



National Integrity Systems

Transparency International Country Study Report

Vanuatu 2004

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Publication Details

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Acknowledgements:

The authors would like to acknowledge the time and effort given by many individuals and organisations within Vanuatu in order that this report could be compiled. A number of people have contributed to the development of this report by way of comment on its drafts.

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First published 2004 by Transparency International Australia

P.O. Box 41 Blackburn South Victoria 3130 Australia

<http://www.transparency.org.au>

ISBN 0 9752438 9 6

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This research was funded by AusAID.

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Abbreviations

AFP	Australian Federal Police
AusAID	Australian Agency for International Development
CID	Criminal Investigation Division
CRP	Comprehensive Reform Programme
DFID	Department for International Development (UK)
EOG	Election Observer Group
EU	European Union
IMF	International Monetary Fund
LDC	Least Developed Country
MPP	Melanesian Progressive Party
NGO	non governmental organisation
NUP	National United Party
OECD	Organisation for Economic Cooperation and Development
PSC	Public Service Commission
REDI	Rural Economic Development Initiative
TIV	Transparency International Vanuatu
UK	United Kingdom
UMP	United Melanesian Party
VANGO	Vanuatu Association of Non Governmental Organisations
VBTC	Vanuatu Broadcasting and Television Corporation
VMF	Vanuatu Mobile Force
VNCW	Vanuatu National Council of Women
VNPF	Vanuatu National Provident Fund
VP	Vanua'aku Party
VPF	Vanuatu Police Force

Executive Summary

Vanuatu is an island country with a population of around 200,000 located in the Southwest Pacific. It is part of Melanesia. Vanuatu has been independent since 1980, having previously been governed jointly by the governments of the United Kingdom and France. With its small, fragile economy, Vanuatu has 'Least Developed Country' status and is highly dependent on the support of aid donors. Whilst it is generally more stable than its neighbours Solomon Islands, Fiji Islands and Papua New Guinea, significant 'instability indicators' have been evident in recent times.

Although issues of corruption and governance are widely discussed in Vanuatu, it is evident that there is no real sense of 'ownership' or philosophical internalisation of either the problems or the possible solutions on a widespread basis. Aspects of traditional Melanesian culture, especially gift giving, contribute to this climate of ambivalence. In addition, people at the 'grassroots' level of society see the (in)activities of law, government (whether national or regional) and related agencies as irrelevant to their everyday lives. One impact of this is that individuals do not place any burden of expectation on their leaders or the government. The most that some people expect is a payout or bribe at election time. There has been relatively little outcry about improper or illegal activities on the part of those who are supposed to be involved in 'public service'. Where such outcry does occur, it is almost always limited to urban areas, whereas the majority of the country's population lives in more remote, rural locations.

Vanuatu is possessed of a number of agencies and institutions that contribute to the pillars of a National Integrity System (NIS). Since the commencement of the Comprehensive Reform Programme in 1997, Vanuatu has made significant steps in developing a strong legal framework designed to foster accountability, transparency and responsibility, especially in the public sector. On paper, Vanuatu now has a very good NIS, with a strong legal framework. In practice, however, it does not yet function effectively.

Institutions are not effectively integrated. Reasons include clashes of personality, lack of skill or experience and lack of awareness of how the NIS as a whole should function. Individuals from different islands, or areas within islands, may also be unwilling to work together.

At times it appears that key components of the NIS, such as the Office of the Ombudsman and the Office of the Public Prosecutor, have been deliberately weakened in order to hinder integration. Many of those currently gaining from the existing lack of system show an unwillingness to change.

The legal system was adopted on Independence, rather than being home grown. The adversarial dispute resolution system of the courts is unfamiliar to most people and stands at odds with customary concepts of restorative justice. The concept of the rule of law remains very much outside of society. A further factor that may increase some leaders' sense of being above the law is the 'Big Man syndrome'. Tradition discourages the criticism of leaders, who enjoy very broad powers. Modern leaders use this traditional concept to justify their actions.

However, there are also factors within Vanuatu's society that could be used to support integration. Vanuatu's small size and the fact that one person may play several different roles could be used to encourage linkages. So too could the concept of the *wantok* system (a traditional system of kinship support). Encouraging the expansion or reformulation of wantok links to strengthen links between pillars of the NIS could bring about a satisfactory blend of a traditional and a modern concept. This, however, may be more of a theoretical ideal than a practical solution.

Strengths within the NIS are always related to a particularly committed and hard-working individual or team of individuals. Conversely, weaknesses are usually linked to under-performing individuals. The obvious answer is to improve checks and to raise expectations of work standards.

There are five priority areas in which activities need to be undertaken to ensure the strengthening of Vanuatu's NIS:

- General education or awareness
- Institutional strengthening through capacity building
- Enforcement of laws
- Facilitation of integration of the NIS
- Investigation of decentralisation/urbanisation and youth unemployment.

Most important is the need to engender a shift in perception, so that corruption ceases to be an 'out there' abstract concept, and is instead internalised and made a real issue of personal and institutional concern and activity.

Country Overview

The Republic of Vanuatu is a collection of over 80 islands located in the Southwest Pacific Ocean. The population of approximately 196,000 people is dispersed over 68 inhabited islands. Prior to independence it was jointly governed by both Britain and France in a condominium arrangement unique within the Pacific region, under which dual legal and administrative systems were maintained. Independence was gained in 1980, and a single legal and administrative system was established, although a dual education system remains (that is, a 'French' system and an 'English' system). As discussed below, Vanuatu's colonial history has left a unique political legacy, with politics sometimes being divided along the lines of Anglophone/Francophone affiliations.

Government is by parliamentary democracy following a 'Westminster' model. The institutional arrangements reflect the notion of the separation of powers. The Head of State is the President. The Head of Government is the Prime Minister. The Prime Minister appoints the executive, or Council of Ministers. The Council of Ministers is answerable to the legislature, or Parliament. An independent judiciary, made up of Magistrates Courts, the Supreme Court, the Court of Appeal and various specialised courts also exists.

The President is elected for a five-year term by an electoral college consisting of Parliament and the presidents of the regional councils. Any indigenous Vanuatu citizen who is eligible to stand for Parliament may stand for election as President. During his or her term the President may only be removed from office due to incapacity or gross misconduct.

The position of President is primarily ceremonial. The President has the power to pardon, commute or reduce a sentence imposed on a person convicted of an offence, and this power has frequently been exercised by Presidents in the past. The President also has a role in ensuring that all laws are consistent with the Constitution. He or she must assent to all Bills before they are enacted. If any Bills are inconsistent then the President is under a duty to refer them to the Supreme Court. This power has been used occasionally.

The Prime Minister is elected by members of Parliament by way of secret ballot. The ballot system requires for there to be the support of an absolute majority of members of Parliament before anyone is elected as Prime Minister. This system means that the Prime Minister is not necessarily from the party with the most number of seats in Parliament.

The Council of Ministers can vary in size, but must not exceed one quarter of the number of members of Parliament. Currently the Council of Ministers is made up of 14 members—the Prime Minister, the Speaker of Parliament, plus 12 Ministers, each responsible for specific portfolios.

Parliament is unicameral. The 52 members of Parliament are elected by popular vote. There is universal suffrage for people over the age of 18 although voting is not compulsory. Vanuatu is divided into 17 constituencies. Depending upon its size, between one and seven seats attach to each constituency. In this manner a degree of proportional representation from each island group is maintained. The maximum life of Parliament is four years, although Parliament can be dissolved earlier by a vote of members of Parliament. Parliament can also be dissolved by the President under instruction from the Council of Ministers. The early dissolution of Parliament through a members' vote has become a familiar part of Vanuatu's political landscape. There are two ordinary sessions of Parliament each year, and extraordinary sessions at the request of the majority of its members, the Speaker of Parliament or the Prime Minister.

In Vanuatu, custom continues to play an important role in many peoples' lives. The role of the National Council of Chiefs, or Malvatumauri, within the political system, reflects this. The National Council of Chiefs is a constitutional body that is made up of custom chiefs elected by their peers sitting in District Councils of Chiefs. 'The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.' (Constitution, Article 30(1)) Also, it 'may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before

Parliament.’ (Constitution, Article 30(2)) The role of the National Council of Chiefs in relation to law making is, however, not mandatory, and there is no requirement that Parliament place special weight on the views of the Council. In practice, the National Council of Chiefs does not get consulted about legislation.

The major political parties in Vanuatu are the Vanua’aku Party (VP), the United Melanesian Party (UMP), the National United Party (NUP), and the Melanesian Progressive Party (MPP). The main political parties have largely arisen out of party splits and changes of factions.

Father Walter Lini, Vanuatu’s first Prime Minister, headed a stable VP government until 1987. VP’s major opposition came from UMP, which was formed by the union of several small francophone parties. These parties were largely distinguished by their support bases, with VP attracting Anglophone and UMP francophone voters. This Francophone/Anglophone divide continues to be a presence within Vanuatu politics.

After Lini’s stroke in 1987 his leadership began to be challenged by Barak Sope, whose challenges to VP policy led to his dismissal from cabinet. In late 1988 Sope broke from VP and formed MPP. In 1991 Lini lost his position as Prime Minister and leader of VP through a vote of no confidence, and he subsequently formed NUP.

Since 1991 the political situation has remained fluid, with politicians switching allegiances between parties fairly freely, to the detriment of governance. Different policies are not clearly distinguishable, which is not particularly surprising, given the shared roots of most of the major parties. Voting appears to be based more upon linguistic or kinship ties than policies. Personalities are also important, and certain politicians have reputations for being more corrupt or less corrupt than others. There is a growing number of small parties, and in the last national elections a large number of independent candidates also stood.

The Judiciary remains independent of politics and frequently makes decisions on political matters that reflect this independence. The Constitution provides that Vanuatu adopt both British (more specifically the law of England and Wales) and French laws as part of its legal system. In practice, though, the legal system is dominated by the approach of the English common law. The Constitution also provides that customary law is part of the law of Vanuatu. The use or application of customary law within the formal legal system remains limited in most areas as it is conceptually difficult for both customary and introduced law to work alongside each other within the formal legal system. There are also significant practical impediments such as how to reconcile customary approaches from differing parts of the country.

Below the national political structure there exist six provincial government councils. Each council is made up of a combination of appointed and elected members. Each provincial council has the power to make laws that apply within its province. The provisional government councils can make laws relating to local taxes, but are funded primarily by the central government.

The Vanuatu Police Force (VPF) has an establishment of 561 officers, 549 of them operational. Within the VPF, there are three main groupings: the general duties police officers, the mobile force (sometimes referred to as the Vanuatu Mobile Force or VMF) and the Police Maritime Wing. Prior to 1997, the VMF existed as a separate entity, having a quasi-military role. Although the VMF has, in theory, been subsumed into the VPF since 1997, numerous tensions between the two groupings exist and there remains much to be done in the realm of achieving full integration and cohesion. Factions from both of these groups have been involved in activities that have involved taking the law into their own hands (in 1996 and 2002). In each instance, the courts have acted decisively to censure such activities. Policing services are generally perceived to be inadequate by the wider community in terms of both quantity and quality.

In Port Vila, a small municipal police force operates to enforce the byelaws of the municipal council and works in conjunction with the VPF in traffic policing and provision of security at public functions and events. In many rural areas, ‘village police’ assist the chiefs in maintaining order and peace in their communities.

Vanuatu has a fairly active media. It currently has two main newspapers—the *Vanuatu Daily Post*, which is published five times a week, and the *Independent*, published once a week. Both are independent. The majority of the print news is in English, although there is limited news printed in French and Bislama, the two other national languages. The Vanuatu Television and Broadcasting Corporation, a government entity, controls television and radio broadcasts. Radio is the most important media for most people in rural areas.

These institutional arrangements do not provide much indication of the social and economic environment in Vanuatu. Vanuatu holds Least Developed Country (LDC) status. Its economy is heavily reliant on agriculture. Its only significant exports are agricultural, and include copra, cocoa, beef and timber. Other important sectors are tourism and, due to Vanuatu's tax haven status, the financial services sector. Local industry is hindered by weak infrastructure, particularly outside of urban areas. Inter-island shipping is not always reliable and flights between islands are very costly. Road networks are poor. Electricity and water supply is limited to the urban areas and telecommunications networks are not very extensive. Utilities and telecommunications are very expensive. The cost of exporting goods, whether by ship or by plane, hinders the development of export markets. Political instability and a largely unskilled workforce also detract from the development of local industry.

Formal institutional structures, including legal and political structures, are irrelevant to the day-to-day lives of many people. There is growing disillusionment with the system of politics. This is reflected, in part, with the decline in voter turnout in national and provincial government elections. In the 2002 national elections voter turnout in the urban centres of Port Vila and Luganville was 51 per cent and 45 per cent respectively. Overall turnout was 63 per cent. Whilst this may not sound particularly low in a country where voting is not compulsory, in the first four elections in Vanuatu turnout was 90 per cent (1979, independence elections), 75 per cent (1983), 81 per cent (1987) and 71 per cent (1991). (Van Trease, (ed) 1995:161)

Corruption Profile

Definitions and Scope

There is no single legal definition of corruption in Vanuatu. Popularly, corruption may be defined as occurring when a leader misuses his or her position for personal gain. Such a definition is in accordance with the Leadership Code Act 1998, which states the expectations that are placed upon leaders.

A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership.

Popularly, the notion of corruption, and related standards of 'good behaviour', relate more to people and institutions within the introduced political system than people considered leaders under traditional or grassroots structures. Actions of members of parliament and civil servants are more likely to attract charges of corruption than actions of chiefs or community leaders, including church leaders. Actions of individuals who benefit from or encourage corrupt behaviours are also not seen as corrupt.

To illustrate, the Representation of the People Act [Cap 146] creates offences for people who try to bribe officials and/or receive bribes during elections. However, in the popular perception, ordinary people who receive bribes are not 'corrupt'. Chiefs who tell individuals how to vote after receiving bribes or goods for their villages are sometimes perceived as corrupt, but not always. The person offering the bribe is, however, acting corruptly. However, traditional leaders do, sometimes, attract charges of corruption. The reasons for differing perceptions as to what is corrupt are complex. In the voter bribery situation it may be that there is an acceptance that people are vulnerable to temptation. The blame attaches to the person who offers the temptation, rather than the person who accepts it. As well, chiefs who accept bribes and distribute them throughout the community are seen as doing their jobs properly, for the benefit of the community, and therefore not corrupt. However, chiefs who take bribes and do not distribute them may be seen as corrupt. Western concepts of corruption and local concepts of wrong behaviour do, sometimes, differ. Further, because social systems encourage respect of chiefs, and thereby discourage criticism, it is less likely that chiefs will be labelled corrupt.

The popular definition of corruption applies to government institutions, and not only individuals. For instance, the scholarships office, which decides who receives scholarships for tertiary education, is popularly identified as being corrupt, or unfair in its dealings. The Vanuatu National Provident Fund and the Vanuatu Commodities Marketing Board are other institutions that, in the past, have been perceived to be generally corrupt institutions. Both have been the subject of Ombudsman's Reports.

The real difficulty in any meaningful definition of corruption comes from the fact that people who have acted corruptly are not necessarily seen as having acted in a morally wrongful manner that should attract punishment. Vanuatu is a very open society. It is possible to find out about misuses of power and position quite easily, through official reports, media stories, or casual conversations with people. However, punishment does not result. Politicians who have had quite damning Ombudsman's Reports published about their behaviour continue to get elected. One reason for this may be a lack of general awareness amongst the voting population of the role of politicians. Another reason may be that the general population sees corruption as largely irrelevant. It is another term that is imported, rather than home grown. Acts of corruption tend not to attract general public moral outrage, as they may do elsewhere. The strongest illustration of this is the re-election of Barak Sope, following his conviction for fraud. Sope, who was Prime Minister from December 1999 to April 2001, forged two government guarantees near the end of his period in office. In July of 2002 Sope was sentenced to imprisonment for 3 years. (Public Prosecutor v Sope 2002) Immediately there were protests that New Zealand and Australia were interfering with local politics. There were also rumours that riots would break out if Sope were not pardoned. In November 2002 Sope was pardoned by the President on the

grounds of ill health. In 2003 he contested the by-election for his seat, and was re-elected to Parliament.

Acts of corruption are not seen as wasting the money of the general population, who therefore may feel little connection to or personal interest in the use of government money. Riots in 1998 over the misuse of Vanuatu National Provident Fund (VNPF) are often cited as an example that the population does care about corruption. However, workers pay a certain percentage of their wage into the VNPF, almost like a direct tax, and there is clear sense of ownership of the fund amongst VNPF members. Corruption within the VNPF was affecting individuals' 'own pockets'. It was this that prompted the riots, not a more abstract disapproval of the corruption that was occurring. Interestingly, a number of people see the introduction of a debit tax as corrupt, although there would appear to be nothing inherently corrupt in the government's taxing the populace.

Where the line is drawn between traditional gifts and bribes is difficult, if not impossible to define precisely. Melanesian culture has a strong tradition of gift giving to strengthen relations between parties. Whilst culture can, undoubtedly, be misused, there is no clear line of demarcation between what is culturally acceptable and what is legally unacceptable. Indeed, because the lines of demarcation come from two different systems of thought (culture and law) it is unsurprising that there is some confusion about what should be, or is, legal, or what rules should apply in any given situation.

For instance, some voters see the receipt of gifts in return for voting a particular way to be a legitimate part of the electoral process. Such gifts may be the only actual return that some voters expect to ever see out of the State political system. Whilst such actions are legally wrong, they fit within custom. However, this is not a traditional custom setting. Although the acceptance of gifts may seem to subvert the political system, given that the political system remains largely meaningless for a lot of people, the acceptance of gifts in return for voting appears to be a legitimate blending of custom and introduced systems in the eyes of some people.

Causes

There are a number of factors that enable corruption in Vanuatu to exist or even flourish. Although these factors may not 'cause' corruption, they contribute to a climate in which corruption can and does occur.

The difficulty of defining corruption as a practically meaningful, rather than abstract, notion, as discussed above, may be at the heart of the problem. However, the main cause is the lack of a sense of personal responsibility, or a willingness to change. At all levels there is an acceptance of the status quo. The general absence of examples of good leadership also makes it easier to accept the status quo, as there is nothing to compare with. People who are benefiting from the current system do not want it to change. This is a matter of personal values, and is not subject to an easy solution. We can build systems to police corruption, but that is not the same as stopping corruption. What needs to happen in order for that to occur is for people's internal attitudes to right and wrong behaviour to alter. During the research for this country study it was pointed out that Vanuatu is said to be 'founded on traditional Melanesian values, faith in God, and Christian principles...'. (Constitution, Preamble) If Christian and Melanesian values were adhered to, the issue of corruption or acting in one's own self-interest would not be such a problem. Melanesian values and Christian values, both regarded as traditional, have not instilled a sense of right and wrong that affects the attitudes and behaviours of some people. Why should anti-corruption initiatives, built around a modern introduced notion, be expected to succeed?

Related to this is the idea that the end justifies the means. This occurs particularly within the NGO sector. Not exactly following the rules of financial reporting, or applying for money for a particular project and then spending it on something else is seen as acceptable practice because 'I am doing good things.' However practical this justification for such actions may be, in a country like Vanuatu, where corruption must necessarily be controlled through mechanistic rules in the absence of internal attitudes, such rule breaking can also foster a climate in which corruption can flourish.

Mismanagement due to the lack of capacity to understand or work within the introduced legal and political system is also a cause. Parliamentarians often do not have a clear understanding of their roles and duties. Public servants often do not have the technical training or experience to be able to fulfil their duties competently. The voting public continue to vote in leaders that have been the subject of Ombudsman's Reports, presumably because they do not have expectations of leaders that accord with the Westminster system of government. This lack of capacity affects many different layers of the NIS. It should be noted, though, that lack of capacity can be used as an excuse. Some leaders are very adept at using the legal system for their own ends. The legal process is increasingly being used to gain rights and benefits. If leaders are able to use the legal process for their own ends, then the argument that they lack the capacity to work within the legal system is dubious.

Civil society does not express outrage or demand punishment when instances of corruption are revealed. Corruption is almost accepted as part of the political system. This acceptance may be due, in part, to inadequate understanding of the political system and civil society's legitimate role within the system. It may also be due to a feeling that the political system and legal punishments are largely irrelevant.

Unsophisticated political party structures also help to create an atmosphere in which corruption can go unchecked. Parties do not have clear policies, and membership of parties is fluid, with Parliamentarians changing parties in order to seek political advantage. This helps to create instability in government. The lack of clear differentiation between parties also prevents them from being able to act as a clear check on each other. For example, there is no real understanding of the role of the Opposition in Parliament and there is very little use of the committee system to question the actions or inactions of government.

Poor pay in the public sector, as compared to the private sector, may also help to contribute to corruption. Poor pay lowers morale, and may help to foster a climate in which people do not take responsibility for, or pride in, their work. It can also foster absenteeism. Also, people with technical skills, particularly in the areas of finance and law, are likely to seek jobs in the private sector, thereby lowering capacity in the public sector.

Private sector businesses can operate without the giving of bribes. Certain businesses, however, do engage in direct bribery. Loans or goods may also be given by businesses, and debts written off in return for the bending of rules to favour businesses. Also common is the employment of a ni-Vanuatu go-between. These go-betweens can help to facilitate dealings with government quite legitimately. They can also help to facilitate the 'giving of gifts'—that is, bribery. Certain prominent business people are also involved in or connected to politics, and it is felt that these people use their political influence to further their business interests. It is also felt that some members of the financial services sector sometimes act in unethical ways, and help to contribute to global corruption through the facilitation of money laundering. Vanuatu's status as a tax haven and Organisation for Economic Cooperation and Development (OECD) movements against tax havens have helped to create this perception (Dwyer, 2000), although within Vanuatu it is thought that the country's financial services sector is not a significant money laundering centre.

Finally, Melanesian culture is a factor that contributes to corruption. Culture is what society is based upon, and the political system is laid over culture. In some respects the political system can be said to 'float on top', as it is not autochthonous and often does not relate to cultural ways of doing things or the lives of people at the 'grass roots'. One obvious source of conflict is the Melanesian notion of gift giving, which to Western eyes can appear as bribery. The *wantok* system, which is a system of relationship and reciprocity between kin and villagers, is also blamed for nepotism within the public service. However, it should be stressed that Melanesian culture does not cause corruption—it does not condone behaviour that benefits an individual at the expense of the community. Instead there is a mismatch between introduced notions of corruption and local culture.

The fear of challenging customary structures and authorities is another reason for not doing anything about corruption or not taking a strong stand about corrupt actions. People may rather live with the consequences of poor and corrupt government than face the hazards of confrontation with those in power. This fear of Black Magic is deeply entrenched and it is likely to take many generations to diminish. It is common for people to believe

that you can kill someone or cause someone grave illness from a distance. This belief greatly reduces the courage required for people to stand up for what is right in the political and social spheres.

Levels

Corruption occurs in all levels of society. However, the concept of corruption is most firmly linked with the actions of members of Parliament, the public service, and certain government institutions. This focus on central government is reflected in the reports of the Ombudsman's Office, which mainly concern themselves with the actions of members of Parliament and high-ranking public servants. The VNPF and the police are the other two main institutions that appear as the subjects of Ombudsman's Reports. (Hill, 2001)

Provincial governments are not generally regarded as corrupt, probably because of the current widespread perception that have no real role to play in the governance of Vanuatu. Currently there are more fundamental and pressing issues than corruption for provincial government to address (such as what its role should be, and how its role can be facilitated).

Costs

In general terms the costs of corruption in Vanuatu include waste of public funds, a lack of investor confidence in Vanuatu (Ala and Arubilake, 2000), destruction of natural resources, inability to deliver public goods and service, and instability.

Specific costs include

- the possible bankrupting of the country, through the fraudulent signing of letters of guarantee. This has occurred twice in the past 10 years, although in neither instance have the letters of guarantee been held to be valid. (See, for example, Public Prosecutor v Sope 2002, which discusses the most recent bank guarantees, and Ombudsman Reports 96/01 and 96/08, which discuss the bank guarantees signed in 1996.)
- the inability to carry out projects and planned activities through the direct misappropriation of funds. (See, for example, Ombudsman Report 98/06, which discusses the misappropriation of the 'Cyclone Betsy Fund', money donated to repair damage following a cyclone.)
- the appointment of public servants on political grounds, rather than on merit, resulting in poor management within the public service and government institutions. (See, for example, Ombudsman Reports 96/10, which discusses the appointment of an unqualified person to be deputy manager of the VNPF, and 97/08, which discusses the hiring of an accountant for the Forestry Department on political grounds, rather than on the basis of merit.)
- improper concessions to businesses, which reduce government revenue. (See, for example, Ombudsman Report 00/01, which discusses improper concessions given by a former Minister of Public Works to a businessman for the hiring of equipment. Note that this report does not reveal whether the Minister of Public Works received any personal gain from this deal, but it is of interest because first, it describes a type of behaviour that could conceivably occur for personal gain, and second, the foreman of the Public Works workshop refused to follow the improper instructions of the Minister of Public Works.)
- improper granting of land leases, resulting in loss of government revenue. (See, for example, Ombudsman Report 99/06, which deals with the granting of land leases by a former Minister of Lands to himself, family members and wantoks.)
- failure to follow government contracts procedures, resulting in the unnecessary purchase of goods and overpriced goods and services. (See, for example, Ombudsman Report 98/25, which reports on the purchase of a ship, Prince II, in breach of all the existing financial procedures and tender rules.)
- weaknesses in health service delivery. (See, for example, Ombudsman Reports 97/03, which reports on the premature birth and death of twins, and reveals maladministration and illegal appointments, 98/14, which discusses the appointment of a male nurse who had been jailed for rape, but then released by his first cousin, the then Minister in charge of prisons, and appointed by him to a

the nurses position, and 99/20, which discusses delays in the appointment of a gynaecologist/obstetrician. Note that reports 97/03 and 99/20 do not reveal corruption, but rather maladministration and negligence, however reading these reports gives rise to the question of improper motive, as it is difficult to imagine that the events they describe could be entirely innocent. It is difficult at times to determine whether behaviour is corrupt or simply naïve.)

- riots following the misuse of VNPf funds. (The misuse is reported in Ombudsman Report 97/16. The Board of the VNPf at the time was made up of political appointees. As the digest of this report states, 'Although there are 33,000 members of the VNPf fund and there were 784 applications for housing loans under the scheme, only 150 people benefited. The majority of these were Ministers, Members of Parliament, VNPf Board members and staff, UMP party supporters (the UMP was the dominant party in Government at the time), political appointees and families of these groups. Many people submitted applications that were not considered while many of the favoured groups had loans approved even before submitting applications and after the amount set aside had been officially exhausted.')
- instability following the improper appointment of a Police Commissioner. (Jowitt, 2003)

Types

The above section details some specific incidences of corruption and their costs. This section gives an overview of the types of corruption that are notably present. Observers have identified four main types of corrupt behaviour: political appointments of unqualified people; conflicts of interest in the awarding of licenses, land leases and government contracts; involvement in 'bad business deals', without following correct procedures; and a lack of respect for the rule of law, or a wilful refusal to be bound by rules. (Hill, 2003)

In discussing political appointments, Hill mentions the appointment of the VNPf deputy manager, mentioned above, as a typical case. He also identifies other examples.

Other examples of this type of conduct are revealed in the Public Report on the Appointment of Senior Public Works Staff where the Prime Minister, in breach of procedure, directly appointed persons, based on the political affiliations of the persons, without consultation with the Public Service Commission or the Department of Public Works, and despite the appointees' lack of proper qualifications. The Public Report on Mismanagement of the Vanuatu Livestock Development Ltd. reveals that an unqualified political appointee (the brother in law of the Agriculture Minister) with a criminal record for misappropriation was hired, in preference to a qualified candidate as Manager of the Vanuatu Livestock Development Ltd., a government owned enterprise. The company suffered disastrous financial consequences as a result of highly incompetent mismanagement by the appointee. (Hill, 2003:82)

Conflicts of interest identified by Hill include the improper granting of land leases, discussed above, and the misuse of VNPf funds, also discussed above. Hill also discusses one of the Ombudsman's first reports, involving the actions of the then Minister of Finance, Willie Jimmy.

In the Nambawan Bottle Shop case, the Ombudsman found that the Minister of Finance, as a partner in a private business enterprise, used his influence to bypass a number of statutory prerequisites to establish a retail liquor outlet...A license (on unprecedented terms) was granted for the operation of this outlet on a 24-hour basis, contrary to the terms of legislation governing the sale of alcohol and contrary to the legal opinion of the Attorney General. The report discloses various other instances of improper behaviour or inaction by officials in relation to this scheme. (Hill, 2003:82)

Bad business deals mentioned by Hill include the bank guarantees situations mentioned above.

Unnecessary travel by ministers and public servants also consumes large amounts of public money. For instance, public servants are often sponsored to attend conferences, and they can also claim allowances from the government. This type of corruption is, perhaps, under-recognised at the moment.

The Impact of Change

In recent years the main change to have impacted on corruption has been the good governance agenda, as reflected in the Comprehensive Reform Programme (CRP). From 1998 on there has been a series of laws passed aimed at improving management of government. Various institutional strengthening projects are aimed at building capacity in the public sector. Notable projects here include a legal sector strengthening project, a police strengthening project, a Parliament strengthening project, and a public service commission strengthening project, all of which have been primarily funded by AusAID. The good governance agenda has created a very good legal framework. At the moment, however, actual practice lags somewhat behind this framework. There is, however, an awareness of this. Now the focus is shifting from improving laws and systems to making sure that the laws and systems are complied with. There is a sense that things are improving slowly, across a number of areas. However, there is little sense that these changes have become ingrained behaviour, and it is recognised that medium to long-term support is needed to ensure that changes continue to occur and are maintained.

The National Integrity System

Executive

Vanuatu's executive is defined by Chapter 7 of the Constitution. The executive is made up of the Prime Minister and the Council of Ministers, who are appointed by the Prime Minister. The maximum size of the executive may not exceed one quarter of the total number of members of Parliament.

Vanuatu's Parliamentarians are politically unsophisticated, not necessarily aware of their roles and responsibilities. Some have had only limited education, and many do not have a thorough understanding of Vanuatu's system of government. Although members of the executive tend to be drawn from more experienced Parliamentarians, the executive is still not a politically sophisticated body. This hinders the effectiveness of the executive, as individual ministers may not fully understand how to exercise their powers legally and appropriately.

As well, there is a lack of responsibility. Ministers are becoming increasingly more adept at using the legal system, so innocent lack of capacity is becoming less of a viable excuse for poor decisions within the executive. Perhaps it would be more accurate to conceptualise at least some of the capacity problems in terms of a lack of 'moral capacity' (distinguishing between right and wrong, and using this distinction to actually guide behaviour).

This weakness in the executive has been recognised, and some attempts have been made to improve its functioning. The Government Act 1998 is the most important piece of legislation in this regard. It establishes the Development Committee of Officials, whose role is to provide advice and guidance to the Council of Ministers. Also, the Act clearly defines the role of political advisors, (advisors who are appointed to ministries by the Minister ostensibly to provide policy advice) and limits their numbers.

The Leadership Code Act 1998 is another important piece of legislation that attempts to ensure that the executive, and other leaders, act in a correct manner. This Act sets out the duties of leaders. It provides for offences if the Act is breached, and also requires leaders to file annual returns. Whilst this Act is penal in character, it does also aid leaders in providing a clearer guide as to what is expected of them.

In spite of these measures there is little confidence that the Council of Ministers is a strong body. Despite the establishment of the Development Council of Officials, there is still a perception that, at times, the Council of Ministers is not provided with good advice and information. Implicit in this perception is the idea that the Council of Ministers is not competent to identify poor advice and/or misinformation or take steps to improve any weaknesses.

Frequent changes of government also hinder the stability of the executive. In the past six years there have been two national elections, in 1998 and 2002. Government also changed at the end of 1998 following a change in coalition, in 1999 when the then Prime Minister resigned in order to avoid a vote of no confidence, in 2001, following a vote of no confidence, and in 2003, following a change of coalition. Such instability makes it difficult for members of the executive to set firm policy directions and develop continuity of government. This is reflected in frequent changes of policy with apparently very little regard paid to resulting economic and social consequences.

Legislature

Weaknesses due to inexperience and lack of knowledge may also be found in the executive.. There is a general perception that Vanuatu's Parliament does not act as a competent law-making body. Members of Parliament are not always given Bills in advance of parliamentary sessions, making it difficult for meaningful debate of issues to occur. Even if there has been advance distribution of Bills there is a sense that Parliament rubber stamps presented legislation, rather than putting it through a rigorous select committee process, or any other kind of scrutiny. Enacted legislation is often 'reactive' in nature rather than 'proactive'.

The role of the legislature as a forum in which public interests in Bills is debated is also hindered, as most Bills are prepared under conditions that do not allow for public debate. Some Bills are prepared in secrecy, with interested members of the public being unable to obtain copies. Even when Bills are not prepared secretly there is currently no institutionalised system of calling for public submissions or comments on Bills before they get tabled in Parliament.

The doctrine of separation of powers, and the concept that the legislature can and should act as a check on the executive, is not well understood in Vanuatu. This may be changing with the re-establishment of the Public Accounts Committee, after years of dormancy. Members of the Committee were provided with workshop training on their role before the Committee first sat. Although some lines of questioning were not taken, active and spirited questioning did occur. This Committee may help to develop the idea that Parliament can, and should, question and examine the actions of the executive.

Just as Parliament does not regulate the executive, nor does it self-regulate. Whilst there have been situations in which one member of Parliament has challenged the actions of another member of Parliament in court for flagrant breaches of procedure (as discussed below in the section on the judiciary), an internal regulatory system is still not in place.

A number of other Parliamentary Committee structures have also been established recently, but as yet are not active. A post of Parliamentary Counsel has also been created. This position should help to ensure that Parliament has fuller advice on matters before it.

Maybe the biggest problem with the legislature is its size. It is big, (52 members in a country of about 200,000 people, a ratio in the region of 1:3,850) and therefore expensive to operate. It cannot afford to meet more than once or twice a year, and there is little money to operate committees even if they are established. The downsizing of Parliament is, however, a politically unpopular topic. Indeed, prior to the 2002 national elections there was a proposal to increase the number of seats by 15, although this was rejected when the cost implications were realised.

Political Parties

Vanuatu does not have a strong political party system. Parties tend not to have clear policies and cannot be identified by reference to any sort of political philosophies. Voter behaviour is linked to the support of personalities, rather than parties. People do not expect parties to have policies. The clearest difference between parties is linguistic—there are still Anglophone parties (such as the Vanua'aku Pati, VP) and Francophone parties (such as the Union of Moderate Parties, UMP).

Members of Parliament frequently switch parties, making it difficult for voters to rely on a vote that has been cast for a party, rather than a person. Because government has been by coalition since the early 1990s, the movements of members of Parliament between parties have helped to increase instability in government. Whilst there has been some talk about creating laws to prevent members of Parliament from crossing the floor for a certain period of time following an election, nothing has come of this idea. Managing the machinations associated with this type of instability (whether as instigator or otherwise) takes up a great deal of time and energy on the part of politicians, thus their ability to effectively contribute to the government of the country is further reduced.

The lack of clear policy differentiation between parties also weakens party coalitions, as party coalitions are formed on the basis not of similar policies, but of the personalities of members of parties or short-term interests. When these interests change, new coalitions can be formed, resulting in a change of government. For example, in November 2003 the Vanuatu government changed as the result of a change of coalition. Following the 2002 election a coalition government between VP and UMP was formed. For a variety of reasons the coalition split. A new coalition between VP, NUP, the Green Party and the Peoples Progressive Party has formed the government. As indicated earlier, in the past six years there have been two national elections. There have also been four changes of government through changes in coalition or votes of no confidence.

There is an increasing number of parties in Vanuatu. In the early 1980s the major parties were the Anglophone VP, which held power throughout the 1980s, and the Francophone UMP, in opposition. In 1988 the Melanesian Progressive Party (MPP) was formed by Barak Sope, after his challenges to VP policy resulted in his dismissal from Parliament. The National United Party (NUP) was formed in 1991 as another breakaway from VP, after Father Walter Lini lost leadership following a vote of no confidence. (Van Trease (ed), 1995)

This trend to establish new parties has continued. Fragmentation within Parliament has also, therefore, increased. In 1983 VP and UMP held 36 of the 39 seats in Parliament between them. In 1987 these two parties held 45 of the 46 seats in Parliament. (Van Trease (ed), 1995:153) In contrast, in 2002 UMP gained 15 seats, VP gained 14 seats, NUP gained eight seats, the Vanuatu Republican Party (VRP) gained three seats, the Greens Confederation and MPP gained two seats each, and the Peoples Progressive Party, Fren Melanesian Party and Namangi Aute each gained one seat. Five independent candidates were also elected. (Electoral Commission, 2002)

There are no laws that require the disclosure of how parties receive their funds, or what those funds are spent on. The perception is that some parties have close links with certain members of the business community, and this affects the actions of the party. However, without rules about disclosure, such perceptions remain no more than speculation. There are also numerous anecdotal stories of party money being used to bribe voters just prior to election time, and a substantiated instance of a candidate using misappropriated public money to bribe voters. (Ombudsman Report 98/06) Again, without rules of disclosure, or prosecutions arising out of such stories, it is impossible to say how widespread this practice actually is.

Electoral Commission

The Electoral Commission is a constitutional body that has responsibility for conducting elections in Vanuatu. The Commission is made up of the chair and two other members, appointed by the President on the advice of the Judicial Services Commission (Art 18(1)). It is an independent body. The position of Electoral Commissioner is unpaid.

The independence and/or integrity of the electoral Commission is potentially jeopardised in two main ways. First, the Ministry of Internal Affairs controls the budget of the Electoral Commission, so it does not have financial independence. Second, the Principal Electoral Officer and other electoral officers are appointed by the Public Service Commission, and not by the Electoral Commission. Although the Public Service Commission is meant to appoint civil servants on merit, it has not always done so in the past. Lack of resources lowers morale, as does the fact that currently everyone within the Electoral Office is appointed as an 'acting' officer. Low morale may also affect the integrity of the Electoral Commission.

Vanuatu does not have an accurate electoral roll. The report of the Election Observer Group on the 2002 national election indicated that the electoral roll overstated the number of eligible voters by about 20,000. (Election Observer Group, 2002:38-40) However, the maintenance of all civil records in Vanuatu is a difficult task, and practical difficulties, rather than deliberate fraud or corruption, may account for some of the inaccuracy of the electoral roll. The Electoral Office is under-resourced, which makes it difficult for it to perform its functions, particularly maintaining an accurate electoral roll. As Vanuatu's population is spread over more than 60 islands, and there are not always easy transport or communication links between and around islands, ensuring that voters are registered is difficult. Irregularities in the registration of births and deaths further complicate the maintenance of an accurate electoral roll.

Some of the irregularities in the electoral roll, however, are clearly the result of fraudulent behaviour. A candidate in a national election reported being approached by people who acted as 'agents', selling the voting cards of people who had registered multiple times. One of these 'agents' reported that a particular candidate had had a number of school students registered to vote for him. It was also reported that when the Electoral Office cleaned the roll of Vila in the mid 1990s the number dropped by more than 10,000, from around 18,000 to approximately 6,000 people. Then Barak Sope came into government and

decided to have the roll reopened. At that time politicians came to the Electoral office with lists of voters that the Office registered from the papers. There were reports of people who never went to the Office and got additional cards handed over to them by politicians of their islands who expected them to vote for them.

A good description of some of the irregularities that can occur during the conduct of elections can be found in the case of *Rarua v Electoral Commission* (1999). Difficulties and irregularities in the conduct of elections have come to prominence with the establishment of Election Observer Groups (EOGs) for the 2002 national election and the 2003 Luganville Municipal Council election. The EOG for the 2002 election was established due to major complaints over the conduct of the previous Port Vila municipal council election. The main complaint was that truckloads of people were brought from the rural sector to vote in the urban sector. In order to do that, one had to have organised illegal voting cards.

Reports of these EOGs have been published, and clearly detail weaknesses in the electoral system. These reports indicate that the problems with the electoral system largely arise because of issues to do with resourcing and public understanding of the electoral system. Fraud and political interference in the voting system are also a huge problem. (Election Observer Group 2002; Election Observer Group, 2003)

Whilst a number of people were identified as committing crimes under the Representation of the People Act in the 2002 national election, no prosecutions have resulted. This suggests that better coordination between agencies is needed. If the Electoral Office identifies irregularities or illegal conduct, investigations need to be properly conducted and prosecutions followed through. This is, perhaps, more important than changing the laws to increase the range of electoral offences and the penalties for breaching the law.

Supreme Audit Institution

Vanuatu's supreme audit institution is the Office of the Auditor General. This is a constitutional office. The Expenditure Review and Audit Act 1998 sets up a comprehensive framework for the Auditor General to work within.

The Auditor General is an independent position. He or she is appointed by the Public Service Commission, and may be removed by the Public Service Commission for misconduct. Whilst this could potentially create a problem if the Public Service Commission did not act in the correct manner, as yet this has not occurred. Prior to the appointment of the current Auditor General, Auditor Generals were appointed on fixed-term contracts. Now the appointment is open ended, so any potential bias arising out of a desire to be reappointed is removed.

The Public Service Commission nominally appoints the staff in the Office of the Auditor General. However, the Auditor General sits upon the appointments committees. This effectively acts as a check against potential misconduct in appointments by either the Public Service Commission or the Auditor General. In practice the system works well.

The Office of the Auditor General has five main roles: to audit the government's financial statements; to review audits of State Owned Enterprises or organisations that government has a share in; to audit ministries, department and other government units, to ensure compliance; to conduct special reviews and investigations that are directed to the Auditor General; and to advise ministries and other government units.

Due to resource limitations, the Office of the Auditor General only audits ministries and other government units for compliance on a rotational basis. In addition, the audit of the national accounts has only recently been brought up to date.

Whilst the Auditor General actively produces reports, the problem is that people do not seem to read or respond to them. They are also not always widely available. Now that the Public Accounts Committee, a Parliamentary Committee which has the responsibility of examining the audited accounts, has been re-established, this may change. However, there are concerns that members of the Public Accounts Committee may not have the technical expertise to adequately review the reports. As well, as with any Parliamentary Committee, there is a danger of political interference in the operation of the committee.

For instance, members of the committee could use their positions to launch vendettas against others, if the makeup of the committee were not well balanced. There is also the likelihood of disruption caused by reconstitution with each change of government.

The Office of the Auditor General is under-resourced. This is not only a matter of money. It also has difficulties finding qualified and experienced local staff, as the skills base in Vanuatu is currently limited. Also, the private sector pays much better than the public sector, so qualified auditors are more attracted to the private sector.

Despite the difficulties of the environment of the Office of the Auditor General, there is a widespread sense that the Office is functioning strongly and well. Indicative of this is the expanding role of the Auditor General to offer advice to ministries.

Judiciary

Vanuatu's courts consist of a Court of Appeal, a Supreme Court, Magistrates Courts and Island Courts. The Land Tribunal Act 2001 has also established a 'custom tribunal' system to deal with land disputes. This Act removes land disputes from the jurisdiction of the judiciary. As yet it is too early to comment on whether the land tribunal system will function effectively.

The Magistrates Courts, Supreme Court and Court of Appeal structure is what one would expect to find in any common law jurisdiction. All judges except the Chief Justice are appointed by the Judicial Service Commission (Constitution, Article 47). Although custom remains part of the law of Vanuatu (Constitution, Article 95(3)) these Courts work largely with English common law and the statutes of Vanuatu. French law, which also applies in Vanuatu, is used very infrequently.

Over the past few years all magistrates have gained LLB (Bachelor of Laws) degrees. This has helped to strengthen the perception of Magistrates Courts as tribunals where the law will be applied strictly. However, the Magistrates Court is still not strongly respected, however. Judgments coming from the Magistrates Courts are still sometimes badly written or reasoned. Lawyers seeking particular orders have been known to go to court with the order already drafted, for the Magistrate to sign. Most magistrates have joined the judiciary immediately upon completion of their law degrees, and so do not have the practical experience and may not have the confidence to ensure that lawyers act properly in their courts.

The Supreme Court is generally viewed as a strong institution, comprised of independent judges, although there are also reports of lawyers writing judgments for judges. If this practice does indeed happen, however, it is not widespread. In the past few years the Supreme Court has made a number of decisions overturning actions by Parliamentarians. The Supreme Court was deeply involved in the Parliamentary crisis of 2001, when the Speaker refused to convene Parliament in order to allow a vote of no confidence to proceed. (Jowitt, 2002) Its decisions in this matter clearly indicate that it is prepared to act as an effective check on the executive.

The Supreme Court also functions as an effective check on the legislature. Before signing any new Acts, the President of Vanuatu has an obligation to refer anything that he or she thinks does not accord with the Constitution to the Supreme Court for review. This power is used and the Supreme Court has rejected Acts, or sections of Acts, for not being in accordance with the Constitution.

The appeals system functions well. The Court of Appeal is made up of judges from New Zealand, Fiji, Australia and Vanuatu and sits twice a year. Appeals are also frequently made from the Magistrates Court to the Supreme Court.

Over the past five years, law reporting in Vanuatu has improved. The Pacific Islands Legal Information Institute now publishes cases and statutes online. Prior to this online publication system there was no regular law reporting in Vanuatu, thus the system of precedent was largely meaningless. More comprehensive law reporting means that the decisions of judges are able to set legal precedents to be followed. The common law and

doctrine of precedent is therefore beginning to have more of an impact on Vanuatu's legal framework.

The weakest part of the judicial system is the Island Courts. These subordinate courts have limited jurisdiction over civil and criminal matters. The justices who sit at Island Court hearings have no legal qualifications, despite being expected to apply written law at times. Nor do Island Courts have clear jurisdictions, as no Island Court warrant has ever been gazetted. These problems in the operation of Island Courts are now being addressed through training for Island Court Justices. There are also plans to review their warrants.

Civil (Public) Service

The main problem with the civil service in Vanuatu is that it has not been clearly separated from the executive. This political interference has also created some instability in the civil service, with frequent changes of the executive resulting in changes within the civil service as well. This problem has been recognised and steps have been taken to fix it. The effective functioning of the civil service is being improved through an AusAID-funded Public Service Commission (PSC) strengthening project. In 1998 a new Public Service Act was passed. In 2002 a new public service manual was produced. These rules now provide clear and comprehensive guidelines to ensure that public service appointments are made on merit.

However, the rules are not always followed. The PSC can still be subject to political pressure. Family or business connections can also still affect appointments. It is felt that the PSC is not willing to dismiss high-ranking public servants for misconduct. However, the PSC is beginning to become a stronger institution, and is getting into a position where it can correct some of the poor decisions that were made in the past. Whilst only gradual changes can be expected over the medium term, it is hoped that the PSC will use its new rules and processes to gradually 'clean up' the public service.

The PSC does not have responsibility for the appointments of teachers and police. There is a separate Teaching Service Commission, established under the Teaching Service Act [Cap 171], and a Police Service Commission, established under the Police Act [Cap 105]. As discussed below, an Aus AID-funded police strengthening project is currently being undertaken, part of it comprising a review of the legislation, including the roles, responsibilities and powers of the Police Services Commission. The Teaching Service Commission is also going to be the subject of an IMF-funded mission in the near future.

Police and Prosecutors

The Vanuatu Police Force (VPF) is the focus of a major AusAID strengthening project, due to commence early in 2004. At the moment it is recognised that the VPF is under-resourced, under-skilled, and suffering from a serious lack of morale. There is little public faith in the ability of the police to deal with crime.

Structural issues have created a relatively well resourced quasi-military unit, the Vanuatu Military Force (VMF). Although the VMF is a part of the VPF (further to a Strategic Review in 1997), tensions between the VMF and the VPF hinder the operation of the police, at times. This tension, and political interference in the police force, has the potential to create wider conflict in Vanuatu society. The best illustration of this tension, and political interference, can be seen in the conflict over the appointment of a new Police Commissioner which occurred in 2002. Appointments were made improperly, and the Acting Police Commissioner kept changing, as appointments were challenged. Various appointments had support of either the VMF or the VPF. This causes divisiveness, as one faction's favourite would lose the appointment and be replaced with the favourite of another. The 'highlight' of this conflict came when a number of armed VMF officers came to the police station to arrest various police, who had earlier arrested an improperly appointed Commissioner of Police and 14-high ranking officials thought to be involved in the appointment. A fuller overview of events can be found in Jowitt (2003).

Political interference is considered a significant threat to the future of the VPF by officials within the organisation at all levels and by members of the wider community.

The Office of the Public Prosecutor is also receiving Australian aid under the legal sector strengthening project. This institution has been perceived as weak—maybe even deliberately weakened or systematically undermined by politicians whose best interests were not served by a strong Public Prosecutor. The independence of the Office has been in doubt. The previous Public Prosecutor was closely related to Father Walter Lini, Vanuatu's founding Prime Minister, and married to another politician. Previous prosecutors are thought to have deliberately lost or chosen not to act on files. Underfunding and lack of suitably qualified and experienced staff have hindered the operation of the Office of the Public Prosecutor.

With the assistance of the AusAID-funded legal sector strengthening project, processes are being improved, and a backlog of files is currently being dealt with. The Public Prosecutors Act 2003 has also been passed. This Act sets out clear guidelines as to the appointment of staff and the operation of the Office. The newly appointed Public Prosecutor has come from Papua New Guinea and so has the independence of an outsider. Currently the strength or weakness of this Office appears to depend largely upon who is appointed as the Public Prosecutor.

The work of the Public Prosecutor is hindered by ineffective investigations by the VPF. This results in the Public Prosecutor being presented with files that have insufficient evidence to go to trial. The public do not appreciate that the role of the Public Prosecutor is not to investigate complaints, but to take them to court, so some criticism is misdirected at the Public Prosecutor for failures to investigate cases. Whilst generally problems with investigations are attributed to lack of resources, including skills on the part of police officers, there is also a perception both within and without the force that some investigations are manipulated by people applying pressure on senior officers either to drop cases or to pursue them more aggressively.

The Public Prosecutor has the responsibility for prosecuting offences that are raised in Ombudsman's Reports. So far, however, this role has not been fulfilled. The reasons for this relate to the problems of underfunding, lack of suitable staff and possible bias, as outlined above. These problems are now being resolved, and there are plans for the first prosecutions under the Leadership Code Act 1998. Currently, however, there is insufficient coordination between the Office of the Ombudsman, the VPF and the Office of the Public Prosecutor.

The Ombudsman has no power to go to court on his or her own initiative in the event that the Public Prosecutor does not prosecute reports. Whilst the Ombudsman Act 1995 contained the power for the Ombudsman to seek an order from the Supreme Court that recommendations be implemented in the event that recommendations were ignored, this power is not included in the 1998 Ombudsman Act. Thus, in the absence of voluntary compliance with recommendations, the effectiveness of the Office of the Ombudsman is entirely dependent upon the existence of a strong Public Prosecutor.

Finally, the effectiveness of the VPF and the Public Prosecutor is called into question by the frequency with which presidential pardons are given. Currently, even if someone commits a crime and gets sent to jail, he or she may well be released within a few months. As such, the prosecution system is seen to have only limited punitive effect. This also contributes to a weakening of morale in these institutions.

Public Procurement

The Government Contracts and Tenders Act 1998 and Government Contracts and Tenders Rules 1999 require almost all contracts over the value of 5 million vatu (around US\$44,000) to be open to competitive tender. Tenders are then reviewed by a board. In this way the scope for corruption in public procurement is being minimised. Whilst the Act is not yet followed universally, it is beginning to have effect. The Act provides that contracts awarded through processes that do not follow the tender rules will not be honoured by the government. Currently some litigation is arising out of contracts that have been rejected because the tender process was not followed.

The Financial Regulations 2000 specify that purchases below the value of 100,000 vatu (around US\$880) require no pro forma invoices; purchases between 100,000 vatu and 1

million vatu (around US\$88,000) in value require 2 quotations wherever possible; and purchases between 1 million and 5 million vatu in value require 3 written quotations.

These laws are becoming more consistently applied and the scope for corruption in relation to public procurement is becoming increasingly limited.

The Ombudsman

The Office of the Ombudsman was established in 1994. An Ombudsman's Act, defining the powers of the office, was passed in 1995. This Act gave the Ombudsman the power to seek a court order to implement recommendations, if they were not otherwise acted upon. The first Ombudsman was noted for producing a large number of reports, and subjecting various leaders to sustained scrutiny, and criticism. There were charges by the leaders that the Ombudsman, a naturalised citizen, was a neo-colonial outsider. In 1998 the Ombudsman's Act was repealed, in an attempt to silence the Ombudsman. She continued to operate, however, on the basis of the constitutional provisions requiring the establishment of an Ombudsman's Office. In 1999 a new Ombudsman's Act was passed, limiting the power of the Office of the Ombudsman somewhat. In particular, the power to seek enforcement of orders from the Supreme Court was removed. (Hill, 2003)

When the first Ombudsman's term expired, she was not reappointed. The current Ombudsman has had a much less turbulent time in office. Fewer reports have been produced, and the office has not been at the centre of any major controversies. Indeed, it is often claimed that the Ombudsman is 'a watchdog without teeth'. This may reflect a different style or approach to the position, with more emphasis being placed on education and prevention than on punishment. It may also reflect deliberate weakening of the Office through the appointment of ineffective personnel. There is concern that the different, more Melanesian, less adversarial style is an example of 'hiding behind the cultural aspects of Melanesian society' to ensure that little gets done. Annual Reports have not been published in a timely fashion, making it difficult to assess the work of the Office.

There is a perception that the current Ombudsman is a political appointee, who was put into the position because he would be relatively ineffective. In support of this claim it can be pointed out that at the time that the Ombudsman was appointed, he had been charged with an offence of misappropriation under the Penal Code Act [Cap 135]. This case was later dismissed, on technical grounds. On appeal it was ordered that the case be retried, but a new trial never eventuated. (Public Prosecutor v Alatoa 2000) Again, whilst this case gives rise to a perception of bias, this is only speculation.

Questions have also been raised about other appointments in the Office of the Ombudsman. For instance, the Director of Legal Services position was advertised in December 2002, yet applicants have still not been notified of the progress of their applications. In the interim a Director has been appointed temporarily, apparently without formal procedure. This type of occurrence is not uncommon in various sectors in Vanuatu.

With the enactment of the Leadership Code Act 1998, the Ombudsman has expanded duties. The Office of the Ombudsman is required to investigate breaches of the Code. Section 34(1) provides

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.

This can be compared with s 18 of the Ombudsman Act 1998, which gives the Ombudsman discretion to investigate complaints, although the Ombudsman Act 1998 also allows the Ombudsman to commence an investigation on his or her own initiative.

The Ombudsman's reports must be given to the Public Prosecutor. When the report has revealed criminal misconduct, a copy must also be given to the Commissioner of Police. As yet, however, there remains considerable uncertainty as to how the Act should work in

practice and there have been no prosecutions under it. The Act is the subject of a technical review, which has proposed various clarificatory amendments. One proposal is the establishment a Leadership Tribunal to hear cases relating to more minor breaches of the Leadership Code. This would reduce the technicalities of prosecutions, as the procedures and evidentiary rules of court would not have to be adhered to. The Papua New Guinea Leadership Tribunal model has been used as a basis for the proposals of the technical review committee. There is one significant difference, as the PNG model only gives the Tribunal powers of recommendation, and the Vanuatu technical review committee currently favours giving the Tribunal the power to make binding orders. This technical review is not yet complete, and it is not known what will happen to the committee's recommendations.

Investigative/Watchdog Agencies

Outside of constitutional or governmental watchdog agencies (such as the Office of the Ombudsman and the Office of the Auditor General), the main watchdog agency is Transparency International Vanuatu (TIV). This NGO was established in 2001.

TIV has no formal powers, and is not an investigative body *per se*. It is active in training, its main focus being raising awareness about corruption issues, for which its main mechanism is the community workshop. In 2003, over 2,000 people attended TIV workshops held on various islands in Vanuatu. TIV also produces newsletters highlighting certain marginal activities and can use the media to good effect.

TIV has also been central in the establishment of Election Observer Groups to monitor the conduct of the 2002 national elections and the 2003 Luganville municipal council election. These groups have been very effective at identifying and highlighting weaknesses in the electoral system.

The need for coordination amongst NGOs in general, as discussed below, applies equally to TIV. Resource constraints are also shared by TIV and other NGOs.

Media

Vanuatu's main media sources of local news are government-run radio stations, a government-run television station and two independent newspapers, the *Vanuatu Daily Post* and the *Independent*. Two internet sites also provide current local news. One of these is run by the *Vanuatu Daily Post*, the other by the Port Vila Presse, which no longer produces a hard copy newspaper. The independent newspapers, particularly the *Vanuatu Daily Post* (previously the *Vanuatu Trading Post*) are very vocal about corruption, while the radio and television broadcasts do not contribute much to the public discourse on corruption.

Stories on corruption have resulted in trouble for journalists. Most recently, the publisher of the *Vanuatu Daily Post* was assaulted and hospitalised after running stories about the corrupt management of the Vanuatu Maritime Authority. An order from the Magistrates Court preventing the *Vanuatu Daily Post* from publishing any stories about management of the Vanuatu Maritime Authority, was subsequently quashed by the Supreme Court. (Jones & *Vanuatu Daily Post* v Emelee 2003).

Another instance indicating that the courts are prepared to uphold the free press arose in early 2001, after the publisher of the *Trading Post*, Marc Neil Jones, was deported for publishing 'negative and baseless' stories about the relationship between businessman Amarendra Nand Ghosh and the government. Jones returned to Vanuatu two days after his deportation, following an interim order by Acting Chief Justice Lunabeck that allowed him back into the country until the legality of his deportation could be resolved in court. After further threats by the government, a customary reconciliation ceremony was performed between Jones and the government. This ceremony, which was prompted in part by a public outcry against the government's actions, settled the dispute. (Jowitt, 2002)

The threat of violence or other sorts of disruption persuades some parts of the media to self-censor their stories, even in the absence of legal grounds for censorship.

Certainly, the media is not always responsible in its reporting. There is a perception that some branches of the media 'target' certain people or parties for their bad behaviour whilst leaving other people or parties alone. Inaccurate reporting of the actions of people or businesses in the private sector has also occasionally hindered business activities, although newspapers are fairly ready to print retractions or apologise by other means. The only defamation case that has proceeded through court involved a private businessman suing a newspaper for inaccurate reporting. (*Moli v Heston* 2001)

Vanuatu does not have a strong tradition of investigative journalism. Journalists print stories that are reported to them, rather than uncover stories themselves. The reporting is also often superficial or inaccurate. Such inadequacies might be symptoms of Vanuatu media's relative infancy—as the institution becomes more secure in its position within society, one would expect journalistic standards to improve.

The Vanuatu Media Association is currently working on a Code of Ethics for journalists, which when completed should help to improve reporting standards. Once the Code has been completed, it is intended that a Complaints Tribunal will be established, allowing members of the public to officially complain about any media content. As yet, however, no time frame for the completion of the Code of Ethics or establishment of the Complaints Tribunal has been set.

Civil Society

Civil society in Vanuatu includes traditional groups, community groups, religious groups and more conventional NGOs. The private sector is also an important, but under-organised (in the sense of group cohesiveness), part of civil society. Because traditional groups, community groups and religious groups are more autochthonous in character than NGOs and also tend to be more loosely structured, in the discussion below they are dealt with together. The private sector and NGOs are discussed under a separate heading.

Traditional Organisations (including community and religious groups)

The Malvatumauri, or National Council of Chiefs, is a constitutional body that has general competence to discuss and make recommendations on any aspect of ni-Vanuatu custom. Its 22 members are elected from provincial councils of chiefs. The Malvatumauri and the chiefs are an important part of the NIS. On the outer islands the reports or complaints of chiefs and elders are the main way for the Public Service Commission to find out about problems with the conduct of public servants. Chiefs have also been very important in helping to maintain stability in times of conflict. For example, chiefs played a central role in calming the VNPFF riot. They are also frequently involved in reconciliation ceremonies, where they defuse tension, an example of which occurred in 2003 when conflict arose over the appointment of the Police Commissioner.

Chiefs also play an important role as dispensers of justice at the village level. Informal village courts are, perhaps, the most frequently used dispute resolution tribunal in Vanuatu. Although they have no formal legal powers, village courts also hand down punishments for acts of wrongdoing. However, such punishments can conflict with the introduced legal system, for example a decision of the chiefs does not respect constitutional rights or otherwise accord with legal principles.

Councils of chiefs are becoming increasingly formalised. Various island councils of chiefs have now created written constitutions for themselves. These constitutions help to define chiefly status, powers and processes. Chiefs are becoming increasingly sensitised to the issue of corruption, and a number have recently undergone TIV training on corruption in relation to the role of chiefs. This training was conducted in three-day TIV community workshops. Content of these workshops is adaptable to different audiences, being partly driven by the discussion of participants, so whilst not specifically designed for chiefs they have provided a useful framework for chiefs to learn about corruption and consider their place within the NIS. The Malvatumauri is also conscious that some chiefs do act in a corrupt or inappropriate manner, for example taking bribes at election time and/or telling people how to vote. Although available resources currently limit the Malvatumauri from being able to do anything more than monitor actions, nonetheless it appreciates that it has a role to play in educating chiefs and helping to lead society in addressing corruption.

Churches are another important traditional organisation. There are various Christian denominations in Vanuatu, and many villages will have more than one church. Church organisations help to foster community development. For instance, village schools are often built by churches. Church elders are afforded a level of respect akin to that given to chiefs, and have an equally important role in leading community attitudes towards corruption. At the moment, however, the role of church organisations in the NIS remains largely unrecognised.

Churches provide a focus for communities and community organisations. The other main community organisation is women's councils or committees. Many villages have a women's organisation. These organisations are linked, to a degree, through the Vanuatu National Council of Women (VNCW). Whilst the VNCW is recognised as a political body, individual women's committees tend not to be thought of as significant in the NIS. Whilst women in Vanuatu are not prominent in political life (for example, Vanuatu has only one female member of Parliament), the disregard of individual women's committees is not simply a gender issue. All 'grassroots' organisations that fall outside of the concept of the modern, politically conscious NGO tend to be overlooked for their actual or potential part in the NIS. People often treat 'traditional' community organisations and the 'modern' institutional structure as separate from each other, their attitude possibly reflecting the apparent irrelevancy of modern institutions and concepts (including corruption) to their lives. Youth committees are also beginning to develop in a number of places, and should also be recognised as a community organisation that can play a role in the NIS.

NGOs and the Private Sector.

There are a number of NGOs in Vanuatu, and many have programmes that relate to corruption or good governance in some way. The NGO sector has been a leader in raising awareness about corruption, providing education, and working with people at the 'grassroots' level on governance issues.

A major problem with the sector is the lack of effective coordination among NGOs. There is a common perception that different organisations keep 'reinventing the wheel'. Information is often not shared, and different projects cover similar ground. There is also a perception that some NGOs become 'experts at everything' in order to be able to attract funding, but are actually unable to execute such a broad range of projects. Competition for funding can also help to create divisions between NGOs. Whilst NGOs are a very important part of the Vanuatu's NIS, then, the sector does sometimes act inefficiently.

There is also a perception that NGOs themselves do not always act in a transparent manner, and sometimes deliberately misuse funds. In particular, aid donors often will not fund operating costs but will fund projects. Money that has been granted for specific projects is moved around within the budgets of some NGOs to fund operating costs or other non-project related expenses. This is not perceived as corruption. Instead NGOs tend to see themselves as 'good guys' who are using money for the good of Vanuatu, not for personal gain, and therefore do not have to be too strict about financial reporting. Having said that, it is the general perception of aid donors that in Vanuatu the misappropriation of funds by NGOs and individuals who work within them is not a significant problem, certainly in comparison to many other areas of the globe.

The private sector is not viewed as a pillar of the NIS. In many respects it is not even viewed as an integral part of Vanuatu society. Whilst some attention is paid to the role of the private sector in leading economic growth in Vanuatu, there is a public perception that the private sector is made up of foreigners who come in to exploit ni-Vanuatu and grow rich. The private sector is, then, very much outside of society. It should be noted that many people in the business community do not come to Vanuatu to make more money than they would make 'back home', but to enjoy a different type of lifestyle. Indeed, many people in the business community accept that it would be easier for them to make more money elsewhere.

Two areas of the private sector are mainly discussed in relation to corruption. The first is financial services, specifically Vanuatu's tax haven industry. The legal structure that allows for secrecy and international (OECD-driven) pressure on tax havens has helped to create

the perception that this industry is not entirely legitimate. However, considerable legal reform has occurred in this area, and the industry is now subject to much more stringent monitoring.

The second area is 'political business people'—members of the business community are frequently perceived as using their political influence to further their businesses. There is no way to determine the extent to which this perception is true.

Bribery by the private sector does occur. Businesses sometimes employ wantoks to act as intermediaries and smooth over business transactions. Gifts are also given, or loans which are then not required to be paid back. A recent example is the donation of two vehicles by a company agent to a Minister responsible for licensing. There are reports that bribery will facilitate transactions within the Department of Lands. There are some allegations that Land Officers receive moneys for accepting subdivisions in areas where it is environmentally unacceptable or where there are obligations in the land lease not to subdivide. As well, there are allegations that if a business pays the required committee to meet to consider its application then that application will be accepted. There are also allegations that Customs Officers have approached businesses seeking bribes, although a recent South Pacific Project Facility study indicated that no respondents had ever been asked to pay a bribe by any government official, and long-term private sector operators report that they have never needed to pay bribes or even been asked to do so in order to conduct business effectively.

The effects of corruption in the private sector are not clear. Political instability, rather than corruption, is usually identified as the main barrier to attracting foreign investment. It is clearly, however, that corruption does have some effects on the private sector. Some expatriate business owners fear the risk of 'green letters', or being deported for no just cause, although this practice is becoming less common. There are reports that different people get treated differently by officials in matters such as obtaining business licenses and paying fees. Private sector businesses seem to accept these things as minor annoyances, and a natural part of business life in Vanuatu. It is possible to conduct business here without paying bribes or otherwise colluding with corrupt officials.

Regional and Local Government

The Decentralisation Act 1994 restructured the provincial government into six regions. However, these provincial governments continued to act inefficiently and have not contributed a great deal to the development of different regions. As a result, a Decentralisation Review Commission was established in 2000. As yet, recommendations from the Commission have not been acted upon.

There is a perception that provincial governments do not have staff with the capacity to be able to effectively manage affairs. Vanuatu has limited human resources, and those human resources it does have tend to be attracted to the urban areas. The national government also has limited financial resources. There is little money to spend on the development of provincial centres. Vanuatu's provincial governments are almost completely overlooked as part of the NIS, possibly reflecting the common perception that they do very little.

This is a problem that is recognised, and there has been some talk about 'what to do about the outer islands'. As yet, however, no clear solutions have been identified for this very complex issue, and the current operation and future role of provincial governments remain very much in limbo.

Progress with Government Strategy

Vanuatu's government reform strategy, the Comprehensive Reform Program (CRP) was developed at a national summit in June 1997. This is a wide-reaching reform programme which 'provides a blueprint for good governance through institutional renewal; improved service delivery, particularly to rural areas; the development of a redefined role for the public sector and improved public sector efficiency; private sector-led growth; and improved equity between sections of the population.' (Australian Department of Foreign Affairs and Trade, 2003) The CRP includes a commitment by government to constrain

expenditure, increase transparency, increase the independence of the public service, the judiciary and other institutions, and to increase accountability.

Significant pieces of legislation that have been passed as part of the CRP are listed in Appendix 2. These Acts are aimed at improving government structures and processes and increasing transparency and accountability in both the public and private sectors.

However, passing a piece of legislation does not mean that it is necessarily implemented or adhered to. There is a recognition that the first few years of the CRP have focussed upon improving the frameworks of institutions. Ensuring compliance with those frameworks will be at the heart of future work.

There are already projects, discussed in the section below, aimed at building the capacity of various institutions in order to foster compliance. Perhaps the most significant of these is the new computer system that has been implemented to improve financial management. This is widely recognised as being a significant means of improving control of public money and increasing accountability for the spending of it.

The most notable area in which there has not been progress with the CRP is in relation to a review of the role and operation of provincial and municipal government. Whilst a Decentralisation Review Commission was constituted in 2000, there has been little action on its report. As indicated earlier, the question of the role provincial government should play usually seems to be placed in the 'too hard basket', resulting in little progress.

Donor Anti-Corruption Initiatives

Donor anti-corruption activities have also been driven by the CRP. The first years of CRP implementation were largely funded through an Asian Development Bank loan of USD 21.2 million. Bilateral donors have also consistently supported CRP activities.

Australia, the largest contributor of bilateral aid to Vanuatu, currently funds four major projects—a legal sector strengthening project, a police capacity building project, a public service commission, and a financial management strengthening project. (AusAID, 2002)

Other aid donors, particularly New Zealand, France and the European Union (EU), are involved in funding smaller, less comprehensive projects. As the United Kingdom channels its aid through the EU, funding through the UK Department for International Development (DFID) is becoming less significant for Vanuatu.

It should be remembered that donors do not always act in ways that support anti-corruption initiatives. Indeed, some aspects of aid may contribute to the existing climate of corruption. Currently there is little coordination of donor activities, although some donors work more closely together than others. This year the government called for a donor coordination meeting, and this may help to improve coordination. However, lack of coordination encourages competition for aid and divisiveness among competitors for aid. Currently all donor funding is meant to go through the government financial system. This would also help to ensure coordination. However, some donors circumvent this process, as they feel it is too slow and may allow for political interference in funding (that is, if the government does not approve an NGO project for funding, then it effectively stops that project). Whilst donors may be able to justify their actions in this respect, the example thus set is of questionable worth. As well, it is thought that some donors give money directly to government officials as 'sweeteners', to ensure that the government votes in support of their policies at international forums. However, there are no means to verify such speculation.

Future Research and Donor Support

It is widely agreed that Vanuatu now has a very good system of laws and a strong institutional framework. Now, rather than creating new institutions or laws the focus has to be on implementing what already exists.

Specific areas for future research and donor support are discussed below.

Anti-Corruption Activities

Overview of Government Reforms

As stated above, the CRP was instituted in 1997. It is a wide ranging reform programme that aims to increase good governance across a number of sectors.

Assessment of Progress

As stated above, the CRP has produced a very good framework of laws. Now the focus must turn to the implementation of those laws. Some areas still need to be reviewed, most notably the role of provincial governments, and how to increase development across all the islands of Vanuatu.

Overview of Donor Anti-Corruption Initiatives

As stated above, donors have been consistently supportive of CRP activities. Funding is now focussing upon institutional strengthening or capacity building, to help ensure compliance with rules and processes.

Donor activity is becoming increasingly sensitive. Interference with independence through the placement of advisors is a strong theme in politics at the moment. Perhaps the most striking example of this was the 'Vanuatu—Spies of the Pacific' programme that aired on Australia's SBS Dateline programme in October 2002. In this programme the Australian Federal Police (AFP) were accused of spying on the government and otherwise overstepping their authority. A member of the Vanuatu Right Wing Movement, a nationalist organisation, stated, 'All these rubbish [advisors] must go back, especially Australia. We ask the Australian embassy, please take back your police advisers, the AFP, your advisers that are misleading us. Take them out safely. We won't want to touch them. We want them to go home.' (SBS Dateline, 2000) This statement reflects a growing sentiment towards foreign advisors that is frequently expressed more strongly.

Whilst the government still wants aid money, it does not want the advisors who go with it in order to ensure it is well used. Undoubtedly, there are some poor advisors. There are people who are insensitive to the culture and the environment. Some consultants 'parachute in' and write reports on the country or make recommendations without having a thorough understanding of the place. Some of the advisors, particularly volunteers under the Australian Youth Ambassador programme, are viewed as being too young and inexperienced to undertake their assignments, which can involve great responsibility. In addition, sometimes it is the case that ni-Vanuatu counterparts and others have misconceptions about what it is that advisors are there to do, leading to a lack of useful activity and skills transfer.

For these reasons the activities of advisors can sometimes be removed from the desires and interests of the people of Vanuatu. Whilst most people in Vanuatu will listen politely to outside ideas, there is sometimes a sense that advisors are 'being humoured'. Perhaps an example can even be found in this research project. Whilst people were willing to talk individually about the NIS when approached, out of almost seventy people invited to the focus group session only eleven attended, and all but two of these were expatriates or naturalized citizens. This is partly because all of this talk about corruption is not being generated from within Vanuatu society.

Assessment of Priority Areas, Issues or Activities

There are five priority areas in which activities need to be undertaken

- General education or awareness
- Institutional strengthening through capacity building
- Enforcement of laws
- Facilitation of integration of the NIS
- Investigation of decentralisation/urbanisation and youth unemployment.

In terms of general education or awareness, there needs to be a focus upon programmes that will develop the values that will lead to a change in expectations rather than programmes that simply teach good and bad behaviour in particular situations. There also needs to be greater awareness of how corruption impacts upon individuals in society. This education or awareness should be multi-pronged. As well as programmes introduced through the formal education system, there is a need for general awareness campaigns directed at a broad spectrum of society and specific education campaigns aimed at organisations that influence community values, such as chiefs and churches.

The second priority area, institutional strengthening through capacity building, involves a continuation of institutional strengthening projects that are already in place.

The 'traditional' parts of civil society, chiefs and churches, may benefit from being given a more definite place and function within the NIS through law. Currently these organisations have been expected to take the initiative to get involved with the NIS just as other, modern, NGOs do. However, the structures and approaches of modern NGOs are completely different to those of traditional organisations. Chiefs have been requesting more formalised power for a number of years, and they are now going ahead and creating their own constitutions. To integrate this initiative with the NIS and to help develop the capacity of chiefs and churches, further research is needed into the definition of their roles.

In regards to the third priority area, enforcement of laws, currently much work is being done to strengthen the legal sector, and this work needs to continue. Capacity building that aims to prevent corruption must be coupled with capacity building to ensure that punishment for corrupt acts occurs.

Fourth, attention must be given to the coordination of actors within the NIS. Research to establish exactly which anti-corruption or good governance projects are being funded by aid donors, which NGOs are undertaking projects, which government institutions are undertaking activities and exactly what those activities or projects are is needed. Such research, as well as giving a comprehensive and precise picture of anti-corruption and good governance activities, should identify mechanisms for improving coordination.

Finally, the need for decentralisation and the related issue of urbanisation must be addressed. There are no easy solutions in this area. It is known that infrastructure must be improved, but there is no money to do this. Nor is infrastructure the only issue. The basic issue of why businesses would want to operate in the outer islands needs to be addressed, and what sorts of businesses are, realistically, going to operate in this environment. This leads to consideration of markets for goods, and the need to open up export markets. The role of provincial government also needs to be considered.

This is an urgent matter because of the impact of rapid population growth and urban drift on the urban areas. In these areas subsistence lifestyles are not possible. Instead, there needs to be access to the cash economy. Without this access dissatisfaction can grow, leading to an increase in crime and instability. As yet, however, even in urban areas there is little increase in formal employment. Thought must be given to ways to increase opportunities in town. The role of education in shaping expectations is also important. Currently the education system is preparing people for jobs that do not exist, and thereby creating false expectations. Systematic attention needs to be turned to the related problems of decentralisation, urbanisation and youth unemployment in order to foster development and minimise the potential for instability.

Key Issues

The National Integrity System (NIS)

On paper, Vanuatu has a very good NIS. The country has a comprehensive framework of laws that establish and regulate institutions, and encourage transparency and accountability. Whilst there are some areas that still need their frameworks reviewed (most notably, provincial governments) one of the strengths of Vanuatu's NIS is its strong legal framework. In practice, however, the NIS is still not functioning effectively.

The main systemic issue is that, although Vanuatu has a number of institutions, they are not effectively integrated. Therefore, 'national integrity system' is something of a misnomer.

Even with this lack of integration, however, some pillars of the NIS function well. Strengths within the NIS are always related to particularly committed and hard-working individuals or teams of individuals. Whilst these individuals are to be commended, this raises the question of what happens when such individuals leave institutions. Conversely, weaknesses within a particular institution are usually linked to underperforming individuals. If individuals are not checked by other parts of the system (whether within or outside their particular institution), they are able to continue with no expectation that their work will improve.

The legal position varies markedly from reality. In considering why this is, the nature of the legal system must be taken into account. It was adopted on Independence, rather than being home-grown. The adversarial dispute resolution system of the courts is unfamiliar to most people and stands at odds with customary concepts of restorative justice. Written laws are usually drafted by outside advisors and/or government offices that are removed from the grassroots level. People are not asked to submit comments on draft laws. Once a statute is passed it is often not widely enforced, which helps to increase the sense that the law is largely irrelevant to most people's lives. The concept of the rule of law remains very much outside of society. In such an environment it is unsurprising that politicians and public servants do not see themselves as bound by law.

Finally, the expectations of people at the grassroots level affect the operation of the NIS. Individuals do not place any burden of expectation on their leaders or the government. The divorce of the majority of people from the government and the common unquestioning acceptance of what goes on in politics indicate a lack of expectation that things will ever improve.

Effectiveness of Government and Donor-Supported Activities

The first six years of the CRP have seen considerable progress made on the government strategy. A number of laws to improve the frameworks of institutions and increase accountability and transparency have been passed. The next challenge is to translate these laws into practical changes. Mechanistic rules are unable to control corruption unless there is a corresponding change in internal attitudes. It is recognised that there must be a concerted effort to implement legal reforms. Aid donors are supporting these implementation initiatives. As change is necessarily progressive, it will be several years before it is possible to meaningfully assess the effectiveness of the CRP initiative.

Priorities and Recommendations

As stated above, there are five priority areas in which activities need to be undertaken:

- General education or awareness
- Institutional strengthening through capacity building
- Enforcement of laws
- Facilitation of integration of the NIS
- Investigation of decentralisation/urbanisation and youth unemployment

The sorts of research or projects that are needed in each of these areas are outlined above. It should also be emphasised that, as far as possible, projects should be home-grown. Steps should always be taken to try to ensure local ownership of projects. It should also be noted that there needs to be thorough assessment of projects. Projects, particularly those carried out by NGOs, need to be assessed on methodologies as well as findings or outcomes, in order to ensure that quality is maintained.

Appendix 1 – Questionnaire

Executive

Can citizens sue government for infringement of their civil rights?

Formal or legal position

Yes. The Crown Proceedings Act 1947 (UK) applies in Vanuatu, and gives the State capacity to be sued in civil proceedings.

What actually happens

Lawsuits do happen. However, there are various barriers to using the legal system. The lack of familiarity that most people have with the laws and court system means that many citizens are unlikely to be aware that they have legal remedies for infringement of civil rights. The costs of accessing legal advice and going to court are other major barriers.

The most common category of civil lawsuits against the government arises in the area of termination of public servants, when grievances arise over wrongful dismissal and/or payment of benefits on termination.

Are there procedures for the monitoring of assets, including disclosure provisions

- **for cabinet and other government ministers?**
- **for high-level officials?**

Formal or legal position

Yes. Article 67 of the Constitution and section 5 of the Leadership Code Act 1998 define leaders to include all government ministers and a wide range of high-level officials. Section 31 of the Leadership Code Act 1998 requires all leaders to file annual returns stating their assets and liabilities. Lists of leaders who have made returns are gazetted, it is an offence to fail to file a return and the Ombudsman has the power to examine the returns.

What actually happens

Currently not all leaders are filing returns. There have not been any prosecutions for failure to file a return, however. It is also easy for leaders to make incomplete disclosures and/or hide assets. For example, the assets of the spouse and children of a leader are not subject to scrutiny. Currently not all returns are being thoroughly checked, due to limited capacity in the Office of the Ombudsman.

Lists of who has filed returns and who has failed to file returns are meant to be published in the gazette by 14 March each year. In 2000, however, the lists were published in June. This makes the lists extremely hard to locate, and it is unclear whether any subsequent lists have been gazetted. An Ombudsman's Report recommended prosecution of leaders who did not submit returns in 2000, but no prosecution has eventuated.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

Formal or legal position

No

What actually happens

Parliamentarians are more likely to file annual returns than some categories of high-level officials. The Clerk of Parliament is the person who collects the annual returns, and this may account for greater compliance amongst Parliamentarians.

Are there conflict of interest rules

- **for ministers?**
- **for high-level officials?**

Formal or legal position

Section 24 of the Leadership Code Act 1998 prohibits leaders from acting in situations in which a conflict of interest exists. This section applies to both ministers and high-level officials.

What actually happens

In practice this is very difficult to police and/or enforce. Vanuatu is a small society, so it is difficult in many situations for ministers and officials to avoid personal connections in their affairs, although of course not every personal connection will amount to a conflict of interest.

There are no reported investigations for breaches of section 24.

Are there rules and registers concerning gifts and hospitality

- **for ministers?**
- **for high-level officials?**

Formal or legal position

The annual returns that leaders must file require them to list all gifts received. However, there are no separate registers of gifts.

What actually happens

As stated above, not all leaders are filing returns, and the capacity to check that all of the returns are accurate does not exist. In practice it would be very difficult to check whether gifts have been received.

If so, are these registers kept up to date? By whom?

- **Have they legal powers to enforce disclosure?**
- **Have they staff to investigate allegations?**
- **What powers of sanction are in place against ministers who are also parliamentarians? Have they ever been invoked?**
- **What powers of sanction are in place against ministers who are not parliamentarians? Have they ever been invoked?**
- **What powers of sanction are in place against high-level officials? Have they ever been invoked?**

N/A as there is no legal requirement for a register of gifts to be maintained.

Are there restrictions on post-ministerial office employment

- **by ministers?**
- **by high-level officials?**

Formal or legal position

There are no restrictions on post-ministerial office employment for ministers. If a high-level official has been dismissed or retired on a compulsory basis or has resigned from the Public Service as a result of a disciplinary matter, he or she may not be considered for any

further appointments in the Public Service for a period of two years. (Public Service Staff Manual 2002, Chapter 3(5)(a))

What actually happens

No reported instances of people being dismissed for misconduct and then being re-employed were reported during the preparation of this report.

Are members of the executive obliged by law to give reasons for their decisions?

Formal or legal position

Different Acts govern the decision-making powers of different ministers. These Acts frequently do not require ministers to give reasons for their decisions. However, the Court has inherent jurisdiction to review decisions to ensure that the principles of natural justice have been complied with.

What actually happens

The main area in which this issue has arisen has been decisions by the Minister of Immigration to revoke residency permits. The Supreme Court has made it clear that, even though the Immigration Act [Cap 66] does not require the Minister to give reasons for his or her decision, the Court retains the power to review that decision, and ensure that the reasons for revoking a residency permit in any given situation were legally valid.

However, this right to judicial review does not alter the fact that ministers usually do not have to give reasons for their decisions at the time that the decision is made.

Do ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Formal or legal position

The Government Contracts and Tenders Act 1998 provides that, when the value of a contract is over 5,000,000 vatu, a Board must make a recommendation on all contract award decisions. Section 12(3) of the Act makes it clear that the Council of Ministers must accept the recommendation of the Board unless there are compelling reasons not to. Section 12(4) of the Act makes it clear that the Council of Ministers must not award contracts unless the tender process has been followed. The Council of Ministers should therefore be simply 'rubber stamping' decisions.

Licensing decisions vary, as different licences are governed by different pieces of legislation. Ministers may be accountable to boards, or may hold sole power to make decisions.

What actually happens

Individual ministers are still perceived to hold power over the specific licensing areas that their ministries govern. Given the range of licenses and powers that ministers and ministries have, it is difficult to say whether this perception is valid in any particular instance.

Are there administrative checks and balances on decisions of individual members of the executive?

Formal or legal position

There are checks and balances. The Auditor General conducts audits, and reports are presented to the Public Accounts Committee. Within ministries there may also be checks through the use of board structures.

What actually happens

The Auditor General does not annually audit ministries for compliance. As well, there is a sense that reports of the Auditor General are not read or acted on, thereby weakening the actual impact of this check. The Public Accounts Committee is new, so it is too early to say whether it will be an effective body.

The different ministries function differently, but because of limited capacity within the public service there is a perception that administrative checks and balances do not operate effectively.

Legislature

Is the legislature required to approve the budget?

Formal or legal position

Yes, under Article 25(2) of the Constitution 'no expenditure of public funds shall be incurred except by or under a law passed by Parliament.'

What actually happens

This procedure is followed. Every year Appropriation Acts are passed by Parliament.

Are there significant categories of public expenditure that do not require legislative approval? (Which departments does this involve, what is their expenditure and what percentage of the government's annual expenditure does this represent?)

Formal or legal position

Statutory or commercial entities that are owned or partially owned by the government are not part of the government budget. The expenditure of trust monies also does not require legislative approval.

What actually happens

Not all revenue that is collected by government institutions gets properly reported or deposited into government accounts. Aid donors also do not always follow the government financial procedures, so some aid money is not approved as public expenditure.

Are there conflict of interest rules for parliamentarians?

Formal or legal position

Section 24 of the Leadership Code Act 1998 prohibits leaders from acting in situations in which a conflict of interest exists. This section applies to members of Parliament.

What actually happens

In practice this is very difficult to police and/or enforce. Vanuatu is a small society, so it is difficult in many situations for parliamentarians to avoid personal connections in their affairs, although of course not every personal connection will amount to a conflict of interest.

There are no reported investigations for breaches of section 24.

Are there rules and registers concerning gifts and hospitality for parliamentarians?

Formal or legal position

The annual returns that members of Parliament must file under the Leadership Code Act 1998 require leaders to list all gifts that have been received. However, there are no separate registers of gifts.

What actually happens

Not all leaders are filing returns, and the capacity to check that all of the returns are accurate does not exist. In practice it would be very difficult to check whether gifts have been received.

If so, are these registers kept up to date? By whom?

- **Have they legal powers to enforce disclosure?**
- **Have they staff to investigate allegations?**
- **What powers of sanction are in place against parliamentarians?**
- **Have they ever been invoked?**

N/A as there are no registers of gifts

Are there restrictions on post-legislature employment?

Formal or legal position

No

What actually happens

People who were Parliamentarians are free to seek employment, and do so. For instance, the current chair of the Public Service Commission used to be a member of Parliament.

Elections

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

Formal or legal position

Yes. An independent Electoral Commission is a constitutional body, as provided by Article 18 of the Constitution.

What actually happens

Resource and structural issues hinder the independence and integrity of the Electoral Commission.

The budget of the Electoral Office is not controlled by the Electoral Commission, but by the government, through the Ministry of Internal Affairs. The Principal Electoral Officer and other electoral officers are public servants who are answerable to the Public Service Commission, and not the Electoral Commission. This could, potentially, create conflicts or reduce independence.

Currently all staff of the Electoral Office are appointed as 'Acting' position holders. This works to lower staff morale, which could also potentially affect the performance of the Electoral Office and Electoral Commission.

Facilities and equipment are limited, and hamper the Electoral Commission and Electoral Office in its activities, such as the maintenance of the electoral rolls.

Who appoints the Head of the Commission?

Formal or legal position

Article 18(1) of the Constitution provides that the Electoral Commissioner and other members of the Commission shall be appointed by the President, on the advice of the Judicial Services Commission.

What actually happens

The legal position is followed.

Political Party Funding

Are there rules on political party funding?

Formal or legal position

There are no rules on political party funding.

What actually happens

There is no transparency surrounding political party funding. There is some ambivalence as to whether such rules are appropriate for Vanuatu at this time. Political parties are often viewed as private, rather than public, institutions, which should not have to disclose their financial affairs. There is also a feeling that Vanuatu's political system and party system are not yet sufficiently developed to be able to effectively enforce such laws.

Are substantial donations and their sources made public?

Formal or legal position

There are no rules requiring publication of significant donations.

What actually happens

Donations and their sources are not made public. Whilst there is speculation that certain business interests associate with certain parties and fund party activities, there are no public records verifying this speculation.

Are there rules on political party expenditures?

Formal or legal position

There are no rules governing political party expenditures.

What actually happens

As there is no transparency it is impossible to verify how political parties spend their money. There is speculation and anecdotal evidence that political parties use funds for improper purposes, particularly around election time in order to buy votes. However, such speculation cannot be properly verified.

Are political party accounts published?

Formal or legal position

There are no rules requiring publication of political party accounts.

What actually happens

Political party accounts are not published.

Are accounts checked by an independent institution, are they published and are they submitted to Parliament?

Formal or legal position

There are no rules requiring political party accounts to be checked.

What actually happens

No institution checks political party accounts.

Does that institution start investigations on its own initiative?

Formal or legal position

N/A, as there is no institution that investigates political party accounts.

What actually happens

N/A

Who appoints the head of the institution?

Formal or legal position

N/A, as there is no institution that investigates political party accounts.

What actually happens

N/A

Supreme Audit Institution

Is the national Auditor General independent?

That is,

- **Is the appointment of the general auditor required to be based on professional criteria/merit?**
- **Is the appointee protected from removal without relevant justification?**
- **Is the office of Auditor General adequately resourced?**

Formal or legal position

Article 25(6) of the Constitution provides for the independence of the Auditor General. The Auditor General is appointed by the Public Service Commission. Unless the employment contract specifies otherwise the Auditor General can be terminated by way of notice, with no need for reasons to be given. This basic principle of employment law means that the Auditor General is not protected from removal without justification.

What actually happens

In practice the Auditor General is independent. He or she is appointed by the Public Service Commission, and the appointment has been on merit. Auditor Generals have not been improperly removed.

The Office of the Auditor General is under-resourced, not only in terms of money, but also in terms of staff with experience. Auditors tend to be attracted to the private sector, where rates of pay are higher. These problems are not unique to the Office of the Auditor General, but reflect the limits of operating in a developing country.

Are all public expenditures audited annually?

Formal or legal position

The requirement for annual audits is implied, but not expressly stated in the Expenditure Review and Audit Act 1998.

What actually happens

The Auditor General is dependent upon information supplied by the Ministry of Finance. This information is not supplied in a timely fashion. For instance, the 1998 accounts were received in 2001, the draft 2002 accounts were received in November 2003, and no accounts have been received for 2001.

Is reporting up to date?

Formal or legal position

N/A

What actually happens

Reporting is not up to date, although, with the assistance of a VSO volunteer, this is now being rectified. Omnibus reports are being prepared for the newly constituted Public Accounts Committee.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature? Are they acted on by the government?

Formal or legal position

The Expenditure Review and Audit (Amendment) Act 2000 legally constituted a Public Accounts Committee to review the reports of the Auditor General.

What actually happens

In November 2003 the newly legislated Public Accounts Committee sat. It reviewed reports from 1993 to 1997. The next time the committee sits it will review reports from 1998 to 2002.

Prior to the establishment of the Public Accounts Committee there was no review of the reports by the legislature, although they were submitted to Parliament by the Auditor General.

Are all public expenditures declared in the official budget?

Formal or legal position

All public expenditures must be declared, by virtue of Article 25(2) of the Constitution.

What actually happens

Not all revenue that is collected by government institutions gets properly reported or deposited into government accounts. Also, aid donors do not always follow the government financial procedures, so some aid money is not approved as public expenditure.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (that is, Presidency, the Prime Minister or other ministers and their officials)?

Formal or legal position

The Judicial Services and Courts Act 2000 reinforces the common law principle that the Supreme Court has inherent jurisdiction to judicially review the actions of the executive and President.

What actually happens

The judiciary are active in reviewing the actions of the executive. A notable example occurred in 2001 when the Speaker of Parliament declined to permit debate on a motion of no confidence in Barak Sope as Prime Minister. In a series of judgments the Supreme Court ensured that Parliamentary procedure was adhered to and that debate was allowed to proceed. (Natapei v Tari No. 1 [2001] VUSC 29, Natapei v Tari No 2 [2001] VUSC 38, Natapei v Tari [2001] VUSC 39, Natapei v Tari [2001] VUSC 49) The Supreme Court has also judicially reviewed decisions by individual ministers.

The judiciary also reviews the decisions of the President. On occasion the government has challenged decisions of the President in court. (See, for example Attorney General v President [1994] VUSC 2)

Are judges/investigative magistrates independent? That is,

- **Are appointments required to be based on merit?**
- **Are the appointees protected from removal without relevant justification?**
- **Are recruitment and career development based on merit?**

Formal or legal position

The Judicial Services and Courts Act 2000, in combination with the Constitution, requires judges to be appointed on merit. Article 47(3) of the Constitution prevents the removal of judges without relevant justification. Section 38 of the Judicial Service and Courts Act 2000 requires judges to disqualify themselves from hearing cases in which they have a conflict of interest.

What actually happens

In 1996, the independence of the Supreme Court was called into question when the President terminated Chief Justice Charles Vaudin d'Imecourt for allegedly interfering in political affairs. In 1997, the Attorney General, Oliver Saksak revoked the appointment of Australian barrister Roger de Robillard, who was to defend the government in its case with d'Imecourt. Saksak was then terminated on the grounds of incompetence and disloyalty. (Niuswire (AFP), 1997) Then, in mid 1997, Saksak was made a Supreme Court judge.

Since that time, however, there has been general confidence in the Supreme Court, with the Court of Appeal acting as a suitable check. There is still some dissatisfaction about Magistrates Courts, however. Magistrates are now all legally qualified, but have often joined the bench immediately upon completion of their law degrees, and are perceived as

not having the depth of experience to be able to operate a fair and impartial court that correctly applies the law.

The justices of Vanuatu's most subordinate court, the Island Court, do not have any legal experience, even though they are required to apply various pieces of legislation. It is not clear how these people are appointed, as all the Island Courts Act [Cap 167] says is that they must be knowledgeable in custom. They are not judicial officers under the terms of the Judicial Services and Courts Act 2000, so are not subject to appointment on merit.

Have there been instances of successful prosecutions of corrupt senior officials in the past three years?

Formal or legal position

N/A

What actually happens

In the past three years there have been two notable prosecutions of corrupt senior officials. In 2001 Immigration Officer John Wai was sentenced to three months imprisonment for accepting a bribe (Public Prosecutor v Wai 2001). In 2002 former Prime Minister Barak Sope was sentenced to three years imprisonment for fraud (Public Prosecutor v Sope 2002). Within a few months of his sentencing, however, Sope was pardoned by the President on the grounds of ill health.

Civil (Public) Service

Are there laws establishing criminal and administrative sanctions for bribery?

Formal or legal position

Section 73 of the Penal Code Act [Cap 135] makes it an offence for public officials to accept bribes. This is also a ground for termination of employment. Section 33(1) also makes it an offence for public officials to accept bribes or gifts.

What actually happens

There has been one recent prosecution for bribery (Public Prosecutor v Wai 2001). The Public Service Commission (PSC) is also appointing a legal officer and intends to become more active in terminations. At the moment, however, bribery is not consistently policed.

Are there rules requiring political independence of the civil service?

Formal or legal position

Under section 4 of the Public Service Act 1998 the first guiding principle of the public service is to maintain independence.

What actually happens

The public service is not an independent body. Over the years there have been a number of political appointments. The PSC is now beginning to work to rectify this, but the independence of the current PSC Board is perceived as questionable, due to links between board members and various politicians and high-ranking civil servants.

Are recruitment/career development rules based on merit?

Formal or legal position

The Public Service Act 1998 and Staff Manual 2002 require appointment and promotion to be on merit.

What actually happens

Appointments are not always based on merit. Political interference and nepotism can affect the appointment and promotion process.

Are there specific rules to prevent nepotism? Cronyism?

Formal or legal position

No law specifically prevents nepotism.

What actually happens

Nepotism does, at times, affect appointments, even though selection is meant to be merit based.

Are there rules and registers concerning acceptance of gifts and hospitality?

Formal or legal position

Section 33(1) of the Public Service Act 1998 prohibits the acceptance of any 'fee, reward or remuneration of any kind' except for payment from the PSC for the performance of public duties. This is broad enough to include gifts.

What actually happens

Gifts are given to strengthen relationships. For example, a business person might pay for kava for the department. There is no record of such transactions, so how widespread the practice is cannot be commented upon.

If so, are these registers kept up to date? By whom?

- **Have they legal powers to enforce disclosure?**
- **Have they staff to investigate allegations?**
- **What powers of sanction are in place against public officials? Have they ever been invoked?**

N/A, as no registers exist.

Are there restrictions on post-public service employment?

Formal or legal position

If a public servant has been dismissed through a disciplinary matter then he or she is not eligible for reappointment to the public service for a period of two years. This is the only restriction on post-public service employment.

What actually happens

There are no reports of the above rule not being applied. Beyond the two-year period, ex-public servants do freely enter the labour market.

Are procedures and criteria for administrative decisions published (for example, for granting permits, licences, bank loans, building plots, tax assessments and so on)?

Formal or legal position

If procedures and criteria are contained in statutes or regulations then they are a matter of public record.

What actually happens

Not all statutes lay out procedures and criteria for the making of administrative decisions. It can also be difficult to locate the relevant laws, particularly if they are contained in statutory regulations.

Are there complaint mechanisms for public servants and whistleblower protection measures?

Formal or legal position

No

What actually happens

Public servants are not known for whistle blowing.

Are there means for complaints by members of the public?

Formal or legal position

There is no formal procedure by which members of the public can complain to the PSC, which manages disciplinary proceedings of public servants. Under the Ombudsman Act 1998 the public can complain to the Ombudsman about the actions of public servants.

What actually happens

Members of the public do complain directly to the PSC, and the PSC responds to those complaints. However, because there is no formal mechanism or process for handling such complaints, complainants do not receive any feedback as to follow up on their complaints.

Are there administrative checks and balances on decisions of individual public officials?

Formal or legal position

The management hierarchy within government offices provides a check on the decisions of individual public officials.

What actually happens

There is little strong or directive supervision of public officials, so the potential check of the management hierarchy is, in practice, ineffective.

Police and Prosecutors

Is the Commissioner of Police independent?

That is,

- **Are appointments required to be based on merit?**
- **Is the appointee protected from removal without relevant justification?**

Formal or legal position

The appointment of the Commissioner is made by the President acting on the advice of the Police Services Commission under section 10(1) of the Police Act (Cap 105). Appointments

are made on the same basis as elsewhere in the Public Service, that is on merit, unless otherwise stipulated,. Section 33 of the Police Act stipulates that any member of the Force may be dismissed where s/he is found to have committed an offence against discipline or has been convicted of an offence against written law.

What actually happens

As has been discussed previously in the report, the process which culminated in the appointment of the current Commissioner of Police was extremely fraught, with many concerns raised about interference and failures to observe proper procedure. These matters have now been settled through the courts and it is generally accepted that the current Commissioner has been appointed on the correct basis. However, there is widespread concern that the office of Commissioner is vulnerable to political interference.

Is the Public Prosecutor independent?

Formal or legal position

Article 55 of the Constitution provides for the independence of the Public Prosecutor.

What actually happens

The independence of the Public Prosecutor has, in the past, been subject to allegations of partiality due to the close relationship between the Public Prosecutor and various prominent politicians. The current Public Prosecutor is an expatriate, who is seen as an outsider and therefore independent from internal politics. However, there is a perception that he is not independent from Australian politics.

Are there special units for investigating and prosecuting corruption crimes?

Formal or legal position

There are no formal requirements for separate corruption investigation or prosecution units.

What actually happens

There is no separate unit in the Office of the Public Prosecutor. There is a Special Investigations unit within the VPF that has responsibility for 'transnational crime', some of which may be corruption-related, although not necessarily related to corruption within Vanuatu. This is a very small and under-resourced unit. It appears to have been established at the instigation of Australia as part of the AFP-driven strategic networking in the Pacific Islands region. There is also a small and largely inactive Internal Investigations department. If and when crimes of a 'corrupt' nature are referred to the police by the Ombudsman, they form part of the workload of the Criminal Investigation Division (CID).

Is there an independent mechanism to handle complaints of corruption against the police?

Formal or legal position

The Office of the Ombudsman can receive complaints about the police and the Ombudsman claims that complaints against the police constitute the largest proportion of issues brought to the attention of his office.

What actually happens

From July 1996 to December 2000 there were five Ombudsman's Reports specifically involving the police. No statistics on the actual number of complaints about police corruption that were received are available.

Does civil society have a role in such a mechanism?

Formal or legal position

Civil society has no defined role beyond the making of complaints.

What actually happens

Civil society plays no role in the operation of the Ombudsman's Office, beyond the making of complaints. Similarly, there is no provision of civilian oversight of the police although an increased focus on 'community policing' has seen more efforts on the part of the VPF to build on and develop linkages with community groupings.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Formal or legal position

N/A

What actually happens

There have been a number of reports in the media of officers being demoted or otherwise disciplined, usually after lengthy periods of suspension, although it is not always made public why these disciplinary actions have been taken. In the most recent set of cases, at least two relatively senior officers have been disciplined for abuse of police powers, although this relates to inappropriate handling of suspects and prisoners (that is, 'process' corruption) rather than corruption for personal gain.

Are there any cases of corruption within the prosecuting agencies?

Formal or legal position

N/A

What actually happens

With previous prosecutors there have been many instances of lost or missing files, files not being acted on and very poorly conducted prosecutions. The close family relationship of the previous Public Prosecutor with various prominent politicians gave the impression of lack of impartiality.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

Formal or legal position

The Penal Code Act [Cap 135] provides various offences, including misappropriation, fraud, false accounting and bribery of public officials. The Public Prosecutor can also prosecute these crimes under the Leadership Code Act 1998.

What actually happens

See below

Is the law applied?

Formal or legal position

N/A

What actually happens

There have been two prosecutions of officials under the Penal Code Act [Cap 135] in recent years, Public Prosecutor v Wai (2001), which involved bribery, and Public Prosecutor v Sope (2002), which involved fraud.

Is private-to-private corruption punishable by law?

Formal or legal position

Under the Penal Code Act [Cap 135] there are a number of offences which can be used to punish private-to-private corruption. These include misappropriation, obtaining credit fraudulently, false statement and false accounting.

Is the law applied?

There have been some prosecutions for misappropriation where the accused has misappropriated community money.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

Formal or legal position

N/A

What actually happens

No statistics are available on the number of prosecutions in recent years. Convictions have tended to result from the offender pleading guilty, rather than from good investigations and prosecutions. Appeals by the accused from decisions in Magistrates' Court level are also very common.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Formal or legal position

The Government Contracts and Tenders Act 1998 and the associated Government Contracts and Tenders Rules 1999 require a competitive tender process for all government contracts with a value of 5,000,000 vatu or more. There are very limited exceptions to this requirement. The Financial Regulations 2000 establish competitive procedures for contracts of between 100,000 vatu and 5,000,000 vatu.

What actually happens

Whilst the law is not always followed at the moment, it is beginning to have effect. The Department of Finance is taking the stance of not honouring contracts that have been awarded through processes that do not follow the tender rules. Currently some litigation is arising out of contracts that have been rejected because the tender process was not followed.

Are the rules laid down in documents publicly accessible?

Formal or legal position

The Act and Rules are both public documents. Both have been gazetted.

What actually happens

Both the Act and Rules and Financial Regulations are accessible in the Emalus Campus Law Library in Port Vila. Staff of the Department of Finance are also willing to supply the relevant laws on request.

Are there strict formal requirements that limit the extent of sole sourcing?

Formal or legal position

Yes. The Act and Rules limit sole sourcing of contracts over 5,000,000 vatu. Finance Regulations require several quotes to be sought for contracts worth between 100,000 vatu and 5,000,000 vatu.

What actually happens

Compliance with the law is increasing. However, some sole sourcing does currently occur, particularly for smaller contracts.

Are all major public procurements widely advertised to the private sector?

Formal or legal position

Rule 4(2) of the Contracts and Tenders Rule 1999 requires that tenders are advertised both in the print media and by radio broadcasts.

What actually happens

Most tenders are advertised, although sometimes adverts are only run in the newspaper once, making it possible for announcements to be missed.

Are procurement decisions made public?

Formal or legal position

Under the Act and Rules there is no stated requirement that decisions be made public.

What actually happens

Vanuatu is a small society. It is usually easy to find out who contracts have been awarded to by 'asking around'.

Is there a procedure to request review of procurement decisions?

Formal or legal position

Under the Act and Rules there is no set procedure.

What actually happens

N/A

Can an unfavourable decision be reviewed in a court of law?

Formal or legal position

Courts have the power of judicial review over situations when decision-making power is conferred by statute. The award of contracts is governed by statute, so it is reviewable.

What actually happens

As yet the power of judicial review over contract decisions has not been exercised by private businesses that have not won contracts.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

Formal or legal position

Whilst there are rules that make it an offence for individuals and businesses to try to subvert procurement processes, there are no rules that provide for the blacklisting of such companies.

What actually happens

Companies are not blacklisted from procurement processes at present.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Formal or legal position

The Government Contracts and Tenders Act and associated rules provide for a Board process that should minimise the risk of individual conflicts of interest affecting procurement decisions. Section 26 of the Leadership Code Act 1998 also prohibits leaders from having or seeking a beneficial interest in contracts awarded by government.

What actually happens

The Government Tenders and Contracts Act 1998 appears to be improving the transparency of processes for awarding contracts. However, in practice it is quite difficult to police conflicts of interest in the awarding of contracts.

Are assets, incomes and life styles of public procurement officers monitored?

Formal or legal position

Under the Leadership Code Act 1998, the assets and incomes of leaders are monitored. The definition of the leader includes the Chair of the Tenders Board. Technical Officers, who do the technical evaluation of tenders and make recommendations to the Tenders Board, do not fall under the definition of leader and so do not have their assets monitored.

What actually happens

There is no effective monitoring of the assets, incomes and life styles of any officials involved in the public procurement process.

Ombudsman

Is there an ombudsman or its equivalent (that is, an independent body to which citizens can make complaints about maladministration)?

Formal or legal position

Yes, the Ombudsman is a constitutional office.

What actually happens

The Office of the Ombudsman was established in Vanuatu in 1994.

Is the ombudsman independent? That is,

- **Are appointments required to be based on merit?**
- **Is the appointee protected from removal without relevant justification?**
- **Is the Office of the Ombudsman adequately resourced?**

Formal or legal position

The independence of the Ombudsman is guaranteed under Article 65 of the Constitution. Section 8 clearly prohibits termination without relevant justification.

What actually happens

There is a perception that, after having a very outspoken Ombudsman for the first five years of the Office's existence, some leaders desired to weaken the office. This has led to the perception that the current Ombudsman was appointed not because of merit, but because he would be relatively ineffectual.

Has an Ombudsman been removed without relevant justification in the last five years?

Formal or legal position

N/A

What actually happens

In 1997 there was an attempt to have the Ombudsman removed. This was successfully challenged in the Supreme Court. (Ombudsman v Attorney General 1997) As stated above, this Ombudsman did not have her contract renewed at the expiry of its five-year term.

Can petitioners complain anonymously if they fear possible reprisals?

Formal or legal position

This is not specifically provided for, although the Ombudsman is under a duty of secrecy by virtue of Division 2 of the Ombudsman Act 1998. However, this duty can be breached if, in the opinion of the Ombudsman, it is necessary for the investigation or to establish grounds in a report.

What actually happens

The names of people who make complaints are usually not common knowledge, although in a small society like Vanuatu it is difficult to keep any information confidential and informal mechanisms can usually discover information.

Are reports of the ombudsman published?

Formal or legal position

Section 34 of the Ombudsman Act 1998 requires the publication of reports of enquiries, although certain information may be kept confidential. Section 35 requires the publication of annual reports.

What actually happens

Reports are published, although in recent years the number of reports being produced has dropped considerably. Annual reports are no longer being published in a timely fashion, so it is difficult to ascertain whether all enquiries are being reported on correctly.

Does the government act on the Ombudsman's recommendations?

Formal or legal position

Section 32 of the Ombudsman Act 1998 requires a response to reports.

What actually happens

There is not a consistent response to the Ombudsman's Reports, although very occasionally there may be action taken in response to recommendations.

Investigative/Watchdog/Agencies

Are there special investigative or watchdog agencies?

Formal or legal position

There are no legally constituted watchdog agencies besides the institutions already discussed above.

What actually happens

The NGO Transparency International Vanuatu (TIV) was established in 2001. TIV has a watchdog role.

What are their main responsibilities

- **investigation?**
- **prevention?**
- **education and awareness?**
- **prosecution?**

Formal or legal position

N/A

What actually happens

The work of TIV is focussed upon education and awareness.

Are they independent? That is,

- **Are appointments required to be based on merit? Are appointments generally based on merit?**
- **Are the appointees protected from removal without relevant justification?**
- **Are they adequately resourced?**
- **Are their reports published (other than when criminal charges are pending)? Are they acted on by the government?**

Formal or legal position

As an NGO there are no rules governing the operation of TIV.

What actually happens

As with any NGO there is no guarantee of TIV's independence. The current President of TIV is Vanuatu's first Ombudsman. This has helped to create a perception that TIV 'has axes to grind', a charge that was laid at the door of the first Ombudsman whilst she was in that office. In response TIV can be seen to quite legitimately 'have an axe to grind' with any corrupt behaviour, and opposition to the organisation sometimes comes from people who have been publicly identified as being corrupt.

Do they report publicly to the legislature on the general scope of their work?

Formal or legal position

No

What actually happens

As an NGO TIV has no obligation to report to Parliament. Conversely, Parliament has no obligation to take note of any reports that it might produce.

Can people complain to the agency without fear of recrimination?

Formal or legal position

N/A

What actually happens

TIV is an NGO with no formal powers. Thus, although people can complain to TIV, it cannot formally help to rectify problems. If someone was seen to be complaining to TIV, then there is no law that would protect that person from recriminations.

Media

Is there a law guaranteeing freedom of speech and of the press?

Formal or legal position

Yes, Article 5(1)(g) of the Constitution protects freedom of expression.

What actually happens

As discussed below, media workers are occasionally subject to threats and intimidation aimed at stopping certain stories from being reported upon.

Is there censorship of the media?

Formal or legal position

Vanuatu's Parliament has not passed any specific laws aimed at media censorship. While s 66 of the Penal Code [Cap 135], which prohibits seditious publications, could conceivably be used as a device for censorship, it has never been used in this manner.

What actually happens

There is a perception that government-owned media services are censored through government control of the Vanuatu Broadcasting and Television Corporation, and the appointment and/or termination of journalists.

There have been attempts to informally or illegally censor independent media through intimidation. The *Vanuatu Daily Post* newspaper (formerly the *Trading Post*), as Vanuatu's longest standing independent media source, provides a number of examples of different types of intimidation. An example of a direct warning from a government Minister can be found in early 2000, when the Minister for Tourism and Ni-Vanuatu Business, John Alick, warned the *Trading Post* not to publish any article relating to the sinking of the MV Latua. The *Trading Post* filed an official complaint to the Ombudsman over Alick's actions. However, although the Ombudsman publicly agreed that Alick's actions were in breach of Constitutional provisions on the freedom of expression, the Ombudsman declined to initiate an investigation into the matter.

Threats of deportation have also been used against expatriate journalists. In January 2001, these threats were acted on when the publisher of the *Trading Post* was deported from Vanuatu for publishing stories related to corruption within the government of the time. He returned to Vanuatu after two days, following an interim order by the then Acting Chief that allowed him back into the country until the legality of his deportation could be resolved in court. The matter was finally settled out of court, and the publisher has subsequently become a naturalised Vanuatu citizen.

As discussed below, staff of the *Trading Post* have also been subject to physical violence, or threats of physical violence, aimed at stopping stories from being published.

Such intimidation should not, however, be regarded as unofficially sanctioned attempts at government censorship, but would be better characterised as the work of individuals who wish to bully the media into self-censorship in respect of particular stories.

Is there a spread of media ownership?

Formal or legal position

The only limits on media ownership are business licensing and broadcasting license requirements. All businesses in Vanuatu are subject to the same business licensing requirements, which do not hinder the spread of media ownership. Broadcasting licenses are discussed below.

What actually happens

There is some spread of print-based media. The two main print media are the *Vanuatu Daily Post*, owned by an independent Vanuatu-based profit-making company, and the Independent (formerly the Port Vila Presse), which is an independent Vanuatu-based not-for-profit organisation.

Locally based radio and television broadcasts are all government-owned. Satellite television services, mainly from Australia and France, are available on a subscription basis, but carry no local content.

There is only a limited market for media services in Vanuatu, which hinders the spread of media ownership.

Does any publicly owned media regularly cover the views of government critics?

Formal or legal position

Section 10(2)(d) of the Broadcasting and Television Act 1992 states that the government-owned Vanuatu Broadcasting and Television Corporation (VBTC) is under a duty to ensure that there is adequate provision of news services and that all news 'is presented with due accuracy and impartiality and with due regard to the public interest.' However, it would appear that 'the public interest' could be interpreted to mean the suppression of anti-government stories, especially when read in light of s10(2)(b), which states that the Minister in Charge of Broadcasting can direct what media services are in the best interest of Vanuatu.

What actually happens

It is perceived that government-owned media do not run stories on corruption by members of government or their supporters. Within the VBTC some self-censorship does occur on the part of journalists who have had their appointment spear-headed by governments to which they 'belong'.

Have journalists investigating cases of corruption been physically harmed in the last five years?

Formal or legal position

N/A

What actually happens

The *Vanuatu Daily Post* is the only media source that has attracted physical violence. Staff there have been the target of several physical attacks. In the most recent attack the publisher of the *Vanuatu Daily Post* was hospitalised after being beaten. The beating occurred because the paper would not stop publishing stories alleging corruption by a certain member of the Vanuatu Maritime Authority.

Other journalists also report receiving threats of violence, or suffering actual violence.

Does the media carry articles on corruption?

Formal or legal position

The media has a guaranteed right of freedom of expression, and so can carry articles on corruption.

What actually happens

It is perceived that government-owned media do not run stories on corruption by members of government or their supporters. However, the independent newspapers frequently run stories on corruption. There is a perception that some of these stories on corruption target particular people or political parties, rather than accurately report on all instances of corruption that journalists come across, although it is very difficult to say how accurate this perception is. People sometimes report stories to the media in order to make attacks on a particular person or party, rather than to raise public awareness of certain behaviour.

At least one person who has been but is no longer involved in the independent media reports self-censorship in relation to private sector corruption in order to avoid criticism on the grounds of conflict of interests. This reflects the realities of living and running businesses in a small place rather than concerns about intimidation.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

Formal or legal position

There is no media licensing of newspapers, although like all businesses in Vanuatu newspapers must obtain business licenses. Radio and television broadcasting licenses must be obtained from the Minister in Charge of Broadcasting under the Broadcasting and Television Act 1992. Section 45 of the Act gives the Minister very broad powers to limit the terms of the license, but does not clearly set out criteria and procedures for issuing a license. Sections 47 and 48 also give the Minister fairly broad power to revoke or alter the terms of a license.

What actually happens

There have been no independent radio broadcast licenses issued in Vanuatu, and there is a perception that government is unwilling to issue licenses. One television broadcast license has been issued in order to allow for pay television services. Costs of television licenses are very high. There is a perception that licenses could be revoked for little reason, making it too risky to invest in broadcasting in Vanuatu.

Are libel laws or other sanctions (for example, withdrawing of state advertising) used to restrict reporting of corruption?

Formal or legal position

Vanuatu's libel laws are governed by the Defamation Act 1952 (UK) and could be used if there was inaccurate reporting of alleged corrupt activities.

There are no other formally endorsed sanctions to restrict reporting on corruption, although informal intimidation does occur, as discussed above.

What actually happens

There have been no court cases in which any media source has been sued for defamation, although there are occasionally threats to sue and at the time of writing this report there is one pending case.

Civil Society

Does the public have access to information and documents from public authorities?

Formal or legal position

Departmental reports are public, although at times they have to be tabled in Parliament before becoming public documents.

What actually happens

Reporting is a slow and haphazard process. It can be very difficult to locate reports. Much of this is not because public authorities do not want to share information, but because reporting and record-keeping procedures are poor. There are very basic but significant limitations, such as no money to pay for photocopying or lack of adequate computer facilities.

Do the public authorities generally co-operate with civil society groups?

Formal or legal position

Yes

What actually happens

Civil society groups do not tend to seek the co-operation of government. However, because funding is meant to go through the Ministry of Finance channels, there is enforced cooperation. There is little sense of a harmonious or mutually supportive relationship beyond this.

Are there citizen's groups or business groups campaigning against corruption?

Formal or legal position

Yes

What actually happens

Some NGOs campaign against corruption. TIV is active in this area. The Good Governance Association is another NGO that focuses on this area, although very little is heard about their activities. Other NGOs also have specific anti-corruption projects. The highest profile activities come from Wan Smolbag theatre, an NGO that delivers education and services through drama, and has a good governance programme.

Are there citizen's groups monitoring the government's performance in areas of service delivery and so on?

Formal or legal position

No

What actually happens

There are no citizen's groups whose main focus is the monitoring of the government's performance in areas such as service delivery.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Formal or legal position

No

What actually happens

Generally there is no public debate on proposed legislation. There is no law reform commission, and there is no expectation that Bills will be available to the public for comment. Sometimes the public is not allowed access to Bills before they are tabled in Parliament. As there is no system of Parliamentary select committees, once a Bill is tabled in Parliament it is likely to be immediately passed.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

Formal or legal position

The National Education Commission has responsibility for the national curriculum. Some attention is being given to incorporating integrity issues into the curriculum.

What actually happens

TIV is currently implementing a project to develop a curriculum and a handbook for teachers in this area. The project will be completed by the end of next year.

Traditional Organisations

To what extent are traditional organisations, such as councils of chiefs, subject to the NIS? And to what extent are they part of the NIS?

Formal or legal position

Members of the National Council of Chiefs are defined as leaders for the purposes of the Leadership Code Act 1998. Other chiefs are not defined as leaders, and so are treated as ordinary people within the NIS.

What actually happens

Traditional organisations have been largely overlooked as part of the NIS. There have been some recent moves to provide training to the National Council of Chiefs on corruption. This body already oversees the actions of chiefs to a degree, but this function could be strengthened. Chiefs are also important for reporting misconduct by public servants on the outer islands, but again this function could be strengthened.

Is their funding and staffing subject to external review and audit?

Formal or legal position

The National Council of Chiefs is funded by the government, so is subject to review and audit.

What actually happens

The government's financial management system has been improved, and improvements are now being implemented. Review and auditing of the National Council of Chiefs are therefore strengthening. However, the National Council of Chiefs has not always been willing to give the Auditor General full access to its records.

To what extent are they part of the NIS controlling corruption in other bodies?

Formal or legal position

Under the Constitution the National Council of Chiefs can be consulted on any Bill, and can make recommendations concerning custom. It has no other legal powers.

What actually happens

The National Council of Chiefs is not consulted about Bills. Chiefs from the islands play a useful role in reporting problems with public servants, although this role is not formalised, and the potential for chiefs to be involved in this area is under-utilised. Chiefs also resolve most disputes at community level. These disputes could involve corruption issues. Again, this role is not formalised, so the extent to which chiefs actually get involved in corruption-related disputes is unknown.

What anti-corruption measures, formal or informal, do they apply to their own members?

Formal or legal position

None

What actually happens

Members of the National Council of Chiefs have recently undergone awareness training in respect of corruption, and want to increase the functions of the Council in this area.

To what extent are their deliberations and decisions open to the public and the media?

Formal or legal position

There is no formal requirement that decisions of the National Council of Chiefs are open to the public.

What actually happens

It is possible to ask for information on Council resolutions from the secretariat. These will sometimes be given out on request, but not always. There is no way to determine what is being discussed at the Council, or what resolutions are being considered, so news or information about resolutions usually comes from informal contacts or rumours. Occasionally items appear in the press about decisions of the Council or declarations of chiefs on particular issues, but this is not systematic.

Private Sector and NGOs

What measures have private companies adopted to reduce corruption within their own activities?

Formal or legal position

Some law changes, such as the Financial Institutions Act 1999 and the Financial Transactions Reporting Act 2000, require much more transparency within the financial services sector than may have previously been the case.

What actually happens

With supervision from the Reserve Bank of Vanuatu these law changes are being adhered to. The financial intelligence unit (located within the State Law Office), which is meant to investigate suspicious transactions, is currently not properly staffed, although there are plans to recruit and train new staff. There are no publicised examples of internal (non-legislated) measures that private companies have undertaken to reduce corruption.

What measures have private companies, or Chambers of Commerce, adopted to discourage their members from corrupting public officials?

Formal or legal position

N/A

What actually happens

There are no publicised examples of internal (non-legislated) measures that private companies or the Chamber of Commerce have undertaken to discourage the practice of bribery. However, informal discussions with members of the private sector indicate a great deal of self-regulation in this area, for example if people are approached to 'support' an election campaign they decline to do so.

What impact have privatisation and outsourcing and increased use of NGOs in service delivery had on opportunities for corruption and on the control of corruption?

Formal or legal position

N/A

What actually happens

There is no information available to verify how many services were formerly delivered by government but are now delivered by NGOs. It is therefore not possible to comment on whether NGOs now get access to money that was formerly directed to the government. As NGOs currently do not have any legislated requirements for transparency or reporting, the possibility for corruption in the NGO sector exists, and the more money being given to this sector the greater the opportunities for corruption. However, the actual extent of corruption cannot be determined.

What measures have NGOs or peak bodies adopted to reduce opportunities for corruption in their own activities?

Formal or legal position

None

What actually happens

The Vanuatu Association of NGOs (VANGO) currently has a capacity-building project to develop management skills within NGOs.

What measures have churches adopted to reduce opportunities for corruption in their own activities?

Formal or legal position

N/A

What actually happens

Churches are not well integrated into anti-corruption activities at the moment. No widespread programmes to counter corruption within church groups in Vanuatu were identified during the course of this study.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post-public office employment?

Formal or legal position

The Leadership Code Act 1998 includes elected and nominated members of municipal councils, chief executive officers or secretaries-general of local governments and the town clerks (or their equivalents in name) of municipal councils within its definition of leaders. Staff of the local government councils are public servants.

What actually happens

Currently the Leadership Code Act 1998 is not being effectively applied in the urban areas. Outside of urban areas the law has even less meaning. The PSC does not have the facilities or resources to be able to effectively supervise its staff in the provinces.

What public offices at regional and local level are appointed by the national government?

Formal or legal position

The Decentralisation Act 1994 allows the national government to appoint representatives of chiefs, women, youth and churches onto a local government council. The total number of these appointments is not allowed to exceed half the number of elected representatives.

The Secretary of the local government council (essentially the chief executive officer) and the accountant are also appointed by the national government.

What actually happens

The formal position is adhered to.

Is there a legal requirement that meetings of city/town councils be open to the press and public?

Formal or legal position

Section 8(1) of the Decentralisation Act 1994 requires meetings of the local government council to be open to the public.

What actually happens

Whilst meetings are public, it is not always possible for people to attend meetings, as council areas cover several islands and it can be difficult or expensive to travel between islands. As well, there is little public interest in attending local government council meetings.

Are there clear criteria restricting the circumstances under which city/town councils can exclude the press and public?

Formal or legal position

No

What actually happens

Meetings are open to the public, but because the public does not usually attend problems of confidentiality do not arise.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

Formal or legal position

National agencies such as the Office of the Auditor General and the Office of the Ombudsman work at regional levels. No specific agencies for dealing with regional issues exist.

What actually happens

The national agencies do oversee provincial affairs, but attention is focussed on the urban areas. Limited resources impair the capacity of such institutions to work effectively in more remote areas.

Progress with Government Anti-Corruption Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

Formal or legal position

In mid 1997 the Comprehensive Reform Programme (CRP) was established. This is a wide-ranging governance reform programme which includes a schedule for implementation.

What actually happens

The CRP is being gradually implemented. National summits have been held to follow up on progress. A Ministry for CRP also exists. Whilst there is no precise timetable for implementation, there is a schedule with priorities, and work is progressing.

How much of the strategy has been implemented?

Formal or legal position

N/A

What actually happens

A lot of work has been done to improve Vanuatu’s legal framework. Whilst there are one or two areas that still need attention, Vanuatu now has excellent laws in many areas. Attention is now being turned to implementation and compliance.

Is the strategy at national level or regional/local level?

Formal or legal position

The strategy applies to all levels.

What actually happens

Issues relating to regional or local issues are much harder to address than national issues. Regional and local issues have therefore been left to one side to a great degree, although a Decentralisation Review Commission was established in 2000.

Is the government meeting its own timetable?

Formal or legal position

There is no hard and fast timetable.

What actually happens

A large amount of work has occurred. International organisations can affect the order in which work is done. Any government timetable that is established now needs to take into account the time to implement changes, and create long-lasting institutional change, which is much harder to predict than the length of time it will take to write a particular law.

Donor Anti-Corruption Activities

Which bilateral and multilateral donor agencies are based in the country?

Formal or legal position

N/A

What actually happens

Australia provides the most aid to Vanuatu. Other significant aid donors include New Zealand, France, Japan and China. England was a major aid donor, but increasingly British aid money is coming through the European Union.

What types of anti-corruption initiatives have they supported?

Formal or legal position

N/A

What actually happens

Aid donors support a wide range of anti-corruption activities. They provide technical assistance and funding for legislative improvements, institutional capacity building and NGO activities. Aid donors pay for most tertiary education of ni-Vanuatu through the provision of scholarships.

Are there any examples of donors cooperating or coordinating their programmes?

Formal or legal position

N/A

What actually happens

There is no formal donor cooperation, although in 2003 the government called a meeting of donors to try to establish cooperation. Some donors, particularly Australia and New Zealand, have close informal connections and coordinate their aid through informal mechanisms.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?

The enforcement of existing laws needs to occur, and currently does not happen with any regularity. This will involve the strengthening of the police, the Ombudsman and the Public Prosecutor in particular.

Is there a particular aspect of corrupt activity either particular to the country concerned or significant in terms of effect or impact that would require more in-depth research?

More research is needed into the cultural context (not just traditional culture, but modern attitudes) to identify why people do not care about corruption. This research is needed to support the development of programmes of education at all levels to foster a sense of personal responsibility for and ownership of the NIS. The current barriers that make people see the NIS as being irrelevant and ways to overcome those barriers so as to help people to internalise the NIS need to be clearly identified.

Increased coordination and establishment of effective linkages between different organisations to promote a 'joined up' approach to addressing corruption issues is needed in order to build a national integrity *system*, rather than a collection of stand alone institutions. To commence this process research into the exact activities that each institution is doing and the exact activities that aid donors are funding is needed. Consultation with stakeholders on ways to improve coordination is also needed.

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Before the Public Accounts Committee sat for the first time, training was provided to members so that the Committee would be better equipped to do its job. This is something that could be expanded and developed to improve capacity of Parliament to act as a check on the Executive, and could be developed into a best practice example.

The work of the election observer groups has been central to gathering information on election practice and is a model that can usefully be built upon.

The Financial Management Information System that is now being operated by the Department of Finance is already recognised as an example of best practice. Further study on the process of implementation of the system and the actual impact it has on management of public money in the medium term would help to establish this system as a best practice system.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

In all of the below areas research is needed and/or programmes need to be developed and monitored

- education methods aimed at instilling 'anti-corruption' values
- the role of chiefs within the NIS
- the role of churches within the NIS
- ways to improve NGO coordination
- ways to improve NIS coordination
- facilitating decentralisation
- developing urban opportunities.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?

Institutional strengthening and capacity building across a number of sectors need to continue for the medium-long term.

Education initiatives could also be better coordinated and sequenced, with a view to planning for the medium term.

The related issues of decentralisation, urbanisation and youth unemployment, whilst not directly 'anti-corruption' related, are central to Vanuatu's long-term stability. Unemployment, which can lead to crime and dissatisfaction with government, creates an ideal climate for corruption to grow in, thus it and related issues should not be ignored in relation to anti-corruption activities.

Appendix 2

Significant Legislation of the Comprehensive Reform Programme

Below is a list of significant legislation passed as part of the Comprehensive Reform Programme, with a brief description of the aims of each Act.

- The Leadership Code Act 1998 creates a range of offences for leaders, and requires annual declarations of assets and income.
- The Expenditure Review and Audit Act 1998 creates a legislative framework for the Auditor General to work within, and the Expenditure Review and Audit (Amendment) Act 2000 establishes the Public Accounts Committee.
- The State Law Office Act 1998 creates a framework for the Attorney General and Solicitor General to work within.
- The Government Act 1998 aims to limit the role and number of political advisors, and strengthens support to the Council of Ministers.
- The Public Finance and Economic Management Act 1998 sets up procedures for the use of public funds, and requires transparency.
- The Government Contracts and Tenders Act 1998 creates rules requiring competitive bidding for all major government contracts.
- The Public Service Act 1998 aims to strengthen the independence of the Public Service Commission and the civil service.
- The Asset Management Unit Act 1998 establishes a unit to recover debts owed to the government.
- The Ombudsman Act 1998 re-establishes a legislative framework for the Office of the Ombudsman (the 1995 Act having been repealed in 1998).
- The Financial Institutions Act 1999 aims to increase the transparency and accountability of the banking sector in Vanuatu.
- The Judicial Services and Courts Act 2000 aims to improve the standards within Vanuatu's judicial system by prescribing minimum qualification standards for justices and clear appointment procedures.
- The Financial Transactions Reporting Act 2000 establishes the Financial Intelligence Unit, and requires banks and other financial institutions to report all suspicious financial transactions.
- The Education Act 2001 aims to improve the framework for the operation of Vanuatu's schools.
- The Public Prosecutor Act 2003 creates a framework for the Office of the Public Prosecutor, and aims to increase its independence.

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