

## **PUBLIC ACCOUNTS COMMITTEE**

### **INQUIRY INTO THE SEPIK HIGHWAY, ROADS AND BRIDGES MAINTENANCE AND OTHER INFRASTRUCTURE TRUST ACCOUNT**

#### **REPORT TO NATIONAL PARLIAMENT**

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## **THE PUBLIC ACCOUNTS COMMITTEE**

### **INQUIRY INTO THE SEPIK HIGHWAY, ROADS AND BRIDGES MAINTENANCE AND OTHER INFRASTRUCTURE TRUST ACCOUNT.**

## **REPORT TO THE NATIONAL PARLIAMENT**

### **1. INTRODUCTION**

- 1.1. On the 8<sup>th</sup> - 9<sup>th</sup> May 2006 the Permanent Parliamentary Committee on Public Accounts conducted an Inquiry into the Department of Finance.
- 1.2. At that Inquiry, the Committee requested the Auditor General to undertake a review of the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account for the period May 2002 to the 31<sup>st</sup> May 2006.
- 1.3. The Committee resolved this particular phase of the Inquiry was a matter of National importance and convened a further Inquiry into the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account in accordance with Section 17 of the ***Permanent Parliamentary Committees Act***.
- 1.4. On the 9<sup>th</sup> day of May 2006 a letter of Request moved from the Public Accounts Committee to the Office of the Auditor General, seeking a full Audit and Report on the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account for the period May 2002 to the 31<sup>st</sup> May 2006.
- 1.5. The Office of the Auditor General considered the Request and held it to be of interest to the general public. The Auditor General directed that an investigation be

undertaken by this Office in accordance with Section 8(2) of the **Audit Act** as requested.

- 1.6. The Auditor General's Office completed its investigation and provided Management Letters to the East Sepik Provincial Administrator and the Acting Secretary of the Department of Finance on the 12<sup>th</sup> July 2006. Those Management Letters requested responses by the 26<sup>th</sup> July 2006.
- 1.7. The East Sepik Provincial Administrator met with the Auditor General's Office staff on the 26<sup>th</sup> July 2006 to discuss audit issues and subsequently responded in writing to the Management Letter in writing on the 1<sup>st</sup> August 2006.
- 1.8. The Acting Secretary of the Department of Finance, Mr. Gabriel Yer, did not meet with the Auditor General's Office staff, but provided a written response to the Office on the 5<sup>th</sup> October 2006.

## 2. EXECUTIVE SUMMARY

2.1 The primary aims of the Inquiry conducted by the Public Accounts Committee were to:

- Examine the Financial Reports that are required to be submitted by the Trustees to the Department of Finance; and
- Ascertain whether the financial transactions conducted by the Trustees were in accordance with the Trust Instrument and Sections 15 – 20 of the **Public Finance (Management) Act** ; and
- Ascertain whether the Department of Finance, the responsible Provincial Administrations and Public Servants have complied with the requirements of Law in the keeping of accounts and records in respect of the Trust Account; and
- Consider the standard of management and decision making by Trustees of the Account with particular emphasis on establishing compliance with requirements

of Law for the accounting for and management of public monies held in and paid from the Trust Account.

2.2 A summary of the conclusions of the Committee are as follows:

- The Committee has found serious continuous breaches of the **Public Finances (Management) Act** by Trustees and Officers of relevant Provincial Governments, the Department of Finance and the Office of Rural Development; and
- The Committee has found serious continuous breaches of the requirements of the Trust Instrument by Trustees; and
- That monies in the Trust Account may not have been spent appropriately and for purposes set out in the Trust Instrument; and
- The contracting of projects funded from the Trust Account have not met the requirements of the **Public Finances (Management) Act** and a number of contracts were identified which have been entered into outside the required processes – including the failure to process contracts through the Provincial Supply & Tenders Board.; and
- Contracts have been let to companies that were not viable or did not exist and the Trustees and responsible Officers of the Department of Finance have failed in their duty to ensure effective management of contracts; and
- There has been poor or non-existent management and supervision of Contracts and Contractors funded from the Trust Account; and
- The Trustees failed in their obligation to ensure that payments were made only for properly completed work; and
- Contracts were not completed or were inadequately performed and in some cases not even commenced; and

- The former Secretary for Finance Mr. Thaddeus Kambanei completely failed to meet his duties and obligations as either or both the Head of the Department of Finance and/or as a Trustee of the Trust Account. As the senior accountable officer, his failures deserve the strongest possible censure; and
- Proper accounts and records have not been maintained and it has not been possible for the Committee to confirm the validity of payments from the Trust Account; and
- Proper accounts and records were not maintained and therefore it has not been possible for the Committee to develop an understanding of the contracting and contract management processes adopted by the Trustees; and
- Proper accounts and records have not been maintained and it has not been possible for the Committee to ascertain the source of more than K 20 million which passed through the Trust Account; and
- Reports on the financial management of the Trust Account have not been provided to the Department of Finance as required; and
- The Department of Finance has failed to fulfill its obligations under the **Public Finance (Management) Act** to ensure appropriate financial management of the Trust Account; and
- There was no documented reason for the control of the Trust Account to be transferred to the Department of Finance in 2005. As a result, this decision lessened the perception of accountability and transparency relating to the operation of the account; and
- There have been continual and blatant breaches of Trust and breaches of the requirements of the Trust Instrument; and
- K 30 million of public monies passed through the Trust Account. The source of only K 7 million can be identified because there are no proper records; and

- Only one Contract was apparently properly tendered, evaluated and granted and even then the records are incomplete and inadequate; and
- Failure to obey the Law and a failure to account at all for public monies is evident at every level of administration that dealt with the Trust Account throughout its entire existence; and
- The Department of Finance and the Provincial Administrations which dealt with this Trust Account comprehensively failed to keep records, account for public monies or acquit monies applied from the Trust Account as they were required to do; and
- Negligence and reckless disregard for the requirements of Law and the duties of a Trustee characterize all transactions into and out of the Trust Account – with the exception of only one Contract; and
- The Committee cannot identify virtually any tangible benefit to the country from the expenditure of K 30 million of public monies; and
- The Department of Finance and the relevant Provincial Governments from which the Committee sought assistance, failed to provide any or any adequate documentation or information to the Committee.

- 2.3 The evidence clearly shows that the Trustees of this Account and senior Public Servants whose duty it was to maintain accounts and records failed or refused to fulfil their roles to any acceptable standard.
- 2.4 These failures were blatant and clearly the individuals concerned acted (or failed to act) with impunity and immunity – never expecting to be called to account for their behaviour.
- 2.5 Trustees failed to act lawfully, acted unlawfully, failed to act independently and did not begin to meet their obligations and duties in the management of the Trust Account and the expenditure of money from it.





- 4.2     **"PAC"**                             Public Accounts Committee.
- 4.3     **"The Constitution"**   The Constitution of the Independent State of Papua New Guinea
- 4.4     **"The Committee"**   The Permanent Parliamentary Public Accounts Committee.
- 4.5     **"The Secretary"**   The Secretary of the Department of Finance.
- 4.6     **"The Department"**   The Department of Finance.
- 4.7     **"The Trustees"**     The Trustees from time to time of the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account.
- 4.8     **"Trust Account"**   The Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account.

## **5. COMPOSITION OF THE COMMITTEE**

- 5.1    The Public Accounts Committee which made inquiry into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account was constituted as follows:
- 5.2    **13<sup>th</sup> December 2006**
  - Hon. Leo Hannett – Chairman
  - Hon Dr. Bob Danaya MP – Deputy Chairman
  - Hon Malcolm Smith-Kela MP – Member
  - Hon. John Koigiri MP – Member
  - Hon. James Togel MP – Member
  - Hon. Tony Aimo MP – Member
  - Hon. Mathew Gubag MP – Member
  - Hon. Ekis Ropenu MP - Member

### 5.3 **15<sup>th</sup> February 2007**

Hon. Leo Hannett MP – Chairman

Hon. Dr. Bob Danaya MP – Deputy Chairman

Hon. James Togel MP – Member

Hon. Andersen Vele MP – Member

Hon Michael Mas Kal MP - Member

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

## **6. JURISDICTION AND PURPOSE OF THE INQUIRY**

### **INTRODUCTION**

- 6.1 The Public Accounts Committee, at the request of certain of its Members, resolved to conduct an Inquiry into the administration of and accountability for monies passing through the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account.
- 6.2 The Public Accounts Committee requested that a special audit of that Trust Account be performed by the Office of the Auditor General. The Auditor General conducted the audit and presented a Report to the Committee.
- 6.3 The Public Accounts Committee received oral and documentary evidence from responsible Heads of Department and current and former Trustees.
- 6.4 The Public Accounts Committee resolved to make a Report to the Parliament on the Inquiry and the Committee findings.
- 6.5 The Committee also resolved that its Report to the Parliament, should contain certain referrals and recommendations.
- 6.6 At all times, the Committee has taken great care to enable witnesses to make full and complete representations and answers to any matter before the Committee – in particular

those matters about which the Committee may make adverse findings against individuals or other entities.

- 6.7 The Public Accounts Committee has taken care to fully consider all responses and evidence given before the Committee.
- 6.8 All evidence was taken on oath and full and due inquiry was made of all relevant State Agencies where the Committee considered those inquiries to be necessary.
- 6.9 This Committee has carefully questioned Mr. Kambanei and all and other Officers involved in the management of the Trust Account.
- 6.10 Their evidence was often not responsive, was self-serving and ultimately these Officers sought refuge in a claim that the Committee had no jurisdiction to hold the Inquiry at all.
- 6.11 It is perfectly clear to this Committee that these Officers believe that they would never be called to account for their actions and did not intend to account for them.
- 6.12 However, on the second day of the Inquiry, Mr. Gabriel Yer, current Secretary for Finance, co-operated with and assisted the Committee - for which we are grateful.

## **7. JURISDICTION**

### **THE CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA.**

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

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

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

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

- 7.2 The Committee has taken care to restrict its Inquiry to an examination of the control of and on transactions with or concerning the public monies of Papua New Guinea.
- 7.3 Whilst considering the relevant provisions of the Constitution, the Committee has had regard to the **Final Report of the Constitutional Planning Committee 1974** and been guided by or applied the stated intentions of that Committee wherever necessary.
- 7.4 The Public Accounts Committee has had due regard to reports by and conclusions of the Auditor General, but has conducted its own Inquiry into matters deemed by the Committee to be of National Importance or which arise naturally from primary lines of Inquiry and which are within the jurisdiction and function of the Committee as set forth in the Constitution.
- 7.5 Whilst engaged in the Inquiry the Committee was guided by two definitions contained in the Constitution, which are directly relevant to Section 216 of the Constitution. They are:

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

and

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

**Schedule 1.2 of the Constitution.**

## **8. THE PUBLIC FINANCES (MANAGEMENT) ACT.**

- 8.1. The Public Accounts Committee also finds its jurisdiction to Inquire into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account in Section 86 of the ***Public Finance (Management) Act***.
- 8.2. 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.

## **9. PERMANENT PARLIAMENTARY COMMITTEES ACT:**

- 9.1. The Committee received very serious allegations of misconduct and maladministration by Trustees of the Trust Account from Members of Parliament and Members of the Public Accounts Committee itself.
- 9.2. The Committee resolved that a full Inquiry into the operation of the Trust Account was a matter of National importance and found further jurisdiction for the inquiry in Section 17 of the ***Permanent Parliamentary Committees Act***.
- 9.3. That Section provides that the Public Accounts Committee can consider any matter to be of national importance and worthy of Inquiry. The Committee, as we have stated, considers this Trust Account and the allegations surrounding its administration, to be such a matter.

## **10. PURPOSE OF THE INQUIRY**

- 10.1. The purpose of the Inquiry conducted by the Public Accounts Committee was to make full and complete examination of the manner in which the Trustees of the Sepik Highways, Roads and Bridges Maintenance and Other Infrastructure Trust Account controlled transactions with or concerning public monies passing into and out of the Account, accounted for those monies, protected the position of the Independent State of Papua New Guinea, complied with the Trust Instrument, complied with the requirements of Law for the operation of such an Account, controlled and monitored expenditure and generally conducted themselves as Trustees.

- 10.2. The Inquiry also sought to make a full and complete examination of the manner in which the Department of Finance, its responsible Officers and the relevant Provincial Administrations controlled, recorded, accounted for and acquitted transactions of public monies into and out of the Trust Account and thereby protected the State by complying with and requiring in others a compliance with all relevant Laws.
- 10.3. The purpose of the Inquiry was not to improperly pursue or criticize any person or company, but to make a constructive and informed Report to the Parliament on any changes which the Committee perceives to be necessary to any item or matter in the accounts, statements or reports or any circumstances connected with them, of the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account and any matter considered by the Committee to be worthy of report to the Parliament.
- 10.4. Further, the intention of the Inquiry was to enable the Committee to report to the Parliament in a meaningful way on alterations that the Committee thinks desirable in the form of the public accounts as manifested in the operation of the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account, in the method of keeping them, in the method of collection, receipt, expenditure or issue of public monies and/or in the control and accountability of Trustees of public monies.

## **11. THE AUTHORITY TO REPORT**

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

## **12. THE AUTHORITY TO REFER**

- 12.1. Where satisfied that there is a prima facie case that a person may not have complied with the provisions of the ***Constitution of the Independent State of Papua New Guinea*** and / or the ***Public Finances (Management) Act*** in connection with the control and transaction with and

concerning the accounts of a public body or public moneys and property of Papua New Guinea, it may make referrals of that person to the Office of the Public Prosecutor in accordance with Section 86A of the **Public Finances (Management) Act**.

- 12.2. The Public Accounts Committee is not a true investigatory body capable of investigating and/or prosecuting persons for breaches of the law. The Committee is required to refer such matters to the appropriate authorities and may make such recommendations as it thinks fit in relation to any referral made pursuant to Section 86A.
- 12.3. The Committee is also empowered to refer for prosecution, any witness who fails to comply with a Notice to Produce any document, paper or book and / or any person who fails to comply with a Summons issued and served by the Committee. See Section 23 **Permanent Parliamentary Committees Act 1994**.
- 12.4. Further, Section 20 of the **Parliamentary Powers and Privileges Act** permits the Committee to refer for prosecution any person who, inter alia, fails to comply with a Summons to produce books, papers or documents specified in the Summons.
- 12.5. As a result of the evidence taken by the Public Accounts Committee, it has resolved to make certain referrals of individuals for further investigation and possible action by law enforcement agencies.
- 12.6. The Committee is cognisant that to make referrals, particularly of a senior public servant is a very serious matter which will adversely reflect on the individual concerned. These referrals are not made lightly but only after careful consideration of all the evidence and unanimous resolution by the Committee.

### **13. METHOD OF INQUIRY**

- 13.1. The Inquiry by the Public Accounts Committee into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account was a public hearing at which sworn evidence was taken from a small number of witnesses.



## **14. PRIVILEGES AND PROTECTION OF WITNESSES**

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

## **15. RELEVANT STATUTES**

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

### **PUBLIC FINANCES (MANAGEMENT) ACT 1995.**

- 15.2. The ***Public Finances (Management) Act*** prescribes the method and standard of the Administration of and accounting for public monies, public properties and assets by State entities in Papua New Guinea.
- 15.3. Further, the Act imposes certain obligations on Public Servants for collection of State revenue and controls the expenditure of State or public monies.
- 15.4. Relevant sections of the Act which were considered by the Public Accounts Committee during the course of the Inquiry into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account are:

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

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

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

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

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

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

(iv) **Part XI - Surcharge**

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

(v) **Section 112 – Offences**

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

(vi) **Section 4 – Responsibilities of the Departmental Head of the Department responsible for financial management.**

This Section prescribes the function and obligations of the Secretary for Finance. It is relevant to assessing the performance of the former Secretary (and Trustee of the Account), Mr. Thaddeus Kambanei.

(vii) **Section 6 – Accountable Officers -.**

This Section imposes duties on all Officers who, inter alia, authorizes the payment of public money. In this Inquiry, the Trustees were or, as a result of their appointment as Trustees, became Accountable Officers.

(viii) **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. At all times during

the life of the Trust Account, the Secretary for Finance and his Inspectors had power to enforce the terms of the ***Public Finances (Management) Act*** and the ***Financial Instructions*** and thereby bring accountability and responsible and lawful management to the operation of the Trust Account.

(ix) **Section 15 – Establishment of Trust Accounts.**

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

(x) **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.

(xi) **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 the Trust Account – including and in particular the keeping of prescribed records and monthly submission of those records to the Department of Finance.

(xii) **Section 21 - Closing of Trust Accounts.**

This Section became relevant when the Committee considered its recommendations to the Minister for Finance.

(xiii) **Part VIII – State Tenders and Contracts**

This Part prescribes the lawful procedures for procurement by the State and almost all its agencies.

The Committee had particular regard to this Part when considering the legality of certain Contracts funded from the Trust Account – in particular Section 47A which

prescribes Offences for breach of the prescribed procedures.

(xiv) **Section 68 – Accounting Records, etc.**

This Section imposes a duty on Provincial Governments to keep proper accounts and records of their transactions and affairs. This Section applied to the relevant Provincial Governments which benefited from the Trust Account.

## **FINANCIAL INSTRUCTIONS**

- 15.5. Section 117 of the ***Public Finances (Management) Act*** enables the promulgation of certain Financial Instructions which establish detailed procedures for the handling, collection, expenditure, disposal of and accounting for public monies, property and stores.
- 15.6. The Public Accounts Committee had regard to these Financial Instructions or Directives in the course of this Inquiry.
- 15.7. 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".***

## **ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF LEADERSHIP**

- 15.8. The Public Accounts Committee has had regard to this Organic Law in the course of this Inquiry. Referrals and resolutions were considered within the terms of this Organic law and are more fully developed (infra).

## **AUDIT ACT**

- 15.9. The ***Audit Act*** establishes and empowers the office of the Auditor General to carry out its work of overseeing and supervising the handling of public monies, stores and

property by all arms of the National Government. The Public Accounts Committee had regard to the terms of this Act during the course of this Inquiry

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

#### **PERMANENT PARLIAMENTARY COMMITTEES ACT 1994.**

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

#### **PARLIAMENTARY POWERS AND PRIVILEGES ACT 1964**

- 15.12. 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.
- 15.13. In the course of this Inquiry, the Committee had cause to examine this Statute.

### **16. THE DUTIES, POWERS AND RESPONSIBILITIES OF A TRUSTEE.**

- 16.1. The Committee accepts that the basic duties of a Trustee 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
  - (iv) To adhere to and carry out the terms of the Trust; and

- (v) To act 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.

16.2 The statutory duties imposed on the Trustees by the **Public Finances (Management) Act** 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 performed before payment is approved – Part VIII.

## **17. THE DUTIES, POWERS AND RESPONSIBILITIES OF THE HEAD OF THE DEPARTMENT OF FINANCE FOR MANAGEMENT OF THE TRUST ACCOUNT.**

- 17.1 The Secretary for Finance has certain obligations for management of a Trust Account imposed by the ***Public Finances (Management) Act***.
- 17.2 The ***Public Finances (Management) Act*** makes no special provision for circumstances where the Secretary for Finance is also a Trustee of a Trust Account.
- 17.3 In that circumstance, the Secretary is in the untenable position of directing and controlling his own actions and purporting to independently oversee, monitor and be accountable, as a Secretary, for his own performance as a Trustee. There can be no transparency or credibility in such an arrangement.
- 17.4 In our opinion, this is a clear conflict.
- 17.5 In the operation of this Trust Account there was clearly a failure on the part of the then Secretary for Finance, Mr. Thaddeus Kambanei, to properly understand or perform his duties in either role and this conflict situation may, in part, explain the problems attending the management of the Trust Account – particularly the failure of the Department of Finance to perform any of its obligations to any acceptable standard.
- 17.6 The basic duties of the Head of the Department of Finance imposed by the ***Public Finances (Management) Act***, 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*** and the ***Financial Instructions*** are met by the Trustees 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 Trustees comply 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 Public Accounts Committee is submitted to that Committee accurately and promptly; and
- (viii) Proper estimates are given by the Trustees 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) Officers of the Department of Finance deployed at Provincial and District level perform their duties – in particular that of record keeping and accounting for the Trust Account and all Contracts, Projects and other recipients of expenditure from the Trust Account; and
- (xi) To oversee the operation of the Trust Account and ensure compliance by the Trustees and Officers of his Department with Sections 15 – 20 of the **Public Finances (Management) Act.**



- 17.7 These are the basic duties imposed on Mr. Thaddeus Kambanei in his capacity as Secretary for Finance in respect of the operation and recording of the Trust Account was concerned. The ***Financial Instructions*** confirm these duties – Para 14.

## **18. TRUST ACCOUNTING REQUIREMENTS**

- 18.1 The duty of the Department of Finance under the ***Public Finances (Management) Act*** is to ensure that complete and proper accounts are maintained in respect of all transactions involving public monies – see Para 13.4 ***Financial Instructions***.
- 18.2 Accounting systems and principles are prescribed by the ***Financial Instructions*** Appendix 1 and Part 12 et seq.
- 18.3 The Trust Fund is part of the Public Account and public monies are payable into the 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.
- 18.4 The basic accounting requirements for Trust Accounts of the nature of the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account are at least:
- (i) The Departmental Head responsible for the Trust Account will ensure proper management and operation; and
  - (ii) Receipts and payments will be accounted for by Provincial and District Treasuries through the Department of Finance; and
  - (iii) 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
  - (iv) 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

- (v) 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 Finance of the time; and
- (vi) All requirements of commitment control and all other requirements in the **Financial Instructions** and the **Financial Management Manual** apply to this Trust Account; and
- (vii) 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 part 12 Para 14.; and
- (viii) The prescribed accounting procedures for Provincial and District Treasuries apply to this Trust Account and in particular in respect of accounting for and acquitting payments made in respect of projects or Contracts given or awarded by the Provincial authorities.

## 19. THE INQUIRY:

- 19.1 The Public Accounts Committee held two informal Meetings with prospective witnesses and persons and entities served with Notices to Produce information and documents, to ensure that the Inquiry was fully and properly prepared.
- 19.2 The Committee convened the Inquiry proper on the 13<sup>th</sup> December 2006. The Inquiry lasted for a full day and the following witnesses were summoned and appeared to give evidence:
  - The former Acting Secretary of the Department of Finance and a Trustee of the Trust Account, Mr Thaddeus Kambanei.
  - The Chief Secretary to Government, Mr Joshua Kalinoe;
  - The then Acting Secretary for the Department of Finance (since confirmed in the substantive position) Mr Gabriel Yer.

- 19.3 Research conducted by the Committee and information before the Inquiry suggested significant failures by the Trustees of the Trust Account, the Executive Managers and staff of the East Sepik Provincial Government, the Department of Finance, the Department of Planning and the Office of Rural Development to comply with requirements of law in the handling of and accounting for monies passing through this Trust Account.
- 19.4 By far the most serious of these failures was that of the Trustees to the Account – and in particular Mr. Thaddeus Kambanei who was not only a Trustee of the Trust Account but was also Chief Accountable Officer to Government in his position as Secretary of the Department of Finance.
- 19.5 The Committee therefore resolved to question the witnesses and give every possible opportunity for those persons to explain or correct information obtained by the Committee and the contents of the Report of the Auditor General. The Committee received no submission or further assistance from any person.

## **THE INQUIRY, - EVIDENCE AND FINDINGS**

### **20. WITNESSES UNDERSTANDING OF THEIR OBLIGATIONS**

- 20.1 Considering the serious lapses by senior Public Servants suggested by evidence and information held by the Committee, the Committee carefully questioned Mr Yer, Mr Kambanei, Mr Kalinoe and Mr John Alman, the Provincial Administrator of the East Sepik Province, as to their understanding and knowledge of the basic duties of accountability and accounting for public monies imposed on them by the **Public Finances (Management) Act**.
- 20.2 The Committee also questioned Mr. Thaddeus Kambanei and Mr. Yer as to their understanding of the obligations of a Trustee both generally and as imposed on them by the **Public Finances (Management) Act** and **Financial Instructions** promulgated thereunder and their the duties and obligations imposed on Officers of the Department of Finance.
- 20.3 Both witnesses were further questioned about their knowledge and understanding of the terms of the Trust Instrument

establishing the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account.

- 20.4 All witnesses gave unequivocal sworn evidence that they had read, were familiar with and understood the requirements imposed on them by the **Public Finances (Management) Act** – particularly in respect of the management of Trust Instruments and accounting for trust monies, payment of trust monies and obligations and duties at law generally arising from the position of a Trustee or accountable Officers of Government.
- 20.5 This Committee concludes that each of these very senior Public Servants, quite properly, clearly knew their duties and obligations.
- 20.6 This Committee also concludes that Mr. Kambanei failed to comply with or fulfill these legal obligations – and did so knowingly and intentionally.
- 20.7 Mr. Yer as the newly appointed Secretary for Finance, has accepted responsibility to deal with the failings of the Trustees as best he now can and the Committee commends his stated attitude.
- 20.8 Mr. Alman, in his capacity as the Provincial Administrator of the East Sepik Province, is apparently attempting to rectify the excesses of the previous administration, but with no records or accounts of any significance to assist him.
- 20.9 Further, in light of the very serious allegations and information before this Committee, Mr. Kalinoe, Mr. Kambanei, Mr. Yer, and Mr. Alman, the Provincial Administrator of the East Sepik Provincial Government were each asked to advise the Committee as to whether they had been subject to any pressure, influence, or directive from any source whatsoever (in particular political pressure) to make any payment from the Trust Account or for any particular purpose and if so, what pressure had been brought on them, by whom and for what purpose.
- 20.10 Each witness – particularly Mr. Kambanei – clearly stated that at no time had any pressure been brought upon any of the Trustees from any quarter to achieve any particular result or to

influence them in any way in their conduct of the Trust Account and all matters associated with it.

- 20.11 Mr. Kambanei's evidence is particularly relevant. He told the Committee:

***"As far as the administration of the Trust Accounts are concerned, there is absolutely no pressure on anybody whatsoever insofar as expenditures out of the Trust Account is concerned. The prerogative of determining whether we ... that expenditure is genuine is legitimate and confines within the Trustees that spells particularly the purpose of the Trust Account.***

***...There has been no pressure at any point in time even to myself and in my previous capacity as Secretary ..."***

- 20.12 In light of these clear and unqualified answers, this Committee accepts that every decision, action and therefore every failure of the Trustees and all other responsible Officers were entirely their own.
- 20.13 Every decision, every payment, every cheque and every failure to provide accounts, records or documents in accordance with law and therefore every failure and/or breach of law was wholly the responsibility of the relevant Officers and not the result of any duress or compliance with political or any other pressure or influence.
- 20.14 Considering the almost total failure by the Trustees – and in particular Mr. Thaddeus Kambanei – to obey virtually any requirement of law in the management of this Trust Account or to comply with the Trust Instrument itself and the failure of the Department of Finance and other Government entities to act lawfully, properly and transparently in the conduct of this Trust Account, this Committee can only conclude that the Trustees and Officers responsible for these failures were totally unfit to hold the position which they did and that they should be referred to appropriate investigatory agencies to be made fully accountable for conduct, decisions and failures which, as we have said, were entirely their own.

## 21. THE TRUST INSTRUMENT

- 21.1 The Trust Instrument was issued by the then Minister for Finance, Planning and Rural Development, the Honorable Andrew Kumbakor MP on the 15<sup>th</sup> May 2002.
- 21.2 He exercised his power as a National Minister and established the Trust Account under Section 15 of the ***Public Finances (Management) Act 1995***.
- 21.3 The Account was styled Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account and this Committee finds that it was properly established in accordance with the terms of Section 15 of the ***Public Finance (Management) Act***.

## 22. THE OBJECTIVES OF THE TRUST

- 22.1 The objectives of the Trust are clearly stated in Sections 1(b) and 2(c) and (d) of the Trust Instrument. That Instrument was received into evidence by the Committee.
- 22.2 The Trust Instrument states the purpose of the Trust Account to be:  
  
***"to hold all monies received from the National Government, Provincial Government, Local Level Government and any other donor agencies"***.
- 22.3. The Trust Instrument has been carefully considered by the Committee. The Committee is of the view that the Instrument was poorly drafted, loose in its terms and provided very limited guidance to the purpose of the Trust. It was, in fact, an open invitation to abuse – and this is precisely what occurred.
- 22.4. The Committee was unable to conclude whether the terms of the Instrument set out in Para. 22.2 were complied with because neither the Committee nor the Auditor General can trace the source of deposits into the Account.
- 22.5. The Instrument states that all purchases and withdrawals on the Trust Account shall be for the purposes established by the Trust Account and shall comply with the ***Public Finances (Management) Act*** subject to the prescribed procedures and

sufficient balance being available in the Account. This must include the proper accounting and record keeping required by that Act and the ***Financial Instructions***.

- 22.6. It is notable that the Provincial Administrator of the East Sepik Province Mr. Alman expressed the view to the Committee that the term "other infrastructure projects" would include maintenance, houses and construction of buildings and extend to contracts for service.
- 22.7. Upon that definition, the Trust Instrument could be used for almost anything, provided that the purpose of the expenditure was physically located with the Sepik Province. It is notable that even this wide definition was breached when payments were made or in projects and other matters outside the Sepik area and for purposes such as "financial assistance".
- 22.8. The Committee tried to ascertain how the Trustees understood the meaning and purpose of the Trust Instrument.
- 22.9. Mr. Kambanei described his understanding of the Trust Instrument and the purpose of the Account in the following way:

***"It should be noted that the Trust Account itself is not called East Sepik Highway Trust, not only for road and bridge infrastructure, meaning that other infrastructures in relation to projects in the East Sepik Province. The East Sepik Highway Trust Account is actually a vehicle that actually delivers project implementation in the East Sepik and West Sepik Provinces. The initial purpose of the Trust when it was first established by former Minister for Finance and Planning, Honorable Andrew Kumbakor there was no demarcation insofar as whether it was for East Sepik or West Sepik Provinces.***

***It was called "Sepik Highway Roads and Bridges and Other Infrastructure Trust Account" because the infrastructure cuts through both East and West Sepik Provinces.***

***So, it became a vehicle for any funds that had been identified as savings to be put into the Trust Account then the Trust Account facilitates the payment out.***

**... I would like to make it very clear that there has also been expenditure that goes out of the Trust Account which pertains to projects that are not within the fiscal framework of the Government.**

**For instance, if you have MPs who chose to identify projects and get the Prime Minister to approve the project without having it actually included in the budget, then they use the Sepik Highway Trust Account as the vehicle.** ( Our emphasis.)

- 22.10 The Committee considers this evidence to be an important description of the understanding of the former Secretary for Finance and Trustee of the Trust Account. It is particularly relevant evidence when the actual management and conduct of the Trust Account by the Trustees and Mr. Kambanei in particular, is considered.
- 22.11 The Trust Account was not regarded as part of any Budgetary process but as a conduit for any money identified (presumably by Mr. Kambanei) as "savings" (no matter what their original designated purpose) to be applied to any unfunded project that attracted political favour but for which there was no approved or budgeted funding.
- 22.12 Indeed Mr. Kambanei also told this Committee that if he was told to fund any particular project for which funding was not allocated or budgeted, it was his duty to find the money.
- 22.13 In other words, as Head of Department and Trustee, his job was to do what he was told – not to act independently in protection of the public purse.
- 22.14 This Committee concludes that Mr. Kambanei, by his evidence has demonstrated that he did not understand his role as Head of the Department of Finance or a Trustee.
- 22.15 If Mr. Kambanei is correct, all it took to get money from the Trust Account was to attract the support of the Prime Minister and Mr. Kambanei's only function was to find the money and pay it.
- 22.16 This attitude is well illustrated by Mr. Kambanei's claim that he made payment from the Trust Account to Jubilee University not



on a basis of a measured decision by an independent Trustee, but because the Prime Minister told him to do so – a contention that, in fact, is incorrect.

- 22.17 Not once did Mr. Kambanei state to this Committee that he was required to act independently as a Trustee and to comply with Law when exercising his discretion to make payments from the Trust Account.
- 22.18 The Committee concludes that in his evidence is the principal cause of the subsequent unlawful conduct of the Trust Account and the complete failure to keep records and accounts of almost any money passing through that Account and the apparent paralysis of the Department of Finance to oversee the Account and enforce the Law.
- 22.19 In short, the Trustees and the Department of Finance had subsumed or abandoned their duties at Law in favour of administering public money as political facilitators rather than guardians.

### **Accountability**

- 22.20 The Trust Instrument states that for proper control and management of the Trust Account and in accordance with Section 19 of the **Public Finances (Management) Act**, an account is to be established and opened with a reputable commercial Bank approved by the Minister for Finance. Such an account was opened and maintained at the Bank of South Pacific.
- 22.21 The Committee has carefully considered the requirements in the Trust Instrument for the signing of cheques from the Trust Account. The Committee concludes that at least three and probably four signatories are required on all cheques and for transfers from the Trust Account.
- 22.22 The signatories to the Account were the Secretary for Finance or his delegate, the Assistant Secretary Public Accounts, the Provincial Administrator, the Provincial Treasurer and the Provincial Works Manager.
- 22.23 Ideally this process should have ensured strict control over payments from the Trust Account. In fact, the Trust Instrument

was completely ignored in the payment of cheques from the Trust Account and this Committee has identified circumstances where cheques were signed by a Senior Government Official who was not a Trustee.

### **Reporting Requirements**

- 22.24 In light of the apparent failures to adequately, properly and lawfully maintain reports and accounts of transactions into and out of this Trust Account, the Committee gave careful consideration to Section 3 of the Trust Instrument which provides reporting requirements.
- 22.25 Section 3 of the Trust Instrument requires that the Provincial Administrator of East Sepik Provincial Government or his delegate maintain records pertaining to the Account as required by the ***Public Finances (Management) Act***.
- 22.26 Further, the Trust Instrument requires that the Provincial Administrator furnish to the First Assistant Secretary of the Public Accounts Division of the Department of Finance within fourteen days at the end of each month, bank statements and bank reconciliations for the Trust Account and a Statement of Expenditure of the Trust Account on a monthly basis by program and activity.
- 22.27 Section 19 (4) (d) ***Public Finances (Management) Act*** requires that the Provincial Administrator submit to the Secretary of the Department of Finance at the end of each fiscal year, a statement of account for the previous year.
- 22.28 The Committee could not obtain evidence from the Provincial Administrator that this reporting obligation had been met. As a result neither the Trustees nor responsible Officers have met their responsibilities under the ***Public Finances (Management) Act*** or the Trust Instrument.
- 22.29 In this regard, the Department of Finance has completely failed to maintain any responsible control over the Trust Account at all. It has failed to comply with the requirements of law in the accounting for and control of the monies passing through the Trust Account.

- 22.30 Further, Mr. Thaddeus Kambanei, the then Secretary for Finance and a Trustee of the Trust Account has failed to fulfil his duties in either or both capacities, to any degree.
- 22.31 That such incompetence and dereliction can exist at the senior level of the Public Service and, in particular, in the person of the Head of the Department responsible for financial matters is a matter of National concern. This is particularly so when that Officer took personal control of the Trust Account and seemingly managed it with no control or accountability that this Committee could identify.
- 22.32 The failures of that Officer are compounded by his admission to this Committee that he understood the requirements of Law attending his positions as both the Head of Department responsible for financial matters and as a Trustee of the Account – yet failed to perform them.
- 22.33 The net result of these failures by all Trustees is that over K 30 million of public money has disappeared for little or no tangible benefit.
- 22.34 These failures to keep accounts and records have also rendered this Committee and the Auditor General unable to find the source of all the money paid into the Account or any bases of Law for the payment out of almost all the money that passed through the Account.
- 22.35 Neither could or would the Department of Finance tell this Committee the source of K 23 million paid into the Trust Account or produce any evidence showing that any payment from the Trust Account was lawful.
- 22.36 The following Trustees were appointed during the period of the Trust Instrument. The Committee could find no relevant bank documentation for most of these Trustees who were apparently never made signatories to the Account. The appointments were:

| <b><u>Trustees</u></b> | <b><u>Designations</u></b> | <b><u>Period of Appointment</u></b> |
|------------------------|----------------------------|-------------------------------------|
| Nelson Hungraboss      | Provincial Administrator   | 2000 – Nov. 2001                    |
| Raymond Kamnobi        | Provincial Administrator   | Nov.2001–Sept. 2002                 |

|                 |                          |                      |
|-----------------|--------------------------|----------------------|
| Fantson Yaninen | Provincial Administrator | Oct. 2002-Aug. 2005  |
| John Alman      | Provincial Administrator | Sept. 2005 – to date |
| Fantson Yaninen | Provincial Treasurer     | Up to Sept. 2002     |
| Haru Yahamani   | Provincial Treasurer     | 2002 – 2005          |
| Binus Naugre    | Provincial Treasurer     | 2005 – June 2006     |
| Stanford Nahuet | Provincial Treasurer     | June 2006 to date    |
| Joe Asinumbu    | Works Manager Dow        | 1998 – 2003          |
| Brian Alois     | Works Manager Dow        | 2003 – 2005          |
| Paul Enemba     | Works Manager Dow        | 2005 – to date       |

### **Accounting Books and Records**

- 22.37 The Trust Instrument provides that the Provincial Administrator maintain proper accounts and records as required by Section 19 of the ***Public Finance (Management) Act***.
- 22.38 This Committee finds that accounting books and records were completely inadequate in many respects and were not properly maintained as required. The Department of Finance did nothing to rectify this defect, - even after management of the Trust Account was removed to Mr. Thaddeus Kambanei in Waigani.
- 22.39 The Office of the Auditor General conducted a search of the relevant books and records maintained in the Provincial Government Offices in Wewak and found the following:

| <b>Name of records</b>            | <b>Year</b> | <b>Status</b>                          |
|-----------------------------------|-------------|--|
| Computer Cashbook                 | 2002-2005   | Incomplete compared with Bank Stmt     |
| Computer Trust Transaction Detail | 2002-2005   | Incomplete compared with Bank Stmt     |
| Bank Statements                   | 2002-2005   | Incomplete                             |
| Bank Reconciliation Statements    | 2002-2005   | Partly provided, incomplete            |
| Payment Vouchers                  | 2002-2005   | Incomplete – material payments missing |
| Related PEC Decisions             | 2002-       | Incomplete                             |

| Name of records         | Year           | Status  |
|-------------------------|----------------|---|
|                         | 2005           |   |
| Related PSTB Minutes    | 2002-2005      | Incomplete  |
| Authority to Pre-Commit | 2002-2005      | Not provided as Treasury Office closed at the time of audit |
| Paid cheques            | 2002-June 2005 | Not provided  |

22.40 This Committee sought to obtain better documentation or records by serving Notices to Produce on the Department of Finance, the East Sepik Administrator, the Department of Planning and the Office of Rural Development.

22.41 The Committee received a small bundle of documents from the Secretary of Finance which did not add anything or relevance to the documents obtained by the Auditor General.

22.42 In particular there was a complete absence of any records of tender procedures, assessments and awarding of tenders for virtually any Contract or Project funded from the Trust Account.

22.43 This Committee finds that vouchers with a total value of K 2,847,709 paid from the Trust Account, are missing.

22.44 This Committee examined the relevant vouchers which were available for procedural and legal compliance and makes the following findings:

- Payment vouchers were not signed by Financial Delegates, Examiners and the Certifying Officer prior to payments being effected. This is a breach of the **Public Finance (Management) Act**. It also represents a failure of essential internal controls of expenditure from a Trust Account and a complete breach of obligation by the Trustees and the Department of Finance.
- In many instances, payment vouchers were signed by the same person as the Financial Delegate, Examiner and Certifying Officer. This is a breach of the **Public Finance (Management) Act** which requires effective separation of duties in the processing of payments. Such "single officer" processing payments represents a failure of

essential internal controls over expenditures out of the Trust Fund.

- Many instances of payments without proper supporting documents were also noted, indicating a failure to ensure proper internal controls over expenditures and the absence of the Certifying Officer's role provided by Section 32 of the **Public Finance (Management) Act**.
- Payments for contracts were completely unsupported by any relevant contract documents such as Supply & Tenders Board approvals, company profiles, copies of actual contracts and other necessary documents such as progress and completion certificates to authenticate the payments made. This is a fundamental requirement and represents a complete breach of duty by all Officers concerned – in particular the Trustees of the Account and by Officers of the Department of Finance.
- In many instances three quotations from potential suppliers of goods and services were not obtained and compared to ensure selection of the best value for money supplier of goods and services. This is a breach of Section 40 of the **Public Finances (Management) Act**.

22.45 The most disturbing aspect of these failures is the fact that they must have been known to the Department of Finance and to the Trustees of the Account, yet it troubled them not at all.

22.46 This appalling situation constitutes a breach of the **Public Finances (Management) Act** by every Trustee and by the responsible Officers of the Provincial Administration, the Department of Finance and the Head of that Department and calls for deeper and expert investigation.

## Conclusion

22.47 Information and evidence gathered by the Committee prior to the opening of the Inquiry suggested that there were failures by Trustees to comply with almost every requirement of the Trust Instrument and thereby that they failed to carry out the duties of Trustees.

- 22.48 The same information and evidence clearly showed a failure by the Provincial Administrator, his staff, the Department of Finance and all other responsible officers at every level to maintain virtually any accounting records. Those records which were provided were almost entirely incorrect or otherwise defective and failed to withstand scrutiny of the Auditors.
- 22.49 The appalling state of management of the Account as it was revealed in information and evidence gathered by the Committee, was a matter of very great concern to Committee Members.
- 22.50 Such failures would be totally unacceptable in junior or even middle level management. That such a state of affairs could have existed and be the result of decisions and failures of the most senior Public Servants in Papua New Guinea required, in the opinion of the Committee that these Officers be heard and given every opportunity to rebut, qualify, explain or correct the information before the Committee.
- 22.51 Having given proper and full consideration of all the evidence including, and in particular, submissions and oral evidence given by Mr. Kambanej, Mr. Yer, Mr. Kalinoe and the Provincial Administrator of the East Sepik Province, Mr. Alman - the Committee must report as follows on the conduct of this Trust Account:

### **23. BANK STATEMENTS.**

- 23.1 The Committee finds that Bank Statements and Bank Reconciliation Statements were missing and could not be provided either to the Committee or to the Office of the Auditor General.
- 23.2 The requirement to keep such records is absolutely basic.
- 23.3 The failure to do so is either the result of complete incompetence (in which case all responsible officers should be removed from their positions) or was intentional (in which case all responsible officers should be removed from their positions). The Committee cannot find any other possible explanation for the missing and incomplete documentation.

23.4 Where bank statements were obtained from the Bank, reconciliations have not been located and subsequent discrepancies revealed by reconciliation of the cash book to bank statements confirm that the reconciliations have not been carried out at all.

23.5 That K30 million of public money passed through this account with no apparent reconciliation is an appalling revelation.

23.6 The Auditor General concludes:

***"This represents a significant control weakness in the management of the Trust Account and the failure by the Trustees to meet the requirements of the Trust Instrument and the Public Finances (Management) Act".***

23.7 This Committee agrees completely with that conclusion and maintains a very strong suspicion that Trustees and responsible Officers in the Department of Finance and the relevant Provincial Governments intentionally failed to keep these records or perform the accounting tasks in order to leave no evidential trail of misconduct.

## **24. ANALYSIS OF RECEIPTS AND PAYMENTS FROM BANK STATEMENTS**

24.1 Receipts and payments were fully analysed from the Bank Statements commencing with the first deposit into the Trust Account on the 24<sup>th</sup> December 2001 and the last noted transaction on the 28<sup>th</sup> April 2006.

24.2 This process revealed the following:

|                       |                   |
|-----------------------|-------------------|
| <b>Total Receipts</b> | <b>31,012,976</b> |
|-----------------------|-------------------|

|                       |                          |
|-----------------------|--------------------------|
| <b>Total Payments</b> | <b><u>30,251,473</u></b> |
|-----------------------|--------------------------|

|   |                       |
|---|-----------------------|
| <b>Closing balance as at 28.04.2006</b> | <b><u>761,503</u></b> |
|---|-----------------------|

Therefore, a total of K 30,251,473 passed through the Trust Account. The Law requires that every toea of this money be accounted for and acquitted.



- 24.3 So derelict was the record keeping, accountability and reporting by Trustees, the Provincial Government and the Department of Finance that neither this Committee nor the Office of the Auditor General were able to identify the source of funds which were made into the account.
- 24.4 This Committee has conducted detailed inquiries and demanded production from the Department of Finance of information sufficient to rectify this defect. Nothing has been forthcoming, despite promises from Mr. Gabriel Yer, the current Secretary for Finance, that he would do so.
- 24.5 Therefore, the position at the conclusion of this Inquiry is that this Committee cannot identify the source of approximately K 23 million of public funds that passed through this Trust Account. The Committee knows where the money went but cannot find where it came from. There could be no more basic failure of accountability and legal obligation than this.
- 24.6 As this Committee has said in the past, there is a very serious attitude and competence problem within the Public Service and particularly in the Department of Finance.
- 24.7 Unless this incapacity to obey the Law is immediately addressed by Government – particularly in the area of fiscal management – the decline of Governance and the failure to deliver services will continue.

## **25. CASH BOOKS**

- 25.1 Computer cash books for the years 2002 to 2005 ( insofar as they exist) were found to be materially inconsistent with bank statements.
- 25.2 The Committee concludes that this is a significant failure by Trustees in the management of the Trust Account and a failure to meet the requirements of the Trust Instrument and the ***Public Finances (Management) Act*** and ***Financial Instructions***.
- 25.3 A huge amount of public money passed through this Account and was paid to dubious, and in many cases, plainly improper recipients. Cash books are a basic accounting tool. They were not produced or were incomplete and incorrect.

- 25.4 The Department of Finance and the Provincial Government failed completely to maintain proper accounting records and to be accountable to any competent degree for the management of this Trust Account.

## **26. BANK RECONCILIATIONS**

- 26.1 It was a requirement of Section 3(b) of the Trust Instrument that monthly Bank Reconciliation Statements were provided to the First Assistant Secretary, Public Accounts of the Department of Finance to enable him to meet his obligations to monitor the Trust Account. This was not complied with.
- 26.2 Further, the evidence before the Committee shows that neither the then First Assistant Secretary nor Department of Finance made any attempt whatsoever to enforce this requirement and had no apparent interest in doing so.
- 26.3 This Committee is very concerned at the failures of a First Assistant Secretary of the Department of Finance to meet these basic requirements of law.
- 26.4 The Committee concludes that the Department of Finance and the First Assistant Secretary of the time were either completely incompetent or acted intentionally to obscure any evidential trail and/or control over the movements of money in and out of the Trust Account by not requiring the provision of monthly Bank Account Statements.

## **27. RECEIPTS INTO THE TRUST ACCOUNT**

- 27.1 This Committee finds that the Provincial Administrator has not maintained relevant revenue accounts and records for receipts into the Trust Account.
- 27.2 Some, but not all receipt copies, collector statements, bank deposit butts, bank statements and related correspondence were produced to support receipts to the Trust Account.
- 27.3 Ledger accounts were not maintained to show the sources of receipts and as a result receipts were not identified into each project.

- 27.4 It was not possible for this Committee or the Auditor General to trace sources of funding into the Account and ascertain the purposes for which the funds were remitted. This means that Trust monies cannot be traced – the most fundamental obligation of a Trustee.
- 27.5 In this regard, the Trustees failed to keep appropriate accounts and records, breached the Trust Instrument and the **Public Finances (Management) Act** thereby and may well be personally responsible for any loss arising as a result of these failures.
- 27.6 The Provincial Administrator of the time failed to manage the financial aspects of the Trust Account to any degree of competence whatsoever in that he failed to maintain proper accounts and records relating to receipts, accounting records and bank statements.
- 27.7 The Committee notes that the Department of Finance is the responsible Department charged with the duty of ensuring that these records and accounts were kept and produced as required by the Trust Instrument and the **Public Finances (Management) Act**.
- 27.8 The Department completely failed in this duty. This is a particularly serious matter when it is considered that the Secretary of the Department of Finance was also a Trustee of the Account and, therefore bore a double responsibility to ensure proper management of the Trust Account.
- 27.9 For this, and other aspects of mismanagement of the Trust Account, Mr. Kambanei is personally accountable but has failed to give any or any proper explanation for these failures.
- 27.10 Mr. Kambanei, as Secretary for Finance, had a clear conflict. He was, by reason of Section 4 and 19 (2) of the **Public Finances (Management) Act** responsible as Secretary for overseeing himself as a Trustee and correcting and being ultimately accountable for his own shortcomings as a Trustee – an impossible position.
- 27.11 Equally, as a Trustee, he was required to report to himself in the capacity of Secretary for Finance pursuant to Section 19 (3) and (4) (c) and (d) and then consider the adequacy of his

own performance and obedience to the requirements of an Act that he himself administered.

- 27.12 This conflict should have been obvious. The Committee supposes that it also exists in respect of every other Trust Account of which the Secretary for Finance is a Trustee. If so, the Minister for Finance should take steps to replace the Secretary as Trustee in order that the appearance of proper and transparent oversight can be maintained.
- 27.13 Once again, the Committee concludes that the failures were systemic and systematic in every single Officer responsible either as a Trustee or as an accountable Officer up to and including the Head of the Department of Finance.
- 27.14 Once again, the Committee concludes that these failures were either the result of gross negligence and incompetence or were intentional. They cannot be the result of mere oversight.
- 27.15 In light of the clear pattern of failures, the Committee maintains a very strong suspicion that these failures were intentional and were designed to confound any audit in an attempt to trace movement of money into and out of the Trust Account and in particular to prevent the source of deposits from being traced.
- 27.16 If so, all those Officers responsible should be referred for further investigation by expert investigatory and law enforcement agencies.

## **28. PROJECT EXPENDITURE**

- 28.1 The Trust Instrument provides that all withdrawals from the Trust Account shall comply with the ***Public Finances (Management) Act***.
- 28.2 This Committee has identified many instances where payments and withdrawals from the Account breached the ***Public Finances (Management) Act***.
- 28.3 Before addressing the evidence, the Committee iterates that the responsible officers were carefully questioned by the Committee on their understanding of the requirements of the ***Public Finances (Management) Act***.

- 28.4 As would be expected from Officers of the seniority of Mr. Kambanei, Mr. Yer, Mr. Kalinoe and Mr. Alman, all those witnesses confirmed their knowledge and understanding of the requirements of the ***Public Finances (Management) Act***.
- 28.5 This Committee finds that all officers, including the Trustees, that were responsible for management of the Trust Account failed to comply with requirements of Law concerning expenditure from a Trust Account.
- 28.6 The Committee specifically finds:

### **Procurement**

- 28.7 Sections 39 and 40 of the ***Public Finances (Management) Act*** set forth mandatory steps that must be followed prior to contracting for the provision of services to the State.
- 28.8 These requirements include the calling of public tenders and steps to be taken in the evaluation of these tenders.
- 28.9 Clearly this process was established to ensure that the procurement process is fair and transparent, that the requirements are properly complied with and that the State obtains value for money.
- 28.10 All tenders are to be evaluated against this specification to ensure that a contract protects the interest of the State and provides a basis for impartial evaluation of results and payments.
- 28.11 Further, the Trust Instrument specifies the purposes for which Trust money can be expended.
- 28.12 This Committee concludes that a number of projects included expenditures that were not provided for by the Trust Instrument.
- 28.13 Further, this Committee finds that there have been expenditures from the Trust Account on matters which do not form any part of Sepik infrastructure – even taking that term at its widest definition.

28.14 For instance, half a million kina was paid for “financial assistance”. The Committee sought detailed explanations as to each payment which made up this total, but received nothing from the Trustees, the Department of Finance or the Provincial Government.

28.15 The Committee sets forth a summary of each project funded by the Trust Account and failures of law, failures to comply with the Trust Instrument, breaches of the **Public Finances (Management) Act** and breaches of accountability identified by the Committee:

| Contractor  | Project  | Amount<br>K | Comments  |
|---|--|-------------|---|
| Westco Limited<br>2002 -2003                                | Construction Yangoru<br>High School                | 482,300     | Did not follow procurement<br>processes (PSTB).<br>Contractual obligations not<br>fulfilled.  |
|   | Governor's House<br>Maintenance                    | 85,000      | Information and accountable<br>documentation not available.<br>Contractual Obligations not<br>fulfilled.  |
|   | Angoram D.O &<br>Brandi H. Sch Design              | 105,670     | Did not follow procuremt<br>procedures (PSTB).  |
| Green Hill<br>Investment<br>2002, 2003 & 2004               | Ami-Sowom Road<br>Maintenance                      | 881,590     | Did not follow procurement<br>processes (PSTB).<br>Information and accountable<br>documentation not available.  |
|   | Maia-Nuku Road<br>Maintenance                      | 1,119,632   | Information and accountable<br>documentation not available.   |
| CCS Anvil (PNG) Ltd<br>2003                                 | Management<br>Consultancy Services                 | 79,500      | Certificate of Inexpediency<br>issued.<br>May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available.              |
| Shorncliffe (PNG)<br>Ltd<br>2003 - 2004                     | Sealing Sepik<br>Highway & Wewak<br>Town           | 2,524,322   |   |
| Sepik Project<br>Managers and<br>Consultants<br>2004 - 2005 | Construction<br>Angoram District<br>Office         | 157,870     | Did not follow procurement<br>processes (PSTB).<br><br>May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available. |
| Baimusu<br>Construction Ltd<br>2005                         | Maintenance District<br>Treasury Houses<br>Ambunti | 154,295     | Did not follow procurement<br>processes (PSTB).<br>Information and accountable<br>documentation not available.<br>May not be related to objectives                  |

| Contractor                                  | Project  | Amount<br>K | Comments  |
|---|--|-------------|---|
|   |  |             | of Trust.   |
| Niugini Builders<br>2005                    | District Treasury Office<br>Building Pagwi,<br>Angoram | 305,000     | Did not follow procurement<br>processes (PSTB).<br>May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available. |
| Garamut<br>Enterprises<br>2005              | Pagui Ambunti District<br>Treasury Office<br>Building  | 137,797     | Did not follow procurement<br>processes (PSTB).<br>May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available. |
| SBA Limited<br>2004 - 2005                  | Maintenance Jama-<br>Pagwi Road                        | 50,000      | Did not follow procurement<br>processes (PSTB).   |
|   | Brandi Secondary<br>School Hall<br>Construction        | 632,065     | Payments exceeded contracted<br>amount.<br>Contractual Obligations not<br>fulfilled.  |
| Department of<br>Works<br>2002, 2003 & 2004 | Supervision & Pmt<br>Services                          | 1,208,700   | Information and accountable<br>documentation not available.<br>May not be related to objectives<br>of Trust.  |
|   | Sepik Highway<br>Counter Funding                       | 6,000,000   | Information and accountable<br>documentation not available.<br>May not be related to objectives<br>of Trust.  |
| Towa Plumbing &<br>Steel<br>2005            | Provincial Treasury<br>residence<br>maintenance        | 37,556      | Information and accountable<br>documentation not available.<br>May not be related to objectives<br>of Trust.  |
| Kipma Builders<br>2002                      | Mobilisation cost                                      | 28,500      | May be not related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available.  |
| Sepik Project Mgrs<br>2004                  | Supervision Fee<br>Angoram Dist Office                 | 20,934      | May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available.  |
| Melkia Investment<br>Ltd<br>2005            | Patigo/Pagwi Road<br>Maintenance                       | 26, 400     | Information and accountable<br>documentation not available.   |
| O'Brian Trust<br>Account<br>2004            | ESPG Contribution SS<br>Tuna Corp Share                | 1,500,000   | May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available.  |
| Steamships                                  | Kwik Built Houses                                      | 491,567     | May not be related to objectives  |

| Contractor              | Project                                    | Amount<br>K | Comments  |
|-------------------------|--|-------------|---|
| Hardware<br>2005        | Wosera District<br>Treasury                |             | of Trust.<br>Information and accountable<br>documentation not available.  |
| Telikom PNG Ltd<br>2005 | Mt Turu Repeater<br>Station                | 600,000     | May not be related to objectives<br>of Trust.<br>Information and accountable<br>documentation not available.  |
| Bake Pty Ltd<br>2004    | Dambui-Timbunkie<br>Highway<br>Maintenance | 570,000     | Did not follow procurement<br>processes (PSTB).<br>May not be related to objectives<br>of Trust. (National Project).<br>Information and accountable<br>documentation not available. |

- 28.16 This Committee could only find one Contract that appeared to have been lawfully and properly instigated and carried out. That contract was a project for sealing the Sepik Highway and Wewak Town and was given to Shorncliffe (PNG) Limited to a value of K 2,524,322.
- 28.17 Every other Contract or Project paid for from the Trust Account did not, upon the evidence received by the Committee, comply with Law in either its procurement, assessment, oversight, performance (or lack of it), results, payment, accounting or acquittal.
- 28.18 The Committee finds that the Department of Finance, the Trustees, Provincial Government and every other responsible Officer or Government arm, agency, Department or entity failed in its duty to identify these failures and to rectify them.
- 28.19 In light of evidence and material which will be set forth later in this report, it is perfectly clear that incompetent conduct existed at the highest level of the Department of Finance and within the Provincial Government and that responsible officers were prepared to and did ignore requirements of law, their duties and the obligations of Trustees to facilitate improper ends.
- 28.20 Further, requirements of the **Public Finances (Management) Act** requiring Tenders for such work were ignored and no records or accountable documentation were maintained.



- 28.21 These failures are clearly illustrated by the fact that payments were made from the Trust Account to companies which did not exist, for work which had not been performed, for projects which did not comply with procurement procedures, in advance of any work actually starting and/or for projects which did not fall within the terms of the Trust Instrument at all.
- 28.22 These payments were made without any query, demur, check, question or requirement for fulfillment of law by the Department of Finance and its officers and, to compound that failure, at the direction or order of the Head of that Department, Mr. Thaddeus Kambane.
- 28.23 The Committee makes the following specific findings:

**Westco Limited**

- 28.24 This Company was apparently deregistered on the 31<sup>st</sup> July 1995 for not submitting Annual Returns to the Investment Promotion Authority.
- 28.25 That Company received three payments from the Trust Account. The Committee has examined each of those contracts and concluded as follows:

**Construction – Yangoru High School – K482,300.00**

- 28.26 The Provincial Government was not able to provide any related contract documents and neither the Auditor General nor this Committee is able to confirm any conditions of the contract engagement.
- 28.27 However, this Committee does find that the contract did not follow procurement processes and that the contractual obligations have not been fulfilled. This is a breach of the ***Public Finances (Management) Act.***
- 28.28 Notwithstanding the fact that the construction company did not exist, that procurement processes did not occur and that the project has not been completed, a total of K 482,300 was paid to Westco Limited by the Trustees with no query or check by any of the Trustees or the Department of Finance.

- 28.29 The Auditor General reports that his Officers visited the site of the project on the 6<sup>th</sup> June 2006. Two classroom buildings and two staff houses were completed and in use, however the two dormitories had not been constructed although payment had been made from the Trust Account.
- 28.30 The Auditor General concludes the two staff houses which had been built were not built according to specifications and were too small.
- 28.31 The Headmaster of Yangoru Secondary School advised that he was seeking reimbursement from the Trustees of part of the money that the School had secured from the Department of Finance through the then Finance Minister, Honourable Andrew Kumbakor MP and paid into the Trust Account to fund the project.
- 28.32 The School has commenced legal proceedings against the contractor for recovery of part of the unfulfilled portion of the contract sum.
- 28.33 This Committee sought explanation as to why contract payments have been made to Westco Limited prior to completion of the contract and what action had been taken by the Provincial Government to ensure completion of the contract. No explanation was provided.
- 28.34 The Committee finds that the Trustees have failed to meet the procurement procedures in Sections 39 and 40 of the **Public Finances (Management) Act** in the engagement of Westco Limited for this project.
- 28.35 The Committee finds that the Provincial Administration has failed to manage the contractual arrangement to ensure that Westco was delivering the services for which they were contracted prior to processing invoices for payments of K 482,300 of public monies.
- 28.36 The Committee finds that the Department of Finance failed to properly administer or account for this project or the monies expended on it and failed to take any steps when it knew that the contract and the payments were unlawful.

- 28.37 This Committee finds that the Provincial Administration failed to ensure that recovery action of monies expended was taken in a timely manner and it would appear that the likelihood of recovery is nil.
- 28.38 The Auditor General reports that Westco Limited, although it was deregistered in 1995, continues to operate and obtain business from the Provincial Government. How this can occur is beyond the understanding of this Committee.

### **Governor's Residence Maintenance – Wewak Hill K85,000**

- 28.39 The Committee finds that documentation, information and accounts records of this Project and Contract do not exist.
- 28.40 The Auditor General reports that contractual obligations of Westco Limited were not fulfilled, yet K85,000 of public money was paid to a non-existent company for work which has not been performed.
- 28.41 The Provincial Supply & Tenders Board Meeting Minute No. 07/2003 dated the 16<sup>th</sup> December 2003 record that the PSTB Chairman informed the Board Members that a contract for K149,685 was awarded to Westco Limited on the 3<sup>rd</sup> March 2003.
- 28.42 The Auditor General has ascertained that K85,000 was paid to Westco for mobilization and some demolition work was performed but the work has not proceeded beyond that point.
- 28.43 No documentation, contract, accounts, records or any other data at all was received from the Provincial Administrator or the Department of Finance in respect of this Contract or its payment.
- 28.44 The Auditor General inspected the work in May 2006. His staff reported that the building was severely damaged and unfit for occupation. There was no evidence of maintenance and the building stood decaying.
- 28.45 Neither the Provincial Administrator nor the Department of Finance or the Trustees of the Trust Account had been able to explain why the contractor was paid prior to completion of the work.

- 28.46 The Provincial Administration has failed completely to ensure that the contractor met contract specifications and the payments were made only for completed work.
- 28.47 This entire contract and the payments made in pursuance of it are unlawful and neither the Provincial Government nor the Department of Finance have taken any action to recover monies paid to the contractor or in any way attempted to address this serious misapplication of public monies.
- 28.48 The Trustees of the Trust Account seem not to care that these monies have been expended for no benefit or to take any responsibility for those failures.

#### **Angoram D.O. and Brandi High School Design – K105,670**

- 28.49 The Committee, on the evidence before it, finds that this contract apparently did not follow lawful procurement procedures, payments were made without any evidence of work performed and payments were made without any control or accountability on the part of the Provincial Government, the Trustees of the Trust Account or the Department of Finance.
- 28.50 Once again, the Committee finds a breach of every basic obligation of law and a waste and misapplication of public funds for no result.
- 28.51 Moreover, this payment was made to a company which apparently did not exist – but that fact did not seem to give the Department of Finance, the Trustees or the Provincial Government Administration any concern at all.

#### **Greenhill Investment Limited**

- 28.52 This Committee, on the evidence produced to it, finds that Greenhill Investment was registered on the 20<sup>th</sup> November 1992 and was de-registered on the 1<sup>st</sup> January 2001.
- 28.53 The Company apparently did not exist in any capacity the time that it received payments from the Trust Account or contracts from the Provincial Government.

- 28.54 These payments are a matter of concern to the Committee. Greenhill Investment was paid K 2,001,222 between 2002 and 2004 for road maintenance work.
- 28.55 Procurement processes were apparently not followed but despite this fact three payments amounting to K881,590 were made to Greenhill Investments for the Sepik Highway Road Construction Project.
- 28.56 Subsequent to these payments, the Provincial Supply & Tenders Board agreed to a contract with Greenhill Investment and the balance of K 1,119,632 of the K 2,001,222 appears to have been paid upon the approval.
- 28.57 Both the Committee and the Auditor General found great difficulty in tracing details of the payments due to a lack of any records at all.
- 28.58 No attempt at all has been made by the Department of Finance (or any one else) to bring any accountability to this transaction.
- 28.59 How contracts can be given for such large amounts of public money (well over the limit prescribed by the **Public Finance (Management) Act** for the calling of Tenders) and how contracts can be given to an apparently non-existent company without any control from the Department of Finance or the Trustees is beyond the understanding of this Committee.
- 28.60 The Committee concludes that the Trustees, the Provincial Government and the Department of Finance failed completely in their duties to properly monitor, control or in any way carry out their obligations to properly manage this expenditure of public monies.

### **CCS Anvil (PNG) Limited**

- 28.61 This Committee finds that on the 4<sup>th</sup> February 2003 a Special Provincial Supply & Tenders Board Meeting awarded a contract to CCS Anvil Limited Consultants on a Certificate of Inexpediency.
- 28.62 Why that Certificate should have been given and on what legal basis it was given, cannot be ascertained by this Committee because there are no records.

- 28.63 The value of the Consultancy was K300,000. The Auditor General was not provided with any documentation regarding the basis for the issue of the Certificate of Inexpediency or any material showing the extent of the project to be carried out.
- 28.64 A Certificate of Inexpediency can only be issued for reasons of emergency. What emergency could possibly justify this Certificate of Inexpediency is unknown.
- 28.65 This Committee concludes that the Certificate was issued to evade the requirement of law for competitive tenders and therefore, that the State could not be satisfied that it obtained value for money.
- 28.66 This Committee finds that this Consultancy was not within the terms of the Trust Instrument and that conclusion is supported by the Office of the Auditor General.
- 28.67 There was no information or accountable documentation preserved or produced by either the Provincial Administration or any other witness to this Inquiry.
- 28.68 A corporate plan was produced to the Auditor General but no other outcomes were able to be ascertained by the Auditor.
- 28.69 Once again, the lack of documentation has frustrated the Auditor and this Committee and has made firm conclusions as to the propriety of these payments impossible – as no doubt they were intended to do.
- 28.70 However, a close reading of the Trust Instrument has led this Committee to include that funding of CCS Anvil should not have been made from the Trust Instrument. There was no Infrastructure involved and the payment does not seem to be within the terms of the Trust Instrument.
- 28.71 Further, the contract was given upon a Certificate of Inexpediency which cannot now be justified. The Provincial Administration of the time, the Department of Finance and the Trustees of the Account failed in their duty to properly manage public funds.

### **Shorncliffe (PNG) Limited**

- 28.72 The Committee finds that there are no adverse matters raised in respect of this contract. This is the only project and payment which, our investigators suggest, was properly and lawfully brought about.
- 28.73 However, even in this transaction, the Committee was not provided with any documents or records despite directing their production.

### **Baimusu Construction Limited - Maintenance District Treasury Houses – Ambunti K154,295**

- 28.74 The Committee finds that this contract did not follow procurement processes as it should have done. The contract was therefore not lawfully granted and payment should not have been made to the contractor.
- 28.75 The Committee and the Auditor General find that there is no information or accountable documentation produced or available and it is the conclusion of the Committee that documentation and records of this project have either been deliberately destroyed or hidden – or never existed.
- 28.76 Neither the Auditor General nor this Committee can conclude that the project or the payments were related to objectives of the Trust.
- 28.77 The Department of Finance, the Department of Planning, the Office of Rural Development and the Provincial Government can provide no documentation whatsoever in relation to this supposed contract and the Committee concludes that the Trustees and the Department of Finance have been derelict in failing to properly oversee and ensure that there was full accountability and maintenance of records of the contract and the payment.

### **Niugini Builders**

- 28.78 This particular project related to the Department of Finance and District Treasury Rollout Program.

- 28.79 This program did not go through the PSTB processes and the Works Manager maintained no information on the project.
- 28.80 This Committee could not ascertain whether Section 40 of the ***Public Finances (Management) Act*** and ***Financial Instructions Part 9 on Public Tendering Processes*** had been adhered to, but it is certain this payment and the work performed does require referral to the PSTB.
- 28.81 The Auditor General is of the view that the District Treasury Rollout Program may not be related to the objective of the Trust Account – and this Committee agrees. That being so, the payments are inappropriate.
- 28.82 The Provincial Administrator advised that all documentation regarding this contract has been removed and could not be located. He also advised that the former Provincial Treasurer had been removed because of personal involvement in Baimusu Construction Limited – See Para 28.75 et. seq.
- 28.83 The Committee concludes that documents have been deliberately hidden or destroyed to prevent any proper and full investigation of the use of this money and that the entire contract lacked compliance with the procurement processes and may not have been related to the objectives of the Trust.

#### **Niugini Builders District Treasury Office – Angoram K305,000**

- 28.84 Once again, the Committee finds that this contract did not follow any procurement procedures and that information and accountable documentation is not maintained or has been deliberately removed or destroyed.
- 28.85 Certainly, no documentation was produced to the Auditor General or this Committee sufficient to ascertain whether the Project and contract were within the terms of the Trust Instrument or not.
- 28.86 Once again, this Committee finds that payment has been made free of any check for legal compliance, or apparent oversight by the Trustees or the Department of Finance. Neither of those entities appears to have any concern as to these failures.



**Garamut Enterprises - Pagui Ambunti District Treasury Office  
- K137,797**

- 28.87 The Committee finds that this contract and project did not follow procurement procedures in accordance with Law.
- 28.88 The Provincial Government, the Department of Finance and the Department of Planning have maintained no or no adequate information and accountable documentation which would enable either the Auditor General or this Committee to be satisfied that the project was within the terms of the Trust Instrument.
- 28.89 Once again, the Committee finds that the Trustees have failed to carry out their obligations either pursuant to the Trust Instrument, the ***Public Finances (Management) Act*** or the ***Financial Instructions*** promulgated thereunder.

**SPA Limited - Brandi Secondary School Hall Construction -  
K632,065**

- 28.90 The Committee finds that the Provincial Supply & Tenders Board awarded a contract to SPA Limited at a meeting on the 16<sup>th</sup> December 2003 (07/2003).
- 28.91 The Tender price and contract was for the construction of a Hall. The Tender price was K 640,754 but the actual payment to the company was K 632,065.
- 28.92 For reasons that this Committee cannot ascertain, two additional payments were made for the same project. K 78,330 was paid to Westco Limited and a further K 38,445 to the Receiver of Public Monies, Department of Works totalling K 116,776.
- 28.93 The Total payment for the project was therefore K 748,841.
- 28.94 The Provincial Administrator has confirmed that the increase in the tender value was not referred to the Provincial Supply & Tenders Board as required by Sections 39 and 40 of the ***Public Finances (Management) Act***.
- 28.95 Staff of the Office of the Auditor General inspected the construction site and reported that the School Hall was not in

use due to poor engineering and because construction work had not been completed.

- 28.96 Once again, this Committee finds that the total of K 748,841 has been spent on construction however the project was incomplete and could not be used.
- 28.97 The Provincial Administration failed to ensure that the contracts were properly managed and that payments were processed upon satisfactory completion of the work.
- 28.98 The Trustees also failed to ensure that contracts were properly carried out and satisfactorily completed before payment was made.
- 28.99 The Department of Finance failed to do anything at all to require or ensure compliance with Law.
- 28.100 The Provincial Administrator has advised the Committee that the Works Manager will authorize/undertake a full investigation into the project "in due course". The Committee is not optimistic that anything will be achieved in this regard.

### **Jama-Pagui Road Maintenance – K50,000**

- 28.101 The Committee finds that this road maintenance project was not put through the Provincial Supply & Tenders Board process and the Works Division has no information or documents on the project.
- 28.102 The Provincial Administration has supplied no documents, records, files or other information on this project, despite being directed to do so by this Committee.
- 28.103 As a result of this failure and the complete absence of any documents at all, the Committee can make no findings as to the propriety or otherwise of the payments, but queries how the Trustees could make any payment at all, when documents were neither available nor before them.
- 28.104 The very basic duty of a Trustee is to ensure that monies are paid out lawfully and properly and upon the completion of projects or contracts to a satisfactory standard.

28.105 This cannot have happened in this case and the Trustees should be held personally liable if a breach of trust is established.

28.106 To this end, the Committee intends to refer this particular payment for full and complete investigation by the relevant law enforcement and investigatory agents.

**Department of Works – K 7, 208, 700.**

28.107 These payments are a matter of very grave concern to the Committee.

28.108 Neither the Auditor General nor the Public Accounts Committee could find any documentation whatsoever relating to these payments which were expressed to be:

- a) Supervision and payment services K1,208,700
- b) Sepik Highway Counterpart Funding K6,000,000

28.109 The Committee directed production of these documents from the Department of Planning, the Department of Finance and/or the Provincial Administration. Nothing was forthcoming.

28.110 How these documents can simply disappear was not explained to the Committee.

28.111 This Committee concludes that the documents have been deliberately removed, destroyed or hidden from the Committee by these three agencies.

28.112 How the Department of Finance – the very Department responsible for acquitting and certifying proper accountability for these monies can have no records at all is utterly beyond the understanding of this Committee.

28.113 At best, the absence of documents suggests gross negligence and incompetence. At worst, it suggests corruption and a complete failure by the Trustees to meet any requirement at all imposed on them by the Trust Instrument or the **Public Finances (Management) Act** relating to accountability for and acquittal of public funds – particularly those funds which

might, it would seem, have been contributed by Members of Parliament.

- 28.114 It is the intention of the Committee to refer these two payments for full investigation by the Ombudsman and the Royal Papua New Guinea Constabulary.

**Towa Plumbing and Steel - Provincial Treasury Residence Maintenance – K37,556**

- 28.115 The Committee finds that no information, documentation, files or records relating to or recording this Contract or payment are maintained by the Provincial Administration, the Department of Finance or the Department of Planning.
- 28.116 Neither the Auditor General nor this Committee can make any investigation or findings on this payment in the absence of documentation.
- 28.117 This Committee directed the production of all available documents concerning this contract, but nothing has been produced.
- 28.118 Again, the Committee and the Auditor General are unable to make any findings concerning this particular payment other than to conclude that the absence of documents was probably intentional and to refer all responsible Officers for investigation by the appropriate Agencies.

**Kipma Builders - Mobilisation Cost – K28,500**

- 28.119 Neither the Auditor General nor this Committee has any evidence concerning the purpose of this payment.
- 28.120 No documents, records, files or any other evidence was produced to the Auditor General or to this Committee, despite directives from this Committee to produce that material served on the Department of Finance, the Department of Planning, the Office of Rural Development and the East Sepik Provincial Government.
- 28.121 Once again, neither the Committee nor the Auditor General make any investigation or finding on the propriety of this payment.

- 28.122 The best that the Committee can do is refer the matter to the Office of the Ombudsman and the Royal Papua New Guinea Constabulary for a full investigation both of the payment itself and the missing documentation.

**Sepik Project Managers Supervision Fee – Angoram District Office – K20,934**

- 28.123 Once again, neither the Auditor General nor this Committee were able to find any documents, records, files or information at all concerning this contract, the payment or the way or ways in which the contract or project was procured or approved.
- 28.124 Neither the Committee nor the Auditor General can make any investigation or finding as to the propriety and the legality of the contract or the payment.
- 28.125 The fact that there are no documents available, despite the Committee having directed their production, suggest either that the documents have been deliberately removed or that they never existed.
- 28.126 In the circumstances, the Committee refers to this contract or project and the payment made from the Trust Account to the Office of the Ombudsman for a full and complete investigation to the Royal Papua New Guinea Constabulary for an investigation of the circumstances giving rise to the payment and the legality of the actions of all trustees and each Officer involved in this particular transaction and the failure to record or account for any aspect of it..

**Melkia Investment Limited – Patigo/Pagwi Road Maintenance – K26,400**

- 28.127 Once again, there is no documentation, record, file or information available or produced to the Auditor General or this Committee, despite directives to do so.
- 28.128 Neither the Committee nor the Auditor General can make any finding on the propriety and legality of this contract or the payment.

- 28.129 Accordingly, the Committee again finds that the documents were either deliberately removed, destroyed or hidden and/or that the Trustees could not possibly have acted in accordance with the Trust Instrument in the absence of documentation before them.
- 28.130 In the circumstances, the Committee refers this transaction and the payment to Melkia Investment Limited to both the Ombudsman and the Royal Papua New Guinea Constabulary for full and complete investigation of the legality of the actions of all Officers involved in this payment.

### **Purchase of Shares by East Sepik Provincial Government in Tuna Corporation**

- 28.131 The Committee finds that the K 1,500,000 moved from the Trust Account as a 30% payment of the total cost of shares purchased by the East Sepik Provincial Government in South Seas Tuna Corporation.
- 28.132 The Committee finds no assistance in the Trust Instrument on the question of investment of monies in the Trust Fund.
- 28.133 However, Section 57 of the ***Public Finance (Management) Act*** sets out the Trustees' responsibilities in respect of investments.
- 28.134 Section 57(2) provides for circumstances where investment of monies that are not immediately required may be made and sets forth the type of investment allowed.
- 28.135 Investments of Treasury Bills with the Bank of Papua New Guinea are provided for as these are securities guaranteed by the State.
- 28.136 However, this Committee cannot establish that the investment in South Seas Tuna was approved by the Minister for Finance as required by the ***Public Finance (Management) Act*** and concludes that this investment was not legal in that it did not fall in the terms of the Trust Instrument and the Trustees were not empowered to make it.
- 28.137 Provincial Executive Council Decision No. A1/2/2000 directed the East Sepik Provincial Government to negotiate with the

Joint Venture Partners in South Seas Corporation for share equity participation in the project.

- 28.138 Neither the Auditor General nor this Committee were supplied with any investment register, share certificate or status report of this investment and the Committee is therefore unable to confirm the fact of the investment or the source of money used to make it.
- 28.139 The Committee is of the view that this investment was an inappropriate use of Trust monies. Further, the investment was not an allowable investment provided by Section 66 of the **Public Finance (Management) Act** and no special approval had been provided as required by Section 66(2)(c) of that Act.
- 28.140 Accordingly, the Committee refers this investment for full and complete investigation, to the Office of the Ombudsman Commission to the Minister for Finance and the Royal Papua New Guinea Constabulary.
- 28.141 The Committee recommends a full investigation of the process leading to this payment be made together with the role played by each responsible Officer and the Trustees of the Trust Account to establish the legality of the investment.
- 28.142 The Committee notes that a further investment of K6 million was made in Treasury Bills with the Bank of Papua New Guinea from the Trust Account.
- 28.143 Section 57 of the **Public Finances (Management) Act** permits investment of funds that are not immediately required in Treasury Bills with the Bank of Papua New Guinea. The Committee makes no adverse finding or recommendation in respect of this investment – except to refer it for full investigation of the source of funds used for the investment.

#### **Steamships Hardware – Kwik Built Houses for Wosera District – K491,567**

- 28.144 Once again, no documentation was provided to this Committee or to the Office of the Auditor General, despite directives from the Committee to produce documents, records, files and information concerning this payment.

- 28.145 The payments were possibly made as part of the District Treasury Rollout Program, but this Committee simply does not know and cannot find that fact.
- 28.146 Once again, the only conclusion that can be drawn is that the documents either never existed or have been deliberately removed, destroyed or hidden to frustrate an Inquiry by the Auditor General or this Committee.
- 28.147 It is impossible to now conclude whether these payments were within the terms of the Trust Instrument or not because the records have not been produced.
- 28.148 We can and do conclude that there may have been a breach of the ***Public Finances (Management) Act*** in that there are no records, accounts, reports or acquittals in respect of this contract maintained by either the Provincial Government or the Department of Finance.
- 28.149 The Committee therefore refers this payment and contract for full and complete investigation by the Office of the Ombudsman and the Royal Papua New Guinea Constabulary.
- 28.150 This Committee again records grave concern that a significant amount of public money cannot be accounted for, was not recorded or acquitted by the Department of Finance, appears to have been approved by Trustees without any documentation and, quite possibly, falls outside the terms of the Trust Instrument.

**Telikom PNG Limited – K600,000 – Mt Tururu Repeater Station**

- 28.151 Neither the Auditor General nor this Committee were able to find any documentation or records relating to this payment.
- 28.152 The Committee directed the production of all records, information and files concerning both the contract and the payment, but received nothing from either the Department of Finance or the Department of Planning or the Provincial Government.



- 28.153 Accordingly, neither this Committee nor the Auditor General could make any conclusions as to the propriety and legality of either the contract or the payment.
- 28.154 This Committee is once again left to conclude the missing documentation was either intentional or the result of gross negligence and incompetence by Trustees and the Department of Finance – including and in particular the then Secretary of the Department of Finance and a Trustee of the Account, Mr. Thaddeus Kambanei.
- 28.155 This Committee cannot understand how the Trustees can possibly approve such payments when there were apparently no documents before them.
- 28.156 Neither can the Committee identify the source of funds or the legality of their application for this purpose.
- 28.157 Once again, the Committee refers this transaction and the payment to the Royal Papua New Guinea Constabulary and the Office of the Ombudsman with a recommendation that a full and complete investigation be carried out to establish the legality of the contract, the legality of the payment and whether the actions of each Officers involved in this payment were lawful and justified.

**Bake Pty Limited – Dambui – Timbunkie Highway Maintenance – K570,000**

- 28.158 The Committee finds that this project was contracted through the Central Supply & Tenders Board and through the Office of Rural Development who apparently awarded the contract to the company.
- 28.159 The total contract price was K 700,000.
- 28.160 This Committee cannot establish if and from where any other payment was made, but has established that only K 570,000 was paid from the Trust Account.
- 28.161 The Provincial Administrator has advised that K 570,000 represents counterpart funding for the project, but can provide no documentation in this regard.

- 28.162 The Committee concludes that proper accounts and records have not been maintained by the Provincial Administration, the Department of Finance or the Trustees.
- 28.163 No documents are held by any Government Department and nobody accepts responsibility for maintaining (or failing to maintain) those records.
- 28.164 The Provincial Administration cannot now demonstrate that K 570,000 has been lawfully expended or demonstrate any value for money – or indeed even demonstrate that the project was completed satisfactorily.
- 28.165 The Trustees cannot explain why they provided 81% of the cost of the project, where the monies came from or how they managed to approve payment of K 570,000 with no documentation before them.
- 28.166 There are no records of account kept by the Trustees, no Reports as required, no records at the Department of Finance or the Provincial Government and this can only be the result of gross negligence and incompetence or the documents have been deliberately removed or hidden. Whatever the situation all responsible Officers are in breach of their legal obligations.
- 28.167 Accordingly, this Committee refers all the transaction with Bake Pty Limited for full and complete investigation by both the Office of the Ombudsman and the Royal Papua New Guinea Constabulary and also refers the Trustees and responsible officers of the Department of Finance and the Department of Planning and the Office of Rural Development for full investigation as to how and why documentary records have gone missing or never existed.

## **29. TRANSFER OF THE TRUST ACCOUNT TO WAIGANI**

- 29.1 This Committee was informed by Mr. Kambanei that the management of the Trust Account was transferred to Waigani and assumed by him as Secretary for the Department of Finance in July 2005.
- 29.2 Mr. Kambanei stated to the Committee that this transfer was the result of the unsatisfactory handling of the Trust Account by the Trustees (which this Committee notes, included himself)

and the poor performance of the Provincial Administration and other unspecified Officers in the management and accountability standards maintained over the Trust Account.

- 29.3 The Provincial Administration was not able to provide any formal notification of the transfer and neither this Committee nor the Auditor General have seen anything in writing which gives effect to the transfer.
- 29.4 However, this Committee accepts that Section 19 (5) of the **Public Finances (Management) Act** does permit the return or control of the Trust Account to the Department of Finance and accepts that, given the appalling state of the Trust Account and its records up to July 2005, the transfer was justified **if** the intention was to bring any control and accountability to the operations of the Trust Account.
- 29.5 This Committee and the citizens of Papua New Guinea had every right to expect that the Trust Account be properly, lawfully and competently managed by the Trustees and the Department of Finance, particularly from July 2005 when the transfer to Waigani was made.
- 29.6 Regrettably, this Committee concludes that there was no improvement in any aspect of Trust management – in some respects, the mismanagement and illegality actually worsened.
- 29.7 This Committee finds that Mr. Kambanei assumed complete and sole responsibility for the management of the Trust Account from July 2005. From that point in time, all decisions concerning expenditure from the Account were apparently made by Mr. Kambanei.
- 29.8 Which projects would be paid, who would receive money and the amounts paid were his responsibility and these decisions were his alone.
- 29.9 The evidence shows that Mr. Kambanei personally and without any reference to other Trustees, considered and approved each and every project or contract and payment out of the Trust Account from July 2005 onwards. He also signed the cheques.
- 29.10 We reiterate that this Committee and the citizens of Papua New Guinea could legitimately expect proper competent, lawful and

fully accountable management of the Trust Account from Mr. Kambanei who was both the Trustee and the Senior Accountable Officer to Government during his management of the Trust Account.

- 29.11 Mr. Kambanei has testified on oath before this Committee, he had full knowledge and understanding of the provisions and requirements imposed on him both as a Trustee and the Head of Department by the terms of the **Public Finance (Management) Act** and the **Financial Instructions** made thereunder.
- 29.12 This Committee finds that Mr. Kambanei has absolutely no excuse whatsoever for the poor or non-existent management, or accountability and failure to comply with the Trust Instrument and his obligations as a Trustee and Head of Department which followed the removal of control of the Trust Account to Waigani in July 2005.
- 29.13 This Committee has carefully considered each transaction from the account from July 2005 and makes the following findings:

### **30. PAYMENTS PROCESSED AT WAIGANI.**

- 30.1 Nine payments totaling K 5,813,053 were processed between 24<sup>th</sup> November 2005 to the 24<sup>th</sup> March 2006 from the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account.

Those payments were:

| <b><u>Payees</u></b>   | <b><u>Details</u></b>        | <b><u>Cheque No.</u></b> | <b><u>Amount</u></b> |
|------------------------|------------------------------|--------------------------|----------------------|
| Dept of Works WSP      | Nat Roads & Bridges Maint    | 1                        | 2,000,000            |
| AOG Jubilee University | Establishment of Jubilee Uni | 4                        | 1,200,000            |
| Green Hill Investments | Upgrading Mai-Nuku Road      | 5                        | 428,656              |
| Yangoru High School    | Donation committed by PM     | 6                        | 10,000               |
| SBA Limited            | Upgrading Ariap-Mari Road    | 7                        | 244,397              |
| Telikom PNG Limited    | Purch 4xVSAT Installation    | 8                        | 200,000              |

|                        |                               |    |                  |
|------------------------|-------------------------------|----|------------------|
| Spirit Life Bookshop   | 500 chairs Brandi High School | 9  | 30,000           |
| Dept of Works          | Yambi/Avatip Road             | 10 | 200,000          |
| Nuku District Treasury | Transfer for Nuku-Arko Rd     | 11 | <u>1,500,000</u> |

**TOTAL****5,813,053**

- 30.2 The Committee finds that each of these payments was variously approved by the First Assistant Secretary Accounting Frameworks and Standards, Deputy Secretary Operations and the Secretary for the Department of Finance in accordance with their financial delegation limits.
- 30.3 But these approvals were, upon the few available documents, made without consideration of the terms of the Trust Instrument and resulted in expenditure that the Auditor General has found to be outside the scope and purpose of the Trust Instrument.
- 30.4 Moreover, Section 2(b) of the Trust Instrument stipulates four signatories on all cheques and transfers from the account.
- 30.5 The Committee has heard evidence from the Office of the Auditor General that, in light of the poor drafting of the Trust Instruments, it may be that only three signatures are required.
- 30.6 However, this Committee interprets the Trust Instrument to require four signatories on all cheques and transfers from the account.
- 30.7 Those signatories were the Secretary for Finance or his delegate, First Assistant Secretary Public Accounts, the Provincial Administrator, the Provincial Treasurer and the Provincial Works Manager.
- 30.8 This Committee can find no variation of the Trust Instrument to change the control and management of the Trust Account in this regard.
- 30.9 This Committee finds that the nine cheques issued for payment shown in Para. 30.1 hereof, were signed by the Secretary of Finance and the Chief Secretary to Government

Mr. Joshua Kalinoe and the Secretary for Finance – Mr. Thaddeus Kambanei.

- 30.10 The Secretary for Finance was a Trustee of the Account and a signatory to the account.
- 30.11 This Committee has found that the Chief Secretary Mr. Joshua Kalinoe was a signatory to the Account but was not a Trustee at the time he signed the cheques.
- 30.12 The Committee summoned Mr. Kalinoe to give evidence. Mr. Kalinoe told the Committee that he had been informed by Mr. Kambanei that he (Kalinoe) was **"a signatory at the Bank"**.
- 30.13 However, the Chief Secretary apparently never read or understood the signature requirements of the Trust Instrument.
- 30.14 On the 12<sup>th</sup> January 2007 Mr. Kalinoe submitted to the Committee a written statement regarding the fact of signing cheques from the Trust Account.
- 30.15 A covering letter from the Chief Secretary stated, inter alia, as follows:
- "As you are aware, I am a subordinate signatory to the Account but not a Manager of the Account. I have countersigned cheques on the recommendation of the Manager of the Account (Secretary for Finance), assuring me that all was in order to be a counter signatory".***
- 30.16 In relevant part, the Statement of Mr. Kalinoe which was annexed to that covering letter states:

**"Trustee to Account**

***I have been advised by the Former Secretary for Finance Mr Thaddeus Kambanei that the Trust Deeds were amended to include me as one of the Trustees. I also recall signing bank documents, including my signature as one of the alternate signatories. The other being the Secretary for Works.***

.....

***I confirm that I signed a number of cheques including K1.2 million for the Jubilee University on the recommendation of the Manager of the Fund, the Secretary for Finance, Mr Thaddeus Kambanei.***

***I am advised by the Public Accounts Section that the former Minister for Finance, Honorable Bart Philemon has amended the original Trust Deed to include my name and title as one of the Trustees. This can be confirmed from the Manager of the Trust, the Secretary for Finance.***

### **Illegal Signing of Cheques**

***I have not signed cheques illegally. Before countersigning cheques I recall effecting bank documents with my specimen signature. I was also advised by the Trustee Mr Kambanei that all was in order and that I can sign the cheques as a countersigning officer.***

***None of the cheques I countersigned has bounced or been refused by the Bank. This means my signature was verified and the cheques cleared accordingly."***

- 30.17 This Committee sought further information and conducted further investigations to establish precisely the identity of the signatories and the Trustees to the account from July 2005 onwards.
- 30.18 In particular, the Committee required to know whether and when, the Trust Instrument was amended to include Mr. Kalinoe as a signatory or Trustee.
- 30.19 The Committee finds that the Trust Instrument established by the Minister for Finance, Planning and Rural Development, Honorable Andrew Kumbakor MP on the 15<sup>th</sup> May 2002 does not specify Mr. Kalinoe as a Trustee and that the Department of Finance has confirmed that the Trust Instrument was not changed as Mr. Kalinoe was told.
- 30.20 The Committee gave Mr. Kambanei and the Department of Finance every opportunity to produce evidence that the Trust

Instrument was, indeed amended by the Honorable Bart Philemon MP as claimed by Mr. Kalinoe. No evidence or proof of this assertion has been supplied to the Committee.

- 30.21 This Committee concludes that Mr. Kalinoe was never a Trustee to the Account.
- 30.22 Why the most senior Public Servant in the country would assume that he was a Trustee or sign cheques without checking the terms of the Trust Instrument is beyond the understanding of this Committee.
- 30.23 The appointment as a Trustee carries with it onerous responsibilities and potentially, personal liabilities. The Chief Secretary should have checked to establish his precise position.
- 30.24 As we have stated, the Trust Instrument required four (or three, if the Auditor General is correct) signatures on any cheque drawn on the account.
- 30.25 At no time was there ever more than one Trustee signature on the cheques drawn on the account from July 2005. That signature was made by Mr. Thaddeus Kambanei.
- 30.26 This Committee finds that the Trustees of the account failed to comply with the Trust Instrument by applying only one valid and recognized signature on all nine of the cheques drawn on the account while the Trust Account was managed by Mr. Kambanei.
- 30.27 The Trust Instrument required the Secretary, Delegate and the First Assistant Secretary Public Accounts to be signatories to any cheque drawn on the account and those Officers were in a position to control expenditure from the account.
- 30.28 The fact that they did not do so prior to July 2005 and the fact that illegality and a complete disregard of the requirements of the Trust Instrument, Trust obligations and the **Public Finances (Management) Act** had occurred with no demur, question or control from the Department of Finance or any of the other Trustees (including and in particular Mr. Kambanei), was plainly evident to this Committee.



- 30.29 Further, the effect of Mr. Kamaneï taking control of the Trust was simply that all payments from the Trust continued without the agreement of any other Trustee appointed to ensure the rights of the Provincial Administration and/or to protect these public monies.
- 30.30 The Committee notes that the action to take control of the Trust in July 2005 coincided with the appointment of a new Provincial Administrator by the National Executive Council and a Provincial Treasurer – appointed by Mr. Kambaneï himself.
- 30.31 Neither of these senior officials, both signatories to the Trust according to the Trust Instrument, were consulted regarding the action by the Secretary to assume control of the Trust or apparently consulted in any way concerning payments amounting to K 5,813,053 drawn on the Trust between the 24<sup>th</sup> November 2005 and the 24<sup>th</sup> March 2006 on the authority of Mr. Kambaneï.
- 30.32 The Trust Account was run as a private and personal account by Mr. Kambaneï from July 2005 with no apparent regard at all to the terms of the Trust Instrument, the **Public Finances (Management)**, the **Financial Instructions** or any of the duties imposed on him as a Trustee or Head of Department.
- 30.33 It is clear to this Committee that the Department of Finance has retained virtually no documentation at all by way of accounts, submissions, reports, acquittals or information concerning the expenditure from the Trust Account after it was managed from Waigani (or has failed to produce same to this Committee despite being directed to do so).
- 30.34 These continuing failures to obey even the most basic requirements of Law in respect of a Trust Account that was operated from Waigani and not from a distant Province, is baffling and inexcusable.
- 30.35 Responsibility for failure as a Trustee to ensure that these records were kept and the Trust Instrument obeyed, rests squarely with the Trustees of the time – including and in particular Mr. Thaddeus Kambaneï.
- 30.36 The identified breaches of Law and the misuse of the Trust Account found by the Auditor General and this Committee can

only have occurred and continued as a result of the incompetence, design or complicity of the Department of Finance - which should have controlled the Trustees and the Trust Account and kept proper accounts.

- 30.37 Responsibility for these Departmental failures rests with the Secretary for Finance at the time – Mr. Thaddeus Kambanei.
- 30.38 This Committee notes that the Provincial Administrator of the East Sepik Province formed the view that a number of payments made from the Trust Account were not provided for by the Trust Instrument, and has advised that it is his intention to seek the return by the Department of Finance, of the expenditure he believes to be inappropriate.
- 30.39 As we have said earlier, it was appropriate for the citizens of Papua New Guinea to expect full and complete accountability and lawful conduct of the Trust Account at all times, but particularly from July 2005 onwards.
- 30.40 It is proper for citizens to expect that a full Audit and an investigation of all that had gone on before that date would be instigated by the Department of Finance and positive steps taken to prosecute those responsible where failings were found or to recover monies which were illegally or inappropriately paid. Neither of these developments has ever occurred.
- 30.41 The Committee has had regard to some of the payments made from the Trust Account after July 2005 and we make the following findings:

#### **Assemblies of God – Jubilee University K1,200.000**

- 30.42 A payment of K1,200,000 was made to the newly established Assemblies of God Jubilee University in Port Moresby from the Trust Account.
- 30.43 The following documents were provided to support the payment:
- A brief to the Deputy Secretary Operations from the First Assistant Secretary Cash Management and Expenditure Division, for approval of payments;

- National Executive Council Decision No. 191/2005. Special Meeting No. 44/2005; and
- A letter from the Prime Minister to the Secretary for Finance dated the 11<sup>th</sup> April 2005.

30.44 This Committee concludes as follows:

- (i) The National Executive Council Decision No. 191/2005 did not approve any funding to the Assemblies of God Jubilee University in Port Moresby.
- (ii) The Decision only directed the transfer of the Sepik Agricultural College excluding its assets, to the administration of Jubilee University as a church agency.
- (iii) A letter from the Prime Minister to the Secretary of Finance dated the 11<sup>th</sup> April 2005 did not give any instruction to make any payment to the Assemblies of God Jubilee University in Port Moresby.

The letter shown to this Committee only makes mention of the Department of Finance delaying the sourcing and funding of 16 provincial projects amounting to K8,900,000 committed by the Prime Minister and as the Provincial Member for East Sepik Province.

30.45 No documents showing any decision of the National Executive Council, Provincial Executive Council, Provincial Supply & Tenders Board or Trustees to pay K 1,200,000 to the privately run Jubilee University in Port Moresby to undertake infrastructure development projects in the East Sepik Province was provided for examination of this Committee.

30.46 This Committee and the Auditor General sought further information, advice, records, files and information from the Department of Finance regarding the appropriateness of this expenditure from the Trust Account, but received nothing.

30.47 This Committee refers this entire payment to the Office of the Ombudsman, to the Commission of Inquiry into the Department of Finance and to the Royal Papua New Guinea Constabulary for a full and complete investigation of every aspect of the payment including and in particular the question of whether Mr Kambanei, at the time he signed the cheque,

had any conflict of interest or acted in breach of the Trust Instrument, the ***Public Finances (Management) Act***, his obligation as a Departmental Head, the ***Financial Instructions*** or any other requirement of law.

- 30.48 The Committee refers the matter to the same agencies for full investigation of the fact that there is virtually no documentation provided and therefore there could have been virtually no relevant documentation before the Trustees when they decided to make this payment.
- 30.49 How could the Trustees have reached an informed decision with no apparent submission or assessment of the proposed payment, the purpose of the payment and the recipient? How could an independent Trustee have concluded that the expenditure and its purpose fell within the terms and intention of the Trust Instrument with no documents before him or them?
- 30.50 Where did this money come from? How was it immediately available for payment? How could any competent Trustee be satisfied that the money was lawfully deposited and available for expenditure for this purpose?
- 30.51 This only justification made to this Committee for the payment was a supposed political directive to do so. We cannot find any such directive and must assume that Mr. Kambanei acted on his own in making and approving this payment, for reasons he has not divulged to this Committee.
- 30.52 Whatever the situation, the justification proffered cannot be correct if the evidence of Mr. Kambanei given to this Committee, that no pressure or directive was given to Trustees at any time, is true. By his own admission, he acted at all times independently and freely. See Para.20.10 hereof.

**SPA Limited - Ariapan Marianberg Road Upgrading - K 244,397**

- 30.53 The Committee finds that a part payment of K 244,397 was made on the 9<sup>th</sup> December 2005 to SPA Limited for the road upgrading from Ariapan to Marianbeg in the Angoram District.

- 30.54 This Committee finds that the tendering process appears to have been undertaken through the Central Supply & Tenders Board but no documentation relating to this process was provided to the Committee or to the Auditor General – despite a directive to do so.
- 30.55 The Committee finds that the total value of the Contract was K1.2 million but neither this Committee nor the Auditor General can establish the source of this funding and whether it was from a Member for Angoram’s District Development Program Funds or from other sources.
- 30.56 The Department of Planning, the Office of Rural Development and the Department of Finance have failed to provide any documentation in this regard, despite directives to do so.
- 30.57 Once again this Committee can make no finding as to the propriety of the payment except that it is clear that the cheque bore only one authorized signatory – when it should have three (or four).
- 30.58 Whether the project or contract was within the terms of the Trust Instrument, where the funds came from and whether the contract itself was lawful cannot be ascertained by this Committee due to the absence of documentation.
- 30.59 This Committee refers this particular payment and the circumstances surrounding it to the Office of the Ombudsman and the Royal Papua New Guinea Constabulary for full and complete investigation.
- 30.60 Once again, it is clear to the Committee that there are no documents, information, records, files or any other data kept or maintained concerning this particular contract and the payment from the Trust Account.
- 30.61 The Department of Finance and the then Head of that Department Mr. Thaddeus Kambanei failed to properly account for this payment from the Trust Account and there can be no excuse or valid explanation for this failure.
- 30.62 The fact of the failure to maintain accountability and documentation is referred to the Office of the Ombudsman

and the Royal Papua New Guinea Constabulary for investigation.

- 30.63 At the very least, the evidence suggests that there have been breaches of the ***Public Finances (Management) Act*** and the ***Financial Instructions*** by accountable Officers and Trustees.

#### **Telikom PNG Limited – District Rollout Program**

- 30.64 By a cheque signed by Mr. Kambanei and Mr. Kalinoe, K 200,000 was paid to Telikom PNG Limited on the 7<sup>th</sup> February 2006 for the provision of four telesat services including installation in four districts of the East Sepik Province.
- 30.65 The only document supplied concerning this transaction was a brief attached to the payment voucher within the Department of Finance stating that the District Treasury Rollout Program of the Department of Finance, funded by appropriation in the National Budget under Vote and Division 207, did not have any funds available for the above purchase.
- 30.66 Consequently, approval was sought from the Finance Secretary to use the Sepik Trust Fund. Approval was granted by the Secretary (presumably in his capacity as Secretary and not as a Trustee) and the expenditure was incurred.
- 30.67 This Committee finds that the expenditure did not meet the objectives of the Trust Account and is an inappropriate use of the Trust Account.
- 30.68 The District Treasury Rollout Program is appropriated under Miscellaneous Vote 207 and the cost of this program should be paid from this vote.
- 30.69 So far as this Committee can ascertain, the Secretary for Finance Mr. Thaddeus Kambanei was both a signatory to the Account, the authorizing Officer, the Approving Officer and a Trustee of the Account at the time the payment was made.
- 30.70 Further, the Secretary was responsible for keeping and maintaining full and complete records and accounts of this transaction both as a Trustee and a Head of the Department of Finance. He failed to do so.

- 30.71 It is the conclusion of this Committee that upon all the material before us, the Trustees could not have made an informed and independent decision to apply Trust Monies to this Project, that the purpose of the payment was not within the ambit of the Trust Account, that authorization to use the Account should not have been given, that no accounts or records have been kept of this payment, that none of the requirements of the **Public Finances (Management) Act** have been obeyed, that the Trustees did not have any relevant material before them to make an independent decision and that the Trustee obeyed his own Secretarial directive without any consideration at all as to the legality or propriety of the payment.
- 30.72 The entire transaction appears tainted and is referred to the Royal Papua New Guinea Constabulary, the Office of the Ombudsman, the Commission of Inquiry into the Department of Finance and the Department of Personnel Management and the Public Service Commissioner for investigation and action as appropriate.

### **Nuku District Treasury – K1,500,000**

- 30.73 This Committee finds that an amount of K1,500,000 was approved by the Secretary, Department of Finance, Mr Thaddeus Kambanei (who was also a Trustee of the Trust Account) and paid to the Nuku District Treasury based on a request from the Honourable Andrew Kumbakor MP for counterpart funding from the Trust Account.
- 30.74 The onus to properly account for the utilization of those funds is vested in the Nuku District Treasury through the Department of Finance and also in the Trustees and ultimately the Secretary of the Department of Finance .
- 30.75 The Committee sought full documentation and records of this payment, but nothing was forthcoming from any quarter.
- 30.76 There is virtually no documentation available from which this Committee can ascertain the purpose and source of that funding or payment or what happened to the money.
- 30.77 It is entirely unclear whether this payment was merely a transfer of the Members District Development Program Fund

initially deposited into the Trust Account or whether it represents additional funding from some unknown source.

- 30.78 This Committee was unable to establish the reasons for the lump sum transfer to the District Treasury and cannot tell what projects may have been involved and how the Trustees including the Secretary of the Department of Finance and the Provincial Administrator intended to ensure accountability for this money.
- 30.79 This failure to maintain records and accounts is, again, an open invitation to misapplication.
- 30.80 Moreover, if this funding was contributed in part or whole by a Member of Parliament from some form of Statutory Grant, the failure to document, account for and acquit the expenditure may have dire results for the Member – who is entitled to rely upon Public Servants and the Trustees to carry out their duty to properly and lawfully account for and acquit all such expenditure.
- 30.81 There is no evidence at all that this payment was within the terms of the Trust Instrument or a proper use of Trust or Public Monies and in the absence of documents or records, no way that this could be established – either now by this Committee or at the time by the Trustees.
- 30.82 The Secretary, Department of Finance, was asked by this Committee and by the Auditor General to provide a full accountability statement for the expenditure of such a large amount of public funds and the reply to the Auditor General was as follows:

***"This money was transferred to the Nuku District Treasury to fund road and bridge rehabilitation work i.e. consistent with the purpose of the Trust. All approvals and tendering will be done through the Sandaun PSTB.***

***The District Treasury is required to ensure records are kept to provide full accountability to the Member and the Parliament for all expenditure".***

This is not a responsive answer.



- 30.83 The Committee finds that the Department of Finance has failed to provide any information regarding the actual programs, projects or contracts that the K 1,500,000 was intended to fund.
- 30.84 There can be no guarantee that the Trustees had any control over the expenditure of this money or that the District, Provincial or National Officers responsible for accounting overseeing and controlling the use of this money have any idea what it was used for or how it was applied.
- 30.85 This entire transaction is referred by the Committee to the Office of the Ombudsman, the Commission of Inquiry into the Department of Finance and to the Royal Papua New Guinea Constabulary with a recommendation that a full and complete investigation of the payment and use of this money be undertaken.

#### **Construction of Yambi/Evatip Road – K200,00**

- 30.86 An amount of K 200,000 was paid to the Department of Works Wewak for the construction of a road from Yambi to Evatip.
- 30.87 However, neither the Auditor General nor this Committee was able to obtain any payment vouchers at all in respect of this contract. This Committee sought that information from the Department of Finance but that Department failed to provide any information regarding the expenditure.
- 30.88 There are virtually no documents and no apparent records of Contract performance at all.
- 30.89 The Committee therefore cannot determine whether this payment was an appropriate use of Trust monies or even if the work has been carried out. The Committee cannot ascertain how the contract came about or where the money paid to the Department of Works came from or whether it was lawfully available at all.
- 30.90 The Committee concludes that, because there were no documents, the Trustees could not possibly have made an informed or independent decision or properly used their discretion when deciding to release funds. They therefore

could not have carried out their duty to act responsibly and in accordance with the terms of the Trust Instrument.

- 30.91 Once again, the Committee refers the Department of Finance, the Trustees and this entire transaction to the Office of the Ombudsman, the Commission of Inquiry into the Department of Finance and the Royal Papua New Guinea Constabulary for full and complete investigation of the circumstances surrounding the payment and the project itself.

### **31. AN ANALYSIS OF EXPENDITURE**

- 31.1 The Committee was concerned to obtain an objective view of the payments made from the Trust Account.
- 31.2 Our investigators therefore extracted all payments from the available cash books for the fiscal years 2002, 2003, 2004 and 2005 and grouped payments according to the nature of the expenditure, to determine the extent to which monies paid from the Trust fell within the scope of the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account.
- 31.3 The analysis is set out below:

| <b>Expenditure Item</b>           | <b>Actual Expenditure<br/>K</b> | <b>Percentage (%)<br/>of total</b> |
|-----------------------------------|---------------------------------|------------------------------------|
| Roads and Bridges                 | 6,177,098                       | 24.48                              |
| Building Contracts                | 3,560,668                       | 14.11                              |
| Building Material & Maintenance   | 3,253                           | 0.01                               |
| Legal & Consultancy Services      | 121,317                         | 0.48                               |
| Department of Works               | 6,268,079                       | 24.84                              |
| Office Materials                  | 3,181                           | 0.01                               |
| Salaries & Wages                  | 9,238                           | 0.04                               |
| Financial Assistance              | 551,575                         | 2.19                               |
| Accommodation                     | 1,029                           | 0.00                               |
| Vehicle Hire                      | 61,329                          | 0.24                               |
| Airfares                          | 947                             | 0.00                               |
| Air Charters                      | 42,557                          | 0.17                               |
| Assets                            | 157,805                         | 0.63                               |
| Fuel Charges                      | 14,847                          | 0.06                               |
| Other Expenditure                 | 71,728                          | 0.28                               |
| Cash Advances/Traveling expenses  | 51,100                          | 0.20                               |
| District Treasury Rollout Program | 41,420                          | 0.16                               |
| Mt Turu repeater Station          | 600,000                         | 2.38                               |
| Investments                       | 7,500,000                       | 29.72                              |

| Expenditure Item | Actual Expenditure<br>K | Percentage (%)<br>of total |
|------------------|-------------------------|----------------------------|
| Total            | 25,237,177              |                            |

- 31.4 The Committee concludes that there are expenditures shown from this analysis that are not related to the objectives of the Trust Instrument – or that there are no documents and no evidence produced to show that they were within the ambit of the Trust Instrument.
- 31.5 Air charters, vehicle hire, financial assistance (to a huge sum of K 551,575) salary and wages, cash advances and travel expenses are a few examples.
- 31.6 When this exercise was undertaken it quickly became apparent that the Provincial Administration, the Department of Finance and the Trustees have retained no information in support of these payments or that these records never existed.
- 31.7 Once again, the absence of documentation is inexplicable. The Trustees, the Provincial Administration and, in particular, the Department of Finance have a heavy onus to properly and fully account for and acquit all expenses of public money made from this account – and this they have failed to do.
- 31.8 The effect of these missing documents is to prevent the Committee and the Auditor General from assessing whether the expenditures meet the objectives of the Trust Account.
- 31.9 The Committee sought advice and information from the Department of Finance and the Provincial Administration on the payments of K 551,575 for “financial assistance”. No information at all was forthcoming despite undertakings by the Secretary for Finance, Mr. Gabriel Yer, to provide the information.
- 31.10 In this regard, the Committee refers the Trustees, the Department of Finance, the Former Secretary of the Department of Finance and Trustee Mr. Thaddeus Kambanei, all Officers involved in the administration of the Trust Account and the Provincial Administration to the Royal Papua New Guinea Constabulary Fraud Squad and the Office of the

Ombudsman to conduct a full and complete investigation of all the payments set forth above – and in particular for “financial assistance” – to establish whether any breach of the law has occurred in or by this payment.

- 31.11 The Committee intends to also refer its Report and the Report of the Auditor General to the Commission of Inquiry into the Department of Finance for consideration as to whether the Terms of Reference of that Commission will permit the Commission to examine payments from this Trust Account.
- 31.12 This Committee also refers this and every other transaction to the attention of the Attorney General and the Solicitor General with a strong recommendation that all available action be taken to recover this and other money from the persons who received and/or the persons who paid it – in particular the Trustees.
- 31.13 This Committee is of the view that Trustees may be personally liable for breaches of their obligations and duties and we recommend that the law enforcement agencies and State investigate whether this avenue will enable the recovery monies wrongly expended.

## **32. DISALLOWANCE OF EXPENDITURE BY THE COMMITTEE.**

- 32.1 The Public Accounts Committee has had regard to Part 6 Division 1 Para. 2.1 of the ***Financial Instructions***. That paragraph is entitled “Accountable Officers” and states, 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”.***
- 32.2 The Committee has considered whether, on all the evidence, it should, pursuant to this Instruction, disallow any of the expenditures made from the Trust Account.
- 32.3 The Committee has concluded that the nature of the Trust Account and the behaviour of Trustees and responsible Officers needs deeper inquiry by properly resourced agencies before any definite conclusions as to liability should be made.

- 32.4 Accordingly, the Committee will not disallow any payments, but instead refer them and all the actions or failures of responsible officers to specialist investigatory agencies of the State with a general recommendation that those agencies, in the course of their investigations, consider if and how wrongful payments may be recovered to the State.

### **33. CONCLUSION AND FINDINGS**

- 33.1 The Auditor General makes the following conclusion in his Report of the 12<sup>th</sup> December 2006:

***"I am increasingly concerned by the manner in which Trustees discharge their obligations and legal responsibilities regarding the management of Trust Accounts.***

***Audits undertaken by this Office have found many incidents where Trust Accounts do not have effective accounting, record keeping and reporting of financial transactions.***

***Often there is a lack of supporting documentation regarding decisions to expend the money from Trust Accounts.***

***As a result it is not always possible for me to be assured that the Trustees are meeting their responsibilities regarding accountability and transparency of expenditure from these trust accounts".***

- 33.2 This Committee agrees with that conclusion in respect of the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account.
- 33.3 This Committee finds that the management of this Trust Account by Trustees and the Department of Finance and its responsible Officers was amongst the worst examples of incompetence, ineptitude, negligence and reckless indifference to the Law of accountability for public monies that this Committee has seen in the last four years.

33.4 The evidence before this Committee shows at least the following breaches of relevant Laws in the conduct of the Trust Account:

- (i) Failure by the Secretary for Finance Mr. Thaddeus Kambanei to fulfill his duties as Head of Department pursuant to Section 4 of the ***Public Finances (Management) Act***.
- (ii) Failure by the Secretary for Finance, Mr. Thaddeus Kambanei to comply with and perform his duties pursuant to Section 5 (1) (a), (b), (c), (d), (f), (l) and (m) of the ***Public Finances (Management) Act***, in that he failed to:
  - ensure or take any steps to ensure that the Department of Finance complied with the requirements of the ***Public Finances (Management) Act*** in the recording, reporting and accounting for monies expended from the Trust Account; and
  - ensure that all accounts and records of the Department of Finance relating to the Trust Account were properly maintained or maintained at all; and
  - ensure that all necessary precautions were taken both by himself and by his Department to safeguard monies held in the Trust Account against misapplication; and
  - ensure that all expenditure from the Trust Account was properly authorized and applied to the purpose for which it was appropriated; and
  - ensure that expenditure from the Trust Account was incurred or made with due regard to economy, efficiency, and effectiveness and the avoidance of waste; and
  - ensure that proper estimates of expenditure of public monies are prepared in a form specified in the ***Financial Instructions***; and
  - ensure that, at the end of each quarter of each fiscal year he submitted a report on financial management of the Trust Account in appropriate form

- (iii) Breaches of Section 6 of the **Public Finances (Management) Act** by accountable officers (including Trustees) in that they failed to comply with the **Public Finances (Management) Act** in respect of monies in and expended from the Trust Account – in particular that they failed to make or keep any accounts or records as required.
- (iv) There may have been breaches of Section 15 of the **Public Finances (Management) Act** by Trustees and Officers of the Department of Finance if money was moved into the Trust Account from sources not included in this Section. This requires further investigation; and
- (v) Similarly, there may have been a breach of Section 16 of the **Public Finances (Management) Act** by Trustees if any payment from the Account was outside the terms of the Trust; and
- (vi) There are breaches of Section 19 (2), (3) and (4) (c) and (d) of the **Public Finances (Management) Act** by the former Secretary for Finance, Mr. Thaddeus Kambanei in that he failed to :
  - ensure the proper management and operation of the Trust Account; and
  - submit to the Department of Finance in prescribed form, an annual estimate of receipts and payments expected to be made into and from the Trust Account; and
  - maintain or ensure the maintenance of records pertaining to the Trust Account and/or to submit monthly details of transactions on that account; and
  - submit annual statements of the Trust Account for the preceding year.
- (vii) Widespread failure by Provincial authorities and Officers of the Department of Finance to comply with Part VII of the **Public Finances (Management) Act – State Tenders and Contracts**. The failure to apply properly these

requirements properly or at all means that the State does not gain value for money or the advantage of an independent and transparent tender and evaluation process. These failures require full investigation and vigorous action against any Officer who failed in his duty pursuant to this Part.

Section 47A, which prescribes Offences for any Officer who authorizes or permits breaches of this Part should be applied to any Officer who is found to have authorized or permitted such a breach.

- (viii) Of Section 68 of the ***Public Finances (Management) Act*** by Officers of the East Sepik Provincial Government and other Provincial Government or Local-level Governments involved in or benefiting from the Trust Account in that it and they failed to keep proper records and accounts of transactions from or with the Trust Account and all Contracts or Projects funded from that Account in the manner prescribed by the ***Financial Instructions***.
- (ix) Section 112 (1) (b) will apply to each witness appearing before the Committee in that they failed or neglected to produce documents and records when asked to do so.  
  
Section 112 (e) will apply to the former Secretary for Finance Mr. Thaddeus Kambanei for failing to provide Reports pursuant to Section 4 of the ***Public Finances (Management) Act*** – see Para 33.4 (i) supra.
- (x) Section 113 of the ***Public Finances (Management) Act*** will apply disciplinary action against an accountable officer who is found responsible for any or all financial irregularities in Section 102 and further liability under Section 112 of the ***Public Finances (Management) Act***. This Section should be considered and applied if there is found to be primary liability in any Officer.

33.5 Further, Section 102 Surcharge may well apply to any Officer who, in respect of the operation of the Trust Account, has:

- (i) failed to account for any moneys; or



- (ii) has been responsible for any improper payment of public monies or for payment of money that was not vouched and authorized; or
- (iii) has authorized or permitted a breach of procedures relating to the tendering processes; or
- (iv) has approved requisitions for the expenditure of public monies.

- 33.6 Considering the manifest failures revealed by the evidence, this Committee recommends that the Surcharge provisions be considered by the Head of Department of Finance after due inquiry.
- 33.7 The Committee has considered the provisions of the ***Public Finances (Management) Act***, the ***Permanent Parliamentary Committees Act*** and the ***Parliamentary Powers and Privileges Act*** prescribing Offences for persons who fail to produce documents and information to the Public Accounts Committee when directed to do so. As we have stated, virtually no documents were produced to this Committee, but there is no evidence that this failure was deliberate on the part of any witness.
- 33.8 Rather, the Committee accepts that the documents either never existed or were removed or destroyed before the witnesses (with the sole exception of Mr. Thaddeus Kambanei) were appointed to their positions.
- 33.9 The Committee accepts that Mr. Alman and Mr. Yer were truthful when they stated to the Committee that they had searched diligently for documents, but were able to find virtually no records at all.
- 33.10 Accordingly, no referral will be made for the inability to produce documents.
- 33.11 This Committee is profoundly concerned that very Senior Public Servants acting as Trustees of public funds can so misconduct themselves as to be incapable of keeping, maintaining, producing or even finding accounts, records, information, data, documents and acquittals of huge sums of public money passing through their hands and for which they are

responsible. This is a matter that requires further deep and searching Inquiry.

- 33.12 The administration of this Trust Account shows a deep-rooted assumption that public servants can do precisely what they please with public funds (including Trust funds) without obeying any legal requirement of accountability for and control of the use of those public monies. This attitude has existed either unknown to or unaddressed by Government, for years.
- 33.13 This attitude has also pervaded other Inquiries conducted by this Committee – and in fact resulted in a recommendation by the Committee for the establishment of the Commission of Inquiry into the Department of Finance.
- 33.14 If the evidence before this Committee is any indication, there seems little or no accountability for expenditure or competent management of development budgets or public monies by the Public Service – particularly the Departments of Finance and Planning.
- 33.15 This attitude must stem from a confidence that misconduct will never be detected or prosecuted – in other words, that these Officers are immune from being called to account for their actions.
- 33.16 Indeed, when the Head of the Department of Finance and a Trustee so conducts himself, all other Officers probably assume that they can share that immunity.
- 33.17 We have no doubt that Mr. Kambanei yielded to pressure from his perceived masters and was not competent or strong enough to bring an independent mind to the management of this Trust Account or to comply with the requirements of Law – which, by his own sworn admission, he understood.
- 33.18 This attitude permeated the management of this Trust Account from the highest public servants in the land, right down to District Administration and beyond and resulted in uncontrolled and unproductive expenditure with no evident accountability.
- 33.19 This situation cannot continue.

- 33.20 It is the fear of this Committee that unless the Government makes significant changes and reforms to force improvement in Governance and accountability at every level, the existence of fiscal management in any acceptable form and therefore the effective delivery of services, must be doubted.
- 33.21 We find money being constantly wasted, diverted, misapplied or simply stolen and this results in Contracts that are not performed or even begun, Projects that annually absorb money from Budgets for no result, Health Centres that do not operate, schools that do not open and basic services that have been paid for but which do not exist (often for years).
- 33.22 To our people, this results in poverty, illiteracy, disease, isolation, neglect and disenfranchisement from even basic services that it is their right to expect from Government. This failure will (and in parts of the country may already has) resulted in disillusion, disquiet and, eventually, civil unrest.
- 33.23 Forcing the Public Service to be accountable for its decisions and actions is the first step to rescuing the situation.
- 33.24 Members should bear in mind that this Trust Account is one of thousands – almost all of which, according to the Auditor General, are unaudited and therefore uncontrolled. The Auditor General told the Inquiry that there are 2,500 Government Trust Accounts.
- 33.25 If the management of the Sepik Trust Account is any indication of the standard of Trustees administration, all these Trust Accounts need urgent examination.
- 33.26 It is this Committee's intention to make very strong recommendations to the Parliament to achieve two ends:
1. The Public Service must be brought under immediate control and be made accountable for its actions.
- Competence and honesty of a high order must be demanded and obtained from Public Servants at all levels – particularly from Departments which administer and implement Development Budgets and Trust Monies.

2. As a result of this and other Inquiries made by this Committee, it is clear that management of Trust Accounts and large amounts of public monies cannot be confidently given to public servants.

They have no ability to manage, account for or supervise the purposes to which those monies are allocated.

A full reform and rebuilding of the system of implementation of and accounting for public monies - particularly Trust monies - should be made to ensure the delivery of services that our citizens expect.

No option should be ruled out – including privatization of service delivery.

If reform requires the recruitment and employment of expert and competent Officers from outside Papua New Guinea, so be it. A great many other countries do so – including Australia – to ensure best practice and skill sharing by experts.

- 33.27 The Committee now makes resolutions, recommendations and referrals:

## **34 RESOLUTIONS OF THE COMMITTEE**

- 34.1 The following Resolutions were made unanimously by the Public Accounts Committee:

1. That the Public Accounts Committee will Report to the Parliament on the Inquiry into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account pursuant to Section 86 (1) (d) **Public Finances (Management) Act 1995** and/or Section 18 **Permanent Parliamentary Committees Act 1994**.
2. That having read and considered a draft Report, the Committee resolves to accept the terms of the Report and to table same at the earliest opportunity.
3. That certain matters and findings of the Committee require further investigation and possible action by the Royal Papua New Guinea Constabulary, the Office of the

Ombudsman, the Office of the Attorney General and the Office of the Solicitor General.

4. That the Secretariat is directed to make those referrals to the named agencies and may release and make known sufficient material and evidence to enable those agencies to commence and perform their functions.
5. That the Report of the Public Accounts Committee into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account be delivered to the Secretary to the Commission of Inquiry into the Department of Finance for consideration of its contents and such further action (if any) deemed appropriate by that Inquiry.
6. That a copy of this Report be delivered to the Minister for Finance forthwith for his consideration.
7. To accept the recommendations and Findings contained in this Report.
8. This Committee will make a full Report on the involvement of the Provincial Administration of the East Sepik Province to the Minister of Inter Government Relations forthwith.

## 35 REFERRALS

35.1 The Public Accounts Committee makes the following referrals from the evidence received in this Inquiry:

- (i) This Report is referred to the Royal Papua New Guinea Constabulary with a recommendation for a full and complete investigation into possible breaches of the ***Public Finances (Management) Act*** by the Trustees of the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account and the then Secretary for Finance Mr. Thaddeus Kambanei and other Officers of that Department and relevant Provincial Governments for failure to make or keep records, accounts, acquittals or requisite documents of deposits into and expenditure from the Trust Account and in particular to consider whether these failures should be prosecuted.

- (ii) This Report is referred to the Royal Papua New Guinea Constabulary to consider the actions, performance of and claims by various Contractors and other recipients of money from this Trust Account with a view to identifying any breach of the Criminal Law – in particular arising from incompleted performance or fraudulent or improper claims for payment.
- (iii) This Committee refers Mr. Thaddeus Kambanei to the Office of the Public Prosecutor, the Royal Papua New Guinea Constabulary and the Office of the Ombudsman with a recommendation that a full and complete investigation be made to establish whether, by reason of his failures as a Trustee and the Departmental Head. Mr. Kambanei may have breached Sections 4, 5, 17 or 19 – or any other Section – of the **Public Finance (Management) Act**.
- (iv) This Report is referred to the Office of the Ombudsman for consideration as to whether any breach of the Leadership Code has occurred.
- (v) This Report is referred to the Offices of the Attorney General and the Office of the Solicitor General with a recommendation that those Officers consider the contents of the Report with a view to commencing action against the Trustees or any other responsible person to recover monies wrongly paid or received from the Trust Account and to obtain a full and complete account and acquittal of all monies which passed through the Trust Account – including and particular the source of those monies and the exact nature of, recipients of and the purposes to which all expenditure from the Trust Account was in fact applied by the recipient (s).
- (vi) The Report is referred to the Offices of the Attorney General and Solicitor General with a recommendation that those Officers consider the contents of the Report with a view to concluding whether the Trustees or any of them, have at any time and by any action or decision, breached their obligations as Trustees and, if so, to take such available action to enforce the rights of the State.

- (vii) The Report is referred to the Department of Personnel Management to consider the actions or failures of Officers of the relevant Provincial Governments, the Department of Finance, the Trustees and any other person pursuant to the **Public Finances (Management) Act** – and in particular identified failures to maintain or produce any accounts, statutory records or other legally required documentation and to take action against any Officer or person who may have breached or failed to perform their lawful duty.
- (viii) That the Office of the Solicitor General, the Investment Promotion Authority and the Royal Papua New Guinea Constabulary investigate the Westco Limited, Greenhill Investment, CCS Anvil (PNG) Limited, Baimusu Construction Limited, SPA Limited and the Nuku District Administration in respect of all payments made to those entities and the use to which those monies were put, including and in particular whether the contracts were commenced or satisfactorily concluded and, in the case of Westco Limited and Greenhill Investments, to ascertain whether those companies existed at all. The Committee strongly recommends that if any breach of law is found against any of these companies or entities that prosecution is made by the relevant authorities.

## **36 RECOMMENDATIONS;**

36.1 This Committee makes the following recommendations:

1. The Parliament accept this Report to the Public Accounts Committee concerning the management and operation of the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account.
2. The findings and resolutions of the Committee, to be effective, need to be actioned by the Government, without delay.
3. That the Parliament accepts the Auditor General's Report dated the 12<sup>th</sup> December 2006 on the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account.

4. That this Trust Account be immediately closed and brought under the control of the Minister for Finance.
5. That the Internal Audit services of the Department of Finance be strengthened and properly funded to allow it to fulfill its functions and to effectively audit all Trust Accounts; and
6. That the Office of the Auditor General be funded and resourced to enable it to conduct regular audits of all Government Trust Accounts; and
7. That every Trust Account be referred to the Office of the Auditor General for a full and complete review, audit, reconciliation of and Report on each account for the last five years.
8. That the Report of the Auditor General on all Trust Accounts be immediately tabled in this Parliament when it is available.
9. That a copy of the Report of the Auditor General on Trust Accounts be referred to the Public Accounts Committee when it is available.
10. That the persons who were Trustees of this Trust Account should never again be allowed to hold any position which requires them to manage public monies or be accountable for the use to which public money may be put in any form at all.
11. That the Royal Papua New Guinea Constabulary be properly resourced and assisted to carry out a detailed and competent investigation of the Committee referral and, if necessary, to allow the commencement and competent presentation of any prosecution (s).
12. That the Offices of the Attorney General and the Solicitor General be properly and fully resourced to enable a detailed and competent investigation of the referral by this Committee and in particular, to examine and conclude on the personal liability of the Trustees and other Officers for monies unlawfully expended from



the Trust Account or for which there are no records, accounts or acquittals and, if as a matter of law, those Officers are liable, to permit proceedings to be commenced against them for full recovery of all monies wrongfully paid or received.

- 36.2 This Committee recommends that every existing Trust Instrument be reviewed by the Solicitor General and, where necessary, to be redrafted to ensure that the obligations on Trustees are firmly established and legally workable and that public monies are protected.
- 36.3 This Committee strongly recommends that all Trustees, upon their appointment, should be subject to tuition and testing to establish that they understand the obligations, duties and legal position of a Trustee and their obligation to properly manage and properly account for all monies passing through a Trust Account.
- 36.4 All major Trust Accounts should, several times a year, be subject to an unannounced and random audit by the Office of the Auditor General, intended to identify weaknesses or failures in Trust management.

### **37. CONCLUSIONS**

This Committee concludes that the Trustees have failed to meet even their basic legal obligations under the ***Public Finance (Management) Act***.

The overwhelming attitude displayed to this Committee by these responsible Officers was one of disinterest and unconcern.

This Committee also finds the Trustees and all Officers involved with the management of this Trust and payments from it completely failed to read, understand or apply the terms of the Trust Instrument – and did not appear to care what the document prescribed.

This Committee has been shocked by the completely derelict attitude and approach of very senior public servants toward the management, control and accounting for very large sums of public money

This Committee can only conclude that if it can, with relative ease, find such serious failures and illegal conduct in respect of one Trust Account,

there is every reason suppose that there is similar (or worse) misconduct in the management of other Trust Accounts.

This Committee finds that this conduct continued after the Head of Department of Finance and a Trustee, Mr. Thaddeus Kambanei, assumed control of the Account. This Officer was the Chief Accountable Officer to Government bearing onerous obligations of Law in the conduct of this and other Trust Accounts – yet seems to have done nothing to rectify the abuses attending the operation of the Account.

Indeed, those abuses and the almost total lack of accountability and record keeping continued uninterrupted under the supervision of Mr. Kambanei. Citizens of Papua New Guinea are entitled to expect and demand better performance from their senior Public Servants – particularly the Head of the Department responsible for financial matters.

This Committee hopes that the litany of abuse and misuse of monies in this Trust Account will signal to the Parliament the urgent need to bring Trustees under control and to make them understand that they are accountable for the application of monies as Trustees and not as mere functionaries who obey directions.

There needs to be an immediate system of training and support given to Trustees in order that they understand their roles and obligations.

There needs to be an urgent reform of the Public Service and the systems of control and accountability which applies to its Officers.

This Committee hopes that this Report will start a process of accountability and responsible management of public monies held in and applied from Trust Accounts and in general.