

**PUBLIC PROSECUTOR**  
**V**  
**SEKDAH SOMON**  
**BUXOO NABILAH BIBI**  
**ANOWAR HOSSAIN**  
**PALAS HOSAN**

**Coram:** *Chief Justice Vincent Lunabek*

**Counsel:** *Mr Josaiah Naigulevu for the Public Prosecutor*  
*Mr Collin B. Leo for Sekdah Somon*  
*Mr Edwin Macreveth for Buxoo Nabilah Bibi*  
*Mr Brian Livo for Anowar Hossain and Palas Hosan*

**Interpreters:** *Mr MD Fahim Hossen of Bangladesh nationality (Bangla to English and English to Bangla)*

**Dates of Oral Sentence submissions:** *22. May 2022*

**Dates of Sentence:** *22 June 2022*

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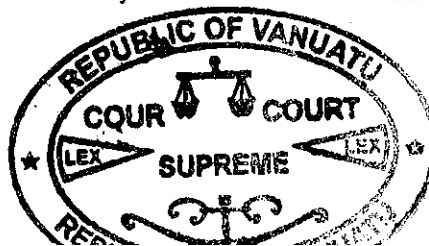
**REASONS FOR SENTENCING**

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**A. INTRODUCTION**

**Preliminary Notes**

1. The four above-named defendants (Sekdah Somon, Buxoo Nabilah Bibi, Anowar Hossain and Palas Hosan) were jointly and severally charged for offences contained in amended information filed on the 6<sup>th</sup> February 2020, and were convicted on the 2<sup>nd</sup> November 2021 of 12 counts following a long and tedious trial lasting for some several months. A 13<sup>th</sup> count of Intentional Assault, against Sekdah Somon was dismissed. The allegations were strongly contested by all defendants. The first two defendants (Sekdah Somon and Buxoo Nabilah Bibi) were initially defended by counsel, but they dismissed him early in the trial. They dismissed also several other senior counsel earlier. Thereafter, these two defendants represented themselves. The last two defendants (Anowar Hossain and Palas Hosan) on the other hand were represented by counsel for the entire duration of the trial.



2. The two first defendants are now represented by counsel at the sentencing submissions and sentences delivery.

**Back to the sentencing notes**

3. Mr Sekdah Somon, Ms Buxoo Nabilah Bibi, Mr Anowar Hossain and Mr Palas Hosan, while I read my sentencing remarks to each of you, you remain seated. I will ask each of you to stand again at the end when I formally sentence each of you.

4. You all appear for sentence today having found guilty by this Court of the following charges:

(a) **Sekdah Somon**

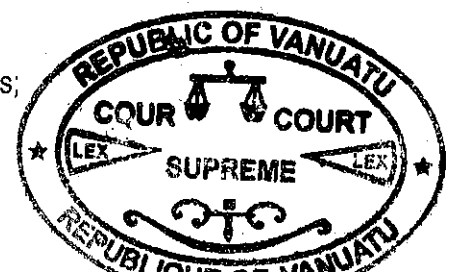
- (i) Traffic in person, contrary to section 102(b) of the Penal Code: 2 counts;
- (ii) Slavery, contrary to section 102(a) of the Penal Code: 2 counts;
- (iii) Money Laundering, contrary to section 11(3)(a) of Proceeds of Crimes Act: 2 counts;
- (iv) Intentional Assault, contrary to section 107(b) of the Penal Code: 2 counts;
- (v) Threats to Kill, contrary to section 115 of the Penal Code: 2 counts;
- (vi) Employing non-citizens without work permits, contrary to section 6(1) of the Labour (Work Permit) Act: 1 count;

(b) **Buxoo Nabilah Bibi**

- (vii) Traffic in person, contrary to section 102(b) of the Penal Code: 2 counts;
- (viii) Slavery, contrary to section 102(a) of the Penal Code; 2 counts;
- (ix) Money Laundering, contrary to section 11(3)(a) of the Proceeds of Crimes Act; 2 counts;
- (x) Employing non-citizens without work permits, contrary to section 6(1) of the Labour (Work Permit) Act: 1 count;
- (xi) Furnishing false information to a labour officer, contrary to section 17(1) of the Labour (Work Permit) Act: 1 count;

(c) **Anowar Hossain**

- (xii) Slavery, contrary to section 102(a) of the Penal Code: 2 counts;



(xiii) Intentional assault, contrary to section 107(b) of the Penal Code: 1 count;

(d) **Palas Hosan**

(xiv) Traffic in person, contrary to section 102(b) of the Penal Code; 2 counts;

(xv) Slavery, contrary to section 102(a) of the Penal Code: 2 counts;

(xvi) Intentional Assault, contrary to section 107(b) of the Penal Code; 2 counts;

5. The maximum sentences in each offence are as follows:

(I) Traffic in person -20 years imprisonment – section 102(b) of the Penal Code;

(II) Slavery - 20 years imprisonment – section 102(a) of the Penal Code;

(III) Money Laundering - 25 years imprisonment or fine of VT50 million – section 11(3)(a) of the Proceeds of Crimes Act;

(IV) Intentional Assault - 5 years imprisonment – section 107(b) of the Penal Code;

(V) Threats to kill - 15 years imprisonment – section 115 of the Penal Code;

(VI) Employing non-citizens without work permits-6 months imprisonment or VT100,000 fine, or both – Labour (Work Permits) Act;

(VII) Furnishing false information to a labour officer – 6 months imprisonment or VT100,000 fine, or both.

6. Now I sentence each of you on the basis of my own assessment of the evidence given at trial.

7. In sentencing each of you, I shall explain:

(a) Your respective offending;

(b) Your personal circumstances;

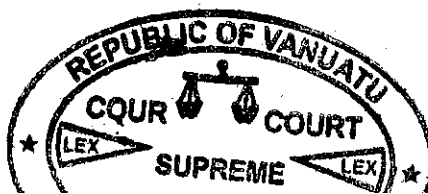
(c) The sentencing goals and methodology;

(d) An appropriate starting point to your respective offending;

(e) Any adjustments for personal aggravating or mitigating factors or whether the aggravating or mitigating features outweigh the other ones;

(f) Whether or not to order a suspended imprisonment sentence;

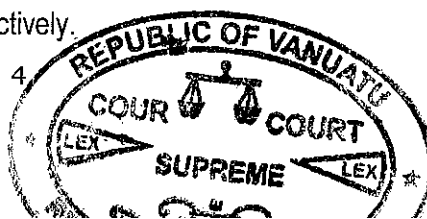
(g) Whether the victims are entitled to compensation as part of your sentencing;



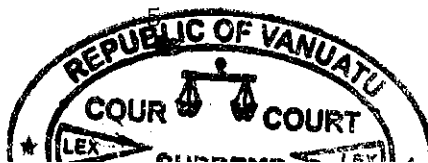
- (h) Whether to issue a trafficking and slavery notification order against each and all of you; and then
- (i) Your respective sentence.

**B. THE OFFENDING – SUMMARY OF FACTS**

8. I start then with your offending. Counsels have traversed these both orally and in their written submissions and we have heard for lengthy months of evidence during the trial. The facts were all detailed in the judgment on verdict issued by this Court on the 2<sup>nd</sup> day of November 2021. The summary of these facts was contained in the prosecution sentencing submissions filed 11 February 2022.
9. The evidence produced during the course of the trial showed that the above-named defendants were engaged in various capacities with a number of other people located mainly in Bangladesh, in luring and trafficking 107 unwary and trusting ordinary Bangladeshi people to Vanuatu.
10. For many of the victims, Vanuatu was not their destination. They were promised a destination that was different at recruitment (Australia, Cuba, New Caledonia ...). The victims were promised a variety of attractive employment opportunities; however, the principal object was to get them do labour of the manual physical type.
11. The network of offshore facilitators, although not highly sophisticated, was relatively well organized and well connected. These offshore facilitators consisted of family members (of Sekdah Somon, Palas Hosan and others), they engaged in various aspects of recruiting, receipt of monies, arrangement of visa and travel, physical escort of victims, the managing of cash and materials carried by victims, overseas transmission of funds by various mediums, and the management of salaries payable to the victims' families in Bangladesh.
12. The evidence showed that the first two defendants (Sekdah Somon and Buxoo Nabilah Bibi) were often directly complicit in these activities, the other two (Anowar Hossain and Palas Hosan) were too, to some extent in certain cases.
13. The offence of trafficking was committed by means of force, deception and fraud, use of threats and violence and exploitation. It was committed with the purpose of exploiting the victims.
14. Mr Sekdah Somon as the main instigator of the offences of trafficking, slavery and money laundering, together and in complicity with the second defendant (Buxoo Nabilah Bibi) created Mr Price Company in Vanuatu (using that name, logo and business models) that belonged to a different international company (South Africa Group Mr Price Limited), thus, unlawfully. The victims were recruited to come and work for Mr Price Company in Vanuatu with attractive terms and conditions of employment. Mr Somon Sekdah and Ms Buxoo Nabilah Bibi were the respective owners and shareholders of Mr Price Company in the order of 70% and 30% respectively.

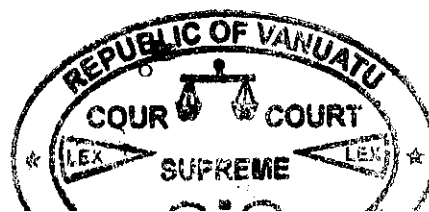


15. The evidence established that at hotels in India, victims were handed substantial amounts of money in cash in foreign currencies (US Dollars) by handlers to carry with them to Vanuatu. The victims were warned that there would be serious consequences if the money were not accounted for at the end of the trip. The money was surrendered to the Defendants or other nominated by them when they arrived in Vanuatu. These monies often in foreign currencies were carried in this way to avoid the legal constraints associated with importing foreign currencies. The evidence showed money transferred between Bangladesh, other countries abroad and Vanuatu. The platform used was through transferring money in two ways: first, monies (US Dollars) carried by victims from India to Vanuatu; second, monies transferred through Western Union. In 2017, the victims brought an amount of cash US\$217,146 and in 2018, they brought an amount of US\$244,700. This was a total of US\$461,846. There were also details of money transferred in Vanuatu from Western Union. There was evidence of money deposited or transferred in the local banks in Vanuatu in the name of Somon Sekdah, Buxoo Nabilah Bibi, Mr Price, in the joint names of Somon Sekdah and Buxoo Nabilah Bibi, in Buxoo Nabilah Bibi Trading as Mr Price and others.
16. The evidence showed the money transferred in Vanuatu from Western Union. Buxoo Nabilah Bibi was amongst this sending money from Australia to Vanuatu. Buxoo Nabilah Bibi was also sending money from Vanuatu to countries abroad. Somon Sekdah sent money abroad when he was outside Vanuatu and also locally to himself (as receiver). What follows is a short illustration:
- Buxoo Nabilah Bibi received from abroad VT2,092,600 which consisted of 8 transfers from Australia and 1 transfer from Qatar;
  - From July 2018 to October 2018 (a period of 4 months), Buxoo Nabilah Bibi sent in Vanuatu VT8,601,819 corresponding to 38 transfers in total;
  - Somon Sekdah received from abroad VT5,397,168 corresponding to 21 transfers from Australia, 2 transfers from Fiji and 2 transfers from United Arab Emirates;
  - Palas Hosan received from abroad, VT2,093,964 corresponding to 9 transfers from Australia (involving 2 different senders).
17. Looking to the manner in which the funds were remitted to Vanuatu, the evidence elucidated the reason why the transactions were made through Western Union instead of using ordinary banking telegraphic transfers. The simple answer was that question and suspicion would be raised on the transactions as the amount was huge over VT15,000,000. The transfers were made through Western Union in order to avoid detections. The connection with money laundering was that the transfers were made by various small amounts to Vanuatu which triggered money laundering.
18. When the victims arrived in Vanuatu, they were immediately subjected to harsh and repressive conditions. A culture of fear was deliberately introduced and reinforced by a set of rules, regular meetings held during which the First Defendant (Sekdah Somon) made it known who possessed



supreme authority, an authority he expected everyone to follow without question. Sekdah Somon used a group of loyal associates (including Anowar Hossain and Palas Hosan) to enforce his authority, and imposed rules and imposed harsh living and working conditions including supplying food of an inferior quality and quantity, and exposed victims to unfamiliar manual labour and excessive working hours.

19. Victims were bullied and assaulted if they did not pay money, if they complained or if they passed on information that was critical about Mr Price company, Sekdah Somon assaulted those who by-passed these rules. He was assisted by his trusted lieutenants (such as Anowar Hossain and Palas Hosan). Victims were taken to the edge of the cliff and their lives threatened; at one occasion, by a broken bottle (at Mr Price office). "*Battan*" was the rod that reminded the victims against conduct that displeased Mr Sekdah Somon as the boss of the victims.
20. Sekdah Somon constantly spoke about what he would do to the victims, like running over them in his car, cutting them up and hanging them from a tree, taking them to the jungle and putting them in the freezer. Sometime it would end up with a threat that pictures of their dead bodies would be taken and sent to their respective families.
21. Remunerations were withheld and unreasonable deductions were made. As an illustration, remunerations were deducted on the basis of income tax, though Vanuatu does not have an income tax regime.
22. The personal and travel documents of the victims were immediately removed from them upon arrival. These served to reinforce Mr Sekdah Somon's control and the victims' dependence.
23. The victims lived on the first defendant's alleged properties, which comprised of houses at Tassiriki, Nopo, Pango and Town House. The front gates of these houses were not secured with a padlock. The victims were instructed when they were not working, they were to remain at the property. The victims gave evidence that they perceived they could not go beyond the property without Mr Sekdah Somon's permission. At the property, they had to carry out various daily chores such as cooking and cleaning. They were told not to connect with other passers-by or other people that they came across.
24. If the victims did not comply with the restrictions set in place (rules), or fulfil their household chores work to an appropriate standard, Sekdah Somon would organize meetings with the victims and especially at Pango House and assaulted the victims in front of the others and created a climate of fear and intimidation with the assistance of his loyal and trusted lieutenants. The victims' evidence on the assaults they received and the violence that they endured at Sekdah Somon's hands and his lieutenants was compelling. It included assaults with objects (weapons) and assaults to the head and other parts of the body (with slipper and timber). Some of these assaults caused injuries and scarring. This installed fear in the victims and ensured their compliance with the first defendant's wishes.
25. The victims' rights to free movement, to gather, to communicate freely amongst themselves and with families were severally curtailed, and gratuitous and wanton violence and threats marked Sekdah Somon's displeasure.



26. There was extreme use of fraudulent documents when fake documents were used in processing the documents of the victims to obtain visas; how immigration officers were bribed in allowing the victims to travel to India, Singapore, Fiji and to Vanuatu. In one instance, how a local immigration officer was given a white envelope containing cash money to stamp the visas in the passports of the victims inside Mr Price Company's office in Port Vila and some of these passports were already expired. The visas were visitors' visas only, which the first two defendants (Sekdah Somon and Buxoo Nabilah Bibi) knew did not allow the victims to work in Vanuatu. Some of the victims were ignorant of this, and others were told that once in Vanuatu or at the place or country of destination, extended visas could be arranged. All of the victims were vulnerable individuals. Most victims were poorly educated and had little access to income or assets. Most victims could not speak English and could not read.
27. The fear these created and Mr Sekdah Somon's overbearing demeanour rendered a feeling of hopelessness and fear amongst the victims, and a sense of ownership by the First Defendant (Mr Sekdah Somon).
28. The Court accepted that a "slave" means a person taken or kept (used) in slavery which means a person held as property and "taking or keeping (using) another in slavery" involves an intentional use of power over that person, as though that person was the property and under the control of the taker or keeper (user). The court accepted that the First Defendant (Sekdah Somon) jointly and severely with the second defendant (Buxoo Nabilah Bibi) with the assistance of the third and fourth Defendants (Anowar Hossain and Palas Hosan) took or kept the victims in slavery and used the victims.
29. The court also accepted the prosecution case that the First Defendant's principal motive was simply to procure and preserve as much money as possible for himself. The collection of any outstanding monies was often the subject of painstaking enquiry by the First Defendant (Mr Sekdah Somon), and the threats of violence were a means to exact outstanding payments. Yet many victims were either never remunerated at all as promised or not remunerated in full. This was so considering the quality of living and working conditions. Money applied to capital investment like the shopping mall was minimal and was of poor quality; and the physical structure was unsafe. Those who were assigned to do business were never paid, and were not provided breakfast. The food was of an inferior quality, and inadequate.
30. The court accepted that the first defendant's ultimate goal, was to exit Vanuatu once he was able to accumulate enough cash.
31. The scheme attracted a diverse group of ordinary people from various walks of life who did not possess formal marketable skills. Consequently, when work permits were sought in Vanuatu, the First and Second Defendants (Sekdah Somon and Buxoo Nabilah Bibi) either failed to obtain work permits for the workers or provided false information to the authorities about the qualification of workers.
32. Eventually, a number of victims escaped and lodged complaints with the police. Some of the victims were deported soon after absconding. Others remained in this country and provided evidence in



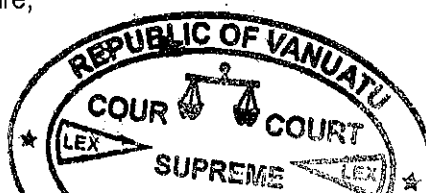
support of the complaints. Most of the victims were unwilling to talk about their experiences of what happened to them and their embarrassment.

33. Each of you pleaded not guilty to the charges. You still deny any responsibility or culpability for the offences of which you are now convicted. The court found you guilty of slavery (2 counts), trafficking in persons (2 counts – save the third defendant [Anowar Hossain]), money laundering (2 counts each for the two first defendants), Intentional assaults (First defendant (2 Counts), third defendant (1 Count) and fourth defendant (1 Count)), threats to kill a person (2 counts for first defendant), employing non-citizens without work permits (1 count each for the first two defendants) and furnishing false information to a Labour Officer (1 count for the second defendant). In essence, it is clear that the court was satisfied that you brought 107 victims into Vanuatu by your false representations and used all the victims as slaves, controlling them and possessing them for your financial benefit.
34. There were no impact statements by the victims but the evidence of the victims showed a recurrent theme of deep sense of shame and humiliations experienced by them with the return back home with nothing to show for their time away and were criminalized by their illegal immigration status. This was coupled by a deep sense of sadness that they were not able to do more for their families financially. Most of the victims still feel a lot of guilt and pain for what occurred to them at your hands and in particular the first and second defendants. Most victims had to sell their properties (shops, farms, land ...), others obtained bank loans and mortgage properties to find money to pay to you and others to come to Vanuatu.
35. I turn then to consider your respective personal circumstances.

### **C. PERSONAL CIRCUMSTANCES**

#### **(a) Sekdah Somon**

36. You are 37 years of age and you resided in Port Vila, Vanuatu for the past 7 years. You claimed to be Zimbabwean origin in the African continent. However, this was a factual issue before the Court in the trial. The facts and evidence are against your assertions of being Zimbabwean origin. First, your wife (Buxoo Nabilah Bibi) told the court you are not from Zimbabwe but you are from Bangladesh. She gave evidence as to how you obtained Zimbabwean passport. The evidence during the trial illustrated that you are from Bangladesh and you come from a village in the Tangail province. Your brothers, sister and mother all are and live in Bangladesh. One of your brothers (Sekdah Kamruzahman) was involved in this scheme and arranged for Indian visas for the victims to come to Vanuatu. The details of your being originated from Bangladesh were given by Nabilah after she had conversation with one of your brothers who were not involved in this sort of scheme.
37. It is noted that you have a daughter and you will pay for her school fees. You had kidney stones and you are taking medications for that illness but you are in good health condition. You had a Vanuatu custom chief and you live under his care;

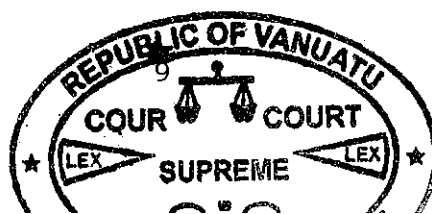




38. It is noted but great caution must be exercised that:
- You have two residential properties in Efate and appointed a Vanuatu custom chief to look after the two properties;
  - You are a Diploma graduate in fashion designer;
  - You are a self-employed and run your own fashion design company.
39. Mr Sekdah Somon had prior “*bad*” character which related to the evidence of police investigation in Mauritius and some evidence that he had trafficked Bangladeshi whilst he was in South Africa. In this instance case, you have been convicted for the offences of trafficking in person, slavery, money laundering, threats to kill a person, intentional assault and employing non-citizens without work permits which represent a significant escalation in severity.

**(b) Buxoo Nabilah Bibi**

40. Mrs Buxoo Nabilah Bibi is 27 years of age. She is originated from Port Louis, Mauritius Island. She comes from a family of four and that she is the second eldest in her family. Both of her parents are still alive and reside in Mauritius. Mrs Bibi stated to have a good family relationship with her parents and siblings.
41. Mrs Bibi is married to Mr Sekdah Somon (First Defendant) who is from Bangladesh and they are married for seven years. Mrs Bibi stated that they have no children together, however her husband had marital affairs to which has two children aged 13 and 4 years, Mrs Bibi stated to have helped raise them till that day she was remanded in custody and the children were returned to their mother.
42. Mrs Bibi stated that she completed her education and graduated from the University of Mauritius with a diploma in Oriental Language in Pakistani language. She was first employed as a trainee staff for an insurance company for nine months back in Mauritius and after her marriage to Mr Sekdah Somon, she worked as a manager in managing the different business that her husband owned. Mrs Bibi stated to have skills in managing business, sewing and cooking, her main ambition in life now, is to return home and re-open the small factory business that her mother owns.
43. In respect to her home environment, Mrs Bibi described her relationship with her husband, as a prison cell, she has no freedom; she was assaulted by her husband, when not following instructions as directed by her husband. She has no say but to obey her husband.
44. When asked about her health, Mrs Bibi stated to be healthy with no major health issues. In relation to religious affiliation, Mrs Bibi was born as a Muslim however, as of May last year she was converted to Christianity and is a member of the International Christian Fellowship.

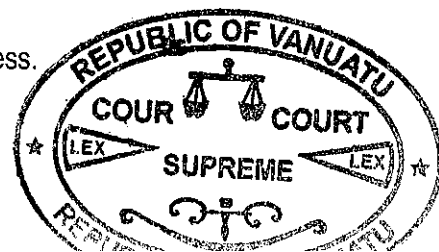


**(c) Anowar Hossain**

45. Anowar Hossain originates from Bangladesh. He is 45 years of age and has been residing at Nambatri Elluk area. He maintains good relationship with his family. He lives under the community care of Chief Joseph Joseph lau of Tanna, who has been taking care of him whilst he was still outside the community.
46. Joseph lau (Chief) added that Mr Hossain maintains good relationship with his chief and community members, chief Joseph stated to the writer of the report, Mr Hossain is a member of his community and he became a member of my community works and helping the community upon request from the community.
47. Mr Anowar Hossain attended Kochau High School and did not complete his education. Mr Hossain stated to the writer of the report, after completing grade six, he started helping his parents in sewing clothes. Mr Hossain stated to have been doing this all his life, till he opened up a clothing shop in Bangladesh, which he designed his own products.
48. Mr Anowar Hossain stated he has skills in fashion design. It is noted that you have an ambition in life to own a fashion business of your own here in Vanuatu, to train ni-Vanuatu in fashion design and youths especially young mothers in some life skill trainings.
49. It is noted with caution that Mr Anowar Hossain said he is self-employed with a small business that is sustaining him here in Vanuatu. Mr Hossain stated he takes care of his family in Bangladesh whilst he is here in Vanuatu. He added that he is the only sole income of the family and his family relies on his financial incomes.
50. Mr Anowar Hossain seems to be in good health without any physical or mental illness.

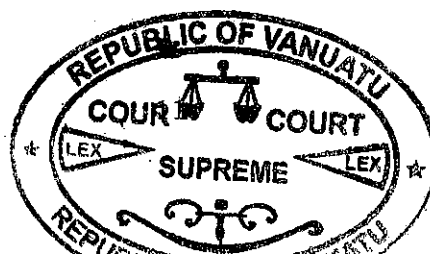
**(d) Palas Hosan**

51. Mr Palas Hosan originates from Bangladesh. He is 27 years of age and has been residing at Tassiriki. He derives from a family of two brothers and he is the second in birth. He maintains good relationship with his family.
52. Mr Palas Hosan attended Jamina Khatun Junior Secondary School from grades one to nine. Mr Hosan stated to never complete his education and worked as taxi driver and other transport services. Mr Hosan stated to have skills in driving and small business management, he has an ambition to earn some cash coming to Vanuatu and taking care of his family back in Bangladesh.
53. Mr Hosan is unemployed at the moment and is currently remanded in custody without any financial assistance.
54. Mr Palas Hosan seems to be in good health without any physical or mental illness.



#### D. SENTENCING GOALS AND METHODOLOGY

55. Turning to sentencing goals and methodology, in sentencing the Court must have regard to the sentencing goals and principles. The most significant objectives are the denunciation of your respective conduct, holding each of you accountable for your actions and deterring others from offending in the way each of you did.
56. This court, in the sentencing decision for trafficking in persons and slavery must stress the need for denunciation and deterrence. Deterrence is required for crimes of this type. In *R v MC* [2019] EWCA Crim 1026 at [38], the Court said that deterrent sentences are required to reinforce the message that the degradation of the worth of a fellow human being through exploitation is totally unacceptable.
57. The modern definition of slavery criminalizes anyone who takes or keeps (uses) a person as property. Human trafficking and slavery are abhorrent crimes. They are crimes against human dignity and degrade the rights and autonomy of individual people and human life (see *R v Ali* [2016] NZHC 3077 at [45]).
58. In Vanuatu, the seriousness of trafficking and slavery offending are indicated by the maximum sentence of 20 years imprisonment for both offences, making them two of the most serious offences in the legislation after the offences of premeditated homicide and sexual intercourse without consent with a maximum sentence of imprisonment for life.
59. This reflects Vanuatu's obligations as part of international efforts to combat these two types of offending, the fulfilment of which is necessary to demonstrate that Vanuatu is doing its part to eliminate exploitative behaviour, to protect Vanuatu's international reputation and, most importantly, to reduce the potentially devastating impact of such offending on the lives of victims [It must be bore in mind that Vanuatu is also a signatory to the United Nations Convention Against Transnational Organized Crimes and the Protocols Thereto (12/12/2005) which includes the Protocol to Prevent, Suppress and Punish Trafficking in persons and the United Nations Convention Against Torture and Other cruel, inhuman or Degrading Treatment or Punishment (28/04/2011) and respective Protocols].
60. The sentencing approach is to take a starting point that reflects the culpability of your respective offending in light of the maximum penalties available for the offending. In this present case, trafficking and slavery are the more serious offences, having the higher maximum penalty. The appropriate approach here is to identify an overall starting point to cover the totality of the offending, because of the interconnectedness of the trafficking and slavery offending. The two sides of the same coin. The trafficking offences capture the means by which you brought the victim to Vanuatu for the purpose of exploiting them, the slavery offence capture the means by which your exploited them once here in Vanuatu.

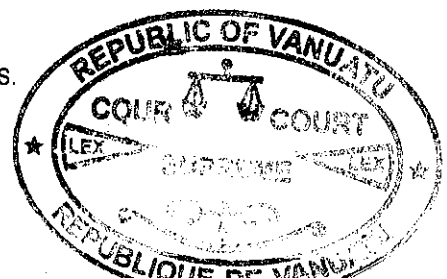


61. In practice, whether I take trafficking as the lead offence and uplift for slavery, or whether I assess an overall starting point for both the trafficking and the slavery offences together as lead offences, it will make little or no difference to the final outcome. What is appropriate is that the starting point should reflect both sets of offending as well. This type of case warrants custodial sentence. I bear in mind that the total period of imprisonment must not be wholly out of proportion to the gravity of the overall offending and must be proportionate.
62. The Court must then consider whether there is any personal aggravating or mitigating factors for which uplifts or discounts should be made. Finally, I will consider whether I should suspend the term of imprisonment if I sentence each of you to a term of imprisonment.
63. In Philip v PP [2020] VUCA 40, the Court of Appeal was asked to consider the appellant's contention that the end sentence imposed on him after his conviction of premeditated homicide was manifestly excessive. In discussing the error of the primary judge when applying the two steps enunciated in PP v Andy [2011] VUCA 14, their Lordships said:

*"... after a starting point sentence has been assessed and set down (a figure X is set) by considering the aggravating factors relating to the nature of the offending, the seriousness and culpability of the offending, the maximum penalty and the comparable case authorities for consistency purposes. The aggravating factors personal to the offender are then assessed or used in a sentencing exercise to increase or add to the starting point sentence already set to reflect the personal factors relating to the offender. They are not used or assessed to arrive at the initial starting point of the sentence".*

## **E. STARTING POINT**

64. I will take a global starting point reflecting both the trafficking and slavery offending. I again record that the maximum penalty for both trafficking and slavery is 20 years imprisonment for both.
65. I will start on the following three basic steps involved in setting a starting point:
- (a) I will identify and evaluate the aggravating and mitigating factors of the offending;
  - (b) I will then place the offending within the appropriate range if there is a range (tariff) judgment for the relevant offence; and
  - (c) I will fix an appropriate starting point by reference to other cases which are comparable by reasons of involving similar aggravating and mitigating factors.
66. The above basic steps are consistent with the authorities in that they establish that in assessing the starting point, the seriousness and culpability of the offending, the maximum penalty and comparable cases are factors to be taken into account.
67. In the present case, I need to consider the submissions of the parties.



**F. PROSECUTION SUBMISSIONS ON TRAFFICKING IN PERSON AND SLAVERY: STARTING POINT**

68. Mr Josaia Naigulevu, the Public Prosecutor in his submissions, suggested that some assistance could be had to the guideline that was issued on the 1<sup>st</sup> October 2021 by the Sentencing Council of England and Wales in respect of offences in the Modern Slavery Act 2015 (UK). The guideline covers the offences of holding someone in slavery, servitude and forced labour (Section 1) and Human Trafficking (Section 2). Those offences are similar to the offences in Section 102(a) and 102(b) of Penal Code. It was pointed out that although they do not mirror each other, the guideline offers a very useful tool to assist the computation of starting points. It is said that the guideline has a total of 7 steps, but in the process of determining a suitable starting point, the first two steps are relevant. In the light of the coverage of the guideline, the two offences of slavery and trafficking in persons will be considered together and also the evidence in this case supports that approach.
69. The step one of the guidelines is as follows:

**Step 1 – Determining the offence category**

**Culpability**

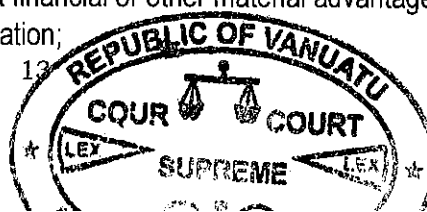
In assessing culpability, the court should weigh up all the factors of the case, including the offender's role, to determine the appropriate level. Where there are characteristics present which fall under different categories, or where the level of the offender's role is affected by the very small scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

**A. High Culpability**

- Leading role in the offending;
- Expectation of substantial financial or other material advantage;
- High degree of planning/premeditation;
- Use or threat of a substantial degree of physical violence towards victim(s) or their families;
- Use or threat of a substantial degree of sexual violence or abuse toward victim(s) or their families.

**B. Medium Culpability**

- Significant role in the offending;
- Involve others in the offending whether by coercion, intimidation, exploitation or reward;
- Expectation of significant financial or other material advantage;
- Some planning/premeditation;



- Use of threat of some physical violence towards victim(s) or their families;
- Use or threat of some sexual violence or abuse towards victim(s) or their families;
- Other threats towards victim(s) or their families;
- Other cases falling between A and C because:
  - Factors in both high and lower categories are present which balance each other out and/or;
  - The offender's culpability falls between the factors as described in A and C.

**C. Lower Culpability**

- Engaged by pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence;
- Performs limited function under direction;
- Limited understanding/knowledge of the offending;
- Expectation of limited or no financial or other material advantage;
- Little or no planning/premeditation.

70. In this first step the prosecution places the defendants in the following categories:

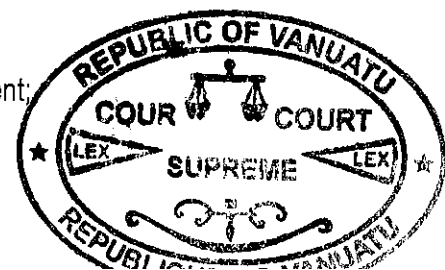
- (a) Sekdah Somon: high culpability;
- (b) Buxoo Nabilah Bibi: medium culpability;
- (c) Anowar Hossain: lower culpability;
- (d) Palas Hosan: medium culpability – he and his family played a very active role in recruiting victims.

71. The Public Prosecutor submitted that the seriousness of the offences must be able to take into account that the two offences (of trafficking in persons and slavery) were of an international character, and that the maximum sentences were in the same vein as similar serious offences in the Penal Code, like unpremeditated homicide (section 106(1)(a) of the Penal Code). In this case, three of the defendants were convicted of traffic in persons, whilst all four were convicted of slavery.

72. The next step in the Sentencing Council guideline involves the assessments of the harm caused. It consisted of 4 categories. The Public Prosecutor contended that whilst the considerations within those 4 categories might help in determining the seriousness of the offending, the prosecution is cautious about applying them here because of the risk of double counting and the prosecution elects not to apply it.

73. The Prosecution submitted, on the basis of the foregoing, the starting points for each defendant are as follows: -

- (a) Somon Sekdah: High end – 11 years imprisonment;
- (b) Buxoo Nabilah Bibi: Medium range – 7 years imprisonment;
- (c) Anowar Hossain: medium range (slavery) – 6 years imprisonment;



- (d) Palas Hosan: medium range – 7 years.

### **Aggravating Factors**

74. The aggravating factors in respect of individual defendants were:

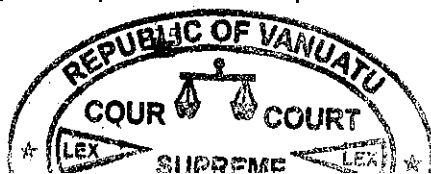
- (a) Somon Sekdah: prior “*bad*” character; evidence of prior planning; offence committed by a group in Vanuatu as well as abroad; offence was motivated by financial gain; vulnerable victims were targeted; weapons were used to frighten and injure victims; deliberate use of gratuitous violence and degradation; curtailment of personal rights and property; victims were assaulted in the presence of others; abuse of authority; victims were sometimes exposed to serious injury and hazardous working conditions; there were multiple victims and incidents; no contrition. His prior bad character relates to the evidence of police investigation in Mauritius and some evidence that he had trafficked Bangladeshis whilst in South Africa.
- (b) Buxoo Nabilah Bibi: evidence of prior planning; offence committed by a group in Vanuatu as well as abroad; offence was motivated by financial gain; vulnerable victims were targeted; abuse of authority; there were multiple victims and incidents.
- (c) Anowar Hossain: (slavery offence) evidence of prior planning; vulnerable victims were targeted; deliberate use of gratuitous violence and degradation; victims were assaulted in the presence of others; abuse of authority; there were multiple victims and incidents, no contrition.
- (d) Palas Hosan: evidence of prior planning; offence committed by a group in Vanuatu as well as abroad; offence was motivated by financial gain; vulnerable victims were targeted, weapons were used to frighten and injure victims; deliberate use of gratuitous violence and degradation; victims were assaulted in the presence of others; abuse of authority; there were multiple victims and incidents, no contrition.

### **Mitigating Factors**

75. The following were the mitigating factors:

- a. Sekdah Somon: first time offender;
- b. Buxoo Nabilah Bibi: first time offender; remorseful and gave credence to the prosecution's evidence;
- c. Anowar Hossain: first time offender;
- d. Palas Hosan: first time offender;

76. The prosecution provided a table of Australia cases on trafficking and slavery for comparative analysis as there is no local case authority on the point. When compared to Australian cases of trafficking and



slavery, it is quite apparent that the instant case is at the higher end of the scale in terms of seriousness and scale. The number of victims trafficked to Vanuatu in this case outnumbers the vast majority of cases in Australia. Quick tables in an Annexure "A" bear this out.

### **End sentences**

77. The prosecution submits as appropriate end sentences:
- a. Sekdah Somon: 14 years;
  - b. Buxoo Nabilah Bibi: 7 years;
  - c. Anowar Hossain: 6 years;
  - d. Palas Hosan: 7 years.

### **G. MONEY LAUNDERING: STARTING POINT**

78. The first and second defendants were convicted of this offence. The maximum sentence is 25 years or a fine of VT50 million or both. In regards to the question of culpability, the first defendant played a leading role and the second a significant role. A significant amount of planning appeared to have gone into the repeated offending and both knew and expected a considerable amount of financial advantage. On the question of seriousness, both the maximum sentence and the international context place the offending in serious categories. The case is slightly different from the situation in *Victor Rory v PP Case No 19/1882 CoA/CRMA* where a starting point of 8 years was fixed. In this case, the prosecution proposes a starting point of 9 years.

### **Aggravating factors**

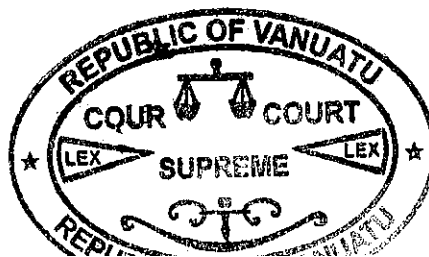
79. The aggravating factors include the total amount of money laundered in Vanuatu, the frequency of the offending, the number people tasked to carry the money, the coercion and threats that accompanied the assignment, the planning involved, the criminal intent and the net effect of the scheme that successfully avoided the cost importing large amounts of foreign currency into Vanuatu in contravention of the exchange control regulations, and the absence of contrition by the first offender.

### **Mitigating factors**

80. Both defendants were first offenders. Buxoo was remorseful and gave credence to the prosecution evidence.

### **End sentence**

81. The prosecution submits end sentences as follows: Sekdar Somon: 11 years; Buxoo Nabilah Bibi: 6 years.





## H. INTENTIONAL ASSAULT: STARTING POINT

82. The first and fourth defendants were each convicted of two counts of intentional assault of victims. The third defendant was convicted of one count only.
83. The maximum penalty for this offence is 5 years. Turning to the question of the appropriate starting point, the twin issues of culpability and seriousness may be affirmed by evidence of the extent of their respective roles, the circumstances. The prosecution notes the following in each case:
- a. Sekdar Somon: he was the instigator and played a lead role, it was part of the system of control and oppression, and it was organized, necessitating travel to crime scene;
  - b. Anowar Hossain: Whilst he did not play the lead role, the part he played was still significant because the reasons can possibly be attributed to him as the source of information, and the venue of the assault at Pango where he was the supervisor;
  - c. Palas Hosan: Similarly, Palas did not play the lead role, but a significant role nevertheless. He was a trusted lieutenant and, on these occasions, was the one who acquired the timber used in the assault.
84. In each case, the offending was serious, given the context in which it was perpetrated in front of others, as tool of oppression and to instill fear in the particular context of an international crime, and the multiplicity of the assailants and victims. Considered together with the statement of the Court of Appeal in Nigel Giltrap v PP Case No 19/1811 CoA/CRMA where a starting point of three months was pegged, the prosecution suggests a start point of six months.

### **Aggravating factors**

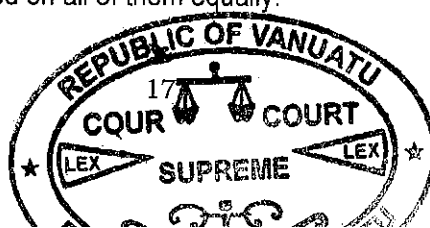
85. The aggravating features included the use of unprovoked gratuitous violence, the use of shoes and timber as weapons, the perpetration by multiple assailants, the abuse of authority by each of the assailants the absence of contrition.

### **Mitigating factor**

86. The defendants were first time offenders.

### **End sentence**

It is suggested that the appropriate end sentences is 1 ½ years. Despite their different roles, the three offenders were jointly charged for the same specific offending incidents. The consequence is that the same sentence should be imposed on all of them equally.



**I. THREAT TO KILL: STARTING POINT**

**Starting point**

87. The first defendant alone was convicted of two counts of threatening to kill. The maximum sentence is 15 years. In determining the appropriate starting point in this case, the questions of culpability and seriousness may be assessed on the basis that the defendant played the lead role and the seriousness of the offence both in the context of the maximum sentence and as an international offence. On the basis of the foregoing, the prosecution proposes a starting point of 4 years.

**Aggravating factors**

88. The aggravating factors in the instant offence include the breach of trust, the multiplicity of times he offended, and the multiple victims, as well as the absence of contrition.

**Mitigating factors**

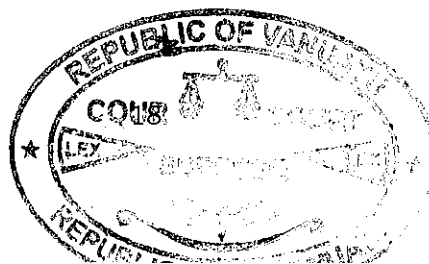
89. The defendant was first time offender.

**End sentence**

90. Against the authority in *Kell Walker v PP Case No 6 of 2007* where the Court of Appeal upheld a sentence of 2 years imprisonment, partially served in custody, the prosecution here proposes an end sentence of 3 years imprisonment.

**J. EMPLOYING NON-CITIZENS WITHOUT WORK PERMITS: STARTING POINT**

91. The first and second defendants were jointly charged and convicted of the offence. The maximum sentence is a fine of not more than VT100,000 or 6 months imprisonment, or both.
92. Towards the determination of a starting point, the questions of culpability and seriousness of the offending may be assessed in the context of lead roles they both played, and that these roles were pursuant to their common positions as directors and shareholders of the company Mr. Price. Their conduct amounted to a serious and deliberate disregard of the Labour laws of a foreign country which was wilfully undermined in order to fulfill the primary object of putting to work unskilled manual labour recruited in large numbers to procure and accumulate for the defendants as much money as possible. As with the other offences, this offence was committed in the context of an international organized scheme. On the basis of the foregoing, the prosecution proposes a starting point of 3 months.



### **Aggravating factors**

93. The aggravating factors included the multiple numbers of workers involved, the number of offenders, the breach of promise and trust to workers that work permits would be obtained by the employers, the absence of remorse by the first defendant and the net effect of denying domestic workers paid employment properly reserved for them in their country.

### **Mitigating factor**

94. The defendants were first time offenders. The second offender has been the only one who has demonstrated some remorse, not the first offender.

### **End sentence**

95. The prosecution submits as the appropriate end sentence a period of 3 months imprisonment and VT60,000 fine for first defendant, and 2 months and VT20,000 fine for the second defendant.

## **K. FURNISHING FALSE INFORMATION TO LABOUR OFFICERS: STARTING POINT**

96. The second defendant was alone convicted of this offence. The maximum sentence is a fine of VT100,000 fine or 6 months imprisonment, or both.

### **Starting point**

97. The second defendant's culpability is evidenced by her lead role, accentuated by her position as a shareholder and director of Mr. Price. She was obviously motivated by the prospect of financial gain that would accrue to Mr. Price. The seriousness of the offence is evidenced by the context in which the offence was committed, an international organized crime.

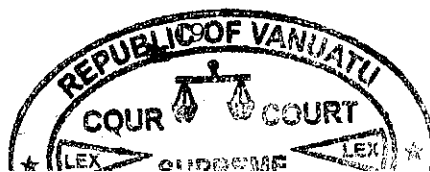
98. The starting point submitted is 3 months.

### **Aggravating factors**

99. The aggravating factors included the number of foreign workers whose details were contained in the false information supplied, the potential disadvantage to the domestic labour market, the breach of trust and promise to the foreign workers that they would be provided work permits for the jobs they were recruited for, and the element of dishonesty that attempted to compromise domestic labour and immigration processes.

### **Mitigating factor**

100. The second defendant is a first-time offender and has demonstrated some remorse.



### **End sentence**

101. The prosecution submits an end sentence of 3 months.

### **L. COMPUTATION OF END SENTENCE**

102. The prosecution submits that the sentences imposed in respect of each individual charge and defendant be served concurrently pursuant to section 52 of the Penal Code. This has been a case where the charges were tried jointly.

103. Accordingly, the end sentences that the prosecution submits in respect of each defendant are as follows:

- (i) Sekdah Somon: 14 years and VT60,000 fine;
- (ii) Buxoo Nabilah Bibi: 7 years and VT20,000 fine;
- (iii) Anowar Hossain: 6 years;
- (iv) Palas Hosan: 7 years.

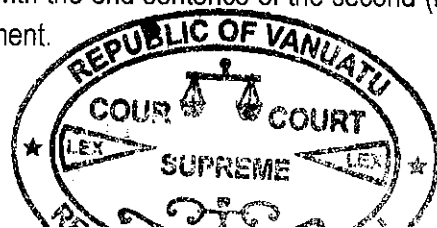
104. These sentences have also been taken into account the totality principle of sentencing law.

### **M. DEFENCE COUNSEL SUBMISSIONS**

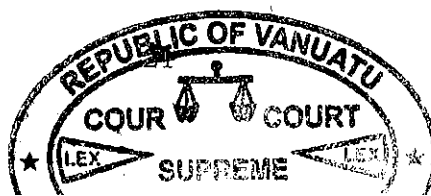
105. Mr Leo on behalf of the First Defendant (Sekdah Somon) objected to the assistance and reliance on the guideline on the Sentencing Council of England and Wales in respect of offences in the Modern Slavery Act 2015 (UK) for the reason that it was foreign but he did not explain reason of the objection to get assistance from the guideline in the computation of starting points. I take it that the dispute could not assist the Court in respect to step 1 further and must be put at rest there and then.

106. The First Defendant (Sekdah Somon) submitted that the prosecution starting point of 11 years on slavery and trafficking in person as lead offences is too high and inappropriate, but a starting point of 8 years would be more appropriate. The first defendant also submitted that the prosecution end sentence of 14 years is inappropriate when comparing his role and involvement in the offending of trafficking in person and slavery in comparison with the role played by the second, third and fourth defendants. The first defendant submitted an end sentence of 8 years to run concurrently.

107. On money laundering, the first defendant referred and relied on the Court of Appeal judgment in Victor Rory v PP [2020] VUCA 41 where the starting point of 8 years was fixed, and the first defendant submitted that the prosecution starting point of 9 years was not appropriate. The end sentence for money laundering would also be 8 years in comparison with the end sentence of the second (Buxoo Nabilah Bibi) of 6 years based on justice and equal treatment.

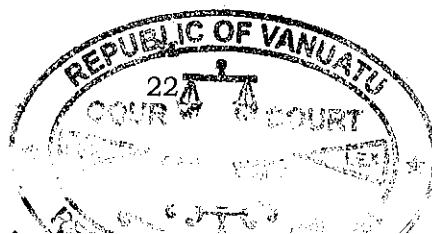


108. The first defendant agreed and accepted the submissions of the prosecution on the starting point of the offences of intentional assaults and employing non-citizens without work permits and their respective end sentences concurrently.
109. The first defendant submitted that a starting point for the offence of threats to kill should be 2 years and a half year to 3 years and half year's imprisonment as an appropriate starting point. An end sentence of 2 years 10 months be appropriate.
110. The first defendant submitted that the overall end sentence of 14 years is inappropriate and he accepted that he should be sentenced to imprisonment of a term of less than 8 years as an end sentence.
111. Mr Macreveth on behalf of the Second Defendant (Buxoo Nabilah Bibi) did not dispute the reliance on the guideline. The second defendant agreed and accepted the facts as set out in the prosecution summary of facts. The second defendant submitted that she did not fall within the medium culpability category for offences of trafficking in person and slavery. The reasons being, that there is evidence that all the planning and premeditation were done by the first defendant, Sekdah Somon. The second defendant's role in planning and pre-meditation, if there is evidence, it would be on the lower scale.
112. In respect to slavery, the second defendant submitted she did not fall within the medium culpability category as outlined by the prosecution due to the fact there was no evidence that suggest use or threat of some physical violence or abuse towards victims or their families; the evidence of use or threats and violence was pointed to the first defendant; there was no evidence to prove that the second defendant has been physically violent towards the victims in this criminal proceeding. She said finally she has not met the criteria that would characterize her in "*medium*" culpability as suggested by the prosecution.
113. On money laundering, the second defendant submitted she did not fall within the medium culpability category as outlined by the prosecution. The reasons being that all the planning and premeditation were done by the first defendant, Sekdah Somon; there is evidence that in every country where the second defendant travelled, somebody was there to pick her up from the airport, drop her at a certain house and take her to Western Union; she was forced to comply with instructions from the first defendant; there is no expectation of significant financial or other material advantage.
114. The second defendant agreed and accepted the end sentence of 2 months imprisonment and VT20,000 fine for the offence of employing non-citizens without work permits and she accepted also the end sentence of 3 months imprisonment for the offence of providing false imprisonment to a Labour Officer as suggested by the prosecution.
115. In mitigation, the second defendant said she was remorseful and the prosecution accepted that. She said she was 27 years of age. She was married to the first defendant (Somon Sekdah) but she intends



to divorce from him. She agreed to remit 30% of her shares in Mr Price Company in favour of the victims in this proceeding as compensation for the damage caused to the victims.

116. The second defendant submitted that she did not entirely fall under the medium culpability as suggested by the prosecution but that she falls towards the lower culpability. For that reason, she said that the starting point sentence for her ought to be 5 years imprisonment. She was arrested and remanded in custody since 20 November 2018 and the time spent has to be taking into account in her sentencing. The second defendant finally submitted that her overall end sentence should be 3 years imprisonment and should be suspended with set conditions.
117. Mr Livo on behalf of the Third and Fourth Defendants (Anowar Hossain and Palas Hosan), agreed with the submissions of the Public Prosecutor that the Court can get assistance and relied on the guideline on the Sentencing Council of England and Wales in respect to offences in the Modern Slavery Act 2015 (UK) as suggested by the prosecution. Mr Livo agreed that the facts are well detailed in the verdict judgment issued by this court on the 2<sup>nd</sup> day of November 2021. In determining the culpability for the third and fourth defendants, he submitted that the following facts should be considered to place a proper culpability that should apply to reach a starting point. Mr Livo submitted the evidence pointed to the role played by the third and fourth defendants as supervisors and associates to Sekdah Somon.
118. Anowar Hossain arrived in the third group who was escorted by Sekdah Somon. He too travelled to Vanuatu as other victims. Anowar become familiar with Somon Sekdah when they travelled to Vanuatu and when he was asked by Somon Sekdah to accompany him to do some shopping. After his arrival to Vanuatu, Somon Sekdah gave him a job to look after the Pango house (as supervisor). Anowar Hossain followed instructions from Sekdah Somon. He was supervisor over Pango house and also other tasks given to him by Sekdah Somon. The restrictions imposed by Anowar Hossain on the freedoms of the victims were all restrictions given to him by Mr Sekdah Somon. He is like a servant whom his master gave him orders. It is submitted that there is no evidence that Anowar Hossain received any profits from the money laundered into Vanuatu. His culpability should be on the lower scale. Anowar Hossain was a victim himself.
119. Palas Hosan came together with Sekdah Somon when they travelled in Port Vila. Palas Hosan collected monies from victims on behalf of Sekdah Somon when they arrived in Vanuatu. Palas Hosan recruited victims Bangladeshi through his brother Josim. He might be seen as closer to the principal offender, Sekdah Somon. Mr Livo agreed with the prosecution's submissions that Palas culpability should be placed at the medium range.
120. Turning to the starting point for Anowar Hossain and Palas Hosan, Mr Livo accepted that the lead offences, in this present case, are slavery and trafficking in persons. The maximum penalty for these two offences under the Penal code is 20 years imprisonment. Without getting into the details, Mr Livo submitted that all the offences that the third and fourth defendants were found guilty of were all related especially in trafficking in person cases or transnational crimes, so sentences for all the offences should run concurrently.



121. The starting point for the lead offences for Mr Anowar Hossain would be of 5 years imprisonment and for Mr Palas Hosan, a starting point of 6 years imprisonment.
122. In mitigation, Anowar and Palas are first time offenders. The court should consider their previous unblemished records, the time they spent in custody since their arrest and remand on 22 November 2018.
123. Mr Livo submitted that Mr Anowar Hossain would receive an end sentence of 4 years imprisonment and Mr Palas Hosan an end sentence of 5 years imprisonment.

**N. APPROPRIATE STARTING POINTS, AGGRAVATING AND MITIGATING FACTORS AND END SENTENCES IN THIS INSTANT CASE**

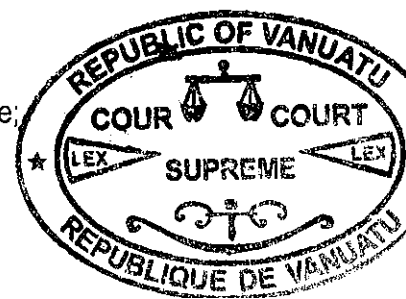
124. In arriving at the appropriate starting point, each offence must be considered individually.

1. **Trafficking in persons and Slavery**

125. In this instant case, the Court accepted the prosecution submissions that the court takes assistance from the guideline that was issued on the 1<sup>st</sup> October 2021 by the Sentencing Council of England and Wales in respect of offences in the Modern Slavery Act 2015 (UK). The reasons being that the guideline covers the offences of holding someone in slavery, servitude and force labour (Section 1) and human trafficking (Section 2) which are similar to the offences of trafficking in persons (Sections 102(a)) and Slavery (Section 102(b)) of Penal Code. The Court also accepted that only the two first steps of the guideline were relevant. On that basis in the light of the coverage of the guideline, the two offences of Slavery and Trafficking in persons will be considered together as lead offences. These two offences are the two sides of the same coin as I have alluded earlier and each has the similar maximum sentence of 20 years imprisonment. The evidence also supported that approach.
126. The first step of the guideline was in relation to determining the offence category. The court will do that by assessing the culpability. In assessing the culpability, the court should weigh up all the factors of the case, including the offender's role, in order to determine the appropriate level. Where there are characteristics present which fall under different categories, or where the level of the offender's role is affected by the very small scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.
127. The first step determines the offences into three categories: high culpability, medium culpability and low culpability range. The three levels (ranges) of the offence category in step 1 were reproduced again here as:

**A. High Culpability**

- Leading role in the offending;
- Expectation of substantial financial or other material advantage;



- High degree of planning/premeditation;
- Use or threat of a substantial degree of physical violence towards victim(s) or their families;
- Use of threat of a substantial degree of sexual violence or abuse towards victim(s) or their families;

**B. Medium Culpability**

- Significant role in the offending;
- Involves others in the offending whether by coercion, intimidation, exploitation or reward;
- Expectation of significant financial or other material advantage;
- Some planning/premeditation;
- Use or threat of some physical violence towards victim(s) or their families;
- Use or threat of some sexual violence or abuse towards victim(s) or their families;
- Other threats towards victim(s) or their families;
- Other cases falling between A and C because:
  - Factors in both high and lower categories are present which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C.

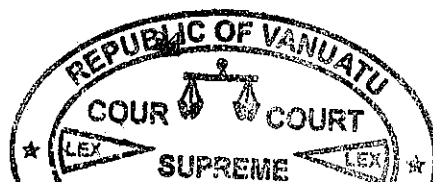
**C. Lower Culpability**

- Engaged by pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence;
- Performs limited function under direction;
- Limited understanding/knowledge of the offending;
- Expectation of limited or no financial or other material advantage;
- Little or no planning/premeditation.

128. The court considered and accepted that in this first step, the defendants are placed in the following categories:

- Sekdar Somon: High culpability
- Buxoo Nabilah Bibi: medium culpability
- Anowar Hossain: lower culpability
- Palas Hosan: medium culpability - he and his family played a very active role in recruiting victims.

129. The Court considered and accepted that the seriousness of the offences must be able to take into account that the two offences (of trafficking in person and slavery) were of an international character, and that the maximum sentences were in the same vein as similar serious offences in the Penal Code,





like unpremeditated homicide (section 106(1)(a) of the Penal Code). In this case, three of the defendants were convicted of traffic in person, whilst all four were convicted of slavery. The court noted also that the assessment of the harm caused in the next step in the Sentencing Council guideline will not apply with the first step to avoid double counting.

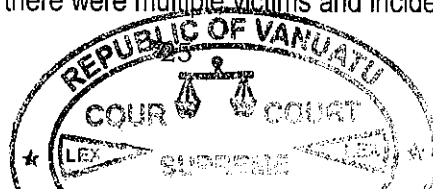
130. The court considered and accepted that, on the basis of the foregoing, the starting points for each defendant were as follows:

- (a) Sekdah Somon: High end – 11 years imprisonment;
- (b) Buxoo Nabilah Bibi: Medium range – 7 years imprisonment;
- (c) Anowar Hossain: Medium range (slavery) – 6 years imprisonment;
- (d) Palas Hosan: Medium range – 7 years.

131. The following aggravating and mitigating factors were present in respect of individual defendants in respect to trafficking and slavery offences:

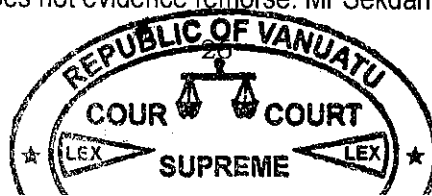
**1. Aggravating factors:**

- (a) Somon Sekdah: prior “*bad*” character; evidence of prior planning; offence committed by a group in Vanuatu as well as abroad; offence was motivated by financial gain; vulnerable victims were targeted; weapons were used to frighten and injure victims; deliberate use of gratuitous violence and degradation; curtailment of personal rights and property; victims were assaulted in the presence of others; abuse of authority; victims were sometimes exposed to serious injury and hazardous working conditions; there were multiple victims and incidents; no contrition. His prior bad character relates to the evidence of police investigation in Mauritius and some evidence that he had trafficked Bangladeshis whilst in South Africa.
- (b) Buxoo Nabilah Bibi: evidence of prior planning; offence committed by a group in Vanuatu as well as abroad; offence was motivated by financial gain; vulnerable victims were targeted; abuse of authority; there were multiple victims and incidents.
- (c) Anowar Hossain: (slavery offence) evidence of prior planning; vulnerable victims were targeted; deliberate use of gratuitous violence and degradation; victims were assaulted in the presence of others; abuse of authority; there were multiple victims and incidents, no contrition.
- (d) Palas Hosan: Anowar Hossain: evidence of prior planning; offence committed by a group in Vanuatu as well as abroad; offence was motivated by financial gain; vulnerable victims were targeted, weapons were used to frighten and injure victims; deliberate use of gratuitous violence and degradation; victims were assaulted in the presence of others; abuse of authority; there were multiple victims and incidents, no contrition.



## Mitigating Factors

- a. Sekdah Somon: first offender;
  - b. Buxoo Nabilah Bibi: first time offender; remorseful and gave credence to the prosecution's evidence;
  - c. Anowar Hossain: first offender;
  - d. Palas Hosan: first offender;
132. There is no case authority for the offences of trafficking in persons or slavery in Vanuatu. This present case is the first case of its kind. As you have heard earlier, the prosecution provided a list of reported Australian cases of trafficking and slavery. The court agreed and accepted that the instant case is at the higher end of the scale in terms of seriousness and scale when compared to these Australian cases of trafficking in persons and slavery. The number of victims trafficking to Vanuatu in this case outnumbered the vast majority of cases in Australia (as outlined in Annexure A referred to earlier). This number must be considered together with the period spent in Vanuatu [from 2017 to 2018] when the 107 victims were exposed to threats of violence, poor living conditions and diet, curtailment of their rights to move freely, congregate, communicate amongst themselves and with their families, and harsh and unfamiliar manual labour. Many of the victims were constantly under immense pressure to pay outstanding monies (similar to debt bandage) until paid. But in this present case, there was a distinction though. Many victims remained idle and were unemployed awaiting promised business licences or work permits that never materialized.
133. The aggravating factors outstandingly outweigh the mitigating features and the court accepted as appropriate the following end sentences:
- a. Sekdah Somon: 14 years;
  - b. Buxoo Nabilah Bibi: 7 years;
  - c. Anowar Hossain: 6 years;
  - d. Palas Hosan: 7 years.
134. Any suggestions by the first, second, third and fourth defendants to the contrary were rejected.
135. The court rejected the first defendant's submissions that the prosecution starting point of 11 years on slavery and trafficking in persons is too high and inappropriate. The court also rejected the submissions of the first defendant that the end sentence of 14 years is inappropriate when comparing his role and the involvement of other defendants in the slavery and trafficking in persons. The fact illustrated that Sekdah Somon played the leading role in the offendings the main instigator or one of the main instigators.
136. In his pre-sentence report, Sekdah Somon had not shown genuine remorse. Speaking in a low tone and looking at the ground does not evidence remorse. Mr Sekdah Somon still disputed the facts, and



refused to accept full responsibility for his actions, now appearing to pass blame onto others as the reason for his wrongdoing: "*his fellow friends*". He also seemed to have suggested that whilst he knew that his actions were illegal, he "*never expected to be in this situation*", that is getting caught and being prosecuted.

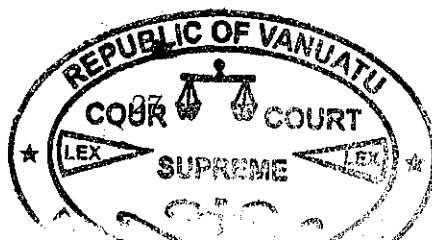
137. Sekdah Somon continued to assert that he is a Zimbabwean national despite the evidence led by the prosecution and the testimony of Buxoo Nabilah Bibi. This is now the new subject of a police investigation.
138. Sekdah Somon's claim over two properties and his relationship with Tassiriki and Elluk can only be treated with great caution in the light of the untrue testimonies by Sekdah Somon's witnesses during the trial his brags about his properties, his fashion design business and his ability to sustain his family who continue to reside in Vanuatu unlawfully. Yet, Sekdah Somon has no thought spared for the victims.

**b. Buxoo Nabilah Bibi**

139. Buxoo Nabilah Bibi submissions that she did not fall within the medium culpability category for offences of trafficking in person and slavery for the reason that all the planning and premeditation were done by the first defendant; and that there was no evidence that suggest use or threat of some physical violence or abuse towards victims or their families as the evidence pointed to the first defendant, were rejected by the court.
140. It has to be noted that the fact that Buxoo Nabilah Bibi has changed her evidence towards the end of the trial did not change her role as an accomplice from the start. She had travelled often, there was ample opportunity for her to take flight. If the reasons that she shared at the end was compelling and then she should decide to do that earlier but not towards the end as she did. Her role was smaller than the first defendant. They are both accomplices but she played a minor role compared to the first defendant.
141. She accepted that the prosecution summary of the facts is true. She is remorseful, and understood how her actions could have impacted the lives of the victims and their families. Accordingly, she is willing to hand over her 30% shares in Mr Price to compensate the losses suffered by the victims.

**c. Anowar Hossain**

142. Anowar Hossain denies knowing about the plan, although he suggested in the last sentence of the same paragraph that he knew what he was doing, but that "*he never expected that he was breaking the law ...*". The rationale is difficult to understand. After a long period of offending, he blames "*peer pressure*" for his wrong doing. He has not shown genuine remorse, least of all an expression of contrition and concern for the victims.



d. **Palas Hosan**

143. Palas Hosan said that he did not know the "plan of the offending" but readily accepts that "... he was normal during the offending, that's why he committed the offence". The evidence suggests that he and his family were deeply involved in recruiting victims, and he was an integral part of Somon's leadership group. He enjoyed the aura and benefits that was attached to it and never once complained. He remains unwilling to accept responsibility, choosing to assign blame on the co-offenders. There is no expression of genuine remorse, or some at least overt concern for the victims.

2. **Money Laundering**

144. The first and second defendants were convicted of this offence. The maximum sentence is 25 years or a fine of VT50 million or both.

145. In regards to the question of culpability, the first defendant played a leading role and the second a significant role. The fact as found by the court were in support of this determination of culpability. It is noted that a significant amount of planning appeared to have gone into the repeated offending and both the first and second defendants knew and expected a considerable amount of financial advantage. To illustrate this point, the following can be put forward:

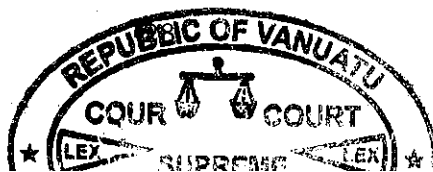
- A list of victims (101) and a total amount of 135,145,000.00 BD Taka (Vatu 190,836,450.00) the victims paid to Sekdah Somon to secure a contractual employment overseas and in particular working for Mr Price Vanuatu;
- The victims brought in Vanuatu: (2017: US\$217,146.00; 2018:US\$244,700.00) an estimated total of US\$461,846.00;
- The transactions of the money transfers through various means in particular transfers made through Western Union was estimated over VT15,000,000.

146. On the question of seriousness, both the maximum sentence and the international context placed the offending in serious categories. The court accepted that the present case is slightly different from the situation in Victor Rory v PP case No. 19/1882 COA/CRMA where a starting point of 8 years was fixed. The starting point in this case of 9 years was appropriate.

147. What follows are the aggravating and mitigating factors.

**Aggravating factors**

148. The court accepted that the aggravating facts included the total amount of money laundered in Vanuatu, the frequency of the offending, the number of people tasked to carry the money, the coercion and threats that accompanied the assignment, the planning involved, the criminal intent and the net



effect of the scheme that successfully avoided the costs of importing large amounts of foreign currency into Vanuatu in contravention of the exchange control regulations, and the absence of contrition by the first defendant.

### **Mitigating factors**

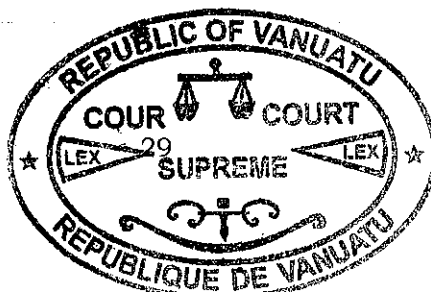
149. Both the first and second defendants were first time offenders. Buxoo Nabilah Bibi was remorseful and gave credence to the prosecution's evidence.

### **End Sentence**

150. On balance, the aggravating factors outweigh that mitigating factors.
151. The following are the appropriate end sentences the court accepted:
- Sekdah Somon: 11 years
  - Buxoo Nabilah Bibi: 6 years
152. The court rejected the submissions of the first and second defendants as they were not supported by the facts as found by the court against each of them.

### **Intentional assault**

153. The first, third and fourth defendants were each convicted of intentional assault – 2 counts for first and fourth defendants and one count for the third defendant.
154. On the question of the appropriate starting point, the culpability and seriousness of the offending could be showed by the evidence of the extent of their respective roles, the circumstances the offences were committed which could be reflected as follows:
- (a) Sekdah Somon  
He was the instigator and played a lead role, it was part of the system of control and oppression, and it was organized, necessitating travel to crime scene;
  - (b) Anowar Hossain  
Whilst Anowar Hossain did not play the lead role, the part he played was still significant because of the reasons the information was obtained, the manner the information was obtained and how the information was provided to Sekdah Somon, and the venue of the assaults at Pango House where Anowar Hossain was the supervisor;



(c) Palas Hosan

Similarly, Palas did not play the lead role, but a significant role nevertheless. Palas Hosan was a trusted lieutenant and on these occasions, was the one who acquire the timber used in the assault.

155. The offending, in each case, was serious, given the context in which it was perpetrated in front of others, as tool of oppression and to install fear in the particular context of an international crime, and the multiplicity of the assailants and victims. Considered together with the statement of the Court of Appeal in Nigel Giltrap v PP Case No. 19/11811 COA/CRMA where a starting point of 3 months was set, the court accepted that, in this case, an appropriate starting point must be of 6 months.

156. The aggravating and mitigating factors reflected the follow:

#### **Aggravating factors**

157. They included the use of unprovoked gratuitous violence, the use of shoes on the head of the victims and timber as weapons on the body of the victims, the perpetration by multiple assailants, the abuse of authority by each of the assailants and the absence of contrition.

#### **Mitigating factors**

158. The defendants were first time offenders.

159. The aggravating features outweigh the mitigating factors.

#### **End sentence**

160. The court accepted an appropriate end sentence of 1 years and 6 months. The court also accepted that despite the defendants' different roles, the three defendants were jointly charged for the same specific offending incidents. As a consequence, the same sentence should be imposed on all of the three defendants equally.

161. The first defendant accepted this end sentence and did not dispute it.

162. The third and fourth defendants did not specifically submit on a starting and end sentence of assault offending but they provided a general comment that "*All the offences that the two defendants were found guilty of were all related and sentences for all counts should run concurrently*".

#### **Threat to Kill**

163. The first defendant alone was convicted of two counts of threatening to kill a person. The maximum sentence is 15 years. In determining the appropriate starting point in this case, the questions of culpability and seriousness may be assessed on the basis that Sekdah Somon played the lead role



and the seriousness of the offences both in the context of the maximum sentences and as an international offence. On that basis, the court accepted a starting point of 4 years.

164. The aggravating and mitigating features which existed in this case were that:

**Aggravating factors**

165. The aggravating features here included the breach of trust, the multiplicity of times he offenders, and the multiple victims, as well as the absence of contrition.

**Mitigating factors**

166. The defendant was first time offender.
167. The aggravating features outweigh the mitigating ones on balancing exercise.

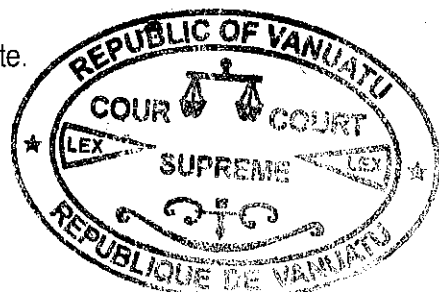
**End sentence**

168. The circumstances of this present case must be considered against the authority in Kell Walker v PP Case No. 6 of 2007 where the Court of Appeal upheld a sentence of 2 years imprisonment, partially served in custody, the court accepted the prosecution's proposal of an end sentence of 3 years imprisonment.
169. The court considered the submissions of the first defendant based on the authority of Kell Walker v PP case but the court noted that the facts of Kell Walker were different from this instant case. The submissions of the first defendant were rejected.

**Employing non-citizens without work permits**

170. The first and second defendants were jointly charged and convicted of this offence. The maximum sentence is a fine of not than VT100,000 or 6 months imprisonment, or both.
171. In determining a starting point, the question of culpability and seriousness of the offending be assessed in the context of lead roles they both played, and that these roles were pursuant to their common positions as directors and shareholders of the company Mr Price. The court accepted that the conduct of the first and second defendants amounted to a serious and deliberate disregard of the labour laws of Vanuatu as a foreign country which was wilfully undermined in order to fulfil the primary object of putting to work unskilled manual labour recruited in large numbers to procure and accumulate for the defendants as much money as possible. Further as with other offences, this offence was committed in the context of an international organized scheme.

172. Based on the above, a starting point of 3 months is appropriate.



173. The following aggravating and mitigating factors existed in the offence:

**Aggravating factors**

174. The aggravating factors included the multiple numbers of workers involved, the numbers of offenders, the breach of promise and trust to workers that work permits would be obtained by the employers, the absence of remorse by the first defendant and the net effect of denying domestic workers paid employment properly reserved for them in their country (Vanuatu).

**Mitigating factors**

175. The first and second defendants were first time offenders. The first defendant did not demonstrate any remorse (as there is none in sentencing report). The second defendant has demonstrated some remorse.

**End sentences**

176. The aggravating factors outweigh the mitigating ones on balance assessment, the court accepted the appropriate end sentences:

- 3 months imprisonment and VT60,000 fine for the first defendant; and
- 2 months imprisonment and VT20,000 fine for the second defendant.

177. The first and second defendants accepted the end sentences in respect to this offending which was suggested by the prosecution.

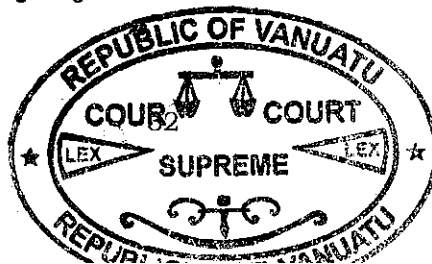
**Furnishing False Information to a Labour Officer**

178. The second defendant was alone charged and convicted of this offence. The maximum sentence is VT100,000 fine or 6 months imprisonment, or both fine and imprisonment.

179. In determining a starting point, the culpability of the second defendant is evidenced by her lead role, accentuated by her position as a shareholder and director of Mr Price Company. The second defendant was obviously motivated by the prospect of financial gain that would accrue to Mr Price Company. The seriousness of the offence is evidenced by the context in which the offence was committed, an international organized crime.

180. The court accepted as appropriate a starting point of 3 months imprisonment.

181. The following aggravating and mitigating factors existed in this offence:





### **Aggravating factors**

182. The aggravating factors included the number of foreign workers whose details were contained in the false information supplied, the potential disadvantage to the domestic labour market, the breach of trust and promise to the foreign workers that they would be provided work permits for the jobs they were recruited for, and the element of dishonesty that attempted to compromise domestic labour and immigration processes.

### **Mitigating factors**

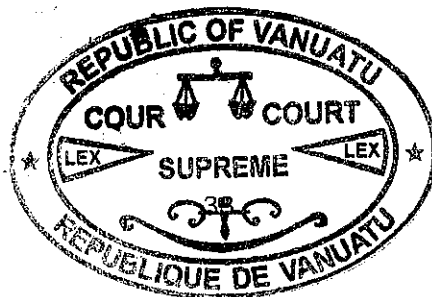
183. The second defendant is a first-time offender and she has demonstrated some remorse.
184. Again here, the aggravating features outweigh the mitigating ones.

### **End sentence**

185. As a result, the court accepted an end sentence of 3 months imprisonment for this offence.
186. The second defendant accepted the end sentence of this offence.

## **O. COMPUTATION OF END SENTENCES**

187. The sentences imposed in respect of each individual charge and defendant shall be served concurrently pursuant to Section 52 of the Penal Code Act [CAP. 135] where the charges were tried jointly.
188. Accordingly, the end sentences that the court considered and accepted in respect of each defendant were as follows:
- (i) Sekdah Somon: 14 years and VT60,000 fine;
  - (ii) Buxoo Nabilah Bibi: 7 years and VT20,000 fine;
  - (iii) Anowar Hossain: 6 years; and
  - (iv) Palas Hosan: 7 years.



**P. CONSIDERATION OF WHETHER OR NOT TO ORDER A SUSPENDED IMPRISONMENT SENTENCE**

189. The court considers the relevant provision of Section 57 of Penal Code. The court declines to make an order suspending any of the imprisonment sentences imposed or part of them in this instant case as inappropriate.

190. The court considered the end sentences of:

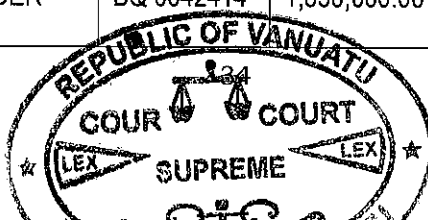
- 14 years imprisonment and VT60,000 for Somon Sekdah;
- 7 years and VT20,000 imprisonment for Buxoo Nabilah Bibi;
- 6 years imprisonment for Anowar Hossain; and
- 7 years imprisonment for Palas Hosan; and

the court considered that each sentence is sufficient to hold each of you accountable for the harm done to the victims and society by your respective offending and the court also considered that each sentence sends a signal of deterrence.

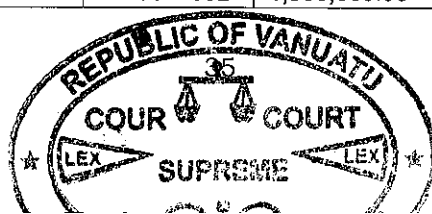
191. These are the reasons for not suspending your respective imprisonment sentences:

- (a) Firstly, the sentence importantly reflects the seriousness of your respective offending;
- (b) Secondly, your respective sentence both denounces your respective conduct and is a deterrent to others committing the same offences;
- (c) Thirdly, the sentences importantly reflect the interest of the victims and provide compensation for the loss of property done by your respective offending. A total amount of 135,345,000.00 BD TAKA (VT190,836,450.00) compensation figure is detailed in the following way: the list of victims and the amounts they paid to Sekdah Somon was provided in the victims' claim for compensation as Annexure B in the prosecution's submissions and now set out as integral part of this sentencing judgment as follows:

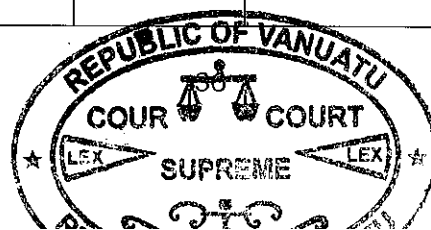
LIST OF VICTIMS AND THE AMOUNTS THEY PAID TO SUMON SEKДАР						
S. NO	NAMES OF VICTIMS	FATHER NAME	PASSPORT NO	BD TAKA	VATU	DISTRICT
1	MUSTAFIZUR RAHMAN KHAN SHAHIN	ABDUL GAFUR KHAN	BF 0017599	1,200,000.00	1,692,000.00	TANGAIL
2	MD. KAMRUL HASSAN MIAH	ABDUL HAKIM MIAH	BF 0052626	1,200,000.00	1,692,000.00	TANGAIL
3	FARID UDDIN	MOMTAZ UDDIN	BJ 0201660	700,000.00	987,000.00	TANGAIL
4	MD. NASIR UDDIN	MD. SHAHIDUL ISLAM	BP 0015725	1,850,000.00	2,608,500.00	TANGAIL
5	MD. SHAFIQ ISLAM	SEKANDER ALI	BQ 0042414	1,850,000.00	2,608,500.00	TANGAIL



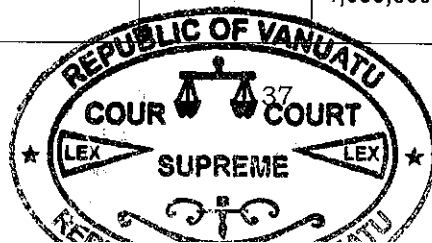
6	MD. MOSHAHED	AZIM UDDIN	BP 0190784	1,700,000.00	2,397,000.00	TANGAIL
7	MD. SHAMIN AL MAMUN	MOTIAR RAHMAN	BR 0025071	1,200,000.00	1,692,000.00	TANGAIL
8	MD. MASUM	SIRAJ SORDER	BQ 0545687	1,150,000.00	1,621,500.00	SHARIWATPUR
9	HATEM ALI	ABDUL QADDUS TRF	BM 0212452	1,200,000.00	1,692,000.00	MYMENSINGH
10	ALAMIN	MD. AKKEL ALI MIDA		1,200,000.00	1,692,000.00	BARISAL
11	SAJAL JAMADER	BELLAL JAMADER	BQ 0142463	1,200,000.00	1,692,000.00	BARISAL
12	AMINUL ISLAM PORAG	MD. ALAMGIR HOSSEN	BR 0471692	1,200,000.00	1,692,000.00	BARISAL
13	ATIQR RAHMAN NAIM	NASIR UDDIN		1,950,000.00	2,749,500.00	BARISAL
14	MD. NAZRUL ISLAM	HAZRAT ALI	BC 0048741	1,200,000.00	1,692,000.00	TANGAIL
15	MD. KAMRUL HASSAN	CHAN MIAH	BQ 0690274	1,200,000.00	1,692,000.00	TANGAIL
16	MD. JAMAL HOSSEN	KHAZU MIAH	AE 9024948	1,200,000.00	1,692,000.00	TANGAIL
17	ABDUL JABBAR	JAMAL HOSSEN	BJ 0527204	1,200,000.00	1,692,000.00	TANGAIL
18	MD. SHAHIDUR RAHMAN	MODHU MIAH		1,150,000.00	1,621,500.00	TANGAIL
19	MD. SAIFUL ISLAM	ABDUL HALIM		1,200,000.00	1,692,000.00	TANGAIL
20	MD. JAHIDUL ISLAM	AZHAR ALI	BR 0007873	1,200,000.00	1,692,000.00	TANGAIL
21	MD FAZLUL HAQUE	RIAZ UDDIN	BR 0815323	1,200,000.00	1,692,000.00	TANGAIL
22	MD. SOHEL RANA	ABDUL MAZID	BM 0621934	1,600,000.00	2,256,000.00	TANGAIL
23	MD. IMRAN KHAN	MD. DULAL KHAN	BQ 0748641	1,150,000.00	1,621,500.00	BARISAL
24	FARHAD HOSSAIN	ABDUL HANNAN KHAN	BC 0862004	1,150,000.00	1,621,500.00	BARISAL
25	MD. SYEDI	SHAHIDUL KHAN	BR 0862456	1,250,000.00	1,762,500.00	BARISAL
26	MOFAZZAL HOSSAIN HAWLADER	AB. JABBER HAWLADER	BQ 0172806	1,950,000.00	2,749,500.00	BARISAL
27	SAIFUL SIKDER	SHAZAHAN SIKDER	BA 0412544	1,150,000.00	1,621,500.00	BARISAL
28	AMIER HOSSEN HAWLADER	SEKANDER ALI HLDR	BQ 0308952	1,200,000.00	1,692,000.00	BARISAL
29	SARWAR HAWLADER	MD. FAZLUL HAQUE	BR 0471087	1,150,000.00	1,621,500.00	BARISAL
30	ABU SAID	HATEM ALI	BH 0014552	1,500,000.00	2,115,000.00	TANGAIL



31	MD. SHAHADAT HOSSAIN	ABDUL BAREK	AG 1448401	1,700,000.00	2,397,000.00	TANGAIL
32	MD. ARIFUL ISLAM	MD. BASED MIAH	BL 0649575	1,700,000.00	2,397,000.00	TANGAIL
33	MD. NASIM AHMED	ALAM AHMED	BR 0689585	1,200,000.00	1,692,000.00	TANGAIL
34	MD. SELIM	MD. HABIBUR RAHMAN	BM 0780433	1,200,000.00	1,692,000.00	TANGAIL
35	ROHUL AMIN	ABDUL KASHEM	BR 0054670	1,200,000.00	1,692,000.00	TANGAIL
36	MAZNU MIAH	KAYEM UDDIN	BQ 0947316	1,200,000.00	1,692,000.00	TANGAIL
37	JAMAL HOSSAIN	BASED MIAH	BF 0486288	1,200,000.00	1,692,000.00	TANGAIL
38	KHALILUR RAHMAN	MD. KHALEK	BR 0500455	1,200,000.00	1,692,000.00	BARISAL
39	YOUSUB ALI	TOMSER ALI	BE 0774828	1,500,000.00	2,115,000.00	TANGAIL
40	SHIHAB AHMED	ABDUS SALAM	BR 0375484	1,300,000.00	1,833,000.00	TANGAIL
41	KAMAL HOSSAIN	MUSLEM UDDIN	BJ 0445243	1,400,000.00	1,974,000.00	TANGAIL
42	ALIMUL RAZI TALUKDER	HAFIZ UDDIN	BR 0493088	1,300,000.00	1,833,000.00	TANGAIL
43	MD. SHAFIK	ABDUL SATTAR	BR 0547655	1,550,000.00	2,185,500.00	TANGAIL
44	SHABUS	SHABDUL MIAH	BR 0544745	1,300,000.00	1,833,000.00	TANGAIL
45	ROHUL AMIN	ABU SAID	BR 0369254	1,700,000.00	2,397,000.00	TANGAIL
46	OMAR FARUQ	A. KUDDUS	BR 0547872	1,232,000.00	1,737,120.00	MYMENSINGH
47	MEHEDI HASSAN	MD. MILON KHALIFA	BL 0951384	1,200,000.00	1,692,000.00	BARISAL
48	ZAKIR HOSSAIN	AB. HALIM HAWLADER	BF 0382789	1,150,000.00	1,621,500.00	BARISAL
49	SAGOR	MD. JINNOT ALI	BR 0742553	1,200,000.00	1,692,000.00	TANGAIL
50	RAFIQUL ISLAM	HOSSEN HAWLADER	BL 0182164	1,150,000.00	1,621,500.00	TANGAIL
51	M NURE ALAM	M SHAZAHAN AKANDO	BM 0269503	1,150,000.00	1,621,500.00	BARISAL
52	SHARIFUL ISLAM	ABDUL AZIZ MIAH	BR 0574140	1,600,000.00	2,256,000.00	TANGAIL
53	MD SABUJ	AZAMOT ALI	BW 0341869	1,700,000.00	2,397,000.00	TANGAIL
54	RASEL KHAN	ABED ALI KHAN	BM 0396920	1,600,000.00	2,256,000.00	TANGAIL
55	MD. KAIYSAR MIAH	MD. ABUL KASHEM	BQ 0884611	1,200,000.00	1,692,000.00	TANGAIL
56	MD. NASIR USSIN	MD. IBRAHIM MIAH	BR 0090296	1,300,000.00	1,800,000.00	TANGAIL
57	MD. TOTUL HASSAN	MD. LABU MIAH	BQ 0419219	1,200,000.00	1,692,000.00	TANGAIL
58	FAZLUL HAQUE	SIRAJUL ISLAM	BW 0224333	1,200,000.00	1,692,000.00	TANGAIL



59	MD. ZIAUL KHAN	MD. ABDUL LATIF		1,150,000.00	1,621,500.00	BARISAL
60	MD. BABUL HOSSAIN	MD. HAYET ALI MIAH	BT 0672131	1,200,000.00	1,692,000.00	TANGAIL
61	RUBEL MIAH	BADSHA MIAH	BR 0010563	1,200,000.00	1,692,000.00	TANGAIL
62	MOHAMMAD KAWSER	MD. ABU TALEB MLLA	BT 0604357	1,200,000.00	1,692,000.00	BARISAL
63	BABLU	NURUL AMIN	BR 0589589	1,200,000.00	1,692,000.00	TANGAIL
64	MOHI UDDIN	SAMAN UDDIN	BT 0686106	1,200,000.00	1,692,000.00	TANGAIL
65	FAZAR ALI	DARAZ ALI	BR 0957180	1,500,000.00	2,115,000.00	TANGAIL
66	ARIFUL ISLAM	MONSUR ALI	BR 0284193	1,200,000.00	1,692,000.00	TANGAIL
67	JAHIRUL HAQUE	MAZIBUR RAHMAN	BH 0846818	1,200,000.00	1,692,000.00	TANGAIL
68	IBRAHIM DHALI	ABDUL LATIF DHALI	BE 0042754	1,150,000.00	1,621,500.00	BARISAL
69	MONIR HOSSSEN	ABDUL MALEK	BQ 0490386	1,500,000.00	2,115,000.00	TANGAIL
70	NAZMUL ISLAM	SHAHIDUL ISLAM	BQ 0568222	1,660,000.00	2,340,600.00	TANGAIL
71	FARUK HOSSAIN	MAZID HOSSAIN	BH 0598473	1,150,000.00	1,621,500.00	BARISAL
72	ASLAM HOSSAIN	JAFOR ALI	BE 0474362	1,200,000.00	1,692,000.00	TANGAIL
73	NASIR UDDIN	ADBUL BAREK	BM 0490416	1,500,000.00	2,115,000.00	TANGAIL
74	SHAH PORAN	MD. SANOWER HSN	BT 0428994	1,500,000.00	2,115,000.00	TANGAIL
75	MD. AKKAS ALI	MD. AMSER ALI	BN 0006111	1,600,000.00	2,256,000.00	MYMENSINGH
76	NASIR UDDIN	SIRAJUL ISLAM	BR 0521845	1,700,000.00	2,397,000.00	TANGAIL
77	ABDUL MALEK	ADBUL JALIL	BR 0652978	1,700,000.00	2,397,000.00	TANGAIL
78	ASHRAFUL ISLAM	YARMAMUD	AG 9404186	1,233,000.00	1,738,530.00	TANGAIL
79	NAZMUL ISLAM	AFSER ALI	BR 0220025	1,200,000.00	1,692,000.00	TANGAIL
80	SHAHA JALAL	NURUL AMIN	BP 0255475	1,600,000.00	2,256,000.00	TANGAIL
81	SAIFUL ISLAM	NURUL ISLAM	BC 0027268	1,500,000.00	2,115,000.00	BARISAL
82	MD. MONIR HOSSSEN	LABU MIAH	BN 0332234	1,600,000.00	2,256,000.00	TANGAIL
83	ASHRAFUL ALAM	MOJAFOR ALI	BP 0775180	1,500,000.00	2,115,000.00	TANGAIL
84	MD. SOHEL RANA	SAMSUL HAQUE	BQ 0071016	1,850,000.00	2,608,500.00	TANGAIL
85	SAKIB AHMED	ANOWER HOSSAIN	BM 0600019	1,700,000.00	2,397,000.00	TANGAIL
86	SHAFIQL ISLAM	ABDUL HAMID	BR 0657780	1,700,000.00	2,397,000.00	TANGAIL
87	MD. MASUD PARVEZ			1,150,000.00	1,621,500.00	BARISAL
88	MD. MUNIRUL ISLAM SAJIB			1,650,000.00	2,326,500.00	BARISAL

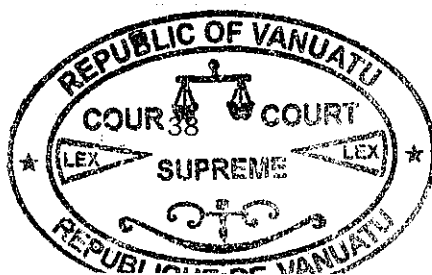


89	MD. RUBEL RANA	SOZAT ALI	BR 0224619	1,200,000.00	1,692,000.00	TANGAIL
90	FIROZ MIAH	SAEID MIAH	BE 0927373	1,170,000.00	1,649,700.00	TANGAIL
91	SOMON MIAH			2,000,000.00	2,820,000.00	MYMENSINGH
92	MD. SOHEL RANA (OFFICE)			1,200,000.00	1,692,000.00	TANGAIL
93	HAROON			1,200,000.00	1,692,000.00	TANGAIL
94	MD. ABDUL HANNAN			1,250,000.00	1,762,500.00	TANGAIL
95	NADIM			1,200,000.00	1,692,000.00	TANGAIL
96	IBRAHIM			1,200,000.00	1,692,000.00	TANGAIL
97	MONIR MOHAMMED			1,000,000.00	1,410,000.00	TANGAIL
98	MD. NAZRUL ISLAM			1,100,000.00	1,551,000.00	TANGAIL
99	KAWSER			1,250,000.00	1,762,500.00	BARISAL
100	MOINUL HASSAN			1,400,000.00	1,974,000.00	BARISAL
101	MD. MUSARAF			1,000,000.00	1,410,000.00	TANGAIL
<b>TOTAL AMOUNT PAID BY 101 VICTIMS</b>				<b>135,345,000.00</b>	<b>190,836,450.00</b>	
				<b>BD TAKA</b>	<b>VATU</b>	

Here, liability is joint and several. Sekdah Somon and Buxoo Nabilah Bibi as directors, owners and shareholders of Mr Price Company have financial means and capacities. Buxoo Nabilah Bibi agreed for her entire 30% shares in Mr Price Company will be paid as compensation to the victims. Mr Sekdah Somon advanced that only the 30% of his 70% shares in Mr Price Company will be paid to the victims as compensation; but here, taking the circumstances of the present case, the court determines that the totality of Sekdah Somon's shares in Mr Price of 70% will be paid to the victims as compensation.

- (d) Lastly, the length of your respective prison terms is ultimately a matter for the Parole Board in these circumstances.

192. The court also noted that the prosecution pointed to the risk that each of the defendants will re-offend in relation to trafficking in persons and slavery offences based on the circumstances of this instant case. And so, the prosecution applies for a trafficking and slavery Notification Order. The application was based on Articles 47(1) and 49 of the Constitution. The prosecution further relies on the two Conventions that have been ratified by the Vanuatu Parliament to reinforce his argument that being part of the laws of Vanuatu, these Conventions assisted derives the key elements of the offences of trafficking in persons and slavery under section 102 of Penal Code. They are the UN Convention against Transnational Organized Crimes (UNCTOC) and the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).



193. The terms of both the CTOC and UNCAT impose positive duties on each State Party (including Vanuatu) to put in place effective measures to prevent the incidence of respective subject offences and to implement obligations under the Convention.

194. In CTOC, the obligation is found in Article 34(1):

*"Each State shall take the necessary measures, including legislation and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under the Convention."*

Article 2 of UNCAT is framed in a similar way:

*"Each State Party shall take legislative, administrative, judicial and other measures to prevent the acts of torture in any territory under its jurisdiction."*

The term "torture" is defined in a very manner in Article 1, and encompasses the type of conduct that might be regarded as cruel, inhuman and degrading that were present in this case.

It is the prosecution submission that the order being sought here falls within the category of administrative, judicial or other measures.

It is the prosecution's further submissions that the requested order is not a substantive one that outweighs the general right of the public to be protected.

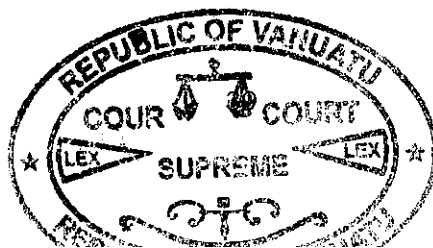
Further, the prosecution asked the court to have regard to the 1926 UN Convention to Suppress the Slave Trade and slavery and its 1956 Supplementary Convention, as well as the cases *Wagner v Radke*, Supreme Court of Samoa and *Tuvita v Minister of Immigration* (1994) 2 NZLR 257 that suggest public policy may be guided by international obligations.

On the basis of the forgoing, the prosecution asked the court to issue Traffic and slavery orders against the four defendant persons.

Mr Leo on behalf of the first defendant and Mr Livo on behalf of the third and the fourth defendants, opposed to the application on the basis that there is no local legislation on the point.

The court considered and accepted to make the orders sought as ancillary orders which are most relevant in modern slavery cases. Here, the court makes a Slavery and Trafficking Notification Order against Sekdah Somon, Buxoo Nabilah Bibi, Anowar Hossain and Palas Hosan (Convicted persons) because the court is satisfied that:

- There is a risk that the defendants may commit a slavery or trafficking offences; and



- It is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the defendants committed such offences.

195. The court also noted that the first and second defendants were remanded on 20 November 2018 and the third and fourth defendants were remanded on 22 November 2018. The court shall take the time already spent by each defendant into account in the computation of your respective sentences.

## **Q. SENTENCES**

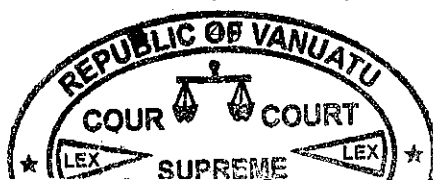
1. So, Sekdah Somon, Buxoo Nabilah Bibi, Anowar Hossain and Palas Hosan, please now stand.
2. On each of the two charges of trafficking in respect of which, Sekdah Somon, Buxoo Nabilah Bibi and Palas Hosan faced a maximum sentence of 20 years imprisonment, and on each of the two charges of slavery in respect of which, Sekdah Somon, Buxoo Nabilah Bibi, Anowar Hossain and Palas Hosan faced a maximum sentence of 20 years imprisonment, as both lead offences, you were sentenced as follows:

Sekdah Somon – 14 years imprisonment and payment of fine of VT60,000;  
 Buxoo Nabilah Bibi – 7 years imprisonment and payment of fine of VT20,000;  
 Anowar Hossain – 6 years imprisonment;  
 Palas Hosan – 7 years imprisonment.

3. All convictions are to be served concurrently which means, each of you shall serve them all at the same time, 14 years imprisonment and payment of fine of VT60,000 being the total for Sekdah Somon, 7 years imprisonment and payment of fine of VT20,000 being the total for Buxoo Nabilah Bibi, 6 years imprisonment being the total for Anowar Hosan and 7 years imprisonment being the total for Palas Hosan. Sekdah Somon and Buxoo Nabilah Bibi, your respective terms of imprisonment of 14 years and 7 years are deemed to start on 20 November 2018. Similarly, Anowar Hossain and Palas Hosan, your respective terms of imprisonment of 6 years and 7 years are deemed to start on 22 November 2018 (based on Section 51(2)(a)(b) and (4) of Penal Code) to take into account the time you have already spent into custody.
4. The total amount of fine of VT80,000 (60,000 VT by Sekdah Somon + 20,000VT by Buxoo Nabilah Bibi) shall be paid by the two first defendants individually to the Government Treasury first before the payment of the compensation sums to the victims as set out below.

## **R. COMPENSATION**

1. The court declines to seek a report under subsection (1) of Section 40 of Penal Code as the court is satisfied as to the amount or type of compensation that the offenders should pay or





make. The court is aware and informed that this sentence of compensation does not deprive the victims from their right to bring proceedings for emotional harm or loss or damage consequential on any emotional or physical harm or loss of, or damage to property (Section 40(2)).

2. The court makes an order for compensation in the sum of 135,345,000.00 BD TAKA (190,836,450.00 Vatu) pursuant to Section 40(1) of Penal Code which provides:

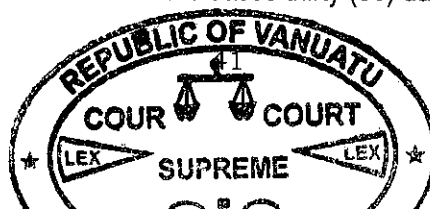
*"A court must consider and may impose a sentence of compensation in monetary terms or otherwise if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer:*

*(a) Loss of or damage to property ...".*

3. The sum of 135,345,000.00 BD TAKA (190,836,450.00VATU) shall be paid to 101 individual victims in the amount each victim paid as set out in the above Table (Annexure B) directly from different bank accounts referred to in the evidence or such lesser sum remaining from any necessary processes (such as forfeiture instrument orders, if required) and related costs which will be necessarily incurred.

#### **S. TRAFFICKING AND SLAVERY NOTIFICATION ORDER**

1. The court makes the following Slavery and Trafficking Notification Order against Mr Sekdar Somon, Ms Buxoo Nabilah Bibi, Mr Anowar Hossain and Mr Palas Hosan (convicted persons);
2. Upon the commencement of sentence in the Vanuatu Correctional Services institutions:
  - a. The Vanuatu Police Force shall obtain from each of the convicted persons their full names, dates of birth; passport numbers, names of two next of kin resident in their home countries and their contact details, and registered residential addresses in home countries;
  - b. The Vanuatu Police Force shall obtain from each of the convicted persons information about intended destination countries when released and intended registered address at each intended destination countries;
3. Further, upon release from their respective terms of imprisonment in the Vanuatu Correctional Service institutions:
  - a. The Vanuatu Correctional Services shall inform the Vanuatu Police Force of the convicted persons' respective imminent releases thirty (30) days before such release;



- b. Vanuatu Police Force shall obtain from each of the convicted persons three (3) days before the intended release from detention details of plans including addresses and period of stay in Vanuatu following their release, their intended date of departure from Vanuatu, detailed travel arrangements including routes to the intended destination country including the identity of carriers, the intended final destination country and the registered home address thereat, the contact details of person(s) residing at the same addresses, and details of accommodation arrangements in any country enroute;
- c. Each convicted person must notify the Vanuatu Police of any changes to the foregoing information within six (6) hours of the change.

**T. APPEAL RIGHTS**

- 196. You have a right to appeal against your respective sentences if you are not satisfied with them. You have 14 days to appeal against your sentences starting from the date of the sentencing judgment (i.e., 22/06/2022).

**U. END**

- 197. Sekdah Somon, Buxoo Nabilah Bibi, Anowar Hossain and Palas Hosan, you may stand down.

**Dated at Port Vila, this 22<sup>nd</sup> June, 2022**

**BY THE COURT**

Vincent Lunabe  
Chief Justice

