



NATIONAL INTEGRITY SYSTEM STUDY

ELECTORAL MANAGEMENT BODY

DISCUSSION PAPER 3
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About the Transparency Vanuatu National Integrity System Study Discussion Papers Series

The National Integrity System (NIS) study follows a methodology developed by the Transparency International Secretariat in Berlin. This methodology provides the structure of the report and identifies the questions to be addressed. The Vanuatu NIS study examines 13 key institutions, or “pillars”: legislature, executive, judiciary, ombudsman, auditor general, public service, law enforcement, media, private business, customary authorities, electoral commission, political parties and civil society. The research aims to develop consensus of the key recommendations for change. Each pillar discussion paper is based upon review of laws, documents and interviews. Discussion papers are released to the advisory group, external reviewer and the public. The discussion paper is a work-in-progress. All comments, corrections or additions are welcome. Comments are requested by the end of February 2014. Comments can be returned to Transparency Vanuatu in writing or in person (contact details above). If you would like to be added to the email list to be notified when further discussion papers are released or when public meetings on the report are held please contact Transparency Vanuatu.

SUMMARY

The electoral system in Vanuatu faces serious challenges. The main source of these challenges is lack of integrity of the electoral roll, which prevents some legitimate voters from being able to vote, and also allows illegitimate votes to be cast. There are issues with lack of prosecutions for electoral offences. Offences that occur include bribery and threats of violence during elections. There can be interference in the position of the Principal Electoral Officer. The integrity of staff of the Electoral Office has also been called into question. None of these problems are new. Ongoing failure to address these problems undermines the extent to which there can be confidence that elections in Vanuatu are “free and fair”.

KEY RECOMMENDATIONS

1. The most critical issue is the integrity of the electoral roll and the related issue of correctly identifying voters. As a matter of urgency the government must take measures to ensure that the content of the roll is accurate and that there is a system in place to ensure that people who present themselves to vote can be correctly identified. It is recommended that electoral roll and voting system be computerized. It is also recommended that, as the current roll is so corrupt, an entirely new roll is constructed, rather than trying to clean up the existing roll.
2. There are concerns about adequacy of training and control of regional registration officers. It is recommended that before a new roll is constructed, new registration officers must be put in place. Processes for the appointment and training of such staff be reviewed by the PEO in

conjunction with the Electoral Commission in order to develop specific recommendations for reform. These recommendations should include measures for ensuring political independence of registration officers, adequate training and adequate oversight.

3. There should be a review of the Representation of the People Act in order to ensure that the law fully supports fair, transparent electoral processes. The Law Reform Commission should be tasked with conducting this review. The first part of this review should involve collecting and assessing the numerous recommendations that have been made in Election Reports and Election Observer Reports since 2002. Specific issues to consider in respect of voting and the electoral roll include:
 - 3.1. Review of proxy voting, which is seen to be a major area of abuse.
 - 3.2. The absence of provisional voting, which prevents legitimate voters with deficiencies in their registration from being able to vote.
4. The independence of the Electoral Office can be undermined due to the PEO and other electoral officers being public servants. This can both affect appointments and attempts to discipline staff. It is recommended that the Electoral Commission be given the power to directly recruit and discipline staff of the Electoral Office.
5. Currently, in practice, the only consequence for committing an electoral offence is that a successful candidate may face an electoral petition. It is recommended that coordination between the Electoral Office, the Police and the Public Prosecutor is strengthened in order to ensure that those committing electoral offences (including candidates, electoral officers, voters and others) are prosecuted.
6. In order to ensure ongoing monitoring of elections:
 - 6.1. the PEO and Electoral Commission should be reminded of their legal obligations to produce election reports in a timely manner. As part of a review of the Representation of the People Act it should be made clear that these reports are to become public documents.
 - 6.2. the Government should, in a timely manner, provide for observer groups comprised of international and domestic representatives, at all elections, in order to ensure ongoing monitoring of election processes.
7. Currently no body regulates campaign finances. The Ministry of Internal Affairs should appoint a taskforce to consider how campaign finances can and should be regulated.

STRUCTURE AND ORGANISATION

The Electoral Commission is a constitutional body provided The Electoral Commission consists of a chairman and two other members appointed by the President of the Republic acting in accordance with the advice of the Judicial Service Commission.¹ The Principal Electoral Officer (PEO) is also provided for by the Constitution.² The Representation of the People Act [Cap 146] further provides for the functions and duties of the PEO in relation to preparing for and conducting elections. He or she has responsibility for the overall administration on the conduct of elections, under the direction of the Electoral Commission.³ The PEO heads the Electoral Office.

The Electoral Office is stationed in Port Vila. The approved staffing of the Electoral Office is the PEO, a deputy electoral officer, a compiler, an assistant compiler and the secretary.⁴ In order to assist in voter registration, the PEO 'appoints provincial and municipal executive officers as registration officers, who through their administrative structures appoint area council secretaries. The area council secretaries appoint their assistants to undertake registrations.'⁵

RESOURCES (PRACTICE)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

The Electoral Office has some resources but lacks human and financial resources to effectively maintain registrations and carry out education functions. Aid donors are currently supporting improvements to the electoral roll and have helped to fund elections in the past.

The Electoral Commission and Electoral Office are financed through an annual appropriation from Parliament. Budgets are sometimes not adequate to cover election costs. For instance, in 2002 the Electoral Commission reported that of the requested VT 40 million to conduct the national election, only VT25 million was approved. Donor funding and direct payments to suppliers funded the shortfall.⁶ Supplementary appropriations are also sometimes made.⁷ Budgets are sometimes not adequate for paying provincial registration officers and their assistants, which contributes to provincial electoral rolls not being consistently maintained.⁸

An ongoing issue has been that the Electoral Office lacks resources and funding to undertake education campaigns.⁹ In the past successful partnerships with NGOs have assisted in voter education programmes.¹⁰ Additional funds from donors help in undertaking education campaigns are sometimes sought. Voter education campaigns are currently minimal in practice.¹¹

¹ Constitution Art 18 (1).

² Constitution Art 19.

³ Constitution Art 20(2).

⁴ Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

⁵ Jeanette Bolenga, 'Vanuatu: Limitations to the Independence of the EMB' (2006) p 248
http://www.idea.int/publications/emd/upload/EMD_CS_Vanuatu.pdf.

⁶ Electoral Commission, 6th General Elections Report, 2 May 2002, pp 2, 44 - 49.

⁷ For example, the 2008 national election required a supplementary appropriation on VT 25 million (Supplementary Appropriation 2008 Act 2009).

⁸ Electoral Commission, above n 6, p 30.

⁹ Jeannette Bolenga, above n 5, p 249.

¹⁰ Electoral Commission, above n 6 p 24.

¹¹ Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

The Electoral Office continues to receive support and assistance through the Australian Government (AusAid) and the Australian Electoral Commission through the provision of office equipment and other financial support. In 2012 Australia's contribution to the Vanuatu Electoral officer comprised 10% of the total budget.¹² Through electoral office has also benefited from the Australian Electoral Commission through the establishment of the Generic Voter Registration System. Further upgrading of this system is underway and it is expected that by the 2016 national elections a computerised identification system using thumbprints and photographs will be in place.¹³ It can be noted that the Government of Vanuatu has tried to fund initiatives in this area in the past. In 2002 the Electoral Office was subject to an audit investigation in relation to a contract for the computerisation of the electoral roll. The Vanuatu government had invested over 37 million vatu in this project but the computerised electoral roll was never delivered. Whilst this was the subject of an audit report and a Public Accounts Committee report no money has been recovered.¹⁴

The Electoral Office lacks human resources to carry out its functions and duties. As of September 2013 the position of the deputy PEO is vacant as is the position of complier and its assistant. Advertisements have now been advertised seeking for applicants for the post of complier and its assistant.¹⁵ As discussed in the section on independence below, the position of the PEO has been unstable, and this instability has hindered the work of the Electoral Office.

The Electoral Office also lacks supportive staff in the provinces. Whilst the PEO appoints provincial registration officers, who are in practice provincial and municipal executive officers they in turn appoint their own assistants.¹⁶ When local government councils change there can be problems in maintaining accurate registrations because of lack of knowledge of provincial registration offices and/or their assistants.¹⁷ This leads to issues with accountability and transparency in provincial voter registration processes.¹⁸

The physical office space of the Electoral Office has not been upgraded in years. The Electoral Office is located in a small wooden colonial era building and there are some concerns that it may not be a suitable environment for a computerised operation.

INDEPENDENCE (LAW)

To what extent is the electoral management body independent by law?

There is the potential for interference as the Public Service Commission (PSC) controls the appointment of staff and the Principal Electoral Officer can either be suspended by the PSC or transferred by the Prime Minister.

Article 18 the Constitution provides for a three member Electoral Commission. The chairman and the two members of the Electoral Commission are appointed by the President of the Republic on the advice of the Judicial Service Commission. No candidates for election to or elected members of

¹² Vanuatu Electoral Office Joint Press Release, 2012.

¹³ Interview of Acting PEO Martin Tete with researcher, Port Vila, 20/09/13.

¹⁴ *Auditor General's Report to Parliament* (October 2007), p 42; *Report of the Public Accounts Committee Report of the Auditor General Financial Years 2002 – 2007* (December 2011) p 21.

¹⁵ Interview of Acting PEO Martin Tete with researcher, Port Vila, 20/09/13.

¹⁶ Section 6 Representation of the People Act [Cap 246].

¹⁷ Electoral Commission, *6th General Elections Report*, 2 May 2002 p 30; Interview of Howard Van Trease with researcher, Port Vila, 26/09/13.

¹⁸ Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

parliament, local governments or the National Council of Chiefs are permitted to be members of the Electoral Commission. 'Any person who exercises any position of responsibility in a political party'¹⁹ is also prohibited from being a member. These restrictions ensure independence of the Electoral Commission.

There are no similar guarantees of independence in respect of the position of PEO. The PEO is a public servant,²⁰ and there are no special requirements for appointment or safeguards in respect of removal of the PEO. The PEO is therefore subject to suspension or dismissal by the Public Service Commission (PSC). Whilst appointment, suspension and dismissal are meant to occur on the basis of merit or for cause only, if the PSC is politicised this can affect the independence of the PEO. Further, the Constitution provides that 'Senior public servants in Ministries may be transferred by the Prime Minister to other posts of equivalent rank.'²¹ As the PEO is a senior public servant he or she may be subject to transfer.

INDEPENDENCE, PRACTICE

To what extent does the electoral management body function independently in practice?

External interference in the position of PEO by both the PSC and the Prime Minister has occurred. The Electoral Office is perceived to have been politicized and, as a result, is perceived to be unable to carry out its duties without bias.

It is not easy for any government to direct the work of the Electoral Commission 'or abolish it as it does with other government departments. The commission works independently of the government. Despite its statutory independence, however, significant limitations exist, caused by issues of access to budget funds and the recruitment and termination of the appointment of electoral officers'.²²

In particular the position of PEO is subject to interference. In October 2012 the then PEO, Lawson Samuel, was removed from his position and replaced with an Acting PEO, Lionel Kaluat. In December Kaluat, who was only on short term secondment, was replaced by Etienne Kombe. In July 2013 Martin Tete was appointed Acting PEO.²³ It was not until September 2013 that a new PEO, Charles Vatu, was appointed.²⁴ Samuel was transferred to another post by the Prime Minister in accordance with Article 58(2) of the Constitution. One issue apparently motivating this transfer was the approval of candidates. The same day that Samuel was removed the Electoral Commission had published a list of 274 eligible candidates. Some prominent politicians' names were missing from this list, apparently because they had outstanding debts owing to Government agencies.²⁵ Following his on 13 October a second candidate list was published, this one contained 345 names.²⁶ It should be noted that the law

¹⁹ Constitution Article 18(2)(e).

²⁰ Constitution Article 19.

²¹ Constitution Article 58(2).

²² Jeannette Bolenga, above n 5, p 249.

²³ Thompson Marango, 'Tete appointed Acting Principal Electoral Officer' *Vanuatu Daily Post Online*, 13 June 2013 <http://www.dailypost.vu/content/tete-appointed-acting-principal-electoral-officer>.

²⁴ Godwin Ligo, 'New Principal Electoral Officer Appointed' *Vanuatu Daily Post Online*, 13 September 2013, <http://www.dailypost.vu/content/new-principal-electoral-officer-appointed>.

²⁵ The criteria requiring candidates to have no debts to Government was added to the Representation of the People Act [Cap 146] in 2007.

²⁶ Both lists are available from <http://pacificpolicy.org/blog/2012/10/17/candidates-lists/>.

provides that the Electoral Commission determines validity for candidature and does not allow for any appeal process. Rather, '[t]he decision of the Electoral Commission that a candidature is valid or invalid shall be final and shall not be questioned in any proceedings whatsoever.'²⁷ However, if the Electoral Commission 'considers that a declaration of candidature is invalid by reason of a bona fide error... [it may] request the candidate to resubmit a valid declaration.'²⁸ The PEO is the person who screens names and advises the Electoral Commission as to individuals' eligibility.²⁹ Another issue allegedly motivating Samuel's transfer was his control of proxy votes. It was reported that 'prior to Lawson's transfer out of the position of Principal Electoral Officer on the 10th October he had approved less than 100 proxy vote applications, and had refused 100's of applications because they failed to meet the required criteria.'³⁰ Subsequently a number of proxy votes were approved and there is a perception that some staff of the Electoral Office and registration officers had been pressured by politicians and had likely conflicts of interest in approving proxy applications.³¹ Proxy votes were critical for the re-election of some candidates and election observer reports noted that proxy votes are particularly subject to vote buying and other abuse.³² The removal of the PEO on the eve of a national election gives the impression that there is interference in the management of elections by politicians.³³

This is not the first time that there has been interference in the position of the PEO on the eve of an election. In 2002 the Director General of the Ministry of Internal Affairs attempted to suspend the PEO 2 weeks prior to the national election. The PEO sought an injunction to prevent this, as it would have been very disruptive to the election.³⁴

As discussed in the section on resources, above, the Electoral Commission or PEO does not have control over the appointment of assistants to registration officers. Nor is there any particular criteria for who can be appointed a registration officer, and in practice provincial and municipal executive officers fill these positions. There is concern that political appointments may be made in these local level government posts, which undermines the integrity of the registration process.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

There are provisions which require the Electoral Office to provide information on activities and allow members of the public to check that information that the Electoral Office holds is correct. However, the timeframe for the public to check roll information is correct is short. There are also no avenues for declined candidates to appeal the decision of the Electoral Commission.

²⁷ Section 26(4) Representation of the People Act [Cap 146].

²⁸ Section 27(1) Representation of the People Act [Cap 146].

²⁹ Section 25(7) Representation of the People Act [Cap 146].

³⁰ 'GJP calls for investigation of all proxy votes cast' *Vanuatu Daily Post Online*, 5 November 2012

<http://www.dailypost.vu/content/gjp-calls-investigation-all-proxy-votes-cast>.

³¹ Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

³² Transparency Vanuatu, '2012 Vanuatu General Election Election Observer Team Report', Norm Kelly, Centre for Democratic Institutions, '2012 Vanuatu Election – Election Observer's Report'.

³³ Interview of Howard Van Trease with researcher, Port Vila, 26/09/13.

³⁴ Electoral Commission & Transparency Vanuatu, *Republic of Vanuatu National Elections 2 May 2002: Report of the Elections Observer Group* p 23.

The law contains provisions for transparency of electoral rolls, candidates, polling stations, vote counting and results. The PEO is responsible for the production, distribution and publication information to voters and the general public.³⁵ The Representation of the People Act [Cap 146] contains a number of provisions to ensure that the public get informed on the certain activities of the Electoral Office. Sections 16 (1) provide that the Electoral Office must make list of registered voters (the electoral list) available for inspection by the public for a period of at least 2 weeks every year. Copies are made available via all registration officers and via display in public places, which include local government offices and the Electoral Office. The purpose of opening the list for inspection is to allow people to apply for corrections to the list or electoral cards. Section 28 requires the Electoral Office to publish the list of candidates for election via display at Provincial Councils, Parliament, the Electoral Office and any other places the Electoral Commission may direct. There is no requirement that the Electoral Office publishes the names of individuals whose candidature was declared invalid, or reasons for holding that there were ineligible to be candidates. Once the list of candidates is closed the PEO is required to publish information on the locations of polling stations and the times they will be open for.³⁶ Public are permitted to be present at the counting of votes.³⁷ At the end of the election the Electoral Commission must publish the results of each constituency.³⁸

In Vanuatu the Electoral Office has no role in monitoring party finances. Nor does any other body ensure transparency in this area.

TRANSPARENCY (PRACTICE)

To what extent are reports and decisions of the electoral management body made public in practice?

Whilst dates for elections, lists of candidates and polling information are well publicized, issues with the electoral roll suggest that the public does not find it easy to access the roll to check that information is correct. Lack of transparency in candidate screening decisions and votes counting processes has also been an issue recently.

There is some transparency in practice. Whilst the Electoral Office does not maintain a website Schedules of dates are made available to the public when election dates are set. Candidate lists and results are also published in Government Gazettes. The media (including print media, online blogs and radio) is also active in publishing this information, although media is more active in reporting national election information than local election information.

The period during which the electoral list is open for public inspection is set by law to be a minimum of a 14 day period,³⁹ and the list is available at these times. However, as issues in the 2012 national election relating to voters who had electoral cards but were not on the polling station lists, so were ineligible to vote demonstrated, members of the public do not, in practice, check and correct this list.⁴⁰ Nor is there a call centre where voters can, at any time, check their registration status.

³⁵ Section 2 Representation of the People Act [Cap 146].

³⁶ Section 29 (4) Representation of the People Act [Cap 146].

³⁷ Rule 14, Schedule 5 Representation of the People Act [Cap 146].

³⁸ Section 38 Representation of the People Act [Cap 146].

³⁹ Section 16(1) Representation of the People Act [Cap 146].

⁴⁰ Norm Kelly, Centre for Democratic Institutions, '2012 Vanuatu Election – Election Observer's Report'.

In the 2012 national election members of the public were permitted to observe the first count. However, they were not able to observe the recounting process on which the final results were based.⁴¹

As discussed in the section on independence, above, in the 2012 national election a number of candidates were initially not approved. No reasons were given for declining the candidature of each individual, although as a group it appeared that they were ineligible as they owed debts to the government. It is not clear what process was used to have candidates approved, as there is no legal appeals process.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

Whilst there are a number of legal lines of accountability, there is no requirement that regular annual reports be produced with the Electoral Office.

The PEO is accountable to the Electoral Commission regarding the exercise of his functions.⁴² The legal framework ensuring transparency as provided under the Representation of the People Act [Cap 146] also helps to ensure accountability. In particular after every election the PEO must, within 3 months submit a report to the Electoral Commission.⁴³ The Electoral Commission shall not more than 3 months after receiving the report of the Principal Electoral Officer make a report to Parliament concerning the conduct of the election which shall include a statement on the overall cost thereof, information on difficulties encountered and how they were dealt with and recommendations for improvements and changes in procedure for future elections.⁴⁴ There is, however, no express requirement that Parliament must debate this report or that anyone else must act on it. There is also no express legal requirement that the Electoral Office produce annual reports.

In terms of financial accounting, the PEO is accountable to the Office of the Auditor General. He or she must also comply with other laws regulating expenditure, including the Government Contracts and Tenders Act. As public servants the PEO and other staff of the Electoral Office are also accountable to the Public Service Commission (PSC).

Public and candidates also have a mechanism by which the Electoral Office can be held to account. An election petition may be presented by people who are registered to vote at the election to which the petition relates or by a person claiming him or herself to have been candidate at such election.⁴⁵ Prior to 2012 an election would be held void if:

(1)...it is proved to the satisfaction of the Supreme Court, that –

(a) bribery, treating, undue influence or other misconduct or circumstances whether similar to those herein before enumerated or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;

⁴¹ Transparency Vanuatu, '2012 Vanuatu General Election Election Observer Team Report'.

⁴² Constitution Article 20(2).

⁴³ Section 39(1) Representation of the People Act [Cap 146].

⁴⁴ Section 39(2) Representation of the People Act [Cap 146].

⁴⁵ Section 55 Representation of the People Act [Cap 146].

(b) there has been such non-compliance with the provisions of this Act, in the conduct of polling or in any other matter that such non-compliance affected the result of the election;

(c) the candidate was at the time of his election a person not qualified or disqualified for election; or

(d) there was such irregularity in the counting of the votes as may reasonably be supposed to have affected the result of the election.

(2) The election of a candidate shall be declared void if he is convicted by a Court of committing a corrupt practice or of attempting or conspiring to commit a corrupt practice.⁴⁶

In 2012 the law was amended to repeal s 61(2).⁴⁷ Now, a candidate who has been convicted of committing a corrupt practice under Part 15 of the Representation of the People Act [Cap 146] will not lose his or her seat. The 2012 amendment also repealed s 61(1)(a) and replaced it with a provision to the effect that an election will be declared invalid if it is proved that a candidate or his or her agent spent or allocated any money in the period between the end of parliament and polling day and that this expenditure or allocation affected the outcome of the election. Some exceptions are also permitted: custom gifts up to a value of 1,000 vatu (US\$10); food, drink, entertainment, transport or accommodation to candidates' agents (with agents being decided by the candidate – there are no limits on the number of agents or requirements that an approved list of agents be submitted prior to campaigning); entertainment during campaign rallies; and food, drink, transport and accommodation to any person on polling day are allowed.

ACCOUNTABILITY (PRACTICE)

To what extent does the EMB have to report and be answerable for its actions in practice?

Whilst candidates can and do petition the Supreme Court when they perceive that electoral irregularities have affected election results and there is oversight of expenditure by the Auditor General the Electoral Office does not regularly produce reports after General Elections.

It has been observed that '[t]here are overlapping and multiple lines for reporting. The PEO reports to the Electoral Commission, the PSC, and the Minister and Director-General of the Ministry of Internal Affairs. These arrangements have had a negative impact on long-term capacity-building and institution-strengthening initiatives because they create confusion and conditions that are conducive to conflict, duplication of effort and political interference.'⁴⁸

Reports on elections are not frequently presented to parliament, with the last official report on a national election being issued in respect of the 2002 election. This is publically available. A report on the 2008 election was prepared but has never been made publically available.⁴⁹ It is understood that there have been advance payments made to two consultants tasked with drafting the report but the 2008 election report was never finalised.⁵⁰ A report on the 2012 national election has been prepared

⁴⁶ Section 61 Representation of the People Act [Cap 146].

⁴⁷ Section 12 Schedule to the Representation of the People Amendment Act 2012.

⁴⁸ Jeannette Bolenga, above n 5, p 249.

⁴⁹ Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

⁵⁰ Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

and is expected to be made public in November after it has been tabled in parliament.⁵¹ Provincial and Municipal election reports are being produced and are forward to the Minister of Internal Affairs but are not made public.⁵²

As discussed in the section on the Supreme Audit Institution, there are some delays in audits. However, the Electoral Office has been subject to a special investigation in 2002, with a follow up in 2007.⁵³ In 2012 the PEO was suspended due to not following rules relating to government contracts when he failed to seek 3 quotes for the printing of ballot papers.⁵⁴ He was subsequently reinstated.

Election petitions occur regularly. Following the 2012 national election at least 11 electoral petitions were heard from different constituencies of Vanuatu. Grounds of petitions ranged from alleged bribery, treating, issues with counting and recording votes and irregularities in the electoral roll. Decisions on election petitions were somewhat delayed because of the load of cases that is listed before the Supreme Court, with judgment on the last petition being issued in October 2013, a year after the election took place.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

There are few laws that specifically relate to integrity of electoral officers.

Vanuatu lacks a formal code of conduct for electoral officials. The general public service law contains integrity mechanisms that apply to members of the electoral administration. Part V of the Public Service Act provides for a Code of Conduct governing the actions and behavior of the staff of the public service. Section 34 establishes general rules of conduct and requires public servants to perform their duties with care and diligence, to behave honestly and with integrity and to observe and comply with all applicable laws. Section 34 (i) also provides that public servants must disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment and use resources and public money in a lawful and proper manner. Breaches of the code are grounds for termination of employment.

Section 52 of the Representation of the People Act [Cap 146] creates a number of offences by electoral officers. These offences include allowing false records to be created, refusing to permit someone to vote and failing to count votes.

INTEGRITY (PRACTICE)

To what extent is the integrity of the electoral management body ensured in practice?

Despite some identification of wrongdoing by electoral officers there is no consistent sanctioning of misbehavior.

⁵¹ Interview of Howard Van Trease with researcher, Port Vila, 26/09/13.

⁵² Interview of former PEO Lawson Samuel with researcher, Port Vila, 1/10/13.

⁵³ *Auditor General's Report to Parliament* (October 2007), p 42.

⁵⁴ 'Principal Electoral Officer Suspended' *Vanuatu Daily Post Online* 14 December 2011

<http://www.dailypost.vu/content/principal-electoral-officer-suspended>.

According to the outgoing Acting PEO there have been issues in regards to the reappointment of staff, which has raised some concern as to the integrity of the electoral officer and the PSC In 2010 there was a suspension of a senior staff member due to financial irregularities, but prior to the audit report being completed the PSC reinstated the staff member. Similarly, despite a PEO report detailing misappropriation of funds by two staff this matter never reached the PSC disciplinary board.⁵⁵

There have never been any prosecutions for electoral offences by electoral officers, despite issues in this area having been identified. The PEO during the 2012 national election conducted an internal inquiry into allegations relating to issuance of duplicate cards and recommended that the Director General of Internal Affairs set up an immediate inquiry into the matter. He also recommended that offences be prosecuted.⁵⁶ No public follow up in respect of these recommendations has occurred.

CAMPAIGN REGULATION

Does the electoral management body effectively regulate candidate and political party finance?

Currently there is no law to allow for the Electoral Office, Electoral Commission or any other body to regulate candidate and political party finance.

Under Vanuatu's law the Electoral Office and the Electoral Commission do not have any role to play in regulating candidate and political party finance. Nor does anyone else have a specific role to play in this area. Candidates who held leadership for the purposes of the Leadership Code Act prior to announcing their candidature (for instance because they were political advisors to Ministers or members of the previous parliament) would have been required to provide annual returns on income and assets disposed of in accordance with that Act, so some disclosures may have been made as part of this process. However, the intention of providing annual returns under the Leadership Code Act is not to regulate candidate finance.

ELECTORAL ADMINISTRATION

Does the EMB ensure the integrity of the electoral process?

Issues with the electoral roll, electoral offences and lack of confidence in the integrity of the Electoral Office significantly undermine the electoral process.

The election process has drawn significant criticism in recent years. Whilst the 2012 national election was labeled "the worst ever" by former Prime Minister Edward Natapei, issues are longstanding.⁵⁷

One of the main issues is lack of integrity in the electoral roll. It is widely acknowledged to be inaccurate, with deceased people not being removed and a number of people being registered more than once. The inflated roll creates an environment which enables fraud. It is alleged that some candidates use the proxy vote system, in which a person can nominate another voter to cast their vote for them on the election day, to enable deceased voters to vote. It also enables people to vote

⁵⁵ Interview of Acting PEO Martin Tete with researcher, Port Vila, 20/09/13.

⁵⁶ Godwin Ligo, 'Natapei should check his facts before lashing out: Kaluat' *Vanuatu Daily Post Online* 10 December 2012, <http://www.dailypost.vu/content/natapei-should-check-his-facts-lashing-out-kaluat>.

⁵⁷ Ibid.

in more than one constituency.⁵⁸ These problems are so deeply rooted that the PEO at the time of the 2012 national election recommended that ‘the current electoral roll be completely wiped out and that the Government starts a complete new roll in preparations towards the 2016 General Elections’.⁵⁹

As checking of voter identities is not always thoroughly done at polling stations some people are thought to be able to vote twice. Whilst a simple system of dipping voters thumbs in ink after voting has been initiated this is not always done.⁶⁰

As well as the roll containing people who should not be there, in 2012 a number of people who should have been present on the roll were not listed or had errors in their voting cards. As there is no allowance for provisional voting in Vanuatu’s electoral laws this prevented some legitimate voters from voting.⁶¹

Issues at polling stations included lack of facilities for disabled people and lack of secrecy of voting. Whilst initial counting was observed, observers were not permitted at recounting.⁶²

Election offences are not prosecuted. Whilst rumours of bribery, treating and other fraud abound they are not well documented. The 2002 Election Observer Group report observed that 8% of people surveyed in Port Vila were directly offered a bribe, with a further 12% knowing someone who had been offered a bribe. Figures were lower on Tanna. Worryingly this report also identified that about 17% of respondents nationally either had been directly threatened with violence in relation to the election or know others that had been threatened with violence.⁶³ A survey conducted by Transparency Vanuatu in 2013 indicates that there is considerable public will for stronger enforcement of these laws, both against those who offer bribes and those who receive them.

Independent observers are not consistently appointed to elections. When observers are appointed they tend to be located in Port Vila. Prior to the Election of 2012 a request was made to the Electoral office by Transparency Vanuatu to be part of an international team of observers. Unfortunately, they were unable to confirm whether or not this approval would be forthcoming. Transparency Vanuatu was advised a month out from the elections that it is the Government who must request international observer teams to come and this request had not been made. It was only at the very last minute that Transparency Vanuatu received agreement from the Electoral Commission allowing Transparency Vanuatu to undertake an observer role as domestic observers.⁶⁴ A further international observer was also permitted to observe, but as he was only 1 person the extent of his observations were limited.⁶⁵

⁵⁸ These issues are detailed in Transparency Vanuatu, ‘2012 Vanuatu General Election Election Observer Team Report’; Norm Kelly, Centre for Democratic Institutions, ‘2012 Vanuatu Election – Election Observer’s Report’; Electoral Commission, *6th General Elections Report*, 2 May 2002; Electoral Commission & Transparency Vanuatu, *Republic of Vanuatu National Elections 2 May 2002: Report of the Elections Observer Group*; Jeannette Bolenga, above n 5.

⁵⁹ Godwin Ligo, ‘Natapei should check his facts before lashing out: Kaluat’ *Vanuatu Daily Post Online* 10 December 2012, <http://www.dailypost.vu/content/natapei-should-check-his-facts-lashing-out-kaluat>.

⁶⁰ Transparency Vanuatu, ‘2012 Vanuatu General Election Election Observer Team Report’.

⁶¹ Transparency Vanuatu, ‘2012 Vanuatu General Election Election Observer Team Report’; Norm Kelly, Centre for Democratic Institutions, ‘2012 Vanuatu Election – Election Observer’s Report’.

⁶² Transparency Vanuatu, ‘2012 Vanuatu General Election Election Observer Team Report’.

⁶³ Electoral Commission & Transparency Vanuatu, *Republic of Vanuatu National Elections 2 May 2002: Report of the Elections Observer Group*.

⁶⁴ Transparency Vanuatu, ‘2012 Vanuatu General Election Election Observer Team Report’.

⁶⁵ Norm Kelly, Centre for Democratic Institutions, ‘2012 Vanuatu Election – Election Observer’s Report’.