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# PM must not 'interfere' with Telecoms Regulator

Supreme Court rules the government cannot 'direct, control or pressure' TRR Dalsie Baniala

By Dan McGarry

**THE SUPREME COURT HAS UPHELD** the independence of the telecommunications regulator.

The judgment ordered that the Prime Minister and the Government Chief Information Officer be restrained from any attempt to "direct, control or pressure her as to how to perform her duties, functions, powers and responsibilities as Regulator".

Justice Oliver Saksak ruled Monday that Prime Minister Charlot Salwai's attempt to summarily suspend the Telecommunications and Radiocommunications Regulator was unlawful.

He further ruled that the PM's attempt to appoint an acting regulator contravened the law on his second try at suspending the TRR after a notice period.

Likewise, his appointment of Utilities Regulatory Authority CEO Hasso Bhatia was quashed as well.

The court filings appear to show a sustained, if slipshod, effort to exert influence over Ms Baniala on a number of issues, the most significant of which related to a series of decisions enforcing price and quantities for bandwidth purchased by local telcos and ISPs from Interchange Ltd.

Interchange operates Vanuatu's only international fibre optic cable. It was determined by the Regulator to be in a 'dominant' position in the local bandwidth market as a result of its de

facto monopoly on high-speed, high-capacity bandwidth services.

In October last year, the Daily Post reported that the Prime Minister had written a letter to Ms Baniala informing her that she "had been suspended on half-pay for a period of 28 days, pending an investigation into her professional conduct".

It listed nine reasons for this, and alleged that together, they constituted a breach of Ms Baniala's employment contract. It accused Ms Baniala of mismanaging her role such that it was 'paralyzed, handicapped and stagnant'.

The 2017 sectoral report, prepared by the Regulator, claims that between 2014 and 2016, mobile data downloads rose from 16.2 million to nearly 273 million megabytes. Gross revenues in the telecoms sector rose by about 15% in the same time period.

Soon after the suspension letter was issued, the State Law Office determined that an immediate suspension was contrary to the TRR Act, which defines the roles and responsibilities of the telecoms regulator, as well as outlining the selection and removal process.

A week later, another letter was sent to the TRR, restating the Prime Minister's concerns, and putting her on 28 days' notice. At the time, the Daily Post reported that "Industry figures, who declined to be quoted because of the dynamic of their professional relationship with the Regulator, said the suspension took them by surprise."



Telecommunications and Radiocommunications Regulator, Dalsie Baniala



Court filings reveal a formal complaint received from Interchange by Minister of Infrastructure and Public Utilities Jotham Napat. It outlined a series of concerns relating to changes in the market allegedly resulting from decisions made by the regulator. A bandwidth wholesaler, FCC, informed Interchange of its decision not to purchase any more blocks to be on-sold to local ISPs, attributing its decision to pricing orders issued by Ms Baniala.

Prior to this, FCC was the only source of leased cable bandwidth, although no one was prevented from competing with them for these large bandwidth blocks.

Mr Napat forwarded the letter in an email to the Prime Minister, urging him to 'intervene' in the matter, citing shareholder interest.

The Government of Vanuatu has a 12.5% share in Interchange.

Shortly after that, the suspension letter was issued.

But the pressure allegedly didn't stop there. Court filings reveal that Ms Baniala claims to have received communications from Gerard Metsan, offering a settlement in the issue, providing that she reverse an order concerning Interchange bandwidth prices. Ms Baniala responded to him, stating that she was prevented by the TRR Act from reversing any order currently under judicial review.

□ Story continues on page 2

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# Gov't still sorting out land

By Anita Roberts

**THE GOVERNMENT ASSURES** that the volcano affected residents of Ambae will relocate to Maewo when it completes the acquisition process on the designated plots of land.

Though land is available on Maewo including Santo, there is confusion on how the government can acquire it from the real custom owners, it was revealed.

A delegation from the Ministry of Climate Change and Natural Disasters (MOCC) and the Penama Provincial Government Council (PPGC) have left Port Vila for Maewo and Santo to meet again with the chiefs and custom land owners to clarify options for government acquisition.

The chiefs from Maewo have offered four plots of land large enough to accommodate the displaced families.

These plots of land are located at Sanasumi in the south, Ulu (central), Naruru and Lolruhu in the north.

The National Disaster Management Office (NDMO) said the Shelter and Water Cluster Teams have prepared their plans to build shelters and bring water to each relocation sites.

The Department of Local Authorities (DLA) under the Ministry of Internal Affairs is working closely with the PPGC to facilitate the relocation of Penama Provincial Headquarter to either Pentecost or Maewo.

Penama Disaster Officer,

Mansen Tari, conveyed that a lot of people in evacuation centers on Ambae have returned home when the Council of Ministers (COM) declared off-island relocation no longer compulsory but voluntary.

"The government is now concentrating on relocating these people to Maewo and expanding services there to meet their needs," he said.

According to NDMO, around 300 individuals have indicated voluntary relocation to Maewo.

So far since last Friday, around 150 households had voluntarily moved out from Ambae to other islands like Santo.

The relocation of people to Maewo should be complete by July 30, next month.



# PM must not 'interfere' with Telecoms Regulator

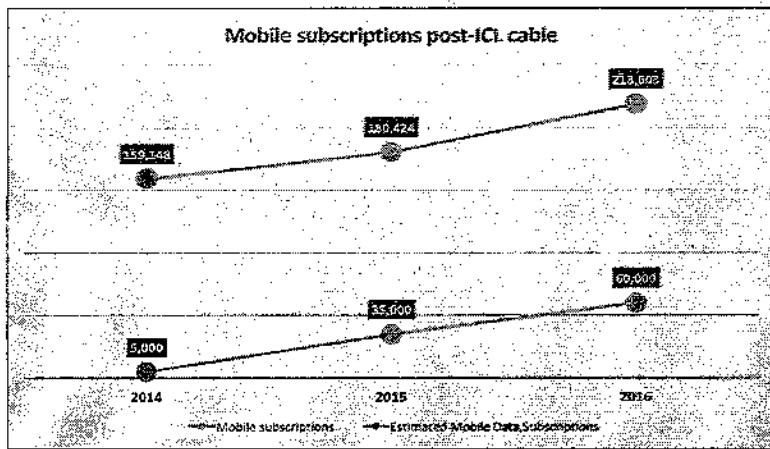
□ From Front Page

Ms Baniala further alleged that Mr Metsan and a member of the TRR's legal staff were engaged in improper contact, and submitted evidence alleging that the legal officer disclosed confidential information to Mr Metsan near to or during the time of the attempt to suspend the regulator.

Following the legal staff member's termination by the TRR, Mr Metsan reportedly informed the regulator that this person would be working for OGCIO to assist with conducting her professional review.

Contacted for comment, Mr Metsan stated that his understanding of the affair was that he was conducting official correspondence with TRR's legal staff pursuant to the PM's instructions. "If Margaret breached confidentiality, that's a matter between her and the Regulator," he told the Daily Post by telephone from Noumea.

He insisted that the decision to suspend had nothing to do with his office, and that the Government Chief Information Officer's actions were all pursuant to instructions received from PMO.



Mr Metsan rejected allegations of pressure, stating that he was simply making a good faith effort to find a way out for the Regulator, without having to resort to the courts.

The court filings show communications from Interchange staff also requesting that she reverse the pricing order.

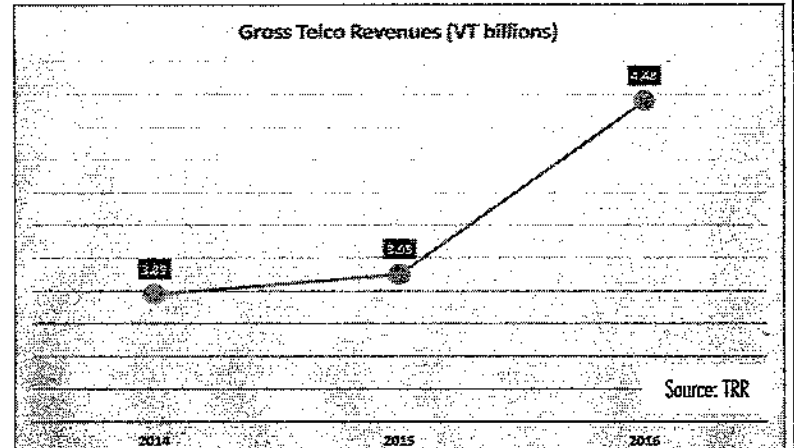
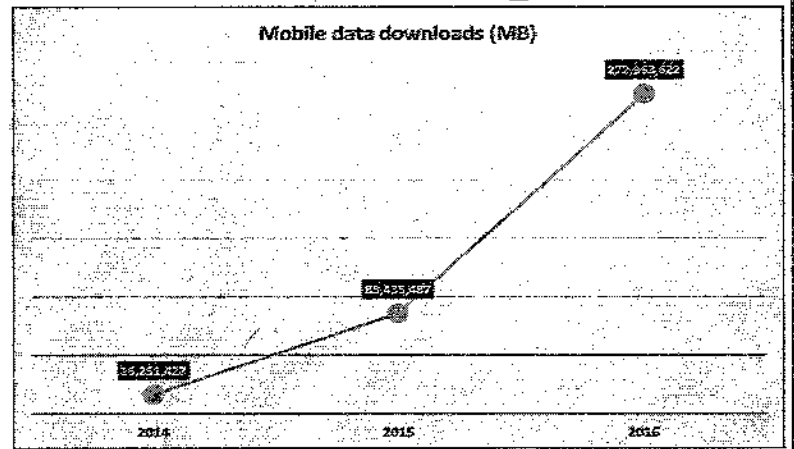
The TRR has since made efforts to resolve these and related disputes. Interchange CEO Simon Fletcher reported that his relationship with the regulator was much improved of late, and he indicated that a settlement in another related issue was very close to completion.

The Daily Post submitted a request for comment to the Prime Minister's Office, but had yet to receive a response at the time this story was finalised.

In his judgment, Justice Saksak suggested that some of the conduct in this matter "may possibly be in violation of the Leadership Code Act but this is a matter for the ombudsman...."

In response to the ruling, Regulator Daisie Baniala wrote to the Daily Post defending the legal battle, and insisted that the "decision to go that far was mainly to protect the institution's credibility".

She cited her office's contribution to "positive development" and concluded



by reiterating "the need to make sure to all its key stakeholders both at the TRR remained the trusted institution national and international level."

WEATHER ICONS & MEANING			TODAY							TOMORROW							
Sunny	Fog	Showers/Thunder	PROVINCE	WEATHER FORECAST	WIND DIR	WIND SPEED	Temp.	WIND DIR	WIND SPEED	SEA STATE	WEATHER FORECAST	WIND DIR	WIND SPEED	Temp.	WIND DIR	WIND SPEED	SEA STATE
			TOSBA		North-East	10kt	31°C 24°C	East	10kt	Light to moderate seas to 1m		North-East	10kt	31°C 24°C	North-East	10kt	Light to moderate seas to 1m
			SANMA		North-East	10kt	30°C 23°C	East	10kt	Light to moderate seas to 1m		North-East	10kt	30°C 23°C	North-East	10kt	Light to moderate seas to 1m
			PENAMA		North-East	10kt	31°C 24°C	East	10kt	Light to moderate seas to 1m		North-East	10kt	30°C 23°C	North-East	10kt	Moderate seas to 1.5m
			MALAMPA		North-East	10kt	29°C 23°C	East	10kt	Light to moderate seas to 1m		North-East	10kt	29°C 23°C	North-East	10kt	Moderate seas to 1.5m
			SHEFA		North-East	10kt	28°C 21°C	East	10kt	Light to moderate seas to 1m		North-East	10kt	28°C 21°C	North-East	10kt	Moderate seas to 1.5m
			TAFEA		East	15kt	31°C 24°C	East	15kt	Moderate seas to 1.5m		East	15kt	27°C 19°C	East	10kt	Rough seas to 3m

SUNRISE/SUNSET TIMES			
06:12 AM		17:18 PM	
06:12 AM		17:18 PM	

TIDES FOR PORT VILA & LUGANVILLE								
HIGH & LOW TIDES FOR	TIME	0520	1042	1714	0029	0639	1155	1812
PORT VILA	HEIGHT(m)	0.80	1.06	0.49	1.17	0.75	1.04	0.52
HIGH & LOW TIDES FOR	TIME	0420	0953	1645	2345	0545	1114	1744
LUGANVILLE	HEIGHT(m)	0.92	1.21	0.58	1.25	0.88	1.20	0.59

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