



Ombudsman Commission of Papua New Guinea



**AN INVESTIGATION INTO THE DEPARTMENT OF LANDS
AND PHYSICAL PLANNING ON ALLEGED IMPROPER
LAND DEAL–STATE LEASE SECTION 283 ALLOTMENT 48
HOHOLA (MORATA) VOLUME 12 FOLIO 171- NATIONAL
CAPITAL DISTRICT**

**FINAL REPORT
AUGUST 2014**

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	III
GLOSSARY	IV
CHRONOLOGY	V
EXECUTIVE SUMMARY	VII
1. JURISDICTION AND PURPOSE OF INVESTIGATION	1
[1.1] INTRODUCTION.....	1
[1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION	1
[1.3] PURPOSE OF THE INVESTIGATION.....	2
[1.4] METHOD OF INQUIRY.....	2
[1.5] PEOPLE WHO GAVE EVIDENCE BEFORE THE COMMISSION	2
[1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON THE LEGALITY OF ADMINISTRATIVE CONDUCT	3
[1.7] WHAT IS “WRONG CONDUCT”?.....	3
[1.8] THE OMBUDSMAN COMMISSION’S OBLIGATION TO OBSERVE PROCEDURAL FAIRNESS	3
[1.9] THE PROVISIONAL REPORT	4
2. FINDINGS OF FACT.....	6
[2.1] GENERAL	6
[2.2] PRE-LAND BOARD MEETING EVENTS	6
[2.3] POST – LAND BOARD MEETING EVENTS.....	6
[2.4] GRANT OF STATE LEASE	6
[2.28] COMMENT.....	10
3. LAND ALLOCATION FLOW CHART - STATE LEASE PROCESS.....	11
[3.1] COMMENT	11
4. FINDINGS.....	13
[4.1] FINDING N° 1.....	13
[4.2] FINDING N° 2.....	14
[4.3] FINDING N° 3.....	16
[4.4] FINDING N° 4.....	17
[4.5] FINDING N° 5.....	18
[4.6] FINDING N° 6.....	19
5. RECOMMENDATIONS	21
[5.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS	21
[5.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS .	21
[5.3] RECIPIENTS OF RECOMMENDATIONS.....	22

[5.4]	RESPONSIBLE MINISTERS.....	22
[5.5]	MINISTER RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS	22
[5.6]	DUTIES OF RECIPIENTS OF RECOMMENDATIONS	23
[5.7]	RECOMMENDATIONS	23
6.	CONCLUSION.....	28
7.	RELEVANT LAWS.....	29
[7.1]	CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA	29
[7.2]	REPEALED LAND ACT (Chapter 185)	29
[7.3]	LAND REGISTRATION ACT (Chapter 191).....	33
[7.4]	PHYSICAL PLANNING ACT 1989	33
[7.5]	SURVEY CORDINATION ACT (Chapter 203).....	34
[7.6]	LANDS ACT 1996.....	35



LIST OF ABBREVIATIONS

DLPP	-	Department of Lands and Physical Planning
CBCPNGPT PTY LTD	-	Christian Brethren Churches of Papua New Guinea Property Trust Proprietary Limited
LAGIS		Land and Geographical Information System
LAF	-	Lease Acceptance Form
LB	-	Land Board
LG	-	Lease Grant
LTD	-	Limited
NCD	-	National Capital District
NCDC	-	National Capital District Commission
OC	-	Ombudsman Commission
OLOC	-	Organic Law on the Ombudsman Commission
OPP	-	Office of Physical Planning
OSG	-	Office of Surveyor General
OVG	-	Office of Value General
PTY	-	Proprietary



GLOSSARY

Delegate: The Minister for Lands by instrument under his hand may share with the officers all or any of his powers and functions under the *Land Act 1996*.

Feasibility Study: A study carried out by applicants to see if portions of land they are interested in, suits their development purposes.

Lagis: Lagis is a software management system the DLPP uses to manage the information on usage of State Land. It keeps records of all Planning Permission Applications from its lodgment and registration to the issuance of land title. It further serves as a form of security to the land information computed in the system.

License: A permission given by the DLPP to an applicant to occupy a State Land to determine its suitability for a particular purpose. It is not a right of ownership over a land. Permanent development cannot be done on the land when issued license.

Mission Lease: A lease granted by the DLPP for mission purposes such as erecting churches, etc.

Planning Permission Application: This is an Application submitted to the DLPP seeking approval to develop a State Land for a particular purpose. The purposes include Public Institutional, Commercial or Special Purposes. The application includes zoning, rezoning, survey, valuation, leasing and issuance of title. The application goes through different processes and Boards to be issued the title to develop the land.

Public Institutional: Land zoned for Public Purposes such as schools, hospitals, sports, government offices and so. To use the land for other purposes, it has to be rezoned and tendered.

Survey: The act or process of determining the earth surface that includes the form, contour, position, area, height, depth, etc.

Survey Plan: A plan which includes map, aerial photograph or description of land made or obtained as part of a survey.



CHRONOLOGY

1994

- Land Board Meeting No. 1915 referenced DC/283/048 – Morata Christian Centre listed as item No. 86
- June 9 Land Board Meeting No. 1915 items were published in the *National Gazette* No. G39-9 June, 1994.
- July 4 Letter of Grant issued to Morata Christian Centre.
- July 14 Lease Acceptance Form completed by Morata Christian Centre and returned to the DLPP.
- August 1 Registration of Lease Form completed.
- August 16 A State Lease under Section 59 of the *Land Act* (Chapter 185) was granted to Christian Brethren Churches of PNG Property Trust Pty Ltd for Mission Purpose for a period of 99 years which commenced on 9 June 1994. The Mission Lease was registered as State Lease Volume 12 Folio 171, on 16 August 1994.
- August 17 New Leases Examination Work Sheet

2000

- October 17 A District Court DCC No. 3022/2000 in Port Moresby ordered that the defendant (Eroa) and his agents to vacate the said property.
- September 26 Kila Launa, Officer In-Charge of the National Capital District Land Unit wrote to Christian Brethren Churches of PNG Property Trust Pty Ltd and reaffirmed its status as the legal tenant of the subject land. The CBCPNPT Pty Ltd was advised to evict any illegal occupants residing on the land.

2007

- February 9 Korowa Eroa, the complainant wrote to the Surveyor General about the subject land, whether it was surveyed and subdivided and how the title was issued to the Morata Christian Centre.
- February 19 Then Surveyor General, Samuel B. Kodawara wrote to Korowa Eroa in response to his letter dated 9 February 2007. He advised that the description of the subject land does not exist on any of the Cadastral Plans and Maps at the Central Plan Office.

2008

- May 13 Pius Kingal of Pius Kingal and Associates, Lawyer for the complainant wrote to the Commission to investigate the administrative practices and procedures applied in the issuance of title to the Morata Christian Centre.

September 11 An Eviction Notice signed by Executives of Christian Brethren Churches of PNG Property Trust Pty Ltd was addressed to Pius Kingal & Associates to advise their client, Korowa Eroa to vacate the property land within 30 days.

2009

March 3 Raga Kavana, then Registrar of Titles wrote to the Commission in response to the Commission's letter enquiring about the subject land deal.

March 3 Korowa Eroa wrote to the Commission on the subject land deal and insisted that the Commission should continue with administrative investigations into the practices and procedures used in the allocation of the subject land.

April 14 Then Acting Surveyor General, Samuel B. Kodawara wrote to the Commission in response to the Commission's letter enquiring about the subject land deal that there is no proper survey registered at the Central Plan Office.

August 2 Then Acting Chief Physical Planner, John Ofoi, wrote to the Commission and advised that this parcel of land has never had the endorsement from his office and cannot remember having sighted a plan of subdivision for the creation of this parcel of land.

Survey Map and the Title Diagram done by licensed and commissioned Surveyor which are registered at the Central Plan Register were provided to the Commission by then Surveyor General, Samuel Kodawara, and then Registrar of Titles, Raga Kavana.



EXECUTIVE SUMMARY

Overview

This is a Final Report of an investigation into improper grant of State Lease (Mission Lease) over Section 283 Allotments 48, Hohola (Morata), National Capital District, to Brethren Churches of PNG Property Trust Pty Ltd.

It is alleged that the Department of Lands and Physical Planning (DLPP) granted Mission Lease to Brethren Churches of PNG Property Trust Pty Ltd over a portion of land which has not been rezoned and surveyed contrary to the *repealed Land Act* (Chapter 185), *Land Act* 1996, *Physical Planning Act* 1989, *Survey Co-ordination Act* (Chapter 203) and *Land Registration Act* (Chapter 191). That is, Mission lease was granted over a portion of land that does not exist in the Survey Plan and Cadastral Map.

This Report focuses on establishing whether the administrative systems, processes and procedures and the legislation governing the work of the DLPP were followed to issue the Mission Lease to Brethren Churches of PNG Property Trust Pty Ltd.

Principal Findings

The main findings of the Report are:

1. In the opinion of the Ombudsman Commission the DLPP appears to have acted wrongly by not complying with the zoning and physical planning requirements under Section 29 (3) of the *repealed Land Act* (Chapter 185) prior to the grant of a State Lease Volume 12, Folio 171, Section 283 Allotment 48 Hohola (Morata) National Capital District.
2. In the opinion of the Ombudsman Commission the DLPP appears to have acted wrongly by granting a State Lease Volume 12, Folio 171 Section 283 Allotment 48 Hohola (Morata) National Capital District to Brethren Churches of PNG Property Trust Pty Ltd without zoning and survey.
3. In the opinion of the Ombudsman Commission it appears that the DLPP have acted wrongly by granting a State Lease Volume 12, Folio 171 Section 283 Allotment 48 Hohola (Morata) National Capital without a Public Tender Advertisement in the National Gazette on the availability of the land for lease as provided under Sections 30 and 57 of the *repealed Land Act* (Chapter 185).
4. In the opinion of the Ombudsman Commission, it appears that the DLPP's failure to publish the Land Board Meeting Agendas in the *National Gazette* as provided under Section 9 (1) of the *repealed Land Act* (Chapter 185) was wrong.
5. In the opinion of the Ombudsman Commission, it appears that the DLPP's failure to conduct investigation into the status of the land to determine availability for lease before effecting the administrative process of granting the State Lease, was wrong and the Court Order issued in the legal proceedings at the Port Moresby District Court in DCC Number 3022 of 2000 under the *Summary Ejectment Act* (Chapter

202) by the CBCPNG Property Trust Pty Ltd against Korowa Eroa and Others is unenforceable and defective in law.

6. In the opinion of the Ombudsman Commission, it appears that the DLPP did not have or establish proper coordination between different Divisional Heads of the Department in relation to land allocation and its accountabilities.

Irregularities

The main irregularities uncovered by this investigation are:

1. DLPP did not complete the lease processes prior to the grant of Mission Lease to Brethren Churches of PNG Property Trust Pty Ltd over Section 283 Allotment 48 Hohola (Morata) National Capital District. That is, the land was not rezoned or surveyed and given new descriptions and not tendered in the *National Gazette* on its availability for leasing.
2. Lack of co-ordination between the different Divisions (Physical Planning, Survey, Valuation, and Land Administration) of the DLPP that resulted in Titles Division issuing Mission Lease to Brethren Churches of PNG Property Trust Pty Ltd over Section 283 Allotment 48 Hohola (Morata) National Capital District without the knowledge and clearance of Physical Planning and Survey Divisions.
3. DLPP failed to establish the status of Section 283 Allotment 48 Hohola (Morata) National Capital District prior to Papua New Guinea Land Board (PNGLB) deliberation and approval for the grant of Mission Lease to Brethren Churches of PNG Property Trust Pty Ltd and Titles' Division registration of the land title.
4. The New Lease Examination Sheet Form which needs to be checked to determine whether all processes have been completed before the registration of the lease issued to Brethren Churches of PNG Property Trust Pty Ltd was not completed. Most of the documents were not ticked as complete to enable registration of title.

Finding of wrong conduct

The conduct of this public officer was wrong:

- Mr. G. Mou by signing the Letter of Grant to Brethren Churches of PNG Property Trust Pty Ltd and the Registration of Lease Form as the Officer In Charge of Leases in the Southern Region rather than the Secretary for the DLPP and the Registrar of Title was wrong. The Registration of Lease Form has no specification of registration date. Mr. Mou is no longer employed with the DLPP.

Recommendation

1. The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the Physical Planning requirement is fully complied with prior to the grant of State Lease as per Section 29 (3) of the *repealed Land Act* (Chapter 185) and Section 67 of the *Land Act* 1996.

2. The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the State land available for lease should comply with zoning and survey requirements before being leased to interested individuals and organizations.
 - 2.1 The Ombudsman Commission recommends that the Secretary for DLPP should cancel the Certificate of Title issued to Christian Brethren Churches of PNG Property Trust Pty Ltd.
3. The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the State land available for lease should be tendered or advertised for interested individuals and organizations to apply as provided under Section 30 and 57 of the *repealed Land Act* (Chapter 185) and Section 68 and 69 of *Land Act* 1996.
4. The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the Land Board Agenda Item is gazetted as required under Section 9 (1) of the *repealed Land Act* (Chapter 185) and Section 58 (1) (a) and (b) of the *Land Act* 1996 for Planning Permission Applicants to attend the Land Board Meeting.
5. The Ombudsman Commission recommends that the Secretary for DLPP should ensure responsible Divisions thoroughly investigate the status of the land before effecting the administrative processes for the grant of State lease.
6. The Ombudsman Commission recommends that the Secretary for DLPP should ensure that there should be proper coordination between different Divisions of the Department to ensure compliance with legislative requirements and administrative processes in terms of granting of State leases over State land.

Conclusion

This Report has found that the DLPP failed to follow the established administrative systems, processes and procedures and legislation governing the Department's operation when issuing Mission Lease to Brethren Churches of PNG Property Trust Limited over the property land (Section 283 Allotment 48, Hohola (Morata) National Capital District) that does not exist on the Central Plan Register. According to the Central Plan Register the last Allotments of Section 283 is Allotments 45, Hohola (Morata) National Capital District.

Furthermore, the manner in which the particular Mission Lease was granted to Brethren Churches of PNG Property Trust Pty Ltd did not adhere to the strict lease processes of the DLPP. The description of the land in question was not rezoned, not surveyed, not given new descriptions and not tendered for leasing. Furthermore, the land title lacks the signature of then Secretary for the DLPP, Pepi Kimas, and Registrar of Titles, Raga Kavana, for registration. Therefore, the said Mission Lease purportedly granted to Brethren Churches of PNG Property Trust Pty Ltd is considered illegal and wrong in the circumstances.



1. JURISDICTION AND PURPOSE OF INVESTIGATION

[1.1] INTRODUCTION

This is an investigation by the Ombudsman Commission to establish whether or not there was any wrong conduct surrounding the grant of State Lease Volume 12 Folio 171, Section 283 Allotment 48, Hohola (Morata), National Capital District to Christian Brethren Churches of PNG Property Trust Pty Ltd.

Notice was issued under Section 17(1) of the *Organic Law on the Ombudsman Commission* to the then Secretary for the Department of Lands and Physical Planning (DLPP), Pepi Kimas, on 12 September 2008 advising them of the Commission's decision to investigate this matter.

[1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

Sections 218(b) and (c) of the *Constitution* state that two of the purposes for establishing the Ombudsman Commission are:

- to help in the improvement of the work of the governmental bodies and the elimination of unfairness and discrimination by them; and
- to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219(1)(a)(ii) of the *Constitution* empowers the Ombudsman Commission to investigate on its own initiative or on complaint by a person affected any conduct on the part of any governmental body or an officer or employee of a governmental body in the exercise of a power or function vested in it, him or her by law in cases where the conduct is or may be wrong, taking into account, amongst other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Schedule 1.2(1) defines "governmental body" as:

- (a) *the National Government; or*
- (b) *a provincial government; or*
- (c) *an arm, department, agency or instrumentality of the National Government or a provincial government;*
- (d) *a body set up by statute or administrative act for government or official purposes.*

The Department of Lands and Physical Planning is a governmental Department in the Public Service established by Section 188 of the *Constitution of Papua New Guinea* and operated under the *repealed Lands Act* (Chapter 185), *Land Act 1996*, *Lands Registration Act 1996* (Chapter 191), *Physical Planning Act 1989* and *Survey Coordination Act* (Chapter 95).

The Ombudsman Commission therefore has jurisdiction to inquire into the question of whether the DLPP have acted wrongly in the grant of State Lease Volume 12 Folio 171,

Section 283 Allotment 48, Hohola (Morata), National Capital District to Christian Brethren Churches of PNG Property Trust Pty Ltd.

[1.3] PURPOSE OF THE INVESTIGATION

The purpose of this investigation is:

- to determine whether any of the conduct under investigation was wrong, and
- to determine whether any laws or administrative practices were defective in relation to the decision of the Department of Lands and Physical Planning.

[1.4] METHOD OF INQUIRY

The Ombudsman Commission issued a Notice on 12 September 2008 under Section 17(1) of the *Organic Law on the Ombudsman Commission* to Pepi Kimas, then Secretary of the Department of Lands and Physical Planning, advising of its intention to investigate the allegation.

Section 17(1) states:

Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.

The Ombudsman Commission obtained documents and other evidence from a number of sources and used its powers under Section 18 of the *Organic Law on the Ombudsman Commission* to require persons to produce documents and information.

Section 18 states:

- (1) *Subject to the provisions of this Section and of Section 20, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.*

[1.5] PEOPLE WHO GAVE EVIDENCE BEFORE THE COMMISSION

The Commission conducted interviews with key witnesses pursuant to Section 18 subsections (1) and (3) of the *Organic Law on the Ombudsman Commission*. The following persons were called and gave evidence before the Commission:

No.	Date of Interview	Persons Interviewed	Designation	Government Body
01	10/08/09	John Ofoi	A/ Director Physical Planning	Department of Lands & Physical Planning
02	08/09/09	Tiri Wanga	A/Director Land Administration	Department of Lands & Physical Planning

[1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON THE LEGALITY OF ADMINISTRATIVE CONDUCT

When the Commission conducts an investigation of this nature, it is not confined to reporting on whether breaches of the law have occurred. The constitutional mandate is much broader than this. The Commission is authorized to report on what, *in its opinion*, is *wrong conduct*, irrespective of whether that conduct was in accordance with the law.

[1.7] WHAT IS “WRONG CONDUCT”?

The *Constitution* gives some guidance to the Ombudsman Commission, when it is deciding whether administrative conduct is “wrong”.

Section 219(2) of the *Constitution* states:

Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is –

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
- (d) based wholly or partly on a mistake of law or of facts; or
- (e) conduct for which reasons should be given but were not,

whether or not the act was supposed to be done in the exercise of deliberate judgment within the meaning of Section 62 (*decisions in “deliberate judgment”*).

The above list is not exhaustive. The phrase “and without otherwise limiting the generality of the expression” indicates that conduct which does not fit into any of the descriptions in paragraphs (a) to (e) may still be regarded as wrong. The Ombudsman Commission is entitled to regard conduct as wrong, even if the conduct does not appear in the list of descriptions given in Section 219(2) of the *Constitution*.

[1.8] THE OMBUDSMAN COMMISSION’S OBLIGATION TO OBSERVE PROCEDURAL FAIRNESS

A Provisional Report allows a person who may be affected by the investigation to respond to any adverse findings and correct any factual errors the Commission may have made.

The Provisional Report is distributed only to persons who are the subject of adverse comment or who have some other special interest in the matter. The Commission also issues a direction under Section 21 of the *Organic Law on the Ombudsman Commission* that none of the contents of the Report could be published without the written consent of the Commission.

All persons who receive the Provisional Report (in whole or in part) are given the opportunity to respond, orally and/or in writing, to the Commission’s findings. Most persons

respond during the time scheduled. In some cases, extensions of time are granted. In a few cases, there are no responses at all.

As far as fairness is concerned, the Commission's constitutional obligation is to "fairly" set out the "defence" of persons who are the subject of adverse or derogatory comment; and we have conscientiously set about discharging this obligation.

[1.9] THE PROVISIONAL REPORT

Whenever the Ombudsman Commission prepares a Report of this nature, it has a duty to observe procedural fairness. Section 17(4) (b) of the *Organic Law on the Ombudsman Commission* imposes this duty.

Section 17(4) (b) states:

Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that ...

- (a) the Commission shall not make any comment in its report that is adverse to or derogatory of any person without –**
 - (i) providing him with reasonable opportunity to be heard; and**
 - (ii) fairly setting out his defence in its report.**

In order to discharge its duty of procedural fairness, the Ombudsman Commission distributed a Provisional Report of this investigation into the *Allegations of improper land deal - State Lease Section 283 Allotment 48 Hohola (Morata) Volume 12 Folio 171 – National Capital District* on 13 September October 2013.

Accompanying the Provisional Report was a direction, pursuant to Section 21(1) of the *Organic Law on the Ombudsman Commission*, which required that all evidence, documents, papers and things referred to, including all findings and opinions, shall not be published without the consent in writing of the Ombudsman Commission. Breach of this direction is a criminal offence.

A copy of the Provisional Report was delivered to the Secretary for Department of Lands and Physical Planning Romilly Kila Pat on 13 September 2013. The DLPP was given the opportunity to respond in writing to the Ombudsman Commission's findings within 28 days from the date of our letter.

The Department of Lands and Physical Planning responded to the findings of the Ombudsman Commission on 29 October 2013. The Department agreed to the findings of the Ombudsman Commission. The Letter of response reads:

The Department concurs with you and your findings into the allegations are valid. The findings are properly reasoned out and the failures explicitly spell out that there were some administrative errors. However, the Department by seeing your report is conclusive and that we would like to exhaust all avenues possible to ensure that there was really an oversight in the process of land allocation leading to the granting of a Mission Lease.

The preliminary Findings of the report however indicate very strongly that the department has erred in granting the State Lease (Mission Lease) to the current proprietor. Whilst we

await the final recommendations of the Ombudsman, we will leave no stones unturned so as to make the right decision for the benefit of all parties concerned and particularly for the parties that have interest over section 283, Allotment 48, Hohola (Morata) National Capital District. The enabling legislations are in place to redeem the issues at hand and it will apply if there is really an issue of irregularity in following the process of land allocation. It is the department's hope that you finalize your recommendations so that we can put this matter to rest.

The Ombudsman Commission after considering the response from the DLPP compiled this Final Report with its recommendations for publication and tabling in Parliament as required under Section 23 of the *Organic Law on the Ombudsman Commission*.



2. FINDINGS OF FACT

[2.1] GENERAL

This Chapter deals with the events leading up to the PNG Land Board's recommendation to grant State Lease over Section 283 Allotment 48, Hohola (Morata), National Capital District to Morata Christian Centre but, the State Lease over the described land was granted to Christian Brethren Churches of Papua New Guinea Property Trust Pty Ltd and was subsequently registered under its corporate name.

[2.2] PRE-LAND BOARD MEETING EVENTS

Land Board Meeting No. 1915 referenced DC/283/048 – Morata Christian Centre listed as Item No. 86 in its Meeting considered the Application by Morata Christian Centre under Section 59 of the *repealed Land Act* (Chapter 185) for a Mission Lease over Section 283 Allotment 48, Hohola (Morata), National Capital District. The Land Board recommended for the Grant of Lease subject to terms and conditions and gave approval to the only applicant at an estimated improvement value of K190, 000.00.

[2.3] POST – LAND BOARD MEETING EVENTS

On 9 June 1994, the Land Board Meeting No. 1915 Items were published in the *National Gazette* No. G39. The Morata Christian Centre was listed as the only successful applicant for a Mission Lease over Section 283, Allotment 48, Hohola (Morata) National Capital District, referenced L.F. DC/283/048.

[2.4] GRANT OF STATE LEASE

On 4 July 1994, a **Letter of Grant** (LG) was signed by G. Mou, an officer with the DLPP other than the Head of the DLPP and was issued to Morata Christian Centre. The **only** term and condition was for the payment of preparation of Lease Fee of an amount of K50.00.

[2.5] On 14 July 1994, a **Lease Acceptance Form** (LAF) completed by Morata Christian Centre with receipt of the payment of K50.00 was returned to the DLPP.

[2.6] On 1 August 1994, **Registration of Lease Form** was signed by Officer In-Charge of Leases in the Southern Region, G. Mou. The form did not bear the signatures of then Secretary for DLPP, Pepi Kimas, and the Registrar of Titles, Raga Kavana and without specification of the registration date.

REGISTRATION OF TITLE

[2.7] On 16 August 1994, a State Lease under Section 59 of the *repealed Land Act* (Chapter 185) was granted to Christian Brethren Churches of PNG Property Trust Pty Ltd for Mission Purpose for a period of 99 years which commenced on 9 June 1994. The Mission Lease was registered as State Lease, Volume 12, Folio 171, on 16 August 1994.

The Lease which was granted under Section 59 of the *repealed Land Act* (Chapter 185) had no specification of Survey Plan Class and Catalogued Number with no description on the land registered in the Central Plan Office.

- [2.8] On 17 August 1994, a Checklist was done on the **New Leases Examination Work Sheet Form** to determine whether all processes have been completed before it went to the Titles Office for registration. Most of the documents were not ticked as complete to enable registration of title.

LAND DISPUTE

- [2.9] On 17 October 2000, a Court Order obtained from Port Moresby District Court DCC No. 3022/2000 by Morata Child Project ordered the Defendant (Korowa Eroa) and his agents to vacate the said property.
- [2.10] On 26 September 2000, Kila Launa, Officer In-Charge of the National Capital District Land Unit, wrote to the Christian Brethren Churches of PNG Property Trust Pty Ltd and reaffirmed its status as the legal tenant of the property. The Christian Brethren Churches of PNG Property Trust Pty Ltd was advised to evict any illegal squatters or occupants residing on the subject land.
- [2.11] On 9 February 2007, the Defendant Korowa Eroa, wrote to the Surveyor General, queried whether the property was surveyed and how the title was issued to Christian Brethren Churches of PNG Property Trust Pty Ltd.
- [2.12] On 19 February 2007, then Surveyor General, Samuel B. Kodawara wrote to Korowa Eroa in response to his letter dated 09 February 2007 and advised that the description of the subject land does not exist on any of the Cadastral Plans and Maps at the Central Plan Office. That means the subject land was not zoned or surveyed, hence, it was not charted on the Town Map. He further advised that any land dealings over the said property not recognized by the Department is considered illegal.
- [2.13] On 13 May 2008, Pius Kingal of Pius Kingal & Associates, Lawyer for the complainant wrote to the Commission to investigate the administrative practices and procedures applied in the Grant of Lease title to the Morata Christian Centre.
- [2.14] On 11 September 2008, an Eviction Notice signed by Executives of Christian Brethren Churches of PNG Property Trust Pty Ltd was addressed to Pius Kingal & Associates to advise their client, Korowa Eroa to vacate the property within 30 days.
- [2.15] On 3 March 2009, Raga Kavana, then Registrar of Titles wrote to the Commission in response to the Commission's letter enquiring about the subject land deal. Raga Kavana advised:
- a) that the Title Records revealed that the subject land was tendered and deliberated by the PNG Land Board Meeting No. 1915. The Board granted the Mission Lease to Morata Christian Centre;

- b) that Morata Christian Center was a church organization operating under Christian Brethren Churches of PNG Trust Pty Ltd, thus the name of the proprietor changed;
- c) that according to the Title Deed kept by his office the State Lease conditions were done in 1994 and no Survey Plan Catalogue Number was quoted.

After a close examination of the documents provided to the Ombudsman Commission by the Registrar of Titles Raga Kavana there was no document on the publication in the *National Gazette* or advertisement of the subject land in the *National Gazette*. The *National Gazette*, No. G39-9 June 1994 contained only the list of successful applicants which included the Morata Christian Centre.

Kavana further stated:

This is clear evidence that the absence of catalogue number and non-existence of allotment 48 in the survey plan further confirmed that the subject land never existed and the title registered and issued is deemed to be illegal.

- [2.16] On 3 March 2009, Korowa Eroa, wrote to the Commission on the subject land deal and insisted that the Commission should continue with its administrative investigations into the practices and procedures used or applied in the allocation of the subject land.
- [2.17] On 14 April 2009, then Acting Surveyor General, Samuel B. Kodawara wrote to the Commission in response to the Commission's letter enquiring about the subject land deal. He advised that his office does not recognize the description used in the subject land dealings as there is no proper survey registered at the Central Plan Office.
- [2.18] On 2 August 2009, then Acting Chief Physical Planner, John Ofoi, wrote to the Commission and advised that this parcel of land has never had the endorsement of his office and cannot remember having sighted a plan of subdivision for the creation of this parcel of land.
- [2.19] Documents on Survey Map and Title Diagram done by licensed and commissioned Surveyor which were registered at the Central Plan Office were provided to the Commission by the Surveyor General's Office and Registrar of Titles for verification.

EVIDENCE BY JOHN OFOI

- [2.20] On 10 August 2009, at 10:15 am, John Ofoi, then Acting Chief Physical Planner told the Commission when interviewed that he is the Acting Director or Chief Physical Planner of the Physical Planning Division of the DLPP. He is charged with the administration of *Physical Planning Act 1989*.
- [2.21] John Ofoi told the Commission that this parcel of land did not click in his mind that his office had dealt with it. His office normally makes recommendation to the Surveyor General's Office for survey to create new Sections and Allotments in conformity with the zoning purposes. He had no knowledge of any recommendation to Surveyor General's Office for survey on this parcel of land.

[2.22] He was shown a Cadastral Map on the subject land and it was identified to him that the allotments for the particular Section 283 ended at Allotment 45 only and there was no Allotment 48 on the registered Map. John Ofoi admitted that the State Lease must have been granted without zoning conformity and survey. The land described did not exist therefore the allocation may be illegal.

EVIDENCE ON OATH BY TIRI WANGA

[2.23] On 8 September 2009, at 10:15 am, Tiri Wanga, then Land Allocation Manager, told the Commission when interviewed that he is the Acting Director of Land Administration Division. His roles and responsibilities are regulated by the *Land Act* 1996.

[2.24] Tiri Wanga told the Commission that he was just recently appointed Acting Director. Although he was then Manager for Land Allocation, he was not aware of this particular case. He stated that even up to date, he is not fully aware of this land deal but from experience the subject land should have been first, properly investigated to determine whether the land is vacant or occupied by some illegal squatters. Acting on this Investigation Report, the DLPP should have inquired further on the subdivision that is recommended from the Physical Planning Office. He further stated that there was no proper zoning done and no proper subdivision was carried out. Hence the Grant of Lease without proper description (no zoning and survey) is illegal.

[2.25] A Flow Chart of Land Allocation and State Lease Processes was shown to Tiri Wanga after going through it, he confirmed that, that was the administrative process used in the allocation of State Leases. He stated that in this particular case all other processes after tender stage must have been followed but he was concerned about the zoning and survey processes not taken place at the initial stage for proper description of land. He suspected that the subject land must have been exempted from tender process and the Application went before the Land Board. This is where the Minister may have used his discretion to approve for the grant of State Lease.

[2.26] A Cadastral Map on Section 283 was shown to Tiri Wanga and it was indicated to him that there is no Allotment 48 as Allotment 45 is the last Allotment in Section 283. Having sighted this Map he admitted that the parcel of land described was not zoned or surveyed. When asked whether the Registrar of Titles be advised to cancel the registration, he stated that the complaint was lodged with Ombudsman Commission, so the DLPP will wait for their recommendation based on the findings of their investigation before DLPP considers any action.

[2.27] Asked whether the Land Board has the power to grant State Lease directly to an applicant, he stated that the Land Board does not have power but technically the Land Board's recommendations are normally approved by the Minister, except where there is any defect. When shown a Board Meeting Minute with recommendation for this particular applicant (Morata Christian Center), Tiri Wanga admitted that it was valid Land Board Meeting Minute.

[2.28] COMMENT

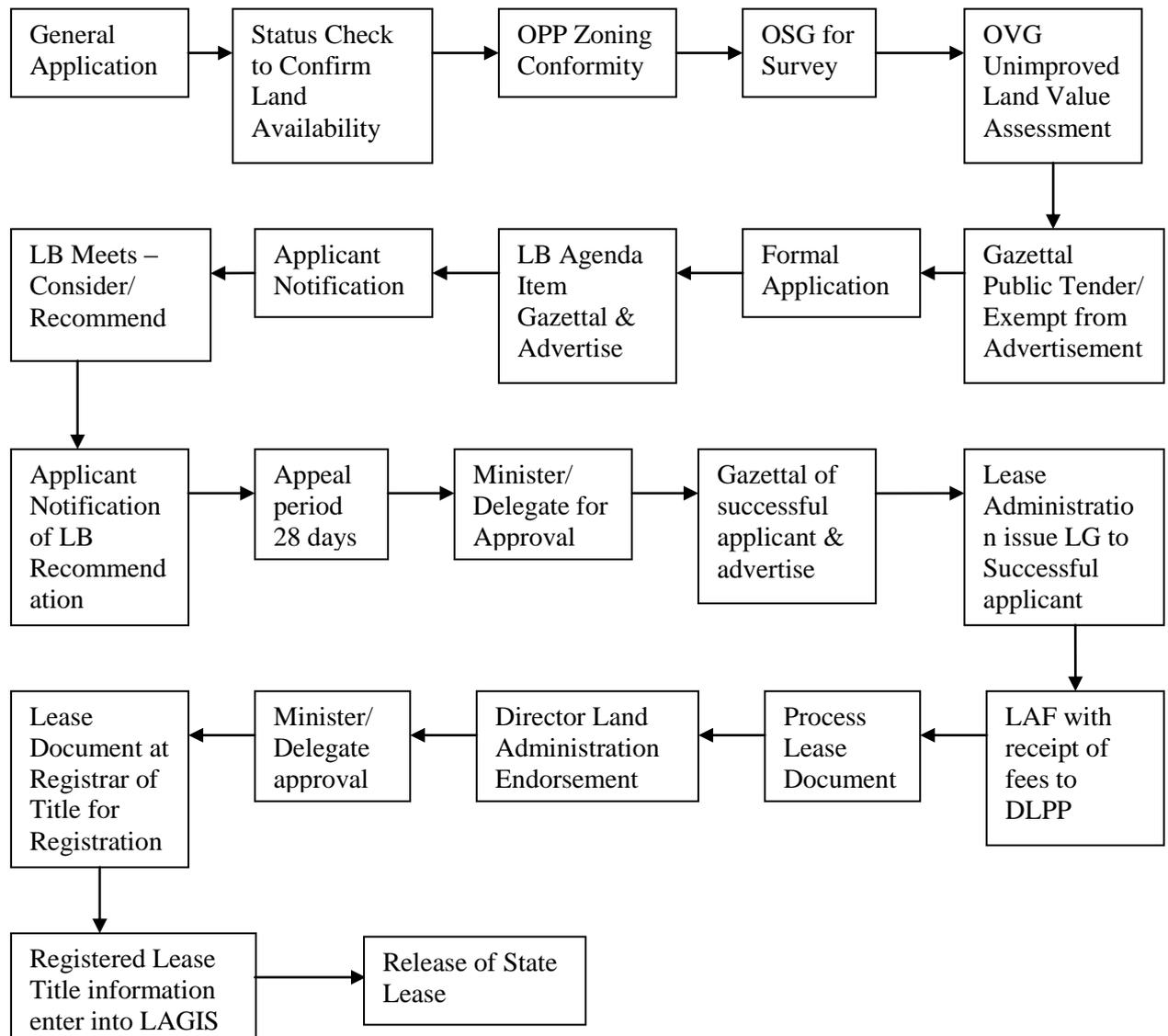
According to the Central Plan Register the Allotments of Section 283 ends at Allotments 45. There is no Allotment 48 on Section 283 on the Central Plan Register. That meant Section 283 Allotment 45 Hohola (Morata) in Port Moresby was not rezoned, nor surveyed to be given new description and leased. The Mission Lease was granted to Brethren Churches of PNG Property Trust Pty Ltd over a land (Section 283 Allotment 48, Hohola (Morata) in Port Moresby) that does not exist. Thus the State Lease granted has no legal effect and void abinitio.

Furthermore, the manner in which the lease was granted to Brethren Churches of PNG Property Trust Pty Ltd had not followed the established process and procedures of the DLPP. The status of the land was not verified or cleared by Physical Planning, Survey, Evaluation and Land Administration Divisions and was not tendered before going to the PNGLB for deliberation. When the Directors of the various Divisions of DLPP were interviewed, they confirmed that they have no knowledge or processed the Lease Application of Brethren Churches of PNG Property Trust Pty Ltd. The lease granted to Brethren Churches of PNG Property Trust Pty Ltd is therefore considered illegal and void abinitio.



3. LAND ALLOCATION FLOW CHART - STATE LEASE PROCESS

This Chapter shows the administrative process (Flow Chart) involved in the grant of State Lease. These administrative processes have their legal basis in the Acts that governs the administration of the Department of Lands and Physical Planning. The Acts include the *repealed Lands Act* (Chapter 185), *Lands Registration Act* 1996 (Chapter 191), *Physical Planning Act* 1989 and *Survey Coordination Act* (Chapter 95). The Planning Permission Applications of government agencies, private individuals and organisations had to strictly follow these administrative processes to be granted State Leases.



[3.1] COMMENT

Tiri Wanga, then Acting Director Land Administration Division, when showed the Flow Chart during interview confirmed that the DLPP had been following these same administrative processes to grant State Lease under the *repealed Land Act* (Chapter 185) and the current

Land Act 1996. The DLPP did not verify the availability of the land, rezone and survey or give new descriptions to the land or put it on public tender. The DLPP did not strictly follow the administrative processes described in the Flow Chart. The DLPP issued the Mission Lease to Brethren Churches of PNG Property Trust Pty Ltd over the land described as Section 283 Allotments 48 Hohola (Morata) National Capital District that does not exist in the Central Plan Register. According to the Central Plan Register only Section 283 Allotments 45 exists. The Mission Lease granted to Brethren Churches of PNG Property Trust Pty Ltd has no legal effect.



4. FINDINGS

In this Chapter the Ombudsman Commission sets out its opinion on the findings based on the facts gathered through material documents and personal interviews with appropriate officers of the DLPP. Relevant Laws are applied to the facts where necessary as reasons for the findings.

[4.1] FINDING N° 1

In the opinion of the Ombudsman Commission, the DLPP appears to have acted wrongly by not complying with the zoning and physical planning requirements under Section 29 (3) of the *repealed Land Act* (Chapter 185) prior to the grant of a State Lease Volume 12, Folio 171, Section 283 Allotment 48, Hohola (Morata) National Capital District.

Reasons

1. The Complainant, Eroa Korowa, one of the squatter settlers on the vacant State Land alleged that a State Lease for Mission Purpose over the parcel of land they occupied for over 10 years was purportedly allocated to Christian Brethren Churches of PNG Property Trust Pty Ltd without proper zoning and survey.
2. State Land, situated in any area for which the Government has no immediate need, can be leased to anyone, whether it be individuals, companies or Churches, interested in developing the land in the best interest of the public. Where urban land is leased, the provisions of the *Physical Planning Act* must be complied with. Section 29 (3) of the *repealed Land Act* (Chapter 185) provided that granted State Leases shall not be inconsistent with zoning and physical planning requirements. Section 29 (3) of the repealed *Land Act* states:

A State Lease shall not be granted for a purpose that would be in contravention of any law relating to town planning or to the use, construction or occupation of buildings or land.

3. This provision provides for the DLPP to ensure that the nature or types of leases to be granted over urban land are in conformity with the zoning plan under the *repealed Land Act*.
4. Then Acting Chief Physical Planner, John Ofoi told the Commission that his office normally makes recommendation to the Surveyor General's Office for survey and subdivision to give new descriptions. He admitted having no knowledge of any recommendation to Surveyor General's Office for survey. He stated in his letter that this parcel of land has never had the endorsement from his office for subdivision and creation of a new Allotment. John Ofoi admitted that the State Lease must have been granted without proper zoning, and survey. The land so described did not exist therefore the allocation is deemed illegal.

5. The Commission infers from the facts that the DLPP failed to comply with its legal obligation to ensure conformity with zoning and subsequent subdivision prior to the grant of State Lease. Therefore, the grant, to the extent of the inconsistency, is of no effect.

Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.2 - 2.7] [2.21] [2.22] and refer to Land Allocation Flow Chart – State Leases Process (Chapter 3).

[4.2] FINDING N° 2

In the opinion of the Ombudsman Commission, the DLPP appears to have acted wrongly by granting a State Lease Volume 12, Folio 171, Section 283 Allotment 48 Hohola (Morata) National Capital District to Christian Brethren Churches of PNG Property Trust Pty Ltd without zoning and survey.

Reasons

1. The Complainant, Eroa Korowa, one of the squatter settlers on the vacant State Land alleged that the above State Lease was granted without proper zoning and survey.
2. The Surveyor General may exercise his discretionary powers under Section 13 of the *Survey Co-ordination Act* (Chapter 203) to cause official surveys and record the plan of the survey in the Central Plan Register. Section 13 states:

The Surveyor General may—

- (a) *cause to be carried out any survey that he considers necessary or desirable for the purposes of this Act; and*
 - (b) *establish on the area so surveyed such permanent marks as he considers necessary, and may cause a record of the plan of every such survey to be entered in the Central Plan Register.*
3. Then Surveyor General, Samuel B. Kodawara denied having the above land surveyed and given new descriptions. He advised Korowa Eroa that the description of the subject land does not exist on any of the Cadastral Plans and Maps at the Central Plan Office. This means that the subject land is not surveyed and charted onto the Town Maps. He further advised that any land dealings over the property not recognized by the DLPP is considered illegal.
 4. Samuel Kodawara maintained his position in his letter to the Commission dated 14 April 2009 that his office does not recognize the description used in the subject land dealing, since it is not registered at the Central Plan Register.
 5. The Registrar of Titles confirmed from the Title Deed kept by his office that State Lease conditions were done in 1994 but without a Survey Plan Catalogue Number quoted. He further stated:

“This is clear evidence that the absence of catalogue number and non-existence of allotment 48 in the survey plan further confirmed that the subject land never existed and the title registered and issued is deemed to be illegal.”

6. There is no specification of Survey Plan Class and Catalogued Number on the State Lease document. That implies that there was no survey done. Therefore there is no description on the land registered in the Central Plan Register.
7. Then Acting Physical Planner, John Ofoi admitted that the Allotment for the particular Section was not shown on the Survey Plan. John Ofoi told the Commission that the State Lease must have been issued without a survey and proper description.
8. This means that Allotment 48 does not exist on the registered Cadastral Map. According to the registered Survey Plan and Cadastral Map from the Office of the Surveyor General Allotments under Section 283 ended at Allotment Number 45 only.
9. Hence the purported registered proprietor, Christian Brethren Churches of PNG Property Trust Pty Ltd has no protection in law on grounds of wrong descriptions of the land as provided under Section 33 (1) of the *Land Registration Act*. (chapter 191). Section 33 (1) States:

“(1) The registered proprietor of an estate or interest holds it absolutely free from all encumbrances except—
(e) in case of the wrong description of the land or of its boundaries;”
10. The fact that there was no Allotment 48 under Section 283 meant the State Lease was granted over a wrong description of the land which may be illegal. Therefore, the proprietor does not have any protection despite the Certificate of Title as the conclusive evidence of the registered proprietor. The Indefeasibility of Title can be dispensed with or invalidated on these grounds.
11. The Commission infers from the facts that the land described as Section 283 Allotment 48 Hohola (Morata) National Capital District does not exist therefore the grant of State Lease over the said portion of land is considered to be illegal, null and void abinitio and wrong in the circumstances.

Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.11] [2.12] [2.16] [2.17] [2.18] [2.19] [2.20] [2.21] [2.24] and refer to Land Allocation Flow Chart – State Leases Process (Chapter 3).

[4.3] FINDING N° 3

In the opinion of the Ombudsman Commission, the DLPP appears to have acted wrongly by granting a State Lease Volume 12, Folio 171, Section 283, Allotment 48 Hohola (Morata) National Capital District without a Public Tender advertisement in the *National Gazette* on the availability of land for lease as provided under Sections 30 and 57 of the *repealed Land Act* (Chapter 185).

Reasons

1. Section 30 of the *repealed Land Act* provides that government land available for lease should first be advertised in the *National Gazette*. Section 30 states:
 - (1) *The Departmental Head may give notice, by advertisement in the National Gazette, of lands available for leasing under this Act.*
 - (2) *An advertisement under Subsection (1) shall contain the following particulars:—*
 - (a) *the type of lease available to be granted;*
 - (b) *the purpose of the lease; and*
 - (c) *the term of the lease; and*
 - (d) *a description of the land the subject of the lease; and*
 - (e) *the amount of rent (if any) payable for the first period of the lease; and*
 - (f) *in the case of a special purposes lease—any royalties (if any) payable on a substance of thing removed from or taken off the land the subject of the lease; and;*
 - (g) *the reservations, covenants, conditions and provisions of the lease; and terms*
 - (h) *the reserve price; and*
 - (i) *such other information as the Departmental Head thinks fit or the Minister directs.*
 - (3) *A statement contained in an advertisement under this Section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.*
2. The only duty imposed on the State is to advertise in the *National Gazette* the land available for lease. Once that duty has been discharged, any lease granted thereafter is validly effected for all purposes. According to the Section 31 (2) of *repealed Land Act* the Minister may for any special reason grant State Lease over land that has not been the subject of advertisement.
3. Section 57 of the *repealed Act* provides that a land within the physical planning area suitable for subdivision must be offered for lease by tender. It states:
 - (1) *Subject to this section and to Section 58, before a lease under this division of town land is granted the land shall, in the first instance, be offered for lease by tender at an upset price equal to the unimproved value of land.*
4. The subject land is within the physical planning area and is subject to zoning requirements, subdivision and survey to create new lease area. Therefore, such parcel or portion of land must have been offered by Tender as required under Sections 30 and 57 of the *repealed Land Act*.

5. Then Registrar of Titles, Raga Kavana, stated in his letter dated 3 March 2009 to the Ombudsman Commission that the subject land was tendered. Examination of documents provided by the Registrar of Titles from the Titles Records revealed that there was no document on the publication in the *National Gazette* or advertisement of the subject land in the *National Gazette*. Only the successful applicants were published in the *National Gazette* No. G39-9 June 1994 which included the Morata Christian Centre.
6. The Commission infers from the facts that the DLPP failed in its statutory duty to publish in the *National Gazette* the land available for lease as required under Sections 30 and 57 of the *repealed Land Act*.

Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.3] [2.15] [2.26] and refer to Land Allocation Flow Chart – State Leases Process (Chapter 3).

[4.4] FINDING N° 4

In the opinion of the Ombudsman Commission, it appears that the DLPP's failure to publish the Land Board Meeting Agenda in the *National Gazette* as provided under Section 9 (1) of the *repealed Land Act* (Chapter 185) was wrong.

Reasons

1. At the very early stages of this investigation the Ombudsman Commission obtained copies of Board Meeting Minutes, Gazettal Notice and lease documents from the Registrar of Titles. Examination of these documents revealed that there was no publication in the *National Gazette* on the Land Board Meeting Agendas to consider the Application of Morata Christian Centre.
2. The Land Board Meeting Agenda which should contain list of Applications and other matters for consideration was not published in the *National Gazette* as provided under Section 9(1) of the *repealed Land Act* (Chapter 185). It states:
 - (1) *At least seven days before a meeting of the Land Board, the Chairman shall cause to be inserted in the National Gazette a list of the applications (other than tenders) and matters to be considered by the Board; and lands to be dealt with, by it, at the meeting.*
3. The Land Board Meeting Minutes reveal that there was only one applicant which is the Morata Christian Centre, the meeting was undated, no signature of approval by the Chairman and the applicant representative. The Board considered only one applicant and subsequently recommended for the grant of State Lease.
4. The successful applicants for different leases were published in the *National Gazette* No. G39-9 June, 1994. Morata Christian Centre was the only applicant considered as successful for a Grant of Lease over Section 283 Allotment 48, Hohola (Morata) National Capital District.

5. The Commission infers from the facts that the DLPP failed in its statutory duty to publish the Land Board Meeting Agenda for the interested applicants to take note and attend. There was only one applicant who applied which is Morata Christian Center and subsequently was granted the Mission Lease.

Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.2] [2.3] [2.15] [2.24] and refer to Land Allocation Flow Chart – State Leases Process (Chapter 3).

[4.5] FINDING N° 5

In the opinion of the Ombudsman Commission, it appears that the DLPP's failure to conduct investigation into the status of the land to determine availability for lease before effecting the administrative process of granting the State Lease, was wrong and the Court Order issued in the legal proceedings at the Port Moresby District Court in DCC Number 3022 of 2000 under the *Summary Ejectment Act* (Chapter 202) by the CBCPNG Property Trust Pty Ltd against Korowa Eroa and Others is unenforceable and defective in law.

Reasons

1. Then Acting Director for Land Administration Division, Tiri Wanga stated in an interview that he was not aware of this subject land deal. He stated that from experience the land should have been first properly investigated to determine whether the land is vacant or occupied by some illegal squatters. Acting on this Investigation Report the DLPP should have inquired into the subdivision that is normally recommended from the Physical Planning Office.
2. Section 8 (2) of the *repealed Land Act* (Chapter 185) provides the mandatory requirement for the investigation to determine land availability before Applications of Grant of Leases are considered by the Board. Section 8 (2) states:

(2) The Land Board shall investigate all application for the grant of leases and all other matters that are remitted to it by the Minister for its consideration.
3. Investigation to establish the status of the availability of land for lease was a precondition to the consideration of Applications for grant of State Lease. However, the DLPP failed to establish the status of the land. Had the DLPP carried out the investigation, the Department would have found that the land was not zoned and not surveyed and that there were squatters residing on the subject land.
4. The Commission infers from the facts that the DLPP failed to investigate the status of the land to determine its availability or otherwise of any encumbrances (rights and interests) before effecting the administrative processes of granting the State Lease.

Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.23 - 2.24] and refer to Land Allocation Flow Chart – State Leases Process (Chapter 3).

[4.6] FINDING N° 6

In the opinion of the Ombudsman Commission, it appears that the DLPP did not have or establish proper coordination between different Divisional Heads of the Department in relation to land allocation and its accountabilities.

Reasons

1. In our preliminary investigation, the Ombudsman Commission obtained information from the DLPP through correspondences and verbal interviews. The four Divisional Heads, namely, John Ofoi, then Acting Director for Physical Planning, then Surveyor General, Samuel Kodawara, then Acting Director of Land Administration, Tiri Wanga, and then Registrar of Titles, Raga Kavana, responded accordingly.
2. The notable revelation was that, none of them were aware of the particular land deal. It was only when the complainant raised the matter with the Office of the Surveyor General that they admitted the controversy of the land deal as illegal.
3. Then Acting Director for Physical Planning, John Ofoi, informed the Ombudsman Commission that the subject land has never had his endorsement and he was not aware of the land deal. According to then Surveyor General, Samuel Kodawara, the subject land was never surveyed and registered in the Central Plan Office.
4. Tiri Wanga, who recently assumed the role of Acting Director for Land Administration told the Commission that he had no knowledge of the land deal and in his previous capacity as a Land Allocation Manager; he could not recall having sighted documents for this particular allocation. Then Registrar of Titles, Raga Kavana, however, admitted the absence of Catalogue Number in the Certificate of Title and confirmed that the registration is deemed to be illegal
5. A Checklist is normally prepared by the Land Administration Division and is circulated to all Divisional Heads for their approval. The Divisional Heads' denial of any knowledge of the actual grant of State Lease and non-compliance in the process of granting the State Lease implies that the statutory requirements and administrative processes were not strictly followed. In other words, the grant of State Lease Volume 12 Folio 171, Section 283 Allotment 48 Hohola (Morata) National Capital District, to Christian Brethren Churches of PNG Property Trust Pty Ltd did not follow the administrative process. That is, no Divisional Heads has signed and approved the Checklist.
6. Based on investigation evidence there is no linkages between different Divisions to the one Departmental Head while administering different legislation. Hence, coordination and accountability in the dispensation of their respective duties to

ensure compliance with legislative requirements and administrative process in terms of granting of State Leases over government land is lacking.

7. The Ombudsman Commission infers from the facts that proper coordination between the different Divisions of the DLPP are lacking. The different processes of check and balance to ensure all legal requirements are met and endorsed by different Divisional Heads before a State Lease document is sent to the Registrar of Titles for registration is in fact comprehensively lacking, or were not complied with.

Reference

The facts and reasons relevant to this opinion are set out in the following paragraphs [2.11] [2.12] [2.15] [2.17] [2.18] [2.20] [2.21] [2.22] [2.23] [2.24] [2.25] [2.26] [2.27] and refer to Land Allocation Flow Chart – State Leases Process (Chapter 3).



5. RECOMMENDATIONS

This Chapter contains the recommendations of the Ombudsman Commission based on its findings of wrong conduct for the Department to implement to correct its administrative failures in granting State Leases.

[5.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1, the general purpose of this investigation is to determine whether any of the conduct under investigation was wrong, or whether any laws or administrative practices were defective.

The Commission is expressly authorized to form such opinions by Section 22(2) of the *Organic Law on the Ombudsman Commission*.

If, after making its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorized to make recommendations. Such recommendations are made under Section 22(2) of the *Organic Law on the Ombudsman Commission*.

Section 22(2) OLOC:

If in any case to which this section applies the Commission is of the opinion that any service, body, person or other appropriate authority should –

- (a) consider the matter further; or**
- (b) take certain specific action; or**
- (c) modify or cancel any administrative act; or**
- (d) alter any regulation or ruling; or**
- (e) explain more fully any administrative act; or**
- (f) do any other thing,**

the Commission shall report its opinion and the reasons for its opinion, to the Minister responsible for the relevant service, body or person and to the Permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

In this Chapter, recommendations are made based on the findings of wrong conduct and defective administration referred to earlier in the report.

Each recommendation is set out as follows:

- The recipients (i.e. the persons to whom the recommendations are directed) are identified.
- The main reason for making the recommendation, are stated.

[5.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

We recommend that some individuals have their continuing public employment carefully reviewed. The Ombudsman Commission is of the opinion that holders of public offices must

continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

[5.3] RECIPIENTS OF RECOMMENDATIONS

When we make recommendations we are obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to report our recommendations to both the Minister and, if appropriate, the permanent or statutory head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this Chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[5.4] RESPONSIBLE MINISTERS

Section 148 of the *Constitution* provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this Report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Minister mentioned below.

[5.5] MINISTER RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS

- Minister for Department of Lands and Physical Planning

In the event that the title or responsibilities of the Minister changes after the date of this report, the responsibility for notifying the Ombudsman Commission of the steps being taken to give effect to its recommendations will pass to the Minister who, from time to time, has political responsibility for the services, bodies or persons who received our recommendations.

[5.6] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinions on things to be done are expressed in the form of “recommendations” does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the *Organic Law on the Ombudsman Commission* to notify the Ombudsman Commission in writing within 30 days after the day of the service of the Report, of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

If the Commission so requests, the responsible Minister, Permanent Head or statutory head as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.

Accordingly, there is a *duty* placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the *Constitution* and the *Organic Law on the Ombudsman Commission*.

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the *Constitution*.

[5.7] RECOMMENDATIONS

Recommendation No 1

The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the Physical Planning requirement is fully complied with prior to the grant of State Lease as per Section 29 (3) of the *repealed Land Act* (Chapter 185) and Section 67 of *Land Act 1996*.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- State Lease Volume 12, Folio 171, Section 283 Allotments 48, Hohola (Morata) National Capital District was granted to Brethren Christian Churches of PNG Property Trust Pty Ltd without complying with Section 29 (3) of the *repealed Land Act* (Chapter 185). Section 67 of the *Land Act 1996* restates the same requirements as in Section 29 (3) of the *repealed Land Act* (Chapter 185).

Recommendation No 2

The Ombudsman Commission recommends that the Secretary for DLPP should ensure that State lands available for lease should comply with zoning and survey requirements before being leased to interested individuals and organizations.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- State Lease granted to Christian Brethren Churches of PNG Property Trust Pty Ltd was done contrary to Section 13 of *Survey Coordination Act* (Chapter 203).

Recommendation No 2.1

The Ombudsman Commission recommends that the Secretary for DLPP should cancel the Certificate of Title issued to Christian Brethren Churches of PNG Property Trust Pty Ltd.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reason

- Certificate of Title was issued to Christian Brethren Churches of PNG Property Trust Pty Ltd over a State land (Section 283 Allotments 48 Hohola (Morata) National Capital District) which is not described and registered in the Survey Plan and Cadastral Map in the Surveyor General's office. The described land does not exist.
- Due to wrong description of the State land the registered proprietor, the Christian Brethren Churches of PNG Property Trust Pty Ltd has no legal protection as specified under Section 33 (1) of *Land Registration Act* (Chapter 191)

Recommendation No 3

The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the State land available for lease should be tendered or advertised for interested individuals and organizations to apply as provided under Section 30 and 57 of the *repealed Land Act* (Chapter 185) and Section 68 and 69 of the *Land Act 1996*.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- The State Lease to Section 283 Allotments 48 Hohola (Morata) National Capital District was granted to Christian Brethren Churches of PNG Property Trust Pty Ltd without first tendering or advertising it as required under Section 30 and 57 of *repealed Land Act*. Section 68 and 69 of the *Land Act 1996* restates the same requirement for advertisement or tendering of State Land.
- Section 31 (2) of the *repealed Land Act* and Section 69 (2) (a) of *Land Act 1996* allows the Minister to grant State Lease to lands which have not been tendered or advertised. In this case, the Minister did not grant the State Lease to Christian Brethren Churches of PNG Property Trust Pty Ltd.

Recommendation No 4

The Ombudsman Commission recommends that the Secretary for DLPP should ensure that the Land Board Agenda Item is gazetted as required under Section 9 (1) of the *repealed Land Act* (Chapter 185) and Section 58 (1) (a) and (b) of the *Land Act 1996* for Planning Permission Applicants to attend the Land Board Meetings.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- The Papua New Guinea Land Board Agenda Item was not gazetted before the Land Board Meeting as required under Section 9 (1) *repealed Land Act* (Chapter 185). Section 58 (1) (a) and (b) of the *Land Act 1996* restates the same requirement for gazettal of Land Board meeting Agenda Items.

Recommendation No 5

The Ombudsman Commission recommends that the Secretary for DLPP should ensure responsible Division thoroughly investigates the status of the land before effecting the administrative processes for the grant of State lease.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- Section 8 (2) of *repealed Land Act* and Section 57 (2) of the *Land Act 1996* require an investigation into the status or availability of the State land before the grant of lease by the PNG Land Board.
- The State Lease for Section 283 Allotment 48 Hohola (Morata) National Capital District granted to Christian Brethren Churches of PNG Property Trust Pty Ltd was done without investigating its status.
- If proper investigation was done on the status of the land the Department would have discovered that Section 283 has only 45 Allotments. Allotment 48 does not exist on the Survey Plan and Cadastral Map. State Lease was granted over the portion of land that does not exist.

Recommendation No 6

The Ombudsman Commission recommends that the Secretary for DLPP should ensure that there should be proper coordination between different Divisions of the Department to ensure compliance with legislative requirements and administrative processes in terms of granting of State leases over State land.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- All Divisional Heads in the DLPP approve Planning Permission Applications' Checklists that their respective Divisions' statutory requirements have been complied with before they are considered by the PNGLB for the grant of State lease.

- All Divisional Heads interviewed had no knowledge nor have approved Christian Brethren Churches of PNG Property Trust Pty Ltd.'s Planning Permission Application.
- The PNGLB and Registrar of Titles did not check with other Divisions when the Christian Brethren Churches of PNG Property Trust Pty Ltd.'s Planning Permission Application came to their attention.



6. CONCLUSION

Public officials must understand their roles and responsibilities and perform their duties in compliance with the laws for the good of our people and country. Non-compliance with relevant laws raises doubts in the public minds as to whether the public official or decision maker has been influenced by outside forces to perform his or her duties contrary to laws and thus is not conducive to good governance and accountability in Government agencies.

This Report highlights irregularities in the land allocation and lease processes the DLPP followed to grant the State Lease (Mission Lease) over Section 283 Allotment 48 Hohola (Morata) National Capital District granted to Christian Brethren Churches of PNG Property Trust Pty Ltd for mission purposes. That is, zoning, survey and tender requirements were not complied with, the agenda items were not gazetted and there was lack of proper coordination between the different Divisions of the Department to facilitate the Planning Permission Applications contrary to the *repealed Land Act* (Chapter 185), *Physical Planning Act* 1989, *Survey Co-ordination Act* (Chapter 203) and *Land Registration Act* (Chapter 191).

The DLPP has failed to live up to the expectation of the people and the State in complying with the administrative processes and procedures and the Acts governing the operation of the Department.

The officers of the DLPP are to take note of the findings and recommendations made in this Report and make special effort to correct the irregularities identified in this Report for the good of the Department and the people of Papua New Guinea.

The leaders to whom the Ombudsman Commission directs its recommendation are asked to carefully consider the recommendations and implement them.

.....
RIGO LUA, LLB, OBE
CHIEF OMBUDSMAN

.....
PHOEBE SANGETARI, LLB, LLM
OMBUDSMAN

Port Moresby

11 August 2014

7. RELEVANT LAWS

This Chapter contains the laws that were examined to verify the legality of the matter.

[7.1] CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

This Chapter contains the Five National Goals and Directive Principles as proclaimed in the Preamble to the *Constitution*. The Goal No. 2 and Section 55 of the *Constitution* are relevant to this particular investigation.

Goal No. 2. Equality and participation.

We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.

WE ACCORDINGLY CALL FOR—

- (1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and

Section 55. Equality of citizens.

- (1) Subject to this Constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex.
- (2) Subsection (1) does not prevent the making of laws for the special benefit, welfare, protection or advancement of females, children and young persons, members of underprivileged or less advanced groups or residents of less advanced areas.
- (3) Subsection (1) does not affect the operation of a pre-Independence law.

[7.2] REPEALED LAND ACT (Chapter 185)

The *Land Act* (Chapter 185) contains several sections relevant to this particular investigation.

2. Interpretation

"Lease Acceptance Form" means a form approved by the Minister for the successful applicant to notify the Department that he accepts the terms and conditions of the granted application for a lease;

"Letter of Grant" means a form approved by the Minister for the purpose of notifying a successful applicant (or in appropriate cases a second-choice or third-choice successful applicant) of the grant to him of a State lease and that sets out the terms and conditions of the grant;

8. Functions of the Land Board.

- (1) In addition to such other functions as are conferred on it by this Act, the Land Board shall consider and make a recommendation on any matter referred to it by the Minister.
- (2) The Land Board shall investigate all applications for grant of leases and all other matters that are remitted to it by the Minister for its consideration.
- (3) A member of the Land Board shall not sit on any matter in which he is directly or indirectly interested.

9. Meetings of the Land Board, reports, etc.

- (1) At least seven days before a meeting of the Land Board, the Chairman shall cause to be inserted in the National Gazette a list of the applications (other than tenders) and matters to be considered by the Board and of lands to be dealt with by it, at the meeting.
- (2) The Chairman shall notify by post every person who, in his opinion, is interested in an application or matter, of the date on which it will be considered by the Land Board.
- (3) The meeting of the Land Board shall be held not less than seven days nor more than 42 days after the publication of the list referred to in Subsection (1), and the Board shall deal with applications and matters, hear any objections and report on the applications or matters within 14 days to the Minister.
- (4) The Chairman shall cause meetings of the Land Board to be held as he thinks necessary.
- (5) For the conduct of business at a meeting of the Land Board—
 - (a) two members, of whom one is the Chairman or a Deputy Chairman nominated for the purpose under Section 6(5), are a quorum; and
 - (b) the Chairman or the Deputy Chairman nominated for the purpose, shall preside; and
 - (c) all matters shall be decided by the majority of votes of the members present; and
 - (d) the person presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.
- (6) The person presiding at a meeting of the Land Board shall—
 - (a) where he thinks it necessary to do so; or
 - (b) where he is directed by the Chairman to do so, exclude any or all members of the public from the meeting.
- (7) Where the Land Board—
 - (a) takes evidence at a meeting from which members of the public have been excluded; or
 - (b) is directed by the Minister that the recommendation of the Board is not to be made available to members of the public; or
 - (c) deals with an application or matter that has been specified in the notice in the National Gazette under Subsection (1) to be the subject of a confidential report, it shall report on it within 14 days to the Minister.
- (8) Where the Land Board, in making a recommendation in any case, considers that two or more applicants are of equal merit, it may decide the matter by ballot and shall report on the ballot within 14 days to the Minister.
- (9) The Chairman shall forward notice of the Land Board's recommendations, other than a recommendation to which Subsection (7) applies, to every person who, in his opinion, is interested in an application or matter dealt with by the Board.

10. Sittings of Land Board in divisions.

- (1) If the Chairman thinks it necessary, more than one sitting of the Land Board may be held at the one time.
- (2) When more than one sitting of the Land Board is to be held at the one time, the Chairman is responsible for determining—

- (a) the constitution of the Board for each sitting; and
- (b) whether the Chairman or a Deputy Chairman is to preside at each sitting, and if a Deputy Chairman, which; and
- (c) the matters to be dealt with at each sitting.

Part VI – STATE LEASES

Division 1- State Leases Generally

29. Grant of State leases

- (3) A State lease shall not be granted for a purpose that would be in contravention of any law relating to town planning or to the use, construction or occupation of buildings or land.

30. Advertisement of lands available for leasing.

- (1) The Departmental Head may give notice, by advertisement in the National Gazette, of lands available for leasing under this Act.
- (2) An advertisement under Subsection (1) shall contain the following particulars:—
 - (a) the type of lease available to be granted;
 - (b) the purpose of the lease;
 - (c) the term of the lease; and
 - (d) a description of the land the subject of the leased; and
 - (e) the amount of rent (if any) payable for the first period of the lease; and
 - (f) in the case of a special purposes lease—the royalties(if any) payable on a substance or thing removed from or taken off the land the subject of the lease; and
 - (g) the reservations, covenants, conditions and provisions of the lease;
 - (h) such other information as the Departmental Head thinks fit or the Minister directs.
- (3) A statement contained in an advertisement under this Section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.

31. Unadvertised Land.

- (1) Subject to this section a State lease (other than a mission lease. Special purposes lease or residence or business lease of a town land) shall not be granted over land that has not been subject of an advertisement under section 30.
- 2) Notwithstanding subsection (1), where for any special reason the Minister thinks fit, a State lease may be granted over land that has not been the subject of an advertisement under section 30.
- (3) Subsection (1) does not apply to the granting of a new lease under Section 71 or 72.

33. Consideration of applications.

The Land Board—

- (a) shall hear all applications for State leases; and

- (b) shall recommend to the Minister the persons (if any) to whom leases should be granted; and
- (c) may make such other recommendations to the Minister in connexion with an application as to the Board seem proper.

34. Publication of names of successful applicants

The names of successful applicants for State leases, together with particulars of the lands to be leased to them, shall be notified by the Departmental Head in the National Gazette.

35 Notice to successful applicants.

As soon as practicable after the publication of the notice under Section 34 is published in the National Gazette. The Departmental Head shall, by written notice, advise each successful applicant of –

- (a) the date of the notification, and
- (b) the terms, conditions, provisions, restrictions and covenants the proposed lease, and
- (c) details of all fees due or outstanding tender moneys and any other amounts payable in respect of the proposed lease; or application for the lease.

36. Acceptance of terms, etc., of proposed leases

- (1) The Departmental Heads may by notice in the National Gazette, extinguish the right of a notice in the National Gazette under section 34 in respect of him or such further time (if any) as is notified to him by the Departmental Head –
 - (a) forward a notice of acceptance of the terms, conditions, provisions, restrictions and covenants of the proposed lease as set out in the notice to him under section 35 so as to reach the Departmental Head not later than 4.00 p.m. on the twenty eighth day after the publication of the notice or on such later date as is notified to him by the Departmental Head, and
 - (b)
 - (c) pay all amounts specified in the notice.
- (2) A person who forwards a notice of acceptance to the Departmental Head under subsection (1) shall be deemed to have executed the lease on the date on which the Minister executes the lease under section 116.

57. Land in township

- (1) Subject to this section and to section 58, before a lease under this Division of town land is granted the land shall, in the first instance, be offered for lease by tender at an upset price equal to the unimproved value of land.
- (2) A tender notice under this subsection (1) shall contain the particulars specified in section 30.
- (3) Land that has been offered for lease in accordance with subsection (1) may –
 - (a) if unleased, be re-offered for lease by tender; or
 - (b) after the first or any subsequent unsuccessful offered for lease by tender, be granted on application under this Act.

58. Dealing with tenders

- (1) The successful tenderer shall pay the State the difference between the upset price and the amount of his tender.

- (2) The successful tenderer is entitled to a State lease of the land the subject of the tender, in accordance with the tender notice.
- (3) The Minister is not bound to accept the highest or any tender.

59. Grant of Mission Lease.

- (1) The Minister may grant a lease of Government land to—
 - (a) a corporation having for its object the establishment or conduct, in the country, of a Christian mission; or
 - (b) a person in trust for an institution or body having any such object.
- (2) A lease under Subsection (1) may be granted for such term, not exceeding 99 years, as to the Minister seems proper.

[7.3] LAND REGISTRATION ACT (Chapter 191)

The *Land Registration Act* contains several sections relevant to this particular investigation.

11. Certificate of title to be evidence.

- (1) The Registrar's duplicate of a certificate of title, when registered—
 - (a) is evidence of the particulars it specifies; and
 - (b) is conclusive evidence, in relation to the land it describes, that the person named in the certificate of title—
 - (i) as seized of an estate in land; or
 - (ii) as taking or otherwise entitled to an estate or interest in the land, is seized of, possessed or entitled to that estate or interest, as the case may be; and
 - (c) is conclusive evidence that the property comprised in the certificate of title is under this Act.

33. Protection of registered proprietor.

- (1) The registered proprietor of an estate or interest holds it absolutely free from all encumbrances except—
 - (a) in the case of fraud; and
 - (b) the encumbrances notified by entry or memorial on the relevant folio of the Register; and
 - (c) the estate or interest of a proprietor claiming the same land under a prior instrument of title; and
 - (d) in case of the omission or misdescription of any right-of-way or other easement created in or existing on the same land; and
 - (e) in case of the wrong description of the land or of its boundaries; and

[7.4] PHYSICAL PLANNING ACT 1989

The *Physical Planning Act* 1989 contains several sections relevant to this particular investigation.

"planning permission" means an approval from a Board to permit development and includes—

- (i) an approval to allow the use of a building or land in a zone for a purpose which is not specifically permitted; and
- (ii) an approval to a request for the change in zoning of land; and
- (iii) an approval to subdivide or consolidate land, under this Act;

"subdivision" in relation to land, means the subdivision of an area of land into two or more parts, whether the subdivision is effected for the purposes of convenience, transfer, partition, sale, gift, lease, mortgage, or any other purpose, and "subdivide" has a corresponding meaning;

"zone" means an area within which the development and the use of land and/or buildings is restricted to one or more particular purposes and/or is subject to specified control.

[7.5] SURVEY COORDINATION ACT (Chapter 203)

The *Survey Coordination Act* contains several sections relevant to this particular investigation.

"survey" means the act or process of determining with regards to the earth's surface—

- (a) the form, contour, position, area, height, depth or other similar particulars of—
 - (i) a part of the surface, whether on land or water; or
 - (ii) a natural or artificial feature on, below or above any part of the surface; or
- (b) the length and direction of the bounding lines of—
 - (i) a part of the surface; or
 - (ii) a natural or artificial feature of the surface, and includes the making or obtaining of a plan or plans of the surface, including an aerial survey;

"the Central Plan Office" means the Central Plan Office established under Section 3;

8. Central Plan Register, etc.

- (1) For the purposes of this Act, there shall be established and maintained in the Central Plan Office a register, to be called the Central Plan Register.
- (2) The Central Plan Register shall be in the prescribed form and contain the prescribed classifications and particulars.
- (3) The Surveyor General, after such inquiry as he considers necessary, shall cause—
 - (a) a record of the plans—
 - (i) set out in any list forwarded to him under Section 4 or 7; or
 - (ii) forwarded to him under Section 6; or
 - (iii) otherwise made available to him, as appear to him to be of general value for the purposes of this Act to be entered in the Central Plan Register; and
 - (b) the plans whether or not they are held in the Central Plan Office to be marked or stamped with such particulars of their recording and classifications as are prescribed.

13. Official surveys.

The Surveyor General may—

- (a) cause to be carried out any survey that he considers necessary or desirable for the purposes of this Act; and
- (b) establish on the area so surveyed such permanent marks as he considers necessary, and may cause a record of the plan of every such survey to be entered in the Central Plan Register.

[7.6] Lands Act 1996

The *Land Act* 1996 contains several sections relevant to this particular investigation.

Land Act 1996,

Being an Act relating to land, to consolidate and amend legislation relating to land, and to repeal various statutes, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister. PART

VII.—THE LAND BOARD.

55. Establishment of the Land Board.

- (1) A Land Board is hereby established.
- (2) The Land Board shall consist of—
 - (a) a Chairman; and
 - (b) such other members,

who shall be appointed in accordance with the Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004.
- (3) In addition to the members referred to in Subsection (2), the Minister may, by notice in the National Gazette, appoint such other members to the Land Board for such periods to act in relation to land in such localities, or in respect of certain types of State leases, as he thinks necessary, and a member so appointed has and may exercise all the powers and functions of a member of the Board.
- (4) The Minister may, by notice in the National Gazette, appoint such number of persons as he thinks proper to be Deputy Chairmen of the Land Board.
- (5) Subject to Section 59(2), in the absence of the Chairman from a meeting of the Land Board a Deputy Chairman nominated by the Chairman for the purpose has and may exercise all the powers and functions of the Chairman in relation to the meeting.

56. Oath and Affirmation of Office.

- (1) Before entering on his duties the Chairman, the Deputy Chairman or a member of the Land Board shall take an oath or make an affirmation in the approved form.
- (2) The oath or affirmation shall be taken or made before the Minister or a person appointed by the Minister for the purpose.
- (3) This Section does not apply to an officer of the Public Service who is appointed to the Land Board.

57. Functions of the Land Board.

- (1) In addition to such other functions as are conferred on it by this Act, the Land Board shall consider and make a recommendation on any matter referred to it by the Minister or by the Department.
- (2) Except where the Minister is empowered by this or any other Act to make a direct grant of a State lease, the Land Board shall consider all applications for grant of leases which have been investigated and referred to it by the Department and all other matters that are remitted to it by the Minister for its consideration.

58. Meetings of the Land Board, reports, etc.

- (1) At least seven days before a meeting of the Land Board, the Chairman shall publish in the National Gazette a list of—
 - (a) the applications and other matters to be considered; and
 - (b) lands to be dealt with,
by the Board at the meeting.
- (2) The Chairman shall notify by post every person who, in his opinion, is interested in an application or matter, of the date on which it will be considered by the Land Board.
- (3) The meeting of the Land Board shall be held not less than seven days nor more than 42 days after the publication of the list referred to in Subsection (1), and the Board shall deal with applications and matters, hear any objections and report on the applications or matters within 14 days to the Minister.
- (4) The Chairman shall cause meetings of the Land Board to be held as he thinks necessary.
- (5) Subject to Section 106, for the conduct of business at a meeting of the Land Board—
 - (a) three members, of whom one is the Chairman or a Deputy Chairman nominated for the purpose under Section 55(5), are a quorum; and
 - (b) the Chairman or the Deputy Chairman nominated for the purpose, shall preside; and

- (c) all matters shall be decided by the majority of votes of the members present; and
- (d) the person presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.
- (6) The person presiding at a meeting of the Land Board shall—
 - (a) where he thinks it necessary to do so; or
 - (b) where he is directed by the Chairman to do so, exclude any or all members of the public from the meeting.
- (7) The Departmental Head or his delegate—
 - (a) may attend any meeting of the Board; and
 - (b) shall, where so requested by the Chairman, attend a meeting of the Board, in the capacity of adviser to the Board.
- (8) Where the Land Board—
 - (a) takes evidence at a meeting from which members of the public have been excluded; or
 - (b) is directed by the Minister that the recommendation of the Board is not to be made available to members of the public; or
 - (c) deals with an application or matter that has been specified in the notice in the National Gazette under Subsection (1) to be the subject of a confidential report, it shall report on it within 14 days to the Minister.
- (9) In respect of each application the Land Board shall recommend—
 - (a) the applicant to whom, in the opinion of the Land Board, the State Lease should be granted; and
 - (b) the applicant who, in the opinion of the Land Board, is the second-choice successful applicant; and
 - (c) the applicant who, in the opinion of the Land Board, is the third-choice successful applicant,and where the Land Board, in making a recommendation in any case, considers that two or more applicants are of equal merit, it may decide the matter by ballot and shall report on the ballot to the Minister within 14 days.
- (10) The Chairman shall forward notice of the Land Board's recommendations, other than a recommendation to which Subsection (8) applies, to every person who, in his opinion, is interested in an application or matter dealt with by the Board.

- (11) A member of the Land Board shall not sit on any matter in which he is directly or indirectly interested.

59. Sittings of Land Board in divisions.

- (1) If the Chairman thinks it necessary, more than one sitting of the Land Board may be held at the one time.
- (2) When more than one sitting of the Land Board is to be held at the one time, the Chairman is responsible for determining—
- (a) the constitution of the Board for each sitting; and
- (b) whether the Chairman or a Deputy Chairman is to preside at each sitting, and if a Deputy Chairman, which; and
- (c) the matters to be dealt with at each sitting.

60. Inquiries, etc., by Land Board.

- (1) The Land Board, in the exercise and performance of the powers and duties conferred or imposed by or under this Act, may—
- (a) summon witnesses; and
- (b) take evidence on oath or affirmation; and
- (c) require a person to produce a document, book or paper in his custody or control.
- (2) A person who, without reasonable excuse, when summoned or required under this Section to give evidence or to produce a document, book or paper in his custody or control fails—
- (a) to attend before the Land Board, as the case may be, at the time and place appointed in the summons or requirement; or
- (b) to give evidence or to produce the document, book or paper,
- is guilty of an offence.

Penalty: A fine not exceeding K500.00.

- (3) It is a defence to a charge of an offence against Subsection (2) for failing without reasonable excuse to produce a document, book or paper if the defendant proves that the document, book or paper is not relevant to the matter in connection with which the production was required.
- (4) For the purposes of this section, a summons purporting to be issued by the Land Board shall be deemed to have been properly issued if it is signed by the Chairman of the Board.

61. Protection of members of Land Board.

No action is maintainable against a member of the Land Board in respect of anything done by him in good faith while acting as a member.

PART VIII.—APPEALS AND REPORTS.

62. Appeals.

- (1) A person aggrieved by a decision of the Land Board may, not later than 28 days after notice is forwarded under Section 58(10), forward a notice of appeal to the Minister.
- (2) An appeal shall be accompanied by a deposit of K500.00, which shall, subject to Subsection (3), be refunded when the appeal has been decided.
- (3) If the Head of State, acting on advice, thinks that the appeal has been made on frivolous grounds, the Head of State, acting on advice, may reject the appeal and direct that the whole or any portion of the deposit shall be forfeited to the State.
- (4) Subject to Subsection (5), the Head of State, acting on advice, shall determine an appeal under this section, and his decision is final.
- (5) Where an appeal under this Section is upheld, the Head of State, acting on advice, may refer the matter back to the Land Board for re-hearing.

63. Reference or reports to Minister.

- (1) A report or recommendation of the Land Board shall—
 - (a) if no appeal is made under Section 62, at the expiration of the period referred to in Subsection (1) of that section; or
 - (b) if any such appeal is made, after the appeal is determined,
be referred to the Minister.
- (2) In addition to any other powers conferred by or under this Act, the Minister shall, if he disagrees with a report or recommendation of the Land Board, and may for any other reason—
 - (a) refer any matter back to the Board for re-hearing, the taking of fresh evidence, the furnishing of a further or additional report, or otherwise; or
 - (b) refer any matter to the National Executive Council.
- (3) The decision of the Head of State, acting on advice, on a matter referred to the National Executive Council under Subsection (2)(b), is final.

PART IX.—ALIENATION OF GOVERNMENT LAND.

64. Alienation of Government Land.

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

PART X.—STATE LEASES.

Division 1.—State Leases Generally.

65. Grant of State Leases.

The Minister may grant State leases of Government land as provided by this Act.

66. State Leases not to be inconsistent with lease from customary landowners.

Notwithstanding anything in any other law a provision of a State lease of customary land leased by the customary landowners to the State that is inconsistent with the terms and conditions of the lease from the customary landowners, is, to the extent of that inconsistency, of no effect.

67. State leases not to be inconsistent with zoning, physical planning, etc.

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

68. Advertisement of lands available for leasing.

- (1) Except where land has been exempted from advertisement under Section 69, the Departmental Head shall give notice, by advertisement in the National Gazette, of all lands available for leasing under this Act.
- (2) An advertisement under Subsection (1) shall contain the following information:—
 - (a) the type of lease available to be granted;
 - (b) the purpose of the lease;
 - (c) the length of the lease;
 - (d) a description of the land to be leased;
 - (e) the amount of rent (if any) payable for the first period of the lease;
 - (f) in the case of a special purposes lease—any royalties that are payable;
 - (g) the terms and conditions of the lease;
 - (h) the reserve price;

- (i) such other information as the Departmental Head thinks fit or the Minister directs.
- (3) A statement contained in an advertisement under this Section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.

69. Duty to advertise State Leases.

- (1) A State lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Subsection (2).
- (2) The Minister may exempt land from advertisement for application or tender—
 - (a) where the lease is granted to a governmental body for a public purpose; or
 - (b) where it is necessary to relocate persons displaced as a result of a disaster as defined in the Disaster Management Act (Chapter 403); or
 - (c) where a lessee applies for a further lease; or
 - (d) where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertaking; or
 - (e) where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit, providing that the claims of other neighbouring landowners are considered and their views taken into account in deciding whether to exempt the land from advertisement in favour of the applicant; or
 - (f) where the Department responsible for foreign affairs recommends that land be made available to the applicant for consular premises; or
 - (g) where the land is required for the resettlement of refugees; or
 - (h) where the applicant has funded the acquisition of the land from customary landowners in order to acquire a State lease over it; or
 - (i) where a lease is to be granted under Section 99 or 102; or
 - (j) where a new lease is granted under Section 110, 130 or Section 131.

70. How applications for State Leases to be made.

An application for a State lease shall—

- (a) be made in the approved form; and
- (b) be accompanied by the prescribed fee for the registration of the application.

71. As a general rule, the Land Board shall consider all applications for State Leases.

Subject to Section 72, the Land Board—

- (a) shall hear all applications for State leases; and

- (b) shall recommend to the Minister the persons (if any) to whom leases should be granted; and
- (c) may make such other recommendations to the Minister in connection with an application as the Board considers proper.

72. Power of Minister to grant State Lease direct.

The Minister may grant, on application or otherwise—

- (a) a lease over any land acquired under the Lands Acquisition (Development Purposes) Act (Chapter 192) (Repealed); and
- (b) a lease over land which has been the subject of a declaration under Section 111; and
- (c) a lease granted under Section 102; and
- (d) a lease granted under Section 99,
without referring the matter to the Land Board.

73. Dealing with Tenders.

- (1) Where the land is required to be offered for lease by tender, a tender notice shall—
 - (a) contain the particulars specified in Section 68; and
 - (b) specify the reserve price for the land.
- (2) A tender for an amount less than the reserve price specified under Subsection (1)(b) is invalid and shall not be considered.
- (3) Land that has been offered for lease in accordance with Subsection (1) may—
 - (a) if unleased, be re-offered for lease by tender; or
 - (b) after the first or any subsequent unsuccessful offer for lease by tender, be granted on application under this Act.
- (4) The successful tenderer shall pay to the State the amount of his tender.
- (5) The successful tenderer is entitled to a State lease of the land the subject of the tender, in accordance with the tender notice.

74. Publication of names of successful applicants, etc., in the National Gazette.

The Departmental Head shall publish in the National Gazette—

- (a) the name of the successful applicant for each State Lease, together with particulars of the lands to be leased to him; and
- (b) in respect of that State Lease and those lands—

- (i) the name of the applicant considered the second-choice successful applicant; and
- (ii) the name of the applicant considered the third-choice successful applicant,
to whom a Letter of Grant may be forwarded on accordance with Sections 75 and 79.

75. Notice to successful applicants.

As soon as practicable after the publication of the notice under Section 74, the Departmental Head shall forward a Letter of Grant to each successful applicant (as specified in Section 74(a)) notifying him of—

- (a) the date of the publication of the notice in the National Gazette; and
- (b) the terms and conditions of the proposed lease; and
- (c) details of all fees due, outstanding tender moneys and any other amounts payable in respect of the proposed lease; and
- (d) the need to sign and return an accompanying Lease Acceptance Form to reach the Departmental Head within 28 days of the publication of the notice in the National Gazette, or such later date as is stated in the Letter of Grant, in order to accept the grant of the lease.

76. Acceptance of terms and conditions of proposed leases and execution of State Leases.

- (1) The Minister, on behalf of the Independent State of Papua New Guinea, shall execute three copies of a State lease and forward the original and a duplicate to the Registrar of Titles for registration.
- (2) A successful applicant, who forwards a duly signed Lease Acceptance Form to the Departmental Head in accordance with Section 75, thereby accepts the terms and conditions of the proposed lease as set out in the Letter of Grant and shall be deemed to have executed the lease on the date on which the Minister executes the lease.

77. Extinguishment of granted application.

The Departmental Head may, by notice in the National Gazette, extinguish the right of a grant of a State lease—

- (a) if a duly signed Lease Acceptance Form does not reach the Departmental Head or other officer authorized to receive such written acceptances within 28 days of the publication of the notice under Section 75 in the National Gazette, or such later date as is stated in the Letter of Grant; or
- (b) if the grantee fails to pay all amounts of money specified in the Letter of Grant within the required time.

78. Revocation of extinguishment.

- (1) Where a granted application (hereafter called "the original grant") has been extinguished under Section 77 by mistake, and provided that a notice under Section 75 has not been published in the National Gazette in respect of another applicant, the Departmental Head may revoke the notice of extinguishment by publishing a notice of revocation of extinguishment in the National Gazette.
- (2) Where the Departmental Head publishes a notice under Subsection (1), the original grant shall be treated as valid and as effectual as if the extinguishment had not occurred.

79. Procedure after extinguishment.

- (1) Where—
 - (a) a notice of extinguishment of a State lease has been published in the National Gazette under Section 77; and
 - (b) after a period of 60 days from the date of publication of the notice of extinguishment, no notice of revocation of extinguishment under Section 78 in respect of that State lease has been published in the National Gazette,

the Departmental Head shall forward to the second-choice successful applicant named under Section 74(b) in respect of that State lease a Letter of Grant under Section 75 and the procedures set out in Sections 75, 76, 77 and 78 shall apply in respect of that Letter of Grant.

- (2) Where, in respect of a Letter of Grant referred to in Subsection (1)—
 - (a) a notice of extinguishment of a State lease has been published in the National Gazette under Section 77; and
 - (b) after a period of 60 days after the date of publication of the notice of extinguishment, no notice of revocation of extinguishment under Section 78 in respect of that State lease has been published in the National Gazette,

the Departmental Head shall forward to the third-choice successful applicant under Section 74(c) in respect of that State lease a Letter of Grant under Section 75 and the procedures set out in Sections 75, 76, 77 and 78 shall apply in respect of that Letter of Grant.

80. Person entitled to State Lease dying before a State Lease is issued to him.

- (1) Where a person who is entitled or would have become entitled to have a State lease issued to him dies before the lease is actually issued, the Minister may—
 - (a) issue the lease to, and in the name of , the deceased person as if he were still alive; or
 - (b) issue the lease to the successors in title of the deceased person.
- (2) A lease issued under Subsection (1)—

- (a) is as valid and effectual as if the deceased person had been living at the time of its issue; and
- (b) has the same effects as between the persons entitled to the land the subject of the lease as if the lease had been issued immediately before the date of his death.

81. Commencement of State Leases.

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

- (a) the date of publication of the relevant notice under Section 74; or
 - (b) such later date as the Minister, after considering a report of the Land Board, determines.
- .Division 6.—Mission Leases.

96. Grant of Mission Lease.

- (1) The Minister may grant a lease of Government land to—
 - (a) a corporation having for its object the establishment or conduct, in the country, of a Christian mission; or
 - (b) a person in trust for an institution or body having any such object.
- (2) A lease under Subsection (1) may be granted for such term, not exceeding 99 years, as to the Minister seems proper.

97. Purpose of Mission Lease.

A mission lease may be granted for—

- (a) the purpose of—
 - (i) a church; or
 - (ii) a dwelling-house or houses for members or persons employed by or working in connection with the mission; or
 - (iii) a school; or
 - (iv) a hospital; or
 - (v) a building for any other charitable, educational or religious purpose; or
 - (vi) gardens or pastures for purposes ancillary to any of the purposes specified in Subparagraphs (i) to (v) inclusive; and
- (b) the construction or operation, for the purposes of the establishment or conduct in the country of a Christian mission, of an aerodrome, and the erection or maintenance of hangars and other buildings required for the operation of an aerodrome.