



**OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**ON THE BREACH OF THE LEADERSHIP  
CODE ACT BY MP HOSEA NEVU**

Date: 30 December 2016



**REPUBLIC OF VANUATU**

80357/2016/02

Ombudsman Haus, Rue Pasteur    PMB 9081 Port Vila, Vanuatu  
Tel: +678 27200    Voip: 2760    Email: [ombudsman@vanuatu.gov.vu](mailto:ombudsman@vanuatu.gov.vu)

---

## **PUBLIC REPORT ON THE BREACH OF THE LEADERSHIP CODE ACT BY MP HOSEA NEVU**

### **Preamble**

"It shall not be a defence to a prosecution under this Act that the accused was not at the time of an investigation or is not in the course of prosecution under this Act or in the event of a conviction at time of sentencing a leader, and for the purpose of establishing jurisdiction it shall be sufficient for the prosecution to establish that at the time of the offence the accused was a leader" (Section 50 of the Leadership Code Act).

### **Summary**

Any leader who breaches section 13 and 19 of the Leadership Code Act [CAP.240] is liable to be prosecuted and penalized under the Act. This is what has happened to Member of Parliament Hosea Nevu.

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

On the 19<sup>th</sup> of May 2015 Member of Parliament for Santo Constituency Hon Hosea Nevu a Leader under Article 67 of the Constitution was convicted for Idle and Disorderly conduct contrary to section 148 of the Penal Code Act [CAP 135] and sentenced to pay a fine of 2,000 vatu and prosecution costs for 1,000 vatu. He was also on the same date sentenced to pay a fine of 3,000 vatu for Intentional Assault on Mr Rex Elong contrary to section 107 of the Penal Code Act [CAP 135] and a fine of 5,000 vatu for using Threatening Language against Mr Rex Elong contrary to section 121 of the Penal Code, Act.- Thus Hon Hosea Nevu has breached the Leadership Code Act.

### **Findings & Recommendations (see further page 5)**

The report finds that by breaching the Penal Code [CAP.135] Mr Hosea Nevu has breached the Leadership Code Act. The Ombudsman recommends that the Public Prosecutions Department prosecute Member of Parliament Hosea Nevu for breaching the Leadership Code Act.

## TABLE OF CONTENTS

|  |   |
|--|---|
| 1. JURISDICTION                                  | 4 |
| 2. PURPOSE, SCOPE AND METHOD OF INVESTIGATION    | 4 |
| 3. RELEVANT LAWS, REGULATIONS AND RULES          | 4 |
| 4. OUTLINE OF EVENTS                             | 4 |
| 5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM | 6 |
| 6. FINDINGS                                      | 7 |
| 7. RECOMMENDATIONS                               | 8 |
| INDEX OF APPENDICES                              | 9 |

## 1. JURISDICTION

- 1.1 Section 50 of the Leadership Code Act [CAP 240] provides that in any proceeding against a leader under the Act “**it is sufficient for the prosecution to establish that at the time of the offence the accused was a leader**”.
- 1.2 The Constitution, the Ombudsman Act [CAP 252] and the Leadership Code Act [CAP 240] allow the Ombudsman to enquire into the conduct of government, related bodies, and Leaders which includes Hon Hosea Nevu, Member of Parliament for Santo Constituency of the 10<sup>th</sup> Legislature. He is presently a Member of Parliament for Santo Constituency of the 11<sup>th</sup> Legislature of the Republic of Vanuatu as of the date of this public report.

## 2. PURPOSE, SCOPE AND METHOD OF INVESTIGATION

- 2.1 The purpose of this public report is to present the Ombudsman’s findings as required by the Constitution, the Ombudsman Act and the Leadership Code Act relating to this enquiry.
- 2.2 The scope of this investigation was firstly to establish whether there was breach of the Leadership Code Act by Mr Hosea Nevu through his dual convictions on 19 May 2015 by the Magistrates Court in Luganville in Criminal Case No.146 of 2013 and Criminal Case No.130 of 2015 and secondly to determine whether Mr Hosea Nevu was a leader pursuant to Article 67 of the Constitution at the time of the offence.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.
- 2.4 This enquiry was undertaken and compiled by the Leadership Code team under the Director of Leadership Code Investigations for and on behalf of the Ombudsman of the Republic of Vanuatu.

## 3. RELEVANT LAWS

Relevant parts of the following laws are reproduced in **Appendix 4** :

Articles 62, 63, 66 and 67 of the Constitution;

Sections 2, 5(d), 27, 30, 34(2), 37, 38, 40, 41, 42, 43 and 50 of the Leadership Code Act [CAP.240];

Sections 12(2) of the Ombudsman Act [CAP252].

## 4. OUTLINE OF EVENTS

- 4.1 On the 19<sup>th</sup> of November 2012, Hon Hosea Nevu was sworn in as a Member of Parliament of Vanuatu that he will bear true faith and allegiance to the Republic of Vanuatu, will uphold the Constitution and the Law and will

- conscientiously and impartially discharge his responsibilities to the people of the Republic of Vanuatu (**Appendix 3**).
- 4.2 On 12<sup>th</sup> September 2013 in the afternoon Mr Rex Elong, driver/messenger for the Luganville Public Solicitor's Office (PSO) went to the residence in Luganville of Hon Hosea Nevu, Member of Parliament for Santo Constituency (**hereinafter "Mr Hosea Nevu" or "Mr Nevu"**) to serve a letter of demand from a client of the PSO on Mr Hosea Nevu. Upon attempt of service by Mr Rex Elong, Mr Nevu physically assaulted Rex Elong twice. Rex Elong left the scene to return to the PSO and Mr Nevu followed Rex Elong to the PSO and further threatened to assault him at the PSO.
- 4.3 On 11<sup>th</sup> April 2015, Mr Hosea Nevu appeared in the Luganville Magistrates Court and pleaded guilty for being Idle and Disorderly contrary to section 148(b) of the Penal Code [CAP.135].
- 4.4 On the 19<sup>th</sup> of May 2015 Mr Hosea Nevu, Member of Parliament, appeared in the Luganville Magistrates Court in Criminal Case No.146 of 2013 and was sentenced to pay a fine of 3,000 vatu for Intentional Assault on Mr Rex Elong contrary to section 107(b) of the Penal Code Act [CAP 135], that is:
- "107. Intentional assault**  
**No person shall commit intentional assault on the body of another person.**  
**Penalty :**
- ( a) ....  
(b) if damage of a temporary nature is caused, imprisonment for 1 year;  
(c) ....  
(d) ...."
- 4.5 Mr Hosea Nevu was also fined 5000 vatu for Threatening Language against Mr Rex Elong contrary to section 121 of the Penal Code, Act [CAP 135] (**Appendix 2**) namely:
- "121. Abusive or threatening language**
- No person shall in a public place use threatening or abusive words, or threatening gestures, towards any other person or persons.**
- Penalty: Imprisonment for 3 years."**
- 4.6 On the same date (19<sup>th</sup> May 2015), Mr Hosea Nevu appeared before the same Court in Luganville in Criminal Case No. 130 of 2015 on charges of Idle and Disorderly conduct contrary to section 148(b) of the Penal Code Act [CAP 135] and was convicted and sentenced to pay a fine of 2,000 vatu and prosecution costs for 1,000 vatu (**Appendix 1**). Penal Code section 148(b) provides:

**“148. Idle and disorderly****No person shall –****(a)....****(b) be found drunk and disorderly, or behave in a riotous or disorderly manner, in any public place (including the premises of any police station);****(c)....****.....****Penalty: Imprisonment for 3 months.”**

4.7 Mr Hosea Nevu was also sentenced to pay a fine of 2,000 vatu for unnecessarily adjourning and prolonging case 146 of 2013 for a period of time. The Court judgment made 3 comments in relation to that delay and the seriousness of assaulting a legal officer, that is –

- **“ the court .... considers these [delays] as an attempt to escape or even deny justice”;**
- **“Secondly, your offending is considered not only as a disrespect and disregard of your senior position as a Member of Parliament but a breach of trust to the people around you and your constituency.”**
- **“Furthermore, assaulting and threatening an officer of the Public Solicitor’s Office on duty can also be interpreted as an attack on the justice system itself and this is not to be expected from you being an elected member of parliament” (sic).**

**5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM**

5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper dated 14 January 2016 was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.

5.2 Responses were received from the following:

- Hon Member of Parliament Hosea Nevu on the 18<sup>th</sup> of January 2016 requested for an extension to be granted to him to respond. He was given until 8<sup>th</sup> of February 2016 to respond however to date this office has not received any response from him. **(Appendix 5)**
- Mr Rex Elong responded on the 26<sup>th</sup> of January 2016 and confirmed the facts of Mr Hosea's Nevu's Assault on him.

•

## 6. FINDINGS

6.01 Considering the facts, the response, the issues and the law set out in this report the Ombudsman makes the following findings:

6.1 **Finding 1:** By breaching Penal Code section 107(b) (Intentional Assault causing temporary damage) for which he was found guilty and convicted by the Luganville Magistrates Court, Mr Hosea Nevu MP, as a leader pursuant to Article 67 of the Constitution breached section 13(a), (b), (c) and (d) and section 19 of the Leadership Code Act [CAP.240] and therefore liable to be punished pursuant to sections 41 and 42 of the Act.

6.2 **Finding 2:** By acting contrary to the Penal Code [CAP.135] Section 122 (Threatening Language) for which he was found guilty and convicted by the Luganville Magistrates Court, Mr Hosea Nevu MP, as a leader pursuant to Article 67 of the Constitution breached section 13(a), (b), (c) and (d) and section 19 of the Leadership Code Act [CAP.240] and therefore liable to be punished pursuant to sections 41 and 42 of the Act.

6.3 **Finding 3:** By breaching Penal Code section 148(b) (Idle and Disorderly) for which he was found guilty and convicted by the Luganville Magistrates Court, Mr Hosea Nevu MP, as a leader pursuant to Article 67 of the Constitution breached sections 13(a), (b), (c) and (d) and section 19 of the Leadership Code Act [CAP.240] and therefore liable to be punished pursuant to sections 41 and 42 of the Act.

## 7. RECOMMENDATIONS

7.01 The Ombudsman recommends:

7.1 **Recommendation 1:** That the Public Prosecutions Department

prosecute Hon Mr Hosea Nevu for breach of the Leadership Code Act sections 13(a), (b), (c) and (d) and section 19.

- 7.2 Recommendation 2: That the Public Prosecutions Department invoke sections 41 and 42 of the Leadership Code Act relating to the prosecution of Hon Mr Hosea Nevu due to the serious nature of the offences committed although the Luganville Magistrates Court ordered minimal penalties for them.

Dated 30 December 2016



**Kalkot MATASKELEKELE**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**

80357/2016/02

Ombudsman Haus, Rue Pasteur PMB 9081 Port Vila, Vanuatu  
Tel: +678 27200 Voip: 2760 Email: [ombudsman@vanuatu.gov.vu](mailto:ombudsman@vanuatu.gov.vu)



## **INDEX OF APPENDICES**

- 1. Honourable Hosea Nevu Sworn Oath of Parliament**
- 2. Honourable Hosea Nevu's sentencing notes for Criminal Case 130 of 2015**
- 3. Honourable Hosea Nevu's sentencing notes for Criminal Case 146 of 2013**
- 4. Relevant laws**
  - A Articles 62, 63, 66 and 67 of the Constitution
  - B Sections 2, 27, 30, 34(2), 37, 38, 40, 41, 42, 43 and 50 of the Leadership Code Act [240]
  - C Sections 12(2) of the Ombudsman Act [CAP252]
- 5. Response from Honourable Hosea Nevu dated 18<sup>th</sup> of January 2016**

**80357/2016/02**

Ombudsman Haus, Rue Pasteur    PMB 9081 Port Vila, Vanuatu  
Tel: +678 27200    Voip: 2760    Email: [ombudsman@vanuatu.gov.vu](mailto:ombudsman@vanuatu.gov.vu)

TENTH PARLIAMENT OF THE REPUBLIC OF VANUATU



THE OATH ACT (CAP 37)

OATH FOR MEMBERS OF PARLIAMENT

I, NEVU ROSEA, having been elected a Member of Parliament, do swear that I will bear true faith and allegiance to the Republic of Vanuatu, will uphold the Constitution and the Law and will conscientiously and impartially discharge the responsibilities to the people of the Republic of Vanuatu upon which I am about to enter.

So help me God.

Sworn at Parliament

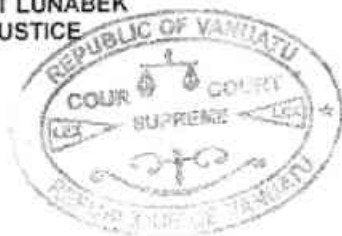
This 19<sup>th</sup> day of November 2012

BEFORE ME

Handwritten signature of Vincent Lunabek, Chief Justice.

Handwritten signature of the Member for Parliament.  
MEMBER FOR PARLIAMENT

VINCENT LUNABEK  
CHIEF JUSTICE



IN THE MAGISTRATES COURT  
OF THE REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Cr. No. 130 of 2015

**PUBLIC PROSECUTOR –V- HOSEA NEVU**

**Prosecutor:** Reston Langon

**Defendant :** In person (Legal Counsel Mr. Ronald Warsal not present)

**Clerk:** Evelyn Kaltapau

**Charge:**

1. Idle & Disorderly contrary to section 147 of the Penal Code, Cap 135

**Plea:** Guilty

**SENTENCE**

On 11<sup>th</sup> April, 2015, you appeared before this court and pleaded guilty to one count of Idle and Disorderly contrary to section 148 (b) of the Penal Code, Cap 135. Having heard your plea and having considered evidences presented by the Prosecutor, the Court is satisfied beyond reasonable doubt that you stand guilty to this offence. The Court thereby finds you guilty and convicts you thereof.

The court in determining **your sentence** considers as a starting point the maximum penalties Idle **and** Disorderly which carries a maximum penalty of 3 months imprisonment. In addition the Court considers the following aggravating and mitigating factors:

**Aggravating Factors:**

This appears to be your second conviction in two years. The first one relates to an assault and threatening but was delayed until today both were determined together. Both offending occurred during the tenure of your 4 years in Parliament and are considered not only as a disrespect and disregard of your senior position as a Member of Parliament but a breach of trust to the people around you and your constituency.

**Mitigating Factors:**

The Court further considers your early guilty plea and today you appear very remorseful for your criminal actions and confirmed to the Court that you were too drunk at that time and did not know what you were doing.



**Appendix 2 – Page 2 of 2**

The Court having considered the above considerations, the Court hereby sentence you are sentence to a fine payment of Vt. 2,000 plus Vt.1,000 prosecution cost

You have 14 days to pay the ordered sums or appeal to the Supreme Court if dissatisfied.

**DATED at Loganville this 19<sup>th</sup> day of May, 2015.**

  
-----  
**H. Naian Ho**  
Senior Magistrate



IN THE MAGISTRATES COURT  
OF THE REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Cr. No. 146 of 2013

**PUBLIC PROSECUTOR -V- HOSEA NEVU**

Prosecutor: Rexton Langon

Defendant: In person (Legal Counsel Mr. Ronald Warsai not present)

Clerk: Evelyn Kaltapau

**Charges:**

1. Intentional Assault contrary to section 107 of the Penal Code, Cap 135
2. Threatening Language contrary to section 121 of the Penal Code, Cap 135

**Plea:** Guilty to both counts

**SENTENCE**

Having heard the re-arraignment of your not guilty plea of 17<sup>th</sup> November, 2014 to Guilty plea today 18<sup>th</sup> May 2015 in both counts of offences, and having considered evidence presented by the Prosecutor, the Court is satisfied beyond reasonable doubt that you stand guilty to both offences. The Court thereby finds you guilty and thereof convicts you.

The court in determining your sentence considers as a starting point the maximum penalties of the respective offences. Intentional Assault carries a maximum penalty of 1 year imprisonment. Threatening Language carries a maximum penalty of 3 years imprisonment. In addition considers the following aggravating and mitigating factors:

**Aggravating Factors:**

1. Firstly, you appeared on 17<sup>th</sup> November, 2014 and decided to plea not guilty knowing fully well you are guilty. In addition the fact that you continued to apply for an adjournment for numerous times since 2013 with different excuses to the extent of failing to attend the recent trial hearing which led to a warrant of Arrest for you to appear in Court and explain the Court is considers these as an attempt to escape or even deny justice.
2. Secondly, your offending is considered not only as a disrespect and disregard of your senior position as a Member of Parliament but a breach of trust to the people around you and your constituency. Furthermore, assaulting and threatening an officer of the Public Solicitor's Office on duty can also be interpreted as an attack on the justice system itself and this is not to be expected from you being an elected member of parliament.



**Mitigating Factors:**


1. This is the first time you appear in court for a criminal matter therefore it would be your first criminal conviction
2. You appear today very remorseful both for your criminal actions and the fact that you have caused the matter to be prolonged unnecessarily since 2013.

The Court having considered the above considerations, the Court hereby sentences you to the follows:

1. For Intentional Assault, you are sentence to a fine payment of Vt. 3,000
2. For Threatening Words, you are sentence to a fine payment of Vt. 5,000
3. For prolonging the matter unnecessarily, you are ordered to pay Prosecution Cost in the amount of Vt. 2,000

You have 14 days to pay the ordered sums or appeal to the Supreme Court if dissatisfied.

DATED at Luganville this 19<sup>th</sup> day of May, 2015.

  
H. Natar Ho  
Senior Magistrate



## **1. CONSTITUTION OF THE REPUBLIC OF VANUATU**

### **62. Enquiries by Ombudsman**

- (1) The Ombudsman may enquire into the conduct of any person or body to which this Article applies –
- (a) upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;
  - (b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Local Government Council; or
  - (c) of his own initiative.
- (2) This Article shall apply to all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.
- (3) The Ombudsman may request any Minister, public servant, administrator, authority concerned or any person likely to assist him, to furnish him with information and documents needed for his enquiry.
- (4) The Ombudsman shall grant the person or body complained of an opportunity to reply to the complaints made against them.
- (5) The enquiries of the Ombudsman shall be conducted in private.

### **63. Findings of the Ombudsman and reports**

- (1) Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the Prime Minister and the head of the public department or authority concerned.
- (2) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings to the Prime Minister and to the head of the public authority or department directly concerned.
- (3) The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the Prime Minister and the person in charge of the relevant public service, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.
- (4) The Prime Minister or the person in charge of the relevant public service shall decide upon the findings of the Ombudsman within a reasonable time and the decision, with reasons, shall be given to the complainant forthwith. Any period limiting the time in which legal proceedings may be commenced shall not begin to run until the complainant has received the decision.
- (5) The Ombudsman shall present a general report to Parliament each year and may make such additional reports as he considers necessary concerning the discharge of his functions and action taken or his findings. He may draw the attention of Parliament to any defects which appear to him to exist in the administration

## **66. Conduct of leaders**

(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

(2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by subarticle (1).

## **67. Definition of a leader**

For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, Members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

## **2. LEADERSHIP CODE ACT CAP 240**

### **2. Summary of obligations imposed on leaders by Chapter 10 of the Constitution**

(1) In Chapter 10 of the Constitution, Article 66 provides that a leader must conduct himself in such a way, both in his public and private life, so as not to:

- (a) place himself in a position in which he has or could have a conflict of interest or in which the fair exercise of his public or official duties might be compromised; or
- (b) demean his office or position; or
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

(2) Article 66 also provides that, in particular a leader must not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article 66(1).

### **27. Other offences punishable under this Act**

(1) A leader who is convicted by a court of an offence under the Penal Code [Cap. 135] and as listed in subsection (2) is:

- (a) in breach of this Code; and
- (b) liable to be dealt with in accordance with sections 41 and 42 in addition to any other punishment that may be imposed under any other Act.

### **34. Role of Ombudsman**

(1) The Ombudsman must investigate and report on the conduct of a leader (other than the President):

- (a) if the Ombudsman receives a complaint from a person that a leader has breached this Code. or



## Appendix 4 – Page 3 of 5

(b) if the Ombudsman has formed the view on reasonable grounds that a leader may have breached this Code.

(2) The Ombudsman must have a copy of the report to the Public Prosecutor and where, in the opinion of the Ombudsman, the complaint involves criminal misconduct, to the Commissioner of Police within 14 days after forwarding his or her findings to the Prime Minister under Article 63(2) of the Constitution.

(3) Where an Act provides for the functions, duties, and powers of the Ombudsman, the provisions of that Act will apply when the Ombudsman is carrying out an investigation under this Act.

(4) Notwithstanding subsection (3), for the purpose of fulfilling any function or duty lawfully conferred or imposed on the Ombudsman under this Act, the Ombudsman:

(a) shall have full access at all convenient times to Government contracts, documents, books, accounts and any other material that relates to and is relevant to the investigation; and

(b) may, by notice in writing signed by the Ombudsman require any person having possession or control of any Government contract, documents, books, accounts or any other material that relates to and is relevant to the investigation to deliver such document or documents to the Ombudsman at such time and place as is specified in the notice; and

(c) may cause extracts to be taken from any Government contract, documents, books, accounts or any other material that relates to and is relevant to the inquiry without paying any fee therefore.

(5) Where a person falls to comply with a notice or any other requirement under subsection (4) the Ombudsman may apply to the Supreme Court for an order requiring that person to do so.

(6) Where the complaint is against the Ombudsman the investigation will be carried out by the Attorney General in accordance with the procedure set out in this part as if the Attorney General were vested with all the functions, duties, discretions and powers of the Ombudsman.

### **37. Public Prosecutor to decide on prosecution**

(1) The Public Prosecutor must decide, within 3 months of receiving the report, whether there are sufficient grounds or evidence to support a prosecution under this Code or under any other Act.

(2) The Public Prosecutor may decide not to prosecute only on the basis that there are insufficient grounds or evidence to support a prosecution, or that the complaint is vexatious, frivolous or trivial.

(3) If the Public Prosecutor decides not to prosecute a person, he or she must:

(a) notify the Prime Minister of the decision within 7 days of making the decision, giving reasons for the decision; and

(b) publish a notice in the Gazette within 14 days of the decision, stating that he or she has decided not to prosecute, and setting out the reasons for the decision.

### **38. Proceedings against leader**

(1) If the Public Prosecutor decides that there are sufficient grounds to support a prosecution, he or she must begin proceedings within one month of deciding to prosecute a leader.

## Appendix 4 – Page 4 of 5

(2) If the Public Prosecutor is not able to begin proceedings against the leader, or has not been able to decide whether to prosecute or not, within 3 months because the matter is complex, the Public Prosecutor must:

- (a) notify the Prime Minister of this, and tell the Prime Minister that he or she needs an extension of another 3 months to complete consideration of the matter, and
- (b) publish a notice in the Gazette to this effect.

(3) The Public Prosecutor must decide the matter and either begin the proceedings, or publish the notice, before the end of that second period of 3 months.

### 40. Fine or imprisonment

(1) A leader who is convicted of a breach of section 19, or 20, or 21, or 22, or 23, or 24 or 26 or 27 is liable to –

- (a) a fine not exceeding VT 5,000,000; or
- (b) Imprisonment for a period not exceeding 10 years.

(2) A leader who is convicted of a breach of section 33 is liable to:

- (a) a fine not exceeding VT 2,000,000; and
- (b) if the offence is a continuing one to a fine not exceeding VT 20,000 a day for each day or part day the leader remains in breach.

(3) A leader who is convicted of a breach of this code for which no specific penalty is provided is liable to a fine not exceeding VT 2,000,000.

### 41. Dismissal from office

(1) Where a leader is convicted of a breach of this Code the court may, if it regards the breach as serious make an order dismissing the leader from office.

(2) In determining whether the breach of this code is serious, the court may have regard to:

- (a) in the case of a breach involving a financial matter, the amount involved;
- (b) whether the conduct of the leader was significantly below what would be expected of a leader;
- (c) where it is possible to discern, the motives of the leader;
- (d) the extent to which the breach diminished the respect or public confidence in the leader's position; and
- (e) whether the leader has been previously convicted of a breach of this Code.

### 42. Disqualification from future office

Where the leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of 10 years from the date of the conviction.

### 43. Loss of benefits

If the leader is entitled to any other payment or allowance, on ceasing to be a leader, as a result of being dismissed from office under this Act, the entitlement ceases.

### 50. Defence to prosecution

## Appendix 4 – Page 5 of 5

It shall not be a defence to a prosecution under this Act that the accused was not at the time of an investigation or is not in the course of prosecution under this Act or in the event of a conviction at time of sentencing a leader, and for the purposes of establishing jurisdiction it shall be sufficient for the prosecution to establish that at the time of the offence the accused was a leader.

### **OMBUDSMAN ACT CAP**

#### **12. Ombudsman's findings**

(2) The Ombudsman may, after due enquiry and on reasonable evidence, conclude that the leader who is the subject of an enquiry:

- a. has failed to carry out or has breached the duties and responsibilities of office imposed on him or her under Article 66(1) or (2) of the Constitution; or
- b. has breached the Leadership Code [Cap. 240].

IA1

GOVERNMENT  
OF THE  
REPUBLIC OF VANUATU

MINISTRY OF  
INTERNAL AFFAIRS

Private Mail Bag 636  
PORT VILA  
Tel: 22752 Tel Fax: 27064

Velma Wano KARABAN  
Officer in Charge  
Office of the Ombudsman  
Port Vila



GOVERNMENT  
OF THE  
REPUBLIC OF  
VANUATU

MINISTRY OF  
INTERIOR

See Post Office Box  
PORT VILA  
22752 Tel Fax: 27064



RE WORKING PSPER ON THE BRACAGE OF SECTION 27 OF THE LEADERSHIP CODE ACT

We write to your office regarding the above caption matter, your ref 237680357/LS5/HH to the Ministry dated 13<sup>th</sup> January 2016.

The 14 days of your letter will elapse on the 27<sup>th</sup> January 2016. During that period I will not be able to have access in communicating with you as I will be campaigning in the rural areas of Santo.

Therefore I am requesting to extend the date from the 27<sup>th</sup> January for another 14 days.

Thank you for your understanding.

  
Hon. Hapla Oves Rorhin NEVU  
Care Label Minister of Internal Affairs



Extension to response to our letter dated 13 January 2016

Page 1 of 1

## **Extension to response to our letter dated 13 January 2016**

Ombudsman Office

**Sent:** Tuesday, 26 January 2016 2:37 PM

**To:** Hon Hosea Nevu (MP)

---

Dear Hon Hosea Nevu,

Please be advised that your request for an extension to our letter dated 13<sup>th</sup> of January 2016 has been granted and you are to respond to our letter by the 8<sup>th</sup> of February 2016. If you do not respond to this request, this office can issue a Notice compelling you to come to the Office to give evidence and to provide the required information and documentation, however we prefer to work cooperatively wherever possible.

Office of the Ombudsman.