REPUBLIQUE DE VANUATU

JOURNAL OFFICIEL

REPUBLIC OF VANUATU

OFFICIAL GAZETTE

28 JUIN 2004	No. 18	28 JUNE 2004

SONT PUBLIES LES TEXTES SUIVANTS

LOI ELECTORALE [CAP.146]

- PUBLICATION DE LA LISTE OFFICIELLE DES CANDIDATS AUX ELECTIONS LEGISLTIVES DE 2004.

NOTIFICATION OF PUBLICATION

REPRESENTATION OF THE PEOLE ACT [CAP.146]

- PUBLICATION OF THE APPROVED LIST OF CANDIDATES FOR THE 2004 GENERAL ELECTIONS

THE PUBLIC PROSECUTORS ACT NO. 7 OF2003

- COMMENCEMENT OF PROSECUTION POLICY FOR THE OFFICE OF THE PUBLIC PROSECUTOR.

CONTENTS PAGE

REPUBLIQUE DU VANUATU

COMMISSION ELECTORALE
TELEPHONE: (678) 23914 / 25875
FAX: (678) 26681

REPUBLIC OF VANUATU

ELECTORAL COMMISSION
PRIVATE MAIL BAG 033
PORT VILA
VANUATU

REPUBLIC OF VANUATU

REPRESENTATION OF THE PEOPLE ACT (CAP 146)

PUBLICATION OF THE APPROVED LIST OF CANDIDATES FOR THE 2004 GENERAL ELECTION

In accordance with section 28 of the Representation of the People Act (CAP 146), the Electoral Commission hereby publishes the list of approved candidates for the General Election to Parliament to be held on Tuesday 6th July 2004.

NAMES OF CONTESTING CANDIDATES

CONSTITUENCY	CANDIDATES	AFFILIATION
1. BANKS/TORRES (2) SEATS	1. Paul K Demmet	IND
	2. Norman Roslyn	IND
	3. Ezekiel W Anthony	VRP
	4. Laliurou Eric Shedrac	NUP
	5. Charles Bice	NUP
	6. Nickolas Brown	VP
	7. Stanlee Reginald	UMP
	8. David WESAROR	GC
	9 . Dunstan Hilton	PPP
	10. Harold Nice	VKG
	11. Reynold Sale	IND
	12. Clifton Lonsdale	IND
2. SANTO (7 SEATS)	1. Tony Naliupis	PAP
	2. Remy Vatambe	MPP
	3. Marceliino Pipite	VRP
	4. Shem Kalo	NUP
	5. Iavcuth Sandie	NUP
	6. John Tari Molibaraf	VNP
	7. Edmond Hajuju	VNP
	8. John Noel	VP
	9. Sela Molisa	VP
	10 Frank Tom Sokarai	VP
	11. Prasad Arnold	GC
	12. Denis Philip	UMP

	13. Vohor Serge	UMP
	14. Imbert Jimmys	UMP
	15. Jean Alain Mahe	UMP
	16. Pisuvoke Ravutia Albert	FMP
	17. Franky Moli Stevens	NAG
	18. Yersel Joris Paul	NAG
	19. Jimmy Nakato Stevens	IND
	20. John Lum	IND
	21. Christian Maliu	IND
	22. Ben Rovu	IND
	23. Jean Ravou Aku Komoule	IND
	24. Andikar Philip	IND
	25. Sylverio Takataveti	IND
3. MALO/AORE (1 SEAT)	1 . Sive Song	PPP
	2. Sano Alvea	MPP
	3. Leo Tamata	VP
	4. Josias Moli	UMP
	5. Ken Mansi	IND
	6. Havo Moli	IND
4. LUGANVILLE (2 SEATS)	1. James Ngwango	PAP
	2. Narua Joe	MPP
	3. Eric Jack	NUP
	4. Manina Packete	VNP
	5. George A Wells	VP
	6. Emboi Morris	GC
	7. Baba Francois Luc	UMP
	8. Buletare Prosper	IND
	9. Donald Restuetune	IND
	10. George Fai	IND
	11. Kalmet Micheal	IND
	12 Aprimen Edwin	VRP
	13. Harry Avia	VKG
5. AMBAE (3 SEATS)	1. Peter Vuta	PAP
	2. Samuel Bani	VRP
	3. James Bule	NUP
	4. Wilson Aru	VP
	5. Jacques Sese	UMP
	6. Samson Bue	UMP
	7. John Tariweu M Wari	IND
	8. Dickinson Vusilai	IND

6. MAEWO (1 SEAT)	1. Paul Ren Tari	NUP
	2. Philip Boedoro	VP
	3. Swithin Adin	GC
	4. Gregory Taranban	UMP
7. PENTECOST (4 SEATS)	1.Tamata Noel	PPP
	2. Ezekiel Bule	MPP
	3. Michel Buleman	VRP
	4. Ham Lini	NUP
	5. David Tosul	NUP
	6. John Hari Leo	NUP
	7. Salathiel Tabi	NUP
	8. Richard Kaentoh Tabi	VP
	9. Gaetano Bulewak	GC
	10. Raphael Leo	VNP
	11. Graim Takasum	VNP
	12. Benedick Boulekone	VNP
	13. Luke F Warry	UMP
	14. Salwai Charlot	UMP
	15. John Tarisine	IND
	16. Wilfred Tabinok	IND
	17. Micheal Ture	IND
	18.Tariroroi Philip Gihiala	IND
	19. Frazer Sine	VKG
8. MALEKULA (7 SEATS)	1. Hospmander Malon	PPP
	2. Kilman Sato	PPP
	3. Esmon Saimon	MPP
	4. Sethy Rapsarey Kalnaran	MPP
	5. Maxwell Maltok	VLP
	6. Donna Browny	VRP
	7. Paul Telukluk	NA
	8. Rokrok Charlie	NUP
	9. Janeck Patunvanu	VNP
	10. Seth Matvungkeres	VNP
	11. Willie John Morsen	VP
	12. Jackleen Reuben Titek	VP
	13. Vebong Antonin	GC
	14. Michel Maurice	GC
	15. Rory Albano	GC
	16. Norbert Ngpan	IND
	17. Alick Masing	UMP
	18. Sam Noel	UMP

	19. Jacob Thyna	FMP
	20. Androng Manjab	IND
	21. Johnson Kalo	IND
	22. Teilemb Kisito	IND
	23. Andre Marcel	IND
	24. Don Ken	IND
	25. Caleb Isaac	IND
	26. Japeth Mali Nawilau	IND
	27. Mathieu Tulili	IND
	28. Pechou Meltetamat	VKG
9. AMBRYM (2 SEATS)	1. John Josiah	PAP
	2. Welwel Andrew	PPP
	3. Simelum Luke Daniel	MPP
	4. William Ken	VLP
	5. Jossie Masmas	VRP
	6. Elie Robert Bonglibu	VNP
	7. Jacob Nabong	VP
	8. Roger T Abiut	GC
	9. Worwor Raphael	UMP
	10. Edwin Wuan	IND
10. PAAMA (1 SEAT)	1. David Willie-Tien	MPP
	2. Sam Dan Avock	VP
	3. TOMATVATIVOLIVOL Luwi Abel	UMP
	4. Demis Lango	IND
	5. Tom Maki Weiwo	VKG
11. EPI (2 SEATS)	1. Billy Raymond	VRP
	2. Luwi Song	NUP
	3. Isabelle Donald	VP
	4. Willie Mesek	UMP
	5. Willi Olli Varasmaite	IND
	6. Leinavao Tasso	IND
	7. Apia Renzo Valia	IND
	8. Alick Aram	IND
	9. Patrick Sarginson	GC
	10. Samuel Taritonga	MPP
12. TONGOA (1 SEAT)	1. Seule Tom	NUP
	2. Edward Kalo Toara	UMP
	3. Willie Reuben Titongoa	VP
	4. John Mark Bell	IND
	5. Peter Morris	IND

13. SHEPHERDS (1 SEAT)	1. Robert Barak Samuel	PPP
	2. Shem Claude Masorangi	VP
	3. Kalo Toara Daniel	UMP
	4. Obed Roy Matariki	IND
14. EFATE (4 SEATS)	1. Noris Jack Kalmet	PPP
	2. Barak T Sope Maautamate	MPP
	3. Kalchichi Malas	VLP
	4. Jimmy Luna Tasong	VRP
	5. Alfred Rolland Carlot	NATATOK
	6. Chilia Jimmy Meto	NUP
	7. Joshua T Kalsakau	NCA
	8. Kalman Kaltoi	VNP
	9. Donald Kalpokas	VP
	10. Joe Bomal Carlo	VP
	11. Robert Tasaruru	VP
	12. Roro Sambo	GC
	13. Kalsakau Steven	UMP
	14. Charlie Kalorus Kalpoi	IND
	15. Soka Edwin Malas	IND
	16. David T Tanarango	IND
	17. Kalsakau Claude	IND
	18. Kali Kalchiare Vatoko	IND
	19. Belleay Kalotiti	VKG
15. PORT VILA (6 SEATS)	1. Elizabeth Qualao	PAP
	2. Alfred Baniuri	PPP
	3. Taiwia Nato	MPP
	4. Ephraim Kalsakau	VLP
	5. Maxim Carlot Korman	VRP
	6. Willie Jimmy	NUP
	7. Natonga Colin	NCA
	8. Dinh Van Than	VNP
	9. Avock Paul Hungai	VNP
	10. Carcasses Moana Kalosil	GC
	11. Taga Henri	UMP
	12. Alick George Noel	UMP
	13. Abel Louis	UMP
	14. Leingkone Guillaume	IND
	15 Cyriaque Melep	IND
	16. Wendy Himford	IND
	17. Basil Hopkins	IND
	18. Eric Pakoa Marakiwola	IND

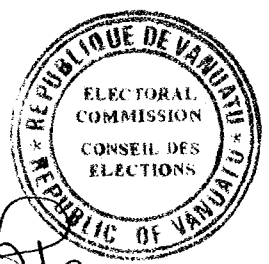
	19. Hendon Kalsakau	IND
	20. Pierre Tore	IND
	21. Blandine Boulekone	IND
	22. Abi Jack Marikempo	IND
	23. Harry Klafer Fantaly	IND
	24. Peter Sali Sovuai	IND
	25. Joseph Joel	IND
	26. Ruth Dovo	IND
	27. Paul Ben Mariwot	IND
	28. Hilda Lini	IND
	29. Reuben Rex	IND
	30. John Path	VKG
	31. Yoan Mariasua	VKG
	32. Clement Leo	VKG
	33. Christina Gao Sau Wilson	VKG
	34. Job Dalesa	VP
	35. Nipake Edward Natapei	VP
16. TANNA (7 SEATS)	1. Tom Nipiau	PPP
	2. Iauko Henry	MPP
	3. Willie Lop	VRP
	4. Morking Stevens	NUP
	5. Keasipai Song	NCA
	6. Kapalu Saupat	NCA
	7. Joe Natuman	VP
	8. Jimmy Nicklam	VP
	9. Moses Kahu	VP
	10. Harris Naunun	GC
	11. Isaac Nauka	GC
	12. Gideon Nampas	IND
	13. Yawah Tom Leong	GC
	14. Koapa Francois	UMP
	15. Posen Willie	UMP
	16. Judah Isaac	UMP
	17. Iapatu Martin	UMP
	18. Moses Nimaen	IND
	19. Joel Mila Joseph	JF
	20. Pita Etap	IND
	21. Mickael Nalao	IND
	22. Simon Kaukare	IND
	23. Kaso Inam	IND
	24. Samuel Pusai	IND
	25. Etap Louis	IND

26. Hosea Jack Kangaru	IND
27. Naieu Henry	IND
28. Bob Loughman	IND
29. Andrew Namhat Kausiama	VKG

17. ERROMANGO/ANIWA/FUTUNA ANEITYMN (1 SEAT)

1. Thomas Nentu	MPP
2. Thomas Namusi Niditauae	VP
3. David Theodore	UMP
4. Philip Charlie Norwo	IND
5. Allen Nafuki	VKG

Made at Port Vila this 22nd day of June 2004.



Etienne Kombe	Cherol Ala	Youen Atnelo
Chairman	**Member**	**Member**
Electoral Commission	Electoral Commission	Electoral Commission

RÉPUBLIQUE DE VANUATU

LOI ÉLECTORALE (CAP. 146)

PUBLICATION DE LA LISTE OFFICIELLE DES CANDIDATS AUX ÉLECTIONS LÉGISLATIVES DE 2004

Conformément à l'article 28 de la Loi électorale (CAP. 146), le Conseil des élections publie par les présentes, la liste officielle des candidats aux élections législatives du 6 juin 2004.

NOMS DES CANDIDATS

CIRCONSCRIPTION		CANDIDATS	AFFILIATION
1. BANKS/TORRES (2 SIÈGES)	1.	Paul K Demmet	IND
	2.	Norman Roslyn	IND
	3.	Ezekiel W Anthony	PRV
	4.	Laliurou Eric Shedrac	PNU
	5.	Charles Bice	PNU
	6.	Nickolas Brown	VP
	7.	Stanlee Reginal	UPM
	8.	David WESAROR	C. VERTS
	9.	Dunstan Hilton	PPP
	10.	Harold Nice	GVK
	11.	Reynold Sale	IND
	12.	Clifton Lonsdale	IND
2. SANTO (7 SIÈGES)	1.	Tony Naliupis	PAP
	2.	Remy Vatambe	PPM
	3.	Marcellino Pipite	PRV
	4.	Shem Kalo	PNU
	5.	Iavcuth Sandie	PNU
	6.	John Tari Molibaraf	PNV
	7.	Edmond Hajuju	PNV
	8.	John Noel	VP
	9.	Sela Molisa	VP
	10.	Frank Tom Sokarai	VP
	11.	Prasad Arnold	C. VERTS
	12.	Denis Philip	UPM
	13.	Vohor Serge	UPM
	14.	Imbert Jimmys	UPM
	15.	Jean Alain Mahe	UPM
	16.	Pisuvoke Ravutia Albert	FMP
	17.	Frankly Moli Stevens	NAG
	18.	Yersel Joris Paul	NAG

	19.	Jimmy Nakato Stevens	IND
	20.	John Lum	IND
	21.	Christian Maliu	IND
	22.	Ben Rovu	IND
	23.	Jean Ravou Aku Komoule	IND
	24.	Andikar Philip	IND
	25.	Sylverio Takataveti	IND
3. MALO/AORE (1 SIÈGE)	1.	Sive Song	PPP
	2.	Sano Alvea	PPM
	3.	Leo Tamata	VP
	4.	Josias Moli	UPM
	5.	Ken Mansi	IND
	6.	Havo Moli	IND
4. LUGANVILLE (2 SIÈGES)	1.	James Ngwango	PAP
	2.	Narua Joe	PPM
	3.	Eric Jack	PNU
	4.	Manina Packete	PNV
	5.	George A Wells	VP
	6.	Emboi Morris	C. VERTS
	7.	Baba François Luc	UPM
	8.	Buletare Prosper	IND
	9.	Donald Restuetune	IND
	10.	George Fai	IND
	11.	Kalmet Micheal	IND
	12.	Aprimen Edwin	PRV
	13.	Harry Avia	GVK
5. AMBAE (3 SIÈGES)	1.	Peter Vuta	PAP
	2.	Samuel Bani	PRV
	3.	James Bule	PNU
	4.	Wilson Aru	VP
	5.	Jacques Sese	UPM
	6.	Samson Bue	UPM
	7.	John Tariweu M Wari	IND
	8.	Dickinson Vusilai	IND
6. MAEWO (1 SIÈGE)	1.	Paul Ren Tari	PNU
	2.	Philip Boedoro	VP
	3.	Swithin Adin	C. VERTS
	4.	Gregory Taranban	UPM

7. PENTECÔTE (4 SIÈGES)	1.	Tamata Noel	PPP
	2.	Ezekiel Bule	PPM
	3.	Michel Buleman	PRV
	4.	Ham Lini	PNU
	5.	David Tosul	PNU
	6.	John Hari Leo	PNU
	7.	Salathiel Tabi	PNU
	8.	Richard Kaentoh Tabi	VP
	9.	Gaetano Bulewak	C. VERTS
	10.	Raphael Leo	PNV
	11.	Graim Takasum	PNV
	12.	Benedick Boulekone	PNV
	13.	Luke F Warry	UPM
	14.	Salwai Charlot	UPM
	15.	John Tarisine	IND
	16.	Wilfred Tabinok	IND
	17.	Micheal Ture	IND
	18.	Tariroroi Philip Gihiala	IND
	19.	Frazer Sine	GVK
8. MALEKULA (7 SIÈGES)	1.	Hospmander Malon	PPP
	2.	Kilman Sato	PPP
	3.	Esmon Saimon	PPM
	4.	Sethy Rapsarey Kalnaran	PPM
	5.	Maxwell Maltok	PTV
	6.	Donna Browny	PRV
	7.	Paul Telukluk	NA
	8.	Rokrok Charlie	PNU
	9.	Janeck Patunvanu	PNV
	10.	Seth Matvungkeres	PNV
	11.	Willie John Morsen	VP
	12.	Jackleen Reuben Titek	VP
	13.	Vebong Antonin	C. VERTS
	14.	Michel Maurice	C. VERTS
	15.	Rory Albano	C. VERTS
	16.	Norbert Ngpan	IND
	17.	Alick Masing	UPM
	18.	Sam Noel	UPM
	19.	Jacob Thyna	FMP
	20.	Androng Manjab	IND
	21.	Johnson Kalo	IND
	22.	Teilemb Kisito	IND
	23.	Andre Marcel	IND
	24.	Don Ken	IND
	25.	Caleb Isaac	IND
	26.	Japeth Mali Nawilau	IND
	27.	Mathieu Tulili	IND
	28.	Pechou Meltetamat	GVK

9. AMBRYM (2 SIÈGES)	1.	John Josiah	PAP
	2.	Welwel Andrew	PPP
	3.	Simelum Luke Daniel	PPM
	4.	William Ken	PTV
	5.	Jossie Masmas	PRV
	6.	Elie Robert Bonglibu	PNV
	7.	Jacob Nabong	VP
	8.	Roger T Abiut	C. VERTS
	9.	Worwor Raphael	UPM
	10.	Edwin Wuan	IND
10. PAAMA (1 SIÈGE)	1.	David Willie-Tien	PPM
	2.	Sam Dan Avock	VP
	3.	Tomatvativolivol Luwi Abel	UPM
	4.	Demis Lango	IND
	5.	Tom Maki Weiwo	GVK
11. EPI (2 SIÈGES)	1.	Billy Raymond	PRV
	2.	Luwi Song	PNU
	3.	Isabelle Donald	VP
	4.	Willie Mesek	UPM
	5.	Willi Olli Varasmaite	IND
	6.	Leinavao Tasso	IND
	7.	Apia Renzo Valia	IND
	8.	Alick Aram	IND
	9.	Patrick Sarginson	C. VERTS
	10.	Samuel Taritonga	PPM
12. TONGOA (1 SIÈGE)	1.	Seule Tom	PNU
	2.	Edward Kalo Toara	UPM
	3.	Willie Reuben Titongoa	VP
	4.	John Mark Bell	IND
	5.	Peter Morris	IND
13. SHEPHERDS (1 SIÈGE)	1.	Robert Barak Samuel	PPP
	2.	Shem Claude Masorangi	VP
	3.	Kalo Toara Daniel	UPM
	4.	Obed Roy Matariki	IND
14. EFATE (4 SIÈGES)	1.	Noris Jack Kalmet	PPP
	2.	Barak T Sope Maautamate	PPM
	3.	Kalchichi Malas	PTV
	4.	Jimmy Luna Tasong	PRV
	5.	Alfred Rolland Carlot	NATATOK

	6.	Chilia Jimmy Meto	PNU
	7.	Joshua T Kalsakau	NCA
	8.	Kalman Kaltoi	PNV
	9.	Donald Kalpokas	VP
	10.	Joe Bomal Carlo	VP
	11.	Robert Tasaruru	VP
	12.	Roro Sambo	C. VERTS
	13.	Kalsakau Steven	UPM
	14.	Charlie Kalorus Kalpoi	IND
	15.	Soka Edwin Malas	IND
	16.	David T Tanarango	IND
	17.	Kalsakau Claude	IND
	18.	Kali Kalchiare Vatoko	IND
	19.	Belleavy Kalotiti	GVK
15. PORT-VILA (6 SIÈGES)	1.	Elizabeth Qualao	PAP
	2.	Alfred Baniuri	PPP
	3.	Taiwia Nato	PPM
	4.	Ephraim Kalsakau	PTV
	5.	Maxim Carlot Korman	PRV
	6.	Willie Jimmy	PNU
	7.	Natonga Colin	NCA
	8.	Dinh Van Than	PNV
	9.	Avock Paul Hungai	PNV
	10.	Carcasses Moana Kalosil	C. VERTS
	11.	Taga Henri	UPM
	12.	Alick George Noel	UPM
	13.	Abel Louis	UPM
	14.	Leingkone Guillaume	IND
	15.	Cyriaque Melep	IND
	16.	Wendy Himford	IND
	17.	Basil Hopkins	IND
	18.	Eric Pakoa Marakiwola	IND
	19.	Hendon Kalsakau	IND
	20.	Pierre Tore	IND
	21.	Blandine Boulekone	IND
	22.	Abi Jack Marikempo	IND
	23.	Harry Klafer Fantaly	IND
	24.	Peter Sali Sovuai	IND
	25.	Joseph Joel	IND
	26.	Ruth Dovo	IND
	27.	Paul Ben Mariwot	IND
	28.	Hilda Lini	IND
	29.	Reuben Rex	IND
	30.	John Path	GVK
	31.	Yoan Mariasua	GVK
	32.	Clement Leo	GVK

	33.	Christina Gao Sau Wilson	GVK
	34.	Job Dalesa	VP
	35.	Nipake Edward Natapei	VP
16. TANNA (7 SIÈGES)	1.	Tom Nipiau	PPP
	2.	Iauko Henry	PPM
	3.	Willie Lop	PRV
	4.	Morking Stevens	PNU
	5.	Keasipai Song	NCA
	6.	Kapalu Saupat	NCA
	7.	Joe Natuman	VP
	8.	Jimmy Nicklam	VP
	9.	Moses Kahu	VP
	10.	Harris Naunun	C. VERTS
	11.	Isaac Nauka	C. VERTS
	12.	Gideon Nampas	IND
	13.	Yawah Tom Leong	C. VERTS
	14.	Koapa Francois	UPM
	15.	Posen Willie	UPM
	16.	Judah Isaac	UPM
	17.	Iapatu Martin	UPM
	18.	Moses Nimaen	IND
	19.	Joel Mila Joseph	JF
	20.	Pita Etap	IND
	21.	Mickael Nalao	IND
	22.	Simon Kaukare	IND
	23.	Kaso Inam	IND
	24.	Samuel Pusai	IND
	25.	Etap Louis	IND
	26.	Hosea Jack Kangaru	IND
	27.	Naieu Henry	IND
	28.	Bob Loughman	IND
	29.	Andrew Namhat Kausiama	GVK

17. ERROMANGO/ANIWA FUTUNA (1 SIÈGE)	1.	Thomas Nentu	PPM
	2.	Thomas Namusi Niditauae	VP
	3.	David Theodore	UPM
	4.	Philip Charlie Norwo	IND
	5.	Allen Nafuki	GVK

FAIT à Port-Vila le 22 juin 2004.

----------	----------	----------
Etienne Kombe	Cherol Ala	Youen Atnelo
Président	**Membre**	**Membre**
Conseil des Élections	Conseil des Élections	Conseil des Élections

REPUBLIC OF VANUATU

THE PUBLIC PROSECUTORS ACT 2003 (ACT NO 7 OF 2003)

COMMENCEMENT OF PROSECUTION POLICY FOR THE OFFICE OF THE PUBLIC PROSECUTOR

PURSUANT to Section 11(1) of the *Public Prosecutors' Act 2003* (Act No 7 of 2003) I, NICHOLAS H. MIROU, Public Prosecutor hereby approve for the commencement of the *Prosecution Policy of the Office of the Public Prosecutor* with effect as of this date.

MADE AT PORT VILA this 10th day of June 2004.

.....

NICHOLAS H. MIROU
PUBLIC PROSECUTOR

Office of the Public Prosecutor

FOREWORD

The Office of the Public Prosecutor, in performing its Constitutional obligation, aims to meet that obligation fairly, in an accountable and transparent way, efficiently, and giving appropriate consideration to the concerns of victims of crime. The following Statement, entitled the *"Prosecution Policy of the Office of the Public Prosecutor"* is a publicly available document and in itself is aimed at meeting in some part those objectives by giving all citizens of the Republic of Vanuatu an opportunity to see for themselves what is the role of the Public Prosecutor in the criminal justice system and how that Constitutional Officeholder goes about performing his Constitutional responsibility to perform the function of prosecution.

The Statement does not attempt to cover all questions that can arise in the prosecution process and the role of the prosecutor in their determination. In general terms, a prosecutor must conduct himself or herself in a manner which will maintain, promote and defend the interests of justice, for in the final analysis the prosecutor is not a servant of government or individuals he or she is a servant of justice.

Nicholas Mirou
Public Prosecutor

Office of the Public Prosecutor

Prosecution Policy

1. Introduction

Independence of the Office of the Public Prosecutor
The Constitution of the Republic of Vanuatu at Article 55 provides as follows:

> "The function of prosecution shall vest in the Public Prosecutor, who shall be appointed by the President of the Republic on the advice of the Judicial Service Commission. He shall not be the subject to the direction and control of any other person or body in the exercise of his functions."

The above Article provides that the office holder shall be completely independent from the rest of government.

The purpose of such "independence" is to ensure that the Public Prosecutor can ensure that the rule of law is applied to everyone, be they important government officials or simple subsistence farmers. The Public Prosecutor's role is to be fair independent and objective. The Public Prosecutor may not let his personal views of the ethnic or national origin, gender, religious beliefs, political views or sexual preference of an offender, victim or witness influence his decisions. The Pubic Prosecutor should also not be affected by improper or undue pressure from any source.

Public Prosecutors Act No 7 of 2003
On 4 August 2003, the *Public Prosecutors Act (Act No.7 0f 2003)* commenced operation in Vanuatu. This is the first time since independence that an Act of Parliament has been passed that sets out the role and responsibilities of the Public Prosecutor. The purpose of the Act is to set out the manner of appointment of the Public Prosecutor and other prosecutors, and the roles and responsibilities of prosecutors. Up until the Act commenced, the role of the Public Prosecutor has been inferred by the procedural provisions of the *Criminal Procedure Code* [CAP 136].

The Act has ensured that there will be a separation of the investigative and prosecutorial functions in the criminal justice system. Once a prosecution has been commenced and referred to the Office of the Public Prosecutor, the decision whether to proceed with that prosecution is made by the Office of the Public Prosecutor independently of those who were responsible for the investigation.

Objectives of the office of fairness, openness, accountability and efficiency
The Public Prosecutor's Office has the following objectives in the exercise of its functions:

- *Fairness* - First in the sense that it brings to trial only those against whom there is an adequate and properly prepared case and who it is in the public interest should be prosecuted, and secondly in that it does not display arbitrary and inexplicable differences in the way that individual cases or classes of case are treated locally or nationally.

- *Openness and accountability* - Those who make the decisions to prosecute or not can be called publicly to explain and justify their policies and actions as far as that is consistent with protecting the interests of suspects and accused.

- *Efficiency* - it achieves the objects that are set for it with the minimum use of resources and the minimum delay.

In successfully pursing these objectives, the Office's overall objective is to ensure that there is public confidence in the criminal justice system, and that appropriate consideration is given to the victims of crime.

Location of Offices
The Office of the Public Prosecutor has a main office at Port Vila and a branch office situated at Santo.

Status of the Prosecution Policy of the Public Prosecutor
Section 11 of the *Public Prosecutors Act* enables the Public Prosecutor to issue directions or guidelines with respect to the prosecution of offences. The Prosecutions Policy is in effect a direction to all prosecutors to apply this policy in exercising prosecutorial discretions. Section 11(3) of the *Public Prosecutors Act* provides that such a direction is binding.

Appointment of Prosecutors (Legal Officers)
The *Public Prosecutors Act* provides for the employment of legally qualified persons to appear on the Public Prosecutors behalf in Court and have carriage of particular prosecution cases. Section 20 of the *Public Prosecutors Act* provides for the appointment of a Deputy Public Prosecutor, who is to be a legal practitioner with at least five (5) years experience. Section 21 provides for the appointment of Assistant Prosecutors. In relation to the Deputy Public Prosecutor and Assistant Public Prosecutors, their appointments are the subject of scrutiny by a panel including representatives from the private legal profession, State Law Office, the Public Solicitors Office and the Public Prosecutor's Office. The purpose of using such a panel is to ensure that the best candidate for any position is selected and to ensure the selection process is free from any personal bias.

Appointment of State Prosecutors
Most cases that are prosecuted in the Magistrate's Court are prosecuted by specialist Police officers who are appointed by the Public Prosecutor as State Prosecutors. The power to appoint State Prosecutors is held by the Public Prosecutor as set out in section 22 of the *Public Prosecutors Act* and the Public Prosecutor in making such appointments must be satisfied that potential appointees have sufficient experience and ability to perform the role of a State Prosecutor and that they are persons of good character.

Duties and Responsibilities of Prosecutors – Code of Practice and Ethics
Pursuant to section 29 of the *Public Prosecutors Act*, the Public Prosecutor, after consultation with the Law Society and the Law Council, has issued a *Code of Practice and Ethics for prosecutors*. This Code sets out ethical rules under which all prosecutors must act. The first rule is that a prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

Independence of Prosecutors
In recognition of the need for a prosecutor to be free from any influence and in recognition of the prosecutor's role as a minister of justice, the Public Prosecutors Act in section 24 provides as follows:

> **24 Independence of Prosecutors**
>
> (1) The Deputy Public Prosecutor, Assistant Public Prosecutors and State Prosecutors must perform their functions independently and are not subject to the direction or control of any other person or body in the performance of their functions.
>
> (2) However, the Deputy Public Prosecutor, Assistant Public Prosecutors and State Prosecutors must perform their functions in accordance with the directions of the Public Prosecutor who is responsible for the due exercise of their functions.

2. The Decision to Prosecute

How the system works
The Office of the Public Prosecutor prosecutes offences that are the subject of trials before the Supreme Court of Vanuatu. Offences that are the subject of trials before the Supreme Court of Vanuatu are the more serious offences, generally speaking being those carrying greater than two years imprisonment as the maximum penalty (see section 14 *Judicial Services and Courts Act No 54 of 2000*).

The criminal justice system generally operates for a serious offence as follows:

1. a complaint concerning an alleged offence is made to a Police Officer;
2. the Police Officer conducts an investigation into the alleged offence, including arresting the defendant and giving him or her an opportunity to answer the allegation against him or her;
3. the Police officer prepares all the statements obtained during the investigation and forwards the file to the State Prosecutor's Office;

4 a State Prosecutor at the State Prosecutor's Office reads through the material and prepares a draft charge or complaint against the defendant and the file containing the draft charge or complaint is then checked by a senior Prosecutor at the Public Prosecutor's Office and the charge or complaint is finalized and forwarded to the Magistrate's Court;

5 the Magistrate's Court authorizes the arresting and charging of the defendant (section 143 of the *Criminal Procedure Code [CAP 136]);*

6 the defendant is brought before the Magistrate's Court and is the subject of a Preliminary Inquiry where all the evidence is tendered before a Senior Magistrate who then makes a determination as to whether there is a prima facie case against the defendant (section 145 of the *Criminal Procedure Code [CAP 136]);*

7 if there is a prima facie case found against the defendant, he or she is committed for trial to the Supreme Court (section 145, 146 of the *Criminal Procedure Code [CAP 136]);*

8 the prosecution file is then brought to the Office of the Public Prosecutor where the prosecution evidence is again considered by a senior prosecutor in the office and determinations made as to:

a) whether further evidence is required to be obtained by the Police;

b) the appropriate charge to be laid before the Supreme Court, keeping in mind the charge upon which he or she was committed for trial; and

c) whether a Supreme Court trial should take place (section 8 *Public Prosecutors Act).*

9 the defendant is brought before the Supreme Court and a trial is conducted before a Justice of the Supreme Court where all the witnesses are called to give evidence and all the exhibits tendered for the prosecution and then for the defence and the Supreme Court Justice determines whether the case against the defendant is proved beyond a reasonable doubt (Part IX of the *Criminal Procedure Code [CAP 136]*);

10 if the case against the defendant is proved beyond a reasonable doubt, he or she is then sentenced for the crime that he or she has committed (Part IX and Part X of the *Criminal Procedure Code [CAP 136]*);

11 the defendant has a right to appeal against the conviction and or sentenced imposed to the Court of Appeal and the prosecution has a right to appeal against the leniency of the sentence that was imposed (Part XI of the *Criminal Procedure Code [CAP 136])*;

12 if the defendant or the prosecution appeals, the Court of Appeal then determines whether the conviction and sentence should be overturned or should be confirmed (Part XI of the *Criminal Procedure Code [CAP 136])*;.

As is set out above, the prosecutor plays no part in the initial investigation of the matter, although where appropriate the prosecutor may give advice to the Police in relation to obtaining further evidence.

The Office of the Public Prosecutor's involvement commences at paragraph 4 above - where the charge drafted by the State Prosecutor is checked by a Senior prosecutor at the Office of the Public Prosecutor. The evidence is again scrutinized by the Office of the Public Prosecutor as set out in paragraph 8 above. In relation to office procedure where a prosecutor performing the roles in either 4 or 8 above determines that further evidence is to be sought by Police, or that the case should not proceed, the prosecutor must provide his or her recommendation on any action to be taken on the file back to a senior prosecutor for consideration.

The initial decision to be made by the Prosecutor is whether to prosecute.

Criteria governing the decision to prosecute

Although by definition an Executive act, the decision to prosecute must be exercised in a quasi-judicial way. It is **not** the rule that suspected criminal offences must automatically be the subject of criminal prosecution. The dominant consideration in every case is whether *the offence itself or the circumstances of its commission* are of such a nature that it is in the public interest for a prosecution to be brought.

The first question however, for a prosecutor to ask himself or herself is *"is there enough evidence to justify putting this case before the Court?"* After answering this question, the prosecutor must then ask himself or herself whether a prosecution is required *in the public interest*. A detailed discussion on this aspect would be beyond the scope of this Statement. The ultimate decision whether or not to prosecute for any serious offence is constitutionally for the Public Prosecutor alone.

The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are to be employed to pursue with some vigor those cases worthy of prosecution.

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.

The objectives of fairness and consistency as previously stated are of particular importance. However, fairness need not mean weakness and consistency need not mean rigidity. The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so. The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases.

Evidentiary test

The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender.

When deciding whether the evidence is sufficient to justify the institution or continuation of a prosecution the existence of a bare prima facie case is not enough. Once it is established that there is a prima facie case it is then necessary to give consideration to the prospects of conviction. A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.

The decision whether there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the alleged offender and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction.

This assessment may be a difficult one to make, and of course there can never be an assurance that a prosecution will succeed. Indeed it is inevitable that some will fail. However, application of this test dispassionately, after due deliberation by a person experienced in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and the useless expenditure of public funds.

When evaluating the evidence regard should be had to the following matters:

(a) Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute? For example, prosecutors will wish to satisfy themselves that confession evidence has been properly obtained. The possibility that any evidence might be excluded should be taken into account and, if it is crucial to the case, may substantially affect the decision whether or not to institute or proceed with a prosecution.

(b) If the case depends in part on admissions by the defendant, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the defendant?

(c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the defendant, or may be otherwise unreliable?

(d) Has a witness a motive for telling less than the whole truth?

(e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?

(f) What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability which is likely to affect his or her credibility?

(g) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?

(h) If there is a lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?

(i) Are all the necessary witnesses available and competent to give evidence, including any who may be abroad?

(j) Where child witnesses are involved, are they likely to be able to give sworn evidence?

(k) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the defendant?

(l) Where two or more defendants are charged together, is there a reasonable prospect of the proceedings being severed? If so, is the case sufficiently proved against each defendant should separate trials be ordered?

This list is not exhaustive, and of course the matters to be considered will depend upon the circumstances of each individual case, but it is introduced to indicate that, particularly in borderline cases, the prosecutor must be prepared to look beneath the surface of the statements.

Public Interest test

Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.

The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While many public interest factors militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution (for example, the seriousness of the offence, the need for deterrence). In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.

Factors which may arise for consideration in determining whether the public interest requires a prosecution include:

(a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a 'technical' nature only;

(b) any mitigating or aggravating circumstances;

(c) the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;

(d) the alleged offender's antecedents and background;

(e) the staleness of the alleged offence;

(f) the degree of culpability of the alleged offender in connection with the offence;
(g) the effect on public order and morale;
(h) the obsolescence or obscurity of the law;
(i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
(j) the availability and efficacy of any alternatives to prosecution;
(k) the prevalence of the alleged offence and the need for deterrence, both personal and general;
(l) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
(m) whether the alleged offence is of considerable public concern;
(n) any entitlement of the government of the Republic of Vanuatu or other person or body to compensation, reparation or forfeiture if prosecution action is taken;
(o) the attitude of the victim of the alleged offence to a prosecution;
(p) the likely length and expense of a trial;
(q) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
(r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
(s) whether the alleged offence is triable only in the Supreme Court; and
(t) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case.

As a matter of practical reality the proper decision in many cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the court at sentence in mitigation. Nevertheless, where the alleged offence is not so serious as plainly to require prosecution the prosecutor should always apply his or her mind to whether the public interest requires a prosecution to be pursued.

In the case of some offences, the legislation provides an enforcement mechanism which is an alternative to prosecution. Examples are the Vanuatu National Provident Fund prosecution procedure under the *Vanuatu National Provident Fund Act [CAP 189]*. The fact that a mechanism of this kind is available does not necessarily mean that criminal proceedings should not be instituted. The alleged offence may be of such gravity that prosecution is the appropriate response.

However, in accordance with the above, the availability of an alternative enforcement mechanism is a relevant factor to be taken into account in determining whether the public interest requires a prosecution.

A decision whether or not to prosecute must clearly not be influenced by:

(a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
(b) personal feelings concerning the alleged offender or the victim;
(c) possible political advantage or disadvantage to the Government or any political group or party; or
(d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

Prosecution of juveniles

Special considerations apply to the prosecution of juveniles. Prosecution of a juvenile should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.

In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out above as appear to be relevant, but particularly to:

(a) the seriousness of the alleged offence;
(b) the age and apparent maturity and mental capacity of the juvenile;
(c) the available alternatives to prosecution, such as a caution, and their efficacy;
(d) the sentencing options available to the relevant Court if the matter were to be prosecuted;
(e) the juvenile's family circumstances, particularly whether the parents of the juvenile appear able and prepared to exercise effective discipline and control over the juvenile;
(f) the juvenile's antecedents, including the circumstances of any previous caution the juvenile may have been given, and whether they are such as to indicate that a less formal disposal of the present matter would be inappropriate; and
(g) whether a prosecution would be likely to be harmful to the juvenile or be inappropriate, having regard to such matters as the personality of the juvenile and his or her family circumstances.

Choice of charges
In many cases the evidence will disclose an offence against several different laws. Care must therefore be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence.

In the ordinary course the charge or charges laid or proceeded with will be the most serious disclosed by the evidence. Nevertheless, when account is taken of such matters as the strength of the available evidence, the probable lines of defence to a particular charge, and other considerations, it may be appropriate to lay or proceed with a charge which is not the most serious revealed by the evidence.

Under no circumstances should charges be laid with the intention of providing scope for subsequent charge-bargaining.

A choice of charge will not infrequently arise where the available evidence will support charges under both a provision of a specific Act and one or more of the offences of general application in the *Penal Code* [CAP 136]. Ordinarily the provisions of the specific Act rather than the general provisions of the Penal Code should be relied on unless to do so would not adequately reflect the nature of the criminal conduct disclosed by the evidence.

Charges should not be laid under the *Penal Code* or any other Act solely to avoid a time limit for a prosecution under a specific Act unless the conduct of the proposed defendant, or the circumstances in which the alleged offence was committed, contributed to the offence under the specific Act being out of time. In determining whether it would be appropriate to proceed under the *Penal Code* in such a case, it may also be necessary to have regard to any delay on the part of the responsible investigating agency in making enquiries in respect of the suspected breach and/or in referring the case to the Office of the Public Prosecutor.

Customary Settlements and their place in criminal law
The *Criminal Procedure Code [CAP 136]* provides for a role for customary settlements in the criminal justice system as follows:

> PROMOTION OF RECONCILIATION
> 118. Notwithstanding the provisions of this Code or of any other law, the Supreme Court and the Magistrate's Court may in criminal causes promote reconciliation and encourage and facilitate the settlement in an amicable way, according to custom or otherwise, of any proceedings for an offence of a personal or private nature punishable by imprisonment for less than 7 years or by a fine only, on terms of payment of compensation or other terms approved by such Court, and may thereupon order the proceedings to be stayed or terminated.

ACCOUNT TO BE TAKEN OF COMPENSATION BY CUSTOM

119. Upon the conviction of any person for a criminal offence, the court shall, in assessing the quantum of penalty to be imposed, take account of any compensation or reparation made or due by the offender under custom and if such has not yet been determined, may, if he is satisfied that undue delay is unlikely to be thereby occasioned, postpone sentence for such purpose.

The Office of the Public Prosecutor abides by the principles enunciated in these provisions. It is to be noted that in the case of serious crimes, including rape, incest and other serious offences including offences against Public Order, a customary settlement is relevant in determining the quantum or length of any sentence, but not relevant in exercising the discretion to prosecute.

3. The institution and conduct of Public Prosecutions

As a general rule any person has the right at common law to institute a prosecution for a breach of the criminal law. Nevertheless, while that is the position in law, in practice all but a very small number of prosecutions are instituted by the Office of the Public Prosecutor.

The decision to initiate investigative action in relation to possible or alleged criminal conduct ordinarily rests with the department responsible for administering the relevant legislation. The Office of the Public Prosecutor is not usually involved in such decisions, although it may be called upon to provide legal advice or policy guidance. The Office of the Public Prosecutor may be consulted where, for example, there is doubt whether alleged misconduct constitutes a breach of the law.

The actual investigation is usually carried out by the Police except where the department or agency concerned has its own investigative arm. Generally speaking, the Office of the Public Prosecutor is not involved in investigations although from time to time it may be called upon to provide legal advice or policy guidance during the investigation stage. In major or very complex investigations such an involvement may occur at an early stage and be of a fairly continuous nature.

If as a result of the investigation an offence appears to have been committed the established practice is for a brief of evidence to be forwarded to the Office of the Public Prosecutor where it will be examined to determine whether a prosecution should be instituted and, if so, on what charge or charges.

By arrangement with the Office of the Public Prosecutor a few Government agencies may conduct their own prosecutions. These are generally high volume matters of minimal complexity (where, for example, pleas of guilty are common) and where prison sentences are rarely imposed (in many instances the maximum penalty involved is a fine). It is expected that those responsible for such prosecutions will observe these guidelines, and that they will consult the Office of the Public Prosecutor when difficult questions of fact or law arise.

If an investigation has disclosed sufficient evidence for prosecution but the department or agency concerned considers that the public interest does not require prosecution, or requires some action other than prosecution, the Office of the Public Prosecutor should still be consulted in any matter which involves alleged offences of real gravity. The Office of the Public Prosecutor should also be consulted whenever a department or agency has any doubt about what course of action is most appropriate in the public interest.

In deciding whether or not a prosecution is to be instituted or continued and, if so, on what charge or charges, any views put forward by the Police, or the department responsible for the administration of the law in question, are carefully taken into account. Ultimately, however, the decision is to be made by the Public Prosecutor having regard to the considerations set out earlier.

Leadership Code
Chapter 10 of the *Constitution of the Republic of Vanuatu* provides for a Leadership Code to govern the conduct of leaders of the people of Vanuatu. *The Leadership Code Act No.2 of 1998* gives effect to Chapter 10 of the *Constitution*. Chapter 10 of the *Constitution* and the associated Act place a high obligation on the leaders of the Republic of Vanuatu to obey the law and to act with integrity.

In relation to the *Leadership Code*, the Ombudsman must investigate and report on the conduct of a leader (other than the President). The report is then furnished to the Public Prosecutor who then must determine whether further investigation should be undertaken by the Police and whether there are sufficient grounds to prosecute the leader or any other person. The same test as applies in the determination of the decision to prosecute is applied in cases alleging breaches of the *Leadership Code* is applied as in deciding whether to prosecute under the general criminal law.

4. Control of prosecutions for an offence

Introduction
Under the *Public Prosecutors Act*, the Public Prosecutor is given a supervisory role as to the prosecution of offences against the criminal law, and is empowered to intervene at any stage of a prosecution for an offence instituted by another.

Intervention in a private prosecution
Section 10(1) of the Public Prosecutors Act provides "If a prosecution in respect of an offence has been instituted by a person other than the Public Prosecutor, the Public Prosecutor may take over and assume the conduct of the prosecution".

The right of a private individual to institute a prosecution for a breach of the law has been said to be "a valuable constitutional safeguard against inertia or partiality on the part of authority" (per Lord Wilberforce in *Gouriet -v- Union of Post Office Workers* [1978] AC 435 at 477). Nevertheless, the right is open to abuse and to the intrusion of improper personal or other motives. Further, there may be considerations of public policy why a

private prosecution, although instituted in good faith, should not proceed, or at the least should not be allowed to remain in private hands. The power under section 10 of the Act therefore constitutes an important safeguard against resort to this right in what may be broadly described as inappropriate circumstances.

The question whether the power under section 10 should be exercised to take over a private prosecution will usually arise at the instance of one or other of the parties to the prosecution, although clearly the Public Prosecutor may determine of his or her own motion that a private prosecution should not be allowed to proceed. Alternatively, some public authority, such as a government department, may be concerned that to proceed with the prosecution would be contrary to the public interest and refer the matter to the Public Prosecutor.

Where a question arises whether the power under section 10 should be exercised to intervene in a private prosecution, and the private prosecutor has indicated that he or she is opposed to such a course, the private prosecutor will be permitted to retain conduct of the prosecution unless one or more of the following applies:

(a) there is insufficient evidence to justify the continuation of the prosecution, that is to say, there is no reasonable prospect of a conviction being secured on the available evidence;

(b) there are reasonable grounds for suspecting that the decision to prosecute was actuated by improper personal or other motives, or otherwise constitutes an abuse of the prosecution process such that, even if the prosecution were to proceed it would not be appropriate to allow it to remain in the hands of the private prosecutor;

(c) to proceed with the prosecution would be contrary to the public interest - law enforcement is necessarily a discretionary process, and sometimes it is appropriate for subjective considerations of public policy, such as the preservation of order or the maintenance of international relations, to take precedence over strict law enforcement considerations; or

(d) the nature of the alleged offence, or the issues to be determined, are such that, even if the prosecution were to proceed, it would not be in the interests of justice for the prosecution to remain in private hands.

A private individual may institute a prosecution in circumstances where he or she disagrees with a previous decision of the Office of the Public Prosecutor. If, upon reviewing the case, it is considered the decision not to proceed with a prosecution was the proper one in all the circumstances, the appropriate course may be to take over the private prosecution with a view to discontinuing it.

In some cases the reason for intervening in the private prosecution will necessarily result in its discontinuance once the Public Prosecutor has assumed responsibility for it. In this regard, once the decision is made to take over responsibility for a private prosecution the same criteria should be applied at all stages of the proceeding as would be applied in any other prosecution being conducted by the Office of the Public Prosecutor.

If it is considered that it may be appropriate to intervene in a private prosecution, it may be necessary for the Office of the Public Prosecutor to request police assistance with enquiries before a final decision can be made whether or not to do so, and if so, whether or not to continue the prosecution.

5. Some other decisions in the prosecution process

The calling of accomplices as witnesses for the prosecution
This section is concerned with the broad considerations involved in deciding whether to call an accomplice to give evidence in a particular matter and associated maters.
A decision whether to call an accomplice to give evidence for the prosecution frequently presents conflicting considerations calling for the exercise of careful judgment in the light of all the available evidence. Inevitably, however, there will be instances where there is a weakness in the prosecution evidence that makes it desirable, or even imperative, to call an accomplice for the prosecution if that accomplice appears to be the only available source of the evidence needed to strengthen the weakness.

In conjunction with the question whether to call an accomplice the question may arise whether that accomplice should also be prosecuted. In this regard, unless the accomplice has been dealt with in respect of his or her own participation in the criminal activity the subject of the charge against the defendant, he or she will be in a position to claim the privilege against self-incrimination in respect of the very matter the prosecution wishes to adduce into evidence.

Where an accomplice receives any concession from the prosecution in order to secure his or her evidence, whether as to choice of charge, the grant of immunity from prosecution the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court.

In the course of an investigation the police may identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than a defendant. Thereafter the investigation may be directed at constructing a case against the remaining participants based on the evidence it is expected this person will give. Unless for some reason it is not practicable to do so, the police should always seek advice from the office of the Public Prosecutor as to the appropriateness of such a course.

Charge-negotiations
Charge-negotiations involve negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the defendant pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

Charge-negotiations are to be distinguished from consultations with the trial judge as to the sentence the judge would be likely to impose in the event of the defendant pleading guilty to a criminal charge. Anything which suggests an arrangement in private between a judge and counsel in relation to the plea to be made or the sentence to be imposed must be studiously avoided. It is objectionable because it does not take place in public, it excludes the person most vitally concerned, namely the accused, it is embarrassing to the Prosecutor and it puts the judge in a false position which can only serve to weaken public confidence in the administration of justice.

This document has earlier referred to the care that must be taken in choosing the charge or charges to be laid. Nevertheless, circumstances can change and new facts can come to light. Arrangements as to charge or charges and plea can be consistent with the requirements of justice subject to the following constraints:

(a) a charge-negotiation proposal should not be initiated by the prosecution; and

(b) such a proposal should not be entertained by the prosecution unless:
(i) the charges to be proceeded with bear a reasonable relationship to the nature of the criminal conduct of the accused;
(ii) those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and
(iii) there is evidence to support the charges.

Any decision whether or not to agree to a proposal advanced by the defence, or to put a counter-proposal to the defence, must take into account all the circumstances of the case and other relevant considerations including:

(a) whether the defendant is willing to co-operate in the investigation or prosecution of others, or the extent to which the defendant has done so;

(b) whether the sentence that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the defendant is already serving a term of imprisonment) would be appropriate for the criminal conduct involved;

(c) the desirability of prompt and certain despatch of the case;

(d) the defendant's antecedents;

(e) the strength of the prosecution case;

(f) the likelihood of adverse consequences to witnesses;

(g) in cases where there has been a financial loss to the Republic of Vanuatu or any person, whether the defendant has made restitution or arrangements for restitution;

(h) the need to avoid delay in the despatch of other pending cases;

(i) the time and expense involved in a trial and any appeal proceedings;

(j) the view of the victim of the crime on the proposed charge negotiation; and

(k) the view of the referring agency (e.g. Police Service).

In no circumstances should the prosecution entertain a charge-negotiation proposal initiated by the defence if the defendant maintains his or her innocence with respect to a charge or charges to which the defendant has offered to plead guilty.

A proposal by the defence that a plea be accepted to a lesser number of charges or a lesser charge or charges may include a request that the prosecution not oppose a defence submission to the court at sentence that the penalty fall within a nominated range. Alternatively, the defence may indicate that the defendant will plead guilty to an existing charge or charges if the prosecution will not oppose such a submission. It will not be objectionable for the prosecution to agree to such a request provided the penalty or range of sentence nominated is considered to be within acceptable limits to a proper exercise of the sentencing discretion.

Proceeding to trial in the absence of a preliminary enquiry or in circumstances where the person was not committed to stand trial

To present an indictment in the absence of a preliminary inquiry (an "ex officio indictment") must be regarded as constituting a significant departure from accepted practice. Given that the purpose of a preliminary inquiry is to filter out those cases where there is an insufficient basis for a defendant being placed on trial, to indict in the absence of a preliminary inquiry will deny the defendant the opportunity of securing a discharge before the magistrate. It will also deny the defendant the opportunity of testing the evidence of prosecution witnesses in cross-examination.

A decision to indict in the absence of a preliminary inquiry will only be justified if any disadvantage to the defendant that may thereby ensue will nevertheless not be such as to deny the defendant a fair trial. Further, such a decision will only be justified if there are strong and powerful grounds for so doing. Needless to say, an ex-officio indictment should not be presented in the absence of a preliminary inquiry unless the usual evidentiary and public interest considerations are satisfied.

It should be noted that where an ex-officio indictment is presented in the absence of a preliminary inquiry the defendant will be provided with all relevant witness statements and full details of the case which the prosecution will present at the trial.

On the other hand, a decision to indict notwithstanding the defendant was discharged at the preliminary inquiry will not constitute as great a departure from accepted practice. The result of a preliminary inquiry has never been regarded as binding on those who have the authority to indict. The magistrate may have erred in discharging the defendant, and in such a case the filing of an ex-officio indictment may be the only feasible way that that error can be corrected. Nevertheless, a decision to indict following a discharge at the preliminary inquiry should never be taken lightly. An ex-officio indictment should not be presented in such cases unless it can be confidently asserted that the magistrate erred in declining to commit, or fresh evidence has since become available and it can be confidently asserted that, if that evidence had been available at the time of the preliminary inquiry, the magistrate would have committed the defendant for trial.

Prosecution appeals against sentence

It is important that prosecution appeals should not be allowed to circumscribe unduly the sentencing discretion of judges. There must always be a place for the exercise of mercy where a judge's sympathies are reasonably excited by the circumstances of the case. There must always be a place for the leniency which has traditionally been extended even to offenders with bad records when the judge forms the view, almost intuitively in the case of experienced judges, that leniency at that particular stage of the offender's life might lead to reform.

The proper role for prosecution appeals is to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic views of individual judges as to particular crimes or types of crime to be corrected, and occasionally to correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience.

The prosecution's right to appeal against sentence should be exercised sparingly, and it is the policy of the Office of the Public Prosecutor not to institute such an appeal unless it can be asserted with some confidence that the appeal will be successful.

A prosecution appeal against sentence should also be instituted promptly, even where no time limit is imposed by the relevant legislation. Undue delay by the prosecution in the institution of an appeal may render oppressive the substitution of an increased sentence, and the appeal courts have indicated on numerous occasions that in such cases they will not intervene although the prosecution's appeal is otherwise meritorious.

Mention should also be made of the notion of "double jeopardy" and its application in the context of prosecution appeals against sentence. The expression "double jeopardy" is not always used with a single meaning. Sometimes it is used to refer to the pleas in bar of autrefois acquit and autrefois convict; sometimes it is used to encompass what is said to be a wider principle that no one should be "punished again for the same matter" *(Wemyss v Hopkins* (1875) LR 10 QB 378 at 381 per Blackburn J.). Further, "double jeopardy" is an expression that is employed in relation to several different stages of the criminal justice process: prosecution, conviction and punishment.

If there is a single rationale for the rule or rules that are described as the rule against double jeopardy, it is that described by Black J in *Green v United States* 355 US 184 at 187-188 (1957):

> "The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty."

The statutory conferral of a right of appeal by the prosecution against sentence infringes the traditional common law rule against double jeopardy in the administration of criminal justice in a manner comparable to a conferral of a prosecution right of appeal against a trial acquittal. As such, in most cases, because of the fact that the respondent to a prosecution appeal is subject to sentence proceedings twice, the sentence imposed in a successful prosecution appeal against sentence is often reduced in recognition of the infringement.

Nolle Prosequi

Nolle Prosequi is a latin term for the voluntary withdrawal by the prosecutor of present proceedings on a criminal charge. The right to withdraw proceedings is provided for in section 29 of the *Criminal Procedure Code [CAP 136].* Section 29 provides that one a decision to withdraw the charge has been made by the prosecutor, the Court is to take that withdrawal as being equivalent to the defendant as having been acquitted of the offence. This means that a defendant after a nolle prosequi has been entered, he or she may not be prosecuted for the same allegation ever again.

It is the policy of the Office of the Public Prosecutor that the procedure should only be invoked where:

i) the defendant is unfit to stand trial because of some physical or mental incapacity;
ii) the Public Prosecutor is of the view that there is no reasonable prospect of conviction because of the lack of admissible evidence; or
iii) the Public Prosecutor determines that it is no longer in the public interest for the prosecution to continue.

Where a prosecutor is of the view that a nolle prosequi ought to be entered, he or she must provide the file with a memorandum containing that recommendation to the Public Prosecutor to make the determination.

Where a defendant fails to appear at Court when he or she has been served with a summons to appear, the appropriate course of action for a prosecutor is to seek a warrant for his or her arrest from the Court (see Public Prosecutor's Practice Direction 1 of 2003).

Public Prosecutor offers no evidence

In some cases, it is determined to be appropriate for the prosecution to offer no evidence in relation to a particular charge when a matter is listed for trial. The consequence of offering no evidence is that the charge is dismissed and the defendant acquitted.

The type of case where it is appropriate for no evidence to be offered is where the prosecutor determines that there is a legitimate defence available to a defendant and that the available evidence discloses that there is a reasonable possibility that the defendant would not be convicted based on that defence. If a prosecutor is not certain whether a defence will be made out, the matter ought to proceed to trial with the Court to determine whether the defence is made out. When a prosecutor has any doubt as to what course to follow, advice must be sought from the Public Prosecutor. If a prosecutor is conducting a Court Tour and the Public Prosecutor cannot be contacted, the prosecutor ought to advise

the Court that he or she undertakes to seek a direction as to whether a nolle prosequi ought to be entered from the Public Prosecutor upon his or her return to Port Vila and the defendant ought to be granted bail until that determination be made.

6 Victims of Crime

Prosecutors must, to the extent that it is relevant and practicable to do so, have regard to the rights of victims in addition to any other relevant matter.

Interested victims and relatives of victims, whether witnesses or not, should appropriately and at an early stage of proceedings have explained to them the prosecution process and their role in it. Prosecutors generally should initiate the giving of such information and should do so directly rather than through intermediaries.

In the case of a child witness the prosecutor is to ensure that the child is appropriately prepared for and supported in his or her appearance in court.

Special needs or conditions of all witnesses, victims and relatives of victims should be given careful consideration. Prosecutors should consider seeking the involvement of the Witness Assistance Service in their dealings with such persons.

Careful consideration should be given to any request by a victim that proceedings be discontinued. In sexual offences, particularly, such requests, properly considered and freely made, should be accorded significant weight. It must be borne in mind; however, that the expressed wishes of victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the accused or where the gravity of the alleged offence requires it, the public interest must prevail.

In domestic violence offences, any request by the victim that proceedings be discontinued should be carefully considered. The needs, welfare and safety of the victim should be considered as relevant factors in determining where the overall public interest lies. It may be necessary to defer any decision on discontinuation until a thorough appraisal of all the circumstances of the case can be made.

7 Conclusion

This Statement does not attempt to cover all questions that can arise in the prosecution process and the role of the prosecutor in their determination. It is sufficient to state that throughout a prosecution the prosecutor must conduct himself or herself in a manner which will maintain, promote and defend the interests of justice, for in the final analysis the prosecutor is not a servant of government or individuals he or she is a servant of justice.

At the same time it is important not to lose sight of the fact that prosecutors discharge their responsibilities in an adversarial context and seek to have the prosecution case sustained. Accordingly, while that case must at all times be presented to the court fairly and justly, the community is entitled to expect that it will also be presented fearlessly, vigorously and skillfully.

Office of the Public Prosecutor
September 2003

REPUBLIC OF VANUATU

VANUATU FINANCIAL SERVICES COMMISSION

COMPANIES ACT [CAP. 191]

TAKE NOTICE that pursuant to Section 364 of the Companies Act [CAP. 191], the following company has ceased to have a place of business in Vanuatu.

BNP PARIBAS S.A.

Dated at Port Vila this twenty-fifth day of March 2004.

George Andrews
REGISTRAR OF COMPANIES

REPUBLIC OF VANUATU

THE BUSINESS NAMES ACT NO. 6 OF 1990

APPOINTMENT

Pursuant to section 1of the Business Names Act No. 6 of1990, 1 hereby appoint:-

Jenny Tari

to be the Acting Registrar of Business Names with effect from 14 June 2004 until such time when the Registrar of Business Names returns from overseas.

MADE at Port Vila this 11 day of June 2004.

REPUBLIC OF VANUATU
MINISTER OF FINANCE AND ECONOMIC MANAGEMENT

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

CHARITABLE ASSOCIATIONS (INCORPORATION) ACT [CAP. 140]

APPOINTMENT

IN EXERCISE of the powers conferred by section 1 of the Charitable Associations (Incorporation) Act [CAP. 140], I hereby appoint –

Jenny Tari

as the Acting Registrar of Charitable Association for the purpose of the said Act with effect from 14 June 2004 until such time when the Registrar of Charitable Associations returns from overseas.

MADE at Port Vila this 11 day of June 2004.

REPUBLIC OF VANUATU
MINISTER OF FINANCE AND ECONOMIC MANAGEMENT

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

COMPANIES ACT [CAP. 191]

APPOINTMENT

IN EXERCISE of the powers conferred by section 235 of the Companies Act [Cap. 191], I hereby appoint:-

Marisan Pierre

As the Acting Official Receiver with effect from 14 June 2004 until such time when the Official Receiver returns from overseas.

MADE at Port Vila this 11 day of June 2004.

MINISTER OF FINANCE AND ECONOMIC MANAGEMENT

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

COMPANIES ACT [CAP. 191]

APPOINTMENT

Pursuant to section 1 of the Companies Act [Cap. 191], I hereby appoint:-

Jenny Tari

to be the Acting Registrar of Companies Act with effect from 14 June 2004 until such time when the Registrar of Companies returns from overseas.

MADE at Port Vila this 11 day of June 2004.

REPUBLIC OF VANUATU
MINISTER OF FINANCE AND ECONOMIC MANAGEMENT

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

REGISTRATION UNITED KINGDOM TRADE MARKS ACT [CAP. 81]

APPOINTMENT

Pursuant to section 1 of the Registration of United Kingdom Trade Marks [Cap. 81], 1 hereby appoint:-

Jenny Tari

to exercise the powers and carry out the duties as the Acting the Acting Registrar of United Kingdom Trade Marks with effect from 14 June 2004 until such time when the Registrar of United Kingdom Trade Marks returns from overseas.

MADE at Port Vila this 11 day of June 2004.

REPUBLIC OF VANUATU
MINISTER OF FINANCE AND ECONOMIC MANAGEMENT
REPUBLIQUE DE VANUATU

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

STAMP DUTIES ACT [CAP. 68]

APPOINTMENT

IN EXERCISE of the powers conferred by section 2 of the Stamp Duties Act [Cap. 68], I hereby appoint:-

Wesley Vieira

to be the Acting Controller of Stamp Duties with effect from 14 June 2004 until such time when the Controller of Stamp Duties returns from overseas.

MADE at Port Vila this 11 day of June 2004.

MINISTER OF FINANCE AND ECONOMIC MANAGEMENT

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

UNITED KINGDOM PATENTS [CAP. 80]

APPOINTMENT

Pursuant to section 2 of the Registration of United Kingdom Patents [Cap. 80], I hereby appoint:-

Jenny Tari

to exercise the powers and carry out the duties as the Acting the Acting Registrar of United Kingdom Patents with effect from 14 June 2004 until such time when the Official Receiver returns from overseas.

MADE at Port Vila this 11 day of June 2004.

REPUBLIC OF VANUATU
MINISTER OF FINANCE AND ECONOMIC MANAGEMENT

.....

Jimmy Nicklam
Minister of Finance and Economic Management

REPUBLIC OF VANUATU

PUBLIC HOLIDAYS ACT [CAP 114]

Declaration of Public Holiday

In exercise of the power conferred on me by section 2 of the Public Holidays Act [CAP 114] and acting on the advice of the Prime Minister, I, Roger Abiut, being the Speaker of Parliament at the time of dissolution and exercising the functions of the President of the Republic of Vanuatu under Article 37(2) of the Constitution of the Republic of Vanuatu, declare the 18th day of June 2004 to be a public holiday for the citizens of Shefa Province throughout Vanuatu.

Made at Port Vila this 17th **day of** June **2004**

VANUATU GOVERNMENT PRESIDENT Republic of Vanuatu OFFICE OF THE PRESIDENT

Roger Abiut