



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON THE FORCE LEAVE OF DIRECTOR OF FINANCE AND ADMINISTRATION, JOHN GIDEON BY STEPHAN BONG

Date: 12 June 2025



REPUBLIC OF VANUATU

OMB24-0003/2025/05

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1. PURPOSE

The purpose of the investigation is to ascertain whether there were sufficient grounds to place John Gideon, the Director of Finance and Administration within the Ministry of Education, on a 40-day forced leave due to allegations of incompetence and failure to adhere to ministerial orders.

2. SCOPE

The scope of the investigation is;

- a) To look into the process undertaken by the Public Service Commission (PSC) to deal with Director John Gideon following the complaint received from the Minister of Education and Training;
- b) To look into the legality of force leave placed on Director John Gideon.

3. ISSUES

The following issues arise in this matter:

- 1. Whether the process undertaken by PSC to put John Gideon on force leave was lawful;
- 2. Whether Stephan Bong has the authority to sign the letter requiring Director John Gideon to go on leave.,

4. OUTLINE OF EVENTS

- 1. On 23rd February 2023, Director General of the Ministry of Education & Training, Bergmans Iati, wrote to the Chairman of PSC, Martin Mahe, requesting the permanent transfer of Director of Finance, Mr John Gideon to another Office in the Public Service.

The reason advanced for his transfer is not entirely clear. It appears to suggest that Mr Gideon had not performed his functions diligently resulting in the funds belonging to MOET, an amount of Sixty two million, five hundred and seventy two thousand and one hundred and thirty four Vatu (VT62, 572,134) being returned to the Ministry of Finance at the end of the financial year 2022.

According to the DG, the funds should have been used on some important priorities of the Ministry of Education.

On 21st August 2023, the then Minister of Education, Hon. Christopher Emelee wrote another letter to the Chairman of PSC, Martin Mahe, requesting for John Gideon's transfer based on the same reasoning mentioned in the letter above. However, the Minister went on to add another interesting reason. In his own words,

this is what he said "...I've learned that not ONLY me that is overlooking the work of this Ministry with the Director General (DG) Mr Iati BERGMANS, there's also few small governments within this Ministry that can't follow instructions as should be and two of them are these two officers stated above (referring to Director Administration and Finance Mr. John Gideon and Principal Finance Officer Ms Julia Whippy...)"

This, in my view, suggested that the officers concerned did not follow orders or instructions of the Minister and or, the Director General, but carry out their functions as if the Minister and or the Director General do not exist, if this were true.

2. On 14 November 2023, Stephan Bong signed on behalf of the PSC Acting Secretary General, Johnathan lavere approving 20 days annual leave for John Gideon to allow for preliminary assessment to take place.
3. On 7th December 2023, Jonathan lavere, Acting SG of PSC signed an extension of leave for another 20 days period. The purpose for the extension was that the assessment team was unable to carry out their task during the earlier period of 20 days.
4. On the 14th of December 2023, Lawyer Mary Grace Ngari wrote to the Acting SG, Jonathan lavere to reconsider the process undertaken by PSC to put John Gideon on force leave.

5. DISCUSSIONS

The first issue arising in this matter is whether the process undertaken by PSC to put John Gideon on force leave or administrative leave was lawfully carried out.

John Gideon was:

- (a) alleged to have withheld an amount of VT62, 527,134 belonging to the Ministry of Education & Training. The reasoning for withholding the amount was not provided in the letters of the Minister and the Director General to the Public Service Commission. For whatever reason, the Ministry of Finance & Economic Management put on hold the funds at the end of the year;
- (b) alleged to have not performed his functions properly regarding the use of the VT62,527,134 for that financial year that led to the money being returned to the Ministry of Finance at the end of the financial year in line with Government Fiscal policies.

The evidence shows that both the Director General and the Minister wrote separately to the Chairman requesting the PSC to permanently transfer Mr Gideon to another

office within the Public Service. However, no action was taken by the Public Service Commission after receiving the letters.

The evidence available comes from several sources. First from Stephan Bong, Acting Deputy Secretary of PSC. The relevant part of his statement goes as follows;

"Mi nao mi signem force leave blong hem folem ol complaint blong Minister Emele. I bin gat wan complaint I kam feswan long nara Miniater we hemi Silas Bule against Julia Whipy mo Director of Finance, John Gideon."

The second evidence comes from Martin Raul Mahe, Chairman of PSC. The relevant part of his statement goes as follows:

"Reason blong putum John Gideon long force leave hemi from three (3) different Ministers I complaint I go long PSC. Complaint blong ol Ministers hemi base lo ol instruction wei oli issuim I go long Director John Gideon through long DG we hemi immediate supervisor blong hem mo hemi no comply long ol instructions ia. "

I am concerned more about the statement provided by the Acting Deputy Secretary and the Chairman as the head of the Commission that PSC has received several complaints against Director John Gideon from the Ministers yet failed to adhere to the lawful process of discipline outlined below in sections 19A and 19B of the Public Service Act.

Section 19A and 19B outline the grounds and procedures of removing a Director General or Director as follows;

"Grounds for removing director-generals and directors

- 19A (1) *The Commission may remove a director-general or director:*
- (a) because his or her performance is unsatisfactory; or*
 - (b) because of misconduct on his or her part; or*
 - (c) because of physical or mental incapacity; or*
 - (d) if he or she becomes bankrupt.*
- (2) *For the purposes of subsection (1), a director-general's or a director's performance is unsatisfactory if:*
- (a) he or she has not undertaken all or any of his or her principal responsibilities as set out in subsection 20(1) or (2) for a significant period of time; or*

- (b) *there has been a serious breach of his or her performance agreement.*
- (3) *For the purposes of subsection (1), an act by a director-general or director that would be a serious disciplinary offence under section 36 amounts to misconduct.*
- (4) *A director-general or a director cannot be removed unless the procedure for removal set out in section 19B is followed*

Procedure for removal of director-generals and directors

- 19B (1) *The Commission must not remove a director-general or director from office unless the Commission has received a complaint in writing from the Prime Minister, a Minister, the Ombudsman or the Auditor General:*
- (a) *alleging that there is a ground or are grounds for his or her removal under subsection 19A(1); and*
 - (b) *setting out the evidence in support of the allegations.*
- (2) *The Commission must:*
- (a) *appoint one or more persons to investigate the complaint; and*
 - (b) *send the director-general or director a copy of the complaint; and*
 - (c) *give the director-general or director 21 days within which to respond in writing to the allegations.*
- (3) *The Commission may:*
- (a) *dismiss the complaint if the Commission is satisfied that it is frivolous or vexatious; and*
 - (b) *request additional information from the complainant if the complaint does not contain sufficient information.*
- (4) *The Commission must decide whether or not to remove the director-general or the director:*
- (a) *within 75 days after receiving the complaint; or*
 - (b) *if additional information has been requested under paragraph (3)(b) - within 75 days after receiving that additional information.*
- (5) *The person or persons appointed to investigate the complaint must provide a report on the investigation to the Commission. The Commission must take into account the report and any responses made under paragraph (2)(c) in deciding whether to remove a director-general or director.*

- (6) *The Commission must give the director-general or director and the complainant written notice of the Commission's decision and the reasons for the decision.*
- (7) *A decision by the Commission to remove a director-general or director takes effect on the day on which the decision is made."*

The Commission has received three complaints from Ministers as outlined under subsection 19B that states,

The Commission must not remove a director-general or director from office unless the Commission has received a complaint in writing from the Prime Minister, a Minister, the Ombudsman or the Auditor General:

The question surrounding the two (2) complaints from the two other Ministers is;

What action did the PSC took to discipline Director John Gideon? There is nothing before me that shows that the PSC did invoke the disciplinary process referred to above in relation to those two complaints.

In relation to the complaint by then Minister Chrispher Emelee, I have thoroughly reviewed the evidence provided before me and I found no indication that the lawful process outlined above was followed upon receiving the complaint. For example, there is no evidence that the PSC complied with section 19B (2) (c) in the resent complaint against John Gideon that requires the Commission to give the Director 21 days within which to respond in writing to the allegations made against him.

I have had a closer look into the PSC Staff Manual and the PSC Act and found nowhere that provides for a director to be put on force leave prior to a complaint received from the Minister.

I ask myself this question. Does the PSC have other processes or procedures of disciplining a Director General or Director apart from the lawful process outlined above?

In my view, the decision taken by Mr Stephan Bong to put John Gideon on force leave was unlawful.

The Chairman of the PSC failed in his capacity as a leader to delegate the complaint to the Compliance Unit and have it properly prepared for discipline as an agenda to be discussed inside the Commission meeting and have proper record of it. That, to me, the PSC Chairman breached section 13 of the Leadership Code Act to comply with the lawful process of discipline of the Director under subsection 19A and 19B of the Public Service Act.

I also make reference to section 22 of the Public Service Act as follows;

"22. Director-general, director and employees subject to Ministerial directive

A director-general, director or any other employee is subject to the lawful direction of his or her minister in relation to exercising his or her powers or performing his or her functions under this Act.”

The Public Service Commission (PSC) should have treated Director John Gideon's actions as a serious misconduct because he did not follow the Minister's instructions under section 22 of the PSC Act. They should have disciplined him following the proper legal process in Subsections 19A and 19B of the PSC Act.

The second issue in this matter is whether Stephan Bong had the authority to sign Director John Gideon's forced leave.

Stephan Bong was appointed by the Public Service Commission as Acting Deputy Secretary on 10 July 2023 during the Commission meeting NO. 08 of 4 July 2023. Mr Bong signed the 20 days leave of Director John Gideon on the 14th of November 2023. Mr Bong signed off the leave on behalf of the Acting Secretary Jonathan lavere. On the letter, it stated that, and I quote, “*this letter serves to advise you that the Office of the Public Service Commission has received a complaint letter from the Minister of Education Hon. Christophe Emele, dated 21 August 2023 in which he raised allegations against you. Upon assessment of the said allegations and the power vested on me under section 13 (1) of the PSC Act [CAP 246]*”.

The evidence available comes from several sources. Firstly, from Stephan Bong, Acting Deputy Secretary. The relevant part of his statement goes as follows.

Mi nao mi signem force leave blong hem folem ol complaint blong Minister Emele.

The second evidence comes from Jonathan lavere. The relevant part of his statement goes as follows;

Mi signem off extension blong force leave folem wan Commission decision long force leave,

I refer to the letter of force leave signed by Stephan Bong. Inside the letter, Mr Bong stated that the decision to sign the force leave was done pursuant to the power vested on him under section 13(1) of the Public Service Act. Section 13(1) of the PSC Act talks about the function of the Secretary as follows;

13. Secretariat

(1) There shall be appointed by the Commission a Secretary who will provide a secretariat and administrative support services to the Commission and who will be the administrative head of the Office of the Public Service Commission

There is no mention of Acting Deputy Secretary or Acting Secretary. It says the Secretary. Section 13 (2) states;

(2) The Secretary is subject to the direction of the Chairman of the Commission.

The overall role of the Secretary under this provision is basically to provide a secretariat and administrative support to the Commission. I found no evidence that shows that the Chairman Martin Mahe has instructed Stephan Bong to sign off the force leave of John Gideon. I also found nowhere in the Commission meeting that approved for Stephan Bong to sign off the document not in line with the lawful process of the Director's discipline.

The evidence of instruments of force leave shows that the PSC has failed to act as a good employer when dealing with Director John Gideon's case. Because PSC failed to follow lawful process, it allows the subordinate officers like Stephan Bong and Jonathan lavere to make decisions on behalf of the Commission. That, to me amounts to abuse of power of Acting Secretary by the two Officers.

I come to conclude by posing this question: Did Stephan Bong have the authority to make decisions on behalf of the Commission concerning a leader as defined under section 5 of the Leadership Code Act?

My answer to the question is no. Stephan Bong does not have the authority. In his role as Acting Deputy Secretary, Stephan Bong is not authorised to participate in any disciplinary process involving a leader. Lacking such authority, his signing of a document permitting Mr Gideon to go on forced leave has no legal basis. In my view, the entire process and actions taken were unlawful.

Now I come to the law. Section 13, 15, 19 of PSC Act and section 13 of Leadership Code Act

"13. Secretariat

(1) There shall be appointed by the Commission a Secretary who will provide a secretariat and administrative support services to the Commission and who will be the administrative head of the Office of the Public Service Commission.

(2) The Secretary is subject to the direction of the Chairman of the Commission.

34. Employees' obligations

(1) Every employee, director-general, director or senior administrator (as the case may be), must in the course of his or her employment in the Public Service: –

(a) comply with generally accepted behavior in the conduct of his or her employment; and

(b) comply with any reasonable direction given by a director-general, director or the Commission; and

(c) behave honestly and with integrity; and

(d) act with care and diligence; and

(e) treat everyone with respect and courtesy and without coercion or harassment of any kind; and

(f) observe and comply with all applicable laws;

15. Duty to act as a good employer

(1) It shall be the duty of each member of the Commission to ensure that the Commission shall, in the performance of its functions, responsibilities and duties, be a good employer.

(2) The Commission shall as a good employer:

(a) ensure the fair and proper treatment of employees in all aspects of their employment; and

Procedure for removal of director-generals and directors

19B (1) *The Commission must not remove a director-general or director from office unless the Commission has received a complaint in writing from the Prime Minister, a Minister, the Ombudsman or the Auditor General:*

(c) alleging that there is a ground or are grounds for his or her removal under subsection 19A(1); and

(d) setting out the evidence in support of the allegations.

(2) The Commission must:

(d) appoint one or more persons to investigate the complaint; and

(e) send the director-general or director a copy of the complaint; and

(f) give the director-general or director 21 days within which to respond in writing to the allegations.

(5) The Commission may:

(c) dismiss the complaint if the Commission is satisfied that it is frivolous or vexatious; and

(d) request additional information from the complainant if the complaint does not contain sufficient information.

(6) The Commission must decide whether or not to remove the director-general or the director:

(c) within 75 days after receiving the complaint; or

- (d) *if additional information has been requested under paragraph (3)(b) - within 75 days after receiving that additional information.*
- (7) *The person or persons appointed to investigate the complaint must provide a report on the investigation to the Commission. The Commission must take into account the report and any responses made under paragraph (2)(c) in deciding whether to remove a director-general or director.*
- (8) *The Commission must give the director-general or director and the complainant written notice of the Commission's decision and the reasons for the decision.*
- (7) *A decision by the Commission to remove a director-general or director takes effect on the day on which the decision is made.*

22. Director-general, director and employees subject to Ministerial directive

A director-general, director or any other employee is subject to the lawful direction of his or her minister in relation to exercising his or her powers or performing his or her functions under this Act.

Leadership Code Act

13. Duties of leaders

(1) A leader must:

- (a) comply with and observe the law;*
- (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;*
- (c) comply with and observe the duties, obligations and responsibilities established by this Code or any other enactment that affects the leader; and*
- (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty"*

6. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

Before starting this investigation, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this Public Report to give the individuals mentioned in this report another opportunity to respond.

No Member of the Commission including Stephan Bong commented on the Working Paper.

7. FINDINGS

FINDING 1: CHAIRMAN OF PSC, MARTIN MAHE BREACHED SUBSECTION 19A & 19B OF THE PSC ACT AND SECTION 13 OF THE LEADERSHIP CODE ACT

By neglecting to follow the lawful procedures outlined in sections 19A and 19B of the Public Service Act, his conduct is inconsistent with the standards expected of a good leader and thus constitutes a breach of section 13 of the Leadership Code Act.

FINDING 2: PLACING JOHN GIDEON ON FORCED LEAVE CONTRADICTS SECTIONS 19A (1), 19B OF THE PSC ACT AND PART 6, SECTION 2 (2.2) (D) OF THE PSC STAFF MANUAL, AS FORCED LEAVE IS NOT MENTIONED OR PROVIDED FOR IN THE ACT

The decision to place him on forced leave was unlawful, as forced leave has no legal basis under the Public Service Act and the Public Service Staff Manual.

FINDING 3: THERE WAS NO RECORD OF THE COMMISSION MEETING TO DECIDE ON THE FORCE LEAVE OF JOHN GIDEON

Since the Commission did not hold a meeting to decide on the forced leave, Stephan Bong's action contradicts his obligation under section 34 of the PSC Act.

FINDING 4: STEPHAN BONG HAS NO AUTHORITY TO SIGN OFF FORCE LEAVE

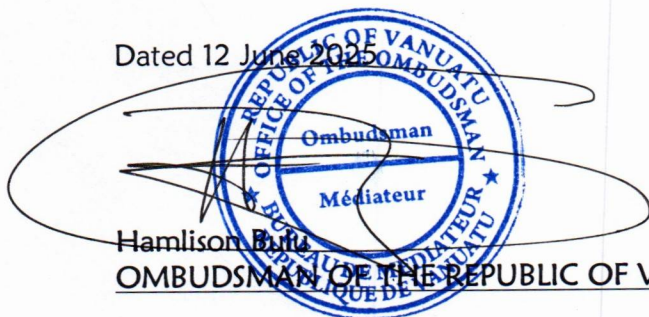
As Stephan Bong lacked the authority to approve Mr. Gideon's forced leave, his action breached section 34 of the PSC Act, which outlines employees' obligations.

8. RECOMMENDATIONS

I make the following recommendations:

1. Due to continued legal breaches by the Public Service Commission under Chairman Mr. Martin Mahe's leadership, the President of the Republic of Vanuatu is respectfully requested to consult with the Prime Minister to remove the current chairperson and appoint another Commission member as Chairman in accordance with Article 59(2) of the Constitution.
2. Mr Stephan Bong to be terminated by the Public Service Commission for breaching his obligation under the PSC Act to sign off on an instrument that he has no authority to make.
3. Members of the Public Service Commission to ensure that their decisions for Director's suspension must be based on the requirements under the PSC Act.
4. Head of State to inform the Ombudsman within 30 days from the date of this Report on his decision.
5. The Public Service Commission to inform Ombudsman within 30 days from the date of this Report on its decision on the conduct of Stephan Bong.

Dated 12 June 2025



Hamlison Bula

OMBUDSMAN OF THE REPUBLIC OF VANUATU