Vanuatu experienced another change of government as a result of a no-confidence motion in 2001. While no-confidence motions have formed part of the political landscape in Vanuatu in recent years, what made this event extraordinary was the involvement of the Supreme Court in the parliamentary wrangles. These events have dominated politics in Vanuatu in 2001.

At the beginning of the year the government was a coalition headed by Barak Sope of the Melanesian Progressive Party. The other main partners in this coalition were the Union of Moderate Parties, the National United Party, and the Vanuatu Republican Party. This government had come to power in November of 1999, when then Prime Minister Donald Kalpokas of the Vanua’aku Party resigned in order to avoid a no-confidence motion.

Dissatisfaction with the Sope-led government had been growing, due in large part to its dealings with Amarendra Nand Ghosh. Ghosh, a Thai businessman, came to attention in April of 2000. It was around this time that, soon after giving the Vanuatu government 10 million vatu for disaster relief, he was appointed Honorary Consul to Thailand and awarded honorary citizenship. This resulted in complaints that he had effectively bought a diplomatic passport.

Throughout the year his business interests in Vanuatu and involvement with various politicians increased, raising some concerns. Toward the end of 2000 Ghosh’s involvement with the Vanuatu government took a somewhat bizarre turn as he presented the country with a gift of a ruby allegedly worth US$174 million. The stated purpose of this gift was “that it could be used as collateral to get financial assistance” (TP, 6 Dec 2000). No independent valuation of this ruby was available however, nor was it available to be inspected by customs officers. The ruby’s valuation on Australian customs declaration forms was only US$40,000, casting further doubt on its value.

In March of 2001 dealings between Ghosh and the Vanuatu government took a further strange turn when it was revealed that the government had signed an agreement with Ghosh that apparently would give him bank guarantees worth US$10 million over a period of ten years. As a further part of this agreement a Hong Kong–based company, Sun Jewel group, who had agreed to buy the ruby for US$175 million, was to manufacture gold and silver coins for sale by the Reserve Bank of Vanuatu. The agreement provided that Ghosh would pay the costs associated with the manufacturing and transport of these coins, and the Reserve Bank of Vanuatu would keep all proceeds associated with the coins. This agreement was signed despite doubts expressed by the governor of the reserve bank as to the legality of such actions (PIR, 23 Mar 2001).

Another factor that contributed
to the vote of no confidence was the deportation of Marc Neil Jones, publisher of the Trading Post newspaper, on 19 January 2001. Jones was deported from Vanuatu for publishing stories about the relationship between Ghosh and the government. He returned to Vanuatu after two days, following an interim order by then Acting Chief Justice Lunabeck that allowed him back into the country until the legality of his deportation could be resolved in court. The matter was finally settled out of court, with Jones receiving about 1.4 million vatu in costs and personal compensation in December of 2001 (Jones, pers comm, 1 Feb 2002). The deportation raised widespread concerns about the government’s lack of respect for constitutionally enshrined human rights. It also effectively raised the question of what the government had to hide in its dealings with Ghosh.

Soon after the bank guarantees agreement was signed, the Union of Moderate Parties left the coalition government and joined the opposition, led by Edward Natapei of the Vanua’aku Party. On 26 March the opposition, now having a majority in parliament, submitted to the Speaker, Paul Ren Tari, a notice of a motion of no confidence in Prime Minister Sope. The Speaker ruled that this notice was in order and placed it on the agenda to be debated on Tuesday, 3 April, as part of the First Ordinary Session of Parliament.

On 27 March the government withdrew all government bills intended for debate during the session. Sope then announced that the Council of Ministers, which had met earlier in the day, had resolved to advise the president of the Republic of Vanuatu to dissolve parliament. He further stated that he would resign if the president declined to dissolve parliament. The Speaker then adjourned the sitting of parliament to the following day.

The president, Father John Bani, declined to dissolve parliament, because the motivation for doing so was to avoid voting on the motion of no confidence. Parliament therefore reconvened for normal business on March 28. Despite his earlier statement, Sope did not resign as prime minister. As there were no written questions before parliament, the Speaker adjourned the sitting to 4:00 PM on 3 April when parliament could debate and vote on the motion of no confidence.

Following the submission of the vote of no confidence there were allegations that agents of Dinh van Than, president of the National United Party, had approached various opposition members of parliament, attempting to bribe them to return to the government. Stories that opposition members of parliament were being harassed by groups of people, apparently on orders from various government supporters, also circulated (TP, 31 Mar 2001).

When parliament reconvened on 3 April 2001, the Speaker ruled that there would be no debate of the motion because it contained some typing errors or incorrect references to the provisions of the Constitution. As this was the last item on the agenda, the Speaker then closed the First Ordinary Session of Parliament.

That day the opposition took two actions. First they filed suit in the Supreme Court on the grounds that the Speaker’s actions in closing the
First Session of Parliament were unconstitutional. They also filed a second motion of no confidence with the clerk of parliament and issued a summons to the Speaker to call an extraordinary session of parliament to debate this second motion.

On 6 April Chief Justice Lunabeck ruled that the closure of parliament was in breach of Article 43 (2) of the Constitution, which gives members of parliament a constitutional right to debate motions of no confidence, provided the correct procedures are followed. The typing errors or incorrect references were not sufficient grounds to prevent debate on the motion, particularly as it had been accepted for debate by the Speaker on 26 March. The court ordered that the Speaker reconvene parliament forthwith in order to allow debate on the motion (Natapei & Ors v Tari No 1, 2001). During this hearing the irregularities in the motion were rectified by the court. After this court ruling (which upheld the continued validity of the first motion of no confidence), the second motion became largely irrelevant to the political wrangling.

At 2:00 PM on 6 April parliament was reconvened, although many of the members of the Sope government did not attend or turned up late. When the session finally commenced the Speaker suspended parliament until Tuesday, 10 April. His apparent justification for doing so was that Standing Order of Parliament 23 allows for debate on written motions on Tuesday afternoons. Although members of the opposition tried to raise points of order, the Speaker did not allow any member of parliament to speak. On 10 April the Speaker again did not allow anybody to speak, but adjourned parliament until 17 April. The apparent justification for this action was that no amendment to the written motion had been made, so parliament was adjourned to allow for an amendment to be made.

The next stage in the drama occurred on 11 April when the opposition applied to the Supreme Court for an order commanding the Speaker to summon parliament to meet that day at 2:00 PM to allow debate on the motion. Chief Justice Lunabeck found that repeated adjournments of parliament were unconstitutional, as they did not allow for the debate of the no-confidence motion, a right provided by Article 43 (2). He ordered that the Speaker summon parliament to meet at 6:00 PM on 12 April, and allow parliament time to debate and vote on the motion. He further found that the Speaker’s actions constituted a breach of the court order of 6 April, and that any failure to comply with the new order to convene parliament would be in contempt of court (Natapei & Ors v Tari No 2, 2001).

Parliament was not convened, and on 13 April contempt proceedings were initiated. During these proceedings the Speaker apologized for disobeying the court orders and undertook to reconvene parliament at seven o’clock that night to allow for debate of the motion. On this apology the contempt proceedings were withdrawn, although the court ordered that any failure to convene parliament that evening would result in the Speaker being immediately arrested and imprisoned for six months (Natapei & Ors v Tari [Contempt], 2001).

As a further delaying tactic it
appears that Sope approached the acting commissioner of police seeking to declare a state of emergency, although nothing came of this action (PIR, 17 Apr 2001). Parliament finally convened and debated the no-confidence motion on the evening of 13 April. Sope was ousted and a coalition between the Vanua’aku Party and the Union of Moderate Parties became the new government. Edward Natapei of the Vanua’aku Party became the new prime minister, with Serge Vohor of the Union of Moderate Parties appointed his deputy prime minister.

With the vote of no confidence finally settled, the First Ordinary Session of Parliament of 2001 came to an end, although this was not to mark the end of parliamentary turmoil. The Speaker, still Mr Paul Ren Tari, summoned parliament to meet in the First Extraordinary Session of 2001 on 3 May, to debate various government bills and motions. On the morning of 3 May no opposition members of parliament attended, preventing a quorum from being formed. That afternoon the boycott continued, with only four opposition members of parliament attending. As a result parliament was adjourned until 7 May. On 7 May there was full attendance in parliament. Following opening formalities the Speaker proceeded to suspend six government members of parliament, including Prime Minister Edward Natapei and Deputy Prime Minister Serge Vohor. The Speaker’s stated reason for the suspension was that the earlier petitions to the Supreme Court were breaches of the Standing Orders of Parliament. At no time were the six given an opportunity to speak or question points of order. The six suspended members of parliament then left, along with the other government members of parliament. They almost immediately filed a constitutional petition with the Supreme Court.

Meanwhile in parliament, after a brief adjournment, the Speaker closed the first Extraordinary Session, although less than half of the members were present. This raised a further legal issue of whether the session could be closed when parliament was inquorate.

On 8 May, at the request of the Speaker, the clerk of parliament issued notice of the Second Extraordinary Session for 2001. Included on this agenda were a motion of no confidence in Prime Minister Natapei and a motion to suspend all twenty-seven government members of parliament from three Extraordinary Sessions of Parliament and two Ordinary Sessions of Parliament. Meanwhile the Supreme Court commenced the hearing on the validity of the suspension of the members of parliament and associated matters. On 12 May the Court ruled that the suspension was invalid, because it prevented the six suspended members from legitimately exercising their lawful duties and responsibilities as members of parliament. Additionally, their having being given no opportunity to speak infringed various constitutionally enshrined human rights. The closure of the First Extraordinary Session of Parliament was also ruled to be invalid, as parliament was inquorate and various other constitutional provisions were also breached. Chief Justice Lunabeck further ordered the Speaker to reconvene parliament on the morning of 14 May to continue the First Extraordinary Session (Nata-
The Speaker, however, chose to ignore this order, and signed a statement to this effect. Early on Tuesday morning, 15 May, he was arrested and charged with making a seditious statement. First Deputy Speaker Irene Bongnaim and Second Deputy Speaker Henry Iauko were also arrested and charged with complicity in making a seditious statement. Parliament sat that day, but only after a worker broke into the parliament building, as Paul Ren Tari refused to release the keys. At this meeting Tari was relieved of the position of Speaker and former Prime Minister Donald Kalpokas was voted in to take his place. This left the government with twenty-six members, compared to the opposition with twenty-five members (TP, 16 May 2001). While there were some doubts whether the government could survive with such a slim majority, and on occasion Sope did discuss the tabling of a no-confidence motion (TP, 1 Sep 2001), this government remained intact for the rest of the year.

Various legal issues and challenges from these events continued throughout the year, although they ultimately had little impact on the government. The sedition charges were finally quashed by the Supreme Court in November because of a legal technicality: Article 27(2) of the Constitution prevents any member of parliament from being arrested or prosecuted during a session. As the Supreme Court had ruled that the closure of the First Extraordinary Session of Parliament on 7 May was invalid and of no effect, parliament was in session at the time of the arrest and it was therefore unconstitutional (TP, 1 Dec 2001). On 29 October a challenge to the decision of 12 May was heard and dismissed by the Court of Appeal (Tari & Ors v Natapei & Ors, 2001).

One of the first acts of the new government was to sever relations with Ghosh. His diplomatic titles were canceled and he was requested to surrender his diplomatic passport and the four passports issued to staff members at his office in Bangkok. The ruby, however, remained in Vanuatu (TP, 12 May 2001).

The remainder of the year has been fairly quiet, although there have been some incidents of note. More prisoners were released as part of Independence celebrations, despite public outcries over the practice following an incident last year when a released prisoner was responsible for the killing of a man (TP, 1 Jul 2001). The commencement of the Customary Land Tribunal Act on 10 December marks the culmination of a review of land administration begun in early 2000. The object of the act is to provide for a system based on custom to resolve disputes about customary land. Although Vanuatu's land all reverted to customary ownership at the time of Independence, there has never been an effective procedure or administrative body for handling disputes. By establishing a number of land tribunals, each covering small “custom areas” with largely homogeneous customs, this act will hopefully address what has been a significant difficulty with the law and land administration in Vanuatu.

It has also been good to note that
dishonest behavior among politicians and within the public service is beginning to result in criminal prosecutions. In the middle of the year Deputy Principal Immigration Officer John Wai was found guilty of accepting a bribe to process residency forms. He was jailed for the offense for three months ([TP], 4 Aug 2001). In November, Barak Sope was charged with forgery related to two government bank guarantees signed when he was prime minister. One of these guarantees is for US$18 million and the other for US$5 million. Ghosh, whose name had been mentioned in connection with the guarantees, has denied any involvement. An Australian, Edmond Gallea, is being investigated with regard to this matter. Gallea, who has apparently been given a Vanuatu diplomatic passport, has been involved in a large cattle deal in Santo, the details of which are still somewhat unclear ([TP], 17 Nov 2001). Sope is no stranger to dubious bank guarantee dealings, having been implicated in ombudsman’s reports in relation to bank guarantees worth US$100 million given to Peter Swanson in 1996 (Vanuatu Ombudsman 2001). The preliminary hearing in this matter is set for February 2002.

Finally, the ombudsman has been permitted to continue an action commenced in 1997 to recover ex gratia payments and compensation payments made to various politicians in 1993 and 1994 ([Korman v The Ombudsman, 2001]). This proceeding was started by the previous ombudsman under the authority of the Ombudsman’s Act 1995, which gave the ombudsman limited rights of enforcement in court if the recommendations contained in public reports were ignored. The original hearings were interrupted by attempts to repeal the Ombudsman’s Act 1995, and by various other attacks on the ombudsman of the time. Eventually the 1995 act was repealed and the new act, which commenced in 1999, does not give the ombudsman any powers of enforcement. This action is therefore an anachronism, but is nonetheless welcome as an attempt to make Vanuatu’s politicians accountable for abuses of power.

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References


West Papua

The gap continued to widen between Indonesian central government rhetoric and performance on the ground in its troubled eastern province of Irian Jaya during 2001. If carrots were proffered to the province, in the form of a law on “Special Autonomy” that is due to be implemented in 2002, sticks were still wielded vigorously by the government’s security apparatus, with the police and military acting in concert with the judiciary. Among the elements on offer in the Special Autonomy package is an apparent concession on use of the name “Papua” for the province, but the failure to satisfy a widely voiced Papuan preference for “West Papua” and the retention in official usage of the alternative but deeply unpopular “Irian Jaya” (Great or Victorious Irian) are symptomatic of a continued reluctance on the part of government to engage seriously in dialogue with its Papuan citizens.

The fall of President Suharto in May 1998 had ushered in a short-lived “Papuan Spring,” a brief eighteen-month period during which civilian political expression in Papua flourished and calls for independence were relatively freely voiced. A formal dialogue held in Jakarta in February 1999 between President Habibie and a team of a hundred Papuan representatives alerted the government to the depth of pro-independence sentiment in Papua. This sentiment then found more public expression in the form of two mass meetings in Jayapura, a Convention or Masyawarah Besar in February 2000, and a Congress in May–June 2000. The Congress, dubbed the “Second Papuan Congress” in acknowledgement of the Papuan Congress of 1961, issued a number of ambitious declarations, each of them unacceptable to Jakarta: a demand that Jakarta recognize the unilateral declaration of independence issued by the first Papuan Congress on 1 December 1961; a repudiation of the 1962 New York Agreement and the subsequent 1969 “Act of Free Choice” or Pepera which, in the eyes of the United Nations, saw former Dutch New Guinea formally incorporated within Indonesia; a rejection of central government plans to carve Papua into three separate provinces; a fiat issued to the leadership of the Congress to seek international support for the cause of independence; and a call for the immediate involvement of the United Nations in a transfer of powers to an independent Papuan state.

A panel of Papuan leaders, the Papuan Presidium Council (Presidium Dewan Papua or PDP), emerged from the Second Congress, headed by Chairman Theys Eluay and Vice Chairman Tom Beanal. Theys, an elected chief from Lake Sentani, had formerly enjoyed a close relationship with Jakarta but had developed a somewhat ambivalent position since 1998 as an outspoken advocate of indepen-