



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON THE BREACH

**OF THE LEADERSHIP CODE ACT
BY MALON HOSPMANDER
AND ANDRE LESINES**

15 October 2010



REPUBLIC OF VANUATU

0119/2010/03

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SUMMARY

“Judas Iscariot, who was one of the twelve, went to the chief priests in order to betray him [Jesus] to them. When they heard it, they were greatly pleased, and promised to give him money. So he began to look for an opportunity to betray him” (Mark 14:10-11).

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 14 March 2008 two prominent leaders: Malon Hospmander and Andre Lesines were convicted by the Supreme Court in a Criminal Case No.77 of 2007 [Public Prosecutor v Andre Lesines and Malon Hospmander] on the charge of aiding forgery between 1 June 2007 and 27 June 2007 – that which is prohibited by both sections 140 of the Penal Code Act and section 27(2)(t) of the Leadership Code Act.

The accused persons Honourable Malon Hospmander and Andre Lesines did an act which assisted an Indo-Fijian man by the name of Salendra Sen Sinha to commit forgery. The act being relied upon by the prosecution was the supply to him (Salendra Sen Sinha) of the cheque number 2154172 which was the subject of forgery – the supply of the very raw material on which forgery was carried out, and in that way assisted the forgery. Of course, the Indo-Fijian could not have forged that cheque unless it was given to him. And as such, both leaders Honourable Malon Hospmander and Mr Andre Lesines have breached section 27 of the Leadership Code Act No.2 of 1998 – that which was subsequently conducive to their conviction at the Vanuatu Supreme Court on 14 March 2008.

Upon that conviction the Ombudsman has made the subsequent findings:

1. That former MP Malon Hospmander and First Political Advisor Andre Lesines as leaders pursuant to Article 67 of the Constitution and section 5(d) of the Leadership Code Act No.2 of 1998 respectively were in breach of section 27 of the Leadership Code Act.
2. That apart from being in breach of section 27 of the Leadership Code Act, Messrs Malon Hospmander and Andre Lesines were also liable to be dealt with under sections 41 and 42 in addition to any other punishment that may be imposed under any other Act.
3. That Salendra Sen Sinha has breached section 30 of the Leadership Code Act No.2 of 1998 by engaging himself in the act of forgery – the very conduct that is prohibited under both sections 27(2)(t) of the Leadership Code Act and 140 of the Penal Code Act [CAP135]

Despite having such breaches, Mr Salendra Sen Sinha cannot be and will never be extradited from Fiji to Vanuatu to face judicial charges as section 56(1)(3)(b) of the Extradition Act [CAP287] is defective. Section 56(1) provides that a person surrendered to Vanuatu must only be detained or tried in Vanuatu for an offence for which he/she was surrendered. Furthermore,

subsection (3)(b) of the same Act provides that subsections (1) and (2) do not apply if the person has left, or has had the opportunity of leaving Vanuatu. As such and since Mr Salendra Sen Sinha did manage to make his way out of the country avoiding police security, Mr Salendra Sen Sinha is now a free man according to section 56(3)(b) of the Extradition Act.

4. That pursuant to section 56 of the Extradition Act [CAP287]

“(1) A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than (a) an offence for which the person was surrendered; or (b) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or (c) another offence for which the surrendering country consents to the person being detained or tried.

(2) A person surrendered to Vanuatu must not be detained in Vanuatu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Vanuatu.

However, the above subsections are not applicable as provided in subsection (3) of the Act if (a) the country surrendering the person to Vanuatu consents to the person to be so detained, and tried or surrendered; or (b) the person has left, or has had the opportunity of leaving Vanuatu. In fact, while considering the case of Mr Salendra Sen Sinha, he has left or has had the opportunity of leaving Vanuatu. Thus, Mr Salendra Sen Sinha is now a free man – that which is, indeed, in contravention to the spirit and purpose of this Act. As such, section 56(3) of the Extradition Act is defective.

5. That Mr Sandie Leo was in breach of section 30 of the Leadership Code Act by allowing the cheque number 2154172 amounting to VT11,805,000 to be deposited in his bank account by Mr Salendra Sen Sinha at the National Bank of Vanuatu and was withdrawn within a very short time afterwards.

On the basis of the above findings, the Ombudsman recommends that:

1. The Public Prosecutor lays charges against Malon Hospmander and Andre Lesines for breach of section 27 of the Leadership Code Act No.2 of 1998.
2. Having breached section 27 of the Leadership Code Act No.2 of 1998, both convicted leaders be dealt with in accordance with sections 41 and 42 of the Leadership Code Act No.2 of 1998. 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*”.
3. The Public Prosecutor lays charges against Mr Sandie Leo for breach of section 30 of the Leadership Code Act No.2 of 1998 for assisting the forgery of the cheque number 2154172 to be deposited in his bank account at the Vanuatu National Bank and withdrawn within a short time. Indeed, section 30(1) of the Leadership Code Act provides that a “*person other than a leader who: (a) takes part in a conduct that is a breach of this Code is guilty of a breach of this Code*”.

4. In conjunction with the State Law Office, the Ministry of Foreign Affairs may consider:
 - (a) the presentation of a bill to Parliament for an amendment of section 56(3) of the Extradition Act – that which is in contravention to the purpose and spirit of the Act; and
 - (b) the ratification of the United Nations Convention Against Corruption whose Article 44 provides for extradition on the basis of further consultation and exchange of information relevant to the allegation or criminal offence. Only then will it be possible to extradite any person such as Mr Salendra Sen Sinha to face trial in Vanuatu for committing forgery with the assistance of both Malon Hospmander and Andre Lesines.

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1. JURISDICTION

- 1.1 The Constitution, the Leadership Code Act [CAP 240] and the Ombudsman Act [CAP 252] allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes former Member of Parliament Honourable MALON HOSPMANDER and former political advisor Mr ANDRE LESINES to the Deputy Prime Minister and Minister for foreign Affairs on their conducts as leaders of the Republic of Vanuatu. Despite the fact that they were given the trust to maintain, protect the financial welfare of the Republic, they both fell short by deliberately breaching the trust placed upon them by the people of Vanuatu.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 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.
- 2.2 The scope of this investigation is to establish the facts surrounding and leading to the conviction on 14 March 2008 of Honourable Malon Hospmander MP for Malekula and Mr Andre Lesines who was first political advisor to the former deputy Prime Minister Sato Kilman for aiding forgery when they assisted a Fiji national SALENDRA SEN SINHA to make a false document namely a Government cheque by making alterations to the document with intent that it be acted upon as genuine and to determine whether Malon Hospmander and Andre Lesines are leaders who have both breached the Leadership Code when they were convicted by the Supreme Court of Vanuatu and are liable to be charged under section 27 of the Leadership Code Act [CAP 240].
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS

- 3.1 Relevant parts of the following laws are reproduced in the attachment as **Appendix A:**
- Article 67 of the Constitution
- Sections 5, 27, 30, 41, 42 of the Leadership Code Act [CAP 240]
- Sections 30, 139, 140 of the Penal Code Act [CAP 135]
- Section 56 of the Extradition Act [CAP287]

4 BACKGROUND INFORMATION

A. ANDRE LESINES

- 4.1 On 22 January 2007 Mr Andre Lesines signed his contract of employment as First Political Advisor to the Deputy Prime Minister and Minister for Foreign Affairs Honourable Sato Kilman. It was then concluded that such a contract began on 1 January 2007.

By this appointment Mr. Lesines became a leader by virtue of section 5(d) of the Leadership Code Act [CAP 240]. Attached as **Appendix B** is the copy of his contract of employment as First Political Advisor.

- 4.2 Between 1 June 2007 and 27 June 2007 both Malon Hospmander and Andre Lesines were leaders pursuant to Article 67 of the Constitution and section 5(d) of the Leadership Code Act No.2 of 1998 respectively.
- 4.3 On 7 December 2007, the Public Prosecutor laid charges of aiding forgery contrary to sections 30 and 140 of the Penal Code Act [CAP 135] against Malon Hospmander and Andre Lesines. Attached as **Appendix C** is the copy of the charge Sheet.

B. MALON HOSPMANDER

- 4.4 On 19 July 2004 the Electoral Commission declared Mr Malon Hospander in the Official gazette as an elected representative of Malekula constituency to the National Parliament of Vanuatu. Attached as **Appendix D** is the copy of the list of persons declared by the Electoral Commission as appeared in the Official Gazette No. 20 of 2004. Included in the list and underlined is the person Malon Hospander from the People's Progressive Party.
- 4.5 On 2004, Malon Hospmander was duly sworn in at the Vanuatu Parliament House as a member of Vanuatu Parliament. As one of the members of Parliament, he was a leader pursuant to Article 67 of the Vanuatu Constitution
- 4.6 On 25 May 2007 Honourable Malon Hospander filled a micro project application for the sum of VT500,000 to assist the people of Unua Community on Malekula. Every member of Parliament is entitled to an allocation of VT2,000,000 per annum for the use and benefit of the community he/she represents.
- 4.7 On 28 May 2007 the Speaker of Parliament approved the application. Attached as **Appendix E** is the copy of the approved application form.
- 4.8 On 4 April 2007, a local purchase order (LPO) was issued by the National Parliament for an amount of VT500.000 to the Unua Community. Attached as **Appendix F** is the copy of the LPO.
- 4.9 On the same date a Government cheque numbered 2154172 (Reserve Bank of Vanuatu) for VT500.000 was issued to MP Malon Hospmander.
- 4.10 In the Daily Post Issue No.2077 of Friday 13 July 2007 it was reported that the National Bank of Vanuatu (NBV) has been defrauded of quite a substantial amount of money after three Government cheques were fraudulently cashed at the bank. The fourth cheque was refused by the bank on Monday 9 July 2007. In fact, the three cheques were Vanuatu government GPVs and those using them had apparently modified them by increasing the amounts that were supposed to have been drawn. They were cashed at the Bank on three separate occasions. The cash that were issued to some communities were less than the amount that were actually stated in the cheques and were cashed at the bank. Investigations also revealed that those involved in this alleged fraud included an expatriate by the name of Salendra Sen Sinha (being an Indo-Fijian citizen) and some nationals/locals. A suspect was arrested by the police while the expatriate involved has allegedly fled the country.

- 4.11 As the issue became public knowledge in the media, Honourable Peter Vuta, MP for Ambae had, on 26 November 2007, taken the initiative to move a Motion No.3 of 2007 during the second extraordinary session of Parliament for 2007 – that which was seconded by Honourable Eric Sadrac, MP for Banks and Torres requesting a parliamentary disciplinary action against Honourable Members Dunstan Hilton, Noel Tamata and Malon Hospmander (**APPENDIX G**). The motion created a deadlock between both the Government and Opposition parliamentarians on whether or not those said members of parliament should attend the session. In spite of such a dispute, it is clearly stipulated in the motion that the said members of Parliament

“have brought disrepute to the Institution of Parliament when their cheques, drawn from the Members of Parliament Allocation Fund, were used to defraud the Parliament and consequently the Government of the Republic of Vanuatu of Public Funds, thus, causing public outcry and bringing shame to the good name of Parliament”.

Finally, the motion was passed with 32 votes in favour out of 47 Members of Parliament being present. Furthermore, it has been reported that during the debate on the motion the three suspended MPs were prevented from entering Parliament Chamber by the Sergeant-at-Arms.

5. OUTLINE OF EVENTS

Between 1 June 2007 and 27 June 2007, the cheque numbered 2154172 as recorded in the Department of Finance for VT500,000 was subsequently changed from VT500,000 to an amount of VT 11,805,000.

- 5.1 The cheque was picked up from the office of Willy Watson at Parliament on or about the 5th or 6th June 2007. Instead of depositing the cheque into the Unua Community’s bank account at NBV having three signatories (being Mr Hospmander and the other two were a gardener and a filing clerk at Ministry of Foreign Affairs), it was given to an Indo-Fijian man named Salendra Sen Sinha
- 5.2 On 27 June 2007 the same cheque No.2154172 – that which was given to Salendra was presented at NBV in Port Vila and deposited into the account of one Sandy Leo. Mr Leo admitted that the cheque had been altered. It was then made out to him (Leo) as payee and its amount had been also altered to VT11,805,000. Mr Sandie Leo’s bank account was credited with that very amount and was withdrawn within a very short time.

The case against MP Hospmander was that Salendra forged the cheque after it was handed over to him and he (Hospmander) aided him in that forgery by supplying the cheque to him. While acknowledging its handing over, the accused denied that they knew that it would be fraudulently forged.

- 5.3 As there was no direct evidence from the prosecution witnesses to substantiate the charge for each accused, the Court had to consider the evidence relating to the circumstances in which the cheque was handed over. In order to draw conclusion as to evidence relating to the charge, the Supreme Court had to rely on (a) what the accused had told other witnesses about it and (b) on what each of them said about it in their own evidence in court. The Court also drew inferences by way of deductions (not retroductions) from the surrounding circumstances which have been proven.

While considering the issue, the Court reminded itself that any statements made by an accused outside the Court that was, any statement to the

parliamentary employees or any other police statements, was admissible evidence only against the person who made it but not against the other one. As such, the evidence of what Mr Hospmander said to Willy Watson and Lino Sacsac was evidence only against himself, not against Mr Lesines. Similarly, the evidence of what each of them revealed in their police statements was only evidence against the person who made that statement.

5.4 **FIRST ACCOUNT AS GIVEN TO MESSRS WILLY WATSON AND LINO SACSAC:**

That upon hearing the news on the alleged fraud case, Mr Willy Watson asked MP Hospmander to attend to his Office in person in order to explain to him what had happened. Upon his attendance therein, Mr Lino Bulekuli dit Sacsac was also called in to witness what was said.

5.4.1 In cross examination Mr Watson revealed that Mr Hospmander said¹:

“that he got a cheque, he went down to meet Salendra at the Waterfront, (meaning the Waterfront Bar and Restaurant), that he gave the cheque to Salendra there, and that he received from Salendra an amount of cash greater than the value of the cheque”.

By witnessing what was to be said by Honourable Hospmander, Mr Sacsac said that upon getting “the cheque he went to the Ministry of Foreign Affairs and he met the 1st Political Advisor Mr Andre Lesines who asked him if he had the cheque with him. The Honourable Member’s answer was yes. As such, Mr Lesines *“told him that if you like you can make a bit of money from the cheque. I will give you a mobile phone number and then the Political Advisor gave him the phone number”*².

Upon ringing that [given] telephone number, someone answered wanting to know who was on the line and upon identifying himself as the Member of Parliament, he (Hospmander) further said “I am interested to see you”³. By that point in time, Honourable Hospmander did not yet know the identity of the person on the phone. Honourable Hospmander went on to say that he made an appointment on the phone to meet the person at the Waterfront. Out there, he met an Indian man who, already sitting at a table called out to him (Hospmander) and invited him to the table. Mr Salendra Sen Sinha ordered some drinks. And upon enjoying or savouring them, Mr Salendra asked “do you have that thing with you”⁴. The reply was yes but reiterated that “before I give the cheque you give me the VT1,000,000 first”⁵. Upon conditionally making such a request, Mr Salendra *“gave him VT1,000,000, and the Honourable Member handed over the cheque”*⁶.

That upon giving that account or story at Parliament’s office, Mr Willy Watson asked Hospmander “do you know the cheque does not belong to the Unua Community?”⁷ To which he answered “Mi mi wantem VT1,000,000 nomo”⁸ and that was Mr Sacsac’s evidence.

¹ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 6.

² *Ibid* 7.

³ *Ibid*.

⁴ *Ibid*.

⁵ *Ibid*.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ *Ibid* 8.

5.4.2 In cross examination the defendants' Council Mr Malcolm attempted to deviate the account by saying that it was Mr Lesiness who gave the cheque to the Indo-Fijian at the Waterfront but still Mr Sacsac was adamant reiterating that Honourable Hospmander was referring about himself doing the action of handing over the cheque.

So that was the first account being given by both Messrs Watson and Sacsac on how the cheque was handed over - that which they say was given by Honourable Hospmander.

5.5 THE ACCUSED'S WRITTEN ACCOUNT TO THE POLICE:

On or about 9th August 2007, the accused persons Honourable Hospmander and Lesines were arrested in Malekula and were interviewed by Police Officer Frazer Tambe in Bislama at the Port Vila Police station.

5.5.1 **Mr Hospmander** collected the cheque on 5th June 2007 and brought it with him back to Malekula. While he was there, Mr Lesines rang him up and asked him about the cheque. In the event that he still had it in his possession and had it been given to him, Mr Lesines would have given it to a friend of his, who would in turn give Mr Hospmander an amount of VT1,000,000 for it. Upon hearing this "surprising news" Honourable Hospmander asked Mr Lesines three times whether such information was sure, genuine and true. To this Mr Lesines gave him his assurance of his word. When he (Hospmander) was back in Vila on 27th June 2007, he was picked up by Mr Lesines together with MP Noel Tamata. He said that the cheque was given to Mr Lesiness who set out to hand it over at the Waterfront. On 28th June 2007 Mr Lesines went to Parliament and instead of giving him VT1,000,000 as promised, he (Hospmander) only received VT500,000. The other half was to be given to him the next day but he never received it. Honourable Member further explained that "*Mi agri se mi no gat raet ia blong mi givim personal cheque blong mi i go long narafala man, however follem carelessness mo ignorens blong mi, mi bin givim wetem biliv se mbai mi recibim mo mani i kam*"⁹ Furthermore, he did not know how the amount was altered to VT11,805,000. Had he known that, for sure he would not have given it to Mr Salendra.

5.5.2 **Mr Lesines** did develop an acquaintance with Mr Salendra who, at the end of June 2007, asked if he had VT500,000 in cash to be given him (Salendra) would be in position to pay back VT1,000,000. With that information Mr Lesines called Honourable Hospmander requesting him if he had any money. To this the Member of Parliament said no but that he only got a cheque for the Unua Community.

Upon travelling back to Vila on 27th June 2007 both Mr Lesines with MP Tamata went to pick him up at the airport and headed to the Foreign Affairs Office where discussion was centred around what to do with the cheque. While there Mr Salendra called and asked Mr Lesines to meet him at the Waterfront Bar with the cheque. They did meet there where the cheque was handed over to Salendra but in return did not receive the money. Instead, he was promised to receive it later.

⁹ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 9.

The next day they once again met at the Waterfront while the two MPs were waiting at Parliament. Mr Lesines said to have received only an amount of VT500,000 and the other half was to be given him later. However, Mr Salendra has never done so, despite attempting to get it on more than one occasion prior to flying back to Malekula on 5th July 2007.

In this account Mr Lesines mentioned that he was not aware that the Indo-Fijian man would change the cheque but acknowledged his wrongdoing in handing over the cheque that was in the name of Unua Community to someone else.

This second account is more or less similar to the first one.

5.6 THIRD VERSION OF THE ACCOUNT AS PROVIDED DURING COURT:

5.6.1 Hospmander

The Honourable Member said that he picked up the cheque from Mr Watson's office at Parliament on 5th or 6th June 2007. Having it in his possession, he gave it to Mr Lesines at the Ministry of Foreign Affairs in order for him to cash it. While in Malekula, he rang Mr Lesines so as to find out whether the cheque was already cashed. To this request, the answer was negative. He then flew to Vila on 13th June 2007 and was picked up at the airport by Mr Lesines prior to dropping him at his Kawenu residence.

With regard to the money, he got the cash from Mr Lesines for the cheque of VT500,000 on 14th June 2007. The latter did not mention where he cashed it nor who cashed it. He said that he did not know that the cheque would be given to Mr Salendra – the one who was unknown to him up until the time he received the cash and had no knowledge of any problem associated with the cheque until he came back from an overseas trip to China around mid July 2007.

Mr Hopsmander denied that the caution on the statement had been read to him. He acknowledged having the statement read to him prior to affixing his signature thereon. However, despite signing the document he said that parts of it were true only and parts of it were untrue. In particular, he denied having received VT1,000,000 in cash for the cheque. Furthermore, parts of the signed statement were untrue as he was uncomfortable and ill at ease and frightened in the Police Station.

In cross-examination Mr Hopsmander said that the cheque was given to Mr Lesines thus, it was not possible for him to deposit it at the National Bank in Lakatoro. He not only denied having read about Mr Salendra in the media but also denied having told officer Tambe that he had taken the cheque to Malekula from where Mr Lesines called him to inform him of the man of his acquaintance who could give a million vatu in exchange for the cheque. He alleged to have been frightened at the Police Station – that which was conducive to telling lies.

Upon questioning him about the difference in dates (13th June or 27th June) about when he returned to Port Vila, he replied that it must have been a mistake.

With regard to both Messrs Watson and Sacsac's evidence, Mr Hopsmander denied their evidence saying they were telling lies. He asserted to have gone to Parliament to ascertain the balance of his allocation – that which was VT1,000,000. However, when queried about the reason for which both

persons could have told untruths, Mr Hopsmander could not possibly explain it.

5.6.2 Lesines

In his evidence, Mr Lesines asserted that the cheque was given to him on the afternoon of 5th June 2007 by Mr Hopsmander in his capacity as Chairman of Regional Co-ordinators of Peoples Progressive Party (PPP). He said that Mr Hopsmander did authorize him to cash it later. However, having no withdrawal slip – that which was kept by the other signatory who was the filing clerk of Foreign Affairs, he could not have access to the money. He also asserted that Mr Hopsmander went to Malekula in order to ascertain the needs of the people at Unua. Some time prior to his return to Port Vila, Mr Hopsmander enquired whether or not the cheque had been cashed but was told “No”. He also asked to be picked up from the airport. Upon arrival, Mr Hopsmander was dropped off at his Kawenu house. He then contacted Mr Salendra in order to obtain some cash for the cheque as the banks were already closed that afternoon.

5.6.2.1 He acknowledged having known Mr Salendra as he met him at the Olympic building. On two occasions he took coffee with Mr Salendra. It was during such meeting that the businessman Salendra told him of having businesses in the United States, Fiji and New Zealand. He also made contact with him (Salendra) at Tamanu Beach Resort – that which was in line with the evidence given by a prosecution witness Mr Yannick who was working at Tamanu Beach Resort. Mr Yannick had seen Mr Lesines in company with Mr Salendra there when he (Salendra) picked up a lobster salad that was ordered from Breaka’s Resort.

5.6.2.2 On the night of Wednesday 13 June 2007 Mr Lesines called Salendra to quickly cash the VT500,000 cheque in order to give it to Honourable Member. Some hours later Mr Salendra rang to say that he (Salendra) had VT500,000 in possession and would want to meet him at the Waterfront Bar. He met him there and exchanged the cheque for VT500,000. He denied having received or promised any further payment of another VT500,000.

On 14 June 2007 Mr Lesines gave an amount of VT500,000 cash in an envelope at Parliament House to Honourable Hopsmander. The unlawful receipt of the amounts of money, as proceeds of fraudulent cheque, only came to his knowledge while he was in Malekula. As a result of his involvement, he was arrested at his village, Rano but could not be locked up into Number 6 at Lakatoro due to his poor health condition. Instead, he stayed at a Police Officer’s home overnight before taking a flight to Vila in the custody of a Police Officer and in company with Honourable Hopsmander.

5.6.2.3 Upon arrival to Bauerfield airport, he was handcuffed and put into a police van to be taken to a holding cell at the Police Station for questioning by the Fraud Squad Officer Tambe.

In his statement Mr Lesines described the same process as Mr Hopsmander had relayed with the exception that he was asked whether or not he agreed with what Mr Hopsmander had already said. Mr Lesines did not actually agree with the content of his statement but went on to sign it – this is simply because he was under pressure and afraid because of the situation and events he was implicated in.

5.6.2.4 Upon cross-examination Mr Lesines was taken through his statement but denied many of the things that were recorded therein:

- That Salendra had offered to sponsor any PPP projects.
- That Salendra had made an offer of VT1,000,000.
- He admitted his mistake in the difference in dates
- That Mr Tamata was at the airport with him when he picked up Mr Hospmander
- Telling Police Officer Tambe that Salendra rang him first
- Having received any money from Salendra when they met
- Not only saying that Salendra gave him VT500,000 the next day and promised VT1,000,000 but also asking for the extra VT500,000 – that which was purportedly revealed to Mr Tambe.

Despite the reasons above, Mr Lesines nevertheless signed the statement.

Upon cross-examination by the Prosecutor for quite some time, Mr Lesines was asked why he did not cash the cheque between the 5th and 13th June 2007. He responded by saying that his priority was his work but the cheque was left in his desk. He was also asked why he did not cash the cheque on Thursday while the bank was opened. To that, his answer was not clear. He also said that he did not know the business activity Salendra was engaged in, even upon making a request to him on the issue but to no avail.

The Court also ask him (Lesines) twice as to what made him think that Salendra would have VT500,000 cash available at night. To that he did not provide a clear direct answer. Furthermore, what did he think Salendra would do with the cheque – to which he answered that he (Salendra) would cash or bank it. Upon putting to him that the cheque was made out to Unua Community, he said that he did not think about what would happen to the cheque.

Mr Lesines did acknowledge having the passbook in his possession and was not one of the signatories. As he was taken through his written statement he repeated that there were things therein which he did not tell the Police and that they were not true. He finally said that on Thursday 14th (June 2007) he gave VT500,000 to Hospmander who went back to Malekula the following Saturday.

5.7 Having gone through his statement, the Court was primarily to comment or make findings on the credibility of the accused's evidence. Commenting on the said documentary and verbal evidence before the Court, the ruling judge did not believe it but would consider that they have concocted an untruthful story on the subsequent basis.

5.7.1 The story was completely implausible and unbelievable. Specifically the story that the cheque was left with Lesines in Vila to cash makes no sense. What was the reason behind leaving the cheque with Lesines when it did not belong to him but it was Hospmander's community and not being a signatory on the account he could not withdraw the money from it except with the signatures of the other two signatories? Indeed, as one of the signatories to the account, Hospmander could easily cash the cheque either in Vila or Lakatoro, and he was the one to receive the money and had to distribute it.

- 5.7.2 Lastly if the cheque had been left with Lesines to cash it, why didn't he do so during the week when he had it in his possession? The provided reason for not cashing it is unbelievable. He mentioned that it was because of his work commitments. Even if his story was true that he had the cheque, he would, of course, have had many chances to cash it, even on the way to the airport to pick up Mr Hospmander, if he wanted Mr Hospmander to straight away enter into possession of the money.
- 5.7.3 Even more unbelievable is another of his evidence that he rang Salendra to cash the cheque because the bank was closed on Wednesday night and wanted to quickly handover the cash to Mr Hospmander. According to his evidence, he gave VT500,000 to Mr Hospmander the next morning Thursday when the banks were open. Why didn't he wait until Thursday morning in order to go to the bank, cash it and give the money to Mr Hospmander at exactly the same time on Thursday morning? To see someone in those circumstances looking around on Wednesday night to find someone to cash a cheque which is made not into the name of that person and not payable to that person is none other than ridiculous.
- 5.7.4 Mr Hospmander needed the money for the purpose of distributing it when he went to Malekula. And Mr Lesines did not go there until Saturday. So what was the reason for which he was in a hurry to cash the cheque at night time on Wednesday night? There was none. Moreover, if he really wanted to cash a cheque on Wednesday night, why did he call Salendra? What would make Mr Lesines think that Salendra had VT500,000 available in cash at night when Salendra did not even have a business in Vanuatu and was not even from Vanuatu. Why would Mr Lesines think Salendra would cash a cheque in vatu made out in someone else's name? It is illogical to expect the Court or anyone to believe that story. In addition to that, it is conflicting with the statements being made to the Police.
- 5.7.5 In their statements none of them mentioned that there was any duress or threat or force of any nature made to them by the Police Officer or anyone else to make them sign those statements. It would be acceptable that they would have been ill at ease, uncomfortable and even afraid in the presence of the Police.
- 5.7.6 However, this does not explain how the detailed information as contained in the Police statements got there, except that they would have told the Police about them. Furthermore, it does not explain how all these things about selling the cheque for a million vatu were put in the statements, read out by the Police and not only did they each sign their statement. According to their evidence they did not make a protest to the Police officer that they never said those things that were read out and that those things read out were untrue.
- 5.7.7 If they did not say those things or that those things were untrue, they would have mentioned them to the Police at that time. In conclusion they have simply changed their story from what they told the Police.
- 5.7.8 Their version of the story as heard in Court was also in conflict with what parliamentary officers Mr Watson and Mr Sacsac said to have been told them by Hospmander. Indeed, both parliamentary officers (Sacsac and Watson) gave a very detailed account of what Mr Hospmander had told them. They could not have imagined all of that detailed account. There is no reason whatsoever suggested for them to have come to Court and told the Court a

whole lot of lies about what Mr Hospmander relayed to them. But of course there is every reason for Mr Hospmander to deny it.

5.7.9 The trial Judge was satisfied that the parliamentary witnesses were telling the truth whereas Mr Hospmander was telling lies when he gave his evidence in Court. As such the trial Judge rejected the evidence of both the accused, as not being believable and not being truthful. Nevertheless, the Supreme Court was obliged to look at all evidence and put aside the accused's evidence in order to see whether the charges were proven. As such, it was still expedient for the Court to make such findings as it could in relation to what actually happened to the cheque.

5.7.10 The stories of both Messrs Hospmander and Lesines as relayed to parliamentary officers (Watson & Sacsac) are different from what is contained in the written and signed Police statements. However, some of the details or some of the themes were consistent.

5.7.11 On some of the findings being made, the trial Judge found that:

- i) The cheque was given to Salendra on the basis that he was to pay VT1,000,000 for it. There was no other reason for the accused to have given the cheque to him. If they were to only obtain VT500,000 as advanced by them, they would have simply put it in the bank – that which was the obvious easy thing to have been done.
- ii) Both the accused to be party to the giving of the cheque to Salendra. On one story, Hospmander handed it over while the other story had Lesines handing it over. In both stories Mr Lesines was the go between. The trial Judge could not for sure say, upon hearing the evidence and both stories that each of which came from the accused or one of them, who actually handed it over or even if both of them were present at that material time. The trial Judge was however satisfied that Mr Hospmander deliberately gave the cheque to Salendra, either directly or through Mr Lesines knowing who it was that it was given to. The trial Judge was also satisfied that Mr Lesines made the arrangement for its handing over to Salendra and he also gave it directly to Salendra or he arranged for Mr Hospmander to give it over directly.
- iii) They personally intended to keep and share between themselves the extra VT500,000 over and above the face value of the cheque. On Hospmander's story to the parliamentary officers they did get it, or he got it. On their police statements they both say that they were still waiting for it – that which was a possibility because Mr Salendra is without doubt a very dishonest person. Although the trial Judge had to say that it was far more likely that they had received the extra VT500,000 and did not tell the truth about that to the Police, in an effort to lessen their responsibility for what had happened. It was seen as not expedient for the trial Judge to make any finding about whether the extra VT500,000 was actually received but instead was satisfied that it was the deal that they had with Salendra.
- iv) The timing being given in the Police statements was much closer to the correct timing of when they handed the cheque to Salendra – that which was close to 27 June, if not on 27 June. That conclusion was reached by the trial Judge because the altered and forged cheque was

in fact presented at the National Bank on 27 June. The trial Judge was sure that Salendra would have acted very quickly once he got hold of a cheque to forge and that he would not be sitting on it for weeks.

5.7.12 The trial Judge then went ahead to consider whether the charge had been proven in the case of each accused. He kept in mind that the onus of proof of the charge and each element of the charge was on the prosecution throughout. The accused gave evidence that did not alter the onus of proof which throughout the case remained on the prosecution. The trial Judge had said that he did not believe the accused's evidence – that which did not mean that they were automatically to be found guilty. The Court had to put aside their evidence and consider on the remainder of the evidence whether the Prosecution had proven the charge.

As the standard of proof in this case as in all criminal cases is beyond reasonable doubt, the trial Judge kept in mind that this was a joint trial where the accused were jointly charged. In this situation the trial Judge had to consider the evidence against each of the accused separately but not that because one was guilty that the other was also to be automatically guilty. That principle was particularly applicable to the out of Court statements of the accused – that which were admissible evidence only in relation to the person who made it.

5.8 Turning to the elements of the charge, it is understandable that every

“criminal charge can be broken into a number of elements, usually two or more, each one of which have to be proven before an accused can be found guilty. In this case Aiding a Forgery, there are three elements that have to be proven. Firstly, that a crime, the crime of forgery, was committed by the principal offender Salendra. Secondly, it must be proven that the accused aided, that is helped and assisted the principal offender Salendra to commit that forgery. They did something to assist it, that has to be proven. Finally it has to be proven that when they did so, they had the knowledge and intention required by the law before they can be found guilty”¹⁰.

Indeed, the accused did not really dispute the first two elements. They made formal admission that the cheque 2154172 was forged upon getting into possession of Salendra. Also, they acknowledged having each played a part by supplying the cheque to him on which the forgery was carried out, and in that way assisted the forgery. However, both Hopsmander and Lesines denied having any knowledge that Salendra was to dishonestly alter the cheque.

5.8.1 The first element was that the crime of forgery, being committed by the principal offender Salendra, was to be proven before the Court could convict. As such, the word ‘forgery’ as defined by section 139(1)(2) of the Penal Code Act

(1) *“is making a false document knowing it to be false with the intent that it shall in any way be used or acted upon as genuine whether within the Republic or not or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything whether within the Republic or not”.*

(2) *“For the purpose of this section the expression making a false document includes making any material alteration and a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise”.*

¹⁰ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 25.

Having defined the word 'forgery' the Court was satisfied that Salendra forged the cheque because:

- The cheque was originally made out to Unua Community for VT500,000. Despite having no right to it and no means of accessing the bank account of Unua Community, it was given to him. That same cheque was later presented at the National Bank showing Sandie Leo as payee and VT11,805,000 as the amount. It was deposited but was immediately withdrawn.
- Having a close look at it with naked eyes, the cheque itself showed visible evidence of erasure particularly where the amount of the cheque is given in words and figures.
- The main inference in those circumstances is the cheque has been altered by erasure of the original payee and amount and insertion of a new payee and a new amount upon coming into Salendra's possession. That very action "*had been done knowingly with intent that it would be acted upon as genuine, as indeed it was. It is also a reasonable and logical inference that the forger was the person the cheque was given to, Salendra*"¹¹.

5.8.2 The second element to be proven was that the accused assisted Salendra Sen Sinha to commit that forgery. The act being relied upon by the prosecution was the supply to him of the cheque – that which was the subject and raw material on which the forgery was carried out. Relying on the reasons as already discussed above, the Court was satisfied that each of the accused took part in the supply of the cheque to Salendra. He could not have forged that cheque unless it was given to him.

5.8.3 The third element to be proven was the legal expression "a guilty mind" meaning that the accused had the required intention and knowledge of what was to occur. And that is exactly what the accused disputed in this case. It was "*necessary to articulate just what knowledge and intention the prosecution must prove in a case like this, when the persons who do something which helps the crime to be committed by someone else, do it before the crime has actually been committed*"¹².

The accused ought to have the intention to hand over the cheque to the forger Salendra. In this case, if they had accidentally given it to him, for sure, they would not be guilty. However, there is no doubt that they intended to supply it to him.

The accused must have some knowledge about what Salendra would do with the cheque. But it was not expedient to prove that both Hopsmander and Lesines knew exactly what would happen. On that issue there is a precedent from the decision of the English Court of Appeal in a case referred to as **R v. Bryce**¹³ in which the Court pronounced that:

In the context of a person charged as an accessory who has rendered assistance prior to the commission of the crime by the perpetrator, the circumstances in respect of which knowledge is sufficient for liability, may go wider than that of the specific

¹¹ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 27.

¹² *Ibid* 28.

¹³ *R v. Bryce* [2004] EWCA Crim 1231 (18 May 2004) p.11 at <http://www.bailii.org/ew/cases/EWCA/Crim/2004/1231.html>

crime actually committed. This is because it is inappropriate and unworkable to require knowledge of the essential matters constituting the event in a situation where the offence is yet to be committed in the future, or by a person whose precise intention, the accused cannot be certain in advance. It is thus sufficient for the accused to have knowledge of the type of crime in contemplation, thus where a person supplied equipment to be used in the course of committing an offence of a particular type, he is guilty of aiding and abetting the commission of any such offence committed by the person to whom he supplied the equipment, providing th[at] he knows the purpose to which the equipment is to be put or realizes that there is a real possibility that it will be used for that purpose and the equipment is actually used for that purpose.

In the Bryce case the Court of Appeal held that the accused must have intended to assist the principal offender as opposed to intending to prevent or hinder. The motive to help him so that the crime would be committed needed not to be proven as well as their wanting to have the crime occurred. And this is a summary of what needed to be proven in relation to the intent and knowledge of both Hopsmander and Lesines:

- a) That they deliberately took part in supplying the cheque to Salendra, realizing that what they were doing was capable of assisting him to commit the type of offence which he did commit.
- b) That at that time they foresaw that that type of offending by Salendra was a real or substantial risk or a real possibility.
- c) That when they did it, they intended to assist him in what he might do, even though they might not have supplied the cheque for that reason and even if they would have preferred that he did not use it in that way¹⁴.

In that respect the position of each of the accused was not significantly different. It is apparent that Lesines had a closer association with Salendra than Mr Hopsmander. Despite the fact that he had much more to do with Salendra than he acknowledged in Court and that he knew much more about what Salendra's plan than he revealed in Court, hard evidence of that reasoning was lacking. The Court would infer that the accused Lesines would have disseminated what he knew of Salendra to Mr Hopsmander. The Court was further satisfied that the accused knew that the cheque 2154172 would fraudulently be used in order to dishonestly obtain money. Both the accused may not have known exactly what the Indo-Fijian Salendra Sen Sinha would do but they must have known that alteration or forgery of the "*cheque was a real or substantial risk or a real possibility*"¹⁵. They must have known it because of their awareness of the subsequent circumstances:

- i. That Salendra should not have come into possession of the Government cheque if the accused did not give it to him.
- ii. That the cheque was made out to Unua Community and Salendra could not possibly have access to the bank account of Unua Community.
- iii. Knowing that Salendra was not from Vanuatu and did not have a legitimate business undertaking here, it is suspected that they may have known more about Salendra but this lacks hard evidence.
- iv. The accused knew perfectly that their transactional actions of selling the cheque made out to Unua Community for double its face value

¹⁴ *Public Prosecutor v Andre Lesines and Malon Hopsmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 30.

¹⁵ *Ibid* 31.

outside of official hours in a bar – thus pocketing themselves the difference, were dishonest.

- v. They knew that Salendra agreed to pay them double the face value of the cheque that was VT500,000 – that which was a large amount of money. The payment of the sum could only be done if Salendra had to use the cheque so as to obtain an even greater amount of money for himself.

They knew exactly that there was no way a cheque of VT500,000 could be used to obtain VT1,000,000 or more except by tampering with it in a dishonest or illegal manner, for instance “forgery was a real possibility and even a probability in the circumstances”¹⁶. The Court was also satisfied that upon handing the cheque over to him they knowingly intended to assist him in using it fraudulently and in order to obtain money dishonestly. On this issue the trial judge elaborated as such:

“Their motive was of course the extra VT500,000 and they probably did not care what Salendra did with the cheque once they got their money. But nevertheless in legal terms they have intention of assisting him. They certainly did not give him the cheque with any other intention. So I find the third element, the guilty mind, proven in respect of both accused and they are convicted of the charge Count 1”¹⁷.

5.9 On 14.March 2008, both Malon Hospmander and Andre Lesines were convicted in the Supreme Court in Vila for aiding forgery. Attached as **Appendix H** is copy of the Supreme Court judgement.

5.10 As a result of their fraudulent action the Government of the Republic of Vanuatu lost an amount of eleven million three hundred and five thousand (VT11,305,000) vatu.

6. PUBLIC REPORT

6.1 This public report is prepared and issued on the basis of the rendered Supreme Court judgement of the Criminal Case No.77 of 2007 dated 14 March 2008.

7. FINDINGS

7.1 **Finding 1: Former Member of Parliament Honourable MALON HOSPMANDER and First Political Advisor ANDRE LESINES as leaders pursuant to Article 67 of the Constitution and section 5(d) of the Leadership Code Act No.2 of 1998 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 section 41 and 42 in addition to any other punishment that may be imposed under any other Act.

¹⁶ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 32

¹⁷ *Ibid.*

Indeed, on 14 March 2008 both Honourable MP Malon Hospmander for Malekula constituency and Mr Andre Lesines were convicted of the charge of aiding forgery between 1 June 2007 and 27 June 2007 (**APPENDIX H**).

Mr Andre Lesines was a political associate of MP Hospmander and was at that time Chairman of the Regional Co-ordinators of the People's Progressive Party (PPP), the party which MP Hospmander represented.

The accused did an act which assisted an Indo-Fijian man by the name of Salendra Sen Sinha to commit forgery. The act being relied upon by the prosecution was the supply to him (Salendra Sen Sinha) of the cheque number 2154172 which was the subject of forgery – the supply of the very raw material on which forgery was carried out, and in that way assisted the forgery. Of course, the Indo-Fijian man could not have forged that cheque unless it was given to him. And as such, both leaders Honourable Malon Hospmander and Mr Andre Lesines have breached section 27 of the Leadership Code Act No.2 of 1998 – that which was subsequently conducive to their conviction at the Vanuatu Supreme Court on 14 March 2008.

- 7.2 Finding 2: Former Member of Parliament Honourable MALON HOSPMANDER and First Political Advisor ANDRE LESINES were not only in breach of section 27 of the Leadership Code Act but were also liable to be dealt with in accordance with section 41 and 42 in addition to any other punishment that may be imposed under any other Act.**

As Honourable Hospmander and Lesines were convicted by the Supreme Court in the Civil Case No.77 of 2007 on 14 March 2008 on the charge of aiding forgery and theft to subsequently take place, they should be dealt with in accordance with sections 41 and 42 of the Leadership Code Act – the very provisions which provide 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 conviction.

- 7.3 Finding 3: Salendra Sen Sinha has breached section 30 of the Leadership Code Act No.2 of 1998 by engaging himself in the act of forgery - the very conduct that is prohibited under both sections 27(2)(t) of the Leadership Code Act and 140 of the Penal Code Act [CAP135].**

Pursuant to section 139 of the Penal Code Act forgery as an offence is defined as '*making a false document knowing it to be false*' or '*uttering forged documents*'. The expression '*making a false document*' "*includes making any material alteration in a genuine document whether by addition, insertion, obliteration, erasure, removal or otherwise*".

By making use of his allocation fund of VT2,000,000 per annum Mr Hospmander applied for VT500,000 on behalf of Unua Community and a Government cheque number 2154172 as drawn on the Reserve Bank was produced. It was made out to the Unua Community as payee having a bank account at the National Bank of Vanuatu (NBV) and was for the sum of

VT500,000. That cheque was not banked in the respective account but was instead given to an Indo-Fijian man (Salendra Sen Sinha). On 27 June 2007 the cheque was presented at NBV in Port Vila and was deposited into the account of one Sandy Leo as payee. In fact, the amount of the cheque had been altered to VT11,805,000 by Salendra Sen Sinha and virtually the whole amount was withdrawn within a very short time. As such, Mr Salendra Sen Sinha has not only breached section 30 of the Leadership Code Act by making a false document or committing forgery but has also breached section 27(2)(t) of the Leadership Code Act and section 140 of the Penal Code Act.

Despite having such breaches, Mr Salendra Sen Sinha cannot be and will never be extradited from Fiji to Vanuatu to face judicial charges as section 56(1)(3)(b) of the Extradition Act [CAP] is defective. Section 56(1) provides that a person surrendered to Vanuatu must only be detained or tried in Vanuatu for an offence for which he/she was surrendered. Furthermore, subsection (3)(b) of the same Act provides that subsections (1) and (2) do not apply if the person has left, or has had the opportunity of leaving Vanuatu. As such and since Mr Salendra Sen Sinha did manage to make his way out of the country avoiding police security, Mr Salendra Sen Sinha is now a free man according to section 56(3)(b) of the Extradition Act.

7.4 **Finding 4: Section 56(3) of the Extradition Act [CAP287] is defective.**

Pursuant to section 56 of the Extradition Act [CAP287]

- “(1) A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than (a) an offence for which the person was surrendered; or (b) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or (c) another offence for which the surrendering country consents to the person being detained or tried.
- (2) A person surrendered to Vanuatu must not be detained in Vanuatu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Vanuatu.

However, the above subsections are not applicable as provided in subsection (3) of the Act which states that

- (3) Subsection (1) and (2) do not apply if:
- (a) the country surrendering the person to Vanuatu consents to the person to be so detained, and tried or surrendered; or
 - (b) the person has left, or has had the opportunity of leaving Vanuatu.

In fact, while considering the case of Mr Salendra Sen Sinha, he has left or has had the opportunity of leaving Vanuatu. Thus, Mr Salendra Sen Sinha is now a free man – that which is, indeed, in contravention to the spirit and purpose of this Act. As such, section 56(3) of the Extradition Act is defective.

- 7.5 **Finding 5:** **Mr Sandie Leo was in breach of section 30 of the Leadership Code Act by allowing the cheque number 2154172 amounting to VT11,805,000 to be deposited in his bank account by Mr Salendra Sen Sinha at the National Bank of Vanuatu and was withdrawn within a very short time afterwards.**

Pursuant to Section 30(1) of the Leadership Code Act it is provided that “A person other than a leader who: (a) takes part in conduct [forgery] that is in breach of this Code is guilty of a breach of this Code”.

On 27 June 2007 Mr Sandie Leo aided the Indo-Fijian Salendra Sen Sinha to commit the act of forgery by allowing him (Salendra) to deposit the cheque number 2154172 amounting to VT11,305,000 and to withdraw it once again from this NBV account within a short time.

8. RECOMMENDATIONS

- 8.1 **Recommendation 1:** The Ombudsman recommends that the Public Prosecutor lays charges against Malon Hospmander and Andre Lesines for breach of section 27 of the Leadership Code Act No.2 of 1998.
- 8.2 **Recommendation 2:** Having breached section 27 of the Leadership Code Act No.2 of 1998, the Ombudsman recommends that both convicted leaders (Malon Hospmander and Lesines) be dealt with in accordance with sections 41 and 42 of the Leadership Code Act No.2 of 1998. 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”.
- 8.3 **Recommendation 3:** The Ombudsman recommends that the Public Prosecutor lay charges against Mr Sandie Leo for breach of section 30 of the Leadership Code Act No.2 of 1998 for assisting the forgery of the cheque number 2154172 to be deposited in his bank account at the Vanuatu National Bank and withdrawn within a short time. Indeed, section 30(1) of the Leadership Code Act provides that a “person other than a leader who: (a) takes part in a conduct that is a breach of this Code is guilty of a breach of this Code”.

- 8.4 **Recommendation 4:** In conjunction with the State Law Office, the Ministry of Foreign Affairs may consider:
- (a) the presentation of a bill to Parliament for an amendment of section 56(3) of the Extradition Act – that which is in contravention to the purpose and spirit of the Act.
 - (b) the ratification of the United Nations Convention Against Corruption whose Article 44 provides for extradition on the basis of further consultation and exchange of information relevant to the allegation or criminal offence. Only then will it be possible to extradite any person such as Mr Salendra Sen Sinha to face trial in Vanuatu for committing forgery with the assistance of both Malon Hospmander and Andre Lesines.

Dated this 15th day of October 2010

Pasa TOSUSU
OMBUDSMAN OF THE REPUBLIC OF VANUATU

9. INDEX OF APPENDICES

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APPENDIX A

CONSTITUTION OF THE REPUBLIC OF VANUATU

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—

- (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 NO.2 OF 1998

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;
- (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.*

OTHER OFFENCES PUNISHABLE UNDER THIS ACT

27. (1) *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 section 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 of permanent nature*
- (c) *rape or attempted rape*
- (d) *abduction*
- (e) *incest*
- (f) *sexual intercourse with girl under care*
- (g) *indecent assault*
- (h) *a serious intentional assault*
- (i) *perjury*
- (j) *making 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) *unlawful entering*
- (w) *any offences under the Representation of the People's Act CAP 146*
- (x) *attempting to commit any of these offences*

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

OFFENCES BY OTHER PERSONS

30 (1) *A person other than a leader who:*

- (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 VT5,000,000; or*
- (b) *imprisonment for a period not exceeding 10 years; or both the fine and imprisonment.*

- (4) *If a 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.*

DISMISSAL FROM OFFICE

- 41 (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.*

DISQUALIFICATION FROM FUTURE OFFICE

- 42 *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.*

PENAL CODE ACT CAP 135

COMPLICITY

- 30 *Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principle offender.*

FORGERY DEFINED

- 139 (1) *Forgery is making a false document knowing it to be false, with intent that it shall in any way be used or acted upon as genuine, whether within the republic or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the republic or not.*
- (2) *For the purpose of this section, the expression "making a false document" includes making any material alteration in a genuine document whether by addition, insertion, obliteration, erasure, removal, or otherwise.*
- (3) *For the purpose of this section the expressio "false document" means any document-*
- (a) *of which the whole or any material part purports to be made by any person who did not make it or authorise its making;*
 - (b) *of which the whole or any part purports to be made on behalf of any person who did not authorise its making;*
 - (c) *in which though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making, whether either is material, or any number or distinguishing mark identifying the document whether either is material is falsely stated;*
 - (d) *of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person, or which is made in the name of an existing person either by him or by his authority with intention that it should pass as*

- being by some person, real or fictitious, other than the person who makes or authorises it.*
- (4) *It is immaterial in what language a document is expressed or in what country or place and whether within or beyond the republic it is expressed to take effect.*
 - (5) *The crossing of any cheque, banker's draft, post office money order, postal order or other document the crossing of which is authorised or recognised by law is a material part of such document*

FORGERY

140 No person shall commit forgery.

Penalty: Imprisonment for 10 years

EXTRADITION ACT [CAP287]

56. Treatment of persons surrendered to Vanuatu

- (1) *A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than:*
 - (a) *an offence for which the person was surrendered; or*
 - (b) *another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or*
 - (c) *another offence for which the surrendering country consents to the person being detained or tried.*
- (2) *A person surrendered to Vanuatu must not be detained in Vanuatu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Vanuatu.*
- (3) *Subsection (1) and (2) do not apply if:*
 - (a) *the country that surrendered the person to Vanuatu consents to the person being so detained, and tried or surrendered; or*
 - (b) *the person has left, or has had the opportunity of leaving, Vanuatu.*