



# National Gazette

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CONSTITUTION SECTION 27 (4)

## **DIRECTION BY THE OMBUDSMAN COMMISSION**

- TO: (1) The Minister for Treasury; and  
 (2) The Minister for Finance and Planning; and  
 (3) The Secretary, Department of Finance; and  
 (4) The Secretary, Department of Treasury; and  
 (5) The Secretary, Department of National Planning and Monitoring; and  
 (6) Director, Office of Rural Development; and  
 (7) All Provincial Administrators; and  
 (8) All District Administrators, All Provincial Treasurers and All District Treasurers and All Officers in the Offices referred to in NO's (1) - (7) above.

Whereas the 2007 general election to the Parliament is imminent and the Ombudsman Commission has obtained information giving rise to serious concerns as to the release, disbursement, transfer and receipt of public money purporting to be in the form of electoral and discretionary funds and various development funds under District Services Improvement Program, but not limited to:

- (1) District Roads Improvement Program (DRIP) and or District Transport Infrastructure Improvement Program (DTIIP and or District Transport Infrastructure Program (DTIP); and
  - (2) District Education Improvement Program; and
  - (3) District Health Improvement Program; and
  - (4) District Law and Justice; and
  - (5) District Water Supply;
- for the fiscal years 2005 and 2006; and

Whereas the distribution of substantial public funds to the District Treasuries and the Provincial Treasuries in such a time when the 2007 general election is imminent and that there is insufficient item for the funds to be properly applied to development purposes as intended and therefore these substantial public funds may be misapplied or mis-used contrary to law and the relevant guidelines; and

Whereas each of you holding the offices in (1) to (7) above is a person to whom the National Goals and Directive Principles, in particular the second National Goal which is for all citizens to have an equal opportunity to participate in and benefit from the development of our country, the Basic Social Obligations, in particular the duty to respect and act in the spirit of the Constitution and to protect Papua New Guinea and to safeguard the national wealth, and Division III.2 (leadership code) of the Constitution apply; and

**Direction by the Ombudsman Commission:—continued**

Whereas each of you holding the offices in (8) above is a person to whom the National Goals and Directive Principles and the Basic Social Obligations, in particular the duty to act in the spirit of the Constitution, apply; and

Whereas it is the duty of all governmental bodies to apply and give effect to the National Goals and Directive Principles and to encourage compliance with the Basic Social Obligations as far as lies within their respective powers; and

Whereas each of you holding an office in (1) to (7) above is subject to Section 27 of the Constitution and accordingly:

- (1) you have a duty to conduct yourself in such a way, both in your public or official life and your private life, and in your associations with other persons, as not:
  - (a) to place yourself in a position in which you have or could have a conflict of interests or might be compromised when discharging your public or official duties; or
  - (b) to demean your office or position; or
  - (c) to allow your public or official integrity, or your personal integrity, to be called into question; or
  - (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea; and
- (2) you have a duty, in particular, not to enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether you are carrying out or have carried out the duties imposed by Section 27(1) of the Constitution; and
- (3) you have a further duty if necessary to publicly disassociate yourself from any activity or enterprise of any of your associates that might be expected to give rise to such a doubt; and

Whereas each of you in (1) to (7) above has a duty under Section 23 of the *Organic Law on the Duties and Responsibilities of Leadership* to not obstruct the Ombudsman Commission and to cooperate to the best of your ability with the Ombudsman Commission in any investigation or other proceedings for the purpose of that Law; and

Whereas the Ombudsman Commission is conducting investigations under the Leadership Code and the *Organic Law on the Duties and Responsibilities of Leadership* relating to suspected misconduct in office by persons to whom that Law applies in relation to the circumstances surrounding the release, disbursement, transfer and receipt of public money purporting to be in the form of electoral and discretionary funds and various development funds under District Services Improvement Program and/or the District Roads Improvement Programs, but not limited to those various funds referred to on pages 1-2 of this Direction in respect of the fiscal years 2005 and 2006; and

Whereas the Ombudsman Commission has determined that it is necessary to do so in this particular case, for the purpose of ensuring the attainment of the objects of Section 27 of the Constitution and in particular protecting the integrity of leaders who are involved in these matters,

Each of you is hereby directed pursuant to Section 27(4) of the Constitution to:

- 1 Stop the Release, Disbursement, Transfer and/or Receipt of Public Money purporting to be in the form of Electoral and Discretionary Funds for the Fiscal years 2005 and 2006; and in particular
- 2 Stop the payment of all Cheques or Warrants dated on or after 1st January, 2005 drawn on any Bank in Papua New Guinea including the Bank of Papua New Guinea by or on behalf of the Government of Papua New Guinea in respect of Public Money purporting to be in the form of Electoral and Discretionary Funds and various Development Funds under District Services Improvement Program, but not limited to:
  - (A) District Roads Improvement Program (DRIP) and or District Transport Infrastructure Improvement Program (DTIIP) and or District Transport Infrastructure Program (DTIP); and
  - (B) District Education Improvement Program; and
  - (C) District Health Improvement Program; and
  - (D) District Law and Justice Program; and
  - (E) District Water Supply Program;
 For the Fiscal years 2005 and/or 2006, and
- 3 Transfer to the Consolidated Revenue Fund at the end of the 2006 fiscal year, all public funds in respect of the various Programs referred to above that are not committed to the relevant Projects,

**Direction by the Ombudsman Commission:—continued**

## Unless and Until:

- (a) the release, disbursement, transfer and/or receipt or the payment of such public money, cheque or warrant complies with the *Public Finances (Management) Act*, Financial Instruction No. 2 of 2005 dated 9th June, 2005 and Financial Instruction No. 01/2006 dated 7th August, 2006 or any relevant Financial Instruction and the relevant guidelines that relate to each of the respective programs referred to above in particular, but not limited, to:
- (i) the duty to acquit funds previously allocated to each member of Parliament and/or each Provincial Treasury or each District Treasury under the respective programs referred to above; and
  - (ii) the duty imposed on Joint Provincial Planning and Budget Priority Committees and/or the Joint District Planning and Budget Priority Committees to properly meet and resolve to apply those funds to projects eligible under each of the respective program; and
  - (iii) where necessary the duty to formulate and present proper tender documentation, project design, scope of works, bill of quantities, project inspection reports, project completion reports, and other relevant documentation for each project as required by the respective guidelines.

## And Take Notice:

- (a) that this direction takes effect immediately; and
- (b) that if any of the person in (1) to (7) above fails to comply with this direction he or she will be guilty of misconduct in office under Section 27(5)(b) of the Constitution and liable to prosecution before a leadership tribunal and subject to penalties under Section 28(1)(g)(ii) of the Constitution, Section 27(5) of the *Organic Law on the Duties and Responsibilities of Leadership* and Section 2 of the *Leadership Code (Alternative Penalties) Act*, including dismissal from office; and
- (c) if any of the persons described in (8) above fails to comply with this direction he or she may be subject to enforcement proceedings in the National Court under Section 23 of the Constitution.

Dated this 27th day of November, 2006.

I. GENO, OBE, QPM,  
Chief Ombudsman

P. MASI,  
Ombudsman

J. NERO,  
Ombudsman