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THE PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO DEPARTMENT OF LANDS & PHYSICAL PLANNING

REPORT TO THE NATIONAL PARLIAMENT

1. INTRODUCTION

1.1. On the 28th day of February 2006 the Permanent Parliamentary Public Accounts Committee concluded a long running inquiry into the Department of Lands & Physical Planning.

1.2. As a result of evidence taken in the Inquiry, the Public Accounts Committee made certain findings which were highly critical of performance of the Department of Lands & Physical Planning and, in particular, the performance and competence of the Head of Department and Senior Officers.

1.3. As a result of evidence and documents tendered to the Inquiry, the Public Accounts Committee made certain referrals of the Secretary of the Department of Lands and Physical Planning for inquiry and possible prosecution for breaches of his statutory obligations.

1.4. As a result of evidence and documents tendered to the inquiry, the Public Accounts Committee unanimously resolved to make a full and complete report of its Inquiry and findings to the National Parliament in accordance with Section 86 (1) (c) of the ***Public Finances (Management) Act 1994.***

1.5. The Public Accounts Committee now tables the report with its strongest recommendation that remedial action be immediately taken by the National Parliament in accordance with findings and resolutions of the Public Accounts Committee.

2. EXECUTIVE SUMMARY

2.1 The Department of Lands and Physical Planning is incompetent and ineffective in carrying out its statutory obligations to manage land and fails to protect and further the fiscal interests of the State.

2.2 The Department of Lands and Physical Planning has failed to collect revenue in a timely manner or at all.

2.3 The Department of Lands and Physical Planning has failed to implement and maintain competent or adequate systems of accounting, control and accountability.

2.4 The Department of Lands and Physical Planning over many years has conducted itself illegally in the allocation of and registering of State Lease, granting of licenses, giving of Ministerial exemptions, dealing with Customary land and in its fiscal obligations to the State.

2.5 The Department of Lands and Physical Planning has, for many years, given priority to the interests of private enterprise and private speculators over the interests and lawful rights of the State.

2.6 The Department of Lands and Physical Planning requires urgent restructuring.

2.7 The Committee recommends the immediate removal of the Secretary and senior Management of the Department of Lands and Physical Planning and the recruitment by international advertisement of competent senior managers and executives to rebuild the Department.

2.8 The system of Land Registration and performance of the Department of Lands and Physical Planning is poorly regarded by the private sector. There is a clear lack of confidence in the Department and its management.

2.9 Illegalities and abuses by Management, Departmental Officers and certain members of the Land Board continue with immunity and impunity.

2.10 There is no will or ability in the current Management of the Department of Lands and Physical Planning to effect any change.

2.11 The Department of Lands and Physical Planning and, in particular, the Secretary and Deputy Secretary of that Department obstructed the Inquiry by the Public Accounts Committee by failing to produce documents when ordered to do so.

2.12 The Department of Lands and Physical Planning has failed in its duty to protect and secure public documents and State records.

2.13 The Department of Lands and Physical Planning has exposed the State to significant liability by reason of illegal practices, unlawful decisions and negligent actions of Departmental Officers.

2.14 The State has been deprived of very significant revenue by way of Land Rental and tender or reserve price which has either not been levied at all by the Department, or not collected.Levy

2.15 The Department has, in the last decade, engaged in the planned and deliberate granting of Reserved Land, National Park, or Open Space land into private hands for little or no recompense to the State – and in many cases, quite unlawfully.

2.16 The current Management of the Department of Lands and Physical Planning has taken no steps at all to rectify, or deal with abuses of past administrations, despite having detailed knowledge of those illegalities.

2.17 The Department of Lands and Physical Planning is a real impediment to National development and economic growth. It is a Department which needs to be brought immediately under control.

2.18 The Government must review the entire system of land allocation in Papua New Guinea. The current system requires a high degree of probity, honesty and competence – attributes lacking for a decade in the Department of Lands and Physical Planning and the Land Board.

2.19 The Committee recommends that the Government immediately appoint a Commission of Inquiry to review every Lease Grant made in the last decade – with a view to establishing which State leases have been illegally or unlawfully issued and to recover same to the benefit of the State.

2.20 That Commission of Inquiry should also be tasked with making recommendations for the rebuilding of the Department of Lands and Physical Planning and basic steps to be taken to restore confidence and credibility to the Department and the system of land registration and land security in Papua New Guinea.

2.21 The Committee has referred the Secretary and Deputy Secretary of the Department of Lands and Physical Planning for investigation and prosecution.

2.22 The Committee endorses and accepts the Reports of the Office of the Auditor General on the Department of Lands and Physical Planning for the years 2000 – 2004.

3. CHRONOLOGY

3.1. The Public Accounts Committee commenced its Inquiry into the Department of Lands & Physical Planning in 2003 and continued on the 1st September 2005, the 24th November 2005, 25th November 2005, the 29th November 2005 and the 28th February 2006.

3.2. The Inquiry was closed on the 28th February 2006.

3.3. Directives to produce evidence and documents were given to the Secretary for the Department of Lands on the 5th September 2005, the 22nd November 2005, the 29th November 2005 and the 26th day of February 2006.

3.4. These Directives were complied with inadequately or not complied with at all.

3.5. Referrals of the Secretary for the Department of Lands & Physical Planning for investigation and possible prosecution were made on the 24th November 2005, the 25th November 2005, the 29th November 2005 and the 28th day of February 2006.

4. LIST OF ABBREVIATIONS

4.1	**UDL**	Urban Development Lease
4.2	**TSL**	Town Sub-Division Lease
4.3	**PF(M)A**	Public Finances Management Act
4.4	**PAC**	Public Accounts Committee.
4.5	**NCDC**	National Capital District Commission
4.6	**The Constitution**	The Constitution of the Independent State of Papua New Guinea
4.7	**The National Court**	The National Court of Justice of Papua New Guinea
4.8	**The Committee**	The Permanent Parliamentary Public Accounts Committee.
4.9	**The Secretary**	The Secretary of the Department of Lands and Physical Planning

4.10 **The Department** The Department of Lands and Physical Planning.

5. COMPOSITION OF THE COMMITTEE

5.1 The Public Accounts Committee which made inquiry into the Department of Lands & Physical Planning was constituted as follows:

5.2 1st September 2005:

Hon. John Hickey MP	(Chairman)
Hon. James Togel, MP	(Member)
Hon. Michael Maskal, MP	(Member)
Hon. David Anggo, MP	(Member)
Hon. John Vulupindi, MP	(Member)
Hon. Ekis Ropenu, MP	(Member)
Hon. Bob Danaya, MP	(Member)

5.3 24th November 2005:

Hon. John Hickey	(Chairman)
Hon. Chris Haiveta, MP	(Deputy Chairman)
Hon. Timothy Tala, MP	(Member)
Hon. Sasa Zibe, MP	(Member)
Hon. Ekis Ropenu, MP	(Member)
Hon. Bob Danaya, MP	(Member)
Hon. James Togel, MP	(Member)

5.4 25th November 2005 .

Hon. John Hickey, MP	(Chairman)
Hon. Bob Danaya, MP	(Member)
Hon. Michael Maskal, MP	(Member)

Hon. Timothy Tala, MP (Member)

Hon. Sasa Zibe, MP (Member)

Hon. James Togel, MP (Member)

Hon. Ekis Ropenu, MP (Member)

5.5 29th November 2005:

Hon. John Hickey, MP (Chairman)

Hon. Bob Danaya, MP (Member)

Hon. Michael Maskal, MP (Member)

Hon. Timothy Tala, MP (Member)

Hon. Sasa Zibe, MP (Member)

Hon. James Togel, MP (Member)

Hon. Ekis Ropenu, MP (Member)

5.6 28th February 2006:

Hon. John Hickey, MP (Chairman)

Hon Sasa Zibe, MP (Member)

Hon. Bob Danaya, MP (Member)

Hon. Mal Smith-Kela, MP (Member)

Hon. John Vulupindi MP (Member)

Hon. Michael Maskal, MP (Member)

5.7 The Chairman, Deputy Chairman and Members of the Committee were properly and lawfully appointed and empowered to sit as a Public Accounts Committee.

6. JURISDICTION AND PURPOSE OF THE INQUIRY

INTRODUCTION

6.1 The Department of Lands and Physical Planning is a central and crucial agency to the economic wellbeing and development of Papua New Guinea. It manages all State land in Papua New Guinea and land is the most important asset in the development of the society and the economy.

6.2 The Department is responsible, inter alia, for the lawful and legitimate issue of State Leases, the consideration by the Papua New Guinea Land Board of tenders and applications for the grant of State Leases and, more particularly, is responsible for the protection of State property, assets and revenue.

6.3 The Department of Lands and Physical Planning should be a major revenue collector for the Government of Papua New Guinea and is subject to the jurisdiction of the Office of the Auditor-General and the Public Accounts Committee.

6.4 The Public Accounts Committee has conducted ongoing Inquiries into the Department of Lands and Physical Planning for at least a decade.

6.5 Throughout this period the Committee has been concerned at the apparent failures by the Department of Lands and Physical Planning to carry out its functions with any degree of competence or success.

6.6 The Committee has been concerned at the apparent inability of the Department of Lands and Physical Planning to protect and manage State land, State Leases and State revenue.

6.7 The Committee became increasingly concerned at the clearly apparent difference between assurances given by Departmental Officers that the Departmental performance was improving every year while the Reports of the Auditor General and other indicators suggested that these assurances were not correct.

6.8 During its Inquiries, the Public Accounts Committee has sought to effect change within the Department of Lands and Physical Planning by a process of Inquiry, directive, suggestion, encouragement and recommendation.

6.9 Throughout that period, the Committee has seen no improvement in the performance of the Department and its Officers. That performance can, in almost all respects, be described as extremely poor and, in many cases, totally non-existent.

6.10 The Committee has entertained serious concerns as to the competence and honesty of Management of the Department of Lands and Physical Planning for some years.

6.11 Continuous evidence of illegal dealings in land, failures to forfeit and reallocate land for breaches of Lease covenants, failure to collect huge arrears of Land Rental owed to the State, the alienation of Reserved or Open Space land to private hands, the failure of the Department to deal with these abuses and an increasingly obvious attitudinal problem within the Department and an increasing Departmental reputation for corruption and failure, has persuaded the Public Accounts Committee that a Parliamentary Report recommending urgent intervention is warranted, if any remedial steps are to occur.

6.12 The Committee has concluded that corrupt practices and inept management of the National Estate continues with impunity and immunity. This is not acceptable.

6.13 This conclusion was confirmed by the almost complete failure and / or refusal of the Departmental Officers to assist the Public Accounts Committee by complying with Directives and producing documents, records and files requested by the Committee.

6.14 It was clearly apparent that the Department deliberately refused to produce any records at all in respect of patently illegal land dealings.

6.15 This blatant failure was blithely explained away by the Secretary and Head of the Department of Lands and Physical Planning in the following sworn testimony to the Committee:

Mr. Pepi Kimas

"Let me inform the Committee that once the client receives their titles they get officers to remove and destroy the files and everything else"

and further

"What they do is that as soon as they get the title they pay off somebody who will destroy the file and remove it and that makes the task very difficult"

Evidence to the Committee 29th November 2005.

6.16 In light of the attitude displayed in this evidence, and considering all the evidence in the Inquiry, the Committee concluded that the Department of Lands and Physical Planning had some very serious, deep and fundamental problems that will not be solved without Governmental coercion to do so.

6.17 The Committee also resolved that the Report to the Parliament from the Committee, contain recommendations for reform of the Department of Lands and Physical Planning.

6.18 At all times, the Committee has taken great care to enable witnesses to make full and complete representations and answers to any matter before the Committee – in particular those matters about which the Committee may make adverse findings against individuals or companies.

6.19 The Public Accounts Committee has taken care to give careful consideration to all responses and evidence given before the Committee.

6.20 All evidence was taken on oath and full and due inquiry was made of all relevant State Agencies where the Committee considered those inquiries to be necessary.

7. JURISDICTION

THE CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

7.1 The Committee finds its jurisdiction firstly, pursuant to Section 216 of the ***Constitution of the Independent State of Papua New Guinea***. That Section reads:

*"**216. Functions of the Committee***

(1) The primary function of the Public Accounts Committee is, in accordance with an Act of the Parliament, to examine and report to the Parliament on the public accounts of Papua New Guinea and on the control of and on transaction with or concerning, the public monies and property of Papua New Guinea".

(2) Sub-section (1) extends to any accounts, finances and property that are subject to inspection and audit by the Auditor General under Section 214 (2) … and to reports by the Auditor General under that Sub-section or Section 214 (3)…".

7.2 The Committee has taken care to restrict its Inquiry to an examination of the control of and on transactions with or concerning the public monies and property of Papua New Guinea by the Department of Lands and Physical Planning and its officers.

7.3 Land itself is a significant State asset and the Committee has jurisdiction to consider the standard of management and control exercised over that asset by the Department of Lands and Physical Planning, on behalf of the State.

7.4 Whilst considering the relevant provisions of the Constitution, the Committee has had regard to the **Final Report of the Constitutional Planning Committee 1974** and been guided by or applied the stated intentions of that Committee wherever necessary.

7.5 The Public Accounts Committee has had due regard to reports by the Auditor General made pursuant to audit inspections of the Department of Lands and Physical Planning for the years 2000 – 2004, but has conducted an Inquiry into matters deemed by the Committee to be of National Importance or which arise naturally from primary lines of Inquiry and which are within the jurisdiction and function of the Committee as set forth in the Constitution.

7.6 Whilst engaged in the Inquiry the Committee was guided by two definitions contained in the Constitution, which are directly relevant to Section 216 of the Constitution. They are:

"Public Accounts of Papua New Guinea" includes all accounts, books and records of, or in the custody, possession or control of, the National Executive or of a public officer relating to public property or public moneys of Papua New Guinea;"

and

"Public moneys of Papua New Guinea" includes moneys held in trust by the National Executive or a public officer in his capacity as such, whether or not they are so held for particular persons;"

Schedule 1.2 of the Constitution.

8. THE PUBLIC FINANCES (MANAGEMENT) ACT.

8.1. The Public Accounts Committee also finds its jurisdiction to Inquire into the Department of Lands and Physical Planning in Section 86 of the ***Public Finance (Management) Act.*** That Section empowers the Committee to examine accounts and receipts of collection and expenditure

of the Public Account and each statement in any Report of the Auditor General presented to the Parliament.

8.2. The Committee has considered both accounts and receipts and as they have been made available by the Department of Lands and Physical Planning and such statements and reports of the Auditor General as may have been presented to Parliament.

8.3. The Committee has further considered reports of the Auditor General which have not yet been presented to the Parliament, on the basis that that evidence was tendered by the Auditor General for the consideration of the Committee and on the basis that such material is within the purview of the Committee as a matter of national importance. (See Para. 9 infra).

8.4. Power to refer matters for investigation and possible prosecution is granted to the Committee by Section 86A of the ***Public Finances (Management) Act***.

9. PERMANENT PARLIAMENTARY COMMITTEES ACT:

9.1. The Committee received very serious allegations of misconduct, maladministration and corrupt dealing within and by Officers of the Department of Lands and Physical Planning.

9.2. The Committee resolved that a full Inquiry into the Department of Lands and Physical Planning was a matter of National importance and found further jurisdiction for the inquiry in Section 17 of the ***Permanent Parliamentary Committees Act***.

9.3. That Section provides that the Public Accounts Committee can consider any matter to be of national importance. The Committee, as we have stated, considers the Department of Lands and Physical Planning to be such a matter.

10. PURPOSE OF THE INQUIRY

10.1. The purpose of the Inquiry conducted by the Public Accounts Committee was to make full and complete examination of the manner in which the Department of Lands and Physical Planning in all its aspects, and officers of that Department, controlled transactions with or concerning public monies and property, accounted for those monies and property, protected the position of the Independent State of Papua New Guinea, collected revenue, controlled and monitored expenditure and protected the position of the State and the security and integrity of property, assets and money of the State.

10.2. The purpose of the Inquiry was not to improperly pursue or criticize any person or company, but to make a constructive and informed Report to the Parliament on any changes which the Committee perceives to be necessary to any item or matter in the accounts, statements or reports or any circumstances connected with them, of the Department of Lands and Physical Planning and any matter considered by the Committee to be of national importance.

10.3. Further, the intention of the Inquiry was to enable the Committee to report to the Parliament in a meaningful way on alterations that the Committee thinks desirable in the form of the public accounts as manifested in the Department of Lands and Physical Planning, in the method of keeping them, in the method of collection, receipt, expenditure or issue of public monies and/or for the receipt, custody, disposal, issue or use of stores and other property of the State by the Department of Lands and Physical Planning.

11. THE AUTHORITY TO REPORT

11.1. The Public Accounts Committee finds authority to make this Report in Section 17 of the ***Permanent Parliamentary Committees Act*** and Section 86(1) (c) and (d) (i), (ii), (iii) and (iv) and (f) of the ***Public Finances (Management) Act 1995***.

12. THE AUTHORITY TO REFER

12.1. Where satisfied that there is a prima facie case that a person may not have complied with the provisions of the ***Constitution of the Independent State of Papua New Guinea*** and / or the ***Public Finances (Management) Act*** in connection with the control and transaction with and concerning the accounts of a public body or the public moneys and the property of Papua New Guinea, it may make referrals of that person to the Office of the Public Prosecutor in accordance with Section 86A of the ***Public Finances (Management) Act***.

12.2. The Public Accounts Committee is not a true investigatory body capable of investigating and/or prosecuting persons for breaches of the law. The Committee is required to refer such matters to the appropriate authorities and may make such recommendations as it thinks fit in relation to any referral made pursuant to Section 86A.

12.3. The Committee is also empowered to refer for prosecution, any witness who fails to comply with a Notice to Produce any document, paper or book and / or any person who fails to comply with a Summons issued and served by the Committee. See Section 23 ***Permanent Parliamentary Committees Act 1994.***

12.4. Further, Section 20 of the ***Parliamentary Powers and Privileges Act*** permits the Committee to refer for prosecution any person who, inter alia, fails to comply with a Summons to produce books, papers or documents specified in the Summons.

12.5. The Public Accounts Committee twice made referrals of the Secretary for Lands and Physical Planning, Mr. Pepi Kimas, during the course of this Inquiry, for investigation and prosecution for failure to comply with a Notice and a Summons to Produce Documents.

12.6. Those referrals were made after anxious consideration of the evidence and explanations given by the Secretary. The Secretary was invited to make any response or show any reason why he should not be referred, but made no or no adequate response to the Committee in this regard.

12.7. The Committee is cognisant that to make referrals, particularly of a senior public servant is a very serious matter which will adversely reflect on the individual concerned. These referrals are not made lightly but only after careful consideration of all the evidence and unanimous resolution by the Committee.

13. METHOD OF INQUIRY

13.1. The Inquiry by the Public Accounts Committee into the Department of Lands and Physical Planning was a public hearing at which sworn evidence was taken from a small number of witnesses.

13.2. Assistance was obtained from representatives of the Salaries & Remuneration Commission, the Office of the Auditor General and from the Public Service Commission.

13.3. The Committee made its Inquiry in four parts, each addressing a different area of Departmental operations. Those Parts are summarized in Paras. 14 – 17 inclusive.

14. PART ONE OF THE INQUIRY – REPORTS OF THE AUDITOR GENERAL.

14.1. The Committee initially considered reports of the Auditor General and questioned officers of the Department of Lands and Physical Planning on the findings of the Auditor General. Certain findings and recommendations were made arising from the Reports of the Auditor General for the years 2000 – 2004.

14.2. The Committee identified a clear failure by the Department to collect Land Rental in a timely fashion and, as the Inquiry progressed, became concerned at the quality of the evidence given by Departmental Officers – particularly the Secretary of the Department, Mr. Pepi Kimas concerning those failures.

14.3. Continuing failures in accounting and management systems were identified in every Audit – many were continually identified and not remedied.

15. PART TWO OF THE INQUIRY – BEFORE 2002.

15.1. The Committee was constantly assured by officers of the Department of Lands and Physical Planning that "new systems" were in place. The systems would, apparently, ensure that abuses which had occurred in the past within the Department of Lands and Physical Planning would no longer occur.

15.2. The Secretary of the Department of Lands and Physical Planning assured the Committee that he had taken significant steps towards eradicating corrupt dealings and improving revenue collection and financial and accounting performance of the Department of Lands and Physical Planning.

15.3. The relevant portions of his evidence were:

HON. CHRIS HAIVETA MP (DEPUTY CHAIRMAN):

"So what you are saying in the last three years, you have not attempted to make any change to the existing policy, rules and existing laws so that land that is taken illegally from the State can be given back to the State. You have not done anything up to now. You are still surrounded by the current inefficient policies. Is that correct?"

MR. PEPI KIMAS :

"That is not quite correct. From the 4th April 2002 and to date, the Lands Department has improved. Lands Department is different from what it used to be. We have tightened things through in-house procedures to ensure that none of the past experiences are repeated".

Evidence given to the Committee on the 29th November 2005.

15.4. This evidence was not borne out by the Reports of the Auditor General. The Committee decided to test the assertion of improvement by Mr. Kimas.

15.5. The Committee chose at random, a number of grants of State Leases prior to 2002 and examined those grants to ascertain whether the Department was protecting the position of the State in these dealings and whether the Department was lawfully and fully collecting revenue on behalf of the State.

15.6. The object of this phase of this Inquiry was to establish whether certain allegations received by the Committee of malpractice, corruption and consequent loss to and liability of the State in the period prior to 2002, were true.

15.7. The second part of the Inquiry was directed to examining these randomly chosen dealings in the period before the appointment of Mr. Pepi Kimas as Secretary of the Department of Lands and Physical Planning, with a view to establishing if and how the current Secretary and his management team had dealt with and remedied past abuses.

15.8. The Committee also considered the liability of the State for these past abuses and the quality of protection given by the Department of Lands and Physical Planning to public land, reserved Open Space Land and National Parks. In other words, if and how the Department of Lands and Physical Planning was protecting the national asset and land reserved for the use of citizens, in the period from 2002 until 2005.

15.9. To the very great concern of the Committee, it became quickly apparent that the Department had failed to carry out its basic statutory obligations adequately or at all, had failed to protect State assets, had failed to protect the legal liability of the State, had opened the State to considerable liability by Departmental failures, had connived with and assisted illegal dealings and exhibited serious management failures and incompetence.

15.10. Of equal concern was the apparent failure of the Department to take any steps to remedy or reverse the abuses of the past after 2002, despite making those abuses public and being well aware of those failures.

15.11. Findings and resolutions were made by the Committee in respect of these matters.

16. PART THREE OF THE INQUIRY – 2002 – 2006.

16.1. The Public Accounts Committee made a further random choice of certain land transactions since 2002 to examine and assess the performance of the Department of Lands and Physical Planning and the management of that Department during the period 2002-2006 – with particular emphasis on the Departmental protection of State revenue and property.

16.2. In doing so, the Committee tested the assertion of the Secretary of the Department of Lands and Physical Planning that, under his stewardship, the Department had eradicated corruption and had dealt with instances of corrupt dealings known to the Department.

16.3. Further, the Committee intended to test the assertion that the management, accounting for and transactions by the Department of Lands and Physical Planning with State property assets and money had improved under the control of the current Secretary and whether the position of the State was now fully protected.

16.4. The Public Accounts Committee considered a number of land transactions and decisions made by the Department and the Papua New Guinea Land Board during the period 2002-2006. It quickly became apparent to the Committee that corrupt, incompetent and unlawful dealings persist and that the Management of the Department has not improved at all – at least in this regard.

16.5. Also apparent was the fact that Departmental officers seem to have no idea of their roles, no appreciation of the vital importance of the Department and no interest in carrying out their tasks in a lawful and professional manner.

16.6. What also became apparent was the contempt and suspicion in which the Department is held by members of the public and persons legitimately involved in land dealings and investment.

16.7. It also became rapidly apparent that no attempt whatsoever had been made by the current Management to deal with known instances of corrupt, fraudulent and criminal dealing with land prior to 2002.

16.8. In one instance, the Secretary had actually issued Press Releases declaring certain dealings to be corrupt, but had taken absolutely no steps to fulfill his statutory obligations to rectify those problems.

17. PART FOUR OF THE INQUIRY – THE LAND BOARD.

17.1. The Committee had received a number of serious allegations concerning the corrupt and incompetent conduct of the Papua New Guinea Land Board over many years.

17.2. The Committee considered the performance of the Land Board during the period 1993 - 2005 and concluded that the performance has declined and remains poor and that illegal decisions and conduct still pervade the Land Board.

17.3. The Committee made certain findings and recommendations in this regard. These matters are addressed later in this Report.

18. PROGRESS OF THE INQUIRY:

18.1. The Committee met on the 1st day of September 2005 and questioned the Secretary of the Department of Lands and Physical Planning, Mr. Pepi Kimas as to his understanding of his duties and obligations as Secretary and Head of a Government Department.

18.2. The Committee heard sworn evidence from Mr. Kimas. He assured the Committee that he was aware of and implemented all the requirements of the ***Public Finances (Management) Act*** (particularly Section 5), the **Financial Instructions** and all Statutes which it was the duty of his Department to administer.

18.3. The Committee then adjourned the Inquiry.

18.4. On the 5th day of September 2005 a Notice for the Production of Documents and other evidence was given to the Secretary for the Department of Lands and Physical Planning.

18.5. The Secretary had nearly three months to comply with this Notice. The Notice was initially given pursuant to Section 23 (1) (b) of the ***Permanent Parliamentary Committees Act 1994.***

18.6. The Secretary of the Department failed to comply adequately with many of the Directives, and failed to comply at all with a large number of them.

18.7. Accordingly, on the 24th day of November 2005 the Secretary of the Department of Lands and Physical Planning was referred to the Office of the Public Prosecutor and to the Police for prosecution arising from his failure to provide documents to the Public Accounts Committee in accordance with the Notice to Produce.

18.8. On that day, the Public Accounts Committee issued a Summons to the Secretary for the Department of Lands and Physical Planning pursuant to Section 89 of the ***Public Finances (Management) Act*** requiring the production of those documents not yet produced by the Secretary.

18.9. The Secretary for Lands and Physical Planning managed to produce a few more documents, but failed to comply with large portions of the Summons.

18.10. Accordingly, on the 25th day of November 2005, the Public Accounts Committee again referred the Secretary for Lands and Physical Planning to the Public Prosecutor and the Police for further investigation and prosecution, on this occasion for failure to comply with a Summons to Produce documents.

18.11. These referrals are more fully addressed in this Report (infra).

18.12. The Committee reconvened on the 29th day of November 2005 and heard sworn evidence from the Secretary for Lands and Physical Planning.

18.13. It became quickly apparent to the Public Accounts Committee that prior to 2002 every randomly chosen land transaction was either unlawful, corrupt or incompetently or corruptly handled by the Department and had exposed the State to both considerable revenue loss and loss of assets.

18.14. More concerning was the fact that the evidence clearly revealed that Public Land and National Parks had unlawfully been alienated by the Department of Lands and Physical Planning with complete disregard of the relevant law and statutory duty imposed on the Department and its officers.

18.15. The Committee adjourned the Inquiry and reconvened on the 28th day of February 2006.

18.16. On the 22nd February 2006, a further Notice to Produce Documents and information was served on the Secretary.

18.17. On the 28th February 2006, further evidence was taken and the Inquiry closed after the Committee delivered its findings and recommendations.

18.18. The Committee first considered the issue of Land Rental collection and further comments are made on this issue later in this Report.

18.19. The Committee considered certain randomly chosen land transactions during the period 2002 – 2005.

18.20. It quickly became apparent to the Public Accounts Committee that after 2002, every one of those randomly chosen transactions was either unlawful, corrupt or incompetently or corruptly handled by the Department and had exposed the State to considerable loss of revenue and assets.

18.21. The Department of Lands and Physical Planning has failed in its role as the administering arm of the State over Land matters and, it seems to this Committee, has become an arm of private enterprise responsible for

allocating Leases regardless of the Law and to the very considerable cost of the State and the citizens of Papua New Guinea.

18.22. In short, the Committee concluded the Inquiry with profound and deep concerns that the Independent State of Papua New Guinea had suffered significant financial losses, lost considerable amounts of very valuable property and has been open to very significant liability as a result of the incompetence, deceit and mismanagement by Departmental Officers at all levels (but particularly Senior Management) of the Department of Lands and Physical Planning.

18.23. For these reasons the Committee resolved to make this Report as soon as possible.

19. PRIVILEGES AND PROTECTION OF WITNESSES

19.1. The Public Accounts Committee has taken care to recognise and extend to all witnesses the statutory privileges and protection extended by the ***Public Finances (Management) Act 1995*** and the ***Permanent Parliamentary Committees Act 1994*** and the ***Parliamentary Powers and Privileges Act 1964***.

20. RELEVANT STATUTES

20.1. The Committee was required to consider the following Statutes during the course of the Inquiry:

21. PUBLIC FINANCES (MANAGEMENT) ACT 1995.

21.1. The ***Public Finances (Management) Act*** prescribes the method and standard of the Administration of and accounting for public monies, public properties and assets by State entities in Papua New Guinea.

21.2. Further, the Act imposes certain obligations on Public Servants for collection of State revenue and controls the expenditure of State or public monies.

21.3. Relevant sections of the Act which were considered by the Public Accounts Committee during the course of the Inquiry into the Department of Lands & Physical Planning are:

(i) **Section 5 – Responsibilities of Heads of Department**

This Section prescribes the duties, powers and obligations of Head of Department.

(ii) **Section 3 – Responsibilities of the Minister**

This Section prescribes the obligations and duties of relevant Ministers of State.

(iii) **Part X - The Public Accounts Committee**

This Part empowers and imposes functions and obligations on the Public Accounts Committee. In particular, the Committee was required to consider Section 86 (A) – power to refer officers of the Department to the Office of the Public Prosecutor for investigation and possible prosecution relating to breaches of the ***Public Finances (Management) Act 1995*** and/or the ***Constitution.***

(iv) **Part XI - Surcharge**

This Section prescribes personal liability for certain public servants who fail in their obligations to collect and protect certain public monies.

(v) **Section 112 – Offences**

This Section prescribes disciplinary action which may be taken against certain public servants or accountable officers who fail to comply with the terms of the ***Public Finances (Management) Act 1995.***

22. FINANCIAL INSTRUCTIONS

22.1. Section 117 of the ***Public Finances (Management) Act*** enables the promulgation of certain Financial Instructions which establish detailed procedures for the handling, collection, expenditure, disposal and accounting for public monies, property and stores.

22.2. The Public Accounts Committee had regard to these Financial Instructions or Directives when considering the performance of the Department of Lands & Physical Planning and its relevant responsible Officers.

22.3. In particular, the Committee had regard to **Part 6 Division 1 Para. 2.1– Accountable Officers.** That paragraph reads, in part:

"…..the Departmental Head is liable under the doctrine of personal accountability to make good any sum which the Public Accounts Committee recommends should be "disallowed".

23. LAND ACT 1996

23.1. The ***Land Act 1996*** is an Act of Parliament which vests all alienated land in the State, controls all dealings with and management of the National Estate and prescribes the procedures for and the manner in which land may be granted by State Lease.

23.2. In particular, the **Land Act** prescribes the powers of the Minister for Lands and the powers, duties and obligations of the Department of Lands and Physical Planning in respect of the management of State land and imposes strict obligations on the Department in the allocation of State Leases, collection of revenue and protection of the public moneys of Papua New Guinea by enforcing the terms of the **Land Act** against defaulting Lessees.

23.3. Further, the **Land Act** creates the Land Board which is vested with power to, inter alia, consider tenders for and grants of State Leases. The **Land Act** prescribes strict procedural steps attending sittings of the Land Board.

23.4. The Committee had cause to examine several parts of the Land Act in the course of the Inquiry.

23.5. In order to understand the findings and recommendations of the Committee, it is necessary to appreciate the relevant terms of the **Land Act** and the obligations imposed on the Department of Lands and Physical Planning thereby.

23.6. The relevant Sections of the **Land Act** are:

SECTION 4. NATIONAL TITLE TO LAND

(1) All land in the country other than customary land is the property of the State, subject to any estates, rights, titles or interests in force under any law.

(2) All estate, right, title and interest other than customary rights in land at any time held by a person are held under the State.

23.7. The appropriate entity which administers the law relating to those estates, rights, titles and interests is the Department of Lands and Physical Planning.

23.8. The crucial nature of the Department of Lands and Physical Planning in protecting and developing the National Estate, is clear from this Section.

23.9. The Committee have concluded that, as a result of this Section, the Department of Lands and Physical Planning performs an important role in the development of the Nation and the National economy, by reason of its role as the custodian of State land.

23.10. The Committee considers that a high standard of probity and competence is required of Officers and Management of the Department of Lands and Physical Planning if the National Estate and the economic welfare of the State and its citizens are to be protected.

23.11. The Committee also concluded that land is the single most significant issue in the social welfare and economic development of Papua New Guinea. Judicious and proper management of land matters will mean a healthy economy and a developing nation with improved living standards for its citizens.

PART D II. THE LAND BOARD

SECTION 55 ESTABLISHMENT OF THE LAND BOARD

(1) A Land Board is hereby established;

(2) ……..

and

SECTION 57 FUNCTIONS OF THE LAND BOARD

(1) In addition to such other functions as are conferred on it by this Act, the Land Board shall consider and make a recommendation on any matter referred to it by the Minister or by the Department.

(2) Except where the Minister is empowered by this or any other Act to make a direct grant of a State Lease, the Land Board shall consider all applications for grant of lease which have been investigated and referred to it by the Department and all other matters are remitted to it by the Minister for its consideration.

and

SECTION 58 MEETINGS OF THE LAND BOARD, REPORTS, ETC

(1) At least seven days before a meeting of Land Board, the Chairman shall publish in the National Gazette a list of:

(a) The applications and other matters to be considered; and

(b) Lands to be dealt with

by the Board at the meeting.

(2) ……..

(3) The meeting of the Land Board shall be held not less than 7 days and no more than 42 days after the publication of the List referred to in Subsection (1), and the Board shall deal with the applications and matters, hear any objections and report on the applications or matters within 14 days to the Minister.

(4) The Chairman shall cause meetings of the Land Board to be held as he thinks necessary.

(5) …….

(6) …….

(7) Where the Land Board –

(a) takes evidence at a meeting from which members of the public have been excluded;

(b) …….

(c) …….

it shall report on it within 14 days to the Minister.

(8) In respect of each application the Land Board shall recommend

(a) the applicant to whom, in the opinion of the Land Board, the State Lease should be granted; and

(b) ……

(c) ……

(9) The Chairman shall forward notice of the Land Boards recommendations, other than a recommendation to which subsection (8) applies, to every person who, in his opinion, is interested in an application or matter dealt with by the Board.

(10) ……..

23.12. The Committee considers that an assessment of the functioning and efficiency of the Land Board would provide a good indication as to the corporate health of the Department of Lands and Physical Planning.

23.13. The Committee considered the state of compliance by the Land Board with the procedural requirements of the ***Land Act***. In many areas the Board had failed to comply at all – thus rendering its decisions unlawful.

23.14. Further, the revenue of the State and the protection and allocation of State Land is largely decided by the Land Board. The Committee considers that a high degree of competence and honesty is necessary if the Land Board is to work efficiently and properly.

PART VIII – APPEALS AND REPORTS

SECTION 62 APPEALS

(1) A person aggrieved by a decision of the Land Board may, not later than 28 days after notices are forwarded under Section 58(10) forward a Notice of Appeal to the Minister.

(2) ……..

23.15. The Committee proceeded upon the basis that no recommendation of the Land Board could be actioned until the expiry of the 28 days after the forwarding of a Notice to all interested persons, if there was no Appeal.

23.16. The Committee proceeded on the basis that strict compliance with the procedural matters attending meetings of the Land Board was necessary in the interests of the public and of the State.

23.17. It is these procedures which ensure transparency and a fair open competitive tender process for the allocation of State Lands and thereby maximizes the return to the State

SECTION 64 ALIENATION OF GOVERNMENT LAND

(1) Government land shall not be alienated otherwise than under this Act or another law.

(2) Land which is the property of the State solely by virtue of the operation of Section 4(1) shall not be alienated or otherwise dealt with by the State under this Act unless the provisions of Section 5 have been complied with in respect of that land.

23.18. The Committee finds that the ***Land Act*** is the sole authority for the alienation of State Land and the Department of Lands and Physical Planning is, thereby, the entity which is responsible for this vital function.

23.19. Moreover, the Department maintains the responsibility for ongoing management of development, revenue collection, Lease issue and all other aspects of land management for and on behalf of the Independent State of Papua New Guinea.

23.20. The Committee again proceeded upon the basis that a high standard of strict probity and competence was required of the Department of Lands and Physical Planning and its Officers – not least in the areas of protection of State Land, security and protection of documents and records and accountability for effecting revenue collection in a timely manner.

PART X – STATE LEASES

DIVISION 1 – STATE LEASES GENERALLY

SECTION 65 GRANT OF STATE LEASES

The Minister may grant State Leases of Government Land as provided by this Act.

SECTION 66 ……..

SECTION 67 STATE LEASES NOT TO BE INCONSISTENT WITH ZONING, PHYSICAL PLANNING ETC

A State Lease shall not be granted for a purpose that would be in contravention of zoning requirements under the Physical Planning Act 1989, and any other law relating to Physical Planning, or any law relating to the use, construction or occupation of buildings or land.

23.21. The Committee proceeded upon the basis that the Department of Lands and Physical Planning in the course of administering the National Estate should maintain a comprehensive and complete knowledge of the ***Physical Planning Act 1989*** and zoning and planning decisions affecting any piece of land, the subject of a lease or application for lease.

23.22. The Committee considers that the Department of Lands and Physical Planning could not alienate any State Land in any way inconsistent with zoning or planning laws, which themselves are the responsibility of the Department Lands and Physical Planning.

23.23. Further, the Committee proceeded upon the basis that the Papua New Guinea Land Board must retain a working knowledge of all relevant zoning and planning decisions or restrictions applying to any particular parcel of land the subject of a State Lease or application for State Lease.

SECTION 68 ADVERTISEMENTS OF LANDS AVAILABLE FOR LEASING

(1) Except where land has been exempted from advertisement under Section 69, the Departmental Head shall give notice by advertisement in the National Gazette, of all lands available for leasing under this Act.

(2() An advertisement under Sub-section 1 shall contain the following information:

(a) the type of lease available to be granted;

(b) the purpose of the lease;

(c) the length of the lease

(d) a description of the land to be leased;

(e) the amount of rent (if any) payable for the first period of the lease;

(f) in the case of a special purpose lease – any royalties that are payable;

(g) the terms and conditions of the lease;

(h) the reserve price;

(i) such other information as the Departmental Head thinks fit or the Minister directs

SECTION 69 DUTY TO ADVERTISE STATE LEASES

(1) A State Lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Sub-section (2).

(2) The Minister may exempt land from advertisement for application or tender –

(a) Where the lease is granted to a Governmental body for a public purpose or;

(b) ***Where it is necessary to relocate persons displaced as a result of a disaster as defined in the Disaster Management Act (Chapter 403); or***

(c) ***Where a lessee applies for a further lease; or***

(d) ***Where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertakings; or***

(e) ***Where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit …***

(f) **…….**

(g) **…….**

(h) ***Where the applicant has funded the acquisition of land from customary landowners in order to acquire a State Lease over it; or***

(i) ***Where a lease is to be granted under Section 99 or 102; or***

(j) ***Where a new lease is granted under Section 110, 130 or Section 131.***

23.24. The Committee finds that these two Sections of the Land Act impose a duty on the Department of Lands and Physical Planning and the Papua New Guinea Land Board, when considering applications or tenders for the grant of State Leases over any land the subject of the Sections, to ensure strict compliance with the terms of the Sections.

23.25. The Committee finds that these Section import transparency, confidence and commercial competitiveness into the process of allocating State Leases. Any deviation from the terms of these Sections will inevitably result in a less than competitive tender to the cost of the State and a consequent reduction in revenue flow to the State from the Department of Lands and Physical Planning.

23.26. The Committee was concerned to establish the precise number of Ministerial exemptions given in respect of land which otherwise would have been the subject of an open competitive tender before the Papua New Guinea Land Board.

23.27. The power to grant Ministerial exemption is bound with strict conditions. The Committee noted at the outset of the Inquiry, that the power to exempt had been delegated to certain Departmental officers and the Committee determined to investigate the use of that delegated power and its effect (if any) on the protection of the National Estate and the consequent flow of revenue to the State from land dealings.

SECTION 70 HOW APPLICATIONS FOR STATE LEASES ARE TO BE MADE

An application for a State Lease shall –

(a) be made in the approved form; and

(b) ***be accompanied by the prescribed fee for the registration of the application***

SECTION 73 DEALING WITH TENDERS

(1) Where the land is required to be offered for lease by tender, a Tender Notice shall

a. contain the particulars specified in Section 68; and

b. specify the reserve price for the land

(2) A tender for an amount less than the reserved price specified under Sub-section (1) (b) is invalid and shall not be considered.

(3) ……..

(4) The successful tenderer shall pay to the State the amount of his tender;

(5) The successful tenderer is entitled to a State Lease of the land the subject of the tender in accordance with the tender notice.

SECTION 74 PUBLICATIONS OF NAMES OF SUCCESSFUL APPLICANTS, ETC, IN THE NATIONAL GAZETTE

The Departmental Head shall publish in the National Gazette-

(a) the name of the successful applicant for each State Lease, together with particulars of the land to be leased to him; and

(b) in respect of that State Lease and those lands –

i. the name of applicant considered the second choice successful applicant; and

ii. the name of the applicant considered the third choice successful applicant, to whom a Letter of Grant may be forwarded in accordance with Section 75 and 79.

23.28. The ***Land Act*** exclusively prescribes the method by which the Papua New Guinea Land Board and thereby the Department of Lands and Physical Planning must deal with the advertisement of lands available for leasing and applications and tenders made for those lands.

23.29. The Committee accepted that in all but the most unusual cases, open commercially competitive tenders are prescribed for the grant of all State Land by the ***Land Act***. That open, competitive transparent process ensures that the State will maximize the financial return from any particular land grant and that the tenderer most capable of developing the land will be chosen.

23.30. The statutory duties of the Papua New Guinea Land Board and the Department of Lands and Physical Planning are clear. The process is not complex or difficult for either the Department or prospective applicants or tenderers, to comply with.

23.31. In respect of all the statutory requirements thus far outlined in this Report, the Committee has repeatedly found a failure to comply with even the most basic statutory requirements – most notably in the alienation of Reserved Land, Public Space land and National Parks, into private hands.

23.32. The Committee will report a Finding of incompetence, mismanagement, fraud, dereliction of duty and blatant misrepresentation by both the Department of Lands and Physical Planning and the Land Board during the period 1999 – 2006.

SECTION 81 COMMENCEMENT OF STATE LEASES

The term of a State Lease and the time within which improvement conditions are to be fulfilled and rent and fees paid shall be calculated from

(a) the date of publication of the relevant Notice under Section 74; or

(b) Such later date as the Minister, after considering a Report of the Land Board, determines.

23.33. This is an important Section. The calculation and collection of revenue and the supervision of compliance with Improvement Covenants can be calculated exactly – to the benefit of the State.

23.34. The Committee examined several transactions and found that the actual issued State Lease document exhibited an incorrect commencement date and other and further incorrect information.

SECTION 83 RENT

The rent on a State Lease is as is prescribed.

23.35. Land Rental is a fundamental revenue flow to the State for the grant of land by way of State Lease.

23.36. Every Lessee must pay rental to the State on an annual basis. The method of calculation is simple.

23.37. It is the duty of the Department of Lands and Physical Planning to correctly calculate and collect this Land Rent.

23.38. The Committee resolved to examine several State Leases and grants of land to private hands with a view to establishing whether rental was properly fixed by the Department of Lands and Physical Planning and whether the rent has actually been collected.

SECTION 104 THE URBAN DEVELOPMENT LEASES TO BE GRANTED OVER LAND IN PHYSICAL PLANNING AREAS SUITABLE FOR SUB-DIVISION.

(1) Subject to Section 69, where there is Government land within a Physical Planning area that is suitable for sub-division in accordance with this Division, the land shall, in the first instance, be offered for lease by tender.

(2) A tender document shall contain the following:-

(a) the particulars specified in Section 68;

(b) ……..

(c) …….

(d) the reserve price for the land.

SECTION 105 - CONDITIONS PRECEDENT TO LAND BEING ADVERTISED FOR SUB-DIVISION

Before land is offered for lease under this division, the Chief Physical Planner or his delegate shall-

(a) certify –

(i) that the land is –

(A) within a Physical Planning area; and

(B) properly zoned; and

(C) suitable for subdivision; and

(D) suitable for release; and

(ii) after consultation with the relevant authorities, that the State will not incur undue expense in the provision of electricity, water and other services to the proposed subdivision; and

(b) provide –

(i) a plan showing the location of the land;

(ii) an assessment of the subdivision potential of the land; and

(c) specify –

(i) the development conditions that will apply to the lease; and

(ii) the conditions that will apply in respect of the infrastructure and zoning when part or the whole of the land subject to the lease is subsequently surrounded/

SECTION 108 TERMS AND CONDITIONS OF URBAN DEVELOPMENT LEASES

An Urban Development Lease –

(a) shall –

(i) be for a term not exceeding five years; and

(ii) contain –

(A) A covenant that within one year … the lessee will submit for the approval of the Physical Planning Board an application for full planning permission for subdivision and zoning, and a final proposal for subdivision, together with survey plans; and

(B) A covenant that a lessee will conform with a determination of the Physical Planning Board under Section 108(3);

(C) A covenant that after the Physical Planning Board has given its approval under Clause (a) (ii)(A), the lessee will submit a cadastral survey plan on the subdivision to the Surveyor General …; and

(D) Such other covenants and conditions including restrictions on disposal prescribed by Section70, as the Land Board thinks proper or as are prescribed; and

(b) may contain a requirement for the surrender … of areas of land the subject of the lease that are not and will not, under the final proposal for subdivision, be required for business or residence purposes; and

(c) may contain covenants that are to be inserted in the new leases granted on the surrender of developed parts of the subdivision.

23.39. These Sections have been quoted at length because they are mandatory requirements for the issue of an Urban Development Lease. These Sections were examined by the Committee when considering at least one grant of a National Park to private hands by way of an Urban Development Lease.

23.40. An Urban Development Lease is a pre-cursor to an application for a 99 year State Lease, to enable development to occur. No Urban Development

Lease can be issued which conflicts with any Physical Plan or Zoning of that land.

23.41. An Urban Development Lease contains onerous covenants and is generally only given for large scale developments to investors with very significant capacity to carry out their obligations.

23.42. The Committee accepts that in administering the Grants of Urban Development Leases, a high degree of probity, competence and measured judgment as to the future needs of the citizens of Papua New Guinea and planned economic development, is required from both the Department and the Grantee

23.43. During its inquiry, the Committee considered a National Park which had been granted to private hands by way of Urban Development Lease. The Committee has concluded that every aspect of the process was incompetent and/or unlawful.

23.44. The State and the public of Papua New Guinea have lost an immensely valuable tract of land to a Lessee which cannot afford to pay the Land Rent – much less invest K 300 million to develop the land as required.

23.45. The necessary good faith and honest and transparent dealing required in such transactions is lacking in this and other similar dealings considered by the Committee.

23.46. More importantly, the Department of Lands and Physical Planning has done nothing to rectify the situation – although it has known of that situation for many years – nor does it intend to do so.

PART XV FORFEITURE OF STATE LEASE AND FINES

DIVISION 1 – FORFEITURE OF STATE LEASE

SECTION 122 FORFEITURE OF STATE LEASE

(1) The Minister may, by Notice in the National Gazette, forfeit a State Lease –

(a) if rent on the lease remains due and unpaid for a period of six months; or

(b) if fees are not paid in accordance with this Act; or

(c) if the amount payable in respect of improvement is not paid in accordance with this Act; or

(d) if –

(i) a covenant or condition of the lease; or

(ii) a provision of this Act relating to the lease; or

(iii) ……

is not complied with; or

(e) if the granting of the Lease has been obtained, in the opinion of the Minister, wholly or partly as a result of Statements that were, to the knowledge of the lessee, <u>false or misleading</u>. (Committees' emphasis)

(2) Before forfeiting a State Lease under Sub-section (1), the Minister

(a) shall serve Notice on lessee calling on him to show cause, within a period specified in the Notice why the lease should not be forfeited on the ground or grounds specified in the Notice; and

(b) may, whether or not cause has been shown in accordance with a Notice under Paragraph (a), serve on the lessee a Notice requiring him within a period specified in the Notice, to comply with the covenants or conditions on the lease or the provisions of this Act.

(3) ……

(4) ……

(5) No acceptance of rent by the State waives a right to forfeit a lease under this Act.

(6) For the purposes of this Section the grant of an application for a State Lease shall be deemed to be the grant of the lease.

23.47. The Committee resolved to examine the enforcement of the forfeiture provisions for want of both payment of Land Rent to the State and failure to comply with Covenants within a lease – notably land Rental and Improvement Covenants.

23.48. The Committee considers that the Statutory Scheme for forfeiture of leases is designed to protect the State from loss of revenue and to encourage

development and thereby economic advancement for Papua New Guinea and its people.

23.49. The Committee considered that these forfeiture provisions would provide a ready measure of the competence and effectiveness of the Department of Lands and Physical Planning in fulfilling its statutory obligations.

23.50. The Committee examined several land parcels known to be significantly in rental arrears to the State and on which no development has occurred in accordance with an Improvement Covenant in the Lease – often for years. In other words, State Leases which should be forfeited by and to the State.

23.51. Consistently, the Committee found that the Department of Lands and Physical Planning had failed to effect or even commence forfeiture (or cancellation where appropriate) proceedings. Huge arrears of Land Rental have accrued over the last five years with no apparent attempt to reclaim land to the State or to collect that Rent.

PART XVI - LICENSES

DIVISION 1 - LICENSES GENERALLY

SECTION 125 GRANT OF LICENSE

(1) Subject to Subsection (2) the Minister or his delegate may grant a licence in the approved form to a person to enter on Government land for one or more of the following purposes:-

(a) to graze stock or a specified kind of stock; or

(b) to strip, dig and take away any valuable material or substance; or

(c) for fisherman's residences and drying ground; or

(d) for any other temporary purpose approved by the Minister.

(2) A licence shall not be granted for a purpose that would be in contravention of zoning requirements under the Physical Planning Act 1989, any other law relating to Physical Planning or any law relating to use, construction, or occupation of buildings or land.

(3) …….

(4) A licence under this Section continues in force for a period, not exceeding one year, specified in the licence;

(5) **……**

(6) **……**

23.52. The Committee proceeded upon the basis that no Licence can be granted over land which is Customarily owned.

23.53. The Committee was in receipt of information concerning the issue of licences over Customary land.

23.54. The Committee resolved to inquire into two of these transactions with a view to establishing whether the land was, truly, Customarily owned or, if it was a Government land, whether the Licences had been issued as a result of a competitive and openly transparent procedure, to the benefit of the State.

23.55. Further, in the course of the Inquiry the Committee considered whether the Department of Lands and Physical Planning had given adequate and proper protection to Customary land – which the Committee considers to be part of the assets of the weal.

LAND REGISTRATION ACT - PART III DIVISION 5 AND PART IV

23.56. Those portions of the Act deal with the effect of registration. The Law of Indefeasibility of Title was considered by the Committee in the course of the Inquiry and this topic is more fully developed – See Para 18.

ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF LEADERSHIP

23.57. The Public Accounts Committee has had regard to this Organic Law in the course of the inquiry into the Department of Lands & Physical Planning. Certain Referrals and resolutions were considered within the terms of this Organic law and are more fully developed (infra).

AUDIT ACT

23.58. The ***Audit Act*** establishes and empowers the office of the Auditor General to carry out its work of overseeing and supervising the handling of public monies, stores and property by all arms of the National Government. The Public Accounts Committee had regard to the terms of this Act during the course of the Inquiry into the Department of Lands & Physical Planning

23.59. The Committee received considerable assistance from the Office of the Auditor General in the course of this Inquiry.

PERMANENT PARLIAMENTARY COMMITTEES ACT 1994.

23.60. The Committee has had regard to Sections 17, 22, 23, 25, 27, and 33 of the ***Permanent Parliamentary Committees Act*** during the course of the Inquiry into the Department of Lands & Physical Planning.

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PARLIAMENTARY POWERS AND PRIVILEGES ACT 1964

23.61. The ***Parliamentary Powers and Privileges Act 1964*** sets forth those privileges and powers extending to Members of Parliament, Committees of Parliament and Officers or Parliamentary Staff.

23.62. In the course of this Inquiry, the Committee had cause to examine and apply Sections 19 and 20 (1) (d) of that Act.

23.63. The Secretary of the Department of Lands and Physical Planning failed to comply with a Summons requiring the production of documents and certain resolutions and referrals were made in this respect. This matter is developed more fully in this Report (infra).

24. INDEFEASIBILITY

24.1. As a result of sworn evidence received from the Secretary for the Department of Lands and Physical Planning, the Committee was required to consider the law of Indefeasibility as it applies to land in Papua New Guinea which has been granted by way of State Lease either unlawfully, fraudulently or by reason of misrepresentation or malpractice within the Department of Lands and Physical Planning – or elsewhere.

24.2. The Secretary of the Department of Lands and Physical Planning, by his own sworn admission, failed to take any action at all to reclaim to the State land which had been freely given to private hands in a manner which was unlawful. This failure has extended for three years.

24.3. The Secretary justified this inaction on the basis that the issued title was indefeasible as soon as the State Lease was registered. The Secretary also proffered other excuses which will be dealt with in this Report (infra), but he was clearly of the view that once registration of a State Lease occurred, the State lost all power over both the land and the Lessee by reason of the Law of Indefeasibility.

24.4. The relevant evidence was:

Mr Pepi Kimas:

"The process of rectification is not as easy as it may sound"

and;

"What I have maintained is that as and when a title is registered by hook or by crook that title remains indefeasible until and unless it is challenged"

and

"I can cancel the title upon issuance…….but as and when the title is given it is indefeasible……and that is the power that neither I nor the Minister has to cancel those titles".

Evidence to the Committee on the 29th November 2005.

24.5. This assertion was also partly relied on by the Secretary for his failure to forfeit land for non-payment of Land Rental and / or breach of covenants in a State Lease.

24.6. The Secretary has, in fact, relied on this conclusion to excuse his inaction to protect the position of the State for the last three years and in respect of transactions which occurred before his appointment as Secretary, but which were his responsibility to rectify.

24.7. The following is a succinct statement of the law of Indefeasibility of Title in such circumstances. The Committee proceeded upon the basis that this summation is an accurate statement of the current law - albeit that the area is a developing one.

24.8. The Committee had regard to the way in which the question of Indefeasibility of fraudulently or unlawfully issued State Leases has been dealt with by the National Court and the Supreme Court in the last ten years.

24.9. This matter has come before the Courts with increasing frequency and almost always involving allegations of incompetent or illegal actions by officers of the Department of Lands and Physical Planning.

24.10. It is clear that the English or Australian cases on the topic, dealt almost exclusively with malpractice by a party to a transaction, rather than by State public servants. The need for the Courts to consider Indefeasibility of Title as a result of Departmental or State misconduct seems to be a matter peculiar to Papua New Guinea – and says a great deal about the management of the Department of Lands and Physical Planning over the last decade.

24.11. The Committee concludes that, in the last ten years, both the National and Supreme Courts have been increasingly required to consider instances where Departmental Officers have fraudulently or unlawfully issued State Leases over State Land – and in particular, over Reserved or Open Space land.

24.12. Clearly, the earlier cases such as **Mudge** v **Secretary for Lands** (**1985) PNGLR 387**, applied the full rigor of the Torrens system principle of Indefeasibility.

24.13. However, over the succeeding 20 years, the Courts were increasingly asked to deal with instances where fraud, constructive or actual, or illegal practices by the Department of Lands and Physical Planning and its officers, resulted in the issue of State Leases.

24.14. One principal difference between jurisdictions is the fact that the Australian cases deal with freehold title – where the opportunities for malpractice by state officers is small. The malpractice alleged is almost exclusively that of one party to a transaction rather than the State or its employees or agents.

24.15. In Papua New Guinea, the central administration of State Leases over State land offers greater opportunity for abuse by the Department, acting as it does on behalf of the State, with complete power to either issue or forfeit the Lease.

24.16. The National and Supreme Courts have struck down fraudulently or unlawfully issued State Leases where such conduct has occurred. In other words, a registered Lease obtained or issued in breach of the Statutory requirements, does not confer indefeasible title.

24.17. In this sense, the Courts have increasingly become the guardians of last resort of the National Estate against the incompetent and/or unlawful conduct of its own Department.

24.18. The Committee considers that this was precisely what the former Chief Justice Sir Arnold Amet meant when he said:

> ***"I do not believe that the ….***(Torrens)***…..system is necessarily appropriate in circumstances such as this, where an individual land holder is deprived of his title to land by irregular procedures by officials and a department of State, to the advantage of a private individual.***
>
> ***I do not accept that quite clear irregularities and breaches of the….*** (Land Act)***…. provisions should remain indefeasible.***

I believe that, although those irregularities and illegalities might not amount strictly to fraud, they should, nevertheless, still be good grounds for invalidating subsequent registration, which should not be allowed to stand.

I have concluded that the doctrine of indefeasibility under the Torrens system of land registration is one that does not necessarily apply, nor is it necessarily appropriate in circumstances such as this that will continue to be experienced by ordinary Papua New Guineans against the might of the State and private corporations.

Emas Estate Development Pty. Ltd. v. John Mea (1993) PNGLR 215

24.19. The effect of this and other Judgements is to deprive the Department of Lands and Physical Planning of the ability to hide or excuse its conduct and failures to act, behind the cloak of indefeasibility.

24.20. Accordingly, the Committee does not accept the excuses for inaction given by Mr. Pepi Kimas – in particular the ludicrous assertion that any attempt by him to cancel or forfeit unlawful or corruptly issued State Leases would undermine confidence in the integrity of the Land Registration in Papua New Guinea.

24.21. The Committee made findings and recommendations in this regard in this Report (infra).

25. FISCAL RESPONSIBILITIES OF THE GOVERNMENT

25.1. The Government of Papua New Guinea is obliged to adequately fund and resource the Department of Lands and Physical Planning. The Public Accounts Committee made no inquiry into the adequacy of that funding, but notes sworn testimony of the Secretary for the Department of Lands and Physical Planning to the effect that staffing, and in particular, competent staffing was a continuing problem in his efforts to collect unpaid Land Rental and effect cancellation or forfeiture of fraudulently issued Titles.

25.2. The Committee does not wholly accept these excuses for Departmental failures, but will make certain recommendations in respect of an assessment of the adequacy of funding and resourcing of the Department of Lands and Physical Planning.

26. RESPONSIBILITES OF THE AUDITOR GENERAL

26.1. The Auditor General is a Constitutional Office Holder and the duties and responsibilities of that Office are contained in the ***Audit Act 1989.***

26.2. The standard of the Reports of the Auditor General into the Department of Lands and Physical Planning were, on the whole, competent and adequate.

26.3. However, the Committee finds that the Reports of the Auditor General into the Department of Lands and Physical Planning were not up to date and have not been tabled or presented to the Parliament, for many years.

26.4. The Committee fully understands the severe staffing constraints attending the Office of the Auditor General but will make recommendations in respect of the funding and resourcing of that Office by the Government of Papua New Guinea, to enable it to carry out its statutory duty in a competent and timely manner.

27. THE DEPARTMENT OF LANDS AND PHYSICAL PLANNING

27.1. The Department of Lands and Physical Planning has the following responsibilities:

1. Promote the best use of all land in Papua New Guinea in the interests of all citizens and the economic advancement of the country.

2. The acquisition, transfer, resumption and disposal of land.

3. To provide appropriate survey and mapping services.

4. To provide necessary services in relation to calculation of land.

5. To formulate policies and proposals for planning urban resettlement.

6. To maintain Lands Titles Registration.

7. To formulate and oversee the implementation of policies in the following areas:

   i. Land use planning and subdivision urban cost recovery; and

   ii. Physical infrastructure needs for urban and rural population urbanization;

8. To supervise and prepare physical plans and exercise planning control; and

9. To administer the provisions of the Physical Planning Legislation; and

10. To provide services to the Land Board, Valuers Registration Board, Physical Planning Board and standing or ad hoc committees relating to the functions of the Department.

11. To expeditiously collect Land Rent.

12. To enforce Lease covenants.

13. To make available land for development on commercially realistic terms.

27.2. The Committee accepts that the Department of Lands and Physical Planning manages and is responsible for the operations of at least:

1. The Papua New Guinea Land Board; and

2. The Papua New Guinea Valuers Registration Board; and

3. The National Physical Planning Board

27.3. The Department of Lands and Physical Planning is responsible for administration in whole or in part of a number of important statutes. These are, at least the:

1. Land Act 1996.

2. Land Groups Incorporation Act (Ch. 147);

3. ***Land (Ownership of Freeholds) Act***; and

4. ***Land Registration Act (Ch.191);*** and

5. ***Local Government Act – S. 91 (Ch. 57)***; and

6. ***Physical Planning Act 1989***; and

7. ***Street Closing Act (Ch. 201);*** and

8. ***Survey Act – except S. 11 (Ch.95);*** and

9. ***Town Boundaries Act (Ch 8);*** and

10. ***Valuation Act – except S. 113 (Ch. 327***).

27.4. The Department of Lands and Physical Planning has not enjoyed a reputation for transparency or efficiency over the last ten years.

27.5. The State has suffered huge losses due to the non collection of Land Rents and the Department has not maintained contact with commercial reality and market place imperatives in its dealings with the allocation of land.

27.6. The Inquiry by the Public Accounts Committee seeks to examine the handling of, accounting for and protection of State property, assets and public monies by the Department of Lands and Physical Planning.

28. PART ONE - EXAMINATION OF THE REPORTS OF THE AUDITOR GENERAL OF THE DEPARTMENT OF LANDS & PHYSICAL PLANNING FOR THE YEARS 2000 – 2004

28.1. The Public Accounts Committee considered reports of the Auditor General on the Department of Lands and Physical Planning for the years 2000 – 2004.

28.2. The Committee must report serious concerns at some parts of those Reports – in particular the performance of the Department in revenue collection for the State

29. REVENUE AND DEBT COLLECTION BY THE DEPARTMENT OF LANDS & PHYSICAL PLANNING.

29.1. The Department of Lands and Physical Planning is responsible for the assessment, levying and collection of Tender prices, reserve prices and Land Rentals for all State Leases in Papua New Guinea.

29.2. This revenue is a significant portion of the National economy.

29.3. During the period 2000 – 2004, the following revenue was collected by the Department.

2000.

Land Rental	**K. 16, 093,407**
Licence Fees and Royalty payments	**K. 20,650**
Sale of Allotments	**K. 12,680**
Survey fees	**K. 21,861**

Surveyors Registration Fees	**K.**	**4,075**
Valuation Fees	**K.**	**254,843**
Valuers Registration Fees	**K.**	**13,000**
Objection Fees	**K.**	**nil**
Sales of Maps etc.	**K.**	**255**
Surplus earnings and rentals	**K.**	**nil**
Lodgement Fees	**K.**	**38,805**
Recovery from materials etc.	**K.**	**87,762**
Physical Planning Fees	**K.**	**9,122**
Sundry receipts	**K.**	**1, 303, 343**

29.4. However, the Auditor General noted a shortfall in the total collection estimated for the year against the annual revenue budget of K21,144,500 by K2,124,197.

29.5. The Report of the Auditor General dated 15th May 2001 identified a number of weaknesses and failures within the Department of Lands and Physical Planning.

29.6. They were:

An unexplained shortfall in respect of various heads of revenue;

- 3,468 lessee rental payees outstanding to a value of K7,853,342 did not have the correct address for billing purposes;

- Potential revenue to the State was lost as a result of 206 rental records with outstanding rents amounting to K92,507 were without a client. This indicates that land which was supposed to have been leased out to clients was not leased and remained unoccupied or under dispute.

- The Auditor General noted consistent failures in updating the list of the land rentals and significant uncollected accumulated Land Rentals totaling K54,912,718.49. This Committee further examines unpaid land rental (infra).

- Valuation fees were outstanding for the year ending the 31st December 2000 for properties charged on debit notes in a sum of K138,831. K91,303 of this amount was outstanding since 1986. The Department had failed to make any follow up on valuations.

- The Auditor General finds "negligence of duty and lack of co-operation between line divisions concerned" which resulted in records maintained by the Revenue Division being unreliable and the State missing out on substantial amounts of revenue.

- Outstanding cheques in a sum of K 905,508.81 – K 893,470.18 of which were current to the year 2000 with no evidence to suggest follow up action – especially for the years 1998 and 1999.

- Significant problems in respect of budgetary controls and payment of accounts were identified.

- The Land Acquisition Trust Account maintained two sets of cash books – manual and computerized cash books - which did not reconcile. Cancelled cheques to a value of K311,150 were not entered in the manual cash book.

- There were omissions in the Asset Register, no evidence of a physical stocktake during the year 2000 and the Register was not maintained properly, was incomplete and therefore could not be relied upon.

29.7. The Office of the Auditor General summarized its findings for the year 2001. The Office of the Auditor General identified:

- Deficiencies in revenue collections;

- Weaknesses in the collection of Land Lease Rentals;

- Shortcomings in the preparation of Drawing Account Bank Reconciliation;

- Weaknesses and irregularities in budgetary control procedures;

- Non-compliance with procurement and payment procedures;

- Shortcomings in the purchase of motor vehicles;

- Weaknesses in acquittal of advances;

- Irregularity in the payment of motor vehicle allowances;
- Weaknesses in operation of trust accounts;
- Weaknesses in maintenance of lost records; and
- Weaknesses in internal controls.

29.8. The Auditor General also noted outstanding matters from previous audit reports as follows:

- From 1999, there remained a non-compliance to procurement and payment procedures;
- Inadequate control over payment and acquittal of advances;
- Lapses in commitment control;
- Weaknesses in Drawing Account Reconciliation; and
- Lack of maintenance of the Trust Accounts.

29.9. Revenue for the year 2001 was recorded as:

Land Lease Rentals	**K**	**16,315,072**
Licence Fees and Royalty payments	**K**	**25, 845**
Sale of Allotments	**K**	**621,075**
Survey fees	**K**	**23,362**
Lodgement Fees	**K**	**26,291**
Recovery from Material & Services	**K**	**33,556**
Physical Planning Regulations	**K**	**8,604**
TOTAL	**K**	**17,053, 805**

29.10. The Budget of Revenue Statement from the Department of Finance total K23,015,000. The Auditor General finds a shortfall of K5,961,195.

2002

29.11. In 2002 the Auditor General reported the following findings:

- Deficiency in revenue collections;
- Deficiencies and weaknesses in the collection of land lease rentals;
- Shortcomings in the preparation of Drawing Account Bank Reconciliation;
- Weaknesses and irregularities in budgetary and expenditure control procedures;
- Non-compliance with procurement and payment procedures;
- Irregularities in payment of professional and consultancy fees;
- Weaknesses in control over Assets;
- Weaknesses in control of motor vehicle fleet;
- Irregularities highlighted in Internal Audit Report; and
- Shortcomings in compliance to Public Accounts Committee Directives.

29.12. The following matters are outstanding from 2001 Audit:

- Non-compliance with procurement and payment procedures;
- Deficiencies in collection of Land Lease Rentals; and
- Weaknesses in Drawing Account Reconciliation.

29.13. More concerning to the Committee were the Internal Audit findings that no action had been taken by the Department for recovery of a fraudulent payment of K18,599.00 to a stationery company and payment of an entertainment allowance and no action had been taken in respect of an incomplete Asset Register in accordance with both the internal and external audit findings and recommendations.

29.14. Further, the Committee finds that its own directives had not been complied with by the Secretary for the Department of Lands and Physical Planning in that:

- An amount of K 465,507 for Land Lease Rental payments from a private company held in Maladinas Lawyers Trust Account was not remitted to the Department and remained to be recovered.

- A payment of K 18,559 to a private stationary supplier had not been recovered. The Auditor General further identified an advance payment of K504, 300 to a private surveying firm to carry out surveying and town planning work at 8 and 9 Mile in the National Capital District.

- The follow up audit for the years 2001 – 2002 revealed no evidence available to vouch for the services paid for and value for money received by the Department.

29.15. The budgeted revenue collection was K25,010,000. The actual collection was K17,551,000 – yielding a shortfall of K7,459,000. This represented 29.82% as opposed to 22.02% in 2001.

29.16. The 2003 revenue figures are:

Lease Rentals	**K 16,914,840**
Licence Fees and Royalties	**K 21,612**
Sale of Allotments	**K 64,130**
Survey Fees	**K 18,834**
Surveyor's registration Fees	**K 3,660**
Valuation Fees	**K 13,782**
Valuers Registration	**K 680**
Objection Fees	**K Nil**
Sale of Maps	**K Nil**
Surplus earnings on rentals	**K Nil**
Lodgement Fees	**K 39,635**
Recovery from materials and Services	**K. 212,674**
Physical Planning Fees	**K 1,035**
Sundry receipts	**K 1,034, 408**

TOTAL **K 18,325,290**

29.17. The net shortfall in revenue collection for 2003 totalled K4,919,423.

29.18. There was a further problem with revenue. The Auditor General compared the total revenue collected as shown by the Department ledgers against the Department of Finance – Public Accounts – Statement "J". This revealed a net difference of K650,787.00. This meant that the total revenue of the Department was understated by K650,787.00 in the Departmental ledgers. The Auditor General concludes that:

"***Prudent management practices called for reconciling of records between two different entities, bodies etc, for purposes of ensuring correctness of balances reported and to avoid duplication of payments, receipts etc.,***

The Department should ensure that its accounting records and data are accurate and reconciliation is one of the management tools to ensure correctness and completeness."

30. LAND RENTALS

30.1. The Committee finds that the Department of Lands and Physical Planning has, for many years, failed to collect or enforce the payment of Land Rental to any acceptable standard.

30.2. The Committee finds that, as a result of that failure, the Department and the Head of Department are in breach of the requirements of the ***Public Finances (Management) Act*** and will make certain referrals in this respect later in this Report.

30.3. The Committee finds that during the period 2000 – 2005, huge amounts of Land Rentals have not been collected by the Department, to the considerable detriment of the State.

30.4. From the Departments own documents and records, the Committee concludes that the following aggregated or accumulated amounts of Land Rental remain outstanding:

2000	**K.**	**54, 912, 718 . 49**
2001	**K.**	**57, 692, 508 . 37**
2002	**K.**	**63, 765, 757 . 39**

2003	**K. 65, 835, 960 . 58**
2004	**K. 73, 505, 636 . 99**
2005	**K. 77, 445, 204 . 11**

30.5. By any measure this is a significant loss to the State. It is unacceptable.

30.6. The Committee notes that this total does **not** include Land Rental owed by Statutory Corporations which was waived by the NEC.

30.7. The Auditor General calculates even more Land Rental to be outstanding but no ageing of these debts is possible due to poor record keeping by the Department.

30.8. The Committee sought an explanation for this failure to collect and / or to forfeit, from the Secretary of the Department, Mr. Pepi Kimas.

30.9. The Secretary blamed the lack of resources, lack of funding, lack of records, lack of staff and lack of cooperation by the Offices of the Solicitor General and the Attorney General and his own staff. The Committee does not accept these excuses.

30.10. To some extent, the Department has manpower problems, but the Statutory mechanism to forfeit Leases for non payment is simple and a readily available coercive device, which has not been used by the Department, adequately or at all – to the considerable detriment of the State.

30.11. The Committee considers that the failure by the Department of Lands and Physical Planning to collect Land Rental in a timely manner – or at all – is a failure of Management over many years and a breach by past and present Departmental Secretaries of their responsibilities under the ***Public Finances (Management) Act***, in respect of which this Committee will make referrals for investigation and prosecution.

30.12. Further, the Committee will recommend that Government take urgent action to address this failure.

31. OBLIGATIONS OF THE DEPARTMENT OF LANDS & PHYSICAL PLANNING TOWARD THE PUBLIC ACCOUNTS COMMITTEE

31.1. The Departmental Head and Secretary of the Department of Lands and Physical Planning is charged, by Section 5 of the ***Public Finances (Management) Act***, with the responsibility to ensure that information

required by the Public Accounts Committee is submitted to that Committee accurately and promptly – (Section 5 (1) (j)).

31.2. The responsibility of that Departmental Head is not derogated from or reduced by reason of any delegation of functions by him to another person.

31.3. The Committee concludes that the Secretary and Departmental Head of the Department of Lands and Physical Planning, Mr. Pepi Kimas, is the Officer responsible for attending, liaising and co-coordinating the attendance and co-operation of his Department with this Inquiry by the Public Accounts Committee.

31.4. At this point, the Committee states that the obligations imposed on a Departmental Head are onerous. He takes, in some cases, personal responsibility for the failures of either himself or his Officers and a Departmental Head may be responsible for a very large and varied Department. For instance, the Department of Labour and Industrial Relations administers no less than 18 Acts of Parliament with all the attendant staff, accounting complexities and lines of command and control upon which the Head of Department must be entitled to rely, but for which he is also responsible.

31.5. It is the Committee's opinion that the duties of the Department of Lands and Physical Planning are clearly set forth in the Land Act and other Acts which it administers. Senior Officers of that Department are long-serving and could be expected to know their duties and to be placed to train their staff to ensure that those obligations are efficiently and effectively carried out.

31.6. Moreover, the Secretary of the Department of Lands and Physical Planning gave sworn evidence to the effect that he understood the statutory obligations imposed on him by the ***Public Finances (Management) Act*** - which include cooperation and compliance with the Public Accounts Committee.

31.7. In his role of responsible Head of Department, the Secretary for the Department of Lands and Physical Planning has the power to obtain full and free access at all times to all accounts and records of accountable officers that relate directly or indirectly to the collection, receipt, expenditure or issue of public money and the receipt, custody, disposal, issue of stores or other property of the State.

31.8. Furthermore, he is empowered to inspect and inquire into and call for all information arising from those accounts and records at any time.

31.9. On the 5th day of September 2005, the Public Accounts Committee issued and served on the Secretary for Lands and Physical Planning, a Notice pursuant to Section 23 (1) (b) of the ***Permanent Parliamentary Committees Act 1994***.

31.10. That Notice required the production of a large number of documents, files and records relevant to the Inquiry. A copy of that Notice appears in Schedule 3 to this Report.

31.11. The Committee reports that the Secretary of the Department of Lands and Physical Planning failed to produce to the Public Accounts Committee when directed to do so, a significant number of documents, records and files.

31.12. In this regard the Secretary breached his statutory duty and was referred to the Office of the Public Prosecutor for investigation, pursuant to Section 23 (3) (b) (iii) of the ***Permanent Parliamentary Committees Act 1994.***

31.13. On the 24th November 2005, the Public Accounts Committee issued and served a Summons to Produce Documents on the Secretary of the Department of Lands and Physical Planning, pursuant to Section 89 of the ***Public Finances (Management) Act.***

31.14. That Summons required the production of all missing documents, files and records. A copy of that Summons appears in Schedule 3 to this Report.

31.15. The Secretary produced some of those materials, but all production was inadequate and, in many instances, non-existent. The Secretary proffered no acceptable explanation for this failure.

31.16. It is notable that no documentary material at all was produced which was relevant to any land transaction which was unlawful, corrupt or otherwise tainted by Departmental misconduct.

31.17. It is also notable that no records at all were produced in respect of any Land Board which was either incompetently convened or did not sit at all – despite the fact that State Leases were issued by the Department of Lands and Physical Planning from those non- existent Boards.

31.18. The Committee again referred the Secretary for prosecution for this failure pursuant to Section 23 of the ***Parliamentary Powers and Privileges Act***.

31.19. The Committee sees no excuse at all for the failure of the Secretary for the Department of Lands and Physical Planning and his Management Team to produce even basic records, documents and files to the Public Accounts Committee.

31.20. This Committee can only conclude that the Department, its Secretary and Senior Managers refused or failed to comply with a Notice and a Summons of the Public Accounts Committee in a calculated and contemptuous manner, wherever they perceived that the refusal would assisted their witnesses and Departmental Officers or where the contents of documents would reflect unfavorably on the Department or individuals within the Department.

31.21. The Committee also concludes that the Secretary for the Department of Lands and Physical Planning has no or no adequate control over his staff or their activities and that either the Secretary actively shields corrupt and /or incompetent staff or is directed by his staff – rather than the other way around.

31.22. The Committee concludes that the Secretary is aware that documents are destroyed or removed within his Department, but refuses or fails to rectify the situation.

31.23. We have previously referred to the frank sworn admission made to the Committee by Mr. Pepi Kimas, to the effect that his staff are paid to destroy documents and records. See Para 6.15 of this Report.

31.24. A more candid admission of criminal conduct cannot be imagined.

31.25. The Public Accounts Committee concludes that the Department of Lands and Physical Planning and its senior officers – in particular Mr. Pepi Kimas – have failed to cooperate and assist the Public Accounts Committee and failed to give frank and full evidence before the Committee – in particular concerning certain unlawful land transactions and illegal grants of State Leases for no or no adequate benefit to the State.

31.26. Further, the Department and its officers have failed to comply with a Notice to Produce Documents and a Summons to Produce Documents, when it was in their power to so comply.

31.27. This amounted to a defiance of the Directives of a Parliamentary Committee and a breach of the basic principles of accountability of the Department.

31.28. Finally, the Committee concludes that the failure by the Secretary and Managers of the Department of Lands and Physical Planning to co-operate with the Public Accounts Committee when taken with other failures and mismanagement, reveals a management team that should be removed and replaced and a Department devoid of viable and competent lines of control and command – and thereby accountability and responsibility.

32. PART TWO - PERFORMANCE OF THE DEPARTMENT OF LANDS AND PHYSICAL PLANNING 1999 – 2002.

32.1. The Committee chose, at random, five portions of alienated State Land which were granted into private hands prior to 2002.

32.2. Of these five parcels of land, four were previously unallocated Reserved Land, National Park or public land and one parcel was the subject of an Agricultural Lease.

32.3. The first purpose of this phase of the Inquiry was to ascertain if this land was lawfully granted into private hands.

32.4. The second and principal purpose was to assess such issues as revenue collection, whether the Department carried out its duties to apply the law when granting and registering the Leases, the state of Rental arrears, tender prices collected, compliance by Leaseholders with Lease covenants, the protection of State assets and documentation, the keeping of accounts and action taken by the Department and its officers to protect the State and preserve national assets at any time since 1999.

32.5. The third purpose of this phase of the Inquiry was to consider what steps, if any, the current Management Team of the Department had taken to recover illegally issued land or land in respect of which Land Rental was outstanding or other Lease Covenants had been breached.

32.6. The Committee now reports in respect of each of those grants of State Lease:

33. PORTION 1597 MILINCH GRANVILLE, FOURMIL MORESBY AT PAGA HILL – GRANT TO PAGA HILL DEVELOPMENT COMPANY LTD.

BACKGROUND:

33.1. On the 18th December 1997 **Paga Hill Land Holding Company (PNG) Pty. Ltd**. was granted an **Urban Development Lease ("UDL")** over Portion 1597 Granville Port Moresby. This land comprises 13.7 hectares of Paga Hill in Port Moresby – virtually all the hill. This Committee concludes that the Grantee was **Paga Hill Development Co. (PNG) Ltd.**

33.2. A large number of onerous conditions attached to the UDL – none of which, the Committee concludes, have been complied with by the Lessee.

33.3. This land was a Gazetted National Park and could not be granted away to private hands.

33.4. The Committee finds that this land was of great National importance and a prime piece of recreational land for the residents of Port Moresby.

33.5. How the land came to be given to private speculators is a good illustration of the failings and corrupt conduct of the Department of Lands and Physical Planning.

33.6. The continuing refusal of the Department to recover the land for the State well illustrates the continued acquiescence of the Department in corrupt dealings and clearly shows the extent to which private interests control the Department at the expense of the State and the citizens of Papua New Guinea.

33.7. This Inquiry was seriously impeded by the Departmental failure to produce any records or documents at all concerning the issue of the original UDL or a subsequent Lease – despite a Notice and Summons to do so.

33.8. The Committee concludes that there should have been many pages of feasibility reports, assessments, surveys and plans produced to and maintained by the Department before the UDL could be converted to another form of State Lease. The Secretary for Lands produced only nine pages of material – much of which was irrelevant.

33.9. In light of the evident illegality which attended the grant of this Lease, the Committee concludes that the Department of Lands and Physical Planning deliberately refused to comply with legitimate directives and a Summons from this Committee to protect either or both the recipients of the Lease Grant and/or Departmental Officers involved in the grant process.

33.10. The only excuse proffered by the Secretary for this failure, was a suggestion that the files "may possibly" be with the Ombudsman Commission. The Committee questioned the Secretary on this suggestion, but neither the Secretary nor other Departmental officers had any interest in establishing the true whereabouts of the relevant files and documents.

33.11. The Committee concludes that Mr. Kimas would rather be prosecuted for failure to produce documents, than reveal that the documents either never existed or be prosecuted as a result of their contents becoming known.

33.12. The Committee treats this failure as a very serious breach of the Law.

33.13. The following analysis of how this National Park came to be in private hands is therefore made with no assistance at all from the Department or its officers.

34. THE LAND

34.1. Portion 1597 Milinch Granville, Fourmil Moresby comprising two parts containing a total area of 13.1198 hectares was reserved from Lease by a Declaration in the National Gazette G59 dated the 10th September 1987 for the purposes of "Open Space" to be managed by the National Parks Board. In other words the land was preserved for future generations as a National Park.

34.2. There were good reasons for this to occur. The Land is of considerable historical importance to the nation, containing as it does, Wartime Bunkers, Gun Emplacements, tunnels and, apparently, significant pre-historical sites.

34.3. Further, the situation of the land in the centre of a growing city offers superior recreational facilities to the occupants of Port Moresby. It is now and will increasingly be a vital recreational area for central Port Moresby.

34.4. Part of the land was occupied by a Police Mess Hall and Police Hall apparently owned and operated for the benefit of Police Legacy. In recognition of this, the Police were granted a "**Certificate Authorising Occupancy of Land**" over part of the land – issued on the 11th September 1987.

34.5. There is no apparent Gazettal of Revocation of the Reservation of Lease or the Certificate Authorising Occupancy of Land until the National Capital District Physical Planning Board by Meeting 2a/2000 rezoned the land from Open Space to Commercial, Part Residential, Part Public Institutional and Part Utilities by Gazette Notice dated 22nd May 2000.

34.6. Precisely how, why and at whose request this was done remains totally unclear in the absence of documents or records from the Department.

34.7. The Committee cannot conclude on the reasoning behind the Revocation of the Land as a National Park.

34.8. In or about 1995, the National Parks Board ceased to exist. There was no management of the Park and it is fair to assume that speculators saw the land as ripe for acquisition.

34.9. The State, in general, and the Department of Lands and Physical Planning in particular allowed and co-operated in the taking of this National Park

from the citizens of Papua New Guinea by profiteers who, subsequent events showed, had no capacity to develop the land at all.

35. **THE URBAN DEVELOPPMENT LEASE**.

35.1. Four applications for grant of this Land were referred to Papua New Guinea Land Board No. 1991 (Item 2) each seeking a grant of a Business (Commercial) Lease over the land – one of which was **Paga Hill Land Holding (PNG)** (sic)**.** The Land was still a National Park.

35.2. The Committee can establish that Land Board No.1991 purported to convene on Friday 22nd August 1997. The Board was chaired by Mr. Ralph Guise.

35.3. The Land Board apparently completely ignored the fact that the land was a National Park and could not be the subject of such tenders or of a Grant of Lease.

35.4. Police Legacy advised the Land Board in writing of its interest in and development plans for part of the land. Representatives of Police Legacy apparently attended the Land Board.

35.5. It seems that the Land Board No 1991 recommended that **"Paga Hill Land Holding PNG"** (sic) be granted a Lease over Portion 1597 Milinch Granville Fourmil Moresby – with an orally imposed condition that the land area the subject of Police Legacy's interest was to be excised from Portion 1597 by the "Developer" and that Police Legacy would be granted appropriate title thereafter.

35.6. Thus far, the only record of such a condition is a hand written memo or record apparently signed by the Chairman of the Land Board Mr. Ralph Guise. That memo records:

"Recommendations:

Of Papua New Guinea Land Board go in favour of Paga Hill Land Holding Co. Ltd. to develop and improve portion 1597 Granville over (sic***) five year period to a value of K M 300.***

Foot Note:

Company appears to have access to sufficient funds to fulfill requirements.

1. ***Annexation of Police Mess to be undertaken by developer in favour of RPNGC***

2. Dept. and developer maintain a close liaison to accommodate requirements as highlighted by Department."

35.7. There would appear to be no real protection at all for the property of Police Legacy. The Committee concludes that this charitable Police asset– and therefore State or public asset - has simply disappeared with no protection given by the Department.

35.8. An Improvement Covenant is clearly set out in that UDL. It requires improvements to a value of K 300 million to be undertaken in the first five years of occupation.

35.9. Such a covenant would be onerous to a large well resourced company. As of March 2006, there is no development on the land at all. How the Land Board concluded that the Grantee could meet the Improvement Covenant, is unknown in the absence of any documentation.

35.10. That Lease contained strict covenants requiring detailed reports on all aspects of the proposed development before the UDL could be surrendered and a Business Lease issued – none of which have apparently been met by the Lessee. If they have been met, the Department has failed or refused to produce any documents at all which show this compliance.

35.11. The Committee concludes that, in order to comply with the UDL Covenants, at least the following documents had to exist:

- Records of Land Board meeting No. 1991
- Minutes of Land Board No. 1991
- Recommendations of Land Board 1991
- Advertisement or call for tenders or
- Exemption from advertisement
- Applications for Grant of Lease
- Supporting documents to those applications
- Internal working papers relating to the issue of the UDL
- Approvals for the Grant of UDL by Departmental Officers
- Ministerial paperwork on the issue of the UDL

- Copies of the UDL
- Land Rent records
- Records of improvement expenditure by the Lessee
- Records of Planning or Surveying
- Any Gazette Notices at all
- Instructions to the Government Printer
- Submissions or proposals for Capital expenditure on Public Open Space
- Submissions or proposals for upgrading or rehabilitation of war Relics or plans therefore
- Compliance with any one of the Covenants in the UDL
- Records of arrangement, discussion or payment to the National Housing Corporation in respect of National Infrastructure
- Proposals or actual steps taken to protect Police Legacy
- Revocation as Open Space in 2000
- Records of legal advice and action taken in respect thereof
- Reserve of tender price levied or paid
- Proof of Land Rental paid
- Any submissions of reports, Plans, Zoning Reports, development plans, infrastructural and utility service details, cadastral boundary survey plans, area survey for conservation purpose, demarcated areas for NCDC Parks and Open Space and waterfront development details to your Office for approval
- Approvals by Physical Planning Board, Eda Ranu, NCDC engineers, Surveyor General, Department of the Environment, Harbours Board, IPA and Tourism Promotion Authority

- Proof of compliance with Improvement Covenant or capacity to do so.

This list is not exhaustive.

35.12. Not a single sheet of paper was produced in respect of any of these matters and no explanation as to that failure was made.

35.13. Further, due to the non-production of documents, this Committee cannot know the identity of the other supposed applicants for State Lease or the nature of the successful tender and can make no findings on the legality and transparency of the tender process.

35.14. The failure to comply with the UDL covenants, particularly the Improvement Covenant, should have resulted in the Department forfeiting the Lease – or at the least, not issuing a Business Lease.

35.15. More properly, the Department of Lands should have cancelled the Lease years ago on the basis that it was unlawfully issued.

35.16. The Committee finds that the grant of the UDL was and is now unlawful for a number of reasons. They are at least:

i) There was no quorum at the original Land Board. The Solicitor General advised the Department of Lands that the Grant of the Lease was illegal for this reason, but the Department ignored the advice.

ii) The Land Board could not have been reasonably satisfied that the applicant could raise K.300 million in five years. Indeed, the Committee finds that the Lessee cannot pay the Land Rental and has sought relief from that obligation, much less fund a development of the magnitude required.

iii) The land was a National Park zoned Open Space. The land should have been zoned as sub-divisional land in order that a UDL could issue, but was not and could not have been so zoned.

35.17. The Committee finds a complete and inexplicable failure of the Department to ensure that even the most basic legal requirements were either imposed or met and this resulted in a total failure to protect State Land and public assets.

36. THE BUSINESS LEASE

36.1. In 2000, a company called **Paga Hill Development Co. (PNG) Ltd** was formed.

36.2. On the 01/09/2000, a **Business Lease over Portion 1597 Granville** was granted to **Paga Hill Development (PNG) Ltd**. This Lease was registered as **State Volume No. 24 Folio 159**. How and why this new Company, rather than the original Grantee, was able to obtain this Lease is unknown.

36.3. The Lease should have been issued to the same company that held the **Urban Development Lease.**

36.4. This Business Lease issued out of the UDL granted to **Paga Hill Land Holding Company (PNG) Ltd**. in 1997. It should have been issued to that company.

36.5. The Department itself states that the UDL has not been surrendered – so two Leases appear to exist over the same land. In a memo to the Secretary for Lands, dated the 18th March 2003, the issue of the Business Lease is described as "dubious".

36.6. Further, the Business Lease related to the entire area and assumed that all the land was zoned "Commercial". This was not the case. There were varied zonings and the Lease was illegally issued.

36.7. This Lease contained only very basic covenants requiring payment of Land Rent and an Improvement Covenant requiring improvements to a minimum of K 10 million within five years of issue of the Lease – on the 1/09/2000. Neither covenant has been complied with. No attempt has been made to forfeit the Lease by the Department for this failure.

36.8. This Business Lease could not have lawfully issued. The reasons are at least:

i) The UDL was unlawfully granted and issued (see above Para 25.16).

ii) None of the stringent conditions in the UDL had been met. In particular the Department has produced no evidence that:

a) the 10% dedicated as Open Space has been excised; or

b) the historical relics have been returned to the Department of Heritage; or

c) the Lessee could or did meet the capital cost of establishing Open Space and renovation of the heritage sites or that they have been handed back to the respective authorities; or

d) any arrangement with National Housing Corporation for compensation by the Lessee for demolishing government Institutional improvements; or

e) the Lessee submitted a Master Plan to the Secretary for Lands within 12 months of the grant or that the Master Plan contained any of the matters prescribed; or

f) that any Master Plan had approval of the Physical Planning Board, Eda Ranu, NCDC Engineers, Surveyor General, Dept. of Environment and the Tourism Promotion Authority or the Harbours Board; or

g) that the Secretary for Lands approved (or even saw) any Master Plan (if it ever existed).

h) the improvement covenant in the UDL had not been met in whole or in part; and

i) rent was in arrears and remains in arrears; and

j) The Lessee had failed to meet all conditions and clearly had no capacity to do so; and

k) The works proposed and covenanted for in the UDL must be approved by the Physical Planning Board – there is no evidence that this ever occurred.

l) The Lease contravenes Section 67 of the Land Act as it contradicts the multi Zoning of the Land

36.9. The unimproved value of the Land was assessed at K 5,000,000 in which case the correct Land Rental, at 5% of that value, should be K 250,000 p.a. This is the Rental appropriate to a Business Lease.

36.10. On the 24/05/ 2001, the Lease was changed by handwritten notation which reduced the Land Rent from K 250,000 per annum to K 50,000.

36.11. The Committee finds that there is no power to correct the record in this fashion.

36.12. When questioned as to the identity of the Officer who changed the amount and the legal basis so to do, both the Secretary and Deputy Secretary of the Department could not tell the Committee.

36.13. There is no explanation for this reduction. This means that with the active collusion of the Department, the State has lost a minimum of approximately K 900,000 from 2000 until 2005.

36.14. Further, the Committee finds that the amended Land Rent of K 50,000 is 1% of the unimproved value – this is the Rent applicable to an Urban Development Lease which, apparently, was surrendered in 2000.

36.15. The Committee was advised that the Lessee could not pay even this reduced amount. A Departmental Officer then agreed to allow the Lessee to pay the Land Rent over a period. This Officer had no power to do so. Why then was the Department prepared to unlawfully allow such a Lessee time to pay?

36.16. The Committee sought to identify the Officer who entered the arrangement.

36.17. The transcript shows the following exchange:

HON. JOHN HICKEY MP:

"Mr Kila Pat did you make some arrangements with the Leaseholder to allow payment of Land Rent over a period?

MR. ROMMILLY KILA PAT (Deputy Secretary of the Department of Lands and Physical Planning)

"Chairman I think I have done that in writing".

And later

MR. KILA PAT;

"Considering the fact that if …..any other Lessee if they have any difficulties in paying one up payment in front they can come to the Department to arrange for payments over a period of time within which they should be able to settle all or whatever the outstanding fees are"

HON JOHN HICKEY MP:

"That is quite difficult for us to accept when there are clearly stated ……..covenants you know, the covenant on the land for development was K 300 million in five years and here you have a Lessee who said they had K 300 million to spend on developing the land and they come along and say we cannot pay the K 250,000 rents per year which is nothing compared to K 300 million.

Who allowed this Leaseholder to pay less Rent…..Did you make arrangements with the Leaseholder?

<u>MR. ROMILLY KILA PAT</u>:

"The arrangements were basically based on the figures that were outstanding at the time, but in terms of paying out rental I do not have the authority to say you don't pay this much".

36.18. The reduction in rent was made by Mr. Pat, as was a time payment arrangement for the benefit of the Lessee. This was quite unlawful – as Mr. Pat acknowledged. The Committee was prevented from following this line of Inquiry as Mr. Pat departed Papua New Guinea for a study course in Australia whilst under Summons to this Committee – with no notification to the Committee.

36.19. Even at the reduced amount, Land Rent owing to the State was K 237,000 in arrears as at 28th February 2006. The Committee notes that as of the 28th February 2006, the last payment of Land Rental was made on the 30th March 2005.

36.20. As if these illegalities were not enough, on the 21st October 2002, the then Minister for Lands agreed to a request from the principal of Paga Hill Development Company limited, to waive all past and future rentals until January 2006.

36.21. The reason for the request by the Lessee was that the Land Rental could be better used in sourcing international investors to develop the land – a contention with which the Minister agreed.

36.22. The Minister further agreed to extend the Improvement Covenant from five to ten years – a decision made with no legal basis at all.

36.23. The Committee concludes that, for once in this transaction, the Department acted quite correctly in refusing to accept the Ministerial waiver of Land Rental.

37. FINANCIAL LOSS TO THE STATE

37.1. The Committee concludes that the State has been deprived of Rental payments by the illegal expedient of retrospectively changing the Lease condition and by the failure of the Department to recover the land either by forfeiture or by cancellation of the Lease.

37.2. In the absence of any evidence to the contrary from the Secretary for Lands and Physical Planning or his Officers, the Committee concludes that no Tender or Reserved Price has been applied.

37.3. This failure has cost the State at least K 3,000,000.00 – representing 60% of the unimproved value. The Department appears to have taken no steps at all to protect the position of the State in this regard.

37.4. Why the Lease has not been forfeited is unknown. Land Rent is in arrears and no development at all has taken place. Non-compliance with the Leasehold improvement covenant and/or non-payment of land rent for six months constitutes grounds for forfeiture.

37.5. Why the lease has not been cancelled for want of lawful issue is unknown. Moreover, the Lessee has attempted to sell shares in the Lessee Company with no apparent attempt to even start the development of the site. In 2005, 50% of the shares in the Company **Paga Hill Development Company Ltd** were offered to a Western Province Landowner Company for K 27 ,000,000.00.

37.6. If this is a true valuation of the Company (the only asset of which seems to be the Paga Hill Land) the loss to the State by under-calculated Land Rental and tender and Reserve Price is huge.

37.7. Further, the Committee concludes that **Paga Hill Development Company Ltd**. has done nothing to protect the interest of Police Legacy at all. Neither has the Department of Lands and Physical Planning. Both entities are in breach of their obligations in this regard and the State through Police Legacy has lost a significant asset.

37.8. Examination of the few documents produced to this Committee and the evidence given by witnesses show clearly that prime land and a National Park, has been illegally given to a private, foreign speculator with no ability to even pay the Land Rental, much less build anything on the site.

38. FAILURES BY THE DEPARTMENT

38.1. In this transaction, the Committee concludes that the Department of Lands and Physical Planning has failed in its obligation to ensure that:

i) the offering of land for tender was lawfully carried out; and

ii) the land exposed to public tender was lawfully available; and

iii) the Papua New Guinea Land Board understood the basic legal requirements for the offering of land for tender; and

iv) the Land Board and the Department understood and complied with Land Zoning and Reservation; and

v) the Papua New Guinea Land Board understood the law under which it operates and the procedural requirements for its meetings; and

vi) the Papua New Guinea Land Board be properly advised in its deliberations; and

vii) any defects in the grant of Leases be identified and rectified, before Leases issued or that the Lease not issue at all; and

viii) legal advice received be acted upon; and

ix) Departmental officers understand the relevant law and act upon legal advice received; and

x) Departmental officers understand their obligations to obey the law and their role and function in protecting the interests of the State over those of private enterprise; and

xi) the forfeiture provisions of the Land Act be acted upon for breaches of covenants or legal obligations; and

xii) the Lease was cancelled for illegal issue; and

xiii) Departmental Officers not proceed in any transaction unless and until all legal obligations, conditions or covenants whatever are complied with by applicants; and

xiv) Departmental Officers understand and obey their duty to properly calculate and collect monies owed to the State; and

xv) the Departmental Officers understand and fulfil their statutory obligations in all respects – in particular that the Department competently and lawfully manage land, collect and account for monies owed to the State and that all Managers and Officers of his Department obey directions and implement legal requirements; and

xvi) the Departmental Secretary promptly reply to letters from interested parties and not delay or ignore obviously relevant matters; and

xvii) no person or company be given preferential or favoured treatment – particularly where that person or company is in breach of lawful obligations and in particular where the unlawful alienation of State Land is sought; and

xviii) interests of the State and the citizens of Papua New Guinea prevail over those of a private foreign company; and

xix) it protected the State and State assets from misappropriation or misuse.

xx) the terms of the Land Act be applied; and

xxi) transparency and honesty prevail in the processes of tender for and grant of State Leases.

39. FAILURES BY THE SECRETARY FOR LANDS

39.1. This Grant was made before the current Secretary for Lands, Mr. Pepi Kimas was appointed, but the Committee considered what, if any, steps the past or current Secretaries had taken to rectify this matter.

39.2. In the opinion it would have been proper for this Lease to have been cancelled or forfeited at any time.

39.3. Despite the fact that the Secretary for Lands and Physical Planning failed to produce relevant documents and files to the Public Accounts Committee, it is clear to the Committee that the Secretary is well aware of this transaction and of the illegalities attending the issue of the Lease over Paga Hill.

39.4. The Committee finds that Mr. Kimas has done nothing. He and his management team have failed to protect the position of the State, and he has thereby breached his statutory duties as Departmental Secretary and Head of Department.

39.5. The Committee questioned Mr. Kimas on this failure. The Committee also questioned Mr. Kimas on similar failures in respect of other State Leases illegally given into private hands.

39.6. The explanations proffered to the Committee for these failures were contradictory and without any force.

39.7. The Committee notes that on the 29th day of November 2005, the Secretary for Lands undertook to the Committee, while on oath, to serve Notices to Show Cause on the Lessee of the Paga Hill Land, as a precursor

to a forfeit of the land. He undertook to do so within 48 hours. The evidence was:

HON JOHN HICKEY MP

"There are a whole lot of illegalities attached to it (Paga Hil). Illegalities caused by greed. And if we do not do anything about it, it is in the hands of two foreigners who do not live in our country. ……As we speak this land is falling into the of two foreigners. Secretary please you and your officers' action this immediately – get this land back to us before the February hearing.

MR PEPI KIMAS

"Chairman, I'll give the copies of the Notice to Show Cause to the lawyers within 48 hours from now."

Evidence given to the Committee 29/11/2005.

39.8. So far as the Committee can ascertain, despite this undertaking, nothing has been done.

39.9. Nowhere is the cavalier and contemptuous attitude of the Secretary toward a Parliamentary Committee better illustrated than by this hollow undertaking.

39.10. The Committee concludes that the Secretary for Lands completely failed in respect of this transaction alone:

a) to produce any records at all relating to the cancellation of the UDL and grant of a Business Lease to Paga Hill Development Company (PNG) Ltd.. The Committee therefore concludes that the documents do not exist.

b) that the proper legal requirements for grant of a Lease were not met – and that the Secretary knows this, but has done nothing to rectify the situation; and

c) to meet his obligations imposed by the ***Public Finances (Management) Act***, in that he has failed to levy and collect State revenue in accordance with Law despite giving sworn evidence that he knew and understood those duties; and

d) to enforce the provisions of the Land Act and other statutory requirements; and

e) to properly and adequately control his Department and officers; and

f) to act in a prudent and competent manner to ensure that State assets and property are protected as soon as illegality or abuses became known to him; and

g) to meet his obligations and duty under the ***Public Finances (Management) Act*** and in particular to obey Section 5 (a), (b), (c), (e), (g), (h), (i), (j) and (k) – and is thereby open to surcharge, penalty and disciplinary action for these failures – See Section 5 (3) **Public Finances (Management) Act 1995**.

h) to exercise his powers as Departmental Head to obtain full and free access to all accounts and records relating to collection, receipt disposal or custody of property or monies of the State.

i) to exercise disciplinary powers over his staff; and

j) to act in a professional, competent and lawful manner in the exercise of his duties and responsibilities; and

k) understand the importance of his role in controlling or reversing this transaction and ensuring that the law is enforced; and

l) to obey Section 112 of the ***Public Finances (Management) Act 1995*** and thereby committed an offence by failing to produce documents under his control when required to do so.

m) to give candid and frank evidence to the Public Accounts Committee; and

n) To take any or any adequate steps to serve the interests of the State over those of the Lessee.

39.11. The PAC has sound jurisdiction to inquire into this grant. That jurisdiction lies at least under Section 86 (1) (d) (iv) and (f) of the ***Public Finances (Management) Act 1995*** and Section 17 of the ***Permanent Parliamentary Committees Act 1994*** because:

i) The State and the public has been deprived of a valuable asset; and

ii) the UDL was apparently unlawfully granted; and

iii) the subsequent State Lease has been unlawfully granted for a number of reasons; and

iv) the true reserve price was possibly as much as K 3,000,000. The State has received nothing; and

v) the true Land Rent is possibly as much as K 250,000 per annum **not** the K 50,000 now applying – which is significantly in arrears – the State has lost revenue thereby; and

vi) the Royal Papua New Guinea Constabulary Legacy fund has lost a valuable asset which is a public asset and subject to the ***Public Finances (Management) Act 1995***; and

vii) the Grantee has failed to comply with any undertaking or covenant in the UDL and the Department failed to enforce those covenants; and

viii) detailed protection of a National historical assets on the land comprised in the UDL has completely disappeared in the State issued **Business Lease**. The State and public interest in preserving the considerable historical sites on the land (which was a major reason that the land was Gazetted a National Park) has been given away; and

ix) the State and public interest in preserving the recreational value of the land (which no doubt was one reason for Gazetting the land as a National Park) has disappeared; and

x) the means by which the land ceased to be a National Park (if it ever did cease) is entirely unclear. The State appears to have been deprived of the asset for no good reason; and

xi) the Lessee had and has no ability to fulfil the Improvement Covenant, hence the State has lost revenue thereby; and

xii) the Grantee has failed to pay rent, rates or comply with improvement covenants. The Department has failed to do anything to collect or forfeit the Lease; and

xiii) the Grantee is clearly only intending to make profit at the expense of the State and the citizens of Papua New Guinea; and

xiv) even if the land had been lawfully allocated into private hands, absolutely no development has occurred at all. Very significant development covenants have been ignored and/or not enforced by the Department. The State may be said to have lost revenue thereby; and

xv) The original grant was invalid for want of a quorum at the Land Board and despite advice from the State Solicitor, no action to forfeit or cancel the Lease has occurred. The Department has failed to act in a lawful manner and has clearly chosen to ignore the Law in favour of the interests of the Grantee – at the expense of the State; and

xvi) not only has the Department of Lands and Physical Planning failed to impose and collect appropriate rent, an Officer of the Department has apparently agreed to accept a reduced amount as land Rent payment – with no power so to do. The State has lost revenue thereby; and

xvii) an Officer of the Department has, unlawfully, permitted the Lessee to pay Land Rent over a period – which agreement the Lessee has breached, with no action from the Department: and

xviii) knowing some or all of these deficiencies, the Department and the Secretary in particular have failed to do anything to reverse the grant or to protect the interest of the State over that of individuals.

39.12. The Committee makes further recommendations and referrals later in this Report.

40. SECTION 122 HOHOLA.

40.1. This is a complicated matter, but well illustrates both inept decision making by the Land Board in the period 1999 – 2002 and the influence that certain entities have exercised over that Board.

40.2. The Land Board has Granted and the Department has issued, State Leases over land that was, and still is, zoned as Reserved open Space Land for the benefit of the public.

40.3. Consideration of the facts shows a clear pattern of conscious illegality in the Lands Board and (at best) cooperation by the Department of Lands and Physical Planning.

40.4. The dealings also well demonstrate the paralysis of action that attends the Department of Lands, even when the illegalities of Lease issue are known to the Department and have been publicly acknowledged by it.

40.5. The history of this parcel is complex. A précis is presented below, but the grants and issues of private title over all of Section 122 Hohola are unlawful and require immediate action from the National Government to rectify the defects and/or reinstate this valuable public asset – if indeed it is not too late to do so.

40.6. The Committee directed the Secretary of the Department of Lands and Physical Planning to produce documents and records by Paras. 6, 7, 8, 27, 28, 29 and 30 of the Notice to Produce Documents dated the 5th September 2005 - See Schedule 3 to this Report.

40.7. The Secretary produced records of payment which were generally adequate and responsive, but all other documentation was inadequate. There have been no documents produced at all to show the decision making process leading to the issue of Leases and no records of the relevant Land Board meetings.

41. THE GRANT AND SUBDIVISION:

41.1. This large tract of land lies opposite the SP Brewery and extends to the Gordons Police Station. It was zoned as "Reserved Land" and is used as public recreational land. The land has been subdivided and been unlawfully granted to private ownership.

41.2. The Committee finds that there are five sequential Survey Plans for this land which have variously subdivided the area into Allotments. With each Plan the designation of the Allotments has changed. These Plans are:

Survey Plan	**Date of Registration**	**Comment.**
49/901	1969	Section 122 Hohola.
49/1507	23/11/1982	Lots 1 – 7 Section 122 Hohola - supersedes Plan 49/901.
49/1867	10/07/1990	Lots 6 – 10 Section 122 Hohola, formerly Lots 8 and 9, formerly part Allotment 1 Section 122 Hohola. This Plan partly supersedes Plan 49/1507 and is concurrent with 49/1887.
49/1887	10/07/1990	Allotment 11 Section 122 Hohola formerly Allotments 1,2, 3 and 4 Section 122

		Hohola, part 15 metre road and 3 metre and variable width reserve on Plan 49/1507; this Plan partly supersedes Plan 49/1507 and is concurrent with Plan 49/1867
49/2276	17/03/1997	Allotments 12 and 13 Section 122 Hohola plus Freeway widening ; this Plan supersedes Plans 49/1507 and 49/1887 **and cancels Allotment 11 Section 122 Hohola.**

41.3. This means that on and from the 17/03/1997, Lots 1, 2, 3, 4, 5 and 11 Section 122 Hohola were cancelled – they ceased to exist. This progressive Sub-divisional change was presumably done with the cooperation of the NCDC.

41.4. There now follows a descriptive tracing of subsequent dealings with Allotments 1, 2, 12 and 13 by the Land Boards and the Department of Lands and Physical Planning – despite the fact that they were either cancelled or reserved as "Open Space". Although dealings with other Allotments are equally legally doubtful, these selected Allotments are the easiest to understand.

41.5. From this examination, the Committee concludes that the State has been deprived unlawfully, of a large and valuable tract of land for no or no adequate recompense, that the State has been exposed to liability by Departmental actions and failures and that the public have been deprived, quite illegally, of prime recreational land.

42. ALLOTMENT 1 SECTION 122 HOHOLA:

42.1. Allotment 1 Section 122 was "Reserved from Lease" for the purposes of "Public Recreation" at page 1085 of the National Gazette dated the 28th November 1985 and thereby was the subject of a trusteeship vested in the NCD Interim Commission by Gazettal at Page 334 of the National Gazette G17 dated the 26th March 1987.

42.2. Allotment 1 Section 122 was cancelled by Survey Plan No. 49/1887 registered on 10 July 1990.

42.3. Despite the cancellation and the overall reservation as Public Space, Land Board No. 2006 Item 101, heard an application from the NCDC and granted a **Special Purpose (Park Reserve) Lease** over Allotment 1 Section 122 Hohola and this recommended grant was formalized by Gazettal Notice on the 17th June 1999.

42.4. The Lease may not have actually issued – quite correctly given that the Lot had been cancelled – but the fact of issue illustrates the inept quality of Land Board decision making.

43. ALLOTMENT 2 SECTION 122 HOHOLA.

43.1. This Allotment also ceased to exist on the 10th July 1990.

43.2. Despite this, Land Board 2006 Item 102, heard and granted an application from the NCDC for the grant of a **Special Purposes (Park Reserve) Lease** over Allotment 2, and this recommended grant was formalized by Gazettal Notice on the 17 June 1999.

43.3. Clearly such a grant cannot issue as the Allotment ceased to exist.

44. ALLOTMENT 12 SECTION 122 HOHOLA.

44.1. Papua New Guinea Land Board No. 2017 did not convene as scheduled on either the 24th November 1999 or the 10th December 1999. No meeting was ever held.

44.2. However, the Chairman of the Land Board, Mr. Ralph Guise, unlawfully and improperly signed a typeset Notices of Grant purporting to derive from that Land Board. The Chairman had no power to do so.

44.3. State Lease Volume 23 Folio 182 comprising a **Business (Commercial) Lease** over Allotment 12 Section 122 Hohola (apparently zoned "Public Institutional") did issue in favour of Mr. Andrew Mald – although this title was cancelled by the Registrar of Titles on the 10th August 2000, as it should have been.

44.4. The title was reinstated by the National Court upon application by Mr. Mald – apparently lawyers representing the State did not oppose the application – and so far as the Committee can ascertain, may not have attended the court at all.

44.5. In early 2006, this land was sold and transferred as unimproved land. This transfer was made by the Department of Lands regardless of a Departmental prohibition on such transfers.

44.6. The sale price was K 1.3 million for land which was illegally granted and subsequently illegally transferred. The Department thereby lost the one opportunity it had to recover this land for the State.

45. ALLOTMENT 13 SECTION 122 HOHOLA.

45.1. Allotment 13 (previously Allotments 1, 2, 3 and thence Allotment 11) Section 122 Hohola was and still is zoned "Open Space".

45.2. Section 67 of the ***Land Act*** states that a Lease cannot be granted :

" ….in contravention of the zoning of the subject land."

45.3. Despite these facts, this 6.49 ha. of prime land was the subject of an application by **Virgo No.65 Ltd** for the grant of a **Business (Commercial) Lease.** This Application was listed before Land Board No. 2006 (Item 20).

45.4. Furthermore, this land was exempted from advertisement – presumably in accordance with one of the grounds in Section 69 (2) of the ***Land Act*** **1996,** although none of the provisions in that Section seems to apply. The Department of Lands have attributed this exemption to persons within the Office of the then Minister for Lands.

45.5. There was at least one other Application that pre-dated this dubious exemption and, considering that an exemption relates to land and not to a particular applicant, all applications received before the exemption should have gone to the Land Board – although here no application should have been sent to the Land Board at all as neither Application complied with the "Open Space" zoning.

45.6. Although not directly relevant, it is notable that PNG Land Board 2006 also heard and granted another application by **Virgo No.65 Ltd** for a **Business (Commercial) Lease** over two allotments in Mount Hagen – despite the fact that this land is zoned "Open Space" – as was Allotment 13 Section 122 Hohola. Two **Business (Commercial) Leases** have issued to **Virgo No. 65 Ltd** for the land in Mount Hagen.

45.7. It is an inexplicable fact that the same Land Board hearing this application (which stated that Allotment 13 previously comprised Allotments 2 and 3 Section 122) also considered and recommended the grant to NCDC of a **Special Purposes (Park Reserve) Lease** over Allotments 1 and 2 Section 122 Hohola – which no longer existed.

45.8. The Land Board therefore managed to deal with the same land in two different forms – one existing and the other not – for two different

applicants, notwithstanding that the land was zoned "Open Space" and could not be dealt with at all. One grant to **Virgo No.65 Ltd** and the other (over Lot 2 – actually Lot 13) to NCDC.

45.9. The Grant was subsequently cancelled by Gazettal for want of compliance with Section 67 of the **Land Act 1996**. This is to the credit of the Department. However, the National Court, in the absence of opposition from the State, ordered the title to issue – an Order that the Minister for Lands obeyed.

45.10. This Committee concludes that the NCDC and the public had lost zoned Reserved Land, the State had received no payment and the whole transaction was totally unlawful. More worrying is the failure of the Department to protect this asset in the first place.

45.11. The dealings with Section 122 Hohola well illustrate the shortcomings of the Land Board system and these transactions are by no means isolated. The dealings are not consistent with mere incompetence.

46. ALLOTMENTS 14, 15, 16 AND 17 SECTION 122 HOHOLA.

46.1. These Allotments are zoned "Open Space". They are not the subject of any cadastral survey and therefore still probably form part of Allotment 13 Section 122 Hohola.

46.2. Three applications, each seeking the grant of a **"Business and Special Purposes Lease"** (note it should be a **Business or Special Purposes Lease**) were made for this Land by **Rohn No.3 Ltd, Pohn Ltd** and **Itu Development Ltd.** and were listed before PNG Land Board 2005 (Items 132, 133 and 134) – one day before the Land Board was due to sit. This contravened Section 58 (3) **Land Act 1996.**

46.3. Nevertheless, each of the three "recommended grants" were Gazetted in National Gazette G39 on the 17/03/1999.

46.4. As with other Allotments on this Section, title is probably void due to the fact that Allotment 13 Section 122 Hohola does not exist – given that it derived from Allotment 1 Section 122 Hohola - which was "Reserved from Lease" and never revoked.

46.5. Once again, the State and the public have been deprived of reserved land quite illegally.

46.6. The Department of Lands, despite knowing of this illegality, has done nothing to rectify the situation.

47. **THE LEGALITY OF DEALINGS IN ALLOTMENTS AT SECTION 122 HOHOLA**:

47.1. A summary of the defects in the Land Board deliberations over this parcel of land follows:

i) "Open Space" land has unlawfully passed into private hands with no apparent concern for the legal status as public land.

ii) Researches have not revealed any evidence that the "Reservation from Lease" was ever revoked. If this is correct, this will mean that, at least;

a) Subsequent Survey Plans are invalid and / or should be cancelled; and

b) All dealings in the land deriving from the subsequent subdivision of Allotment 1 Section 122 Hohola are equally unlawful; and

c) The State may be liable to Leaseholders or successors in title – see below.

iii) Allotment 13 Section 122 arguably did not exist at the time it was granted by Land Board 2006 due to the deliberations of Land Board 2005, and could not therefore have been lawfully dealt with.

iv) The NCD also applied for the Allotments 1 and 2 (which became Lot 13) as **Park Reserve Lease.** That conflict between private and public use meant that the Land Board should be immediately adjourned.

v) The Land Board managed to grant Leases to NCDC and Virgo over the same parcel of land.

vi) At least one Land Board did not sit at all and the typeset notices giving rise to the Leases were forgeries.

47.2. The Committee concludes that, if the Reservation of this land was never revoked, the State has an exposure to all holders or past holders of title in any land on Section 122 that derived from the subdivision of Allotment 1 Section 122, upon the basis that the title issued is defective due to the unlawful conduct of the Land Board and the Department as well as the failure of the State and its legal advisers to protect public assets.

47.3. Peremptory searches suggest that the State may be exposed to at least the following claims:

Allotment	**Section**	**Comment**
8	122	The Filipino Association had been granted a lease over Allotments 6 and 7 (Consolidated) Section 122 Hohola. Despite this, the DOL advertised a Special Purposes Lease over Allotments 7 and 8 Section 122 Hohola for Tender. A subsequent grant to Land Bank Holdings Ltd. deprived the Filipino Association of Allotment 7. There seem no lawful grounds for this to occur.
9	122	Granted to the PNG Family Planning Association but title never issued.
13	122	See extended review (supra).
14, 15, 16 and 17 (Consolidated)	122	See review (supra).

47.4. The Secretary for Lands and Physical Planning produced to the Committee, sparse documentation concerning this Land, but the Department clearly has not understood the zoning or considered the legalities of issuing State Leases for this Land – which was and is reserved as Open Space i.e. for public recreation.

47.5. The Committee concludes that the Secretary has failed in his duty to produce documents and records to this Committee. The Department has produced some Rent records, a few old zoning plans (out of date) and one Survey Plan (out of date), but there are clearly huge gaps in the Departments understanding and records of these crucial matters. In these circumstances it is not surprising that the Department was and remains ineffectual.

47.6. The whole saga is very complicated and should be the subject of a deeper Inquiry, however the important fact for this Committee is that the State has again been deprived of an asset for no realistic payment, exposed to litigation by the incompetence of the Department and the Land Board, has not received Land Rent and its interest has not been protected by the Department.

47.7. More concerning to the Committee is the fact that gross breaches of law appear not to have been detected by the Department or, if they were detected, were ignored. Some of these defects are:

(1) That private title to public land has been given in suspect and/or illegal circumstances by the Department for no fee and with significant Rental losses to the State.

(2) Allotment 1 Section 122 Hohola – this Allotment was apparently cancelled in 1990. Yet Land Board 2006 granted the NCDC a **Special Purpose Lease** in 1999 – over a Lot that apparently did not exist.

(3) Allotment 2 Section 122 Hohola – This Allotment apparently ceased to exist on 10th July 1990. Yet the Land Board granted a **Special Purpose Lease** over the land in 1999.

(4) Leases over Allotments 2 and 3 Section 122 Hohola was granted for no fee, but Land Rent is now in arrears in a sum of approximately K 34,000. There has been no apparent action by the Department.

(5) Allotment 7 appears to have been given to two different applicants at the same time – this requires an inquiry and review by the Department, but none has occurred.

(6) Allotment 12 Section 122 – Land Board 2017 did not convene at all. Yet a State Lease issued from that Board over Allotment 12 – apparently from a typeset, but not published, Gazette Notice. This is either gross negligence or a corrupt dealing. There has been no compliance with an Improvement Covenant and Land Rental was in arrears. The Department has done nothing in respect of these matters.

(7) Allotment 13 Section 122 Hohola - in the absence of any documentation from the Department the Committee believes that this Allotment was and still is zoned Open Space. Despite this, it came before Land Board 2006, having been exempted from advertisement for no apparently lawful reason. That Land Board granted a Lease to Virgo No. 65 Ltd for no ascertainable tender or reserve price and contrary to Section 67 of the ***Land Act.***

The Committee also finds that Virgo No. 65 Ltd owes arrears of Land Rent for this land in a sum of approximately K 13,000. The Department appears to have done nothing to forfeit the land.

It seems that the same Land Board at the same sitting also gave this same Open Space land to the NCDC – the same blocks of Public Land were granted to different Lessees – for no price.

(8) Allotments 14, 15, 16 and 17 Section 122 Hohola – Land Board 2005 considered three applications for grant of a Lease over these Allotments – despite the fact that each application appears to have breached Section 58 (3) of the ***Land Act***, that the Allotments probably do not exist at all, that the land was "Reserved From Lease", that no tender price was received, that the land was and still is zoned "Open Space" and in breach of Section 67 of the ***Land Act.***

Shortly before the printing of this Report, the Committee became aware of a further State Lease issued to Virgo No. 65 Ltd over Allotment 14 Section 122 Hohola.

47.8. At least in relation to the Leases issued to Mr. Andrew Mald and Virgo No. 65 Ltd, there is good reason to conclude that there has been interference in or by the Department – at best the Department has failed to carry out its duty to ensure that the Law attending the issue of State Leases was obeyed.

47.9. In summary, the Committee finds an almost total failure by the Department to control the illegal dealings with this Open Space land, both at the time of the original unlawful grants and subsequently.

48. PORTIONS 109 AND 110 MADANG, MADANG PROVINCE VOLUME 12 FOLIO 113 (PREVIOUSLY VOLUME 65 FOLIO 26)

48.1. This land was owned by the Evangelical Lutheran Church of Papua New Guinea, which held an **Agricultural Lease** issued in 1924 for a period of 99 years – plus an extra five years to take account of the period of the Second World War.

48.2. Rents were up to date, all covenants had been complied with and the Lease was still current until at least 2027.

48.3. The net area of the land is 83.989 hectares – of which 2.627 hectares are reserved for roading.

48.4. The land sits astride the area identified as the site of the township serving the Ramu Nickel project.

48.5. In 2005, the Church discovered that its title had apparently been cancelled and an Agriculture Lease issued to the Ganglau Landowner Company Limited.

48.6. It is now apparent that the land had been compulsorily acquired – unknown to the Church and by some means reissued to the current Leaseholder by a Land Board decision. The original owner had no knowledge of this and has received no compensation.

48.7. The matter is now before the National Lands Title Commission, but seemingly this very valuable land was neither advertised, not exempted and the true owner has been deprived quite unlawfully of its asset.

48.8. The Department was directed to produce certain documents and records by Paras. 31, 32, 33, 34 and 35 of the Directives dated the 5th September 2005. See Schedule 3 to this Report.

48.9. These documents were finally produced after the Committee issued a Summons to the Secretary. The Department is apparently addressing the matter, but failed to do so before or immediately after the problem arose. Matters do not appear in the Land Board without Departmental approval and listing. Clearly the Department failed in its duty to protect the lawful titleholder.

48.10. The Committee cannot understand how this situation was allowed to occur. It seems that the Department of Lands has no control over its Officers, maintains no effective oversight of dealings or is an active party to these illegal dealings.

48.11. Whatever the situation, the fact that this Committee can, with no difficulty, find examples of blatantly illegal dealings and decisions within the Department of Lands and Physical Planning suggests that there is a very significant problem.

48.12. The Committee is further concerned that the State may have been exposed to potential litigation as a result of the failures by the Department regarding this particular parcel of land and has certainly been deprived of revenue.

48.13. We are further concerned that a year has passed with little action from the Department to rectify the matter.

48.14. The Committee finds that the Department of Lands has failed to co-operate with this Committee or to assist in the Inquiry into Portions 109 and 110 Madang.

48.15. The Committee makes certain further findings and recommendations in respect of this matter (infra).

49. ALLOTMENTS 2 AND 3 (CONSOLIDATED) SECTION 111 BOROKO: STATE LEASE 27 FOLIO 202

49.1. This is a parcel of prime land in the heart of the Boroko business district. It is 0.220 hectares in size.

49.2. Land Board 2006 of 1999, granted a **Business Lease** over the land to Bluehaven No.7. Ltd.

49.3. The **Business Lease** sets the Land Rent at K 19,825.00 per annum and an improvement Covenant to a value of K 200,000 within the first three years.

49.4. As of the 8th February 2006, the Land Rent arrears was K129,704.38 and no improvement at all had taken place. The land remains vacant and undeveloped.

49.5. The Committee concludes that the Lessee is therefore in breach of the Lease conditions, but no effective attempt has been made by the Department to forfeit the land.

49.6. More significantly, there was no tender price at all. The land was given away. Land Rent is 5% of the unimproved value. Using the assessed Land Rent, the unimproved value of the land was K. 396,500.

49.7. The Reserve or Tender price should have been K. 237,900. The State has lost this amount together with the Land Rent arrears – a total to date of K 367,604.38.

49.8. The Secretary of the Department was directed by the Committee to produce records and documents concerning this transaction by Paras. 36, 37 and 38 of the Directives dated the 5th September 2005. See Schedule 3 to this Report.

49.9. No files or records relating to the grant of the Lease were produced at all.

49.10. Only in response to a Summons did the Secretary for Lands produce three pages of Land Rental and Tender Price record.

49.11. This Committee has once again been impeded in its Inquiry by Departmental failure or refusal to produce documents showing the history of this matter. In the absence of any explanation by the Secretary for Lands, the Committee concludes that the Department does not want the Committee to know what has occurred and therefore the documents have been hidden or destroyed.

49.12. On the 13/05/2003, Mr. Daniel Katakumb, the Director Land Management Division of the Department of Lands and Physical Planning, wrote to the Government Printer enclosing Notices of Forfeiture of the subject land in 1999. The failure to advertise these notices at that time was excused as an administrative oversight.

49.13. For once, the Department of Lands and Physical Planning actually commenced a forfeiture proceeding for non-payment of Land Rental, but failed to proceed with it. The Committee cannot ascertain why the Lease should continue when the Leaseholder is in breach of its obligations. Even at this late stage, the Department was more intent on protecting the interests of the Grantee rather than the State.

49.14. The Committee is also concerned that this land has remained undeveloped and unimproved for six years. The Department has failed totally to enforce Lease covenants as it is required to do by the Land Act.

49.15. In respect of this particular Grant and issue of Lease, the Committee finds that the Secretary for Lands and Head of the Department of Lands and Physical Planning, both past and current has:

- Breached his obligations to ensure the timely and full collection of State revenue under the ***Public Finances (Management) Act.***

- Breached his duty to provide documents to this Committee under the ***Public (Finances) Management Act.***

- Committed an Offence under Section 112 (b) of the ***Public Finances (Management) Act*** by willfully neglecting to produce books, accounts or other documents when required to do so.

- Prima facie, breached Section 5 (a), (b), (c), (g), (h) and (i) of the ***Public Finances (Management) Act.***

- Failed to apply properly or at all the ***Land Act*** and to ensure that all legal steps were taken to protect the State.

49.16. The Committee makes recommendations and referrals concerning this matter, later in this Report.

50. ALLOTMENT 69 SECTION 229 HOHOLA.

50.1. This Grant of a State Lease well illustrates both the arrogant disregard of Departmental Officers for decisions of the Land Board and the Law and the failure of past and present Departmental Management to control or reverse or even acknowledge illegal dealings.

50.2. A **Special Purpose Lease** was granted to the Sisters of Charity in 1999 by Land Board 2014, for the purpose of building a hospice for the dying and, in particular, for HIV AIDS sufferers on this land. The Grant was Gazetted on the 23rd December 1999.

50.3. However, **Willing Pacific (PNG) Pty. Ltd**., applied for a **Town Subdivision Lease** ("TSL") in 1991.

50.4. A TSL can only be granted for five years. The Registrar ultimately gave Willing Pacific (PNG) Pty. Ltd. a **Residential Lease** over the land in 1999, despite the grant to the Sisters of Charity by the Land Board.

50.5. This Lease was for a 99 year period, despite the fact that the applicant had only applied for a five year Lease and that the land had been granted to the Sisters of Charity.

50.6. In doing so, the Committee concludes that the Registrar has completely ignored the Land Board recommendation and has acted unlawfully.

50.7. In the absence of documentary records, how this State Lease came to be issued is not known but the Committee concludes that the issue was unlawful as the land was Granted to the Sisters of Charity.

50.8. The TSL could and should not have issued in the absence of a Sub-divisional Plan and the actual provision of infrastructure on the land. Only when those services are established can such a Lease issue.

50.9. Once again, the State has lost land to private hands for no benefit, a Lease has been issued illegally, the Department has failed to take any steps to rectify the situation, the Land Rental is in arrears with no attempt to forfeit the Lease, the Improvement Covenant has not been complied with and the Department of Lands has done nothing to fulfil its statutory duties.

50.10. In short, the Department has allowed the Lessee to control the dealing instead of the Department controlling it.

50.11. An Improvement Covenant applied. It required the erection of buildings to a value of K 20,*000* ***"…from the date of registration of the transfer of the lease from Willing Pacific (PNG) Ltd to Department of Foreign Affairs and Trade……".*** This curious and meaningless covenant requires the Lessee to do nothing, but enables him to sit on undeveloped land for 99 years.

50.12. The Committee directed the Secretary to produce documents and records in respect of this Lease issue by Paras. 39, 40 and 41 of the Directive dated the 5th September 2005. See Schedule 3 to this Report.

50.13. The Land Rent records are reasonably complete but the records of the issue of the Lease and the proceedings of Land Board 2014 are incomplete and inadequate. In the view of the Committee the Department of Lands and Physical Planning has again deliberately refused to assist the Committee in its Inquiry.

50.14. The Committee concludes that the Lease issued to ***Willing Pacific (PNG) Ltd***. was given with no reserve price paid to the State, with Land Rent assessed at K 450.00 per annum for the first ten years – which means the unimproved value of the land was K 45,000.00 – an extremely low figure. Even on this valuation, the reserve price should have been K 27,000.00.

50.15. The Committee finds that the issue of this Lease was not transparent and is attended by illegality. The Lease was not advertised or tendered, but simply issued in defiance of the Grant by the Land Board.

50.16. During the course of the Inquiry into the Department of Lands and Physical Planning by the Public Accounts Committee, the Committee received many reports of gross delay by the Department in answering correspondence or dealing with the public – particularly in dealing with matters of complaint or where illegal or suspect transactions were involved.

50.17. The Sisters of Mercy have been writing to the Department seeking rectification of their Grant for **five years** and, until recently, received no response at all.

50.18. A letter was finally received from Mr. Daniel Katakumb on the 27th June 2005, advising that ***Willing Pacific (PNG) Ltd*** had indefeasible title and that the Sisters should buy the land from that company. This statement is wrong in law. Clearly the Department is not intending to rectify the grant according to law, but are content to act as a sale agent for the Leaseholder.

50.19. The Department has failed to action the Land Board Grant in any way. No letter or publication of the Grant has been made. No attempt to forfeit the land has been made and the legal obligations on the Department have been ignored in favour of an unlawful Lessee.

50.20. Why this should be the case is a matter for conjecture, but the Committee considers that the Departmental failures are consistent with either gross incompetence or corrupt dealings – or both. Whatever the truth, the situation is unacceptable and the Committee detects no will in the

Department to change the culture of indolence and apathy – unless forced to do so.

50.21. The Committee makes further recommendations and referrals in respect of this matter later in this Report.

51. PART 3 - PERFORMANCE OF THE DEPARTMENT OF LANDS AND PHYSICAL PLANNING 2002 – MARCH 2006.

51.1. The Committee next examined randomly chosen Grants of State Leases made during the period 2002 – March 2006 inclusive, to establish the truth of assertions made to the Committee by the Secretary for Lands and Physical Planning, that the Department had improved its governance and systems to eradicate illegal practices.

51.2. The Committee cannot detect any improvement in the performance of the Department in the control of illegal dealings or protection of the State and its interests.

52. PORTION 1555 MILINCH GRANVILLE, FOURMIL MORESBY, NATIONAL CAPITAL DISTRICT.

52.1. The issue of this State Lease shows that the malpractices of the past still exist with no attempt by the Department to stop them.

52.2. This is a large and particularly valuable block of land at the end of Chesterfield Street, Ela Beach.

52.3. By Gazettal Notice G17 of the 18th November 1999, a company called **Kembis Holdings Ltd**. was granted an **Urban Development Lease ("UDL")** over the land by Land Board 2012.

52.4. The UDL expired after five years – in 2004.

52.5. By Gazette Notice G137 dated the 15th September **2005**, Kembis Holdings Ltd. was granted a renewal of the UDL. This Notice records the decision to renew as being made by Land Board Meeting 3/2004, Item 23.

52.6. Land Board Meeting 3/2004 was a Morobe Land Board, held in Lae. Item 23 is a call for Tender for a Business (Commercial) Lease over Allotment 72 Section 336 (Tentsiti Settlement) City of Lae, Morobe Province, Tender No. 25/2003.

52.7. It was not Portion 1555 Granville.

52.8. Legitimate Grants from this Land Board were Gazetted on the 16th September 2004.

52.9. The Committee notes that the Gazettal Notice granting the renewal of the UDL to Kembis Holdings Ltd. was actually published a year later – in 2005.

52.10. The Committee cannot locate any Land Board that decided any such renewal.

52.11. There was apparently no call for Tender, no tender, no sitting of a Land Board, no power to renew, no tender price, no reserve price and no compliance with the original UDL.

52.12. The State has been again deprived of a valuable tract of land with no advertisement, no tender, no transparency and no basis in law.

52.13. The State has received no revenue, no Land Rental and no development has taken place at all on this land.

52.14. The Committee notes that the Chairman of the Land Board, Mr. Francis Tanga, apparently signed the Gazettal Notice in 2005. He has no power to do so.

52.15. This is an unlawful Gazettal, an unlawful Grant and an unlawful issue of a State Lease.

52.16. The Committee concludes that if the Chairman of the Land Board did sign the Notice, he must have known that the matter was never before the Land Board and no decision had been made.

52.17. This illegal issue was sanctioned by the Department with no or no adequate inquiry into the legality of the purported Grant.

52.18. The Department of Lands and Physical Planning have taken no steps to reverse or remedy this illegal issue and appear not to have detected the illegality at all.

52.19. Clearly, the vested interests of a speculator have been favoured over that of the State and the citizens of Papua New Guinea.

52.20. The Committee concludes that, despite the assurances of the Secretary for Lands to the effect that the Department of Lands and Physical Planning had eradicated fraud and maladministration since 2002, abuses continue to the detriment of the State and citizens of Papua New Guinea.

52.21. The Committee makes findings and referrals in respect of this matter later in this Report, but does consider that every officer of the Department involved in this illegal issue of Lease and the Chairman of the Land Board should be removed from the positions they hold.

53. PORTION 2415 MILINCH GRANVILLE FOURMIL MORESBY, PORT MORESBY, NCD.

53.1. This land is located on the top of Burns Peak.

53.2. By decision of the Native Land Commission the land was and still is customarily owned.

53.3. On the 08th September 2005, the Department of Lands and Physical Planning issued a Licence Numbered 006/2005 SR to a company called **Global Transfers Ltd** to occupy the land and perform "feasibility studies". The Licence was issued under the hand of Mr. Romilly Kila Pat.

53.4. A Licence can only issue in limited circumstances – and not over Customary Land. We understand that the licensee has taken an application to the Physical Planning Board to obtain Town Planning Approval – Customary Land cannot be so considered.

53.5. This issue of the Licence is unlawful and has been made during the tenure of the current Secretary for Lands. Appeals from the putative Landowners to the Department resulted in an agreement to review the Licence, but no apparent action has occurred since the Appeal was lodged in 2005.

53.6. Again, the Committee does not accept that change has occurred in the Department of Lands since 2002 and that there are still deep problems of incompetence, illegality and negligence within the Department.

54. PORTION 2399 MILINCH GRANVILLE FOURMIL MORESBY, PORT MORESBY, NCD

54.1. This land is predominately or substantially Customary Land situate at the top of Burns Peak.

54.2. By Gazette Notice G121 dated the 18/08/2005, entitled "**Notice under Section 69 (2) (d) Exemption from Advertisement"** the Lands Department preceded a Grant to Garamut Enterprises Ltd.

54.3. This land was somehow rezoned to **"Subdivision Zone**" – which is impossible given that it is still Customary Land. Further, the exemption meant no competitive tender and no revenue to the State.

54.4. Moreover, in the rush to exempt the land, the Department Gazettal notice actually preceded the Zoning Gazettal, ignored the three month appeal period and was incorrect in that it related to all Portion 2399 – not just the southern part which was the subject of the application for rezoning.

54.5. Once again it seems that Customary Land has been given away by a Department apparently unable to read Plans and Survey maps. This is not acceptable.

54.6. The Landowners have referred this matter to the Secretary in August 2005 but have received no response.

54.7. The Department does not respond to letters or petitions and the State and its citizens continue to suffer loss as a result of this attitude.

54.8. The Committee has examined Departmental performance on a number of occasions since 2002 and we have been told of plans and strategies to improve the Department and how effective the current stewardship has been in eliminating abuses.

54.9. The Committee does not agree.

54.10. We see no change. We see no improvement in performance and, we suspect, no lessening in unlawful allocations of Leases and land. We see no improvement in revenue collection. We see no change in the Departmental failure to protect the State or its assets**.**

54.11. The Committee does not consider that further questioning or Directives will change anything – because the current management cannot and will not do what is required. Significant action is needed from the Parliament to force change on the Department.

55. PORTION 2228 MILINCH GRANVILLE FOURMIL PORT MORESBY:

55.1. This particular transaction is addressed later in this Report, but came before the Department in 2005 in suspicious circumstances.

55.2. This land was reserved for the development of a Fire Station. It was taken from the State and given for no payment to the State by the Lands Board and the Department of Lands.

55.3. The Committee finds that the agenda for Land Board 2005 listed 134 matters. That Land Board sat on the 21st and 22nd January 1999.

55.4. On the 29th October 1999 the Grant of a **Business (Light Industrial) Lease** by that Land Board to **Tomonga Holdings Ltd**. was gazetted as Land Board Item **135** – an Item which never existed.

55.5. Moreover this was State Reserved Land. Any grant of the land would conflict with a **Certificate Authorising Occupancy of Land No 2033**, granted in 1992, whereby this Portion was handed to the Office of the Prime Minister to establish a Fire Station.

55.6. On the 20 May **2005** (during the tenure of Mr. Kimas as Secretary) the Department of Lands and Physical Planning issued a State Lease in respect of Portion 2228 Milinch Granville Fourmil Port Moresby. – thereby confirming the unlawful Grant made six years before, not by a Land Board but by a forged and fraudulent Gazettal Notice.

55.7. To compound the Departmental failure, the Committee finds that the Department had a clear understanding that this Gazettal Notice was fraudulent well before the actual issue of the State Lease in 2005.

55.8. Moreover, the Lease issued by the Department shows the Lease as commencing on the 03/08/1999 but there was no Gazette of that day. The Lease is false and breaches Section 81 **Land Act.**

55.9. Not only did the Department take no steps to protect the position of the State, but actively connived and abetted the illegal issue of the State Lease some six years later.

55.10. The Committee finds that this transaction is an excellent example of both the incompetence of Departmental management to control its own staff and the impunity and immunity with which the Departmental officers engage in corrupt activity.

55.11. The Committee finds that the much vaunted "new systems and traps" cited by the Secretary for Lands are either imaginary or ineffective – or probably both.

55.12. By co-incidence, on the day of the Inquiry by the Committee into this transaction, this same unimproved block of land was advertised for sale in the daily National newspaper for K 2.5 million. No development has taken place in six years; the State has lost a very valuable block of land and has received no revenue at all from the process.

55.13. Further, the interests of a private speculator have again been given precedence over the legal rights of the State – by the States own Officers.

55.14. The Committee concludes that every Officer involved in this transaction up to and including the Secretary of the Department should be removed and referred to the Royal Papua New Guinea Fraud and Anti-Corruption Squad for investigation.

55.15. Regrettably the Committee must report that this incident is not an isolated one.

55.16. The Committee makes further findings and resolutions in respect of this incident later in this Report (infra).

56. PART 4 - ANALYSIS OF LAND BOARDS 1999 – 2005.

56.1. The Papua New Guinea Land Board is a statutory Board constituted under the ***Land Act***.

56.2. It is arguably one of the most powerful Statutory entities in Papua New Guinea.

56.3. The Board is responsible for the allocation of Land and the consideration and granting of tenders for State Leases.

56.4. As land has become more scarce, so the power and the importance of the Land Board has increased.

56.5. However, at the same time, the quality and transparency of decision making and performance by the Land Board has decreased.

56.6. The performance of the Land Board is integral to the operations of the Department of Lands and Physical Planning. Almost everything that goes to or comes from the Department is considered by the Land Board.

56.7. Equally, matters going to or coming from the Land Board are considered and approved or actioned by the Department.

56.8. The Committee considers that incompetent or illegal practices cannot exist in one of those entities without the co-operation or connivance of the other.

56.9. The Board plays a vital role in the economic development of the country. Membership of the Land Board requires high standards of probity, efficiency, experience and accountability.

56.10. The Committee concludes that, in the last decade, the performance of the Land Board and certain of its Members have failed to meet these standards.

56.11. The Committee concludes that many of the problems manifested in the Department of Lands and Physical Planning can be traced to the decline in the performance of the Land Board in the period 1995 – 2003.

56.12. In its turn, much of this decline in performance and honesty was directly caused by political interference in and pressure on the composition and workings of the Land Board.

56.13. The Committee chose certain Land Board meetings at random, to consider the quality of performance of the Land Board over the last ten years.

56.14. The Committee concludes that, while the statistics show a small improvement in 2004 – 2005, the Land Board is not performing adequately, is subject to external influences, is directly responsible for illegal dealings and unlawful decision making in respect of Grants of Lease, fails to understand its role or the law that it is required to administer, fails to comply with procedural requirements and seems unaccountable to and uncontrolled by the Department.

56.15. The Committee detected a clear pattern of illegal conduct by certain Members – particularly Chairmen - of the Land Board over a long period and continuing to the present day.

56.16. The Secretary of the Department of Lands and Physical Planning in his evidence before the Committee, agreed with this finding.

56.17. The Committee is concerned that the Land Board Members are not adequately trained or experienced to competently carry out their function and overwhelmingly owe their appointments to political patronage rather than merit.

56.18. The Committee received into evidence a Handbook for the use of the Land Board. This is apparently the only training or reference manual available to the Board. It is the opinion of the Committee that the material is inadequate and outdated.

56.19. The Committee will make further findings and recommendations in respect of the Land Board (infra).

56.20. The Committee considered the following randomly chosen Land Board meetings:

57. PAPUA NEW GUINEA LAND BOARD NO. 2005 – ITEMS 130, 131, 132, 133 AND 134.

57.1. This meeting is a good example of the incompetent and careless approach taken by Land Boards to the procedural requirements for its meetings.

57.2. It also clearly shows Departmental failures to control Land Board excesses by refusing to implement Grants which were unlawfully made or, if implemented, to cancel or forfeit subsequently issued Leases.

57.3. These five items were added to the Land Board agenda by Gazette Notice dated the 20th January 1999 – and the Land Board convened on the 21st and 22nd January 1999.

57.4. The Committee finds that Section 58 (3) of the ***Land Act*** was therefore not complied with and that these five items were unlawfully considered. This Section requires the Land Board to meet not less than seven days and not more than 42 days after the publication of the agenda for a particular meeting.

57.5. The purpose of Section 58 (3) is to give members of the public knowledge of and the opportunity to participate in the hearing of any Item and thereby assures transparency and a maximized return to the State from a Grantee best able to develop the land – not mere speculators.

57.6. The Grant of Items 132, 133 and 134 were formalized by Gazettal at Page 4 of the National Gazette G39 dated the 17th March 1999 and three **Business (Commercial) Leases** were issued despite the fact that:

i) The Agenda items were not lawfully before the Land Board; and

ii) The land was and still is zoned "Open Space" at the time, meaning that the land was public land and had not been revoked – this contravenes Section 67 of the ***Land Act 1996***; and

iii) Allotments 14, 15, 16 and 17 Section 122 Hohola were not then and are not now the subject of a registered Plan of Survey and could not have been Granted.

57.7. Further, Land Board 2005 (which convened on the 21st and 22nd January 1999) was later the subject of a one page Gazette on the 29th October 1999 which belatedly:

i) Corrected the description of the land the subject of Item 131, the incorrect Grant of which had been Gazetted on the 17th March 1999; and

ii) Gazetting the Grant of a **Business (Light Industrial) Lease** over Portion 2228 Milinch Granville, Fourmil Moresby to Tomonga Limited, citing **Item 135** of the Land Board No. 2005.

57.8. The Committee finds that the corrigendum Gazetted unlawfully one day before the Land Board 2005 convened, added just five items to the agenda – **there was never an Item 135**.

57.9. This grant was unlawful either because of fraud and/or because it conflicts with Certificate Authorising Occupancy of Land No. 2033 (S/R) issued on the 23rd November 1993, whereby portion 2228 was handed over to the Department of Prime Minister and National Executive Council (PNG Civil Fire Service) for a new fire station.

57.10. The State has lost this land by the incompetence or corruption of the Department of Lands and Physical Planning.

57.11. As already stated by the Committee, the Departmental Secretary, Mr. Pepi Kimas, despite knowing of these illegalities, has done nothing to protect the position of the State, but rather permitted the issue of a State Lease to Tomonga Ltd in May 2005 – See Para. 34.42 et seq.

58. PAPUA NEW GUINEA LAND BOARD NO. 2006, (ITEMS 20, 101 AND 102).

58.1. The unlawful Grant of Leases over Allotments at Section 122 Hohola has been considered earlier in this Report (supra).

58.2. The Committee now considers the actions of the Land Board which purported to make these Grants of State Lease.

58.3. This Land Board granted a **Business (Commercial) Lease** over Allotments 2 and 3 (now known as Allotment 13 Section 122 Hohola.).

58.4. Allotment 13 Section 122 Hohola was zoned "Open Space" and the grant contravened the zoning of the land and Section 67 **Land Act 1996**. That Section requires State Leases to be consistent with zoning and physical planning decisions.

58.5. Further, the State and the public have been deprived of land reserved for public recreation.

58.6. Moreover, Allotments 14, 15, 16 and 17 were granted by Land Board 2005. It can be strongly argued that Allotment 13 Section 122 Hohola ceased to exist with the aforementioned Grants even though there is no

Plan of Survey of these four allotments – despite which, three Leases have been issued.

58.7. The Board then considered Items 101 and 102. It managed to allocate or grant the same land to two different applicants – this land is also Open Space land and should never have been before the Board at all.

58.8. Items 101 and 102 comprised applications by the NCDC seeking the grant of two **Special Purpose (Park Reserve) Leases** over Allotments 1 and 2 Section 122 Hohola.

58.9. These allotments ceased to exist with the registration of Survey Plans Cat Nos. 49/1867 and 49/1887 on the 10th July 1990.

58.10. Further, another applicant, Virgo No.65 Ltd also applied for a Grant of the land. In such circumstances, the respective applications should have been deferred.

58.11. Instead, Virgo No 65. Ltd. was granted a **Business (Commercial) Lease** over Allotments 2 and 3 now known as Allotment 13 Section 122 Hohola and the NCDC was granted two **Special Purpose (Park Reserve) Leases** over Allotments 1 and 2 Section 122 Hohola. Therefore, the grant to Virgo No. 65 Ltd and the NCDC conflict, as both have been given different grants over Allotment 2.

58.12. The Registrar has actioned and Gazetted a Grant of Lease to Virgo No.65 Ltd when:

i) The land was Open Space incapable of being granted at all unless the Open Space classification was revoked – which it was not; and

ii) The grant conflicts with the grant to the NCDC and zoning as Open Space; and

iii) The State has been wrongfully deprived of land; and

iv) Section 67 of the **Land Act** has been breached.

58.13. 150 matters were Gazetted for consideration by Land Board 2006. Nevertheless, by Gazettal notice dated the 23rd September 1999, a corrigendum numbered **151** to Land Board 2006 was published. This Grant was for relaxation of the Improvement Covenant over Allotment 2 Section 429 Hohola.

58.14. The corrigendum adding Item 151, was Gazetted on the 22nd October 1999 – seven months after the Land Board convened in March 1999 and one

month after the Grant in favour of Waim No. 92 Ltd. purporting to derive from Land Board 2006 (Item 151) had been Gazetted. The Committee have established that this was the portion of land which featured so prominently in the NPF Inquiry.

58.15. The Committees Inquiry into this Land Board has been significantly impeded by an almost total lack of any relevant records, files or documents.

58.16. The Committee directed the Secretary to produce all records, files and Gazettal Notices relating to the deliberations and decisions of PNG Land Board 2006 by Directive 2 of the 5th September 2005. See Schedule 3 to this Report.

58.17. The Secretary failed to produce anything.

58.18. This Land Board considered 150 matters. It was the biggest Land Board ever, yet not a single piece of paper can be found in the Department.

58.19. The Committee is concerned at a handwritten note produced by the Department, which reads

"Land Board 2006 withdrawn and was not convened / held at all, when and how did these items (items 20, 101 and 102) were deliberated (sic)**"**

58.20. The Committee considers that this comment well illustrates the depths to which the Land Board had sunk by 1999. Illegality and incompetence attended the Land Board decision making processes to the detriment of the State and all citizens of Papua New Guinea.

58.21. These excesses were either not noticed by the Department or were ignored. That situation still prevails.

58.22. The Secretary for Lands, Mr. Pepi Kimas, caused a notice to be published in the local media in **2002**, stating that 12 illegal Leases had been issued by the Land Board and the Department. Yet he has failed to do anything at all to rectify the situation. When questioned by the Committee on this failure, the Secretary proffered no acceptable explanation at all for his inaction.

58.23. In the opinion of the Committee, the Department should be rid of officers that cannot or will not understand or attend to their duties. The Committee makes further referrals and recommendations later in this Report.

59. PAPUA NEW GUINEA LAND BOARD 2014.

59.1. Sections 58 (1) and (3) ***Land Act*** clearly prescribe that the Agenda for a Land Board must be Gazetted not less that seven days before the sitting date of a Land Board.

59.2. This Land Board convened on the 1st October 1999, however the Agenda for this Board was Gazetted on the 28th September 1999 – and was followed by a corrigendum advising an additional 10 matters.

59.3. This corrigendum was Gazetted on the 30th September 1999.

59.4. The agendas were unlawfully Gazetted and the Land Board should have been deferred.

59.5. Further, Sections 58 (10) and 62 (1) **Land Act** prescribe a statutory appeal period of 28 days commencing from the date of notification. The notifications were issued on the 29th October 1999 – the appeal period expiring on the 26th November 1999.

59.6. Notwithstanding these requirements of law, the Grants from Land Board 2014 were Gazetted on the 8th November 1999. This was unlawful.

59.7. The Department of Lands and Physical Planning reassessed the grants from Land Board 2014 and a total of 27 Grants were Gazetted on the 23rd December 1999.

59.8. However the agenda for Land Board 2014 totalled 49 items – a total of 32 grants were improperly Gazetted on the 8th November 1999, of which 19 were included in the subsequent Gazettal on the 23rd December 1999.

59.9. Thirteen Grants were excluded and the status of those Grants is uncertain because they were Gazetted in the 28 day appeal period – but due to the failure to comply with Section 58, **all** Grants are invalid.

59.10. These unlawful Grants and issues of Leases open the State to liability from Leaseholders or purchasers. This meeting clearly shows that the Land Board had no ability to understand the terms of the Land Act or intention to obey the law.

59.11. The Department of Lands and Physical Planning failed to appreciate the invalidity of the Grants and has failed to take any steps to rectify the situation in the last six years.

59.12. The Committee reiterates its comments made in respect of Land Board 2006. It makes referrals and recommendations later in this Report.

60. PAPUA NEW GUINEA LAND BOARD NO. 2017

60.1. The Committee finds that this Land Board meeting is the most blatant example of fraud and criminal activity by the Land Board and certain of its Members.

60.2. The Committee also finds that the Department of Lands and Physical Planning has known of this illegal issue of Leases for six years, but has failed to take any remedial steps at all.

60.3. An agenda of 20 items were Gazetted on the 11th November 1999 and the 15th November 1999, for a Land Board meeting on the 24th November 1999.

60.4. The meeting was stopped by Mr. Morris Alalaku – then Departmental Secretary.

60.5. A further 17 items were added by Gazettal on the 2nd December 1999 and an attempt to reconvene this Land Board meeting was stopped again by Mr. Alalaku.

60.6. Despite the fact that the Land Board had not met, a grant purporting to derive therefrom was Gazetted on the 6th December 1999, by which Waim Ltd. was granted a relaxation of a Improvement .Covenant over Allotment 2 Section 429 Hohola. This Gazettal was utterly unlawful. This was the "NPF land" that featured so prominently in the NPF Inquiry.

60.7. Further, the Chairman Mr. Ralph Guise (dec'd), prepared a "Schedule" of Grants purporting to derive from Land Board 2017 for referral to the Government Printers Office over his own name when he was neither the Minister nor the Delegate of the Minister.

60.8. That "Schedule" was typeset for publication however, due to Lands Department intervention, the publication was stopped.

60.9. Despite the fact that the Land Board did not meet and that the bogus "Schedule" was not printed, the Department of Lands and Physical Planning subsequently issued at least two titles from this Land Board. They are:

State Lease Volume 23 Folio 182.

60.10. This was a **Business (Commercial) Lease** issued over Allotment 12 Section 122 Hohola (then "Open Space") in favour of Mr. Andrew Mald. Despite the illegality of this issue, it was signed off by the Ministers Delegate and the Registrar of Titles. To the credit of the Department it was subsequently cancelled.

60.11. However, a National Court decision restored the title to Mr. Mald after the Solicitor General failed to oppose the grant. Costs were ordered against the State together with a compensation award against the State.

60.12. The Committee cannot understand how this result could possibly have been obtained.

State Lease Volume 23 Folio 132.

60.13. This was a **Business (Commercial) Lease** over Allotment 5 Section 59 Town of Alotau in favour of PNG Deep Sea Fishing Ltd. Once again this was signed off by the Ministerial delegate and the Registrar of Titles.

60.14. Despite the fact that PNG Land Board 2017 did not meet, that the Gazettal of the Grants supposedly issuing from that Land Board did not occur, that the "Schedule" (although not printed) wrongly identified the land and that the Gazettal was **stopped** by Departmental intervention, State Lease Volume 23 Folio 132 comprising a **Business (Commercial) Lease** over Allotment 5 Section 59 Town of Alotau, did issue.

60.15. Given Jimmy Maladinas involvement in the company PNG Deep Sea Fisheries Ltd, NPF have lodged a caveat over the property. However, the value of a caveat over an unlawfully issued title is moot.

60.16. The Committee finds that certain Departmental Officers attempted to intervene and stop the Land Board and to prevent the illegal Gazettal and issue of State Leases.

60.17. However, more powerful Officers were intent on achieving a result for the Grantees utterly irrespective of the Law.

60.18. Once again, no attempt has been made to recover these lands for the State in the last six years, despite the fact that the current Secretary knew of the illegal issue and actually publicized it in the media.

60.19. The Committee will make further referrals and recommendations later in this Report.

61. PAPUA NEW GUINEA LAND BOARD 2026

61.1. The agenda for this Land Board (convened on the 25th May 2001) included a total of 31 items Gazetted on the 8th May 2001 and a further 14 items Gazetted on the 17th May 2001. A total of 24 grants were ultimately Gazetted.

61.2. Page 4 of the National Gazette G160 dated the 13th December 2001 Gazetted the Grant of a Business (Light Industrial/Hotels) Lease over Allotment 44 (previously Allotments 9,10,11 and 12 Section 7 Granville in favour of Kakbuk Investments Ltd. and advised that this grant related to **Item 43** of PNG Land Board 2026 – when there were only 31 items.

61.3. The Committee cannot find any evidence that a Land Board ever considered this matter at all.

61.4. The Committee can find no evidence that the Department of Lands detected this Gazettal or did anything about it.

61.5. The Committee reiterates its comments made in respect of Land Board 2006 (supra). The Department has failed to take any steps to recover this land. It failed to take any steps to prevent the unlawful issue of the Lease – in fact it actually issued and registered it.

61.6. The Committee makes recommendations and referrals in respect of this purported Grant later in this Report.

62. PAPUA NEW GUINEA LAND BOARD NO. 2033.

62.1. This Land Board considered 14 items lawfully Gazetted.

62.2. Item 14 was an application seeking a **Business (Light Industrial) Lease** over Allotment 16 Section 35 Boroko, the title of which had been forfeited by Gazettal dated the 25th January 2002.

62.3. This land was exempted from advertisement by Gazettal dated the 31st January 2002 and thence added to the agenda for the Land Board by Gazettal on the 18th February 2002 i.e. all within the 28 day period for appeal from a decision to forfeit a title.

62.4. The Land Board recommended that a **Business (Light Industrial) Lease** be granted over Allotment 16 Section 35 Boroko despite the fact that the land is zoned "Residential" in which case the Grant contravenes Section 67 of the ***Land Act*** and despite the fact that the property accommodates a total of 33 houses.

62.5. Again, the Land Board has failed to apply the procedural requirements of the ***Land Act*** and has delivered a Grant which was unlawful.

62.6. This is one of the few instances where the Department appears to have intervened and stopped the Grant – at the request of the original Leaseholder.

62.7. The Committee cannot understand why the Department could not do the same thing in other instances on behalf of the State.

63. SUMMARY

63.1. A comparative précis of Land Board performance during the period from 1993 – 2005 follows:

YEAR	NO. OF MEETINGS	NO. OF ITEMS CONSIDERED	MEETINGS PER MONTH	ITEMS PER MEETING
1993	23/26	1267/1283	1.92/2.17	55/49
1994	16	900	1.34	56
1995	31	1160	2.59	37
1996	19	723	1.59	38
1997	13	457/ 462	1.09	35/35
1998	6	370	0.50	62
1999	12	1070	1.00	89
2000	5	239	0.42	48
2001	6	335	0.50	56
2002	7	262	0.50	37
2003	9	365	0.75	40
2004	8	309	0.60	38
2005	11	490	0.90	45

63.2. The performance of the Land Board from 1999 to 2004 was poor.

63.3. In 19 months from August 2000 until April 2002, only 16 Land Board sittings were scheduled. The downward slide in performance continued until 2005, when slight improvement is noted in the first eight months of the year.

63.4. One sitting was a Special Land Board, five were Provincial Lands Boards of which one was deferred and another did not take place and two more - Meetings 2024 and 2027 - simply disappeared.

63.5. The Land Board convened eight times and considered 282 items – a poor performance.

63.6. The Board chaired by Mr. Ralph Guise (dec'd.) became notorious for the constant unlawful Grants of Land made by it. The Committee considers this reputation to be justified.

63.7. Political interference in the composition of the Land Board has crippled the Board in recent years. For example, on the 14th May 2004 a new Land Board was appointed and Gazetted on the 3rd June 2004 – G59 page 3. That Board lasted five days.

63.8. On the 8th June 2004, that Board was removed and another panel of Members appointed – National Gazette G64, Page 1. That Board lasted 37 days. On the 29th July 2004 another Board was appointed in National Gazette G87 page 2.

63.9. The net result of this instability was a Land Board that met only four times in 2004 and did not meet at all for eight months.

63.10. Although the Government has the right to make such appointments, the constant renewal process requires the new Board to re-learn the appropriate processes. During this period, productivity drops and the quality of decision making is poor.

63.11. Finally, during research for this Inquiry, it became evident that the Land Board in 2005 was dealing with many very old matters. The huge delay in bringing matters before the Lands Board inhibits development and commercial sales. In 2005, the Land Board considered 94 applications which were five years older or more. The oldest dated back to 1991!

63.12. However, the Committee does conclude that the Land Board is catching up on the backlog of tenders waiting for determination.

63.13. Also apparent to the Committee were very considerable delays in getting matters before the Physical Planning Boards. Some outstanding matters are years old. How can development occur if Zoning Applications and title applications or tenders are undecided?

63.14. The Committee concludes that at least the following matters must be addressed if the Land Board is to work effectively:

i) Matters been delayed for years before coming to the Land Board. This needs to be addressed immediately; and

ii) there seems to be no induction, training or resource material for new members of the Land Board; and

iii) there is no or no adequate Handbook, Standing Orders or Instructional Manual for members of the Land Board. How are members to learn or understand their roles and duties?

The Secretary for Lands was asked to produce all handbooks and guidelines for the Land Board. The Committee received one slim volume that in our view would be of limited value to any new member; and

iv) the Secretary and the Department failed to produce virtually any Land Board records at all. There appears to be no system of preservation or protection of records and it became clear to the Committee that neither the Department nor its officers placed any value or priority on record keeping. This is a matter of national importance and should be immediately attended to; and

v) systems to ensure timely and accurate and informed decision making by the Land Board must be implemented; and

vi) this Inquiry has shown a failure by the Department of Lands and Physical Planning to ensure either that Land Board decisions are implemented at all, to ensure that titles are issued strictly in accord with Land Board decisions or not issued where the Land Board acts unlawfully. Further, Leases were issued by the Department when the Land Boards had not sat at all. A system of checks and some form of remedial intervention by the Department must be implemented; and

vii) the Committee notes that in 2004 political interference in the Land Board appointments resulted in the appointment of three Land Boards in three months and no Land Board sittings for eight months. This should not occur; and

viii) the Department should have a greater ability to advise on or approve candidates for appointment to the Land Board; and

ix) members should be chosen for their merit, experience, training and qualification; and

x) despite the fact that Departmental officers were wrongly issuing titles on the basis of non-existent Land Board decisions and despite the fact that those officers are still employed in the Department, we see nothing in the material before this Committee that suggests any action against these persons at all. Disciplinary and criminal prosecutions should be immediately and forcefully applied to these Officers; and

xi) it is clear to the Committee that Chairmen of the Land Board have exceeded their powers and abused their office. The Department appears to have ignored these excesses or not to have known about them. Constant scrutiny and checking (particularly of the National Gazette) should occur in the Department and systems of report and intervention to stop these illegal practices should be implemented; and

xii) the Committee concludes that the Land Board has failed to understand or to comply with Zoning decisions, Planning decisions or the terms of the Land Act and other Statutes relevant to its functioning. This lack of resource, training and knowledge must be addressed.

63.15. The Committee accepts that the Department has referred several officers for disciplinary action for minor theft, misrepresentation and breaches of procedural practices. For this we congratulate the Department but we find nothing to suggest that it has tackled the huge fraud and corruption problems in the Department.

63.16. Despite appearing before this Committee now for years we see no improvement at all. What the Committee has heard is every excuse imaginable to avoid doing the very task that the Department exists to perform i.e. manage and advance the National Estate and fiscal position by controlling Land dealings and acquisition to the benefit of the State and its citizens.

63.17. The Committee also concludes that there is no apparent accountability at all for that failure. We do propose to make recommendations for significant change later in this Report.

63.18. Finally, the Committee gave Notice to Produce documents, files and records pertaining to these Land Board meetings. The Secretary for Lands produced two files only and claimed to have no records of other Land Board meetings. The Committee does not accept this.

63.19. The Committee finds that the Department of Lands and Physical Planning has failed to preserve and store records and files and, by the admission of the Secretary, has allowed Departmental Officers to corruptly destroy files and records of suspect dealings.

64. FAILURE BY THE DEPARTMENT OF LANDS & PHYSICAL PLANNING TO CO-OPERATE WITH THE PUBLIC ACCOUNTS COMMITTEE.

64.1. Throughout this Report, the Committee has recorded consistent failures by the Secretary of the Department of Lands and his staff to either produce in part or at all documents, files and records when ordered to do so.

64.2. The Secretary did produce some scant records in response to a Notice to Produce. A record of that response is annexed to this Report in Schedule 2.

64.3. The Committee extracted a few more documents after referring the Secretary for prosecution for failure to comply and issuing a Summons to Produce, but these were incomplete, where they were produced.

64.4. The Committee then referred the Secretary for prosecution for failure to comply with a Summons to Produce and a few more documents were delivered to the Committee on the last day of Inquiry. These were also scant and inadequate.

64.5. That a Parliamentary Committee should need to refer a Head of Department for prosecution before co-operation is forthcoming (and then only grudging and partial co-operation) is not acceptable.

64.6. The duties of a Head of Department toward the Public Accounts Committee are clearly set out in the ***Public Finances (Management) Act*** and the Secretary acknowledged that he was aware of those obligations.

64.7. The Committee has made three conclusions from these failures. They are:

i) That the Head of Department has no control over his staff and cannot or would not compel them to produce documents or assist the Committee; and

ii) the Department has failed to preserve, store or protect files, documents and records and has allowed records to be removed or destroyed; and

iii) as addressed earlier in this Report, the Department deliberately and intentionally failed to co-operate with the Public Accounts Committee Inquiry.

64.8. The classes of documents sought by the Committee are fundamental and irreplaceable records of the management of State Land, State Leases, proceedings of the Land Board, Zoning decisions, Planning decisions and other documents of similar type. They should be readily available and securely stored.

64.9. The Committee concludes that urgent attention must be given to this problem by Government and makes certain relevant recommendations in this Report (infra).

65. POTENTIAL LIABILITY OF THE STATE

65.1. Throughout this Inquiry and Report the Committee considered the potential liability of the State for the failures of the Department of Lands and Physical Planning.

65.2. The Committee concludes that the incompetence and outright corruption which has existed in the Department for years has exposed the State to liability.

65.3. That liability may arise in a number of ways, but the Committee has identified at least the following areas of risk:

i) The Government must identify and deal with illegally issued State Leases if credibility is to be restored to the Land Registration system in Papua New Guinea. In the event that unlawful State Leases are cancelled or revoked by forfeiture, successors in title, original Leaseholders and the finance industry may look to the State for their remedy.

The Committee concludes that there may be many such State Leases and while the possible extent of State liability is unknown, it is likely to be considerable. Section 122 Hohola is an example of this category.

ii) Where State Leases have been issued inconsistently with Zoning or Planning decisions, Leaseholders or successors in title have no valid Lease at all. Moreover, they have a State Lease document that may not allow them to do anything with the Land.

These Leases should never have been issued in the first place and the State may have a liability to Leaseholders and their successors in Title for initial outlay and failed expectation. Again Section 122 Hohola and Portion 1597 Paga Hill are examples of this category.

iii) Banks or other lenders may, in the event that the State ever cancels or forfeits illegal grants of State Leases, be deprived of their Security for no reason of their making.

This situation did arise in **Emas Estate Development Pty. Ltd. v. The Secretary for Lands and Physical Planning (1993) PNGLR 215**. The State should seek advice from its legal advisers in this regard.

65.4. In respect of the potential liability of the State arising from actions and decisions of the Department of Lands and Physical Planning, the Committee makes certain recommendations later in this Report (infra).

66. RELATIONSHIP BETWEEN THE BANKING AND FINANCE INDUSTRY AND THE DEPARTMENT OF LANDS & PHYSICAL PLANNING.

66.1. The Committee, having considered the performance of the Department of Lands and Physical Planning over many years, expressed its concern that little confidence could be had by the banking and finance industry in the integrity of the Land Registration System in Papua New Guinea, nor in the value of State Leases as security – given the failures of the Department to lawfully issue State Leases or ensure that issued State Leases are lawful.

66.2. The Committee questioned the Secretary on this topic. The Secretary showed little understanding of the importance of his Department in this regard and seemed unable to appreciate that unlawful titles may not give any security at all for loans.

66.3. The Committee had before it evidence that Banks are reluctant to release original titles to the Department because the Department loses documents and that Legal firms employ full time clerks to deal with the Department because the level of Departmental performance and response to the public is poor.

66.4. The Committee concludes that a deeper Inquiry is needed into this matter. The Register should be cleansed of illegal or unlawfully issued State Leases by a process of forfeiture or cancellation.

66.5. This will restore confidence in the system and reassure lenders as to the quality of their security.

66.6. The Department needs to address urgently its standards of service, security and competence.

67. THE PERFORMANCE OF THE DEPARTMENT OF LANDS & PHYSICAL PLANNING AND NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT

67.1. The Department of Lands and Physical Planning manages the most important asset in the country – land.

67.2. While the Department only oversees approximately 3% of the land mass of the country, that land is the basis of all economic and social development in Papua New Guinea.

67.3. The Committee cannot find that the Department is capable of competent management of even this tiny portion of the country. State land is stolen from or given away by the Department for no return to the State. The Department of Lands is incompetent in nearly all its areas of operation – particularly in its failure to control its own Officers.

67.4. The Committee considers that the Department of Lands is the most crucial agency in the planned and progressive building of the national economy and social development. If land acquisition and development is properly controlled, the development of wealth, employment and therefore improvement in all social indicators will follow.

67.5. The Committee considers that the Department and all its officers should be aware of this vital role and be imbued with the task of competently managing their statutory tasks.

67.6. The Committee concludes that Officers at all levels in the Department of Lands and Physical Planning lack this understanding and neither know nor care about the important national role that they should play.

67.7. Further, the Committee finds that Departmental Officers do not understand that they control land dealings – land dealings and dealers do not control the Department. It is not their purpose to do the bidding of private speculators at the expense of the State.

67.8. Neither is the Department a Real Estate Agent for the unplanned or random allocation of State Land for no benefit to the State, either social, fiscal or developmental.

67.9. The Department has declined over the last ten years to a point where it cannot manage even simple statutory functions – such as collecting Land Rent. The Department is held in low esteem and it is clear to the Committee that corruption and criminal collusion by senior managers is an accepted incident of the Departments functioning.

67.10. How then can other employees be expected to perform to any better standard in the absence of real Leadership?

67.11. The Committee considers that this Departmental disintegration is a matter of National importance in that economic progress and improvement is retarded by the Department.

67.12. The State must take immediate action to force change in the Department and this Committee makes further recommendations in this regard in this Report (infra).

68. RESOLUTIONS OF THE COMMITTEE

68.1. The following Resolutions were made unanimously by the Public Accounts Committee:

1. The Committee will make a Report to Parliament under Section 86 (1) (c) and (d) **Public Finances (Management) Act 1995** with findings and recommendations concerning the Department of Lands and Physical Planning.

2. The Committee concludes that the Department of Lands and Physical Planning is not functioning to any acceptable standard and its Management is ineffective. The Department has failed to carry out its duties and has failed to protect the interests of the State and the citizens of Papua New Guinea.

3. The Committee concludes that there is an urgent need to restaff and restructure the Department of Lands and Physical Planning and the Management of that Department. This is a matter of National importance.

4. The Committee recommends to the Government that assistance be sought from foreign aid donors to recruit and retain expert managers, trainers and administrators to assist the Department to become functional and effective.

5. That the Government review relevant statutes and, if appropriate, amend them to assist the restructuring of the Department and to restore confidence to the Papua New Guinea Land Registration and administration system.

6. That the Government immediately commission a Report addressing potential exposure of the State to claims arising from Departmental actions or inactivity, into revenue losses and methods of collection, into the recovery of State Land wrongly alienated into private hands, into customary land wrongly alienated and preservation of such lands in the interim.

7. That the Government immediately commence the process of reviewing all State Leases granted by the Land Board and issued and registered by the Department of Lands and Physical Planning in the period 1996 – 2006 with the intention of identifying those State Leases that were unlawfully issued.

8. That the Government immediately cancel all State Leases identified as unlawfully Granted.

9. That the Government immediately commence the process of forfeiting all those State Leases, the Lessees of which are in breach of any Lease Covenant.

10. That the Government immediately commence recovery of all Land Rentals outstanding for more than 90 days.

11. That the Government take immediate action to recover Portion 1597 Paga Hill and declare and preserve that land as National Park.

12. That the Committee accepts the findings of the Office of the Auditor General for the years 2000 – 2004, and will report to Parliament on necessary changes to those matters set down in Section 86 (1) (d) (i – iv) of the ***Public Finances (Management) Act 1995***.

13. To endorse and accept the findings set forth in Para. 69 herein.

14. To accept and endorse the referrals set forth in Para. 70 herein

15. That the Chairman brief the Minister for Lands on the findings and resolutions of this Committee.

69. FINDINGS:

69.1. As to the performance of the Department of Lands and Physical Planning, the Committee makes the following findings:

1. The Committee, on all the evidence before it, finds that the Department of Lands and Physical Planning has:

a) failed to protect the State against loss of revenue through failure to collect land Rental in a timely manner (or at all). The losses to the State are very significant ; and

b) failed to forfeit land for unpaid Land Rental or other breach of covenant, thereby contributing to loss by the State; and

c) failed to forfeit or cancel titles to land which the Department knew or should have known were fraudulently or corruptly issued; and

d) failed to correct Gazettal notices of issue of titles which the Department knew or ought to have known were fraudulent, forged or otherwise illegal; and

e) failed to take any or any adequate steps to protect the State and its land from fraudulent dealings; and

f) failed to maintain adequate internal controls and systems to ensure timely collection of revenue; and

g) failed to action in a timely fashion or at all, recommendations or directions of the Auditor General, to the detriment of the State; and

h) failed to action adequately or at all, directives or recommendations of the Public Accounts Committee, to the detriment of the State; and

i) failed to perform its Statutory duties under the Land Act adequately or at all; and

j) failed to perform its statutory duties under the ***Public Finances (Management) Act*** adequately or at all; and

k) failed to protect the State against claims for loss and damage or compensation for losses arising from the fraudulent issue of land titles; and

l) failed to take any or any adequate steps to protect the interest of the State or to protect the State against liability arising from illegal dealings by Departmental Officers of which the Department was or should have been aware; and

m) failed to control lawfully or at all, the agendas of Land Boards to ensure that only properly and lawfully available land tenders were considered by the Land Board; and

n) failed, when the Department knew of illegal decisions or dealings by the Land Board, to prevent Gazettal of illegal grants or registration of illegally issued Leases; and

o) promoted private interests over those of the State and its citizens; and

p) actively tolerated collusion and corrupt practices by its own staff; and

q) exposed the State to claims for loss, damage or compensation arising from land titles fraudulently or unlawfully issued ; and

r) failed to take any or any reasonable action to rectify the issue of fraudulent titles; and

s) failed to store, keep or protect documents, records, files and correspondence properly, adequately or at all; and

t) failed to produce documents, records and files when ordered to do so by the Public Accounts Committee; and

u) failed to cooperate with the Public Accounts Committee; and

v) failed to comply with or to apply the requirements of the Land Act and other Statutes, the administration of which is the duty of the Department; and

w) permitted staff members corruptly to destroy or remove files, records and documents; and

x) negligently and unlawfully allowed the transfer of State and Reserved Land to private ownership; and

y) failed to manage properly or at all land allocation, payments, forfeiture and all other aspects of land management; and

z) caused loss to the State by failing to levy accurately or at all, tender or reserve prices for land allocation; and

aa) caused loss to the State by failing to levy accurately or at all, Land Rental payments to favoured Grantees and Leaseholders; and

bb) failed to defend adequately or at all litigation arising from Departmental mismanagement, illegality or negligence; and

cc) failed to establish and maintain a competent system of management and accountability; and

dd) failed to properly and adequately account for public funds and revenue; and

ee) failed to implement systems to comply with the terms of the ***Public Finance (Management) Act*** – particularly Section 5 thereof; and

ff) issued **Urban Development Leases** over Reserved Land with out requiring compliance with any Lease or Licence covenants; and

gg) tolerated revocation of certain lands with no legal basis, to the detriment of the State; and

hh) failed to read or understand Zoning and Land Use restrictions before issuing Leases; and

ii) failed to maintain Zoning records or Land Use records and failed to produce same to the Public Accounts Committee; and

jj) issued Leases to more than one recipient over the same land; and

kk) gave Public land to speculators at no or no proper cost or price, thereby depriving the State of money and assets; and

ll) failed to carry out Land Board recommendations; and

mm) illegally issued Leases where no Land Board had either sat, deliberated or decided the matter; and

nn) ignored Land Board decisions completely; and

oo) generally become a distrusted, disorganized and chaotic Department incapable and disinterested in performing its function.

pp) failed to respond in a timely manner, or at all, to complaints or requests for intervention by citizens – particularly in cases of fraudulent issue of titles; and

qq) that the Secretary and his senior management have failed to correct abuses which they knew were occurring (e.g. the Secretary made a clear sworn admission that his staff were paid by unnamed parties to destroy documents and records and was clearly aware of at least twelve illegal dealings in land); and

rr) that the Secretary and his Management allowed abuses and corrupt dealings to continue with no apparent attempt to stop them; and

ss) that the Department deliberately obstructed the work of the Committee by failing to produce documents and records when ordered to do so. At best, this failure clearly demonstrated that the Secretary has no control over his staff;

2. That these failures (or any of them) have an immediate and deleterious effect on the economic development of the country. The Department of Lands in its quality of management of the National Estate is the most important arm of Government insofar as economic and social development is concerned.

3. That the failure of the Department to guarantee sound titles means that the finance and Banking Industries can have no confidence in land as security and investors can have no confidence that they have good title at all.

4. That the State cannot manage competently even 3% of the landmass which has been alienated. This does not bode well for the further mobilization of Customary Land.

5. That the Department has little credibility in the business sector. Banks will not send titles to the Department because they never get them back. Missing files and slovenly performance by the Department is a daily occurrence. This must be unacceptable to a Government which professes policies of economic development and investor confidence.

6. That the Department has, quite unlawfully, issued titles to State Reserved Land and National Parks. Moreover two such parcels of land examined by the Committee showed that the recipients of the titles had no ability to satisfy Improvement Covenants, pay Land Rental or do anything but sell the land for huge profits. The land was given away to speculators for no benefit to the State and to the detriment of the public who are deprived of the use of this land.

7. That, as a result of mismanagement and malpractice by the Department, the State has been deprived of revenue and assets. Failure to collect Land Rentals, failure to levy appropriate prices for land and the failure to prevent fraudulent dealings have so deprived the State for many years.

8. That the State has been exposed to significant losses by way of claims for damages and compensation by persons and companies deprived of titles, granted defeasible titles or who were otherwise the victims of fraud or malpractice in the Department.

9. That the Committee has only discovered a very small part of the corrupt and negligent practices within the Department. The Committee concludes that a much deeper Inquiry is warranted with a view to a complete restructure of the Department and replacement of the current management

10. That political interference in the Land Board has seriously impeded the work and the effectiveness of that Board.

11. That the Land Board performance in the period 1999 – 2005 has been poor, but that there has been a slight improvement in 2005.

12. That the Land Board requires immediate restructuring with an emphasis on controlling the actions of Chairmen and on making the Board transparent and accountable.

13. That training and resourcing of the Land Board is poor and needs urgent improvement.

14. That membership of the Land Board should be made strictly on merit and qualification – not political patronage.

15. The Committee concludes that the Department of Lands and Physical Planning and its Management are in such a state of failure, that a recommendation should move to the Public Service Commission and the Parliament to suspend the Secretary ans senior management pending a further Inquiry and their replacement with competent senior management or a senior management team charged with beginning the process of rebuilding the Department.

16. That the current Government has inherited a Department which is incompetent and disloyal to the State and its citizens. It is the product of a decade of political and criminal influence on Departmental officers and exists to serve the interests of a few. Honest or competent Officers , seemingly, have little or no influence in the workings of the Department

70. REFERRALS

70.1. The Committee resolves that the Secretary of the Department of Lands and Physical Planning, Mr. Pepi Kimas, is referred to the Office of the Public Prosecutor, the Royal Papua New Guinea Constabulary and the Office of the Ombudsman for investigation and possible prosecution for the following breaches of the ***Public Finances (Management) Act,*** in that he:

i) failed to comply with Section 5 (1) (a) in that he has not complied with nor ensured that his Department has complied with the terms of the ***Public Finances (Management) Act;*** and

i) failed to comply with Section 5 (1) (b) in that he did not ensure that all records and accounts relating to the functions of the Department are properly maintained; and

ii) failed to comply with Section 5 (1) (g) in that he failed to safeguard property of the State; and

iii) failed to comply with Section 5 (1) (h) in that fees, taxes or charges for which the Department is responsible were not collected promptly and to the fullest extent. This includes Land Rental, reserve price and tender prices; and

iv) failed to comply with Section 5 (1) (i) in that fees, charges or taxes for which the Department was responsible were not reviewed at least once in every year; and

v) failed to comply with Section 5 (1) (j) in that he failed to submit information to the Public Accounts Committee when directed by Notice and Summons so to do.

70.2. The Departmental Secretary is also referred for disciplinary action under the Public Service General Orders for breaches of the ***Public Finances (Management) Act*** and failure to comply with Notices and Summonses from the Public Accounts Committee, for which he has already been referred.

70.3. The Committee refers the Departmental Secretary to the Office of the Public Prosecutor for investigation and possible prosecution for breach of Section 112 (1) (b) ***Public Finances (Management) Act*** in that both persons refused or willfully neglected to produce documents when required to do so by the Public Accounts Committee.

70.4. The Committee refers the Secretary to the Public Service Commission for consideration of the imposition of a surcharge under Section 102 (d), (e) and/or (g) ***Public Finances (Management) Act*** – particularly in relation to

the continuing failure to collect Land Rentals and to protect State assets, thereby constituting a deficiency in public monies and State property.

70.5. The Committee refers the Secretary to the Public Service Commission and the Department of Personal Management for investigation and possible disciplinary action under the ***Public Service (Management) Act 1995*** and General Orders made thereunder for failure to assist the Public Accounts Committee and failure to comply with the terms of the ***Public Finances (Management) Act***– See Section 113 ***Public Finances (Management) Act.***

70.6. The Committee concludes that certain land transactions made by the Department of Lands and Physical Planning be referred to the Offices of the Solicitor General and the Attorney General for appropriate action to protect the interests of the State. The Paga Hill land, the twelve illegal titles identified by the Secretary as fraudulently issued, those titles issued on the authority of a non-existent Land Board etc are examples. At the very least the Solicitor General may consider caveating titles, pending further action.

71. RECOMMENDATIONS;

71.1. The findings and resolutions of the Committee, to be effective, need to be actioned by the Government, without delay.

71.2. Replacement of incompetent Departmental management, implementation of competent accounting and control systems, establishment of the precise number of unlawful Leases issued, establishment of likely State Liability, rectification of the Land Register, return to the State of all land either wrongly allocated or liable to forfeit and+ collection of outstanding Land Rentals are matters which must be attended to immediately.

71.3. The Committee considers that the Government should institute an further deeper Inquiry into past land allocations by the Department of Lands and Physical Planning over the last decade with a view to establishing the extent and numbers of corruptly or illegally issued State Leases and the exact number of State Leases that should be either cancelled or forfeited for either illegality or breaches of Lease covenants.

71.4. That Inquiry should be properly resourced and given wide terms of reference. The Committee considers that such an Inquiry will require only a matter of months to complete its work **if** it receives assistance from the Department of Lands staff – which should be enforced by Government.

71.5. Shortage of land for development has significantly contributed to the disintegration of the Department. As land has become more valuable, so

the temptation to acquire it by any means has resulted in the blatant malpractices that this Report records.

71.6. This motivation, coupled with a nil chance of detection or interference by the Department has brought the system of land allocation and, more importantly, security, into contempt.

71.7. The Committee also suggests that the system of land release and allocation be reviewed by persons expert in assessing future needs and the role played by such matters in overall National development.

71.8. We recommend that the Land Board and every facet of the operations of the Department of Lands Department be given urgent attention by Government in order that the National Estate is protected from further depredations and that the State recovers both its assets and revenue owed to it.

71.9. More specifically, the Committee concludes that the present system of land management requires high standards of honesty and competence – attributes that the Department lacks. We commend a review of this system with a view of developing systems of checks and balances that cannot be circumvented, to ensure that the Department and the Land Board carry out their tasks with honesty, competence and pride.

71.10. The Committee has found a large number of Ministerial exemptions granted by Departmental officers in very suspicious circumstances. Such exemptions should be granted only in exceptional circumstances – and then strictly in accordance with the terms of the ***Land Act***.

71.11. The exemption given in respect of Lot 10 Section 23 Granville Paga Hill is a good example. This prime land was removed from the Department of Justice, exempted from advertisement and given to a Company with no apparent assets or ability to develop the block, for no fee and in a closed tender. This land, if it was lawfully offered at all, was capable of a substantial return to the State and there is no legitimate reason for exempting it from open tender.

71.12. Pending further Inquiry or action, we recommend that Ministerial Delegation be removed from the Department entirely. The few instances where such exemptions are legitimately made can easily be met by the Minister himself.

71.13. The Committee recommends that all the allocations of State Land examined by the Committee in this Inquiry, be immediately referred to the Solicitor General for urgent action to prevent any further alienation or dealing in that land, pending further recovery action by the Government.

71.14. Finally, the Committee states that it only examined a small portion of those transactions referred to it by before and during this Inquiry. However, all transactions reported to the Committee will be referred to the appropriate agencies for action as soon as possible.

72. CONCLUSIONS

72.1. The Committee has been deeply concerned by the revelations made during and as a result of this Inquiry.

72.2. That such a vital Government Department could have reached such levels of incompetence and be so riddled by illegality, should be a matter of profound National concern.

72.3. The Department and its officers show every intention of continuing as they have for the last decade and clearly have neither the capacity nor the ability to change.

72.4. Therefore we conclude that the State must intervene without any delay to force reform, in the national interest.

72.5. This Committee hopes that this may be the beginning of positive change for this Department and that our system of land administration becomes a model of its type for developing nations and we will urge the Parliament to act quickly and decisively in this regard.

SCHEDULE ONE

LIST OF WITNESSES

30th April 2003

Names of Witnesses	Comments
Mr. Pepi Kimas	Secretary, Department of Lands & Physical Planning
Mr. Romilly Kila Pat	Deputy Secretary – Corporate & Regulatory Division
Mr. Ian Kundin	Senior Legal Officer and Acting Human Resources Manager
Mr Tony Luben	Acting Deputy Secretary – Lands Services

1st September 2005

Names of Witnesses	Comments
Mr. Pepi Kimas	Secretary, Department of Lands & Physical Planning
Mr. Francis Tanga	Chairman, PNG Land Board
Dr. Tonges Zanggo	Deputy Chairman, PNG Land Board
Kutt Paonga	Member, PNG Land Board
Ian Kundin	Manager, Legal Services, DLPP
Gabriel Donump	Co-ordinator, Manam resettlement
Darcy Tamia	Chief Internal Audit, DLPP
Romilly Kila Pat	Deputy Secretary, Operations and Ministerial Delegate
Gideon Simeon	Manager, Finance
George Oli	Director, Corporate Services
Frend Morove	Acting Executive Officer

24th November 2005

Names of Witnesses	Comments
Mr Pepi Kimas	Secretary, Department of Lands & Physical Planning

25th November 2005

Names of Witnesses	Comments of Witnesses
Mr Pepi Kimas	Secretary, Department of Lands & Physical Planning

29th November 2005

Names of Witnesses	Comments
Mr Pepi Kimas	Secretary, Department of Lands & Physical Planning

28th February 2005

Names of Witnesses	Comments
Mr Pepi Kimas	Secretary, Department of Lands & Physical Planning

SCHEDULE TWO

LIST OF EXHIBITS AND DOCUMENTS BEFORE THE INQUIRY

Directive Number	Number of Pages	
1	Nil 1 - 3	
2	4 – 6 3 – 5	
3	1 – 6 1 – 2	

	1 – 146	
4	Nil 1 - 5 1 - 61 1 - 64	
5	1 - 12	
6	1 - 4 6 - 12 1 - 7	
7	Nil	
8	Nil Nil	
9	Nil	
10	Nil	
	Nil	
11	Nil	
12	Nil	
13	Nil	
	6 - 46	

16	Nil	
17	Nil	
18	Nil	
18	Nil	
19	Nil	
20	Nil	
21	Nil	
22	Nil	
23	Nil	
27	Nil	
28	Nil	
29	Nil	
34	Nil	
37	Nil	
39	Nil	
40	Nil	
41	Nil	

43	Nil	
44	Nil	
45	Nil	
46	Nil	
47	Nil	
53	Nil	
53	1 – 15	
58	Nil	
	Nil	
59		

Miscellaneous Files

No. of files	Titles of the files
1.	Allotment 1, Section 122, Hohola - NCD
2.	Allotment 2, Section 122, Hohola – NCD
3.	Allotment 6, Section 122, Hohola – NCD
4.	Allotment 7, Section 122, Hohola – NCD
5.	Allotment 8, Section 122, Hohola – NCD
6.	Allotment 9, Section 122, Hohola – NCD
7.	Allotment 10, Section 122, Hohola – NCD
8.	Allotment 13, Section 122, Hohola – NCD DC/122/013
9.	Allotment 13, Section 122, Hohola – NCD: - Virgo No. 65 Ltd
10.	Allotment 14, Section 122, Hohola – NCD
11.	Allotment 15, Section 122, Hohola - NCD

Response by Secretary for Lands to "Summons to a Witness"

NO. OF FILE	APPENDICES	DETAILS
1	**Appendices File**	Files, records and information relating to the National Court ruling regarding Portion 08C, M/L Wasus, F/M Markham Morobe Province cancelling the State Lease Granted to Piu Land Group Incorporated and others.
2	**"01"**	All files, Directives, and records relating to a decision to exemption from advertisement Allotment 16, Section 35, Boroko, Gazetted on 31/01/2002
3	**"02"**	All files, directives, and records relating to and in respect of Portion 1597, M/L Granville (Paga Hill) as well as grant of an "Urban development Lease" and subsequently Business Lease over Portion 1597 M/L Granville
4	**"04"**	All documents and records relating to the
	"06"	A detail statement of reasons for the cancellation of a Lease held by the Lutheran church of Papua New Guinea and the issue of a State Lease to the Ganglau Landowner company over Portion 109 and 110 M/L Pommern, F/M Madang
	"07"	All files, records and documents showing how the Ganglau Landowner Company Ltd. obtained a State Lease over Portion 109 and 110, M/L Pommern and F/M Madang
5	**"10"**	A report on all matters referred investigated by the Governance and compliance unit and the result of each inquiry.
6	**"11"**	A list of all matters referred by the Governance and Compliance Unit to the Ombudsman or the Police and the outcome of each referral or complaint.

INTERNAL AUDIT FILES	
NO. OF FILE	**TITLES OF FILES**
1	Brief on unauthorised trip to Manus by Lease Coordinator, Islands Regions.
2	Brief on Section 32, Lot 27 Granville
3	Brief on changes to PNG National Land Board & National Physical Planning Board
4	Report on fraudulent Loan application to Vini Finance Co. Ltd
5	Report on fraudulent Loan application to Muruk Finance Ltd
6	Report on fraudulent payment of K2,475.00
7	Report on payment of entertainment allowance to former Secretary Guad Zurenuoc, OBE
8	Report on theft K 2,880.00
9	Report on theft of blank cheques
10	Report on abuse of power & position by current Director Corporate Services (photocopied from my running file)
11	Report on Land Board Members – Albert Varina & others claim for O/S Land Board entitlements**.**
12	Report on Section 03, Allotment 20 Hohola
13	Report on Section 38, Allotment 14 Hohola
14	Report on discrepancy of office stationery and furniture.
15	Brief /report on misuse of hired vehicle hired for Wewak storm water project
16	Brief / report on State Owned Plantations of Asuramba, Mangen, Malagen & Posdam, Madang.
17	Brief / report into State Owned Plantations in Madang
18	Directives for investigations into Land dealings as per PAC Directives
19	Statement in responses to PAC Directives

SCHEDULE THREE

COPIES OF DIRECTIVES AND SUMMONSES ISSUED.

THE NATIONAL PARLIAMENT
OF PAPUA NEW GUINEA

PERMANENT PARLIAMENTARY COMMITTEE ON PUBLIC ACCOUNTS

Telephone: (675) 327-7783
Facsimile: (675) 327-7474
NCD

Parliament House
WAIGANI,
Papua New Guinea

e-mail:pacparliament@daltron.com.pg

5th September 2005

Mr. Pepi Kimas
Secretary
Department of Lands & Physical Planning
PO Box 5665
BOROKO, NCD

Fax: 301 3105

Dear Mr. Kimas,

I refer to the Public Accounts Committee inquiry into the Department of Lands & Physical Planning held on the 1st of September 2005 at the Parliament House.

Having reviewed the Auditor-Generals Report and considering the responses you verbally gave for a series of questions put to you at the inquiry, the Committee has unanimously resolved to issue the following directives to be implemented before the expiration of thirty (30) working days from the date of these directives;

1) The Departmental Secretary will produce all records, files and Gazettal notices relating to the deliberations and decisions of Papua New Guinea Land Board No. 2005 in respect of Items 130, 131, 132, 133 and 134 before that Board.

2) The Departmental Secretary will produce all records, files and Gazettal notices relating to the deliberations and decisions of Papua New Guinea Land Board No. 2006 in respect of Items 20, 101 and 102 before that Board.

3) The Departmental Secretary will produce all records, files and Gazettal notices relating to the sittings and deliberations and decisions of Papua New Guinea Land Board No. 2013 with particular emphasis on the time, days and locations at which the Land Board convened.

4) The Departmental Secretary will produce all records, files and Gazettal notices relating to the sittings and deliberations and decisions of Papua New Guinea Land Board No. 2014.

5) The Departmental Secretary will produce all records, files, minutes or transcripts and gazettal notices relating to the sittings and deliberations and decisions of Papua New Guinea Land Board No. 2017 with particular emphasis on the time, days and locations at which this Land Board convened.

6) The Departmental Secretary will produce all files, records and other documents including Gazettal Notices relating to the issue of a Business (Commercial) Lease over Allotment 12 Section 122 Hohola to Mr. Andrew Mald.

7) The Departmental Secretary will produce Land Rent records to the date of this directive for Allotment 12 Section 122 Hohola including and in particular, records of all arrears of Land Rent.

8) The Departmental Secretary will produce records of the reserve or tender price paid by Mr. Andrew Mald for Allotment 12 Section 122.

9) The Departmental Secretary will produce all files, records and other documents relating to the issue of a Business (Commercial) Lease over Allotment 5 Section 59 Town of Alotau to PNG Deep Sea Fishing Ltd.

10) The Departmental Secretary will produce all records of reserve or tender price paid by PNG Deep Sea Fishing Ltd in respect of Allotment 5 Section 59 Town of Alotau.

11) The Departmental Secretary will produce all records of land Rent applied to Allotment 5 Section 59 Town of Alotau.

12) The Departmental Secretary will produce the final and actual agenda for PNG Land Board No. 2026.

13) The Departmental Secretary will produce all Gazettal Notices of grants made by PNG Land Board No. 2026.

14) The Departmental Secretary will produce Land Rent records current to the date of the directive for Allotments 9, 10, 11 and 12 Section 7 Granville.

15) The Departmental Secretary will produce all records of reserved or tender price paid by KakbuK Investments Ltd in respect of Allotments 9, 10, and 12 Granville

16) The Departmental Secretary will produce all documents, files, Gazettal Notices and records of PNG Land Board No. 2033.

17) The Departmental Secretary will produce all files, directives, decisions and other records relating to the exemption from advertisement of Allotment 16 Section 35 Boroko, Gazetted on the 31st January 2002.

18) The Departmental Secretary will produce records showing the zoning of Allotment 16 Section 35 Boroko on and from the 27th February 2002 until the date of this directive.

19) The Departmental Secretary will produce a record of all litigation in the National Court of Justice or the Supreme Court either completed or current arising from or concerning the deliberations and decisions of the Papua New Guinea Land Board during the period 1997 until the date of this directive, to which the Department of Lands and Physical Planning, the Papua New Guinea Land Board, the Secretary for Lands and Physical Planning or the State is a party.

20) The Departmental Secretary will produce a list of all damages awards or Judgments given against the State (however described) arising from deliberations or decisions of the Papua New Guinea Land Board during the period from 1997 until the date of this directive.

21) The Departmental Secretary will produce records of the Members of each Land Board from 1991 until the date of this directive with copies of relevant Gazettal Notices of appointment and revocation.

22) The Departmental Secretary will produce all records all records showing zoning of Portion 1597 Milinch Granville from the 22nd August 1997 until the date of this directive.

23) The Departmental Secretary will produce all records files, minutes and other documents relating to the hearing and determination of Papua New Guinea and Board No. 1911 Item 2.

24) The Departmental Secretary will produce all records of any reserved or tender price paid by Paga Hill Development Co. Ltd or Paga Hill Land Holding (PNG) or any other person or entity in respect of Portion 1597 at any time from August 1997 until the date of this directive.

25) The Departmental Secretary will produce all records of Land Rental applied and paid or outstanding in respect of Portion 1597 at any time from August 1997 until the date of this directive.

26) The Departmental Secretary will provide a detailed report on all steps taken to excise or otherwise protect and preserve the interest of Police Legacy in Portion 1597.

27) The Departmental Secretary will produce all records of zoning of Section 122 Hohola and in particular Allotment 1 Section 122 Hohola as described in Survey Plan 49/901 showing revocation and change in that zoning from 1969 until the date of this Directive.

28) The Departmental Secretary will produce all records of Land Rental applied and/or outstanding for Allotments numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 Section 122 Hohola.

29) The Departmental Secretary will produce all records, documents and accounts of any reserve or tender price paid in respect of Allotments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 Section 122 Hohola.

30) The Departmental Secretary will produce a statement of any and all litigation issued, finalized or current concerning in any way any part of Section 122 Hohola and to which the Department or the State is a party.

31) The Departmental Secretary will produce a detailed statement of reasons for the cancellation of the Lease held by the Evangelical Lutheran Church of Papua New Guinea.

32) The Departmental Secretary will produce a detailed statement or reasons for the issue of a State Lease to the Ganglau Landowner Company Ltd over Portions 109 and 110 Madang, Madang Province.

33) The Departmental Secretary will produce to the Committee all files, documents, records, minutes or notes whatsoever whether in hard or printed form or in any electronic media relating to or recording the process by which the Ganglau Landowner Company Ltd obtained a State Lease over Portions 109 and 110 Madang, Madang Province.

34) The Departmental Secretary will produce all Land Rent records for Portions 109 and 110 Madang, Madang Province for the period 1997 to the date of this directive.

35) The Departmental Secretary will produce evidence of any reserve or tender price paid by the Ganglau Landowner Company Ltd.

36) The Departmental Secretary will produce all records, files and other documents relating to the application for and issue of a State Lease over Allotments 2 and 3 Section 111 Boroko to Bluehaven No. 7 Ltd.

37) The Departmental Secretary will produce all records of Land Rent and Land Rent outstanding in relation to Allotments 2 and 3 Section 111 Boroko for the period 1997 to the date of this directive.

38) The Departmental Secretary will produce all records, accounts, files and other documents recording the reserve or tender price fixed and/or paid by Bluehaven No. 7. Ltd in respect of Allotments 2 and 3 Section 111 Boroko.

39) The Departmental Secretary will produce all files, documents, minutes and other records relating to or recording the proceedings and decision of Papua New Guinea Land Board 2014 in relation to an application by the Sisters of Charity for the grant of a State Lease over Allotment 69 Section 229 Hohola.

40) The Departmental Secretary will produce all documents, records and files relating to the grant and issue to Willing Pacific (PNG) Ltd of a State Lease over Allotment 69 Section 229, Hohola.

41) The Departmental Secretary will produce all Land Rent records showing land Rent paid or owed in respect of Allotment 69 Section 229 Hohola during the period 1991 to the date of this directive.

42) The Departmental Secretary will produce all files and records of correspondence received by or sent to the Department of Lands and Physical Planning during the period from 1991 until the date of this directive.

43) The Departmental Secretary will produce all Departmental files (including Land Board files) and Gazettal Notices relating to the grant and issue of a Business (Commercial) Lease to PNG Deep Sea Fishing Ltd over Allotment 5 Section 132 Town of Alotau.

44) The Departmental Secretary will produce Land Rental statements and records for this land.

45) The Departmental Secretary will produce all records of the reserved or tender price paid to the State by PNG Deep Sea Fishing Ltd.

46) The Departmental Secretary will produce all valuation reports and/or Land Rental assessment records for Allotment 5 Section 132, Town of Alotau for the period 1917 until the date of this directive.

47) The Departmental Secretary will produce minutes and records of Meeting No. 08/98 National Physical Planning Board.

48) Provide to the Committee a confidential report setting out all officers suspended or terminated from the service of the Department 1997 – 2005, including reasons for that action.

49) Produce to the Committee the approval from the Department of Finance for all bank accounts maintained by the Department of Lands and Physical Planning.

50) Produce to the Committee the approval by the Department of Finance to the appointment of Mrs. Lavu Matau as Collector of Public monies.

51) Produce to the Committee a full and complete list of all advisers, consultants or contractors appointed or retained by the Department of Lands and Physical Planning in the last in the period 1999 – 2005.

52) Produce to the Committee all applications or tenders made to the Department for the supply of services, all records of deliberations and awards of contracts for services made by the Department in the period 1999 – 2005.

53) Produce to the Committee copies of any written guidelines for the Papua New Guinea Land Board.

54) Produce to the Committee any and all correspondence to the office of the Attorney General or any other Office seeking authority to issue collection proceedings of outstanding debts.

55) Produce to the Committee a confidential report showing instances of threats made to officers of the governance and compliance unit of the Department of Lands and Physical Planning including the identity of the person making the threat, the nature of the threat and action taken in respect of that threat.

56) Produce to the Committee a report on all matters referred to or investigated by the governance and compliance unit and the result of each inquiry.

57) Produce to the Committee a record of all matters or allegations referred by the governance and compliance unit to the Ombudsman or the Police and the outcome of each matter or referral or complaint.

58) Produce to the Committee a list of all State Land which, in your opinion, has been illegally or improperly passed into private hands giving brief reasons for your conclusions, full title references and details of the recipient(s) and current owners.

58) Within ten days, from the date of these directives, the Department of Lands and Physical Planning will respond in writing to all queries, allegations or matters of inquiry by the Auditor General contained in Audit Reports dated the 21st March 2005. That response will be delivered to the Office of the Auditor General and to the Secretary of the Committee.

You are to implement the above directives within the given time and also you may contact the Committee Secretariat to clarify any matters that may arise relating to the directives.

Yours sincerely,

HON. JOHN TONGRI HICKEY, MP
Chairman

THE NATIONAL PARLIAMENT
OF PAPUA NEW GUINEA

PERMANENT PARLIAMENTARY COMMITTEE ON PUBLIC ACCOUNTS

Telephone: (675) 327-7783
Facsimile: (675) 327-7474
NCD

Parliament House
WAIGANI,
Papua New Guinea

e-mail:pacparliament@daltron.com.pg

22 September 2005

Mr. Pepi Kimas
Secretary
Department of Lands & Physical Planning
PO Box 5665
BOROKO, NCD

Fax: 301 3105

Dear Mr. Kimas,

I refer to the PAC directives issued to you dated 5 September 2005.

There was an inadvertent error which affected directives number 43 and 46.

Please amend directives 43 and 46 to read as **"Allotment 5 Section 59 Town of Alotau"**

A further additional directive is now being issued to be implemented together with the previous directives.

59) The Departmental Secretary will produce a list of all Ministerial exemptions from public advertisement and competitive tender, made pursuant to Section 69 (2) of the Land Act during the period 2003, 2004 and 2005 identifying the subject land and the reasons for each exemption.

Yours sincerely,
HON. JOHN HICKEY, MP
Chairman.

THE NATIONAL PARLIAMENT
OF PAPUA NEW GUINEA

PERMANENT PARLIAMENTARY COMMITTEE ON PUBLIC ACCOUNTS

Telephone: (675) 327-7783
Facsimile: (675) 327-7474
NCD

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INDEPENDENT STATE OF PAPUA NEW GUINEA

Public Finances *(Management)* Act 1995

Act, Sec.89(1)

SUMMONS TO A WITNESS

To: **Mr Pepi Kimas**
Secretary
Department of Lands & Physical Planning
P O Box 5665
BOROKO NCD

You are summoned to produce to the Committee or the Secretary of the Committee by 2:00pm today the 24th of November 2005 the following books, papers, documents and articles:-

1. All files, directives, decisions and other records relating to a decision to exempt from advertisement Allotment 16 Section 35 Boroko, Gazetted on the 31st January 2002.

2. All records of any reserve or tender price paid by Paga Hill Development Co. Ltd. or Paga Hill Land Holding (PNG) Ltd or any other person or entity in respect of Portion 1597 Milinch Granville at any time from August 1997 until the date of this Summons.

3. All records of Land Rent applied and paid or outstanding in respect of Portion 1597 Milinch Granville at any time from August 1997 until the date of this Summons.

4. All documents and records relating to the grant of an Urban Development Lease and subsequently Business Lease over Portion 1597 Milinch Granville.

5. A statement of any and all litigation issued, finalized or current concerned in any way any part of Section 122 Hohola and to which the Department of Lands and Physical Planning is a party.

6. A detailed statement of reasons for the cancellation of a Lease held by the Lutheran Church of Papua New Guinea and the issue of a State Lease to the Ganglau Landowner Company Limited over Portions 109 and 110 Milinch of Pommern, Fourmil of Madang, Madang Province – Vol. 12 Folio 113 (previous Volume 65 Folio 26).

7. All files, records and documents showing how the Ganglau Landowner Landowner Company Ltd. obtained a State Lease over Portions 109 and 110 Milinch of Pommern, Fourmil of Madang, Madang Province – Vol. 12 Folio 113 (previously Vol. 65 Folio 26) and evidence of any reserve or tender price paid by the Ganglau Landowner Company Ltd. for that land.

8. All records, files and other documents relating to the application for and grant of a State Lease to Bluehaven No.7 Ltd., payment of land rent and reserve or tender price by Bluehaven No.7 Ltd, over Allotments 2 and 3 Section 111 Boroko. And/or Allotment 6 Section 111 Fourmil Boroko – Vol. 27 Folio 202.

9. All correspondence from the Department of Lands and Physical Planning to the Office of the Attorney General or any other office seeking authority to issue collection proceedings for outstanding debts.

10. A report on all matters referred to or investigated by the governance and compliance unit and the result of each inquiry.

11. A list of all matters referred by the governance and compliance unit to the Ombudsman or the Police and the outcome of each referral or complaint.

12. A list of all State Lands which in your opinion has been illegally or improperly passed into private hands giving brief reasons for your conclusions, full title references and details of the recipients and current owners.

You are required to continue in attendance as directed by the Committee or the Chairman of the Committee until your attendance is no longer required.

Dated: 24th November 2005

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22 February 2006

Mr. Pepi Kimas
Secretary
Department of Lands & Physical Planning
PO Box 5665
BOROKO NCD

Fax: 301 3105

Dear Mr. Kimas,

You are to deliver to the Public Accounts Committee Secretariat on or before the 24th February 2006, the followings;

1. Confirmation that a Ministerial exemption was given in respect of Allotment 10 Section 23 Granville Paga Hill and if so in whose favour was the exemption granted?

2. A written description of all action taken by you to cancel/forfeit or otherwise return Portion 1597 Paga Hill to the State since the 29th November 2005 and in particular provide a copy of the Notice to Show Cause which you undertook to serve within 48 hours of the 29th November 2005 and a statement of the results of those actions.

3. All letters sent by you or your Department to the Office of the Solicitor General or the State Solicitor seeking assistance or permission to commence collection proceedings for unpaid Land Rental.

4. A written description of all action taken by you since the 29th November 2005, to cancel/forfeit or otherwise return the 12 blocks of land identified by you as being unlawfully issued in a press release dated the 19th December 2002, and a description of the results of those actions.

5. Name the person or persons who may place "the security of my officers in jeopardy" in respect of cancellation / forfeiture of the Lease over Portion 1597 Paga Hill as stated in your sworn evidence on the 29 November 2005.

6. A statement showing why you have not produced documents relating to Land Board 1991 as directed on the 29th November 2005?

7. A statement identifying who manually changed the rental payable in respect of Portion 1597 on the face of the Business Lease? Why did you not provide this information within five days as directed on the 29th November 2005?

8. A statement as to why your Department failed to preserve and produce to this Committee any documents, records, files or reports regarding the issue of the Business Lease over Portion 1597?

9. A statement clarifying how detailed covenants in the Urban Development Lease disappeared when the Business Lease was issued.

10. A statement as to how a Business Lease issued at all when the applicant had failed to comply with any of the covenants in the Urban Development Lease.

11. A statement setting out the reasons why you took no action to forfeit /cancel the Lease issued over Portion 1597 for breach of covenant or unpaid Land Rental?

12. A statement as to why you have not cancelled / forfeited the Lease over Portion 1597 in light of the advice of the Solicitor General to the effect that the initial grant was unlawful?

13. A statement as to what steps you have taken to protect the interests of Police Legacy in portion 1597 since the 29th November 2005?

14. A copy of the report of Mr. Pius Koriawagan into Portion 1597.

15. A copy of the written arrangement made between the Lessee of Portion 1597 and Mr. Romilly Kila Pat regarding payment of land Rental for that Portion. You are to contact Mr. Pat and obtain a faxed statement as to the arrangement.

16. A statement of the legal basis to allow payment of reduced or periodic Land Rental payments.

17. The agenda for PNG Land Board 3/2004.

18. A list of all grants made by Land Board 4/2004.

19. Copy of all Ministerial exemptions made in respect of Portion 1555 Milinch Granville.

20. A statement of all Land Rental outstanding for the years 2000, 2001, 2002, 2003, 2004 and 2005.

Yours sincerely,

HON. JOHN HICKEY, MP
Chairman

THE NATIONAL PARLIAMENT
OF PAPUA NEW GUINEA

PUBLIC ACCOUNTS COMMITTEE REPORT

TO PARLIAMENT ON THE INQUIRY

INTO THE DEPARTMENT OF LANDS

AND PHYSICAL PLANNING

PRESENTED ON: