



**OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**ON THE BREACH OF THE LEADERSHIP  
CODE ACT BY THE FORMER  
PORT VILA MUNICIPAL COUNCIL**

**1 February 2008**



**REPUBLIC OF VANUATU**

**5174/2008/02**

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## **PUBLIC REPORT ON THE BREACH OF THE LEADERSHIP CODE ACT BY THE FORMER PORT VILA MUNICIPAL COUNCIL**

### **SUMMARY**

The Ombudsman is issuing this Public Report to illustrate how the Port Vila Municipal Council Councillors (some former and current) have misused public moneys by approving certain allowances for themselves during their terms as Councillors.

On 26 October 2005, the Supreme Court of Vanuatu ruled that the decisions taken by the Port Vila Municipal Council to pay for members' monthly allowances, create the post of Deputy Mayors, pay for Councillors' allocations, make ex-gratia payments and approve the terms and conditions of the Town Clerk's contract were unlawful.

Due to the above ruling, the Ombudsman has found in this investigation that as the decisions were unlawful, it amounts to misuse of public money. Therefore, as leaders under section 5 of the Leadership Code Act, the Lord Mayors and Councillors have breached the Leadership Code Act.

Due to the above, the Ombudsman recommends that:

- the Minister of Internal Affairs who is responsible for the Municipal Councils must lodge an official complaint to the Police requesting them to carry out an investigation into the matter in accordance with the Leadership Code Act and ensure that it is forwarded to the Public Prosecutor for prosecution and
- the Minister of Internal Affairs who is responsible for the Municipal Councils, through the State Law Office, must institute civil proceedings against each of the above stated individual members of the Council to recover the money that was illegally paid out to them.

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## **1. JURISDICTION**

- 1.1 The Constitution, the Ombudsman Act and the Leadership Code Act allow the Ombudsman to look into the conduct of government, related bodies, and leaders. This includes the elected Councillors of the Port Vila Municipal Council. The Ombudsman can also look into defects in laws or administrative practices, including the Standing Orders of the Municipal Council.

## **2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED**

- 2.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution, the Ombudsman Act and the Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts about the decision taken by the former Port Vila Municipal Council to :
- Pay for members' monthly allowances;
  - Create the position of Deputy Mayors;
  - Allow for payment of Councillors' allocations;
  - Allow payment of ex-gratia payments and
  - Approve the terms and conditions of the Town Clerk and to determine whether conduct of the said Council is proper and in accordance with the Leadership Code Act.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

## **3. RELEVANT LAWS**

- 3.1 Relevant parts of the following laws are reproduced in **Annex 'A'**.  
**Constitution**  
**Leadership Code Act**

## **4. OUTLINE OF EVENTS**

- 4.1 On 26 October 2005, the Supreme Court of Vanuatu published its decision on Civil Case No. 75 of 2003 (copy of judgment can be viewed in **Annex 'B'**). The written judgment is self-explanatory but in essence, it revealed that the following decisions that were taken by the former Port Vila Municipal Council ("PVMC") were unlawful :
- the payment of members' monthly allowances;
  - the creation of the position of Deputy mayors;
  - the payment of Councillors' allocations;

- the payment of ex-gratia payments and
- the approval of terms and conditions of Town Clerk.

4.2 On 5 January 2006, the Ombudsman commenced an enquiry into the matter as a Leadership Code issue.

4.3 On 11 January 2006, the Ombudsman issued a letter of enquiry to the present Lord Mayor of the Port Vila Municipality, Mr Paul Avock Hungai, ("Mr. Hungai"), informing him that the Ombudsman was commencing an enquiry into the matter.

Mr Hungai was advised that since the judgment of Civil Case No. 75 of 2003 ruled that the decisions made concerning the payment of members' monthly allowance, etc were unlawful, he was requested to provide copies of the Council meeting minutes that approved the executed decisions.

4.4 On 9 March 2006, an officer of the Ombudsman spoke with the Police Officer responsible for the investigation into the alleged misuse of public funds by the Lord Mayor and Councillors of the PVMC, Frazer Tambe ("Officer Tambe"). Officer Tambe advised that initially he had received what is called the Aranboe Report. Briefly the Aranboe Report presents the investigation into certain matters of the PVMC. The Aranboe Report made findings which included "outstanding staff advances and unlawful payment of duty allowances of councillors". Because an official complaint was not made, Officer Tambe then sought the Public Prosecutor's advice. The Office of the Public Prosecutor advised him that an official complaint has to be received from PVMC. He approached former Lord Mayor, Joseph Aaron, but his term ended and nothing was done. He then approached the then Commissioner, Mr Hannington Alatoa ("Mr Alatoa") who said he would speak to Mr Tony Ata, but no complaint was made and Mr Alatoa's term expired. Three weeks earlier, Officer Tambe said he went back to the PVMC and it was only on 8 March 2006 that he was able to speak to the financial controller, Mr John Colwick ("Mr. Colwick") about submitting a complaint. Mr Colwick has however, been too busy to submit a complaint to the Police so this is the status of the case so far.

4.5 On 23 March 2006, the Ombudsman issued a letter to the Lord Mayor, Mr Hungai. The letter was also copied to Mr Colwick. The letter advised that the Ombudsman is conducting an investigation into the following allegations that have been made against the Port Vila Municipality:

- Sections of the Leadership Code Act were breached through the illegal payments of money to the following former Councillors: Patrick Crowby, Paul Avock, James Kalo, Yoan Johnson, Joseph Aaron, Daniel Bule, Joe Maurice, Miller Rorine, Lamai John, Nalesabong Florent, Seule Tong, Solomon Simon, Ambrosio Melteres and Terry Vano.
- The Port Vila Municipal Council Audit Report of 2005, also known as the Aranboe Report, has not been investigated by the Police as should be the case.
- An official complaint should be lodged by PVMC to the Police to conduct criminal investigation into the matters as reported in the Aranboe report.

Following the above, Mr Hungai was requested to provide information and documents by April 6<sup>th</sup>, 2006 in relation to whether any official complaints were lodged with the Police and if there was any advancement of the complaint.

4.6 On 31 March 2006, Lord Mayor Hungai appeared before the Ombudsman to provide his response. The following documents were provided by him in this meeting which can also be viewed in **Annex 'C'**:

- Copy of the minutes of an extraordinary full Council meeting that was held on Friday 18 February 2000 at 11:30am. It was agreed in this meeting that the Councillors will receive a new special monthly allowance.
- Copy of letter from the former Lord Mayor Patrick Crowby ("Mr Crowby") to the Honourable Minister of Internal Affairs Barnabas Tabi dated 12 January 2000. In this letter, Mr Crowby explained that in accordance with the Standing Orders as signed on 30 September 1999 by the former Minister of Internal Affairs Minister, Honourable Vincent Boulekone, the PVMC was at liberty to determine the Councillors' allowances regardless of whether the annual budget was able to cater for it or not. A calculation as proposed under the ministerial order of Honourable Boulekone ("Boulekone's Standing Order") was then outlined with an annual budget on Councillors' allowances amounting to twenty three million six hundred forty thousand (VT 23,640,000) Vatu (Refer to **Annex 'C'**). However, another calculation being proposed under the new Standing Order by the Council then to the Minister had an annual budget of thirteen million three hundred twenty thousand (VT 13,320,000) Vatu. The difference between these two figures shows that there would be a saving of ten million three hundred twenty thousand (VT 10,320,000) Vatu. The Lord Mayor concluded by informing the Minister that he had until 26 January 2000 to provide his response on the matter. If by this date, the Ministry did not provide any response, the "Boulekone's Standing Order" of 30 September 1999 would be adhered to.
- Copy of letter from the Honourable Minister of Internal Affairs, Barnabas Tabi to Mr. Crowby dated 4 April 2000. This letter was mainly to urge the Lord Mayor to consider the proposed Municipality (Standing Order) (Amendment) Order No. of 1999. The Ministry of Internal Affairs accepted that any amendment to the Standing Orders was a power vested in the PVMC and would therefore give its approval as soon as it was forwarded to the Ministry.
- Copy of the minutes of an Ordinary Full Council Meeting that was held on 15 May 2002 at the Port Vila Municipal Council Chamber. It was agreed in this meeting that the total amount of severance for Councillors would be three million (VT3,000,000) Vatu. It was also agreed that the Municipal Honorary Councillors would be entitled to a special allocation amounting to seventeen million (VT 17,000,000) Vatu annually.
- Copy of the minutes of an Ordinary Full Council Meeting that was held on 28 November 2001 at the PVMC Chamber. It was agreed in this

meeting that the PVMC maintained its Standing Orders on the Councillors' allowances and privileges that were signed and approved in 1999. Furthermore, the position of 2<sup>nd</sup> Deputy Town Clerk was also approved unanimously.

- 4.7 On 5 April 2006, the Ombudsman also received a response to his letter of 23 March 2006 from the Lord Mayor, Mr Hungai. Mr Hungai stated in his letter that both the former Lord Mayor, Mr Joseph Aaron and the Commissioner, Mr Alatoa wrote letters to the Police requesting them to carry out an investigation into the matter. In response to such a request, the Police met Mr. Alatoa in person and advised that the procedure to lodge a complaint was for the Council to make an official complaint to the Police. But until then, no complaints had been lodged to the Police.
- 4.8 On 24 April 2006, the Ombudsman issued another letter to Mr Hungai. In this letter, Mr Hungai was reminded of the allegations that he was previously notified of in the letter of 23 March 2006. Mr Hungai was then requested to provide the following information and documents before 9 May 2006 :
- Please provide a copy of the Aranboe Report.
  - The Ombudsman was informed that between January and August 2005, the former Council members requested and received advances as well as monthly duty allowances that were beyond the approved amounts. The Ombudsman understands that the same happened for their housing allowance and that special allowances were paid, even though they were not provided for in the Council's standing orders. Gratuity payments were also paid prior to the end of their term in Office – that the paid amounts were over the approved figures. The Ombudsman was advised that sitting allowances for caucus meetings were not allowed under the Council's standing orders but they were paid anyway to the Councillors. As such, the Ombudsman wanted to have access to:
    - (a) Copies of the payment vouchers made to the former councillors mentioned above for their monthly duty allowances, their housing allowances, the sitting allowances at caucus meetings, their special allowances and also their gratuity payments.
    - (b) Copies of payment vouchers on the Councillors' advances, including copies of their requests for advances.
  - Any other documents or information that is relevant to this matter.
- 4.9 As the Lord Mayor Mr. Hungai did not respond to the Ombudsman's letter of 24 April 2006, another letter was issued to him on 15 June 2006 requesting copies of payment vouchers for the councillors' advances between January and August 2005 and the basis for executing such payments.
- 4.10 On 21 June 2006, the Ombudsman received a response from Mr. Hungai. Mr Hungai confirmed that the advances being mentioned in the audit report were paid as Councillors' monthly allowances to former Councillors. Such allowances were not only approved by the Council and budgeted for in the 2004/2005 recurrent budget but also by the Minister of Internal Affairs. They claimed that since the Minister of Internal Affairs had given its approval to the

budget which catered for an increase of the Councillors' allowances, they were legally and duly entitled to them.

## 5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided on 10 September 2007 prior to the preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 Responses were received from the following:

- On 13 September 2007, Mr Seule Tong called in to the Office of the Ombudsman to provide his response to the Working Paper. Mr Tong was a Councillor of the Port Vila Municipality from 2001 to 2004.

Mr Tong stated that after he was elected in 2001, the first Council meeting was held and he and three other Councillors were "thrown out" of the Council. They did not attend the next three consecutive meetings of the Council and they eventually took the case to court in 2001 but to date, the matter is still pending.

From then on, they did not attend any Council meetings until 2004. However, towards the end of that year, Patrick Crowby approached them and asked them to once again attend Council meetings. This was because he wanted to contest the position of Lord Mayor against Paul Avock Hungai as he needed numbers. So they went back into the Council for only three (3) months then their term as Councillors ended.

When they went back into the Council in 2004, they were paid some money by the Council. This money was already approved by Crowby's Council and all the other Councillors had already received the same amount of money. It was the Town Clerk at that time, Ms Maturine Tom, who processed such payments. Sometimes later it came to their knowledge that Ms Tom was taken to Court for allowing these types of payment to be executed.

Mr Tong then advised that he did not bring any documents with him but will try to locate copies of the payment vouchers in order to bring them to the Ombudsman. He also did not recall the exact dates of the Council meetings he attended but will try to locate the minutes in order to bring copies to the Ombudsman.

*The Ombudsman did not receive any further response or documents from Mr Tong so it is assumed that he did not find the said documents.*

- The Ombudsman received a response from Mr Hannington Alatoa, former Commissioner of the Port Vila Municipality on 28 September 2007. Mr Alatoa stated that pursuant to paragraph 4.7 on page 7 of the Working Paper, he does not recall writing nor speaking personally to the police about the matter therein. It has also been quite a while

since then. Above all, during his term in office as Commissioner there was no action taken in relation to the matter in question in this report.

- On 3 October 2007, a former Councillor of the Port Vila Municipality, Mr Ambrosio Melteres called in to the Office and advised that despite having received a copy of the Working Paper, he does not understand its content because he is a Francophone.

*The investigating officer for the Ombudsman apologised to Mr Melteres and he was advised that the Working Paper will be translated into Bislama and be forwarded to him.*

*The document was translated by the Language Services Department and forwarded to Mr Melteres on 26 October 2007.*

5.3 The Ombudsman did not receive any response to the Working Paper from the following persons :

- Mr Patrick Crowby Manarewo, Former Lord Mayor and Councillor;
- Mr Ken Hosea, Former Councillor;
- Mr Alain Tounguen, Former Councillor;
- Mr Terry Vano, Former Councillor;
- Mr Willy Daniel, Former Councillor;
- Mr Paul Avock Hungai, Lord Mayor and Councillor (current);
- Mr Job Saelas, Former Councillor;
- Mr Miller Rorine, Former Councillor;
- Mr Solomon Simon, Former Councillor;
- Mr Thompson Tom Berry, Former Councillor;
- Mr Paul Binihi, Former Councillor;
- Mr Willie Pakoa Lokin, Former Councillor;
- Mr John Lamai, Former Councillor;
- Mr Florent Nalesabang, Former Councillor;
- Mr Johnson Yoan, Councillor (current);
- Mr Joseph Aaron, Former Councillor;
- Mr Daniel Bule, Former Councillor;
- Mr Maurice Joe, Former Councillor;
- Mr James Kalo, Councillor (current);
- Mr Ambrosio Melteres, Former Councillor;
- Honourable Joe Natuman, Minister of Internal Affairs;
- Police Officer Frazer Tambe and
- Mr John Colwick.

## 6. FINDINGS

### 6.1 Finding 1: **DECISION OF PVMC CONTRARY TO LAW AND BREACH OF SECTION 28 OF THE LEADERSHIP CODE ACT**

The Supreme Court has ruled in Civil Case No. 75 of 2003 (please refer to **Annex 'B'**) that the decisions taken by the Port Vila Municipal Council to allow for the:

- payment of members' monthly allowances;
- creation of the position of Deputy mayors;
- payment of Councillors' allocations;
- payment of ex-gratia payments and
- approval of terms and conditions of Town Clerk's contract were unlawful as they were contrary to the provisions of the Municipalities Act. Elected and nominated members of municipal councils are declared as leaders under section 5 of the Leadership Code Act (please refer to **Annex 'A'**) and are therefore expected to conduct themselves in accordance with the same Act. The Councillors have breached Section 28 of the Leadership Code Act.

### 6.2 Finding 2: **BREACH OF SECTION 20 OF THE LEADERSHIP CODE ACT**

Misuse of public monies is an offence under the Leadership Code Act. Section 20 of the Leadership Code Act specifically states this (please refer to **Annex 'A'** for the full text of this section). As the Supreme Court has ruled that the decisions taken by the former PVMC were unlawful, then it appears that the Councillors have misused public monies that have been entrusted to them on behalf of PVMC.

Furthermore, section 28 of the Leadership Code Act (please refer to **Annex 'A'**; for the full text of this section) states that leaders who fail to abide by an enactment that imposes on the leader a duty, obligation or responsibility is in breach of the Code.

The Ombudsman has found that the following members of the former PVMC have committed an offence under section 20 and 28 of the Leadership Code Act and must be dealt with in accordance with the same Act :

- Mr Patrick Crowby Manarewo, former Lord Mayor & Councillor;
- Councillor (former) Ken Hosea;
- Councillor (former) Alain Tounguen;
- Councillor (former) Terry Vano;
- Councillor (former) Willy Daniel;
- Councillor and current Lord Mayor Paul Avock Hungai;

- Councillor (former) Willie Pakoa Lokin;
- Councillor (former) John Lamai;
- Councillor (former) Florent Nalesabang;
- Councillor Johnson Yoan;
- Councillor (former) Joseph Aaron;
- Councillor (former) Daniel Bule;
- Councillor (former) Maurice Joe;
- Councillor James Kalo.;
- Councillor (former) Seule Tong and
- Councillor (former) Ambrosio Melteres.

## 7. RECOMMENDATIONS

Due to the above findings, the Ombudsman makes the following recommendations:

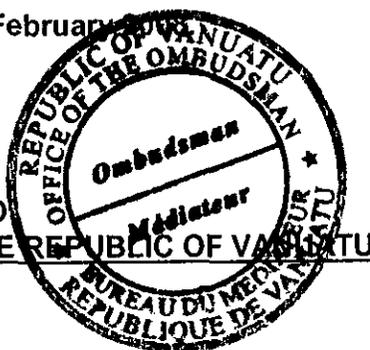
- 7.1 The Minister of Internal Affairs who is responsible for the Municipal Councils must lodge an official complaint to the Police requesting them to carry out an investigation into the matter in accordance with the Leadership Code Act and ensure that it is forwarded to the Public Prosecutor for prosecution.
- 7.2 The Minister of Internal Affairs who is responsible for the Municipal Council, through the State Law Office, must institute civil proceedings against each of the above stated individual members of the Council to recover the money that was illegally paid out to them.

Dated this 1<sup>st</sup> day of February



Peter K. TAURAKOTO

OMBUDSMAN OF THE REPUBLIC OF VANUATU



**8. INDEX OF APPENDICES**

**A** Relevant laws

**B** Supreme Court judgment on Civil Case No. 75 of 2003

**C** Copy of the relevant council meeting minutes

CONSTITUTION OF THE REPUBLIC OF VANUATU

CONDUCT OF LEADERS

- 66(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to—
- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
  - (b) demean his office or position;
  - (c) allow his integrity to be called into question; or
  - (d) *endanger or diminish* respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- 66(2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub article (1).

## Appendix A - Page 2 of 2

### LEADERSHIP CODE ACT NO.2 OF 1998

#### PART 1 – PRELIMINARY

##### LEADERS

5. In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders:
- (c) elected and nominated members of municipal councils.

#### PART 3 – BREACHES OF LEADERSHIP CODE

##### MISUSE OF PUBLIC MONEYS

20. A leader must not use, or agree to the use of, any public money for a purpose other than the purpose for which it may lawfully be used.

##### OBEYING THE LAW

28. A leader acting in his or her capacity as a leader who fails to abide by an enactment that imposes on the leader a duty, obligation, or responsibility is in breach of this Code.

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

**CIVIL CASE No. 75 of 2003**

**BETWEEN: PORT-VILA MUNICIPAL  
COUNCIL**

Applicant

**AND: ATTORNEY GENERAL of State  
Law Office, PMB 9048, Port-Vila**

First Respondent

**AND: MINISTER OF INTERNAL  
AFFAIRS**

Second Respondent

Coram: Chief Justice Vincent LUNABEK

Counsel: Mr. Ishmael A. Kalsakau for the Appellant  
Mr. Michael Edward and Ms Viran Molisa for Respondents ✓

Date of Decision: 22 August 2005

Date of Publication of Reasons: 26 October 2005

**RESERVED JUDGMENT**

**I - INTRODUCTION: NATURE AND RELIEF SOUGHT**

This is an amended application for Judicial Review dated 19 May 2003. The Applicant is the Municipal Council of Port-Vila, Vanuatu. The Respondents are the Attorney-General (First Respondent) and the Minister of Internal Affairs (Second Respondent).



The Applicant applies for the Court to review various directives issued by the Minister of Internal Affairs on 25 March 2003 and as subsequently amended on 16 April 2003 and further on 16 May 2003 against the Applicant, Port-Vila Municipality.

On 22 August 2005, the Court dismissed the claim for judicial review because the Claimant fails to establish how the Directives issued by the Second Respondent Minister were in excess of the powers of the Second Respondent and unlawful or unreasonable. I set out below the reasons of the decision.

The Applicant challenges the directives of the First Respondent upon the grounds that:

1. The directives are in excess of the jurisdiction of the Minister to so make;
2. They are unlawful; and
3. They are unreasonable as to so expect the Applicant to comply with them.

## II - ISSUES

The following are the issues to be determined by the Court:

1. Whether or not the Minister of Internal Affairs has the power/jurisdiction to issue the Directives as he did on March, April and May 2003?
2. If the Minister has the jurisdiction to do so, whether the exercise of the powers by the Minister was within the scope of his powers under the Municipality Act [CAP.126] or whether it is in excess of the powers of the Minister and thus, unlawful.
3. Whether the Directives are unreasonable so to expect the Applicant Municipal Council to comply with them in the circumstances of their issuance?

I will deal with each issue in turn. But before I do that I will set out some factual circumstances leading up to the challenge.

### III - FACTUAL BACKGROUND

The following are the factual circumstances leading up to the application for Judicial Review:-

On or about December 2002, allegations were made against the First Respondent for mismanagement.

On or about 15 December 2002, the then Prime Minister Edward Natapei wrote to the Minister of Internal Affairs to follow up the issues of mismanagement of the Applicant.

On or about 24<sup>th</sup> January 2003, the Minister of Internal Affairs appointed Mr. Haydn Saunders as an inspector to undertake an inquiry into the affairs of the Port Vila Municipal Council with immediate effect.

On or about 28<sup>th</sup> January 2003, the Solicitor for the Applicant wrote to the Respondents seeking clarification of the appointed Inspector.

On or about 29<sup>th</sup> January 2003, the Second Respondent responded and outlined to the Applicant why the Inspector was appointed.

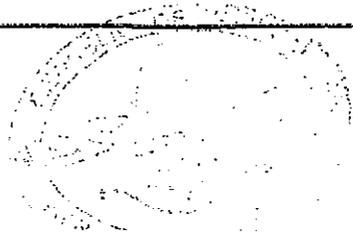
On or about February 2003 the inspector submitted his Report about his findings to the Second Respondent.

On or about the 25<sup>th</sup> March 2003, and subsequently on April and May 2003, the Second Respondent issued a series of Directives to the Applicant purportedly in exercise of powers vested in him by section 61(2) of the Municipalities Act [CAP.126]. The Directions fall into six (6) classes namely:

- (i) Those relating to the payment of monthly allowances to councillors.



- (a) That as from the date of [the second Respondent's] letter the Port-Vila Municipal Council must stop paying monthly allowances to the councillors and the Mayor and Deputy Mayors.
  - (b) That the Council's treasurer must immediately cease to make payments of monthly allowances, councillors' allocation and ex-gratia payments to the councillors and Mayor and Deputy Mayors.
  - (c) That the Council must put in place a system within two weeks to recover all monies it had illegally paid out since October 1999.
- (ii) A Directive relating to the position of Deputy Mayor.
- (d) That within two weeks as from the date of [the second Respondent's] letter the Council must meet and abolish the position of the 2<sup>nd</sup> and 3<sup>rd</sup> Deputy Mayors.
- (iii) Those relating to the payment of councillors allocations.
- (e) That as from the date of [the second Respondent's] letter the Council must stop paying Councillors' allocation to the Councillors.
  - (f) That the Council must put in place a system within two weeks to recover all monies it had illegally paid out to the Councillors allocation
- (iv) Those relating to the making of ex-gratia payments to Councillors.
- (g) That as from the date of [the second Respondent's] letter the Council may make ex-gratia payments but ONLY with the prior approval of the Minister.
  - (h) That the Council must put in place a system within two weeks to recover all monies it had illegally paid out as ex-gratia payment.
- (v) Those relating to the employment of the Town Clerk.
- (i) That the Employment Contracts of the Town Clerk, First Deputy Clerk and Second Deputy Clerk must comply with the provision of section 19(4) of the Municipal Act CAP 126 and the Council is given two weeks to remedy this situation.



- (j) That since section 19 of CAP 126 makes reference to "clerk", this also includes deputy clerks, therefore their Employment Contracts are also subject to the approval of the Minister.
- (k) That the Treasurer of the Council must immediately cease from making payments to the Town Clerk, First Deputy Clerk and Second deputy Clerk under the new Employment agreements signed on 1<sup>st</sup> October 2002.
- (vi) One relating to the auditor.
  - (l) That within two (2) months from the date of the letter [the Second Respondent's] letter the Council must produce all the outstanding audits reports of its finances for the 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001 and 2001-20002 financial years.

At the trial, counsel for the Respondents informed the Court, that the Minister was satisfied that the Applicant Council, has complied with directive (l) as far as it can. Directive (l) relating to auditors is no longer an issue. It is now put at rest. The considerations and determinations will be about directives (a) to (k) only.

On or about the 3<sup>rd</sup> April 2003, the Applicant through his Solicitor delivered a response to the directives issued by the Second Respondent.

On or about the 16<sup>th</sup> April 2003, the second Respondent responded to the Applicant and extended the deadline for compliance of his initial directives maintaining their effect notwithstanding the response given by the Applicant.

A meeting was held between the parties to discuss the above mentioned issues.

On or about 13<sup>th</sup> May 2003 the Applicant was advised that the Second Respondent is going to suspend the Applicant and appointed a Commissioner in the stead of the Applicant to administer the Port Vila Municipality.

The Port Vila Municipal Council through its Lord Mayor applies for Judicial Review and applies for interlocutory Orders restraining the Minister of Internal Affairs from suspending the said Council pending the determination of the applicant's application for judicial review

On 21<sup>st</sup> May the Court grants the Interlocutory Orders sought by the Applicant and proceeded to hear the Judicial Review Application challenging the lawfulness and reasonableness of the Directives of the Second Respondent Minister.

#### IV – EVIDENCE

The evidence is not substantially disputed by the parties. It can be summarised as follows:

##### The evidence of the Applicant

The Lord Mayor Mr Patrick Crowby and Mrs Madeline Tom filed sworn statements in support of the Applicant's application for Judicial Review. The substantive part of the statement of Mrs Madeline was objected to and was struck out by the Court. She was not cross-examined by the Respondents' counsel on the balance of her statement as her evidence is not factually critical for the case of the Applicant.

The Lord Mayor Patrick Crowby gave evidence to the following effect. He is the Lord Mayor of Port-Vila Municipal Council, the Applicant. On 24 January 2003, the Minister of Internal Affairs, Hon Joe Natuman appointed an inspector to undertake an inquiry into the Council's affairs scoping for the inspector his investigation. The Council received the Minister's response to the appointment by the Minister on 29 January 2003.

On 4 January 2003, the Council submitted all particulars requested by the Inspector along with an explanatory note prepared by the Council's solicitor.

~~The Council was made aware that the Inspector delivered his report and recommendations to the Minister of Internal Affairs on 24 February 2003.~~

On 15 March 2003 the Minister issued to the Council several directives for Council's compliance.

The Council instructed its solicitor to respond to such directives which response was given by a letter on the 3<sup>rd</sup> April 2003.

The Minister responded to the Council's letter by a letter to the Port-Vila Municipal Clerk with a further deadline of 25 April 2003 for the Council to comply with the Directives. Due to a visit to Noumea, New Caledonia, by him, the Town Clerk and other Municipal Councillors, to depart for Noumea on 18 April 2003, the Council instructed its solicitors to write to the Minister and to suggest to the Minister that the Council was prepared to have a meeting to discuss the directives of the Minister, which the solicitors did on 24 April 2003.

The Lord Mayor, Patrick Crowby was cross-examined. He stated he received all the corresponding letters by the respondents. He had been a Councillor since 1997 and was well aware of his obligation to act in accordance with the Municipal Act [CAP.126] and authorities and regulations thereunder. He said the payment of monthly and sitting allowances was done long before he was voted in as a Mayor. He stated that allowances payable would be unlawful if it is not within the Act. However he said the Minister has approved the Standing orders. The Council acted on Standing Orders the Ministers in the past had approved to five (5) former mayors before his time.

Furthermore he stated that there was a procedure in place for Councillors Allocation. He stated in his evidence that the system for allocations was transparent and all records were made of allocations and all corresponding receipts were submitted to the Auditor General.

#### The evidence of the Respondents

Mrs Tountano Bakokoto was the only witness of the Respondent. Mrs Bakokoto said she was responsible for registering all statutory orders received by the First

Respondent for publication in the Official Gazette. The statutory Orders were issued by the Minister of Internal Affairs. They were sent to the State Law Office. She then registered them in the file and she gazetted them in the Official Gazette. Her evidence is that she did not receive the Port Vila Municipal Order No...1999. She never gazetted it until today.

She said there were only two (2) Orders gazetted in 1999. She checked the registration book of 1999 in respect to gazetted statutory Orders. She did not check the records about the years before 1999. She was asked if there were standing Orders issued before 1999. She replied she was aware that there was an early standing Orders of 1989. As to different years she did not know. She was finally asked specifically if she was aware about Orders issued and gazetted in 1993. She replied she did not remember.

## V - FINDING OF FACTS

It transpires from the evidence that the following are the facts as found and accepted by the Court:

- On 23 March 2003 and subsequently, the Minister of Internal Affairs issued the Directives against the Council on the belief that the Council was engaged in unlawful conduct. The evidence of Patrick Crowby Manarewo on behalf of the Applicant shows that the Minister believed the Council was engaged in unlawful conduct: see Annexure H to the sworn statement of Patrick Crowby Manarewo sworn on 13 May 2003 (Exhibit C1-1) where the Minister sets out why he believes the conduct is unlawful.

On the facts before the Court, the only rational inference to be drawn from the evidence of the Applicant is that the Minister was satisfied the Council was acting unlawfully because:

- He issued the directives in relation to matters he considered unlawful;[ see annexure J to Exhibit C1-1, and

- The Minister issued the directives after receiving the reports of the Inspector, Mr Saunders saying that the actions of the Council were unauthorised [see annexure G to exhibit Cl.1 and annexure M to Exhibit Cl.2].
- On the evidence, the directives on their face show that the Minister was satisfied that the Applicant had done things that it is not authorised to do, namely:
  - paying members unlawful monthly allowances;
  - creating the positions of 2<sup>nd</sup> and 3<sup>rd</sup> Deputy Mayors;
  - making ex-gratia payments to Councillors; and
  - employing the Town Clerks on conditions that he had not approved.

The evidence shows that there have been only two (2) Orders issued under Section 4(f) of the Act. The first, the Municipal Council (Payment of Gratuities) Order No.9 of 1993 which related to gratuities. The second is the Port-Vila Municipalities (Allowances) Order No. of 1999, and the reimbursement of costs, to councillors but not the payment of monthly allowances.

The Applicant's evidence shows some Council's Standing Orders. It is not clear as to which Standing Orders it relies on. The Applicant's lawyer has annexed what purport to be copies of Standing Orders to his submissions. These Standing Orders have not been proved in evidence so they are not considered by the Court as the Court can only take judicial notice of the Standing Orders that have been gazetted. In the absence of proof of gazettal the Applicant must formerly prove the Standing Orders in evidence.

On the evidence the only Standing Orders for Port-Vila Municipal Council that have been gazetted is No.6 of 1989. Standing Orders 23 in No.06 of 1989 authorises the payment of sitting allowances of VT5,000. It does not authorise monthly allowances for councillors.

There is no evidence before the Court that the Minister or any of his predecessors have made Orders under the Municipalities Act authorising the payment of monthly allowances to the councillors.

There is evidence that the Councillors allocations were paid. However, there is no evidence as to how the allocations were spent and for what purposes. There is no evidence that Councillors spent their allocations on lawful projects or in compliance with the Municipal Councils Financial Regulations [subsidiary legislation – CAP.126].

The only evidence before the Court about allocation is that they were paid by the Council's treasury upon production of a receipt. There is no evidence that the funds were used for lawful purposes. There is no evidence by the Applicant to show there is any proper accounting practices in place or any procedure of acquittal in relation to those allocations to show that the money has been used for proper purposes.

It is a fact that the Applicant made ex gratia payments relying on Standing Orders issued by the Municipal Council of Port-Vila.

It is further a fact that the Council promoted the Town Clerk to her current position (she was a Deputy Town Clerk) on 19 December 2000. On 13 March 2001, the former Minister approved her promotion on her existing terms and conditions. On 1 October 2002, the Council entered into employment contracts with the Town Clerk and her two (2) Deputies. The contracts provided for two (2) new terms (a thirteen month's salary bonus, and a housing and utilities allowance of VT30,000 per month). On the evidence, the Minister has not approved them.

It is finally a fact that the Applicant claimed that the Minister had acted on improper motives. There is no evidence before the Court to support such a claim.

## VI - THE LAW

The following are the relevant provisions of the law:

- Relevant provisions of the Municipalities Act [CAP.126]:-

### COMPOSITION OF COUNCIL

#### Section 4

"4. The Minister may from time to time by Order-

- ...
- (f) *prescribe the terms and conditions of office of councillors including the mayor and the deputy mayor.*
  - (g) *provide for any other matter not hereinbefore specified which may be necessary for the proper establishment of a council."*

## STANDING ORDERS

### Section 12

"12. (1) *Subject to the provisions of the this Act every council shall make standing orders for –*

- (a) *the regulation and conduct of the meetings of the council and its committees;*
  - (b) *the authentication of all documents required to be sealed with the seal of the council; and*
  - (c) *such other matters as may be necessary for the purposes of this Act or as may be directed by the Minister.*
- (2) *The clerk shall cause a certified true copy of the standing orders of a council and of all amendments to such standings orders to be forwarded to the Minister.*
  - (3) *Standing orders of a council shall not have effect until approved by the Minister and all variations and revocations of such orders shall likewise be subject to his approval.*
  - (4) *If any council fails within a reasonable time to make standing orders which have been approved by the Minister under the provisions of this section the Minister may direct the council by letter addressed to the council to make standing orders.*
  - (5) *If within 60 days of receipt of such letter the council has not made such standing orders, the Minister may make standing orders for the council and such standing orders shall be the standing orders for the purposes of subsection (1)."*

## MUNICIPAL CLERK

### Section 19

- "19. (1) A council shall appoint a fit person, not being a councillor, to be clerk upon such terms and conditions as it may determine.
- (2) the clerk shall be the chief officer of the council and shall have the charge and custody of and be responsible for all books, records and other documents of the council.
- (3) The clerk may, subject to the general directions of the council, exercise the powers of the council of all acts done by him in the exercise of such powers shall be considered to have been done by the council.
- (4) The appointment of a person as clerk and the terms and conditions of such appointment shall in all respects be subject to the approval of the Minister."

#### OTHER OFFICERS

##### Section 20

- "20. (1) A council may appoint fit persons, not being councillors, respectively to be treasurer, medical officer of health and engineer upon terms and conditions as it may determine.
- (2) A council may appoint such other officers as it may consider necessary for the proper performance of the functions of the council upon such terms and conditions as it may determine and may define the powers and duties of such offices."

#### DISMISSAL OF CLERK

##### Section 21

- "21. The clerk shall not be dismissed from office without the consent of the Minister."

#### TO ENGAGE STAFF

##### Section 22

- "22. A council may from time to time employ on such terms and conditions as it may determine such agents, servants and workmen as may be necessary for the proper performance of the functions of the council."

#### GENERAL DUTIES

## Section 25

- "25. (1) Subject to and in accordance with the provisions of this Act relating to the duties of the council, it shall be the duty of the council-
- (a) to control, manage and administer the municipality;
  - (b) to safeguard public health;
  - (c) to develop, control and manage land taken on lease from any statutory land authority including any housing estates thereon; and
  - (d) to administer education, medical and health services as the Minister may after consultation with the responsible Minister by Order declare.
- (2) If the Minister is satisfied that a council is incapable by reason of insufficiency of staff or facilities, of administering any of the services referred to in subsection (1)(d) he may, by order, direct such council to appoint the Government as its agent for the purpose of administering such service and such service shall thereafter be administered by the Government at the expense of such council."

## GENERAL POWERS

### Section 26

- "26. (1) Subject to subsection (2) and to any law specifically providing for any matter, a council may, in addition to any powers for which specific provision is made by this or any other law, exercise all or any of the powers contained in the Schedule.
- (2) The Minister may, in relation to any particular council, by order, restrict the exercise of its scheduled powers.
- (3) The Minister may, by Order, from time to time vary the Schedule."

## POWER TO MAKE BYE-LAWS

### Section 36

- "36. (1) Subject to the provisions of this Part a council may from time to time make by-laws in respect to all such matters as are necessary or expedient for-
- (a) the safety of the inhabitants of the municipality; or

- (b) *the maintenance of health, well-being and good order and government of the municipality; or*
- (c) *the prevention and suppression of nuisances in the municipality.*
- (2) *In particular, and without prejudice to the generality of subsection (1) a council may make bye-laws necessary for carrying out the powers conferred upon the council by this or any other law and for such additional purposes as may be prescribed by the Minister.*
- (3) *Bye-laws made under the provisions of this section may apply to the whole or any part of the municipality."*

#### **BYE-LAWS NOT TO CONFLICT WITH ACTS OR ORDERS**

##### **Section 38**

*"38. Nothing in this Act shall empower a council to make any bye-law which is in conflict with or derogates from the provisions of any Act or order for the time being in force in Vanuatu; and to the extent that any bye-law conflicts with or derogates from any such Act or Order it shall be void and of no effect."*

#### **APPLICATION OF BYE-LAWS**

##### **Section 39**

*"39. Every bye-law shall be published by notification in the Gazette and shall have the force of law in the municipality as from the date of such publication or if a later date is provided in such bye-law, as from that date."*

#### **AUDIT**

##### **Section 55**

- 55. (1) *The Auditor General or a person approved by him and appointed by a council shall be the auditor of the council, at such rate of remuneration as the council may determine for the purpose of auditing and reporting on the accounts of the council.*
- (2) *If the Auditor General so directs, the council shall reimburse to the Government such sum in respect of the Auditor General's expenses as the Minister may fix.*
- (3) *The council shall*

- (a) produce to the auditor within 3 months of conclusion of the year to which they relate all the books and accounts of the council together with all deeds, contracts, documents, receipts and vouchers relating thereto;
  - (b) permit the auditor to inspect all stores and other assets of the council as he may require; and
  - (c) give to the auditor such information, explanation and facilities as he may require to be given to enable him to perform the duties of an auditor.
- (4) It shall be the duty of the auditor to report to the council not less than once in each year separately in respect of each of the following matters, that-
- (a) he has obtained all such information, explanations and facilities as he may have required to be given to enable him to perform the duties of an auditor;
  - (b) the accounts of the council are in order and present a true view of the financial position of the council;
  - (c) separate accounts of all undertakings and other accounts required to be kept by the provisions of this Act have been kept;
  - (d) due provision has been made for redemption and repayment of all moneys borrowed by the council;
  - (e) such provision as may be required under the provisions of this Act has been made for depreciation or renewal of the assets of the council.
- (5) In addition to the report required under subsection (4) the auditor shall report to the Minister and to the Minister responsible for finance and to the council any matter or thing which is discovered during the course of the audit and which appears to have been done or performed without authority.
- (6) The clerk shall-
- (a) within 30 days of the receipt of the auditor's report on the accounts of the council for any year submit the accounts together with such report to the Minister; and

(b) lay the accounts of the council for each year together with the auditor's report thereon before the council within 30 days of the receipt of such report, or if the council is not sitting, at its next meeting;

and thereafter such extracts from such accounts and such reports as the Minister may approve shall be deposited in the offices of the council and shall at all reasonable hours be open to public inspection without payment. A notice of such deposit shall be published in the Gazette."

## INSPECTIONS

### Section 59

"59. (1) The Minister may at any time, by notice published in the Gazette, appoint any person to be an inspector for the purpose of inspecting the observance and performance of a council of the duties and powers imposed or conferred upon it by the provisions of this Act or any other law.

(2) An inspector may-

- (a) attend any meeting of the council or any committee of the council;
- (b) upon giving due notice to the clerk of his intention so to do, inspect any books, records, documents, contracts, stores or other assets and any undertaking of the council.

(3) An inspector shall report to the Minister the result of an inspection made by him."

## DISALLOWANCE AND SURCHARGE

### Section 60

"60. (1) If, on receipt of the report of the auditor or an inspector, the Minister is satisfied that expenditure has been incurred without proper authority he may either sanction or disallow such expenditure and if he disallow such expenditure, he may, subject to the provisions of section 67 by directive in writing surcharge any person responsible for such expenditure for the whole or any part thereof.

~~(2) If, on receipt of the report of an auditor or an inspector, the Minister is satisfied that-~~

- (a) any failure to collect money due to the council; or
  - (b) any loss of money or property; or
  - (c) any damage to property;
- has occurred by reason of any wilful or wrongful act or any negligence by any councillor or person in the service of the council, the Minister may, subject to the provisions of section 67 by order in writing surcharge such councillor or person for the whole or any part thereof.
- (3) Any sum surcharged on any person under the provisions of this section shall be a debt to the council and shall be payable by such person within 1 month or such longer period as the Minister may approve of the date of serve upon him of the order of the Minister.
  - (4) Any person aggrieved by an order of surcharge may appeal to the Supreme Court which may confirm, set aside or vary such order and the decision of which shall be final."

**INQUIRIES AND SUSPENSION**

**Section 61**

- "61. (1) If the Minister-
- (a) has cause to suspect that a council has failed to observe and perform any of the duties and powers conferred or imposed upon it by the provisions of this Act or any other law; or
  - (b) has cause to suspect that a council has done or performed any act, matter or thing without due authority; or
  - (c) is otherwise of the opinion that an investigation should be made into the affairs of a council;
- he may in his discretion, appoint a person or persons to inquire into such matter.
- (2) If upon an inquiry under this section the Minister is satisfied that the council has done or suffered any of the act, matter and thing contained in paragraphs (a) and (b) of subsection (1), he may by directive in writing require the council to remedy the same within such time as he may appoint
  - (3) If a council fails to comply with the terms of a directive of the Minister made under subsection (2) or if the Minister, having appointed a

person or persons to make an inquiry under subsection (1) considers it expedient so to do, the Minister may in addition to any other powers conferred upon him by the provisions of this Act-

(a) suspend the exercise by the council of any of the powers conferred upon it by this or any other act for such period as he may think fit; or

(b) dissolve the council and, in his discretion, appoint or direct the election of new councillors;

and during such period, or, as the case may be, pending the appointment or election of new councillors, confer upon any person the exercise of any powers so suspended or of the powers of the council so dissolved.

(4) The expenses incidental to-

(a) any inquiry under this section; or

(b) the exercise of any of the powers of the council under this section; shall be a debt due by the council to the Government and shall be paid and discharged out of the funds or revenues of the council in such manner as the Minister shall direct. Any such direction may include a direction that the expenses shall be deducted from any grant payable by the Government to the council."

## IMMUNITIES FROM PROCEEDINGS

### Section 67

"67. No act, matter or thing done or committed by:

(a) any councillor;

(b) any officer or other person in the service of a council;

(c) by any person acting under the directions of a council;

shall if such act, matter or thing was done in good faith in the execution of his duty, render any such councillor, officer or person personally liable to any action, liability, claim or demand whatever."

## EX-GRATIA PAYMENTS

Section 114 of the Municipalities Financial Regulations (Subsidiary Legislation) provides as follows:

"114. (1) *Ex-gratia* payments may only be made with the prior approval of the Minister. They are made in exceptional circumstances and after reference to the Attorney General. *Ex-gratia* payments include the following-

(a) compensation payments made to claimants who allege that damage or injury has been caused to them by the council or its servants;

(b) extra contractual and *ex-gratia* payment to contractors;

(c) other *ex-gratia* payments as approved by the council.

(2) Before payment is made of any claim, which is being settled on an *ex-gratia* basis, an acknowledgement will be detained from the claimant that the sum approved for payment is in full and formal settlement of the claim.

(3) All *ex-gratia* payments will be recorded in the councils accounts in the annual statement of losses."

- Relevant provision of the Interpretation Act [CAP.132]

#### DEFINITION OF STATUTORY ORDERS

##### Section 12

"12. Where an Act of Parliament confers on the President, a Minister or any other authority a power to make or a power exercisable by making proclamations, rules, regulations, by-laws orders or statutory order and the provisions of this Act shall apply thereto accordingly."

#### PUBLICATION OF STATUTORY ORDERS

##### Section 13

"13. Every statutory order shall be published in the Gazette and shall be judicially noticed."

#### COMMENCEMENT OF STATUTORY ORDERS

##### Section 14

"14. (1) Subject to the provisions of this section-

- (a) the commencement of a statutory order shall be such date as is provided in or under the order or where no date is so provided the date of its publication as notified in the Gazette;
- (b) every statutory order shall come into force immediately on the expiration of the day preceding its commencement.

..."

## VII - APPLICATION OF THE LAW

Having set out the relevant legislative provisions, the Court must then apply them to the facts as found and provide answers to the questions to be determined.

1. DOES THE MINISTER HAVE THE POWER TO ISSUE DIRECTIVES? IF SO, WHETHER THE EXERCISE OF SUCH POWER IN THIS CASE IS IN EXCESS OF THE MINISTER'S JURISDICTION.

The Minister's power to issue directives is set out in subsection 61(2) of the Municipalities Act [CAP.126].

Subsection 61(2) provides:

*"If upon an inquiry under this section the Minister is satisfied that the council has done or suffered any of the act, matter and thing contained in paragraphs (a) and (b) of subsection (1), he may by directive in writing require the council to remedy the same within such time as he may appoint."*

The Applicant asserts that the Minister had not complied with the preconditions in subsection 61(2) so his directives are in excess of his jurisdiction.

The onus of proof is on the Applicant to establish that the Minister had not complied with any preconditions he had to meet before issuing any directives. On the facts, there is no evidence to show, or from which an inference can be drawn, that the Minister was not "~~satisfied that the council has done or suffered any of the act, matter and thing contained in paragraphs (a) and (b) of subsection (1),...~~". I accept

the submissions that the evidence of the Applicant actually shows that the Minister believed the Council was engaged in unlawful conduct. The submission is further supported by the fact that the Minister was satisfied the Council was acting unlawfully because-

- (a) he issued the directive in relation to matters he considered unlawful; and
- (b) the Minister issued the directives after receiving the reports of the Inspector, Mr Saunders saying that the actions of the Council were unauthorised.

By perusing the language of section 61(2) of the Municipalities Act, there is no obligation on the Minister under section 61(2) to specify whether he is satisfied of events in subsection 61(1)(a) and (b).

Further, under section 59(2) and (3) of the Act, the Minister may at any time, by notice published in the Gazette, appoint any person to be an inspector for the purpose of inspecting the observance and performance of a Council of the duties and powers imposed or conferred upon it by the provisions of this Act or any other law and for the inspector to report to the Minister the result of an inspection made by him.

In this case, it is self evident from the nature of the directives whether the Minister is relying on subsection 61(1)(a) or (b). I accept the submissions that the directives on their face show that the Minister was satisfied that the Applicant had done things that it was not authorised to do, namely:-

- (a) paying members unlawful monthly allowances;
- (b) creating the positions of 2<sup>nd</sup> and 3<sup>rd</sup> Deputy Mayors;
- (c) making ex-gratia payments to councillors; and
- (d) employing the Town Clerk and Deputy Town Clerks on conditions that he had not approved.

Accordingly, the Applicant has not established the Minister made the directives in excess of his powers under section 61(2) of the Municipalities Act [CAP. 126].

The Claimant/Applicant says that the directives were unlawful because the actions the Minister believed to be unlawful namely:

- (a) pay members unlawful monthly allowances;
- (b) created the positions of 2<sup>nd</sup> and 3<sup>rd</sup> Deputy Mayors;
- (c) made ex-gratia payments to councillors; and
- (d) employed the Town Clerk and Deputy Town Clerk on conditions that he had not approved,

were in fact lawful or done with lawful authority.

The Respondent submits that the Minister's directives were issued because the above acts of the Claimant were unlawful or done without proper authority. To establish the unlawfulness of the Minister's directives and discharge its onus of proof the Applicant must show that its conduct, the subject of the directives, is lawful. Each of the directives will be dealt with in turn.

(a) Payment of members' monthly allowances

The Applicant says it relies on statutory orders No. \_\_\_ of 1999 signed by the Minister of Internal Affairs, responsible for the Municipalities. The Order which is not gazetted provides for the payment of monthly allowances.

The Respondent submits that under the Municipalities Act [CAP.126] ('the Act') any allowances paid to councillors (including the mayor) must be authorised by Order made pursuant to subsection 4(f) of the Act. There have only been two (2) Orders made under subsection 4(f). The first is the Municipal Council (Payment of gratuities) Order No.9 of 1993 which related to gratuities. The second is the Port-Vila Municipalities (Allowances) Order No. \_\_\_ of 1999 which is in effect authorises the payment of sitting allowances, and the reimbursement of costs, to Councillors but not the payment of monthly allowances.

The Applicant seeks to rely on the Council's Standing Orders although no specific Standing Order was referred to. Counsel for the Applicant has annexed copies of the Standing Orders to his submissions and relies on them on the basis that a Statutory

Order shall be judicially noticed. Further a Statutory Order commences at the date stipulated in the Order (ss. 13 & 14) of the Interpretation Act [CAP.132].

These Standing Orders have not been proved in evidence so should not be considered by the Court. I accept the submission that a Court can only take judicial notice of the Standing Orders that have been gazetted. In absence of proof of gazettal, the Applicant must formally prove the Standing Orders in evidence.

The only Standing Orders for Port-Vila Municipal Council that have been gazetted is No.6 of 1989. Standing Order 23 in No.6 of 1989 authorises the payment of sitting allowances of VT5,000. It does not authorise monthly allowances for councillors. Accordingly, it does not assist the Applicant.

However, for completeness, even if the Court could have reference to the latter Standing Orders, it is important to peruse the power to make Standing Orders under Section 12 of the Municipalities Act.

**Section 12(1) provides:**

*"Subject to the provisions of this Act, every council shall make Standing Orders for-*

- (a) the regulation and conduct of the meetings of the council and its committees;*
- (b) the authentication of all documents required to be sealed with the seal of the council; and*
- (c) such other matter as may be necessary for the purposes of this Act or as may be directed by the Minister."*

The power clearly does not extend to making Standing Orders for the provision of allowances to members of the council. The standing Orders authorising the payment of allowances to the council are in excess of the Council's power under subsection 12(1). The only person with power to prescribe the terms of Councillors, is the Minister by Order under subsection 4(f) of the Act.

Furthermore, none of the standing Orders attempted to be put before the Court authorise allowances in the amounts paid to the Councillors in this case. These standing Orders are also inconsistent with the unnumbered Order of 1999 to which they would be inferior legislation.

In the present case, the only Order made under subsection 4(f) of the Municipalities Act authorising payment of any type of allowances (other than gratuities) to the councillors is the unnumbered Order from 1999. It provides for Councillors to be paid sitting allowances for meetings of the Council and its committees, and to be reimbursed any necessary expenditure incurred. It does not entitle Councillors to be paid monthly allowances, even if those allowances purport to cover sitting allowances and reimbursement for monies spent while carrying out special duties.

The Applicant complains also about the disparity in the allowances paid to different Councillors. However, it is immaterial to the lawfulness or otherwise of the Minister's directives as the payment of any allowance is unlawful. No monthly allowances were authorised so any amount paid was unlawful.

The Applicant also relies on the fact that the Minister approved its budget for 2003. First, there is no evidence before the Court that the Minister approved the paying of the allowances to the Councillors by approving the Council's budget. Second, the Minister cannot authorise illegal expenditure. The payment of monthly allowances can only be authorised by the Minister by Order under subsection 4(f) of the Municipalities Act.

It transpires clearly that there is no evidence before the Court that the Minister or any of his predecessors have made an Order under subsection 4(f) of the Municipalities Act to the Councillors. Therefore, the Minister had lawful authority to issue the directives (a), (b) and (c) and I so rule.

(b) Position of Deputy Mayors

The Minister issued directive (d) to abolish the positions of the 2<sup>nd</sup> and 3<sup>rd</sup> deputy mayors.

The Applicant submits that that directive was unlawful as Section 4 of the Municipalities Act [CAP.126] provides for more than one deputy mayor and the Municipal Council Election Regulations provides for the authorisation of more than one office of deputy mayors.

The Respondent says the Applicant has not led any evidence to show the positions were authorised in accordance with section 19 of the Municipalities Act.

Section 19(4) of Order No.60 of 1982 (set out as subsidiary legislation to [cap.126]) of the Municipalities Act, states:-

*"The Minister may at the request of or after consultation with a municipal council, authorise the creation of one or more additional offices of deputy mayor."*

By section 4 of the Municipalities Act all the matters from (a) to (g) as set out under section 4 of the Act, will operate only by Order of the Minister. Order No.60 of 1982 (subsidiary legislation) implements the matters set in (a) to (g) in section 4 of Municipalities Act. Accordingly, section 19(4) of the said Order provides for the Minister to authorise the position of one or more additional offices of deputy mayor at the request of or after consultation with a municipal council.

On the facts, there is no evidence that the positions of the 2<sup>nd</sup> and 3<sup>rd</sup> deputy mayors are created in accordance with section 19(4) of Order 60 of 1982 (Subsidiary legislation).

Directive (d) to abolish the positions of the 2<sup>nd</sup> and 3<sup>rd</sup> deputy mayors is, therefore, lawful.

The Minister issued directive (e) and (f) to stop payments of the allocation of councillors.

The Applicant says that the directives (e) and (f) are unlawful. It contends that the allocation payments are designed to meet the councillors' obligations and are therefore lawful. It says that it is permitted by the Act to expend monies to meet its obligations.

The Respondent say he does not dispute the applicant's right to expend money for proper purposes i.e. for purposes of fulfilling its functions under the Municipalities Act. However, the Respondents say there is no evidence that the councillors have spent their allocations on lawful projects or in compliance with the Municipal Council's Financial Regulations [subsidiary legislation to CAP.126].

The Respondents further submit that the only evidence before the Court about the allocation is that they were paid by the Council's treasury upon production of a receipt. There is no evidence that the funds were used for lawful purposes.

I therefore accept the submission that the Minister is entitled to direct the council to stop paying the allocations. The Applicant has brought no evidence to show there is any proper accounting practices in place or any procedure of acquittal in relation to those allocations to show that the money has been used for proper purposes. It is for the Applicant to show that the allowances have been used for proper purposes under the Municipalities Act. In the circumstances, the Minister was authorised to make the directives to stop payments of the allocation. Directives (e) and (f) are therefore lawful and I so rule.

(d) Payment of ex-gratia payments

The Minister directed, among other matters, that the Council must put in place a system, within two (2) weeks, to recover all monies it had illegally paid out as councillors' ex-gratia payments.

The Applicant contends the directives issued by the Minister in relation to ex-gratia payments are unlawful. It submits that the payments are advances on the councillors' gratuities under Municipal Council (Payment of gratuities) order No.9 of 1993. Paragraph 2(1) of the Order states:-

*"Subject to... a Municipal Council may pay to its councillors at the end of their term of office gratuities."*

The Order does not authorise the advance payments of such gratuities.

Any ex-gratia payments may only be made:-

- (i) with the prior approval of the Minister;
- (ii) in exceptional circumstances;
- (iii) and after reference to the Attorney-General.

The above preconditions are spelt out under subsection 114(1) of the Municipal Council Financial Regulations (subsidiary legislation to CAP.126) which provides:-

*"114. (1) Ex-gratia payments may only be made with the prior approval of the Minister. They are made in exceptional circumstances and after reference to the Attorney General. Ex-gratia payments include the following-*

- (a) compensation payments made to claimants who allege that damage or injury has been caused to them by the council or its servants;*
- (b) extra contractual and ex-gratia payment to contractors;*
- (c) other ex-gratia payments as approved by the council.*

*(2) Before payment is made of any claim, which is being settled on an ex-gratia basis, an acknowledgement will be detained from the claimant that the sum approved for payment is in full and formal settlement of the claim.*

*(3) All ex-gratia payments will be recorded in the councils accounts in the annual statement of losses."*

Any ex-gratia payments made by Councils must comply with subsection 114(1) of the Municipal Councils Financial Regulations.

The Applicant/Claimant seeks to rely on Standing Orders to support those payments. The standing Orders cannot override the clear language of Order No.9 of 1993. Further, the Applicant says in effect that the standing Orders were used in relation to early payments of gratuities. It is clear that by law, they are ultra vires (beyond) the power of the Council under section 12 of the Municipalities Act.

Also, the standing Orders sought to rely upon are not part of evidence and as such rejected.

Accordingly, the two (2) directives relating to ex-gratia payments are lawful in that monies paid out without authority must be recovered. As the Council is a body corporate with perpetual succession, it does not matter that the elected members of the Council had changed.

Directives (g) and (h) are therefore lawful and I so rule.

(e) Approval of terms and conditions of Town Clerk

On the facts, it is not disputed that the Council promoted the Town Clerk her current position (she was a Deputy Town Clerk) on 19 December 2000. On 13 March 2001, the former Minister approved her promotion on her existing terms and conditions. On 1 October 2002, the Council entered into employment contracts with the Town Clerk and her two Deputies. The contracts provide for two new terms (a thirteen month's salary as bonus, and a housing and utilities allowance of VT30,000 per month) which the Minister has not approved.

The question is can the Council proceed with the alteration of the appointment of a clerk without the approval of the Minister? The answer is in the negative. Section 19(4) of the Municipalities Act which deals specifically with this point, states:

*"The appointment of a person as clerk and the terms and conditions of such appointment shall in all respects be subject to the approval of the Minister."*

Subsection 19(4) is clear the Minister must approve the terms and conditions of the clerk. The Applicants' submissions to this effect that the Minister's approval only relates to fresh appointment has no basis in law. If a clerk is to have his or her terms and conditions of appointment altered, the Minister must approve such alteration. If the Council could change a person's terms and conditions after appointment without the approval of the Minister, it would render subsection 19(4) of no effect.

Accordingly, directives (i), (j) and (k) are lawful as the new conditions of employment have not been approved by the Minister.

### 3. OTHER MATTERS RAISED IN THE SUBMISSIONS

#### (a) Section 67 of the Municipalities Act

The Applicant/Claimant had referred to section 67 of the Municipalities Act as affording it protection from the Minister's direction.

Section 67 of the Act is to protect individual councillors from civil action. It does not operate to protect them from directions of the Minister under section 61 of the Municipalities Act. As such section 67 has no operation in this context. In any event, section 67 of the Act can in no way make the Minister's directives unlawful.

#### (b) Improper Motive

The Applicant had suggested in its statements of case that the Minister's decision to issue the directive was unlawful because he had acted on improper motives. As found by the Court, there is no evidence before the Court to support such a claim. This submission cannot stand. It is therefore rejected

#### (c) Directives to the Treasurer

The Applicant contended it was unlawful for the Minister to hold directives to the treasure of the Council. The treasurer is an officer of the Council.

He/she has certain functions and duties under Municipal Councils Financial Regulations. There is no basis in law for holding directives to the treasurer of the Council unlawful if the directive would be lawful if directed to the Councils.

#### 4. UNREASONABLENESS

The Applicant says that the directives of the Minister relating to recovery of monies are unreasonable as there is a process of auditing the financial operations of the Councils under section 55 of the Municipalities Act.

The Claimant/Applicant has to establish that the directives of the Minister were so unreasonable that no reasonable person could have made them. This test is set out in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223, which is followed and applied in other cases by Vanuatu Courts.

The Applicant submits that section 67 of the Municipalities Act protects Councillors for actions done in good faith. In the context of this case, section 67 has no operation.

The Applicant submits also it is unreasonable to make the council recover "what would otherwise be considered as legitimate expenditure". On the facts as found and accepted by the Court, there is no evidence that the expenditure was legitimate expenditure. The Council must, therefore recover it.

The Applicant further submits that it is unreasonable for the Minister to expect recovery only for the period back to October 1999 when monthly allowances and the disparity in allowances have been made prior to 1999. The Applicant further says that recovery would not only be nonsensical but expensive also due to the fact it would cover councillors already deceased and where former councillors are not employed it represents a major expense for council to issue proceedings to recover.

Annex 3 - Page 01 of 01

Recovery of allowances to October 1999 is reasonable as there may be practical and legal difficulties recovering older payments.

The Applicant again submits that the Minister has no power under the Act to order the Treasurer of Council.

The directions to the Treasurer are not unreasonable. The Treasurer is an officer of the Council and the appropriate person to comply with the directive directed at him/her.

The Applicants also submits that the position of Second Deputy Mayors have been authorised in the past by the Minister of Internal Affairs and it is therefore unreasonable for the Minister to direct the abolition of the offices.

On the facts, there is no evidence before the Court that the positions of deputy mayors had ever been authorised. Further, the Minister has authority to abolish the positions.

The Applicant submits then that if the allocations to Councillors are legitimate expenditure of Council approved by the Minister in budgetary estimates each year and that there is a clear and transparent system, it is unreasonable for the Minister to expect recovery of sums expended toward the betterment of the constituencies of the Applicant where the councillors do not derive any personal benefit from the allocations expended.

The Respondents say they would concede if councillors' allocations were spent on lawful purposes, then, it would be unreasonable to recover them. However, in the present case, as found by the Court, there is no evidence before the Court that the allocations have been lawfully expended.

What is important to understand is that it is not a question of whether the councillors receive personal benefit or not, it is whether the money is lawfully spent under the Municipalities Act.

In order to appreciate whether or not the directives are unreasonable we shall look at each direction individually and for that purpose, applying the law to the facts as found, the Court accepts the following submissions:-

- (a) That as from the date of [the second Respondent's] letter the Port-Vila Municipal Council must stop paying monthly allowances to the Councillors and the Mayor and Deputy Mayors.

The payment of these allowances was unlawful. It is reasonable to direct that the allowance not be paid. The council has no right to make illegal payments. This was conceded by the mayor in cross-examination.

- (b) That the Council's Treasurer must immediately cease to make payments of monthly allowances, councillors' allocation and ex-gratia payments to the Councillors and Mayor and Deputy Mayors.

Again, the Council has no right to make illegal payments so it is reasonable to direct the council not make such payments.

- (c) That the Council must put in place a system, within two weeks, to recover all monies it had illegally paid out since October 1999.

There is nothing unreasonable in asking for an extension of time or said the time was too short. Also, by the time the Claimant came to challenge the directions it had had over 2 months to put a system in place.

- (d) That within two weeks from the date of [the second Respondent's] letter the Council must meet and abolish the positions of 2<sup>nd</sup> Deputy Mayor and 3<sup>rd</sup> Deputy Mayor.

The appointments of the 2<sup>nd</sup> and 3<sup>rd</sup> Deputy Mayors were unauthorised then it is reasonable for the council to be directed to abolish the positions. The time allowed could not be considered unreasonable and there was no request to extend the period.

- (e) that as from the date of [the second Respondent's] letter the Council must stop paying councillors' allocation to the Councillors.

The allocations were unlawful so it is reasonable to direct that the Claimant stop paying them.

- (f) That the Council must put in place a system, within two weeks, to recover all monies it had illegally paid out as councillors' allocation.

It is not unreasonable in the circumstances to ask for a system to be put in place in two weeks. The Claimant has never asked for an extension of time or said the time was too short.

- (g) That as from the date of [the second Respondent's] letter the council may make ex-gratia [payments] but ONLY with the prior approval of the Minister.

This direction only reinforces the requirements of the Act.

- (h) that the Council must put in place a system, within two weeks, to recover all monies it had illegally paid out as ex-gratia payments.

Again, it is not unreasonable in the circumstances to ask for a system to be put in place in two weeks. The Claimant has never asked for an extension of time or said the time was too short.

- (i) That the Employment Contracts of the Town Clerk, First Deputy Clerk and Second Deputy Clerk must comply with the provision of section 19(4) of the Municipalities Act [CAP.126] and the Council is given two weeks to remedy this situation.

The Council is bound to comply with the Act. The contracts do not comply with the Act, so the direction is reasonable. There is no evidence to show that the

time for compliance was too short. Again, the effective time for compliance was in excess of two months.

- (j) That since section 19 of the [CAP.126] makes reference to "clerk", this also includes deputy clerks, therefore, their Employment Contracts are also subject to the approval of the Minister.

This direction is reasonable for the same reason as (i) above.

- (k) That the Treasurer of the Council must immediately cease from making payments to the Town Clerk, First Deputy Clerk and Second Deputy Town Clerk under the new Employment Agreements signed on 1<sup>st</sup> October 2002.

The payments were unlawful so this directive is reasonable.

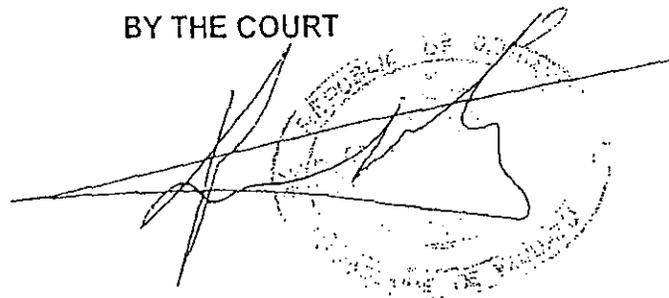
#### VIII - CONCLUSION

The Claimant has not established that the directives were either beyond the power of the Minister, unlawful or unreasonable, therefore the application is dismissed and the Respondents are entitled to their costs as ordered by the Court on 22 August 2005.

Those are the reasons for the Decision of this Court made on 22 August 2005.

DATED at PORT-VILA this 26<sup>th</sup> of October 2005

BY THE COURT



Vincent LUNABEK  
Chief Justice

MUNICIPALITÉ

DE

PORT-VILA

Boite Postale 09

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Telecopie: 25002

Annex C - Page 1 of 10 MUNICIPALITY

OF

PORT VILA

PO Box 09

Tel: 22113

Facsimile: 25002

Nº Réf: MC. 1/1/9 - MT

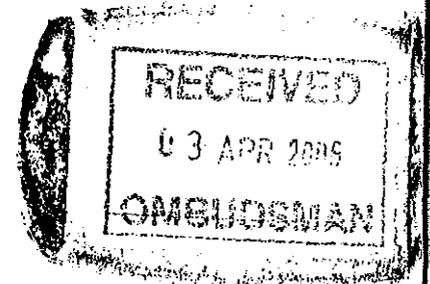
Port Vila, 22 February 2000

V/ Réf:

NO. 07/00 EXTRAORDINARY FULL COUNCIL MITING  
FRAEDE 13 FEBRUARY 2000 - 11.30 AM  
PORT VILA MUNICIPAL KAONSEL CHAMBER

Present

Lord Mayor Patrick Crowby Manarewo - Jeaman  
Deputy Lord Mayor Ken Hosea  
2<sup>nd</sup> Deputy Lord Mayor Alain Tounguen  
3<sup>rd</sup> Deputy Lord Mayor Terry Vano  
Councillor Paul Avock Hungai  
Councillor Willy Daniel  
Councillor Job Saelas  
Councillor Miller Rorine  
Councillor Solomon Simon  
Councillor Thompson Tom Berry  
Councillor Paul Binihi  
Councillor Willie Pakoa Lokin



Jeaman Lord Mayor Patrick Crowby Manarewo I kolem miting into orda mo hem i askem Councillor Paul Binihi blong talem opening prea. Hem I then introducem agenda.

Councillor Willie Pakoa Lokin I Muv blong appruvum agenda olsem we I stap.  
-Seconded by 3<sup>rd</sup> Deputy Lord Mayor Terry Vano.

I. Agenda

1. Appruvum agenda
2. Niu Special Monthly Allowance (Councillors)
3. New Traffic System
4. Lini's Day

Agenda emi unanimously approved.

2. Niu Special Monthly Allowance

Jeaman I introducem agenda mo hem I askem Town Clerk blong I elaborate long hem.

Town Clerk Georges Calo I informem ol membas se wanem document we I stap emi blong offis I usum olsem wan guideline blong mekem ol payment blong ol allowances blong ol councillors from we Standing Orders we council I sendem I go long Ministry, Minister I wantem se bambae hem I includem allowances blong ol councillors I go insaed long CAP 126 mo ol councillors bambae oli no save wait long taem. Document ia I been pass finis long Executive, Finance and Staff mo naoia I kam long Full Council blong endorsem so that ol membas I save kasem smol allowance. Hem I talem se allowances ia I catter for insaed long budget blong 1999/2000. Hem I talem se document we Lord Mayor I mekem ia emi base long order we former minister I been saenem mo emia emi blong justify nomo payment blong ol allowances I go long ol councillors, pending signing blong niufala standing orders by the Minister of Internal Affairs.

Jeaman I askem sapos ol membas oli gat comments.

Councillor Solomon Simon I expressem reservation blong hem long page 5 we I talem se sapos I no gat wok, I no gat vatu. Hem I talem se I luk olsem se olgeta I mas jastify long Town Clerk bifo oli save kasem allowance blong olgeta. Hem I talem se ol councillors oli elected anda long semfala procedure olsem ol MP's mo I luk olsem se olgeta I no longer regarded as elected councillors. Hem I talem se hem I fully agree se ol councillors I mas visitim ol wards blong olgeta be hem I ting se I no propa blong olgeta I mas justify long administration. Hem I talem se section ia I open tumas mo hem I gat reservations long hem from we nogud administration I'over rulum power blong ol elected members.

Lord Mayor Patrick Crowby I reply se hem I andastandem point of view blong Councillor Solomon Simon be hem I talem se follem wanem we I stap, offis I no gat any other choice but blong follem wanem we hem I preparem I stap in order blong legalisem payment blong ol allowances blong ol councillors naoia. Hem I talem se sapos no, bambae olgeta I mas wait kasem taem Minister I passsem amendment blong CAP 126 I go long Parliament. Hem I talem se I gat wan order we former minister blong Internal Affairs I saenem we I legal mo document we I stap emi follem nomo ol rate we I specified anda long Order ia.

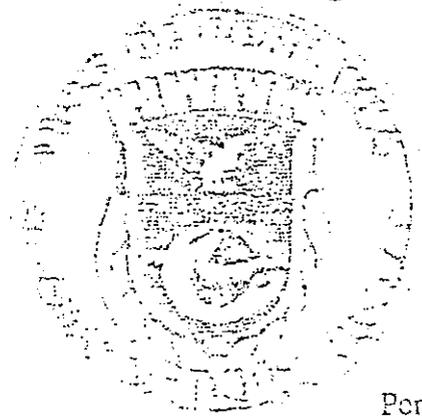
Town Clerk I comment se wanem we Councillor Solomon Simon I talem hem I true. Be hem I talem se council we I stap I star wok finis long wan decentralised system mo wetem wanem we I stap long document, bambae I helpem ol councillors blong oli go aot long field mo mekem moa contact wetem ol electors blong olgeta. Hem I talem se follem decentralisation policy blong present gavman, ol councillors bambae oli stap long wan better position blong save talem long central gavman wanem nao emi decentralisation.

MUNICIPALITÉ  
DE  
PORT-VILA

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MUNICIPALITY  
OF  
PORT VILA

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Tel: 22113  
Facsimile: 25002



Ref: MC. 1/13 - PCM/mr

Port Vila, 12<sup>th</sup> January 2000

Hon. Barnabas Tabi  
Minister of Internal Affairs &  
Minister Responsible for Municipalities  
Vanuatu Government  
PORT VILA

Sir,

PORT VILA MUNICIPAL STANDING ORDERS (Continued)

Mi stap raet I kam long you blong givim more explanations abaot Standing Orders we mi bin submittim long you werem Order we former Minister Boulekone hemi bin saenem long 30 September 1999.

Port Vila Municipality hemi compose long 14 kaonselas. Aot long ol 14 kaonselas ia, I gat Lord Mayor, 3 Deputy Lord Mayors mo long actual situation, tedei Kaonsel hemi gavern by 12 kaonselas including Lord Mayor. I bin gat wan kaonsela hemi kam wan Member of Palamen, and narawan hemi lusum seat blong hem long last yia.

Aot long olgeta 12 kaonselas. I gat 8 kaonsela we I made up long NUP, MPP, VRP mo UMP oli ranem present kaonsel and I gat 4 kaonselas blong opposition, bat long evry debate and vote, evrywan oli vote werem kaonsel we Lord Mayor hemi lidim.

Standing Orders we mi bin submittim long you blong you saenem, hemi blong givim wan guideline or savem funds blong kaonsel, werem litle budget blong hem. Sentaem, hemi givim picture blong wan real cost blong olgeta allowance, based long reality blong work blong ol kaonsela, according long existing budget 1999/2000.

Standing Orders we predecessor blong you Hon. Minister Boulekone hemi saenem long 30 September 1999, hemi givim total freedom long olgeta kaonselas or Lord Mayor blong fixim rate blong ol kaonsela long tingting we Kaonsel hemi wandem, bat actual budget hemi no cater for.

Bambaem mi givim long you two clear explanation blong you luk difference or givim kila picture long proposed Standing Orders we mi proposem, werem hemia we Hon. Boulekone hemi bin saenem long 30 September 1999. Bambaem yumi base long wan working month of 22 days.

I. Niufala Standing Orders

a)	- Monthly allowance blong 22 working days	
	- Chairman blong Commission	60,000 VT
	- Kaonseia	40,000 VT
	- Deputy Mayors	70,000 VT
	- Lord Mayor	200,000 VT
Calculation - 22 days		
	- 5 Opposition Kaonseia x 40,000 x 12 months	2,400,000 VT
	- 3 Commission Chairman Kaonseia x 60,000 x 12 months	2,160,000 VT
	- 3 Deputy Mayors x 70,000 x 12 months	2,520,000 VT
	- Lord Mayor x 200,000 x 12 months	2,400,000 VT
	<b>TOTAL</b>	<b>9,480,000 VT</b>
b)	- Sitting allowance 8 miting/month = 96 miting per year minimum 96 x 8 Kaonseia x 5,000	3,840,000 VT
c)	- Total spending long Monthly Allowance wetem sitting allowance long wan year	13,320,000 VT

II. Order blong forma Minister Boulekone - 30/09/99  
Monthly Allowance blong 22 working days

	- Kaonselas - 5,000	
	- Deputy Mayors - 7,000	
	- Lord Mayor - 10,000	
a)	- 8 Kaonseia x 22 days x 5,000 x 12	10,560,000 VT
	- 3 Deputy Mayors x 22 days x 7,000 x 12	5,544,000 VT
	- Lord Mayor x 22 days x 10,000 x 12	2,640,000 VT
		18,744,000 VT
b)	Sitting allowance per Annum (Minimum)	
	- 96 x 4 Konsela x 5,000	1,920,000 VT
	- 96 x 3 Deputy Mayor x 7,000	2,016,000 VT
	- 96 x Lord Mayor x 10,000	960,000 VT
		4,900,000 VT
c)	- Total spending long wan year	18,744,000 VT
		23,640,000 VT

III. Difference bitwin Niu Standing Orders wetem  
Order blong Hon. Boulekone

- 23,640,000 - 13,320,000 = 10,320,000 VT

Annex 'C' - Page 5 of 15

Honorable Minister, picture blong tufala calculation, hemia niufala proposed Standing Orders wetem hemia we forma Minista I saenem hemi shoem klia se sapos yumi wandem sevem money blong kaonsel, blong mekem development, yumi should yusum niufala Standing Orders we mi bin submitim blong you saenem. Then bambae kaonsel hemi sevem ova long 10 million varu. Bat sapos you disagri blong saenem, bambae mifala I yusum Order we former Minista hemi bin saenem long 30 September 1999.

Olsem wan Mayor blong NLP, hemi dury blong mi blong mekem sure se wan kaonsel hemi work follem policy blong pati blong savem varu blong mekem development.

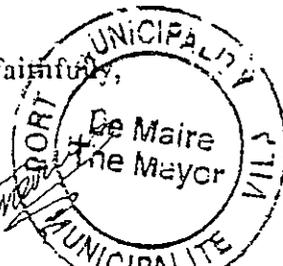
Honorable Minister, mi stap requestem you bakegen blong considerem mo saenem Standing Orders blong savem budget blong kaonsel.

Bambae mi livim matters ia long good hands blong you kasem 26 January 2000. Afta date ia, sapos kaonsel I no risivim anything, bambae mifala I follem legal Order we Hon. Boulekone I saenem mo I effective long 30 September 1999.

Mi biliv se bambae you tekem note long important matter ia abaot future blong kaonsel.

Tankio long attention blong you.

Yours faithfully,



Le Maire  
The Mayor

Patrick Crowby Manarewo  
Lord Mayor

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Annex C - Page 6 of 15  
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GOVERNEMENT  
DE LA  
REPUBLIQUE DE VANUATU

GOVERNMENT  
OF THE  
REPUBLIC OF VANUATU



MINISTÈRE DE L'INTÉRIEUR

MINISTRY OF INTERNAL AFFAIRS

State Law Office  
Received

MIA 2011/jr/bc

Patrick Crowby Manarewo  
Lord Mayor  
Municipality of Port Vila  
Town Hall, P.O. Box 99  
PORT VILA

04 APR 2000

by hand AA/S/4

28<sup>th</sup> March 2000

Dear Sir,

RE: PORT VILA MUNICIPAL - AMENDMENTS OF STANDING ORDERS AND COUNCIL ALLOWANCES

Further to my letter to you dated 22<sup>nd</sup> February 2000 on the above issue, I now wish to make the following comments in order to finally resolve this matter between us.

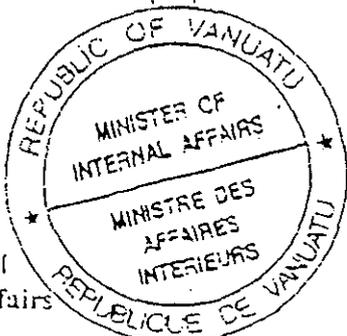
Following legal advice provided to my office and relevant information on the subject matter at hand, the Ministry is now in a suitable position in which it could resolve the situation.

We are of the understanding that the Council has agreed comply with the new Allowances Order. This is important and the Ministry applauds that decision.

Furthermore, the State Law Office has informed us that Councillors, including the Lord Mayor, have not received any allowances since January 2000. We are regretful for this and it must not continue any further. Therefore, we are urging you to consider the proposed Municipality (Standing Order) (Amendment) Order No. of 1999. The Ministry accepts that any amendments to the Standing Orders is a power vested with the Council and would therefore give its approval as soon as it is forwarded to the Ministry.

I take this opportunity to express my appreciation to you and the Council for your patience and understanding which has now led to a proper solution of the matter.

Yours Sincerely,



HON. BARNABAS TABI  
Minister for Internal Affairs

Cc: Attorney General, State Law Office  
SOI DG - MIA

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NRSE

MC. 1/1/9 - MT

Port Vila, 21 May 2002

NRSE

NO. 05/02 ORDINARY FULL COUNCIL MITING (CONT.2)

TOSDE 16 MAY 2002 - 4.30 PM

PORT VILA MUNICIPAL KAONSEL CHAMBER

Present

Lord Mayor Patrick Crowby Manarewo - Jeaman  
Deputy Lord Mayor John Lamai  
2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang  
3<sup>rd</sup> Deputy Lord Mayor Miller Rorine  
Councillor Paul Avock Hungai  
Councillor Joseph Aron  
Councillor Johnson Yoan  
Councillor Daniel Bule  
Councillor James Kalo  
Councillor Maurice Joe

Jeaman Lord Mayor Patrick Crowby Manarewo I then askem ol councillors blong oli debatem ol difren heads blong expenses blong budget 2002/2003.

B100 - Mazout - 13.000.000 VT

Councillor Paul Avock Hungai I comment se I gat increase blong 1.000.000 VT long head ia. Hemi explainem se figure we I budget for mazout hemi follem hamas we council I stap usum mo hemi talem se wanem we I stap ia hemi realistic follem tu increase long namba blong vehicle blong council.

Muv by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang. Seconded by 3<sup>rd</sup> Deputy Lord Mayor Miller Rorine.

So Resolved Unanimously.

Annex 'C' - Page 8 of 15

B129 - Road Taxes and Other Taxes - 900,000 VT

Councillor Paul Avock Hungai I comment se follem increase blong namba blong vehicles blong council. I need blong maintenem figure long head ia.

Councillor Daniel Bule I questenem whether council I mekem any work blong traem collectem smol revenue aot long road taxes.

Councillor Paul Avock Hungai I reply se wanem we I stap long head ia emi blong road taxes we council I mas pem I go long gavman from ol vehicles blong hem.

Muv by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang. Seconded by Councillor Johnson Yoan.

So Resolved Unanimously.

B130 - Salary and Staff training - 64,000,000 VT

Councillor Paul Avock Hungai I explainem se figure we I stap ia hemi cater tu for creation blong ol new post mo figure ia hemi realistic according long staff salaries.

Councillor Daniel Bule I askem sapos council I stap arrangem training blong ol staff.

Lord Mayor Patrick Crowby Manarewo I informem council se Tony Ata mo Wesley Takau I been attendem samfala training overseas. Tedei, offis I stap prepare blong sendem Malkom Dalesa wetem Stanley John I go long samfala workshop overseas.

Muv by Councillor Johnson Yoan. Seconded by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang.

So Resolved Unanimously.

B131 - Severance - 3,000,000 VT

Councillor Paul Avock Hungai I comment se I no gat change long head ia follem last budget mo head ia I cater for ol redundancies tu.

Muv by Councillor Joseph Aron. Seconded by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang.

So Resolved Unanimously.

B132 - Municipal Councillors Honoraries - 17,000,000 VT

Councillor Paul Avock Hungai I comment se I no gat change long head ia mo figure we I stap hemi realistic.

Annex 'C' - Page 9 of 13

Councillor Daniel Bule I askem sapos Council I save increasem special allocation blong 100,000 VT we ol councillor I entitle long hem long wan year.

Lord Mayor Patrick Crowby Manarewo I confirmem se special allocation ia I catter anda long head ia mo hemi tekem note long request blong councillor.

Muv by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang. Seconded by Councillor Johnson Yoan.

So Resolved Unanimously.

B133 - Financial fee - Loan repayment - 6,500,000 VT

Councillor Paul Avock Hungai I explainem se figure we I stap ia I gat reduction blong 1 million vatu mo figure hemi realistic.

Councillor Daniel Bule I questionem sapos council I gat best interest rate.

Lord Mayor Patrick Crowby Manarewo I reply se council I gat best rate wetem ANZ Bank mo hemi hope se bambae Westpac I givim semfala rate.

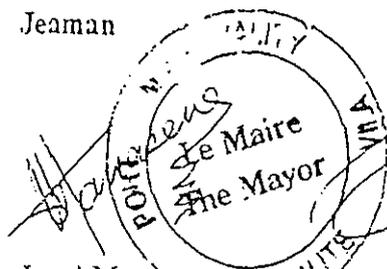
Muv by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang. Seconded by Councillor Johnson Yoan.

So Resolved Unanimously.

Jeaman Lord Mayor Patrick Crowby Manarewo I talem tankio long contribution blong ol membas mo hemi adjournem miting kasem tumoro Friday 17 May 2002 long 11.30 am. Hem I declarem miting I close mo hem I askem 3<sup>rd</sup> Deputy Lord Mayor Miller Rorine blong mekem closing prea. Time : 6.15 pm.

Minutes ia hem I saen olsem true mo correct rikod blong No. 05/02 (Cont.2) Ordinary Full Council Miting we I bin tek ples long Municipal Kaonsel Chamber long Tosde 16 May 2002 long 4.30 pm.

Jeaman

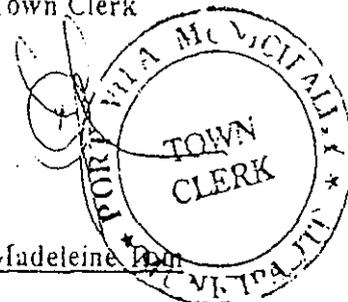


Lord Mayor  
Patrick Crowby Manarewo

Member

Councillor  
Paul Avock Hungai

Town Clerk



Madeleine

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MUNICIPALITÉ  
DE

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MC. 1/1/9 - MT

Port Vila, 29 November 2001

NO. 04/01 ORDINARY FULL COUNCIL MITING  
WEDNESDAY 28 NOVEMBER 2001 - 11.30 AM  
PORT VILA MUNICIPAL KAONSEL CHAMBER

Present

Lord Mayor Patrick Crowby Manarewo - Jeaman  
Deputy Lord Mayor John Lamai  
2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang  
3<sup>rd</sup> Deputy Lord Mayor Miller Rorine  
Councillor Paul Avock Hungai  
Councillor Johnson Yoan  
Councillor Joseph Aron  
Councillor Daniel Bule  
Councillor Maurice Joe  
Councillor James Kalo

Jeaman Lord Mayor Patrick Crowby Manarewo I kolem miting into orda. Hemi welkamem Councillors Daniel Bule, Maurice Joe mo James Kalo we oli kam blong joenem council for the first taem. Hemi then askem 3<sup>rd</sup> Deputy Lord Mayor Miller Rorine blong talem opening prea.

Jeaman Lord Mayor Patrick Crowby Manarewo I then askem ol members blong oli addem item 6 Councillor Priviledges long agenda.

Councillor Joseph Aron I Muv blong council I apprimum agenda wetem addition we Lord Mayor I proposem. Seconded by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang.

1. Agenda

1. Apprimum agenda
2. New time blong rubbish collection
3. Fest Napuan
4. Position blong 2<sup>nd</sup> Deputy Town Clerk
5. Security blong Market House
6. Councillors Priviledges

Agenda emi Unanimously Approved.

Councillor Daniel Bule I talem tankio long Lord Mayor from ol explenesen mo hem I voicem concern blong hem ia from we I nogud blong I gat sam bills I kam afta we event ia I pass.

Jeaman Lord Mayor Patrick Crowby I talem se how we komiti I ranem festival ia emi bisnis blong olgeta. Only samting we council I mekem emi blong bildim stalls, participate long sound system mo bringim in any musical group from Lifou. Hemi talem se I gat wan chapter head long budget blong council we I catter for festival ia mo I gat wan provision blong 1 million vatu. Council we I stap tedei bambae I votem se bambae emi wan policy blong hem blong sapotem Fest Napuan be any future council we I kam, bambae emi save reviewem decision ia.

Muv by Deputy Lord Mayor John Lamai, Seconded by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang.

**So Resolved Unanimously.**

#### 4. Position blong 2<sup>nd</sup> Deputy Town Clerk

Jeaman Lord Mayor Patrick Crowby Manarewo I informem ol members se long chart we council I been appruvum, I gat position blong 2<sup>nd</sup> Deputy Town Clerk mo position ia I budgeted for. Hemi informem ol members se follem opening blong extension blong market house, I need blong I gat wan man we I stap blong overseem ol work mo person we bambae council I recruitem long position ia, bambae hem nao I responsible blong raning blong market house. Hemi informem ol members se Deputy Town Clerk I been putum aot finis long news paper vacancy notice. Hemi askem sapos ol members I gat any comment.

Councillor Daniel Bule I askem se who nao bambae I mekem screening blong jusum wan person blong tekemap position ia.

Jeaman Lord Mayor Patrick Crowby Manarewo I reply se any recruitment blong council I pass fastaem long Executive Komiti then long Finance and Staff for recruitment. Hemi explenem se Finance and Staff Komiti blong Council nao hemi stap mekem ol recruitment. Lord Mayor I bringim back ol members I go long niufala chart blong council we I lukim market house I aot long responsibility blong environment unit. Hemi talem se market house I generatem abaot 12 million vatu long wan year mo I need blong I gat wan unit we I lukaotem. I need blong gat better control long cash collection so offis bambae I lukluk blong provaedem wan office space wetem wan computer blong officer in charge long market house. Tedei, council I chargem 400 VT blong 12 hours long wan table mo fee ia I includem use blong toilet mo shower. Fee witaot toilet mo shower emi 200 VT mo olgeta we I salem shells oli pem 100 VT.

Councillor Paul Avock Hungai I comment se I need blong council I recruitem wan responsible person blong tekemap position ia from we hem nao bambae I responsible long gudfala raning blong market house. Hemi Muv blong council I endorse advertisement blong position blong 2<sup>nd</sup> Deputy Town Clerk.

Seconded by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang.

So Resolved Unanimously.

5. Security blong Market House

Jeaman Lord Mayor Patrick Crowby Manarewo I informem ol members se advertisement I aot finis long news paper abaot security blong market house. Hemi talem se contract blong kampani we I stap provaedem security long market house I kam nao long end blong hem mo I need blong council I putum aot advertisement blong ol pipol we I interest long work ia oli apply. Application bambae I close long 07 November 2001.

Muv by 2<sup>nd</sup> Deputy Lord Mayor Florent Nalesabang, Seconded by 3<sup>rd</sup> Deputy Lord Mayor Miller Rorine.

So Resolved Unanimously.

6. Councillors Priviledges

Jeaman Lord Mayor Patrick Crowby Manarewo I informem ol members se hemi decide blong bringim issue ia I kam bifo long council blong harem view blong olgeta abaot priviledges blong ol councillors.

Lord Mayor I explenem se since hemi kam in olsem mayor long 1997, hemi been mekem samfala changes long standing orders blong council regardem allowances blong mayor, deputy mayors wetem ol councillors. Minister Robert Karie long that time nao I been saenem amendements ia. During time blong formør mayor Solomon Simon, council blong hem I been mekem wan proposed amendement bakegen I go long Minister mo long that time, interim minister blong internal affairs Hon. Willy Jimmy Tapangararua I been saenem. Taem we Minister Bulekone I kam olsem minister blong Internal Affairs, hemi been revokem section 23 blong Standing Orders ia we Willy Jimmy I saenem mo hemi mekem wan proposal. Wetem proposal blong Bulekone ia, Lord Mayor I kasem 10,000 VT long evri work we hemi mekem, wan deputy mayor 7,000 VT mo wan councillor 5,000 VT. Wetem amendement we Bulekone I saenem ia, I gat wan form we evri taem we wan councillor I carry aot wan duty long constituency blong hem, bambae hemi filimap mo sabmitim I kam long Town Clerk for payment. Form ia I specify se councillor I mas pruvum se hemi mekem wan wok mo tu provaedem ol receipt blong any monies we hemi spendem during course blong wok ia so that offis I save refundem hem.

Lord Mayor I further explenem se since taem ia, hemi been wokem aot se sapos ol councillors I usum method ia, bambae I very expensive long council. Hemi mekem exampol se hem hemi kamaot long area blong Tagabe mo sapos hemi visitim ol community blong hem, long wan week hemi save mekem over long 100,000 VT. Mo fasin ia I save bankraptem council.

Therefore, last council I been mekem wan proposal I go long then Minister blong Internal Affairs Hon. Barnabas Tabi blong wan councillor I karem 40,000 VT long wan manis, wan chairman blong any working komiti 60,000 VT, wan Deputy Mayor 70,000 VT mo Lord Mayor 200,000 VT plus housing allowance of 35,000 VT. Ol councillor I gat gratuity payment we I save paid out long end blong evri yia or long end blong term blong council (4 yia) depending long wish blong councillor. Long wan yia, ol councillor oli gat wan provision blong 100,000 VT we oli save usum towards constituency blong olgeta mo payment emi long form blong voucher nomo but I no long cash. Minister I been agree long proposal ia mo council I usum ol allowances ia nao kasem tedei.

Jeaman Lord Mayor Patrick Crowby Manarewo I informem ol members se reason why hemi decide blong bringim matter ia I kam bifo council emi from we long yesterday, State Law Office I sendem wan leta I kam long Town Clerk. Leta ia I givim long Town Clerk 24 hours blong hemi justifaem why nao ol councillors oli stap receivim allowances from se long save blong olgeta, ol councillors oli no sapos blong kasem any form ol allowances. Hemi talem se leta ia I written long wan way we I luk olsem se I gat misappropriation long ol funds blong council mo leta ia I givim instruction se sapos Town Clerk I fail blong reply in time, bambae olgeta I tekem wan legal action agensem council. Lord Mayor I expressesem view blong hem mo strong bilif blong hem se ol councillors oli ol elected members, semak olsem ol members of parliament. Olgeta I gat ol sapos we I electem olgeta to become councillors mo obviously, bambae ol pipol ia or ol votas blong olgeta bambae oli expectem blong ricivim samting I kam bak. Hemi talem se council I no stap spendem any public fund. Fund we council emi stap usum emi kamaot long ol tax payers blong hem mo gavman I nomo givim any grant long Port Vila Municipality since 1983. Hemi talem se I no gat any injection of public fund insaed long council blong allowem Minister blong givim instructions I kam long council. Hemi reiterem se council emi financially independent. Hemi talem se long 1998/1999 council I introducem priviledges blong ol councillors we emi 100,000 VT. Hemi askem ol councillors blong oli luksave importance blong olgeta, ol service delivery we oli mas givim back I go long ol pipol blong olgeta we oli votem olgeta. Hemi biliv se tedei I no gat wan man I slave mo man Vanuatu tedei I expectem blong ricivim wan reward long wok we hemi mekem. Laef blong tedei tu I no alao blong man I work for free. Jeaman Lord Mayor Patrick Crowby Manarewo I talem se wetem ol comments ia, hemi wantem se ol councillors oli givim views blong olgeta abaot issue ia.

Councillor Daniel Bule I givim sapos blong hem long evri comments we Lord Mayor I mekem. Hemi talem se sapos wan man I wantem stanap long municipal election, I mean se hemi expectem blong taem we bae I win, hemi givim back samting I go back long pipol we I votem hem, especially nao service delivery we evriwan I stap tokbaot. Hemi talem se taem we hemi stanap olsem wan councillor, hemi expectem blong I ricivim vatu long end blong evri manis. Hemi talem se sapos I no gat vatu, bambae I no gat wan man I prepare blong stanap olsem candidate long wan municipal election from we tedei, pipol I liv long vatu. Hemi talem se evriwan I gat family mo bambae hemi I expectem moa blong luk se allowance I increase. Hemi askem sapos council I save help aot wetem ol project we wan councillor I wantem carry aot. Hemi askem tu long Town Clerk outcome blong leta ia mo issue we I stap regardem ol councillors priviledges.

Concernem projects, Lord Mayor I reply se each councillor I gat raet long 100,000 VT per year mo watu ia oli save usum long any smol projects we oli tink se emi gud blong constituency blong olgeta. Hemi talem se council I luksave need we I stap be gavman I feel se olgeta I no should gat priviledge ia. Hemi addem se any councillor I save submittim I kam long council any project document blong council I considerem.

Town Clerk Madeleine Tom I informem ol councillors se last council I been mekem wan proposal I go long gavman blong Sope long that taem blong amendem CAP. 126, especially nao blong putum se ol councillors priviledges and allowances I catter for insaed long CAP. 126. Emia blong mekem se minister I no moa gat interference insaed long issue ia. Amendment ia I been go long DCO mo I been ready to be tabled long parliament long last November. Tedei, I gat interference blong minister from we councillors allowances I catter for insaed long Standing Orders but I no long CAP. 126. Follem change blong gavman, amendment ia I neva take ples. Town Clerk I informem ol members se lawyer blong council I stap deal naoia wetem leta blong State Law Office.

3<sup>rd</sup> Deputy Lord Mayor Miller Rorine I talem se CAP. 126 I givim paoa long council blong mekem Standing Orders mo Standing Orders I provided for councillors allowances. Ol councillor I nidim allowances blong givim back service I go long pipol we I electem olgeta mo emia emi wan way tu blong shoem appreciation blong olgeta. Evriwan I nidim watu blong liv long Port Vila, man I no save work for free. Taem we pipol I votem wan man, oli wait blong luk se wanem nao man ia bambae I mekem blong helpem olgeta or givim back service I go long olgeta. Therefore, hem olsem wan councillor, hemi stanap strong blong council I maintenem ol councillors priviledges olsem we I catter for long Standing Orders.

Councillor Daniel Bule I talem se ol explenesen we Town Clerk I givim oli clear mo hemi askem hem blong liaise gud wetem lawyer blong council blong savegardem priviledges blong ol councillors. Emi givim sapot blong hem long ol monthly allowances we ol councillors I stap ricivim mo hemi addem se wan councillor emi elected by the people, for the people. Therefore, bambae ol councillors I mas givim back service long pipol. Hemi askem tu sapos council I save considerem blong leftemap ol councillors allowances.

3<sup>rd</sup> Deputy Lord Mayor Miller Rorine I reiterem bakegen se last council I been push hard blong I gat amendment long CAP. 126 mo hemi talem se emi duty blong each councillor blong usum paoa we hemi gat long political party we oli representem blong luk se amendment ia I save go thru long parliament. Hemi talem se once councillors allowances I stap insaed long CAP. 126, bambae minister I no moa save interfere long issue ia. Hemi then askem strong blong council I maintenem mo adoptem councillors allowances as per Standing Orders.

Councillor Paul Avock Hungai I biliv se State Law Office I mekem enquiry ia long behalf blong Minister blong Internal Affairs. Hemi talem se matter ia I stap finis long hand blong lawyer blong council blong deal wetem in order blong sevgardem right blong ol councillors. Hemi talem se wanem priviledge we wan councillor hemi gat, emi legal from we Minister I saenem Standing Orders we council I stap usum tedei.

Councillor Paul Avock Hungai i talem se evriwan I mas push hard blong amendment blong CAP. 126 I pas thru long parliament. Ol councillors oli stap blong lukluk long welfare blong pipol we I electem olgeta mo hemi sapotem proposal blong Councillor Daniel Bule se I mas gat increase long monthly allowance blong ol councillors.

Follem query blong Councillor Daniel Bule, Lord Mayor I reiterem bakegen se any councillor I save forwardem wan proposed project document I kam long council for consideration. Hemi talem se despite ol difren political parties we evriwan I kamaot long hem, as a councillor, evriwan I mas work long benefit blong whole ward we oli representem. Hemi talem se once wan development emi carried out long wan area, emi blong use blong evriwan. Hemi informem Councillor Daniel Bule se olgeta I gat privilege tu blong usum office facilities but I no salary nomo. Hemi then askem ol members blong votem wan resolution.

Councillor Daniel Bule I Muv blong Council I maintenem Standing Orders we I been saen long 1999 we I tokbaot councillors allowances and privileges.

Seconded by 3<sup>rd</sup> Deputy Lord Mayor Miller Rorine.

So Resolved Unanimously.

From we I nomo gat any other matters blong tokbaot, Jeaman Lord Mayor Patrick Crowby Manarewo I talem tankio long contribution blong ol membas. Hemi declarem miting I close mo hemi askem Councillor Maurice Joe blong mekem closing prea.  
Time : 12.55 pm.

Minutes ia hem I saen olsem true mo correct rikod blong No. 04/01 Ordinary Full Council Miting we I bin tek ples long Municipal Kaonsel Chamber long Wednesday 28 November 2001 long 11.30 am.

Jeaman

Member

Town Clerk

Lord Mayor  
Patrick Crowby Manarewo

Deputy Lord Mayor  
John Lamai

Madeleine Tom