

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PMB 081
Port Vila
Vanuatu

**PUBLIC REPORT
ON THE
LAVUSVATU WATER
PROJECT - LUGANVILLE**

0038/2002/05

26 April 2002

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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, related bodies, and leaders. This includes the conduct of the Luganville Town Clerk in implementing decisions of the Council. The Ombudsman can also look into defects in laws or administrative practices, including the Municipal Act [CAP 126].

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this paper 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 has been to establish the facts surrounding the non-implementation by the Town Clerk, Mr Karl Batick, of Luganville Municipal Council's decision to carry out the Lavusvatu Water Project and his decision, instead, to undertake road works in the Pepsi area.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS

- 3.1 The relevant laws are produced in **Appendix E** to this report.
- 3.2 The Constitution and the Leadership Code Act provide that a leader has a duty to conduct him or herself in such a way - both in his public and private life - so as not to demean his or her position.
- 3.3 The Municipal Act provides that the Council has the sole responsibility for control, management and administration of the municipality. The council may enter into contracts for the purpose of any works, services or other matters that it is required or empowered to undertake, carry out or manage.
- 3.4 The Municipal Act also provides that the Town Clerk may, subject to the general directions of the Council, exercise the powers of the Council and all acts done by him in the exercise of such powers are considered to have been done by the Council.

4. OUTLINE OF EVENTS

- 4.1 At its meeting on 21 June 1999, the Luganville Municipal Council (LMC) unanimously resolved that the Department of Public Works (PWD) begin the work on the Lavusvatu water supply project on the basis that LMC would only be billed for the work on completion. A copy of the minute recording the LMC decision is contained in **Appendix A**.
- 4.2 In its 1999 development budget, the LMC had budgeted VT1,490,000 for the Lavusvatu Water Supply project **Appendix B**.
- 4.3 Mr. Charlie Tari, a senior foreman with the PWD urban water supply section in Luganville, prepared a quotation amounting to VT467,115 for the project **Appendix C**.
- 4.4 On 18 October 1999 the Ombudsman received a complaint against the Town Clerk, Mr Karl Batick, alleging that he had not implemented the LMC decision to proceed with the Lavusvatu water project, but instead had applied the funds toward road repairs in the Pepsi area, not authorised by LMC.

- 4.5 In response to a request from the Ombudsman to explain his actions, Mr Batick replied (**Appendix D**):

The Council should have funded this project at Lavusvatu. However, the council has budgeted for that project, but due to funds the Council can't afford to purchase the project. Therefore, as it is a Council project, with due respect that once the Council has funds then the Council should take it as a priority project.

- 4.6 Instead of executing the Lavusvatu water project as per the Council's decision, Mr Batick decided to implement road maintenance at the Pepsi area in Luganville - work that was never approved by Council.

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 prior to this public report to give another opportunity to respond.
- 5.2 No responses were received from any party to whom the working paper was submitted.

6. PRELIMINARY FINDINGS

- 6.1 Finding 1: As a chief officer of the Council, Mr. Karl Batick may have breached s.25 of the Municipal Act [CAP 126] by approving the implementation of a project for which no budget had been allowed (the Pepsi area road maintenance) while not implementing the Council approved Lavusvatu water project.
- 6.2 Finding 2: Mr. Karl Batick may have breached s.25 (1)(a) of the Municipal Act [CAP 126] by interfering with the Council's responsibility to control, manage and administer the Municipality.
- 6.3 Finding 3: As a leader, Mr. Karl Batick's action in not implementing the decision of LMC may also be in breach of the Leadership Code Act (Misuse of public funds).

7. RECOMMENDATIONS

- 7.1 Recommendation 1 The Minister responsible for the Municipalities should issue a Standing Order or Circular advising the Town Clerks to comply with lawful resolutions of their Council.
- 7.2 Recommendation 2 The Minister responsible for Municipalities should refer this matter to the Police and the Public Prosecutor should there be a prima facie case against Mr. Batick for breaches of the Municipalities Act Cap 126.

Dated 26 April 2002.



Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A** Copy of the LMC minute approving the Lavusvatu Water Project.
- B** LMC Development Budget (1999-2000).
- C** Copy of quotation prepared by Mr. Charlie Tari from PWD
- D** Copy of Mr. Batick's letter dated 21 December 1999.
- E** Relevant laws

Appendix "A"

(b) LMC Auditor

NB - Council i bin gat fullap toktok blong faenem wan Auditor .
we babe ino costem Council tumas. Evry councillor oli
toktok long expensence blong Council.

Lord Mayor Roy Bongalan - emi move blong Administration blong
LMC i faenem wan Auditor blong LMC.

Councillor Hum Japhet - emi secondem mover

Vote carried unanimously

Councillor Ham Japet - sapos Lord Mayor mo Deputy Mayor i
carrem allowance ia long ol Councillor's
allowance ino gat any toktok ikam about Councillor's
Allowance.))

Councillor Gaetan Pikioune. Mi prefer mo sapos Minister i signem
standing order then ol Councillor oli save carrem allow
allowance.

Lord Mayor Roy Bongalan - Long Water supply long Lavusvatu
sapos work i save start mo department blong Public Work
Works i just billem LMC after.

Councillor Gaetan Pikioune - Mio move blong work i start long
Water Supply blong Lavusvatu

Councillor Louis Vatu - semi secondem

Vote carried unanimously


Cocouncillor Ham Japhet - Mi move blong miting i close

Councillor Sam Malon - emi secondem


Vote carried unanimously

Prayer - Oscar Buleuru

Closing Time - 10.20am


BATICK KARL
Town Clerk




COUNCILLOR JEAN DELAVEAU
Chairman, Finance komiti

Appendix "B"

P.10

REPUBLIC OF VANUATU

LUGANVILLE MUNICIPAL COUNCIL

1999 / 2000

RECURRENT BUDGET ESTIMATES

RECURRENT REVENUE

CODE NO	SUBHEAD	ACTUAL 1997 / 1998	ESTIMATE 1998 / 1999	ACTUAL 1998 / 1999	ESTIMATE 1999 / 2000
<u>TAXATION</u>					
100 Property Tax	Tax	18,451,055	30,700,000	30,836,278	31,388.0
102 Pro. Tax	Arrear	462,608	1,000,000	301,719	6,570.00
					629.000
104 Dog Tax		8,000	100,000	124,250	400,000
<u>SUB-TOTAL</u>		18,913,663	31,800,000	31,262,247	38,987.0
<u>FEES & RENTALS</u>					
120 Cemetery	Fees	312,000	400,000	253,300	400,000
121 Medical	Fees Dispensary	312,000	500,000	826,218	500,000
122 Civil Reg	Fees	379,216	500,000	677,986	500,000
123 Youth	Center	1,048,000	1,090,000	714,475	1,090,000
124 Town Hall	Chamber	7,500	70,000	13,900	70,000
125 W/Scm	Toilet	83,750	53,000	13,950	85,000
126 Public	Toilet Fees	432,150	400,000	650,857	400,000
127 Machinery	Bill	56,000	30,000	161,040	50,000
128 Photocopy		34,120	40,000	142,710	250,000
129 Annual	Transport Fees	334,880	360,000	553,450	400,000
<u>SUB-TOTAL</u>		3,224,741	3,515,000	4,032,886	3,845,000
<u>WATER FRONT DEVELOPMENT</u>					
130 Unity Park	Stage	27,400	5,000	27,000	50,000
131 MINT Pond	Stage	1,521,000	1,800,000	1,057,450	1,500,000
132 MINT	Market	1,421,000	1,500,000	3,558,600	3,500,000
133 MINT	Stage	1,000,000	1,000,000	1,503,300	1,500,000
					500,000
<u>SUB-TOTAL</u>		3,969,400	4,305,000	6,642,350	7,000,000

EXPENDITURE RECURRENT REVENUE

CODE NO.	SUBHEAD	ACTUAL 1997 / 1998	ESTIMATE 1998 / 1999	ACTUAL 1998 / 1999	EST 1999	1AT 2000
<u>MAYOR</u>	<u>COUNCIL</u>					
2100	Allowances	689,500	3,390,000	2,817,760	3,300,000	
2110	Mayor	261,519	300,000	498,309	300,000	
2120	Council	23,000	1,000,000	752,641	250,000	
2130	Donation	71,000	250,000	138,270	250,000	
2140	Mayor Duty	351,540	690,000	221,000	300,000	
2150	Mayor Duty	135,000	500,000	154,500	240,000	
<u>SUB-TOTAL</u>		1,941,719	6,170,000	4,582,480	4,600,000	
<u>WORK MANT</u>	<u>FUEL, ELECT</u>					
2200	Hire of	20,000	100,000	—	600,000	
2210	Main Machinery & Parts	1,914,274	1,000,000	2,761,434	1,000,000	
2220	Fuel, Oil	480,000	2,000,000	2,191,507	2,500,000	
2230	Main Equip & Handgives	697,192	500,000	789,445	200,000	
2240	Electricity	1,214,662	800,000	1,214,662	1,000,000	
2250	Electricity	2,057,362	800,000	1,506,165	700,000	
2260	Water	351,897	500,000	353,513	1,000,000	
2270	Public	30,000	2,000,000	—	200,000	
2280	Private	—	1,000,000	—	500,000	
<u>SUB-TOTAL</u>		—	—	—	900,000	
					7,890,000	

EXPENATURE
RECURRENT REVENUE

CODE NO	SUBHEAD	ACTUAL 1997 / 1998	ESTIMATE 1998 / 1999	ACTUAL 1998 / 1999	ESTIMATE 1999 / 2000
<u>PERSONAL</u>	<u>EMOLUMENTS</u>				
200.1 Staff	Salaries	620,427	3,200,000	6,488,539	9,640,000
200.2 Staff H/	Allowance	920,000	1,100,000	946,000	1,000,000
200.3 Staff C/	Allowance	465,000	569,000	492,000	960,000
200.4 Staff VNPF	+LMC Cont	347,540	1,375,000	592,334	400,000
200.6 Severance	Pay	39,336	600,000	371,107	1,682,500
200.7 Overtime	Allowance	242,075	200,000	166,671	200,000
200.8 Acting/Rasp	Allowance	187,000	200,000	60,000	100,000
200.9 Temporary	Employees	—	40,000	—	40,000
200.10 Expt	Rent act	141,258	600,000	—	—
<u>SUB-TOTAL</u>		9,332,989	12,884,000	9,136,651	14,522,500
<u>DAILY RATED</u>	<u>EMPLOYEES</u>				
201.1 Labour	Salaries	6,014,067	7,500,000	4,602,796	7,500,000
201.2 Labour	CA Allowance	403,000	691,000	589,000	691,000
201.3 Lab VNPF	+LMC Cont	337,023	440,000	690,669	440,000
201.5 Overtime	Allowance	448,492	500,000	659,023	500,000
201.6 Bonus		117,266	288,000	184,312	288,000
201.7 Mini Wages	Incentive	—	360,000	52,276	360,000
<u>SUB-TOTAL</u>		7,311,848	9,779,000	6,078,076	9,779,000

RECURRENT REVENUE

CODE NO.	SUBHEAD	ACTUAL 1997 / 1998	ESTIMATE 1998 / 1999	ACTUAL 1998 / 1999	ESTIMATE 1999 / 2000
<u>TOWN</u>	<u>PLANNING</u>				
140 Building	Application	4,323,017	2,000,000	2,533,055	2,000,000
<u>SUB-TOTAL</u>		4,323,017	2,000,000	2,533,055	2,000,000
<u>OTHERS</u>					
150 Comm. On	Disburs	—	100,000	—	200,000
151 Bank	Interest	—	—	—	—
152 Miscellaneous		735,832	800,000	2,649,014	1,244,000
153 Government	Grants	4,557,175	—	2,860,422	—
<u>SUB-TOTAL</u>		5,293,007	18,900,000	5,509,446	1,444,000
<u>GRAND</u>	<u>TOTAL</u>	9,616,024	20,900,000	8,042,501	3,444,000

Appendix "C"

REPUBLIC OF VANUATU
PUBLIC WORKS DEPARTMENT
P.O. BOX 147
LUGANVILLE
SANTO



REPUBLIQUE DE VANUATU
SERVICE des TRAVAUX PUBLICS
B.P. 147
LUGANVILLE
SANTO

TEL: (678) 36540

FAX: (678) 36540

DATE: 23/07/1999

Ref: 142/99/CT

The Lord Mayor
Mr Roy Bonny
Luganville Municipality
Santo

Dear Sir,

RE.: INSTALMENT OF WATER FOR MUNICIPALITY PROJECT -
(LAYISVATU AREA).

Water Supply Instalment:

Length of Main Line Pipe @ 650 meters

Length of branch out Extension @ 200 meters

Estimate time to carry out works @ 6 days

Plant Hire Rates

J.C.B. @ 6,500 VT per Hr X 14 Hrs @ 91,000 VT

Labour Cost

1 Foreman @ 15,000 VT

2 Labour @ 13,000 VT

33,000 VT

Materials

100mm Ø Poly Pipe class 10 @ 650 mtr = 135,150 VT

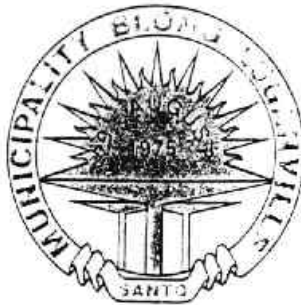
32mm Ø Poly Pipe class 10 @ 200 mtr = 23,900 VT

LAO ANNUAL BUDGET 1999 DEVELOPMENT BUDGET 1999

ITEMS SUBHEAD LMC DEVELOPMENT	ESTIMATE 1998 / 1999	ACTUAL 1998 / 1999	ESTIMATE 1999 / 2000
<u>PUBLIC HEALTH</u>			
1 Chapais Dispensary	—	—	1,200,000
<u>WATER FRONT DEVELOPMENT</u>			
5 Riverside Stalls	—	—	1,560,000
<u>AREA MINI MARKET</u>			
1 Chapais Mini Market	—	—	1,300,000
<u>ENVIRONMENT</u>			
1022 P.A. Roadside	—	—	1,450,000
1 Tractor & wheel Drive	—	—	3,000,000
Lavosvato Water Supply	—	—	1,490,000
<u>MAINTENANCE</u>			
Renovation LMC Dock	—	—	2,000,000
<u>TOTAL</u>			12,000,000

**MUNICIPALITÉ
DE
LUGANVILLE**

Boîte Postale 232
Tel: 36646 / 36840
Télécopie: 36648
Republique de Vanuatu



**MUNICIPALITY
OF
LUGANVILLE**

P.O. Box 232
Tel: 36646 / 36840
Facsimile: 36648
Republic of Vanuatu

Our Ref: BK/20.9/523/bm

21st December 1999

The Ombudsman
Ombudsman's Office
Private Mail Bag 081
Port Vila

Dear Sir

RE: LAVUSVATU WATER PROJECT AND RURAL MAINTENANCE ON PEPSI AREA

Receiving your letter on the 20th December 1999 time 4:20pm, below is my response to queries raised by your Office with respect to the above.

The Council should have funded this project at Lavusvatu, However, the Council has budgeted for that project, but due to funds the Council can't afford to purchase the project.

Therefore, as it is a Council Project, with due respect that once the Council has funds then the Council should take it as a priority project.

Yours Sincerely

Batick Karl
TOWN CLERK

APPENDIX E

RELEVANT LAWS, REGULATIONS AND RULES

3.2 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
- (a) 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 subarticle (1).

DEFINITION OF A LEADER

- (a) For the purposes of the 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.

3.3 LEADERSHIP CODE ACT NO. 2 OF 1998

LEADERS

- (a) In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders:
- (h) the town clerks (or their equivalent in name) of municipal councils.

3.4 DUTIES OF A LEADER

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 leader; and
- (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty.

- 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.

3.5 MUNICIPAL ACT (CAP 126)

MUNICIPAL CLERK

- 19 (1) A Council shall appoint a fit person, not being a councilor, to be clerk upon such terms and conditions as it may determine.
- 21 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.
- 22 The clerk may, subject to the general directions of the council, exercise the shall be considered to have been done by the council
- 23 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.

GENERAL POWERS

- 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.

CONTRACTS

- 27(1) Subject to the provisions of subsection (2) to any regulation made under section 57 and to any conditions or limitations imposed by its standing orders, a council may enter into contracts for the purpose of any works, services or other matters which it is required or empowered to undertake carry out or manage.