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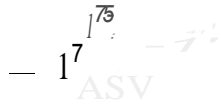
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FINAL REPORT

Containing Findings, Implementations and Recommendations

Dated th6s⁵ Day of ay, 2012



THE INDEPENDENT STATE OF PAPUA NEW GUINEA

INVESTIGATION TASK-FORCE SWEEP

FINAL REPORT

Prepared by

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Chairman

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PA T II—PRELIMINAI Y

1 Abbreviations used in this report

- APC -Authority to Pre-Commit
- COC —Certificate of Compliance
- COI —Certificate of Inexpediency
- GSM —Central Supplies and Tenders Board
- DNPM —Department of National Planning and Monitoring
- DoF —Department of Finance
- DoT —Departillent of Treasury
- FF3
- FF4
- IPA —Investment Promotion Authority
- IRC —Internal Revenue Commission
- ITFS —Investigation Task-Force Sweep
- NACA —National Anti-Corruption Affiance .
- NADP —National Agriculture Development Program \ . cc-
- OC —Ombudsman Commissihr — — — — — / .
- PFMA —Public Finances (Management) Act 1995
- PIP -Public Investment Program
- PPP —Public Private Partnership
- PSTB —Provincial Supplies and Tenders Board
- SCITB -

*PMFM - Public Finance and
Management Act.*

2 Glossary

K2 Companies —

no this word

3 Acknowledgement

The Bank of Papua New Guinea is ackno lged in providing information ,and clarifying on—the. issues relating to the K125 on Kokopo Sovereign Community Infrastructure Treasury Bill (SCITB).

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INTRODUCTION

There were allegations of massive corruption at the Department of National Planning and Monitoring being raised in the media in early 2011. It was triggered by a dispute between the Minister for DNPM and the Secretary for DNPM. During the period of dispute and media circus, both sides of the dispute raised serious allegations of corruption against each other.

When the O'Neill/Namah Government came into power on August 2, 2011, ITFS was appointed to investigate the allegations.

4.1 Executive Summary

4.2 Terms of Reference

The Terms of Reference of this investigation, inter alia, were:

1. Inquire into and ascertain:

- i. That Public funds (Development budget component) administered by the Department of National Planning & Monitoring of the 2009, 2010 & 2011 Budgets were appropriated in compliance with their respective Appropriation Acts.
- ii. That those who applied for and received the funds were in accordance with the Appropriation Act.
- iii. That the project submissions were consistent with the Appropriation Act and passed the screening criteria used by DNPM without undue influence.
- iv. That the proponents of the project did not place themselves in a conflict of interest position.
- v. If those funds were diverted, who orchestrated the diversion and who benefited from such diversion.
- vi. If the Funds were paid outside of the Appropriation Act, who applied for and benefited from the funds.
- vii. Whether the funds were solely used for the purpose to which it was applied and granted.
- viii. Whether certain laws including the Public Finance (Management) Act, Public Service (Management) Act and the Criminal Code Act etc were breached.
- ix. Who orchestrated the breach of these laws.
- x. Whether the person(s) implicated were public servants and so, whether their conduct also amounted to conflict of interests.

- #### 2. Prosecute the persons, criminally implicated during the inquiry under the laws of Papua New Guinea including but not limited to the Criminal Code Act and Proceeds of Crimes Act 2005

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3. Take all steps under the *Proceeds of Crimes Act 2005* and the *Mutual Assistance in Criminal Matters Act 2005* to recoup all proceeds of all funds found to have been diverted and misappropriated, such proceeds as are defined by Section 10 of the Proceeds of Crime Act.
4. Refer the person(s) to the Ombudsman Commission if he/she is a leader covered by the Leadership Code.
5. Recommend for immediate termination of employment he or she is a public servant who is implicated in the investigations.
6. Furnish to the NEC within 3 months from the date of commencement, a report on the investigations conducted, persons implicated, prosecutions done, funds recouped, referrals made to the Ombudsman Commission and further actions to be taken it Lia-e-teLlae:.
7. Recommend to the NEC through the Minister for Panning and Attorney General, possible legislative changes to patch up loopholes discovered during the investigation.

The NEC, in its Decision No. NG10/2012 extended the terms reference to cover all other cases referred to ITFS.

4.3 Scope of Inveigations

The scope of the investigations as per 1 EC Decision No. NG ,O⁵/2011 cover

allegations of corruption in the DNPM -ertends-t other departments and State , envies insofar as development budgets of 2009, 2010 and 2011/was-appropriat4p ;L
among others, the controversial K125 Million Sovereign Community Infrastructure Treasury Bills for Kokopo Community Projects and the KIOmillion that was paid to Travel Air Limited owned by Kokopo Businessman, Eremas Wartoto.

On le September 2011, the NEC, through its Decision No: NG 25/2011, included the National Department of Health to be investigated by ITFS. Further, on 27th January 2012, the NEC, through its Decision No: NG 10/2012, extended the teens of reference of ITFS to include any cases that the Government and/or any cases the general public lodge with the ITFS from time to time.

With the combined powers of each agencies co-opted to ITFS, ITFS was able to extend its investigations into wide range of areas including financial fraud, administrative malpractices, recoverability of tax dues and proceeds of climes and leadership code breaches am_o_iag_othets-7-

4.4 The Team Structure

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The Committee as per Annexure "A" of NEC Decision No: NG 03/2011 is comprised of:

- Chairman, Mr Sam Koim, a Principal Legal Officer at the Office of the Solicitor General, Department of Justice & Attorney General
- Superintendent Sylvester Kalaut, PPC of East New Britain as Deputy Chairman
- Chief Inspector Timothy Gitua, Director of Frauds & And Corruption Squad together with 6 Investigators, 1 Forensic Expert, 1 Police Prosecutor, 2 Financial Intelligence Unit officers and 6 Mobile Squads.
- A Lawyer with the POCA Division at the Office of the Public Prosecutor
- An Officer with Department of Treasury
- An Accountant from the Auditor General's Office
- An Officer with the Tax Compliance Division of the Internal Revenue Commission.
- An auditor with Department of Provincial Affairs

The structure of ITFS was adopted from National Anti-Corruption Alliance (NACA) however certain members of NACA were not included in that Decision. Those members were coopted to ITFS including Ombudsman Commission and Department of Personal Management. The ToR does captures these two agencies' involvement however faqe short of listing them on Annexure "A".

the Papua New Guinea and Australian Law and Justice Partnership Program (PALJP) was gracious enough to second Mr John ToGuata to the Team to assist the team as a technical advisor, a role he plays with NACA.

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The constitutionality and/or legality of bringing the different State agencies together through ITFS by NEC as tested in three different National Court proceedings. Two those proceedings Tutted in, a deasjortin our favour whilst one of them is still pending decision. Team- structure Pias therefore fortified by two National Court Decisions, namely, Tiensten v Koim [2011] PGNC 127: N4420 (14 October 2011) and Golu v National Executive Council [2011] PGNC 134: N4425 (21 October 2011).

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The organizatic l. at Appendix A shows the sttucture of the ITFS.

4.5 Investigations Methodology

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The operation of the Task Force Svieep fundamen is one where all the agencies come together and share r sour5es, ana\informnaticin. There are operational links between the age esigtei infor tion collated, assessed and then we-discuss. as a team ow leads are to be followed. This is essentially where each agency uses its constituti tin powers and clout to follow cases.

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An auditor with Department of Provincial Affairs

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...-V jo e;7-1 %ay-for-instance if kt is a disciplinary matter, then the relevant body is the Department of Personnel Management. If it is a leadership case, then it becomes a case for the Ombudsman Commission. If it is a 'K2 company' purposely created overnight to benefit from certain allocated sums of money, then it becomes an issue for the IC to follow-up. If it is a criminal matter, then the police fraud squad is equipped for that. Police use their normal lawful process of collecting evidence and arresting using their powers. The Task Force Sweep therefore is exactly what the name says; we-'sweep', we sweep. viAluch-is-similarisLasiragnet. t -5 1- +O ,, Are 4,U. all 4446... tbi 4441 e,5 4. ,...4 AAC al-49-4 44-C-iPe144 4 6 i 12.e. ' '...t.h i-c 5-i-A0 e °E ""i4. 4',C., t ,, There is no overlapping or crossing of another agency's constitutional role. All the team members are sharing information and collaborating their efforts in taking a thorough action to combat corruption.

PART H —LEGAL PROCESSES AND ESTABLISHMENT

5 Established State,Procurement Process

5.1 'ticagetary · Zess and Appropriations

CE -1 ⁶⁴/the raising and expenditure of finance by the National Government is subject to a ••thotization d control by the National Parliament and is regulated by an Act of f.(° **Pa;lirent ma-tesSection** 209 of the Constitution. That-Autislhe Public Finance (Management) Act, 1995 vzhich was enacted for the purposes of managing public funds¹ **Public money is** defined by PFMA includes all revenue and loans, trust and other moneys raised or received, and all bonds, debentures and other securities received, by any person on behalf of the State'; or by an officer in his capacity as such on behalf of any other person.³

PFMA is defined under section 2 of the Act itself. Pursuant to section 2, PFMA includes the Regulations, Rules and Financial Instructions. The Regulations, Rules and Financial Instructions are not subordinate to PFMA itself but forms' part of PFMA. **The Court per Davani J in Robmost Ltd State** [2008] N3372 affirm s position when she held that PFMA also includes Financial Instructions.

Pursuant to Section 210 of Constitution, the Executive Government takes the initiative in formulating the National Budget. There are two components of the

¹ Preambles of the *Public Finance Management Act* 1995

²In line with judicial interpretations and, as encompassed in the PFMA, the State herein also includes Provincial Governments and Local Level Governments, See, *SCA No.1 of 1998* [2001] PGSC 8; SC 672 (8 November 2001), a decision by five member supreme Court.

³ Section 2 of the PFMA

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budget, namely recurrent and development. Budget Process on Development Budget takes the following phases:

- o All development proposals by line agencies, provinces, Statutory Bodies and private sector agencies are documented in the Project Formulation Document and submitted to the Secretary of M and a copy sent to Development Planning and Programming Division (PIP). Note that the development initiatives of the Government are driven through submitting the respective policies. A private company cannot use the government's budget process to benefit itself.
- o Proposals that meet all requirements are submitted to the Departmental Technical Screening Committee (PIP) for deliberation and selection. The Committee further provides technical appraisal and consolidates the proposals.
- ' After clearing from the Technical Screening Committee, the proposals will proceed to the Department of National Planning & Monitoring Budget Management Committee for final screening and approval. The Committee after deliberations approves new list of development projects and existing ones for inclusion in the Budget and forwarded to Budget Steering Committee.
- © The Budget Screening Committee co-chaired by Deputy Secretary for Treasury and National Planning (PIP) after consultations with national agencies, statutory bodies and relevant provincial governments, the list is finalized by Treasury and Planning and together with recommendations presents to the Central Agencies Coordinating Committee (CACC).

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- a The Central Agencies Coordinating Committee (CO) made up of the Secretaries of the Central Agencies Treasury, Finance, DPM, M & NEC, Attorney General and Provincial Affairs, This committee then further deliberated and justified as to why these development projects need funding. With the recommendations, Treasury & Planning Departments prepare the list of projects for CO to be presented to Ministerial Economic Committee
- e The MEC finally makes recommendations either to cut or increase for particular projects. At this stage, certain projects that are not on the list of projects that ULA initially recommended for funding at the Planning and Screening process are included at the request of the Ministers and such request is taken note of and effective by the request by Planning & Treasury.
- G The National Executive Council (NEC) deliberates on the recommendations by MEC. Again, new projects are also recommended for inclusion. The NEC will be mindful of the government's commitments and would want to ensure all are reflected. After the NEC process, the Development Budget is now finalized to be tabled at the floor of Parliament, with the endorsement of the Head of State, who acts with and in accordance with the advice of NEC.

e Parliament approves the Budget through an Appropriation Bill, thus makes the policies legal for funding. The Appropriation Act provides for expenditure to be incurred during the year for the purposes and services set out in a Schedule to the Appropriation Bill.

® After Parliament approves the expenditure of public funds and money is available, Department of Finance and Treasury enters leases warrants to implementing agencies, be it a government department, LLG, Provincial Government, etc.

- When money is transferred to implementing agencies, it is not up for grabs or to be paid to private contractors at the will of that implementing agency. The expenditure of that money is again subject to the PFMA, hence the obligations for tender apply.

Section 211 of Constitution makes it illegal for any expenditure of public funds that is not authorised by Parliament through the Appropriation Act. All expenditures of public funds within a fiscal year must be in accordance with the law, be it Constitution, PFMA, Appropriation Act. The expenditure, whether development or recurrent, must be in accordance with the relevant laws.

5.2 The Law Governing State Tenders and Contracts

The Constitution, s. 247(1), provides that the Government has the capacity to make contracts. Some enabling legislations empower respective agencies to make contracts whilst others do not. Unless specifically provided in any other law to the contrary, the mandatory requirements of the PFMA in terms of the expenditure of public funds cannot be replaced or ignored.

Part VII of the PFMA (sections 38 A — 47D) provides for public contracts. Public contracts can be divided into two categories, Minor and Major contracts. Minor contracts are contracts valued up to R100 000 but any value beyond that is defined as major contracts. Major contracts are executed through a public tender and minor contracts are executed through quotations.

The Central Supply and Tenders Board (CSTB) is established under section 39 (1) of PFMA. The composition and appointment of CSTB is provided for under subsections 3, 4, 5 & 6. As the name suggests, CSTB is the public body that amongst others, tenders and executes public contracts on behalf of the government. Its primary role is to control and regulate all purchase and disposal of property and stores and the supply of works and services unless it falls within the Specialized Supply and Tenders Boards established under section 39A of PFMA such as the Pharmaceutical Supply and Tenders Board and Gazelle Restoration Authority Supply and Tenders Board. Section 39B of the PFMA establishes a Provincial Supplies and Tenders Board (PSTB) and

⁴See Part 12 Division 2 Clause 8.

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gives a ceiling of K3,000,000 as the maximum amount that it can tender.

CSTB is generally the legitimate authority to control and regulate all public contracts. The control and regulatory jurisdiction of CSTB is extended to minor procurements, major procurements and Provincial Supply and Tenders Board (PSTB).

The requirement for public tender is compulsory except as provided by Section 40(3) of the PFMA which provides that:

- (a) if that project to be undertaken or purchased by a public body, authority or institution; a Provincial Government; Local Level Government or an approved overseas agency; or
- (b) If Certificate of Inexpediency is necessary; or
- (c) If Minister for Finance approves it to be exempted, but the amount should not exceed a limit of K500, 000 and also it must relate to a natural disaster related cause; or
- (d) where the terms of an agreement concluded, or proposed to be concluded, with any international organization under which the State is to receive moneys, make specific provision for the manner in which tenders will be invited for contracts to be performed in relation to the agreement.

1. The value based tender process goes as follows:

- (e) less than K5000- Verbal quotation is required
- (f) K5000 to K100 000 — written quotation is required.
- (g) Section 32 officer, amount up to K300,000.
- (h) K300,000 to 1(3,000,000 —PSTB and/or CS 1 '13 pursuant to s 39B(1)(b) of PFMA
- (i) CSTB — amounts up to K10 million pursuant to s 39(2)(b) of PFMA
- (j) Any Amount beyond K10million goes to NEC.

5.2.1 Issuance of Certificate of Inexpediency (COI)

As stated hereinabove, a COI is one of the exceptions to the compulsory requirement for public tender. Section 40 (3) (b) of the PFMA states that tenders shall not be publicly invited and contracts met if a board certifies that the inviting of tenders is impracticable or inexpedient. That is when certificate of Inexpediency is issued. Division 4 of Part 13 of the *Financial Instructions* states what a Certificate of Inexpediency is and when it can be issued. The Court in *Robmos o State* [supra] extensively elaborated this provision. In light of the provisions in the PFMA including the *Financial Instructions* and the Court decision following could be noted;

⁵ See Part 15 Division 1, Clause 4 of *Financial Instructions*

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- 1) The CSTB must ensure that there is a valid approved APC⁶ for the procurement before approving a Certificate of Inexpediency.
- 2) That certificate "*mut cearly identify*" the requirement set out in Div. 4 Clause 12 of the *Financial Instructions*, namely;
 - (a) Supplier, and
 - (b) Department / agency requesting the certificate, and
 - (c) Name and signature of the Departmental/agency head requesting the certificate, and
 - (d) Goods, works or services being procured, and
 - (e) Value of the procurement, and
 - (f) Name and signature of the Chairman of the Supply and Tenders Board issuing the certificate
 - (g) Reason for the certificate to be issued, and
 - (h) Date on which the Certificate is awarded, and
 - (i) Name of those Board members issuing the Certificate, and
- 3) Certificate of Inexpediency cannot and should not be issued, to retrospectively cover a contract already executed.
- 4) Certificate of expediency is only necessary where a declared Natural Disaster, or, Defence Emergency, or Health Emergency, or Situation of Civil Unrest exists, and procurement processes must be undertaken urgently, to remedy the situation.

In the absence of any of the four situations enumerated and (4), the Certificate of Inexpediency issued or intended to be issued is invalid and enforceable. A COI should not be used because there is one suitable supplier or because the implementing agency/Department has "run out of time" to conduct a proper tendering process.

5.2.2 The use of Authority to Pre Commit Expenditures **Opic**)

Section 47B of the PF1VIA provides thegookigns for the use of APC. The co biped reading of Part VII under which this .e is accommodated and - is provision itself; zImp that APCs can be issued, in a case involving contract exceeding K100,000,ggua4ntee that funds for that particular project is available to be released in due course. It gives the assurance to the private contractor that the State will honour its side of the deal. Hence, the APC cannot replace the mandatory requirements of tender etc provided under that Part of the PFIVIA. It must also be noted that APCs are requested by the head of the implementing agency but is issued by the Secretary for Finance matters. Note also that section 47C makes it illegal for any supply of goods and services without an APC on credit basis, hence deemed null

⁶ Authority to Pre Commit is only issued by the Secretary for Finance and no other persons pursuant to section 47B of PFMA.

and void. Section 47D even bars any claim against the State for supplying goods and services without a prior APC.

Execution of State Contracts as stipulated under section 47 of the PFMA must be distinguished from awarding of a State contract. Different authorities or persons may exercise the two distinct functions as empowered by the PFMA

5.2.3 Rationale behind Public Tender Process

The rationale behind public tender is to prevent fraud, waste, corruption or local protectionism; hence the Government regulates the procurement process. The size and volume of government procurement does, however, give rise to considerable potential for corruption. Both contractors and public officials may resort to corrupt practices, and this may be for personal or political reasons. Whatever the underlying reasons, corruption undermines the attainment of use for money in government contracting, the fair treatment of contractors and thrust of procurement as a policy tool., c p.5 4
The bidding process must therefore be open to public scrutiny and chosen on the basis of price and quality.

5.3 Established position by the Courts on illegal contracts and their enforcements

The Government's procurement process is defined by law and established by various Court decisions. A series of National and Supreme Court decisions have made the law clear that a party that contracts with the State is deemed to know the legal processes stipulated under the relevant laws including the PFMA, and any contract that is executed and performed in violation of the law is illegal and unenforceable: *Panga Coffee Factory PO Ltd v. Coffee Industry Corporation Limited (Unreported but numbered judgement delivered on 6 October, 1999) SC61 9, Fly River Provincial Government v Pioneer Health Services Ltd [2003] PGSC 4; SC705 (24 March 2003, Jack Livinai Patterson a National Capital District Commission (unreported judgement delivered 05/10/01) N2145*

6 DEPARTMENT OF NATIONAL PLANNING AND MONITORING

6.1 Establishment of DNPM

The Department of National Planning and Monitoring (DNPM) does not have an Enabling Act of Parliament for its establishment. It is understood that there is a draft National Planning and Monitoring Act being drafted which is yet to be passed by Parliament. Its establishment is by way of Ministerial Determination.

The DNPM used to be part of the Department of Finance and called Department of Finance & Planning. The separation of National Planning from Finance occurred in 1995. By National Gazette No. G72 dated 31st August 1995, the National Planning

functions were separated from Finance and were vested in the Department of Prime Minister and National Executive Council.

Almost a month later, a separate ministry called National Planning was established by way of National Gazette No. G89 dated 28th September 1995. The Minister, Moi Avei (now Sir) was delegated the National Planning functions of the Prime Minister to take charge. A department was yet to be established at that time.

6.2 Core Functions of DNPM

The Department of National Planning and Implementation was established in 1997 by National Gazette No G65 dated Tuesday 26th August 1997. Schedule 2 of that National Gazette outlines the determination of functions of the Department of National Planning and Implementation. The functions are:

1. Monitor and report on implementation of National Executive Council Decisions.
2. Co-ordinate and provide advice to Government on medium and long term development strategies and priorities
3. Provide effective co-ordination and advice for development and improvement plans at the National, Provincial and Local Level of planning in the allocation of resources.
4. Provide advice for the formulation of macro-economic policies in consultation with the Department of Finance and Bank of Papua New Guinea.
5. Provide advice and direction to all Departments and agencies as provided under its enabling legislation on any specific planning aspect of Government operation.
6. Co-ordinate the International organisations in the provision of grants, concessional and/or technical assistance and aid to the country.

The Investigation Team had not sighted any other Instrument or law replacing the National Gazette No G65 dated Tuesday 26th August 1997 which initially established the Department of National Planning and Monitoring. In the absence of such the most likely conclusion is that the core functions of DNPM remain.

The DNPM in consultation with DoF is responsible for the compilation of the national budget and for carrying out periodical review of budgetary performance and appraisal of projects. The appraisal of projects in this case is the appraisal of project proposals by State agencies to be included in the budget formulation. It is the role of the Departments of Finance and Planning to appraise the project initiative of the respective agency in line with the overall long/short term Plans of the Government and include them in the Budget for funding. The program budget involves an analytical approach in the allocation of budgetary funds to specific operations, which are identified in the light of sectoral policies to meet national objectives. It also entails establishing suitable indicators for measuring performance of government operations.

DNPM's primary role and function as a mandated central agency of the Government of Papua New Guinea (GoPNG) is for the formulation of national development plans

and strategies, development programming and budgeting, monitoring and evaluation, donor coordination and mobilization, and giving assistance to provincial and district administration in planning and formulation of their own development plans. DNPM's responsibility as a central agency is not to involve itself with the actual implementation of the project. Its role is to coordinate the overall plans of the Government, ensure that funds are committed according to those plans, and monitor the implantation of those plans with the support of funding, by each agency.

6.3 Project Appraisal Guidelines

The only lawful appraisal of project proposals comes before the budgetary process and it is an integral part of the budget process. The project appraisal process takes place during the budget formulation period where agencies submit their respective project proposals for inclusion in the Budget for the following year. DNPM in consultation with DoF, consider the viability of the project such as impact projects for funding under the Public Investment Program (PIP). If satisfied, that project proposal is appraised to go through the budget process.

6.3.1 The PIP Guidelines

The PIP Guidelines outlined the PIP process. It details a step-by-step process for the implementation of PIP from the formulation, submission, and appraisal of proposals, to the composition of management committee, disbursement procedures, monitoring and evaluation, and reporting procedures. It was envisaged as the planning and budgeting tools that would help guide the design of investment projects and preparation of annual development budget.

Sub-Section 2.1.1 of the Guidelines stipulates the purpose of DNPM being the agency charged with administering PIP of the government, as follows:

- Provide a coherent strategy and policy planning process for effective, sustained and equitable national development, ensuring the involvement of all key stakeholders;
- Coordinate the public investment program in line with approved strategic directions, mobilizing funding as required; and
- o Support and monitor implementation of the public investment program.

Section 2.2.1 showed the structure of DNPM, to-wit, as follows:

"The Public Investment Programme is managed by the PIP Wing of DNPM, headed by the Deputy Secretary. The PIP Wing of DNPM is divided into two major divisions comprising the Development Planning and Programming Division (DPPD) headed by a First Assistant Secretary and a Development Monitoring and Evaluation Division (DMED) also headed by a First Assistant Secretary. The DPPD is responsible for coordination and processing all proposals for funding under the PIP including registration, appraisal and screening. After funding is approved by

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Parliament, the DIVIFD takes over and is responsible for monitoring and reporting on all ongoing projects".

6.3.2 The Development Projects Documentation Guidelines

On the other hand, Development Project Documentation Guidelines was intended to assist planners and development workers access project funding on behalf of communities including districts through proper documented projects. It detailed the development project documentation requirements, namely: the Project Identification Document (PID) and Project Formulation Document (PFD). These documentations were to be used for the identification and formulation of all projects at every level of government and for both GoPNG and donor-funded projects.

Section 2.0 (Project Endorsement) of the Guidelines required all proposals to be screened, endorsed, and prioritized by the relevant committees, named as follows:

- o The Joint District Planning and Budgeting Priorities Committee (JDPBPC);
- O Project Screening Committees within Line Agencies and Statutory Bodies (if such committee do not exist, endorsement must be provided from the highest level within the agency);
- e The Working Groups of Sector Coordinating Mechanisms where these mechanisms exist.

Section 3.0 listed the organizations eligible to submit proposals for development funding from the GoPNG Public Investment Programme, as follows:

- Government Line Agencies;
- O Provincial Administrations;
- o District Administrations;
- o Local-level Government Administration; and
- o Statutory Bodies and Public Institutions.

It further reiterated that private individuals and companies were ineligible to apply directly for development funding from the GoPNG's Public Investment Programme.

Furthermore, Section 5.0 (Appraisal Criteria) required that:

"Projects will be accessed in terms of their anticipated social and economic benefits, cost effectiveness and the capacity of the applicant(s) to carry out the intended tasks on time and within budget. Therefore proponents need to provide sufficient information in the Project Formulation Document to enable the appraising organization and DNPM to assess the proposal...."

6.4 DNIFM's Capacity

Consistent with its primary functions, DNPM operates out of the Vulupindi House in Waigani, National Capital District as its Headquarters. It has Six (6) divisions headed

by First Assistant Secretaries. Each division have four branches headed by Assistant Secretaries. DNPM has three other regional offices outside of Port Moresby with the staff strength of five (5) each. Of those five, one of them is always a person with Project Management background whilst the others are ancillary staff.

PART 11! —IFIINDENGs

PART II11.1 -General Findings

Incidences of institutionalised and syndicated corruption had been uncovered where private companies through partnerships with public officials and politicians have infiltrated the Government budgetary processes under the guise of development projects. Funds have been earmarked for project programs for the public at large as it seems but only selected companies appear to be the sole beneficiaries.

DNPM digressed from its principle function and turned into a cash cow, usurping the powers of DoF, DoT and CSTB without any legislative backing. DNPM institutionalised illegality and corruption by usurping powers that were vested in other authorities such as public tenders board, even to the extent of gazetting those powers in the National Gazette.

DNPM became a cash cow by dishing out project funds to certain selected private companies at will, most of which were ghost companies that did not have the capacity to deliver.

Projects were awarded to selective private companies under a thick veil of secrecy with any public tender. On other occasions, COIs were systematically cleared by the State Solicitor and granted by CSTB on projects that clearly did not qualify for the issuance of a COI but for collusion and corruption.

PART HL2 -Detailed Findings

7 DNPM's Deviation from Primary Role

7.1.1 Mischievous Gazetting of Ministerial Functions

The powers and functions of the Minister who was responsible for the Department of National Planning and Implementation in successive National Gazettes after 26th August 1997 reflected the primary functions of the Department itself as stipulated in National Gazette No G65 of 1997. Soon after the 2007 National General Elections, Hon Paul Tiensten was appointed the Minister for National Planning and Rural Development. As is evidenced by the National Gazette No. G145 of 2007 dated 13th September 2007, the powers and functions that Mr Tiensten had as a Minister were

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those that reflected the primary role of the department. The functions as stipulated in Schedule 5 of the National Gazette are:

All the matters related to the functions of:-

- (a) Department of National Planning and Monitoring; and
- (b) Department of Finance and Treasury insofar as relating to-
 - i. International Development Assistance, National, Regional and Provincial Social and Economic Planning and Management; and
 - ii. Department and Regional Audits; and
- (c) National Statistical Service; and
- (d) Central Agencies Coordinating Committee insofar as relating to reforms processes and implementation; and
- (e) Office of Rural Development; and
- (f) Bilateral and Multilateral negotiations with donor partners except those relating to International Financial Institutions; and
- (g) International Development Assistance; and
- (h) Gazelle Restoration Authority.

Statutory Responsibilities are:

Statistical Services Act (Chapter 386)

Gazelle Restoration Authority Act 1995

Mineral Resources Development Company POI Ltd (Privatisation) Act 1996

In 2011, by National Gazette No. G57 dated 31st March 2011, interestingly, the scope of the functions of the Minister for National Planning and Rural Development were widened. The functions as stipulated in Schedule 4 of that National Gazette are:

All the matters related to the functions of:-

- (a) Department of National Planning and Rural Development; and
- (b) Department of Finance and Treasury insofar as or relating to-
 - i. International Development Assistance, National, Regional and Provincial Social and Economic Planning and Management; and
 - ii. Department and Regional Audits; and
 - iii. All financial matters; and
- (c) National Statistical Service; and
- (d) Central Agencies Coordinating Committee insofar as relating to reforms processes and implementation; and
- (e) Office of Rural Development; and
- (f) Bilateral and Multilateral negotiations with donor partners except those relating to International Financial Institutions; and
- (g) Only insofar as the powers and functions relate to Supply and Tenders Board under Public Finance (Management) Act 1995; and
- (h) International Development Assistance; and
- (i) Gazelle Restoration Authority.

Statutory Responsibilities are:

Gazelle Restoration Authority Act 1995

Mineral Resources Development Company Pty Ltd (Privatisation) Act 1996

Public Finance (Management) Act 1995, insofar as it relates to matters —

(a) Relating to approval of requisition, under section 32 for expenditure of true monies or funds for health and education; and

(b) International Development Assistance and DSIP funds.

Statistical Services Act (Chapter 386)

The notable provisions that increased the powers of the Minister for Planning and Rural Development as per National Gazette No. G57 of 2011 are highlighted with underline emphasis,---

In the subsequent Determination of Titles and Responsibilities of Ministers after the Change of Government on August 2, 2011, the powers relating to Supply and Tenders Board were omitted whilst the Section 32 requisition powers under the PFMA were retained with the Ministry of National Planning and Monitoring. That is reflected by National Gazettes No G234 dated Thursday 18th August 2011 and G374 dated Wednesday 14th December 2011. The Ministry for National Planning and Rural Development was separated with National Planning and Monitoring to Hon Sam Basil whilst Implementation and Rural Development to Hon Moses Maladina. When that split occurred, both Minister Maladina and Minister Basil appear to have retained section 32 powers under the PFMA as per the National Gazette G374 of 2011.

7.1.2 Observations on the Gazettal Notices conferring of powers to successive National Planning Ministers

Why was Department of Finance and Treasury powers relating to all financial matters vested in the National Planning and Rural Development Minister by virtue of National Gazette No. G57 dated 3rd March 2011? What was the legal basis for conferral of powers of Finance and Treasury in all financial matters to the National Planning and Implementation Minister? Why duplicating the role of finance and treasury? Does the DNPM have the capacity to operate as a mini treasury or finance department? Was DNPM structured and equipped to operate finance and treasury functions and responsibilities?

The Section 32 of the PFMA powers that were stated as part of the functions of the Minister for National Planning and Rural Development in National Gazette No G57 of 2011 must be verified against the provision of the Act itself. Section 32 provides:

32 APPROVAL OF REQUISITIONS.

- (1) The Departmental Head of a Department may appoint officers to approve requisitions for the expenditure of money in the Department for which he is responsible in accordance with a warrant authority and may specify conditions for the exercise of that approval.*
- (2) The Minister may appoint designated officers to approve variations to contracts as regards time, price or other conditions within such limits as are specified in the Financial Instructions.*
- (3) An officer appointed under this section who wilfully refuses or neglects to comply with the provisions of this section is guilty of an offence under Section 112.*

(4) *appi* mental Head in relation to the Department of which he is Head may appoint Financial 1)legates to approve expenditure in accordance with a Cash Fund Certificate.

It is clear from the above provision that Section 32 power under the PFMA vested in the departmental head and not the political head. How then was section 32 power vested in the Minister by those Gazettal Notices?

Put the powers and functions relate to Supply and Tenders Board under the FF :NIA, there is no provision that leaves a room for any other persons apart from those established by PFMA to exercise those powers. The PFMA gives powers to the Minister for Finance in regards to Supply and Tenders Board in certain circumstances, not Minister for Planning or any other Minister for that matter.

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An amendment to the PFMA, if any, was not cited by the Investigation Team. As it is, the above is the correct position of law. On what legal basis were powers of the public /tender Board were conferred to the Minister for Planning by that National Gazette? And what specific powers of the Supplies and Tenders Board under PFMA was conferred to the Minister for Planning? Vesting of power in a Minister without the legislative foundation and particularly where the law had already/to usurp the powers of other authorities is illegal and suspicious.

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7.1.3 DNPM turned into a Cash Cow

DNPM had deviated from its purpose of establishment into a mini-treasury and mini department of finance of its own, thereby duplicating the roles of Departments of Finance and Treasury. It assumed responsibilities that were beyond its purpose and capacity hence, created room for abuse and a culture for corruption. Most of the corruption was facilitated by the officers of DNPM itself.

Through the investigations, it was discovered that from 2008, DNPM started to have interest in the development funds and opted to implement a number of development initiatives, as such kept a portion of the development budget. In 2009, DNPM decided to keep more of the Government initiatives including the RESI and NADP funds and disbursed on projects that it selected. That continued in 2010 with more development projects vested in DNPM through the annual budget.

Project Proposals from private companies and individuals were received, appraised and payments made directly to the proponents by DNPM. The more payments were made; the more it encouraged others to approach the department with project proposals, hence a culture and practice was then established and entrenched.

In 2011, the then Acting Prime Minister, Honourable Sam Abal upon taking office as the Acting Prime Minister, deliberately or being misled by the Minister responsible for DNPM, or passively announced that 2011 would be a "Year of Implementation". In keeping, with that, the DNPM was directed to front-load 90% of the Development Budget to be spent by June 2011. The Annual Development Budget

foi: 2011 was K2.066 Billion and K1.9 Billion of that money was anticipated to be spent within the first half of the year. The DNPM anticipated to rollout the entire Development Budget by the end of July and to focus on monitoring and ensuring projects are implemented well in the later part of the year.

Interesting in the year 2011, most of the development projects under the GoPNG Development budget were parked with the DNPM. Coincidentally, the Minister now has absolute power by way of National Gazette No. G57 dated 3rd March 2011 to exercise the public tenders' powers and section 32 powers. Aligned with those powers and in the pretext of executing the Government's "year of implementation" policy millions of kina were paid out directly to purported contractors without any public tender.

Minister Tiensten misled the public to believe that the funds were sent to the Government's sectoral implementing agencies when in fact most of those funds were retained by DNPM. Once such statement was reported in the Post Courier on 6th July 2011 where he said:

"Under instructions of the acting Prime Minister, Sam Abal, 2011 has been designated the 'Year of Implementation'. As a result, Treasury and National Planning have front-loaded 80 per cent of development expenditure based on the Appropriations Bill with cash flows going directly to the government's sectoral implementing agencies."

Against the backdrop of financial mismanagement and no proper monitoring of development projects, the then Acting PM, deliberately or was misled, to make that announcement which opened the flood gates for looting of 90% of the Development funds within less than three months in 2011.

It was discovered that between 2006 and 2011, the DNPM would have directly managed and implemented K3.6 billion worth of projects and programs out of a total development funding of K15 billion for that period. Of the K3.6 billion, and based on our investigations with the 2009, 2010 and 2011 development budgets that DNPM administered, it is estimated that more than K1 billion of those funds did not translate into tangible development projects to which Parliament had appropriated.

7.1.4 Corruption and Malpractices

7.1.4.1 DNPM performing CST *ales*

The expenditure of public funds, whether recurrent or development, is regulated by law, in particular the PFMA. As soon as Parliament passes the budget, the public funds are not up for grabs or for any one department to spend it at will. Those funds are subject to the PFMA such as calling for public tender. The PIP Guidelines, as well as the Development Projects Documentation Guidelines do not make any provision for a private contractor to access funds directly under the PIP. If there is such provision, then it is inconsistent with the law and is illegal.

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It was discovered during our investigations that COIs were either issued on projects that did not qualify for such or were issued to retrospectively cover payments that were already paid.

The then State Solicitor, Mr George Minjihau, who, by virtue of his position is a member of the CSTB. He is also required to do legal clearance for any issue of COI. It was discovered that he basically defends the decision of CSTB by tailoring legal clearance letters to sanction illegal decisions on issuance of COIs. His legal clearances on projects/contracts that did not qualify for COIs is illegal and highly improper.

8.1 Some examples of Abuse of COI:

Certificate of Inexpediency (COI) 001/09 Department of National Planning and Monitoring

The COI was requested by Joseph Lelang Secretary of the Department of National Planning and Monitoring on 16th January 2008 in a letter addressed to Bryan Kimmins for the construction of three (3) houses and a Police Post in Bewani and Amanab in West Sepik Province. Clearance was given by State Solicitor George A. Minjihau in a letter dated 23rd January 2009 to the Acting Board Secretary of CS 1'B. It was approved by the CSTB to the amount of K2 Million as stated in the letter to Joseph Lelang on the 21st of January 2009.

2. Certificate of Inexpediency (COI) 001/11 Department of Finance

Request was made by the Department of Finance Secretary Gabriel Yer in a letter dated 13th of December 2010 for stationary and learning material for various schools in the Talasia District of the West New Britain Province. In a letter dated 26th January, 2011 State Solicitor George A. Minjihau cleared the application of all legal obligations. Approval was given in a letter dated 05th January 2011 to the Finance Secretary Gabriel Yer by CSTB Chairman Bryan Kimmins. The amount approved in the letter dated 05th January 2011 from the Chairman of CSTB to Gabriel Yer Secretary of the Finance Department was Six Million Eight Hundred Thousand Kina (K 6,800,000.00).

3. Certificate of Inexpediency (COI) 004/09 Department of Police

Police Commissioner Gari L. Bald applied for a COI for K20,000,000.00 rehabilitation of the Kerowagi Mobile Squad Barracks in Chimbu Province and the reestablishment of the Kavugara barracks in Kimbe West New Britain Province. The COI request was put through by Commissioner of Police Gari L. Baki on behalf of the Police Department in a letter dated 23rd January 2009 to Bryan Kimmins. George A. Minjihau wrote to the Acting Secretary of the Central Supply and Tenders Board on March 09th 2009 and gave clearance to the COI. Letter of approval was issued on the 04th of February 2009, attention to Gari L. Bald and signed by the

There is no internal Tenders Board established at DNPM by the Minister for Finance pursuant to the PFMA. The Secretary for DNPM, just like all other departmental heads, can authorise commitment and payment of up to K300,000 as his limit.

Against the standing PIP and Development Project Documentation guidelines restricting the eligibility of PIP project proposals to State agencies only, DNPM officers went out of their way to accept project proposals from private contractors, appraised them and made payments in millions of kina without any tender process.

There appears to be some sort of appraisal criteria used to appraise the project proposals for the expenditure of public funds. Although the Investigation Team does not have the benefit of such a criteria, we find that purported project appraisal criteria were devised as a substitute for the legally established procurement process under the PFMA. In so doing, DNPM officials assumed the role of mandated authorities such as the CSTB. The actions of DNPM and its officials amount to legitimising illegality and creating a culture 'of corruption.

The former Minister for National Planning and Monitoring, Honourable Paul Tiensten, MP did not have the lawful authority to approve project funds yet he approved projects for funding. In doing so, he usurped the public tender powers. The practise went on for some time until it was institutionalised with the Gazettal of his powers in the National Gazette. In the absence of any lawful justification, we find that the Public Tender powers invested in the National Planning Minister by way of National Gazette No. G57 dated 3r^d March 2011 was done to backflip and legitimise the illegal authority the Minister purportedly exercised over the years. It was also done to give him the basis to continue the trend.

Billions of kina in development funds were disbursed on purported projects to certain private companies by incompetent officials who did not have the capacity to perform the role of CSTB. The awarding of the development contracts were single handed by certain officers of DNPM under a thick veil of secrecy hence defeated the role and purpose of public tender process envisaged under the PFMA.

We find that there was no limit placed as to who should sign and commit on what amount. The PFMA places ceiling on the Departmental Heads, Finance Minister, PSTB, CSIB and NEC respectively. At DNPM, there appears to be no ceiling on who was going to sign on what amount to commit the funds. There was gross abuse of the process. Senior officials appear to have taken turn in approving projects and the signing of FF3 and FF4 documents.

7.1.4.2 Lack of Capacity to implement Projects

In an Interview with Dr Kora, the incumbent Secretary of DNPM, it was revealed that DNPM only have three (3) regional offices apart from the Head Office in

Waigani. In those, three, other. regional offices, they have less than 5 staff each. Among the five, nlig e^rOne Project manager and the rest are support staff. The Secretary indicated that he was going to decommission the regional offices and centralise operations from Waigani.

The DNPM, consistent with its primary function, obviously does not have the capacity for implementation of individual projects on the ground level. DNPM does not have officers in each province or districts throughout the country. Even if DNPM had offices/officers throughout the country, it did not have specialised project managers to manage projects.

We inquired why the funds for National Agriculture Development Program (NADP), REST, Rural Electrification, Strategic Market Development Program, just to name a few, were retained by DNPM? Did DNPM have the capacity to implement these projects? Or is it for the convenience of controlling the public purse? When these questions were posed to Dr Kora, he said "that was illegal" and that he was directing all these projects and the funds to be transferred to the respective implementing agencies. For instance, REST should be handled by Education Department; NADP should be implemented by Department of Agriculture and Livestock.

7.1.4.3 DNPM's Lack of Capacity to Monitor Projects

DNPM had a division for monitoring the projects but lacks capacity and most times is dysfunctional.

As already highlighted, most of the impact projects that DNPM retained against the respective implementing agencies were funded directly from DNPM. As such, the qualified implementing agencies were not involved in the monitoring of the implementation of the projects. Since the payments were made out of DNPM without the knowledge of the supposedly implementing agencies, DNPM created an enormous responsibility in monitoring its implementation all around the country which it did not have the capacity to do so.

There were some specialised projects that needed expertise to verify the designs and further monitor the implementation according to the specifications and designs. DNPM did not have those specialists yet it opted to administer the projects. For instance, DNPM did not have qualified electricians yet it retained the rural electrification project to itself as an implementing agency.

Since DNPM did not have the capacity and did not bother to monitor the implementation of the projects, it opened the door for schemers and scammers to approach the DNPM with more and more ghost project proposals. DNPM therefore turned into a cash cow, dishing out cash without any responsibility,—;/,..--

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As a result, much needed public funds were wasted and opened to abuse. The projects were either not implemented at all, incomplete or completed but with changed designs and specifications with the cheapest materials.

7.1.4.4 Lack of proper documentation and record keeping

Millions of kina were paid out of DNPM and most of these payments were not supported by proper documentation. DNPM officials failed their duty to maintain proper records of the transactions involving public monies. In some instances, only FF3 and/or FF4 documents were found. In other instances, only the copy of the cheque was placed on the file.

Since most of the allegations of corruption were raised against the officers of DNPM, it is believed that most of the crucial documents were conveniently disposed by persons with vested interest.

7.1.4.5 Release of payments in full amounts

For any Government Contracts, unless the nature of the contract allows otherwise and by agreement of both parties, works and supplies have always been done in phases. There is always a clause or schedule in every contract with the State to ensure that each project is implemented in phases. In order for the next phase of payment to be released, a phase completion report is issued by the implementing agency. The implementing agency automatically becomes the project manager if a specific project manager is not nominated.

DNPM in this case had kept the development budget at its disposal and developed a trend of paying the full value of the contract/project in single cheque payments to private companies on purported contracts. There does not appear to be due diligence checks done on whether the private companies had the capacity to deliver the projects. In many cases, these companies are K2 companies that were just registered to cater for the funds from DNPM. When the monies were released to those companies, withdrawals were made in substantial amounts, and in some cases the funds were depleted and accounts closed.

The payment of full value of the contract coupled with lack of monitoring mechanisms presented opportunistic contractors the perfect option to squander the funds.

7.1.4.3 Conflicts of interest Situations

The level of abuse at the DNPM was such that the development budget was at the disposal of the Minister and the officers. They diverted monies into companies that they themselves have direct interest. The officials appear to have used their knowledge to apply and their position to approve or influence the payments to their

companies. In other instances, they facilitated payments to certain front companies and received their kickbacks— Lf

When conducting search at various houses of officers of DNPM, it was discovered that the officers of DNPM write up project proposals for front companies in accordance with their knowledge of the appraisal guidelines that they set at DNPM. It is believed that they then give the draft proposal to front companies to submit with a cover letter. Once it is submitted, the officers then appraise the proposal without any reservation as it is tailored to comply with every requirement of DNPM. An officer of DNPM having electronic copies of project proposals implies the level of insider trading orchestrated by public officials to syphon public funds, r-'i'; (6)

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It now makes sense as to how front companies whose principals have no knowledge and experience on certain specialised projects yet received funding on very colourful project proposals.

7.1.4.7 *Lath of Due Diligence*

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ITFS was not provided a copy of the project appraisal criteria that DNPM used to appraise projects from individuals and companies. What is howeverXDparent is that the officers at DNPM, being blurred by the corrupt and deceitful eyes, failed to even detect the most obvious defects in the project documentations submitted to DNPM. Elementary due diligence checks such as Investment Promotion Authority Certificate of Incorporation, Certificate of Compliance from IRC, specialised trade certificates, register of machinery and equipment, number of skilled employees, company's track record, surety bonds on contracts requiring contractor to undertake payment in the event of contract not complied with etc, were ignored to be part of the due diligence checks.

7.1.4.8 *Deviation of Payment Votes*

It was discovered through the investigations the Appropriation Act was breached when officers diverted funds appropriated under different votes. In their search to get hold of the funds, they grossly abused the Appropriations by taking monies out of different votes to pay for purported contracts/projects.

8 Abuse of Certificate of ffnexpediencies

Certificate of Inexpediency, as already explained, is only necessary where a declared Natural Disaster, or Defence Emergency, or Health Emergency, or Situation of Civil Unrest exists, and procurement processes must be undertaken urgently, to remedy the situation.

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Chairman of the CSTB Bryan Kimmins. The total value approved in the letter to the Commissioner of Police from the Central Supply and Tenders Board was Ten Million Kina (K10,000,000.00).

4. COI 008/09A Department of Police

This is in reference to the construction of the Musu/Wutung Jetty and Wharf in the Sandaun Province in the year 2009 at the cost of K6.5 Million. There was no formal letter written to CSTB applying for a COI. On the 13th of March 2009 George A. Manjihau the State Solicitor issued a letter of clearance to the CSTB attention to the Secretary of CSTB. In a letter to the Secretary Finance Gabriel Yer on the 26th February 2009, the COI application was rejected on the basis that the project did not meet the CSTB requirement of it being an emergency situation. However, it was subsequently approved and communicated to Joseph Lelang, Secretary for DNPM in a letter dated 12th of March 2009 by the CS'•.13 and signed by the Chairman Brain Kimmins. The amount approved per letter from CSTB on the 12th of March 2009 was Six Million Five Hundred Thousand Kina (K 6,500,000.00).

5. COI 019/09 — Department of National Planning and Monitoring

Certificate Of Inexpedience (COI) Application to build a bridge in Aitape Town, Aitape Lumi District in Sandaun Province at the cost of Three Million and Twenty Four Thousand Kina (K3,024,000.00). Proposed contractor was Structural Bridging Systems Ltd. Request made by Joseph Lelang, Secretary of the Department of National Planning and Monitoring in a letter dated 13th March 2009 to Mr Bryan Kimmins Chairman of the Central Supply and Tenders Board. Clearance letter was signed by George A. Minjihau, State Solicitor on 14th May 2009 in a letter addressed to the Acting Board and Secretary of the Central Supply and Tenders Board. CSTB approved the COI on the 23rd April 2009 as per the letter to the Secretary of the Department of National Planning and Monitoring on the 24th of April 2009. The project was estimated at the cost of Three Million and Twenty Four Thousand Kina (K3,024,000.00) as per letter from the State Solicitor dated 14th May 2009.

In another COI application dated 13th March 2009 from the Department of National Planning and Monitoring the total amount was stated Nine Million Seven Hundred and Ninety Thousand Kina (K9,790,000.00).

6. Certificate of Inexpediency (COI) 031/09 Department of Finance

COI application for the upgrading of the Balam-Kauk-Sowam and Urip-Sapuain feeder road in Wewak District of East Sepik Province. Request was put through by the Department of Finance Caretaker Secretary Chris Kalebo on the 25th of May 2009. There was also a supporting letter from the Finance Minister Patrick Pruaitch

on the 11th May 2009 to CSTB Chairman Bryan Kimmins. In a letter dated 28th May 2009 State Solicitor George A. Minjihau wrote a letter to the Acting Board Secretary of CSTB giving clearance to the COI. Approval was given in a letter dated 20th May 2009 to Chris Kalebo Acting Secretary in the Department of Finance. The amount approved in the letter dated 20th May 2009 from the Chairman of CS173 to Chris Kalebo of the Finance Department was One Million Nine Hundred and Ninety Six Thousand Nine Hundred and Ninety Six Kina Twenty Toea (K1,996,996.20).

7. COI 008/09A Department of Police

This was for the construction of the Vanimo market at the cost of K2.5 Million. No formal letter requesting COI, but in the letter of approval from CSTB to Joseph Lelang Secretary of the National Planning and Monitoring approved a COI for the amount of Two Million Five Hundred Kina (K2, 500,000.00). No letter was on file from the State Solicitor's Office regarding this matter. But on the 3rd of March 2009 John Kwarara Board Secretary of Central Supply and Tenders Board wrote to George Minjihau, State Solicitor requesting legal clearance but the letter was not signed. Letter of approval was issued on the 03rd of June 2009 attention to Joseph Lelang, Secretary of the Department of National Planning and Monitoring from Brain Kimmins Chairman of CSTB. The amount approved per letter from CSTB on the 03rd of June 2009 was Two Million Five Hundred Thousand Kina (2,500,000.00).

8. COI 036/10 Department of National Planning and Monitoring

Construction of the Wapenamanda District Market. No formal letter requesting or applying for a COI was on file. No letter was on file from the State Solicitor's Office regarding this matter. There is a letter dated 24th June 2009 from CSTB requesting legal clearance. Letter of approval was issued on the 19th June 2009 attention to Joseph Lelang Secretary, Department of National Planning from Brain Kimmins Chairman of CSTB. The amount approved per letter from CSTB on the 19th June 2009 was Two Million Kina (K 2,000,000.00).

9. GOT 088/10 Department of National Planning and Monitoring

Application for the construction of the second stage of the Yuhama to Pandoka Road in Komo Magarima Electorate in the Southern Highlands Province. No formal letter requesting COI was on file. No letter was on file from the State Solicitor's Office regarding this matter. Letter of approval was issued on the 18th November 2010 attention to Gabriel Yer Secretary, Department of Finance from Brain Kimmins Chairman of CSTB. The amount approved per letter from CSTB on the 1st of November 2010 was Three Million Five Hundred Thousand Four Hundred and Seventy Five Kina (K 3,500,475.00).

FINAL BERIMITT

Full (100%) payment and released full contract value of K3,500,475.85 on cheque No:44012 dated 20th October, 2010 but cancelled and replaced with cheque No: 44103 dated 3rd November, 2010 for the same amount. The payment was made first on 20th October, 2010 and the contract signed later to retrospectively cover their actions.

8.2 Recommendations

It is recommended that:-

- 1) The State Solicitor should not be a member of the Central Supplies and Tenders Board so that he can independently assess the nature of the contract before giving legal clearance for the issuance of a COI.
- 2) Mr Brian Kimmins, the Secretary for CSTB and Mr Minjihau should be dealt with under the Public Services Management Act and GOs.

9 ILLEGAL CONTRACTS

It was discovered that most of the contractual arrangements that the State was made a party were illegal hence unenforceable. Contracts that were entered into in breach of the PFMA are illegal and unenforceable. Not many of the payments made were based on properly constituted contracts. The rights of the State were not protected. Therefore it makes it difficult for the State to plead its rights and take actions under the **law** of contract. The servants of the State who were supposed to protect the rights and interests of the State have failed their responsibilities and failed their employer.

The course of action available to the State is the recovery under the Proceeds of Crimes Act 2005.

1e INDIVIDUAL CASES

10.1 Detailed Investigations

The ITFS investigated a number of allegations, some of which actions were taken whilst others are still being pursued by the respective agencies. The following are 20 cases set out in detail for the purposes of substantiating the findings and recommendations in this report. These are only the few of the many cases that ITFS is investigating.

The individual cases bear contain the findings and recommendations respectively. Again, the structure of ITFS allows ITFS to implement its own findings.

IFOINAL REPORT

Case 1: Payment and Release of K180,000 to Kajah Development & Business Service Centre

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2007 for 2008 and 2010 for 2011 Development Budget. Consequently, We were unable to establish whether this project went through the normal budget process through to NEC.

The payments were made from vote item 4203-5203-413, earmarked for Districts Markets Program.

2. Facts involving Project Submission, Appraisal and Approval for the K180,000.00

The initial project proposal and copy of Contract No: COI — 76/2008 said to be awarded by CSTB for the construction of Mul Baiyer Sub-District Markets to Kajah Development & Business Service Centre for a quoted price of K450,000.(K150,000 each) for three (3) markets in Western Highlands Province are not on file.

During later part of 2008, all of 2009 and 2010, nothing is said about the project and whether payments were made in relation to this contract but in 2011, cheque No:132 for 1(180,000 dated 22/03/11 was paid, the same date, cheque No:133 for 1(137,000 was paid to K-Island Builders Ltd (*refer K-Island Builders Ltd K547,00.*

The letter and Invoice on file and submitted by the Managing Director, Mr Obed Rouri, to the Secretary for DNPM was for the final 10% of Contract No: COI — 76/2008 for 1(37,000.00 to be paid. That is an indication that 1(413,000.00 of the contract value of 1(450,000 was already paid as down payment in 2008. As such, there was an over payment of 1(143,000 when 1(180,000 was paid instead of 1(37,000.00.

3. Breach of Financial Management and Administrative Process in facilitating the release of K180, 000.00.

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

- o The acting Secretary — Ms Ruby Zarriga as Departmental Head and Chief Accountable Officer,

FINAL REPORT

- i) AppinVed as Section 32 officer for payment to Kajah Development & Business Service Centre, a private company without proper due diligence checks and its track record of being in the Building Industry.
- ii) The letter and Invoice on file and submitted by the Managing Director, Mr Obed Rouri, to the Secretary for DNPM was for the final 10 % of Contract No: COI — 76/2008 for 1(37,000.00 to be paid but instead the requisition officer requested for 1(180,000 and Acting Secretary approved this. As a result, an overpayment of 1(143,000 was made.

There is NO Project Completion Certificate on file to certify that this contract was fully implemented. Only the Provincial Works Manger's status report addressed to Secretary but attention made to FAS-IED, a position held by Mr William Sent in an acting capacity recently. The Provincial Works Manager mentioned in his status report that the actual Contract No: Col 76/2008 was not at his disposal to determine whether the project was done according to specifications.

- 0 There was very long delay of more than two (2) years from the time the contract was entered into and this payment which should be explained.

Part II Section 5 (a), (b), (d), (e), (i) and (g) of the *Public Finances (Management) Act, 1995* were breached as the Departmental Head.

The cheque signing officers, Assist Secretary Finance Mr Aloge Alupe and the counter signing officer and the authorized requisition officer, Mr Moses Aihi, as accountable officers are equally responsible for raising, approving and releasing moneys without properly monitoring resulting in excessive payments totaling 1(143,000.00.

Part II Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instruction were breached as Accountable Officers.

4. National Tenders & Contracts

This contract valuing 1(450,000.00 falls within PSTB and/or CS IB threshold and should have been publicly tendered but instead COI - 76/2008 was issued. The nature of the contract does not qualify the issuance of a COI yet such was issued.

5. Missing Source Documents

The payment vouchers for the first 90% payment and the contract document together with other supporting documents were missing.

. Possible Contractor & Employer Conflicts

FUNAL REPUTTI

It is noted that Mr William Sent, was the Acting First Assistant Secretary - IED within the Department of National Planning & Monitoring at the time of payment and he is the Director of the contractor Kajah Development & Business Services Centre as per the company extract. Mr Sent has awarded a contract to himself

7. Directorship, Expenditure of Funds and Site Inspections

The Directors of the company as per the company extract are Obed Rouri and William Sent Keleim.

The technical valuation of the markets shows that the market does not equate with the value of the money. In the absence of a contract, it is found that the amount was grossly overpaid for a substandard market, hence bulk of the monies were diverted to purposes other than the markets.

8. Recommendations

- 1) Firstly;
 - a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
 - b) Other Accountable Officers mentioned in hereinabove (if a confirmed Director) should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
 - c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
- 2) Concurrently, the Departmental Head and Acting Secretary, Ms Ruby Zartiga, Acting First Assistant Secretary-IED, Mr William Sent, Assistant Secretary Finance Mr Aloge Alupe should be interviewed in relation to this contract by the fraud squad.

Case 2: Payment of K100,000 to Kerekamb Island Corporative Society

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2010 for 2011 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payments were made from vote item 2075 6000 01 252000, earmarked for Social Development Program that should have been administered by the Department of Health.

LEDINAL BERM'S

2. Facts involving Project Submission, Appraisal and Approval for th.! K100,000

- o Initial project proposal dated if April, 2011 was submitted for two (2) Lucas Sawmills to do a small scale logging by a Pastor Michael Kui in Mount Hagen, Western Highlands Province.
- The same address used by K-Island Builders Ltd of which Mr William Sent is a Director and at the same time Acting First Assistant Secretary-IED of DNPM.
- ® Without any project appraisal and screening, Assistant Secretary-Budgets raised FF3 and FF4 on even date.
- Again, immediately on 1' April, 2011, Acting Secretary-Ms Ruby Zarriga approved the payment as Section 32 Officer.
- o Finally, on the next day, 2^d April, 2011, cheque No:189 for K100,000 was paid.

reach of Financial Management and Administrative Process in facilitating the release of K100,000.00.

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

The acting Secretary — Ms Ruby Zarriga as Departmental Head and Chief Accountable Officer,

- (a) Approved as Section 32 Officer for this payment without any project appraisal, assessment or recommendation from her senior staff. Proper due diligence checks including its certificate of incorporation for this corporative society was not done.
- (b) On the same date (01/04/2011), the project proposal done, requisition by requisition officer, approval by Section 32 Officer without the financial delegate and commitment clerk signing and next day cheque was paid even from a wrong vote.

Part H Section 5 (h), (d), (II and (g) of the *Public Finances (Management) Act, 1995* were breached as the Departmental Head.

The cheque signing officers, Assistant Secretary Finance Mr Aloge Alupe and the counter signing officer and the Authorized Requisition Officer, Assistant Secretary-Budgets Mr Paul Daungun, as accountable officers are equally responsible for raising, approving and releasing moneys.

FINAL REPORT

Section 6 of the *Public Finances (Management) Act, 1995* was breached as Accountable Officers.

4. Expenditure of Funds and Site inspections

The cheque of K100,000.00 was drawn on the name of Kerekamb Island Corporative Society's account with the ANZ Bank Mt Hagen Branch.

On or after 26/4/10 Pastor Michael Kui immediately made cash withdrawals and started buying items like one day old chickens for members of the society, stockfeed, cash of K10,000.00 given to their local church as tithes, parts for chain saw and other unappropriated items etc. Pastor Michael Kui himself single handles the funds which were to purchase a complete set Lucas Sawmill.

Police findings reveal that the sum of K100,000.00 that was acquired from the Department of National Planning and Monitoring was not used in purchasing a complete set of Lucas Sawmill but was diverted to other use. Police also confirm that the Society headed by Chairman Pastor Michael Kui misappropriated the sum of K100,000.00 to the use of others.

On Wednesday the 9th of November 2011 at about 9:00am Pastor Michael Kui was asked to front up at the Mt Hagen fraud office. He voluntarily came where he was interviewed and later arrested and charged for misappropriating the sum of K100,000.00 to the use of others the property of the state. He is out on bail. The prosecution file was served on him and he is awaiting the committal hearing.

5. Recommendations

1. Firstly;

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
 - b) Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15; and
 - c) Any other captions of the *General Order and Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Acting Secretary, Ms Ruby Zarriga, Assistant Secretary-Budgets Mr Paul Daungun, Assistant Secretary Finance Mr Aloge Alupe and Acting First Assistant Secretary-IED, Mr William Sent should be interviewed in relation to this payment by the fraud squad.
3. The Directors of the Co-operative society be interviewed by the Fraud Squad on the expenditure of the public funds.

Case 3: Payment and Release of K547,000 to K-Island Builders Ltd

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 and 2010 for 2011 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payments were made from vote item 229.000.101725, earmarked for Districts Markets Program.

2. **Facts involving Project Submission, Appraisal and Approval for the K547,000.00**

Initial project proposal not on file but on 31st August, 2008, CSTB in its Meeting No: SM-008/2008 awarded and approved the construction of Hagen Central Sub-District Markets to K-Island Builders Ltd for a quoted price of K450,000.(K150,000 each) for three (3) markets in Western Highlands Province through Contract No: COI — 062/2008.

During later part of 2008, all of 2009 and 2010, nothing is said about the project and whether payments were made in relation to this contract but in 2011, cheque No:111 for K410,000 dated 18/03/11 was paid and again shortly after three (3) days, cheque No:133 for K137,000 dated 22/03/11 was paid.

3. **reach of Financial Management and Administrative Process in facilitating the release of K547, 000.00.**

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

The acting Secretary — Ms Ruby Zarriga as Departmental Head and Chief Accountable Officer,

- (a) Approved as Section 32 officer for payment to K-Island Builders LTD, a private company without proper due diligence checks and its track record of being in the Building Industry.
- (b) The invoice for the final progressive payment was for K110,000 but requisition and approval was for K137,000, in excess of K27,000.

The Contract No: COI — 062/2008 approved value was K450,000.00 but actual payment totaled K547,000.00 resulting in an overpayment of K97,000.00. Also we were unable to ascertain whether any down payment made in 2008 in relation to this project.

ENAL REPORT

The full contract value plus additional K97,000 was paid but there is NO Project Completion Certificate on file to certify that this contract was fully implemented.

- o There was very long delay of more than two (2) years from the time the contract was entered into and this payment which should be explained.

Part H Section 5 (a), (b), (d), (e), (f) and (g) of the *Public Finances (Management) Act, 1995* were breached as the Departmental Head.

The cheque signing officers, Assist Secretary Finance Mr Aloge Alupe and the counter signing officer and the authorized requisition officer, Mr Moses Aihi, as accountable officers are equally responsible for raising, approving and releasing moneys without properly monitoring resulting in excessive payments totaling 1(97,000.00.

Part II Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

This contract valuing 1(450,000.00 falls within Central Supply & Tenders Board threshold and should have been publicly tendered but instead COI - 062/2008 was issued. This project was not qualified for a COI pursuant to Section 40 (3) (b) of the PFMA hence the issuance thereof was a gross abuse of the established procedures and amounts to fraud.

5. Missing Source documents

The payment vouchers for cheque No:111 for value 1(410,000 together with the other supporting documents were missing.

6. Contractor & Employer Conflicts

It is noted that Mr William Sent, was the Acting First Assistant Secretary- IED within the Department of National Planning & Monitoring at the time of payment and he was also the Director of the contractor, K-Island Builders Limited per the Contract Agreement through his directorship of Kajah Development and Business Services which is the shareholding company of K-Island Builders. As such, Mr Sent has awarded a contract to himself.

7. Expenditure of Funds and Site Inspections

Upon site inspection five of the proposed markets were built. However, the standard of the markers do not show the value for the money. There were make-shift sheds those various locations which would cost less than 1(10,000 with its existing fittings. Also, the sheds were built at locations distanced from the normal marketing places hence they are not is use.

8. Recommendations

1. Firstly;

- a. The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
- b. Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
- c. Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.

2. Concurrently, the Departmental Head and Acting Secretary, Ms Ruby Zarriga, Acting First Assistant Secretary-IED, Mr William Sent, Assistant Secretary Finance Mr Aloge Alupe should be interviewed in relation to this contract by the fraud squad.

3. The Director of the recipient company, Mr William Sent should be interviewed by the Fraud Squad for the expenditure of the public funds.

Case 4: **Payment and Release of K1.0 million to Koningi Coffee Limited**

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made incorrectly from vote item 1204-1292-144, eaitnarked for Business Development Grants. Proper vote would be the NADP vote.

2. Facts involving Project Submission, Appraisal and Approval for the K1.0 million

- o On 11th August, 2011, a project proposal was submitted by a Mr Lufai Wan (Managing Director) for establishment of a new coffee project to be located Watabung LLG, Daulo Electorate, EHP.

- The CVs included in the project proposal are the same ones also included in Rait Hela Coffee Limited a project located in Komo/Magarima District of SHP. See Case 11.
 - e On 12th August, 2010, the Secretary-Mr Joseph Lelang approved and directed K1.0 million for a K4.5 million project proposal without any project assessment, appraisal and screening process.
 - The Acting Assistant Secretary- Budget Mr Japheth Michael. raised the requisition for K1.0 million and was signed by Secretary - Mr Joseph Lelang as Section 32 officer without the commitment clerk and financial delegate signing and the cheque No: 43638 for K1.0 million was processed, signed and released, on 18th August, 2010.
 - K1.0 million of State's much needed development funds released to this project, without any project assessment, appraisal, screening and approval process raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed.
3. Breach of Financial Management and Administrative Process in facilitating the release of K1.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer,

- iii) Approved as Section 32 Officer for payment to Koningi Coffee Limited, a private company without proper due diligence checks and its track record of rehabilitating and setting up agricultural plantations.
- iv) The Secretary illegally paid from vote item 1204-1292-144 earmarked for Business Development Grants instead of NADP vote.

Part II Section 5 (a), (b), (d), (e), (l) and (g) of the *Public Finances (Management) Act, 1995* were breached.

The Acting Assistant Secretary-Budget, Mr Japheth Michael illegally paid from vote item 1204-1292-144, earmarked for Business Development Grants instead of NADP vote.

The cheque signing officers Mr Aloge Alupe, Assistant Secretary Finance and the counter signing officer are equally responsible for approving and releasing moneys earmarked for the said projects to a different agricultural project.'

Part L Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

For the purpose of this, DNPM does not have an internal Supply & Tenders Board. The Department Secretary has the capacity of up to K300,000.00. Any amount beyond that is the responsibility of the CSTB. For the establishment of agricultural project for K1.0 million, falls within PSTB and/or CS threshold for procurement.

Again, the Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer has assumed the role of CSTB when K1.0 million was not within his financial limit.

5. Control Weaknesses

The DNPM does not have a departmental payment procedure/guideline that would show the financial limits attached to certain positions for approval of requisitions, as financial delegates and Section 32 Officers for payments. This has been a very serious internal control weakness that should have been addressed as the Department was in control of the Development Budget (PIP) and its own Recurrent Budget.

For the Development Budget, proper established processes were not followed in project assessment, appraisal, screening and approval or planned and approved projects that went through the budget process right through to National Executive Council and Parliament were not implemented.

6. Expenditure of Funds and Site Inspections

The Director of the company is Mr. Lufai WARI who is from the Koningi area of the Asaro/Watabung area of EHP. His company according to the extracts from IPA is based in Port Moresby. He wrote a project proposal requesting for K4 million from the DNPM but was only given K1 million. The cheque was paid to his company on the 18th August 2010 after he opened an account with BSP POM Branch and was the sole signatory to the account. There was no tender process for this payment but was done directly from the DNPM to the company account purposely for rehabilitation of a new coffee plantation in the Watabung area.

The bank statements indicate that most of the money was diverted for personal use with huge amounts made on cash payment bases with some funds been credited to personal accounts and not on the purposes intended for. This shows a clear case of **DEFRAUDING THE INDEPENDENT STATE** of Papua New Guinea. Some of these funds were used to purchase Motor vehicles from Ela Motors.

7. Recommendations

1. Firstly,

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
 - b) Other Senior and Accountable Officers mentioned in 4.3 above should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15; and
 - c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Departmental Head, Mr Lelang, Acting Assistant Secretary-Budget, Mr Japheth Michael and the Assistant Secretary Finance, Mr Aloge Alupe should be interviewed by the fratid squad in relation to this payment.
 3. The directors of the recipient company should be interviewed by the Fraud Squad on how these funds were received and used.

Case 5: Payment and Release of K1.5 million to Mettle Limited

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2010 for 2011 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made from vote item 101722, earmarked for Social Development Program that should be transferred to the Public Authorities (Agencies) for implementation.

2. Observations on Project Submission, Appraisal and Approval for the K1.5 million

- o The project proposal/submission in relation to this payment was not on file. However, per the FF3 and FF4, this was a funding assistance for rehabilitation of Vailala Hiloi Primary School in Gulf Province.
- ³ On 13th August, 2009, Minister Paul Tiensten in a letter directed Mr Lelang to release K5.3 million to this project stating that the Governor for Gulf has written to him in relation to this project. However, copy of this letter not on file and this amount did not fell through 'in 2009 and 2010. Again on 20^h December, 2010, the

Minister in an official letter titled Urgent Contracts Outstanding, listing twenty three (23) projects totaling K28.8 million and to whom the payments would be made including K1.5 million for Mettle Limited, wrote to Mrs Ruby Zarriga who was then Acting Secretary.

- o The Minister further authorized his Research Officer and Special Projects Officer Mr Mildred Tamiloeni and Mr Christopher Hulape respectively to co-ordinate from his office and ensure proper appraisal processes were adhered to.
- o There is no project appraisal, project screening committee meeting minute or a CoI in relation to this project on file.
- o The FF3 and FF4 were filled out by Mr Chris Bakwak, an acting principal budget officer that time and signed as the requisition officer on 06th January, 2011.
- e The acting Secretary Ms Zarriga approved as Section 32 Officer on 06th January, 2011 for the funds to be released to Mettle Limited without the commitment clerk and finance delegate signing.
- O Mettle Limited is a private company and proper due diligence checks and its track record of rehabilitating schools or building and maintenance should have been done.
- o The cheque No:000047 for K1.5 million was raised and released on 01st March, 2011 to Mettle Limited.
- o K1.5 million of State's much needed development funds was released to this project, without the project proposal and no project appraisal raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed.
- o The funds were supposed to have been taken from the REST vote, instead it was paid from funds earmarked for Social Development Program, a clear deviation from what Parliament authorized through the Appropriation Act.
- O The implementing agency was supposed to be the National Department of Education. The Education department had the capacity to organize for the tender by CSTB and manage the implementation of the project.

3. Breach of Financial Management and Administrative Process in facilitating the release of K1.5 million

The Minister responsible for Financial Management stipulated under Section 3 (1) Part II of the PFMA is the Minister for Finance and Treasury and not any other Minister, including the Minister for National Planning. As such, Minister Paul Tiensten had breached the PFMA when he exercised financial directives to departmental staff.

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Department.

IFINNAL REPORT

Part II Section 5 of the *Public Finance Management Act, 1995* among other responsibilities of the Departmental Head, he/she must ensure that;

- (a) the provisions of this Act are complied with;
- (b) all accounts and records relating to the functions and operations of the department are properly maintained;
- (d) all expenditure is properly authorized and applied to the purposes for which it is appropriated;
- (e) all expenditure is incurred with due regard to economy, efficiency and effectiveness and avoidance of waste.

The acting Secretary — Ms Zarriga, as Departmental Head and Chief Accountable Officer that time had failed to comply with the above provisions and as such, Part II Section 5 (a) (b), (d), and (l) of the *Public Finances (Management) Act, 1995* were breached.

The cheque signing officers Mr Aloge Alupe- Assistant Secretary Finance, Chris Bakwak, Principal Budget Officer and requisition officer and the counter signing officer are equally responsible for facilitating the payment without proper assessment, approval and project documentation.

Part H Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

DNPM does not have an internal Supply & Tenders Board. For the rehabilitation of this school, although the funds were available at DNPM, if a private company was to be paid for the works, it is subject to the PFMA, hence it would have been tendered by CS 1'13. The amount of K1.5 million clearly falls within the jurisdiction of GS M. As such, the Department of National Planning and Monitoring and its officers had assumed the role of CSTB when 1(1.5 million was not within their financial limit.

5. Expenditure of Funds and Site Inspections

Site inspections yet to be conducted.

6. Recommendations

1. Firstly;

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.

FRIAL REPIDET

- b) Other Accountable Officers mentioned in hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
 - c) Any other captions of the *General Order and Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
- 2. Concurrently, the Minister Paul Tiensten, the Departmental Head, Ms Zarriga, Assistant Secretary Finance Mr Aloge Alupe and Mr Chris Bakwak should be interviewed in relation to this payment by the fraud squad.
 - 3. Mr Tiensten and Ms Zarriga should be investigated by the Ombudsman Commission for their part in this payment pursuant to the Leadership Code.

Case 6: Payment and Release of K3.5 million and K1,108,650.18 to Niugini Star Transport Limited

- 1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made from vote items 1204-1299-225, K3,500,475.85 earmarked for Business Growth Centre Development.

- 2. Observations on Project Submission, Appraisal and Approval for the K3.5 million
 - o The initial project proposal was not located at the DNPM in relation to this road upgrading project located in Komo/Magarima District of Southern Highlands Province.
 - e *Description of Project and Location:* According to the Contract Agreement, upgrading of Yuhama to Pandoka Road in the Komo-Margarima District of Sothern Highlands Province.
 - ® The project approval process, appraisal and its subsequent approval Minute by the project steering committee (if any) were missing in the accounts section of Department of National Planning & Monitoring.
 - o *Project Steering Committee or Internal Supply & Tenders Board:* There is no such committee or board within DNPM where project proposals are deliberated, screened and approved for funding.

EINAL REPOTTI

- o The requisition (FF4) for the 13.5 million and the FF3 signed by Section 32 Officer and the financial delegate were also missing. However, the Section 32 Officer that time was the Secretary - Mr Lelang as he approved as Section 32 Officer for the bridge project for K5.0m by the same company.
- o Contract No: Col: 035/10 for the Road Upgrading and Contract No: Col: 036/10 for construction of three (3) Bridges were both signed and awarded by CSTB to Niugini Star Transport Ltd on 08th November, 2010 and again this Contract No: Col: 087/10 signed on 08th December, 2010, a space of just one month.
- o Full (100%) payment and released full contract value of K3,500,475.85 on cheque No:44012 dated 20th October, 2010 but cancelled and replaced with cheque No: 44103 dated 3rd November, 2010 for the same amount. However, under Section 5.2 of the signed contract, stated the payment schedule as 30%, 30%, 20% and 20% and this was not complied with.
- o The payment was made first on 20th October, 2010 and the contract signed later on 08th December, 2010 through Col: 087/10 between CSTB and Niugini Star Transport Ltd a company nominated by the Governor for SHP for the bridge project. This is a serious breach of the Public Finance Management Act.
- o Also the cheque was raised on 20th October, 2010 first and later the tender bid for this project dated 23rd October, 2010 addressed to the Governor for SHP by the Administration and Finance Manager of Niugini Star Transport Ltd. Mr Lelang and CS1B need to explain why full payment was made first and later tender bids and contract signed.
- o There is no document on file showing due regard to economy, efficiency and avoidance of waste have been carefully assessed and considered; and
- o The monies were taken out of the Business Growth Centre Development vote but the contract was for road/bridge infrastructure. This is deviation from Parliaments approval for the expenditure of public funds.
- o The properly, legislated and equipped Public Authority established by the Government to construct, renovate and maintain the roads and bridges is the Department of Works well established in all provinces. As such, Mr Lelang should be held accountable for not transferring Roads and Bridges funds to Department of Works or the Provincial Treasury through CSTB for proper and value for money implementation.

FINAL REPOEU

K3.5 million of titate's much needed development funds were released to this project. Without a proper project proposal and direct payment made to this private company raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed and considered.

3. Breach of Financial Management and Administrative Process in facilitating the release of K3.5 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and Officer responsible for financial administrative role of the Department.

Part II Section 5 of the *Public Finance (Management) Act, 1995* among other responsibilities of the Departmental Head, he/she must ensure that;

- (a) the provisions of this Act are complied with;
- (b) all accounts and records relating to the functions and operations of the department are properly maintained;
- (d) all expenditure is properly authorized and applied to the purposes for which it is appropriated;

all expenditure is incurred with due regard to economy, efficiency and effectiveness and avoidance of waste.

The Secretary — Mt Lelang as Departmental Head and Chief Accountable Officer that time had failed to comply with the above provisions and as such, Part H Section 5 (a) (b), (d), and (4) of the *Public Finances (Management) Act, 1995* were breached.

The authorized Requisition Officer and the cheque signing Officers Mt Aloge Alupe and the counter signing officer are equally responsible for the release of moneys without proper documents in place.

Part H Section 6 of the *Public Finances (Management) Act, 1995* and Part 5 of the Finance instructions were breached as Accountable Officers.

4. National Tenders Sc Contracts

The amount of K3.5m falls within the jurisdiction of CSTB and payment to a single nominated company without public tender is a serious breach of the PFMA.

The purported COIs were flawed in that they appear to have been issued well after the payment was made. Even if CSTB was involved, the nature of the works does not fall under the category that would attract a Col. CoI is .for emergency related

situation aid also. CoI cannot be issued retrospectively to cover a contract that was illegal. The issuance of CoI No. 087/10, if ever was issued, was illegal and fraudulent.

There was no reason for the issuance of a CoI at all except to conceal the fraudulent and illegal payment of funds.

5. Project Supervision and Completion

Per the Appendix to the conditions of the contract, the Provincial Works Manager was named as the delegate of the "employer" who is the Independent State of Papua New Guinea. As such there is neither project status report nor a completion report by the Provincial Works Manager stating whether the project was successfully completed according to Department of Works specifications and value for money gained.

6. Conflict of Interest

Nuigini Star Transport is owned by Jeffrey Yakopia, an employee of DNPM. The implication of him using his position to orchestrate the payment cannot be ruled out. There is therefore a serious conflict of interest in this payment.

7. Payment of K1,108,650.18

Another payment for road works between Paduaga and Yuhama Road, Komo/Magarima District was made to Nuigini Star Transport Ltd on 25th November 2010, Cheque No. 44239

The Southern Highlands Provincial Government had engaged Cargen Prett Services, a company based in Mendi to do road works construction of this same road in 2007 through PS/TB. However, Nuigini Star Transport upon variations for road works submitted to DNPM and received the funding to do the same work for the value of K1,108,650.18.

8. Expenditure of Funds and Site Inspections

Site Inspections revealed that there is no road being built along that area.

Mr. Jeffery Yakopiya is the director of the company and is also the signatory of the account himself which is operated at Westpac Bank, Boroko Branch. He has no other Directors apart from himself. The Bank account was opened on the 10/03/10 before getting funds from the Department of National Planning & Monitoring into this account. The company is also registered with IPA and incorporated on the 06th August 2005. When Mr. YAKOPIYA opened the account, funds totaling about 5 million kina (in separate cheques) deposited into the account for certain construction

FINAL REPORT

work on bridges along the Komo/Magarirna District Of the Southern Highlands Province.

The bank statements show most of the funds were on cash payments even in huge amounts with some payments done to companies like Ela Motors, Boroko Motors, Niugini Oil Company Hosting Deering and believed to be for Motor vehicles and Earth Moving Vehicles.

9. ecommendations

1. Firstly;
 - a) The Departmental Head, Mr Lelang should be dealt with under General Order 8.22 and Section 114A of the PFMA.
 - b) Other Accountable Officers mentioned in hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
 - c) Any other captions of the *General Order and Public Services .I anagementi) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Departmental Head, Mr Lelang, Authorized Requisition Officer, Assistant Secretary Finance Mr Aloge Alupe, Chairman of CSTB Bryan Kimmins, Hon Anderson Agiru and the project proponent, the Managing Director of Niugini Star Transport Ltd Mr Mr Jeffrey Yakopyia should be interviewed in relation to this payment by the fraud squad.

Case 7: Payment and Release of K5.0 million to Niugini Star Transport Limited

	Col #	Project	Chq No:	Amount (K)
a	036/10	3x Bridges in SHP	42097	3,900,000.00
b	036/10	3x Bridges in SHP	43635	1,100,000.00
TOTAL:				5,000,000.00

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that went through the above (3.0) development budget process, approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made from vote items 4203-2209-225, K3.9 million and 3909-5201-143, K1.1 million earmarked for Rural Roads and Coastal Vessels Program respectively that should have been transferred to the Public Authorities for proper value for money implementation.

2. Observations on Project Submission, Appraisal, Type and Location

- o The initial project proposal obtained from the DNPM is for three (3) bailey bridges located in Komo Margarima District of Southern Highlands Province as denoted on the cover namely Wage, Lapae and Guria bridges.

o *Description of Project and Location:* The contents of the contract depicts that the scope of works and its locality, relates to a 27 km re-gravelling and sealing on a selected road in East New Britain Province. It has implications of someone doing a copy-paste job in haste just to facilitate the payment.

- The project was supported by the Governor, Hon. Anderson Agiru through a letter dated 12th May, 2010. He further requested for the K5.0m to be made payable to Niugini Star Transport Ltd as "Department of Works in Mendi was overloaded with work" an unsubstantiated statement and for reasons only known to the Governor for the K5.0m to be made payable to a private company by-passing all procurement processes.

9 The project approval process, appraisal and its subsequent approval Minute by the project steering committee (if any) were missing in the accounts section of Department of National Planning & Monitoring.

© *Project Steering Committee or Internal Supply & Tenders Board:* There is no such committee or board within DNPM where project proposals are deliberated, screened and approved for funding.

- o The Assistant Secretary- EID- Mr Jeffery Yakopya raised a requisition for K5.0 million. The Secretary-Mr Lelang approved as Section 32 officer on 31st May, 2010 for K5.0 million however the commitment clerk signed on 02nd June, 2010.

O It appeared the Secretary approved without knowing whether funds were available or not for K5.0 million. The Assistant Secretary- EID- Mr Jeffery Yakopya then seeing only K3.9 million was available, changed and initialed on the FF4 from K5.0 million to K3.9 million. Further, the financial delegate did not sign and cheque No: 42004 for K3.9 million was processed, signed and released on 02nd June, 2010. However, the balance of K1.1 million was later paid on cheque No:43635 dated 17th August, 2010.

K5.0 million of State's much needed development funds were released in this project. Without a proper project proposal and direct payment made to this private company

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the (jueshou of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed and considered.

reach of Financial Management and Administrative Process in facilitating the release of K5.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and Officer responsible for financial administrative role of the Department.

Part II Section 5 of the *Public Finance (Management) Act, 1995* among other responsibilities of the Departmental Head, he/she must ensure that;

- (a) the provisions of this Act are complied with;
- (b) all accounts and records relating to the functions and operations of the department are properly maintained;
- (c) all expenditure is properly authorized and applied to the purposes for which it is appropriated;
- (d) all expenditure is incurred with due regard to economy, efficiency and effectiveness and avoidance of waste.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer that time had failed to comply with the above provisions and as such, Part II Section 5 (a) (b), (d), and (I) of the *Public Finances (Management) Act, 1995* were breached when he;

On 14th May, 2010 on the letter by Hon. Anderson Agiru in a foot note requested acting Deputy Secretary-PIP to appraise and act on it without a project appraisal and its subsequent approval Minute by the project steering committee.

Approved as Section 32 Officer for;

• An initial project submission that was flawed with only the cover stating the three (3) bridges in Southern Highlands Province but the content related to a different project, a road sealing in East New Britain Province.

0 A contract that was flawed when he approved full (100%) payment on 31st May, 2010 and cheque No: 42004 for K3.9m raised. This cheque was later cancelled and replaced with cheque No:42097 for K8.9m dated 17th June, 2010 (K3.9m for the bridges and K5.0m for road construction). The other K1.1m for the bridges was paid on cheque No:43635 dated 17th August, 2010. The contract was signed on 08th November, 2010 through Col: 036/10 between CSTB and Niugini Star Transport

Ltd. aicompany nominated by the Governor for SLIP, payment approved and made first and then Authority to Pre-Commit (APC) and contract concluded and signed later. This is a serious breach of the Public Finance Management Act.

- o A signed contract that contained sections that related to ADB and its payment process but does not contain the payment schedule for this contract thus Mr Lelang and CSTB need to explain why full payment was made first and later contract signed.
- o There is no document on file showing due regard to economy, efficiency and avoidance of waste have been carefully assessed and considered; and
- o The properly, legislated and equipped Public Authority established by the Government to construct, renovate and maintain the roads and bridges is the Department of Works well established in all provinces. As such, Mr Lelang should be held accountable for not transferring Roads and Bridges funds to Department of Works or the Provincial Treasury through CSTB for a value for money implementation for the funds allocated in the Development Budget of which K3.9m million is part of and K1.1m for the Coastal Vessels Program.

Also, Section 40 of the PFMA stipulates public tenders to be called for "works and services" through public tenders board for value more than 1(300,000.00 and this was breached by approving and paying K5.0m to a single nominated company without proper public tender.

The Assistant Secretary- EID- Mr Jeffery Yakopya, authorized requisition officer and the cheque signing Officers Mr Aloge Alupe and the counter signing officer are equally responsible for the release of moneys without proper documents in place.

Pan II Section 6 of the *Public Finances (Management) Act, 1995* and Part 5 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

For the purpose of this, DNPM does not have an internal Supply & Tenders Board. The Secretary for DNPM can authorize payment of up to 1(300,000.00. The amount of K5million falls within the jurisdiction of CSTB for supply of works and services for and on behalf of the State with properly constituted contracts.

In this case, payment was flawed as no public tenders were called and payment was made first and then APC and the Col: 036/10. Even if a valid CoI was issued, the nature of works/contract does not qualify the issuance of a CoI on such contracts, hence the Col is illegal and fraudulent.

5. (Conflict of Interests

FINAL HEMET

Jeffrey Yakopyia is the director of the recipient of these monies, Nuigini Star Transport Limited and he himself appears to have facilitated the payment using his position as a senior officer of DNPM.

6. Expenditure of Funds and Site inspections

Site Inspections revealed that there were no new bailey bridges being built or even maintenance done on the existing bridges. The existing bridges were built by the resource sector companies and are still in good condition.

Mr. Jeffery Yakopyia is the director of the company and is also the signatory of the account himself which is operated at Westpac Bank, Boroko Branch. He has no other Directors apart from himself. The Bank account was opened on the 10/03/10 before getting funds from the Department of National Planning & Monitoring into this account. The company is also registered with IPA and incorporated on the 06th August 2005. When Mr'. YAKOPIYA opened the account, funds totaling about 5 million kina (in separate cheques) deposited into the account for certain construction work on bridges along the Komo/Magarima District of the Southern Highlands Province.

The bank statements show most of the funds were on cash payments even in huge amounts with some payments done to companies like Ela Motors, Boroko Motors, Niugini Oil Company Hosting Deering and believed to be for Motor vehicles and Earth Moving Vehicles.

7. Recommendations

1. Firstly;

- a) The Departmental Head, Mr Lelang should be dealt with under General Order 8.22 and Section 114A of the PFMA.
- b) Other Accountable Officers mentioned in 4.3 should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
- c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.

2. Concurrently, the Departmental Head, Mr Lelang, Assistant Secretary- EID- Mr Jeffery Yakopyia Assistant Secretary Finance Mr Aloge Alupe and the project proponent, the Managing Director of Niugini Star Transport Ltd should be interviewed in relation to this payment by the fraud squad. Further, the Governor for Southern Highlands Province, Honorable Anderson Agiru should be

FOINAL HERMIT

questioned by Fraud Squad for his part in requesting payment to be made to the said company.

3. Further, Honorable Anderson Agiru should be referred to the Ombudsman Commission for further investigations for his part in this payment.

Case 8: Payment and Release of K5 0 million to Niugini Star Transport Limited

	Col #	Project	Chq No:	Amount (K)
a	035/10	Road in SHP	42097	5,000,000.00
				5,000,000.00

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made from vote item 4203-2209-225, K5.0 million earmarked for Rural Roads that should have been transferred to the Public Authorities, in this case, the Department of Works for proper implementation through CSIB.

It must be noted that the cheque no 42097 was in the sum of K8.9million of which K3.9 million was for the balance of the construction of bailey bridges as stated in Case No. 7 hereinabove and bears the same cheque number.

2. Facts involving Project Submission, Appraisal and Approval for the 15.0 million

- Ⓜ The initial project proposal was not located at the DNPM in relation to this road maintenance project located in Komo/Margarima District of Southern Highlands Province.

Description of Project and Location: According to the Contract Agreement, upgrading of Yuhama to Yongle Road in the Komo-Margarima District of Southern Highlands Province.

- Ⓜ Like the bridge project, the Managing Director of Niugini Star Transport, a Mr Yalop Pakio on 08th February, 2010 wrote to Honorable Anderson Agiru. The responses to that letter by the Governor together with other documents in relation to this payment are missing.

- » The project approval process, appraisal and its subsequent approval Minute by the project steering committee (if any) were missing in the accounts section of Department of National Planning & Monitoring.
 - *Project Steering Committee or Internal Supply & Tenders Board:* There is no such committee or board within DNPM where project proposals are deliberated, screened and approved for funding.
 - The requisition (FF4) for the K5.0 million and the FF3 for Section 32 Officer and the financial delegate was also missing. However, the Section 32 Officer that time was the Secretary - Mr Lelang as he approved as Section 32 Officer for the bridge project for K5.0m by the same company and also a single cheque No: 42097 dated 17st June, 2010 for K8.9 million was raised and paid for the two projects.
- « Contract No: CoI: 035/10 for the Road Upgrading and Contract No: Col: 036/10 for construction of three (3) Bridges were both signed and awarded by CSTB to Niugini Star Transport Ltd on 08th November, 2010.

K5.0 million of State's much needed development funds were released to this project. Without a proper project proposal and direct payment made to this private company raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed and considered.

3. Breach of Financial Management and Administrative Process in facilitating the release of K5.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and Officer responsible for financial administrative role of the Department.

Part II Section 5 of the *Public Finance (Management) Act, 1995* among other responsibilities of the Departmental Head, he/she must ensure that;

- (a) the provisions of this Act are complied with;
- (b) all accounts and records relating to the functions and operations of the department are properly maintained;
- (c) all expenditure is properly authorized and applied to the purposes for which it is appropriated;
- (d) all expenditure is incurred with due regard to economy, efficiency and effectiveness and avoidance of waste.

FINAL BERDEIT

The Secretary Mr Wang as Departmental Head and Chief Accountable Officer that time had failed. to comply with the above provisions and as such, Part II Section 5 (a) (b), (d), and (1) of the *Public Finances (Management) Act, 1995* were breached when he;

- Failed to keep records in relation to this payment of K5.0m except the contract and actual paid cheque, whilst all other documents supporting this payment were missing from the Department of National Planning & Monitoring.
- Approved as Section 32 Officer for;
 - o A contract that was flawed when he approved full (100%) payment and cheque No:42097 for K8.9m dated 17th June , 2010 (K3.9m for the bridges and K5.0m for Road Upgrading) was raised and paid.
 - o The payment was made first on 17th June, 2010 and the contract signed later on 08th November, 2010 through Col: 035/10 between CSTB and Niugini Star Transport Ltd a company nominated by the Governor for SHP for the bridge project. This is a serious breach of the Public Finance Management Act.
- A signed contract that contained sections of the conditions of contract that related to World Bank and its payment process including advance payments but does not contain the payment schedule for this contract thus Mr Lelang and CSTB need to explain why full payment was made first and later contract signed.
- o There is no document on file showing due regard to economy, efficiency and avoidance of waste have been carefully assessed and considered; and
- o The properly, legislated and equipped Public Authority established by the Government to construct, renovate and maintain the roads and bridges is the Department of Works well established in all provinces. As such, Mr Lelang should be held accountable for not transferring Roads and Bridges funds to Department of Works or the Provincial Treasury through CSTB for proper and value for money implementation.
- Also, Section 40 of the PFMA stipulates public tenders to be called for "works and services" through CSTB for value more than K300,000.00 and this was breached by approving and paying K5.0m to a single nominated company without proper public tender.

The authorized Requisition Officer and the cheque signing Officers Mr Aloge Alupe and the counter signing officer are equally responsible for the release of moneys without proper documents in place.

Pail II Section 6 of the *Public Finances (Management) Act, 1995* and Part 5 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

For the purpose of this, DNPM does not have an internal Supply & Tenders Board. The Secretary of DNPM can authorize payment of up to K300,000.00 only. Any amount beyond that is subject to public tender.

This was flawed as no public tenders were called and payment was made first and then APC and the CoI: 035/10 signed. Even if a valid CoI was issued, the nature of works/contract does not qualify the issuance of a CoI on such contracts, hence the CoI is illegal and fraudulent.

5. Conflict of Interest

Jeffrey Yakopiya is the director of the recipient of these monies, Nuigini Star Transport Limited and he himself appears to have facilitated the payment using his position as a senior officer of DNPM.

6. Expenditure of Funds and Site Inspections

Site Inspections revealed that there were no new bailey bridges being built or even maintenance done on the existing bridges. The existing bridges were built by Exxon Mobil and are still in good condition.

Mr. Jeffery Yakopiya is the director of the company and is also the signatory of the account himself which is operated at Westpac Bank, Boroko Branch. He has no other Directors apart from himself. The Bank account was opened on the 10/03/10 before getting funds from the Department of National Planning & Monitoring into this account. The company is also registered with IPA and incorporated on the 06th August 2005. When Mr. YAKOPIYA opened the account, funds totaling about 5 million kina (in separate cheques) deposited into the account for certain construction work along the Komo/Magarirna District of the Southern Highlands Province.

The bank statements show most of the funds were on cash payments and does indicate huge amounts with some payments done to companies like Ela Motors, Boroko Motors, Niugini Oil Company Hasting Deering and believed to be for Motor vehicles and Earth Moving Vehicles.

7. Recommendations

1. Firstly;

The Departmental Head, Mr Lelang should be dealt with under General Order 8.22 and Section 114A of the PFMA.

- b) Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
 - c) Any other captions of the *General Order and Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Departmental Head, Mr Lelang, Authorized Requisition Officer, Assistant Secretary Finance Mr Aloge Alupe and the project proponent, the Managing Director of Niugini Star Transport Ltd should be interviewed in relation to this payment by the fraud squad.
 3. Hon Anderson Agiru also has to answer for his part in orchestrating the payment. Fraud Squad and Ombudsman Commission should question him accordingly.

Case 9: Payment and Release of K3.0 million to Hiland Farms Limited

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made illegally from vote item 1204-1280-143, earmarked for Large Plantation Rehabilitation that should be transferred to the Public Authorities (Agencies) for implementation, particularly the Department of Agriculture and Livestock.

2. Facts involving Project Submission, Appraisal and Approval for the K3.0 million

According to the project proposal on file, funds were sought to establish piggery, poultry and chicken processing facilities. The project location is in Rabaul, East New Britain. The proposed finance structure contained in the proposal was for GoPNG to contribute K.2.5 million and the project owners to contribute as equity of K0.5 million. However, the Secretary — Mr Lelang on a foot note directed the Deputy Secretary-PIP, for the release of K3 million from the Large Plantations' allocation to this project.

FRIAL REPOIRU

The Deputy Secretary - PIP, raised the requisition for K3.0 million but Section 32 officer and the financial delegate did not sign and cheque No: 43362 for K3.0 million was processed, signed and released on the next day, 21st July, 2010.

K3.0 million of State's much needed development funds released to this project, raising the requisition, Section 32 Officer not approving and raising cheque no: 43362 all on the same date, is just fraud and raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed.

3. Breach of Financial Management and Administrative Process in facilitating the release of K3.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer,

- i) Failed to ensure that Section 32 officer on all payments should approve before cheques were raised and released. Hiland Farms Limited is a private company and proper due diligence checks and its track record of piggery and poultry farming should have been done.
- ii) The amount requested per the finance structure was K2.5 million but K0.5 million of the owner's component was also paid by DNPM.
- iii) The Deputy Secretary-PIP illegally paid from vote item 1204-1280-143 earmarked for Large Plantation Rehabilitation, even without the section 32 Officer signing and that is fraud.

Part H Section 5 (a), (d), (i) and (g) of the *Public Finances (Management) Act, 1995* were breached.

The cheque signing officers Mr Alogé Alupe- Assistant Secretary Finance, Deputy Secretary-PIP and the counter signing officer are equally responsible for facilitating the payment.

Part 11 Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

The DNPM does not have an internal Supply & Tenders Board but even if there was one, K300,000.00 is the maximum limit and K10 million is the maximum limit of CSTB for supply of works and services for and on behalf of the State with properly constituted contracts.

For the establishment of a piggery and poultry project for K3.0 million should have been referred to CSTB for procurement. As such, the Department and its officers had assumed the role of CSTB when K3.0 million was not within their financial limit.

5. Expenditure of Funds and Site Inspections

Director of the company is Mr. Anton KULIT and Mr. Willie MARUM. Both are the Directors and signatories of the company (HILAND FARMS LIMITED) which is located along the Warangoi Road of the Pomio District of ENBP. The account of the company was opened on the 05/08/10 at BSP Branch Port Moresby after the Department of National Planning & Monitoring released a sum of K3 million and deposited into the company account on the 21/06/10. Current extracts on the company show the company was incorporated on the 26/07/10. Investigations confirm that there was no tender of this project and the money was paid directly from National Planning to the company.

The bank statements indicate that most of the money was diverted for personal use with huge amounts made on cash payment bases with some funds being credited to personal accounts and not on the purpose intended for. Some of this funds were used to purchase Motor vehicles from Ela Motors.

On recent site inspections, in 2012, new buildings have been erected in the vicinity of the HILANDS FARMS area. However, since the funds were released on the month of July 2010, nothing has been done until recently which shows one thing and that is that nothing would have been done if it wasn't for this investigation.

6. Recommendations

1. Firstly;
 - a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
 - b) Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
 - c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Departmental Head Mr Lelang, Deputy Secretary-PIP and Assistant Secretary Finance Mr Aloge Alupe should be interviewed in relation to this payment by the fraud squad.
3. The Directors of Hilands Farms Limited have to be interviewed by the Fraud Squad.

FINAL HEMET

Case 10: Payment and Release of K3.0 million to Agricultural Development Limited

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the ITFS the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payment was made illegally from vote item 1204-1280-143, earmarked for Large Plantation Rehabilitation that should be transferred to the Public Authorities (Agencies) for implementation.

2. Facts involving Project Submission, Appraisal and Approval for the K3.0 millions

There is no project proposal on file. The payment vouchers including the cheque copies and original cheque slip missing. The funding is to assist pyrethrum processing, a project located somewhere in Wabag per payee history printout. Postal address, C/-JDP & BPC Lagaip.

The cheque was raised and released on the same date as cheque No:42262 to Yapiok Contractors Limited for K2.0 million also for pyrethrum processing, (some likeness). Refer to case 12 below.

K3.0 million of State's much needed development funds released to this project, with all payment vouchers missing raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed.

3. Breach of Financial Management and Administrative Process in facilitating the release of K3.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer that time,

0 Failed to ensure that all accounting records were properly kept. Agricultural Development Limited is a private company and proper due diligence checks and its track record of establishing pyrethrum processing facilities should have been clone.

Part 5 (a), (4 and (g) of the *Public Finances (Management) Act, 1995* were breached.

The cheque signing officers are equally responsible for raising and signing cheque and releasing moneys earmarked for the said projects to a different agricultural project.

Part H Section 6 of the *Public Finances (Management) Act, 1995* was breached as Accountable Officers.

4. National Tenders & Contracts

Part VII, Section 39 under subsections (1) (2) and (3) of the *Public Finances (Management) Act, 1995* empowers the minister by way of notice in the National Gazette; establish an internal supply and tenders Board with limits (lower than the minimum threshold of the Central Supply & Tenders Board), policies to be applied, criteria for the evaluation and other rules in relation to the operation of the internal tenders board.

For the purpose of this, DNPM does not have an internal Supply & Tenders Board. Secretary for DNPM can authorize payment up to K300,000.00. The amount of K3million falls within the jurisdiction of either PSTB or CSTB.

For the establishment of a pyrethrum processing facility for K3.0 million should have been referred to CSTB for procurement. As such, the Department and its officers had assumed the role of CSTB when K3.0 million was not within their financial limit.

5. Irregularities on the Payment Vouchers

The DNPM does not have a departmental payment procedure/guideline that would show the financial limits attached to certain positions for approval of requisitions, as financial delegates and Section 32 officers for payments. This has been a very serious internal control weakness that should have been addressed as the Department was in control of the Development Budget (PIP) and its own Recurrent Budget.

Even if DNPM had a payment guideline, approval and release of K3.0 million would be based on a properly constituted contract for works and services to the State. As such, those senior officers have assumed the role of CSTB, a financial management decision, committing and paying K3.0 million of State's much needed Development Funds to a private company that does not fall within their financial limit without due care, no due diligence checks *and even still paying from different legislated projects can only be termed as "highly fraud"*.

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Part II Section 5 (a), (a), 0) and (g) of the *Public Finances (Management) Act, 1995* were breached.

6. Expenditure of Funds and Site Inspections

Site inspections are yet to be conducted.

7. Recommendations

1. Firstly, the Secretary- Mr Lelang and Assistant Secretary-Finance should be interviewed in relation to this payment. Based on the interview;
 - a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
 - b) Other Senior Officers should be dealt with under the General Order 15; and
 - c) Any other captions of the *General Order and Public Services Management) Act, 1995* deemed appropriate.
3. Concurrently, the Senior Officers should also be referred to the fraud squad to be dealt with under the criminal Code.
4. The directors of the recipient company should be interviewed by the Fraud Squad on the expenditure of the public funds.

Case 11: Payment and Release of K3.0 million to Rait Hela Coffee Limited

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

2. Observations on Project Submission, Appraisal and Approval for the K3.0 million

- e On 06th August, 2010, a project proposal was submitted by a Timothy Timbalu Kaloma (Managing Director) for a coffee project located in Komo/Magarima District of Southern Highlands Province.

The CVs included in the project proposal are the same ones included in Koningi Coffee Limited proposal located in Watabung LLG, E.H.P. Refer to Case 4 above.

- O The payment was made illegally from vote item 1204-1296-143, out of the K178 million earmarked for District Services Improvement Program (K.2.0m each for the 89 Districts). The DSIP funds are paid directly to the District Treasuries and project identification is by JDP & BPC in the districts.
- o On 12th. August, 2010, the Secretary-Mr Joseph Lelang approved and directed K3.0 million for a K5.0m project proposal without any project assessment, appraisal and screening process.
- o The Acting Assistant Secretary- Budget Mr Japheth Michael, raised the requisition for K3.0 million and was signed by Secretary - Mr Joseph Lelang as Section 32 Officer without the commitment clerk and financial delegate signing and the cheque No: 43602 for K.3.0 million was approved, processed, signed and released on even date, 12th August, 2010.
- o K3.0 million of State's much needed development funds released to this project, raising the requisition, approving as Section 32 Officer and raising cheque no: 43608 all on the even date, raises the question of whether due regard to economy, efficiency and avoidance of waste have ever been carefully assessed.

3. Breach of Financial Management and Administrative Process in facilitating the release of K3.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Departmental.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer,

- i) Approved as Section 32 officer for payment to Rait Hela Coffee Limited, a private company without proper due diligence checks and its track record of rehabilitating and setting up agricultural plantations.
- ii) The Secretary illegally paid from vote item 1204-1296-143, out of K178 million earmarked for District Services Improvement Program (K2.0m each for the 89 Districts).

Part H Section 5 (a), (b), (d), (e), (i) and (g) of the *Public Finances (Management) Act, 1995* were breached.

The Acting Assistant Secretary-Budget, Mr Japheth Michael illegally paid from vote item 1204-1296-143, out of K178 million earmarked for District Services

improvement Program' (K2.0m each for th2 89 Districts). Deviation of Parliamentary Appropriation is unlawful.

The cheque signing officers are equally responsible for approving and releasing moneys earmarked for the said projects to a different agricultural project.

Part H Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

Part VII, Section 39 under subsections (1) (2) and (3) of the *Public Finances (Management) Act, 1995* empowers the minister by way of notice in the National Gazette; establish an internal supply and tenders Board with limits (lower than the minimum threshold of the Central Supply & Tenders Board), policies to be applied, criteria for the evaluation and other rules in relation to the operation of the internal tenders board.

For the purpose of this, National Planning & Monitoring Department (NPMD) does not have an internal Supply & Tenders Board for supply of works and services for and on behalf of the State with properly constituted contracts.

For the establishment of agricultural project for K3.0 million, should have been referred to CS1.13 for procurement as there was no internal supply and tenders board if funds were available.

Again, the Secretary — Mr Lelang as Departmental Head and Chief. Accountable Officer has assumed the role of CSTB when K3.0 million was not within his financial limit.

5. Directorship, Expenditure of Funds and Site Inspections

The Director of the company is Mr. Robert TIA who is a Sole signatory to the company account operated at BSP Port Moresby Branch. The company extracts show that Robert TIA is Director with other Directors namely Norma AGAU, Timon TUMBU ANL Liya BORORO, Hokotu BULU, Kati HEGABA, Haguai HEWALU, Amos KRLA, Kambura JOGOMA, Timothy TIMABLU, Luke KEWA, Andrew LEPE and Mark MIN.ALU. There was no tender process for this payment. The claim was paid without any supporting documents like submission with the company profile including Certificate of Incorporation from IPA and COC from IRC. The payment was purposely for a Marco Scale Coffee plantation in the Komo/Magarima area of SHP.

Site inspections were done in September 2011 and confirmed that the coffee factory in Komo was incomplete and at its foundation stage. However, most of the funds, as

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it appears from the bank statements, were already cashed and diverted to personal use.

6. Recommendations

1. Firstly,

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
- b) Other Accountable Officers mentioned in hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
- c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.

2. Concurrently, the Departmental Head, Mr Lelang, Acting Assistant Secretary-Budget, Mr Japheth Michael and the cheque signing officers should be interviewed by the fraud squad in relation to this payment.

3. The director of the company, Mr Robert Tia should be interviewed by the Fraud Squad for the receipt and use of the public funds through this company.

Case 12: Payment and Release of K2.0 million to Yapiok Contractors Limited

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

2. Facts involving Project Submission, Appraisal and Approval for the 1(2.0 millions

- There is no project proposal on file but according to the FF4, the funding was to assist pyrethrum processing & production without the location of the project whilst the postal address being in Port Moresby, NCD.
- There was no project appraisal, assessment report nor a project steering committee minute on file approving this project.

The Budget Officer-Chris Bakwak signed as the requisition officer for K2.0 million and was approved by Secretary - Mr Joseph Lelang as Section 32 Officer and Assistant Secretary- Finance as financial delegate and cheque No: 42262 for K2.0 million was processed, signed and released on 05th July, 2010.

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However, 11L cheque was noted to have been cancelled and replaced by Cheque No: 43236 dated 14 July, 2010 for the same amount.

- o The payment was made illegally from vote item 1204-1280-143, out of Large Plantations Rehabilitation Program where the funds should have been transferred to the Public Authorities for implementation
- o K2.0 million of State's much needed development funds released to this project, raising the requisition, approving as Section 32 Officer and raising cheque no: 42262 all on the same date (cancelled and replaced with cheque No: 43236), raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed.

3. Breach of Financial Management and Administrative Process in facilitating the release of 1c2.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Department.

The Secretary — V. Er Lelang as Departmental Head and Chief Accountable Officer,

- i) Approved as Section 32 Officer for payment to Yapiok Contractors Limited, a private company without proper due diligence checks and its track record of whether it was in the pyrethrum processing/production industry.
- ii) The Secretary illegally paid from vote item 1204-1280-143, out of Large Plantations Rehabilitation Program where the funds should have been transferred to the Public Authorities.

Given the missing documents and the circumstances in relation to this payment, the Secretary did not ensure that expenditure was incurred with due regard to economy, efficiency and effectiveness and avoidance of waste.

Part H Section 5 (a), (b), (d), (e), (i) and (g) of the *Public Finances (Management) Act, 1995* were breached.

The Budget Officer-Chris Bakwak signed as the requisition and illegally requested and paid from vote item 1204-1280-143, Assistant Secretary Finance, Mr Aloge Alupe as Financial delegate and cheque signing officer and the counter signing officer are equally responsible for facilitating the release of moneys for this project.

Part H Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenclero & Contracts

Part VII, Section 39 under subsections (1) (2) and (3) of the *Public Finances (Management) Act, 1995* empowers the minister by way of notice in the National Gazette; establish an internal supply and tenders Board with limits (lower than the minimum threshold of the Central Supply & Tenders Board), policies to be applied, criteria for the evaluation and other rules in relation to the operation of the internal tenders board.

For the purpose of this, National Planning & Monitoring Department (NPMD) does not have an internal Supply & Tenders Board for procurement and a Project Steering Committee for the development budget. Even if there was an internal tenders board, K300,000.00 is the maximum limit and K10 million is the maximum limit of CS1B for supply of works and services for and on behalf of the State with properly constituted contracts.

For the establishment of pyrethrum processing/production facility for K2.0 million should have been referred to CSTB for procurement.

Again, the Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer has assumed the role of CS113 when K2.0 million was not within his financial limit.

5. Directorship, Expenditure of Funds and Site Inspections

The Director of the company is Mr John YANIS who is the Sole signatory to the bank account operated at BSP Port Moresby Branch. The company extracts show that another Director is a Mr Nandi YAPIOK. There was no tender process for this payment. The claim was paid without any supporting documents like submission with the company profile including a Certificate of Incorporation from IPA and a COC from IRC. The payment was purposely for a Pyrethrum Process and payments done was on the 05/07/10.

The payment vouchers do not show where the actual location of the project is hence site inspection was impracticable. In such instances, the only conclusion is that this was a ghost project.

The bank statements indicate that most of the money was diverted for personal use with huge amounts made on cash payment bases with some funds been credited to personal accounts and not on the purpose intended for.

Recommendations

1. Firstly;

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 11(A) of the PFMA.
 - b) Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
 - c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Departmental Head, Mr Lelang Budget Officer, Chris Bakwak, Assistant Secretary Finance Mr Aloge Alupe and the project proponent should be interviewed in relation to this payment by the fraud squad.
 3. The Directors of the recipient company should be interviewed by the Fraud Squad for the receipt and expenditure of these public funds.
 4. Mr Lelang should be investigated by the Ombudsman Commission for his part in this payment pursuant to the Leadership Code.

Case 13: Payment and Release of K700,000 to Tiki Coffee Estate Limited

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2007 for 2008 and 2010 for 2011 Development Budgets. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

The payments were made from vote item 2075 5000 01 276000, earmarked for Strategic Market Development Program. The objective for Strategic Market Development Program was to improve the infrastructure for the rural population in the 89 Districts to increase their incoming earning opportunities, thus enhancing the improvement of their living standards. The aim was to construct new markets and rehabilitate existing markets in the 89 Districts of Papua New Guinea.

However, the project in question, by its nature, relates to large coffee plantation rehabilitation but the funds seem to have been sourced from a wrong vote.

2. Observations on Project Submission, Appraisal and Approval for the K700,000.00

Initial project proposal and approval not on file but on 30th June, 2008, CS 1 B awarded and approved the consultancy services of Tiki Coffee Estate Limited for the rehabilitation of Tiki coffee plantation in Western Highlands Province through Contract No: CoI - 048/08 for value K1.5 million. A 50% totaling K750,000.00 was

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said to have ^{Ut.,1211} paid as down payment and for phase I of the project in 2009 per the letter by a Chairman Mr John Kol dated 06^h March, 2011.

Dialing later part of 2008, all of 2009 and in 2010, nothing is said about the project in terms of project assessment and the status of phase I of this contract but in 2011, cheque No:184 for K700,000 dated 02/04/11 was paid as phase II.

A Project appraisal was on file but is highly suspicious as appraiser's name and signature not indicated. Reasons maybe that an officer appraised the project without a project visit and was reluctant to sign or the project proponent may have appraised it himself as the appraisal document does not bear the Department logo or letter head.

3. Breach of Financial Management and Administrative Process in facilitating the release of K700,000.00.

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Department.

The acting Secretary — Ms Ruby Zarriga as Departmental Head and Chief Accountable Officer,

- i) Approved as Section 32 Officer for payment to Tiki Coffee Estate Limited, a private company without proper due diligence checks and its track record of being in the consultancy services to coffee plantations.
- ii) Per the contract, the Department of Agriculture & Livestock would monitor the contract in terms of progress and status. As such, the second payment (50%), this payment should have been endorsed by the Departments of Agriculture & Livestock and Monitoring section of the Department of National Planning and Monitoring before payment.
- 9 There was a very long delay of more than two (2) years from the time the contract was entered into and this payment which should be explained.

Pan E Section 5 (a), (b), (d), (e), (i and (g) of the *Public Finances (Management) Act, 1995* were breached as the Departmental Head.

- 0 Assistant Secretary-Budgets, Mr Paul Daungun was the requisition officer and the claimant of this payment.
- 0 The cheque signing officers, Assist Secretary Finance Mr Aloge Alupe and the counter signing officer and the authorized requisition officer, Mr Paul Daungun, as accountable officers are equally responsible for raising,

approving and releasing moneys without properly looking at the contractual terms and conditions of this contract.

Part II Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable officers.

4. National Tenders & Contracts

The DNPM does not have an internal Supply & Tenders Board but even if there was one, K300,000.00 is the maximum limit and K10 million is the maximum limit of CSTB for supply of works and services for and on behalf of the State with properly constituted contracts.

This contract valuing K1.5 million falls within Central Supply & Tenders Board threshold and should have been publicly tendered but instead Col - 048/08 was issued and the reasons for this not stated. The nature of the works do not fall within those ones that require a CoI, hence the issuance of such in this case is a gross abuse and fraudulent.

5. Project Phase IT

As per request by the Chairman, Mr John Kol, phase II payment is for the establishment of a wet factory and labor compounds and should be complied with.

6. Expenditure of Funds and Site Inspections

Field trip to Tiki Plantation in. Dei, Western Highlands Province confirms that there is not factory and labour compound built as intended in Phase 2 payments. The company's bank account with BSP, # 1003246087 shows a total of K101 pay cash cheques out of the K700,000 that was paid. The Cheques were paid to identified individuals and companies like Ela Motors etc. It is discovered that the funds had been used on purposes other than that which it was intended for.

7. Recommendations

1. Firstly;

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
- b) Other Accountable Officers mentioned hereinabove and should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15.
- c) Any other captions of the *General Order* and *Public Services(Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.

2. Concurrently, the Departmental Head and Acting Secretary, Ms Ruby Zarriga, Assistant Secretary-Budgets, Mr Paul Daungun, Assistant Secretary Finance Mr Aloge Alupe and Mr Wakai Digne as program officer and appraiser should be interviewed in relation to this contract payment after site inspection by the fraud squad.
3. The Company owner, Mr John Kol be interviewed by the Fraud Squad for the receipt and expenditure of these funds.

Case 14: **Payment and Release of K2.0 million to Wando No.2 Coffee Estate Limited**

1. Analysis of the Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

2. Observations on Project Submission, Appraisal and Approval for the K2.0 million
 - o On 12th August, 2010, a project proposal was submitted by a Dickson Tasi, Managing Director of Wando No.2 Coffee Estate Limited to establish a coffee project in the Kagua Erave District of SHP.
 - o The CVs and the company profile including its management and shareholders were not inserted in the project document.
 - o The Acting Assistant Secretary- Budget Mr Japheth Michael, raised the requisition for K2.5 million and was signed by Secretary - Mr Joseph Lelang as Section 32 Officer without the commitment clerk and financial delegate signing and cheque No: 43608 for K2.0 million (less K0.5 million) was processed, signed and released within two (2) days, on 13th August, 2010, one day after cheque No:43602 for K3.0 million to Rait Hela Coffee Limited was paid.
 - o The payment was made illegally from vote item 1204-1296-143, out of K178 million earmarked for District Services Improvement Program (K2.0m each for the 89 Districts). The DSIP funds are paid directly to the District Treasuries and project identification is by JDP & BPC in the districts.
 - o K2.0 million of State's much needed development funds released to this project, raising the requisition, approving as Section 32 Officer and raising cheque no:

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43601 all almost on the same date, raises the question of whether due regard to economy, efficiency and avoidance of waste have been carefully assessed.

3. Breach of Financial Management and Administrative Process in facilitating the release of K2.0 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Department.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer,

- i) Approved as Section 32 Officer for payment to Wando No.2 Coffee Estate Limited, a private company without proper due diligence checks and its track record of rehabilitating and setting up agricultural plantations.
- ii) The Secretary illegally paid from vote item 1204-1296-143, out of K1.178 million earmarked for District Services Improvement Program (K2.0m each for the 89 Districts).
- iii) The Secretary also approved as Section 32 Officer without the commitment clerk and the financial delegate signing.

Part H Section 5 (a), (b), (e), (f) and (g) of the *Public Finances (Management) Act, 1995* were breached.

The Acting Assistant Secretary-Budget, Mr Japheth Michael illegally paid from vote item 1204-1296-143, out of K1.178 million earmarked for District Services Improvement Program (K2.0m each for the 89 Districts).

The cheque signing officers are equally responsible for approving and releasing moneys earmarked for the said projects to a different agricultural project.

Part H Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

4. National Tenders & Contracts

For the purpose of this, DNPM does not have an internal Supply & Tenders Board for supply of works and services for and on behalf of the State with properly constituted contracts.

For the establishment of agricultural project for K2.0 million, should have been referred to CS 1 J3 for procurement as there was no internal supply and tenders board if funds were available.

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Again, the Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer has assumed the role of CSTB when K2.0 million was not within his financial limit.

5. Internal Control Weaknesses

The DNPM does not have a departmental payment procedure/guideline that would show the financial limits attached to certain positions for approval of requisitions, as financial delegates and Section 32 Officer for payments. This has been a very serious internal control weakness that should have been addressed as the Department was in control of the National Development Budget (PIP) and its own Recurrent Budget.

6. Expenditure of Funds and Site Inspections

The Directors of the company are Mr. Dickson TASI and his wife, Mrs. TASI who are originally from Kagua in the SHP who are also signatories to this company's bank account operated at the BSP bank in Port Moresby. There was no tender process for this payment or Certificate of Incorporation from IPA and COC from IRC. The claim was paid without any supporting documents to the company. The payment was purposely for rehabilitation of a rundown coffee plantation in the Sugu area of the Kagua/Erave District of SHP.

Site inspections were not conducted at the time of this report due to bad condition of the road which is impassable.

The bank statements indicate that most of the money was diverted for personal use with huge amounts made on cash payment bases with some funds been credited to personal accounts and not on the purpose intended for. Some of this funds were used to purchase Motor vehicles from car dealers.

7. Recommendations

1. Firstly,

- a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.
- b) Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15; and
- c) Any other captions of the *General Order* and *Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.

2. Concurrently, the Departmental Head, Mr Lelang, Acting Assistant Secretary-Budget, Mr Japheth Michael and the cheque signing officer should be interviewed by the fraud squad in relation to this payment.

3. The Directors of the recipient company should be questioned by the Fraud Squad and OC after their independent site inspections are conducted.

Case 115: **Payment and Release of K7.5 million to Rait Fama Limited**

1. Analysis of *the* Payment & Final Submission to NEC

The DNPM did not provide to the Task force team the list of projects and their cost estimates by Sectors that were approved by NEC and subsequently Parliament in 2009 for 2010 Development Budget. Consequently, we were unable to establish whether this project went through the normal budget process through to NEC.

2. Observations on Project Submission, Appraisal and Approval for the K7.5 million
 - o There is no proper project proposal but on 15th July, 2010, the Acting Chief Executive Officer (Cocoa Board of PNG) Mr. Lauatu Tautea on a two (2) page letter, under the board's letterhead (not a proper documented project proposal) wrote to Secretary, Mr Joseph Lelang that the board was sponsoring for the rehabilitation and development of a Banio Plantation in the Autonomous Region of Bougainville. He further nominated ant Fama Limited to manage the project on behalf of the Board.
 - o On 16th July, 2010, the Project Folinulation Document (PDF) was done and immediately endorsed by the Acting CEO, 1\11 Tautea on the same date.
 - o Also on 16th July, 2010, Acting Assistant Secretary-Budget, Mr Japhet Michael filled out the requisition (FF3) as the Authorized Requisition Officer for K7.5 million.
 - @ On 19th July, 2010, the Secretary, Mr Lelang approved for the K7.5 million as included in the PFD and on the same date, Mr Lelang signed as Section 32 Officer and the cheque was raised again on even date.
 - o The payment was made illegally from vote items 4203-2202-225 (K5 million) and 4203-2213-225 (K2.5 million) earmarked for Construction and Improvement of roads for Bogia — Angoram Road and East New Britain Roads respectively.
 - o K7.5 million of State's much needed development funds released to this project, preparing the Project Formulation Document, approving the project, raising the requisition, approving as Section 32 Officer and raising cheque no: 43305 all within days, raises the question of whether due regard to economy, efficiency and hvoidance of waste have been carefully assessed.

3. Breach of Financial Management and Administrative Process in facilitating the release of K7.5 million

The primary responsibility for the prevention and detection of fraud rests with the Departmental Head as Chief Accountable Officer and officer responsible for financial administrative role of the Department.

The Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer,

- i) Approved as Section 32 officer for payment to Rait Fame Limited, a private company without proper due diligence checks and its track record of rehabilitating agricultural plantations and machinery for the capital works K3million mentioned in the PFD.
- ii) The Secretary illegally paid from vote items 4203-2202-225 (K5 million) and 4203-2213-225 (K2.5 million) earmarked for Construction and Improvement of roads for Bogia — Angoram Road and East New Britian Roads respectively to this agricultural project.
- iii) The K7.5 million is within the CSTB threshold and should properly be expensed through a constituted contract for works and services to the State. As such, these Senior Officers have assumed the role of CSTB and paid K7.5 million of State's much needed Development Funds to a private company that does not fall within their financial limit without due care, no due diligence checks and paying from different legislated projects can only be termed as "highly fraud".

Part II Section 5 (a), (b), (d), (e), (i) and (g) of the *Public Finances (Management) Act, 1995* were breached.

The Acting Assistant Secretary-Budget, Mr Japheth Michael illegally paid from vote items 4203-2202-225 (K5 million) and 4203-2213-225 (K2.5 million) earmarked for Construction and Improvement of roads for Bogia — Angoram Road and East New Britain Roads respectively to this agricultural project when he signed as Authorized Requisition Officer for K7.5 million prior to the project request letter being approved.

The Assistant Secretary-Finance, Mr Aloge Alupe and the cheque signing officer are equally responsible for approving and releasing moneys earmarked for the said projects to a different agricultural project.

Part II Section 6 of the *Public Finances (Management) Act, 1995* and Part 8 of the Finance Instructions were breached as Accountable Officers.

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For the purpose of this, National Planning & Monitoring Department (DNPM) does not have an internal Supply & Tenders Board.

For the services of rehabilitating agricultural project for K7.5 million, should have been referred to CST13 for procurement if funds were available.

Again, the Secretary — Mr Lelang as Departmental Head and Chief Accountable Officer has assumed the role of CSTI3 when K7.5 million was not within his financial limit.

The proper and established government entity to do this project would be the Cocoa Board of PNG itself and the payment should have been made to Cocoa Board of PNG who will manage the funds and release on phase by phase as the Board would be monitoring this project. If the project was to be contracted to a private firm, as in this case, it was subject to the PFMA, which means it was supposed to have gone through the public tender process. The Acting Chief Executive Officer (Cocoa Board of PNG) Mr. Lauatu Tautea or Mr Lelang for that matter, lacked the capacity to approve a project that was work the amount of K7.5million.

5. Expenditure of Funds and Site Inspections

Director of the company is Mr. Lautu TAUTEA and his wife Ruth TAUTEA who both hail from Motlock Island in the Bougainville Atolls of the Autonomous Region of Bougainville. Both are the Directors and signatories of the company(RAIT FAMA LIMITED). The account of the company was opened on the 16/07/10 at BSP Branch Port Moresby after the Department of National Planning & Monitoring released a sum of K7.5 million after a project proposal was given stating were for the BANIU PLANTATION AND COCOA REHABILITATION on the Northern Region of Bougainville. The cheque of 1(7.5 million king was released on the 19th July 2010. The company's registered place of business is located in Kokopo, ENBP but the project area is in Buka, Autonomous Region of Bougainville.

The bank statements indicate that most of the funds was diverted for personal use with huge amounts made on cash payment bases with some funds being credited to personal accounts and not on the purpose intended for. Some of this funds were used to purchase Motor vehicles from Ela Motors.

6. Recommendations

1. Firstly,
 - a) The Departmental Head should be dealt with under General Order 8.22 and Section 114A of the PFMA.

- b) Other Accountable Officers mentioned hereinabove should be dealt with under Sections 102, 112 and 113 of the PFMA and General Order 15; and
 - c) Any other captions of the *General Order and Public Services (Management) Act, 1995* deemed appropriate for all officers stated in (a) and (b) above.
2. Concurrently, the Departmental Head, Mr Lelang, Acting Assistant Secretary-Budget, Mr Japheth Michael, the Acting Chief Executive Officer of Cocoa Board of PNG, Mr Lauatu Tautea, Mr Aloge Alupe, Assistant Secretary Finance and the cheque signing officer should be interviewed by the fraud squad in relation to this payment.
 3. The Directors of the company should be interviewed by the Fraud Squad for the receipt and expenditure of these public funds.

Case 16: Payment of K1million to New Star Century Limited for Esa-ala District

1. Background

A total of K20 million was appropriated under Vote 229-4203-5203-225 in 2011 Development Budget for Strategic District Markets Development Program in 89 Districts throughout the country. Esa-ala District is a recipient of this funding for K1.0 million. The markets were to be built in Esa-ala Station, Dobu Rural Local-level Government (RLLG), Pwanapwana, Duau RLLG, Salamo Station and Ukeoukeo, West Ferguson RLLG.

On 17th March 2011, a Cheque No. 000102 for K1.0 million was issued in favour of Esa-ala District Treasury. This cheque was subsequently cancelled and a new one was raised to New Star Century Limited for the same amount on Cheque No. 000223 on 14th April 2011.

2. Findings

Payment made to New Star Century Ltd. for Esa-ala District Markets

The initial payment of K1.0 million was made to Esa-ala District Treasury for Esa-ala District Markets without any supporting documents such as project proposals by the proponent and appraisal done by DNPM nor proper accounting procedures were followed when effecting the payment.

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The Requisition for Expenditure, Finance Form 3 (FF3) was merely signed by a Moses Aihia as Authorised Requisition Officer and approved by Mrs. Ruby Zarriga as Section 32 officer without the Commitment Clerk and Financial Delegate signing. The General Expenses, Finance Form 4 (FF4) was also not certified by the Financial Delegate to justify the correctness of the account. The normal practice is that all FF3 and FF4 must be duly completed and signed by the relevant appointed Financial Delegates as indicated in the respective forms before any financial decision is made.

In this scenario, Mrs. Zarriga as Acting Secretary and Chief Accountable Officer had not followed these procedures and processes and yet went ahead and made an expenditure decision by approving the claim without any concrete supporting documents to justify the payment. This is noted to be a total ignorance of the set down procedures and processes of the Public Finances (Management) Act 1995 and its Financial Instructions.

On 11th April 2011, Hon. Moses Maladina, LL.M, MP, the then Minister for Public Service and Member for Esa-ala wrote to the Acting Secretary, Mrs. Zarriga, DNPM to cancel the cheque and raise a new one to New Star Century Ltd. His reason being that, the Governor for Milne Bay had on numerous occasions had interfered with his previous Development Funds and did not want this to happen again. This letter in our considered view was either delivered to and/or intercepted by Mr. William Sent, Acting First Assistant Secretary, Infrastructure and Economic Division who then did a Minute to Mrs. Zarriga to facilitate the cancellation and reissue of a new cheque.

Based on this letter by the Hon. Member and Minute by Mr. Sent, the initial Cheque No. 000102 for K1.0 million was cancelled. A new Requisition was raised and approved by Mrs. Zarriga as Section 32 Officer and Mr. Alorige Alupi, Assistant Secretary, Finance signed as Financial Delegate without the signatures of Authorised Requisition Officer and Commitment Clerk. A new Cheque, No. 000223 was raised in favor of New Star Century Ltd for the same amount (K1,000,000.00) on the 14th April 2011. Again the procedures and processes in the PFMA and its Financial Instructions were totally defied.

It was evident that proper verification of documents to ascertain the veracity and validity of the claim were not undertaken. Also officers mandated to ensure regularity and propriety of the expenditure of public funds were negligent of their roles and responsibilities.

It was also evident that proper internal control mechanisms are not in place to strictly monitor and screen claims hence allowing them to be processed without due respect to PFIVLA 1995 and its Financial Instructions. If stringent verification was adhered to by the mandated Financial Delegates, this claim would not have been paid unless collaboration and/or collusion were made between the Member and the officers of DNPIVI to have it processed and paid. Both the Member (Hon. Moses Maladina MP) and the Acting Secretary (Mrs. Zarriga) had abused their respective

offices to defraud the state by approving the payment to New Star Century Limited, a private company without proper verification of documents.

3. **Breach of Financial Management and Administrative Process in facilitating the release of K1.0 million**

Mrs. Zarriga as Acting Departmental Head and Chief Accountable Officer, approved the payment to New Star Century Limited, a private company without proper verification of documents thereby breaching *Section 5 (1) (a), (b), (d), (I) and (g) of the Public Finances (Management) Act, 1995 and Part 8 of the Financial Instructions,*

Also the cheque signing officers are equally responsible for approving and releasing the payment. *Section 6 Subsections (1), (a), (b) and (2) of the Public Finances (Management) Act, 1995* was also breached by the mandated and/or appointed Accountable Officers.

Subsection (2) An accountable officer shall comply with the provisions of this Act in respect of all matters for which he is responsible and for all public moneys and stores in his possession or under his control, and shall duly account for them.

4. **Breach of Public Tender requirements**

Pursuant to the PFMA and the Financial Instructions, the amount of K1 million falls within the jurisdiction of the PSTB and or CSTB. Minister Maladina, his JDP & BPC or the Secretary for DNPM cannot substitute the mandatory requirements of tender unless exempted by law.

Hon Maladina single handedly assumed the role of the Public Tenders board and directed the payment to a private company even without any duly endorsed written contract nor was there any tender.

Mrs. Zarriga and Hon. Moses Maladina MP had also abused their respective offices when they awarded the K1.0 million project to New Star Century Limited.

5. **Directorship of Company and Expenditure of Funds**

New Star Century Limited is an Asian company involved in operating shops and retailing business in Alotau. It is not clear whether the company had the capacity to deliver the project.

6. **Conclusion/Recommendations**

Verification of the source documents showed that proper procedures and processes were not followed by the mandated officers of DNPM when exercising their roles

rvf,p(4 abilities as administrators of the public funds under PFMA 1995. It is also evident that both Mrs. Zarriga and Hon. Moses Maladina MP had abused their respective offices when facilitating the payment to New Star Century Limited.

7. Recommendation

1. The Departmental Head and the officers that facilitated the payment should be dealt with under *Public Services (Management) Act 1995, General Order 8.22 and Sections 102 and 114A of the PFMA.*
2. Concurrently, the Departmental Head and the Senior Officers should also be referred to the National Fraud Squad for further actions to be taken according to law.
3. The Hon. Member for Esa-ala should also be referred to the National Fraud Squad and Anti-Corruption Office for further course of actions to be taken.
4. Mrs Zarriga and Mr Maladina should be referred to the Ombudsman Commission for further actions under the Leadership Code.
5. The recipient company should be interviewed by the Fraud Squad with respect to the receipt and expenditure of the public funds.

Case 17: COMMUNITY COLLEGE CONCEPT

Brief report pertaining to implementation of Community College Concept — establishment of pilot Marienberg & Wabag community colleges in East Sepik Province & Enga Province and rollout of the Second Phase throughout the country (PNG)

1. General Overview of the Community College Concept

The education is one of the single most important things that could be given to anyone and it is a catalyst for development of the entire PNG. It is known that not even 20% of the pupils enrolled at schools reach the universities, colleges and other higher institutions, only a hand full are selected to further their studies.

Therefore, many of the pupils become school dropouts and dwell in rural and urban areas of PNG seeking for greener pastures. However these category of people are semi qualified and do not have the appropriate skills and knowledge to venture into any workforce. Further, the education system does not propagate life skills courses as part of the compulsory curriculum hence when the students drop out of school, they become totally unknowledgeable to venture into any rewarding work on their own.

The Community College concept was introduced to give a second chance to these drop outs. It is an alternative system of education which is aimed at empowerment of the disadvantaged and under privileged by equipping them with appropriate skills attain a rewarding job and sustain their livelihood. It is anticipated that the Community College Concept would respond to the deficiencies of the Vocational System.

The Community College System is a new concept introduced from India, an initiative of the former National Government under the leadership of Grand Chief Sir Michael Somare.

2. Government Approval

The Community College System of education concept was introduced by Jesuit Dr. Xavier Alphonse S.J. Director, India Centre for Research and Development for Community (ICRDCE) in India to be piloted in PNG.

The former National Government under the Prime Ministership of Hon. Sir Michael Somare's National Executive Council Meetings, NEC Decision No: 55/2007 - Special Meeting No: 12/2007 dated 30th November 2007, NEC Decision No: 138/2008 — Special Meeting No: 22/2008 dated 16th July, 2008 and NEC Decision No : 229/2008 — Meeting No: 10/2008 dated 31st October, 2008 approved the establishment of Community College System of Education Concept, introduced by Jesuit Dr. Xavier Alphonse S.J. Director, India Centre of Research & Development for Community (ICRDCE) in India to be piloted in PNG.

The first Pilot Community College was approved by NEC for establishment in Merienberg, Angoram District in the East Sepik Province (ESP) and to be rolled to other districts in PNG thereafter. The NEC Decision No: 229/2008 - Meeting No: 10/2008 dated 31st October, 2008 also approved the establishment of Wabag Community College in Enga Province as the second pilot project.

The NEC also approved the establishment and operation of thirteen (13) additional Community Colleges in the four (4) Regions of PNG & Bougainville. It was noted that the Department of Education and Office of Higher Education were directed by NEC to develop a directional and operational policy in PNG context, for the establishment of the thirteen (13) additional Community Colleges throughout the Country.

The NEC retrospectively approved K130 Million to implement the projects for a period of five (5) years commencing in 2008 at the cost of K10 Million per project and directed the Ministry and Department of Finance & Treasury to allocate funds retrospectively commencing in 2009 Appropriation Act.

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The investigation further uncovered that National Executive Council (NEC) deliberated and approved per NEC Decision No. 119/2010 dated 26th May, 2010 to obtain a Concessional Loan of US\$35.0 million from the Chinese Government through Export Import Bank of China to carry out the Second Phase

3. Budgetary Allocation and Financing of the Community College Project

In 2009, K30million was allocated for the Marienberg Community College and Others under the PIP No 3002. The 2009 Budget estimates show that an amount of K120million would be rolled out in the next five years including 2009.

In the 2010 budget, the amount of K30million for the 2009 Appropriation is shown with a subsequent amount of K20million for the 2010 budgetary allocation.

The 2011 Budget under the Community College Appropriations contains the following table as the forecasted funding for this project through the PIP.

2009 Actual	2010 Budget	5 Year Total	2011	2012	2013	2014	2015
		95,906,000	51,906,000	11,000,000	11,000,000	11,000,000	11,000,000

For the Marienberg Community College under PIP Number 3284, the Government allocated K20million which is the estimated total project cost for the 3 years estimated duration of the project.

It can be noted from the 2009, 2010 and 2011 Budgets that an amount of K50million (K30m -2009 and K20m for 2010) had already been appropriated but is not reflected in the 2011 budget. These figures were conveniently not stated in the 2011 budget. It is also noted from the 2011 budget that if K20million was allocated to Marienberg for the implementation of the project for three years, what happened to the K50million for the previous two years, 2009 and 2010 as appropriated by Parliament.

4. Concessional Loan of USA Dollar \$ 35.0 million from the Government of China

On the 26th May, 2010, National Executive Council Decision No. 119/2010 approved the authority to proceed with Government to Government negotiation for a Concessional Loan of USD \$35 million to fund the Second Phase Pilot Community College Concept for the thirteen (13) additional approved Community Colleges which total to fifteen (15).

The loan was obtained from the Export Import (Exim) Bank of China to implement the Second Phase Community College Project and on-going work for Phase 1 that brings the total to fifteen (15) Community Colleges. To rollout of the

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Second Phase of the Community College Project the Inclusive Education for National Development for Community Education Trust (ITE Trust) was working with the ZIE Corporation, a Chinese Company to roll-out the Second Phase.

It was noted that the loan of USD \$35 million was to meet the short fall of K110 million under the budgetary allocation for implementation of the Second Phase on Community College Project roll-out.

The loan was approved and the agreement was signed between the State of PNG as the borrower and Export Import Bank of China as the lender on the 19th January, 2011. The loan was obtained at 2% interest per annum and management fee of 1%. The maturity period of the facility shall be 180 months, among that Grace Period of 60 months and repayment period shall be 120 months.

The Concessional Loan arrangement with Exim Bank of China is a low interest rate credit extended by the Chinese Government through the Exim Bank purposely designated to fund the supply of manufactured products and infrastructure developments in the borrowing country. It is one of the primary conditions of the loan that a Chinese company shall be selected as the project contractor for the procurement of materials which shall largely be from China. The loan is therefore tied to infrastructure materials to be administered by a selected Chinese company to deliver to the borrowing country. In our case, ZIE Corporation was selected.

The 2011 budget however states the forecasted loan raised funds as follows:

2009 Actual	2010 Budget	5 Year Total	2011	2012	2013	2014	2015
		40,000,000		10,000,000	10,000,000	10,000,000	10,000,000

The US\$35million at the time of NEC Decision No. 119/2010 dated 26th May 2010 would have been PNG Idna equivalent around K94,948,000. The US\$35million at the time of the signing of the loan agreement would be around PGK87,500,000. ⁷

The people who formulated the 2011 National Budget should have had the benefit of the NEC decision to obtain the loan beforehand, hence the loan raising component for the next five years for the Community College Project should have been estimated to as near as possible. The loan figure for the five years is however grossly understated to be less than half of the total amount of loan. An explanation is required for this understatement.

5. Disbursement of Funds by Department of Treasury & Finance

Calculations done on <http://www.oanda.com/currency/converter/>

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Th.: Department of Education made a submission to the Department of Treasury & Finance requesting the release of funds allocated to implement the Community College Concept in 2008.

The submission also disclosed standard plans of architectural designs for teachers' houses and other infrastructure buildings for the two pilot projects.

Instead of releasing the funds to the Department of Education, they were paid into the Young & Williams Lawyers Trust Account. ITFS has not cited any Trust Instrument duly issued by the Treasurer to open or use the Young and Williams Lawyers Trust Account. How a private law firm's trust account was used to carry out development projects of the Government raises questions in itself.

6. Establishment of Pilot Marienberg Community College in Angora District, East Sepik Province.

The investigation revealed the proposed architectural designs and cost of construction for the Pilot Marienberg Community College infrastructure developments were 1(8,760,000.00, which includes all the essential infrastructure buildings.

The operational costs estimated for running of the college stood at K1,800,000.00 for first academic year upon completion of construction works and subsequent enrolment of students.

It was noted from the project inspection conducted by the Investigation Team that only three (3) teachers houses were erected and forty (40%) per cent done. The construction work ceased, the team was unable to talk to the constructor. Some of the photographs taken during the site inspections are posted at Appendix of this report.

It is confirmed that K17,631,721.02 was disbursed to Marienberg Community College Trust Account. The funds disbursed were more than sufficient to carry out the construction works and commence operation of Marienberg Community College. Yet nothing much has been done by the Contractor, Board of Governing Councils and Community College Secretariat. The funds allocated and disbursed to execute the project were deemed misappropriated without completing the project.

It was confirmed that the Marienberg Community College was administered by Board of Governing Councils; the Chairman of the Governing Council being Mr Junior Michael Maiwa Somare and is also a signatory to the Marienberg Community College Trust account.

The proposed architectural plan and costs for the construction of buildings and other infrastructure for the Pilot Marienberg Community College.

- i. 8 x Teachers houses @ K200,000.00 per house K1,600,000.00

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ii	2 x 40 Mel' student dormitories @ K680,000.00 per dormitory	1(1,360,000.00
iii.	2 x 30 Men fully furnished classroom @ K250,000.00	K 500,000.00
iv.	1 x Kitchen and Mass Hall @ K900,000.00	K 900,000.00
v.	1x Boys Ablution Block @ K50,000.00	K 50,000.00
vi.	1x Girls Ablution Block @ K50,000.00	K 50,000.00
vii.	Freight costs @ K300,000.00	K 300,000.00
viii.	Parameter Fencing @ K500,000.00	K 500,000.00
ix.	Multi-purpose Hall @ K500,000.00	K 500,000.00
x.	Project Administration cost @ K3,000,000.00	<u>K3,000,000.00</u>
	Total	<u>K8,760,000.00</u>

Operations costs Marienberg Community College

i	Equipment maintenance @ K50,000.00	K 50,000.00
ii.	Building Maintenance @ K200,000.00	K 200,000.00
iii.	Students amenities @ K100,000.00	K 100,000.00
iv.	Student ration @ K75,000.00 per quarter (K300,000.00)	K 300,000.00
v.	Office materials & supplies @ K200,000.00	I< 200,000.00
vi.	Transport & fuel @ K200,000.00	K 200,000.00
vii.	Utilities @ K150,000.00	K 150,000.00
viii.	Monitoring & Evaluation Research @ K500,000.00	K 500,000.00
ix.	Student learning & development @ K100,000.00	<u>K 100,000.00</u>
	TOTAL:	<u>X1,800,000.00</u>

7. Establishment of Pilot Wabag Community College in Wabag District, Enga Province:

It was confirmed that the estimated costs for the construction works of the Pilot Wabag Community College were K5,060,000.00 and the operational costs were valued at K1,800,000.00 respectively.

The investigation uncovered that the Department of National Planning & monitoring disbursed 1(5,400,000.00 and the Wabag District Treasury Office drew a cheque of K200,000.00 to Pilot Wabag Community College. The total public funds given to implement the project accumulated to K5,600,000.00 which equates for ninety two (92%) per cent of the total construction and operation costs.

The Investigation Team's project inspection conducted in Wabag confirmed that no construction works were done to establish the Pilot Wabag Community College. However, it was noted that the location was identified and initial ground works were done to clear and level the ground but no buildings were erected.

The Expenditure Transaction Printout from the Wabag District Treasury Office in relation to Wabag Community College Vote number revealed that all the funds were

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extrato, i c;il or fully committed. However, there were no tangibly, infrastructure/constructions sighted during the site inspection to ascertain and verify the expenditure of public funds since those funds were released.

The approved proposal plan for the construction of infrastructure for the Pilot Wabag Community College and the related costs were as follows:-

i.	8 x Teachers houses @ K200,000.00 per house	K1,600,000.00
ii.	2 x 40 Men student dormitories @ 1(680,000.00 per dormitory	1(1,360,000.00
	2 x 30 Men fully furnished classroom @ 1(250,000.00	K. 500,000.00
iv.	1 x Kitchen and Mass Hall @ 1(900,000.00	K 900,000.00
v.	1x Boys Ablution Block @ 1(50,000.00	1(50,000.00
vi.	1x Girls Ablution Block @ K50,000.00	K 50,000.00
vii.	Freight costs @ K100,000.00	I< 100,000.00
	Parameter Fencing @ 1(500,000.00	<u>K 500,000.00</u>
	Total	<u>K5,060,000.00</u>

Operations costs for Wabag Community College

i.	Equipment maintenance @ 1(50,000.00	K 50,000.00
ii.	Building Maintenance @1(200,000.00	K 200,000.00
iii.	Students amenities @ K100,000.00	I< 100,000.00
iv.	Student ration @ 1(75,000.00 per quarter (K300,000.00)	K 300,000.00
v.	Office materials & supplies @ K200,000.00	K 200,000.00
vi.	Transport & fuel @ K200,000.00	I< 200,000.00
vii.	Utilities @ 1(150,000.00	K 150,000.00
viii.	Monitoring & Evaluation Research @ 1(500,000.00	K 500,000.00
ix.	Student learning & development @ K100,000.00	<u>K 100,000.00</u>
	Total	<u>K1,800,000.00</u>

The investigation uncovered that the above buildings were not erected using the funds disbursed by the Department of National Planning and Wabag District Treasury Office in total of 1(5,600,000.00.

8. Second Phase Pilot Community College Project

The NEC Decision No. 117/2009, Meeting No. 05/2009 dated 30th July, 2009 noted the submission for the second phase of the Community College Projects Submission and endorsed establishment of the proposed thirteen (13) Community Colleges to offer Certificate, Diploma and other programs. The particulars and location are as follows:-

Names of Colleges	Provinces
(i) Viviran	East New Britain
(ii) Karkar	Madang
Morobe Technical College	Morobe

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(iv)	Cape Rodney	Central
(v)	Aitape	Sandaun
(vi)	Pomio	East New Britain Province
(vii)	Pangia	Southern Highlands
(viii)	Mabiri	Central Bougainville/ABG
(ix)	Alotau	Milne Bay
(x)	Rigo	Central
(xi)	Lahame	Eastern Flighlands
(xii)	Karamui	Chimbu
(xiii)	Hela Community College	Southern Highlands

These were new projects and the costs estimated was to set up a totally new infrastructure for the establishment of the community colleges just like Marienberg and Wabag pilot projects under the First Phase.

9. Disbursement of funds to Young & Williams Lawyers

Payments made to Young & Williams riirectly from the Department of National Planning & Monitoring are as tabulated hereunder.

No	Date	Vote No.	Chef No.	Details/Particulars	Amount
.	08/10/09	229-4203-3299-225	40068	Construction for Corn. College	K8,000,000.00
2.	08/10/09	229-4203-3299-225	40069	Construction for Corn. College	K8,000,000.00
3.	08/10/09	229-4203-3299-225	40070	Funding Com. College Facilities	K4,000,000.00
4.	11/12/09	229-4203-3228-135	40677	Funding for Marienberg Corn. College	1(5,000,000.00
5.	11/12/09	229-4203-3228-135	40685	Funding for Marienberg Corn. College	K5,000,000.00
.	05/02/10	229-3909-1202-225	40880	Funding Marienberg Corn. Colle e	K20,000,000.00
	Total				K50,000,000.00

10. Marienberg Community College Trust Account

a. Total Receipts/revenues accounted for by the Marienberg Community College Trust Account.

	Payee	Method of Payment	Details/Particular	Amount
0.				
1.	12/06/07 Marienberg	Direct deposit	New Account	50,200.00

Trust Account					
2.	29/07/08	Marienberg Trust Account	Direct deposit	Young & Williams	546,000.00
3.	12/09/09	Marienberg Trust Account	Direct deposit	No details	5,000.00
3.	24/09/08	Marienberg Trust Account	Direct deposit	Young & Williams	246,000.00
4.	28/10/08	Marienberg Trust Account	Direct deposit	Young & Williams	1,000,000.00
5.	25/11/09	Marienberg Trust Account	Direct deposit	Young & Williams	500,000.00
6.	27/05/09	Marienberg Trust Account	Direct deposit	ESP Govt A/C 1000873030	10,000,000.00
7.	28/05/09	Marienberg Trust Account	Direct deposit	Prov. Treasury WWK	15,508.20
8.	15/09/09	Marienberg Trust Account	Direct deposit	From FTD # 6001598705 P/WDL	2,500,000.00
9.	15/10/09	Marienberg Trust Account	Direct Deposit	BSP WWK Chq	8,400.00
10.	04/11/09	Marienberg Trust Account	Direct Deposit	Young & Williams	728,906.86
11.	19/10/10	Marienberg Trust Account	Direct Deposit	10 spl clr f/o Marienberg Corn College	1,843,332.71
12	23/02/11	Marienberg Trust Account	Direct Deposit	Dpt NEC-BPNG Chq	58,374.25
13	29/03/11	Marienberg Trust Account	Direct Deposit	Young & Williams	130,000.00
TOTAL					17,631,7221.02

b. Disbursement of K10.0 million RESI funds to Marienberg Community College

The investigation uncovered that on the 28th January, 2009 a cheque number 1016 for K10 million was drawn to East Sepik Provincial Treasury Office by Department of National Planning & Monitoring. There is a letter by the then Minister for Education, Hon Sani Rambi to Education Secretary Dr Joseph Pagelio dated 17th November, 2008 advising the Secretary that K10 million of the RESI funds to support the Community College project. There is no other document showing that this K10 million was earmarked for Marienberg Community College. Further, Marienberg has its own direct funding from the National Budget.

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The Chairman (Michael Somare Junior) of Marienberg Community College and Deputy Provincial Administrator ESPA wrote to ESP Treasury Office to transfer the K10.0 million into the Marienberg Community College Trust Account. Consequently cheque number 81000228 for the amount of K10.0 million was raised and paid into the Marienberg Trust Account on 26th May, 2009 by ESP.

On the following day, 26th May 2009, a cheque worth K10million, Cheque No. 000273 was raised by the Marienberg Community College Trust Account deposited into an Interest Bearing Deposit (IBD) Account at Westpac Bank - Wewak Branch. It was evident that interests obtained from the principle amount have been withdrawn and the principle amount of K10.0 has been rolled over and still held at the bank. From the transactions out of the IBD Account, it is believed that another IBD deposit had been made from the subsisting IBD account on the 15th of September 2009.

a. Payments made directly by Young & Williams into the Marienberg Community College Trust Account

No.	Date	Payee	Method of Payment	Particulars	Amount (K)
1.	29/07/2008	Marienberg Trust Account	Direct deposit	Cheque pmt By Y&WL	546,000.00
2.	24/09/08	Marienberg Trust Account	Direct deposit	Cheque pmt by Y&WL	246,000.00
3.	28/10/08	Marienberg Trust Account	Direct deposit	Chq pmt by Y&WL	1,000,000.00
4.	25/11/08	Marienberg Trust Account	Direct deposit	Chq pint by Y&WL	500,000.00
	04/11/09	Marienberg Trust Account	Direct deposit	Chq pmt by Y&WL	728,906.86
	28/10/08	Marienberg Trust Account	Direct deposit	Chq pmt by Y&WL	130,000.00
Total Amount					3,150,906.86

The Young & Williams bank statements obtained from the BSP Bank shows cheques valued millions of kina had been drawn to pay for various goods and services. However, the investigation was unable to verify as the payment vouchers were not furnished by BSP Bank as at the time of this report. It is believed that more than K.20.0 million could be invested in a finance company, which is yet to be confirmed. It is also noted from the Young and Williams Lawyers Trust Account transactions that the funds for the project got mixed up with the law firms own funds and at times the law firm appears to use some of these funds to fund its own expenses.

Separate books regarding the expenditure of community college funds may be maintained by Young and Williams Lawyers. However, what is of concern is that State's project funds should not have been deposited into a private law firms trust account in the first place. An amendment to the Criminal Code Act Section 383A was done with the inclusion of subsection (3) to broaden the definition of dishonesty to include instances where public funds are used to meet private expenses, even with the intention of reimbursing.

7. Parallel Stream Community College Roll-out

It was uncovered that some of the funds were committed to finance Parallel Stream Community Colleges throughout the country. The Parallel Stream Community Colleges are the existing Vocational Centers administered by churches and government institutions established with basic and minimum facilities. It was noted that ten (10) vocational centers were selected to run the Community College Programme as Parallel Stream Community Colleges in the same campus by using the same facilities available.

The investigated noted that an amount of K100,000.00 was given to each of the Parallel Stream Community Colleges to improve the existing infrastructure to accommodate sufficient students to undertake courses offered at the institutions. The funds were disbursed by Young & William who are the Trustee or Custodian of the funds to these existing Vocational Centers for face lifting before becoming Community Colleges upon advice and recommendation from the Community College Secretariat.

The investigation is yet to ascertain how much was actually given to carry out the renovation and improve the existing infrastructure of the Vocational Centers before enrolling course participates.

If the costs estimates to the tune of K110million for the Second Phase was to build new facilities like Maricnberg and Wabag, and the loan was obtained to cover for it, why then resorting to do maintenance at the cost of K100,000 each to those existing schools?

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8. Findings

The total funds used for the purposes of this Community College Concept are as follows:

Parliament Appropriated	Amount (K)
2009 Budget	30,000,000
2010 Budget	20,000,000
2011 Budget	20,000,000
Loan as signed (US\$35million) estimated PNG Kina equivalent	90,000,000+
TOTAL	K160,000,000+
Identified Payments from DNPM	
DNPM payment to Young and Williams Lawyers	50,000,000
RESI Funds paid directly to ESP and transferred to Marienberg	10,000,000
DNPM Payment directly to Wabag Community College	5,400,000
TOTAL	K65,400,000

From the above table, it can be seen that K160 million plus were raised through the budget as of 2011. The K50million that was appropriated under the 2009 and 2010 budgets were paid into the Young and Williams Lawyers Trust Account during those years as tabulated earlier hereinabove.

A payment of K10 million was made out of the RESI funds for the Marienberg Community College which was remitted to the East Sepik Provincial Government Account and later transferred to Marienberg Community College Trust Account. Another payment of K5.4million was paid directly by DNPM into the Wabag Community College Account. In total, around K65.4million was paid out of the DNPM for Community College Projects.

If only K65.4 million was remitted out of the DNPM for the community college, much of which are believed to have been misappropriated, what happened to the balance from K160million plus, which is estimated to be more than K95million?

The investigations reveal that most of the building materials and fittings are prefabricated materials from China. It is no doubt that the US\$35 million was a tied loan from the Import and Export Bank of China. As such ZTE Corporation of China engaged to deliver the prefabricated building materials out of the tied loan and deliver them to PNG. The materials are very cheap and do not equate the millions of kina appropriated for such. If the loan was tied to materials and the ones that were

Lists were as a result of that loan arrangement, what 1.1 '1pi 'cried to the
revenues appropriated by the PNG Government for the successive years?

If the US\$35 million Concessional Loan is estimated at around K90m K100m, why
was it grossly understated in the 2011 budget by stating K40million instead of
around K90 million to K100 million? What happened to the remaining balance?

The two pilot projects of Marienberg and Wabag are yet to be completed. The site
inspections have confirmed that the Marienberg College is incomplete and bushes
have overgrown the project area. The Wabag Community College is at the ground
clearing stage, without any infrastructural improvement as yet.

The Second Phase of the Project appear to have taken another twist, with a deviation
from building new schools to revamping existing vocational schools under what they
call a "Parallel Stream Community College Roll-out". The 13 extra colleges under the
Second Phase would cost around K10million each as per the subsequent NEC
Decision. Why was K100,000 eventually given to each existing vocational School to
make up the 13 schools?

If the estimated costs of the Marienberg Community College were around
K10million as indicated in the initial proposal, why was K17,631,7221.02 of which
K10million from RESI funds were remitted to the Marienberg Community College
Trust Account? The K10million was then deposited into an IBD at Westpac bank
Wewak and is collecting interests whilst the project itself is left incomplete. The
Board of the Marienberg Community College have to answer for illegally deviating
project funds to make money. Parliament had not authorized them to raise revenue
as is provided by the Constitution.

The Distance Education Project would set up a headquarters in Port Moresby, where
a data center would be established and would set up 13 community colleges with
video conference system across the country. The viability of this education program
which is believed to be using high technological learning apparatus including settle-
light televised teaching programs is believed to have not been properly scrutinised by
the Education Department prior to its adoption and establishment. Using a highly
technological education medium to train the excluded populace of the country
demonstrates the huge disparity that any reasonable Papua New Guinean, knowing
all the facts of PNG, can judge that it is not viable. The program appears to have
been imposed on the Education Department to sanction it. The Education
Department does not seem to know much about this project. Whether it is a genuine
project or another colour coated project to be used as a smokescreen to squander
public funds is one of the bundles of issues that remain to be investigated further.

The project was conveniently kept at the Department of the Prime Minister and
NEC as the implementing agency instead of the qualified implementing authority,

which is the Eclilta.Lon Department. Further, monies were paid into a Law Firms Trust Account. One should ask why development funds are paid into a law firms trust account. ITFS has not cited a trust instrument duly endorsed by the Minister for Finance and Treasury. Out of the Young and Williams Trust Account, the monies were then paid into Marienberg Community College Account, where the then Prime Minister's own son Junior Somare was the Chairman of the Board and a signatory to the account. Further, the funds apparently got mixed with the law firm's own funds and in the process, the law firm may have used some of the funds to funds its own expenses. That is illegal and improper.

A law firm's trust account is solely for lawyering related payments. It should not be used as conduits to launder illegal funds nor shall it be used for development projects. Trust Accounts authorized by the Minister for Finance and Treasurer serves the sole purpose of catering development funds and other funds. There is no indication of a trust instrument approving the use of Young and William Lawyers Trust Account for development projects.

9. Recommendation

This case needs further and detailed investigations by Fraud Squad, Ombudsman Commission and PNG Law Society accordingly. The Principal of Young and Williams Lawyers Mr Greg Sheppard, the Boards of Marienberg and Wabag Community Colleges, Directors of ZTE Corporation, the Community College Secretariat, among others need to be interviewed immediately in relation to this project and the whereabouts of the public funds including the concessional loan.

Case 18: **Koge Coffee and Pyrethrum Project —K5million**

1. Analysis of Payment

On 23rd July 2009, Hon Jeffrey Nape authored a (3) page letter addressed to the then Minister for Treasury and Finance, Hon Patrick Pruaitch, using his official letterhead as the Speaker of Parliament, requesting funding of thirty million kina (K30.0 million) to fund Coffee and Pyrethrum projects in his Sinasina Yongomugl Electorate.

The letter reached the office of the Minister for Treasury & Finance on 03rd August, 2010. At that time, Hon Peter O'Neill was just appointed as the Minister for Finance and Treasury. On 11th August, 2010, Mr O'Neill then made notations on the letter and marked it to his EO, with these comments stating " *Develop letter to Speaker that funding for Agriculture will be top priority in 2011Dev Budget. And that this proposal should be sent to Planning.*"

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On 28th October 2010, the then Minister for National Planning & Monitoring Department, Hon Paul Tiensten, directed the then Secretary, Joseph Lelang to organize K5.0 million cheque for this project to Koge Yoba Poramara Estate Pty Ltd.; ASAP. On the same day, Secretary Lelang then issued directive to Japheth Michael, to please proceed to release K5.0 m for this project ASAP.

A Department of National Planning & Monitoring Drawing Account cheque number 44082 was drawn for K5.0 million and paid to Koge Yoba Poramara Estate, which was refused by the bank due to wrong payee details on the Cheque. Another replacement cheque No. 44282 for the same amount was raised on 3rd December 2010 under the correct name, Koge Yoba Estate Limited and deposited into the Company Account on 8th December 2010.

2. Facts i evolving Project Submission, Appraisal and Approval for the K5million
The investigation team was unable to sight the project proposal, believe that the three page letter served as the project proposal. If there was a proposal, it is not known who was engaged to prepare it as the District Agriculture officer has no knowledge of such project proposal for a K30 million Coffee Pyrethrum Project.

Staff within the Department interviewed were also unable to provide a copy or recall having sighted such proposal including the then Secretary. In the absence of the proposal the investigation team is unable to work out how this figure of K30. Million was reached. If there was a proposal, it did not go through the proper process. The whole project screening process was circumvented.

3. Directorship and Expenditure of Funds

According to the IPA Company extract, the Company was registered on 1st March 2007 with its registered place of business as Port Moresby. The Shareholders of the company are a Mr John Hibulu Piru and Mrs Joyce Yagi Piru (probably a married couple). The company does not have registered number of employees.

The Bank Statement obtained from Bank South Pacific Limited reveals that the company account does not appear to have been operating a business with regular transactions. An amount of K100 was deposited to keep the account operational and pay the service fees. For instance, on the date that the cheque of K5million was deposited, the bank account balance was only K125.

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raises the question of whether the company is one of the K2 companies. It also raises the question of whether the company had the capacity to deliver the project.

4. Findings:

The tenor of the letter by Hon Jeffrey Nape, although political in nature, does not in any way justify a project worth K30million or even K5million for that matter as released. Rather, it implicates the leader on how he has been using the highly esteemed office of the Speaker of Parliament to support the government. The use of his office as a reason to extract funds from the public coffers tantamount to abuse of office which needs further investigation.

He further stated in his letter that Koge Yoba Estate Limited is a Business arm of Sinasina Yongomugl District Administrative Services. However, the company extract from IPA does not reflect such an assertion. Further inquiries have confirmed that the Owners and Directors of the company are not officers of the Sinasina Yongomugl District Administration.

Since the payment was made, the Bank refused to clear the funds and further requested the duly executed contract or project proposal. None of that was produced and a period of more than 5 months had lapsed. Consequently, BSP Ltd raised a bank cheque of K5million on 12th May 2011 and paid it back to the Department of National Planning and Monitoring.

That also confirms that there was no project proposal. The three page letter by Mr Nape was the project proposal upon which the officers of DNPM acted. The letter, as alluded earlier, is not worthy of a project proposal, yet seen fit to be considered as viable by the officers of DNPM.

5. Breach of Financial Management and Administrative Process

The process of expenditure of public funds and awarding of contracts is well established by law. The amount of K5million falls within the jurisdiction of CSTB and public tenders would have been called if private companies are going to be involved. If the funding is for special intervention projects, then due consideration should have been given to value for money and avoidance of waste.

The raising and paying of cheques is highly irregular and officers who facilitated the payment were grossly negligent in the discharge of their duties.

6. Recommendations

1. It is recommended that
 - a. Mr Joseph Lelang, Mr Japheth Michael and others implicated in orchestrating this payment should be dealt with under the Public Service Management Act and the GOs.
 - b. Hon Jeffrey Nape, Paul Tiensten and Joseph Lelang be referred to the Ombudsman Commission to be dealt with accordingly under the Leadership Code.
 - c. Hon Jeffrey Nape, Hon Paul Tiensten, Mr Joseph Lelang and Mr Japheth Michael as well as the directors of the recipient company be interviewed by the National Fraud Squad for their part in orchestrating this payment.

Case 19: K3,400,000.00 PAYMENTS TO TOL PORT SERVICES FOR FUNDING REHABILITATION OF KARL PLANTATION.

1. Analysis of Payment

On 01 December 2009, cheque no. 40572 (Appendix 1) for K3, 400, 000.00 was raised in favour of TOL PORT SERVICES. The payment was for funding assistance for rehabilitation of KARL PLANTATION as indicated in the Requisition for Expenditure (FF3) and General Expenses (FF4) forms and the Department of National Planning and Monitoring Remittance Advice.

The expenditure was charged under the project vote code:

- 229 Department of National Planning and Monitoring
- 4203 Other Multi-Functional Development
- 3281 National Agri-Development Plan
- 143 Grant Transfer: Public Authorities

The payment voucher was supported with the following documents:

- a A minute under the letterhead of the office of the Minister, Ministry of National Planning and District Development which was duly signed by Hon. Paul Tiensten, LLM, MP on 23 November 2009, with subject: REISSUE OF DEPT. OF NATIONAL PLANNING AND MONITORING CHQ.# 38249 FOR K 3.4 MILLION.

The Minister instructed the Secretary of Department of National Planning and Monitoring (DNPM) to reissue the mentioned cheque to TOL PORT SERVICES as the newly nominated project manager of the plantation rehabilitation program in place of MESU INVESTMENTS LIMITED.

The minute was marked out to P. Danggun with the following notation:

Approved. For cancellation & raise to Tol Port Services. Ensure we can get proper acquittal & project monitoring in 2010. Signed by Mr. Joseph Lelang 30/11.

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- A minute signed by Mr. Paul Danggun Assistant Secretary, Budgets Branch on 30 November 2009 and addressed to Mr. Joseph Lelang, Secretary with subject: REPRINT OF CHEQUE NO. 38249, AMOUNT K 3, 400, 000.00. MR Danggun informed the Secretary that a new requisition form is attached; that the said cheque raised to the payee named Mesu Investment Limited for rehabilitation of Karl Plantation is to be reprinted to Tol Port Services, PO Box 27, Kokopo, ENB; and that this cheque has to be reprinted immediately so that it can be disbursed to the contractor to carry out the required work on time.

Note that the name of the plantation for which the expenditure was intended to rehabilitate was shorted to read as read KARL PLANTATION instead of KARLAI PLANTATION as per the original payment to Mesu Investment.

- a copy of the Department of National Planning & Monitoring Remittance Advice no. 237380 for cheque no. 38249 issued on 22 March 2009 for K3, 400, 000.00 as funding of Karlai Plantation rehabilitation. The original document was used as basis for Journal Entry to effect the instruction.
- A handwritten instruction duly signed by Hon. Paul Tiensten on 16.11.09 was noted thereon to read as follows:
 - Reissue under Tol Port Services
 - P.O BOX 27
 - Kokopo
 - ENBP'
- ® FF3, FF4 and cheque were signed by the following officers of the Department of National Planning and Monitoring:

FF3 and FF4

I Date	Name of Officer	Designation	Capacity
30.11.09	Paul Danggun	AS-Budget	Authorised Requisitioning Officer
01.12.09	Alonge Alupi	AS-Finance	Financial Delegate
30.11.09	Joseph Lelang	Secretary	Section 32 Officer
01.12.09	Berly Wagi	Asst. Accountant	Examiner
	Peter Parua	Asst. Accountant	Certifying Officer

CHEQUE

01.12.09	Peter Parua	Asst. Accountant	Signing Officer
01.12.09	Jacqueline Kiap	Examiner	Countersigning Officer

In addition,, the cheque was collected and released to Mr. Paul Danggun on the same day it v. as issued as reflected in the Cheque Usage Report. However, Mr. Danggun did not present for verification any record to document subsequent release of said cheque to the named payee.

- o The cheque was negotiated with Australia and New Zealand Bank- Kokopo Branch on 09 December 2009 and subsequently cleared by Bank of Papua New Guinea on 16 December 2009. An illegible signature was noted on the 'Endorsement of Payee' portion of the cheque. Numbers 12620760 was written at the back of the cheque, presumably the bank account number of the payee (TOL PORT SERVICES).

2. FINDINGS

(a) General Findings/Conclusion

Based on the supporting documents attached, the payment of K3,400, 000.00 to Tol Port Services for funding the rehabilitation of Karl Plantation was dubious and suspicious, let alone, anomalous. There were no proper documentation and submission that would warrant and justify the redirection of the payment.

Officers of the Department of National Planning and Monitoring were tasked to administer the Public Investment Program towards achieving the ultimate goals of the government which is to reduce if not eradicate, poverty.

Mr Joseph Lelang, the Secretary for National Planning & Monitoring, was the Departmental Head and therefore the Chief Accountable Officer. He was the Section 32 Officer who approved the payment process, made the irregularity possible.

Most importantly, processes and procedures contained in the Public Investment Programme Guidelines and Development Project Documentation Guidelines established in August 2007 by the then Secretary, Mr. Valentine Kambori, MBE, were disregarded. These guidelines were formulated to provide guidance and ensure effective and quality of life in the social, economic and cultural spheres of both urban and rural areas of Papua New Guinea.

Non-compliance of these established guidelines compromised the regularity and propriety of this transaction. It simply defeated the effort of the government to fairly distribute the nation's resources through development projects reaching the remotest area of the country.

Consequently, it paved the way to circumvent the procurement requirements prescribed under the Public Finance (Management) Act and the related Financial Management Manuel.

Equally significant finding to highlight was the violation of the direction, stipulated in the Appropriation Bill translated in the 2010 Budget Book of the Department of Treasury. The expenditure made payable to Tol Port Services was charged under the vote item for Grants to Public Authorities.

The payee is a private company and apparently, not a public authority.

(h) Detailed Findings

1) *No Valid Documents to Support Re-direction of payment*

Payment to Tol Port Services was based on two (2) requests/instructions of Hon. Paul Tiensten, the Minister for National Planning & District Development:

- o in his minute of 23 November 2009 to the Secretary for Department of National Planning and Monitoring; and
- o his hand-written instruction on the unused cheque no. 38249, originally raised to Mesu Investment Limited on March 2009.

Both indicated that the aforesaid cheque for funding the rehabilitation of Karlai plantation be reissued to Tol Port Services, allegedly, the newly nominated project manager in place of Mesu Investment Limited.

Proposal, sufficient information, and/or other documents detailing and assessing the character, capacity and trustworthiness of the new project manager were not seen on file to justify the purported change of project manager. Much more, the expenditure was not supported with the endorsement, if any, had undergone and passed the screening and evaluation process, and that the change of project manager was sanctioned.

It would appear that Tol Port Services were using and benefiting from the submissions and proposals of Mesu Investments Limited. Incidentally, payment voucher (FF3 & FF4) and supporting documents, if any, in relation to the first cheque issued in favour of Mesu Investment were not on file. Its whereabouts could not be sanctioned.

In the absence of important requirements, it would appear that the Secretary, Mr. Joseph Lelang, in his capacity as the Section 32 Officer approved the redirection of the payment to Tol Port Services in order to appease the instruction of the Minister even without valid reason and documentation to do so; and much more, even if his actions was not in conformity with his main mandate to safeguard public funds.

Equally responsible of the irregular payment were other officers down the line who likewise succumbed to the pressure.

Officers Involved in the Payment Process

The following officers of the Department of National Planning and Monitoring who initialled or signed on the FF3, FF4 and cheque were responsible in facilitating the irregular payments. The irregularity could have not eventuated without the collaboration of these officers. They were the last phase of the payment process, however, their failure to adhere to proper procedures attributed to the perpetration of such fraudulent payments. They failed miserably in the performance of their mandated duties and responsibilities.

Mr. Joseph Lelang — Secretary/Section 32 Officer

As the Secretary of the Department, Mr. Lelang was deemed the Head of the Department and thus the Chief Accountable Officer. His duties and responsibilities were enumerated under Section 5 (ACCOUNTABLE AND ACCOUNTABLE OFFICER) of the Public Finance (Management) Act and further defined, explained and expounded under Part 8 (ACCOUNTABLE AND ACCOUNTING OFFICER) of the Financial Management Manual.

The main responsibilities of the Departmental Head, among others, were:

- o Safeguard public funds and propriety and regularity of expenditure from the funds appropriated by Parliament to his department;
- Ⓜ Make sure that his Department is organised and staffed on sound lines, particularly in the finance and establishment branches, to facilitate proper delegation of duties;
- Ⓞ Ensure that financial considerations are taken into account at all stages in framing and reaching policy decisions and in their execution, for the efficient and economical operation of the Department as a whole;
- Responsible for the 'regularity and propriety of the expenditure'; thus , expenditure must be within the ambit of appropriation, and within the total sum authorized to be spent on the vote to which it is charged. It must be for the purpose set out in a programme, function, activity and item of performance of service, detail of payee and the period of account in which the expenditure is charged.

Aside from being the Head of the Department, Mr. Lelang was also the sole Section 32 Officer who was authorized to make the expenditure decision. As Section 32 Officer, he was duty bound to, among others, ensure that the proposed expenditure was according to established plans and would not result in other planned expenditure being delayed or aborted through lack of funds; and to ensure that proper procurement practices had been observed in accordance with Part 12 (Minor Procurement) and Part 13 (Major Procurement) of the Financial Management Manual.

In addition, Mr. Lelang approved the payment despite without the signature of the Commitment Clerk who was supposedly responsible to ascertain that the expenditure was committed to the correct activity or project vote and on items it indicated in the space provided for in the Requisition for Expenditure.

Mr. Alonge Atinpi -- AS-Finance/Financial Delegate

Part 7 Division 6 Section 30 (Roles and Duties of a Financial Delegate) of the Financial Management Manual enumerated the roles and duties of a Financial Delegate which included among others:

- G Control allocated funds so that over commitment does not take place;
- a Ensure observance of prescribed financial procedures in implementing expenditure decisions;
- Review and monitor commitments and expenditure so that timely warnings are given on fund availability;
- a To ensure that proper commitment control procedures are enforced;
- G To initiate necessary steps to comply with prescribed financial procedures e.g. tender procedures or special procedures set out under Financial Instructions; and
- G To notify the Departmental Head of any vote that is out of control or of any irregularities incurred on a specified vote.

In Section 33 (Commitment Control), Financial Delegates were further tasked and made responsible for commitment control, that is, to ascertain that expenditure was committed to the correct activity or project vote and items it pertains to.

Mr. Paul Danggun — AS-% udget/Authorised Requisitioning Officer

Mr. Danggun, at the first instance and before raising the Requisition for Expenditure, should have ascertained valid documentations consistent with what was required under the Public Investment Programme Guidelines and the Development Project Documentation Guidelines established by the Department. His signature made the transaction eligible for payment.

Part 7 Division 5 Section 27 (Requisitioning of Expenditure) of the Financial Management Manual stipulated that the requisitioning officers should be responsible officers under the Activity to which the votes relate.

It was also noted that Mr. Danggun collected the cheque in half of the payee by signing on the Cheque Usage Report on 01. 12. 09. The final release of the cheque to the named payee was no longer documented.

Ms. Beryl Wagi — Assistant Accountant/Examiner

MR.

Peter Patna — Assistant Accountant/Certifying Officer

Primary responsibility of the examiner and the certifying officer was to determine completeness of documents. Ms. Wagi examined the documents while Mr. Parua certified that they passed through the payment process; and more specifically, that the account was correct within the meaning of the Public Finances (Management) Act.

Part 7 Division 6 Sub-Section 31.2 (Duties of Certifying Officers) of the Financial Management Manual stipulated that their duties included supervision of the claims

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examination system a OCI certifying that the claims tendered were correct and can be paid.

It should be reiterated that the payment was based on insufficient documents; and was charged under a vote item for Grant to Public Authorities.

Mr. Parua also signed as the Signing officer of the cheque.

zii) Breaches of Established Procedures/Guidelines

The PIP Guidelines and the Development Project Documentation Guidelines were wantonly disregarded in processing the expenditure. Claim for K3,400,000.00 was paid to Tol Port Services on 01 December 2009 despite prohibition and without the required documentations prescribed in these Guidelines:

- o Tol Port Services was a private company/contractor, therefore not eligible to apply directly for development funding from GoPNG's PIP.
- The payment was not supported with the required documents to justify the decision to expend, as follows:
 - > Duly screened and endorsed proposal/Project Formulation Document on the rehabilitation of Karl Plantation by Tol Port Services;
 - > Endorsement by relevant committee on the engagement of Tol Port Services as the new project manager;
 - > Sufficient information about the capacity, character, and trustworthiness of Tol Port Services to ably carry out the project on time and within budget; and
- Appraisal and assessment conducted by the Development Planning and Programming Division (DPPD) of DNPM on the rehabilitation of Karl Plantation.
- Duly executed contract between Tol Port Services and the State through the Central Supply and Tenders Board to ascertain procurement process was undertaken; and that, Tol Port Services was the newly appointed project manager.
- o Authority to Pre-Commit Expenditure (APC) from the Secretary of Finance to confirm that funds will be made available to the supplier once a contract has been executed and fulfilled.

Breaches of Public Finances (Management) Act (PFIVIA)

The amount of K3,400,000.00 falls within the jurisdiction of CSTB and there was no public tender on this project pursuant to the PFIVIA between Mesu Investment (old project manager) or Tol Port Services (the new project manager). There is even no evidence of COI and if it was issued, it would be unlawful as the project is not the kind that would attract a COI.

v) *Violation of Appropriation (Bill) Act Erroneous Line Item of Expenditure*

Payment of K3, 400, 000 to Tol Port Services as funding to rehabilitate Karlai Plantation was charged under the National Agri-Development Plan (NADP) project vote code 3281 and the expenditure line item 143 intended for Grants And Transfers To Public Authorities.

PNG Budget Manual prepared by the Budget Division of the Department of Treasury indicated that said line item was provided for expenditures relating to transfers in the form of grants and lump sum payments to governmental institutions for the implantation of programs supported or shared by National Government; such as grants to provincial and Local-Level Governments and Statutory Institutions.

Undoubtedly, the set up was in line with the government's policy to implement activities under this project with close involvement of sectoral agencies and all other key stakeholders. The project was carried under PIP Number 3003 (National Agriculture Development Plan) which only allowed expenditures for Grants and Transfers to Public Authorities (expenditure item 143).

It should be noted that Appropriation Bill Act was passed by Parliament based on budget submissions which was then translated into Department of Treasury's Budget Book; such that, any variations from what was in the Budget Book would be regarded a direct violation of the Act.

3. Directorship, Site Inspections and Expenditure of Funds

Hon Paul Tiensten is a Director and a Shareholder of Tol Port Services Ltd. This is also exemplified by the signatory to the company account of Tol Port Services Ltd at ANZ Bank Kokopo, in which the defendant's biological brother, Isidor Tiensten is also a signatory. When the cheque was deposited in the ANZ Account Kokopo for Tol Port Services Ltd, several payments were made without any rehabilitation work being undertaken at Karlai Plantation. As such, most of the monies from that K3.4 million had been misused by Tol Port Services Ltd for other purposes not connected to the rehabilitation of Karlai Plantation. The funds have been depleted for other purposes and only K1.3 million had been frozen.

4. RECOMMENDATIONS

1. Referral of named officers of the Department of National Planning and Monitoring (as listed above) to Fraud Squad to determine criminal culpability of their actions.
2. Interview of these officers conducted in order to ascertain extent of participation in the irregular payment.

3. Serious disciplinary and surcharge actions in accordance with the Public Services (Management) Act and Public Finances (Management) Act, respectively, instituted against named officers of the Department of National Planning and Monitoring who were responsible for the irregular payment.
4. Hon Paul Tiensten and Mr Lelang should be investigated by the OC under the leadership Code.

Case 20: Payment and release of K10 million to Travel Air Limited

1. Policies and Funding Guidelines

It was noted that Air Travel Subsidy is a new development program under Air Travel Services initiated by the Department of National Planning & Monitoring only in 2010 for the 2011 budget and this is evidenced in the budget books for prior years that there was no allocation under this programme.

This is confirmed in the written statements by the then Deputy Secretary (PIP) Mr Jacob Mera, the person who was responsible for the 2011 development budget formulation - as the Development Budget Controller and Assistant Secretary — Budget Mr Paul Danggun . As such, there were no existing policies and guidelines for this new Air Travel Subsidy program and the Department was yet to install such guidelines.

2. Analysis of Air Freight Subsidy

The policy as it appears was to address the pressing need of the Air Transport to the very remote areas where Air Nuigini can't get to where small airlines can cater for and on behalf of Air Nuigini whereby the subsidy of air freight comes in handy for the travelling public plus the rural populace in the country. Existing third level airline operators like MAF, Tropic Air etc are eligible proponents to apply for this airfreight subsidy. Further, this analysis is confirmed in the written statements by the then Deputy Secretary (PIP) Mr Jacob Mera, the person who was responsible for the 2011 development budget formulation - as the Development Budget Controller and Assistant Secretary — Budget Mr Paul Danggun.

3. Facts involving Project submission, appraisal and approval for the K10 million

o Travel Air, an unregistered company in 27th May 2010 submitted an unsigned business plan to the office of Minister for National Planning requesting for funding. Then in 2011 Travel Air, submitted their second proposal again to the Ministers' Office, which the Minister entertained the Proposal and directed the Secretary for National Planning to facilitate the payment. Hon Paul Tiensten made notations on the cover directing, the Acting Secretary — Ms Ruby Zaniga,

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in a form of request to facilitate the release of K10 million under 2011 budget to Travel Air dated 23 March, 2011.

- a The Acting Secretary, Ms Zarriga on the same date stamped and did a note requesting Acting Deputy Secretary — PIP, Mr Takale Tuna to appraise and advise.
- a A/Deputy Secretary, Mr Tuna on the same date, did a note to Acting First Assistant Secretary — IED, Mr William Sent to appraise the proposal and action as soon as possible.
- a The a/FAS — IED, Mr Sent did a minute dated 21st March, 2011, a minute done two (2) days before business plan was submitted, containing misleading and falsified statements, to Mr Tuna and Ms Zarriga stating that the submission was endorsed by the minister, he was attaching requisition forms (FF3 & FF4) for their concurrence. Further stated that the funding was earmarked for subsidizing the activities of Travel Air, a new airline company servicing the remote areas of the country and the airline operates two (2) Dash 8/100 aircrafts and would operate under the Civil Aviation Rule.
- o The appraisal and approval process was facilitated on the same day, 23rd March 2011 and on 31st March 2011, a Cheque No.158 was made payable to Travel Air was raised and paid.

4. Breach of Financial Management and Administrative Process in facilitating the release of K10 million

The Minister is responsible for supervising, formulating the budget, overseeing its implementation and reporting to Parliament, Contrary to these and even still, the Minister, Mr Paul Tiensten who is not responsible for Financial Management, when requesting the release of K10 million to Travel Air, has taken over or assumed the financial administrative role of the Departmental Head, the Acting Secretary as Chief Accountable Officer. (Refer above on the roles of the minister)

The Acting Secretary — Ms Zarriga as Departmental Head and Chief Accountable Officer,

- i) Approved a misleading and falsified pre-appraisal minute by Mr William Sent and on the same date signed and approved as Section 32 officer for the cheque to be raised.
- ii) Air Freight Subsidy was a new initiative by the Department and the policies and guidelines to properly administer the K10 million allocation were not yet in place

but released the K10 million to Travel Air, an airline operator u.ilaLan.l of, not as a subsidy but to purchase a new aircraft.

- iii) When the Minister requested for the release of K10 million, she as Chief Accountable Officer failed to advise the minister that K10 million was for subsidizing operating Air freight carriers and not for establishing a new airline company.

Part H Section 5(d), (I) and (k) of the *Public Finances (Management) Act, 1995* were breached.

The Acting Deputy Secretary — (PIP), Mr Takale Tuna facilitated and endorsed the pre-appraisal minute, although it was misleading and falsified. Again, failed to advise the Acting Secretary that Air Freight Subsidy was for subsidizing operating air freight carriers and not for purchasing new aircraft and further failed to advise that Travel Air's project proposal was not included in the 2011 budget and had not gone through the budget formulation process in 2010 for 2011. funding.

The Acting First Assistant Secretary — IED, Mr William Sent in his pre-appraisal Minute dated 21" March, 2011, stated that the funding was earmarked for subsidizing the activities of Travel Air, a new airline company servicing the remote areas of the country and the airline operates two (2) Dash 8/100 aircrafts and would operate under the Civil Aviation Rule. These statements are falsified and misleading because K10 million to a private company requires NEC approval and for Mr Sent to say that "K10 million funding was ealinarkeed for Travel Air" does not have the basis.

5. National Tenders & Contracts

Part VII, Section 39 under subsections (1) (2) and (3) of the *Public Finances (Management) Act, 1995* empowers the minister by way of notice in the National Gazette; establish an internal supply and tenders Board with limits (lower than the minimum threshold of the Central Supply & Tenders Board), policies to be applied, criteria for the evaluation and other rules in relation to the operation of the internal tenders board.

For the purpose of this, DNPM does not have an internal Supply & Tenders Board but even there was one, K300,000.00 is the maximum limit and K10 million is the maximum limit of CSTB for supply of works and services for and on behalf of the State with properly constituted contracts.

In the absence of such properly constituted contracts and not falling within the meaning of providing "works and services" to the State, like this K10 million to Travel Air (the subject) as subsidy or capital funding, the approval solely vests with the National Executive Council (NEC) and that authority/power cannot be assumed

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by any Departmental Head or Tenders Board unless it is stated under a separate Act of Parliament.

Furthermore, if it was a special intervention project by the Government, then the beneficiary should have been stated in the Budget to avoid confusions. The funds were earmarked for subsidizing airfreight for the rural populace serviced by existing third level airlines companies such as I\IAF etc. If it was for Travel Air, it would be particularized such as the 2010 budget where the Government budgeted K30million for procurement of aircraft for Air Nuigini under vote 229-1204-1-295 and mentioned Air Nuigini in the Appropriation Act as the recipient.

6. Irregularities on the Payment Vouchers

The DNPM does not have a departmental payment procedure/guideline that would show the financial limits attached to certain positions for approval of requisitions, as financial delegates and Section 32 officers for payments. This has been a very serious internal control weakness that should have been addressed as the Department was in control of the Development Budget (PIP) and its own Recurrent Budget.

From the payment voucher, Assistant Secretary- Budget signed as authorized requisition officer, Assistant Secretary- Finance signed as financial delegate/commitment clerk and signing officer on cheque No: 000158 and Acting Secretary signed as Section 32 officer without stating the designated financial limit and for what purpose in compliance with Part 5, division 5 section 26.3 (c) of the Financial Instructions.

Even if DNPM had a payment guideline, approval and release of K10 million would be based on a properly constituted contract for works and services to the State. As such, these senior officers have assumed the role of NEC, a financial management decision, committing and paying K10million of State's much needed Development Funds to a private company that does not fall within their financial limit without due care can only be termed as "highly fraudulent".

Part H Section 5(d), (4 and (g) of the *Public Finances (Management) Act, 1995* were breached.

7. Findings

The written statement by the Acting Director (CEO) of Civil Aviation Safety Authority confirming that Travel Air is currently not in operation and no aircraft owned by Travel Air has been registered on the PNG Register of Aircrafts as at that date of the payment which confirms that the statement by Mr Sent that "Travel Air is a company servicing the remote areas of the country and the airline operates two (2) Dash 8/100 aircrafts" cannot not hold water.

Investigations reveal that Travel Air which is the recipient of the funds in question was a mere business name registered with IPA on 8th September 2010 with the Business Name Number 6-91851. The business start date to provide domestic air services as per the company extract is 1st October 2010. That shows that on the date of the first proposal dated 27th May 2010, there was no business entity registered with IPA with the name Travel Air.

Travel Air Limited, a company with the company number 1-79205 was registered on 15th June 2011, more than two months after the payment was made to Travel Air. Company extracts show that both Travel Air and Travel Air Limited are subsidiaries of Sarakolok West Transport Ltd, a company owned by Mr. Eremas Wartoto.

It is uncovered that the funding proposal was not accompanied by a Certificate of Incorporation of the company from Investment Promotion Authority nor a COC from IRC. There was no evidence that Travel Air had existing aeroplanes. Further, there was no Domestic Aircraft Operating License under section 159 of Civil Aviation Act 2000 attached to the Proposal. There is also no evidence of registration of an aeroplane in PNG owned by Travel Air. Clearly, the business was not in operation so as to be qualified for the funding under this vote.

If ever Travel Air was going to be purchasing airplanes and operating an airline company, it was a fact known to the people who were involved in facilitating this payment. No competent officer would have approved and appraised a funding of substantial amount of money to a purported company without all the relevant documentation except by conspiring to defraud. A colorful proposal without these very important documentation is not qualified to be paid hence it goes to show collusion and conspiracy to defraud the State. Some, if not all, of the officers who orchestrated this payment somehow knew that a company under the name of Travel Air Limited was going to establish an airline company.

"Whether Business name is qualified to receive funds or a company"

8. Recommendations

2. Firstly the Minister, Acting Departmental Head and the Senior Officers dealt with under;
 - a) The Minister would be dealt with under the leadership Code, or any other Act appropriate.
 - b) The Acting Departmental Head should be dealt with under General Order 8.22
 - c) Other Senior Officers should be dealt with under the General Order 15; and
 - d) Any other captions of the *General Order and Public Services (Management) Act, 1995* deemed appropriate.

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3. Concurrently, the Minister, Acting Department Head and the Senior Officers mentioned hereinabove should also be referred to the fraud squad to be dealt with under the Criminal Code Act.
4. Hon Paul Tiensten and Ms Zarriga should also be investigated by the Ombudsman Commission pursuant to the Leadership Code for their part in this payment.
5. The owner of Travel Air Limited, Mr Eremas Wartoto should also be interviewed by the fraud squad for his part in applying, receiving and expending these funds.
6. The funds paid out are illegal and remain as proceeds of crime in the hands of Travel Air Limited hence should be recovered forthwith using the Proceeds of Crimes Act 2005 and the Taxation powers.

10.2 More cases in Brief

There are more cases that unfortunately could not be included under 10.1 hereinabove as it is not the intention of ITFS to fill-up the entire report with individual cases. However it is proper to state those cases briefly for the purposes of this report.

10.2.1 Sarakolok West Transport Ltd and Chain of Companies

This is a company owned by Kokopo Businessman, Mr. Eremas Wartoto. The company and its owner, through a number of related companies, have been the recipient of millions of public funds.

1) Projects (Works)

Kerevat National High School

A payment of K7.9million was paid under the RESI component to rehabilitate the Kerevat National High School. Another payment of K1, 975,006.05 was paid on a purported variation. The total therefore is K9,875,006.05. However, less than K.5million was used for some incomplete and substandard work at the school which resulted in the closure of the school for a number of years . Criminal Investigations were wrapped up with arrests being made.

Kandrian Hospital

Manner in which contract was awarded is suspicious. The only director to Kandrian Limited is believed to be a driver of SWT's Travel Car. Site inspections conducted reveals signs of materials purchased from China. Project is very slow with demolitions done but yet to erect new buildings. The total amount paid is K5.1million.

Wilddog Plantations

Amount of K6million was paid in the name of Wild Dog Plantations. Account is operated by the same Indian person named Krishnaraj Sathymurthy, an employee of SWT. Bank transactions record shows that all the funds were diverted to other business interests of SWT. A Cash transfer of K1.3million to SWT main Account.

Medic Plantation

K7.5 million was paid to Medic Plantations Limited Company. Proposal to DNPM under NADP to rehabilitate the rundown coconut plantation situated at Namatanai District of New Island Province. Apparently, the project proposal is the same one that was used for Wilddog Plantations by replacing Wilddog with Medic. However, they forgot to change some of the contents hence the name Wilddog still appears in some paragraphs of the proposal.

Site inspections revealed that there was no development taking place according to the local leaders. Expenditures —K5million was transferred to SWT and balance was used elsewhere including purchasing the Plantation after the payment was made. Directors include Mr Timi Aisoli and Mr Joe Tobung. Mr Timi Aisoli is a grade 6 leaver and driver who, when interviewed, appears to have no knowledge of him being a director of the plantation. Proposal is a fraudulent and clear indication of SWT involved in scheming and scamming. Only signatory to the account is the same Indian national Krishnaraj Sathymurthy employed by SWT who has since fled the jurisdiction.

2) Projects (Supplies) -Coastal Vessels Program under Vote: 229-3909-5-201

This is part of the rural development program particularly for the coastal areas. Its objective is to improve marine transportation system does enabling accessibility by majority of the targeted population to cost effective and appropriate shipping services with improved delivery of basic goods and services to enhance livelihood of the rural population. Its aim is to address the pressing needs of transportation for Maritime Provinces.

Under the Project Component heading of this program as stated in the Budget documents, it is stated that "The major components will involve acquisition of new work boats and landing barges and identification of a management body in the private sector to manage the operations of the boats and barges." The project was retained by DNPM as the implementing agency. Under this program, Work boats and landing barges were to be purchased for the 14 Maritime provinces in the country.

The Coastal Vessels was appropriated under PIP#3001. In 2009, an amount of K13million was budgeted. In 2010, an amount of K50million was appropriated. In

2011, there was no separate appropriation. However, an amount of K20million is believed to have been expended on the coastal vessels program through the Department of Transport under a vote number 259-3602-1-209. The total amount for this program in 2009, 2010 and 2011 is K83million. With that money under this program, at least 10 Maritime Provinces should have vessels operating in their provinces.

MV Marunga H

The Manus Provincial Government had applied for a vessel under the Coastal Vessel Program. Unbeknown to them, a payment of K7.5million was made to SWT as a brokerage to purchase and deliver the vessel to the Manus Provincial Government. When the vessel arrived, it was not delivered to Manus Provincial Government. Instead, SWT management approached Manus Provincial Government to sign a contract and purchase the vessel from SWT whereby Manus Provincial Government would deposit K650, 000.00 and later the final payment of Five Million Eight Hundred and Fifty Thousand Kina (K5, 850, 000.00). In total as per the Contract for Sale of Vessel, the contract requires Manus Provincial Government to pay Sarakolok West Transport (SWT) Ltd K6.5 million for the vessel and that is apart from the K7.5 million that was initially paid by the Department of National Planning & Monitoring for the vessel for Manus Provincial Government that was to have been supplied by Sarakolok West Transport (SWT) Ltd.

The Contract for the Sale of Vessel also requires Manus Provincial Government to pay additional K3.425 million. In total as per the Contract of Sale for Vessel, Manus Provincial Government would have to pay Sarakolok West Transport (SWT) Ltd the sum of K9,925,000.00 and that is apart from the K7.5 million that was paid initially by the State, If Manus Provincial Government had paid the K9.925 million, then Sarakolok West Transport (SWT) Ltd would have received K17.425 million just for this one vessel, *MV Marunga*

Criminal Investigations have led to arrests and are continuing.

MV Kandrian

The DNPM, under the Coastal Vessels Program paid K6.5million to Sarakolok West Transport (SWT) Ltd to supply a vessel to the Kandrian. District in West New Britain Province. SWT after having received the K6.5 million from the State made no attempt to deliver the vessel to the people of Kandrian District. SWT acquired the said vessel and kept it for their use until. the 25th of July 2011 when the ownership of the vessel was transferred from SWT to Tol Coastal Shipping Services Ltd. A purported contract for the transfer of ownership was sighted.

MV Warakalaio

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M.V. Warakalap is a vessel that the State paid SWT Ltd to purchase and deliver to the people of Kokopo for the benefit of the people of Kokopo District. SWT, after receiving the ship and using it for a while, then negotiated with Tol Coastal Shipping Services Ltd and had the vessel transferred to Tol Shipping services Limited.

Tol Coastal Shipping Services Ltd from the company extract appears to have all the LLG Presidents of Pomio as the Directors. When Mr Camillus Tati (Chairman) and Herman Yareng were interviewed, they knew they signed some documents as directors but do not know how the company is run. A closer look at the bank account records of Tol Coastal Shipping Services Ltd reveal that the signatories of the account are: Mr Eremas Wartoto, Mr Chris Narat (SWT Accountant) and Tim Rowland (SWT Manager).

Tol Coastal Shipping Services is therefore one of those companies that SWT set up by using other people for the sole purpose of stealing funds from the State.

Since this has happened, the people of Kokopo District did not have the benefit of having this vessel.

Other Ships believed to have been bought from State funds

It is firmly believed that two other vessels have been paid for by the State could not be located. The first vessel is named *MV Doi* which was paid for the people of Kokopo and Duke of Yoke Island. The State is believed to have paid K7.1million for that ship.

Another one is a luxury sheep named *FireFox*. The State is believed to have paid K7million for that ship.

3) Findings of SWT

There may be others that SWT and its ring of companies may have been paid from the State coffers. From the cases identified so far, SWT had been paid as follows:

1. Travel Air	K10,000,000
2. Kerevat National High School	K9,875,006.05
3. Kandrian Hospital	K5,100,000
4. Wildog Plantation Ltd	K6,000,000
5. Metlic Plantation Ltd	K7,500,000
6. MV Marunga II	K7,500,000
7. MV Kandrian	K6,500,000
8. MV Warakalap	K4,800,000
9. MV Doi (still missing)	K7,100,000
10. Fire Fox(still missing)	K7,000,000
TOTAL:.	K62,375,006.05

It is uncovered that SWT registered a number of companies just to use them as conduits to obtain funds by false pretense. SWT uses its own managers to be signatories of those companies' bank accounts and use other persons as directors of the company. When the funds are paid into those accounts, most of these funds are then remitted to the main SWT account or to other subsidiaries of SWT.

Some of these vessels, such as *IWV Kandrian*, are believed to be second hand and should have cost less than the amount paid for. A number of people in the shipping industry including Agmark Shipping Managing Director, when interviewed, said that Agmark bought a second hand vessel similar to *MT/ Kandrian* which costs around K400,000. Views from ship operators also established that a new vessel of the type SWT purchased would cost less than K3million. It is therefore believed that the vessels were grossly overpriced and the State was misled to pay on the inflated value.

The Government's budget appears to have been infiltrated by people with vested interest. The only policy under which government development programs can be transferred to private enterprises to manage is the much anticipated PPP policy. That program is yet to be approved and implemented. There is no existing legislative and/or policy basis upon which a particular private company could be given public funds to procure, register under its own name and use the assets to make profit. Therefore how did this justification of having a private management company to manage the vessels for the benefit of the coastal people come in? The end result then indicates how such a program was inserted in the budget.

It is also discovered that the shipping vessels that were bought using State funds, were registered under SWT, used by SWT as cargo and passenger ships, making more money. The maritime districts that were earmarked as beneficiaries did not have any knowledge whatsoever of these vessels. When the investigations closed in on SWT, SWT then purported to sell the vessels to the recipients of the vessels, conspiring to extort more funds and double dipping.

It is therefore our considered view that Parliament was used to legislate funds through the Appropriation Act for a certain company under the Coastal Vessels Program and that is none other than SWT. Such legislation of corruption orchestrated by partnerships of private and public officials is a new trend in the level of corruption in this country, a highest level.

11 SCHATB (K125 MILLION KOKOPO COMMUNITY PROJECTS)

11.1 Introduction

The Central Bank of Papua New Guinea and the Department of Treasury have carried out their own separate investigations on the issuance of the SCITB. Some of their documents were furnished to ITFS pursuant to a Direction by the Attorney General under the Proceeds of Crime Act, 2005, which documents were considered useful to the scope of ITFS Investigations.

11.2 Treasury Bills

A Treasury Bill is a short term financing instrument (like a loan) which must be repaid within one year. The Government uses Treasury Bonds to borrow money to finance budget expenditure and so it is a loan. In this case, the then Treasurer, Hon Patrick Pruaitch purportedly released the Treasury bond worth K125million in consideration for the liquid cash from NASFUND. Those funds were remitted to National Capital Limited (NCL), a private company to manage and pay contractors.

11.3 SCITB and Chronology of Events

1. On September 2009 the Minister for communication and Information Hon. Patrick Tammur sought legal clearance from the State Solicitor on a Memorandum of Agreement regarding a proposal for funding of Road and Water Projects in Kokopo Districts of ENBP. The legal clearance sought was in relation to Chinese Government consideration in granting "soft interest loans" to the Government of Papua New Guinea for the Kokopo District, following discussions undertaken by the Prime Minister, Sir Michael Somare and Communications Minister Hon. Tammur, when they made an official visit to China. Under the proposal the general contractor was the China Overseas Engineering Group Co, Ltd (COVEC) and copies were made to the Secretary DoF & Secretary DoT.
2. In October 2009 Mr Allan Waters as MD of Malco approached BLC regarding infrastructure funding in PNG. BLC is the Australian based parent company of NCL, the investment manager for Nasfund.
3. On 27 November 2009 Hon. Tammur appointed Malco as the Exclusive Coordinator for fundraising, fund management and legal requirements.
4. On 29 November 2009 Hon. Tammur appointed Malco as the joint District and Budget Priority Committee of Kokopo Open (sic — should be Kokopo JDP&BPC). Our understanding of this is that Malco is the Committee, which might not be in the compliance with legislative requirements. The exact Terms of Reference for this appointment is unclear. It appears that Hon. Tammur is the Chairman of the Kokopo JDP&BPC and has acted as the representative and authorised signatory of the Kokopo JDP&BPC in this matter.

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5. On 14 December 2009, NCL made an investment Proposal to Nasfund recommending that the Kokopo water and road projects through investments in a 10 year SCIB worth K100 million at an interest rate of 7%. This bond would be issued by the Treasurer subject to approval from NEC and the K100 million bonds was a first of a series of issues to be undertaken over time for a total rising of K1.5b for community infrastructure in PNG. In addition, the SCIB as advised by NCL was to be tax exempt and administered or managed outside of the Consolidated Revenue Fund by a Fund Manager external to the Bank and DoT.
6. On 15 December 2009, the very next day, Mr Rod Mitchell presented NCL's proposal to the Nasfund Board. The Board approved the 10 year Bond in principle that day despite both Nasfund directors Dr John Nonggorr and Mr Anton Sekum expressing concerns that the SCIB was outside the National Government 2010 Budget. It was understood that NEC approval for the SCIB was required.
7. On 26 January 2010 the former Treasurer Hon. Patrick Pruaitch apparently appointed Malco as the exclusive coordinator for the SCITB as purported by Malco in its Appointment letter to Ben O'Dwyer of BLC dated 27 January 2010 without any legal basis. The copy of the letter of appointment dated 26 January 2010 — however a copy of a letter of appointment dated 5 March 2010 was cited.
8. On 27 January 2010 Mr Waters wrote to BLC appointing BLC to work for Malco to advise, arrange funding and sub-underwriting for the SCITB Series 1.1 (squared) with a total capital rising of K360m. The appointment also required them to obtain legal requirements and manage the legal process. BLC received fees of 0.90% worth K1.125m for structuring and advising and 3% totalling K3.75m for sub-underwriting. Overall the underwriting and sub-underwriting appears to be a sham as the issue was fully subscribed by Nasfund and there was no requirement of underwriting. In addition, there is a lack of analysis and disclosure on the underwriting and sub-underwriting arrangements to Nasfund at the time the investment proposal was made.
9. On 29 January 2010 NCL revised the investment proposal (including attaching the Legal Advice from Peter Allan Lowing Lawyers) and make a submission to Mr Mitchell of Nasfund. He then advised the Nasfund Board via email that the 10-year SCIB has been restricted to the SCITB and that there was no NEC approval needed for this particular investment. The Nasfund directors, via email on the same day, voted for the investment to proceed. Mr Sekum again expressed concern that the investment was outside of the 2010 Budget.
10. On 3 February 2010 Former Treasurer Hon. Pruaitch received a proposal from Mr Waters of Malco to issue SCITB to fund expenditure by the Border Development Authority.

11. On 5 March 2010, in a Formal Appointment Letter both Ministers Hon. Tammur and Hon. Paul Tiensten acted on behalf of the state and appointed Malco as Exclusive Co-ordinator for Corporate Advising, Fund Raising and Fund Management and other related requirements for the Independent State of PNG. On the same date, the SCITB fund management agreement was signed by former Treasurer Hon. Pruaitch and NCL's Chief Fund Manager, Mr Gadisa Igah, and endorsed by the Minister for National Planning & Development, Hon. Tiensten and Minister for Communication & Information Hon. Tammur. The agreement appointed NCL as the issuer, registrar, agent and fund manager for the SCITB 1.
12. In addition, the Term Sheet outlining the terms and conditions of the SCITB was signed by Hon. Tiensten on behalf of the Independent State of PNG as endorsed and approved by the Ministers of National Planning & Development and Communication & Information.
13. On 8 March 2010 the DoT provided advice to former Treasurer, Hon. Pruaitch, in response to Malco's proposal and advised against issuing the Bills as there was no budget appropriation and therefore the proceeds of the issuance could not be legally spent.
14. On 10 March 2010 NCL wrote to Nasfund asking for settlement of the K125m SCITB. This letter had the following documents attached:
 - o the term sheet,
 - the NCL agreement,
 - o the legal opinion,
 - legal sign-off,
 - o an excel spreadsheet; and
 - o a draft certificate.Nasfund's Joint CEO'S Messrs. Rod Mitchell and Ian Tarutia signed off on the K125m SCITB and a certificate of ownership was issued by NCL,.
15. On 12 March 2010 Malco wrote to BLC advising that the SCITB Series 1 documentation had been signed.
16. On 15 March 2010 Nasfund wrote to the Bank and advised that the SCITB was in excess of 5% of the net assets of the Fund.
17. On 24 March 2010 DoT found out about the Fund Management agreement when the media (Post Courier & The National) released information about the financing of K125m of Kokopo's water and infrastructure development projects via the issuance of SCITB 1. Nasfund's was named as the Principal investor. Nasfund subsequently provided a copy of the Fund Management agreement to DoT at DoT's request. DoT didn't have any other documents at that time.

18. On 29 March 2010 the State Solicitor provided legal advice on the issue of Treasury Bills for the UBSA financing when Southern Highlands Provincial Government sought similar arrangements to fund the UBSA and related landowner commitments, advising that issuing Treasury Bills to fund expenditure that had not been authorized by Parliament would be illegal as it would breach Section 209(1) of the Constitution. The State Solicitor verbally confirmed that this advice was also applicable to SCITB 1.
19. On 11 April 2010 in the Nasfund E-newsletter, Mr Mitchell wrote an article praising the SCITB by stating how much better it was than a T-Bill. Mr Mitchell stated that it *"...is recognition that a new way has been developed to provide direct infrastructure in an accountable framework"*.
20. On 28 April 2010 the former Treasurer, Hon. Pruaitch, was briefed by DoT on the State Solicitor's advice and he was strongly advised against issuing the SCITB as it would be illegal. He was also advised to rescind the Fund Management Agreement with NCL.
21. In August 2010 the DoT subsequently learned from Nasfund's E-Newsletter of August 2010 that the SCITB was issued and that expenditure under the SCITB had commenced in June 2010 and was being overseen by the Kokopo Joint Budget and Planning Committee (sic — should be Kokopo JDP&BPC) and Hon. Tammur for water and roads and that approximately K65m had been spent up to that point in time.
22. On 14 September 2010 DoT sought and received legal advice again from the State Solicitor advising that the SCITB was illegal.
23. On 11 October 2010 given the controversy surrounding this transaction ENB Provincial Administrator wrote to the DoT requesting explanation on the funding arrangement of K125m SCITB for Kokopo projects.
24. On 19 October 2010 the then Minister for Treasury, Hon. Peter O'Neil, after being informed about the illegal issuance of SCITB Series 1, endorsed a press statement which was released to the public via the print media reconfirming DoT's stance that it was the only authorized issuer of State Securities (Treasury Bills and Inscribed Stock) and that the SCITB was illegal and would not be honoured.
25. On 19 October 2010 Malco, Nasfund and NCL were notified in writing by DoT about the illegality of the SCITB and advised that the SCITB will not be honoured.

26. On 2 October 2010 DoT received another financing proposal which included an appointment letter and an Agency Agreement, to fund the completion of the road and water infrastructure projects in Kokopo District. The source of funding proposed was via SCIB Series 2.1. The proposal involved raising funds in October 2010 for K125m of SCITB Series 1 in 2011 and suggested that appropriation for the raising of these funds be included in the 2010 Supplementary Budget.

- a) The appointment letter dated 6 October 2010 required the State to appoint Malco as Exclusive Coordinator to advise, structure, arrange and manage SCITB Series 2 on behalf of the State and BLC as a secondary underwriter.
- b) In the Agency Agreement, Malco named NCL as Issuer, Registrar, Agent and Fund Manager for the SCITB issuance.

The Government did not include any appropriation for the SCITB Series 2.1 or Series 1.1 in its 2010 Supplementary budget or 2011 budget.

27. On 29 October 2010 Mr Mitchell of Nasfund and one of his officers met with DoT Secretary Mr Simon Tosali to establish contact with DoT and see if a "way out of this situation" could be worked out to avoid complication getting to the Courts. Nasfund anticipated that this matter would end up in a bitter legal battle in Court, thus the meeting with DoT to amicably find a solution to this issue.

28. On 12 November 2010 DoT responded to the ENB Provincial Administrator and advised that the SCITB was done outside of the budget process without the knowledge of DoT and further advised that the transaction was illegal.

29. On 19 November 2010 correspondence was issued from former Attorney General Hon. Ano Pala stating that the SCITB was legal.

30. On 1 December 2010 Nasfund send a scanned letter to the Bank from Hon. Tammur and a supporting letter by the Prime Minister to Hon. Tammur stating that:

The Government would honour the SCIB; and

The DoT and the Attorney General's Department had been requested to draft an Appropriation Bill for the expenditure to be included in the 2011 Budget. DoT was not copied in nor had DoT received any direction to draft an Appropriation Bill.

31. On 4 February 2011 an article in The National newspaper reported that the Prime Minister, Sir Michael Somare had approved the "issuance of certain special purpose securities by the State through DoT". This prompted DoT to review how and /or where this approval had come about. In addition, The National newspaper reported that the Prime Minister had issued a media statement on Tuesday 1 February 2011 stating that he had approved DoT to issue the SCITB on behalf of the State.

2. O. 5 February 2011 an article appeared in the Pacific Business newspaper entitled "Nasfund deal illegal". Another article also appeared on same day in which ENBP Governor Hon. Leo Dion raised questions about the deal.
33. On 7 February 2011 a media release, which was purportedly signed by the Prime Minister, appeared in both daily newspapers claiming that the DoT had confirmed that the SCITB are securities issued on behalf of the State and then showing the Financial Markets Division of DoT as the contact Division for any queries. The Prime Minister purportedly signed as both Prime Minister and Treasurer.
34. On 10 February 2011 the Post Courier newspaper reported on its front page that Hon. Tammur was suspended by the Prime Minister for providing misleading advice and for using the Prime Minister's signature on the press release of 7 February 2011.
35. On 11 February 2011 the Post Courier reported that certain ministers wanted suspended Hon. Tammur to be reinstated by the Prime Minister.
36. On 11 March 2011 DoT wrote to the Bank in respond to the Bank's letter of 6 January 2011 and maintained their stand that the SCI•13 is illegal and therefore, no payments were to be made to Nasfund to legitimize the SCITB.

11.4 Findings

11.4.1 Legality of the SLIT

The available legal advice was that The SCITB transaction is a vehicle for raising the loan for the Kokopo JDP&BPC and which is repaid upon maturity of the bill based on the period stated on the term sheet. The funds (K125 million) in the hands of the Kokopo JDPBPC is therefore a loan which the National Government is required to repay out of the Consolidated Revenue Funds of the State upon maturity of the term of the Treasury bill. Consequently, it is imperative that the SCITB transaction must comply with all applicable laws — the Constitution, Sections 209 and 210; the Loan Securities Act; the Treasury Bills Act and the Public Finances (Management) Act. The SCITB was arranged illegally and without compliance to the mandatory requirements of the law.

Those legal advises show that the arrangement was illegal and therefore the State is not bound by the terms of the Investment Management Agreement. Hon Patrick Pruaitch was advised against the arrangement yet he proceeded for the reasons known to himself. Although numerous other legal opinions were given saying the arrangement was legal, it is our considered view that no amount of legal thought can replace the explicit provisions of the written law in the Constitution and the other Acts of Parliament as stated herein.

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State institutions

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The Joint District Planning and Budget Priorities Committees (JDP&BPC) is established under the Organic Law on Provincial Governments and Local Level Governments, section 33A. Its composition and functions are described by the organic law under that provision and there is no provision in that Organic Law or the Local Level Governments Act that provides for a single person to be appointed as the JDP&BPC.

Likewise, the public procurement process for the provision of goods and services, works and supplies, is prescribed by law as outlined in this report earlier. No person or private company can perform the functions of CSTB.

It is apparent that Malco was appointed by the Late Hon Tammur to be the JDP&BPC of Kokopo. On 5 March 2010, in a Formal Appointment Letter both Ministers Hon. Tammur and Hon. Paul Tiensten acted on behalf of the state and appointed Malco as Exclusive Co-ordinator for Corporate Advising, Fund Raising and Fund Management and other related requirements for the Independent State of PNG. Malco appears to be the key person orchestrating the entire SCITB.

When NCL officers were interviewed, they said they acted on the invoices that Malco issued and paid them accordingly. Malco selected the contractors and issued invoices on account of SCITB funds managed by NCL. NCL paid the funds upon the issuance of those invoices.

Malco therefore appears to be the Kokopo JDP&BPC, Exclusive Coordinator on behalf of the State, the public tenders' board, and project manager. NCL appears to be the mini-treasury and department of finance, paying upon the issuance of the invoices by Malco and collecting its management fees.

When members of the Kokopo LLG were interviewed on their knowledge about the SCITB project, they revealed that Hon Tammur told them that the project had nothing to do with the District and need not to be approved by the JDP&BPC as it was arranged outside of the District. The members of the JDP&BPC were also not aware that Malco had replaced their functions insofar as the SCITB was concerned.

11.4.3 Directorship and Expenditure of Funds

The following table shows the details of recipients of the K125million.

Company	Directors	Role/Purpose	No. of Invoices	Amount Received	Comments
National Capital Ltd	BLC is believed to be parent company	Management of SCITB		K0.6rn as annual fee. It is also understood	

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	based in Australia, Bernard O'Dwyer			that success fee of K0.51ri	
Blackwell Lombard Capital (BLC)	Bernard O'Dwyer & Sons, parent company of NCL	Underwriter as subcontracted by Malco, and structure and advisory fee		K4.86m	The underwriting was questionable as the issue was fully subscribed by Nasfund
Malco (PNG) Ltd	Alan Waters, incorporated in 2008.	Kokopo JDP&BPC, Exclusive Coordinator	Total fees in 1" Year	K22.7m	
Nuigini Assets Management Ltd	Henry Lorima and Peter Kakoa. Incorporated in October 2009.	Provide oversight and manage the infrastructure projects	8 Invoices	K29.6m	Capacity of this company is questioned because it was incorporated immediately before the issuance of the SCITB.
Covec (PNG) Limited	Incorporated in December 1995	Yuang Zajing and the China National Overseas Engineering Corporation	23 Invoices	K11.7m	
Kokopo Earth Moving Ltd	There was no such company with IPA . There was one company called Kokopo Earth Movers Pty Ltd which was registered in 1981 and deregistered in 1996.	Kokopo Earth Movers Pty Ltd shareholders were Lucas Entini, Luni Mono, Egidius Mararang, Oscar Tammur (deceased father of Patrick), Pilakai Tilia and Lui Topailai. On 6/04/2010, a company under the name of Kokopo Earth Moving Ltd was incorporated and the sole director is Alois Kinglsey .	1 invoice	K5.6m	BSP bank rejected the Cheque due to discrepancies and made bank Cheque on 18th May 2010. On 19/05/2010, Alois Kingsley opened an account with May Bank and produced the new company certificate. The payment was made to a company that did not exist.
JGBEE Consulting Engineers	Incorporated in 2005	Chris Sioni and Lucy Sioni (believed to be Mr Tammur's sister and her husband)	2 Invoices	K3.9m	
Goldling HKG Ltd	Searches at IPA reveal	Not known	1 Invoice	K5.9m	

	<p>that there is no such company. From the Invoices, the business location appears to be Guangzhou, Capital City of Guangdong Province of China.</p>				
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There are also unexplained transactions worth millions of kina between Malco, Nuigini Assets Management Ltd, Malco and others. For instance, Nuigini Assets Management Ltd paid K6.7m to Malco. Another amount of K4.785m was transferred from NCL to BCL and then BLC transferred K4,962,938 back to NCL, deducting K90,062 in the process. A number of money laundering activities are believed to have transpired during these transactions.

The SCIIJ3 was structured in a way that of the K125million, K32 01million would be spent on fees and commissions; K27.9million was to be paid as interests over a three year period, leaving only K65.09million for the development in Kokopo.

Most of the purported infrastructure projects reported to have been undertaken through the SCITB funding was refuted by the East New Britain Provincial Government. Some of these companies like Kokopo Earth Movers Ltd had most of its funds withdrawn on cash basis from the May Bank. Some have converted the cash into capital investment, unrelated to the purported purposes to which these funds were paid.

It is discovered that the arrangement was engineered by people who were in the financial industry in Papua New Guinea for a long time. There appears to be a strong network between these people who have known the financial system in Papua New Guinea well enough that they used its weaknesses to their advantage.

It is our finding that the entire SCITB issue was illegal, orchestrated by Nasfund Management and other companies and people within the financial institutions who had the connections. Nasfund knew or would have known that it was illegal yet readily agreed and sold the contributors funds in exchange for the purported inscribed stock. An illegal contract is void and unenforceable. For the State to redeem the K125million is to sanction illegality and set a wrong precedent.

The SCITB was organised outside of the normal government procurement and service delivery process to avoid public tender and other check and balance processes. Much needed funds were therefore wasted and defrauded. The end result

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speaks it all as to why the arrangement was done outside of the normal government process.

11.5 Actions Taken

There is an amount of K55million in NCL's accounts which was frozen by the BPNG. The National Executive Council in its previous decision No 51/2011 approved the redemption of the K125million. However, this was superseded by a subsequent NEC Decision No 84/2011 stating that no redemption attempts should be made until the investigations by ITFS is complete.

BPNG is also understood to have terminated the Investment License of NCL and further made a finding of Mr Rod Mitchel as not fit and proper person to run financial institutions.

11.6 Recommendation

It is recommended that:

- 1) The recoverability of the funds expended on the SCITB by Nasfund Limited including the remaining balance of K55million in NCL accounts be reverted to Nasfund to take the responsibility.
- 2) Individuals who orchestrated this issue including Patrick Pruaitch, Paul Tiensten, Rod Mitchel, Alan Waters, Ben O'Dwyer and Lawrence Akanufa be interviewed by the Fraud Squad for their part in this illegal and fraudulent arrangement.
- 3) The SCITB was organised outside of the normal government procurement and service delivery process to avoid public tender and other check and balance processes. Much needed funds were therefore wasted and defrauded. The end result speaks it all as to why the arrangement was done outside of the normal government process.
- 4) Directors of purported contractors be interviewed by the Fraud Squad for the expenditure of the funds on the purported projects.
- 5) Further, Mr Paul Tiensten and Patrick Pruaitch be referred to the Ombudsman Commission for further investigations.

12 Health

The Health Investigations are continuing. The major allegations stem around the drug procurement process. Some of the actions that were taken are recorded in the respective appendices to this report.

13 Others

There are other cases that are still being investigated and are continuing. Some of those cases have been wrapped up with arrests and other related actions. The actions taken are recorded in the respective appendices to this report.

PART IV — REPORTS

Unlike other investigations teams including Commission of Inquiries, ITFS is unique in that its structure had allowed the team to inquire into the allegations and take actions as and when appropriate. As such this Part covers all the actions taken so far using its different powers.

14 Actions under the Criminal Code Act

The prosecution of a criminal case starts with the arrest and charging of a person accused of committing a crime.

ITFS has treated that arrest is always the last thing of the investigations. A number of arrests have been made and their statuses are tabulated and attached to this report as Appendix

The prosecutions cases are priority as the ultimate success of the fight against corruption through ITFS is to see convictions are secured.

15 Recovery Actions — Tax

Through the tax powers, ITFS was able to recover more than K52million in tax revenue, some of which are still being assessed. There are more companies that are yet to be assessed.

The table attached to this report as Appendix "" contains the summary of the actions taken as of the date of this report.

15.1 Introduction

This report summarises the tax enforcement action through IRC in achieving the Term of Reference Number 3 where persons who received funds from the Department of National Planning & Monitoring, SCI'113 and National Department of Health are brought to tax and recovery of the funds by way of garnishee order under Section 272 of the *Income Tax Act* 1959 as amended.

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1j; Background

The Internal Revenue Commission a member of National Anti- Corruption Alliance (NACA) approved on secondment to the ITFS one of its senior enforcement officers and later a second officer in August 2011 and January 2012 respectively.

In accordance with the Term of Reference IRC took appropriate actions under the Income Tax Act to raising tax assessment on persons, both individuals and companies who received funds from the DNPM, SCITB and NDOH.

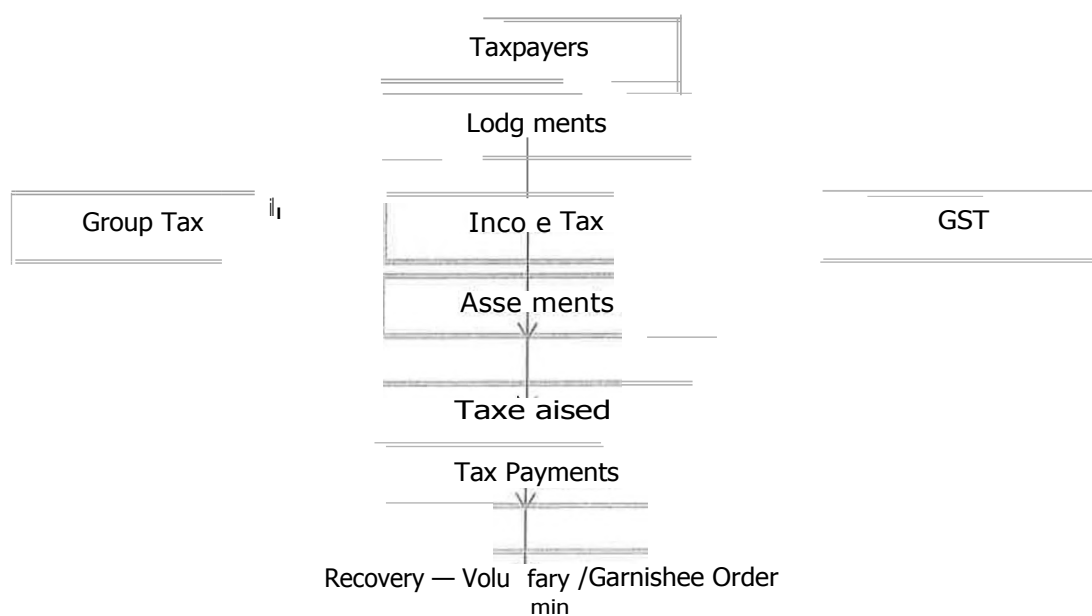
The infoiliation relied on to achieving the necessary outcomes were provided by the relevant government departments and agencies. Based on this information and others obtained under the sections 365 and 366 of the *Income Tax Act*, tax assessments were raised on account of each taxpayer.

15.3 Methodology

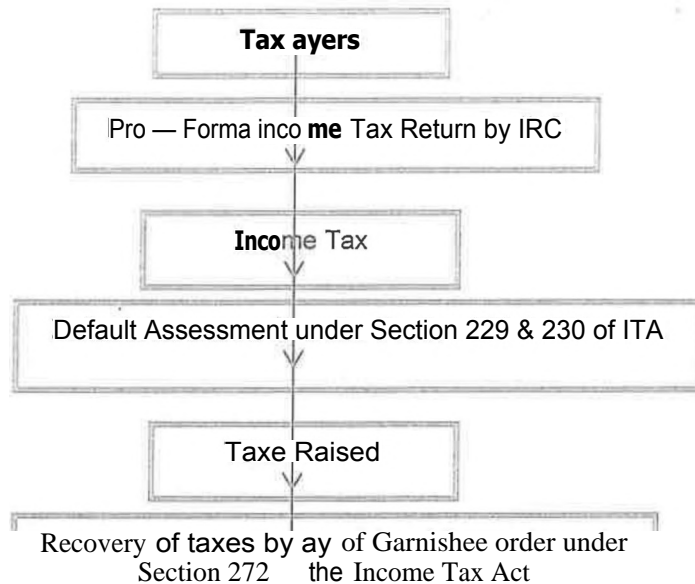
The recipients of funds from the Department of National Planning & Monitoring and National Department of Health for tax purposes were deemed and listed as taxpayers

The Flow Chart 1 & 2 below depicts the routine tax administration processes as regards voluntary compliant and non-voluntary compliant taxpayers.

Flow Chart 1 — Voluntary Compliance



Flow Chart 2: Non — Voluntary Compliance ,



15.4 Assessments

15.4.1 Compliant taxpayers

Review of assessments and decision made to;
 desk and field audit to ascertaining the correctness of disclosure of assessable income in taxpayers income tax returns, or
 include the amounts received in the taxable income and,
 raise original and amended assessments to effect (i) and (ii) above, and
 raise additional tax by way of penalty under section 316 of the *Income Tax Act* at rates ranging 20% to 200% proportionate to taxpayers culpabilities.

15.4.2 Non-compliant taxpayers

These taxpayers are not registered for tax purposes and therefore are not in the tax system. Registrations and tax file numbers were internally processed by IRC to raise PRO-FORMA Income Tax Returns. Based on the Pro-Forma Income Tax Returns default assessments were raised under sections 229 and 230 of the *Income Tax Act*.

15.4.3 Desk and Field Audit

15.4.4 Desk Audit

This audit is held at IRC office. Desks audit are n.o inAly concerned with straightforward issues or tax adjustments.

15.4.5 Field Audit

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This audit is one that takes place at a taxpayer's premise. It involves the checking of the taxpayers business as well as non-business records. Normally, taxpayers will be given prior notice of field audit.

15.4.6 Objections, Review or Appeal and Request for Amendments

Taxpayer's right to objections against assessments raised, review and/or request for amendments are provided for under sections 245 to 258 and 232 of the *Income Tax Act*.

15.5 Recovery of Tax aised

Garnishee order under section 272 of the *Income Tax Act* served on persons, especially banks which held money on account of taxpayer.

15.6 Facts & Findings

- i. Most if not all persons in receipts of funds from Department of National Planning & Monitoring and SCITB failed to lodge income tax returns and disclose the income in their return of income.
- ii. Companies, businesses and individuals received funds prior to registration with Investment Promotion Authority or were recently registered with IPA.
- iii. Existence of network between recipients of government funds through money laundering depicted on Flow Charts.
- iv. Analysis of bank statements revealed funds were depleted by project proponents as soon as it were credited and cleared by the banks therefore rendering recovery action by way of garnishee order under section 272 of the *Income Tax Act* ineffective.
- v. In relation to findings (iv) above, funds were diverted to other bank accounts, associates and acquisition of assets.
- vi. Field audit to taxpayers premise and project sites revealed lack of management, poor record keeping, incomplete projects and misappropriation of funds
- vii. Obstruction and legal action by SARA KOLOK WEST TRANSPORT LTD and DAVID CONSULTANT & ASSOCIATES LTD hindered tax officers in carrying out their duties.

15.7 Outcomes

- i. Listed and registered seventy (70) recipients of funds from DNPM, SCII13 and NDOH for tax.

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- ii. Field audit to three (3) provinces which resulted in tax assessments raised.
 - iii. Gross receipts from DNPM and SCITB deemed assessable income derived by taxpayers taken as a basis and from it no deductions were allowed to arrive at taxable income on which taxes are raised.
 - iv. Raised tax assessments for fourteen (14) taxpayers
 - v. Garnishee order under section 272 of the *Income Tax Act* served on banks holding money on account of the fourteen (14) taxpayers.
 - vi. Only two (2) taxpayers lodged their return of income after receiving special assessments raised and issued under sections 229 and 230 of the *Income Tax Act*.
 - vii. One objection was made by a taxpayer to an assessment which has been disallowed in full.
 - viii. Four (4) amendment under section 232 of the *Income Tax Act* to assessments raised under sections 229 and 230 of the *Income Tax Act* were effected to reduce taxable income and tax payable after taxpayers lodged their income tax returns and request for amendment.

15.8 • Tax revenue

15.8.1 Actual Tax Raised

Tax raised at the time of this report was K 52,094,200. Refer Appendix 1.

15.8.2 Estimate Tax

Based on taxpayers listed it is estimated that K100 million in tax revenue would be raised.

15.9 Recommendations

- i. *Companies, businesses and individuals for tax purposes must register with Internal Revenue Commission;*
 - a. to open bank accounts,
 - b. to obtain driving licences and pass ports.
- u. Investment Promotion Authority must improve their Businesses and Companies registration system by flagging names of individuals who are Sole Traders under Registration of Business Name, Shareholders, Directors and Secretaries of Companies to detect habitual De-registered Sole Traders and Companies and registration of multiple companies by same individual in order to;
 - a. enhance compliance in relation to mandatory requirements by Sole Traders and Companies to lodge Annual Returns with Investment Promotion Authority,
 - b. inform Internal Revenue Commission with regard to tax evasion and money laundering.
- iii. Project proponents must obtain Certificate of Compliance (COC) under section 3541 to 345ZA of the *Income Tax Act* from the Internal Revenue Commission as

- prerequisite to submitting proposals for public funds and tender documents with Central Supply & Tenders Board.
- iv. In addition to recommendation (iii) above, amendment must be made to section 3541 to 354ZA of the *Income Tax Act* to withhold 10% tax on eligible payment to taxpayers whose sources are from public funds whether compliant or non-compliant taxpayers to protect tax revenue.
 - v. Recovery of taxes currently provided for garnishee order under section 272 of the *Income Tax Act* is exhaustive therefore should expand to other assets owned by taxpayers besides liquid asset.
 - vi. In relation to recommendation (v) above, addition by way of amendment to section 272 of the *Income Tax Act* to give additional power to the Commissioner General and his or her delegated officers to recover taxes through repossession of taxpayers other assets in order to dispose at public auction to realise into cash to meet their tax liabilities.

16 Recovery Actions —Proceeds of Crimes

A number of proceeds of crime have been identified. The powers of the Financial Intelligence Unit of Police and the Office of the Public Prosecutor are collating the documentation to institute recovery proceedings.

The proceeds of crime pursuant to Section 10 of POCA is defined as:-

- (1) *Property is proceeds of an offence if—*
 - (a) *it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or*
 - (b) *it is partly derived or realised, whether directly or indirectly, from the commission of the offence,*
whether the property is situated within or outside Papua New Guinea.
- (2) *Proceeds of an offence includes —*
 - (a) *property into which any property derived or realised directly from the offence is later converted or transformed; and*
 - (b) *income, capital or other economic gains derived or realised from that property since the offence.*

With the amount of monies squandered off fraudulently, it is assessed that at least more than K500million of the ill-gotten funds can be recovered using the POCA powers.

The POCA Act is fairly new and that the institutions implementing POCA have capacity and other issues that affect their ability to act swiftly in taking actions under POCA.

17 Referrals —Disciplinary Actions

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A number of public servants have been heavily implicated, some of whom have been arrested, others suspended whilst others still investigate and still at large.

The names of the officers who were suspended are as stated in the table attached to this report as Appendix `

18 eferrals —Leadership Code Actions

A number of Leaders under the Leadership Code have been referred to the Ombudsman Commission to take further actions.

19 COURT (C.11.-1.td,LIEN GES AGAINST FS

19.1 National Court Proceedings

Apart from the Court proceedings instituted against the IRC, there were three proceedings instituted in the National Court, questioning the constitutional validity of the structure of this investigation team comprising different agencies of government. The proceedings are:

- i. Eremas Wartoto & Travel Air Limited —v- Sam Koim & Others:- OS GR) NO 742 of 2011. In this matter, Mr Wartoto is seeking orders, among others, that the entire NEC Decision establishing this investigation be declared null and void, and a permanent injunction restraining the Defendants and their servants/agents from conducting any further investigation. The leave for judicial review application was heard by His Honour Justice Sao Gabi and a decision is pending at the time of this report.
- ii. Paul Tiensten —v- Sam Koim & Others:-OS OR) NO 769 of 2011. That is also a Judicial Review application filed in Kokopo National Court and seeking orders in the same terms as the one filed by Wartoto. The matter was heard by His Honour Justice Lenalia on 5th October and subsequently dismissed it with costs to the State on 14th October 2011.
- iii. Alois Kingsley Golu—v- Sam Kollin, NEC, State & Others:- OS OR) NO 770 of 2011. This proceeding was filed in Waigani National Court, seeking almost the same remedies as the two above. His Honour Justice Les Gavara-Nanu heard the matter on 18th October and dismissed it with costs on 21st October 2011.
- iv. OS No. 64 of 2012: East Sepik Provincial Government —v- Tom Kulunga and Others: This proceeding was instituted, connecting to the ongoing political impasse and the Supreme Court Reference instituted by the Plaintiff. The Plaintiff obtained a restraining order from the National Court, preventing ITFS members to conduct investigations in East Sepik Province until the issues before the Supreme Court Reference were determined.

PART V —REMEDIAL ACTIONS

PART VA General

1) Level of Corruption in PNG

Understanding the dimensions of how corruption had permeated through the fabrics of the society is the first step in devising strategies to combat corruption.

Pow yea.i. ago, dlc: Prime Minister, Hon Morauta described the ;(.•.;, of coruption in this country as "systemic and systematic."

The successes of ITFS have encouraged many people who have come forward and lodged complaints of corruption in the government. In assessing all the allegations, we have discovered that corruption has permeated through every fabrics of the society

The level of corruption in this country had grown from sporadic corruption such as occasional incidences of bribes to an' *endemic or systemic* corruption where it has become an integrated and essential aspect of the economic, social and political system, having it embedded in a wider and complex networks between the public officials and the private sectors that helps sustain it. We have discovered that major institutions and processes of the state are routinely dominated and used by corrupt individuals and groups.

A more advanced and the highest level of corruption in any country, in our respective view, is when corruption is institutionalised. This in our view happens where unlike in the past where people use existing loopholes to steal public funds, this time they use their position, authority and institutions of government to orchestrate the passage of legislation, gazettal of instruments or even devising of guidelines to create loopholes and loot the country's wealth using those loopholes. This is the most dangerous and frightening trend of corruption and we have identified incidences of this kind of corruption in this country through our investigation.

. Institutions of Government are used to legitimise corruption. When institutions such as the CSTB which are established solely for preventing fraud, waste and corruption are then used against its own functions to sanction illegality, legitimising secrecy and corruption, what hope is there?

There were other instances of insider trading and conflict of interest situations where public officials use their positions to divert funds to companies that that have interests, either directly or through their relatives.

2) Effects of Corruption

The second most important National Goal enshrined in our Constitution calls for equitable distribution of incomes and other benefits of development as well as equalization of services in all parts of the country. Corruption has however distorted those principles of fairness that are embedded in our constitutional democracy. The Government robs its citizens through so much tax and resources levies yet it does not equally distribute the wealth where it really matters. The plundering of resources such as public funds by persons in authority to benefit their cronies and supporters had created injustice and is against spirit of fair distribution of wealth as per Goal 2

of the *National Goals and Directive Principles* of our Constitution. Such a practise had caused our democracy to devolve into a "mobocracy", where cronyism and minority powerful mob appear to decide who should get what and plunder rich resources of the country at the expense of the vast majority. The locally known phrase "whom you know" builds the channels of wealth creation and wealth transfer.

Systemic corruption had provided powerful alternatives to the faunal institutions of democracy and market economy. Instead of encouraging our population to be laborious and industrious in the creation of wealth, an opportunistic culture is created, where people with political connections are always on the look out to make quick easy money.

Furthermore, now that corruption has become systemic in the public sector, firms that have business with government agencies can rarely escape participating in bribery and further corrupt dealings. It is becoming a noun than an exception. Corruption has corroded the integrity of government processes including the public tender processes. It has undermined trust in public institutions and disproportionately affects the poor, who cannot afford to pay bribes to obtain public services.

Business then mark up their prices to cater for bribery related expenses onto consumers, making it even expensive for ordinary and poor people to afford their services at their marked up prices.

The ugly image of corruption in Papua New Guinea is better described by this statement "PNG is so rich yet so poor".

3) Possible Causes of Corruption

The core of the problem is embedded in our culture. We have an opportunistic culture where we feel that whatever is not protected is available for taking. Professor Ross Hynes, also identified it as a value of cultural strand that influence our behaviour and termed it as "Kisim Chance Values" which he stated are expressed through opportunistic and exploitive behaviour, is intolerant, impatient, and follows an assumption that what is not fully protected is available for taking and thus is often expressed as criminal behaviour. Greed is an element of that *kisim chance value*. The officers at DNPNI had a responsibility of trust endowed on them to protect the scarce resources and administer the expenses on projects that would benefit our people, yet their seized the opportunity to squander them for personal use.

Another possible cause is the inefficient, ineffective and dysfunctional Public Service machinery. The PNG public service has been breeding a group of lazy public servants who just laze around, waiting for the next pay day. People who needed the services of the public service had to come up with ways to motivate efficient delivery of routine services with what is commonly known as "lunch money". A culture of

nothing gets done as quickly as it would be until some "lunch money" is given. It has evolved into a culture where every transaction by a government officer would require some form of lunch money.

Time savings and regulatory avoidance: The cumbersome bureaucratic red tape is another possible cause of corruption and flagrant breach of lawful procedures. Bribes can speed up the granting of permission, licenses and permits to carry out activities that are perfectly legal. This is also done with lunch money or better termed as "grease money" to turn the wheels of bureaucracy more smoothly, speedily and hopefully in the right direction. It is also not difficult to think of a really awful situation where rules and regulations, and the way they are applied, are so complex and burdensome that the only way left to get things done is to pay money to avoid them. One situation that comes to mind is the issuance of a COI. The convoluted and time consuming public tender process may be one of the reasons why most projects that did not qualify for a COI were instead issued.

One other Cause of corruption is attributable to public servants with insufficient salaries to meet the living expenses of their families are driven by necessity to engage in corrupt practices. In a place like Port Moresby where prices of goods and services as well as accommodation are skyrocketing, public servants are scraping through every fortnight, even to the extent of borrowing to meet the necessities till the next pay day. The highly paid and well offs take advantage of public vulnerable lowly paid public servants and use them for their greed.

Further, our existing laws do not make adequate provisions on instilling accountability on the managers of the public funds. The managers are as good as the systems. The penalties of corruption are also light hence the deterrence factor is not given prominence.

4) Strategies of combating corruption

Strict/improving the LEGAL and ADMINISTRATIVE Systems and Processes: Our propositions for the remedial actions are based on the considered view that corruption in PNG had proliferated because the benefits are large, chances of getting caught are small, and penalties when caught are light, hence many people have and will succumb to illicit activities.

We also find that the law sets very strict guidelines on regulating the expenditure of public funds, especially the procurement process. However, the law fails to:

- a Sufficiently instil. accountability and ethical values on the administrators of the public funds. The people are as good as the system. If the people are not made responsible for their actions, then they will flout the system, however perfect the system may be structured.

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- Provide general terms and conditions on how the State's interest shall be protected as a party in contractual agreements with private contractors, particularly in procuring works, supplies and provision of goods and services.
- Establish how the projects implementations will be monitored to avoid waste.
- o Provide strong penal provisions on breaches of the rules and laws as a strong deterrence to future occurrences.

It is our firm believe based on the findings that no government can effectively manage its finances if due process is materially impaired. The managers and the management process are equally important hence the law should put equal emphasis on both.

Anti-Corruption Agency: We also propose for institutionalising the recent Parliament adopted National Anti-Corruption Strategy. In institutionalising the Anti-Corruption Strategy, the first most important question is the adoption of an appropriate model (structure) that would work for Papua New Guinea. Do we need an Independent Commission Against Corruption (ICAC) in PNG? If so, what sort of structure would that ICAC be like?

Many anti-corruption models around the world have failed. Only a few are considered effective. The prevailing view is that for such bodies to be effective, they have to be created in a political atmosphere where leaders are honest, civil servants are insulated from political interference, and better incentives are provided to discourage corruption. Papua New Guineas political dynamics differ from the rest of the world and it's hard at times to separate the expectation that accompanies the political will. These are the real challenges of modelling a structure that will work for Papua New Guinea. Nevertheless, success stories in the fight against corruption like Hong Kong ICAC have given us hope that they once had the very challenges that PNG has but the continued strong political commitment had turned Hong Kong around' and placed it on a sure foundation for prosperity. That is also one of the challenges that we have addressed in this report.

Leadership: Everything rises and falls on leadership. When it comes to fighting corruption, the top leadership must set a good example with respect to honesty, integrity and capacity for hard work. Since fighting corruption will involve taking difficult decisions, the leadership must also display firmness, political will and commitment to carry out the required reforms. When political will is lacking, as is often the case, compliance will be weak. If political support is forthcoming, rules is necessary; if it is not, rules will not work.

Responsible press: Many studies on anti-corruption strategies have confirmed that a responsible press to gather, analyse, organize, present and disseminate information is considered vital to create greater public awareness and to provide the momentum

undertaking initiatives to overcome corruption. Secretiveness has been a key factor that has enabled public officials and politicians to get away with corruption. A responsible and an investigative press has played an important role in many countries, both developed and developing, in exposing misconduct as well as in serving as a watchdog to limit corruption and preventing it from getting out of hand.

Some public servants do accept bribe to fund the daily necessities. An increase in the terms and conditions of public servants should also be a way forward. The Government should look at measures aimed at increasing the costs of being corrupt and the benefits of being honest.

PART V.2 DETAILED

Under Part V.1, general premise upon which remedial actions are to be taken were discussed. This part contains some of the detailed remedial actions that we recommend to the Government to implement.

20 Production Notices in Financial Fraud and Corruption related Cases Investigation

20.1 The Current Law (Problem)

The Constitution of Papua New Guinea is very protective on human rights, even protecting criminals (Section 37(1) of Constitution). The notion of innocence until proven guilty is embedded in the PNG Constitution (Sections 37(3) and (4) of the *Constitution*)

In fraud cases involving the State, there were practical difficulties faced by the ITFS during its investigations. Fraud cases, due to its criminal nature places the burden on the prosecution to prove the case beyond reasonable doubt. As a result, a suspect in a fraud case is deemed innocent until proven guilty. That burden also extends to the collection of evidence in accordance with law. Under the current scheme of legislations, the burden is placed on the State Authorities to obtain source documents lawfully. A source document that is not obtained lawfully, however useful it may be, is tainted and cannot be tendered in Court as evidence, hence it can affect the entire case. Therefore, all evidences have to be obtained upon the production of a Search Warrant granted by the District Court.

Without very vital documents such as bank statements, customer records cards, Investment Promotion Authority Company Registration documents, Payment vouchers, Receipts and invoices etc, a financial fraud investigation cannot commence. The collection and collation of source documents is the key to lead the investigator to where the particular funds were expended on and for whose benefit.

The process of collecting and collating source documents under the current system is tedious, time consuming and very costly. Investigators have to apply for search warrants and if granted, they have to execute the search warrants. All the Commercial Banks are not comfortable with the investigators personally doing a search and so negotiate with the investigators to retrieve the documents on their behalf and furnish to them, which takes weeks and even months at times.

Whilst the Investigators are clogged down with the collection and collation process, proceeds of crimes and vital evidences concerning the cases are conveniently disposed. That further complicates the process and makes the recovery actions futile as there is nothing to recover.

Even Government agents and officers have refused to furnish very valuable documents. Some Government organisations such as the DNPM have not kept the documentations and reports of the funds that they released.. Given the lack of documentation and record keeping, the question has to be asked whether proper acquittals and implementation reports are furnished to the respective authorities on the expenditure of public funds.

Acquittal is a process of accountability to show whether the public funds were expended in a properly legal manner and for the purposes intended for the funds. Lack of acquittal would certainly raise suspicion as to how and where the funds were applied. Therefore the process done properly would erase any doubts of abuse and mismanagement of public funds: In the matter of Peter Yama, Member of Parliament [2004] PGLT 2; N2746 (1 December 2004)

Private Companies who received public funds to provide goods and services or carry out works sometimes do not have proper documentation and record keeping of how they have spent those funds. For instance, on many occasions, it had been noted that a company's bank account reflects the expenditure of funds but there is no documentary evidence showing how and where those funds were spent.

Persons who apply for and receive public funds are under a duty to be accountable in the expenditure of those public funds. That duty also demands that proper acquittals are done on how those funds had been expended, as well as proper implementation reports.

What had been discovered is that there is lack of documentation. Millions of kina are received by individuals and companies but there is lack of accountability in the expenditure of those funds. Funds are diverted and misused on purposes other than those intended for.

Financial fraud is further advanced by cyber technologies. Wiring of funds into different accounts etc makes it even difficult tracing and even recover ill-gotten funds. That adds to the burden that the State already has.

Search Warrants

The current process available to Police to obtain documents in the custody of another person, government agency or company is by way of Search Warrants obtained under the Search Act. That process as explained is cumbersome and costly. We have even experienced instances where people who are subject of the investigations even go to Court to obtain stay orders against the Search Warrants.

Proceeds of Crime Act 2005

Section 164 of the Proceeds of Crime Act 2005 provides in the following terms:

.164. DIRECTION TO DISCLOSE INFORMATION.

Despite any other law, the Minister may direct the person in charge of a Government department or statutory body to give or disclose, to the Minister or a police officer nominated by the Minister, a document or information that is in the possession or under the control of that person or to which that person has access, if the Minister is satisfied that the document or information is relevant to —

- (a) establishing whether an indictable offence has been, or is being, committed; or*
- (b) the making, or proposed or possible making, of an order under Part 3 or 4 of this Act.*

This section does not restrict to proceeds of crimes matters only. It states in no uncertain terms that such direction can be issued where it relates to establishing whether an indictable offence is committed including fraud. Section 165 of POCA allows the use of the evidence obtained under Section 164 in investigation and prosecution matters.

Nevertheless, this provision restricts to State agencies only with the phrase "Government Department or statutory body"

There is also no penal provision to enforce against non-compliance hence it makes the enforcement of this provision difficult.

20.2 Proposed Law (Solution)

In order to instill accountability, a duty must be placed on the recipient of public funds to furnish all documentation including bank statements, payment vouchers, receipts and invoices, contractual documents, etc. As and when an allegation is made against a company or individual for the use of the public funds, a duty is placed on the alleged person to furnish all the relevant documentation to the authority on how the funds were expended.

The authority, upon receipt of the allegation must assess the source of the allegation and establish a case against the documents provided. It is in the interest of the alleged person to clear his/her name at the earliest opportunity by providing the records. The authority can then decide whether to proceed with the investigation or

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close the case. Upon receipt of the documents, the authority can request for further particulars and documents if it is necessary.

A person who is served with the production Notice must produce all and any information that is within his possession and/or knowledge that relates to the allegations stated in the Notice.

A person who is unable to comply with the Production notice within the specified period can write to the Authority explaining the reasons for the delay and seek extension. The extension should not be more than 21 days.

A person who refuses to comply with any of the production notices is guilty of an offence. Penal provisions should include a penalty of more than K100,000 and a term of years imprisonment or both.

The proposed provision should also indicate that the penalty and the imposition thereof, does not waive the substantive allegations. The non-cooperation would be taken on record and can be used against the disobedient person.

20.3 econaineridation

- a. Cater for the Production Notice provision in the proposed new legislation, ICAC.
- b. Amend Part 5, particularly section 164 of POCA to give more teeth. Extend the boundaries and include penal provisions for non-compliance.

20.4 justifications on the Proposed Law

It serves a number of purposes for shifting the duty to the alleged person:

- It is an early opportunity given to the person alleged to have committed an offence to clear his/her name by providing all the documents that is within his/her knowledge at the earliest opportunity.
- o It is consistent with the principles of natural justice and fairness that the person accused of any financial fraud offence is given the first opportunity to clear his name.
- o The information so requested would be in his possession and/or readily accessible by him. For instance, if it is his personal bank statement, he can always obtain it over the counter from his bank. Therefore it will save the State time and resources which it is currently expending in collecting and collating same.
- o It will instill accountability in that the recipients of public monies have to keep proper records of expenditure of public funds so as to comply with legislative requirements.
- o It will expedite some investigations. Instead of the Authorities conducting wild and lengthy investigations only to 'confirm funds had been properly expended,

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with the documentation provided, it can assist the authorities to ascertain and make a decision whether to proceed with that particular case.

It will help prevent unnecessary prosecutions that fail after the defendant produces evidence in Court.

- It will save the State from civil suits such as damages claims arising out of failed prosecutions.

The proposed change of law would to some extent shift the onus of proof to the accused in all financial fraud matters. A duty is placed on the accused to prove his innocence by providing all the documents, receipts, invoices etc. that the funds have been used properly for the purposes to which it was appropriated.

The shifting of onus of proof is not foreign to finance related offences in this country. Our tax regimes have such an arrangement. When a tax payer had been evading tax, the tax master makes a general assessment and issues an arbitrary tax assessment against the tax payer. It is then up to the tax payer to object to the assessment by producing his tax returns with receipts etc.

The proposed option of requesting for production of the documentation is not in substitution or derogation of the existing process, rather in addition to a provision of any other Act or subordinate enactment which confers a power of obtaining evidence such as search warrants etc. The State can elect, given the circumstances surrounding the case, whether to invoke that provision. The Authorities can proceed the normal way for purposes of confidentiality and protecting the investigations if in its opinion sees fit. It is however important to create an alternative by law then to rely on the traditional practice and procedure.

The duty to produce does not affect the prosecutions duty to prove the case beyond reasonable doubt. This is the production of documents process. Once the Authorities have sufficient documents, they can be able to either proceed to investigate further or close the case accordingly.

By legislating the production requirement, the documents obtained through such will be admissible in Court, firstly because it will be produced with the consent of the party concerned and secondly it is a compliance of the law.

The Production Notice is analogous to the powers vested in the Ombudsman Commission under Section 21 of the Organic Law on Duties and Responsibilities of Leadership. That Organic Law however restricts the penalty to the persons covered by the leadership code and states at section 23 that a person who does not comply is guilty of misconduct in office. Only leaders covered by the Leadership Code can be held accountable for misconduct for noncompliance.

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21.1 The Current Law (Problem)

Bail is available as of right for the accused. Any person accused of committing a crime is presumed innocent until proven guilty in a court of law. Therefore a person charged with a crime should not be denied freedom unless there is a good reason and/or the law bars bail. Bail after the arrest is consistent with the notion of innocent until proven guilty enshrined in the PNG Constitution pursuant to Section 37(4). A Bail Application is allowed to be made anytime pursuant to Section 6 of the Bail Act 1977.

Apart from those offences stipulated under section 4 of the Bail Act which vests the jurisdiction of bail in the National and Supreme Courts, Senior Police Officers as defined in the Bail Act can exercise the powers of a bail authority. Official Corruption and financial fraud cases are not among those that are listed under section 4 of the Bail Act. As such, police officers have exercised jurisdiction on those matters.

It is frustrating and undermining the efforts of the Investigation Team when persons who were arrested and charged on fraud and corruption related charges were released within few minutes even when refusal of bail was requested by the arresting officer. In most instances, the Bail Authorities (Police Officers) failed to consult the cases officers to ascertain why a request for refusal was stated. Normally, if such a request exists, then a duty is placed on the bail authority to consult the arresting officer to ensure that none of the conditions set out in section 9 of the Bail Act exist to affect the grant of bail. Such was not complied with and it makes the actions of some police officers suspicious. A total failure by respective police commandments were matters of concern as these police officers were seemingly readily available to grant bail at will. As a result, we have had offenders fleeing the jurisdiction after their arrest.

It was also a matter of concern that the bail amounts were totally disproportionate to the offences committed and the amounts involved. In other jurisdictions, when a person is alleged to have committed an offence and is arrested, the severity of the offence and the prominence of the person attract a larger bail amount. In our cases, even bail on one's own recognition (OR) were entertained in fraud related matters. It does not seem fair when a person is arrested and charged for allegedly stealing millions of kina but is out on a K5,000 bail or even on OR bail.

The Bail Act as well as the Bail Regulations do not have a schedule of bail amounts and conditions of imposing such. It leaves the amount to the discretion of the Court or any other bail authority.

The criminal justice system is established for deterrence, retribution, rehabilitation and incapacitation and not a comfort zone for alleged perpetrators to cool off after the heated investigations. It has been found that most of the financial fraud, official corruption and abuse of office offences are committed by persons who are sophisticated, having full knowledge of the consequences of their actions. As such, the criminal justice system with its enforcement mechanisms should be tougher against those offences to instil strong deterrence against the commission of similar offences.

21.2 Proposed Law (Solution)

It is recommended that:

- a) Consistent with the Government's treatment of prevalence of corruption as a very serious issue, Section 4 of the Bail Act should be amended to include financial fraud and corruption offences as offences where the National and Supreme Courts would have exclusive jurisdiction in considering bail.
- b) A further amendment should be made to the Bail Act to include in it a provision that Own Recognition (OR) bails would not be available in financial fraud, official corruption and abuse of office offences.
- c) The Bail Regulations 1977 (Chapter 340) be amended to include a Bail Schedule. The Bail Schedule shall consist of a list of crimes and the amount of bail that must be posted for those crimes. In instances where the bail schedule does not cover the offence, general principles should be included to guide the bail authority. For instance, bail amount may depend on a number of factors, including the severity of the crime, the degree of sophistication of the offender, prior convictions and the potential risk of flight.
- d) In the proposed bail schedule under (c), financial fraud cases should carry 10% of the alleged total amount misappropriated/defrauded should be paid as bail money.
- e) In the proposed bail schedule under (c), official corruption and abuse of public office charges should require a bail amount of not less than K10,000

22 Reforming the Judiciary

22.1 Integrity of District Court Committal Proceedings

22.1.1 Current Practice (Problem)

Most of the criminal investigations which led to arrests are now at the District Court for Committal Hearings. The Committal proceedings serve as the filtering process for all indictable offences before the substantive matter is tried in the National Court.

In a Review of Committal Proceedings by the PNG Constitutional and Law Reform Commission Report dated August 2007, the CLRC stated at p.20 that:

"...committal proceedings enquire into the strengths and weakness of the

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...ages brought by the State against the accused by scrutinizing the evidence available on the police file and considering those against the elements of the crime/offence for which the accused is charged under."

Similar observations by Ted Hill and Guy Fowles in the *Magistrates Manual of Papua New Guinea* (2001, Sydney: Law Book Company) at p. 193-194. is therefore pertinent:

"A committal proceeding is an investigation into the strength of the case being mounted by the prosecution, and it is not an act of adjudication. Its function is not to determine whether or not the person accused is guilty of the offence charged. The proceedings are of an investigatory, tentative and non-conclusive nature. The statutory test to be applied by the Magistrate asks whether the evidence is sufficient to put the Respondent on trial for an indictable offence."

The Magistrates are at times setting up their own set of rules to dismiss cases which in our considered view are clear-cut that could pass the committal stage. We have requested the Public Prosecutor to consider initiating ex-officio indictments in those instances; however, the fact that cases like these are dismissed is a matter of concern. For instance, some magistrates are questioning the admissibility of evidence obtained from State agencies. It is absurd to require a search warrant when it is a State case and the evidence produced are properties of the State, albeit, from an agency of State. In another case, the District Court constantly inquired who the complainant was of the case. The law empowers Police to act on their own volition by arresting a person whom they believe has or is about to commit an offence which means that police can act without a complainant in certain circumstances. For the ITFS investigations, the State is the complainant through the NEC when it appointed ITFS. The limited view of restricting the medium of complaint is an unnecessary and inconsistent with the law.

Using the procedural law as an end instead of a means to an end is in our considered view a serious miscarriage of justice. Procedural law is useful in the proper and orderly adjudication of the case based on substantive law. It will open the flood gates for alleged criminals to hide behind the curtains of procedural law and escape the substantive harm of the law if the procedural law is given so much prominence that it affects the entire case.

The Magistrates should put more emphasis on assessing the evidence against the elements of the offence. Any procedural improprieties can be corrected as provided by the District Court Act.

The District Court proceedings are not on record and their decisions are rarely published unlike the National and Supreme Courts. It would be more transparent if

the proceedings of the Committal Louct, particularly fraud and corruption related matters are compulsorily recorded and reported. Without having their proceedings open to scrutiny, there is room for doubt and such must be avoided.

The call to install recording system in the District Court is not inconsistent with law nor is it first time. Time and again, the higher courts have made such a call.

The importance of having such a record system was explained by Injia Dg (as he then was) in Papua New Guinea Harbours Board v Breni Kora (2005) N2834 where his honOur said:

The District Court is a court of record. It is implicit in Sections 160(2) and 163(2) of the Constitution, when referring to the National Court and the Supreme Court as "superior" courts of record, that the District Court is an "inferior" court of record. Both the two superior courts and the District Court are courts of the National Judicial System: Constitution, Section 155(1). As such, the District Court must keep a written record of its proceedings for appeal and other administrative purposes. The Magistrate's decision on the case is an integral, if not the most important, part of the case and it must be fully recorded in writing or by some form of audio recording system if such equipment is available. The practice seems to be that the Magistrate's decision is recorded in a worksheet provided for that purpose. The Court must record its decisions and the reasons for decisions on the Magistrate's worksheet or in some other written

The Court's decision comprises of a decision or judgment on the claim or action itself and the reasons for that decision. The reasons for decision are indispensable in every case. It may be a summary in note form or verbatim record of the reasons as pronounced in Court. It is not sufficient to say or record statements of the type above, [the magistrate had recorded only "complaint proved] which I must say, I have seen frequently in appeals before me. It also makes it difficult for the appeal court to fully deal with the grounds of appeal. It also hinders the preparation and presentation of the appeal by the parties. A party is entitled to rely on the lack of reasons for decision as a ground of appeal, and it is a valid ground of appeal. In such cases, if the Magistrate's decision is under challenge in the appeal, the Court may infer that a decision without reasons is not a good decision and allow the appeal."

Justice Cannings echoed the same sentiments in Abel v Hargy Oil Palms Ltd [2006] PGNC 179; N4150 (8 June 2006) where he said:

"Though the District Court is a court of summary jurisdiction and the extent of its duty to record its proceedings is not as great as the National Court (which is a superior court of record), it is part of the National Judicial System. It is a court, fully fledged. It has a duty to record its proceedings in sufficient detail to withstand scrutiny. Its records must be able to demonstrate that its decisions have been made judicially, in accordance with the principles of natural justice. Not on a whim or arbitrarily."

22.1.2 Recommendation

it is therefore recommended that the Papua New Guinea Magisterial Services be directed through the Minister for Justice and Attorney General to facilitate the installation of recording systems all the District Courts, starting with Criminal Courts dealing with committal proceedings. Such a project will need funding; hence the PNG Magisterial Service should seek funding through the budgetary process to initiate the project.

22.2 Giving Priority to Corruption related cases.

Once investigations of corruption are wrapped up and prosecutions commence with the arresting of the alleged person, the state institutions prosecuting the case, the offender and the public at large look forward to proving the offender their innocence in front of judges. But, in practice, hearings are postponed for a variety of reasons including immunities, health conditions, unavailability due to business travel, etc. Unfortunately, courts accepted these excuses and no hearings have yet taken place. Trials are not expedited, offenders are allowed on bail for a long time and evidence is conveniently disposed or stale. Some cases even take years before the final verdict is handed down. In order to effectively deliver justice and keep the potential offenders deterred from further corruption, the judiciary must give priority to cases involving corruption. It is therefore crucial to *reform the judicial system to fight corruption.*

This is not uncommon to many other countries who treat corruption as a serious development issue. They set different Courts tracks with judges to deal with corruption related matters only. In PNG, particularly in the Waigani National and Supreme Court, we do have such National Court Tracks such as the Judicial Review, Commercial, Criminal, Election Petitions etc.

It is also recommended that a new law or Rules of Court should set the timelines on which cases can be instituted, committed, tried and decided.

22.3 Courts Interference into Authorities vested with Investigatory Powers

22.3.1 Current Situation

Abundance of case law has made the law trite in this jurisdiction that the Courts should not readily interfere with an authority vested with investigatory powers unless on very clear grounds warranting such an interference. Among other reasons, the aggrieved party still has his rights intact during the investigation period and will be given the opportunity to respond at the appropriate forum. If he is aggrieved by the decision, he can always seek other course of actions known to law. Furthermore, interference during the investigation period frustrates any efforts by the investigative bodies to perform their lawful duties and ascertain whether the allegations are true.

Sometimes parties mislead the Courts to issue restraining orders and unnecessarily forestall and frustrates investigations. **The Commission of Inquiry into the Department of Finance** is a clear example of a case that has been gagged by the Court.

22.3.2 Recbr...mendation

It is therefore recommended that a new law should make provision to protect the investigations against such intervention by the Court, except on very exceptional grounds that warrant such an intervention. The law is already settled but instead of leaving it to the Court, it should be codified to bring clarity in its interpretation and certainty to its enforcement.

23 Enactment of Public Contracts Act

23.1 State Contracts

The Constitution empowers the State to enter into contracts. Section 247 (1) empowers the Independent State of Papua New Guinea with the legal capacity to acquire, hold and dispose of property of any kind, and to make contracts, in accordance with an Act of the Parliament. There is no specific Act of Parliament empowering the State to make contracts pursuant to this provision of the Constitution.

The PFMA, under Part VII provides for State Tenders and Contracts. That part of the PFMA however covers mostly on the procurement process, but it fails to provide for how the interests of the State in contractual relationships can be protected when the State becomes a party to a contract, particularly when the State engages the private sector carryout works and supplies and deliver goods and services. The Financial Instructions extensively elaborates the procurement process but fails to particularize standard conditions that should form part of the contract. The Financial Instructions do make provision for all State contracts to be drawn up in close consultations with the Office of the State Solicitor and variations to a contract. The PFMA and Financial Instructions essentially make provision for purchases and expenditure of public funds but does not have any provision with respect to how contractual relationships between the State and other parties are to be regulated. Public procurement is not just about purchasing hence the law should be broadened to cover all other aspects of State contracts. The existing laws are designed to regulate purchasing but not manage contractual relationships between the State and private contractors.

What the existing laws fail to provide is a standard conditions in all Government contracts. Although it can be left to the contracting parties to negotiate such terms and conditions, practice has shown that State is always the vulnerable party that does not receive the value for the money. The officers of the State collude with the private contractors in scheming up projects and siphon public funds. Without having such conditions legislated, there are no statutory obligations imposed on the officers of the State to ensure such conditions are written into every contract with the State.

A number of remedial actions must be taken to avoid instances from happening.

There is no separate Act of Parliament regulating how the State can enter into contracts.

23.2 Proposal

It is therefore recommended that a new Act of Parliament should be enacted with the title "Public Contracts Act" pursuant to section 247(1) of the Constitution. The proposed Act should supplement the PFMA. The provisions under Part VII of the PFMA that provides for State Tenders and Contracts should be repealed and transplanted in the proposed Act. The proposed Act, apart from providing for the procurement process as adopted from the PFMA, should also provide for standard terms and conditions in State contracts.

23.3 Standard Terms and Conditions in State Contracts

In all Governmental contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment, certain standard conditions must be inserted into those contracts.

1) Contract Surety Bonds

The surety bonds are very important as it protects the State funds from irresponsible bidders and incapable contractors. A contract surety bond is given to the State by the contractor to secure the performance of a contract and to assure that certain labour, materials suppliers, and subcontractors will be paid.

In the current tender practice, the Supply and Tenders Boards do request bid securities when they call for public tenders. However, it is recommended that Performance Bonds and Payments Bonds should become part of the standard terms and conditions of a State contract. A Performance Bond would be a binding obligation of the contractor and surety for the performance of the contract or payment of the cost of performance, up to the amount of the bond. It protects the State and taxpayers from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions of the Contract.

Say for instance, Prior to executing a contract for more than K3million that includes the construction of a public improvement, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract.

A. py.i.neut bond. would as sure that certain subcontractors, labourers, and material suppliers will. be paid in the event of contractors default. That is to avoid those persons making claims against the State and further prevent them from having a lien on State property which happens in some instances.

The Performance and Payment Bonds should be built into every contract for works and supply of goods and services

2) Project Implementation Schedules

Every State contract shall have a project implementation schedule that determines and defines the major phases of work that will be undertaken to achieve the desired policy objective/s and the associated deliverables. Payment should also be made in phases, conditional on timely and satisfactorily delivery of deliverables.

Project phasing will prevent contractors walking away with monies when paid in full, enable the State to monitor the projects and deal with uncertainties when they arise at the earliest opportunities.

To avoid delays and costs of delays, warrants for the specific projects must be issued to the implementing agency. The implementing agency will act as the principal project manager hence will ensure that the payment for each phase is released to the contractor on time in accordance with the contract. The State is allowed 30 days to pay on timely issued invoices. All contractors shall be required to provide banking information at the time of contract execution in order to facilitate electronic funds transfer payments by State.

3) Prohibition Clauses

There shall be some prohibition clauses which would prohibit the State from contracting with that particular contractor if these conditions exist. The State agency, including the supply and tenders board shall use these conditions as a filtering process. Some of the proposed conditions are:

0 Business Registration — a company that is not registered under section 14 of the Companies Act 1997 is prohibited from entering into a contract with an agency of the State unless the bidder and each subcontractor named in the bid proposal have a valid Business Registration Certificate on file with the Investment Promotion Authority. An updated company extract should be obtained from IPA before proceeding further with that particular contractor.

0 Certificate of Compliance (COC) — Pursuant to section 3541 to 345ZA of the *Income Tax Act*, all businesses that are not registered with IRC and produce a duly issued COC shall be prohibited from entering into a contract with an agency of the State.

- 0 **Debarment:** A company that is blacklisted as having a history of being involved in orchestrating fraudulent activities and not performing previous contractual obligations to standard shall be prohibited from re-entering another contract with the State. The contractor shall certify, by submitting the bid or proposal, that neither it nor its principals, owners, partners, key employees are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in further transaction (contract) by any governmental department or agency. That has to be supported by a performance report/reference from the Project Implementation Committee. If the contractor cannot certify this statement, attach a written explanation for review by the State.
- a **Consideration of contractor's past performance:** The bid proposal should accompany a report on the contractors past performance. Consideration of the past contract performance of offerors in awarding contracts is essential. The offeror shall be given an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executing agency concerned, other departments and agencies of the State and commercial clients. If there is no information on past contract performance of an offeror or the information on past contract performance is not available, the offeror may not be evaluated favourably or unfavourably on the factor of past contract performance.

4) **Voidable Clauses**

Certain contracts will be deemed voidable if the following conditions are breached:

- 0 **Conflict of Interest:** The Contractor has to certify that there is no conflict of interest by any official, director or shareholder of the contractor company.
- Kickbacks:** The contractor has to certify that it had not offered or given any gift or compensation prohibited by the laws to any officer or employee of the State or participating political subdivisions to secure favourable treatment with respect to being awarded the contract.

5) **Maintenance of Records**

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the contract. Such records shall be made available to the State, including the Auditor General for audit and review as well as Ombudsman Commission, Police and other authorities when allegations are raised against that particular project.

Further quality assurance mechanisms are designed to ensure that contractors fulfill their contractual obligations in respect to project quality (specifications), quantity,

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and related services. The objective is to ensure that the Government obtains the value for the money.

Monitoring performance under the contract should also be included in the State Contracts Act with specified monitoring clauses in different contracts.

23.4 Establishment of an Ad Hoc Project Implementation Committee

23.4.1 Current Problem

The National Government pours in billions of kina for development projects year after year but little is seen on the ground. Among the many problems that curtail the development initiatives of the Government, some of which are identified in this report, one obvious one is the proper management of implementation of the projects that the Government had funded. After so much money is being spent and without monitoring the implementation of the projects, millions of kina are carelessly left in the hands of purported contractors who walk off with the money with incomplete or even no project delivered.

There appears to be no Project Management arrangements in most of the projects. DNPM does not have the capacity to monitor all the projects. DNPM does not have skilled officers to monitor specialist projects that it awarded to private contractors. It also does not have branches in all the Districts or provinces of the country to monitor all the projects. Hence when contracts are directly paid and the performance thereof is not monitored, the inevitable happens -money swindled to unintended purposes. Even variation requests are done by the contractor without verification and payments are made to the contractor. For instance in the Kerevat National High School case, SWT did not complete the project, yet it applied for variation and was readily paid more than K1.9million.

23.4.2 Importance of Monitoring Contract Performance

Once a contract is signed and the service provider has begun work, it is important to monitor the service provider's performance under the contract and to promptly deal with any problems that arise. Any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract receives the value for the money. Effective contract monitoring can assist in identifying and reducing fiscal or program risks as early as possible, thus protecting public funds.

While the contractor has responsibility to perform under the terms of the contract, the state agency has responsibility for reasonable and necessary monitoring of the contractor's performance.

In the Monitoring processes performance of the project is observed so that potential problems can be identified in a timely manner and corrective action can be taken, when necessary, to control the execution of the project. The key benefit is that project performance is observed and measured regularly to identify variances from the project management plan.

The Project Implementation Committee will devise quality assurance policies and procedures to ensure that the government is getting the value for the money under the terms of the contract.

23.4.3 Is there a Monitoring Committee in place?

DNPM does not have the capacity to monitor projects on its own. DNPM departed from its primary purposes and assumed responsibilities that were beyond its own capacity hence was unable to even monitor the implementation of projects were funded out of the Development budget that it administered.

There is a National Project Implementation Committee. That committee is chaired by the Chief Secretary who receives and provides ad hoc reporting on the implementation of the District Service Improvement Program (DSIP) and other projects implementations to Cabinet and Parliament. It is not clear whether that committee is effective and whether it has the capacity to monitor the implementation of most of the development projects around the country apart from DSIP funds.

Under PIP Number 2837, the Office of the Rural Development had been receiving separate funding through the National Budget for monitoring DSIP funded projects. The DNPM is also understood to be receiving funding for monitoring implementation of development projects in accordance with its primary functions.

23.4.4 Proposed Solution

It is off course very expensive to hire private companies to manage the projects. The State has the capacity to monitor its own projects. With the split in the DNPM and the establishment of the Department of Rural Implementation and Development, that department can be better equipped to monitor the implementation in consultation with DNPM. However, even if that is done, there are still capacity issues.

A better option as proposed here is to establish an ad-hoc multi-agency Project Implementation Monitoring Committee (PIMC). The Committee will not be comprised of certain agencies only but will vary depending on the nature of the project. For instance:

- (a) If it relates to a road project, it should involve the DNPM, Finance, ORD, Works etc.

- (b) if it is a conservation project at a mine site, it should involve Department of Environment and Conservation, DNPM, Finance, Mineral Resources Authority etc.
- (c) If it involves electricity project, it should involve PNG Power, DNPM, finance, works etc.
- (d) If it involves RESI, it should involve DNPM, Works, Education, Dept etc.
- (e) If it involves National Agriculture Development Project, it should involve DAL, Respective Boards such as Coffee or Cocoa Boards, DNPM etc.

DNPM should revert to its original primary function and play a key role in the proposed PIMC by ensuring that all projects are completed in accordance with the overall plans of the government and according to budget. The knowledge of the implementation of the project can assist DNPM to help formulate budget for the following year which would see monies made available should there be a need.

The PIMC will monitor every phase of the project and ensure that the project is progressing on target. The Government contract must reflect a phase by phase contract whereby payment will be released on time before the next phase. The Committee will recommend for variation and also issue a performance certificate for future contracts involving the contractor.

The involvement of various agencies will provide check and balance on each other's functions and will be more independent and transparent.

24 Establishment of an Anti-Corruption Institution

24.1.1 Background

Corruption had grown its roots far and wide and in all the fabrics of the society. Successive Governments had turned a blind eye on this issue which allowed it to grow its tentacles all over the Government apparatus. The approach to fight corruption had been a *band aid* approach with very short term investigation teams to expensive Commission of Inquiries.

It is now a known fact that fraud and corruption is a major development issue in Papua New Guinea that significantly obstructs the Government's efforts to deliver basic goods and services to the people. Through these investigations, it is uncovered that billions of kina that supposed to have translated into real socio-economic development had been stolen from the public coffers.

The National Parliament through this Government had recently endorsed a National Anti-Corruption Strategy to tackle the growing threat of corruption to National development and the future prosperity of the Nation. The current Government's practical approach towards implementing the National Anti-Corruption Strategy

yezilizeu through the establishment of ITFS which has spear headed the Government's anti-corruption initiatives to date. The National Anti-Corruption Strategy will strengthen the Government's efforts to ensure compliance with the United Nations Convention Against Corruption (UNCAC), an important international obligation which PNG has ratified in May 2007. Article 5 of UNCAC specifically requires Papua New Guinea to "develop and implement effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability."

We should build on from the successes of ITFS and promulgate that into a permanent agency of government. Although ITFS may be seen as a temporary *Band-Aid* approach to addressing corruption in this country, the setting up of a permanent agency will bolster this Government's strong will to eradicate corruption in all levels of the Government.

There is on one single solution that we can rely on to fight corruption. Fighting corruption requires a well thought out and comprehensive strategic plan. Our circumstances and the contexts in which corruption is perpetrated and proliferates, is unique to other countries. Therefore we must come up with comprehensive strategies to combat corruption.

The Government had recently tabled the National Anti-Corruption Strategy in Parliament, which Parliament adopted it. Institutionalizing the National strategy on corruption and making it work is the real challenge. We can always come up with nicely written strategy on paper but the real challenge is the implementation part of it.

The policy therefore has to be thought out in the first place to avoid duplication, performance deficiencies and agency territorial conflict. We have existing agencies of Government that equally need the Government political will and funding. Creating a totally new body with its full staffing may cause conflict, confusion, duplication and diversion of Government attention from the existing institutions. The establishment of a new anti-corruption agency to combat corruption is a new policy initiative by this Government; hence a strategy must be developed so that it is cultured into the Government apparatus. It must evolve into a permanent institution, by which time all the agency territorial boundaries would then be identified and drawn. Understanding the evolution process with the existing mechanisms as the basis is therefore necessary. The succeeding paragraphs outline that process.

24.1.2 PNG's Existing Anti-Corruption Mechanisms

It must be understood that we have laws sufficient enough to combat corruption. Various State institutions have mechanisms in place to detect and report corruption, investigate as well as prosecute corrupt persons. There are loopholes as identified and recommendations made in this report that can help plug those loopholes as

identified. The following accounts the existing institutions and how it will evolve into a Permanent Anti-corruption Commission.

a. Forces outside the Government Apparatus

There are organisations that, although do not have the powers to take any penal actions, do expose corruption. Such organisations like the Transparency International, the Media organisations, the Civil Society and many others play a key role in exposing corrupt activities. The exposing of corrupt activities does create the public demand for action by the respective State agencies.

b Agencies of State

The Government institutions like Ombudsman Commission, Royal Papua New Guinea Constabulary (National Fraud & Anti-Corruption Squad, FIU, and Transnational Crime Unit etc), Auditor General's Office, Office of the Public Prosecutor, Department of Justice, Department of Treasury, Internal Revenue Commission, Customs, etc... have the powers under their respective enabling legislations to combat corruption.

These, although were State agencies having the State as the common denominator, worked in isolation. As a result of that, individual Agency's attempts to achieve a scattered dream of curbing corruption were seriously undermined by lack of information, resources and expertise. The unavoidable result we now experience is that corruption began to grow unabated.

c. NACA

In 2004, a group of ten agencies came together by way of a Memorandum of Agreement to share their information, resources and expertise to combat corruption in the public service.

The MOA of July 2004 sets out the guiding principles, the structure of NACA and the modus operandi for NACA. This MOA was reviewed and revised in 2010 and signed off by the heads of the member departments and agencies in 2011 as an agreement to continue the operation of the Alliance.

The primary purpose of NACA is to investigate major fraud and corruption within the public sector organizations. NACA has been established to coordinate existing manpower and resources of member agencies to be more robust and effective in investigating and prosecuting fraud and corruption primarily in the public sector. Additionally, with the recent enactment of the *Proceeds of Crime Act* the State can now take steps to recover and/or seize assets or properties that were acquired through proceeds of crime and forfeit them to the State.

The combined resources also mean combined powers in collecting evidence, prosecuting perpetrators and recovering proceeds of crime. Against this backdrop combined ability, what has been really lacking for NACA was the political will and funding.

NACA is currently funded under the Development Budget parked within the Papua New Guinea & Australia Law & Justice program (PALJP) and administered through the Fraud & Anti-Corruption Activity Management Team (AMT) to which the Director for NACA is a member. This arrangement was necessary because there was no specific funding vote (activity item) for NACA and a government department or agency has not been identified for purposes of parking the funds. Financial reporting in respect of NACA operations is also done through the AMT. Corruption in the public service is a development issue and how the successive Governments have turned a blind eye on this is somewhat astonishing.

Since ITFS was established by this Government, ITFS took over most, if not all of the functions of NACA. Apparently, NACA had evaporated into ITFS. Preliminary discussions with NACA members show that NACA had always dreamt of a moment such as this when the Government would commit its political will with resource backing to group all the agencies together to fight corruption and now that it had happened, it should then develop into a permanent institution.

d. ITFS

On 12th August 2011, the O'Neill/Namah Government, through the NEC Decision No NG 25/2011 established an Investigation Team to look into certain allegations of corruption. The Investigation Team, now codenamed "Investigation Task-force Sweep" was drawn from the National Anti —Corruption Affiance (N.ACA) to investigate certain allegations of corruption. The Government, instead of the usual establishments of Commissions of Inquiry, decided this time to give the onus back to the State institutions to take ownership of the issue and address it. The State institutions, with the ably and qualified professionals have taken on the challenge with much appreciation to the Political will committed to fighting this evil.

The ITFS structure had been drawn from NACA which comprised of ten agencies of the State. The structure provided an efficient and effective approach to addressing corruption by sharing resources, information, expertise and manpower.

The ITFS composition enables it to collect and collate sources documents, conduct financial audits, conduct criminal investigations, prosecute perpetrators, make referrals for disciplinary and Leadership actions by the Department responsible in consultation with Department of Personal Management and Ombudsman

Conilltissi()1) respectively, recoup proceeds of clinic; under the Proceeds of Cisiiiiies Act, Penalise and Impose tax on Tax Evaders etc.

The success of the investigation and in keeping with the popular demand for the work of ITFS to be made permanent, the Government had directed ITFS to make a recommendation for an independent, yet competent entity to address the corruption issue in the country. Keeping and building on the momentum as well as establishing a permanent office are key steps towards continuing the good initiative this Government had taken.

24.1.3 The New Agency

We have the Independent Commission Against Corruption (ICAC) legislation in the process of being certified by the Speaker of Parliament before being tabled in Parliament for the enactment process. However, a number of pertinent issues must be addressed before its establishment. Issues such as:

- o Do we necessarily need an ICAC? As pointed above, we do have existing institutions with their respective powers to combat corruption.
- o Is the timing right to introduce ICAC into PNG? The concept is fairly new; as such we need to take a bottom up evolution approach than a top-down approach. There must be a process of evolution where the Structure of Anti — Corruption is eventually cultured into the Government apparatus. (refer to Graph below)
- o Is the anti-corruption legislation adequate and effective? We do have laws, if fully used, can assist to combat corruption.
- Will it build on from the successes and momentum set by ITFS, knowing that it will need considerable amount of time, resources and manpower to set it up.
- The risk of setting up a monster independent organisation like Ombudsman Commission, eating up government funds and resources yet not fully effective,
- o Whether there is a real likelihood of inter-agency territorial conflict. If ICAC is given investigation and prosecution powers, it might duplicate the role of OC, the Police (fraud Squad), the Public Prosecutor etc.
- Will it create confusion as to which agency should be responsible for what?
- ICAC will need trained officers of its own apart from Fraud Squad and other agencies, as such will take some time to train people with the expertise.

24.1.4 Proposed Structure

It is very important that among the many anti-corruption structures used in the world, in PNG, we have used the Inter-Agency Cooperation model through NACA/ITFS. It is therefore proposed that the Government's drive against corruption be institutionalized with the establishment of a transitional agency which

will hardier develop and make meaningful the National Anti-Corruption Strategy and evolve into a PNG version of an ICAC

It is important to provide an arrangement which will allow time for the development of new legislation which is well received by the public and supported by the numerous stakeholders each having its own interests under respective Constitutional and statute laws to deal with corruption in its myriad forms. It is therefore important to maintain the concept of the affiance between the anti-corruption agencies to ensure that all interests have been taken into account in a collaborative venture to create the Independent Commission Against Corruption under a Constitutional Law (ICAC). For this purpose, it is necessary to create an overarching coordinating mechanism at the highest level in the Public Service reporting to the Prime Minister, and to bestow an overarching anti-corruption coordination function in the Prime Minister's portfolio, in preparation for the advent of the ICAC.

Whilst the legislative development is taking place, the voluminous cases that are currently being investigated can be continued under the transitional arrangement so that the momentum that had been picked up through ITFS in the fight against corruption is not lost. The only structure that can allow such to work is the NACA/ITFS structure.

25 APPENDICES

25.1 References on Materials used in this eport

25.2 Financial Report of HITS

25.3 Organizational Chart of HITS

25.4 National Gazettes

25.5 Criminal Prosecutions Status Report

25.6 Tax Recovery Status Report

25.7 Summary of Legislative Changes Proposed

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