

**INTERNATIONAL  
STATE CRIME  
INITIATIVE**

## **RESEARCH REPORT**

### **An Evaluation of Task-Force Sweep's Case Investigation into 'Allegations against Public Curator, CCS Anvil, Paga Hill Development Company Ltd etc.'**

**SEPTEMBER 2015**

The **International State Crime Initiative** is a research centre institutionally supported by Queen Mary University of London and partnered with Harvard University, the University of Hull and the University of Ulster.

**@STATECRIME**  
**WWW.STATECRIME.ORG**

First published by the International State Crime Initiative in 2015.

Copyright © International State Crime Initiative

Download more copies at <http://statecrime.org/state-crime-research/report-investigation-taskforce-sweep/>

**Citation:** Lasslett, K. (2015) *An Evaluation of Task-Force Sweep's Case Investigation into 'Allegations against Public Curator, CCS Anvil, Paga Hill Development Company Ltd etc'*. London: International State Crime Initiative.

This report was produced by Dr Kristian Lasslett in collaboration with the International State Crime Initiative at Queen Mary University of London. For further information on the International State Crime Initiative see: <http://statecrime.org/about-isci/>

## About the Author

**Dr Kristian Lasslett** is Lecturer in Criminology at the University of Ulster, and sits on the Executive Board of the International State Crime Initiative. He is joint Editor-in-Chief of *State Crime*, a leading international peer reviewed journal, and Editor of *The State Testimony Project*, the first online casebook for state crime studies. Kristian's research focuses on criminogenic intersections of state-corporate power, and the communities of resistance that emerge in opposition. This focus has been operationalised through fieldwork on the extractive industries – with a landmark study on the Bougainville conflict – in addition to corruption, land-grabbing and forced eviction. Kristian has published on a range of subjects in leading international journals and edited collections, including scientific method, state theory, action research methodologies, state-corporate crime, state terrorism, and forced eviction. His first book *State Crime on the Margins of Empire* was published by Pluto Press in 2014. Kristian's second book *Uncovering the Crimes of Urbanisation* will be published by Routledge in 2016.

## Contents

Executive Summary.....	4
1. Background .....	11
2. Irregularities in the production of ITFS’ assessment .....	15
3. Critical omissions from the investigation’s terms of reference.....	16
4. Flaws in ITFS’ fact-finding methodology .....	21
5. Failure to properly read evidence.....	25
6. Serious errors of law .....	27
7. Payments made to Anvil (PNG) Project Services Limited .....	36
8. Weighting of evidence by ITFS.....	38
9. Failure to investigate state land at Paga Hill .....	42
10. Undermining the security of ITFS sources .....	50
11. Recommendations .....	50
12. Methodology.....	53
Bibliography .....	55

## Executive Summary

On 19 October 2012 the International State Crime Initiative (ISCI) asked Papua New Guinea's Investigation Task-Force Sweep (ITFS) to follow up on certain findings tendered by the Public Accounts Committee (PAC) and the Auditor General's Office (AGO). These findings related to the commercial dealings of Australian-based businessman, Gudmundur Fridriksson, and a number of associates.

In total, these dealings had been censured in –

- 2 x AGO reports,
- 4 x PAC reports, and
- 2 x Commission of Inquiries.

On 25 March 2015, ITFS emailed ISCI a copy of its case assessment with a cover letter dated 1 December 2014, signed by its Chairman, Mr Sam Koim.

The ITFS assessment focuses on reports tendered by the PAC and AGO which allege that Anvil (PNG) Project Services Limited (APSL) – a company managed and part-owned<sup>1</sup> by Mr Fridriksson –

- had entered into a number of contracts to reform the institutional structures of the Public Curator's Office,<sup>2</sup> in violation of the *Public Finances (Management) Act 1995*, and
- had misappropriated the property of private estates in violation of the *Public Curator Act 1951* and the *Criminal Code Act 1974*.

In the case assessment ITFS:

- dismisses all allegations against APSL and Mr Fridriksson, claiming they are without merit (see Appendix A).
- heavily criticises investigations conducted by the AGO and the PAC.

When ISCI reviewed the case assessment, it identified serious errors of fact, law and method. Yet ISCI was aware from examining past ITFS documentation<sup>3</sup> that the agency's staff is highly literate in both investigative methods and the relevant financial and criminal laws. It thus became apparent that standard ITFS practice and procedure had been inexplicably ignored in this investigation.

---

<sup>1</sup> Through Asigau (PNG) Holdings Limited, a company fully owned by Mr Fridriksson and his wife.

<sup>2</sup> The Public Curator's Office administers deceased estates; it has a fiduciary duty to conserve estate properties and deliver them to beneficiaries.

<sup>3</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

ISCI's concerns were immediately raised with Papua New Guinea's National Executive Council in a letter dated 26 March 2015. A subsequent email from the Chairman of ITFS was received on 30 March 2015 rejecting ISCI's concerns.

Owing to the serious issues at stake, ISCI conducted a detailed review of the ITFS case assessment with a view to publishing the results. The key findings of this evaluation are summarised below.

### **The ITFS assessment was tainted by irregular investigative practices**

Between October 2012 and June 2014 (over 19 months), ITFS made no substantive attempt to investigate the AGO and PAC allegations forwarded by ISCI.

On 9 June 2014, ITFS received a request from Mr Gudmundur Fridriksson to 'correct' the PAC and AGO findings.

During November 2014, an ITFS case assessment exonerating Mr Fridriksson and associated companies was published (5 months after Mr Fridriksson's request).

ITFS' conclusions rely solely on the evidence submitted to it by Mr Fridriksson and the Office of the Public Curator.

### **Either ITFS failed to read the PAC report with due care, or ITFS has relied on second hand readings submitted to it by parties censured in the inquiry.**

ITFS (2014: 9) argues that the PAC inquiry – which was conducted with the assistance of the AGO – was 'tainted' by a denial of natural justice to those whose interests were impacted by the hearing. ITFS (2014: 6) insists that the Public Curator and Mr Fridriksson's company 'were not afforded ... [an] opportunity to respond prior to the publication of the reports'.

In fact both the Public Curator's Office and APSL *were* afforded the opportunity to respond prior to the publication of the PAC findings. Both organisations took advantage of this opportunity. The PAC explicitly acknowledges that these responses were considered prior to the report's publication.

The responses submitted by APSL and the Public Curator's Office are also noted in schedules one and three of the PAC report, volume one. In volume two of the PAC report they are reproduced in full.

ISCI concludes that ITFS has either:

- failed to read in full the PAC and AGO reports it condemns as 'tainted', or

- it has relied on second-hand readings submitted to it by ‘interested parties’ censured in the inquiries, without making an attempt to consult the original reporting.

These multiple failures significantly undermined the case assessment and raise questions over the integrity of the investigation.

### **Misrepresentation of the *Public Finances (Management) Act 1995* and the *Public Curator Act 1951***

In the case assessment, ITFS fundamentally misrepresents key provisions of the *Public Finances (Management) Act 1995* and the *Public Curator Act 1951*.

According to ITFS, the Office of the Public Curator asked the Central Supply and Tender Board on several occasions to *retrospectively* approve contracts with APSL, which had not been publicly tendered. The Central Supply and Tender Board rejected these requests on the grounds that they violated procurement requirements set out in the *Public Finances (Management) Act 1995*.

ITFS accepts that the Public Curator’s Office was able to circumvent the *Public Finances (Management) Act 1995*, by subsequently funding these multi-million dollar consultancy arrangements out of private estates entrusted to the office, using powers granted under the *Public Curator Act 1951*.

This assertion misrepresents the *Public Finances (Management) Act 1995*, and the *Public Curator Act 1951*.

We conclude that ITFS either:

- a) operates with a fundamentally flawed understanding of the *Public Finances (Management) Act 1995* and the associated *Financial Instructions*;
- b) intentionally misrepresents the relevant law in order to circumvent consideration of the *Criminal Code Act 1974*; or
- c) was grossly negligent in accepting the legal explanation submitted to ITFS by certain ‘interested parties’ censured in the inquiry, without any form of critical evaluation.

Given other ITFS documentation available to ISCI, which demonstrates ITFS has a sound grasp of the relevant law, we suggest (b) or (c) are the most likely conclusions.

Additionally, ITFS’ assessment erroneously interprets the commissions that can be charged by agents under the *Public Curator Act 1951* and the *Public Curator Regulations 1952*. It also wrongly suggests that the AGO failed to submit an opinion on this legal matter, when it did – ITFS had failed to read the relevant passages, or deliberately ignored them.

These multiple failures meant ITFS were unable to assess allegations that APSL overcharged estates managed by the Public Curator's Office.

### **Failure to consider the question of criminal liability**

ITFS gave no explicit consideration to the tests set out for establishing criminality liability under sections 383A and 407 of the *Criminal Code Act 1974*, despite the fact:

- The Central Supply and Tender Board refused on two occasions to issue retrospective certificates of inexpediency for the consultancy arrangement with APSL, because the company was procured in violation of the *Public Finances (Management) Act 1995*.
- As a result, the Office of the Public Curator paid for these consultancy services by expropriating private estates administered by the office under the *Public Curator Act 1951*.
- The Public Curator's Office paid a total of K5,120,464 to APSL, 'using estate monies' (AGO 2005: 55).
- According to the AGO (2005) and PAC (2006) the payments made to Anvil (PNG) Project Services Limited were excessive.
- The arrangement with APSL was initiated in June 2000, when the Acting Public Curator was Mr G J Nouari; company records show a Mr Gomoga Jack Nouari had a 30% stake in Anvil (PNG) Project Services Limited.
- ITFS was aware of the relevant tests and key precedent.

We conclude that ITFS's failure to explicitly explain why the facts do not meet the standards set out by the courts for criminal liability, has undermined the authoritative character of its conclusions.

### **Failure to Inquire**

ITFS failed to pursue elementary lines of inquiry, despite claiming their assessment was based on an 'abundance of materials'. As a result, ITFS failed to note that:

- The Acting Public Curator Mr G J Nouari appears on the share registry of APSL.
- Mr Gudmundur Fridriksson had direct commercial links with three of the four other companies scrutinised during the PAC inquiry into the Public Curator's Office. This network of inter-connected companies also featured in the Commission of Inquiry into the Department of Finance, whose transcripts and reporting are available online.

A review of ITFS' report on the Department of National Planning and Monitoring<sup>4</sup> demonstrates that ITFS is literate in both forensic investigation methods, in addition to the relevant laws governing finance and misappropriation.

Accordingly, ISCS concludes that:

- ITFS failed to judiciously implement basic fact-finding measures nor did it apply analytical techniques (triangulation) essential to any rigorous investigation.
- It is standard ITFS procedure when producing case assessments to scope company records, analyse actor networks and cross-reference evidence. ITFS failed to adhere to its own practices and procedures for conducting a rigorous case assessment.

### **Failure to Investigate Actor Network**

ITFS refused to examine the wider network of individuals and organisations cited in the October 2012 request and attached AGO/PAC reports.

It was inexplicably claimed by ITFS there was 'no evidence' to support these lines of inquiry despite the fact the individuals and companies were featured in the very same reports as Mr Gudmundur Fridriksson.

This inconsistent argument meant a vital interconnected network of companies and individuals was not examined, who also feature adversely in the Commission of Inquiry into the Department of Finance.

ISCI concludes that this seriously undermined the integrity of the assessment findings.

### **Failure to investigate Paga Hill Development Company**

ITFS declined to investigate allegations of corruption and impropriety made against the Paga Hill Development Company and the Paga Hill Land Holding Company Limited by the PAC during its inquiry into the Department of Lands and Physical Planning.

It is claimed in the assessment, that ITFS's mandate is limited to 'financial fraud of public funds related crimes' (ITFS 2014: 9).

ITFS make no attempt to refer the case to an appropriate investigative authority.

ISCI believes state land is a clear form of public property. Furthermore, the reserve fee and rental income derived from state land are a stream of public funds which must be protected from misappropriation.

---

<sup>4</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

Had ITFS initiated basic investigative steps it would have discovered that:

- This Paga Hill land transaction examined during the PAC inquiry involved breaches of the *Land Act 1996*, the *Physical Planning Act 1989* and the *Investment Promotion Act 1992*.
- The executives involved in this land transaction, were also the principals of companies implicated in alleged misconduct within the Office of the Public Curator (see AGO 2005; PAC 2006).

ISCI notes with concern ITFS's refusal to investigate any allegations involving state land, especially given the sizable black market that currently exists in state leases which constitutes a major threat to economic growth, urban policy and social development in Papua New Guinea.

### **Jeopardising whistle blowers**

ITFS' practice of including in written case assessments the personal information of individuals requesting investigations, which it then shares both with 'complainants' and other 'interested parties', poses serious risks to the security of ITFS sources. It also acts as a considerable disincentive for anyone considering coming forward to ITFS with information on potentially corrupt practices.

### **Lack of rigour**

ITFS staff appear to be unaware of key guidance, findings and recommendations contained in Commission of Inquiry reports, reports issued by the AGO and PAC, National and Supreme Court judgement, and the Financial Instructions issued by the Department of Finance. This weakens their capacity to rigorously evaluate cases and evidence presented to them on potentially corrupt transactions.

### **Summary of recommendations**

As a result of these findings, ISCI recommends that an independent, arms-length inquiry be conducted into the ITFS investigation by a judicial authority of high standing.

If the findings of this investigation reveal systemic problems within ITFS, we submit that the inquiry should be broadened in order to conduct a representative audit of ITFS casework between 2011-2015 focusing on the rigour, integrity and professionalism of its operations.

We also believe the shortcomings observed in this case heighten the urgency of constituting the proposed Independent Commission Against Corruption.

Finally, ISCI submits that the serious allegations cited in its original request to ITFS, requires urgent, rigorous investigation by the Royal Papua New Guinea Constabulary.

## 1. Background

On 19 October 2012 the International State Crime Initiative asked Investigation Task-force Sweep (ITFS) to examine the commercial dealings of prominent Australian-based businessman, Gudmundur Fridriksson, and a number of associates. At the time Mr Fridriksson was a senior figure in Australian indigenous welfare reform through his role as Chief Executive Officer of the Cape York Institute, and Director of welfare reform at Cape York Partnerships.

Before assuming these high profile positions in Australia, Mr Fridriksson managed a range of companies in neighbouring Papua New Guinea, which he also part-owned. These companies were involved in commercial transactions censured in two Auditor General's Office reports, four Public Accounts Committee reports, and the Commission of Inquiry into the Department of Finance (see Table 1). This was the first occasion the International State Crime Initiative had come across a single set of inter-linked companies censured across such a wide body of official reporting in Papua New Guinea.

Company and Personnel	Inquiry citations
<p><b>Anvil (PNG) Project Services Limited (2001-2005)</b></p> <p>Gudmundur Fridriksson – Director/Shareholder*</p> <p>Gamoga Jack Nouairi – Director/shareholder</p> <p>* Through Asigau (PNG) Holdings Limited</p>	<p>Auditor General's Office, Special Investigation into the Office of the Public Curator (2005)</p> <p>Public Accounts Committee Report to Parliament on the Inquiry into the Office of the Public Curator (2006)</p>
<p><b>CCS Anvil (PNG) Limited (2002 – Current)</b></p> <p>Gudmundur Fridriksson – Director/Shareholder*</p> <p>George Hallit – Shareholder**</p> <p>* Though Anvil Holdings Limited and Palimb Holdings Limited</p> <p>** Through Anvil Holdings Limited</p>	<p>Report of the Public Accounts Committee on the Parliamentary Services (2003)</p> <p>Auditor General's Office, Special Investigation into the Office of the Public Curator (2005)</p> <p>Public Accounts Committee Report to Parliament on the Inquiry into the Office of the Public Curator (2006)</p> <p>Report of the Auditor General on the Sepik Highway Roads and Bridges Maintenance and Other Infrastructure Trust Account (2006)</p> <p>Public Accounts Committee Report to Parliament on the Inquiry into the Sepik Highway, Roads and Bridges Maintenance and Other Infrastructure Trust Account (2007)</p> <p>Commission of Inquiry into the Department of Finance (2009)</p>
<p><b>Ram Business Consultant</b></p> <p>Rex Paki – Director/Shareholder</p>	<p>Commission of Inquiry into the National Provident Fund (2002)</p>

<p>Gudmundur Fridriksson – Former Employee*</p> <p>* According to the Auditor General’s Office (2005) Mr Fridriksson left Ram Business Consultants shortly before May 2000 to set up Anvil (PNG) Project Services Limited</p>	<p>Auditor General’s Office, Special Investigation into the Office of the Public Curator (2005)</p> <p>Public Accounts Committee Report to Parliament on the Inquiry into the Office of the Public Curator (2006)</p> <p>Commission of Inquiry into the Department of Finance (2009)</p>
<p><b>Paga Hill Land Holding Company (1996-2009)</b></p> <p>Rex Paki – Director/Shareholder</p> <p>Gudmundur Fridriksson - Director</p> <p>Fidelity Management Pty Ltd* – Shareholder</p> <p>*Fidelity Management Pty Ltd is a Perth based holding company, which shared a registered address with Mr Gudmundur Fridriksson.</p>	<p>Public Accounts Committee Report to Parliament on the Inquiry into the Department of Lands and Physical Planning (2007)</p>
<p><b>Paga Hill Development Company (PNG) Limited (2000 – Current)</b></p> <p>Gudmundur Fridriksson – Chief Executive Officer, Director and Shareholder* (2005-2009)</p> <p>Stanley Liria – Director/Shareholder</p> <p>George Hallit – Shareholder</p> <p>Michael Nali – Shareholder**</p> <p>* Though Anvil Holdings Limited and Palimb Holdings Limited ** Through Kwadi Inn</p>	<p>* Public Accounts Committee Report to Parliament on the Inquiry into the Department of Lands and Physical Planning (2007)</p>

Our concerns over Mr Fridriksson and his associates were initially prompted when a business managed by Mr Fridriksson, the Paga Hill Development Company (PNG) Limited, helped organise the demolition of homes along the foreshore of Paga Hill in Port Moresby on 12 May 2012, as part of a ‘forced relocation’ exercise (*Radio Australia*, 10/10/2012).<sup>5</sup> Given the serious humanitarian issues now at play, the International State Crime Initiative believed there was an urgent need for the findings of the reports outlined in Table 1 (above) to be thoroughly investigated.

By 2012 ITFS was widely regarded as the most effective body investigating corruption cases in Papua New Guinea. At the heart of ITFS’s rise is its multi-agency approach, which is said to be combined with strongly independent, rigorous investigations. The Chairman of ITFS,

<sup>5</sup> Paga Hill Development Company (PNG) Limited holds a 99 year state lease over Portion 1597, which covers much of the southern side of Paga Hill. Residents have maintained that their homes were built on reclaimed land outside the lease boundaries, with permission from the customary owners.

Sam Koim, has won particular acclaim for his strong stance on the international dimensions of corruption, after he famously labelled Australia the ‘Cayman Islands’ of Papua New Guinea (Koim 2012).

On 19 October 2012 the International State Crime Initiative asked ITFS to investigate a range of companies and individuals cited in key reports enumerated in Table 1. For the reasons already noted, emphasis was given to Mr Gudmundur Fridriksson and associated companies, including Anvil (PNG) Project Services Limited, CCS Anvil (PNG) Limited and Paga Hill Development Company (PNG) Limited, all of which were part-owned by foreign nationals residing in Australia. The Chairman of ITFS, Sam Koim, emailed the International State Crime Initiative a case assessment on 25 March 2015, **two years and five months** after the original complaint (see Appendix A). The assessment is dated November 2014.

The case assessment largely focuses on a series of allegations against Anvil (PNG) Project Services Limited tendered by the Auditor General’s Office (2005) and the Public Accounts Committee (2006) (see Appendices B and C) following their inquiry into the Public Curator’s Office. The Public Curator’s Office is a government agency that administers certain types of deceased estates; it has a fiduciary duty to protect estate properties and deliver them to beneficiaries.

The Public Accounts Committee and Auditor General’s Office, allege that Anvil (PNG) Project Services Limited was paid K5.2 million by the Public Curator’s Office in violation of the *Public Finances (Management) Act* 1995 and the *Public Curator Act* 1951. They also contend that Anvil (PNG) Project Services Limited ‘withheld a significant amount of monies it has received from the proceeds of the realisation of assets of deceased estates, including sales of properties, shares and investment and rent’ (Auditor General’s Office 2005: 55). A range of other irregularities were also pointed to in the inquiry reports.

ITFS’ case assessment dismisses all allegations made against the Public Curator, Mr Fridriksson and other associated companies. The assessment also heavily criticises the Public Accounts Committee and Auditor General’s Office for conducting what ITFS deems a ‘tainted’ investigation into the Office of the Public Curator. The findings of the ITFS investigation are reiterated in a cover letter signed by its Chairman, Sam Koim, on 1 December 2014.

When ITFS’ case assessment was examined by the International State Crime Initiative, glaring errors of method, fact and law were discovered. However, the International State Crime Initiative is aware from examining past ITFS documentation<sup>6</sup> that the agency’s staff is highly literate in both investigative methods and the relevant financial and criminal laws. It thus became apparent standard ITFS practice and procedure had been inexplicably ignored in this investigation.

---

<sup>6</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

Our concerns were immediately relayed to Papua New Guinea's National Executive Council in a letter dated 26 March 2015. The National Executive Council has yet to respond to this letter. However, we did receive an email on 30 March 2015, from ITFS' Chairman Mr Koim. In this email, he asserts that the International State Crime Initiative's concerns are 'based on rumours, hearsay and bit of evidence'. On the other hand, Mr Koim maintains, the ITFS assessment 'is purely based on evidence and law', and 'stacks of documents'.

In lieu of any substantive response to our initial letter of concern, the International State Crime Initiative conducted a detailed review of the ITFS case assessment with a view to publishing the results. To evaluate the case assessment we conducted a fresh inquiry into the allegations ITFS investigated, applying a comparative methodology to evaluate the rigour of its approach. This methodology is set out in section twelve.<sup>7</sup>

To our knowledge this is the first occasion an independent civil society organisation has evaluated an ITFS investigation. It thus offers an important opportunity to scrutinise the work and method of this key government agency. However, this evaluation does take place in a contentious political environment.

Contention stems from an ITFS investigation into the Prime Minister of Papua New Guinea. Initially, during January 2014, ITFS declared that corruption allegations against Prime Minister O'Neill were of little or no merit. In June 2014, ITFS reversed its findings and asked the Police Commissioner to issue a warrant for the Prime Minister's arrest, which triggered a major political crisis (see Kama 2014). Subsequently, the National Executive Council chose to disband ITFS, a decision which has been enjoined pending judicial review.

In its defence, the O'Neill government claims that ITFS has become 'heavily compromised and politicised' (*Post-Courier*, 20/6/2014). On the other hand, ITFS claims it is a highly effective agency and that its work is being seriously undermined by the O'Neill government, who has cut its budgetary allocation (Cochrane 2015).

ITFS has also obtained an injunction staying a National Executive Council decision to set up an Interim Office for Anti-Corruption, which was to be led by retired Supreme Court Judge, Graham Ellis SC. The interim-office is part of a broader O'Neill government initiative to launch an Independent Commission Against Corruption.

Clearly this report is not appropriate place to express an opinion on these allegations levelled by ITFS and the Prime Minister. Moreover, it is important to note the original submission by the International State Crime Initiative was received by ITFS in October 2012, well before this crisis emerged. That the submission remained dormant until mid-way

---

<sup>7</sup> We were also advised by Mr Sam Koim that ITFS does not publicly release the source documents upon which their assessments are based.

through 2014, a time of significant upheaval for ITFS, is a matter that will be discussed further in the report.

We will now present our findings, before a series of recommendations are tendered in the penultimate section of this report.

## 2. Irregularities in the production of ITFS' assessment

The ITFS assessment acknowledges that its Chairman, Mr Sam Koim, received correspondence from the International State Crime Initiative on 19 October 2012, requesting an investigation into certain findings tendered by the Public Accounts Committee (2006; 2007) and the Auditor General's Office (2005) (see Appendices B, C and R). This request remained dormant for over 19 months 'pending technical assessment and investigation' (ITFS 2014: 3).

According to ITFS, 'a letter dated 9th June 2014 was [then] served on ITFS by a Gudmundur Fridriksson, managing director of Paga Hill Development Company on the same day. Another letter dated 16th June 2014 was served on ITFS on 26th July 2014 by Mr Fridriksson concerning the same subject matter' (ITFS 2014: 3). ITFS suggests that these letters may have been prompted by the significant publicity being given to the findings of the inquiry into the Office of the Public Curator at a time when Mr Fridriksson was attempting to secure investment for a K300 million real-estate development at Paga Hill, Port Moresby (see, for example, Robinson 2012).<sup>8</sup>

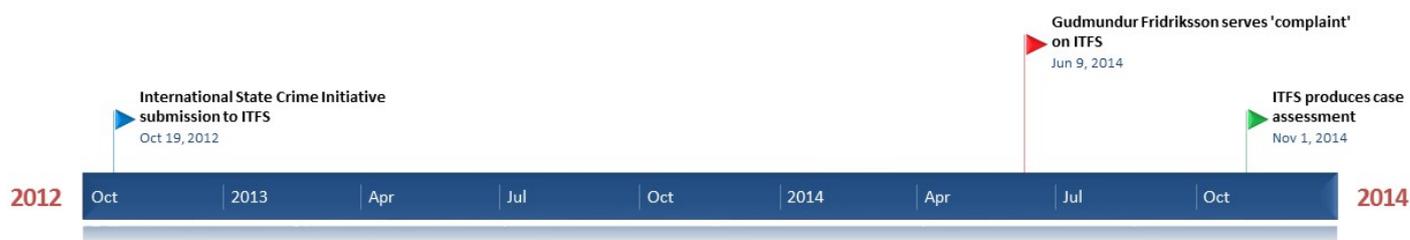
Later in the assessment, ITFS (2014: 5) sheds further light on the correspondence from Mr Fridriksson:

Pending investigation into the allegations submitted by Dr Laslett [sic], Mr Fridriksson, in his capacity as the Chief Executive Officer of Page Hill Development Company Ltd, lodged a complaint on 9th June 2014. That complaint was more of a request for ITFS to correct the findings of the AGO [Auditor General's Office] and PAC [Public Accounts Committee] against CCS Anvil and himself. The request was backed by a number of documents.

Within five months of this request, ITFS produced a written assessment reprimanding both the Auditor General's Office and the Public Accounts Committee. This assessment also dismisses all allegations against Mr Fridriksson and associated companies on the grounds they are of 'limited or no merits' (ITFS 2014: 10).

---

<sup>8</sup> The developer's projected value of the real-estate venture has varied from K300 million up to K1.2 billion.



ITFS failed to explain why the original request from the International State Crime Initiative lay dormant for 19 months, or why a case assessment dismissing the allegations was produced in such close proximity to Mr Fridriksson's request. However, it would appear reasonable to hypothesise in light of the significant lapse of time between the International State Crime Initiative's submission and ITFS' case assessment, that ITFS only elected to investigate the case after it received the 9 June 2014 'complaint' from Mr Fridriksson. The International State Crime Initiative does not have any evidence that would allow it to explain why ITFS only chose to investigate the allegations after being petitioned by Mr Fridriksson, nor does the case assessment offer any explanation. This is a matter which we believe should be investigated.

### 3. Critical omissions from the investigation's terms of reference

ITFS' case assessment focuses on the conduct of:

- Gumundur Fridriksson
- Paga Hill Development Company (PNG) Limited; and
- CCS Anvil (PNG) Limited

ITFS maintain that these companies and individual were at the centre of the inquiries referred to it by the International State Crime Initiative (see Public Accounts Committee 2006; Public Accounts Committee 2007). Inexplicably, the assessment omits other key companies mentioned in the 19 October 2012 request, which also featured in the Public Accounts Committee inquiries. These companies include, for example:

- Paga Hill Land Holding Company Limited
- Anvil (PNG) Project Services Limited; and
- Ram Business Consultants Limited

With respect to ITFS' assessment of the Public Curator's Office allegations, their investigation maintains a singular focus on CCS Anvil (PNG) Limited.<sup>9</sup> According to

<sup>9</sup> Certain documentation associated with Mr Fridriksson appears to suggest that CCS Anvil (PNG) Limited is the new name assumed by Anvil (PNG) Project Services Limited (see, [www.gudmundurfridriksson.com](http://www.gudmundurfridriksson.com)). This echoes similar statements made in the past by CCS Anvil (PNG) Limited. For example, in their press release for a proposed 'fun park' in Port Moresby - a project sponsored by the late regional member Bill Skate MP - it is stated: 'The appointed project managers for the fun park are CCS Anvil (PNG) Ltd. The company was until

Investment Promotion Authority records, CCS Anvil (PNG) Limited is ultimately owned by three individuals:

- a) Gudmundur Fridriksson,
- b) Tau Fridriksson (wife of Gudmundur Fridriksson); and
- c) George Hallit (Sydney based Businessman).

However, the Auditor General’s Office (2005: 53) report submitted to ITFS, states it was Anvil (PNG) Project Services Limited that was procured in June 2000 to provide consultancy and agency services to the Office of the Public Curator, this is an entirely different company.

The Auditor General’s special investigation also notes that the Acting Public Curator during this period **was G J Nouairi** (Auditor General’s Office 2005: 2). An examination of Anvil (PNG) Project Services Limited registration documents held by the Investment Promotion Authority, reveals that Anvil (PNG) Project Services Limited was incorporated in April 2001 and ceased operating during 2005. Its Directors were Gudmundur Fridriksson and **Gamoga Jack Nouairi** (see Appendix D). The company was **jointly owned by** Asigau (PNG) Holdings Limited (70%) and **Gamoga Jack Nouairi** (30%) (see Appendix E).

Section 13(1)(d)(i)

**CONSENT OF SHAREHOLDER OF PROPOSED COMPANY**

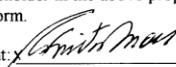
*Note: Information in this form must be either typed or handwritten in block letters. This form is only to be used in respect of the incorporation of a company. Where there is insufficient space to supply the information required, use additional forms or annexed a separate sheet in the same format containing the information.*

1. **Name of proposed company.** ANVIL ( PNG) PROJECT SERVICES LIMITED

**2. Details of proposed shareholder(s). (One section per shareholder.)**

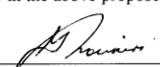
Given names <i>(natural persons)</i>		Surname or corporate name	ASIGAU (PNG) HOLDINGS LIMITED
Nationality / country of incorporation	PNG	Date of birth <i>(natural persons)</i>	
Residential address / registered office	UNIT 44, NO.1 FINANCE BUILDING, WAGANI, NCD	Postal address	PO BOX 625 WAIGANI NCD
Class of shares	ORDINARY	Number of shares	77
Consideration for shares	CASH	Price per share	K1.00

**Declaration and signature** - I consent to being a shareholder in the above proposed company and to taking the class and number of shares specified in this form.

Signature of Proposed Shareholder or Authorised Agent:  Date: 26/3/01

Given names <i>(natural persons)</i>	GAMOGA JACK	Surname or corporate name	NOUAIRI
Nationality / country of incorporation	PNG	Date of birth <i>(natural persons)</i>	31/10/48
Residential address / registered office	GABA GABA VILLAGE, CENTRAL PROVINCE	Postal address	PO BOX 756, WAIGANI, NCD
Class of shares	ORDINARY	Number of shares	33
Consideration for shares	CASH	Price per share	K1.00

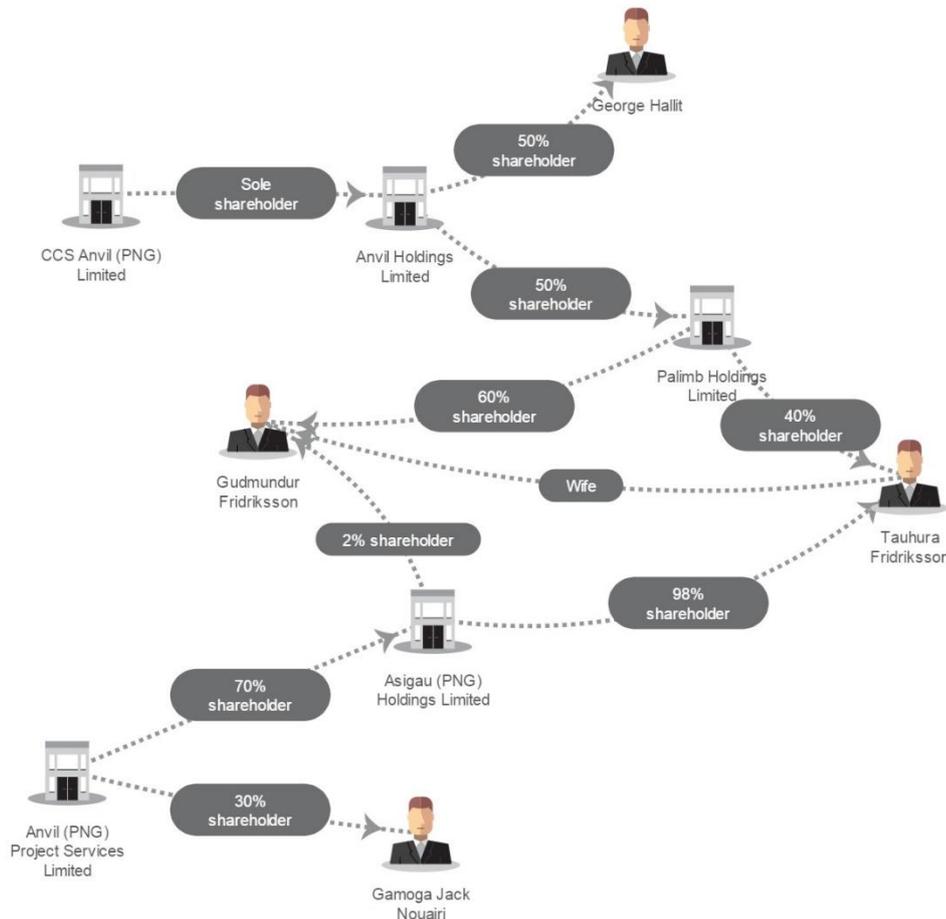
**Declaration and signature** - I consent to being a shareholder in the above proposed company and to taking the class and number of shares specified in this form.

Signature of Proposed Shareholder or Authorised Agent:  Date: 26/3/01

**Image 1:** Form 4, Consent of shareholder of proposed company, Anvil (PNG) Project Services Limited, 26 March 2001 (see Appendix D).

recently known as Anvil Project Services (PNG) Ltd which had been operating in PNG for about 10 years’ (CCS Anvil 2003) (note: Anvil Project Services (PNG) Limited was only registered in Papua New Guinea during 2001).

Asigau (PNG) Holdings Limited was incorporated on 14 June 1996, its registered address at the time was Ram Business Consultants, ADF House. It ceased operating in 2009. The company was owned by Gudmundur Fridriksson (2%), whose registered address was 45 Ventnor Avenue, West Perth, Australia, in addition to his wife Tauhura Asigau Fridriksson (98%), from Tubuseria village, Central Province (see Appendix F).



**Image 2:** The ownership structure of CCS Anvil (PNG) Limited and Anvil (PNG) Project Services Limited, source Investment Promotion Authority.<sup>10</sup>

These critical arrangements were excluded from the ITFS investigation, despite claims that an ‘abundance of materials’ had been analysed (ITFS 2014: 5).

The additional exclusion of Paga Hill Land Holding Company Limited from the investigation meant other important facts and relations were omitted from the assessment. The company extract held by the Investment Promotion Authority, which was sent to ITFS on 19 October 2012 states that Paga Hill Land Holding Company Limited (see Appendix G), was active between 1996 and 2009, during which time it was jointly owned by three actors:

<sup>10</sup> This network model was constructed using Visual Investigative Scenarios, a free data-visualisation tool available online: <https://vis.occrp.org/>

- Rex Paki
- Felix Leyagon
- Fidelity Management Pty Ltd.

Fidelity Management Pty Ltd is an Australian holding company that shares the registered address used by Mr Fridriksson for his interest in Asigau (PNG) Holdings Limited, i.e. 45 Ventnor Avenue, West Perth Australia.<sup>11</sup> The company extract also states that the Directors of Paga Hill Land Holding Company Limited were Mr Rex Paki and Mr Gudmundur Fridriksson. According to Lands Department records, Mr Paki and Mr Fridriksson were involved in a major real estate venture (via the Paga Hill Land Holding Company), which was subsequently investigated by the Public Accounts Committee (2007) (see below).

During this period, Mr Rex Paki was also the principal, joint-owner and Director of Ram Business Consultants Limited. Ram Business Consultants Limited has multiple links with Mr Fridriksson:

- 1) Between 1996 and 2001 the registered address of a company Mr Fridriksson owned with his wife, Asigau (PNG) Holdings Limited, was Ram Business Consultants' office in Port Moresby.
- 2) The Auditor General's Office special investigation report states: 'Mr G Fridriksson ... resigned from RAM Business Consultants shortly before May 2000 and along with several other expatriates formed Anvil Project Services in both Australia and PNG' (Auditor General's Office 2005: 53).

These connections are an important part of the factual landscape. Like Anvil (PNG) Project Services Limited, Ram Business Consultants featured heavily during the inquiry into the Office of the Public Curator.<sup>12</sup> According to reports tendered following this inquiry, the Public Curator's Office contracted Ram Business Consultants to provide a range of professional services during December 1998, the arrangement was cancelled on 12 May 2000. By then Ram Business Consultants had been paid K1,561,062. The Auditor General's Office argues that the appointment was made in contravention of sections 39 and 40 of the *Public Finances (Management) Act* 1995. Their special investigation also notes, 'there was no formal contract that specified the actual engagement and to provide a basis for payment. Invoices received from RAM did not refer to any contracted deliverable, or provide a basis for certification or acquittal of expenditure' (Auditor General's Office 2005: 45).<sup>13</sup>

---

<sup>11</sup> No registered address for Fidelity Management Pty Ltd is stated on the Paga Hill Land Holding Company Limited extract, however, it is stated in the Paga Hill Development Company (PNG) Limited registration documents, see Appendix H.

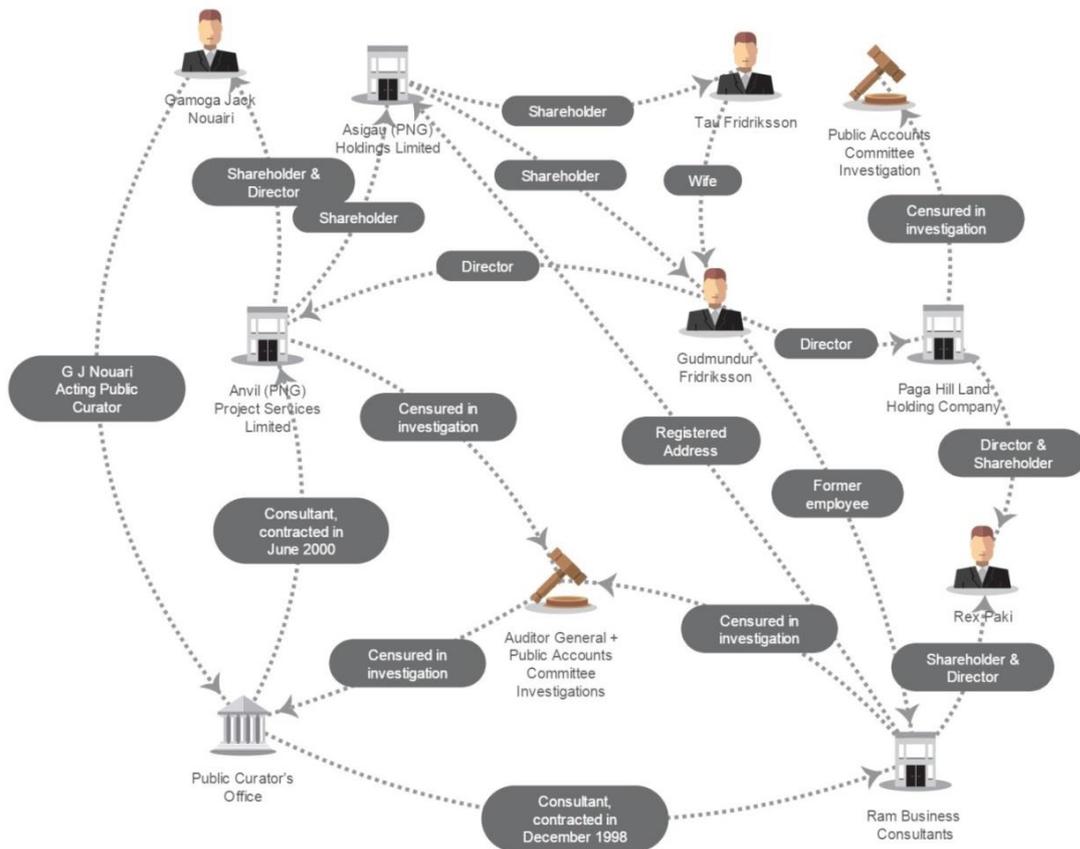
<sup>12</sup> It should be noted, that in addition to the Public Curator investigation, Ram Business Consultants was reprimanded by the Commission of Inquiry into the National Provident Fund, and the Commission of Inquiry into the Department of Finance.

<sup>13</sup> This type of commercial behaviour by Ram Business Consultants was strongly criticised by the National Court in *Motor Vehicles Insurance Ltd v Paki* [2006] PGNC 130; N3212 (25 May 2006) and the Supreme Court in *Paki v Motor Vehicle Insurance Ltd* [2010] PGSC 2; SC1015 (9 February 2010). In the latter case Salika DCJ, Gabi J and Hartshorn J observed: 'It is clear to us that the appellant [Rex Paki] was attempting to avoid giving discovery;

On the following page the Auditor General (2005: 46) continues:

Of particular concern must be that after eighteen months of paying for services of RAM the only result that could be reported to the Public Curator was a small amount of computer equipment. In addition, records that had been under the control of RAM staff have still not been located. Despite recommendations to do so, there has been no attempt to seek redress or take recovery action against RAM.

According to the Auditor General, shortly after Mr Fridriksson left Ram Business Consultants and set up Anvil (PNG) Project Services Limited, the latter company was contracted 'to audit the work undertaken by previous consultants [including Ram Business Consultants], review the current situation of the Public Curator's Office, develop a project plan for the future and implement the plan' (Auditor General's Office 2005: 53).



**Image 3:** The network featured in the inquiries into the Office of the Public Curator and Department of Lands and Physical Planning, source: Auditor General's Office (2005), Public Accounts Committee (2006 and 2007) and Investment Promotion Authority company registry database.

the refusal was repeated, chronic and designed to conceal the true state of affairs. He was evasive and dishonest. He gave different reasons for not producing the invoices. He said copies of the invoices were available for inspection at Namaliu & David Lawyers, that the originals were in archives at Korobosea, that the copies on his computer have been lost because the computer crashed, that copies have been misplaced and he needed time to locate them, that copies were available at MVIL or at the offices of Mr. Kerenga Kua, a lawyer ... We are of the view that the conduct of the appellant was improper, unreasonable and blameworthy'.

The connection between Rex Paki, Ram Business Consultants and Gudmundur Fridriksson were pointed to in the original request sent to ITFS on 19 October 2012. However, ITFS (2014: 3) justify excluding numerous actors including Ram and Paki, arguing: 'At the centre of the allegations are an expatriate man named Gudmundur Fridriksson and two entities [CCS] Anvil and Page Hill Development Company Ltd. Other information provided to ITFS concerning other persons and entities were not supported by evidentiary materials hence were not pursued'. Given that Rex Paki and Ram Business Consultants were censured in the same reports prompting ITFS' investigation into Fridriksson and associated companies, its argument here lacks consistency.

However, this was not the only important network excluded from the ITFS investigation. ITFS were also alerted to the fact that the real-estate development at Paga Hill, censured in a separate Public Accounts Committee inquiry (2007), was originally championed by Michael Nali when Minister for Civil Aviation, Culture and Tourism (see Appendix I). On 27 February 1997 Michael Nali offered to endorse the real-estate venture as a project of national significance: 'It give [sic] me pleasure to confirm my full support to your proposed comprehensive mixed use development of Paga Hill ... I am prepared to sponsor a submission to the National Executive Council next month to have the project endorsed as a property of National Significance. It deserves the full support of Papua New Guinea'.

The International State Crime Initiative advised ITFS, with supporting company records, that Michael Nali subsequently obtained a 9% stake in Paga Hill Development Company on 16 December 2011 (see Appendix K), the state leaseholder over Paga Hill.<sup>14</sup> Nonetheless, this network was omitted from the ITFS investigation.

As a result of numerous inexplicable omissions, ITFS failed to investigate critical actors, relations and transactions that would have made their case assessment a more authoritative statement of fact. The singular focus on Mr Fridriksson and CCS Anvil (PNG) Limited is difficult to understand given the request submitted by the International State Crime Initiative during October 2012 pointed to a larger network of individuals and organisations referenced in the Public Accounts Committee and Auditor General inquiries. This adds weight to the hypothesis that ITFS' investigation was prompted and framed by the 'complaint' Mr Fridriksson tendered on 9 June 2014, rather than the International State Crime Initiative's original submission. Why ITFS staff elected to place so much weight on Mr Fridriksson's correspondence is a matter which needs further investigation.

#### 4. Flaws in ITFS' fact-finding methodology

When assessing the allegations made by the Public Accounts Committee and Auditor General's Office against Mr Fridriksson and associated companies, ITFS (2014: 5) claims it

---

<sup>14</sup> Through the company Kwadi Inn, which Nali fully owns (see Appendix J).

relied on an ‘abundance of materials’. This includes evidence supplied by the Public Curator, Mr Fridriksson, in addition to documents acquired from the national court registry (ITFS 2014: 5). However, as should be apparent from the previous section, crucial lines of inquiry were not pursued. Part of the explanation for these factual omissions may be found in ITFS’ investigative methodology.

Business registries, in particular, are regarded as a crucial resource for any agency or organisation conducting forensic investigation into allegations of corruption or corporate impropriety (Mattera 2014; Radu N.D.). ITFS failed to judiciously consult the business registry administered by the Investment Promotion Authority, despite the fact it is digitised freely available online, and expansive in scope.<sup>15</sup>

We have already demonstrated how a basic search of the business registry would have evidence direct links between:

- Anvil (PNG) Project Services Limited, Gudmundur Fridriksson and Gamoga Jack Nouairi; and
- Gudmundur Fridriksson, Rex Paki, Ram Business Consultants Limited and the Paga Hill Land Holding Company Limited.

However, it is important that we now point to other key links ITFS missed, as a result of its failure to observe basic investigative protocol.

During its inquiry, the Public Accounts Committee – with support from the Auditor General’s Office – scrutinised the procurement of consultants providing services to the Office of Public Curator. In total five companies were identified as providing such services between 2000 and 2005, including:

1. Ram Business Consultants Limited,
2. LJ Hooker Real Estate Limited,
3. Anvil (PNG) Project Services Limited,
4. Jac’o Business Consultants Limited; and
5. Jerry Kama & Co Lawyers.

Had ITFS judiciously examined company records held by the Investment Promotion Authority they would have been aware of direct links between Mr Fridriksson and:

- Ram Business Consultants Limited,
- Jac’o Business Consultants Limited, and
- Jerry Kama & Co Lawyers.

---

<sup>15</sup> Given that business registries are very frequently protected by paywalls, and limited in scope, the Investment Promotion Authority’s database is an example of best-practice commercial transparency.

In other words three out of the four other companies contracted by the Public Curator's Office.

For example, between 2000 and 2005 Jac'o Business Consultants Limited was responsible for submitting records to the Investment Promotion Authority, for a range of companies in which Mr Fridriksson had an interest. To that end, their company stamp appears on Anvil (PNG) Project Services Limited documents exhibited in Appendix D and Appendix E. It also submitted company records for CCS Anvil (PNG) Limited, Anvil Holdings Limited, and Palimb Holdings Limited (see Appendix L), which are companies that Mr Fridriksson had a direct interest in whether as Director, joint-owner, or both.

After considering submissions from the Public Curator, Jac'o Business Consultant Limited and the Auditor General's Office, the Public Accounts Committee (2006: 76): 'There was no evidence that any formal procurement had ever taken place [for Jac'o Business Consultants Limited], nor was there any evidence of any formal contract. The Public Curator provided to the Auditor General an Appointment of Agent retaining JACO and one Jack Naiyep to be an Agent under Section 4 of the Public Curator Act'. As a result, the Public Accounts Committee concludes:

The Public Curator failed to comply with Sections 39 and 40 of the Public Finances (Management) Act in the appointment of JACO as an Agent and the payment of large amounts to JACO ... Payment to JACO was made from Estate funds ... The Committee finds that this use of Trust funds to pay for purely operational matters is unlawful ... The Auditor General finds ( and the Committee accepts the finding) that the quality of work was not acceptable and of little use to the Public Curator ... This Committee is concerned that despite these serious flaws and non-performance, the Public Curator continued to pay JACO – in particular an amount of K825,000 paid on the 23rd March 2005. (Public Accounts Committee 2006: 76-7)

Another company cited during the inquiry into the Office of the Public Curator was Jerry Kama lawyers. The Auditor General's Office found in its special investigation that K112,105 was paid to Jerry Kama lawyers for professional fees relating to a National Executive Council submission and other legal advice. According to the Auditor General (2005: 29), this payment was made out of an Estate Arrears Trust Settlement Account, set up for the specific purpose of repaying accumulated arrears in estates resulting from 'neglect, mismanagement and misappropriation' – however, no wrongdoing is imputed to Jerry Kama Lawyers in this respect. Nonetheless, it is relevant to note that Jerry Kama Lawyers company stamp appears on a mortgage document signed by Gudmundur Fridriksson on behalf of CCS Anvil (PNG) Limited (see Appendix M). This is another connection, which ITFS failed to pursue when assessing the facts.

Furthermore, had ITFS broadened its fact-finding to include Commission of Inquiry records and other reports issued by the Auditor General's Office and Public Accounts Committee, potentially new and important lines of inquiry would have been opened up (see Table 1). The citation of Mr Fridriksson, Anvil (PNG) Project Services Limited and CCS Anvil (PNG) Limited in these reports and inquiry transcripts, were widely discussed in Papua New Guinea's active social media, which ITFS claims to have used as a source of information; the veracity of these references could have been easily checked especially in the case of the Commission of Inquiry into the Department of Finance, whose reports and transcripts are available online (see [www.coi.gov.pg/finance.html](http://www.coi.gov.pg/finance.html)).<sup>16</sup> It is important to underline this point, as it is the latter Commission of Inquiry in particular that includes serious allegations that centre on a transaction involving CCS Anvil (PNG) Limited,<sup>17</sup> Mr Gamoga Jack Nouairi, and Jerry Kama, which were detailed during the inquiry hearing (see Appendix N). These are the same actors which featured in the inquiry into the Office of the Public Curator. Had ITFS triangulated this evidence, and conducted further inquiries, its assessment would have been significantly more robust.

However, we find ITFS failed to judiciously implement basic fact-finding measures and apply analytical techniques (triangulation), essential to a rigorous investigation.

The International State Crime Initiative has had the benefit of reading ITFS' 2012 report on the Department of National Planning and Monitoring.<sup>18</sup> In this report ITFS investigates cases of potential corruption. In order to substantiate allegations, ITFS consults records held by the Investment Promotion Authority, in order to uncover:

- The owners of companies illegally awarded contracts.
- The Directors of companies illegally awarded contracts.
- The address of companies illegally awarded contracts.

This information is then employed by ITFS to determine whether civil servants or politicians had a material interest in an illegal contract whose award/enactment they had potential influence over.

It is apparent, therefore, that ITFS is aware of the company records held by the Investment Promotion Authority and has employed them previously to build case files for prosecution. Furthermore, ITFS is also aware of the importance of conducting network analyses of actors involved in suspect transactions to support the authoritativeness of its conclusions. Again it is inexplicable why in this instance ITFS has failed to replicate its own practice and procedure in the case assessment.

---

<sup>16</sup> This is another example of commendable efforts to enhance transparency through increasing the public circulation of anti-corruption reporting.

<sup>17</sup> Mr Fridriksson was a Director and part-owner, ultimately through Palimb Holdings Limited, of CCS Anvil (PNG) Limited

<sup>18</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

It would appear reasonable to conclude that ITFS has ignored its own investigative methods. Further investigation is urgently required to determine the cause of this failure.

## 5. Failure to properly read evidence

Compounding the errors made during the fact-finding process, which have already been noted, ITFS also applied a flawed methodology when weighing the evidence before it. Our analysis of the case assessment uncovered evidence which strongly suggests the reports published by the Auditor General's Office and Public Accounts Committee were not properly read by ITFS.

For example, ITFS claims that the Public Accounts Committee inquiry failed to elicit explanations from parties whose interests would be effected by the findings, including the Public Curator and CCS Anvil (PNG) Limited.<sup>19</sup> This denial of natural justice, ITFS contends, led the inquiry into serious error, an assertion that constitutes one of the principle bases upon which the inquiry allegations are dismissed by ITFS as 'tainted'.

For example, on page five of its assessment ITFS observes:

At the outset, it is noted that during the AGO and the subsequent PAC hearings, the DJAG [Department of Justice and Attorney-General], Public Curators Office and CCS Anvil were not accorded ample opportunities to present their reasons for their respective conducts. That is evidenced by the documents available to ITFS which reveal that the DJAG, Public Curator and CCS Anvil furnished their explanations as a reaction to the findings but were too late to cause any changes to the recorded findings of the AGO and PAC. (ITFS 2014: 5)

ITFS then state: 'Why DJAG, Public Curator and CCS Anvil were not afforded that opportunity to respond prior to the publication of the reports is something we are unable to establish at this stage' (ITFS 2014: 6).

As a result of this contention, ITFS (2014: 9) conclude their case assessment by alleging that the inquiry into the Office of the Public Curator was 'tainted' in such a significant way as to disqualify any attempt at further prosecution. ITFS observes:

Procedurally, we find that the allegations originate from two reports that are tainted with breach of procedural fairness. Common law principles of natural justice, now affirmed in section 59 of the Papua New Guinea Constitution apply to inquisitorial proceedings including inquiries and investigations that may affect a person's rights, expectations or interests. An investigation founded on the two

---

<sup>19</sup> Although, as we previously noted, CCS Anvil (PNG) Limited was a separate entity to Anvil (PNG) Project Services Limited

tainted reports is challengeable in Court thus it may prove to be a fruitless exercise to proceed further on this case. (ITFS 2014: 9)

ITFS' representation of the inquiry is so manifestly incorrect, it can only be explained in three ways, either:

- a) ITFS has intentionally misrepresented the actual procedure which was observed during the Public Accounts Committee inquiry;
- b) ITFS has failed to scrutinise the inquiry report, and is thus unaware of the serious errors contained in its conclusion; or
- c) ITFS has relied on flawed second hand accounts of the inquiry reports solicited to it by 'interested parties', and has failed to consult the original sources.

Contrary to ITFS claims, the Public Accounts Committee provided a clear summary outlining the origins of the inquiry, and the procedures it observed, including the opportunities interested parties were afforded to have their explanations considered by the committee before their findings were handed down. The Public Accounts Committee (2006: 16) observes it had 'received a large number of very serious allegations of misconduct levelled against the Office of the Public Curator and its staff'. It continues by noting that successive audit reports produced by the Auditor General were 'unable to determine the accuracy of virtually any information recorded in the [Public Curator's] financial statements due to the chaotic state of the Office of the Public Curator' (Public Accounts Committee 2006: 16).

Owing to these concerns the Public Accounts Committee (2006: 11) initiated an inquiry into the Office of the Public Curator which began on 13 April 2005. During this first sitting on 13 April, the Auditor General was asked to conduct a special investigation into the Office of the Public Curator and tender its findings to the committee for consideration; a request that was publicised in the national newspapers at the time (see Wakus 2005). A special investigation report by the Auditor General's Office was tendered to the Public Accounts Committee on 1 November 2005 (Public Accounts Committee 2006: 12). The inquiry concluded on 1 March 2006.

On page 17 of its report the Public Accounts Committee (2006) explicitly sets out the procedure observed during the inquiry period:

At all times, the Committee has taken great care to enable all witnesses to make full and complete representations and answers to any matter before the Committee – in particular those matters about which the Committee may make adverse findings against individuals or companies. The Committee received and considered submissions from JACO Ltd., L.J. Hooker Ltd and Anvil (PNG) Project Services. These documents are presented in Volume 2 of this Report. The Public Accounts Committee has given careful consideration to all responses and to all evidence given before the Committee. All evidence was taken on oath and full

and due Inquiry was made of all relevant State Agencies where the Committee considered those Inquiries to be necessary.

Furthermore, schedule one of the Public Accounts Committee report reveals a range of senior public servants appeared as witnesses before the inquiry including the Public Curator, and the Acting Attorney General. Schedule three lists written submissions considered during the inquiry, including one submitted by Anvil (PNG) Project Services on 23 November 2005 and a formal response from the Public Curator.

Accordingly, it is reasonable to conclude in light of the explicit references cited above that ITFS failed to properly read the report issued by an inquiry it subsequently deemed 'tainted'. We suggest that this error was caused by ITFS' decision to accept second hand readings of the inquiry reports submitted to it by parties censured in the inquiry, without consulting the originals. Our conclusion in this respect is supported by further evidence presented in section seven.

## 6. Serious errors of law

In the assessment, ITFS considers whether the consultancy arrangement between Anvil (PNG) Project Services Limited (wrongly named CCS Anvil (PNG) Limited by ITFS) and the Public Curator's Office contravened the *Public Finances (Management) Act* 1995. ITFS (2014: 6) notes:

Upon careful consideration of the AGO and PAC reports, it is clear that those two reports were premised on a belief that a contractual agreement was reached between CCS Anvil [sic - Anvil (PNG) Project Services Limited] and the Corporate Executive Team of DJAG [Department for Justice and the Attorney General] and subsequently with the Public Curator. The report states that the DJAG CET failed to tender the works as the contractual value was above the threshold stipulated under the PFMA [*Public Finances (Management) Act* 1995]. The report concluded that the arrangement was illegal. It is noted that attempts by the Public Curators Office and DJAG CET to obtain a Certificate of Inexpediency (COI) from the Central Supplies and Tenders Board (CSTB) were unsuccessful.

ITFS (2014: 6) goes on to observe:

Evidentiary documents obtained from DJAG, Public Curators Office and CCS Anvil reveal that after it occurred that CSTB would not grant the COI, CCS Anvil's [sic - Anvil (PNG) Project Services Limited] engagement was metamorphosed into an agency arrangement pursuant to section 4 of the Public Curator's Act. The defence advanced by the Public Curator, the DJAG and CCS Anvil is that the services of CCS Anvil were procured under section 4 of the Public Curators Act.

The then Attorney General, Mr Fred Tomo acknowledged and accepted that arrangement as legally proper. It is understood that those explanations were provided to the AGO and PAC after their reports were out.<sup>20</sup>

Section 4(1) of the *Public Curator Act 1951*, referred to here by ITFS, permits the Public Curator to 'appoint a person to act as his agent *for the purpose of the administration of an estate*' (italics added). Accordingly, the Act only empowers the Public Curator to appoint agents for the administration of individual estates; the fees and commissions which can be charged for this service are set out in the Act itself, and the *Public Curator Regulations 1952*.

The *Public Curator Act 1951* **does not** allow the Public Curator to expropriate estate assets in order to pay for general consultancy services, unrelated to the administration of an individual estate. Such services must be paid for out of public finances, drawing on budgetary allocations, and it must be done in conformance with the *Public Finances (Management) Act 1995* and the *Financial Instructions*.

Indeed, had ITFS carefully read the reports tendered by the Public Accounts Committee and the Auditor General's Office it would have been aware of two things:

- a) Both agencies had considered the argument that the Office of the Public Curator may circumvent the *Public Finances (Management) Act 1995*, by paying for consultancy arrangements out of estate funds, using powers enumerated within the *Public Curator Act 1951*.
- b) Both agencies rejected this argument as fundamentally flawed; thus the Public Accounts Committee referred the relevant transactions to the Royal Papua New Guinea Constabulary Fraud and Anti-Corruption Squad for investigation.

Detailed consideration, in particular, was given to the procurement of Anvil (PNG) Project Services Limited. The Auditor General's Office (2005: 23) observes:

Rather than call tenders on 12 June 2000 the Department for Justice and Attorney General's Corporate Executive Team (CET) approved the engagement of Anvil. The proposed fee for the initial three months was AU\$480,000 plus estimated disbursements of AU\$110,000. The engagement was to audit the work undertaken by previous consultants, review the current situation of the Public Curator's Office, develop a project plan for the future and implement the plan.

---

<sup>20</sup> We note with concern that ITFS would uncritically accept advice tendered by the Attorney General during this period, in light of the systemic failures identified within the Department of Justice and Attorney General by the Commission of Inquiry into the Department of Finance. Having examined the work of the latter agency between 2000-2006 the Commission of Inquiry concluded: 'Lack of competent and effective professional leadership throughout the period has ... been a significant factor in the failure of the Department to perform ... error and breach of duty has been able to flourish without restraint' (Davani et al 2009: 32).

The Auditor General's Office (2005: 54) continues:

Subsequently the Public Curator applied to the Central Supply and Tender Board (CSTB) for a certificate of inexpediency but was rejected on the ground that the engagement had not been advertised. At the time the CSTB were not advised that an agreement had been reached with Anvil that CET had approved their engagement and that Anvil were already working on the task. The Public Curator called restricted tenders for the second stage of the project, evaluated the tenders and advised the CSTB that Anvil was the successful tenderer. The CSTB rejected the process as it was not an open tender process. Anvil continued to work for the Public Curator. The AGO understands that the Public Curator entered into a further six month contract with Anvil on 30 November 2000. This process did not meet the procurement requirements set down by the Public Finances (Management) Act. There was a further request on 14 May 2001 for a certificate of inexpediency for the appointment of Anvil to complete its work and to undertake training. Again there was no approval by the CSTB and despite this the Public Curator ... engaged Anvil to undertake the work up until 7 June 2001, total payments to Anvil for work relating to the corporatisation project was K1,210,116.

The Auditor General's Office (2005: 54) then catalogues further work conducted by Anvil Project Services (PNG) Limited:

From October 2001 through October 2002, Anvil undertook a range of additional engagements for the Public Curator for which the Public Curator did not meet required procurement processes. These engagements totalled K1,720,000 and included: - Data collation and preparation of business case against POSF - K250,000; Upgrade of software for Estate Tracker, creation of database and data verification - K300,000; Assistance with preparation of financial statements for Public Curator's Office - K500,000; Analysis and identification of overpayment against accounts - K195,000; Analysis of estate receipts against banking - K300,000; and Administration support services - K175,000.

The Auditor General's Office (2005: 55) concludes: 'Payments as an Agent of the Public Curator and for delivery of consultancy services amounted to K5,120,464. These *payments have all been made using estate monies*' (italics added).

It is apparent from the above summary – and further confirmed on CCS Anvil (PNG) Limited's<sup>21</sup> website – that the payments made from estate monies, covered consultancy services acquired for the general of purposes reforming the institutional structures of the

---

<sup>21</sup> Accessed using the 'Wayback Machine' internet archive, see: <http://web.archive.org/web/20071005121121/http://www.ccsanvil.com.pg/>

Office of the Public Curator's Office. This service falls outside the administration of individual estates, to which section four of the *Public Curator Act* 1951 applies.

Nonetheless, because ITFS fundamentally misrepresents the relevant law in this respect, it does not consider in its assessment whether these payments conformed with the *Public Finances (Management) Act* 1995. Operating under this flawed premise, ITFS also maintains that the inquiry into the Office of the Public Curator failed to address the question of whether consultancy services could be procured using powers enumerated in the *Public Curator Act* 1951.<sup>22</sup> Of course, both the Auditor General's Office and the Public Accounts Committee **did address this question**.

For example, in its special investigation report, the Auditor General's Office (2005: 51) states:

I note that the Attorney General advised the Public Curator on 4 September 2001 that his engagement of Jac'o was in breach of the Public Finances (Management) Act. [23] The Public Curator responded that the appointment was as an Agent under Section 4 of the Public Curator Act, and therefore he was not subject to the requirements of the Public Finances (Management) Act. The contention by the Public Curator that Section 4 of the Public Curator Act allows him to appoint Agents does not allow him to ignore his legal obligations under the Public Finances (Management) Act, to follow procurement processes that ensure fairness, transparency, value for money and contractual conditions over payments and delivery of services. I also note that Section 4 of the Public Curator Act provides for the Public Curator to appoint an agent for the purpose of the administration of an estate, while it provides the authority for the delegation of the Public Curators powers, it does not provide for the procurement process. The terms of reference for the Appointment of Agent, (above) prepared on 30 November 2001, well after Jaco commenced the engagement with the Public Curator's Office, do not relate in any way to the administration of estates but to the establishment of accounts and records and preparation of financial statements. This is an operational responsibility of the Public Curator's Office and a requirement in the normal course of business of any State agency.

Accordingly, the Auditor General's Office concludes that this was a consultancy arrangement designed to support the general operations of the Public Curator's Office, which must be paid for out of state budgetary allocations, and procured in conformance with the *Public*

---

<sup>22</sup> Even were we to accept ITFS' contention that the Public Curator could expropriate estate funds to pay for consultancy services, nevertheless, as a public institution it would still have to administer the expenditure of these funds in conformance with the *Public Finances (Management) Act* 1995.

<sup>23</sup> On p.6 of its assessment ITFS contend that the opposite advice was tendered by the Attorney General in 2005. ITFS appears unaware of the conflicting evidence

*Finances (Management) Act 1995*. The Public Accounts Committee (2006: 76) concurs with the Auditor General's opinion:

The Committee finds that the Public Curator has wrongly used the power of appointment of an Agent. Section 4 of the Public Curator Act permits the appointment of an Agent ... "for the purpose of the administration of an estate" and for the delegation of powers of the Public Curator. The appointment of JACO was not an agency appointment. That company was retained to perform purely operational matters and not the administration of an Estate. The Committee finds that the appointment and subsequent execution of an Appointment of Agent was unlawful in that it was a breach of the *Public Finances (Management) Act*.

The inquiries findings with respect to Anvil (PNG) Project Services Limited, are grounded on this legal premise.

It is difficult to understand how ITFS could have overlooked these passages, or how it could err so significantly in its interpretation of the *Public Curator Act 1951*. Furthermore, it is difficult to understand why ITFS was not put on guard by certain uncontested facts. Specifically, as ITFS states, the Office of the Public Curator asked the Central Supply and Tender Board to retrospectively approve the procurement of Anvil (PNG) Project Services by issuing a certificate of inexpediency. Such a request is in clear violation of the *Public Finances (Management) Act 1995*.

Section 40 of the Act states that 'tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount', which was K100,000. Failure to observe this public tender requirement renders a contract void. Deputy Chief Justice Kapi explains:

The problem of corruption and misuse of public funds have become notorious and widespread. To quote the words of Connolly J in *Hunter Bros v Brisbane City Council* (supra) at page 339 this provisions [sic] are "designed to ensure regularity and openness in the purchase of goods and services. Its provisions are a matter of public law and there can be no injustice in holding not only the Council but prospective vendors to a strict observance of its requirements." As a matter of construction I conclude that s 40 (1) [of the *Public Finances (Management) Act 1995*] prohibits the class of contract which do not go through the tender process.

In the reports tendered by the Auditor General's Office and the Public Accounts Committee it is noted that no public tender process took place. As a result, the Office of the Public Curator attempted to *retrospectively* confirm its consultancy arrangement with Anvil (PNG) Project Services Limited by asking the Central Supply and Tender Board to issue a certificate

of inexpediency. A certificate of inexpediency allows public bodies to forgo the section 40 public tendering requirement in certain, circumscribed circumstances. However, as Justice Davani made clear certificates of inexpediency 'cannot and should not be issued, to retrospectively cover a contract already executed' (see *Robmos Ltd v Punangi* [2008] PGNC 70; N3372). Division 4 of Part 13 of the *Financial Instructions* sets out the limited conditions in which certificates of inexpediency can currently be issued (see Table 2).

#### **DIVISION 4 - CERTIFICATE OF INEXPEDIENCY**

10. Section 40, (3), (b) of the Public Finances Management Act provides Supply and Tenders Boards with the powers to "certify that the inviting of tenders is impracticable or inexpedient".

11. A Supply and Tenders Board must ensure that there is a valid approved APC for the procurement before approving a Certificate of Inexpediency.

12. A "Certificate of Inexpediency" must clearly identify the:

- a. Supplier, and
- b. Department / agency requesting the certificate, and
- c. name and signature of the Departmental/agency head requesting the certificate, and
- d. Goods, works or services being procured, and
- e. Value of the procurement, and
- f. Reason for the certificate to be issued, and
- g. Date on which the Certificate is awarded, and
- h. Name of those Board members issuing the Certificate, and
- i. Name and signature of the Chairman of the Supply and Tenders Board issuing the certificate.

B. A "Certificate of Inexpediency" cannot be issued to retrospectively to cover a contract already executed.

14. Certificates of Inexpediency will only be issued in situations where a declared:

- a. Natural Disaster, or
- b. Defence Emergency, or
- c. Health Emergency, or
- d. Situation of Civil Unrest exists, and procurement processes must be undertaken urgently, to remedy the situation.

Supply and Tenders Boards must be prepared to hold extraordinary meeting(s) where these declared situations have arisen, in order to expedite procurements.

In the past, "Certificate of Inexpediency" have enabled Departments and agencies to avoid the public tendering process. Certificates have generally been issued on the basis that:

- a. There is only one suitable supplier, or
- b. The Department has "run out of time" to conduct a proper tendering process

Closer examination of the former justification generally means that the specification for the goods or services is biased in some way. The second justification (lack of forward planning by departments) is no longer acceptable. Departments must now be planning their major procurements in a timely manner.

**Table 2:** Financial Instructions [online], available at:

[http://www.finance.gov.pg/Fin\\_Framework\\_Legislations/FMM%20and%20PFMA/FMM.htm](http://www.finance.gov.pg/Fin_Framework_Legislations/FMM%20and%20PFMA/FMM.htm)

Given the widespread abuse of certificate of inexpediencies by government agencies, which is noted both in the *Financial Instructions*, and in a range of National and Supreme Court decisions, we would expect ITFS to have inquired into these repeated attempts to procure the services of Anvil (PNG) Project Services Limited, through the *retrospective use of certificates of inexpediency* (which were rightly rejected by the Central Supply and Tender Board).

Operating under a number of problematic legal assumptions, ITFS (2014) concludes:

The divergent views [on section 4 of the Public Curator Act] give rise to a legal issue and that is: - whether the fees paid to the CCS Anvil [sic – Anvil (PNG) Project Services Limited] were public funds for the purposes of invoking the PFMA. The AGO and PAC reports do not address that issue [Note: Both reports *do* specifically address this issue]. The AGO and PAC reports were founded on the understanding that the funds paid were public funds and should have therefore been subjected to the PFMA. Attorney General Tomo and Public Curators Office on the other hand asserted that the services undertaken by CCS Anvil as an agent under Section 4 of the Public Curators Act are “estate work” and are therefore not subject to the PFMA. The administration costs of administering the estates are met by the Estates and not the State. In other words, the contrarian view is that the payments would have been subjected to the PFMA if the payments were drawn from funds legally appropriated in the

National Budget for the Public Curators Office operations. ITFS does not intend to offer its opinion on the legal issue suffice to state that it is an issue that casts doubt on the success of the investigation.

The flawed logic of this statement needs to be underlined. ITFS appear to suggest that the decision by the Office of the Public Curator to pay Anvil Project Services (PNG) Limited for services relating to the office's restructuring, using *private* moneys held in trust by the Public Curator – in seeming violation of the *Public Curator Act* 1951 – in a conscious attempt to circumvent the requirements of the *Public Finances (Management) Act* 1995, is a matter ITFS feels does not warrants an opinion, and which actually casts doubt on the potential success of any further investigation. We expect such transactions would be compelling grounds *for* further investigation by ITFS. ITFS' conclusion also stands in marked contrast to the opinion of the Public Accounts Committee (2006: 80) which concludes 'that the retainer of Anvil by the Public Curator was riddled by illegalities and an unlawful waste of Estate monies'.

ITFS' flawed understanding of the law is difficult to explain given that it has a demonstrated grasp of public procurement law and its significance for prosecuting cases under the *Criminal Code Act* 1974. For example, in a report tendered to the Prime Minister of Papua New Guinea in 2012, ITFS observe:

The mandatory requirements of the PFMA [*Public Finances (Management) Act* 1995] in terms of the expenditure of public funds cannot be replaced or ignored ... The requirement for public tender is compulsory except as provided by Section 40(3) of the PFMA ... As state hereinabove, a COI [Certificate of Inexpediency] is one of the [section 40(3)] exceptions to the compulsory requirement for public tender ... Certificate of Inexpediency cannot and should not be issued, to retrospectively cover a contract already executed ... The rationale behind public tender is to prevent fraud, waste, corruption or local protectionism.<sup>24</sup>

Added to that, ITFS would be aware from past misappropriation cases it has been involved in prosecuting, that breaches of the *Public Finances (Management) Act* 1995, are a critical part of the factual matrix used to evidence criminal liability under the section 383A of the *Criminal Code Act* 1974 (see *State v Tiensten* [2013] PGNC 234; N5422). Critically, to establish criminal liability it must be shown that the misappropriation of property belonging to another was done dishonestly. The Courts have employed a blended test which examines whether the actors involved, given their education and intelligence, would have known what they were doing was dishonest (*State v Tiensten* [2013] PGNC 234; N5422). In lieu of direct evidence, such as a confession, the courts have accepted that flagrant breaches of the

---

<sup>24</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

*Public Finances (Management) Act 1995*, which senior officials are presumed to know, helps to evidence the requisite dishonesty (*ibid*).

This rationale was also applied in *State v Veraga* to convict a private actor, involved in the National Provident Fund (NPF) scandal (see *State v Veraga* [2005] PGNC 103; N2849). In this instance, the accused was contracted by senior executives at the NPF and a lawyer, Jimmy Maladina, to submit valuations for two properties. The courts found that the valuation was not procured by the NPF, in conformance with the *Public Finances (Management) Act 1995*. Furthermore, the court also concluded that the valuation was part of a criminal conspiracy to artificially inflate the value of properties. In return for his part in the conspiracy, the defendant was permitted to charge 'exorbitant professional fees'. Justice Sakora observes:

I accept the evidence of both Mr Bai and Mr Mitchell that tenders ought to have been called on the two valuations. As it was, the procedures and processes in place had not been undertaken or complied with so that the Board's attention, information, consideration and final determination on the expenditure of such large sums of money were avoided or evaded. I find that this was no mere inadvertence on the part of the Fund management, more particularly the corporate secretary and the managing director. This was deliberate. The evidence on this demonstrates a pattern of eagerness to "cut corners", keep matters away from the formal official attention and deliberations of the Board, the legitimate legal authority on such matters.

As a result Justice Sakora concludes:

In relation to the charges of misappropriation, the detailed facts once again satisfy me to the necessary degree that the State has discharged its onus, an onerous one at that, of making out the four counts ... The accused did not earn the K60,300.00, nor did he earn the K175,000.00 fees. He obtained these funds by deceit as defined. The three constituent elements of the offence of misappropriation have been satisfied. The element of dishonesty is ably demonstrated by the facts surrounding the secrecy with which the two officers of the Fund performed their respective parts [procuring the valuation. It is sufficiently demonstrated by the assessing of exorbitantly high values on the two properties and charge excessive fees that had no justification.

This case is widely cited; its difficult to contemplate that ITFS is not familiar with this important precedent given that it has featured in a range of trials ITFS has been involved in (see *State v Mauludu* [2014] PGNC 47: N5566; *State v Tiensten* [2014] PGNC 224: N5563).

In light of ITFS' cogent grasp of the *Public Finances (Management) Act*, and its involvement in successful prosecutions under sections 383A and 407 of the *Criminal Code Act 1974*, it can be reasonably suggested that in its case assessment, ITFS either:

- deliberately misrepresented the relevant law, in order to abort any consideration of the *Criminal Code Act 1974*; or
- With gross negligence, accepted legal arguments submitted to it by parties censured in the Public Accounts Committee inquiry, without any attempt to critically evaluate these justifications.

We contend that this significantly weakened the conclusions of ITFS' case assessment.

In order to robustly substantiate its conclusion, ITFS at the very least would need to clearly consider the following facts in light of the tests set out by the courts for sections 383A and 407 of the *Criminal Code Act 1974*:

- The Central Supply and Tender Board refused on two occasions to issue retrospective certificates of inexpediency for the consultancy arrangement between the Office of the Public Curator and Anvil (PNG) Project Services Limited because the company was procured in violation of the *Public Finances (Management) Act 1995*.
- In order to circumvent the *Public Finances (Management) Act 1995*, the Office of the Public Curator paid for these consultancy services by expropriating private estates administered by the office under the *Public Curator Act 1951*.
- According to the Auditor General's Office and the Public Accounts Committee the payments made to Anvil (PNG) Project Services Limited were excessive.
- The arrangement with Anvil (PNG) Project Services Limited was initiated in June 2000, when the Acting Public Curator was Mr G J Nouari; company records show a Mr Gomoga Jack Nouari had a 30% stake in Anvil (PNG) Project Services Limited.

The failure to apply the relevant tests considerably undermined the authoritative character of ITFS' conclusions.

## 7. Payments made to Anvil (PNG) Project Services Limited

In the case assessment, ITFS rejects a finding by the Auditor General's Office and the Public Accounts Committee that payments to Anvil (PNG) Project Services Limited were excessive. ITFS observes:

The AGO report specified at page 55 that about K5.2 million was paid to CCS Anvil as an Agent of Public Curator and for providing consultancy services. The report states that all those payments were made using estate monies. CCS Anvil undertook the services based on a contractual agreement with DJAG CET and the Public Curator. There is acknowledgement of the work done hence

notwithstanding the legality of the contract(s), CCS Anvil was entitled to payment pursuant to the principles of quantum meruit. (2014: 8)

First of all, it is arguable that the principle of quantum meruit would apply in situations where the work was procured in breach of the *Public Finances (Management) Act 1995*. This certainly appears to be the point of view ITFS tendered to the Prime Minister of Papua New Guinea in 2012: 'National and Supreme Court decisions have made the law trite that a party that contracts with the State is deemed to know the legal processes stipulated under the relevant laws including the PFMA. Consequently, any contract that is executed and performance not in conformance with the law is illegal and unenforceable'.<sup>25</sup>

This issue aside, on page eight of their assessment, ITFS (2014) claims:

Issues were raised in the AGO and PAC reports concerning the total amount paid to CCS Anvil as staggering. The Public Curator argues that certain charge-out rates were fixed against each estate. Whilst it is acknowledged that the amount of K5.2 million is substantial, any calculations should have been based on the terms of the contractual agreement. There is no suggestion in the two reports that the contracts were used as the basis for the computation of the costs. It would have been useful if the two reports judiciously verified the amount paid against the value of the work in order to reach a firm conclusion. That would enable us to ascertain what was actually earned and what was unjustly paid. For instance, at page 55 of the AGO report, it states that CCS Anvil retained 10% of all monies realised by the sale of properties and shares. How much of that was earned by CCS anvil and how much was unjustly withheld?

This again evidences how the serious breakdown in procedure discussed in section five, has led ITFS to distort documents tendered as a result of the Public Accounts Committee inquiry. Contrary to ITFS's suggestion, both reports justify their assertion that the payments were excessive, by pointing to the regulation of fees and commissions in the *Public Curator Act 1951* and the *Public Curator Regulations 1952*.

To that end, on page 36 of its special investigation report, the Auditor General's Office (2005) states: 'The Agency agreement entered into with CCS Anvil [sic] provides for a payment, by the Public Curator, of commission of 10% for all monies realised. This is not consistent with Section 4 of the Public Curator's Act, which provides for commissions to agents of 10% of all monies collected'.<sup>26</sup> The Auditor General's Office is underlining here the significant difference between charging a 10% commission on all monies realised from the

---

<sup>25</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

<sup>26</sup> Section 4(5) of the *Public Curator Act 1951* states: 'The Public Curator may pay to an agent appointed under Subsection (1) a commission, not exceeding 10%, in respect of all moneys collected by him or by reason of his agency'.

sale of estate assets, and a 10% commission charged for collecting monies owed to an estate.

Furthermore, when considering agency powers under section four of the *Public Curator Act* 1951, the Auditor General's Office also notes that associated payments must be in conformance with the provisions of the *Public Curator Act* 1951 and the *Public Curator Regulations* 1952. To that end, on page seventeen of their special investigation report the Auditor General's Office (2005) explicitly draws attention to the payment schedule in the *Public Curator Regulations* 1952, which governs commissions charged for the realisation of estate assets.

Where the deceased died intestate, a 10% commission can be awarded on gross amounts up to K4,000; where the amount is in excess of K4,000 but under K20,000 a 2.5% commission can be charged; while for estates in excess of K20,000 the commission is 1%. Where the deceased died testate, and the gross amount realized is under K1,000 a 10% commission can be charged, where it is in excess of K1,000 and up to K20,000 the commission is 2.5%; where it is excess of K20,000 the commission is 1%.

This schedule is also cited in the Public Accounts Committee (2006: 54) report, which observes: 'A Commission of 10% is only provided for Estates up to K4, 000.00 where the deceased has died intestate and K1,000.00 for Estates where the deceased died testate'.

As a result of the rates set out in the regulations, the Auditor General's Office (2005: 55) notes: 'Of particular concern ... Anvil has withheld 10% *of all monies realised* by the sale of properties and shares and identification of bank accounts' (italics).

Clearly then, contrary to ITFS' claim, the assertions made by the Auditor General's Office and Public Accounts Committee with respect to over-payment, were clearly explained drawing on fact and law. The Auditor General's concern, in particular, was that the commissions charged by Anvil (PNG) Project Services Limited for agency work, breached the ceilings allowable under the *Public Curator Act* 1951 and the *Public Curator Regulations* 1952.

## 8. Weighting of evidence by ITFS

The wide ranging errors of fact and law outlined above appear to be symptomatic of an investigation which inexplicably placed heavy reliance on information submitted to ITFS by those parties censured in the Auditor General's Office and Public Accounts Committee inquiries, without any attempt to seriously engage with the original findings of the latter bodies, or indeed implement fresh lines of inquiry. As a result of the unjustified weight given to the testimony and legal advice offered by those censured in these inquiries, ITFS made egregious errors which have brought its integrity into question.

Further evidence for this contention can be found in ITFS' case assessment. For example, on page four ITFS (2014) notes that it was supplied with 'numerous documents' which were evidently attached to correspondence served on them by Mr Gudmundur Fridriksson on 9 June 2014 and 26 July 2014. ITFS also claims it consulted a range of media and social media sources, but argues this information is hearsay and could not be employed as evidence. Furthermore, ITFS (2014: 4) notes it 'was also able to obtain certain other documents from the Public Curators Office and the National Court registry, among others'. It concludes this methodological discussion stating: 'With the abundance of materials available to ITFS, ITFS was able to consider both sides of the allegations and made an assessment which is detailed hereunder' (ITFS 2014: 5).

Notable by its absence here is any stated attempt to solicit evidence or guidance from either the Public Accounts Committee or the Auditor General's Office; nor did ITFS make any contact with the International State Crime Initiative. Moreover, as we have already observed, no significant independent fact-finding efforts were initiated by ITFS. The problems associated with such a one-sided sample, were further compounded by the ITFS' weighting of the evidence, a matter to which we will now turn.

On page five of the case assessment ITFS makes the following statement about the evidence considered during its investigation:

We had the benefit of the then Public Curator, Mr Paul Wagon's 25 page response to the AGO report, detailing his explanations on the findings of the Auditor General. We have also had the benefit of a recent correspondence from the Public Curator dated 11<sup>th</sup> March 2014. That correspondence details a recent and further investigation undertaken by the Public Curator. The Public Curator, after thoroughly reviewing the matter, concluded that there was no outstanding issue with CCS Anvil concerning their engagement and payments.

The uncritical reception of evidence submitted to the investigation by those censured in the Auditor General and Public Accounts Committee inquiries, is frequently found to be at the heart of the erroneous legal and factual assertions made by ITFS. For example, on page four of the case assessment ITFS notes: 'Evidentiary documents obtained from DJAG, Public Curators Office and CCS Anvil reveal that after it occurred that CSTB [Central Supply and Tender Board] would not grant the COI [certificate of inexpediency], CCS Anvil's [sic - Anvil Project Services (PNG) Limited] engagement was metamorphosed into an agency arrangement pursuant to section 4 of the Public Curator's Act'. ITFS does not scrutinise the lawfulness of this 'metamorphosis'; had they reflected on their own legal guidance submitted to the Prime Minister in 2012, ITFS would have been alerted to breaches of the *Public Finance (Management) Act 1995*.

When considering allegations that Anvil (PNG) Project Services Limited had certified payments to itself, ITFS (2014: 7-8) again places heavy reliance on the testimony supplied by

the Public Curator's Office: 'The Public Curators Office through continual correspondences refuted this claim [that Anvil certified payments to itself] and state that the invoices certified by Mr Fridriksson were not requisitions of Public Curators Office but were CCS Anvil's invoices to the Public Curator for services rendered. The report would have been balanced on this point if the Public Curator was afforded the opportunity to explain prior to compiling the reports'.

If instead of relying on second hand accounts, ITFS had thoroughly read the original reports tendered by the Auditor General's Office and the Public Accounts Committee it would have been aware of the multiple opportunities the Public Curator had to respond to accusations of misconduct. For instance, the Public Curator was invited by the Auditor General's Office to correct any misunderstandings appearing in the draft of its special audit report. However, in a letter dated 25 September 2005, which is included as an attachment in the Auditor General report (see Appendix B), the Public Curator replies:

I acknowledge your completed draft report on the above and note your request for me to furnish a response to the report. I note your reason that it would assist you to correct any misunderstandings in order that my views would be incorporated. I am of the view that your report must go to the Minister and the PAC uninfluenced by me ... It is at that point [the Public Accounts Committee hearing] I believe that it is appropriate for me to furnish a response to the entirety of your investigative findings. (Auditor General's Office 2005: Attachment 1)

Had ITFS then glanced at the index of the Public Accounts Committee report (see Image 4) and appended schedules, it would have seen that the Public Curator was indeed afforded ample opportunity during the Public Accounts Committee inquiry to respond to the findings of the Auditor General both orally and through a written submission. ITFS appear unaware of these multiple opportunities because it accepted a second hand account of the inquiry's procedure solicited by the Public Curator's Office, without checking its veracity. ITFS place similar uncritical reliance on evidence produced by the Public Curator when considering the amounts paid to Anvil (PNG) Project Services Limited.

<b>SPECIFIC ALLEGATIONS AND FINDINGS BY THE PUBLIC ACCOUNTS COMMITTEE</b>	38
<b>PUBLIC CURATOR'S OFFICE STAFFING</b>	38
Auditor General's Findings	38
<u>Response of the Public Curator</u>	40
Findings of the Public Accounts Committee	41
<b>INTERNAL CONTROLS</b>	42
Report of the Auditor General	42
<u>The Response of the Public Curator</u>	44
The Evidence	44
Findings of the Public Accounts Committee	45
<b>PUBLIC CURATOR'S OFFICE OPERATIONAL FUNDING</b>	45
Findings of the Auditor General	45
<u>Response of the Public Curator</u>	46
The Evidence	47
Findings of the Committee	50

**Image 4:** Screenshot of the Public Accounts Committee (2006) report index. Red underline added.

It is difficult to explain why ITFS would uncritically accept the arguments tendered to it by the Public Curator and other associated individuals, especially given that ITFS do not ordinarily place such heavy reliance on the testimony on parties being investigated.<sup>27</sup> Indeed, basic fact-checking would have alerted ITFS to serious errors in the tendered arguments; unfortunately, such checks were not implemented. Furthermore, we would have expected more caution from ITFS in light of the serious levels of misconduct alleged to have occurred within the Office of the Public Curator. Indeed, both the Auditor General's Office and the Public Accounts Committee claim that over the course of the Public Curator's tenure, the estate's managed by his office were the victim of systemic frauds, wastage and mismanagement; they also suggest that estate monies were systematically misused in violation of the *Public Finances (Management) Act 1995*, the *Public Curator Act 1951* and the *Public Curator Regulations 1952*.

For example, the Public Accounts Committee (2006) states on page 27 of their report: 'Criminal dealings, fraud, forgery, incompetence and non-accountability have resulted in gross mismanagement of a huge number of Estates which may result in a significant liability to the State for those failures'. This conclusion is justified on the basis that, 'the Public Accounts Committee has identified incidents of fraud and criminal conduct, mismanagement of Estates, breach of trust and breach of fiduciary duties on the part of the Public Curator and his Agents, Contractors or Consultants' (Public Accounts Committee 2006: 8). The Public Accounts Committee (2006: 9) further notes: 'The Public Curator, the Attorney General and the Secretary for Justice have failed to take action to recover

---

<sup>27</sup> Investigation Task-Force Sweep (2012) *Final Report: Containing Findings, Implementations and Recommendations*, Port Moresby: Author.

property, money and assets unlawfully detained or withheld by Consultants, Contractors or Agents to the Public Curator'. It then adds, 'the Public Curator has made unauthorized investments of Estate monies and has failed to pay money back to Estate accounts or to maintain such records as would enable that money to be paid to identified Estates' (Public Accounts Committee 2006: 9). As a result, the Public Accounts Committee (2006: 11) concludes: 'The Public Curator and his management team should be replaced by competent, experienced interim trustees'. Concerns over the Office of the Public Curator have also been raised by the National Court in *Bank of South Pacific Ltd v Public Curator* [2003] PGNC 152; N2320 (20 January 2003) and *Lang v Wagon* [2009] PGNC 242; N3933 (16 July 2009).

It is difficult, therefore, to understand how ITFS (2014) could adopt the following methodology outlined on page nine of its assessment:

The two reports [by the Auditor General's Office and Public Accounts Committee] do not imply that the subsequent explanations of DJAG, Public Curator and CCS Anvil were accommodated. To our assessment, the weight of the two reports and the subsequent explanations of DJAG, Public Curator and CCS Anvil are equalled in many respects. We do not have any other evidence to tip the balance.

This statement acutely reflects ITFS' failure to properly read the two reports (relying instead on flawed second hand accounts); critically scrutinise information tendered by parties censured by the inquiry into the Office of the Public Curator; elicit evidence from the Auditor General's Office, Public Accounts Committee and the International State Crime Initiative; or indeed, conduct fresh fact-finding.

## 9. Failure to investigate state land at Paga Hill



**Image 5:** Homes on the foreshore of Paga Hill, Port Moresby, prior to the demolition exercise

Portion 1597 ('Paga Hill'), is a 13.7 hectare plot of land adjacent to the Central Business District in Papua New Guinea's capital, Port Moresby. Up until 2014, the top of Paga Hill was

populated by National Housing Corporation properties, leased by public servants. Outside the boundaries of Portion 1597, along the harbour foreshore is reclaimed land occupied by a community of approximately 3000 people whose origins stretch back to the 1960s.

Portion 1597 is owned by the state of Papua New Guinea, after it was originally purchased from the customary owners by the British Crown under controversial circumstances during the 1880s.

Because of Paga Hill's historical and natural value, in 1987 it was 'reserved from lease for the purpose of Open Space for [the] National Parks Board'.<sup>28</sup> Nonetheless, as this is a large harbour front property in the heart of Port Moresby, numerous developers have attempted to acquire the land.

On the 14 June 1996, Paga Hill Land Holding Company Limited was incorporated. According to the company extract held by the Investment Promotion Authority, the company was co-owned by Rex Paki, Felix Leyagon and Fidelity Management Pty Ltd (the latter holding company, shared a registered address in Perth with Gudmundur Fridriksson). Its Directors were Rex Paki and Gudmundur Fridriksson (see Appendix G). On 31 October 1996 the Paga Hill Land Holding Company's application to rezone Portion 1597 was considered and then refused by the National Capital District Physical Planning Board.<sup>29</sup> However, on 27 February 1997 the Minister for Civil Aviation, Culture and Tourism Michael Nali, offered to endorse the project in Cabinet as one of national significance (see Appendix I); in 2011 Mr Nali obtained a direct stake in portion 1597, through his company Kwadi Inn (see Appendix J) which is a shareholder in the Paga Hill Development Company (PNG) Limited (see below and Appendix O).

On 6 April 1998, the Paga Hill Land Holding Company Limited was issued a five year Urban Development Lease over Portion 1597, while the land was still zoned open space. According to section 67 of the *Land Act 1996*: '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'. An explanation for this irregularity is offered by the Paga Hill Land Holding Company on page 25 of its estate masterplan:

The application process for an Urban Development Lease, which would normally be required by the Land Act 1996 and the Physical Planning Act of 1989, has been altered in order to provide for the best development outcome for the Paga Hill site. None of the requirements of the existing process will be excluded,

---

<sup>28</sup> Papua New Guinea, National Gazette, No.G59, 10 September 1987

<sup>29</sup> Letter from Bill Skate (Governor), Chairman, N.C.D. Physical Planning Board, to The Managing Director, Paga Hill Land Holding Company (PNG), P O Box 269, Badili, NCD, 11 November 1996.

rather the timing of application and approval has been altered to provide for a more flexible and intuitive approach to the development of the site.<sup>30</sup>

The masterplan cites no authority which would permit the company or government to alter the requirements of the *Land Act 1996* and the *Physical Planning Act 1989* in order to facilitate this more 'intuitive approach'.

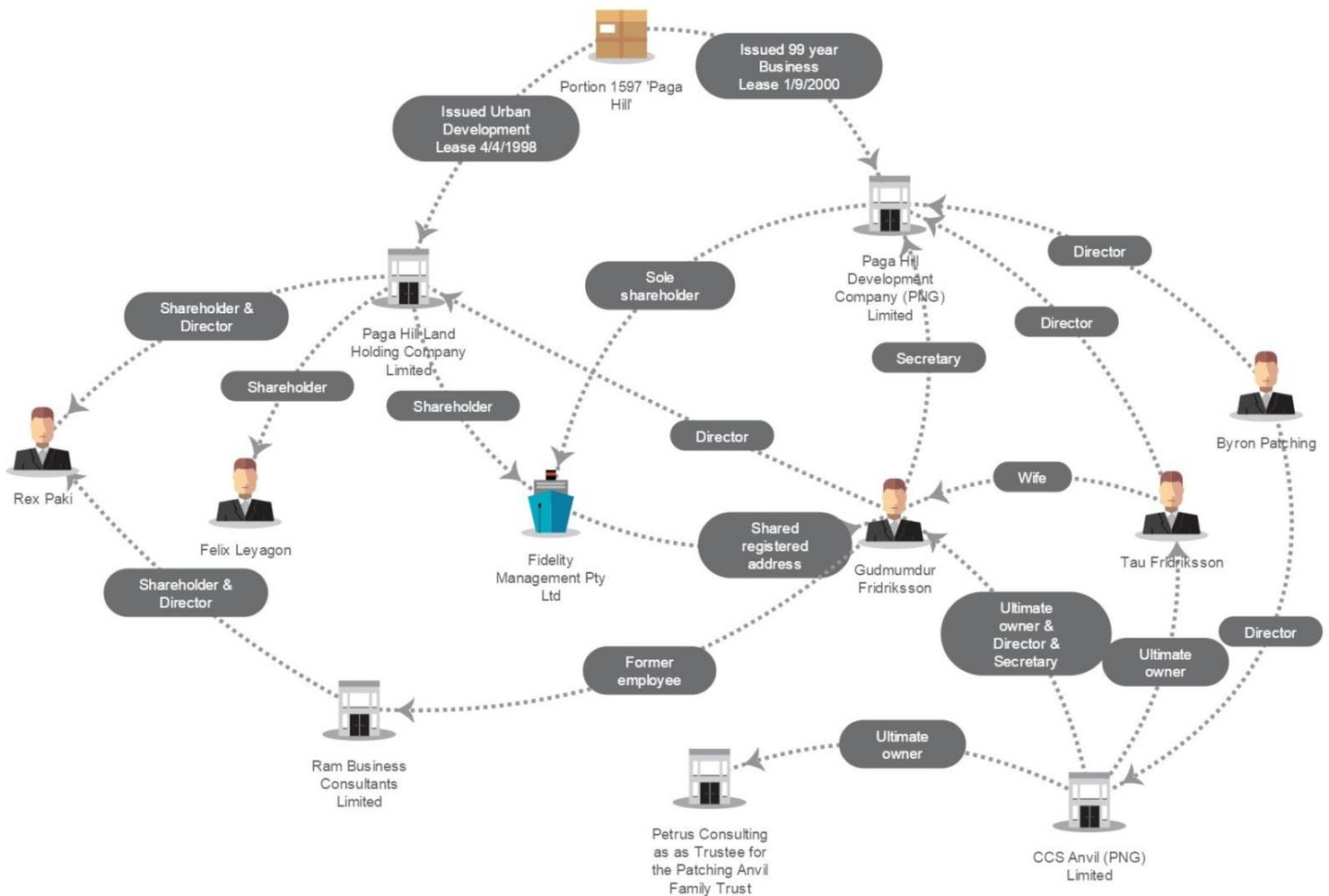
Included in this Urban Development Lease issued to Paga Hill Land Holding Company Limited are a range of covenants, including the payment of K30,000 annual rent, and the erection of improvements on the land 'to a minimum value of Three Hundred Million Kina (K300,000,000.00)'. Providing these covenants were observed within the set five year timeframe, the state committed to issue Paga Hill Land Holding Company Limited a 99 year state lease over Portion 1597. On 1 September 2000, just two and a half years after the Urban Development Lease was signed, a 99 year business lease over Portion 1597 was issued, despite the fact no significant improvements had been made to the land. The recipient of this 99 year state lease was the Paga Hill Development Company (PNG) Limited.

Examination of company records held at the Investment Promotion Authority show that Paga Hill Development Company (PNG) Limited is separate entity from the Paga Hill Land Holding Company Limited. The former concern began life in July 1999 as a shelf company Kitoro No.33, owned by Papua New Guinea national Ben Memafu Ivaharia. On 14 August 2000 Mr Ivaharia changes the name of Kitoro No.33 to Paga Hill Development Company (PNG) Limited. On 24 August 2000 Mr Ivaharia ceases to be a Director of the company, and is replaced by Tau Asigau Fridriksson and Byron Patching, while Gudmundur Fridriksson is appointed Company Secretary on 27 September 2000. Tau Fridriksson is the wife of Gudmundur Fridriksson, while Byron Patching would later become a Director at CCS Anvil (PNG) Limited along with Mr Gudmundur Fridriksson. The single share in Paga Hill Development Company (PNG) Limited was transferred from Mr Ivaharia on 24 August 2000 to Fidelity Management Pty Ltd, a company that also part-owned Paga Hill Land Holding Company with Rex Paki and Felix Leyagon. A further 99 shares are issued on the same day to Fidelity Management Pty Ltd, a company whose registered address in Australia matched the one employed by Gudmundur Fridriksson for his interest in Asigau (PNG) Holdings Limited.

It should also be recalled here that during its special investigation into the Public Curator's Office, the Auditor General alleges that Gudmundur Fridriksson left Rex Paki's company, Ram Business Consultants, shortly before May 2000 in order to set up Anvil (PNG) Project Services Limited. The latter company was then contracted in June 2000 to provide a range of consultancy services to the Public Curator's Office, shortly after Ram Business Consultants' contract with the same agency was cancelled. It would appear that during 2000 Rex Paki also lost his interest in Portion 1597, when the land was eventually leased to the Paga Hill Development Company (PNG) Limited, which was solely owned by Fidelity Management Pty Ltd.

---

<sup>30</sup> Paga Hill Land Holding Company (1998), Masterplan Submission, NCD Physical Planning Board, 13 June.



**Image 6:** The companies (including associated executives/shareholders) issued state leases over Portion 1597 'Paga Hill' during 1997-2000, source: Department of Lands and Physical Planning, Investment Promotion Authority company registry, and Auditor General's Office (2005).

Despite now being wholly owned by an Australian holding company, the Investment Promotion Authority's registry suggests that Paga Hill Development Company (PNG) Limited failed to apply for a certificate permitting it to carry on business as a foreign enterprise. This is a requirement under the *Investment Promotion Act 1992*. Section 32(4) states 'where there is a change in the share-holding or beneficial ownership of a citizen or national enterprise and as a result of the change the citizen or national enterprise becomes a foreign enterprise, it shall within 14 days of the change apply for a certificate under Section 28'. Nevertheless, on 1 September 2000, Paga Hill Development Company (PNG) Limited was granted a Business (Commercial) Lease over Portion 1597, for a period of 99 years. By this stage it would appear that the land had been rezoned from open space to part commercial, part residential, part public institutional and part public utilities. Although it is not clear why

a Business (Commercial) Lease was issued given that the land was to be employed for Business (Commercial) *and* Residential Purposes.<sup>31</sup>



**Image 7:** Transaction timeline for Paga Hill Development Company (PNG) Limited

The improvement covenant contained in the 99 year state lease issued to Paga Hill Development (PNG) Limited, was reduced from K300 million to K10 million. However, in according with the *Land Regulation* 1999 annual rent was levelled at 5% of the land’s unimproved value (K5 million), which came to K250,000 per annum. It appears from the hard copy of the state lease that a Lands Department official attempted to reduce the rental to K50,000 through a hand written amendment (see Appendix Q), a power that can only be exercised by the Minister under circumscribed circumstances.

The successive award of states leases over Portion 1597 to the Paga Hill Land Holding Company Limited and then the Paga Hill Development Company (PNG) Limited, were subsequently investigated by the Public Accounts Committee as part of its inquiry into the Department of Land and Physical Planning (see Appendix R).

On page 60 of the inquiry report, the Public Accounts Committee (2007) observes:

This land was a Gazetted National Park and could not be granted away to private hands. The Committee finds that this land was of great National importance and a prime piece of recreational land for the residents of Port Moresby. How the land came to be given to private speculators is a good illustration of the failings and corrupt conduct of the Department of Lands and Physical Planning. The continuing refusal of the Department to recover the land for the State well illustrates the continued acquiescence of the Department in corrupt dealings and clearly shows the extent to which private interests control the Department at the expense of the State and the citizens of Papua New Guinea.

<sup>31</sup> Section 92 of the Land Act 1996 states ‘Subject to this Act, the Minister may grant leases of Government land for business or residence purposes, or for both business and residence purposes’.

Following its examination of the Urban Development Lease issued to the Paga Hill Land Holding Company, the Public Accounts Committee observes:

The Committee can establish that Land Board No.1991 purported to convene on Friday 22nd August 1997. The Board was chaired by Mr. Ralph Guise [<sup>32</sup>]. The Land Board apparently completely ignored the fact that the land was a National Park and could not be the subject of such tenders or of a Grant of Lease ... It seems that the Land Board No 1991 recommended that “Paga Hill Land Holding PNG” (sic) be granted a Lease over Portion 1597 Milinch Granville Fourmil Moresby. (Public Accounts Committee 2007: 62)

The Public Accounts Committee then turned its attention to the 99 year Business (Commercial) Lease. It observes:

The failure to comply with the UDL covenants, particularly the Improvement Covenant, should have resulted in the Department forfeiting the Lease – or at the least, not issuing a Business Lease ... On the 01/09/2000, a **Business Lease over Portion 1597 Granville** was granted to **Paga Hill Development (PNG) Ltd.** This Lease was registered as **State Volume No. 24 Folio 159**. How and why this new Company, rather than the original Grantee, was able to obtain this Lease is unknown ... In a memo to the Secretary for Lands, dated the 18th March 2003, the issue of the Business Lease is described as “dubious”. Further, the Business Lease related to the entire area and assumed that all the land was zoned “Commercial”. This was not the case. There were varied zonings and the Lease was illegally issued. This Lease contained only very basic covenants requiring payment of Land Rent and an Improvement Covenant requiring improvements to a minimum of K 10 million within five years of issue of the Lease – on the 1/09/2000. Neither covenant has been complied with. No attempt has been made to forfeit the Lease by the Department for this failure. (Public Accounts Committee 2007: 63-6)

After documenting a range of other irregularities associated with the state leases issued over Portion 1597, including a retrospective reduction in annual rent, the Public Accounts Committee (2007: 69-70) finishes its assessment by noting:

The Committee concludes that the State has been deprived of Rental payments by the illegal expedient of retrospectively changing the Lease condition and by the failure of the Department to recover the land either by forfeiture or by cancellation of the Lease. In the absence of any evidence to the contrary from the Secretary for Lands and Physical Planning or his Officers, the Committee

---

<sup>32</sup> Ralph Guise was censured during the Commission of Inquiry into the National Provident Fund for ‘fabricating and gazetting false documents, preparing and signing false Land Board minutes and signing false and fictitious approvals’ (Barnett 2002).

concludes that no Tender or Reserved Price has been applied. This failure has cost the State at least K 3,000,000.00 – representing 60% of the unimproved value. The Department appears to have taken no steps at all to protect the position of the State in this regard. Why the Lease has not been forfeited is unknown. Land Rent is in arrears and no development at all has taken place. Non-compliance with the Leasehold improvement covenant and/or non-payment of land rent for six months constitutes grounds for forfeiture.

Despite the serious issues raised in the Public Accounts Committee inquiry, an amended state lease was issued to the Paga Hill Development Company (PNG) Limited on 22 June 2009 for Business (Commercial) purposes; according to the original Public Accounts Committee findings, this purpose is at variance with the current zoning of Portion 1597. Additionally, the improvement covenant was further reduced from K10 million to K5 million, while the annual rent was set at K50,000 (reduced from K250,000 set in 2000). For this sum to conform with the *Land Regulations* 1999, the unimproved value of the land would need to be K1 million. This amount would seem grossly under-valued.

Writing in the *Pacific Economic Bulletin*, Gouy et al (2010: 15) note: ‘One of the unexpected surprises that new residents and investors to Port Moresby find is the extraordinary price of unimproved and improved property in all categories’. Indeed, the authors compare the prices in the more salubrious parts of Port Moresby to ‘New York, London or Tokyo’ (Gouy et al 2010: 19). In order to support this contention, Gouy et al note, that in 2010 the average residential sale in the Ela Beach, Central Business District, and Paga Hill area, was K2.1 million (approx. US\$800,000). It would appear counterintuitive that the unimproved value of nearly 14 hectares of prime real estate on the harbour foreshore in Paga Hill, Port Moresby, zoned part commercial, part residential, part public institutional and part public utilities, would be less than the average residential property. This again raises concerns previously expressed by the Public Accounts Committee; that the set rental payments may not correspond to 5% of the unimproved value of the land.

The findings of the Public Accounts Committee was attached to the 19 October 2012 communication sent to ITFS by the International State Crime Initiative. Given the significant overlap of personnel involved in this case and the Public Curator’s Office consultancy arrangements, the International State Crime Initiative believed both should be investigated together.

However, ITFS declined to investigate the handling of state land at Paga Hill. It justified this decision on the following basis: ‘The allegations concerning the issuance of State Lease to Page Hill Development Company is an issue that ITFS has limited jurisdiction to investigate as our terms of reference allow us to scope our inquiries within the purview of financial fraud of public funds related crimes, suffice to mention that we have perused the Public Accounts Committee Report concerning Portion 1597 Milinch Granville, Fourmil Moresby at Paga Hill - Grant to Page Hill Development Company Ltd’ (ITFS 2014: 9).

It is difficult to see how the case of Paga Hill falls outside the ITFS mandate as outlined in its assessment. State land is a public asset managed by the Department of Lands and Physical Planning, which is a significant source of revenue for the government of Papua New Guinea. Transactions involving state land and the associated revenues it produces would appear to be a matter ITFS should be investigating, especially given the significant black market that currently exists in state leases, which constitutes a serious threat to the country's economic development and security, in addition to the human rights of its citizens.

ITFS (2014: 9) also notes: 'From our preliminary inquiries, we understand the property of the grant of lease was subjected to numerous court proceedings and various decisions ruled in favour of the leaseholder'. To our knowledge, the decision to award state leases over Portion 1597 to the Paga Hill Land Holding Company, and then the Paga Hill Development Company (PNG), have never been subject to judicial review by the courts. Therefore, the legitimacy and legality of the decisions underpinning the award of the lease has not been considered by either the National or Supreme Court.

However, we do note that the Supreme Court issued an order on 1 July 2014 stating that the residents living on Paga Hill's foreshore reside on reclaimed land outside Portion 1597 (see Appendix S). Nevertheless, it appears that this reclaimed land was surveyed and registered as Portion 3149 on 16 July 2013 (see Appendix T). On 5 December 2013 a notice features in the National Gazette acknowledging an application by Andayap No. 5 Limited for a Special Purpose Lease over Portion 3149.

Special purpose leases can be awarded under section 1000 of the *Land Act* 1996 when no other lease-type is appropriate. Additionally, the rent payable for a Special Purpose lease is determined by the Minister, and thus is not regulated by the *Land Regulations* 1999, which would ordinarily require rent be set at 5% of the land's unimproved value.

The company applying for this Special Purpose lease, Andayap No.5, was incorporated on 31 May 2013, its Company Secretary is Gudmundur Fridriksson and it is wholly owned by the Paga Hill Development Company (PNG) Limited. In a subsequent notice published in the National Gazette on 4 June 2015,<sup>33</sup> we are told Andayap No.5 Limited was indeed awarded a Special Purpose Lease over Portion 3149 (see Appendix U). It does not appear the Supreme Court was advised of this award when deliberating on the matter during 2015.

On 22 July 2015 approximately 15 homes at Paga Hill were destroyed in a second demolition exercise. However, on this occasion, no agency or organisation has been prepared to assume responsibility for the action. Residents from Paga Hill have now been forced off the land; some residents have been relocated to customary land at 6-mile by Paga Hill Development Company (PNG) Limited. A new ring road is being built along the harbour

---

<sup>33</sup> This Gazettal notice incorrectly identifies the land as Portion 3124, this was corrected in a subsequent Gazettal notice on 16 June 2014.

foreshore by Curtain Bros Papua New Guinea, while the Paga Hill Development Company (PNG) Limited has begun earthworks on neighbouring Portion 1597.

Given that this land at Paga Hill is of historical and natural significance to all citizens of Papua New Guinea, as its original national park status recognised, in addition to now being a potential source of revenue for the state, the commercial transactions underpinning the state leases over Portion 1597 and Portion 3149 require rigorous and transparent investigation, where all affected parties are given ample opportunity to be heard.

## 10. Undermining the security of ITFS sources

During the course of the International State Crime Initiative's investigation the head of our Papua New Guinea research cluster, Dr Kristian Lasslett has been subjected to anonymous threats. The most recent threat was relayed through an email sent on 31 March 2015. It states: 'We'll fuck yout [sic] ass if you come to PNG'. A collaborator from Paga Hill has also received anonymous death threats at their place of work.

In this sensitive light, we note that ITFS shares with 'interested parties' case assessments, yet makes no attempt to remove from these assessments the personal information of parties who triggered the investigation: '[ITFS] write to the complainant *and other interested parties* with the initial assessment of the case that the case has limited or no merits' (italics added) (ITFS 2014: 3). We believe the risk to International State Crime Initiative staff in particular has been heightened by ITFS' practice of sharing case assessments with 'interested parties', without first removing the personal details of individuals who have requested the investigation. We also believe this procedure of divulging the personal information of ITFS sources to 'interested parties' also acts as a considerable disincentive for anyone else contemplating coming forward to ITFS with important information.

## 11. Recommendations

As a result of the serious errors of method, fact and law uncovered in the case assessment by the International State Crime Initiative, which are in clear breach of standard ITFS practice and procedure, an independent, arms-length inquiry must be conducted into the ITFS investigation of Mr Fridriksson and associated entities. If the inquiry concludes that this case assessment is symptomatic of more deeply rooted, structural problems within the agency we submit that the terms of reference should then be expanded to include a greater range of activities. In particular, the inquiry should:

- Audit a random sample of cases investigated by ITFS, drawing in part on the methods outlined in section 12 of this report.
- Assess the rigour of audited investigations focusing on methodology, findings of fact, findings of law, and the quality of any subsequent attempt to prosecute the case.

- Using robust performance criteria determine whether ITFS has effectively and efficiently prosecuted cases referred to it.
- Determine whether ITFS personnel have adequate training, and experience to undertake the responsibilities mandated to them.
- Determine whether ITFS has in place robust internal controls that ensure its investigations are managed well enough to protect the agency from outside influence.
- Examine whether ITFS has allocated its expenditure in conformance with the *Public Finances (Management) Act 1995*, and the *Financial Instructions*.
- Appraise to what extent budget cuts have impacted on the performance and integrity of ITFS.
- Produce a set of recommendations that will assist the proposed Independent Commission Against Corruption produce rigorous, independent investigations that uphold the integrity of the office.
- Where ITFS personnel or external actors have engaged in unlawful or criminal conduct, refer the case to the relevant legal authority for action.

In a highly politicised context, it is essential that this audit of ITFS work is led by a judicial authority with an esteem track record of independence and rigour. Not only must this inquiry be independent, *it must be seen to be independent* if the public is to have confidence in its findings.

We also recommend that the national government of Papua New Guinea take urgent steps to implement plans for an Independent Commission Against Corruption. As this case demonstrates, there are public agencies and bodies in Papua New Guinea uncovering vital information that demands forensic investigation, and where compelling evidence exists, prosecution. We would estimate that hundreds of referrals issued by the Public Accounts Committee, Auditor General's Office and various Commission of Inquiries remain unactioned to this day. Furthermore, the National and Supreme Court case archive contain a large volume of civil litigation which feature serious evidence of corruption, which have never been investigated, let alone prosecuted. An Independent Commission Against Corruption would be one positive step forward in reducing the gap between transparency and accountability in Papua New Guinea.

Furthermore, the Papua New Guinea government should continue its welcomed efforts to make accessible resources and reports that empower the public and civil society to scrutinise the use of public moneys by government agencies and private sector actors; this report is hopefully evidence of the impact these efforts are having on civil society. In particular, the initiative shown by the Auditor General's Office, Public Accounts Committee, and Ombudsman Commission to publish their reporting online so it is freely available across Papua New Guinea and internationally, deserves recognition. These positive steps towards greater transparency have been complemented by the open and accessible character of records kept by the Investment Promotion Authority, and the archive of judicial decisions

maintained on PACLII. The critical challenge currently facing the government of Papua New Guinea is to match this transparency with congruent levels of prosecutorial capacity.

However, we do note with concern that the Public Accounts Committee reporting has recently been taken offline owing to non-payment of webhosting fees. This should be rectified immediately. Furthermore, we also recommend that the aforementioned agencies are resourced so they can continue to publish online the full wealth of materials they are currently producing, in addition to their back catalogue of public reports. And to that end, an onus should be placed on government anti-corruption agencies to make public their findings, so that the integrity of their investigations are open to public scrutiny.

Finally, given the systemic failures observed in the ITFS investigation the government of Papua New Guinea should take immediate steps to rectify matters by robustly implementing the recommendations and referrals made by the Public Accounts Committee during its inquiry into the Office of the Public Curator (2006) and the Department of Lands and Physical Planning (2007). At the very least there is a need to investigate the companies and associated figures cited in the International State Crime Initiative's original request dated 19 October 2012, including:

- Anvil (PNG) Project Services Limited,
- CCS Anvil (PNG) Limited,
- Paga Hill Land Holding Company Limited,
- Paga Hill Development Company (PNG) Limited,
- Ram Business Consultants Limited, and
- Kwadi Inn.

Given the direct links between Jac'o Business Consultants Limited, Jerry Kama Lawyer and CCS Anvil (PNG) Limited, and their prominent place in the inquiries into the Public Curator's Office and Department of Finance, these organisations should be included in the investigation, with flexible terms of reference that permit other connected actors to be examined where compelling evidence exists.

If the allegations made by the Public Accounts Committee and Auditor General's Office are supported by the evidence compiled during this investigation, the Royal Papua New Guinea Constabulary and the Office of the Public Prosecutor must take steps to bring those responsible to account. In addition, it is important that anyone who has been victimised are fully apprised of the steps taken to administer justice, and where appropriate victims should also be compensated for their loss and suffering with assistance from the government of Papua New Guinea.

## 12. Methodology

Owing to the highly specialised skill-sets required to conduct forensic investigations into allegations of corruption, it is often the case that the work of those agencies responsible for investigating the latter allegations, are not subjected to the form of judicious external oversight essential to good governance. This raises a challenging question – how do we develop rigorous methods for evaluating the quality and integrity of highly specialised investigation into corruption?

To meet this challenge, the International State Crime Initiative under the intellectual leadership of Dr Kristian Lasslett has established a five step approach. While in this assessment the methodology is applied to the ITFS investigation, the techniques are transferable.

**1. Establish a baseline of minimum competence:** In order to determine whether ITFS' investigation of the facts was conducted with minimal competence, the International State Crime Initiative implemented its own inquiry into the allegations drawing on publicly available sources. This included:

- Reports tabled by the Public Accounts Committee and Auditor General's Office,
- Commission of Inquiry reports and transcripts,
- Company records held at the Investment Promotion Authority, and
- National and Supreme Court judgements.

These sources were then mined for relevant information that would illuminate the transactions, companies and individuals implicated in those allegations which centre on the Public Curator's Office (however, given the overlapping networks, this also dovetailed with matters arising out of the state leases awarded to the Paga Hill Land Holding Company Limited and the Paga Hill Development Company (PNG) Limited).

The International State Crime Initiative then constructed our own case assessment using a range of analytical techniques employed in forensic investigations. This included social network analysis and the construction of transaction timelines using freely available software.

There are, of course, limits to this baseline study. In particular, a comprehensive comparative case analysis could only be constructed if the International State Crime Initiative enjoyed the same legal powers as ITFS personnel. However, at the very least a criminal investigation should exhibit a robust command of publicly available records and sources. This is a matter the International State Crime Initiative could test using investigative research methods. Accordingly, we labelled this methodological step a baseline of *minimum* competence.

**2. Comparative analysis of case results:** The results of the case assessment produced through this baseline study were then compared with the results of the ITFS investigation.

Through a comparative analysis of the actual investigation and the simulated investigation we were able to detect whether the ITFS assessment:

- Failed to identify critical records, networks and transactions,
- Omitted from its evaluation key lines of inquiry, or
- Made significant errors of fact.

**3. Scrutinise the rigour of investigative design:** Drawing on the results of our comparative case analysis, we deconstructed the ITFS inquiry in order to see if its investigative design contained *systemic* flaws. In particular, we assessed whether its terms of reference, data collection methods and data-analysis techniques, were robust. This allowed the International State Crime Initiative to detect systemic explanations for errors observed through comparatively applying the baseline of minimum competence.

**4. Critical evaluation of the legal assessment:** In order to evaluate the rigour of ITFS' legal assessment, the International State Crime Initiative conducted independent doctrinal research into the relevant legislation and case law, focusing in particular on provisions of the *Public Finances (Management) Act 1995*, *Public Curator Act 1951*, *Public Curator Regulations 1952*, *Land Act 1996*, *Land Regulations 1999*, *Physical Planning Act 1989*, the *Investment Promotion Act 1992* and the *Criminal Code Act 1974*. This research allowed the International State Crime Initiative to determine: a) whether the representation of law contained in ITFS' assessment conformed with accepted interpretations; and b) whether ITFS had failed to recognise important legal issues critical to an authoritative investigation.

Moreover, through steps one to three, the International State Crime Initiative could deduce on the balance of probabilities whether any observed legal errors in the ITFS assessment were a product of flawed interpretation, errors in investigative design, gross negligence, or intentional misrepresentation.

**5. Internal comparative analysis:** While steps one to four can reveal errors of fact, law and method, they do not necessarily help researchers determine whether these errors are the result of mere carelessness, or actions marked by gross negligence or *mala fides*. To make the latter determination internal comparative analysis is required. In this case, the International State Crime Initiative compared the methods and understandings demonstrated by ITFS in its report into the Department of National Planning and Monitoring, with the methods and understandings exhibited in the 2014 case assessment. This internal comparison revealed that established ITFS practice and procedure had been ignored when compiling the 2014 case assessment.

## Bibliography

Auditor General's Office. (2005) *Special Investigation into the Office of the Public Curator*, Waigani: Author.

Barnett, T. (2002) *Report of the Commission of Inquiry into the National Provident Fund* [online]. Extracts available online: [web.archive.org/web/20060923050634/http://www.postcourier.com.pg/NPF%20inquiry/npf116](http://web.archive.org/web/20060923050634/http://www.postcourier.com.pg/NPF%20inquiry/npf116)

CCS Anvil (PNG) Limited. (2003) 'A fun park for all', media release, 11 April.

Cochrane, L. (2015) 'PNG anti-corruption taskforce broke after making allegations against Prime Minister Peter O'Neill' [online], *ABC News*, 4 February, available online: [www.abc.net.au/news/2015-02-04/png-anti-corruption-taskforce-starved-of-funding/6070170](http://www.abc.net.au/news/2015-02-04/png-anti-corruption-taskforce-starved-of-funding/6070170)

Davani, C., Sheehan, M., and Manoa, D. (2009) *The Commission of Inquiry Generally into the Department of Finance: Final Report*, Papua New Guinea: The Commission.

Gouy, J., Kapa, J., Mokaie, A. and Levantis, T. (2010) 'Parting with the past: Is Papua New Guinea poised to begin a new chapter towards development?', *Pacific Economic Bulletin*, 25(1), 1 – 23.

Kama, B. (2014) 'Some clarification from the courts in PNG PM's "fight to the very last breath"' [online], *Devpolicy Blog*, available online: [devpolicy.org/some-clarification-from-the-courts-in-png-pms-fight-to-the-very-last-breath-20140704-2/](http://devpolicy.org/some-clarification-from-the-courts-in-png-pms-fight-to-the-very-last-breath-20140704-2/)

Koim, S. (2012) 'Speech to AUSTAC major reporters meeting' [online], Sydney, 4 October, available online: [www.abc.net.au/4corners/documents/PNG2013/Speech\\_SamKoim.pdf](http://www.abc.net.au/4corners/documents/PNG2013/Speech_SamKoim.pdf)

Mattera, P. (2014) *Dirt Diggers: Digest Guide to Strategic Corporate Research* [online], Corporate Research Project, available online: [corp-research.org/dddresearchguide](http://corp-research.org/dddresearchguide)

Public Accounts Committee. (2006) *Public Accounts Committee Report to Parliament on the Inquiry into the Office of the Public Curator*, Waigani: National Parliament of Papua New Guinea.

Public Accounts Committee. (2007) *Public Accounts Committee Report to Parliament on the Inquiry into the Department of Lands and Physical Planning*, Waigani: National Parliament of Papua New Guinea.

Radu P. C. (N.D.) *Follow the Money: A Digital Guide for Tracking Corruption* [online], International Center for Journalists, available online: [www.icfj.org/sites/default/files/Follow\\_Money.pdf](http://www.icfj.org/sites/default/files/Follow_Money.pdf)

Robinson, N. (2012) 'Paga link to "profits from PNG deceased"' [online], *The Australian*, 10 October, available online: [www.theaustralian.com.au/national-affairs/indigenous/paga-link-to-profits-from-png-deceased/story-fn9hm1pm-1226492400079](http://www.theaustralian.com.au/national-affairs/indigenous/paga-link-to-profits-from-png-deceased/story-fn9hm1pm-1226492400079)

Sharman, J. C. (2014) 'Corruption-related political crisis in Papua New Guinea', *Transnational Corruption and Asset Forfeiture*, 30(11), 426

Wakus, W. (2005) 'Curator probed', *Post-Courier*, 14 April, p.1