

**Request for Consideration under the Urgent Action/
Early Warning Procedure to Prevent Irreparable
Harm to Indigenous Peoples' Rights in Papua New
Guinea**

**78th Session of the Committee on the Elimination of
Racial Discrimination**

Submitted by:

**The Centre for Environmental Law and Community
Rights (CELCOR) / Friends of the Earth PNG, the
Bismark Ramu Group, Greenpeace Australia Pacific
and the Forest Peoples Programme (FPP)**

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i. Submitting Organizations:

The Centre for Environmental Law and Community Rights (CELCOR):

CELCOR, a public interest environmental law NGO based in Port Moresby, was founded in February 2000. The main aim of CELCOR is to provide legal assistance to landowners affected by large scale environmentally destructive projects including industrial logging, mining and oil palm plantation developments and to promote community based natural resource management through promotion of effective law and policies in PNG.

Address: PO Box 4373, Boroko NCD, Papua New Guinea, www.celcor.org.pg

The Bismarck Ramu Group (BRG) is a community development organization based in Madang Province. The organization was founded in 2000 and its purpose is to empower, inform and educate people to take control of their lives and maintain control over their land.

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Greenpeace (Australia Pacific) Greenpeace is an independent international campaigning organisation that uses non-violent direct action to expose global environmental problems and to force solutions which are essential to a green and peaceful future. Greenpeace's goal is to ensure the ability of the earth to nurture life in all its diversity. Greenpeace has worked to protect the natural environment of Papua New Guinea since 1995.

Address: PO Box 166 Port Moresby, National Capital District, Papua New Guinea

Forest Peoples Programme (FPP): FPP is an international NGO, founded in 1990 and based in the United Kingdom, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies.

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Request for consideration under the Urgent Action/Early Warning Procedures to Prevent Irreparable Harm to Indigenous Peoples' Rights in Papua New Guinea

I. Introduction

1. This request is respectfully submitted for consideration by the Committee on the Elimination of Racial Discrimination ("CERD") pursuant to its urgent action and early warning procedures. Specific requests are set forth in paragraph 28 below. It is submitted by the Centre for Environmental Law and Community Rights (CELCOR/Friends of the Earth Papua New Guinea), the Bismark Ramu Group, Greenpeace Australia Pacific and the Forest Peoples Programme ("the submitting organisations"). It concerns two situations in the Independent State of Papua New Guinea ("Papua New Guinea" or "PNG") which have the effect, singularly and cumulatively, of threatening irreparable harm to the rights of indigenous peoples to the continued use, enjoyment and ownership of their lands and resources and to judicial remedies. The first situation concerns the wide-spread (and growing) issuance of 'special agricultural and business leases' on customary lands and the real danger of land alienation under this process. The second relates to recent amendments to the Environmental Act (2000), in particular the removal of the right to judicial review from that law.

2. Papua New Guinea is one of the most culturally diverse countries in the world with over 850 different indigenous peoples and between 820 – 850 distinct languages spoken in a population of approximately 6.6 million.¹ Only 14% of Papua New Guineans live in urban centres, the remaining 86% of the population are almost exclusively employed in semi-subsistence agriculture and small, local trading networks.² The Constitution of Papua New Guinea specifically refers to and recognizes the importance of supporting the continuation of such social arrangements, providing a "recognition that the cultural, commercial and ethnic diversity of our people is a positive strength" and calling for "traditional villages and communities to remain as viable units of Papua New Guinean society".³ As part of this, Papua New Guinea recognizes customary land tenure as a corner stone of such social arrangements.

4. The importance accorded to customary law and tenure in the laws of PNG is reflected in the provisions of the Land Act (1996), which serves to regulate State land and to govern interactions between the State or private companies and customary land owners.⁴ This latter role of the Act is particularly important as customary land ownership exists over the vast majority of PNG lands. After

¹ The most recent available statistics are the national census from 2000. The next census will be undertaken in 2011. National Census, Papua New Guinea National Statistical Office, 2000 <http://www.nso.gov.pg/>

² Project Appraisal Document, PNG Productive Partnerships in Agriculture Project, World Bank, 31 March 2010 p. 1.

³ Constitution of the Independent State of Papua New Guinea, Article 5 (3) and (4).

⁴ The Land Act (1996) defines 'customary land' as land "that is owned or possessed by an automatic citizen or community of automatic citizens by virtue of rights of a proprietary or possessory kind that belong to that citizen or community and arise from and are regulated by custom" Section 2 (1), Land Act (1996). As this reflects the overwhelming majority of the land in PNG, the Land Act thereby reduces its role to the management of State land, possible acquisition of customary land and the management of leasing arrangements over customary lands. Land Act (1996), Papua New Guinea.

independence in 1975 the early governments re-acquired lands that had been alienated, purchased or transferred from Papua New Guineans during colonial times and returned such lands to customary ownership.⁵ In doing so the fledgling country defined two types of land ownership, which are still the overarching forms of land ownership in PNG today. First, 'customary land', being land that is "owned by the Indigenous People of Papua New Guinea whose ownership rights and interest is regulated by their customs" and; second, 'alienated land', those lands no longer held under customary ownership.⁶ Only 3% of the land mass of PNG is alienated land, the remaining 97% is formally held under customary ownership and therefore regulated by custom, not, in the first instance, by the State.⁷

5. The strength of the customary land ownership system and the difficulty of land purchase or acquisition are reflected in the proportion of land still held under customary tenure. However, there are ways in which lands and rights thereto can and have been alienated in fact, if not in law. The Land Act (1996) allows long-term leases to be issued by the government over customary lands through a 'lease-leaseback' process for periods of up to 99 years and the recipients of these leases can be, and have been, non-indigenous companies. These arrangements, known as 'Special Agricultural and Business Leases', presently affect 5.6 million hectares of customary lands (amounting to 10 percent of PNG) and, in a dramatic acceleration of State-supported activity in this respect, have more than doubled in size in the past year. While the Act provides for a double consent process, whereby the landowners must consent to both (1) the land being leased to the government, and (2) the identity of the recipient of the lease from the government, it has been documented, including in judicial proceedings, that consent has been manipulated, manufactured or falsely presented as companies seek to secure tenure over customary lands. When this occurs, there is no effective avenue for redress, thus allowing customary lands to be alienated for up to three generations.⁸

6. Although an overwhelming proportion of Papua New Guineans are involved in the agriculture sector, mining and hydrocarbon extraction provide a third of PNG's Gross Domestic Product.⁹ There is a long history of complaints by

⁵ Land Reform Policies in Papua New Guinea: Successes and Failures of the Plantation Acquisition and Unused State Lands Redistribution Schemes (1 January 2003), *Melanesian law Journal* 5, George M S Muroa, p. 1 Accessed at: <http://www.paclii.org/journals/MLJ/2003/5.html#fn1>.

⁶ Section 2 (Interpretation) Land Act (1996), Papua New Guinea.

⁷ The statistic of 97% of land being held as customary land is the official government figure provided by the Department of Lands and Physical Planning (DLPP) which states "Alienated Land in Papua New Guinea is only 3% of the total land mass. The 3% comprises of State vacant and undeveloped land, State leasehold land, Freehold and Private Land" wherein the remaining 97% is 'Customary land' defined as "land that is not state land and is owned by the Indigenous People of Papua New Guinea whose ownership rights and interest is regulated by their customs". Accessed from the DLPP website http://www.lands.gov.pg/Services/Land_Administration/LA_Services/Land_Acquisition/Land_Tenure.htm.

⁸ See, for instance, the case of the customary owners of the Musa Valley area, dealt with more fully in paragraphs 13-14 below (documenting manufactured consent). *Musa Valley vs Department of Land and Physical Planning*, OS (JR) No 10 of 2009.

⁹ The World Bank states, in a project approved for PNG in 2010, that the "modern extractive sector draws on substantial reserves of metal ores and hydrocarbons and accounts for 30 percent of GDP", going on to note that the "pattern of growth based mainly on the extractive industries sector has not been conducive to rural poverty reduction.". Project Appraisal Document, PNG Productive Partnerships in Agriculture Project, 31 March 2010.

customary landowners in PNG against foreign mining companies, most famously in cases against Rio Tinto and BHP.¹⁰ These complaints have concerned the environmental destruction of lands and resources and its impact on indigenous peoples and their lands. . In the aftermath of these and other cases, the Compensation (Prohibition of Foreign Legal Proceedings) Act (1995) was passed, denying landowners the right to seek redress, in particular compensation, from foreign courts. This has now been followed by the Environment (Amendment) Act (2010), which bars landowners from using the PNG judicial system to challenge environmental permits granted for activities that impact on their lands and resources. The legitimacy of this provision, which denies indigenous peoples access to crucially important judicial remedies, is currently being challenged on constitutional grounds before the Supreme Court.

7. The situation described herein threatens gross and irreparable harm to indigenous peoples in PNG and satisfies the criteria for consideration under the CERD's early warning and urgent action procedures. Specifically, it concerns serious "Encroachment on the traditional lands of indigenous peoples ..., [including] for the purpose of exploitation of natural resources," and the adoption of discriminatory legislation that denies indigenous peoples access to judicial remedies that are indispensable to the protection of their rights.¹¹ It thus represents a grave situation "requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention" and to reduce the risk of further racial discrimination.¹²

II. The recognition of traditional and customary land ownership in PNG law

8. The World Bank estimates that 86% of the PNG population is directly and primarily dependent on semi-subsistence agriculture for its livelihood.¹³ Underlying this dependence on agriculture is a land-ownership system that reflects the strong national consensus on the importance of tradition and culture to the future of PNG. The system in place is one that recognizes and protects traditional and customary land ownership regimes over 97% of the country's land mass.¹⁴ It also recognises that custom is not static, specifically defining the custom governing land ownership as "the customs and usages of indigenous inhabitants of the country existing in relation to land or the use of land at the

¹⁰ Further details on the case against Rio Tinto for its mine in Bougainville can be found at the *Business and Human Rights Resource Centre* site which provides a compilation of all relevant legal papers and media coverage of the case. <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/RioTintolawsuitrePapuaNewGuinea>. The case against BHP is covered in more detail in this request (paragraph 18).

¹¹ See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at p. 3, para. 12.

¹² *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, at para. 8-9.

¹³ Project Appraisal Document, PNG Productive Partnerships in Agriculture Project, 31 March 2010. para. 3

¹⁴ The DLPP provides oversight for land law and recognizes in PNG two forms of land status, 'alienated land' and 'customary land' as previously explained. Customary land is governed not by the Land Act of 1996 but by the traditional custom of the owning people. Legal basis for the governance of customary land is provided in Land Act 1996 Section 2(1) on definition of 'custom', 'customary lands' and 'customary rights', see Annex B.

time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial”.¹⁵

9. At independence in 1975 there was a strong focus on the importance of maintaining the distinct cultural and social fabric of PNG and the importance of small village units in that cultural identity.¹⁶ This focus on equitable and socially sensitive development was reflected in the founding principles of the ministries and departments that make up the government of PNG. Relevant to the amendment passed to the Environment Act 2000 it is worth revisiting the founding principles of environment and conservation in PNG:

“By careful planning we can control the rate of change and we can make sure that the kind and nature of the development we choose is good in all ways, not just when measured in economic terms. Development must be ecologically, socially and culturally suitable for Papua New Guinea and her people. We wish to avoid the expensive mistakes we see in other countries where poorly planned development has caused problems and has required costly measures to improve the quality of the environment”.¹⁷

10. International law requires that indigenous peoples’ property rights, including those based on customary tenure systems, are both guaranteed in law and effectively protected in practice. CERD’s General Recommendation No. XXIII, for instance, draws particular attention to the obligations of States parties “to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources”.¹⁸ With regard to remedies, the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) restates existing law in the context of development programmes, specifically requiring that “States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”¹⁹ PNG endorsed the passage of UNDRIP when it was adopted by the General Assembly in 2007.

11. As discussed below, these rights have been seriously eroded in law and practice in PNG in relation to both of the situations raised herein. As a

¹⁵ Land Act (1996), Preliminary, Section 2 (1) on the definition of custom, see Annex B.

¹⁶ The Preamble to the Constitution of PNG states that the 5th National Goal is the preservation of ‘Papua new Guinean ways’, as part of which the State will aim to “achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization” and to ensure that “traditional villages and communities to remain as viable units of Papua New Guinean society”. Preamble, National Goals 5(4) Constitution of the Independent State of Papua New Guinea.

¹⁷ *Environment and Conservation Policy: a statement of principles*. Office of Environment and Conservation, Waigani, Papua New Guinea, 1976.

¹⁸ *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee’s 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4, at para. 5.

¹⁹ Consistent with CERD’s constant jurisprudence, the UNDRIP states in Article 32, “1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, *particularly in connection with the development, utilization or exploitation of their mineral, water or other resources*. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.” (emphasis added).

consequence, indigenous peoples in that country are threatened with irreparable harm and are in urgent need of international assistance so as to assist PNG to comply with its obligations under, *inter alia*, the Convention on the Elimination of All Forms of Racial Discrimination.

III. Special Agricultural and Business Leases: giving the land away

12. The Land Act (1996) serves to manage State land and to regulate relationships between the State and customary owners, the latter retaining control over their lands and resources pursuant to custom. While there is means for compulsory acquisition of land (largely for cases in which customary owners cannot be ascertained ‘after diligent inquiry’), this is rarely used as evidenced by the 97% figure for customary ownership. There is also lease-leaseback which, while not permanently extinguishing customary rights, allows long-term leases referred to as Special Agricultural and Business Leases (“SABLs”) to be issued over customary lands.²⁰ As noted above, the Land Act provides a two-fold layer of protection in these leasing processes, requiring consent both for the initial lease to the government, and the subsequent lease by the government to a third party.²¹

13. The stated purpose of the ‘lease-leaseback’ process is “to assist or encourage Papua New Guinean (Landowners) to develop & utilize their own land”, allowing landowners to utilize their land as collateral to raise capital for business development purposes.²² However, while not the primary intention of the law, it is also possible for the State to lease to an entity other than the land owning group themselves, if the leasee is an entity “to whom the customary landowners have agreed that such a lease should be granted”.²³ This is intended to happen only rarely and to assist customary owners in encouraging economic development of their resources. However it also provides an avenue for non-indigenous entities, including logging, agribusiness and mining companies, to gain access to customary lands and resources in PNG for periods of up to 99 years.

14. There is evidence and growing concern in PNG that the protections offered by the Land Act (1996) are not adequately observed and that the SABL process is increasingly being used to alienate customary land, in fact if not in law.²⁴ This is especially troubling given that the logging and mining sectors as a

²⁰ Section 10 ‘Acquisition of Customary Land by Agreement’ in conjunction with Section 11 ‘Acquisition of Customary Land for the Grant of Special Agricultural and Business Lease’, Land Act (1996).

²¹ The Land Act (1996) does not control the management of customary lands but recognises that this authority lies with the customary owners and therefore focuses on two areas in which the State can gain authority over customary land, by compulsory acquisition and by leasing through ‘lease-leaseback’ arrangements. See Section 10 and 11 (for the requirement for written consent before the State can lease land from customary owners) and Section 102 (for the requirement that the recipient of the lease be approved by the customary owners prior to the lease being provided).

²² Lease-Leaseback, Department of Lands and Physical Planning website.
http://www.lands.gov.pg/Services/Land_Administration/LA_Services/Land_Acquisition/Lease_Leaseback.htm.

²³ Section 102, Land Act (1996).

²⁴ Challenges to SABLs that have been issued have even been raised in national Parliament, for example, the Member for Kairuku-Hiri Paru Aihi questioning the granting of a SABL to Mekeo Hinterland Holdings Limited for 116,400ha of customary land by the State. <http://www.apecdoc.org/blog/10/page/20>.

whole in PNG have been under scrutiny for wide-spread violations of human rights for many years. As the British High Commissioner to the country noted “There is substantial evidence from independent sources that current levels of logging (in PNG) are unsustainable, the legality of many current concessions is in doubt, corruption is a growing problem in the sector... and there are human rights abuses of forest communities and local labour”.²⁵ The corruption and resource theft that characterizes the timber industry in PNG is well documented, in government-commissioned reviews as well as by non-governmental sources.²⁶ Conservation organisations have also noted in this regard “[t]he problem in PNG is not the lack of rights guarantees, but the capacity and the will of the state to implement, uphold and defend those rights.”²⁷

15. The number of SABLs granted by PNG has risen rapidly, dramatically so in the past year. When a SABL is issued it must, by law, be published in the national gazette. A review of the announced SABLs issued by the Government of PNG in the past 13 months (updated January 2011) reveals that no less than 2.6 million hectares of customary lands have been granted in SABLs to non-indigenous companies and other entities, effectively doubling the area leased as SABLs in just over one year.²⁸ In this total of 68 leases or extensions to leases in the last year, the overwhelming majority have been for 99 years despite the stated policy of the Department of Lands and Physical Planning that leases to non-indigenous entities over customary lands should average 10-20 years.²⁹

16. Concern about this process is heightened when looking at the outcome of the *Musa Valley vs Department of Land and Physical Planning* case, one of the few cases to have been successfully litigated in court. In this case, a lease issued for 99 years to Musida Ltd., was successfully challenged by the customary land owners. In his findings, the judge concluded that consent had been fraudulently claimed by Musida Ltd., the recipient of the lease, which had secured the agreement of only 10 of the 62 incorporated land groups who owned the land in question.³⁰

17. In PNG presently no less than 5.6 million hectares of customary lands are under SABLs (as noted, 2.6 million hectares of which have been issued in the past year).³¹ This is over 10% of the land area of the country.³² There is widespread

²⁵ David Gordon-MacLeod, British High Commissioner to Papua New Guinea, July 2006.

²⁶ See *What can be learnt from the past? A history of the forestry sector in Papua New Guinea: Papua New Guinea Forest Studies 1*, Overseas Development Institute, January 2007, page 17, for details of these reviews and their key recommendations.

²⁷ *Bulldozing Progress: Corruption and Human Rights Abuses in Papua New Guinea's Large-Scale Logging Industry*, Australian Conservation Foundation and the Centre for Environmental Law and Community Rights, Papua New Guinea, 2006, pg. 27.

²⁸ See Annex D, a record of SABL announcements in the national gazette.

²⁹ Lease-Leaseback, Department of Lands and Physical Planning (DLPP) http://www.lands.gov.pg/Services/Land_Administration/LA_Services/Land_Acquisition/Lease_Leaseback.htm.

³⁰ *Musa Valley vs Department of Land and Physical Planning*, OS (JR) No 10 of 2009. An incorporated land group is “when a customary landowning group forms a body that has legal status under the formal legal system. This body, or corporation, can sue and be sued, hold assets in its name, hire agents, sign contracts and make rules governing its internal affairs.” In *Reconciling Customary Ownership and Development*, ‘Incorporated Land Groups in Papua New Guinea’, Tony Power.

³¹ http://www.aisaid.gov.au/publications/pdf/MLW_VolumeTwo_CaseStudy_1.pdf.

³² See Annex D for a record of SABL announcements in the national gazette.

concern in PNG that many or a majority of these leases have been obtained without the valid consent of customary land owners. The first of these cases to be taken to court substantiated this concern.³³ This is particularly serious given the barriers that face customary owners whose lands may have been illegally leased when they seek to access the judicial system, as UN human rights bodies have already noted.³⁴

18. Land that is leased in this way may be legally regarded as remaining under customary ownership, and thereby maintaining the 97% figure for land managed by custom, but the Land Act specifically states that customary rights over the land are suspended for the period of the lease.³⁵ To state plainly, the customary rights of the indigenous peoples of PNG have been suspended over 10% of their lands and resources, for periods up to 99 years, through an opaque land transfer process, widely regarded as corrupt and for which lease agreements and other relevant documentation is unattainable, including for local landowners trying to ascertain the status of their lands. Alienation of land in this way is recognized under international law as a grave and urgent threat to the survival of indigenous peoples, not least in the jurisprudence of CERD itself.³⁶

19. CERD has emphasized indigenous peoples' right to give their informed consent both in general³⁷ and in connection with specific activities, including: mining, oil and gas operations;³⁸ logging;³⁹ the establishment of protected

³² The PNG Forest Authority quantifies the land area of PNG as 46.284 million hectares. <http://www.forestry.gov.pg/site/page.php?id=11>.

³³ *Musa Valley vs Department of Land and Physical Planning*, OS (JR) No 10 of 2009.

³⁴ Although PNG has repeatedly failed to provide its State Reports to the Committee for the Elimination of Racial Discrimination, it was reviewed by the Committee for the Elimination of Discrimination Against Women (CEDAW) in 2010, when the Committee noted that "the State party does not have a comprehensive and effective legal system for receiving complaints" and recommended that the State act rapidly to improve this system to ensure effective access to justice. CEDAW/C/PNG/CO/3, 12-30 July 2010, at para 19-20.

³⁵ Section 11 provides that "an instrument of lease in the approved form, executed by or on behalf of the customary landowners, is conclusive evidence that the State has a good title to the lease and that all customary rights in the land, except those which are specifically reserved in the lease, are suspended for the period of the lease to the State", Land Act (1996).

³⁶ CERD "calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories", General Recommendation XXIII (5).

³⁷ *Inter alia*, Australia. CERD/C/AUS/CO/14, 14 April 2005, at para. 11 (recommending that Australia "take decisions directly relating to the rights and interests of indigenous peoples with their informed consent, as stated in its general recommendation XXIII"); and Mexico, 04/04/2006, CERD/C/MEX/CO/15, at para. 14 (noting with concern "that under Article 2, section VII of the Constitution, the right of the indigenous peoples to elect their political representatives is limited to the municipal level" and reminding Mexico that "article 5 (c) of the Convention, and recommends that it should guarantee in practice the right of the indigenous peoples to participate in government and in the management of public affairs at every level").

³⁸ *Inter alia*, Guyana, 04/04/2006, CERD/C/GUY/CO/14, at para. 19 (recommending that Guyana "seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities"); Guatemala, 15/05/2006, CERD/C/GTM/CO/11, para. 19; and Suriname, 18/08/2005, Decision 1(67), CERD/C/DEC/SUR/4, para. 3.

³⁹ *Inter alia*, Cambodia, 31/03/98, CERD/C/304/Add.54, at para. 13 and 19 (observing that the "rights of indigenous peoples have been disregarded in many government decisions, in particular those relating to citizenship, logging concessions and concessions for industrial plantations" and recommending that Cambodia "ensure that no decisions directly relating to the rights and interests of indigenous peoples are taken without their informed consent").

areas;⁴⁰ dams;⁴¹ agro-industrial plantations;⁴² resettlement⁴³ and; compulsory takings⁴⁴ and other decisions affecting the status of land rights.⁴⁵ Further, CERD has specifically addressed instances in which legal recognition of the right to give or withhold consent is undermined by inappropriate State action, observing in a 2007 letter to the Philippines that, although the right to consent was recognized in that country's law, CERD was nevertheless concerned that this right has been negatively affected by implementing regulations adopted under the Act.⁴⁶ It also expressed concern about alleged manipulation of the right to consent related to a government agency's "creation of a body with no status in indigenous structure and not deemed representative" by the affected people, and which had "concluded an agreement with a Canadian mining company (TVI Pacific) in order to authorize mining activities" on the indigenous people's sacred mountain.⁴⁷

20. Encroachment onto traditional and customary lands currently occurring in PNG, on such a large scale and with such speed, presents a real and urgent threat to the livelihoods and continued cultural survival of indigenous peoples in PNG. The submitting organisations therefore request that CERD addresses this situation and assists PNG to comply with its obligations, in particular, providing the State with guidance regarding the requirement for informed consent, in practice as well as in law, for any action impacting on indigenous peoples' use of their lands, including through the lease-leaseback process.

IV. Amendments to the Environment Act: denial of the right to judicial remedies

21. On 28 May 2010 PNG passed the Environment (Amendment) Act 2010, a sweeping amendment that provides almost total immunity to third parties involved in development projects where the Ministry of Environment has issued

⁴⁰ *Inter alia*, Botswana, 23/08/2002, UN Doc. A/57/18, paras.292-314, at para. 304 (concerning the Central Kalahari Game Reserve); and Botswana, 04/04/2006, CERD/C/BWA/CO/16, at para. 12.

⁴¹ *Inter alia*, India, 05/05/2007, CERD/C/IND/CO/19, at para. 19 (stating that the India "should seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects and provide adequate compensation and alternative land and housing to those communities").

⁴² *Inter alia*, Indonesia, 15/08/2007, CERD/C/IDN/CO/3, at para. 17 (recommending that Indonesia "ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the Plan"); and Cambodia, 31/03/98, CERD/C/304/Add.54, para. 13 and 19.

⁴³ *Inter alia*, India, 05/05/2007, CERD/C/IND/CO/19, at para. 20 (stating that the "State party should also ensure that tribal communities are not evicted from their lands without seeking their prior informed consent and provision of adequate alternative land and compensation..."); and Botswana, 04/04/2006, CERD/C/BWA/CO/16, at para. 12 (recommending that the state "study all possible alternatives to relocation; and (d) seek the prior free and informed consent of the persons and groups concerned"). See, also, Laos, 18/04/2005, CERD/C/LAO/CO/15, para. 18.

⁴⁴ Guyana, 04/04/2006, CERD/C/GUY/CO/14, at para. 17 (recommending that Guyana "confine the taking of indigenous property to cases where this is strictly necessary, following consultation with the communities concerned, with a view to securing their informed consent...").

⁴⁵ Australia, CERD/C/AUS/CO/14, 14 April 2005, at para. 11 (recommending "that the State party refrain from adopting measures that withdraw existing guarantees of indigenous rights and that it make every effort to seek the informed consent of indigenous peoples before adopting decisions relating to their rights to land"); and United States of America, 14/08/2001, A/56/18, para. 380-407, at para. 400 (concerning "plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples").

⁴⁶ *Letter to the Permanent Mission of the Philippines, Urgent Action and Early Warning Procedure*, 24 August 2007, at p. 1. Available at: http://www.ohchr.org/english/bodies/cerd/docs/philippines_letter.pdf.

⁴⁷ *Id.* at p. 2.

a permit (referred to as an 'Authorization Instrument') and to the extension and alteration of the permit. Specifically, the amendment provides the Director of the Environment with total discretion and complete immunity with respect to: (i) the authorization of 'associated acts';⁴⁸ and issuance of (ii) exemption certifications;⁴⁹ (iii) best practice certificates;⁵⁰ (iv) certificates of necessary consequence⁵¹ and; (v) certificates of compliance.⁵²

22. For each of these new powers, the Act specifies that the Director's decision to issue the certification "is final and may not be challenged or reviewed in any court of tribunal," and that the action undertaken under one of these certifications "does not constitute a civil cause for action, whether in torts or otherwise, or an offence and is not unlawful".⁵³ However there is an exception allowed in this blanket ban on accessing judicial review specifically for "an aggrieved holder of an Authorization Instrument" – that is, except by the third party undertaking the development activity in question.⁵⁴ The Amendment thus acknowledges the right of the investor to judicial review while at the same time as it removes the same right from the indigenous customary owners of lands under threat of environmental degradation.

23. The Amendment is made all the more incredible when viewed in conjunction with the Compensation (Prohibition of Foreign Legal Proceedings) 1995, which was passed by PNG in the aftermath of a court challenge to the Ok Tedi mine.⁵⁵ This law explicitly removed the right of customary owners to seek redress in a court or forum of their choice by prohibiting filing compensation cases in courts in other countries. If a Papua New Guinean does file complaint in

⁴⁸ An associated act is defined as 'specific acts or works ... relating or associated with an activity permitted under an Authorization Instrument' which was not initially included in the instrument, Environment Act Amendment (2010) paragraph 69A(1)

⁴⁹ An exemption certificate declares that "an act, work or omission that was not in accordance with the terms of an Authorization Instrument is an 'Exempt Operation'" and may be issued when the Director is satisfied that the additional work was carried out 'substantially in accordance' with the terms of the instrument. Environment Act Amendment (2010) paragraph 87A (1) Such a judgement cannot be challenged in any court. (paragraph 87A(4))

⁵⁰ Many authorization instruments refer to the need to adhere to 'best practice standards'. Where an instrument does require this of the project implementer the Amendment allows the Director to issue a certificate of best practice which 'shall be considered conclusive evidence' that the best practice standard has been met. Environment Act Amendment (2010) paragraph 87B (1) – (4)

⁵¹ Certificates of Necessary Consequence declare that certain acts or works by the developer, together with a described set of consequences from carrying out the work, are necessary for the developer to carry out the work allowed under the Authorization Instrument. Although these acts or works are not described in the AI, nor the consequences of them, the issuance of the certificate of necessary consequence makes them lawful under the Authorization Instrument. Environment Act Amendment (2010) paragraph 87C (1) – (5)

⁵² Certificates of Compliance are issued by the Director and are conclusive evidence that a developer complied in full with the requirements of their Authorization Instrument. The certifications are not able to be challenged. Environment Act Amendment (2010) paragraph 87D (1) – (5)

⁵³ Environment Act Amendment (2010). Paragraph 87B(4) among others. See Annex C

⁵⁴ Environment Act Amendment (2010). See Annex C

⁵⁵ *Rex Dagi (and other landowners) v BHP Minerals PTY LTD and Ok Tedi Mining*, Victoria Supreme Court, heard 1 August 1994, judgement issued 1 November 1994. The case concerned allegations that the managers of the Ok Tedi mine had unlawfully discharged mining waste into the Ok Tedi River, thereby violating the rights of customary land owners to the enjoyment and use of their riverine resources downstream from the mine. <http://vsc.sirsidynix.net.au/Judgments/Civil/1990+/485775.pdf> The case expanded to four concurrent cases, and was settled out of court in 1995. See also Customary Land Owners' Right to Sue for Compensation in Papua New Guinea and the OK Tedi Dispute [1997] *Melanesian Law Journal* 4; [1997] 25 MLJ 65, 1 January 1997. See also the Compensation (Prohibition of Foreign Legal Proceedings) Act 1995, available at: http://www.paclii.org/pg/legis/consol_act/coflpa1995499/.

a foreign court they are held to have committed a criminal offence, punishable by fines and/or imprisonment, and any complaint at the national level “will cease to be actionable”.⁵⁶ Furthermore, although the Environment Act provides for extensive compensation in the case of damages sustained (Section 87), the new Environment (Amendment) Act (2010) specifically removes this right to sue for compensation with respect to activities carried out under an authorization of ‘associated acts’;⁵⁷ certificates of necessary consequence;⁵⁸ and/or certificates of compliance⁵⁹. With external venues prohibited, denial of judicial remedies in PNG itself per the Amendment to the Environment Act has the effect of a complete denial of access to justice systems by customary owners impacted by environmentally destructive acts as a result of actions taken under one of these forms of certification – or acts retrospectively provided with such certification.

24. This egregious removal of fundamental rights to legal review and compensation has been challenged. The Supreme Court has accepted the case against the Environment Act amendment and granted CELCOR (a submitting organisation of this request) leave to argue. It is expected that the case will be heard in mid-2011, although a date has not yet been set. However, an atmosphere is emerging in PNG of intimidation and threatening action against the individuals and organisations working to have this amendment revoked. This atmosphere was made more tense when the Hon. Ano Pala, Minister of Justice and Attorney General of PNG, issued a written statement warning against any use of the media or publicity by organisations and individuals opposed to the amendment.⁶⁰

25. The right to an effective remedy is recognized in the Universal Declaration of Human Rights and all human rights instruments applicable to PNG, and should be considered part of the corpus of international customary law. For indigenous peoples, such redress is particularly important in cases where the health of their environment and of the resources on which they depend may be threatened.⁶¹ These rights are guaranteed by Article 6 of the Convention on the

⁵⁶ Further to a straightforward prohibition against the use of foreign courts for compensation claims “no compensation proceedings may be taken or pursued in a foreign court” (Section 4 (1)) the Act goes on to make it a criminal offense to file a claim in a foreign court, punishable by a K10,000 fine or 5 years in prison (Section 5) and de-validating any possible national level claim if foreign action is taken: “if compensation proceedings are taken or pursued in a foreign court in respect of a compensation claim, that compensation claim will cease to be actionable in Papua New Guinea and each act or omission alleged to give rise to that compensation claim will be deemed to have been justifiable in Papua New Guinea” (Section 4(3)) Compensation (Prohibition of Foreign Legal Proceedings) Act 1995.

⁵⁷ S69B: “Activity does not constitute a civil cause of action or an offence. If the Director grants an authorization under Section 69A, the holder of the permit for the associated activity is entitled to carry out that act, or work and the carrying out of that act, work or activity *does not constitute a civil cause of action, whether in torts or otherwise*, or an offence and is not unlawful.” (Emphasis added) Environment (Amendment) Act (2010), Section 69B.

⁵⁸ S87C(5): “The carrying out of a conduct or proposed conduct, or the occurring of consequences, referred to in a Certificate of Necessary Consequence *do not constitute wholly or partly a civil cause of action*, whether in torts or otherwise, or an offence and are not unlawful.” (Emphasis added) Environment (Amendment) Act (2010) Section 87C (5)

⁵⁹ S87D: “If carrying out of any act, work or activity that is the subject of a Certificate of Compliance *does not constitute wholly or partly a civil cause of action, whether in torts or otherwise*, or an offence and is not unlawful.” (Emphasis added) Environment (Amendment) Act (2010), Section 87D.

⁶⁰ The Statement is undated, and is provided here in Annex E.

⁶¹ Among others, G. Handl, Indigenous Peoples’ Subsistence Lifestyle as an Environmental Valuation Problem, in *ENVIRONMENTAL DAMAGE IN INTERNATIONAL AND COMPARATIVE LAW. PROBLEMS OF DEFINITION AND VALUATION*

Elimination of All Forms of Racial Discrimination and their importance is highlighted by CERD, which includes the “lack of effective mechanisms, including lack of recourse procedures” as one of the criteria for the use of the urgent action and early warning procedures.⁶²

V. Conclusion and Request

26. Traditional landowners in Papua New Guinea face irreparable harm if their rights to their lands and resources are not adequately protected. Actions taken by companies, and the role of the government of PNG in facilitating and allowing those actions, provide ample evidence of the threat to traditional landowners if the profits from resource extraction is allowed to override the legal protection of their rights to lands and resources. With the passage of the Environment (Amendment) Act, this harm is imminent and further demonstrated by prior and ongoing acts and omissions that substantially compromise a series of rights that are fundamental to the cultural integrity and survival of the peoples of PNG.

27. The denial of access to effective remedies manifest in the Environment (Amendment) Act 2010 should also be viewed in the light of a massive expansion of SABLs in the past year, more than doubling the area under these arrangements. This massive expansion, coupled with evidence that consent procedures are not being faithfully adhered to, threatens imminent and irreparable harm to indigenous peoples. As CERD and others have repeatedly recognised, indigenous peoples’ well-being and the exercise of a series of inextricable inter-connected rights, are severely threatened by acts and omissions that undermine the ownership of and control over their traditional lands, territories and resources. The SABLs currently in effect in PNG fall into this category and their dramatic increase in the past year threatens imminent and irreparable harm to indigenous peoples.

28. In light of the preceding, the submitting organisations respectfully request that CERD:

- a) recommends that Papua New Guinea urgently reviews the Environment (Amendment) Act 2010 and reinstates judicial review of all decisions affecting the lands and resources of traditional landowners in PNG, including the right to compensation from damage caused to those lands and resources;
- b) urges Papua New Guinea to implement and enforce Freedom of Information legislation allowing public and community access to

85-110, at 95 (footnotes omitted) (M. Bowman and A. Boyle eds., OUP 2002) (arguing ‘there can be little room for doubt that there exists today a general consensus among states that the cultural identity of traditional indigenous peoples and local communities warrants affirmative protective measures by states, and that such measures be extended to all those elements of the natural environment whose preservation or protection is essential for the groups’ survival as culturally distinct peoples and communities’).

⁶² *Guidelines for the Early Warning and Urgent Action Procedure*, UN Committee on the Elimination of Racial Discrimination, C(e).

information about the issuance of all leases affecting customary land, including the evidence of appropriate and effective consent procedures;

- c) recommends that Papua New Guinea amends, in light of the UN Declaration on the Rights of Indigenous Peoples and other international human rights standards, the Compensation (Prohibition of Foreign Legal Proceedings) Act (1995) to ensure the right to access effective remedy in a court of one's choice;
- d) recommends that Papua New Guinea reviews the Land Act (1996) and, in particular, Section 102, to ensure that the intent of the lease-leaseback process is preserved and that such arrangements be conducted solely for the purpose of providing indigenous peoples with access to capital and investment for economic development;
- e) recommends that Papua New Guinea reviews the consent procedures in place in the process of issuing SABLs to ensure that they are compliant with international standards and recommends that all SABL's issued in 2010 and earlier are examined by an independent and appropriately skilled panel to ensure that in cases where consent has been engineered, fraudulently obtained or manipulated, that the rights to land and resources are returned to the customary owners and the leases cancelled.

Annex A: The Land Act (1996)

Land Act 1996

No. 45 of 1996.

Land Act 1996.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 45 of 1996.

Land Act 1996.

ARRANGEMENT OF SECTIONS.

1. Compliance with constitutional requirements.
2. Interpretation.
3. Application of Act to interests under repealed *Land Act*.
4. National Title to Land.
5. Declaration of State Land.
6. Interpretation.
7. Modes of acquisition.
8. Rights that may be acquired.
9. Involvement of Land Titles Commission or Land Court where Customary Land acquired.
10. Acquisition of Customary Land by agreement.
11. Acquisition of Customary Land for the grant of special agricultural and business lease.
12. Compulsory Acquisition.
13. Notice to treat.
14. Conversion of interests into claims for compensation.
15. Notice to owner.
16. Registration of notification.
17. Powers of persons under disability, etc.
18. Application of purchase money.
19. Jurisdiction in relation to Customary Land.
20. Order as to rights and basis of compensation.
21. Making, acceptance and rejection of claims.
22. Proceedings where claim rejected.
23. General principles.
24. Value of land in certain cases.
25. Agreement before acquisition as to compensation.
26. Agreement after acquisition as to compensation.
27. Submission of claim to arbitration.
28. Interest on compensation.
29. Revocation of agreement to arbitrate.
30. Proceedings *inter partes* for determination of compensation.
31. Ex-parte proceedings by Minister.
32. Payment of compensation determined.
33. Mortgage moneys barred by Statute of Limitations.
34. Rights of Mortgagee on compulsory acquisition.
35. Particulars of mortgages.
36. Interest, etc, paid after date of acquisition.
37. Court may order stay of proceedings under mortgage.
38. Separate rights of mortgagee and mortgagor to determination.

39. Compensation to mortgagee.
40. Deduction of mortgagee's compensation from mortgagor's compensation.
41. Execution of discharge of mortgage debt.
42. Rights of Mortgagor where mortgagee does not claim.
43. Saving of certain rights of mortgagee.
44. Payment of compensation.
45. Payment of Compensation into Court.
46. Order that claimant entitled to compensation.
47. Interest on compensation.
48. Disposal of resumed land.
49. Reservation from lease or further lease.
50. Trustees for reserved land.
51. Incorporation of trustees.
52. Special purposes lease to be granted over reserved land.
53. Effects of reservation of leased land.
54. Declaration of land as Aerodromes.
55. Establishment of the Land Board.
56. Oath and Affirmation of Office.
57. Functions of the Land Board.
58. Meetings of the Land Board, reports, etc.
59. Sittings of Land Board in divisions.
60. Inquiries, etc, by Land Board.
61. Protection of members of Land Board.
62. Appeals.
63. Reference or reports to Minister.
64. Alienation of Government Land.
65. Grant of State Leases.
66. State Leases not to be inconsistent with lease from customary landowners.
67. State leases not to be inconsistent with zoning, physical planning, etc.
68. Advertisement of lands available for leasing.
69. Duty to advertise State Leases.
70. How applications for State Leases to be made.
71. As a general rule, the Land Board shall consider all applications for State Leases.
72. Power of Minister to grant State Lease direct.
73. Dealing with Tenders.
74. Publication of names of successful applicants, etc., in the National Gazette.
75. Notice to successful applicants.
76. Acceptance of terms and conditions of proposed leases and execution of State Leases.
77. Extinguishment of granted application.
78. Revocation of extinguishment.
79. Procedure after extinguishment.
80. Person entitled to State Lease dying before a State Lease is issued to him.
81. Commencement of State Leases.
82. Reservations, conditions, etc, in leases.
83. Rent.
84. Improvements on land to be leased.
85. Insurance on improvements not paid for.
86. Maintenance of improvements.
87. Grant of Agricultural lease.
88. Improvement conditions.
89. Grant of Pastoral lease.
90. Stocking conditions.
91. Inquiry into depasturing of stock.
92. Grant of Business and Residence Leases.
93. Terms of Leases.

94. Specification of classes of business.
95. Land in physical planning areas.
96. Grant of Mission Lease.
97. Purpose of Mission Lease.
98. Rent.
99. Leases of land on which there are Government-owned buildings.
100. Grant of special purposes leases.
101. Special purposes lease of land in physical planning area.
102. Grant of special agricultural and business leases.
103. Interpretation.
104. Urban Development Leases to be granted over land in physical planning areas suitable for Subdivision.
105. Conditions precedent to land being advertised for subdivision.
106. Grant of Urban Development Lease of Government Land.
107. Urban subdivision by lessee of a State Lease.
108. Terms and conditions of Urban Development Leases.
109. Final proposal for Subdivision and full planning permission.
110. Surrender of land in the Subdivision and Grant of new leases.
111. Declaration of land by Minister.
112. Certain provisions not to apply.
113. Minister may grant lease.
114. Notification of grant.
115. Effective date of grant.
116. Remission and postponement of rent.
117. Improvements.
118. Period of lease.
119. Variation of purposes, relaxation of covenants, etc.
120. Payment for improvements on expiration of lease.
121. Surrender of State Lease.
122. Forfeiture of State Lease.
123. Revocation of Forfeiture.
124. Fee instead of forfeiture.
125. Grant of licence.
126. Grant of licence over resumed land.
127. Application of Part XVII.
128. Approval of controlled dealings and permitted dealings.
129. Withholding of approval in certain cases.
130. Approval of Subdivision.
131. Consolidation of Leases.
132. Disposal of Customary Land.
133. Declaration of Customary Land.
134. Protection of interests of Customary Landowners.
135. Service on Customary Landowners.
136. Inspection of land subject to improvement conditions.
137. Power to examine land.
138. Temporary occupation.
139. Taking of materials, etc, from adjacent land.
140. Fencing of land temporarily occupied.
141. Compensation for damage.
142. Appeal to National Court.
143. Power of Departmental Head to delegate.
144. Trespass, etc, on certain land.
145. Unlawful occupation of Government Land and Customary Land.
146. Unlawful occupation of Government Land and Customary Land.
147. Obstruction of authorized persons.

148. Interpretation.
149. Declared schemes.
150. Disruptive conduct.
151. Compulsory acquisition of State Lease.
152. Order to send people back.
153. Interpretation.
154. Application of this Part.
155. Adjoining owner, etc, to contribute to dividing fence.
156. Dividing fences on neighbouring lands.
157. Repair of dividing fences.
158. Cost of repair of dividing fence.
159. Expenses of dividing fence where State Land alienated, etc.
160. Occupier may recover costs from owner.
161. Notices.
162. Agreements as to dividing fences.
163. Jurisdiction of Court.
164. Mode of recovering cost of fencing.
165. Recoverable costs of fencing.
166. Fencing costs may be levied by distress, etc.
167. Future entitlement to estate tail.
168. Survey fees.
169. Services of notices, etc.
170. Inquiries, etc, by Minister.
171. Recovery of money due to the State.
172. Interest on outstanding moneys.
173. Payment, etc, by the State good discharge.
174. Minister may approve forms.
175. Regulations.
176. Repeal.
177. Applications, matters, etc, not to abate.
178. Appeals, actions, etc, not to abate.
179. Officers.
180. References to repealed Acts.
181. Difficulties with transitional provisions.
182. Town Subdivision Lease to be known as Urban Development Lease.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Land Act 1996,

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

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution (Qualified Rights)*, namely–

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and

- (d) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (e) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purpose of giving effect to the national interest in public order and public welfare, the purpose of protecting the exercise of rights and freedoms of other persons, and for public purposes that, in the considered opinion of the Parliament, are reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind.

(2) For the purposes of—

(a) . . .

(b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“agricultural lease” means a State lease granted under Section 87;

“agricultural purpose” includes a purpose of dairying, horticulture or mixed farming;

“applicant” includes a tenderer;

“application” includes a tender;

“business group” means a business group incorporated under the *Business Groups Incorporation Act 1974*;

“business lease” means a State lease for business purposes granted under Section 92;

“citizen” includes—

(a) a business group; and

(b) a land group; and

(c) a customary kinship group; and

(d) a customary descent group; and

(e) a customary local group or community;

“claimant” means a person who has made a claim for compensation under this Act;

“the Custodian for Trust Land” means the Custodian for Trust Land appointed under the *Land Registration Act 1981*;

“custom” means the customs and usages of indigenous inhabitants of the country existing in relation to land or the use of land at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;

“customary land” means land that is owned or possessed by an automatic citizen or community of automatic citizens by virtue of rights of a proprietary or possessory kind that belong to that citizen or community and arise from and are regulated by custom;

“customary rights” means rights of a proprietary or possessory kind in relation to land that arise from and are regulated by custom;

“the date of acquisition”, in relation to any land acquired by compulsory process under this Act, means the date on which the notice of acquisition of the land is published in the National Gazette;

“the Department” means the Department responsible for land matters;

“the Departmental Head” means the Departmental Head of the Department responsible for land matters;

“District Court”, in relation to any land, means a District Court having jurisdiction in respect of the locality in which the land, or part of the land, is situated;

“Government land” means land other than—

(a) customary land that is not leased by the customary owners to the State; or

(b) land held by a person other than the State for an estate greater than an estate for a term of years; or

(c) land that is the subject of a State lease or a lease from the State under any other Act; or
(d) land reserved from lease or further lease under this Act;

“guardian” includes a person who has, by law or by custom, the immediate custody and control of a child or the right to dispose of property of a child on his behalf;

“improvements” includes a building, yard, fence, well, bore, reservoir, artificial watercourse or watering place, apparatus for raising, holding or conveying water, garden, plantation, cultivation or clearing, or any erection, construction or appliance, being a fixture, for the working or management of land or of stock depastured on land or for maintaining or increasing the natural capabilities of the land;

“interest”, in relation to land, means—

(a) a legal or equitable estate or interest in the land; or

(b) a right, power or privilege over, in or in connection with the land;

“land” includes an interest in land whether arising out of and regulated by custom or otherwise;

“land group” means a land group incorporated under the *Land Groups Incorporation Act 1974*;

“the Land Board” means the Land Board established under Section 55;

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

“lessee”, in relation to a lease from the State, means the holder of the lease, his heirs, executors, administrators or assigns;

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

“mission lease” means a State lease granted under Section 96;

“mortgagee”, in relation to a mortgage, means the person for the time being entitled to the moneys secured by the mortgage;

“mortgagor”, in relation to a mortgage, means the owner for the time being of the land which is subject to the mortgage;

“the National Housing Corporation” means the National Housing Corporation established by the *National Housing Corporation Act 1990*;

“notice of acquisition”, in relation to any land, means a notice under Section 12 declaring the land to be acquired by compulsory process under this Act;

“notice of forfeiture” means a notice under Section 122;

“pastoral lease” means a State lease granted under Section 89;

“physical planning area” has the same meaning that it has under the *Physical Planning Act 1989*;

“public purpose” means—

(a) the purpose of ensuring that land that is not being developed in a manner and to an extent conducive to the best public interest, is properly developed; or

(b) the purpose of making land available to citizens for—

(i) subsistence farming where other land in the area for that purpose is insufficient; or

(ii) for economic development so that they may share in the economic progress of the country; or

(c) any educational, social welfare or community development purpose where other suitable land is either unavailable or insufficient; or

(d) the purpose of preventing disruptive conduct on the part of a leaseholder in a declared land settlement scheme or development scheme from endangering the scheme; or

(e) a purpose connected with the defence or public safety of Papua New Guinea; or

- (f) a purpose of public health, utility, necessity or convenience; or
- (g) the purposes of a hospital, school, training institution, public library or other similar institution; or
- (h) a purpose of or connected with navigation or the safety of navigation by land, air or water; or
- (i) the purposes of or connected with a quay, pier, wharf, jetty or landing place or port or harbour purposes, or an aerodrome or landing pad; or
- (j) the purposes of or connected with a road, track, bridge, culvert, ferry or canal; or
- (k) a purpose of or connected with radio, telegraphic, telephonic or other communication, and the purposes of the National Broadcasting Corporation or the Departments responsible for transport or civil aviation matters; or
- (l) the purposes of an oceanarium, or of an aquarium or of oceanographic research and education; or
- (m) the purposes of an agricultural, horticultural, veterinary or forestry experimental, treatment or demonstration institution, and the purpose of or a purpose connected with re-forestation, water conservation, the prevention or control of soil erosion or the reclamation or rehabilitation of land; or
- (n) the purposes of a reservoir, aqueduct or water-course; or
- (o) the purposes of or connected with the generation or supply of electricity; or
- (p) the purposes of a park or recreational area; or
- (q) a purpose of industrial development; or
- (r) the purpose of accommodation for employees of the State and any other prescribed authority, and the purpose of the settlement or resettlement of residents of urban areas; or
- (s) the purpose of ensuring that land designated under the *Physical Planning Act 1989* for a particular use or uses is made available for that use or uses; or
- (t) the purposes of a cemetery or other place for the interment of the dead; or
- (u) the purposes of a coronous pit or a quarry; or
- (v) the purposes of or a purpose connected with a welfare centre; or
- (w) a purpose declared by any law to be a public purpose for the purposes of this Act; or
- (x) a purpose ancillary to or necessary or convenient for the carrying out of a purpose referred to in any of the preceding paragraphs of this definition;

“the Registrar of Titles” means the Registrar of Titles appointed under the *Land Registration Act 1981*;

“the regulations” means any regulations made under this Act;

“a repealed Land Act” means an enactment that dealt primarily with the acquisition, allocation, transfer or registration of rights to land that was enacted or adopted by a former Administration or other government of a former territory, or by the Independent State of Papua New Guinea and which is not currently in force;

“reserve price” means the reserve price for tendered land as is prescribed or as is determined by the Valuer-General;

“reserved land” means land that was reserved from lease or further lease under this Act or a repealed Land Act, or was reserved from sale under a repealed Land Act;

“residence lease” means a State lease granted for residence purposes under Section 92;

“special purposes lease” means a State lease granted under Section 100;

“special agricultural and business lease” means a State lease granted under Section 102;

“State lease” means a lease from the State granted under or continued in force by this Act;

“this Act” includes the regulations;

“trust land” means—

(a) any land held by the Custodian for Trust Land in trust for a citizen, and includes—

(i) land held in trust for unspecified citizens or for citizens generally; and

(ii) land reserved or deemed to be reserved from lease or further lease under this Act and vested in the Custodian for Trust Land in trust for a citizen or citizens generally; or

(b) any land reserved from sale or lease, or deemed to be reserved from sale or lease, under a repealed Land Act for the purpose of a native reserve,

other than land which is the subject of a State lease;

“**unimproved value**”, in relation to any land, means the unimproved value of the land within the meaning of, and determined in accordance with, the *Valuation Act 1967*;

“**urban development lease**” means a State lease granted under Section 104.

(2) The public purposes referred to in Subsection (1) are public purposes for the purpose of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*.

(3) A reference in this Act to the acquisition of land or of an interest in land includes a reference to the extinction of an interest in land by virtue of Section 12(2).

3. APPLICATION OF ACT TO INTERESTS UNDER REPEALED LAND ACT.

Except where the contrary intention appears, this Act applies to a grant, granted application, lease, licence, permit, estate, right, title, interest, power, duty, obligation or liability granted under a repealed Land Act.

PART II. – NATIONAL TITLE TO LAND.

4. NATIONAL TITLE TO LAND.

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

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

5. DECLARATION OF STATE LAND.

(1) The Minister may, by notice in the National Gazette, declare that any land that appears to him not to be customary land shall, unless good cause is shown to the contrary, be conclusively deemed for all purposes, at the expiration of three months from the date of publication of the notice, to be State land.

(2) A notice under Subsection (1) shall set out–

- (a) the name or names (if any) by which the land the subject of the notice is known; and
- (b) a description or plan of the land; and
- (c) the position of the land; and
- (d) an estimate of the area of the land,

and the Departmental Head shall immediately give a copy to the Custodian for Trust Land.

(3) Subject to this section, on the expiration of three months from the date of publication of a notice under Subsection (1) the land shall be deemed conclusively for all purposes to be State land.

(4) Where, before the expiration of three months from the date of publication of a notice under Subsection (1), a claim that the land the subject of the notice is customary land is made to the Minister by or on behalf of a citizen, the Minister shall refer the matter to the Land Titles Commission.

(5) Where a claim is made under Subsection (4), the land the subject of the claim shall not be deemed to be State land until the Land Titles Commission has decided the claim, and–

- (a) where no application for review or appeal is made under the *Land Titles Commission Act 1962*–the period prescribed for applying for review or making an appeal has expired; and
- (b) where an application for review is made under that Act–the Commission has concluded the review and any re-hearing arising from it; and
- (c) where an appeal is made under that Act–the National Court has decided the appeal.

(6) This Section does not affect a right, title, estate or interest in the land the subject of a notice under Subsection (1) in force under, or continued in force by, an Act.

PART III. – ACQUISITION OF LAND BY THE STATE.

Division 1.

Preliminary.

6. INTERPRETATION.

In this Part–

“court of competent jurisdiction” means–

(a) in relation to land other than customary land–

(i) the National Court; or

(ii) a District Court, that has jurisdiction–

(A) in actions for the recovery of debts up to an amount not less than the value of the land or the amount of compensation claimed; and

(B) in respect of the locality in which the land, or part of the land, is situated; and

(b) in relation to customary land–the Land Titles Commission;

“acquire” includes purchase or lease.

Division 2.

General.

7. MODES OF ACQUISITION.

The Minister may, on behalf of the State, acquire land–

(a) by agreement; or

(b) by compulsory process,

in accordance with this Act.

8. RIGHTS THAT MAY BE ACQUIRED.

(1) Land acquired by agreement or by compulsory process under this Act may be an easement, right, power, privilege or other interest that did not previously exist as such in, over or in connection with the land.

(2) Notwithstanding any other law relating to the acquisition of chattels by the State, where–

(a) land acquired or to be acquired under this Act is developed or partly developed; and

(b) at the time the land is acquired, certain chattels are being used on the land in connection with the development of, or production from, the land,

the Minister may, where he is of opinion that it is desirable to do so to develop the land or to maintain or increase its productivity, on behalf of the State, by agreement or by compulsory process, acquire all or any of the chattels.

9. INVOLVEMENT OF LAND TITLES COMMISSION OR LAND COURT WHERE CUSTOMARY LAND ACQUIRED.

(1) Where it is intended to acquire customary land under this Act, whether by agreement or by compulsory process, the Minister may apply to the Land Titles Commission or a Local Land Court having jurisdiction over the land that is intended to be acquired, for a determination of the ownership of the land or of interests in the land.

(2) Where the State acquires customary land under this Act, whether by agreement or by compulsory process, the Land Titles Commission or a Local Land Court having jurisdiction

over the land that is intended to be acquired, may appoint an agent who may, on behalf of the customary landowners—

(a) execute in his own name all conveyances, transfers, releases and other instruments and do all other acts, matters and things necessary or convenient for effecting that acquisition and vesting the land in the State; and

(b) accept any rent, purchase money, compensation or other moneys or things, and distribute that money or those things to the persons entitled.

(3) A conveyance, transfer, release or other instrument executed, and an act, matter or thing done, in relation to customary land by an agent appointed under Subsection (2) is as valid and effectual for all purposes as if executed or done by all the customary landowners.

(4) The State, or a person taking under the State, is not bound to see to the application of any rent, purchase money, compensation or other moneys or things paid or given to an agent under Subsection (2), and the receipt of the agent is a sufficient discharge.

Division 3.

Acquisition by Agreement.

10. ACQUISITION OF CUSTOMARY LAND BY AGREEMENT.

(1) Subject to Section 11, customary land shall be acquired in accordance with this Section and shall be authenticated by such instruments and in such manner as are approved by the Minister.

(2) The Minister, on behalf of the State, may acquire customary land on such terms and conditions as are agreed on between him and the customary landowners.

(3) Subject to Subsection (4), the Minister shall not acquire customary land unless he is satisfied, after reasonable inquiry, that the land is not required or likely to be required by the customary landowners or by persons on whom the land will or may devolve by custom.

(4) Where the Minister is satisfied, after reasonable inquiry, that any customary land is not required or likely to be required for a certain period but is of the opinion that the land may be required after that period, he may lease that land from the customary landowners for the whole or a part of that period.

Division 4.

Acquisition of Customary land for Lease-leaseback purposes.

11. ACQUISITION OF CUSTOMARY LAND FOR THE GRANT OF SPECIAL AGRICULTURAL AND BUSINESS LEASE.

(1) The Minister may lease customary land for the purpose of granting a special agricultural and business lease of the land.

(2) Where the Minister leases customary land under Subsection (1), an instrument of lease in the approved form, executed by or on behalf of the customary landowners, is conclusive evidence that the State has a good title to the lease and that all customary rights in the land, except those which are specifically reserved in the lease, are suspended for the period of the lease to the State.

(3) No rent or other compensation is payable by the State for a lease of customary land under Subsection (1).

Division 5.

Acquisition by Compulsory Process.

12. COMPULSORY ACQUISITION.

(1) The Minister may, on behalf of the State—

(a) after the expiration of a period of two months after the service of a notice to treat, or of notices to treat under Section 13, in relation to any land; or
(b) at any time where, after diligent search and inquiry, he is satisfied that the owner of the land cannot be located; or
(c) at any time after he has given a certificate under Section 13(6) in relation to any land, by notice in the National Gazette, declare that the land, other than any interest in respect of which a notice to treat has been withdrawn, or any chattel, is acquired by compulsory process under this Act for a public purpose specified in the notice.

(2) On the publication of a notice under Subsection (1), the land or chattel to which the notice applies is—

(a) vested in the State; and
(b) freed and discharged from all interests, trusts, restrictions, dedications, reservations, obligations, contracts, licences, charges and rates.

13. NOTICE TO TREAT.

(1) The Minister shall not acquire land by compulsory process under this Act unless he has first caused to be served on each of the owners of the land, or such of them as can, after diligent inquiry, be ascertained, a notice inviting the person on whom the notice is served to treat with the Minister for the sale or surrender to the Minister, on behalf of the State, of his interest in the land.

(2) A person served with a notice to treat in respect of land shall, not later than two months after the service of the notice, provide the Minister with particulars of—

(a) the interest claimed by him in the land; and
(b) the amount for which he is agreeable to sell his interest in the land; and
(c) the name and address of any other person known to him to have an interest in the land and the nature of that interest.

(3) On receipt of the particulars referred to in Subsection (2), the Minister may—

(a) treat with the person providing the particulars for the acquisition of his interest by agreement; and
(b) notwithstanding anything in this Act, enter into an agreement with that person for the acquisition.

(4) The Minister may, by written notice to a person served with a notice to treat, withdraw the notice to treat.

(5) Where the owner of an interest in land, who has provided the particulars referred to in Subsection (2), suffers loss by reason of the notice to treat having been given and withdrawn, the State is liable to pay to him such compensation as is determined by agreement between the owner and the Minister or, in the absence of agreement, by action as determined by a court of competent jurisdiction.

(6) This Section does not apply in a case where the Minister certifies that there are special reasons why the Section should not apply.

14. CONVERSION OF INTERESTS INTO CLAIMS FOR COMPENSATION.

(1) Subject to Subsection (2), the interest of every person in land or a chattel to which a notice of acquisition applies is, on the date of acquisition, converted into a right to compensation under this Act.

(2) Where an easement, right, power, privilege or other interest in, over or in connection with land that did not previously exist as such is acquired, the interest of every person in the land is, on the date of acquisition, and to the extent to which the interest is affected by the acquisition, converted into a right to compensation under this Act.

15. NOTICE TO OWNER.

(1) Where land is acquired by compulsory process under this Division, the Departmental Head shall, as soon as practicable after the date of acquisition, cause a copy of the notice of acquisition—

(a) to be given to or served on—

(i) the owner of the land; and

(ii) where the owner is not the occupier, the occupier; and

(iii) any other person whom he has reasonable cause to believe has an interest in the land; and

(b) to be published in a newspaper circulating in the area in which the land is situated; and

(c) to be affixed, if practicable, on a conspicuous part of the land.

(2) Service of a notice under Subsection (1) shall be effected by serving the person with the notice, personally or by registered post, at the address of the person last-known to the Minister, or where for some reason the notice cannot be so served, by serving it on any person in occupation of the land.

16. REGISTRATION OF NOTIFICATION.

(1) Where land registered under the *Land Registration Act 1981* has been acquired by compulsory process under this Act, the Departmental Head shall lodge with the Registrar of Titles a copy, certified under his hand, of the notice of acquisition.

(2) The Registrar of Titles shall—

(a) register the acquisition in the manner, as nearly as may be, in which dealings with land are registered; and

(b) deal with and give effect to the copy of the notice of acquisition as if it were a duly executed grant, conveyance, memorandum or instrument of transfer of the land to the State.

Division 6.

Persons under Disability and Certain Limited Owners.

17. POWERS OF PERSONS UNDER DISABILITY, ETC.

(1) A person seised or possessed of, or entitled to, land, or having the management of land on behalf of a person under a legal disability, particularly—

(a) a customary landowner; or

(b) a corporation that has no power, or limited power only, to dispose of land; or

(c) a tenant for life; or

(d) a guardian; or

(e) a committee of a person of unsound mind; or

(f) a trustee; or

(g) an executor or administrator; or

(h) a person for the time being entitled to the receipt of rents and profits of land in possession;
or

(i) a lessee other than a lessee under a State lease,

is empowered and shall be deemed always to have been empowered, by force of this Act and notwithstanding anything to the contrary in any law, custom, deed of settlement or other deed, will, memorandum or articles of association or instrument—

(j) to lease, sell, transfer or convey to the State the land or an interest in the land; and

(k) if the land is acquired by the State by compulsory process—

(i) subject to this Act, to make or join with another person in making a claim for compensation; and

(ii) to accept or not to accept an offer of compensation by the Minister; and

(iii) to take any action authorized by this Act to be taken by a claimant to determine a disputed claim for compensation; and

(l) to enter into an agreement incidental to the exercise of a power conferred by this section.

(2) The powers conferred by Subsection (1) may be exercised and shall be deemed always to have been capable of exercise—

(a) by the customary landowners—not only on behalf of themselves but also on behalf of all other persons who would otherwise have subsequently become entitled to the land by virtue of custom, and in defeasance of the customary rights of those persons; and

(b) by a person other than a lessee—not only on behalf of himself and his heirs, executors, but also on behalf of every person entitled in reversion, remainder or expectancy after him, and in defeasance of the estate of every person so entitled; and

(c) by a guardian—on behalf of his ward, and to the extent to which the ward could exercise those powers if he were not under a disability; and

(d) by the committee of a person of unsound mind—on behalf of the person, and to the extent to which he could exercise those powers if he were not under a disability; and

(e) by a trustee, executor or administrator—on behalf of the beneficiary to the same extent as the beneficiary could exercise those powers if he were not under a disability.

(3) The provisions of any law (other than this Act), making provision for the sale of settled land, or authorizing a person specified in Subsection (1) to sell land of which he is not a beneficial owner, apply, by force of this Act, in relation to land that has been acquired by compulsory process under this Act as if an agreement to accept an amount of compensation in respect of the acquisition were a sale of the land to the State at a price equal to that amount.

(4) Where a person specified in Subsection (1)(b), (c), (d), (e), (f), (g), (h) or (i)—

(a) has leased or sold land (other than customary land) of which he is not the beneficial owner, or agreed to accept compensation in respect of the acquisition under this Act of any such land; and

(b) was not empowered to grant the lease or to make the sale or agreement by a law (other than this Act), including any such law as applied by Subsection (3),

the lease, sale or agreement has no force or effect unless approved by the National Court.

18. APPLICATION OF PURCHASE MONEY.

(1) In this section—

“compensation” includes interest payable on compensation;

“the moneys” means the rent, purchase money or compensation referred to in Subsection (2).

(2) Where a lease, sale or agreement—

(a) to which Section 17(4) applies; or

(b) by a customary landowner, by virtue of Section 17(1)(a),

is made, the rent, purchase money or compensation shall be dealt with as provided by this section.

(3) With the consent of all parties interested, the moneys may be paid to a trustee subject to trusts declared by a deed of trust approved by the Minister.

(4) Where an infant or a person of unsound mind is interested in or entitled to receive the moneys, his consent to an application or disposition of the moneys may be given by a guardian, trustee or committee on his behalf.

(5) The moneys may be paid to the Registrar of the National Court, to be applied in accordance with an order of the Court under Subsection (6).

(6) On the application of a person interested (including a trustee, executor or administrator), the National Court may order the moneys to be applied—

- (a) in the discharge of a debt or encumbrance affecting the land, or affecting other land settled to the same or to the like uses, trusts and purposes; or
- (b) in the purchase of other land, or of securities of or guaranteed by the State, or by the Government of Australia or of a State of Australia, to be conveyed, limited and settled on and for the like uses, trusts and purposes, and in the same manner, as the land in respect of which the moneys were paid; or
- (c) if the moneys have been paid in respect of a building acquired under this Act—in replacing the building or substituting another; or
- (d) in payment to a person becoming absolutely entitled to the moneys, or to such other person, and on such conditions, as the Court directs; or
- (e) in such other manner as the Court directs.

(7) If the owner of the land was a corporation, the moneys may be paid to the corporation.

(8) If the land was vested in a trustee, the moneys may be paid to the trustee to be dealt with by him as nearly as may be in accordance with the trusts on which the land was held.

(9) If the land was vested in an executor or administrator, the moneys may be paid to the executor or administrator to be dealt with by him in accordance with his duties as executor or administrator.

(10) If the land was vested in or managed by the guardian of an infant or the committee of a person of unsound mind, the moneys may be paid to the guardian or committee.

PART IV. – COMPENSATION.

Division 1.

Jurisdiction under Part IV.

19. JURISDICTION IN RELATION TO CUSTOMARY LAND.

Except where the contrary intention expressly appears, the jurisdiction conferred by this Part on the National Court, may with the necessary modifications, be exercised in relation to customary land by the Land Titles Commission, and references in this Part to that Court shall be read as references to the Commission accordingly.

20. ORDER AS TO RIGHTS AND BASIS OF COMPENSATION.

(1) Notwithstanding any provision in this Act, where land is acquired by compulsory process under this Act the National Court may, on the application of the State or any other interested person, make such orders as it thinks proper for declaring or adjusting rights and liabilities in connection with the land or with transactions in relation to the land or otherwise by the acquisition.

(2) Without limiting the generality of the powers conferred by Subsection (1), the orders that may be made under that subsection include—

- (a) an order for the payment or repayment of money; and
- (b) an order discharging a person from an obligation to pay money; and
- (c) where there was a subsisting contract of sale of the land—an order with respect to the rights and liabilities of the parties to the contract; and
- (d) where there was a charge or encumbrance over the land—

(i) an order releasing a person in whole or in part from a personal covenant or obligation in relation to the charge or encumbrance; and

(ii) an order apportioning the charge or encumbrance between the land acquired and other land subject to the charge or encumbrance.

(3) Notwithstanding this Act, the National Court may, in proceedings under this Section or on the application of the State or a claimant, make such order as it thinks just in the special circumstances of a particular case declaring the basis on which compensation in respect of the

acquisition of any land acquired under this Act by compulsory process is to be determined, and the compensation shall be determined accordingly.

(4) Where the National Court has made an order under Subsection (1) in relation to any land, compensation in relation to the land shall, subject to any order made under Subsection (3) but notwithstanding any other provision of this Act, be determined having regard to the effect of that first-mentioned order.

(5) Where the State is not a party to proceedings under this section, the National Court may order the State to be joined as a party if the Court thinks it desirable to do so, either in relation to the making of an order as to costs or otherwise.

(6) For the avoidance of doubt, it is hereby declared that the jurisdiction conferred by this Section on the National Court may, in the case of customary land, be exercised, with the necessary modifications, by the Land Titles Commission.

Division 2.

Claims for Compensation.

21. MAKING, ACCEPTANCE AND REJECTION OF CLAIMS.

(1) A person who has a right to compensation under Section 14 may make a written claim for compensation to the Departmental Head, and shall provide such information in relation to the claim as the Departmental Head requires.

(2) Compensation is not payable to a person in respect of an interest in land acquired by compulsory process under this Act if—

(a) a claim for compensation in accordance with Subsection (1) in respect of the interest is not served on the Departmental Head by the person within one year after the date of acquisition or within such further time as the Departmental Head allows; or

(b) the interest is inconsistent with an interest claimed by another person in respect of which the State has, in good faith, paid or agreed to pay compensation.

(3) Where a claim for compensation is made, the Minister shall, except where compensation is not payable by virtue of Subsection (2), consider the claim, and if he is satisfied that the claimant has produced *prima facie* evidence that he had, immediately before the date of acquisition of the land, the interest claimed by him in the land the Minister shall accept the claim for determination, but otherwise he shall reject the claim.

(4) Within three months after a claim for compensation is made, the Minister shall, by written notice served on the claimant, accept the claim for determination or reject the claim, and if the Minister fails to notify the claimant, he shall be deemed to have accepted the claim for determination.

(5) The acceptance of a claim for determination under this Section does not entitle the claimant to payment of compensation otherwise than in accordance with Division 8.

22. PROCEEDINGS WHERE CLAIM REJECTED.

(1) Where a claim for compensation has been rejected by the Minister, the claimant may bring an action against the State in the National Court claiming a declaration that he was, immediately before the date of acquisition of the land, entitled to the interest specified in the claim.

(2) After notice to such persons as it directs, the National Court shall hear the action, and may—

(a) declare that the claimant was entitled to the interest specified in his claim or to some other interest; or

(b) dismiss the action.

(3) For the purposes of this Act, an order of the National Court under this Section is binding on the State and on all persons who had interests in the land immediately before the date of acquisition of the land, whether or not it or they were represented before the court on the hearing of the action.

(4) Where the National Court declares under this Section that a claimant had an interest in land—

(a) compensation in respect of the interest shall be determined in accordance with this Act as if the claim had been accepted by the Minister; and

(b) if the interest declared by the court differs from the interest specified in the claim—the claim shall be deemed to be amended accordingly.

(5) Where, in relation to a claim for compensation that has been rejected by the Minister—

(a) the claimant does not, within one month after service on him of the notice of rejection of the claim or within such further time as the Minister or the National Court allows, institute an action under this Section in relation to the claim; or

(b) the claimant has so instituted an action and—

(i) the action has been dismissed; and

(ii) a period of not less than one month has elapsed since the dismissal of the action and no appeal or further appeal by the plaintiff (including an application for leave) is pending,

the State may pay compensation in respect of the acquisition on the basis that the claimant was not, at the date of acquisition, entitled to the interest the subject of the claim.

(6) In a case to which Subsection (5) applies, where compensation is paid in respect of an interest that is inconsistent with the interest the subject of the claim no compensation is payable in respect of the last-mentioned interest.

(7) On the application of—

(a) the State; or

(b) the claimant; or

(c) any other person appearing to the court to have a sufficient interest to justify the application,

made at any time after the issue of the writ in the action, whether before or after the making of a declaration under Subsection (2), the National Court may order that the action be treated as including proceedings duly instituted under Section 30 for determination of the amount of compensation under this Act in respect of the interest (if any) that the court declares the claimant to have held.

(8) Section 30 (other than Subsections (2), (3), (7) and (10)) applies to and in relation to proceedings consequent on the making of an order under Subsection (7).

Division 3.

Principles on which Compensation is to be Assessed.

23. GENERAL PRINCIPLES.

(1) In the determination of the amount of compensation payable in respect of land acquired by compulsory process under this Act, regard shall be had to—

(a) the value of the land at the date of acquisition; and

(b) the damage (if any) caused by the severance of the land from other land in which the claimant had an interest at the date of acquisition; and

(c) the enhancement or depreciation in value of the interest of the claimant, at the date of acquisition, in other land adjoining or severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

(2) In determining the value of land acquired under this Act, regard shall not be had to any increase in the value of the land arising from the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

(3) Where the value of the interest of the claimant in other land adjoining the land acquired is enhanced or depreciated by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, the enhancement or depreciation shall be set off against, or added to, as the case requires, the amount of the compensation otherwise payable to the claimant.

24. VALUE OF LAND IN CERTAIN CASES.

Where, for a purpose—

- (a) connected with the defence of Papua New Guinea; or
- (b) for securing the public safety of Papua New Guinea; or
- (c)^[1] connected with navigation or the safety of navigation by land, air or water,

the State, a former administration, any other government or a person or authority acting for or on behalf of the State, a former administration or any other government has done or caused to be done work on, or in relation to, land or has placed anything on, under or over land, and the land is subsequently acquired by compulsory process under this Act, the value of the land shall, for the purpose of determining the compensation payable in respect of the acquisition, be assessed without reference to the enhancement or depreciation (if any) in value arising from the work so done on, or in relation to, the land or the thing so placed on, under or over the land.

Division 4.

Determination of Compensation by Agreement.

25. AGREEMENT BEFORE ACQUISITION AS TO COMPENSATION.

(1) The Minister may, on behalf of the State, enter into an agreement with the owner of land as to the amount of compensation to which the owner will be entitled if the land is acquired by compulsory process under this Act within a time specified in the agreement.

(2) If the land is acquired by compulsory process under this Act—

- (a) within the time specified in the agreement; and
- (b) while the owner who made the agreement is still the owner of the land,

the compensation payable to him in respect of the acquisition shall be deemed to have been determined by agreement at the amount specified in the agreement.

26. AGREEMENT AFTER ACQUISITION AS TO COMPENSATION.

Where a claim for compensation is accepted under Section 21, the amount of compensation to be paid may be determined by agreement between the Minister and the claimant.

Division 5.

Determination of Compensation by Arbitration.

27. SUBMISSION OF CLAIM TO ARBITRATION.

(1) The Minister and a claimant may, instead of determining by agreement the amount of compensation to be paid in respect of the acquisition of any land by compulsory process under this Act, agree to submit the determination of the amount to arbitration.

(2) Where an agreement for arbitration is made under this section, the *Arbitration Act 1951* applies, subject to the agreement, to and in relation to the agreement and to and in relation to the arbitration under the agreement.

28. INTEREST ON COMPENSATION.

(1) Subject to Subsection (2), in an arbitration for the assessment of compensation for the compulsory acquisition of land, the arbitrator may, if he thinks fit, order that there be included in the sum at which compensation is assessed, interest, at such rate as he thinks proper, on the whole or part of the compensation for the whole or part of the period between the date of the acquisition and the date of the assessment.

(2) Nothing in Subsection (1) applies in relation to any amount of compensation on which interest is payable under any other law.

29. REVOCATION OF AGREEMENT TO ARBITRATE.

(1) If, after an agreement referred to in Section 27 is made in relation to a claim by a person in respect of an interest in land and before the award is made on the arbitration under the agreement—

(a) another person makes a claim for compensation in relation to the interest or to another interest in the land; or

(b) the Minister learns of another person who may be entitled to make such a claim,

the Minister may revoke the agreement.

(2) Where the Minister revokes an agreement under Subsection (1), the State is liable to pay the reasonable costs of and incidental to the agreement and, if the arbitration has commenced, of and incidental to the arbitration.

Division 6.

Determination of Compensation by a Court of Competent Jurisdiction.

30. PROCEEDINGS *INTER PARTES* FOR DETERMINATION OF COMPENSATION.

(1) In this Section “**court of competent jurisdiction**” means—

(a) the National Court; or

(b) a District Court that has jurisdiction—

(i) in actions for the recovery of debts up to an amount not less than the amount of compensation claimed; and

(ii) in respect of the locality in which the land, or part of the land, is situated.

(2) Where, in the case of a claim for compensation that has been accepted by the Minister—

(a) a period of three months has elapsed since the claim was made and the compensation has not been determined by agreement; or

(b) before that period has elapsed, the Minister has made a written offer to the claimant of an amount as compensation but the claimant has not accepted the amount or any other amount offered by the Minister,

the claimant may, unless an agreement for the determination of the compensation by arbitration is in force, institute proceedings against the Minister in a court of competent jurisdiction for determination of the amount of compensation under this Act in respect of the interest the subject of the claim.

(3) The writ or summons shall state the amount of compensation that the claimant claims and the interest in respect of which it is claimed.

(4) Subject to the succeeding provisions of this section, the proceedings shall be heard and determined as nearly as may be in the same manner as actions in contract are heard and determined in the court in which the action is instituted.

(5) Except with the consent of the parties, the court shall not direct a reference to arbitration.

(6) If the proceedings are brought in the National Court and that Court is of opinion that the proceedings might have been brought in a court of summary jurisdiction, costs, if awarded to

the claimant, shall be allowed only on the scale of costs applicable in the other court, unless the National Court certifies that special circumstances existed that made it proper to institute the proceedings in the National Court.

(7) Where proceedings under this Section have been instituted in a court in relation to an interest in land, the court may, on the application of the Minister, by order direct any other person—

(a) who has claimed compensation arising out of the acquisition of the interest or of another interest in the land acquired at the same time; or

(b) who appears or claims to have had immediately before the date of acquisition an interest in the land that has been acquired at the same time,

to join as a plaintiff in the proceedings within a time specified in the order.

(8) If a person directed under Subsection (7) to join as a plaintiff fails to do so within the time specified in the order, he is absolutely debarred from afterwards instituting any action against the State for determination or recovery of compensation arising out of the acquisition of—

(a) the interest that was the original subject of the proceedings; or

(b) any other interest in the same land that was acquired at the same time.

(9) Where, by reason of the joinder of a new plaintiff or otherwise, the total compensation claimed in proceedings under this Section exceeds the amount up to which the court has jurisdiction, the Minister shall apply without delay to the National Court for the removal of the proceedings into that Court.

(10) If on an application under Subsection (9) the National Court is satisfied that the application is properly made, it shall order the removal of the proceedings accordingly, and the proceedings shall be continued in the National Court as if they had been instituted in that Court.

(11) If, in relation to the acquisition of any land, proceedings under this Section have been instituted in the National Court and proceedings under this Section have also been instituted in another court in the country, the action in the other court shall, on the application of the Minister to the National Court, be removed into the National Court.

(12) Such documents relating to the proceedings referred to in Subsection (9), (10) or (11) as are filed as of record in the court in which the proceedings were instituted shall be transmitted to the Registry of the National Court.

31. EX-PARTE PROCEEDINGS BY MINISTER.

(1) In this section, “**court of competent jurisdiction**” means—

(a) in relation to an application arising out of Subsection (2)(a)—the National Court or, where the Minister does not make a request under Subsection (4), the National Court or a District Court; and

(b) in relation to an application arising out of Subsection (2)(b)—a court that would be a court of competent jurisdiction under Section 30 if the application were proceedings by the claimant under that Section claiming the amount of compensation specified in the original claim lodged with the Departmental Head.

(2) Where—

(a) a period of six months has elapsed since the date of acquisition of any land and a claim for compensation has not been made in respect of an interest in the land; or

(b) the Minister has made a written offer to the claimant of an amount of compensation in respect of an interest claimed by the claimant in the land and—

(i) the compensation has not, within two months after the making of the offer or within such further time as the Minister, on the application of the claimant, has allowed, been determined by agreement, by arbitration or by a court; and

(ii) proceedings in which the claimant is a plaintiff for determination of compensation under Section 30, or proceedings in an arbitration in respect of the claim, are not pending,

the Minister may apply to such court of competent jurisdiction as he thinks appropriate, having regard to the value and locality of the land, for a determination under this Section in respect of the interest concerned.

(3) After notice to such persons as it directs, the court shall hear the application and determine the amount of compensation payable in respect of the interest the subject of the application.

(4) In an application under this Section arising out of Subsection (2)(a) the Minister may request the court to determine—

(a) the person or persons who, immediately before the date of acquisition, had an interest or interests in the land; and

(b) the nature of the interest or interests,

and the court shall, after notice to such persons as it directs, determine those matters accordingly.

32. PAYMENT OF COMPENSATION DETERMINED.

This part, and a determination of a court or an award under an arbitration under this Part, does not entitle a person to receive payment of compensation otherwise than in accordance with Division 8.

Division 7.

Mortgages over Land Acquired by Compulsory Process.

33. MORTGAGE MONEYS BARRED BY STATUTE OF LIMITATIONS.

For the purposes of this Division, moneys shall not be deemed to have been due to a mortgagee under a mortgage, or to have been secured by the mortgage, at the date of acquisition of land that was subject to the mortgage if the right of the mortgagee to recover the moneys was, at that date, barred by a statute relating to the limitation of actions, unless the mortgagee had, at that date, a power of sale or other remedy exercisable in relation to the land.

34. RIGHTS OF MORTGAGEE ON COMPULSORY ACQUISITION.

(1) Where land acquired by compulsory process under this Act was, at the date of acquisition, subject to a mortgage, the mortgagee may either—

(a) claim compensation under Division 2; or

(b) by notice to the Minister, waive his rights to compensation.

(2) If the mortgagee makes a claim for compensation, he shall state in his claim—

(a) the amount of principal due under the mortgage at the date of acquisition; and

(b) the amount of interest, costs and charges due under the mortgage at that date.

(3) The Minister may, by written notice served on a person who is or may be a mortgagee, require him, at his option—

(a) to make a claim under this Act for compensation as mortgagee; or

(b) to waive his rights to compensation.

(4) If the person referred to in Subsection (3) fails to make a claim for compensation in accordance with this Act within two months, or such further period as the Minister in writing allows, after the service of the notice under that subsection, he shall be deemed to have waived his rights to compensation as mortgagee.

(5) Where a mortgagee claims compensation under this Act, the acquisition of the land has, to the extent to which the compensation payable to the mortgagee under Section 39(1) is

sufficient to satisfy the mortgage debt and interest, costs and charges due to the mortgagee under the mortgage as at the date of acquisition, the effect of extinguishing the liability of the mortgagor under the mortgage as from the date of acquisition.

(6) A mortgagee who waives his rights to compensation is debarred from claiming or recovering as mortgagee any compensation or other amount from the State.

(7) Waiver of his rights to compensation by a mortgagee, or failure by a mortgagee to claim compensation, does not affect his rights and remedies against the mortgagor or in respect of land included in the mortgage other than the land acquired.

35. PARTICULARS OF MORTGAGES.

(1) The Minister may, by written notice served on the owner of land acquired by compulsory process under this Act, require him to furnish the following particulars:—

(a) whether or not the land is subject to a mortgage;

(b) if the land is subject to a mortgage—

(i) the name and address of the mortgagee; and

(ii) the amount of principal due under the mortgage at the date of acquisition; and

(iii) the amount of interest, costs and charges due to the mortgagee under the mortgage at that date.

(2) If the owner of the land fails to furnish the particulars to the Minister within two months, or such further period as the Minister in writing allows, after the service of notice under Subsection (1), the Minister may agree with any person claiming to be a mortgagee of the land as to the amount due under the mortgage, and the owner is debarred from disputing the correctness of any amount so agreed on.

36. INTEREST, ETC, PAID AFTER DATE OF ACQUISITION.

(1) Where an amount has been paid to or recovered by a mortgagee under a mortgage in respect of a liability that, on the making of a claim by the mortgagee, is deemed to have been extinguished as from the date of acquisition by virtue of Section 34(5)—

(a) the mortgagee is liable to repay the amount to the person who paid it; and

(b) the Minister may deduct from the compensation payable to the mortgagee, and pay to the person who paid that amount, so much of the amount as has not been so repaid.

(2) A payment made by the Minister in accordance with Subsection (1)(b) shall be deemed to have been made in discharge of the obligation of the mortgagee under Subsection (1)(a).

37. COURT MAY ORDER STAY OF PROCEEDINGS UNDER MORTGAGE.

(1) In this section, “**proceedings**” means any action to enforce the rights of a mortgagee under a mortgage, whether or not the proceedings are in a court, including action with a view to taking possession of or selling land, or to foreclosing.

(2) Where—

(a) any land acquired by compulsory process under this Act was, at the date of acquisition, subject to a mortgage; and

(b) proceedings by the mortgagee in relation to the mortgage—

(i) were pending at the date of acquisition; or

(ii) are commenced or proposed to be commenced after that date and before compensation had been paid in full to the mortgagor in respect of the acquisition,

the National Court may—

(c) on the application of the mortgagor and subject to such conditions as the Court thinks fit order a stay of the proceedings or enjoin the mortgagee against commencing or continuing the

proceedings; and

(d) make such other orders as it thinks necessary.

38. SEPARATE RIGHTS OF MORTGAGEE AND MORTGAGOR TO DETERMINATION.

Subject to Sections 30(8), 31 and 35(2)–

(a) the rights of a mortgagor claiming compensation are not affected by a determination of the compensation payable to a mortgagee; and

(b) the rights of a mortgagee claiming compensation are not affected by a determination of the compensation payable to the mortgagor or another mortgagee,

unless the mortgagor or mortgagee, as the case may be, was a party to the agreement or proceedings in which the compensation was determined.

39. COMPENSATION TO MORTGAGEE.

(1) The compensation payable to a mortgagee is an amount equal to the sum of–

(a) the principal secured by the mortgage at the date of acquisition; and

(b) any interest, costs or charges due to the mortgagee under the mortgage at that date,

but not exceeding the compensation payable to the mortgagor in respect of the land.

(2) For the purposes of Subsection (1), the compensation payable to the mortgagor shall be deemed to be–

(a) if there was only one mortgage over the land–the compensation that would have been payable to the mortgagor if there had been no mortgage over the land; or

(b) if there was only one mortgage over the land–the compensation that would have been payable to the mortgagor if there had been no mortgage over the land,

less the amount, or the sum of the amounts, of principal, interest, costs and charges due at the date of acquisition to a mortgagee or mortgagees in respect of a mortgage or mortgages having priority over the mortgage in respect of which the compensation is to be determined.

(3) In addition to the compensation referred to Subsection (1), the mortgagee is entitled to payment by the State–

(a) of interest on the amount of principal included in the compensation at the lowest rate (whether for prompt payment or otherwise) provided by the mortgage, from the date of acquisition to–

(i) the date of payment of compensation; or

(ii) where payment is delayed through a default of the mortgagee, the date when payment would have been made but for the default; and

(b) if the principal was not repayable (with or without notice) at the date when interest ceased to be payable under Paragraph (a)–

(i) of the costs of the mortgagee of re-investing the principal included in the compensation; and

(ii) if a loss of interest is reasonably to be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest obtained or likely to be obtained on the re-investment–of a reasonable allowance for loss of interest until the date on which the principal would have been repayable (with or without notice).

40. DEDUCTION OF MORTGAGEE'S COMPENSATION FROM MORTGAGOR'S COMPENSATION.

The compensation payable to a mortgagee under Section 39(1) shall be deducted from the compensation that would have been payable to the mortgagor if the mortgage did not exist, and interest under Section 47 is payable to the mortgagor on the reduced amount only.

41. EXECUTION OF DISCHARGE OF MORTGAGE DEBT.

On payment or tender of the compensation to the mortgagee, he shall, if so required by the mortgagor and at the expense of the mortgagor, execute a discharge of the mortgage debt to the extent to which the liability of the mortgagor under the mortgage is extinguished by virtue of Section 34(5).

42. RIGHTS OF MORTGAGOR WHERE MORTGAGEE DOES NOT CLAIM.

Where a mortgagee does not claim compensation, the mortgagor is entitled to the same compensation as if the mortgage did not exist, and, in addition, to such amount (if any) as he should justly receive as compensation in respect of—

- (a) interest on the mortgage debt accruing after the date of acquisition; and
- (b) any other liability to the mortgagee.

43. SAVING OF CERTAIN RIGHTS OF MORTGAGEE.

Where land that is subject to a mortgage is acquired by compulsory process under this Act and the whole or part of the mortgage debt is not discharged by virtue of this Act, the mortgagee retains, in respect of the whole or the part of the mortgage debt, as the case may be, his rights and remedies against the mortgagor (other than rights and remedies in relation to the land acquired) and in relation to any other land that is subject to the mortgage.

Division 8.

Payment of Compensation and Interest.

44. PAYMENT OF COMPENSATION.

(1) When the amount of compensation to which a person is entitled under Section 19 has been determined, the amount shall be paid to him when he has—

- (a) made out, to the satisfaction of the Attorney-General, a title, as at the date of acquisition, to the interest in respect of which the compensation is payable; and
- (b) produced or surrendered all deeds and documents relating to, or evidencing, the title that the Attorney-General reasonably requires to be produced or surrendered; and
- (c) executed such documents as the Attorney-General reasonably requires.

(2) Subsection (1)(a) does not apply where a court has, under Section 22, 31 or 46, declared or determined that the claimant had, immediately before the date of acquisition, the interest in respect of which the compensation is payable.

45. PAYMENT OF COMPENSATION INTO COURT.

(1) If, at the expiration of six months after the determination of the amount of any compensation, the person entitled to the compensation has not, by reason of some default or delay on his part, received payment of the compensation, the Minister may deposit the amount of compensation in the National Court.

(2) If, before the amount of compensation is deposited in the National Court, the Minister has notice of any rents, rates, taxes or assessments charged on the land and due at the date of acquisition, he may—

- (a) pay the amount of the rents, rates, taxes or assessments out of the amount of compensation; and
- (b) deposit the balance in the National Court.

(3) An amount of compensation deposited in the National Court under Subsection (1) or (2) may be paid, on the direction of the Attorney-General, to a person who complies with the requirements of Section 44.

(4) Section 19 does not apply in relation to Subsection (1) or (2).

46. ORDER THAT CLAIMANT ENTITLED TO COMPENSATION.

(1) Notwithstanding Sections 44 and 45, where a person claims to be entitled to an amount of compensation determined in respect of any land by agreement or by a court (including an amount that has been deposited in the National Court), the National Court—

(a) on application by the person; and

(b) on proof, to the satisfaction of the Court, of his title, immediately before the date of acquisition, to the interest in land in respect of which the compensation was payable,

may—

(c) declare that the person is entitled to the compensation; and

(d) order the payment of the compensation to the person, subject to such conditions as the Court thinks fit.

(2) Where the National Court orders payment to a claimant of an amount of compensation that has been deposited in the Court, the Court may, if it thinks fit, order payment of interest at the rate of 3% per annum in respect of a period after the date of the deposit.

47. INTEREST ON COMPENSATION.

(1) Subject to this Division, an amount of compensation payable in respect of an acquisition by compulsory process under this Act (other than an amount payable to a mortgagee on which interest is payable under Section 39) bears interest at the rate of 3% per annum from the date of acquisition of the land to—

(a) the date on which payment is made to the claimant; or

(b) where the amount is deposited in the National Court in accordance with Section 45, to the date on which the amount is so deposited.

(2) Where the amount of compensation determined by the National Court does not exceed an amount offered by the Minister, interest is payable only to the date on which the offer of the Minister was received by the claimant.

(3) Where compensation is determined, or ordered to be paid, by the National Court, interest continues to be payable under this Section and not otherwise.

Division 9.

Disposal of Resumed Land.

48. DISPOSAL OF RESUMED LAND.

(1) Notwithstanding the purpose for which land, other than customary land, has been acquired by compulsory process, it may be dealt with in all respects as other Government land.

(2) Where—

(a) the whole or part of any land that, immediately before the date of acquisition by compulsory process under a repealed Land Act or this Act, was customary land is no longer required for the purpose for which it was acquired; and

(b) within seven years after the date of acquisition it is proposed to grant a State lease for a purpose other than the purpose for which the land was acquired,

the Minister should, where practicable, unless in his opinion it is undesirable to do so, declare the land to be customary land under Section 132, in which case the provisions of Subsection (3) of that Section do not apply in relation to the land or to the declaration.

(3) Subsection (2) does not apply where the State or any other person has, since the date of acquisition, made substantial improvements to the land.

(4) A person contracting or otherwise dealing with the State is not concerned to inquire whether the requirements of this Section have been complied with, and the title of any such person to land acquired from the State is not affected by any failure to comply with those requirements.

PART V. – RESERVATION OF LAND.

49. RESERVATION FROM LEASE OR FURTHER LEASE.

The Minister may, by notice in the National Gazette, reserve from lease or further lease–

- (a) Government land; or
- (b) land that is the subject of a State lease,

that he considers is or may be required for a purpose specified in the notice.

50. TRUSTEES FOR RESERVED LAND.

(1) The Minister may, by notice in the National Gazette–

- (a) appoint trustees for land reserved for lease or further lease under this Act or a repealed Land Act; and
- (b) place the land under the control of the trustees; and
- (c) declare the style or title of the trustees; and
- (d) declare the trusts for the carrying out of which the land is placed under the control of the trustees; and
- (e) empower the trustees to make by-laws for carrying out the objects of the trust and to prescribe penalties of fines not exceeding K200.00 for offences against the by-laws.

(2) By-laws made under Subsection (1) are of no force or effect until–

- (a) approved by the Head of State, acting on advice; and
- (b) published in the National Gazette.

(3) Notwithstanding anything in this Act (otherwise than in this Part) or in any other law, by-laws made under this Section may authorize the making of charges for the admission of persons and vehicles to the land placed under their control.

(4) Notwithstanding anything in this Act (otherwise than in this Part) or in any other law, trustees appointed under this Section may, with the approval of the Minister, grant licences over, or limit or restrict the use of, the land placed under their control.

(5) Trustees appointed under this Section shall, at such times as are prescribed or as the Minister directs–

- (a) forward to the Minister a report on the administration of the trust and on such matters connected with the administration of the trust as the Minister directs; and
- (b) provide the Minister with a statement of receipts and expenditure during such period as the Minister directs.

51. INCORPORATION OF TRUSTEES.

Trustees appointed under Section 50–

- (a) are a corporation; and
- (b) have perpetual succession; and
- (c) shall have a common seal; and
- (d) are capable of suing and being sued in their corporate name.

52. SPECIAL PURPOSES LEASE TO BE GRANTED OVER RESERVED LAND.

Where Government land is reserved from lease, the land shall not be granted on application or tender, and a special purposes lease over the land shall be issued and registered in the name of the Independent State of Papua New Guinea.

53. EFFECTS OF RESERVATION OF LEASED LAND.

Where land that is the subject of an existing State lease is reserved from further lease–

- (a) the reservation does not affect the provisions of the lease or the rights, powers, duties and liabilities of the lessee; and

(b) the exercise of powers conferred under Section 50 shall be subject to the provisions of the lease, and to the rights, powers, duties and liabilities of the lessee.

PART VI. – AERODROMES.

54. DECLARATION OF LAND AS AERODROMES.

(1) The Minister may, by notice in the National Gazette, declare an area of land to be an aerodrome.

(2) The provisions of this Act shall not apply to land the subject of a declaration under Subsection (1), but rather the *Aerodromes (Business Concessions) Act 2000* shall apply to a lease in respect of such land or any part of such land.

PART VII. – THE LAND BOARD.

55. ESTABLISHMENT OF THE LAND BOARD.

(1) A Land Board is hereby established.

(2) The Land Board shall consist of–

(a) a Chairman; and

(b) such other members, as the Minister thinks proper,

appointed by the Minister by notice in the National Gazette.

(3) In addition to the members referred to in Subsection (2), the Minister may, by notice in the National Gazette, appoint such other members to the Land Board for such periods to act in relation to land in such localities, or in respect of certain types of State leases, as he thinks necessary, and a member so appointed has and may exercise all the powers and functions of a member of the Board.

(4) The Minister may, by notice in the National Gazette, appoint such number of persons as he thinks proper to be Deputy Chairmen of the Land Board.

(5) Subject to Section 59(2), in the absence of the Chairman from a meeting of the Land Board a Deputy Chairman nominated by the Chairman for the purpose has and may exercise all the powers and functions of the Chairman in relation to the meeting.

56. OATH AND AFFIRMATION OF OFFICE.

(1) Before entering on his duties the Chairman, the Deputy Chairman or a member of the Land Board shall take an oath or make an affirmation in the approved form.

(2) The oath or affirmation shall be taken or made before the Minister or a person appointed by the Minister for the purpose.

(3) This Section does not apply to an officer of the Public Service who is appointed to the Land Board.

57. FUNCTIONS OF THE LAND BOARD.

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

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

58. MEETINGS OF THE LAND BOARD, REPORTS, ETC.

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

- (a) the applications and other matters to be considered; and
- (b) lands to be dealt with,

by the Board at the meeting.

(2) The Chairman shall notify by post every person who, in his opinion, is interested in an application or matter, of the date on which it will be considered by the Land Board.

(3) The meeting of the Land Board shall be held not less than seven days nor more than 42 days after the publication of the list referred to in Subsection (1), and the Board shall deal with applications and matters, hear any objections and report on the applications or matters within 14 days to the Minister.

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

(5) Subject to Section 106, for the conduct of business at a meeting of the Land Board—

(a) three members, of whom one is the Chairman or a Deputy Chairman nominated for the purpose under Section 55(5), are a quorum; and

(b) the Chairman or the Deputy Chairman nominated for the purpose, shall preside; and

(c) all matters shall be decided by the majority of votes of the members present; and

(d) the person presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(6) The person presiding at a meeting of the Land Board shall—

(a) where he thinks it necessary to do so; or

(b) where he is directed by the Chairman to do so,

exclude any or all members of the public from the meeting.

(7) The Departmental Head or his delegate—

(a) may attend any meeting of the Board; and

(b) shall, where so requested by the Chairman, attend a meeting of the Board,

in the capacity of adviser to the Board.

(8) Where the Land Board—

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

(b) is directed by the Minister that the recommendation of the Board is not to be made available to members of the public; or

(c) deals with an application or matter that has been specified in the notice in the National Gazette under Subsection (1) to be the subject of a confidential report,

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

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

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

(b) the applicant who, in the opinion of the Land Board, is the second-choice successful applicant; and

(c) the applicant who, in the opinion of the Land Board, is the third-choice successful applicant,

and where the Land Board, in making a recommendation in any case, considers that two or more applicants are of equal merit, it may decide the matter by ballot and shall report on the ballot to the Minister within 14 days.

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

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

59. SITTINGS OF LAND BOARD IN DIVISIONS.

(1) If the Chairman thinks it necessary, more than one sitting of the Land Board may be held at the one time.

(2) When more than one sitting of the Land Board is to be held at the one time, the Chairman is responsible for determining—

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

60. INQUIRIES, ETC, BY LAND BOARD.

(1) The Land Board, in the exercise and performance of the powers and duties conferred or imposed by or under this Act, may—

- (a) summon witnesses; and
- (b) take evidence on oath or affirmation; and
- (c) require a person to produce a document, book or paper in his custody or control.

(2) A person who, without reasonable excuse, when summoned or required under this Section to give evidence or to produce a document, book or paper in his custody or control fails—

- (a) to attend before the Land Board, as the case may be, at the time and place appointed in the summons or requirement; or
- (b) to give evidence or to produce the document, book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) It is a defence to a charge of an offence against Subsection (2) for failing without reasonable excuse to produce a document, book or paper if the defendant proves that the document, book or paper is not relevant to the matter in connection with which the production was required.

(4) For the purposes of this section, a summons purporting to be issued by the Land Board shall be deemed to have been properly issued if it is signed by the Chairman of the Board.

61. PROTECTION OF MEMBERS OF LAND BOARD.

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

PART VIII. – APPEALS AND REPORTS.

62. APPEALS.

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

(2) An appeal shall be accompanied by a deposit of K500.00, which shall, subject to Subsection (3), be refunded when the appeal has been decided.

(3) If the Head of State, acting on advice, thinks that the appeal has been made on frivolous grounds, the Head of State, acting on advice, may reject the appeal and direct that the whole or any portion of the deposit shall be forfeited to the State.

(4) Subject to Subsection (5), the Head of State, acting on advice, shall determine an appeal under this section, and his decision is final.

(5) Where an appeal under this Section is upheld, the Head of State, acting on advice, may refer the matter back to the Land Board for re-hearing.

63. REFERENCE OR REPORTS TO MINISTER.

(1) A report or recommendation of the Land Board shall—

(a) if no appeal is made under Section 62, at the expiration of the period referred to in Subsection (1) of that section; or

(b) if any such appeal is made, after the appeal is determined,

be referred to the Minister.

(2) In addition to any other powers conferred by or under this Act, the Minister shall, if he disagrees with a report or recommendation of the Land Board, and may for any other reason—

(a) refer any matter back to the Board for re-hearing, the taking of fresh evidence, the furnishing of a further or additional report, or otherwise; or

(b) refer any matter to the National Executive Council.

(3) The decision of the Head of State, acting on advice, on a matter referred to the National Executive Council under Subsection (2)(b), is final.

PART IX. – ALIENATION OF GOVERNMENT LAND.

64. ALIENATION OF GOVERNMENT LAND.

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

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

PART X. – STATE LEASES.

Division I.

State Leases Generally.

65. GRANT OF STATE LEASES.

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

66. STATE LEASES NOT TO BE INCONSISTENT WITH LEASE FROM CUSTOMARY LANDOWNERS.

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

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

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

68. ADVERTISEMENT OF LANDS AVAILABLE FOR LEASING.

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

(2) An advertisement under Subsection (1) shall contain the following information:—

- (a) the type of lease available to be granted;
- (b) the purpose of the lease;
- (c) the length of the lease;
- (d) a description of the land to be leased;
- (e) the amount of rent (if any) payable for the first period of the lease;
- (f) in the case of a special purposes lease—any royalties that are payable;
- (g) the terms and conditions of the lease;
- (h) the reserve price;
- (i) such other information as the Departmental Head thinks fit or the Minister directs.

(3) A statement contained in an advertisement under this Section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.

69. DUTY TO ADVERTISE STATE LEASES.

- (1) A State lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Subsection (2).
- (2) The Minister may exempt land from advertisement for application or tender—
 - (a) where the lease is granted to a governmental body for a public purpose; or
 - (b) where it is necessary to relocate persons displaced as a result of a disaster as defined in the *Disaster Management Act 1984*; or
 - (c) where a lessee applies for a further lease; or
 - (d) where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertaking; or
 - (e) where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit, providing that the claims of other neighbouring landowners are considered and their views taken into account in deciding whether to exempt the land from advertisement in favour of the applicant; or
 - (f) where the Department responsible for foreign affairs recommends that land be made available to the applicant for consular premises; or
 - (g) where the land is required for the resettlement of refugees; or
 - (h) where the applicant has funded the acquisition of the land from customary landowners in order to acquire a State lease over it; or
 - (i) where a lease is to be granted under Section 99 or 102; or
 - (j) where a new lease is granted under Section 110, 130 or 131.

70. HOW APPLICATIONS FOR STATE LEASES TO BE MADE.

An application for a State lease shall—

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

71. AS A GENERAL RULE, THE LAND BOARD SHALL CONSIDER ALL APPLICATIONS FOR STATE LEASES.

Subject to Section 72, the Land Board—

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

72. POWER OF MINISTER TO GRANT STATE LEASE DIRECT.

The Minister may grant, on application or otherwise—

- (a) a lease over any land acquired under the *Lands Acquisition (Development Purposes) Act* (Chapter 192) (Repealed); and
- (b) a lease over land which has been the subject of a declaration under Section 111; and
- (c) a lease granted under Section 102; and
- (d) a lease granted under Section 99,

without referring the matter to the Land Board.

73. DEALING WITH TENDERS.

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

74. PUBLICATION OF NAMES OF SUCCESSFUL APPLICANTS, ETC., IN THE NATIONAL GAZETTE.

The Departmental Head shall publish in the National Gazette—

- (a) the name of the successful applicant for each State Lease, together with particulars of the lands to be leased to him; and
 - (b) in respect of that State Lease and those lands—
 - (i) the name of the applicant considered the second-choice successful applicant; and
 - (ii) the name of the applicant considered the third-choice successful applicant,
- to whom a Letter of Grant may be forwarded in accordance with Sections 75 and 79.

75. NOTICE TO SUCCESSFUL APPLICANTS.

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

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

76. ACCEPTANCE OF TERMS AND CONDITIONS OF PROPOSED LEASES AND EXECUTION OF STATE LEASES.

- (1) The Minister, on behalf of the Independent State of Papua New Guinea, shall execute three copies of a State lease and forward the original and a duplicate to the Registrar of Titles for registration.

(2) A successful applicant, who forwards a duly signed Lease Acceptance Form to the Departmental Head in accordance with Section 75, thereby accepts the terms and conditions of the proposed lease as set out in the Letter of Grant and shall be deemed to have executed the lease on the date on which the Minister executes the lease.

77. EXTINGUISHMENT OF GRANTED APPLICATION.

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

(a) if a duly signed Lease Acceptance Form does not reach the Departmental Head or other officer authorized to receive such written acceptances within 28 days of the publication of the notice under Section 75 in the National Gazette, or such later date as is stated in the Letter of Grant; or

(b) if the grantee fails to pay all amounts of money specified in the Letter of Grant within the required time.

78. REVOCATION OF EXTINGUISHMENT.

(1) Where a granted application (hereafter called “**the original grant**”) has been extinguished under Section 77 by mistake, and provided that a notice under Section 75 has not been published in the National Gazette in respect of another applicant, the Departmental Head may revoke the notice of extinguishment by publishing a notice of revocation of extinguishment in the National Gazette.

(2) Where the Departmental Head publishes a notice under Subsection (1), the original grant shall be treated as valid and as effectual as if the extinguishment had not occurred.

79. PROCEDURE AFTER EXTINGUISHMENT.

(1) Where—

(a) a notice of extinguishment of a State lease has been published in the National Gazette under Section 77; and

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

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

(2) Where, in respect of a Letter of Grant referred to in Subsection (1)—

(a) a notice of extinguishment of a State lease has been published in the National Gazette under Section 77; and

(b) after a period of 60 days after the date of publication of the notice of extinguishment, no notice of revocation of extinguishment under Section 78 in respect of that State lease has been published in the National Gazette,

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

80. PERSON ENTITLED TO STATE LEASE DYING BEFORE A STATE LEASE IS ISSUED TO HIM.

(1) Where a person who is entitled or would have become entitled to have a State lease issued to him dies before the lease is actually issued, the Minister may—

(a) issue the lease to, and in the name of, the deceased person as if he were still alive; or

(b) issue the lease to the successors in title of the deceased person.

(2) A lease issued under Subsection (1)—

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

81. COMMENCEMENT OF STATE LEASES.

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

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

82. RESERVATIONS, CONDITIONS, ETC, IN LEASES.

- (1) In this section, “**petroleum**” means naturally occurring hydrocarbons in a free state, whether gaseous, liquid or solid, other than coal, shale or a substance that may be extracted from coal, shale or other rock by the application of heat or by a chemical process.
- (2) In addition to such reservations, covenants and improvement and other conditions as are prescribed, a State lease shall contain such other reservations, covenants and conditions as the Minister considers proper.
- (3) There is implied in a State lease—
- (a) a reservation to the State of all minerals and mineral substances in or on the land the subject of the lease (including gold, silver, copper, tin, metals, ores and substances containing metals), gems, precious stones, coal, shale, mineral oils and valuable earths or substances, together with the right, subject to any law relating to mining, to authorize a person to enter on the land to search for, mine, work or win, recover and remove them or any of them and to do all things necessary or convenient for those purposes; and
- (b) a reservation to the State of all petroleum on or below the surface of the land the subject of the lease, together with all rights necessary for the purpose of searching for and obtaining petroleum in any part of the land and all rights of way and easements for pipelines and for other purposes required for searching for, obtaining or conveying petroleum; and
- (c) a reservation to the State of all helium found in association with petroleum on or below the surface of the land the subject of the lease, together with all rights necessary for the purpose of searching for, obtaining or conveying helium similar to the rights served by Paragraph (b) in respect of petroleum; and
- (d) a condition that the lessee will, subject to Section 119, use the land *bona fide* for the purpose only for which it is granted, or for a purpose ancillary to that purpose.

83. RENT.

- (1) The rent on a State lease is as is prescribed.
- (2) Notwithstanding Subsection (1), the Minister may, not earlier than 10 years after the commencement of the term of a State lease as calculated in accordance with Section 81, where in any particular case he thinks fit and after considering a report of the Land Board, impose such lower rental as he thinks proper and as is specified in the notice (if any) given under Section 68 in relation to the lease.
- (3) The unimproved value of the land comprised in a State lease shall be re-assessed every 10 years, calculated from the commencement of the term of the lease, except where the Minister for some special reason, fixes an earlier date from which the periods of 10 years shall be calculated.
- (4) A re-assessment takes effect, as from 1 January next following the giving by the Departmental Head to the lessee of notice of the re-assessment.
- (5) Subject to Section 116, where for any special reason he thinks fit, the Minister may, on the application of the lessee and after considering a report of the Land Board, remit or postpone

in whole or in part, for such period and on such terms as he thinks proper, payment of rent on a State lease.

(6) Rent up to the next 1 January is payable on the granting of an application for a State lease or on the termination of any period of remission of rent granted, and afterwards annually in advance on 1 January in each year.

(7) The Departmental Head shall, as soon as practicable after 31 December in each year—

(a) prepare a list with the names of lessees from whom rent is due; and

(b) publish a notice in the National Gazette that the list has been prepared and may be inspected.

(8) Once the list referred to in Subsection (7) has been notified in the National Gazette, it shall be received in any court as *prima facie* evidence in each case that the rent is due and unpaid and that payment of the rent, where necessary, has been lawfully demanded.

Division 2.

Improvements on land to be leased.

84. IMPROVEMENTS ON LAND TO BE LEASED.

(1) Subject to Sections 120 and 100 and 102, if there are improvements on land to be leased under this Act, the lessee may be required to pay an amount in respect of the improvements fixed by the Minister, after considering a report of the Land Board.

(2) Where a lessee is required to pay an amount in respect of improvements on the land the subject of his lease, the Minister may permit him to pay for them by annual instalments.

(3) The rate of payment in respect of improvements and the rate of interest payable are as prescribed.

85. INSURANCE ON IMPROVEMENTS NOT PAID FOR.

(1) While an amount payable in respect of improvements (including interest) under Section 84 remains unpaid, the lessee shall insure the improvements and keep them insured with an insurer approved by the Departmental Head in the joint names of the State and the lessee according to their respective rights and interests, for their full insurable value, against loss or damage by fire or any other risk against which the Departmental Head requires him to insure.

(2) The lessee shall punctually pay all premiums and other sums necessary for effecting and keeping up insurance required under Subsection (1), and shall immediately hand to the Departmental Head every policy and receipt relating to the insurance.

(3) Notwithstanding anything in any law, all moneys received or recoverable under or by virtue of any insurance required under this Section shall, at the option of the Departmental Head, be applied in or towards—

(a) substantially re-building or repairing the improvements lost or damaged; or

(b) paying or satisfying the amount (including interest) remaining unpaid in respect of those improvements,

and the surplus (if any) shall in either case be paid to the lessee.

(4) If a lessee fails to comply with this section, the Departmental Head may—

(a) insure the property or keep it insured in accordance with this section; and

(b) recover the cost of doing so from the lessee as a debt.

86. MAINTENANCE OF IMPROVEMENTS.

(1) A lessee shall—

(a) maintain all improvement referred to in Section 85 in good order and condition; and
(b) carry out any requirement in that regard of the Departmental Head or of a person authorized for the purpose by the Departmental Head.

(2) If the improvements suffer loss or damage, the lessee shall—

(a) immediately make good the loss or damage to the satisfaction of the Departmental Head; and

(b) carry out any requirement in that regard of the Departmental Head or of a person authorized for the purpose by the Departmental Head.

(3) If a lessee fails to comply with this Section the Departmental Head may take or cause to be taken such action as he, in his discretion, thinks desirable to maintain the property in or to restore the improvements to good order and condition, or to make good the loss or damage, and may recover the cost of doing so from the lessee as a debt.

Division 3.

Agricultural Leases.

87. GRANT OF AGRICULTURAL LEASE.

Subject to this Act, the Minister may grant a lease for agricultural purposes for such term not exceeding 99 years, and for such area of Government land, as seem to him proper.

88. IMPROVEMENT CONDITIONS.

An agricultural lease shall contain conditions prescribing the minimum improvements to be carried out by the lessee.

Division 4.

Pastoral Leases.

89. GRANT OF PASTORAL LEASE.

Subject to this Act, the Minister may grant a lease for pastoral purposes for such term, not exceeding 99 years, and for such area of Government land, as seem to him proper.

90. STOCKING CONDITIONS.

A pastoral lease shall contain conditions as to the minimum stocking required of the lessee.

91. INQUIRY INTO DEPASTURING OF STOCK.

(1) The Minister may at any time direct the Departmental Head to inquire into the number of stock depastured on the land comprised in a pastoral lease.

(2) When directed to do so under Subsection (1), the Departmental Head shall inquire into, and report to the Minister on, the number of stock depastured on the land comprised in the lease.

(3) If the Minister is satisfied that the land is likely to be permanently injured on account of the number of stock being depastured on the land, and after considering a report of the Land Board, he may cause notice to be served on the lessee requiring him—

(a) within a time specified in the notice to reduce the number of stock depastured on the land to not more than such number; and

(b) to comply with such other conditions and restrictions as to the depasturing of stock,

as the Minister thinks proper and as are specified in the notice.

(4) Section 63 does not apply to or in relation to a report of the Land Board under Subsection (3).

Division 5.

Business and Residence Leases.

92. GRANT OF BUSINESS AND RESIDENCE LEASES.

Subject to this Act, the Minister may grant leases of Government land for business or residence purposes, or for both business and residence purposes.

93. TERMS OF LEASES.

A residence lease, business lease or lease for both business and residence purposes may be granted for such term, not exceeding 99 years, as to the Minister seems proper.

94. SPECIFICATION OF CLASSES OF BUSINESS.

A business lease or lease for both business and residence purposes may specify the class or classes of business for which the land may be used.

95. LAND IN PHYSICAL PLANNING AREAS.

Subject to Sections 69 and 73, before a lease under this Division of land in a physical planning area is granted, the land shall, in the first instance, be offered for lease by tender.

Division 6.

Mission Leases.

96. GRANT OF MISSION LEASE.

(1) The Minister may grant a lease of Government land to—

(a) a corporation having for its object the establishment or conduct, in the country, of a Christian mission; or

(b) a person in trust for an institution or body having any such object.

(2) A lease under Subsection (1) may be granted for such term, not exceeding 99 years, as to the Minister seems proper.

97. PURPOSE OF MISSION LEASE.

A mission lease may be granted for—

(a) the purpose of—

(i) a church; or

(ii) a dwelling-house or houses for members or persons employed by or working in connection with the mission; or

(iii) a school; or

(iv) a hospital; or

(v) a building for any other charitable, educational or religious purpose; or

(vi) gardens or pastures for purposes ancillary to any of the purposes specified in Subparagraphs (i) to (v) inclusive; and

(b) the construction or operation, for the purposes of the establishment or conduct in the country of a Christian mission, of an aerodrome, and the erection or maintenance of hangars and other buildings required for the operation of an aerodrome.

98. RENT.

Rent is not payable for a mission lease.

Division 7.

Leases of Government-owned Buildings.

99. LEASES OF LAND ON WHICH THERE ARE GOVERNMENT-OWNED BUILDINGS.

- (1) The Minister may, by written agreement grant a lease of Government land on which there is a building the property of the State.
- (2) Sections 49, 68 to 76 inclusive, 82, 83 and 122 do not apply to or in relation to a grant of a lease of Government-owned buildings.
- (3) A lease may be granted under this Section for business or residence purposes, or for both business and residence purposes.
- (4) A lease may be granted under this Section on a weekly, fortnightly, monthly or quarterly tenancy.
- (5) A lease under this Section shall—
 - (a) contain such reservations, covenants, conditions and provisions as are prescribed to be included in a lease under this section, and such additional reservations, covenants, conditions and provisions as the Minister determines; and
 - (b) take effect according to its tenor.
- (6) This Act, other than this Section and Section 145, does not apply to or in relation to a lease granted under this section, but the law that would apply to and in relation to a lease of land held for an estate in fee simple applies to and in relation to a lease granted under this Section as if the land leased were held by the State for an estate in fee simple.
- (7) The *Land Registration Act 1981* does not apply to leases granted under this section.

Division 8.

Special Purposes Leases.

100. GRANT OF SPECIAL PURPOSES LEASES.

- (1) Subject to Section 69 and to Subsection (2), where the Minister thinks that the grant of a lease under any other Division of this Part would not be appropriate or would not be possible, he may grant a special purposes lease of Government land.
- (2) A special purposes lease shall not be granted for private residence purposes within a physical planning area.
- (3) A special purposes lease may be granted for such term, not exceeding 99 years, and for such area of Government land, as seem to the Minister proper.
- (4) Subject to Subsections (5) and (6), the rent for a special purposes lease is such (if any) as seems to the Minister proper and as is specified in the lease.
- (5) In addition to, or in place of, rent, the Minister may make a special purposes lease subject to the payment of such royalties on any substance or thing to be recovered from or taken off the land the subject of the lease as he thinks proper and as are specified in the lease.
- (6) At such times, in such manner, and on such basis as are specified in a special purposes lease, the Minister may—
 - (a) re-appraise the rent payable; or
 - (b) where in the lease no rent is specified, impose rent; or
 - (c) vary or impose royalty on any substance or thing referred to in Subsection (5).
- (7) Sections 83 and 84 do not apply to or in relation to a special purposes lease.

101. SPECIAL PURPOSES LEASE OF LAND IN PHYSICAL PLANNING AREA.

Subject to Section 69, before a lease under this Division of land within a physical planning area is granted the land shall, in the first instance, be offered for lease by tender.

Division 9.

Special Agricultural and Business Leases.

102. GRANT OF SPECIAL AGRICULTURAL AND BUSINESS LEASES.

(1) The Minister may grant a lease for special agricultural and business purposes of land acquired under Section 11.

(2) A special agricultural and business lease shall be granted—

(a) to a person or persons; or

(b) to a land group, business group or other incorporated body,

to whom the customary landowners have agreed that such a lease should be granted.

(3) A statement in the instrument of lease in the approved form referred to in Section 11(2) concerning the person, land group, business group or other incorporated body to whom a special agricultural and business lease over the land shall be granted, is conclusive evidence of the identity of the person (whether natural or corporate) to whom the customary landowners agreed that the special agricultural and business lease should be granted.

(4) A special agricultural and business lease may be granted for such period, not exceeding 99 years, as to the Minister seems proper.

(5) Rent is not payable for a special agricultural and business lease.

(6) Sections 49, 68 to 76 inclusive, 82, 83, 84 and 122 do not apply to or in relation to a grant of a special agricultural and business lease.

(7) Notwithstanding anything in this Act, a special agricultural and business lease shall be effective from the date on which it is executed by the Minister and shall be deemed to commence on the date on which the land subject to the lease was leased by the customary landowners to the State under Section 11.

Division 10.

Urban Development Leases.

103. INTERPRETATION.

In this Division—

“Physical Planning Board” means a Physical Planning Board established under the *Physical Planning Act 1989* which has jurisdiction in respect of the land over which an urban development lease is to be granted;

“Chief Physical Planner” means the Chief Physical Planner appointed under Section 6 of the *Physical Planning Act 1989*.

104. URBAN DEVELOPMENT LEASES TO BE GRANTED OVER LAND IN PHYSICAL PLANNING AREAS SUITABLE FOR SUBDIVISION.

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

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

(a) the particulars specified in Section 68;

(b) the information provided by the Chief Physical Planner or his delegate under Section 105;

(c) such other information as the Departmental head thinks fit or the Minister directs;

(d) the reserve price for the land.

(3) Land that has been offered for lease in accordance with Subsection (1) may—

(a) if unleased, be re-offered for lease by tender; or

(b) after the first or any subsequent unsuccessful offer for lease by tender, be granted on application under this Act.

105. CONDITIONS PRECEDENT TO LAND BEING ADVERTISED FOR SUBDIVISION.

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

(a) certify—

(i) that the land is—

(A) within a physical planning area; and

(B) properly zoned; and

(C) suitable for subdivision; and

(D) suitable for release; and

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

(b) provide—

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

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

(c) specify—

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

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

106. GRANT OF URBAN DEVELOPMENT LEASE OF GOVERNMENT LAND.

(1) A tender shall—

(a) specify the amount offered; and

(b) be accompanied by—

(i) a preliminary proposal for the subdivision; and

(ii) a preliminary sketch plan of the proposed subdivision; and

(iii) a preliminary proposal for the infrastructure; and

(iv) evidence of the financial and other resources of the tenderer available for the subdivision.

(2) When considering tenders or applications for the grant of an urban development lease, the Land Board shall consist of five persons including—

(a) the Chairman or a Deputy Chairman; and

(b) the Surveyor General or his delegate; and

(c) the Chief Physical Planner or his delegate.

(3) A tender of an amount less than the reserve price is invalid and shall not be considered.

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

(5) The successful tenderer is entitled to an urban development lease of the land the subject of the tender, in accordance with the tender notice.

(6) The Minister is not bound to accept the highest or any tender.

(7) The grant of an urban development lease does not imply an approval of the preliminary proposals for the subdivision and infrastructure of the preliminary sketch plan of the proposed subdivision which are lodged with the tender in accordance with Subsection (1).

107. URBAN SUBDIVISION BY LESSEE OF A STATE LEASE.

(1) The lessee of a State lease of land within a physical planning area that is zoned as suitable for urban subdivision may apply to the Minister to surrender the lease or part of the lease in

exchange for an urban development lease over the whole or part of the land comprised in the first- mentioned lease.

(2) An application under this Section shall be accompanied by—

- (a) a preliminary proposal for the subdivision; and
- (b) a preliminary sketch plan of the proposed subdivision; and
- (c) a preliminary proposal for the infrastructure; and
- (d) evidence of the financial and other resources of the applicant available for the subdivision; and
- (e) evidence that the land is zoned as suitable for urban subdivision.

(3) If the Minister, on the advice of the Land Board as constituted in accordance with Section 106(2), is satisfied that—

(a) the preliminary proposal—

- (i) appears suitable; and
- (ii) is consistent with a general plan for development within the physical planning area; and
- (b) the State will not incur undue expense in the provision of electricity, water and other services to the proposed subdivision,

he may grant a lease under this Section conditional on the surrender of the whole, or such part as the Minister determines, of the lease in respect of which the application was made.

108. TERMS AND CONDITIONS OF URBAN DEVELOPMENT LEASES.

An urban development lease—

(a) shall—

- (i) be for a term not exceeding five years; and
- (ii) contain—

(A) a covenant that, within one year or such further time as the Minister in any particular case allows after the granting of the lease, the lessee will submit for the approval of the Physical Planning Board an application for full planning permission or subdivision and zoning, and a final proposal for subdivision, together with survey plans; and

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

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

(D) such other covenants and conditions, including the restrictions on disposal prescribed by Section 70, as the Land Board thinks proper or as are prescribed; and

(b) may contain a requirement for the surrender, on such terms and conditions as are specified in the lease or as are agreed on between the Physical Planning Board and the lessee, of areas of the land the subject of the lease that are not and will not, under the final proposal for subdivision, be required for business or residence purposes; and

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

109. FINAL PROPOSAL FOR SUBDIVISION AND FULL PLANNING PERMISSION.

(1) A—

- (a) final proposal for subdivision; and
- (b) plan of the subdivision design; and

- (c) timetable for development work; and
- (d) an application for full planning permission, subdivision and zoning,

shall be lodged with the Physical Planning Board within 12 months, or such further time as the Minister, on the recommendation of the Board allows, after the granting of the lease.

(2) If a final proposal for subdivision and an application for full planning permission is not submitted to the Physical Planning Board within one year, or such further time as the Board allows, after the granting of the lease, the Board may recommend to the Minister that the lease be forfeited.

(3) In approving a final proposal for subdivision, the Physical Planning Board shall—

- (a) decide whether the proposal appears suitable within the provisions of Section 5 of the *Physical Planning Act 1989*; and
- (b) determine the periods during which the stages of the development associated with the subdivision shall be carried out; and
- (c) specify the covenants and conditions relating to physical planning that will be included in new leases granted under Section 110.

(4) The Physical Planning Board may vary a determination under Subsection (3)(b) on such conditions as it thinks proper.

(5) A cadastral survey plan of the subdivision, conforming to the final proposal for the subdivision approved by the Physical Planning Board, and supporting documents shall be lodged for registration by the Surveyor General or his delegate within six months of approval by the Physical Planning Board under Section 108(a)(ii)(A).

(6) The plan lodged under Subsection (5), if for a stated development, shall illustrate each subdivisional stage and any residue parcel of land at each stage, to the satisfaction of the Surveyor General or his delegate.

110. SURRENDER OF LAND IN THE SUBDIVISION AND GRANT OF NEW LEASES.

(1) On the completion, to the satisfaction of the Chief Physical Planner or his delegate of development of all or any part of the land the subject of an urban development lease, the lessee may surrender all or part of the land and a new lease or new leases shall be granted over the developed portions of the land—

- (a) in the name of the lessee; or
- (b) at the direction of the lessee.

(2) The new lease or new leases shall contain the covenants and conditions specified under Sections 107(c) and 109(3).

(3) On the partial surrender of a lease in accordance with Subsection (1), the rent, covenants and conditions of the lease may be varied to such extent as the Minister, on the recommendation of the Departmental Head, thinks proper.

PART XI. – GRANT OF STATE LEASES OF IMPROVED GOVERNMENT LAND TO THE NATIONAL HOUSING CORPORATION.

111. DECLARATION OF LAND BY MINISTER.

The Minister may, by notice in the National Gazette, declare Government improved residential land to be land to which this Part applies.

112. CERTAIN PROVISIONS NOT TO APPLY.

Sections 70, 71, 74, 75, 84 and 95 do not apply to land the subject of a declaration under Section 111.

113. MINISTER MAY GRANT LEASE.

The Minister may, in respect of land to which this Part applies, grant a lease to the National Housing Corporation on such conditions as he thinks proper.

114. NOTIFICATION OF GRANT.

The Minister shall—

- (a) by notice in the National Gazette notify the grant of a lease under this Act; and
- (b) as soon as practicable after the notification under Paragraph (a), by written notice, advise the National Housing Corporation of—
 - (i) the grant of the lease and of the date of publication of the notice under that paragraph; and
 - (ii) the terms, conditions, restrictions and covenants on which the lease is granted including the amount payable under Section 117.

115. EFFECTIVE DATE OF GRANT.

A grant of a lease under this Act takes effect from the date of publication of the notice referred to in Section 113(a) and the National Housing Corporation shall be deemed to have accepted and executed the lease on that date.

116. REMISSION AND POSTPONEMENT OF RENT.

During the period between the date of grant of the lease and the date a transferee executes a Contract for Sale, Transfer and Mortgage instruments in respect of the transfer of the lease by the National Housing Corporation to the transferee, the Minister—

- (a) may, in respect of that lease, exercise his powers under Section 83(5) notwithstanding that an application has not been made to him by the National Housing Corporation; and
- (b) shall not, in the exercise of those powers, consider a report of the Land Board.

117. IMPROVEMENTS.

(1) The Minister may, in addition to any other conditions that he may impose under Section 114, require the National Housing Corporation to pay such amount in respect of the improvements on the land as he determines.

(2) Interest is not payable on the amount determined under Subsection (1).

118. PERIOD OF LEASE.

A lease under Section 113 shall be granted for a period of 99 years.

PART XII. – VARIATION OF PURPOSES, RELAXATION OF COVENANTS, ETC.

119. VARIATION OF PURPOSES, RELAXATION OF COVENANTS, ETC.

(1) On application by a lessee, the Minister, after considering a report of the Land Board, may vary the purpose for which a State lease was granted, but not so as—

- (a) to convert the lease into a lease of a type that may not be granted under the Division under which the original lease was granted; or
- (b) to make the purpose of the lease a purpose for which the lease could not have been so granted in the first instance.

(2) The covenants and conditions of a State lease may be relaxed or modified or, if the lessee agrees, varied by the Minister, after considering a report of the Land Board, where it seems to him that special hardship would otherwise be caused.

PART XIII. – PAYMENT FOR IMPROVEMENTS ON EXPIRATION OF LEASE.

120. PAYMENT FOR IMPROVEMENTS ON EXPIRATION OF LEASE.

(1) In this section—

“**improvements**” means improvements made, or in respect of which a payment has been made, by the outgoing lessee, that are suitable to the land and add to its leasing value, other

than improvements in respect of which the lessee has received payment under this section; “value” means the value on the day after the date of expiration of the lease.

(2) Where, after the expiration of the term of a State lease of land on which there are improvements, the lessee is granted—

- (a) a further lease of the land; or
- (b) a lease of part only, or that includes part only, of the land,

the provisions of Section 84 do not apply in respect of the improvements in relation to the further lease, unless he has received payment for the improvements under this section.

(3) Subject to this section, where on the expiration of the term of a State lease of land on which there are improvements the lessee applies for and is not granted a further lease of the land, or is granted a further lease of part only, or that includes part only, of the land, the Minister shall, within six months after the expiration, pay to the outgoing lessee the value of the improvements on the land, or on the part of the land not included in the further lease, as the case may be.

(4) Where, within the period of six months referred to in Subsection (3), a State lease of the land or part of the land the subject of the expired lease is granted to a person other than the outgoing lessee, the Minister shall pay to the outgoing lessee, on or before the date of grant of the new lease, the value of the improvements on the land or that part of the land, as the case may be.

(5) Subject to Subsections (6) and (13), this Section does not entitle a lessee who does not apply for a further lease of the land the subject of his lease to payment for improvements on the land at the expiration of the lease, but he may remove such of the improvements as are severable on or before the expiration, doing as little damage as may reasonably be to the land.

(6) Where a lease is surrendered under this Act, the lessee may remove such of the improvements as are severable on or before the surrender, doing as little damage as may reasonably be to the land.

(7) If the outgoing lessee and the incoming lessee (if any)—

(a) agree as to—

- (i) the amount to be paid for improvements for which the outgoing lessee is entitled to receive payment by the State or that he is entitled to remove under this section; and
- (ii) the time and manner of payment; and

(b) notify the Minister in writing of their agreement before the date on which a lease is granted to the incoming lessee,

then—

(c) the amount payable in respect of the improvements under Section 84 is payable by the incoming lessee to the outgoing lessee; and

(d) the Minister ceases to be liable under this Section to pay the value of the improvements to the outgoing lessee; and

(e) Section 84 does not apply in respect of those improvements in relation to the new lease.

(8) This Section does not apply to or in relation to a lease that is forfeited under this Act.

(9) Where, between—

(a) the date of the expiration of the term of a State lease of land on which there are improvements for which the outgoing lessee is entitled to receive payment or which he is entitled to remove under this section; and

(b) the date of the grant of a State lease of the land or a part of the land to the outgoing lessee or another person,

the State derives revenue, part or all of which is directly attributed to those improvements on the land or that part of the land, the Minister shall pay to the lessee, from time to time as the Minister determines, the revenue or such part of the revenue as is directly attributable to the improvements, less the amount of any expenditure incurred by the State in maintenance and other costs in respect of the improvements.

(10) Without prejudice to any other remedies that are available, the Minister may deduct from moneys payable by him under this section—

(a) moneys due during the term of the lease and outstanding to the State in respect of the term, or in respect of the land the subject of the lease; and

(b) if the outgoing lessee has continued to occupy the land after the expiration of the term of the lease—any occupation fee outstanding.

(11) The lessee of a special purposes lease or mission lease may remove, on or before the expiration of the lease, such of the improvements on the land the subject of the lease as are severable, doing as little damage as may reasonably be to the land, but otherwise is not entitled to payment under this Section in respect of the improvements.

(12) The amount to be paid under this Section shall be determined, and is recoverable, as nearly as may be in the same manner as compensation under Part IV.

(13) For the purposes of this section, where a lease expires and a further lease cannot be granted because the land the subject of the lease is reserved from lease or further lease under this Act—

(a) the lessee shall be deemed to have applied for and not to have been granted a further lease over that land; and

(b) the period of six months specified in Subsection (3) shall be deemed to expire at the end of the period of one month after the date of expiration of the lease.

PART XIV. – SURRENDER OF STATE LEASE.

121. SURRENDER OF STATE LEASE.

(1) A lessee may, with the written consent of the Minister, surrender his lease or any part of his lease.

(2) For the purposes of this section, the grant of an application for a State lease shall be deemed to be the grant of the lease.

PART XV. – FORFEITURE OF STATE LEASE AND FINES.

Division I.

Forfeiture of State Lease.

122. FORFEITURE OF STATE LEASE.

(1) The Minister may, by notice in the National Gazette, forfeit a State lease—

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

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

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

(d) if—

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

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

(iii) a requirement of a notice under Section 91 relating to the lease,

is not complied with; or

(e) if the granting of the lease has been obtained, in the opinion of the Minister, wholly or partly as a result of statements that were, to the knowledge of the lessee, false or misleading.

- (2) Before forfeiting a State lease under Subsection (1), the Minister—
- (a) shall serve notice on the lessee calling on him to show cause, within a period specified in the notice, why the lease should not be forfeited on the ground or grounds specified in the notice; and
- (b) may, whether or not cause has been shown in accordance with a notice under Paragraph (a), serve on the lessee a notice requiring him, within a period specified in the notice, to comply with the covenants or conditions of the lease or the provisions of this Act.
- (3) The Minister shall not forfeit a lease under this Section unless—
- (a) the lessee has failed to comply with a notice under Subsection (2)(a) or (b); or
- (b) the lessee has failed to show good cause why the lease should not be forfeited.
- (4) Copies of a notice of forfeiture and a notice under Subsection (2)(a) or (b) shall be served on all persons who, to the knowledge of the Departmental Head, have or claim to have a right, title, estate or interest in, to or in relation to the land, or such of them as can with reasonable diligence be ascertained and found.
- (5) No acceptance of rent by the State waives a right to forfeit a lease under this Act.
- (6) For the purposes of this Section the grant of an application for a State lease shall be deemed to be the grant of the lease.

123. REVOCATION OF FORFEITURE.

- (1) Where a State lease (hereafter called “**the revoked lease**”) has been forfeited under Section 122 by mistake, and provided that a notice under Section 75 has not been published in the National Gazette in respect of another applicant, the Departmental Head may, by notice published in the National Gazette, revoke the notice of forfeiture.
- (2) Where the Departmental Head publishes a notice under Subsection (1), the revoked lease shall be treated as valid and as effectual as if the forfeiture had not occurred.

Division 2.

Fee instead of Forfeiture.

124. FEE INSTEAD OF FORFEITURE.

- (1) If a term, covenant or condition of a State lease is not complied with, the Minister may, in his discretion, instead of taking action under Section 122, serve notice on the lessee calling on him to show cause, within a period specified in the notice, why a non-compliance fee should not be imposed under this section.
- (2) If the lessee fails, within the period specified in the notice under Subsection (1), to show good cause why the non-compliance fee should not be imposed, the Minister may, by written notice served on the lessee, impose a non-compliance fee not exceeding K100.00 per month for each month for which the non-compliance has continued or continues.
- (3) If a non-compliance fee imposed under this Section is not paid within the time limited for the purpose in the notice under Subsection (2), the Minister may, by notice in the National Gazette, forfeit the lease without regard to any formalities or requirements of this Act preliminary to the forfeiture of a State lease, or otherwise.
- (4) No acceptance of rent by the State waives a right to impose a non-compliance fee or forfeit a lease under this section.
- (5) For the purposes of this Section a grant of an application for a State lease shall be deemed to be the grant of the lease.

PART XVI. – LICENCES.

Division 1.

Licences generally.

125. GRANT OF LICENCE.

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

- (a) to graze stock or a specified kind of stock;
- (b) to strip, dig and take away any valuable material or substance;
- (c) for fishermen's residences and drying grounds;
- (d) for any other temporary purpose approved by the Minister.

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

(3) A licence under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the licence thinks proper, and, subject to those conditions, empowers the licensee—

- (a) to make such temporary improvements and do such things on the land the subject of the licence as are necessary or convenient for the purposes of the licence; and
- (b) to remove such of those improvements as are severable on or before the termination of the licence, doing as little damage as may reasonably be to the land.

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

(5) In addition to or in substitution for the prescribed fee for a licence, where a licence is issued under this Section for a purpose specified in Subsection (1)(b) the licence is subject to the payment of such royalties (if any) on the material or substance stripped, dug or taken away and to such restrictions and conditions as are prescribed or as to the Minister or officer granting the licence seem proper.

(6) A licence granted under this Division may be revoked by the Minister for failure to comply with, or for a contravention of, the conditions of the licence.

Division 2.

Licences over resumed land.

126. GRANT OF LICENCE OVER RESUMED LAND.

(1) Notwithstanding any other law, the Minister, or any officer authorized by him in writing for that purpose, may grant a licence in a form approved by the Minister to the person from whom any land has been acquired under this Act or a repealed Land Act, or where that person does not apply for a licence, to some other person, for the purpose of allowing him to use the land for the purpose or purposes for which it was used immediately before the date of acquisition or any other purpose.

(2) A licence under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the licence thinks proper, and, subject to those conditions, empowers the licensee to make such improvements and do such things on the land the subject of the licence as are necessary or convenient for the purpose of the licence.

(3) A licence under this Section continues in force for such period as is specified in the licence.

(4) A licence granted under this Section is subject to the payment of—

- (a) the fee; and
- (b) the amount of premium (if any),

fixed in relation to it by the Minister.

(5) A licence granted under this Division may be revoked by the Minister at any time for failure to comply with a condition of the licence.

PART XVII. – APPROVAL OF DEALINGS.

127. APPLICATION OF PART XVII.

This Part does not apply to or in relation to customary land.

128. APPROVAL OF CONTROLLED DEALINGS AND PERMITTED DEALINGS.

(1) In this section—

“controlled dealing” means a disposition of or a contract or agreement to dispose of a leasehold estate but does not include a transmission or a permitted dealing;

“instrument” means a document giving effect, or intended to give effect to a controlled dealing;

“leasehold estate” means—

(a) an urban development lease; or

(b) a lease or sublease the term or remaining term of which exceeds five years; or

(c) a lease or sublease for a term of five years or less which contains an option to renew for a further term which, together with the original term would exceed five years;

“permitted dealing” means a disposition of or a contract or agreement to dispose of a leasehold estate which has been prescribed as a dealing in respect of which Ministerial approval is not necessary to make it valid and effective;

“transmission” means the acquisition of title to or an interest in a leasehold estate consequent on the death or insolvency of the owner.

(2) A controlled dealing is void and of no effect unless it has been approved by the Minister.

(3) Where the Minister refuses to approve a controlled dealing, he shall notify the reasons for his refusal to the person seeking the approval.

(4) The grantee or transferee or intended grantee or transferee of a controlled dealing shall, within 28 days of the execution of the relevant instrument—

(a) present the instrument to the Department for endorsement with a certificate of approval; and

(b) lodge a duplicate or certified copy of that instrument with the Department.

(5) A person referred to in Subsection (4), who refuses or fails to comply with Subsection (4), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K500.00.

(6) A duplicate or certified copy prepared solely for the purposes of Subsection (4)(b) is not liable to stamp duty.

(7) For the avoidance of doubt, it is hereby declared that a transfer, transmission or dealing with an estate or interest arising under or subject to—

(a) the *Forestry Act 1991*; or

(b) the *Mining Act 1992*; or

(c) the *Oil and Gas Act 1998*),

is not a controlled dealing for the purposes of this Act.

129. WITHHOLDING OF APPROVAL IN CERTAIN CASES.

(1) Without otherwise limiting in any way the discretion of the Minister, the approval of the Minister under Section 128 shall be withheld in the case of land the subject of a State lease unless—

- (a) the rent has been paid to date and the improvement conditions (if any) specified in the lease have been performed; or
- (b) special grounds of an urgent or exceptional character are shown to the satisfaction of the Minister by the respective applicants concerned in the transaction.

(2) Unless the Minister has given his prior approval under Subsection (1)(b), a lessee shall not dispose of or enter into a contract or agreement to dispose of land the subject of a State lease unless the improvement and other covenants and conditions in the State lease have been fulfilled.

Penalty: A fine not exceeding K10,000.00.

(3) Unless the Minister has given his prior approval under Subsection (1)(b), the owner of shares in a company, a major asset of which is an urban development lease, shall not dispose of or enter into a contract or agreement to dispose of or otherwise deal with those shares unless the improvement and other covenants and conditions in the lease have been fulfilled.

Penalty: A fine not exceeding K50,000.00.

(4) A disposition or contract or agreement to dispose of or otherwise deal with shares, contrary to the requirements of Subsection (3), is void and of no effect.

(5) For the purposes of Subsection (3), a disposition does not include a transmission.

PART XVIII. – SUBDIVISION OF STATE LEASES.

130. APPROVAL OF SUBDIVISION.

(1) A lessee may apply to the Minister for approval to subdivide the land included in his lease.

(2) An application under Subsection (1) shall–

- (a) be written; and
- (b) be accompanied by a plan showing the manner in which it is proposed to subdivide the land; and
- (c) where any part of the land is within a physical planning area, be accompanied by planning permission for the subdivision under the *Physical Planning Act 1989*.

(3) The Minister may–

- (a) approve an application under Subsection (1); and
- (b) refuse the application but, where the application is accompanied by planning permission for the subdivision under the *Physical Planning Act 1989*, shall not refuse the application for any physical planning reason.

(4) The Minister shall notify the lessee of his decision in writing and, if he has approved the application, he shall specify in the notification–

- (a) any reservations, covenants, conditions and provisions that he thinks are necessary to be included in each lease of the land if it is subdivided; and
- (b) the fees and deposits to be paid by the lessee in respect of the grant of new leases for the subdivided portions of the land.

(5) If the lessee–

- (a) has paid all rent due under the lease; and
- (b) accepts the reservations, covenants, conditions and provisions specified in the notification; and
- (c) has paid the fees and deposits in respect of the grant of the new leases,

he may surrender his lease, and in that case he shall be granted a new lease over each of the subdivided portions of the land.

(6) A surrender of a lease under Subsection (5)–

- (a) shall be made within 30 days or within such further time as the Minister allows, after the date of the notification of the approval of the subdivision; and
- (b) has effect from the date of commencement of the new leases.

(7) A new lease granted under this Section shall—

- (a) be of the same kind as the surrendered lease, unless the Minister in any particular case directs otherwise; and
- (b) preserve the lessee's rights (if any) in respect of improvements on any land included in the new lease; and
- (c) be for a period that will expire on the same date as the surrendered lease would have expired, unless the Minister, on the recommendation of the Land Board, fixes a later date; and
- (d) contain, in addition to the matters provided for elsewhere in this Act, the reservations, covenants, conditions and provisions specified in the notification given under Subsection (4).

PART XIX. – CONSOLIDATION OF STATE LEASES.

131. CONSOLIDATION OF LEASES.

(1) Where a person is the lessee of adjoining land under two or more State leases, he may apply to the Minister for the grant to him of a new lease of all the land included in the leases.

(2) An application under Subsection (1) shall—

- (a) be written; and
- (b) be accompanied by a plan showing the land that it is desired to have included in the new lease; and
- (c) where any part of the land is within a physical planning area, be accompanied by planning permission for the consolidation under the *Physical Planning Act 1989*.

(3) The Minister may—

- (a) approve an application under Subsection (1); or
- (b) refuse the application but, where the application is accompanied by planning permission for the consolidation under the *Physical Planning Act 1989*, shall not refuse the application for any physical planning reason.

(4) The Minister shall notify the lessee of his decision in writing, and if he has approved the application he shall specify in the notification—

- (a) the reservations, covenants, conditions and provisions that he thinks are necessary to be included in the new lease; and
- (b) the fees and deposit payable in respect of the grant of the new lease.

(5) If the lessee—

- (a) has paid all rent due under each of the leases of the respective lands that are to be included in the new lease; and
- (b) accepts the reservations, covenants, conditions and provisions specified in the notification; and
- (c) has paid the fees and deposit payable in respect of the grant of the new lease,

he may surrender each of the leases, and in that case he shall be granted a new lease over all the lands included in the surrendered leases.

(6) A surrender of a lease under Subsection (5)—

- (a) shall be made within 30 days or within such further time as the Minister allows, after the date of the notification of the approval of the application; and
- (b) has effect from the date of commencement of the new lease.

(7) A new lease granted under this Section shall—

- (a) be of the same kind as any one of the surrendered leases, unless the Minister in any particular case directs otherwise; and
- (b) preserve the lessee's rights (if any) in respect of improvements on any land included in the new lease; and
- (c) be for a period that will expire not before the earliest date, and not after the latest date, on which any of the surrendered leases would have expired; and
- (d) contain, in addition to the matters provided for elsewhere in this Act, the reservations, covenants, conditions and provisions specified in the notification given under Subsection (4).

PART XX. – SPECIAL PROVISIONS RELATING TO CUSTOMARY LAND.

132. DISPOSAL OF CUSTOMARY LAND.

Subject to Sections 10 and 11, a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom, and a contract or agreement made by him to do so is void.

133. DECLARATION OF CUSTOMARY LAND.

(1) The Minister may, by notice in the National Gazette, declare any Government land or trust land to be customary land and thereupon the land shall for all purposes be deemed to be customary land.

(2) In relation to any land the subject of notice under Subsection (1), the land shall, for the purpose of the determination of its ownership, be deemed always to have been customary land.

(3) Where the Minister makes a declaration that any trust land is customary land under this section—

- (a) any trust under which the land was held is determined; and
- (b) the Custodian for Trust Land—
 - (i) is divested of the duties and responsibilities of the trust; and
 - (ii) is not liable for compensation or damages as a result of the determination of the trust.

134. PROTECTION OF INTERESTS OF CUSTOMARY LANDOWNERS.

In connection with any proceedings, matter or thing under this Act, it is the duty of the Custodian for Trust Land to take such action—

- (a) as seems to him necessary or desirable; or
- (b) as is ordered by the National Court or the Land Titles Commission,

to establish, further or protect the interests of customary landowners.

135. SERVICE ON CUSTOMARY LANDOWNERS.

(1) In this section, “**customary landowners**” means the customary landowners or the alleged or purported customary landowners.

(2) Where under this Act a notice or thing is to be given to or served on customary landowners, it may, whether or not it has been given to or served on the customary landowners, be given to or served on the Custodian for Trust Land.

(3) Where a notice or thing is given to or served on the Custodian for Trust Land under Subsection (2), he shall, unless he is satisfied that the notice or thing has in fact been given to or served on the customary landowners whom it affects—

- (a) take all practicable steps to give the notice or thing to, or serve it on, the customary landowners; and
- (b) post a copy of the notice or thing on a conspicuous place on the land to which it relates; and

(c) notify details of the notice or thing in the area in which the land is situated by any method by which it is customary to transmit orders or news within that area.

(4) Where the Custodian for Trust Land has taken action in accordance with Subsection (3) and is not satisfied that the customary landowners whom the notice or thing affects—

(a) have been given or served with the notice or thing; or

(b) have had reasonable opportunity of obtaining details of the notice or thing,

he may apply to the National Court or the Land Titles Commission for an order as to the sufficiency or otherwise of service, and the Court or Commission may make such order as to it seems just.

PART XXI. – POWERS IN RELATION TO LAND.

136. INSPECTION OF LAND SUBJECT TO IMPROVEMENT CONDITIONS.

(1) The Minister, the Departmental Head, or a person authorized in writing by the Minister or the Departmental Head may inspect any land included in a State lease in order to ascertain whether the conditions to which the lease is subject have been or are being observed.

(2) In the case of a pastoral lease, the Minister, the Departmental Head or a person authorized in writing by the Minister or the Departmental Head may, by written notice, require the lessee, for the purpose of an inspection, to muster and produce on the land comprised in the lease, on a day and to the person respectively named in the notice, all stock on the land.

(3) A lessee who fails without reasonable excuse (proof of which is on him), to comply with the requirements of a notice under Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

137. POWER TO EXAMINE LAND.

(1) A person authorized in writing by the Minister to act under this Section may, for the purpose of ascertaining whether any land is suitable for a public purpose or of surveying or obtaining information in relation to any land that he thinks suitable for such a purpose—

(a) enter on the land, or on adjoining land, with such persons, vehicles and things as he thinks proper; and

(b) make surveys, take levels, sink pits, examine the soil and do any other thing in relation to the land.

(2) If a person hinders or obstructs a person authorized under this Section to enter on land in the exercise of any of his powers under this Section in relation to the land, the District Court may, on the application of the person so authorized, grant a warrant authorizing a member of the Police Force—

(a) to enforce the entry on the land; and

(b) to prevent hindrance or obstruction to the exercise of any such power in relation to the land.

138. TEMPORARY OCCUPATION.

A person authorized by the Minister may, with such other persons as he thinks necessary, enter land—

(a) being within a distance of 180m from the nearest boundary of any Government land; and

(b) not being a garden, orchard or plantation attached or belonging to a house, or a park, planted walk or a venue, or ground ornamentally planted; and

(c) not being nearer than 450m to the dwelling-house of the occupier of the land,

and may occupy the land so entered for so long as is necessary for the purposes of any works connected with the carrying out of a public purpose.

139. TAKING OF MATERIALS, ETC, FROM ADJACENT LAND.

(1) Subject to Subsection (2), a person authorized by the Minister under Section 138 to enter land may—

(a) in connection with the carrying out, on or from that land, of a public purpose—

(i) construct, build or place plant, machinery, equipment or goods; and
(ii) take or deposit sand, clay, stone, earth, gravel, timber, wood or other materials or goods; and

(iii) make roads, cuttings or excavations; and

(iv) erect workshops, sheds and other buildings of a temporary character; and

(v) manufacture and work materials of any kind; and

(b) demolish, destroy or remove plant, machinery, equipment, goods or buildings constructed, built, placed or erected on land under Paragraph (a).

(2) The power to take clay, stone or earth under this Section shall not be exercised in respect of a stone or slate quarry, brickfield or other like place commonly worked or used for getting that material for the purpose of sale or disposal.

140. FENCING OF LAND TEMPORARILY OCCUPIED.

(1) A person entering and temporarily occupying land under this Part shall, if required by the owner or occupier of the land to do so, separate land occupied under this Part from adjoining land by a sufficient fence with such gates as are necessary for the convenient occupation of the land.

(2) A fence and gate erected under Subsection (1) remain the property of the State and may be removed at the termination of the occupation, with as little damage as may reasonably be to the land.

141. COMPENSATION FOR DAMAGE.

(1) In this section, “**court of competent jurisdiction**” means—

(a) in relation to land other than customary land—

(i) the National Court; or

(ii) a District Court that has jurisdiction—

(A) in actions for the recovery of debts up to an amount not less than the amount of compensation claimed; and

(B) in respect of the locality in which the land, or part of the land, is situated; and

(b) in relation to customary land, the Land Titles Commission.

(2) Where the owner of an interest in land suffers loss or damage by reason of the exercise, in relation to the land, of the powers conferred by this Part (otherwise than by Section 136), the State is liable to pay to him such compensation as is determined by agreement between the owner and the Minister, or, in the absence of agreement, by action by the owner against the State in a court of competent jurisdiction.

PART XXII. – APPEALS.

142. APPEAL TO NATIONAL COURT.

(1) An interested person may appeal to the National Court on—

(a) a re-appraisal of imposition of rent, or a variation or imposition of royalty, under Section 100(5); or

(b) the forfeiture of a lease.

(2) An appeal under Subsection (1) shall be made within 28 days after the matter complained of, or within such further time as the National Court for any special reason allows.

(3) Where an appeal is made under Subsection (1), the matter complained of has no effect until–

- (a) the National Court has decided the appeal; or
- (b) where no further appeal is made to the Supreme Court–the period prescribed for making an appeal has expired; or
- (c) where a further appeal is made to the Supreme Court–the Supreme Court has decided the appeal,

and, subject to Subsection (4), a lessee may in the meantime continue lawfully to occupy the land the subject of the appeal and to exercise his rights, and shall fulfil his obligations, under the lease.

(4) When an appeal is made under Subsection (1)(a) the decision of the National Court or of the Supreme Court shall be deemed to operate as from the date of the matter complained of.

PART XXIII. – DELEGATION BY DEPARTMENTAL HEAD.

143. POWER OF DEPARTMENTAL HEAD TO DELEGATE.

(1) The Departmental Head may, by writing under his hand, delegate to a person (in this Section referred to as “**the Delegate**”) all or any of his powers and functions under this Act.

(2) Where the Departmental Head makes a delegation under Subsection (1), he may, in the same or another instrument of delegation, also delegate to the Delegate the power, by instrument, to further delegate all or any of the delegated powers or functions to a person or member of a class of persons (in this Section called “**the Subdelegate**”) specified in the Departmental Head’s instrument.

(3) Where the Delegate makes a further delegation pursuant to Subsection (2), he may, in the same or another instrument, but subject to any restrictions placed on him by the Departmental Head, also delegate to the Subdelegate the power, by instrument, to further delegate all or any of the delegated powers and functions to a person or a member of a class of persons specified in the Delegate’s instrument.

PART XXIV. – OFFENCES.

Division 1.

Unlawful occupation of land.

144. TRESPASS, ETC, ON CERTAIN LAND.

(1) A person who, without authority–

- (a) injuries, fells, barks or destroys a tree growing on Government land or customary land; or
- (b) cuts, saws, removes or sells timber lying or being on any such land; or
- (c) removes or takes away or severs, excavates, quarries or digs for, with intent to remove or take away, any mineral or any stone, sand, gravel or other material from any such land,

is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

(2) In addition to a penalty imposed for an offence against this section, a person convicted under this Section shall pay to the Minister or, in the case of customary land to the Custodian for Trust Land for distribution to the customary landowners, the value as determined by the court by which he was convicted of any tree, timber, mineral or thing in respect of which the offence was committed.

(3) A member of the Police Force or a person authorized for the purpose by the Minister or the Departmental Head of the Province may arrest without warrant a person found committing an offence against this Section and immediately cause him to be dealt with according to law.

145. UNLAWFUL OCCUPATION OF GOVERNMENT LAND AND CUSTOMARY LAND.

(1) A person who, without authority, enters, occupies or uses Government land or customary land, is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K500.00 or imprisonment for a term not exceeding 6 months.

For a second or subsequent offence—a fine not exceeding K1,000.00 or imprisonment for a term not exceeding 12 months.

(2) It is not a defence that the entry, use or occupation of the land was under a claim of right.

(3) A person who contravenes Subsection (1) and refuses to leave after receiving notice to quit from the Departmental Head or the Provincial Administrator of the province in which the land is located may be forcibly ejected by a member of the Police Force.

146. UNLAWFUL OCCUPATION OF GOVERNMENT LAND AND CUSTOMARY LAND.

(1) A person who—

(a) is in occupation of land acquired under this Act at the date of acquisition of the land; and
(b) refuses to leave that land within 14 days after receiving a notice to quit from the Departmental Head,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

Default penalty: A fine not exceeding K100.00.

(2) A person who contravenes Subsection (1) may be forcibly ejected by a member of the Police Force.

147. OBSTRUCTION OF AUTHORIZED PERSONS.

A person who in any way, directly or indirectly, hinders or obstructs a person in the exercise of his powers or the performance of his duties under this Act is guilty of an offence.

Penalty: A fine not exceeding K500.00.

Division 2.

Prevention of Disruption in Land Settlement Schemes.

148. INTERPRETATION.

In this Division—

“**declared scheme**” means a re-settlement or development scheme in relation to which a declaration under Section 149 is in force;

“**disruptive conduct**” means conduct of a kind referred to in Section 150(1);

“**Government land**” means—

(a) Government land as defined in Section 2; or

(b) land the subject of a State lease;

“**land in a declared scheme**” means any land the subject of a declaration under Section 149;

“**leaseholder**” means a lessee of a State lease of land in a declared scheme.

149. DECLARED SCHEMES.

(1) Subject to Subsections (2) and (3), the Head of State, acting on advice, may, by notice in the National Gazette, declare—

(a) any area of Government land over which State leases have been or are to be granted or made available for the purpose of the development of the land as, or as part of, a planned scheme of settlement or development; and

(b) any other Government land used or to be used in connection with the scheme,

to be land in a declared scheme for the purposes of this Act.

(2) A declaration shall not be made under Subsection (1) unless the National Executive Council, after consultation by the Minister as provided by Subsection (3), is of the opinion that the nature of the scheme and the likely relationship between the leaseholders are such that disruptive conduct could endanger the success of the scheme or social relations between the leaseholders.

(3) For the purposes of Subsection (2), the Minister shall consult with—

(a) any Local-level Government in whose area the land, or any part of the lands in the scheme is situated; and

(b) where State leases, or applications for State leases, of land in the scheme have already been granted or are under actual consideration—

(i) any leaseholders' or settlers' association (or any similar body) formed in relation to land in the scheme; or

(ii) the leaseholders of land in the scheme generally,

and, if he thinks it useful to do so, with the Land Board; and

(c) such other interested or concerned persons as he thinks proper to consult,

in such manner and to such extent as (subject to Section 255 (*consultation*) of the *Constitution*) he thinks proper and calculated to give a reasonably clear idea of the likely attitudes of and relationships between leaseholders (including future leaseholders).

150. DISRUPTIVE CONDUCT.

(1) Disruptive conduct for the purposes of this Act consists of—

(a) the commission of acts of a criminal nature (or in special circumstances a single such act); or

(b) other reprehensible conduct,

on or about the land in a declared scheme or otherwise (and in particular such conduct affecting a leaseholder or a person for whose conduct a leaseholder would, under Subsection (2)(b), be responsible), such that, or in such circumstances that, it is likely—

(c) to have adverse effects on the scheme; or

(d) to create or increase tensions or disturbances between leaseholders or groups of leaseholders,

or has already done so.

(2) For the purposes of this Act, a leaseholder is responsible for any disruptive conduct—

(a) that he has committed or allowed to be committed; or

(b) subject to Subsection (3) that has been committed by a member of his family or by a person who is employed by him or who is residing on the land of which he is the leaseholder.

(3) Subsection (2)(b) does not apply if the leaseholder has taken all reasonable action to dissociate himself from the conduct and, to the best of his lawful ability, to mitigate its adverse effects on the scheme and to prevent its recurrence.

(4) Subject to Subsections (5) and (6), a District Court, on application by or on behalf of the Minister or a leaseholder, may declare—

(a) that any conduct is disruptive conduct within the meaning of Subsection (1); and

(b) that a leaseholder is responsible, within the meaning of Subsection (2), for the conduct.

(5) Before making a declaration under Subsection (4), the District Court shall consider any views expressed by or on behalf of—

- (a) other leaseholders of land in the declared scheme in question; and
- (b) any Local-level Government in whose area the land, or any part of the land, in the scheme is situated; and
- (c) any leaseholders' or settlers' association (or any similar body) formed in relation to land in the scheme; and
- (d) any other interested or concerned persons whose views the Court thinks proper to be considered.

(6) If a District Court dealing with an application under Subsection (4) is satisfied that the conduct in question has been atoned for to the satisfaction of the leaseholders generally so that the consequences referred to in Subsection (1) are not likely to occur, it may refuse to make a declaration under Subsection (4).

(7) Subsection (6) does not prevent the conduct concerned being taken into account with other conduct or circumstances, in and for the purposes of any later application under Subsection (4), as disruptive conduct for the purposes of this Act.

151. COMPULSORY ACQUISITION OF STATE LEASE.

Where a District Court has made a declaration under Section 150(4) that conduct is disruptive and that a leaseholder is responsible, the Minister shall acquire by compulsory process any State lease of land held by the leaseholder so held responsible for the disruptive conduct after paying to the leaseholder, by way of compensation for the land, an amount as is prescribed or as is determined by the Valuer-General.

152. ORDER TO SEND PEOPLE BACK.

(1) Where, under Section 151, the Minister acquires by compulsory process any State lease of land held by a leaseholder held responsible for disruptive conduct, the Minister may apply to the District Court and obtain—

- (a) an order that the leaseholder, his family and any other person for whose conduct he is held responsible, be sent to their original home province or such other place away from the declared scheme as may be determined by the Court; and
- (b) any other order that the Court thinks fit to prevent further disruption to the scheme.

(2) Where the Minister has obtained an order from the District Court under Subsection (1) to send a person home, he may deduct from any moneys payable as compensation to the leaseholder under Section 151—

- (a) such amounts as the Minister considers reasonably necessary to meet all or some of the costs of transporting the leaseholder, his family or other person for whose conduct he is held responsible; and
- (b) costs incurred in survey fees or fees incurred in the preparation of agreements and other work or service fees or debts incurred by or on behalf of the leaseholder; and
- (c) any other amount for the repayment of capital or the payment of interest, service charges or any other cost incurred in relation to loans obtained by or on behalf of the leaseholder by the Minister or other person authorized by the leaseholder.

PART XXV. – FENCING OF LAND.

153. INTERPRETATION.

In this Part, unless the contrary intention appears—

“common natural boundary” means the portion of a watercourse or other natural feature that forms the common boundary of lands adjoining it on opposite sides;

“cross fence” means a fence duly erected across the common boundary under this Part;

“land” means land other than—

- (a) land held under the State by annual licence under any law relating to land; or
- (b) State land that is not alienated or the subject of a State lease; or
- (c) customary land;

“neighbouring land”, in relation to any land, means land of a different owner or occupier that adjoins it at a common natural boundary, the whole or part of which boundary is insufficient to prevent the passage of stock.

154. APPLICATION OF THIS PART.

(1) Neither the State nor an officer who, by virtue of his office, has the management or control of any lands of the State is liable under this Part to make a contribution towards the erection or repair of a boundary or other fence between the land of an owner or occupier and any public land.

(2) Nothing in this Part affects a covenant, contract or agreement, whenever made, between a landlord and a tenant relating to fencing.

(3) The provisions of this Part relating to adjoining lands and their owners and occupiers extend, as far as practicable, to neighbouring lands and their owners and occupiers respectively.

155. ADJOINING OWNER, ETC, TO CONTRIBUTE TO DIVIDING FENCE.

(1) The owner of any land not separated by a dividing fence from adjoining land may serve a notice on the occupier, or if there is no occupier then on the owner, of the adjoining land, or his attorney or agent, requiring him to assist in equal proportions in, or contribute in equal proportions to, the erection of a dividing fence.

(2) If the occupier or owner, or his attorney or agent, refuses, or neglects for three months after the service of the notice under Subsection (1), to assist in or contribute to the making of the fence, or after having started does not use due diligence in completing the fence, the person serving the notice may make and complete the fence and demand and recover from the other occupier or owner half the cost of the fence.

156. DIVIDING FENCES ON NEIGHBOURING LANDS.

(1) In the case of neighbouring lands, the owner of land on one side of a common natural boundary may require the owner or occupier of the neighbouring land to join him in separating their respective lands, for the common advantage of the lands, by a fence erected along the common natural boundaries (either on one side or partly on one side and partly on the other side of the common boundary), and by the necessary cross fences.

(2) The fence and any cross fences erected under Subsection (1) shall be deemed to form a dividing fence within the meaning and for the purposes of this Part.

157. REPAIR OF DIVIDING FENCES.

(1) Subject to Subsections (3) and (4), the occupier of any land separated from any adjoining land by a dividing fence may serve a notice on the occupier, and if there is no occupier then on the owner, of that adjoining land requiring him to assist in equal proportions in, or contribute in equal proportions to, the repairing of the dividing fence.

(2) If the occupier or owner who is served with a notice under Subsection (1) refuses, or neglects for three months after the service of the notice, to assist in or contribute to the repairing of the dividing fence, the occupier serving the notice may repair the fence and demand and recover from the other occupier or owner half the cost of repairing the fence.

(3) If a dividing fence or a portion of a dividing fence is destroyed by accident, the occupier of land on either side may immediately repair it without any notice, and is entitled to recover half the expense of doing so from the occupier or owner of the adjoining land.

(4) Where a dividing fence is destroyed by fire or by the falling of a tree, any owner or occupier through whose neglect the fire originated or the tree fell is bound to repair the entire fence so damaged.

158. COST OF REPAIR OF DIVIDING FENCE.

When a dividing fence is out of repair or becomes insufficient, the occupiers of land on either side of the fence are liable, in equal proportions, for the costs of repairing the fence.

159. EXPENSES OF DIVIDING FENCE WHERE STATE LAND ALIENATED, ETC.

The owner of land who makes or has made a fence dividing the land from adjoining State land that is subsequently alienated or demised (otherwise than by an annual licence under any law relating to land) may, within six months after the alienation or demise, recover from the owner of the adjoining land half the value of the dividing fence.

160. OCCUPIER MAY RECOVER COSTS FROM OWNER.

(1) The occupier of the adjoining land is liable in the first instance to contribute to the erection of a dividing fence, but he may deduct all expenses incurred in erecting the fence from any rent due or afterwards becoming due from the occupier to the owner.

(2) The occupier is liable to contribute to the erection or repair of a dividing fence, but where the adjoining land is not in the occupation of any person the owner of the land is liable to contribute.

161. NOTICES.

(1) Subject to Subsection (2), where a notice is required by this Part to be given it must be in writing and must be served personally on the person to whom it is addressed, or his attorney or agent, or left with some adult person at his last-known place of residence.

(2) When an owner is unknown or is absent from the country without a known attorney or agent, the notice shall be inserted once a week for two consecutive weeks in a newspaper published nearest to the land, and the production of a copy of the newspaper containing the notice is proof of the due service of the notice.

162. AGREEMENTS AS TO DIVIDING FENCES.

(1) The owners or occupiers of adjoining lands may agree between themselves as to what part of a dividing fence each is to—

- (a) erect and keep in repair; or
- (b) keep in repair only; or
- (c) erect only.

(2) An agreement made under Subsection (1) shall be in writing, and shall be witnessed by the clerk of the District Court nearest to the land to which the agreement relates.

(3) A copy of an agreement under this Section certified by the clerk as being a true copy shall be lodged in the office of the District Court nearest to the land to which the agreement relates, and any such copy may be used in evidence in any case arising in relation to the land and the fence referred to in the agreement.

(4) Subject to Subsection (5), the provisions of this Part, so far as they are applicable, apply to a dividing fence the subject of an agreement under this section.

(5) Where an owner or occupier erects or repairs under this Part any portion of a dividing fence that, under an agreement made under this section, the owner or occupier of the adjoining land should have erected or repaired, the first-mentioned owner or occupier is entitled to recover the whole of the cost of the erection or repair from the owner or occupier failing or neglecting to repair the dividing fence.

163. JURISDICTION OF COURT.

If a dispute or difference occurs between the owners or occupiers of any adjoining lands as to—

- (a) the sufficiency as a fence of a river or other natural boundary; or
- (b) what portion of a fence shall be erected or repaired by each owner; or
- (c) the necessity for a dividing fence to be repaired; or
- (d) whether due diligence has been used to complete the erection or repair of a fence after it has been started; or
- (e) the description and sufficiency of a fence erected or to be erected; or
- (f) the sufficiency or otherwise of an excuse for not using due diligence in the completion of the erection of a fence or any repairs after having commenced the erection or repairs; or
- (g) what is a fair distribution of the water in a water-course, lagoon or water-hole forming part of a common natural boundary on which a dividing fence has been or is to be erected,

either party may apply to the District Court nearest to the place where the fence in question exists or is about to be erected, and the Court—

- (h) shall inquire into the matter; and
- (i) may summon witnesses and examine them on oath or by view or otherwise take the best means of informing itself on the merits of the case at issue; and
- (j) shall give judgement, with or without costs, to either party as it sees fit,

and the decision of the Court is final.

164. MODE OF RECOVERING COST OF FENCING.

All sums of money recoverable under this Part may be sued for and recovered in a summary manner before a District Court.

165. RECOVERABLE COSTS OF FENCING.

(1) A judgement shall not be given under this Part that will involve an expense in the erection of a fence exceeding—

- (a) in the case of land other than land in a town—the fair and usual price charged for the erection of a three-railed fence; and
- (b) in the case of land in a town—the fair and usual price charged for a four-railed or paling fence.

(2) Where contribution is required for an existing fence, the amount to be recovered shall have reference to the actual value and state of the fence at the time the sum is sought to be recovered and not to the original cost of the fence.

166. FENCING COSTS MAY BE LEVIED BY DISTRESS, ETC.

All sums of money ordered under this Part by a District Court to be paid by a party for erecting or repairing a fence and not paid within one month after the order may be recovered under a warrant of the Court directed to a commissioned officer of the Police Force to levy it by distress and sale of the goods and chattels of the party ordered to pay the sum of money, together with all costs and charges attending the levy.

PART XXVI. – MISCELLANEOUS.

167. FUTURE ENTITLEMENT TO ESTATE TAIL.

Where, but for this section, a person would become entitled to an estate tail (whether legal or equitable) in any land, the estate shall be deemed to be an estate in fee simple or the equivalent interest (legal or equitable, as the case may be) to the land, to the exclusion of all estates or interests that, but for this Act, would have taken effect after the determination of or in defeasance of any estate tail.

168. SURVEY FEES.

(1) The survey fees payable in respect of an application for a State lease or of an application for approval to subdivide the land comprised in a State lease are as determined.

(2) If the Departmental Head so requires, survey fees shall be deposited with the application and otherwise shall be paid on demand, and the fees shall be returned to the applicant if the application is not granted.

(3) Where the Departmental Head certifies that any land in respect of which survey fees have been paid under this Section has been wholly or partly surveyed, and that further survey of the whole or part so surveyed is unnecessary the survey fees or such part of the survey fees as the Departmental Head thinks just, shall be returned to the applicant, after the deduction of such amount as is approved by the Departmental Head for the cost of any necessary inquiries made by a licensed surveyor in the employ of the State.

(4) If the survey fees are not paid on demand, the application or lease shall not be granted or, if granted, the grant may be revoked and the lease terminated by the Minister without compensation.

169. SERVICES OF NOTICES, ETC.

(1) Subject to this section, where, under this Act, a claim, notice or thing is required or permitted to be given to or served on a person (other than a corporation), the claim, notice or thing may be given or served personally or by registered post to his postal address last known to the Departmental Head.

(2) Where—

(a) in the opinion of the Departmental Head, it is impracticable to serve a person in accordance with Subsection (1); or

(b) the Departmental Head has cause to believe that that person is dead,

it is a sufficient service if a copy of the claim, notice or thing—

(c) is published in three consecutive issues of a newspaper that is distributed regularly throughout the country; and

(d) is forwarded by pre-paid post to the Local-level Government (if any)—

(i) in whose area the land the subject of the notice is situated; or

(ii) in whose area the person to be served last, to the knowledge of the Departmental Head, resided; and

(e) is placed in a conspicuous place on the land the subject of the notice.

(3) Where under this Act, a claim, notice or thing is required or permitted to be given to or served on a corporation, the claim, notice or thing may be given or served by registered post to the postal address of the corporation last known to the Departmental Head.

170. INQUIRIES, ETC, BY MINISTER.

(1) The Minister, in the exercise and performance of the powers and duties conferred or imposed by or under this Act, may—

(a) summon witnesses; and

(b) take evidence on oath or affirmation; and

(c) require a person to produce a document, book or paper in his custody or control.

(2) A person who, without reasonable excuse, when summoned or required under this Section to give evidence or to produce a document, book or paper in his custody or control fails—

(a) to attend before the Minister at the time and place appointed in the summons or requirement; and

(b) to give evidence or to produce the document, book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) It is a defence to a charge of an offence against Subsection (2) for failing without reasonable excuse to produce a document, book or paper if the defendant proves that the document, book or paper is not relevant to the matter in connection with which the production was required.

171. RECOVERY OF MONEY DUE TO THE STATE.

Money due to the State under this Act may be recovered from the person liable as a debt.

172. INTEREST ON OUTSTANDING MONEYS.

Interest at the prescribed rate is payable on all moneys due to the State under this Act that remain unpaid for more than 60 days after the date on which they became due and payable.

173. PAYMENT, ETC, BY THE STATE GOOD DISCHARGE.

A payment or deposit made on behalf of the State under this Act is a good and valid discharge to the State, and the State is not bound to see to—

- (a) the application of the money paid or deposited; or
- (b) the performance of any trusts.

174. MINISTER MAY APPROVE FORMS.

The Minister may approve Forms for use under this Act.

175. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART XXVII. – REPEAL.

176. REPEAL.

The Acts specified in Schedule 1 are repealed.

PART XXVIII. – SAVING AND TRANSITIONAL PROVISIONS.

177. APPLICATIONS, MATTERS, ETC, NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any application or matter was pending or existing before the Land Board, it does not, on the coming into operation of this Act abate or discontinue, but may be continued as if this Act had not been made.

178. APPEALS, ACTIONS, ETC, NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any appeal, action, arbitration or proceeding, was pending, or any cause of action was pending or existed in respect of any lease, licence or authority granted, renewed or continued in existence under an Act repealed by Section 176, such action, arbitration or proceeding or cause of action does not abate and is not affected by the coming into operation of this Act, but it may be prosecuted, continued and enforced as if this Act had not been made.

179. OFFICERS.

A person holding office under an Act repealed by Section 176 immediately before the coming into operation of this Act shall be deemed to have been appointed to the corresponding office under this Act.

180. REFERENCES TO REPEALED ACTS.

A reference in any Act, regulation, rule, by-law, instrument or document to an Act repealed by Section 176, or any provision thereof, shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

181. DIFFICULTIES WITH TRANSITIONAL PROVISIONS.

Where a difficulty arises in respect of the transitional provisions in this Part, the Head of State, acting on advice, may, by regulation—

(a) make such modifications to those provisions as may appear necessary for preventing anomalies during the transition to the provisions of this Act from the provisions of the repealed Acts; and

(b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any such modifications or provisions made by the Head of State, acting on advice, have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Part, and on publication of the Regulation in the National Gazette, this Part shall be amended accordingly.

182. TOWN SUBDIVISION LEASE TO BE KNOWN AS URBAN DEVELOPMENT LEASE.

A “town subdivision lease” granted under a repealed Land Act shall be referred to as an “urban development lease”.

SCHEDULE 1

Section 176

Aliens (Property) Act (Chapter 14)

Arawa Township Development Act (Chapter 180)

Distress, Replevin and Ejectment Act 1967 (Queensland, adopted) [Papua] (omitted)

Enclosed Land Protection Act (Chapter 294)

Fencing Act (Chapter 183)

Gire Gire-Ralum Lands Act 1968 (No. 72 of 1968) (Reserved Chapter 184)

Land Act (Chapter 185)

Land (Amendment) Act 1986

Land (Amendment) Act 1987

Land (Amendment) Act 1990

Land (Amendment) Act 1990

Land (Corrected Titles) Act (Chapter 186)

Land (Estates Tail) Act (Chapter 187)

Land (Interest on Arbitrated Compensation) Act (Chapter 188)

Land (Papenbus Island) Act (Chapter 185A)

Land Redistribution Act (Chapter 190)

Land Settlement Schemes (Prevention of Disruption) Act (Chapter 358)

Land Trespass Act (Chapter 271)

Land (Underdeveloped Freeholds) Act (Chapter 193)

Land (Wuvulu) Acquisition Act (Chapter 360)

Lands Acquisition (Development Purposes) Act (Chapter 192)

Lost Registers Act (Chapter 314)

National Housing Corporation (Grant of Leases) Act 1990 [(Chapter 375)]

New Guinea Land Titles Restoration Act 1951

Property Dealings (Validation) Act (Chapter 356)

Real Property (Registration of Leases) Act 1962 (omitted)

Settled Land Act (Papua) (Chapter 200).

Office of Legislative Counsel, PNG

^[1]Section 24 Amended by No. 73 of 2003, s. 12.

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No. of 2010.

Environment (Amendment) Bill 2010.

ARRANGEMENT OF CLAUSE.

PART 1. – PRELIMINARY.

1. Compliance with Constitutional Requirements.
2. Interpretation.

PART 2. – AMENDMENTS TO THE *ENVIRONMENT ACT* 2000.

3. Interpretation (Amendment of Section 2).
4. New Sections 69A and 69B.
5. New Sections 87A - 87E.



No. of 2010

A BILL

for

AN ACT

Entitled,

Being an Act to amend the ***Environment Act 2000*** to authorize the State to issue certificates certifying that certain conduct complies with environmental approvals, permits, leases, licences, consents or permissions.

MADE by the National Parliament.

PART 1. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Bill, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.C (*qualified rights*) of the ***Constitution***, namely –

- (a) the right to freedom of employment conferred by Section 48 of the ***Constitution***; and
- (b) the right to privacy conferred by Section 49 of the ***Constitution***; and
- (c) the right to freedom of information conferred by Section 51 of the ***Constitution***; and
- (d) the right to freedom of movement conferred by Section 52 of the ***Constitution***.

is a law that is made pursuant to Section 38 of the ***Constitution*** for the purpose of giving effect to –

- (e) the public interest in public order and public welfare, taking into account the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled –
 - (i) national sovereignty; and
 - (ii) natural resources and environment; and
- (f) the right of the State under the ***Environment Act 2000*** to regulate acts, works or activities that may harm or damage the environment through, but not limited to, notices, studies, directions, policies, environment permits and Regulations.

Environment (Amendment)

- (2) For the purposes of Section 53(1) and (2) of the *Constitution*:-
- (a) the purpose and reason for which this Act permits possession to be compulsorily to be taken of any property and permits any interest in or rights over property to be compulsorily acquired are declared and described to be a public purpose and a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
 - (b) this Act is expressed to be in the national interest.
- (3) For the purposes of Sections 29 and 41 of the *Organic Law on Provincial Governments and Local-Level Governments*, and it is declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

(1) Unless otherwise defined in this Act, words and expressions which are given certain meaning in the Principal Act are used in this Act with the same meanings.

(2) In This Act, unless the contrary intention appears, "Amendment Commencement Date" has the meaning given to it in Section 3(1).

PART 2. – AMENDMENTS TO THE *ENVIRONMENT ACT 2000*.

3. INTERPRETATION (AMENDMENT OF SECTION 2).

(1) Section 2 of the Principal Act is amended by inserting after the definition of "activity" the following new definition: -

"Amendment Commencement Date" means the date of commencement of the *Environment Act 2000*;"

- (2) On the "Amendment Commencement Date", Section 2 of the Principal Act is amended: -
- (a) by inserting before the definition of "approval in principle" the following definition:

"Authorisation Instrument" includes any approval, consent, lease, licence, permission, permit or authorization issued or granted under the *Environmental Planning Act* (Chapter 370) and any Supplementary Approval;" and

- (b) by inserting after the definition of "serious environmental harm" the following new definition: -

"Supplementary Approval" means any approval, consent, lease, licence, permission or authorization or permit given in relation to an Authorisation Instrument including any variation, renewal, amendment, modification, transfer or extension thereof whenever made and by whatever statutory authority;"

4. NEW SECTIONS 69A AND 69B.

The Principal Act is amended by inserting after Section 69 the following new sections: -

“69A. DIRECTOR MAY AUTHORISE ASSOCIATED ACTS.

(1) Notwithstanding anything in any other law in force at any time (whether before or after the commencement of this Act), the Director may, on behalf of the State, authorise the carrying out of specific acts or works (including but not limited to those described under Section 41) relating or associated with an activity permitted under an Authorisation Instrument if:

- (a) the Director is satisfied that the acts or works relate to or are associated with the carrying on of a level 3 activity, or would not cause material harm to the environment; or
- (b) the acts or works have been allowed to be carried out in association with an identical or similar activity that is, or have been permitted under an Authorization Instrument, Supplementary Approval or an environment permit (whether or not granted to the same person and whether or not granted or issued prior to the commencement of this Act).

which authorisation may be granted with retrospective effect.

“(2) An authorization granted under Subsection (1) is deemed to be a permit granted under this Act and applies notwithstanding non-compliance with any procedural or other requirements for the grant of such permits under this Act.

“(3) The Director’s decision to grant an authorization is final and may not be challenged or reviewed in any court or tribunal.”.

“69B. ACTIVITY DOES NOT CONSTITUTE A CIVIL CAUSE OF ACTION OR AN OFFENCE.

If the Director grants an authorization under Section 69A, the holder of the permit for the associated activity is entitled to carry out that act, or work and the carrying out of that act, work or activity does not constitute a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.”.

5. NEW SECTIONS 87A – 87E.

The Principal Act is amended by inserting after Section 87 the following new sections: -

“87A. DIRECTOR MAY GRANT EXEMPTION CERTIFICATE.

(1) The Director may, on behalf of the State, issue a Exemption Certificate declaring that an act, or a work or omission which was not in accordance with the terms of an Authorisation Instrument (including Authorisation Instruments granted or issued prior to the commencement of this Act) is an “Exempt Operation “, provided that the Director is satisfied that an act, a work or omission was carried out substantially in accordance with the terms of that Authorisation Instrument.

“(2) Subject to this section, in granting an Exemption certificate under Subsection (1), the Director is not bound by any provisions of any law requiring or permitting any authority, consent, approval, report, recommendation, appeal, procedure or formality, or by any similar provisions.

Environment (Amendment)

“(3) An Exempt Operation shall be taken to have been authorized by the Authorisation Instrument to which it relates and an Exemption Certificate is conclusive evidence in any proceeding that an Exempt Operation was authorized by the Authorisation Instrument at the time at which it occurred.

“(4) The Director’s decision to issue the Exemption Certificate is final and may not be challenged or reviewed in any court or tribunal.”.

“87B. DIRECTOR MAY ISSUE BEST PRACTICE CERTIFICATE.

(1) A holder of an Authorisation Instrument may apply to the Director to request a confirmation that certain methodology or conduct (or proposed methodology or conduct) complies with best practice standards or requirements or best available standards or requirements (whether engineering, environmental or otherwise) specified in an Authorisation Instrument.

“(2) Upon receiving an application referred to in Subsection (1), the Director may issue a Best Practice Certificate declaring that the methodology or conduct (or proposed methodology or conduct) specified in the application complies or would comply with best practice standards or requirements or best available standards or requirements for the purposes of a particular Authorisation Instrument.

“(3) Where an Authorisation Instrument refers to best practice standards or requirements or best available standards or requirements, a Best Practice Certificate issued in accordance with this section shall be conclusive evidence that the conduct or methodology specified in the Best Practice Certificate meets or would meet that standard or requirement in relation to the Authorisation Instrument specified in the Best Practice Certificate.

“(4) The Director’s decision to issue the Best Practice Certificate is final and may not be challenged or reviewed in any court or tribunal, except at the instigation of any aggrieved holder of an Authorisation Instrument.”.

“87C. DIRECTOR MAY ISSUE A CERTIFICATE OF NECESSARY CONSEQUENCE.

(1) A holder of an Authorisation Instrument may apply to the Director to request a confirmation of any or all of the following matters, namely, that:

- (a) the undertaking of certain conduct or proposed conduct referred to in the application is, was, or will be necessary or inevitable in order to carry out the work or activity that is authorized by the Authorisation Instrument; and
- (b) the consequences referred to in the application in respect of that conduct or proposed conduct or of the work or activity that is authorized by the Authorisation Instrument are, were or will be necessary or inevitable, consequences of undertaking that conduct, proposed conduct, work or activity.

Environment (Amendment)

“(2) Upon receiving an application referred to in Subsection (1), the Director may issue a Certificate of Necessary Consequence declaring any or all of the following matters, namely, that:-

- (a) the undertaking of the conduct or proposed conduct referred to in the certificate is, was or will be necessary or inevitable in order to carry out the work or activity that is authorized by the Authorisation Instrument; and
- (b) the consequences referred to in the certificate in respect of that conduct, proposed conduct, work or activity are, were or will be necessary or inevitable consequences of carrying out that conduct, proposed conduct, work or activity.

“(3) A Certificate of Necessary Consequence issued in accordance with this section shall be conclusive evidence that:

- (a) the undertaking of the conduct or proposed conduct referred to in the certificate is, was or will be necessary or inevitable in order to carry out the work or activity that is authorized by the Authorisation Instrument; and
- (b) the consequences referred to in the certificate in the respect of that conduct, proposed conduct, work or activity are, were or will be necessary or inevitable consequences of carrying out that conduct, proposed conduct, work or activity.

“(4) The Director’s decision to issue the Certificate of Necessary Consequence is final and may not be challenged or reviewed or any court or tribunal, except all the instigation of an aggrieved holder of an Authorisation Instrument.

“(5) The carrying out of a conduct or proposed conduct, or the occurring of consequences, referred to in a Certificate of Necessary Consequence do not constitute wholly or partly a civil cause of action, whether in torts or otherwise, or an offence and are not unlawful.”.

“87D. A DIRECTOR MAY ISSUE A CERTIFICATE OF COMPLIANCE.

(1) A holder of an Authorisation Instrument may apply to the Director for a Certificate of Compliance to certify that an act, a work or activity has been conducted in compliance with the Authorisation Instrument or Supplementary Approval or an environment permit and the carrying out of that act, work or activity does not constitute a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.

“(2) Upon receiving an application referred to in Subsection (1), the Director may issue a Certificate of Compliance declaring that the act, work or activity has been conducted in compliance with the related Authorisation Instrument or Supplementary Approval or an environment permit and the carrying out of that act, work or activity does not constitute a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.

Environment (Amendment)

“(3) A Certificate of Compliance issued in accordance with this Section shall be conclusive evidence that the act, work or activity has been conducted in compliance with the related Authorisation Instrument or Supplementary Approval or an environment permit and no civil or other action may be brought or maintained in relation to that conduct.

“(4) The Director’s decision to issue a Certificate of Compliance is final and may not be challenged or reviewed in any court or tribunal, except at the instigation of an aggrieved holder of an Authorisation Instrument.

“(5) The carrying out of any act, work or activity that is the subject of a Certificate of Compliance does not constitute wholly or partly a civil cause of action, whether in torts or otherwise, or an offence and is not unlawful.”.

“87E. A HOLDER MAY APPLY FOR MORE THAN ONE CERTIFICATE.

A holder of an Authorisation Instrument may apply for the issue of, and the Director may issue, more than one certificate under Sections 87A to Section 87D in respect of one Authorisation Instrument.”.

Annex C Record of published notices of SABLs issued in Papua New Guinea

SPECIAL AGRICULTURAL AND BUSINESS LEASES GRANTED TO INCORPORATED BODIES/COMPANIES.

DATE	GAZETTE NO.	GRANTEE	TERM (YEARS)	AREA (HECTARES)	LAND DESCRIPTION			PROVINCE	NOTES
					PORTION	MILINCH	FOURMIL		
03-07-03	G86	VAILALA OIL PALM LTD	99	11,800.00	377C	IHU (NE & SE) KEREMA (NW & SW)	KIKORI & WAU	GULF	SURVEY PLAN 37/114.
03-05-04	G42	TRUKAKE LTD	99	120.70	46	KOKOPO	RABAU	ENBP	CUSTOMARY LAND?
14-10-04	G113	BARAVA LTD		244.70	307	KOKOPO	RABAU	ENBP	CUSTOMARY LAND?
06-01-05	G113	LOLOKORU ESTATES LTD	45	1,750.00	1C	GARUA	TALASEA	WNB	
28-10-05	G157	BAIINA AGRO-FOREST LTD	40	42,100.00	29C	KASE	BUNA	CENTRAL	SURVEY PLAN 43/400.
12-12-05	G184	ROSELAW LTD	99	25.11	2541C	GRANVILLE	MORESBY	NCD	
16-06-06	G120	PULIE ANU PLANTATION LTD	99	46,233.00	396C	GOGOR/MIO	RAULT/ARAW	WNB	SURVEY PLAN 33/28.
20-07-06	G143	VANIMO JAYA LTD & ONE UNI-DEV.CORP	99	47,626.00	248C	TADJI	AITAPE	WSP	SURVEY PLAN 2/144.
21-09-06	G183	ZIFASING CATTLE RANCH	50	8,374.23	79	ONGA	MARKHAM	MOROB	IS THIS CUSTOMARY LAND? M1/16
22-09-06	G186	PERPETUAL SHIPPING LTD	50	283.29	19C	AIRD	KIKORI	GULF	SURVEY PLAN 37/115.
07-12-06	G224	CASSAVA ETAGON WHY LTD	99	20,000.00	884C	DJAUL	KAVIENG	NIP	SURVEY PLAN 23/453.
28-12-06	G234	EMIRAU TRUST	99	3,384.38	53C-58C	ELEOA	EMIRA	NIP	EMIRAU TRUST LIMITED REMOVED FROM THE REGISTER OF COMPANIES DATED 30/05/2008 - PUBLISHED POST COURIER 16/10/2008. SURVEY PLAN 66/11.
01-02-07	G157	CHANGHAE TAPIOKA (PNG) LTD	40	1,656.00	519C	RIGO	MORESBY	CENTRAL	AS AT 17/10/2008 CENTRAL PROVINCE ADMINISTRATION ADVISE THAT THEY HAVE NOT SIGHTED AN "AGREEMENT" BY AND BETWEEN THE COMPANY AND THE CUSTOMARY LANDOWNERS.
01-02-07	G157	CHANGHAE TAPIOKA (PNG) LTD	40	74.87	444C	RIGO	MORESBY	CENTRAL	
01-02-07	G157	CHANGHAE TAPIOKA (PNG) LTD	40	66.77	446C	RIGO	MORESBY	CENTRAL	
01-02-07	G157	CHANGHAE TAPIOKA (PNG) LTD	40	2,514.00	517C	RIGO	MORESBY	CENTRAL	
01-02-07	G157	CHANGHAE TAPIOKA (PNG) LTD	40	3,573.00	518C	RIGO	MORESBY	CENTRAL	
01-02-07	G185	CHANGHAE TAPIOKA (PNG) LTD	40	2,514.00	521C	RIGO	MORESBY	CENTRAL	
01-02-07	G157	CHANGHAE TAPIOKA (PNG) LTD	40	2,514.00	520C	RIGO	MORESBY	CENTRAL	
15-02-07	G224	BRILLIANT INVEST LTD	99	25,600.00	146C	ANGORAM / MARIENBERG	BOGIA / VANIMO	ESP	RECEIVER MANAGER APPOINTED BY THE NATIONAL COURT - PUBLIC NOTICE DATED 13/08/2007. SURVEY PLAN 3/605.
19-02-07	G234	OKENA GOTO KARATO DEV.CORP.LTD	99	28,100.00	146C	KUPARI	TUFI	ORO	SURVEY PLAN 50/91
03-05-07	G38	YUMI RESOURCES LTD	99	115,000.00	30C	KASE	BUNA	CENTRAL	SURVEY PLAN 43/401
03-08-07	G115	KOARU RESOURCE OWNERS COMPANY LTD	99	59,460.00	323C	KUKIPI/CUPOLA	YULE	GULF	SURVEY PLAN 42/380
17-10-07	G161	RAKUBANA DEV.PTY.LTD.	99	24,581.00	871C	DOLOMAKAS	NAMATANAI	NIP	SURVEY PLAN 21/353
17-10-07	G161	TABU LTD	99	11,864.00	885C	LOVANGAI	KAVIENG	NIP	SURVEY PLAN 23/467
17-10-07	G161	UMBAKUL LTD	99	25,108.00	886C	LOVANGAI	KAVIENG	NIP	SURVEY PLAN 23/468
17-10-07	G161	CENTRAL NEW HANOVER LTD	99	56,592.00	887	LOVANGAI	KAVIENG	NIP	SURVEY PLAN 23/469
22-11-07	G182	MEKEO HINTERLAND HOLDINGS LTD	99	116,400.00	45C	OMERI	YULE	CENTRAL	POST COURIER NEWSPAPER 20/04/09.

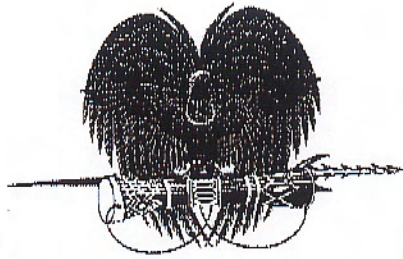
DATE	GAZETTE NO.	GRANTEE	TERM (YEARS)	AREA (HECTARES)	LAND DESCRIPTION			PROVINCE	NOTES
					PORTION	MILINCH	FOURMIL		
09-01-08	G38	WOWOBO OIL PALM LTD	99	23,180.00	4C	AURI	KIKORI	GULF	SURVEY PLAN 37/118
18-03-08	G45	AKAMI OIL PALM ESTATE LTD	99	231.20	104C	MEGIGI/DAGI	TALASEA	WNBP	SURVEY PLAN 15/802.
07-04-08	G54	AKAMI OIL PALM ESTATE LTD	99	345.75	2628C	MEGIGI/DAGI	TALASEA	WNBP	SURVEY PLAN 15/877.
09-07-08	G120	POMATA INVESTMENT LTD	99	15,000.00	196C	NAKANAI/WOIPUNA	TALASEA	ENBP	SURVEY PLAN 15/879
09-07-08	G120	NAKIURA INVESTMENT LTD	99	16,100.00	198C	WOIPUNA	TALASEA	ENBP	SURVEY PLAN 15/881
09-07-08	G120	RALOPAL INVESTMENT LTD	99	11,300.00	197C	WOIPUNA	TALASEA	ENBP	SURVEY PLAN 15/880
14-07-08	G124	BEWANI OIL PLAM DEVELOPMENT LTD	99	139,909.00	160C	OENAKE/BEWANI	VANIMO/AITAP	WSP	SURVEY PLAN 1/130
14-08-08	G145	OIL PALM PLANTATION LTD	99	116,840.00	144C	TRING	WEWAK	ESP	GRANT REPEATED G154 02/09/2008. SURVEY PLAN 3/624
14-08-08	G145	RERA HOLDINGS LTD	99	68,300.00	2C	KAPIURA	TALASEA	ENBP	SURVEY PLAN 15/981
01-09-08	G152	ATABEDA AGRO FOREST LTD	99	11,700.00	409C	EPO/KAIRUKU	YULE	CENTRAL	SURVEY PLAN 42/382
25-09-08	G174	AKIVRIIU LTD	99	6,111.00	398	MIO	ARAWA	WNBP	CUSTOMARY LAND? SURVEY PLAN 33/29
25-09-08	G174	IVAGA OUROUINO-MASINAMTA LTD	99	10,741.00	397	MIO	ARAWA	WNBP	CUSTOMARY LAND? SURVEY PLAN 33/29
25-09-08	G174	POLOPO LTD	99	8,328.00	35	GOGOR	ROUALT	WNBP	CUSTOMARY LAND? SURVEY PLAN 33/29
25-09-08	G174	KAVUNI LTD	99	7,161.00	34	GOGOR	ROUALT	WNBP	CUSTOMARY LAND? SURVEY PLAN 33/29
25-09-08	G174	GOGORANTO LTD	99	8,893.00	33	GOGOR	ROUALT	WNBP	CUSTOMARY LAND? SURVEY PLAN 33/29
08-01-09	G4	MUSIDA LTD	99	211,600.00	16C	GONA (GORA?)	TUFI	ORO	REVOKED BY AN ORDER OF THE NATIONAL COURT & GAZETTED 10/02/10
18-02-09	G31	EAST WAII OIL PALM LTD	99	21,108.00	5C	BEARA/AURI	KIKORI	GULF	SURVEY PLAN 37/1120
18-02-09	G31	AROWA OIL PALM LTD	99	12,341.00	6C	AURI	KIKORI	GULF	SURVEY PLAN 37/121
01-04-09	G58	NUKU RESOURCES LTD	99	239,810.00	26C	VARIOUS	VARIOUS	ESP & WSP	SURVEY PLAN 2/149
28-04-09	G78	TUMU TIMBERS DEVELOPMENT LTD	99	790,800.00	1C	VARIOUS	VARIOUS	WESTERN	SURVEY PLAN 35/15
30-10-09	G217	LA-ALI INVESTMENTS LIMITED	70	7,170.00	5C	GUAVI	AWORRA	WESTERN	MIDDLE FLY. SURVEY PLAN 36/21
30-10-09	G217	MUDAU INVESTMENT LIMITED	70	10,450.00	6C	GUAVI	AWORRA	WESTERN	MIDDLE FLY. SURVEY PLAN 36/21
30-10-09	G217	GODAE LAND GROUP INC.	70	15,153.00	7C	GUAVI	AWORRA	WESTERN	MIDDLE FLY. SURVEY PLAN 36/22
30-10-09	G217	HAUBAWA HOLDINGS LIMITED	70	11,110.00	8C	GUAVI	AWORRA	WESTERN	MIDDLE FLY. SURVEY PLAN 36/23
30-10-09	G217	FOIFOI LIMITED	70	33,900.00	9C	GUAVI	AWORRA	WESTERN	MIDDLE FLY. SURVEY PLAN 36/23
10-12-09	G245	UNUNG SIGITE LIMITED	99	13,000.00	27C	NAKANAISE	TALASEA	ENBP	POMIO - SURVEY PLAN 15/915
14-01-10	G7	KONEKARU HOLDINGS LTD	99	457.00	2465C	GRANVILLE	MORESBY	CENTRAL	SURVEY PLAN 49/2751
14-01-10	G7	KONEKARU HOLDINGS LTD	99	98.00	2466C	GRANVILLE	MORESBY	CENTRAL	SURVEY PLAN 49/2751
26-02-10	G37	TIRIU TIMBERS LIMITED	99	11,240.00	904c	PONDO	RABAU	ENBP	SURVEY PLAN 19/1913
26-02-10	G37	TIRIU TIMBERS LIMITED	99	42,240.00	903c	PONDO	RABAU	ENBP	SURVEY PLAN 19/1913
23-04-10	G38	MAPSERA DEVELOPMENT CORPORATION LTD	99	54,384.00	54C	MASALAGA, KUBALIA, CHAMBRI & YAMBON	WEWAK	ESP	SURVEY PLAN 3/657
23-04-10	G38	WEST MAIMAI INVESTMENT LTD YANGKOK RESOURCES LTD & PALAI RESOURCES LTD (AS JOINT TENANTS)	99	149,000.00	594C	LUMI	AITAPE & WEWAK	WSP	SURVEY PLAN 2/151
29-07-10	G160	POROM COFFEE LTD	99	24.10	302C	BAIYER	RAMU	WHP	SURVEY PLAN 11/1436

DATE	GAZETTE NO.	GRANTEE	TERM (YEARS)	AREA (HECTARES)	LAND DESCRIPTION			PROVINCE	NOTES
					PORTION	MILINCH	FOURMIL		
29-07-10	G161	VEADI HOLDINGS LTD	99	1057.45	2485C	GOLDIE	MORESBY	CENTRAL	SURVEY PLAN 49/2800
05-08-10	G170	KEMEND KELBA KEI INVESTMENT LTD	99	41.30	155C	BAIYER	RAMU	WHP	SURVEY PLAN 11/609
24-09-10	G218	TOSIGIBA INVESTMENTS LIMITED	99	632,538.00	14C	CARRINGTON KARIUS, STRICKLAND BOSAVI, CAMPBELL AIEMA, TOMU & SISA	KUTUBU WABAG BLUCHER & RAGGI	WESTERN	SURVEY PLAN 28/126
24-09-10	G218	NORTH EAST WEST INVESTMENTS LTD (NEWIL)	99	470,642.00	1C	PALMER SARI, MULLER, CARRINGTON ALICE ELEVAGA, STRICKLAND & TOMU	BLUCHER & RAGGI	WESTERN	SURVEY PLAN 9/133
24-09-10	G218	NORTH EAST WEST INVESTMENTS LTD (NEWIL)	99	149,117.00	27C	ALICE, TEDI, SARI PALMER & KIUNGA	BLUCHER & RAGGI	WESTERN	SURVEY PLAN 9/133
30-09-10	G228	MUSA VALLEY MANAGEMENT COMPANY LIMITED	99	320,060.00	17C	GORA & SAFUA (NW) BIBIRA (NE & SE)	TUFI & MORESBY	ORO	IJIVITARI DISTRICT SURVEY PLAN 50/96
15-10-10	G243	WAMMY LIMITED	99	105,200.00	27C	MAINAI (SW)	AITAPE	WSP	SURVEY PLAN 2/159
30-11-10	G284	AINBAI-ELIS HOLDING LTD	99	22,850.00	40C	BEWANI (NW)	AITAPE	WSP	SURVEY PLAN 2/158
16-12-10	G305	HEWAI INVESTMENT LTD	99	358.00	351C	KARIUS, STRICKLAND	WABAG	SHP	SURVEY PLAN 10/731 Post Courier newspaper 23/08/2010.
25-01-2011	G19	PURARI DEVELOPMENT ASSOCIATION INC.	99	656,034.00	8c	AURI	KIKORI & KARIMUI	GULF	SURVEY PLAN 37/123
27-01-2011	G22	OSSIMA RESOURCES LIMITED	99	31,430.00	163C	BEWANI & OENAKE	AITAPE & VANIMO	WSP	SURVEY PLAN 1/136.

5,114,911.85

2,646,770.85

Annex D



Independent State of Papua New Guinea

DEPARTMENT OF JUSTICE & ATTORNEY GENERAL*Office of the Attorney General*

Telephone: (675) 325 5100 / 323 0628 / 325 5276
Facsimile: (675) 325 9712

Level 11, Sir Buri Kidu Haus
Independence Drive
P O Box 591, WAIGANI, NCD
Papua New Guinea

**IN THE MATTER OF *ENVIRONMENT (AMENDMENT) ACT 2010*
SCR NO. 3 OF 2010**

This is to advise the Public that a Supreme Court Reference has been filed by Nonggorr & William Lawyers for the Clients Sana Melambo, Eddie Tarsie and Farina Siga on June 3, 2010 and copies of the Reference have been served on the State on the same date where in this Reference, the Referrers are asking the Supreme Court to give its advisory opinion on whether or not the recently enacted *Environment (Amendment) Act 2010* is unconstitutional. Since then there have been two direction hearings. In the recent one, at which the State lawyers appeared, the Supreme Court raised concerns about the wide and extensive media comments which have been raised by the public at large since the Supreme Court is now seized of this matter.

By this notice, I advice the general public that there should not be anymore discussions, comments or references conducted in the media or anywhere else in public as this matter is now sub judice. This means, there will be no more talk-back radio programs and interviews, no more advertisements, no more letters to editors, no more public meetings, and above all there will be no public demonstrations or protest marches.

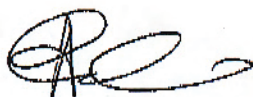
: 2 :

Your right to freedom of expression is now subsumed into this court case. This means that you also have a right to be represented at the hearing of this Supreme Court Reference. You can be represented by Nongorr & William lawyers or you can retain your own lawyers to represent your interest at the hearing of this Reference.

The Police Commanders of any metropolitan centres throughout the country should now cancel and/or refrain from granting permits for any public meetings, demonstrations and protest marches.

Any person or media outlet which continue to run or publish commentaries and opinions or which coordinate and conduct public meetings, demonstrations or public protests on the recent amendments to the Environment Act 2000 runs the risk of being cited for contempt of court. You are herewith accordingly warned.

Authorized by



Hon. Ano Pala, CMG, MP
Minister for Justice & Attorney-General