

**REPUBLIC OF VANUATU**

**OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**(Pursuant to art 63(3) of the Constitution)**

**on the illegal**

**HOSPITALS**

**PANEL SIGNS CONTRACT**

**entered into by Mr Yves Niowenmal,**

**the former Director of Health**

**Department**

**This report contains the findings of fact, opinions, views and of unlawful conduct and the recommendations of the Ombudsman pursuant to the Constitution of the Republic of Vanuatu and the Ombudsman Act No.14 of 1995.**

**1st October 1997**

## **TABLE OF CONTENTS**

<b>PREAMBLE.....</b>	<b>1</b>
<b>1 SUMMARY OF FACTS.....</b>	<b>1</b>
<b>2 JURISDICTION.....</b>	<b>3</b>
<b>3 SCOPE OF INVESTIGATION.....</b>	<b>4</b>
<b>4 METHOD OF INVESTIGATION.....</b>	<b>4</b>
<b>5 PRELIMINARY REPORT.....</b>	<b>4</b>
<b>6 BACKGROUND.....</b>	<b>5</b>
<b>7 RELEVANT LAWS.....</b>	<b>5</b>
<b>8 FACTS.....</b>	<b>5</b>
8.1 Tender process.....	5
8.3 Installation of panel signs.....	6
8.6 Refund of VT 2.2 million.....	6
8.11 Extravagant and useless expenditure.....	7
8.13 Misallocations.....	8
8.14 Public Health Act.....	8
<b>9 REPLIES.....</b>	<b>9</b>
Mr H Ouchida, Managing Director, Laho Limited.....	9
The Acting Director General of Finance.....	10
<b>10 FINDINGS OF WRONGFUL CONDUCT AND DEFECTIVE ADMINISTRATIVE PRACTICE.....</b>	<b>11</b>
10.1 Director of Health, Mr Niowenmal.....	10
10.11 Department of Finance.....	13
<b>11 RECOMMENDATIONS.....</b>	<b>14</b>
<u>RECOMMENDATION NO.1: THE ATTORNEY GENERAL ON BEHALF OF THE ACTING DIRECTOR OF HEALTH AND THE MINISTRY OF FINANCE TO RECOVER FROM LAHO AND MR YVES NIOWENMAL THE LOSS OF VT 200,00.....</u>	14
<u>RECOMMENDATION NO.2: A REMINDER TO FOLLOW THE FINANCIAL REGULATIONS BE SENT TO DEPARTMENTS.....</u>	14
<u>RECOMMENDATION NO.3: MR NIOWENMENAL SHOULD NOT BE MADE IN CHARGE OF THE HEALTH DEPARTMENT AGAIN AND SHOULD NOT OCCUPY ANY POSITION WHICH INVOLVES THE SPENDING OR THE ALLOCATION OF PUBLIC FUNDS.....</u>	14
<b>13 APPENDICES.....</b>	<b>16</b>
<b>14 ANNEXES.....</b>	

## **PREAMBLE**

*"Where there is no vision, the people perish, but he that keepeth the law, happy is he ...."* Proverbs 29 v 18

As the list of complaints to the Ombudsman's Office continues to mount, it is no longer possible to avoid the disturbing conclusion that within most of the government offices and public services there is a widespread belief that when a person is appointed to a position, he or she need not be familiar with the law governing that office, but instead can operate on a basis of personal whim, accountable to nobody.

Time and again, investigations have encountered a reaction of apparent surprise that there was any obligation to follow strict rules of procedures when taking decisions which affect the public. Instead there has developed an attitude, which results in personal favours being granted as if the official concerned had a free hand to operate as he or she pleased. Sometimes these failures arise largely because the official concerned is simply not equipped with the education and experience and training to fit him for the duties required, and there is little evidence of any realistic effort being made to acquire those abilities.

Illegal arrangements are made with selected "cronies" which result in public money being either wasted or misappropriated. Ignoring approved procedures for public tendering results in overcharging or simply failure to comply with "contracts".

This report is a case in point, showing that foolish ideas and lack of maturity led to the spending of scarce hospital funds following a frivolous and indeed illegal decision to pay for an expensive ornamental sign when all sectors of the hospital were crying out for funds for vital equipment and services - even to the extent of bed linen (which had to be paid by voluntary organisations and fundraising). At no point in the entire chain of command was an appropriate action taken to counter the errors of the Director of Health (whose appointment and successive suspensions in the first place are being investigated by the Office of the Ombudsman).

## **1 SUMMARY OF FACTS**

**1.1** Sometime in December 1994 the Director of Health, Mr Yves Niowenmal, made a verbal agreement with Mr Ouchida Henri from

- Laho Limited ("Laho") for Laho (a cigarettes and cars importer) to install luminous panel signs in front of the Port Vila and Northern District (Santo) Hospitals. The main reasons for this according to Mr Niowenmal were that it would be easier to find the hospitals at night and also that it would make the hospitals look "flash".
- 1.2 As part of the agreement, the names of the hospitals would appear in three languages on the panel signs, with the inscription "Sponsored by Benson & Hedges" (a cigarette company) underneath. In return for advertising its sponsorship, Benson & Hedges would either donate funds to the Health Department or provide funding for new clinics, dispensaries, aid posts or small motor boats for rural areas. Laho is the agent for Benson & Hedges Cigarettes.
  - 1.3 There was no fixed amount agreed upon nor was Mr Niowenmal sure of any agreed amount which he would get from Benson & Hedges in return for allowing them advertising rights on Health Department property.
  - 1.4 It was agreed that the signs would cost VT 600,000 each. On 22.12.94, based on this agreement, Mr Niowenmal issued a Local Purchase Order ("LPO") for VT 600,000 to Laho for the installation of the luminous panel sign at the main entrance of the Vila Central Hospital. This was a payment made in advance. This was followed by another LPO on 30.12.94, again issued by Mr Niowenmal to the same company for VT 600,000 for the installation of the other luminous panel sign at the main entrance of the Northern District Hospital in Santo.
  - 1.5 Despite having been paid a total of VT 1.2 million in early 1995, Laho failed to install the two panel signs. Laho then requested a further one million vatu from the Health Department one year later sometime in 1995 as additional charges on the installation of the panel sign at the Vila Central Hospital. In response on 27.12.95 Mr Niowenmal issued a third LPO for a further amount of one million vatu, payable to Laho.
  - 1.6 The panel signs were not put up because of two reasons. First, the uncertainty of the verbal agreement. Secondly, because Mr Niowenmal, who was the person who initiated the "contract" with Laho, was suspended on several occasions and nobody could, or was prepared to, decide on the matter on his behalf during the period of his suspensions. Later on, when the particulars needed for these panels were provided to Laho, Mr Niowenmal requested Laho to withhold their installation. However, Laho had already

- received payments totalling VT 2.2 million from the Health Department.
- 1.7 On 18.07.96 Laho refunded the Department of Finance an amount of VT 1,980,000, being all payments received by Laho, less ten percent for expenses incurred in connection with this matter (as mentioned by Laho), after the Office of the Ombudsman had started their enquiry and after the intervention of the Minister of Health requesting the return of the funds.
- 1.8 In this report I conclude that it was a waste of public money to get these signs. Furthermore having a cigarette company sponsoring a hospital is highly inappropriate because are known to cause ill health including cancer and it was also illegal, in breach of the Public Health Act.
- 1.9 According to the World Health Organisation (WHO)'s Action Plan for 1995 to 1999, 2.7 million deaths are associated with tobacco annually worldwide. Of those deaths, 0.5 million occur in the Asia-Pacific area. WHO and governments have tried and are still trying to put an end to the use of cigarettes. This is because it is very expensive for governments to set up proper treatment, such as clinics, hospitals, equipment, and staff, for people with diseases associated with cigarettes.
- 1.10 As a result of the information in this report, I consider that Mr Niowenmal broke the relevant laws and was responsible for the loss of VT 220,000 of public money. I have therefore in my recommendations in section 12 recommended he not be employed in any position by the Government involving public money.

## **2 JURISDICTION**

- 2.1 This enquiry was conducted in accordance with article 62 of the Constitution and section 14 of the Ombudsman Act No. 14 of 1995 ("Act"). The Ombudsman has the authority to enquire into matters either of her own initiative or upon receiving complaints from a person affected as a result of a particular conduct or action of any Department, Ministry or Public Authority. The Ombudsman can also start an enquiry at the request of a Minister, member of Parliament, member of the Council of Chiefs or member of a Local Government. This enquiry into Mr Niowenmal's conduct in relation to the Laho contract was conducted of the Ombudsman's own initiative.



- 2.2 Mr Niowenmal as a head of the Health Department falls within the Ombudsman's jurisdiction by reason of s14(2)(g) of the Act which prescribes Heads of Departments as leaders.**

### **3 SCOPE OF INVESTIGATION**

- 3.1 The aim and purpose of this enquiry was:**

- (a) To find out how and why Mr Niowenmal agreed to pay for signs sponsored by a cigarette company to be placed outside the hospitals;**
- (b) To establish the importance and need of having the luminous panel signs;**
- (c) To determine if public funds were spent in the most economical and appropriate manner; and**
- (d) To find out whether the appropriate procedures, financial regulations and laws were followed in this transaction by Mr Niowenmal.**

### **4 METHOD OF INVESTIGATION**

- 4.1 The procedures used and applied by Mr Niowenmal were compared to the Government's procedures and rules, namely the Financial Regulations. Information and documents were obtained from the Department of Health and Laho, pursuant to the powers vested in the Ombudsman under article 62(3) of the Constitution and section 17 of the Ombudsman Act.**

### **5 PRELIMINARY REPORT**

- 5.1 On 02.01.97 I issued and circulated my preliminary version of this public report. These preliminary report was sent to:**

- Mr Yves Niowenmal, former Director of Health**
- Mr Jeffrey Wilfred, Director General of Finance**
- Mr Ouchida Henri, Managing Director of Laho Limited**

- 5.2 Only Messrs Jeffrey Wilfred and Ouchida Henri from Laho Ltd exercised their constitutional rights to reply to the preliminary**

report. The former Health Department Director, Mr Yves Niowenmal did not reply. I assumed that he agreed with the report where it concerns him. Copies of the replies are annexed to this report. They are discussed further in section 8.

## **6 BACKGROUND**

**6.1** In March 1996 the Ombudsman was notified by the Deputy Director of Health, Mr Daniel Kalorib, of a questionable deal between the Director of Health, Mr Yves Niowenmal, and Laho. It was later revealed that the deal was for Laho to install two panel signs, one in the Vila Central Hospital and the other in the Northern District Hospital in Santo (Appendix A). Although Laho was paid a total of VT 2.2 million for the installation of two panel signs, no such signs were ever installed.

**6.2** As the actions of Mr Niowenmal appeared to be unjustified from an initial review, the Ombudsman decided to conduct an investigation. During the course of the investigation, the Ombudsman discovered a number of irregularities not only in the installation agreement, but also relating to breaches of the Government Tender Procedures by Mr Niowenmal, and blatant maladministration and unreasonable management from the Director, Mr Niowenmal.

## **7 RELEVANT LAWS**

**7.1** In this section the facts identified in s7 are considered by reference to:

- (a) The Government Financial Regulations; and
- (b) The Public Health Act (No. 22 of 1994).

## **8 FACTS**

### ***Tender process***

**8.1** The Government tender procedures are set out in chapter 22 of the Financial Regulations. Regulation 361 of the Financial Regulations requires for work or service over VT 50,000 but under one million vatu, three written quotations, if over one million vatu, three

tenders are required by the Central Tender Board to look at and decide.

8.2 This process was not followed by Mr Niowenmal. There were no written quotations from three different contractors as required. He did not even get one quotation from Laho. In an interview with the Ombudsman, the Director stated that he did not know nor was he aware of the requirements in the Financial Regulations. Regulation 12 of the Financial Regulations says all public officers must know the Financial Regulations and comply. It is no excuse to say they do not know.

***Installation of panel signs***

8.3 The following payments for the installation of the panel signs at the two hospitals were made in 1995 and 1996:

<u>LPO</u>	<u>AMOUNT (VT)</u>	<u>DATE OF GPV</u>	<u>DATES OF PAYMENTS</u>
224805	600,000	20.12.94	11.01.95 Appendix B
224393	600,000	30.12.94	11.01.95 Appendix C
251390	1,000,000	27.12.95	11.01.96 Appendix D

8.4 During his interview, Mr Niowenmal confirmed that despite having made the payments to Laho in January 1995 for VT 1.2 million and in January 1996 for a further one million vatu, the luminous panel signs were never installed.

8.5 Mr Niowenmal was also asked if he had thought of alternatives to the luminous panel signs such as painted wood. This would be cheaper and serve the same purpose. Mr Niowenmal stated that he had not thought of such alternatives.

***Refund of VT 2.2 million***

8.6 During his interview with the Ombudsman, Mr Niowenmal was asked if he had sought refunds from Laho on the grounds that the company failed to install the panel signs. Mr Niowenmal was not in favour of refunds, but emphasised that he wanted the panel sign for the Vila Hospital to be installed because it would make the hospital look nice and "flash" at night. He said tourists and the public would be able to find the hospital easily at night time.

8.7 As far as the Northern District Hospital is concerned, Mr Niowenmal stated that if refunded, part of the money would be



used to buy a new vehicle for the hospital. The old vehicle had mechanical problems. He was only made aware of the need to replace the old vehicle when he was on suspension in February 1995.

**8.8** On 11.07.96 the then Minister of Health, Mr Cyriaque Metmetsan, requested Laho to refund the original payments of VT 2.2 million made to the company in early 1995 and 1996 by the Health Department. In reply, the Managing Director of Laho, Mr H. Ouchida stated that because he had also incurred expenses he would only refund VT 1,980,000, (i.e., VT 2.2 million less 10%) (Appendix E). On 18.07.96 Laho refunded the Government, via the Finance Department, the amount of VT 1,980,000.

**8.9** Under regulation 23 of the Financial Regulations, Government officers are personally liable for the performance of their financial duties. It states in part:

All officers shall be personally liable for the due performance of their financial duties and may be held financially responsible, at the discretion of the Minister of Finance, for any losses, inaccuracies or errors occurring during the performance of those financial duties.

**8.10** The Government lost a total of VT 220,000 because of Mr Niowenmal's negligence. Mr Niowenmal must be held responsible for the loss, and refund VT 220,000 to the Government. During the course of an interview with the Ombudsman on 27.07.96, Mr Niowenmal stated that he was prepared to make good the loss of VT 220,000. He confirmed that he was prepared to refund this amount through deductions from his salary by the Department of Finance. This should be followed up.

### ***Extravagant and useless expenditure***

**8.11** During the same interview with the Ombudsman, Mr Niowenmal said that he wanted to use up all the available budget of the Health Department in December 1994 and 1995 before the end of the Government financial year. To do this, he issued the three LPOs to Laho for the panel signs, on 22.12.94 and 30.12.94, and again on 27.12.95.

**8.12** It appears difficult to understand the reason for Mr Niowenmal spending public funds on panel signs. The hospital needed desperately a gynaecologist/obstetrician (G/O) in 1994 and 1995 when the former G/O's contract came to an end in December 1993.

In 1994 to 1996 the Health Department was unable to find Vt 1.5 million in its budget to recruit a G/O on local contract. This was outlined in our recent report on the death of premature twins. However, Mr Niowenmal was able to find money to spend it on useless items like "flash" panel signs.

### ***Misallocations***

**8.13 Regulation 176 of the Financial Regulations states in part:**

In certifying and signing a payment voucher, the accounting officer or authorised signatory, is responsible for ensuring that:

- (a) the expenditure is for a purpose approved by Parliament in the Appropriation Act.
- (b) the expenditure is an acceptable charge to public funds in accordance with all laws and these Financial Regulations.

**8.14 The authorised signatory and accounting officer for the LPOs was Mr Niowenmal (regulation 1).**

**8.15 The three amounts paid in respect to the panel sign were charged to incorrect sub-heads in the accounts.**

<u>LPO</u>	<u>AMOUNT (VT)</u>	<u>SUB-HEAD ACCT. CHARGED TO</u>
224805	600,000	261.20.109.0001 Build.maintenance
251390	1,000,000	261.20.109.0001 Build.maintenance
224393	600,000	461.400.01 Central Hosp. Equipt. Van. Govt funded

**8.16 The sub-heads to which the amounts were charged were not the proper sub-heads to absorb these costs. It is standard Government procedure as outlined in regulation 176 that charges must be made to the proper heads and sub-heads in the Government accounts. Costs which are misallocated to other heads and sub-heads not only show a lack of proper financial management but also give a false and misleading picture to Parliament.**

***Public Health Act***

- 8.17 Mr Niowenmal is planning to have a cigarette sponsors with the signs ignored Section 105 of the Public Health Act, which bans the advertisement of cigarettes. It is ironic, to say the least that the Director of the Health Department would spend Public Funds on signs which would promote cigarettes in contravention of the Public Health Act.**

**9 REPLIES**

***Laho Limited***

- 9.1 A copy of Laho's reply is annexed as "1". In his reply Laho mentioned it was not his wish to advertise cigarettes; nor it was his intention to accept such publicity, even though that is what Mr Niowenmal wanted. He stated that: "I never approached the firm "Benson & Hedges" for the advertisement requested by the Director".**
- 9.2 If Laho never approached Benson and Hedges, it is strange that Laho retained 10% of the Vt 2.2 million. No correspondence on the matter with Benson & Hedges was shown to the Ombudsman's Office yet 10% of the total amount was retained by Laho.**
- 9.3 The additional invoice for Vt 1 million issued on 27.12.95 to the Ministry of Health states:**

***"Being for additional charges on installation of Illuminated Panel Sign at the main front entrance gate of Port Vila Central Hospital".***

**There were no details on what exactly the installation included and why it could reach a cost of VT 1,000,000 just for the installation. There does not appear to be any new instructions to charge additional money and it appears unjustified to charge any installation fee when no panels ever reached Vanuatu and no panels were ever installed.**

- 9.4 Laho further stated that the New Zealand firm which was producing cool blue water was not in a position to pay for the advertisement of its product in this panel sign. To date I have not seen any correspondence between his company (Laho) and the firm in New Zealand. I therefore do not see any justification or detail of any**

cost for the retention of 10% of the total amount of Vt 2.2 million by his company.

Furthermore, any type of communication expenses are part of Laho's cost unless there is an agreement with the buyer. In this case there was no agreement allowing for this.

### **The Acting Director General of Finance**

- 9.5 A copy of the Acting Director General of Finance is annexed as "2". In her reply the Acting Director of Finance stated in part;**

*"In my opinion, the checking officer, have reviewed the documentation, would be justified in accepting the charging to the sub-heads indicated on the order forms. I have examined the documents, and without the knowledge that the payments were invalid would similarly have accepted the sub-head codes used. I am unable to accept that the checking officer would be in a position to have reasonably determined a more appropriate sub-head, given the level of documentation and its certification. I also note in your report that you do not suggest a more appropriate sub-head!"*

- 9.6 The checking officers in the Department of Finance have a duty to ensure that the charge that relates to the sub-head stated, and that it is an acceptable and a correct charge. If the officer cannot accept the charge as a proper charge to this particular sub-head, he/she should have referred the LPO back to the accounting officer in the Health Department to create or identify a correct sub-head per the expenditure. These expenses would have been on proper charge to other purchases and incidentals sub-heads.**
- 9.7 Surely the charging of the cost to Building Maintenance and Hospital Equipment sub-heads are not the correct sub-heads. The installation of panel signs is not Building Maintenance nor is it a hospital equipment. This must have been clear on the face of the LPOs. These payments should not have been processed or at least should have been questioned.**

## **10 FINDINGS OF WRONGFUL CONDUCT AND DEFECTIVE ADMINISTRATIVE PRACTICE**

### ***Director of Health, Mr Niowenmal***

**Finding No.1: Mr Niowenmal breached regulation 361 of the Financial Regulations by failing to follow the procurement procedures.**

**10.1 Regulation 361 of the Financial Regulations states in part:**

- (2) Where the cost of a specific work or service exceeds 50,000 vatu but does not exceed 1 million vatu, at least three (3) written quotations shall be obtained wherever possible and the procurement order will be place by the Accounting Officer who will usually be the director of the department.**
- (3) Where the cost of a specific work or service exceeds 1 million vatu, at least three (3) written tenders must be obtained. These tenders must be submitted to the Central Tender Board for its evaluation and for the awarding of the contract.**
- (4) Procurements may not be divided up in order to circumvent these procurement procedures.**

**10.2 Mr Niowenmal ignored these provisions and authorised expenses beyond his authority. He just went ahead and made a deal with Laho without consulting anyone else. He did not bother himself to obtain any quotations or tenders other than Laho's, though he was required to do so. He did not bother to involve the Central Tender Board, though he was required to do so. What is more, he split the initial cost of VT 1.2 million into two separate payments of VT 600,000 precisely so as to avoid the required tendering process. This manoeuvre is specifically prohibited by the Financial Regulations. He furthermore pretended that he did not know about this requirement of the Financial Regulations.**

**Finding No.2: Mr Niowenmal failed to carry out his duty as director of one of the biggest budget spending departments of the Government, in that he did not ensure that the Government got the product that it paid for.**

**10.3 Despite having spent a total of VT 2.2 million, Mr Niowenmal did not make sure that the signs were installed. Although the total of VT 1.2 million was paid to Laho on 11.01.95, no steps were taken to have the product provided. Instead Mr Niowenmal authorised an**



additional payment of one million vatu on 27.12.95, almost one year later, and Laho still fails to instal the signs.

**10.4 Mr Niowenmal failed to recover public money from Laho although he was fully aware that the panel signs had not been installed. He allowed a private company to earn profits from public funds at the expense of the Government of Vanuatu. Laho got a loan from the Government for more than one year interest free and then charged 10% at the end for the privilege. Remarkable!**

**10.5 As Director of the department who had paid a supplier without receiving the services and goods, he should have requested a refund of the funds as soon as he discovered that the signs were not installed. Instead Mr Niowenmal allowed Laho to keep the money and negotiate other alternatives. By doing so he allowed public money to be used by Laho for its own benefit. The payments were only recovered by the direct intervention of the Minister of Health. It is doubtful if Mr Niowenmal would ever have tried to recover these payments. The Minister concerned, Mr Metmetsan, is to be praised for his good and quick action.**

**Finding No.3: Mr Niowenmal failed to ensure that public funds were spent in the most economical manner. He breached regulation 18(2)(c) of the Financial Regulations.**

**10.6 Regulation 18(2)(c) imposes the duty to ensure:**

control over the provision voted for the service of the department and, in particular, to ensure that funds are properly applied without waste to the purposes for which they were voted and that no expenditure is committed or incurred without proper authority.

**10.7 In this case Mr Niowenmal spent public funds without due care. That is, he spent public funds on something that was not important or vital to the running of the Health Department. The luminous panel signs were not essential. They were a personal whim of Mr Niowenmal. They were just to decorate the hospital. The fact that they were to be sponsored by a cigarettes company was thoughtless and ridiculous in the extreme.**

**Finding NO.4: Mr Niowenmal took no precautions in spending public moneys and show himself to be incapable of managing public funds. He breached regulation 146 (1)(b) of the Financial Regulations. Regulation 146(1)(b) imposes the duty to ensure:**

**that any expenditure is essential to the public service and is being provided in the most economic, efficient and effective manner.**

- 10.8** During his interview with the Ombudsman, Mr Niowenmal stated that because it was close to the end of the Government financial year, he wanted to spend all the remaining funds from the Health Department budget, on 21.12.94 VT 600,000, on 30.12.94 VT 600,000, and on 27.12.95 VT 1,000,000.
- 10.9** This attitude showed a total lack of financial responsibility on his part by not making sure that funds were spent properly with due care and in an economical manner. It further shows that Mr Niowenmal has an extravagant attitude toward expenditure with little knowledge of proper financial management and control. He wanted to spend public health money for "flash" signs as he said himself.
- 10.10** The attitude of Mr Niowenmal cannot be tolerated if the Government is to keep control of its spending of public funds each year. Heads of departments must demonstrate that they can provide the best service with the funds made available by Parliament and spend them wisely and that they can plan ahead.

### ***Department of Finance***

**Finding NO.5: The Department of Finance failed to ensure that expenditures were charged to the correct sub-head in the Health Department's budget.**

- 10.11** Under regulation 186(2)(a) of the Financial Regulations, checking officers in the Department of Finance, who have the duty to check prior to processing payments, must check that the vouchers are correctly completed. The checking officer must be satisfied that:

**the payment is an acceptable charge to Government funds and the Head and sub-head to which payment is to be charged is the correct allocation of the expenditure to be incurred.**

- 10.12** The charge to building maintenance of VT 1.6 million is not the proper sub-head. In the same manner, the other VT 600,000 which was charged to the Central Hospital Equipment sub-head is also not proper. The Department of Finance should not have processed the payments.

## **11 RECOMMENDATIONS**

**RECOMMENDATION NO.1: THE ATTORNEY GENERAL ON BEHALF OF THE ACTING DIRECTOR OF HEALTH AND THE MINISTRY OF FINANCE TO RECOVER FROM LAHO AND MR YVES NIOWENMAL THE LOSS OF VT 220.000.**

- 11.1** I recommend that Mr Niowenmal and Laho jointly and commonly refund this money to the Government of Vanuatu within a period of 30 days from the date of publication of this report, and I recommend that a letter be written by the Director of Health, Mr Johnson Wabaiat to request the refund of the money. Mr Nowenmal said in an interview with the Ombudsman on 27.07.96 that he was prepared to make good for the loss of VT 200,000.
- 11.2** Failure to return the money within 30 days, I recommend that the Acting Director of Health with the Ministry of Finance and with the approval of the Attorney General lodge a civil claim in Court and recover the money.

**RECOMMENDATION NO.2: A REMINDER TO FOLLOW THE FINANCIAL REGULATIONS BE SENT TO DEPARTMENTS**

- 11.3** The Minister of Finance to issue a circular within 42 days to remind all Heads of Departments and accounting officers to follow Government Financial Regulations. The Minister must state that any Head of Department or an accounting officer who commits the Government to loss of money as a result of pure negligence shall refund the loss to the Government in full via his/her salary.

**RECOMMENDATION NO.3: MR NIOWENMAL SHOULD NOT BE MADE IN CHARGE OF THE HEALTH DEPARTMENT AGAIN AND SHOULD NOT OCCUPY ANY POSITION WHICH INVOLVES THE SPENDING OR THE ALLOCATION OF PUBLIC FUNDS**

- 11.4** Acts of maladministration of Mr Niowenmal were mentioned in my public report on the Premature Birth and Death of Newborn Twins at Vila Central Hospital. These were:
- (a)** He failed to honour the official document agreed upon between the British and Vanuatu Governments to submit a formal request to recruit a Gynaecologist/Obstetrician for the Hospital;

- (b) He neglected to organise a selection panel to select the successful candidate for the Gynaecologist/Obstetrician position;**
- (c) He failed to follow up on an earlier request to recruit a temporary Gynaecologist/Obstetrician to fill the vacant position;**
- (d) He failed to regard the recruitment of a Gynaecologist/Obstetrician as an urgent and important matter; and**
- (e) He failed to assess that the absence of a Gynaecologist/Obstetrician at the Hospital might be responsible for the increase deaths of babies at birth.**

**11.5 As the Health Department is one of the biggest spending departments, it is important to appoint people as Directors who have the proper financial management abilities and who are prepared to improve the Health Department, and to follow the rule of law.**

**11.6 In this latest report Mr Niowenmal has demonstrated that:**

- (a) he was not prepared to follow Government Financial Regulations;**
- (b) he wanted to spend public funds as he wanted; and**
- (c) he showed a disrespect for the laws of Vanuatu. Whether they were the Financial Regulations or the Public Health Act.**

**11.7 As such he cannot be placed in such a position again; hence my recommendation.**

**Dated this 1st day of October 1997.**



**MARIE-NOËLLE FERRIEUX PATTERSON  
OMBUDSMAN OF THE REPUBLIC OF VANUATU**

## **13 APPENDICES**

<b>Appendix A</b>	<b>Proposed panel sign</b>
<b>Appendix B</b>	<b>LPO for Northern District Hospital panel sign</b>
<b>Appendix C</b>	<b>LPO for Vila Central Hospital panel sign</b>
<b>Appendix D</b>	<b>LPO for additional charge in installation of panel sign at Vila Central Hospital</b>
<b>Appendix E</b>	<b>Letter from Mr Henri Ouchida to refund only VT 1,980,000</b>

## **14 ANNEXES**

<b>Annex 1</b>	<b>Reply from Mr Henri Ouchida on Preliminary Report</b>
<b>Annex 2</b>	<b>Reply from Mrs Julie-Ann Rovo, Acting Director General of Finance</b>