

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT
ON THE
GOVERNMENT CONTRACT
GRANTED TO IFIRA WHARF &
STEVEDORING (1994) LTD**

26 August 2002

0197/2002/10

PUBLIC REPORT ON THE GOVERNMENT CONTRACT GRANTED TO IFIRA WHARF & STEVEDORING (1994) LTD

SUMMARY

Outline of events (see further page 5)

In June 2000, Ifira Wharf and Stevedoring (1994) Ltd ("IWS") paid an amount of VT13.9 million to the Vanuatu Government, reportedly as dividend in respect of the Government's shareholding in IWS. In July 2000, the Council of Ministers decided to renew the existing contract with IWS for stevedoring services for 15 years, without reviewing the terms of the contract. This was notwithstanding advice from the Development Committee of Officials that the contract for operation of stevedoring services at Ifira Wharf be put to tender for three years after reviewing the existing contract.

The Ministry for Infrastructures and Public Utilities and the Central Tenders Board subsequently confirmed that no tender process was undertaken in relation to the stevedoring contract. The State Law Office stated that advice had been given both to the Hon. Reginald Stanley and the Council of Ministers that the contract with IWS could not legally be extended and that the provision of stevedoring services must be put to tender in accordance with the Government Contracts & Tenders Act.

Findings (see further page 7)

- There is evidence that the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley acted unlawfully, committing breaches of the Government Contracts and Tenders Act, Financial Regulations of the Republic of Vanuatu and the Leadership Code Act.
- There is also evidence that all members of the Council of Ministers at the time committed breaches of the Leadership Code Act.
- There is no presently enforceable contract for the provision of stevedoring services at Ifira Wharf.
- IWS acted unreasonably when it ended into a purported contract for stevedoring services that was legally void.
- The Ombudsman cannot determine whether there is any link between the decision by the Government to extend the contract to IWS for 15 years and the decision by IWS, shortly beforehand, to pay a dividend of VT13.9 million to the Government.
- There is confusion about the Government's actual shareholding in IWS and a planned transfer of part of its shareholding to Vila Municipality, SHEFA and TAFEA provinces has not occurred.

Recommendations (see further page 10)

The Ombudsman recommends that the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley, be prosecuted without delay for multiple breaches of Government Contracts and Tenders Act, Financial Regulations of the Republic of Vanuatu and the Leadership Code Act. Prosecution of all members of the Council of Ministers at 13 July 2000 for breaches of the Leadership Code Act should also be considered.

The Ombudsman also recommends that stevedoring services at Ifira Wharf should be properly put to tender, that uncertainty about the Government's present and proposed shareholding in IWS be resolved and that the management of IWS familiarise itself with legal requirements for any future government contract.

TABLE OF CONTENTS

| | |
|--|----|
| SUMMARY | 2 |
| 1. JURISDICTION..... | 5 |
| 2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED..... | 5 |
| 3. RELEVANT LAWS, REGULATIONS AND RULES | 5 |
| 4. OUTLINE OF EVENTS..... | 5 |
| 5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM..... | 6 |
| 6. FINDINGS..... | 7 |
| 7. RECOMMENDATIONS..... | 9 |
| 8. INDEX OF APPENDICES | 11 |

1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act and the Leadership Code Act allow the Ombudsman to look into the conduct of government, government agencies, related bodies, and Leaders.
- 1.2 Under section 1 of the Ombudsman Act, a "government agency" includes any company incorporated under the Companies Act in which the Government has an interest, such as Ifira Wharf & Stevedoring (1994) Limited ("IWS").
- 1.3 The Ombudsman can also enquire into the conduct of the Hon. Reginald Stanley, the then Minister of Infrastructure & Public Utilities, and the then Council of Ministers, as they were all "leaders" under article 67 of the Constitution and the Leadership Code Act.

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, Ombudsman Act and Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts about the decision by the Council of Ministers purporting to grant an extension of 15 years to the contract allowing IWS to operate Ifira Wharf, without seeking tenders as required by law.
- 2.3 This Office collects information and document by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

Relevant parts of the following laws are reproduce din **Appendix L**

OMBUDSMAN ACT NO. 27 OF 1998
GOVERNMENT CONTRACTS AND TENDERS ACT NO.10 OF 1998
FINANCIAL REGULATIONS OF THE REPUBLIC OF VANUATU
CONSTITUTION OF THE REPUBLIC OF VANUATU
LEADERSHIP CODE ACT NO.2 OF 1998

4. OUTLINE OF EVENTS

- 4.1 On 16 June 2000, IWS made a payment of VT13.9 million to the Government of the Republic of Vanuatu. This payment was reported as representing a dividend to the Government of profits for the previous six months, determined by reference to the Government's beneficial shareholding in the company - said to be 49%.
- 4.2 On 28 June 2000, the Development Committee of Officials met in a normal session and, after considering a Council of Ministers paper (**Annexure E**) in relation to the stevedoring contract for Ifira Wharf, made various recommendations (see **Annexure D**) including:
 - (a) That stevedoring services for Ifira Wharf should be tendered out for a period of three years. This three year term would allow Ports and Marine to enter into a new contract for stevedoring in Port Vila and Luganville after being corporatised.
 - (b) That the Government's 49% shareholding should be re-allocated:

| | |
|------------------------|-----|
| Government | 19% |
| Port Vila Municipality | 10% |
| SHEFA province | 10% |
| TAFEA province | 10% |
 - (c) The existing contract for stevedoring services should be reviewed.

- 4.3 On 13 July 2000, the Council of Ministers met for their ordinary meeting No. 97 and decided (see **Annexure F**):
- (a) That the existing contract be renewed for a further period of 15 years, without being reviewed;
 - (b) That the Government's 49% shareholding should be re-allocated:

| | |
|------------------------|-----|
| Government | 34% |
| Port Vila Municipality | 5% |
| SHEFA province | 5% |
| TAFEA province | 5% |
 - (c) That the State Law Office was to be instructed to prepare an instrument documenting the extension for signing.
- 4.4 In a letter dated 8 January 2001, the Ministry for Infrastructures & public Utilities confirmed to the Ombudsman that there "was no tender for the Stevedoring at Port Vila Wharf" (**Annexure B**).
- 4.5 In a letter dated 8 January 2001, Ifira Trustees Limited disputed the jurisdiction of the Ombudsman to investigate the affairs of IWS "as the nature Company of chair [sic] is private" (**Annexure C**).
- 4.6 In a letter dated 26 January 2001, the Central Tenders Board advised the Ombudsman that the Board had no records on file relating to any tender process for Ifira Wharf stevedoring (**Annexure G**).
- 4.7 By a letter dated 25 July 2001, the State Law Office advised the Ombudsman that it "did not prepare any documents or instruments for execution last year by the Maoutamate Government in relation to Ifira Stevedoring" (**Annexure H**).
- 4.8 In a letter dated 13 December 2001, the State Law Office further advised the Ombudsman that advice had been given both to the Hon. Reginald Stanley and the Council of Ministers that the contract with IWS:
- Could not legally be extended; and
 - That the provision of stevedoring services must be tendered in accordance with the Government Contracts & Tenders Act (**Annexure I**).
- 4.9 In a letter dated 14 January 2001, the Ministry for Infrastructures & Public Utilities made the following comments in relation to the extension to IWS (**Annexure J**):
- (a) The extension of the concession contract to IWS-94 appear [sic] to have been executed on the decision of the previous Vanuatu Government through the Council of Ministers;
 - (b) The execution of the CoM decision was done without first obtaining the State Law Office's comments of the Final Draft;
 - (c) It has always been the general view that precedents were set with UNELCO and Telecom Vanuatu extension agreements where s7 of the Act has not been followed.

While this Ministry does not wish to steer away from the rule of law I believe it would be wise to bring to your awareness that we are dealing with a full fledged Ni-Vanuatu owned company that is managed by the very land owners of the site where the main wharf and facilities are located.

5. RESPONSES BY THOSE WITH FINDINGS 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 prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.

5.2 No responses were received to the working paper.

6. FINDINGS

6.1 **Finding 1:** **The Ombudsman finds there is evidence that the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley, acted unlawfully in obtaining the extension of the Ifira Wharf contact without complying with the provisions of the Government Contracts and Tenders Act.**

6.1.1 There is evidence that the Hon. Reginald Stanley breached the following provisions of the Government Contracts and Tenders Act:

| Section | Provision | Penalty on conviction |
|-----------------|--|--|
| Section 3(1) | All Government contracts must be in writing | Fine not exceeding VT 1 million or imprisonment not exceeding one year |
| Section 3(3)(d) | Must obtain legal advice on the legal aspects, implications and appropriateness of the contract | Fine not exceeding VT 1 million or imprisonment not exceeding one year |
| Section 3(3)(f) | Must use a competitive and transparent process when deciding to whom the contract should be awarded, including tender processes when prescribed | Fine not exceeding VT 1 million or imprisonment not exceeding one year |
| Section 3(3)(g) | Must include certain information with a written submission to Council of Ministers, including draft of proposed agreement and certification by Attorney-General that procedures required by law have been followed | Fine not exceeding VT 1 million or imprisonment not exceeding one year |
| Section 8 | Must comply with the tendering process specified in the Finance Regulations | Fine not exceeding VT 1 million or imprisonment not exceeding one year |

6.2 **Finding 2:** **The Ombudsman finds there is evidence that the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley, acted unlawfully by not obtaining three written tenders for the contract.**

6.2.1 Regulation 361(3) of the Financial Regulations of the Republic of Vanuatu states that, where the cost of services exceeds VT 1 million, at least three written tenders must be obtained and submitted to the Central Tenders Board for evaluation and awarding of the contract. The Central Tenders Board has no awarding of being involved with any tender process for stevedoring at Ifira Wharf.

6.3 **Finding 3:** **The Ombudsman finds there is evidence that members of the then Council of Ministers, including the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley, breached the Leadership Code Act.**

6.3.1 The following is a list of the breaches of the Leadership Code Act (and, where applicable, the Constitution) for which the Ombudsman has found evidence. The breaches arise from unlawfully entering into the contract with IWS, as well as purporting to enter into a contract that is no longer legally binding:

| Section | Provision | Penalty on conviction |
|------------------|--|---|
| Article 66(1)(c) | A leader must not endanger or diminish respect for and confidence in the integrity of the Government of Vanuatu | Fine not exceeding VT 5 million or imprisonment not exceeding 10 years |
| Section 3 | A leader must avoid behaviour likely to bring his or her office into disrepute | Fine not exceeding VT 2 million |
| Section 3 | A leader must ensure that he or she is familiar with and understands the laws that affects the area or role of his or her leadership | Fine not exceeding VT 2 million |
| Section 13(1)(a) | A leader must comply with and observe the law. | Fine not exceeding VT 5 million or imprisonment not exceeding 10 years. |
| Section 28, 29 | Failing to comply with another enactment is a breach of the Code. | Fine not exceeding VT 2 million. |

6.3.2 Additional penalties such as dismissal, disqualification and loss of employment benefits may also be imposed by the Court on conviction.

6.3.3 Section 16 of the Government Contracts and Tenders Act makes it clear that the law intends leaders to be subject, on conviction, to penalties under the Government Contracts and Tenders Act, as well as penalties under the Leadership Code Act.

6.3.4 A list of the members of the Council of Ministers as at 13 July 2000 (the date of the decision) is included as **Annexure K**.

6.4 **Finding 4:** **The Ombudsman finds there is evidence that the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley, and the then Council of Ministers, acted unreasonably, failed to take into account relevant consideration by ignoring the recommendations of the Development Committee of Officials and may have taken into account irrelevant considerations in reaching their decision.**

6.4.1 The Development Committee of Officials specifically recommended (**Annexure D**) that the contract should be:

- Tendered out;
- Awarded for three years only, to facilitate corporatisation of Ports and Marine; and
- Reviewed by the State Law Office.

6.4.2 The decision reached by the then Minister and Council of Ministers was contrary to all three of these recommendations and the record of decision (**Annexure F**) makes no mention of the recommendations having been considered.

6.4.3 The record the decision does not indicate what considerations were taken into account by the Council of Ministers in making its decision.

6.5 **Finding 5:** **The Ombudsman finds that there is at present no legally enforceable contract for the provision of stevedoring services at Ifira Wharf.**

6.5.1 Under section 7 of the Government Contracts and Tenders Act, the purported contract between the Government and IWS is of no effect and not binding on the Government.

6.5.2 This prejudices both the people and businesses of Vanuatu, who rely on orderly stevedoring services being provided in the future, and IWS as a government agency, since the Government can decide to put stevedoring services to tender at any time.

6.6 **Finding 6:** **The Ombudsman finds evidence that IWS, as a government agency, acted unreasonably by purporting to enter into a contract that was not legally binding.**

6.6.1 IWS should have sought advice to ensure that the extension of the contract was valid in order to protect the interests of its shareholders, including the Government.

6.7 **Finding 7:** **The Ombudsman is unable to say whether the decision by the Government to extend the contract to IWS for 15 years is linked to the decision by IWS, shortly beforehand, to pay a dividend of VT 13.9 million to the Government.**

6.7.1 There is only circumstantial evidence, namely the proximity of the payment and the subsequent decision to extend the contract, to support this view.

6.8 **Finding 8:** **The Ombudsman finds that there is confusion about the Government's actual shareholding in IWS.**

6.8.1 While the Government is consistently referred to as having a 49% beneficial shareholding in IWS, records from the Vanuatu Financial Services Commission dated 11 January 2002 (**Annexure A**) show that the shareholding structure has been, since 4 April 1995:

| | |
|--------------------------|--------------|
| * Ifira Trustees Limited | 49 "A" class |
| * Government of Vanuatu | 51 "A" class |

No special rights are listed as attaching to these shares and there are no other shares on issue.

6.9 **Finding 9:** **The Ombudsman finds that the proposed transfer of part of the Government's shareholding to local and provincial governments has not occurred.**

6.9.1 The Development Council of Officials recommended that the Government transfer 30%, divided equally amongst Port Vila Municipality, SHEFA and TAFEA provinces. The Council of Ministers resolved only to transfer 15%, again divided equally amongst the three other governments mentioned above. Financial Services Commission records, however, show that no share transfers had taken place as at 11 January 2002 (see **Annexure A**).

7. RECOMMENDATIONS

7.1 **Recommendation 1:** That the then Minister of Infrastructures & Public Utilities, the Hon. Reginald Stanley, be prosecuted without delay for breaches of:

- Government Contracts and Tenders Act No. 10 of 1998;
- Financial Regulations of the Republic of Vanuatu; and
- Leadership Code Act No.2 of 1998.

7.2 **Recommendation 2:** That the Public Prosecutor consider legal action against the remaining members of the Council of Ministers at the time of the decision (listed in **Appendix K**) for breaches of the Leadership Code Act No. 10 of 1998.

- 7.3 **Recommendation 3:** That the Government put to tender the right to provide stevedoring services at Ifira Wharf, following procedures set down by law. Terms of the proposed contract should be determined in close consultation with the State Law Office.
- 7.4 **Recommendation 4:** That the apparent misapprehension as to the Government's shareholding in IWS be corrected.
- 7.5 **Recommendation 5:** That effect be given to the Council of Ministers' decision to re-distribute part of the Government's shareholding in IWS to Port Vila Municipality, SHEFA province and TAFEA province and the appropriate notifications lodged with the Financial Services Commission.
- 7.6 **Recommendation 6:** That the management of IWS familiarise itself with legal requirements for government contracts and ensure that, in order to protect the interests of its shareholders, any subsequent contracts are enforceable before they are entered into.

Dated the 26th day of **August 2002.**



Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A** Financial Services Commission profile of Ifira Wharf & Stevedoring (1994) Limited.
- B** Copy of letter dated 8 January 2001 from Ministry of Infrastructures & Public Utilities to the Ombudsman.
- C** Copy of letter dated 8 January 2001 from Ifira Trustees Limited to the Ombudsman.
- D** Copy of record of decision of Development Committee of Officials from normal session meeting held on 28 June 2000.
- E** Copy of Council of Ministers paper (undated) tabled by Hon. Reginald Stanley, subject: The Stevedoring Contract - Port Vila Wharf.
- F** Copy of record of decision No. 480 of Council of Ministers from ordinary meeting No. 97 held on 13 July 2000.
- G** Copy of letter dated 26 January 2001 from Central Tenders Board, Ministry of Finance and Economic Management, to the Ombudsman.
- H** Copy of letter dated 25 July 2001 from State Law Office to the Ombudsman.
- I** Copy of letter dated 13 December 2001 from State Law Office to the Ombudsman.
- J** Copy of letter dated 14 November 2001 from Ministry of Infrastructures & Public Utilities to the Ombudsman.
- K** List of Ministers as at 13 July 2000.
- L** Relevant laws



Profile of Registration 005216: IFIRA WHARF AND STEVEDORING (1994)

General Info

| | |
|--------------------|--|
| Name | IFIRA WHARF AND STEVEDORING (1994) LIMITED |
| Type | Standard Local Company |
| Established | in Vanuatu |
| Registered | Under Nr 005216 04 April 1995 |
| Status | Active (No Special Condition) |
| Nature of Business | Stevedoring & associated activities |
| Address | Box 95 Moore Stephens House Kumul Highwa Port Vila Efate |
| Representative | MOORE STEPHENS |
| Phone | 22159 |
| Fax | 22276 |
| Last Update | 11 January 2002 by TIM |

Directors

| | |
|-----------|----------------------------|
| Secretary | ASTROLABE NOMINEES LIMITED |
| Director | Kalpokor Kalsakau |
| | Mantoi Kalsakau |
| | Kalia Mangawai |
| | Kaltabau Kiri |
| | Seru Korikalo |
| | Nato Taiwia |
| | Glinton Kalfabun |
| | Autate Kalpukai |
| | Aloani Chichirua |
| | Timothy Kalterekie |
| | Kalmet Kaltabang |

Capital Structure

| | |
|---------------|---------------------------------|
| 04 April 1995 | 25,000,000 Vatu Capital |
| | 25,000,000 Vatu Paid Up Capital |

Issued Shares

100 'A' Shares @ 100 Ordinary Share

Share Holders

| | |
|------------------------|---|
| Ifira Trustees Limited | 49 'A4' Shares Value 4,900 since 04/04/1995 |
| The Government Of The | 51 'A4' Shares Value 5,100 since 04/04/1995 |

End of Report



FAX: 27/40

GOVERNMENT OF THE
REPUBLIC OF VANUATU
MINISTRY OF INFRASTRUCTURES
& PUBLIC UTILITIES
Private Mail Bag 057, Port Vila
Tel: (678) 22 790

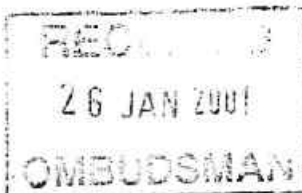
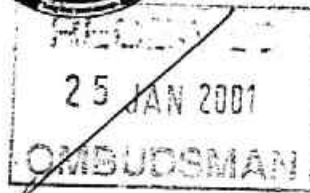


GOUVERNEMENT DE LA
REPUBLIQUE DE VANUATU
MINISTRE DES INFRASTRUCTURES
& SERVICES PUBLIQUES
Sac postal privé 057, Port Vila
Fax: (678) 27714

Ref: 140/22

Date: 8/1/01

Hannington G Alatoa
Ombudsman of the Republic of Vanuatu
PMB 057
Port Vila



FAXED
26/01

Dear Sir,

RE: NON-TENDERING FOR NEW IFIRA WHARF STEVEDORING (IWS) CONTRACT

Apologies for the late respond to your enquires, it must be an oversight by this office.

There is nothing much to say about the tendering process because there was no tendering process. I would try to answer your queries as listed in your letter.

- 1) There was no tender for the Stevedoring at Port Vila Wharf.
- 2) Your office should enquire through the Secretary to the CoM for the actual date the CoM made the decision to award the 15-year contract to IWS.
- 3) No Tender Board meeting because there was no tender for the Stevedoring at the Port Vila Wharf.
- 4) I don't have a copy of the signed 15-year contract but your office may want to check with the State Law Office.
- 5) You might obtain the information on whether the IWS is Partly government owned company from the State Law Office. It was indicated that the 15-year contract indicates again the 41% and the 51% shares between the Government and the IWS.

I know that this is not much of assistance but I hope that the information that you might from the State Law Office would be of more assistance in your investigation.

Yours Faithfully,


Manasseh Tary
Director General
Ministry of Infrastructures
& Public Utilities



ITL

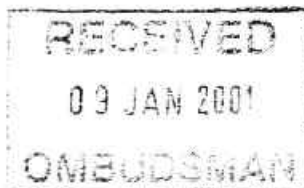
Annexure C

HGA

Ifira Trustees Limited

In trust for the Indigenous people of Ifira Island

Ifira Wharf Road
P.O. Box 259 - Port Vila - Vanuatu
Telephone: (678) 24351 - Facsimile: (678) 25351



8 January 2001

Mr. Hannington Alatoa
Ombudsman
PMB 081
Port Vila

RE: EXTENSION PORT VILA WHARF CONCESSION

Thank you for your letter of 3 January 2001.

With respect my position remains one and the same.

If you wish to investigate the 49% proportion of IWS (94) Limited, you are at liberty to direct your investigations to government.

Please understand as the nature of the Company of chair is private or the greater proportion thereof being private it becomes in excess of your jurisdiction to so investigate the company.

Yours sincerely


.....
Chief Manto Kalsakau III
Chairman
Ifira Trustees Limited (ITL)





CONFIDENTIAL

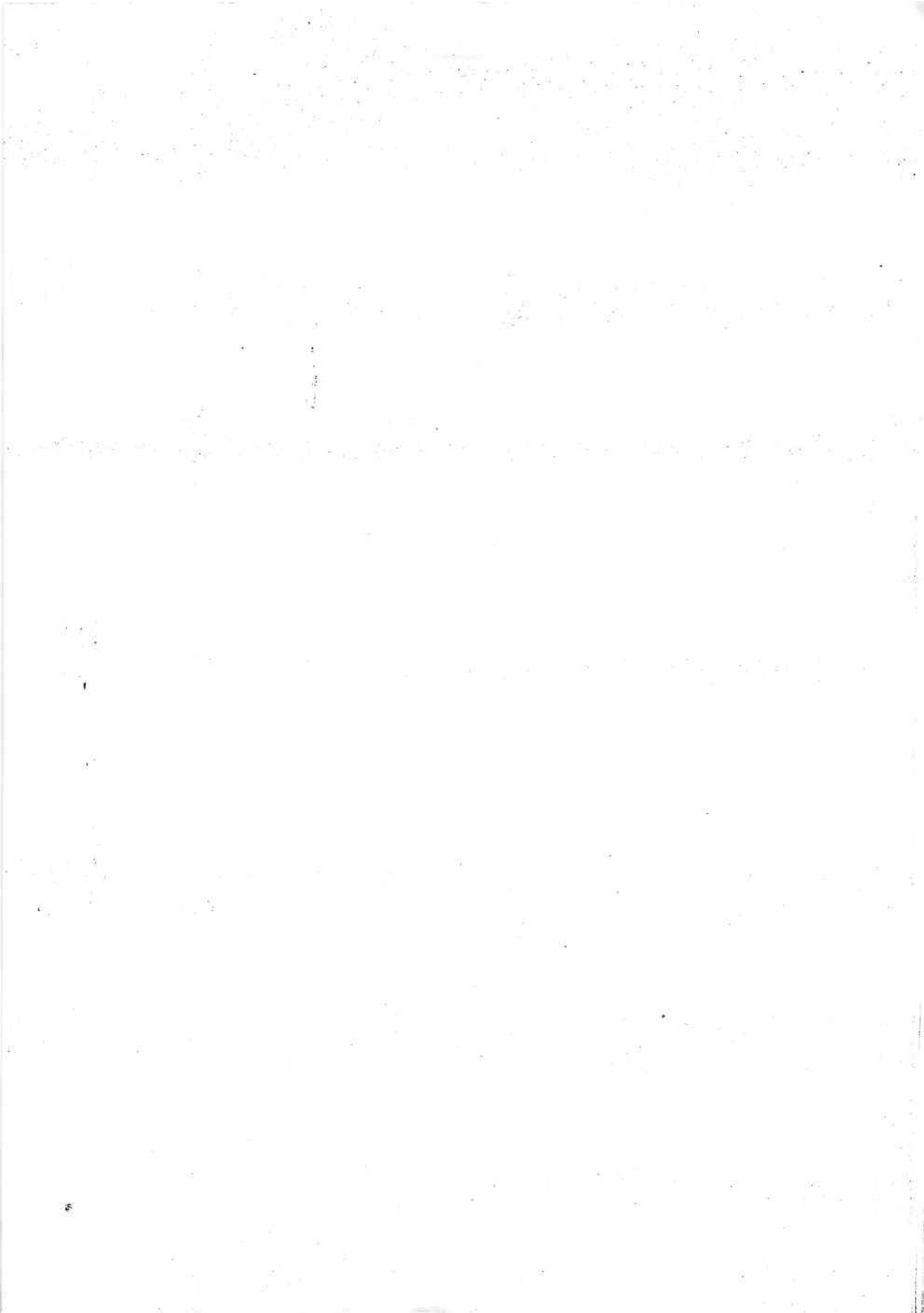
DEVELOPMENT COMMITTEE OF OFFICIALS (DCO)
FOR
THE COUNCIL OF MINISTERS (COM)

The Development Committee of Officials (DCO) met in a normal session on 28th June 2000 and considered COM papers and made the following recommendations:

1. The Stevedoring Contract – Port Vila Wharf:

DECISION: DCO agreed with the proposal and advised COM that:

- (a) The Stevedoring Services should be tendered out. The proposed duration of the contract is to be 3 years;
- (b) When Ports & Marine is corporatized this new corporation will enter into a new contract with the two stevedoring in Port Vila and Luganvillie. The new contracts will have new terms and conditions and will supersede this proposed tender contract of 3 years;
- (c) The reallocation of Government's 4% shares, should be as follows,
 - 1. Government 19%
 - 2. Port Vila Municipality 10%
 - 3. SHEFA Province 10%
 - 4. TAFEA Province 10%
- (d) The existing contract is to be reviewed.



SECRET

COUNCIL OF MINISTERS

Tabled by: Hon. Reginald Stanley
Minister of Infrastructure & Public Utilities

Subject: THE STEVEDORING CONTRACT - PORT VILA WHARF

Proposal:

The Council of Ministers to consider and endorse the following;

- a) The extension of the Wharf and Stevedoring Contract to 15 years.
- b) The reallocation of the Governments shareholding of 49 % to include SHEFA PROVINCE, TAFEA PROVINCE and PORT VILA MUNICIPAL COUNCIL.

Background:

In 1986 the Government and Ifira Stevedoring signed a contract for Ifira Stevedoring to provide the following services at the Port Vila Wharf,

- a) Handling of international cargoes of coastwise ships making use of the Port Vila Wharf
- b) All operations dealing with the loading and unloading of international cargoes of ships whether on the wharf or at anchorage and within the limits of Port Vila Harbour or by barge.
- c) Providing enough manpower, sufficient and appropriate equipment and machinery to carry out the above responsibilities.

The contract was for a period of 5 years and it ended in October 1991. After the 5 years period the contract was never officially extended. In 1994/1995 contracts were drafted by both the Government and the Ifira stevedoring. There was no agreement reached on these drafted contracts. The contract is now overdue for review.

The Port Vila Wharf Management and Stevedoring Contract was awarded to the Ifira Wharf and Stevedoring Company Ltd in a Joint Venture Partnership with 51 % Shareholding to Ifira Trustees Limited and 49 % to the Government of Vanuatu.

During the starting of the operation of Stevedoring, the contract is for a 5 years term. The term of 5 years for a contract in any Stevedoring operation is regarded as not adequate for a stevedoring company to upgrade its equipment and machinery. It is therefore considered that a 15 Year Term of Contract is sufficient enough period to start upgrading stevedoring equipment and machinery that are more technologically advanced.

The 15 years contract will be justified, as there would be numerous benefits that could be derived simultaneously and financially in the best of interests of the Government of the day for the following;

Annexure E Page 2

- a) With an extended period, the company could be able to restructure its operations over a longer period to accommodate the acquisition of new machinery and equipment and thus improve its financial performance. This would also improve the service provided by the company.
- b) With an improved financial performance, the Government could effectively receive a greater dividend annually.

The current reform programs provide the Government with the mandate to promote and facilitate as much as it can, Ni - Vanuatu business entities in all forms of businesses. In this context the Ifira Wharf & Stevedoring Company Ltd is a fully owned indigenous business entity and its majority shareholder is the Ifira Trustees Ltd.

Financial Implication:

The dividend from the Ifira Stevedoring was not included in this year's Government revenue. The Government share in the company is 49%. With the new contract extension, the Government proposes to divide the 49% between the Government, Port Vila Municipality, Shefa Province and Tafea Province. The proposal is to reallocate some of the Government revenues to the Provincial and Municipal institutions to help improve their services to the people.

The proposed breakdown of the 49% of Government share is as follows,

- a) 20 % - Government of Vanuatu
- b) $\frac{5}{10}\%$ - Port Vila Municipal Council
- c) $\frac{5}{10}\%$ - SHEFA Province
- d) $\frac{5}{10}\%$ - TAFEA Province

Legal Implication

The State Law Office is to prepare the instrument for the extension of the contract to 15 years.

Recommendation:

The Council of Ministers is respectfully requested to endorse the following:

- a) The term of the contract be extended to 15 Years to Ifira Wharf and Stevedoring Company Ltd.
- b) The 49 % Shareholding of Government in IWS Ltd be reallocated to include 20 % for the Government, $\frac{5}{10}\%$ for the Port Vila Municipality, $\frac{5}{10}\%$ to SHEFA Province and $\frac{5}{10}\%$ to TAFEA Province.

$\frac{5}{10}\%$

$\frac{5}{10}\%$

$\frac{5}{10}\%$

- c) The State Law Office be instructed to prepare instrument for signing the extension upon approval by Council of Ministers.
- d) Ifira Wharf & Stevedoring Ltd re-incorporate the company bearing the name "Ifira Wharf & Stevedoring Company Limited 2000" that will reflect Shareholding capacity as above said in (c) of the recommendations.



GOVERNMENT OF THE
REPUBLIC OF VANUATU

COUNCIL OF MINISTERS

GOUVERNEMENT DE LA
RÉPUBLIQUE DU VANUATU

LE SECRÉTAIRE-GÉNÉRAL

20/7/2000

Hon. Depiuti Praem Minista mo
Minista blong Infrastrakja mo ol Pablik Utility [MP]
Vanuatu Gavman

Hon. Mr. Stanley Reginald,

Decisen 480: Stevedoring kontrak - Port Vila Wof

Long 13 Julae 2000, Kaonsel blong Minista I bin holdem namba 97 odineri miting blong hem.

Long taem ia, Kaonsel blong Minista ibin disaed blong apruvum decisen antap ia wetem ol toktok se:

- a) Term blong kontrak emi extend igo long 15 yia igo long Ifira Wof mo Stevedoring (IWS) Kampani Ltd;
- b) 49% shareholding blong Gavman long IWS hemi rialoketed blong inkludim 34% igo long Gavman, 5% igo long Port-Vila Munisipaliti, 5% igo long Shefa Provins mo 5% igo long Tafea Provins;
- c) Stet Lo Ofis I priperem instrumen blong saening blong extenson blong kontrak, afta we Kaonsel i apruvum;

- d) Ifira Wof mo Stevedoring Ltd oli re-inkorporetem Kampani mo putum nem "Ifira Wof mo Stevedoring Kampani Limited 2000" blong riflektem shareholding kapasiti olsem we istap long c) antap.

Tankio.

Nadine Alatou
Sekretari-Jenerol
Kaonsel blong Minista



Cc - Ekselensi Hed blong Stet
Cc - Hon. Praem Minista
Cc - All Hon. Minista
Cc - Atoney-Jenerol
Cc - All Daarekta-Jenerol



GOVERNMENT
OF THE REPUBLIC
OF VANUATU
Central Tenders Board
Ministry of Finance and
Economic Management
Private Mail Bag 008
Vanuatu (South West Pacific)

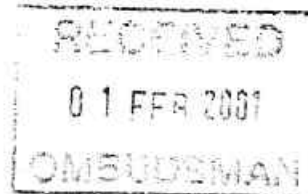
Annexure G



HGA
GOUVERNEMENT DE
LA REPUBLIQUE
DE VANUATU
**Conseil d'étude des
offres**
Ministère des Finances et de
la Gestion Economique
Sac Postal Confidential 008
Vanuatu (Pacific Sud Ouest)

Tel (678) 22043/22605 Fax (678) 23087

Mr Hannington Alatoa
Ombudsman
Office of the Ombudsman
PMB 081
Port Vila



26 January, 2001

Dear Sir

ALLEGED NON -TENDERING FOR IFIRA WHARF STEVEDORING

Thank you for your 03 January follow-up letter concerning the above matter. I also apologise for this late reply whilst waiting the return of our secretary who was until recently on an overseas mission.

Your instructions clearly state I cannot discuss the matter of investigation with anyone except my lawyer, however in order to make inquiries I have had to ask our secretary whether he had been able to track down any further information. He has advised we have no records on file relating to the matter.

I am therefore unable to provide additional information at this time.

Yours sincerely,


Meto Nganga
Chairman

Annexure H

Private Mail Bag 010
Port Vila
Vanuatu
South West Pacific

Telephone : (678) 25421
Fax : (678) 25421



Our Ref: AG/8/1/2/VM
our Ref: 3104/0197/L68/hb

STATE LAW OFFICE

25 July 2001

Mr Hannington Alatoa
Ombudsman
Office of the Ombudsman
PMB 081
Port Vila

RECEIVED

27 JUL 2001

OMBUDSMAN

Dear Mr Alatoa,

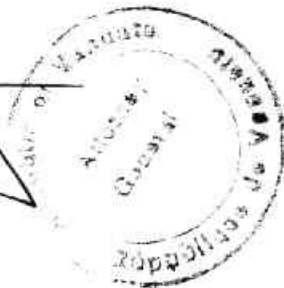
Re: Ifira Stevedoring Contract 2000

I refer to your letter of 18 June 2001.

Please be advised that the State Law Office did not prepare any documents or instruments for execution last year by the Maautamate Government in relation to Ifira Stevedoring.

Yours sincerely,

Hamlison Bulu
Attorney General



GOVERNMENT OF THE REPUBLIC OF VANUATU

Private Mail Bag 9048
Port Vila
Vanuatu
South West Pacific

Telephone: (678) 22362
Facsimile: (678) 25473
E-mail: att.gen@vanuatu.com.vu



Our Ref: AG. / /HB-cnt

STATE LAW OFFICE

13 December, 2001

Hanington Alatoa
The Ombudsman
Office of the Ombudsman
PMB 081
PORT VILA

Dear Sir

Re: Ifira Wharf and Stevedoring Contract 2000

Thank you for your letter of 7 November 2001 reference number 4578/0197/L68/hb on the above matter.

In your letter you made reference to the Council of Minister's Decision No. 480(c) of 20 July 2000 and you query "why did (my) Office not prepare the relevant documents and instruments"?

Prior to the matter being tabled at that Council of Ministers' meeting we had advised the Minister of Infrastructure, Honourable Stanley Reginald, that –

- (a) that the Contract which the Government had entered into earlier with the Ifira Wharf and Stevedoring had expired. The Government cannot extend a contract that has expired; and
- (b) the Government Contracts and Tenders Act applies to the matter. The provision of stevedoring services at the main wharfs in Vila must be tendered in accordance with that Act.

The advice was also tendered to the Council of Ministers. However, the Council instructed the State Law Office in Decision 480 paragraph (c) "**i priperem instrument blong saening blong extenson blong kontrak**".

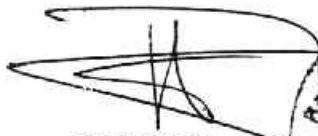
2/2


Hanington Alatoa
The Ombudsman
Office of the Ombudsman

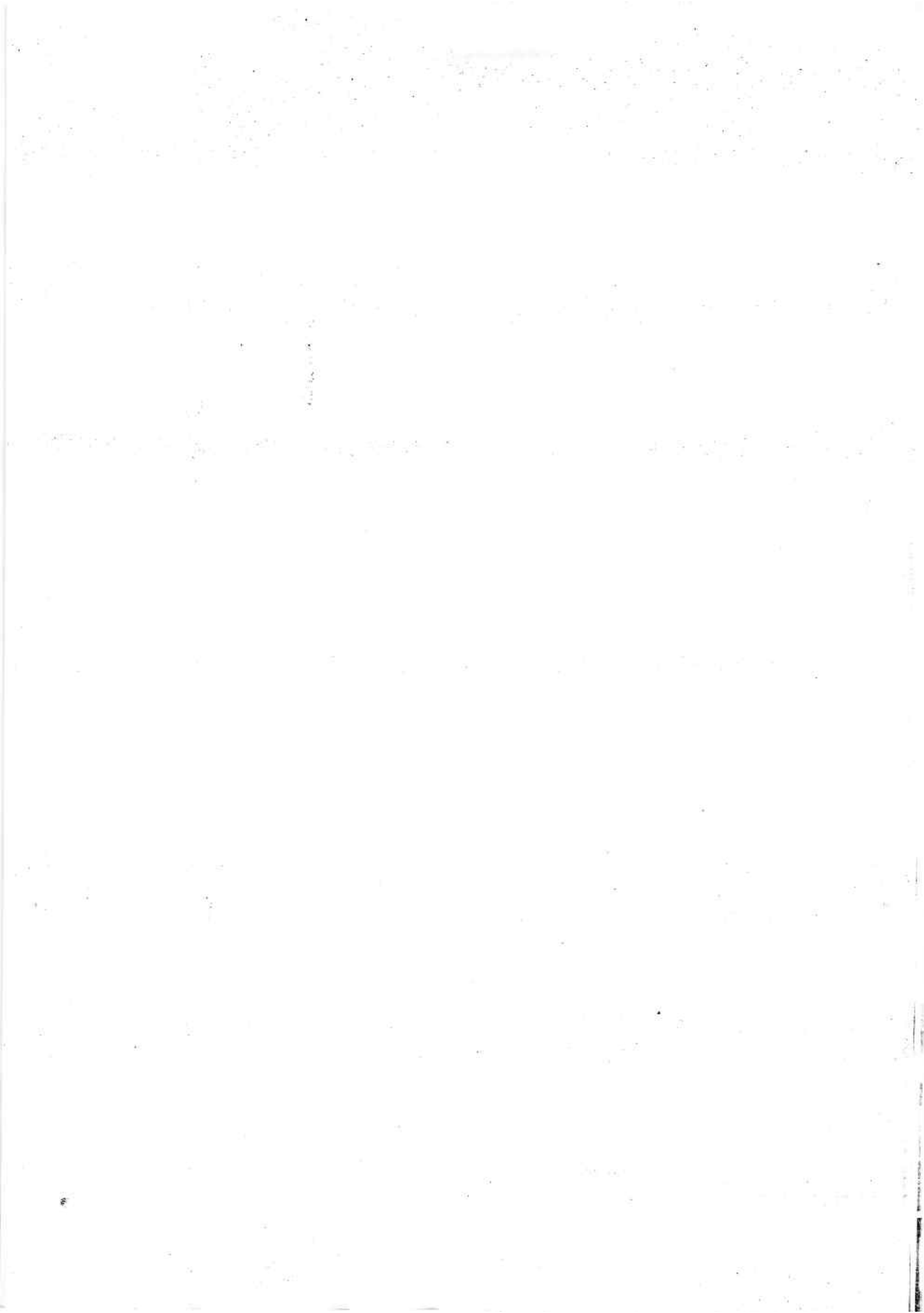
The State Law Office did not prepare any such **"instrument blong saening blong extenson blong kontrak"**. The instruction is contrary to law. One cannot extend a contract that has terminated or expired.

I do hope the above explanations is of assistance for your purpose.

Yours sincerely

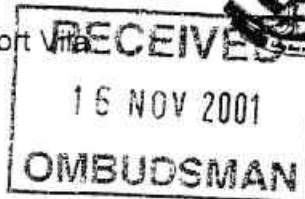

H. BULU
Attorney General





GOVERNMENT OF THE
REPUBLIC OF VANUATU
MINISTRY OF
INFRASTRUCTURES & PUBLIC
UTILITIES
Private Mail Bag 057, Port Vila
Tel +678 22790

Annexure J



f. du
GOVERNMENT DE LA REPUBLIQUE DE VANUATU
MINISTRE DES
INFRASTRUCTURES & SERVICES
PUBLIQUES
Fax +678 27714
O. Huit

Date: 14th November 2001

Ref. 140/22

Hannington Alatoa
Ombudsman of the Republic of Vanuatu
PMB 081
Port Vila

Dear Ombudsman,

Subject: Government/ Ifira Wharf & Stevedoring 1994 (IWS) Concession

Your letter Ref.3856/0197/L68 of 29 August 2001 on the captioned is acknowledged. I have perused through various correspondences between the State Law Office and the previous Minister for Infrastructure on this matter and can only make the following comments;

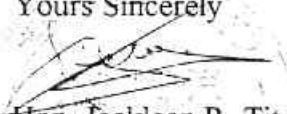
- a) The extension of the concession contract to IWS-94 appear to have been executed on the decision of the previous Vanuatu Government through the Council of Ministers;
- b) The execution of the CoM decision was done without first obtaining the State Law Office's comments on the Final Draft;
- c) It has always been the general view that precedents have been set with UNELCO and Telecom Vanuatu extension agreements where s7 of the Act has not been followed.

Whilst this Ministry does not wish to steer away from the rule of law I believe it would be wise to bring to your awareness that we are dealing with a full fledged Ni-Vanuatu owned company that is managed by the very land owners of the site where the main wharf and related facilities are located.

Caution and patience must therefore be exercised in dealing with this issue as the contrary may result in situations detrimental to all parties concerned. Perhaps lawyer to lawyer talks, in the first instance, could be a good start.

I believe further information may be obtained from the State Law Office.

Yours Sincerely


Hon. Jackleen R. Titek Ambilmasdan
Minister of Infrastructure and Public Utilities

c.c. - Hon. Prime Minister
- Hon. Minister of Finance
- DG - MIPU

LIST OF MINISTERS AS OF 13 JULY 2000

1. Prime Minister: Hon. Barak Tame Sope Mautamate
2. Deputy Prime Minister & Minister for Infrastructure & Public Utilities: Hon. Stanley Reginald
3. Minister of Finance & Economic Management: Hon. Morkin Steven Iatika
4. Minister of Internal Affairs: Hon. Barnabas Tabi
5. Minister of CRP: Hon. Sato Kilman
6. Minister of Agriculture, Livestock, Fisheries & Forestry: Hon. Albert Ravutia
7. Minister of Lands, Geology, Mines & Energy: Hon. Maxime Carlot Korman
8. Minister of Trade & Business Development: Hon. James Bule
9. Minister of Education: Hon. Jacques Sésé
10. Minister of Youth & Sports: Hon. Willie Posen
11. Minister of Foreign Affairs: Hon. Serge Vohor Rialuth
12. Minister of Ni-Vanuatu Business Development: Hon. John Robert Alick
13. Minister of Health: Hon. Jean Keasipae Song

APPENDIX L

RELEVANT LAWS

OMBUDSMAN ACT NO. 27 OF 1998

DEFINITIONS

1 "government agency" means:

- (j) a company incorporated under the Companies Act [CAP 191] in which the Government has an interest;

GOVERNMENT CONTRACTS AND TENDERS ACT NO. 10 OF 1998

GOVERNMENT CONTRACTS

3(1) Every Government Contract must be in writing.

3(3) Prior to entering into a Government Contract a minister must first:

- (a) ensure the contract is consistent with Government policy;
- (b) ensure the contract is fiscally responsible, prudent, cost effective, and is a necessary obligation for the Government to assume;
- (c) consult with the Director-General and satisfy himself on reasonable grounds that the Government has or is likely to have the financial ability and resources to meet all of the obligations under the contract including future obligations;
- (d) consult with and obtain the advice of the Attorney-General or a legal practitioner approved by the Attorney-General in writing, on the legal aspects, implications, and appropriateness of entering into the contract;
- (e) ensure that no conflict of interest exists between a minister or the Council and any other party;
- (f) use a competitive and transparent process when deciding who to award the contract to including where applicable, a tender process as may be prescribed by this or any other Act or regulation;

- (g) make a written submission to Council which must include a copy of the proposed contract, the process followed and comments on the proposed contract by, and under the signatures of the Director-General and the Attorney-General or the legal practitioner. The Attorney-General must certify that the procedures in accordance with this and any other applicable Act have been followed;
- (h) obtain a Council minute approving the Contract

EFFECT OF GOVERNMENT CONTRACT ENTERED INTO IN BREACH OF THIS ACT

- 7 A Government Contract entered into after the commencement of this Act, which is in breach of the provisions of this Act, will be void of no effect, and will not be binding on the State or the Government.

REQUIREMENT TO OBTAIN TENDERS AND QUOTATIONS

- 8 When entering into a Government Contract or a contract for the contracting out of a Government service or the purchasing of goods or services, a minister, or director-general of a ministry, or any other person authorised to do so, must comply with the quotation or tendering process in accordance with this Act or with any regulations made under this or any other Act.

OFFENCES AND PENALTIES

- 14(1) A person who acts in breach of sections 3, 4 8, 10(2), (3), (4), (7) or 12, or regulations under this Act commits an offence and is liable on conviction to a fine not exceeding VT 1,000,000 or imprisonment for a term not exceeding 1 year or in the case of a person or organisation other than an individual, to a fine not exceeding VT5,000,000.
- 14(2) It will be a defence to any proceedings under subsection (1) where a person can satisfy the court that the offence was not intentional and that the breach was minor, trivial or technical.

BREACH OF LEADERSHIP CODE

- 16 Where a person convicted of an offence under this Act is a leader, as that term is defined in the Leadership Code, and that offence amounts to a breach of the Leadership Code then that person is also liable to be dealt with under the Leadership Code, in addition to any penalty imposed under this Act.

FINANCIAL REGULATIONS OF THE REPUBLIC OF VANUATU

Chapter 2 - Financial Duties, Powers and Responsibilities of Public Officer

GENERAL

- 12(1) All public officers shall be aware of, and comply with, the content of these Financial Regulations, particularly with regard to any Financial Regulation which shall directly affect the performance of their duties.
- 12(2) Ignorance of the content of Financial regulations shall not be accepted as a defence where a public officer causes any loss whatsoever to Government, or creates any error or inaccuracy in any record of any type.

Chapter 22 - Purchase of Goods and Services

PROCUREMENT PROCEDURES

- 361(3) Where the cost of a specific work or service exceeds 1 million vatu, at least three (3) written tenders must be obtained. These tenders must be submitted to the Central Board for its evaluation and for the awarding of the contract.

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.

DEFINITION OF A LEADER

67 For the purpose of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

LEADERSHIP CODE ACT NO. 2 OF 1998

LEADER'S BEHAVIOUR

3 A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership.

DUTIES OF LEADERS

- 13(1) A leader must:
- (a) comply with and observe the law;
 - (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;
 - (c) comply with and observe the duties obligations and responsibilities established by this Code or any other enactment that affects the leaders; and
 - (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty.

BREACH OF LEADERSHIP CODE

19 A person who does not comply with part 2, 3 or 4 is guilty of a breach of this Code and is liable to punishment in accordance with Part 6.

OBEYING THE LAW

- 28 A leader acting in his or her capacity as a leader who fails to abide by the provisions of an Act that provides for:
- (a) the public service; or
 - (b) public finance or economic management; or
 - (c) expenditure review committee or audit functions; or
 - (d) government contracts or tenders;
- is in breach of this Code.

FINE OR IMPRISONMENT

- 40(1) A leader who is convicted of a breach of section 19, or 20, or 21, or 22, or 23, or 24, or 26 or 27 is liable to -
- (a) a fine not exceeding VT5,000,000; or
 - (b) imprisonment for a period not exceeding 10 years.
- 40(3) A leader who is convicted of a breach of this code for which not specific penalty is provided is liable to a fine not exceeding VT2,000,000