 of November 25, 2012). These licensing costs continued to apply during the period of study (Media Association of Vanuatu representative, February 28, 2014). "Community radio licenses are cheaper, which mean that through CREST FM our local communities can broadcast their messages and news, as long as they have the broadcasting equipment," (Local Government Official, April 2013).

Just prior to the period of this study, the Vanuatu Government ordered the shutdown of Capital 107 FM due to the non-payment of annual license fees since 2010 (Marango, January 10, 2013). Then-Prime Minister Sato Kilman ordered FM 107 "to cease operations immediately as it is operating in contravention of Section 43 (1) of the Broadcasting and Television Act". However, FM 107 ignored the government order and continued to broadcast illegally, defending their right to broadcast (Younger, January 11, 2013). CEO Arthur Knight claimed the station had just been pulled out of bankruptcy and provided an important national service (Radio Australia, January 16, 2013). However, aside from this incident, there were no other complaints from local broadcasters regarding the license fee structure.

References:

Vanuatu Broadcasting License Guidelines. 2008. Vanuatu Broadcasting and Television Corporation.

"Kilman orders closure of FM 107," by Thompson Marango, Vanuatu Daily Post. January 10, 2013. <http://www.dailypost.vu/content/kilmans-orders-closure-fm-107>

"Vanuatu radio station defies government order," by Emma Younger, Australia Network News. January 11, 2013. <http://www.abc.net.au/news/2013-01-11/an-vanuatu-radio-station-closure/4460750>

"Radio Apparatus Licence and Spectrum Licence (Fees) Regulation Order no. 153 of 2012." Official Gazette of the Republic of Vanuatu no. 40, November 26, 2012. [http://www.trr.vu/attachments/article/98/Radio%20Apparatus%20Licence%20%20Spectrum%20Fees%20Regulation%20\(Gazetted%20Copy\).pdf](http://www.trr.vu/attachments/article/98/Radio%20Apparatus%20Licence%20%20Spectrum%20Fees%20Regulation%20(Gazetted%20Copy).pdf)

"Vanuatu, Media Freedom at Work." 2012. In Fragile Freedom " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

"Vanuatu Radio Station Says Government Claims are False," Radio Australia, January 16, 2013. <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/vanuatu-radio-station-says-government-claims-are-false/1074018>

Interview with Media Association of Vanuatu representative. February 28, 2014. Source requested anonymity.

Interview with David Tovovur, Tafea Local Government Official. April 2013. (from author's own field notes)

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

75

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The Vanuatu Government does not prevent citizens from accessing content published on-line. Some forms of content are illegal under Vanuatu law, such as pornography, however the government uses a model of co-regulation with internet providers to restrict access to this information.

During the period of study, Vanuatu had 10.6% internet penetration (ITU 2013). According to a 2013 national survey of citizen access to information in Vanuatu, only 4% of households had access to the internet (Intermedia, 2013: 2), although this is likely to be higher with the increasing use of mobile handsets for internet access. The limited access to on-line content due to minimal infrastructure coverage and cost has been observed by some media practitioners as a possible reason why government restriction on online content has been minimal. In 2012 the Telecommunications and Radio-communications Regulator (TRR) office spearheaded efforts to develop a code of industry practice for co-regulation of online content (TRR 2012). Specifically, the policy recommended that material considered not to be in the public interest of Vanuatu (such as nudity intended for erotic purposes, pornography including child pornography, acts of extreme violence, content advocating homosexuality, incest, necrophilia, bestiality or pedophilia or content promoting ethnic, religious or racial hatred and intolerance) be prohibited via the various internet platforms. To date, however, the code of practice has not been officially endorsed nor finalized.

A representative from the Media Association of Vanuatu has indicated that due to low levels of media literacy there is an ongoing debate regarding the level of paternalism relating to access to online content (MAV representative, February 28, 2014).

References:

A Consultation Paper on Codes of Practice for Industry Co-Regulation in the Areas of Internet Content. Vanuatu Telecommunications and Radio-communications Regulator (TRR). October 15, 2012. <http://www.trr.vu/attachments/article/29/Internet%20Industry%20Code%20of%20Practice.pdf>

"Percentage of individuals using the internet 2000-2012," International Telecommunications Union (ITU). <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx> Accessed March 5, 2014.

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Government attention to on-line discussion forum increased substantially during 2013 with one incidence of censorship of political speech. In April 2013, journalist Gratien Molsul was illegally arrested for posting derogatory comments about Prime Minister Moana Carcasses on a Facebook discussion site Yumi Toktok Stret (10,000 followers), commenting on a wish for an aircraft carrying government officials to Torba Province to crash. Following this comment, "Prime Minister Carcasses who is also a member of the Yumi Toktok Stret commented on Facebook that he would raise a complaint as such comments allegedly by Tiona would be deemed as instigating terrorism," (Ligo, May 8, 2013). He was arrested in his office at the Independent newspaper a month after his on-line post, and held illegally for 24 hours (MAV representative, February 28, 2014).

On-line self-censorship has been encouraged by some media entities. The Media Association of Vanuatu issued a statement: "we all have a responsibility when we speak in public forums " whether it is in a newspaper, at a public meeting or on a social media website " we all have a responsibility to think before we speak and consider the possible consequences," (May 7, 2013). MAV encouraged all journalists and citizen-journalists to abide by MAV's code of ethics and consider their safety when making public statements.

While outside the period of this study, there was one incidence in July 2012 when the government directly intervened in relation to a locally-based website "Talemaot " Blowing the Whistle on Corruption in Vanuatu." At the time, the Director-General of the Prime Minister's Office, Simeon Athy, issued a circular to all government email users warning them not to instigate a protest in relation to a Talemaot report on "Monkey business in the Vanuatu National Provident Fund (VNPF). He stated, "the head of the OGCIO is hereby directed to disable access of any public servant exchanging widely on this matter or using the public IT system to plan such an activity," (Vanuatu Daily Digest, August 7, 2012).

References:

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014.

"Journalist arrested," by Godwin Ligo, Vanuatu Daily Post. May 8, 2013. <http://www.dailypost.vu/content/journalist-arrested>

Vanuatu Daily Digest, Authored by Daily Digester, August 7, 2012. <http://vanuatudaily.wordpress.com/2012/08/07/talemaot-archive-director-general-pms-office-advises-mfem-investigating-vnpf/>

"Vanuatu Journalist released without charge after arrest for Online Comment", by Media Association of Vanuatu. May 7, 2013.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

There are no laws in Vanuatu pertaining to media content. Freedom of expression is guaranteed in the Constitution (Article 5(g)) but there is no specific protection for freedom of the media.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 5.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Vanuatu does not have a strong tradition of investigative journalism, which continued throughout the period of this study. While media freedom is regularly espoused and annually celebrated by the Media Association of Vanuatu on May 3 each year, there is a tendency for the media to print what is reported to them and reproduce media releases as provided (IFJ 2012: 55). The only exception during 2013 was the on-line Vanuatu Daily Digest which broke a number of anti-corruption stories, in addition to covering the occasional investigative piece by the private media houses. Private print media typically freely publish corruption-related stories, however threats against journalists following publication are common (PACMAS 2013: 12). Despite these threats, private media rarely practice self-censorship and where they do, it is more typically related to a personal connection rather than government-induced (Kaltongga, March 1, 2014).

Journalists in the public broadcaster, the Vanuatu Broadcasting and Television Corporation, practice self-censorship to avoid confrontation with government (PACMAS 2013: 6). However, while VBTC does not usually investigate corruption or sensitive government stories, they will report the findings of the occasional investigative story run by commercial news outlets.

While outside the period of this study, an example of from December 2012 demonstrates the rationale for self-censorship within the public broadcaster. In December 2012, a senior VBTC journalist, Antoine Malsungai, was suspended from work for hosting a talk-back show in which he commented on then-Prime Minister Sato Kilman's VT13 million (USD130,000) debt to government (Media Association of Vanuatu Representative, February 28, 2014). His suspension was deemed to be due to a breach in organizational guidelines although other media entities observed that this was a direct act of censorship (Makin, December 3, 2012).

References:

Interview with anonymous source, Media Association of Vanuatu. February 28, 2014. Source requested anonymity.

Vanuatu Daily Digest, by Bob Makin. Vanuatu Daily Digest. December 3, 2012. <http://vanuatudaily.wordpress.com/2012/12/03/vanuatu-daily-news-digest-3-december-2012/>

"Vanuatu, Media Freedom at Work." 2012. In Fragile Freedom " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

While there were numerous cases of government reaction to and interference with broadcast media content in 2011 and 2012, there were no recorded cases of pre-publication censorship in corruption-related stories during the period of this study. While outside the period of this study, in 2011 then-Minister of Ni-Vanuatu Business, Don Ken, attempted to stop the Vanuatu Broadcasting and Television Corporation from running a story regarding a case against him, "saying it could damage his reputation" (RNZI, August 11, 2011). Similarly in March 2011 Vanuatu Daily Post Publisher Marc Neil-Jones was assaulted by then-Minister Harry Iauko for running a corruption-related story in his newspaper. The Media Association of Vanuatu called on government leaders to stop threatening journalists, both pre- and post- publication. While no such cases were recorded during the period of this study, journalists in the public broadcaster, the Vanuatu Broadcasting and Television Corporation, practice self-censorship to avoid confrontation with government (PACMAS 2013: 6).

Some journalists have acknowledged that while the government may not directly restrain anti-corruption stories from being published, personal networks may influence the content of final publication, regardless of whether it is the public or private media (Kaltongga, March 1, 2014).

In practice, non-state journalists provide the government an opportunity to comment on topics prior to publishing but the government does not often make itself available (Media Association of Vanuatu Representative, February 28, 2014). This often results in shaky relations post-publication. For example, while outside the period of this study, in 2012 the Government's Public Relations Officer Richard Kaltongga aimed a number of criticisms at the media regarding the release of an investigative piece about then-Prime Minister Sato Kilman's VT13 million (USD130,000) debt to government. The President of the Media Association of Vanuatu, Evelynne Toa, responded: "Our investigation shows that the caretaker Prime Minister owes the people of Vanuatu 13 million vatu (140 thousand US dollars) and we have proof, we have evidence, and he cannot use politics to humiliate or intimidate our journalists" (Vanuatu Daily Digest, October 16, 2012).

References:

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-Report_FINAL.pdf

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

Vanuatu Daily Digest, by Daily Digester. October 16, 2012. <http://vanuatudaily.wordpress.com/2012/10/16/he-cannot-use-politics-to-humiliate-or-intimidate-our-journalists/>

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

"Vanuatu media group calls on leaders to stop threatening journalists," by Radio New Zealand International. August 11, 2011. <http://www.radionz.co.nz/international/pacific-news/198868/vanuatu-media-group-calls-on-leaders-to-stop-threatening-journalists>

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

45

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | **No**

Comments:

According to the Newspaper [CAP 156] Act, ownership is restricted to ni-Vanuatu citizens, which is documented on registration. However, there is no requirement for the public disclosure of ownership. In reality, the smallness of Vanuatu means that ownership is generally well-known.

References:

Newspaper Act [CAP 156] of 1982.
http://www.paclii.org/vu/legis/consol_act/nopa424/

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | **No**

Comments:

The Broadcasting and Television Act [CAP 214] does not specify a requirement for disclosure of ownership.

References:

Vanuatu Broadcasting and Television Act [CAP 214], 1992. Amendments in 2002 and 2003.
http://www.paclii.org/vu/legis/consol_act/bata258/

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

The Media Association of Vanuatu has a code of ethics for its members; however, the code is not enforced and there are no specific content restrictions specified in legislation (PACMAS 2013: 10). Compliance with the code is voluntary. Complaints regarding journalistic practice tend to be handled by individual media houses rather than through a coordinated entity and as such are ad hoc.

In November 2013 the Vanuatu Daily Post ran an opinion piece, presented as news, on "Rent house for only "Chinese" and "Whites", and included an image of the burning of the advertisement (Binihi, November 11, 2013). This initiated a series of anti-Chinese articles and letters to the editor in the newspapers, in breach of the media code of ethics regarding discrimination (section 6). A complaint was raised during a regular Media Association of Vanuatu meeting, during which the Vanuatu Daily Post publisher threatened to withdraw their membership (MAV representative, February 28, 2014).

Several media houses defend their professional practice. Arthur Knight, CEO of Group 107 (a commercial radio station) has said, "all [our] journalists have been trained " _ to always double check sources before anything has been released on air, to ensure that all stories that are being carried out are balanced" (Radio Australia, January 16, 2013). The Vanuatu Broadcasting and Television Corporation (VBTC) developed editorial guidelines in 2008. These guidelines were alleged to be the reason for senior journalist Antoine Malsungai's suspension in December 2012, following comments he made on-air regarding then Prime Minister Sato Kilman's alleged VT13 million (USD 130,000) debt to government (Vanuatu Daily Digest, December 3, 2012).

References:

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-Report_FINAL.pdf

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

The Media Association of Vanuatu General Media Code of Ethics and Practice. 2012.

"Rent house for only 'Chinese' and 'Whites'," by Ricky Binihi, Vanuatu Daily Post. November 11, 2013. <http://www.dailypost.vu/content/rent-house-only-%E2%80%9Cchinese%E2%80%9D-and-%E2%80%9Cwhites%E2%80%9D>

"Vanuatu radio station says government claims are false," Radio Australia. January 16, 2013. <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/vanuatu-radio-station-says-government-claims-are-false/1074018>

"Discrimination," Letter to the Editor by George P. Tarimanu. Vanuatu Daily Post. February 13, 2014. <http://www.dailypost.vu/content/discrimination>

Vanuatu Daily Digest, December 3, 2012.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The most recent election was the Port Vila Municipality Council election held in January 2014.

The state-owned Vanuatu Broadcasting and Television Corporation (VBTC) has an editorial policy and guideline which helps it to provide fair coverage during electoral campaigns (NGO official, February 22, 2014). Included in these guidelines are timeframes when no candidate coverage is provided in keeping with the Electoral Office's campaign black-out periods.

However, some of the private media outlets are known to be linked to political party interests, which is evident in their reporting (NGO official, February 22, 2014). For example, the Vanuatu Times newspaper and FM107 radio are owned by Saby Natonga and managed by Moses Stephens, both of whom were candidates in the 2012 national elections and received highly favorable coverage. Saby Natonga also ran in the December 2013 by-elections on Tanna. Similarly the Vanuatu Independent newspaper has been linked with the Green Confederation political party (MAV, February 28, 2014). One anti-corruption advocate (March 3, 2014) has observed that even relatively neutral media houses, such as the Vanuatu Daily Post, tend to bias their coverage during campaign black-out periods, running stories about candidates which can influence voting behavior.

References:

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

During the period of this study, the state-owner Vanuatu Broadcasting and Television Corporation provided equal access and fair treatment of election contestants. An established rates system was applied consistently to candidates during the January 2014 Port Vila Municipal Elections and no complaints of bias were made (NGO official, February 22, 2014). Prior to elections, the Media Association of Vanuatu frequently reminds its members to "not get distracted by such propaganda techniques employed by politicians and pretend that facts are not facts." (Vanuatu Daily Post, February 11, 2013). In the case of state-owned VBTC, where self-censorship is a frequent occurrence (PACMAS 2013: 6), it is more likely to err on the side of caution to avoid perceptions of bias during elections.

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

"MAV calls on media to safeguard rights and media freedom," Vanuatu Daily Post. February 11, 2013.

<http://www.dailypost.vu/content/mav-calls-media-safeguard-rights-and-media-freedom>

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11-PACMAS_Vanuatu-Country-Report_FINAL.pdf

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes | No

Comments:

No journalists investigating corruption were imprisoned in the past year. While one journalist, Gratien Molsul of the Vanuatu Independent newspaper was detained overnight in April 2013 for posting derogatory remarks about the Prime Minister on the Facebook discussion site, Yumi Toktok Stret, this was not in relation to a corruption investigation (MAV representative, February 28, 2014). Mr Molsul had commented on a wish for an aircraft carrying government officials to Torba Province to crash. Following this comment, "Prime Minister Carcasses who is also a member of the Yumi Toktok Stret commented on Facebook that he would raise a complaint as such comments allegedly by Tiona would be deemed as instigating terrorism," (Ligo, May 8, 2013). Charges were later dropped.

A freelance journalist commented that in the last year some journalists used pen names for security reasons, particularly if the story was politically sensitive (Kaltongga, March 1, 2014).

References:

"Journalist arrested," by Godwin Ligo, Vanuatu Daily Post. May 8, 2013.
<http://www.dailypost.vu/content/journalist-arrested>

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | No

Comments:

In the past year, no journalists investigating corruption have been physically harmed. However, in the last year some journalists used pen names for security reasons, particularly if the story was politically sensitive (Kaltongga, March 1, 2014). Journalists in the public broadcaster, the Vanuatu Broadcasting and Television Corporation, have been known to practice self-censorship to avoid confrontation with government (PACMAS 2013: 6). While one journalist, Gratien Molsul of the Vanuatu Independent newspaper was detained overnight in April 2013 for posting derogatory remarks about the Prime Minister on the Facebook discussion site, Yumi Toktok Stret, this was not in relation to a corruption investigation nor was he physically harmed (MAV representative, February 28, 2014).

Prior to the period of study, Vanuatu's journalists faced a number of physical threats from senior politicians due to corruption-related stories. In May 2011, Vanuatu Daily Post publisher Marc Neil-Jones was assaulted in his office by associates of then-Minister for Lands, Harry Iauko, for running a story on ministerial corruption in the sector (IFJ 2012: 55). In mid-2011, then-Minister for Ni-Vanuatu Business, Don Ken, "had on two occasions attempted to intimidate journalists for reporting on his alleged public drunkenness during Vanuatu's annual Independence celebrations. The Minister was arrested at the end of July 2011 and was charged by police with abusive language, obstruction, and drunk and disorderly behavior" (IFJ 2012: 55).

References:

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

"Vanuatu, Media Freedom at Work." 2012. In Fragile Freedom " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-Report_FINAL.pdf

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

Comments:

In the past year, no journalists investigating corruption were killed. However, in the last year some journalists used pen names for security reasons, particularly if the story was politically sensitive (Kaltongga, March 1, 2014). Journalists in the public broadcaster, the Vanuatu Broadcasting and Television Corporation, have been known to practice self-censorship to avoid confrontation with government or politicians in general (PACMAS 2013: 6). While one journalist, Gratien Molsul of the Vanuatu Independent newspaper was detained overnight in April 2013 for posting derogatory remarks about the Prime Minister on the Facebook discussion site, Yumi Toktok Stret, this was not in relation to a corruption investigation nor was he physically harmed (MAV representative, February 28, 2014).

Historically, Vanuatu has not seen journalist deaths from the investigation of corruption, only threats of violence and/or imprisonment (IFJ 2012: 55).

References:

Vanuatu State of Media and Communication Report 2013. Pacific Media Assistance Scheme (PACMAS), Australian Broadcasting Corporation and AusAID. September 2013. http://www.pacmas.org/wp-content/uploads/2013/10/11.-PACMAS_Vanuatu-Country-Report_FINAL.pdf

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

"Journalist arrested," by Godwin Ligo, Vanuatu Daily Post. May 8, 2013. <http://www.dailypost.vu/content/journalist-arrested>

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

"Vanuatu, Media Freedom at Work." 2012. In Fragile Freedom " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

0

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

Comments:

While freedom of expression is enshrined in Vanuatu's Constitution, there is no corresponding Freedom of Information law to facilitate access to accurate and timely government information (IFJ 2012: 54). A Right to Information bill was developed in 2012, and was to be tabled in Parliament in December 2013 however was postponed (Naupa, March 3, 2014).

Under section 14 of the Archives Act [CAP 216], the public may access public archives that are not designated secret. Public archives are defined as material of the age fifteen or over (section 7). However, the Archivist "may for any good cause, withhold

access to any specified class of public archives in his custody" (1(a)). In addition, any public archives relating to the trial or punishment of any particular person requires additional written authorization by the Chief Justice or his designate (section 1(b)).

An Official Secrets Act [CAP 111] contains a wide definition of "classified material" which government officials can rely on to withhold information from the public (IFJ 2012: 54). Section 5 specifically designates offenses connected with unauthorized possession of classified material by persons not in service of government.

References:

Archives Act [CAP 216]. 1992. Section 14.
http://www.paclii.org/vu/legis/consol_act/aa98/

Official Secrets Act [CAP 111]. 1980.
http://www.paclii.org/vu/legis/consol_act/osa156/

Interview with Anne Naupa, National Archivist, March 3, 2014.

"Vanuatu, Media Freedom at Work." 2012. In *Fragile Freedom* " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes | **No**

Comments:

Under section 14 of the Archives Act [CAP 216], the Archivist "may for any good cause, withhold access to any specified class of public archives in his custody" (1(a)). An appeal can be made to the Minister (of Internal Affairs) whose decision is final. Public archives are defined as material of the age fifteen or over (section 7).

However, there is no law at present to facilitate either a process for access to accurate and timely government information of less than 15 years old, nor a formal appeal mechanism for such requests (IFJ 2012: 54). Therefore, a score of no is warranted. A Right to Information bill was developed in 2012, and was to be tabled in Parliament in December 2013 and then postponed (Naupa, March 3, 2014). Part 8 of the draft legislation regards the right of appeal to a designated "Information Commissioner" if a basic government record is denied. However, the passage of this draft legislation is uncertain.

The Official Secrets Act [CAP 111], which contains a wide definition of "classified material" that government officials can rely on to withhold information from the public does not provide for a right of appeal.

References:

Interview with Anne Naupa, National Archivist, March 3, 2014.

Archives Act [CAP 216]. 1992.
http://www.paclii.org/vu/legis/consol_act/aa98/

Official Secrets Act [CAP 111]. 1980.
http://www.paclii.org/vu/legis/consol_act/osa156/

"Vanuatu, Media Freedom at Work." 2012. In *Fragile Freedom* " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

Comments:

There is no process for requesting government records less than 15 years old, as there is no freedom of or access to information law for timely, basic government records. There is therefore no established mechanism or institution through which citizens would access government records available under such laws.

However, the public may request archived government records under section 14 of the Archives Act [CAP 216]. Public archives are defined as material of the age fifteen or over (section 7). Citizens are required to address their request to the National Archivist who may "for any good cause, withhold access to any specified class of public archives in his custody subject to the right of the person so denied access to appeal to the Minister, whose decision thereon shall be final" (section 1(a)). Requests for court-related archives require the authorization of the Chief Justice, or his designate (section 1(b)).

References:

Archives Act [CAP 216]. 1992.
http://www.paclii.org/vu/legis/consol_act/aa98/

Interview with Anne Naupa, National Archivist, March 3, 2014.

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

50

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Response times to information requests vary according to the nature of the request. During 2013, there was no on-line process for requesting information, and public documents were inconsistently shared on-line via government websites. "The government has its own rules about who can speak to the media and who cannot" (Kaltongga, March 1, 2014). Personal networks play an important role in accessing government information, both for journalists and the average citizen, and for this reason records may be obtained informally within a matter of days in the capital of Port Vila. Travel to the capital is necessary.

For information requests relating to government records of the past 15 years and less, access to this information is at the behest of the relevant government agency and responses may vary in timeframe. In terms of the media's request for information, the Public Relations Officer (government spokesperson) is the main point of contact. A 2012 observation by the International Federation of Journalists (2012: 54) continued to apply to the period of study: "Media workers have expressed frustration at the inefficiency of this arrangement. It can be difficult to get statements and information from government agencies without going via the government spokesman, which can cause significant delays and is inconsistent with the need for media practitioners to meet deadlines." A Media Association of Vanuatu official observed during the period of study that timely access to information "really works on personal relationships. Some journalists have commented that they don't have a problem getting information but through informal networks" (interview, February 28, 2014).

For information requests related to government records aged fifteen years and over, the National Archivist is the point of contact (Archives Act [CAP 216] section 14). The National Archivist, Anne Naupa, outlines the process (May 3, 2014): "The requestor is required to complete a Access/Refer/Copy form and have it stamped at the appropriate department. Once the form is stamped (with the Lands Department it is immediate, with the Supreme Court it might take longer due to additional authorization required) the client returns to the National Archives, where he/she has immediate (but supervised) access to the document(s) in question." Responses may take anywhere from a day up to two weeks depending on the nature of the request.

References:

Interview with Anne Naupa, National Archivist, March 3, 2014.

"Vanuatu, Media Freedom at Work." 2012. In *Fragile Freedom* "Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Interview with Media Association of Vanuatu representative. February 28, 2014. Source requested anonymity.

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Information request mechanisms vary according to whether the request for government information is archival (i.e. documents aged 15 years and older) or current. All national government records are stored in the capital, Port Vila. During 2013, personal networks played an important role for journalists in accessing government information, and for this reason records may be obtained informally without little to no cost (Media Association of Vanuatu Representative, February 28, 2014). Public requests to access the national archives are available for the cost of photocopying (Naupa, March 3, 2014). Information is typically complete and up to date. Additional travel costs to Port Vila may be incurred for citizens residing outside of the capital.

Additionally, individual government departments may charge document access fees. For example, in 2013 Lands Registry experienced the heaviest public demand for information relating to land titles and records. For a fee of VT1,000 (USD10) per land title, the public may view records, with additional costs for photocopying.

References:

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

Interview with Anne Naupa, National Archivist, March 3, 2014.

Vanuatu Ministry of Lands website, accessed 14 April 2014.

<http://www.mol.gov.vu/lands-lr.php>

"Vanuatu, Media Freedom at Work." 2012. In *Fragile Freedom* " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

During the period of the study there was no Freedom of Information law to facilitate access to government information although

the government unveiled a new policy in April 2014. Responses to information requests are of varied quality (IFJ 2012: 54). During 2013, personal networks played an important role for journalists in accessing government information, and for this reason records may be obtained informally (Media Association of Vanuatu Representative, February 28, 2014). The information obtained through these informal networks is frequently accurate and up to date. However, the informal nature of obtaining information has meant that subjects of corruption stories have often criticized the level of accuracy of media articles (e.g. former Prime Minister Sato Kilman and Director-General of Internal Affairs, George Bogiri in early 2013, regarding electoral practice and alleged nepotism respectively). The Media Association of Vanuatu has commented that, "In practice, non-state journalists provide the government an opportunity to comment on topics prior to publishing but the government does not often make itself available" (interview, February 28, 2014). The informality of access allows the individuals in the government to cast doubt on any potentially damaging records accessed by journalists.

For average citizens, personal networks similarly play an important role in accessing government information. Certain government agencies, such as the Land Registry, provide public access to land titles and records for a fee of VT1,000 (USD10) per title. These documents are generally comprehensive, although there have been some cases of incomplete records (Author's own notes, 2013).

Official government documents that are available on-line through ministerial websites tend to provide high quality policy and statistical information. However, except for the National Statistics Office, which is legally required to publish periodic reports, official documents are inconsistently uploaded to the internet and those that are available are often dated.

References:

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

"Bogiri blames elements in business houses for media outcry on visa applications," by Jonas Cullwick. Vanuatu Daily Post. January 31, 2013. <http://www.dailypost.vu/content/bogiri-blames-elements-business-houses-media-outcry-visa-application>

"I did not receive financial report from Saken," Vanuatu Daily Post. February 19, 2013. <http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

Vanuatu National Statistics Office (VNSO) website. <http://www.vns.gov.vu/>

"Vanuatu, Media Freedom at Work." 2012. In Fragile Freedom " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Author's field notes. 2013.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

While freedom of expression is enshrined in Vanuatu's Constitution, there is no corresponding Freedom of Information law to facilitate access to government information (IFJ 2012: 54). Where formal requests for information have been denied or disregarded, there is no formal recourse for action. For records over 15 years old, appeals to denied access to the national archives are free of charge, but may be time consuming depending on which depositing agency is required to authorize access (Naupa, March 3, 2014). During 2013, personal networks played an important role for journalists in accessing government information, and for this reason records may be obtained informally (MAV representative, February 28, 2014).

Some journalists have indicated that where extensive information is required but unattainable, an approach may be made to the Ombudsman's Office or similar to progress further inquiry, although this can be time consuming. For example, media coverage of alleged irregular recruitment practices by the General Manager of the Vanuatu National Provident Fund resulted in both an Ombudsman and Auditor-General's investigation. Despite frequent media requests for public disclosure, the five-month long agency investigation reports were not released due to the Ombudsman's need to be satisfied that "due process has been followed and that all who are named in the report had a right to reply to accusations" (Binihi, February 11, 2013). Another example includes media coverage of alleged corruption by the Department of Lands staff triggered a formal investigation by the government in late 2012, resulting in full information disclosure 6 months later in March 2013 (Binihi, March 1, 2013).

References:

"PSC will present land investigation to COM," by Ricky Binihi, Vanuatu Daily Post. March 1, 2013. <http://www.dailypost.vu/content/psc-will-present-lands-investigation-com>

"Vanuatu, Media Freedom at Work." 2012. In Fragile Freedom " Inaugural Pacific Press Freedom Report. International Federation of Journalists. Pp 52-58. <http://asiapacific.ifj.org/assets/docs/105/240/07e2369-f2487f0.pdf>

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

"Parliament to debate Vanuatu Provident Fund report." by Ricky Binihi, Vanuatu Daily Post. February 11, 2013. <http://pidp.org/archive/2013/February/02-12-08.htm>

Interview with Anne Naupa, National Archivist, March 3, 2014.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In the absence of right to information legislation, there is no formal mechanism to appeal denied information requests for government information from the last 15 years. For records over 15 years old, appeals to denied access to the national archives are free of charge, but may be time consuming depending on which depositing agency is required to authorize access (Naupa, March 3, 2014). During 2013, personal networks played an important role for journalists in accessing more recent government information, and for this reason records may be obtained informally without the need for an appeals process and at little to no cost (MAV representative, February 28, 2014). However, these personal networks are not universal, and therefore not all citizens can either access records nor appeal a denied request.

Additionally, individual government departments manage publicly available information for a cost. For example, in 2013 Lands Registry experienced the heaviest public demand for information relating to land titles and records. For a fee of VT1,000 (USD10) per land title, the public may view records, with additional costs for photocopying. During 2013, there were no reports of unreasonable denied access (i.e. where access was denied, this was explained; no fee was required), and very few appeals to these decisions.

References:

Interview with media expert who requested anonymity, Media Association of Vanuatu. February 28, 2014.

Interview with Anne Naupa, National Archivist, March 3, 2014.

Ministry of Lands website.
<http://www.mol.gov.vu/lands-lr.php>

Interview, Lands Official who requested anonymity, February 20, 2014.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government usually discloses reasons for denying access to the requestor, with some exceptions where requests for politically sensitive information may be denied without explanation. The National Archivist also regularly provides reasons for denied access to archives, which may include designated "secret" material, confidentiality due to ongoing court cases (for Supreme Court archival requests) or denial by the depositing agency that "owns" the records (Naupa, March 3, 2014).

An anti-corruption advocate has observed that when public requests for government information have been denied or disregarded, the use of the media to place pressure on government proved successful in at least obtaining a reason for the denial. For example, in February 2013 in response to media pressure, the government Chairman of the Vanuatu National Provident Fund Board, Simil Johnson, made a public statement regarding the rationale for non-disclosure of VNPF corruption investigations (Binihi, February 11, 2013).

References:

"Parliament to debate Vanuatu Provident Fund report," by Ricky Binihi, Vanuatu Daily Post. February 11, 2013. <http://pidp.org/archive/2013/February/02-12-08.htm>

Interview with Anne Naupa, National Archivist, March 3, 2014.

Interview with Anti-Corruption Advocate who requested anonymity, March 1, 2014.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category 2. Elections

2.1. ⁴² Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

50

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

Comments:

In January 2014, the Republic of Vanuatu introduced Constitutional Amendments to Articles 4, 5 and 13 of the Constitution of the Republic of Vanuatu (Revised Edition 1988) in recognition of dual citizenship and modified universal franchise. Specifically, Article 13 (formerly regarding "Avoidance of Dual Nationality") was repealed and re-named "Recognition of Dual Citizenship." Sub-article (3) creates a second-class citizen category by preventing holders of dual citizenship from holding or serving in public office, becoming involved in Vanuatu politics, funding activities that would cause political instability in Vanuatu, affiliations with, or forming of political parties, and standing as a candidate or voting in national, provincial or municipal elections. Sub-article (3) does not apply to dual citizenship holders who are indigenous or naturalized citizens (Article 13(4)).

Indigenous or naturalized citizens are guaranteed electoral franchise under Article 4, which mandates that national sovereignty belongs to the people of Vanuatu, which they exercise through their elected representatives (sub-article (1)). The January 2014 Constitutional Amendments added a sub-article (4) to clarify that "For the purposes of national sovereignty, people of Vanuatu means all indigenous and naturalized citizens." Article 4(2) provides that "franchise is universal, equal and secret. Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of Vanuatu who is at least 18 years of age shall be entitled to vote." Article 17(1) establishes election of members of Parliament "on the basis of universal franchise through electoral system that has an element of proportional representation to ensure fair representation of different political groups and opinions". Every citizen of Vanuatu aged 25 years and older is eligible to stand for election (Article 17 (2)). The Representation of the People Act [CAP 146] further outlines the framework in which one's voting right can be exercised.

Discussion with a senior government executive confirms media reports that, "there are limitations to the privileges of dual citizenship which may not be exercised until the new citizen has been ordinarily resident in Vanuatu for 10 years" (Jonas Cullwick, August 2013). A ten-year residency requirement and the passing of a Bislama-language Citizenship test satisfies elevation to the naturalized citizenship category (Citizenship Act [CAP 112] 12(2)(j)).

The impetus for the January 2014 Constitutional Amendments to dual citizenship began in August 2013, under the auspices of the Vanuatu Financial Services Commission, a business regulation authority. In August 2013, the Vanuatu Government passed amendments to the Immigration Visa Regulation Order no. 180 of 2011, to enable dual citizenship under the publicly controversial Capital Investment Immigration Plan (CIIP). For the price of USD310,000 economic investors could purchase citizenship, replacing the former 10-year residency requirement. "Economic" citizens will likely comprise the majority of second-class citizens.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 4,5,13 and 17. [<http://www.parliament.gov.vu/Constitution.html>]

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Representation of the People Act [CAP 146]. 1982 (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Immigration Visa Regulation (Amendment) Order No.115 of 2013 under the Immigration Act No.17 of 2010. August 14, 2013.

Vanuatu Government 2012 Election Report. November 2013. Authored by Howard Van Trease. [Yet to be publicly released]

<http://www.abc.net.au/news/2014-02-11/an-vanuatu-defends-dual-citizenship-changes/5252122>

Investors can now 'buy' Vanuatu citizenship for \$10,000 by Jonas Cullwick, Vanuatu Daily Post. August 19, 2013. <http://pidp.eastwestcenter.org/pireport/2013/August/08-19-03.htm>

Interview with anonymous source, Vanuatu Government, February 20, 2014. Source requested anonymity.

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

Comments:

According to Article 28(1) of the Constitution of the Republic of Vanuatu specifies elections are required to take place at least every four years. Parliament may be dissolved, if endorsed by three-fourths of the members (Article 28(2)) or enacted by the President of the Republic upon the advice of the Council of Ministers (Article 28(3)), however, four years is the legally established limit of the timeframe of elections. General elections cannot be held earlier than 30 days and not later than 60 days after any dissolution (Article 28(4)). Dissolution of Parliament is prohibited within the first 12 months of the general elections following a dissolution by either the President or a 3/4 parliamentary vote (Article 28(5)).

The enactment of one's right to vote is further detailed in the Representation of the People Act [CAP 146], which was enacted by Parliament in 1982 and has been amended on six occasions"most recently in 2007 and 2012. It lays out the procedures for the registration of voters and elections to Parliament, including the duties of the Principal Electoral Officer (PEO) who administers elections.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 28. [<http://www.parliament.gov.vu/Constitution.html>]

Representation of the People Act [CAP 146]. 1982. http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In practice, all adult indigenous and naturalized citizens of Vanuatu aged 18 and over are able to vote, however are required by law to be a registered voter to exercise their right on polling day. As of January 2014, other categories of citizenship (e.g. "investor" citizens) are not entitled to vote in national, provincial or municipal elections (Constitution of the Republic of Vanuatu Article 13(3)).

For those eligible to vote, the Principal Electoral Officer prepares the electoral roll and by law, may "call upon two inhabitants in the area to assist him in determining the age, place of residence or any other matter for the purpose of drawing up the electoral list." (Representation of the People Act, Par. 6(4)). To ensure accessibility of polling stations to citizens, the Electoral Office manages 344 polling stations across the island archipelago. The smallest station, Merig, has 12 registered voters on this island. Larger islands such as Santo and Malekula have 65 and 35 polling stations respectively to accommodate geographical barriers for their populations. Citizens may also exercise their right not to vote.

However, there is general acknowledgement by both government officials and watchdog groups that the registration procedures and maintaining an accurate, up-to-date electoral roll are challenged by the country's geography (communicating updates to a centralized database in Port Vila from provincial outposts can take several weeks), and weak registration accountability structures (Tete, February 10, 2014; NGO Official, February 22, 2014).

Another common challenge for the right to vote is the proof of identity required on polling day. While outside of the period of study, the experience of denied voting privileges during the October 2012 elections, is common. Howard Van Trease (2013) reports that "a significant number of angry voters in Port Vila, who had lost their electoral cards or whose names did not appear on the electoral roll, congregated at the Electoral Office" sometimes quite threatening in their behavior "creating a significant disturbance." The electoral roll system does not allow for bio-metric identification checks and relies on cross-checking one's card with a numbered paper list.

The timing of elections has also been observed to limit citizen participation in voting. Transparency Vanuatu observed in the press that there was a delay in the opening of two polling stations during the 7th January 2014 Port Vila Municipality Elections and that: "Some voters have reportedly said that delaying the time of voting meant that they could not vote as they had only been able to free themselves for half a day" (10 January 2014). Official statistics for the municipality elections report low voter turnout (43% and below) across the Port Vila polling stations. It is standard practice for the President of the Republic declares a public holiday for national elections to foster citizen participation, and provincial and municipal heads are afforded similar discretion for local level elections.

Within the Representation of the People Act [CAP 146], there is provision for proxy voting should a person be absent from their normal constituency on polling day. The person is required to produce an official letter from their employer or institution explaining the reason for the absence. The Act [Schedule 4, Part 1, S. 1(10)] stipulates that applications for proxy must reach the registration officer not less than 72 hours before polling, which is a major problem as it does not allow enough time to be able to adequately process application forms (Van Trease 2013: 19).

References:

Vanuatu Government 2012 Election Report. October 2013. Howard Van Trease.

Vanuatu Daily Digest, Bob Makin, July 15, 2013. <http://vanuatudaily.wordpress.com/2013/07/15/vanuatu-daily-news-digest-15-july-2013/>

Interview with Martin Liu Tete, Electoral Adviser, Vanuatu Electoral Commission. February 10, 2014.

Norm Kelly. 2012 Vanuatu Elections – Election Observer Report. Centre for Democratic Institutions, Australian National University, Canberra. http://www.cdi.anu.edu.au/VAN/2012-13/D/2012_10_VAN_RES_Elctn_Mntrng_VAN/2012_10_VAN_ELC_Obs_Rep_KELLY.pdf November 2012.

Transparency Vanuatu Press Statement, 10 January 2014 "Questions for the Electoral Office." <https://www.dropbox.com/s/5xstnjpwg0t9j7s/Press7.pdf>

Republic of Vanuatu Official Gazette. 13 January 2014. Municipalities Act [CAP 126] "Declaration of Results for the Port Vila Municipal Council Election on the 7th January Order no. 2 of 2014."

Interview with NGO Official who requested anonymity. February 22, 2014.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are secret and there is protection in most cases. While the last national election of October 2012 was held outside of the period of this study, several local level and by-elections held during the period of study indicate that there has been no substantial change to the protection measures for ballot boxes. Voters have access to an individual booth in which to privately select their vote before casting the ballot envelope in a central location (Kelly 2012: 4).

An initial count of the ballot box is conducted at each polling station by the polling officials, observed by official party observers and the general public (Van Trease 2013). The Vanuatu Electoral Office coordinates transportation of the ballot boxes from the polling station to the central counting location in Port Vila with the Vanuatu Mobile Force (military). This may involve land, sea and air transportation.

While there were no reports during the period of this study regarding tampering with ballot boxes during transportation there have been concerns regarding discrepancies between the initial count and the final count. For example, following the October 2012 national elections Van Trease (2013: 22) reports four petitions relating to alleged miscounts in Santo and Tongoa constituencies. Follow-up investigations by the Electoral Office, revealed no discrepancies in these final counts (Tete, February 10, 2014).

References:

Interview with Martin Liu Tete, Electoral Adviser, Vanuatu Electoral Commission. February 10, 2014.

Vanuatu Government 2012 Election Report. October 2013. Howard Van Trease.

"Ballot Boxes Shipped To Islands," by Jane Joshua, Vanuatu Daily Post. October 26, 2012. <http://www.dailypost.vu/content/ballot-boxes-shipped-islands>

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.pacii.org/vu/legis/consol_act/rotpa298/

Vanuatu 2012 Election – Election Observer Report. November 2012. Norm Kelly. Centre for Democratic Institutions, Canberra, Australia. http://www.cdi.anu.edu.au/VAN/2012-13/2012_10_VAN_RES_Elctn_Mntrng_VAN.html

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

In 2013, four provincial elections and one by-election were held in Vanuatu, the former planned according to established election schedules. In practice, the Electoral Commission regularly and consistently informs the public via the media of scheduled

elections each year, as shown during the national election of October 2012 (held outside of the period of this study), as well as during several local level and by-elections held during the period of study.

The Electoral Commission ensures that elections are held every four years, as per Article 28(2) in the Constitution of the Republic of Vanuatu. It further upholds the Representation of the People's Act, 28(4), which stipulates that "General elections shall be held not earlier than 30 days and not later than 60 days after any dissolution [of Parliament]." Once a date has been approved by the President, on advice from the Prime Minister and the Electoral Commission, and gazetted by the State Law Office, the Electoral Commission then announces the relevant dates for candidate registration, polling list checks etc. It uses various media to publicize election dates.

The 2012 Transparency Vanuatu Election Observer Report (2012: 8) provides a timeline of key public announcements in both print and broadcast media regarding the October 2012 elections, including the announcement of polling day and deadlines for voter and candidate registration, demonstrating the adherence to legislated schedules by the Electoral Commission. During the period of this survey, there were no reported issues with the scheduling of elections, although Howard Van Trease (2013) notes that prior to the October 2012 elections there was an issue of premature announcement of the election date before Presidential approval had been granted. This was due to a minor administrative error.

During the study period, an extra-ordinary by-election was held to replace the seat of a member from the Tanna constituency who passed away in December 2012. Scheduling of this by-election was delayed due to lack of budget and the awaiting of a court decision regarding an electoral petition in the same constituency (Cullwick, Vanuatu Daily Post, 19 March 2013). While section 22 of the Representation of the People Act [CAP 146] permits by-elections for vacated parliamentary seats, it does not set a deadline by which the by-election must be held after a seat has been vacated.

Planning for a second by-election for Port Vila was also underway in February 2014, with the Electoral Office publicizing the legal schedules for these additional elections (Martin Tete, February 10, 2014 and Makin, Vanuatu Daily Digest February 12, 2014).

References:

Vanuatu Government 2012 Election Report. October 2013. Howard Van Trease.

Vanuatu Daily News Digest, by Bob Makin. January 7, 2014.

<http://vanuatudaily.wordpress.com/2014/01/07/vanuatu-daily-news-digest-7-january-2014/>

Vanuatu Daily News Digest, by Bob Makin. February 12, 2014.

<http://vanuatudaily.wordpress.com/2014/02/12/vanuatu-daily-news-digest-12-february-2014/>

Interview with Martin Liu Tete, Electoral Adviser, Vanuatu Electoral Commission. February 10, 2014.

"No Parliamentary By-Election Date Set Yet for the Seat of Tanna," by Jonas Cullwick. Vanuatu Daily Post. March 9, 2013. <http://www.dailypost.vu/content/no-parliamentary-election-date-yet-vacant-tanna-seat>

2012 Vanuatu General Election – Election Observer Report. Transparency Vanuatu. Port Vila. <http://www.fijipsnack.com/9D68AD5C5A8/fkfr8mj>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

50

16a. In law, all citizens have a right to form political parties.

Yes | **No**

Comments:

Article 4(3) of the Constitution states that "Political parties may be formed freely and may contest elections. They shall respect the Constitution and the principles of democracy. "No groups are banned from forming parties. While the legislation is silent on a formal registration process for political parties, political entities are required to provide an 'electoral symbol' (Representation of the People Act [CAP 146] 25 (1d)).

An ongoing issue for the Electoral Commission is that there is no legal way to regulate parties other than an electoral symbol. Van Trease (2013: 13) noted that, "The lack of clear-cut regulations regarding the formation of political parties is confusing to the

public and actually led to a serious confrontation between a prominent politician [late Honorable Minister Harry Iauko] and the Principal Electoral Officer [Lawson Samuel] in the lead-up to the 2012 election." A court ruling determined that Iauko could not field candidates under the banner of the Vanuaʻaku Pati according to party rules. Responsible for candidate registration, which includes statements of political affiliation and related electoral symbol, the PEO's upholding of the court judgment was strongly protested by the candidate in question. While this example is outside of the period of study, it demonstrates the absence of a legal registration process for political parties.

However, as of January 2014, other categories of citizenship (e.g. "investor" citizens) are not entitled to form or participate in political parties.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 4.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Representation of the People Act [CAP 146]. 1982. Section 25. http://www.paclii.org/vu/legis/consol_act/rotpa298/

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [not yet publicly available]

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes | **No**

Comments:

The Constitution specifies a minimum age of 25 years to be eligible to stand for election to Parliament (Article 17(2)). As of January 2014, non-indigenous, non-naturalized citizens (e.g. "investor" citizens) are not entitled to affiliations with, or forming of political parties, and standing as a candidate or voting in national, provincial or municipal elections (Article 13(3)).

Sections 23 and 24 of the Representation of the People Act [CAP 146] outline the further eligibility requirements for parliamentary candidates. Neither the President of the Republic, judges and magistrates, members of the police force, members of the National Council of Chiefs (and members of district, island, and area level councils of chiefs), public servants, members of the teaching service and members of the Citizenship Commission are eligible to stand in parliamentary elections (RPA [146] 23). The Electoral Commission may add additional classes of person, after consultation with the Council of Ministers. In addition, parliamentary candidates must not be disqualified from voting, must not have received a sentence, including a suspended sentence, and cannot be an un-discharged bankrupt (RPA [146] 24).

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 17.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act [CAP 246]. 1982. Sections 23 and 24.
http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | **75** | 50 | 25 | 0

Comments:

There are no restrictions for indigenous and naturalized citizens (those who have resided in Vanuatu for at least 10 years before attaining citizenship) citizens in forming political parties. While there is no specific legal process for the registration of political parties, according to Van Trease (2013: 13) the requirement for parties and candidates to provide an electoral symbol to the Electoral Office (Representation of the People Act [CAP 146] 25(1d)) has instituted a perception that the Electoral Office plays a role in approving party formation. As such, Van Trease (2013: 13) reports, that "it has become the practice for the EO to request political parties to provide their names, logo, colours and their guiding principles or constitutions to enable elections to be organized."

Some parties choose to formally register under the Charitable Associations Act, although this is not formal requirement. This registration requires the drafting of a Constitution and information relating to Board membership. The proliferation of political parties since the 1980s, when Vanuatu's political scene was occupied by only a handful of major parties, suggests that there is limited government opposition to party formation. Van Trease (2013: 28, Table 6) records that since 2002, the number of political parties has more than doubled, from 14 to 37 contesting the October 2012 national elections. One of the newest parties to the political scene was the Graon mo Jastis Party, which formed in 2010. Despite vocal opposition to the government of the time's land policies, GJP leader Ralph Regevanu was not prevented from forming his party.

As of January 2014, non-indigenous, non-naturalized citizens (e.g. "investor" citizens) are not entitled to affiliations with, or forming of political parties (Constitution Article 13(3d)).

In August 2013, Islands Business magazine reported on a government-led initiative to reform the political system and require political parties to register in accordance to specific criteria. There have not been any further developments in this area during the period of this study.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 13. [<http://www.parliament.gov.vu/Constitution.html>]

Representation of the People Act [CAP 146]. 1982. Section 25. http://www.paclii.org/vu/legis/consol_act/rotpa298/

Vanuatu Government 2012 Election Report. October 2013. Howard Van Trease.

"Parties in Vanuatu to hold talks on improving political stability," by staff writer, Islands Business, August 1, 2013. <http://www.islandsbusiness.com/news/vanuatu/2178/parties-in-vanuatu-to-hold-talks-on-improving-poli/>

Graon mo Jastis Party (Vanuatu) website. Accessed on April 2, 2014. <http://www.graonmojastis.org/>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Subject to meeting the eligibility requirements for candidacy, citizens may lodge their intent to run with the Electoral Office within the publicized election schedule. While there has been the occasional objection in social media regarding the electoral candidacy fee rate of VT100,000 (USD1,000), it is a condition of political participation that is applied equitably. The candidate registration fee this does not appear to have prevented running for political office. There has been a proliferation of political parties and independent candidates in the past decade, with increasingly high numbers of total candidates (Van Trease 2013: 28). For example, during the four February 2013 provincial elections 274 candidates were fielded, which was only 71 candidates less than in the October 2012 national elections (Samuel Lj, Vanuatu Daily Post February 11, 2013). During the January 2014 Port Vila Municipality elections there were 13 parties and 190 candidates contesting 12 seats (Official Gazette No.2 of 13 January 2014).

Women face particular challenges in running for office, often linked to the prevailing view that political office is a male domain. A 2010 government study of the gender profile of political parties revealed that very few parties have an articulated gender strategy, and infrequently field female candidates (Vanuatu Government 2010: 20). During the period of this study, the media documented continued lack of party support for women from political leaders and parties. For example, only 12 out of the 274 candidates in the February 2013 Tafea, Shefa, Malampa and Penama provincial elections were women (Samuel Lj, February 11, 2013). Out of all political parties contesting these elections, the Vanua'aku Party fielded the highest number (5) of female candidates (Simon, Vanuatu Daily Post, February 13, 2013). The Vanuatu Government addressed these challenges to women's political participation by piloting reserved seats for women during the January 2014 Port Vila Municipality elections. As a result, forty-two women contested the five reserved seats, a record high for female candidates in any election in Vanuatu's history according to Charles Vatu, the Principal Electoral Officer (Ligo, Vanuatu Daily Post, Jan 2, 2013).

In January 2014, Chair of the Electoral Commission, John Killion Taleo, discussed the VEO's intention to require future political candidates to undergo mandatory health checks. This future policy intends to mitigate the cost to government for running by-elections as two members of parliament elected in October 2012 have since passed, causing a budget challenge for the government. "It's a person's constitutional right to stand for elections, even if they are sick or disabled, said Mr Taleo, "but we have to be very careful. It took us three months to secure the budget for the last by-election" (Islands Business, January 6, 2014).

As of January 2014, a new class of citizens were created – these non-indigenous, non-naturalized citizens (e.g. "investor" citizens) are not entitled to stand as a candidate, nor vote in any election (Constitution Article 13(3e)). There are no restrictions for indigenous and naturalized citizens (those who have resided in Vanuatu for at least 10 years before attaining citizenship) citizens in running for political office.

References:

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease [yet to be publicly released]

"Future Vanuatu MPs to Face Medical Checks," by staff writer, Islands Business. January 6, 2014. <http://www.islandsbusiness.com/news/vanuatu/4125/future-vanuatu-mps-to-face-medical-checks/>

"Declaration of the official results of the Port Vila Municipal Council Election on the 7th January order nos. 2 and 3 of 2014." Official Gazette no. 2 of the Republic of Vanuatu. January 13, 2014.

"No Woman Elected," by Kathie Simon, Vanuatu Daily Post. February 13, 2013. <http://www.dailypost.vu/archive/all/2013/2/19>

"Women Gone Political: the Challenges," by Samuel LJ, Vanuatu Daily Post. February 11, 2013. <http://www.dailypost.vu/content/women-gone-political-challenges>

"42 Women Contesting for 5 Reserve Seats," by Godwin Ligo, Vanuatu Daily Post. January 2, 2014. <http://www.dailypost.vu/content/42-women-contesting-5-reserve-seats>

Vanuatu Government (Department of Women's Affairs). Gender Profile of Political Parties and Elections. December 2010. Authored by Tina Ilo-Noka and Seman Dalesa-Saraken. <http://www.pacwip.org/resources/uploads/attachments/documents/Vanuatu%20-%20Gender%20Profile%20of%20PPs%20&%20Elections%20-%202010.pdf>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Despite political party fragmentation and fluid power coalitions, the Opposition plays an important and active role in providing a check for government-proposed legislation and policy. During the period of this study, the 16-member Opposition comprised several political parties and was led by MP and former Prime Minister Ham Lini of the National United Party. The Opposition regularly challenged the 36-member coalition government regarding initiatives relating to the sale of Vanuatu visas in China (Radio NZ, February 14, 2014), the new dual citizenship policy (Radio Australia, February 10, 2014) and passport fraud (Radio Australia, October 30, 2013). The Opposition parties lodged 4 motions of no confidence in the government during the 12-month period of this study, the most recent on February 25, 2014, of which none passed.

Within Parliament, the Leader of the Opposition plays a central role in the appointment of parliamentary standing committees, alongside the Prime Minister.

References:

"Vanuatu opposition wants probe of visa sales in China," Radio New Zealand International, February 14, 2014. <http://www.radionz.co.nz/international/pacific-news/235149/vanuatu-opposition-wants-probe-of-visa-sales-in-china>

"Vanuatu opposition attacks dual citizenship move," by Caroline Tiriman, Radio Australia, February 10, 2014. <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/vanuatu-opposition-attacks-dual-citizenship-move/1262360>

"Vanuatu opposition allege passport fraud by current government," Radio Australia, October 30, 2013. <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/vanuatu-opposition-allege-passport-fraud-by-current-government/1212234>

"Parliamentary Committees." Parliament of the Republic of Vanuatu. <http://www.parliament.gov.vu/Committees/Committees.html>

"Vanuatu Opposition Consolidating Support for No-Confidence Motion." Pacific Islands News Report. February 25, 2014. <http://pidp.eastwestcenter.org/pireport/2014/February/02-26-01.htm>

Interview with NGO representative who requested anonymity. February 22, 2014.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

Comments:

The Constitution of the Republic of Vanuatu provides for an independent Electoral Commission (Article 18), to be appointed by the President of the Republic, in consultation with the Judicial Service Commission (Article 20). The Electoral Commission comprises a chairman and two other members, who may neither be a member of or a candidate for election to parliament, local government or municipal councils, to the National Council of Chiefs nor any person who exercises any position of responsibility in a political party (Article 18(3)). The Chairman and members serve for a period of up to 5 years (Article 18(3a)). The Electoral Commission has general responsibility for, and supervises, registration of electors and the conduct of elections to Parliament, the National Council of Chiefs, local government and municipal councils (Article 20 (1)). The Electoral Commission may lay reports before Parliament regarding matters under the supervision, including any draft bill (Article 20 (4)). The Representation of the People Act [CAP 146, section 39(2)] further specifies that the Electoral Commission must submit electoral reports to Parliament within 3 months of receiving such reports from the Principal Electoral Officer (PEO).

The PEO administers functions relating to registrations and elections (Articles 19 and 20). The Representation of the People Act [CAP 146] section 2 further outlines the functions and duties of the Principal Electoral Officer in preparing for and conducting elections. The PEO heads the Electoral Office and supervises a staff of four, including a deputy electoral officer, a compiler, an assistant compiler and a secretary. The Public Service Commission may second such staff to the Electoral Office to assist with the discharge of the PEO's functions, as required by the PEO (RPA [CAP 146] 2(4)). The Electoral Office has headquarters in Port Vila and may establish branch offices (RPA [CAP 146] 2(5)). In addition, section 6 of the RPA [CAP 146] empowers the PEO to appoint a registration officer for each constituency, who may in turn draw on assistance from inhabitants in a particular area to assist with "determining the age, place of residence or any other matter for the purpose of drawing up the electoral list" (RPA [CAP 146] 6(4)).

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 18, 19 and 20. <http://www.parliament.gov.vu/Constitution.html>

Representation of the People Act [CAP 146]. 1982. Section 2. http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

25

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | **No**

Comments:

The constitutionally mandated Electoral Commission comprises a chairman and two other members who are prohibited from participating as candidates in state or local government, to be members of the Malvatumauri National Council of Chiefs or to have any position of responsibility in a political party (Article 18(2)(e)). These restrictions enable the independence of the Commission.

The Principal Electoral Officer (PEO), however, has weaker guarantees of political independence in the Representation of the People Act [CAP 146], with an operational budget tied to the Ministry of Internal Affairs. The PEO position is a public servant position within the Ministry of Internal Affairs. For example, during the survey period, two by-elections were held for the Tanna and Port Vila constituencies. The Electoral Office's ability to administer these unprecedented elections depended on the Minister's securing of supplemental appropriation from Parliament. There is no legal guarantee that additional budget for elections will be prioritized by government.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 18, 19 and 20.
<http://www.parliament.gov.vu/Constitution.html>

Representation of the People Act [CAP 246]. 1982. Section 6.
http://www.paclii.org/vu/legis/consol_act/rotpa298/

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be publicly released]

"New Principal Electoral Officer Appointed," by Godwin Ligo, Vanuatu Daily Post. September 13, 2013. <http://www.dailypost.vu/content/new-principal-electoral-officer-appointed>

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

During the survey period, the Electoral Commission was appointed by the President, in consultation with the Judicial Service Commission in January 2012. It comprised John Killion Taleo (Chairman) and two other members: Linnes Tarranga and Martin Tete (Van Trease 2013: 3). Martin Tete was the Principal Electoral Officer from 1996 to 2010 and has extensive qualifications in electoral management. As recurrent budget is appropriated annually through the Ministry of Internal Affairs, who also endorses supplementary appropriations, and there is no formal guarantee that requested election budgets will be prioritized, the Electoral Commission is limited in its exercise of independence.

During this same 12-month period, the Principal Electoral Officer was subject to political interference. This post was held by four different officials, either by directive of the Prime Minister or by the Public Service Commission, which sits within the Prime Minister's portfolio. The interference in the PEO's position in the lead up to the October 2012 elections continued into 2013 (Van Trease 2013: 3).

Two interim PEOs, Lionel Kaluat (transferred from his position as Commissioner of Labor) and Etienne Kombe (recalled to duty, a former PEO during the early 1990s), were appointed in October 2012 and December 2012 respectively. Their appointments followed the suspension of PEO Lawson Samuel on the eve of the 30 October 2012 elections for reasons of alleged bias in candidate registration. Mr Samuel had declared the caretaker Prime Minister Sato Kilman ineligible to stand due to outstanding debt to government (Makin, Vanuatu Daily Digest, October 16, 2012). Samuel was re-instated by the Prime Minister on 4 May 2013, which was then revoked on 24 May 2013. In July 2013, Martin Tete was appointed Acting PEO (Marango, Vanuatu Daily Post 13 June 2013). A new PEO, Charles Vatu, was appointed on 4 September 2013 and has remained in this position to the end of the survey period (Ligo, Vanuatu Daily Post 13 Sept 2013).

Aside from the political interference with the term of the PEO position, appointments have typically been based on qualifications, as per the Public Service Commission's policy. All PEOs have had tertiary qualifications and previously held senior management positions within government or civil society.

A final limitation to the independence of the Electoral Office relates to the power of the Public Service Commission to appoint additional electoral/registration staff (RAP [CAP 146] 2(4)), without the restrictions specified in relation to the Electoral Commission's membership (Constitution Article 18(2)(e)). Such staff may have political affiliations, a particular concern for local level government posts which are charged with conducting registration processes. This is a particular challenge for small communities where social networks are strong. For example, in the author's voting constituency of Efate Rural, the local area secretary who conducts voter registration and is a regular polling clerk, is also the brother of a prominent political figure within Shefa Provincial Council, which appoints local level government positions.

References:

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be publicly released]

"New Principal Electoral Officer Appointed," by Godwin Ligo, Vanuatu Daily Post. September 13, 2013. <http://www.dailypost.vu/content/new-principal-electoral-officer-appointed>

Interview with Martin Tete, Electoral Adviser. February 10, 2014.

"Tete Appointed Acting Principal Electoral Officer," by Thompson Marango, Vanuatu Daily Post. June 13, 2013. <http://www.dailypost.vu/content/tete-appointed-acting-principal-electoral-officer>

"Vanuatu Daily Digest," by Bob Makin, Vanuatu Daily Digest. October 16, 2012. <https://vanuatudaily.wordpress.com/2012/10/16/vanuatu-daily-news-digest-16-october-2012/>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

During the period of this study, the Vanuatu Electoral Office experienced a high turnover of staff due to political interference, recurrent budget constraints and staff sabbaticals. Within the organizational structure, the Principle Electoral Officer (PEO) oversees a Compiler, an Assistant Compiler, and a Receptionist. Temporary, daily-rated junior staff are brought in as required during peak registration and polling periods. During the October 2012 elections and through to the 2013 provincial elections, temporary staff comprised first-year university students from the Port Vila campus, and provided continuity within the office as the PEO position was suspended and/or transferred prior to and throughout the study period. In January 2013, the Compiler went on four years study leave and a full-time replacement was not recruited until 10 months later.

The office is particularly understaffed "with regard to its operation in the outer islands, where it has no permanent designated officers to carry out its operations" (Van Trease 2013: 24).

Full-time electoral officers are typically qualified public servants. In the case of the recruitment of the PEO in September 2013, Charles Vatu was recruited from outside of the public service and is a university-educated reverend and former politician under the Graon mo Jastis Party. Polling officers are recruited on a voluntary basis, and typically reside in the communities in which they will be working in a polling station (ACE 2006). On several islands, provincial area secretaries and teachers typically volunteer as polling officers. The Electoral Office provides a half-day training on voting procedures and rules for all officers (Tete, Feb 10, 2014).

References:

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be released]

"Vanuatu – Limitations to the Implementation of the Electoral Management Board." ca. 2006, ACE The Electoral Knowledge Network.

<http://aceproject.org/ace-en/topics/em/electoral-management-case-studies/vanuatu-limitations-to-the-independence-of-the-emb>

Interview with Martin Tete, Electoral Adviser. February 10, 2014.

Lead Researcher, Notes from Series of Discussions with VEO, Port Vila, January – June 2013.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Office does not regularly produce reports after general elections, primarily due to capacity and budget constraints, despite the legal requirement for the Principal Electoral Officer to submit an election report to the Electoral Commission within 3 months of polling day (Tete, Feb 2014). The Electoral Commission in turn must make a report to Parliament, within 3 months of having received the election report (Representation of the People Act [CAP 146] 39 (1 and 2)).

The 2012 report on the 9th elections was finalized in October 2013 with the support of a consultant, Howard Van Trease, and funded by the Australian Government's Aid Program. This report is awaiting parliamentary endorsement before it can be released publicly (Van Trease 2013). As election results are officially released by the government within 30 days of an election (e.g. the January 7, 2014 Port Vila Municipality Election results were officially released a week later), there is no evidence of public demand for more reporting other than the Official Gazette from the State Law Office containing the official vote count.

References:

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be released publicly]

Representation of the People Act [CAP 146]. 1982. Section 39.

http://www.paclii.org/vu/legis/consol_act/rotpa298/

"Declaration of Results for the Port Vila Municipal Council Election of 7 January," Republic of Vanuatu Official Gazette no. 2 of 2014.

Interview with Martin Tete, Electoral Adviser. February 10, 2014.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

Comments:

All of the 32 electoral petitions lodged following the October 2012 national elections were pitted against the Electoral Office, but no prosecutions were lodged against political candidates. In February 2013, Willy Jimmy, Member of Parliament for the Port Vila constituency, claimed that “the Electoral Commission has allowed an offence to go unheeded,” in relation to candidate eligibility of former Prime Minister Sato Kilman, who was alleged to have an outstanding debt to the state (Makin, February 9, 2013). Prior to the October 2012 election, former Principal Electoral Officer, Lawson Samuel, had deemed then-Prime Minister Kilman ineligible to stand in the Malekula constituency until debts were settled. The Prime Minister suspended the PEO Makin, Vanuatu Daily Digest, October 16, 2012). The court struck out Willy Jimmy’s case on the grounds that the interpretation of section 55 of the Representation of the People Act [CAP 146] did not permit Jimmy to present a petition in a constituency other than his own.

There is public acknowledgement that treating and bribing are common electoral offences, but this is poorly documented and difficult to prove (Binihi, December 2013). Sections 45 and 46 of the RPA [CAP 146] define bribery as (i) the provision of money or gifts to procure office or votes, or to induce voters to refrain from voting; or (ii) the provision of food, drink and entertainment for the purpose of corruptly influencing a person to vote or refrain from voting (as well as rewarding a person for behaving in a particular way). Election petitions frequently present cases on such grounds. For example, in July 2013, the Opposition scheduled a motion of no-confidence in Prime Minister Moana Carcasses’ government, based on election petitions pertaining to alleged vote-buying by Carcasses and two other ministers, Tony Wright and Patrick Crowby (now deceased) prior to the October 2012 elections. The petitioner, former Attorney-General Ishmael Kalsakau, alleged that: Carcasses gave 25kg of rice to people in the Port Vila district of Seaside Paama, that Wright offered an open bar to young voters and that Crowby gave money directly to people to vote for him (Radio Australia, July 10, 2013).

During the January 2014 Port Vila Municipality elections, urban citizens regularly posted comments regarding campaign practice in a Facebook discussion group specifically aimed at sharing information about corruption.

The penalty fee for corrupt practices is set at VT100,000 or imprisonment of up to 5 years and appears not to be a deterrent based on alleged widespread treating and bribery, as well as an Electoral Office that has not prosecuted candidates. During the period of this study, no penalties were imposed on alleged offenders.

References:

“Campaign for Vila Elections Should Start Friday,” by Ricky Binihi, Vanuatu Daily Post. December 20, 2013. <http://www.dailypost.vu/content/campaigns-vila-elections-should-start-friday>,

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be released publicly]

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Vanuatu Daily Digest, by Bob Makin. February 9, 2013. <https://vanuatudaily.wordpress.com/2013/02/09/vanuatu-daily-news-digest-9-february-2013/>

“Vanuatu Daily Digest,” by Bob Makin, Vanuatu Daily Digest. October 16, 2012. <https://vanuatudaily.wordpress.com/2012/10/16/vanuatu-daily-news-digest-16-october-2012/>

Yumi Toktok Stret, Facebook Discussion Group. January 2014. <https://www.facebook.com/groups/yumitoktok>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

75

19a. In practice, there is a clear and transparent system of voter registration.

Comments:

The law outlines a transparent voter registration process, including the requirement for the electoral roll to be publicly available for at least 2 weeks every year (Representation of the People Act [CAP 146] 16(1)), which the Electoral Office follows. However, very few members of the public typically practice, check or correct this list in practice (Kelly 2012).

The voter registration process and electoral roll are challenged by insufficient resources in maintaining an accurate registry, and the application of special provisions such as proxy voting. The lack of permanent electoral staff in the provinces is a major factor contributing to the flawed electoral roll (Van Trease 2013: 24). Van Trease (2013: 5) has estimated that the electoral roll for the 2012 elections was in excess by approximately 50,000 voters. While outside of the period of study, in 2012 former PEO Lionel Kaluat’s commented that, “most election discrepancies [are due to] the direct influence of politicians and their agencies in tampering into the system by way of influencing Registration Officers and staff of the Electoral Office to facilitate documents such as proxies, duplicate cards and registration of voters names into the electoral roll that do not comply with the requirements of CAP 146,” an observation that continued to apply during for the period of this study (Ligo, December 2012).

The system of registering for proxy voting also increases the opportunity for vote-buying (Kelly 2012: 4). Proxy votes are not recorded on a master list, nor specifically documented on polling day therefore it is difficult to track the legitimate use of this provision. Abuse of this system is believed to have contributed to an inflated electoral roll (which is in excess of 50,000 people according to Van Trease 2013).

In May 2013, Tannese Member of Parliament (MP) Silas Yatan called on the Electoral Office to prohibit the use of proxy votes during a by-election to replace a deceased MP, as there were outstanding election petitions relating to the use of proxies (Ligo, May 13, 2013). Proxy votes were, however, allowed by law during the Tanna by-election.

References:

“Natapei should check his facts before lashing out: Kaluat,” by Godwin Ligo, Vanuatu Daily Post. December 10, 2012. <http://www.dailypost.vu/content/natapei-should-check-his-facts-lashing-out-kaluat>

“Calls to overhaul Vanuatu electoral system,” Australia Network News, July 30, 2013. <http://www.abc.net.au/news/2013-07-30/calls-to-overhaul-vanuatu-electoral-system/4852750>

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be publicly released]

Vanuatu 2012 Election – Election Observer Report. November 2012. Norm Kelly. Centre for Democratic Institutions, Canberra, Australia. http://www.cdi.anu.edu.au/VAN/2012-13/2012_10_VAN_RES_Elctn_Mntrng_VAN.html

“Stop proxy votes for Tanna election: MP,” by Godwin Ligo, Vanuatu Daily Post. May 13, 2013. <http://www.dailypost.vu/content/stop-proxy-votes-tanna-election-mp>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and “ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

Comments:

Article 54 of the Constitution of the Republic of Vanuatu enables election disputes to be presented to the Supreme Court. Elections may also be challenged under section 54 the Representation of the People Act [CAP 146], provided that those challenging are registered to vote or are a candidate in that election (s55). Petitions must be lodged within 21 days of the publication of the Gazette of the official results (s57) and must be accompanied by a VT20,000 (USD200) deposit.

The Supreme Court may declare the election of a candidate void if (RPA [CAP 146] 61): (a) bribery, treating, undue influence or other misconduct has affected the result of the election;

(b) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;

(c) the candidate was at the time of his election a person not qualified or disqualified for election; or

(d) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Article 54. [<http://www.parliament.gov.vu/Constitution.html>]

Representation of the People Act [CAP 246]. 1982. (Amendments 2007 and 2012) Sections 54 to 61. http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Political candidates frequently exercise their right to contest election results. During the period of this study, the Supreme Court presided over 24 electoral petitions pertaining invariably to alleged misuse of proxy voting, voting miscounts, alleged bribery and candidate eligibility regarding the October 2012 elections (Van Trease 2013: 22). By January 2014, 22 cases had been assessed and dismissed by the courts (Tete, February 2014).

However, a February 2013 Supreme Court decision to throw out petitions by Port Vila candidates, Willy Jimmy and Daniel Molisa, regarding former Prime Minister Sato Kilman’s candidate eligibility has raised questions about the legal interpretation of section 55 of the Representation of the People Act [CAP 146] pertaining to eligibility for lodging petitions. Ricky Binihi of the Vanuatu Daily Post (February 11, 2013) reports that, “The Court found that this [section] restricts petitioners to those registered to vote in the election in the particular constituency to which the challenged election of an individual occurred.” The Court’s interpretation suggests that citizens and watchdog groups are limited in their rights to challenge electoral administration, practice and outcomes.

References:

“Election petitions against PM Sato Kilman quashed,” by Ricky Binihi, Vanuatu Daily Post. February 13, 2013. <http://www.dailypost.vu/content/election-petitions-against-pm-kilman-quashed>

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be publicly released]

Interview with Martin Liu Tete, Electoral Adviser. February 10, 2014.

“No Confidence Motion Lodged Against Vanuatu PM,” Radio Australia, July 10, 2013. <http://pidp.eastwestcenter.org/pireport/2013/July/07-11-01.htm>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

During the period of this study there were no reports of military partisanship. While no national elections were held during the period of this study, a number of provincial and by elections were held that demonstrated the Electoral Office’s good working

relationship with the Vanuatu Mobile Force and the Vanuatu Police Force to ensure peaceful running of elections. During the October 2012 elections, Acting PEO Lionel Kaluat reported an additional 300 police officers drafted to supervise polling stations and that “we have had “_ successful briefing with the security “_ the police and Vanuatu Mobile Force “_ to maintain law and order” (Australia Network News, October 30, 2012). No violence occurred during the elections.

The military also provide security officers for the transportation of ballot boxes during elections and at polling stations (Jane Joshua, October 2012; Van Trease 2013).

References:

“Ballot Boxes Shipped To Islands,” by Jane Joshua, Vanuatu Daily Post. October 26, 2012. <http://www.dailypost.vu/content/ballot-boxes-shipped-islands>

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be publicly released].

“Vanuatu headed for a smooth election day,” Australia Network News. October 30, 2013. <http://www.abc.net.au/news/2012-10-29/an-vanuatu-election-day/4340248>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

Authorized representatives of political candidates are permitted to observe voting and counting proceedings at a specified polling station, provided that they are nominated more than 24 hours prior to election day (Representation of the People Act [CAP 146] Schedule 5 (3)). Members of the press and civil society groups may also request observer status from the Electoral Office, for example during the 2012 elections Transparency Vanuatu fielded a team of observers across the Efate polling stations. A list of all authorized persons is displayed outside all polling stations, and the Principal Electoral Officer issues an identification card for use on the day.

RPA [CAP 146] Schedule 5 (15) further permits the public to observe a count at the polling station, provided that the returning officer is assured that this will not hinder counting.

No legal provisions for international observers exist, but neither are there any restrictions to the presence of international observers. International observers participated in the 2002 and 2012 elections (Kelly 2012).

References:

Representation of the People Act [CAP 246]. 1982. (Amendments 2007 and 2012) Schedule 5. http://www.paclii.org/vu/legis/consol_act/rotpa298/

Vanuatu 2012 Election – Election Observer Report. November 2012. Norm Kelly. Centre for Democratic Institutions, Canberra, Australia. http://www.cdi.anu.edu.au/VAN/2012-13/2012_10_VAN_RES_Elctn_Mntrng_VAN.html

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

Comments:

Authorized election observers regularly scrutinize voting and counting procedures on polling day, unhampered by returning officers and polling clerks. While international observers were only permitted for the October 2012 elections (PINA, October 2012), which is outside the period of this study, domestic observers were authorized for all provincial and municipal elections in the last year.

The Electoral Office allows for a generous interpretation of “authorized representative” observers, and has previously approved non-political-affiliate observers such as members of the media. During the October 2012 elections, the EO approved 60 Transparency Vanuatu observers (2012). The lead researcher served as an observer during these elections on the island of Efate and observed that polling clerks enabled the effective management of observers. Observers were required to sit at a distance from the voting area, but afforded full view of the proceedings. Polling clerks publicly shared updates with observers, for example, announcing when and why a voter was not permitted to vote or when elderly or disabled voters would be permitted to have someone assist them to the voting booth (the security officer was the designated aide).

Authorized observers, as well as the general public, were permitted to observe the first unofficial count at the polling station, including the declaration of void votes (e.g. due to more than one ballot paper in an envelope) and were informed by the returning officer of total votes against the tally sheet of votes. The official re-counts occur at the centralized counting center in Port Vila, where access is restricted to electoral officials (Van Trease 2013: 21).

References:

Vanuatu Government 2012 Election Report. October 2013. Authored by Howard Van Trease. [yet to be publicly released]

Vanuatu 2012 Election – Election Observer Report. November 2012. Norm Kelly. Centre for Democratic Institutions, Canberra, Australia. http://www.cdi.anu.edu.au/VAN/2012-13/2012_10_VAN_RES_Elctn_Mntrng_VAN.html

“Diplomats called in as observers at last minute for Vanuatu poll,” by on-line editor, Pacific Islands News Association. October 26, 2012. <http://pina.com.fj/index.php?p=pacnews&m=read&o=13138272355089ab4bd12b97b34f3f>

“Electoral Observation Role,” in Transparency Vanuatu’s Annual General Meeting report, December 2012. http://www.transparencyvanuatu.org/index.php?mact=News.cntnt01_detail_0&cntnt01articleid=43&cntnt01returnid=15

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

67 2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are limits on individual donations to political parties.

Yes | **No**

Comments:

There is no legislation regulating party financing in Vanuatu, nor is this role specified for either the Electoral Commission or the Principal Electoral Officer. The closest approximation to transparent financing is found in the Leadership Code Act [CAP 240]

(sections 31, 32 and 33) which requires incumbents to provide annual returns on income and assets disposed of in accordance with the Act.

Of relevance are the January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu which introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

References:

Leadership Code Act [CAP 240]. 1998. Sections 31, 32 and 33 (Annual Returns).
http://www.paclii.org/vu/legis/consol_act/lca131/

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:

There is no legislation regulating party financing in Vanuatu, nor is there a formal requirement for the Electoral Commission or the Principal Electoral Officer to take on this role. The closest approximation to transparent financing is found in the Leadership Code Act [CAP 240] (sections 31, 32 and 33) which requires incumbents to provide annual returns on income and assets disposed of in accordance with the Act.

The Vanuatu Government has begun to address concerns regarding political financing by corporate entities, commencing with limitations of political finance from "investor-citizens". January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

References:

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | No

Comments:

There are no laws limiting total political party expenditures. Both the Constitution and the Representation of the People Act [CAP 146] are silent on political party expenditures.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.
<http://www.parliament.gov.vu/Constitution.html>

Representation of the People Act [CAP 246]. 1982.(Amendments in 2007 and 2012).
http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | **No**

Comments:

There are no legal requirements for the disclosure of financial donations to political parties. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the disclosure of donations to political parties. However, there is provision within the Leadership Code Act [CAP 240, sections 31, 32, and 33] for candidates who held leadership positions (not only elected officials, but also political appointees and public servants) to provide annual returns on income and assets.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act [CAP 246]. 1982. (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Leadership Code Act [CAP 240]. 1998. Sections 31, 32, and 33 (Annual Returns)
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | **No**

Comments:

There are no laws regulating party financing in Vanuatu and as such no legal requirements exist for the independent auditing of the finances and expenditure of political parties when financial irregularities are uncovered. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the issue of political financing.

References:

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 4,5,13 and 17.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | **No**

Comments:

There is no legislation regulating party financing in Vanuatu, nor is this role specified for either the Electoral Commission, the Principal Electoral Officer or another entity to monitor political financing. The closest approximation to transparent financing is found in the Leadership Code Act [CAP 240] (sections 31, 32 and 33) which requires incumbents to provide annual returns on income and assets disposed of in accordance with the Act.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.

[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act [CAP 146]. 1982.

[\[http://www.paclii.org/vu/legis/consol_act/rotpa298/\]](http://www.paclii.org/vu/legis/consol_act/rotpa298/)

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

Yes | **No**

Comments:

There are no legal requirements for the disclosure of financial donations to political candidates. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the disclosure of donations to political candidates. However, there is provision within the Leadership Code Act [CAP 240, sections 31, 32, and 33] for candidates who held leadership positions (not only elected officials, but also political appointees and public servants) to provide annual returns on income and assets.

Of relevance are the January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu which introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.

[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Leadership Code Act [CAP 240]. 1998.

http://www.paclii.org/vu/legis/consol_act/lca131/

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

Comments:

There are no legal requirements for the disclosure of financial donations to individual political candidates and therefore no limits to corporate donations to individual political candidates. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the disclosure of donations to political candidates.

The Vanuatu Government has begun to address concerns regarding political financing by corporate entities, commencing with limitations of political finance from "investor-citizens". January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

There are no legal requirements for the disclosure of financial donations to individual political candidates. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the disclosure of donations to political candidates. However, there is provision within the Leadership Code Act [CAP 240, sections 31, 32, and 33] for candidates who held leadership positions (not only elected officials, but also political appointees and public servants) to provide annual returns on income and assets.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.paclii.org/vu/legis/consol_act/rotpa298/

Leadership Code Act [CAP 240]. 1998. Sections 31, 32 and 33.
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

There are no legal requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the matter of political financing and related auditing. However, there is provision within the Leadership Code Act [CAP 240, sections 31, 32, and 33] for candidates who held leadership positions (not only elected officials, but also political appointees and public servants) to provide annual returns on income and assets. There is no auditing requirement for these annual returns.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.pacii.org/vu/legis/consol_act/rotpa298/

Leadership Code Act [CAP 240]. 1998. Sections 31, 32 and 33.
http://www.pacii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

The law does not provide for an agency or entity to monitor the financing of individual political candidates' campaigns. There are no legal requirements for the disclosure of financial donations to political parties. Both the Constitution and the Representation of the People Act [CAP 146] are silent on the regulation of political financing.

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988.
[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Representation of the People Act. 1982 (Amendments of 2007 and 2012). http://www.pacii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Until January 2014, there were no regulations governing individual donations to political parties. The January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

During the study period, there were a number of media allegations of controversial political party funding which formed the basis for some electoral petitions (Makin, February 4, 2013). In February 2013, the media alleged that controversial yacht-owner and Vanuatu Honorary Consul to Vietnam, Pascal Anh Quan Saken, provided USD200,000 financing to Prime Minister Sato Kilman campaigns in the lead up to the October 2012 elections. The Vanuatu Independent newspaper published an email purportedly written by Saken, confirming his financing of Kilman's legal fees during his fight against an April 2011 motion of no-confidence (Makin, February 9, 2013). Kilman denied allegations stating that, "neither I nor the Peoples Progressive Party (PPP) have received assistance of any kind from Mr Pascal Saken for my political campaigns." The Prime Minister requested that the Police Force investigate the allegation with the journalist of the original article, who "responded that he had proof and will only speak in Court. He did not show his proof to the police " _ nor [did] " _ my office receive any proof of these allegations" (Vanuatu Daily Post, Feb 13, 2013). The Prime Minister used the opportunity to question media practice and responsible journalism.

As shown by the example, the burden of proof for political financing tends to be placed on the media. The context of little to no documentation and the difficulty in accessing financial records, particularly for smaller parties, means that despite frequent whispers of political financing, there often is no investigation.

References:

Vanuatu Daily Digest, by Bob Makin, February 4, 2013. <https://vanuatudaily.wordpress.com/2013/02/04/vanuatu-daily-news-digest-4-february-2013/>

Vanuatu Daily Digest, by Bob Makin, February 9, 2013. <http://vanuatudaily.wordpress.com/2013/02/09/vanuatu-daily-news-digest-9-february-2013/>

"I did not receive financial report from Saken," Vanuatu Daily Post. February 19, 2013. <http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are currently no limits governing corporate donations to political parties. During the study period there were a number of media allegations of controversial political party funding which formed the basis for some electoral petitions (Makin, February 4, 2013). The majority of these allegations pertained to individual funding, rather than corporate funding of political parties.

Until January 2014, there was no legal acknowledgement of political financing and the need for regulation. The January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

References:

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal limits on total party expenditure on political campaigns, nor is there any external monitoring of campaign financing.

Party campaign expenditure is limited by other factors such as geographical focus (e.g. the Jenisem Port Vila Party formed solely for the January 2014 Port Vila Municipal elections) and fundraising capacity. While outside the period of this study, one example of party practice for campaigning financing includes the Graon mo Jastis Party, which required all its October 2012 electoral candidates to cover their own campaign costs, including the VT100,000 (USD1,000) candidate registration fee. Similarly it required its candidates for the Port Vila Municipal elections to fundraise for their own campaign costs (GJP, October 2013). Kiery Manasseh of the Pacific Institute of Public Policy (July 2013) has observed that campaign expenditure can be curtailed by localization of politics: voters tend to vote for truly local candidates, so there is no need for a "massively expensive election campaign."

References:

"Fanresing blong ol kandidat blong Munisipol Kaonsel Eleksen." Graon mo Jastis Party. October 30, 2013. <http://www.graonmojastis.org/blog-nyus/ol-email-post/243-fandresing-blong-ol-kandidet-blong-munisipol-kaonsel-eleksen>

"By-elections and voting behaviour in Vanuatu," by Kiery Manasseh, Pacific Institute of Public Policy. July 2013. <http://pacificpolitics.com/2013/06/voting-behaviour-and-by-elections-in-vanuatu/>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations governing political party financing nor are any agencies charged with investigating party financing.

The Vanuatu Financial Intelligence Unit (FIU) is the “agency responsible for the receipt, analysis, assessment and dissemination to competent authorities disclosures of financial information to counter money laundering, terrorism financing and suspected proceeds of crime.” However, its primary functions are to focus on intelligence gathering and compliance regulation of financial institutions; it does not have a role in political party financing.

During the period of this study, Vanuatu’s media played an important role in monitoring political party financing, regularly informing the public of suspicious occurrences. In February 2013, the media alleged that controversial yacht-owner and Vanuatu Honorary Consul to Vietnam, Pascal Anh Quan Saken, provided USD200,000 financing to Prime Minister Sato Kilman campaigns in the lead up to the October 2012 elections. The Vanuatu Independent newspaper published an email purportedly written by Saken, confirming his financing of Kilman’s legal fees during his fight against an April 2011 motion of no-confidence (Makin, February 9, 2013). Kilman denied allegations stating that, “neither I nor the Peoples Progressive Party (PPP) have received assistance of any kind from Mr Pascal Saken for my political campaigns.” The Prime Minister requested that the Police Force investigate the allegation with the journalist of the original article, who “responded that he had proof and will only speak in Court. He did not show his proof to the police “_ nor [did] “_ my office receive any proof of these allegations” (Vanuatu Daily Post, Feb 13, 2013). The Prime Minister used the opportunity to question media practice and responsible journalism.

As the most frequent challengers to political financing, the burden of proof tends to be placed on the media. The context of little to no documentation and the difficulty in accessing financial records, particularly for smaller parties, means that despite frequent whispers of political financing, there often is no investigation beyond an initial allegation.

References:

“I did not receive financial report from Saken,” Vanuatu Daily Post. February 19, 2013. <http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

“Vanuatu Daily Digest,” by Bob Makin, Vanuatu Daily Digest. February 9, 2013. <https://vanuatudaily.wordpress.com/2013/02/09/vanuatu-daily-news-digest-9-february-2013/>

Vanuatu Financial Intelligence Unit (Homepage). <http://www.fiu.gov.vu/>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations governing political party financing nor are any agencies charged with investigating party financing, and as such no penalties.

While the January 2014 Constitutional amendments to Article 13 specified restrictions on “investor-citizens” from funding of activities that would cause political instability in Vanuatu (13(3)), no penalties were specified and it is unclear how such activities are to be monitored. However, both in traditional and social media there is growing recognition of the need for a legal framework regarding political financing (Yumi Toktok Stret, February 2014).

References:

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 2014. <https://www.facebook.com/groups/yumitoktok>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are no official audits of political party financing nor are any agencies charged with investigating party financing, and as such no penalties.

While the January 2014 Constitutional amendments to Article 13 specified restrictions on "investor-citizens" from funding of activities that would cause political instability in Vanuatu (13(3)), no penalties were specified and it is unclear how such activities are to be monitored. However, both in traditional and social media there is growing recognition of the need for a legal framework regarding political financing (Yumi Toktok Stret, February 2014).

During annual congresses, subcommittees of the major political parties such as the Vanua"aku Pati and the National United Party provide financial updates of member contributions (Yumi Toktok Stret, February 2014). Campaign contributions are inconsistently documented, with the Graon mo Jastis Party providing the most regular public communication in this regard, via online media.

References:

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.

<https://www.facebook.com/groups/yumitoktok/>

Graon mo Jastis Party (Vanuatu) – Reports

<http://www.graonmojastis.org/ol-ripot>

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

Comments:

Until January 2014, there were no regulations governing individual donations to political candidates. The January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

During the period of this study, Vanuatu's media played an important role in monitoring political party financing, regularly informing the public of suspicious occurrences. In February 2013, the media alleged that controversial yacht-owner and Vanuatu Honorary Consul to Vietnam, Pascal Anh Quan Saken, provided USD200,000 financing to Prime Minister Sato Kilman campaigns in the lead up to the October 2012 elections. The Vanuatu Independent newspaper published an email purportedly written by Saken, confirming his financing of Kilman's legal fees during his fight against an April 2011 motion of no-confidence (Makin, February 9, 2013). Kilman denied allegations stating that, "neither I nor the Peoples Progressive Party (PPP) have received assistance of any kind from Mr Pascal Saken for my political campaigns." The Prime Minister requested that the Police Force investigate the allegation with the journalist of the original article, who "responded that he had proof and will only speak in Court. He did not show his proof to the police "_ nor [did] "_ my office receive any proof of these allegations" (Vanuatu Daily Post, Feb 19, 2013). The Prime Minister used the opportunity to question media practice and responsible journalism.

As the most frequent challengers to political financing, the burden of proof tends to be placed on the media. The context of little to no documentation and the difficulty in accessing financial records, particularly for smaller parties, means that despite frequent whispers of political financing, there often is no investigation beyond an initial allegation.

References:

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

"I did not receive financial report from Saken," Vanuatu Daily Post. February 19, 2013.

<http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

"Vanuatu Daily Digest," by Bob Makin, Vanuatu Daily Digest. February 9,

2013. <https://vanuatudaily.wordpress.com/2013/02/09/vanuatu-daily-news-digest-9-february-2013/>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

Comments:

There are no limits on corporate donations to individual candidates, and thus no effective regulation of a company's ability to financially support a candidate. During the study period there were a number of media allegations of controversial political financing which formed the basis for some electoral petitions (Makin, February 4, 2013). The majority of these allegations pertained to individual funding of parties, rather than corporate funding of candidates.

Until January 2014, there was no legal acknowledgement of political financing and the need for regulation. The January 2014 amendments to Article 13 (3) of the Constitution of the Republic of Vanuatu introduced specifications for the "investor-citizen" category that prevent them from being involved in Vanuatu politics, funding activities that would support political stability in Vanuatu and affiliating or forming political parties. Indigenous and naturalized citizens are exempt from these restrictions. However, there is no assigned regulatory authority to monitor this activity.

References:

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

"Vanuatu Daily Digest," by Bob Makin, Vanuatu Daily Digest. February 4, 2013. <https://vanuatudaily.wordpress.com/2013/02/09/vanuatu-daily-news-digest-4-february-2013/>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no agency charged with monitoring the financing of individual candidates' campaigns, and as such no investigations have been demanded nor penalties imposed.

The Vanuatu Financial Intelligence Unit (FIU) is the "agency responsible for the receipt, analysis, assessment and dissemination to competent authorities disclosures of financial information to counter money laundering, terrorism financing and suspected proceeds of crime." However, its primary functions are to focus on intelligence gathering and compliance regulation of financial institutions; it does not have a role in political financing. Any suspicions regarding fraudulent behavior of political candidates (such as 8 out of 22 petitions related to the October 2012 elections) are referred to the Vanuatu Police Force for investigation.

During the period of this study, Vanuatu's media played an important role in monitoring political party financing, regularly informing the public of suspicious occurrences. In February 2013, the media alleged that controversial yacht-owner and Vanuatu Honorary Consul to Vietnam, Pascal Anh Quan Saken, provided USD200,000 financing to Prime Minister Sato Kilman campaigns in the lead up to the October 2012 elections. The Vanuatu Independent newspaper published an email purportedly written by Saken, confirming his financing of Kilman's legal fees during his fight against an April 2011 motion of no-confidence (Makin, February 9, 2013). Kilman denied allegations stating that, "neither I nor the Peoples Progressive Party (PPP) have received assistance of any kind from Mr Pascal Saken for my political campaigns." The Prime Minister requested that the Police Force investigate the allegation with the journalist of the original article, who "responded that he had proof and will only speak in Court. He did not show his proof to the police " _ nor [did] " _ my office receive any proof of these allegations" (Vanuatu Daily Post, Feb 13, 2013). The Prime Minister used the opportunity to question media practice and responsible journalism.

As the most frequent challengers to political financing, the burden of proof tends to be placed on the media. The context of little to no documentation and the difficulty in accessing financial records, particularly for individual candidates, means that despite frequent whispers of political financing, there often is no investigation beyond an initial allegation.

References:

"I did not receive financial report from Saken," Vanuatu Daily Post. February 19, 2013. <http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

"Vanuatu Daily Digest," by Bob Makin, Vanuatu Daily Digest. February 9, 2013. <https://vanuatudaily.wordpress.com/2013/02/09/vanuatu-daily-news-digest-9-february-2013/>

Vanuatu Financial Intelligence Unit (Homepage). <http://www.fiu.gov.vu/>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are no regulations governing political financing nor are any agencies charged with investigating political financing of individual candidates' campaigns, and as such no penalties.

While the January 2014 Constitutional amendments to Article 13 specified restrictions on "investor-citizens" from funding of activities that would cause political instability in Vanuatu (13(3)), no penalties were specified and it is unclear how such activities are to be monitored. However, both in traditional and social media there is growing recognition of the need for a legal framework regarding political financing (Yumi Toktok Stret, February 2014).

References:

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.
<https://www.facebook.com/groups/yumitoktok/>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are no audits of individual candidates' campaigns.

While the January 2014 Constitutional amendments to Article 13 specified restrictions on "investor-citizens" from funding of activities that would cause political instability in Vanuatu (13(3)), no penalties were specified and it is unclear how such activities are to be monitored. However, both in traditional and social media there is growing recognition of the need for a legal framework regarding political financing (Yumi Toktok Stret, February 2014).

While the finances of independent candidates' campaigns are not audited, candidates may choose to disclose funders to their electorate during campaigns. For example, the author attended a number of village-level campaign rallies in the lead up to the February 2013 Shefa Provincial elections, where some candidates personally thanked specific donors for support. Specific financial contributions, however, were less frequently referenced.

References:

Official Gazette No. 2 of the Republic of Vanuatu. January 21, 2014. Constitution (Sixth) Amendment Act no. 27 of 2013 and Citizenship (Amendment) Act no. 39 of 2013.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.
<https://www.facebook.com/groups/yumitoktok/>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

6

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal requirement for political parties to disclose financial records within a specified timeframe. Financial disclosure is at the discretion of each party.

During annual congresses, subcommittees of the major political parties such as the Vanua"aku Pati and the National United Party provide financial updates of member contributions and expenditures to other party members (Yumi Toktok Stret, February 2014). Campaign contributions and expenditure are inconsistently documented, with the Graon mo Jastis Party providing the most regular public communication in this regard, via online media. Since 2008, the Graon mo Jastis Party has provided annual reports of its Member of Parliaments' expenditures of public funds, as a step toward greater party transparency.

References:

Graon mo Jastis Party (Vanuatu) – Reports
<http://www.graonmojastis.org/ol-ripot>

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.
<https://www.facebook.com/groups/yumitoktok/>

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access the financial records of political parties unless they personally serve in the party executive. Journalist investigations of alleged political financing rely primarily on personal networks, rather than formal procedures (Kaltongga, February 22, 2014). Financial information can also be accessed during annual party congresses, when subcommittees of the major political parties such as the Vanua"aku Pati and the National United Party provide financial updates of member contributions and expenditures, as well as general fundraising activities (Yumi Toktok Stret, February 2014). The Graon mo Jastis Party is currently the only party to make public financial expenditure reports available on-line.

References:

Interview with Eslyn Kaltongga, Freelance Journalist. February 22, 2014.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.
<https://www.facebook.com/groups/yumitoktok/>

Graon mo Jastis Party (Vanuatu) – Reports
<http://www.graonmojastis.org/ol-ripot>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access the financial records of political parties unless they personally serve in the party executive. There are no fees charged.

Journalist investigations of alleged political financing rely primarily on personal networks, rather than formal procedures (Kaltongga, February 22, 2014). Financial information can also be accessed during annual party congresses, when subcommittees of the major political parties such as the Vanua'aku Pati and the National United Party provide financial updates of member contributions and expenditures, as well as general fundraising activities (Yumi Toktok Stret, February 2014). The Graon mo Jastis Party is the only party to provide its financial records on-line (www.graonmojastis.org).

References:

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.
<https://www.facebook.com/groups/yumitoktok/>

Graon mo Jastis Party (Vanuatu) – Reports
<http://www.graonmojastis.org/ol-ripot>

Interview with Eslyn Kaltongga, Freelance Journalist. February 22, 2014.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The Graon mo Jastis Party is the only party to provide its financial records publicly and on-line (www.graonmojastis.org). These records identify the date, amount and recipient for expenditures. Party income information is less transparent. Financial information is made available during annual party congresses, when subcommittees of the major political parties such as the

Vanua"aku Pati and the National United Party provide financial updates of member contributions and expenditures, as well as general fundraising activities (Yumi Toktok Stret, February 2014). Party Treasurers tend to be hired based on accounting experience, however the author was unable to access financial records to determine quality.

Journalist investigations relating to political financing rely primarily on personal networks, rather than formal procedures (Kaltongga, February 22, 2014). However, the comprehensiveness of the financial information gathered through these informal mechanisms is unknown. This has led some political leaders, such as former Prime Minister Sato Kilman, to question the factual base of media stories that spotlight political financing (Vanuatu Daily Post, February 19, 2013).

References:

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.
<https://www.facebook.com/groups/yumitoktok/>

Graon mo Jastis Party (Vanuatu) – Reports
<http://www.graonmojastis.org/ol-ripot>

Interview with Eslyn Kaltongga, Freelance Journalist. February 22, 2014.

"I did not receive financial report from Saken," Vanuatu Daily Post. February 19, 2013.
<http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Individual candidates are not legally required to publish their sources of funding. Independents may choose to disclose funders to their electorate during campaigns. For example, the author attended a number of village-level campaign rallies in the lead up to the February 2013 Shefa Provincial elections, where some candidates personally thanked specific donors for support. Specific financial contributions, however, were less frequently referenced.

Once elected, officials are required to file annual returns on income and assets under the Leadership Code Act [CAP 240, sections 31, 32, and 33]. While outside the period of this study, former independent MP Ralph Regenvanu (who now heads the Graon mo Jastis Party) and Luganville MP George Wells, were the only elected officials to annually publish reports regarding their public fund allocations between 2008 and 2012 (Garae, February 13, 2012). Even when legally required, public financial disclosure is generally ad hoc and there is no monitoring.

References:

"MP worries over court decision," by Len Garae, Vanuatu Daily Post, February 13, 2012.
<http://www.dailypost.vu/content/mp-worried-over-court-decision>

Leadership Code Act [CAP 240]. 1998. Sections 31, 32 and 33.
http://www.pacii.org/vu/legis/consol_act/lca131/

Author's observations, Shefa Provincial elections, February 2013.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access the financial records of individual candidates. Individual candidates, like political party candidates, may choose to disclose funders to their electorate during campaigns, but there is no formal mechanism for obtaining this information via other means (Yumi Toktok Stret, February 2014) . For example, the author attended a number of village-level campaign rallies in the lead up to the February 2013 Shefa Provincial elections, where some candidates personally thanked specific donors for support. Specific financial contributions, however, were less frequently referenced.

Journalist investigations relating to political financing rely primarily on personal networks, rather than formal procedures (Kaltongga, February 22, 2014).

References:

Interview with Eslyn Kaltongga, Freelance Journalist. February 22, 2014.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.

<https://www.facebook.com/groups/yumitoktok/>

Author's observations, Shefa Provincial elections, February 2013.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access the financial records of Individual candidates. Individual candidates, like political party candidates, may choose to disclose funders to their electorate during campaigns, but there is no formal mechanism for obtaining this information via other means (Yumi Toktok Stret, February 2014). For example, the author attended a number of village-level campaign rallies in the lead up to the February 2013 Shefa Provincial elections, where some candidates personally thanked specific donors for support. Specific financial contributions, however, were less frequently referenced.

Journalist investigations relating to political financing rely primarily on personal networks, rather than formal procedures (Kaltongga, February 22, 2014). No fee is required.

References:

Interview with Eslyn Kaltongga, Freelance Journalist. February 22, 2014.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.

<https://www.facebook.com/groups/yumitoktok/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Campaign financing is not required to be made publicly available. Prior to forming the Graon mo Jastis Party in 2010, former independent MP Ralph Regenvanu was the only known independent elected official to provide details of campaign expenditure (February 20, 2012). While independent candidates may choose to disclose funders to their electorate during campaigns, the author observed during the February 2013 Shefa provincial election campaigns that these tended to be verbal announcements rather than shared balance sheets.

Journalist investigations relating to political financing rely primarily on personal networks, rather than formal procedures (Kaltongga, February 22, 2014). However, the comprehensiveness of the financial information gathered through these informal mechanisms is unknown. This has led some political leaders, such as former Prime Minister Sato Kilman, to question the factual base of media stories that spotlight political financing (Vanuatu Daily Post, February 19, 2013).

References:

"MP Ralph Regenvanu reports details of his MP allocation spending – a good example other MPs should follow," Transparency Vanuatu opinion piece, Vanuatu Daily Post, February 20, 2012.

<http://www.dailypost.vu/content/mp-ralph-regenvanu-reports-details-his-mp-allocation-spending-%E2%80%93-good-example-other-mps-should>

Interview with Eslyn Kaltongga, Freelance Journalist. February 22, 2014.

Vanuatu Yumi Toktok Stret, Facebook, Discussion Forum. February 21, 2014.

<https://www.facebook.com/groups/yumitoktok/>

"I did not receive financial report from Saken," Vanuatu Daily Post. February 19, 2013.

<http://www.dailypost.vu/content/i-did-not-receive-financial-support-saken-pm-kilman>

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

3.1. Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

Comments:

The Constitution of Vanuatu outlines the fundamental rights and freedoms of all Vanuatu citizens, including those who have been charged with an offence (Article 5).

Individuals may seek remedy in the courts for any infraction of their guaranteed rights. This is laid out in Article 6 of the Constitution on Enforcement of fundamental rights:

“(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.

(2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right.”

References:

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Articles 5 & 6, <http://www.parliament.gov.vu/Constitution.html#amendment>

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

69

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The Vanuatu Government develops and implements policy initiatives both as part of a planned, transparent approach as well as, at times, on an ad hoc basis with little consultation and with a haste that does not allow for broad community or stakeholder consultation, or for considered debate in the national Parliament.

Sometimes the reasons for policy decisions are not clearly articulated, and, particularly in the case of revenue-raising measures, have been given in terms of the Government’s budgetary pressures, without any explanation as to why that particular policy direction was taken amongst a range of other options.

In March 2013, a new Government was formed following the resignation of the Honourable Sato Kilman, on the eve of a motion of no confidence to be debated in Parliament. The new Government, headed by the Honourable Moana Carcasses Kalosil (who had been Finance Minister in the Kilman Government), published a list of actions to be completed within its first 100 days in office. Some items on this list were implemented, others remain unaddressed, and some have been seemingly overturned by policy decisions contradicting the intentions in the list. Two particularly controversial items on the 100 day list included:

30. Amend laws to prevent granting of citizenship without having lived 10 years in Vanuatu
 31. Publish a draft policy paper for public comment on a proposed amendment of the Constitution to provide for dual nationality (Honourable Moana Carcasses Kalosil, Prime Minister, "100 Days List").

Despite the promise to prevent the granting of citizenship before ten years' residence in Vanuatu, less than one year later, a new category of citizenship was created, which allows for people to take up dual citizenship without first having lived in Vanuatu for ten years, for a price. This change took place, according to the Leader of the Opposition, without opportunity for "any parliamentary committee of both sides of the House to consider the proposals which finally emerged, with changes being introduced as late as even this morning" (Honourable Ham Lini MP quoted at Vanuatu Daily Digest, 29 November 2013, the date on which the legislation was debated and passed).

In contrast, in 2013, the Government undertook a lengthy process to develop its National Information and Communications Technology (ICT) Policy, appointing a National ICT Development Committee including representatives from Government, civil society, private sector and the media. By the end of 2013, national public consultations had been undertaken, and a final policy approved by the Council of Ministers. In response to a question about the policy's development, a Project Manager with the Vanuatu Office of the Chief Government Information Officer stated that, "A good national ICT policy is about stakeholders taking ownership of the policy on a more bottom up approach which we are taking and so far, we have positive outcomes" (Dionisia Tabureguci, April 2013).

However, more controversial policy decisions are often taken without any prior public input and without detailed explanation, which can lead to negative perceptions of the Government and its actions. One example is the awarding of a contract for the upgrade of existing airports and development of a new international airport for Vanuatu: "A company with no apparent experience in aviation has been awarded a \$US350 million contract to upgrade Vanuatu's airports and run them for the next 50 years." (Liam Cochrane, "Palm oil giant Mewah denies links to Vanuatu airport developer", Radio Australia)

References:

Honourable Moana Carcasses Kalosil, Prime Minister, Republic of Vanuatu, "100 Days List", reproduced at <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list/>, 11 April 2013, accessed 18/03/2014

Honourable Ham Lini MP, quoted at Bob Makin, Vanuatu Daily Digest, <https://vanuatudaily.wordpress.com/?s=29+november>, 29 November 2013

Dionisia Tabureguci, "Vanuatu taps into ICT sector Moves closer to a national ICT Policy", Islands Business, <http://www.islandsbusiness.com/2013/4/telecommunications/vanuatu-taps-into-ict-sector-moves-closer-to-a-nat/>, April 2013

Liam Cochrane, "Palm oil giant Mewah denies links to Vanuatu airport developer," Radio Australia, 6 September 2013. <http://www.radioaustralia.net.au/international/2013-09-03/palm-oil-giant-mewah-denies-links-to-vanuatu-airport-developer/1185327>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

The actions of the Executive can be reviewed by the judiciary. The Government Proceedings Act (as amended by the Government Proceedings (Amendment) Act, No 4 of 2010, and renamed the State Proceedings Act), provides at Section 3: Subject to this Act, a proceeding may be instituted by or against the State. In section 2, the Act defines an 'important public issue' to be any proceedings in any Court that involves: "(a) the interpretation of the Constitution; or (b) a determination as to the validity of any Act" _

References:

Government Proceedings Act, No 9 of 2007, Sections 2 and 3, http://www.paclii.org/vu/legis/num_act/gpa2007248/

Government Proceedings (Amendment) Act, No 4 of 2010, http://www.paclii.org/vu/legis/num_act/gpa2010328/

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

In the period under review, there is evidence that the courts dealt with judicial reviews as soon as was practicable. For example, the case of a Director General challenging his transfer to another agency was lodged with the Supreme Court on 8 August 2013 and a ruling made on 30 August 2013 (*Bebe v Republic of Vanuatu* [2013]). A subsequent appeal was finalized before the end of 2013 (*Bebe v Republic of Vanuatu* [2013]). Other examples include a case dealing with the signing of a concession agreement to build an airport (*Vanuaroroa v Republic of Vanuatu* [2013]) and the termination of an appointment of a roving ambassador (*Goiset v Republic of Vanuatu* [2013]).

While not directly related to judicial review of executive actions, there have been allegations that the courts at times use technicalities to avoid difficult decisions (Willie Jimmy MP, quoted in Radio NZ International, 11 February 2013). And it is clear too that in some cases, the courts have struggled to enforce their judgements, and have had to resort to drastic measures in what one Officer of the Court reportedly described as a "constitutional breakdown in its worst possible term" ("Warrant to Seize 3 Ministerial Cars", *Vanuatu Daily Post*, 17 February 2014), when a warrant authorizing seizure of three ministerial vehicles was issued by the Court of Appeal following the failure of the Government to comply with an order to pay damages awarded to an applicant. The Government was ordered to pay an amount in early 2013, and its failure to do so by early 2014 led to the order for seizure and sale of the vehicles.

References:

Bebe v Republic of Vanuatu [2013] VUSC 190; Judicial Review 13 of 2013, 30 August 2013, <http://www.paclii.org/vu/cases/VUSC/2013/190.html>

Bebe v Republic of Vanuatu [2013] VUCA 36; Civil Appeal Case 27 of 2013, 22 November 2013, <http://www.paclii.org/vu/cases/VUCA/2013/36.html>

Goiset v Republic of Vanuatu [2013] VUSC 84; Judicial Review 6 of 2013 (1 July 2013) <http://www.paclii.org/vu/cases/VUSC/2013/84.html>

Vanuaroroa v Republic of Vanuatu [2013] VUSC 182; Judicial Review 17.2013 (17 October 2013). <http://www.paclii.org/vu/cases/VUSC/2013/182.html>

Willie Jimmy MP, quoted in "Vanuatu MP describes court decision to strike out his petition against PM as nonsense", Radio NZ International, 11 February 2013, <http://www.radionz.co.nz/international/pacific-news/210143/vanuatu-mp-describes-court-decision-to-strike-out-his-petition-against-pm-as-nonsense>

"Warrant to Seize 3 Ministerial Cars", February 17, 2014. *Vanuatu Daily Post*. <http://www.dailypost.vu/content/warrant-seize-3-ministerial-cars>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

In Vanuatu, there is some room for members of the Executive to use delegated or subsidiary legislation to implement policy changes without parliamentary scrutiny or other community consultation. While many changes made in this way are limited to relatively minor changes, in the last year, ministerial orders have been used to make some highly controversial changes to immigration regulations.

The 'Road Map of the Capital Investment Immigration Plan (CIIP)' was instigated by an order of the Minister for Internal Affairs in August 2013. This change meant that foreign nationals could effectively sidestep the constitutional requirement to reside in Vanuatu for ten years before obtaining citizenship (Jane Joshua, "US\$10,000 for Citizenship", Vanuatu Daily Post, 19 August 2013).

Other less controversial, yet significant, changes have been effected in other areas in the past year. The Minister for Internal Affairs amended the municipal boundaries in the capital city, Port Vila, and increased the number of seats on the Municipal Council by order in 2013 (Godwin Ligo, "Port Vila Municipal seats increase by 3", Vanuatu Daily Post, 13 May 2013).

A ministerial order was also used, again by the Internal Affairs Minister, to temporarily declare hotel and resort undertakings as "essential services", thereby preventing industrial action from 15 June to 15 July 2013 while an industrial dispute at a major resort was resolved (Bob Makin, Vanuatu Daily Digest, 17 June 2013).

The use of ministerial orders in these ways to some extent undermines the ability of citizens to provide input to and engage in what can be significant local, national and industrial relations issues.

References:

Jane Joshua, "US\$10,000 for Citizenship", Vanuatu Daily Post, 19 August 2013, <http://www.dailypost.vu/content/us10000-citizenship>

Godwin Ligo, "Port Vila Municipal seats increase by 3", Vanuatu Daily Post, 13 May 2013, Godwin Ligo, "Port Vila Municipal seats increase by 3", Vanuatu Daily Post, 13 May 2013

Bob Makin, Vanuatu Daily Digest, 17 June 2013, <http://vanuatudaily.wordpress.com/2013/06/17/vanuatu-daily-news-digest-17-june-2013/>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

Sections 34 to 39 of the Leadership Code Act [CAP 240] make provisions for the investigation and prosecution of leaders, including the heads of state and government, for breaches of the leadership code. The heads of state and government are defined as leaders at Article 67 of the Constitution of Vanuatu.

The Leadership Code Act also foreshadows the possibility of leaders being prosecuted and convicted under other Acts. Section 27(1) provides:

"A leader who is convicted by a court of an offence under the Penal Code [Cap. 135] and as listed in subsection (2) is:

- (a) in breach of this Code; and
- (b) liable to be dealt with in accordance with sections 41 and 42 in addition to any other punishment that may be imposed under

any other Act.”

The offences listed in 27(2) include, but are not limited to, conspiracy to defeat justice; corruption and bribery of officials; extortion; unlawful discrimination; any of the offences under Part 15 of the Representation of the People Act [Cap. 146], and, importantly, an attempt to commit any of the offences listed.

References:

Leadership Code Act [CAP 240], 1998, Sections 34 to 39, http://www.paclii.org/vu/legis/consol_act/lca131/

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 67. <http://www.parliament.gov.vu/Constitution/Constitution%20Of%20The%20Republic%20of%20Vanuatu.pdf>

Penal Code Act [CAP 135], 1988, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

Sections 34 to 39 of the Leadership Code Act [CAP 240] make provisions for the investigation and prosecution of leaders, including Ministers, for breaches of the leadership code. Article 67 of the Constitution of Vanuatu defines leaders to include Ministers.

The Leadership Code Act also foreshadows the possibility of leaders being prosecuted and convicted under other Acts. Section 27(1) provides:

“A leader who is convicted by a court of an offence under the Penal Code [Cap. 135] and as listed in subsection (2) is:

- (a) in breach of this Code; and
- (b) liable to be dealt with in accordance with sections 41 and 42 in addition to any other punishment that may be imposed under any other Act.”

The offences listed in 27(2) include, but are not limited to, conspiracy to defeat justice; corruption and bribery of officials; extortion; unlawful discrimination; any of the offences under Part 15 of the Representation of the People Act [Cap. 146], and, importantly, an attempt to commit any of the offences listed.

References:

Leadership Code Act [CAP 240], 1998, Sections 34 to 39, http://www.paclii.org/vu/legis/consol_act/lca131/

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 67. <http://www.parliament.gov.vu/Constitution/Constitution%20Of%20The%20Republic%20of%20Vanuatu.pdf>

Penal Code Act [CAP 135], 1988, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

25

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

Section 31 of the Leadership Code Act [CAP 240] requires that every leader submit a return to the Clerk of the Parliament within 2 months of election and by 1 March each year (Section 31(1) and (2)).

The annual return must include details of:

- “(a) all land and other property (except one family home);
- (b) all vehicles (except one family vehicle);
- (c) all shares in public or private companies;
- (d) all income;
- (e) all liabilities;
- (f) directorships in corporations;
- (g) all directorships or other offices held in unincorporated bodies;
- (h) any assets acquired or disposed of during the period covered by the return;
- (i) any liabilities acquired or discharged during the period covered by the return.” (31(4))

The annual return must include assets and liabilities of a leader’s spouse and children (31(3)), and “details must include assets within and outside Vanuatu” (31(5)).

Leaders are defined under Article 67 of the Constitution of Vanuatu, and at Section 5 of the Leadership Code Act [CAP240]. The Constitution provides: “a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law” (Article 67).

In addition to the annual return, under Standing Order 52 of the Parliament of the Republic of Vanuatu, all members of Parliament are required to provide details to the Speaker of Parliament of “all companies, businesses or other organizations in which he has any pecuniary interest of any kind whether direct or indirect as owner, employee, partner, shareholder or otherwise” within three months of election, and notify the Speaker of any changes as soon as possible. The Speaker maintains a register of these pecuniary interests.

Under Standing Order 52, a member of parliament is “not allowed to speak or vote on any matter in which he has a pecuniary interest without disclosing the nature and the extent of such pecuniary interest.”

References:

Leadership Code Act [CAP 240], 1988, Sections 31 to 33. http://www.paclii.org/vu/legis/consol_act/lca131/

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 67, <http://www.parliament.gov.vu/Constitution.html#amendment>

Standing Orders of Parliament, Parliament of the Republic of Vanuatu, <http://www.parliament.gov.vu/Standing%20Order/Standing%20order.html>, accessed 20 March 2014

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

Section 31 of the Leadership Code Act [CAP 240] requires that every leader submit a return to the Clerk of the Parliament within 2 months of election and by 1 March each year (Section 31(1) and (2)).

The annual return must include details of:

- “(a) all land and other property (except one family home);
- (b) all vehicles (except one family vehicle);
- (c) all shares in public or private companies;
- (d) all income;
- (e) all liabilities;
- (f) directorships in corporations;
- (g) all directorships or other offices held in unincorporated bodies;
- (h) any assets acquired or disposed of during the period covered by the return;
- (i) any liabilities acquired or discharged during the period covered by the return.” (31(4))

The annual return must include assets and liabilities of a leader's spouse and children (31(3)), and "details must include assets within and outside Vanuatu" (31(5)).

Leaders are defined under Article 67 of the Constitution of Vanuatu, and at Section 5 of the Leadership Code Act [CAP240]. The Constitution provides: "a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law" (Article 67).

References:

Leadership Code Act [CAP 240], 1988, Sections 31 to 33. http://www.paclii.org/vu/legis/consol_act/lca131/

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 67, <http://www.parliament.gov.vu/Constitution.html#amendment>

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

While there are provisions in Section 23 of the Leadership Code Act [CAP 240] and in Section 73 of the Penal Code Act [CAP 15] prohibiting bribery of leaders and public officials, there are no specific provisions regulating gifts and hospitality offered to members of the executive branch.

Schedule to Section 31 of the Leadership Code Act which provides the format for leaders' annual returns contains one line item for leaders to give details of "Gifts received during the previous year". These returns are confidential unless the Clerk of the Parliament determines they are necessary for an investigation or prosecution.

Additionally, the Leadership Code Act at Section 10 provides that "the giving or accepting of a gift by a leader is not a breach of this Code if it is done:

- (a) in accordance with custom; and
- (b) in the course of a traditional exchange of gifts; and
- (c) openly; and
- (d) for the benefit of a community or group, rather than an individual."

There are rules governing the giving of gifts and hospitality before, during or after an election in the Representation of the People Act [CAP 146], Section 46: "A person commits the offence of treating "

- (a) if he corruptly by himself or by any other person either before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expenses of giving or providing any food, drink or entertainment to or for any person "
- (i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
- (ii) on account of that person or any other person having voted or refrained from voting or being about to vote or refrain from voting;
- (b) if he corruptly accepts or takes food, drink or entertainment offered in the circumstances and for the purpose mentioned in paragraph (a) of this section."

The Representation of the People Act at Section 45 also contains prohibitions against bribery and attempted bribery, including directly or indirectly giving gifts.

References:

Leadership Code Act [CAP 240], 1988, Sections 10 and 23, Schedule to Section 31, http://www.paclii.org/vu/legis/consol_act/lca131/

Penal Code Act [CAP 135], 1988, Section 73, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Representation of the People Act [CAP 146], 1988, Sections 45 to 48, http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | No

Comments:

There is no requirement for independent auditing of the annual returns of leaders.

Section 33 of the Leadership Code Act [CAP 240] states that a leader who "files a return knowing that it is false in a material particular, is guilty of a breach of this Code."

The Leadership Code Act also requires that the Clerk of the Parliament "must publish in the Gazette on or before 14 March in each year a list of the leaders who have given or failed to give the Clerk an annual return" (32(3)).

However, Section 32 of the Act makes clear that all annual returns by leaders must be kept confidential and the Clerk of Parliament "must not make a part of an annual return, or the whole of an annual return, available to another person unless the Clerk is satisfied that the part or annual return is necessary for:

- (a) an investigation under Part 5 of this Act, or an investigation authorised by or under any other Act or law; or
- (b) a prosecution under Part 5 of this Act, or a prosecution authorised by or under any other Act or law."

In his Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, the then Ombudsman observed that "[a]lthough a leader is obliged to submit his/her annual return form to the Clerk of Parliament setting out the details of the leader's assets and liabilities pursuant to Section 31 of the [Leadership Code] Act [CAP 240, 1988], the latter is not mandated to check the accuracy and reliability of the information."

While the Ombudsman is mandated to "investigate and report on the conduct of a leader (other than the President): (a) if the Ombudsman receives a complaint from a person that a leader has breached this Code. or (b) if the Ombudsman has formed the view on reasonable grounds that a leader may have breached this Code" (Section 34(1)), it is unlikely that breaches would come to the attention of the Ombudsman in relation to irregularities in a leader's annual returns under the current regime.

There has been one case, in 2003, where the Ombudsman investigated an allegation where a former leader allegedly made a false annual return by not declaring the payment of a substantial sum of money to the leader's wife in 2001.

References:

Leadership Code Act [CAP 240], 1988, Sections 31 to 34, http://www.paclii.org/vu/legis/consol_act/lca131/

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, p.10, <http://www.paclii.org/vu/ombudsman/2009/>

Office of the Ombudsman, Public Report on The False Annual Return Declaration Made by (Former) MP Barak Sope Maaumatate on 1 March 2001, 6 June 2003, <http://www.paclii.org/cgi-bin/sinodisp/vu/ombudsman/2003/8.html>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

Comments:

No such law/mechanism exists that specifically restricts heads of state and government and ministers entering the private sector after leaving government.

Section 15 of the Leadership Code Act [CAP 240] provides that: "A leader must always give priority to his or her official business over his or her private business interests."

There are provisions in the Leadership Code Act relating to disclosure of personal interest (Section 16), additional disclosure of interest by Ministers (Section 17), divesting of assets (Section 18), conflicts of interest (Section 24) and undue influence (Section 22).

The Leadership Code Act [CAP 240] also provides the following in relation to those not defined as leaders (and so would equally apply to former leaders):

“30. Offences by other persons

(1) A person other than a leader who:

(a) takes part in conduct that is a breach of this Code; or
(b) obtains a benefit, directly or indirectly, from an act or omission that is a breach of this Code;
is guilty of a breach of this Code.

(2) A person other than a leader must not exercise undue influence over or in any other way bring pressure to bear on a leader, so as to influence, or attempt to influence, the leader to act in a way that is in breach of this Code.”

References:

Leadership Code Act [CAP 240, 1988, Sections 15 to 18, 22, 24, 30, 39, http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no restrictions on private sector employment for heads of state, heads of or members of the executive when they leave their leadership position. Once leaving office, there are no restrictions to keep a former member of the executive from moving directly into the private sector.

Even while in office, members of government aren't ably kept from using their positions while in office to benefit themselves, their families or connections. During 2013, some serious issues relating to Ministers using their office to benefit themselves and their families and 'wantoks', were raised, particularly the granting of land leases, and on very generous conditions (Bob Makin, Vanuatu Daily Digest, 7 February 2013). In December 2013, one Member of Parliament spoke out in Parliament against the fact that many leaders are receiving benefit from government contracts, for example, in public works, and called for better supervision of contract approval (Bob Makin, Vanuatu Daily Digest, 20 December 2013).

References:

Bob Makin, Vanuatu Daily Digest, 7 February 2013, <http://vanuatudaily.wordpress.com/2013/02/07/vanuatu-daily-news-digest-7-february-2013/>

Bob Makin, Vanuatu Daily Digest, 20 December 2013, <http://vanuatudaily.wordpress.com/2013/12/20/vanuatu-daily-news-digest-20-december-2013/>

Bob Makin, Vanuatu Daily Digest, 24 September 2013, <https://vanuatudaily.wordpress.com/2013/09/24/vanuatu-daily-news-digest-24-september-2013/>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The giving of gifts or hospitality to members of the Executive are not clearly regulated, and while all leaders are required to list gifts received in their annual asset returns made to the Clerk of Parliament, these returns are not made public. (Leadership Code Act [CAP 240], Section 32)

However, due to the small population size of Vanuatu, where the capital city has a population of about 45,000 people, the giving of gifts or hospitality can be quite visible. In this context, a recent media story, sparked by a media release from the Opposition parties, made allegations that a gift from the Communist Party of the People's Republic of China to the Prime Minister and others in Government of four container loads of roofing was inappropriate. There were allegations that the containers had received an exemption from customs duties, and also that "Vanuatu's diplomatic mission in Beijing is being used by the prime minister and his government as a centre to source and dispatch aid to members and the ruling coalition." (Radio New Zealand International) The response from the Prime Minister was that "the materials were supplied on a party-to-party basis from China to the Vanuatu Green Confederation Party." (Vanuatu Daily Post)

A 2008 baseline study by the Pacific Islands Forum Secretariat, under its Principles of Good Leadership program, found that leaders in Vanuatu exercise "considerable laxity" in adhering to the Code's requirements. Follow up studies have yet to be published.

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.paclii.org/vu/legis/consol_act/lca131/

Radio New Zealand International, "Chinese roofing iron shipment seen as interference in Vanuatu politics," 11 February 2014, <http://www.radionz.co.nz/international/pacific-news/235837/chinese-roofing-iron-shipment-seen-as-interference-in-vanuatu-politics>, accessed 12 March 2014

Jonas Cullwick, "4 containers from China for MPs," Vanuatu Daily Post, 10 February 2014, <http://www.dailypost.vu/content/4-containers-china-mps>, accessed 12 March 2014

Pacific Islands Forum Secretariat, Good Leadership Report: Vanuatu, 2008, <http://www.forumsec.org/pages.cfm/political-governance-security/good-governance/forum-principles-of-good-leadership-accountability.html>, accessed 13 March 2014

"Kilman Wants Vanuatu PM To Resign Over Wine "Gifts"", Len Garae, Vanuatu Daily Post. October 14, 2013. <http://pidp.eastwestcenter.org/pireport/2013/October/10-15-07.htm>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

While members of the executive must file asset disclosures, there is no legal requirement for these asset disclosures to be audited (Leadership Code Act [CAP 240] sections 31 and 32). If a particular official is being investigated for alleged corruption, the Act (s32) permits investigations, which may or may not result in an audit. According to some NGO officials, the government's internal audit checks are generally dysfunctional (Harrison, March 1, 2014). In recent years, the Auditor-General's Office has undergone reforms to improve auditing of public accounts but there are very few available resources to conduct audits at this individual level (Vanuatu Daily Post, August 27, 2013). During the period of this study, investigations of corruption in the Department of Lands did not include audits of officials' asset disclosures, in part because such disclosures are rarely filed and in part because there is confusion about which agency is responsible for requesting audits during investigations (Government Official, March 2014).

Additionally, the Ombudsman has earlier reported publicly on a number of occasions about the failure of leaders, including members of the Executive, to file their annual return form with the Clerk of the Parliament, and further, on occasion that the Clerk had failed to publish the list of leaders who had and who had not filed their returns.

The Ombudsman report published in 2009 in relation to annual returns for 2007 found that the Clerk of Parliament "is not mandated to check the accuracy and reliability of the information provided [in leaders' annual returns] (p.10). The Ombudsman also recommended that the Leadership Code Act [CAP 240] be amended such that the Ombudsman would be responsible for collecting the annual return forms of leaders, "to independently assess the correctness and reliability of the submitted records. Unless this is done, the submission of Annual Return forms serve no purpose and are of no use to anyone" (p.10).

However, in 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action, May 2013).

References:

Leadership Code Act [CAP 240]. 1998.

http://www.paclii.org/vu/legis/consol_act/lca131/

"Auditor General Says He Supports Transparency," Vanuatu Daily Post. August 27, 2013.

<http://www.dailypost.vu/content/auditor-general-says-he-supports-transparency>

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with Government Official who requested anonymity, March 5, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyanuatu.wordpress.com/2013/05/>

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, <http://www.paclii.org/vu/ombudsman/2009/>

Office of the Ombudsman, Public Report on the Failure of 177 Leaders who Failed to File 2006 Annual Returns, 11 January 2008, <http://www.paclii.org/vu/ombudsman/2008/>

Office of the Ombudsman, Public Report on Failure of 156 Leaders who Failed to File Annual Returns for 2005, 23 March 2007, <http://www.paclii.org/vu/ombudsman/2007/>

Office of the Ombudsman, Public Report on Failure of 150 Leaders to Declare 2004 Annual Returns, 15 December 2006, <http://www.paclii.org/vu/ombudsman/2006/>

Office of the Ombudsman, Public Report on Failure of 53 Leaders to File Annual Returns to the Clerk of Parliament by 1 March 2000, 20 September 2001, <http://www.paclii.org/vu/ombudsman/2001/>

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | **No**

Comments:

No such mechanism exists. While heads of state and government must file annual asset and liability returns with the Clerk of Parliament, the Leadership Code Act [CAP 240] of 1998 was amended in 1999 to include the following section which makes all leaders' annual returns confidential:

"32. Annual returns confidential except for investigations and prosecutions

(1) Subject to subsection (2), the Clerk must keep confidential all annual returns given to the Clerk by leaders.

(2) The Clerk must not make a part of an annual return, or the whole of an annual return, available to another person unless the Clerk is satisfied that the part or annual return is necessary for:

(a) an investigation under Part 5 of this Act, or an investigation authorised by or under any other Act or law; or

(b) a prosecution under Part 5 of this Act, or a prosecution authorised by or under any other Act or law.

(3) The Clerk must publish in the Gazette on or before 14 March in each year a list of the leaders who have given or failed to give the Clerk an annual return. The list must set out the leader's name and the position the leader holds."

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.pacii.org/vu/legis/consol_act/lca131/

Leadership Code (Amendment) Act 1999, Act No 7 of 1999, http://www.pacii.org/vu/legis/num_act/lca1999211/

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not have open access to asset disclosure records, but may access names of those who have filed asset disclosure records under the Leadership Code Act [CAP 240] section 32(3). The contents of the annual returns are confidential except for during prosecutions and investigations, in which case access is strictly controlled (section 32(1)).

In practice, citizens do not access the asset disclosure records, as they are only accessible when individuals are under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). Submission of annual returns of assets of senior civil servants is an area that is weakly enforced by the government.

The Ombudsman has reported publicly on a number of occasions about the failure of leaders, including members of the Executive, to file their annual return form with the Clerk of the Parliament, and further, on occasion that the Clerk had failed to publish the list of leaders who had and who had not filed their returns.

However, in 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action). This has not been enacted.

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.pacii.org/vu/legis/consol_act/lca131/

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyanuatu.wordpress.com/2013/05/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens do not access the asset disclosure records, as they are only accessible when individuals are under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). There is no cost for accessing the official gazette of names, beyond basic photocopying costs of the list of who has submitted an annual return. However, citizen access to the annual returns themselves is limited to cases where there is suspicion of irregularity and an investigation.

Submission of annual returns of assets is an area that is weakly enforced by the government, and few records are actually available.

However, in 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action). The proposed changes to legislation to allow for public disclosure of leaders' annual returns have not yet been made.

References:

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyanuatu.wordpress.com/2013/05/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is little information available to establish the quality of annual returns made by heads of state and government, as returns are by law confidential (Leadership Code Act [CAP 240], Section 32). Some reports from the Office of the Ombudsman have been critical of the rules governing leaders' annual returns. Quality is therefore difficult to ascertain in the absence of data. Submission of annual returns of assets is an area that is weakly enforced by the government.

In practice, citizens do not access asset disclosure records, as they are only accessible when under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). Quality is therefore difficult to ascertain in the absence of data. Submission of annual returns of assets of senior civil servants is an area that is weakly enforced by the government.

In a report published in 2009, the Ombudsman made the following observation:

"Although a leader is obliged to submit his/her annual return form to the Clerk of Parliament setting out the details of the leader's assets and liabilities pursuant to Section 31 of the [Leadership Code] Act [CAP 240, 1988], the latter is not mandated to check the accuracy and reliability of the information" (Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009)

In 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action).

The proposed changes to legislation have not yet been made, nor has it been made clear if any changes would consider the quality of annual returns.

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.paclii.org/vu/legis/consol_act/lca131/

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyvanuatu.wordpress.com/2013/05/>

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, p.10, <http://www.paclii.org/vu/ombudsman/2009/>

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Political parties in Vanuatu are weak, and governments are now typically formed by a coalition of parties. These coalitions are not necessarily very strong, and government leaders often face motions of no confidence, with their numbers in the legislature never guaranteed.

In this context, considerable time and resources can be spent on ensuring numbers in the legislature in order to hold onto government, "which has weakened the law-making and oversight functions of Vanuatu's Parliament and made marshaling the numbers to form government the principal task of parliamentary parties" (Morgan, *The Origins and Effects of Party Fragmentation in Vanuatu*, p117). While outside of the study period, this assessment continues to apply (Vanuatu Daily News Digest, 28 February 2014).

As a consequence of this political instability, there is at times an overlapping of government and political party functions, as members of government provide rewards and favours to political allies, in an attempt to retain them as allies.

There were a number of allegations leading up to the most recent (October 2012) general election and a number of petitions following this election, that misuse of government resources by outgoing Ministers had occurred, especially the misuse of government vehicles and fuel supplies (see for example, "Vanua'aku Party concerned over misuse of Government property for political campaigns", Vanuatu Daily Post, 25 October 2012).

References:

Marcus Cox, Hannington Alatoa, Linda Kenni, Anna Naupa, Dr. Gregory Rawlings, Nikunj Soni, Charles Vatu, *The Unfinished State: Drivers of Change in Vanuatu*, Australian Aid, April, 2007, aid.dfat.gov.au/Publications/Documents/vanuatu_change.pdf __, accessed 14 February 2014

Vanuatu Daily Post, 25 October 2012, <http://www.dailypost.vu/content/vanua%E2%80%99aku-party-concerned-over-misuse-of-government-property-political-campaigns>, accessed 7 March 2014.

Michael G Morgan, "The Origin and Effects of Party Fragmentation in Vanuatu", in *Political Parties in the Pacific*, eds, Roland Rich, Luke Hambly and Michael G. Morgan, ANU Press, Australian National University, Canberra, Australia, 2008, pp117-

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

Article 16(4) of the Constitution of the Republic of Vanuatu provides for judicial review of legislation passed by the legislature: "If the President considers that the bill is inconsistent with a provision of the Constitution he shall refer it to the Supreme Court for its opinion. The bill shall not be promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution."

References:

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 16, <http://www.parliament.gov.vu/Constitution.html#amendment>

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Vanuatu judicial system is considered active in its oversight of the legislature. This is largely reflected, as one commentator put it, in the "well worn track between Parliament House and the Supreme Court in Port Vila" for cases challenging a ruling of the speaker (Newton Cain, 2 August 2013).

There were not many judicial reviews of legislation in the reporting period. One case of note was decided in the Supreme Court in April 2013, when Chief Justice Lunabek “declared Section 23A of the Representation of the People (Amendment) Act 10 of 2012 [The Act] unconstitutional” (BJ Skane, 15 April 2013). Another example was the opposition filing for judicial review of the airport concession agreement (Vanuatu Daily Post, August 29, 2013).

References:

Tess Newton Cain, “Vanuatu: Supreme Court decides two important cases with implications for government stability”, DevPolicy Blog, 2 August 2013, <http://devpolicy.org/in-brief/vanuatu-supreme-court-decides-two-important-cases-with-implications-for-government-stability-20130802/>

BJ Skane, “Controversial section of People’s Representation (Amendment) Act “unconstitutional” – MP Robert Bohn’s fundamental rights infringed”, 15 April 2013, <http://www.dailypost.vu/content/controversial-section-people%E2%80%99s-representation-amendment-act-%E2%80%99unconstitutional%E2%80%9D-mp-robert-boh>

“Opposition file judicial review over Airport Concession Agreement”, Vanuatu Daily Post, August 29, 2013. <http://www.dailypost.vu/content/opposition-file-judicial-review-over-airport-concession-agreement>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

Comments:

The Constitution, Article 27 on Privileges of members

(1) No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.

(2) No member may, during a session of Parliament or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of Parliament in exceptional circumstances.

Sections 34 to 39 of the Leadership Code Act [CAP 240] make provisions for the investigation and prosecution of leaders, including members of parliament, for breaches of the leadership code. Members of parliament are defined as leaders at Article 67 of the Constitution of Vanuatu.

The Leadership Code Act also foreshadows the possibility of leaders being prosecuted and convicted under other Acts. Section 27(1) provides:

“A leader who is convicted by a court of an offence under the Penal Code [Cap. 135] and as listed in subsection (2) is:

(a) in breach of this Code; and

(b) liable to be dealt with in accordance with sections 41 and 42 in addition to any other punishment that may be imposed under any other Act.”

The offences listed in 27(2) include, but are not limited to, conspiracy to defeat justice; corruption and bribery of officials; extortion; unlawful discrimination; any of the offences under Part 15 of the Representation of the People Act [Cap. 146], and, importantly, an attempt to commit any of the offences listed.

References:

Leadership Code Act [CAP 240], 1998, Sections 34 to 39, http://www.paclii.org/vu/legis/consol_act/lca131/

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 27 and 67. <http://www.parliament.gov.vu/Constitution/Constitution%20Of%20The%20Republic%20of%20Vanuatu.pdf>

Penal Code Act [CAP 135], 1988, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial

immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

Section 31 of the Leadership Code Act [CAP 240] requires that every leader submit a return to the Clerk of the Parliament within 2 months of election and by 1 March each year (Section 31(1) and (2)).

The annual return must include details of:

- "(a) all land and other property (except one family home);
- (b) all vehicles (except one family vehicle);
- (c) all shares in public or private companies;
- (d) all income;
- (e) all liabilities;
- (f) directorships in corporations;
- (g) all directorships or other offices held in unincorporated bodies;
- (h) any assets acquired or disposed of during the period covered by the return;
- (i) any liabilities acquired or discharged during the period covered by the return." (31(4))

The annual return must include assets and liabilities of a leader's spouse and children (31(3)), and "details must include assets within and outside Vanuatu" (31(5)).

Leaders are defined under Article 67 of the Constitution of Vanuatu, and at Section 5 of the Leadership Code Act [CAP240]. The Constitution provides: "a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law" (Article 67).

In addition to the annual return, under Standing Order 52 of the Parliament of the Republic of Vanuatu, all members of Parliament are required to provide details to the Speaker of Parliament of "all companies, businesses or other organizations in which he has any pecuniary interest of any kind whether direct or indirect as owner, employee, partner, shareholder or otherwise" within three months of election, and notify the Speaker of any changes as soon as possible. The Speaker maintains a register of these pecuniary interests.

Under Standing Order 52, a member of parliament is "not allowed to speak or vote on any matter in which he has a pecuniary interest without disclosing the nature and the extent of such pecuniary interest."

References:

Leadership Code Act [CAP 240], 1988, Sections 31 to 33. http://www.paclii.org/vu/legis/consol_act/lca131/

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 67, <http://www.parliament.gov.vu/Constitution.html#amendment>

Standing Orders of Parliament, Parliament of the Republic of Vanuatu, <http://www.parliament.gov.vu/Standing%20Order/Standing%20Order.html>, accessed 20 March 2014

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

No such law/mechanism exists that specifically restricts members of parliament entering the private sector after ceasing to hold a seat in the legislature.

Indeed, Section 15 of the Leadership Code Act [CAP 240] provides that: "A leader must always give priority to his or her official business over his or her private business interests."

There are provisions in the Leadership Code Act relating to disclosure of personal interest (Section 16), additional disclosure of interest by Ministers (Section 17), divesting of assets (Section 18), conflicts of interest (Section 24) and undue influence (Section 22).

The Leadership Code Act [CAP 240] also provides the following in relation to those not defined as leaders (and so may equally apply to former leaders):

"30. Offences by other persons

(1) A person other than a leader who:

(a) takes part in conduct that is a breach of this Code; or
(b) obtains a benefit, directly or indirectly, from an act or omission that is a breach of this Code;
is guilty of a breach of this Code.

(2) A person other than a leader must not exercise undue influence over or in any other way bring pressure to bear on a leader, so as to influence, or attempt to influence, the leader to act in a way that is in breach of this Code."

References:

Leadership Code Act [CAP 240], 1988, Sections 15 to 18, 22, 24, 30, 39, http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

While there are provisions in Section 23 of the Leadership Code Act [CAP 240] and in Section 73 of the Penal Code Act [CAP 15] prohibiting bribery of leaders and public officials, there are no specific provisions regulating gifts and hospitality offered to members of parliament. According to the Constitution, members of Parliament are defined as leaders.

The Schedule to Section 31 of the Leadership Code Act which provides the format for leaders' annual returns contains one line item for leaders to give details of "Gifts received during the previous year". These returns are confidential unless the Clerk of the Parliament determines they are necessary for an investigation or prosecution.

There are rules governing the giving of gifts and hospitality before, during or after an election in the Representation of the People Act [CAP 146], Section 46: "A person commits the offence of treating "

(a) if he corruptly by himself or by any other person either before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expenses of giving or providing any food, drink or entertainment to or for any person "
(i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
(ii) on account of that person or any other person having voted or refrained from voting or being about to vote or refrain from voting;
(b) if he corruptly accepts or takes food, drink or entertainment offered in the circumstances and for the purpose mentioned in paragraph (a) of this section."

The Representation of the People Act at Section 45 also contains prohibitions against bribery and attempted bribery, including directly or indirectly giving gifts.

However, the Leadership Code Act at Section 10 provides that "the giving or accepting of a gift by a leader is not a breach of this Code if it is done:

(a) in accordance with custom; and
(b) in the course of a traditional exchange of gifts; and
(c) openly; and
(d) for the benefit of a community or group, rather than an individual."

References:

Leadership Code Act [CAP 240], 1988, Sections 10 and 23, Schedule to Section 31, http://www.paclii.org/vu/legis/consol_act/lca131/

Penal Code Act [CAP 135], 1988, Section 73, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Representation of the People Act [CAP 146], 1988, Sections 45 to 48, http://www.pacii.org/vu/legis/consol_act/rotpa298/

The Constitution of Vanuatu. 1980. Article 67. <http://www.parliament.gov.vu/Constitution.html#amendment>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

Comments:

There is no requirement for independent auditing of the annual returns of leaders, including members of parliament.

Section 33 of the Leadership Code Act [CAP 240] states that a leader who "files a return knowing that it is false in a material particular, is guilty of a breach of this Code."

The Leadership Code Act also requires that the Clerk of the Parliament "must publish in the Gazette on or before 14 March in each year a list of the leaders who have given or failed to give the Clerk an annual return" (32(3)).

However, Section 32 of the Act makes clear that all annual returns by leaders must be kept confidential and the Clerk of Parliament "must not make a part of an annual return, or the whole of an annual return, available to another person unless the Clerk is satisfied that the part or annual return is necessary for:

- (a) an investigation under Part 5 of this Act, or an investigation authorised by or under any other Act or law; or
- (b) a prosecution under Part 5 of this Act, or a prosecution authorised by or under any other Act or law."

In his Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, the then Ombudsman observed that "[a]lthough a leader is obliged to submit his/her annual return form to the Clerk of Parliament setting out the details of the leader's assets and liabilities pursuant to Section 31 of the [Leadership Code] Act [CAP 240, 1988], the latter is not mandated to check the accuracy and reliability of the information."

While the Ombudsman is mandated to "investigate and report on the conduct of a leader (other than the President): (a) if the Ombudsman receives a complaint from a person that a leader has breached this Code. or (b) if the Ombudsman has formed the view on reasonable grounds that a leader may have breached this Code" (Section 34(1)), it is unlikely that breaches would come to the attention of the Ombudsman in relation to irregularities in a leader's annual returns under the current regime.

There has been one case, in 2003, where the Ombudsman investigated an allegation where a former leader allegedly made a false annual return by not declaring the payment of a substantial sum of money to the leader's wife in 2001.

References:

Leadership Code Act [CAP 240], 1988, Sections 31 to 34, http://www.pacii.org/vu/legis/consol_act/lca131/

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, p.10, <http://www.pacii.org/vu/ombudsman/2009/>

Office of the Ombudsman, Public Report on The False Annual Return Declaration Made by (Former) MP Barak Sope Maautamate on 1 March 2001, 6 June 2003. <http://www.pacii.org/cgi-bin/sinodisp/vu/ombudsman/2003/8.html>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no restrictions on private sector employment for members of parliament after their term in office, and there are few restrictions placed on them in this regard when they are in office.

Even while in office, members of parliament aren't always ably kept from using their positions to benefit themselves, their families or connections. In December 2013, one Member of Parliament spoke out in Parliament against the fact that many leaders are receiving benefit from government contracts, for example, in public works, and called for better supervision of contract approval (Bob Makin, Vanuatu Daily Digest, 20 December 2013).

Once leaving office, there are no restrictions to keep a former member of parliament from moving directly into the private sector.

References:

Leadership Code Act [CAP 240], 1998, http://www.pacii.org/vu/legis/consol_act/lca131/

Bob Makin, Vanuatu Daily Digest, 20 December 2013, <http://vanuatudaily.wordpress.com/2013/12/20/vanuatu-daily-news-digest-20-december-2013/>

Bob Makin, Vanuatu Daily Digest, 24 September 2013, <https://vanuatudaily.wordpress.com/2013/09/24/vanuatu-daily-news-digest-24-september-2013/>

"Amendment of the Government Contracts and Tenders Act", Transparency International Vanuatu in the Vanuatu Daily Post, 12 April 2014, <http://www.dailypost.vu/content/amendment-government-contracts-and-tenders-act>

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The giving of gifts or hospitality to members of parliament are not regulated, and while all leaders are required to list gifts received in their annual asset returns made to the Clerk of Parliament, these returns are not required to be made public. (Leadership Code Act [CAP 240]).

However, due to the small population size of Vanuatu, where the capital city has a population of about 45,000 people, the giving of gifts or hospitality can be quite visible. In this context, a recent media story, sparked by a media release from the Opposition parties, made allegations that a gift from the Communist Party of the People's Republic of China to the Prime Minister and others in Government of four container loads of roofing, was inappropriate. There were allegations that the containers had received an exemption from customs duties, and also that "Vanuatu's diplomatic mission in Beijing is being used by the prime minister and his government as a centre to source and dispatch aid to members and the ruling coalition" (Radio New Zealand International, 11 February 2014). The response from the Prime Minister was that "the materials were supplied on a party-to-party basis from China to the Vanuatu Green Confederation Party" (Jonas Cullwick, "4 containers from China for MPs," Vanuatu Daily Post, 10 February 2014).

Though outside the period of study, a 2008 baseline study by the Pacific Islands Forum Secretariat, under its Principles of Good Leadership program, found that leaders in Vanuatu exercise "considerable laxity" in adhering to the Code's requirements. Follow up studies have yet to be published, but from recent stories, including those mentioned above, it is clear that this state of affairs has continued through the period of study.

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.pacii.org/vu/legis/consol_act/lca131/

Radio New Zealand International, "Chinese roofing iron shipment seen as interference in Vanuatu politics," 11 February 2014, <http://www.radionz.co.nz/international/pacific-news/235837/chinese-roofing-iron-shipment-seen-as-interference-in-vanuatu-politics>, accessed 12 March 2014

Jonas Cullwick, "4 containers from China for MPs," Vanuatu Daily Post, 10 February 2014, <http://www.dailypost.vu/content/4-containers-china-mps>, accessed 12 March 2014

Pacific Islands Forum Secretariat, Good Leadership Report: Vanuatu, 2008, http://www.forumsec.org/pages_cfm/political-governance-security/good-governance/forum-principles-of-good-leadership-accountability.html, accessed 13 March 2014

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

While members of Parliament must file asset disclosures, there is no legal requirement for these asset disclosures to be audited (Leadership Code Act [CAP 240] sections 31 and 32). If a particular member is being investigated for alleged corruption, the Act (s32) permits investigations, which may or may not result in an audit. According to some NGO officials, the government's internal audit checks are generally dysfunctional (Harrison, March 1, 2014). In recent years, the Auditor-General's Office has undergone reforms to improve auditing of public accounts but there are very few available resources to conduct audits at this individual level (Vanuatu Daily Post, August 27, 2013). During the period of this study, investigations of corruption in the Department of Lands did not include audits of officials' asset disclosures, in part because such disclosures are rarely filed and in part because there is confusion about which agency is responsible for requesting audits during investigations (Government Official, March 2014).

Additionally, the Ombudsman has earlier reported publicly on a number of occasions about the failure of leaders, including members of the Executive, to file their annual return form with the Clerk of the Parliament, and further, on occasion that the Clerk had failed to publish the list of leaders who had and who had not filed their returns.

The Ombudsman report published in 2009 in relation to annual returns for 2007 found that the Clerk of Parliament "is not mandated to check the accuracy and reliability of the information provided [in leaders' annual returns] (p.10). The Ombudsman also recommended that the Leadership Code Act [CAP 240] be amended such that the Ombudsman would be responsible for collecting the annual return forms of leaders, "to independently assess the correctness and reliability of the submitted records. Unless this is done, the submission of Annual Return forms serve no purpose and are of no use to anyone" (p.10).

However, in 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action, May 2013).

References:

Leadership Code Act [CAP 240]. 1998.

http://www.paclii.org/vu/legis/consol_act/lca131/

"Auditor General Says He Supports Transparency," Vanuatu Daily Post. August 27, 2013.

<http://www.dailypost.vu/content/auditor-general-says-he-supports-transparency>

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with Government Official who requested anonymity, March 5, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyanuatu.wordpress.com/2013/05/>

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, <http://www.paclii.org/vu/ombudsman/2009/>

Office of the Ombudsman, Public Report on the Failure of 177 Leaders who Failed to File 2006 Annual Returns, 11 January 2008, <http://www.paclii.org/vu/ombudsman/2008/>

Office of the Ombudsman, Public Report on Failure of 156 Leaders who Failed to File Annual Returns for 2005, 23 March 2007, <http://www.paclii.org/vu/ombudsman/2007/>

Office of the Ombudsman, Public Report on Failure of 150 Leaders to Declare 2004 Annual Returns, 15 December 2006, <http://www.paclii.org/vu/ombudsman/2006/>

Office of the Ombudsman, Public Report on Failure of 53 Leaders to File Annual Returns to the Clerk of Parliament by 1 March 2000, 20 September 2001, <http://www.paclii.org/vu/ombudsman/2001/>

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | **No**

Comments:

No such mechanism exists. While members of parliament must file annual asset and liability returns with the Clerk of Parliament, the Leadership Code Act [CAP 240] of 1998 was amended in 1999 to include the following section which makes all leaders' annual returns confidential:

"32. Annual returns confidential except for investigations and prosecutions

(1) Subject to subsection (2), the Clerk must keep confidential all annual returns given to the Clerk by leaders.

(2) The Clerk must not make a part of an annual return, or the whole of an annual return, available to another person unless the Clerk is satisfied that the part or annual return is necessary for:

(a) an investigation under Part 5 of this Act, or an investigation authorised by or under any other Act or law; or

(b) a prosecution under Part 5 of this Act, or a prosecution authorised by or under any other Act or law.

(3) The Clerk must publish in the Gazette on or before 14 March in each year a list of the leaders who have given or failed to give the Clerk an annual return. The list must set out the leader's name and the position the leader holds."

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.paclii.org/vu/legis/consol_act/lca131/

Leadership Code (Amendment) Act 1999, Act No 7 of 1999, http://www.paclii.org/vu/legis/num_act/lca1999211/

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Citizens do not have open access to asset disclosure records, but may access names of those who have filed asset disclosure records under the Leadership Code Act [CAP 240] section 32(3). The contents of the annual returns are confidential except for during prosecutions and investigations, in which case access is strictly controlled (section 32(1)).

In practice, citizens do not access the asset disclosure records, as they are only accessible when individuals are under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). Submission

of annual returns of assets of senior civil servants is an area that is weakly enforced by the government.

The Ombudsman has reported publicly on a number of occasions about the failure of leaders, including members of the Executive, to file their annual return form with the Clerk of the Parliament, and further, on occasion that the Clerk had failed to publish the list of leaders who had and who had not filed their returns.

However, in 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action). This has not been enacted.

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.pacii.org/vu/legis/consol_act/lca131/

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyvanuatu.wordpress.com/2013/05/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens do not access asset disclosure records, as they are only accessible when individuals are under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). There is no cost for accessing the official gazette of names, beyond basic photocopying costs of the list of who has submitted an annual return. However, citizen access to the annual returns themselves is limited to cases where there is suspicion of irregularity and an investigation.

Submission of annual returns of assets is an area that is weakly enforced by the government, and few records are actually available.

However, in 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action). The proposed changes to legislation to allow for public disclosure of leaders' annual returns have not yet been made.

References:

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyvanuatu.wordpress.com/2013/05/>

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is little information available to establish the quality of annual returns made by members of parliament, as returns are by law confidential (Leadership Code Act [CAP 240], Section 32). Quality is therefore difficult to ascertain in the absence of data. Submission of annual returns of assets is an area that is weakly enforced by the government.

In practice, citizens do not access asset disclosure records, as they are only accessible when under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). Quality is therefore difficult to ascertain in the absence of data. Submission of annual returns of assets of senior civil servants is an area that is weakly enforced by the government.

In a report published in 2009, the Ombudsman made the following observation:

"Although a leader is obliged to submit his/her annual return form to the Clerk of Parliament setting out the details of the leader's assets and liabilities pursuant to Section 31 of the [Leadership Code] Act [CAP 240, 1988], the latter is not mandated to check the accuracy and reliability of the information" (Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009)

In 2013, the Prime Minister, the Honourable Moana Carcasses Kalosil MP, announced as part of his Government's 100 Day Plan, that the Ombudsman Act would be reviewed, and at a planning retreat for the Office of the Ombudsman staff, the Prime Minister announced that as part of this review, the Government would "reinstate legal requirements making it mandatory for public scrutiny of leader's annual returns" (Transparency Vanuatu, Update on the Government's 100 Day Plan of Action).

The proposed changes to legislation have not yet been made, nor has it been made clear if any changes would consider the quality of annual returns.

References:

Leadership Code Act [CAP 240], 1998, Section 32, http://www.paclii.org/vu/legis/consol_act/lca131/

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

Transparency Vanuatu, "Update on the Government's 100 day Plan of Action: Positive Plan for Change or a Quick Fix Solution?", 10 May 2013, <http://transparencyanuatu.wordpress.com/2013/05/>

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, p.10, <http://www.paclii.org/vu/ombudsman/2009/>

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

17

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

While Article 24 of the Constitution of the Republic of Vanuatu states that: "Unless otherwise provided proceedings of Parliament shall be held in public", and the Standing Orders of the Parliament allow for visitors to be present during proceedings, there is no legal requirement for the minutes of parliamentary proceedings, bills, tabled documents, committee reports or other records of proceedings to be made public.

Standing Order 10 of the parliament includes the requirement that the Speaker shall read or cause to be read by the Clerk the results of any vote or debate of Parliament.

References:

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 24, <http://www.parliament.gov.vu/Constitution.html#amendment>

Standing Orders of Parliament, Parliament of the Republic of Vanuatu, <http://www.parliament.gov.vu/Standing%20Order/Standing%20order.html>, accessed 20 March 2014

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Vanuatu does not have in place rules requiring the broadcast of parliamentary proceedings, nor for making public documents tabled in parliament.

Live proceedings of parliament, which can be heard on the national broadcaster, or seen via a webcast, are free of charge and instant (Evelyne Toa, Deputy Editor, Vanuatu Independent Newspaper; Parliament of Vanuatu website). Additionally, some parliamentary proceedings are available as broadcast on demand at <http://stream.parliament.gov.vu/archive/>.

Additionally, the Hansard is published and available for access at the Parliament Library. It includes records of some parliamentary proceedings, though these do not necessarily cover all proceedings, such as committee meetings (Parliament website).

The lack of access to complete records of parliamentary proceedings is a significant barrier to reporting accurately on what happens in parliament, particularly in those (to date) rare instances where the public is excluded from the parliament during debate (as occurred on 10 December 2010 during a motion of no confidence which led to a change of Prime Minister), or when for whatever reason live broadcasting on the radio or internet is unavailable, which happens with more frequency (Evelyne Toa, Deputy Editor, Vanuatu Independent Newspaper).

References:

Parliament of the Republic of Vanuatu website, www.parliament.gov.vu, accessed 15 March 2014.

Mrs Evelyn Toa, Deputy Editor, Vanuatu Independent Newspaper, interview by author, 20 March 2014, Port Vila, Vanuatu.

Parliament of Vanuatu Hansard Website. Accessed on June 12, 2014. <http://parliament.gov.vu/Hansard/Hansard.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Vanuatu does not have in place rules requiring the broadcast of parliamentary proceedings, nor for making public documents tabled in parliament.

Live proceedings of parliament, which can be heard on the national broadcaster, or seen via a webcast, are free of charge and instant (Evelyne Toa, Deputy Editor, Vanuatu Independent Newspaper; Parliament of Vanuatu website). Additionally, some parliamentary proceedings are available as broadcast on demand at <http://stream.parliament.gov.vu/archive/>.

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The lack of access to complete records of parliamentary proceedings is a significant barrier to reporting accurately on what happens in parliament, particularly in those (to date) rare instances where the public is excluded from the parliament during debate (as occurred on 10 December 2010 during a motion of no confidence which led to a change of Prime Minister), or when for whatever reason live broadcasting on the radio or internet is unavailable, which happens with more frequency (Evelyne Toa, Deputy Editor, Vanuatu Independent Newspaper).

References:

Parliament of the Republic of Vanuatu website, www.parliament.gov.vu, accessed 15 March 2014

Mrs Evelyn Toa, Deputy Editor, Vanuatu Independent Newspaper, interview by author, 20 March

Parliament of Vanuatu Hansard Website. Accessed on June 12, 2014. <http://parliament.gov.vu/Hansard/Hansard.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

33

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

67

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

Article 47(2) of the Constitution of the Republic of Vanuatu provides that: "Except for the Chief Justice the judiciary shall be appointed by the President of the Republic acting on the advice of the Judicial Service Commission." The Chief Justice is also appointed by the President, "after consultation with the Prime Minister and the Leader of the Opposition"(Article 49(3)).

The Constitution also states that "Parliament may provide for the appointment by the President of the Republic, after consultation with the Judicial Service Commission, of acting judges"(Article 47(5)).

The Judicial Service Commission is established under the Constitution, and consists of "the Minister responsible for Justice, as Chairman, the Chief Justice, the Chairman of the Public Service Commission, and a representative from the National Council of Chiefs appointed by the Council" (Article 48(1)). The Constitution provides that the Judicial Service Commission "shall not be subject to the direction or control of any other person or body in the exercise of its functions" (Article 48(2)).

References:

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 47, 48 and 49, http://www.pacii.org/vu/legis/consol_act/cotrov406/

Judicial Services and Courts Act, No 54 of 2000, Sections 18, 33, http://www.pacii.org/vu/legis/consol_act/jsaca280/

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary in Vanuatu is regarded as being fair and independent and operating with integrity, and its judges appropriately qualified (Jennifer Ehmann, Regional Registry Systems and Processes Report, 2012; Vanuatu 2013 Human Rights Report, US Department of State, 2013).

There have been at times been difficulties in recruiting Supreme Court judges, in part due to the mismatch between the professional criteria which must be applied to prospective judges and the salary and working conditions that are extant for the judiciary working in the Vanuatu judicial system. This lack of resources impeding the hiring and retention of qualified judges is supported in several international studies (Human Rights Report and Freedom in the World).

References:

Judicial Administration Diagnostic Project" Pacific Judicial Development Program Regional Registry Systems and Processes Report, Jennifer Ehmann. February, 2012. Accessed on June 6, 2014. <http://www.fedcourt.gov.au/pjdp/materials-developed/system-and-processes/Judicial-administration.pdf>

Vanuatu Human Rights Report, 2013, US Department of State. Accessed on June 6, 2014. <http://www.state.gov/documents/organization/220453.pdf>

Freedom in the World Report 2013, Vanuatu. Freedom House. <http://www.freedomhouse.org/report/freedom-world/2013/vanuatu#.U6BXro1dUWl>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

Comments:

There is no confirmation process in the process of appointing judges.

Appointments to the judiciary are provided for in the Constitution of the Republic of Vanuatu. Appointments are made by the President, acting on the advice of the Prime Minister and Leader of the Opposition for appointment of the Chief Justice (Article 49(3)), and on the advice of the Judicial Services Commission for appointment of judges and magistrates (Article 47(2)).

The Judicial Service Commission is made up of the Minister for Justice as Chairman, the Chief Justice, the Chairman of the Public Service Commission and a representative of the National Council of Chiefs appointed by the Council (Article 48(1)).

References:

Constitution of the Republic of Vanuatu, 1980. Articles 47-49. http://www.paclii.org/vu/legis/consol_act/cotrov406/

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

67

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

Members of the judiciary are required to give reasons for their decisions. Section 95(1) of the Criminal Procedure Code Act [Cap 136], provides that judgments "shall contain the point or points for determination, the decision thereon and the reasons for the decision".

For civil matters, the Civil Procedure Code requires judgments to summarise findings of facts, law and give reasons for their decision (Rule 13.1(1) Civil Procedure Rules 2002).

References:

Criminal Procedure Code Act [Cap 136], 1981. http://www.paclii.org/vu/legis/consol_act/cpc190/

Civil Procedure Rules (CAP.122), No 49 of 2002. Rule 13.1. <http://www.paclii.org/vu/rules/CPRules2002/CPMain.html>

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

The national-level judiciary give reasons for their decisions. These decisions are made public, as displayed by the Pacific Islands Legal Information Institute website archive, which holds 2,603 Supreme Court decisions and 542 Court of Appeals decisions (<http://www.paclii.org/vu/cases/VUSC/2014/> and <http://www.paclii.org/vu/cases/VUSC/2014/>).

References:

Vanuatu Supreme Court Decisions 2014. Pacific Islands Legal Information Institute website, accessed on June 12, 2014. <http://www.paclii.org/vu/cases/VUSC/2014/>

Vanuatu Court of Appeal Decisions 2014. Pacific Islands Legal Information Institute website, accessed on June 12, 2014. <http://www.paclii.org/vu/cases/VUCA/2014/>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

The Judicial Service Commission is the disciplinary agency for the judiciary. Article 43(3) of the Constitution of the Republic of Vanuatu provides that members of the judiciary "shall only be removed from office by the President of the Republic in the event of

- (a) conviction and sentence on a criminal charge; or
- (b) a determination by the Judicial Service Commission of gross misconduct, incapacity or professional incompetence."

The Judicial Service Commission is comprised of "the Minister responsible for justice, as Chairman, the Chief Justice, the Chairman of the Public Service Commission, and a representative of the National Council of Chiefs appointed by the Council" (Constitution of the Republic of Vanuatu, Article 48(1)).

References:

Constitution of the Republic of Vanuatu, 1980, Articles 43 and 48. http://www.paclii.org/vu/legis/consol_act/cotrov406/

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

Article 48(2) of the Constitution of the Republic of Vanuatu provides that "The Judicial Service Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions."

References:

Constitution of the Republic of Vanuatu, 1980, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

No information on the activities of the Judicial Service Commission which provides oversight of the judiciary (including whether it undertakes investigations or the outcomes of investigations) was found. Also, no mechanism for members of the public to make complaints about judges was found.

References:

Chief Justice Vincent Lunabek, quoted in Transparency Vanuatu, "Has Public Access To Justice Improved?", Yes! Yumi Save Stopem Korapsen, 28 June 2013, <http://transparencyvanuatu.wordpress.com/2013/06/28/has-public-access-to-justice-improved/>

Willie Jimmy MP, quoted in "Vanuatu MP describes court decision to strike out his petition against PM as nonsense", Radio NZ International, 11 February 2013, <http://www.radionz.co.nz/international/pacific-news/210143/vanuatu-mp-describes-court-decision-to-strike-out-his-petition-against-pm-as-nonsense>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No information on the activities of the Judicial Service Commission which provides oversight of the judiciary (including whether it undertakes investigations or the outcomes of investigations) was found, nor of any penalties imposed.

References:

Chief Justice Vincent Lunabek, quoted in Transparency Vanuatu, "Has Public Access To Justice Improved?", Yes! Yumi Save Stopem Korapsen, 28 June 2013, <http://transparencyvanuatu.wordpress.com/2013/06/28/has-public-access-to-justice-improved/>

Vanuatu Judicial Monitoring Project, Transparency International Vanuatu, 2013, <http://www.transparencyvanuatu.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=42&cntnt01returnid=66>

Willie Jimmy MP, quoted in "Vanuatu MP describes court decision to strike out his petition against PM as nonsense", Radio NZ International, 11 February 2013, <http://www.radionz.co.nz/international/pacific-news/210143/vanuatu-mp-describes-court-decision-to-strike-out-his-petition-against-pm-as-nonsense>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

4

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | **No**

Comments:

Asset disclosures are required by all leaders in Vanuatu, under the Leadership Code Act [CAP 240]. However, national level judges are not defined as leaders under this Act and therefore are not required to make annual returns. There are also no provisions in the Judicial Services and Courts Act [CAP 270] which sets out the regulations for appointment and disqualification of members of the judiciary.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | **No**

Comments:

There is no mechanism regulating gifts and hospitality offered to members of the national-level judiciary in the Judicial Services and Courts Act [CAP 270] which sets out the regulations for appointment and disqualification of members of the judiciary, or in any other Acts. Neither are judges considered leaders regulated by the Leadership Code Act [CAP 240].

References:

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | **No**

Comments:

Asset disclosures are not required by national level judges under either the Leadership Code Act [CAP240] or the Judicial Services and Courts Act [CAP 270] which sets out the regulations for appointment and disqualification of members of the judiciary. There are therefore also no requirements for independent audit of asset disclosures.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

No such mechanism exists. The Judicial Services and Courts Act [CAP 270] which provides for appointment and disqualification of members of the judiciary does not have any sections dealing with post-service employment, although it does provide that magistrates and judges "must not perform any paid work outside his or her duties of office without the consent of the Commission" (Sections 24(2) and 39(2), and see Transparency Vanuatu Press Statement, 7 February 2014).

References:

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

Transparency Vanuatu, Press Statement, 7 February 2014, p2-3, attached

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

Comments:

Once leaving office, there are no restrictions to keep a former judge from moving directly into the private sector. No such restrictions exist for the judiciary, nor have there been reports of abuse of this lack of regulation by the judiciary.

Civil servants and members of Parliament are also not regulated in such a fashion, and there have been reports of such workers moving directly into private sector businesses after office, as well as indicators of private sector dealings for personal gain while in office (Interview; Makin 20 Dec 2013; Makin 24 Sept 2013). The lack of such reports on the judiciary is therefore seen as an indication of their self-regulation in regards to such conflicts of interest.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2006. http://www.paclii.org/vu/legis/consol_act/jsaca280/

Interview with NGO representative who requested anonymity. February 22, 2014.

Bob Makin, Vanuatu Daily Digest, 20 December 2013, <http://vanuatudaily.wordpress.com/2013/12/20/vanuatu-daily-news-digest-20-december-2013/>

Bob Makin, Vanuatu Daily Digest, 24 September 2013, <https://vanuatudaily.wordpress.com/2013/09/24/vanuatu-daily-news-digest-24-september-2013/>

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism exists.

However, there is evidence that the Vanuatu judiciary do self-regulate to maintain integrity. For instance, in a situation first reported in the Vanuatu Independent, the Chief Justice issued a warning to, and ordered an apology in open court from, a Member of Parliament, Mr Don Ken, who had organised a social event for court personnel in the lead-up to finalisation of a prosecution of some of Mr Ken’s supporters, who were facing trial for a range of serious offences (Vanuatu Daily News Digest, 24 June 2013).

Traditional gift-giving and hospitality between official delegations and communities is common (e.g. exchange of traditional mats or cloth) and a cultural expectation, and social networks are close-knit, which makes gifts and hospitality a difficult practice to regulate (NGO worker, February 22, 2014).

References:

Leadership Code Act [CAP 240]. 1998.
http://www.pacjii.org/vu/legis/consol_act/lca131/

Interview with NGO representative who requested anonymity. February 22, 2014.

Vanuatu daily news digest, 24 June 2013, <http://vanuatudaily.wordpress.com/2013/06/24/vanuatu-daily-news-digest-24-june-2013/>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Members of the judiciary are not required to make asset disclosures, and there is therefore no audit of asset disclosures.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

Comments:

No such mechanism exists for asset disclosures to be made by members of the judiciary.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism exists for asset disclosures to be made by members of the judiciary.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism exists for asset disclosures to be made by members of the judiciary.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism exists for asset disclosures to be made by members of the judiciary.

References:

Leadership Code Act [CAP 240], 1998, http://www.paclii.org/vu/legis/consol_act/lca131/

Judicial Services and Courts Act [CAP 270], 2000, http://www.paclii.org/vu/legis/consol_act/jsaca280/

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

33

40a. In law, the legislature can amend the budget.

Yes | **No**

Comments:

The Constitution of the Republic of Vanuatu provides that: "Every year the Government shall present a bill for a budget to Parliament for its approval" (Article 25(1)) and "No taxation shall be imposed or altered and no expenditure of public funds shall be incurred except by or under a law passed by Parliament." (Article 25(2)). However, "No motion for the levying or increase of taxation or for the expenditure of public funds shall be introduced unless it is supported by the Government." (Article 25(3))

The Parliament's Standing Orders state that only a Minister may present:

"a) A Bill, including any amendment to a Bill, which in the opinion of the Speaker, makes provision for any of the following purposes:

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction.

(ii) the imposition of any charge upon the Revenue Fund or Public Funds of the Republic of Vanuatu or the alteration of any such charge.

(iii) the payment, issue or withdrawal from the Revenue Fund or Public Funds of the Republic of Vanuatu of Any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal.

(iv) the composition or re-mission of any debt due to the Government of the Republic of Vanuatu." (Standing Order 51).

References:

Constitution of the Republic of Vanuatu, 1980, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Parliament of the Republic of Vanuatu, Standing Orders of

Parliament, <http://www.parliament.gov.vu/Standing%20Order/Standing%20order.html>

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | **75** | 50 | 25 | 0

Comments:

In practice, the majority of Vanuatu's public expenditure is approved by the Parliament through the annual budget process, culminating in the tabling and debate of appropriation bills in the Parliament. Vanuatu's financial and economic management system is regarded highly in the Pacific Islands. The Pacific Institute of Public Policy in 2011 observed that the Government's budget documents provide comprehensive information and "the in-year budget reporting excellent by Pacific standards. Whilst the overall credibility of the budget is well regarded, at the category level there are variations due to the extensive use of virements (the transfer of a surplus from one account to cover a deficit in another)." (Pacific Institute of Public Policy, Vanuatu,

<http://pacificpolicy.org/blog/2011/02/07/vanuatu/>). Though this 2011 report is outside the period of study, it continued to apply during the period of this study.

There is some discretion for the Executive to vary allocation of appropriations to cover unforeseen circumstances without the Parliament's approval, and this has attracted some criticism. An unnamed but 'reliable' source told the Vanuatu Daily Post, "At the start of the year, government sets the budget approved by parliament. But decisions that place additional burdens on the budget have caused the figures to end up in deficit at the end of the year. That's what's been happening, and it would be good for the leaders of government to exercise sound and responsible financial decisions all the time" (unnamed source quoted in Jonas Cullwick, "Third consecutive budget deficit soars to Vt20 billion," Vanuatu Daily Post, 25 February 2013, <http://www.dailypost.vu/content/third-consecutive-budget-deficit-soars-vt20-billion>).

A recent and ongoing controversy over the awarding of a contract for the redevelopment of existing airports and construction and operation of a new international airport has demonstrated how significant expenditure must be approved by Parliament: while the Government has signed an agreement with a preferred provider for these services, the contract will be null and void if the parliament does not provide approval before July 2014 (Vanuarorua v Republic of Vanuatu [2013] VUSC 182; Judicial Review 17.2013 (17 October 2013)). At a sitting to consider this issue, the Parliament moved to provide more time for the ad hoc parliamentary committee to examine the agreement and related matters, so that the committee can provide a considered report and recommendations to the parliament, prior to its being voted on by the members of parliament in June 2014 (Jane Joshua, "Airport documents tabled in parliament," Vanuatu Daily Post, 16 April 2014).

References:

Jonas Cullwick, "Third consecutive budget deficit soars to Vt20 billion," Vanuatu Daily Post, 25 February 2013, <http://www.dailypost.vu/content/third-consecutive-budget-deficit-soars-vt20-billion>

Vanuarorua v Republic of Vanuatu [2013] VUSC 182; Judicial Review 17.2013 (17 October 2013), <http://www.paclii.org/vu/cases/VUSC/2013/182.html>

Jane Joshua, "Airport documents tabled in parliament," Vanuatu Daily Post, 16 April 2014, <http://www.dailypost.vu/content/airport-documents-tabled-parliament>

Pacific Institute of Public Policy, Country Profile: Vanuatu. Last updated 7 February 2011. Accessed on 23 April 2014. <http://pacificpolicy.org/blog/2011/02/07/vanuatu/>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The Parliament of the Republic of Vanuatu does not have sufficient resources to adequately consider the annual budget presented by the Government. While the financial management and budget process that occurs within Government is well regarded in the region, and in fact is now being used as a model for other developing nations (for example, officials from Timor Leste have recently visited Vanuatu to learn from the experience here, as reported by Radio Vanuatu News in March 2014), the legislature struggles to sufficiently review bills.

While appropriation bills to be debated should be supplied to Members of Parliament with sufficient time for them to be considered in detail before debate commences, in practice this does not happen. For example, the appropriation bills for the 2014 annual budget were provided to members just 2 days before being tabled in parliament for debate (Jane Joshua, "VT16 Billion Budget Eyed for 2014", Vanuatu Daily Post, 4 December 2013).

References:

Radio Vanuatu News on Facebook, <https://www.facebook.com/RadioVanuatu>, March 2014

Jane Joshua, "VT16 Billion Budget Eyed for 2014", Vanuatu Daily Post, 4 December 2013, <http://www.dailypost.vu/content/vt16-billion-budget-eyed-2014>

Parliament of Vanuatu, audio recording of debate, 5 December 2013, <http://stream.parliament.gov.vu/archive/20131205085946/>

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009. <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-performance-2009.pdf>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

42

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Preparation of the annual budget follows a defined process and timetable, the details of which are now available publicly (<http://doft.gov.vu/index.php/widgetkit/budget-timetable#my-id>). Provision of this information on the Department of Finance website is a recent improvement to enhancing the transparency of the budget process.

In 2013, the appropriations bills were only supplied to members of parliament two days before they were to be debated in parliament. This was the subject of a point of order by the Deputy Leader of the Opposition during the debate to suspend standing orders in order to bring on the appropriation bills, on 5 December 2013 (Archive of parliamentary debates, Parliament of Vanuatu, <http://stream.parliament.gov.vu/archive/>). The debates on the appropriation bills in parliament are open to the public, and have been relayed via live broadcast on the national broadcast radio station. As at November 2013, these debates (all parliamentary debates) are now also streamed live on the Parliament's website, and an archive of these recordings is also available at www.parliament.gov.vu.

However, the consultations that occur prior to finalisation of the budget estimates do not occur in public. A 2009 assessment of Vanuatu's fiscal and economic management found that while some reports and information are periodically made available to the public, in practice, the negotiations and finalisation of budget allocations occur without public scrutiny (Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009, p21). Though outside of the time period of this study, its findings have continued to apply.

References:

Government of the Republic of Vanuatu, Department of Finance and Treasury website, <http://www.doft.gov.vu/index.php/widgetkit/budget-appropriation>

The Parliament of Vanuatu Website. Accessed on June 17, 2014. <http://stream.parliament.gov.vu/archive/> and <http://stream.parliament.gov.vu/>

Vanuatu Budget Timeline: Pacific Policy Institute. Accessed on June 17, 2014. <http://economics.pacificpolicy.org/vanuatu/vanuatu-budget-timeline/>

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-peformance-2009.pdf>

Pacific Economics: Vanuatu's 2014 Budget at a Glance, <http://economics.pacificpolicy.org/vanuatu/2014-at-a-glance/>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not have a formal means to provide input at budget hearings. The only publicly available debate occurs in the Parliament of Vanuatu once the bills are finalised. These debates are open to the public, however, there is no provision for public input to the debates. Debates are broadcast on the national radio broadcaster, Radio Vanuatu, and are, from November 2013, streamed live from the Parliament of Vanuatu website (<http://stream.parliament.gov.vu/>). An archive of these recordings is also available online at <http://stream.parliament.gov.vu/archive/>.

In law, there is a mechanism for the public to make submissions or provide input at hearings regarding the budget via the parliamentary Public Accounts Committee, but in practice this committee is not functional. In parliamentary proceedings leading up to the debate on the 2014 appropriation bills, the Deputy Leader of the Opposition raised the issue that appropriation bills are not available to members prior to the debates occurring in parliament, thereby preventing members of parliament from consulting with their constituencies in relation to the proposed appropriations (Archive of parliamentary debates, Debate 5 December 2013, Parliament of Vanuatu, <http://stream.parliament.gov.vu/archive/>).

Key documentation in relation to the annual appropriations are made available after the budget process has been finalised, at the Department of Finance website, <http://www.doft.gov.vu/index.php/widgetkit/budget-appropriation> and at a website set up by the Pacific Institute of Public Policy (Pacific Economics: Vanuatu's 2014 Budget at a Glance, <http://economics.pacificpolicy.org/vanuatu/2014-at-a-glance>).

References:

Budget Information, Government of the Republic of Vanuatu, Department of Finance and Treasury webpage. Accessed on June 18, 2014. <http://www.doft.gov.vu/index.php/widgetkit/budget-appropriation>

Archive of parliamentary debates, Debate 5 December 2013, Parliament of Vanuatu, <http://stream.parliament.gov.vu/archive/>

Pacific Economics: Vanuatu's 2014 Budget at a Glance. Accessed on June 18, 2014. <http://economics.pacificpolicy.org/vanuatu/2014-at-a-glance>

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-peformance-2009.pdf>

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

As at April 2014, budget papers detailing expenditure allocation was available from the Department of Finance and Treasury website for the years 2009 to 2013, but had not yet been supplied for 2014.

The Budget Policy Statement for 2014 was available, which provides the Government's overall strategy and significant changes (<http://www.doft.gov.vu/index.php/widgetkit/budget-appropriation>). Local media provided details of the Minister of Finance speech on tabling the appropriation bill in Parliament, which included details of major changes to expenditure and revenue (see for example, Jane Joshua, 2014 Budget Reflects Buoyant Economy, Vanuatu Daily Post, 6 December 2013).

In March 2014, the Pacific Institute of Public Policy supported by the Ministry of Finance and Economic Management, launched a website which provides user-friendly information on the 2014 budget and comparisons to earlier budgets, <http://economics.pacificpolicy.org/vanuatu/>. The information available online includes line items, and also provides comparators with the previous two budgets.

Members of the public without internet access are limited to accessing copies of budget papers by request from the Ministry of Finance and Economic Management, or an allocation for a specific ministry or agency can be accessed by requesting the information from them directly.

References:

Government of Vanuatu, Ministry of Finance and Economic Management, www.doft.gov.vu/index.php/widgetkit/budget-appropriation

Jane Joshua, 2014 Budget Reflects Buoyant Economy, Vanuatu Daily Post, 6 December 2013, <http://www.dailypost.vu/content/2014-budget-reflects-buoyant-economy>,

Pacific Economics: Vanuatu Government Budget, Pacific Institute of Public Policy website. Accessed on 23 April 2014. <http://economics.pacificpolicy.org/vanuatu/>

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

Comments:

The Public Accounts Committee is established under the Expenditure Review and Audit Act [CAP 241] to:

" (a) review the policy statements under the Act and the relevance of the provisions or outcomes proposed and note submissions from the public;

(b) review and comment on the content of the various other statements, economic updates and reports required under the Act;

(ba) review and comment on annual reports prepared under section 20(1)(h) of the Public Service Act [Cap. 246];

(c) note compliance by the Minister for Finance in terms of the provision of those statements required under the Act and comment publicly if there is any non-compliance by any party;

(d) consider and report to Parliament (after consultation with the Auditor-General) on the adequacy and nature of the programme intended to be undertaken by the Auditor-General;

(e) report to Parliament (after consultation with the Auditor-General) on the adequacy of the external audit arrangements proposed by the Auditor-General including the standards to be followed;

(f) review and report to Parliament (after consultation with the Auditor-General) on whether the Auditor-General's Office has sufficient resources to enable the Auditor-General to perform his or her functions and if the Committee finds there are insufficient resources, to advise Parliament on the additional resources required;

(g) review annual financial statements of the State, and the audit opinion thereon, including any concerns raised by the Auditor-General;

(h) receive submissions from the public;

(i) examine the details of all reported offences and penalties imposed under the Act;

(j) regularly report to Parliament upon any matters considered by the Committee or referred to the Committee which the Committee considers ought to be brought to the notice of Parliament;

(k) pursue any concerns that the Committee believes are justified, and in particular in the context of other parties' responsibilities under the Act, that the Committee believes are within the legitimate functions of the Committee." (Section 14).

Membership of the Public Accounts Committee is also established by CAP 241. Section 5 relates to the Chairperson of the Committee:

(1) The Chairperson of the Committee is to be a member of the Parliament who:

(a) is not a member of the Government; and

- (b) has the capacity to discharge the functions of the Chairperson; and
 - (c) has an understanding of Government.
- (2) The Chairperson is to be appointed by the Parliament.”

Section 9 of the Act provides that:

“(1) In addition to the Chairperson, the Committee is to comprise not more than 6 other members who must be members of Parliament appointed by the Parliament...

(2) The Committee shall comprise an equal number of members from Government and from members of Parliament who are not members of Government.”

References:

Expenditure Review and Audit Act [CAP 241], 1998, Sections 5,9 and 14, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

42

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee should have a central role in providing a detailed analysis of the annual appropriation and expenditure of government agencies, however in practice the Committee has rarely met and does not have the resources to undertake this work (Actra Advisers, p37). The Public Accounts Committee has not been fully functional for some time, with evidence of meeting only twice in 2013 (PAC News).

Though the committee has rarely met and isn't fully functional, there are financial updates publicly available on a quarterly basis in 2014 (<http://doft.gov.vu/index.php/widgetkit/quarterly-expenditure-reports>), with historical monthly reports from 2013 (<http://doft.gov.vu/index.php/widgetkit/2014-01-04-23-41-48>).

References:

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-peformance-2009.pdf>

Public Accounts Committee (PAC) News, 12 November 2013, Vanuatu Parliament website, accessed on June 18, 2014. [http://webcache.googleusercontent.com/search?q=cache:aRjYh4LtlqQJ:parliament.gov.vu/Home%2520Page%2520Archived/2013/Public%2520Accounts%2520Committee%2520\(PAC\)%2520News%2](http://webcache.googleusercontent.com/search?q=cache:aRjYh4LtlqQJ:parliament.gov.vu/Home%2520Page%2520Archived/2013/Public%2520Accounts%2520Committee%2520(PAC)%2520News%2)

Hon Ralph Regenvanu, Minister for Lands, Government of the Republic of Vanuatu, public forum – commented that “A Government Minister recently commented that parliamentary committees are seen more as political rewards than for improving government performance or policy”, 13 May 2014

“Strengthening Parliamentary Oversight in Vanuatu”, Center for Democratic Institutions. Accessed on June 18, 2014. http://www.cdi.anu.edu.au/VAN/2011-12/2012_02_VAN_SRP_PAC_MLB.html

Budget Reports, Ministry of Finance and Treasury. Accessed on June 18, 2014. <http://doft.gov.vu/index.php/widgetkit/2014-01-04-23-41-48> and <http://doft.gov.vu/index.php/widgetkit/quarterly-expenditure-reports>

Individual Consultant Procurement Notice for a Technical Advisor to assist the Public Accounts Committee.

25/10/2013. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&ved=0CEsQFJAG&url=http%3A%2F%2Fprocurement-notices.undp.org%2Fview_file.cfm%3Fdoc_id%3D22448&ei=1WGhU42DGvTc8gHj4CICw&usq=AFQjCNHGsyZrIj2XB6CfwTuX6yKsGmEBXg&bvm=bv.6

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee membership is required to have equal numbers of government and opposition members, which it does in practice (see Parliament of Vanuatu website).

References:

Parliament of Vanuatu, Public Accounts Committee, <http://www.parliament.gov.vu/Committees/Public%20Accounts%20Committee.html>

Expenditure Review and Audit Act [CAP 241], 1998, Sections 5,9 and 14, http://www.pacii.org/vu/legis/consol_act/eraaa293/

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee has been largely inactive and is lacking in resources to undertake detailed investigations. In 2013, the Committee met twice as of November 29 (Public Accounts Committee (PAC) News, Parliament of Vanuatu website). There have been no reported investigations instigated by the Committee in the period February 2013 to February 2014.

References:

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-performance-2009.pdf>

Public Accounts Committee (PAC) News, 12 November 2013, Vanuatu Parliament website, accessed on June 18, 2014. [http://webcache.googleusercontent.com/search?q=cache:aRJYh4LtqQJ:parliament.gov.vu/Home%2520Page%2520Archived/2013/Public%2520Accounts%2520Committee%2520\(PAC\)%2520News%2](http://webcache.googleusercontent.com/search?q=cache:aRJYh4LtqQJ:parliament.gov.vu/Home%2520Page%2520Archived/2013/Public%2520Accounts%2520Committee%2520(PAC)%2520News%2)

Hon Ralph Regenvanu, Minister for Lands, Government of the Republic of Vanuatu, public forum – commented that “A Government Minister recently commented that parliamentary committees are seen more as political rewards than for improving government performance or policy”, 13 May 2014.

“Strengthening Parliamentary Oversight in Vanuatu”, Center for Democratic Institutions. Accessed on June 18, 2014. http://www.cdi.anu.edu.au/VAN/2011-12/2012_02_VAN_SRP_PAC_MLB.html

“Vanuatu Parliament Plans Hearings on Corruption”, Government Press Release, April 21, 2010. Accessed in the Pacific Islands Report website on June 18, 2014. <http://pidp.org/archive/2010/April/04-23-r13.htm>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁵⁵Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

Section 7 of the Public Service Act [CAP 246] establishes a Public Service Commission to oversee public administration. Included among the guiding principles of the Public Service Act [CAP 246] (section 4) are for the Public Service and Public Service Commission to " (a) be independent and perform their functions in an impartial and professional manner; (b) make employment decisions based on merit;(c) provide a workplace that is free from discrimination and recognises the diverse background of employees. Furthermore, article 59 (3) of the Constitution of the Republic of Vanuatu specifies that eligible appointments to the Public Service Commission cannot include members of Parliament, the National Council of Chiefs or Local Government Councils or anyone that exercises a position of responsibility in a political party.

Article 57(4) of the Constitution also allows "The Prime Minister or the chairman of a Local Government Council may, exceptionally, make provision for the recruitment of staff for a specified period to meet unforeseen needs. In urgent cases, the Public Service Commission may, after consulting the Ministers responsible for finance and public administration, make such a decision instead of the Prime Minister."

References:

Public Service Act [CAP 246]. 1998. Sections 4 and 7.
http://www.paclii.org/vu/legis/consol_act/psa152/

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 57 and 59.[\[http://www.parliament.gov.vu/Constitution.html\]](http://www.parliament.gov.vu/Constitution.html)

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

Included among the guiding principles of the Public Service Act [CAP 246] (section 4) are for the Public Service and Public Service Commission to " (a) be independent and perform their functions in an impartial and professional manner; (b) make employment decisions based on merit;(c) provide a workplace that is free from discrimination and recognizes the diverse background of employees." Section 15(3) further specifies that merit-based appointments must consider:
" (a) skill and ability to perform the duties and responsibilities of the post; and
 (b) the standard and efficiency of work performance; and
 (c) formal qualifications and training; and
 (d) personal qualities including conduct."

Article 57(4) of the Constitution also allows "The Prime Minister or the chairman of a Local Government Council may, exceptionally, make provision for the recruitment of staff for a specified period to meet unforeseen needs. In urgent cases, the Public Service Commission may, after consulting the Ministers responsible for finance and public administration, make such a decision instead of the Prime Minister." Security of tenure for public servants is enshrined in Article 57(5) of the Constitution, but does not apply to personal political advisers of the Prime Minister and Ministers (Article 58 (1)), nor to senior public servants of Ministries who may be subject to transfer by the Prime Minister to other posts of equal rank (Article 58(2)).

References:

Constitution of the Republic of Vanuatu. Revised Edition 1988. Articles 57 and 58.
<http://www.parliament.gov.vu/Constitution.html>

Public Service Act [CAP 246]. 1998. Sections 4 and 15.
http://www.paclii.org/vu/legis/consol_act/psa152/

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Section 37 of the Public Service Act [CAP 246] establishes a Disciplinary Board, independent of civil servant supervisors, to hear and determine disciplinary offenses. Appointments to the Board shall comprise (37(1)): " (a) a member of the Commission appointed by the Commission for 3 years;
 (b) a member of the public service appointed by the Public Service Staff Association or in the case when no staff association exists, appointed by the Judicial Services Commission for 3 years;
 (c) a director appointed by the Judicial Services Commission for 3 years."

Section 37 (3) determines that "A member of the Board who has an interest over and above the interest of other members in any proceedings before the Board shall disqualify himself or herself from participating in the conduct of those proceedings, in which event, there will be appointed by the Commission or the Judicial Services Commission (as the case may be) for the purposes of those proceedings a person in the place of the disqualified member."

In addition, the Public Service Disciplinary Board Procedure Rules of 1999 outlines the process for an independent redress mechanism.

References:

Public Service Act [CAP 246]. 1998. Section 37.
http://www.paclii.org/vu/legis/consol_act/psa152/

Public Service Disciplinary Board Procedure Rules. 1999.
http://www.paclii.org/vu/legis/consol_sub/psdbpr459/

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

Section 29a of the Public Service Act [CAP 246] enables the Public Service Commission to dismiss employees convicted of a criminal offence, which would include corruption. The Leadership Code Act [CAP 240] applies to senior public servants (director-general and director-level, section 5e), who are disqualified from future office for ten years from the date of conviction for corruption (section 42).

References:

Public Service Act [CAP 246]. 1998.

http://www.pacii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998.

http://www.pacii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

50

45a. In practice, civil servants are protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

Despite a reasonable legal framework for accountability and integrity of public servants, there are reports that political interference and lack of enforcement of regulations are common. "The Chairperson of the Public Service Commission is usually appointed according to political lines and the recruitment, management and disciplinary processes are open to manipulation by department and section heads," (NGO Official, February 22, 2014). In December 2013, Member of Parliament Alfred Carlot publicly stated that "The PSC is very weak; the position of secretary has been vacant for some years, if rumors going around that the acting secretary has been appointed to the post without applying is true then it is political interference in the PSC." He then went on to slam political appointments within the Ministry of Health during the second Ordinary Parliamentary Session of 2013, (Vanuatu Daily Post, December 9, 2013). Allegations of political interference have included non-merit based selection of officials, and appointments that were not budgeted for.

Political interference is particularly common at the senior civil servant level (Directors and Director-Generals). Although prior to the period of this study, in 2012 the Vanuatu Government introduced new legislation to shift DG positions to performance-based contracts, a move that the Pacific Institute of Public Policy observed could bring additional political interference to the public sector (RNZI, September 19, 2012). During the period of this study, transfers of DGs between Health and Justice ministries were allegedly politically motivated due to differences of opinion between Ministers and DGs (NGO Official, February 22, 2014). For example, in August 2013 Ministry of Health's Director-General was transferred to the Ministry of Agriculture, allegedly to enable the appointment of new health DG who was from the same island as the Minister of Health at the time (Ligo, August 1, 2013). Similarly, although prior to the period of this study, a former Director-General of Lands, Russell Nari, was transferred on three occasions in 2010 from Lands to Education to Justice ministries for politically-motivated reasons.

References:

"Spotlight on political appointments in health," Vanuatu Daily Post, December 9, 2013. <http://www.dailypost.vu/content/spotlight-political-appointments-health>

Interview with NGO representative who requested anonymity. February 22, 2014.

"Vanuatu Director-Generals resign and jobs re-advertised under new contract system," Radio New Zealand International, September 19, 2012. <http://www.radionz.co.nz/international/pacific-news/207323/vanuatu-directors-general-resign-and-jobs-re-advertised-under-new-contract-system>

"DG Aru transferred to Agriculture," by Godwin Ligo, Vanuatu Daily Post, August 1, 2013. <http://www.dailypost.vu/content/dg-aru-transferred-agriculture>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

While civil service jobs are regularly advertised via print and on-line media, merit-based appointment of civil servants and performance management is ad hoc. While the Public Service Commission must approve all job descriptions, advertising of vacancies and nominated candidates, there have been numerous public concerns of nepotism for the past several years (AusAID 2007; Vanuatu Daily Post, November 27, 2013; Harrison, March 1, 2014; NGO Official, February 22, 2014). While outside of the period of study, the following example highlights public concern for nepotistic practice in public sector agencies. In August 2012, following media coverage of nepotism in the Vanuatu National Provident Fund, the government initiated an investigation into recruitment practices, which eventually resulted in the termination of a number of contracts (Binihi, August 12, 2012). Allegations of "islandism" (recruiting people from the same island or locality) were also common in relation to other government bodies. While there is considerable public perception of nepotism in the public service, it is often difficult to obtain evidence due to poor record-keeping "and so the media play an important role in making us aware of these bad practices" (Anti-Corruption Advocate, March 3, 2014).

Staff performance management is a weak area, as this requires good middle- and senior-management training and good knowledge of subordinates' job descriptions (Government Official, March 5, 2014). Where staff have been placed on suspension, these are often for political, rather than performance, reasons. The disciplinary committee of the Public Service Commission does not meet regularly (NGO Official, February 22, 2014). Although just prior to the period of this study, the following example illustrates the performance management. In November 2012, the PSC disciplinary committee finally met to discuss the Director of Lands' suspension case, after more than a year of his suspension (Transparency Vanuatu, December 3, 2012). He was reinstated to his position due to the dropping of charges by his Director-General.

References:

"Nepotism in appointments of legal officers into government legal offices," Letter to the Editor, Vanuatu Daily Post, November 27, 2013. <http://www.dailypost.vu/content/nepotism-appointments-legal-officers-government-legal-offices>

Vanuatu Drivers of Change Study, AusAID. 2007. http://aid.dfat.gov.au/Publications/Documents/vanuatu_change.pdf

Vanuatu Wok I Kik website (On-line Job Advertisements)
<http://vanuatujobalert.blogspot.com/>

"Suspension case withdrawn against Director of Lands," by Transparency Vanuatu, Vanuatu Daily Post, December 3, 2012. <http://www.dailypost.vu/content/suspension-case-withdrawn-against-director-lands-jean-marc-pierre>

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"Carcasses requests Auditor-General to investigate VNPF," by Ricky Binihi, Vanuatu Daily Post, August 12, 2012. <http://www.dailypost.vu/content/carcasses-requests-auditor-general-investigate-vnpf>

Interview with Anti-Corruption Advocate who requested anonymity. March 3, 2014.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

The public service has a varied experience regarding management, and there are reports of nepotism being a problem. NGO representatives have observed that in 2013, recruitment along party lines, particularly for senior officials was common (NGO Official, February 22, 2014; Harrison, March 1, 2014). Allegations of "islandism" (recruiting people from the same island or locality) were also common in relation several government agencies. Politically-motivated civil servant management actions were a frequent media topic in 2013 (e.g. Ligo, February 27, 2013; Garae, September 4, 2013).

In general, political patronage is common, particularly regarding boards of state-owned enterprises where wholesale exchange of appointments is common with political transitions. Although outside of the period of study, in March 2014, the media carried allegations of political appointments to the Airports Vanuatu Limited (AVL) Board (Vanuatu Daily Post, March 27, 2014). In December 2013, Member of Parliament Alfred Carlot publicly slammed political appointments within the Ministry of Health during the second Ordinary Parliamentary Session of 2013, (Vanuatu Daily Post, December 9, 2013).

References:

"New AVL Board Claimed to Be Illegal," by Vanuatu Daily Post, March 27, 2014. <http://www.dailypost.vu/content/new-avl-board-claimed-be-illegal>

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

"Vanuatu Public Service Sacks Biosecurity, Port Director," by Godwin Ligo, Pacific Island Report, February 27, 2013. <http://pidp.org/archive/2013/February/02-28-11.htm>

"Directors Suspended", by Len Garae, Vanuatu Daily Post, September 4, 2013. <http://www.dailypost.vu/content/directors-suspended>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Officially, all civil servants have job descriptions, although in practice many do not as "some Departments are very good on filing updated job descriptions and some do not bother" (Government Official, March 5, 2014). Job descriptions include an assigned pay grade within the civil service structure. According to a former public servant and NGO official (Harrison, March 1, 2014), "the Public Service Commission has a well-defined human resource management policy " _ but has very little or no oversight on the functions of HRM in line ministries."

The Public Service Commission is generally consistent at providing clear job descriptions for senior management positions and technical roles, however junior and administrative staff, including temporary staff, may not always have clear job descriptions. For example, in 2013, the Wok I Kik employment website advertised several government positions, with varying depth of job description detail, depending on the level of the position.

References:

Interview, Government official who requested anonymity, March 5, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Vanuatu Wok I Kik Employment Service Website.

<http://vanuatujobalert.blogspot.com/2013>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants do not officially receive bonus payments, although are eligible to receive additional allowances e.g. pro-rated subsistence funds for official travel, housing, acting and shift allowances etc (Public Service Commission Staff Manual 2008). Overtime is compensated at a 1.25 rate, but may also be negotiated through a "time-off-in-lieu" arrangement, as negotiated with supervisors (Government Official, March 5, 2014). Payment amounts may vary according to length of official travel and amount of overtime, but typically constitute only a fraction of total pay.

Sitting allowances for civil servants to attend donor project-related meetings has been an ongoing discussion between line ministries and donor agencies. Government board members, including the members of the Public Service Commission, typically receive sitting allowances, a practice that some civil servants have occasionally tried to create for themselves (Ligo, May 2, 2012). However, the PSC Staff Manual clearly defines eligibility for sitting allowances only in cases where such an allowance is provided for.

References:

Interview, Government official who requested anonymity, March 5, 2014.

Lead researcher notes while employed as a donor official, 2013.

"PSC Sitting Allowance Increases," by Godwin Ligo, Vanuatu Daily Post, May 2, 2012.

<http://www.dailypost.vu/content/psc-sitting-allowance-increases>

Public Service Commission Staff Manual, 2008. Table 4-2 "Allowances and Additional Payments".

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

There is no evidence that the government publishes the number of authorized civil service positions along with the number of positions actually filled. NGO and media representatives have indicated that they are not aware whether a complete list of authorized service positions available to the public (NGO Official, February 22, 2014; Kaltongga, March 1, 2014). While the government regularly advertised a number of civil service positions in the media during 2013, no indication was provided regarding a position's relationship to total authorized positions within the civil service (e.g. Wok I Kik website).

In practice, several ministries operate with only a proportion of total staff due to budget and/or capacity constraints, although temporary daily-rated staff may fill some gaps (Government Official, March 5, 2014). For example, the Ministry of Lands has been operating with 60% staff levels for a number of years, recruiting people on temporary contracts to manage work loads.

References:

Interview with Eslyn Kaltongga, Freelance Journalist. March 1, 2014.

Vanuatu Wok I Kik Employment Service Website.
<http://vanuatujobalert.blogspot.com/2013>

Interview, Government official who requested anonymity, March 5, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

During 2013, the Public Service Disciplinary Board hardly met to discuss cases, a theme that persisted prior to the period of this study as well (Government Official, March 5, 2014). The Public Service Disciplinary Board Procedures 1999 empowers the Public Service Commissioner to decide when and where to call meetings to assess cases. However, until June 2013 this position had undergone high turnover for more than a year, limiting the ability to implement disciplinary procedures. Transparency Vanuatu has alleged that the appointments tend to be political, and therefore are likely to be subjected to pressure on politically sensitive issues relating to civil servants (Transparency Vanuatu, June 21, 2013).

For example, in February 2013, the suspended Director of Ports and Harbours alleged the action was politically motivated by the Public Service Commission. His attempts to seek redress were unsuccessful: "My case has never gone before the PSC Disciplinary Board and I was never asked to defend myself before the Disciplinary Board which is totally unfair in a democratically run government and nation," (Ligo, February 27, 2013).

References:

"Political Interference Should Not Impede the Public Service Commission," Transparency Vanuatu, June 21, 2013. http://www.transparencyvanuatu.org/index.php?mact=News.cntnt01_detail.0&cntnt01articleid=11&cntnt01returnid=67

Interview, Government official who requested anonymity, March 5, 2014.

"Vanuatu Public Service Sacks Biosecurity, Port Director," by Godwin Ligo, Pacific Island Report, February 27, 2013. <http://pidp.org/archive/2013/February/02-28-11.htm>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In 2013 there were no reports of delayed salary payments to civil servants. The Department of Finance and Treasury advertises payroll schedules on-line, with line agencies responsible for administering their payrolls (Government Official, March 5, 2014).

Although just outside the period of this study, a few examples illustrate the occasional uncertainty regarding salary payments. In March 2014, over 100 contract nurses did not receive their salaries, and many for several months prior to this, due to administrative delays within the Ministry of Health (RNZI, March 15, 2014). Similarly, in 2012, several teachers did not receive salaries due to alleged budget diversion within the Ministry of Education (Ligo, July 12, 2012).

References:

"Government fails to meet promise to Vanuatu nurses," Radio New Zealand International, March 15, 2014. <http://www.radionz.co.nz/international/pacific-news/238919/government-fails-to-meet-promise-to-vanuatu-nurses>

Interview, Government official who requested anonymity, March 5, 2014.

Vanuatu Government Payroll Schedule 2014 (Example as 2013 data is now off the system). (<http://www.doft.gov.vu/index.php/library-publication-archives/payroll-timetable-2014>).

"We are not slaves: teachers," by Godwin Ligo, Vanuatu Daily Post, July 12, 2012. <http://www.dailypost.vu/content/we-are-not-slaves-teachers>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants convicted of any criminal offense, including corruption, may be dismissed according to section 29a of the Public Service Act [CAP 246]. This is a weakly regulated aspect of the Public Service Commission and relies on the ability of the PSC to firstly investigate allegations of corruption and secondly to enforce the interpretations of both the Public Service Act [CAP 246] and the Leadership Code Act [CAP 240] section 42, which restricts re-employment of senior public servants to 10 years from the date of conviction. The 2013 UN Convention Against Corruption report on Vanuatu, has recorded that the re-employment restriction is only for 4 years (2013: 5). The difference in timeframes relate to the flexible interpretation of the Public Service and Leadership Code Acts in practice.

Although prior to the period of this study, an example from April 2012 illustrates the flexible enforcement of the Public Service Act and Leadership Code Act. In April 2012, a former Deputy Police Commissioner who was convicted for "mutiny, kidnapping and false imprisonment" and sentenced to 2 years jail in 2003 was appointed Chairman of the Public Service Commission, two years earlier than the Leadership Code's 10-year re-employment requirement (Makin, April 2, 2012).

NGO representatives have observed that there is minimal prosecution follow-through regarding civil servants charged with corruption, resulting in both poor documentation and unenforced regulations regarding corruption and future employability (Harrison, March 1, 2014).

References:

"Review of the Implementation of the United Nations Convention Against Corruption " Executive Summary: Vanuatu," November 25, 2013, United Nations.

Public Service Act [CAP 246]. 1998. Section 29a.
http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

"Police Mutineer to Head Vanuatu Public Service Commission," by Bob Makin, Vanuatu Daily Post, April 2, 2012. <http://pidp.org/archive/2012/April/04-02-12.htm>

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

14

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

The Leadership Code [CAP 240] requires all public leaders, including senior civil servants (director-general and director levels), to provide annual returns to the Clerk of Parliament detailing the assets and liabilities (section 31 and Schedule). Annual returns are confidential except during investigations and prosecutions (section 32).

References:

Leadership Code Act [CAP 240]. 1998. Sections 31 and 32.
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

The Public Service Act [CAP 246] does not establish specific regulations relating to conflicts of interest for civil servants. The Leadership Code Act [CAP 240] applies only to senior public servants (director-general and director-level, section 5e). Section 24 specifies that, "A leader who has a conflict of interest in relation to a matter must not act in relation to the matter, or arrange for

someone else to act in relation to the matter, in such a way that the leader or a member of his or her close family benefits from the action.”

References:

Leadership Code Act [CAP 240]. 1998. Section 24.
http://www.paclii.org/vu/legis/consol_act/lca131/

Public Service Act [CAP 246]. 1998.
http://www.paclii.org/vu/legis/consol_act/psa152/

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | **No**

Comments:

Neither the Public Service Act [CAP 246] nor the Leadership Code Act [CAP 240] restricts civil servants from entering the private sector after leaving government.

References:

Public Service Act [CAP 246]. 1998.
http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | **No**

Comments:

Neither the Public Service Act [CAP 246] nor the Leadership Code Act [CAP 240] specifically regulates gifts and hospitality offered to civil servants. However section 34(1i) of the PSA [CAP 246] requires public servants to “disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment.” Under section 44 of the PSA [CAP 246] the Public Service Staff Manual (Code of Conduct) may also provide additional stipulations regarding staff conduct and conditions of work. The Staff Manual does not, however, include specific provisions relating to gifts and hospitality offered to civil servants.

References:

Public Service Act [CAP 246]. 1998.
http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

Public Service Commission Staff Manual. 2008.

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | **No**

Comments:

There is no legal requirement for the independent auditing of the annual returns submissions of leaders, including senior public servants. While the Leadership Code [CAP 240] requires all public leaders, including senior civil servants (director-general and director levels), to provide annual returns to the Clerk of Parliament detailing the assets and liabilities (section 31 and Schedule) there is no requirement for either the Clerk or an independent body to audit these returns.

References:

Leadership Code Act [CAP 240]. 1998. Section 31.
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no regulations restricting post-government private sector employment of civil servants and therefore no "cooling off" periods between government and private sector employment.

Private sector employment and the public service is a loosely regulated area. While Section 32(1) of the Public Service Act expressly prohibits a public officer from receiving privately paid office outside of the Public Service without the approval of the Public Service Commission, in practice public servants regularly partake in private enterprise (NGO worker, February 22, 2014). In addition, there are no restrictions for civil servants who are on a leave of absence (e.g. sabbatical, study, or holiday) from undertaking private, paid work. In January 2014, a parliamentarian involved in a high-level review of the Public Service Act commented that "public servants "... go around half the time minding their private businesses" (Ligo, January 22, 2014).

References:

Public Service Act [CAP 246]. 1998.
http://www.paclii.org/vu/legis/consol_act/psa152/

Interview with NGO representative who requested anonymity. February 22, 2014.

"Survey reveals 70% of public servants not fully productive," by Godwin Ligo, Vanuatu Daily Post, January 22, 2014.
<http://www.dailypost.vu/content/survey-reveals-70-public-servants-not-fully-productive>

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no specific regulations governing gifts and hospitality offered to civil servants, although section 29a of the Public Service Act [CAP 246] addresses issues of conflict of interest.

Traditional gift-giving and hospitality between official delegations and communities is common (e.g. exchange of traditional mats or cloth) and a cultural expectation, and social networks are close-knit, which makes this a difficult practice to regulate (NGO worker, February 22, 2014). While there were no known cases of perceived irregularities in gifts and hospitality offered to civil servants during the period of this study, the emphasis of public scrutiny of the public service practice has been on bribery or nepotism, particularly in relation to procurement processes (Daily Digest, January 24, 2013).

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

"Bribery is on the increase in Vanuatu," by Transparency Vanuatu, July 23, 2013. <http://www.transparencyvanuatu.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=26&cntnt01returnid=60>

"Family business: George Bogiri awards himself immigration visa contract worth VT200,000,000+ a year," by Daily Digester, Vanuatu Daily Digest, January 24, 2013. <http://vanuatudaily.wordpress.com/2013/01/25/george-bogiri-awards-himself-immigration-visa-contract/>

Public Service Act [CAP 246]. 1998. http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998. http://www.paclii.org/vu/legis/consol_act/lca131/

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

While the Leadership Code Act [CAP 240] (s24) contains conflict of interest provisions for senior level civil servants, there are reports of weak enforcement of this. Additionally, lower level civil servants are under no requirement of recusal.

According to some sources, senior civil servants rarely remove themselves from engaging in policy decisions that affect their personal interests (NGO Official, February 22, 2014; Harrison, March 1, 2014). A significant example from the Ministry of Lands in 2012/2013 highlighted the involvement of over 40 civil servants who engaged in a land policy decision that enabled them obtain leases for half the property value (Binihi, March 1, 2013). According to then-Minister of Lands, the policy decision was based on advice from the Director-General at the time, who in turn had family members benefit from preferential pricing of land. During 2013, the Ombudsman's Office and the Public Service Commission each conducted an investigation, which recommended staff redundancies.

References:

"PSC will present lands investigation to COM," by Ricky Binihi, Vanuatu Daily Post. March 1, 2013. <http://www.dailypost.vu/content/psc-will-present-lands-investigation-com>

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

While senior-level civil servants must file asset disclosures, there is no legal requirement for these asset disclosures to be audited (Leadership Code Act [CAP 240] sections 31 and 32). If a particular senior civil servant is being investigated for alleged corruption, the Act (s32) permits investigations, which may or may not result in an audit. According to some NGO officials, the government's internal audit checks are generally dysfunctional (Harrison, March 1, 2014). In recent years, the Auditor-General's Office has undergone reforms to improve auditing of public accounts but there are very few available resources to conduct audits at this individual level (Vanuatu Daily Post, August 27, 2013). During the period of this study, investigations of corruption in the Department of Lands did not include audits of civil servants' asset disclosures, in part because such disclosures are rarely filed and in part because there is confusion about which agency is responsible for requesting audits during investigations (Government Official, March 2014).

References:

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

"Auditor General Says He Supports Transparency," Vanuatu Daily Post. August 27, 2013.
<http://www.dailypost.vu/content/auditor-general-says-he-supports-transparency>

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with Government Official, March 5, 2014.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

Citizens may access names of senior civil servants who have filed asset disclosure records under the Leadership Code Act [CAP 240] section 32(3). The Clerk of Parliament is required to annually publish a list of leaders who have given, or failed to give an annual return. However, the contents of the annual returns are confidential except for during prosecutions and investigations, in which case access is strictly controlled (section 32(1)). Should a citizen wish to view the contents of annual returns, they must file a request for investigation by the Ombudsman (section 34(1)), but access to records may still be limited to the investigator.

References:

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not have open access to asset disclosure records, but may access names of senior civil servants who have filed asset disclosure records under the Leadership Code Act [CAP 240] section 32(3). The contents of the annual returns are confidential except for during prosecutions and investigations, in which case access is strictly controlled (section 32(1)).

In practice, citizens do not access the asset disclosure records of senior civil servants, as they are only accessible when under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). Submission of annual returns of assets of senior civil servants is an area that is weakly enforced by the government.

With few annual returns actually submitted by senior civil servants, no requirement for audits and the confidentiality of returns submitted, there is very little scrutiny of this practice internally within the Public Service and externally by the public. Media investigations of alleged malpractice by senior public servants have often relied on other means of access to information. For example, just prior to the period of this study, in January 2013, the Director-General of Internal Affairs, George Bogiri, was implicated in a case of nepotistic public procurement. A media investigation accessed records from the Vanuatu Financial Services Commission, which revealed that Bogiri was listed as the director of the winning company (Daily Digest, January 24, 2013).

References:

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"Family business: George Bogiri awards himself immigration visa contract worth VT200,000,000+ a year," by Daily Digester, Vanuatu Daily Digest, January 24, 2013.

<http://vanuatudaily.wordpress.com/2013/01/25/george-bogiri-awards-himself-immigration-visa-contract/>

Interview with NGO representative who requested anonymity. February 22, 2014.

Leadership Code Act [CAP 240]. 1998.
http://www.paclii.org/vu/legis/consol_act/lca131/

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens do not access the asset disclosure records of senior civil servants, as they are only accessible when under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). There is no cost for accessing the official gazette of names, beyond basic photocopying costs of the list of who has submitted an annual return. However, citizen access to the annual returns themselves is limited to cases where there is suspicion of irregularity and an investigation.

Submission of annual returns of assets of senior civil servants is an area that is weakly enforced by the government, and few records are actually available.

References:

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens do not access the asset disclosure records of senior civil servants, as they are only accessible when under investigation (Harrison, March 1, 2014), and also because very few records exist (NGO Official, February 22, 2014). Quality is therefore difficult to ascertain in the absence of data. Submission of annual returns of assets of senior civil servants is an area that is weakly enforced by the government.

References:

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

50

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

Section 47 (1) of the Public Service Act [CAP 246] obliges civil servants to report any breaches of the Act. Section 47 (2) further specifies that, "the person making the allegation shall not be penalised in any way whether the allegation is proven or not unless it is proved beyond reasonable doubt that the report was made maliciously and in bad faith."

Civil servants may also choose to report corruption to the Ombudsman under the Leadership Code Act [CAP 240] (section 34(1a)). Section 36 (2) of the Act enables the person making the complaint to the Ombudsman to submit a written request to withhold their name from any investigation publication.

References:

Public Service Act [CAP 246]. 1998. Section 47.
http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998. Sections 34 and 36.
http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

While it is common practice for the Office of the Ombudsman and the Internal Audit Office of the Ministry of Finance and Economic Management to protect whistleblowers and persons making complaints (Harrison, March 1, 2014), some anti-corruption observers have noted that there is a disincentive for civil servants to report cases of corruption or abuse of power for fear of loss of employment (Anti-Corruption Advocate, March 3, 2014).

Although outside of the period of this study, an example from 2012 illustrates the disincentive for civil servants to report corruption. In the lead up to the October 2012 elections, a blog site called "Talemaot" was created to "expose corruption within government." The blogger, a civil servant, leaked documentation exposing particular government officials involved in improper conduct, apparently because he was unable to report this internally (NGO Official, February 22, 2014). The Director-General of the Prime Minister's Office issued a public statement denouncing the site and warning other civil servants against improper sharing of government documentation. He issued a directive to the government's IT services to shut down the site and the civil servant was disciplined (Vanuatu Daily Digest, July 2012).

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Anti-Corruption Advocate who requested anonymity, March 1, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | No

Comments:

There is no comprehensive legislation protecting private sector whistleblowers. There are, however, a few laws that provide minimal protection of private sector whistleblowers:

- Section 34 (1a) of the Leadership Code Act [CAP 240] empowers any citizen, including private sector employees, to report a breach of the Code to the Ombudsman, who may then conduct an investigation. Section 36 (2) of the Act further enables the person making the complaint to the Ombudsman to submit a written request to withhold their name from any investigation publication.
- Section 7 of the Financial Transactions Reporting Act [CAP 268] provides protection from civil or criminal proceedings for private sector employees of financial institutions who report suspicious financial transactions.

References:

Leadership Code Act [CAP 240]. 1998. Sections 34 and 36.
http://www.paclii.org/vu/legis/consol_act/lca131/

Financial Transactions Reporting Act [CAP 268]. 2000. Section 7.
http://www.paclii.org/vu/legis/consol_act/ftra335/

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

While private sector employees may opt to protect their identity when reporting corruption under section 36(2) of the Leadership Code Act [CAP 240], the small-town environment of Port Vila (the capital city) lends itself to little anonymity (Anti-Corruption Advocate, March 3, 2014). The media is often used by the public (including private sector employees) to leak information about corruption, as an additional screen of identity protection. For example, just prior to the period of this study in January 2013, media exposure of nepotism on the awarding of a public contract was based on information from private sector sources, who did not trust formal reporting mechanisms and the minimal protections they provide (Vanuatu Daily Digest, January 25, 2013). This exposure resulted in a backlash from the implicated senior civil servant, accusing business houses of being behind the media expos (Cullwick, January 31, 2013). The Vanuatu Daily Digest protected its private sector sources. There is a general reluctance to be associated with whistleblowing.

References:

Interview with Anti-Corruption Advocate who requested anonymity, March 1, 2014.

"Bogiri blames elements in business houses for media outcry on visa application," by Jonas Cullwick, Vanuatu Daily Post, January 31, 2013. <http://www.dailypost.vu/content/bogiri-blames-elements-business-houses-media-outcry-visa-application>

"Family business: George Bogiri awards himself immigration visa contract worth VT200,000,000+ a year," by Daily Digester, Vanuatu Daily Digest, January 25, 2013. <http://vanuatudaily.wordpress.com/2013/01/25/george-bogiri-awards-himself-immigration-visa-contract/>

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

Comments:

Under section 42 of the Public Service Act [CAP 246], a civil servant may report a breach of the Act to either their director-general or the Public Service Commission. In addition, section 34 (1a) of the Leadership Code Act [CAP 240] empowers any citizen, including civil servants, to report a breach of the Code to the Ombudsman, who may then conduct an investigation.

References:

Public Service Act [CAP 246]. 1998. Section 42. http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998. Section 34. http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Internal reporting mechanisms for corruption primarily feed into the Director-General of each Ministry, therefore staffing may vary across ministries. If there is financial corruption, the Internal Audit Unit for the Ministry of Finance and Economic Management

(MFEM) may also be involved in the reporting chain and has professional, full-time staff to handle investigations. However, available staff are under-used because corruption is infrequently reported internally (Harrison, March 1, 2014). Also, the Ombudsman's Office may also receive complaints from all citizens.

Given the frequent political interference within the public sector, internal support for combatting corruption depends on motivations of senior officials. Several sources suggest that civil servants are reluctant to report corruption via internal mechanisms, out of fear of reprisal (Anti-Corruption Advocate, March 3, 2014; Government Official, March 5, 2014; NGO Official, February 22, 2014).

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Anti-Corruption Advocate who requested anonymity, March 1, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview, Government official who requested anonymity, March 5, 2014.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Internal reporting mechanisms for corruption primarily feed into the Director-General of each Ministry, before reaching the Public Service Commission, therefore funding may vary across ministries. If there is financial corruption, the Internal Audit Unit for the Ministry of Finance and Economic Management (MFEM) may also be involved in the reporting chain. Funding for internal reporting mechanisms is integrated into the general "corporate services" pool of funds for each ministry, and is therefore difficult to obtain a specific value (Harrison, March 1, 2014).

The Vanuatu Government's 2013 budget allocated VT43.6 million (USD4.36 million) to the Public Service Commission's Corporate Services Unit costs, which provides general oversight of all PSC's mandated functions including investigations of alleged corruption. However, "we may plan for certain accountability mechanisms, but often we find from Finance that the budget has been diverted to other activities," (Government Official, March 5, 2014).

References:

Interview, Government official who requested anonymity, March 5, 2014. (45 all)

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Government of the Republic of Vanuatu Budget 2013. Vanuatu Daily Digest Website. p5.

<http://vanuatudaily.files.wordpress.com/2013/03/vanuatu-government-2013-budget.pdf>

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Complaints often take more than a month to resolve. Internal reporting mechanisms for corruption primarily feed into the Director-General of each Ministry, before reaching the Public Service Commission, therefore response times may vary across ministries (Harrison, March 1, 2014). Given the frequent political interference within the public sector, internal support for combatting corruption depends on motivations of senior officials (NGO Official, February 22, 2014). Therefore internal investigation of complaints may be delayed or even impeded.

Public servants often resort to external mechanisms to instigate an investigation. For example, in April 2013, government documents were leaked to the media revealed conflict of interest in relation to Department of Lands' staff awarding themselves with titles to former state-owned real estate the year prior (Vanuatu Daily Post, April 8, 2013). A Public Service Commission investigation into these land sales had commenced in late 2012, but was suffering from lack of access to information. The Director-General of the Ministry of Lands was then suspended for allegedly "attempting to pervert the cause of the current investigations, being undertaken by the Public Service Commission, concerning the leases of state lands issued to public servants" (Garae, April 15, 2013). Public servants may also choose to submit complaints to the Ombudsman's Office.

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"Vanuatu Director General of Lands Suspended Pending Further Investigation," by Len Garae, Pacific Islands Report, April 15, 2013. <http://pidp.eastwestcenter.org/pireport/2013/April/04-15-03.htm>

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is a mixed follow-through on corruption reporting and investigations, with complaints often taking up to a month to be acknowledged, and sometimes more than two months to one year to be resolved. Inconsistent resourcing of internal reporting mechanisms, combined with political interference with senior officials and a reluctance to report corruption, result in very few investigations (NGO Official, February 22, 2014; Harrison, March 1, 2014). It is common practice for the Public Service Commission to address complaints by suspending officials, pending investigation. However, investigations may be delayed or prolonged due to political interference. For example, although outside of the period of this study, the Public Service Commission suspended the Director of Lands in 2011 due to maladministration charges from his Director-General, but took more than a year to follow-up on the matter (Transparency Vanuatu, December 3, 2012). The Director was reinstated to his position in November 2012 due to the dropping of charges by his Director-General.

In another example, in April 2013, the media highlighted an ongoing investigation by the Public Service Commission into alleged corrupt land deals to Department of Lands Officers. A Public Service Commission investigation into these land sales had commenced in October 2012 but did not complete until March 2013, in part due to lack of access to information (Binihi, March 1, 2013).

References:

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

"PSC Will Present Lands Investigation to COM," by Ricky Binihi, Vanuatu Daily Post, March 1, 2013. <http://www.dailypost.vu/content/psc-will-present-lands-investigation-com>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

63
4.3. Government Procurement: Transparency, Fairness, and
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

45

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

Public procurement is governed by two acts: the Government Contracts and Tenders Act [CAP 245] applies to procurements valued VT5 million (USD50,000) and above; the Public Finance and Economic Management Act [CAP 244] governs contracts for less than this amount.

Section 3(2) of the Government Contracts and Tenders Act [CAP 245] authorizes ministers to enter into government contracts. Additionally section 3(3) requires the minister, prior to entering into a Government Contract, to "ensure that no conflict of interest exists between a minister or the Council and the other party." Section 3 also outlines the requirements for a competitive and transparent procurement process (3f), including certification by the Attorney General of proper process (3g) and Council approval of the Contract (3h).

The GTCA [CAP 245] establishes a Tenders Board to over see procurement. Members of the Tenders Board cannot participate in the tendering process for contracts for which they have a conflict of interest (section 10(5)).

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Public Finance and Economic Management Act [CAP 244]. 1998.
http://www.paclii.org/vu/legis/consol_act/pfaema291/

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

Comments:

Neither the Public Service Act [CAP 246], the Public Finance and Economic Management Act [CAP 244] nor the Government Contracts and Tenders Act [CAP 245] require mandatory professional training for public procurement officials. Part 4 of the GCTA [CAP 245] outlines the roles and responsibilities of the Tenders Board, including the required expertise (section 10), but does not mandate professional procurement training.

References:

Public Service Act [CAP 246]. 1998.

http://www.paclii.org/vu/legis/consol_act/psa152/

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

Public Finance and Economic Management Act [CAP 244]. 1998.

http://www.paclii.org/vu/legis/consol_act/pfaema291/

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the conflicts of interest regulations for public procurement officials are enforced only in relation to donor-funded projects for which a government contract mechanism is being used. Such regulations are irregularly applied for government-funded procurements, and it is often unclear where monitoring responsibilities lie (NGO official, February 22, 2014). Though immediately prior to the period of study, a January 2013 case is emblematic of this deficiency. In this case, the media revealed that the Director-General of Internal Affairs had awarded his daughter a VT200million (USD2 million) immigration management contract, without advertising the tender nor declaring his directorship of the daughter's company (Vanuatu Daily Digest, January 25, 2013). Yet, without media investigation, the government had no mechanism to identify this conflict of interest.

A November 2011 assessment of public procurement management made a number of recommendations for strengthened practice, including improved civil servant awareness of the official June 2005 Guidelines for the Procurement of Goods and Services, which also addresses conflict of interest (Vanuatu Government, November 2011). This issue continued during the period of this study.

References:

"Family business: George Bogiri awards himself immigration visa contract worth VT200,000,000+ a year," by Daily Digester, Vanuatu Daily Digest, January 24, 2013.

<http://vanuatudaily.wordpress.com/2013/01/25/george-bogiri-awards-himself-immigration-visa-contract/>

Interview with NGO representative who requested anonymity. February 22, 2014.

An Assessment of Public Procurement Management in Vanuatu. Government of Vanuatu, November 2011. <http://www.gov.vu/index.php/component/content/article/73-procurement/171-an-assessment-of-public-procurement-management-in-vanuatu>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

Neither the Government Contracts and Tenders Act [CAP 245], the Public Service Act [CAP 246] nor the Public Finance and Economic Management Act [CAP 244] provide a mechanism to monitor the assets, income and spending habits of public procurement officials. The Leadership Code Act [CAP 240] requires all public leaders, including senior civil servants (director-general and director levels), to provide annual returns to the Clerk of Parliament detailing the assets and liabilities (section 31 and Schedule), but not spending habits. These senior officials are typically also often appointed to Tenders Boards under the GCTA [CAP 245].

References:

Public Service Act [CAP 246]. 1998.

http://www.paclii.org/vu/legis/consol_act/psa152/

Leadership Code Act [CAP 240]. 1998.

http://www.paclii.org/vu/legis/consol_act/lca131/

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

Public Finance and Economic Management Act [CAP 244]. 1998.

http://www.paclii.org/vu/legis/consol_act/pfaema291/

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

The Government Contracts and Tenders Act [CAP 245] applies to procurements valued VT5 million (USD50,000) and above, and stipulates the "use a competitive and transparent process when deciding who to award the contract to including where applicable, a tender process as may be prescribed by this or any other Act or regulation" (section 3(f)). Open bidding is usually required under the Tenders Regulations of 1999 (3(2)) with tenders being advertised in the press and on the radio (4(2)).

References:

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.

http://www.paclii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

Sole source funding is permissible for contracts of less than VT5 million (USD50,000) under the Public Finance and Economic Management Act [CAP 244]. For amounts greater than this, the Government Contracts and Tenders Act [CAP 245] and the Tender Regulations of 1999 come into force. Section 13(a) of the GCTA [CAP 245] prohibits contract splitting in order to avoid the tendering process. Sections 4 to 8 of the Tenders Regulations stipulate the tender process, but allow for selective tendering (section 4b) "where it is known that limited skills are available to perform the work required." Additionally, section 9(1) of the Tenders Regulations allows that "In the case of emergency expenditure, the Tenders Board may choose to recommend a Government Contract to the Council of Ministers without following the procedure set out in regulations 4 to 8. This may only be done when the urgency of the expenditure does not allow sufficient time for the full tender process to be carried out."

References:

Tenders Regulations No. 40 of 1999.

http://www.paclii.org/vu/legis/consol_sub/tr208/

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

Public Finance and Economic Management Act [CAP 244]. 1998.

http://www.paclii.org/vu/legis/consol_act/pfaema291/

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

The Public Accounts Committee may review the records, minutes and decisions of the Tenders Board under section 18 of the Government Contracts and Tenders Act [CAP 245]. However, there is no procedure for members of the public, or unsuccessful bidders, to request a review of procurement decisions.

References:

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

There is no specific procedure for members of the public or unsuccessful bidders to challenge procurement decisions. However, there is no law prohibiting such challenges in court.

Section 13C of the Government Contracts and Tenders Act [CAP 245] provides protection for whistleblowers who may report alleged breaches of the tender process "(a) to the Director of the Department responsible for Finance, or (b) any other senior official within that Department or the Ministry responsible for finance," who must then refer the matter to Director-General of the Ministry of Finance (section 13C (3)). He in turn may refer the matter the Attorney-General, Commissioner of Policy and/or the Public Prosecutor (section 13C (4)).

References:

Government Contracts and Tenders Act [CAP 245]. 1998. Section 13C.

http://www.paclii.org/vu/legis/consol_act/gcata342/

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | **No**

Comments:

There are no specific regulations for the restriction of violating companies from participating in future procurement bids. Section 7(4) of the Tenders Regulations 1999 provides evaluation criteria for bids, including an assessment of the "reputation and credit worthiness of the tenderer" (section 7(4h)), but there is no specific limitation based on a tenderer's prior history of regulation violation.

References:

Tenders Regulations No. 40 of 1999. Section 7(4).
http://www.paclii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

There are no specific regulations for the restriction of violating companies from participating in future procurement bids. The difficulty in obtaining proof of bribery of procurement officials, as well as limited recording of companies guilty of bribery or other violations of procurement regulations mean that in general the integrity of public procurement is weak (NGO official, February 22, 2014).

Background checks of bidding companies are rarely conducted and the irregularity in advertising major procurements further complicate the government's ability to record and prohibit offending companies. For example, in August 2013 a Port Vila Member of Parliament, Willie Jimmy, questioned the lack of a tender process for the construction of a new jumbo jet airfield, highlighting the limited background information available about the winning company and its role in securing a promissory note from the government outside of any procurement process (Makin, August 13, 2013). The lax application of procurement regulations increases the opportunities for corruption between companies and officials.

References:

"Vanuatu Government Doubles Down on New Airport," by Bob Makin, Pacific Islands Development Report, August 13, 2013. <http://pidp.org/pireport/2013/August/08-14-19.htm>

Interview with NGO representative who requested anonymity. February 22, 2014.

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.paclii.org/vu/legis/consol_sub/tr208/

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

58

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

The Government Contracts and Tenders Act [CAP 245] and the Tenders Regulations 1999 are publicly available on-line. Section 4(3) of the Tenders Regulations allows citizens to access procurement information during a specific tender including: "(a) sufficient information concerning the goods, services or public works, as the case may be, to enable prospective tenders to determine the scope of the contract for the goods, services or public works; (b) details of the location from which tender documents and further information can be obtained; (c) details of the office or location to which tenders must be submitted; (d) a statement that a tender must be in a sealed unmarked envelope, with the name of the tenderer and the tender reference appearing on the front of the envelope; (e) details of the manner in which the envelopes containing tenders are to be addressed (eg. "Tender Number 3 of 1999 for construction of market"); (f) the closing date for submission of tenders; (g) a statement that the Government is not bound to accept the lowest or highest or any tender; (h) a statement that failure to comply with the tender instructions may lead to disqualification of the tender; (i) a statement that any attempt by a tenderer to influence the award of the tender in his or her favour will meet with automatic disqualification and may lead to criminal proceedings."

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.paclii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

Neither the Government Contracts and Tenders Act [245] nor the Tenders Regulations 1999 require procurement decisions to be made public.

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.paclii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Government Contracts and Tenders Act [245] and the Tenders Regulations 1999 are available on-line at any given point in time, or in print for the cost of photocopying.

In addition, advertised public procurement tenders include details regarding where tender documents may be collected, eligibility criteria and deadlines etc, which may require a trip to the capital. Access to information for specific tenders depends on the government agency administering the tender process, and relates to the capacity of the Secretary to the Tenders Board to interact with the public (Government official, March 5, 2014). Some citizens have reported difficulties in accessing information about public procurement regulations, particularly for recent and current tenders (NGO official, February 22, 2014).

The government has recognized the need to strengthen public procurement processes, including transparency of regulations. In October 2013, the Ministry of Finance launched national standard procurement documents in an effort to improve management of public funds (Vanuatu Daily Post, January 28, 2014). This move has been welcomed by the private sector in Port Vila and Luganville, who participated in public presentations about the procurement standards. The new procurement standards are currently awaiting gazettal before implementation commences (VCCI Representative, March 2014).

References:

"Presentation on the National Standard Procurement Documents to the Private Sector," Vanuatu Daily Post, January 28, 2014. <http://www.dailypost.vu/content/presentation-national-standard-procurement-documents-private-sector>

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.paclii.org/vu/legis/consol_sub/tr208/

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview, Government official who requested anonymity, March 5, 2014.

Interview with representative of Vanuatu Chamber of Commerce and Industry, March 25, 2014.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Government Contracts and Tenders Act [245] and the Tenders Regulations 1999 are available for free, on-line, at any given point in time, and in hardcopy for the cost of photocopying.

In addition, advertised public procurement tenders include details regarding where tender documents may be collected, eligibility criteria and deadlines etc, which may require a trip to the capital and the cost of photocopying (Government Official, March 5, 2014). Some, primarily non-private sector, citizens have reported difficulties in accessing information about public procurement regulations, particularly for recent and current tenders (NGO official, February 22, 2014). Some government agencies, like the Telecoms Regulator, advertise requests for tender on their websites, although this has primarily occurred where donor funds are involved and has been the exception rather than the norm. Access to major public procurement information is dependent on public awareness of a tender process, which may not often be advertised (NGO Official, February 2014).

The government has recognized the need to strengthen public procurement processes, including transparency. In October 2013, the Ministry of Finance launched national standard procurement documents in an effort to improve management of public funds (Vanuatu Daily Post, January 28, 2014). This move has been welcomed by the private sector in Port Vila and Luganville, who participated in public presentations about the procurement standards. The new procurement standards are currently awaiting gazettal before implementation commences (Vanuatu Chamber of Commerce and Industry, March 2014).

References:

"Presentation on the National Standard Procurement Documents to the Private Sector," Vanuatu Daily Post, January 28, 2014. <http://www.dailypost.vu/content/presentation-national-standard-procurement-documents-private-sector>

Interview, Government official who requested anonymity, March 5, 2014.

"Invitation for Expressions of Interest Financial Audit Services 2013-2015," Telecommunications and Radiocommunications Regulator (TRR). http://www.trr.vu/attachments/article/281/trr_audit_2013.pdf

Interview with representative of Vanuatu Chamber of Commerce and Industry, March 25, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.

http://www.paclii.org/vu/legis/consol_sub/tr208/

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

In 2013, a number of public procurements were advertised, although this does not capture the volume of procurements that actually occurred (NGO Official, February 22, 2014; Harrison, March 1, 2014).

Although prior to the period of this study, there were a number of highly publicized breaches of the advertising requirements of the public procurement regulations that involved senior government officials and politicians. For example, in January 2013, the media revealed that the Director-General of Internal Affairs had awarded his daughter a VT200million (USD2 million) immigration management contract, without advertising the tender (Vanuatu Daily Digest, January 25, 2013). Similarly, in 2011 then-Minister of Public Utilities awarded VT273 million (USD2.73 million) in government contracts to his political acquaintances outside of the public procurement process (Willie, May 30, 2011).

The private sector has indicated that since the August 2013 government efforts to introduce National Procurement Standards tenders are now being advertised more effectively (Vanuatu Daily Post, January 28, 2014; VCCI Representative, March 25, 2014). For example, publicized procurements were authorized by the Telecommunications and Radio-Communications Regulator and the Ministry of Public Utilities, to name a few that were advertised in the press and on-line. However, there are many of the view that advertising for major procurements primarily occurs where donor funds are involved (NGO Official, February 22, 2014).

References:

Interview with representative of Vanuatu Chamber of Commerce and Industry, March 25, 2014.

"Invitation for Expressions of Interest Financial Audit Services 2013-2015," Telecommunications and Radio-communications Regulator (TRR). http://www.trr.vu/attachments/article/281/trr_audit_2013.pdf

"Run-down government ships on tender," by Thompson Marango, Vanuatu Daily Post, January 28, 2014.

<http://www.dailypost.vu/content/run-down-gov%E2%80%99t-ships-tender>

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"VT273 million worth of government contracts awarded to friends of minister," by Royson Willie, Vanuatu Daily Post, May 30, 2011. <http://www.dailypost.vu/content/vt273-m-worth-govt-contracts-awarded-friends-minister>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Neither the Government Contracts and Tenders Act [245] nor the Tenders Regulations 1999 require procurement decisions to be made public, nor is there any instituted process for citizens to access the results of bids (NGO Official, February 22, 2014). As major public tenders are administered by the requesting government agency, communication of results relates to the capacity of the Secretary to the Tenders Board to interact with the public (Government official, March 5, 2014). In 2013, public awareness of procurement outcomes relied in media investigation, such as the Vanuatu Daily Post's coverage of the outcome of a controversial tender for a new airport (Makin, August 2, 2013). However, the private sector has reported that since the August 2013 government efforts to introduce National Procurement Standards, there has been more transparency in accessing the results (VCCI Representative, March 25, 2014).

References:

"Man in failed tobacco bid behind new airport," by Bob Makin, Vanuatu Daily Post, August 2, 2013. <http://www.governmentofvanuatu.gov.vu/index.php/services>

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview, Government official who requested anonymity, March 5, 2014.

Interview with representative who requested anonymity, Vanuatu Chamber of Commerce and Industry, March 25, 2014.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

While there is no specific legislation addressing the privatization of state assets, all businesses are eligible to compete for government tenders under the Government Contracts and Tenders Act [CAP 245], provided that bids are submitted in accordance with the prescribed tender procedure (section 12(2)).

Section 2(2) of the Tenders Regulations 1999 further stipulates that "All tenders must be called by open and competitive bidding except where another process is approved by the Tenders Board under subregulation (3)". Section 2(3) states that "The Tenders Board may approve another tender process for projects where a straight open and competitive tender process may not provide the best result in the opinion of the Tenders Board," in which case selective participation may occur.

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.paclii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

Comments:

While there is no specific legislation addressing the privatization of state assets and the role of government officials therein, the Government Contracts and Tenders Act [CAP 245] provides a framework to address conflict of interest for any government tender. Section 3(3) requires the minister, prior to entering into a Government Contract, to "ensure that no conflict of interest exists between a minister or the Council and the other party." Section 3 also outlines the requirements for a competitive and transparent procurement process (3f), including certification by the Attorney General of proper process (3g) and Council approval of the Contract (3h).

The GTCA establishes a Tenders Board to over see procurement. Members of the Tenders Board cannot participate in the tendering process for contracts for which they have a conflict of interest (section 10(5)).

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Privatization of state assets, particularly in relation to real estate, was infrequently advertised in 2013, and therefore the ability to enforce conflict of interest regulations for government officials was limited. In 2013, "several high value state assets were privatized without the public's knowledge" (NGO Official, February 22, 2014; Harrison, March 1, 2014). In February 2013, the Public Service Commission investigated several land leases issued to about 40 Department of Lands staff that were alleged to have been improperly acquired. According to the media, just prior to the October 2012 elections, then-Minister of Lands Stephen Kalsakau had allowed DOL staff to pay only 50% of the total value of the land (Binihi, February 26, 2013). Also linked to

preferential land rates for staff, were allegations of Department of Lands" staff awarding themselves with titles to former state-owned real estate in the Joint Court area of Port Vila, without public tender (Vanuatu Daily Post, April 8, 2013).

A similar lack of enforcement of tender regulations occurred in relation to the sale of government cars just prior to the period of this study. State office assets, such as furniture and equipment, tend to be more consistently advertised than major capital state assets. (Government Official, March 5, 2014).

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"Sale of Government Houses and Land at Joint Court for a Pittance," Vanuatu Daily Post. April 8, 2013. <http://www.dailypost.vu/content/sale-government-houses-and-land-joint-court-pittance>

Interview, Government official who requested anonymity, March 5, 2014.

"Vanuatu Lands Department Staff Leases Probed," by Ricky Binihi, Pacific Islands Report, February 26, 2013. <http://pidp.org/archive/2013/February/02-27-05.htm>

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

70

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

There is no specific legislation addressing the privatization of state assets.

However, the Government Contracts and Tenders Act [CAP 245] and the Tenders Regulations 1999 are publicly available on-line. Section 4(3) of the Tenders Regulations allows citizens to access procurement information during a specific tender including: "(a) sufficient information concerning the goods, services or public works, as the case may be, to enable prospective tenders to determine the scope of the contract for the goods, services or public works; (b) details of the location from which tender documents and further information can be obtained; (c) details of the office or location to which tenders must be submitted; (d) a statement that a tender must be in a sealed unmarked envelope, with the name of the tenderer and the tender reference appearing on the front of the envelope; (e) details of the manner in which the envelopes containing tenders are to be addressed (eg. "Tender Number 3 of 1999 for construction of market"); (f) the closing date for submission of tenders; (g) a statement that the Government is not bound to accept the lowest or highest or any tender; (h) a statement that failure to comply with the tender instructions may lead to disqualification of the tender; (i) a statement that any attempt by a tenderer to influence the award of the tender in his or her favour will meet with automatic disqualification and may lead to criminal proceedings."

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.paclii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.paclii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatization of state assets is infrequently advertised (NGO Official, February 22, 2014). The Central Tender Board is responsible for processing the government assets for tender, but oftentimes is caught unawares of prior privatization that occurred for the same assets (Government Official, March 5, 2014). For example, in February 2013, the Central Tender Board made preparations for the sale of four government shipping vessels, only to discover that at least one of the vessels had already been leased outside of a tender process (Ligo and Marango, February 18, 2013). In many cases however, such as in relation to the privatization of state real estate, advertising rarely occurs (Vanuatu Daily Post, April 8, 2013).

Some government agencies, such as the Ministry of Finance, are more diligent regarding advertising invitations to tender for state assets in print media, as per the Government Financial Regulation 9.4 (4) (Government Official, March 5, 2014). However this practice is inconsistent across all government agencies.

References:

Interview, Government official who requested anonymity, March 5, 2014.

"Sale of Government Houses and Land at Joint Court for a Pittance," Vanuatu Daily Post. April 8, 2013. <http://www.dailypost.vu/content/sale-government-houses-and-land-joint-court-pittance>

"MV Euphrosyne leased without tender," by Godwin Ligo and Thompson Marango, Vanuatu Daily Post, February 18, 2013. http://www.dailypost.vu/content/mv-euphrosyne-leased-without-tender?quicktabs_1=1

Interview with NGO representative who requested anonymity. February 22, 2014.

Financial Regulations Amendment. 2000.
http://www.pacii.org/vu/legis/consol_sub/tra270/

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

There is no specific legislation addressing the privatization of state assets. Neither the Government Contracts and Tenders Act [245] nor the Tenders Regulations 1999 require procurement decisions to be made public.

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.pacii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.pacii.org/vu/legis/consol_sub/tr208/

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Government Contracts and Tenders Act [245] and the Tenders Regulations 1999 are available for free, on-line, at any given point in time, and in hardcopy for the cost of photocopying. Thus the rules governing the competitive privatization process are uniformly available without delay.

In addition, advertised privatization tenders include details regarding where tender documents may be collected, eligibility criteria and deadlines etc, which may require a trip to the capital and the cost of photocopying (Government Official, March 5, 2014). Some citizens have reported that the lack of transparency regarding privatization of state assets, results in preferential treatment of outcome. Access to major privatization information is dependent on public awareness of a specific tender process, which may not often be advertised (NGO Official, February 2014). The Ministry of Finance adheres to strict Financial Regulations (2000) for the privatization of its assets, for which the process is publicly accessible on-line, but not all ministries are as consistent. In 2013, public awareness of privatization processes relied on media investigation, such as the Vanuatu Daily Post's coverage of the sale of state land to Department of Lands Staff (April 8, 2013).

References:

Government Contracts and Tenders Act [CAP 245]. 1998
http://www.pacii.org/vu/legis/consol_act/gcata342/

Tenders Regulations No. 40 of 1999.
http://www.pacii.org/vu/legis/consol_sub/tr208/

Financial Regulations Amendment No.27 of 2000.
http://www.pacii.org/vu/legis/consol_sub/fra270/

Interview, Government official who requested anonymity, March 5, 2014.

Interview with NGO representative who requested anonymity. February 22, 2014.

"Sale of Government Houses and Land at Joint Court for a Pittance," Vanuatu Daily Post. April 8, 2013. <http://www.dailypost.vu/content/sale-government-houses-and-land-joint-court-pittance>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Government Contracts and Tenders Act [245] and the Tenders Regulations 1999 are available for free, on-line, at any given point in time, and in hardcopy for the cost of photocopying. Thus the rules governing the competitive privatization process are uniformly available with little or no cost.

In addition, advertised privatization tenders include details regarding where tender documents may be collected, eligibility criteria and deadlines etc, which may require a trip to the capital and the cost of photocopying (Government Official, March 5, 2014). Some citizens have reported that the lack of transparency regarding privatization of state assets, results in preferential treatment of outcome. Access to major privatization information is dependent on public awareness of a tender process, which may not often be advertised (NGO Official, February 2014). The Ministry of Finance adheres to strict Government Financial Regulations 2000 for the privatization of its assets, for which the process is publicly accessible on-line, as well as via print media for the cost of a newspaper. In 2013, public awareness of privatization processes relied on media investigation, such as the Vanuatu Daily Post's coverage of the sale of state land to Department of Lands Staff (April 8, 2013).

References:

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview, Government official who requested anonymity, March 5, 2014.

Government Contracts and Tenders Act [CAP 245]. 1998

http://www.paclii.org/vu/legis/consol_act/gcata342/

"Sale of Government Houses and Land at Joint Court for a Pittance," Vanuatu Daily Post. April 8, 2013. <http://www.dailypost.vu/content/sale-government-houses-and-land-joint-court-pittance>

Tenders Regulations No. 40 of 1999.

http://www.paclii.org/vu/legis/consol_sub/tr208/

Financial Regulations Amendment No.27 of 2000.

http://www.paclii.org/vu/legis/consol_sub/fra270/

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁶⁶National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

Article 61(1) of the Constitution of Vanuatu provides for an Ombudsman to be appointed, who is empowered to enquire into the conduct of any person or body to whom this law applies, namely, "all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies." (Article 62(2)).

The Ombudsman also administers the Leadership Code (Constitution Chapter 10, Articles 66-68; Leadership Code Act, 1998 (CAP 240)). Section 34 of the Leadership Code Act states that:

"(1) The Ombudsman must investigate and report on the conduct of a leader (other than the President):
 (a) if the Ombudsman receives a complaint from a person that a leader has breached this Code. or
 (b) if the Ombudsman has formed the view on reasonable grounds that a leader may have breached this Code."

A leader is defined in Article 67 of the Constitution as, "the Prime Minister and other Ministers, members of Parliament and such public servants, officers of Government agencies and other officers as may be prescribed by law." Section 5 of the Leadership Code Act provides a complete list of such leaders, including members of the National Council of Chiefs and political advisors to a Minister.

While the broad functions and powers of the Ombudsman are outlined in the Constitution, more detailed provisions are found in the Ombudsman Act of 1998. This is the second Ombudsman Act to be enacted in Vanuatu; the first Ombudsman Act, which came into force in 1995, was repealed in 1998.

References:

Constitution of the Republic of Vanuatu, No10 of 1980, No15 of 1981 and No20 of 1983, Articles 61-65, <http://www.parliament.gov.vu/Constitution.html#amendment>

Ombudsman Act [CAP252], 1998, http://www.pacii.org/vu/legis/consol_act/oa114/

Leadership Code Act [CAP 240], 1998, http://www.pacii.org/vu/legis/consol_act/lca131/

E R Hill, The Vanuatu Ombudsman in Passage of Change: Law, Society and Governance in the Pacific, 2nd Edition, Anita Jowitt, Tess Newton Cain (eds), ANU E Press, 2010, pp71-91, http://books.google.vu/books?id=WN-Qu58vRQYC&dq=vanuatu+ombudsman+act+1995&source=gbs_navlinks_s

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

57

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

Article 65 of the Constitution of the Republic of Vanuatu provides that "The Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions."

References:

Constitution of the Republic of Vanuatu, Act 10 of 1980, Act 15 of 1981 and Act 20 of 1983, Article 65, <http://www.parliament.gov.vu/Constitution.html#amendment>

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There have been no recent reports of political interference in the work of the Office of the Ombudsman. Staff of the Ombudsman (Mr. Yan, interview 19 February, 2014) have indicated this, as well as external reports (Human Rights Report 2013).

However, some point to changes to the Ombudsman Act in the late 1990s, with a reduction in the powers of the Office, as evidence of political interference (Mr Gideon Nimbwen, interview with researcher, 20 February 2014). These changes included removing the ability of the Ombudsman to directly appoint staff, which now must occur through the Public Service Commission; removal of the power of the Ombudsman to make an application to the Supreme Court for an order that recommendations be implemented, where the Prime Minister fails to act; and limiting the Ombudsman's ability to access some information (Edward R Hill, The Vanuatu Ombudsman, in Jowitt and Newton Cain (eds), Passage of Change: law, society and governance in the Pacific, 2010, pp78-79).

References:

Mr Yan, Corporate Services Officer, Office of the Ombudsman, interview with researcher, 19 February 2014

US Department of State, Country Reports on Human Rights Practices for 2013: Vanuatu, <http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220243.htm>

Mr Gideon Nimbwen, Legal Officer, Transparency International Vanuatu, interview with researcher, 20 February 2014

Edward R Hill, The Vanuatu Ombudsman, in Anita Jowitt and Tess Newton-Cain (eds), Passage of Change: law, society and governance in the Pacific, ANU E-Press, The Australian National University, Canberra, Australia, 2010 edition, pp71-92, press.anu.edu.au/wp-content/uploads/2011/05/ch0447.pdf

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There have been no allegations of or investigations into direct political or other interference in the work of the Ombudsman. The Ombudsman can only be removed from office if he or she is declared bankrupt, convicted and sentenced on a criminal charge, becomes incapacitated, if a finding of gross misconduct is made against him or her, or if the Ombudsman is convicted of an offense under the Leadership Code Act [Cap. 240] (Mr Yan, Corporate Officer, Office of the Ombudsman, interview, 19 February 2014, Port Vila).

References:

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

The Leadership Code Act [CAP 240]. http://www.paclii.org/vu/legis/consol_act/lca131/

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Resourcing issues have been identified by the current Ombudsman as a significant impediment to undertaking the work of the

Office. In a media report, the Ombudsman, Kalkot Mataskelekele, said, "When I came into the office, there were 9 staff members...The first and the second Ombudsman had considerably more staff working for them and the reduction of the staffing numbers is reflected in the work output of the Office"... The first ombudsman ... released 69 reports, the second ombudsman ... released 61 reports, the third ombudsman...put out 53 reports, and the fourth ombudsman... released 8 reports in two years." (Vanuatu Daily Post, 29 April 2013).

In 2013, the Office of the Ombudsman released 3 reports (Mr Yan, interview, 19 February 2014).

References:

Jonas Cullwick, "Ombudsman appeals for an increase in resources," Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Appointments to positions within the Office of the Ombudsman (apart from the Ombudsman) are made through the Vanuatu Government's Public Service Commission, which some claim could potentially compromise the independence of the institution.

However, there have not been any allegations that officers appointed to the Office of the Ombudsman are appointed on other than professional criteria. There have been reported significant delays in recruitment to positions within the Office, which has implications for the capacity of the Office to undertake its work. For example, the Leadership division, which investigates breaches of the Leadership Code Act, currently only has one investigator, due to delays in recruitment of other staff through the Public Service Commission (Interview with Ombudsman staff member who requested anonymity, 13 May 2015).

References:

Interview with staff member who requested anonymity, the office of the Ombudsman, 13 May 2015, Port Vila, Vanuatu

"Roles and functions of Ombudsman and current complaint mechanisms in Pacific Islands", The Pacific Ombudsman Alliance, June 2013. Accessed from www.pacificombudsman.org on June 18, 2014. http://pacificombudsman.org/publications-resources/Roles_and_functions_ombudsman.pdf

"Acting Ombudsman appointed", Jane Joshua for the Vanuatu Daily Post. August 20, 2012. <http://www.dailypost.vu/content/acting-ombudsman-appointed>

"Vanuatu's Current Ombudsman and His predecessors Meet to Discuss Legislation Amendments", Transparency Vanuatu, May 1, 2013. Accessed on June 18, 2014. <http://transparencyvanuatu.wordpress.com/2013/05/01/vanuatus-current-ombudsman-and-his-predecessors-meet-to-discuss-legislation-amendments/>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget allocation for the Office of the Ombudsman in 2012 and 2013 was 40,972,648 VT (431,655 USD), and in 2014 the allocation is 36,500,000 VT (384,534 USD) (Department of Finance and Treasury, Budget Appropriation 2012 and 2013, <http://doft.gov.vu/index.php/widgetkit/budget-appropriation>; Pacific Economics, Vanuatu Budget 2014). In 2013, budget constraints were commented on by the Ombudsman, Kalkot Mataskelakele, as diminishing the capabilities of the office, and bringing the government's intentions into question (Cullwick, April 29, 2013).

References:

Department of Finance and Treasury, Budget Appropriation 2012 and 2013, <http://doft.gov.vu/index.php/widgetkit/budget-appropriation>

Pacific Economics, Vanuatu Budget 2014, <http://economics.pacificpolicy.org/vanuatu/spending-wheel>

Ombudsman appeals for an increase in resources, Jonas Cullwick in the Vanuatu Daily Post, April 29, 2013. <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Once approved for publication, reports on investigations of the Office of the Ombudsman are made available on request from its offices in Port Vila and Luganville (the two main urban centres in Vanuatu), and are also available from the Public Library and the library at the Emalus Campus of the University of the South Pacific in Port Vila and online through the Paclii website, <http://www.paclii.org/vu/ombudsman/> (however, the most recent report listed on the website was from April 2012, with the 2012 annual report still outstanding).

The Office of the Ombudsman makes public reports on investigations, where the Ombudsman has not made a determination that a report or a part of a report must remain confidential. In 2013, the Office of the Ombudsman issued three reports on investigations (Vanuatu Television News, TBV, 8 April 2014). However, none of these three are available on the Paclii website (<http://www.paclii.org/vu/ombudsman/>).

References:

Pacific Islands Legal Information Institute website, accessed on April 23, 2014. <http://www.paclii.org/vu/ombudsman/>

Vanuatu Television News Bulletin, Television blong Vanuatu, Tuesday 8 April 2014

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In 2013, the Office of the Ombudsman issued three reports on investigations (Mr. Yan, interview). The number of reports on investigations has declined significantly, as bemoaned by the Ombudsman in 2013 in an appeal for more resources ("Ombudsman appeals"). The number of reports is an indicator of the number of investigations completed by the Ombudsman.

While there are some investigations undertaken by the office ("Six staff suspended"), there are other examples of inaction or delays. For instance, the Ombudsman was recently pushed to investigate by Transparency International Vanuatu, which reference the Ombudsman's inaction and delays on investigations ("Commission of Inquiry").

There are circumstances, which the Ombudsman in the past has reported on, which make it more difficult for the Ombudsman to initiate or follow through on investigations. For example, the Ombudsman can undertake investigations of leaders for suspected breaches of the Leadership Code Act, yet leaders' annual asset returns must remain confidential unless the Clerk of Parliament is satisfied that they will assist with an investigation or prosecution. Therefore the Ombudsman has no power to routinely examine these annual returns for irregularities or breaches of the Act. (Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009). While this report was from 2009, this limitation continued to apply in the period of study.

References:

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

"Six staff suspended in State Land misappropriation probe", May 22, 2014, Vanuatu Daily Post. <http://www.dailypost.vu/content/six-staff-suspended-state-land-misappropriation-probe>

"Commissions Of Inquiry Into The Fishermen's Claim", February 15, 2014, Vanuatu Daily Post. <http://www.dailypost.vu/content/commissions-inquiry-fishermen%E2%80%99s-claim>

Vanuatu Television News, TBV, 8 April 2014

Jonas Cullwick, "Ombudsman appeals for an increase in resources," Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, <http://www.paclii.org/vu/ombudsman/2009/>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Ombudsman has no power to penalise offenders; the Ombudsman is empowered to make reports containing recommendations for action, including prosecution for criminal offences, but these are not often followed by the Public Prosecutor. The Prime Minister has promised to review the Ombudsman Act to give the office power to initiate prosecutions where the Public Prosecutor does not do so (Jonas Cullwick, "Government to amend Ombudsman Act", Vanuatu Daily Post, 29 April 2013).

An investigation into human rights in Vanuatu in 2013 found that while the Office of the Ombudsman had investigated complaints of police corruption (inaction and maladministration), "the results and recommendations provided to the commissioner for police elicited no prosecutions during the year." (US Department of State, Vanuatu 2013 Human Rights Report, p8).

References:

US Department of State, Vanuatu 2013 Human Rights Report: Executive Summary, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>

"Government to amend Ombudsman Act", Jonas Cullwick, Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/government-amend-ombudsman-act>

Vanuatu Ombudsman Seeks Prosecution of Minister Iauko: Hopes police will act on violations of Leadership Code", Royson Willie, The Vanuatu Daily Post, February 5, 2012. Accessed in the Pacific Islands Report on June 18, 2014. <http://pidp.eastwestcenter.org/pireport/2012/February/02-07-21.htm>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

An investigation into human rights in Vanuatu in 2013 found that while the Office of the Ombudsman had investigated complaints of police corruption (inaction and maladministration), "the results and recommendations provided to the commissioner for police elicited no prosecutions during the year." (US Department of State, Vanuatu 2013 Human Rights Report, p8).

Some policy recommendations, particularly in relation to the Ombudsman itself, have been repeatedly made over a long period, with no action to date. These recommendations have pointed to some of the limitations placed on the Ombudsman which impede effectiveness of the role, particularly in relation to the Leadership Code Act and accountability of Vanuatu's leaders (see for example repeated recommendations to enable the Ombudsman access to leaders' annual asset returns to ensure they comply with the Leadership Code Act. These reports are available at the Pacific Legal Information Institute, paclii.org/vu/ombudsman.

The current government has undertaken to review the Ombudsman Act and the powers of the Office of the Ombudsman to address these issues (Bob Makin, "Carcasses Government releases "100 Day" list", Vanuatu Daily Digest, 11/4/2013)

References:

Vanuatu Ombudsman Reports, Pacific Legal Information Institute. Accessed on June 18, 2014. <http://www.paclii.org/vu/ombudsman/>

Bob Makin, "Carcasses Government releases "100 Day" list", Vanuatu Daily Digest, November 4, 2013, <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list/>

US Department of State, Vanuatu 2013 Human Rights Report: Executive Summary. Accessed on June 18, 2014. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>

Vanuatu Ombudsman Seeks Prosecution of Minister Iauko: Hopes police will act on violations of Leadership Code", Royson Willie, The Vanuatu Daily Post, February 5, 2012. Accessed in the Pacific Islands Report on June 18, 2014. <http://pidp.eastwestcenter.org/pireport/2012/February/02-07-21.htm>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Transparency International Vanuatu's study on the Office of the Ombudsman made an examination of data available from the Office's annual reports. These reports showed an increase in the amount of time taken to handle complaints, with the latest data showing the average time to resolve a complaint being 4 years and 3 months (Anita Jowitt, National Integrity System Study: Ombudsman, Transparency International Vanuatu, 2013, p15).

The current Ombudsman, who was appointed in early 2013, has spoken publicly of the need to improve systems, recruitment and management in order to achieve speedier resolution of complaints and investigations (Jonas Cullwick, "Ombudsman appeals for an increase in resources," Vanuatu Daily Post, 29 April 2013; Television News Bulletin, Television blong Vanuatu, Tuesday 8 April 2014). The Ombudsman has sought assistance both from the Vanuatu Government and also regional organisations to assist with additional resources and with better use of existing resources (Network News: Issue 32, Pacific Ombudsman Alliance, November 2013).

References:

Anita Jowitt, National Integrity System Study: Ombudsman, Transparency International Vanuatu, 2013, <http://www.transparencyvanuatu.org/index.php?page=national-integrity-system-project>

Jonas Cullwick, "Ombudsman appeals for an increase in resources," Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

Television News Bulletin, Television blong Vanuatu, Tuesday 8 April 2014

Network News: Issue 32, Pacific Ombudsman Alliance, November 2013, www.pacificombudsman.org/news/index.html

"Commissions Of Inquiry Into The Fishermen's Claim", February 15, 2014, Vanuatu Daily Post, <http://www.dailypost.vu/content/commissions-inquiry-fishermen%E2%80%99s-claim>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

42

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

Article 63(3) of the Constitution of the Republic of Vanuatu provides that, following an enquiry by the Ombudsman: "The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the Prime Minister and the person in charge of the relevant public service, on the grounds of public security or public interest."

The Ombudsman Act [CAP 252] also contains provisions relating to publicising the activities and reports of the Ombudsman: "For the purpose of giving effect to any findings or recommendations of the Ombudsman following an enquiry into the conduct of a government agency or a leader, the Ombudsman may:

a) publicize proceedings, reports and recommendations; and
b) make reports and recommendations to the Parliament, the Prime Minister and other relevant persons and bodies as provided for by this Act..." (Section 33).

The Constitution also provides for annual reports by the Ombudsman. At Article 63(5), the Constitution states that: "The Ombudsman shall present a general report to Parliament each year and may make such additional reports as he considers necessary concerning the discharge of his functions and action taken or his findings. He may draw the attention of Parliament to any defects which appear to him to exist in the administration."

The Ombudsman Act provides further detail on the annual report at Section 35: "(1) For the purposes of Article 63(5) of the Constitution, the Ombudsman must give to the Prime Minister for presentation to Parliament at least once each year, a general report on the functions and workings of the Ombudsman's office, with such recommendations as to improvement as the Ombudsman thinks proper.

(2) If the Ombudsman is of the opinion that an administrative action has produced unfair or objectionable results and that the action was caused wholly or partly by legislation, the Ombudsman must forward a report on the matter to:

- (a) in the case of parliamentary legislation " the Parliament and the Attorney General; and
- (b) in the case of legislation made by local government councils or municipal councils " the Chairman of the local government council or Mayor of the municipality, as the case may be, and the Attorney General."

The Prime Minister must also make reports to Parliament in relation to the activities of the Ombudsman. Section 39 of the Ombudsman Act requires that:

"(1) The Prime Minister must prepare a report each year on the actions (if any) that a leader, or the person in charge of a government agency, has taken during that year to give effect to any findings or recommendations made by the Ombudsman following an enquiry into the conduct of that leader or government agency, as the case may be.

(2) The Prime Minister must present the report to the Parliament as soon as practicable, and in any event within 6 months, after the end of the year to which the report relates."

The Ombudsman also has another reporting role conferred on the position by the Constitution. Under the Constitution, the Ombudsman must annually " make a special report to Parliament concerning the observance of multilingualism and the measures likely to ensure its respect" (Article 64(3)).

The Ombudsman Act too provides that the Ombudsman may "at any time as he or she considers necessary or desirable, make and transmit to the Prime Minister, for presentation to Parliament, other reports on any matters of pressing importance or urgency that, in the Ombudsman's opinion, should not be deferred until the presentation of his or her annual general report.

(2) A report may deal with all or any of the following:

- (a) the discharge of his or her functions;
- (b) any action taken on his or her findings;
- (c) any defects which appear to the Ombudsman to exist in the administration of any government agency over which he or she has jurisdiction under the Constitution or this Act;
- (d) any defects which appear to the Ombudsman to have been caused wholly or partly by defective legislation or laws of the Parliament;
- (e) any matters relating to the conduct of leaders for the purposes of giving effect to Chapter 10 (Leadership Code) of the Constitution or the Leadership Code [Cap. 240]" (Section 36).

References:

Constitution of the Republic of Vanuatu, 1980, Articles 63 and 64, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Ombudsman Act [CAP 252], Sections 33, 35, 36 and 39, http://www.paclii.org/vu/legis/consol_act/oa114/

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports on enquiries undertaken by the Ombudsman, once completed, are available immediately to the public through the two offices of the Ombudsman, in the national capital, Port Vila and in Luganville on the island of Santo. Copies of reports are also made available at public libraries, at the Emalus Campus of the University of the South Pacific in Port Vila (Mr Yan, Corporate Officer, Office of the Ombudsman, 19 February 2014).

The Pacific Legal Information Institute also places reports from Ombudsman enquiries on its website, [paclii.org](http://www.paclii.org); however, the most recent report available online through [paclii.org](http://www.paclii.org) is from April 2012.

Access to other reports by the Ombudsman, including annual reports, are available on request to the Office of the Ombudsman in Port Vila or Luganville, or at the Parliamentary Library in Port Vila, Vanuatu.

References:

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

Vanuatu Ombudsman's Reports, Pacific Legal Information Institute, accessed on 23 April 2014. <http://www.paclii.org/vu/ombudsman/>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Ombudsman provides copies of reports on request, charging a small 100VT fee to cover the cost of copying the report (Mr Yan, Corporate Officer, Office of the Ombudsman). Reports on enquiries undertaken by the Ombudsman, once completed, are available immediately to the public through the two offices of the Ombudsman, in the national capital, Port Vila and in Luganville on the island of Santo.

The public can access copies of investigation reports online at the Pacific Legal Information Institute website, paclii.org, although the most recent report available online is from April 2012.

Access to other reports by the Ombudsman, including annual reports, are available on request to the Office of the Ombudsman in Port Vila or Luganville, or at the Parliamentary Library in Port Vila, Vanuatu.

References:

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

Vanuatu Ombudsman's Reports, Pacific Legal Information Institute, accessed on April 23, 2014. <http://www.paclii.org/vu/ombudsman/>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

Oversight of Vanuatu's state public sector is undertaken the Auditor-General and the Parliament's Public Accounts Committee.

Article 25 of the Constitution of the Republic of Vanuatu establishes the office of Auditor-General and provides that:(5) The function of the Auditor-General shall be to audit and report to Parliament and the Government on the public accounts of Vanuatu.

The Expenditure Review and Audit Act [CAP 241] gives powers to the Public Accounts Committee of Parliament and the Auditor-General as the two entities providing oversight of the public sector (Sections 14 to 15 and 27 to 28).

The objective of the Public Accounts Committee under Section 14 of the Act is "to ensure that adequate public accountability is achieved by:

- (a) confirming that the obligations under the Act are met, in particular
- (i) required economic and financial statements are produced and are reviewed;
- (ii) adherence to fiscal disciplines is explicit;
- (iii) statements of responsibilities are completed and sufficient undertakings exist in order to rely on them;
- (iv) that all obligations of directors-general of ministries are met;
- (b) providing a mechanism for public consultation about budget and expenditure matters;
- (c) undertaking or supervising all audits in order to ensure the reliability of systems and procedures and the integrity of information produced;
- (d) the pursuit of legitimate issues of public concern that affect the management of public money;
- (e) review of the efficiency and effectiveness of the financial performance of those persons, organizations or entities managing, collecting, expending or administering public money."

Under Section 27(1) of the Act, the Auditor-General has a duty to "assist the [Public Accounts] Committee to discharge its obligations, functions and responsibilities under section 14 of this Act ."

References:

Constitution of the Republic of Vanuatu, 1980, Article 25, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Expenditure Review and Audit Act [CAP 241], 1998, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

59

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Under Article 25 of the Constitution of the Republic of Vanuatu, the "Auditor-General shall not be subject to the direction or control of any other person or body in the exercise of his functions."

The Public Accounts Committee is comprised of members of Parliament, and its Chairman cannot be a member of the government, and is appointed by Parliament (Expenditure Review and Audit Act [CAP 241], Section5).

References:

Constitution of the Republic of Vanuatu, Article 25, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Expenditure Review and Audit Act [CAP 241], 1998, Section 5, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor General serves a defined term, and there have not been any allegations of interference leading to removal of an Auditor General.

The Auditor General is appointed by the Public Service Commission, and can be removed from office “by the Public Service Commission after consultation with the Committee and the Council of Ministers for incompetence, disability, bankruptcy, neglect of duty or misconduct.” (Section 23, Expenditure Review and Audit Act [CAP 241]). Until 2008, there was no fixed term for the position. However, an amendment to CAP 241 in 2007, which commenced in 2008, introduced a 5 year term for the position, with the option to reappoint (Expenditure Review And Audit (Amendment) Act, No. 21 Of 2007). The incumbent Auditor General was required to resign from the post subsequent to this legislation coming into force, and opted not to reapply for the position, which then remained vacant for more than 12 months until the current Auditor General was appointed in late 2009 (Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009).

References:

Expenditure Review and Audit Act [CAP 241], 1998, Section 5, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Expenditure Review And Audit (Amendment) Act, No. 21 Of 2007, http://www.paclii.org/vu/legis/num_act/eraaa2007373/

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Auditor General has been severely hampered through a lack of adequate resources, including appropriately qualified and trained staff. Agency staff have noted that the hiring process through the Public Service Commission is too cumbersome with too low set salary rates, and that this impacts their capabilities through leading to the agency being unable to fill vacant positions with properly qualified staff (email correspondence with Sr. Auditor, June 16).

For example, the current Auditor General has been attempting to address limited access to appropriately qualified staff through improvements in procedures and better use of technology to enable greater efficiency (“Auditor-General improves anti-corruption audit software and procedures”, Vanuatu Daily Post, 29 April 2013). The Auditor General has also sought external technical assistance from aid donors, and through engaging private contractors to undertake audits. For example, the Auditor General contracted Ernst & Young to undertake an audit of the Vanuatu National Provident Fund in 2012, following a request from the Government to make an examination of its operations (Ricky Binihi, “Parliament To Debate Vanuatu Provident Fund Report”, Vanuatu Daily Post, 11 February 2013).

The Vanuatu Government’s Ministry of Finance and Economic Management also provides some indirect support to the work of the Auditor General, through the establishment and operation of an Internal Audit Unit within the Ministry. This unit undertakes internal audits within public sector agencies, and consults with the Auditor General to identify where to focus its attentions (Internal Audit Unit- Department of Finance And Treasury, <http://www.doft.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/audit-section>).

References:

Correspondence with Beulah Daunakamakama, Senior Auditor, Office of the Auditor General, June 16, 2014.

"Auditor-General improves anti-corruption audit software and procedures", Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/auditor-general-improves-anti-corruption-audit-software-and-procedures-0>

Ricky Binihi, "Parliament To Debate Vanuatu Provident Fund Report", Vanuatu Daily Post, 11 February 2013, <http://pidp.org/archive/2013/February/02-12-08.htm>

Internal Audit Unit- Department of Finance And Treasury, accessed on 23 April 2014. <http://www.doft.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/audit-section>

Beulah Daunakamakama, Technical Adviser, Office of the Auditor General, "Changing Vanuatu's Auditing Tide", AV Magazine, Winter 2013, http://issuu.com/australianvolunteersinternational/docs/avi_magazine_june2013_web_72dpi_rgb/24

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

Appointments to positions within the Office of the Auditor General are made through the Public Service Commission (PSC). In addition, any proposed changes to the gradings or salaries of positions within the Office of the Auditor General must be approved by the Public Service Commission. Agency staff have noted that the PSC process is too cumbersome with too low set salary rates, and that this impacts their capabilities through leading to the agency being unable to fill vacant positions with properly qualified staff (email correspondence with Sr. Auditor, June 16).

As with general civil service jobs, they are regularly advertised via print and on-line media, but merit-based appointment of civil servants and performance management is ad hoc. While the Public Service Commission must approve all job descriptions, advertising of vacancies and nominated candidates, there have been numerous public concerns of nepotism for the past several years (AusAID 2007; Vanuatu Daily Post, November 27, 2013; Harrison, March 1, 2014; NGO Official, February 22, 2014).

References:

Beulah Daunakamakama, Technical Adviser, Office of the Auditor General, "Changing Vanuatu's Auditing Tide", AV Magazine, Winter 2013, http://issuu.com/australianvolunteersinternational/docs/avi_magazine_june2013_web_72dpi_rgb/24

Correspondence with Beulah Daunakamakama, Senior Auditor, Office of the Auditor General, June 16, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"Nepotism in appointments of legal officers into government legal offices," Letter to the Editor, Vanuatu Daily Post, November 27, 2013. <http://www.dailypost.vu/content/nepotism-appointments-legal-officers-government-legal-offices>

Interview with NGO representative who requested anonymity. February 22, 2014.

Vanuatu Drivers of Change Study, AusAID. 2007. http://aid.dfat.gov.au/Publications/Documents/vanuatu_change.pdf

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The annual budget for the National Audit Office has been consistent, and in 2013 was approximately 32 million vatu (\$315,000USD), which remained unchanged from 2012 (see Government of the Republic of Vanuatu, Budget 2013 and 2012), with funding for audit operations totaling approximately 19 million vatu (\$200,000USD).

The current Auditor General, Mr John Path, stated in 2013 that, "Our Office has been open to the public about the need to increase the technical knowledge and resources – capacity building – to enable us to carry out our legislative duties under the Expenditure Review and Audit Act [CAP 241]. We are currently working with donors to provide assistance in this area and have also been looking to amend our governing legislation to provide our Office with increased independence and the ability to fund and set our annual audit program" (John Path, Auditor General, quoted in "Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013).

References:

Government of the Republic of Vanuatu, Budget 2013, <http://www.governmentofvanuatu.gov.vu/index.php/publicationdocuments/budget>

Government of the Republic of Vanuatu, Budget 2012, <http://www.governmentofvanuatu.gov.vu/index.php/publicationdocuments/budget>

Mr John Path, Auditor General, Republic of Vanuatu, quoted in "Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The National Audit Office has not produced many reports and has been hampered in its function for a number of years, with only one report being published between 2000 and 2009 (ECORYS Final Report 2006) (Actra Advisers, 2009). Since the appointment of the current Auditor General in 2009, work has been undertaken to improve the operations of the National Audit Office, and a technical adviser to the Office has assisted to improve both the output and quality of reports (Beulah Daunakamakama, Technical Adviser, Office of the Auditor General, "Changing Vanuatu's Auditing Tide", AV Magazine, Winter 2013, p24).

However, in a media report in late 2013, the Auditor General said, "Over the last two years our office has issued an increased number of audit opinions, but you can appreciate with an unstable political environment there is a bottleneck of reports that have yet to be tabled and debated in parliament. We are bound by the constitution and laws of Vanuatu which governs when a document becomes a "public document". Any document issued by the Office becomes a public document when it is tabled to parliament. Until such time, the auditor general and his staff are unable to issue documents in the public arena. We agree that improvements are needed to ensure all reports are made public in a more timely manner and this also needs to be balanced with the appropriate scrutiny and debate." (Mr John Path, Auditor General, quoted in "Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013). In November 2013, it was reported that the Public Accounts Committee was reviewing the Auditor General's annual reports from 2005 to 2009, showing how deep the backlog truly is (Parliament website release, 2013).

While the number of audit reports has increased in recent years, public access to them has not improved.

References:

Mr John Path, Auditor General, quoted in "Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

Beulah Daunakamakama, Technical Adviser, Office of the Auditor General, "Changing Vanuatu's Auditing Tide", AV Magazine, Winter 2013, http://issuu.com/australianvolunteersinternational/docs/avi_magazine_june2013_web_72dpi_rgb/24

"Public Accounts Committee (PAC) News", Parliament website, November 12, 2013. [http://parliament.gov.vu/Home%20Page%20Archived/2013/Public%20Accounts%20Committee%20\(PAC\)%20News%C2%A0.html](http://parliament.gov.vu/Home%20Page%20Archived/2013/Public%20Accounts%20Committee%20(PAC)%20News%C2%A0.html)

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009.

ECORYS Nederland BV, Vanuatu Public Expenditure and Financial Accountability: Final Report 2006, European Commission Vanuatu Delegation, July 2006.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | **25** | 0

Comments:

There is little evidence that the Government acts upon reports by the Auditor General.

In November 2013, it was reported that the Public Accounts Committee was reviewing the Auditor General's annual reports from 2005 to 2009, showing how deep their backlog for review truly is (Parliament website release, 2013).

However, an Auditor General's investigation of the Vanuatu National Provident Fund (the national superannuation scheme) in 2012/13 did precede the sacking of the General Manager of the Fund and other senior staff in January 2013. The audit report was not made public, despite promises by the Government that the report would be released in January 2013 (Bob Makin, Vanuatu Daily Digest, 8 January 2013 and 24 January 2013).

References:

Bob Makin, Vanuatu Daily Digest, 8 January 2013 and 24 January 2013, <https://vanuatudaily.wordpress.com/tag/vanuatu-national-provident-fund/>

"Public Accounts Committee (PAC) News", Parliament website, November 12, 2013. [http://parliament.gov.vu/Home%20Page%20Archived/2013/Public%20Accounts%20Committee%20\(PAC\)%20News%C2%A0.html](http://parliament.gov.vu/Home%20Page%20Archived/2013/Public%20Accounts%20Committee%20(PAC)%20News%C2%A0.html)

ECORYS Nederland BV, Vanuatu Public Expenditure and Financial Accountability: Final Report 2006, http://ec.europa.eu/europeaid/what/economic-support/public-finance/documents/vanuatu_pefa_en.pdf

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009. <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-peformance-2009.pdf>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

Comments:

While the Auditor General is empowered to launch its own investigations, the low level of resourcing to the National Audit Office means that it is severely limited in its ability to carry out its functions, including initiating investigations. The Audit Office has in recent years, including the period covered by this report, focused its limited resources on addressing a significant backlog of government audits, improving the technical and other skills of its employees and updating and improving the resources it has to undertake audits (AV Magazine, Winter 2013, p24). The most recent special investigation undertaken by the National Audit Office was instigated at the request of the Prime Minister (Vanuatu Daily Post, 12 August 2012).

References:

Beulah Daunakamakama, Technical Adviser, Office of the Auditor General, "Changing Vanuatu's Auditing Tide", AV Magazine, Winter 2013, http://issuu.com/australianvolunteersinternational/docs/avi_magazine_june2013_web_72dpi_rgb/24

Ricky Binihi, "Carcasses requests Auditor General to investigate VNPF", Vanuatu Daily Post, 12 August 2012, <http://www.dailypost.vu/content/carcasses-requests-auditor-general-investigate-vnpf>

Pacific Islands Forum Secretariat, Principles of Good Leadership: Vanuatu. 2010. Accessed on 23 April 2014. <http://www.forumsec.org/pages.cfm/political-governance-security/good-governance/forum-principles-of-good-leadership-accountability.html>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

17

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

There are two key bodies responsible for external audit of the public sector: the Public Accounts Committee (PAC) of Parliament and the Auditor General.

Article 25(5) of the Constitution of the Republic of Vanuatu provides that: "The function of the Auditor-General shall be to audit and report to Parliament and the Government on the public accounts of Vanuatu." The Expenditure Review and Audit Act provides further detail on reporting requirements at Section 33: "(1) Without limiting the right to report at any other time, the Auditor-General shall, at least once annually, forward to the Speaker of Parliament, a report containing such information relating to the reviews and audits undertaken pursuant to this Act and any other enactment, as the Auditor-General deems appropriate together with such other information as the Auditor-General considers desirable and the Speaker must forthwith present the report to Parliament and call for debate thereon."

The Expenditure Review and Audit Act [CAP 241] provides that one of the functions of the PAC is to "note compliance by the Minister for Finance in terms of the provision of those statements required under the Act and comment publicly if there is any non-compliance by any party" (Section 14(2)(c)). The Act also provides that the PAC "shall at least twice in every year prepare a written report signed by the Chairperson of all matters considered by the Committee" (Section 16(1)) and, at Section 16(3), that: "The Committee shall forward the report, together with the comments made under subsection (2A) to the Speaker of Parliament who shall forthwith present the same to Parliament if Parliament is in Session, and if not in Session forthwith upon the commencement of the next ensuing Session."

While reports must be made to Parliament and the Speaker must present the report at the next available sitting, there is no explicit requirement for such reports, once tabled, to be made public.

References:

Expenditure Review and Audit Act [CAP 241], 1998, Sections 14, 16 and 33, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Not many reports have been produced and there is a lack of clarity about when and if reports should be made public, once they have been tabled in Parliament. However, comments made in 2013 by the current Auditor General suggest that once reports are tabled in Parliament, then they would be made public: "there is a bottleneck of reports that have yet to be tabled and debated in parliament. We are bound by the constitution and laws of Vanuatu which governs when a document becomes a "public document". Any document issued by the Office becomes a public document when it is tabled to parliament. Until such time, the auditor general and his staff are unable to issue documents in the public arena. We agree that improvements are needed to ensure all reports are made public in a more timely manner and this also needs to be balanced with the appropriate scrutiny and debate." (Vanuatu Daily Post, 27 August 2013). The current backlog is substantial, and the only reports available are significantly out of date.

When reports do become public, they are available on request from the Office of the Auditor General. The only reports from the Auditor General available online are not available at Government websites, but rather where they have been leaked through news media sites, for example, linked through the Vanuatu Daily Digest: <http://vanuatudaily.wordpress.com/2012/07/27/talesaot-archive-lack-of-action-by-prime-minister-sato-kilman-at-vanuatu-broadcasting-television-corporation/>.

References:

Mr John Path, Auditor General, quoted in "Auditor General says he supports transparency", Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

"Lack of action by Prime Minister Sato Kilman at Vanuatu Broadcasting & Television Corporation," Vanuatu Daily Digest, July 27, 2012. <http://vanuatudaily.wordpress.com/2012/07/27/talesaot-archive-lack-of-action-by-prime-minister-sato-kilman-at-vanuatu-broadcasting-television-corporation/>.

Auditor General Report on VBTC for years 2005-2011. June 7, 2011. Accessed at the Vanuatu Daily Digest on June 18, 2014. http://vanuatudaily.files.wordpress.com/2012/07/auditor-general_s-investigation-report-of-vbtc-2005-2011.pdf

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

When reports do become public, they are available on request from the Office of the Auditor General, and can be obtained at no cost. The only reports from the Auditor General available online are available through news media sites, for example, Vanuatu Daily Digest: <http://vanuatudaily.wordpress.com/2012/07/27/talesaot-archive-lack-of-action-by-prime-minister-sato-kilman-at-vanuatu-broadcasting-television-corporation/>, and these are free of charge.

Not many reports have been produced and there is a lack of clarity about when and if reports should be made public, once they have been tabled in Parliament. There is currently a substantial backlog, and the only reports available are significantly out of date (Vanuatu Daily Post, 27 August 2013).

References:

Mr John Path, Auditor General, quoted in "Auditor General says he supports transparency", Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

"Lack of action by Prime Minister Sato Kilman at Vanuatu Broadcasting & Television Corporation," Vanuatu Daily Digest, <http://vanuatudaily.wordpress.com/2012/07/27/talematof-archive-lack-of-action-by-prime-minister-sato-kilman-at-vanuatu-broadcasting-television-corporation/>.

Auditor General Report on VBTC for years 2005-2011. June 7, 2011. Accessed at the Vanuatu Daily Digest on June 18, 2014. http://vanuatudaily.files.wordpress.com/2012/07/auditor-general_s-investigation-report-of-vbtc-2005-2011.pdf

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

59
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Revenue collection is the responsibility of the Ministry of Finance and Economic Management, with two departments falling under its purview being responsible for collecting taxes: the Department of Customs and Inland Revenue and the Department of Finance. Customs and Inland Revenue is the agency responsible for collection of the two major taxes, the value added tax on goods and services and import duties. There are also taxes on rental income and motor vehicles (roadworthiness tax), and other annual charges including business licence fees.

The powers of the Customs and Inland Revenue Department are set out in:

Import Duties (Consolidation) Act [Cap 91], 2005
Customs Act [CAP 257], 1999
Value Added Tax Act [CAP 247], 1998
Excise Act [CAP 290], 2003
Business License Act [CAP 249], 1998
Rent Taxation Act [CAP196], 1986
Casino (Control) Act [CAP223], 1993
Road Traffic (Control) Act [CAP 29], 1962

References:

Ministry of Finance and Economic Management, Government of the Republic of Vanuatu, <http://www.governmentofvanuatu.gov.vu/index.php/government/ocean>

Vanuatu Customs and Inland Revenue Department, Government of the Republic of Vanuatu, <http://www.vanuatucustoms.gov.vu/index.php/about-us>

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As with other government agencies, the Customs and Inland Revenue department has struggled with capacity issues. It has been recognized that this has hampered revenue collection: 'Owing to its small size and lack of capacity the Department of Customs and Inland Revenue has found it difficult to collect excise and value added tax' (Dan Gay, WTO Report). The limited numbers of and professional capacity of staff in the agency has led the International Monetary Fund to recommend further recruitment and training of staff to improve revenue collection and compliance (International Monetary Fund, p9).

To address capacity issues within the agency, funding from the European Union was sought and provided to ensure training of existing staff to increase their skills and knowledge and ensure better collection, particularly outside of the capital, Port Vila. Training undertaken in 2013 was delivered in the northern provinces of Vanuatu (Godwin Ligo, "Custom s course to improve gov't revenue," Vanuatu Daily Post, 18 March 2013).

The Customs and Inland Revenue Department has also recently expanded its functions to include strengthening its audit functions and introducing risk-based auditing (International Monetary Fund, p9). This has had some impact, according to a media release from the Department ("Inland Revenue spot fines retailers thousands of vatu", Vanuatu Daily Post, 6 March 2014).

References:

Dan Gay, 'Vanuatu's Suspended Accession Bid: Second Thoughts?,' Managing The Challenges Of Wto Participation: Case Study 43, World Trade Organization. Accessed on May 20, 2014. http://www.wto.org/english/res_e/booksp_e/casestudies_e/case43_e.htm

Godwin Ligo, "Customs course to improve gov't revenue," Vanuatu Daily Post, 18 March 2013, <http://www.dailypost.vu/content/customs-course-improve-gov%E2%80%99t-revenue>

International Monetary Fund, Vanuatu 2013 Article IV Consultation, IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

"Inland Revenue spot fines retailers thousands of vatu", Vanuatu Daily Post, 6 March 2014, <http://www.dailypost.vu/content/inland-revenue-spot-fines-retailers-thousands-vatu>

"Department of Customs and Inland Revenue to take over Administration of all Taxes in Black Man Town," Vanuatu Daily Post, 28 November 2013, <http://www.dailypost.vu/content/department-customs-and-inland-revenue-take-over-administration-all-taxes-black-man-town>

Godwin Ligo, "Customs course to improve gov't revenue, Vanuatu Daily Post," 18 March 2013, <http://www.dailypost.vu/content/customs-course-improve-gov%E2%80%99t-revenue>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget allocation for the Customs and Inland Revenue Department has increased from 173million VT in 2012 to 187million VT in 2014 (Vanuatu Government Budget, Annual Appropriation 2013 and 2014) .

The increased budget is reflected in its expansion to new locations (Vanuatu Daily Post, 28 November 2013) and also in its increased focus on training and outreach (Godwin Ligo, "Customs course to improve gov't revenue, Vanuatu Daily Post," 18

March 2013), and on compliance.

References:

Vanuatu Government Budget, Pacific Institute of Public Policy, <http://economics.pacificpolicy.org/vanuatu/>

Government of the Republic of Vanuatu, Department of Finance and Treasury, <http://www.doft.gov.vu/index.php/widgetkit/budget-appropriation>

"Department of Customs and Inland Revenue to take over Administration of all Taxes in Black Man Town," Vanuatu Daily Post, 28 November 2013, <http://www.dailypost.vu/content/department-customs-and-inland-revenue-take-over-administration-all-taxes-black-man-town>

Godwin Ligo, "Customs course to improve gov't revenue, Vanuatu Daily Post," 18 March 2013, <http://www.dailypost.vu/content/customs-course-improve-gov%E2%80%99t-revenue>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

Revenue collection in Vanuatu has been hampered by lack of capacity and resources, as has been recognised in a number of earlier reviews of Vanuatu's financial and economic management: 'Owing to its small size and lack of capacity the Department of Customs and Inland Revenue has found it difficult to collect excise and value added tax' (Dan Gay, World Trade Organization). This assessment continued to be true through the period of this present study, and compliance activities have often been ad hoc and inconsistent in application.

Recent enhancements through increased budget allocation and donor assistance to provide training and outreach (International Monetary Fund, June 2013, p9), and expanding functions, especially outside the nation's capital of Port Vila, have meant that Customs and Inland Revenue Service is now better placed to ensure compliance across a broader range of businesses in a greater number of locations ("Inland Revenue spot fines retailers thousands of vatu," Vanuatu Daily Post, 6 March 2014).

A successful prosecution in late 2013 against a businessman who attempted to bribe a Customs and Inland Revenue officer was only the second time the agency has taken a bribery case to court, and the first to be made using the Value Added Tax Act. It was hailed as "a lesson to the public to rule out any idea of attempting to bribe officers" (Vanuatu Daily Post, 28 October 2013).

References:

International Monetary Fund, Vanuatu 2013 Article IV Consultation, IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

"Inland Revenue spot fines retailers thousands of vatu," Vanuatu Daily Post, 6 March 2014, <http://www.dailypost.vu/content/inland-revenue-spot-fines-retailers-thousands-vatu>

Mr Ben Leeshi, Director, Finance and Inland Revenue, Customs and Inland Revenue Service, quoted in Thompson Marango, Bribery Case: Chinese man fined Vt100,000, Vanuatu Daily Post, 28 October 2013, <http://www.dailypost.vu/content/bribery-case>

Dan Gay, 'Vanuatu's Suspended Accession Bid: Second Thoughts?,' Managing The Challenges Of WTO Participation: Case Study 43, World Trade Organization, 2005. http://www.wto.org/english/res_e/booksp_e/casestudies_e/case43_e.htm

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

The Department of Customs and Inland Revenue is the agency responsible for customs and excise.

The powers of the Customs and Inland Revenue Department are set out in:

Import Duties (Consolidation) Act [Cap 91], 2005

Customs Act [CAP 257], 1999

Excise Act [CAP 290], 2003.

References:

Vanuatu Customs and Inland Revenue Department, Government of the Republic of Vanuatu, <http://www.vanuatucustoms.gov.vu/index.php/about-us>

Import Duties (Consolidation) Act [Cap 91], 2005. http://www.paclii.org/vu/legis/consol_act/ida315/.

Customs Act [CAP 257], 1999. http://www.paclii.org/vu/legis/consol_act/ca124/.

Excise Act [CAP 290], 2003. http://www.paclii.org/vu/legis/consol_act/ea80/.

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As with other agencies, the Customs and Inland Revenue department has struggled with capacity issues, and it has been recognised that this has hampered revenue collection: 'Owing to its small size and lack of capacity the Department of Customs and Inland Revenue has found it difficult to collect excise and value added tax' (Dan Gay, World Trade Organization).

To address capacity issues within the agency, funding from the European Union was sought and provided to ensure training of existing staff to increase their skills and knowledge and ensure better collection, particularly outside of the capital, Port Vila. Training undertaken in 2013 was delivered in the northern provinces of Vanuatu (Vanuatu Daily Post, 18 March 2013). The Customs and Inland Revenue Department has also recently expanded its functions to include strengthening its audit functions and introducing risk-based auditing (International Monetary Fund, Vanuatu 2013 Article IV Consultation, IMF Country Report No. 13/169, June 2013, p9). This has had some impact, according to a media release from the Department (Vanuatu Daily Post, 6 March 2014).

However, the International Monetary Fund made recommendations in 2013 for further recruitment and training of staff to improve revenue collection and compliance (IMF, p9).

References:

Dan Gay, "Vanuatu's Suspended Accession Bid: Second Thoughts?," Managing The Challenges Of Wto Participation: Case Study 43, World Trade Organization , http://www.wto.org/english/res_e/booksp_e/casestudies_e/case43_e.htm

Godwin Ligo, "Custom s course to improve gov't revenue," Vanuatu Daily Post, 18 March 2013, <http://www.dailypost.vu/content/customs-course-improve-gov%E2%80%99t-revenue>

International Monetary Fund, Vanuatu 2013 Article IV Consultation, IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

"Inland Revenue spot fines retailers thousands of vatu", Vanuatu Daily Post, 6 March 2014, <http://www.dailypost.vu/content/inland-revenue-spot-fines-retailers-thousands-vatu>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget allocation for the Customs and Inland Revenue Department has increased from 173million VT in 2012 to 187million VT in 2014 (Vanuatu Government Budget, Annual Appropriation 2013 and 2014) .

The increased budget is reflected in its expansion to new locations throughout Vanuatu, as the formal economy expands (Vanuatu Daily Post, 28 November 2013) and also in its increased focus on training and outreach (Vanuatu Daily Post," 18 March 2013), and on compliance.

References:

Vanuatu Government Budget, Pacific Politics, <http://economics.pacificpolicy.org/vanuatu/>. Accessed on April 30, 2014.

Government of the Republic of Vanuatu, Department of Finance and Treasury, <http://www.doft.gov.vu/index.php/widgetkit/budget-appropriation>. Accessed on April 30, 2014.

Godwin Ligo, "Customs course to improve gov't revenue, Vanuatu Daily Post," 18 March 2013, <http://www.dailypost.vu/content/customs-course-improve-gov%E2%80%99t-revenue>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

A series of reports, from 2005 through 2011, noted that collection of excise and customs duties in Vanuatu has been hampered by lack of capacity and resources, as has been recognised in a number of reviews of Vanuatu's financial and economic management: 'Owing to its small size and lack of capacity the Department of Customs and Inland Revenue has found it difficult to collect excise and value added tax' (World Trade Organization, 2005; also Actra Advisors, 2009 and UNICEF, 2011).

Recent enhancements have been achieved through increased budget allocation and donor assistance to provide training and outreach (International Monetary Fund, p9), and expanding functions.

There have been ongoing allegations that Government Ministers make use of their executive discretion to support business interests, including the ability to grant exemptions for tax and import and export licensing fees and duties (The Unfinished State: Drivers of Change in Vanuatu, 2007, p29). Showing that this has continued to be the case during the period of study, an allegation was raised by the Opposition in early 2014 in relation to the import of containers of iron roofing for the Prime Minister and other Ministers (Jonas Cullwick, "4 containers from China for MPs", Vanuatu Daily Post, 10 February 2014).

References:

Dan Gay, 'Vanuatu's Suspended Accession Bid: Second Thoughts?', Managing The Challenges Of WTO Participation: Case Study 43, World Trade Organization, 2005 http://www.wto.org/english/res_e/booksp_e/casestudies_e/case43_e.htm

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-performance-2009.pdf>

Arthur Faerua, Vanuatu Import Monitoring Study, UNICEF, 2011, http://www.unicef.org/pacificislands/Vanuatu_Import_Monitoring_Assessment.pdf

International Monetary Fund, Vanuatu 2013 Article IV Consultation, IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

The Unfinished State: Drivers of Change in Vanuatu, Australian Government, 2007, http://aid.dfat.gov.au/Publications/Documents/vanuatu_change.pdf

Jonas Cullwick, "4 containers from China for MPs", Vanuatu Daily Post, 10 February 2014, <http://www.dailypost.vu/content/4-containers-china-mps>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Each commercial government business enterprise (CGBE) is officially overseen by the Minister responsible for the sector in which the CGBE operates.

General financial oversight of Vanuatu's state owned companies is undertaken by the Auditor-General, Public Accounts Committee, and by the Ministry of Finance and Economic Management's Government Business Enterprise Unit and Government Business Monitoring and Evaluation Section.

The Expenditure Review and Audit Act [CAP 241] gives powers to the Auditor-General and the Public Accounts Committee of Parliament as the two entities providing oversight of state owned agencies (Sections 14 to 15 and 27 to 28).

At Section 2 of the Act, an 'agency' includes "an Organisation or corporation (whether established by statute or otherwise) and any subsidiary of a corporation where the Organisation or corporation either:

- (a) is substantially owned or controlled by Government; or
- (b) has a significant financial interdependence with the State by virtue of an allocation in an Appropriation Act; or
- (c) has significant use of or controls public money".

Under Section 27(1) of the Act, the Auditor-General has a duty to "assist the [Public Accounts] Committee to discharge its obligations, functions and responsibilities under section 14 of this Act."

References:

Expenditure Review and Audit Act [CAP 241], 1998, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Government of Vanuatu, Budget Vol1 and 2, pp61-2

Government of Vanuatu, Finance and Treasury website. Accessed on May 20, 2014. "Government Business Enterprise Monitoring and Evaluation Unit". <http://doft.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/government-business-enterprise-unit>

Government Business Enterprise Policy. Ministry of Finance and Treasury. Approved October 17, 2013. Accessed on May 20, 2014. <http://doft.gov.vu/images/downloads/gbu/Reports%20on%20SOEs/Vanuatu%20SOE%20Policy%20-%20adopted%20Thursday%2017%20October%202013.pdf>

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

Under Article 25 of the Constitution of the Republic of Vanuatu, the "Auditor-General shall not be subject to the direction or control of any other person or body in the exercise of his functions."

The Public Accounts Committee is comprised of members of Parliament, and its Chairman cannot be a member of the government, and is appointed by Parliament (Expenditure Review and Audit Act [CAP 241], Section 5).

References:

Expenditure Review and Audit Act [CAP 241], 1998, Section 5, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Constitution of the Republic of Vanuatu, Article 25, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Resourcing of the agencies providing oversight of state owned enterprises is inadequate. Each commercial government business enterprise (CGBE) is officially overseen by the Minister responsible for the sector in which the CGBE operates. The newly approved GBE Policy is, in part, a response to the poor performance, management and accountability within the current system (Asian Development Bank).

The main auditing and investigatory responsibility falls with the Office of the Auditor General, which has been severely hampered in its work by a lack of adequate resources, including appropriately qualified and trained staff. It is noted that the auditor general has been unable to fill vacant positions with properly qualified staff (email correspondence with Senior Auditor, June 16). The Auditor General has also sought external technical assistance from aid donors, and through engaging private contractors to undertake audits. For example, the Auditor General contracted Ernst & Young to undertake an audit of the Vanuatu National Provident Fund in 2012, following a request from the Government to make an examination of its operations (Ricky Binihi, "Parliament To Debate Vanuatu Provident Fund Report", Vanuatu Daily Post, 11 February 2013).

The Public Accounts Committee has not met often nor been reported active in any recent investigations, and as noted earlier in this report.

References:

"Auditor-General improves anti-corruption audit software and procedures," Vanuatu Daily Post, 9 April 2013, <http://www.dailypost.vu/content/auditor-general-improves-anti-corruption-audit-software-and-procedures-0>, accessed 28 February 2014

Ricky Binihi, "Parliament To Debate Vanuatu Provident Fund Report", Vanuatu Daily Post, 11 February 2013, <http://pidp.org/archive/2013/February/02-12-08.htm>

Correspondence with Beulah Daunakamakama, Senior Auditor, Office of the Auditor General, June 16, 2014.

Internal Audit Unit- Department of Finance And Treasury, accessed on 23 April 2014. <http://www.doft.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/audit-section>

Asian Development Bank, A New State-owned Enterprise Policy for Vanuatu, Press Release, 30 October 2013, <http://www.adb.org/news/vanuatu/new-state-owned-enterprise-policy-vanuatu>

Government Business Enterprise Policy Approval, Ministry of Trade and Finance. October 18, 2013. Accessed on May 20, 2014. <http://doft.gov.vu/images/com-paper.pdf>

Government Business Enterprise Policy. Ministry of Finance and Treasury. Approved October 17, 2013. Accessed on May 20, 2014. <http://doft.gov.vu/images/downloads/gbu/Reports%20on%20SOEs/Vanuatu%20SOE%20Policy%20-%20adopted%20Thursday%2017%20October%202013.pdf>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agencies providing oversight of state owned enterprises generally receive consistent funding. For instance, the annual budget for the National Audit Office has been consistent, and in 2013 was approximately 32 million vatu (\$315,000USD), which remained unchanged from 2012 (see Government of the Republic of Vanuatu, Budget 2013 and 2012), with funding for audit operations totaling approximately 19 million vatu (\$200,000USD).

Though their funding has been consistent, these bodies providing oversight of state owned companies have been under-resourced, as has been reported earlier for the Auditor General's office.

In addition, the Government has approved a policy framework for state owned corporations, and with support from the Asian Development Bank, is working on "strengthening of governance and monitoring practices" for state owned enterprises. (Press Release, Asian Development Bank, October). The newly approved GBE Policy is, in part, a response to the poor performance, management and accountability within the current system.

References:

Government of the Republic of Vanuatu, Budget 2013, <http://www.governmentofvanuatu.gov.vu/index.php/publicationdocuments/budget>

Government of the Republic of Vanuatu, Budget 2012, <http://www.governmentofvanuatu.gov.vu/index.php/publicationdocuments/budget>

"Auditor-General improves anti-corruption audit software and procedures," Vanuatu Daily Post, 9 April 2013, <http://www.dailypost.vu/content/auditor-general-improves-anti-corruption-audit-software-and-procedures-0>, accessed 28 February 2014

Mr John Path, Auditor General, Republic of Vanuatu, quoted in "Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

Asian Development Bank, A New State-owned Enterprise Policy for Vanuatu, Press Release, 30 October 2013, <http://www.adb.org/news/vanuatu/new-state-owned-enterprise-policy-vanuatu>

Government Business Enterprise Policy Approval, Ministry of Trade and Finance. October 18, 2013. Accessed on May 20, 2014. <http://dofv.gov.vu/images/com-paper.pdf>

Government Business Enterprise Policy. Ministry of Finance and Treasury. Approved October 17, 2013. Accessed on May 20, 2014. <http://dofv.gov.vu/images/downloads/gbu/Reports%20on%20SOEs/Vanuatu%20SOE%20Policy%20-%20adopted%20Thursday%2017%20October%202013.pdf>

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

While there have been a number of significant concerns raised in relation to the management, operation and reporting of state owned companies, including the European Commission's 2006 assessment report observation that a majority of state owned enterprises had not completed or submitted financial returns for a number of years (ECORYS Final Report 2006) and a follow-up report in 2009 showing limited improvement (Actra Advisers, 2009), as well as numerous media reports alleging mismanagement, very few special investigations have been initiated or undertaken by the agencies responsible for oversight of state owned companies.

There have been calls for the Auditor General and others to investigate one or more of the state owned corporations. For example, in early 2013, a member of the board of the National Housing Corporation called publicly for an audit of the organisation to be undertaken (Vanuatu Daily Post, 30 January 2013). These calls are sometimes answered, for example in the case of the

Vanuatu National Provident Fund, which the Auditor General investigated (through an external contractor) in late 2012, and reported to Government in early 2013 (Vanuatu Daily Digest, 8 January 2014).

As reported earlier of the Auditor General lacks sufficient resources for thorough and timely investigations.

The newly approved (October 2013) Government Business Enterprise Policy is, in part, a response to the poor performance, management and accountability within the current system.

References:

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009. <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/public-financial-management-peformance-2009.pdf>

ECORYS Nederland BV, Vanuatu Public Expenditure and Financial Accountability: Final Report 2006, http://ec.europa.eu/europeaid/what/economic-support/public-finance/documents/vanuatu_pefa_en.pdf

Godwin Ligo, "National Housing Corporation must be audited: Board Member," Vanuatu Daily Post, 30 January 2013, <http://www.dailypost.vu/content/national-housing-corporation-must-be-audited-board-member>

Ricky Binihi, "Carcasses requests Auditor General to investigate VNPF", Vanuatu Daily Post, 12 August 2012, <http://www.dailypost.vu/content/carcasses-requests-auditor-general-investigate-vnpf>

Bob Makin, Vanuatu Daily Digest, 8 January 2014, <https://vanuatudaily.wordpress.com/2013/01/08/vanuatu-daily-news-digest-8-january-2013/>

Government Business Enterprise Policy. Ministry of Finance and Treasury. Approved October 17, 2013. Accessed on May 20, 2014. <http://doft.gov.vu/images/downloads/gbu/Reports%20on%20SOEs/Vanuatu%20SOE%20Policy%20-%20adopted%20Thursday%2017%20October%202013.pdf>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Bodies providing independent oversight of state owned corporations are not empowered to impose penalties on offenders. The Auditor-General is empowered to provide recommendations to Government through the Parliament in reports arising from investigations and audits, and similarly, the Public Accounts Committee (PAC) does not have powers to penalise.

In May 2013, a case against the former Chief Executive of the Northern Islands Stevedoring Company Limited (a company in which the national government and several provincial governments have an interest), in which he was accused of three serious charges of theft, misappropriation and fraud, was dropped by the Public Prosecutor. There were no reasons reported for the abandonment of the prosecution, which was instigated following an audit in 2011 (Royson Willie, 27 May 2013). This, and the release of another Auditor General's report in May 2013, which actually dealt with matters going back as far as 2001 (Royson Willie, Vt100m CDF misused, Vanuatu Daily Post, 27 May 2013), show the impact of lack of resourcing of the Auditor's office, and the impact of a large backlog of audits to undertake. The ability to prosecute cases or otherwise hold those responsible to account, becomes increasingly difficult with the passage of time.

As reported elsewhere in this study, the Public Accounts Committee has not been functional for some time, meeting only twice in 2013. A Government Minister recently commented that parliamentary committees are seen more as political rewards than for improving government performance or policy. He also indicated that the recommendations made in Auditor General reports are not as strong as they once had been (Hon Ralph Regenvanu, Minister for Lands, Government of the Republic of Vanuatu, public forum, 13 May 2014).

References:

Expenditure Review Act [CAP 241], 1998, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Royson Willie, "Criminal case against MP Moli dropped", 27 May 2013, <http://www.dailypost.vu/content/criminal-case-against-mp-moli-dropped>

Royson Willie, "vt100m CDF misused", 27 May 2013, <http://www.dailypost.vu/content/vt100m-cdf-misused>

Hon Ralph Regenvanu, Minister for Lands, Government of the Republic of Vanuatu, public forum, 13 May 2014

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

20

69a. In law, citizens can access the financial records of state-owned companies.

Yes | **No**

Comments:

While there are reporting requirements for state owned companies, including that an annual report be made to the Minister, there are no requirements for such reports to be made public. For example, the National Housing Corporation Act [CAP 188] 1985, at Section 14 provides that:

- "(1) The Corporation shall keep proper accounts and other records in respect of its income and expenditure and shall cause to be prepared an annual statement of accounts in respect of each financial year.
- (2) The accounts of the Corporation shall be audited by the Auditor General in accordance with the Expenditure Review and Audit Act [CAP. 241].
- (3) Within 4 months of the end of each financial year the Corporation shall transmit to the Minister an annual report of its activities together with the audited accounts including the report of the Auditor General thereon.
- (4) The Minister shall cause a copy of the annual report and audited accounts and audit report to be laid before Parliament."

References:

National Housing Corporation Act [CAP 188] 1985, Section14, http://www.paclii.org/vu/legis/consol_act/nhca318/

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | **25** | 0

Comments:

A number of reports have been critical of the lack of accountability of state owned companies, and the inadequate monitoring and oversight in place. For example, in 2013, the International Monetary Fund, in its report on the Article IV Consultation said in relation to Government Business Enterprises (GBEs), "Enhancing accountability, strengthening governance... are important to control risks and improve financial performance... Accounting standards in many GBEs are weak and several have not produced financial statements for many years." (IMF, p11).

The Auditor-General of Vanuatu in early 2013 made a public call for the Vanuatu Financial Services Commission to provide financial statements for the past three years, after he received requests to assist in auditing the VFSC accounts (Radio New Zealand International, "Vanuatu auditor calls for key government agency to submit financial statements). There is little information publicly available about what reports are provided to government.

The Government of Vanuatu has recently approved a policy on state owned enterprises (October 2013). Policy statement 5 includes that the Minister responsible for the state owned enterprise is to "ensure that audited annual accounts are tabled in Parliament promptly after the end of the CGBE's financial year and are made available to the public" (Government of Vanuatu, Vanuatu Government Business Enterprise Policy, October 2013, p5).

The Department of Finance and Treasury has recently provided a web page on state owned enterprises where financial statements and/or annual reports for state owned enterprises, where available, are posted. The most recent statements or reports available here are from 2012, though some companies have not even posted through 2012 (<http://dof.gov.vu/index.php/administration-finance-treasury/state-owned-enterprise>).

Individual agency websites, where they exist, do not have current information. For example, the last annual report available online at the Vanuatu National Provident Fund is from 2011 (<http://www.vnfp.com.vu/p/vnfp-about-us-annual-reports.html>), and for the Vanuatu Investment Promotion Authority, the last available report covers the 2010 financial year (<http://www.investvanuatu.org/AboutUs/Pdtsubpages/annual.html>)

References:

International Monetary Fund, Vanuatu: Staff Report for the 2013 Article IV Consultation, 2013,

Radio New Zealand International, "Vanuatu auditor calls for key government agency to submit financial statements," 18 February 2013, <http://www.radionz.co.nz/international/pacific-news/210292/vanuatu-auditor-calls-for-key-government-agency-to-submit-financial-statements>, accessed 19 March 2014

Government of Vanuatu, Vanuatu Government Business Enterprise Policy, October 2013, <http://www.dof.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/government-business-enterprise-unii>, accessed 27 March 2014

Government of Vanuatu Department of Finance and Treasury website, State Owned Enterprises page. Accessed on May 21, 2014. <http://dof.gov.vu/index.php/administration-finance-treasury/state-owned-enterprise>

Vanuatu Provident Fund website. Accessed on May 21, 2014. <http://www.vnfp.com.vu/p/vnfp-about-us-annual-reports.html>

Vanuatu Investment Promotion Authority website. Accessed on May 21, 2014. <http://www.investvanuatu.org/AboutUs/Pdtsubpages/annual.htm>

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

In practice, very few of the financial statements of state owned enterprises have been made available to be audited. This is the finding of the International Monetary Fund report, conducted in 2013: "Controls to ensure that GBEs are efficiently managed and accountable are inadequate. Accounting standards in many GBEs are weak and several have not produced financial statements for many years. Indeed, many do not employ any qualified accountants, while their boards are often staffed by political appointees without the requisite technical knowledge. More generally, political interference in GBEs' operations can result in poor financial decisions" (IMF, p11).

The IMF report in 2013 echoed observations made in earlier analyses in 2006 and 2009 commissioned by the European Commission (See Vanuatu Public Expenditure and Financial Accountability: Final Report 2006 and Republic of Vanuatu: Public Financial Management Performance Report: Final Report 2009).

The recently approved policy framework for state owned enterprises (Asian Development Bank, Press Release, 30 October 2013) may assist in this regard.

References:

International Monetary Fund, Vanuatu: Staff Report on Article IV Consultation, 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

Asian Development Bank, "ADB Welcomes New State-owned Enterprise Policy for Vanuatu", Press Release, 30 October 2013, <http://www.adb.org/news/vanuatu/new-state-owned-enterprise-policy-vanuatu>

ECORYS Nederland BV, Vanuatu Public Expenditure and Financial Accountability: Final Report 2006, European Commission Vanuatu Delegation, July 2006.

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

State owned companies in Vanuatu generally do not have a good record of producing financial reports on time. A recent International Monetary Fund report found: "Controls to ensure that GBEs are efficiently managed and accountable are inadequate. Accounting standards in many GBEs are weak and several have not produced financial statements for many years." (IMF).

The Finance and Treasury Department of the Ministry of Finance and Economic Management has recently established a website where anyone can access financial statements of state owned companies, where they have been completed and where internet access is available. However, this site provides financial statements for some though not all, state owned companies. As of March 2014, there are no reports or statements available yet for 2013. Of the 21 Government Business Enterprises listed on the Department's website, there were financial reports available for 13 of them. Of these, 7 had reports available up to 2012, 4 had reports available up to 2011, and 1 each for 2010 and 2009. Eight agencies had no reports available. Some agencies, for example the Reserve Bank and the National Bank of Vanuatu have statements available upon request to the agency.

Other agencies, for example the Vanuatu Investment Promotion Authority, have not made public financial reports, and have not submitted any reports to the Auditor General for review for a number of years (Radio NZ International, 18 February 2013).

References:

International Monetary Fund, Article IV Consultation: IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

Government of Vanuatu, "Government Business Enterprise Policy," October 2013, <http://www.doft.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/government-business-enterprise-unit>, accessed 27 March 2014

ECORYS Nederland BV, Vanuatu Public Expenditure and Financial Accountability: Final Report 2006, European Commission Vanuatu Delegation, July 2006

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009

"Vanuatu auditor calls for key government agency to submit financial statements", Radio NZ International, 18 February 2013, <http://www.radionz.co.nz/international/pacific-news/210292/vanuatu-auditor-calls-for-key-government-agency-to-submit-financial-statements>

Government of Vanuatu Department of Finance and Treasury website, State Owned Enterprises page. Accessed on May 21, 2014. <http://doft.gov.vu/index.php/administration-finance-treasury/state-owned-enterprise>

Vanuatu Provident Fund website. Accessed on May 21, 2014. <http://www.vnpf.com.vu/p/vnpf-about-us-annual-reports.html>

Vanuatu Investment Promotion Authority website. Accessed on May 21, 2014. <http://www.investvanuatu.org/AboutUs/Pdtsubpages/annual.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

State owned companies in Vanuatu generally do not have a good record of producing financial reports on time. A recent International Monetary Fund report found: "Controls to ensure that GBEs are efficiently managed and accountable are inadequate. Accounting standards in many GBEs are weak and several have not produced financial statements for many years." (IMF).

The Finance and Treasury Department of the Ministry of Finance and Economic Management has recently established a website where anyone can access financial statements of state owned companies, where they have been completed and where internet access is available. However, this site provides financial statements for some though not all, state owned companies. As of March 2014, there are no reports or statements available yet for 2013. Of the 21 Government Business Enterprises listed on the Department's website, there were financial reports available for 13 of them. Of these, 7 had reports available up to 2012, 4 had reports available up to 2011, and 1 each for 2010 and 2009. Eight agencies had no reports available. Some agencies, for example the Reserve Bank and the National Bank of Vanuatu have statements available upon request to the agency.

Other agencies, for example the Vanuatu Investment Promotion Authority, have not made public financial reports, and have not submitted any reports to the Auditor General for review for a number of years (Radio NZ International, 18 February 2013).

References:

International Monetary Fund, Article IV Consultation: IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

Government of Vanuatu, Government Business Enterprise Policy, October 2013, <http://www.doft.gov.vu/index.php/about-us-admin-management/2014-01-04-23-31-58/government-business-enterprise-unit>

Government of Vanuatu Department of Finance and Treasury website, State Owned Enterprises page. Accessed on May 21, 2014. <http://doft.gov.vu/index.php/administration-finance-treasury/state-owned-enterprise>

Vanuatu Provident Fund website. Accessed on May 21, 2014. <http://www.vnfp.com.vu/p/vnfp-about-us-annual-reports.html>

Vanuatu Investment Promotion Authority website. Accessed on May 21, 2014. <http://www.investvanuatu.org/AboutUs/Pdtsubpages/annual.htm>

"Vanuatu auditor calls for key government agency to submit financial statements", Radio NZ International, 18 February 2013, <http://www.radionz.co.nz/international/pacific-news/210292/vanuatu-auditor-calls-for-key-government-agency-to-submit-financial-statements>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Business licenses are available to all citizens, and under Section 2 of the Business Licence Act, "no person shall carry on a business without a licence issued under this Act", with some exemptions from this requirement.

Business licences are available to any citizen; however a licence will only be granted to applicants who meet the business requirements and provide true information as stated in Section 4(2) "Any person who, without reasonable cause for believing it to be true, makes, or aids and abets the making of any false statement in any application made under this section shall be guilty of an offence."

References:

Business Licence Act [CAP249], 2006, Sections 2 and 4, http://www.paclii.org/vu/legis/num_act/bla165

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

Business licence applicants can file a complaint if a business licence request is denied. Under Section 11 of the Business Licence Act, if the Minister, Director or local government council refuses to issue, renew or transfer a business licence they must record the decision, and reasons for the decision, in writing and send a copy of the decision and reasons to the applicant within seven days of making the decision.

Section 12 of the Business Licence Act states that, "A person may appeal to the Minister against a decision of the Director or local government council refusing to issue, renew or transfer a business licence." This Section also provides for a person to make an appeal to the Supreme Court against a decision of the Minister.

References:

Business Licence Act [CAP249], 2006, Sections 11 and 12, http://www.paclii.org/vu/legis/num_act/bla165

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In its data for 2014, the World Bank estimates that in the capital of Vanuatu, Port Vila, it takes one day for the business licence application process to be completed. No data is available for locations outside the national capital. According to the World Bank data, starting a business requires 8 procedures, takes 35 days, costs 47.2% of income per capita and requires paid-in minimum capital of 0.0% of income per capita. The World Bank data also shows that in Vanuatu between 2009 and 2013, the number of days required to start a business, including obtaining a business licence, fell from 47 days to 35 days.

Mr Arthur Faerua, a business consultant, legal practitioner and academic, says that applicants can obtain business licences in a reasonable timeframe, whether they are small or large businesses, as long as any requirements for each type of business are met. He provided one example of a small business established by a ni-Vanuatu businessman which imports canned tuna from Fiji. This business was established within less than a month and the products it imports are now widely available in local stores. However, in late 2013 the Government changed the laws regulating businesses, now requiring small businesses with an annual gross turnover of less than Vt4 million to hold a business licence.

References:

Doing Business: Measuring business regulations, World Bank and International Finance Corporation, <http://www.doingbusiness.org/data/exploreeconomies/vanuatu/>, updated 2014, accessed 9 March 2014

World Bank and International Finance Corporation, Economy Profile: Vanuatu: Doing Business 2013. <http://www.doingbusiness.org/data/exploreeconomies/vanuatu/~media/giawb/doing%20business/documents/profiles/country/VUT.pdf>

Arthur Faerua, Business Consultant and Legal Practitioner, A&J Consultant Services and Law School, Emalus Campus, University of South Pacific, Port Vila, Vanuatu, interview by the author, 17 February 2014

Vanuatu Chamber of Commerce and Industry, "Business License Fees imposed on Small Businesses," Vanuatu Daily Post, 11 February 2014, <http://www.dailypost.vu/content/business-license-fees-imposed-small-businesses>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to World Bank data, starting a business in Vanuatu requires 8 procedures, takes 35 days, costs 47.2% of income per capita and requires paid-in minimum capital of 0.0% of income per capita. This data applies to businesses in Port Vila, and no data is available for businesses outside of the capital. (World Bank and International Finance Corporation, Economy Profile: Vanuatu, 2014).

Licences are obtainable from the Department of Customs and Inland Revenue in Port Vila and Luganville (the two main urban centres in Vanuatu), and also from the offices from provincial councils in the capitals of each of Vanuatu's six provinces.

In late 2013 the Government changed the laws regulating businesses, now requiring small businesses with an annual gross turnover of less than Vt4 million to hold a business licence. The Vanuatu Chamber of Commerce and Industry surveyed local small business owners for their reaction to the changes, and reported that a majority of respondents expressed the concern that setting up and operating a business are high, especially for small and micro businesses, and that "[g]etting small businesses to pay for business license fees will certainly affect the new business start-ups." (Vanuatu Chamber of Commerce, Daily Post, 11 February 2014)

References:

Doing Business: Measuring business regulations, World Bank and International Finance Corporation, <http://www.doingbusiness.org/data/exploreeconomies/vanuatu/>, updated 2014, accessed 9 March 2014

World Bank and International Finance Corporation, Economy Profile: Vanuatu: Doing Business 2013. <http://www.doingbusiness.org/data/exploreeconomies/vanuatu/~media/giawb/doing%20business/documents/profiles/country/VUT.pdf>

Arthur Faerua, Business Consultant and Legal Practitioner, A&J Consultant Services and Law School, Emalus Campus, University of South Pacific, Port Vila, Vanuatu, interview by the author, 17 February 2014

Vanuatu Chamber of Commerce and Industry, "Business License Fees imposed on Small Businesses," Vanuatu Daily Post, 11 February 2014, <http://www.dailypost.vu/content/business-license-fees-imposed-small-businesses>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

The Public Health Act [CAP 234], 1994, provides regulation in relation to notifiable diseases, sanitation and waste management, provision and protection of water supply, safety provisions relating to vessels and to buildings and housing and swimming pools, promoting breast feeding, and control of smoking. The Act provides that the Ministry of Health and local authorities have responsibilities under the Act to ensure compliance. This act is publicly available online.

Vanuatu has legislation to enforce food safety standards, namely the Food (Control) Act [CAP 228], which passed parliament in 1993 but was not gazetted and come into force until 1999, and the Meat Industry Act [CAP 213], 1991. Both are publicly accessible online.

The Food (Control) Act was enacted to regulate and control the manufacture, importation, sale and distribution of food. It provides for the powers of a Chief Food Authority and Food Authorities (Sections 7-11), and prohibitions on the manufacture, import, sale or distribution of food:

- "(a) that has upon it any natural or added deleterious substance which renders it injurious to health;
- (b) that is unfit for human consumption;
- (c) that consists in whole or in part of any unclean, putrid, repugnant, decayed, decomposed or diseased animal substance or decayed vegetable substance or is insect infested;
- (d) that is adulterated;
- (e) that has in or upon it any added substance in contravention of the provisions of this Act or any regulation made thereunder;
- (f) in contravention of the provisions of this Act or any regulation made thereunder." (Section 1)

References:

Food (Control) Act [CAP 228], 1993, http://www.paclii.org/vu/legis/consol_act/fa147/

Meat Industry Act [CAP 213], 1991, http://www.paclii.org/vu/legis/consol_act/mia178/

Public Health Act [CAP 234], 1994, http://www.paclii.org/vu/legis/consol_act/pha126/

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

Sections 11 to 28 of the Environmental Management and Conservation Act [CAP 283], 2002, provide clear guidelines for assessing projects and required actions where it is deemed an environmental impact assessment is required. This act is publicly

available online. The process is also outlined clearly at the Ministry of Lands and Natural Resources website, which also provides necessary information and forms.

References:

Environmental Management and Conservation Act [CAP 283], 2002, Sections 11 to 28, http://www.paclii.org/vu/legis/consol_act/emaca412/

Ministry of Lands and Natural Resources website, <http://www.mol.gov.vu/environment-environmental-impact-assessment.php>. Accessed on April 30, 2014.

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

The Public Health Act [CAP 234], 1994, provides public safety regulation in relation to vessels, vehicles, buildings, housing and swimming pools, seatbelt requirements, etc., as well as sanitation and waste management, provision and protection of water supply, and other public safety and public health related matters. The Act provides that the Ministry of Health and local authorities have responsibilities under the Act to ensure compliance. The Act is publicly available online.

References:

Public Health Act [CAP 234], 1994, http://www.paclii.org/vu/legis/consol_act/pha126/.

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections to ensure compliance with licensing, health and safety regulations are carried out by Vanuatu Customs and Inland Revenue Services. Mr Harrison Rantes, a Compliance Officer with the Service, indicated that, while in the past, inspections have been done on an ad hoc basis, the service has recently improved, so that the majority of retail and tourism businesses were inspected in mid and late 2013.

Recent legislative changes requiring all businesses to hold a license mean that small businesses, including kava bars and road market stalls, will also be subject to licensing as well as health and safety inspections. The Customs and Inland Revenue Service is expected to have inspected all businesses on the island of Efate [which includes the nation's capital, Port Vila], by the end of February 2014. Mr Harrison indicated, however, that the number and frequency of business inspections is dependent on the budget available, and therefore constrained.

Health standard inspections on businesses are not often or consistently carried out by government officials in Vanuatu. While meat inspections are undertaken for the food vending stalls at Fest Napuan [a major annual music festival in Port Vila attracting tens of thousands of visitors over 5 days], there are no regular inspections of other food vendors (Interview, Mr Arthur Faerua).

The Editor of the Vanuatu Independent, Mr Tony Wilson, commented that, "The situation is that the health inspection service is reactive rather than proactive. So if a citizen makes a complaint about some food item, such as out of date stock, then health inspectors will go and follow up the complaint. Unfortunately they do not have the budget to make regular visits to premises selling food stuffs. In countries like Australia and New Zealand, all licensed food premises would be inspected regularly " not just following a complaint. Traders are aware of the situation in Vanuatu and are prepared to take the risk and sell stock that is past its use by date, knowing there is only a small chance of being caught."

A recent article in the Vanuatu Daily Post reported a major seizure of out of date food by the Port Vila Municipal Council. Council wardens confiscated five hundred 18.5kg bags of rice just before they were to be shipped from Port Vila to the island of Santo. It was reported that the bags had an expiry date of December 2012, and so were more than a year out of date.

References:

Mr Arthur Faerua, Legal Practitioner, A&J Consultant Services and Academic, School of Law, University of the South Pacific, Emalus Campus, Vanuatu, interview by the author, 17 February 2014, Port Vila Vanuatu.

Arthur V. Faerua, Vanuatu Import Monitoring Assessment, UNICEF, 2011, http://www.unicef.org/pacificislands/Vanuatu_Import_Monitoring_Assessment.pdf

Mr Harrison Rantes, Vanuatu Customs and Inland Revenue Services, Compliance Officer, interview by author, 19 February 2014, Port Vila Vanuatu.

Mr Tony Wilson, Editor, The Vanuatu Independent Newspaper, interview by the author, 19 February 2014, Port Vila, Vanuatu.

Thompson Marango, "500 Rice Bags Confiscated," Vanuatu Daily Post, 19 February, 2014

Thompson Marango, "Wrong expiry date on rice bags: Exporter," Vanuatu Daily Post, 26 February, 2014 <http://www.dailypost.vu/content/wrong-expiry-date-rice-bags-exporter>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There is some concern about the administration of environmental legislation. Concerns have been expressed that any one of a number of government agencies can undertake a preliminary EIA, and there is no requirement for anyone with qualifications, knowledge or experience to undertake the preliminary EIA. Given that it is also open to a number of agencies, there is also the possibility of developers 'PEA' shopping, to find the best 'deal', or of corruption, where the process is not controlled or managed with any transparency.

Of great concern is a story that was current in 2012, so outside the timeframe for this report, but which illustrates some of the very serious concerns with how EIA's are dealt with by the department that should be protecting the environment.

Limited staffing in the Department of Environment and Conservation is admitted, and much of the regulatory process is undertaken by developers in their planning stages (Vanuatu Daily Post, March 11, 2014).

References:

"Environment wants EIA as integral part of development", Vanuatu Daily Post, March 11, 2014, <http://www.dailypost.vu/content/environment-wants-eia-integral-part-development>

"Vanuatu Community Told, Geothermal Energy Risks Minimal", Bob Makin, Pacific Islands Report. April 1, 2014. <http://pidp.eastwestcenter.org/pireport/2014/April/04-02-13.htm>

"Bellevue acts environmentally for us all", Vanuatu Daily Post, 9 March 2012, <http://www.dailypost.vu/content/bellevue-acts-environmentally-us-all>

"Inadequate scrutiny of chicken project by DEPC under the spotlight at Bellevue meeting where developers refuse to be quoted", Vanuatu Daily Post, 22 February 2012, <http://www.dailypost.vu/content/inadequate-scrutiny-chicken-project-depc-under-spotlight->

"Environmental Impact Assessment Process", Ministry of Lands and Natural Resources: Environment and Conservation website. Accessed on May 21, 2014. <http://mol.gov.vu/environment-environmental-impact-assessment-process.php>

Environmental Protection and Conservation Act [CAP 283], Environmental Impact Assessment Regulations, Order No. Of 2011. http://www.nab.vu/sites/all/files/documents/03/04/2013%20-%2009%3A48/eia_regulation_jkp_v03_clean_text_1.pdf

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

Business inspections to ensure compliance with licensing, health and safety regulations are carried out by Vanuatu Customs and Inland Revenue Services. Mr Harrison Rantes, a Compliance Officer with the Service, indicated that, while in the past, inspections have been done on an ad hoc basis, the service has recently improved, so that the majority of retail and tourism businesses were inspected in mid and late 2013.

Recent legislative changes requiring all businesses to hold a licence mean that small businesses, including kava bars and road market stalls, will also be subject to licensing, health and safety inspections. The Customs and Inland Revenue Service is expected to have inspected all businesses on the island of Efate [which includes the nation's capital, Port Vila], by the end of February 2014. Mr Harrison indicated, however, that the number and frequency of business inspections is dependent on the budget available.

The Editor of the Vanuatu Independent newspaper, Mr Tony Wilson, pointed to recent media reports which indicate a level of public and business dissatisfaction with health and safety standards, for example, pertaining to new constructions, concerns which may be allayed by regular inspections.

The Vanuatu Customs and Inland Revenue Service reports that it has acted to improve its operations and capacity to identify and deal with attempts to bribe officials, including through greater cooperation between the Service and other Government agencies. One outcome from these efforts has been the successful prosecution of a business owner who attempted to bribe a Customs and Inland Revenue Officer in 2013. However, the findings of a survey undertaken in 2013 for Transparency International's Global Corruption Barometer, show that among respondents there is a perception that corruption has increased over the past 2 years, with 10% of respondents saying they had paid a bribe to an official in the past 12 months.

References:

Jonas Cullwick, "Prime Minister alerted on alleged risky building under construction near USP," Vanuatu Daily Post, Feb 19, 2014, 3, <http://www.dailypost.vu/content/prime-minister-alerted-alleged-risky-building-under-construction-near-usp>

Thompson Marango, "Chinese man fined Vt100,000," Vanuatu Daily Post, October 28, 2013, <http://www.dailypost.vu/content/bribery-case>

Mr Harrison Rantes, Vanuatu Customs and Inland Revenue Services, Compliance Officer, interview by author, 19 February 2014, Port Vila Vanuatu.

Mr Tony Wilson, Editor, The Vanuatu Independent Newspaper, interview with the author, 19 February 2014, Port Vila Vanuatu.

Transparency Vanuatu, Global Corruption Barometer Indicators 2013, http://www.transparencyvanuatu.org/index.php?mact=News.cntnt01_detail_0&cntnt01articleid=21&cntnt01returnid=60

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ~~67~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Some corruption offences are covered in the Penal Code Act [CAP 135], which at Section 28 includes that an "attempted offence shall constitute an offence punishable in the same manner as the offence concerned" (Section 28(4)).

The Leadership Code Act [CAP 240], which criminalises corruption in officials classified as leaders, also criminalises attempted corruption (Section 27(2)(m) and 27(2)(x)).

References:

Penal Code Act [CAP 135], 1988, Section 28, http://www.paclii.org/vu/legis/consol_act/pc66/

Leadership Code Act [CAP 240], 1998, Section 27, http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

Comments:

Section 138 of the Penal Code Act [CAP 135] states that:

"No person shall, with intent to extort or gain anything from any person-

(a) threaten expressly or impliedly to make about any person, living or dead, any accusation or disclosure of any offence, or moral misconduct, whether the accusation or disclosure is true or not;

(b) threaten expressly or impliedly that any person shall make any such accusation or disclosure about any person living or dead;

(c) threaten to publish, or offer to abstain from publishing, any defamatory words within the meaning of section 120;

(d) send or cause to be sent to any person any document containing any such threat;

(e) by any such means compel or attempt to compel any person to sign, execute, make, accept, endorse, alter, or destroy the whole or part of any valuable security, or to write, impress, or affix any name or seal upon any document in order that it may afterwards be used as a valuable security;

(f) by any such means induce or compel or attempt to induce or compel any person to do any act against his will, other than an act which it is his legal duty to do, or not to do any lawful act."

References:

Penal Code Act [CAP 135], 1988, Section 138, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

Comments:

Section 73(2) of the Penal code Act [CAP 135] states that, "No person shall corruptly give or offer or agree to give any bribe to any person with intent to influence any public officer in respect of any act or omission by him in his official capacity" and anyone found guilty of offering any benefits like money or valuable consideration to influence decisions can be imprisoned for ten years.

The Value Added Tax [CAP 247] also prohibits bribery of officials. Section 51(1) states that it is unlawful when any person "commits any of the following acts:

- (i) offers or gives, whether directly or indirectly to the Director or an officer of the Department or person appointed by the Director to assist the Department, any payment or reward whether in money or otherwise;
- (ii) proposes to enter or enters into any agreement with the Director, officer or person so appointed by the Director; to induce him or her to do, abstain from doing, to permit or conceal any act intended to defraud the Government or otherwise unlawful under this Act or any other law."

Bribery relating to elections and voting is prohibited under Section 45 of the Representation of the Peoples Act [CAP 146].

References:

Penal Code Act [CAP 135], 1988, Section 73, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Value Added Tax Act [CAP 247], 2005, Section 51, http://www.paclii.org/vu/legis/consol_act/vata132/

Representation of the Peoples Act [CAP 146], 1982, Section 45, http://www.paclii.org/vu/legis/consol_act/rotpa298/

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

Section 73 of the Penal Code Act [CAP 135] states that, "No public officer shall, whether within the republic or elsewhere, corruptly accept or obtain or agree or offer to accept or attempt to obtain any bribe for himself or any other person in respect of any act done or omitted or to be done or omitted, by him in his official capacity."

Bribery of leaders is specifically covered under Section 23 of the Leadership Code Act [CAP 240] states that a leader must not "(a) corruptly ask for or receive; or (b) agree to ask for or obtain; any money, property, or other benefit or advantage of any kind" for him or herself, another person, "in exchange for his or her acts or omissions as a leader being influenced in any way, either directly or indirectly."

References:

Penal Code Act [CAP 135], 1988, Section 73, http://www.paclii.org/vu/legis/consol_act1988/pc66/

Leadership Code Act [CAP 240], 1998, Section 23, http://www.paclii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | **No**

Comments:

No such mechanism exists. A review of Vanuatu's implementation of the United Nations Convention Against Corruption in 2013 reported that "[b]ribery of foreign public officials and officials of public international organizations, and bribery in the private sector are not criminalized."

References:

UN Implementation Review Group, Country Report UNCAC Vanuatu 2013, Executive Summary: Vanuatu, Panama City, 26-27 November 2013, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

Section 34 of the Public Service Act [CAP 246] states that Government officers must "(j) use resources and public money in a lawful and proper manner."

The Public Service Act also says, at Section 36(1), that an officer in the public service can be disciplined if he or she "(f) improperly uses or removes property, stores, monies, stamps, securities or negotiable instruments for the time being in his or her official custody or under his or her control, or fails to take reasonable care of any such property, stores, monies, stamps, securities or negotiable instruments". Disciplinary action under the Public Service Act can include a warning or reprimand, demotion, suspension without pay, compulsory retirement or dismissal (Section 37(9)).

References:

Public Service Act [CAP 246], 2001, Sections 34, 36 and 37, http://www.paclii.org/vu/legis/consol_act/psa152/

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:

Section 34 of the Public Service Act [CAP 246] states that Government officers must "(j) use resources and public money in a lawful and proper manner; and (l) not make improper use of information or his or her duty, status, power or authority in order to gain or seek to gain a benefit or advantage for himself or herself or for any other person."

The Public Service Act also provides, in Section 36, that any officer in the public service who "(g.) otherwise than in the proper discharge of his or her duties directly or indirectly discloses or for private purposes uses any information acquired by him or her either in the course of his or her duties or in his capacity as an employee;" will be disciplined. Disciplinary action under the Public

Service Act can include a warning or reprimand, demotion, suspension without pay, compulsory retirement or dismissal (Section 37(9)).

Section 2 of the Official Secrets Act [CAP 3] states that any Government officer who “(a) without lawful authority, obtains, collects, records, publishes or has in his possession any classified material or (b) contrary to his official duty communicates any classified material to any person” or “(e) uses, or permits to be used, any classified material in his possession or under his control in a manner which is calculated to be or might be or is intended to be indirectly prejudicial to the safety or interests of the Government, shall be guilty of an offense.”

References:

Official Secrets Act [CAP 3], 1980, Section 2, http://www.paclii.org/vu/legis/consol_act/osa156/

Public Service Act [CAP 246], 2001, Sections 34, 36 and 37, http://www.paclii.org/vu/legis/consol_act/psa152/

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

Comments:

The Proceeds of Crime Act [CAP 284] criminalises money laundering: “A person engages in money-laundering only if the person: (a) acquires, possesses or uses property or engages directly or indirectly, in an arrangement that involves property that the person knows or ought reasonably to know to be proceeds of crime; or (b) converts or transfers property that the person knows or ought reasonably to know to be proceeds of crime; or (c) conceals or disguises the true nature, source location, disposition, movement, ownership of or rights with respect to property that the person knows or ought reasonably to know to be proceeds of crime.” (Section 11)

Section 12 of the Act also criminalises possession of the proceeds of crime. Section 12(1) states that a person that “receives, possesses, conceals, disposes of or brings into Vanuatu money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence.”

Changes to the Proceeds of Crime Act through the Proceeds of Crime (Amendment) Act of 2012 amended the Act so that a person can be convicted of “both money-laundering and the underlying predicate offences, according to section 11(3) and (4) of [the Act]” (UN Implementation Review Group, Country Report UNCAC Vanuatu 2013).

References:

Proceeds of Crime Act [CAP 284], 2002, Sections 11 and 12, http://www.paclii.org/vu/legis/num_act/poca2002160

Proceeds of Crime (Amendment) Act, No 12 of 2012, http://www.paclii.org/vu/legis/num_act/poca2012240

UN Implementation Review Group, Country Report UNCAC Vanuatu 2013, Executive Summary: Vanuatu, Panama City, 26-27 November 2013, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

Section 29 of the Penal Code Act [CAP 153] states that:

“(1) Conspiracy is an agreement, express or implied, between two or more persons to do an act which, if done, even by one person, would constitute a criminal offence.

(2) There can be no conspiracy between husband and wife.

(3) The criminal responsibility of a conspirator who voluntarily withdraws from the conspiracy before the commission of the offence shall be diminished.

(4) A conspiracy to commit a criminal offence shall be punishable only where expressly provided by any provision of law.

(5) No person shall be prosecuted as a conspirator without the consent in writing of the Public Prosecutor.”

References:

Penal Code Act [CAP 135], 1981, Section 29, http://www.paclii.org/vu/legis/consol_act/pc66/

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

While there is no single agency tasked with combating corruption, such as an anti-corruption commission, there are a range of agencies involved in combating and prosecuting corruption in Vanuatu. The Office of the Ombudsman, Attorney General's Office, Vanuatu Police Force, Office of the Public Prosecutor, Vanuatu Financial Intelligence Unit, and Public Service Commission are all involved in the criminalization and enforcement of corruption, while all criminal charges are prosecuted by the Public Prosecutor (Implementation Review Group).

The anti-corruption mandate is largely held by the Office of the Ombudsman and the Auditor General. The Office of the Ombudsman (Constitution of the Republic of Vanuatu, 1980, Article 61) investigates corruption within the public sector and breaches of the Leadership Code Act. The Auditor General is to review and confirm the discharge of financial management obligations within the public sector (Expenditure Review and Audit Act [CAP 241], Article 27(c)).

Additionally, four units within the Police Force deal with corruption, the Serious Crime Unit, the Fraud Unit, the Intelligence Unit and the Transnational Crime Unit.

The Office of the Public Prosecutor (Constitution of the Republic of Vanuatu, 1980, Article 55) receives matters referred by the Ombudsman and the Police Force.

References:

Constitution of the Republic of Vanuatu, 1980, Article 25, 55, 61, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Expenditure Review and Audit Act [CAP 241], 1998, http://www.paclii.org/vu/legis/consol_act/eraaa293/

Police Act [CAP 105], 1980, http://www.paclii.org/vu/legis/consol_act/pa75/

Financial Transactions Reporting Act [CAP 268], 2000, http://www.paclii.org/vu/legis/consol_act/fttra335/

Public Service Act [CAP 246], 1998. http://www.paclii.org/vu/legis/consol_act/psa152/

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

53

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

All of the agencies dealing with corruption are protected from political interference in law:

Article 65 of the Constitution of the Republic of Vanuatu provides that the "Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions."

Under Article 25 of the Constitution of the Republic of Vanuatu, the "Auditor-General shall not be subject to the direction or control of any other person or body in the exercise of his functions."

The State Law Office Act [CAP 242] prohibits interference at Section 21: "The President, Government and all other persons whether in the Public Service or otherwise must not interfere or attempt to interfere in the performance and independence of the Attorney General and the Office."

Article 55 of the Constitution of the Republic of Vanuatu provides that the "function of prosecution shall vest in the Public Prosecutor, who shall be appointed by the President of the Republic on the advice of the Judicial Service Commission. He shall not be subject to the direction or control of any other person or body in the exercise of his functions."

The Police (Amendment) Act No 22 of 2010 provides that the Police Service Commission, which provides advice to the President of the Republic on appointment of a Police Commissioner and appoints other senior officers to the Police Force, and assists the Police Force with human resource and disciplinary matters, is not subject to the direction and control of any other person or body (Section 1B(1)).

References:

Constitution of the Republic of Vanuatu, 1980, Articles 25, 55 and 65, http://www.paclii.org/vu/legis/consol_act/cotrov406/

State Law Office Act [CAP 242], 1998, Section 21, http://www.paclii.org/vu/legis/consol_act/sloa152/

The Police (Amendment) Act No 22 of 2010, http://www.paclii.org/vu/legis/num_act/pa2010155/

The Public Service Act [CAP 246], 1998, http://www.paclii.org/vu/legis/consol_act/psa152/

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

While there is no single agency tasked with combating corruption, such as an anti-corruption commission, there are a range of agencies involved in combating and prosecuting corruption in Vanuatu (Implementation Review Group, 2013). Two of the main agencies involved are the Ombudsman and Auditor General.

There have been no recent reports of political interference in the work of the Office of the Ombudsman. Staff of the Office have indicated this, as well as external reports (US Department of State). Although the Auditor General has been under-resourced and has struggled to hire sufficiently qualified staff through the Public Service Commission (Correspondence with office staff, June 16,

2014). Also there have been significant delays in their reports, they do not have the power to release their reports to the public until such time as they have been tabled in Parliament, something that has been considerably delayed for reports over the past few years (Vanuatu Daily Post, 27 August 2013). However, there have been no reports that the office is influenced in its investigations by direct political influence, but rather by its resource constraints.

References:

Mr Yan, Corporate Services Officer, Office of the Ombudsman, interview with researcher, 19 February 2014

US Department of State, Country Reports on Human Rights Practices for 2013: Vanuatu, 2013, <http://www.state.gov/documents/organization/220453.pdf>

Mr Gideon Nimbwen, Legal Officer, Transparency International Vanuatu, interview with researcher, 20 February 2014

Beulah Daunakamakama, Technical Adviser, Office of the Auditor General, "Changing Vanuatu's Auditing Tide", AV Magazine, Winter 2013, http://issuu.com/australianvolunteersinternational/docs/avi_magazine_june2013_web_72dpi_rgb/24

Correspondence with Beulah Daunakamakama, Senior Auditor, Office of the Auditor General, June 16, 2014.

"Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

Ricky Binihi, "Carcasses requests Auditor General to investigate VNPf", Vanuatu Daily Post, 12 August 2012, <http://www.dailypost.vu/content/carcasses-requests-auditor-general-investigate-vnfp>

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

While there is no single agency tasked with combating corruption, such as an anti-corruption commission, there are a range of agencies involved in combating and prosecuting corruption in Vanuatu (Implementation Review Group, 2013). Two of the main agencies involved are the Ombudsman and Auditor General.

The Ombudsman can only be removed from office if he or she is declared bankrupt, convicted and sentenced on a criminal charge, becomes incapacitated, if a finding of gross misconduct is made against him or her, or if the Ombudsman is convicted of an offence under the Leadership Code Act [Cap. 240] (Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila Vanuatu).

The Auditor General serves a defined term (Expenditure Review and Audit Act), and there have not been any allegations of interference leading to removal of an Auditor General.

However, it is not clear that heads of other agencies involved in investigating or prosecuting for corruption are, in practice, similarly protected from removal.

References:

Godwin Ligo, "New chairman for Public Service Commission", Vanuatu Daily Post, 8 May 2013, <http://www.dailypost.vu/content/new-chairman-public-service-commission>

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Expenditure Review and Audit Act [CAP 241], 1998, Section 5, http://www.pacii.org/vu/legis/consol_act/eraaa293/

Expenditure Review And Audit (Amendment) Act, No. 21 Of 2007, http://www.pacii.org/vu/legis/num_act/eraaa2007373/

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

While there is no single agency tasked with combating corruption, such as an anti-corruption commission, there are a range of agencies involved in combating and prosecuting corruption in Vanuatu (Implementation Review Group, 2013). Two of the main agencies involved are the Ombudsman and Auditor General.

Some appointments to the anti-corruption agencies are undertaken outside of the agencies, by the Public Service Commission, a process which has been criticized for being too cumbersome and slow, resulting in potential high quality candidates finding alternative employment while awaiting the outcome of the selection process. This process has Auditor General's office has been hindered in hiring qualified staff (correspondence with Beulah Daunakamakama). However, there have not been any allegations that officers appointed to the Office of the Ombudsman are appointed on other than professional criteria (Interview with government officer, 13 May 2015).

However, it is less clear if the appointments to the other entities similarly support their independence.

References:

Interview with staff member who requested anonymity, the office of the Ombudsman, 13 May 2015, Port Vila, Vanuatu

Correspondence with Beulah Daunakamakama, Senior Auditor, Office of the Auditor General, June 16, 2014.

Godwin Ligo, "New chairman for Public Service Commission", Vanuatu Daily Post, 8 May 2014, <http://www.dailypost.vu/content/new-chairman-public-service-commission>

"Poor Police recruit result", Letter to the Editor published in the Vanuatu Daily Post, Chief John Roy Tabangasa. May 5, 2014. <http://www.dailypost.vu/content/poor-police-recruit-result>

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

All anti-corruption agencies struggle without enough resources to undertake all of their expected functions, and this has been a consistent impression across all publicly funded bodies, who often rely on external assistance from donor partner countries to fulfill even basic functions.

Resourcing issues have been identified by the current Ombudsman as a significant impediment to undertaking the work of the Office. The number of staff in the office are a hinderance to the agency's effective work (Vanuatu Daily Post, 29 April 2013).

Likewise, the Office of the Auditor General has been severely hampered through a lack of adequate resources, including appropriately qualified and trained staff (correspondence with Beulah Daunakamakama).

The Vanuatu Financial Intelligence Unit within the State Law Office has similarly struggled with a small budget and limited staff (VFIU Annual Report). The 2013 review of implementation of the United Nations Convention against Corruption recommended that "Sufficient resources should be made available for capacity-building and the development of processes to address constraints and backlogs in the investigation, prosecution and adjudication of cases" (Implementation Review Group, p8).

References:

Jonas Cullwick, "Ombudsman appeals for an increase in resources," Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

Correspondence with Beulah Daunakamakama, Senior Auditor, Office of the Auditor General, June 16, 2014.

Vanuatu Financial Intelligence Unit Annual Report 2010-2012, State Law Office, Government of Vanuatu, <http://www.fiu.gov.vu/doc/Vanuatu%20FIU%20Annual%20Report%202010-12.pdf>

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Vanuatu Financial Intelligence Unit Annual Report (2010-2012), Accessed on June 8, 2014. <http://fiu.gov.vu/index.php?id=20&report=2010-2012#tops>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget allocation for the Office of the Ombudsman in 2012 and 2013 was 40,972,648 VT (431,655 USD), and in 2014 the allocation is 36,500,000 VT (384,534 USD) (Department of Finance and Treasury, Budget Appropriation 2012 and 2013, <http://doft.gov.vu/index.php/widgetkit/budget-appropriation>; Pacific Economics, Vanuatu Budget 2014, <http://economics.pacificpolicy.org/vanuatu/spending-wheel>).

The annual budget for the National Audit Office has been consistent, and in 2013 was approximately 32 million vatu (\$315,000USD), which remained unchanged from 2012 (see Government of the Republic of Vanuatu, Budget 2013 and 2012), with funding for audit operations totaling approximately 19 million vatu (\$200,000USD).

Since 2011, Vanuatu has established a Financial Intelligence Unit (FIU), but effective implementation and enforcement still need to be demonstrated. Personnel and financial resources of the FIU are too limited (International Monetary Fund, p13).

References:

International Monetary Fund, Article IV Consultation: IMF Country Report No. 13/169, June 2013, <http://www.imf.org/external/pubs/ft/scr/2013/cr13169.pdf>

Department of Finance and Treasury, Budget Appropriation 2012 and 2013, <http://doft.gov.vu/index.php/widgetkit/budget-appropriation>

Pacific Economics, Vanuatu Budget 2014, <http://economics.pacificpolicy.org/vanuatu/spending-wheel>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Once approved for publication, reports on investigations of the Office of the Ombudsman are made available on request from its offices in Port Vila and Luganville (the two main urban centres in Vanuatu), and are also available from the Public Library and the library at the Emalus Campus of the University of the South Pacific in Port Vila and online through the Paclii website, <http://www.paclii.org/vu/ombudsman/> (however, the most recent report listed on the website was from April 2012, with the 2012 annual report still outstanding).

The Office of the Ombudsman makes public reports on investigations, where the Ombudsman has not made a determination that a report or a part of a report must remain confidential. In 2013, the Office of the Ombudsman issued three reports on investigations (Vanuatu Television News, TBV, 8 April 2014). However, none of these three are available on the Paclii website (<http://www.paclii.org/vu/ombudsman/>).

The National Audit Office has not produced many public reports and has been hampered in its function for a number of years by constrained resources, as well as by delays in Parliament that constrain when audit reports can be made public (Vanuatu Daily Post, 27 August 2013).

The majority of other agencies involved in anti-corruption activities do not routinely produce reports. The Financial Intelligence Unit within the State Law Office has produced three public reports, its Annual Report for 2008, 2009 and 2010-2012.

References:

Vanuatu Television News Bulletin, Television blong Vanuatu, Tuesday 8 April 2014.

Pacific Islands Legal Information Institute website, accessed on April 23, 2014. <http://www.paclii.org/vu/ombudsman/>.

"Auditor General says he supports transparency," Vanuatu Daily Post, 27 August 2013, <http://www.dailypost.vu/print/13307>

Annual Reports, Vanuatu Financial Intelligence Unit, State Law Office, Government of Vanuatu, <http://fiu.gov.vu/index.php?id=20>. Accessed on April 30, 2014.

Actra Advisers, Republic of Vanuatu: Public Financial Management Performance Report: Final Report, European Commission, November 2009.

ECORYS Nederland BV, Vanuatu Public Expenditure and Financial Accountability: Final Report 2006, European Commission Vanuatu Delegation, July 2006.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The powers available to agencies to combat corruption are not sufficient to be effective. For example, the Government of Vanuatu has recognised that the Ombudsman needs greater powers in order to effectively combat corruption and ensure accountability of leaders. In its 100 day plan, released in April 2013, and in subsequent public announcements, the Prime Minister has committed to amending the Ombudsman Act (Vanuatu Daily Digest, 11/4/2013). Resource constraints as well as certain limitations on access to information make it challenging to initiate investigations in certain circumstances. For example, the Ombudsman can undertake investigations of leaders for suspected breaches of the Leadership Code Act, yet leaders' annual asset returns must remain confidential unless the Clerk of Parliament is satisfied that they will assist with an investigation or prosecution. Therefore the Ombudsman has no power to routinely examine these annual returns for irregularities or breaches of the Act. (Office of the Ombudsman, Public Report, 19 August 2009). While this report was from 2009, this continued to apply in the period of study.

There is uncertainty on the part of the Public Prosecutor and the Police Force as to their powers particularly in relation to prosecuting breaches under the Leadership Code Act. This at least has been used in two cases for delays in, and eventually decisions against, acting on the recommendations of the Ombudsman to prosecute. (Pacific Islands Report, 5 February 2012). While the two incidents in question are outside of the timeframe for this report, they are issues that have not been resolved to date and continue to influence those responsible for prosecuting corrupt officials.

The fact that enforcement necessitates coordination between agencies involved in combatting corruption, it has been noted that inter-agency coordination and collaboration need to be improved, as well as increased resources made available to clear backlogs in investigation, prosecution and adjudication of cases. Additionally, witnesses are not afforded adequate safeguards against retribution, so additional protection for whistleblowers would aid investigations (Implementation Review Group, pp7-8).

References:

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Bob Makin, "Carcasses Government releases "100 Day" list", Vanuatu Daily Digest, 11/4/2013, <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list>

Royson Willie, "Vanuatu Ombudsman Seeks Prosecution Of Minister Iauko", Vanuatu Daily Post, reproduced at Pacific Islands Report, 5 February 2012, <http://pidp.eastwestcenter.org/pireport/2012/February/02-07-21.htm>

Office of the Ombudsman, Public Report on the Failure of 188 Leaders Who Failed to Submit Annual Returns for 2007, 19 August 2009, <http://www.paclii.org/vu/ombudsman/2009/>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Resource constraints as well as certain limitations on access to information make it challenging to initiate investigations in certain circumstances. In 2013, the Office of the Ombudsman issued three reports on investigations (Mr. Yan, interview). The number of reports on investigations has declined significantly, as bemoaned by the Ombudsman in 2013 in an appeal for more resources ("Ombudsman appeals"). The number of reports is an indicator of the number of investigations completed by the Ombudsman.

While there are some investigations undertaken by the office (“Six staff suspended”), there are other examples of inaction or delays. For instance, the Ombudsman was recently pushed to investigate by Transparency International Vanuatu, which reference the Ombudsman’s inaction and delays on investigations (“Commission of Inquiry”).

There is also some uncertainty on the part of other agencies, notably the police force and Public Prosecutor, which should be involved in investigation and prosecution of corruption offenses about their powers, which limits their ability and willingness to initiate investigations.

References:

Jonas Cullwick, “Ombudsman appeals for an increase in resources,” Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

Mr Yan, Corporate Officer, Office of the Ombudsman, interview with researcher, 19 February 2014, Port Vila, Vanuatu

“Six staff suspended in State Land misappropriation probe”, May 22, 2014, Vanuatu Daily Post. <http://www.dailypost.vu/content/six-staff-suspended-state-land-misappropriation-probe>

“Commissions Of Inquiry Into The Fishermen’s Claim”, February 15, 2014, Vanuatu Daily Post. <http://www.dailypost.vu/content/commissions-inquiry-fishermen%E2%80%99s-claim>

Roysen Willie, “Vanuatu Ombudsman Seeks Prosecution Of Minister Iauko”, Vanuatu Daily Post, reproduced at Pacific Islands Report, 5 February 2012, <http://pidp.eastwestcenter.org/pireport/2012/February/02-07-21.htm>

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Transparency International Vanuatu’s study on the Office of the Ombudsman made an examination of data available from the Office’s annual reports. These reports showed an increase in the amount of time taken to handle complaints, with the latest data showing the average time to resolve a complaint being 4 years and 3 months (Anita Jowitt, National Integrity System Study: Ombudsman, Transparency International Vanuatu, 2013, p15).

The current Ombudsman, who was appointed in early 2013, has spoken publicly of the need to improve systems, recruitment and management in order to achieve speedier resolution of complaints and investigations (Jonas Cullwick, “Ombudsman appeals for an increase in resources,” Vanuatu Daily Post, 29 April 2013; Television News Bulletin, Television blong Vanuatu, Tuesday 8 April 2014). The Ombudsman has sought assistance both from the Vanuatu Government and also regional organisations to assist with additional resources and with better use of existing resources (Network News: Issue 32, Pacific Ombudsman Alliance, November 2013).

Once recommendations are made, they are not frequently followed. An investigation into human rights in Vanuatu in 2013 found that while the Office of the Ombudsman had investigated complaints of police corruption (inaction and maladministration), “the results and recommendations provided to the commissioner for police elicited no prosecutions during the year.” (US Department of State, Vanuatu 2013 Human Rights Report, p8).

References:

Anita Jowitt, National Integrity System Study: Ombudsman, Transparency International Vanuatu, 2013, <http://www.transparencyvanuatu.org/index.php?page=national-integrity-system-project>

Jonas Cullwick, "Ombudsman appeals for an increase in resources," Vanuatu Daily Post, 29 April 2013, <http://www.dailypost.vu/content/ombudsman-appeals-increase-resources>

Television News Bulletin, Television blong Vanuatu, Tuesday 8 April 2014

Network News: Issue 32, Pacific Ombudsman Alliance, November 2013, http://www.pacificombudsman.org/news/network_news/network_news_issue_32.pdf

Royson Willie, "Vanuatu Ombudsman Seeks Prosecution Of Minister Iauko", Vanuatu Daily Post, reproduced at Pacific Islands Report, 5 February 2012, <http://pidp.eastwestcenter.org/pireport/2012/February/02-07-21.htm>

US Department of State, Vanuatu 2013 Human Rights Report: Executive Summary. Accessed on June 18, 2014. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

While it is common practice for the Office of the Ombudsman and the Internal Audit Office of the Ministry of Finance and Economic Management to protect whistleblowers and persons making complaints (Harrison, March 1, 2014), some anti-corruption observers have noted that there is a disincentive for civil servants to report cases of corruption or abuse of power for fear of loss of employment (Anti-Corruption Advocate, March 3, 2014).

Although outside of the period of this study, an example from 2012 illustrates the disincentive for civil servants to report corruption. In the lead up to the October 2012 elections, a blog site called "Talemaot" was created to "expose corruption within government." The blogger, a civil servant, leaked documentation exposing particular government officials involved in improper conduct, apparently because he was unable to report this internally (NGO Official, February 22, 2014). The Director-General of the Prime Minister's Office issued a public statement denouncing the site and warning other civil servants against improper sharing of government documentation. He issued a directive to the government's IT services to shut down the site and the civil servant was disciplined (Vanuatu Daily Digest, July 2012).

At a recent public meeting, a young politician commented that when he had criticised the public service, he had been threatened for doing so; as a former public servant, he was able to confirm that junior officers are afraid to speak out, for fear of losing their jobs (13 May 2014).

References:

"Vanuatu Media Group Discusses Journalist's Arrest With PM", Vanuatu Daily Post republished at Pacific Islands Report, 16 May 2013, <http://pidp.eastwestcenter.org/pireport/2013/May/05-17-12.htm>

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 25 November 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

Interview with NGO representative who requested anonymity. February 22, 2014.

Interview with Anti-Corruption Advocate who requested anonymity, March 1, 2014.

Interview with Charlie Harrison, Secretariat, Vanuatu Association of NGOs (VANGO). March 1, 2014.

"Director-General PM's Office advises MFEM investigating VNPf", Talemaot, July 24, 2012. Archive captured by Vanuatu Daily Digest. <https://vanuatudaily.wordpress.com/2012/08/07/talemaot-archive-director-general-pms-office-advises-mfem-investigating-vnpf/>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

63
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

Yes | No

Comments:

The Criminal Procedure Code Act [CAP 136] provides for appeals to the Supreme Court and Court of Appeal. Section 200 of the Act states that:

"(1) Any person convicted on a trial held by a Magistrate's Court may appeal to the Supreme Court.
(2) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal."

Sections 201 through to 212 outline the appeal procedures to be followed; Section 207 provides that "An appellant whether in custody or not shall be entitled to be present at the hearing of his appeal".

References:

Criminal Procedure Code Act [CAP 136], 1988, Sections 200 to 212, http://www.paclii.org/vu/legis/consol_act1988/cpc190/

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In the the most recent Judiciary of The Republic Of Vanuatu: Annual Report 2012, it was reported that, in 2012, 54 criminal cases were referred to the Court of Appeal from the Supreme Court, and of these cases, 42 (78%) were finalised in 2012. There were no cases held over from earlier years. There is no data available disaggregated to show criminal appeals heard in the Supreme Court. However the average duration of cases heard in the Supreme Court was 65 work days. No more recent data or analyses are available in relation to criminal appeals in Vanuatu courts.

The Chief Registrar of the Judiciary, however, indicated that the Vanuatu courts have the best clearance rate for appeals in the Pacific Islands region, and that delays in terms of criminal cases are due to lack of resources and the challenges of accessing remote and isolated areas where the majority of the population reside, for example, in executing warrants and getting people to the court (Mr John Obed Alilee, Chief Registrar, Judiciary of the Republic of Vanuatu, 13 May 2014).

References:

Judiciary of The Republic Of Vanuatu: Annual Report 2012, March 2013, <http://www.paclii.org/vu/judicial-services-courts/court-annual-reports/main.htm>

Mr John Obed Alilee, Chief Registrar, Judiciary of the Republic of Vanuatu, National Integrity System Study Validation meeting, 13 May 2014

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

Access to justice, including appeals, is available to all in law, however, it is limited in practice in Vanuatu. Vanuatu has a small, widely dispersed population, 76% of whom live in rural areas, and mainly living by subsistence who are not part of the formal economy (as of a 2010 report).

There is no court fee for filing a criminal appeal, and the Public Solicitor will assist those on low incomes based on means testing during the hearing (Officer with the Vanuatu Public Solicitor's Office).

However, the Public Solicitor's Office has been plagued by staff shortages and high staff turnover for a number of years, and this significantly affects its capacity to provide adequate legal counsel. This means that, despite legal representation in theory being available through this Office for those who cannot afford private representation, in practice it is not readily available to most – and based on the mismatch between need for services and the Public Solicitor's resources, the USP Community Legal Centre cites a backlog of over 10 years.

For those that wish to contract with private legal assistance, the USP Community Legal Centre states that average hourly rates range from 2,000 vt to more than 30,000vt, and that "A person employed full time for a month at minimum wage could afford 48 minutes of a lawyer's time."

This means that there are considerable limitations on and delays to access to representation from the Public Solicitor's Office.

References:

Officer with the Public Solicitor's Office who requested anonymity, interview with researcher, Port Vila, Vanuatu, 2 April 2014.

Harrison Selmen, "MP assault on officer causes office to shut down," Vanuatu Daily Post, 19 September 2013, <http://www.dailypost.vu/content/mp-assault-officer-causes-office-shut-down>

University of the South Pacific, The USP Community Legal Centre: Combining legal education and legal services in a developing island country, <http://www.usp.ac.fj/index.php?id=13270>, updated 25 October 2013

"Threat closes Solicitor's Office," Vanuatu Daily Post, 25 November 2013, <http://www.dailypost.vu/content/threat-closes-solicitor%E2%80%99s-office>

Miranda Forsyth, A Bird That Flies With Two Wings: Kastom and state justice systems in Vanuatu, ANU E-Press, Australia, 2009, press.anu.edu.au/titles/kastom_citation/

Prime Minister's Office, Millennium Development Goals 2010 Report for Vanuatu, Government of the Republic of Vanuatu, September 2010. <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/vanuatu-mdg-report-2010.pdf>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

While there have been no complaints recorded suggesting that judgements do not follow the law, there is evidence that other, mainly resourcing issues, are hampering the justice system, including issuing judgements.

The available annual reports for the Vanuatu Judicial System (2009-2012) contain commentary from the Chief Justice on issues arising at each court level during the year covered by the report; a review of these has found no reference to concerns with decisions issued (Vanuatu Judicial Services & Courts Annual Reports, Pacific Legal Information Institute, <http://www.paclii.org/vu/court-annual-reports/main.htm>).

References:

Vanuatu Judicial Services & Courts Annual Reports, Pacific Legal Information Institute, <http://www.paclii.org/vu/court-annual-reports/main.htm>

Transparency Vanuatu, "Has Access to Justice Improved?", Yes! Yumi Save Stopem Korapsen, 28 June 2013, <http://transparencyvanuatu.wordpress.com/2013/06/28/has-public-access-to-justice-improved/>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Generally, court judgements are enforced, however there are some significant exceptions. A key issue that has been raised in a number of arenas is the lack of resources and the strain that this places on the justice system to function effectively. One consequence of this is delays or failure to enforce decisions. This was one finding in Transparency International Vanuatu's 2013 examination of delays in the justice system (Vanuatu Judicial Monitoring System Research Report, p37-8). In one case, it was

found that a particular case took 11 years to be completed, and yet following the final judgement and award of damages, the damages were not paid (Yes! Yumi Save Stopem Korapsen, 28 June 2013).

A United States Department of State report on human rights in Vanuatu found that: "There is an independent and impartial judiciary for civil matters, including for human rights violations; however, police were often reluctant to enforce domestic court orders, particularly when the orders concerned their own family or clan members." (US Department of State, Country Reports on Human Rights Practices for 2013, p5).

References:

Transparency Vanuatu, Vanuatu Judicial Monitoring System Research Report, 2013, http://www.transparencyvanuatu.org/index.php?mact=News,cntnt01_detail_0&cntnt01_articleid=42&cntnt01_returnid=66

US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

Transparency Vanuatu, "Has Access to Justice Improved?", Yes! Yumi Save Stopem Korapsen, 28 June 2013, <http://transparencyvanuatu.wordpress.com/2013/06/28/has-public-access-to-justice-improved/>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

69

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

Article 47(1) of the Constitution of the Republic of Vanuatu provides that "The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law."

Section 3 of the Judicial Services and Courts Act [CAP 270] outlines the objects of the Judicial Services Commission, which include "to promote and protect the independence and the efficiency of the Judicial Service" (Section 3(1(a))). CAP 270 also specifically inhibits the responsible Minister, stating that, "The Minister must not act so as to interfere with the independence of the Judicial Service in performing his or her functions:

- (a) as the Minister responsible for justice; and
- (b) as the Chairman of the Commission." (Section 3(2)).

Funding of the judiciary is dealt with at Section 49 of CAP 270:

"49. Funding of the Judicial Service and the Vanuatu Courts

(1) The Government must ensure that there is a sufficient budget allocated for the operations of the Judicial Service and the Vanuatu Courts to enable the Judicial Service to perform its functions and each of the Courts to exercise its jurisdiction and powers as provided for under the Constitution, this Act and any other law.

(2) The operations of the Judicial Service and the Vanuatu Courts are to be funded by monies appropriated by Parliament for that purpose.

(3) To avoid doubt, the budget procedure provided for by the Public Finance and Economic Management Act [Cap. 244] applies in relation to the budget for the operations of the Judicial Service and the Vanuatu Courts. "

References:

Constitution of the Republic of Vanuatu, 1980, Article 47, http://www.paclii.org/vu/legis/consol_act/cotrov406/

Judicial Services and Courts Act [CAP 270], Sections 3 and 49, http://www.paclii.org/vu/legis/consol_act/jsaca280/

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary is generally regarded as operating independently and with integrity. According to the most recent annual report on the judiciary (2012, published in 2013), the judiciary enjoys a high degree of independence in its work, with the only issue raised being the delay of funding through the Ministry of Finance. Likewise, other reports have not noted any cases of political interference in the courts work, but have instead focused on the court's backlog of cases (Judicial Monitoring System Research Report)

A recent attempt by a politician to influence judges was as well a public display of the judiciary's independence. As reported in the media in 2013, when a former health minister, MP Don Ken, was ordered by the Chief Justice to "apologize to an open court for inviting court personnel to a kava night in advance of associates being convicted of criminal offenses involving kidnapping, intentional assault and extortion. Chief Justice Lunabek pointed out that Ken wanted the Chief Justice, the presiding trial judge, to have kava with him so he could talk to the Chief Justice before a judgement was given" (Vanuatu Daily News Digest, 24 June 2013).

References:

Chief Justice Vincent Lunabek, Judiciary of the Republic of Vanuatu Annual Report 2012. Released March 2013.
<http://www.paclii.org/vu/judicial-services-courts/court-annual-reports/2012.html>

Bob Makin, Vanuatu Daily News Digest, 24 June 2013, <http://vanuatudaily.wordpress.com/2013/06/24/vanuatu-daily-news-digest-24-june-2013/>

Vanuatu Judicial Monitoring System Research Report, Transparency International Vanuatu, August, 2013, http://www.transparencyanuatu.org/index.php?mact=News,cntnt01,detail_0&cntnt01articleid=42&cntnt01returnid=66

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

The system for allocating cases to national level judges is not transparent; information on how cases are allocated is not public. However, the courts are operated independent of the Executive, and all administration rests with the Chief Justice and the Chief Registrar (Judiciary of the Republic of Vanuatu, Annual Report 2012).

The Pacific Judicial Development Program has identified significant problems with court administration, for which plans have been established to address. In its assessment report of 2012, a case study of Vanuatu found that court operations "are affected by a lack of supervisory and quality control systems. This causes case and file management systems to break down and judges to be overly burdened with routine administrative issues" (Jennifer Ehmann, Judicial Administration Diagnostic Project: Regional Registry Systems and Processes Report, Pacific Judicial Development Programme, 2012, p2).

In mid 2013, the Chief Justice, Vincent Lunabek, signed a Memorandum of Understanding with the Chief Justice of the Federal Court of Australia, which will provide assistance to the Vanuatu judiciary, including "auditing of the pending case files in the Supreme Court so that some policies establishing Case Management strategies can be promulgated. By December 2013, the Supreme Court of Vanuatu will have launched a "guideline for case management", implemented a specific regime for backlog reduction and laid the foundations for an effective case management system which is supported by appropriate technology" ("Lunabek signs MOU with Australian counterpart," Vanuatu Daily Post, 10 July 2013).

References:

"Lunabek signs MOU with Australian counterpart," Vanuatu Daily Post, 10 July 2013, <http://www.dailypost.vu/content/lunabek-signs-mou-australian-counterpart>

Judiciary of the Republic of Vanuatu, Annual Report 2012, Pacific Legal Information Institute, <http://www.pacii.org/vu/court-annual-reports/2012.html>

Jennifer Ehmann, Judicial Administration Diagnostic Project: Regional Registry Systems and Processes Report, Pacific Judicial Development Programme, 2012, <http://www.fedcourt.gov.au/pjdp/materials-developed/earlier-reports>

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

Comments:

Article 47(3) of the Constitution of the Republic of Vanuatu provides that "All members of the judiciary shall hold office until they reach the age of retirement. They shall only be removed from office by the President of the Republic in the event of "
(a) conviction and sentence on a criminal charge; or
(b) a determination by the Judicial Service Commission of gross misconduct, incapacity or professional incompetence.

This is reinforced by the Judicial Services and Courts Act [CAP 270], which has at Section 36(2): "A judge must not be removed from office except in accordance with Article 47(3) (a) or (b) of the Constitution."

References:

Constitution of the Republic of Vanuatu, 1980, Article 47, http://www.pacii.org/vu/legis/consol_act/cotrov406/

Judicial Services and Courts Act [CAP 270], 2000, Section 36, http://www.pacii.org/vu/legis/consol_act/jsaca280/

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

There were a number of cases adjudicated during the period February 2013 and February 2014 that considered allegations of corruption, mostly in relation to the October 2012 General Election. However, there were no reported cases of injury or harm to members of the judiciary adjudicating those cases.

References:

Mrs Evelynne Toa, Deputy Editor, Vanuatu Independent Newspaper, interview by the author, 19 March 2014

Mr Moses Stevens, Senior Journalist, Freelance, interview by the author 19 March 2014

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

There were a number of cases adjudicated during the period February 2013 and February 2014 that considered allegations of corruption, mostly in relation to the October 2012 General Election. However, there were no reported deaths of members of the judiciary adjudicating those cases.

References:

Mrs Evelynne Toa, Deputy Editor, Vanuatu Independent Newspaper, interview by the author, 19 March 2014

Mr Moses Stevens, Senior Journalist, Freelance, interview by the author 19 March 2014

Pacific Islands Legal Information Institute, <http://www.paclii.org/vu/cases/VUSC/>, accessed 19 March 2014

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Though there has been some controversy around indigenous vs. non-indigenous citizen rights in regards to the investor citizenship noted earlier (Godwin Ligo, Sept 5, 2013), there have been no reports of any ethnic or racial bias in the courts.

There have been no allegations that judicial decisions are based on racial or ethnic bias. Recent reports on human rights (such as country reports on Human Rights Practices for 2013: Vanuatu, 2013) have not raised this as an area of concern. Data available on judicial decisions is not disaggregated by race, ethnicity or place of origin.

References:

US Department of State, Country Reports on Human Rights Practices for 2013: Vanuatu, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>

"MP Jimmy says UN recognizes indigenous rights" Godwin Ligo, The Vanuatu Daily Post, September 5, 2013. <http://www.dailypost.vu/content/mp-jimmy-says-un-recognizes-indigenous-rights>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The United Nations Joint Presence in Vanuatu has found that “in general, women faced difficulty in accessing justice and support services” (Human Rights Council Working Group on the Universal Periodic Review, Eighteenth Session, 27 January- 7 February 2014, p7).

There are no specific rules or practices of the Vanuatu courts which restrict women’s access to the judicial system that are not part of the broader cultural and socio-economic environment. However, in practice, the formal, introduced justice system comprising the magistrates court, supreme court and court of appeal is less accessible to the majority of women (and indeed the general population) than are the island courts which provide remedies based on customary law, which is often discriminatory to women (Human Rights Council Working Group on the Universal Periodic Review, p8). A United States Department of State report on human rights in Vanuatu found that: “There is an independent and impartial judiciary for civil matters, including for human rights violations; however, police were often reluctant to enforce domestic court orders, particularly when the orders concerned their own family or clan members. This contributed to the reluctance of women to lodge complaints with the police.” (US Department of State, p5).

Most analyses of women’s interaction with the justice system focus on the passage of family protection legislation in 2008, which provided a means through the formal judicial system for family violence to be addressed. Family violence and violence against women are very high in Vanuatu. (Government of Vanuatu, “Elimination and Prevention of Violence Against Women and Girls,” United Nations 57th Commission on the Status of Women, 4-15 March 2013, p2).

References:

Human Rights Council Working Group on the Universal Periodic Review, Eighteenth Session, 27 January- 7 February 2014, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/VUSession18.aspx>

Government of Vanuatu, “Elimination and Prevention of Violence Against Women and Girls,” United Nations 57th Commission on the Status of Women, 4-15 March 2013, <http://www.un.org/womenwatch/daw/csw/csw57/generaldiscussion/memberstates/Vanuatu.pdf>

US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

Article 5(2)(a) of the Constitution of the Republic of Vanuatu provides that “everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence”.

The Constitution also requires that “Parliament shall provide for the office of the Public Solicitor, appointed by the President of the Republic on the advice of the Judicial Service Commission, whose function shall be to provide legal assistance to needy persons” (Article 56).

References:

Constitution of the Republic of Vanuatu, 1980, Articles 5 and 56, http://www.pacii.org/vu/legis/consol_act/cotrov406/

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

Comments:

Legal counsel for criminal defendants unable to afford their own representative is supplied by the Office of the Public Solicitor. Representation by a private legal practitioner can be accessed for between 2,000VT and 30,000VT per hour, which is beyond the capacity of many people to pay (University of the South Pacific, The USP Community Legal Centre: Combining legal education and legal services in a developing island country). To put this into context, one third of the inhabitants of the national capital, Port Vila, live below the basic needs poverty line of around 11,000VT per month (Government of Vanuatu, Millennium Development Goals 2010 Report for Vanuatu, 2010, p4).

The Public Solicitor’s Office has been plagued by staff shortages and high staff turnover for a number of years, and this significantly affects its capacity to provide adequate legal counsel. This means that, despite legal representation in theory being available through this Office for those who cannot afford private representation, in practice it is not readily available to most – and based on the mismatch between need for services and the Public Solicitor’s resources, the USP Community Legal Centre cites a backlog of over 10 years.

A 2013 study of the judicial system by Transparency International Vanuatu found that the Public Solicitor’s Office in Port Vila experiences a high demand for legal assistance, yet there is a shortage of legal staff and there are inadequate office facilities to accommodate more staff. The Public Solicitor’s Office in Vanuatu’s other urban centre of Luganville has only one lawyer on its staff, who also has an unmanageable case load as well as inadequate access to transport and other facilities (Transparency Vanuatu, Vanuatu Judicial Monitoring System Research Report, 2013, p 37 and 41).

References:

University of the South Pacific, The USP Community Legal Centre: Combining legal education and legal services in a developing island country, <http://www.usp.ac.fj/index.php?id=13270>, updated 25 October 2013

Government of Vanuatu, Millennium Development Goals 2010 Report for Vanuatu, 2010, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/vanuatu-mdg-report-2010.pdf>

Transparency Vanuatu, Vanuatu Judicial Monitoring System Research Report, 2013, http://www.transparencyvanuatu.org/index.php?mact=News_cntnt01_detail_0&cntnt01_articleid=42&cntnt01_returnid=66

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

Comments:

A recent study into the judicial system in Vanuatu found that the cost of a civil case is 8,000VT or 577% of the weekly basic needs poverty line of 1,400VT, based on data developed for the 2012 Pacific Regional MDGs Tracking Report of the Pacific Islands Forum Secretariat. (Cate Sumner, 2012 Court Trend Report, Pacific Judicial Development Programme, July 2013, p29). In Vanuatu's capital city, Port Vila, 33% of the population live below the basic needs poverty line (Government of Vanuatu, Millennium Development Goals 2010 Report for Vanuatu, 2010, p4).

The Court Trend Report found that only one country in the Pacific Islands, Tokelau, has a court system that is accessible to all regardless of income. While the report found that in Vanuatu court fees may be waived upon application, no data are collected on the number of cases where a court fee waiver is sought and/or granted by the court (Cate Sumner, 2012 Court Trend Report, ibid, p40).

Likewise, the USP Community Legal Centre noted, "The legal system is not accessible to a large majority of the population" _ A person employed full time for a month at minimum wage could afford 48 minutes of a lawyer's time" _ [and he] or she would have to work for another couple of weeks to be able to afford fees for filing a claim." Additionally, public legal assistance is provided through an under-resourced and overburdened Public Solicitor's office, which the USP Community Legal Centre cites as having a 10 year backlog.

The high costs reported in the Court Trend Report confirm perceptions found in a 2014 street survey, which found that many respondents believed that the courts were "only for the rich" (Transparency International Vanuatu, "Public confidence in the Judiciary?", Press Statement, 20 February 2014, p4).

References:

Cate Sumner, 2012 Court Trend Report, Pacific Judicial Development Programme, July 2013, <http://www.fedcourt.gov.au/pjdp/materials-developed>

Transparency International Vanuatu, "Public confidence in the Judiciary?", Press Statement, 20 February 2014, <http://www.transparencyvanuatu.org/index.php?page=national-integrity-system-project>

University of the South Pacific, The USP Community Legal Centre: Combining legal education and legal services in a developing island country, <http://www.usp.ac.fj/index.php?id=13270>, updated 25 October 2013

Government of Vanuatu, Millennium Development Goals 2010 Report for Vanuatu, 2010, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/vanuatu-mdg-report-2010.pdf>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

Comments:

A recent study into the judicial system in Vanuatu found that the application fee for a civil case is 8,000VT or 577% of the weekly basic needs poverty line of 1,400VT, based on data developed for the 2012 Pacific Regional MDGs Tracking Report of the Pacific Islands Forum Secretariat. (Cate Sumner, 2012 Court Trend Report, Pacific Judicial Development Programme, July 2013, p29). In Vanuatu's capital city, Port Vila, 33% of the population live below the basic needs poverty line (Government of Vanuatu, Millennium Development Goals 2010 Report for Vanuatu, 2010, p4).

The costs of bringing a legal suit are relatively high in Vanuatu. According to data collected by the International Bank for Reconstruction and Development / The World Bank, enforcing a contract in Vanuatu takes 430 days, requires 30 procedures and costs 56.0% of the value of the claim. This 56% figure comprises: cost of legal representation, 40%; court fees, 6% and enforcement costs, 10%. The average cost of enforcing a contract in OECD countries is 20% of the value of a claim (The International Bank for Reconstruction and Development / The World Bank, Doing Business Vanuatu 2013, 2013, p89)

The majority of businesses in Vanuatu are small or micro businesses (Accord International Management Services, Micro-, Small and Medium Enterprise (MSME) Policy and Strategy for Vanuatu, 2011, p14). It is likely that the costs associated with taking legal action are prohibitive to the majority of small and micro businesses.

References:

Cate Sumner, 2012 Court Trend Report, Pacific Judicial Development Programme, July 2013, <http://www.fedcourt.gov.au/pjdp/materials-developed>

Government of Vanuatu, Millennium Development Goals 2010 Report for Vanuatu, 2010, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/vanuatu-mdg-report-2010.pdf>

The International Bank for Reconstruction and Development / The World Bank, Doing Business Vanuatu 2013, 2013, <http://vcci.com.vu/wp-content/themes/e-pacifik/pdf/Doing%20Business%20In%20Vanuatu%202013.pdf>

Accord International Management Services, Micro-, Small and Medium Enterprise (MSME) Policy and Strategy for Vanuatu, 2011, http://www.spc.int/cetc/resources/msme-reports/doc_download/40-vanuatu-msme-policy-and-strategy-and-appendices-volume-1

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

The Republic of Vanuatu comprises a chain of 83 islands, extending 1,300 km from north to south. The population of Vanuatu at the 2009 census was 234,023, with the majority dispersed across 60 islands. Just 25 percent of the population live in Vanuatu's two urban centres, the capital, Port Vila, on the island of Efate, and Luganville, on the island of Espiritu Santo. Vanuatu is comprised of many small islands and the distances between them, with the rugged island terrain, make travel and communications between and within islands very difficult and expensive (Government of Vanuatu, MDG 2010 Report for Vanuatu, 2010, p2). In this context, access to the justice system is often very limited for those living outside of the urban areas.

The limited resources of judicial services has an impact on accessibility to justice for ni-Vanuatu living in remote locations. There is a concentration of these limited resources in Port Vila and Luganville, and there are also 10 island courts which can deal with a limited range of matters, using custom law.

The supreme court and magistrates court operate an annual court circuit program to visit more remote locations, although their capacity to do so is limited by resourcing. The 2012 Annual Report for the Judiciary contained the following observation from the Chief Justice: "In 2012, the unilateral decision of the Department of Finance and Treasury to restrict the release of monthly warrants directly impacted on the court administration's financial capacity to support 2 court tours of the Supreme Court, and a few for the Magistrates' Court and the Island Courts, which were planned on the court calendar. This, of course, impacted on the number of cases disposed during circuits" (Judiciary of the Republic of Vanuatu, Annual Report 2012). According to the USP Community Legal Resource Centre, "A large proportion of the population simply lives beyond the reach of the formal legal system, being governed by traditional chiefly authority."

In 2013, one judge expressed concern over the lack of access to justice facilities in one province (Harrison Selman, "Saksak concerned over lack of justice facilities in Penama," Vanuatu Daily Post, 8 February 2013). One year later, the Chief Justice has further centralised the operations of the Supreme Court by bringing the one judge based outside of Port Vila back to the national capital from April 2014, to enable better case management (Thompson Marango, "Santo Supreme Court Judge Saksak recalled," Vanuatu Daily Post, 28 February 2014).

References:

Harrison Selman, "Saksak concerned over lack of justice facilities in Penama," Vanuatu Daily Post, 8 February 2013, <http://www.dailypost.vu/content/saksak-concerned-over-lack-justice-facilities-penama>

Thompson Marango, "Santo Supreme Court Judge Saksak recalled," Vanuatu Daily Post, 28 February 2014, <http://www.dailypost.vu/content/santo-supreme-court-judge-saksak-recalled>

University of the South Pacific, The USP Community Legal Centre: Combining legal education and legal services in a developing island country, <http://www.usp.ac.fj/index.php?id=13270>, updated 25 October 2013

Judiciary of the Republic of Vanuatu, Annual Report 2012, Pacific Legal Information Institute, 2013, <http://www.pacii.org/vu/court-annual-reports/2012.html>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The Vanuatu Police Force periodically undertakes recruitment drives, with the most recent call for new recruits occurring in 2013; this followed from a recruitment drive that had been cancelled in 2011 due to the withdrawal of assistance to the Vanuatu police from the Australian Federal Police following a diplomatic disagreement between Australia and Vanuatu (Vanuatu Daily Post, 28 June 2013). These recruitment processes are open, and there are few reports of appointments not being made according to professional criteria.

There were significant shifts within the top ranks of the Vanuatu Police Force in 2012, with the suspension of the then Police Commissioner and the eventual appointment of the Deputy Commissioner to the post of Commissioner. There was a perceptible split within the police force and a number of officers, in addition to the Police Commissioner, were suspended, and some eventually had their employment terminated ("Ten Senior Officers In Vanuatu Police Force Sacked", Radio Australia, 8 October 2012). This episode showed the force divided with personal and political loyalties.

Following the early 2014 police recruitment, a letter to the Editor in the Vanuatu Post accused the process of being untransparent and driven by nepotism, rather than necessary qualifications (Vanuatu Daily Post, May 5, 2014). The Force offered publicly to answer any questions on the recruitment process, and on the merit-based scoring (Vanuatu Daily Post, May 8, 2014).

References:

"Caulton Calls Upon PMO to Consider Police Recruitment Budget", Vanuatu Daily Post, 28 June 2013, <http://www.dailypost.vu/content/caulton-calls-upon-pmo-consider-police-recruitment-budget>

"Ten Senior Officers In Vanuatu Police Force Sacked", Radio Australia, 8 October 2012, <http://www.abc.net.au/news/2012-10-08/an-vanu-police-mutiny/4301320>

"33 new police recruits", Vanuatu Daily Post, May 8, 2014. <http://www.dailypost.vu/content/33-new-police-recruits>

"Poor Police recruit result", Letter to the Editor published in the Vanuatu Daily Post, Chief John Roy Tabangasa. May 5, 2014. <http://www.dailypost.vu/content/poor-police-recruit-result>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Vanuatu Police Force is perceived to be under-resourced by those within the service, and this is often cited as one contributing factor in reported failings on the part of police. For some, lack of an appropriate budget is "the main constraint that prevents the Police from maximizing law enforcement" (Vanuatu Daily Post, 25 May 2013).

There have been instances where police have claimed to be unable to attend incidents due to lack of funds to purchase fuel for their vehicles, or have been hampered in investigations due to lack of resources ("Fund shortages, no fuel for fire truck: Police call for public precaution"; Vanuatu Daily Post Miranda Forsyth, A Bird that Flies with Two Wings, p151).

The 2013 budget showed that 13% of the total allocation for law enforcement was for operational costs, with 87% allocated for salaries (Government of Vanuatu, Budget Papers Vol 2, p13; Marango, Daily Post). The high cost of transport and communications has been reported to be a significant burden particularly for police officers based on remote islands and in non-urban areas (Forsyth – though her study was from 2009, this continues to apply today).

In October 2013, the Prime Minister announced that he had instructed the Government Remuneration Tribunal to facilitate an increase in salary to subordinate officers in the Police Force by January 2014. The last pay increase awarded to police officers was in 1997, and many police officers are currently paid below the legislated minimum wage (Vanuatu Daily Post, 17 October 2013).

References:

Budget 2013, Volume 2, 2013 Program Budget Estimates, Government of the Republic of Vanuatu, 2013, p13

Thompson Marango, "Separation of VMF from Police hinged on budget," Vanuatu Daily Post, 25 May 2013, <http://www.dailypost.vu/content/separation-vmf-police-hinged-budget>

"Fund shortages, no fuel for fire truck: Police call for public precaution," Vanuatu Daily Post, 11 October 2013, <http://www.dailypost.vu/content/fund-shortages-no-fuel-fire-truck>.

Jane Joshua, "Prime Minister wants salary increase soon for police subordinates", Vanuatu Daily Post, 17 October 2013, <http://www.dailypost.vu/content/prime-minister-wants-salary-increase-soon-police-subordinates>

Miranda Forsyth, A Bird that Flies with Two Wings: The kastom and state justice systems in Vanuatu, ANU E Press, The Australian National University, Canberra, Australia, 2009, http://press.anu.edu.au/kastom/mobile_devices/ch05s02.html#d0e8283.

Australian Department of Foreign Affairs and Trade, Vanuatu Australia Police Project (VAPP): Project Design Document: Final, March 2011, <http://aid.dfat.gov.au/countries/pacific/vanuatu/Documents/police-project-design-document.docce-project-design-document.doc>.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There have been reports of politicization within the police force coming from events prior to the period of study. A 2012 episode involving the suspension and reinstatement of the Police Commissioner showed a police force divided by personal and political

loyalties, and has “stirred public concern about potential violence between competing parties and its effect on public order and safety” (Freedom House, 2013).

The effects of this were still being felt and discussed in the media into 2013, with legal cases pending and the government attempting to reconcile the two factions. Several politicians were implicated in these goings on, with some media reports stating too that there was also an “attempt to arrest Caretaker Minister of Internal Affairs” in relation to the mutiny case” (Vanuatu Daily Digest, 11 October 2012).

References:

Bob Makin, Vanuatu Daily Digest, 11 October 2012, <http://vanuatudaily.wordpress.com/tag/arthur-caulton>

“Ten Senior Officers In Vanuatu Police Force Sacked”, Radio Australia, 8 October 2012, <http://www.abc.net.au/news/2012-10-08/an-vanu-police-mutiny/4301320>

Vanuatu Freedom in the World Report, 2013. Freedom House. <http://www.freedomhouse.org/report/freedom-world/2013/vanuatu#.U3uEY1hdXg8>

A Bird That Flies With Two Wings: Kastom and state justice systems in Vanuatu, ANU E Press, The Australian National University, Canberra, Australia, 2009, http://epress.anu.edu.au/kastom_citation.html

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

42

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Citizens can make complaints to the Ombudsman about law enforcement officers or agencies.

Article 62 of the Constitution of the Republic of Vanuatu and Section 11 of the Ombudsman Act provide the functions of the Ombudsman, which include “to enquire into any conduct on the part of any government agency (Ombudsman Act, Section 11(a)).

The Ombudsman Act also provides that, “The Ombudsman may exercise his or her functions:

- a) on the complaint of a person or body referred to in Article 62(1)(a) or (b) of the Constitution; or
- b) on his or her own initiative” (Section 11(2)).

Section 11(4) states that: “To avoid doubt, conduct on the part of any officer, employee, member or agent of a government agency in his or her capacity as an officer, employee, member or agent of the government agency is taken to be conduct on the part of the government agency.”

Section 1 of the Ombudsman Act defines government agency to include “a state service”, and defines state service as: “ a) the public service; and

- b) the police force including the Vanuatu mobile force and prison services; and
- c) any other service exercising purely state functions.”

References:

1. Constitution of the Republic of Vanuatu, 1980, http://www.paclii.org/vu/legis/consol_act/cotrov406/

2. Ombudsman Act [252], 1999, Section 1, 11, http://www.paclii.org/vu/legis/consol_act/oa114/

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is evidence from a range of sources that complaints against members of the Police Force are not acted upon quickly or effectively.

The US Department of State annual report on human rights for 2013 found that, while the Office of the Ombudsman had received and investigated a number of complaints about the police, there were no prosecutions arising from the reports provided to the Police Commissioner. Additionally, the report notes, "A lack of resources hampered civilian authorities in maintaining effective control over security forces, and authorities did not have effective mechanisms to punish abuse or corruption. There were allegations of police impunity" (p8).

As an example, a recently publicized complaint against two police officers in Port Vila, by a young woman who had been detained by police, pointed to some potentially serious issues in how complaints are managed, with the police officer who responded to media queries acknowledging that the two officers in question remained on active duty during the course of the internal investigation (suspension letters were prepared but not given to the officers in question) (Vanuatu Daily Post, 21 November 2013).

References:

Bureau of Democracy, Human Rights and Labor, US Department of State, Vanuatu 2013 Human Rights Report, 2013, <http://www.state.gov/documents/organization/220453.pdf>

Thompson Marango, "Sex allegations lack evidence: Police", Vanuatu Daily Post, 21 November 2013, <http://www.dailypost.vu/content/sex-allegations-lack-evidence-police>

Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The Ombudsman is mandated to investigate corruption within any public service agency including the Police Force (Ombudsman Act [CAP 252], 1998, Section 11).

The Ombudsman is also mandated to investigate breaches of the Leadership Code Act, including corruption. The the Commissioner and Deputy Commissioner of Police, members of the Police Service Commission, the Commander of the Vanuatu Mobile Force are all defined as leaders under the Leadership Code Act [CAP 240], Section 5.

The Vanuatu Police Force also has an Internal Investigations Office which can investigate allegations of corruption within the Police Force. The Police (Amendment) Act, No 22 of 2010 amends the Police Act to provide for internal investigations to be instigated by the Minister. It provides that, "The Minister may from time to time appoint in writing 3 persons to carry out internal investigations on any matter affecting a member or the Force for such period as he or she may determine." (Section 45B(1)). At least one of the people appointed to undertake the investigation must have a legal qualification and the two other members must be retired members of the Police Force (Section 45B(2)).

Findings from internal investigations undertaken through this mechanism must be provided to the Minister within 21 days of the completion of a report, and the Minister must provide a copy of the report to the Police Commissioner within one week of receiving the report (Section 45B(3)-(4)).

References:

Police (Amendment) Act, No 22 of 2010, http://www.pacii.org/vu/legis/num_act/pa2010155/

Ombudsman Act [CAP 252], 1998, Section 11, http://www.pacii.org/vu/legis/consol_act/oa114/

Leadership Code Act [CAP 240], 1998, Section 5, http://www.pacii.org/vu/legis/consol_act/lca131/

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

There have been a number of incidents and reports which suggest that allegations of corruption against law enforcement officials are rarely dealt with effectively. While agencies like the Office of the Ombudsman make reports and recommendations, they are rarely followed through. A 2013 report by the United States Department of State also raised the issue that while the Office of the Ombudsman made a number of reports and recommendations to the Commissioner of Police in relation to complaints of corruption, these did not result in any prosecutions (US Department of State, p8).

An example of the delays and difficulties in holding the police force accountable, Transparency International Vanuatu has also repeatedly publicized a case against police brought by the complainants which took 11 years to resolve through the courts, which found in favor of the complainants, and yet there were no consequences for the police officers involved, nor has the judgement of the court been enforced (YES! Yumi Save Stopem Korapsen website, 24 June 2013).

References:

"Police Force members must learn to obey the law", Transparency International Vanuatu, Press Release, YES! Yumi Save Stopem Korapsen website (Transparency Vanuatu), 24 June 2013, <http://transparencyvanuatu.wordpress.com/2013/06/24/police-force-members-must-learn-to-obey-the-law/>

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Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, Executive summary: Vanuatu, CAC/COSP/IRG/2013/CRP.19, 2013, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/26-27November2013/V1388053e.pdf>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

The Police Act [CAP 105], 1980, does provide protection from legal proceedings for acts performed in good faith in the performance of proper duties. This act declares that no suit or legal proceedings shall be instituted in such cases.

40. Non-liability for act done in good faith

"No suit or other legal proceedings for damages shall be instituted in any court of law against the Minister or the Commissioner or any other member of the Force or any other person for or on account of or in respect of any act, matter or thing done or purported to be done or omitted to be done, in good faith, in the performance or exercise of any duty or power imposed or conferred by or under this Act; and the provisions of this section shall extend to the protection from liability as aforesaid of any person deputed by delegation under this Act or under any other law for the time being in force to perform or exercise any such duty or power aforesaid."

References:

Police Act [CAP 105], 1980, Section 40, http://www.paclii.org/vu/legis/consol_act/pa75/

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

There have been a number of incidents and reports which suggest that allegations of corruption against law enforcement officials are rarely dealt with effectively. While agencies like the Office of the Ombudsman make reports and recommendations, they are rarely followed through. A 2013 report by the United States Department of State also raised the issue that while the Office of the Ombudsman made a number of reports and recommendations to the Commissioner of Police in relation to complaints of corruption, these did not result in any prosecutions (US Department of State, p8). The report notes that government efforts to control and punish the force were not effective, and impunity was a real problem.

An example of the delays and difficulties in holding the police force accountable, Transparency International Vanuatu has also repeatedly publicized a case against police brought by the complainants which took 11 years to resolve through the courts, which found in favor of the complainants, and yet there were no consequences for the police officers involved, nor has the judgement of the court been enforced (YES! Yumi Save Stopem Korapsen website, 24 June 2013).

References:

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Vanuatu Ombudsman Reports, Pacific Legal Information Institute, accessed on June 17, 2014. <http://www.paclii.org/vu/ombudsman>

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