



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE IMPEACHMENT
OF THE LEADERSHIP CODE ACT
BY HONOURABLE HARRY IAUKO,
AND JAY NGWELE
THROUGH THEIR CONVICTIONS
AT THE MAGISTRATES COURT**

**IS FOR SUBMISSION
TO THE PUBLIC PROSECUTOR
FOR THEIR PROSECUTION UNDER SECTIONS
35, 37 & 38 OF THE LEADERSHIP CODE ACT**

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REPUBLIC OF VANUATU

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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

Section 27 of the Leadership Code Act No. 27 of 1998 provides that whenever a leader is convicted by a court of law of an offence under the Penal Code Act [CAP135] and is listed in subsection (2), he is in breach of this Code.

On 4th March 2011 two prominent leaders: Minister Harry Iauko and political advisor Jay Ngwele, and other persons who took part in their criminal conducts at the Vanuatu Daily Post Newspaper’s premises, were all convicted and sentenced on 29th June 2011 by the Magistrates Court in a Criminal Case No.80 of 2011 [*Public Prosecutor v Harry Iauko and others*] – thus, were all in breach of Sections 27 and 30 of the Leadership Code Act respectively (Refer to Judicial decision **EXHIBIT 4**).

On one hand, Honourable Harry Iauko MP, member for Tanna constituency and Minister for Infrastructure and Public Utilities is and was at all relevant times a person to whom the Leadership Code in Chapter 10 (Articles 66 to 68) of the Constitution and the Leadership Code Act No. 2 of 1998, apply by virtue of Section 67 of the Constitution.

And on the other hand, Mr Jay Ngwele as political advisor to the Minister of Infrastructure and Public Utilities is and was at all relevant times a person to whom the Leadership Code Act No.2 of 1998 applies by virtue of Section 5(d) of the Leadership Code Act.

The persons other than leaders, to whom Section 30 of the Leadership Code Act applies, were as follows: Manipen Nokai, Nanua Eta, Johnathan Wako, Bernard Athen and Bob Worek Lovo. Messrs Manipen Nokai, Nanua Eta, Johnathan Wako, Bernard Athen and Bob Worek Lovo, as persons to whom Section 30 of the Leadership Code Act applies by virtue of them taking part in their leader’s conduct which is in breach of the Leadership Code Act, will not be dealt with in this report

pursuant to Section 34(2)(3) of the Ombudsman Act. That legal provision clearly stipulates that:

“(2) The Ombudsman may decide to keep a report, or part of it, confidential to the Prime Minister or the person in charge of the government agency the subject of the enquiry, on the grounds of public security or public interest. (3) If the Ombudsman decides to keep a report, or part of it, confidential he or she must inform the complainant (if any) in writing of his or her findings without in any way prejudicing the grounds on which the Ombudsman decided to keep the report, or the part, confidential”.

Subsequent to conducting an investigation in accordance with Articles 62 and 63 of the Constitution and Section 12(2) of the Ombudsman Act No.27 of 1998, the Ombudsman is satisfied that there is a prima facie case that Minister Iauko and political advisor Jay Ngwele have been guilty of misconduct in office. Consequently, the Ombudsman would come up with the following findings that:

- 1: The Minister of Infrastructure and Public Utilities Honourable Harry Iauko and Political Advisor Jay Ngwele as leaders pursuant to Article 67 of the Constitution and Section 5(d) of the Leadership Code Act respectively were in breach of section 27 of the Leadership Code Act.
- 2: Honourable Harry Iauko as Minister of Infrastructure and Public Utilities has impeached both Article 66 of the Constitution and Section 2 of the Leadership Code Act.
- 3: Honourable Harry Iauko may have breached Section 49 of the Ombudsman Act by refusing or neglecting to produce documents before the Ombudsman and by failing to provide a justifiable excuse for non-attendance.
- 4: Mr Jay Ngwele as a political advisor to the Minister of Infrastructure and Public Utilities has impeached both Article 66 of the Constitution and Section 2 of the Leadership Code Act.

Having made the above findings, the Ombudsman of the Republic of Vanuatu would make the subsequent recommendations for consideration and action:

- 1: Having breached Section 27 of the Leadership Code Act No.2 of 1998 and having laid proper charges (Refer to page 6 to 12 of this Report), the Ombudsman recommends that both Harry Iauko and Jay Ngwele be prosecuted by the Public Prosecutor and be dealt with in accordance with not only Sections 40(1) but also 41, 42 and 43 of the Leadership Code Act. In fact, Section 42 of the Leadership Code Act provides that “Where a 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”. Furthermore, in situation where 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.
- 2: Honourable Harry Iauko should not only be prosecuted by the Public Prosecutor for his refusal or negligence to attend in person before the Ombudsman for the

production of the requested information and documents on 2nd September 2011 but also for his non-provision of sufficient excuse(s) for non-attendance on the respective date and time – that which is contrary to Section 49 of the Ombudsman Act.

Accordingly, pursuant to Section 34(2) of the Leadership Code Act a copy of this Public Report is given to the Public Prosecutor for consideration and appropriate action under Sections 35, 37 and 38 of the Leadership Code Act.

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1.0.0 JURISDICTION

- 1.1.0 Section 50 of the Leadership Code Act [240] provides that in any proceeding against a leader under this Code **“it is sufficient for the prosecution to establish that at the time of the offence the accused was a leader”**.
- 1.1.1 The Constitution and the Ombudsman Act [252] and the Leadership Code Act [240] allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the convictions of Honourable Harry Iauko as Minister of Infrastructure and Public Utilities and Mr. Jay Ngwele as the political advisor to the Minister.
- 1.1.2 In exercising his discretionary powers as conferred on him by Section 34(2)(3) of the Ombudsman Act, the Ombudsman has taken a decision not to deal with persons other than leaders in this report.

2.0.0 PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1.0 The purpose of this report is to present the Ombudsman’s findings as required by the Constitution, the Ombudsman Act and the Leadership Code Act.
- 2.1.1 The scope of this investigation is to primarily establish the facts about the impeachment of duties under the Leadership Code Act by Honourable Harry Iauko and Mr Jay Ngwele as the political advisor to the Minister of Infrastructure and Public Utilities through their convictions by the Magistrates Court on 29th June 2011 and to secondarily determine whether those convicted by the same were in fact: leaders pursuant to Article 67 of the Constitution and/or Sections 5(d) of the Leadership Code Act.
- 2.1.2 This Office collects information and documents by informal request, summons, letters, interviews and research.

3.0.0 RELEVANT LAWS

Relevant parts of the following laws are reproduced in **Appendix A**.

Articles 62, 63, 66 and 67 of the Constitution

Sections 2, 5(d), 27, 30, 34(2), 35, 37, 38, 40, 41, 42, 43 and 50 of the Leadership Code Act [240]

Sections 12(2), 34(2) and 49 of the Ombudsman Act [CAP252]

4.0.0 OUTLINE OF CHARGES OF MISCONDUCT IN OFFICE BY MINISTER HARRY IAUKO AND JAY NGWELE SUBSEQUENT TO THEIR CONVICTIONS BY THE MAGISTRATES COURT

4.1.0 HARRY IAUKO AND JAY NGWELE

4.1.1 IMPEACHMENT OF SECTION 27 OF THE LEADERSHIP CODE ACT BY HARRY IAUKO AND JAY NGWELE SUBSEQUENT TO THEIR CONVICTIONS

Count 1: THAT on or about 29th June 2011 at around 3pm both leaders consisting of Minister Harry Iauko and political advisor Jay Ngwele were convicted for the commissions of criminal offences – those very convictions that are in breach of Section 27 of the Leadership Code Act [240].

4.1.2 PARTICULARS RE: COUNT 1: APPOINTMENT AS A MINISTER

On 13th February 2011, Honourable Harry Iauko MP was appointed a Minister responsible for Public Utilities and Infrastructure by the Prime Minister Honourable Sato Kilman pursuant to Article 42(1)(2) of the Constitution (Refer to Instrument of Appointment of Minister **EXHIBIT 1**). With regard to the administration of the oaths every Minister of State such as Honourable Harry Iauko is to swear an oath of allegiance to the Republic of Vanuatu according to law (**EXHIBIT 2**) and an official oath (**EXHIBIT 3**) pursuant to Sections 2 and 3 of the Oath Act [CAP37] respectively before the Attorney General of the Republic of Vanuatu. In the latest oath Mr Iauko affirmed that he will uphold the Constitution and the law and will conscientiously, impartially and to the best of his ability discharge his duties as Minister of State and do right to all manner of people without fear or favour, affection or ill-will.

However, on 29th June 2011 Mr Harry Iauko was convicted by the Magistrates Court on two counts of criminal offences under the Penal Code [CAP135] (Refer to Judicial Decision **EXHIBIT 4**), thus, in breach of Section 27 of the Leadership Code Act [CAP 240].

4.1.3 APPOINTMENT AS ADVISOR TO MINISTER

On 3rd March 2011 a contract of employment was signed between Honourable Harry Iauko as Minister of Infrastructure and Public Utilities on behalf of the Government of the Republic of Vanuatu and Mr Jay Ngwele as Advisor to Minister in the presence of the Attorney General Mr Alatoi Ishmael KALSAKAU (**EXHIBIT 5**).

In Clauses 2.1, 2.2 of his employment contract it is mentioned that:

- 2.1 The Employee shall punctually, diligently and to the best of his skill and ability perform, carry out and be responsible for all those duties, functions and responsibilities which the Employer from time to time issue by means of a Job Description to the Employee.
- 2.2 Without derogating from the generality of the provisions of Clause 2.1, the Employee:
- (a) Shall attend punctually at the Ministerial Office or at such other place or places as his duties may from time to time require;
 - (b) Shall devote his whole time and attention to and diligently and to the best of his skill and ability to perform his duties as the ADVISOR TO MINISTER between the hours of 0730 and 1630 (reasonable intervals allowed for meals) on every workday;
 - (c) Shall not be absent at any time during the said hours from the said Ministerial Office without the consent of the Employer or such other person authorized to give such consent on behalf of the Employer;
 - (d) Understands and accepts that in his position as the ADVISOR TO MINISTER in the Ministry, he is personally responsible to the Employer for the due performance of his duties and responsibilities and he is obliged to carry out all lawful instructions which the Employer may from time to time give or issue to him (emphasis added).

However, on 29th June 2011 Mr Jay Ngwele was charged, convicted and sentenced together with Messrs Bernard Eta and Bob Worek Lovo for the commission of some criminal offences under the Penal Code [CAP135] (Refer to Judicial Decision **EXHIBIT 4**), thus, in breach of Section 27 of the Leadership Code Act [CAP240].

4.2.0. **HARRY IAUKO**

4.2.1 **A: HIS CONVICTION FOR AIDING AND ABETTING INTENTIONAL ASSAULT AND AIDING AND ABETTING MALICIOUS DAMAGE TO PROPERTY**

Count 1: THAT on or about 4th March 2011 Honourable Harry Iauko in associations with other persons conducted himself in his public life contrary to both Article 66 of the Constitution and Section 2 of the Leadership Code Act, in such a way that he -

- (a) placed 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) demeaned his office or position as a Minister of State,
- (c) allowed his public or official integrity and his personal integrity to be called into serious question; and
- (d) endangered and diminished respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

AND FURTHERMORE engaged in an activity that gave rise to doubt in the public mind as to whether he was carrying out his duties as a leader under Article 66 of the Constitution.

IN THAT he did, without giving notice and in associations with other persons, burst into the Office of Marc Neil Jones as Publisher of Vanuatu Daily Post and committed the criminal offences of aiding and abetting intentional assault and aiding and abetting malicious damage to property belonging to Daily Post Newspaper for which he was convicted on 29 June 2011 by the Magistrates Court (**EXHIBIT 4**).

THEREBY contravening Article 66(1) and (2) of the Constitution and Section 2(1) and (2) of the Leadership Code Act.

4.2.2 PARTICULARS RE: COUNT 1:

BREACHES OF ARTICLE 66(1) and (2) OF THE CONSTITUTION AND SECTION 2(1) and (2) OF THE LEADERSHIP CODE ACT

The Minister of Infrastructure and Public Utilities is responsible for some departments such as public works and Air Vanuatu (currently transferred to Prime Minister).

On 4th March 2011 at around 3pm Minister Harry Iarris Lauko went, in associations with other persons, to the Daily Post's premises without giving any notice to the management of his "official or courtesy visit" – that which turned out to be "criminal instead". At the scene he was seen to be aiding and abetting intentional assault on the body of the Daily Post Publisher Mr Marc Neil Jones as well as aiding and abetting malicious damage to the property of Daily Post.

As a prominent leader and Minister of State as described in 4.1.1 above, his conviction for aiding and abetting intentional assault and aiding and abetting malicious damage to property (Refer to Judicial Decision **EXHIBIT 4**) was not only in breach of Section 27 of the Leadership Code Act but also contravening Article 66(1) of the Constitution and Section 2 of the Leadership Code Act by virtue of his actions on the afternoon of 4 March 2011.

In view of the fact that Minister Lauko neglected to carry out his official duties in any department for which he was and/or is responsible at that particular material time but instead decided to engage himself in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out or had carried out the duty imposed by Article 66(1), his flagrant disregard of the requirements of Article 66 of the Constitution is inexcusable. Indeed, the fact that the Minister decided to take the law into his own hands in collaborating with his colleague leader and supporters in the commission of the criminal offences has inevitably the effect of not only calling his official and personal integrity into questions, demeaning his office or position as Minister of State but also putting in danger and diminishing the respect and confidence in the integrity of the Government of the day under the hegemony of Prime Minister Sato Kilman.

4.2.3 **B: FAILURE TO APPEAR**

4.2.4 STATEMENT OF WRONG

FAILURE TO APPEAR WITHOUT SUFFICIENT EXCUSE CONTRARY TO SECTION 49 OF THE OMBUDSMAN ACT [CAP252].

4.2.5 PARTICULARS OF WRONG

- On 17th day of August 2011 the Ombudsman of the Republic of Vanuatu Mr Pasa TOSUSU sent a letter (**EXHIBIT 6**) to Honourable Harry Iauko. Therein, the Ombudsman requested that copies, if any, of the appointment or contract of the political appointees and other persons, who took part in Minister Iauko's conduct – that which was in breach of Section 27 of the Leadership Code Act, to be provided to his Office before 26th day of August 2011. The persons being involved in the incident of 4th March 2011 and being referred to are as follows: Jay Ngwele, Manipen Nokai, Nanua Eta, Johnathan Wako, Bernard Athen and Bob Worek Lovo. The Minister and his political advisor on his behalf failed to respond to the Ombudsman's queries by that specified date. To date no satisfactory response, in the sense of the provision or production of the requested documents and explanatory information, has been received from him nor his political advisor.

Upon a visit on 25th August 2011 to the Ombudsman Office after issuance of a Notice to him, Mr Willie Watson, being then the Acting Director General of the Ministry of Infrastructure and Public Utilities, offered to assist the Ombudsman Office with their investigation. Therefore, a copy of the letter dated 17th August 2011 was given to him for the provision of the information and documents being specified therein. Upon seeing the Minister of Infrastructure about the content of the said letter (dated 17 July 2011), Honourable Harry Iauko reiterated to him that he would personally respond to the Ombudsman's queries. The message of having the Minister to respond personally to the Ombudsman's queries was relayed to Ms Patricia Kalpokas in the morning of Monday 29th August 2011 when Mr Willie Watson came back to the Ombudsman Office to provide certain information and documents. To date no satisfactory response has been received from the Minister concerned.

- On the 18th day of August 2011, a Notice to a Witness was issued by the Ombudsman for him, Honourable Harry Iauko as Minister of Infrastructure and Public Utilities, to appear before him on the 2nd day of September 2011 and to furnish information and documents relating to a matter being enquired into by his Office (**EXHIBIT 7**). The Notice to a Witness was personally served on him at 15.44pm on 18th day of August 2011 by an officer of the Ombudsman's Office namely Mr Lokin Malas (Refer to copies of Statement of Witness and Affidavit of Service **EXHIBIT 8**). However, Honourable Harry Iauko categorically failed to appear on the specified date and time and he neglected to give any sufficient excuse for not appearing either through email and/or fax and/or correspondence.

On 20th September 2011 Honourable Harry Iauko instructed his Acting First Political Advisor Mr John Nariovi to notify the Ombudsman of his overseas trip. As such, Mr. Nariovi would only advise the Ombudsman in a letter dated 21st September 2011 by saying that "*I would appreciate much, if you could hold on to this case until the Honorable Minister is back in the country, then the queries will be process[ed] on again*" (**EXHIBIT 9**). Consequently, the Minister of Infrastructure and Public Utilities has miserably failed to respond

to the Ombudsman's queries as explicitly stated in both his letter dated 17th August 2011 and as requested to be provided through his appearance or attendance in person on 2nd September 2011. As such, Honourable Harry lauko as Minister of Infrastructure and Public Utilities has, without sufficient excuse, failed to appear before the Ombudsman to make available to him the required information and documents – that which is in breach of Section 49 of the Ombudsman Act.

4.3.0. **JAY NGWELE**

4.3.1 **HIS CONVICTION FOR UNLAWFUL ASSEMBLY, UNLAWFUL ENTRY AND CRIMINAL TRESPASS**

Count 1: THAT on or about 4th March 2011 in associations with other persons Mr Jay Ngwele conducted himself in his public life contrary to Section 27(1)(a) of the Leadership Code Act and both Article 66 of the Constitution and Section 2 of the Leadership Code Act, in such a way that he -

- (a) placed 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) demeaned his office or position as a political advisor,
- (c) allowed his public or official integrity and his personal integrity to be called into serious question; and
- (d) endangered and diminished respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

AND FURTHERMORE engaged in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out his duties as a leader under Article 66 of the Constitution and Section 2 of the Leadership Code Act.

IN THAT he did, without giving notice and in associations with other persons, go into the Office of Mr. Marc Neil Jones as Publisher of Vanuatu Daily Post - those which amounted to his criminal offences of unlawful assembly, unlawful entry and criminal trespass for which he was convicted on 29th June 2011 by the Magistrates Court (**EXHIBIT 4**).

THEREBY contravening Article 66(1) and (2) of the Constitution and Section 2(1) and (2) of the Leadership Code Act.

4.3.2 **PARTICULARS RE: COUNT 1:**

BREACHES OF ARTICLE 66(1) and (2) OF THE CONSTITUTION AND SECTION 2(1) and (2) OF THE LEADERSHIP CODE ACT

Amongst other things as mentioned above in 4.1.2 in his contract of employment (Refer to **EXHIBIT 5**), Mr Jay Ngwele was required therein to “devote his whole time and attention to and diligently and to the best of his skill and ability to perform his duties as the *ADVISOR TO MINISTER* between

the hours of 0730 and 1630 (reasonable intervals allowed for meals) on every workday”.

However, on 4th March 2011 at around 3pm Mr Jay Ngwele, in associations with other persons unlawfully assembled and without giving any appropriate notice to the Daily Post management of their “official or courtesy visit” unlawfully gained entry by trespassing into the Daily Post’s premises.

As a prominent leader and advisor to the Minister of Infrastructure and Public Utilities as described in 4.1.3 above, his conviction for unlawful assembly, unlawful entry and criminal trespass (Refer to Judicial Decision **EXHIBIT 4**) was not only in breach of Section 27 of the Leadership Code Act but was also contravening Article 66(1) of the Constitution and Section 2 of the Leadership Code Act by doing as he did on the afternoon of 4th March 2011.

In view of the fact that Mr Jay Ngwele decided to devote some time out of his normal official duties to be at a wrong place at 3pm he was not supposed to instead of devoting his whole time and attention to perform his duties as the advisor to the Minister, he was definitely trespassing on the Daily Post’s premises. In so doing, he decided to engage himself in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out or had carried out the duty imposed by Article 66(1) of the Constitution, his flagrant disregard of the requirements of Article 66 of the Constitution is inexcusable and unacceptable. Indeed, the fact that Mr Jay Ngwele decided to take the law into his own hands in collaborating with his colleague leader and supporters in the commission of the criminal offences has inevitably the effect of not only calling his official and personal integrity into questions, demeaning his office or position as advisor to Minister of State but also putting in danger and diminishing the respect and confidence in the integrity of the Government of the day under the hegemony or leadership of Prime Minister Sato Kilman.

5.0.0 BRIEF OUTLINE OF EVENTS

5.1.0 On 4th March 2011 at around 3pm, Honourable Harry Iauko as Minister of Infrastructure and Public Utilities angrily burst into Mr Marc Neil Jones’ Office without notice and started arguing with him over certain issues being continuously carried or reported in the Vanuatu Daily Post Newspaper – those which he claimed were defamatory and unfair. A few seconds later a group of his ministerial cabinet staff and some supporters stormed the same office with some of them having the intention of assaulting and causing damage in support of their leader (Minister Iauko).

5.2.0 Upon carrying out an investigation into the matter, the Police finally laid various charges against those being implicated in the commission of the criminal conducts at the Daily Post office and sent the completed file to the Prosecution Office for vetting and prosecutorial filing at the Magistrates Court. In the judicial decision as rendered on 29th June 2011 (**EXHIBIT 4**) the prosecuting Senior Magistrates Rita Bill Naviti mentioned on page 2 that:

The evidences within the files provided by the prosecution show that one of the defendant grabbed Mr. Marc Neil Jones by the neck and another punch[ed] and kicked him. One of the daily post personnel managed to control the situation when he shouted "stop, stop" in the language of Tanna, while Mr. Marc Neil Jones was struggling to breath. During the struggle damages were caused to the chairs, computers and office stationaries. As they left Mr. Harry Yauko looked [at] Mr. Robson Willie who is from Tanna and told him [in] the language of Tanna "I will kill you". Mr. Marc Neil Jones was examined and medical certificates and photos were produced to the court to show seriousness of the incident

5.3.0 Subsequently, those persons being implicated in the above mentioned incident, were charged, convicted and sentenced accordingly as follows:

5.3.1 As a leader pursuant to Article 67 of the Constitution (**EXHIBIT 4**) Mr. Harry Iauko was charged with:

- ❖ Unlawful assembly contrary to Section 69,
- ❖ Unlawful entry contrary to Section 143,
- ❖ Criminal trespass contrary to Section 144,
- ❖ Aiding and abetting intentional assault on Marc Neil Jones contrary to Section 107(b), and
- ❖ Aiding and abetting malicious damage to property belonging to Daily Post Newspaper contrary to Sections 30 and 133 of the Penal Code Act.

He pleaded guilty to Aiding and abetting assault and damages whereas entered a non-guilty plea for the first three (3) charges. Consequently, the Minister was convicted on two counts or charges and ordered to pay fines respectively.

Being convicted and sentenced by the Magistrates Court on 29 June 2011, his conviction as a leader is in itself in breach of Section 27(1) of the Leadership Code Act. To substantiate such impeachment, it is sufficient for the prosecution to show that Mr Harry Iauko was at the time of the commission of the two criminal offences a Minister of State. In fact, Honourable Harry Iauko was appointed as a Minister of State on 13th February 2011. Please Refer to copies of his:-

- Instrument of Appointment, (**EXHIBIT 1**)
- Oath of Allegiance, and (**EXHIBIT 2**)
- Official oath (**EXHIBIT 3**)

On the date of the commission of the offences (4 March 2011) for which he was convicted of by the Magistrates Court, he was duly Minister for Infrastructure and Public Utilities and as such, a leader under Article 67 of the Constitution.

On conviction, Honourable Harry Iauko as a leader under the Leadership Code is in breach of Section 27(1)(a) and (2)(h) of the Leadership Code Act. The penalties for breaching this particular provision of the Leadership Code

Act are stated in Sections 40, 41, 42 and 43 of the Leadership Code Act 1998, particularly Section 40(1) and if the Court considers that breach of the Code as serious in the sense that the leader's conduct was significantly below what would be expected of a leader then it may order that particular leader's dismissal from office under Section 41 of the Code. As such and in the event that Section 41 of the Leadership Code Act is being enforced herein then, it only follows that Sections 42 and 43 of the Code will also be applied to the case of Honourable Harry lauko.

5.3.2 As a political advisor to the Minister of Infrastructure and Public Utilities, Mr. Jay Ngwele together with Bernard Athen, and Bob Worek Lovo were equally charged with:

- ❖ Unlawful assembly contrary to Section 69,
- ❖ Unlawful entry contrary to Section 143,
- ❖ Criminal trespass contrary to Section 144 of the Penal Code Act.

To which they pleaded guilty, and were convicted and sentenced to pay fines respectively (Refer to **EXHIBIT 4**).

5.3.2.1 Mr Jay Ngwele was charged, convicted and sentenced by the Magistrates Court on 29th June 2011. His conviction as a leader by virtue of his support in Minister lauko's misconduct in office on 4th March 2011 by the commission of the above criminal offences, is in breach of Section 27 of the Leadership Code Act. To substantiate such impeachment, it is sufficient to demonstrate that Mr Ngwele was at the time of the commission of the criminal offences serving Minister lauko in the Ministry of Infrastructure and Public Utilities and has committed the above mentioned criminal offences for which he was charged, convicted and sentenced (Refer to **EXHIBIT 4**).

Mr Jay Ngwele signed his contract of employment within the Ministry of Infrastructure and Public Utilities on 3rd day of March 2011 Attached as **EXHIBIT 5** is a copy of the employment agreement.

By virtue of his appointment as Political Advisor to the Minister in the Ministry of Infrastructure and Public Utilities, he was a leader under section 5(d) of the Leadership Code Act.

On the date of the commission of the offence (04 March 2011), Mr Ngwele was a leader by virtue of his appointment on 3rd day of March 2011 as the Political Advisor to the Minister in the Ministry of Infrastructure and Public Utilities.

As a leader being convicted of the above mentioned offences, Mr Ngwele has breached Section 27(1)(a) and both Section 2 of the Leadership Code Act and Article 66 of the Constitution. The penalties for breaching this particular provision of the Code are stated in Sections 40, 41, 42 and 43 of the Leadership Code Act 1998. As such, Mr Ngwele may pay a fine (not exceeding VT5 million) or be imprisoned (not exceeding 10 years) or lose his entitlement benefits, be dismissed from office or be disqualified from future office, as deemed fit by the Court.

5.4.0 As the result of their convictions, both leaders consisting of Minister Harry lauko and political advisor Jay Ngwele have impeached Section 27(1) of the Leadership Code Act which provides that:

27(1) "A leader who is convicted by a court of an offence under the Penal Code Act [CAP135]... 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"

The convicted Harry lauko was appointed a State Minister on 13th February 2011 (**EXHIBIT 1**) whereas the Prime Minister Sato Kilman appointed the convicted political advisor Jay Ngwele on 3rd March 2011 (**EXHIBIT 5**).

As such, it is only proper that both convicted persons be prosecuted under the Leadership Code Act by the Public Prosecutor for the respective breaches of the Code and any other laws..

6.0.0 SUMMONS AND INTERVIEWS WITH PERSONS BEING CONVICTED BY MAGISTRATES' COURT

6.1.0 This public report is prepared and issued on the basis of the rendered Magistrates Court judgement of the Criminal Case No.80 of 2011 dated 29th June 2011. Therein, leaders and persons other than leaders have been convicted and sentenced by the Court – that which is in contravention to both Sections 27 and 30 of the Leadership Code Act. As such, the Ombudsman has given to each convicted person an opportunity to provide a statement on the possible prosecution under the Leadership Code Act for impeachment – that which is in line with the principle of natural justice. In so doing, the Ombudsman has issued summons or notices to witness requiring each person to attend in person before the Ombudsman on a particular given date and time. Before him, each person was given the right either to voice his concerns, if any, regarding the potential prosecution under the Leadership Code Act or not to speak but declare before him to only speak in a court of law.

6.1.1 On 17th August 2011, the Ombudsman has formally requested Honourable Harry lauko to furnish copies of the appointment or contract of the "political appointees" and other persons with no proper contract with the Minister who took part in his conduct that was in breach of not only Section 27 but 30 of the Leadership Code Act respectively (**EXHIBIT 6**).

6.1.2 On 18th August 2011 at 15:45pm Honourable Harry lauko received the Ombudsman's summon (**EXHIBIT 7**) requiring him to appear before him on 2nd September 2011 at 9:00 o'clock in the morning. Honourable Harry lauko was required to pursuant to Article 62(3) of the Constitution and Section 22 of the Ombudsman Act to bring with him and produce the following documents or papers he has in his possession or control, these being documents or papers which in the opinion of the Ombudsman, relate to a matter being enquired into by the Ombudsman and that may be in his possession or control:

1. Copies of the appointment or contract of employment of the political appointees namely Jay Ngwele, Manipen Nokai, Nauna Eta, Johnathan Wako, Bernard Athen and Bob Worek Lovo.
2. All other documents or papers relevant to this matter.

However, the Minister of Infrastructure and Public Utilities Honourable lauko has miserably failed to comply with Section 23 of the Ombudsman Act on the failure to comply with notice subsection (1) which reads: “*If a person who has been served with a notice under Section 22(a) fails or refuses to appear before the Ombudsman, the Ombudsman may apply to the Court for the person to be summoned to appear before the Court or to furnish to the Court the information or documentary evidence requested in the notice*”. Consequently, the investigator dealing with the case has, indeed, compiled a sworn statement to that effect (**EXHIBIT 10** Refer also to **EXHIBIT 8** being Mr. Lokin Malas’ statement of witness and Affidavit of service).

- 6.1.3 On 7th September 2011 the Ombudsman issued a summons to Mr. Jay Ngwele (**EXHIBIT 11**) requiring him to attend in person at the office of the Ombudsman on 9th September 2011 at 2:000pm to provide his opinion or statement in relation to the impeachment under the Leadership Code Act – that which is in line with the principle of natural justice. Once before the Ombudsman on the above date and time, he had the right either to voice his concerns, if any, regarding the potential prosecution under the Leadership Code Act or not to speak but declare before him to only speak out in a court of law.

Furthermore, he was required to provide a copy of his contract of employment within the Ministry of Infrastructure and Public Utilities under the leadership of Honourable Harry lauko.

On the above mentioned date and time Mr. Jay Ngwele attended in person before the Ombudsman. Please refer to the signed oath and statement of interview and are attached as **EXHIBIT 12**

- 6.1.4 In a letter dated 21st September 2011 the Acting First Political Advisor Mr. John Nariovi within the Ministry of Infrastructure and Public Utilities has, on the Minister’s instruction, advised the Ombudsman Office of the ministerial trip overseas as of 21st September to 2nd October 2011. Mr Nariovi gave his assurance that upon his return to the country, the Honourable Minister Harry lauko would be in a position to respond to the Ombudsman’s queries. However, to date (20/10/2011) nothing constructive has transpired.

7.0.0 FINDINGS

- 7.1.0 **Finding 1: The Minister of Infrastructure and Public Utilities Honourable Harry lauko and Political Advisor Jay Ngwele as leaders pursuant to Article 67 of the Constitution and Section 5(d) of the Leadership Code Act respectively were in breach of Section 27 of the Leadership Code Act.**

Section 27 of the Leadership Code Act No.2 of 1998 provides that:

A leader who is convicted by a court of an offence under the Penal Code Act CAP 135 and is 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.

Indeed, on 29th June 2011 both Honourable Minister of Infrastructure and Public Utilities Mr Harry Iauko, MP for Tanna constituency and Mr Jay Ngwele were convicted of the charges of aiding and abetting intentional assault on Marc Neil Jones contrary to section 107(b), and aiding and abetting malicious damage to property belonging to Daily Post Newspaper contrary to Sections 30 and 133 of the Penal Code Act; and unlawful assembly contrary to Section 69, and unlawful entry contrary to Section 143, and criminal trespass contrary to Section 144 of the Penal Code Act respectively (**EXHIBIT 4**).

Being so convicted pursuant to Section 27 of the Leadership Code Act, both Harry Iauko and Jay Ngwele in associations with other persons other than leaders have impeached the Leadership Code Act and are liable to be dealt with in accordance with Sections 40, 41, 42 and 43 of the Leadership Code Act in addition to any other punishment that may be imposed under any other Act..

7.2.0 Finding 2: Honourable Harry Iauko as Minister of Infrastructure and Public Utilities has impeached both Article 66 of the Constitution and Section 2 of the Leadership Code Act.

That on or about 4th March 2011 Honourable Harry Iauko conducted himself in his public life, in such a way that he -

- (a) demeaned his office or position as a Minister of State,
- (b) allowed his public or official integrity and his personal integrity to be called into serious question; and
- (c) endangered and diminished respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

In that he did, without notice and in associations with other persons, burst into the Office and started arguing with Mr Marc Neil Jones as Publisher of Vanuatu Daily Post and committed criminal offences of aiding and abetting intentional assault and aiding and abetting malicious damage to property belonging to Daily Post Newspaper for which he was convicted on 29 June 2011 by the Magistrates Court (**EXHIBIT 4**). Thereby, Honourable Harry Iauko has impeached both Article 66 of the Constitution and Section 2 of the Leadership Code Act.

7.3.0 Finding 3: Honourable Harry Iauko may have breached Section 49 of the Ombudsman Act by refusing or neglecting to produce documents before the Ombudsman and by failing to provide a justifiable excuse for non-attendance.

By not appearing in person before the Ombudsman on 2nd September 2011 at 9:00am to produce the requested documents and information and by not

providing sufficient excuse(s) for non-attendance, Honourable Harry Iauko may have breached Section 49 of the Ombudsman Act.

7.4.0 Finding 4: Mr Jay Ngwele as a political advisor to the Minister of Infrastructure and Public Utilities has impeached both Article 66 of the Constitution and Section 2 of the Leadership Code Act.

That on or about 4th March 2011 Mr Jay Ngwele conducted himself in his public life, in such a way that he -

- (a) demeaned his office or position as a political advisor,
- (b) allowed his public or official integrity and his personal integrity to be called into serious question; and
- (c) endangered and diminished respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

In that he did, without notice and in associations with other persons, also go into the Office of Marc Neil Jones – those which amounted to his criminal offences of unlawful assembly, unlawful entry and criminal trespass for which he was convicted on 29th June 2011 by the Magistrates Court (**EXHIBIT 4**). Therefore he has impeached Article 66 of the Constitution and section 2 of the Leadership Code Act.

8.0.0 RECOMMENDATIONS

8.1.0 RECOMMENDATION 1:

Having breached Section 27 of the Leadership Code Act No.2 of 1998 and having laid proper charges (Refer to page 6 to 12 of this Report), the Ombudsman recommends that both Harry Iauko and Jay Ngwele be prosecuted by the Public Prosecutor and be dealt with in accordance with not only Sections 40(1) but also 41, 42 and 43 of the Leadership Code Act. In fact, Section 42 of the Leadership Code Act provides that “Where a 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”. Furthermore, in situation where 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.

Consequently, upon their conviction on the basis of the impeachment of Section 27 of the Leadership Code Act, both Honourable Harry Iauko and Mr Jay Ngwele should not only be punished in accordance with Section 40(1) but also Section 41(1) of the Leadership Code Act as their conducts on 4th March 2011 were significantly below what would be expected of the national leaders of their calibres. Subsequent to inflicting this punishment, it only follows that Sections 42 and 43 of the Leadership Code Act will also be taken into consideration as the Court deems fit and appropriate.

8.2.0 RECOMMENDATION 2:

Honourable Harry Iauko should not only be prosecuted by the Public Prosecutor for his refusal or negligence to attend in person before the Ombudsman for the production of the requested information and documents on 2nd September 2011 but also for his non-provision of sufficient excuse(s) for non-attendance on the respective date and time – that which is contrary to Section 49 of the Ombudsman Act.

Accordingly, pursuant to Section 34(2) of the Leadership Code Act a copy of this Public Report is given to the Public Prosecutor for consideration and appropriate action under Sections 35, 37 and 38 of the Leadership Code Act.

Dated this 21st day of October 2011

Pasa TOSUSU
OMBUDSMAN OF THE REPUBLIC OF VANUATU

9.0.0 INDEX OF APPENDICES

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4. Magistrates Court Decision of 29 June 2011
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APPENDIX A

CONSTITUTION OF THE REPUBLIC OF VANUATU

ENQUIRIES BY OMBUDSMAN

62. (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.

FINDINGS OF THE OMBUDSMAN AND REPORTS

63. (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 on his findings. He may draw the attention of Parliament to any defects which appear to him to exist in the administration.

CONDUCT OF LEADERS

66(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—

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- (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.
- 66(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 sub article (1).

DEFINITION OF A LEADER

- 67 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.

LEADERSHIP CODE ACT

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).

(3) Article 68 requires Parliament by law to give effect to the principles of Chapter 10.

5. Leaders

In addition to the leaders referred to in Article 67 of the Constitution the following are declared to be leaders:

- (a) members of the National Council of Chiefs;
- (b) elected and nominated members of local government councils;
- (c) elected and nominated members of municipal councils;
- (d) political advisors to a Minister;
- (e) directors-general of ministries and directors of departments;
- (f) members and the chief executive officers (however described) of the boards and statutory authorities;
- (g) chief executive officers or secretaries-general of local government;
- (h) the town clerks (or their equivalent in name) of municipal councils;

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- (i) persons who are:
- (i) directors of companies or other bodies corporate wholly owned by the Government; and
- (ii) appointed as directors by the Government;
- (j) the Attorney General;
- (k) the Commissioner and Deputy Commissioner of Police;
- (l) the Solicitor General;
- (m) the Public Prosecutor;
- (n) the Public Solicitor;
- (o) the Ombudsman;
- (p) the Clerk of the Parliament;
- (q) the Principal Electoral Officer;
- (r) the Auditor-General;
- (s) the Chairperson of the Public Accounts Committee;
- (t) the Chairperson when acting in that capacity of the Tenders Board;
- (u) members of the Public Service Commission;
- (v) members of the Teaching Service Commission;
- (w) members of the Police Service Commission;
- (x) members of the Electoral Commission;
- (y) the Commander of the Vanuatu Mobile Forces.

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.

(2) The offences are:

- (a) intentional homicide;
- (b) intentional assault causing death or damage of a permanent nature;
- (c) rape or attempted rape;
- (d) abduction;
- (e) incest;
- (f) sexual intercourse with a girl under care or protection;
- (g) indecent assault;
- (h) a serious intentional assault;
- (i) perjury,
- (j) making a false statement;
- (k) fabricating or destroying evidence;
- (l) conspiracy to defeat justice;
- (m) corruption and bribery of officials;
- (n) theft or misappropriation or false pretences;
- (o) fraud or fraudulently obtaining credit;
- (p) receiving property dishonestly obtained;
- (q) demanding with menaces;
- (r) robbery;
- (s) extortion;
- (t) forgery or uttering forged documents;
- (u) unlawful discrimination;
- (v) unlawfully entering;
- (w) any of the offences under Part 15 of the Representation of the People Act [Cap. 146];
- (x) attempting to commit any of these offences.

(3) This section does not limit the power of a court to deal with a person under any other Act.

30. Offences by other persons

(1) A person other than a leader who:

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(a) takes part in conduct that is a breach of this Code; or
(b) obtains a benefit, directly or indirectly, from an act or omission that is a breach of this Code;
is guilty of a breach of this Code.

(2) A person other than a leader must not exercise undue influence over or in any other way bring pressure to bear on a leader, so as to influence, or attempt to influence, the leader to act in a way that is in breach of this Code.

(3) A person who is found guilty of a breach under this section is liable, on conviction, to a penalty of.

(a) a fine not exceeding VT 5,000,000; or
(b) imprisonment for a period not exceeding 10 years;
or both the fine and imprisonment.

(4) If the person obtains a benefit as a result of acting in breach of this section, the court may make an order that the benefit be recovered in accordance with section 45 or 46.

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
(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.

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35. Public Prosecutor to consider Ombudsman's Report

(1) The Public Prosecutor must:

- (a) consider the report; and
- (b) if within 14 days of receiving the report, is of the opinion that further investigation is required, refer the report to the Commissioner of Police for that purpose; and
- (c) after receiving the results of the investigation, decide whether there are sufficient grounds to prosecute the leader or any other person.

(2) If, after considering the report under subsection (1)(a), or after considering the results of the investigation under subsection (1)(c), the Public Prosecutor decides the complaint is vexatious, frivolous or trivial the Public Prosecutor may determine not to prosecute a leader. If the Public Prosecutor does decide not to prosecute on those grounds he or she must follow the procedure set out in section 37(3).

(3) Where the complaint is against the Public Prosecutor the Attorney General will carry out the duties and obligations of the Public Prosecutor in accordance with the procedure set out in this Part.

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.

(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.

39. Conduct of proceedings

(1) Proceedings against a leader for a breach of this Code, or against another person under section 30, are to be conducted in the same way as any other criminal proceeding.

(2) Proceedings under sections 45 and 46 are to be conducted in the same way as proceedings for the recovery of a debt or other property.

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(3) Proceedings under this Act may in the Court's discretion be heard by 3 judges sitting together.

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

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

12. Ombudsman's findings

(1) The Ombudsman may, after due enquiry and on reasonable evidence, conclude that conduct was:

- a) oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
 - b) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- or

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- c) contrary to natural justice; or
- d) conduct for which reasons should be given but were not.

(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].

(3) The conclusions that the Ombudsman may make under this section are in addition to the conclusions referred to in Article 63(2) of the Constitution.

34. Publication of reports

(1) Subject to subsection (2), the Ombudsman must:

- a) make public by way of a written report the results of any enquiries carried out by him or her, including any findings, recommendations and opinions; and
- b) furnish the complainant (if any) with a copy of his or her report.

(2) The Ombudsman may decide to keep a report, or part of it, confidential to the Prime Minister, or the person in charge of the government agency the subject of the enquiry, on the grounds of public security or public interest.

(3) If the Ombudsman decides to keep a report, or part of it, confidential he or she must inform the complainant (if any) in writing of his or her findings without in any way prejudicing the grounds on which the Ombudsman decided to keep the report, or the part, confidential.

49. Failure to appear etc.

A person who has been given a notice under section 22 to attend as a witness or to produce documents before the Ombudsman is guilty of an offence if the person without sufficient excuse:

- a) refuses or neglects to do so, or
- b) refuses to be sworn or refuses to answer any questions relevant to the matters being enquired into or put to him or her by the Ombudsman or an officer acting under a delegation made under section 14.

Penalty: VT 100,000 or imprisonment for 6 months or both.