

COMMISSION OF INQUIRY INTO  
SPECIAL AGRICULTURE AND BUSINESS LEASE (C.O.I SABL)

REPORT

JUNE 2013

TABLE OF CONTENTS  
Pages

FOREWORD	12-14
EXECUTIVE SUMMARY	15-23
KEY FINDINGS AND RECOMMENDATIONS PART 1	
BACKGROUND	24

1. Introduction	25- 42
1.1. Establishment of the Commission of Inquiry	
1.1.1 Establishment	

- 1.1.2 Terms of Reference
- 1.1.3. List of SABLs inquired into by the C.O.I.
- 1.1.4 Appointmentsof the Commissioners and other Staff

1.2. Scope of Interim Report 42

1.3. Methodologyof the Inquiry Adopted and Used by 42–46  
the C.O.I.generally and in the inquiry of the Individual SABLs

## PART 2

2. Determination of Legal Authority for the Issuance of 48  
Special Agricultural and Business Leases (SABLs)

2.1 The Land Act 1996(Power of State to LeaseCustomary 48–67  
Land to Lease Back)

2.1.1 The Involvement of Custodian of Trust Land under  
The Land Act & Land Registration Act

2.1.2. Judicial Precedent

2.2 Application of the Land Registration Act 1981 67–71  
(as amended by Land Registration (Amendment)Act 2009(No. 21 of 2009))

2.3 Summary 71

## PART 3

3 Administration of Special Agricultural & Business 73  
Leases(Determine Procedures for Issuance of SABLs if in Compliance with the Law

3.1. Administrative Procedures followed in the Acquisition 74–83  
of Customary Land and Grant of SABLs under the  
Land Act

3.2 Registration of Titles (Registrar of Titles) 83–87

3.3. Administrative Procedures followed in the Registration.....87–88 of Title and other Interests  
in SABLs under the  
Land Registration Act 1981(as amended)

3.4 DLPPProposed New Administrative Procedures in 88–102  
the Processing of SABLs.

3.5. Application of the Survey Act 1969(Chapter 95) 102–105

3.6. Administrative Procedures Followed In Respect of .....105–108 Planningunder the Physical

## Planning Act 1989

### 3.7 Application of the Forestry Act 1991 (as amended) by....109–121

Forestry (Amendment) Act 2000 (No. 36 of 2000)

And Forestry (Amendment) Act 2007 (No. 19 of 2007)

#### 3.7.1. Forestry Law and SABL Processing

#### 3.7.2. PNG Forest Authority Administration

##### 3.7.2.1 Background

3.7.2.2 Role Played By PNG Forest Authority in SABL (Sections 90A, 90B and 90C in the 2000 and 2007 Amendments)

#### 3.7.3. FCA Issued So Far

### 3.8 Application of the Environment Act 2000 121–135

#### 3.8.1. Introduction

#### 3.8.2 DEC's Responsibility in the Processing Of Environmental Permits (EPs)

#### 3.8.3 Role of DEC in SABLs

#### 3.8.4 Table of Environmental Permits Pending and/or Granted to SABL Project Proponents.

#### 3.8.5. Constraints Faced by DEC.

### 3.9. The Conservation Areas Act 1978 136–137

### 3.10. Responsibility of Department of Agriculture and .....137–150 Livestock (DAL) in Agriculture Development of SABL

#### 3.10.1 Introduction

#### 3.10.2 Background

#### 3.10.3 Legal Authority for DAL

#### 3.10.4 Role Played by DAL in SABL

#### 3.10.5 Approved Agricultural Projects

#### 3.10.6 Constraints faced by DAL

##### 3.10.6.1 DAL and its Lack of Control over Provincial Agriculture Officers

##### 3.10.6.2. Lack of Resources

##### 3.10.6.3 Lack of Coordination among Lead Agencies Responsible for SABLs

#### 3.10.7. Misunderstanding by DAL that Logging done to raise funds for Agriculture Projects in SABL

### 3.11. Application of the Land Groups Incorporation Act 151–153

### 3.12. Application of the Investment Promotion Act 1992.....153–154

#### 3.12.1 Extent of IPA's Role in SABLs

### 3.13. Administration of the Companies Act in SABLs 154–157

### 3.14. Extrinsic Matters Affecting the Administration of 157–160

SABLs Generally.

#### 3.14.1. Introduction

#### 3.14.2 Integrity of Officials of the Principal Agencies of the State Affecting SABLs

### 3.15 Summary 160

## PART 4

4. Effectiveness or Otherwise of Existing Legislation and Policy Framework in respect of SABLs and Administrative Mechanisms for Administration of SABL's in the Improved Management of SABLs in Future 162
- 4.1 Introduction 162-163
- 4.2. Findings on Policy 163-170  
Instances Highlighted by C.O.I. SABL Inquiry
- 4.2.1. SABL
- 4.2.2. Ownership of Natural Resources to be Primarily Recognized as Being Owned by Customary Landowner's.
- 4.2.3 Workable Corporate Models For Customary Landowners to be involved in SABLs
- 4.3 Donigi Plan 170-172
- 4.4 The National Land Development Policy (NLDP) 172-174  
Perspective
- 4.5 Summary 174
- 4.6. Findings on the Effectiveness of Legislation in the.....175-179 Administration of SABLs(Absence of Regulations Providing for Processing of Acquisition under Section 11 and Grant of Lease under Section 102 of the Land Act)
- 4.7 Findings on the Effectiveness of Administrative Procedures Followed in Accordance with the Legislation in Processing SABLs and Operations of SABLs 179-207
- 4.7.1 Initiation of Processing SABLs
- 4.7.2. Funding of Processing of SABLs.
- 4.7.3. Findings on the Effectiveness of the Administrative Procedures for the Processing of SABLs for Lease/Lease Back under Sections 11 and 102 of the Land Act.
- 4.7.4. Findings on the Effectiveness of the DLPP Proposed New Administrative Procedures in the Processing of SABLs.
- 4.7.5 Findings in Respect of the Administrative Procedures Followed in Respect of Physical Planning under the Physical Planning Act 1989.
- 4.7.6 Findings in Respect of the Administrative Procedures Followed in Respect of Agriculture.
- 4.7.7. Findings in Respect of the Administrative Procedures  
in Surveys of SABL Proposed Area under the Survey Act 1969 (Chapter 95).
- 4.7.8. Findings in Respect of the Legal and Administrative Procedures Followed in Respect of Forest Clearance Authorities Associated with SABLs.
- 4.7.9 Findings in Respect of the Procedures for the Issuance of Environmental Permits in accordance with the Environment Act 2000 and Conservation Areas Act 1978.
- 4.7.10 Findings in Respect of the Role of Investment Promotion Authority (IPA) in respect of SABLs under the Investment Promotion Act 1992.

4.7.11 Findings in Respect of the Role of the Registrar of Companies under the Companies Act, 1997.

4.7.12 Findings in Respect of Benefits Sharing from SABL Projects

PART 5 CONCLUSION 209

## APPENDIX 1

### New Ireland Province

Cassava Etagon Holdings Limited 213–244

Emirau Trust Limited 245–271

Tabut Limited 272–317

Umbukul Limited 318–338

Central New Hanover Limited 339–358

Rakubana Development Limited 359–384

### Western Province

North East West Investment Limited 386–453

North East west Investment Limited 454–473

Tosigiba Investment Limited 474–509

Tumu Timbers Development Limited 510–530

La Ali Investments Limited 531–553

Mudau Investment Limited 554–573

Godae Land Group Incorporated 574–588

Haubawe Holdings Limited 589–601

Foifo Limited 602–615

### Central Province

Baina Agro Forests Limited 616–640

Yumu Resources Limited 641–660

Mekeo Hinterland Holdings Limited 661–681

Abeda Agro Forests Limited 682–705

### East Sepik

Brilliant Investment Limited 707–739

Nungawa Rainforest Management Alliance Limited 740–802

Mapsera Development Corporation Limited 803–821

Sepik Oil Palm Plantations Limited 822–865

### Madang Province

UrasirDevelopment Limited 867–899

### MorobeProvince

Zifazing Cattle Ranch Limited 901–917

APPENDIX II  
Statement of Case Terms of Reference  
Instrument s of Appointment?s

FOREWORD

The Commission of Inquiry (C.O.I.) into the Special Agriculture & Business Leases (SABL) was established by the then Acting Prime Minister Honourable Samuel Abal MP, by virtue of powers conferred upon him under Section 2 of the Commission of Inquiry Act (Chapter 31) on the 21st day July, 2011 with instruction to inquire into seventy-five (75) specific SABLs issued especially in regard to the period March 2003 to April 2011. There were two (2) existing SABLs that was brought to our attention during our inquiry bringing the total number of SABLs to seventy-seven (77).

The SABL including the processes involved in the application, processing, registration and granting of the leases have become a growing concern in recent times attracting a lot of public debate especially over the manner in which customary land was acquired for SABLs under the lease/lease back scheme pursuant to Sections 11 and 102 of the Land Act, 1996.

It is estimated that a total of 5.2 million hectares of customary land throughout the country have been alienated from customary landowners through the acquisition of the seventy-seven (77) SABLs which are only a part of over 400 SABLs issued since the early 1980s. This represents a huge chunk of customary land that has been alienated for SABLs under the lease/lease-back scheme.

On 9th September 2011, the Commission of Inquiry into SABL exercised its powers under Section 14 of the Commission of Inquiry Act authorizing me to preside as a single Commissioner to conduct and make inquiries into twenty-

five (25) individual SABLs that was located in seven (7) provinces of the country.

The conduct of my inquiry was to assess and evaluate the effectiveness of the for SABL grants, and its impact on the majority of the rural people who in their limited understanding and at the most ignorance of the process view it as a means to advance their livelihoods through resultant infrastructure developments including accessibility to health and education services, (social services) and economic services. Fundamental to the notion of development is the price landowners will have to bear, the huge burden of suspension of their inherited rights over the land when customary land registration and mobilization process are abused. The plight of the landowners and their sense of helplessness was openly expressed because of a sheer neglect of duty by public officials in particular and self-serving landowners and Developers who manipulated the process to benefit from providing that assurance to the landowner that their "inheritance" the land will be protected under the existing legislative regime.

The C.O.I.acknowledge the attendance, support and co-operation of the Agencies of government

both at the National and Provincial levels that principally deal with SABLs including the Department of Lands & Physical Planning (DLPP), Department of Agriculture & Livestock (DAL), PNG Forest Authority (PNGFA), Department of Environment & Conservation (DEC), Department of Provincial & Local Level Government (DPLLG) and Investment Promotion Authority (IPA).

The C.O.I. also acknowledges the support and co-operation of the SABL title holders, persons of interests, landowner groups and other entities including non- governmental organizations such as CELCO during the course of our Inquiry.

Further, the C.O.I. acknowledges the hundreds of witnesses who appeared before the inquiry to give evidence, either voluntarily or in response to summons.

Dated at Waigani this 24th day of July 2013

NICHOLAS MIROU COMMISSIONER

EXECUTIVE SUMMARY

KEY FINDINGS

1. The Findings by the C.O.I into SABLs as set out in pages 175 to 207 inclusive and under sub-parts 4.6 to 4.7.11 is hereby adopted. The key agencies DLPP, DAL, PNG Forest Authority and DEC are not collaborating and exchanging information that is related to the administration of SABL under their respective functions.
2. The law as it is currently applied to SABL per se does not provide for nor does it compel an all-embracing collaborative and consultative effort to be undertaken by all relevant government agencies and Departments including DLPP, DAL, PNGFA, DEC and IPA that deal with consideration, approval and processing of SABLs
3. The Land Investigation process was technically abused by those responsible in the management, land mobilisation and the conduct of land investigation in number of instances. Customary Lands Officers were so negligent in completing the all details necessary for majority consent, grant and issuance of SABL title.

4. Almost all the Provincial Lands Officer was not fully aware of their role in the conduct of the field investigation and was not competent to

complete the process amicably. This was evident in the Provinces of East Sepik, Central, Western and Madang.

5. Land mobilisation and investigations were fully funded by the proposed Developers of the project as was the case with four (4) SABLs located in New Ireland, four (4) at Western Province and one (1) in the Madang Province. This is a typical scenario that has become endemic and systemic within the public service for Public Servants to derive extra benefits by way of allowances and other incidental to be able to conduct the LIR. The independence and integrity of the SABL process is compromised with the result very much favouring the proposed Developer and Sub lessee of an Agriculture Sub-lease.

6. In the majority of SABLs reservation for customary rights was not recommended for whatever reasons the Provincial Administrator or District Administrator considered at the time the LIR files were submitted.

7. The Provincial Administrators are required to undertake due diligence of the Land Investigation Report, but the normal trend was that the Officers involved in the project was experienced and competent was enough to ignore the vetting process. This is fatal due to the fact that if a lease is for a period of 99 years then the three to four generations will have not exercise their rights to hunting, fishing, burial and sacred sites. This was evident in all the twenty-five SABLs inquired thus far.

8. Two PNG registered companies with majority shareholding in the hands of foreigners are issued as owners of SABL title. This is the result of DLPPs ignorance of due diligence to check with IPA on the shareholding structure of the company. (Brilliant Limited and Sepik Oil Palm Plantations Limited)

9. In almost all the twenty-five SABLs not one of the SABLs was processed by the Custodian of Trust Land pursuant to the Land Registration Act for the Certificate of Alienability to be issued. The Certificate allows for Direct Grant under section 11, Registration under Section 102 of the Act and issuance of the Title. The Department of Lands evidently decided to forgo this process and ultimately issued titles without the Custodian of Customary Land Certification.

10. Mr Miskus Maraleu was involved in four (4) of the SABLs on New Ireland. At that time he was the Secretary of the Tabut Limited and Umbukul Limited both companies involved in SABL on New Hanover. He was also the employed Corporate Lawyer of Tutuman and played a very integral part in the mobilization of landowners through the ILG process and directed the lands Officer with the Land Investigation Process.

11. In Western Province, the beneficiary of the Gre Drimgas Trans Papuan Highway Project was also instrumental through its employed Surveyor to undertake the Land Investigation including

organising Landowner Executives of Companies to mobilize ILG registration. On issuance of the title, the company secured full of the custody titles in four (4) SABLs and the ILG Certificates. This was also the case at Madang.

12. In relation to the five SABLs located in New Ireland, one in ESP the Recommendation for Alienability was not signed by the Provincial Administrator and the lease-lease back agreement was found to not have been signed by the Minister or the Delegate, but the SABL lease was issued. This trend was the norm for the failure to undertake due diligence by the DLPP in the process and rendered the SABL null and void.

13. The mobilisation of the ILG and the LIR on Emirau was organised well despite the objection of a family that resides in Kavieng. The issue of majority consent requirement endorsed by the decision in Musa and the Emirau case reflects that a minority assent cannot be a reason to justify cancellation when majority wants to be involved in development and self-sustenance.

14. The Office of the State Solicitor is completely out of touch with some of the major contracts that have been found to be unfair and completely imposes conditions on the major agencies of the State such as DLPP, DEC, PNG Forest Authority, IPA, DAL to forgo their statutory and regulatory powers to fulfil the project initiative. This was evident in the Projects Agreements executed between the State (Governor General) on advice of the NEC and the Developer Company ultimately cleared by the Office of the State Solicitor in respect of the Gre-Drimgas Trans Papuan Highway Project (Western), and Nungwaia Bongos Project Agreement

(ESP). Those contracts were prepared outside of the Department of Attorney General and Justice and literally not vetted but cleared for execution by the Head of State.

15. All Sub-lease Agriculture Agreement was executed between landowners and companies registered with IPA are involved in forestry related activities. The companies are Brilliant Investment Limited, Sepik Oil Palm Plantation Investment Limited (East Sepik Province), Independent Timbers & Stevedoring Limited (Western Province), Tutuman Development Limited (New Ireland Province), Albright Limited (2 SABLs at Central Province), SPZ Enterprises Limited (ESP), Goldworld Resources Limited (ESP), Sovereign Hill Limited (South Fly District) and Continental Venture Limited (Madang). The involvement of these companies is an indictment of the continued abuse of harvesting logs without any implementation of agricultural project as evidenced by the DAL approval for FCA to be issued by PNG Forest Authority.

16. There was one incident of a foreign worker employed as Operations Manager at Danfu Extension whose work and entry permit had expired but he remained in the country. A renewal of his work permit and entry visa was approved. In the normal situation, it is a migration requirement that the foreigners leave the country to await renewal. The C.O.I was unable to conduct any further inquiry into TOR (g)(i)(ii) and (iii) due to time constraints.

17. In the case of Abeda Agro-Forest Limited and Mekeo Hinterland Holdings Limited, Albright Limited the developer of the Central Province SABL project proceeded to apply for Environmental Permit prior to DAL approval for certification of agriculture investment and FCA approval. Similar

behaviour of the part of the Developer was also evident on the Urasir Agriculture Project and the Nungwaia Bongos Project. This is a complete disregard for the process of allowing DAL to satisfy itself on an application of a request for FCA grant under section 90A of the Forestry Act. This process has continued unabated due to lack of consultation between DAL, PNG Forest Authority and DEC.

18. Executives of Landowner Company have neglected their fiduciary obligations and duties to the shareholder who are the Landgroup or ILGs by entering into contractual agreements with the Developers without any resolution from the majority shareholders creating serious contentions, disagreements and often times violence as experienced in the Western Province, East Sepik Province, Madang Province and New Ireland Province. The provinces referred to have been controversial in terms of the publicity it has received both internationally and domestically.

19. Controversial objections raised by disgruntled landowners prior to ILG registration and SABL investigation was disregarded by DLPP before the grant, registration and issuance of the SABL title. This was obvious in Emirau Trust Limited (NIP), Mekeo Hinterland Holdings Limited, Abeda Agro Forest Limited (Central Province) and Cassava Etagon Holdings Limited (NIP). It was incumbent on DLPP to suspend the SABL investigation and allow the issues affecting the landowners to be resolved

by mediation. There was no evidence of the process of mediation encouraged and for the investigation to be suspended pending resolution of the dispute,

20. In almost most of the SABLs there was a common trend on the conversion of former TRP and FMA concession areas into SABLs for the purpose of acquiring FCA rights to harvest and export logs and also to comply with FCA requirements to undertake commercial agriculture crops such oil palm, cocoa or coconut and rubber. This was the normal process since the operation of Section 90A came into operation. The former TRP and FMA areas of Nungwaia Bongos, Danfu FMA Extension, Mamirum TRP, Umbukul TRP, Central New Hanover TRP, South Fly TRP to Rimbunan Hijau. These examples are evidence of the conversion of the surveyed TRP and FMA areas into blanket SABL acquisition, allowing full unrestricted access to prime forest areas.

## Recommendations

Based on the foregoing key findings and considering that those findings are essentially problem areas identified and isolated as affecting SABL, I hereby make the following recommendation to address and take corrective measures

1. That new and specific legislation be enacted and introduced to govern all aspects of SABL in an all-embracing manner.

2. Propose that a legislative framework be established defining and setting the scope and the extend of the responsibilities of DAL in so far as SABLs are concerned with a view to ensuring that the DAL must play a prominent role (if not leading) in so far as the consideration, approval and

processing of SABL is concerned.

3. Sections 11 and 102 of the Land Act 1996 in relation to registration of customary land must harmonise with the Land Registration (Amendment) Act 2009 (No 21 of 2009)

4. SABLs created under Sections 11 and 102 of the Land Act must harmonise with Customary Lands registered under Amendment No 21 of 2009.

5. Propose amendments to the Companies Act to strictly make provisions for landowner companies more particularly with the view to addressing and resolving all issues adversely affecting the establishment, incorporation and registration, and management.

6. Existing Survey Plans and Land Investigation Report relating to particular resource development projects such as logging or harvesting merchantable timber on customary land under a TRP or FMA should not be used to convert that area into SABL. In other words new and fresh LIR and land boundary survey must be conducted to gauge a certain and secure informed consent of the landowners.

7. To introduce and develop training modules for Officers involved in Customary Land Registration at three levels of government. This is to enhance their capacity and understanding of the latest process, procedures and legislation dealing with Customary land Registration.

8. Establish an Institute of Customary Land Registration to facilitate land development program in PNG.

9. Where an SABL is situated on the coast or inland but along a major waterway, for instance a river connecting the SABL project area to the sea, strict compliance of existing laws governing the construction and operation of jetties, wharves including other requirements must be adhered to.

PART 1

THE BACKGROUND TO THE

ADMINISTRATION OF  
THE  
COMMISSION OF INQUIRY INTO  
SPECIAL AGRICULTURE  
AND  
BUSINESS LEASES (C.O.I SABL)

Landowners protesting – Wewak, ESP

## PART 1 BACKGROUND

For the background to the establishment of the C.O.I., see the Statement of Case appended to this Report.

### 1. INTRODUCTION

#### 1.1 Establishment of the Commission of Inquiry

##### 1.1.1 Establishment

The Commission of Inquiry (C.O.I.) into the Special Agriculture and Business Leases (SABL) was established by the then Acting Prime Minister Honourable Samuel Abal, MP by virtue of his powers conferred under Section 2 of the Commission of Inquiry Act (Chapter 31), pursuant to National Executive Council Decision number 19/2011 dated 29th June 2011 which was published in the National Gazette No. G128 of 22 July 2011.

The C.O.I. was given three (3) months commencing on and from the date of the signature of the Instrument of Establishment and Appointment.

As the initial three (3) months term of the C.O.I. was both insufficient and practically impossible due to the large number of SABLs involved and the fact that they were spread out across the length and breadth of the country. The Prime Minister Honourable

Peter O'Neill extended the term of the C.O.I. for a further term of five months by notice published in the National Gazette No. G.292 on 18th October 2011.

All instruments including their Gazettal Notices are appended to this Report.

##### 1.1.2. Terms of Reference (TOR)

The TOR for the Inquiry are:-

(a) determine the legal authority for the issuance of SABL; and

(b) determine the procedure for the issuance of SABL in accordance with the legal authority if any; and

(c) inquire into and confirm the number of SABL issued to date and the particulars of each including:

(i) location; and

(ii) customary ownership whether there are any disputes regarding SABL; and

(iii) prior consent and approval by customary landowners for the issue of SABL over the particular customary land the subject of each SABL; and

(iv) in whose name the title to the SABL is held; and

(v) if not in the customary landowners name then in whose name is the particular SABL title held; and

(vi) if not in the customary landowners name then by what authority and whether lawful for the title to be held by a non-customary landowner of the land the subject of the particular SABL; and

(vii) if all of the matters in the preceding Sub-paragraphs

(i) to (vi) involved duly granted approvals and permits from the Departments of Agriculture and Livestock; Environment and Conservation; Lands and Physical Planning; and the Papua New Guinea Forest Authority; and

(d) inquire into and determine if the requisite or subsequent approvals determined under proceeding Sub-paragraph 3(i) to (vii) were lawfully and duly obtained; and

(e) inquire into and determine if Forest Clearance Authority (or FCA) in respect of each SABL complied with the proportionate agriculture development input; and

(f) inquire into and determine if FCA in respect of each SABL complied with the Environmental Permit terms and conditions; and

(g) inquire into and determine if any official or individuals, both citizens and foreigners have engaged in unethical and/or criminal conduct in the course of the operation of each SABL including:

(i) employment of illegal Immigrants; and

(ii) engagement in illicit or illegal trade including sale and consumption of drugs; prostitution; fire-arms; and pornography; and

(iii) unethical conduct in the disregard for the customs and traditions of the local area, and sacred grounds; and unlawful and unethical mistreatment of the local people in undermining their dignity and respect; and

(h) inquire into and assess the effectiveness of existing legal and policy framework in the

improved management of

SABL in future including facilitating the applications from legitimate applicants, and

(i) inquire into and determine if all of the seventy-two (72) SABL including any other SABL discovered in the course of the inquiry<sup>1</sup> covering approximately 5.2 million hectares of customary land in PNG had complied with the existing legal and policy frameworks, in incorporation of Land Groups Act 1974, the Land Act 1996, the Forestry Act 1991, and the Environment Act 2000; and

(j) to take all steps and to exercise all powers under all enabling legislations, inter alia, the Commission of Inquiry Act to complete this Inquiry and to Report to the Prime Minister for tabling in the National Parliament including all Recommendations, as well as to refer to appropriate law enforcement authorities any incidences of criminal conducts this Commission of Inquiry may become aware of in the course of this Inquiry; and

(k) to make recommendations arising from the Inquiry; and

(l) to make such referral for prosecution as the Commission deems appropriate; ...”

The TORs in (m) to (p) include the following directions in dealing with TORs (a) to (l):

“(m) AND I FURTHER direct the Inquiry be held in Port Moresby or as such other place or places in Papua New Guinea; and

(n) AND I FURTHER direct the Inquiry be held in public, but I approve that you may permit it to be given in private, any evidence that in the course of inquiry you, in your absolute

1 The insertion was made pursuant to the “Amendment to the Commission of Inquiry into Special Purpose Agriculture and Business Lease” and gazetted in the National Gazette No. G292 dated 18th October, 2011.

discretion, consider needs to be given in private in accordance with Section 12 of the Commission of Inquiry Act (Chapter 315); and

(o) AND I FURTHER direct that you commence the inquiry without delay and proceed therein with all dispatch and render to me your final reports within three (3) months from the date of commencement of the inquiry; and

(p) AND I FURTHER direct that this Instrument relating to the Terms of Reference of Commission of Inquiry into Special Agricultural and Business Leases (sic) supersede any previous Instruments issued under my hand...(sic)...”

Henceforth the list of SABLs to be inquired into is set out in Table A below

Table A

GRANTEE  
Term (Years)  
Area (Hectares)  
Land Description

Province

Comments  
No

Portion  
Project  
Developer

1  
VAILALA OIL PALM LTD

99  
11,800.00

377C  
Oil Palm  
Vailala Oil Palm Ltd

GULF  
In process

2  
TRUKAKE LIMITED

99  
120.70

46  
Plantation Redistribution Scheme (Plantation Acquisition Scheme)  
Nakumal Plantations Limited

ENBP  
Existing Plantation

3  
BARAVA LIMITED

99  
244.7/00

307  
Plantation Redistribution Scheme (Plantation Acquisition Scheme)  
Barava Limited

ENBP  
Existing Plantation

4  
LOLOKORU ESTATES LTD

45  
1750.00

1C

Mini Oil Palm Estate  
New Britain Palm Oil Ltd  
WNBP  
Joint Venture between Lolokoru and NBPOL

5

BAINA AGRO -  
FOREST LTD

40

42,100.00

29C

Baina Agroforestry

Nasyi 98

CENTRAL PROVINCE

Approved

6

ROSELAW LTD

99

25.118

2541C

Idumava Multi- Purpose Marine Facility

Dynasty Real Estate (RH Subsidiary)

NCD

Linked to LNG Project

7

PULIE ANU PLANTATION LTD

99

42,233.00

396C

Pulie Oil Palm Project (Refer to SABL # 39-

40 below)

Same as SABL

# 39-40 below

WNBP

No record

8

VANIMO JAYA LTD & ONE UNI DEVELOPMENT CORPORATION

99

47,626.00

248C

West Aitape (Port 248C) Agroforestry Project  
One-Uni Development Corporation  
SANDAUN

Approved

9

ZIFASING CATTLE RANCH LTD

50

8,374.23

79

Cattle Breeding Program and Sale

Zifasing Cattle Ranch Limited (Landowner Company)

MOROBE

Existing Cattle Ranch

10

PERPETUAL SHIPPING LTD

50

283.29

19C

Boat Building Yard and Slipway

Perpetual Shipping Ltd

GULF

No agriculture activity noted

11

CASSAVA ETAGON HOLDINGS LTD

99

20,000.00

884C

Cassava Bio Fuel Project

Tutuman Development Ltd

NIP

Nil Project or activity on SABL site

12

EMIRAU TRUST (LIMITED)

99

3,384.38

53C-58C

Free Trade Zone

Emirau Trust Limited

NIP

In discussion with RH on project

13

CHANGHAE TAPIOKA (PNG) LIMITED

40

16,56.00

519C

Cassava BioFuel Project

Changhae Tapioka (PNG) Ltd

CENTRAL

Not FCA/Approved

14

CHANGHAE TAPIOKA (PNG) LIMITED  
40  
74.87  
444C

Cassava Biofuel Project  
Changhae Tapioka (PNG) Ltd  
CENTRAL  
Not FCA/Approved

15  
CHANGHAE TAPIOKA (PNG) LIMITED  
40  
66.77  
446C

Cassava Biofuel Project  
Changhae Tapioka (PNG) Ltd  
CENTRAL  
Not FCA/Approved

16  
CHANGHAE TAPIOKA (PNG) LIMITED  
40  
2,514.00  
517C

Cassava Biofuel Project  
Changhae Tapioka (PNG) Ltd  
CENTRAL  
Not FCA/Approved

17  
CHANGHAE TAPIOKA (PNG) LIMITED  
40  
3,573.00  
518C

Cassava Biofuel Project  
Changhae Tapioka (PNG) Ltd  
CENTRAL  
Not FCA/Approved

18  
CHANGHAE TAPIOKA (PNG) LIMITED  
40  
2,514.00  
521C

Cassava Biofuel Project  
Changhae Tapioka (PNG) Ltd  
CENTRAL  
Not FCA/Approved

19  
CHANGHAE TAPIOKA (PNG)  
40  
2,514.00  
520C

Cassava Biofuel Project  
Changhae Tapioka (PNG)  
CENTRAL

Not FCA/Approved

20

BRILLIANT INVESTMENT LIMITED

99

25,600.00

146C

Angoram Integrated Cocoa Project (Marienberg)

Brilliant Investment Ltd

ESP

Approved

21

OKENA GOTO KARATO DEVELOPMENT CORPORATION LTD

99

28,100.00

146C

Tufi Wanigela Agroforestry Project

Victory Plantation Ltd

ORO

Approved

22

YUMU RESOURCES LTD

99

115,000.00

30C

Yumu Agro- Forestry Project

Aramia Plantation Ltd

CENTRAL

Approved

23

KOARU RESOURCE OWNERS COMPANY LIMITED

99

59,460.00

323C

Kerema Agro- Forestry Palm Oil Project (Pinewood, Plantation & any other agricultural crop development)

Pacific International Resources (PNG) Ltd

GULF

Approved

24

RAKUBANA DEVELOPMENT LTD

99

24,581.00

871C

Danfu Extension Cocoa Project

Tutuman Development Ltd

NIP

Approved  
25  
TABUT LIMITED  
99  
11,864.00  
885C  
New Hanover Oil Palm Project  
Tutuman Development Ltd  
NIP  
Approved  
26  
UMBUKUL LIMITED  
99  
25108.00  
886C  
New Hanover Oil Palm Project  
Tutuman Development Ltd  
NIP  
Approved  
27  
CENTRAL NEW HANOVER LIMITED  
99  
56592.00  
887C  
New Hanover Oil Palm Project  
Tutuman Development Limited  
NIP  
Approved  
28  
MEKEO HINTERLANDS HOLDINGS LTD  
99  
116,400.00  
45C  
Mekeo Hinterland Oil Palm Project (including Rice Project)  
Albright Limited  
CENTRAL  
Approved  
29  
WOWOBO OIL PALM LIMITED  
99  
23,180.00  
4C  
Wowobo Oil Palm Plantations  
Reko (PNG) Ltd  
GULF  
Approved  
30  
AKAMI OIL PALM ESTATE LIMITED  
99  
231.20  
104C

Roka Mini Oil Palm Estate  
Expectation Hicks Construction Ltd  
WNBP  
Approved  
31

AKAMI OIL PALM LIMITED  
99  
345.75  
2628C

Roka Mini Oil Palm Estate  
Expectation Hicks Construction Ltd  
WNBP  
No record  
32

POMATA INVESTMENT LIMITED  
99  
15,000.00  
196C

Sigite Mukus Integrated Development Project  
Gilfford Ltd  
WNBP  
No record

33  
NAKIURA INVESTMENT LIMITED  
99  
16,100.00  
198C  
Sigite Mukus Integrated Development Project  
Gilfford Ltd  
ENBP  
No record

34  
RALOPAL INVESTMENT LIMITED  
99  
11,300.00  
197C  
Sigite Mukus Integrated Development Project  
Gilfford Ltd  
ENBP  
No record

35  
BEWANI PALM OIL DEVELOPMENT LTD  
99  
139,909.00  
160C

Oil Palm  
Bewani Oil Palm Plantation Ltd

SANDAUN  
Refer to SABL

#72 Ossima

36

SEPIK OIL PALM PLANTATION LTD

99

116,840.00

144C

Wewak-Turubu Large Scale Integrated Agriculture Project (Oil Palm)

Wewak Agriculture Development Ltd

ESP

Approved

37

RERA HOLDINGS LIMITED

99

68,300.00

2C

Mukas Melkoi Integrated Agriculture Project

DD Lumber Ltd

WNBP

No Record

38

ABEDA AGRO FOREST LIMITED

99

11,700.00

409C

Abeda Integrated Agro-forestry Project (Rice Project)

Albright Limited

CENTRAL

Approved

39

AKIVRU LIMITED

99

6,111.00

398

Pulie Anu Oil Palm Project

Monarch Investments Limited

WNBP

No record

40

IVAGA OUROUINO- MUSENAMTA

99

10,741.00

397

Pulie Anu Oil Palm Project

Monarch Investments Limited

WNBP

No record

41

POLOPO LIMITED

99

8,328.00

35

Pulie Anu Oil Palm Project

Monarch Investments Limited

WNBP

No record

42

KAVUN LIMITED

99

7,161.00

34

Pulie Anu Oil Palm Project

Monarch Investments Limited

WNBP

No record

43

GORORANTO LIMITED

99

8,893.00

33

Pulie Anu Oil Palm Project

Monarch Investments Limited

WNBP

No record

44

MUSIDA HOLDINGS

LIMITED (Court Revoked)

99

211,600.00

16C

Agro Forest Project

Musida Holdings Ltd

ORO

SABL Revoked on 22/01/10 by National Court- now part of Portion 17C

45

EAST WAII OIL PALM LIMITED

99

21,108.00

5C

Oil Palm

East Waii Oil Palm Ltd

GULF

No record

46

AIOWA OIL PALM LIMITED

99

12,341.00

6C

Oil Palm

REKO (PNG)

Ltd

GULF

No record

47

NUKU RESOURCES LIMITED

99

239,810.00

26C

Nuku (Port 26C Integrated

Agro-Forestry Project

Skywalker Global Resources (PNG) LTD

SANDAUN

Approved

48

TUMU TIMBERS DEVELOPMENT LTD

99

790,800.00

1C

Proposed Trans Papuan Highway Project

Independent Timbers & Stevedoring Ltd

WESTERN

No record

49

LA-ALI INVESTMENTS LIMITED

70

7,170.00

5C

Wawoi Guavi Oil Palm Project

Negotiations with current TRP holder Rimbunan Hijau

WESTERN

In progress and Pending

50

MUDAU INVESTMENT LIMITED

70

10,450.00

6C

Wawoi Guavi Oil Palm Project

Negotiations with current TRP holder Rimbunan Hijau

WESTERN

In progress and Pending

51

GODAE LAND GROUP INC

70

15,153.00

7C

Wawoi Guavi Oil Palm Project

Negotiations with current TRP holder Rimbunan Hijau

WESTERN

In progress and Pending

52

HAUBAWE HOLDINGS LIMITED

70  
11,110.00  
8C  
Wawoi Guavi Oil Palm Project  
Negotiations with current TRP holder Rimbunan Hijau  
WESTERN  
In progress and Pending  
53

FOIFOI LIMITED

70  
33,900.00  
9C  
Wawoi Guavi Oil Palm Project  
Negotiations with current TRP holder Rimbunan Hijau  
WESTERN  
In progress and Pending  
54

UNUNG SIGITE LIMITED

99  
13,000.00  
27C  
Sigite Mukus Integrated Development Project  
Gilford Limited  
ENBP  
Approved  
55

KONEKARU HOLDINGS LTD

99  
457.00  
2465C  
Konekaru Holdings  
Activities under PNG LNG–  
Leighton (PNG) Ltd  
CENTRAL  
No record  
56

KONEKARU HOLDINGS LTD

99  
98.00  
2466C  
Konekaru Holdings  
Activities under PNG LNG–  
Leighton (PNG) Ltd  
CENTRAL  
No record

57

TORIU TIMBERS LIMITED

99

11,240.00

904C

No Record

No Records

ENBP

Approved

58

TORIU TIMBERS LIMITED

99

42,240.00

903C

No Record

No records

ENBP

Approved

59

MAPSERA DEVELOPMENT CORPORATION LTD

99

54,384.00

54C

Nungawa Sengo Integrated Agro Forest Project

Gold Water Resources (PNG) Limited

ESP

In Process

60

WEST MAIMAI INVESTMENTS LTD & YANGKOK RESOURCES LIMITED. PALAI RESOURCES LTD (JOINT TENANTS)

99

149,000.00

594C

Proposed Integrated Agro Forest Project and not Agricultural Land Development Plan

Gold Water Resources (PNG) Limited

SANDAUN

Approved Yangkok Resources Ltd not a legal entity but a SABL Grantee

61

POROM COFFEE LIMITED

99

24.10

302C

Existing Coffee Plantation

Porom Coffee Ltd

WHP

Landowner operated plantation

62

VEADI HOLDINGS LIMITED

99

1057.45  
2485C  
LNG linked projects  
Activities under PNG LNG-  
Leighton (PNG) Ltd  
CENTRAL  
Linked to LNG Gas Project  
63  
KEMEND KELBAKEI INVESTMENT LTD  
99  
41.30.00  
155C  
Existing Coffee Plantation  
KEMEND KELBAKEI INVESTMENT LTD  
WHP  
Landowner operated plantation  
64  
TOSIGIBA INVESTMENT  
99  
632,538.00  
14C  
Proposed Trans Papuan Highway Project  
Independent Timbers and Stevedoring Limited  
WESTERN  
No activity undertaken to date

65  
NORTH EAST WEST INVESTMENTS LTD (NEWIL)  
99  
470,642.00  
1C  
Proposed Trans Papuan Highway Project  
Independent Timbers and Stevedoring Limited  
WESTERN  
No activity undertaken to date

66  
NORTH EAST WEST INVESTMENTS LTD (NEWIL)  
99  
149,117.00  
27C  
Proposed Trans Papuan Highway Project  
Independent Timbers and Stevedoring Limited  
WESTERN  
No activity undertaken to date

67  
MUSA VALLEY MANAGEMENT COMPANY LIMITED  
99  
320,060.00  
17C  
Oil Palm and Cattle

Musa Century Limited

ORO

Approved- Extension of now revoked SABL Portion 17C

68

WAMMY LIMITED

99

105,200.00

27C

Ainbai-Elis Integrated Rural Development Project

Global Elite Limited

SANDAUN

Approved

69

AINBAI-ELIS HOLDINGS LIMITED

99

22,850.00

40C

Ainbai-Elis Integrated Rural Development Project

Star Link Limited

SANDAUN

In process

70

HEWAI INVESTMENT LTD

99

358.00

351C

SHP LNG

Project Business Spin off

Hewai Investment Ltd

SHP

No record

71

PURARI DEVELOPMENT ASSOCIATION INC

99

656,034.00

8C (GP)

Integrated Agro Forest Limited in mining, gas and oil palm project

PDA

Incorporation

GULF

No record

72

OSSIMA RESOURCES LIMITED

99

31,430.00

163C

Oil Palm

Bewani Palm Oil DevLtd

SANDAUN

In process

73  
VAILALA OIL PALM LIMITED  
99  
11,800.00  
377C  
Oil Palm  
Vailala oil Palm Ltd  
GULF  
SABL  
Surrendered and refer to SABL#1  
74  
URASIR RESOURCES LIMITED  
99  
112,400.00  
16C  
Urasirk Rural Development Project–Middle Ramu District.  
Continental Venture Ltd (CVL)  
Madang  
In process  
75  
NUNGAWA RAINFOREST MANAGEMENT ALLIANCE LIMITED  
99  
109,580  
55C  
Nungawa Bongos Integrated Large Scale Agricultural Project (Oil Palm/Rubber)  
SPZ Enterprises (PNG) limited  
ESP  
Approved  
76  
DOGURA (DERE KONE/DEGUBEGA  
99  
Not Stated  
2370C  
Proposed Housing Estate  
One Uni–Ltd.  
CENTRAL&N CD  
Customary Land purportedly sold to one Fu Tsai Wu as alleged by Enehako Land Group Inc (ILG 7993), the legitimate LOs.  
77  
KAIRAK/BAINING  
Not stated  
23,073  
908C &  
909C  
Oil Palm Plantation  
Documents submitted with evidence taken from LOs, Provincial Administration & MP for Gazelle.  
ENBP  
Objections on the issuance of SABL to Kairak Development Corporation

#### 1.1.4 Appointments of the Commissioners and other Staff

In the earlier National Gazette G128 of 22 July 2011 Mr John Numapowas appointed as Chief Commissioner along with Messrs AloisJerewai and Nicholas Mirou as Commissioners.

By separate instruments the following Counsel and Technical Advisors were appointed to assist the C.O.I.:

- Mr Simon Ketan - Counsel Assisting
- Mr Paul Tusais - Senior Counsel Assisting
- Mr Mark Pupaka - Technical Advisor
- Ms MayamboPeipul - Technical Advisor
- Mr Matthew Yuangu - Secretary to the C.O.I. The C.O.I. then engaged the following Lawyers.
- Mr Jimmy Bokomi - Assisting Counsel
- Ms AviaKoisen- Assisting Counsel
- Mr WeminBoi - Assisting Counsel

## 1.2. Scope of Interim Report

This Interim Report will coverTOR?s (a), (b) and (h) which are set out below:

- “(a) determine the legal authority for the issuance of SABL”,
- (b) determine the procedure for the issuance of SABL in accordance with the legal authority (if any)”
- (h) inquire into and assess the effectiveness of legal and policy framework in the improved management of SABL in future including facilitating the applications from legitimate applicants...”

The balance of the TOR?s that is, TOR?s(c) to(g) and(i)to (p)will form the main body of the Final Report.

## 1.3 Methodology of the Inquiry adopted and used by the C.O.I. Generally and in the Inquiry of the Individual SABLs

For the purposes of gathering and compiling evidence during the inquiry, the C.O.I.used the following methods or means of obtaining evidence, bearing in mind the fact that by law it was not subject to strict rules of evidence:

- (1) issuance of summonses to witnesses compelling their appearances at C.O.I. hearings and conducting hearings both generally and specificallyover aspects of the SABLs within the scope of its TOR?s at Waigani, NCD, and in respective Provinces wherethe seventy- seven (77) SABLs are located;
- (2) admission and consideration of written submissions from witnesses summonsed, and other interested persons;
- (3) acceptance, admission and consideration of written communications and correspondences on particular SABLs;
- (4) in certain instances, site visits to particular SABL?s were made by the C.O.I.either prior to, during or after the hearings were conducted and photographs and videos of the locality of the

SABLs project site were taken; and

(5) meetings with landowners on particular SABL sites with the view to ascertaining and or confirming whether the landowners had prior knowledge of the SABL and that they had given their approval and consent for their customary land to be acquired and used for SABL purposes. Considering the enormity of the task of inquiring into and the spread of all the seventy-seven (77) SABLs in the context of and strictly within the parameters of the TORs, the C.O.I. earlier on the 9th September, 2011, resolved unanimously pursuant to Section 14 of the Commission of Inquiry Act, Chapter 30 to hold combined hearings of the three (3) Commissioners here at Waigani, and then for each of them to sit

singularly or individually as the C.O.I in each Province throughout the country exercising all C.O.I powers accordingly.

[This authorization was made by the C.O.I on 9th September, 2011 Refer to Transcript of Proceedings SABL 09/09/11.]

All proceedings of the C.O.I have been recorded, transcribed and reproduced verbatim and accordingly compiled and collated according to chronological order, and location of each individual SABL inquired into. These recordings are held at the C.O.I offices at Waigani and any interested persons can obtain copies thereof following proper representation with the Secretary of the Secretariat to the Commission of Inquiry and Investigations Branch of the Department of Prime Minister and the National Executive Council, Level 1, Muruk Haus, above Government Printing Office, Waigani, National Capital District.

TORs (c), (d), (e), (f), (g), (i), (j), (k) and (l) cover the C.O.I inquiry into all the seventy-five (75) individual SABLs located in the provinces.

The Inquiry commenced with the opening of individual files with respect to the seventy five (75) SABLs, we then received files and information from the leading agencies, the main one being the Department of Lands and Physical Planning (DLPP) followed by the Department of Agriculture and Livestock (DAL), Papua New Guinea Forest Authority

(PNGFA) and the Department of Environment and Conservation (DEC).

The second phase involved preliminary hearings in Waigani where evidence was received from the top management and officers of the key government agencies involved in the administration of SABLs, such as Mr Romilly Kila-Pat the Acting Secretary of the DLPP, the former immediate past Secretary of the DLPP Mr Pepi Kimas and other line managers and directors. We had the immediate past Secretary of DAL Mr Anton Benjamin, Deputy Secretaries for DAL Mr Francis Daink and Mr Kagena, Mr Kanawi Pouru the Managing Director of the PNGFA, Dr Wari Iamo the Secretary of the DEC and Director for Environment, Mr Michael Wau, and the Managing Director of the Investment Promotion Authority (IPA), Mr Ivan Pomaleu.

We also received evidence from the Custodian of Trust Lands, Surveyor General, and officers of some of the SABL grantees or holders and developers.

The Third phase of our inquiry involved hearings held in the Provinces where the SABLs were located and where site visits were made. SABLs are located in New Ireland Province, East and West New Britain, East Sepik and Sandaun, Oro, Central, NCD. SABLs are also located in the Gulf & Western Provinces. Morobe and Madang have only one SABL each being the Zifazing Cattle

Ranch Limited and Urasir Development Limited respectively. The Highlands Region only had three, two in Western Highlands and one in Southern Highlands.

## PART 2

### TERMS OF REFERENCE (a)

The Determination of the legal authority for the issuance of SABLs.

## PART 2

### 2. DETERMINATION OF LEGAL AUTHORITY FOR THE ISSUANCE OF SPECIAL AGRICULTURAL & BUSINESS LEASES (“SABLs”).

Under TOR(a) the Inquiry is instructed and required to “determine the legal authority for the issuance of SABLs....”, or even lack of it.

We consider that under this TOR we are instructed not only to present our findings on the “legal authority” for the issuance of SABLs but also on other applicable laws including the Laws relating to registration of interests in respect of SABLs and Judicial Precedents as may be applicable.

We therefore make the following findings under TOR (a):

#### 2.1 The Land Act 1996 (Power of State to Lease Customary Land to Lease Back)

The only provisions providing for the grant of SABLs are Sections, 10, 11 and 102 of the Land Act 1996.

Section 10 (1), (2), (3) and (4) which are of relevance state;

#### “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.”

Section 10 subsections (1), (2), (3) and (4) in summary authorise the Minister for Lands & Physical Planning to acquire customary land by agreement either permanently or temporarily. In both ways the acquisition can be for the State's permanent use or temporary use. Section 10 however is made subject to Section 11 so that for temporary use, the acquisition must be done only in accordance with Section 11 which in turn is subject to Section 102 of the Act. The Minister only proceeds with such acquisition on being satisfied after reasonable inquiry that the land is not required by the customary landowners or will be required after a period of time and by authentic instruments may proceed with such acquisition with the express agreement of the customary landowners. This is a very general provision allowing for acquisition of customary land by agreement either permanently or temporarily as opposed to compulsory acquisition under Division 5 (Sections 12 to 16 inclusive) of the Land Act.

It is noted that Section 10, subsection (1) renders Section 10 subject to Section 11 in so far as such acquisitions are temporary and are for specified periods only whereby the requirements of Section 11 shall apply.

Section 11 provides that;

#### 11. "ACQUISITION OF CUSTOMARY LAND FOR THE GRANT OF SPECIAL AGRICULTURAL AND BUSINESS LEASES.

(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).”

Four important effects of Section 11 should be noted. They are:

(1) The Lands Minister has the discretionary power to lease customary land for the purpose of granting a special agricultural and business lease of that land.

(2) The lease of customary land must be in the approved form and executed by the customary land owners of the land which will ensure good title is taken by the State.

(3) All customary rights in the land except those specifically reserved for the customary owners are

suspended for the period of the lease to the State.

(4) No rent or other forms of compensation is payable by the State for the lease of customary land as leased.

Section 102 of the Land Act then sets out the limitations on the State as to the manner of the Lease to be granted once the customary land is acquired under Section 11 from the customary landowners. Section 102 provides as follows:

“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 or 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.”

We note eight characters of Section 102 which are:

(1) The Lands Minister has the discretionary power to grant a SABL over the customary land acquired by State under Section 11 from the customary landowners.

(2) Such lease granted by the State must be to;

(a) a person or persons; or

(b) a land group, business group or other incorporated body including all forms of companies.

(3) The grantee (i.e. any of these entities above) must have been agreed to by the customary landowners to be granted such a lease (SABL). Put another way, the customary landowners must agree and consent to the entity to be

granted title to a SABL after the land had been acquired under Section 11.

(4) A statement in the agreement for lease of the customary land by the State from the landowners as to the entity to be granted the SABL is conclusive evidence of the identity of the grantee.

(5) The period or term of a SABL must not exceed 99 years.

(6) Rent is not payable to the State for a SABL.

(7) Certain requirements under other provisions of the Land Act are excluded including reservation from lease or further lease (s.49) advertisements for leasing of land (s.68) acceptance of terms and conditions of lease (s.76) reservations and conditions in leases (s.82) rent (s.83) improvements on land to be leased (s.84) and forfeiture of lease (s.122).

(8) An SABL is effective from the date on which it is executed by the Minister for Lands for lease from the customary landowners of that land.

#### 2.1.1 The Involvement of Custodian of Trust Land under The Land Act and Land Registration Act

It would appear that the provisions under Sections 10, 11 and 102 of the Land Act are affected by the question of whether there is a vested trust in the Custodian of Trust Land pursuant to Part XX (SPECIAL PROVISIONS RELATING TO CUSTOMARY LAND) of that Act. The special provisions relating to customary land are provided under Sections 132 to 135 of the Act and the full text of the Act is available on [www.paclii.org](http://www.paclii.org).

Except for dealings in customary land under Sections 10, 11, 12 and 102, Section 132 simply renders all customary landowners powerless and with absolutely no right to sell, lease or otherwise dispose of customary land or customary rights except to citizens but even then, they can only do so in accordance with the customs of the customary owners and the customary recipient of the land by such a transaction. Any contract or agreement made in breach of Section 132 is void and unenforceable. Simply put, any dealings in customary land not done in accordance with custom to a citizen in case of citizens, and in all other cases not done in compliance with Sections 10, 11, 12 and 102 are void and of no legal effect. Non-citizens cannot directly purchase or lease customary

land. No citizen can purchase or lease customary land except in accordance with custom.

All other dealings in customary land can only be entered with the State in accordance with Sections 10, 11 and 102 of the Act if it is by agreement with the customary owners and in accordance with Sections 12 to 16 of that Act if it is a compulsory acquisition by the State having barred individual direct dealings in customary land, when it is not the subject of any dealings as allowed under

Sections 10, 11, 102 and 12 of the Land Act. The subject land remains customary land.

Once any dealing is considered to be made in respect of a customary land, the first and foremost consideration is whether such dealing is being proposed in accordance with either Sections 10, 11 and 102 (by agreement) or Section 12 (by compulsory process). In either case, whether by agreement or by compulsory acquisition, such dealing will immediately trigger and activate the directive responsibility of the Custodian of Trust Land under Section 134 of the Act.

The Custodian of Trust Land is appointed pursuant to Section 167 of the Land Registration Act 191 which states that:

“167. Appointment of Custodian

(1) The Minister shall, by notice in the National Gazette, appoint a person to be the Custodian.

(2) An appointment under Subsection (1) takes effect or shall be deemed to have taken effect, as the case may be—

(a) in the case of the first appointment – on the commencement date; and

(b) in the case of a subsequent appointment – at the time that the previous office holder ceases to hold office for any reason.”

The duties of the Custodian of Trust Land are as specified under Sections 134 and 135 of the Land Act.

The next question is what constitutes “Trust Land” which the Custodian is responsible for.

Section 2 of the Land Act defines trust land to mean:

“(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.”

It is not spelt out in precise and unequivocal terms that customary land is included in the definition of trust land and placed in trust and vested in the custody of the Custodian. The

definition of trust land in (a)(ii) however includes “land reserved or deemed to be reserved from lease or further lease under this Act and vested in the Custodian of Trust Land in trust for a citizen or citizens generally.”

This part of the definition renders that land reserved from lease or further lease is “trust land.”

Further on in the definition of “trust land”, in section 2(b) it is stated, “any land reserved from sale or lease, or deemed to be reserved from sale or lease, under a

repealed Act for the purpose of a native reserve, other than land which is the subject of a State lease,” is trust land.

Both these parts of the definition of “trust land” under Section 2, when read in conjunction with Section 132 (disallowed dealings over customary land); Sections 134 and 135 (dealings in customary land) and Sections 10, 11, 12 and 102 (State dealings over customary land), all point to the involvement of the Custodian of Trust Land in the protection of the interests of customary landowners in such deals. Be they acquisitions by agreement or compulsory process; temporary lease from customary owners or outright purchase, the Custodian of Trust Land must be involved to protect the interests of the customary landowners.

Conflicting evidence were given by the Chief Secretary, Mr Manasupe Zurenuoc (in his former capacity as Custodian of Trust Land), and the Acting Secretary for DLPP, Mr Romilly Kila-Pat in respect of whether the „Certificate of Alienability? (COA) is a legal requirement for the Custodian to issue in acquisition of a SABL. Mr Zurenuoc in his evidence suggested it is a requirement while Mr Kila-Pat maintains his Department had considered this

2 Refer to the evidence of Mr Manasupe Zurenuoc, Chief Secretary to Government in relation to his sworn Affidavit dated 6th September 2011 and tendered into evidence as Exhibit “MZ 13” on 13th September 2011. See C.O.I Transcript of Proceedings SABL 17-13/09/11 @ pages 22-44.

requirement not of any legal import and had done away with that compliance 10 years ago, (apparently without raising the issue with the Custodian who ex-officio is the Secretary of the Department of Provincial and Local-level Government Affairs).

The C.O.I. considers however that the operative nature of Section 132 being prohibitive of dealings over customary land coupled with the operative responsibilities of the Custodian under Sections 134 and 135 of the Land Act must be construed to mean all customary land are trust land, dealings over which can only be valid if conducted through the Custodian who represents the State as Trustee of all customary landowners. Further, that only dealings in customary land conducted in accordance with Sections 10, 11, 12 and 102 of the Land Act are allowed in exception of the prohibition under Section 132.

This has the effect that the Minister’s duty to carry out “reasonable inquiry” as to whether land proposed to be acquired under Sections 10 and 11 will be “required by the customary landowners” must be made through the Custodian of Trust Land.

In any event, the C.O.I. is of the view that based on sound policy development on the mobilisation of customary land, the roles and responsibilities of the Custodian of Trust Land can be more clearly defined

in any review which may be undertaken after the findings of this Inquiry.

At this juncture, having considered the lack of unequivocally expressed definition of trust land, over which the Custodian is responsible, the C.O.I. is of the view that this is an area of legislation which needs to be stated in more precise terms.

Nonetheless, based on the C.O.I.'s interpretations of these provisions both of the Land Act and the Land Registration Act, the Custodian of Trust Land must be involved in the processing and granting of SABLs as trustee of all customary land. It would appear that implicitly, the DLPP accepted over time these interpretations in view of the fact that it had followed the procedure of land acquisitions under Sections 10, 11 and 12 of the Land Act by ensuring the recommendation for alienability were given by the Provincial Administrator of the Province SABLs are located presumably to refer to the Custodian of Trust Land to issue Certificate of Alienability (COA).

It is also clear that the Custodian alone has the sole power and function to execute a COA. This power also is not delegable. The power of appointment did not include the power for the Custodian to delegate the exercise of that power to anyone else. Such delegation of power cannot be implied.

The upshot is that any SABL granted over customary land leased by the State (lease-lease back) based on a lease of customary land acquired from the customary landowners without a COA executed by the Custodian of Trust Land will automatically be a nullity and void pursuant section 132. In his evidence to the inquiry, Mr Zurenuoc told the inquiry that only forty-seven (47) COAs were formally issued for SABLs by the Custodian of Trust Land between the periods 1995 - 2011 covering a total land area of 116,492.84 hectares. Mr Zurenuoc recalled issuing only nine (9) COAs between 2003 and 2011 during his time as Custodian of Trust Land. If indeed that is the case, only those nine (9) SABLs will be valid while those without such COAs will be voidable. The Custodian of Trust Land provided to the C.O.I the list of the forty-seven (47) SABLs where COAs were issued and this list is referred to in the Table B below;

#### Table B

##### LIST OF SABLs ISSUED WITH CERTIFICATE OF ALIENABILITY

Records of Certificate of Alienability ("COA") Issued for SABL from 1995 - 2011

COA  
LAND NAME  
AREA (ha)  
PURPOSE  
PROVINCE  
Period of Lease-back  
4/2-95  
Mandres  
12,300  
Agriculture  
East New Britain  
20

92/5-96

Beliau

875

Agro-forest

West Sepik

99

93/5-96

Huwapien

440

Agro-forest

West Sepik

99

94/5-96

Tolum

414

Agro-forest

West Sepik

99

95/5-96

Nilkapon

359

Agro-forest

West Sepik

99

96/5-96

Kalilo Titolum Yalentigi

1158

Agro-forest

West Sepik

99

97/5-96

Humelki

440

Agro-forest

West Sepik

99

98/5-96

Wamti

2030

Agro-forest

West Sepik

99

99/5-96

Labaigu

101

Agro-forest

West Sepik

99

100/5-96

Meini

59

Agro-forest

West Sepik

99

101/5-96

Nayan

163

Agro-forest

West Sepik

99

102/5-96

Beliau

1253

Agro-forest

West Sepik

99

105/5-96

Wurakelki

1.810

Agro-forest

West Sepik

99

106/5-96

Trnalua

0.8614

Agro-forest

West Sepik

99

107/5-96

Trnalua

0.7150

Agro-forest

West Sepik

99

108/5-96

Nanum Samoru

121

Agro-forest

West Sepik

99

109/5-96

Lupaite

1000

Agro-forest

West Sepik

99

110/5-96

Eipalom Frenggaopau

Agro-forest

West Sepik

99

111/5-96  
Paukel Eingom  
1909  
Agro-forest  
West Sepik  
99  
112/5-96  
Pauke/Eryale  
1909  
Agro-forest  
West Sepik  
99  
113/5-96  
Naupingo  
646  
Agro-forest  
West Sepik  
99  
114/5-96  
Siran  
800  
Agro-forest  
West Sepik  
99  
115/5-96  
Faipou Kufau  
1600  
Agro-forest  
West Sepik  
99  
116/5-96  
Umam Taingo  
1200  
Agro-forest  
West Sepik  
99  
117/5-96  
Emingowabe  
1288  
Agro-forest  
West Sepik  
99  
118/5-96  
Moyu  
802  
Agro-forest  
West Sepik  
99  
119/5-96  
Wolpango A&B  
100

Agro-forest  
West Sepik  
99  
120/5-96  
Naimbele A7B  
800

Agro-forest  
West Sepik  
99  
121/5-96  
Elia  
530

Agro-forest  
West Sepik  
99

122/5-96  
Tolum  
277

Agro-forest  
West Sepik  
99

123/5-96  
Tolum  
277

Agro-forest  
West Sepik  
99

124/5-96  
Tuliara (Sokei)  
81

Agro-forest  
West Sepik  
99

125/5-96  
Kiripau  
81

Agro-forest  
West Sepik  
99

126/5-96  
Wamti  
1069

Agro-forest  
West Sepik  
99

127/5-96  
Yilkili & Wilkili  
1069

Agro-forest  
West Sepik

99  
128/5-96  
Uh Simeninge  
440  
Agro-forest  
West Sepik  
99  
128/5-96  
Uh Simeninge  
440  
Agro-forest  
West Sepik  
99  
129/5/96  
Pare Angole  
440  
Agro-forest  
West Sepik  
99  
130/5-96  
Huhotonga  
440  
Agro-forest  
West Sepik  
99  
45/9-2004  
Bilane Pilapila  
1750  
Oil Palm Dev.  
West New Britain  
99  
32/6-2006  
Amoamo Inaoea  
569  
Rice Project  
Central  
40  
2/4-2007  
Matairuka (P521C)  
1,068  
Casava Project  
Central  
40  
3/4-2007  
Bigairuka (P52C)  
2,031  
Casava Project  
Central  
40  
4/4-2007  
Saroa Keina (518C)

3,573  
Cassava Project  
Central  
40  
5/4-2007  
Bouferena (519C)  
1656  
Cassava Project  
Central  
40  
8/4-2007  
Bore (Portion 517)  
2,514  
Cassava Project  
Central  
40  
7/6-2010  
Iokoru & Kahiru  
1057.45  
LNG project  
Central  
30  
16/4-2011  
Vabari (Portion 643C)  
65,800  
Agro-forest  
Central  
99  
Total: 47

116,492.84  
hectares

The full details of twenty-five (25) of the seventy-five (75) individual SABLs are appended to Annexure 1 of the Report.

#### 2.1.2. Judicial Precedents

Of the two case precedents involving the question of validity in the procedures and processes toward grant

of a SABL only one case is of direct bearing on this issue. The two cases are:

(1) RAMU NICKEL LTD & 2 OTHERS v. THE HON. DR. PUKA TEMU, M.P., MINISTER FOR LANDS & PHYSICAL PLANNING & 2 OTHERS (N.3252 OF 2007) (O.S. No. 950 of 2005); and

(2) YANTA DEVELOPMENT ASSOCIATION INC. & 4 OTHERS v. PIU LAND GROUP INC. & 3 OTHERS (S.C. NO. 798 of 2005) (S.C.M. No. 6 of 2004).

The former case involved in essence only the issues of indefeasibility of an earlier granted lease, namely a special mining lease, over the later grant of a SABL over the same land, and litigation procedural matters of the National and Supreme Court Rules. This case will be of relevance when we consider the recommendations in respect of grant of a SABL where there already exist any other type of tenements over the same customary land.

The latter case however is of direct relevance to this Inquiry's considerations of procedures followed so far in the grant of SABLs. In the latter case the Supreme Court actually considered the issues of primary compliance with the procedures, inadequate as they are, in the grant of the SABL over 50,000 hectares of land within which the CRA operated Wafi Gold mine is located and also within which the very

many different land areas owned by different tribes are located. In the most primary aspect, the Supreme Court in that case found that there was not even an application lodged for such a lease to be granted.

The Supreme Court in fact came short of branding directly the then Secretary for the Department of Lands and Physical Planning, Mr Pepi Kimas as corrupt as he signed the grant as delegate of the Lands Minister. The Supreme Court in that case nullified, ordered and directed the immediate cancellation of that SABL described as Portion 8C, Milinch of Wasu, Fourmil of Markham, Morobe Province. The imperative of this case as a precedent is that the Courts of jurisdiction have the power to order cancellation of a SABL processed and granted irregularly.

## 2.2 Application of the Land Registration Act 1981 (as amended by Amendment No. 21 of 2009)

Until the Land Registration (Amendment) Act 2009 certified on 20th. May, 2010, (No. 21 of 2009) came into force, only Section 98 related to customary land. Section 98 provides that:

“(1) Notwithstanding any law to the contrary, a right privilege or advantage over or affecting land may, with the consent of the Custodian, be created by the registered proprietor by instrument in the name of the Custodian as a trustee for customary owners.

(2) Where a right, privilege or advantage is created under Subsection (1), the Registrar shall register the instrument.”

The Land Registration (Amendment) Act 2009 however created a whole new Part III A – Registration of Customary Land (hereinafter referred to as Amendment No. 21 of 2009).

The C.O.I. notes that the principal Act, the Land Registration Act 1981 in its preamble states that Act as “Being an Act to unify the law relating to the registration of title to land, and for related purposes.”

The C.O.I. notes that the creation of Part III A in the said Amendment Act was to cater for the registration of title to customary land and/or interests therein.

The C.O.I. notes that the provisions of the said Amendment Act makes no reference to its derivative jurisdiction to conduct registration of ownership, interests and title in customary land bearing in mind the prohibitive nature of Section 132 of the Land Act; the enabling powers in exception to Section 132 under Sections 11 and 102 of the Land Act in processing and grant of SABLs and the omission in the said Amendment Act to define the roles and powers of the authorities particularly responsible for the processing toward grant of SABLs as opposed to the

roles and powers of the newly established office of the Director of Customary Land Registration under the Amendment Act.

The C.O.I. examines briefly the provisions of the Land Registration (Amendment) Act 2009, in particular, Sections 34A to 34Q which provide for the procedures to be followed to eventually have title or other interests in customary land registered.

It is noted that under Section 34D only representatives of an Incorporated Land Group may apply for registration of customary land. It is not stated if any other person may apply for registration of customary land nor does it expressly bar any other persons from making such an application.

The rest of the provisions of the said Amendment Act set out the procedures to be followed in processing applications for registration of customary land up to and including the issue of certificate of title to a registered customary land.

Once a portion of customary land is registered and title is issued, under Section 34O of the said Amendment Act, the Incorporated Land Group registered as owner of the clan land has power to grant derivative rights and interests in the land or portions to itself, any land group, incorporated or unincorporated, an individual or any entity for rent or rent-free. We note significantly that under Subsection (3) of Section 34O, transfer of allodial title in clan land is prohibited.

Further on at Section 34P of the said Amendment Act it is noted that statutory approval under Part XVII of the Land Act

(Approval of Dealings) is required for any dealings in registered customary land.

The C.O.I. had neither been informed during evidence given by officials of DLPP nor on its own initiative been able to establish if amendments to Sections 11 and 102 of the Land Act had been enacted to align these provisions with the said Amendment Act and vice versa. We believe no such amendments were enacted.

In particular this C.O.I. is of the view that powers exercisable in the grant of SABLs ought to be brought into harmony with the powers exercisable in the registration of customary land and thereafter.

The distinction however between an SABL and Registered Customary Land under Amendment No. 21 of 2009 is that SABL involved acquisitions of customary land with the State as the intermediary for the use of the customary owners of those lands themselves or any other entity of their choice, while registered lands under Amendment No. 21 of 2009 are acquired through that process and title issued directly to the Incorporated Land Group registered for the members of the Clan who own the land in question. The State is not involved at all in the customary land registration process.

Our observation and interpretation of the principal legislations relating to SABLs discussed above concludes the C.O.I.'s determination of the "legal authority for the issuance of SABL"

pursuant to in particularly the Land Act 1996 and Land Registration Act 1981 under TOR(a).

### 2.3. Summary

The C.O.I. is of the view, that, in accordance with TOR (a), examination of the applicable provisions of the Land Act and the Land Registration Act conclude the C.O.I.'s determination of the "legal authority for the issuance of SABL."

The other Legislations applicable in the administration and operation of SABLs will be examined under TOR(b) in Part 3 of this Report.

## PART 3

### 3. ADMINISTRATION OF SPECIAL AGRICULTURAL & BUSINESS LEASES (Determine Procedures For Issuance of SABLs If In Compliance With The Law)

Under TOR (b) the C.O.I. is instructed to "determine the procedure for the issuance of SABLs in accordance with the legal authority if any." We understood this instruction for us to examine the administrative procedures adapted by the Department of Lands and Physical (DLPP) in the administration of SABLs including:

- \* procedures for acquisition of customary land from the customary landowners by the State under Section 11 of the Land Act;
- \* procedures for the grant of title by the Minister for Lands and Physical Planning pursuant to Section 102 of the Land Act over the customary land acquired under Section 11 of that Act;
- \* procedures required under the Survey Act in the related survey plan to map out and register the survey map of the land being dealt with pursuant to Sections 11 and 102 of the Land Act;
- \* in the operations of SABLs which involve forest clearances for agriculture development purpose, the procedures required to be followed under the Forestry Act, Environment Act, and Conservation Areas Act;
- \* in the operations of SABLs which involve land within declared planning areas, the procedures required under the Physical Planning Act to be followed; and
- \* procedures (if any) required under the applicable provisions of any other law in the operations of SABLs.

#### 3.1. Administrative Procedures Followed in the Acquisition of Customary Land and Grant of SABLs under The Land Act.

Pursuant to Section 10 of the Land Act 1996 and the Land Regulations made pursuant to Section 175 of that Act, the administrative procedures required under those Sections are followed for the purpose of Sections 11 and 102 of that Act in the process and grant of a SABL. At the time of this Inquiry no Regulations in respect of SABLs were made pursuant to Section 175 and none are in force as a guide for processing of acquisitions of SABLs as allowed under Sections 11 and 102.

The Inquiry received evidence from DLPP in this regard from the Acting Secretary of the

Department, MrRomilly Kila Pat, who at the time was the Deputy Secretary (Customary Lands Service)when most of the SABLs were granted. He gave evidence to this Inquiry after his appointment as Acting Secretary of DLPP on 18th July, 2011.

MrRomillyKila Pat sets out the detailed procedure for dealing with the process for the grant of SABL in his affidavit sworn and

tendered to this Inquiry on 16th August, 2011, tendered and marked as EXHIBIT “RKP1”.

Of relevance first of all is MrRomilly Kila–Pat’s evidence that the current processes of issuing SABL involve five (5) divisions within DLPP. They are;

- (1) Office of the Secretary of DLPP.
- (2) The Division of Customary Land Leases.
- (3) The Division of Land Information Services.
- (4) The Office of the Surveyor General, and
- (5) The Office of the Registrar of Titles.

MrRomilly KilaPat stated further that the Office of the Registrar of Incorporated Land Group’s (ILG’s) is not always involved in the process of a SABL grant as it is not a prerequisitefor customary landowner’s to have ILG’s registered before being considered for such a grant.

MrRomilly KilaPatthen went on to set out the procedures followed in the grants of a SABL as follows:

- 1) Consultation and Survey of Customary Land for SABL.

Initially customarylandowners approach developers/investors or vice versa to develop an identified land area. They approach the DLPP or its Provincial Lands Officers to conduct awareness of both the proposed development and the SABL type lease to be processed over the land to be acquired for SABL.

- 2) Preliminary Advice to the Landowners and Developers.

Upon the approach by the landowners and/or the developers, among the preliminary advice are advices as to registration of incorporated land groups (ILGs). If they choose to register an ILG or ILGs they are then assisted in submitting their applications for that purpose to the Registrar of Incorporated Land Groups.

The landowners then engage a surveyor to survey the land proposed to be granted a SABL status.

Usually the developers/investors put capital up front for these purposes.

Once the land is surveyed the survey plan is lodged by the surveyor to the office of the Surveyor General for examination, and if approved then registration follows thereafter.

A copy of the survey once registered is then lodged with the Chief Information Officer for file creation of the registered parcel of land.

### 3) Lodgement of Lease/Lease Back Application.

After the lodgement with and registration of the survey plan with the Office of the Surveyor General, the landowners lodge with the Customary Leases Division their application for grant of SABL over the land comprised in the survey plan of the land together with a development proposal attached to the application. MrRomilly KilaPat states that the DLPP does not have a proper application form for the purpose of this application and the DLPP accepts applications submitted in an ordinary land tender form or by a mere letter of expression of interest upon payment of K10.00 application fee.

### 4) Issuance of Land Instruction Number by DLPP.

Upon receipt of the application for a SABL, the Customary Leases Division of the DLPP conducts a status check to ensure there are no existing leases over the proposed SABL area and that it is customarily owned. Upon confirmation of the status that there is no existing lease, a Land Instruction Number is registered in the Land Investigation Instruction Register and is issued to the Provincial Lands Office in whose Province the proposed SABL area is located. Where application for a SABL grant is made at a Provincial Lands

office, that office then requests for a Land Investigation Instruction Number to be registered and issued from the DLPP through the Customary Leases Division. DLPP is the only authority that issues the Land Investigations Instruction Number.

### 5) Land Investigation Upon Receipt of Land Investigation Instruction as Numbered.

On receipt of the Land Investigation Instruction Number including the instruction itself, the Provincial Lands Office concerned together with the DLPP Customary Leases Division have their officers assigned to carry out the land investigation.

The land investigation comprises of visits to the proposed SABL area and holding of meetings with the landowners for the purposes of –

(i) conducting awareness with the landowners including interviews to determine if they want to lease their land for SABL;

(ii) record all necessary information including topography, land ownership, consent of the landowners for the alienation of their land, appointment of agents to execute the lease of the land to the State for lease-back, and consent

of adjoining landowners which confirms the subject land is not theirs; and

(iii) the Land Investigation Report is then compiled jointly by the concerned Provincial Lands Officers and the Customary Leases Division of DLPP and referred to the Provincial Administrator of the relevant Provincial Administration who may, if satisfied, execute a recommendation for land alienability.

#### 6) Due Diligence After Receipt of Completed Investigation Report.

The duly executed Land Investigation Report complete with the applicable Provincial Administrator's Recommendation as to Alienability, is then referred to the Customary Leases Division for processing.

The assigned Customary Leases Officer checks to ensure all necessary matters needed to be covered by the Report, have in fact been satisfied.

In the event ILG numbers have been referred to that Officer, he/she also ensures that all these ILG's certificates have been submitted.

The assigned Customary Leases Officer finally confirms that there is a copy of the Registered Survey Plan attached to the application.

If the Land Investigation Report is not in order, it is referred back to the Provincial Lands Officer concerned to be rectified and/or completed thoroughly.

Once satisfied that all necessary matters have been satisfied the Customary Leases Officer then determines whether the landowners have agreed to the lease of their land before the preparation of a lease/lease back agreement.

#### 7) Preparation and Execution of the Lease/Lease Back Agreement.

After the preceding due diligence, the Customary Leases Officer prepares the Lease/Lease Back Agreement and is brought to the applicable Province for execution by the landowners or by their duly appointed agents in the presence of the Customary Leases officer and the Provincial Lands officers. The executed Lease/Lease Back is then taken back to the Customary Leases Division for execution by the Lands Minister or his delegate the Secretary of the DLPP.

There may be special projects initiated by the National Government using the SABL type lease when the Minister and the DLPP Secretary attend the signing.

#### 8) Preparation, Execution and Publication of Notice of Direct Grant (of SABL).

After execution of the Lease/Lease Back Agreement, the Customary Leases Officer requests for the Lands file from the Information Services Division which had already been created. All documents required in the SABL process are attached to the Lands file and a Direct Grant Notice pursuant to Section 72(c) of the Land Act 1996 is prepared by the Customary Leases Officer in duplicate. A minute is prepared and attached to the Lands file to advise the Minister or his delegate to peruse and approve and execute the direct grant notice which is then gazetted in the National Gazette. Once gazetted a copy of the notice is sent to the Customary Leases officer.

#### 9) Registration and Issuance of Native Land Dealing Number.

On receipt of the gazetted notice of the direct Grant, the Customary Leases officer requests for the

Native Land Dealing (NLD)<sup>3</sup> to be registered with the office of the Surveyor General, whereby the Surveyor General checks that all the documents are in order. If in order the NLD is registered and a number issued. A NLD contains the following documents:

<sup>3</sup>The description “Native Land Dealing”(NLD) had been substituted with the description “Customary Land Dealing” (CLD).

(i) Executed Lease/Lease Back Agreement.

(ii) The Schedule of Owners.

(iii) The Agency Agreement.

(iv) The Declaration of Customary Land in relation to Land Tenure (Ownership).

(v) The Certification in Relation to Boundaries.

(vi) The registered Survey Plan.<sup>4</sup>

10) Final Process For Title To Be Issued By The Registrar Of Titles.

The final step after the NLD is registered, the Customary Leases Officer prepares the SABL Certificate of Title in duplicate which are attached to the Lands file with a check- list which is referred to the Deputy Secretary-Customary Lands Services through the Director of Customary Leases. The Deputy Secretary then refers it to the Minister or his delegate for approval and execution. The Certificate of Title as executed by the Minister or his delegate is referred to the Registrar of Titles for registration.

<sup>4</sup>All the documents referred to under (i) to (vi) would have and should have been produced in the Land Investigation Report.

Mr Romilly KilaPat, after giving evidence on the current and existing procedures as set out above for the processing and grant of SABL also informed the Inquiry that the DLPP is presently reviewing the Land Act, 1996 and among the priorities is the review of the current procedures for the grant of SABL to further improve the procedures, in particular, to avoid granting of irregularly processed SABL applications.

We will examine this process under the segment of this Report under Part 3.4 when we will refer to the affidavit evidence of Mr Adrian Abby<sup>5</sup>, Acting Deputy Secretary (Customary Leases Division), DLPP, sworn and produced before the Inquiry on 16th August, 2011.

### 3.2 REGISTRATION OF TITLES (REGISTRAR OF TITLES)

The next witness on the Administrative Procedures in the processing and grant of SABL was Mr Henry Wasa, Registrar of Titles.

Mr Wasa gave evidence as to the steps taken administratively for the registration of a SABL on receiving the Certificate of Title as executed by the Minister (refer to step no.10 in Mr Romilly KilaPat's evidence). These steps Mr Wasa says involve a check-

5 The Affidavit of Mr Adrian Abby was tendered at the Inquiry on 16th August, 2011 and marked as Exhibit "AAE 2".

6 Mr Wasa's sworn Affidavit dated 23/08/11 was tendered into evidence as Exhibit "HW3". Refer to his evidence in C.O.I. Transcript of Proceedings SABL 7-23/08/11 @pages 2-39. Mr Wasa also provided additional Affidavit and sworn evidence on oath as required by the C.O.I.

list of documents which must have been properly compiled and executed by the various appropriate persons. These include:

- 1) Proof of registered survey plan of the subject land which is required to be attached to the application for grant of that SABL.
- 2) confirmation of the SABL having been prepared under the applicant's name or nominee as required under Section 102(2) of the Land Act and incorporated in the Lease/Lease Back Agreement.
- 3) Proof of receipt of payment of K10.00 application fee.
- 4) Proof of receipt of payment of K50.00 lease preparation fee.
- 5) Confirm if all the requirements of Sections 11 and 102 of the Land Act have been satisfied.
- 6) Confirm if the instrument of lease as prescribed under Sections 11 and 102 of the Land Act has been approved by the Minister or his delegate.
- 7) Confirm if the instrument of lease as prescribed under Sections 11 and 102 of the Land Act had been duly gazetted in the National Gazette.
- 8) Check if Customary Land Dealing (CLD) formerly Native Land Dealing (NLD) had been properly compiled and contains all relevant documents (as specified by Mr RKP in his evidence).
- 9) Ensure there is in existence the applicable Lease/Lease Back agreement duly executed by the landowners and the Minister or his delegate.
- 10) Finally, check if the Land Investigation Report (LIR) had been duly compiled and executed by

the Provincial Lands Office of the applicable Province.

Mr Wasa stated that the new leases check-list form is the same used to verify various requirements prior to registration of all types of new leases, among them the SABL, and address the specific aspects relevant to the type of leases, such as in respect of a SABL, importantly there must have been landowners consent which is a compulsory requirement.

When all of the abovestated checks establish satisfactorily that a SABL for registration should be registered, a new file in the Office of Registrar of Titles is created and all of the abovementioned documents are placed in that file and the land description is entered in the Register Book.

The next available volume and folio number is noted from the Register Book and is affixed onto the SABL Certificate of Title. Once that is done, it is the Registrar of Titles or his Deputies who sign the SABL Certificate of Title and the date of approval of that Certificate

is entered in the Register Book. The owner's copy of the Certificate of Title is released to the owner.

All of the process of registration of Certificate of Title is then entered into the DLPP computer database system, namely the Land Geographic Information System(LAGIS). The completed file is then stored in the Registry.

In his evidence, the Registrar of Titles Mr Wasa said his office performs to a strict statutory duty and he has no role whatsoever in the earlier processes including initiation of the procurement of a SABL until a Certificate of Title prepared by the Deputy Secretary- Division of Customary Leases and duly executed by the Minister or his delegate is sent to him for registration of that Certificate of Title. He said his office does that in accordance with Part III Division 1 (Sections 1 to 11) of the Land Registration Act 1981. Mr Wasa emphasised his office adheres to this process in respect of all instruments affecting interests in all types of land, among the SABL.

The segment of this Report, based on the evidence presented particularly by the Acting Secretary of the DLPP, Mr Romilly KilaPat, and the Registrar of Titles, Mr Henry Wasa, fully sets out the present procedures followed in the initiation to the conclusion of the grant and registration of a SABL Certificate of Title.

The administrative procedures followed in the acquisition of customary land to the grant of title under Land Act included also the compliance requirements under the Survey Act.

The administrative procedures as set out in Mr RKP's evidence do not indicate any early involvement of other State agencies in the procurement of SABLs. This is obvious when viewing his evidence and the evidence of Mr Kanawi Pouru, the Managing Director of the National Forest Services of the PNG Forest Authority (PNGFA) the evidence of Mr Anton Benjamin (a/Secretary, DAL) Mr Francis Daink (Deputy Secretary, DAL) and Dr Wari Iamo (a/Secretary DEC).

During public hearings, "awareness" are conducted amongst the customary landowners and as a matter of practice, State agencies responsible for SABL become involved because of their respective involvement through licensing and permit processes.

3.3. Administrative Procedures Followed in The Registration of Title and Other Interests in SABLs under the Land Registration Act 1981(as amended)

As stated in the evidence of Mr Henry Wasa, the registration of title and other interests in customary land is effected by his office in compliance with procedures for registration of different interests generally provided for under the Land Registration Act. As we know, the effect of registration among many is the indefeasibility of title.

In Mr Wasa's evidence he states that once customary land had been acquired as a SABL, all matters of registration apply in similar manners to all other State Leases except for the special provision in relation to registration of interests created by a

registered proprietor in the name of the Custodian for customary owners under Section 98 of the Land Registration Act 1981.

However Mr Wasa did not give any evidence in respect of the procedure imposed under the Land Registration (Amendment) Act 2009.

We note however that the Amendment does more than just registration of title and interests in customary land. As we noted earlier, the Amendment creates a whole new form of institutionalisation of customary land running separate but parallel to SABLs.

The C.O.I. finds that the said Amendment does not apply to SABLs per se except as discussed earlier in Part 2 (supra).

### 3.4 DLPP Proposed New Administrative Procedures in the Processing of SABLs.

Evidence on the „Proposed New Administrative Procedure? was given by Mr Adrian Abby (hereinafter referred to as MrAA) in his affidavit sworn and filed on 16th. August, 2011, in which he deposed to the facts of the DLPP undertaking a review of the procedures for the processing of grants of SABLs. However, Mr AA makes no reference to the Land Registration (Amendment) Act 2009 and or the Land Groups Incorporation (Amendment) Act 2009.

At the time of giving evidence, Mr AA was the Acting Deputy Secretary (Customary Land Services Division) of the DLPP. He set out the following proposed new procedures for SABL grants which are yet to be adopted by the DLPP:

#### 1) Lodgement of applications

Customary landowners who wish to apply for a SABL may submit an application in the approved form (assuming an appropriately designed form is approved by the Minister). Attached to the application form submitted should be the following attachments:-

- (i) Development proposed which should indicate the level of impact of the development and its viability;
- (ii) consent forms from the relevant government agencies e.g. Department of Environment and Conservation and PNG Forest Authority;
- (iii) topographical map; (we are not sure if he is referring to a registered survey plan here);
- (iv) Incorporated Land Groups Certificates;

(v) genealogy of the landowners; and

(vi) a land use plan.

## 2) Issuance of Land Investigation Instruction Number

The application is either submitted to the Provincial Lands Officer in which the proposed SABL land area is located, or directly to the DLPP, Customary Lands Services Division.

If submitted in the Province, it is sent to the Customary Lands Services Division (DLPP) with a request for a Land Investigation Instruction Number.

If directly submitted to the DLPP the Customary Lands Division satisfies itself of the application having attached to it the accompanying documents specified in sub-paragraph 1 above before that Division issues a Land Investigation Instructions Number to the concerned Provincial Lands Office to conduct the Land Investigation.

## 3) Approval for Land-use Plan

The Customary Leases Division of DLPP will on receipt of the application together with the attachments request the Physical Planning Division for a land use plan. According to Mr AA this is a new additional procedure proposed for refining the processing of SABL applications.

On the request for a land use plan the Chief Physical Planner, Planning (CPP), makes an assessment to determine the magnitude of the proposed development and land use requirement. The CPP will determine if it is a major impact

project or a minor impact project. In case of determining either they will be treated differently as follow:-

(i) Minor Impact Project:-

Where an application is assessed to be a minor impact project the application will be treated as an application for a planning permission which will be in triplicate and contain the following:

- (a) Development Proposed,
- (b) Consent from relevant Government agencies,
- (c) Topographical map,
- (d) ILG Certificate,
- (e) Genealogy,
- (f) Proposed Land use Plan, and
- (g) Zoning proposal of the area.

The Chief Physical Planner or the Provincial Physical Planner assesses the special impact of the

proposed project and sends it to either the National or Provincial Physical Planning Board with recommendations.

The Physical Planning Board will consider the application and invite the applicant to present the land-use proposal and after deliberations the Board notifies the applicant of its decision.

Where the Board is satisfied that the proposed development or zoning (re-zoning) or a purpose which is the subject of an application for planning permission will or is likely to require

provision of or increase the demand for a public or private amenities, utilities and services, the Board before approving planning permission will enter into an agreement with the applicant to provide those amenities, utilities and services.

The approved planning permission is sent by the Chief Physical Planner to the Surveyor General as evidence of all requirements of Section 5 of the Physical Planning Act 1989 have been satisfied.

(ii) Major Impact Project:-

Where an application is assessed to be of a major impact project the applicant must submit the following:

- (a) land use plan; and
- (b) zoning plan for subject planning area.

The Chief Physical Planner seeks the Minister's consent for a SABL pursuant to Section 50 of the Physical Planning Act 1989. The Minister after advice from the National Physical Planning Board or Chief Physical Planner may consent to the preparation of land use plan and will by notice in the National Gazette order a development plan, specified type of development plan prepared and specify any matter that shall be covered by the development plan.

The Chief Physical Planner or Provincial Planner shall be responsible for the preparation of the development plan. Either of the two shall prepare the terms of reference and submit to a steering committee and then either to a Provincial Executive Council, National Executive Council, National Physical Planning Board or Provincial Physical Planning Board.

The Chief Physical Planner or the Provincial Planner will then draft the development plan and then publish the draft Land use plan in the media where comments and objections are submitted to the National Physical Planning Board.

Where there are no comments the final development plan is lodged to the Physical Planning Board and if it is refused, reasons for its refusal are given. After the approval of the subject plan and within the time specified it is then submitted by notice in the National Gazette to declare the approval of the plan and the date of gazettal is the date of effectiveness of the execution of the land use plan.

Mr AA stated that all of the preliminaries set out in the assessment of minor impact project or major impact project category are carried out in accordance with the existing procedures of the National Physical Planning Board and also of other Provincial counterparts where such procedures are established. The ultimate result of these steps however, where the planning permission is

approved, is that the application progresses to the next step which he said was the new additional step proposed for customary lands. Mr AA then went on to state the following:

#### 4) Publication of Land Investigations.

(a) Once an approval from the Physical Planning division is submitted, the Customary Leases Division then publishes a notice to the public of the minister's intention to conduct a land investigation and a survey in a particular area.

(b) This is published in the daily papers. It will be aired on radio stations and a copy of the notice will be sent to that particular province, district and local level government area.

(c) The notice will be published at the cost to be borne by the applicants and a 30 days waiting period will be given for objections.

(d) This notice also gives other boundary sharing landowners or other parties who have interests in their land the benefit to know if the survey and land investigation will not encroach onto their customary land.

(e) This is a measure identified as a factor that has not been considered in the past in facilitating the SABL through the lease/lease back arrangement that caused a

lot of outcry from landowners, non-government organizations and other agencies of customary land being leased.

(f) Land investigation and survey are vital components to identify legitimate landowners and the boundary of their customary land subject to registration.

(g) Landowners claim that they were never consulted in the first instance when the land investigations and survey were conducted and never agreed to be a sub clan. An individual or land owning company, having title to land and later find out there are also disputes of neighbouring land owners claiming encroachment onto their land.

(h) This new process will therefore be a measure to ensure that all landowners are aware of an investigation and survey being conducted. This notice can be published in the newspapers, radio stations, whereby landowners are then given the opportunity to object by writing to the Minister and if there are objections a land investigation will not be conducted and the Minister may refer the subject landowners to the local land court pursuant to Section 9 of the Land Act 1996 to determine the ownership of the land.

(i) The Department will not conduct an investigation where an objection is received.

#### 5) Conduct of Actual Land Investigation.

The land investigation report is the co-process of this whole SABL process whereby a Land Investigation Report is compiled and in that investigation report, it contains the vital information to proceed with acquiring the lease. Landownership is determined, the types of rights of clan

members over that Land, the agents that will be appointed to execute the special agricultural lease arrangements and other recommendations made by the investigating officers.

The stakeholders involved in the land investigation are the District Land Officers, Provincial Lands Officers, DLPP, Customary Lands Officers.

(i) If the Department or the Provincial Lands Office does not receive any objections, a land investigation will be conducted whereby the Provincial Lands Officer, the Department of Lands Customary Lands Officers, a Valuer and a surveyor will go to that particular area to conduct the investigation.

(ii) During the land investigation, the following steps will be conducted.

(a) Awareness of this Special Agriculture Business Lease process. This awareness is conducted to ensure that landowners understand what a

SABL is and the advantages and the disadvantages in being granted the lease. Awareness will be given about the sub lease agreement, the term of the lease with the developers and the benefits that will derive from the SABL.

(b) Identification of the Landowners. All landowners of that particular area will be identified and included in the land investigation report. Also which tribe or clan that they represent will be recorded.

(c) Landowners' names which have been collected both old and young will be included in the LIR and landowners over the age of 18 will be interviewed as to person or persons they want to be appointed as their agents.

(d) Term of Lease. This is to determine how long the landowners want their land leased for SABL purposes.

(e) Demarcation of the land boundary. An applicant who applies for that particular lease will hire a surveyor to demarcate the boundary. He will be required to walk the land and demarcate the boundary.

Landowners of land adjacent to that particular land of interest will walk the boundary to confirm and ensure that the landowner applicant is not encroaching onto the other landowners' land.

(f) A valuation of the land will be conducted by a Valuer who will also walk the land during the boundary demarcation.

(g) Confirm the type of dealing that the landowners are agreeing on for the Special Agricultural and Business Lease.

(h) Compiling the land investigation and obtaining the signatures of all those landowners who agree to lease their land, recording the names of the agents who will carry out the transactions on behalf of the landowners, all data that is required will be collected and inserted in the land investigation report.

6) Registration of Survey.

(a) Once the land investigation is compiled the officers return to their respective offices and a survey of the particular area is drawn up by the Surveyor.

(b) Survey registration is very important as far as SABL is concerned because a survey comes as a result of field work carried out by a registered Surveyor and upon completion of the field work, a file is lodged with the office of the Surveyor General.

(c) The file contains the drawn plan of the land with a survey book which has the survey coordinates that was obtained through the use of the total station or theodolite. The Surveyor General assigns a survey examiner to examine the lodged survey plan to ensure that survey regulations or code of practice has been complied with.

(d) The Surveyor General then refers the survey file to a survey allocation officer and a portion number is given and the plan is finally approved by the Surveyor General by way of his signature on the plan.

(e) The primary reason to have a registered plan is due to the fact that land is subject to registration and must have an exact area of land documented on the title deed.

Approval of Land Investigation. The Land Investigation Report once compiled is then endorsed

by the Provincial Lands Officer and is sent to DLPP headquarters for verification purpose. Once verification is conducted and where the Director Customary Leases, is of the opinion that the LIR is in order, it is sent to the Provincial Administrator to recommend for a Special Agriculture and Business Lease.

## 7) Preparation of Lease.

This step on to the final issue of the Title by the Registrar of Titles are the same as the remaining steps from the execution of the Lease-Lease Back Agreement with the State.

The step onwards to the Title being signed by the Registrar of Titles as set out by Mr Romilly KilaPat, in the earlier segment of this Report. (Part 3.2)

According to Mr AA, these are the proposed new administrative procedures being prepared to be adopted by the DLLP to improve the current “...SABL process.... whereby it provides for more notifications, more public awareness, and whereby, all physical planning requirements for the appropriate use of the land will be conducted by the developer (our underlining) to ensure that the land being proposed for the SABL is appropriate and comes within the perimeters of the planning requirements of Papua New Guinea.”

Mr AA did not suggest in any way that the proposed new procedures as set out above in the administration of SABLs will run parallel to the procedures spelt out under the provisions of the Land Registration (Amendment) Act 2009 (Amendment No. 21 of 2009).

In fact it is quite clear that the administrative procedures in respect of SABLs will be different from the procedures set out under Amendment No. 21 of 2009.

The clear distinction obviously then is that SABLs are converted through the State for use by the customary landowners while Registered Customary Land is directly registered in the name of the customary landowners principally through incorporated land groups.

The effect of these two parallel systems of dealings in customary land are discussed under TOR (h). (Effectiveness or Otherwise of Existing Legislation and Policy Framework in Respect of SABLs and Administrative Mechanisms for Administration of SABLs in the Improved Management of SABLs in Future).

At the outset the C.O.I. noted that the proposed new administrative procedure was not supported by any evidence of the legal basis upon which it is premised, nor was it made clear if these procedures would come under subordinate legislation

The C.O.I. has earlier noted that Mr AA makes no mention of the Land Registration (Amendment) Act 2009 (referred to as Amendment No. 21) in his evidence; particularly in view of the fact that that law was enacted in 2009 and awaiting certification, and indeed while this C.O.I. was still deliberating, Amendment No. 21 was certified and came into operation in March 2012, as notified by the Lands Technical Advisor on the C.O.I., although it is noted on the website <http://www.paclii.org> to have been certified on 20th May, 2010.

Notwithstanding the date of certification, in the evidence of Mr AA he makes no mention of whether the proposed new procedures for the administration of SABLs took into account the provisions of Amendment No. 21.

Some meritorious aspects of the proposed new administrative procedures are:

- \* stricter processing and approval of land use plan;
- \* assessments of project impact whether minor or major;
- \* the land investigations process itself;
- \* survey registration to follow thereon

These proposed new procedures however should not be concluded in isolation from consultation and inter-action from and with other State Agencies including DAL (especially), PNGFA, DEC, Provincial Government of the Provinces the proposed SABLs are located.

### 3.5. Application of the Survey Act 1969 (Chapter 95)

All proposed areas to be incorporated in a SABL without exception require surveys to be carried out. Accordingly as stipulated in Section 3(1), the Survey Act must be applied to all SABLs. Pursuant to Section 3(2) of that Act, a survey carried out or a plan prepared otherwise than in accordance with Section 37 cannot be used in any document dealing in land.

Section 37 states that “....an authorised survey must be carried out subject to any directions given by the Surveyor General...” and “.....be made in accordance with any survey information supplied by or by authority of the Surveyor General....”

All such surveys or survey plans then must be lodged at the Plan Registry, and under Subsection (3) of Section 37A, cannot be registered until approved by the Surveyor General and cannot be used in any dealings in land without the consent of the Surveyor General. Dealings in land is assigned the same meaning as in Section 3(4) of the Act and include a transfer of title, a mortgage, any other encumbrances, a lease, a grant of an easement, right, power or privilege, over, or in connection with the land”.

For SABL, the required surveys can be accepted from the most accurate to the error margin (at the minimum) of 1m to 1000m. A Rural Class 3 survey is allowed that error margin.

Most if not all the surveys of SABL located in the rural areas are within the Rural Class 3 classification.

The imperative however is that once approved by the Surveyor General a survey plan can be used in any land dealing.

The technical aspects of survey plans of SABLs and their uses after the Surveyor General's approval is not the problem.

The problem it seems is the due diligence required to ensure that customary land not belonging to the SABL proponents being erroneously or mischievously or even fraudulently included in the survey plan for the SABL area.

The C.O.I. finds that to this extent, no provisions exist in the Land Act and the Survey Act to avoid or correct such an occurrence.

The C.O.I. notes in the DLPP's "proposed new administrative procedures in processing of SABL..." that survey of the area proposed for a SABL is to be carried out after the land investigations have been completed and a Land Investigation Report have been endorsed by the relevant Provincial Administrator. The C.O.I. noted that this was a departure from the procedures followed to date as set out in Mr Romilly KilaPat's evidence, and the C.O.I. considers it a good change to minimise incidences of error, mischief and fraud.

Again the C.O.I. finds that no provisions of the Survey Act connect to the special care which must be taken in processing SABLs.

That is also a matter to be discussed further under Part 4 (TOR (h)) of this report.

### 3.6 Administrative Procedures Followed in Respect of Planning Under the Physical Planning Act 1989.

No evidence was given by DLPP as to the implication of the physical planning laws relating to SABL. It is our view though that at some point, aspects of physical planning will clash or contradict or affect SABLs in some respects. However, we note that no administrative procedure is in place to cater for this possibility. There is no requirement in terms of compliance and approval in physical planning before the lease of customary land for lease-back pursuant to the Physical Planning Act, 1989.

The only time when an approved development plan may be required is after the grant and depending on whether the proposed development on that land is within a physical planning zone.

Part VII of the Physical Planning Act, 1989 makes provision for the control of the development and use of land and comprises of section 67, 68 and 69 inclusive but for present purposes, only sections 67, 68 and 69 are relevant.

Sections 67, 68 and 69 are as follow:

“67. Declaration of Physical Planning area in the national interest.

The Minister may, after–

(a) consideration of the advice of –

(i) the National Physical Planning Board; and

(ii) the Chief Physical Planner; and

(b) consultation with –

(i) where a province is affected – the provincial minister of that province; and

(ii) where the National Capital District is affected – the National Capital District Commission,

by notice in the National Gazette declare an area to be a physical planning area in the national interest.”

“68. Declaration of Physical Planning area by provincial minister.

A Provincial minister may, after

(a) consideration of the advice of

(i) the Provincial Physical Planning Board; and

(ii) Senior Physical Planner in the province; and

(b) obtaining the consent of the Minister,

by notice in the National Gazette, declare an area within the province to be a physical planning

area.”

“69. Minister may refuse consent, etc.

(1) Where a provincial minister requests consent to a proposed declaration under Section 68, the Minister shall, within one calendar month of receiving the requests–

(a) give his written consent; or

(b) decide that the area should be declared as a physical planning area in the national interest, refuse the consent and refer the matter for consideration to–

(i) the National Physical Planning Board; and

(ii) the Chief Physical Planner; or

(c) refuse his consent

and shall, in the case of Paragraphs (b) and (c) give the reasons for his decision.

(2) Where the Minister fails to respond in accordance with Subsection (1), he is deemed to have given his consent under Section 68(b).”

Essentially, if, aSABL or a proposed SABL is within a declared Physical Planning Area or subsequently becomes part of a Physical Planning Area, an approved development plan will be required. There is no provision under the current Act that deals with developments that had already taken place on a SABL and its area later becomes part of a declared Physical Planning Area.

There is a need therefore to bridge this void in the legislative provisions linking the development already existing on a SABL prior to the declaration of a Planning area.

Grants made in respect of SABLs located outside of planning zones and developments of which involve agriculture do not attract physical planning approvals under the current laws and regulations.

3.7 Application of the Forestry Act, 1991 (as amended) by Forestry (Amendment) Act 2000 (No. 36 of 2000) and Forestry (Amendment) Act 2007 (No. 19 of 2007))

3.7.1. Forestry Law and SABL Processing

There is no requirement in the Forestry Act for any requisite compliance before the lease of customary land from customary landowners by the State and the subsequent grant of a SABL.

However, where a SABL has been granted for the purpose of a proposed agricultural development in a forested area, necessitating forest removal, and where the removed forest products are to be used commercially including sale, such activity will attract the regulatory requirements of the

Forestry Act, 1991(as amended), particularly Sections 90A and 90B.

Evidence was received from the Mr Kanawi Pouru<sup>7</sup>, the Managing Director of the National Forest Services, the administrative arm of PNGFA, in respect of the procedures followed in receiving and evaluating applications for Forest Clearance Authorities (FCAs) where SABLs for agriculture purposes require clearances of large forest areas.

The vital parts of Mr Pouru's evidence in the operation of SABLs are as follows:

<sup>7</sup>Transcript of Proceedings SABL 9 –25/08/11 and SABL 31/08/11 @pages 2–44, Affidavit of Kanawi Pouru sworn on 24th August 2011 was tendered into evidence on 25th August 2011 and marked as Exhibit” KP6”

- (1) if trees in the forest when cleared for agriculture development are going to be sold or dealt with commercially, the PNGFA becomes involved in invoking its regulatory powers under Sections 90A and 90B of the Forestry Act and receiving and processing applications for FCAs;
- (2) in the course of the processing of FCA applications, PNGFA will not issue a FCA unless the DAL had certified the agriculture development plan or other land-use plans;
- (3) similarly an FCA will not be issued in the absence of an environmental permit (EP) issued by the Environmental Council (EC); and
- (4) on the reverse, the EC will not issue an EP unless the PNGFA had approved the forest management plan (FMP) and DAL had certified the agriculture development plan.

The evidence of Mr Pouru in essence is that his Agency (PNGFA) only becomes involved with a SABL where extractions of forest products are intended to be disposed of commercially.

### 3.7.2. PNG Forest Authority Administration

#### 3.7.2.1 Background

The PNGFA finds itself in a conundrum when it deals with SABLs for two main reasons. Firstly because forest

clearance is permanent; usually done in order to carry out agriculture or other land use such as road building and this runs contrary to the normal practice of sustainable forestry where PNGFA insists that loggers replant trees for future harvest (to maintain forest cover). Second is the fact that PNGFA does not gain any financial returns from the merchantable timber that is cut and sold, often for huge sums of money, because royalties (if any) are paid directly to landowners.

Unfortunately the view held by PNGFA in those circumstances is that FCA activities conducted in SABL areas come second in priority to other strictly forestry related or pure logging activities conducted under the pre – Independence era Timber Rights Purchase Areas (TRP), Forest Management Areas (FMA) granted under the current Forestry Act 1991 and Local Forest Areas (LFA) granted under the Forestry Private Dealings Act. The three concessions (TRP, FMA & LFAs) are

issued for large scale timber harvesting operations that are expected to provide development and services to the project areas, the province and nation as a whole. Timber Authorities (TA) granted under the current Forestry Act is the fourth type of concession granted for smaller areas involving small volumes of harvested timber (up to 5000 cubic meters) for instance to process through local sawmills.

It became obvious to the C.O.I. on its provincial visits, that in most provinces, forestry workers based there were not

monitoring forest clearance activity conducted under FCA. The most active regional office was the Rabaul office covering all provinces in the New Guinea Islands region. In fact, that office was responsible for cancellation of the few FCA's that have been cancelled so far.

Despite the above situation, PNGFA has tried to carry out its duties to screen applications for FCAs, monitor forest clearance under FCA and in a few instances has cancelled FCAs when developers failed to conduct agriculture activity, for example to plant oil palm, before carrying on further forest clearance in allotments of 500 hectares at any one time. Stringent measures to ensure agriculture is carried out after forest clearance are set out in detail under sections 90A and 90B of the Forestry Act, the only legislation that deals at length with SABL in contrast to the bare minimum provisions found under the Land Act.

In his evidence given to the C.O.I. Mr Kanawi Pouru, Managing Director of PNGFA expressed his disappointment over the perceived failure of DAL to play its part in firstly screening and selecting genuine developers (as opposed to operators only interested in logging) and secondly to monitor and ensure that agriculture developments take place once FCA's are granted. On the 20th May 2009 Mr Pouru wrote to Mr Daink, Deputy Secretary, DAL, raising serious concerns about DAL's failure to properly screen applications. He said in his letter and we quote; "... What has transpired has become distressing and threatens to ridicule the intentions of

these project types. Most notable is the ever widening gap between forest clearance activities to that of the actual agriculture establishment / implementation. The real threat here is that proponents may be disguising under the cover of a sanctioned DAL project with the underlying interest to log."

### 3.7.2.2 Role Played By PNG Forest Authority in SABL (Sections 90A, 90B & 90C in the 2000 and 2007 Amendments)

In 2001, the Forestry Act, 1991 was amended by No. 36 of 2000 by the insertion of Sections 90A, and 90B to cater for developments expected to be carried out under the SABL scheme. That Amendment was further amended by Amendment No. 19 of 2007. Proponents of projects within SABLs are required to submit detailed information from copies of State leases, approved environmental plans, detailed development plans by proponents, certificate of approval given by DAL Secretary and a host of other information referred to below. The National Forest Service is merely a Regulator where forests upon SABLs are to be dealt with commercially but have a serious role in ensuring that the agriculture component necessitating forest clearances are implemented and the whole project is not just a forest operation under the pretext of agriculture. The PNGFA, in essence, is mandated under those two (2) provisions to monitor, evaluate and if satisfied, approve

FCAs and subsequent requests for further FCAs within the boundaries of the SABL.

## SECTION 90A

Section 90A of Forestry Act 1991 requires strict compliance with certain preconditions before grant of a large scale conversion of forest to agricultural or other land use and these are:

Under Section 90A(3) (a), applications for FCA must be accompanied by:

- a) A detailed development plan (by Proponents)
- b) Evaluation Report (by DAL)
- c) Certificate of approval from Secretary for DAL or other relevant departmental head.
- d) Copy of State leases
- e) Implementation schedule showing precise areas and proposed rate of harvest. Applicant must further show what he plans to do on the cleared land by submitting a successive land use development plan approved in writing by the Secretary for DAL or other relevant Head of Department such as Transport for Road construction. The schedule must also include detailed start and completion dates of all activities associated with the project.
- f) The proponents (usually developer companies) must provide details of costs involved in the agricultural or other projects and proof of financial capacity from a bank certifying that the full costs of funding the project will be available to the applicant.
- g) Map and description of project area showing areas that are too steep (over 30 degrees) or unsuitable for agriculture such as a swampy area and any conservation areas.
- h) Verification of ownership and consent of each resource owning clan agent or ILG within the project area. The prescribed form must be signed by the clan representative or ILG Executive in presence of a village court magistrate or the land mediator.
- i) Supporting letters from relevant departments and/or agencies.
- j) Written approval by DEC of applicant's environment impact statement.
- k) Details of equipment and manpower plus proof of past experience in such developments (that is agricultural projects).

## SECTION 90B

After the PNG Forest Board (the "Board") is satisfied that all the above requirements have been fulfilled it must take the following steps;

a) Consult with government body concerned.

b) Arrange public hearings where government bodies and private sector may be heard. Such hearing be held at or as near as possible to the proposed agricultural or other land use sites.

c) On completion of hearing the chairman shall refer application and summary of hearing to Provincial Forest Management Committee ("PFMC") who will in turn make its recommendation to the Board.

d) PFMC in its deliberations must consider among others "...the commercial viability of the project including the financial resources of the applicant, the past performance of the applicant in agriculture..., analysis of cash flows and the anticipated net benefit to the resource owners and to the State."

e) PFMC will refer its decision to the Board and the Board makes the decision.

f) The Board shall call for tenders from registered forestry participants. If there are no tenders then the Board may invite the applicant to carry out forest clearance.

g) "The successful tender is then required to enter into the prescribed sales and purchase Agreement with the customary owners which agreement shall provide for the purchase, harvesting, processing or marketing of timber and other forest products and which agreement shall be subject to the grant of a forest clearing authority by the board."

Section 90B(22)(b) prescribes that any forest clearance operation must be done in four phases. Each phase:-

(i) Shall represent one quarter of the total area to be cleared

(ii) Shall contain conditions imposed by the Board and

(iii) Shall be subdivided into blocks of 500 hectares but this can be increased at the discretion of the Board,

(iv) Performance Bonds under S.98 of the Act shall be imposed by the Board when granting FCA.

The Minister may cancel an FCA under Section 90E.

### 3.7.3. FCA Issued So Far

We note that out of the seventy-five (75) SABLs on the C.O.I. List, FCAs have been granted and issued to seventeen (17) SABLs during the period 2008 to 2010 and these are listed in Table "C" below:

Table "C"

List of Records of Forest Clearance Authority ("FCA") Issued for

SABLs from periods 2008 – 2010

C.O.I.

File

Grantee

Hectares

SABL

Portion

Location

FCA Issued Date and Company.

8

Vanimo Jaya Limited & One Uni Development Corporation

47, 6262

248C

Tadji, Aitape, Sandaun Province

Issued on 21/04/08 to Vanimo Jaya Ltd

20

Brilliant Investment Limited (BIL)

25, 600

146C

Marienberg, Angoram, ESP

Granted on 26

June 2009 to BIL

24

Rakubana Development Pty Ltd

25,581

871C

Namatanai, NIP

Issued on 11/09/09 to Tutuman Dev. Ltd

27

Central New Hanover Ltd

56, 592

887C

New Hanover, NIP

Issued on 25/11/10 to Tutuman Dev. Ltd

28

Mekeo Hinterland Holdings Ltd

116,400

45C

Central Province

Issued on 26/06/09 to Allbright Ltd

35

Bewani Oil Palm Dev. Ltd (BOPDL)

139,909

160C

Bewani, Sandaun Province

Issued on 26/03/09 to BOPDL

36

Turubu Oil Palm Limited

116,840

144C

Turubu area of Wewak and Sausia area of Yangoru Sausia, ESP

Issued on 26/03/09 to Wewak Agriculture Dev. Ltd

38

Abeda Agro Forest Ltd

11,700

409C

Kairuku area of Central Province

Issued on 22/04/10 to Allbright Ltd

57

Toriu Timbers Ltd (Toriu TL)

11,240

904C

Rabaul, ENBP

Issued on 15/01/08 to Toriu TL

58

Toriu Timbers Ltd (Toriu TL)

42,240

903C

Rabaul, ENBP

No records

Rera Holdings Ltd

68,300

2C

Mukus Melkoi area of Pomio, ENBP

Issued on 07/10/10 to DD Lumber Ltd

Pomata Investment Ltd

15,000

196C

Part of Sigite Mukus Integrated Rural Development project (3 separate projects) in Pomio, ENBP

Issued by NFB on 07/10/10 to Gilford Limited

Ralopal Investment Limited

11,300

197C

Part of Sigite Mukus Integrated Rural Development project (3 separate projects) in Pomio, ENBP

Issued by NFB on 07/10/10 to Gilford Limited

Nakiura Limited

16,100

198C

Part of Sigite Mukus Integrated Rural Development project (3 separate projects) in Pomio, ENBP

Issued by NFB on 07/10/10 to Gilford Limited

North East West Investment Limited

149,114

27C

Kiunga stretching up to Olsobip in the North and Nomad to the West, North Fly Western Province

Issued on 25/11/10 to Independent Timbers and Stevedoring Limited

Tufi Wanigela Tree Farming Project Okena Goto Karato Dev Corp Ltd

28,100

146C

Oro Province

Issued on 23/04/08 to Victory Plantation Limited

Wanigela

320,060

17C

Oro Province

Issued on

Integrated

28/01/10 to

Agriculture

Ang Agro

Project

Forest

Management

Limited. PNG

National Forest

Board decided

in meeting of

03/08/11 to

cancel FCA

It is our considered view that the provisions of Sections 90A and 90B are explicit and adequate and only requires a competent and transparent regulatory scrutiny by the PNGFA through its National Forest Service, for strict compliances with these provisions will ensure that not only responsible forest clearances are carried out

but also that the accompanying approved agriculture development takes place.

These provisions of the Forest Act as amended however have no links to the requirements under the Environment Act, 2000 or the Conservation Areas Act, 1978 although these Acts subsumed the environmental compliances which may arise from forest clearances for agriculture or other land use of the land in a SABL.

### 3.8 Application of the Environment Act 2000

#### 3.8.1. Introduction

The Environment Act 2000 is a comprehensive piece of legislation that defines clearly the roles, functions and responsibilities of the Department of Environment and Conservation (DEC) generally and also relating to SABLs. The main focus of the legislation on SABL applications is the project's impact on the environment and water ways including waste discharge associated with the project. It should be read in conjunction with Environment (Prescribed Activities) Regulation 2002.

The Environment Act enables the DEC to classify different activities affecting customary land including SABLs involving agriculture, forestry, fishing, mining and so forth. The various activities are level 1, level 2 or level 3 activities. This is to attract the appropriate compliance for the purpose of environmental protection particularly to prevent contamination and destruction

of existing and nearby ecological system, preserve them and ensure renewability in the case of renewable resources. We note essentially that the compliance requirements must be met where projects of the nature affecting environment issues are categorised as Level 1, Level 2 or Level 3.

Part 5 (Divisions 1 to 5 or Sections 41 to 73) of the Environment Act 2000, subsumed the application of their provisions to the operations of SABLs, be they agriculture with associated forestry activities or other land uses. The effect of the Environment Act regulating environmental practices ensures that environmental compliances as stipulated are complied with failing which the applicable penalties will apply.

Nonetheless, it is imperative as will be seen in the final analysis, that all facets for the improvement of the SABL system should be linked by express provisions of each applicable law from the Land Act, the Forestry Act, the Environment Act, and the Conservation Areas Act so that the objectives of the SABL system are achieved and are properly managed.

### 3.8.2. DEC's Responsibility in the Processing of Environmental Permits (EPs).

DEC is responsible for issuing Environment Permits for proposed development projects once it is satisfied that all necessary requirements are fulfilled. It is a stringent five (5) step process culminating in the issuance of an Environment Permit. The Environment Permit is issued with conditions requiring

developers to comply with the conditions. Failure by the permit holder to comply with the conditions will result in the immediate revocation of the permit.

With particular applications upon all SABLs over 50 hectares, the requirements for an Environmental Permits are more stringent and appear to be thorough. Once a permit is issued, the impact on the environment and the people within the SABL areas is significant.

### 3.8.3 Role of DEC in SABLs

The DEC does not necessarily play a direct role in the processing and grant of a SABL. The DEC's role however is that once a SABL holder (or sub-lease holder) proposes to engage in a large scale economic impact project development within the SABL area, to ensure that the SABL holder complies with the relevant application for the grant of an environment permit as prescribed by the Environment Act 2000 and the Environment (Prescribed Activities) Regulation 2002 to enable it to undertake the project.

As most projects fall into the category of over 50 hectares, the SABLs have genuine commercial interest that may impact on the environment and waterways and therefore, have submitted applications and were granted permits by the DEC. The process although legislated, is also contained in the DEC Environment Division Operational Manual. Projects are divided into three (3) main categories of Activities described as Level 1 - 3 Activities under the Environment (Prescribed Activities) Regulation 2002.

SABL projects fall under Level 3 Activity as, in most cases, it requires forest clearing/harvesting and land clearance and agricultural development over a large tract of land.

For Level 3 Activity, the following must be done pursuant to the Act, Regulations and the DEC's Operational Manual<sup>8</sup>:

(i) Registration of Intention to Carry out Preparatory Works (sec. 48) – Prior to any feasibility or environmental studies into a Level 3 Activity, DEC would require the proponents of the project or the developer to register his „Intention to Carry out Preparatory Work? with the department. DEC requires sufficient information from the proponents of the project before it accepts the Notification and issues an instruction for the Environmental Impact Assessment (EIA) process to begin. A Notification will include details on the proponent/developer, company registration certificate, brief descriptions of the project and the environment (physical, biological and social) and its location. Failure to register an Intention to carry out an activity is an offence under the Act.

<sup>8</sup> The Manual is referred to in the evidence of Mr Michael Wau, Acting Director of Environment by Affidavit sworn on 29th August, 2011 and tendered into evidence on 31st August 2011 and marked as Exhibit “MW 8”. Refer also to Transcript of Proceedings SABL 10 31/08/11 @pages 30–37.

(ii) Notice to Undertake Environment Impact Assessment (sec. 50) –

Once the registration of Intention is accepted by DEC, the project proponent/developer is advised in writing to undertake an Environment Impact Assessment (EIA). The first step in an EIA is the submission of the Environment Conception Report. The EIR identifies who will be conducting the EIA and their qualifications. The EIR is assessed by the Impact Assessment Branch of the DEC. Other Divisions within DEC are also invited to comment on the EIR to ensure that it complies with all the guidelines. It is now also a requirement to present the EIR to the Environment Council as an information paper so that the Council is informed of projects in the pipeline.

If the EIR is satisfactory, the proponent will be informed in writing of its acceptance. The proponent will then commence with the preparation of the Environment Impact Statement (EIS). The applicant will be required to provide an EIS with sufficient details covering the following:

(i) Purpose of the Development – describing linkages with the 4th National Goals and Directive Principles under the preamble of the Constitution. This will also include detailing economic benefits from the project

for the nation and the impacted communities where the project is developed.

(ii) Viability of the Project – includes capital costs, details of the proponents technological expertise

and resources, results of feasibility studies, informed landowner's consent and participation in the project, lifespan of the project and development phases of the project.

(iii) Description of the Proposed Activity – background information, process technologies, detailed location maps, site layouts, site selections, flow chart (wastes generated), nearby development activities that may contribute to background pollution levels.

(iv) Characteristics of the Respective Environment :

- Physical – data on ambient environmental qualities
- Biological – presence of protected species, special purpose areas, existing terrestrial and aquatic ecology and presence of vulnerable species
- Social – existing socio-economic data on the resource owners

(v) Potential Impacts of Proposal

(vi) Waste Minimization, Cleaner Production and Energy Balance

(vii) Environmental Management, Monitoring & Reporting

The EIS undergoes an internal assessment. The assessment is designed to ensure that the EIS complies with the operational guidelines and includes sufficient information to allow a decision to be made.

(a) Public Review and Submissions (sec.55)

If DEC is satisfied that sufficient information is provided the EIS is then open for public review. Advertisements are placed in the local media for submissions from the public and interested parties. The Public may also raise objections through this process. A period of one month is allowed for submissions. Other key government agencies are contacted directly in writing inviting their comments. A presentation is also made at a suitable location near the proposed development to allow for input from the local communities and resources owners/landowners. Comments made are collected and collated and are recorded and presented as part of the submission to the Environment Council.

(b) Acceptance of EIS (sec.56)

When DEC is satisfied that sufficient information is provided regarding potential impacts and reasonable steps proposed to minimize environmental harm a written letter of acceptance of the EIS is sent to the proponent. Acceptance of the EIS is not necessarily the approval. Approval is only granted by the Minister acting on the recommendation of the Environment Council.

The Environment Council has 90 days to deliberate on the EIS and make a decision whether or not to accept an EIS and recommend to the Minister to approve the project in principle. If additional information is required or some adjustments are to be made on the EIS, the Council may refuse the EIS and advise the proponent to amend or resubmit the EIS to the department after the necessary amendments or adding additional information.

(c) Ministerial Approval in Principle (sec.59)

The Minister for Environment & Conservation may grant the „Approval in Principle? for the project when he receives a recommendation from the Council to do so. The Minister may also refuse to approve an activity.

(d) Environment Permit (sec.62)

An Environment Permit for a Level 3 Project can only be applied for after an „Approval in Principal? is granted by the Minister. Applications for Environment Permit for wastes discharges and for taking of water also have to comply with the guidelines issued by the department. The Environment Permit is issued by the Secretary of the DEC and will set the term of the permit, fees payable and permit conditions.

SABL projects that do not involve large scale forest clearance do not require an Environment Permit. Projects such as Roselaw Ltd (Idumava Multi-Purpose Marine Facility owned by Dynasty Real Estate), Konekaru 1 and 2, (Konekaru Holdings), Akami Oil Palm Estates (estates less than 1,000 hectares), Veady Holdings Ltd (PNG LNG activities in Central Province owned by Leighton Ltd) and Zifasing Cattle Ranch Ltd (Cattle Breeding Farm, Erap, Morobe Province).

(e) Management of Environment Permits

Environment Permits are issued with conditions. A project proponent is required to submit a „Waste Management Plan? and an „Environmental Management and Monitoring Plan? within three (3) months of commencement of the permit. In addition, there will be a requirement to monitor discharges of wastes and to report on non-compliance with

conditions. Permit holders are required to submit annual performance reports to DEC.

(f) Environmental Audits & Investigations (sec.74)

The DEC also conducts regular environmental audits and investigations and compliance visits to ensure that the developers complied with the conditions of the environment permit. It has the power to institute court proceedings in an event of a breach including revocation of the permit. However, evidence revealed that the enforcement aspects have not been diligently carried out due to funding problems and lack of skilled and qualified manpower within DEC.

(g) Restraint on Approval by other Authorities (sec. 46)

The C.O.I noted the restraints on approval by other authorities in the following;

(1) Other governmental authorities are restrained from issuing permits or licences for level 2 or level 3 activities (other than existing activities) which would authorize the holder to carry out an activity which would cause environmental harm where to do so would be a breach of this Act until an environment permit in relation to the activity has been granted in accordance with this Act.

(2) Subsection (1) does not apply to approvals under the

Investment Promotion Act 1992.

(3) Where a person applies for another kind of approval in respect of a level 2 or 3 environment impact activity, under the provisions of other legislations, the applicable governmental authority shall refer the application to the Director.

### 3.8.4 Table of Environmental Permits pending and/or granted to SABL Project Proponents

TABLE D

GRANTEE

Term of Lease

AREA

SABL PORTION

PROV

PROJECT

DEVELOPER

STATUS

TRUKAKE LTD

99

120.7

46

ENBP

No record

No record

No record

BARAVA LTD

244.7

307

ENBP

No record

No record

No record

LOLOKORU ESTATES LTD

45

1750

1C

WNBP

NBPOL

NBPOL

Approved (EPA)

BAINA AGRO -

FOREST LTD

40

42100

29C

CP

Baina Agro Forestry

Nasyi 98

Permitted

ROSELAW LTD

99

25.11

2541C

NCD

Idumava Multi- Purpose Marine Facility

Dynasty Real Estate (RH Subsidiary)

In Process

PULIE ANU PLANTATION LTD

99

46233

396C

WNBP

See also

Pulie Anu

Oil Palm Project below

No records

Not Known

VANIMO JAYA LTD & ONE UNI- DEV

99

47626

248C

Sandaun

West Aitape (Port.

248C))

Agro- Forestry Project

One-Uni Development Corporation

Approved (EPA)

ZIFASING CATTLE RANCH

50

8374.2

79

Morobe

Cattle Ranch

Zifazing Landowners

No record

CASSAVA ETAGON PTY LTD

99

20000

884C

NIP

Cassava

Changhae Ethanol Corporation of Korea & State

No record

EMIRAU TRUST

99

3384.3

8  
53C-58C  
NIP  
Free Trade Zone project  
Rimbunan Hijau (2010)  
Nil development  
CHANGHAE TAPIOKA (PNG) LTD  
40  
1656  
519C  
CP  
Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
CHANGHAE TAPIOKA (PNG) LTD  
40  
74.87  
444C  
CP  
Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
CHANGHAE TAPIOKA (PNG) LTD  
40  
66.77  
446C  
CP  
Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
CHANGHAE TAPIOKA (PNG) LTD  
40  
2514  
517C  
CP  
Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
CHANGHAE TAPIOKA (PNG) LTD  
40  
3573  
518C  
CP  
Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
CHANGHAE TAPIOKA (PNG) LTD  
40  
2514  
521C  
CP

Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
CHANGHAE TAPIOKA (PNG) LTD  
40  
2514  
520C  
CP

Cassava Bio Fuel Project  
Changhae Tapioka (PNG) Ltd  
In process (EIS)  
BRILLIANT INVEST LTD  
99  
25600  
146C  
ESP

Angoram Integrated Project  
Brilliant Investment Ltd  
Permitted  
OKENA GOTO  
KARATO DEV. CORP.LTD  
99  
28100  
146C?  
ORO

Tufi Wanigela Agro- forestry Project  
Victory Plantation Ltd  
Not Known  
YUMU RESOURCES LTD  
99  
115000  
30C  
CP

Yumu Agro Forestry Project  
Aramia Plantation Ltd  
In Process (EIS)  
KOARU RESOURCE OWNERS CO LTD  
99  
59460  
323C  
GULF  
No records  
No records  
Not Known  
RAKUBANA DEV. PTY LTD  
99  
24581  
871C  
NIP  
DANFU  
Extention SABL

Tutuman Development Ltd

Permitted

TABUT LTD

99

11684

885C

NIP

Mamirum SABL

Tutuman Development Ltd

In process (EIS)

UMBUKUL LTD

99

25108

886C

NIP

Umbukul SABL

Tutuman Development Corporation

No record

CENTRAL NEW HANOVER LTD

99

65692

887C

NIP

Central New Hanover SABL

Tutuman Development Ltd

No record

MEKEO HINTERLAND HOLDINGS LTD

99

116400

45C

CP

Mekeo Hinterland Oil Palm Project

Albright Ltd

Permitted

### 3.8.5 Constraints Faced By DEC

The administration and monitoring of environment permit conditions by DEC are as discussed in 3.8.2 and 3.8.3 (supra).

The Act nonetheless subsumes the environmental compliances notwithstanding the absence of similar provisions in the Land Act or the Forestry Act. This means that environmental compliance aspects of the agriculture or other land uses to be developed upon SABLs are complied with at some point.

Evidence from Dr Wari Iamo<sup>9</sup> coupled with our examination of the procedures for environmental impact assessments of proposed projects implicating the environment impact including (inter alia) SABLs are quite elaborate and are adequate in our view.

We note that the problem is not the legislative mechanisms provided for in the Environmental Act but rather the Administrative structural route through which the environmental impact assessment is made ultimately resulting in the grant or refusal of grant of Environmental Permits under Part III of the Act.

Under Part III of the Act, it is a requirement to register with the Director of the Office of Environment, created under Section 15 of the Act, in submitting a proposal to carry out a level 2 or level

<sup>9</sup> See evidence of Dr, Wari Lea Iamo sworn on 29 August 2011 and tendered into evidence as Exhibit "WI7" on 31 August 2011. See also C.O.I. Transcript of Proceedings SABL 10 31/08/11 at pages 24-30.

3 activity which is likely to affect the environment pursuant to Section 48 of the Act. It is not necessary to refer to each Section of the Act that prescribes the process of grant or refusal of Environmental Permit that takes place, but a diagram illustrating the process map as shown below will suffice.

## ENVIRONMENTAL PERMIT PROCESS MAP

We note the process to secure an Environmental Permit for a level 2 or level 3 activity is quite efficient. However, we note the following possible conflict areas;

(1) The Director of the Office of Environment is the Secretary of DEC and also the Chairman of the Environment Council.

(2) As DEC Secretary, Director of Environment and Chairman of the Environment Council occupying three different positions concurrently in the environment permit process map places the occupier of these positions in a potentially conflict of interest situation that is likely to affect the public perception as to the impartiality and therefore the integrity of the process.

We are of the view that the provisions for the grant of EPs are quite adequate. The Administrative structure, through which applications for EPs are processed, however is undesirable with the Secretary of DEC occupying 3 major positions in which a great amount of discretion is given him or her. In addition, we noted with concern that „ex-officio? as the DEC Secretary is also the Deputy Chairman of the PNGFA. This gives a total of 4 Roles particularly where development of SABLs in forested areas are being processed for both FCA?s through the PNGFA and the accompanying

Environment Permit applications processed by the DEC.

Whilst there are no express provisions in the Environment Act specifically applying to SABLs, the requirements under the Environment Act pertaining to applications for Environmental Permits must be complied with by developers of SABLs.

### 3.9 The Conservation Areas Act 1978.

The Department of Environment & Conservation also administers the Conservation Areas Act 1978. The Act enables the DEC to classify different activities affecting customary land including SABLs involving agriculture, forestry, fishing and mining within the declared conservation and management areas.

C.O.I. notes that essentially the Act provides for the preservation of the environment and of the national cultural inheritance inclusive of "...The conservation and management of sites, and areas having particular biological, topographical, geological, historic, scientific or social importance" over customary land subject of declared conservation areas. Any development or land use can only be carried out in accordance with the stipulations under Part VI of that Act. The vital aspect being that any proposed development or land use of a conservation area cannot be carried out without the prior approval of the Minister.

C.O.I. note here that the requirements of the Conservation Areas Act, 1978 is straight forward as noted in our discussions in Part 2 of this Report. C.O.I however caution that in any review, the discretion vested in the Minister to approve any proposed development or land-use of a declared conservation area must be strictly regulated so that that discretion is not abused. C.O.I note with gladness that no abuse in this respect has occurred despite a lack of stricter law.

C.O.I however note that these environmental compliances are not part of the prerequisites to the lease of customary land to the State and the subsequent grant of title on lease-back from the State.

### 3.10. Responsibility of DAL in Agriculture Development of SABLs

#### 3.10.1 Introduction

There is no separate law regulating commercial agriculture developments.

Sections 11 and 102 of the Land Act make a reference to agriculture where they provide for the grant of Special Agriculture and Business Leases (SABLs).

Accordingly, C.O.I feel very strongly that a specific Act of Parliament be enacted with specific reference to the mobilisation of customary land to be involved in large scale commercial agricultural developments.

Such an Act should carry mainly the following –

(i) variety and type of agriculture in a proposed development area must follow an approval process

once an intention to develop is presented.

(ii) once approved, no departure from the agriculture type should be permitted without substantial justification.

(iii) the thrust of the provisions of such an Act should be to ensure performance and regulate variations from original proposals, flexible in commercial realities of business and impose penalties, amongst others.

(iv) guidelines to ensure harmony with the SABL system of leases under the Land Act, Forestry Act, Environment Act, Conservation Areas Act, and Physical Planning Act.

(v) the establishment of an administrative regulatory Committee or Council to oversee the encouragement of, regulation of, and management of all agricultural activities involving large scale commercial agriculture development involving customary land.

The Government could consider setting up under such an Act a National Agriculture Development Authority.

### 3.10.2 Background

The Department of Agriculture and Livestock (DAL) is responsible for vetting large scale agriculture development plans proposed by sub lessees or developer companies invited by landowners to establish agriculture projects within proposed SABL areas. Where a SABL comprises of a forested area, unless the DAL Secretary issues a Certificate of Approval, the PNG Forest Board will not issue a FCA granting permission for a PNGFA approved Forest Industry Participant (FIP) to log

merchantable timber before the proposed agriculture project is established on the cleared land. These operations have come to be popularly described as “Agro Forestry” projects.

The C.O.I. has found disturbing evidence of emphasis being placed by senior DAL officials on forestry instead of the agricultural aspect. DAL officials have embraced the developer’s argument that they need to conduct logging within SABL areas in order to fund the proposed agricultural project. As was set out in the previous chapter dealing with Forestry this notion is contrary to section 90A (3),(d) of the Forestry Act 1991 that requires the proposed developer to furnish details of costs involved and proof that it has sufficient existing funds verified by a bank. Unscrupulous developers have seized on this misunderstanding by DAL officials to carry on logging activities and neglected implementation of agriculture as planned.

Senior DAL officials told the C.O.I. that projects conducted under SABLs have or should have a “... profound impact on the PNG economy and should come with it immediate benefit to the resource owners in the rural communities”<sup>10</sup> Site visits throughout PNG done by the C.O.I. showed overwhelming evidence that in about 95 % of SABLs no agricultural activity whatsoever had been commenced other than the establishment of nurseries for tree crops (mainly oil palm, cocoa and rubber) which in the main was just for show. Except for two oil palm projects supported by New Britain Palm Oil Limited (NBPOL), namely Lolokoru SABL and Akami Oil Palm SABL both

<sup>10</sup> Evidence of Francis Daink in the Transcript of Proceedings SABL #13 at page 14

located in West New Britain and Porom Coffee in the Western Highlands, all the others had not

even commenced planting of proposed crops although forest clearance and export shipment of logs proceed full steam ahead.

The following are examples of agro-forest activities currently in progress in the following SABLs just to mention a few;

\* Turubu Oil Palm in East Sepik. No oil Palm planted. Developer cutting trees in forested part of SABL although a huge part of the SABL consists of grassland (part of the Sepik Plain) on which the developer could already have started planting.

\* Bewani Oil Palm in West Sepik; Large Nursery full of oil palm seedlings well past the planting stage and not a single hectare of land cleared to plant or any evidence of required machinery and lodgings for workers being constructed. In the meantime logging under FCA going ahead.

\* Rakubana in Namatanai, New Ireland: Derelict nursery containing overgrown cocoa seedlings. No agriculture workers included among an all Asian team of about 20 forestry workers housed at the logging camp and ready to recommence logging. Trial plot planted by developer Tutuman show that all the planted cocoa trees have died and shade trees are struggling to grow due to very poor soil.

\* Tabut in New Hanover, New Ireland. No cocoa trees grown as promised by Tutuman Limited. Trees had been logged by Tutuman under the pretext of constructing a 12 kilometer road (under 12.5 km minimum requiring road clearance TA s.87 Forestry Act) leading from nowhere to nowhere. The so-called „road“ is now a track covered in tall grass and bush.

### 3.10.3 Legal Authority for DAL

For such a vital governmental body (food security wise), the Department of Agriculture and Livestock (DAL) was not created by Statute or any other law. Specific laws were enacted only for the various agricultural commodities. The DAL Secretary is ex - officio member on all the Commodity Boards and related regulatory and research bodies established by various Acts of Parliament including;<sup>11</sup>

1. Coffee Industry Corporation - Coffee Industry Corporation Act of 1991
2. Cocoa Board of PNG - Cocoa Board Act of 1981
3. Kokonas Industry Koperesen - Kokonas Industry Koperesen Act of 2002
4. Spice Board -Spice Board Act of 1989
5. Rubber Board - Rubber Board Act of 1956

<sup>11</sup>Refer to the evidence of Mr Anton Benjamin, Acting Secretary of DAL in relation to his sworn Affidavit dated 5th September 2011 and tendered into evidence as Exhibit “AD 9” on 5th September 2011. See C.O.I Transcript of Proceedings SABL 13 05/09/11 @pages 2-12 and SABL 15 08/09/11 @ pages 2-33.

6. National Agriculture Quarantine Inspection Authority -National Agriculture Quarantine Inspection Authority Act of 1997

7. Oil Palm Industry Corporation – Oil Palm Industry Corporation Act of 1992
8. Livestock Development Corporation – Companies Act 1997
9. Fresh Produce Development Agency – Companies Act 1997
10. Cocoa Coconut Institute – Companies Act 1997
11. National Agriculture Research Institute – Higher Education Act

The involvement of DAL in SABL is mainly through other legislations such as the Forestry (Amendment) Act 2000 and the Environment Act. Even then DAL is only required to assess and approve agricultural plans when the developer wants to clear forest in areas over 50 hectares.

#### 3.10.4 Role Played by DAL in SABL

Although the DAL is not involved in the granting process of SABLs its role is central to the project that is to be established within the area of the agriculture SABL. DAL's role is to screen and approve agriculture project proposals and where necessary assist projects proponents in revising proposal particulars, technical capacities, land use assessments, developments and implementation schedules to satisfactory standards. DAL also conducts land suitability tests and land capability assessments (on

behalf of the project proponents) of all project proposals covering the total SABL area.

##### 1) Public Hearings

DAL is required under the Forestry Act 1991 to co-ordinate public hearings with customary landowners of SABL areas. Provincial Administrators preside as Chairperson, DAL representative as Deputy Chairperson and officers from DLPP, DEC, PNGFA and Department of Transport make up the agencies with direct input into SABL projects. Public hearings must be conducted before approval for the developer to carry out its proposed agriculture venture. It is also necessary under the Forestry Act for these hearings to be conducted at or close to the project site before the Forest Board considers grant or otherwise of FCA. Landowners are given the opportunity to voice their approval or objection to the proposed agriculture project. Of concern to the C.O.I. is the fact that these public hearings do not necessarily have to be conducted before grant of SABL by the DLPP.

Another area of concern to the C.O.I. became apparent during evidence given by Mr Daink<sup>12</sup> that often serious landowner concerns about shortage of land is ignored by the various governmental agency representatives because of the prevailing view that the "majority" of land owners are for the project and its

<sup>12</sup> Refer to the evidence of Mr Francis Daink, Deputy Secretary of DAL in relation to his sworn Affidavit dated 5th September 2011 and tendered into evidence as Exhibit "FD 10" on 6th September 2011. See C.O.I Transcript of Proceedings SABL 13 05/09/11 @pages 12–26.

anticipated benefits. Minutes documenting a public hearing held in Pomio, East New Britain for the SABL granted to Rera Holding, show clearly that a landowner expressed concerns that there was serious shortage of land and he asked if his area could be left out or excised from the boundaries of the SABL. Mr Daink admitted to this but said the committee decided not to act on that concern effectively putting people in the area in a far worse plight than just shortage of land because they now no longer had any customary right to subsist off their own land.

In another SABL, that of Urasir Resources Limited in Madang, DAL records show that no public hearing had actually been conducted. Yet the same records state that DAL had approved the proposed agriculture development plans.

### 3.10.5 Approved Agricultural Projects

Francis Daink of DAL in evidence provided a tabulated list of approved Agricultural projects that have some FCA components, referred to by the DAL as Integrated projects. This was produced by him in evidence as Exhibit "FD 4" on 11th January 2011.

Table E below is a list of Approved Agricultural Projects

Table E

Province/ District	Project Name	Land Use Option (s)	Approval Status (DAL)	FCA	Status (PNGFA)	Development Status/Comments
--------------------	--------------	---------------------	-----------------------	-----	----------------	-----------------------------

Sandaun Province	Vanimo Green	Scotiaho	Cocoa	Approved	Approved	Progressing well
------------------	--------------	----------	-------	----------	----------	------------------

	Walsa	Cocoa	Approved	Approved	Progressing well.
--	-------	-------	----------	----------	-------------------

	Mumuru	Cocoa	Approved	Approved	Progressing well
--	--------	-------	----------	----------	------------------

	Ori	Cocoa	Approved	Approved	Progressing well
--	-----	-------	----------	----------	------------------

	Ossima	Cattle			
--	--------	--------	--	--	--

Pending  
Pending  
Public Hearing Conducted

Ambai Alis  
Oil Palm  
Pending  
Pending  
Provincial Approved

Bewani  
Oil Palm  
Approved  
Approved  
Initial work progressing  
Telefomin  
WammyN amea  
Oil Palm  
Pending  
Pending  
Land use assessment in progress

AitapeLu mi  
West Aitape  
Oil Palm  
Approved  
Approved  
Progressing

East Aitape (Samas)  
Oil Palm  
Approved  
Approved  
Poor, review called for change from Oil Palm to Cocoa/Rubber New FCA Application.

Moile West Aitape  
Cocoa  
Approved pending  
Pending  
EIR and Environment Permit pending  
Nuku  
Nuku  
Cocoa, tick, Jetropha,  
Approved  
Pending  
Need report for FCA Status

Portion 59C  
PalaiYank ok, Maimai  
Cocoa, rubber Jetropha Teak  
Approved pending  
Need report of FAC  
status  
Need report of FCA Status

#### East Sepik Province

Angoram  
Brilliant (Marienberg Hills )  
Cocoa  
Approved  
Approved  
Recommenced work for nursery seed garden.  
Wewak  
Turubu  
Oil Palm  
Approved  
Approved  
Progressing well

Turubu Portion 145C  
Jetropha  
Approved  
Pending

Ambunti/ Maprik  
NugawaBon gos  
Large scale (Various)  
Approved  
Pending  
Environment permit issued  
Ambunti  
Bassei  
Oil Palm  
Approved  
Pending

Wosera Gawi  
Nungawa Sengo Portion 54C  
Rubber, Cocoa, Jetropha, Teak  
Approved  
Approved

#### Madang Province

Middle Ramu

Urasir Dev Ltd  
Approved Oil Palm  
Approved  
Pending  
Assessment stage

Middle Ramu/ Bogia  
Oil Palm  
Pending  
Pending  
Registration of ILGs  
Bogia  
Bogia  
Rubber/Oil Palm  
Pending  
Pending  
Assessment Stage, Social mapping (ILG) yet to commence  
Oro

Wanigela  
Wanigela  
Oil Palm 15C  
Approved  
Approved  
Yet to commence

Musa Pongani  
Oil Palm Portion 116C  
Pending  
Pending  
Yet to commence

Musa Pogani  
Integrated  
Approved  
Pending  
Project assessment stages received.  
Erero  
Erero/ Sambogo  
Cocoa, Cassava  
Approved  
Pending  
Yet to commence  
Milne Bay

Alotau  
Gadaisu

Oil Palm  
Pending  
Pending  
Land use study  
completed

Sagarai  
Oil Palm  
Pending  
Pending  
EOI received  
Central Province

KairukuHi ri  
Baina Agro Forest Ltd  
Oil Palm  
Approved  
Approved  
FCA cancelled  
Kairuku Hiri  
Yumu Ltd  
Oil Palm  
Approved  
Pending  
Proposal being assessed  
Kairuku Hiri  
Mekeo Hinterland Holdings Ltd  
Oil Palm  
Approved  
Approved  
No progress  
Kairuku Hiri  
Abeda Agro Forest Ltd  
Oil Palm  
Pending  
Pending  
Land use assessment conducted.

Abau  
Abau  
Oil Palm  
Pending  
Pending  
Proposal assessments stages  
Gulf Province

Kikori  
Turama  
Oil Palm  
Pending  
Pending

Proposal received for assessment.

Kikori  
Vailala  
Oil Palm  
Pending  
Pending  
Yet to commence  
East New Britain

Pomio  
Illiawawas  
Oil Palm  
Approved  
Approved  
Progressing well

Suikol  
Cocoa, Coffee  
Approved  
Pending

Tauri Head  
Oil Palm  
Approved  
Pending

Mukus Melkoi  
Oil Palm  
Approved  
Pending

Sigite Mukus  
Oil Palm  
Approved  
Pending

Illi Stand alone  
Cocoa/Balsa  
Approved  
Pending

Toriu  
Cocoa  
Approved  
Pending  
Environment permit approved

Gazelle  
South Baining  
Oil Palm  
Approved  
Approved  
Project Monitoring required

Kairak/ Kerevat  
Oil Palm  
Approved

Does not require FCA.  
West New Britain

Biälla  
Lolobau Island  
Cocoa, Kamarere  
Approved  
Pending  
Need EIA  
Talasea  
Aria Vanu Block 2  
Cocoa  
Pending  
Pending  
Awaiting receipt  
New Ireland

Namatanai  
Danfu  
Cocoa  
Approved  
Approved  
Project Monitoring required

Central Namatanai  
Cocoa  
Approved  
Approved  
Project Monitoring required  
Western

Balimo  
Kuria Emeti  
Cocoa, sago, rice rubber, cashew, vanilla, rosewood,  
Pending  
Pending  
Project assessment in Progress

Of the list provided there are nine (9) integrated projects that are within the 75 SABLs as contained

in the initial C.O.I.'s Terms of Reference. It was obvious that the initial TORs did not adequately capture a true reflection of FCA affected SABLs in the country especially pertaining to integrated agriculture projects by the DAL as indicated by the above list.

### 3.10.6 Constraints Faced By DAL

#### 3.10.6.1 DAL and Its Lack of Control over Provincial Agriculture Officers.

A handicap faced by the DAL is that it does not employ and therefore has no control over Agriculture officers in the provinces who are full time workers employed by the Provincial Government. These workers answer to the Provincial Administration. As a result some Provinces perform better than others in facilitating and monitoring agriculture projects conducted in SABL areas.

#### 3.10.6.2 Lack of Resources.

Senior officials of DAL gave evidence to the C.O.I. that the department faces shortage of funds to send its officers out to the field to inspect and report on progress of the proposed projects to be conducted in SABLs. This in the C.O.I.'s view is a perennial excuse used by the bureaucracy at large and does not excuse lack of diligence by DAL within their allocated budget. It may also be due to the lack of coordination between DAL and the agriculture

sector workers employed by Provincial Governments through the Divisions of Primary Industry.

#### 3.10.6.3 Lack of Coordination among Lead Agencies Responsible For SABLs.

In sworn evidence Mr Daink told the C.O.I. that Developers and resource owners submit Land Development Plans and project submissions directly to DLPP when submitting their applications for registration of SABL. DAL is not consulted during that process. A serious consequence of this is that huge tracts of land found within the boundaries of SABLs are in fact unsuitable for agriculture due to adverse topographical features such as rugged terrain and steep slopes, swampy waterlogged land and generally infertile soils not able to sustain agriculture.

Another serious consequence of lack of coordination was mentioned earlier in regards to discovery of serious issues of land shortage which were only discovered during the public hearings conducted by DAL and related government agencies after grant of SABL title by DLPP. How these issues were missed in the initial information gathering and public consultations carried out by Lands officers conducting LIR is indicative of failure to consult widely. It goes against section 10 (3) of the Land Act, 1996 which states that the Lands 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..."

#### 3.10.7. Misunderstanding by DAL that Logging Done to Raise Funds for Agriculture Projects in SABLs.

A common trend seen by the C.O.I. throughout PNG is the fact that developer companies are not registered with IPA as companies that carry on agriculture. Yet DAL does not see any problem in issuing certificates of approval for large scale agricultural projects to such operators. Part of the explanation for this serious oversight may be gleaned from evidence given by Mr Daink. Specific

questions were put to Mr Daink about such situations in West Aitape (Vanimoy Jaya) and Mulkus Melkoi or Rera Holdings in Pomio (DD Lumber Company) where both developer companies were registered with IPA as purely logging companies. Daink told the C.O.I. that “.... they are loggers and they have to show some sort of arrangement with a reputable agriculture firm to go into some sort of arrangement while the other is logging, the other firm looks after the agriculture component.”

Taking advantage of this very much mistaken view held by DAL, developers involved in SABL are stalling the agriculture projects using lack of sufficient funds as an excuse. The Forestry Act under section 90A (3) (d) requires applicants for FCA to provide to the Managing Director of PNGFA details of costs involved and proof of financial capacity certified by a bank.

### 3.11 Application of the Land Groups Incorporation Act

The Land Groups Incorporation Act 1974 (Chapter 147) had been in force until amended by the Land Groups Incorporation (Amendment) Act 2009. The amendment was mainly to expand corporate responsibility of the members and executives of all Incorporated Land Groups (“ILG”).

The obvious salient feature of the ILG is that, it is a corporate entity bearing all characteristics of an incorporated corporation with capacity to sue or be sued; acquire, own and dispose of both personal and real properties, enter into binding contracts, and open to prosecution for offences and non-compliances. However, ILGs are not governed and regulated by the Registrar of Companies which is the qualified and competent authority with supervisory and regulatory powers of administration and enforcement of compliances by all incorporated entities. ILGs are instead supervised and regulated by the DLPP through its Land Groups Incorporation Division.

This is probably because of the nature of interests represented by ILGs in customary land.

The centralisation and administration of all aspects of the SABL process combined with the statutory powers under the amendments in relation to the processing and registration of ILGs to DLPP raises very serious issues in our view over the apparent lack of independent vetting and processing of SABLs.

Section 34D of the Land Registration Act as amended implies that only customary landowners through an ILG can apply for registration of ownership of customary land. It is not clear if any individual customary landowner or a group of clans in shared ownership or in sharing agreement, or any other form of recognised customary group can apply for registration of a customary Land.

Once an application is made for registration and the processes had been concluded including verification of registration plan under Section 34H; publication of registration plan under Section 34I, and final registration plan under Section 34J, registration of the land is effected under Section 34K and title is issued under Section 34L of the Land Registration Act.

Section 34N of that Act, states that once registered the customary land ceases to be subject to customary law.

We note that an ILG must seek approval of any dealings in its registered land under Part XVII of the Land Act (Approval of Dealings) unless the transaction between the ILG and its members, whether

corporate or unincorporated.

The inevitable question then arises as to the effect of registration of customary land with its accompanying registered title over customary land in relation to which application for a SABL is made pursuant to Sections 11 and 102 of the Land Act.

This is a question dealt within our discussions under Part 4 of this Report in reference to TOR (h).

The distinction however between SABLs and registered customary land under Amendment No. 21 of 2009 is clear: SABLs are acquisitions of customary land with the State as the intermediary for the use of the customary owners of those lands themselves or any other entity of their choice while Registered Lands under Amendment No. 21 of 2009 are directly acquired through that process for the benefit of all the members of the clan who are owners of these lands.

It suffices to say that both the Land Registration (Amendment) Act, 2009, and the Land Group Incorporation (Amendment) Act 2009 do not expressly harmonise with Sections 11 and 102 of the Land Act affecting SABLs and for that matter other forms of acquisition of customary land including „by agreement? and by „compulsory process? under sections 10 and 12 of the Land Act respectively.

### 3.12 Application of the Investment Promotion Act 1992

The Investment Promotion Act will apply to SABL interests where foreign investors are involved as is the case with most SABLs.

The foreign investor needs to be registered as foreign enterprises and have to meet the other requirements of the Investment

Promotion Act 1992 especially as to foreign enterprise certification.

The Investment Promotion Authority (IPA) has no specifically defined role insofar as the SABL is concerned other than in the performance of its regular statutory role in regulating and monitoring statutory compliance.

The other context in which the IPA may be involved is through the Office of the Registrar of Companies in terms of regulating the legal status of companies.

#### 3.12.1 Extent of IPA's Role in SABLs

Unless the intended business activity of the entity is known to IPA, IPA has no additional role other than to simply perform its statutory functions under the Investment Promotion Act, Companies Act, Business Names Act and Associations Incorporation Act.

In the case of foreign enterprises entering the country with the express intention to participate in large scale agro-forestry or commercial projects as developers either on their own or in partnership with customary landowners on SABL, the IPA's role as the regulator and monitor of foreign enterprises is significant such as ensuring that the foreign owned companies are or have the necessary resources and expertise to undertake the business locally, and are specifically registered and issued a Foreign Enterprise Certificate.

The other context in which the IPA can play a role in the development of an SABL in a more involved manner would be in the promotion of investment because of an approach by foreign investor as was the case of the Mekeo Hinterlands Holdings Ltd.

### 3.13. Administration of Companies Act in SABLs

The Companies Act applies in terms of regulating the legal status of companies and monitoring statutory compliances.

The C.O.I. found the majority of the SABLs were issued in favour of landowner companies and about four SABLs were issued directly in favour of foreign registered companies or PNG incorporated companies with foreign shareholdings sufficient to attract the regulatory requirements for compliance to carry on business in PNG. One or two actually sold out to foreign companies.

The landowner companies were incorporated under the Companies Act.

The C.O.I. considers it not to be of great imperative to determine the full provisions of the Companies Act applicable to landowner companies and therefore refers the report recipientsto look up the Companies Act.

It suffices in brief to state that all landowner companies are required to comply with the requirements of the Companies Act except where exempted by the Companies Registrar from some requirements relating especially to annual returns and annual reports. Otherwise all landowners, directors and managers must ensure compliance with all requirements of that Act.

In the landowner companies? involvements as title-holders to their respective SABL they must adhere by company law in entering into contracts or agreements especially Lease or Sublease, management, financial, projects development, and other types of agreements. They must also comply with the requirements for shareholders approval where a proposed debt or liability constitutes a major transaction affecting risk exposure over company assets of over 33%. No company directors can commit the company to such major transactions without shareholders approval under Section 110 of the Companies Act 1997. This aspect of company management, especially where landowner companies hold titles to SABLs is crucial because their assets include, if not entirely, the SABL and all the natural resources occurring upon them. In the event of inability to discharge the debt, the SABL and its entire natural resource can be lost to the creditor who in nearly all instances involving SABLs areforeignentities or entities other than landowners. Customary land can be lost in this process.

In the case of foreign registered companies or PNG incorporated companies with foreign shareholding and control, they must duly register their proposed business activities to be carried on in

PNG. In that respect if among the registered businesses it involves SABLs, there is no law regulating their business activities except in accordance with the Forestry Act, Mining Act, Oil and Gas Act, Fisheries Act, Environment Act, and Conservation Act.

The C.O.I. noted that, there is no special provision in all laws regulating specific features of SABLs

where foreign entities are to be involved covering-

- \* subleases;
- \* development types and targets;
- \* investment capital ratio based on value of SABL land and natural resources found upon them and their capital to be invested.

### 3.14. Extrinsic Matters Affecting the Administration of SABLs Generally.

#### 3.14.1. Introduction

The C.O.I. consider it extremely important to address matters of extrinsic nature and not necessarily arising from policy, legislation and administrative mechanisms, but largely people created and people related, notwithstanding the existence or otherwise of policy, legislation or administrative procedures pertaining to SABLs.

This C.O.I. is cognizant of PNG being rated highly among the corrupt countries in the World. Corruption of the nature of official graft is the single largest measure of level of corruption in any society. This C.O.I. would be lax in not addressing this issue and indeed TOR(d) directs us to determine this aspect.

#### 3.14.2. Integrity of Officials of the Principal Agencies of the State Affecting SABLs.

No direct evidence was adduced or presented to the Inquiry whether or not any officials of the principal State Agencies was engaged in graft and corruption in the processing of and the eventual grant of SABLs.

Near inferences from this inquiry have however been drawn where instances were noted of the DLPP officials particularly involved in the "awareness" and "land investigations" exercises who may have placed themselves in compromising positions when allowing proposed developers to fund their expenses on these exercises.

The saving grace however for many of these officials from being deemed as compromised is the fact that the State through the DLPP has not provided adequate funding in the national budget to meet the costs of these exercises. In the circumstances therefore, when especially pressured by the customary landowners and accompanied with lack of or no funding, the DLPP officials, both at Provincial and National levels, proceeded to carry out land investigations and awareness program funded

by entities other than the government and in most cases funded by developers of the project.

The C.O.I. noted that some Provincial Governments, such as the East New Britain Provincial Government, took greater interest and actually made provisions in its annual budgets the funding for these exercises under universally adopted development policy combining land mobilisation with infrastructure and economic development.

In some instances however, inferences from very strong evidence suggests that not only the DLPP officials but landowner companies and ILG executives have been compromised. These will be noted in instances where grants of title were made directly to foreign entities (developers) as well as where transfer of shares of the SABL title holding company to other or foreign entities resulted

with control of title to be in foreign hands. In other instances also the terms and conditions entered into in the SABL Sublease Agreements particularly with the foreign developers had the effect of the SABL title being in the name and control of foreigners. The names of such individuals appear in the individual SABLs reported under Annexure "1".

In respect of Forestry (PNGFA), many FCAs were issued in questionable circumstances. Many of these FCAs issued, were not supported by authentic, verified and approved agriculture development plans. Even if these FCAs were supported by properly approved agriculture development plans, during the operations in many instances it had been noted that the operators or developers departed or digressed from the approved agriculture plans.

In other instances, the proportionate agriculture development phased out per every 500 hectares maximum area over which clear felling of forests can take place, it has been noted that FCAs were nonetheless given and logging generally continued into areas not immediately within the 500 hectares phases but over the whole areas of SABLs.

### 3.15 Summary

Our deliberations in this Part of the Report are self-explanatory in the existence and non-existence of both legislative and administrative procedures for the administration of SABLs.

Run-down oil palm nursery, Bewani, Sandaun Province

## PART 4

### 4. EFFECTIVENESS OR OTHERWISE OF EXISTING LEGISLATION AND POLICY FRAMEWORK IN RESPECT OF SABLs AND ADMINISTRATIVE MECHANISMS FOR ADMINISTRATION OF SABLs IN THE IMPROVED

## MANAGEMENT OF SABLs IN FUTURE.

### 4.1. Introduction

This part is in respect of TOR(h) which instructed us to examine the existing legal and policy framework in the improved management of SABLs in future, including facilitating the application for legitimate applicants.

We understood it firstly that TOR (h) requires the C.O.I. to inquire and assess the effectiveness of existing legal and policy framework inclusive of practice and procedure or processes relating to application, processing, registration and granting of SABL leases and the subsequent development and management, administration and management of SABLs in accordance with current law and policy.

Secondly, if upon our inquiry and assessment we found the system to be ineffective, then we were to recommend changes to the system with a view to improving management of SABLs in future, particularly in the facilitation of application of SABLs from legitimate or genuine applicants and thereby restoring confidence

and trust in the integrity of the SABL application, processing, granting and development and management.

If we are to provide a complete assessment apart from stating our findings we will repeat ourselves. Therefore we decided that we convey our findings which in effect are our assessments as to the effectiveness or otherwise of the policy, legislative and administrative framework for SABLs.

In this Part of the Report the C.O.I set out its findings inclusive in the succeeding sub-paragraphs of the Report.

As no evidence on Policy was given during the C.O.I. hearings, apart from evidence from Ambassador Donigi and Mr Warwi from NLDP the C.O.I address this aspect first.

### 4.2. Findings on Policy

Land acquisition for purposes of development has been a government scheme since 1979 when Special Agricultural and Business Leases (SABLs) were created within Sections 11 and 102 of the Land Act 1962 and subsequently became the Land Act 1996 as stated in the Statement of Case (Refer to Appendix 1). The intention of the post-independence government of Papua New Guinea was noble and well-intended but it has been left unchecked allowing it to be abused by forces that are beyond landowner's capacity to cope.

Again, as stated in the Statement of Case successive governments used the SABL scheme as a means to increase economic activities and empower the local communities in Papua New Guinea to engage in development of the country by providing customary landowners with a form of formal land title, state lease and documentation necessary to lease their land for development purposes. Through issuance of SABL communities were expected to benefit through rental payments, employment opportunities, and increased social services and infrastructure but in the late 1990s and early 2000 onwards it became controversial when foreign business interests took advantage of

the scheme under the Land Act 1996 and acquired up to 99 years leases through SABLs.

SABL approvals have increased at a high rate resulting in over 5.2 million hectares of customary land acquired for commercial use at the end of April, 2011. This appears to have been triggered by the 2001 and 2007 amendments to the Forestry Act with the introduction of new sections 90A & 90B facilitating for Forest Clearance Authorities (FCAs) to interface with Agriculture Projects in forested areas, and the apparent abuse resulting from the bypass of stringent forestry regulations by forest exploiters in the guise of agricultural business development prompting the Government to review the SABL scheme hence the establishment of the C.O.I.

Be that as it may, currently there appears to be a total void in a cohesive policy in respect of dealings in and over customary land.

The issue arises as to why there has been no serious policy development with resultant legislative enactments to facilitate customary land mobilisation. The answer lies, it seems, in the trend, in the political, social and economic development of Papua New Guinea which has shifted its focus away from the FIVE (5) PILLARS OF DEVELOPMENT stated in our Constitution (Five National Goals and Directive Principles).

The Five (5) PILLARS OF DEVELOPMENT<sup>13</sup> are:

- \* INTEGRAL HUMAN DEVELOPMENT.
- \* EQUALITY AND PARTICIPATION.
- \* NATIONAL SOVEREIGNTY AND SELF-RELIANCE.
- \* NATURAL RESOURCES AND ENVIRONMENT.
- \* PAPUA NEW GUINEAN WAYS.

All of the five (5) Pillars of Development directs all levels of leadership in PNG to drive development ultimately for the benefit of Papua New Guineans not only in the abstract but for every citizen to be personally and integrally developed in being educated and being healthy so they themselves will drive the other 4 Pillars of

<sup>13</sup> See the Preamble to the Constitution of the Independent State of Papua New Guinea on the National Goals and Directive Principles

development. Ultimately the final Pillar (Pillar No. 5) is to achieve "Papua New Guinean Ways."

Land being integral to any development, and as in the case of PNG with 97% of the land being customary land, the lack of cohesive policy development and implementation in relation to customary land is sheer negligence by successive Governments since Independence.

True to the trend of development in digressing from the five pillars, emphasis had been too

strenuously in favour of foreign investment without careful and firm direction for such investments to meet the fivepillars; not just one or two but all of them conjunctively. Nearly all minerals, arable agricultural land, forests, fisheries, flora and fauna are within and upon customary land.

If we are to achieve all developments by the guidance of the fivepillars, by virtue of customary ownership of land, greater participation by our citizens will be assured. Citizens who are the owners of the vast land mass of PNG and in relation to whom the fivepillars of development were issued as a direction to our leaders under our Constitution.

The ownership of that land mass must therefore be recognised and the application of the fivepillars of development must be integral to the exploitation of that land mass in agriculture, minerals, oil and gas, forestry, fisheries and other developments. To ignore that ownership is to ignore our integral human development, equality and participation and sovereignty and self-reliance.

PNG is not going to be a strong nation if the first Pillar of “Integral Human Development” is not realised. PNG is not going to be a strong Nation and one built on foreign domination of commerce and foreign control of a large part of its wealth. The C.O.I. firmly believe that to commence the journey to a strong and vibrant PNG, the Government of the day here-onwards must address itself to an in-depth Policy Development to mobilise much of the customary land.

Again the word “mobilisation” must not be used in the abstract. In this C.O.I.’s view the word “mobilisation” must be used in the context of bringing the mass of Papua New Guineans who own customary land by use of their land to enter, participate and benefit substantially in the market economy as opposed to subsistence economy.

In the course of the Inquiry the C.O.I. was confronted by one unmistakeable cry from the vast majority of the rural population of PNG. That is:

“We want development!”

All too often this unmistakeable cry is expanded to accuse successive Governments at all levels for having failed to develop transport, education and health infrastructure with the rural areas lagging far behind in quality health and education services delivery in addition to lack of economic development of their areas despite abundance of arable agriculture land, forested areas, fisheries both inland and oceans and of course minerals, oil and gas. This cry is an indicator that a large scale policy development on mobilisation of customary land is

long over-due. This cry however is saddled with this insistence that there will be no alienation of customary land by either the State or individuals. This Policy development therefore must embrace these wishes universally.

Instances Highlighted by C.O.I. SABL Inquiry

The C.O.I. therefore highlights some aspects encountered in the course of its Inquiry as guidance in the prospect of a large scale Policy development of the customary land mobilisation.

#### 4.2.1 SABL

The majority of the rural people want to retain the SABL structure in the mobilisation of their land. However they would like to see legislative enactments in place to ensure two fundamental preserves including:

(i) Integrity in the official processing of the issuance of and grant of SABLs

(ii) a high standard of commercial ethics to be imposed not only on outside developers but on the landowners in commercial dealings over SABLs.

They also want the current provisions of the Land Act and its related legislation reviewed to simplify, yet ensure integrity in the official process and achieve high business ethics between the land owners and developers.

Ultimately the majority expressed support for the SABL type lease arrangements to be retained but those affected by serious irregularities including questions of integrity of the process by public officials, developers and landowners alike and unconscionable business ethics to be nullified and cancelled. They want all compulsory acquisition powers to be rationalised so that it occurs only for construction of public infrastructures. No compulsory acquisition should be made to later vest in another person or corporation, both citizens and foreigners alike for private use.

#### 4.2.2. Ownership of Natural Resources To Be Primarily Recognised As Being Owned By Customary Landowners.

Most customary landowners demand to be recognised by law (as they are already by customary laws) as owners of all natural resources growing or found on their land.

On this aspect the landowners insist that any major policy development in the mobilisation of customary land must address the issue of ownership of natural resources seriously.

In this regard we note that the ownership of natural resources varies from resource to resource. Minerals by law are owned by the State (inclusive also of oil and gas). Forestry is owned by the customary landowners whose ownership is affected by the State's regulatory and licensing/permit powers and fisheries ownership is determined by the waters in which they occur.

#### 4.2.3. Workable Corporate Models for Customary Landowners To Be Involved In SABLs.

The next expressed desire of the customary landowners is for workable corporate models to be used by them in mobilising their land. They are mostly aware of such legislation as the Land Groups Incorporation Act and Business Groups Act. They are somewhat satisfied with particularly the Land Groups Incorporation Act as the enabling legislation for a corporate vehicle to be used in SABL arrangements.

Some have expressed that individual customary landowners should also be allowed to have SABLs processed in their favour. Whatever the corporate vehicle used, most are insistent that the entity to whom a SABL grant is made must be one approved by them and this approval can only be clearly obtained during land investigations.

### 4.3. Donigi Plan

A submission under the general title of “Donigi Plan For Unlocking Customary Land.” was made by Ambassador Peter Donigi<sup>14</sup>, to the C.O.I. presided by Commissioner Jerewai on 15th November 2011 at 10:30 a.m. Also in attendance at the presentation of the submission was assisting counsels Ms Mayambo Peipul and Ms Avia Koisen. (The submission is available in the Transcript of Proceedings dated 15th November, 2011 and can be obtained from the C.O.I. Secretariat.)

14 A senior lawyer admitted to practice as a lawyer of the Supreme and National Court of PNG, an academic and the past President of the PNG Law Society.

Ambassador Donigi argues that in his view poverty currently suffered and will continue to be suffered by Papua New Guinean automatic citizens is created by lack of property rights. This has rendered PNG a Nation of people with land endowed with very rich natural resources, yet are very poor and live at poverty level.

Donigi argues that if we develop a legal system where we encourage property rights, we will then remove poverty overnight.

Donigi argues that successive Executive Governments in PNG have ignored the 5 Pillars of Development (5 National Goals and Directive Principles pronounced in our Constitution). He argues that “economic rationalisation” had been the preferred approach rather than “economic nationalism”. As Papua New Guineans do not have two things important to enter the market economy, namely CAPITAL and EXPERTISE, we cannot compete in trade both domestic and internationally. With “economic rationalism”, Donigi argues, we engage for instance in privatisation which sees foreign or non-automatic citizens taking over National businesses and as an example, he cited the take-over of Papua New Guinea Banking Corporation and other State Statutory Corporations. Donigi argues that, had successive PNG Governments braved it out against the demands by International Lending Institutions such as International Monetary Fund (IMF); World Bank (WB); Asian Development Bank (ADB) for “economic rationalisation” and stuck to their guns with developmental approach of “economic nationalism”, the majority of automatic citizens of this Country would not face a bleak future living in poverty as they do now. This situation he argues had rendered our citizens to the status of being mere spectators watching their natural resources being devastated by foreign capital and expertise. All

these have come about because successive Executive Governments of PNG have not legislated to create property rights for automatic citizens, many or all of whom own or share ownership rights and interests in customary land in PNG comprising altogether 438,900 hectares out of the total land mass 462,000 hectares.

Because of this lack of property rights, ultimately the National Goals and Directive Principles of development as enshrined in our Constitution have not been achieved after almost 40 years of the Nation's Independence. He argues, that is why, today we see major international trade remain firmly in foreign hands involving our nation's natural resources.

#### 4.4. The National Land Development Policy Perspective (NLDP)

Evidence was given by Mr. Ezekia Warvi from the National Research Institute (NRI). He is on secondment to the National Land Development Program (NLDP) as Interim Program Manager. He therefore represented both NRI and NLDP. He presented publications including studies, monographs and other papers showing a great amount of data on the Nations ongoing land reforms as well as details of the Concept Design Documents (CDDS) that create and underpin the exercises undertaken by NLDP.

In Mr. Warvi's evidence he emphasized that the NLDP is intended to implement reforms to facilitate national development in PNG. The NLDP and DLPP are distinct in that the DLPP is a Government Department while the NLDP is a committee composed of representatives of the NLDP implementing agencies. The quality of the NLDP exercise is guided by regular inputs from the NRI.

According to Mr. Warvi's evidence the "NLDP's mission is to facilitate national development through the vehicle created by amendments to two laws, namely ILGs under the Land Groups Incorporation Act(as amended) and voluntarily registered customary land under the Land Registration Act (as amended) particularly Amendment No. 21 of 2009. NLDP's focus, it was stated, is to empower customary land owners. Mr. Warvi said the legal frameworks created by these two laws in tandem provided the vehicle for broad based, long term rural development. In his submission, voluntarily registered customary land is an option by which customary land is accessed for national development, through the initiatives of customary landowners themselves. The NLDP in institutionalizing customary land by this process ensures, he submits, protection from being deprived of their land. Mr. Warvi submits that we should appreciate in that context the parity with PNG Vision 2050, 2010– 2030 Development Strategic Plan (DSP) and the 2011–2015 Medium Term Development Strategic Plan (MTDS).

It appears to Mr. Warvi that the NLDP is struggling to find traction due to a myriad of reasons which includes: Lack of clear leadership; Lack of structure; Lack of proper institutionalization; Lack of budget support generally and also for its oversight track; Lack of ownership by DLPP as the key and lead implementing agency. Therefore it is his considered view that the Government can seize the opportunity now and endow the NLDP with its proper status and preeminence. One need only peruse PNG Vision 2050 and its two implementation plans [2010–2030 DSP and 2011–2015 MTDP] to appreciate that the NLDP's programs is indeed the vehicle by which some critical outcomes in the 2010–2030 DSP and 2011–2015 MTDP will be realized.

Abuses over SABL are being perpetuated under the guise of organizing and utilizing customary land for economic development, which of course is NLDP's general term of reference Mr. Warvi added.

#### 4.5 SUMMARY

There is no cohesive policy on customary land mobilisation. The existence of SABL provisions in law are at best to be described as a scheme of convenience to access agriculture land and the other natural resources occurring upon them. It is not based on carefully principled ideals and considerations which must be for the benefits to the customary landowners.

The NLDP submissions do not point to clear policy development paths. There is therefore, an urgent need to develop an in-depth National Policy on commercialisation of customary land with the primary objective that the customary owners benefit substantially.

The regulation and administration of the processes must not be for the administrative convenience of the politicians and bureaucrats alike but for the people's benefits.

In the absence of any clear policy in respect of SABLs or generally the mobilisation of customary lands, the C.O.I., proceeds on to make its other findings

4.6 Findings on the Effectiveness of Legislation in the Administration of SABLs. (Absence of Regulations Providing for the Processing of Acquisition under Section 11 and Grant of Lease under Section 102 of the Land Act.)

In respect of Legislative framework for SABLs the C.O.I. makes the following findings:

(1) Provisions under Sections 11 and 102 of the Land Act are good law, although as will be noted, lacked in the procedural provisions for their implementation.

(2) No Regulations were made by way of sub-ordinate legislation in the manner empowered under Section 175 of the Land Act, specifying procedures to be followed in effecting acquisitions of customary land under Section 11 and the subsequent grant of SABLs under Section 102 of that Act.

(3) It is assumed the procedures followed both for the purposes of Sections 11 and 102 as explained by DLPP through Mr Romily Kila Pat may have been by way of "departmental instructions<sup>15</sup>" although unclear as to whether it originated from the Head of DLPP, the Minister for Lands or the National Executive Council (NEC).

<sup>15</sup>"Departmental instructions" is a subordinate legislation and if not in conflict with its enabling law, has the same force and effect of a law.

(4) Such procedural provisions whether by way of Regulations made pursuant to Section 175 of the Act or by way of "departmental instructions" must be for the purpose of \_

(i) Preserving the integrity of and authenticity of such acquisitions and their subsequent SABL grants; and

(ii) Regulate the operations of SABLs after the grants.

(5) Provisions under the Land Registration Act make no distinction between SABL types and other State Leases and instruments and hence no provisions have been made separately for SABL registration purposes except under Section 98 of the Land Registration Act 1981. Under Section 98 a SABL grant may be registered in the name of the custodian as a trustee for the customary owners. Otherwise, all dealings in SABLs after grant are treated in the same manner as all other State Leases.

(6) The Land Registration (Amendment) Act 2009 (No. 21 of 2009), as enacted for the registration of customary land has no relation to SABLs created under Sections 11 and 102 of the Land Act, although some may converge or overlap.

Customary Lands registered under Amendment No. 21 of 2009, and SABLs created under Sections

11 and 102 of

the Land Act are distinct and separate and stand parallel and independently of each other.

(7) With the exception of Agriculture, most other facets of SABLs in their operations attract the respective regulatory compliances including in respect of survey (Survey Act 1969); physical planning (Physical Planning Act 1989); forests (Forestry Act 1991); environment (Environment Act 2000 and Conservation Areas Act 1978); land groups (Land Groups Incorporation Act Chapter 147) and corporate responsibilities (Investment Promotion Act 1997 and Companies Act 1997).

Application of the requirements of all other Acts and Regulations in respect of different facets in the operation of SABLs are mostly by subsumation (inclusion) but not connected expressly by reference in their provisions except forestry.

(8) Agriculture being among two (2) of the purposes for SABLs is, to say the least, negligible in its legislative mention throughout all legislations with itself not at all being governed by any law significantly to ensure it is carried out in its development and not be merely used to access natural resources found on SABLs. (Refer discussions in Part 2).

Legislations in respect of Commodity Boards regulate narrowly the particular crop or agricultural product

especially in quality control and export regulatory practices and are irrelevant in actual agriculture developments including those carried on or proposed to be carried on upon SABLs.

(9) Customary lands had been lost along with the natural resources found on them including temporary losses (i.e. within the specified term of Sub-leases) because there is absolutely no provision in the Land Act governing Sub-leases derived from SABLs as to the term of sub-leases, rents, development conditions, breaches and penalties, to name a few.

(10) Section 11(1) and 102(1) of the Land Act give respectively a discretion to the Minister to lease customary land and to grant title to such a lease. This discretion should be made subject to Section 102 Sub-section (2) so that that discretion is exercised by the Minister only at the option of the customary landowners.

(11) The involvement of the Custodian of Trust Land is vague in respect of processing of SABLs, in particular Certificates of Alienability although the C.O.I. finds that such certificates are for the time being required in the processing of SABLs in leases under Section 11 and grants under Section 102 of the Land Act.

(12) Any dealings in respect of customary land including sale and transfer, leases, securities including mortgages

charges and liens, pledges, and any other dealings whatsoever in contravention of Section 132 of the Land Act is null and void.

4.7. Findings on the Effectiveness of Administrative Procedures Followed In Accordance With Legislation In Processing SABLs and Operations of SABLs.

4.7.1 Initiation of Processing of SABLs.

The C.O.I. finds the following:

(1) Except for the State sponsored projects such as the Changhae Cassava Project in Rigo, and the Mekeo Hinterlands Rice Project, both in Central Province, most SABLs were initiated by the landowners jointly with foreign investors except for a few such as Akami Oil Palm Limited in West New Britain and urban related SABLs such as Veady, Konekaru 1 & 2 and Roselaw in the National Capital District.

(2) Nearly all the SABLs in the rural areas throughout PNG in relation to which agriculture developments were proposed, had large forested areas with trees of highly merchantable value.

(3) Nearly all if not all SABLs involved in agriculture development have in their capital investments the component

to be generated locally through commercial disposal of forest products particularly export of whole logs.

(4) In almost all initiated projects involving SABLs they do not arise from any co-ordinated National Agriculture Development Policies such as "corridors of development".

(5) DLPP merely responds to request by customary landowners to process SABLs over their customary land.

#### 4.7.2. Funding of Processing of SABLs.

(1) It was apparent in the course of the Inquiry that no annual budgetary provisions were made in both the National Annual Appropriations (National Budgets) and Provincial Annual Appropriations (Provincial Budgets) except perhaps for the East New Britain Province, to meet the costs for processing of SABLs.

(2) Because of lack of funding in the budgetary provisions, the costs of processing of SABLs involving proposed agriculture developments were largely, if not entirely, paid by the foreign developers including survey costs, mobilization costs to assemble landowners, subsistence costs, costs of registration of ILG's, costs of land use and agriculture plans, and costs of incorporation of landowner companies (lancos).

(3) In some cases the foreign developers also paid the costs of travel, accommodation and travel allowances for DLPP and Provincial Department officials.

(4) The funding considered at both the National and Provincial levels of Government is negligible and in most cases, grossly inadequate.

(5) The landowners themselves in most SABLs had absolutely no cash capital and were extremely vulnerable to manipulation which involve cash advances of every nature from the foreign developer to the heads of ILG's, Lancos and Umbrella Lancos, such that these heads of land owning groups no longer deal with the developers at arms-length but are instead placed in debt and feel deeply indebted to the developers. This resulted in representatives of landowning groups, having a deep sense of indebtedness to developers/investors which compromised particularly the negotiations of

the sub-lease agreements and the benefits to be derived from benefit sharing agreements.

(6) The lack of funding by the State have placed Government officials also in vulnerable positions to an extent that they easily compromise their positions especially when developers offered to pay for the cost of carrying out land investigation and awareness programme. The C.O.I. finds that in most instances the reports and recommendations made by the Government officials are in favour of the developers with no proper consent obtained from the

landowners, erroneous land boundary descriptions and generally unethical manipulations both between the developers and landowners and between developers and State officials.

4.7.3. Findings on the Effectiveness of Administrative Procedures for the Processing of SABLs for Lease/Lease Back under Sections 11 and 102 of the Land Act.

(1) The procedures as set out by Mr Kila Pat for processing of SABLs for the Section 11 Lease from customary landowners to the Section 102 Grant of title by the Lands Minister and issue of official Title by the Registrar of Titles were never made to be Subordinate Legislation by the rules of Subordinate Legislation including:

- (i) Regulations made by instrument by the Head of State acting on advice pursuant to Section 175 of the Land Act; or
- (ii) Departmental Instructions,

both of which would have the effect and force of law.

(2) The steps from (3) to (5) as set out by Mr Kila Pat for processing of SABLs including respectively are:

- (i) Lodgement of Lease-Lease Back application
- (ii) Issuance of Land Instruction Number by DLPP; and
- (iii) Land investigation upon receipt of Land Instruction Number after the survey had been carried out over the land, a survey plan is lodged with the Surveyor General, and after it is approved.

This is highly undesirable as the boundary of the customary land to be included in a particular SABL are among matters which can only be determined in the course of land investigations and therefore a survey plan should be registered only after the land investigations have been concluded and Land Investigation Report had been presented and accepted by the Provincial Administrator.

(3) The DLPP does not have a formal or standard application forms to be used in applications for Lease/Lease Back.

(4) The most important of the primary procedures, in the C.O.I.'s assessment, being procedures to ensure full awareness and understanding by the landowners and based on which they consciously consent to the surrender of their land for the purpose of the proposed SABL. The C.O.I. finds no procedures put in place by DLPP guiding the actual land investigation to be conducted, and a report of which will later be compiled in the Report (LIR).

(5) There is no central coordination to ensure that land investigations are carried out in collaboration with other State Agencies including Departments of Agriculture & Livestock (DAL), Environment & Conservation (DEC), PNG Forest Authority (PNGFA) (where forests operations are to be involved), Mining (where mining is to be involved) in the conduct of public hearings.

(6) With the majority of SABLs located in the rural PNG and all of them were processed for the purpose of Agriculture Development, the DAL was found not to be the lead agency involved in the processing of SABLs in association with DLPP. DAL instead only acts on submissions on agriculture development plans or other land uses for certification.

(7) DAL demonstrated little or no monitoring of the progress in agriculture developments after the grant of SABLs.

(8) There are otherwise no problems or defects with the remaining procedures outlined by Mr Kila Pat up to the grant of title for SABLs.

(9) The procedures undertaken after the grant by the Registrar of Titles are standard as followed in respect of all dealings in State Land.

(10) The security of the files specifically affecting titles had been a big issue at the commencement of this Inquiry with both the DLPP and the Titles Registry failing to explain the

whereabouts of 75% of the SABL files taking over three weeks to produce most with the C.O.I. proceeding without the services of four or five SABL files. In short for the moment these files are insecure from loss.

(11) Although direct evidence was not given, the C.O.I. noted very strong inferential evidence during the Inquiry into individual SABLs throughout the Provinces that extrinsic matters affected the processing of SABLs including conflicts of interest, compromising conducts and possible frauds involving landowners, developers, Provincial officials, DLPP officials, Forestry officials and DEC officials. These extrinsic matters in the C.O.I.'s view are part of the more universal problem of graft and corruption in PNG.

(12) It is noted that the procedures followed in processing of SABLs were followed in the same process or with other acquisitions such as acquisition by Agreement by the State under Section 10 of the Land Act.

(13) In all fairness, the DLPP must be commended as an organisation (leaving aside individual official's indiscretions) for being innovative in the absence of procedural provisions of law in dealing with SABLs.

#### 4.7.4. Findings on the Effectiveness of the DLPP Proposed New Administrative Procedures in the Processing of SABLs.

(1) The proposed new administrative procedures in the processing of SABLs noted from the evidence of Mr Adrian Abbyagain showed it was not intended to formally enact them into a Subordinate Legislation. The new procedures are not based on Subordinate Legislation and therefore do not have any legal basis for the time being.

(2) The proposed new procedures were developed as a reaction to the complaints over the existing procedures in processing SABLs and it seemed, after the commencement of this Inquiry.

(3) Assuming if the proposed new procedures for processing of SABLs will be made Subordinate Legislation in one form or another, the C.O.I finds the proposed new procedures to be cumbersome and imposes upon customary landowners stringent regulatory requirements as pre-conditions to both an application for a lease by the State under Section 11 and a lease-lease back (grant) under Section 102 of the Land Act and is impracticable and will defeat the primary objective of SABLs. In the C.O.I.'s view, those stringent regulatory requirements should be imposed on persons or entities, both PNG citizens and corporations and foreign investors who propose agriculture or other businesses to be conducted upon the SABLs and that the Subleases of SABLs to them for

those purposes shall not be approved until the pre-conditions are met. These preconditions the C.O.I. noted are as in Mr Adrian Abby's affidavit evidence as follows:

- \* Approval for Land-use Plan.
  - Minor Impact Project
- \* Major Impact Project
- \* Demonstration of Capital and Expertise (C.O.I. suggestion)

(4) The evidence of the proposed new procedures for processing of issuance of SABLs given by Mr Abby makes no reference to the Land Registration Act 1981(as amended by Amendment No. 21 of 2009), in particular the procedures for registration of customary land, and the C.O.I. is therefore convinced beyond doubt that it was intended that the two processes for acquiring title to customary land namely the SABL process under Section 11 and 102 of the Land Act, and the customary land registration process under Amendment No. 21 of 2009 were intended to be kept separate but parallel to each other.

(5) The proposed new procedures also failed in specifying the procedures for the conduct of the land investigations and awareness themselves, which exercises the C.O.I. considers to be the most important and vital to preserve the special character of SABLs including full awareness of the effect of SABLs affecting the landowners customary rights, and thereafter giving their consents.

(6) The proposed new procedures at no point suggest any interaction between State agencies such as DAL, DEC and NFA having responsibility over SABLs.

(7) The proposed new procedures do not distinguish between the procedures for the registration of customary land under the Amendment 21 of 2009 of the Land Registration Act and SABLs under Sections 11 and 102 of the Land Act and this aspect remains void of any explanations, however the C.O.I. had concluded its findings on the parallel of these two separate enactments.

(8) The proposed new procedures apparently were not developed pursuant to any policy direction but based on criticisms of DLPP's inadequacies in the administration of SABLs including discrepancies in the processing to grant and operations after the grant. Whilst the C.O.I. commend the DLPP for taking the initiative to develop these new sets of guidelines, it is considered as a „knee jerk? reaction to the growing public concern over the management of SABLs. Infact, Mr Abby admitted during the inquiry that the new procedures were developed as a result of the public outcry over the manner in which SABLs were managed.

#### 4.7.5. Findings in Respect of Administrative Procedures Followed in Respect of Physical Planning under the Physical Planning Act 1989.

The C.O.I. finds in respect of Physical Planning the following:

- (1) Physical Planning in accordance with the Physical Planning Act 1987 had not been a factor in the processing of SABLs from lease/ leaseback to grant of title.
- (2) There are no provisions either in the Land Act or Physical Planning Act to address any implications in terms of physical planning if under Part VII of that Act an area is declared a “physical planning area” in accordance with section 67 of that Act either before or after a SABL covering either whole or parts of that area is processed
- (3) There are also no provisions in either of the said Acts to deal with developments including agriculture and other business infrastructure developed upon SABLs particularly in the rural areas, and later the SABL areas become a declared “physical planning area” in accordance with section 67 of that Act.
- (4) It is not provided for either in the Land Act or Physical Planning Act whether a township infrastructure (e.g. large scale oil palm estates) are to be subjected to physical planning under the Act or not.
- (5) The Chief Physical Planner’s (CPP) role proposed by DLPP in its “proposed new procedures for the administration of SABLs” to assess the question of “minor impact” and “major impact” project involving considerations for processing of SABLs is a good approach provided however that the CPP coordinates with other State Agencies including DLPP, PNGFA, DEC and Provincial Governments in determining the level of impact of a proposed project. Again this should be part of an overall review and possible for better coordination by all relevant State Agencies.
- (6) The overall roles, functions and powers under the Physical Planning Act can only be appropriately reviewed if a universal policy on customary land mobilisation is formulated.

#### 4.7.6 Findings in Respect of Administrative Procedures Followed in Respect of Agriculture

The C.O.I. finds in respect of Agriculture the following:

- (1) The functions, roles, responsibilities and powers of the Department of Agriculture and Livestock (DAL) are not defined by law, but the C.O.I. assumes, by instrument, creating the Ministerial Portfolio as allocated with responsibility as a Ministry in the Executive Government (NEC) in accordance with the Constitution and the Prime Minister and the National Executive Council Act. However

through various laws/statutes establishing different agriculture commodity Boards, the DAL Secretary is ex- officio chairman hence through those avenues DAL has legislatively defined roles, functions, responsibilities and powers.

- (2) Agriculture is one of the two (2) PURPOSES for which SABLs can be sought. Business purpose is

the other one. Both are provided for in the most general description under Section 102 of the Land Act, and in cases of agriculture, sections 90A and 90B of the Forestry Act 2000(as amended).Except for the conjunctive but general mention of agriculture under sections 90A and 90B of the Forestry Act, they are not regulated in their forms and contents. The C.O.I. finds this accordingly.

(3) Majority of the SABLs have agriculture developments/project as their stated purpose.

(4) Agriculture being the main development thrust in applications for SABLs, the C.O.I. is disappointed to find that DAL finds itself in a secondary role to the DLPP and PNGFA.

(5) The C.O.I. finds that it would be of great imperative if agriculture and any other businesses proposed for a SABL be evaluated in all their facets before the commencement of the processes for issuance of SABLs so that certification by DAL in case of agriculture and Department of Commerce

and Industry in case of any other businessand certification by any other relevant State Agencies as are required by their respective laws be requisites either before grant of SABLs or before approval of the sub-leases thereof to developers.

(6) DAL had either totally failed or neglected or have been negligible in the monitoring and enforcement of performances in agriculture developments as certified by it in respect of SABLs and in conjunction with PNGFA and DEC in corresponding compliances with FCA conditions and Environmental Permit conditions.

(7) The presence of DAL in many provinces is limited except through the Divisions of Primary Industry under the auspices of the Provincial Administrationsand that lapse has a profound effect on the evaluation of proposed agriculture projects to monitoring thereafter including those carried on upon SABLs.

(8) Overall the C.O.I. repeats that absence of central coordination of all relevant State Agencies has had the effect of isolated approaches by each of them in dealing with management of SABLs.

#### 4.7.7 Findings in Respect of Administrative Procedures in Surveys of SABL Proposed Areas under the Survey Act 1969 (Chapter 95)

The C.O.I. finds in respect of survey of SABL areas the following:

(1) The provisions of the Survey Act in relation to survey plans and actual maps are adequate and effective in respect of all classes of surveys affecting SABLs including a Class 3 Rural Survey.

(2) The anomaly the C.O.I find however in respect of many SABLs is near lack of independent and impartial verification of information provided to the registered surveyors involved in drawing the surveys and in many instances the boundaries of the SABL proposed area was not walked physically to determine the boundary within the accuracy level of Rural Survey Class 3.

(3) It is found also that in respect of a number of SABLs the Rural Survey Class 3 was conducted entirely from helicopters using the global satellite Grid Positioning System (GPS), for example Toriu Timbers SABL which is inaccessible because of very rugged terrain, Urasir Development Limited located in the Josephstal Ranges extending from Ramu to the Sepik River, East Sepik Province and the acquisition of 2 million hectares of forested area in the North Fly District of the Western

Province extending to Sandaun, Hela and Gulf Provinces.

(4) In the absence of walking of the boundary or even to a lesser extent, absence of a coordinated public hearing or land investigation, the C.O.I do not

consider that a survey concluded otherwise than by these methods will truly represent the area agreed to be included in a SABL.

(5) In its findings the C.O.I. is of the opinion that all matters of survey must be determined during awareness hearings and land investigations based on which a survey plan can then be accepted for registration by the Surveyor General, whether the survey plan was drawn before or after those processes. If such survey plans were drawn before the awareness hearings and land investigations, and there be any variations or amendments, such variations or amendments must be made before registration.

(6) An acceptable survey process must be settled in respect of SABLs for the purpose of avoiding disputes and litigation affecting operations of SABLs particularly in respect of inclusion of areas not agreed to or consent withheld for inclusion and involvement in SABLs.

#### 4.7.8. Findings in Respect of Legal & Administrative Procedures Followed in Respect of Forest Clearance Authorities Associated to SABLs.

The C.O.I. makes the following findings in respect of legal and administrative procedures followed in respect of FCAs associated with agriculture developments upon SABLs:

(1) Sections 90A, 90B and 90C (although 90C is relevant only to roadline construction FCA's) were provisions noted to have been enacted recently in an amendment to the Forestry Act 1991 by Forestry (Amendment) Act 2000 (No. 36 of 2000), and later the Forestry (Amendment) Act 2007 (No. 19 of 2007).

(2) These Amendments were primarily to facilitate forest clearances of forested areas required for large scale agriculture developments over areas in excess of 50 hectares divided into quarterly phases of 500 hectares to be developed prior to progressing to the next 500 hectares.

(3) Accordingly FCAs are issued by the PNGFA on a quarter by quarter phases based on certificate of approval issued by the Secretary of the DAL in respect of agriculture and an Environment Permit issued by the

Environmental Council in respect of environment and such other approvals as may be given by other State Agencies as applicable.

(4) The grant of further FCAs for successive quarter phases of forest clearances will only be issued on satisfactory developments carried out in the preceding quarter phase.

(5) The structure of the provisions under Sections 90A and 90B of the Act vests the facilitation of agriculture development primarily in PNGFA when in all reasonableness it should have been vested in the DAL in all its deliberations and then brought to the PNGFA only to facilitate FCA's. The C.O.I. finds this arrangement by law to be highly undesirable notwithstanding that the DAL could have been more pro-active and ensure compliance, despite the lead role being vested in the PNGFA, thus resulting in deeply serious deviations from lack of agriculture developments and continuously

altered agriculture plans to excessive forest clearances in breach of regulation clearances permitted by law, affecting many SABLs.

(6) It is found that in most SABLs, agriculture purpose had been used as the fastest route to access pristine forests for the reasons that:-

(i) through the processes of Local Forest Areas (LFA) or Timber Rights Permit (TRP) areas the stringency in obtaining permits to harvest logs through those processes make agriculture FCAs over SABLs an easier process; and

(ii) it was easier to breach FCA conditions including lack of cohesive inter-State Agencies evaluation and monitoring mechanisms and ofcourse extrinsic influences, that there was less official scrutiny.

(7) It is found with great concern that the in- cohesiveness and disorganised functioning of the regulatory authorities by State Agencies had exacerbated massive destruction of the forests throughout the country through FCAs which involve complete forest clearances.

(8) It is found also that for the same reasons, but in particular the PNGFA had been either lax in enforcing quarter phased forest clearances for agriculture or by inference its officials have been affected by external influences including compromises, bribes and indiscretions to turn a blind eye to abuses of this nature, and worse,

they recommend to their superiors the advance to the next phase for the next FCA to be issued.

(9) It is found that in terms of the proposed capital investment in agriculture, such capital is presented by the foreign investors to include revenue to be derived from the commercial disposal of logs from the forests to be extracted within the proposed agriculture development area with ordinary benefits by way of royalties, development premiums, and government taxes based on per cubic meter of logs. The C.O.I. considers this to be highly undesirable, and the total ownership and commercial value of extracted forest products should vest entirely in the landowners and the investor be restricted totally to capital investment in agriculture it brings in without the inclusion of revenue from the said forest products, while the landowner capital contribution be the arable land availed through SABL.

4.7.9. Findings in Respect of Procedures for the Issue of Environmental Permits in accordance with the Environment Act 2000 and Conservation Areas Act 1978.

The C.O.I. makes the following findings in respect of procurement of environmental protection compliances and issue of

environmental permits under the Environment Act and generally requirements of the Conservation Areas Act.

The C.O.I. finds the following in respect of the procedures followed in the processing of and issuance of Environmental Permits (EP).

(1) By virtue of Section 46 of the Environment Act all activities of every kind which are likely or ought to be assessed as likely to impact upon the environment including disturbances and damage to natural environment and habitat, require approval of the DEC and the Environmental Council.

(2) Most, if not all, activities including agriculture and other businesses proposed or actually carried out in respect of SABLs required environmental regulatory compliances.

(3) The procedures imposing necessary compliances including acceptable environmental management plans associated with such activities upon SABLs are quite elaborate and are found to be quite effective subject to the C.O.I.'s further findings.

(4) The C.O.I. finds that the lack of collaboration and in-cohesiveness between relevant State agencies dealing with SABLs continues even after Environmental

Permit is issued thereby allowing breaches of permits conditions to go undetected.

(5) The capacity of DEC to enforce compliance through regular environmental audits and investigations continues to be hampered by lack of funds and resources including technically qualified personnel.

(6) The C.O.I. also finds it highly undesirable that the Secretary of DEC wears four (4) hats in the processing of applications for EPs. They are:-

(i) Registration of intention to carry out preparatory work is received by DEC and scrutinized by the Secretary or his delegate.

(ii) DEC accepts or refuses environmental impact report.

(iii) If accepted, it is referred to the Environmental Council of which the DEC Secretary is the chairman.

(iv) Environmental Council refers the application to the Minister with its recommendation to approve or not approve the application.

(v) If EP is approved, it is referred to PNGFA with recommendations in respect of FCA considerations. DEC Secretary is ex-officio deputy chairman of PNGFA.

The C.O.I. considered the four (4) roles performed by the DEC Secretary will place him in a conflict of interest situation and therefore resulting in partial and biased decisions being made.

(7) There was no direct evidence but the C.O.I. in many instances had been poised to infer from the findings in respect of inquiries into agricultural SABLs that extrinsic matters again affected the effective administration of the environmental compliances.

(8) The C.O.I. is otherwise again concerned about the absence of a central co-ordination committee or council for the purpose of unifying all forms of scrutiny from appropriate State Agencies in the granting and operation of SABLs.

(9) There is neither evidence nor was there any SABL referred to the C.O.I. involving the question of SABLs issued over "reserved" conservation areas to attract compliance with the Conservation Areas Act 1978. The C.O.I. finds no particular concern over procedures to be followed under that Act except for

the Ministerial discretion which must be further restricted.

#### 4.7.10. Findings in Respect of the Role of the Investment Promotion Authority (IPA) in respect of SABLs under the Investment Promotion Act.

The C.O.I. makes the following findings in respect of the role of the Investment Promotion Authority (IPA) under the Investment Promotion Act:

(1) IPA has no additional role other than to perform its statutory functions under the Investment Promotion Act, Companies Act, Business Names Act and Associations Incorporation Act, with no particular distinction of these corporate entities being involved in businesses engaged in SABLs.

(2) The C.O.I. noted that the IPA regulatory requirements for foreign investors either through foreign registered companies or PNG incorporated companies with foreign control are adequate but with no special application to businesses proposed to be conducted involving SABLs.

(3) The C.O.I. finds that the I.P.A. in its strict statutory functions is not given any powers under any relevant legislation to specifically require demonstration of capital and expertise in the particular agriculture development or business to be engaged in upon SABLs.

(4) The C.O.I. finds that such scrutiny by IPA is necessary in view of concessions over many SABLs being given to logging companies with absolutely no agriculture background in their past operations and the total absence of agriculture specialists and employees on their pay-roll.

#### 4.7.11. Findings in Respect of the Application of the Companies Act 1997

In respect of the application of the Companies Act and the requirements of companies involved in SABLs, the C.O.I. makes the following findings:

(1) The Companies Act 1997 makes no distinction as between SABL landowner companies and other companies although as companies comprised of all citizens as shareholders, these companies could be favourably considered for exemptions from filing annual returns and other statutory requirements.

(2) The Companies Act is concerned with the creation of abstract entities almost on par with living persons in

respect of the right to acquire and dispose of assets, sue or be sued, engage in commercial activities and so on and is a person for all purposes.

(3) This Act however does not distinguish between companies engaged in businesses operated upon SABLs, and whether they are foreign owned or not. Those are matters for the Investment Promotion Authority.

(4) Section 110 of the Companies Act, in our view, is an ample provision which imposes an obligation on the managers and directors of landowner companies and generally any other company to place before the shareholders for their approval if any major decisions by way of agreements and commitments will expose the assets of the company to liabilities in a large proportion. In relation to SABLs, titles of which are predominantly issued in favour of landowner companies, entering into Sub-leases to foreign investors as well as financing loans can expose the SABL title to serious risks bearing in mind that almost all landowner companies' assets are their

SABL land and the natural resources found on them.

(5) The C.O.I. finds however that specific provisions can be considered for dealings specifically in respect of SABLs particularly in terms of scrutiny of proposed risks exposures which can be enacted in harmony

with the provisions of the Fairness of Transactions Act.

(5) The C.O.I. repeats its finding in respect of ILG's under the Land Groups Incorporation Act that that the regulatory and over-sight responsibilities should be vested with the Registrar of Companies and not with DLPP.

(6) It is in the C.O.I.'s consideration that the Companies Office, among all other relevant State Agencies must function in co-ordination in respect of SABLs under a single organization perhaps or be known as the National Agricultural Development Authority with clearly defined roles and functions of such Agencies in the co-ordination of agriculture development, not only in respect of SABLs, but generally throughout the country.

#### 4.7.12 Findings in respect of Benefits Sharing from SABL Projects

Benefits to be derived by the customary landowners by the involvement of their land in SABLs had been their primary expectations. Also, as discussed in Part 4.2 (Policy), the total lack of infrastructure for health, education and vital economic services including roads and bridges. Airstrips, and Seaports, had driven the landowners to submit their land and natural resources to effect these infrastructures. Forests

being among natural resources immediately accessible to satisfy these needs, had also become the most abused of natural resources.

The C.O.I. finds in respect of benefits sharing from SABL the following:

(1) The customary landowners expectations of the benefits derived from their land incorporated in SABLs are predominant factors in SABLs. These benefits range from immediate monetary benefits to infrastructure developments.

(2) The customary landowners suffered limitations in their ability to distinguish the difference between benefits to be enjoyed by them arising from the agricultural development upon their land, and the commercial value of the natural resources found on their land which are exploited commercially, in particular forests on most of the SABLs.

(3) In respect of agriculture, almost without exception the customary landowners do not know the value of the proposed agriculture projects upon their land comprised in the SABLs over the period/term of the sub-lease to foreign developers. In their ignorance therefore they do not know the reasonable value of the land rentals to be charged to the developers, as

well as benefits to them from the agriculture developed on their land.

(4) In respect of SABLs engaged in agricultural developments involving forest clearances, the customary landowners including the executives of their ILG's and landowner companies (lancos), do not understand and do not therefore distinguish between TEMPORARY BENEFITS derived from their forest products in the form of royalties, infrastructure development levies as opposed to the

LONG TERM BENEFITS they must secure over the agricultural developments upon their land.

(5) Because of lack of understanding and therefore inability to make the said distinctions between the different benefits, the customary landowners of SABLs requiring forest clearances assume that the Developers have an automatic right to revenue derived from the commercial forest products as if it is simply another logging operation.

(6) In view of both inadequacies in policy and legislative developments therefore, benefits sharing especially to the customary landowners of SABLs are minimal and negligible.

## PART 5 CONCLUSION OF THE REPORT

This Report consists of\_

(1) the legislative basis for the issuance of SABLs (TOR(a));

(2) the procedures followed in the administration of SABLs in accordance with the legal authority, (TOR (b)); and

(3) the effectiveness or otherwise of existing legal and policy framework in the improved management of SABLs in future including facilitating the applications from legitimate applicants (TOR (h)).

Appended to this Report and referred to as Annexure "1" comprise twenty-five individual Reports of which I was assigned to inquire into and make findings and recommendation thereof. This Individual Report correspond to the following provinces where the twenty five SABLs are located and are New Ireland Province, Western Province, Central Province, East Sepik Province, Morobe and Madang Provinces.

The Findings and Recommendation of the Individual SABLs that I have conducted separate inquiry as a Commissioner covers Terms of Reference(c)(i)(ii)(iii)(iv)(v)(vi) &(vii), (d), (e), (f),(g)(i)(ii) &(iii) and (i).

## APPENDIX "1"

Appendix 1 comprise all twenty five (25) individual SABLs Reports covering New Ireland Province, Western Province, East Sepik Province, Central Province (specifically for four SABLs located along the Hiritano Highway), Morobe and Madang Provinces

### NEW IRELAND PROVINCE

Central New Hanover SABL–Destruction and environmental damage resulting from logging

1. COI Inquiry File No 9 for Special Purpose Agricultural and Business Lease over Portion 884C Volume 16 Folio 232 Milinch: Djaul NE and Lossuk NW New Ireland Province in the name of Cassava Etagon Holdings Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to Section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Cassava Etagon Holdings Limited SABL. These were:

1.2.1 Department of New Ireland Province, (DNIP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGForest Authority)

## 2. Witnesses Statement and Summonses

2.1 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings are set out in the schedule below.

No

Name and Position

Pages

Day

Date

1

Mr Michael Lamusan of Bagatere, West Coast of Tigak, Tikana LLG, Landowner &

16-28

2

25/10/11-SABL 37 KAVIENG

2

Mr Henry Eremas, Landowners

29-43

2

25/10/11-SABL 37 KAVIENG

3

Mr Jerry Lamasisi

Landowner

46-51

2

25/10/11-SABL 37 KAVIENG

4

Mrs Margaret Elias

Landowner

52-58  
2  
25/10/11-SABL 37 KAVIENG  
5  
Mrs Lydia Philip  
Landowner  
59-61  
2  
25/10/11-SABL 37 KAVIENG  
6  
Mr Talana Tiamon  
Landowner  
62-63  
2  
25/10/11-SABL 37 KAVIENG  
7  
Mr Anthony Luben, Unattached Public Servant & Former Deputy Secretary Lands Services 2002-2008, DLPP  
10-18  
-  
05/01/12-SABL 68 MIROU (WAIGANI)  
8  
Mr Lazarus Malesa, Customary Leases Lands Officer, DLPP  
6-15  
  
23/01/2012 SABL 79-  
Mirou (Waigani)

### 3. Parties represented by counsel

3.1. Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

3.2 The following were granted leave to be represented by counsel

### 4 Exhibits and documents

4.1. There were eleven (11) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No  
Item  
Interested Party  
Date received  
Exhibit Number  
1  
National Gazette No, G224 of 7 December 2006 (Notice of Direct Grant)  
CEHL/DLPP  
25/10/11  
CE "1"  
2  
SABL State Lease- dated 14 May 2007  
CEHL/DLPP  
25/10/11  
CE "2"  
3  
Instrument of Lease/Lease Back Agreement made on 1 November 2006  
DLPP/CEHL  
25/10/11  
CE "3"  
4  
Survey Plan of KAUT SABL by  
Lands Department  
CEHL  
25/10/11  
CE "4"  
5  
Michael Lamusan?s  
Statement  
C.O.I.  
25/10/11  
CE "5"  
6  
Copy of the National Gazette No. 80 dated 13  
April 2006  
COI  
25/10/11  
CE"6"  
7  
Letter by Neighbouring Clan and Mr Eremas Clan  
C.O.I.  
25/10/11  
CE "7"

to the C.O.I.

8  
Letter by five (5) dated 4 March 2011 addressed to the Honourable Minister for Lands.

C.O.I.  
25/10/11  
CE "8"  
9

Land Investigation Report of 2006  
DLPP/CEHL  
25/10/11  
CE "9"  
10

MOU Between the State of PNG and Changhae Ethanol Corporation Limited dated 4 February  
2005

C.O.I  
25/10/11  
CE "10"  
11

Brief Statement of Mrs Margaret Anne Elias and Recording of Proceedings Local Land Court Kavieng

C.O.I  
25/10/11  
CE "11"

5. Timeline of events of note surrounding Cassava Etagon Holdings Limited SABL Title  
5.1 The timeline showing important events concerning the SABL is shown below in  
chronological order of their happening:

No  
Milestone  
Dated of Completion/ Grant/Issue Execution  
Proponent/Applicant  
Respondent Entity/Respondent

1  
Memorandum  
4th February  
State/Changhae  
Cassava Etagon

of Agreement  
2005  
Ethanol  
Holdings

executed

Limited/DLPP/DAL/P  
Limited/Landowner

between State

NG Forest  
s of Kaut

and Changhae

Authority/DEC

Ethanol

Corporation

Limited of

Korea for

developing Cassava Industry in PNG

2  
Incorporation of Cassava Etagon Holdings Limited  
4th August  
2005

Landowners of Kaut TRP area  
ILGs registered

3  
ILG  
Registration and Gazettal No. G80  
13th April  
2006

CEHL-11 ILGs  
owners of customary land at Tikana LLG area was issued by ILG Registrar i=on 10th April 2006.  
All ILG listed dispute the registered ILGs

4  
Inter  
18 Tuesday  
State/Agencies/Lando  
Changhae Ethanol

Departmental

July 2006  
owners/CEHL  
Corporation of

Committee

Korea

Report on

Cassava

Biofuel

Project-Status

of Land

Mobilization

Nd Land

Availability

for the Project

5  
Land  
18th June  
DLPP-Completed 9  
CEHL/Landowners

Investigation  
2006 to 01  
LIR and 27 LIR

(Field Report)  
July 2006  
pending completion

and yet to be signed

and accepted by

landowner

representatives/NIPA

Final Land  
29th October  
DLPP undertake at

Investigation  
2006 to 11  
NIPA funding

Field Activity  
November  
awareness and signing

2006  
of Deed of Lease at

Lokono village

6  
Lease/Lease Back Agreement  
1/11/2006  
DLPP-Mr Kimas did not sign though Messrs Lazarus Malesa  
Landowners representative/CEH L

between State and landowners representative pursuant to section 11 of Land Act

(DLPP)/Martin Banovo (NIPA)and Anthony Drett (NIPA) signed as witnesses

7  
Lease/Lease Back Agreement between State and landowners representative pursuant to section 11  
of Land Act  
1/11/2006  
DLPP-Mr Anthony Luben signed (ass Delegate)  
Landowner representatives and Executives of CEHL from Kaut/Tome/Lokono/ Kavin and Lemakot  
villages signed

8  
Notice of Direct Grant (s102)-  
Gazettal No, 224  
07 Dec2006  
DLPP-Mr Luben signed as Delegate on 4th December 2006  
Landowners

9  
Notice of Grant (s102) on file for CEHL  
01st May  
2007  
DLPP-Mr Kimas signed  
Landowners

10  
Deregistration of CEHL  
30 May  
2008  
IPA  
CEHL Shareholders and Directors

FINDINGS

5.2. The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Cassava Etagon Holdings Limited.

## 6 Cassava Etagon Holdings Limited SABL

6.1. A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G224 dated 7th December 2006 for Portion

884C Lossuk NW and Djaul NE. The land is described as Kaut. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 14th May 2007 by the Department of Lands and Physical Planning to the holder Cassava Etagon Holdings Limited SABL (CEHL). Mr Anthony Luben, signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

### Legal Description

Portion 884C

Registered Survey Plan Catalogue No

23/453

SABL Holder

Cassava Etagon Holdings Limited

Date of Registration of Lease

14th May 2007

Period of Lease

Ninety-nine (99) years

Land area of lease

26,000.00 hectares

## 7 Background

7.1 A direct grant under section 102 of the Land Act for 99 year SABL lease was made on 4 December 2006 to Cassava Etagon Holdings. It was published in National Gazette number G224 of 7 December 2006. With an area of 20,000 hectares, the land known as Kaut being portion 884C in the Milinch of Djaul, Fourmil Kavieng. This land is said to be about 25 kilometres out of Kavieng town in the New Ireland Province. The area was previously logged under a Timber Rights Purchase area but that TRP expired in 2009. It is a large tract of land that runs basically from the eastern seaboard of New Ireland Province, There are two coastlines lying within the barrier of coral reefs and it runs between the eastern seaboard and up to the hills that divide the island and down to the West Coast of New Ireland Province.

## 8. Site Inspection

8.1. On Saturday 29th October 2011, the Commission conducted site inspection of the Kaut SABL. The SABL is located some 20km drive along the Buluminski Highway from Kavieng on the eastern side of the island and extends inland for another 30km onto the western part of the island ending at Kau No 2 Camp (a fishing village lying closer to Kavieng Town). The visit was to confirm that cassava was planted on land with an area of 20,000 hectares known as Kaut being Portion 882C Milinch Djaul Fourmil Kavieng earmarked for production and exporting of dried cassava to South Korea.

8.2 Our visit confirmed that the cassava was not planted on the land registered for the purpose of growing cassava for production of ethanol as biofuel. We visited Kaut village and met the Ward Recorder and a member of the Village Planning Committee (VPC) and were told that the cassava project was not established even though the launching of the project took place in Kavieng. There was no awareness programme conducted in the village and consultative process for registration of the customary land for cassava production. DPI Office at Kopkop, Kavieng confirmed that the agriculture extension officer of Tikana LLG were not consulted on the planning and development of cassava project at proposed sites on the land known as Kaut.

8.3. Inquiries and searches conducted by the C.O.I Agriculture Advisor at the DPI Office confirmed that there was no file established for the project. Mr Wohuinangu also observed during the site inspection that red soil was suitable for cassava and rubber tree crops. Despite the anomalies and flaws existing with SABL Portion 884C, the land mobilization should be encouraged and ILG registration and land investigation conducted to

ensure that the landowner corporate vehicle be incorporated to proceed with the cassava project ably assisted by NIPA and government.

8.4. Cassava Etagon Holdings Ltd has not fulfilled the purpose of its registration as a business entity to grow cassava for production of ethanol as a biofuel, Very limited consultative process has been established by the customary landowners in the registration of customary land and between the government agencies responsible for the development of agriculture sector.

## 9. IPA/ COMPANIES REGISTRY RECORDS

9.1. According to the IPA Extracts, Cassava Etagon Holdings Limited was incorporated on 4th August 2005 and ceased operating as a company on 30th May 2008. The Company Number is 1-54388 and the current status with IPA is that it is deregistered.

9.2 The issued ordinary shares of the company are 16. The shareholders holding 1 ordinary share in CEHL comprise Messrs Jimmy Awakas (Panapai village), Vakaty Baia (Ngavalus village), Edward Bart (Tome village), Kalis Ekonia (Lokono village), Emanuel Garasale (Putput village), Pelick Kasup (Kaut village), Graham Langa (Kaut village), Munias Mais (Kavin village), Kiutie Erie Moi (Tome village), Wain Nakikus (Lokono village), William Passingan (Tome village), Walagis Robin (Kaut village), Tangap Ruby (Putput village), Jimmy Salatiel Goss (Kaut village), Motley Simpson (Lokonon village) and Salatiel Tangap (from Kasalok village and now deceased) all of Tikana LLG, Kavieng. The 15 listed shareholders came from eight villages named as Kasalok, Lokono, Kaut, Putput, Tome, Kavin, Ngavalus, and Panapai village

9.3. The Directors comprise Martin Mek (Lamekot village), Joseph Daniel (Kaplaman village), Jimmy Salatiel Goss (Kaut village), Robin Sanagala (Nonopai village), Gerson Rabana (Panamana village) Nangkos Kaklavui (Limanak Island), David Eliakim (Lokono village), Salatiel Tangap (Kasalok village) and Robert Rabana (Ngavalus village) all from Tikana LLG, Kavieng.

9.4. The Secretary to CEHL is Kiutie Erie Moi and Paul Steven Taong of Kaut village.

9.5 The lessee Cassava Etagon Holdings Limited was deregistered by IPA on 30 May 2008. Under section 16 of the Companies Act 1997, "A company is a legal entity in its own right separate from the shareholders and continues in existence until it is removed from the Register." Cassava Etagon no longer has capacity under law to sue or to be sued and correspondingly or consequently to own and to dispose of property.

## 10. Land Mobilization

(a) Meeting of 14th to 17th June 2006 to Establish CEHL as landowner company

10.1. C.O.I's perusal of document titled „Land Investigation Report of New Ireland Cassava Project 2006? compiled by DLPP and under cover of IOM by Mr Oswald Tolopa, Director-Policy DLPP was submitted to Deputy Secretary in respect of the LIR process and ILG registration (Exhibit "CE 9"

Appendix “E”). Appendix “E” refers to CEHL Minutes of Meeting 02/06 where Ward Members (10), a Lawyer (1), Consultants (3) from NIPS CCG and Subsistence Farmers (42 landowners under CEHL) from Kaut TRP area and Lokono LFA area were present at that meeting held at LIGGA Conference Room on 14th –17th June 2006.. The list of those in attendance totalled 56 persons (including 3 females).

10.2. Mr Paul Steven Taong was the Facilitator and Chairman of the 4 day meeting. According to the landgroups Mr Taong was not a landowner but acted as Consultant to the company and the project. The Agenda for that meeting was to discuss and resolve (1) The need for a landowner company, (2) Name of the landowner company, (3) Registration of the company, its Board of Directors, Company Secretary and (4) Shareholders. It was noted from IPA records that Mr Paul Taong acting as proposed Secretary of the company submitted the application for Registration of a company, Names of Directors, Shareholders and Application for Reservation of name Cassava Etagon Limited to IPA on 20th July 2005.

10.3 This meeting failed to inform the members that CEHL was already in existence and registered with IPA to carry on business in PNG. Those present at the meeting included Messrs Taong (Consultant), Salatiel Tangap (now deceased), Salatiel Goss, Robert Rabana, robin Sangala, David Eliakim, Joe Daniel, Martin Mek Gerson Rabana (All Ward members of Tikana LLG), Ekonia Kalis, Edward Bart and Nakikus Wain (Landowners from tome village) the interim Directors of the company. The actual cover up of the existence of the company was in our view so well executed by Mr Taong the chief initiator of the scheme who was ably supported by the elected Ward Councillors and a number of villagers from Tome and Lokono village. They withheld information on the existence of the company from those in attendance at that four day meeting.

10.4. The C.O.I considers this cover up as deceitful, fraudulent and a misrepresentation in the lead up to the Land Investigation process and the

issuance of SABL Title to CEHL. That is conduct unbecoming of elected Ward members and representatives of the LLG and the people whose livelihood would change with the high impact project such as the cassava project.

10.5. The C.O.I notes that this very deceit resulted in DLPPs endorsement of the irregularities in the process leading to the issuance of SABL title to CEHL. Although it is confirmed that proposed project never eventuated, the irregularities within the process of land mobilization, ILG registration, the deceit of the CEHL officials and the dual role played by Special Projects as the lead Division in the LIR process it is important to highlight the involvement of officials in their constructive neglect of duty to ensure that land was to be mobilised with the majority consent of the landowners.

(b) Landowners objections to the ILG Registration and SABL Portion 884C Project

10.6. Landowners openly expressed their anger over what they termed as lack of awareness and fraudulent processing of the ILG registration process including the inclusion of their land within the SABL Project area.

10.7 The Evidence of Michael Lamusan

10.7.1. Mr Michael Lamusan, a former Public Servant and spokesman representing the people of Bagatere, West Coast Tigak in the Tikana LLG. Bagatere comprises five (5) villages Olmalak, Metiselen, Lasagok, Penumai and Batig. The villages share common border with Ngvalus to the east, Lovalei to the South and Kaut to the North/Northwest.

10.7.2. His evidence basically was that there was no proper awareness and most of the villagers were taken by surprise to learn that their villages have been included in the SABL Portion 884C to CEHL. The people of Bagatere disputed the authenticity of the registration of the 11 ILGs gazetted under G80 dated 13 April 2006 (Exhibit "CE 6"). The Chairman of ILGs named in the Certificate of ILG was deceased and that names of clan leaders was appearing in other clan.

10.7.3. With regard to the SABL process, the awareness and the period of lease, the following extract of his evidence typifies the feelings of the people,  
"...Sir, SABL on Cassava Etagon Holdings Limited is for a 99 years Lease – lease back arrangement, I believe, and our land in Bagatere has been included under that. We have not been truly informed of the complication relating to the lease–lease back arrangement that as we know now covers a term of 99 years.

....The people must be consulted adequately and then their consent must be obtained honestly and transparently, not by force or devious means. Whilst we are angry that some unauthorized persons have gone out and register our land under suspicious circumstances, we are equally angry in the way that these people are allowed to freely roam our land in the pretext of development and enticing our ignorant and simple folks in the village in signing away their

land for a development project that our people can hardly benefit from...."

(Refer to page 24 of SABL 38 Mirou–25/10/11)

## 10.8. The Evidence of Jerry Lamasisi

10.8.1 Mr Jerry Lamasisi of Maxon village recalls in 2004 when late Ward Member and Director/Shareholder of CEHL Mr Salatiel Tangap and Mr Miskus Maraleu came to their village sometime in 2004 and met the villagers of Kaut at the Community centre. They told people about consent form and out of respect of Mr Tangap few people signed the consent form but majority of villagers were not too happy to sign the ILG forms as there was no proper explanation and a lot of people were in a state of confusion.

10.8.2. When it was put to Mr Lamisisi, that evidently the late Mr Tangap been the representative of the people of his clan would have been authorised by the clan/ward/village to endorse their support for the project. He responded that there was lack of consultation, collaboration and awareness and his consent could only be for his small group and not the entire village.

10.8.3 In his concluding remarks to the Commission, he states, "I do not know what his motives were but this Cassava Etagon exercise, there is nothing to show this thing has actually taken place and people are still waiting. We are people, our hands are tied because there is nothing we can do or have any knowledge of and as to this day we are not sure who is holding on to the title or who is benefiting."

(Refer to page 51 of the Transcript).

## 10.9. The Evidence of Margaret Anne Elias

10.9.1. Ms.Margaret Anne Elias representing landowners of 1,000 hectares of land belonging to Tigik, Matambua and Palmasaut protested that her land was the subject of SABL Portion 849C Nono 3 which was surveyed for real estate and rubber project. That land has been included in SABL Portion 884C to CEHL. Her people did not support the Cassava Project and since 2006 she lived at her mother's village and could not confirm if any government officers visited the village and talked

to her people. There was overwhelming support for the revocation of the SABL Lease.

#### 10.10 The Evidence of Mrs Lydia Philip

10.10.1. Mrs Lydia Philip from Kaut village on the west coast and representing the Makanuk Clan. She states that no Mamais, their village leaders, government official visited villages in the Kaut area to discuss the ILG registration and cassava project. In evidence she said, "...Whilst still at the village, these people never came around. But whilst we are in town or anywhere else we hear rumours of these people coming...They were saying they will come and plant tapiok at the village..." (Refer to page 60–61 of Transcript).

10.10.2. There was no awareness and the people of Kaut did not consent indicating that this whole project was organised in the township of Kavieng.

#### 10.11. The Evidence of Mr Talana Tiamon

10.11.1 Mr Talana Tiamon of Nono village and representing the people of Nono to Losuk comprising 23 head clans, 96 sub-clans totalling 118 ILGs covering eight communities within the Kaut TRPO area. He confirmed that no officials from CEHL, government department consulted his people over the proposed cassava project. He confirms his people's concerns, "...I would like to tell this Commission that we have no idea, we do not know what this Cassava Etagon is all about. Like I say, there was no awareness carried out, we have no idea, no knowledge of what it is all about. ...According to the people, we do not want this Cassava Etagon thing to go on. We just simply want our land to be returned to us." (page 63 of Transcript)

10.12. The evidence of the landowners are genuine and confirms that the land investigation undertaken by the Special Projects Division of DLPP lacked proper management of the Land Investigation process even though it was made of of very experienced officers in the like of Elisabeth Toba, Manu Kala and Lazarus Malesa.

10.13. The funding and the time spent on the Land investigation is a testament of the DLPP official's lack of duty in safeguarding the interest of the landowners in the SABL process.

### 11. Department of New Ireland/New Ireland Provincial Administration

11.1. The Department of New Ireland provided funding and logistical support to the Land Investigation team comprising Ms Elisabeth Toba (Team Leader, Special Projects), Mr Manu Kala, (Special Projects Officer) and Mr Lazarus Malesa (Customary Land Officer) from DLPP to conduct the land investigation.

11.2. The Intergovernmental Report on the Cassava Biofuel Project acknowledges the support from the New Ireland Provincial Government and its commitment to the project with the endorsement of the Working Committee on the Cassava Project in terms of funding assistance.

11.3. The C.O.I inquiry finds that self-serving consultants such as Mr Toang in full collaboration with the Ward Leaders of the Tikana LLG influenced the land mobilization process without the full knowledge of all the landowning clans/villages within SABL Portion 884C.

## 11.4. The Evidence of Mr Mark Waine

11.4.1 Mr Mark Waine, Provincial Lands Officer, Division of Lands and Physical Planning, Department of New Ireland was summonsed to appear and assist the C.O.I with his involvement in the Land Investigation for Kaut SABL project. He was not happy about the summons and was forthright about the lack of protocol and courtesy extended by the DLPP team at New Ireland. The C.O.I refers to the extract of his evidence

“... And in my capacity, as far as I was the boss of the Lands Department in the Province, I have no clue, no whatsoever idea, that is why I am saying I am in a unique situation, I do not know what actually happened on the ground. It was all done by Waigani, Lands Department Headquarters. My office was never consulted, even the Provincial Administrator’s Office and the Governor’s Office.” (My highlight for emphasis) (Transcript SABL 40 Mirou 28/10/11 at page 52)

11.5. There was a lack of coordination between DLPP and the Office of the Provincial Administrator through the Provincial Division of Lands and Physical Planning for the land investigation to be conducted. This is one of the many trends common to the way the LIR were conducted by DLPP without any consultation with the Provincial Administration.

## 12. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

12.1. What prompted the rush to acquire customary land previously a TRP concession area within the Kaut for the SABL Cassava Project? The primary reason why the Land Investigation was conducted by the Special Projects Office, DLPP at Kavieng related to the Memorandum of Agreement executed between the State and CHANGHAE ETHANOL CORPORATION LIMITED

## 13. MEMORANDUM OF AGREEMENT BETWEEN THE STATE AND CHANGHAE ETHANOL CORPORATION LIMITED [OF

THE REPUBLIC OF KOREA] FOR DEVELOPING CASSAVA INDUSTRY IN PNG

13.1. The Memorandum of Agreement (MOA) between the Independent State of PNG and the company Changhae Ethanol Corporation Limited (CECL) of Korea was executed between the parties on 4th February 2005.

13.2. The MOA is in general terms and does not make reference to the specific project earmarked for the SABL in the Kaut area of New Ireland. The

C.O.I make specific reference to parts of the MOA with respect to the State’s intention to involve Changhae Ethanol Corporation a Korean company, to grow cassava for production of ethanol as a biofuel and to produce other products.

13.3. Recital Clause (A) & (B) provides as follows;

“A. Purpose of the Agreement is to establish an understanding between all parties to work in unison in promoting the commercial cultivation and export of cassava and cassava based products through a framework of economic cooperation and for parties to use their best endeavours to cooperate with each other to the extent permitted by the laws and practices in Papua New Guinea and the Republic of Korea and any other applicable international laws and regulations.

B. GovPNG is desirous in improving the economy by promoting a broad based economic growth

propelled through increased commercial agriculture activity as outlined in the GovPNG's Medium Term Development Strategy through a public/private

partnership between GovPNG, its institutions of state and the private sector by..."

13.4. The C.O.I notes under Clause 2 of the Agreement that the Government of PNG is obliged to "(i)Use the institutions of State including, but not limited to, the Executing Agency to identify suitable land for leases or sub-lease to CHEC for its investment purposes.and(ii)Encourage customary landowners and landowning groups to make available to CHEC or to its contracted out-growers suitable land for cultivation of cassava." The C.O.I notes further that whole intent for the MOA was to impose conditions on the State to secure up to 20,000 hectares of suitable land for cassava cultivation on suitable sites contiguous to the first 6,000 hectares, secure State lease and transfer that lease to the Developer for a period of 30 years.

13.5. Whilst the C.O.I notes that no development took place and that the MOA has lapsed is academic. I have in my inquiry observed that a number of project agreements signed by the State over the Gre Drimgas Trans Highway Project and the Nungwaia Bongos Project disclose the very same pre-conditions on the State to secure land.

13.6. The C.O.I was not able to confirm whether the Department of Attorney General through the Office of the State Solicitor had drafted the Agreement or from which agency of government the contract was sourced. This is also a classic example of the State's attempt to introduce prospective Investors and Developers to the landowners simply because of the unfair clauses agreed to in favour of the Developer. The Office of the Attorney-General must become more proactive in ensuring that Agreements do not conflict with statutory and legislative powers of the State Agencies.

13.7. The C.O.I was unable to sightcopies of the business agreement between CEHL and Chinghai Limited, no detailed business plan for development of cassava production, processing and export to South Korea for processing of biofuel and alcohol. There is also lack of evidences on the project design and formulation processes and procedures. Therefore the SABL issued to CEHL be reviewed and adequate consultation with the customary landowners to secure their consent for land registration and appropriate cassava production and processing plan should be developed with a view of attracting private sector investment for this impact project. The C.O.I notes that there was no development since the Agreement was signed, but in terms of the manner of processing the ILG land mobilization and LIR, it is incumbent on this C.O.I to make the inquiry in accordance with the TOR.

13.8. Cassava Etagon Holdings Limited has not designed the commercial cassava production and processing plan. There was no forest clearance plan and no environmental statement for management and conservation of the environment.. The processes and procedures for customary land registration have not been adopted. There is also very limited consultative process between and the various landowning clan groups. Therefore and by law the SAB&L for 99 years of the Portion 882c Kaut ,Millinch Djaul FourMil, Kavieng should be revoked.

## 14. Land Investigation Process & Report

14.1. TheTender form/Applicationstated thatthe landowners through CEHL wanted; "to develop a 20,000 hectare Cassava farm in two phases, Phase 1 will involve cultivation of more than 6,000 hectares in three years and the construction of cassava driers to process and dry 10,000, it does not

say what metric unit, but 10,000 of cassava monthly for export to South Korea. Phase 1 will cost US\$6 million. Phase 2 will involve full development of 20,000 hectares and the construction of a

cassava factory to produce ethanol oil and other cassava based products such as cassava wine, spirit and flour for export”.

14.2. Land Instruction Number 16/06 was issued and investigation was coordinated by the Special Projects team from DLPP, Waigani.

14.3 The Land Investigation was conducted in two phases by the team over a period of almost six weeks. The first period was from 18th June 2006 to 1st July 2006, the second phase from 29th October 2006 to 11th November 2006. The report compiled and exhibited as CEHL “9” for Secretary, DLPP indicates that the investigation was not adequately covered due to difficulties experienced due to allowances, accommodation, transportation and various other factors. The real time spent on the land investigation could have been far more less than what was provided in the brief to the Secretary.

14.4. We are likewise critical on the involvement of the Special Projects Division of DLPP in a customary land investigation, normally the responsibility of the Customary Lands Division. Their involvement in this project not only reflects poorly on the Management of DLPP allocating the customary land investigation to Special Projects in compliance with MOA conditions.

14.5. The project is a government initiated project for PNG, but the land to be acquired is customary land, hence the Customary Leases Division including the Provincial Lands Office are equipped with the understanding to undertake field reports on the land prior to acquisition.

#### a) Land Investigation Report

14.6. Out of 36 LIR, only 9 LIRs was signed by the landowner's representatives mostly due to the ILG registration which was disputed by the landowners of Bagatere. The remaining 27 LIR Working Files was not ready pending signatures of the landowner representatives of each clan. The file from the Lands Department does not show or reflect that those 27 outstanding LIRs had been endorsed by the Customary Landowner representatives.

14.7. To be fair to Cassava Etagon, which otherwise does not seem to have any other controversial circumstances surrounding it, there has not been as much evidence as in other SABLs which this Commission will encounter as the days go by relating to disputes between opposing customary landowners within the SABL area

14.8. Mr Malesa also confirmed that they were supported by some landowners long into the night. The Land Investigation Reports seem to have been conducted in haste and often in the night time. He said that instructions were normally conveyed to him from only one landowner or only a few landowners. He also confirmed disputing Mr Paul Steven Toang, Robert Rabuna and Gerson Rabuna name appearing on the Lease/Lease Back Agreement because they were non landowners.

14.9 Despite the incomplete 27 LIRs, the lease/lease back Agreement was prepared for execution.

14.10 There is a Statutory Declaration submitted to the Commission stating objections to the SABL by people within the area who claim not to have given their consent. There is some or a bit of support from the Lands files in a report submitted by Lazarus Malesa, Manu Kala and Elizabeth Tobe. They noted that, “there are two opposing parties involved where one is in support of us carrying out land investigation whilst the other one

wants us to return to Port Moresby since they claim that those organizing this project are unorganized”.

14.11 By way of information, there are indications that there was pressure on the Lands Department officials to expedite this project as referred to by the Memorandum of Agreement entered into by the Government of PNG and Changhae.

#### b) Instrument of Lease/Lease Back Agreement

14.12. On 1 November 2006, a lease-lease back Agreement was entered into between the State (Lessee) and Jimmy Salatiel Tangap, Eliakim David, Motly Simpson, Emmanuel Garasale, Robert

Rabana, Ekonia Kalis, Wilson Passingan, Pelick Kasup and Graham Langa, all of different villages; namely Kaut, Putput, Tome, Lokono, Kavin and Lemakot in the Kavieng District of the New Ireland Province (Lessors). The lease was to be for a 99 year period to run from 1 November for a rental of K10 to be paid on demand and on further condition that the State issue a Special Agriculture Lease to Cassava Etagon Holdings Limited.

14.13. The actual Instrument of Lease/Lease Back Agreement show that Mr Pepi Kimas, the Secretary and Delegate of the Minister did not sign the document. The named landowner representatives and witnesses signed the agreement. A Notice of Direct Grant was signed by Mr Anthony Luben as delegate for the Minister and SABL registered. Mr Kimas when examined on this matter provided no explanation to the

C.O.I. That flaw was the result of the incompetence of the Special Projects Officers, Mr Malesa explains, "Counsel, my involvement went as far as the land investigation report and to the preparation of the lease/lease back agreement. Then everything was left with our Special

Project Unit.". The C.O.I views this omission as clearly fatal to the acquisition of good title over the land issued in the name of CEHL.

c) Variance in Portion 884C Hectares

14.14. The C.O.I took issue with the variation and changes found in the Instrument of Lease/Lease Back and the SABL title/ The variation was in relation to the original 20,000 hectares was inflated by an extra 6,000 in the title, hence 26,000 hectares. Mr Malesa attributed this variation to either an error that was corrected as a result of survey been carried after the initial estimation.

14.15. Mr Malesa also confirmed that the team was not able to carry out any awareness at Bagatere due to bad weather. He also confirmed the evidence of Mr Lamusan who had told the inquiry that the additional 6,000 hectares was part of the Bagatere land.

14.16. Rural Class 4 Surveys is less expensive but the survey conducted in accordance with the wishes of the landowners must be realistic and not delineated from major rivers, ridges and other common features as is the case with Kaut.

14.17. C.O.I recommendation–Rural Class 4 Survey be used to identify land areas likely for agriculture and business and not a blanket land mass which is unrealistic.

14.18. There was no evidence of;

\* customary land owner identification and verification reports and the customary landowners' participation in the selection processes of the various chairmen of the Incorporated Land Groups as the vehicles for registration of customary land.

\* genealogy study as the process of identifying customary land owning clans in the area and subsequent Incorporations of Land Groups (ILGs) as the processes for the registration of customary land .

\* physical mapping of the area to establish external boundaries between villages and internal boundaries between the various clans. The Class 4 surveyor using the coordinates on the map to establish external and internal boundaries and this process leaves out the negotiations between two neighbouring villages and clans to establish pegs and any other verifiable physical indicators that separate boundary between clans and villages.

14.19 The evidence given at the COI hearing at Kopkop Fishery College in Kavieng indicated non compliance on the processes and procedures for customary identification and verifications as set out in the preceding paragraph. There is need to carry out new customary land identification processes and that needs to be verified by lands experts in the Department of Lands and Physical Planning in Port Moresby. There is also need to carry out field survey to establish internal and external boundaries between clans and villages within the Cassava Etagon Holdings Limited for the development of commercial cassava production and processing project.

## 15. DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

15.1. The Land Investigation Report and the Recommendation for Alienability was not referred to the Custodian of trust Land for due diligence. There

was also no Certificate of Alienability issued by the Custodian of Trust Land to allow for the registration and issuance of SABL Title to CEHL.

## 16. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

16.1. The C.O.I was unable to ascertain DALs involvement in this project. We note that the then Secretary of DAL Mr Benjamin witnessed the signing of the MOA. The MOA was basically to develop the cassava crop for ethanol biofuel products.

16.2. Mr Daink tendered to the C.O.I DAL's Report on the Status of FCA for Agriculture Projects (Exhibit "FD2") to assist the C.O.I with its inquiry. The status of the approval for FCA by DAL was noted as "YET TO BE APPROVED". DAL was the main agency involved as far as the MOA was concerned particularly the commercial production of cassava and cassava based products through commercial for bio-fuel (ethanol production). It also stated that the increase production of cassava was to feed the mill in the Central Province. That meant that a cassava estate was to be established and that CEHL would be more of an out grower supplying the raw product to Central Province. It was not a standalone project. He made reference to the MOA in that status report.

a) Public Hearing:

16.3 None as reported. Fairly low keyed consultation with NIPA and landowner awareness. Therefore there was much opposition and blockade by the landowners from Kaut and other nearby communities.(Refer to Exhibit "FD2")

b) No detailed Agriculture Plan

16.4. There is no detailed plan cassava production and processing and the export for this project.

b) No Land Use Plan for the Area

16.5. Crop farming as business firstly based on the assessment of soil suitability and rainfall pattern which determine the potential crops and livestock for investment in a given area.

16.6. There is no land use plans for the Kaut old TRP and Kavieng District that could be used for the development cassava production, processing and export project.

c) No oil Suitability Assessment

16.7. Soil Survey is a detail study to determine the plant nutrition requirements which would contribute towards the input costs for the agriculture investment plan .There is no soil suitability assessment report therefore it is difficult to assess the agriculture projects and plans, input requirements for the development of agriculture and teak tree plantations development as proposed .

d) Feasibility Study

16.8. Feasibility study should be next step to confirm technical, economics and financial conditions for the establishment commercial farming business. Based on the outcome of the feasibility study an investment plan would be drawn and submitted to the government and a developer/investor.

## 17. PNG FORESTRY AUTHORITY

17.1. There is no forest development plan involving the community for logging to appreciate the best interest of the people and future generations. This is an old TRP site where the entire natural forest stand had been logged out.

## 18. DEPARTMENT OF ENVIRONMENT AND CONSERVATION

18.1. The C.O.I. notes that environmental issues will arise over the planned project to develop cassava tree crop and infrastructure to mill raw cassava and will impact on the environment (marine ecosystem, corals and pristine waters) and it is necessary for an environment impact report to be submitted for evaluation and approval pursuant to the Environment and Conservation Act. As there are no commercial cassava production plan and no forestry development plan there is also no environmental impact statement to determine the negative impact on the environment as a result of commercial cassava production and processing.

## 19. RECOMMENDATION

19.1. The C.O.I. recommends that SABL Portion 884C be revoked on the basis that the land group registration process and the Land Investigation process fundamental to good title was flawed.

19.2 The Land Investigation Report was not fully completed for all the eight villages of TIKANA LLG comprising Kasalok, Lokono, Kaut, Putput, Tome, Kavin, Ngavalus and Panapai villages. No proper consultation and awareness was carried out by the Officers conducting the Land Investigation and the Report was not fully compliant with the land investigation process administered by DLPP.

19.3. The Lease/Lease Back Instrument executed between the purported representatives of the Landgroups of TIKANA LLG and the State was incomplete. The Secretary and Delegate of the Minister for Lands did not sign the Agreement rendering the registration and issuance of title to be null and void.

19.4. Cassava Etagon Holdings Limited is deregistered by IPA. The company also does not reflect shareholding of all the respective clans/tribes within the project area formerly known as KAUT TRP. The eight (8) villages of Tikana LLG to set up a new landowner company to forge development project?s for its community.

19.5. Any future development plan coinciding with customary land, landowner company and ILGs must be proactive and ensure on Joint Venture/Partnership Agreement with foreign investors and corporation who comply with IPA requirements and properly screened by the Department of Commerce, Industry and Trade.

19.6 Registration and Issuance of Certificate of Incorporation of the following 11 ILGs as notified in the government gazette number G80 13 April 2006 to be revoked. We recommend the need to review the whole process of ILG registration through proper consultation with genuine landowners, the New Ireland Provincial Administration and the Office of the Registrar of Incorporated Land Groups to allow for landowner participation in development projects.

ILG No.  
ILG Names  
Village Names

11841  
Makatitian Lulu  
Kawin/Bagatara  
11842  
MakatitianSivitan  
Bagatara  
11843  
Makamuk  
Batan  
11844  
Makatitian Lamaluo  
Bengatara  
11845  
Makatitian Naris  
Penemai  
11846  
Makatitian Mit  
Bagatara  
11847  
Makatitian Yanmat  
Bagatara  
11848  
Makatitian Raisel  
Olmalak  
11849  
Makatitian Manao  
Matselan  
11850  
Makatitian Malakaur  
Bagatara  
11851  
Makatitian Patan  
Bagatara

19.7 The Memorandum of Agreement between the State and Changhae Ethanol Corporation Limited of Korea has lapsed and should not be renewed. We however encourage the villages of Tikana LLG to seriously consider tapping into the Cassava/Rubber Project and allow a reasonable portion of land within the hinterland of old KAUT TRP to undertake such high impact project in consultation with the NIPA and relevant agencies of the State. The State must not be seen to muscle projects without the necessary data availed by the key agencies of government such as DLPP, DAL and the Provincial Governments and Administrations and the land owners concerned.

19.8. It is recommended that SABL issued to Cassava Etagon Holdings Ltd should be reviewed and the process of ILG registration should proceed with prober consultative programme. Dialogue should be continuing through appropriate agriculture institutions to initiate a preliminary varietal and agronomic research to develop the site specific technology. Conduct the economic and financial analysis to determine the returns to investment. Conduct social and environmental impact studies to determine the impact of this project on the standard of living of the people and conservation of land for other uses by the present and future generation. Finally identify appropriate investor with the capital and expertise to participate in the joint venture business with

the customary landowners to fulfil the intentions of the Special Purpose Agriculture and Business Lease.

COI Inquiry File No.12 for Special Purpose Agricultural and Business Lease over Portion 53C, 54C, 55C, 56C, 57C and 58C Volume 16 Folio 223 Milinch: Eloa New Ireland Province in the name of Emirau Trust.

1.1 In accordance with the powers given to the Commissioners pursuant to Section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Emirau Trust SABL. These were:

1.2.1 Department of New Ireland Province, (DNIP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGForest Authority)

## 2 Witnesses Statement and Summonses

2.1 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings are set out in the schedule below.

No

Name and Position

Pages

Day

Date

1

Mr Gilis Silau, Landowner & Administrator of Emirau Trust

12-31

3

26/10/11-SABL 38 KAVIENG

2

Mr Albert Moses, CEO, Economic & Infrastructure Sector, DNIP & Official of Emirau Landowners Association, Landowner

34-42

3

26/10/11-SABL 38 KAVIENG

3

Mr Naidan Benny Silau Landowner (Portion 54C & 58C) Opponent of SABL. Resident of Kavieng

43-49

3

26/10/11-SABL 38 KAVIENG

4

Mr Jerry Sio Landowner (Aiune Pakena ILG), Deputy Chairman of Emirau Landowners Association  
49-55

3

26/10/11-SABL 38 KAVIENG

5

Mr Venantius Gaul, Provincial Lands Officer Customary Land, Division of Lands and Physical  
Planning, NIPA

32-44

5

28/10/11-SABL 40 KAVIENG

6

Mr David Silakot, Former Acting Provincial Administrator & Retired Public Servant, NIPA

53-57

5

28/10/11-SABL 40 KAVIENG

7

Mr Anthony Luben, Unattached Public Servant & Former Deputy Secretary Lands Services 2002-  
2008, DLPP

2-10

-

SABL 68 MIROU (WAIGANI)

### 3. Parties represented by counsel

3.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

3.2. The following were granted leave to be represented by counsel

### 4. Exhibits and documents

4.1. There were eight (8) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No

Item

Interested Party

Date received

Exhibit Number

1

National Gazette No, G23 of Thursday 28 December 2006 (Notice of Direct Grant)

ET/DLPP

26/10/11

ET “1”

2  
SABL Lease–Owners Copy dated 16 March 2007  
ET/DLPP  
26/10/11  
ET “2”

3  
Land Investigation Report forwarded by Emirau Trust  
DLPP/ET  
26/10/11  
ET “3”

4  
Memorandum of Understanding Made on 10 November 2004 between Ben Micah and Edward Carr  
ET/Carr  
26/10/11  
ET “4”

5  
Deed of Trust, Emirau Trust dated 24 December 2004 made between the Settlers (Emirau Islanders) and the Trustee.  
ET/Emirau Islanders/Carr  
26/10/11  
ET “5”

6  
Sworn Statement of Albert Amos  
COI  
26/10/11  
ET”6”

7  
Letter by Naidan Silau dated 21 March 2007 to the Registrar of Titles  
COI  
26/10/11  
ET ”7”

8  
Certificate of ILG Incorporated on 29 March 2006 (Mr Naidan Benny Silau)  
COI  
26/10/11  
ET “8”

## 5. Timeline of events of note surrounding Emirau Trust SABL Title

5.1. The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No  
Milestone  
Dated of Completion/G rant/Issue Execution  
Proponent/Applicant  
Respondent Entity/Respondent

Memorandum of Agreement between Mr Ben Micah as Vau/Chief on behalf of all Emirau Islanders and Edward Carr of Kangaroo Ground, Melbourne, Australia

10th November

2004

Ben Micah/All Emirau Islanders/Edward Carr

ET/Carr

2

Registration of Trust Deed incorporating EMIRAU TRUST

24th December

2004

All 29 major landowning clans of Emirau Island referred to as Settlers (ILGs not registered with Registrar of ILGS)/ 9 Trustees

ET

3

Certificate of Recognition of ILGs

13th April

2005

29 Land Group Chairman

ET

4

Land Investigation

3rd August

29 Separate LIR for ILGs

ET

Report

2005

(2 Bound Volumes of Report

5

Recommendation for Alienability

12th August

2005

Recommendation by Mr Silakot, A/Provincial Administrator. No reservation for customary rights (99 years lease)

6

Notice of Direct Grant issued

27th December

2006

Issued by Mr Luben as Delegate (Was authorized by Instrument of Delegation)

7

Gazettal Notice of Notice of Direct Grant

28th December

2006

G 238

8

SABL Lease/Lease Back Title

## FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Emirau Trust Limited.

### 6. Emirau Trust SABL

6.1. A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G234 dated 26th December 2006 for Portion 53C, 54C, 55C, 56C, 57C and 58C Eleoa Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 26th December 2006 by the Department of Lands and Physical Planning to the holder Emirau Trust SABL (ET). Mr Anthony Luben signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

#### Legal Description

Portion 53C, 54C, 55C, 56C, 57C and 58C

Registered Survey Plan Catalogue No

3/

#### SABL Holder

Emirau Trust

Date of Registration of Lease

26th December 2006

Period of Lease

Ninety-nine (99) years

Land area of lease

3384.38 hectares

### 7. Background

7.1. Emirau Island is located 130 kilometres North West of Kavieng town. Emirau is among the St Mathias group of islands of which the biggest is Mussau Island. It is described as too rocky and infertile for growing groups. The Island nevertheless is rich with fish and other marine resources, including potentially and recently discovered deep sea oil and gas reserves.

### 8. Site Inspection

8.1. Due to logistical and time allocated to the C.O.I. Inquiry team, we were not able to travel to Emirau Island to undertake inspection and talk to the Islanders over the inquiry into SABL Portion 53C, 54C, 55C, 56C, 57C and 58C to Emirau Trust. The Commission was not able to conduct on-site inspection and evaluation of the Emirau Trust Limited. The remoteness of the island from Kavieng and the need for air transportation to visit the island required a visit in the future during the tenure of the inquiry which never eventuated. The team acknowledges the efforts of the Emirau people to travel long distance by dinghy to present themselves at the hearing at the Kavieng Fisheries College indicative of their interest in the SABL process and the development

prospects in the mobilization of customary land to Emirau Trust, trustee of the Emirau landowners to

forge development prospects for an island that is isolated and remotely located within the Pacific Ocean.

#### 9. IPA COMPANIES REGISTRY RECORDS

9.1. The Commission received files and information from IPA and interested members of the public.

9.2. Emirau Trust (“ET”) is a landowner Trust company for Emirau Islanders. The Trust was incorporated under Division 5 (Sections 69 to 74) of the Securities Act 1997.

9.3. The IPA Extract indicates that the Trust has one shareholder named as Ms Elvie Judy Mave from the Sagas Nahae ILG. The IPA Extracts states that she was born on the 21 of September 1959 and resides at Section 6 Allotment 5, Bisini Parade, East Boroko. She is also the sole Director which is allowed for under Section 11 of the Companies Act 1997. Section 11 of the Companies Act 1997 states, “.for purposes of a company, it is sufficient that there is one shareholder and one Director.”

9.4. C.O.I is concerned however, that for a trust that is set up for the benefit of a whole island or a whole community, that only one shareholder and one Director should be listed and effectively have control and direction of the Trust.

#### 10. DEED OF TRUST ESTABLISHING EMIRAU TRUST

10.1. Deed of Trust titled the EMIRAU TRUST (“ET”) numbered 00006715090 (referred to as Exhibit “ET 5”) was produced to the Commission on 26th October 2011 at the SABL Hearings at Kavieng. The Deed is dated 24th day of December 2004 and the C.O.I. note that this Trust Deed was registered with the Registrar of Companies in accordance with section 70 of the Securities Act 1997 on 5th January 2005.

10.2. ET was „established and registered to assume all Land and Land Usage Rights from? the twenty-nine (29) registered ILGs comprising all the land owners/settlers said to cover all of Emirau Island. The consolidated ILG will allow their land to be processed under a lease/lease back title to be issued by the State through DLPP to ET. We take no issue on the incorporation of the Trust by the very nature of its existence as a

landowner Trust Company enjoying the support of the majority of Emirau Islanders especially on its initiative to bring economic development to Emirau. In turn the Trust intended to enter into a, “Memorandum of Agreement to sublease all land on the island up to the high water mark for 99 years to a Mr Edward Carr of Kangaroo Ground, Melbourne for the purpose of developing integrated industry involving fishing, tourism, airline industry and transport services that will transform Emirau Island into a strategic centre for diverse business operations in the Pacific Rim.”

10.4. The Deed makes reference to a Memorandum of Understanding (MOU) between Ben Micah as Vau or Chief of Emirau Island and Mr Edward Carr, in the proposed development for Emirau Island was executed a month earlier before the Deed.

10.5. The primary object of the Deed of Trust was to give effect to the Memorandum of Understanding that was signed between Mr Ben Micah (on behalf of Emirau Landowners) and Mr Carr. The C.O.I viewsthat the on-going feud is related to suspicion, and continuous in fighting between the proponents and opponents of the proposed project development for the island. There needs to be a coordinated dialogue between the Emirau Island elites and the ordinary islanders. The misconception and major disagreements over the purported agreement with the Investor led to constant disagreement, disputes and contentions between clans both at Emirau and Kavieng. This was clearly evident during the land investigation process and the hearings of the SABL inquiry at Kavieng.

10.6. The Emirau Trust Deed was signed by the 29 Chairman of landowners referred to as Settlers

in the Deed. The comprehensive Register of all beneficiaries and members are listed under Schedule 2 of the Deed. It is to be noted that the ILGs at that time was not officially registered with the Registrar of ILG, DLPP. We however note that the actual social mapping of all the 29 clans on the island was satisfactory despite evidence to the contrary that some landgroups were omitted from the list. The C.O.I suggests that continued collaboration and understanding between the Islanders can alleviate the potential for dispute and criminal act that is the sorry state of affairs created by ET and its proponents.

10.7. The Corporate Structure of Emirau Trust consists of the Land Group Council comprising individual chairpersons of all ILGs on Emirau Island (Clause 1.1(f) and 4.1 and 4.2. in reference to their powers acting as Custodian of land rights) The Trustees appointed under the Emirau Trust Deed comprises individuals from within the registered ILGs. We consider a serious flaw in this arrangement as a potential for serious conflict of interest arising in the case of clan members holding position of Trustee. The duty imposed on the Trustee is linked to the concept of fiduciary obligation and responsibilities of the Trustee to act in good faith, to act fairly, to act prudently, to act honestly and exercise the required degree of care and diligence in the conducting business on behalf of the beneficiary MAY NOT BE FULLY DISCHARGED. There is a likelihood that the trustees will act as a protagonist from some beneficiaries and in antagonism to others<sup>16</sup> committing a serious breach of trust.

10.8. The appointment of the six (6) Trustees of Emirau Trust, show that Ms Elvee Mave the sole Director and Shareholder of Emirau Trust continues to play an important role in the Trust. She comes from the Sagas Nahae Clan. Pastor Wilson Stephen and Mr Bill Saeno both come from the same clan namely Vaum Sisasu Clan and their involvement as Trustee may constitute unfair distributions of benefits. The C.O.I raises question over the appointment of these Trustees in accordance with Clause 8.2 of the Trust Deed. There are no records of the Minutes of the Meetings produced to the C.O.I as to the election and appointment of the six (6) Trustees.

10.9. Clause 8.1.1 provides for the maximum number of Trustees as seven, but only six (6) Trustees was appointed to administer the Trust Deed.

10.10. The C.O.I notes that the Trust Deed in its entirety needs to be reviewed and amended in the following

10.11. Recital in respect of the reference to Mr Carr and the MOU as a paper vision with no tangible development since 2004. That MOU is obsolete and well passed its use by date and ET is required to engage with stakeholders (government agencies, provincial government and reputable

16 National Superannuation Fund Limited v Pacific Equities and Investment Limited [2006] SC 845 (11 July 2006) per Lay J at page 9 ([www.paclii.org](http://www.paclii.org))

investment financiers) to develop the projects identified at paragraph 2 of the Recital and the St Mathias Free Zone Trade Development Proposal for Emirau Project.

10.12. The clauses dealing with Uncontrolled Discretion (Clause 7.6) and Powers of the Trustee in relation to making decisions either alone or with other Trustees in respect of the 17 matters it transacts on behalf of the Trust pursuant to Clause 5.1 (d), (e), (f), (g), (h), (i), (k), (l), (n), (o), (p) and (q) must be complemented by additional clauses dealing with Corruption and Conflict of Interest of both Trustee and employees of the Trustee.

10.13 There must be a Fund Operation Manual and Investment Portfolio for the Trust in operation.

10.14. Mr Silau confirms as example of abuse, that an amount of K300, 000 was paid by the New Ireland Provincial Government to ET to assist with its proposal and these monies were disbursed on lawyer's fees and other programs on the island. Clearly the monies were disbursed for the beneficiaries given the unconditional discretion clause. He also states that ET does not have a bank account due to the ongoing disputes which lends his evidence as unreliable because it is

incumbent that any corporate entity is required by law to establish its accounts for the purpose of accountability especially a Trust clearly empowered as a corporate vehicle for all landowners on the island. (See his evidence at page 26 to 27 of Transcript SABL 38 Kavieng-26/10/2011)

## 11. Memorandum of Understanding

11.1 The MOU was signed on 10th November 2004. Mr Micah agreed on behalf of all Emirau Islanders to lease the island to Edward Carr (known as EC) for 99 years with an option for a further 99 years lease. The lease would not be terminated by either party until the first twenty-five years had elapsed. That agreement provides for the development of Emirau Island through the lease/lease back title which purports to allow Mr Carr to undertake his conceptual blueprint for the development of the island. The C.O.I notes that the Agreement was not an agreement for the sale of the island but development to take place through the lease/lease title.

11.2. Under the MOU, the Emirau Islanders would grant to EC the exclusive rights to fish the waters of the Island including the waters extending from a 12 mile radius in the Murat LLG covering Mussau, Tench and Emirau Islands to remove any doubt the MOA states that "...no tribal or cultural issues prevent EC receiving produce fished from local waters."

11.3. In other concessions EC would be allowed by the Emirau people to build and operate one or more international airports capable of taking large aircraft like 747s and airbus. EC would charge landing and take-off fees and impound and hold any plane until such fees were paid. It was agreed that Mr Micah would work with the PNG government to allow EC to create an island economy which would use the US dollar as currency

11.4. What would the people of Emirau get in return? EC promised among other things to pay monthly rental to the Trust and to build a wharf, an airport, a fish processing operation, a fishing industry and a recycling industry (presumably the material left behind by the US army while it was based there during WWII).

11.6. The Commission notes that the signing of the MOU and the subsequent incorporation of it into the form of a legally binding Deed both preceded the formation of ILGs. The ILGs were formally incorporated and gazetted on the 13th April 2005. The Land Investigation Report is dated 3rd August 2005. There is no problem with the registration of the ILGs as the social mapping records indicate that the ILG application and registration process was coordinated properly and in accordance with the ILG registration process.

11.7. The C.O.I notes that specific timeline was also agreed to in respect of the following

1. That Ben Micah will supply to EC with the Emirau Trust Deed by 25 November 2004
2. That Ben Micah will provide to EC with the first draft of the lease by 20 December 2004
3. That Ben Micah will supply to EC the ILG Certificates by 20 December 2004
4. By 1 January 2005 EC and Emirau Trust will execute the lease.

11.8. That timeline the C.O.I observes is the very basis for the application to register the ILG and organise the Trust to mobilise all the land on the Island for SABL. The MOA has outlived its usefulness and no longer binding on Emirau Trust. That was confirmed in evidence by Mr Gilis Silau, the employed Administrator of Emirau Trust (page 28-29 of Transcript SABL 36 Kavieng 26/10/11)

## 12. New Investment for Emirau Island

12.1. The Commission is now aware that there was a further lease agreement signed sometime in

November or towards the end of 2010 on Emirau Island. The Commission has not seen copies of that lease agreement. The actual event was captured in a video which was submitted to the Commission for its evaluation. We however caution Emirau Trust to ensure that the actual lease agreement with the Developer is transparent and must be coordinated in conjunction with preferably with Department of Commerce and Industry and IPA so that the proper due diligence can be assessed for its financial and technical capacity including equipment and technology to develop infrastructure on the island that will benefit the islanders.

### 13. Land Mobilization on Emirau

#### Incorporated Land Groups

13.1. ILG process is described by Mr Gilis in the extract of proceedings at page 13 as follows;

“A: We begin with ILGs. ILGs were – we had a lengthy process beginning in 2000, I being the officer of the Local Level Government in that time. Request was made by the Trust to carry out land mobilization on the island and we began that process in 2000. Most of his time was taken up in doing awareness and

educating the people on how to do land process, mobilizing their land through the ILG system. We only started doing serious land mobilization program after Local Level Government engaged the Village Court Magistrate in 2002, 2003; that is when serious land mobilization program began. Most of this time was taken up in various villages organizing village committees by themselves. The village committees then identified people who would put together, may be organizations in later on, coming up with various ILGs. We have six villages and we had six committees in those times. They all came up with a total of 29 ILGs at their own discretion. From then until 2005, a program was organized in which the Magistrate presided over all the land issues, land mediation and your honour, it was a real tiring experience working with this ILG. We concluded the program and managed to document 29 ILGs in 2005. Various ILGs were tasked to raise funds and they eventually raised required fundings to lodge their applications for registration. After this they were successfully lodged and certificates were obtained. We also raised funds after that to engage a surveyor and in about January and February, a registered surveyor came to the island and the entire island community supported him in going through the bushes and the entire circumference of the island to survey. It was completed in record time because the community supported that program. ..“

(SABL 38 Kavieng–26/10/13)

13.2. It is commendable on the part of Emirau Trust in behalf of the Islanders to conduct social mapping relative to lineages to land ownership covering those living on the Emirau Island, Kavieng and throughout PNG. The ILGs are as follows

No	Names of Chairperson of all Settlers of Emirau Is.	No of Beneficiaries	ILG No (As per National Gazette G50 dated 13/04/05)	Clan/ILG Name
1	Frazer Mathew	30	10839	Evele Ne Manaonema
2				

Jerry Moses

59

10840

Evele Ne Buliale

3

Genan Peter

74

10841

Evele Ne Tavilu

4

Lindy Boaz

52

10842

Evele Ne Pakasialele

5

Benson Thomas

33

10843

Evele Ne Eukaokao

6

Kessa Roger

63

10844

Evele Ne Tasingina

7

Pr. Sio Paylo

25

10845

Evele Ne Sauruvau Pakena

8

Gordon Kasane

29

10846

Evele Sauruvau Ne Tasingina

9

Gilis Silau

24

10847

Evele Ne Ulua

10

Lele Amos

44

10848

Evele Ne Matara

11

Colin Naulu

78

10849

Evele Ne Nuaipala

12

Staedis Ross

-

10850  
Evele Eturu Ne Leoa  
13

Edward Jimmy  
26

10851  
Evele Eturu Ne Tasingina  
14

Kalen Thomas  
94

10852  
Enaiu Ne Sangas Nahae  
15

Kelos Maigen  
44

10853  
Enaiu Ne Pakenaa  
16

Daniel Lal  
65

10854  
Enaiu Ne Ginama  
17

Peter Mitiel  
101

10855  
Enaiu Ne Gilotu  
18

Jeffry Loesaraoi  
52

10856  
Enaiu Ne Ovo Eleoa  
19

Kevin William  
180

10857  
Emunganua Saitalai  
20

Ruth Kolly  
54

10858  
Malilua  
21

Gregory David  
35

10859  
Matakoropa  
22

Donlee Taso  
137

10860  
Epuarae  
23  
Frank Kapty  
70  
10861  
Vaum Ne Siasu  
24  
Edson Thomas  
38  
10862  
Vaum Ne Pakena

25  
Raclif Amanga  
31  
10863  
Eloirati  
26  
Willie Maigen  
25  
10864  
Eponali  
27  
Maelon Kunivua  
61

10865  
Eaisa  
28  
Mackson James  
70  
10866  
Enusi  
29  
Yvon Mitiel  
84  
10867  
Mataisao

13.3. The objection over ILG Registration was raised by Naiden Benny. Mr Benny is the son of Benny Silau who was the official spokesperson of the Emirau Landowners Association and major objector to the ILG and SABL process for Emirau Island. According to Mr Anthony Luben, the immediate past Deputy Secretary, DLPP a meeting was convened in his office which was attended by Mr Ben Micah, Gilis Silau and Pastor Wilson of the Emirau Trust and Naiden Benny and others. In that meeting Mr Benny expressed concern about the ILG formation and registration and the need to suspend registration of the ILG and open more discussion on the ILG process to which his father's clan was not included in the 29 ILGs subject of registration and the LIR. It transpired at that meeting that Mr Benny's clan was the minority group objecting when the majority were willing to register their interest and become involved on the Emirau Project.

13.4. The C.O.I in reviewing the video concerning this meeting noted that there were a number of issues that could be resolved at a proper forum to be convened at Emirau where most of the

pressing issues raised will be discussed and amicably resolved in accordance with the custom of the people. We also noted that the ILG registration required any objections within a prescribed period and no notice of objections was filed hence it would be futile for the process to be halted on the basis of the objection.

13.5. We however received documentary evidence that Mr Benny Silau registered his ILG Evele Baupationgo Land Group (Inc) (Exhibit "8" 26th October 2011) with the Registrar of ILG. A Certificate to that effect was issued by the A/Registrar (ILG) on 29th March 2006.

#### 14. Department of New Ireland Province

14.1. Land Investigation was conducted and the report compiled by one Mr Venantius Gaul, Provincial Lands Officer attached to the Division of Lands with the New Ireland Provincial Administration (NIPA). Mr Gaul appeared under summons to give evidence to the inquiry at Kavieng. We summarise his evidence as follows

14.2. Land Instruction Number 01/05 was issued by DLPP to Office of Provincial Administrator authorizing land investigation on application by ET.

14.3. On 1st August 2005 he was released by Mr Martin Mavo, Manager for Lands to undertake the Land Investigation.

14.4. On 2nd August 2005 people from Murat LLG (Emirau) arranged speed boat for him to travel to Emirau.

14.5. 3 August 2005, he conducted a meeting with more than 200 islanders at Lorusa, Emirau Island. This was also an awareness on the SABL process and he also commenced the land investigation for each of the ILGs which he completed on 4th August 2005. He also sought the view of those present at that time if there was any objections to the proposed SABL and at that time no objections was raised.

14.6. He also consulted Chairman of the Village Court including three other Magistrates as to any ongoing dispute.

14.7. He was not involved in the meeting at ToRot Hall at Kavieng which was organised by Mr Anthony Luben and his officers from Port Moresby, Emirau Trust officials and the people of Emirau.

14.8. He confirmed that he proceeded on boundary inspection at Lorusa and travelled by speedboat to Muli Island, to Tavilu and Pakena and onto the Plantation at Mareluana and returned through Pasikena, Ieva and Lorusa. He states that he explained to the people that as a government officer it was his duty to walk the boundary to fully satisfy that this land consented by the people to be released for the proposed fishing project.

14.9. The C.O.I inquired that Portion 54C and 58C were Plantations in colonial times and may continue to do be Plantation. Mr Gaul informed the C.O.I that the land may have reverted back to the landowners in the 1980s pursuant to the Plantation Registration Scheme.

14.10. In view of his evidence reference was made to the Land Investigation Report which is not disputed by Emirau Islanders generally. The LIR (Field Notes) comprises two volumes of all twenty nine ILGs and landgroups of Emirau Island. (Exhibit "ET 3").

14.11. The relevant section of the Report was completed and includes as follows;

- \* The willingness of the clan to allow the land for lease/lease back for a period of 99 years
- \* Certification as to the boundary;
- \* Declaration of Custom in relation to Land Tenure;
- \* Schedule of Ownership, Status, and Rights to the Land;
- \* Registered ILG as per National Gazette No G 50 dated 13 April 2005;

\* Consent of the ILG on land use right to ET by meeting dated 24th November 2004;

14.12. Completed Genealogy on the respective members of the clan as to inheritance rights over

the land.

14.13. Emirau ILG land Usage Agreement dated 10th January 2005. basically allowing their land to be used for the purpose of creating economic industry as desired under the project agreement.

14.14. The LIR was completed by Mr Gau on 3rd August 2005. The Report was submitted to the Provincial Administrator for due diligence and Recommendation for Alienability.

14.15. The Recommendation for Alienability was signed by Mr David Silachot on 12th August 2005. It was evident that Mr Silachot failed to undertake a proper due diligence and also omitted to make any reservation for the continued rights of the landowners to hunting, fishing, collecting, fishing and access to sacred sites, cemetery and so on. The LIR records quoted Mr Silachot in his recommendation,; "I have fully considered the question of reserving to the native owners and their

descendants the rights of hunting, gathering, collecting, fishing and access and I recommend that no such reservations be made". The implication under law as stipulated in Section 11(2) of the Land Act is that all customary rights in the land, except those which are specifically reserved in the Lease are suspended for the period of the lease. He admitted this oversight during cross examination and apologised to the people of Emirau.

14.16. The Commission of Inquiry has a copy of a letter written on 25 July 2005 by a Mr Benny, President of the Emirau Landowners Association protesting the conduct of the Lands Investigation Report. We however accept that a proper LIR was completed in the absence of any challenges been made during the course of this inquiry into the Land Investigation Report. There was a much stronger and huge support for the project by the majority the result of a well-structured social mapping and ILG registration.

## 15 DEPARTMENT OF LANDS AND PHYSICAL PLANNING

15.1. The Lands Department failed to produce the NLD file and the SABL Title file and at that time put out public advertisement asking land title holders to produce owners copy in order to reconstruct their files.

15.2 The C.O.I was unable to ascertain from the lack of documentation as to the Native Land Dealings File and the Registrar of Titles files on the administrative process with regard to SABL Portions 53C to 58C in the name of Emirau Trust.

15.3. Mr Anthony Luben was Deputy Secretary, Lands. He signed as delegate of the Minister. Mr Luben from New Ireland province himself was serving as Deputy Secretary of Lands at that time. What piece of interest is that in the same Gazette, G234, two other direct grants made by Mr Pepi Kimas Secretary at that same time? The C.O.I. was informed by Mr Romilly Kila Pat that an Instrument of Appointment was current at the time Mr Luben signed as Delegate. The production of the Gazettal of the Instrument by DLPP confirmed that Mr Luben was authorized to sign the Notice of Direct Grant as delegate of the Minister for Lands.

15.4. It is important to deal with the matter concerning DLPPs knowledge of the objections raised by some landowners from Emirau Island. Mr Luben?s involvement is essential to set the records as he clearly understood it to be when the ILG was processed for registration and the meeting held prior to the Notice of Direct Grant at the conclusion of the LIR process.

(a) The Meeting at Mr Luben's Office prior to the issuance of the 29 ILG Certificates

15.5. The Commission notes from Mr Luben?s evidence that he tried to facilitate discussions between Mr Micah, Pastor Wilson and Mr Gilis of ET and Naiden Benny representing his father and clan over the ILG registration. He was concerned as to why ET failed to include his parents name

amongst the 29 ILG applications for registration. That meeting which was recorded on video and copies submitted to the C.O.I for its viewing will confirm that Mr Benny was expressing the desire for DLPP to suspend registration of the ILG application and to allow for parties to return to Emirau and resolve the issue.

15.6. It was quite obvious that the application were gazetted and publicly advertised. The prescribed period for objections had lapsed and that registration was to take effect. The C.O.I notes that it was made clear at that meeting in the presence of Mr Luben that all the issues would be properly dealt with as it would not be feasible to stop the registration process at that time.

(a) The Meeting at Peter ToRot Hall at Kavieng on 3 November 2006

15.7. We refer to the extract in the evidence of Mr Luben

“A: So Commissioner what happened is on this particular date, I think it was on 3 November 2006 I led a delegation to Kavieng. Unfortunately, two of my colleague in that team passed away but there were about four or five of us who went there. We had an awareness and tried to talk, clarify the Emirau situation with the two parties in the ToRot hall in Kavieng town. And while the majority of the people in there were supporting, including Ben Micah was also there present at that time, the good majority of the people there supported the idea of having a lease – lease back on the island. There was a family led by Ben – as you mentioned, the counsel – that is his family that they objected to it vigorously to their proposal. They had a heated argument. Now, the argument went beyond the land issue, it went and start touching about criminal activities on the island and so forth and that is when they actually had a physical confrontation and we witnessed that, me and the delegation, and we tried to calm them down and get back to the issue of the lease thing that they were talking about.

But at that time, my assessment, if I may say so Commissioner, my assessment at that time was that the majority of the islanders who actually stay at Emirau wanted the lease – lease back thing. This so called Landowners Association of Emirau, the people who are against it, I found out later that they are not staying on the island, they are people staying in Kavieng town themselves. So according to the people who came from the island, this particular family, they are based in Kavieng and not in Emirau. So I concluded that the majority of the islanders, they agree to, they are in support of the Emirau Trust Lease.”(My underlining)

(Refer to his evidence at Transcript SABL 68 Mirou-05/01/12 at pages 2– 10)

15.8. That evidence indicates that there was a need to allow for the grievances to be addressed and it was clearly evident that DLPP was in a position to suspend the SABL process and allow the proponents and objectors of ET to mediate issues relating to Emirau Trust, the ILG registration of the clan and the SABL process. That process was ignored in totality by DLPP and the title was issued. Despite the issuance of title to ET, the issues over Emirau land mobilization, suspicion and misunderstanding continue to abate with hostilities more profound between the warring clans.

15.9. We note that remoteness of the Island and the ability to arrange meetings between the parties was dependent on availability of the parties, the venue for the meeting and the requirement to have land court magistrate present to mediate on the issues. It was important that the meeting was held at Emirau where the SABL project site was proposed.

16 DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

16.1 The Commission notes from the evidence of Mr Manasupe Zurenuoc on the ongoing dispute and concerns raised by the objecting landowners over the issuance of SABL title over five portion of land to Emirau Island. The landowners registered their concerns with the Custodian of Trust Land (Secretary for Provincial Government and Local Level Government Affairs). The Custodian of Trust Land was contemplating proceedings in the National Court when the COI into SABL was established. (Refer to the evidence of Mr Manasupe Zurenuoc)

16.2 The Land Investigation Report and the Recommendation for Alienability was not referred to the Custodian of trust Land for due diligence. There

was also no Certificate of Alienability issued by the Custodian of Trust Land to allow for the registration and issuance of SABL Title to ET.

#### 17 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

17.1 There are no agricultural considerations so DAL has no involvement in this SABL.

#### 18. PNG FORESTRY AUTHORITY

18.1 There are no agricultural considerations so PNG Forest Authority has no involvement in this SABL.

#### 19. DEPARTMENT OF ENVIRONMENT AND CONSERVATION

19.1 The C.O.I notes that environmental issues will arise over the planned project to build seaport and airport facilities that will impact on the environment and it is necessary for an environment impact report to be submitted for evaluation and approval pursuant to the Environment and Conservation Act.

#### 20. OBJECTIONS TO SABL TITLE TO EMIRAU TRUST

20.1 The Association called Emirau Landowners Association were adamant that they did not give their unreserved consent for the formation of the Emirau Trust and the subsequent alienation of their island through the SABL for 99 years to the developer known as Edward Car. Emirau Landowners Association, a legal entity established with the IPA was legally established and registered in 2002.

20.2. Numerous objections have been received by the Commission. The objections and the protests are not new. They date back to the early 1990's when the Emirau Landowners Association was not in dispute with

the leaders of what was then the Emirau Development Corporation (EDC) which evidently is the forerunner to Emirau Trust as it is now.

20.3. A letter dated 28 September 1994 written by then, President of the Association Mr Absolam Peter to a Mr Gilis Timothy, the President of Emirau Development Corporation ("EDC"), accusing him of trying to claim the whole Emirau Island as his very own. At that time there was talk of setting up a fishing industry and also a satellite launching station. Ten years later, in 2003 and 2004 the land dispute heated up again, this time between the supporters of Emirau Trust and Benny Silau, Chairman of the Emirau Landowners Association. The Commission has on file, a letter written by Mr Don Polye, then Minister for Transport and Civil Aviation in reply to concerns raised by Mr Ian Lin Stucky, then Regional Member for NIP and Governor about landowner opposition to the building of an international airport on Emirau Island.

20.4 In another letter to the Lands Department, attention to Anthony Luben, concerns were raised about why he had conducted a meeting on Friday 3 November 2006 attended by both parties, which ended up in an ugly fight and hospitalization of some landowners. Mr Anthony Luben later on went on to make a direct grant to Emirau Trust.

20.5. During the course of SABL Hearings at Kavieng Fisheries College the following persons gave evidence on oath with regard to their objections to the Emirau Trust SABL Title over the five portions covering the entire island of Emirau. The evidence provided have been fairly well covered in this report and references made to the extract of evidence from the transcript,

The Evidence of Albert Amos

20.6. Mr Albert Amos, Chief Executive Officer, Economic and Infrastructure Sector, Kavieng, NIP and Landowner

20.7. His evidence was that there was discrepancy in the ILG registration in that some ILGs members were objecting to the SABL but eventually showed interest to be part of ET.

20.8. The reference to the bankruptcy proceedings against Hon Mr Ben Micah we consider is not within the C.O.I terms of Reference to inquire into and we make no further evaluation on this issue. (SABL 38 Kavieng 26/10/11 and refer also to Exhibit "ET 6" comprising a number of correspondences to relevant State agencies on the SABL to ET)

The Evidence of Naiden Benny Silau

20.9 Naiden Benny Silau (the son of Benny Silau), Resident, Kavieng, Landowner

20.10 Confirm that his father and their clan did not consent to SABL Portion 53C and 58C to Emirau Trust. That land belonged to his father by inheritance and was not too happy that it was included in the SABL. They want Portion 53C and 58C to be incised from the SABL title to Emirau Trust. Portion 53C and 58C is a current coconut plantation and the family would like to continue with that agriculture activity.

(Refer to evidence at SABL 38 Kavieng 26/10/11 at pages 43–49)

The Evidence of Jerry Sio

20.11 Jerry Sio, Deputy Chairman–Emirau Landowners Association, Subsistence Farmer and Landowner

20.12. Confirm that there was no awareness on the ILG and SABL process and not happy for been excluded in the ILG registration.

(SABL 38 Kavieng 26/10/11 at pages 49)

## 21. RECOMMENDATION

21.1. SABL Portions 53C, 54C, 55C, 56C, 57C and 58C issued in the name of EMIRAU TRUST to be retained subject to the following conditions which are required to be addressed by the Grantee immediately

1. Memorandum of Agreement between Mr Ben Micah, a Vau/Chief on behalf of Emirau Islander and Mr Edward Carr of Kangaroo Island, Melbourne, Australia dated 2004 has lapsed and cancelled. The effect of the MOA has no binding effect on the Deed of Trust creating EMIRAU TRUST

2. A restructure of the Directorship and Shareholding of Emirau Trust with IPA. Ms Mave to be removed as sole Director and Shareholder of the Trust and replaced by all Twenty Nine (29) ILG Clan leaders/Chairperson of Emirau Island.

3. The TRUST DEED incorporating EMIRAU TRUST in its entirety to be reviewed and amended forthwith to enable transparency within the corporate structure of the Council, the Trustee and the Beneficiaries at large. These amendments must also be registered

with the Securities Commission pursuant to section of the Securities Act.

3.1. In the interest of all islanders a Trustee company of impeccable standing and reputation be appointed to administer the Trust including employed officers of the Trustee Corporation.

4. Need to mediate land and other outstanding issues with the objectors of the Emirau Trust SABL on the way forward in terms of the development of Emirau Island. If there is no resolution to the issue, Portions within the SABL clearly the subject of the dispute will be incised and a new survey plan undertaken for the new SABL.

5. Any future negotiations with prospective Investors and Developers over sub-lease arrangement require compliance with regulations and statutory requirements. The involvement of line agencies are necessary so as to ensure that the proposed development consistent with the St Mathias Free Trade Zone Development Proposal (Emirau Project) is realised for the traditional landgroups of Emirau Island.

6. Reservation for customary rights must also be applied and Lease/Lease Back Title amended to include that covenant.

7. The period of ninety-nine years to be carefully considered and reduced based on realistic development proposals.

## 1. NEW HANOVER AND NAMATANAI DISTRICT SABLs-NEW IRELAND PROVINCE

1.1 This Report sets out the findings of the COI on a total of three (3) SABLs issued in the island of New Hanover and one (1) SABL issued in Namatanai District in the New Ireland Province of Papua New Guinea as follows:

1.1.1. The Commission of Inquiry File No. 25 for Special Agricultural and Business Lease (SABL) over Portion 885C Volume 17 Folio 01 Milinch: Lavongai, New Ireland Province in the name of Tabut Limited.

1.1.2. The Commission of Inquiry File No. 26 for Special Agricultural and Business Lease (SABL) over Portion 886C Volume 17 Folio 19 Milinch: Lavongai, New Ireland Province in the name of Umbukul Limited.

1.1.3. The Commission of Inquiry File No. 27 for Special Agricultural and Business Lease (SABL) over Portion 887C Volume 17 Folio 13 Milinch: Lavongai, New Ireland Province in the name of Central New Hanover Limited.

1.1.4. The Commission of Inquiry File No 2 for Special Purpose Agricultural and Business Lease over Portion 871C Volume 17 Folio 16 Milinch: Dolomakas New Ireland Province in the name of Rakubana Development Pty Limited.

## 2. HEARINGS SPECIFIC TO SABLs ON NEW HANOVER ISLAND AND NAMATANAI

Date of Hearings: 24th October 2011 to 3 November 2011

Venue: Kavieng Fisheries College Campus

## 3. INTRODUCTION Background

3.1. New Hanover Island has experienced extensive exposure to logging activities as early as the 1980s when Malaysian Overseas Investment (MOI) entered into agreement with the people of Mamirum (Tabut) under the repealed Forestry (Private Dealings) Act, that "permitted owners to sell their timber privately; the usual procedure was for landowner company; to acquire timber harvesting rights from customary landowners and then sell these rights on to a foreign logging company. Provided there was ministerial approval, loggers could operate without a timber permit and with minimum state supervision." (Pedi Anis @ pages 47 and 50 of SABL 42 Mirou-03/11/11). That led to the Barnett Forest Inquiry and the changes made to the Forestry Act in 1991, to which New Hanover was featured in this inquiry.

3.2. In the late 80s and early 90s, Dominance Resources a Malaysian Company was invited by the Provincial Government under the leadership of Mr Anis to harvest logs under the Umbukul area TRP. A dispute arose and Dominance Resources abandoned its machineries and expatriate employees and left. Court proceedings were instituted by Mr Anis to recover the machinery. He confirmed that two former employees of Dominance Resources Mrs Reina Lau Hii and Mr Stephen Hii later became major shareholder partners in Tutuman Development Limited, a company that Mr

Pedi Anis set up basically to harvest and export merchantable logs. (Anis at page 17–19). The company later went on to harvest logs on the cancelled Kaut TRP concession (Tikana LLG) and Danfu TRP (Namatanai District). Landowner issues became a thorn for Tutuman especially with the Kaut TRP experience and that followed through to Danfu and New Hanover.

17 Refer to Chapter 11: Forest Sector Policy Making and Implementation: Policy making since independence. [http://express.anu.edu.au/ssgm/policy\\_making/mobile\\_devices/ch11s02.html](http://express.anu.edu.au/ssgm/policy_making/mobile_devices/ch11s02.html)

#### 4. SABL Leases on New Hanover Island and Namatanai District

4.1. Special agriculture business leases on New Hanover Island issued to three landowner companies of Tabut Limited, Umbukul Limited and Central New Hanover Limited made news headlines when it was reported that the whole Island had been sold to a Singaporean company. Certainly the total area granted under the 3 leases takes up 75 % of the Island, but, it remains to be seen whether in fact that portion of a large Island in PNG has been sold off to a foreign entity(s). It is also clear that a lot of customary landowners believe that they have lost their right to the use and enjoyment of their land for the next 99 years without getting anything in return. They have also expressed serious concern about the exploitation of their land resulting in permanent environmental damage.

4.2. Things came to a head early on in the piece, when landowners of the Mamirum area that is now covered by the Tabut SABL, objected to the landing and establishment of the developer company Tutuman Development Limited (TDL) on their beach front village. They were arrested and locked up at the Kavieng police station for their defiance against the sublessee who had exercised its new found rights as tenant. It is perhaps a sign of things to come in other SABL areas and an indication of what may be the negative aspects of an otherwise well intentioned concept.

4.3. The news of the New Hanoverians plight brought the issue of SABLs to the public's attention and has caused sufficient public concern in the government's view to set up this inquiry. What is clear from perusal of all the material furnished so far to the COI is that there is still a lot of discord, distress and general anxiety out there among a large number of customary landowners. Their numbers are sufficient to indicate that there may not have been informed and unequivocal consent for the creation of these leases. In fact their cries reached the ears of now Chief Secretary Manasupe Zurenuoc when he was Secretary for Provincial affairs and designated custodian of customary and trust lands. Mr Zurenuoc has since given evidence to the COI and asked the Commission to recommend for the cancellation of the 3 SABLs on New Hanover Island.

#### 5. Site Visits

5.1. The C.O.I. team comprising Commissioner Nicholas Mirou, Counsels Paul Tusais, Jimmy Bokomi, Kako Sarufa (Associate), Ben Kaiah (Administration), Patrick Debesa, Dokta Mckenzie (Security), Joseph Wohuinangu (C.O.I Agriculturalist), Kavieng Police and Landowners travelled by sea to inspect the SABL located at New Hanover. Due to logistical convenience, team headed by Commissioner, Mr Tusais, John Sek and Kamsal Mareleu, Police Personnel travelled direct to Noipus, Umbukul. Mr Jimmy Bokomi, Mr Wohuinangu and other team travelled to the nursery site on Central New Hanover. The Commissioner later travelled back visiting Noipus, Tabut village within the Three Island Harbour on to Metaia, the log pound and nursery site on Central New Hanover. It took the team the entire day starting at around 9 am and returning to Kavieng around 9p.m.

5.2. Three (3) dinghies was hired from the Fisheries College and we acknowledge the skills of our operators in ensuring our safety and wellbeing during the long and gruelling marathon traveling

from Kavieng to New Hanover and returning within the same day. The C.O.I highlights these factors to be taken into account as to the time allocated for the inquiry was realistically short and funding inadequate to undertake an inquiry of this magnitude especially with the conduct of hearings and at the same time conducting site visit to various SABL locations in the province.

5.3 The following is the C.O.I observation of the site visit is confirmed by the photos and video accompanying this report.

5.4. Evidence of log pound with harbour facility well below international harbour standards. It is not long terms and will only serve the interest of the loggers as long logging activity continues in Central New Hanover and exported through the Three Island log pound harbour.

5.5. Environmental concerns over massive destruction of mangroves, waterways, sago palms, trees on the coastline including dredging of the harbour and destruction of coral reefs affecting the ecosystem and marine life. No environmental concerns addressed by the Developer.

5.6. The District Office Building at Noipus is derelict condition and in want of renovation.

5.7. Evidence of machinery used by Dominion dumped at Noipus District Offices waterway.

5.8. Evidence of dredging of coral to build logging roads

5.9. Evidence of a nursery on Central New Hanover SABL, but this was confirmed by the Commission Agriculturalist to be three weeks old. This would reflect the urgency of Tutuman to initiate such nursery on the understanding that the Commission was conducting its hearings and site inspection at New Ireland for two weeks commencing 15th October 2011.

## 6. TUTUMAN DEVELOPMENT LIMITED

6.1. Perusal of IPA extracts show Tutuman Development Limited to be a company incorporated in PNG. The Company was registered by the Registrar of Companies on 2nd December 1999. The Company number is 1-36478. Files from PNGFA and DEC show that Regina Hii a Malaysian citizen who is resident in PNG owns 49% of the total shares. Deodatus Hii also a Malaysian citizen with PNG residency holds 12.5 % shares whilst Pedi Anis, Janet Rauveve and Degon Logo, all PNG citizens each hold 12.75 % shares. It would appear from this record that the majority shareholding of 61.5% in the company is held by foreigners. The company is a registered forest industry participant given registration number F101156 by the PNGFA. Its main activities seem to be forestry related but it also claims to be the first company in New Ireland to be granted a cocoa export licence.

6.2 The shareholding structure was confirmed by Mr Pedi Anis, the current Chairman of Tutuman as two foreign nationals of Malaysia been the major shareholder of TDL

6.3. The C.O.I was also informed by Mr Anis on the incorporation and registration of Tutuman Integrated Products Limited, company set up on 30 August 2007. The Company Number is 1-60628.

6.4. According to the Document tendered by Mr Daink of DAL titled "Integrated Agro-Forestry Project, Central New Hanover SABL, NIP" (Exhibit "FD 10"), "Tutuman Development Limited is a duly registered national company under Investment Promotion Authority Act and is specialized in logging and marketing in the New Ireland Province. Recently the TDLs subsidiary, Tutuman Integrated Products Ltd (TIPL) has switched to agriculture and reforestation land use development, making TIPL as the first nationally owned company in NIP to obtain Cocoa Export Licence.

6.5. We are critical of the registration of a new subsidiary company for the three reasons, (1) Tutuman does not have the financial capacity and the expertise as an agriculture company to undertake high impact agro-forest project on New Hanover and Namatanai. In addition, the current Agriculture Sub-Lease Agreement was executed between TDL and the four (4) Landowner Company; (2) the lease agreement is it is not fulfilled by Tutuman should be terminated by Tabut, Umbukul, Central New Hanover and Rakubana, because there is no agreement with TIPL; and (3)

the shift of agriculture focus from TDL to TIPL constitutes serious breach of the regulatory process of compliance in accordance with DAL approval and issuance of Certificate of Compliance Certificate to PNG Forest Authority for issuance of FCA including Level 3 Environmental Permits. The lessee has failed outright to perform the condition of the lease agreement and therefore must be terminated.

## 7. EVIDENCE OF KEY FIGURES COMMON TO THE SABLs UNDER REVIEW

7.1. The following Witnesses either summonsed or appeared voluntarily are common witnesses to the SABLs issued to the four (4) SABLs in the New Ireland Province. The C.O.I will include Rakubana Development Corporation in this report on the basis that Tutuman is directly involved under an Agriculture Sublease to Danfu Extension SABL. The common witness to the above SABLs provided information on the role they played in the formation of the SABL.

7.2. The C.O.I refers to the evidence of Mr Pedi Anis, Mr Miskus Maraleu and Mrs Janet Rauveve as the key figures in the four (4) SABLs on New Ireland (excluding Emirau Trust Limited), and technically Cassava Etagon Holdings Limited in the expired Kaut TRP concession.

7.3. The C.O.I was unable to summons Ms Regina Hii, Mr Deodatus Hii and Mr Steven Hii as they were out of the country at the time C.O.I conducted its hearings at Kavieng.

### 8. Mr Pedi Anis

8.1. Mr Pedi Anis is a graduate from UPNG, a former Premier (1982–1991) and politician in the New Ireland Provincial Assembly (1982–1995), Senior Bureaucrat and Advisor to Ministers. (various roles). He typifies passion to ensure New Ireland communities mobilize and utilize their land inclusive of forest and its biodiversity for agricultural development. This is reflected in the major role he played in creation of the five SABLs in the province including former Kaut TRP area.

8.2. Amongst Mr Anis employment portfolio, there are significant milestones apparently linked to the SABLs listed as part of our inquiry,

1999–2003 Negotiated Kaut TRP

2003–2007 Negotiated and signed Central New Ireland TRP

2006–2007: Negotiated and signed Tabut/Mamirum Timber Authority Licence for Forestry on TAO2 & TAO 3, Roadline Licences & Agriculture TA (Tabut)

2008–2009 Negotiated DANFU Timber Licence for Namatanai District

2011 Negotiated and signed a multi-million Kina project development of Rubber Plantation, Rubber downstream processing, Veneer Sawmill, sawmill, Woodchip mill–New Hanover

8.3. The Commission finds that Mr Anis was better placed in terms of his knowledge of the entire forest related project within the province

including his own island. He could not be underestimated at all when it comes to forestry related activities. In his own words, he said, “you cannot grow cocoa on top of trees, you have to cut trees in order to grow cocoa and rubber and other cash crops.”

8.4. He exerts influence among his peers, his people and with his illustrious service to the people of New Ireland, there is no doubt that the general population will accept his actions however detrimental to their interest for fear of repercussion or intimidation. He also set up Tutuman after Dominance Resources abandoned Umbukul TRP logging operation. We do not doubt the fact that his involvement in the four SABLs in the province, his understanding of the landowner issues and his impeccable standing, I find he was not able to mediate these ongoing landowner issues successfully. I have assessed the demeanour of Mr Anis disposition and attribute his credibility to

one of condescending and this is clearly illustrated in the following exchanges during cross examination by the Commission

(Refer to SABL 42–Mirou 03/11/11)

1) Ignorance of Mr Kamsal Maraleu's evidence on his involvement as Tutuman's agent to coerce landowner consent

“Q: So those machines, after you left Noipuas, you shipped those machines to Kaut?

A: Yes.

Q: Okay. At that time, Kamsal Maraleu was working for you? A: No.

Q: He moved those machines to Kaut?

A: No, Kamsal never worked for me; he did not work. He claim to be in the engine room of Tutuman but as you know in the engine room, there are people who just wipe oil on the engine and people who just put oil in the engine; and there are engineers really who understand the engine room.

(page 19 of the Transcript)

2) The following extracts clearly indicate his view that the people are responsible creating the land disputes within themselves and it no fault of the Developer/Investor.

“Q: Sorry, Mr Anis, could I just ask you this? Is that also the experience you had at Kaut that there were some landowner disputes?

A: Yes, the landowner disputes are really disputes among themselves, not so much disputing the operations. It is just landowners disputing among themselves and that is always going to be a problem unless we refine the way we are going to do things here.

I think I, in my experience, when the forest remains as a forest and nobody touches it for development, there are no arguments; no cross or fight. But when development comes in and the talk of development comes, people see physical money and then they also want – they look at the agricultural development, first and foremost, as the way to make money on forest on timber and then that is where all the arguments come in; I own this place, I own this place.

(3) There are processes by which the social mapping process is normally done through key agencies of government which evidently in this SABLs was processed by Tutuman through its employed lawyer Mr Maraleu.

“..So the way that I have been approaching this one on – later on, on New Hanover and everywhere, especially in Danfu, is to get the people in the area themselves, teach them, help them and they themselves will go and do the incorporation of their own land groups and then actually go down. The next step is do boundary

line and the village, as you talk, understand where the boundaries are and then go together into the bush and cut your boundaries.”

(4) Ignorance of the hereditary rights of people over knowledge of customary land boundary

“..You see, Commissioner, there are so many landowners who say, my land starts from here to there but if you get them into the bush, they themselves do not know where exactly is their land boundaries because they have never been there. They have been – somebody has been telling them in the village. They have never gone up into that big bush and know exactly where, which point and which point the boundaries go....”

THE COMMISSIONER: MrAnis, that will be an insult to the people who actually live on those lands. That is an insult to their ownership rights. You say that they do not even know the boundaries that they – that these particular villages who are affected by these SABLs live in.

A: Yes, sorry---

Q: You come from Umbukul? A: Yes.

Q: What about those ones in Kabut, Central New Hanover? Then you have Kaut, from the East Coast to the West Coast, and then you have those in the Danfu area; and you say that they do not know their boundaries?

A: I am sorry, I---

Q: Because they do not have their customary ancestors who pass on those rights?

A: I stand corrected.

Q: Is that not an insult to the people?

A: The boundaries, not – yes, there are so many difficulties on – they know the boundaries but there are so many difficulties among themselves establishing exactly where the boundaries are.

Q: That is why when you look at these SABLs in total, they are just completely – the whole track of land belonging to people even from the coastline to the backlands, or the hinterlands or where the mountainous regions are, are taken over by one particular company, which is your company. That is the sad fact about these SABLs had the involvement on Tutuman a developer in each of those SABLs in this region. Actually, four of the SABLs belong to – is actually subleased to Tutuman, your company, as a developer.

I come in because you said that they do not know their physical boundaries, but the people know exactly where they go and fish. They know what they do when they go hunting in the forest. Would they not know their own – where their ancestors put in certain rights over land, the creek and everything that goes with it?”

(Pages 19–22)

(5) Reference to pollution of rivers affecting drinking water for the people of Danfu as a result of intensive logging in the hinterlands of Danfu by Tutuman. He blames the villagers for polluting the environment.

“Dinamu river is an interesting river. People who live next to the river and they got cocoa blocks along the river up there. They actually – some of the people use the river system as toilets and actually also as a dumping area for some of their rubbish. It happens everywhere and our people are our own worst enemy when it comes to our own

waterways. We need to be educated and help us to be able to conserve and look after our river frontage. The cocoa goes right down to the water’s edge.” (page 36)

“MR TUSAIS: Mr Anis, look, just on that point about the river, I was on the Namu river. You are saying, look, Namu village people they excrete into the river so even if one of my bridges collapsed, it does not really matter. They have spoilt it already. Is that what you are telling the Commission?”

A: No.

Q: That is what I heard you say; they build toilets over the river or the river---

A: No, no, no.

Q: Or, the river is no good, to start with?

A They use the river for other things other than drinking water?

(page 37)

(6) His view on the general perception of New Hanover islanders over oil palm plantation estate development.

“Q: Before you appointed a sublessee by the people of Tabut through the umbrella company Tabut Limited, did you tell the people that you would plant oil palm?

A: Yes, there was a project documentation that we submitted that went through public hearing on oil palm and it was reported by – and DAL went through this public hearing with us. As I said Commissioner, our people change their oil palm due mainly to the fact that 90 percent of people working in Poliamba come from New Hanover; and 90

percent of those from New Hanover come from central New Hanover and Tabut.

Now, their experience with oil palm is that it brings a lot of flies and New Hanoverians do not like flies; they hate flies, and it brings a lot of snakes. They are frightened of snakes; and it does not help to improve the soil fertility and they themselves do not want – they will rather work for the oil palm factory or oil palm company somewhere else but they would rather have a different crop on the island which, based on that and a lot of our people also from New Hanover, academics, did not agree with the oil palm and also our CCI people. So we had to engage a group of scientists to again, go around the island and we proposed to do rubber an integrated agriculture project changing from oil palm to rubber. That is what they did and we have the documentation that they have done which was endorsed by the Department of Agriculture for a change of crop.”

## 9. AGRICULTURAL ACTIVITY

9.1 When pressed about Tutuman's record with „major agricultural projects, he referred to the nursery at the DANFU (Rakubana Development Limited) and the KAUT project. The C.O.I noted a nursery site at DANFU but the seedlings in the polybag was overgrown and left to the forces of nature. The cocoa plots we observed were struggling and dried up including the shade trees. It was not a promising venture and virtually nil agriculture activity, apart from extensive logging.

9.2 The C.O.I during its exhaustive site visit to Danfu SABL project area was not able to visit what Mr Anis referred to as 30 hectares cleared for cocoa farming. This was also confirmed by Mrs Rauveve and Mr Maraleu. In fact Mrs Rauveve expressed that there was no Agriculturalist on site, and the site was currently managed by Mr Husain, a Business graduate from Indonesia who has neither agricultural background nor experience. (Refer to evidence under Rakubana Development SABL Report) This also

brought the attention of the PNG Forest Authority concerned about TDLs capacity to meet its implementation schedule as the Logging and Agriculture plans. The monitoring inspection report

attributed a poor performance rating to TDL on the Danfu Extension SABL.

## 10. The Evidence of Miskus Maraleu

10.1. He has practised in the public sector and since 1981 has practised as a private Lawyer. He is the current lawyer for Tutuman. He was formerly Chairman of the Forest Industry Council and conversant with the basic operations of Forestry Logging Operations.

### (a) Capacity of TDL to undertake Agriculture Projects

10.2. It was evident that TDL was supplying polybags to landowners within the agricultural parts of the project area and build nurseries so that panting can take place on cleared land. Mr Maraleu confirmed that TDL did not have the capacity to develop oil palm but would do so by sub-contracting the agricultural component of the project. The Commission finds that this is very unusual in that Section 90(3) C Forestry Act requires TDL when applying for FCA to convince PNG Forest Authority that it has the implementation schedule showing precise areas and proposed rate of harvest and also show what TDL intends to do on the cleared land by submitting a successive land use development plan approved by DAL.

10.3 It became evident that TDL did not have the capacity to run estates and organise structured plantation type operation. Mr Maraleu agreed that TDL had misled PNG Forest Authority when it applied for FCA for all the four SABLs. In the case of Central New Hanover and Rakubana FCA was granted based on this misleading information.

### (b) Conflict of Interest

10.4. Mr Maraleu at the time of the Inquiry was the Corporate Secretary and lawyer of TDL, the Secretary for Umbukul Limited and Secretary for Tabut Limited. The IPA extract currently confirmed his status; hence his involvement in the land investigation process was highly irregular.

10.5. The C.O.I deem that his involvement as Corporate Secretary to the Developer and two SABL title Holders is a conflict of interest and raises ethical issues of good corporate governance in terms of the interest he serves.

10.6. He told the C.O.I that when he was employed by TDL in 2007, he “found out that there was a lot of work undertaken in the land mobilization period to 2007. He also discovered that there was a lot of Consent Forms and Agreements with Tutuman to get the subject land. He subsequently did work on the DANFU Extension and became involved with the landowner company Rakubana Development Limited.

10.7. According to Mr Maraleu, at the completion of the ILG registration, TDL invited Mr Malesa to conduct the LIR. He confirms that he accompanied Mr Malesa to New Hanover and conducted awareness and investigation at Umbukul for one full week, Tabut for 1–2 days and Central New Hanover for 4 days. They did not conduct any awareness or investigation for the outlying islands of Sohe, Nukus, Nuslik, Nusa and Ungalik Island. These island communities are also landowners on the mainland of Central New Hanover. They also did not conduct any investigation for those landowners living in the hinterland.

### (c) Land Investigation.

10.8. The whole investigation process was conducted without any input from the Provincial Lands Office. He accompanied Mr Malesa on the trip to introduce Mr Malesa to the Chairman of each ILG (landowners have disputed that appointment of the Chairman), leaders of the community and the community.

10.9. This would have been made possible had DLPP consulted the Lands Office at Kavieng to assist in facilitating the land investigation awareness. The presence of TDL in the LIR process was highly irregular because the Developer was so involved in the process. The Commission finds that the requisite requirement of consent may not have been properly obtained and if that happened, it was basically through those individuals and landgroups that supported TDL.

10.10 The following document? was tendered as part of his evidence.

No.

Document Tendered

Exhibit No.

1

ENVIRONMENT IMPACT STATEMENT FOR CENTRAL HANOVER, SABL PROJECT BY TUTUMAN DEVELOPMENT LIMITED PROVIDED BY N SYSTEMS MANAGEMENT SERVICES LIMITED EXHIBIT MM1 – BUNDLE OF THREE DOCUMENTS, RAKUBANA DEVELOPMENT LIMITED REPOR, A SET OF PHOTOGRAPHS AND THE FORMS; CONSENT FORMS 165 AND 166 SALES AND PURCHASE AGREEMENT

“MM1”

2

FIVE DOCUMENTS IN BUNDLE; CENTRAL NEW HANOVER LTD BY MISKUS MARALEU OF TUTUMAN LIMITED

MM2

3

BUNDLE OF DOCUMENTS IN RELATION TO TABUT LIMITED TENDERED BY MISKUS MARALEU OF TUTUMAN LIMITED

MM3

4

BUNDLE OF DOCUMENTS FOR UMBUKUL LIMITED BY UMBUKUL LIMITED BY MISKUS MARALEU OF TUTUMAN LIMITED

MM4

## 11. THE CONDUCT OF THE LAND INVESTIGATION PROCESS– MR LAZARUS MALESA

11.1 The C.O.I. does not intent to repeat the findings in respect of the LIR (landowner consent), ILG registration and consent of the landowners in all the four (4) SABLs on New Hanover and Namatanai respectively. There is a common trend in the process of LIR which is grounded on the evidence of Mr Lazarus Malesa, currently Manager–Customary Land DLPP (Refer to SABL 79–Mirou 23/01/12)

(a) Funding by Tutuman Development to conduct Land Investigation and Awareness

11.2 Mr Malesa trip was fully funded by Tutuman in terms of Allowances, Accommodation and Transportation including incidentals. The C.O.I also recognise that this was common trend in the SABL covered by the

Commission on the compromise of employees of the State accepting

“bribes” sanctioned by their superiors as a normal state business. The

C.O.I understands that Mr Malesa was caught in a situation forced upon him when he was directed by Mr Anthony Luben on TDLs request to carry out the investigation.

11.3. The Commission in the strongest term condemn such practice and urge the government to ensure that funds are budgeted for future land investigation into customary land, ILG Registration, conduct of awareness, proper survey plans conducted by officers sanctioned to perform survey on behalf of the Surveyor General

11.4. The Commission recommends for serious disciplinary action to be taken by Departmental Heads against Senior (National Contract) Managers who knowingly issue such illegal directive to

subordinates. This also relate to Heads of Department and Statutory at National, Provincial and Local Level Government Affairs.

(b) Land Investigation Report (Working Files)

11.5. Mr Malesa produced land investigation working files used for individual ILG groups within the project area and compiled one overall land investigation. The four SABL grantees have a common Agriculture Sub- Lease agreement with Tutuman Development Limited, a foreign owned company incorporated in Papua New Guinea. Mr Malesa also confirmed that he conducted land investigation for Cassava Etagon Holdings Limited (Expired Kaut TRP), Rakubana Development Limited (Danfu Extention) and the three (3) SABLs located on the expired MAMIRUM TRP concession on New Hanover Island.

11.6. The working file folders for Central New Hanover consisting of 11 LIRs, working file folders for Tabut SABL containing 11 LIRs and working file folders for Umbukul SABL consisting 18 LIRs. The files for Rakubana Development Limited (Danfu Extention-Namatanai) totalling 15 LIRs were produced. Mr Malesa states that “..I only worked ...during the trip and you will notice that the Land Investigation have different hand- writings. Some of them are mine and some of them done by I think the agents they have been using for each of the project area and perhaps Mr Miskus Maraleu.”(Transcript SABL 80 24/01/12 @ page 16).The most crucial fact of the LIRs are that Mr Miskus Maraleu, Corporate Lawyer

and Secretary for Tutuman Development Limited and his agents directed and compiled the whole report including ILG registration and the consent forms for the landowners.

11.8. We refer to the main criticism of the ILG Registration and Land Investigation process as well as the Lease/Lease Back Agreement which is flawed.

(c). Major Facilitator of the LIR process

11.9. Mr Miskus Maraleu, a lawyer by profession and from Umbukul was instrumental in coordinating the land investigation and awareness. Mr Malesa was unable to coordinate an independent Land Investigation a criticism already levelled against him by the Provincial Lands Office. He was not able to undertake the due diligence of all the landholding clan which included a massive coastline stretching from Central New Hanover to Tabut and Umbukul including the hinterland. The extract of evidence discloses his dilemma substantially meaning that the process was flawed,

“Q: You yourself you did not go to cross-check and verify yourself, to satisfy yourself that---

A: No. I have actually used the working files for each of those projects areas, which some I have done. In every visits I made and awareness, I have also asked the landowners whether they understand the SABL process and are they willing to be part of the project, and whether this village was willing to be part of the project, he can come forward so that I can sit with him and do the land investigation reports for them, for their ILG group. Not most of them attended and that is the problem.

Q: Yes, what the people – just generally, this is in Namatanai as well as on New Hanover, what they say is the few that

attended,these were chosen by Miskus and Tutuman.These were selected groups that you were doing awareness to.

A: That is true.

Q: The majority of people of Namatanai, at least in the Danfu Extension area and the three SABLs on New Hanover, they are totally unaware. They did not know that your team was around saying these things about SABL. I think it came out in the Papers and they said, "Oh, my land is gone." That is what they are saying.

Q: Okay.

A: Counsel, my visits to those areas were – most of the landowners and communities were not aware that a Lands officer was going and I think it was a failure with our department also not getting involved the provincial administration through the Lands division to make an announcement earlier prior to our visits. This is one of the reasons why most landowners were not present during our visit to conduct awareness."

(SABL 79 Mirou 23/01/12 @ pages 26–27 per Mr Malesa)

Evidence of Custody of Land Investigation Report

11.10. Mr Malesa relates to the Commission that on the morning he had a terrible accident at Noipus Village, Umbukul. Whilst he climbed limestone cliff about five metres high to answer the call of nature, he slipped and fell horizontally onto the jagged limestone (karanas) injuring his side (not mention part of the body in evidence) and was scared as result of the injury. He says, "So I decided to quit making awareness in any land investigation on whatever so for the company at that time. So on 24th to 30th, I was in a- sorry, on the 23rd, we travelled back to Tabut and there were some landowners who arrived at Tabut that time in the night, which I was also nursing my sore body and tried my best to do some land

investigations. That is in the Tabut area. Okay from the 25th , we travelled to Metamin, another village, we tried to conduct awareness but no landowners were there. (page 35 of SABL 79)

11.11 All LIRs were returned to Tutuman for its completion and submission to DLPP

Land Investigation awareness–15th to 30thMay 2007.

11.12. The depth of the awareness for mobilisation of the land on the island clearly indicated that there was no proper awareness conducted, and if anything there was already history of logging taking place on the island prior to the SABL which was basically a conversion from the expired Maimirum TRP concession.

11.13 Below is a summary of the land investigation diary to indicate that it was a difficult task to undertake land Investigation over three SABLs in a record two week tour of the island.

\* 15th to 17th May 2007– The team talked to 10 people at night at Tabut

\* 17th to 18th May 2007–The team talked to few villagers at Kone village (past Umbukul)

\* 18th to 19th May 2007–Miskus and Reuben Peni of Tutuman instructed Malesa to travel to Bawun village (north) which is on the boundary of Umbukul and Tabut and talk to few landowners.

\* Travelled to Butulum village and talk to few landowners on 20th May 2007,

\* Accident at Noipuas Village 22 May 2007

\* 23 May 2007 travelled to Tabut–met some landowners at night

\* 25th May 2007 travelled to Metemin–no landowners present to conduct awareness and travelled to Unusa Island, Central New Hanover and talked to few landowners on 26th May 2007 and returned to Metemin and met a handful of LOs. The LOs did not want any involvement in the project because of the presence of Mr Maraleu and the ongoing issues with logging and encroachment by TDL. On 27th Returned to lodge at Nunga Island.

\* 27th May 2007 travelled to Meteai, no landowners available but only four Landowners present and he was forced to talk to them. Did very little by way of Land Investigation as well as awareness.

\* 29th May 2007 they all returned to Kavieng,

11.14. The C.O.I notes that the trip was not coordinated well enough to gauge the majority landowners along the coastline and the hinterland of the three (3) SABLs and often times, the awareness was conducted late in the evening, the days spent travelling from village to village. The C.O.I experienced the hardship travelling by sea around the island which is quite exhausting and dependent on good weather and the wind that causes major tides and swells in the sea.

#### Boundary Walks

11.15. Mr Malesa told the inquiry that he attempted to walk the boundary, but the steep rugged mountains and limestone provided a barrier for his access to the land boundary. They only followed the coastline and conducted the investigation and awareness to the coastal villages only. The details of the three SABL boundary was provided by TDLs Miskus Maraleu and Reuben Peni, and significantly Mr Peni seem to appear as a landowner in all the details relating to land boundaries walks. (pages 37- 38)

#### Schedule of Owners

11.16 Amongst the LIRs produced to the inquiry and confirmation from the objections and concerns raised by the landowners, landowner forum groups and prominent New Hanoverians, the continued abuse of the process was evident in the clan listing basically for.

11.17 Aihi Vonge clan of Umbukul, The listed name of clan members indicate Miskus Mareliu, Margaret Mareliu, Mauna Mareliu, Miskus Jnr Mareliu, Maloni Mareliu, Majorie Mareliu and Melki Jedek Mareliu.

11.18 Objections were raised by the landowners of Poronbus village (affected village) and references is made to the clan landowning representatives who appeared at the C.O.I hearing at Kavieng Fisheries College on their views as to the SABLs.

## 12. Commission's observation of the site inspection

12.1. The following observations (evidenced by photographs and video) on the SABL relative to Central New Hanover are as follows;

12.2 Evidence of harassment of local landowners with the developer in relation to the landing of machinery on the shoreline at Lavongai. The use of arms and force by members of the Mobile Unit stationed at Tomaringa Barracks, East New Britain Province resulting in the shooting of a youth and hospitalization. This was done on the orders of the owners of Tutuman.

12.3 Consent not obtained from the people and no awareness done prior to the issuance of the SABL. It would seem that the landowner company was coerced into entering into a sub-lease agreement with Tutuman;

12.4. ILG names not conforming to lineages and persons from other clans were used to sign for a particular clan.

## 13. The PURCHASE AND SALE OF NEW HANOVER ISLAND

13.1 This was the major contention of the people of New Hanover and the C.O.I was reminded of the alleged sale and purchase of New Hanover Island. The following documents were produced to the C.O.I by Mr Anis.

13.2 According to Mr Anis, Tutuman entered into a Logging and Marketing Agreement with Gromax (a company owned by Palma Hacienda) to harvest logs and commence process of establishing nursery for Oil Palm including the setup of infrastructure into various clan blocks to grow oil palm. The Sublease Agreement has been registered with the Registrar of Titles on the SABL Title held in the name of the four landowner companies of Portion 885C, 886C, 887C and

888.

13.3. The Sale and Purchase Agreement was executed between TDL (Seller) and Palma Hacienda (PH-Buyer), a company incorporated in PNG and having a place of business in Kavieng on 10th June 2009.

13.4. Tutuman representing itself as the Seller and holding itself out as the Leaseholder and Beneficial owner of SABL Portion 885C, 886C and 887C comprising a total 93, 564 hectares of land. KH intended to purchase the Plantation land (as was referred to) and the Noipuas lease

land or any other lease land in Central New Hanover for US\$600, 000. The said monies to be paid into Citibank Singapore Limited Bank Account No. 0348592017 in the name of Regina Lau Yii Kuong.

13.5. Amongst the six conditions, conditional to that Agreement (Clause 3), , TDL was required to, transfer its legal title of the three (3) Plantation Lands to Palma Hacienda (Clause 3.1); and transfer its legal title of Noipuas lease or any other lease to PH. A Supplementary Agreement dated 10th June 2009 stipulated an additional payment of US\$200, 000 to be paid immediately on signing of the Agreement. We infer that this was a bonus to TDL for settling the deal to sell Portion 885C, 886C and 887C.

13.6. The Agreement was signed by both Chairman of TDL and PH. Mr Maraleu when asked about his advice on the Agreement, responded, Mr Anis did not consult him and acted on his own free will to sign the Agreement.

13.7. Mr Anis was asked in cross examination on the Sale and Purchase Agreement and the following was his initial reaction;

“Q: Did you sign a document called Sale and Purchase Agreement between Tutuman Limited and Palma Hacienda for the sale of plantation lands back on New Hanover?”

Q: You are under oath. It is just a simple question, did you sign a paper called the Sale and Purchase Agreement between Tutuman Limited and Palma Hacienda on 30 – in June 2010?

to the company's account. That is why – that is the deal that went bad.

Q: There are certain receipts that we have. It shows that certain amounts were paid into the account of Mrs Hii; Regina Lau Hii. I will just show it to you.

Perhaps, copies could be made later. Just look at those – there are certain sums paid to Mrs Regina Hii in consideration of a sale of plantation land. There are certain sums, US\$300,000 – significant sums made – several payments made over a period of time to the same account for the same reason. Is that payment in relation to that agreement that you signed in June 2010?

A: This, I do not know.”

13.8. The following documents (Exhibit) was tendered to the C.O.I on 3rd November 2011 by Mr Anis in response to the questions raised regarding his involvement in the deal with PH to sell the three SABL Portion (as Plantations) including other leases on the island.

No.  
Document Tendered  
Exhibit No.

1  
MAP OUTLINE OF PROPOSED DEVELOPMENT ON CENTRAL NEW HANOVER  
PA 1

2  
REPORT ON TABUT LIMITED, PORTION 885C MILINCH LAVONGAI, FOURMIL KAVIENG.  
PA 2

3  
BUNDLE OF DOCUMENTS -TRANSACTION  
MADE ON 23 JUNE 2009 FROM JAMATA PROFITS LIMITED, CARE OF HAM TING SIEW, 2 WAY  
LINCOLN ROAD, UNIT 24-08,PARK INFINIA AT WINHAM, SG308364, SINGAPORE  
PA 3

4  
LETTER FROM JOINLAND GROUPLIMITED - 2 NOVEMBER 2011; OUTWARD REMITTANCE -YEAR 2000  
- REGINA LAU HII WONG  
PA 5

5  
LETTER FROM UBS - 2 NOVEMBER 2011 JOINLAND GROUP LIMITED RE OUTWARD REMITTANCE -  
2009 TO 2010  
PA 6

6  
LETTER FROM JAMAKA PROFITS LIMITED BASED IN VIRGIN ISLANDS - 2 NOVEMBER 2011  
REOUTWARD REMITTANCE MADE IN 2009 FOR  
PA 7

REGINA LAU HII WONG

7  
LETTER OF CONFIRMATION FROM CITI BANK - 31 OCTOBER 2011  
PA 8

8  
CENTRAL NEW HANOVER LIMITED PORTION 887C, MILINCH OF LAVONGAI, FOURMIL KAVIENG, NEW  
IRELAND PROVINCE  
PA 9

9  
REPORT KNOWN AS UMBUKUL LIMITEDPORTION 886C, MILINCH OF LAVONGAI, FOURMIL, KAVIENG  
PA 10

10  
LAND DEVELOPMENT SCHEME FOR NEW IRELAND PROVINCE BY TUTUMAN DEVELOPMENT LIMITED,  
JANUARY 2001, REVISED JANUARY 2008 BY MR PEDI ANIS, OBE  
PA 11

11  
SALES AND PURCHASE AGREEMENTBETWEEN TUTUMAN DEVELOPMENT LIMITED, THE SELLER AND  
PALMA HACIENDA LIMITED, THE BUYER DATED 10TH DAY OF JUNE, 2009  
PA 12

13.9. The C.O.I finds that there is a major irregularity in the transaction for the following reason; (1) TDL is not the titleholder of SABL Portion 885C, 886C and 887C and therefore has no legal authority to sell the subject SABL leases. The leaseholder to the subject land is in the name of the respective landowner company;

(2) There are no plantation on the subject land, except for logging activity as a result of the sub-contract between TDL and PH to harvest log currently on Portion 887C (CNHL).

(3) TDL has entered into an Agriculture Sub-lease Agreement to develop agriculture on the land. That sub-lease was registered with the Registrar of Titles.

13.10 In the final analysis Mr Anis explained that no monies were paid out of the Agreement to TDL or Mrs Regina Lau Hii. He produced a bundle of documents to substantiate this claim, which we recommend be the subject of further investigation to substantiate and verify with the bank concerned.

13.11 The C.O.I will recommend for further investigation into this purported deal to sell the land without the authority of the landowners, the legitimate landowners whose customary rights, exist. That the purported deal be the subject of a criminal investigation by the appropriate authority, We consider that the Agreement that was signed was fraudulent and dishonest on the part of TDL to mislead and hold itself out as the legitimate owner of SABL Portion 885C, 886C and 887C in order to secure a deal financially and in the process dispose customary land amidst a continuing discord and contention by the aggrieved landowners and concerned New Hanover islanders living on the island, Kavieng and around PNG.

14. The Evidence of Mrs Janet Rauveve

14.1. Mrs Janet Rauveve comes from Bok village, Namatanai and evidently she is a landowner (through her genealogy to her grandmother who is from Hilalon village) over the SABL held in the name of Rakubana Development Limited (RDL) a.k.a Danfu Extension. She is a Forester by profession and was previously employed by the PNG Forest Authority (1981 to 1999) and joined TDL in March 1999 as Director and Forester undertaking technical aspects of the company in the preparation of forestry plans and ensuring that implementation schedules are met by the field officers on project sites.

14.2 Much of what she says about her involvement on TDL operation was the Kaut TRP (2000–2003), Central New Ireland TRP (2003–2007), Danfu One (Forest Licence), Mamirum One (FA-Clear and plant cocoa), Tabut (Agriculture TA). During their operation on Tabut TA, advice was received from PNG Forest Authority that since the TA normally was

renewable annually it was feasible to undertake large-scale agriculture development through SABL process and issuance of FCAs.

14.3. She also confirmed that movement of TDL from the Central New Ireland TRP was based on landowner disputes and it was her advice that it was necessary to move out and operate where there was no disputes. It was during that time, that they coordinated the people of Danfu to incorporate RDL and organise ILG for the conversion of the Danfu Extension into SABL. She had no involvement in the Tabut and Umbukul FCA.

14.4. In terms of the real agriculture development and the low rating on TDLs performance in meeting its forest clearing and planting of cocoa trees, Mrs Rauveve was unable to convince this Commission due to the fact that there was no Agriculturalist in the employ of TDL to oversee the implementation of the FCA requirements at Danfu and the other project sites.

14.5 Environmental issues relating to the Danfu Extension lack proper supervision for example road construction conducted by TDL for logging activities resulted in soil entering into a creek and affecting the water source for the villagers living on the coastal villages. Despite Mrs Rauveve's

assurance that TDL maintained a high level of safety checks, the C.O.I received numerous accounts from the villagers during the inspection visit of environmental damage and continuous logging operation, the dumping of machinery near the log pound site which is a hazard to coastal villagers nearby. The lack of due regard to environmental compliance by TDL employed foresters and machine operators continue to be a major problem for TDL as a logging company.

14.6 The Commission make no adverse findings against Mrs Rauveve as she played no integral role in Land Investigation process and ILG registration process leading to the acquisition of SABL title. The Commission recommends that she ensures TDL full compliance of the FCA and PNG Forest Authority's requirements on the Danfu Agriculture project.