

THE NATIONAL PARLIAMENT OF PAPUA NEW GUINEA
PERMANENT PARLIAMENTARY COMMITTEE ON PUBLIC ACCOUNTS

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CHAIRMANS FOREWARD

As Chairman of the Parliamentary Public Accounts Committee of Papua New Guinea, I now present the Final Report of the Public Accounts Committee into the Department of Petroleum and Energy and the Konebada Petroleum Park Project.

The Report follows several months of Inquiry and consideration of evidence and the Committee makes certain findings and recommendations that are of immediate National importance.

I acknowledge the Reports produced and assistance given by the Office of the Auditor General and those Officers of the Public Service who took the time to provide submissions and evidence to us.

I also acknowledge the attendances and hard work of the Members of the Public Accounts Committee who readily found time for Committee work from busy schedules.

I encourage all Members to read and carefully consider this Report and reflect on the state of fiscal management in Papua New Guinea.

Hon. Timothy Bonga OL MBE MP
CHAIRMAN.
1/03/2010.

PERMANENT PARLIAMENTARY COMMITTEE ON PUBLIC ACCOUNTS

REPORT TO THE NATIONAL PARLIAMENT ON THE DEPARTMENT OF PETROLEUM AND ENERGY AND THE KONEBADA PETROLEUM PARK PROJECT.

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PERMANENT PARLIAMENTARY COMMITTEE ON PUBLIC ACCOUNTS

REPORT TO THE NATIONAL PARLIAMENT ON THE DEPARTMENT OF PETROLEUM AND ENERGY AND THE KONEBADA PETROLEUM PARK PROJECT.

1. EXECUTIVE SUMMARY.

1.1 The Department of Petroleum and Energy is a crucially important Government Department. Its role in National development will only increase in the future.

1.2 The nation has a right to expect that this Department is expertly and lawfully managed and thoroughly accountable for all public monies, property and stores under its control.

1.3 The Department has, for years, failed to meet those expectations.

1.4 This Committee makes the following general findings:

Departmental weaknesses and failures:

1.5 In so far as its management of public monies is concerned, the Department of Petroleum and Energy is incompetently managed, unaccountable and disorganized.

1.6 The Department is incapable of managing or accounting for its own internal finances to any acceptable level of competence or

legality. This situation has existed for years and continues in 2009.

1.7 The Department of Petroleum and Energy has, for years, failed to make, maintain, submit or produce lawful financial accounts or records as required by Law.

1.8 The Department of Petroleum and Energy has failed to comply with virtually any of the accounting or reporting requirements prescribed by the Public Finances (Management) Act 1995, the Financial Instructions, the Audit Act, the Constitution or the requirements of the Oil and Gas Act 1998 and breaches those Acts on a daily basis.

Management of the Department of Petroleum and Energy:

1.9 By his own admission to this Committee the Head of the Department has lost control of his Department and is ineffective – as are his management team – in the management of and accounting for, public monies, property and stores.

1.10 The Head of the Department of Petroleum and Energy has failed to account for or control expenditure of public monies, failed to prevent private individuals from taking unfettered control of huge amounts of public monies outside the Departmental and Government accounting systems and failed to seek or obtain any accountability from those persons and companies.

1.11 The Head of the Department of Finance failed to require, obtain or enforce the delivery of statutory accounts and records from the Department of Petroleum and Energy, the Head of the Department of Petroleum and Energy and/ the Konebada Petroleum Park Working Group – thereby failing to fulfill the duties and functions of the Department of Finance and the Head of the Department of Finance.

1.12 The Head of the Department of Petroleum failed to read, consider or understand the Audit Management Letters or Audit Reports from the Office of the Auditor General, to respond thereto or address the problems and failings recorded in those Management Letters or Reports.

Trust Accounts: Weaknesses and failures:

1.13 The Department of Petroleum and Energy has, for years, failed to lawfully or competently manage, administer or account Royalty Trust Accounts in the control of the Department.

1.14 The Department has failed or refused to lawfully and competently manage, administer or account for public monies held in and expended from the Konebada Petroleum Park Authority Working Group Trust Account.

1.15 Very significant amounts of Royalty monies cannot be accounted for or audited because the Department has not made, kept or submitted accounts or records as it is required to do.

1.16 The Department and the Head of Department have allowed significant amounts of public money paid to the Konebada Petroleum Park Authority Working Group Trust Account, to be expended or applied by private individuals with no accountability or oversight – in breach of law.

1.17 In short, the Head of Department has failed to perform his statutory duties of trust management and thereby exposed himself and the State to potentially significant liability.

1.18 The Committee makes the following specific findings:

Departmental Fiscal Management:

1.19 The Department of Petroleum and Energy has, for eight years, shown:

- deficiencies in revenue collection and record keeping;
- discrepancies in the management of drawing accounts;
- weaknesses in budgetary controls;
- weaknesses and irregularities in procurement and payment procedures;
- weaknesses in payment of salaries;
- deficiencies in the management of payment and acquittal of advances;
- weaknesses in safekeeping and maintenance of assets;

- failures and outright illegality in the management of Royalty Trust Accounts;
- failures to make or submit Trust Account records as required by Law;

- unrecorded losses and deficiencies;

- Internal Audit Unit unable to be considered by the Auditor General because no cooperation was given by the Department to the Auditor General;

- intentional refusal to produce records and information to the Auditor General despite undertakings to do so;

- significant weaknesses in internal controls;
- no procurement policies or programmes and consistent breaches of legal requirements in procurement and processing .
- unrealised budgeted revenue by the Department;
- unreconciled differences of revenue figures between the Department of Finance and Department of Petroleum and Energy records;
- reconciling items not cleared by the recompilation of monthly bank reconciliations for the Drawing Account ;
- unreconciled differences of expenditure balances between the Department of Finance and Departmental records;
- expenditure amounts exceeded warrant authority appropriation;
- outstanding commitments for previous years settled from the current year's appropriated funds;
- no proper authority, monitoring of usage or payment of hire of motor vehicles;
- no contractual agreements with building contractors for services rendered and paid for;
- no contractual agreements with security contractors for services rendered;
- no proper authority, monitoring and control over recreational leave fares paid to personnel;
- recreational leave fares and PMV fares paid to fictitious personnel;
- employment of casuals exceeded periods of six months without proper review of employment;
- unauthorised overtime worked by staff members;
- overtime payments to senior officers above the required salary level;
- salary advances paid to officers whose fortnight nett pay were less than the required normal 80% nett pay;
- no proper authority, monitoring and recovery of travel and cash advances by the Department;
- additional advances to personnel while previous advances still unacquitted;
- advances for official duties misused for other social activities;

- appropriations for other funded activities misused for the purchase of office furniture and equipment and motor vehicles;
- no proper or adequate accounts or records maintained or submitted;
- significant and serious failures and weaknesses in Trust Management, payments from Royalties, payments from Trust Accounts, and Trustee duties and obligations

Departmental Management of Royalty Trust Accounts:

1.20 The Department of Petroleum and Energy has control of six Trust Accounts – five of which are Royalty Trust Accounts. The Royalty Trust Accounts are:

1. Kutubu Petroleum Royalty Trust Account.
2. Gabe Landowners Benefits Trust Account.
3. Moran Petroleum Royalty Trust Account.
4. Central Moran Petroleum Development Levy Trust Account.
5. Hides Petroleum Royalty Trust Account.

1.21 The Department of Petroleum and Energy also managed the Konebada Petroleum Park Authority Working Group Trust Account.

1.22 The management of all Trust Accounts by the Department of Petroleum and Energy is among the worst and most derelict that this Committee has encountered.

1.23 The identified failures and frank illegality in the management of Trust Accounts was made worse by reason that five of the Trust Accounts held Royalty monies – the ultimate property of third persons for whose benefit the Department administered the Accounts. In such circumstances a high degree of probity and strict adherence to requirements of Law and/or the Trust Instrument are required. The Department and its officers failed to demonstrate either of those qualities.

1.24 This Committee finds that Royalty Trust Accounts were maintained:

- In breach of the Oil and Gas Act 1998 Section 186 (1–3) in that, payments are made on an irregular basis. The Act requires royalties to be paid on a monthly basis.
- There is a total of K 82,736,884.48 held in the Trust Accounts as at the end of December 2008. No interest is earned on any of those sums.
- A total payment of K 6,724,203.60 was made from the five Trust Accounts between 31 December 2007 and 30 April 2008 but the Auditor General cannot ascertain whether these were made to legitimate landowners, as there are no disbursement or accountability reports.

The Auditor General was promised delivery of these documents, but this has not happened.

The Auditor concludes that records of disbursements do not exist. This Committee agrees.

1.25 Failure to keep disbursement records is a breach of the Public Finances (Management) Act 1995 and this Committee will refer the Head of the Department of Petroleum and Energy for investigation of those possible breaches.

1.26 Prescribed statutory records relating to the operation of Trust Accounts have not been provided to the Department of Finance as required by the Public Finances (Management) Act 1.995. This Committee will make referrals of Departmental officers for this failure.

1.27 Disbursements from Trust Accounts should be processed in accordance with the Finance Management Manual Part 1.6(14) but no records were delivered to the Auditor General and it is proper to conclude that they do not exist. This

Committee will refer Departmental Officers for investigation for these failures.

1.28 There were no bank reconciliations for six Trust Accounts from May 2007 – June 2008.

1.29 There were no records of K 29 million expended from the Trust Accounts sufficient to audit the account.

1.30 Development expenditure totaling K 47,125,189 was paid during the 2007 Financial Year. Random Audit of payment vouchers revealed:

- MOA Project Proposals/Plans were not provided to the Auditor General and probably do not exist.
- Statements and receipts of expenditure in cash flows were not sighted for the MOA Projects.
- All project payments of K 100,000 (40 payments) have no CSTB procedures .
- Payment of K 20,796,031.42 for project payments was made out of an incorrect Vote.

1.31 The Expenditure Implementation Committee failed to monitor or report on Development progress and did not maintain or submit records of how a budgeted K 71.8 million was spent on infrastructure projects.

1.32 The Department refused or failed to cooperate with or assist the Auditor General by producing records or accounts of Trust Accounts managed by it – even after undertaking to do so.

1.33 There are virtually no records of expenditure of K 47 million M.o.A. development monies.

1.34 All Trust Accounts should immediately be removed from the control of this Department. They should not be removed to the Department of Finance under Section 19 (6) of the Public Finances

(Management) Act as history shows "management" of Trust Accounts removed to the Department of Finance under that section may well be worse than by the Department of Petroleum and Energy – see the PAC Parliamentary Report into the Sepik Roads, Bridges, Highways and Other Infrastructure Trust Account and the PAC Parliamentary Reports on the 2004 – 2006 Public Accounts.

1.35 Trust Account management – particularly Royalty Trust Accounts – should be entrusted to independent, experienced, controlled trustees subject to oversight and strict Rules and Guidelines. These persons should be capable of understanding and complying with requirements of law in their management of and accounting for Royalty monies.

1.36 Royalty Trust Accounts require detailed investigation and reconciliation to assess the likely liability of the State and the exact recipients of Royalty monies. This should be performed by independent, professional, experienced and honest appointee.

Konebada Petroleum Park:

1.37 The Konebada Petroleum Park Authority Working Group was allowed by the Department of Petroleum and Energy to become unaccountable for large sums of public monies expended by it.

1.38 The Konebada Petroleum Park project and the public monies which funded it were controlled by private individuals and companies who were allowed to deal with those public monies in a discretionary, uncontrolled and unaccountable fashion – contrary to Law.

1.39 Huge and unaccountable expenditure was made by this Working Group from Trust monies in breach of the Public Finances (Management) Act 1.995, the Financial Instructions and the Trust Instrument.

1.40 The Konebada Petroleum Park Authority Working Group Trust Account was operated outside the PGAS in breach of the Trust Instrument.

1.41 No bank reconciliations were made, maintained or submitted by the Department in breach of the Public Finances (Management) Act 1.995.

1.42 No accountability statements, Quarterly or Annual Reports or reconciliations were submitted to the Department of Finance as required by Law.

1.43 The Working Group and the Departmental Head of the Department of Petroleum and Energy failed or refused to submit records of expenditure.

1.44 The Trust Instrument recorded the Project Manager as a counter signatory to the Trust Account. By this simple act the Department and the Government lost control of these public funds.

1.45 The Secretary of the Department of Petroleum and Energy ceased to be the Accountable Officer as the Project Manager and the Secretary for Finance could and did sign cheques. K 8 million of public money was given to private individuals to use as they deemed appropriate.

Intentionally or otherwise, this rendered public monies unaccountable and untraceable in the PGAS.

1.46 As a private individual the Project Manager maintains that he has no obligation to make statutory reports. This Committee disagrees. Public monies are accountable and the attempt to remove them from PGAS requires investigation by the Police Fraud and Anti-Corruption Squad to ascertain whether a breach of Law has occurred.

1.47 Approximately 90% of Trust Funds were expended on Consultants – engaged without tender processes and, in some cases, for little result.

1.48 The Konebada Petroleum Park Authority Working Group Trust Account was audited by a private accounting firm. This is not lawful. Only the Auditor General can audit public monies.

1.49 Duplication of jobs and functions was evident between the Department and the Working Group.

1.50 Expenditure was made for motor vehicles, jewellery, travel, lunches and other matters in breach of the Trust Instrument which allows expenditure only for "feasibility studies, project preparation and design"....

1.51 There was no asset register produced to audit.

1.52 No progress reports were produced to audit.

1.53 Neither this Committee nor the Auditor General could establish a legal basis for the Working Group in the absence of statute.

1.54 Title deeds were not made available for audit.

1.55 The Working Group refused to co-operate with the Auditor General or to provide lawful documents, accounts and records to the Department of Petroleum and Energy in accordance with Law.

1.56 There was no tender or advertisement for the position of Project Manager which was filled by NEC directive.

1.57 There was no legislative basis for the Konebada Petroleum Park or its Working Group. The entire facade was created by political directive and absorbed K 12 million of public money for little tangible result.

1.58 Neither of the Departments of Finance or Petroleum and Energy made any apparent attempt to fulfil their duties to enforce lawful accounting by the Working Group, or demonstrate any understanding or concern that public monies were illegally removed from the Government accounting system and any

effective Government control or oversight – even after these facts were reported by the Auditor

General.

Summary:

1.59 In summary, the Department of Petroleum and Energy has no competent corporate management or capacity to properly and lawfully manage its own internal financial affairs to a lawful and acceptable standard. It has failed to comply with Law and failed to properly manage public monies.

1.60 That failure has been compounded by a complete abdication of duty to control and account for public monies expended from Trust Accounts and Royalty Trust Accounts within Departmental control.

1.61 Immediate and thorough reform of the Department is required.

2 CHRONOLOGY.

2.1 The Public Accounts Committee commenced its Inquiry into the Department of Petroleum and Energy and the Konebada Petroleum Park Project on the 14th July 2008.

2.2 The Committee continued this Inquiry on the 11th January 2009 and closed it on the 31st July 2009 .

2.3 The Committee met to consider and approve this Report on the 21st December 2009 .

2.4 On the 17th of December 2008 a copy of the Auditor General's Management Letter to the Department was sent to the

Secretary for the Department of Petroleum and Energy with an invitation to comment on or explain the contents of the Report. A written response was received from the Secretary.

2.5 On the 9th of February 2009 a copy of the Committee transcript of evidence was sent to the Secretary for the Department of Petroleum and Energy for comment. Short written responses were received .

3. LIST OF ABBREVIATIONS

3.1 "PF(M)A"

Public Finances Management Act

3.2 "PAC"

Public Accounts Committee.

3.3 "PGAS"

Papua New Guinea Government Accounting System"

3.4 "the Constitution"

The Constitution of the Independent State of Papua New Guinea

3.5 "the Committee or "this Committee"

The Permanent Parliamentary Committee on Public Accounts.

3.6 "T.M.S."

Treasury Management System.

4. COMPOSITION OF THE COMMITTEE.

4.1 The Public Accounts Committee which made inquiry into the Department of Petroleum and Energy and the Konebada Petroleum Park, was constituted as follows:

14th July 2008.

Hon. Timothy Bonga OL MBE MP – Chairman. Hon. Benjamin PoPONAWA MP – Member.
Hon Francis Marus MP – Member. Hon. Koni Iguan MP – Member.
Hon. Lucas Dekena MP – Member.

Hon Malcolm Smith–Kela CMG MBE DFC MP – Member. Hon Philip Kikala MP – Member.
Hon Sai Beseo MP – Member.

11th January 2009.

Hon Timothy Bonga OL MBE MP – Chairman. Hon. Francis Marus MP – Member.
Hon. Benjamin PoPONAWA MP – Member.

Hon Philip Kikala MP – Member. Hon. Malachi Tabar MP – Member. Hon. Sai Beseo MP – Member.
Hon. Malcolm Smith–Kela CMG MBE DFC MP – Member. Hon Sam Basil MP – Member.
31 July 2009.

Hon Timothy Bonga OL MBE MP – Chairman. Hon Dr. Bob Danaya MP – Deputy Chairman. Hon Sam Basil MP – Member.
Hon Fr. John Garia MP – Member.

Hon. Malcolm Smith–Kela CMG MBE DFC MP

21st December 2009.

Hon Malcolm Smith Kela CMG MBE DFC MP – Acting Chairman.

Hon Fr. John Garia MP – Member. Hon Malachi Tabar MP – Member. Hon Sam Basil MP – Member.
4.2 The Chairman, Deputy Chairman and Members of the Committee were properly and lawfully appointed and empowered to sit as a Public Accounts Committee.

5. JURISDICTION OF THE COMMITTEE.

The Constitution of the Independent State of Papua New Guinea.

5.1 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) ...".

5.2 2 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.

5.3 The Public Accounts Committee has had due regard to reports by the Auditor General made pursuant to audit inspections of the Department of Petroleum and Energy and the Konebada Petroleum Park accounts and records, but has also 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.

5.4 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.

The Public Finances (Management) Act 1995.

5.5 The Public Accounts Committee also finds its jurisdiction to Inquire into the Department of Petroleum and Energy and the Konebada Petroleum Park in Section 86 of the Public Finance (Management) Act 1995. 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.

5.6 The Committee has considered such statements and reports of the Auditor General as may have been presented to Parliament and in particular the Part 2 Reports of the Auditor General insofar as they concern the Department of Petroleum and Energy and Konebada Petroleum Park .

5.7 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. 5.10 infra).

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

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Permanent Parliamentary Committees Act 1994:

5.9 The Committee also resolved that a full Inquiry into the Department of Petroleum and Energy and the Konebada Petroleum Park was a matter of National importance and found further jurisdiction for the inquiry in Section 17 of the Permanent Parliamentary Committees Act 1.994.

5.10 That Section provides that the Public Accounts Committee can consider any matter, within its jurisdiction, to be of national importance. The Committee, as we have stated, considers the operations of the Department of Petroleum and Energy and the Konebada Petroleum Park to be such a matter.

6 . THE AUTHORITY TO REPORT.

6.1 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 1.995.

7. THE AUTHORITY TO REFER.

7.1 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 1995 in connection with the control of and transaction with and concerning the accounts of a

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public body or the public moneys, stores or 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. Referrals for breaches of the Leadership Code may also be made to the Office of the Ombudsman.

7.2 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.

7.3 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.

7.4 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.

7.5 Regrettably, the Committee is required to make referrals of individuals for further investigation and possible prosecution as a result either of the attitudes displayed

by those persons toward the Committee or as a result of evidence received by the Committee.

7.6 Those referrals were made after anxious consideration of the evidence and explanations given by the persons concerned.

7.7 The Committee accepts 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 and where there is clear and unequivocal evidence which requires specialized investigation.

8. RELEVANT STATUTES.

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

Public Finances (Management) Act 1995.

8.2 The Public Finances (Management) Act 1995 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.

8.3 Further, the Act imposes certain obligations on Public Servants at all levels and in all agencies of Government for collection of State revenue and controls the expenditure of public monies.

8.4 Relevant sections of the Act which were considered by the Public Accounts Committee during the course of the Inquiry were:

(i) Section 3 – Responsibilities of the Minister

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

(ii) Section 4 Departmental

Responsibilities Head of the
of the Department
responsible for financial matters.

This Section prescribes the role, duties and function of the Departmental Head of the Department of Finance.

(iii) Section 5 Department.

Responsibilities of Heads of

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

(iv) Section 6 – Accountable Officers.

This Section imposes duties on all Officers who, inter alia, authorizes the payment of public money.

(v) Section 9 – Powers of Departmental Head and Finance Inspectors.

This Section sets out the powers given to the Secretary for Finance and his Inspectors to enable

access to and inspection of accounts and records. The Secretary for Finance and his Inspectors had power to enforce the terms of the Public Finances (Management) Act 1995 and the Financial Instructions and thereby bring accountability and responsible and lawful management to the operation of Trust Accounts.

(vi) Section 15 – Establishment of Trust Accounts.

This Section prescribes the power to establish Trust Accounts and the manner in which that establishment must be made.

(vii) Sections 16 and 17 – Payments into and out of Trust Accounts.

This Section sets out the nature of deposits into Trust Accounts and the purposes for and circumstances in which money may be paid out of Trust Accounts.

(viii) Section 16 Payments into Trust Accounts.

This Section prescribes the rules of law concerning receipts into Trust Accounts.

(ix) Section 17 – Payments out of Trust Accounts.

This Section prescribes the manner and circumstances in which money may be paid out of Trust Accounts.

(x) Section 19 – Management of Trust Account.

This Section was carefully considered by the Committee. It imposes on the Head of Department absolute responsibility to properly and lawfully manage Trust Accounts – including, and in particular, the keeping of prescribed records and monthly submission of those records to the Department of Finance.

(xi) Part VII – State Tenders and Contracts.

This Part prescribes mandatory tender and procurement procedures applicable to the Department of Petroleum and Energy.

(xii) 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.

(xiii) Part XI – Surcharge.

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

(xiv) 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.

Financial Instructions

8.5 Section 117 of the Public Finances (Management) Act 1995 enables the promulgation of certain Financial Instructions which establish detailed procedures for the handling, collection, expenditure, disposal of and accounting for public monies, property and stores.

8.6 The Public Accounts Committee had regard to these Financial Instructions or directives in the course of this Inquiry – in particular those parts of the Instructions concerning the management of and accountability for Trust Account management.

8.7 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".

Audit Act 1986.

8.8 The Audit Act 1986 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 this Inquiry.

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

Permanent Parliamentary Committees Act 1994.

8.10 The Committee has had regard to Sections 17, 22, 23, 25, 27, and 33 of the Permanent Parliamentary Committees Act 1994 during the course of this Inquiry.

Parliamentary Powers and Privileges Act 1964

8.11 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.

8.12 In the course of this Inquiry, the Committee had cause to examine this Statute.

9. PURPOSE OF THE INQUIRY.

9.1 The purpose of this Inquiry was to examine and report on the quality of management of and accountability for public

money, property and stores by the Department of Petroleum and Energy to the end of the 2008 financial year.

9.2 Further the Inquiry was intended to examine the management of and accountability for Trust monies received into the Konebada Petroleum Park Authority Working Group Trust Account or otherwise paid to that Working Group.

9.3 Further, the Inquiry examined the quality of management of and accounting for Royalty Trust Accounts operated or managed by the Department of Petroleum and Energy.

9.4 The Inquiry was convened as a result of the Office of the Auditor General finding incompetence, illegality and non-cooperation by both the Department of Petroleum and Energy and the Konebada Petroleum Park Authority Working Group.

9.5 It was the intention of the Committee to examine and confirm or reject those findings and to make a Report to the National Parliament on the Inquiry outcome.

10 . DUTIES OF THE HEAD OF THE DEPARTMENT OF PEROLEUM AND ENERGY.

10.1 The duties of the Departmental Head of the Department of Petroleum and Energy in respect of the use of and transactions with public money, property and stores are set forth in Section 5 of the Public Finances (Management) Act 1.995.

10.2 These obligations are simply stated and easily understood.

10.3 In oral evidence to the Committee the Head of the Department of Petroleum and Energy, Mr. Rendle Rimua, stated that he had read and understood these statutory obligations.

10.4 In summary, the responsibilities of the Departmental Head under Section 5 (1) of the Public Finances (Management) Act 1995 were and are to ensure:

- that the obligations imposed by the Public Finances (Management) Act 1995 are complied with by his Department; and
- all accounts and records relating to the functions and operations of his Department are maintained properly; and
- all proper precautions are taken to safeguard the collection and custody of public moneys; and
- all expenditure is properly authorized; and
- all expenditure is properly applied to the purpose for which it is appropriated; and
- there is no over commitment of funds; and
- a monthly review is undertaken to ensure there is no over expenditure or over commitment and the collection of public monies is in accordance with approved plans and estimates; and
- all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste; and
- all necessary precautions are taken to safeguard stores and property; and
- fees, charges and taxes are collected promptly; and
- information required by the Public Accounts Committee is submitted to that Committee accurately and promptly; and

- proper estimates in respect of collection and expenditure of public monies are prepared in a form specified in the Financial Instructions; and
- at the end of each quarter of each financial year he submits to the Department of Finance a report on financial management in a form specified in the Financial Instructions.

10.5 The Head of Department is, by Section 5 (3) of the Public Finances (Management) Act 1995, liable to surcharge, prosecution and penalty and disciplinary action for failure to comply with any part of Section 5 (1).

10.6 To aid compliance with Section 5, the Head of Department has power:

- to appoint a Finance Inspector – Section 8 PF(M)A.
- to obtain free access at all reasonable times to all accounts and records of accountable officers that relate to the collection, receipt or issue of public money, stores or property;
- to inspect and inquire into or call for any information arising from those accounts and records; and
- summarily suspend accountable officers from all duties if he believes that officer may have been in breach of the PF(M)A – Section 9 PF(M)A.

10.7 Past and present Heads of the Department of Petroleum and Energy failed to fulfill virtually any of those responsibilities for years – as a result of which the Department became unaccountable and derelict in its accounting and recording functions.

10.8 It is therefore apparent to this Committee that past and present Heads of the Department of Petroleum and Energy have breached their statutory obligations and duties.

11. DUTIES AND FUNCTIONS OF THE DEPARTMENT OF FINANCE.

11.1 The Committee refers to the Secretary's Statement prefacing the 2005 Public Accounts for a description of the duties of the Department of Finance. These are the words of the Secretary of the Department of Finance, Mr. Gabriel Yer and constitute an authoritative Departmental statement on those duties :

"The Department of Finance in conjunction with Treasury, is the principal advisor to Government and to government agencies on the management of public finances, budget implementation, accountability and government accounting policy matters. The department is also responsible for maintaining the accounting information system used to facilitate the receipting, expenditure and monitoring of public monies. (Committee emphasis).

In line with this role the Department advises and supports the Government in the formulation of financial policy, development of financial systems, monitoring and reporting of whole of Government financial outcomes and financial position, and the implementation of measures aimed at ensuring that the financial management within Government is of a high standard."

11.2 The Department of Finance is responsible for implementing, enforcing and overseeing compliance with statutory accounting requirements and managing all policies, regulations and laws pertaining to the collection and disbursement of Public Monies.

11.3 The Secretary then listed the duties of Heads of Departments and concludes:

"The extent to which Departmental Heads fulfil these responsibilities significantly impacts the quality, completeness and timeliness of these Public Accounts"

11.4 In other words, if there is a failure in any part of the Public Accounts, it is the fault of Heads of Departments and no responsibility of the Department of Finance. This Committee does not agree.

11.5 The Public Finances (Management) Act 1995 clearly imposes the duty of overall control of financial management on the Head of the Department of Finance – see Section 4 PF(M)A.

11.6 Further, Mr. Yer is responsible for financial management in his own Department – Section 5 of the PF(M)A.

11.7 This Committee finds that, in respect of the Department of Petroleum and Energy and Konebada Petroleum Park project, on any measure of performance the Department of Finance has, for years, failed to fulfill its statutory duties.

11.8 The Department of Finance did not demand or enforce the delivery of statutory accounts, reports or records as it is charged to do. This has deprived the State of oversight and control as prescribed by our Constitution and Laws.

11.9 This has allowed the Department of Petroleum and Energy to become unaccountable and uncontrolled in its use of public monies and, more seriously, its management of and accounting for Royalty Trust Accounts. Indeed, were it not for

this Committee the Department would have remained unaccountable.

11.10 More seriously, this failure of oversight and accountability extended to Trust Accounts and Royalty Trust Accounts within the power of the Department of Petroleum and Energy and was an invitation to abuse and illegal conduct – which is exactly what occurred.

11.11 The primary cause for the collapse of fiscal management within the Department of Petroleum and Energy must lie squarely with the Secretary and Head of the Department – presently Mr Rendle Rimua – who tolerated incompetence, intentional overriding of fiscal and management controls and illegality – or acquiesced in that conduct.

11.12 However, had past and present Secretaries for Finance performed their statutory duties, the collapse of accountability and consequent illegalities would not have occurred. It can be concluded that past and present Finance Secretaries also tolerate non-performance and refusals to be accountable in accordance with Law – even within the Department of Finance itself (see Committee Reports on the Keeping of the Public Accounts 2004 – 2006).

11.13 The Department of Petroleum and Energy is not a unique case. All Government agencies exhibit the same failures and have done so for years – for the same reasons and with the same corrupting results.

12. STATUTORY ACCOUNTING REQUIREMENTS .

12.1 The statutory accounting requirements for all Government agencies are prescribed in the Public Finances (Management) Act 1995 and the Financial Instructions made under Section 117 of that Act .

12.2 That Act establishes mandatory accounting practices which cannot, in the absence of specific exclusory legislation, be derogated from.

12.3 These mandatory requirements apply to the Department of Petroleum and Energy .

12.4 They also apply to all public money, property and stores acquired, appropriated to, received and expended by the Konebada Petroleum Park Authority Working Group and received into and expended from the Konebada Petroleum Park Authority Working Group Trust Account.

12.5 The accounting procedures are straightforward and are easily understood by a competent Financial Officer or Head of Department.

12.6 The Financial Instructions provide a step by step formulaic system of recording and accounting for public monies which, if obeyed in a timely manner, will establish reliable and informative primary documentation from which the statutory reports can be compiled.

12.7 Therefore, this Committee cannot conceive of any valid excuse for failing to comply with these legal requirements other than intentional refusal to comply or incompetence.

12.8 No matter what the reason for non compliance, Officers who do not make and submit accounts, reports and records in a timely fashion are unfit to hold the positions that they do.

12.9 Similarly, Heads of Department who tolerate such failures are unfit to hold the positions they do.

12.10 In summary, the accounting requirements imposed on the Department of Petroleum and Energy by the Public Finances (Management) Act 1995, in respect of its own internal budget and finances, were and are, at least, to:

- Maintain proper and lawful accounts and records; and
- Ensure expenditure is properly and lawfully authorized; and
- Avoid over expenditure; and
- Annually review levels of taxes and fees and submit to the Department of Finance, financial reports on these reviews; and
- Prepare and submit to the Department of Finance quarterly estimates of collection and

expenditure in proper form; and

- Ensure Trust Accounts are administered in strict accordance to the Trust Instrument and the Law; and
- Ensure and record that moneys paid out of Trust Accounts comply with Section 17 PF(M)A; and
- Submit an estimates of receipts and expenditure in accordance with Section 19 (3) PF(M)A; and
- Submit monthly reports in accordance with Section 19 (4) (c) PF(M)A; and
- Ensure compliance with Part VII of the PF(M)A – Tender and Procurement; and
- Ensure good, effective and lawful corporate governance; and
- Make, maintain and submit all accounting records and reports in proper form as may be prescribed by the Financial Instructions; and
- Co-operate with the Public Accounts Committee and the Office of the Auditor General.

12.11 Hardly any of these very basic accounting requirements were evident to either the Auditor General or this Committee in the Department of Petroleum and Energy and these failures and weaknesses had persisted for years without redress.

13. THE DUTIES, POWERS AND RESPONSIBILITIES OF A TRUST MANAGER.

13.1 The Department of Petroleum and Energy manages certain Bank Trust Accounts – including Royalty Trust Accounts containing money belonging to third parties and which thereby, arguably, demand a very high degree of probity, experience, skill and accountability from the appointed Trustees.

13.2 The Committee accepts that the basic duties of a Trust manager, are at least to:

- (i) know and obey the requirements of the Public Finances (Management) Act and the Financial Instructions in the management of the Trust Account and the keeping of records and accounts thereof; and
- (ii) know and obey the requirements of all other relevant Laws governing the operation of the Trust; and

(iii) to acquaint himself with the terms of the Trust Instrument and obey them; and

(iv) to adhere to and carry out the terms of the Trust; and

(v) to act lawfully, impartially and independently in his administration of the Trust Account – particularly in deciding to make payments from the Account; and

(vi) to keep proper accounts and to give full information when required; and

(vii) to exercise reasonable care in the management of the Trust. The Trustee should apply the same diligence and prudence as a normal man of business would to his own affairs. This is particularly important in the administration of Royalty Trust Accounts.

13.3 The statutory duties imposed on Trust managers by the Public Finances (Management) Act 1995 are at least:

(i) To ensure that the Trust is properly established – Section 15 .

(ii) To ensure that payments into the Trust Account are properly and lawfully available for deposit and are within the terms of Section 16.

(iii) To ensure that any deposit of money into the Trust Account from Consolidated Revenue is properly authorized by an Appropriation Act.

(iv) To ensure that all payments out of the Trust Account are only made for the purposes of the Account or as authorized by Law and if there is sufficient credit in the Account for that purpose – See Section 17.

(v) To ensure proper management and operation of that Trust Account – Section 19 (2).

(vi) To submit to the Secretary for Finance before the commencement of each fiscal year an estimate in the prescribed form, of receipts and payments expected to be made into and withdrawn from the Trust Account – Section 19 (3).

(vii) To ensure that the Departmental Head of the Department of Finance has authorized payment from the Trust Account in accordance with the estimates approved by him – Section 19 (4) (a).

(viii) Ensure that all Contracts, Projects and other recipients of payments from the Trust Account are lawfully and properly established and actually exist or have been performed before payment is approved.

13.4 The basic duties of a Head of Department imposed by the Public Finances (Management) Act 1995, in respect of the management of a Trust Account, are at least:

(i) To ensure that all the requirements of the Public Finances (Management) Act 1995 and the Financial Instructions are met by the Trust managers and all responsible Officers of the Department; and

(ii) to ensure that all accounts and records relating to the functions and operations of the Trust Account are properly maintained; and

(iii) to ensure that all expenditure is properly authorized and applied to the purposes for which it was appropriated; and

(iv) to ensure that the Department complies with the Trust Instrument and all other requirements of Law in the operation of the Trust; and

(v) to ensure that expenditure from the Trust is proper, lawful and made with due regard to economy, efficiency and effectiveness; and

(vi) to safeguard public funds and ensure propriety and regularity in the expenditure of funds appropriated by Parliament. In this context the Head of any Department is personally liable to make good any sum that the Public Accounts Committee may disallow.

(vii) information required by the Committee is submitted to accurately and promptly; and

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(viii) proper estimates are given by the Department and himself; and

(ix) all Reports and records including and in particular acquittals and accounts are given in a timely fashion and in proper form; and

(x) to oversee the operation of the Trust Account and ensure compliance by the Trust managers with

Sections 15 20 of the Public Finances (Management) Act 1995.

13.5 These are the basic duties imposed on Trust managers and Mr. Rendle Rimua in his capacity

as Secretary for Petroleum and Energy in respect of the operation and recording of the operation of the Konebada Petroleum Park Authority Working Group Trust Account and the Royalty Trust Accounts managed by the Department of Petroleum and Energy.

13.6 The Financial Instructions confirm these duties and prescribe the actual steps and mechanics by which these duties are to be performed.

14. TRUST ACCOUNTING REQUIREMENTS

14.1 The duty of the Department of Finance under the Public Finances (Management) Act 1995 is to ensure that complete and proper accounts are maintained in respect of all transactions involving public monies – see Part 16 of the Financial Instructions.

14.2 Accounting systems and principles are prescribed by the Financial Instructions.

14.3 The Trust Fund is part of the Public Account and public monies are payable into a bank Trust Account only if such payments are within the specific scope of any individual Trust Account –

if not, the monies must be paid into the Consolidated Revenue Fund.

14.4 The basic accounting requirements for all Trust Accounts managed by the Department of Petroleum and Energy are at least:

(i) the Departmental Head responsible for the Trust Account will ensure proper management and operation; and

(ii) statement of cash account will be submitted to the Department of Finance monthly and not later than seven days after the end of the month; and

(iii) statements of receipts and payments and the closing balance will be accompanied by bank reconciliation statements. This is necessary for incorporation of the trust transactions in the monthly and quarterly Statement of Public Accounts compiled by the Department of Finance; and

(iv) the Trust Account must be reconciled on a monthly basis with copies sent to the Public Accounts Division of the Department of Finance. This was the responsibility of the Secretary for Petroleum and Energy; and

(v) fill requirements of commitment control and all other requirements in the Financial Instructions

and the Financial Management Manual apply to the Trust Accounts managed by the Department of Petroleum and Energy; and

(vi) expenditure of monies from the Trust Account will be processed on the prescribed Finance Forms such as requisitions for Expenditure, ILPOC and General Expenses and related forms with certain modifications set out in Volume 3 of the Financial Management Manual; and

- (vii) requirements of commitment control fully apply to Trust Accounts with the exception of those provisions relating to appropriation, Ministers Warrant, Warrant Authorities and Cash Fund Certificates; and
- (viii) lawful and effective purchasing and procurement arrangements must be implemented; and
- (ix) estimates of receipts and expenditure must be made to the Secretary for Finance before the commencement of the fiscal year; and
- (x) delegated officers should be appointed on merit and on proven capability and financial limits established and promulgated; and
- (xi) financial Delegates should be appointed on merit and with firm limits on their delegation; and
- (x i i) a paying officer from a Trust Account should always satisfy himself that there is sufficient credit in the relevant account; and
- (xiii) the terms of the Trust Instrument should be made clearly known to all officers involved in the management of the Trust Account(s) and paying or authorizing officers should always satisfy themselves that the purpose of any expenditure is within the terms and purpose of the Trust Instrument; and
- (xiv) signatories or counter signatories should never be private individuals; and
- (xv) all monies moving into or out of a Trust Account should be traceable at all times; and
- (xvi) every Trust manager and signatory should act with an independent mind and not in accordance with directives – particularly in respect of expenditure from a Trust Account and/or a Royalty Trust Account where the Trust manager stands in a true trust and fiduciary relationship with the beneficiaries; and
- (xvii) Trust managers should always be aware that they may be personally liable for defalcation or failure to act in good faith; and
- (xviii) no signatory or Trust manager should ever accept directions or interference in their roles; and
- (xix) where there is any doubt as to the meaning or effect of a Trust Instrument, officers should seek legal advice.

14.5 These requirements are simple and straightforward. Yet the Department of Petroleum and Energy failed to comply with virtually any single requirement.

15. DUTY OF OFFICERS ETC. TO ASSIST THE AUDITOR GENERAL.

15.1 All persons have the duty to assist and cooperate with the Auditor General when required to do so.

15.2 The Audit Act 1989 gives wide powers to the Auditor General – see for example Sections 2 (power to access information or data), 4 (power to summon, examine, access, search and force delivery of information) and 5 (power to prosecute).

15.3 By Section 29 of the Audit Act 1986, offences and penalties are prescribed for obstructing or failing to assist the Auditor General.

15.4 In the course of auditing the Department of Petroleum and Energy, the Auditor General met refusals to produce records, information or documents.

15.5 Quite properly, the Auditor General issued a written warning to the Department that he would refer the refusal to the Fraud and Anti-Corruption squad of the Police and the Office of the Public Prosecutor unless the records were forthcoming.

15.6 In concert with the provisions of the Public Finances (Management) Act 1995, it is clear that co-operation with the Auditor General is mandatory and enforceable. Yet for years, public servants have failed or refused to give this cooperation when it did not suit their agenda to do so.

15.7 This Committee has wide experience of failure and blatant refusal by Departmental Heads and Officers to cooperate with the Auditor General and with the Committee itself.

15.8 In the opinion of this Committee it is high time that recalcitrant Public Servants were subject to the full coercive powers of the Auditor General, this Committee and with disciplinary action as prescribed by the Public Finances (Management) Act 1995.

15.9 These failures to cooperate strike at the heart of accountability and transparency and cannot be tolerated.

16. THE DEPARTMENT OF PETROLEUM AND ENERGY.

16.1 The principal objective of the Department of Petroleum & Energy is to advise and assist the Minister for Petroleum and Energy in the development of relevant Policies in accordance

with Legislative requirements and objectives and to support the Government's efforts to develop the Nation's petroleum industry by promoting, monitoring and regulating all activities directly related to exploration and development of petroleum resources in Papua New Guinea – including gas production development and sale.

16.2 The Department is also required to formulate and implement appropriate action plans for energy management, suitably integrated with development planning in other economic sector activities.

16.3 The work of the Department includes liaising with other Government Departments involved in rural infrastructure development by adopting an integrated approach to energy, planning and rural development.

16.4 The old Department of Mining and Petroleum was split into two separate Departments by Gazette notification on Gazette Notice No. G65 dated the 26th August 1997.

16.5 The two Departments thus created were the Department of Mineral Resources and the Department of Petroleum and Energy .

16.6 The functions of the Department of Petroleum and Energy were determined by the same Gazette notification. They are:

- to develop the Petroleum and Energy Industries by actively encouraging socially, environmentally and

technically responsible private sector exploration and development of Petroleum and Energy resources;

- to negotiate Petroleum and Energy Agreements and carry out related research and policy analysis;
- to promote exploration and development of indigenous and non-fossil and renewable energy resources for the benefit of both urban and rural populations of Papua New Guinea as well as those of the agricultural and manufacturing sectors;
- to promote better management of the country's non-fossil and renewable energy resources through appropriate energy planning activities; and
- to provide services to standing or ad hoc organisations and committees relating to the functions of the Department.

16.7 It is apparent to this Committee that the Department of Petroleum and Energy is the nominated Department responsible for the development of, co-ordination of, establishment and operation of the liquid natural gas project proposed by Exxon Mobil and partners, and likely to commence in the next few months.

16.8 For that reason this Department has become a crucially important entity in current National development and the future of this country for decades to come.

16.9 To perform these duties, the Department of Petroleum and Energy receives public monies by way of Appropriation.

16.10 According to the tabled Budget for each financial year the Development and Recurrent budget for the Department of Petroleum was:

2007:

Recurrent Budget – K 9,810,900. Development Budget – K 42,025,000 Total: K 51, 835,900
2008:

Recurrent Budget – K 12,630,000 Development Budget – K 123,678,000 Total: K
136,308,000

2009:

Recurrent Budget – K 10,892,000

Development Budget – K 66,800,000

Total: 2010:
Recurrent Budget –

K 77,692,000

K 11,637,000

Development Budget – K 4,768,000

Total: K 16,405,000

16.11 In the last four Budgets the Department of Petroleum and Energy has been appropriated a total of K 292,240,000 – and the Auditor General can find scant records and accounts for that money and its application.

16.12 More worryingly, neither the Department of Finance nor Government seemed to care that there was little lawful accountability. The money kept flowing to the Department in the absence of virtually any Corporate Governance or accountability.

16.13 The Department of Petroleum and Energy, in a real sense, represents the Nation in our Gas and Petroleum Projects and the Nation will be judged by the performance of that Department – particularly on the management of it's own internal finances and corporate governance.

16.14 Having considered all the evidence presented to this Committee, we are of the opinion that the Department of Petroleum and Energy is an incompetent, poorly managed entity which cannot lawfully and properly conduct its own internal financial affairs.

16.15 It is the recommendation of this Committee that this Department be immediately totally reformed, rebuilt and infused with professional, lawful and competent senior managers (recruited internationally if necessary) in order that the interests of the State and the citizens of Papua New Guinea may be properly, fully and lawfully protected as the LNG Project develops and as other energy projects come on line.

16.16 This Committee identifies gross misconduct in the use of accounting for and recording the use of public monies by the Department of Petroleum and Energy but also, more seriously, failures to properly manage, administer or account for Trust and Royalty monies managed on behalf of landowners or resource owners and other of our citizens.

17 THE NATURE OF THE INQUIRY AND THE EVIDENCE BEFORE THE COMMITTEE

17.1 The Public Accounts Committee received into evidence the following documents and submissions:

- A Management Letter from the Office of the Auditor General dated 15 July 2008 entitled "Audit Report of the Department of Petroleum and Energy for the Year 2007 and 2008".
- Departmental Report on Detailed Expenditure Transactions for Konebada Petroleum Park 2005 – 2008.
- Letter of Report from the Office of the Auditor General dated 3 March 2009 to the Public Accounts Committee entitled "Department of Petroleum and Energy PAC Inquiry – Royalty Trust Accounts Audit".
- Annotated transcript containing responses from the Head of Department of Petroleum and Energy.
- Departmental responses to PAC Enquiry Sessional Paper and supporting documents – 26th June 2009.
- Departmental responses to Public Accounts Committee Enquiry – 31st January 2009.

17.2 The documents received into evidence are shown in Schedules 2 and 3 to this Report.

17.3 Having perused the Report of the Auditor General dated 15th July 2008, it became apparent that there were significant and severe internal corporate governance and accounting problems within the Department of Petroleum and Energy. The information contained in that Report was current to 2009.

17.4 The contents of the Report by the Auditor General concerning the management of Trust Accounts maintained or managed by the Department of Petroleum and Energy, prompted this Committee to seek a further and better investigation and report on those Trust Accounts by the Auditor General.

17.5 The Committee gave careful consideration to that further Report of the Auditor General

and will discuss the Audit and report our Findings in respect of that document later in this Parliamentary Report.

17.6 The Committee sent to the Head of the Department a full transcript of proceedings with open invitation to comment on any matter in the transcript.

17.7 The Head of the Department, Mr. Rendle Rimua, returned the transcript interlined with his responses and comments. We will refer to this evidence later in the Report.

17.8 Moreover, the Committee made and gave every opportunity to Mr. Rimua to be frank and honest with the Committee and in his explanations for fiscal shortcomings and accounting failures.

17.9 The Committee left an open invitation to Mr. Rimua to meet with it privately if he so required and to explain or excuse his conduct as Head of the Department in any way that he wished.

17.10 The following extract from Transcript is relevant:

"Hon. Timothy Bonga, MP (Chairman):

"Mr. Rimua, you are the accountable officer and the Head of the Department and the responsibility for any illegality will be entirely your own and we strongly suggest you consider telling us the truth of this matter and if you were brought under any pressure or if you were threatened or ordered in any way to conduct yourself in any matter, you should tell us and if you require a private hearing, we will consider your application.

All parties will be supplied with a copy of the Auditor General's Report and a Transcript of

the proceedings and we invite full and complete responses by 31. January 2009 when we will continue this Inquiry.

The Committee will give full consideration to any responses which any person may wish to make.

Finally, we very strongly suggest that rather than attempt to justify the unjustifiable, all parties be frank and candid."

And further in the following terms:

Hon. Timothy Bonga, MP (Chairman) to Mr. Rimua:

"Please feel free to speak to our staff if there is any information you wish to give us. Otherwise you will accept full responsibility for mismanagement and misuse of monies identified by the Auditor General but as I said feel free, if there is any information you want, to submit it to the Secretary – please do so."

17.11 Mr. Rendle Rimua was appointed Secretary of the Department of Petroleum and Energy on the 27th of April 2007 and this was gazetted on the 30th of April 2007.

17.12 He has therefore headed the Department during the period of the Auditor General's current

Audit and the period of fiscal management and accounting performance considered by this Committee.

17.13 The Committee established from Mr. Rimua that he was familiar with and understood the requirements imposed on Heads of Department including those duties imposed under the Public Finances (Management) Act 1995.

17.14 The Committee heard from Mr. Rimua that he has, at no time, been subject to any pressure, inducement or direction in the manner in which he performs his work or duties of the Head of the Department and the Committee. He therefore accepts that all failures and illegalities, errors or omissions during the tenure of his appointment are entirely his responsibility.

17.15 The Committee conducted the Inquiry in two parts. The first part addressed the state of fiscal accounting, management and recording of the use of and transactions with public monies, property and stores within the Department.

17.16 The second part of the Inquiry dealt with the management of Trust Accounts including Royalty Trust Accounts and the Konebada Petroleum Park Authority Working Group Trust Account and the establishment of, status of and funding of the Konebada Petroleum Park Authority Working Group.

17.17 The Committee now submits to the National Parliament its findings and the evidence upon which those findings were made in each part of the Inquiry and concludes the Report with recommendations for immediate attention of the National Parliament arising from those findings.

18. THE DEPARTMENT OF PETROLEUM AND ENERGY IN THE FINANCIAL YEARS 2007 AND 2008.

Corporate Governance.

18.1 Corporate governance of any Government Department, entity or agency is a description of the way in which an organisation is controlled and governed in order to achieve its objectives.

18.2 Solid and sound controlled environments make an organisation reliable in achieving its objectives within an acceptable degree of risk.

18.3 Conversely, the lack of corporate governance leads to a chaotic, uncontrolled and uncontrollable organisation, incapable of addressing its statutory functions or roles for the simple reason that there are no established or effective lines of command and control.

18.4 In a Department of the seniority and importance of the Department of Petroleum and Energy, the Committee expected to find a highly refined and professional corporate strategic planning function capable of enabling the Department to meet its sophisticated, technical and complex statutory obligations and its other functions.

18.5 In particular the Committee expected to find:

- Soundly based operational plans developed from objectives and organisational structure and roles

and responsibilities of members of the organisation in a highly developed form; and

- Well established and understood ensuring that responsibilities were necessary authority; and

delegations met with

- A code of corporate conduct providing members of the organisation with the accepted standard of behaviour and specifically directed to prevention of fraud, ensuring good client service and creating a culture which favours continuous improvement; and

- Responsive and workable reporting and monitoring processes, ensuring compliance with laws, policies, procedures and codes of conduct and also ensuring performance against objectives of the Corporate and Operational Plans; and

- Implementing a systematic and co-ordinated risk management system across all business activities.

18.6 The Committee anticipated finding such systems not only because of the crucially important part played by this Department in current and immediate future national development, but also because Public Service General Order No. 8.1.J. requires all agencies to have a Corporate Plan in place and, based on that Plan, annual Management Plans devised to meet requirements of the budgetary cycle.

18.7 The Auditor General found an unsigned Corporate Plan for the Years 2007 – 2011, although the contents stated the Corporate Plan was for the period 2003 – 2007.

18.8 Further, closer Inquiry revealed that the Corporate Plan 2007 – 2011 was still an incomplete working draft document and by the end of 2008, the Corporate Plan had still not been finalised.

18.9 More worryingly, the Department of Personnel Management had not committed any resources for the completion of the Corporate Plan. A Working Committee or Special Task Force had not been established to examine and take responsibility for completing this vital document.

18.10 The Committee finds:

- That the Department has no Corporate Plan and has not had one for years.

- The lack of a Corporate Plan renders the Department unable to set targets and performance indicators to monitor its achievements and take corrective actions to achieve objectives.

- The lack of a Corporate Plan means inefficient and ineffective service delivery to stakeholders and the public.

- Most importantly, the lack of a Corporate Plan renders the Head of Department immediately ineffective. Without such a plan, there can be no

management control – and this is precisely what has happened in the Department of Petroleum and Energy.

18.11 The current state of disorder found within this Department is clearly explicable in large part by the absence of such a Corporate Plan .

18.12 There is no guidance, no direction and no mission or objective statement for any employee within the Department to understand or follow.

18.13 This would be unacceptable in a minor entity of Government. It is wholly and completely unacceptable in a Department of such crucial importance to National development both in the short, medium and long term.

18.14 The absence of the Corporate Plan and the quite clear indifference to whether that Plan exists or not, set the background to our Inquiry and largely explained the profound, deep-rooted long lasting failures, illegalities, incompetence and non-accountability that are a common thread in the history of this Department.

Internal Audit .

18.15 An essential ingredient of good corporate governance is a working and effective Internal Audit Unit. The importance of such a unit is clear by the terms of Section 9 of the Public Finances (Management) Act 1995.

18.16 The Auditor General considered the state of Internal Audit in the Department of Petroleum and Energy and found:

- The Internal Audit Unit did not have an Audit Plan for the years 2007 and 2008; and
- There was no Audit Program or specific areas of Audit coverage which the IAU could conduct in 2008;
- Recurrent staffing shortages – the IAU has only one officer, that is the Chief Internal Auditor;
- The Department does not have an Audit Committee established at all.

18.17 Considering the state of financial management and accounting within the Department, the Committee was not surprised to learn of the shortcomings in the Internal Audit Unit.

18.18 Indeed, as this Report will show, the Department of Petroleum and Energy flatly refused to assist or provide evidence or documents to the Office of the Auditor General in the course of his Audit – even after promising to produce the records.

18.19 If the Internal Auditor is met with that response, he would be entirely ineffective.

18.20 This Committee finds:

- Combining the lack of funding and staff shortages in the Internal Audit Unit with a lack of planning and direction inherent in the absence of a Corporate Plan, renders management ineffective and results in a Department that has failed in both its purpose and its duties to be accountable for public monies.
- An ineffective Internal Audit Unit means that the control environments are weak and this facilitates irregular activities. It is, in short, an open invitation to malpractice and this is exactly what has occurred.
- We have found mismanagement and illegality in the handling of Trust Accounts and trust monies by the Department – an issue addressed later in this Report. If an effective Internal Audit Unit had existed and if there had been a Corporate Plan of any degree of competence, those failings and financial mishandling would not have occurred.
- An Internal Audit Unit is necessary to ensure accountability and transparency and it is clear that this Department is neither transparent nor accountable – partly as a result of a failure by the Department of Finance to control, govern or impose accounting standards and governance standards on this Department.

18.21 However, full and complete responsibility for this failure must be accepted by the Head of the Department Mr. Rendle Rimua.

18.22 In respect of a Corporate Governance of the Department of Petroleum and Energy, this Committee recommends:

- The immediate insertion within the Department of competent expert managers capable of understanding the need for a Corporate Plan and capable of imposing one.
- The immediate placement of professional and expert managers who understand the need for and are capable of implementing effective and vibrant Internal Audit Unit.
- A Working Committee should be formed whilst new and fresh management is recruited.

That Working Committee should be given clear guidelines and a time frame in which to complete and impose the Corporate Plan and recruit and commence the operations of an Internal Audit Unit. In the meantime, it would be quite proper for private Auditors to be deployed pending the creation of the Internal Audit Unit.

- This Committee recommends that the Corporate Plan should clearly specify performance indicators which are attainable, realistic and precisely defined.
- The Working Committee should have very close regard to statutory duties and other functions of the Department when formulating the strategic planning process – which itself should be reviewed to ensure development and implementation of an effective Plan is truly based on mission statements and lawful requirements.
- In our opinion, current management is entirely incapable of understanding the need for or unwilling to implement a detailed Corporate Plan and unless that attitude changes the management team should be replaced.
- An Audit Committee should immediately be established in an attempt to begin the imposition of some form of corporate governance upon a chaotic Department.

18.23 This Committee notes that the identified weaknesses were outlined in a Report of the Auditor General dated the 15th July 2008 which was sent to the Head of the Department of Petroleum & Energy on that date.

18.24 As of the date of this Inquiry, no responses had been received by the Auditor General, which strongly suggests that the nature and resolution of the failures were beyond the ability of management.

REPORTING REQUIREMENTS.

Quarterly and Annual Financial Management Reports.

18.25 Section 5 of the Public Finances (Management) Act 1.995 requires the Departmental Head to submit a Report on financial management after the end of each quarter and an Annual Report (including overall assessment of the Department) at the end of each fiscal year, to the Secretary of the Department of Finance.

18.26 Reports have not been prepared and submitted to the Secretary of the Department of Finance by the Department of Petroleum and Energy since 2005.

18.27 The failure to make these Reports is a breach of the Public Finances (Management) Act 1.995 and no explanation has been received by this Committee for that failure.

18.28 Tens of millions of Kina of public money have passed through the Department in that time – with no reports, records or accounts made as required by law.

Annual Management Reports

18.29 Division 4 Section 32 (1) (a) of the Public Service (Management) Act 1.995 requires:

"Each Departmental Head shall by the 31. s t of March in each year prepare a Report on the attainment of the planned objectives of his

Department for the year ending 31 st December preceding".

18.30 It is further stated in the Public Service General Order 6.12 that the Departmental Head should forward to the Secretary of the Department of Personnel Management, a Report on the work and achievements of his Department in relation to the corporate and annual management plan.

18.31 No Report has been prepared since 2005 and no explanation for that failure was forthcoming.

18.32 These failures represent significant non-compliance and show a lack of accountability in the reporting process.

18.33 More seriously, neither Mr. Rimua nor any other witness showed the slightest concern at this failure. Once again, this Committee must find that the Department of Petroleum and Energy is not lawfully or competently managed. The Department refuses to comply with law in its management or reporting procedures.

18.34 These failures are sufficient to refer the Head of the Department for investigation and prosecution and we intend to do so.

18.35 Once again the Auditor General made these facts known to the Department of Petroleum and Energy by a letter to the Secretary dated the 15th July 2008 but as of the date of this Inquiry, no response has been received. We can only

conclude that the Departmental Head either did not understand or care about these failings.

Budgetary Controls and Cash Management

18.36 The state of a Department's cash management is a very good indicator of the quality of overall management and management control.

18.37 Not surprisingly, the budgetary controls and cash management within the Department of Petroleum and Energy were particularly poor with considerable weaknesses being identified.

18.38 Efficient cash management depends on accurate information of the availability of funds requirement as well as a reliable procedure for tracking variances for the Departmental record, against the records of the Department of Finance.

18.39 This is intended to ensure that:

- Funds transferred by way of warrant authority agree with funds recorded at the Department's PGAS Ledger;
- Monthly reconciliations of Departmental expenditure and the records of the Department of Finance are carried out to eliminate any differences with Public Accounts;
- Differences noted are communicated with the Department of Finance and are adjusted as soon as possible.
- Funds spent are within budgetary allocations.

18.40 This simplistic explanation really means that competent and lawful accounting systems exist and are used.

18.41 During a review of the budgetary controls, cash management and cash flow reporting, the Auditor General found:

- The Department of Petroleum and Energy did not employ a Budget Officer responsible for cash flow management and therefore no cash flow statements were prepared on a monthly basis up to the 31st December 2007 or to the time of Audit in early June 2008, to enable the Department to spend funds within its budgetary allocation.
- There were no regular cash position reports to the Secretary of the Department, to predict or prepare for significant anticipated shortfalls or surpluses or to enable the Secretary to make informed financial decisions. Inefficient application of the Department's funds may result in the Department not achieving its objectives.
- No inter-departmental expenditure reconciliations were carried out between the Department of Finance

and the Department of Petroleum and Energy for whole of 2007 and up until the day of the Audit in June 2008. At any point in time there is likely to be an imbalance between the financial accounting systems, PGAS and TMS. It is therefore very important for these two systems to be reconciled on a timely basis.

- The Department's efficient cash management depends on accurate information on availability and funds requirement, as well as a reliable procedure for tracking variances from forecasts.

It is important to establish clear and accurate forecasts in order to ensure that sufficient cash is available to meet the day to day needs of the Department.

In the absence of an efficient cash flow management system to enable reporting on sums availability, there was no sufficient cash available to meet the day to day needs of the Department resulting in five instances of over-expenditure aggregating K 331,814 as per period 12 Report of 2007.

In other words, there was no effective management of cash flow, cash requirement or cash budgets at all. This chaotic management of finances is an open invitation to malpractice and it is a clear example of incompetent management by the Head of the Department and his management team.

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- Revenue was under-collected by K 169 , 667. These adverse variances were not investigated and appropriate action was not taken to collect the revenue as budgeted.
- There were outstanding commitments as at the 31st December 2007 amounting to K 32, 590.
- Expenditure was incorrectly charged to certain Votes aggregated K 757,830 contrary to the 2006 Appropriation Act for the year ended 31st December 2007.
- The expenditures incorrectly charged to other Votes in 2008 totalled K 322,748 contrary to the 2007 Appropriation Act.
- Surplus funds available in Trust Accounts were not invested in line with the Public Finance (Management) Act 1.995 to obtain maximum return.

18.42 This Committee finds that the failures in the area of budgetary control and cash flow management are so serious as to constitute breaches of the Appropriation Acts and the Public Finance (Management) Act 1.995 and these are likely to recur in the absence of proper corporate governance.

18.43 The lack of controls exposed the Department to the risk that management decision making may be compromised, a

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potential risk of error, misappropriation or fraud may not be detected and deprived management of the tools to enable corrective action where necessary.

18.44 The Committee makes the following recommendations:

- There should be a Budget Officer appointed within the Department to monitor and report on

budget versus actual expenditure.

- The Financial Instructions and accounting manuals and systems should be imposed on the Department of Petroleum and Energy and the Department of Finance needs to very considerably improve its failed performance in this regard.
- Management of the Department of Petroleum and Energy have failed in the most fundamental way. The management of budget and cash within any organisation are very basic accounting requirements and any management which cannot perform these tasks should be removed immediately.
- Management should be replaced by competent knowledgeable officers who understand the requirements of cash and budget management and these officers should be constantly overseen and assisted by a viable Internal Audit Unit.
- The appointment of a Budget Officer should be complimented by a centralisation of budget and cash

management to obtain maximum benefit from the pooling of cash resources.

- Effective cash management practice requires preparation of long term cash flow forecasts to anticipate and plan for major inflows and outflows of funds and short term cash flow forecasts to ensure adequate funds are available to meet day to day needs of the Department.
- The Department should immediately commence regular monthly reconciliations of PGAS to TMS systems and bring the operation of all its Trust Accounts within PGAS – we will discuss this issue later in this Report.

18.45 Once again, the Office of the Auditor General sent its findings on budgeted cash flow management to the Head of the Department of Petroleum and Energy on the 15th July 2008 but no response has been received in respect of those findings.

18.46 This Committee concludes that the Head of the Department of Petroleum and Energy neither understood or cared about the findings and recommendations.

Bank Reconciliations.

18.47 Bank Reconciliations are a basic and fundamental accounting tool which are performed on a daily basis by every business

and should be performed by Government Departments, agents and entities at all levels.

18.48 In the course of a number of Inquiries, it has become clear that the system of public accountability within Government has collapsed to the point where scarcely a Government Department or entity can make any bank reconciliations of its own Departmental funds – much less Service and Development Budgets or Trust Account monies.

18.49 This failure is a matter of very profound concern to this Committee and should be to the

National Parliament.

18.50 In this regard, the Department of Petroleum and Energy is no exception and has failed to perform or maintain any competent bank reconciliations.

18.51 The Drawing Bank Account is a vital part of cash management and it is very important that it should be reconciled monthly. There is a requirement that monthly bank reconciliations be compiled and submitted to the Department of Finance no later than 14 days of the close of each month. Part 3 Division 1 Para 4. 7 Financial Management Manual which states:

4.7 Bank Reconciliation:

All Heads of Government Departments and Statutory Authorities are to ensure that their Bank Accounts are reconciled on a monthly basis. Bank balances should be reconciled against the

Cash Book balance and the reconciled Cash Book balance should be agreed with the Appropriation Ledger for National Government, Provincial Government and Local-level Government transactions. Copies of Bank Reconciliation Statements should be forwarded to Accounting Frameworks and Standard (sic) Division, Department of Finance no later than 14 days of the close of each month.

Failure to necessitate

comply with the withholding further

above, may issuance of

Warrant Authorities".

18.52 This Committee finds:

- The Department compiled bank reconciliations for the Drawing Account to the 31st of December 2007. However, from January 2008 until the time of this Inquiry, reconciliations were not prepared at all. No explanation for this failure was made either to this Committee or to the Auditor General. This is totally unacceptable.
- The Drawing Account bank reconciliation statements were not evidenced as having been checked and reviewed by an independent senior officer to attest the accuracy of the reconciliation statement.
- There is no proper segregation of duties. The preparer of the bank reconciliation also performs

other duties in her capacity as acting Accountant in the Accounting area, such as countersigning of Departmental cheques.

- The December 2007 Bank Reconciliation revealed certain reconciling items which were not cleared in order to reflect the correct cash book balance as at the 31st December 2007, namely:

Fraudulent cheques in the bank statement but not in the cashbook aggregated a staggering K 1 , 508 , 287.23 . No explanation for this was forthcoming .

Reimbursements received but not posted to the cashbook totalled K 44,336,797.73. Unpresented cheques as at the 31st December 2007 were K 4,016,915.26. These included stale cheques totalling K 2,910,898.82, some 8 years old.

Other reconciling items not cleared aggregated K 42,250.26 .

The cashbook revealed an overdrawn balance of K 46,887,676.02 as at the 31st December 2007.

- The Department opened five Trust Accounts since May 2007, but bank reconciliations after the beginning of June 2008 were not prepared at all.

This is particularly worrying as the Trust Accounts held Royalty benefits on behalf of third persons.

- A further Trust Account called the "Konebada Petroleum Park Authority Working Group Trust Account" No. 1234560 was operated at ANZ Bank at Waigani Branch where the following matters were noted:

This account was operated outside the Government's accounting system – PGAS. This is a breach of Clauses 4 (b), (c) and 5 of the Konebada Petroleum Park Authority Working Group Trust Account Trust Instrument.

The Department failed to properly administer the Trust Account by drawing the whole 2006 PIP Budget allocation.

In accordance with the Trust Instrument, the Department was required to pay specific claims. By paying a lump sum the Department has lost control over the transactions and failed to ensure accountability requirements are met.

Bank reconciliation statements for 2007 and 2008 were not made available to the Auditor General for his examination. In the absence of any records submitted, the AGO concludes that

the reconciliations were not performed. This Committee agrees.

18.53 We will be addressing the conduct of the Konebada Petroleum Park Authority Working Group Trust Account later in this Report but at this stage we conclude that the entire operation of that Trust Account was unlawful and resulted in the transfer of a very large amount of public money to unaccountable private individuals and a ceding of virtually all control over and accountability for, the use of that money.

18.54 In short, the Department and the Departmental Head of the Department of Petroleum and Energy have failed in their duty to protect public monies paid into this Trust Account and acquiesced in improper payment and use of those monies.

18.55 The failure to complete bank reconciliations means the loss of a key control in assisting

Management to identify anomalies or errors in the payment and receipting processes and to assist the Department to discharge accountability requirements.

18.56 In the absence of a timely preparation of properly constituted bank reconciliation statements, fraud and errors may pass through the bank account without being detected.

18.57 This Committee recommends:

- Immediate controls should be instigated for regular monitoring of budgetary controls and cash management.
- Bank reconciliations must be prepared on a timely, monthly basis. This is a requirement of Law. There is no real complexity involved in this exercise and there is no explanation or acceptable excuse for Departmental failure to carry out the reconciliations.
- Reconciliations should be compiled by a separate Officer and not the Accountant who is signatory to the payment of cheques.
- Reconciliations should be reviewed by a senior staff member.
- Bank account reconciliations should be prepared within a reasonable period to ensure anomalies or errors have been identified and appropriate action taken.
- The Auditor General has recommended (and this Committee agrees) that stale cheque values be written back to the cashbook by way of journal entry by debiting the cashbook and crediting the former years appropriation votes so that funds may be appropriated in the succeeding year.

18.58 It is notable that these failures and recommendations were sent to the Secretary of the Department of Petroleum and

Energy on the 15th July 2008 by the Auditor General's Office. No Departmental response had been made as at the time of this Inquiry.

18.59 This Committee concludes that the Head of the Department of Petroleum and Energy neither understood nor cared about these failures .

Journal Entries:

18.60 The Department of Petroleum and Energy was found to have used excessive journal entries to justify adjustments to unauthorised expenditures.

18.61 The Auditor General reports :

"Journals examined by the AGO were also not properly narrated and certified by a senior staff officer before posting to the ledgers to authenticate the genuineness of the journal entries. The absence of basic controls resulted in expenditure journalised to wrong expenditure votes for 2007 which aggregated to K 757,830.33. Expenditures incorrectly charged to other votes in 2008 and journalised aggregated K 322,748."

18.62 This Committee accepts those findings.

18.63 Unauthorised journal entries are an open invitation to fraud or the concealment of fraud and unauthorised expenditure of public monies. This deceptive bookkeeping has no place in a senior Government Department.

18.64 This Committee recommends that all journals raised are properly narrated and certified by an authorised competent officer before posting to the ledgers to authenticate the genuineness of the transaction. There can be no excuse for fraudulent or creative journal entries to cover up unappropriated or unauthorised expenditure.

18.65 It is notable that once again this information was laid before the Secretary of the Department of Petroleum and Energy on the 15th July 2008 but no response was received and no explanation made to this Committee.

18.66 It is our finding that Management does not understand or does not care that these practices exist and this means that a thorough change to corporate culture and management is required – and required immediately.

Human Resources Management: Payroll Certification

18.67 In a properly managed Department, payroll costs should be controlled and monitored in order that employees' skills are usefully and efficiently deployed and because payroll is the largest single item of expenditure in most internal budgets.

18.68 Payroll information is sensitive and likely to require particular controls to ensure confidentiality.

18.69 Accuracy and completeness of payroll records is the responsibility of the Departmental Head. Payroll information

is processed centrally by the Information Technology Division of the Department of Finance but the raw data and Departmental records are solely the responsibility of each Department.

18.70 A review by the Auditor General of the Human Resource Management Process and Payroll Controls showed:

- Payroll was not certified by a Divisional or Branch Head nor was the payroll reviewed by Senior Management; and
- The required Finance Form 10 (FF10) was not used in compilation of its pays for officers as required under Part 18 of the Finance Management Manual Paragraphs 23 – 27.

18.71 These issues were identified in 2006 but as of the date of this Inquiry the issues had still not been addressed by the Department.

18.72 This Committee finds that these failures incur a risk that entitlements are incorrectly calculated and recorded for work that has been performed and more importantly for work that has not been performed and that unauthorised payment is made to individuals who are not bona fide employees i.e. ghost names/ghost employees.

18.73 Further, when Management or Supervisory personnel are unaware of statutory and regulatory requirements, expenditure can be charged to incorrect vote items.

18.74 In other words, maintenance of payroll records is very basic accounting procedure. Any competent Human Resource Division must be able to perform this simple and fundamental task – but the Department of Petroleum and Energy (like almost every other Government Department) has failed in this regard.

18.75 The Committee has considered the recommendations of the Auditor General in this respect. The Auditor General has recommended that management of the Department of Petroleum and Energy delegate the authority to check and certify the payroll to each of the Divisional Heads. In addition, Management should ensure that all procedures in the Finance Management Manual are adhered to.

18.76 The Committee endorses those recommendations of the Auditor General and urges the Parliament to do likewise.

18.77 This information was sent by the Auditor General to the Department of Petroleum and Energy on the 15th July 2008 but no response was received and no apparent attempt to rectify the problems has been evidenced before this Committee.

Payroll

18.78 To compound the failures of the certification of the payroll, the Auditor General has found that the former Departmental Head (Mr. Joseph Gabut) who left the Department in 2004

was still on the Department's payroll. The Auditor General stated:

"The following matters of concern were noted:

- Total gross salaries and allowances amounting to K112,872.75 were paid to Mr. Gabut between the period from the 1st January 2005 to Pay No. 7 of 2006 although he was no longer employed; and
- That officer was not listed on the Staff Establishment Register and the officer's personnel file was missing.

A review of the Audit recommendation in June 2008 revealed that an investigation into the above matter has not been conducted".

18.79 The oral evidence received on this issue, was as follows: " Honourable Sam Basil, MP, Member –

Significant defects in the payroll system, leave entitlements incorrectly calculated or not recorded either for work performed or not performed, former Departmental Heads are still on the payroll record and still being paid also who are no longer employed by the Department. Is that correct?

Mr. Thomas Holland (Office of the Auditor General} –

Mr. Chairman just a clarification here. The former Secretary left the Department in 2004 but was still being paid until mid 2006. At the time of our Audit in July 2008 the amount has still not been recovered – the overpayment.

Honourable Sam Basil, MP, Member: "Any legal action taken on that?"•••••
Honourable Timothy Bonga, MP, Chairman:

The question is, the former Secretary for Petroleum was removed in 2004 and was still paid a salary until 2006. The question we are asking is, he is being out of the job, he has been paid, has any measure been taken by your Department to recoup this money? I understand there is nil. What have you done about it?

Mr. Rendle Rimua (Head of the Department of Petroleum and Energy)

Thank you Honourable Chairman. The standard practice I think the Auditor General has correctly highlighted here. As soon as a person leaves we notify DPM to put them off the payroll. One of the problems that we have always had is also to do with DPM because it takes time for them to bring them off the payroll.

But I agree this situation, it is too long. It should have been done previously. Now, one of the reasons why we have problems with this part in the Auditor General's work is that I think there has been some lack of co-operation from my Department that we have (sic).

This is a new Management that we are aiming to resolve a lot of these issues and we are in the process of doing that. But, I assure you, we will establish the correct status of this issue and try to resolve it."

18.80 At the time of this Inquiry no apparent attempt had been made to recoup overpayments and equally, no attempt had been made to rectify the defects in payroll management.

18.81 These illegalities and failures were advised to the Secretary for Department of Petroleum and Energy on the 15th July 2008 but nothing was done and no response was made to the Auditor General until such time as this Committee commenced its Inquiry.

18.82 This Committee can properly conclude that no response would have been made by the Department to the findings of the Auditor General and no attempt made to rectify them but for the pressure applied by this Committee and its Inquiry.

18.83 Indeed it is a proper conclusion that the Departmental Head had no intention of responding, no understanding of the failures and no ability to address them.

Recreational Leave Entitlements.

18.84 As long ago as 2005, the Office of the Auditor General made findings relating to weaknesses in the payment of recreational leave entitlements, leave repatriation airfares and accounting and record-keeping in respect of these areas of operation.

18.85 The Auditor General noted in July 2008, that the findings and failures were still current as there had been no significant improvement in the process of raising or processing employee recreation leave entitlements.

18.86 The findings of the Auditor General in respect of the performance of the Human Resources Branch of the Department of Petroleum and Energy in respect of leave entitlements, are particularly serious.

18.87 We quote the findings of the Auditor General (which this Committee endorses):

"AGO observed during the 2005 Audit that a staff member employed in the Human Resources Branch had abused his position and availed himself of improper payment of recreational leave entitlements and recreational leave airfares as observed in the following instances:

- A total of K 29,046.50 was raised and paid to Freemans Travel being recreational leave airfares for Steven Teya – an employee of the Department.
- Public Service General Order 1.4.1. stipulates that the Departmental Head shall authorise payment of the cost of return travel of the Officer, his spouse and children under the age of 19 who are wholly dependant and maintained by the Officer applying for recreational leave.

It was noted that Steven Teya was claiming non-biological children as dependents without any clearance from the Internal Revenue Commission and without proof of adoption from appropriate authorities e.g. a Welfare Officer.

In the absence of such lawful documentation, this Office is of the view that the Department has erred in allowing the officer's children to be determined as dependents. For the purpose of calculating leave entitlements, the Officer's commencement date was set at the 16th June 2001.. It was noted that the Officer was allowed to delay his recreation leave without proper authorisation in accordance with the requirements of General Order 1.4.36.

AGO only sighted a memo from the Manager

Human Resources Advising Officer, whereas an authority from the Departmental Head was not sighted."

18.88 Recreational leave fares shall be granted every two years according to the General Orders . Contrary to this Order, in January 2005 the Officer was allowed travel airfares of K 6,626.60 being travel between Port Moresby – Tari and return.

18.89 In November 2005 the Officer was allowed and paid recreation leave airfares of K 11,017.60 (an increase of K 4, 391.00) . The increase was also due to changes in the Officer's recreation leave destination being travel between Port Moresby – Tari – Koroba return via Hagen.

18.90 In December 2005 another advance payment of K 11,408.10 was paid to the airline ticketing agent. No approval of this payment by the Departmental Head was sighted. A follow up of the 2006 accounts indicate that a further K 4,800 was paid per Cheque No. 130811 dated the 8th August 2006. The caption on the form stated that the Officer wanted money to buy a block of land at 8 Mile NCD.

18.91 The Officer continued to be paid irregular payments in 2006. This was after the AGO reported the problem in a Management Letter in 2005.

18.92 The Officer was paid a total of K 11,515.90 per Cheque No. 16264 dated the 21st June 2007, being advance payment of airfares for recreation leave due in 2008.

91

18.93 Recreational leave entitlements are accrued and not paid in advance. This policy is quite explicit in the Public Service General Orders. The Department has erred in allowing and processing these claims.

18.94 No recovery action has been instigated and the Officer concerned continues to be employed in the Human Resources and Management Section.

18.95 It is clear to this Committee that the Officer abused his position as a Staff Member in the Human Resources Branch to obtain money he is not entitled to.

18.96 More seriously, the Auditor General reports that he requested both the Director, Corporate Affairs and the HR Manager to meet with him to discuss this issue. Both failed to do so, claiming to be attending to urgent matters and to be unavailable. This is a totally unacceptable attitude.

18.97 This abuse by an Officer of the Human Resources and Management Section of the Department of Petroleum and Energy very well illustrates the lack of command and control that both former and current Management and, in particular the then Head of the Department, have allowed to occur.

18.98 How can an officer conduct himself in such a manner and abuse public monies with the full knowledge of the Management, yet nothing is done about it?

18.99 If any example of the state of failure of internal management of this Department was required, it is

furnished by, firstly, the actions of this Officer, secondly by the tolerance of those actions by Management, thirdly the impunity with which this Officer (and we suppose others) has been able to abuse his position and fourthly, by the complete paralysis and failure of the then Head of the Department and his Management Team to stop the behaviour or recoup the payments.

18.100 The Officer concerned should be immediately suspended, full investigation should be made, the Fraud Squad should be involved in that investigation and prosecutions made, if appropriate.

18.101 The inevitable result of these failures is to create a culture where controls are not considered necessary, Management are treated with contempt and a weak or vacillating Head of Department is unable to take any action even where outright fraud exists because he has lost control over officers with access to public monies.

18.102 This Committee endorses the following recommendations of the Auditor General:

- The Department must implement controls to ensure that payment of all employee entitlements are made only after satisfying and meeting the requirements of the Public Service General Orders and the Public Finance Management Manual.
- The Department must investigate Officers involved in approving the advance payment claims and have the

Officers charged both under the Public Service General Orders, the Public Finances (Management) Act 1.995 and the Criminal Code if appropriate.

- The Department must investigate the manner in which the Officer abused his position and deal with him appropriately together with all other Managers who allow this to happen.
- The Department must apply the Surcharge provisions of the Public Finances (Management) Act 1.995 wherever appropriate.
- The Department must seek to recover the overpayments by whatever means it can.

18.103 Once again we must report that, although these facts have been known since 2005 and were advised to the Secretary of the Department by the Auditor General on the 15th July 2008 – no response was made to the findings and no attempt was made to rectify or address the problem.

18.104 The Committee concludes that the Head of the Department of Petroleum and Energy, Mr. Rendle Rimua, did not understand the finding, had no interest in it and no intention to take any remedial action.

Salary Advances.

18.105 Once again the Committee was concerned to learn that in 2005 the Auditor General raised serious findings of weaknesses and failures in salary advances with the Head of

the Department of Petroleum and Energy and again raised the issues on the 15th July 2008 – with no response and no

apparent remedial action being taken.

18.106

The practice of making salary advances throughout all Government agencies is widely abused

18.107

Part 20 Para. 10 Financial Management salary advances except in "exceptional which are defined as being :

Manual prohibits circumstances"

(a) On transfer of an officer from one station to another in a remote location; or

(b) When an officer returns to duty in a remote location ex-leave.

18.108 The advance is fully accountable and will be repaid or recouped from the officers' salary.

18.109 In 2005 the Auditor General found:

- Significant breaches of the Financial Management Manual and the Public Service General Orders in the process of raising and making salary advances and in not ensuring that payment and acquittals occurred at all.
- A total of 17 salary advances were paid to 13 employees totalling K 20, 004.98 .
- In 16 instances totalling K 19,984.98 no action had been taken to recover the salary advances.
- In one instance the only salary deduction was of K180.00 from a salary advance of K 400.00.

- Three salary advances totalling K 2,989.78 were paid to one officer who had since been retrenched on medical grounds and the amount of the advance was not recouped from his retrenchment entitlements.
- Another Officer was paid K 1,500 salary advance in November 2005 and resigned in January 2006. No deduction was made from his final entitlements.
- The Acquittal Forms attached to the cheque butts were filed and noted as being acquitted on the Salary Advances Register without any actual salary deduction being made.
- It is significant that no Management response was ever received to the Findings of the 2005 Audit and during the 2008 Audit the Auditor General determined that no action had been taken to recover the monies inappropriately spent and advised in the 2005 Audit .

18 .110 In other words, the Auditor General, the law, the requirements of the Public Service General Orders and the Public Finance Management Manual had been ignored with impunity.

18 . 111 The Findings in 2006 were no better. The Auditor General observed that from Salary Advance Registers maintained by the Department, salary advances totalling K 67,723.00 were paid to 34 Officers during the year 2006 but:

- Advances paid were not recovered within the year 2006.
- Salary advances were contrary to Part 20 Paragraph 10.2 of the Public Finances Management Manual which states that the amount of salary advance paid should not exceed 80% of the normal fortnightly net pay of the Officer.
- Reasons for payment of salary advances did not meet the "exceptional circumstances" test provided for in the Public Finance Management Manual.
- Some of the Officers paid salary advances in 2006 had outstanding advances paid in 2005 which are yet to be recovered.

18.112 In 2007 and 2008 the Auditor General further found that recovery action had not been instigated to recover outstanding advances given in previous years and the advances given out in 2007 and 2008 were even more significant.

- The advances in 2008 totalled K 9 1 5 , 5 7 5 .4 5 . A break up of this figure is:

Category of Advanee
Number of
Amount

Outstanding
K

Salary Advance

27

K41,138.84

Cash Advance

44

K501,045.76

Petty Cash Advance

13

K3,175.00

Domestic Travelling Allowance

106

K95,514.00

Overseas Travelling Allowance

30

K341,255.85

Total

K 915,575.45

- The Auditor General found a total of K 609,155 were paid as second advances without acquitting the first advances for the Financial Years 2007 and 2008 – let alone the advances for 2005 and 2006.
- Ageing of advances disclosed a total of 666 advances totalling K 2,068,820.97 were not acquitted from 2003 until 2007.
- The Advance Register was not properly maintained and updated accordingly. Important information about advances were not always disclosed in the Register such as cheque numbers, collection date and signature of the advance holder. All required Acquittal Forms with supporting documents were not provided to the Auditor General.
- In all the instances of salary advances made to Officers of the Department of Petroleum and Energy, there were no written correspondences to the Secretary nor any approval sighted for payment of salary advance for the years 2005 – 2008.
- In 16 instances, advances totalling K 326,482.20 were paid under the Paymaster (Mr. J. Kuno) as Cash Advances.
- These cheques were cashed by the Paymaster and paid to Officers of the Department for various purposes for which no acquittals have yet been received.

18.113 These practices are fraudulent, unlawful and seemingly uncontrolled. The Head of the Department has known of these abuses for at least five years and was again advised on July the 15th 2008 but made no response and no attempt to understand or address the problem.

18.114 More seriously, the Auditor General identified a series of project liaison payments made through the Paymaster in the name of Cash Advances . The Auditor General concludes (and this Committee agrees):

"This is a serious matter and this practice is deemed illegal. All matters relating to Project Liaison Payments are to be handled by the Trust Co-ordinators appointed for the 5 Trust Accounts and with payments captured on these records. The Paymaster is not supposed to handle these types of payments and these payments cannot be categorised as "Cash Advances". These payments are required to go through the normal procurement procedures

where a Requisition for Expenditure is raised with supporting documents and a General Expenditure and a Cheque drawn for the particular payment".

18.115 This Committee concludes that there has been a total breakdown in the internal control over advance payments and monitoring of the usage and acquittals of the various advances that were paid to Officers of the Department.

18.116 The Advance Register was not properly maintained, was incomplete and recovery was not promptly actioned. This may and certainly has led to fraudulent payments of advances and misappropriation of public money.

18.117 This uncontrolled, illegal and unaccounted payment of salary advances shows the state of collapse of this Department. Public monies are treated as a dinau account to be used by all and sundry with complete disdain for the Law.

18.118 Moreover, the practice has escalated every year until 2007 when it reached huge proportions.

18.119 We can only conclude that Mr. Rimua has lost control over his Department (if he ever had it) and is either regarded with contempt by his staff or knowingly acquiesced in the illegal money scheme that public monies in his Department had become.

18.120 The Committee recommends:

- All Management and accountable Officers involved in the payment of these Advances should be removed immediately, investigated, charged, surcharged and referred to the Fraud Squad for further investigation of possible prosecution.
- All outstanding advances should be recovered either from payees directly or by surcharge if possible.
- The Head of the Department be investigated and, if appropriate, charged with offences under the Public Finances (Management) Act 1995 – particularly for breaches of Section 5 (1) (a), (b), (d), (f) and 112 (e) and (f) .
- There should be an infusion of fresh competent professional managers capable of understanding and implementing advance control systems and capable of recouping monies wrongly

paid.

It is clear that a culture of impunity and immunity has arisen within this Department which has given rise to deliberate and intentional overriding of management, management controls and accounting systems and the use and misuse of public monies with no accountability or transparency at all. This must change.

- The Department should immediately implement prudent cash and advance management and issue

instructions to all staff as to their responsibilities in refusing advances in the first instance unless the "exceptional circumstance,, test is met and advances are acquitted within the expected time frame.

18.121 It is clear that Management have deliberately ignored this problem or have actively colluded in the giving of illegal and improper advances using public money.

Employment of Casual Staff.

18.122 General Order No. 7 (7.3 – 7.5) Part Time and Casual Employees, stipulates:

"General Order 7.3 : All casual and part time employees shall be held against position numbers obtained from the Secretary of Department of Personnel Management by application prior to engagement (our emphasis).

General Order 7.4: All casual and part time employees shall be paid through Government payroll against appropriate votes and shall be issued with staff payroll numbers by the Secretary of DPM.

General Order 7.5: No casual or part time employees shall be paid off by cash or cheque payment."

18.122 The Auditor General reports an engagement of a total of 52 casual staff by the Department and these casuals are either

paid through the Alesco Payroll system or through the PGAS system.

18.123 The Department failed to observe the General Order requirements when recruiting all casual workers.

18.124 A total of 38 casual staff out of 52 are paid through PGAS and do not have Staff Payroll numbers. This is very basic paperwork which the Department has intentionally and deliberately refused to perform.

18.125 Further, for a Department of a relatively small size (averaging 120 employees) 52 casual staff is an excessive number to be employed – for no apparent purpose.

18.126 The manner in which these casuals have been employed is improper and violates the provisions of the General Orders as stated above.

18.127 Casuals paid through the PGAS system indicate that expenditure is unbudgeted. Expenditure Item 111 is controlled by the Department of Finance and the Department of Treasury.

18.128 The Auditor General reports that in the Corporate Services Division, casual staff are not attending to duties and responsibilities and states:

"It is a case of idle labour which the Department cannot justify. There are officers who have been casuals for the past 5 – 10 years of service".

18.129 This failure to comply with the requirements of law is yet another failing of this Department and the Head of Department made no attempt to justify the unjustifiable before this Committee but meekly accepted that this (and all other identified problems) did indeed exist and that he would get around to doing something about them.

18.130 This Committee recommends that the duties and responsibilities of each of these casual staff members should be thoroughly investigated and they should be either terminated if they are not required or permanently employed if their services are essential.

18.131 The existence of casual employees on the payroll for a decade (quite illegally) strongly suggests that the Department has failed to manage its own internal affairs, has no lines of command and control, no accountability and a management which does not know or understand what is going on in its own Department.

18.132 Whatever the situation, the responsible managers have failed and should be immediately replaced and this Department should be the subject of a thoroughgoing examination by relevant Authorities and reconstruction to ensure that it is functional – at least insofar as its own internal affairs are concerned.

18.133 We again find that these facts were made known to the Head of the Department on the 15th July 2008 .

18.134 No attention was paid to the Auditors report, no remedial action was taken and no response was received by the Auditor General.

Purchasing and Payments: Planning.

18.135 Procurement Planning and Policies are a constant problem in all entities and agencies of Government.

18.136 For many years Government agencies have had no procurement plans or policies or manuals but that situation has been rectified somewhat in the last few years as a result of a very detailed 2006 Audit investigation and report by the Auditor General's Office on procurement procedures.

18.137 Procurement planning ensures that the right goods and services are acquired at the right time and at the right price. It entails linking the procurement process into the operational plans including the asset management plan of an agency. The plan should be linked to budgetary processes to ensure that funds are available when required.

18.138 This Committee finds that the Department of Petroleum and Energy does not have a Procurement Plan or any strategy to ensure better value for money, compliance with legislative requirements, fast procurement or availability of procurement funds.

18.139 Apparently a plan is being drafted but was not operational at the time of this Inquiry.

18.140 The absence of such a Procurement Plan means that the Department will not be able to achieve improved purchasing power, better value for money, fast procurement, greater assurance that procurement complies with legislative requirements or that funds are available when required.

18.141 No Departmental response to these findings was made to the Auditor General despite the fact that the findings were advised to the Head of Department on the 15th July 2008 Purchasing and Payments Quotations .

18.146 Part 12 of the Financial Management Manual Paragraph 6 and 7 states "three verbal quotations will be obtained for purchases valued at less than KSh,000".

18.147 Quotations are to be recorded in the Quotations Register, whilst Paragraphs 14 – 16 clearly state that three written quotations are required for procurements between K 5,000 and K 100,000.

18.148 Further, Part 20 of the Financial Management Manual, Paragraph 9. 2(8) states that "a voucher will be required to support the issue of the advance – FF4".

18.149 A review of the evidence reveals:

- No Quotation Register was maintained by the Department.
- Payments for goods and services were made in advance before actual receipt of the items required.
- Evidence of the receipt of goods on the payment voucher or accompanying documents was rarely provided.
- Three written quotations were not always obtained.
- Management overriding controls for their own benefit.

18.149 The risks inherent in these failures are twofold. Firstly, value for money will not be obtained and secondly irregular practices such as fraud are inevitable.

18.150 This Committee recommends that the Department should maintain a Quotation Register in accordance with the Financial Management Manual and that Register should record verbal quotations and explanatory remarks.

18.151 We further recommend that Management implement controls to ensure that payment of goods and services satisfy the requirements of the Public Finance Management Manual.

18.152 Once again, these intentional breaches of Law show a Department uncontrolled and uncontrollable in the management of its day to day affairs.

18.153 These weaknesses were advised to the Department on the 15th July 2008 and had previously been advised in 2005 and 2006 – with no response, no remedial action and seemingly no concern on the part of any manager or officer of the Department. No response was ever made to the Auditors reports.

Purchasing of Goods and Services

18.154 The Auditor General makes extraordinary findings that in the years 2006 and 2007, engagement of services by the Department of Petroleum and Energy involved supply companies that "are not reputable".

18.155 The Auditor General states the following:

"The risks involved in acquiring services from unknown/ not genuine suppliers of goods and services contravene fundamental principles of transparent and good management practice that emphasise the following:

- Value for money that involves obtaining goods and services that best meet the Department's needs at the lowest cost.
- Transparency – involves the clear and public documentation of procurement processes and decisions.
- Effective competition – creating effective competition involves publicly requesting

tenders and quotes from suppliers, providing timely and adequate information to suppliers and ensuring that all genuine suppliers participate.

- Fair and ethical dealing – the Department that is spending taxpayers and donor agency money has a special responsibility to avoid waste, act honestly and impartially, and be accountable to procurement actions.
- Efficient and effective operation – the principal of efficient and effective procurement requires procurement staff to use procurement processes that are commensurate with the amount of monies spent".

18.156 The companies providing goods and services to the Department of Petroleum and Energy in the years 2006 and 2007 are almost, without exception, unknown to the Committee and we note that a very significant amount of money was paid for hire cars and maintenance work at the Departmental Office.

18.157 We make no further comment in this regard but the evident failures of checks and balances

required by the Financial Management Manual and the Public Service General Orders will, as we have said, inevitably give rise to improper practices and we strongly recommend that fundamental principles of procurement be enforced within

the Department and that the Procurement Manual be promulgated as soon as possible.

19. RESPONSE AND EXPLANATION FROM THE DEPARTMENT OF PETROLEUM & ENERGY

19.1 As we have indicated, the Committee considered that failures, illegal conduct, lack of transparency and accountability and general collapse of fiscal management within the Department of Petroleum and Energy was so serious that the Head of that Department should be given every opportunity to provide an explanation for those failures.

19.2 The Committee therefore provided the Head of the Department Mr. Rendle Rimua with a copy of the Management Letter of the Auditor General dated 15th July 2008 (which he already had), a copy of the transcript of the Inquiry dated the 16th January 2009, a copy of questions to be asked by the Committee and invited a full and complete written response to both the findings of the Auditor General and the evidence before the Committee.

19.3 The matters which particularly concerned the Committee were:

- The comprehensive and almost complete failure in all areas of management and accounting for transactions with or use of public monies, property and stores by the Department of Petroleum and Energy for at least five years.

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- That fact that these failures and weakness were well known to the Department but no apparent attempt was made to address or rectify them.
- The complete failure of the Department of Finance to impose accounting standards on the Department or require the Department to comply with its obligations of law to provide reports, returns, budgets, management plans etc.
- The evident failure of the Department and in particular its Head and Secretary, Mr. Rendle Rimua to assist and co-operate with the Auditor General when he was required to do so as a matter of law. In this regard the evidence from the Auditor General was:

Mr. Thomas Holland (Office of the Auditor General)

"We did not get the kind of cooperation we thought we should be receiving from the Department.

It is very frustrating. I am saying this because there are instances where we called upon senior

managers and they gave assurances that the documents will be forthcoming and we kept on running around asking for documents. They assure us but the documents don't come. You can imagine

how difficult it is for us on the ground trying to do an Audit and not receiving the kind of support.

19.4 Not only was it frustrating (as it was doubtless intended to be) but it was also a breach of the Audit Act and the Public Finances (Management) Act 1995 .

19.5 It is notable that on the 15th July 2008 the Auditor General wrote to the Head of the Department of Petroleum and Energy in the following terms:

" we requested that supporting documentation regarding payment of royalties and payments to Konebada Trust Account are made available to Audit before the end of July 2008. If the documentation is not provided within this time frame, the AGO will refer the case to the Public Prosecutor for their further action".

19.6 In our experience a threat of this nature from the Office of the Auditor General has no precedent. It well illustrates the contemptuous refusal of this Department and its Managers to cooperate with the Auditor General and we can only conclude that that non-cooperation was generated by a desire to avoid Audit at all.

19.7 This is a good indication of the extent to which this Department has failed. It is so uncontrolled that senior managers are quite prepared to oppose and frustrate the

Office of the Auditor General when it suits their ends to do so.

19.8 It is high time that this attitude was brought under control – particularly in a Department of the seniority and importance of the Department of Petroleum and Energy.

19.9 As we have said ample time was extended to the Head of the Department to make any explanation that he wished.

19.10 Mr. Rimua was present whilst all evidence was taken on the 16th January 2009 and acknowledged having received the Report of the Auditor General in July 2008.

19.11 In summary, the response of the Head of Department was to accept all criticisms and findings of illegality, weakness and incompetence but claim that he only accepted responsibility for those failures from the time of his appointment in April 2007.

19.12 Whatever the merits of that attitude, the Head of Department accepts his Department as he finds it. The problem facing Mr. Rimua is that not only has he failed to address any of the problems which were known both to his predecessors and to himself, he seems to have actively tolerated the lack of control and to have done nothing to assert his authority or to bring the Department and its internal operations and management of its own affairs onto a lawful and proper footing.

19.13 In other words, in the twenty months of his appointment, he did nothing that this Committee can identify to accept or rectify the very obvious problems attending the handling of public money, property and stores by his own Officers until this Committee began its Inquiry.

19.14 Only then did the Secretary instigate very basic remedial steps – which he should have actively pursued from the time of his appointment.

19.15. Mr. Rimua advised the Committee, in writing, as follows:

"1. Since January 2009, we have requested formally for a Financial Controller from the Department of Finance. Due to their own manpower problems, we are still waiting for the Financial Controller.

2. In April 2009, I instructed our Internal Auditor to act as Financial Controller until we officially get one from the Department of Finance.

3 Also early this year, we established the Consultancy and Contractors Engagement Committee (CCEC) to oversee this

responsibility commitment.

before any financial

4 In November 2008, a team of finance inspectors were deployed by the Department

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of Treasury to my Department to inspect certain activities. They have since concluded and we are awaiting their results.

5 We have plans to finalise our Corporate Plan to guide our work objectives but (due) to the urgency of the LNG project, progress is slow.

6 We will endeavour to establish proper procedures and follow established procedures to rectify problems that have been identified".

19.16 This Committee concludes that all these claimed reforms and remedial steps are of very recent origin and have little or no apparent effect. How this Department can hope to address the LNG Project on behalf of the State without proper Corporate Plans, financial control or competent fiscal management in place, is unclear.

19.17 Indeed, it seems to this Committee that to blame the LNG Project for impeding reform and restructuring of the Department is disingenuous, at best.

19.18 For example, it is clear from the Report of the Auditor General, that the abuses of public monies by way of unlawful and possibly fraudulent payment of advances escalated to enormous proportions under Mr Rimua's management with seemingly no control or attempt to address the problem.

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19.19 Some of the responses made by Mr. Rimua after consideration of the Transcript of Evidence are revealing.

19.20 For instance, Mr. Rimua was asked whether he had read the Reports of the Auditor General or Management Letters from the Office of the Auditor General concerning the state of the Department of Petroleum and Energy for the years 2000 – 2008 or any of those Reports or Management Letters.

19.21 Mr. Rimua stated:

"I recently read some of the Reports".

19.22 We assume this means that he read some of the Reports prior to appearing at this Inquiry but they should have been uppermost in his mind from the day he took the appointment as Secretary and should have been given absolute priority by him.

19.23 When questioned as to the failure to respond to the Auditor General, Mr. Rimua stated:

"Audit responses for these periods (2008) had been prepared but due to their lateness and the fact that the Auditor General had already decided to refer the Reports to this Committee, I decided to await the PAC Inquiry instead."

19.24 The Report of the Auditor General was delivered on or about the 15th July 2008 whereas the Inquiry by the PAC commenced on the 16th January 2009.

19.25 No response was made by Mr. Rimua to the Auditor General in the five and half months available to him – and it is notable that no response to the Auditor General's Office Report has yet been received in December 2009.

19.26 The Committee has given careful consideration to the responses made by Mr. Rimua to this

Committee concern ing the very poor state of his Department revealed in the Report of the Auditor General – not only in 2007 and 2008 but for years prior to that.

19.27 Mr. Rimua agreed with a long list of weaknesses, failures, illegalities and incompetence which were put to him by the Committee and agreed that no action had been taken at all to rectify any of the defects either reported in the period 2000 – 2006 or in the Audits for 2007 and 2008

19.28 We consider that the relevant responses should be included in this Report in order that there can be no claimed misunderstanding or misreporting. The relevant questions and answers considered by the Committee were:

"Question:

There would appear to have been absolutely no attempt made to address any of the matters raised by the Auditor General in that period (2000 – 2008) and the Department, in common with all other Government Departments, would appear to be remiss at least insofar as the

handling and involving public monies are concerned.

Answer:

I would agree for audit period 2000 – 2006 as audits for 2007 – early 2008 highlighted the fact that the Department had yet to solve audit findings of 2000 – 2006.

Question:

There would appear to be no control over your staff or the systems of accounting and recording.

Answer:

I would generally agree. Question:

The conclusions drawn by the Office of the Auditor General in 2005 makes a summary of findings that were common for all the Reports of the Auditor General for eight years and which required immediate and urgent redress, but which do not appear to have received any attention. They were:

- deficiencies in revenue collection and record keeping;
- discrepancies in the management of drawing accounts;
- weaknesses in budgetary controls;
- weaknesses and irregularities in procurement and payment procedures;
- weaknesses in payment of salaries;
- deficiencies in the management of payment and acquittal of advances;
- weaknesses in safekeeping and maintenance of assets;

- failures and outright illegality in the management of Royalty Trust Accounts;
 - failures to make or submit Trust Account records as required by Law;
 - unrecorded losses and deficiencies;
 - Internal Audit Unit unable to be considered by the Auditor General because no cooperation was given by the Department to the Auditor General;
 - intentional refusal to produce records and information to the Auditor General despite undertakings to do so;
 - significant weaknesses in internal controls;
 - no procurement policies or programmes and consistent breaches of legal requirements in procurement and processing.
- unrealised budgeted Department;
revenue by the
- unreconciled differences of revenue figures between the Department of Finance and Department of Petroleum and Energy records;
 - reconciling items not cleared by the recompilation of monthly bank reconciliations for the Drawing Account;
 - unreconciled differences of expenditure balances between the Department of Finance and Departmental records;
 - expenditure amounts exceeded warrant authority appropriation;
 - outstanding commitments for previous years settled from the current year's appropriated funds;
 - no proper authority, monitoring of usage or payment of hire of motor vehicles;
 - no contractual agreements with building contractors for services rendered and paid for;
 - no contractual agreements with security contractors for services rendered;
 - no proper authority, monitoring and control over recreational leave fares paid to personnel;
 - recreational leave fares and PMV fares paid to fictitious personnel;
 - employment of casuals exceeded periods of six months without proper review of employment;
 - unauthorised overtime worked by staff members;

- overtime payments to senior officers above the required salary level;
- salary advances paid to officers whose fortnight nett pay were less than the required normal 80% nett pay;
- no proper authority, monitoring and recovery of travel and cash advances by the Department;
- additional advances to personnel while previous advances still unacquitted;
- advances for official duties misused for other social activities;
- appropriations for other funded activities misused for the purchase of office furniture and equipment and motor vehicles;
- no proper or adequate accounts or records maintained or submitted;

This list applies right up to 2008. Answer:
I would generally agree."

19.29 The inescapable conclusion is that Mr. Rimua as the Head of the Department has virtually no control over his Department or its operations and in the absence of Corporate Plans, Management Structures, Directives, General Orders or any other document enforcing good cooperate governance, lacks the ability to address the matters found by the Auditor General.

19.30 The failures inherent in this Department's management of its own internal affairs are extremely serious and completely inexcusable.

19.31 This Committee will make further and detailed findings and recommendations at the conclusion of this Report – suffice to say at this stage that this pivotally important Government Department requires thorough, complete and immediate rehabilitation and restaffing.

19.32 A Department of this importance and complexity which cannot perform basic tasks such as reconciling its own bank accounts or making statutory reports is a failed Department.

19.33 Considering the crucially important role that it plays now and will continue to play in the future, professional, experienced, honest and competent managers are immediately required and if those persons cannot be found within Papua New Guinea they should be recruited internationally.

20. TRUST ACCOUNTS.

20.1 The Department of Petroleum and Energy maintains five bank Trust Accounts holding royalty monies, development levies or benefit payments to landowners or resource owners.

20.2 The Department is therefore responsible for the management of monies belonging to third parties. These accounts are Trust Accounts in the true sense of that term and, in our opinion, the duties of a Trustee and the Trust accounting requirements which we summarised in Paras. 13 and 14 apply to the Department and its officers – particularly the Head of Department .

20.3 The Committee has carefully considered the nature of the money held in these Trust

Accounts and has concluded that, pursuant to Schedule 1 of the Constitution of the Independent State of Papua New Guinea, those monies and the accounts in which they are maintained constitute

"public monies of Papua New Guinea" and are therefore within the jurisdiction of this Committee.

20.4 Schedule 1 of the Constitution states:

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

20.5 It is the conclusion of this Committee that Trust Accounts maintained and managed by the Department of Petroleum and Energy are to be managed in accordance with the terms of the Public Finances (Management) Act 1.995 and Financial Instructions and, considering that they are maintained for the benefit of certain of our citizens, a high degree of accountability and transparency should be expected and delivered.

20.6 The five Trust Accounts maintained by the Department are:

- Kutubu Petroleum Royalty Trust Account;
- Gobe Landowners Benefits Trust Account;
- Moran Petroleum Royalty Trust Account;
- Central Moran Petroleum Development Levy Trust Account; and
- Hides Petroleum Royalty Trust Account.

20.7 There was a sixth Trust Account – the Konebada Petroleum Park Authority Working Group Trust Account which was opened in November 2006 and which will be the subject of discussion later in this Report.

20.8 As of the 29th April 2008, the amounts held in the accounts in the five Royalty Trust Accounts were:

- Kutubu Petroleum Royalty Trust Account –
K 25,036,063.96;
- Gobe Landowners Benefits Trust Account –
K 10,905,242.43;
- Moran Petroleum Royalty Trust Account –

K 4,428,976.65;

- Central Moran Petroleum Development Levy Trust Account –

K 39,409,240.82; and

- Hides Petroleum Royalty Trust Account –

K 2,479,712.87.

The Evidence.

20.9 The Department of Petroleum and Energy is required to monitor all exploration programmes to ensure work is

carried out in the most cost-effective manner and to regulate the exploration, drilling, development and production of oil fields – and gas production.

20.10 The Department also advises Government on legal transactions, licensing, policies and operational matters and to meet the program objectives for which certain Trust Accounts were established.

20.11 Monies raised to the benefit of land and resource owners were held in the five Trust Accounts already outlined (see Para 20.8).

20.12 The Auditor General conducted a full review of the operation of these five Trust Accounts in the years 2007 and 2008 and found significant failures and weaknesses.

20.13 After considering all the evidence, this Committee concludes that the Trust Accounts have all been managed either illegally or incompetently and the Trustees have breached their obligations in respect of each one of the Trust Accounts or their relevant Trust Instruments.

20.14 The evidence before this Committee shows the following:

- The Department did not compile bank reconciliations for the five Royalty Trust Accounts from the 31st May 2007 until the time of Audit in June 2008. The sixth Trust Account Konebada Petroleum Park Authority Working Group Trust Account – was likewise, not reconciled in that period.

Failure to reconcile Trust monies is a fundamental failure of trustee obligations and a breach of the requirements of the Financial Instructions (Part 16 Para.8 Clauses 8.1 and 8.2) and the Public Finances (Management) Act 1.995 Sections 19 (2), (4) (c), and 5 (a), (b), (l) and Section 112 (1) (e).

The Committee intends to refer the Head of the Department and every responsible officer who failed to make or submit reconciliations of each Trust Account with a recommendation for investigation for these breaches.

- The Konebada Petroleum Park Authority Working Group Trust Account was managed outside the Department's PGAS accounting system and this is a breach of Clause 4 (b), (c) and 5 of the Konebada Petroleum Park Authority Working Group Trust Instrument.

We will address this Trust Account later in our Report but at this point record that the Department of Finance confirmed to this Committee that it has received no accountability statements by way of bank reconciliations or quarterly or annual reports since the opening of this particular Trust Account.

This constitutes a breach of the Public Finances (Management) Act 1.995 Sections 5 (1) (a), (b),

(c), (l), 19 (2), (3), (4) (c) and (d) and the Financial Instructions Para.

All responsible officers and Trustees are also open to disciplinary action under the Public Service (Management) Act 1.995 by operation of Sections 113 and 102 (e) and Surcharge, under Section 102.

This Committee will refer all Trustees and responsible officers, including the Head of the Department of Petroleum and Energy for investigation, disciplinary action and surcharge.

- Expenditures charged against the Royalty Trust Accounts total K 29,426,980. The Auditor General requested the provision of records relating to that expenditure but these were not made available to the Auditor by the Department. It was therefore impossible to vouch for the authenticity of the payments made or to confirm compliance with the purposes of the Trust.

As we have indicated in this and other Reports, Public Servants and accountable officers have an absolute duty of cooperation and assistance to the Auditor General when that assistance is requested – see Section 5 (1) (j) Public Finances (Management) Act 1.995 and the requirements of the Audit Act.

The Department of Petroleum and Energy deliberately and intentionally refused to produce accounts or

records to the Auditor General and there is no excuse and no possible explanation for this refusal. Clearly, either the records did not exist or, if they do exist, Departmental Managers would rather risk prosecution for non-production than prosecution for what the records may reveal.

The Auditor General's work was frustrated and this is completely unacceptable where public trust monies are concerned. Where money owed to third parties is placed in trust accounts, such refusal is not only unlawful but is also a fundamental breach of basic Trustee obligations.

The Auditor General, quite properly in our opinion, made the following Report to the Department of Petroleum and Energy:

"The AGO requested that supporting documentation regarding payment of royalties be made available to Audit before the end of July 2008 and that, if the documentation were not provided within the time frame, the matter would be referred to the Public Prosecutor and the Fraud and

Anti-Corruption Unit of the Police Department for their further action. To date, no documents have been furnished to this Office".

LETTER TO THE PAC DATED THE 3RD MARCH 2009

- The Konebada Petroleum Park Authority Working Group Trust Account was operated unlawfully and payments from this Account may constitute fraud as the Working Group had no legal status to operate or apply public monies outside the Papua New Guinea Government's accounting system. We will discuss this matter later in this Report.
- Relevant Memorandum of Agreement Project Proposals or Plans were not sighted in the Audit and were not produced to audit despite requests to do so.
- Statements of receipts and expenditures and cash flow statements from the five Trust Accounts were not sighted or provided to the Auditor for the Memorandum of Agreement Project.
- The appropriate Vote to which all project payments were required to be charged is Expenditure Vote 225 under PIP Funding or the Development Budget. Massive project payments of K 20,796,031.42 made under Expenditure Vote 135 concerned the Auditor General. Expenditure Vote 135 is for "Other Operational Expenses" and therefore should not be utilised.
- The Department of Petroleum and Energy has, by its operation of these Trust Account monies, breached the Oil and Gas Act 1998.

Section 168(1-3) of the Oil and Gas Act 1.998 states: "... The State grants to the project area landowners, the affected Local Level Governments and affected Provincial Government of a petroleum project, a royalty benefit in respect of that Petroleum Project.

The royalty benefit granted under this Section shall be shared between the affected Local Level Government and Provincial Government of the Project in proportion agreed by them in a Development Agreement. The royalty benefit granted under this Section shall be payable monthly, by the Minister, out of the royalties payable to the Minister pursuant to Section 1.59".

The Auditor General has reviewed Trust Account transactions between the 31st December 2007 and the 30th April 2008.

Audit revealed that royalties from these Trust Accounts were paid on an irregular basis while Trust Accounts for Kutubu and Gobe recorded nil royalty payments since the 31st December 2007. This is contrary to the provisions of the Oil and Gas Act

1998 which stipulates that all royalties must be paid to landowners on a monthly basis.

- Not only is the Oil and Gas Act 1998 breached by this failure, the five Royalty Trust Accounts were holding in excess of K 82 million – monies which should attract interest revenue.

It is the duty of a Trustee to manage and invest money belonging to a beneficiary in a prudent and fruitful manner. The records indicate no interest has been paid into these Trust Accounts for the period 30 th May 2007 – 30th April 2008.

There is clear authority to invest funds by Part 16 Para 16 of the Financial Instructions.

- The Auditor General was unable to verify whether total payments of K 6,724,203.60 made from the five Trust Accounts between the 31st December 2007 and 30th April 2008 were made to legitimate landowners in the absence of any relevant disbursement and accountability records.

Once again, the Department simply refused or failed to produce these records to the Auditor General – a breach of law and one in respect of which this Committee intends to make referrals for further and expert investigation.

This refusal was deliberate and intentional – most probably because the records do not exist, but is also consistent with fiscal malpractice with Trust Funds which the Department intends to hide.

Whatever the reason, it constitutes a serious breach of legal and trustee obligations and clearly shows the Trust managers and accountable officers concerned to be unfit to hold the positions that they do.

The Auditor General was told by the Director – Petroleum, that each Coordinator of the Trust Accounts were to furnish Audit documents of disbursements relating to Trust Accounts maintained by the Coordinator. No documents were received.

The Auditor General concludes:

"In the absence of written records/ evidence, the AGO considers that such documentation does not exist".

This Committee agrees and will make immediate recommendations to the National Parliament and to the relevant Minister to remove management of all trust monies from this Department to a competent lawful and experienced Trust manager.

This misconduct and mishandling of Royalty trust monies begs a question – if the Department of Petroleum and Energy cannot comply with the Oil and

Gas Act 1.998, what is the use and purpose of the Department?

If it conducts itself in an illegal and unlawful manner where Royalty monies are concerned, what confidence can the citizens of this country have in that Department to properly, lawfully and professionally manage the development of an enormous Gas Project for the benefit of the Nation?

- This Committee finds that the non-provision of the Royalty Expenditure Reports is a breach of Section 19 (4) of the Public Finances (Management) Act 1.995 which requires prescribed records and accounts relating to Trust Accounts to be maintained and submitted to the Department of Finance at the end of each fiscal year.

- Payments from Trust Accounts must be processed through the FF3, FF4 and FF4A Forms supported by relevant supporting documents stipulated under Part 16(14) of the Financial Management Manual.

20.15 Not a single document, record or statutory return was provided to the Auditor General and this Committee concludes that the Department simply does not create or maintain these documents at all.

20.16 In fact, there is virtually no accounting for, recording of or transparency in the operation of any of these Trust Accounts and this Committee intends to make reference of the

Department, the Trust managers and accountable Officers for further investigation and possible prosecution.

20.17 This Committee also concludes that there is a complete breakdown in fiscal accountability and reporting by the Department – whether those finances are public monies applied to the Department's internal operations or monies held for and on behalf of third parties. The control environment is non-existent and risk of fraud and mishandling is obvious.

20.18 This Committee recommends that either the Trust managers should be removed immediately and replaced by competent motivated professional and experienced Trustees capable of implementing and maintaining Trust Account management systems – and capable of understanding the reasonably simple Trust accounting requirements set forth in the Public Finances (Management) Act 1995 and the Financial Instructions and enforcing the Department to comply with the requirements of law in its operations – or that Trust Account management be entirely removed from the Department.

20.19 Further, the Department of Finance have acted entirely negligently in allowing this Department to behave as it wishes rather than in accordance with the requirements of the Public Finances (Management) Act 1995 which it is the duty of the Department of Finance to impose and enforce.

20.20 These matters were put to Mr. Gabriel Yer, the Secretary for the Department of Finance and Mr. Simon Tosali the Secretary of the Department of Treasury in the course of our Inquiry.

20.21 The Committee sought explanations for the miserable state of the Department of Petroleum and Energy in its management of public monies, property and stores but received no satisfactory answers from either Mr. Yer or Mr. Tosali.

20.22 What we can understand from the evidence of Mr. Yer is that no documents, returns or statutory records were delivered to or received by the Department of Finance from the

Department of Petroleum and Energy concerning virtually any matter (including Trust Accounts) for the years 2007 and 2008. Yet, apart from written requests, he did nothing to enforce the statutory accounting or reporting requirements and thereby failed in his prescribed role under Section 4 Public Finances (Management) Act 1.995.

20.23 All the faults, failures and defects identified by the Office of the Auditor General were advised to the Secretary of the Department of Petroleum and Energy on the 15th July 2008 but no response was received at all.

20.24 This clearly shows a Department which does not understand or care about the findings of the Auditor General or the blatant continuous breaches of law engaged in by the Department and its Officers .

20.25 The responsibility for this state of affairs must lie with the Head of the Department – Mr. Rendle Rimua – but be shared by the Head of the Department of Finance – Mr. Gabriel Yer.

21. DEVELOPMENT EXPENDITURE EXPENDITURE IMPLEMENTATION COMMITTEE.

21.1 The Expenditure Implementation Committee was established by Section 178(2 – 5) of the Oil and Gas Act 1998.

21.2 That Section stipulates that the Minister shall establish in respect of each Petroleum Project, an Expenditure Implementation Committee comprising:

(a) The Secretary of the Department of Treasury or a National Government Department responsible for National Government finances, who shall be Chairman; and

(b) The Director; and

(c) The Director of the Office of Works; and

(d) The Secretary of the Department of Provincial and Local Level Government Affairs; and

(e) The Governor of each affected Provincial Government and Head of each affected Local-level Government of the Petroleum Projects; and

(f) The Chief Executive of the Operator on behalf of the Licensee of the Petroleum Project, or their representatives.

21.3 The Expenditure Implementation Committee is charged with certain responsibilities by Section 178(4) of the Oil and Gas Act 1998.

21.4 These include:

- monitoring expenditures and timetables for construction and implementation of grant and benefit expenditure on behalf of affected LLG's and affected Provincial Governments and approving such expenditures; and
- monitoring expenditure made pursuant to Section 219(C) of the Income Tax Act 1959 to ensure that projects funded pursuant to that Section comply with development plans submitted by the relevant LLG's and Provincial Governments; and
- monitoring the program of ongoing projects for expenditure of monies in accordance with this Act

21.5 The Expenditure Implementation Committee must approve all expenditure by a licensee in respect of a Petroleum Project .

21.6 The Development Budgets for 2007 and 2008 were K 31,300,000 and K 40,500,000 respectively.

21.7 Of the K 31,300,000 budgeted for under the 2007 Development Budget the actual expenditure incurred under relevant development expenditure votes amounted to K 49,747,370.59, of which, K 47,125,188.00 directly relates to expenditures incurred under the Project area.

21.8 Clearly the Expenditure Implementation Committee did not monitor and report on the progress of infrastructure development.

21.9 We find a complete loss of control and failure to responsibly manage the statutory responsibilities vested in the EiC.

21.10 The Director of the Petroleum Division agreed to provide relevant information to the Auditor General but the information was never delivered . Once again an undertaking to the Auditor General was given with no intention of being fulfilled – and was broken immediately.

21.11 In the absence of these documents, the Auditor General considers the Reports had never been prepared and this Committee accepts that conclusion.

21.12 No explanation was forthcoming from the Head of the Department.

21.13 Once again, not only has the Department failed to carry out its lawful and statutory duty, but it has also lost control and oversight over expenditure and failed or refused to cooperate or assist the Auditor General in performing an Audit.

21.14 The failure of the EiC to carry out its mandated responsibility by not delivering accounts or reports is inexcusable. A development budget totalling K 71,300,000 for the years 2007 and 2008 cannot be verified in the absence of documentary evidence. In short, there is no record of this money capable of being audited.

21.15 The EIC Secretariat is under the control of or within the jurisdiction of the Department of Petroleum and Energy and has failed in its statutory duty. The Department and the Head of the Department of Petroleum and Energy are responsible and answerable for this failure.

21.16 It is notable however that the EIC does not maintain a representative from the Department of National Planning or the Department of Petroleum and Energy. This should be rectified immediately.

21.17 This failure by the EIC and the Department to keep accounts or records of a huge amount of expenditure was reported by the Auditor General to the Department of Petroleum and Energy on the 15th July 2008.

21.18 No response, explanation or contact was received from the Department of Petroleum and Energy and it is clear to this Committee that the Department has no understanding or concern for this failure and consequent breach of statutory duty on its behalf or by the EIC.

21.19 This Committee can find no remedial action at all and it is clear that the Department intends to continue expending this money free and clear of accountability of any sort.

21.20 This Committee recommends that the National Parliament and the Minister for Petroleum take immediate action to remove the management team that are currently placed in the Department of Petroleum and Energy and to deploy competent, honest, experienced Managers who understand their functions, duties and obligations and who are prepared and capable of meeting those obligations.

22. KONEBADA PETROLEUM PARK PROJECT.

22.1 As this Committee has outlined earlier in this Report, a sixth Trust Account called the "Konebada Petroleum Park Authority Working Group Trust Account" was opened and operated within the Department of Petroleum and Energy in November 2006.

22.2 The Trust Instrument was dated the 19th May 2006 and signed by the Minister for Finance, Hon. Patrick Pruaitch MP.

22.3 The Trust Instrument, by Paragraph 2, established the purposes of payments from the Trust Account as follows:

"The payments from the trust are to be used only for the purposes of funding:

(i) The implementation of the Konebada Petroleum Park Project;

(ii) The implementation of the National Government's policy of downstream processing of PNG's gas reserves;

(iii) Legal, accounting, project management and consulting services to the Project; and

(iv) Activities of the Konebada Petroleum Park Authority Working Group."

22.4 By Para. 4 (d) all payments or withdrawals from the account were to be solely for the purposes

referred to in Para. 2 and must comply with the Public Finances (Management) Act 1995 and Financial Instructions.

22.5 Further, all cheques and transfers from the account required two signatories. Para. 4 (b) established those signatories as:

Mandatory Signatory:

(i) Secretary Department of Finance or his delegate at Deputy Secretary level, shall be the mandatory signatory;

Countersigning Signatories:

And any of these two to be counter signing officers:

(i) Project Manager, Konebada Petroleum Park Authority, or

(ii) Secretary, Department of Petroleum and Energy."

22.6 The Konebada Petroleum Park Authority Working Group Trust Account was administered by the Secretary of the Department of Petroleum and Energy who was required to maintain records and accounts within the PGAS and to furnish accounts and reports in accordance with the Public Finances (Management) Act 1995 – Para. 5 Trust Instrument.

22.7 The Konebada Petroleum Park Authority Working Group was a group of individuals appointed by the NEC with the apparent mandate to prepare for, implement and manage a Project called the "Konebada Petroleum Park".

22.8 The Project Manager was Mr. Kila Ai and the finance management was apparently entrusted to a company called FIRMS Ltd. – owned by Mr. Peter Nichols.

22.9 As far as this Committee can ascertain, the Petroleum Park is a Project created by politicians in 2006 and implemented by NEC Directive.

22.10 The Project has received and expended a very considerable amount of public money for very little result.

22.11 The Konebada Petroleum Park Working Group and the management of its Trust Account was handed to private, unaccountable individuals who were also the persons involved in the Central City Development and other

government development projects – each of which achieved no tangible results for huge amounts of public money spent on them.

22.12 Insofar as we can ascertain anything at all about the intention behind Konebada Petroleum Park Authority, the Project was intended to ●●●●●"attract investment in Gas based industries with maximum spin-off benefits to the PNG economy at a minimal cost".

22.13 Precisely how this was to occur is unclear although a very general Consultants' Report

concerning similar projects in other countries was commissioned and a good deal of work was performed by Consultants for and at the request of the Working Group.

22.14 The purpose, philosophy and achievements of the Working Group are not the subject of this Inquiry. This Committee is concerned with the management of and accounting for public monies expended by the Working Group.

22.15 Accordingly, the Auditor General was asked to review the operations of the Konebada Petroleum Park Authority Working Group Trust Account and to report to this Committee on the management of that Trust Account.

22.16 The Auditor General has made the following findings – which are accepted by this Committee:

- The Department of Petroleum and Energy did not compile, obtain or submit bank reconciliations for the

Konebada Petroleum Park Authority Working Group Trust Account during the period 31st May 2007 until the time of Audit in June 2008.

- Konebada Petroleum Park Authority Working Group Trust Account was operated outside the Department's PGAS accounting system. This is a breach of Clause 4 (b), (c) and 5 of the Konebada Petroleum Park Authority Working Group Trust Account Trust Instrument which required the Trust Account to be under the strict control of the Department and operated within the PGAS accounting system.

The Trustees and the Head of the Department of Petroleum and Energy ignored the Trust Instrument.

- Bank reconciliations of this Trust Account were not submitted for Audit.
- The Department of Finance had not received any accountability statements by way of bank reconciliations, quarterly and annual reports since the opening of the Trust Account.
- Significant amounts of public money passed into and through the Trust Account with not a single statutory record, account or report being made.
- Public money was handed to private individuals who expended that money as they thought fit – with no control or accountability imposed by Government.
- Financial Instructions were breached by the Head of the Department of Petroleum and Energy in the daily operation of this Trust Account.
- The Project Manager was appointed under the Trust Instrument as a counter-signing Officer in the absence of the Secretary of Department of Petroleum and Energy. The head signatories were the Secretary of

Finance or his Deputy. comments:

As the Auditor General

"The risk exposed is that after the Finance Secretary signs the cheques, the Project Manager will sign as the countersigning Officer in the absence of the Secretary of the Department of Petroleum and Energy. This contravenes the basic requirements of the Public Finances (Management) Act as the Secretary is the Chief Accountable Officer of the Department's Fund and not the Project Manager. The current arrangement is viewed as eroding or bypassing the Departmental Secretary's powers to transfer the funds out".

22.17 This Committee has no doubt that the operations of this Trust Account were intentionally and deliberately hidden from the Auditor General and from Government scrutiny.

22.18 We also find that the Departments of Petroleum and Energy and Finance allowed this to occur and permitted private

individuals to access and spend public monies entirely at their own discretion.

22.19 We also find that the persons actually "managing" the Trust Account i. e. Mr Kila Ai and the individuals comprising the Working Group, refused to be accountable for the use of public money in that they failed or refused to provide information to either the Department of Petroleum & Energy or the Auditor General when it was requested.

22.20 This Committee further concludes that the Secretary and Head of the Department of Petroleum and Energy (and therefore the Government) had lost control of this Trust Account and the way in which public money was expended from it.

22.21 The Auditor General took the unprecedented step of demanding documentation relating to the Trust Account before the end of July 2008 and advising the Department that:

"If the documentation is not provided, the AGO will refer this matter to the Public Prosecutor and Fraud and Anti Corruption Unit of the Police Department for their further action".

22.22 Requests were made to the Project Co-ordinators to furnish records related to expenditure totalling K 29,426,980 but these were not made available. The Auditor General could not vouch for the authenticity of the payments made or confirm compliance with the purposes of the Trust.

22.23 This Committee goes further. The same modus operandi was used by the same individuals and companies in the Central City Development and was, in our opinion, a blatant attempt to remove the use of considerable amounts of public trust money from Government control, audit oversight or accountability.

22.24 . The breaches of law identified by the Auditor General were acquiesced in by the Head of the Department of Petroleum and Energy who seemingly had no concern as to the failure by both himself and his Department to apply lawful accounting standards in the management of public funds held in this Trust Account.

22.25 They were also ignored or condoned by the Head of the Department of Finance.

22.26 The Auditor General finds that the position of Project Manager was not publicly advertised and this Committee has confirmed that advice. The Project Manager, Mr. Kila Ai, was appointed directly by the NEC without any competitive applications and solely upon the recommendation of Sir Moi Avei the then Minister for Petroleum and Energy.

22.27 The Minister also advised the NEC that:

"To publicly advertise the position will cause an undue delay and may diminish professional services offered by the successful applicant".

22.28 It became apparent that the Ministerial Gas Steering Committee had already appointed Mr. Ai as the Manager of the Konebada Petroleum Park Authority Working Group and, as the Auditor General finds, this appointment resulted in a Project Manager who was not a Public Servant and not bound by Public Service General Orders and other enabling Acts.

22.29 K 8.8 million of public monies placed in this Trust Account were removed from public scrutiny by the simple expedient of improperly appointing a private individual who was not subject to provide accountability by way of quarterly and annual reports and then illegally appointing him a counter signatory to the account.

22.30 The Project Manager failed to submit bank reconciliation statements, quarterly and annual reports pertinent to the operation of the Working Group Trust Account – in breach of the law.

22.31 No Legislation gave effect to the operation of Konebada Petroleum Park Authority and as such, the Auditor General concludes that the payment of this money may constitute fraud as the Working Group had no legal status to operate and apply public monies outside the Papua New Guinea Government's accounting system.

22.32 When a detailed examination was made of the nature of expenditure that finding became even more serious, as we will address later in this Report.

22.33 The Auditor General further found:

- Payment vouchers related to expenditures from the Konebada Petroleum Park Authority Working Group Trust Account were not made available for examination. These were apparently held by the Project Manager at his Office at an apartment occupied by him.

No supporting documentation or evidence to substantiate the payments was held by the Department of Petroleum and Energy or, apparently, by the Project Manager or its Accountant.

- The Trust Fund financial statements were audited by a private accounting firm contrary to the Constitution and the Audit Act. Since the money in the Trust Fund constitutes public money, the Auditor General is required to perform Annual Audits and report on those results to the Parliament.

More seriously, the Head of the Department of Petroleum and Energy took no steps to stop payments or demand accountability from the Working Group through statutory records and accounts.

22.34 The Auditor General did consider the private Auditor's Report and noted the following matters of concern:

- Fixed Assets acquired amounted to K 20,558 in 2007 and K 112,076 in 2006 but it is not known whether an

Asset Register was maintained to record all the assets purchased.

- In 2006 one motor vehicle was purchased and in 2007, three were purchased. All four vehicles were registered with private number plates instead of Z number plates and the Auditor General could not confirm the ownership, condition and location of the vehicles.
- There is no justification for the purchase of these vehicles. The objective of the initial appropriation was for "feasibility studies, project preparation and design". It does not include the purchase of motor vehicles.
- The Auditor General observed that expenses reported in the Financial Statements frequently revealed duplication of jobs already done at Departmental level such as land titles and landowner consultancy, liaison services, legal services including drafting legislation, planning, engineering, landowner liaison, social mapping and communication – to name only a few.
- Progress Reports on the status of the implementation of the Working Group's progress were not submitted for Audit.
- Authenticity and legal existence of the Working Group could not be established by the Auditor General. Once again, this lack of accountability and transparency mirrors that found by this Committee in its Inquiry into

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Central City Development where the same individuals and companies were involved as managers.

- Title Deeds to several land parcels proposed to be purchased and those that were purchased for the purpose of the Trust were not made available for Audit examination despite requests to provide them.

22.35 This Committee agrees with the Auditor General that the implication of these actions and failures are at least:

- In the absence of monthly bank reconciliation statements being prepared, fraudulent transactions may be passed through the accounts without being detected. Timely management action may not be taken to recover the misappropriated money.
- The Trust Instrument has been breached due to the Trust Account operating outside the PGAS system and no supporting documentation to validate the Project s.
- Since the Fund is operated outside the Trust Instrument by the Project Manager, the Funds are open to abuse.
- Inclusion of the Project Manager as a signatory to the Trust has eroded controls and left room for abuse and misappropriation of public money.

22.36 This Committee further finds that the establishment of an entity of doubtful legal import by Ministerial and Executive Directives and the payment of large amounts of public money to Trust Accounts which are controlled by private

companies or individuals for their unfettered use, is a breach of accountability and transparency requirements and one which should not be tolerated by this Parliament.

22.37 Clearly, as we will point out later in this Report, public money was used for purposes outside the Trust Instrument and outside the purposes of the Konebada Petroleum Park Working Group – insofar as any Guidelines and Directives can be found which establish the purpose and function of that Group.

22.38 This Committee gave every opportunity to the Department of Petroleum and Energy to explain its failure to account for or keep any control or supervision over the Konebada Petroleum Park Authority Working Group Trust Account and the way in which public monies were used by private individuals operating or "managing" the Petroleum Park Development.

22.39 Not only was the Transcript of proceedings given to Mr. Rendle Rimua for comment, a full set of written questions were addressed to him in the hope that this Committee could ascertain some legal basis for what clearly amounts to a misuse of significant amounts of public money for private purposes.

22.40 The written and oral responses by Mr. Rimua clearly showed a Secretary or Head of Department who (by his own admission) has no control over his own Department or the way in which an independent entity dealt with public monies in this Trust Account .

22.41 We consider that the relevant written questions to and answers from Mr. Rimua concerning this Trust Account should be recorded in full in order that there can be no suggestion of

misunderstanding or misrepresentation. That document states:

"Question:

Mr Rimua, the Trust Account was allocated to the Department of Petroleum and Energy and you as the Secretary and Departmental Head are the accountable officer. Do you understand what that means?

Answer: Yes I do. Question:

Mr Rimua and Mr Yer, the Auditor General finds that monies were spent from the Trust Account contrary to the purposes of the trust Instrument. How could this occur- particularly when the Secretary of the Department of Finance, the Deputy Secretary of the Department of Finance and the Secretary, Department of Petroleum and Energy were signatories to the Account together with Mr Ki/a Ai? Did you read or consider the Instrument or the purposes for which the payments were requested?

Answer:

Although I am a countersigning signatory to the trust Account held at the ANZ Bank, Waigani, I never signed any cheques to procure goods or services rendered.

Question:

Mr Rimua, were you ever directed, ordered or coerced or placed under any duress to make payments from this trust Account for any purpose whatsoever?

Answer:

Although I am a countersigning signatory to the Trust Account held at the ANZ Bank, Waigani, I never signed any cheques to procure goods or services rendered.

Furthermore, I was never directly involved in the procurement of goods and services for the KPPAWG."

22.42 Clearly the Department and its Head were sidelined by the Petroleum Park Working Group to the extent where, as the Auditor General has reported, public monies were spent at the complete discretion of a private individual or individuals with no accountability imposed by the Department of Petroleum and Energy - a base breach of statutory and Trust Instrument obligations.

22.43 The position of the Head of Department in respect of the Konebada Petroleum Park and its Management is also summarised in the following oral testimony to the Committee:

Honourable Timothy Bonga, MP, Chairman

"Mr. Rendle Rimua, as far as you are concerned, who was responsible for compiling Trust records, documents, instruments, forecast reports and budgets and all other documents relating to the Konebada Petroleum Park Development and submitting them under the Public Finance (Management) Act?"

Mr. Rendle Rimua in written response:

"The Department is responsible for maintaining some of these records".

Mr. Rendle Rimua (oral response).

"The Department is responsible for certain of these. The accounts are kept by the Working Group but we are responsible to provide monthly reports to the Department of Finance. The only information we did get was the 2007 – not going back".

Honourable Timothy Bonga, MP,(Chairman}

"Ultimately, you are the responsible officer and from the Report compiled by the Auditor General, none of the documents appear to exist. Can you explain this?"

Mr. Rendle Rimua (written response>

"The Department of Petroleum and Energy is not directly involved in the daily operational affairs of Konebada Petroleum Authority Working Group.

My Department received the annual budget appropriation for the Working Group. This was then forwarded to the Working Group, hence all daily administration, operations and transactions were managed at the Working Group. Many of these documents would have been provided to the PAC.

The Working Group is required to furnish periodic financial reports to my Department which we then forward to the appropriate Authority such as the Department of Finance.

I am aware we received the financial report for year ended 2007 and a copy was sent to the PAC but not for previous years.

••. The Working Group runs its operations from its own office and since it commenced operations, it

has maintained its own books. The Department does not keep Working Group books however, as required under a Trust arrangement, they are required to provide period financial transaction reports which we then forward to relevant State agencies."

22.44 This Committee does not agree.

22.45 The duties of a Head of Department are made perfectly clear by the Public Finances (Management) Act 1995 and Mr. Rendle Rimua told this Committee that he had read and understood those obligations. He is the responsible Officer and his claim that his only function was to pay money to the Working Group is not correct.

22.46 Paragraphs 4 and 5 of the Trust Instrument establishing the Konebada Petroleum Park Authority Working Group Trust Account states:

4. "For proper control and management of this Trust Account and in accordance with the Public Finances (Management) Act 1995 and Financial Instructions issued from time to time:

(a),...

(b) All Trust (payments

Account transactions and receipts) shall be

processed through the Papua New Guinea Government accounting system

at the Department of Petroleum and Energy; and

(c) The Trust Account shall be administered by the Secretary of the Department of Petroleum and Energy; and

(d) All payments or withdrawals from the accounts shall be solely for the purposes referred to in paragraph 2 above and shall comply with the Public Finances (Management) Act 1995 and Financial Instructions provided sufficient balances available.

5. The Secretary of the Department of Petroleum and Energy shall:

(a) Maintain records pertaining to the account in the Government's Papua New Guinea Government Accounting system (PGAS) and as required by the Public Finances (Management) Act 1995, furnish to the First Assistant Secretary Accounting Frameworks and Standards Division of the Department of Finance:

(i) Within seven days from the end of each month, a Statement of Receipts and expenditures and a bank

statement and reconciliation for the Trust Account and;

(ii) Every June annual estimates of receipts and expenditure for the account for the following year.
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22.47 A copy of the Trust Instrument is annexed in Schedule 4 to this Report.

22.48 Mr. Rendle Rimua was clearly the responsible officer and he failed in his duties. Why he allowed the management of money in this Trust Account to be taken from him and his Department is not known. What is clear, is that the operation of the Trust was to be kept from Government and public scrutiny.

22.49 The fact that the Auditor General cannot obtain records of this Trust Account is capable of only one explanation – the Working Group and its Consultants refused to be accountable in accordance with law for the use of public monies and the Head of the Department of Petroleum acquiesced in this refusal and must assume full responsibility for it.

22.50 It is notable that the Minister for Petroleum and Energy terminated the services of FIRMS Limited and closed all transactions from the Konebada Petroleum Park Authority Working Group Trust Account as of the 11th December 2008 .

22.51 This Committee also questioned the Head of the Department of Finance, Mr. Gabriel Yer, as to the conduct of this Trust Account. The following exchange is the evidence received by the Committee in this regard:

Honourable Timothy Bonga, MP (Chairman)

"Mr. Yer, as Head of the Department of Finance is (sic) or were you aware of the abuses of this Trust Instrument as they have now been identified by the Auditor General? When did you become aware and what did you do about it?"

Mr. Gabriel Yer – Secretary, Department of Finance

"Mr. Chairman, we wrote letters to them at that time for them for our monthly reports of all the Trust Instruments being on the part of the Trustees administration it was reported to have misplaced the account. As for the Department for Finance we asked for only monthly reports to be incorporated in the General Ledger".

22.52 So serious was the mismanagement of the Konebada Petroleum Park Authority Working Group Trust Account that the Auditor General actually wrote to the Secretary for Finance requesting that the Trust Account be closed and brought under control of the Department of Finance.

22.53 This Committee concludes that nothing was done by Mr. Yer in this regard. The following exchange constitutes the evidence received by the Committee:

Honourable Timothy Bonga, MP, Chairman:

"Mr. Yer, this Committee has asked you to produce records, documents and responses to the request of the Auditor General to suspend this Trust Account. We have received nothing from you. What has happened in relation to this request by the Auditor General?"

Mr. Gabriel Yer, Secretary for Finance:

"Mr. Chairman and Members thank you. That is correct I have received the letter. We are talking about two Trust Accounts here. One is the old one and the other one is the new one. The first one is the Konebada Park Authority Working Group Trust and the second is Konebada Petroleum Park Trust Account. There are two. So the only general submission to do it looks like I have to suspend? I've got a letter for suspension already. So which I have to suspend is something that I need to clarify."

Chairman:

"Mr. Auditor General which one did you Audit, the second or the first?"

Mr. Thomas Holland (Auditor General)

"In the letter it was quite specific. It is the Konebada Petroleum Park Authority Working Group Trust Account."

22.54 Mr. Yer claims to have written a letter suspending the Trust Account, but took months to do so. This Committee is not convinced that he has acted on the request of the Auditor General at all.

22.55 No letter was produced to us despite the fact that the Committee sought documents from Mr. Yer well in advance of the Inquiry – but received nothing from either him or his Department.

22.56 Once again this Committee is left in a position where it must criticise the inaction of the Department of Finance.

22.57 The mismanagement of this Trust Account and the breaches of the Trust Instrument by the Working Group were well-known to the Department of Finance as was the failure to provide statutory documents when they should have been submitted. Yet the Department did nothing. This is a very clear pattern of neglect which we have outlined in previous Committee Reports – see Parliamentary Reports into the Keeping of the Public Accounts for 2004, 2005 and 2006 and Parliamentary Reports into the Part Two, Three and Four Reports of the Auditor General.

22.58 Indeed, the Secretary for Finance (or his delegate) were the primary signatories to the Trust Account. They could not avoid knowing of activity with the Trust Account, yet continued to sign and to tolerate breaches of the Trust Instrument and of statutory accounting requirements.

22.59 That the Department of Finance did know of these failures is apparent from the following evidence:

Honourable Timothy Bonga, MP, Chairman:

"Thank you Secretary Yer. Have you received a Statement of Trust Account for the years 2005 to 2008 pursuant to Section 19 Subsection 3 and 4 of the Public Finances (Management) Act?"

Mr. Gabriel Yer, Secretary – Department of Finance:

Mr. Chairman, Members, we have not received that as yet.

Honourable Timothy Bonga, MP, Chairman:

Mr. Yer, have you received monthly bank reconciliations concerning this Trust Account fourteen days after the close of each month for the operations of the Trust accounts pursuant to Part 16 4.2 and 8 of the Public Finance Management Manual?

Mr. Gabriel Yer– Secretary, Department of Finance:

Mr. Chairman that is correct in these Trust Instruments that requires that and we have written a lot of times to them with no response.

Honourable Timothy Bonga, MP, Chairman:

So the answer is "no"?

Mr. Yer, this Trust Account was operated outside the Papua New Guinea Government's accounting system and was controlled by private individuals and it seems that public money is looked after by private individuals and handled utterly at their own discretion without any lawful control exerted by your Department through the PGAS or in any other way. How can this occur? It appears that the signatories to the account were not delegated but were private individuals owing no allegiance whatsoever to the Government and to the people whose money this was. It also seems that your Department had no idea what was happening.

Mr. Gabriel Yer- Secretary, Department of Finance:

Mr. Chairman I can only say that I concur with the statement you have made (our emphasis). On the Instrument it only provides for reconciliation and statement after seven days of each month. That is only one what we get."

22.60 This extraordinary admission precisely summarises the failed state of the Department of Finance.

22.61 In summary, the management of Trust Accounts within the Department of Petroleum and Energy and in particular by the Konebada Petroleum Park Authority Working Group was illegal and characterised by cynical disregard of the law.

22.62 Intentional and deliberate flouting of the law relating to Trust Accounting and reporting and the Trust Instrument itself clearly shows that neither the Department of Petroleum and Energy nor the private individuals and companies managing the Project had any intention of being accountable to Government and intended to and did use public monies precisely as they wished, free of any oversight or control

22.63 Mr. Rimua agreed with all the findings of the Auditor General which include illegality,

fraud, intentional overriding of management controls, wilful breaches of Law, misappropriation and intentional failure and refusal to provide information to the Auditor General or to assist or cooperate with him.

22.64 As if this scenario was not bad enough, despite a complete absence of accountability, clear illegality and clear breaches of the Trust Instrument, not one responsible officer or Department made any attempt to call the Working Group to account. The money kept flowing and the abuses continued.

Expenditure.

22.65 The result of permitting huge sums of public money to be expended at the discretion of private individuals can be found when the nature of that expenditure is considered:

22.66 All material received by the Committee recording or analysing expenditure is attached in Schedules 2 and 3 to this Report.

22.67 A summary of the type of expenditure made from the Konebada Petroleum Park Authority Working Group Trust Account follows:

Consultants:

22.68 This Committee finds:

- In 2006 – K 648,717.46 was spent on Consultants.

- In 2007 – K 3,208,490.37 was spent on Consultants.

- In 2008 – K 4,672,426.41 was spent on Consultants.

- For the years 2006 – 2008 inclusive, K 8,529,634.24 of public monies was spent on Consultants, representing 830/o of total expenditure from the Trust Account of K 10,252,962.83.

- Of that amount, FIRMS Ltd. received K 1,344,387.51 and FIRMS Trust Account received K 123,846.50 for rental of a unit.

- Nikit a Consulting received K 668, 250 .00 as the Project Manager.
- Payments to or in respect of Mr. Kila Ai and Mr Peter Nichols in the years 2006 – 2008 represented 28.01 % of all expenditure undertaken in the Konebada Petroleum Park Project.
- Public monies were paid to the Golden Bowl restaurant, Daikoku restaurant, Roundhouse restaurant, Asia Aromas restaurant and others.
- Public money was spent on bilums, gold jewellery (K4,500), considerable overseas travel made without records or reports required by the Financial Instructions, renovation of an apartment owned by Avonmore Ltd, vehicles, lunches for cleaners and security (K20,850) and other purposes not within the terms of the Trust Instrument.
- The available records show that on the 5th March 2008, a total of K 164,320 was expended for "TA for travel to Australia for meeting". Of that amount of K 100,562.21 was apparently used for "USD notes" and the balance was sent by TT to Australia for unknown purposes. Why American dollars would be required in such huge amounts for travel to Australia requires explanation.
- No tax deductions appear to have been made in respect of any payments from the Trust Account – or at least

none were submitted to the Committee or the Auditor General in any lawful form.

- In the period 2006 – 2007 cash payments of K 545,124.03 were made – 88.13% of those payments were for casual workers. How they were employed and for what purpose is unknown.
- In the same period K 371,799.45 was spent on assets which do not appear in any asset register and cannot be identified.
- In 2008, approximately K 47,000 was paid in cash – but there are no records, acquittals, receipts or other documents.
- No tendering procedures were conducted. "Consultants" seem to have been chosen by the individuals concerned with the management of the Project with no lawful competitive selective procurement conducted.

22.69 As if this was not bad enough, the Trust Account was so poorly administered that in each year of its operation 2006 – 2007, it was overspent as follows:

- 2006 – K 136,396.83
- 2007 – K 58,751.66.
- 2008 – K 1, 357,814.34 .

22.69 An overdrawn Trust Account is a legal impossibility. The fact that it has occurred shows breaches of the Public Finances (Management) Act 1995 and the Financial Instructions and

clearly demonstrates the dismal and incompetent standard of management brought to this Trust Account.

22.70 It clearly also shows the failure of the Heads of the Department of Petroleum and Energy and the Department of Finance to act lawfully, perform their duties and or take any notice of the reports of the Auditor General.

22.71 To compound these failures, if the Konebada Petroleum Park Authority Working Group Trust Account was operated outside the PGAS system (and we accept that it was) the managers of the account were required to comply with the Trust Accounts Act. They did not and thereby evaded the only other method of oversight and accountability available to Government.

22.72 In respect of the Konebada Petroleum Park Project and its management, the Committee will make the following recommendations:

- At no time should any private individuals, including and in particular the managers of the Konebada Petroleum Park Project, be given control over public monies either within or without the PGAS accounting system. To do so is not only unlawful but is an open invitation to non-compliance, non-accountability, malpractice and fiscal mishandling.
- The Management Team of the Department of Petroleum and Energy are incompetent and should be immediately removed and replaced.
- The Konebada Petroleum Park Project should be brought back within the Government Public Service and be rendered fully accountable in accordance with the terms of the Public Finance Management Act 1.995 and the Public Finances Management Manual.
- Management of the Department of Finance should be removed and replaced with competent experienced Secretary and Management Team who understand their obligations and are prepared to call to account all Government entities and agencies who fail to comply with statutory and lawful requirements for accounting for and recording all transactions with public monies – especially Trust monies.
- Any statute governing the development of the Petroleum Park or its managing Authority, should be the subject of very careful scrutiny to ensure that it removes all public money from private hands and gives no right of fiscal management, control, authority or discretion to any private individuals at all – particularly those persons who hitherto presided over the Konebada Petroleum Park Authority Working Group Trust Account and/or the Project itself.
- The Konebada Petroleum Park Authority Working Group or any future entity which might replace it should be

the subject of constant oversight, full accountability and scrutinised in its handling of public monies.

- A full Account of all monies expended from the Konebada Petroleum Park Authority Working Group Trust Account should be sought from, amongst others, Mr Rendle Rimua, Mr. Gabriel Yer, Mr Peter Nichols, Mr Kila Ai, Nikita Consulting Ltd. and FIRMS Ltd . and all other officers within the Department of Petroleum and Energy responsible in any way for management of or accountability for the public funds which passed through that account.
- The Internal Revenue Commission should conduct a full tax audit on all recipients of money from the Konebada Petroleum Park Working Group Trust Account (corporate or personal) to ensure that taxation obligations have been fully declared and paid.
- The Office of the Solicitor General should issue proceedings to recoup all payments made from the Trust Account in breach of the Trust Instrument.
- Disciplinary and surcharge action should be taken against all officers, managers and signatories who have failed in their duties to manage this Trust Account lawfully and properly.
- The Project Manager of Konebada Petroleum Park Authority Working Group should never be a counter? signatory to any Government Trust Account and no

form of delegation or empowerment should be made to any private individual in respect of the operation of Government Trust Accounts.

As we have previously stated, there is an immediate need for a review of the entire system of Government Trust Accounts – see the Parliamentary Report on the Keeping of Government Trust Accounts for the Financial Years 2000 – 2008.

22.73 Professional, experienced, independent and competent managers/trustees should be appointed to manage these Trust Accounts subject to full and complete, modern and effective Trust Rules and Regulations.

22.74 This Committee is not convinced that the Public Service is competent and capable of managing public monies whether held in Trust or not.

22.75 Not one single Government Department is capable of managing even its own internal affairs much less development and service budgets which are conducted through Trust Accounts.

22.76 The performance of the Department of Petroleum and Energy in the management of monies and in the management of itself and entities and agencies for which it was responsible, is incompetent.

22.77 The state of accelerating collapse of that Department is well illustrated by the abuses attending the Konebada Petroleum Park Authority Working Group Trust Account.

22.78 If a fresh new management team of experienced individuals cannot be identified in this country, we should advertise internationally and recruit the best available talent to repair and

move this Department to fulfil the position of considerable National importance which it now holds and will continue to hold for the foreseeable future.

23. CONCLUSIONS.

23.1 The Department of Petroleum and Energy requires immediate and thoroughgoing reform.

23.2 This Department is an extremely important agency responsible for future development of the Nations' resources and for protecting the interests of the State. It is patently incapable of fulfilling this role in its present form.

23.3 Citizens of Papua New Guinea have the right to expect that such an important Department will be managed and directed by capable, trained and experienced persons able to understand and willing to obey requirements of Law and to act in the National interest.

23.4 Upon all the evidence received by this Committee, current and past management of the Department do not demonstrate these qualities.

23.5 The Department of Petroleum and Energy is incapable of lawfully managing its own internal finances or of keeping or maintaining proper, transparent and lawful accounts of its dealings with public monies, property or stores.

23.6 The Department of Petroleum and Energy is incapable of accounting for huge amounts of public money entrusted to it over many years.

23.7 Fiscal management within and by the Department of Petroleum and Energy has collapsed and the Department has become uncontrolled and unaccountable for public funds entrusted to it.

23.8 The Department of Petroleum has mismanaged Trust Accounts for many years and failed to comply with the terms of Trust Instruments and the requirements of lawful trust accounting prescribed by the Public Finances (Management) Act 1995 and/or the Financial Instructions.

23.9 Management of the Department of Petroleum and Energy is incompetent in its management of public monies and the Head of the Department has lost control of his officers and, therefore, the Department.

23.10 The mismanagement of, and non-accountability for, public monies within the Department has worsened over the last three years.

23.11 The Head of the Department of Petroleum and Energy has failed in his statutory duties and should be replaced – together with all the senior managers of the Department.

23.12 The systemic failures of fiscal accountability within the Department of Petroleum and Energy may have exposed the State to significant liability – particularly resulting from the operation of Royalty Trust Accounts. We can be no more specific because there are no records or accounts capable of audit examination and that, in itself, is unlawful..

23.13 The Konebada Petroleum Park Authority Working Group Trust Account was removed from and operated outside the PGAS system and the Head of the Department of Petroleum and Energy acquiesced in or failed to prevent this development .

23.14 If the Konebada Petroleum Park Authority Working Group Trust Account was operated outside the PGAS, the Trustees owed a legal duty to comply with the Trust Accounts Act. There is no evidence that they did so.

23.15 There is no evidence to show that the Departmental managers, private Project managers or recipients of money from, the Konebada Petroleum Park Authority Working Group Trust Account made taxation deductions or complied with the tax laws.

23.16 Millions of Kina were spent by private individuals who refused to make, keep or submit statutory records in

respect of these Trust Funds and who acted thereby in breach of the Trust Instrument.

23.17 The Department of Petroleum and Energy has intentionally refused to cooperate with the Auditor General in that it failed or refused to provide records, accounts or information even after it undertook to do so.

23.18 The Department of Finance refused or failed to maintain any oversight on, or require lawful accountability from, the Department of Petroleum and Energy despite being aware of failings and illegality in the Departmental management of public monies.

23.19 The Department of Finance failed or refused to close Trust Accounts when requested to do so by the Auditor General.

23.20 The Committee censures the Head of the Department of Petroleum and Energy for failing to fulfill his duties and obligations under Section 4 of the Public Finances (Management) Act 1995 and the Financial Instructions and for breaches of the Oil and Gas Act 1998 in the management of Royalty Trust Accounts.

23.21 The Committee censures the Department and all responsible managers thereof for failing to comply with the requirements of the Public Finances (Management) Act 1995 and the Financial Instructions in the accounting for public monies.

23.22 The Committee censures all managers, trustees and signatories of all Trust Accounts managed by the Department of Petroleum for failing to comply with Trust Instruments, trustee obligations, the Public Finances (Management) Act 1995, the Financial Instructions and/or the Oil and Gas Act 1998.

23.23 The Committee censures the Secretary for Finance Mr. Gabriel Yer, for failure to require or enforce the keeping or submission of statutory records and accounts and, in particular, for

refusing or failing to close Trust Accounts when asked to do so by the Auditor General.

23.24 The Committee censures the Secretary and Minister for Finance for permitting a private individual to be appointed a counter signatory to a Trust Account holding public money and for failing to enforce the terms of the Trust Instrument establishing that Trust Account.

23.25 The Committee censures all persons responsible for the expenditure of public monies by the Konebada Petroleum Park Authority Working Group Trust Account.

24. RECOMMENDATIONS:

24.1 This Committee recommends:

24.2 Current management of the Department be removed and replaced by officers with appropriate background, qualifications, training and experience to manage financial

affairs of such an important National Government Department.

24.3 If suitable expert managers cannot be recruited domestically, the Government should identify and deploy foreign expertise to ensure that the Department is professionally managed and the interests of the State protected and furthered thereby.

24.4 A full, deep and searching examination of the exact state of Royalty Trust Accounts managed by the Department of Petroleum and Energy is required to ascertain any liability of the State.

24.5 A deep and searching examination of the procedures, decisions and record keeping of the Expenditure Implementation Committee be conducted.

24.6 All Trust Accounts should be removed from the Department of Petroleum and Energy immediately.

24.7 The Konebada Petroleum Park Project should be independently investigated and brought under close management and oversight.

24.8 The Office of the Solicitor General should be requested to recover all monies expended from the Konebada Petroleum Park Authority Working Group Trust Account in breach of the Trust Instrument and to obtain a full account of all monies received and disbursed by the Konebada Petroleum Park Working Group.

24.9 The Government should immediately impose a Corporate Plan, Operational Plan and accounting systems and practices on the Department of Petroleum and Energy, in accordance with Law.

24.10 Surcharges should be levied on all officers of the Department of Petroleum and Energy responsible for failure to account for public money, for improper payment of public money, permitting breaches of the tenders procedures prescribed by law or any other matter lawfully justifying surcharge.

24.11 Reform and restructuring of the Department of Petroleum and Energy should be treated as a

matter of national importance and priority.

24.12 The Internal Revenue Commission should investigate the Konebada Petroleum Park Working Group and all contractors and consultants thereto and all entities and persons receiving monies from that Group to ensure that proper and lawful taxation liabilities were met.

25. RESOLUTIONS.

25.1 The following resolutions were made unanimously by the Public Accounts Committee:

- (1) This Report is accepted as the Report of the Committee.
- (2) The title of this Report is approved in the form:

"REPORT TO THE NATIONAL PARLIAMENT ON THE DEPARTMENT OF PETROLEUM AND ENERGY AND THE KONEBADA PETROLEUM PARK PROJECT"

- (3) The appendices in Schedules to the Report are

- (4) approved.

There is no dissenting Report.

- (5) The Committee will make this Report to the National Parliament by Section 86 (1) (c) and (d) of the Public Finances (Management) Act 1995.

- (6) To accept the recommendations made in Para. 24 hereof.

- (7) To endorse the referrals made in Para. 26 hereof.

26. REFERRALS.

The Committee makes the following referrals:

- (1) This Report is referred to the Royal Papua New Guinea Constabulary with a recommendation that the payment of money to the Konebada Petroleum Park Authority Working Group Trust Account and the management of that Trust Account be the subject of investigation to establish

whether any offence may have been committed.

(2) The Trustees of the Konebada Petroleum Park Authority Working Group Trust Account are referred to the Office of the Attorney General to consider whether they or any of them breached the Trust Accounts Act.

(3) The Konebada Petroleum Park Authority Working Group and all entities comprising that Group are referred to the Internal Revenue Commission with a recommendation that the Working group taxation records be thoroughly investigated to ensure that all taxation liabilities were met.

(4) All recipients of money from the Konebada Petroleum Park Authority Working Group Trust Account are referred to the Internal Revenue Commission to ascertain whether all taxation liabilities have been met.

(5) The managers/signatories or officers for all Royalty Trust Accounts are referred to the Royal Papua New Guinea Constabulary with a recommendation that a full investigation be undertaken of all expenditure from those Trust Accounts to establish whether any offence has been committed and in particular whether breaches of the Public Finances (Management) Act 1995 and/or the Financial Instructions have occurred.

(6) The Heads of the Departments of Petroleum and Energy and of Finance are referred to the Office of the Solicitor General, the Office of the Ombudsman, the Public Service Commission and the Department of

Personnel Management with a recommendation that those officers be investigated for breaches of the Public Finances (Management) Act and the Financial Instructions for failing to comply with Sections 4 and 5 thereof respectively and the requirements of Trust Accounting established by Sections 15 – 21 inclusive and/or the provisions of the Financial Instructions with a recommendation that the Head of the Department of Petroleum and Energy be investigated for possible breaches and liability to surcharge and/or disciplinary proceedings under Section 5 (3) of the Public Finances (Management) Act 1995 for possible breaches of :

(i) Section 5 (1) (a) PF(M)A in that he failed or refused to make, keep, submit or produce to the Department of Finance, the Auditor General or this Committee all or any statutory records – in particular financial statements, budgets, Trust reports and estimates – required by the Public Finances (Management) Act 1995 and/or the Financial Instructions.

(ii) Section 5 (1) (b) PF(M)A in that he failed to maintain properly or at all, accounts and records relating to the function and operations of the Department;

(iii) Section 5 (1) (d) PF(M)A in that he failed to ensure all expenditure – in particular from Royalty

Trust Accounts, salary allowances, from the Konebada Petroleum Park Authority Working Group Trust Account and/or for Departmental procurement and purchasing – was properly authorized and applied to the purpose for which it was appropriated;

(iv) Section 5 (1) (e) PF(M)A in that monies expended from the Konebada Petroleum Park Authority Working Group Trust Account was overcommitted and paid with no legal basis;

(v) Section 5 (1) (f) PF(M)A in that he failed to ensure that all expenditure was incurred with due regard to economy, efficiency and effectiveness and avoidance of waste;

(vi) Section 5 (1) (j) PF(M)A in that he failed to submit information to the Public Accounts Committee accurately and promptly – in particular all statutory records and accounts for all Trust Accounts under his control or management;

(vii) Section 5 (1) (m) PF(M)A in that he failed to submit a report on financial management to the Departmental Head of the Department of Finance in the time specified – or at all;

(viii) Section 17 of the PF(M)A in that he allowed payments from Trust Accounts in breach of the

Trust Instruments and/or when there was not a sufficient credit in the Account;

(ix) Section 19 (2) PF(M)A in that he failed to ensure proper management and/or operation of all Trust Accounts for which he was responsible;

(x) Section 19 (3) PF(M)A in that he failed to submit in the prescribed form (or at all) an estimate of receipts and payments to be made into and withdrawn from Trust Accounts for which he was responsible;

(xi) Section 19 (4) (a), (c) and (d) PF(M)A in that he failed to authorize expenditure from Trust Accounts in accordance with an agreed estimate of receipts and payments, failed to maintain or submit records or accounts of any Trust Account for which he was responsible and failed to submit an annual statement of each Trust Account for which he was responsible;

(xii) Section 40 and 47A PF(M)A in that he failed to maintain any tender process and permitted breaches of the tendering processes;

(xiii) Sections 4 and 112 of the PF(M)A in that he failed to submit financial reports when asked to do so by the Head of the Department of Finance;

(7) The Committee refers the Head of the Department of Petroleum and Energy and the Trustees of all Trust Accounts managed by that Department for investigation by the Department of Personnel Management to ascertain whether any and what surcharge should be applied to those officers under Section 102 of the Public Finances (Management) Act 1.995.

(8) Management of the Konebada Petroleum Park Working Group are referred to the Police and the Office of the Solicitor General to ascertain the legality of expenditure from the Konebada Petroleum Park Authority Working Group Trust Account, the legality of all expenditure therefrom including cash payments, all payments to consultants, travel costs and the purchase of foreign currency with a recommendation that the Solicitor General consider issuing proceedings for Account and recouping of money from all managers of the Working Group and/or the managers/signatories of, or responsible officers for the Trust Account.

(9) The Minister for and the Head of the Department of Finance be held accountable for permitting a private individual to be appointed counter signatory to a Trust Account holding public monies and failing to make the Trust managers/signatories or officers accountable, enforce delivery of

statutory accounts and statements or to close the Account when those reports and accounts were not forthcoming and when the Head of the Department of Finance was requested to do so by

the Auditor General. The Committee will send a copy of this Report and the Audit Reports to the NEC to consider these recommendations.

(10) The Head of the Department of Petroleum and Energy and the managers/ trustees/signatories of all Royalty Trust Accounts are referred to the Royal Papua New Guinea Constabulary and the Office of the Solicitor General with a recommendation that they be investigated for possible breaches of Section 168 of the Oil and Gas Act 1998 as found by the Office of the Auditor General.

(11) To assist all agencies in their investigations, a copy of this Report and the Audit Reports of the Auditor General on the Department of Petroleum and Energy will be forwarded to those referee agencies.

(12) The Committee considers that this Report, our referrals and the Audit Report of the Auditor General should be sent to the Ministers for Finance and of Petroleum and Energy for their attention and action.

(13) This Committee will also forward copies of this Report and the Audit Report from the Office of the Auditor General to all Resource or Landowner organizations representing the beneficiaries of Royalty Trust Accounts managed by the Department of Petroleum and Energy.

27. SUMMARY.

27.1 It is no part of our jurisdiction or purpose to examine the performance of the Department of Petroleum and Energy in its dealings with developers and its ability to protect and further the interests of the nation in the development of our Petroleum and Gas resources.

27.2 However, any Department that cannot obey the Law in the management of its own internal finances and, more seriously, in the management of Trust Accounts is a failed Department.

27.3 Any Department or Head of Department that freely admits these failures, who fails or refuses to cooperate with or assist the Auditor General and ignores Audit reports and recommendations is a failed Department and a failed Head of Department.

27.4 In such circumstances, the Nation has the right to question the ability of the Department to fulfill its mission statement or to protect the National interest.

27.5 Exactly the same may be said about the Department of Finance upon the state of the evidence received in this Inquiry.

27.6 How the very Department responsible for accounting standards in Government agencies could fail to call the management of the Department of Petroleum and Energy to

account for its failures – especially with Trust monies – is beyond our understanding.

27.7 Equally, we do not understand how the Department of Finance could fail to close an obviously mismanaged Trust Account when asked to do so by the Auditor General.

27.8 The Department of Petroleum and Energy needs immediate and thorough reform commencing with the deployment of competent, trained, experienced Managers and the implementation of lawful and effective accounting systems.

27.9 The Department that represents the State in a complex and highly geared industry such as the Petroleum and Gas market must itself be staffed by expert managers and staff and at least be capable of lawfully managing its own affairs before it attempts to deal with developers or resource owners.

27.10 Further and finally it is our conclusion that a Department of Government that is responsible for the formulation of development and market plans on behalf of the State should not administer Royalty Trust Accounts as there may well be a conflict in those two roles.

27.11 Royalty Trust Accounts should be managed for the National good by expert, independent, trained, honest Trustees with the intellectual and personal qualities required to fulfill such a complex function and to understand their statutory accounting requirements.

27.12 We hope that the National Parliament will share our concern at the state of this Department and make immediate reform to enable the agency to fulfill its statutory duties and role.

.....●●●●●.....●●●●●.
Signature of the Chairman
Hon. Timothy Bonga OL MBE MP

Date of adoption by the Committee: 21st December 2009.

SCHEDULE 1.

WITNESSES.

14th July 2008.

Mr. George Sulliman – Auditor General

Mr Andy Vui – Office of the Auditor General

Mr Thomas Holland – Office of the Auditor General.

Mr Kila Ai – Project Manager, Konebada Petroleum Park. Mr Rendle Rimua – Secretary, Department of Petroleum.

16th January 2009:

Mr. George Sulliman – Auditor General .

Mr. Andy Vui – Office of the Auditor General.

Mr. Thomas Holland – Office of the Auditor General.

Ms. Marina Cvetanovska – Office of the Auditor General. Mr. Kila Ai – Project Manager, Konebada Petroleum Park.

Mr. Rendle Rimua – Secretary Department of Petroleum and Energy. Mr. Simon Tosali – Secretary Department of Treasury.

Mr. Gabriel Yer – Secretary for Department of Finance.

31st July 2009

Mr George Sulliman – Auditor General.

Mr Thomas Holland – Office of the Auditor General.

Ms. Marina Cvetanovska – Office of the Auditor General.

SCHEDULE 2.

REPORTS OF THE AUDITOR GENERAL RECEIVED BY THE COMMITTEE.

SCHEDULE 3.

WRITTEN RESPONSES RECEIVED FROM THE DEPARTMENT OF PETROLEUM AND ENERGY

SCHEDULE 4.

TRUST INSTRUMENT: KONEBADA PETROLEUM PARK AUTHORITY WORKING GROUP
TRUST ACCOUNT