



**OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**ON A DEFECTIVE LAW: SECTION 12 OF THE  
LABOUR (WORK PERMITS) ACT [CAP 187]**

**25 March 2011**



**REPUBLIC OF VANUATU**

**9314/2011/01**

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(WORK PERMITS) ACT [CAP 187]**

**SUMMARY**

***Outline of events (see further page 4)***

The Ombudsman was inspired to conduct further investigations when he discovered the apparent irregularity and instances where expatriates or non Ni-Vanuatu were employed in positions that are normally reserved for local Ni-Vanuatu.

Following the investigation, the following ***findings*** were made: (***see further page 5***)

- Section 12 of the Labour (Work Permits) Act [CAP 187] is contrary to Section 7 of the Labour (Work Permits) Act [CAP 187].
- Section 12 of the Labour (Work Permits) Act [CAP 187] contradicts Article 2, 5 and 6 of the Constitution of the Republic of Vanuatu
- Section 12 of the Labour (Work Permits) Act [CAP 187] provides an avenue for abuse and it contradicts Article 66 of the Constitution of the Republic of Vanuatu and Section 2(1) of the Leadership Code Act [CAP 240].

The Ombudsman concluded the investigation with the following ***recommendation*** (***see further page 5***)

- That Section 12 of the Labour (Work Permits) Act [CAP 187] be reviewed and amended so as to avoid the contradiction in law as well as preferential abuse by the Minister

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## TABLE OF CONTENTS

<b>SUMMARY .....</b>	<b>2</b>
<b>1. JURISDICTION.....</b>	<b>4</b>
<b>2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED.....</b>	<b>4</b>
<b>3. RELEVANT LAWS .....</b>	<b>4</b>
<b>4. OUTLINE OF EVENTS.....</b>	<b>4</b>
<b>5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM .....</b>	<b>5</b>
<b>6. FINDINGS.....</b>	<b>5</b>
<b>7. RECOMMENDATIONS.....</b>	<b>7</b>
<b>8. INDEX OF APPENDICES.....</b>	<b>8</b>

## 1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into defects in laws or administrative practices, which includes Section 12 of the Labour (Work Permits) Act [CAP 187] – “the Act”.

## 2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman’s findings as required by the Constitution and the Ombudsman Act.

## 3. RELEVANT LAWS

Relevant parts of the following laws are reproduced in **Appendix 1**.

Constitution of the Republic of Vanuatu  
Labour (Work Permits) Act [CAP 187]  
Leadership Code Act [CAP 240]

## 4. OUTLINE OF EVENTS

- 4.1 In 1999, the Ombudsman instituted an own motion inquiry into the alleged discrimination in the granting of an accountant’s position in the local utilities company, UNELCO.
- 4.2 Mrs B was an expatriate residing in the country who was offered the position of accountant and needed to obtain a worker’s permit in order to work in Vanuatu.
- 4.3 Then Acting Commissioner of Labour, Mr Ephraim Mathias refused to grant Mrs B a work permit on the basis that there were Ni-Vanuatu who were qualified for the position and should be offered the position. This is a rule that is in accordance with section 7 of the Labour (Work Permits) Act [CAP 187].
- 4.4 Mrs B then personally approached several leaders regarding her work permit. In fact, the Director of the private company wishing to employ Mrs B then approached not only the Minister responsible for Labour (Mr Vincent Boulekone), but also the First Political Adviser to then Prime Minister, Father Gerard Leymang.
- 4.5 Mrs B was then issued a worker’s permit by the Minister responsible for Labour.
- 4.6 Prior to issuing a working paper, the Ombudsman contacted the Commissioner of Labour in September 2006 and June 2007.
- 4.7 In his responses, the Commissioner of Labour reported that no amendments had been made to address the alleged defect in the law. Mr Lionel Kaluat stated that the same issues were still being faced, but with respect to different individual cases.
- 4.8 The Ombudsman sent another letter to the Commissioner of Labour in May and July 2008 for an update on the situation. To date, the Ombudsman has no record of receipt of a response from the Commissioner of Labour.

## 5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 During the course of finalising the public report, there was a reshuffle in government and the former Minister of Internal Affairs whom the working paper was sent to was replaced by Honourable Moana Carcasses Kalosil. Mr Kalosil and then Honourable Dunstan Hilton. Both Mr Hilton and Mr Kalosil were also provided with a copy of the working paper and given an opportunity to respond.
- 5.3 However, the former Minister for Internal Affairs, Mr Patrick Crowby Manarewo did respond during his time in Office to say that he was in agreement that there is a need to amend Section 12 of the Act if it is unconstitutional. He disagreed that the Minister's discretion to overrule the Commissioner of Labour's decision be amended. Mr Manarewo also questioned the Ombudsman on why it took him 29 years before he brought this matter to his attention. (Mr Manarewo's response is attached as **Appendix 2**). It should be noted that Mr Manarewo's statement is unsigned due to the fact that even after the Ombudsman reminded him, no signed copy was ever received before the report was published.
- 5.4 The Ombudsman detects a note of annoyance in Mr Manarewo's statement and he would like to say that it is not his intention to create any ill feeling towards the former Minister of Internal Affairs. Instead, the Ombudsman applauds Mr Manarewo's statement to consider his recommendation.
- 5.5 Regardless of the length of time it has taken to release this report, the Ombudsman is still legally obliged to report any defects in the laws of Vanuatu. Further, this law is still current and being applied today. If it was not, then there would be no need to issue this report.
- 5.6 The Ombudsman still maintains that the Minister's discretionary power be reviewed and amended so as to avoid instances where there is likely to be abuse of power by the Minister.

## 6. FINDINGS

### 6.1 **Finding 1: Section 12 of the Labour (Work Permits) Act is contrary to Section 7 of the Labour (Work Permits) Act.**

6.1.1 Section 7 of the Labour (Work Permits) Act states that the Commissioner of Labour, when considering applications for work permits, shall ascertain whether the employing agency has advertised the position first and proven that a suitably qualified local person cannot be found before approving the applicant's permit.

6.1.2 On the other hand, Section 12 of the Act declares that the Minister responsible for labour relations "*may in his discretion confirm, modify,*

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*amend or rescind such decision, or determine any application which has not been so determined by the Commissioner of Labour within the said period.” The Minister’s decision is deemed to be final and cannot be challenged, even in any court proceedings.*

6.1.3 Section 12 undermines the powers of the Commissioner of Labour in granting work permits.

**6.2 Finding 2: Section 12 of the Labour (Work Permits) Act contradicts Article 2, 5 and 6 of the Constitution of the Republic of Vanuatu**

6.2.1 Article 2 of the Constitution provides that the Constitution is the supreme law of the Republic of Vanuatu. Article 5 states that subject to any restrictions imposed by law on non-citizens, all persons are entitled to “.....*the fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health.*”

6.2.2 A citizen has the right to employment in Vanuatu according to their qualification as provided for in Section 7 of the Labour (Work Permits) Act. There were Ni-Vanuatu who were qualified for the position which had been offered to Mrs B. The Labour Commissioner’s decision to reject Mrs B’s application was provided for under Section 7 of the Act. However, the Minister’s decision to overrule the Labour Commissioner’s decision demeans Ni-Vanuatu’s rights to a job as provided for under the Constitution and the Act.

6.2.3 The Constitution also provides in Article 6 sub-article (1) that anyone whose right is being affected may apply to Court to enforce that right.

6.2.4 Section 12 of the Act is a defective law as it ignores the right of the citizen under the Constitution to challenge the decision of the Minister even in any Court Proceedings.

**6.3 Finding 3: Section 12 of the Labour (Work Permits) Act provides an avenue for abuse and it contradicts Article 66 of the Constitution of the Republic of Vanuatu and Section 2(1) of the Leadership Code Act.**

6.3.1 Section 12 could create unfairness, prejudices, and bias or entertain corruption in the Government system due to unlimited power given to the Minister responsible for Labour. The Labour Commissioner’s decision to reject Mrs B’s work permit application was based on Section 7 of the Act which provides an opportunity or right of a Ni-Vanuatu in the work force with the Public and Private Sector.

6.3.2 The Minister’s decision to grant Mrs B the work permit seems to place the Minister in a position where the fair exercise of his official duties might be compromised.

## **7. RECOMMENDATIONS**

- 7.1 That Government review Section 12 of the Labour (Work Permits) Act so as to avoid the contradiction in law as well as preferential abuse by the Minister

Dated 1 July 2013

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

## **8. INDEX OF APPENDICES**

**Appendix 1** - Relevant laws

**Appendix 2** - Copy of Response from Former Minister for Internal Affairs



