



NATIONAL INTEGRITY SYSTEM STUDY

SUPREME AUDIT INSTITUTION

DISCUSSION PAPER 1
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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 February 2014. Comments can be returned to Transparency Vanuatu in writing or in person (contact details above). 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

The Office of the Auditor General (OAG) is severely hindered by lack of staff. Less than a third of approved technical staff positions are filled. This has been a problem for a number of years and has led to backlogs in the conduct of audits. It has also limited the extent to which the OAG can undertake special investigations. Between August 2008 and November 2009 the position of Auditor General was vacant.

Despite the lack of staff, since the appointment of the new Auditor General in 2009 a number of positive changes have occurred. In 2011, with the assistance of technical assistance from the European Union, the OAG produced a Corporate Plan 2012 – 2016. This technical assistance also saw the development of a draft audit manual. The OAG is also provided with support by AusAID by way of an operating grant and funding an external advisor through the Pacific Technical Assistance Mechanism (PACTAM) program. It is through this grant that the OAG are able to undertake training activities for staff, contract audits out to external firms and other forms of technical assistance. For example, in 2013 TeamMate software was reinstated and staff trained in its use. In 2012 the OAG presented an annual report covering the years 2005 – 2009 to Parliament. This was the first such report produced since 2007. A report covering 2010 – 2012 is currently under preparation.

Another significant problem for the OAG is that in order for its recommendations to be acted upon there needs to be a strong Public Accounts Committee (PAC) and/or other mechanisms to ensure recommendations are implemented. However, as discussed in the legislature section, the PAC does not operate consistently, and when it does produce reports these recommendations are also not acted upon. As such the “accountability cycle” is incomplete.

RECOMMENDATIONS

1. Staffing issues need to be addressed as a matter of urgency:
 - 1.1. Long term measures need to be introduced to address skill shortages within Vanuatu which are the underlying cause of the inability to recruit staff. Scholarships for tertiary study need to be directed to areas of specific need, including accounting.
 - 1.2. Until local skill shortages are addressed, the recruitment on non-citizens should be explored.
2. A major problem is the lack of consistent action on audit reports. Addressing this problem may require better coordination between stakeholders. It may also require some legislative reform. The Corporate Plan 2012 – 2016 includes a proposal to introduce a National Audit Act. There is already draft legislation in this area. Before this legislation is finalised there should be consultation between the OAG, the PAC (including support staff), the PSC, the Public Prosecutor and other stakeholders as to whether further reforms are needed to the draft legislation or other Acts to ensure that recommendations of the OAG will be acted upon, particularly when criminal activities have been identified.
3. Current audit practice means that only consolidated government accounts are being audited and financial compliance audits are not being carried out at individual ministry and department level. Further performance audits are not being regularly carried out. Bearing in mind resource constraints the OAG should implement measures to ensure a rolling programme of compliance audits and performance audits of individual ministries and departments.
4. The PAC's roles include to monitor the performance of the OAG and to ensure that the OAG has adequate resources. The PAC should play a more active role in ensuring that adequate resources and technical support are provided to the OAG to assist it to comply with international audit standards as developed by INTOSAI and other goals as set out in the Corporate Plan 2012 – 2016. The PAC should also more actively monitor the implementation of this Corporate Plan and effective use of resources within the OAG.
5. There is currently little public awareness of the work of the OAG or the recommendations it makes. Lack of transparency weakens accountability as it reduces both public awareness of the importance of correct management of public funds and public demands that changes occur in response to recommendations. Any new law, or amendment to the existing law, should:
 - 5.1. strengthen transparency of the OAG by clarifying when and how audit reports, annual reports and special investigation reports are to be made available to the public;
 - 5.2. strengthen public involvement in the detection of financial irregularities by allowing the OAG to directly receive complaints from the public.
6. Establishing a website for the OAG will help to improve access to information about the OAG, and therefore transparency. This website should include audit reports, or summaries of recommendations, annual reports, the Corporate Plan and reports on implementation of the Corporate Plan. It should also include information for the public on what to do if they are aware or suspect irregularities in respect of the use of public money.

7. A cross cutting issue affecting both the OAG and the Office of the Ombudsman is the potential for interference or delays in staffing matters by the PSC. This issue has also been faced by other constitutional offices, and the solution has been to give other constitutional offices the direct power to recruit. The State Law Office Act [Cap 242] provides an example of legislation that allows this. The law should be revised (possibly using the State Law Office Act [Cap 242] as a model) to give the OAG the power to directly recruit staff.

STRUCTURE AND ORGANIZATION

The office of the Auditor General (OAG) is provided for in the Constitution.¹ Further detail as to the functioning of the OAG is found in the Expenditure Review and Audit Act [Cap 241] (ERA Act). This Act was passed in 1998 and amended in 2000. As well as detailing the operation of the Office of the Auditor General, this Act also covers the operation of the parliamentary Public Accounts Committee (PAC).

The OAG is empowered to audit the central government, including constitutional agencies, ministries and departments, local level government, statutory bodies, state owned enterprises, statutorily established national councils and government operated tertiary (technical) educational institutions. It is also audits donor funded projects and conducts special audit reviews or investigations into specific issues. Subjects for special audit reviews or investigations may be referred to the OAG by the PAC and can also be instituted directly by the Auditor General. The ERA Act provides that the OAG must contract out at least 20% of its audits to external agents. At present all project audits and some financial audits are contracted out to private local accounting firms.

The ERA Act provides that 'The Auditor-General must employ two competent external audit advisors for just that time necessary to offer advice and assistance in the discharge of the Auditor-General's functions including confirming adherence to standards, who together with the Auditor-General will collectively be known as the Audit Commission'.² Although no Audit Commission has ever been established, in recent years technical advisors have been provided to the OAG by the European Union and AusAID and these advisors have provided the support which was, maybe, envisaged by Parliament to be provided by the Audit Commission.

RESOURCES (PRACTICE)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The OAG does exist, and is managing to carry out some of its work. However, less than half of the technical staff positions are filled. Without aid donor support the OAG would not be able to perform one of its core operations, which is to contract out at least 20% of audit work.

The Auditor General and all staff of the OAG are public servants appointed by the Public Service Commission. One office is maintained. The Corporate Plan provides for a staffing level of 23 technical staff, including the Auditor General.³ The Corporate Plan provides that the technical staff are to be organised into three audit teams comprised of a senior auditor, 2 auditors, 2 assistant

¹ Article 25, Constitution of the Republic of Vanuatu.

² Section 21(4) ERA.

³ Republic of Vanuatu Office of the Auditor General, *Corporate Plan 2012 – 2106* (August 2011), p 9.

auditors and 2 trainee auditors. These teams work under the principal auditor and the Auditor General. The most significant issue that the OAG faces is a lack of staff. Whilst there is approval for 23 technical staff, only 9 technical staff are appointed.⁴ There has never been sufficient budget allocated for 23 staff.⁵ Of those appointed, 2 are on study leave and are due to complete studies within the next two years.⁶ Between August 2008 and November 2009 the position of Auditor General was vacant.⁷ As a result of staff shortages only one audit team operates.

Limited financial resources are not the primary reason for staff shortages. Staff shortages are largely due to lack of skills in the market. Only citizens can be appointed to permanent positions within the public service⁸ and there is a shortage of accounting degree qualified local staff. There is also a severe shortage of professionally qualified accountants.⁹ In May 2011 4 positions were advertised (for two trainee auditors, one auditor and one senior auditor) but there was a lack of suitably qualified applicants for the positions.¹⁰ As a result not all positions that have been allocated funding are filled. Until these positions are filled government budgeting rules means that the government is not able to increase the already under-utilised staffing budget.¹¹

Lack of financial resources does, however, impact on the ability to attract staff. There is a perception that salaries within the OAG are not competitive for qualified or even partially qualified staff. The private sector tends to offer salaries which are higher than those found in the public sector.¹² Whilst it is possible to recruit overseas staff on short term contracts under the Public Service Staff Manual,¹³ expatriate staff are unlikely to be attracted by public (as opposed to private) sector salaries.

The lack of staff prevents the OAG from being able to undertake audit activities in a timely manner. It also hinders the effective transfer of skills through technical assistance.¹⁴

The OAG does not have the power to apply directly to Parliament for additional resources. Instead the ERA Act provides that the PAC shall, after consultation with the Auditor General report to Parliament on resources required by the OAG and advise whether additional resources are required.¹⁵ If the PAC is not active in this role it can effectively block allocation of sufficient resources. In practice the PAC does not currently function effectively to advocate for resource allocations.¹⁶

Aid donor support via AusAID's Governance for Growth programme allows the OAG to contract out some of its work to external agents and undertake other activities to assist in strengthening the Office. Examples of activities undertaken with AusAID support was the reinstallation and training on the latest audit management software in 2013 and ability for the OAG to contract out a highly

⁴ Ibid and interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁵ Written comments from Brendan Toner to author, September 10, 2013.

⁶ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁷ *Auditor General's Annual Report to Parliament 2005 – 2009* (April 2012) p 6.

⁸ Article 57(2) Constitution; *Public Service Staff Manual 2008*, chapter 3.5 (p 3.13).

⁹ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013; written comments from Nikunj Soni to author, August 21 2013; written comments from Brendan Toner to author, September 10, 2013.

¹⁰ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

¹¹ Written comments from Ralph Regenvanu to author, September 28, 2013.

¹² Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

¹³ *Public Service Staff Manual 2008* chapter 3.4, p 3.13.

¹⁴ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

¹⁵ Section 14(2)(f) ERA.

¹⁶ Interview with Leon Teter, Port Vila, August 26, 2013.

sensitive investigation of the Vanuatu National Provident Fund in 2012. AusAID is also currently funding one technical advisor who is working with local staff to conduct audits.¹⁷

Between 2010 and 2011 an EU funded consultant provided corporate support, which included the development of the Corporate Plan 2012 – 2016 and the development of an audit manual.¹⁸

INDEPENDENCE (LAW)

To what extent is there formal operational independence of the audit institution?

The legal framework provides some measures to ensure political independence of the OAG, however there is the potential for interference as the PSC controls staffing.

The Constitution provides that the Auditor General 'shall not be subject to the direction or control of any other person or body in the exercise of his functions.'¹⁹

The Auditor General is appointed by the Public Service Commission (PSC). Specific merit related criteria for appointment are stated in the ERA Act.²⁰ His or her appointment is not subject to any specified set term. He or she can be removed by the PSC, in consultation with the PAC and the Council of Ministers, for 'incompetence, disability, bankruptcy, neglect of duty or misconduct.'²¹

Other staff of the OAG are also appointed by the PSC. The PSC is legally empowered to set the job classifications and salary and allowance structure for staff of the OAG.²² This has the potential to interfere with the independence of the OAG as it directly affects the OAG's ability to recruit and retain staff.

The ERA Act provides 'No employee of the Office of the Auditor-General shall undertake, perform or engage in any duty or function that shall be inconsistent with the performance by the employee of the duties or functions imposed on that person pursuant to this Act'.²³ This broad provision is intended to restrict all political or other activities which may interfere with staff of the OAG being able to act with neutrality.

The OAG has the power to set its own programme and methods, although the PAC has the power to consider this programme and report to Parliament. The PAC can direct the OAG to investigate specific issues, but does not have the express power to alter the OAG's self-directed programme.²⁴

The OAG currently has draft legislation to replace the current ERA. The new legislation will effectively separate the PAC from the OAG, and allow for the OAG to separate itself from the PSC in order to allow more effective recruitment and retention of qualified resources.²⁵

INDEPENDENCE (PRACTICE)

¹⁷ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013

¹⁸ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013

¹⁹ Article 25(6) Constitution.

²⁰ Section 26 ERA.

²¹ Section 23 ERA.

²² Chapter 2, *Public Service Staff Manual 2008*.

²³ Section 29 ERA.

²⁴ Section 14(2) ERA outlines the specific functions of the PAC and section 15 outlines the PAC's powers.

²⁵ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

To what extent is the audit institution free from external interference in the performance of its work in practice?

External interference takes the form of inaction (difficulties in getting positions reclassified) rather than direct attacks or political interference.

There are no examples of political interference in the activities of the OAG. Nor are there examples of political engagement by staff of the OAG. Whilst the power of the PAC could, in theory, be used in a non-partisan manner to direct the OAG to undertake specific investigations, in practice the PAC does not interfere with the functioning of the OAG.²⁶

The fact that the PSC, rather than the OAG, controls job grades and salary structures for staff of the OAG is perceived to be something of a challenge to independence in the sense that the PSC could, in theory, block the recruitment and advancement via defined career pathways of suitable staff. Whilst the PSC has not interfered in the operation of the OAG by, for instance, removing staff without justification, there is a perception that the involvement of the PSC in recruitment processes is a hindrance.²⁷ Changes in job grades have been put forward to the PSC, however financial implications of reclassification of job grades has resulted in requests not being approved by the Ministry of Finance.²⁸ It should be emphasised that even if positions were re-graded skills shortages in the field of accounting in Vanuatu mean that there will still be difficulties in recruiting staff. It can also be noted that even if the OAG had the direct power to recruit, this would not necessarily solve the issue of the Ministry of Finance not approving positions.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Whilst there are requirements that the OAG makes audit reports available to relevant agencies there is no legal provision for audit reports to be made public.

The ERA Act provides that the OAG is required to report on all reviews, audits, inquiries and investigations to the Minister of Finance (who has responsibility for the OAG), the PAC and the Head of the agency that is the subject of the report.²⁹ It is also required to make an annual report to Parliament.³⁰

There is, however, no express requirement that any reports be made available to the public.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

²⁶ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

²⁷ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

²⁸ Interview of Laurent Rep with author, Port Vila, August 30, 2013.

²⁹ Section 32 ERA.

³⁰ Section 33 ERA.

Whilst annual reports provide useful information they are infrequent and are not easily accessible through a website or in libraries. Audit reports are not released to the public as a matter of course. The PAC does not produce regular reports.

Whilst the 2012-2016 Corporate Plan includes public relations and communications (audit awareness) as a goal of the OAG³¹ currently little activity has occurred in this area. Occasionally media carries stories in relation to high-interest special investigations³² and the OAG has reacted to press releases issued by Transparency Vanuatu.³³ However, no systematic plan to regularly report on its activities is currently in place.³⁴ The OAG does not maintain a website.

Annual reports have been produced infrequently. The most recent annual report, covering the years 2005 – 2009, was presented to parliament in April 2012. Prior to that the last annual report, covering the years 1998 – 2004, was presented in November 2007. An annual report covering the years 2010 – 2012 is currently under preparation. Annual reports are available on request from the OAG and are also distributed by the Ministry of Finance to all partners once they are approved.³⁵ Whilst annual reports contain summaries of audit reports produced, the individual audit reports are not easily publicly available.

Because there is no requirement that reports of special investigations be made available to the public there can be some confusion about whether these reports should be accessible by the public after they are tabled in Parliament. This confusion is exacerbated by the fact that Parliament does not make public a list of documents that have been tabled. Further, debate of reports by the PAC and in Parliament is lacking.³⁶ Meetings of the PAC are open to the public³⁷ however this fact is not widely known and dates of meetings are not well publicised. Whilst the PAC reports contain useful information on the investigations of the OAG only 4 reports have been produced since Independence, in 1980.³⁸

ACCOUNTABILITY (LAW)

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

Whilst the OAG is required to report to Parliament and the PAC annually there are some gaps in the law in areas such as the content of annual reports, the time by which annual reports must be delivered and the process for debating annual reports.

³¹ *Corporate Plan 2012 – 2016*, pp 22 – 24.

³² See, for example, Ricky Binihi, 'Vanuatu National Provident Fund Subject Of Auditor's Probe' (August 13 2012) <http://pidp.eastwestcenter.org/pireport/2012/August/08-13-06.htm>; 'Lack of action by Prime Minister Sato Kilman at Vanuatu Broadcasting and Television Corporation' <http://vanuatudaily.wordpress.com/2012/07/27/talemaot-archive-lack-of-action-by-prime-minister-sato-kilman-at-vanuatu-broadcasting-television-corporation/>; 'VNPf Report Findings' Vanuatu Daily Post Online, (September 13, 2013) <http://www.dailypost.vu/content/vnpf-report-findings>.

³³ 'Auditor General Says he Supports Transparency' Vanuatu Daily Post Online, August 27 2013 <http://www.dailypost.vu/content/auditor-general-says-he-supports-transparency>.

³⁴ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

³⁵ Written comments from Nikunj Soni to author, August 21, 2013.

³⁶ Interview of Leon Teter with author, August 28, 2013.

³⁷ Interview of Leon Teter with author, August 28, 2013.

³⁸ *Report of the Public Accounts Committee Report of the Auditor General Financial Years 2002 – 2007* (December 2011) p 9.

The OAG is required to present annual reports to the Speaker of Parliament, who is legally obliged to present these reports to parliament and to call for debate on them.³⁹ There are no specific guidelines on what is to be contained in these reports. Nor is there a specific deadline by when annual reports must be submitted.

All reports are also presented to the PAC. The PAC's duties include reviewing and reporting to parliament on the adequacy of the OAG's audit planned programme and external audit arrangements.⁴⁰

There is no specific provision allowing agencies to appeal or challenge audit results. However, when audit reports are considered by the PAC it calls for written statements from agencies involved in reports and also takes oral evidence from them before reaching conclusions and presenting PAC reports.⁴¹ This effectively acts as an appeal process.

At present law does not provide for the OAG to be audited by an external auditing agency.

ACCOUNTABILITY (PRACTICE)

To what extent does the SAI have to report and be answerable for its actions in practice?

Annual reports have not been produced regularly and weaknesses in the functioning of the PAC and Parliament mean that there is little accountability in practice.

In practice accountability mechanisms do not function. The OAG has only produced 2 annual reports since 1999. Parliamentary debate on the reports did not occur.⁴² The PAC is largely inactive. As mentioned above, it has only produced four reports since Independence, in 1980. The most recent report, issued in December 2011, reviewed all 12 audit reports that were issued between 2002 – 2007.⁴³ This report did not make any comment of the functioning of the OAG. It did however produce recommendations in respect of 10 of the audit reports. These recommendations supported the content of audit reports. The other 2 audit reports did not result in recommendations of the PAC as the PAC was satisfied with responses during the accountability phase.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Both general and specific integrity laws apply to the OAG, although the law regulating the OAG does not provide for a detailed specific code of ethics.

The ERA Act provides 'No employee of the Office of the Auditor-General shall undertake, perform or engage in any duty or function that shall be inconsistent with the performance by the employee of the duties or functions imposed on that person pursuant to this Act'.⁴⁴ There are no further specific

³⁹ Section 33(1) ERA.

⁴⁰ Section 14 ERA.

⁴¹ The procedures of the PAC are explained in the *Report of the Public Accounts Committee Report of the Auditor General Financial Years 2002 – 2007* (December 2011) pp 10 – 13.

⁴² Interview of Leon Teter by author, Port Vila, 26 August 2013.

⁴³ *Report of the Public Accounts Committee Report of the Auditor General Financial Years 2002 – 2007* (December 2011).

⁴⁴ Section 29 ERA.

codes of ethics or rules of conduct regulating the OAG contained in the ERA Act. There is, however, an audit manual which includes ethical guidelines for the conduct of audits.⁴⁵

The ERA Act requires that ‘the Auditor-General shall... establish, review and regulate the procedures of the Office of the Auditor-General in accordance with generally accepted auditing practice.’⁴⁶ As such it is expected that the OAG is governed by international auditing standards, which sets out the code of ethics that auditors should abide by. Ongoing training is required to ensure all staff are aware and follow the auditing standards.

General integrity laws apply to the OAG. The Auditor General is defined as a leader under the provisions of the Leadership Code Act,⁴⁷ so must comply with the provisions of this Act. This Act regulates a wide range of behaviours, including conflicts of interest, receiving gifts and misuse of office. Leaders are also required to provide annual returns of assets and liabilities to the clerk of Parliament. Breaches of this Act are criminal offences. The content of this code and its implementation in practice are discussed in further detail in the Legislature and Ombudsman pillars.

The Auditor General and other employees within the OAG are public servants, and are therefore subject to the public service code of conduct under the Public Service Act. This code contains broad rules relating to honesty and integrity. The content of this code and its implementation in practice are discussed in further detail in the Public Service pillar.

There are no specific post-employment restrictions provided in law, either under the Public Service Act or the Leadership Code Act.

INTEGRITY (PRACTICE)

To what extent is the integrity of the audit institution ensured in practice?

Whilst general integrity laws are not well enforced, the OAG, through its association with INTOSAI, is actively working in a systematic and comprehensive manner to enhance compliance with international accounting standards. This work is in progress.

A cross cutting issue affecting all pillars is that the Leadership Code Act is not effectively enforced (see discussion in the Ombudsman pillar). The public service code of conduct is also not consistently enforced (see discussion in the Public Service pillar). There have been no recent cases within the OAG of violations of codes of conduct or ethical standards which resulted in sanctions being applied.

Despite the weak implementation of general integrity laws, the OAG, through its membership of the International Organisation of Supreme Audit Institutions (INTOSAI), is active in enhancing internal integrity and ensuring that staff are aware of, and trained in, issues of ethics for auditors.⁴⁸ INTOSAI provides international audit standards, which include ethical standards relating to issues such as confidentiality and conflicts of interest.⁴⁹ As part of international harmonisation activities in March 2013 Vanuatu completed a report identifying the extent to which its audit practices comply with

⁴⁵ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁴⁶ Section 30(1) ERA.

⁴⁷ Section 5(r) Leadership Code Act [Cap 240].

⁴⁸ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013, *Corporate Plan 2012 – 2016*, p 24.

⁴⁹ See INTOSAI, ‘<http://www.intosai.org/issai-executive-summaries/view/article/issai-200-general-standards-in-government-auditing-and-standards-with-ethical-significance.html>’

international standards.⁵⁰ By October 2013 it is anticipated that the OAG will have completed its strategy for enhancing compliance.⁵¹ INTOSAI has anticipated that smaller and more resource limited countries may not be able to comply fully with international standards so provides national auditing guidelines in areas where compliance is lacking. Implementing the strategy will involve developing national auditing guidelines for Vanuatu.⁵² Activities in this area are being done in conjunction with the Pacific Association of Supreme Audit Institutions (PASAI).⁵³

EFFECTIVE FINANCIAL AUDIT (LAW AND PRACTICE)

To what extent does the audit institution provide effective audits of public expenditure?

Whilst there have been improvements the audit of public expenditure recently lack of human resources and lack of education or awareness within government entities about audit procedures make it very difficult for the OAG to provide timely and effective audits.

When the current Auditor General assumed his position in late 2009 the most recent audit opinion, released in 2007, covered consolidated government accounts from 1998 – 2004.⁵⁴ The inherited backlog was not the fault of the Ministry of Finance, which had submitted consolidated accounts to the OAG. The audit of the 2005 – 2009 consolidated government accounts was released in early 2012, with a disclaimer that it was not a full audit.⁵⁵ The Auditor General's annual report indicated that auditing 5 years together was done in order to best manage limited resources, and enable the OAG to focus on auditing the more recent 2010 and 2011 financial statements.⁵⁶ By all accounts the current Auditor General is doing a creditable job of clearing backlogs in respect of consolidated government accounts.⁵⁷ There is also a considerable backlog in auditing other entities outside of the central government. In August 2011 there was a back log of 277 outstanding audits.⁵⁸

Current audit practice does not have the OAG auditing individual ministries and departments that are included within the consolidated government accounts, and this means that audit opinions do not thoroughly examine all levels of government.⁵⁹

The work of the OAG in auditing other bodies (including local authorities, statutory bodies and state owned enterprises) is hindered by a lack of awareness of what is required by these bodies and a lack of capacity to produce financial statements to be audited.⁶⁰

Audits of the consolidated government accounts are also hindered by information not being provided by third parties and ministries. Whilst financial data is available on the government

⁵⁰ Ibid.

⁵¹ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁵² Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁵³ See, generally, <http://www.pasai.org/>.

⁵⁴ *Auditor General's Report to Parliament* (October 2007).

⁵⁵ *Auditor General's Annual Report to Parliament 2005 - 2009* (April 2012) pp 2, 3.

⁵⁶ Ibid.

⁵⁷ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013, written comments from Nikunj Soni to author, August 21, 2013; written comments of Brendan Toner to author, September 10 2013.

⁵⁸ *Corporate Plan 2012 – 2016*, p 12.

⁵⁹ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁶⁰ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013; Alistair Brown, 'The milieu of government reporting in Vanuatu' (2011) 23(2) *Pacific Accounting Review* 165 – 184.

financial information system, hard copy evidence is sometimes not produced on request.⁶¹ Whilst laws require that material be disclosed to the OAG, compliance with the law is lacking. This may be due to lack of awareness/education and cultural factors, rather than any deliberate attempt to obstruct the OAG, but it does hinder the ability of the OAG to perform its audit functions.⁶²

There is little confidence that the PAC and/or Parliament reads or acts upon audit recommendations and this undermines the practical effectiveness of any reports that are produced.⁶³

DETECTING AND SANCTIONING MISBEHAVIOUR (LAW AND PRACTICE)

Does the audit institution detect and investigate misbehaviour of public officeholders and conduct investigation according to detected facts?

Whilst the OAG does (within resource constraints) detect misbehaviour lack of follow up by other agencies, including the PAC, mean that implementation of recommendations is not consistent.

There is no express statutory power for the OAG to take complaints or reports of irregularities directly from the public. Instead, this power is given to the PAC.⁶⁴ The PAC can direct that special investigations occur. The Auditor General can also institute special investigations.⁶⁵ Detection of misbehaviour also occurs during compliance audits.⁶⁶

Since the current Auditor General assumed his position in late 2009 two special investigations (into the Department of Quarantine and Inspection Services and into the Vanuatu Broadcasting and Television Corporation) have been publicly reported.⁶⁷ Both of these reports made a number of recommendations, but it is unclear what action, if any, has resulted from these recommendations. Another special investigation (into the Vanuatu National Provident Fund) has recently been completed.⁶⁸

The 2005 – 2009 Annual Report also details irregularities arising from compliance audits of the Department of Civil Status, the Office of the Ombudsman, the State Law Office Trust Fund, the Vanuatu Agriculture College, the Department of Quarantine and Inspection Services and the Malvatumauri National Council of Chiefs.⁶⁹

The OAG does not have the power to sanction misbehaviour, but it can make reports containing recommendations. It has no specific statutory power to compel other bodies to act upon its recommendations. Instead, the process is that the OAG reports to the Minister of the Finance and the PAC. The OAG also reports to the person in charge of the body subject to the report and may require a response to be given within 14 days. The PAC then has the power to conduct further

⁶¹ See, for example, 'Vanuatu auditor calls for key government agency to submit financial statements' (February 13, 2013) <http://www.rnzi.com/pages/news.php?op=read&id=74088>.

⁶² Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013; Alistair Brown, 'The milieu of government reporting in Vanuatu' (2011) 23(2) *Pacific Accounting Review* 165 – 184.

⁶³ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013, written comments from Nikunj Soni to author, August 21, 2013; written comments of Brendan Toner to author, September 10 2013.

⁶⁴ Section 14(2)(h) ERA.

⁶⁵ Section 27 ERA.

⁶⁶ *Corporate Plan 2012 – 2016*, pp 13 – 14.

⁶⁷ *Auditor General's Annual Report to Parliament 2005 – 2009* (April 2012) pp 28 – 30.

⁶⁸ 'VNPf Report Findings' Vanuatu Daily Post Online, (September 13, 2013)

<http://www.dailypost.vu/content/vnpf-report-findings>.

⁶⁹ *Auditor General's Annual Report to Parliament 2005 – 2009* (April 2012) pp 32 – 37.

enquiries, if necessary and make a further report to the person in charge of the body subject to the report. This person must respond with written comments within 28 days. The PAC then also reports to Parliament on its activities. Within 6 months, or longer if the PAC authorises, the person in charge of the body subject to a report must provide an update on action that was taken to rectify the problem, or reasons no action was taken.⁷⁰ As noted earlier, significant downfall in recent times is that the PAC has not been operating effectively if at all. Further, when the PAC did produce a report in December 2011 no written responses to its recommendations were received within the timeframes provided by law.⁷¹

Annual reports of the OAG observe that on some occasions public servants have been dismissed, but misappropriated money has not been recovered.⁷² The 4th report of the PAC made some recommendations which indicated that the PSC should ensure public servants who had misappropriated funds were criminally prosecuted and that as part of the criminal prosecution misappropriated money should be recovered.⁷³ However, the PSC does not have the power to prosecute breaches of the Penal Code. Instead, this is a function of the Office of the Public Prosecutor. Nor does the PSC have the power to demand repayment of misappropriated funds during disciplinary procedures.⁷⁴

IMPROVING FINANCIAL MANAGEMENT (LAW AND PRACTICE)

To what extent is the SAI effective in improving the financial management of government?

Whilst audit reports contain, where relevant, recommendations on how to improve financial management there is little systematic follow up by the PAC on whether recommendations are implemented.

As already discussed, the lack of staff numbers within the OAG translates into fewer audit opinions being issued and capacity building efforts being hindered. Currently the focus is on compliance audits, not performance audits, which would address efficiency in the use of state money,⁷⁵ although compliance audits do address performance to a degree.⁷⁶ Further, effectively improving financial management of government can only occur when the audit reports and recommendations are being tabled, debated and acted upon in a timely manner. Whilst the PAC remains ineffective and other agencies also do not consistently act in response to audit reports the “cycle of accountability” does not function and the effectiveness of the OAG is undermined.

⁷⁰ Section 16 (3A) ERA.

⁷¹ Interview of Leon Teter with author, Port Vila, 28 August 2013.

⁷² See, for example, special audit reviews of Lycee Louis Antoine de Bouganville, Rural Water Supply Unit, Santo East Junior Secondary School, *Auditor General Report to Parliament October 2007*, pp 41 – 42.

⁷³ See for example, comments of the Audit Report of 2005 in respect of the Rural Water Supply Unit *Report of the Public Accounts Committee Report of the Auditor General Financial Years 2002 – 2007* (December 2011), pp 22 - 23.

⁷⁴ Interview of Laurent Rep with author, Port Vila, August 30, 2013.

⁷⁵ Interview of Beulah Daunakamakama with author, Port Vila, August 20, 2013.

⁷⁶ *Corporate Plan 2012 -2016*, p 14.