



# NATIONAL INTEGRITY SYSTEM STUDY

## LEGISLATURE

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### **About the Transparency Vanuatu National Integrity System Study Discussion Papers Series**

*The National Integrity System (NIS) study follows a methodology developed by the Transparency International Secretariat in Berlin. This methodology provides the structure of the report and identifies the questions to be addressed. The Vanuatu NIS study examines 13 key institutions, or "pillars": legislature, executive, judiciary, ombudsman, auditor general, public service, law enforcement, media, private business, customary authorities, electoral commission, political parties and civil society. The research aims to develop consensus of the key recommendations for change. Each pillar discussion paper is based upon review of laws, documents and interviews. Discussion papers are released to the advisory group, external reviewer and the public. The discussion paper is a work-in-progress. All comments, corrections or additions are welcome. Comments are requested by the end of March 2014. Comments can be returned to Transparency Vanuatu in writing or in person (contact details above). They can also be sent to the lead researcher at [anita.jowitt@gmail.com](mailto:anita.jowitt@gmail.com). If you would like to be added to the email list to be notified when further discussion papers are released or when public meetings on the report are held please contact Transparency Vanuatu.*

### **SUMMARY**

A new Clerk of Parliament assumed his position in June 2013, and the management of Parliament is undergoing some change. The operation of Parliament has become more open, with video and audio now being broadcast live. Recordings are also available on the website. The backlog of Hansards has also been reduced and a number of other plans to strengthen the functioning of committees with the assistance of agencies such as UNDP and the Parliament of Queensland are underway. The administration of parliament does, however, suffer from lack of human resources.

Whilst the administration of the legislature is developing there is considerable concern about the performance of members of parliament. Parliament is currently comprised of representative of 16 political parties and 4 independent members of parliament (mps). This necessarily means government is a coalition. Coalitions are unstable and motions of no confidence are frequent. The causes of instability are discussed further in the foundations section, and are a reflection of both the socio-cultural environment in which democracy operates, and the simple fact that democracy, and the values associated with it are new. As such, instability is not able to be simply cured by law reforms.

Internal politicking, including changes in executive positions, occurs in order to maintain coalitions or succeed in motions of no confidence. This weakens the ability for the legislature to play its role as the central accountability mechanism for public entities and expenditure. It also distracts members of parliament from their role as representatives of the people. Public trust in mps is low and mps do little to inform their constituencies about the work of parliament or represent their concerns in parliament. There is also little public information about Bills, or opportunities for the public to contribute to discussion associated with the legislative changes.

## RECOMMENDATIONS

1. Parliament should be the “hub” of accountability, whereby other agencies report to it. It should also be a source of information on activities, via annual and other reports presented to parliament. Currently it does not serve this function. It is recommended that:
  - a. Standing orders be reviewed to include a requirement that lists of documents to be tabled, as well as Bills, is issued prior to Parliament, and that this list be published to both members of parliament and the public.
  - b. Procedures of Parliament be reviewed to require that every report tabled in Parliament is to be public unless matters of national security require otherwise, and made available through the Parliament library.
  - c. External monitoring of work currently being undertaken to strengthen parliamentary committees to allow them to fulfil their role as an accountability mechanism occurs.
2. There is very limited training for members of parliament and little technical support. It is recommended that measures to increase both training of and technical support for parliamentarians be considered. This training should include components related to ethics and integrity for members of parliament, as well as more mechanical training on processes and procedures.
3. There is concern about the extent to which members of parliament account for their own allowances. There has also been dissatisfaction at increases in members’ allowances. It is recommended that:
  - a. Consideration be given to establishing an independent body to set the allowances of members of parliament. This could possibly be modelled on New Zealand’s law.
  - b. The matter of representation allowances, and how to control them, be considered. Options to consider include:
    - i. requiring members to publically account annually for their representation allowances.
    - ii. removing the distribution of representation allowances from the control of members and instead give members a role as conduits of project proposals that are forwarded to the Parliamentary Management Board or another body to decide upon.
    - iii. providing allowances to political parties, rather than individual members, to distribute.
4. There is little communication between members of parliament and the public, and little public information on matters going before parliament. This may be, in part, due to no requirement in the Standing Orders that information, including copies of Bills be made publically available. Short time frames between when members receive Bills and Parliament sits also hinders opportunities for consultation. It is recommended that the Standing Orders be reviewed to ensure that the public receives information before parliament sits, and that members have adequate time to consult on Bills.
5. In practice integrity mechanisms are almost entirely dysfunctional. In additions to recommendations made in the Ombudsman’s pillar it is recommended that:
  - a. the Leadership Code Act is revised to ensure that annual returns are scrutinised on an annual basis
  - b. automatic penalties (such as ceasing to be paid salary) are implemented for leaders who fail to file returns

6. There is public interest in changing the law to require higher educational qualifications for candidates standing for election as members of parliament. The Law Reform Commission should explore whether it is appropriate to amend the eligibility criteria for candidates contained Representation of the People Act.

## STRUCTURE AND ORGANISATION

Vanuatu's constitutional form is a representative democracy. Parliament is formed through national elections which occur at intervals of no more than four years.<sup>1</sup> Parliament is unicameral and is comprised of 52 members. Once parliament is elected the members of parliament collectively form the legislature. The executive is drawn from parliament, with members voting to elect the prime minister,<sup>2</sup> who then appoints his (Vanuatu has only ever had male prime ministers) cabinet.<sup>3</sup> The Speaker of Parliament and one or more Deputy Speakers are elected by Parliament.<sup>4</sup> Two ordinary sessions of Parliament are held each year, in March and August. Extraordinary sessions can be called outside of these times.<sup>5</sup>

There are currently 8 standing committees of Parliament, the Standing Orders Review Committee, the Institutions Committee, the Privileges Committee, the Committee on Economic Policy, the Public Accounts Committee, the Committee on Social Policy, the Committee on the Members of Parliament Ethics and Integrity and the Committee on Foreign Affairs and External Trade.<sup>6</sup> Each is made up of 7 members of parliament, selected by the Prime Minister and the Leader of the Opposition. No members of standing committees can be Ministers. As discussed in the foundations and executive sections, frequent changes in Ministers mean that committees are largely comprised of new members of parliament and less prominent backbenchers.

The Parliament Administration Act [Cap 306] came into force in 2006 and outlines the administrative structure of Parliament. This Act establishes a 4 member Parliamentary Management Board, comprised of the Speaker of Parliament, the Prime Minister, the Leader of Opposition and the Parliamentary Counsel.<sup>7</sup> The Parliamentary Management Board has the responsibility for overseeing the management of Parliament, including parliamentary committees.<sup>8</sup> The primary administrator is the Clerk of Parliament, who is appointed by the President on advice of the Parliamentary Management Committee.<sup>9</sup> The Act requires 4 Assistant Clerks to be appointed,<sup>10</sup> along with other staff as is necessary.<sup>11</sup> There is also provision for the Speaker to directly appoint staff to assist him.<sup>12</sup>

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<sup>1</sup> Article 21(1), Constitution of the Republic of Vanuatu.

<sup>2</sup> Article 41, Constitution of the Republic of Vanuatu.

<sup>3</sup> Article 42, Constitution of the Republic of Vanuatu.

<sup>4</sup> Article 22, Constitution of the Republic of Vanuatu.

<sup>5</sup> Sections 3 – 6, Parliament (Administration) Act [Cap 306].

<sup>6</sup> <http://www.parliament.gov.vu/Committees/Committees.html> [accessed 26 February 2014].

<sup>7</sup> Section 12, Parliament Administration Act [Cap 306].

<sup>8</sup> Section 10, Parliament Administration Act [Cap 306].

<sup>9</sup> Section 15, Parliament Administration Act [Cap 306].

<sup>10</sup> Section 16, Parliament Administration Act [Cap 306].

<sup>11</sup> Section 17, Parliament Administration Act [Cap 306].

<sup>12</sup> Section 20, Parliament Administration Act [Cap 306].

## RESOURCES (LAW)

*To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?*

*Members set their own levels of allowances. However, there are few statutory requirements as to administrative support that must be provided to the legislature.*

Section 22(1) of the Parliament (Administration Act) [Cap 306] provides that ‘prior to each fiscal year, the Board must direct the Clerk of Parliament to prepare an estimate of the sums that Parliament will be required to provide for the payment of the expenses of Parliament and its Members.’ The Clerk must also ‘prepare the estimate for Parliament within the ceiling established for Parliament for the fiscal year by the Council of Ministers.’<sup>13</sup> By law Members of Parliament set their own allowances, including representation and travel allowances.<sup>14</sup> The estimate provided by the Clerk of Parliament must include these statutorily determined sums.

In terms of human resources the law requires the appointment of a Clerk of Parliament and four Assistant Clerks.<sup>15</sup> Whilst other staff can be appointed there is no statutory requirement that they be appointed, although there is an assumption, in law, that Parliamentary Counsel will exist.<sup>16</sup>

## RESOURCES (PRACTICE)

*To what extent does the legislature have adequate resources to carry out its duties in practice?*

*Although individual members are provided with adequate allowances, the efficient administration of parliament is hindered by resource issues. Part of the resource issues stem from lack of human resources and part stems from management issues.*

The operations of Parliament are hindered, in part by lack of staff and in part by issues relating to management of staff.<sup>17</sup> Whilst Parliament does maintain a library there is no currently no mechanism to ensure that copies of all reports tabled in Parliament get placed in the library.<sup>18</sup> Observation indicates that much of the material in the library is out of date.

There is particular inadequacy in the area of committee resources. Whilst financial resources are committed for the sitting of committees, and for committees to conduct activities, human resource support is lacking. One Assistant Clerk is responsible for all committees.<sup>19</sup> The work of the committees is further hindered by frequent changes in the executive and government, as these result in the composition of committees changing. UNDP is currently supporting Vanuatu Parliament to employ a technical advisor to support the work of the Public Accounts Committee.<sup>20</sup> The

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<sup>13</sup> Section 22(2), Parliament (Administration Act) [Cap 306].

<sup>14</sup> Parliament (Members Expenses & Allowances) Act [Cap 109].

<sup>15</sup> Part IV, Parliament (Administration Act) [Cap 306].

<sup>16</sup> Section 12, Parliament (Administration Act) [Cap 306].

<sup>17</sup> Interview with of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

<sup>18</sup> Interview of Leiwia Moli, Parliament Librarian with Anita Jowitt, Port Vila 18 October 2013.

<sup>19</sup> Interview of Leon Teter Assistant Clerk, Parliamentary Committees with Anita Jowitt, Port Vila, 28 August 2013.

<sup>20</sup> Interview with of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

functioning of committees has also been a particular focus of support via a Parliamentary twinning programme with the Parliament of Queensland.<sup>21</sup>

Summarised proceedings have not been published regularly. However, a new Clerk was appointed in mid 2013, and he is working with the Hansard division to clear this backlog and improve reporting. Proceedings from 2007 – 2010 were published in August 2013.<sup>22</sup> Improvements to the Parliamentary sound system and recording should help to ensure the production of Hansards. The latest improvements, introduced after July 2013, include facilities to broadcast Parliament live over the internet and television, as well as radio. The November 2013 sitting of Parliament was the first to be broadcast in this manner.<sup>23</sup> This project has been implemented by the New Caledonia Congress with the assistance of the Agence de Development Economic de la Nouvelle Calédonie (ADECAL).

Each member of parliament is provided with an office, equipped with computer facilities. There is one legislative counsel to support the 52 members of parliament. In practice she supports the executive.<sup>24</sup> Political factions do not maintain their own parliamentary researchers or support staff although, as discussed in the section on the executive, members of the executive are supported by political advisors. As members of parliament set their own representation and travel allowances these should be adequate. Members of parliament are currently provided a representation allowance 387,167 vatu per month (US\$3870).<sup>25</sup> This allowance combines their “salary” and an annual allocation of 2 million vatu (US\$20,000) to be spent in their constituency.<sup>26</sup> There is no requirement that members of parliament account for the constituency allocation in any way. There are also, apparently, proposals to raise the MPs allocation to 10 million vatu (US\$100,000) for some, or all, MPs.<sup>27</sup> As discussed in the foundations section, there is a concern that this leads to clientelistic politics, where candidates for election to parliament are voted for based on what they can give to their supporters, rather than what policies for national development they advocate.

Street survey research conducted by NIS researchers in late 2013 indicated that 90% of the 50 respondents thought that MPs were corrupt. Forty percent (40%) wanted to see changes to the MPs allocation.<sup>28</sup> A follow up survey in 2014 with a further 50 respondents indicated that 80% of respondents thought that mp’s allocations were not allocated fairly, with a further 8% being unsure if allocation was fair or not. The main reasons why allocations were seen to be unfair were that people perceived that MP’s allocations were distributed only to voters/political supporters, or distributed only to families and friends (including *wantoks* and communities that were directly related to the MP).

A smaller survey, with only 25 respondents, was then conducted, to find out if dissatisfaction was due to not receiving allocations. Levels of dissatisfaction were slightly lower to those found in the

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<sup>21</sup> Interview of Leon Teter Assistant Clerk, Parliamentary Committees with Anita Jowitt, Port Vila, 28 August 2013.

<sup>22</sup> Interview with of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

<sup>23</sup> <http://www.parliament.gov.vu/Home%20Page%20Archived/2013/Parliament%20Debate%20Streaming%20Live%20Online.html> [accessed 27 February 2014].

<sup>24</sup> Interview with of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

<sup>25</sup> Parliament (Members’ expenses and allowances) Amendment Act 2012.

<sup>26</sup> Email from Ralph Regenvanu, Minister of Lands to Anita Jowitt, Port Vila, November 10, 2010; <https://www.facebook.com/notes/vote-against-merging-of-vanuatu-mp-allocation-and-salary/email-from-mp-ralph-regenvanu/140403422677768> [accessed 27 February 2014].

<sup>27</sup> Opposition Office Press Statement, 4 February 2014.

<sup>28</sup> <https://www.dropbox.com/s/m7hza7n0j36axb6/Press5.pdf> [accessed 11 March 2014].

first survey, with 72% of respondents thinking MP's allocations were distributed unfairly, and a further 6% not being sure if distribution was fair. Interestingly of those that thought the allocation was unfair, 61% had received goods or money from an MP's allocation. A further 22% had received something, but were unsure if the goods or money they had received were from the MP's allocation, or from another source. Less surprising, maybe, is that of those who thought the allocation was fair, 75% had received goods or money from an MP's allocation.

Concern has also been expressed over the extent to which all members of parliament fully understand their duties.<sup>29</sup> There have been calls to change the educational qualifications required to be eligible to stand as a candidate.<sup>30</sup> A street survey carried out by researchers as part of the national integrity system research indicates that there is considerable public support for this proposal.<sup>31</sup> The issue was also debated in Vanuatu's youth parliament in November 2013, with youth parliamentarians voting in support of a mock Bill to increase the educational qualifications required to be eligible to stand as a candidate for election.<sup>32</sup> Training of members of parliament is limited. Whilst induction programmes have been conducted for new members following the 2008 and 2012 national elections, these programmes are take place over a week, so are necessarily superficial.

## **INDEPENDENCE (LAW)**

*To what extent is the legislature independent and free from subordination to external actors by law?*

*There are comprehensive laws seeking to ensure the independence of the legislature.*

Parliament has a fixed life of 4 years and can only be dissolved earlier by the vote of an absolute majority of members of Parliament when  $\frac{3}{4}$  of members are present or by the President acting of the advice of the Council of Ministers. If Parliament is dissolved early then once a new Parliament is established following elections it cannot be dissolved in the first 12 months of its life.<sup>33</sup>

In addition to the two ordinary sessions each year extraordinary sessions can be held at any time on the request of the Speaker, the Prime Minister or the majority of members of parliament.<sup>34</sup> In the event that the Speaker refuses to call an extraordinary session the matter can, and has, been taken to court.

The Clerk prepares the Agenda for each sitting day of Parliament, although the Speaker can add items.<sup>35</sup> The Speaker and Deputy Speakers are elected by Parliament.<sup>36</sup> Parliament also controls the

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<sup>29</sup> Interview with of Louis Kalnpel, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013; Michael G Morgan *Integrating Reform: Legislative Needs Assessment, Republic of Vanuatu* (Technical Report for UNDP, March – April 2001).

<sup>30</sup> Transparency Vanuatu, *2012 Vanuatu General Election, Election Observer Team Report*, (Port Vila: Transparency Vanuatu, 2013).

<sup>31</sup> <https://www.dropbox.com/s/2vl2oag1g3s7spy/Press2.pdf>.

<sup>32</sup> <http://www.parliament.gov.vu/Home%20Page%20Archived/2013/Youth%20Parliament's%20role%20in%20Political%20Party%20reform%20highlighted.html> [accessed 27 February 2014].

<sup>33</sup> Article 28, Constitution of the Republic of Vanuatu.

<sup>34</sup> Section 6, Parliament Administration Act [Cap 306].

<sup>35</sup> Order 17(1), Standing Orders of Parliament.

<sup>36</sup> Article 22(1), Constitution of the Republic of Vanuatu.

establishment of parliamentary committees and the appointment of members to these committees.<sup>37</sup> The committees can include standing committees and ad hoc committees.<sup>38</sup>

As stated in the section on structure above, the Parliamentary Management Board is comprised of the Speaker of Parliament, the Prime Minister, the Leader of Opposition and the Parliamentary Counsel. Administrative staff of Parliament are appointed by this Board, either directly or, in the case of the Clerk, by the President on the advice of the Board.

Whilst police do not require special permission to enter Parliament, 'No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.'<sup>39</sup> Further, no member may be arrested or prosecuted for any offence during a session of parliament or one of its committees, unless authorised by Parliament.<sup>40</sup>

## **INDEPENDENCE (PRACTICE)**

*To what extent is the legislature free from subordination to external actors in practice?*

*Whilst boycotts and other tactics can be used to attempt to undermine the legislature, the judiciary is active in ensuring that the Standing Orders of Parliament are adhered to. However, internal politicking undermines the separation of the executive and the legislature.*

In practice the President rarely exercises his power to dissolve Parliament on the advice of the Council of Ministers. This last occurred in May 2004, when the Prime Minister was facing a motion of no confidence. In June 2011, when there were ongoing issues relating to the position of the Prime Minister<sup>41</sup> there was some discussion of whether the President would dissolve Parliament. This did not, however, occur.

On a number of occasions the Speaker has attempted to close sessions of Parliament, or not call extraordinary sessions. This is often done to avoid debates on motions of no confidence either in the government or the Speaker. In these instances the court does intervene to ensure that Parliamentary process is followed. Another common tactic to avoid the progress of debates is for factions to boycott sittings, thereby ensuring no quorum can be established.

The Executive dominates the agenda of the legislature. In the past 5 years all Bills have originated with the government. Whilst there are sometimes complaints that Bills are presented late, the unstable and frequently changing nature of Vanuatu's executive means that it is not accused of undue interference. However, there are concerns about the lack of separation of the executive and the legislature.<sup>42</sup> One way in which this is indicated is by the lack of debate on many Bills. It is not uncommon for a Bill to pass through all stages of the legislative process in or two days.<sup>43</sup>

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<sup>37</sup> Article 23, Constitution of the Republic of Vanuatu.

<sup>38</sup> Part VIII, Standing Orders of Parliament.

<sup>39</sup> Article 27(1), Constitution of the Republic of Vanuatu.

<sup>40</sup> Article 27(2), Constitution of the Republic of Vanuatu.

<sup>41</sup> See judiciary discussion paper for further details.

<sup>42</sup> Interview with Louis Kalnpe, Clerk of Parliament with Anita Jowitt, Port Vila, 18 October 2013.

<sup>43</sup> Based on a review of Hansards by the author.

Indeed it is the unstable nature of Vanuatu's executive that is the biggest threat to the independent functioning of the legislature comes. Motions of no confidence are frequent. Even if the Prime Minister does not change, changes in Ministerial positions in order to alter the balance of power within governing coalitions and maintain the Prime Minister are also frequent. When attention is focussed on internal politicking either legislative business does not proceed, or matters are not properly scrutinised.

## **TRANSPARENCY (LAW)**

*To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?*

*Despite the constitutional requirement that proceedings of Parliament are to be held in public other rules relating to the operation of Parliament do not support transparency.*

The Constitution states that 'Unless otherwise provided proceedings of Parliament shall be held in public.'<sup>44</sup> The Standing Orders provide that 'visitors may be admitted only to such places as may be reserved for them by the Speaker. Visitors shall be properly dressed and they shall remain seated and silent.'<sup>45</sup> The Speaker may also 'order the withdrawal of visitors in special circumstances'<sup>46</sup> although special circumstances are not defined.

Whilst the Clerk is required to send members a list of Bills at least 15 days prior to the commencement of an ordinary Parliamentary session<sup>47</sup> there is no requirement that the list of Bills be made available to the public. Copies of Bills, in English and French, must be made available to members at least 10 days prior to the session at which they are to be debated.<sup>48</sup> There is no requirement that copies of Bills be made available to the public. There is no requirement that a list of documents to be tabled and debated be sent. Whilst documents to be tabled are provided in the daily agendas<sup>49</sup> and tabled documents are to be recorded in the Minutes,<sup>50</sup> again there is no requirement that daily agendas be made public.

The law does not require verbatim recordings of sessions to be made. Nor does the law require that voting records must be made public. There is no provision on the standing orders for the public to directly submit written questions to the legislature. Whilst the issue of reviewing the Standing Orders was identified as a priority during the Comprehensive Reform Programme initiated in the late 1990s, revised Standing Orders still have not been introduced.

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<sup>44</sup> Article 24, Constitution of the Republic of Vanuatu.

<sup>45</sup> Order 53(1), Standing Orders of Parliament.

<sup>46</sup> Order 53(2), Standing Orders of Parliament.

<sup>47</sup> Order 12(4), Standing Orders of Parliament.

<sup>48</sup> Order 26(2), Standing Orders of Parliament.

<sup>49</sup> Order 17, Standing Orders of Parliament.

<sup>50</sup> Order 20, Standing Orders of Parliament.



Proceedings of standing committees are not open to the public other than during the hearing of evidence.<sup>51</sup> Reports of standing committees also confidential until they have been presented in Parliament.<sup>52</sup>

There is no legal requirement that Parliament provides annual reports in respect of its operations. Nor is there any requirement that members of parliament account for their representation allowances.

## **TRANSPARENCY (PRACTICE)**

*To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?*

*Whilst it is possible to view Parliamentary sessions now, it is not easy to gain information prior to parliament sitting. There is also very little transparency in respect of the use of member's representation allowances.*

As discussed above, major improvements with public access to Parliament have occurred in late 2013. Facilities to broadcast parliamentary sessions over the television and the internet have been installed. The November-December session of Parliament was broadcast on television as well as the radio. The videoed sessions are archived on Parliament's website and available for anyone to access, although links are currently not working.

In the past there have been significant delays in the publication of Hansards, so the public has not been able to get timely access to records. Hansards, which are summarised records, are now available for sessions up to 2010. These contain brief voting records, in that members who vote against the Bill or abstain are recorded. Many Bills are passed unanimously, and records do not record which members were present during the vote. They do not contain information on documents that have been tabled, although it is unknown if this is because documents are not tabled.

Gaining information prior to sessions is difficult. Whilst Parliament does publish lists of Bills on its website, the Bills themselves are not made available to the public. Nor is information on documents to be tabled made available. Whilst the media reports on activities within Parliament this often is done after debates have taken place. As a result of being unable to access information prior to parliamentary sessions media is unable to assist in generating public debate on matters that will be arising. In order to get Bills before sessions reliance must be placed upon personal contacts. It is not usual for members of parliament to hold public meetings or consultations on matters, although this does sometimes occur. A notable instance prior to the November 2013 session of Parliament was public consultations by the Minister of Lands on proposed changes to land laws. The actual Bills themselves were not made publically available however. Instead a booklet summarising proposed changes was distributed. It is not usual for members of public to submit questions via their elected representatives to be asked during legislative question time.

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<sup>51</sup> Rule 36(1), Procedural Guidelines Standing Committees.

<sup>52</sup> Rule 36(2), Procedural Guidelines Standing Committees.

Budgets of Parliament are published as part of the annual government budget. There is no subsequent public reporting of how this budget is used.

Whilst a small number of members of Parliament have voluntarily published a statement of how they have spent their representation allowances, this is the exception, rather than the rule.

## **ACCOUNTABILITY (LAW)**

*To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?*

*Whilst Parliament is accountable to the courts for the constitutionality of its decisions, and must consult with the public on some amendments to the Constitution accountability of individual legislators to other bodies such as the Auditor General and the Ombudsman is extremely limited.*

The only regular review of legislative activities is conducted by the Auditor General as part of his general duty to audit and report to Parliament and the government on public accounts.<sup>53</sup> However, as discussed in the section on transparency above, there is no auditing of how individual members use their representation allowances. This is because they are paid as a “salary” so the powers of the Auditor General only extend to ensuring that allowances have been paid to members.

The Supreme Court has the authority to review any Bill that has been passed by the parliament.<sup>54</sup> This usually happens when Bills are referred by the President to the Supreme Court prior to their promulgation. However the Supreme Court can also review Acts that have been brought into force.

The only time that public consultation is required by law is when a Bill to amend ‘a provision of the Constitution regarding the status of Bislama, English and French, the electoral system, or the parliamentary system’ is passed by Parliament. Such a Bill can only come into law if it is supported by a public referendum.<sup>55</sup>

The Ombudsman is tasked to handle complaints regarding breaches of the leadership code and maladministration. The powers of the Ombudsman are discussed further in the Ombudsman section of this report. It can be observed that the Ombudsman only has the power to make recommendations. As discussed in the judiciary section of this report, the judiciary is also active in overseeing the activities of the legislature, and in particular adherence to the Standing Orders.

## **ACCOUNTABILITY (PRACTICE)**

*To what extent do the legislature and its members report on and answer for their actions in practice?*

*Accountability to the court occurs when matters are placed before it. Little proactive accountability via other mechanisms occurs.*

There is very little consultation of the public by the legislature, either as a group or through individual legislators. Whilst standing committees are established to debate various issues, debate is often limited to the members of committees and does not enter the public domain. Indeed a recent

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<sup>53</sup> Article 25(5), Constitution of the Republic of Vanuatu.

<sup>54</sup> Article 16(3), Constitution of the Republic of Vanuatu.

<sup>55</sup> Article 86, Constitution of the Republic of Vanuatu.

survey conducted by Transparency Vanuatu indicted that improving consultations was the main measure that the public wanted the legislature to undertake.<sup>56</sup>

Whilst the public can make complaints to the Ombudsman, as discussed in that section very little action occurs as the result of Ombudsman's reports. This may have contributed to the decline in the number of public complaints being made to the Ombudsman.

There is no regular reporting of the legislature either to the public, or to state bodies. However, Bills are regularly presented to the Supreme Court to determine their constitutionality. Further, as discussed in the section on the judiciary, active oversight of adherence to Standing Orders occurs when cases are brought before the court.

Constitutional immunity provisions in respect of liability for statements made during parliamentary debate are not often used. The last instance occurred in 2004, when the then Prime Minister was prosecuted for contempt of court for comments made during a parliamentary debate on a motion of no confidence. It was held that privilege applied.<sup>57</sup>

## **INTEGRITY MECHANISMS (LAW)**

*To what extent are there mechanisms in place to ensure the integrity of members of the legislature?*

*The Leadership Code Act is fairly comprehensive although the lack of public disclosure or other regular scrutiny of annual returns weakens their effectiveness as an accountability mechanism.*

The two main sources of integrity rules are the Standing Orders of Parliament and the Leadership Code Act. The Leadership Code Act generally requires that '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.'<sup>58</sup> Leaders include, but are not limited to, members of parliament.

Whilst members of Parliament cannot hold public office<sup>59</sup> there is no specific restriction on private sector activities. The Standing Orders do, however, require members of Parliament to inform the Speaker of political party affiliations and of 'all companies, businesses or other organizations in which he has any pecuniary interest of any kind whether direct or indirect as owner, employee, partner, shareholder or otherwise.'<sup>60</sup> The Speaker is required to keep records of all private sector interests<sup>61</sup> and members are prohibited in participating in any debate or vote without first disclosing their interests.<sup>62</sup> The Leadership Code Act also contains provisions relating to conflict of interest.

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<sup>56</sup> <https://www.dropbox.com/s/rhkjosbau0b7r20/Press3.pdf>.  
<https://www.dropbox.com/s/m7hza7n0j36axb6/Press5.pdf>.

<sup>57</sup> *Vohor v Public Prosecutor* [2004] VUCA 23.

<sup>58</sup> Section 3, Leadership Code Act [Cap 240].

<sup>59</sup> Section 25, Leadership Code Act [Cap 240].

<sup>60</sup> Order 52(1)(b), Standing Orders of Parliament.

<sup>61</sup> Order 52(2), Standing Orders of Parliament.

<sup>62</sup> Order 52(4), Standing Orders of Parliament.

Leaders must disclose personal interests<sup>63</sup> must divest themselves of assets likely to create conflict with their duties<sup>64</sup> and must not act in any matter where they have a conflict of interest.<sup>65</sup> They are also restricted in accepting loans<sup>66</sup> and limited in having beneficial interests in government contracts.<sup>67</sup> There are, however, no post-employment restrictions.

In order to help ensure that leaders are not using their positions for personal gain they are required to make annual returns. These annual returns must also be filed for their spouse, children and trusts of which they are beneficiaries.<sup>68</sup> The annual returns must detail:

- (a) all land and other property (except one family home);
- (b) all vehicles (except one family vehicle);
- (c) all shares in public or private companies;
- (d) all income;
- (e) all liabilities;
- (f) directorships in corporations;
- (g) all directorships or other offices held in unincorporated bodies;
- (h) any assets acquired or disposed of during the period covered by the return;
- (i) any liabilities acquired or discharged during the period covered by the return.<sup>69</sup>

These returns should record gifts and hospitality. Further, there is provision in the Act to regulate for the receipt of gifts to the State,<sup>70</sup> although no such regulations have been made. Accepting gifts under custom is not a breach if done openly and follows traditional practice.<sup>71</sup> There is no requirement that a record of contact with lobbyists is kept. Annual returns are provided to the Clerk of Parliament who must keep them confidential, although they can be released to other parties pursuant to an investigation or prosecution of breaches of the law.<sup>72</sup> The Clerk must also publish in the Gazette, by March of each year, a list of those who have filed annual returns and those who have failed to do so.

Breaches of the Leadership Code Act are criminal offences and can be prosecuted.

## **INTEGRITY MECHANISMS (PRACTICE)**

*To what extent is the integrity of legislators ensured in practice?*

*There is a complete absence of enforcement of the Leadership Code Act.*

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<sup>63</sup> Section 16, Leadership Code Act [Cap 240].

<sup>64</sup> Section 18, Leadership Code Act [Cap 240].

<sup>65</sup> Section 24, Leadership Code Act [Cap 240].

<sup>66</sup> Section 21, Leadership Code Act [Cap 240].

<sup>67</sup> Section 26, Leadership Code Act [Cap 240].

<sup>68</sup> Section 31, Leadership Code Act [Cap 240].

<sup>69</sup> Section 32(4), Leadership Code Act [Cap 240].

<sup>70</sup> Section 10(2), Leadership Code Act [Cap 240].

<sup>71</sup> Section 10(1), Leadership Code Act [Cap 240].

<sup>72</sup> Section 32, Leadership Code Act [Cap 240].

List of leaders who have filed or not filed annual returns are not consistently published in the gazette. Even when leaders fail to file returns, and it is published, no further action is taken. The last Ombudsman's public report on this topic was published in 2009, and related to 188 leaders who had failed to file annual returns in 2007.<sup>73</sup>

Nobody is empowered in law to scrutinise the content of these returns unless there an investigation for a breach of the Leadership Code Act [Cap 240] has been commenced, and as a result there is no regular scrutiny of the content of annual returns. As a result, even if they are filed, they are ineffective as an accountability mechanism.

Despite a number of Ombudsman reports recommending that further action be taken due to apparent breaches of the Leadership Code Act no prosecutions have been initiated. In the past 5 years reports which have recommended prosecution of members of the legislature for breaches of the Leadership Code Act [Cap 240] have included: a report on former member of parliament for breaches of the Leadership Code Act associated with his involvement in abetting forgery;<sup>74</sup> a report on a then member of parliament for breaches of the Leadership Code Act associated with his conviction for abetting an assault;<sup>75</sup> a report on the Prime Minister and his cabinet for breaches of the Leadership Code Act associated with not complying with the Government Contracts and Tenders Act;<sup>76</sup> reports, in 2007, 2008 and 2009 recommending prosecution for leaders who have failed to file annual returns under the Leadership Code Act;<sup>77</sup> and a report on misuse of personal office for private gain by the then Speaker of Parliament.<sup>78</sup>

## EXECUTIVE OVERSIGHT

*To what extent does the legislature provide effective oversight of the executive?*

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<sup>73</sup> Office of the Ombudsman, *Public Report on the Failure of 188 Leaders who failed to Submit Annual Returns for 2007 19 August 2009* <http://www.paclii.org/vu/ombudsman/2009/1.pdf> [accessed 27 February 2014].

<sup>74</sup> Office of the Ombudsman, *Vanuatu: Public Report on the Breach of the Leadership Code Act by Malon Hospmander and Andre Lesines 15 October 2010* <http://www.paclii.org/vu/ombudsman/2010/3.html> [accessed 27 February 2014].

<sup>75</sup> Office of the Ombudsman, *Vanuatu: Public Report on the Impeachment of the Leadership Code Act by Honourable Harry Iauko, and Jay Ngwele through their convictions at the Magistrate Court 21 October 2011* <http://www.paclii.org/vu/ombudsman/2011/2.pdf> [accessed 27 February 2014].

<sup>76</sup> Office of the Ombudsman, *Vanuatu: Public Report on the Breaches of the Government Contracts and Tenders Act, The Leadership Code Act And Financial Regulations in Relation to Vanuatu Holdings 2 May 2008* <http://www.paclii.org/vu/ombudsman/2008/3.html> [accessed 27 February 2014].

<sup>77</sup> Office of the Ombudsman, *Vanuatu: Public Report on the Failure of 156 Leaders who Failed to File Annual Returns for 2005 23 March 2007* <http://www.paclii.org/vu/ombudsman/2007/3.pdf> [accessed 27 February 2014]; Office of the Ombudsman, *Vanuatu: Public Report on the Failure of 177 Leaders who Failed to file 2006 Annual Returns 11 January 2008* <http://www.paclii.org/vu/ombudsman/2008/1.pdf> [accessed 27 February 2014]; Office of the Ombudsman, *Vanuatu: Public Report on the Failure of 188 Leaders who Failed to Submit Annual Returns for 2007 19 August 2009* <http://www.paclii.org/vu/ombudsman/2009/1.pdf> [accessed 27 February 2014]

<sup>78</sup> Office of the Ombudsman, *Vanuatu: Public Report on the Breach of Leadership Code in using Public Office for Personal Gain by Honourable Sam Dan Avock Speaker of Parliament and the Abuse of Section 3 of the Official Salaries Amendment Act 1989 by the Honourable Prime Minister 14 May 2007* <http://www.paclii.org/vu/ombudsman/2007/4.pdf> [accessed 27 February 2014].

*Whilst the legislature has some power to scrutinise the executive it is not consistent in fulfilling this role. Internal politicking and weak committee structures hinder the legislature from acting as an effective check on the executive.*

The legislature does not have the power to establish commissions of inquiry. Instead this power is vested in the Minister of Justice.<sup>79</sup> The legislature can, however, establish ad hoc committees to investigate Bills or matters raised in motions.<sup>80</sup> It can also establish a standing committee 'in order to examine, enquire or consider any business, question or matter related to a ministry, department or service of the Government or the Republic of Vanuatu.'<sup>81</sup> Whilst a number of standing committees are established they do not release regular reports which indicate the extent to which they provide effective oversight of the government.

Whilst the legislature approves the national budget through Appropriation Acts, it is not very effective in scrutinising public expenditure. This is largely due to weaknesses in the functioning of the public account committee, and lack of parliamentary action when the public accounts committee does report. Whilst the Parliament (Administration) Act requires all Ministers to prepare an annual report for Parliament<sup>82</sup> recent Hansards have not recorded any public debate on these reports. Some decisions are, however, challenged. In mid 2013 the Opposition sought judicial review over an agreement that the government had signed with a private company to court.<sup>83</sup> Whilst the review was unsuccessful parliament has established an ad hoc committee to investigate the agreement. One of the most controversial provisions is the issuing of promissory notes. Promissory notes must be approved by Parliament.<sup>84</sup>

The main mechanism for controlling the executive is motions of no confidence. However, as discussed in the foundations section and the section above on independence, Vanuatu's political environment is very unstable. Motions of no confidence, or rumours of motions of no confidence, are frequent. In this environment members of parliament, where members of parliament stand to gain by shifts in the government and executive posts, motions of no confidence are largely seen as a self serving device, rather than a device to hold the executive to account.

A number of key office holders, including the Ombudsman and the Chief Justice, are appointed in consultation with both the Prime Minister and the Leader of the Opposition, ensuring independence in these posts.

## **LEGAL REFORMS**

*To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?*

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<sup>79</sup> Section 1, Commissions of Inquiry Act [Cap 85].

<sup>80</sup> Order 48, Standing Orders of Parliament.

<sup>81</sup> Order 49, Standing Orders of Parliament.

<sup>82</sup> Section 23, Parliament Administration Act [Cap 306].

<sup>83</sup> Vanuaroroa v Republic of Vanuatu [2013] VUCA 41.

<sup>84</sup> Sections 59 & 60, Public Finance and Economic Management Act [Cap 244].

*Whilst a major international Convention in the area of anti-corruption has been ratified, there is no clear programme of developing national laws to respond to issues of corruption.*

The United Nations Convention Against Corruption was ratified in 2010.<sup>85</sup> No specific legislative reforms have occurred in furtherance of compliance with this Convention, however. Changes in government make it difficult for the legislature to embark on and adhere to a comprehensive anti-corruption law reform agenda, and also make it difficult to assess the degree to which there is commitment for such an agenda. The current Carcasses government released a “100 day plan” when it first came into power. This plan contained a list of actions, some of which had a clear anti-corruption focus. Example actions include:

17. Establish a “Public Concerns Monitoring Group” headed by the Ombudsman with secretarial support from the Office of the Ombudsman and comprised of representatives from VANGO, VCC, VCCI, Malvatumauri, Auditor General’s Office and others, with a mandate to identify and raise key issues of public concern with the Government, to advise and assist the Government to address these concerns, and to liaise with the public. This group also able to receive submissions on such issues
19. Amend the Ombudsman Act to re-instate the power of the Ombudsman to institute a civil case against a leader to recover misappropriated funds
20. Amend the Leadership Code Act to remove the prerequisite requirement for conviction under the Penal Code for conviction for breach of the Leadership Code
21. Insert a new section into the Ombudsman Act to allow anyone, including the Ombudsman, to prosecute a leader for breach of the Leadership Code if the Public Prosecutor has not commenced proceedings three months after issuing of a Report alleging breaches
23. Establish high-level ‘Constitutional Review for Political Reform’ Committee and complete consultation with all political parties on amendment of Constitution to reform the political system, ready for wider consultation<sup>86</sup>

However, none of these actions have been completed. Less than a month after the Prime Minister convened a meeting of political party leaders to begin addressing political reform a motion of no confidence was tabled. Whilst this motion was defeated, 4 ministerial portfolios changed.<sup>87</sup> The government has stated that it remains committed to political reform,<sup>88</sup> but there are concerns that if political reform is not in the personal interests of parliamentarians it will not be successful.

Whilst a number of positive law reforms are listed in the anti-corruption activities section, there have also been some reforms that appear to facilitate corruption. Somewhat controversial reforms include changes to passport laws. Vanuatu has historically been embroiled in a number of passport scandals, particularly relating to diplomatic passports. A new Passports Act was introduced in 2009, and a number of diplomatic passports were cancelled after this new law.<sup>89</sup> However, in 2010 it was

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<sup>85</sup> United Nations Convention Against Corruption (Ratification) Act 2010.

<sup>86</sup> ‘Carcasses Government releases 100 Day List’ *Vanuatu Daily Digest*, 11 April 2013 <http://vanuatudaily.wordpress.com/2013/04/11/carcasses-government-releases-100-day-list/> [accessed 27 February 2014].

<sup>87</sup> ‘Vanuatu Prime Minister Moana Carcasses avoids no-confidence vote after opposition MPs defect’ *Australia Network News* 27 February 2014 <http://www.abc.net.au/news/2014-02-27/an-vanuatu27s-pm-appears-to-avoid-no-confidence-motion/5286952> [accessed 11 March 2014].

<sup>88</sup> Ibid.

<sup>89</sup> ‘New Agency to Stamp Out Illegal Passport Trade in Vanuatu’ *Radio Australia* 14 October 2009 <http://www.radioaustralia.net.au/international/radio/onairhighlights/new-agency-to-stamp-out-illegal-passport-trade-in-vanuatu> [accessed 7 March 2014].

reported in the Daily Post the more non citizens held diplomatic passports than citizens.<sup>90</sup> In 2011 the Passports Act was amended to allow non-citizens to hold Vanuatu diplomatic passports, and this was seen, by some, as facilitating the corrupt sale of diplomatic passports.<sup>91</sup>

Changes to laws surrounding election petitions have also been controversial. Whilst it has always been the case that election petitions on the grounds of improper conduct will only be successful if the improper conduct affected the result of the election, the law also used to provide that if a candidate were convicted of an election offence, then his or her election would be declared invalid. This provision was removed in 2012, and replaced with a much narrower provision relating to spending or allocating money during a set period around elections.<sup>92</sup>

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<sup>90</sup> Godwin Ligo, 'More foreigners holding diplomatic passports than ni-Van holders', *Vanuatu Daily Post Online* 30 October 2010.

<sup>91</sup> 'New Zealand Urged to Investigate Vanuatu Passport Office' *Pacific Island Report* 21 December 2009 <http://pidp.org/archive/2011/December/12-21-09.htm> [accessed 7 March 2014].

<sup>92</sup> Section 13, Representation of the People (Amendment) Act 2012.