

1. COI Inquiry File No 25 for Special Purpose Agricultural and Business Lease over Portion 885C Volume 17 Folio 01 Milinch: Lavongai New Ireland Province in the name of Tabut 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 Tabut 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)

Witnesses Statement and Summonses

1.3 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

Jephat Sipmaul, Village Court Magistrate & Landowner (Moloi Numo Clan), Lopas Village, West Lavongai Electorate

29-35

4

27/10/11-SABL 39 Mirou

2

Isaiah Tamti MBE, Chairman Noipuas Primary School, Noipuas Village, New Hanover

35-38

4

27/10/11-SABL 39 Mirou

3

John Sek, Landowner, Correctional Services Officer, Kulikatan Land Group, Anekunaman Village, Tabut, NH

2-16

5

28/10/11-SABL 40 Mirou

4

Mr Pedi Anis, Landowner,

8-54

03/11/11-SABL 33 Mirou

Umbukul Village, Chairman

of Tutuman Development

Ltd
2-14

04/11/11-SABL 34 Mirou

&21-29

5
Mr Miskus Mareliu

Corporate Lawyer & Secretary, TDL Landowner, Umbukul,- Secretary (Umbukul Ltd & Tabut Ltd)
29-67

04/10/11-SABL Mirou
6

Mr Anthony Luben, Unattached Public Servant & Former Deputy Secretary Lands Services 2002-
2008, DLPP
10-18

-
05/01/12-SABL 68 Mlirou (WAIGANI)
7

Mr Pepi Kimas, Former Secretary, DLPP

8
Mr Lazarus Malesa, Customary Leases Lands Officer, DLPP
6-15

23/01/2012 SABL 79-Mirou
(Waigani)

2. Parties represented by counsel

2.1. 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.”

The following were granted leave to be represented by counsel

3. Exhibits and documents

3.1 There were nine (9) 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	Statement of Jephath Sipmaul			
	C.O.I			
	27/10/11			
	TL "1"			
2	Statement of Isaiah Tamti, MBE			
	C.O.I			
	27/10/11			
	TL "2"			
3	Statement of John Sek			
	C.O.I			
	28/10/11			
	TL "3"			
4	Lease/Lease Back Agreement (through Mr Sek)			
	C.O.I			
	28/10/11			
	TL "4"			
5	Schedule Of Owners, Status And Rights To The Land From Umbukul			
	C.O.I			
	23/01/12			
	LPM1 -			
6	LIR Report For Umbukul Prepared By Mr Lazarus Paul Malesa			
	C.O.I			
	23/01/12			
	LPM2			
7	Letter Dated 5th May 2006 From Provincial Lands Manager, Mr M Banovo, New Ireland Province Notice Of Direct Grant			
	C.O.I			
	23/01/12			
	LMP3			
8				

Letter By Mr Robinson Sirambat, Provincial Administrator To The Secretary, Department Of Lands,
Dated 19 November 2007, Revocation Of Rakubana Development Propriety Limited, Tabut,
Umbukul And
Central New Hanover As Registered Entity
C.O.I
23/01/12
LMP4

9
Appendix "G" – Field Trip Report By
Mr Lazarus Paul Malesa
C.O.I
23/01/12
CE9

4. Timeline of events of note surrounding Tabut Limited SABL Title

4.1. 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
1	Incorporation of Tutuman Development Limited (TDL)	2 December	1999	Tutuman Development Ltd TDL/Tabut Ltd
2	Incorporation of Tutuman Integrated Products Limited	30 August	2007	TDL TDL/Tabut Ltd
3	Land Investigation Report (Incomplete)	? May 2007	Tabut Limited	Tabut/State
4	Survey Plan of SABL Portion 885C (Expired Mamirum TRP)	16 August	2007	Tabut Ltd/DLPP Tabut/TDL
5				

Instrument of Lease/Lease Agreement
24th September
2007 (Minister not sign the Agreement)
Tabut Ltd/State
Tabut Limited

6
Notice Under Section 11 (Signed by Pepi Kimas)
10th October
2007
State/TL

TL
7
Notice of Direct Grant (s102)–Signed by Pepi Kimas
16 October
2007

State/TL
TL

8
Gazettal Notice G161 on SABL title
17th October,
TL
TL

for Portion 885C
2007

9
SABL Lease to TABUT Limited
29th October
2007
Tabut
Tabut/TDL

10
Request by TDL to DLPP for Cancellation of Sub- lease Agreement with TL/Umbukul/Central New
Hanover (Letter by Mr Miskus Mareleu, Company Lawyer)
29 September
2009

TDL/State
TDL

11
Agricultural Sublease Agreement between TDL and TL (Stamp Duty Endorsement)–99 years
29 September
2009
TDL/TL/State
TDL/TL

FINDINGS

5.2. The findings follow the chronology of table of notable events above surrounding the SABL

lease title held by Tabut Limited.

6. Tabut Limited SABL

6.1. A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G161 dated 17th October 2007 for Portion 885CLavonagi. The land is described as Mamirum. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 16th October 2007 by the Department of Lands and Physical Planning to the holder Tabut Limited SABL (TL). Mr Pepi Kimas OL, signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 885C

Registered Survey Plan Catalogue No

23/467

SABL Holder

Tabut Limited

Date of Registration of Lease

16th October 2007

Period of Lease

Ninety-nine (99) years

Land area of lease

11, 864.00 hectares

7. LOCATION OF SABL

7.1. Located about 70 kms north west Kavieng town the lease commences at the mouth of Neisung river and runs in a southerly direction for 11.6 kms then turns east for a further 6.3 kms until reaches the Nivau river. From there it turns north easterly and goes on for 3 kms until it reaches the mouth of the Min River.

8. IPA COMPANIES REGISTRY RECORDS

8.1 According to the IPA Extracts dated 21st September 2011, Tabut Development Limited was incorporated on 4th October 2007 and is currently registered. The Company Number is 1-60998.

8.2 The issued ordinary shares of the company comprise 10 listed shareholders holding 1 ordinary share in TDL namely Obed Kakmalisa, John Lapaken, Lapanrut Makius, Eliap Malpo, Passingan Kasup Patrick, Reuben Peni, Allan Samson, Isaih Tanglik, and Robin Ulawai. The shareholders address is Section 10 Allotment 6 Anir Street, Kavieng, NIP which is the principal place of business.

8.3 The seven (7) Directors are Passingan Kasup Patrick, Reuben Peni, Eliap Malpo, Obed Kakmalisa, Lapanrut Makius, Boski Martin and Lapanrut Makius

8.4 The Secretary to TDL are Elizabeth Melun and Miskus Maraleu.

9. Landowner's objections to the ILG Registration and SABL Portion 884C Project

9.1. 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.

9.2. Two witnesses gave evidence that basically covered the objections raised by the landowners of Portions 885C.

The Evidence of Jephath Sipmaul

9.3. Mr Jephath Sipmaul of Lopas village, West Lavongai village and Mr Isaiah Tamti, MBE, from Noipuas village, Chairman of Noipuas Primary School and from the Moloi Numa clan confirmed to the inquiry that there was lack of consultation, knowledge and proper awareness conducted by

DLPP, DEC, DAL and PNG Forest Authority at the four

(1) main villages that make up Tabut LLG. They were not even aware of Mr Malesa's land investigation and were not consulted.

9.4 Mr Tamti also told the inquiry that the clans within Tabut did not hold a general meeting to appoint nor authorize Mr Obed Kakmalisa to be their clan leader, Shareholder and Director of Tabut Ltd.

9.5. The main villages of Tabut demanded that SABL Portion 885C be revoked and proper land mobilisation and awareness carried out for their benefit.

The Evidence of John Sek

9.6 Mr John Sek, Clan Leader from Anekunman village, Kulikatan Land Group, Tabut. The C.O.I sets out extract of his evidence on the movement of machinery onto his village at Tabut, "On 19 March 2006, Tutuman Development Limited landed its machineries at the beachfront of Tabut village. People were caught surprised and half of the village were forced to vacate their houses and moved inland. It was saddening that they had to sleep in makeshift houses at their garden sites until proper shelters were built. Until to date, no one of those affected was built a house as promised by Tutumang Development Limited. Tabut village was

not an approved landing site for TDL to land its machineries. The FCA granted to TDL was for a registered area within the Mamirum TRP area known as Mamirum Plantation, portion 644 and 6448. Therefore, the approved landing site was Mamirum Harbor. After setting up of the camp site, a log pond was to have been constructed at the spot where the people vacated their homes. The landowners sought a court order and prevented the completion of the log pond. This was too late as damage was already done. This action resulted in a few local boys been locked up at the Kavieng police cell.....

...The Company then has to construct a road right around to the original landing site. In the process of the road construction trees were felled and logs were scaled for shipment. This was when the formation of ILGs came into play as the landowners were arguing as to whom the royalties be paid to. This was done by clients of the company who already knew which clans have big volumes of timber in their land. The operations extended to areas beyond the boundaries of the originally approved area. I personally witnessed some instances when landowners confronted the camp manager who at that time was Daniel Hii for trespassing on their customary land and harvesting timber. I have always wondered how this could happen when there was a forestry officer on the ground supervising the project and a company employing two senior former foresters who should have known better. Mr Commissioner, it is not written here, but to my knowledge the registered FCA was granted to was - the chairman of the PMFC (Marius Soiat) had an interest over that area at that time.

....

After the granting of the SABL for Tabut Limited on the 16th day of October 2007, to date you could hardly see a plantation of cocoa, coconut nor any reforestation. In anyone's good thinking mind, I think the acquiring of the SABLs for the three portions of land on New Hanover was only for the interest of harvesting timber. When TDL left Tabut Limited for Central New Hanover, all the promises to the people were never fulfilled. All was left behind were rotten logs rotting over in the bushes, spilled oil on the surface of the

ground and damaged water sources. Sir, it is not written but on behalf of my people I call upon the Commission of Inquiry within its Term of Reference, that those who are involved in this fraudulent dealings be brought to justice so that justice can be done to the people of New Hanover. ."

9.7. The TOR requires this Commission to inquire into the behaviour of foreign logging companies and the total disregard of environmental concerns, the customary rights of the people basically supported by very eminent Papua New Guineans.

9.8. Mr Sek also confirmed the following;

- * Landowners were accommodated at Kavieng Hotel in 2007 to meet Mr Malesa on the Land Investigation. He was surprised at his exclusion since he was considered as clan leader for Tabut.
 - * Approached by Mr Miskus Maraleu to sign a form at Tutuman Office and he signed without knowing fully well what was the purpose of signing the consent form.
 - * Environmental damage to ecosystem, the destruction of mangrove tree, removal of betel nut and coconut trees, total disregard of the sacred sites, and pollution of the waterways and the only creek supplying water to the village was dug up and had since dried up.
 - * The movement of machinery was to construct a 12 km road inland through forest around the Three Islands Harbour to Meteai Log Pound on Central New Hanover for the purpose of logging.
- 9.9 The evidence of the landowners are genuine and confirms that the land investigation process undertaken by the DLPP lacked proper management and oversight on the part of the Land Investigation team. The C.O.I request that appropriate attention be made to the landowners concerns over prosecution of companies (foreign and national) for breaching laws of PNG

10. Department of New Ireland/New Ireland Provincial Administration

10.1 The Provincial Lands and Physical Planning Office, NIPA was not involved in the Land Investigation and ILG process on the island of New Hanover and Namatanai.

10.2 The C.O.I notes that Mr Lazarus Malesa was directed by Mr Anthony Luben, then Deputy Secretary on request by Tutuman Development Limited to assist with the ILG registration and the LIR process. It became obvious that when Mr Malesa's trip was fully funded and paid by Tutuman, that he saw no need to make any contact with his provincial counterpart to assist in the land investigation on the island and at Namatanai

10.3 The lack of protocol on the part of DLPP resulted in a letter written by Mr Robinson Sirambat, Provincial Administrator to Secretary, DLPP dated 19 November 2007 seeking to revoke all the SABLs in the province. This was on the premise that the Provincial Lands Office headed by Mr Banovo was ignored and that no direction was issued for their involvement as the lead agency. The letter in part reads, "It is sad to note that your Lands Officer, Mr Lazarus Malesa, failed to consult my Lands Manager as a matter of protocol when he visited the province to conduct LIRs on Mamirum, Central New Hanover, Umbukul and Danfu."

10.4 The same issue was raised by the current Manager Mr Mark Waine in the Cassava Etagon Holdings SABL hearings. This was refuted by Mr Malesa who said that he was invited to be part of the team on the land mobilization for Kaut SABL.

10.5 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 involvement.

11. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

11.1 The evidence of Mr Malesa as the Lands Officer conducting the Land Investigation and Report on Portion 885C is applicable to Portion 885C (Refer to Common Witnesses) In summary, the C.O.I has perused the Land Investigation Report prepared by Mr Malesa in collaboration with Mr Maraleu of Tutuman Development Limited.

Land Investigation Process & Report

11.2. No Tender Form/Application was sighted and we doubt whether any such application was submitted by the Executives of the Tabut Limited to DLPP to verify the application in respect of existing State Leases. No Land Instruction Number was issued to authorize Provincial Lands Office at NIPA to conduct the land investigation and ILG social mapping awareness and registration.

11.3. The pertinent details as indicated from all the LIRs inspected generally indicate that it was rushed and did not fully capture the important aspects of majority consent of landowners for inclusion in the report. We also note that Mr Malesa travelled from village to village and at times conducted his awareness at night amongst far less than 10 people, which was not the best

scenario to conduct the land investigation. He was also reported to have conducted his land awareness with selected landowners at Kavieng Hotel and not on site.

11.4. LIR was not completed with the following details either missing or left as blank

- * Lack or no names of female clan leaders because it is a matrilineal society which casts a lot of doubt on the Declaration of Custom in relation to Land Tenure.

- * The Declaration as to Custom in relation to Land Tenure consisted of agents names as indicated in the report

- * Certificate as to Land Boundary is flawed because Mr Malesa was constantly travelling with his companions.

- * Valuer General's Requirements is incomplete and blank

- * A person named Miskus Maraleu appears in forms attached to LIRs called „Schedule of owners, status and rights to the land?. Representatives for the Ahi Vonge clan are Miskus Maraleu, Mageret

Maraleu, Mauna Maraleu, Miskus Junour Maraleu, Malonie Maraleu, Majorie Maraleu and Melchicedek Maraleu

11.5. The Recommendation as to Alienability is not signed by the Provincial Administrator and blank. This document will serve the basis for the verification and processing of the lease/lease back agreement. It is crucial to the SABL process and the lack of it renders the registration and issuance of the SABL title as null and void.

Instrument of Lease/Lease Back Agreement

11.6 The lease/lease back Agreement was executed between the State and the Agents on behalf of the landowners on 24th September 2007. The Minister for Lands and Physical Planning did not sign the Instrument ratifying the requisite consent under section 11 of the Land Act. This is another major flaw in the process leading to issuance of Direct Grant and registration of title pursuant to section 102 of the Land Act. Mr Martin Banovo, Manager Lands, NIPA and Lazarus Malesa, Customary Lands Officer witnessed the agreement.

12.

AGRICULTURE SUB LEASE AGREEMENT

12.1

Agriculture Sub Lease agreement signed between Ruben Peni Chairman of Tabut, Pelick Isaiah and Passingan Kasup Ruik Committee members of Tabut on the one part and Steven Hii as as as

Managing director of Tutuman on the other. The agreement was witnessed by Miskus Maraleu as tenant or lawyer for tenant.

12.2. TL agreed to lease to Tutuman for 40 years Agriculture lease at an Annual rent set at K10,000 per annum. The Commission's inquiry into other SABLs for example Lolokoru Estate SABL in West New Britain Province, New Britain Palm Oil Limited pay K50,000 per year for harvest of oil palm fruit on only 2,000 hectare of land. This is great disparity to the amount paid to Tabut Limited. TDL should review the rent paid at the current market value and increase the rental amount to K50,000.

ENDORSEMENTS NOTED ON SABL PORTION 885C TITLE DOCUMENT

12.3. We note evidence of Sub-lease agreement duly registered with the Office of the Registrar of Titles. The endorsements at back of the SABL Title indicate sublease to TDL on 5/11/07, cancelled on 30/09/09, subleased again to Palma Hacienda Limited on 01/10/09. This sublease cancelled on 21/03/2011 and subleased again to TDL on 20/09/2011.

13 DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

13.1 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 Tabut Limited.

14. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

14.1 Input by DAL has been minimal as was evident in other SABLs. The trend seems to be that DAL enthusiastically supports agriculture development plans and urges DEC to approve permits and PNGFA to approve FCAs then they disappear off the radar. In this 3 SABLs deputy secretary Daink has done just that. There does seem to be invitation put out for public hearings but there is no record of those hearings taking place.

14.2. Just as an aside, the same was done by DAL in the SABL granted to Rakubana Limited over an area known as Danfu in Namatanai. The same agriculture development plans were proposed there and DAL was full of praise. When it came to implementation of that agricultural program it seems that the PNGForest Authority Service and the Forest Service officer in NGI demanded that Tutuman implement its agriculture component.

14.3. As far as the New Hanover projects are concerned the COI's whirlwind tour of the site to ascertain the developments show very little evidence of cocoa tree estates. There have been landowner complaints that TDL has not kept its part of the bargain to plant cocoa and coconut and the few trees planted so far are now under thick bush as a result of neglect, though Tutuman was only facilitating the supply of cocoa seedlings to growers, who were farming their plots individually.

14.4 The C.O.I takes note of DALs involvement with the SABL Project on New Hanover.

(1) A public notice on Public Hearing to be held at Tabut/Mamirum and Central New Hanover Integrated Agriculture and Forestry Project organised by DAL in consultation with PNG Forest Authority and other key Agencies of the Government in the conduct of a public hearing at New Hanover. The Meeting we note for the letter of invitation was to be held on 27th to 28th June 2009. Copies was circulated to PNG Forest Authority, DEC, Administrator, NIPA, Pedi Anis, Chairman, TDL and Tom Peni, NDAL, Kokopo.

14.5 C.O.I has not received any further information whether the awareness was conducted. The evidence by the landowners seem to suggest that there was no awareness nor any meetings conducted at New Hanover.

(2) Mr Daink, Deputy Secretary (PATS), DAL advises Mr Anton Benjamin, Secretary, DAL by letter dated 14th July 2009, that proposals submitted by TDL to conduct agro- forestry projects requiring large areas of forest land to be cleared for agriculture purposes was assessed by his office and they were satisfied that an approval under Form 235 Certificate for Compliance be approved.

14.6. The Commission notes that under Form 235, DAL approval must be based on a detailed development plan, evaluation report to be assessed and determined. The detailed plans were not submitted when the application was made, though volume's of Agro-Forestry Plans submitted by TDL was done after the approval was granted. This is grossly negligent, in that Form 235 is an important process whereby no grant for

FCA can be processed after DAL approves that the Developer has the capacity to deliver on its agricultural product with full financial backing and an implementation schedule. The C.O.I. notes that this is a common trend that has become a norm for DAL to allow investors without any agricultural background and financial capacity to be allowed to have access to prime forest area

especially under SABL for logging purpose.

14.7 The C.O.I also noted that a map and description area of the project area is made showing any areas of slope in excess of 30% or other area that is unsuitable for agriculture, other land use purpose and conservation. This was a cocoa project and such information was required as a pre-requisite to grant of FCA.

14.8 C.O.I has noted that the Management of TDL has now embarked on the Rubber Plantation Development. The Document was prepared for TDL by Escol Consulting Sdn Bhd of Malaysia and is dated May 2011. The

C.O.I is highly suspicious on the manner in which TDL has decided to change its agriculture approach of originally planting cocoa to rubber. This is an abuse of the process for FCA approval, which was originally planned and approved by DAL for cocoa estate.

No detailed Agriculture Plan

14.9 There is no detailed plan cocoa production, processing and processing of cocoa product..

No Land Use Plan for the Area

14.10. 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.

14.11. There is no land use plans for the expired Mamirum TRP that could be used for the development, cocoa production, processing and export project.

No oil Suitability Assessment

14.12 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 was difficult to assess the agriculture projects and plans, input requirements for the development of agriculture development as proposed

.”

Feasibility Study

14.13. 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.

15. PNG FORESTRY AUTHORITY

15.1. There have been complaints made that the PFMC is constituted by the Chairman who is related to Mr Pedi Anis the Chairman of TDL and the Deputy Chairman is said to be a part of the TDL company.

15.2 The C.O.I notes that there is no mention of FCA being granted by PNFA Board.

16 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

16.1 Environment permits have been issued for Central New Ireland by DEC. It is still considering Permit for Tabut Limited and has no record for Umbukul Limited. There is no mention on DEC files as to whether public hearings and awareness were conducted to gauge views of customary land owners.

17 RECOMMENDATION

17.1. The C.O.I. recommends that SABL Portion 885C be revoked on the basis that the integrity of the Land Group Registration process and the Land Investigation process fundamental to good title was flawed and must be nullified. The recommendation is consistent with the findings based on

the sworn evidence of witnesses; Affidavit and Statements of Witnesses and production of documentary evidence

1. The Land Group Incorporation Registration process and awareness conducted was not transparent affecting consent of majority landgroups within Tabut Electorate of New Hanover Island

2. The Integrity of the Land Investigation process and disregard of the ad hoc administrative process adopted by DLPP in conducting land investigation for SABL was compromised;

(1) Failure of DLPP to fund the officer's operational costs to conduct the Land Investigation and also conduct public awareness on SABL.

(2) Tutuman Development Limited funded the operational cost for the Officer conducting the land investigation and directed and took charge of the whole process.

(3) The Land Investigation Report was not fully completed and the details were missing.

(4) DLPP failed to collaborate and coordinate the field report with the Provincial Administrators Office and the Provincial Lands and Physical Planning Division.

(5) The Recommendation for Alienability was not signed by the Provincial Administrator, NIPA in the LIRs produced to the Commission; and

(6) The Minister or his Delegate also did not sign the Instrument of Lease/Lease Back Agreement. This affected the requisite consent requirement pursuant to section 11 of the Land Act.

17.2. On the basis of points (5) and (6) above means that the Notice of Direct Grant, Gazettal Notice, Registration and Issuance of Title are legally deemed to be void.

17.3. The Shareholding/Directorship of Tabut Development Limited must be restructured in terms of Shareholding and Directorship within the recognised and legitimate clans/villagers of Umbukul District.

17.4. The Election of the Chairman of the company must be conducted in a transparent way and with the consent of the people through their nominated agents acting as shareholders in the company.

17.5. All Resolutions and Decisions of the Company with respect to development issues should adhere to the provisions of the Companies Act and its Regulations.

17.6 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

17.7 It is recommended that SABL issued to Tabut Ltd should be reviewed and the process of ILG registration should proceed with proper 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.

1. COI Inquiry File No 26 for Special Purpose Agricultural and Business Lease over Portion 886C Volume 17 Folio 19 Milinch: Lavongai New Ireland Province in the name of Umbukul Limited.

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1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Umbukul Limited SABL. These were:

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Witnesses and Summonses

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Mr Kamsal Maraleu, Ward Councillor, Ward 12 LLG, West Lavongai, Clan Leader & Deputy Chairman of Ianga Clan

16-22

5

28/10/11-SABL 40 Mirou

2

Mrs Gedjolly Aron,
Nursing Officer &

23-28

5

28/10/11-SABL 40 Mirou

Landowner Silau Clan, Kone Village, Umbukul

3

Mrs Delta Passingan Nates, Office Manageress, Melrose Place, Kotkot Clan, Soson Island, Umbukul
28-30

5

28/10/11-SABL 40 Mirou

4

Dickson Passim Kasi, Clan Leader of Manusap Clan& Pastor of Covenant Ministry International,
Umbukul Ward 12 LLG.

58-60

5

28/10/11-SABL 40 Mirou

5

Mr Pedi Anis, Chairman, Tutuman Development Corporation & Landowner of Umbukul

5

28/10/11-SABL 40 Mirou

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Mr Pepi Kimas, OL, Former Secretary, DLPP

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05/01/12-SABL 68 MIROU (WAIGANI)

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23/01/2012 SABL 79-Mirou
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2.1 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.”

2.2 The following were granted leave to be represented by counsel

3 Exhibits and documents

3.1. There were nineteen (19) 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
Statement of Kamsal Mareleu
C.O.I
28/10/11
UL "1"
2
Statement of Gedjolly Aron
C.O.I
28/10/11
UL "2"
3
Statement of Delta Passingan Nates
C.O.I
28/10/11
UL "3"
4
Statement of Dickson Kasi
C.O.I
28/10/11
UL "4"
5
Statement of Charles Lamangan
C.O.I
28/10/11
UL "5"
6
Schedule Of Owners, Status And Rights To
The Land From Umbukul
C.O.I
24/01/12
LPM1
7
LIR Report For Umbukul Prepared By
Mr Lazarus Paul Malesa
C.O.I
24/01/12
LPM2
8
Letter Dated 5th May
2006 From Provincial

Lands Manager, Mr M Banovo, New Ireland Province
Notice Of Direct Grant
C.O.I
24/01/12

LMP3

9

Letter By Mr Robinson Sirambat, Provincial
Administrator To The Secretary, Department Of

C.O.I

24/01/12

LMP4

Lands, Dated 19

November 2007, Revocation Of Rakubana Development Propriety Limited, Tabut, Umbukul And
Central New Hanover As Registered Entity

10

Land Investigation Report for Milinch of Lavongai Applicant Manag Katakesep, Guna Nuna
Landgroup

C.O.I

24/10/12

LMP 5

11

Land Investigation Report for Milinch of Lavongai Applicant Aihi Venge Clan

C.O.I

24/10/12

LMP 6

12

Working File Folder for Central New Hanover Consisting of 11 Land Investigation Reports

C.O.I

24/01/12

LPM 8

13

Working File Folder for Tabut Consisting of 11 Land Investigation Reports

C.O.I

24/01/12

LPM 9

14

Working File Folder for Umbukul Consisting of 18 Land Investigation Reports

C.O.I

24/01/12

LPM 10

15

Working File Folder for Danfu Consisting of 15 Land Investigation Reports

C.O.I

24/01/12

LPM 11

16

The Brief Report of the Process Used to Register The SABL For Portion 885C, 886C, 887C and
871C Danfu

C.O.I

24/01/12

LPM 12

17

An Outline of a Field Trip to New Ireland Province in 2007 by Mr Malesa

C.O.I

24/01/12

LPM 13

19

Appendix "G" – Field Trip Report By

Mr Lazarus Paul Malesa

C.O.I

23/01/12

CE9

4. Timeline of events of note surrounding Umbukul Limited SABL Title

4.1. 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

1

Incorporation of Tutuman Development Limited (TDL)

2 December

1999

Tutuman Development Ltd

TDL/Umbukul Ltd

2

Incorporation of Tutuman Integrated Products Limited

30 August

2007

TDL

TDL/ Umbukul Ltd

3

Incorporation of Umbukul Ltd

30 August

2007

Umbukul

Umbukul/TDL

4

Land Investigation Report (Incomplete)

17th May 2007

Umbukul Limited

Umbukul/State

5

Notice Under Section 11 (Signed by Pepi Kimas)

10th October

2007
State/UL
UL
6
Notice of Direct Grant (s102)–Signed by Pepi Kimas
16 October

2007
State/UL
UL
7
Gazettal Notice G161 on SABL title for Portion 886C
17th October,

2007
UL
UL/TDL
8
SABL Lease to
29th October
UL
UL/TDL

Umbukul Limited
2007

9
Request by TDL to
29 September
TDL/State
TDL

DLPP for
2009

Cancelation of Sub–

lease Agreement

with

TL/Umbukul/Central

New Hanover (Letter

by Mr Miskus

Mareleu, Company

Lawyer)

10
Agricultural
29 September
TDL/UL/State
TDL/UL

Sublease Agreement
2009

between TDL and

UL (Stamp Duty

Endorsement)-99

years

FINDINGS

4.2 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Umbukul Limited SABL.

5. Umbukul Limited SABL

5.1. A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G161 dated 17th October 2007 for Portion 886CLavongai. The land is described as Umbukul. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 16th October 2007 by the Department of Lands and Physical Planning to the holder Umbukul Limited SABL(UL). Mr Pepi Kimas OL, signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 886C

Registered Survey Plan Catalogue No

23/468

SABL Holder

Umbukul Limited

Date of Registration of Lease

16th October 2007

Period of Lease

Ninety-nine (99) years

Land area of lease

25,108.00 hectares

6. Background

6.1 There was no mention of boundaries and distances involved in the material perused but the lease is contiguous to Central New Hanover Limited and Tabut Limited SABLs.

IPA COMPANIES REGISTRY RECORDS

7. UMBUKUL LIMITED

7.1. According to the IPA Extracts dated 2nd August 2011, Umbukul Limited was incorporated on 30 August 2007 and is currently operating. The Company Number is 1-54388. The principal place of business in Section 10 Allotment 6, Anir Street, Kavieng.

7.2 The issued ordinary shares of the company comprise 22. The listed shareholders holding 1 ordinary share in UL are Passingan Anis, Manuel Emos, Tusa Eremas, Kulepmu Gedion, Tugak Gira, Makago Isanah, Moris Japhet, Nipal Kepas, Enoch Konesikei, Iguatumaip Kunas, John Lapankun, Silas Lasaro, Joseph Nomba, Reuben Peni, Septe Sakias, John Sek, Isaiah Slavun, Akuila Sosonga, Isaiah Tangik, Kepas Temerem, Robin Tonaup and Temevoi Toropi. The 22 listed shareholders address is the same as the principal place of business.

7.3 The seven (7) Directors are Reuben Peni, Tugak Gira, Passingan Anis, Makago Isanah, Akuila Sosonga, Moris Japhet and Kepas Temerem

7.4 The Company Secretary to UL is named as Miskus Maraleu.

8 LANDOWNERS OBJECTIONS TO THE SABL PORTION 886C

8.1 Landowners openly expressed their anger over what the C.O.I found consistent with New Hanover to be lack of awareness and fraudulent processing of the ILG registration and SABL processing of their land within the SABL Project area.

8.2 The following witnesses representing the different clans within the Umbukul LLG were called to confirm the general dissent against the umbrella landowner company and the wide spread abuse in the SABL which affected their habitation and general livelihood. These witnesses including two (2) female landowners who gave evidence to the inquiry.

The Evidence of Mrs Gedjolly

8.3. Mrs Gedjolly from the Silau clan was approached by her relative Reuben Peni and Kepas Temeran at her house in the evening to obtain her signatures over what they said was for land registration. She signed the documents only to learn as a result of the inquiry that she signed consent to allow her land to be converted to SABL. Mrs Nates expressed concern over the future of her children, the lack of awareness and consultation between the parties.

The Evidence of Mr Kasi

8.4 Mr Dickson Kasi insisted and reinforced the views of the majority for more awareness on the SABL process demanding the return of the SABL land back to his people of Manusap Clan at Metetui Village. This situation could not have occurred had the government agencies entrusted with the legal and statutory duties ensured that the process of acquiring customary land was done professionally with the illiterate, unsophisticated rural villager better informed on the disadvantages, advantages and the impact such development will have on their lives especially in the most basic subsistence life they enjoy. That is the most important duty that is expected from public servants and this must not be compromised for example payment of allowances and other expenses by the benefactor of the project. This continues to occur where the vast majority of people live in subsistence economy and their disability over understanding a concept

so foreign to them requires patience and time to coordinate the land investigation process properly.

The Evidence of Mr Kamsal Maraleu

8.5. He was the young brother of Miskus Maraleu. He was honest and played a significant role on behalf of Tutuman through his brother and Mr Pedi Annis, Chairman of Tutuman to ensure that consent was obtained from the landowners resulting in the sub lease agreement. He was instrumental in assisting the Malaysians in bringing machinery to Maitiea where the local landowners set up a blockade. He only became aware that the people no longer owned the land, through a conversation between Pedi Annis and two clansman namely Reuben Peni and Kepas Temeran on the signing of the consent form that "you just sold your land!".

8.6. In admitting his mistakes to his people and his resolve to return the land back to his people, he freely volunteered the information to the inquiry. After he gave evidence he was assaulted by his nephew. The C.O.I denounces such action and at the time of the incident it was reported to police. Mr Maraleu had assisted the C.O.I on the site visit to New Hanover. We refer to the extract to his statement to the Inquiry which sets out the behaviour of Tutuman in its dealings with the people at New Hanover and Namatanai,
"Thank you. I, Kamsal Maraleu, brother of Miskus Maraleu, lawyer; uncle to Pedi Anis, Chairman of Tutuman Development. I came and surrender myself to the Commission of Inquiry because I have a

heart for my people. My statement is short in this paper which is now in front of you.

A: I would like to tell the Commissioner that I was there during all these preparation. Dominance, Tutuman, Joinland and another company – they are one, with different names but they are same people. They used me because I am a leader and I have influence on the island. The way they went about all these was not right. I got the machineries from

Dominance to start Tutuman Limited, the new company, and we went and operated at Kaut in Central New Ireland and Namatanai, later our plan was to go to the island because the island had plenty of trees.

A: New Hanover Island. There are many educated people from New Hanover Island. That is why handpicked some of these people to pursue this idea. We selected these people from the three areas. We selected people from interested clans who would be able to follow us through with this idea. We did not follow the right way. I landed the machinery like my other brother from Central New Hanover. We were forced to make sure the machinery must go. When I landed the machine there was dispute. Myself and David, a Malaysian, manager went to seek advice from lawyer, Miskus Maraleu, to find out what we will do; the machine will go or what. He replied that the machine had to go and the Police must be present.

The signing of every document's, I used to grease the people to sign it in the interest of the company.

Q: Sorry witness, could you just elaborate. You said, you “grease”. How did you “grease” them? Did you promise them anything? Just tell the Commissioner.

A: I used to tell them to sign the paper because there will be some changes to help each of the families. That is what I thought would happen. But these evil people have hidden agendas. The signing of the permits, and to organize the director to talk to the PA and landowners I organized them. I did not put it on paper because we are family. One day during my good times I signed the last document to transfer a permit to Palma Hacienda. Miskus was there that time in the office, Pedi Anis, Deo, Mr Hii's son, and Mrs Regina Hii. When I completed signing, Pedi shook my hands and said, “You have sold your land.” They were all happy. After this they paid me K100 for the paperwork I had done. I was troubled and I cried. I cry because I see the future of

the children, grandchildren will not be good. So I got up and left everything. I did not cry for money, I went out because I have a heart for my people. I started to do some work to return the land back to our people. After three months away from work I heard that they had received a large amount of money; US\$1.6 million. They got the money from the sales of Portion 887, Central New Hanover and 886C, Umbukul. I am from Umbukul.

....

I stand firm to tell this Commission like this that these three Malaysians, Mr Sisi and Mr Deo and their workers that they must not return again to New Ireland and also to New Hanover and this lease – leaseback will have to stop. Get rid of the title from that company and the other companies that are on the island will have to leave the island. And whatever outstanding that they did not pay for in rental they have to pay up and they have to finish from working or stop working and the company Tutuman will to stop, cease operation.” (Refer to pages 17–19 of Transcript)

8.7. He also highlighted specific actions taken by Tutuman in its dealings with the SABL and that all the decisions undertaken by Umbukul Ltd was done by the Directors of the Company who attended the office of Tutuman at Kavieng. There was no consultation and decisions taken by Umbukul with the clan back at the village and the views of the landowners/villagers/clans were not represented. Everything was conducted in a veil of secrecy with the handpicked Shareholders/Directors of the company who at all times were Tutuman's cronies. This equally applied to landowner companies Rakubana, Tabut and Central New Hanover

8.8 His explanation of the thick development plan by Tutuman to grown cocoa, coconut oil and oil palm was for interest in the volume of timber.

The Evidence of Mr Lamangan

8.9 Mr Charles Lamangan described as fraudulent and criminal the consent obtained from traditional landowners to register ILGs in an area that was previously surveyed as the now expired Mamirum TRP area. He said the method of converting the expired TRP area into the SABL was to fast track the SABL process and under that arrangement acquires accessibility to the entire island of New Hanover. In his statement to the Commission he again reinforced the general feelings of the people on Tutuman's involvement in the registration of ILG and Land Investigation process as fraudulent and the use of consultants that either were compromised or had potential conflict of interest.

8.10 The Commission finds that Tutuman appeared to have compromised its independent role as investor and Developer by personal and direct involvement in the ILG registration and the LIR process. We note that this conflict of interest did in fact continue with the involvement of the DLPP officer who was paid by Tutuman to undertake the LIR at its direction. That element of conflict does amount to gross abuse of the process and interference with public officials in the discharge of their statutory functions without fear and favour. This is in fact the worst kind of interference by a Developer whose shareholders/Directors are also landowners themselves.

9 Department of New Ireland/New Ireland Provincial Administration

9.1 The Provincial Lands and Physical Planning Office, NIPA was not involved in the Land Investigation and ILG process on the island of New Hanover and Namatanai.

9.2 The C.O.I notes that Mr Lazarus Malesa was directed by Mr Anthony Luben, then Deputy Secretary on request by Tutuman Development Limited to assist with the ILG registration and the LIR process. It became obvious that when Mr Malesa's trip was fully funded and paid by Tutuman, that he saw no need to make any contact with his provincial counterpart to assist in the land investigation on the island and at Namatanai

9.3 The lack of protocol on the part of DLPP resulted in a letter written by Mr Robinson Sirambat, Provincial Administrator to Secretary, DLPP dated 19 November 2007 seeking to revoke all the SABLs in the province. This was on the premise that the Provincial Lands Office headed by Mr Banovo was ignored and that no direction was issued for their involvement as the lead agency. The letter in part reads, "It is sad to note that your Lands Officer, Mr Lazarus Malesa, failed to consult my Lands Manager as a matter of protocol when he visited the province to conduct LIRs on Mamirum, Central New Hanover, Umbukul and Danfu."

9.4 The same issue was raised by the current Manager Mr Mark Waine in the Cassava Etagon Holdings SABL hearings. This was refuted by Mr Malesa who said that he was invited to be part of the team on the land mobilization for Kaut SABL.

9.5 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 consulting the Provincial Administration for its assistance and involvement.

10. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

10.1 The evidence of Mr Malesa as the Lands Officer conducting the Land Investigation and Report on Portion 886C is applicable to other Portions (Refer to Common Witnesses) In summary, the C.O.I has perused the Land Investigation Report prepared by Mr Malesa in collaboration with Mr Maraleu of Tutuman Development Limited.

Land Investigation Process & Report

10.2. No Tender Form/Application was sighted and we doubt whether any such application was

submitted by the Executives of the Umbukul Limited to DLPP to verify the application in respect of existing State Leases. No Land Instruction Number was issued to authorize Provincial Lands Office at NIPA to conduct the land investigation and ILG social mapping awareness and registration.

10.3. The pertinent details as indicated from all the LIRs inspected generally indicate that it was rushed and did not fully capture the important aspects of majority consent of landowners for inclusion in the report. We also note that Mr Malesa travelled from village to village and at times conducted his awareness at night amongst far less than 10 people, which was not the best scenario to conduct the land investigation. He was also reported to have conducted his land awareness with selected landowners at Kavieng Hotel and not on site.

10.4. LIR was not completed

- * Lack or no names of female clan leaders because it is a matrilineal society which casts a lot of doubt on the Declaration of Custom in relation to Land Tenure.

- * The Declaration as to Custom in relation to Land Tenure consisted of agents names as indicated in the report

- * Certificate as to Land Boundary is flawed because Mr Malesa was constantly travelling with his companions.

- * Valuer General's Requirements is incomplete and blank

- * A person named Miskus Maraleu appears in forms attached to LIRs called „Schedule of owners, status and rights to the land?. Representatives for the Ahi Vonge clan are Miskus Maraleu, Mageret Maraleu, Mauna Maraleu, Miskus Junieur Maraleu, Malonie Maraleu, Majorie Maraleu and Melchicedek Maraleu

10.5. The Recommendation as to Alienability was not signed by the Provincial Administrator and was blank. This document will serve the basis for the verification and processing of the lease/lease back agreement. It is crucial to the SABL process and the lack of it renders the registration and issuance of the SABL title as null and void.

Instrument of Lease/Lease Back Agreement

10.6. No lease/lease back Agreement was sighted by the C.O.I and executed between the State and the Agents on behalf of the landowners on 24th September 2007. We are unable to ascertain and verify if such an Agreement exists. If there is in fact no such documentation, then the statutory requirements under section 11 of the Land Act is highly questionable.

10.7. On 16th October 2007, Notice of Direct Grant was signed by Pepi Kimas dated and the Owners copy of lease shows that Lease to Umbukul was signed on the 29th/10/2007

10.8. This whole process of registration without compliance of the statutory requirement of the lease/lease back agreement is flawed and is subject to nullification. DLPP is unable to monitor and enforce irregularities basically for the reason that there is no regulatory process governing the procedure and process of SABLs apart from ad-hoc administrative process accepted by DLPP which has been abused in all the SABLs we have evaluated and audited.

11. AGRICULTURE SUB LEASE AGREEMENT

11.1 Agriculture Sub Lease agreement signed between Nipal Kepas as Chairman of Umbukul, Benvan Rovi and Passingan Anis as Committee members of Umbukul on the one part and Steven Hii as Managing director of Tutuman on the other. The agreement was witnessed by Miskus Maraleu as tenant or lawyer for tenant.

11.2. UL agreed to lease to Tutuman for 40 years at the annual rent set at K10, 000/annum. Other SABLs for eg Lolokoru estate in WNB, NBPOL pay K50, 000/yr for harvest of oil palm fruit on only 2,000 ha of land.

ENDORSEMENTS NOTED ON SABL PORTION 885C TITLE DOCUMENT

11.3. We note evidence of Sub-lease agreement duly registered with the Office of the Registrar of

Titles. The endorsements at back of the SABL Title indicate sublease to UL on 5/11/07, cancelled on 30/09/09, subleased again to Palma Hacienda Limited on 02/10/09. This sublease cancelled on 21/03/2011 and subleased again to TDL on 22/03/2011.

12. DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

12.1. 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 Tabut Limited.

13. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

13.1 Input by DAL has been minimal as was evident in other SABLs. The trend seems to be that DAL enthusiastically supports agriculture development plans and urges DEC to approve permits and PNGFA to approve FCAs then they disappear off the radar. In this 3 SABLs Deputy Secretary Daink has done just that. There does seem to be invitation put out for public hearings but there is no record of those hearings taking place.

13.2 The C.O.I takes note of DALs involvement with the SABL Project on New Hanover.

1) A public notice on Public Hearing to be held at Tabut/Mamirum and Central New Hanover Integrated Agriculture and Forestry Project organised by DAL in consultation with PNG Forest Authority and other key Agencies of the Government in the conduct of a public hearing at New Hanover. The Meeting we note for the letter of invitation was to be held on 27th to 28th June 2009. Copies of that Minute were circulated to PNG Forest Authority, DEC, Administrator, NIPA, Pedi Anis, Chairman, TDL and Tom Peni, NDAL, Kokopo.

C.O.I has not received any further information whether the awareness was conducted. The evidence by the landowners seems to suggest that there was no awareness nor any meetings conducted at New Hanover.

2) Mr Daink, Deputy Secretary (PATS), DAL advises Mr Anton Benjamin, Secretary, DAL by letter dated 14th July 2009, that

proposals submitted by TDL to conduct agro-forestry projects requiring large areas of forest land to be cleared for agriculture purposes was assessed by his office and they were satisfied that an approval under Form 235 Certificate for Compliance be approved.

3. The Commission notes that under Form 235, DAL approval must be based on a detailed development plan, evaluation report to be assessed and determined. The detailed plans were not submitted when the application was made, though volumes of Agro-Forestry Plans submitted by TDL was done after the approval was granted. This is grossly negligent, in that Form 235 is an important process whereby no grant for FCA can be processed after DAL approves that the Developer has the capacity to deliver on its agricultural product with full financial backing and an implementation schedule. The C.O.I. notes that this is a common trend that has become a norm for DAL to allow investors without any agricultural background and financial capacity to be allowed to have access to prime forest area especially under SABL for logging purpose.

The C.O.I also noted that a map and description area of the project area is made showing any areas of slope in excess of 30% or other area that is unsuitable for agriculture, other land use purpose and conservation. This was a cocoa project and such information was required as a pre-requisite to grant of FCA.

4. C.O.I has noted that the Management of TDL has now embarked on the Rubber Plantation Development. The Document was prepared for TDL by Escol Consulting Sdn Bhd of Malaysia and is dated May 2011. The C.O.I is highly suspicious on the manner in which TDL has decided to change its agriculture approach of originally planting cocoa to rubber. This is an abuse of the process for FCA approval, which was originally planned and approved by DAL for cocoa estate.

No detailed Agriculture Plan

13.3 There is no detailed plan cocoa production, processing and processing of cocoa product..

No Land Use Plan for the Area

13.4. 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.

13.5. There is no land use plans for the expired Mamirum TRP that could be used for the development, cocoa production, processing and export project.

No oil Suitability Assessment

13.6 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 development as proposed .

Feasibility Study

13.7 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.

14 PNG FORESTRY AUTHORITY

14.1 The C.O.I notes that there is no mention of FCA being granted by PNG Forest Authority Board.No mention of FCA being granted by PNG Forest Authority Board.

15 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

15.1 Environment permits have been issued for Central New Ireland by DEC. It is still considering Permit for Tabut Limited and has no record for Umbukul Limited. There is no mention on DEC files as to whether public hearings and awareness were conducted to gauge views of customary land owners.

16 RECOMMENDATION

16.1 The C.O.I. recommends that SABL Portion 886C be revoked on the basis that the integrity of the Land Group Registration process and the Land Investigation process fundamental to good title was flawed and must be nullified. The recommendation is consistent with the findings based on the sworn evidence of witnesses; Affidavit and Statements of Witnesses and production of documentary evidence

16.1.1. The Land Group Incorporation Registration process and awareness conducted was not transparent affecting consent of majority landgroups within Umbukul Electorate of New Hanover Island

16.1.2. The Integrity of the Land Investigation process and disregard of the ad hoc administrative process adopted by DLPP in conducting land investigation for SABL was compromised;

16.1.3. Failure of DLPP to fund the officer's operational costs to conduct the Land Investigation and also conduct public awareness on SABL.

16.1.4. Tutuman Development Limited funded the operational cost for the Officer conducting the land investigation and directed and took charge of the whole process.

16.1.5 The Land Investigation Report was not fully completed and the details were missing.

16.1.6. DLPP failed to collaborate and coordinate the field report with the Provincial Administrators Office and the Provincial Lands and Physical Planning Division.

16.1.7. The Recommendation for Alienability was not signed by the Provincial Administrator, NIPA in the LIRs produced to the Commission; and

16.1.8. The Minister or his Delegate also did not sign the Instrument of Lease/Lease Back Agreement. This affected the requisite consent requirement pursuant to section 11 of the Land Act.

On the basis of points (16.1.7) and (16.1.8) above means that the Notice of Direct Grant, Gazettal Notice, Registration and Issuance of Title are legally deemed to be void.

16.2 The Shareholding/Directorship of Umbukul Limited must be restructured in terms of Shareholding and Directorship within the recognised and legitimate clans/villagers of Umbukul District.

16.3 The Election of the Chairman of the company must be conducted in a transparent way and with the consent of the people through their nominated agents acting as shareholders in the company.

16.4 All Resolutions and Decisions of the Company with respect to development issues should adhere to the provisions of the Companies Act and its Regulations.

16.5. 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.

16.6. It is recommended that SAB&L issued to Umbukul Ltd should be reviewed and the process of ILG registration should proceed with proper 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.

1 COI Inquiry File No 27 for Special Purpose Agricultural and Business Lease over Portion 887C Volume 17 Folio 013 Milinch: Lavongai New Ireland Province in the name of Central New Hanover 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 Central New Hanover 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)

Witnesses and Summonses

1.3 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	Felman Isaac, Landowner, Konematirik village	10-16	4	27/10/11-SABL 39 MIROU
2	Ismael Passingan, Electoral Officer, Landowner, Nuslik Village, Central New Hanover	16-21	4	27/10/11-SABL 39 MIROU
3	Nelson Posikai, Landowner, Inungulus Siabun Clan Patikin Village, CNH	22-25	4	27/10/11-SABL 39 MIROU
4	Elijah Sakias, Landowner, Sugun Village	22-25	4	27/10/11-SABL 39 MIROU
5	Darius Kanai, Patipai Village, North Lavongai, Ward 3	28-29	4	27/10/11-SABL 39 MIROU
6	Paul Pira, Teacher, Lavongai Primary School, Metamaram Village	66-69	5	28/10/11-SABL 40 Mirou
7	Benjamin Wenmot, Nanilara Village	70-72	5	28/10/11-SABL 40 Mirou
8	Sition Passingan, Private Lawyer & Representative of the Central New Hanover Forum	14-21		
				04/11/11-SABL 43-MIROU
9	Mr Pedi Anis, Landowner, Umbukul Village, Chairman of Tutuman Development Ltd	8-54		

2-14

03/11/11-SABL 42 MIROU

04/11/11-SABL 43 MIROU

10

Mr Miskus Maraleu

Corporate Lawyer, Tutuman, Landowner, Umbukul

29-67

04/11/11-SABL MIROU

11

Mrs Janet Rauveve, Director, TDL & Forester,

67-79

8

04/11/11=SABL MIROU

12

Francis Daink, Deputy Secretary, (PATS), DAL

02-15

11/01/12 SABL 77- MIROU

13

Mr Anthony Luben, Unattached Public Servant & Former Deputy Secretary Lands Services 2002-2008, DLPP

10-18

05/01/12-SABL 68 MIROU (WAIGANI)

14

Mr Pepi Kimas, Former Secretary, DLPP

3-52

18/01/12-SABL 77-WAIGANI

15

Mr Lazarus Malesa, Customary Leases Lands Officer, DLPP

6-15

23/01/2012 SABL 79-Mirou

(Waigani)

2. Parties represented by counsel

2.1. 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.”

2.2 The following were granted leave to be represented by counsel

3. Exhibits and documents

3.1. There were twenty-one (21) 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	Statement of Felman Isaac	C.O.I	27/10/11	CNH “1”
2	Statement of Nelson Posikai	C.O.I	27/10/11	CNH “2”
3	Statement of Elizah Sakias	C.O.I	27/10/11	CNH “3”
4	Statement of Darius Kanai	C.O.I	27/10/11	CNH “4”
5	Statement of Paul Pira	C.O.I	27/10/11	CNH “5”
6	Schedule Of Owners, Status And Rights To The Land From Umbukul	C.O.I	24/01/12	LPM1
7				

LIR Report For Umbukul Prepared By
Mr Lazarus Paul Malesa
C.O.I
24/01/12
LPM2
8
Letter Dated 5th May
2006 From Provincial

Lands Manager, Mr M Banovo, New Ireland Province
Notice Of Direct Grant

C.O.I
24/01/12
LMP3

9
Letter By Mr Robinson Sirambat, Provincial
Administrator To The Secretary, Department Of Lands, Dated 19
November 2007, Revocation Of Rakubana Development Propriety Limited, Tabut, Umbukul And
Central New Hanover As

C.O.I
24/01/12
LMP4

Registered Entity

10
Land Investigation Report for Milinch of Lavongai Applicant Manag Katakesep, Guna Nuna
Landgroup

C.O.I
24/10/12
LMP 5

11
Land Investigation Report for Milinch of Lavongai Applicant Aihi Venge Clan

C.O.I
24/10/12
LMP 6

12
Working File Folder for Central New Hanover Consisting of 11 Land Investigation Reports

C.O.I
24/01/12
LPM 8

13
Working File Folder for Tabut Consisting of 11 Land Investigation Reports

C.O.I
24/01/12
LPM 9

14
Working File Folder for Umbukul Consisting of 18 Land Investigation Reports

C.O.I
24/01/12
LPM 10
15
Working File Folder for Danfu Consisting of 15 Land Investigation Reports

C.O.I
24/01/12
LPM 11
16
The Brief Report of the Process Used to Register The SABL For Portion 885C, 886C, 887C and 871C Danfu

C.O.I
24/01/12
LPM 12
17
An Outline of a Field Trip to New Ireland Province in 2007 by Mr Malesa

C.O.I
24/01/12
LPM 13
19
Appendix "G" – Field Trip Report By
Mr Lazarus Paul Malesa

C.O.I
23/01/12
CE9

20
Report on Status of Forest Clearance Authority Agriculture Projects by Mr Francis Daink, DAL

C.O.I
11/01/12
"FD2"

21
Affidavit of Sition Passingan including
Annexures "A", "B" & "C" and Report of TDL dated October 2010.

C.O.I
04/11/11
"SP(CNH) 1"

4. Timeline of events of note surrounding Central New Hanover Limited SABL

4.1. 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

1

Incorporation of Tutuman Development Limited (TDL)

2 December

1999

Tutuman Development Ltd

TDL/CNHL

2

Incorporation of Tutuman Integrated Products Limited

30 August

2007

TDL

TDL/ CNHL

3

Incorporation of Central New Hanover Ltd

30 August

2007

CNHL

CNHL/TDL

4

Land Investigation Report (Incomplete)

17th May 2007

CNHL

CNHL/State

5

Lease Lease Back Agreement (Not signed by Minister or Delegate)

28 September

2007

CNHL/State

CNHL

5

Notice Under Section 11 (Signed by Pepi Kimas)

10th October

2007

State/CNHL

CNHL

6

Notice of Direct Grant (s102)–Signed by Pepi Kimas

16 October

2007

State/ CNHL

CNHL

7

Gazettal Notice

17th October,

CNHL

CNHL/TDL

G161 on SABL title for Portion 886C

2007

8

SABL Lease to Umbukul Limited

29th October

2007

CNHL

CNHL/TDL

9

Request by TDL to DLPP for Cancellation of Sub-lease Agreement with TL/Umbukul/Central New Hanover (Letter by Mr Miskus Maraleu, Company Lawyer)

29 September

2009

TDL/State

TDL

10

Agricultural Sublease Agreement between TDL and CNHL (Stamp Duty Endorsement)-99 years

29 September

2009

TDL/CNHL/State

TDL/CNHL

FINDINGS

4.2 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Central New Hanover Limited.

5 Central New Hanover Limited SABL

5.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G161 dated 17th October 2007 for Portion 887CLavongai. The land is described as Central New Hanover. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 29th October 2007 by the Department of Lands and Physical Planning to the holder Central New Hanover Limited SABL (CNHL). Mr Pepi Kimas OL signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 887C

Registered Survey Plan Catalogue No

23/469

SABL Holder

Central New Hanover Limited

Date of Registration of Lease

16th October 2007

Period of Lease

Ninety-nine (99) years

Land area of lease

56, 592.00 hectares

6 Background

6.1. According to submissions made by Tutuman Development Limited the land on which they intend to develop agro forestry project is located approximately 50 kilometres from Kavieng town. Its boundaries commence on the North Coast of New Hanover Island at the mouth of the Min River which is to be found at the eastern boundary of the former Mamirum TRP. The border continues south westerly up the Min River for

12.5 kilometres and then runs 3 kms up the Nivau river turning westerly along this river for 6.3 kms before reaching the Neissung River. From there the project area goes for another 5 kms southwards to the Tirpitz range.

IPA COMPANIES REGISTRY RECORDS

7. CENTRAL NEW HANOVER LIMITED

7.1. According to the IPA Extracts dated 2nd August 2011, Central New Hanover Limited was incorporated on 30 August 2007 and is currently operating. The Company Number is 1-60626.

7.2. The issued ordinary shares of the company comprise 26 listed shareholders holding 1 ordinary share in CNHL namely William Alfred, Luis Alik, Patrick Kanai, John Lapanbot, Sirimui Laun, Nelson Tauvungum, Silas Tigimat, Lasiu Turas, John Vani, Kilkil Nguma ILG, Ungules Siavun ILG, Malapat Tien ILG, Sivigiluai Silau ILG, Manangkata Kesep ILG, Tonminulis ILG, Tuisokovut ILG, Potpot ILG, Kulivuka Vuka ILG, Votaimos Yanga ILG, Igua Sokon Manilava ILG, Vengevenge Ikavi ILG, Meterakingliang ILG, Patilasing ILG, Patalang ILG, Lamantong ILG, Pogol ILG, Tikingang ILG, Neikeputuk ILG, Bangia-Singinagaung ILG, Vutenguma ILG, Kumala ILG, Paluten Sivatmasung ILG, Neimatas ILG, Tukulikau ILG, Matamani ILG and

Lapansapirik ILG. The shareholders address is Section 10 Allotment 6 Anir Street, Kavieng, NIP which is the principal place of business.

7.3. The seven (7) Directors are Luis Alik, Patrick Kanai, Nelson Tauvungum, Lasiu Turas, William Alfred, Silas Tigimat and Sirimui Laun.

7.4. The Secretary to CNHL is Dominic Siavai.

8. LANDOWNERS OBJECTIONS TO THE ILG REGISTRATION AND SABL PORTION 887C PROJECT

8.1 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.

THE LANDING OF HEAVY MACHINERY AND INCIDENT AT KONOMATALIK VILLAGE

8.2. This incident is well publicised and occurred at Konomatalik village where heavy equipment and machinery belonging to GROMAX (a foreign Malaysian logging company), the subcontractor of Tutuman Development Limited entered Isabel Bay. According to Mr Sition Passingan, a private lawyer and former Acting Judge of the National Court and lawyer for the Central New Hanover Landowner Forum, wrote a letter of demand for payment of charges to Mr Pedi Anis on this issue on 26th May 2010. The letter in part reads, "...On the 12th May 2010 your tugboat and pontoon transporting your heavy logging machinery entered the "Isabel Passage" through Tsoi Island and landed at Konomatalik point. From the 12th to 15th your vessels anchored there and sailed to and fro until 15th May (total of 4 1/2 days)..." The coastal village affected by the operation was Puas, Metemin, Patiyagaga, Volpua, Sulava, Metiai, Patipai and Vukavuka, including surrounding villages of Soi, Lukus, Luslik, Unusa and Uwalik.

8.3. Mr Passingan provided to the C.O.I. affidavit evidence to emphasise the continuing concerns and opposition to the operation and conduct of the developer company, the environmental

damage and pollution to the sea and ocean and the seashore.

“...Tutuman Development Limited landed suddenly on the shore of Konematalik village on or about the morning of Wednesday 12 May 2010 and between 12th and 13 May 2010 all machineries landed at Konematalik proposed log pond with no proper consultation and awareness. My family and I were at Patipai village for Sunday Worship. Moved by the disturbance and widespread dissatisfaction over the lack of consultations with the customary land owners, we took action to organize Konematalik landowners to stop the landing and operations. The village magistrate at Patipai was used for this purpose.

(6) During the first few days, there were divisions within the families, clan members, clans and communities. We returned to Soia Island that Sunday and organize our people and people of the neighbouring island of Nukus. We were concerned about the impacts of such operations to our environment and livelihood. We took our stand to oppose the Tutuman Development operations on our mainland which is Central New Hanover.

(7) On Monday 17th Day of May 2010, we made our first visit to the landing site at Konematalik. We witnessed the initial destruction to the mangroves, some of the sacred sites and people's houses. Early noticeable effects of the operation was the destruction to the high school, the water supply at Konematalik. Then shortly after we organized and formed a Central New Hanover Landowners Forum. The main purposes of the Forum were; To oppose the logging operations by Tutuman Development Limited and its partners; and To oppose, investigate and have the 99 year lease revoked.”

(Refer to page 18 of SABL 34–Mirou 04/11/11)

8.4. Evidence insupport came from Mr Felman Isaac who was a member of the landowner group that protested the landing of heavy machinery by setting up customary blockade (planting gorgor) at Konematalik Point prohibiting entry onto the beach and the land. In spite of opposition, the company landed heavy machinery and equipment and commenced

building the log pound and constructing road to Taskul and the project area without PNG Forest Authority FCA. There was a complete disregard for sacred places, reefs, hunting and fishing areas.

8.5. Tutuman hired Task Force policeman from Tomaringa Barracks, Kokopo to protect the company and its employers and to allow the deployment of machinery onto Central New Hanover. Mr Isaac also says that police used force to disperse the people and as a result a young protestor was shot and was hospitalised for injuries to his leg and chest. The C.O.I was unable to confirm or interview any of the Asians working at that time, but it was revealed by the landowners that most of the workers were mechanics, chainsaw operators, bulldozer drivers and mostly forestry workers.

8.6. Mr Anis response was that the landowners had agreed for the machinery to be allowed into the project area.

8.7. The Commission's assessment on the evidence of Ismael Passingan, Nelson Posikai, Elijah Sakias, Darius Kanai, Lamugan Wenmat depicting events on Central New Hanover as follows;

i. Filed complaint against Regina Lau Hii with the Major Crimes Unit, Royal PNG Constabulary on the illegal deals over the Sale and Purchase Agreement for SABL Portion 885C, 886C and 887C.

ii. Fight between landowners and employees of Tutuman at Konematalik log pond resulting in 11,000 cubic meters of log stranded on the log pond jetty.

iii. Executives of CHNL (landowners) appointed because of their close alliance to TDL and used by TDL to make decisions without the majority knowledge of the people they represent through the supposed umbrella company.

iv. The lack of proper social mapping of all the clan group and lineages within the Inugulus Siabun clan of Min Area, Patikin village comprise a total of 28 villages. Out of the ILG registration, only two out of 28 villages was registered, hence a misleading incorporation of clans within that village.

The same applies to other landgroups of Tabut and Umbukul, and that all villages did not nominate and appoint the Chairman of each ILG. The Chairman were handpicked by TDL for the furtherance of illegal act.

v. Sugin village confirm that the shareholder of the landowner company was not elected by the village at a General Meeting convened for that purpose.

vi. The common concern was lack of knowledge, no consultation with appropriate officers of key agencies of government linked to the SABL process.

vii. The majority had no input nor knowledge of how TDL was engaged as the Developer/Investor of agricultural crops for the land under SABL.

8.9 Mr Malesa dilemma to conduct an independent land investigation given his experience was the direction made by Mr Luben on request from TDL and also the enormous duress resulting from been directed by TDL to cover villages known to be supportive to TDL venture to acquire what is the expired Mamirum TRP area.

8.10 The funding and the time spent on the Land investigation is a testament of the continuing ignorance of DLPP Management and its field officers in safeguarding the interest of the landowners in the SABL process and Central New Hanover Limited SABL Project is no exception.

9. Department of New Ireland/New Ireland Provincial Administration

9.1. Mr Moses Makis, then Acting Provincial Administrator by letter dated 2nd May 2011 requested the Office of the Registrar of Titles to extinguish and recall all the SABLs issued to New Hanover in what he termed as „due to lack of due consideration and consultation? by DLPP when it processed and issued SABL to Portions 885C, 886C and 887C New Hanover. His concerns resulted from the constant complaints flooding his office as a result of the National Government Departments ability not to involve the Administration in the initial stages of the land investigation and awareness. Mr Waine also raised similar concern in his evidence in relation to Kaut SABL.

9.2 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 involvement.

10. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

10.1 The C.O.I notes that there are no official records of the Application or Tender submitted to DLPP to undertake the Land Investigation by Central New Hanover Limited.

10.2 The Lease/Lease Back agreement was signed by the Agents of the Landowner but the Minister or his delegate did not sign the Agreement.

10.3 There was no evidence of;

(1). 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.

(2) 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 .and

(3) 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.

10.4 It was evident from the landowners that non-compliance of the SABL processes and procedures for customary identification and verifications was not followed. 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 Central New Hanover Limited for the development of commercial cocoa tree farm

11 DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

11.1 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 Central New Hanover Ltd.

12 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

12.1 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 "APPROVED" to developer Tutuman Development Limited. The purpose of the approval was for "major Cocoa and Coconut (13,000 ha), and reforestation using commercial species (identified)(14,000ha) on non-arable land with slopes exceeding 25degrees slopes. Again smallholder's involvement is noted as important. The Tututman Development Limited to provide cocoa and coconut seedlings from 60,000 capacity cocoa nursery and other inputs such as buying, processing and export of agriculture products." Whilst it look quite convincing to DAL on paper, C.O.I evaluation and assessment of the agricultural project on the New Hanover is less promising. No Detailed Agriculture Plan

12.2 Agriculture development plan is usually based on the land suitability assessment and a land use plan for the area which was proposed for the development of agro-forestry project. The land use plan and soil suitability assessments were conducted by PNG Cocoa Coconut Institute Ltd confirmed that the area is suitable for cocoa, robusta coffee and oil palm.

12.3 In a letter dated 10th of October 2008 the chairman of Tutuman Development Ltd advised the Director of the Department of Environment & Conservation that its company planned to cultivate 19,000 hectares of cocoa, coconut and oil palm over a ten year period. We find that there was no feasibility study undertaken by independent experts on cocoa, coconut and oil palm to consolidate the technical requirements for production, processing and marketing of those crops. There was also no assessment of the costs and returns to indicate that the farming business will generate adequate revenue to pay for the operational costs and sustain the operations

12.4. The tentative Development Schedule in Chapter Five (5) pages 14 - 18 of the Inception Report for issuance of the Environmental Permit for logging is only a token to satisfy the statutory requirements from the PNG Forest Authority and the Department of Environment and Conservation. All large scale land clearance and agriculture development requires independent environmental and social impact studies to show that the environment and biodiversity is preserve for future generation. The logging company TDL does not have the capacity for the development of

the agriculture projects planned for development of cocoa, coffee and oil palm.

12.5. TDL had failed to develop agriculture and other infrastructure projects that were promised before the commencement of logging operations on the western side ((Tabut and Umbukul) of New Hanover Island, (Sigulogo's letter dated March 22,2010).

Nursery Development

12.6. The Tutuman Development Ltd has established a nursery with a capacity of producing 100,000 seedlings. At the time of visit there 11,000 rubber and 15,000 cocoa seedlings and some unknown quantity of forest tree seedlings established in the nursery.

12.7. Based on a 4mx3m square plant population those seedlings are adequate to plant 14 hectares. The land for planting of cocoa and rubber has not been identified. The adhoc management of the nursery and the plan for planting cocoa and other tree crops indicated that there is lack of agricultural experts for planning and development of the plantation crops within the management of Tutuman Development Ltd.

12.8 Our site inspection of the nursery indicated that the nursery was established more recently and the cocoa seedlings were three weeks old and could just be a show piece to impress the Commission of Inquiry. Our C.O.I. Agriculture Advisor Mr Wohuinangu was also shown the plan for replanting of forest trees by the camp manager after the logging and there were no plans indicating the planting agricultural crops.

Summary

12.9 The government process and procedure for the establishment of project was not adhered with. The process for the design, formulation and financing of a project includes: an idea, design, formulation, feasibility study, investment plan and financing through a Public Investment Programme. The private sector is an investor that facilitates the development process by the provision of finance and makes money from the agriculture business. The basic process for project design and formulation, feasibility studies for investment and environmental sustainability and benefit sharing agreements between the investor and the resource owners has not been adopted..

Illegal Operation of Logging without FCA

12.10 This aspect of the inquiry is important because Tutuman had continuously operated illegally through its subcontractor to conduct illegal logging operation at New Hanover.

12.11 The PNG Forest Authority entered into an understanding with Tutuman at meeting held at the PNG Forest Authority Office. Mr Pouru in his letter to Mr Anis restated the purpose of the meeting and to Mr Anis team "...having come to a round table forum to discuss your development plans for New Hanover FCA project while at the same time highlighting the failure on the part of your subcontractor in not having to comply with specific regulatory requirements..." in light of the illegal logging operation. PNG Forest Authority also reminded Tutuman to ensure that all future development undertakings should be in conformity to laws, regulatory requirements, approved plans and standards or procedures of line government agencies or Statutory bodies whether it be

PNG Forest Authority , DAL, DEC, to void punitive action, been taken to your operation if contrary conduct practices are been employed".(See Mr Pouru's letter to Mr Anis dated 10th February 2011 titled Affirmation of Understandings Reached in Meeting of 8/2/11.) The understanding reached was for the logs harvested illegally could not be exported and stringent cordon placed to separate logs prior to FCA.

13. PNG FORESTRY AUTHORITY

13.1 FCA # 16-02 granted on 25/11/2010.

14. DEPARTMENT OF ENVIRONMENT AND CONSERVATION

14.1 Environment permits have been issued for Central New Ireland by DEC. It is still considering Permit for Tabut Limited and has no record for Umbukul Limited. There is no mention on DEC files as to whether public hearings and awareness were conducted to gauge views of customary land owners.

15. RECOMMENDATION

15.1. The C.O.I. recommends that SABL Portion 887C be revoked on the basis that the integrity of the Land Group Registration process and the Land Investigation process fundamental to good title was flawed and must be nullified. The recommendation is consistent with the findings based on the sworn evidence of witnesses; Affidavit and Statements of Witnesses and production of documentary evidence

1. The Land Group Incorporation Registration process and awareness conducted was not transparent affecting consent of majority landgroups within Central New Hanover Electorate of New Hanover Island
2. The Integrity of the Land Investigation process and disregard of the ad hoc administrative process adopted by DLPP in conducting land investigation for SABL was compromised;
 - (1) Failure of DLPP to fund the officer's operational costs to conduct the Land Investigation and also conduct public awareness on SABL.
 - (2) Tutuman Development Limited funded the operational cost for the Officer conducting the land investigation and directed and took charge of the whole process.
 - (3) The Land Investigation Report was not fully completed and the details were missing.
 - (4) DLPP failed to collaborate and coordinate the field report with the Provincial Administrators Office and the Provincial Lands and Physical Planning Division.
 - (5) The Recommendation for Alienability was not signed by the Provincial Administrator, NIPA in the LIRs produced to the Commission; and

(6) The Minister or his Delegate also did not sign the Instrument of Lease/Lease Back Agreement. This affected the requisite requirement for consent pursuant to section 11 of the Land Act. On the basis of points (5) and (6) above means that the Notice of Direct Grant, Gazettal Notice, Registration and Issuance of Title are legally deemed to be void.

3, The Shareholding/Directorship of Central New Hanover Limited must be restructured in terms of Shareholding and Directorship within the recognised and legitimate clans/villagers and the surrounding islands of Central New Hanover District.

- (1) The Election of the Chairman of the company must be conducted in a transparent way and with the consent of the people through their nominated agents acting as shareholders in the company.
- (2) All Resolutions and Decisions of the Company with respect to development issues should adhere to the provisions of the Companies Act and its Regulations.
- (3) 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.
- (4) It is recommended that SAB&L issued to Central New Hanover 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.

1. COI Inquiry File No 12 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 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 Rakubana Development 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)

3. Witnesses Statement and Summonses

3.1. 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

Kepas Tapkon, Managing Director of Rakubana Development Corporation Ltd, Nokon village (Outside SABL)

12-18

6

31/10/11-SABL 41 MIROU

2

Thomas Tomar, Ex Chairman, RDL

18-30

6

31/10/11-SABL 41 MIROU

3

Jamal Husin Imran Bin,

30-54

6

31/10/11-SABL 41 MIROU

Estate Manager, Tutuman

DL, Danfu SABL

3-6

7

03/11/11-SABL 42 MIROU

4

Mr Pedi Anis, Chairman of

8-54

7

03/11/11-SABL 42 MIROU

Tutuman Development Ltd

2-14

8

04/11/11-SABL 43 MIROU

5

Mr Miskus Maraleu Corporate Lawyer, Tutuman

29-67

8

04/11/11-SABL MIROU

6

Mrs Janet Rauveve, Director, TDL & Forester

67-79

8

04/11/11-SABL MIROU

7

Francis Daink, Deputy Secretary, (PATs), DAL

02-15

11/01/12 SABL 77- MIROU

8

Mr Anthony Luben, Unattached Public Servant & Former Deputy Secretary Lands Services 2002-2008, DLPP

10-18

05/01/12-SABL 68 MIROU (WAIGANI)

9

Mr Pepi Kimas, Former Secretary, DLPP
3-80

17/01/12-SABL 77 WAIGANI
10

Mr Lazarus Malesa, Customary Leases Lands Officer, DLPP
6-15

23/01/2012 SABL 79-Mirou
(Waigani)

4. Parties represented by counsel

4.1. 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.”

4.2 The following were granted leave to be represented by counsel

5. Exhibits and documents

5.1. There were seventeen (17) 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

Notice of Direct Grant By Pepi S. Kimas, Delegate, Minister of Lands dated 16 October 2007

C.O.I

31/10/11

RDL 1

2

Special Agriculture and Business Lease to Rakubana Development Limited

C.O.I

31/10/11

RDL 2

3

Survey Plan of Portion 871 Milinch of Dolomakas Fourmil of Namatanai

C.O.I

31/10/11

RDL 3

4

PNG General Work Permit of Jamal Husin Imran Bin

C.O.I
31/10/11
RDL 4
5
Eight (8) page Extract of Danfu Integrated Agro Forestry Project Progressive Report

C.O.I
31/10/11
RDL 5
6
Bachelor of Business Administration Degree to Jamal Husin Imran Bin dated 10 October 1991,
Sigaperbangsa University, Indonesia

C.O.I
04/11/11
RDL 6
7
Department of Labour Approved Foreign Work

C.O.I
04/11/11
RDL 7

Permit to Jamal Husin Imran Bin issued 03-Jul- 2009 to 03 Jul-2012

8
Department of Labour Approved Foreign Work Permit to Arnell Gualiza Medina issued 10-Nov-
2009 to 05 Nov-2012

C.O.I
04/11/11
RDL 8

9
Department of Labour Approved Foreign Work Permit to Gregorio Buhia Camaso issued 03-Jul-
2009 to 03 Jul-2012

C.O.I
04/11/11
RDL 9

10
Department of Labour Approved Foreign Work Permit to Tanggui Kurong Anaik issued 24-Jan-
2011 to 24 Jan-2013

C.O.I
04/11/11
RDL 10

11
Department of Labour Approved Foreign Work Permit to Ching Loi Sun issued 10-March-2011 to
10 March-2013

C.O.I
04/11/11
RDL 11

12
Department of Labour Approved Foreign Work Permit to Elmer Hecon- imbang issued 22-Jan-

2010 to 22 Jan-2013

C.O.I

04/11/11

RDL 12

13

Department of Labour Approved Foreign Work Permit AnaiK Tuan Jlgga issued 19-Jan-2011 to 19 Jan-2013

C.O.I

04/11/11

RDL 15

14

DANFU Agriculture Project Report for Namuh and Hilalon Nursery as at 04/11/11 by Imran Husin, Operations Manager

C.O.I

04/11/11

RDL 15

15

COI Site Visit Photographs 30/10/11 at Namuh Nursery, Danfu- Signpost of Danfu Agro

C.O.I

24/01/12

RDL 16

Forest Project Nursery

16

COI Site Visit Photographs 30/10/11 at Namuh Nursery, Danfu- Signpost of Danfu Agro Forest Project Nursery (Overgrown Cocoa Trees in Polybag/Nursery is derelict)

C.O.I

24/01/12

RDL 17

17

COI Site Visit Photographs 30/10/11 at Namuh Nursery, Danfu- Signpost of Danfu Agro Forest Project Nursery (Overgrown Cocoa Trees in Polybag/Nursery is derelict)

C.O.I

24/01/12

6 Timeline of events of note surrounding Rakubana Development Limited SABL

6.1 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

Incorporation of Tutuman Development Limited (TDL)

2 December

1999

Tutuman Development Ltd

TDL/RDL

2

Incorporation of Tutuman Integrated Products Limited

30 August

2007

TDL

TDL/ RDL

3

Incorporation of Rakubana Development Ltd

25 April 1997

RDL

RDL/TDL

4

Gazettal Notice G161 on SABL title for Portion 871C

16th October 2007

RDL

RDL/TDL

5

Agricultural Sublease

29

September

TDL/RDL/State

TDL/RDL

Agreement between TDL and RDL(Stamp Duty Endorsement)–99 years)

2009

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Rakubana Development Limited.

7 Rakubana Development Limited SABL

7.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G161 dated 17th October 2007 for Portion 871CDolomakas. The land is described as Danfu Extension. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 29th October 2007 by the Department of Lands and Physical Planning to the holder Rakubana Development Limited SABL(RDL). Mr Pepi Kimas OL signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 871C

Registered Survey Plan Catalogue No

21/353

SABL Holder

Rakubana Development Limited

Date of Registration of Lease

16th October 2007

Period of Lease

Ninety-nine (99) years

Land area of lease

29, 581.00 hectares

8. Background

8.1. This SABL is a 99 year lease granted to a Corporation called Rakubana Development Corporation Limited. It is found in the Namatanai District of New Ireland Province the long thin strip that runs down continuously from Kavieng town which is at the other end, located 300 kilometres to the North West.

8.2 The SABL covers a large area, all of which falls on customary land of about seven villages namely Rativis, Kudukudu, Balai, Naumu, those are the first four villages, the two first letters of which form what is called Rakubana. Then the other three villages are Igalon, Imau and Puranbus. Imau is at the furthest end south east, and Rativis village is the one nearest from Namatanai, the first village within the SABL area.

8.3. The lease is located within the expired Danfu TRP concession area. Under this TRP, timber was logged by a Corporation called Gaisho Limited of Japan at the invitation of a local company called Tasukolak Pty Limited. It is an old company formed prior to the new Companies Act.

9. Location

9.1 Its boundary starts at the mouth of the Numbai River which is on the eastern border of the Danfu TRP running in a Southerly direction along the river for 8 and a half kilometres and then in a South Easterly direction for another 20 kilometres until the river terminates at its mouth with the sea. It is about 9 kilometres by 20 in dimension and there is a slight variation or difference in the area as found under the lease.

10. Site Visit

10.1 On Sunday 28th October 2011 at around 0830am, the Commission party comprising Commissioner Nicholas Mirou, Messrs Paul Tusais, Jimmy Bokomi, Kako Sarufa, Joseph Wohuinangu, Brian Salo, Patrick Debessa, Dokta Mckenzie, Ben Kaiah and Miles Romano left Kavieng and travelled by road (273 kilometre) to Namatanai arriving at 2.30pm. This was to commence our hearings and site inspection of the SABL project area.

10.2 At around 3.30pm the Commission continued with the site visit to ascertain where exactly it is located and to determine how many villages was located within the SABL area called Danfu Extension. Huris Coconut Plantation was passed along the way and after two and a half hours drive the party arrived at Numbai River the start of the SABL area

.We travelled mostly along the coast passing coastal villages within the project area to the Log Pond Jetty & Harbour facility (made up of logs and soil), Namu Nursery and loggers Base Camp.

The party continued on until we arrived at Kesin River where the SABL ends.

10.3 That SABL area begins at Numbai River where Raggia Village is located and by using the speedometer estimated about 30.6 km drive one way. The party travelled from Kavieng to Namatanai (273 Km) and Namatanai to Kesin River (30.6 Km) and return to Namatanai (30.6km). The party travelled exhaustively for almost 334 kilometres on that day to Namatanai and the coastal site visit of the DANFU Eextension and SABL project area.

10.4 The Commission noted the following (and evidenced by photographs);

- * Log Pond and makeshift Harbour/jetty facilities made up of logs and filled with dirt/soil from the area near the wharf. Heavy machinery and equipment dumped and left to rust on the beach front. Requires.

- * Observed shade trees and cocoa trees planted along the main road, but the trees were not yielding well because the red soil according to Mr Wohuinangu, Agriculturalist was not suitable for commercial tree crop such as cocoa.

- * No harvested logs sighted as the logging operations were suspended at that time.

- * The Nursery at Namu, near the loggers base camp is overgrown with shrubs and the dryer is filled with old decaying cocoa. This is sign of neglect

- * Overgrown cocoa trees still in polybags

- * The nursery is neglected and the green shade destroyed

- * No water pump in sight.

- * The Logging Base camp comprises a Mechanical Workshop and accommodation for workmen.

10.5. Met people on the way and they expressed surprise that their land was within the SABL project area. Evidence of lack of awareness undertaken by DLPP, DAL & DEC on the ILG registration and SABL process.

10.6 Villagers complained about the collapse of a bridge (makeshift and made of felled logs) polluting river used for drinking water and other uses. Promise by the developer to provide water tanks were never fulfilled and people are still waiting for the delivery of the water tanks.

10.7 Evidence of five (5) foreign nationals of Asian origin on site. The site Manager produced documents confirming valid passport, work and residency permit. All of the Asians on the SABL site have experience in forestry and are engaged as store keepers, mechanic and other general duties normally work reserved for PNG Nationals.

10.8 There was evidence of non-compliance with Immigration laws in relation to work permit renewals. It was evident that Mr Husin, Tutuman Operation Manager had his work permit processed and renewed whilst he remained without a valid work permit and entry permit for the period in PNG. We are concerned that Immigration and Tutuman officials have collaborated to short circuit the immigration work permit process. C.O.I was unable to continue with the inquiry.

10.9 The Commission also missed the opportunity to visit the 30,000 hectares clearing and planting of cocoa trees on the hinterlands, Hilalon Village, Namatanai. This was well covered in the evidence of the common witnesses Mr Pedi Anis, Mrs Rauveve and Mr Maraleu and Mr Husin, the Operations Manager for TDL on the project site.

10.10 The Commission recommends that the Developer Company companies comply with Regulation and Statutory Requirements of maintaining a harbour and jetty facility for the long terms benefit to the community and not during the life of the project. It must be compulsory especially for the people of Namatanai and access to East New Britain Province to conduct business.

11. Hearing of SABL Portion 871C –Namatanai District Conference Centre.

11.1 On Monday October 2011, the Commission held its hearing at Namatanai District Conference

Room and it was well attended by concerned landowners. Due to the shortness of the Commission trip to Namatanai, with the view of returning to Kavieng to deal with the three SABLs on New Hanover the Commission informed the landowners that it will return in January 2012 to complete its inquiry into the DANFU Extension SABL.

11.2 The Commission acknowledged that in terms of logistical difficulties, the lack of public transport, the deteriorating road conditions and terrain the villages within the project area was unable to receive any benefits from the development taking place on their land.

IPA COMPANIES REGISTRY RECORDS

12 TUTUMAN DEVELOPMENT LIMITED

12.1. Please refer to the discussion on the common witnesses of TDL and background information.

13. RAKUBANA DEVELOPMENT LIMITED

13.1 Rakubana is a nationally owned company. According to IPA extracts, it was formed by the villagers within the expired Danfu Extension TRP, incorporated and registered with the Registrar of Companies on 25 April 1997.

13.2 It has 22 Shareholders and the same number of Directors. The Shareholders have also made up the Directors. Annual returns have been filled consistently from the year 1998 up to 2009.

14 LANDOWNERS OBJECTIONS TO THE ILG REGISTRATION AND SABL PORTION 871C PROJECT

14.1 The Commission received no formal submission from the villagers and landowners of Danfu SABL project area. The Commission noted that the remoteness of the SABL and the logistical difficulties faced by the people in terms of public transport and proper road maintenance, much of the population the Commission met and talked to on that evening of Sunday 30th October 2011 were totally surprised to hear that their land was

subject of the SABL which was under a Agriculture Sublease agreement to TDL for 40years.

14.2 Mr Thomas Tomar, former Secretary of Rakubana Development Corporation Limited, from Lamu Village, Chairman of Tarakeva ILG. According to Mr Tomar, Rakubana was formed by the villagers to embark on harvesting logs in their area. RDL applied for Forest Industry Participant Certificate and it was approved by PNG Forest Authority. TDL was engaged by RDL to undertake logging activity in the area under Logging and Marketing Agreement which was signed in 2005. The following is a summary of the evidence of Mr Tomar with regard to ILG Registrations, SABL awareness, and Developer meeting with the villagers

a) Land Investigation and ILG Registration process

He named Mr Malesa and Mr Maraleu as the two men conducting ILG registration and the land investigation at only two village Prombus and Namu village. The other five villages missed out on the awareness in 2007. During that time, Mr Maraleu conducted the ILG applications and did not inform the villagers on the disadvantages or advantages of the ILG process.

Mr Malesa conducted awareness on the Lease/Lease Back arrangement, the lease title will be in the name of Rakubana Development Limited.

The ILG process included the appointment of the Chairman, the Secretary and other officials as required by the ILG Act. There was instance of appointment of Chairman from different clan and that caused a dispute at Hamus village. Mr Lake Tovo of the Koro Clan was named as Chairman of Hirimaran ILG. The Koro Clan comprises people of Bulai and Huris. Tutuman was accused of this misleading the people and putting names of

individuals from other clans as Chairman. This was a common trend featured in the New Hanover SABLs conducted by TDL with the assistance of Mr Malesa.

b) Logging activity and pollution of Namu River

Logging activity in the mountains between three villages inland and heavy rainfall caused a major collapse of the logging road resulting in the makeshift log road and soil to enter the river stream and pollute drinking water for the people. Namu River and Balu River was affected by this manmade disaster. A complaint was lodged and the promised water tanks by TDL were never supplied despite promise to deliver water tanks..

c) Mrs Hii's outburst on the agriculture sub-lease

At a formal launching of the TDLs development plan for the project, Mrs Hii told the villagers in the project site that she will plant cocoa on the land. There was a dispute that arose and she was heard to have told the landowners, "After that argument with Forestry and the landowners, Mrs Hii said the land is hers. She made us the landowners realize that land is already on lease."

14.3 The Commission observes that Namatanai is the closest township to the major mining project at Lihir Island. The SABL project has not yielded any significant progress and changes to the people of the DANFU SABL Project area, in terms of properly maintained road, permanent harbour

facility and public transportation for the least undeveloped area of the province.

14.4 The Commission was allocated 10 working days on the SABL Circuit and had to accommodate Namatanai by conducting that arduous trip on Sunday and run a short half day hearing returning to Kavieng for the site visit to New Hanover.

14.5. The funding and the time spent on the Land investigation is a testament of the continuing ignorance of DLPP Management and its field officers in safeguarding the interest of the landowners in the SABL process and Central New Hanover Limited SABL Project is no exception.

15. Department of New Ireland/New Ireland Provincial Administration

15.1. Mr Moses Makis, then Acting Provincial Administrator by letter dated 2nd May 2011 requested the Office of the Registrar of Titles to extinguish and recall all the SABLs issued to New Hanover including Namatanai in what he termed as „due to lack of due consideration and consultation? by DLPP when it processed and issued SABL to Portions 885C, 886C and 887C New Hanover and 871C Namatanai. His concerns resulted from the constant complaints flooding his office as a result of the National Government Departments ability not to involve the Administration in the initial stages of the land investigation and awareness. Mr Waine also raised similar concern in his evidence in relation to Kaut SABL.

15.2. 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 involvement.

16. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

16.1 No files have been furnished by the Lands Department. This is one of many that the system has either lost or simply cannot locate because of the chaotic and disastrous system it maintains. Consequently, the Commission does not have original copies of the lease, the land investigation report including certificate or recommendation for alienability by the Provincial Administrator.

16.2 What the Commission does have are files provided by the Department of Environment and Conservation, the Department of Agriculture and Livestock, the PNG Forest Authority and Investment Promotion Authority. We are able to say from perusal of these files that Rakubana subleased to developer, Tutuman Development Limited of P O Box 167, Kavieng, New Ireland Province. It is subleased for a period of 40 years.

16.3 The C.O.I notes that there are no official records of the Application or Tender submitted to DLPP to undertake the Land Investigation by Rakubana Development Limited.

16.4 The Commission has not sighted any Lease/Lease Back agreement signed between the Agents of the Landowners and the Minister or his delegate.

16.5. Mr Malesa in evidence (at page 20 SABL 79–Mirou23/01/12) confirmed that

1. That TDL funded the Land Investigation which he conducted for a period of three (3) weeks commencing 4th May 2007 to 31 May

2007. He was paid between K1–2,000 in allowances, accommodation and incidentals.

2. He interviewed a number of Executives of the landowner company as a means to obtain the necessary agreement and consent without the benefit of talking to the entire community of New Hanover villagers.

3. In terms of awareness he says, "...But I have actually conducted several awareness in the—that is in the Susurunga area of Namatanai visiting villages like Raivis, Orongus, Himaul, Hilalon, Namu, the idea first was to make the landowners aware of the SABL process."

4. Confirmed that the ILG part was conducted by Maraleu, but it was done before the Land Investigation process. "...from what I know the ILGs were done before I was in Danfu. And the working plan that I was using, the Soe plan comprised of several clan boundaries within the survey area where it shows different clans and I was working along with those clan names. Unfortunately, time could not permit me to thoroughly investigate each of those individual ILG groups because I think I have spent about a week in the Danfu"

16.6 In view of the land form and mountain after the coastal strip, there was grave doubts as to any potential for cocoa or agriculture development and proved very difficult for travelling or even walking the boundary, According to Mr Malesa in evidence, "The area beyond the, especially the villages, they were not suitable for whatever projects because I think the landowners, especially with the landowners trying to walk the

distance, it would be quite difficult for them. And the cocoa project, I do not think it was suitable for a cocoa project within that area".

The Land Investigation Report

16.7 This extract provides the explanation from Malesa as to the Land Investigation Report for Rakubana

"...My visit, as I have said included the Himaul village, Namu Boronbush, Namu, Ratavis and Kudukudu villages. Now there was one village which the landowners also disputed, that is

Boronbush

-. Boronbush village and I took note of that. But in the process, I have done the land investigation reports but after the compilation of the land investigation reports, the reports were referred to the Tutuman Development office which I believe is not the right place but that is how we operated during my trip in New Ireland.

So most of these land investigations that I have done were incomplete because of the timing factor and also the availability of the genuine landowners, especially in the Danfu area and also the New Hanover area. That is why if you look through some of the documents, land investigation reports were not done properly, and I believe the staff themselves from Tutuman have gone ahead and done the land investigation reports for some of those ILGs, which eventually I compiled; one whole land investigation report for each project area, from those four areas.”

16.8 All the Land Investigation Files was kept by Tutuman for whatever reason, DLPP never really took ownership and custody of what was

supposed to be an independent investigation. This general trend continued in place of the normal process and justifies nullification.

17 DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

17.1 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 Central New Hanover Ltd.

18 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

18.1 Under the sublease granted to Tutuman by Rakubana, agreement was made specifically for Tutuman to enter into agricultural project to grow cocoa, coconut and oil palm after clear felling remaining stands of forest. At page 2 of the Agriculture Development plan found in the DAL files, the project areas estimated at a gross of 24,851 hectares, out of that a net area of 9,267 hectares with an inaccessible area of 15.584 hectares and the report does not say why it is not inaccessible. The main reason for this is that the report is not complete. There were 25 pages of that report but the Agriculture Department only submitted five pages. The other 20 pages is missing.

18.2 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 "APPROVED" to developer Tutuman Development Limited. The purpose of the approval

was for "major Cocoa and Coconut, and reforestation development project involving smallholder participation over an area of 9,267 hectares. The total gross at 1,000 per year. Developer will provide cocoa and coconut seedlings from an established infrastructure for processing and trading. All processed products are for export of product."

18.3 Whilst it look quite convincing to DAL on paper, C.O.I evaluation and assessment of the agricultural project on the New Hanover is less promising. The actual report from the Operations Manager at Danfu indicated two nursery operated by TDL. The Nursery at Danfu is virtually non-existent and overgrown due to the fact that the Tutuman has no qualified agriculturalist and that it is a logging company.

18.9 The developer Tutuman Development Limited (TDL) did not develop a detail agriculture plan for growing of cocoa, coconut, and oil palm after the felling of the remaining stand of forest as the requirement of the sublease agreement. The details agriculture plan will have crop production schedules, costs and revenue schedules showing return to investment and a road map for developing the crop production industry. There are no business plan for developing the logging business and linking with the agriculture investment plan. The business plans for the large scale agriculture development would be certified by the Secretary for the Department of Agriculture and Livestock in form 235 under the Forestry Act of 1991 and submitted to the PNG Forest Board for forest clearance.

No detailed Agriculture Plan

18.10 The developer TDL did not prepare a detail agriculture development plan as a requirement under the SABL for establishment after the forest clearance. There is lack of evidence of the approval of agriculture development plan of TDL by the Secretary of the Department of Agriculture and Livestock as a requirement under Sections 90A of the Forestry Act of 1991.

18.11 Therefore the sublease granted to TDL for investment in large scale agriculture and land use development is flawed because the TDL is a logging company.

No Land Use Plan for the Area

18.12 Crop farming as business firstly based on the land use plan which determines the potential crops and livestock for investment in a given area/district.

18.13 There is no land use plans for the Namatanai District and the project area and therefore it is difficult to determine the areas that are suitable for crops and livestock production and processing.

No Soil Suitability Assessment

18.14 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 as proposed .

Feasibility Study

18.15 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.

18.16 In the forestry projects this processes is undertaken through under the Development Option Study under the provisions of Section 62 subsection (2) and (3) of the Forestry Act 1991. There was no feasibility study cited in the information provided about the RDCL to the COI.

19. PNG FORESTRY AUTHORITY

19.1 The company Tutuman Limited is a Registered Forest Industry Participant given registration number F101156 by the PNG Forest Board. Its main activities seem to be forestry related but it also

claims in what it submitted to the Environment Department and Forestry Authority that it is the first company in New Ireland to be granted a cocoa export licence.

19.2 Forest Clearance Authority number 16-01 was granted to Tutuman on 24 August 2010. Status report done by PNGFA dated May 11, 2011 indicates that currently there are no logging operations in the Danfu FCA, Forest Clearance Area. Correspondence noted on PNGFA records reveal ongoing concerns raised by the Regional Office of the PNG Forest Service about Tutuman's compliance or more specifically lack of compliance with Section 90 requirement under the Forestry Act. According to a Status Report filed, after file checks done by the PNG Forest Authority Regional office of New Guinea Islands in 2010, only one block out of three blocks approved by PNGFA had been harvested while the other three were not touched due to landowner disputes.

19.3 This is the first indication that things do not seem to be all that well with the SABL, and that there may be issues relating to customary owners' disputes. This same status report, noted that satellite images provided by the University of Papua New Guinea showed that Tutuman had operated beyond its approved areas.

19.4 On 15 December 2010, Managing Director of PNGFA, Mr Kanawi Pouru, wrote to Mr Pedi Anis, Chairman of Tutuman and bluntly told him that Tutuman had failed in its implementation of agriculture and tree plantation development component of the project. The PNGFA conditionally approved Tutuman's 2010-2011 annual logging plans but only for three months, commencing from 1 January 2011. Within those three months, the Forestry Service field officers would monitor progress and make a final report after checking on 31 March 2011. PNG Forest Authority warned Tutuman to improve on its poor performance.

19.5 The PNGFA files, is a letter dated 18 April 2011, written by Mr Peter Lat, the PNG Forest Authority Officer wrote again to the Chairman of Tutuman and said, "though the company did a number of improvements in forest clearances and cocoa planting for agriculture, it is not sufficient to necessitate a favourable consideration from PNGFA. I would advise that TDL "put in more effort to completely plant the 150 hectares identified in block 1 as arable land suitable for cocoa farming." He says, "You have planted 17 hectares and cleared over 23 hectares of forest therefore you are to continue further or increase the rate of your work in the field because the results we have only shows an 11 percent success in your performance." The letter goes on to point out concerns over landowner issues.

19.6 As been seen by evidence found in the files the National Forest Service of PNG based in the New Guinea islands seem to have been vigilant, diligent in the implementation or administration of the tasks that it is supposed to do.

19.7 The current Directors and Management of TDL was tasked by the C.O.I on the PNG Forest Authority's poor rating on the clearance and planting of cocoa. This is reflected in their evidence as common witnesses.

20 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

20.1 DEC documents produced to the C.O.I indicate that Environment Impact Statement dated 26th February 2009 was submitted to DEC. DEC accepted the EIS for assessment on 2nd April 2009 and records reveal that the Meeting of the Environment Council deliberated on the EIS at its Meeting No EC05/2009 on 24th July 2009 and Council accepted the EIS (Decision Number 7/2009) and recommended to the Minister to issue an Approved in Principle. This was issued on 30th July 2009.

20.2 TDL applied for Environment Permits on 12th August 2009 which was subsequently issued on 17th August 2009.

20.3 The Environmental Monitoring and Management Program and the Waste Management Plan (Conditions 34 and 27 of the Environment Permit) were submitted in November 2009.

20.4. It seems ironic that the Agriculture Sublease Agreement was only executed on 29th September 2009. There was no sub-lease agreement but

TDL was already applying for environmental permit for the SABL at Danfu.

21. RECOMMENDATION

21.1 The C.O.I. recommends that SABL Portion 871C be revoked on the basis that the integrity of the Land Group Registration process and the Land Investigation process fundamental to good title was flawed and must be nullified. The recommendation is consistent with the findings based on the sworn evidence of witnesses; Affidavit and Statements of Witnesses and production of documentary evidence

1. The Land Group Incorporation Registration process and awareness conducted was not transparent affecting consent of majority landgroups within Namatanai, Danfu Extension area
2. The Integrity of the Land Investigation process and disregard of the ad hoc administrative process adopted by DLPP in conducting land investigation for SABL was compromised;
3. Failure of DLPP to fund the officer's operational costs to conduct the Land Investigation and also conduct public awareness on SABL.

4. Tutuman Development Limited funded the operational cost for the Officer conducting the land investigation and directed and took charge of the whole process.

- 5, The Land Investigation Report was not fully completed and the details were missing.

- 6 DLPP failed to collaborate and coordinate the field report with the Provincial Administrators Office and the Provincial Lands and Physical Planning Division.

- 7, The Recommendation for Alienability was not signed by the Provincial Administrator, NIPA in the LIRs produced to the Commission; and

- 8, The Minister or his Delegate also did not sign the Instrument of Lease/Lease Back Agreement. This affected the requisite consent requirement pursuant to section 11 of the Land Act.

On the basis of points (7) and (8) above means that the Notice of Direct Grant, Gazettal Notice, Registration and Issuance of Title are legally deemed to be void.

21.2 The Shareholding/Directorship of Rakubana must be restructured in terms of Shareholding and Directorship within the recognised and legitimate clans/villagers and the surrounding islands of Central New Hanover District.

21.3 The Election of the Chairman of the company must be conducted in a transparent way and with the consent of the people through their nominated agents acting as shareholders in the company.

21.4 All Resolutions and Decisions of the Company with respect to development issues should adhere to the provisions of the Companies Act and its Regulations.

21.5 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.

21.6 It is recommended that SAB&L issued to Rakubana Ltd should be reviewed and the process of ILG registration should proceed with proper 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.

WESTERN PROVINCE

WESTERN PROVINCE SABLs COVERED BY THIS REPORT

1. This Report sets out the findings of the COI on a total of nine (9) SABLs issued in the Western Province of Papua New Guinea as follows:
 - 1.1 The Commission of Inquiry File No. 66 for Special Purpose Agricultural and Business Lease (SABL) over Portion 27C Awin Pari Volume Folio Milinch: Alice, Tedi, Sari, Palmer & Kiunga, Western Province in the name of North East West Investment Limited.
 - 1.2 The Commission of Inquiry File No. 65 for Special Purpose Agricultural and Business Lease over Portion 1C Awin Pari Volume Folio Milinch: Palmer, Sari, Muller, Carrington, Alice, Elevala, Strickland & Tomu Western Province in the name of North East West Investment Limited.
 - 1.3 Commission of Inquiry File No. 64 for Special Purpose Agricultural and Business Lease over Portion 14C Awin Pari Volume Folio Milinch: Carrington, Karius, Strickland, Bosavi, Campbell, Aiema, Tomu & Sisa, Western Province in the name of Tosigiba Investment Limited.
 - 1.4. Commission of Inquiry File No. 48 for Special Purpose Agricultural and Business Lease over Portion 1C Aibolo Volume Folio Milinch: Aramia, Bosavi, Miwa, Aiema, Wawoi, Campbell, Kaim, Soari, Avu, Kotale, Piareme, & Samaki, Western Province in the name of Tumu Timbers Development Limited.
 - 1.5. Commission of Inquiry File No. 49 for Special Purpose Agricultural and Business Lease over Portion 5C Volume Folio Milinch: Guavi, Western Province in the name of La Ali Investments Limited.
 - 1.6. Commission of Inquiry File No. 50 for Special Purpose Agricultural and Business Lease over Portion 6C Volume Folio Milinch: Guavi, Western Province in the name of Mudau Investment Limited.
 - 1.7. Commission of Inquiry File No. 51 for Special Purpose Agricultural and Business Lease over Portion 7C Volume Folio Milinch: Guavi, Western Province in the name of Godae Land Group Incorporated.
 - 1.8. Commission of Inquiry File No. 52 for Special Purpose Agricultural and Business Lease over Portion 8C Volume Folio Milinch:Guavi, Western Province in the name of Haubawe Holdings Limited.
 - 1.9 Commission of Inquiry File No. 53 for Special Purpose Agricultural and Business Lease over Portion 9C Volume FolioMilinch:Guavi, Western Province in the name of Foifoi Limited.

2. Western Province SABL Circuit

Date of Hearings: 16th November 2011 to 25th November 2011

Venue: Kiunga Vocational Technical College

2.1. The Commission commenced its hearings on the nine (9) SABLs on Wednesday 16th November, 2012 at the Kiunga Vocational Technical College Mess/Recreation Hall. The late start was the result of logistical and administrative difficulties related to scheduled flights into Kiunga resulting in the Commission's late arrival on Tuesday 15th November 2011.

2.2 Despite the late start to the hearings of the inquiry, the Commission's advance party was able to make the necessary arrangements with the Provincial Administrators Office, the Kiunga Guesthouse, Transportation, Provincial Police Commanders Office, Landowner companies, Public Servants and all interested persons.

2.3 Much of the logistical and administrative support arrangements on the venue for hearing, site visit, security and provincial administration support location and summoning of witnesses and other persons of interest to the Commission was done by the lead team comprising counsel

assisting the Commissioner, administrative and security personnel 5 days prior to arrival of the Commissioner.

2.4. In total, eight days were allocated to the conduct of hearings of oral evidence by persons of interest and those persons who have been summoned to provide both documentary and oral evidence. The circuit time was limited to allocation of one SABL a day as we commenced our hearing at Kiunga on Wednesday 16th November 2011. Therefore with 8 days allocated for the public hearing, including SABL site visit (and there were 4 SABLs located in the North Fly Electorate and 5 SABLs located in the South Fly Electorate), it was practicable that evidence from the landowners was confined only to spokespersons on behalf of clans.

2.5. We however found that a majority of landowners were not happy when they found that their land was within the SABL and also there was huge interest in the packed hall for the hearings and the placards calling for their land to be returned.

3. Site Visits

3.1. The Commission conducted site visit to Portion 27C Awin Pari which accessible by road along the Kiunga/Tabubil Highway turning off at Gre village junction and travelling on a 12 kilometre feeder road that ends at Drimgas village situated along on the western bank of the Fly River. From Drimgas village, Portion 1C Awin Pari consisted of mainly heavily forested land is located on the eastern bank of the Fly River where a proposed electronic bridge will be constructed across the Fly River linking Portion 27C to Portion 1C.

3.2. Runginae Rural Hospital is also located on Portion 27 and is situated some 32 km from Kiunga. Runginae is an ELCPNG facility consisting of airstrip, rural hospital, residential houses and other amenities. This institution lies alongside the Tope River that feeds into the Fly River.

3.3 The Commission was unable to visit Portion 1C Aibolo held by Tumu Timber Ltd and the other 4 SABLs located along the Strickland River on the South Fly electorate as it required additional funding for chopper or fixed wing plane to conduct aerial inspection due to logistical difficulties having access to the SABL within the vast area of the North Fly District.

3.4. The Report is divided into two parts and is based on common reasons for acquisition under SABL to develop and enhance economic development for the landowners whose main issues are accessibility to good government services and economic activity.

3.5. Part "A" of the Report covers the four SABLs held in the name of North East West Investment Limited, Tosigiba Investment Limited and Tumu Timbers Development Limited. The SABLs are located in the North Fly and Middle Fly electorates.

3.6. Part "B" of the Report covers the five SABLs held in the name of La Ali Investments Ltd, Mudau Investment Ltd, Godae Land Group Incorporation, Haubawe Holdings Ltd and Foifoi Ltd. The SABLs are located in the South Fly electorate.

PART A

1.0 Introduction

1.1 The four (4) SABLs featured under Part A of our report for Western Province is linked to the proposed construction of the “GRE_DRIMGAS_WAWOI FALLS road and referred to as the Trans Papuan Highway. There is evidence of majority support which has the support of the people of Awin Pari, Nomad and Wawoi Falls, the North Fly Provincial Government and the National Government. The national highway on completion will link the township of Kiunga, Tabubil, Nomad, Wawoi Falls, Gulf Province, Central Province and the National Capital District,

1.2. The first phase of the Project relates to the Aimbak–Kiunga–Gre–Drimgas Road, The second phase of the project is the subject of proposed Trans Papuan Highway Contract to be constructed by IT&SL commencing Drimgas village through Nomad and Wawoi Falls on the border of Western Province and Gulf Province.

2.0 BACKGROUND TO SABL PORTION 27C, PORTION 1C PORTION 14C AWIN PARI LAND AND PORTION 1 C AIBOLO

2.1 The proposed Gre–Drimgas Nomad Road Project was initiated by Mr Kala Swokin a former Member of the National Parliament in 2002 The initial intent of the project was to build a road for accessible purpose of the large population of people living in North East, Awin, Pari, and Nomad area who have since Independence, did not have any or very little form of government services. The idea was to find a developer or Aid

assistance from overseas or within the country to build the road at their expense since the Fly River Provincial Government has little funds to build such road in the province as the province is so large. And to pay for the cost of the construction was to get consent from landowners to allow for timber permit or authority to harvest logs within 1 kilometer of both side or selective felling along the road, starting from Gre–Drimgas across Fly River, all the way to Nomad and Wawoi Falls area. The whole plan and purpose for the road project was to firstly provide accessibility for the population that lives in the North East West Pari and Nomad towards Wawoi Falls.

Secondly, the economic logs to meet the cost of the road construction through timber permit obtained by the developer to sell and recoup the cost of construction of the road. There was no intention of SABLs. It was a simple road project for accessibility purpose to provide accessibility to the people of that region.

After the discussion was agreed, former leader, Kala Swokin and old man Sam Wigan, Sevi Bona on the following week went to Department of Works, Forestry Department, National Planning on their deliberations on whether the proposed idea was ideal or not. Since then the Department of Works, Forestry Department, National Planning gave their preliminary consents for feasibility work to proceed. The records of these arrangements can be obtained from Works Department or National Planning.

The negotiations and consultation began among the national agencies responsible for this project went well.” (Imen Ita Papa)

3.0 COMMON FINDINGS ON THE TRANS PAPUAN HIGHWAY PROJECT OVER CUSTOMARY LAND

3.1 Mr Imen Ita Papa, the Provincial Lands Officer who signed the Land Investigation Report for the Portion 27C Awin Pari, Portion 1C Awin Pari, Portion 14C and Portion 1C Aibolo in the North Fly Districts in his evidence which I detail separately in the Report said he did not do the Report. The Report was compiled by Mr Hudson Hape of IT&SL and he was only told to sign, and left the Report for IT&SL to complete. This is a common trend we find also happening at New Ireland. (Refer to Imen Ita Papa–Transcript 16/11/11 pages 19–23)

4. INVOLVMENT AND SUPPORT FOR THE ROAD PROJECT BY THE NATIONAL GOVERNMENT.

NEC Decision No 115 of 2002

4.1 On 22nd March 2002 the National Executive Council (NEC) approved in principle the construction of Stage 2 of the Trans Papuan Highway aka Drimgas–Guavi Road. NEC approved government assistance and incentives to be negotiated together with other appropriate terms and conditions through the Project Agreement negotiation process.

4.2 NEC approved Department of Works (DoW) as the lead state agency in the project agreement negotiations. However there is conclusive evidence from documents submitted by IT&SL that feasibility studies was conducted and exchanged between IT&SL and DoW, the Commission is concerned that for a national project concerning a national road, proper tender process was not followed in the engagement of IT&SL in this regard.

4.3 It was however noted that the technical Working Group endorsed by the NEC was only a smokescreen for the engagement of IT&SL and seem to fortify the notion that that this was the endorsement to engage with landowners over the customary land. That Special Projects group involving other state agencies is farcical when the Commission notes that this was for a national road project.

The Recommendation

4.4 NEC Decision was made in the interest of the people of Western Province for a highway that enable access by the people in the most remote areas of PNG to towns and to involve in economic activity.

4.5 DoW in conjunction with the National Roads Authority, Department of Transport, Department of National Planning and Implementation, Department of Finance, NSTB, Department of Justice & Attorney General would have been involved in the process on that NEC endorsement. (See Clause 5 Construction– This should be part of the feasibility process with DoW– The Company shall construct and develop the road (highway) in accordance with the Department of Works Standards and Specifications and attend to harvesting, reforestation and processing in accordance with the Timber Authorities.(Clause 5 Construction and Development).prior to commencement and

NEC Decision 293 of 2008

4.6 NEC Decision 293/2008 relate to two specific decisions to implement NEC Decision 115 of 2002 concerning Drimgas to Duava Road Project,

WP by directing the Minister for Commerce and Industry in consultation with the project proponents to obtain FCA from PNG National Forest Authority, basically to obtain approval for the

construction of the roadline economic corridor. The reference to project proponents would include the Provincial Government, IT&SL and the customary landowners. The direction to the Minister responsible for Trade and Industry is not within the ambit of that ministry which in our view could have been the DoW through the normal tendering process which will also encapsulate all that requirements through proper negotiations. As will be seen all this process was floundered because the authorisation gave IT&SL a free rein to negotiate the agreement without much input from the stakeholders. Although the Inquiry was not inquiring into the aspects of tendering process, it has become evident that the whole web of acquiring the land was linked to this deal that was negotiating with the government and not conceding to the process for roadline projects.

4.7 A specific direction was made for the Minister responsible for Agriculture and Livestock to compulsorily acquire 40metre road corridor of customary land for the purpose of constructing the road. That submission to the NEC which was sighted failed to include that very important aspect of the acquisition.

4.8 We take note that the road project agreement was prepared by the Department of Treasury, and no reference made on the involvement of Ministry of Works and Ministry of Attorney General & Justice.

5. GRE –DRIMGAS–DUARA–WOIWOI FALLS TRANS PAPUAN HIGHWAY (STAGE TWO) ROAD PROJECT AGREEMENT between the State, Fly River Provincial Government, North East

West Investment Limited (NEWIL), Kebogas Investment Limited, Tosigiba Investment Limited, PNG Agency For International Development and Independent Timber & Stevedoring Limited.

5.1. On 23 March, 2011 the NEC (Special NEC Meeting No. 06/2011) advised the Governor General to enter into and execute on behalf of the Independent State of Papua New Guinea Project Agreement between the State, Independent Timber & Stevedoring Limited and the Western Province.

5.2 The Project Agreement was prepared by the State Solicitor who gave legal clearance for the execution of the agreement between the said parties. In a letter dated 3rd December 2010, State Solicitor advised Mr John Andreas, acting Secretary, Department of Commerce and Industry that the project agreement was cleared by his office on 8th May 2007 which implied absence of proper negotiations of the Agreement by the relevant State Agencies. It is presumed that no proper discussions and negotiations to gauge the views of the stakeholders were addressed.

5.3 The Agreement was executed by Honourable Sir Michael Ogio, Governor General and Head of State of PNG acting on the advice of the NEC on behalf of PNG on 23rd May 2011 in the presence of John Andreas (Acting Secretary, Department of Commerce and Industry); Joel Luma (Secretary, Department of Works); Mr Kanawi Pouru (National Forest Authority).

5.4 It is noted that key government stakeholders named as signatories on the Agreement were not present at the signing ceremony. Those named but not present were Mr Gabriel Yer Secretary, Department of Finance; Ms Ruby Zariga, Department of National Planning and Monitoring;

Honourable Bob Danaya, then Governor of the Western Province and Mr Gul Gurom, Provincial Administrator, Department of Western Province This means only one thing and that all the stakeholders had not been provided with the documents and had not commented on it during the drafting stages which was already done in 2007.

5.5 Mr Imen Ita Papa had asked Mr Harsely to convene a special meeting at Kiunga and make presentation of the project agreement. That letter was signed by the Provincial Administrator and he refused the offer. Instead, Mr Harsely funded the trip for the Executives of NEWIL, Tosigiba & Kebogas to travel to Port Moresby for the signing ceremony. Dina Gabo then Chairman of Tosigiba refused to travel to Port Moresby and insisted on IT&SLs transparency over the Agreement, that IT&SL lawyer funded the trip for the Soki Samisi, the signatory on the agreement. Mr Samisi was later installed as the acting Chairman with the assistance of Mr Titus, lawyer engaged by IT&SL. There is evidence that all the executives of the landowner company expressed concern that they did not know what they were signing and that no copy of the agreement was provided.

5.6 Pertinent issues arise following our examination of the project agreement which the Commission finds contravenes Section ---of the Fairness of Transactions Act. For example, under recital letter "O",

Recital letter "O" IT & SL in conjunction with the landowners is seeking a timber authority (T/A) to cover the harvesting of log product covering some seven thousand (7,000) cubic metre per kilometre and or selective harvesting of timber from 1,000 hectares per kilometre of road length or which is the greater of the two for selective

harvesting of commercial species and the removal of timber from the 40 metre road corridor or 20 metres either side of the road centreline and a distance of 5, 000 metres on either side of the road corridor which has been initially agreed with traditional landowners.

5.7 The Commission's review of the 2009 Draft Agreement (Exhibit 27C) prepared by the State Solicitor notably excludes under Recital "O" the reference to 5,000 hectares. It only corresponds to 40 metre road corridor or 20 metres either side of the road centreline. The C.O.I finds this to be erroneous, misleading, and mischievous. That provision we also find contradicts the statutory requirements for road line forest clearance pursuant to Section 90C of the Forestry Act.

6 EVALUATION AS TO FAIRNESS OF THE CONTRACT

6.1 The effect period of the agreement for a period of twenty-five years is questionable and whether it takes twenty five years to construct the 600 km roadline (Clause 2.1.(a)(b)), issuance of Timber Authority through NFA (Clause 3.2.(a)), submission of environmental permit application from DEC (Clause 3.2(c)); submission of an application to the Minister for Lands and Physical Planning under the lease back agreement through the three (3) landowner company, hence reference to the SABL process (Clause 3.2(d)), construction and development (Clause 5) need for roadline feasibility to be completed before contract is awarded and funding available-logging will occur for over twenty five years. (Clause 5 (c)-, Obligations with State and Provincial Government.)

6.2 The Western Provincial Government was not present at that signing ceremony.

6.3 Mr Neville Harsely of IT&SL; Mr Waiti Kwani of NEWIL; Mr Max Miyoba (Kebogas Investment Limited) Sami (Tosigiba) signed the document as the Developer and landowners respectively. The signing of the contract was a major concern to the Fly River Provincial Government and the landowners for the reasons expressed by Mr Imen Ita Papa. (Refer to his evidence and evidence of other landowners in this Report).

6.4 The absence of the most important stakeholders leaves a lot to be desired as to how this

project document signed by the government would be determined by the very action of IT&SL and the Executives of the Landowning companies.

7. Recommendation

7.1. All government Contracts must be transparent and the involvement of the Office of the State Solicitor as an important Office involved in State Contracts is compulsory. Transparency and involvement of all the Stakeholders must be paramount in all decisions and contractual obligations. The State has been inundated by litigation resulting from irresponsible behaviour of very important instrumentalities of the State. This Contract was not prepared by the State Solicitor and brings into question what is the purpose of that Office in terms of providing advice to the State.

8 Papua New Guinea Agency for International Development

8.1 The Papua New Guinea Agency for international Development (PNGAID) is providing assistance to the landowner companies in the development and humanitarian needs in this road project. This connotes the intention of the company to provide apart from funding project assistance, but humanitarian assistance largely in exchange for merchantable logs for export. The road project has been given a lifeline of twenty five years where IT&SL is benefiting from the agreement at the expense of the four companies, the provincial government having no involvement in matters affecting customary land in the WP and key agencies of government.

8.2 Under recital letter “L” of the Agreement states; “The Landowner Companies have approached PNGAID to seek financial assistance for the project funding. In consultation with the landowners, PNGAID has agreed to assist in the development and humanitarian needs in this road project. All funding has been provided by IT&SL and there will be no cost or liability to the State, the Provincial Government and the landowners in connection with the construction of Stage 2 of the Road Project.” (Recital L).

8.3 The Commission notes that funding of the road project will be sourced from the logging activities of IT&SL as stipulated under this agreement, the Joint Venture Agreement with the Landowner companies and under the 25 years sub lease agreement.

8.4 Recital “U” of the Agreement further states, PNGAID has assigned the road construction and logging operation to IT&SL and IT&SL have

entered into separate contractual arrangement with the landowner Companies for the purpose of implementing the Road Project and harvest the timbers.”

8.5 We find fundamental to this aspect of inquiry that PNGAID played a pivotal role acting as the middleman agency for the landowner companies, IT&SL and the State from inception of the project to the signing of the project agreement. The Commission noted that PNGAID was the funding agency and had engaged its own contractor to implement the road project thus eliminating CSTB involvement in awarding of the contract, minimising delays relating to DOW depleted in-house Design capacity, and minimise delays in outsourcing survey and design components to Consultants, however, the planning and procurement aspects of the PNGAID proposal required approval of the Department of Treasury, National Planning and Finance respectively. Mr Mumu then Deputy Secretary of DOW also advised PNGAID that the new Design

concept was accepted subject to DOW Design Standards of Roads and Bridges. (Roy Mumu letter dated 07th September 2006). According to records the proposed design, construction and funding of the road was an initiative taken by the private sector in the provision of a major transport infrastructure in compliance with DOW design standards hence a national road asset subject to the discretion of the Minister of Transport to declare that road as a national road asset. (Mr Parakei, Secretary–Transport–letter dated 21st September, 2006)

8.6 A Memorandum of Understanding was executed between the State and PNGAID on 8th July 2005. The signatories to that MOU were Mr Valentine Kambori, then Secretary for National Planning and Rural Development and Mr Paul M. Japhlom, Managing Director of PNGAID.

Under that MOU, the State will use its best endeavours to facilitate investment by PNGAID in the areas of Economic and Social Development, facilitate the processing of approvals, endorsement, licences, permits and other clearance as may be required by PNGAID to develop identified projects in PNG and the Department of National Planning and other relevant agencies will provide support and assistance to PNGAID in its dealing with local authorities, landowners and other interested groups. (See MOU)

8.7 Likewise amongst other things PNGAID will access US and other international multilateral public funding agencies to provide financial, technical and human resources to establish economic and social projects.

8.8 IPA extracts of IT&SL reveal that Paul Michael Japhlom and his wife Winnie Winifred Japhlom each held 50 shares from 7th November 2003 to 5th April 2006. They also held the Directorship and Secretary position jointly to November 2006. The Commission did not interview or receive any evidence from Mr Japhlom on his involvement as Director of IT&SL and the setting up of PNGAID of which he is the Managing Director. The Commission finds that IT&SL became involved with the Trans Papuan Road project as early as 2003, the time Mr & Mrs Japhlom were Shareholders, Directors and Secretary of IT&SL. The Commission conclude as a matter of fact that a potential conflict of interest on the part of Mr Japhlom existed when he established PNGAID to forge investment on behalf of the landowners, the State and IT&SL of which he was a previous active corporate member.

8.9 The Commission notes that a Mr John Mulcahy signed the Road Project Agreement as Managing Director of PNGAID on 23rd May 2011. We find

as a fact that the same Mr John Mulcahy is a non–resident active Director/Employee of IT&SL referred to in the evidence of Mr Neville Harsely (Harsely 10/1/12–SBL 76 Mirou at pages 52–53). Subject to further inquiry on this aspect of the inquiry, the Commission sighted a letter from Meridian Capital Group (Merchant Bankers) dated 1st October 2005 where a Mr John Mulcahy, Managing Director Meridian Capital Group wrote to the Secretary for Transport, Mr Henry Parakei stating that the Meridian Capital Group was acting as an intermediary in regard to Trans Papuan Highway Project, As an intermediary to foreign governments and domestic sources of funding, we have arranged to provide capital required to design, implement and maintain socially conscious infrastructure projects such as the National Road Projects.

8.10 The triangular web created by forging understanding with the State, the abuse of the lease back process and the acquisition of the two (2) million hectares the Commission finds is questionable for the fact that IT&SL is the main source of outworking towards the road project and directly manipulating the SABL lease back process. The source of that manipulation is absolutely

encouraged by the agencies of the State whose responsibilities border on gross negligence.

8.11 The State Agencies responsible for foreign company registration and investment portfolio are required to undertake indepth due diligence on all foreign corporations, individuals (both national and foreigners) investors to avoid gross abuse of natural resources and having access to the peoples asset, the land.

8.12 We recommend that further investigation undertaken to ascertain the involvement of Messrs Japhlom, Harsely, Malcahy and to establish if an

international racketeering over land acquisition has been committed by the company(s) over the SABLs Portion at Awini Pari, Nomad and Wawoi Land.

9 ELC RUN RUNGINAE RURAL HOSPITAL AND OTHER EXISTING STATE LEASES

9.1 It appears from the acquisition that a number of existing SLs was not excised from the SABL. Mr Max Ako current Hospital Administrator of the Runginae Rural Hospital gave evidence on oath. Runginae Rural Hospital is located some 62km from the township of Kiunga (along the Kiunga/Tabubil Road) and is a private hospital administered by the Evangelical Church of Papua New Guinea (ECPNG). The current SABL also includes that current hospital facility, administration block, airstrip and residential houses and other amenities. In what was a very strong statement to the inquiry involving a private run hospital and essential service to North Fly ECPNG raised very serious concerns over the inclusion of an existing mission lease including various leases within the district that is crucial to the decision of the Commission to revoke the SABL without any consideration to NEWIL and IT&SL.

9.2 The statement to the Inquiry in part reads; "...The executive committee of the Evangelical Church of Papua New Guinea Health Services North Fly has some concerns regarding the granting of SABLs in the areas where we operate health service which effectively extinguishes the mission church lease under which we were operating. At a minimum, we would like to see the areas of mission church lease exercise from the SABLs. ECPNG Health Services North Fly operates a rural hospital at Rumginai which serves a referral centre for a very large area of Western Province

as well as a Community Health Worker Training School. As well as the hospital and CSW school we also operate five health centres namely; Moguru Health Centre in Nomad, Debepari Health Centre in Nomad, Havena Health Centre north of Rumginai and Dome, this is not in the SABL area, in the North Fly and Obo in the Middle Fly and 10 aid-posts namely; Senamrai, Atkamba, Sonai, Dahamo, Suabi, Adumari, Honenabi, Yehebi, Fuma and Hesaribi. And six of these last ones are, I think, within the SABL lease. A large number of our aid post and our busiest health centre Moguru have been directly affected by the granting of the Special Purpose Agriculture and Business Lease which now includes the ground where these facilities have been built. The SABLs have also taken away land from the mission stations in which these facilities are based including land where there are schools and other facilities...."

"...As a health service the granting of SABLs has presented us with a number of concerns. Rumginai hospital was built in the late 1960s and many of our facilities are also quite old and run down. We are in the process of presenting project submissions to various agencies. We have no longer hold a valid lease over the land where our facilities are built. We are not going to be able to convince potential donors to assist us with rebuilding or rehabilitating our facilities. To secure funding for infrastructure project, we need to have a valid lease. Our church service has a very high standard with regard to healthy living and respectful behaviour."

9.3 The project agreement between the State, Fly River Provincial Government and the Independent Timber and Stevedoring Limited is not binding and enforceable because it fails to meet necessary statutory requirements in relation to public contract. For example, tendering

requirements under Public Finance (management) Act 1995 as amended were not complied with. Also, the contract does not comply with either statutory requirement such as Section 90 C of the Forestry Act.

9.4 The recital letter "O" to the project agreement is illegal or fraudulent in that there was no real consensus ad idem between the landowners and the independent Timber Stevedoring Limited and on the subject matter before the agreement were executed by the Head of State, acting on advice of the NEC.

1. COI Inquiry File No. 66 for Special Purpose Agricultural and Business Lease over Portion 27C Volume -- Folio -- Milinch: Alice, Tedi, Sari, Palmer & Kiunga, Western Province in the name of North East West Investment 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 North East West Investment SABL. These were:

1.2.1 Department of Western Province, (DWP)

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 (PNGFA)

Witnesses Evidence and Summonses

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings, including titles, are set out in the schedule below. For ease of reference, the schedule also lists the

transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1

Mr Imen Ita Papa,

3-50

1
16/11/11-SABL 58-MIROU

Provincial Lands Adviser,
36-51

5
21/11/11-SABL 61-MIROU

Provincial Lands &
74-75

5
21/11/11-SABL 61-MIROU

Physical Planning Office,
101-103

5
21/11/11-SABL 61-MIROU

DWP

2
Mr Manase Dimonai,
63-75

2
17/11/11-SABL 59-MIROU

District Administrator,
62-74

5
21/11/11-SABL 61-MIROU

North Fly District, DWP

3
Mr Hudson Hape,
Surveyor, IT&SL

13-
6
22/11/11

4
Mr Michael Titus, Lawyer,

5
21/11/11

Private Legal Practitioner

12-13

6

22/11/11

5

Mr Ronny Guran Landowner, Dahamo Village (Ward 16), Ward Councillor, Olosobip LLG

50-55

1

16/11/11-SABL 58_MIROU

6

Mr Steve Kwani Landowner, Tmigondok village, Husioke Clan, Chairman-Nakrone Forest Area

Landowners Association

58-66

1

16/11/11-SABL 58-MIROU

7

Mr Jack Kwani Landowner & Chairman of Gase Clan, Drimgas & Tupensomi village,

67-78

1

16/11/11-SABL 58-MIROU

8

Mr Giwi Giwi Landowner-Sawi Clan, Awin Tribe, Tiomnai Village (Kiunga/Tabubil Road)

55-57

1

16/11/11-SABL 58-MIROU

9

Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga

78-85

1

16/11/11-SABL 58-MIROU

10

Mr Ronny Guran

Landowner

50-55

1

16/11/11-SABL 58-MIROU

11

Mr Norbert Gwame Landowner, Somoe clan, Somoekwankia village, Ningerum Rural LLG

1

16/11/11 SABL 58-MIROU

12

Mr Nelson Women Landowner(Also refer to evidence under Portion 1C Awin Pari)

19-28

2

17/11/11-SABL 59-MIROU

13

Mr Neville Harsely, CEO, IT&SL

1-73

10/01/12-SABL MIROU

14

Mrs Betty Wine, Chairlady, Women in Mining, Kiunga

3-

7

23/11/11-SABL 64-MIROU

15

Mr Waiti Kwani

76-

5

21/11/11-SABL 61-MIROU

Chairman-NEWIL

Drimgas village

6

22/11/11-SABL 62-MIROU

16

Mr Foxy Asobi

Secretary-NEWIL

5

21/11/11-SABL 61-MIROU

17

Mr Samson Ubre

Director-NEWIL

5

21/11/11-SABL 61-MIROU

18

Mr Aaron Dupnai

Landowner, Awin Tribe

8

25/11/11-SABL MIROU

19

Mr Patoro Ako, Landowner, Awin Tribe

34-

2

`17/11/11-SABL 59-MIROU

20

Mr Pepi Kimas

Former Secretary, DLPP (200 to 2010)

7-87

2, Parties represented by counsel

2.1 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.”

2.2 The following were granted leave to be represented by counsel

3. Exhibits and documents

3.1 There were fourteen (14) 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

Survey Map of Portion 27C

C.O.I

16/11/11

NEWIL 27C(1)

2

Notice of Direct Grant

C.O.I

16/11/11

NEWIL 27C(2)

3

Land Investigation Report

C.O.I

16/11/11

NEWIL 27C(3)

4

Instrument of Lease-Lease Back Agreement

C.O.I

16/11/11

NEWIL 27C(4)

5
Response by Mr Imen Ita
C.O.I
16/11/11
NEWIL 27C(5)

Papa, Acting Advisor, Division of Lands and Physical Planning–Trans Papuan Highway Road Project
in Kiunga, WP

6
Bachelor of Land Studies Degree–Mr Imen Ita Papa dated 28/11/97
C.O.I
16/11/11
NEWIL 27C(6)

7
Agreement Between The Independent State of PNG, Fly River Provincial Government and NEWIL and
KEBOGAS Investment Limited and Tosigiba Timbers Group Limited and PNG Agency for
International Development and Independent Timbers and Stevedoring Limited
C.O.I
16/11/11
NEWIL 27C(7)

8
ECPNG Letter dated 15 November 2011 from Max Ako, Runginae Rural Hospital Administrator
C.O.I
16/11/11
NEWIL 27C(8)

9
Affidavit of Waiti Kwani & List of ILG Consent Form signed on /11/11
C.O.I

NEWIL WK

10
Affidavit of Foxy Asobi
C.O.I

11
Affidavit of Samson Ubre
C.O.I

12
Affidavit of Betty Wine
C.O.I

BW 18/11/11

13
Supplementary Affidavit of Max Ako

& Map of Project Areas Covered under Portion 27C (NEWIL) & Portion 14C (TOSIGIBA)

C.O.I

25/11/11

25/11/11

MA "1"

MA "2"

14

Statement of Aaron Dupnai dated 22 August 2011 re: Inclusion and Investigation to be conducted, PNG Highway and SABLs

C.O.I

25/11/11

AD 1

4, Timeline of events of note surrounding NEWIL SABL Title

4.1 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

Incorporation of North East West Investment Limited

10 May 2044

NEWIL

NEWIL

2

Independent Timbers & Stevedoring Limited

7 November

2003

IT & SL

IT & SL

3

Application for SABL to Portion 27C

19/12/2008

IT & SL

IT & SL

4

Land Investigation Report(s)

19/12/2008

IT & SL

IT & SL

5

Survey Plan Catalogue

-

IT & SL

IT & SL

6

Lease-Lease Back Agreement

24/07/2009

IT & SL

IT & SL

7

NEC Decision 115/2007 dated 22nd March 2007 re: Government Support and Approval in Principle sought for the construction of the Drimgas to Duara (Tegana) Road Project- Western Province, PNG

22/03/2007

IT & SL

IT & SL

8

NEC Decision 293/2008 dated 15th December 2008. re: Implementation of NEC Decision 115/2007 Drimgas to Duara Road Project, Western Province

15/12/2008

IT & SL

IT & SL

9

Special NEC Meeting No. 06/2011 re Advice to the Governor General dated 25th March 2011.

25/03/2011

IT & SL

IT & SL

10

Trans Papua Highway Road Project Stage II

23/03/2011

IT & SL

IT & SL

5, FINDINGS

5.1 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by NEWIL.

6, North East West Investment Limited SABL

6.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G218 dated 24th September 2010 for Portion 27C Awin Pari Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 23rd September 2010 by the Department of Lands and Physical Planning to the holder North East West Investment Limited (NEWIL).The details of the SABL is shown below:

Legal Description

Portion 27C

Registered Survey Plan Catalogue No

9/133

SABL Holder

North East West Investment Limited

Date of Registration of Lease

23rd September 2010

Period of Lease

Ninety-nine (99) years
Land area of lease
149,117.0 hectares

IPA

7 North East West Limited

7.1 North East West Investment Limited (NEWIL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 10th May 2004 and the current Principal

Place of Business is Room 1001, 10th Floor, Pacific View Apartments, Pruth Street, Korobosea, National Capital District. As at 3rd October, 2011 IPA records confirms that it is operating. The Company number is 1-51352.

7.2 The latest IPA company extract provided to the Commission dated 3rd October 2011 indicates 62 shareholders of NEWIL holding 1 ordinary share each in their capacities as Incorporated Land Groups within the land known as Awin Pari, North Fly electorate of the Western Province.

7.3 The extract discloses Messrs Robin Yawa, Foxy Asobi, Dimo Sobori, Paul Wasi, Joe Skai, Waiti Kwani, Samson Ubre, Susan Bale, Ronson Moya and Tusa Dimabo as Directors of the company. Mr Foxy Asobi is also the current Secretary of the Company with Mr Kwani appointed as the Chairman. The Annual return for the company was made up to 30th June 2010.

7.4 Messrs Waiti Kwani, Foxy Asobi and Samson Ubre, the current Executives of NEWIL told the inquiry the importance of development for the people of North Fly district and collectively confirmed that the people agreed in principle to allow IT&SL to develop the district through the road project. It was on this basis that the majority consented for the road project to be constructed on their land. Mr Waiti Kwani, current Chairman of NEWIL told the inquiry that on 16th March 2003, the Executives convened a meeting at Sarekona for the landowners of Portion 27C, Portion 1C and Portion 14C to inform them that "... IT&SL heard our cry for development and was interested in constructing a road, selective logging and agriculture project from Drimgas, Guavi Falls and all landowners must form ILGs to participate in the project.

On 23 March 2003, Neville Harsely of IT&S came and met more than 500 people at the old Kiunga Rural LLG Council chamber and Mr Harsely advised everyone he was prepared to partner them by carrying out the developments in exchange for forest resources."

7.5 It was after that meeting that awareness and ILG was organised by the Executives with the assistance of Mr Michael Titus, a private lawyer paid by IT&SL to assist all the landowners register their respective ILGs. According to Mr Waiti the ILG registration finalised in 2006, and that all landowners were aware of the proposed road project agreed to solve their disputes and register their ILG at a later date. This fact was pursued when Mr Waiti attached to his Affidavit a list of clan members endorsing their support and „consent?, copies of the signatures signed in the presence of lawyer Michael Titus on October 2011, some 2 weeks before the inquiry commenced its hearing at Kiunga.

7.6 Mr Waiti further states that in 2007, that when IT&SL commenced feasibility studies on all components of the road project, authority for the road line TA was refused by NFA because of

changes to the Forestry Act, as the requirement for roads more than 12.5km required FCA. It was that point in time that SABL was mooted and agreed to as the best vehicle for development and for the avoidance of further NFA process where the request for feeder road by landowners during the life of the project would not be an impediment to the IT&SLs construction of the 600 km economic road line for the North Fly District linking Gulf Province, Central Province and eventually Port Moresby. This was admitted as the very basis for converting the initial request for road line into an SABL concept as Waiti states in his evidence;

“...And since NEWIL represented the landowners now given all the awareness programs, the landowners has consented for the project, a next half activities to be undertaken in the project based on the Department of Land’s advice. It was agreed the appropriate way forward was by way of an SABL. Through the SABL, the customary lands would be secured for the project fundamentally, because aside from the main Trans Papuan Highway, the potential request for feeder roads by the landowners would see feeder roads closing the entire project area.

....

Apart from the Trans Papuan Highway, corridor and the development alongside the corridor of the highway, airstrips, base camps, all other parts of the project area would not be utilized unless the landowners wanted feeder roads, selective logging for agriculture projects on their customary lands.

Awareness of SABL. After learning the need to secure the land by way of an SABL, in November 2008 we had a meeting with all Pari, Waitu, Awin, Nomad, Biyami tribes at Sarekona and then form teams and we went to advise them of what we understood and described to the landowners was agricultural lease, timber over their land for the road and agricultural forest project. We went to all the same villages along the proposed road corridor and up the Fly and Palmer River.

.....”

7.7 In that evidence Mr Waiti confirmed that during the process of the Land Investigation process they made representation to Mr Sikabi Maika, then Provincial Lands Adviser and learnt that the district lands office was short staffed and their was funding problems to undertake the LIR. The Executives used that information to approach IT&SL and the developer agreed to facilitate the LIR. Mr Hudson Hapa was instrumental in assisting the landowners in surveying the land and conducting the LIR.

7.8 Mr Waiti, Chairman of NEWIL produced a detailed list of landowners names from all the various clan members and signature to indicative that majority consent for Portion 27C and 1C was obtained. This was an attempt to mislead the COI and it was noted during the hearings that Mr Titus was assisting the executives in the preparation of the Affidavits. The Affidavit tendered in as evidence indicate that it was sworn on 17th September 2011 and the Attachment “a” confirming landowner support of the project and the signatures indicate that signatures was obtained between periods 30/10/11, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th November 2011. The list was prepared some two weeks before the commencement of the hearings at Kiunga and places a lot of question on the integrity of the land investigation process.¹⁸

8 Recommendation

8.1 The Chairman and Executives of landowner companies must exercise responsibility in land mobilization process and should not be influenced by any means that is a contravention of any laws or process.

18Pepi Kimas confirmed that when Forestry policy changed in 1996 this led to wholesale changes to the way SABL was processed–(page 11 of Transcript SABL 80–Mirou–17/01/12)

8.2 The IPA must also become proactive and undertake workshops for landowners executives in understanding the corporate laws and its process. That must be a compulsory exercise to educate the mushrooming landowning companies.

9 EVIDENCE OF THE LANDGROUPS OF AWIN PARI

9.1 The proceedings of the inquiry into Portion 27C Awin Pari gave opportunity for the landowners under SABL Portion 27C Awin Pari to provide evidence on their understanding of the SABL and the issue of consent. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers or the Provincial administration into all aspects of the land investigation. The general thrust of landowner consensus is that the majority villagers within the road corridor project had consented to the construction of the Trans Papuan Highway, which also included allowance for the clearance of forest area to build the road. That road clearance in compliance with Forestry Act would entail a 40mter road corridor forest clearance.

9.2 The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity

9.3 Ronny Guran, a Ward Councillor from Dahamino village, Olsopip LLG told the Commission, that the five (5) villages within Ward 16 was not aware of the existence of NEWIL as the umbrella landowner company. He confirmed that there was virtually no awareness carried out in the area

by NEWIL or DLPP, but the villagers only knew of the Trans Papuan Highway project and any feeder road that would be constructed for the village to enable access to the highway and the township of Kiunga or other major towns. Olsopip is located further north on the border towards Sandaun Province.

9.4 Giwi Giwi from Tiomna village which is some 13km from Kiunga (on the Kiunga/Tabubil Highway) and representative spokesperson for the 70plus members of the Sami clan, Awin tribe confirmed that they were not aware of the SABL Portion 27C until they saw the gazettal listing published by the Commission of Inquiry. The whole village was not aware of the existence of NEWIL as the landowner umbrella company, and also knew nothing of any government representation in the land investigation process.

9.5 Steven Kwani, Chairman of Nakrone Forest Area Landowners Association, spokesman representing the USIOKE clan from Trigondok village also confirmed that his people were not aware of the SABL that also included their land. According to Mr Kwani, his people were only told that a roadline will be constructed connecting the Gre –Drimgas road across the Fly River over Portion 1C to the Wawoi Falls. There was no involvement from DLPP or the Provincial Lands Office.

He also states that he comes from a clan that has about 105 adults and children. In total there are also 10 clans making up their tribe totalling 246 inhabitants.

9.6 Jack Kwani, spokesman from Drimgas village and of the Gause Clan which is one of the 12 clans along the Fly River where the proposed roadline will be constructed. He said on oath that from Drimgas to Tupensomi there are about 624 inhabitants. He also restated that the

people of Drimgas to Tupensomi were not fully aware of SABL until the date of the SABL inquiry hearings at Kiunga, There was awareness about the Trans Papuan Highway, but IT&SL did not make that very clear to the people.

9.7 In respect of the ILG forms, it was confirmed that Waiti Kwani, Samson Ubre and Foxy Asobi were conducting the ILG awareness and collecting signatures basically on the roadline project and not the SABL. He was present at the time the road project agreement was signed at the Office of the Governor General but was insisting on the ILG Certificate for his clan. The important aspect of his evidence is that IT&SL had no presence in Kiunga especially an office to conduct business with the Awin landowners including heavy machinery and equipment since 2006. The current feeder road between Gre village and Drimgas on the Fly River was built jointly by Department of Works and Trima Construction Limited.

9.8 Patoro Ako comes from Grengas village which is about 10km from Kiunga along the Kiunga/Tabubil Highway. He is a member of the Hongas clan. Mr Ako states that he played a very significant role by assisting IT&SL as a former Director of NEWIL in the process leading to the acquisition of Portion 27C and the other three SABL lease back titles. He agreed that whilst the initial intent for the consent was for the road corridor roadline, the SABL process was not considered by the majority landowners. He confirmed that his clan have never given the approval or consent and supported calls for the revocation of the SABL title.

9.10 Nelson Women (SABL 59-MIROU 17/11/11 pp 19-28) comes from Tmingondok village which lies on the land bordering Portion 27C and

Portion 1C Awin Pari land and covers about 30,000 hectares of land. The villages comprising nine (9) clans are located on the eastern (Portion 1C) and western banks (Portion 27C) of the Fly River. He is the leader of the Gase clan and Deputy Chairman of the Dispute Settlement Authority.

9.11 He expressed disappointment on behalf of his clan over the absence of government officials in conducting awareness over the SABL, the land investigation process and the fraudulent means of obtaining the consent of his people by using another person by the name of Julius Mangunen, who is the member of the Musiok Clan (ILG 12448) on the east bank of the Fly River. He even said that their village lies well outside of the intended road construction project and could not understand how and why it was included under the two portions under the NEWIL and subleased to IT&SL under the JV Agreement. His clan did not fill out the consent form as required in the Land investigation process and they also did not approve Julius Mangunen to be the agent for their clan.

9.12 Aaron Dupnai comes from the Giponai village some 30km up the Fly River from Kiunga, He represents his people of the Gre Clan of the EKium Tribe. At the time of the hearing, Mr Dupnai in the company of his people in their traditional regalia in a silent protest holding placards simply calling for their land under SABL to be returned to them. Mr Dupnai registered his people's complaints over the acquisition of their customary land by the umbrella Landowner Company and IT&SL without the knowledge and consent of his people. He also expressed a number of matters that will require further investigation especially over the lack of consent and the forging of

signatures on the consent form, the road corridor extension of forest clearance to 5km in breach of the

Forestry Act and the lack of financial capacity of IT&SL to construct the road.

10. INDEPENDENT TIMBERS AND STEVEDORING LIMITED

10.1 The proposed developer for the SABL is Independent Timbers & Stevedoring Limited (IT&SL) a foreign company registered and located in Delaware, United States of America. It registered in PNG on 7th November 2003 as a branch or operation office under section 386 of the Companies Act, 1997. The company registration number is 1-500930 and is wholly owned by IT&SL USA, INC.

10.2 In terms of the share structure and composition of shareholders the company has issued a total of 19,242,603 shares. Between 5 April 2006 and 31 May 2011 the company had issued a total of 7million shares. The registered office of IT&S(USA) Incorporated is stated as 3500 South Dupont Highway, Dover, Detroit 19901 USA.

10.3 The current directors of the company are Mr Neville John Harsely and Clifford Ian Frazer, both are Australian citizens.

10.4 The company applied for certification as a foreign entity operating in PNG and the IPA Certificate Committee deliberated and approved the application on 3rd August 2006. A foreign certificate with Certificate No. 91629 with terms and conditions was issued to IT&SL on 11th August 2006.

10.5 The company was certified to carry on business activities of Infrastructure and Construction development; Harvesting of Forest

Products, Processing of Forest Products and Buyers and Exporters of Sawn Timber. Its registered office is located at Section 72, Allotment 31, Korobosea Drive, National Capital District and its operating location to conduct the its certified activities is DRIMGAS to DUNA (TEGANA)- Western Province. That variation was issued to IT&SL by IPA on 18th February 2011. According to IPA, the company intended to work with NEWIL and to implement its Project Executive Work Plan executed on 4 November 2005.

10.6 The Commission is concerned about the lack of presence of the company including heavy machineries, office infrastructure to carry out the project. Under the Schedule of Terms and Conditions of IPA Certification, the company is required to “(1). Commence operations of the approved activities and locations within 6 months from Certification; and;(4). Within 6 months from the date of certification and every 6 months thereafter, provide details of any capital expenditure and other economic statistics such as employment creation as stated in the business plan, import/export statistics and productions data that may be deemed necessary for the purposes of the Investment Promotion Act, 1992.” The company has not complied with this requirement and may be liable for prosecution under the Investment Promotion Act, 1992since the

Certificate was issued on 11th August 2006.19

19 Refer to Affidavit and Annexure attached to the Affidavit of Alex Tongayu, Registrar of Companies dated 20 October 2011 to COI SABL 48 Portion 1C Tumu Timbers Limited

The Evidence of Mr Neville Harsely

10.7 Mr Neville Harsely²⁰ is an Australian and the Managing Director of IT&SL operations in Papua New Guinea. He played a leading role in establishing rapport with the landowner company executives, government agencies especially with the Trans Papuan Highway for the past 8 years culminating in the execution of the road project agreement between the State, the landowner companies and his company.

10.8 The Commission has noted with concern that since the company was accorded the status of developer company, there was no significant progress over the second phase of the project been only feasibility studies and on-going negotiations over forestry roadline clearance, environmental issues, agricultural and at the highest the National Executive Council's authorization for government agencies to lend support to IT&SL as the preferred developer.

10.9 Company has worked in the Western province for eight (8) years and done detailed engineering on the project. (Nothing tangible and operations not visible in terms of the road project both at Kiunga & Port Moresby). Following the amendment to the Forest Act, company was forced to consider other process to utilise the land earmarked for the construction road corridor. "We set up a very significant point by saying that the road construction and clearing had to be done and designed in what we call 20 kilometre sections so that we do survey on site, we design road section in 20 km sections which is submitted to the Department of Works in engineering alignment sheets. The DoW duly approved those

20 SABL 76-MIROU-10th January 2012 pages 1-72

20km sections for then to be able to commence construction on," (page 4 line 46-51)²¹

10.10 Confirm retaining Michael Titus as lawyer to assist the Landowners, "Mr Titus is paid by our company to provide independent legal counsel to the respective landowner companies. So that way companies are provided some form of legal guidance from where they are. We (IT&SL) do not involve ourselves in any of those meetings and we preclude ourselves".

10.11 According to his evidence, IT&SL commenced feasibility studies on the road project which included application for grant of TA. NFA advised IT&SL that proposed road project did not require TA concept based on amendments to the Act, recommending that they submit for roadline FCA . It was at that point in time that IT&SL "...went back to the landowners advising them in Kiunga at a public meeting that the Forestry had advised us that we could not use the TA concept along the road from where it was that we had to use the new adapted FCA concept for the roadline which involved an FAC roadline clearance authority for the forty metre wide and then to achieve the other

areas of the road for FCA agriculture. So that was the concept; we went back to the landowners with the briefing that we were provided by Forestry. The landowners then agreed that that was the most applicable way for us to proceed with where we were with agricultural activities and the road along there.”

10.12 IT&SL went further by creating the idea that feeder roads would also be constructed linking the road corridor project hence those outside

21 Reference is made to his involvement in the appointment of Soki Samisi of Tosigiba aided by Michael Titus. The fall out of Dina Gabo and the subsequent signing of the project agreement at p 6 line 29–38 and page 7 lines 14–23

the project area would require access from their remote areas. They consulted National Mapping Bureau to obtain the maps the result of the survey plans and the SABL.

10.13 Mr Harsely's explanation on the SABL process and IT&SLs involvement, “And there was very much number of meetings there. I personally attended the meetings, I do not send out some lands person to brief the people. I personally went out myself. I had travelled to Wakina, Togina, Deabi. I have been to Suabi, ...Juha, Movalulu, Nomad, ...Wawoi Falls, Sempoka, ...Yabo and Hesalibi and Honinabi, the major villlages..

10.14 These were related to the road and the SABL process.

* Confirm involvement of Simon Malu with reference to a meeting that was convened for the community at Sempoka village. Mr Malo interpreted what was said to the people in the Pidgin language. Mr Imen Papa and Biyama also attended the forum and the documents were signed in the presence of the people. “

* Used landowners for consultation, conduct awareness on the land investigation, named Samson Ubre, Foxy Asobi, Waiti Kwani, Dina Gabo Steven Kwani and representatives from Kiunga Timbers. Provided assistance outboard fuel, boat hire to conduct awareness within the project area.

* Agree that the LIR was signed in Port Moresby

A. Commissioner, those provincial lands officers just did not walk in for five minutes and sign documents. I know for a fact because we

had them in our office, they were using our facilities to go through with landowner representatives present.

Q. In Kiunga?

A. In Port Moresby.

Q. Kiunga, I mean that is where the–these lands are located in Western Province not in Port Moresby?

A. Yes, and we also had the same officers present at the meetings with the landowners in Kiunga. Imen Papa was present at those meetings in Kiunga, Ipisa Biyama was present at those meeting in Kiunga and the same representatives came up here to formalize things with Lands

Department here in Port Moresby. And the landowner representatives were present were present in Kiunga and they were also present at meetings in our office with officers.

Q. But the lands investigation report says that all these documents were signed in Kiunga not in Port Moresby. Now, you say that it has been signed in Port Moresby?

A. No, in the agreement on the customary boundaries, Commissioner, we had representatives from the respective clan groups at a meeting with the provincial lands officer to agree on the boundaries. We used, where we could the river systems as the boundary because the way river systems provides a boundary on the lease...”

Q. Mr Harsely, that is quite true. Your Mr Hape has confirmed that evidence. He did not walk the boundary, he just simply used what you are saying, used the river systems, the ridges...

10.15 Construction Corridor–required additional 10km to grow vegetables, cash crop (cabbage, beetroots, lettuce, tomatoes and light chi chi trees–to be used for catering over project sites camps etc.–No expertise in agricultural development (page 28 line 18 to line 50 on page 29; page 41–42).

10.16 NFA questions capacity of IT&SL to fund the road project–pages 30 line 1 to DEC also queries further submission on the application for further 5,000metres.(Kei Vuatha Kapa)

Company has no profile in PNG and apart from the reference to certain experts within IT&SL operations and will concentrate on logging and shipping

“...We are going to have the same life in the village mentality that is going to do nothing. I am not here and when I first was invited down at Kiunga by the people, they told me no money politics, no mobilization money because the biggest thing that corrupts this community at the moment is sign documents, to get them to sell their rights out. Before this project agreement was signed, I ensured that the landowner companies shares were issued to all of the ILGs so those companies were owed by the people; not a group of six directors sitting in Port Moresby doing some dirty deal on peoples land. I have tried to take a moral position on this project over eight years to protect the rights of people. If I have made a mistake, I will stand by it. You know from where the land investigation reports; if there is a correction to be done, I will do it. I am not going to walk away from it but the other things is let me say is that people over this period of time said. Well the project agreement is signed; then we

know it is real. Since the project agreement was signed, we have registered another 200 ILGs which encompass everyone. From where Tumu Timbers is; when Forestry went through originally they had 52 ILGs. We found out there is another 55 ILGs whose land comes in the project area too. We fixed it, we have registered then...” (Page 49 line 42 to page 50 line 19)

10.17 The above answer was in response to the question put to Mr Harsely by Mr Tusais Counsel for C.O. that the SABL LIR process was defective and had no legal basis for an issuance of SABL to the three Landowner Umbrella Company.

10.18 C.O.I questioned Mr Harsely on the Minute that was send out by Hudson Hapa to Cliff Frazer, Noah Vica and John Mulcahy seeking K60, 000as reasonable fee to compensate them for putting their careers and professional standing on the line to process the LIR and defend it.

* Explanation was that it was done by a potential candidate for the seat held by Sir Puka Temu and a conspiracy to solicit funds from IT&SL to fund election campaign as he was previously employed by IT&SL (Pages 52–53) – It is

quite extraordinary in that the allegation in itself was a request to pay the Secretary and officers to process project area one and two SABL.

* Simon Malu asked for K5000 to assist him with his father's funeral expenses and IT&SL never paid the money to him.

11 The Evidence of Hudson Hape (SABL 62 KIUNGA- 22nd November 2011-pages 13-77

11.1 Mr Hudson Hape is a duly qualified and registered company surveyor and graduated from University of Technology with a Bachelor of Technology specialising in Surveying in 1988..On examination by the Commission of Inquiry at Kiunga, Mr Hape confirmed that he was currently employed as a registered company surveyor for IT&SL. At the time the land investigation process begun as a result of the company's involvement in negotiations with the Landowners over the road project

11.2 He played a leading role in the Land Investigation, coordinated the ILG formations with the Executives of the Tumu and produced the rural class 4 survey from the maps that was already available and provided coordinates for the identification of the boundaries of Portion 1C without any input from the Provincial Lands Officer. It was a direct involvement between DLPP (Waigani) and IT&SL, the developer. He says that he became involved in the LIR and land surveys on his engagement in 2008, and that much of the surveys were already conducted and his role was to ensure that the coordinates were in order before it was finalised.

11.3 When asked by the Commission over his endorsement of the Cadastral Map for Portion 1C, he was adamant it was not his work.

11.4 We are critical on this manner of involvement as there is already evidence obtained from the DLPP and the Provincial Lands Officer that nullifies the LIR. Evidence from Mr Romilly Kila Pat, Simon Malu, Imen Ita Papa, Pepi Kimas painted a completely different analogy to the process.

Mr Kimas in evidence says, "It is not the job of users-for owners of the project to go there and carry out investigations, it is the job of District Officers or Lands Officers to carry out the investigation and that is the normal thing."(Kimas-SABL 80-Numapo/Mirou 17/01/12 at page 64-65)

11.5 The evidence of Mr Hudson Hape is very critical to the four (4) SABLs located in the North Fly District and Middle Fly District of the Western Province. His evidence features the depth by which his employer IT&SL manipulated the landowner companies in the Trans Papuan Highway project to acquire customary land under the SABL process, a hallmark tainted with corruption involving DLPP, Department of Western Province and the executives of the umbrella landowner companies through lack of awareness and proper advice proceeded to accept IT&SLs tactical ploy and deception over eight years association with a company that had no real presence in Kiunga which included heavy equipment and machinery anywhere in PNG.

11.6 He told the Inquiry that he was involved in preparation of the Survey Plan and Maps for Portion 27C Awin Pari, Portion 1C Awin Pari in the name of NEWIL, Portion 14C Awin Pari to Tosigiba and Portion1C Aibolo in the name of Tosigiba (and Kebogas Investment Limited). He was also responsible for the Land Investigation Report for four SABLs. He confirmed his involvement at that time he commenced work with IT&SL, in fact confirming the survey plans were already done

and his involvement was to enter the coordinates on topographical maps scaled at 1:100,000.

11.7 The Commission accepts that evidence Rural Class 4 survey specifications require GPS land boundary coordinates which can be

manipulated through the desktop rather than the physical land survey requirements under Class 1 and 2 survey which is normally expensive. The surveying land boundaries are transposed onto aerial topographical maps provided by the National Mapping Bureau and the Office of the Surveyor General. The coordinates of land boundaries are the natural rivers, ridges, mountain tops which are transposed onto the aerial topographical maps by the cartographer.

11.8 The survey plan is then vetted by the surveyor as to the correctness of the land boundaries, the landowner's instructions on boundaries. When the surveyor is satisfied he then certifies the survey map and registers it with the Surveyor General's Office. The certified map bearing the Rural Class 4 boundaries are then provided to the DLPP for the issuance of title. Mr Hapa agreed that the survey was done not for the Trans Papuan Highway but purposely done for customary land registration.

11.9 In his evidence, Mr Hapa facilitated that process and that we find that he only confined the land investigation and organized the ILGs through the Executives of the four companies. The following information based on evidence confirms that Mr Hapa of IT&SL;

1. Submitted the Tender Form/Application form for SABL on behalf of NEWIL, Tosigiba Investment Limited/Kebogas Investment Limited, Tumu Timbers Development Limited to DLPP on... The Tender form was prepared and submitted after the issuance of the title. That anomaly is our view is deceptive and clearly fraudulent when the land comprises in excess of 2 million hectares.

2. Requested for Land Instruction Number and it was passed onto IT&SL. This would normally be issued to the Provincial Lands Office, Department of Western Province. The Land Instruction Number was issued after the issuance of the title. This indicates the fraudulent nature by which IT&SL colluded with DLPP to fraudulently acquire the said SABLs.

3. Conducted the Land Investigation Report with the assistance of the Executives of the umbrella landowners companies. In his evidence he states that he was so authorized by Mr Simon Malu, Customary Leases Division. This authorization was not done within the acceptable process of administering SABL application.

4. Mr Titus who was paid by IT&SL to assist the landowner companies in the registration of ILGs worked closely with ILGs were completed basically to facilitate the consent of the landowning members of the clan.

5. Certified the survey plan without conducting field survey on the land boundaries with the landowners.

6. Collated the LIR and then got Mr Imen Ita Papa and Ipisia Biyama of the Department of Western Province to sign the LIR. Both Officers signing the LIR knowing it to be false because they did not conduct the land investigation. They signed the LIR at Port Moresby, but the LIR shows that it was signed in Kiunga which was false.

7. The Recommendation for Alienability was signed by Mr Dimonai, the District Administrator for North Fly at Port Moresby whilst he was on

duty travel. The place of the signing indicates Kiunga which is totally false and misleading. Mr Dimonai did not conduct due diligence and out of ignorance of the fact that the LIR was incomplete and did not clearly show the whole tribes/clans in the SABL Portion. Most of the landowners included in the LIR are from within the Kiunga and surrounding village communities.

11.10 However upon cross examination at the hearings Mr Hudson Hape affirmed on oath that the LIR was provided to Land group leaders to conduct. On assessment of the LIRs they were found to be filled by one or two agents or Executors for many people. This is unsatisfactory as two things can happen and that is, (1) names could be made up and (2) numbers of people inflated to mislead. This bore true when on inspection of individual clan group LIRs the names of people named in a certain group was included in two or three other clan groups

11.11 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Montford Awetari appeared as an agent for Tumten and Gre-Dmesuk land groups. His stated village is Gusiore village along Elevala River under those land groups over Portion 1C Awin Pari. Mr Awoke Wando appears as Agent for Uga Somi and Kyankwenai Dmesuke Land Groups with his stated village as Kmom in those land groups. It is improper and fraudulent for a person to be named in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected. There were twenty-six landgroups who participated in the LIR leading to the NEWIL SABL as provided below:

No	
Name of Land Group	
No of people in land group	
Lease Period Agreed (years)	
No of people signing Agency Agreement	
Names of Appointed Agents	
Stated village of Appointed Agents	
1	
Tumten	
9	
25	
9	
Montford Awetari	
Gusiore	
2	
Srontia	
11	
25	
11	
Wikri Kikri	
Gusiore	
3	
Suli	
26	
25	
26	
Joel Megime	

Kana
4
Bube Skai
26
25
28
Gill Atigi
Kwomhe Nai
5
Kusy
20
25
20
Dumo Sokom
Tegina
6
Waintia
20
25
20
Frank Wiko
Diabi
7
Solomkia
14
25
14
Wanaka Suguari
Pipila
8
Waintya
37
25
38
Hubert Wasu
Kwomhnai
9
Domana Kuse
25
25
35
Nainu Wokri
Igubia
10
Sagai
26
25
30
Thomas Hela
Igubia
11

Samaka

26

25

27

Wanaka Saguari

Pipila

12

Ihensmo

26

25

38

Max Dwepu

Drimgas

13

Ihen

32

25

31

Raka Tangu

Gusiore

14

Usiok

40

25

40

Julius Mgunen

Trimgondok

15

Grupe

24

25

24

Melsam Sape

Kmom

16

Srunai Gas Ryanka

50

25

43

Neme Sika

Gre

17

Drim Kmom

23

25

0

Wasinai Sakonai

Drim

18

Uga Somi

9

25
9
Awoke Wando
Kmom
19
Kyankwenai Dmesuke
9
25
9
Awoke Wando
Kmom
20
Gre Dwe- Dmesuke
12
25
12
Willie Sare
Kmom
21
Dmesuke
9
25
0
Asonge Kwiiwed
Turudmesuk
22
Ungasomi
29
25
29
Hunda Udena
Drimgas
23
Kwape Gre
11
25
10
Amos Daue
Kmom
24
Drim Kmom
23
25
23
Wasinai Sakonai
Drim
25
Gre Dmesuk
21
25
0

Montford Awetare
Gusiore
26
Mepu Durankia
24
25
24
Arake Wosebi
Gre

11.12 The total number of people collated in the LIR report total 658, a far cry from the stated 28,000 odd persons (1,100 @2% growth) NEWIL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.

12 Recommendation

12.1 The involvement of a foreign owned company in the customary land investigation process, the grant and issuance of title, the security of title in its offices and the agreement to ensure that the State Entities disregard their statutory obligations is a real concern for the State.

12.2 The State should become more proactive in the enforcement of regulations and exercise its powers to protect the asset of the rural community, the customary land of PNG.

12.3 That the owners of IT&S and their employed Surveyor be questioned on their role in facilitating the NEWIL SABL.

13. The Evidence of Michael Titus

13.1 Mr Michael Titus is a lawyer by profession and the principal of his law firm Titus Lawyers. He is currently operating his practice at Section 2 Allotment 7 Emirau Street, Kavieng, NIP. He graduated with a law degree from UPNG in 1995.

13.2 Mr Titus is a person of interest to the inquiry in that he has acted as lawyer on record for NEWIL, Tosigiba and Tumu over the grant of SABL concerning portion 27C, 1C, 14C and 1C Aibolo. When cross-examined as to his involvement as a lawyer acting for the landowner companies and IT&S, he said that he was not acting for IT&S. Mr Harsely has confirmed that IT&S engaged and paid Titus Lawyers to assist the landowner companies with legal advice more so with the SABL

acquisition, the ILG formation and consent forms, and general advice to company directors and executives over meetings and company returns.

13.3 Mr Titus was engaged by IT&S to assist Tumu Timber Development Limited at the time Mr Dina Gabo and executives of Tosigiba Development Ltd decided to pursue carbon trading initiatives much to IT&S's dislike. According to Mr Titus, they were referred to as the „rogue directors? and was considered in our view a sabotage what has been a fruitful cooperation between IT&S and the landowners. It is confirmed that after the Project Agreement was signed in Port Moresby in May 2011, Mr Titus convened a meeting with Soki Samisi and others at Kiunga for

changes to be made to the chairmanship and directorship of the company. Mr Gabo and other executives were not properly advised of that meeting which is contrary to the requirements of the Companies Act.

13.4 Mr Titus was cross examined on his role as the lawyer for the three (3) landowner company and IT&SL as a potential conflict of interest with regard to the SABL and a number of agreements that have since been executed. That conflict of interest relates directly to the fact that since he was paid by IT&SL it constituted divided loyalties as to his professional and ethical duties to discharge his professional duties as a lawyer to his clients, the landowner company. The potential conflict was evident with regard to the project agreement clauses which are considered as unfair to the landowners for e.g.

* The original draft of the Project Agreement relating to the harvesting of logs from the road construction corridor was initially 20metre either side of the road was subsequently increased to 5,000metre either side of the road. Recital Clause "O" was not even discussed with the

landowners. The project agreement with the amended clause was executed by the State on May 2011.

* In reference to paragraph 3.2(d) of the Project Agreement (Condition Precedent to States Obligation) states that the landowner companies NEWIL, Tosigiba & Kebogas are „obliged? by this agreement to fast track SABL Lease–lease back process and appoint IT&SL as the developer company in order to carry out the project.

* Paragraph 6 (Development Licence) obligates the State to fast track Lease–lease back agreements in favour of IT&SL.

13.5 These examples reflect the unfair nature of the contract that was drafted by the State Solicitors Office where there is clauses that in our view obligates agencies of government to compromise the regulatory and monitoring powers of state agencies such as DLPP, DEC, NFA, DAL etc. to ensure IT&SL has the ultimate control over all that land for a period of 25 years.

Recommendation

13.6. Mr Titus must be referred to the PNG Law Society for his involvement with the landowners companies whilst been paid by IT&SL constituting serious ethical questions over the conduct of his legal services to competing interests.

14. Department of Western Province

14.1 The Department of Western Province is the bureaucratic arm of the North Fly Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of

which the Lands Division is an important one. In the issuance of the NEWIL SABL there was no formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of Western Province.

Findings

14.2 It was found that the whole process of Land Investigation, the survey of the land boundaries, the appointment of agents by a particular land group and the authenticity of the data collected from within the said 26 landgroups comprising the land referred to as Portion 27C emanated from the developer company IT&S with the able assistance of the Executives of the umbrella land owner company NEWIL.

Land Investigation Process

15 IMEN ITA PAPA

15.1 Mr Imen Ita Papa in his evidence to the inquiry at Kiunga categorically stated that he was not involved in the investigation from the very beginning until the time Mr Hudson Hape contacted him at Port Moresby whilst he was on official business to sign the Land Investigation Report.

“MR BOKOMI: ...Under normal circumstances from your experience as a government Lands officer, who should actually take the lead in the land investigations? Should it be the developer company or should it be government Lands officers?

A: Commissioner, it is the functions of the government; the agent of Lands Department in Western Province is Division

of Lands and Physical Planning, which I am responsible for all land investigations, every land dealings in Western Province, I must be consulted first.

Q: Where you actually physically involved in the lands investigations in respect of the three project areas?

A: No, I have not been to the project site.”

15.2 Mr Imen Ita Papa was the then District Lands Officer (now elevated to the position of Acting Advisor, Provincial Lands and Physical Planning Office) at the Department of Western. Evidence before the COI indicated that he was the officer responsible for all Provincial Government matters in the Western Province and was not aware of the SABLs issue over the said road project. In his evidence to the Commission Mr Papa said that most dealings by the landowners, leaders and developer were always done with the national agency by-passing provincial authorities through the project that was in the WP. The only consultation was when the project was referred by the National Forest Authority to the Provincial Forest Management Committee for its deliberation and endorsement.

15.3 Mr Papa's evidence is crucial to the inquiry and we make specific references the depth of his evidence to which he states unequivocally that IT&SL played a major role in manipulated the LIR process through the road project initiative in the Western Province. The major thrust of that evidence is the admission of his non-involvement in that process follows;

“A: ...I now will admit to the Commission of what actually I have done to the Lands Investigation Reports. The initial arrangement was to consent for road corridor and 1 kilometers both sides of the road. Firstly, my office in

Kiunga have no records of these registered plans. Special Agriculture and Business Lease listed at number 64 held by Tosigiba Investment Limited over land described as Portion 14C Milinch of Kariton, Karia, Strickland, Bosavi, Campbell, Iema, Tomu and Sisa fourmil of Kutubu, Wabag

Blucher and Raggi located in the Upper Middle Fly area of Western Province, National Gazette number 3218 of 24 September 2010. Special Agriculture and Business Lease listed as number 65 held by North East West Investment Limited over land described as Portion 1C, Milinch of Palmer, Sari, Mula, Karrington, Alice and Evara, Strickland and Tomu, fourmil of Blucher and Raggi located in the Middle Fly district of Western Province. Notice of direct grant under section 102 of the Land Act of 1996 was published in the National Gazette No G.218 of 24 September 2010. Special Agriculture and Business Lease listed as number 66 held by North East West Investment Limited over land described as Portion 27C Milinch of Alice, Tedi, Palmer and Kiunga fourmil of Blucher and Raggi located in the Middle Fly district of Western Province. Notice of direct grant under section 102 of the Land Act of 1996 was published in the National Gazette No G.218 of 24 September 2010. During the project feasibility studies status, land investigation and lands surveys were part and parcel of the feasibility work. The IT&S officers, Department of Works officer and landowners have collectively completed the lands investigation report for my signature only. All I understood was that once the project feasibility was sanctioned by national relevant agencies, lands surveys, lands investigation was one of the component

of the feasibility studies. And because all various professionals who went out on the field collected data were the agents of the State including landowners leaders and IT&S officials, though I was not out in the field carrying out inspections, I relied all information before me for signature were all true and correct as it was sanctioned by State and the landowners before the actual feasibility work commenced. While I was in Port Moresby in 2008 on other official duties, I was called in to sign the lands investigation report for the proposed road project at the Pacific View up at the 10th floor at 2 Mile Hill in the presence of few landowners and the company IT&S officials, I signed the lands investigation report as North Fly District Lands officer.

...

MR BOKOMI: You stated earlier on to the Commission that you never conducted the lands investigations yourself?

A: No, I stated that I was not involved in the investigation out on the field.

Q: Well, if I put to you that you were not physically involved in the investigations yourself – leave aside all those others who may have done it – is that a true statement? You were not involved in the lands investigations yourself?

A: That is a true statement. I was not involved in the investigation reports that were compiled.

Q: Then my further question to you is, how then can you sign the lands investigation report? Is it possible?

A: I made a statement that because at the initial consent by the landowners in the start of the project, negotiations, consultations with landowners in Kiunga, because they gave

their consent for feasibility to commence, other departments like Environment Department, Lands Department, Forestry Department, other State agencies were involved in other components, as well as the IT&S and their lands officers and surveyors being an agent of the State, conducted – I cannot go out to the forest and I was, as I have stated, I was on other official duty in Port Moresby and the report was before me. Believing that all the reports were related to the road corridor that is within the 1 kilometer, both side, as initially agreed by people, not outside of the both sides 1 kilometer.

Q: Mr Papa, I will show you something. Before I do that, you would agree with me if I put to you that under normal circumstances, the Lands officer who signs the investigation report is the one who actually physically goes out to the area to conduct the investigations and then thereafter to confirm by taking a land boundary walk with the relevant landowners that these are parcels of land that they do not require in the near future and they can have it alienated by the State for whatever purpose that the State would require the land for. Is that not a true statement of your duties and

functions as the Lands officer?

A: That is correct. I should be physically on the ground identifying the area that investigations should cover which are the landowners that I should interview or provide consultations and negotiations for the project to go through as well as identifying the landowners physically on the ground.

Q: That should have been the correct procedure?

A: That should have been the correct procedure I am saying. Q: But who told you to sign the land investigation report?

A: I signed on the understanding that ---

Q: No, my question to you is, who told you to sign the land investigation report? Who asked you?

A: I was asked by the IT&S company. They picked me up in Waigani while I was on other official duty.

Q: Yes, where did you sign the Lands investigation report? A: Pacific View, 10th Floor.”
(Transcript SABL58–Mirou–16/11/2011)

16 The Evidence of Mr Ronald Manase Dimonai

16.1 Mr Dimonaicomes from the Awin tribe and has been the District Administrator for the past 13 years and obtained a Masters Degree from Western University, Australia in 1998.

16.2 In December 2008 he confirmed that Mr Imen Ita Papa and himself were at Port Moresby on duty travel. He says that Mr Imen Ita Papa and Mr Hudson Hape visited him Lamana Hotel where he was residing and brought documents namely copies of 26 pages of the Recommendation for Alienability and he signed believing that all the information for the purpose of the Trans Papuan Highway, which was road accessibility to bring economic benefits to his people and NOT SABL.

16.3 On December 2008, Mr Dimonai the current District Administrator for the North Fly District was asked by Mr Imen Ita Papa at Lamana Hotel in Port Moresby to sign the Recommendation for Alienability for LIR into SABL Portion 27C. The recommendation was signed at Port Moresby in

the presence of Mr Imen Ita Papa and Mr Hudson Hape of IT&SL. The twenty six separate LIR for each of the clan groups comprising the land referred to as Portion 27C contained no recommendation for reservations to be made on the customary hence extinguishing the customary rights over the for a period of 99 years to NEWIL and subsequent Sub Lease Project Agreement for a period of up to 40 years in the name of the IT&SL and the joint venture company in the name of Awin Pari Lumber

16.4 He also confirmed that

“...The signing was done for the purposes of acquiring the land to provide road accessibility for my people on the North East as well as our people in the Nomad area for the road acquisition and it is not for SABL. That was the understanding I had when I signed this document now in front of you. That they were to build the road in exchange for the logs as well as the road, that document was signed for the acquisition of the road from Drimgas to Nomad for the purpose of the Trans Papuan Highway. While in the course of all the meetings that was held by IT&S, no officers within my office or from the North Fly District Administration was deployed to conduct land investigation

report, investigation to identify landowners along the proposed road corridor. None of my officers were deployed to conduct the road, the land investigation to identify landowners who own the land along this proposed road corridor. There was no clear direction from National Department and Physical Planning or any other organizations directing North Fly District Administration through my office to deploy officers to conduct land investigation reports to identify landowners along this proposed road...”

16.5 Mr Dimonai expressed that he had no idea about the LIR and had not conducted any due diligence on the report which was incomplete, contained serious omissions in respect of signatures of landowners appointment of agents and discrepancy

Recommendation

16.6 That the SABL be revoked pending a fresh LIR to be reconducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

16.7 That Mr Imen Ita Papa, Dimonai, and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re- educated and reinforced as necessary regarding proper conduct of LIRs.

17 DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Findings

17.1 The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Dimonai as the District Administrator on behalf of the Administrator of the Western Province in December 2008

Recommendation

17.2 That all LIRs be provided to the Secretary of Provincial Affairs as the Custodian of Customary Land for issue of certificate of Alienability.

18 DEPARTMENT OF LANDS AND PHYSICAL PLANNING

18.1 DLPP file records on SABL Portion 27C Awin Pari disclose that an Application or Tender Form duly filled out by the agent for NEWIL and dated 17th June 2009 was submitted for consideration. The agent whose signature appears on the document was confirmed as those of Mr Hudson Hape, Registered Company Surveyor for IT&SL as having been authorized by NEWIL to be their agent. It was revealed that no such authorization was approved by the Board of Directors, NEWIL on matters related to the acquisition of Portion 27C for SABL.

18.2 The purpose of the application was, for Forestry-Reforestation, Sawmilling, Agriculture and Major Road Construction. Estimated Value for Improvement is about K192.0 Million.” The Commission noted with interest that Portion 27C was specifically referred to in the Application. This application was reflected in the application for SABL regarding Portion 1C Awin Pari, Portion

14C Awin Pari and Portion 1C Aibolo symbolically considered as illuminating the manipulation of a foreign corporation over the people of Awin Pari being unsophisticated with a handful of intellectuals.

18.3 The DLPP file also disclosed that Mr Simon Malu then Caretaker Manager, Customary Land in a letter dated 24th November 2008 to the Managing Director, IT&SL confirmed issuance of Land Instruction

Number for Portion 27C Milinch of Alice; Fourmil: Raggi as 01/316 including references to Portion 1C Awin Pari; Portion 14C Awin Pari and Portion 1C Aibolo. This date confirm that the Land Investigation process was conducted without submission of the most primary documentation that will allow DLPP to carry out vetting on the proposed land in particular existing leases.

18.4 Mr Malu instructed IT&LS to liaise with Customary Lands Section and the Fly River Provincial Government Administration to carry out awareness and complete the Land Investigation process.

18.5 Land Investigation Report for Portion 27C was completed and signed by Mr Imen Ita Papa Provincial Land Adviser, Provincial Land and Physical Planning Office of the Department of Western Province, North Fly Electorate on 19th December 2008. The LIR comprised 26 clans submitting their consent for 25hectares of their land within the Awin Pari region of Kiunga to be freed up for 25 years.

18.6 Recommendation as to Alienability was signed by Mr Ronald Manise Dimonai, District Administrator, North Fly Region of Western Province at Kiunga on 19th December 2008 as was purportedly indicated on the LIR. No reservation for the continuation of reasonable access for hunting, fishing, gardening and other necessities conducive to access onto the land.

18.7 Instrument of Lease–Lease Back for Customary Land pursuant to section 11 of the Land Act, was executed on 24th June 2009 between the 29 Agents for and on behalf of the landowners as identified in the LIR in the presence of Simon Malu (Senior Customary Lands Officer–DLPP) and

Sikabu Maika (Adviser Lands WP) and Mr Pepi Kimas, then Secretary, DLPP signed as the delegate of the Minister of Lands and Physical Planning and the State. It is however noted that under Schedule Part 2 Term of the Lease (Instrument) states that the customary landowners agree to lease the subject “land” to the State for a period of 99 years, The lease was to come into commence and be complied, for all intents and purposes on the date of this Agreement pursuant to section 102 (7) of the Land Act.

18.8 In relation to the issuance of the title to the applicants namely NEWIL, we note for the DLPP files that a letter directed to the then Secretary of Lands by the Executives of TOSIGIBA Investment Limited, Mr Iya Fami (Acting Chairman); Frank Neobia (Director), John Wabi Sari (Director) and Waiti Kwani (Director) in a Minute dated 27 September 2009 with instructions to DLPP to release the ninety–nine (99) years SABL Title to IT&SL for safe custody keeping it in a secured premises to avoid loss and fraudulent copies of the title.

18.9 By letter dated 29 June 2009 from IT&SL to DLPP Secretary submitting 3 copies of the Instrument of Lease for Customary Land (Lease–lease Back Agreement) and accompanying documents for two of the Agro– Forestry and Road Project Sites to Kiunga and Nomad sub–district in the North Fly District of Western Province. The project sites referred to in the letter included the following;

Portion 1C, chartered as Catalogue Plan Number 9/133 Project Area 1
Portion 27C, chartered as Catalogue Plan Number 9/133 Project Area 1

Portion 14C, chartered as Catalogue Plan Number 28/126 Project Area 2

18.10 Mr Hape of IT&SL also follows up with a very similar letter on 3 April 2009.

18.11 The Notice of Direct Grant to NEWIL on Portion 27C is for 99 years. In the LIR, the 26 landowning clans with their immediate members of the clan or unit have agreed to allow 25 hectares of their land freed up for SABL for a period up to 25 years. The underlying reason for giving their consent to this SABL was for the Trans Papua Highway to be built across Portion 27C (Kiunga-Gre-Drimgas), Portion 1C Awin Pari, Portion 14C (Nomad). The objections were basically that their consent was manipulated by IT&SL to obtain access to all the hectares of prime pristine forest which is suspicious and fraudulent. Not consistent with section 11 and 102 of the Land Act.

18.12 In the evidence provided there was found Land Instruction Number given for the LIR to be conducted, a notice of Direct Grant under Section 102 and the signed Lease/leaseback instrument.

18.13 However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

19 The evidence of Simon Malu
(SABL 71-Mirou-04/01/12)

19.1 Director, Land Acquisition, joined in 2001 Degree in Land Management 2000 University of Technology

19.2 Mr Malo states that he attended meetings organised by IT&SL on the Trans Papuan Highway project with the landowners. He confirmed been paid allowances by IT&SL for the chartered plane trip to Kiunga. In terms of his knowledge over the LIRs, he stated in evidence that he had instructed Hudson Hape to liaise with Mr Imen Ita Papa or Mr Biyama for the officers to conduct the LIR. He didn't conduct any due diligence on the completed LIR and proceeded to prepare the Lease-Lease Back agreement for the execution by the Minister or Delegate with the authorized agents of Tumu. He knew Mr Hape because he normally frequented his office over land survey matters

19.3 That lack of due diligence from Mr Malo is expressed in his evidence

“Qyou said you gave instructions to Mr Hudson Hape. Would it not have been proper for you to give instructions directly to Mr Imen Papa and then follow it on from there personally to ensure that he conducted the land investigations, rather than giving it to Mr Hape as a government officer to another government officer, not to a private sector employee..?

A. yes that is correct

Q. Why did you do that?

A. Okay, Hudson, he came to the office and saw me regarding this project, since he was present at that time, and I had to issue an

instruction. I told him that you have to go to Kiunga and liaise with Imen Papa or whoever officer is on the ground, you liaise with him and do the land investigation report, So it was Hudson who was present at that time that I gave the instruction.

Q. Did you ever confirm with Hudson later on---

A. I did

Q. As a follow up measure to ascertain whether or not he did go to Kiunga and he did talk to Mr Imen Papa and that Mr Papa did the investigation personally, did walk the land boundaries as it is stated in the land investigation report? No?

A. I did check with Hudson, Since he was in and out of the office because of this project, so from time to time I talked to him and I asked him if he had contact with Imen and he was also going to, he had probably a few trips to Kiunga and back to Moresby.

Q. What did Hudson tell you?

A. Hudson did indicate that he is in contact with Imen and as soon as the reports are completed they will submit it to me.

Q. You never talked to Imen at all? I mean you never talked to Mr Papa at all, even after getting that kind of response from Mr Hape?

A. No

Q, You think you should have?

A. Yes

19.4 Mr Malo failed in his duties as the Director-Customary Leases to conduct proper due diligence on the LIR we find contained gross defects and anomalies prior to the preparation of the Lease-lease back agreement, No due diligence was conducted and it is evident that he was merely been directed by IT&SL due to the fact that he had already compromised his position when he was paid allowances IT&SL over the said project. That

project was the high point in all the activities he understood was for IT&SL benefit.

19.5 Mr Malo was merely interested in ensuring that the Lease-lease back agreement was settled, despite the anomalies noted in LIR. No due diligence was conducted and it is evident that he was merely been directed by IT&SL due to the fact that he had already compromised his position when he was paid allowances IT&SL over the said project. That project was the high point in all the activities he understood was for IT&SL to benefit from.

Recommendation

19.6 That the lease be revoked forthwith

19.7 Mr Malo should be disciplined for not doing his job and the result of that neglect of duty has led to the lack of integrity in the SABL process. His actions are a well documented trend in all the SABL inquired by this Commission.

20 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

20.1 There was no evidence illicit from DAL over the land area. We make no findings or recommendation.

21 PNG FOREST AUTHORITY

21.1 The Commission noted that on 25th November 2010 and pursuant to section 90D (8) of the Forestry Act 1991 (Regulation 273 and Form 252)

the Board of the National Forest Authority issued Forest Clearance Authority Number FCA 01-01 to IT&SL to carry out larger scale conversion of Forest Road Development. Of note to the FCA was the fact that "The Project area is about 600 kilometres of road alignment in the North Fly District of the Western Province. It is to be known as the Gre- Drimgas to Nomad Road Alignment. The maximum forest clearance of road corridor from forest edge to forest edge is to be strictly confined to 40 metres (20 metres of both sides of the road centre line). (Refer Schedule 1 and 4(1) of the FCA)".

21.2 The Commission however finds that IT&SL has deliberately increased the FCA road line approval for a 40metre forest clearance with an additional 5,000metres clearance of forest under the Contract between the State and IT&SL dated 23rd May 2011. The changes are reflected under Recital "O", "IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road lengths or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline and a distance of 5,000mtres on either side of the road corridor which has been initially agreed with by the traditional landowners." (Contract Agreement at page 7)

21.3 In fact the Commission has also sighted an earlier version of the Contract which stipulates as follows; IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the timber harvesting period of twenty five years and also to cover the harvesting of log product

covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road 600 kilometres of road length or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline which has been initially agreed with by the traditional landowners."

21.4 That is a major deviation from the original requirement of road clearance as issued by the Board of PNG Forest Authority.

21.5 In conformity to the FCA requirements for a performance bond in the sum of K595, 000.00 to be paid within 21 days of the issuance of the FCA, IT&SL provided an ANZ BANK Guarantee in the said sum of K595, 000.00 to PNG Forest Authority on 16th December 2010.

RECOMMENDATIONS

21.6 That the PNGNFA officers summoned and failing to appear with material before the COI be served a stern warning so as to prevent future similar behavior by PNGFA officers.

22 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

22.1 In terms of environmental permit, there was no evidence taken and we make no findings or recommendation.

COI Inquiry File No. 65– for Special Purpose Agricultural and Business Lease over Portion 1C Volume -- Folio -- Milinch: Alice, Tedi, Sari, Palmer & Kiunga, Western Province in the name of North East West Investment 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 North East West Investment SABL. These were:

1.2.1 Department of Western Province, (DWP)

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 (PNGFA)

Witness Summons and Statement

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1

Mr Imen Ita Papa, Provincial Lands Adviser, Provincial Lands & Physical Planning Office, WPA

3–50

36–51

74–75

101–103

1

5

5

5

16/11/11–SABL 58–MIROU

21/11/11–SABL 61–MIROU

21/11/11–SABL 61–MIROU

21/11/11–SABL 61–MIROU

2

Mr Manase Dimonai, District Administrator, North Fly District, WPA

63–75

62-74

2

5

17/11/11-SABL 59-MIROU

21/11/11-SABL 61-MIROU

3

Mr Hudson Hape, Surveyor, IT&SL

13-

6

22/11/11-SABL 62-MIROU

4

Mr Michael Titus, Lawyer, Private Legal Practitioner

12-12

6

22/11/11-SABL 62-MIROU

5

Mr Montford Awetari

9-18

2

17/11/11-SABL 59 MIROU

6

Mr Samuel Kepuknai,

43-

2

17/11/11-SABL 59 MIROU

Former Director-NEWIL, Landowner, Drimskai village

7

Mr Frank Hameshu, Landowner, Drimdamasau village

54-62

2

17/11/11-SABL 59 MIROU

8

Mr Nelson Women Landowner(Also refer to evidence under Portion 1C Awin Pari)

19-28

2

17/11/11-SABL 59 MIROU

9

Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga

78-85

1

8

16/11/11-SABL 58 MIROU

25/11/11-SABL- MIROU

10
Mr Neville Harsely, CEO, IT&SL
1-73

10/01/12-SABL MIROU

11
Mrs Betty Wine, Chairlady, Women in Mining, Kiunga

3-
7

23/11/11-SABL 64 MIROU

12
Mr Waiti Kwani, Chairman NEWIL

76-

5

6

21/11/11-SABL 61 MIROU

22/11/11-SABL 62 MIROU

13

Mr Foxy Asobi, Secretary- NEWIL

5

21/11/11-SABL 61 MIROU

14

Mr Samson Ubre Director-NEWIL

5

21/11/11-SABL 61 MIROU

15

Mr Aaron Dupnai, Landowner, Awin Tribe

8

25/11/11=SABL-MIROU

16

Mr Pepi Kimas, Former Secretary, DLPP (2000-
2010)

7-87

17/01/12-SABL 80- NUMAPO/MIROU

17

Mr Simon Malo

2. Parties represented by counsel

2.1 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.”

2.2 The following were granted leave to be represented by counsel

3. Exhibits and documents

3.1 There were ten (10) 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	Survey Map of Portion 1C	C.O.I	17/11/11	NEWIL 1C(1)
2	Land Investigation Report 30/10/10	C.O.I	17/11/11	NEWIL 1C(2)
3	Notice of Direct Grant Gazette No. G 218 dated 27/09/10	C.O.I	18/11/11	NEWIL 1C(3)
4	Instrument of Lease-Lease Back Agreement	C.O.I	18/11/11	NEWIL 1C(4)
5	Response by Mr Imen Ita Papa, Acting Advisor, Division of Lands and Physical Planning–Trans Papuan Highway Road Project in Kiunga, WP	C.O.I	16/11/11	NEWIL 1C(5)
6	Bachelor of Land Studies Degree–Mr Imen Ita Papa dated 28/11/97	C.O.I	16/11/11	

NEWIL 1C(6)

7

Agreement Between The Independent State of PNG, Fly River Provincial Government and NEWIL and KEOGAS Investment Limited and Tosigiba Timbers Group Limited and PNG Agency for International Development and Independent Timbers and Stevedoring Limited

C.O.I

16/11/11

NEWIL 1C(7)

8

ECPNG Letter dated 15 November 2011 from Max Ako, Runginae Rural Hospital Administrator

C.O.I

16/11/11

NEWIL 1C(8)

9

Supplementary Affidavit of

C.O.I

25/11/11

MA "1"

Max Ako & Map of Project Areas covered under Portion 27C and 1C (NEWIL) & Portion 14C (Tosigiba)

MA "2"

10

Statement of Aaron Dupnai dated 22 August 2011 re: Inclusion and Investigation to be conducted, PNG Highway and SABLs

C.O.I

25/11/11

AD 1

4. Timeline of events of note surrounding NEWIL SABL Title

4.1 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	Incorporation of North East West Investment Limited	10/05/04		

2

Independent

07/11/03

Timbers &
(IPA

Stevedoring
Registration)

Limited (US)

Inc.

3
Survey Plan Catalogue

Hapa
4
Land

Investigation

Report(s)-30th

October 2010
19/11/08

26 separate

LIRs signed by

Mr Imen Papa.
19/11/08

Recommendatio

n for Alienability

5
Land Instruction No, issued by DLPP
24/11/08

DLPP/IT&SL
(Malo/Hapa)

6
Application/Ten der for SABL to Portion 1C
17/06/09

7
Lease-Lease Back Agreement
24/06/09

8
SABL Notice of Direct Grant
24/09/10

9
NEC Decision 115/2007 dated 22nd March 2007 re: Government Support and Approval in Principle sought for the construction of the Drimgas to Duara (Tegana) Road Project- Western Province, PNG

10
NEC Decision 293/2008 dated 15th December 2008. re:

Implementation of NEC Decision 115/2007
Dringas to Duara Road Project, Western Province

11

Special NEC Meeting No. 06/2011 re Advice to the Governor General dated 25th March 2011

12

Trans Papua Highway Road Project Stage II

FINDINGS

4.1 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by NEWIL.

5. North East West Investment Limited SABL

5.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G218 dated 24th September 2010 for Portion 27C Awin Pari Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 23rd September 2010 by the Department of Lands and Physical Planning to the holder North East West Investment Limited (NEWIL). The details of the SABL is shown below:

Legal Description

Portion 1C

Registered Survey Plan Catalogue No
9/133

SABL Holder

North East West Investment Limited

Date of Registration of Lease

23rd September 2010

Period of Lease

Ninety-nine (99) years

Land area of lease

470,462.0 hectares

6 IPA

6.1 North East West Investment Limited (NEWIL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 10th May 2004 and the current Principal Place of Business is Room 1001, 10th Floor, Pacific View Apartments, Pruth Street, Korobosea, National Capital District. As at 3rd October, 2011 IPA records confirms that it is operating. The Company

number is 1-51352.

6.2 The latest IPA company extract provided to the Commission dated 3rd October 2011 indicates 62 shareholders of NEWIL holding 1 ordinary share each in their capacities as Incorporated Land Groups within the land known as Awin Pari, North Fly electorate of the Western Province.

6.3 The extract discloses Messrs Robin Yawa, Foxy Asobi, Dimo Sobori, Paul Wasi, Joe Skai, Waiti Kwani, Samson Ubre, Susan Bale, Ronson Moya and Tusa Dimabo as Directors of the company. Mr Foxy Asobi is also the current Secretary of the Company with Mr Kwani appointed as the Chairman. The Annual return for the company was made up to 30th June 2010.

6.4. Messrs Waiti Kwani, Foxy Asobi and Samson Ubre, the current Executives of NEWIL told the inquiry the importance of development for the people of North Fly district and collectively confirmed that the people agreed in principle to allow IT&SL to develop the district through the road project. It was on this basis that the majority consented for the road project to be constructed on their land.

7 The Evidence of Waiti Kwani

7.1 Mr Waiti Kwani, current Chairman of NEWIL told the inquiry that on 16th March 2003, the Executives convened a meeting at Sarekona for the landowners of Portion 27C, Portion 1C and Portion 14C to inform them that "... IT&SL heard our cry for development and was interested in constructing a road, selective logging and agriculture project from Dringgas, Guavi Falls and all landowners must form ILGs to participate in the project.

On 23 March 2003, Neville Harsely of IT&S came and met more than 500 people at the old Kiunga Rural LLG Council chamber and Mr Harsely advised everyone he was prepared to partner them by carrying out the developments in exchange for forest resources."

7.2 It was after that meeting that awareness and ILG was organised by the Executives with the assistance of Mr Michael Titus, a private lawyer paid by IT&SL to assist all the landowners register their respective ILGs. According to Mr Waiti the ILG registration finalised in 2006, and that all landowners were aware of the proposed road project agreed to solve their disputes and register their ILG at a later date. This fact was pursued when Mr Waiti attached to his Affidavit a list of clan members endorsing their

support and „consent?, copies of the signatures signed in the presence of lawyer Michael Titus on October 2011, some 2 weeks before the inquiry commenced its hearing at Kiunga.

7.3 Mr Waiti further states that in 2007, that when IT&SL commenced feasibility studies on all components of the road project, authority for the road line TA was refused by NFA because of changes to the Forestry Act, as the requirement for roads more than 12.5km required FCA. It was that point in time that SABL was mooted and agreed to as the best vehicle for development and for the avoidance of further NFA process where the request for feeder road by landowners during the life of the project would not be an impediment to the IT&SLs construction of the 600 km economic road line for the North Fly District linking Gulf Province, Central Province and eventually Port Moresby. This was admitted as the very basis for converting the initial request for road line into an SABL concept as Waiti states in his evidence;

"....And since NEWIL represented the landowners now given all the awareness programs, the

landowners has consented for the project, a next half activities to be undertaken in the project based on the Department of Land's advice. It was agreed the appropriate way forward was by way of an SABL. Through the SABL, the customary lands would be secured for the project fundamentally, because aside from the main Trans Papuan Highway, the potential request for feeder roads by the landowners would see feeder roads closing the entire project area.

Apart from the Trans Papuan Highway, corridor and the development alongside the corridor of the highway, airstrips, base camps, all other parts of the project area would not be utilized unless the landowners wanted feeder roads, selective logging for agriculture projects on their customary lands.

Awareness of SABL. After learning the need to secure the land by way of an SABL, in November 2008 we had a meeting with all Pari, Waitu, Awin, Nomad, Biyami tribes at Sarekona and then form teams and we went to advise them of what we understood and described to the landowners was agricultural lease, timber over their land for the road and agricultural forest project. We went to all the same villages along the proposed road corridor and up the Fly and Palmer River.

.....”

7.4 In that evidence Mr Waiti confirmed that during the process of the Land Investigation process they made representation to Mr Sikabi Maika, then Provincial Lands Adviser and learnt that the district lands office was short staffed and their was funding problems to undertake the LIR. The Executives used that information to approach IT&SL and the developer agreed to facilitate the LIR. Mr Hudson Hapa was instrumental in assisting the landowners in surveying the land and conducting the LIR.

7.5 Mr Waiti, Chairman of NEWIL produced a detailed list of landowners names from all the various clan members and signature to indicative that majority consent for Portion 27C and 1C was obtained. This was an attempt to mislead the COI and it was noted during the hearings that Mr Titus was assisting the executives in the preparation of the Affidavits.

The Affidavit tendered in as evidence indicate that it was sworn on 17th September 2011 and the Attachment “a” confirming landowner support of the project and the signatures indicate that signatures was obtained between periods 30.10/11, 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th November 2011. The list was prepared some two weeks before the commencement of the hearings at Kiunga and places a lot of question on the integrity of the land investigation process.

Recommendation

7.6 That landowner companies must become accountable to their landgroup in terms of holding meetings and been transparent in their duties and responsibilities as agents for the people.

8 EVIDENCE OF LANDOWNERS OF AWIN PARI

8.1 The proceedings of the inquiry into Portion 27C Awin Pari gave opportunity for the landowners under SABL Portion 27C Awin Pari to provide evidence on their understanding of the SABL and the issue of consent. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers or the Provincial administration into all aspects of the land

investigation. The general thrust of landowner consensus is that the majority villagers within the road corridor project had consented to the construction of the Trans Papuan Highway, which also included allowance for the clearance of forest area to build the road. That road clearance in compliance with Forestry Act would entail a 40mter road corridor forest clearance.

8,2 The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity

9. The Evidence of Montford Awetari

9.1 Montford Awetari (SABL 59–MIROU 17/11/11) comes from Gusieri village, the first village on the Eevala River from Kiunga. His village is located within SABL Portion 1C Awin Pari Land. That portion of land is bounded by Eevala River to the south which empties into the Fly River and is about 2 ? hours boat ride upstream from Kiunga. He is the Chairman of TUMTEN Clan with a population of about 15 people. There are 14 landgroups within the village and his land is located under Portion 1C in which his clan owns about 1,000 hectares of land.

9.2 On behalf of his clan, Mr Awetari on oath stated, “I have never heard of the SABL up until after Gazettal No. G 218 was released. That was early this year (2011), I was the one who did the awareness campaigning to cease or terminate Gazettal No. 218 under SABL.”(Page 11) He confirmed having knowledge of the SABL as a result of the publication of the list of SABL by the COI.

9.3 He said that he signed the lease–lease back agreement as the appointed agent for his clan for the Trans Papuan Highway road project for a period of up to 25 years. The formation and registration of the Tumten Clan ILG (ILG No. 12432) was done by the Executives of NEWIL without any involvement of DLPP and the Department of Western Province. He

confirmed that Mr Samson Ubre told him to sign the ILG applications and the Consent Forms at Tumten village in a rush, and that he was not allowed to confirm the ILG and the consent for SABL with members of his clan.

9.4 Mr Awetari raised concern over the inclusion of his clan under Portion 27C Awin Pari which is fraudulent and false. The Commission confirm that Tumten Clan is also referred to in the ILGs named under the Land Investigation Report for Portion 27C.

10 The Evidence of Nelson Women

10.1 Nelson Women (SABL 59–MIROU 17/11/11 pp 19–28) comes from Tmingondok village which lies on the land bordering Portion 27C and Portion 1C Awin Pari land and covers about 30,000 hectares of land. The villages comprising nine (9) clans are located on the eastern (Portion 1C) and western banks (Portion 27C) of the Fly River. He is the leader of the Gase clan and Deputy Chairman of the Dispute Settlement Authority.

10.2 He expressed disappointment on behalf of his clan over the absence of government officials in conducting awareness over the SABL, the land investigation process and the fraudulent means of obtaining the consent of his people by using another person by the name of Julius Mangunen,

who is the member of the Musiok Clan (ILG 12448) on the east bank of the Fly River. He even said that their village lies well outside of the intended road construction project and could not understand how and why it was included under the two portions under the NEWIL and subleased to IT&SL under the JV Agreement. His clan did not fill out the consent

form as required in the Land investigation process and they also did not approve Julius Mangunen to be the agent for their clan.

The Evidence of Samuel Kepukunai

11.1 Mr Samuel Kepukunai (SABL 59-17/11/11 pp 43-) of Drimskai village located on the eastern bank of the Fly River is about 3 hours outboard motor ride from Kiunga. He is the clan leader of the Susuke Clan and a former Director of NEWIL. He was elected to the position of Director by shareholders of Drimskai and Swipen villages and was involved with IT&SL over the said road project. He confirmed that no government officers from both the national and provincial level was involved and that the project and voiced concern on the manner in which the project became isolated from the people as it was emanating from Port Moresby and the illiterate community were forced to consent to alienation of land under the guise of the road project and other agricultural projects that will benefit the people as promised by Mr Harsely of IT&SL. He resigned his directorship of NEWIL when he questioned on or about September 2010 as to the manner by which IT&SL coerced illiterate villagers "...bypassing government office, the North Fly Office which is the Department of Western.."(page 44 line 33 of Transcript). He also told the inquiry that he had no idea about the SABL over his land.

12 The Evidence of Frank Hameshu

12.1 Frank Hameshu (SABL 59-MIROU-17/11/11 pp. 54-) from Drimdamasu village-East Awin Census Division and from the Phayuri clan. His village is located on the Elevela River and Fly River on the SABL survey plan. He stated that his land even though it is outside the

SABL, his land is actually surveyed as part of the SABL. He explains as follows;

"A Okay, my village is Drimdamasu just above Kiunga, and then that is on the Fly River then to the mouth, you turn to Elevela and then Elevela right up follow up Elevela then to Ketu. Mouth of Ketu is another river above Busuri village and my land is within Elevela and Ketu about maybe 3,000 hectares of land."

12.2 He was aware of the landowner company NEWIL and IT&SL over the road project, but at no one time was proposal to acquire customary land through the SABL process discussed with his people. There was no representation by any officers from either the national or provincial government in those key agencies involved with the landowners except their understanding that an electronic bridge will be built over the Fly River rive linking Awin with Nomad and onto the Gulf Province.

(An example of why boundary walks are crucial in determining land boundaries where minority dissent means dissection from the SABL survey plan.)

13. The Evidence of Aaron Dupnai

13.1 Aaron Dupnai comes from the Giponai village some 30km up the Fly River from Kiunga, He represents his people of the Gre Clan of the EKium Tribe. At the time of the hearing, Mr Dupnai in the company of his people in their traditional regalia in a silent protest holding placards simply calling for their land under SABL to be returned to them. Mr Dupnai registered his people's complaints over the acquisition of their

customary land by the umbrella Landowner Company and IT&SL without the knowledge and consent of his people. He also expressed a number of matters that will require further investigation especially over the lack of consent and the forging of signatures on the consent form, the road corridor extension of forest clearance to 5km in breach of the Forestry Act and the lack of financial capacity of IT&SL to construct the road.

14 INDEPENDENT TIMBERS AND STEVEDORING LIMITED

14.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

15. The Evidence of Mr Neville Harsely

15.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

16. The Evidence of Mr Hudson Hape

16.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

16.2 In addition to Mr Hape's evidence, the following number of inhabitants indicated in the Land Investigation he produced does not reflect the majority of people who have been omitted or missed out of the listing.

This is tantamount to fraudulent practices and also it is not independent and unreliable.

No

Name of Land Group

No of people in land group

Lease Period Agreed (years)

No of people signing Agency Agreement

Names of Appointed Agents

Stated village of Appointed Agents

1

Suli

0

25

26

Joel Megime

Kana
2
Srontia
11
25
11
Wikri Kikri
Gusiore
3
Bube Skai
0
25
28
Gill Atigi
Kwomhenai
4
Kusy
20
25
20
Dumo Sokom
Tegena

5
Waintia
20
25

0
Frank Wiko
Diabi
6
Solomkia
0
25
9
Wanaka Suguari
Pipila

7
Waintya
37
25
37

Hubert Wasu
Kwomhnai
8
Dowana Kuse
34
25
33
Nainu Wokwi

Igubia
9
Utana Kuse
24
25
24
Dumo Sobovi
Tegina
10
Sagai
0
25
30
Thomas Hela
Tegina
11
Samaka
0
25
26
Wanaka Saguari
Pipila
12
lhensmo
0
25
33
Max Dwepu
Drimgas
13
Ihen
32
25
30
Raka Tangu
Gusiore
14
Usiok
39
25
40
Julius Mgunen
Trimgondok
15
Grupe
0
25
26
Melsam Sape
Kmom
16

Srunai Gas Ryanka

0

25

43

Neme Sika

Kmom

17

Kyankwenai Dmesuk

10

25

10

Awoke Wando

Kmom

18

Drim Kmom

25

25

23

Awoke Wando

Kmom

19

Uga Somi

9

25

9 (All 9 did not sign)

Dimas Binai

Kmom

20

Gre Dwe- Dmesuke

12

25

1

Dimas Binai

Kmom

21

Dmesuke

10

25

0

Asonge Kwined

Turudmesuk

22

Ungasomi

29

25

29

Hunda Udena

Drimgas

23

Kwape Gre

11

25
10
Amos Daue
Kmom
24
Gre Dmesuke
20
25

0
David Tunai
Trimdmesuk
25
Mepu Durankia
24
25
22
Arake Wosebi
Gre

16.3 The above table indicates that the total number of people collated in the LIR report total 658, a far cry from the stated 28, 000 odd persons (1,100 @2% growth) NEWIL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.

Recommendation

16.4 The involvement of a foreign owned company in the customary land investigation process, the grant and issuance of title, the security of title in its offices and the agreement to ensure that the State Entities disregard their statutory obligations is a real concern for the State.

16.5 The State should become more proactive in the enforcement of regulations and exercise its powers to protect the asset of the rural community, the customary land of PNG.

16.6 That the owners of IT&SLand their employed Surveyor be questioned on their role in facilitating the NEWIL SABL.

17 The Evidence of Mr Michael Titus

17.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

18 Department of Western Province

Findings

18.1 It was found that the whole process of Land Investigation, the survey of the land boundaries, the appointment of agents by a particular land group and the authenticity of the data collected from within the said 26 landgroups comprising the land referred to as Portion 27C emanated from

the developer company IT&S with the able assistance of the Executives of the umbrella land owner company NEWIL.

Land Investigation Process

18.2 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

19 The Evidence of IMEN ITA PAPA

19.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

20 The Evidence of Mr Ronald Manase Dimonai

20.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.
Recommendation

20.2 The C.O.I makes reference to the Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The recommendation is common to the SABL under review.

21. DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

21.1 Even though there was evidence of the North Fly District Administrator Mr Dimonai signing recommendations as to alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were

brought to the office of the Custodian of Customary Land for a certificate of alienation to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

21.2 No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

21.3 That all LIRs be provided to the Secretary of Provincial Affairs as the Custodian of Customary Land for issue of certificate of Alienability.

22 DEPARTMENT OF LANDS AND PHYSICAL PLANNING

22.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

23 The Evidence of Simon Malu

23.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.
Recommendaton

23.2 The C.O.I makes reference to the Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Recommendation is common to the SABL under review.

24 DEPARTMENT OF AGRICULTURE AND LIVESTOCK

24.1 There was no evidence elicited from DAL over the land area. We make no findings or recommendation.

25 PNG FOREST AUTHORITY

25.1 The C.O.I makes reference to the Evidence and the Recommendations under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

26 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

26.1 In terms of environmental permit, there was no evidence taken and we make no findings or recommendation.

COI Inquiry File No 64 for Special Purpose Agricultural and Business Lease over Portion 14C Volume -- Folio --Milinch: Carrington, Karius, Strickland, Bosavi, Campbell, Aiemu, Tumu & Sisa, Western Province in the name of Tosigiba Development 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 Tosigiba Development SABL. These were:

1.2.1 Department of Western Province, (DWP)

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 (PNGFA)

Witness Summons and Statement

1.3 The names of the persons who have been summoned to appear and who have in fact appeared

in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No
Name and Position
Pages
Day
Date
1
Mr Imen Ita Papa,
3-50
1
16/11/11-SABL 58-MIROU

Provincial Lands Adviser,
36-51
5
21/11/11-SABL 61-MIROU

Provincial Lands &
74-75
5
21/11/11-SABL 61-MIROU

Physical Planning Office,
101-103
5
21/11/11-SABL 61-MIROU

DWP

2
Mr Manase Dimonai,
63-75
2
17/11/11-SABL 59-MIROU

District Administrator,
62-74
5
21/11/11-SABL 61-MIROU

North Fly District, DWP

3
Mr Hudson Hape, Surveyor, IT&SL

13-
6
22/11/11

4
Mr Michael Titus,

5
21/11/11

Lawyer, Private Legal

Practitioner

12-13
6
22/11/11

5
Mrs Waeya Bugaebo, Biyami Tribe, Mougulu village, Noamd LLG, Middle Fly
18-31

3
18/11/11-SABL 60-MIROU

6
Mr Dina Gabo
Landowner & Chairman, Tosigiba Timber Group Ltd, ILG Chairman of Yugri Clan, Sodiobi Village,
Nomad LLG, Middle Fly District

7-33
5
21/11/11-SABL 61_MIROU

7
Mr Max Miyoba Chairman/Director, Kebogas Investment Ltd Landowner, Kukulababi village,
Nomad LLG, Middle Fly
133-143

6
22/11/11-SABL 62-MIROU

8
Mr Soki Samisi
Director of TTGL Landowner-Wodibi village, Nomad LLG, Middle Fly District
143-153

6
22/11/11-SABL 62 -MIROU

9
Mr Iya Fami
Landowner-Sodiri village, Nomad LLG, Middle Fly Secretary TTGL
154-158

6
22/11/11-SABL62 -MIROU

10
Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga
78-85

1
16/11/11-SABL 58-MIROU
11
Mr Nelson Women
Landowner
19-28

2
17/11/11-SABL 59-MIROU
12
Mr Neville Harsley, CEO,
1-73

10/01/12-SABL MIROU

IT&SL

13
Mrs Betty Wine, Chairlady, Women in Mining, Kiunga

3-
7
23/11/11-SABL 64-MIROU

14
Mr Aaron Dupnai
Landowner, Awin Tribe

8
25/11/11-SABL MIROU
15
Mr Pepi Kimas
Former Secretary, DLPP (200 to 2010)

7-87

17/01/12-SABL 80-NUMAPO/ MIROU
16
Mr Simon Malo

SABL 71 MIROU-04/01/12

2. Parties represented by counsel

2.1 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.”

2.1 The following were granted leave to be represented by counsel

3 Exhibits and documents

3.1 There were fourteen (14) 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

Survey Map of Portion 27C

C.O.I

16/11/11

NEWIL 27C(1)

2

Notice of Direct Grant

C.O.I

16/11/11

NEWIL 27C(2)

3

Land Investigation Report

C.O.I

16/11/11

NEWIL 27C(3)

4

Instrument of Lease- Lease Back Agreement

C.O.I

16/11/11

NEWIL 27C(4)

5

Response by Mr Imen Ita Papa, Acting Advisor, Division of Lands and Physical Planning-Trans
Papuan Highway Road

C.O.I

16/11/11

NEWIL 27C(5)

Project in Kiunga, WP

6

Bachelor of Land Studies Degree-Mr Imen Ita Papa dated 28/11/97

C.O.I
16/11/11
NEWIL 27C(6)
7

Agreement Between The Independent State of PNG, Fly River Provincial Government and NEWIL and
KEBOGAS Investment Limited and Tosigiba Timbers Group Limited and PNG Agency for
International Development and Independent Timbers and Stevedoring Limited

C.O.I
16/11/11
NEWIL 27C(7)

8
ECPNG Letter dated 15 November 2011 from Max Ako, Runginae Rural Hospital Administrator

C.O.I
16/11/11
NEWIL 27C(8)

9
Affidavit of Waiti Kwani & List of ILG Consent Form signed on /11/11

C.O.I

NEWIL WK

10
Affidavit of Foxy Asobi
C.O.I

11
Affidavit of Samson Ubre
C.O.I

12
Affidavit of Betty Wine
C.O.I

BW 18/11/11

13
Supplementary Affidavit of Max Ravo Ako & Map of Project Areas Covered under Portion 27C and
IC Granted to NEWIL & 14C Granted to TOSIGIBA Investment Ltd

C.O.I
25/11/11
25/11/11
MA "1"
MA "2"

14
Statement of Aaron Dupnai dated 22 August 2011 re: Inclusion and Investigation to be conducted,
PNG Highway and SABLs

C.O.I
25/11/11
AD 1

5. FINDINGS

5.1 I make the following findings follow the chronology events as documented and by evidence adduced during the hearings surrounding the SABL lease title held by TOSIGIBA.

6. Tosigiba Investment Limited SABL

6.1 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G218 dated 24th September 2010 for Portion 14C Awin Pari Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 23rd September 2010 by the Department of Lands and Physical Planning to the holder Tosigiba Investment Limited (Tosigiba). The details of the SABL is shown below:

Legal Description

Portion 14C

Registered Survey Plan Catalogue No

28/126

SABL Holder

Tosigiba Investment Limited

Date of Registration of Lease

23rd September 2010

Period of Lease

Ninety-nine (99) years

Land area of lease

632538.0 hectares

IPA

7 TOSIGIBA INVESTMENT LIMITED

7.1 Tosigiba Investment Limited is not incorporated as a company in PNG and does not exist. The issuance of the SABL title Tosigiba Investment Limited contravenes s 102 of the Land Act in that this company has no legal capacity to operate as a landowner company. Mr Dino Gabo stated that “to the best of my knowledge no company by that name has ever been registered by the Registrar of Companies.”

7.2 The other glaring effect also is that the Notice of Direct Grant is issued to Tosigiba Investment Limited, according to IPA records, is not even registered at all; hence, there are no formal and legal records of registration and or incorporation of that company pursuant to the Companies Act 1997.

8 TOSIGIBA TIMBER GROUP LIMITED

8.1 The purpose for the formation of TOSIGIBA TIMBER GROUP LIMITED (TTGL) was to encourage the development of the remote areas of the district in joint partnership with a logging company. At that time RH whose presence as a logging company was visible in the Nomad area, was able to provide such assistance to the landowner groups. Tosigiba ceased discussions with RH in 1998 since its inception as a company in 1996.

8.2 Tosigiba Timber Group Limited (TTGL) was incorporated on 27th March 1996 and as at 5th August 2011 was currently operating as an entity in PNG. The Company number is 1-25389 and is a national owned company. Its principal place of business is c/-Titus Lawyers, 4th Floor, Defens Haus, Corner Champion Parade and Hunter Street, Port Moresby, NCD. The company's total number of ordinary shares issued is 82.

8.3 The Certificate of Incorporation dated 19th August 1996 show that the original name of the company was JINDALEE NO.1 PTY LTD, followed by a name change to JOSIGIBA TIMBER GROUP PTY LTD and a further name change to TOSIGIBA TIMBER GROUP LTD on 1st July

2008. That was registered by the IPA on 4th August 2008. JINDALEE P/L was incorporated on 27th March 1996.

8.4 The initial and current shareholders are 81 ILGs representing the people of TOMU River, SLU River, GLOME River and the BAIYA River areas of part of the NOMAD District of Western Province. On 26th November 1996, TTGL was approved and registered by National Forest Authority as a Forest Industry Participant, Registration No. F1797.

8.5 The Directors of TTGL as at 10th August 1996 are Dina Gabo, Jimmy Obabo, Foyo Gaia, Honiabi Bogou, Moses Uwomali, Soki Samisi, Martin Asuwe, Usima Duluwa, Alengo Bayo, Uga Uwok, Opi Sisibai, Hiwabi Umae, Philip Ebagi and Abi Kasubia. Mr Foyo Gaia was appointed as the company Secretary. The Company return is current to 10th May 2011.

8.6 The evidence in relation to the issue of the majority consent by members of each clan and ILG and their understanding on the process and registration of the SABL concept was adequately covered in the evidence of former and current Executives of Tosigiba Timber Group Limited. It had become evident during the course of our inquiry that there was factions between the former executives/directors and those executives endorsed to replace Dino Gabo and his group with the assistance Michael Titus and IT&SL. The facts leading up to this dispute within the rank of the Executives of Tosigiba could also be described as unfortunate when it represented the illiterate community which the company stands to foster partnership with entities to develop what is a virtual remote and difficult areas of the district.

8.7 Dina Gabo the foundation Chairman of Tosigiba Timber Group Limited on oath described his removal as Chairman in May 2011 right after the signing of the Trans Papuan Highway Agreement at Government House at the behest of Mr Harsely of IT&SL. He told the inquiry that he had requested Mr Harsely to send his lawyer Michael Titus to Kiunga with the Stage II Project Agreement so that NEWIL/TOSIGIBA can understand what the content of the agreement consisted of before they agreed in principle to execute. Mr Harsely refused the request through Mrs Betty Wine, a women leader of the province. That was the basis for the urgent meeting held at Nomad station immediately after the agreement was signed at Government House to appoint new Executives. Mr Gabo had refused to travel to Port Moresby to witness the execution of the Project Agreement and also to sign as Chairman of TTGL.

8.8 Mr Soki Samisi, Director of Tosigiba and the three Executives of NEWIL travelled to Port

Moresby, the trip fully funded by IT&SL to attend the signing ceremony at Government House and Mr Samisi signed on behalf of Tosigiba and the 81 ILGs that the company represented. (Tosigiba did not hold a meeting authorising Mr Samisi to sign on behalf of the company and its shareholders).

8.9 Mr Gabo later learned from the shareholders of Tosigiba that after the signing ceremony at Port Moresby, Mr Iya Fami in the company of Michael Titus flew from Port Moresby direct to Honinabi and walked to Nomad District Station where a Special General Meeting was held to appoint Mr Soki Samisi as the acting Chairman of the company. (This was done irregularly and in breach of section 102 of the companies Act—Chairman was not informed of the meeting and agenda procuring his attendance).

8.9 Mr Gabo does not deny that he was a party to early negotiation with Mr Harsely in 2003 when he was introduced through former MP Kala Swokim and that Mr Harsely was working for a humanitarian company that was interested in constructing the road from Kiunga to Nomad. It was at the first and only meeting that was attended by Mr Harsley, Paul Japhlom representing PNG Agency for International Development at Kiunga when IT&SL informed the landowners of the company's interest to involve in the Trans Papuan Highway Project.

10. Proponents of the SABL

10.1 Despite the major defects in the process combined with the lack of awareness and concern over the involvement of the developer company in the land dealings and process, IT&SL was able to convince other executives of Tosigiba to commit to the 25 year sub-lease agreement.

11 The Evidence of Iya Fami

11.1 Mr Iya Fami, shareholder representative of Tosigiba Timber Group Limited on the Joint Venture Company registered as Awin Pari Nomad American Lumber Joint Venture Company Limited confirmed the importance of the road project and the initiatives for development to his people.

11.2 In cross examination, Mr Fami referred to Annexure "A" of his Affidavit to the Commission sworn on 21st November 2011 attaching Statutory Declaration showing consent of the landowners in Nomad, Juha and

Biami. The Statutory Declarations were brought to all the people by Allan Epsi, Derek Wau, Sambo Kobi and Max Miyoba.

11.3 The Statutory declaration was an attempt by the Mr Fami in collaboration with their lawyer Mr Michael Titus to show that the 1,551 signatures of the members of the landgroups was effectively majority consent for the SABL. This is very fraudulent because the process requires that the essential prerequisite of consent is obtained during the land investigation process. The actual dates on which this exercise took place is a period encompassing 26th October 2011, 27th October 2011, 31st October 2011, 2nd November 2011 and 3rd November, 2011 respectively The Commission conducted its hearings at Kiunga on 16th November 2011 and thus this was a deliberate attempt to mislead the Inquiry with respect to the issue of majority consent. Further to that the signatures of each individual land owners was considered to be fraudulent as was very clear to the Commission that the majority of inhabitants are illiterate and unsophisticated are not

able to sign on the small space within the columns and legibly. It is also a concern that the signatures were obtained in a space of three to four days thus suspicions arise.

12 The Evidence of Max Miyobi

12.1 Max Miyobi, the current Chairman of Kebogas Development Limited endorsed Tumu Timber Group Limited as the landowner company vested with their authority to apply for SABL over their customary land. Kebogas land group owns almost 5/6 of the land in the Nomad LLG and Tumu land group would hold 1/6 of the land totalling hectares. The reason for this arrangement was that Kebogas had not organised its ILGs and the need for Stage 2 of the Roadline Project at that time required the

SABL to be issued. Kebogas had lend its support to IT&SL in the lead up to the signing of the Gre-Drimgas–Wawoi Falls Agreement.

12.2 (Recommend that Kebogas facilitate the SABL process and organise land group into ILGs for the purpose of facilitating SABL in its name in the future for the development of its customary land. It would not be in the interest of the majority of the land groups within the umbrella of Kebogas to be controlled by another landowning company in the district. Mr Miyoba had not been authorized by Kebogas to make that arrangement by its customary unit holders of land.)

13. The Evidence of Soki Samisi

13.1 Soki Samisi was ably supported by IT&SL when Mr Gabo questioned IT&SL over the Agreement and the need for a presentation to be made to the Los in Kiunga. We find that Mr Harsely of IT&SL, Mr Michael Titus funded the trip to Port Moresby to execute the Agreement at Government House. In fact, the Agreement was never provided to all the stakeholders including the North Fly Provincial Administration, Governor, NEWIL, Tosigiba, Kebogas and Tumu for its consideration prior to the signing of the document.

13.2 Imen Ita Papa has confirmed that most of the landowners including himself were spectators and were treated with contempt by Mr Harsely after the signing ceremony. They were not even given copies of the Agreement–Unfair Contracts Act

14. KEBOGAS INVESTMENT LIMITED

14.1 Kebogas Investment Limited is the umbrella company of the landowners in the Nomad District, Middle Fly, Western Province. This company was included as an applicant for the SABL Portion 1C Aibolo with Tosigiba Development Limited. The evidence of Mr Max Miyoba by Affidavit and on sworn testimony confirms their willingness to participate in the road project and was very supportive of IT&SL as the developer of the project stage II. Mr Miyoba is the current Director and Chairman of Kebogas Investment Limited (Kebogas) and comes from Kukuhalo village, Nomad District. He is the leader of the Miyami people and told the inquiry that played a principal role in promoting the Trans Papuan Highway, selective logging and agriculture projects in the Noma District. He had extensive knowledge of the project and worked closely with Waiti Kwani of NEWIL during the feasibility stages of the road link project, formation of ILG and SABL

14.2 He stated that he travelled extensively to Nomad, Sobodi and Mogulu carrying out awareness of the benefits that the roadline and SABL will bring to the project area. That awareness had no

input from the key government agencies involved in SABL and the very pertinent aspect of that inquiry was that the road project will also bring numerous request by landowners for feeder roads on both sides of the proposed highway, hence the best way forward was the acquisition of customary land under the lease back system.

14.3 The Commission was unable to peruse any documentation over the incorporation, directorship, shareholding and corporate structure of the company. It was stated in evidence that Kebogas was not able to coordinate its clan and formalise registration of the ILGs, that it decided to nominate Tosigiba to hold the lease in behalf of the Kebogas until such time it was able to formalise its ILGs.

14.4 The C.O.I is very critical of such agreement based on the following factors;

1. Tosigiba does not have a controlling authority over the landowners to whom Kebogas was formed to represent.
2. There was no agreement between the two entities over such arrangement and it was not authorised by the Directors and Shareholders of the companies. In any event, Kebogas was a legitimate company incorporated in PNG and was at liberty to organize its ILGs and allow for separate LIR to be conducted within its land boundaries. This arrangement was contrary to the Land Act in so far as consent and issuance of the title is concerned.
3. The 82 ILGs represented in the LIR does not include any landowners from Mogulu to Juha along the SHP border across Strickland River and Nomad Station. This would have been excised from the Portion 14C Awin Pari Land.

Recommendation

14.5 That there should be continuous dialogue and collaboration based on mutual understanding between the land groups over the land allocated for agricultural or business activity and that if there is a need to go alone on a business venture that should be allowed to occur. The on going disputes between Lancon Executives is an impediment to progress and development and is not a licence for powerplay and politics in the corporate setting.

15 LANDGROUPS OF STRICKLAND RIVER AND KASUWE RIVER COMPRISING PART OF SABL PORTION 14C AWIN PARI

15.1 The inquiry received evidence from landowners representing the respective villagers and clans from within Portion 14C Awin Pari Land. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers on the land investigation. It is general consensus that they had in fact consented to the 600km road corridor project including the 20m by 20m road corridor clearance of forest area to build the road.

15.2 The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity

16 The Evidence of Mrs Bugaebo

16.1 Mrs Bugaebo is from Gogodala, Balimo but now lives with her husband who is from the Biyami Tribe, Mougulu village which is about six hours walk from Nomad Station. It is about eight (8) days walk from Mougulu village to Kiunga township. The Commission has noted the hardships faced by the people in having access to Kiunga/Tabubil due to the river tributaries, dense jungle and heavily forested areas, the stark remoteness of villages which epitomises the drive for development and the need for a national road network with proper feeder roads into various rural

community. These hardship are very real and in her evidence she told the inquiry of her 8 days walk to Kiunga to attend the hearings of the SABL inquiry and to express her concerns for her tribe in Mougulu which is located at the border closer to the Southern Highlands Province.

“ ...

A: I am Mrs Waeya Bugaebo but Luia. I am from Balimo, Gogodala; got married to Biyami.

MR BOKOMI: Your husband is from the Biyami tribe? A: Biyami tribe.

Q: Where do the Biyamis live? A: In Mougulu.

Q: Mougulu. How far is Mougulu from Nomad? A: It is six hours walk.

Q: Six hours walk. How far is Mougulu from Kiunga? A: I have walked eight days.

Q: Eight days. Commissioner, I am asking these questions simply to establish one tract and that is that some of these SABLs, they cover, as confirmed by the survey plans; very

extensive areas and for government officers to even walk, will take them a considerable period of time.

COMMISSIONER MIROU: Considering that you have to cross rivers, tributaries, swamps, forests---

MR BOKOMI: Swamps, mountainous areas. COMMISSIONER MIROU: Yes.

MR BOKOMI: Densely and populated rainforest.

COMMISSIONER MIROU: Yes, it is very difficult. We thank Mrs Bugaebo for her efforts to come to Kiunga.”

(Our emphasis)

16.2 She expressly called for the revocation of the SABL title in the name of Tosigiba Investment Ltd (a non existing corporate entity) in that no awareness was carried out on each of the 82 indigenous land groups that includes 44 villages in the Biyami tribe, Mount Bosavi and Wawoi Falls. She emphasised the need for proper social mapping before any ILGs are registered. Based on the information and proper collation of land groups and other disputes that may arise over land boundary the land groups can make informed decision on how they would like to deal with their land. She emphasised the need for the Developer to wait until all the pressing issues are resolved, which is our view was not forthcoming from DLPP and the provincial lands office.

16.3 In evidence she also identified to the Commission that the SABL in fact included mission leases and airstrip leases that was run by ECPNG and the Catholic Church. (Mougulu Catholic Mission Lease, Fuma Mission Station, Eselevi (ECPNG), even includes government onwed station/district offices etc.

16.4 In conclusion she told the inquiry that the SABL should be revoked but the road must be constructed to allow for access to towns and market.

17 The Evidence of Giwi Giwi

17.1 Giwi Giwi from Tiomna village which is some 13km from Kiunga (on the Kiunga/Tabubil Highway) and representative spokesperson for the 70plus members of the Sami clan, Awin tribe confirmed that they were not aware of the SABL Portion 27C until they saw the gazettal listing published by the Commission of Inquiry. The whole village was not aware of the existence of Tosigiba as the landowner umbrella company responsible for facilitating and negotiating on behalf of the villagers on their involvement in projects that will benefit the landowners collectively. Mr Giwi stated that his clan members and other surrounding villagers never had any meeting with any government representatives over the land investigation process.

18 The Evidence of Steven Kwani

18.1 Steven Kwani, Chairman of Nakrone Forest Area Landowners Association, spokesman representing the USIOKE clan from Trigondok village also confirmed that his people were not aware of the SABL that also included their land. According to Mr Kwani, his people were only

told that a roadline will be constructed connecting the Gre - Drimgas road across the Fly River over Portion 1C to the Wawoi Falls. There was no involvement from DLPP or the Provincial Lands Office. He also states that he comes from a clan that has about 105 adults and children. In total there are also 10 clans making up their tribe totalling 246 inhabitants.

18 The Evidence of Jack Kwani

18.1 Jack Kwani, spokesman from Drimgas village and of the Gause Clan which is one of the 12 clans along the Fly River where the proposed roadline will be constructed. He said on oath that from Drimgas to Tupensomi there are about 624 inhabitants. He also restated that the people of Drimgas to Tupensomi were not fully aware of SABL until the date of the SABL inquiry hearings at Kiunga, There was awareness about the Trans Papuan Highway, but IT&SL did not make that very clear to the people.

18.2 In respect of the ILG forms, it was confirmed that Waiti Kwani, Samson Ubre and Foxy Asobi were conducting the ILG awareness and collecting signatures basically on the roadline project and not the SABL. He was present at the time the road project agreement was signed at the Office of the Governor General but was insisting on the ILG Certificate for his clan. The important aspect of his evidence is that IT&SL had no presence in Kiunga especially an office to conduct business with the Awin landowners including heavy machinery and equipment since 2006. The current feeder road between Gre village and Drimgas on the Fly River was built jointly by Department of Works and Trima Construction Limited.

19 INDEPENDENT TIMBERS AND STEVEDORING LIMITED

19.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment

Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

20 Mr Neville Harsely

(SABL 76-MIROU-10th January 2012 pages 1-72)

20.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

21 The Evidence of Mr Hudson Hape

21.1 The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

21.2 The evidence with respect to this SABL in relation to the Land Investigation are;

21.3 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Montford Awetari appeared as an agent for Tumten and Gre-Dmesuk land groups. His stated village is Gusiore village along Eevala River under those land groups over Portion 1C Awin Pari. Mr Awoke Wando appears as Agent for Uga Somi and Kyankwenai Dmesuke Land Groups with his stated village as Kmom in those land groups. It is improper and fraudulent for a person to be named

in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected.

21.4 There were twenty-six landgroups who participated in the LIR leading to the NEWIL SABL as provided below:

24.1.1 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Montford Awetari appeared as an agent for Tumten and Gre-Dmesuk land groups. His stated village is Gusiore village along Eevala River under those land groups over Portion 1C Awin Pari. Mr Awoke Wando appears as Agent for Uga Somi and Kyankwenai Dmesuke Land Groups with his stated village as Kmom in those land groups. It is improper and fraudulent for a person to be named in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected. There were twenty-six landgroups who participated in the LIR leading to the NEWIL SABL as provided below:

24.1.2. There were nine landgroups who participated in the LIR leading to the TOSIGIBA DEVELOPMENT LIMITED SABL as provided below:

No

Name of Land Group

No of people in land group

Lease Period Agreed (years)

No of people signing Agency Agreement

Names of Appointed Agents

Stated village of Appointed Agents

1

Orasi

21

25

0
Robert Kusagi, Todoba Kusagi, David
Siohomesu

Toboda, Hoduofoi Hang, & Hodguva Hang.

2
Seasu (Whoin)

21

25

0

Yubiai Tionai, Saiyo Tionai, Joe Woyoosu, Thomas Yoyoosu & Joshua Uago
Udamobi

3

Seasu B

16

25

0

Reuben Wasiyo, Someyo Siabo, Daibo Reuben & Debit Siabo
Udamobi

4

Sowasu

39

25

0

Gwagu Kwaro, Kobauo Kwaro, Luke Boiu & Wambi Kowa
Udamobi

5

Siligai

73

25

0

Alex Uwo, Jack Soyuwo, Jacob Dobose, Fayo Dobuse, Wahayo Hahaloi & Kurabieae Gobagui
Kwobi

6

Somulo

18

25

0

Ugo Dimabi, Husi Biago, Brago Husa & Mamisi Ugo
Sodiobi

7

Yowdow

33

25

0

Usaho Wabogo, Huhuo Bedaiyo, Sisa Bedaiyo, Siso Bedaiyo, Danny Bedaiyo, Gau Hawonau & Semion Gase
Siohmesu
8
Sorobo
12
25
0
Waharo Nogo, Bameyo Salia, Waharo Nogo, Saragol
Fabi

Kobo, Sigiba Nogo & Gosomo Habale

9
Wofsaik One
35
25
0
Hawi Wagu, Sepeti Paul, Peter Hawi, Gilayo Dadguba, Gilamo Elo, paul Osalap, Wugolop Aliyebi, Dadgobo Osalap
Yulabi
10
Wowobau
27
25
0
Nomol Toyop, Seyal Abalae, Keloli Nomolo, Koiso Kus, Sigop Bosep, Abawe Bosaip & Dagili Bosaip
Yulabi
11
Alamo Bologia
30
25
0
Gulowo Woiai, Twaiyo Helali, Obo Baboae, Vas Woiai, Nomagai Duka, Woiai Bosobeai, Hiwabi Umai
Kududobi
12
Siyafikiyali
24
25
0
Fesuwan Bogubai, Tibo Siyale, Obaka Fesuwan, Gulo Walo & Allan Amadi Wosiapo
Tiriabi
13
Tiali
18
25

0
Soli Ondiae, Kogea Osugnae, Dimabi Osugnae, Dage Osugnae & Darukwamo Ondiae
Sodiobi
14
Tiga Buwo
21
25
0
Asiye Wahame,
Tilivabi

Dawoko Wahame, Hagowe Kuyamo, Koyabi Wahame & Pogoah Wahame

15
Utugo
16
25
0
Tioma Wologon, Owage Wologo, Gobuku Kesemo & Haneyo Oyaijo
Bebelubi

16
Wosigi
14
25
0
Yowo Hube, Ameyo Oma, Suluky`Hube, Timothy hube & Hube Sosoae
Belubi

17
Beami
10
25
0
Mogodiye Susumo, Komolo Tegeai, Joseph Udae & Soda Gosali
Wodiobi/Siohomeui

18
Siasoso
49
25
0
Togedi Gosalobo, Soki Gosoalobo, Dobi Sabede & Fiaoso Oyali
Wonabi

19
Siagugl Boyabo
43
25
0

Osu Walai, Dohou Gisawe, Gesebiae Gisawe, Sibosoda, Opi Silibae & Usayo Walai

Sokabi

20

Edagisoba

30

25

0

Suwa Yowamo, Bude Kese, Iya Fami, Oska Kese & Ulubadio Esay

Wodiobi

21

Hunhun

11

25

0

Guba Simugu, Ken Osobo, Asele

Wonabi

Simugu & John Guba

22

Kelegege

7

25

0

Swayo Hiyofu, Sisale Nesuae & Hilofo Nesuae

Sokabi

23

Kielen

28

25

0

Sodibai Gaia, Debeka Ede, Moses Sumo, Foyo Gaia & Sumo Suiyo

Sodiobi

24

Dafo Woeamotof i

10

25

0

Hidiai Onyomoi, Made Dewali, Hayou Onyonmoi, Dewali

Bebelobi

25

Bubusi

17

25

0

Kibi Sogawo, Wabo Mogobe & Dakiyo Giyoba

Wodiori

26

Torogofu

26

25

0

Howali Ifagu, Toyobo Hadeomoi, Philip Toyobo, Kosali Soai & Ifagu Busu
Sodiobi

“O” depicts that even though names of villagers appeared on the list, there was no signatures verified as to their endorsement of the agent for the ILG or clan.

The total number of people collated in the LIR report total 658, a far cry from the stated 28, 000 odd persons (1,100 @2% growth) NEWIL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.

Recomendation

The C.O.I makes reference to the Recomendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Recomendation is common to the SABL under review.

The Evidence of Michael Titus

The C.O.I makes reference to the Evidence andRecomendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recomendation is common to the SABL under review.

We only highlight certain aspects of his evidence distinct to this SABL as folows

Mr Titus was engaged by IT&SL to assist Tumu Timber Development Limited at the time Mr Dina Gabo and executives of Tosigiba Development Ltd decided to pursue carbon trading initiatives much to IT&SLs dislike. According to Mr Titus, they were referred to as the „rogue directors? and was considered in our view a sabotage what has been a fruitful cooperation between IT&SL and the landowners. It is confirmed that after the Project Agreement was signed in Port Moresby in May 2011, Mr Titus convened a meeting with Soki Samisi and others at Kiunga for changes to be made to the chairmanship and directorship of the company. Mr Gabo and other executives were not properly advised of that meeting which is contrary to the requirements of the Companies Act.

Recommendation

Mr Titus must be referred to the PNG Law Society for his involvement with the landowners companies whilst been paid by IT&SL constituting serious ethical questions over the conduct of his legal services to competing interests.

Notable features of the Land Investigation process for Portion 14C Aibolo LIR 01/314

Name of Applicant: Kebogas Investment & Tosigiba Investment Limited. On the face of the LIR the site from Kiunga is about 80km east. The sub district is NOMAD which is situated within the project site is about 120km from Kiunga. Each of the 26 clans agreed to 25 years. The population estimated with a 2% growth was 1,100 increase. The consent does not reflect that the majority consented. The LIR was signed on 15th December 2008 and the walk on the boundary was done on that very day Papa

Domonai, North Fly DA signed the recommendation for alienability on 19th December 2008 at Kiunga. – No due diligence and signing took place at Port Moresby and not Kiunga.

* Papa endorses that reservations be allowed for gardening, hunting, sacred sites, rivers, villages, roads and other complementary uses to the project

* Means of livelihood of owners – subsistence farming, nomadic gatherers, hunting and fishing.

Names of Los endorsing agents all appear on the LIR but no signatures endorsing the agents thus affecting the Instrument of Lease – lease back agreement.

Malu and Sikabu signed and Pepi Kimas signed as the delegate of the Minister. Signed at Kiunga on 12th February 2009. (Instrument)

Recommendation

That the owners of IT&SL. be questioned as to their role in facilitating the NEWIL SABL.

Department of Western Province

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

Land Investigation Process

THE EVIDENCE OF IMEN ITA PAPA

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Even though there was evidence of the North Fly District Administrator Mr Dimonai signing recommendations as to alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for a certificate of alienation to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

The Department of Lands and Physical Planning processes SABLs under two main legal criteria prescribed under the Lands Act Chapter 5 (the Land Act). The relevant provision referred to are sections 10 and 11 of the Act and section 102 of the Act.

DLPP file records on SABL Portion 27C Awin Pari disclose that an Application or Tender Form duly filled out by the agent for NEWIL and dated 17th June 2009 was submitted for consideration. The agent whose signature appears on the document was confirmed as those of Mr Hudson Hape, Registered Company Surveyor for IT&SL as having been authorized by NEWIL to be their agent. It was revealed that no such authorization was approved by the Board of Directors, NEWIL on matters related to the acquisition of Portion 27C for SABL.

The purpose of the application was, for Forestry–Reforestation, Sawmilling, Agriculture and Major Road Construction. Estimated Value for Improvement is about K192.0 Million.” The Commission noted with interest that Portion 27C was specifically referred to in the Application. This application was reflected in the application for SABL regarding Portion 1C Awin Pari, Portion 14C Awin Pari and Portion 1C Aibolo symbolically considered as illuminating the manipulation of a foreign corporation over the people of Awin Pari being unsophisticated with a handful of intellectuals.

The DLPP file also disclosed that Mr Simon Malu then Caretaker Manager, Customary Land in a letter dated 24th November 2008 to the Managing Director, IT&SL confirmed issuance of Land Instruction Number for Portion 27C Milinch of Alice; Fourmil: Raggi as 01/316 including references to Portion 1C Awin Pari; Portion 14C Awin Pari and Portion 1C Aibolo. This date confirm that the Land Investigation process was conducted without submission of the most primary documentation that will allow DLPP to carry out vetting on the proposed land in particular existing leases.

Mr Malu instructed IT&LS to liaise with Customary Lands Section and the Fly River Provincial Government Administration to carry out awareness and complete the Land Investigation process.

Land Investigation Report for Portion 27C was completed and signed by Mr Imen Ita Papa Provincial Land Adviser, Provincial Land and Physical Planning Office of the Department of Western Province, North Fly Electorate on 19th December 2008. The LIR comprised 26 clans submitting their consent for 25hectares of their land within the Awin Pari region of Kiunga to be freed up for 25 years.

Recommendation as to Alienability was signed by Mr Ronald Manise Dimonai, District Administrator, North Fly Region of Western Province at Kiunga on 19th December 2008 as was purportedly indicated on the LIR. No reservation for the continuation of reasonable access for hunting, fishing, gardening and other necessities conducive to access onto the land.

Land Investigation Report

The Tender form submitted by the agent Mr Hape from IT&SL for SABL to be issued to Tosigiba Investment Limited is dated 17th June 2009. This application was submitted to DLPP after the issuance of the Instruction Number, the land boundary survey and land investigation; and the lease-lease back agreement. This is fraudulent and would in our view require criminal investigation on the manner in which the process for customary land dealings was corrupted at the very beginning. (Lands Official and IT&SL to be investigated for criminal misconduct and conspiracy to acquire customary land without due regard to the process)

Land Investigation Report was conducted by Mr Hapea from IT&SL. It was submitted to Mr Imen Ita Papa who signed each of the 26 individual clan reports on 15th December 2008. Mr Manase Dimonai, District Administrator North Fly District signed the Recommendation for Alienability on 19th December 2008.

There is fraud involved as the applicant(s) in all the 26 reports refers to Tosigiba Timber Group Limited & Kebogas Investment Limited

Mr Michael Titus was paid by IT&SL to assist the Executives of the umbrella landowner company Tosigiba with IPA registration, meetings, annual returns and also with the ILG forms. (see evidence of Harsley on that retainer arrangements, even though Mr Titus strenuously refused to accept the Commission's observation that he was actually paid by IT&SL to provide legal assistance to the Landowner companies-Tosigiba/NEWIL/Tumu.

Instrument of Lease-Lease Back Agreement

Our investigation confirms that there was two Instrument of Lease-lease Back Agreement in existence. These documents disclose the corruptible nature of the company IT&SL to manipulate the company executives and ILG agents during

the land acquisition process. Major discrepancies indicate that the agreement is tainted with fraud as was evident in the discovery of two lease-lease back agreements over Portion 14C Awin Pari land.

Agreement dated 12th February 2009 (TOSIGIBA 4)

Mr Gabo confirmed signing the Instrument dated 12th February in the presence of Mr Imen Ita Papa at the Provincial Lands Advisors Office at Kiunga. The other eighty one agents as authorized agents of the respective ILG were also present and signed the agreement. He was not aware of the second Lease-Lease Back agreement dated July 2009 that led to the issuance of the direct grant to Tosigiba under section 102 of the Land Act. That agreement was not signed by the Minister or by his Delegate.

Agreement dated 24th June 2009 (TOSIGIBA 9)

This agreement led to the issuance of the Direct Grant signed by Mr Kimas as the Delegate of the Minister for Lands and Physical Planning. The Agreement dated 24th June 2009 was signed by 81 agents of the landgroups but Mr Gabo's signatures is omitted. The agents signed the agreement in the presence of Mr Sikabu Maika and Simon Malu

Title

The substantive title holder to Portion 14C Awin Pari is in the name of TOSIGIBA INVESTMENT LIMITED. It is evident that Tosigiba Timber Group Limited was incorporated in 2006 and is recognised as the umbrella company for 81 landowning clans in the Nomad District.

By letter dated 26th October 2010, Mr Hape of IT&SL wrote to Mr Simon Malu, Director Customary Lands Administration, DLPP for addendum to Notice of Direct Grant under section 102 of the Land Act adding that SABL grantee should be changed to TOSIGIBA TIMBER GROUP LIMITED in compliance with IPA business name requirements.

SERIOUS DEFECTS IN THE PROCESS THAT WE OBSERVE ARE FRAUDULENTS AND CORRUPTIBLE

Period of Lease–lease back

The lease – lease–back agreement in relation to the subject land was executed by parties on 24 June 2009. Land investigation reports, generally are incomplete and or unsigned in most relevant and necessary parts thereof. The Notice of Direct Grant expressly says that a Special Agriculture and Business Lease under section 102 of the Land Act is granted to Tosigiba for a period of 99 years. However, according to the lands investigations conducted purportedly by the Lands Officer based in Kiunga, one Mr Imen Ite Papa, in relation to portion 14C, the landowners were and are not willing to sell their land outright but, rather, were and are willing to lease for only 25 years and not 99 years as stipulated in the Notice of Direct Grant.

The lease period of 25 years as consented to and approved by the customary landowners, as it appears during the land investigations, found the expression as an essential term of the lease – lease–back agreement executed between the landowners and the State. That particular term is found in part 2 of the terms of the lease as set out in the schedule to the lease which says in particular that the customary landowners agree to lease the subject land to the State for a period of 25 years.

There is a glaring contradiction between the term as set out in the notice of Direct Grant and the term set out in the lease entered into between the State and the landowners. In the lease, landowners are willing to give away their land for only 25 years, whilst in the Notice of Direct Grant, 99 years.

The Notice of Direct Grant was signed by Mr Kimas, and it was witnessed by Mr Simon Malu who is now the Director Customary Lands Division, Lands Department Waigani; and Mr Sikabu Maika who was the then Provincial Lands Adviser. (He has now been transferred to Alotau, Milne Bay Province). It is also noteworthy to mention that only 29 of the 56 ILGs from the area, covered by the SABL, signed through their respective agents the lease instrument.

According to the land investigation reports, all the clans owning land within the SABL have, respectively, a population of 1100 persons at 2 per cent natural increase rate per annum. That is the population of almost each and every village that was apparently in which land investigations were conducted.

The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been

issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Dimonai as the District Administrator on behalf of the Administrator of the Western Province in December 2008. In the evidence provided there was found a instruction no. ---- given for the LIR to be conducted, a notice of Direct Grant under Section 102 and the signed Lease/leaseback instrument.

However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback

agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

The Evidence of Simon Malu

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

PNG FOREST AUTHORITY

Files provided to the Commission by NFA reveal that on 25th November 2010 and pursuant to section 90D (8) of the Forestry Act 1991 (Regulation 273 and Form 252) the Board of the National Forest Authority issued Forest Clearance Authority Number FCA 01-01 to IT&SL to carry out larger scale conversion of Forest Road Development. We note from the Forest Clearance Authority (FCA) that clearly stated that "The Project area is about 600 kilometres of road alignment in the North Fly District of the Western Province. It is to be known as the Gre-Drimgas to Nomad Road Alignment. The maximum forest clearance of road corridor from forest edge to forest edge is to be strictly confined to 40 metres (20 metres of both sides of the road centre line). (Refer Schedule 1 and 4(1) of the FCA)".

The Commission however finds that IT&SL has deliberately increased the FCA road line approval for a 40metre forest clearance with an additional 5,000metres clearance of forest under the Contract between the State and IT&SL dated 23rd May 2011. The changes are reflected under Recital "O", "IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road lengths or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline and a distance of 5,000mtres on either side of the road corridor which has been initially agreed with by the traditional landowners." (Contract Agreement at page 7)

In fact the Commission has also sighted an earlier version of the Contract which stipulates as follows; IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover

the timber harvesting period of twenty five years and also to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road 600 kilometres of road length or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline which has been initially agreed with by the traditional landowners.”

That is a major deviation from the original requirement of road clearance as issued by the Board of NFA.

In conformity to the FCA requirements for a performance bond in the sum of K595, 000.00 to be paid within 21 days of the issuance of the FCA, IT&SL provided an ANZ BANK Guarantee in the said sum of K595, 000.00 to NFA on 16th December 2010.

RECOMMENDATIONS

The PNG Forest Authority should cancel the FCA and allow new process to be applied consistent with the Road Line Authority and not for Agricultural purpose.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

No findings and recommendations as no application was made for environmental permit

COI Inquiry File No 48. -- for Special Purpose Agricultural and Business Lease over Portion 1C Volume -- Folio -- Milinch: Aramia, Bosavi, Miwa, Kaim, Soari, Avu, Kotale, Piareme & Samaki, Western Province in the name of Tumu Timbers Development 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 North East West Investment SABL. These were:

1.2.1 Department of Western Province, (DWP)

1.2.2 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.3 Department of Lands and Physical Planning, (DLPP)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 PNG Forest Authority, (PNGFA)

1.2.6 Department of Environment and Conservation, (DEC)

Witness Summons and Statements/ Evidence

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1

Mr Imen Ita Papa,

3-50

1

16/11/11-SABL 58-MIROU

Provincial Lands Adviser,

36-51

5

21/11/11-SABL 61-MIROU

Provincial Lands &

74-75

5

21/11/11-SABL 61-MIROU

Physical Planning Office,

101-103

5

21/11/11-SABL 61-MIROU

DWP

2

Mr Ipisa Biyama, District

63-75

2

17/11/11-SABL 59-MIROU

Administrator, South Fly

62-74

5

21/11/11-SABL 61-MIROU

District, DWP

3

Mr Hudson Hape, Surveyor, IT&SL

13-

6

22/11/11

4

Mr Michael Titus, Lawyer,

5
21/11/11

Private Legal Practitioner

12-13
6
22/11/11

5
Mr Abini Gesele, Councillor of Ai village, Awala Clan of Boyadari Tribe comprising 36 ILGs President of Gogodala LLG & Chairman for Economics in the Provincial Executive Council, Middle Fly (TTL "7"-Statement of Gesele)

36-
3
23/11/11-SABL 63-MIROU

6
Mr Alex Tongayu Registrar of Companies IPA

7
George Deposie

8
Mr Soki Samisi Director of TTGL
Landowner-Wodibi village, Nomad LLG, Middle Fly District
143-153

6
22/11/11-SABL 62 -MIROU

9
Mr Iya Fami
Landowner-Sodiri village, Nomad LLG, Middle Fly Secretary TTGL
154-158

6
22/11/11-SABL62 -MIROU

10
Mr Max Ako, Hospital Administrator, Runginae Rural Hospital, Evangelical Church of PNG, Kiunga
78-85

1
16/11/11-SABL 58-MIROU

11
Mr Solomon Kosa,
8

25/11/11-SABL 65-MIROU

12

Mr Neville Harsely, CEO, IT&SL

1-73

10/01/12-SABL MIROU

13

14

Mr Aaron Dupnai Landowner, Awin Tribe

8

25/11/11-SABL MIROU

15

Mr Pepi Kimas

Former Secretary, DLPP (200 to 2010)

7-87

17/01/12-SABL 80-NUMAPO/ MIROU

2, Parties represented by counsel

2.1 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.”

2.2 The following were granted leave to be represented by counsel

3 Exhibits and documents

3.1 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

Land Investigation Report

C.O.I

/11/11
TTL (1)
2
Survey Map of Portion 1C Aibolo
C.O.I
23/11/11
TTL (2)
3
Notice of Direct Grant No G 78 dated 28/04/09
C.O.I
23/11/11
TTL (3)
4
Instrument of Lease-Lease Back Agreement dated 01/04/09 and Deed of Amendment of the Joint
Venture Agreement between Pisa American Lumber Shareholder Agreement dated 27/02/09
C.O.I
23/11/11
TTL (4)
5
Notice of Direct Grant under Section 102 dated 27
April 2009: Undated Instrument of Lease for Customary Land Lease- lease Back Agreement
pursuant to s 11 of the Land Act.
C.O.I
23/11/11
TTL (5)
6
Special Agriculture And Business Lease dated 1 April 2009.
C.O.I
23/11/11
TTL (6)
7
Agreement Between The Independent State of PNG, Fly River Provincial Government and NEWIL
C.O.I
16/11/11
NEWIL 27C(7)

and KEBOGAS Investment Limited and Tosigiba Timbers Group Limited and PNG Agency for
International Development and Independent Timbers and Stevedoring Limited

8
Statement of Abini Gesele
C.O.I
23/11/11
TTL (7)
9
Personal Statement of Wisa Suspie
C.O.I
23/11/11

TTL (8)
10
Copy of letter from Eco- Forestry dated 9th November 2011 and Copy of Interim Orders OS (JR)
259 of 2006
C.O.I
23/11/11
TTL (9)
11
Copy of Court Proceeding OS 737 of 2011 Initiated by Mr Wisa Susupie
C.O.I
23/11/11
TTL (10)

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Tumu Timbers Development Limited.

Tumu Timbers Development Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G78 dated 28th April 2009 for Portion 1C Aibolo Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 27th April 2009 by the Department of Lands and Physical Planning to the holder Tumu Timbers Development Limited (Tumu).The details of the SABL is shown below:

Legal Description
Portion 1C
Registered Survey Plan Catalogue No
35/15
SABL Holder
Tumu Timbers Investment Limited
Date of Registration of Lease
27th April 2009
Period of Lease
Ninety-nine (99) years
Land area of lease
790,800.0 hectares

The Commission also notes the existence of the SABL Title in the name of Tumu Timber Development Limited which was signed on 10th May 2009 (See Exhibit TTL"6"). This discrepancy indicates the lack of proper supervision and management of land dealings contributed largely by the reckless disregard for proper administrative observance of the land investigation process thus compromising the safe custody and security on indefeasibility of the SABL title (including other State Leases) by DLPP.

IPA

Tumu Timber Development Limited (Tumu) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 20th July 1994 and the current Principal Place of Business is DFK Hill Mayberry, 5th Floor Defens Haus, Corner Champion Parade & Hunter Street, Port Moresby National Capital District. As at 14th April, 2009 IPA records confirms that it is operating and the Company number is 1-22269.

The company status on the IPA Extract is that it is deregistered for failure to file company returns as is required under the Companies Act. Mr of Tumu confirms that the company having submitted returns to IPA, it is currently operating.

The latest IPA company extract provided to the Commission dated 14th February 2011 confirm that there are 81 shareholders comprising Incorporated Land Groups within the land known as Aibolo, North Fly District of the Western Province. The Company has issued total number of 145 ordinary shares.

The extract discloses Messrs Ablie Wape, Wisa Susupie, Yamai Umtadie, Walama Paimama, Billy Toroti and Yaiye Bosai as Directors of the company. Mr Walama Paimama is also the current Secretary of the Company with Mr Wisa Susupie appointed as the Chairman. The Annual return for the company was made up to 17th March 2008.

EVIDENCE OF LANDGROUPS OF STRICKLAND RIVER AND KASUWE RIVER

The proceedings of the inquiry into Portion 1C Aibolo gave opportunity for the landowners to and appear and assist the inquiry with evidence based on their understanding of the SABL and the issue of consent. It is significant to ascertain whether the consent and general awareness was conducted by the Lands Officers or the Provincial administration into all aspects of the land investigation. The general thrust of landowner consensus is that the majority villagers within the road corridor project had consented to the construction of the Trans Papuan Highway, which also included allowance for the clearance of forest area to build the road. That road clearance in compliance with Forestry Act would entail a 40mter road corridor forest clearance.

The evidence of the landowners is indicative of their understanding of what was a genuine road line project becoming a source of venue to acquire customary land under the guise of road project basically to undertake logging activity

Abini Gesele Councillor of Ali village and President of the Gogodala LLG, Chairman of Economics, Provincial Executive Council, Fly River Provincial Government. He belongs to the Awala Clan of the Boiyadari Tribe which has 36 registered ILGs. stated in his evidence and sworn testimony that his clan and

tribe from Ali village, Balimo, Muye village in Lake Murray was not aware of the acquisition of their land under SABL. As their representative, he also stated that the BOYDARI LAND GROUP and BEGUA RESOURCES CONSERVATION did not consent to the acquisition of their land under SABL and they treated the signing of the land deal as illegal and lack the consent of all the members of his tribe and clan. If

there was any agricultural activities was to eventuate on that land then there would have been a submission made to the PEC of which he was a member of the Committee tasked with the oversight of all agricultural activities within the Province.

Wisa Suspie comes from Songoba village and speaks the Doso and Kamula dialect. He belongs to the Kawokwok clan which is situated in Middle Fly of the project area. He is an experienced logger having worked as a Chief Scaler, Marketing Officer for logs, Camp Assistant at logging camps with RH Group of Companies. He currently holds a loggers licence No. 054. He has worked at Kamusi, Teredau, Vailala, and Doa/Tuna Camp (Central Province). He represented his people of the Kamula Doso area which is part of the SANBL encompassing the logging concession known as Kamula Doso TRP operated by RH.

He was the mandated Chairman of Tumu Timbers Development Limited. Tumu is the umbrella landowner company which has 52 ILGs within the Kamula Doso FMA area the shareholder of the company. He confirmed in his evidence that no boundary inspection took place and that proper surveys were not carried out in consultation with Tumu. He told the inquiry that between periods 2006–2008, Tumu under his chairmanship worked closely with IT&SL on the registering each ILGs with regard to the road project. He became concerned when IT&SL prepared the Joint Venture Agreement with the shareholding structure of ninety (90) percent in the name of IT&SL and ten (10) percent to Tumu. The control of

the joint venture company will be in the name of IT&SL, which will nullify the sub lease requirement under the lease back title in the name of Tumu. His group was referred to as the rogue directors by IT&SL (Harsely/Titus) when they decided in 2009 to pursue carbon trade as a means of preserving their forest due to the forest concession held by the forest developer RH.

He confirmed that after the signing of the road agreement at Port Moresby on May 2011 Mr Harsely directed Mr Titus to organise and convene a meeting of BOD basically to deal with the continued leadership of Mr Suspie, A aircraft at the expense of IT&SL was chartered to transport all the directors to Wawoi Falls. That meeting was convened on location at Wawoi Falls and on 9th May 2011 Inwapa Yama was appointed as Chairman, Nodie Imare and Walama Painama was appointed as Directors replacing Mr Suspie's executives. The meeting was convened without proper notice given to Suspie and his executives to be present at that meeting. It was stated in evidence that IT&SL was trying to protect the SABL interest and that he was seen as an obstacle to IT&SLs role in bringing economic development to Western Province.

He has confirmed that there two factions created over the leadership and directorship of Tumu, the subject of current proceedings in the National Court. The other faction is led by George Deposie and the current records at IPA indicate that both Deposie and Suspie are not registered as Directors of Tumu.

Mr Solomon Kosa who is the spokesman for the other 5 SABL in the South Fly District informed the Commission that there was a dispute between Tumu Timber Development Corporation and Wawoi Tumu Holdings over the FMA concession for the harvest of timber within the Kamula Doso area. It transpired that there is a current proceeding in the National Court between the two landowner company over the FMA concessions. The subject of the proceedings

is not known but the essence of that proceeding is for the reason that Wawoi cannot renew and obtain extension for FMA to carry out logging activity within Makapa FMA and Wawoi Falls FMA on the basis of the SABL that was issued under the name of Tumu Timber Development Limited. He said in evidence that the majority of the people wanted to continue with logging activity but was

now restrained because of the SABL. Further to that the National Forest Authority has advised that it would not issue any new FMA for the area until the SABL issue was resolved. Mr Kosa was assisting the warring groups in resolving the differences with the intent of carrying on logging in the area. According to Mr Kosa, Waoi Guavi Timber company was requested by NFA for extension of Wawoi Guavi operations of 791,000, 200 hectares of land is heavily forested area. The Kamuladoso FMA was signed in 1997 having lapsed was the subject of an application by the company seeking renewal and extension of the FMA.

Aaron Dupnai comes from the Giponai village some 30km up the Fly River from Kiunga, He represents his people of the Gre Clan of the EKium Tribe. At the time of the hearing, Mr Dupnai in the company of his people in their traditional regalia in a silent protest holding placards simply calling for their land under SABL to be returned to them. Mr Dupnai registered his people's complaints over the acquisition of their customary land by the umbrella Landowner Company and IT&SL without the knowledge and consent of his people. He also expressed a number of matters that will require further investigation especially over the lack of consent and the forging of signatures on the consent form, the road corridor extension of forest clearance to 5km in breach of the Forestry Act and the lack of financial capacity of IT&SL to construct the road.

INDEPENDENT TIMBERS AND STEVEDORING LIMITED

The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

The Evidence of Mr Neville Harsely

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

The Evidence of Mr Hudson Hape

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

The Evidence of Michael Titus

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

PISA AMERICAN LUMBER JOINT VENTURE COMPANY

Pisa American Lumber Joint Venture Limited (PALL) was set up as a joint venture company for IT&SL and Tumu Timber Development Ltd. The Deed of Amendment Joint Venture Shareholder Agreement (Exhibit TTL"4") between

IT&SL, Tumu Timber Development Ltd Pisa American Lumber Ltd, and Neville Harsely was executed

on 5th February 2009. The agreement was prepared by Gadens Lawyers based in Queensland, Australia. The Commission is concerned that the instruction and the agreement was done outside of PNG when there were law firm quite capable of preparing an agreement that is for the benefit of the landowners and not the developers as will be highlighted in the content of the shareholders agreement.

“A. Very serious and this why we started with a process of what we needed and what the people needed by the MOUs through the contracts so the landowners counsel, under those contracts if we do not perform? they can sue us. They can sue for damages. We have had a reputable Australian Law Firm with offices in PNG in Gadens draw up those contracts. So we have provided rights in equal parity to the people and to us so if we do not perform counsel, the landowners can physically take us to court and sue us and we can be cited for breach. This project is covered by a project agreement and it provides for provisions under that project agreement for legal ramification so that landowners are also as an insurance policy are protected by the project agreement.

(Refer to his evidence at page 25 commencing line 44 to and Exhibit NEWIL 27(7))

Recital (A), (B), (C),(D)(E) &(F) sets out the background to the agreement. I set out the pertinent recitals below;

A. “IT&S is a PNG Company and holds a Certificate of Registration as a Forest Industry Participant (registration number F101573) and is

recognised under Part IV of the PNG Forestry Act1991. The Company is certified to harvest, process and sell forest products in PNG.

B. Tumu is an umbrella company representing each and every customary landowner and/or Incorporated Land Group (ILG) of all land in the Kamula Doso (“KD Area”) FMA Concession. Tumu is duly incorporated and registered under the laws of PNG and is the company recognised by the Provincial and National Government as the legal entity representing the rightful landowners of the KD concession area.

C. KD Area is an area of land in the Western Province that has been identified by the State of PNG (“State”) and the PNG Department of Forestry, as a Forest Management Authority Timber Concession (“FMA”) as recognised under the PNG Forestry Act 1991, and described as Portion 1C, Aibolo, LIR No. 01/317, in the Locality of Balimo, District of Middle Fly, Western Province, on Survey Plan Cat No, 35/15, having an area of 790,800 hectares.

D. IT&S and Tumu have formed a joint venture (the Joint Venture) to undertake the commercial development of the timber and other forest resources within the KD FMA as granted under the Forestry Act 1991, and have set out the terms and conditions of their joint venture in an agreement dated 30 November 2007 (the Joint Venture Agreement)

E. Pursuant to the Joint Venture Agreement, IT&S and Tumu have established and registered Pisa as a special purpose entity for the purpose of the Joint Venture.

F. IT&S and Tumu have required that Pisa agree to carry out the terms of the Joint Venture Agreement on its part required, and Pisa has agreed to do so.”

We are concerned that the Agreement does not accord any right to the landowners to exercise free will and decision on nominating a developer over land dealings affecting pristine forest located within the said project area. The Agreement is in my view an attempt to substitute the „sub-lease? process under the lease back system and introduce the joint venture agreement which we strongly believe undermines the landowner?s ability to use the process the lease in accordance with agriculture, the central basis for the lease.

Clause 1.4 and Clause 1.5 of the Lease Back Agreement states;

“Clause 1.4. In a lease-lease back agreement, the Customary Landowners are the “Lessor” and the State becomes the „[Head] Lessee? and when the land is leased back as agreed, it becomes a Sublease arrangement, hence, the person(s), land group, business group or other incorporated body nominated/appointed by the Customary landowners become the „Sublessee?.

Clause 1.5. The Sublessee can either retain the registered interest that it secures and develop the land according to the agreed special agriculture and business lease terms and conditions or it can further „Sub-sublease? the land to another party (i.e: a developer, etc.) for the remaining term of the lease.”

In addition the agreement does not accord any room for benefits to flow from any proposed agricultural activity as envisaged under the SABL process but one that is concerned entirely on the construction corridor and logging. The following are some examples of such exploitation that is to occur and contravenes s of the Fairness of Transactions Act, 1999,

1. IT&S will hold 90 Ordinary shares and Tumu holds 10 A (Royalty) Class shares hence IT&S retains the controlling interest over the SABL lease and the payment of royalties. (Clause 2.1 (a)- Shares in Pisa; Clause 2.1 (e) Royalty payable under the Marketing Agreement)

2. Clause 2.1(f) imposes an obligation on Tumu to take all steps to arrange with the customary landowners and the State and to secure the Minister for Land?s agreement and all statutory and legal approvals for leasing of the customary land covering the whole of the project area for the purpose of lease-lease back agreement and to ensure the leasing by Tumu to Pisa of the whole of the Project Area for the purpose of logging and taking of timber and associated purposes in accordance with any rules and guidelines from time to time provided for under the Forest Act (the Business Lease).

3. The holding of Timber Authorities by Tumu whether now held or granted in the future in respect of the project area are to be assigned to IT&S and it may direct that those rights be granted to Pisa. Under clause 2.1(g), Tumu shall not grant (or procure or consent to the grant of) any logging rights in the Project area to any other party other than IT&S or Pisa...”

4. Clause 2.1 (h) (Right to timber; undertaking of logging and marketing operations) provides that “IT&S shall itself undertake (either itself or by

any independent contractor or contractors) all logging operations on the project Area”. Pisa is also required to grant IT&S the right to take for its own benefit timber from the project area, and any benefits of carbon sequestration in respect of those areas.

5. We also note that under clause 2.1.(j)(k)(l) the reference to the project area to mean the actual road construction corridor and the requirement under the Forestry Act 1991 for a road corridor of 40metre from the centre line. The JV agreement was executed to give effect to the notion that IT&SL would require an additional 5000 metres to harvest logs within the road corridor, an agreement they insist was agreed to by the landowners. We deem this as irresponsible action and the Agreement contravenes the statutory requirements stipulated under section 90C of the Forestry Act, 1991, hence it is illegal and null and void. The reference to the 5,000metres can be found under Clause 2.1(i) (iii) of the JV Agreement and Recital “O” of the Project Agreement

6. The agreement also contravenes the provisions of section 102() of the Land Act, in relation to payment of rent whereby clause 2.1 (l)(v) and (n) states that „entitlements of Pisa to royalties...are in lieu of any other right to compensation (whether by way of royalties or rent payable under the Business Lease or fees or royalties payable under any Marketing Agreement or under any Management Agreement (or otherwise) payable to Tumu or the Incorporated Landowner Groups which represents in respect of the Project Area...the royalties payable under the agreement shall be reduced by the amount of that payment. We take the view that any land rental or compensation paid will be deducted from the royalty paid out of the logs harvested subject to the share component of Tumu 10 “A” (Royalty) Class shares.

Whilst the reference to the construction corridor this agreement also provides IT&SL through its controlling stake in Pisa to have access to all the land under Portion 1C Aibolo.

Recommendation

The agreement should be nullified as it contravenes the Fairness of Transactions Act in relation to the inability of Tumu to benefit fully from what is to be a logging operation been legitimised under the guise of the JV Agreement,

The roadline requirements under section 90C of the Forest Act have also been contravened.

The lease back requirement for sub-lease has not been executed and that the JV Agreement cannot be the ideal substitute as it only progresses the intent of IT&SL to use PISA as the vehicle to carry out logging activities not only in the construction corridor project area but the entire - hectares of land.

Department of Western Province

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

Recommendation

That the SABL be revoked as the fundamental aspects of land mobilization through the ILG process and LIR process was not independently processed by DLPP in collaboration with the Department of Western Province.

That the Provincial Lands Officers undertake training workshop to be facilitated by the DLPP as a

compulsory course for all public servants of any agencies of government involved in the land investigation of state leases and in particular the SABL process either in the present format or a new format that is subject to government intervention as this system of SABL process is abused and entrenched.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Even though there was evidence of the District Administrator signing recommendations as to alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for a certificate of alienation to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

Recommendation

The SABL is to be revoked as the Certificate of Alienability was not signed by the Custodian of Customary Land.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The Evidence and Recommendation is common to the SABL under review.

The C.O.I highlights distinctive features of the SABL,

The Lease-lease back agreement was signed by the agents authorized by the fifty-two (52) landowning clans/groups of Portion 1C Aibolo and Hon. Dr. Puka Temu (now Sir), Minister for LPP on behalf of the State on 24th June 2008 in the presence of Sikabu Maika (then Advisor Lands-WPA) and Simon Malu, Customary Lease Section, DLPP. Clause 2.0 of the lease-lease back agreement refers to the customary landowners listed in the LIR and the nominated representatives and agents whose signature appears in the Agreement. That clause implies the important nexus with the LIR and in this case fifty-two (52) individual LIR was not conducted by Mr Biyama. This agreement therefore was executed without the primary document authenticating consent of the majority landowners apart from the two parts of the LIR referred to above. The lack of due diligence or deliberate attempt on the part of the persons so implicated constitutes the lack of majority consent for the release of the land for agriculture and business activities.

The evidence of Simon Malu

The C.O.I makes reference to the evidence under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was unable to sight any agricultural reports arising, as the main thrust of the developers interest was on the construction corridor and ensuring that approvals be granted for harvesting of forest products within the confines of the project area (Trans Papuan Highway).

PNG FOREST AUTHORITY

The Commission noted that on 25th November 2010 and pursuant to section 90D (8) of the Forestry Act 1991 (Regulation 273 and Form 252) the Board of the National Forest Authority issued Forest Clearance Authority Number FCA 01-01 to IT&SL to carry out larger scale conversion of Forest Road Development. Of note to the FCA was the fact that "The Project area is about 600 kilometres of road alignment in the North Fly District of the Western Province. It is to be known as the Gre-Dringgas to Nomad Road Alignment. The maximum forest clearance of road corridor from forest edge to forest edge is to be strictly confined to 40 metres (20 metres of both sides of the road centre line). (Refer Schedule 1 and 4(1) of the FCA)".

The Commission however finds that IT&SL has deliberately increased the FCA road line approval for a 40metre forest clearance with an additional 5,000metres clearance of forest under the Contract between the State and IT&SL dated 23rd May 2011. The changes are reflected under Recital "O", "IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road lengths or which is the greater of the two for selective

harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline and a distance of 5,000mtres on either side of the road corridor which has been initially agreed with by the traditional landowners." (Contract Agreement at page 7). There is fraud involved in this case as to how IT and SL managed to increase harvesting of timber from 80 wide road corridor on 20 meters either side of the road with an additional 5,000 meters clearance of forest under the contract between the

In fact the Commission has also sighted an earlier version of the Contract which stipulates as follows; IT&SL in consultation with the landowners, is seeking timber authority (TA) permit to cover the timber harvesting period of twenty five years and also to cover the harvesting of log product covering some seven thousand (7000) cubic metre per kilometre and or selective harvesting of timber from 1000 hectares per kilometre of road 600 kilometres of road length or which is the greater of the two for selective harvesting of commercial species and the removal of timber from 40 metre road corridor or 20 metres either side of the road centreline which has been initially agreed with by the traditional landowners."

That is a major deviation from the original requirement of road clearance as issued by the Board of PNG National Forest Authority.

In conformity to the FCA requirements for a performance bond in the sum of K595, 000.00 to be paid within 21 days of the issuance of the FCA, IT&SL provided an ANZ BANK Guarantee in the said sum of K595, 000.00 to NFA on 16th December 2010.

RECOMMENDATIONS

That FCA for Portion 1C is cancelled pending fresh application for Roadline Authority.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

No evidence of application for DEC Level 3 Environment Impact Statement We make no findings and Recommendation

PART B–SOUTH FLY DISTRICT–WESTERN PROVINCE

Five SABLs are registered in the Middle and South Fly District of the Western Province. The landowner companies represent the people living along the floodplains, plains and plateau along the tributaries of the Fly and Strickland Rivers. The population density of the Western province is the lowest in the country and represents 2 persons per square kilometre. That is based on the population figure for the province at 153,30422 and a total land area of 98, 541.2 hectares. (Refer to Exhibit FD”5” Natural Resources and Land Use Potential of PNG compiled by the Land Utilization Section of DAL–Francis Daink)

That statistics provides a useful guide to the landowners as to the type of economic crops suitable for their land in terms of the lease–lease back scheme. The landform for the Middle Fly and South Fly District is predominantly floodplain landform and is more extensive and has characteristics of major river systems and the drainage and watershed basins to which these land areas are associated.

The type of economic activity and tree crops to be planted are compatible to soil suitability for the region with respect to oil palm is marginally suitable indicating an area whose limitations are more than two limiting factors such as a number of environmental factors are identified as being constraints to the growth and production of a crop. Cocoa has the potential to yield favourably further from the river tributaries and in the forested areas and may not suitable if planted on the coastline or the tributaries that is the land arability test is virtually unsuitable.

22 Figures from 2000 Census

The four landowner companies including a land group corporation come from the area known as the Wawoi Guavi TRP In 1982 logging operations commenced in the Wawoi Guavi area up and including the date of the inquiry hearing at Kiunga. The landowners themselves were aware that the TRP was to expire on 10th April 2012 and that the area according to evidence has been the subject of logging, second entry logging and re–logging along what is the Wawoi river and the Guavi river, hence the name of the logging operator Wawoi Guavi Timber Company.

The people have suffered throughout the logging operation for over a period of 20 years and have not been formally informed about the exit strategy of the company in terms of benefits and other economic activities that will enhance the livelihood of the people in that area. It was on this basis that the villagers commenced a series of meetings with regard to the future land use program after the logging company had exited. This was the major thrust of their resolve to seek assistance from RH to assist in the oil palm development. That drive for economic independence and development for the Wawoi Guavi area commenced in 2008 with the application for SABL and direct grant of the lease back on or about 2009.

COI Inquiry File No 49 for Special Purpose Agricultural and Business Lease over Portion 5C Volume 35 Folio 104 Milinch: Guavi, Fourmil: Aworra Western Province in the name of La Ali Investments Limited

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.

Witnesses were called from the six government agencies involved in the issuance and operation of the La Ali Investments Limited SABL. These were:

- 1.2.1 Department of Western Province, (DWP)
- 1.2.2 Department of Provincial Affairs and Local Level Government, (DPALLG)
- 1.2.3 Department of Lands and Physical Planning, (DLPP)
- 1.2.4 Department of Agriculture and Livestock, (DAL)
- 1.2.5 PNG Forest Authority (PNGFA)
- 1.2.6 Department of Environment and Conservation, (DEC)

Witness Summons, Statements/ Evidence

The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1
Mr Ipisa Biyama, District Administrator, South Fly District, DWP
63-75
62-74
2
5
17/11/11-SABL 59-MIROU
21/11/11-SABL 61-MIROU
2
Mr Solomon Kosa, Landowner and Lead Consultant
8
25/11/11-SABL 65-MIROU

3
Mr Francis Daink, Deputy Secretary, PATS, DAL

2012

Parties represented by counsel

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.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were nine (9) 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	Land Investigation Report	C.O.I	/11/11	La' Ali (1)
2	Survey Map of Portion 5C Aworra	C.O.I	25/11/11	La' Ali (4)
3	Notice of Direct Grant No G 217 dated 30/10/09	C.O.I	25/11/11	La' Ali (1)
4	Instrument of Lease-Lease Back Agreement dated 24/07/08	C.O.I	25/11/11	La' Ali (2)
5		C.O.I	/11/11	

La' Ali (5)
6
Special Agriculture And Business Lease dated 6
C.O.I
25/11/11
La' Ali (3)

November 2009

7
Report of Development Proposal
C.O.I
25/11/11
SK "1"

8
Copy of Sub-lease proposed between Godae Landgroup Incorporated and Sovereign Hill PNG Ltd
C.O.I
25/11/11
SK"2"

9
Proposed Infrastructure Map of Wawoi Guavi Consolidated TRP
C.O.I
25/11/11
SK"3"

Timeline of events of note surrounding LA'ALI SABL Title

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

1
Incorporation of La? Ali Investments Limited
02/09/09
La? Ali Landowners
La? Ali/

2
Application or Tender Form for SABL to Portion 5C Aworra
14/08/08
La? Ali/ Mr Gabei Gaima, Chairman, La? Ali Landgroup Committee
DLPP

3
Survey Plan Catalogue

4
Land Investigation Reports
26/11/08
Mr Ipisa Biyama/District Lands Officer, WPA
WPA/Provincial Administrator

5
Recommendation for Alienability
05/12/08
Sikabu Maika, Advisor- Lands and Physical Planning-WPA
DLPP/Secretary

6
Instrument of Lease- Lease Back Agreement
24/07/08

7
Notice of Direct Grant
30/10/09
La? Ali Investments
Limited

8
SABL Lease Title dated 6 November
2009
6/11/09

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by La Ali Investments Limited.

LA'ALI INVESTMENTS LIMITED

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G217 dated 30th October 2009 for Portion 5C Miromu Land. The term of the lease was for seventy (70) years. A Special Agricultural and Business Lease was registered and issued on 30th October 2009 by the Department of Lands and Physical Planning to the holder La? Ali Investments Limited (La? Ali).The details of the SABL is shown below:

Legal Description
Portion 5C
Registered Survey Plan Catalogue No
36/21
SABL Holder
La? Ali Investments Limited
Date of Registration of Lease
30th October 2009

Period of Lease
Seventy (70) years
Land area of lease
7,170.0 hectares

IPA

The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

La? Ali Investments Limited (La? Ali) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG

under the Companies Act 1997. The Company was incorporated on 2nd September 2009 and the current Principal Place of Business is 39, 4 Ilimo Street, Boroko National Capital District. As at 5th August, 2011 IPA records confirm that it is operating. The Company number is 1-69420.

The IPA company extract provided to the Commission confirm that there are three (3) shareholders namely Messrs Bawage Bosei, Samoge Gabei and Max Mekere. The Company has issued total number of 3 ordinary shares.

The extract discloses Messrs Bawage Bosei, Samoge Gabei and Max Mekere as Directors of the company. Mr Max Mekere is also the current Secretary of the Company. The last annual return lodged with IPA was not found. Mr Kosa states in his evidence that Siko Gabei is the Chairman of La? Ali.

That is confirmed by the sworn Affidavit by Siko Gabei dated 5th September 2011 and submitted to the COI on 21st September 2011 stating that he was the Chairman of La?Ali. He also supported the evidence of Mr Kosa wherein in respect of the SABL title “that all mandatory processes and procedures required under the Land Act of 1996 and other enabling Acts and Regulations in obtaining the Special Agriculture and Business Lease Titles have been complied with at all material times.” (refer to paragraph 4 of the Affidavit of Siko Gabei).

The Commission was unable to verify with Mr Kosa, whether Siko Gabei was the same person named in the IPA extract as Samoge Gabei, otherwise the chairmanship of Siko Gabei in La?Ali is illegal and not recognized according to law.

Recommendation

The C.O.I recommends that the Shareholding and Directorship be reviewed and changed to include all the ILGs representatives in the landowner company.

EVIDENCE OF CONSULTANT TO LA’ALI INVESTMENTS LIMITED

Mr Solomon Kosa is a common witness to the five SABLs located in the Wawoi Guavi timber

concession area. He comes from the La?Ali clan. The Commission noted his demeanour to be one of sincerity and honesty, there any faults that arise resulting from the inquiry was intentional but one principally to assist his fellow villagers to engage in economic activity before the departure of RH the logging operator in April 2012.

He basically coordinated and negotiated the setup of the five landowner companies according to his evidence as a trial basis for further involvement of other villagers within the TRP concession. In his evidence he states that the villagers comprising the five companies were located in Block 1, 2 and 3 of the TRP, where logging had taken place, replaced by secondary forestry growth and relogging by RH.

Mr Kosa initiated negotiations with RH and advised that the landowners had identified 60 hectares of land for the purpose of oil palm estate, to which RH was obligated to assist before the TRP expired. Whilst that was Mr Kosa's understanding, it was also important for him to appreciate that the TRP was the responsibility of the National Forest Authority and any other benefits and infrastructure development for the people would be found in the TRP agreement and this was not availed to the Commission.

However the SABL process was a way forward for his people and also to set up any economic base for the Wawoi Guavi region of the province. The actual land investigation process has been included and SABL titles issued for each of the five villagers involved in this agricultural business venture.

Mr Kosa was asked as to the reasons why he failed to have dialogue with DAL, DEC and National Forest Authority, which was a major concern to the progress of the oil palm initiative. He admitted that since he was dealing with DLPP, it became priority that the process be completed. He was to embark on the next process and that was to pursue dialogue with DAL, DEC and NFA.

The Commission's concern was the failure of Mr Kosa and his group to consult NFA, DAL and DEC who are considered as part of the SABL package. He explained in his evidence, "...That is why in my report I have stated there agriculture the project proposal is going to be prepared by the Agriculture Department. Agriculture Department will prepare that and give it to the developer and the Agriculture Department prepare that, they will give to us and we have a look at it before signing anything. So next is environment and continue until."

An agriculture report was also exhibited as relates to the proposed Wawoi Guavi Oil Palm Project.

By a letter dated 08th August, 2011, a Mr Solomon Kosa who appears to be a Consultant and or spokesperson for Mudau (Portion 6C) and four (4) other SABL holders from the Balimo area viz La?Ali Investments Ltd (Portion 5C); Godae ILG-(Portion 7C), Haubawe Holdings Limited (Portion 8C) and Foifoi Limited (Portion 9C) has written to the Commission of Inquiry to give evidence on the herein mentioned SABLs.

Mr Kosa in his correspondence claims that all processes and procedures required for acquisition of customary land and subsequent registration and grant of SABLs over the land so acquired have been followed.

Mr Kosa further says that only the processes involving the Department of Agriculture and Livestock (which is to do with the preparation, submission and approval by the DAL of an Agricultural Development Plan and of the PNG National Forest Authority (as to the presentation and submission

of an application for a Forest Clearance Authority under section 90C of the Forestry Act 1991 (as amended) still remain to be completed.

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“A: ... It will be a disgrace for my people, Commissioner, if my five ILGs or five SABLs take a long time, as I have mentioned earlier, timber permit is expiring next year and our only access, our only light is through that logging operations. Logging goes out, we are left behind. We will be back seven, ten times backwards without the developments. Please if while going through if you have seen that I have followed the process rightly or if there are some errors I ask the Commission that you can use your powers and enable me and my group to complete the process as soon as possible. And I

am saying, I have been wondering, why I am here if I have already from my knowledge completed the settle process that is required under the law of Papua New Guinea. Without completing all other process I should not be here. I live this to your good hands, I hope and trust our Heavenly Father will bless your job, your work that you are now commissioning, good Lord will bless as you move on to make decisions in the near future. Thank you.”

SOVEREIGN HILL (PNG) LIMITED

The proposed developer for the SABL is Sovereign Hill (PNG) Limited (“Sovereign”) was incorporated in PNG on 14 April, 1987 and is currently operating as a company in PNG. The IPA company registration number is 1- 12045.

The registered address of the company as at 1 April 1995 is Section 479, Allotment 1, Kennedy Road, Hohola, National Capital District (PO Box 5697 Boroko, NCD).

In terms of the share structure and composition of shareholders the company has issued a total of 1000002 shares. The IPA historical extract dated 19th September, 2011 reveal that the following shareholders as Mr Ik King Tiong, a Malaysian national issued with one (1) ordinary share on 14 August, 1993; Rimbunan Hijau (PNG) Ltd, issued with 999998 ordinary shares on 15 August, 1992 and one (1) ordinary share on 30 June 2000. The records reveal that Mr Tiong resides at 11 Collyer Quay, #15-01 The Arcade, Singapore

The current Directors of the company are Messrs Hiew King Tiong, Thai King Tiong, Ik King Tiong, James Lau Sze Yuan, Ivan Su Chiu Lu and Chiong Ong

Tiong all Malaysian nationals. The extract show that apart from Ik King Tiong, James Lau Sze Yuan and Ivan Su Chiu Lu, the other three Directors reside in Singapore and Malaysia respectively. The company Secretary is Geok Liam Wong who commenced on 21 October 1996.

The Commission was not able to verify with IPA whether or not the company had applied for certification as a foreign entity operating in PNG due to the composition of the directorship of a company that is foreign by its operation. The lack of certification by IPA on the type of activities to

be carried out by the company to undertake oil palm estates and in particular, its credentials in the area of oil palm management either in PNG or in Malaysia is quite questionable, because the current logging operator of the Wawoi Guavi area is Rimbunan Hijau.

A sub-lease arrangement appears to have been proposed by La?Ali, to be entered into with a company called Sovereign Hill (PNG) Limited. However, this proposed arrangement is only in draft form and an unexecuted copy thereof has been provided to the Commission as part of the SABL title holder?s submission to the inquiry. The Commission notes that the sub-lease agreement in its current format is a standard agreement that we have sighted in other sub- lease arrangements with other SABL the subject of our inquiry that may contravene the Fairness Transactions Act.

The Commission notes that no work has been undertaken since the title holders negotiated with Sovereign to establish the Oil Palm and Forest Plantations project in the forest concession area.

Recommendation

Soveriegn Hills is a Logging Company and registered by IPA to carry out logging in the country, The current arrangement should be cancelled and negotiations preferably through the Provincial Administration and the Department of Commerce and Industry to find a Developer that is capable of establishing high impact agricultural project.

Department of Western Province

The Department of Western Province is the bureaucratic arm of the North Fly Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the La?Ali SABL there was formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of Western Province.

Findings

Mr Ipisa Biyama, the District Lands Officer for the Middle Fly District conducted land investigation for the La?Ali clan on the 26th day of November, 2008. According to the report he interviewed and compiled statistics accounting for 86 persons on the day of his visit. That may not constitute a fair representation of the villagers of Wareho on site where the investigation was conducted.

Further, as it appears from a perusal of the LIR the landowners of the La?Ali clan of Wareho village, Kamusie, Balimo gave their consent for the acquisition

of their customary land by the State and to later, as it appears, have it registered as a State Lease under section 102 for a period of seventy (70) years.

The population density is very low within the subject area and estimated at 250 hectares per person.

It also appears to be demonstrated by the LIR that in terms of its current usage the land area covered by the SABL, it is under the Wawoi-Guavi TRPA logging concession of the RH Group of Companies.

According to the Schedule of Owners Status and Rights to Land of Clan contained in the LIR only the landowners/villagers of Wareho Village, Kamusie signed and or gave their consent and their approval for the acquisition. In total 69 of them appear to have given their consent.

The Commission has noted that Max Mekere a director of La?Ali has not formalised his consent under the schedule which includes the names of Gabei Gaimili, Siko Gabei, Bawage Bosei and Solomon Kosa all of Wareho village. The name of Mr Mekere is missing from the list and we have not verified this with Mr Kosa to date, hence it is highly questionable for a director of the company not to be involved in the LIR process. The company had no corporate legal status in so far as the issuance of the title was to be made out to La?Ali Investment Limited as the landowner umbrella company for the La?Ali clan.

There is no formalised ILG for each of the landowner clans which is a substantial aspect of landownership through clan/tribes as was evident in the landowner companies in the North Fly District. Therefore with the lack of ILG representation, the activities of the company seem to be placed on a three (2) men directorship, though questions now arise whether or not the company

represents the true intention of each and every member of the tribe/clan living on Aworra land.

On the 4th day of December, 2008 the Certificate in relation to Boundaries was executed by Ipisa Biyama, the District Lands Officer has having walked along as far as practicable and indicated the boundaries of the subject land also on the 5th day of December, 2008.

The Recommendation as to Alienability was executed and issued on the 5th day December 2008 at Kamusie by a Mr Sikabu Maika, the then Advisor for Lands and Physical Planning, Western Province Provincial Administration. Mr Sikabu was an officer in charge of the Division of Lands and Physical Planning within the Department of Western Province and was not delegated with the responsibility of signing the recommendation for alienability. That recommendation is flawed because it was signed off by either the District Administrator for Middle Fly or the Provincial Administrator who is the administrative head of the Provincial Administration.

This investigation report was in my considered view rushed to give effect to the changing circumstances of the expiry of the logging concession in 2012 and the need for continued economic activity with lack of proper formation of ILGs within the area, the lack of structure within the directorship and shareholding of the company and the complete trust in engaging a company whose major concerns was logging whereas no infrastructure or economic activity was identified for the good of the people.

Recommendation

That the SABL be suspended pending a fresh LIR to be re-conducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

That Mr Ipisa Biyama and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Even though there was evidence of the Mr Sikabu signed the recommendations as to Alienability of customary land for La?Ali Investment Ltd, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for Certificate of Alienation (COA) to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

The Department of Lands and Physical Planning processes SABLs under two main legal criteria prescribed under the Lands Act Chapter 5 (the Land Act). The relevant provision referred to are sections 10 and 11 of the Act and section 102 of the Act.

The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Sikabu as the Advisor, Lands and Physical on behalf of the Administrator of the Western Province in December 2009.

In the evidence provided there was found no Land Instruction Number was given by DLPP for the LIR to be conducted. That may be minor flaw in the process as we have noted that an officer of the Department of Western Province and a Senior Lands Officer conducted the Land Investigation.

However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

APPLICATION AND/OR TENDER FOR SABL

The Application or Tender Form for SABL and Lease/Lease Back submitted by a Mr Gabe Gamili on the 14th September, 2008, the proposed improvements and

purpose for the subject land is for large scale Agricultural (Oil Palm) Plantation with:-

- (a) Administration Offices
- (b) Housing Blocks for Staff, Employees and Local Residents
- (c) Nursery Sites and Buildings
- (d) Power lines & Electricity Supply;
- (e) Domestic Water Supply System;

- (f) Drainage & Sewerage reticulations;
- (g) Warehouse and Store Building;
- (h) Processing Plant; and
- (i) Road network

The Commission was not able to verify from DLPP records if any proposed oil Palm Agricultural and Business Plans was submitted to National Forest Authority and DAL respectively.

Land Instruction Number

Commission was not able to verify whether a Land Investigation number was issued, but the involvement of Mr Biyama as the investigator confirms that the instruction was issued to the Department of WP to conduct investigation.

Land Investigation process

The Landowners confirmed their intention to allow their land to be leased for a period of 70 years. That was inserted into the Direct Grant and SABL Title and is not contested.

Reservation for customary rights

Mr Biyama made the following recommendations (page 2 of LIR)

“The following be considered;

- * Hamlets not to be disturbed and allow forest buffer zones encompassing village
- * Graveyards and sacred sites be left as they are;
- * Buffer zones along waterways and creeks to stop erosion (maybe 50m).
- * Maintain natural sago clumps for local staple diet.

He also recommended, “...it is important to note that the landowners still maintain a traditional way of life. They live on subsistence farming, hunting and gathering and depend on bush materials for housing requirements. Given the foregoing, there must be reservation and conservation of certain areas for essential landowner needs for their livelihood.”

The Commission fails to identify from the Direct Grant and the SABL title that this reservation was considered as important for the continued use of the land was not included on the Notice of Direct Grant and the SABL Title. It is a concern that the officer concerned the late Jacob Waffinduo and including other lands officer have a duty to ensure that the relevant reservations are clearly inserted prior to submission to the Minister of his delegate to sign the Notice of Direct Grant. In addition to that, the recommendation as to alienability does not clearly demarcate whether reservations can be made or not. The reference to an attachment A is also missing and is misleading.

INSTRUMENTS OF LEASE & REGISTRATION

On the 24th July, 2008 a lease/lease back agreement (“instrument of lease”) was executed between the State and the landowners in respect of the subject land covered by the SABL.

Further, a Special Agriculture and Business Lease was registered and vested in La?Ali Investments Limited over the subject land on 06th November, 2009 and comprised in the Registrar of State Leases Volume 35 Folio Number 104.

The Commission notes that La?Ali Investments Limited was incorporated as a company on 2nd September 2009. During the period 2nd September 2008 when the application for SABL was submitted, the conduct of the Land investigation up to 24th July 2008 when the Lease-Lease Back agreement was executed between the State and the agents of the La?Ali.

Recommendation

That the lease be amended from 45 years to 40 years as supported by LIRs, Lease/leaseback agreement and schedule of Notice of Grant under Section 102.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was informed by Mr Kosa that whilst the SABL title has been issued La?Ali, they would pursue as a matter of course on the submission of a agriculture project plan to DAL including environmental plan and FCA. The FCA may impact on the existing TRP and that under an SABL process, there must be evidence of an agriculture plan submitted prior to the issuance of the title.

Findings

It is found in the evidence before the enquiry that neither La?Ali, its first or second proposed development partner have obtained a Certificate of Compliance from DAL to warrant issuance to them of a FCA permit from PNGFA and all other relevant processes thereafter.

Recommendation

The Executives of La? Ali must engage a developer that has agricultural background to be under a Sub-lease arrangement for the feasibility study and development of the oil palm project including other initiatives to be derived out of this business venture

PNG FOREST AUTHORITY

THE Papua New Guinea Forest Authority (PNGFA) was established in 1993 under the 1991 Forestry Act replacing the former Department of Forest, and unifying all Provincial Forest Divisions and the Forest Industries Council. All these came about as a result of the 1989 Barnett Commission of Inquiry into aspects of the forestry industry. The PNGFA, with its headquarters at Hohola in the National Capital District, has 19 provincial offices including five regional offices. The PNGFA mission statement is to: "Promote the management and wise utilization of the forest resources of Papua New Guinea as a renewable asset for the well-being of present and future generations". Its main objective is to work toward achieving sustainable forest management in Papua New Guinea.

The current Forestry Act provides that all relevant stakeholders must participate in the harvesting and management of the national forest resource. Forestry functions are decentralized wherein the respective Provincial Forest Management Committees established under the provision of the Forestry Act make decisions relating to the management of their forest resource.

There were no Forestry files brought to the Inquiry as requested through emails, fax and phone. The material on Forestry was presented through copies from other presenters at the Commission such as BAFL, CPG and DEC.

It was found that the Forestry Amendment Act 2007 (No. 19 of 2007) amended some of the provisions of Section 90A, 90B, 90C and 90D of the principle Forestry Act 1991 where laws governing agriculture and road development comes under the amended provisions. The PNGFA is the ultimate enforcing agency of the National Forest Act, 1991. Under these new provisions the issue of a Forest Clearance Authority (FCA) lies in the PNGFA subject to the approvals sought in the DAL submissions and Certificate of Compliance and those of the DEC submissions.

It was found from evidence presented that La?Ali was not registered as a Forest Industry Participant. There is no evidence of application for FCA as is the process with agro-forest activities.

RECOMMENDATIONS

The requirement for FCA is crucial any agro-forest activity on the land and is required. La?Ali as a matter or course must consult NFA for FCA process to be initiated and approved as is required under the Forestry Act

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

We make no findings and recommendation on DEC's involvement with this SABL project.

COI Inquiry File No 50.for Special Purpose Agricultural and Business Lease over Portion 6C Volume 35 Folio 103Milinch: Guavi, Fourmil: Aworra Western Province in the name of Mudau Investment Limited

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.

Witnesses were called from the six government agencies involved in the issuance and operation of the Mudau Investment Limited SABL. These were:

- 1.2.1 Department of Western Province, (DWP)
- 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 (PNGFA)

Witness Summons, Statements/ Evidence

The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No
Name and Position
Pages
Day
Date
1
Mr Ipisa Biyama, District
63-75
2
17/11/11-SABL 59-MIROU

Administrator, South Fly
62-74
5
21/11/11-SABL 61-MIROU

District, DWP

2
Mr Solomon Kosa,
8
25/11/11-SABL 65-MIROU
3
Mr Francis Daink

Parties represented by counsel

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.”

The following were granted leave to be represented by counsel

Exhibits and documents

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	Land Investigation Report dated 26th November 2008			
	C.O.I		/11/11	
	Mudau (1)			
2	Survey Map of Portion 6C Aworra			
	C.O.I		25/11/11	
	Mudau (4)			
3	Notice of Direct Grant No G 217 dated 30/10/09			
	C.O.I		25/11/11	
	Mudau (1)			
4	Instrument of Lease-Lease Back Agreement dated 24/07/08			
	C.O.I		25/11/11	
	Mudau (2)			
5				
	C.O.I		/11/11	
	Mudau (5)			
6	Special Agriculture And Business Lease dated 6 November 2009			
	C.O.I		25/11/11	
	Mudau (3)			
7				
	C.O.I			
8	Report of Development Proposal			
	C.O.I		25/11/11	

SK "1"

9

Copy of Sub-lease proposed between Godae Landgroup Incorporated and Sovereign Hill PNG Ltd
C.O.I

25/11/11

SK"2"

10

Proposed Infrastructure Map of Wawoi Guavi Consolidated TRP
C.O.I

25/11/11

SK"3"

Timeline of events of note surrounding MUDAU SABL Title

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

1

Incorporation of Mudau Investment Limited

28 April 2009

Mudau Landowners

Mudau

2

Application or Tender Form for SABL to Portion 6C Aworra

29/09/08

Mr Solomon Silas/ Chairman, Mudau Landgroup Committee

DLPP

3

Survey Plan Catalogue

Mudau

DLPP

4

Land Investigation Reports

26/11/08

Mr Ipisa Biyama/District Lands Officer, WPA

WPA/Provincial Administrator

5

Recommendation for Alienability

05/12/08

Sikabu Maika, Advisor- Lands and Physical Planning-WPA

DLPP/Secretary

6

Instrument of Lease-Lease Back Agreement

24/07/09

Mudau/State

Mudau/State

7

Notice of Direct Grant

30/10/09

Mudau Investment Limited

Pepi Kimas/DLPP

8

SABL Lease Title dated 6 November

2009

6/11/09

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Mudau Investment Limited.

MUDAU INVESTMENT LIMITED

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G217 dated 30th October 2009 for Portion 6C Namili Tao Land. The term of the lease was for seventy (70) years. A Special Agricultural and Business Lease was registered and issued on 30th October 2009 by the Department of Lands and Physical Planning to the holder Mudau Investment Limited (Mudau). The details of the SABL is shown below:

Legal Description

Portion 6C

Registered Survey Plan Catalogue No

36/21

SABL Holder

Mudau Investment Limited

Date of Registration of Lease

30th October 2009

Period of Lease

Seventy (70) years

Land area of lease

10,450.0 hectares

IPA

The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

Mudau Investment Limited (Mudau) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG

under the Companies Act 1997. The Company was incorporated on 28th April 2009 and the current Principal Place of Business is Section 39, Allotment 4 Ilimo Street, Boroko National Capital District. As at 2nd August, 2011 IPA records confirm that it is operating. The Company number is 1-67588.

The IPA company extract provided to the Commission confirm that there one (1) shareholder namely Mr Solomon Gali who holds 100 ordinary shares in the company. The Company has issued total number of 100 ordinary shares as at 28th April 2009.

The extract discloses Messrs Solomon Gali and Harry Bobby as Directors of the company. Messrs Solomon Gali and Max John act as joint Secretary to the Company. The last annual return lodged with IPA was not found.

The chairmanship of the company is reflected in the statement of one Akare Apa of Wareho village and that is confirmed by his sworn Affidavit dated 5th September 2011 and submitted to the COI on 21st September 2011 confirming to the effect that he was the Chairman of Mudau. He also supported the evidence of Mr Kosa wherein in respect of the SABL title "that all mandatory processes and procedures required under the Land Act of 1996 and other enabling Acts and Regulations in obtaining the Special Agriculture and Business Lease Titles have been complied with at all material times." (Refer to paragraph 4 of the Affidavit of Akare Apa).

The Commission was unable to verify with Mr Kosa as to why his name does not appear in the shareholding or directorship of the company. The exclusion of his name in the directorship of the company does not entitle him to hold himself out as the chairman and is illegal and not recognized according to law.

Recommendation

1. The shareholding structure of the company does not reflect entirely that it represents the interest of the villagers and clan of Mudau. The shareholding in the name of an individual defeats the purpose of a landowner company that comprises a number of clans, which is clearly defined under the ILG formation and concept.
2. The appointment of a chairman needs to be properly coordinated in accordance with the Company Act. The Commission does not accept the statement of Mr Akare Apa as he is not a representative of the company either as a shareholder or director.

EVIDENCE OF CONSULTANT TO MUDAU INVESTMENT LIMITED

Mr Solomon Kosa is a common witness to the five SABLs located in the Wawoi Guavi timber concession area. He comes from the La?Ali clan. The Commission noted his demeanour to be one of sincerity and honesty. He was the principal player in the SABL basically to assist his fellow villagers to engage in economic activity before the departure of RH the logging operator in April 2012.

He coordinated and negotiated the setup of the five landowner companies according to his evidence on a trial basis for future involvement of other villagers within the TRP concession area. In his evidence he states that the villagers comprising the five companies were located in Block 1, 2 and 3 of the TRP, where logging had taken place, replaced by secondary forestry growth and relogging by RH.

Mr Kosa initiated negotiations with RH and advised that the landowners had identified 60 hectares of land for the purpose of oil palm estate, to which RH was obligated to assist before the TRP expired. Whilst that was Mr Kosa's understanding, it was also important for him to appreciate that the TRP was the responsibility of the National Forest Authority and any other benefits and infrastructure development for the people would be found in the TRP agreement and this was not availed to the Commission.

However the SABL process was a way forward for his people and also to set up any economic base for the Wawoi Guavi region of the province. The actual land investigation process has been included and SABL titles issued for each of the five villagers involved in this agricultural business venture.

Mr Kosa was asked as to the reasons why he failed to have dialogue with DAL, DEC and National Forest Authority, which was a major concern to the progress of the oil palm initiative. He admitted that since he was dealing with DLPP, it became priority that the process be completed. He was to embark on the next process and that was to pursue dialogue with DAL, DEC and NFA.

The Commission's concern was the failure of Mr Kosa and his group to consult NFA, DAL and DEC who are considered as part of the SABL package. He explained in his evidence, "...That is why in my report I have stated there agriculture the project proposal is going to be prepared by the Agriculture Department. Agriculture Department will prepare that and give it to the developer and the Agriculture Department prepare that, they will give to us and we have a look at it before signing anything. So next is environment and continue until."

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By a letter dated 08th August, 2011, a Mr Solomon Kosa who appears to be a Consultant and or spokesperson for Mudau (Portion 6C) and four (4) other SABL holders from the Balimo area viz La? Ali Investments Ltd (Portion 5C); Godae ILG-(Portion 7C), Haubawe Holdings Limited (Portion 8C) and Foifo Limited (Portion 9C) has written to the Commission of Inquiry to give evidence on the herein mentioned SABLs.

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“A: ... It will be a disgrace for my people, Commissioner, if my five ILGs or five SABLs take a long time, as I have mentioned earlier, timber permit is expiring next year and our only access, our only light is through that logging operations. Logging goes out, we are left behind. We will be back seven, ten times backwards without the developments. Please if while going through if you have seen that I have followed the process rightly or if there are some errors I ask the Commission that you can use your powers and enable me and my group to complete the process as soon as possible. And I am saying, I have been wondering, why I am here if I have already from my knowledge completed the settle process that is required under the law of Papua New Guinea. Without completing all other process I should not be here. I live this to your good hands, I hope and trust our Heavenly Father will bless your job, your work that you are now commissioning, good Lord will bless as you move on to make decisions in the near future. Thank you.”

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The registered address of the company as at 1 April 1995 is Section 479, Allotment 1, Kennedy Road, Hohola, National Capital District (PO Box 5697 Boroko, NCD).

In terms of the share structure and composition of shareholders the company has issued a total of 1000002 shares. The IPA historical extract dated 19th September, 2011 reveal that the following shareholders as Mr Ik King Tiong, a Malaysian national issued with one (1) ordinary share on 14 August, 1993; Rimbunan Hijau (PNG) Ltd, issued with 999998 ordinary shares on 15 August, 1992 and one (1) ordinary share on 30 June 2000. The records reveal that Mr Tiong resides at 11 Collyer Quay, #15-01 The Arcade, Singapore

The current Directors of the company are Messrs Hiew King Tiong, Thai King Tiong, Ik King Tiong, James Lau Sze Yuan, Ivan Su Chiu Lu and Chiong Ong Tiong all Malaysian nationals. The extract show that apart from Ik King Tiong, James Lau Sze Yuan and Ivan Su Chiu Lu, the other three Directors reside in Singapore and Malaysia respectively. The company Secretary is Geok Liam Wong who commenced on 21 October 1996.

The Commission was not able to verify with IPA whether or not the company had applied for certification as a foreign entity operating in PNG due to the composition of the directorship of a company that is foreign by its operation. The lack of certification by IPA on the type of activities to be carried out by the company to undertake oil palm estates and in particular, its credentials in the area of oil palm management either in PNG or in Malaysia is quite questionable, because the current logging operator of the Wawoi Guavi area is Rimbunan Hijau.

A sub-lease arrangement appears to have been proposed by La?Ali, to be entered into with a company called Sovereign Hill (PNG) Limited. However, this proposed arrangement is only in draft form and an unexecuted copy thereof has been provided to the Commission as part of the SABL title holder?s submission to the inquiry. The Commission notes that the sub-lease agreement

in its current format is a standard agreement that we have sighted in other sub-lease arrangements with other SABL the subject of our inquiry that may contravene the Fairness Transactions Act.

The Commission notes that no work has been undertaken since the title holders negotiated with Sovereign to establish the Oil Palm and Forest Plantations project in the forest concession area.

Recommendation

The engagement of a logging company and the SubLease Agreement must be reviewed by the Landowning Companies and cancelled. We believe that Sovereign will not be able to develop large scale oil palm estate and it is evident that they are an established logging company within the area for over twenty years.

Department of Western Province

The Department of Western Province is the bureaucratic arm of the North Fly Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the La?Ali SABL there was formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of Western Province.

Findings

Mr Ipisa Biyama, the District Lands Officer for the Middle Fly District conducted land investigation for the Mudau clan on the 26th day of November,

2008. According to the report he interviewed and compiled statistics accounting for 75 persons on the day of his visit to the SABL site. That may not constitute a fair representation of the villagers of Wareho on site where the investigation was conducted.

Further, as it appears from a perusal of the LIR the landowners of the Mudau clan of Wareho village, Kamusie, Balimo gave their consent for the acquisition of their customary land by the State and to later, as it appears, have it registered as a State Lease under section 102 for a period of seventy (70) years.

The population density is very low within the subject area and estimated at 250 hectares per person.

It also appears to be demonstrated by the LIR that in terms of its current usage the land area covered by the SABL, it is under the Wawoi-Guavi TRPA logging concession of the RH Group of Companies.

According to the Schedule of Owners Status and Rights to Land of Clan contained in the LIR only the landowners/villagers of Wareho Village, Kamusie signed and or gave their consent and their approval for the acquisition. In total 69 of them appear to have given their consent.

The Commission has noted that Solomon Gali, Harry Bobby respectively the single major

shareholder and Directors of Mudau has not formalised their consent under the schedule which only includes the name of Mr Akare Apa, the de-facto chair of Mudau, Wareho village. The name of Messrs Solomon Gali and Harry Bobby are missing from the list and we have not verified this with Mr Kosa to date, hence it is highly questionable for a shareholder and director of the company not to be involved in the LIR process.

There is no formalised ILG for each of the landowner clans which is a substantial aspect of landownership through clan/tribes as was evident in the landowner companies in the North Fly District. Therefore with the lack of ILG representation, the activities of the company seem to be placed on a two (2) men directorship, though questions now arise whether or not the company represents the true intention of each and every member of the tribe/clan living on Aworra land.

On the 4th day of December, 2008 the Certificate in relation to Boundaries was executed by Ipisa Biyama, the District Lands Officer has having walked along as far as practicable and indicated the boundaries of the subject land also on the 5th day of December, 2008. It is highly likely that a walk around the land boundary as big as the land would take one day to complete and for that matter three (3) other adjoining SABLs.

The Recommendation as to Alienability was executed and issued on the 5th day December 2008 at Kamusie by a Mr Sikabu Maika, the then Advisor for Lands and Physical Planning, Western Province Provincial Administration. Mr Sikabu was an officer in charge of the Division of Lands and Physical Planning within the Department of Western Province and was not delegated with the responsibility of signing the recommendation for alienability. That recommendation is flawed because it was signed off by either the District Administrator for Middle Fly or the Provincial Administrator who is the administrative head of the Provincial Administration.

This investigation report was in my considered view rushed to give effect to the changing circumstances of the expiry of the logging concession in 2012 and the need for continued economic activity with lack of proper formation of ILGs

within the area, the lack of structure within the directorship and shareholding of the company and the complete trust in engaging a company whose major concerns was logging whereas no infrastructure or economic activity was identified for the good of the people.

Recommendation

That non -inclusion of the names of the shareholder and Director of the company is a classic case of creating entities in the name of development but simply a guise for other ventures. That further inquiries be conducted into the structure and composition of the company.

That the SABL be suspended pending a fresh LIR to be re-conducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

That Mr Ipisa Biyama and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Even though there was evidence of the Mr Sikabu signed the recommendations as to Alienability of customary land for Mudau Investment Ltd, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for Certificate of Alienation (COA) to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Sikabu as the Advisor, Lands and Physical on behalf of the Administrator of the Western Province on 5th December 2008.

In the evidence provided there was found no Land Instruction Number was given by DLPP for the LIR to be conducted. That may be minor flaw in the process as we have noted that an officer of the Department of Western Province and a Senior Lands Officer conducted the Land Investigation.

However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

APPLICATION AND/OR TENDER FOR SABL

The Application or Tender Form for SABL and Lease/Lease Back was submitted by a Mr Solomon Silas on the 09th September, 2008, the proposed improvements and purpose for the subject land is for large scale Agricultural (Oil Palm) Plantation with:-

- (a) Administration Offices
- (b) Housing Blocks for Staff, Employees and Local Residents
- (c) Nursery Sites and Buildings
- (d) Power lines & Electricity Supply;
- (e) Domestic Water Supply System;
- (f) Drainage & Sewerage reticulations;
- (g) Warehouse and Store Building;
- (h) Processing Plant; and
- (i) Road network

The Commission was not able to verify from DLPP records if any proposed oil Palm Agricultural and Business Plans was submitted to National Forest Authority and DAL respectively.

Land Instruction Number

Commission was not able to verify whether a Land Investigation number was issued, but the involvement of Mr Biyama as the investigator confirms that the instruction was issued to the Department of WP to conduct investigation.

Land Investigation process

The Landowners confirmed their intention to allow their land to be leased for a period of 70 years. That was inserted into the Direct Grant and SABL Title and is not contested.

Reservation for customary rights

Mr Biyama made the following recommendations (page 2 of LIR)

“The following be considered;

- * Hamlets not to be disturbed and allow forest buffer zones encompassing village
- * Graveyards and sacred sites be left as they are;
- * Buffer zones along waterways and creeks to stop erosion (maybe 50m).
- * Maintain natural sago clumps for local staple diet.

He also recommended, “...it is important to note that the landowners still maintain a traditional way of life. They live on subsistence farming, hunting and gathering and depend on bush materials for housing requirements. Given the foregoing, there must be reservation and conservation of certain areas for essential landowner needs for their livelihood.”

The Commission fails to identify from the Direct Grant and the SABL title that this reservation was considered as important for the continued use of the land was not included on the Notice of Direct Grant and the SABL Title. It is a concern that the officer concerned the late Jacob Waffinduo and including other lands officer have a duty to ensure that the relevant reservations are clearly inserted prior to submission to the Minister of his delegate to sign the Notice of

Direct Grant. In addition to that, the recommendation as to alienability does not clearly demarcate whether reservations can be made or not. The reference to an attachment A is also missing and misleading that important information were excluded by an omission or deliberate action on the part of the officers empowered with the responsibility to undertake due diligence.

INSTRUMENTS OF LEASE & REGISTRATION

On the 24th July, 2008 a lease/lease back agreement (“instrument of lease”) was executed between the State and the landowners in respect of the subject land covered by the SABL.

Further, a Special Agriculture and Business Lease was registered and vested in Mudau Investment Limited over the subject land on 06th November, 2009 and comprised in the Registrar of State Leases Volume 35 Folio Number (not legible).

The Commission notes that Mudau Investment Limited was incorporated as a company on 28th April 2009. During the period 9th September 2008 when the application for SABL was submitted and the actual conduct of the Land investigation up to 24th July 2008 when the Lease-Lease Back agreement was executed between the State and the agents of the Mudau the company had no corporate legal status in so far as the issuance of the title was concerned. The actual title was made to Mudau Investment Limited as the landowner umbrella company for the Mudau clan.

Recommendation

That the lease be amended from 45 years to 40 years as supported by LIRs, Lease/leaseback agreement and Schedule of Notice of Grant under Section 102.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was informed by Mr Kosa that whilst the SABL title has been issued La?Ali, they would pursue as a matter of course on the submission of a agriculture project plan to DAL including environmental plan and FCA. The FCA may impact on the existing TRP and that under an SABL process, there must be evidence of an agriculture plan submitted prior to the issuance of the title.

Recommendation

The Executives of Mudau must enter into a Joint Venture Agreement with a Developer that has agricultural background and be able to conduct feasibility study and development of the oil palm project including other initiatives to be derived out of this business venture

PNG FOREST AUTHORITY

There were no Forestry files brought to the Inquiry as requested through emails, fax and phone. The material on Forestry was presented through copies from other presenters at the Commission such as Mudau and DEC.

It was found that the Forestry Amendment Act 2007 (No. 19 of 2007) amended some of the provisions of Section 90A, 90B, 90C and 90D of the principle

Forestry Act 1991 where laws governing agriculture and road development comes under the amended provisions. The PNGFA is the ultimate enforcing agency of the National Forest Act, 1991. Under these new provisions the issue of a Forest Clearance Authority (FCA) lies in the PNGFA subject to the approvals sought in the DAL submissions and Certificate of Compliance and those of the DEC submissions.

It was found from evidence presented that Mudau was not registered as a Forest Industry Participant. There is no evidence of application for FCA as is the process with agro-forest activities.

RECOMMENDATIONS

The requirement for FCA is crucial any agro-forest activity on the land and is required. La?Ali as a matter of course must consult NFA for FCA process to be initiated and approved as is required under the Forestry Act

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

We make no findings and recommendation in respect DEC in this SABL

COI Inquiry File No 51for Special Purpose Agricultural and Business Lease over Portion 7C Volume 35 Folio 102Milinch: Guavi, Fourmil: Aworra Western Province in the name of Godae Land Group Incorporated.

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.

Witnesses were called from the six government agencies involved in the issuance and operation of the Godae Land Group IncorporatedSABL. These were:

- 1.2.1 Department of Western Province, (DWP)
- 1.2.2 Department of Provincial Affairs and Local Level Government, (DPALLG)
- 1.2.3 Department of Lands and Physical Planning,(DLPP)
- 1.2.4 Department of Agriculture and Livestock, (DAL)
- 1.2.5 PNG Forest Authority, (PNGFA)
- 1.2.6 Department of Environment and Conservation, (DEC)

Witness Summons, Statements/ Evidence

The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No
Name and Position
Pages
Day
Date
1
Mr Ipisa Biyama, District
63-75
2
17/11/11-SABL 59-MIROU

Administrator, South Fly
62-74

5
21/11/11-SABL 61-MIROU

District, DWP

2
Mr Solomon Kosa,
8

25/11/11-SABL 65-MIROU
3
Mr Francis Daink

Parties represented by counsel

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.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were nine (9) 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	Land Investigation Report dated 26th November 2008	C.O.I	/11/11	Godae(1)
2	Survey Map of Portion 6C Aworra	C.O.I	25/11/11	Godae (4)

3
Notice of Direct Grant No G 217 dated 30/10/09

C.O.I
25/11/11
Godae (1)

4
Instrument of Lease–Lease Back Agreement dated 24/07/08

C.O.I
25/11/11
Godae (2)

5
C.O.I
/11/11
Godae (5)

6
Special Agriculture And Business Lease dated 6 November 2009

C.O.I
25/11/11
Godae (3)

7
Report of Development Proposal

C.O.I
25/11/11
SK “1”

8
Copy of Sub–lease proposed between Godae Landgroup Incorporated and Sovereign Hill PNG Ltd

C.O.I
25/11/11
SK”2”

9
Proposed Infrastructure Map of Wawoi Guavi Consolidated TRP

C.O.I
25/11/11
SK”3”

Timeline of events of note surrounding GODAE SABL Title

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

1
Incorporation of Godae Holdings Limited
4 September

2002
Godae Landowners
Godae
2
Application or Tender Form for SABL to Portion 7C Aworra
10th August

2001
Mr Micah Esame/ Chairman, Godae Landgroup Committee
DLPP
3
Survey Plan Catalogue

Godae
DLPP
4
Land Investigation Reports
26/11/08
Mr Ipisa Biyama/District Lands Officer, WPA
WPA/Provincial Administrator

5
Recommendation for Alienability
05/12/08
Sikabu Maika, Advisor- Lands and Physical Planning-WPA
DLPP/Secretary

6
Instrument of Lease-Lease Back Agreement
24/07/09
Godae/State
Mudau/State

7
Notice of Direct Grant
30/10/09
Godae Landgroup Incorporated
Pepi Kimas/DLPP

8
SABL Lease Title dated 6 November
2009
6/11/09
Godae
Godae/DLPP

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Godae Landgroup Incorporated.

GODAE LAND GROUP INCORPORATED

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no.

G217 dated 30th October 2009 for Portion 7C "Namili Tao" Land. The term of the lease was for seventy (70) years. A Special Agricultural and Business Lease was registered and issued on 30th October 2009 by the Department of Lands and Physical Planning to the holder Godae Land Group Inc. (Godae). The details of the SABL is shown below:

Legal Description

Portion 7C

Registered Survey Plan Catalogue No

36/22

SABL Holder

Godae Land Group Inc

Date of Registration of Lease

30th October 2009

Period of Lease

Seventy (70) years

Land area of lease

15, 153.0 hectares

IPA

The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

Godae Land Group Incorporated

Godae Land Group Incorporated is not registered as a legal entity with IPA. The Commission had conducted searches within the records of IPA and there are no documents to verify the corporate status of the land group.

This requires further investigation and confirmation. Mr Kosa was not cross-examined over the existence of the incorporation of the land group.

Godae Holdings Limited

Godae Holding Limited (Godae HL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 4th September 2002 and the current Principal Place of Business is Section 139, Allotment 13 Gari Street, Hohola, National Capital District. As at 5th August, 2011 IPA records confirm that it ceased operating as of 31 March, 2005 and is de-registered. The Company number is 1-47202.

The IPA company extract provided to the Commission confirm that there are two (2) shareholder namely Mr Kaiks Esami who holds 1000 ordinary shares and Micah Esami who also hold 1000 shares respectively in the company. The Company has issued total number of 2000 ordinary shares as at 4th September, 2002.

The extract discloses Messrs Micah Esami and Kaiks Esami as Directors of the company. A Mr Lesly Micah is the Secretary to the Company. The last annual return lodged with IPA was not found.

The chairmanship of the company is reflected in the statement of Mr Micah Esami of Wareho village and that is confirmed by his sworn Affidavit dated 5th September 2011 and submitted to the COI on 21st September 2011 confirming to the effect that he was the Chairman of Godae Land Group Inc. He also supported the evidence of Mr Kosa in respect of the SABL title "that all mandatory processes and procedures required under the Land Act of 1996 and other enabling Acts and Regulations in obtaining the Special Agriculture and Business Lease Titles have been complied with at all material times." (Refer to paragraph 4 of the Affidavit of Micah Esami).

The Commission notes that Mr Micah Esami is a Shareholder and Director of Godae Land Group Incorporated which is no longer operating. By the operations of the Companies Act, all the assets of the company vests in the Registrar of Companies until the statutory officers of the company comply with the requirement to submit their returns.

It is also important that this issue be resolved by Mr Kosa and the landowners of Godae as to the corporate vehicle for their involvement in the SABL process. AT this stage the Commission accepts on the face of it that Godae HL is de- registered entity and that subject to further verification, the Godae Land Group incorporation is not registered with IPA. The only inference to be drawn is that the shareholder and directors are very similar to the Land Group Inc application for SABL.

Recommendation

The shareholding structure of the company does not reflect entirely that it represents the interest of the villagers and clan of Godae. The shareholding in the name of an individual defeats the purpose of a landowner company that

comprises a number of clans, which is clearly defined under the ILG formation and concept.

EVIDENCE OF CONSULTANT TO MUDAU INVESTMENT LIMITED

The C.O.I refers to the evidence of Mr Kosa and recommendation under Mudau Investment Limited which is common and applicable to this SABL.

SOVEREIGN HILL (PNG) LIMITED

The C.O.I makes reference to the Evidence and Recommendation under C.O.I Report on North East West Investment Limited Portion 27C Awin Pari. The evidence is common to the SABL under review.

Department of Western Province

The Department of Western Province is the bureaucratic arm of the North Fly Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the Godae SABL there was formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of Western Province.

Findings

Mr Ipisa Biyama, the District Lands Officer for the Middle Fly District conducted land investigation for the Godae clan on the 26th day of November, 2008. According to the report he interviewed and compiled statistics accounting for 75 persons on the day of his visit to the SABL site. That may not constitute a fair representation of the villagers of Wareho on site where the investigation was

conducted.

Further, as it appears from a perusal of the LIR the landowners of the Godae clan of Wareho village, Kamusie, Balimo gave their consent for the acquisition of their customary land by the State and to later, as it appears, have it registered as a State Lease under section 102 for a period of seventy (70) years.

The population density is very low within the subject area and estimated at 250 hectares per person.

It also appears to be demonstrated by the LIR that in terms of its current usage the land area covered by the SABL, it is under the Wawoi-Guavi TRPA logging concession of the RH Group of Companies.

According to the Schedule of Owners Status and Rights to Land of Clan contained in the LIR only the landowners/villagers of Wareho Village, Kamusie signed and or gave their consent and their approval for the acquisition. In total 69 of them appear to have given their consent.

The Commission has noted that Micah Esami and Kaiks Esami are the two shareholders and directors of Godae Holdings Limited and also Godae Land Group Incorporated and that is a substantial aspect of landownership through clan/tribes as was evident in the landowner companies in the North Fly District. Therefore with the lack of ILG representation, the activities of the company seem to be placed on a two (2) men directorship, though questions now arise whether or not the company represents the true intention of each and every member of the tribe/clan living on Namili/Tao land.

On the 4th day of December, 2008 the Certificate in relation to Boundaries was executed by Ipisa Biyama, the District Lands Officer has having walked along as far as practicable and indicated the boundaries of the subject land also on the

5th day of December, 2008. It is highly likely that a walk around the land boundary as big as the land would take one day to complete and for that matter three (3) other adjoining SABLs.

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This investigation report was in my considered view rushed to give effect to the changing circumstances of the expiry of the logging concession in 2012 and the need for continued economic activity with lack of proper formation of ILGs within the area, the lack of structure within the directorship and shareholding of the company and the complete trust in engaging a company whose major concerns was logging whereas no infrastructure or economic activity was identified for the good of the people.

Recommendation

That non-inclusion of the names of the shareholder and Director of the company is a classic case of creating entities in the name of development but simply a guise for other ventures. That further

inquiries be conducted into the structure and composition of the company.

That the SABL be suspended pending a fresh LIR to be re-conducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

That Mr Ipisa Biyama and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Findings

Even though there was evidence of the Mr Sikabu signed the recommendations as to Alienability of customary land for Godae Land Group Inc, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for Certificate of Alienation (COA) to be issued. This important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

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The Application or Tender Form for SABL and Lease/Lease Back was submitted by a Mr Micah

Esami on the 10th August, 2001, the proposed improvements and purpose for the subject land is for large scale Agricultural (Oil Palm) Plantation with:-

- (a) Administration Offices
- (b) Housing Blocks for Staff, Employees and Local Residents
- (c) Nursery Sites and Buildings
- (d) Power lines & Electricity Supply;
- (e) Domestic Water Supply System;
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Further, a Special Agriculture and Business Lease was registered and vested in Mudau Investment Limited over the subject land on 06th November, 2009 and

comprised in the Registrar of State Leases Volume 35 Folio Number (not legible).

Recommendation

That the lease be amended from 70 years to 25 years as supported by LIRs, Lease/leaseback agreement and schedule of Notice of Grant under Section 102.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was informed by Mr Kosa that whilst the SABL title has been issued Godae Land Group Incorporated they would pursue as a matter of course on the submission of a agriculture project plan to DAL including environmental plan and FCA. The FCA may impact on the existing TRP and that under an SABL process, there must be evidence of an agriculture plan submitted prior to the issuance of the title.

Recommendation

The Executives of Godae Land Group Incorporated and a developer that has agricultural background to be engaged under a Sub-lease arrangement for the feasibility study and development of the oil palm project including other initiatives to be derived out of this business venture

PNG FOREST AUTHORITY

It was found from evidence presented that Mudau was not registered as a Forest Industry Participant. There is no evidence of application for FCA as is the process with agro-forest activities.

RECOMMENDATIONS

The requirement for FCA is crucial any agro-forest activity on the land and is required. Mudau as a matter of course must consult PNGFA for FCA process to be initiated and approved as is required under the Forestry Act

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

The C.O.I makes no finding and recommendation.

COI Inquiry File No 52 for Special Purpose Agricultural and Business Lease over Portion 8C Volume 35 Folio 101 Milinch: Guavi, Fourmil: Aworra Western Province in the name of Haubawe Holdings Limited

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.

Witnesses were called from the six government agencies involved in the issuance and operation of the Haubawe Holdings Limited SABL. These were:

- 1.2.1 Department of Western Province, (DWP)
- 1.2.2 Department of Provincial Affairs and Local Level Government, (DPALLG)
- 1.2.3 Department of Lands and Physical Planning, (DLPP)
- 1.2.4 Department of Agriculture and Livestock, (DAL)
- 1.2.5 PNG Forest Authority, (PNGFA)
- 1.2.6 Department of Environment and Conservation, (DEC)

Witness Summons Statements

The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No
Name and Position
Pages
Day
Date
1
Mr Ipisa Biyama, District
63-75
2
17/11/11-SABL 59-MIROU
Administrator, South Fly
62-74
5
21/11/11-SABL 61-MIROU
District, DWP

2
Mr Solomon Kosa,
8
25/11/11-SABL 65-MIROU
3
Mr Francis Daink

Parties represented by counsel

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.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were nine (9) 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	Land Investigation Report dated 26th November 2008	C.O.I	25/11/11	Haubawe (1)
2	Survey Map of Portion 8C Aworra	C.O.I	25/11/11	Haubawe (4)
3	Notice of Direct Grant No G 217 dated 30/10/09	C.O.I	25/11/11	Haubawe (1)
4	Instrument of Lease- Lease Back Agreement dated 24/07/08	C.O.I	25/11/11	Haubawe (2)
5		C.O.I	/11/11	Haubawe (5)
6	Special Agriculture And	C.O.I	25/11/11	Haubawe (3)

Business Lease dated 6 November 2009

7

Report of Development Proposal

C.O.I

25/11/11

SK "1"

8

Copy of Sub-lease proposed between Godae Landgroup Incorporated and Sovereign Hill PNG Ltd

C.O.I

25/11/11

SK"2"

9

Proposed Infrastructure Map of Wawoi Guavi Consolidated TRP

C.O.I

25/11/11

SK"3"

Timeline of events of note surrounding MUDAU SABL Title

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

1

Incorporation of Haubawe Holdings Limited

6 May 2004

Haubawe Landowners

Haubawe HL

2

Application or Tender Form for SABL to Portion 8C Aworra

14/08/08

Haubawe/Obert Kibu/ Chairman, Board of Directors, Haubawe Holdings Limited

DLPP

3

Survey Plan Catalogue

Haubawe Holdings Limited

DLPP

4

Land Investigation Reports

26/11/08

Mr Ipisa Biyama/District Lands Officer, WPA

WPA/Provincial Administrator

5
Recommendation for Alienability
05/12/08
Sikabu Maika, Advisor- Lands and Physical Planning-6WPA
DLPP/Secretary
6
Instrument of Lease- Lease Back Agreement
24/07/09
Haubawe Holdings Limited /State
Haubawe/State
7
Notice of Direct Grant
30/10/09
Haubawe Holdings Limited
Pepi Kimas/DLPP
8
SABL Lease Title dated 6 November
2009
6/11/09

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Mudau Investment Limited.

HAUBAWEHOLDINGS LIMITED

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G217 dated 30th October 2009 for Portion 6C Namili Tao Land. The term of the lease was for seventy (70) years. A Special Agricultural and Business Lease was registered and issued on 30th October 2009 by the Department of Lands and Physical Planning to the holder Haubawe Holdings Limited (Haubawe HL).The details of the SABL is shown below:

Legal Description
Portion 8C
Registered Survey Plan Catalogue No
36/23
SABL Holder
Haubawe Holdings Limited
Date of Registration of Lease
30th October 2009
Period of Lease
Seventy (70) years
Land area of lease
11,110.0 hectares

IPA

The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

Haubawe Holdings Limited (Haubawe HL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 6th

September 2004 and the current Principal Place of Business is c/-Rimbunan Hijau (PNG) Ltd, section 479 Allotment 1, Kennedy Road, Gordons National Capital District. As at 2nd August, 2011 IPA records confirm that it is operating. The Company number is 1-51331.

The IPA company extract provided to the Commission confirm that there are four (4) shareholders namely Messrs Duabele Bisowa, Obert Kibu, Max Saiya and Peter Samae who each hold 5 ordinary shares respectively in the company. The Company has issued total number of 20 ordinary shares.

The extract discloses Messrs Obert Kibu, Aima Sumili, Max Saiya, Tiai Udoi, Duabele Bisowa, Dandy Genuru, Peter Samae and Goae Kaisino as current Directors of the company. Mr Peter Samae was appointed as the Secretary to the Company and currently holds that position in the company. The last annual return lodged with IPA was not found.

The chairmanship of the company is reflected in the Affidavit of one Max Saiya of Sila village dated 5th September 2011 and submitted to the COI on 21st September 2011. The deponent confirms to the effect that he was the Chairman of Haubawe. He also expressed support on the evidence of Mr Kosa in respect of the SABL title "that all mandatory processes and procedures required under the Land Act of 1996 and other enabling Acts and Regulations in obtaining the Special Agriculture and Business Lease Titles have been complied with at all material times." (Refer to paragraph 4 of the Affidavit of Max Saiya).

Recommendation

The shareholding structure of the company does not reflect entirely that it represents the interest of the villagers and clan of Haubawe. The shareholding in the name of an individual defeats the purpose of a landowner company that

comprises a number of clans, which is clearly defined under the ILG formation and concept.

The appointment of a chairman needs to be properly coordinated in accordance with the Company Act. The Commission does not accept the statement of Mr Akare Apa as he is not a representative of the company either as a shareholder or director.

EVIDENCE OF CONSULTANT TO HAUBAWE INVESTMENT LIMITED

The C.O.I makes reference to the Evidence of Mr Kosa and Recommendation under C.O.I Report on Mudau Portion 5C. The evidence is common to the SABL under review.

SOVEREIGN HILL (PNG) LIMITED

The C.O.I makes reference to the Evidence of Sovereign and Recommendation under C.O.I Report on Mudau Portion 5C. The evidence is common to the SABL under review.

Department of Western Province

The Department of Western Province is the bureaucratic arm of the North Fly Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the Haubawe SABL there was formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of Western Province.

Findings

Mr Ipisa Biyama, the District Lands Officer for the Middle Fly District conducted land investigation for the Haubawe clan on the 26th day of November, 2008. According to the report he interviewed and compiled statistics accounting for 363 persons on the day of his visit to the SABL site. That may not constitute a fair representation of the villagers of Wareho on site where the investigation was conducted.

Further, as it appears from a perusal of the LIR the landowners of the Haubawe clan of Wareho village, Kamusie, Balimo gave their consent for the acquisition of their customary land by the State and to later, as it appears, have it registered as a State Lease under section 102 for a period of seventy (70) years.

The population density is very low within the subject area and estimated at 250 hectares per person.

It also appears to be demonstrated by the LIR that in terms of its current usage the land area covered by the SABL, it is currently under the Wawoi-Guavi TRPA logging concession of the RH Group of Companies.

According to the Schedule of Owners Status and Rights to Land of Clan contained in the LIR only the landowners/villagers of Wareho Village, Kamusie signed and or gave their consent and their approval for the acquisition. In total 363 of them appear to have given their consent.

There is no formalised ILG for each of the landowner clans which is a substantial aspect of landownership through clan/tribes as was evident in the landowner companies in the North Fly District. Therefore with the lack of ILG representation, the activities of the company seem to be placed on a what is

deemed to be a group of persons holding themselves out as leaders in the Haubawe clan, though questions now arise whether or not the company represents the true intention of each and every member of the tribe/clan living on Aworra land.

On the 3rd day of December, 2008 the Certificate in relation to Boundaries was executed by Ipisa Biyama, the District Lands Officer having walked along as far as practicable and indicated the boundaries of the subject land also on the 5th day of December, 2008. It is highly likely that a walk around the land boundary as big as the land would take one day to complete and for that matter three (3) other adjoining SABLs.

The Recommendation as to Alienability was executed and issued on the 5th day December 2008 at Kamusie by a Mr Sikabu Maika, the then Advisor for Lands and Physical Planning, Western Province Provincial Administration. Mr Sikabu was an officer in charge of the Division of Lands and Physical Planning within the Department of Western Province and was not delegated with the responsibility of signing the recommendation for alienability. We find that no instrument of delegation have been produced by the provincial administration setting a list of names of officers having been delegated with the authority to execute recommendations as to alienability. That recommendation is flawed

because it was not signed off by either the District Administrator for Middle Fly or the Provincial Administrator who is the administrative head of the Provincial Administration. There is no evidence of due diligence been carried out by Mr Maika, which also raises questions about the land investigation process that is depended on majority consent by the people of the Haubawe tribe/clan.

This investigation report was in my considered view rushed to give effect to the changing circumstances of the expiry of the logging concession in 2012 and the

need for continued economic activity with lack of proper formation of ILGs within the area, the lack of structure within the directorship and shareholding of the company and the complete trust in engaging a company whose major concerns was logging whereas no infrastructure or economic activity was identified for the good of the people.

Recommendation

That further inquiries be conducted into the structure and composition of the company.

That the SABL be suspended pending a fresh LIR to be re-conducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

That Mr Ipisa Biyama and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Sikabu as the Advisor, Lands and Physical on behalf of the Administrator of the Western Province on 5th December 2008.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

In the evidence provided there was found no Land Instruction Number was given by DLPP for the LIR to be conducted. That may be minor flaw in the process as we have noted that an officer of the Department of Western Province and a Senior Lands Officer conducted the Land Investigation.

However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

APPLICATION AND/OR TENDER FOR SABL

The Application or Tender Form for SABL and Lease/Lease Back was submitted by a Mr Obert Kibu on the 14th September, 2008, the proposed improvements and purpose for the subject land is for large scale Agricultural (Oil Palm) Plantation with:-

- (a) Administration Offices
- (b) Housing Blocks for Staff, Employees and Local Residents
- (c) Nursery Sites and Buildings
- (d) Power lines & Electricity Supply;
- (e) Domestic Water Supply System;
- (f) Drainage & Sewerage reticulations;

- (g) Warehouse and Store Building;
- (h) Processing Plant; and
- (i) Road network

The Commission was not able to verify from DLPP records if any proposed oil Palm Agricultural and Business Plans was submitted to National Forest Authority and DAL respectively.

Land Instruction Number

Commission was not able to verify whether a Land Investigation number was issued, but the involvement of Mr Biyama as the investigator confirms that the instruction was issued to the Department of WP to conduct investigation.

Land Investigation process

The Landowners confirmed their intention to allow their land to be leased for a period of 70 years. That was inserted into the Direct Grant and SABL Title and is not contested.

Reservation for customary rights

Mr Biyama made the following recommendations (page 2 of LIR)

“The following be considered;

- * Hamlets not to be disturbed and allow forest buffer zones encompassing village
- * Graveyards and sacred sites be left as they are;
- * Buffer zones along waterways and creeks to stop erosion (maybe 50m).
- * Maintain natural sago clumps for local staple diet.

He also recommended, “...it is important to note that the landowners still maintain a traditional way of life. They live on subsistence farming, hunting and gathering and depend on bush materials for housing requirements. Given the foregoing, there must be reservation and conservation of certain areas for essential landowner needs for their livelihood.”

The Commission fails to identify from the Direct Grant and the SABL title that this reservation was considered as important for the continued use of the land was not included on the Notice of Direct Grant and the SABL Title. It is a concern that the officer concerned the late Jacob Waffinduo and including other lands officer have a duty to ensure that the relevant reservations are clearly inserted prior to submission to the Minister of his delegate to sign the Notice of Direct Grant. In addition to that, the recommendation as to alienability does not clearly demarcate whether reservations can be made or not. The reference to an attachment A is also missing and misleading that important information were excluded by an omission or deliberate action on the part of the officers empowered with the responsibility to undertake due diligence.

INSTRUMENTS OF LEASE & REGISTRATION

On the 24th July, 2008 a lease/lease back agreement (“instrument of lease”) was executed between the State and the landowners in respect of the subject land covered by the SABL.

Further, a Special Agriculture and Business Lease was registered and vested in Haubawe Holdings Limited over the subject land on 06th November, 2009 and comprised in the Registrar of State Leases Volume Folio Number (not legible).

Recommendation

That the lease be amended from 45 years to 40 years as supported by LIRs, Lease/leaseback agreement and schedule of Notice of Grant under Section 102.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was informed by Mr Kosa that whilst the SABL title has been issued La?Ali, they would pursue as a matter of course on the submission of a agriculture project plan to DAL including environmental plan and FCA. The FCA may impact on the existing TRP and that under an SABL process, there must be evidence of an agriculture plan subvmitted prior to the issuance of the title.

Recommendation

The Executives of Haubawe Holdings Limited engage a developer that has agricultural background under the proposed Sub-lease arrangement to enable the process of carrying out feasibility study and development of the oil palm project including other initiatives to be derived out of this business venture

PNG FOREST AUTHORITY

The C.O.I makes no finding and recommendation as no FCA application has been processed.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

The C.O.I makes no finding and recommendation as no application for level 3 enviromental permithas been processed.

1. COI Inquiry File No. 53- for Special Purpose Agricultural and Business Lease over Portion 9C Volume 35 Folio 100 Milinch: Guavi, Fourmil: Aworra Western Province in the name of Foifoi 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 Foifoi Limited SABL. These were:

1.2.1 Department of Western Province, (DWP)

1.2.2 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.3 Department of Lands and Physical Planning, (DLPP)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 PNG Forest Authority (PNGFA)

1.2.6 Department of Environment and Conservation, (DEC)

Witness Summons, Statements and Evidence

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No
Name and Position
Pages
Day
Date
1
Mr Ipisa Biyama, District
63-75
2
17/11/11-SABL 59-MIROU

Administrator, South Fly
62-74
5
21/11/11-SABL 61-MIROU

District, DWP

2
Mr Solomon Kosa,
8
25/11/11-SABL 65-MIROU

3
Mr Francis Daink

Parties represented by counsel

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.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were nine(9)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	Land Investigation Report dated 26th November 2008	Kubeai Landgroup	25/11/11	Foifoi (1)
2	Survey Map of Portion 8C Aworra	Kubeai Landgroup	25/11/11	Foifoi (4)
3	Notice of Direct Grant No G 217 dated 30/10/09	Kubeai/Foifoi	25/11/11	Foifoi (1)
4	Instrument of Lease-Lease Back Agreement dated 24/07/08	Kubeai/Foifoi	25/11/11	Foifoi (2)
5			25/11/11	Foifoi (5)
6	Special Agriculture And Business Lease dated 6 November 2009	Kubeai/Foifoi	25/11/11	Foifoi (3)
7	Report of Development Proposal	Foifoi/RH(PNG)Ltd	25/11/11	SK "1"
8	Copy of Sub-lease proposed between Godae Landgroup Incorporated and Sovereign Hill PNG Ltd	Foifoi/Sovereign Hill (PNG) Ltd	25/11/11	

SK"2"

9

Proposed Infrastructure Map of Wawoi Guavi Consolidated TRP

Foifoi/Sovereign/DLPP

25/11/11

SK"3"

Timeline of events of note surrounding FOIFOI SABL Title

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

Incorporation of Foifoi Limited

2 September

2009

Kubeai village Landowners

Foifoi Limited

2

Application or Tender Form for SABL to Portion 9C Aworra23

14/08/08

Haubawe/Obert Kibu/ Chairman, Board of Directors, Kubeai Landgroup

DLPP

3

Survey Plan Catalogue

Kubeai Landgroup/Foifoi Limited

DLPP

4

Land Investigation Reports

26/11/08

Mr Ipisa Biyama/District Lands Officer, WPA

WPA/Provincial Administrator

5

Recommendation for Alienability

05/12/08

Sikabu Maika, Advisor- Lands and Physical Planning-WPA

DLPP/Secretary

6

Instrument of Lease-Lease Back Agreement

24/07/09

Foifoi Limited /State

Haubawe/State

7

Notice of Direct Grant

30/10/09

Foifoi Limited

Pepi Kimas/DLPP

8

SABL Lease Title dated 6 November

2009

6/11/09

Foifoi Limited

Foifoi Limited/Kubeai Landgroup

23 Application for SABL was submitted to DLPP under the name of Kubeai Landgroup on 14th August 2008 prior to the incorporation of Foifoi Limited on 2 September 2009.

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Foifoi Limited.

FOIFOI LIMITED

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G217 dated 30th October 2009 for Portion 6C Demowi, Agila and Wasala Land. The above named land corresponds to three (3) rivers that demarcate the boundary to Kubeai village. The term of the lease was for seventy (70) years. A Special Agricultural and Business Lease was registered and issued on 30th October 2009 by the Department of Lands and Physical Planning to the holder Foifoi Limited (Foifoi). The details of the SABL is shown below:

Legal Description

Portion 9C

Registered Survey Plan Catalogue No

36/23

SABL Holder

Foifoi Limited

Date of Registration of Lease

30th October 2009

Period of Lease

Seventy (70) years

Land area of lease

33,900.0 hectares

IPA

The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

Foifoi Limited is a limited liability company registered in the Register of Companies of the

Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 2nd September 2009 and the current Principal Place of Business is Section 39 Allotment 4, Ilimo Street, Boroko National Capital District. As at 2nd August, 2011 IPA records confirm that it is operating. The Company number is 1-69429.

The IPA company extract provided to the Commission confirm that there are seven (7) shareholders namely Messrs Seia Bagili, Wadame Bosai, Simeon Davi, Baela Nenamo, Dumai Nenamo, Taru Saowe and Aimei Sumili who each hold 1 ordinary shares respectively in the company. The Company has issued total number of 7 ordinary shares.

The extract discloses Messrs Seia Bagili, Wadame Bosai, Simeon Davi, Baela Nenamo, Dumai Nenamo, Taru Saowe and Aimei Sumili as current Directors of the company. Mr Dumai Nenamo was appointed as the Secretary to the Company and currently holds that position in the company. The last annual return lodged with IPA was not found.

The chairmanship of the company is reflected in the Affidavit of one Aimei Sumili of Kubeai village dated 5th September 2011 and submitted to the COI on 21st September 2011. The deponent confirms to the effect that he was the Chairman of Foifoi Limited. He also expressed support on the evidence of Mr Kosa in respect of the SABL title "that all mandatory processes and procedures required under the Land Act of 1996 and other enabling Acts and Regulations in obtaining the Special Agriculture and Business Lease Titles have been complied with at all material times." (Refer to paragraph 4 of the Affidavit of Aimei Sumili).

Recommendation

The shareholding structure of the company does not reflect entirely that it represents the interest of the villagers and clan of Kubeai under the landowner company Foifoi. The shareholding in the name of an individual defeats the purpose of a landowner company that comprises a number of clans, which is clearly defined under the ILG formation and concept.

EVIDENCE OF CONSULTANT TO FOIFOI LIMITED

The C.O.I makes reference to the Evidence of Mr Kosa and Recommendation under C.O.I Report on MudauPortion 5C. The evidence is common to the SABL under review.

SOVEREIGN HILL (PNG) LIMITED

The C.O.I makes reference to the Evidence of Sovereign and Recommendation under C.O.I Report on MudauPortion 5C. The evidence is common to the SABL under review.

Department of Western Province

Mr Ipisa Biyama, the District Lands Officer for the Middle Fly District conducted land investigation for the Duinemi, Mowo and Wasala clan on the 26th day of November, 2008. According to the report he interviewed and compiled statistics accounting for 122 persons on the day of his visit to the SABL site. That may not constitute a fair representation of the villagers of Kubeai on site where the investigation was conducted.

Further, as it appears from a perusal of the LIR the landowners of the Foifoi clan of Kubeai village, Kamusie, Balimo gave their consent for the acquisition of

their customary land by the State and to later, as it appears, have it registered as a State Lease under section 102 for a period of seventy (70) years.

The population density is very low within the subject area and estimated at 250 hectares per person.

It also appears to be demonstrated by the LIR that in terms of its current usage the land area covered by the SABL, it is currently under the Wawoi-Guavi TRPA logging concession of the RH Group of Companies.

According to the Schedule of Owners Status and Rights to Land of Clan contained in the LIR only the landowners/villagers of Kubeai Village, Kamusie signed and or gave their consent and their approval for the acquisition. In total 122 of them appear to have given their consent.

There is no formalised ILG for each of the landowner clans which is a substantial aspect of landownership through clan/tribes as was evident in the landowner companies in the North Fly District. Therefore with the lack of ILG representation, the activities of the company seem to be placed on a what is deemed to be a group of persons holding themselves out as leaders in the Haubawe clan, though questions now arise whether or not the company represents the true intention of each and every member of the tribe/clan living on Aworra land.

On the 3rd day of December, 2008 the Certificate in relation to Boundaries was executed by Ipisa Biyama, the District Lands Officer has having walked along as far as practicable and indicated the boundaries of the subject land also on the 3rd day of December, 2008. It is highly likely that a walk around the land

boundary as big as the land would take one day to complete and for that matter three (3) other adjoining SABLs.

The Recommendation as to Alienability was executed and issued on the 5th day December 2008 at Kamusie by a Mr Sikabu Maika, the then Advisor for Lands and Physical Planning, Western Province Provincial Administration. Mr Sikabu was an officer in charge of the Division of Lands and Physical Planning within the Department of Western Province and was not delegated with the responsibility of signing the recommendation for alienability. We find that no instrument of delegation have been produced by the provincial administration setting a list of names of officers having been delegated with the authority to execute recommendations as to alienability. That recommendation is flawed because it was not signed off by either the District Administrator for Middle Fly or the Provincial Administrator who is the administrative head of the Provincial Administration. There is no evidence of due diligence been carried out by Mr Maika, which also raises questions about the land investigation process that is depended on majority consent by the people of the Kubeai village which include the Duinemi, Mowo and Wasalaclan.

This investigation report was in my considered view rushed to give effect to the changing circumstances of the expiry of the logging concession in 2012 and the need for continued economic activity with lack of proper formation of ILGs within the area, the lack of structure within the directorship and shareholding of the company and the complete trust in engaging a company whose major concerns was logging whereas no infrastructure or economic activity was identified for the good of the people.

Further to that, the initial tender for the SABL was submitted on behalf of the Kubeai Landgroup but the SABL title was issued in the name of Foifoi Limited

and questions arise whether it was possible for Minister or his delegate to issue notice of direct grant in the name of Foifoi when it was incorporated a year after the initial application was

submitted.. This is a question of irregularity arising out of the issuance of title to another company who was not the original applicant amount to an abuse of process on the part of DLPP. It goes to the issue of indefeasibility of title.

Recommendation

That further inquiries be conducted into the structure and composition of the company.

That the SABL be suspended pending a fresh LIR to be re-conducted by the Department of Western Province with the walking of the boundaries and certification as to ownership by custom.

That Mr Ipisa Biyama and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

The COI find no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by Mr Sikabu as the Advisor, Lands and Physical on behalf of the Administrator of the Western Province on 5th December 2008.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

In the evidence provided there was found no Land Instruction Number was given by DLPP for the LIR to be conducted. That is a major flaw in the process because it encompasses a specific instruction to the officers concerned to undertake a land investigation consistent with the process as accepted by DLPP.

However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was not met prior to the land grant being published in the National Gazette and issue of title.

APPLICATION AND/OR TENDER FOR SABL

The Application or Tender Form for SABL and Lease/Lease Back was submitted by a Mr Taru Sawoe as Chairman, Kaubia Landgroup Committee and Kubeai Landgroup jointly on 14th September, 2008, the proposed improvements and purpose for the subject land is for large scale Agricultural (Oil Palm) Plantation with:-

- (a) Administration Offices
- (b) Housing Blocks for Staff, Employees and Local Residents
- (c) Nursery Sites and Buildings
- (d) Power lines & Electricity Supply;
- (e) Domestic Water Supply System;
- (f) Drainage & Sewerage reticulations;
- (g) Warehouse and Store Building;
- (h) Processing Plant; and

(i) Road network

The Commission was not able to verify from DLPP records if any proposed oil Palm Agricultural and Business Plans was submitted to National Forest Authority and DAL respectively.

Land Instruction Number

Commission was not able to verify whether a Land Investigation number was issued, but the involvement of Mr Biyama as the investigator confirms that the instruction was issued to the Department of WP to conduct investigation.

Land Investigation process

The Landowners confirmed their intention to allow their land to be leased for a period of 70 years. That was inserted into the Direct Grant and SABL Title and is not contested.

Reservation for customary rights

Mr Biyama made the following recommendations (page 2 of LIR)

“The following be considered;

- * Hamlets not to be disturbed and allow forest buffer zones encompassing village
- * Graveyards and sacred sites be left as they are;
- * Buffer zones along waterways and creeks to stop erosion (maybe 50m).
- * Maintain natural sago clumps for local staple diet.

He also recommended, “...it is important to note that the landowners still maintain a traditional way of life. They live on subsistence farming, hunting and gathering and depend on bush materials for housing requirements. Given the foregoing, there must be reservation and conservation of certain areas for essential landowner needs for their livelihood.”

The Commission fails to identify from the Direct Grant and the SABL title that this reservation was considered as important for the continued use of the land was not included on the Notice of Direct Grant and the SABL Title. It is a concern that the officer concerned the late Jacob Waffinduo and including other lands officer have a duty to ensure that the relevant reservations are clearly inserted prior to submission to the Minister of his delegate to sign the Notice of Direct Grant. In addition to that, the recommendation as to alienability does not clearly demarcate whether reservations can be made or not. The reference to an attachment A is also missing and misleading that important information were excluded by an omission or deliberate action on the part of the officers empowered with the responsibility to undertake due diligence.

INSTRUMENTS OF LEASE & REGISTRATION

On the 24th July, 2008 a lease/lease back agreement (“instrument of lease”) was executed between the State and the landowners in respect of the subject land covered by the SABL.

Our perusal of the DLPP file, a memo written under the hand of late Mr Waffinduo, Acting Manager, Customary Land which was dated 20th October 2009 under caption “Approval of Lease-lease Back Instruments over Portion 9C Milinch Guavi, Fourmil of Aworra, WP” to the Secretary, we note the Secretary’s handwritten notation on the memo as “Is this a landowner company? Provide proof of this.” This goes the issue we raised as to whether or

not the proper title holder should be Kubeai Landgroup or Foifoi Limited. The Commission was also not able to verify whether or not Kubeai Landgroup was registered under IPA.

Further, a Special Agriculture and Business Lease was registered and vested in Haubawe Holdings Limited over the subject land on 06th November, 2009 and comprised in the Registrar of State Leases Volume Folio Number (not legible).

Recommendation

That the lease be amended from 45 years to 40 years as supported by LIRs, Lease/leaseback agreement and schedule of Notice of Grant under Section 102.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Commission was informed by Mr Kosa that whilst the SABL title has been issued Foifoi, they would pursue as a matter of course on the submission of a agriculture project plan to DAL including environmental plan and FCA. The FCA may impact on the existing TRP and that under an SABL process, there must be evidence of an agriculture plan subvmitted prior to the issuance of the title.

Recommendation

The Executives of Foifoi Limitedengage a developer that has agricultural background under the proposed Sub-lease arrangement to enable the process of carrying out feasibility study and development of the oil palm project including other initiatives to be derived out of this business venture

PNG FOREST AUTHORITY

C.O.I makes no findings and Recomendation

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

C.O.I makes no findings and Recomendation

CENTRAL PROVINCE

FOUR (4) CENTRAL PROVINCE SABLs (HIRITANO HIGHWAY) COVERED BY THIS REPORT

1.1 This report sets out the findings of the COI on a total of four (4) out of eight (8) SABLs issued in the Central Province of Papua New Guinea as follows:

1.1.1 The Commission of Inquiry File No. 05 for Special Purpose Agricultural and Business Lease (SABL) over Portion 29C Volume 29 Folio 182 Milinch: Kase, Buna, Central Province in the name of Baina Agro Forests Limited.

1.1.2 The Commission of Inquiry File No. 22 for Special Purpose Agricultural and Business Lease over Portion 30C Volume 31 Folio 120 Milinch: Kase, Buna, Central Province in the name of Yumu Agro Forests Limited.

1.1.3 Commission of Inquiry File No. 28 for Special Purpose Agricultural and Business Lease over Portion 45C Volume31 Folio 249 Milinch: Kase, Buna, and Central Province Mekeo Hinterlands Holdings Limited;

1.1.4 The Commission of Inquiry File No. 38 for Special Purpose Agricultural and Business Lease over Portion 409C Volume 32 Folio 171Milinch: Epo and Kairuku, Yule Island, Central Province in the name of Abeda Agro Forests Limited.

SITE VISIT

The C.O.I did not conduct any site visit to the four (4) SABLs situated along the Hiritano Highway starting from Kuriva to Mekeo Hinterland.

1. COI Inquiry File No. 05 for Special Purpose Agricultural and Business Lease over Portion 29C Volume 29 Folio 182 Milinch: Kase Buna, Central Province in the name of Baina Agro Forests 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 Baina Agro Forests Ltd. SABL. These were:

1.2.1 Department of Central Province, (DCP)

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 (PNGFA)

1.3. Witnesses and Summonses

1.3.1 Other persons of interest were also summonsed to provide evidence at the hearing. The names of the persons who have been summonsed to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of

reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Transcript

1
AIA, LINUS
(Consultant, Adviser, Baina Agro Forest Ltd.)
82-118

29/12/11-SABL 64 MIROU
2
BOUTAU, CLIFF
(Manager Lands, Dept. of Central)
50-71

29/12/11-SABL 64 MIROU
3
Francis DAINK
12-27

05/09/11-SABL13

(Deputy Sec. DAL)
2-33

06/09/11-SABL
4
GULU, RAGA
(Senior Lands Officer, Dept. of Central)
2-24

29/12/11-SABL 64 MIROU
5
POURU, KANAWI
2-11

25/08/11-SABL 9 WAIGANI

(MD, PNGFA)

2-44

31/08/11-SABL 65 WAIGANI
6
ZURENUOC, MANASUPE
(Custodian of Customary Land)
22-44

13/09/2011-SABL 17

1.4. Parties represented by counsel

1.4.1. 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.”

The following were granted leave to be represented by counsel

1.5. Exhibits and documents

1.5.1. There were twenty-six (26) 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	IPA records concerning Baina Agro Forests Limited	C.O.I	Not sighted	C.O.I
2	IPA records concerning PMS Timber Limited	C.O.I	02/11/11	C.O.I
3	LIRs Lands Department file material	C.O.I	15/08/11	C.O.I
4	Statutory Declaration Lawrence Martin Vauro	C.O.I	23/08/11	C.O.I
5	COI Submission			

Baina Agro Forest Ltd (Linus Aia- adviser

30/11/11

C.O.I

Secretariat Register

6

Support Letter

Central Province Administrator

27/10/11

C.O.I

Secretariat Register

7

COI Submission

DEC

Not Sighted

C.O.I

Secretariat Register

8

COI Submission

LIR (DLPP)

26/10/11

C.O.I

Secretariat Register

9

COI Submission

PNG Forest Authority

29/08/11

C.O.I

Secretariat Register

10

COI Submission

Kanawi Pouru, MD, PNG Forest Authority

24/08/11

C.O.I

Secretariat Register

11

Letter and Submission

BAFL-Joe Bagaro-Chairman

12/09/11

C.O.I

Secretariat Register

12

COI Submission

IPA BAFL Records

01/08/11

C.O.I

Secretariat Register

13

Samakuma LIR (Mr Raga) 22/12/2011

C.O.I

29/12/11

BAL 1

14
Fagaga LIR
C.O.I
29/12/11
BAL 2

15
Simalolo LIR
C.O.I
29/12/11
BAL 3

16
Hokuma LIR
C.O.I
29/12/11
BAL 4

17
Biabina LIR
C.O.I
29/12/11
BAL 5

18
Obea LIR
C.O.I
29/12/11
BAL 6

19
Kuniroma LIR
C.O.I
29/12/11
BAL 7

20
Yaua LIR
C.O.I
29/12/11
BAL 8

21
Eka LIR
C.O.I
29/12/11
BAL 9

22
Minute under the letterhead of the Office of the Provincial Administrator dated 10/01/07 by Mr Boutau to Mr Yibmaramba

C.O.I
29/12/11
BAL 10

23
Document titled Agriculture Development Plan for Oil Palm and Forest Plantation Management In BAF Agricultural Project dated 10th April 2007
C.O.I

29/12/11

BAL 11

24

Photograph Depicting a Nursery at Baina Agro by NSAYL in 2005

C.O.I

29/12/11

BAL 12

25

Photograph of Trip to Malaysia by the Chairman of BAFL, Mr Jerewai (as Counsel), Governor and Provincial Administrator in 2006

C.O.I

29/12/11

BAL 13

26

Bundle of Documents comprising Submission of BAFL to COI by Mr Bagaro and Agriculture Sub-lease between PMS timber Ltd and BAFL dated 20 April 2011 for a period of 45 years.

C.O.I

29/12/11

BAL 14

1.6. Timeline of events of note surrounding BAFL SABL Title

1.6.1. 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

Change of name from UVAL No. 46 to Baina Enterprises Ltd.

29/06/93

Linus Aia, John Havi, Michael Tama, Daniel Mona, Ray Ond

IPA

2

Registration of Developer Nasyl No.98 Ltd. as a Forestry Industry Participant with PNGFA

04 July 2004

Nasyl No. 98 Ltd.

PNG Forest Authority

3

Change of name from Baina Enterprises Ltd. to Baina Agro Forest Limited

19/08/2004

Linus Aia, Joe Bagoro, Wasanata Boti, John Havi, Daniel Mona, Michael Tama

IPA

4

Formation of Baina Agriculture Development Board

03/02/2005

No evidence on File

BAFL, Department of Central Province, Woitape LLG

5
Survey Plan catalogue no. 43/400 Registered
11/07/2005

Baina Agroforest Limited
Office of Surveyor General, Dept of Lands and Physical Planning

6
Land Investigation Reports
26th July 2005

Samakuma, Fagaga, Simalolo, Hokuna, Biabina, Orbea, Yaua, Kuniroma and Eka Land Groups
Lands Division Department of Central Province

7
Issue of Certificate of Alienability

No evidence on file
Secretary, Department of Provincial Affairs and Local Level Government

8
SABL Lease/Lease Back Agreement
27/10/2005

27 Landowning ILGs
Minister for Lands (Dr Puka Temu)

9
Direct Land Grant gazetted.
28/10/2005

Minister for Lands/delegate
Minister for Lands/Delegate

10
Development Agreement with NASYL No. 98
Ltd.

No evidence on file
NASYL No. 98 Ltd and Baina Agriculture Development Board

11
Issue of SABL title
03/11/2005

Baina Agroforest Limited
Department of Lands and Physical Planning

12
Environment Permit WDL3 (87) discharge waste for 25 years
06/03/2006

Baina Agroforest Ltd
Department of Environment and Conservation

13
Environment Permit
WEL3 (66) extract water for 25 years
06/03/06

Baina Agroforest Ltd.
Department of Environment and Conservation

14
Timber Permit license no PNGFA L-432/06 granted to Nasyl No. 98 Ltd.
31/03/2006

Nasyl No. 98 Ltd
National Forest Service– PNG Forest Authority
15
Letter of approval to Nasyl No. 98 regarding PNGFA License
05/04/2006

PNG Forest Authority National Forest Service
Nasyl No. 98 Mr Jack Goh
16

Caveat registered by NASYL No. 98
Ltd.
02/09/2009

NASYL No. 98 Ltd.
Registrar of Titles DLPP
17

Application for replacement title
03/05/2011
BAFL

(Joe Bagoro/PMS Timbers)
Registrar of Titles DLPP
18

Project Agreement, Baina and PMS Limited
05/05/2011

Baina Agroforest Limited and PMS Timber Limited (Joe Bagoro and Linus Aia)
Baina Agroforest Limited and PMS Timber Limited (Joe Bagoro and Linus Aia)
19

Agricultural Sub– lease
20 April 2011

Baina Agroforest Ltd and PMS Timber Ltd.
Baina Agroforest Ltd and PMS Timber Ltd.
20

Advertisement by Registrar of Titles in the National Gazette for replacement title
19/05/2011
Registrar of Titles (Benjamin Samson)
National Gazette

Obtain Replacement Title

Date not evidenced on file

1.7 FINDINGS

1. 7.1 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by BAFL.

Baina Agro Forests Limited SABL

1.7.2 A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G157 dated 28th October 2005 for Portion 29C. The term of the lease was for forty (40) years.

A Special Agricultural and Business Lease was registered and issued on 3rd November 2005 by the

Department of Lands and Physical Planning to the holder Baina Agro Forest Limited (BAFL). The details of the SABL is shown below:

Legal description

Portion 29C, Kase, Buna, Central Province

Registered Survey Plan catalogue no.

43/400

SABL Holder

Baina Agroforest Limited

Date of Registration of lease

03/11/2005

Period of Lease

27/10/2005 to 26/10/2045

Land area of lease

42,100 hectares

Location

1.7.3. The SABL Portion 29C is situated west of Doa Rubber Estate near Kuriva on the Hiritano Highway between Kairuku Hiri LLG and Woitape LLG, Central Province. This particular SABL sits adjacent to another SABL Portion 30C, which is in the name of Yumu Resources Limited. Baina Agro-Forest Limited's portion is covering a total area of 42,100 hectares.

1.8. IPA

1.8.1. The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

1.8.2 Baina Agro Forests Limited (BAFL) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The company has undergone a number of name changes leading to the current name of

Baina Agro Forest Ltd. The company was first known as UVAL (No. 46) Pty. Ltd. with one share each owned by a Vetali Maino and Alice Haromairi who were also Directors.

1.8.3 On 29th June 1993 the company was changed to Baina Enterprises Ltd. Mr Vetali Maino and Alice Haromiri resigned as shareholders and Directors and Messrs Linus Aia, John Havi, Michael Tama, Daniel Mona and Roy Ond were registered as new Directors and shareholders.

1.8.4 On 27th July 2004 Directors of the company by way of company resolution applied for change of name of the company from Baina Enterprises to Baina Agro Forest Ltd. (BAFL). This was effected by the Registrar of Companies with issuance of Certificate indicating the name change to Baina Agro Forest Ltd. under hand of the Registrar of Companies on 19 August 2004.

1.8.5 The latest IPA company extract provided to the COI dated 1st August 2011 indicates six shareholders of BAFL holding 10 shares each in their individual capacities and not on trust for their

respective communities on the company register. The shares were held in the names of Messres Linus Aia, Joe Bagoro, Wasana Boti, John Havi, Daniel Mona and Michael Tama. The extract discloses these six were also directors of the company together with seven other directors being messrs Morris Oki, Augustine Mark, Michael Mogo, Simon Boni, David Bemu, Henry Mona and Nikial Efi.

1.8.6 There were no Annual returns submitted by the company from 2004 to the present.

1.8.7 The COI finds that a company set up for landowners interests has the shares held not in trust for the clans, but in the names of individual persons. It is recommended that this is a glaring defect which must be rectified as soon as possible or in the failure thereof to recommend for withdrawal of the SABL Lease.

Recommendation

1.9. NASYL NO. 98 LIMITED

1.9.1 NASL No. 98 Limited was the developer identified by the partners in the Baina Agro Forestry Project to undertake logging and oil palm project. The partners were BAFL, Central Provincial Government, Woitape LLG and Kairuku LLG.

Findings

1.9.2 In Mr Linus Aia's letter dated 2nd February 2006 to DEC there were contentions from the BAFL that NASL No. 98 was simply a shelf company brought into the project as a Consultant. It however maneuverer its way around to positions of influence with the Central Provincial Government. From an Investment Agreement draft drawn up by a Ahamba & Co. Chambers an Attorney based in Nigeria it was seen that the principle partners in the logging and oil palm venture being contemplated was a Dr David Smith based in Nigeria as financial investor and Mr Jack Goh a Malaysian.

1.9.3 There were no legal documents on file regarding engagement of NASL No. 98 Ltd. by the Provincial Government or BAFL including dates of commencement of NASL no. 98 Ltd. Neither were there information on dates of cessation of NASLs activities. On file is a letter dated 1st July

2005 from DEC FAS Mr Gunther Joku to Managing Director of Nasyl No. 98 Ltd. acknowledging the latter's Environmental Inception Report and advising that the next requirement in the process is the conduct of an Environment Impact Assessment and Environmental Impact Statement. This letter indicates Nasyl No. 98 Ltd.'s involvement in the project at being around or before mid 2005.

1.9.4 It was found on file that Nasyl No. 98 Ltd. complied with DEC procedures to obtain Environment permits from DEC by satisfactorily conducting a EIS as borne in a letter dated 31st January 2007 from Secretary of DEC to Secretary DAL. There is also evidence of substantial logging machinery and operational manpower on the ground during the early part of 2007 following substantial feasibility reports and correspondences between CPG and DAL and NFA.

Recommendation

1.9.5. That the owners of Nasyl No. 98 Ltd. be questioned as to their role in facilitating the BAFL SABL.

1.10. PMS TIMBER LIMITED

1.10.1 According to evidence from IPA (Company extract dated 2nd November 2011), this

company was incorporated on 22nd September 2008 with its registered address being at Section 515, Allotment 8 & 9 Waigani. The company structure shows issued shares of 100 shares held by a sole shareholder Mr Eii Sing Hii a Malaysian by nationality.

1.10.2 The company extract shows three directors being Mr Eii Sing Hii, Mr Stephen Hii, an Australian by nationality and a Chiong Hieng Tiew, a Malaysian by nationality.

Findings

1.10.3 From the evidence PMS Timber Limited was picked up as a developer with the demise of Nasyl No. 98 Limited. It is not clear if this decision was made between all project partners, being the Central Provincial Government and the Woitape and Kairuku LLG as there were no meeting minutes to verify this. A Project Agreement dated 5th May 2011 was signed between Baina Agroforest Limited and PMS Timber Limited. The Project Agreement stipulated a sub-lease clause no. 6.2 in which the term of the sub-lease would be for a period of 99 years.

1.10.4 Clause no. 6.2 raises important issues of how such a sub-lease agreement could be held to be binding in a Project Agreement when the proposed term of the sub-lease is over twice as long a time duration as the Head Lease itself (SABL held by BAFL is only for a period of 40 years).

1.10.5 Prior to the project agreement being signed between the two parties an Agricultural Sub-Lease had been signed on 20 April 2011 between the Chairman of Baina Agroforest Ltd. Mr Joe Bagoro and Director Mr Linus Aia on the one hand and PMS Timber Ltd. on the other, witnessed by the Provincial Administrator Mr Raphael Yibmaramba. The duration of the sub-lease schedule however, in difference to the Project Agreement clause 6.2 stated 45 years to commence on 5th May 2011 and terminating on 4th May 2056. This again raises questions as to the validity of the sub-lease since the Head Lease held by Baina Agroforest Ltd. was for 40 years as of 27/10/2005 to 26/10/2045. Clearly the sub-lease period ending in 2056 would exceed the head lease period by a period of 11 years. This requirement was a binding requirement. In the circumstances it was not enforceable the effect is that the sub-lease is invalid.

1.10.6 Moreover the form showing the appended signature and stamp of the Registrar of titles to effect registration of the sub-lease dated 06 July 2011 shows a blank square where the expiring term of the sub-lease is normally entered. Only the square showing the commencement period of 5th May 2011 was filled. The omission of the expiry date is crucial. Without it being filled in the document should not have been stamped at the Stamp Duties office of IRC. Neither should it have been registered by the Registrar of Titles at DLPP. Critical enquiry should have been made by both statutory offices as to why this box was left blank, failing which the Stamp Duties Office and Registrar of Titles Office could be assumed to be implicit in the fraud.

1.10.7 It is also not stated whether PMS Timbers Ltd. as the new developer would have to obtain new Environmental Permits by virtue of the fact that the old Environment

1.10.8 Currently PMS and BAFL are awaiting the moratorium imposed by the conduct of the COI and subsequent decisions to be taken by government before they can apply for timber permits.

Recommendation

1.10.9. That the Registrar of titles and Stamp Duties OIC be reprimanded for failing to properly ensure the sub-lease instrument was correctly filled out before executing their respective statutory duties in appending their signatures and stamps to the sub-lease document.

1.11. Department of Central Province

1.11.1 The Department of Central Province is the bureaucratic arm of the Central Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the BAFL SABL there was a formal Land Investigation Report (LIR) conducted by the Lands Division of the Department of Central Province.

Findings

1.11.2 However upon cross examination at the hearings Mr Cliff Boutau affirmed on oath that the LIR was provided to Land group leaders to conduct. On assessment of the LIRs they were found to be filled by one or two agents or executors for many people. This is unsatisfactory as two things could be surmised from this, firstly names could be made up and secondly the number of people inflated with members of other clan, deceased people and small children. This bore true when on inspection of individual clan group LIRs the names of people named in a certain group re-appeared in two or three other Land groups

1.11.3 It was also found that people appointed as Agents by a particular land group were also found appointed as Agents in two or three other land groups. For example Mr Augustine Maka appeared as an agent for Eka, Mauru and Yaua land groups. His stated village is Baida, Banola and Mauru villages under those land groups. Mr Linus Aia appears as Agent for Eka and Kuniroma Land Groups with his stated village as Baida and Banola in those land groups. It is improper and fraudulent for a person to be named in more than one land group for the purposes of the LIR. This raises questions on the authenticity of the data collected. There

were nine landgroups who participated in the LIR leading to the BAFL SABL as provided below:

No

Name of Land Group

No. of people in land group

Lease Period Agreed (years)

No. of people Signing Agency Agreement

Names of Appointed Agents

Stated village of Appointed Agents

1

Eka

18

40

18

Luciano Sabiga, John Sabiga, Augustine Maka, Michael Tama, Linus Aia

Baida village

2

Kuniroma

17

40

15

Linus Aia, Hani Ovia, Cannolo Ovia, Gavia Aia

Banola village

3

Mauru

29

40

24

Augustine Maka, Daniel Tama, Aia Peto, Maini Alano, Daniel Linus

Mauru village

4

Yaua

23

40

21

Gari Aia, Daniel Linus, Oboro Ovia, Augustine Maka, Camillo Ovia, Peter Aia

Yaua village

5

Biabina

31

40

14

Roy Aubo, Mona Bagoro, Joe Bagoro, Havila Muina, Ivaiko Aubo, Wasana Boti

Inaya village

6

Simalolo

26

40

104

Burida Ovia, Moda Maini, Madlen Guwara, Joe Burida, Emmanuel Moda

Inaya village

7

Samakuma

70

40

67

Joe Bagoro, Mena Roaima, Daniel Essi, Wasana Boti, Fiuta Daniel, Iga Mona, Mona Boti

Inaya village

8

Fagaga

47

40

24

Joseph Gavara, David Asume, Imona Mona, Yori Asume, Boa Burida, Goia Burida, Mona Asume

Inaina village

9

Hokuma

39

40

24

Henry Mona, John Mona, Mathew Kogabe, Kasina Eves, Guna Kora

Inaya village

1.11.4 The total number of people collated in the LIR report total 300, which is a very small percentage of the reported 6000 inhabitants of the project area, BAFL has been making itself out to represent. Clearly numbers have been inflated under a form of manipulation to aid grant of the lease.

Mr Raga Gulu

1.11.5 Mr Raga Gulu was the Senior Lands Officer at the Department of Central. Evidence before the COI indicated that he was responsible for the LIRs. In his evidence to the Commission Mr Gulu states that the LIR was prepared around July 2005.

1.11.6 Mr Raga Gulu conducted the LIR for all the nine (9) ILGs, but was limited in collating all the information due to logistical difficulties. He confined his investigation to one or two villagers and failed to undertake the boundary walk with the landgroups. That in fact would have been impossible due to the large area of land surveyed under Rural Class 4 renders his account as truthful, because the trend was simply for lands officers conducting LIRs just to fill out the information, sign of and return to the Provincial Administrator for execution of the Recommendation for Alienability. That process invariably required any due diligence test.

Recommendation

1.11.7 That the SABL be revoked so that the SABL process subject to fresh application and processing pending a fresh LIR to be re-conducted by the Department of Central Province with the walking of the boundaries and certification as to ownership by custom.

1.11.8 That Mr Gulu Raga, Cliff Boutau, Manase Rapilla and Raphael Yibmaramba be reminded as to their respective roles regarding SABLs.

1.11.9 That DLPP organise a workshop for all key agencies including Provincial Administration and all Lands Officers involved in land investigation to be properly trained and equipped with all the necessary

information on the law, the process and laws. This must be a complete package of training module which is lacking since SABL was introduced some 30 years ago.

1.12. DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

1.12.1 The DPALLG Secretary holds the position of Custodian of Customary land throughout Papua New Guinea as appointed by the Minister responsible under section 167 of the Land Registration Act. The Secretary of the Department of Provincial and Local Government Affairs had always been appointed as Custodian for Trust Land, prior to Independence and continues to do so to date. The role of the Custodian is described in Section 166 of the Land Registration Act.

1.12.2 In the process of alienating customary land for a SPABL, the role of the Custodian of Customary Land (Secretary for DPALLG) is to check and be satisfied with the information provided him in the LIR to warrant his issuing a certificate of alienability for alienation and acquisition process to commence.

Findings

1.12.3 Even though there was evidence of the Central Province Administrator Mr Raphael Yibmaramba signing Recommendations as to Alienability of customary land for a number of ILG groups, there is no evidence that the LIRs were brought to the office of the Custodian of Customary Land for a Certificate of Alienation to be issued. This

important facet of complying with the procedures for alienation of land was not complied with prior to the grant of the SABL by DLPP.

Recommendation

1.12.4 In the future any LIRs fully completed and compiled with the Recommendation as to Alienability be submitted as a compulsory process to the Secretary of Provincial Affairs as the Custodian of Customary land for issuance of Certificate of Alienability.

1.13. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

1.13.1 The Department of Lands and Physical Planning processes SABLs under two main legal criteria prescribed under Section 10 and 11 of the Lands Act Chapter 5 (the Land Act).

1.13.2 The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs to complement the Recommendation as to Alienability instrument signed by the Central Province Administrator in September 2005. In the evidence provided there was found a instruction no. 06/05 given for the LIR to be conducted, a notice of Direct Grant under Section 102 and the signed Lease/leaseback instrument.

1.13.3 However as noted earlier it is a condition for processing of customary land that a Certificate of Alienability is issued from the Department of Provincial Affairs prior to the customary leases officer at the DLPP preparing a Lease/leaseback agreement and a Notice under section 102 to be published in the National Gazette. This procedure was

not met prior to the land grant being published in the National Gazette and issue of title.

1.13.4 A Project Agreement dated 5th May 2011 was signed between Baina Agroforest Limited and PMS Timber Limited and witnessed by Provincial Administrator Mr Raphael Yibmaramba. The Project Agreement stipulated a sub-lease clause no. 6.2 in which the term of the sub-lease would be for a period of 99 years. It is found that this 99 year requirement makes the sub-lease invalid as the Head Lease itself (SABL held by BAFL) is only for a period of 40 years.

1.13.5 Prior to the project agreement being signed between the two parties an Agricultural Sub-Lease had been signed on 20 April 2011 between the Chairman of Baina Agroforest Ltd. Mr Joe Bagoro and Director Mr Linus Aia on the one hand and PMS Timber Ltd. on the other, witnessed by the Provincial Administrator Mr Raphael Yibmaramba. The duration of the sub-lease schedule stated 45 years to commence on 5th May 2011 and would last to 4th May 2056. This again raises questions as to the validity of the sub-lease since the Head Lease held by Baina Agroforest Ltd. was for 40 years as of 27/10/2005 to 26/10/2045. Clearly the sub-lease period ending in 2056 would exceed the head lease period by a period of 11 years. This requirement was a binding requirement. In the circumstances it was not enforceable the effect is that the sub-lease is invalid.

1.13.6 Moreover the form showing the appended signature and stamp of the Registrar of titles to effect registration of the sub-lease dated 06 July 2011 shows a blank square where the expiring term of the sub-lease is normally entered. Only the square showing the commencement period of 5th May 2011 was filled. The omission of this date is crucial. Without it

being filled in the document should not have been stamped at the Stamp Duties office of IRC. Neither should it have been registered by the Registrar of Titles at DLPP. Critical enquiry should have been made by both offices as to why this box was left blank, failing which the Stamp Duties

Office and Registrar of Titles Office could be assumed to be implicit in the fraud.

1.13.7 Another anomaly on file is that in early May 2011, a statement by way of a Statutory Declaration by Chairman of BAFL Mr Joe Bagoro stated that the original SABL lease title for the land had been lost. He had tendered this Statutory Declaration in his evidence to DLPP to obtain a replacement title. The replacement title was provided by the Registrar of Titles sometimes in late May 2011. The replacement title however showed that the lease period had changed from 40 years. The title now showed 45 years.

1.13.8 There were no supporting documents on file to explain whether the lease period increase from 40 to 45 years was authorised. Such supporting documents would include evidence of all customary clans and land groups agreeing to the increase and subsequent amendment to the schedules of the notice of direct grant under section 102 giving 45 years instead of the previous notice of 40 years. This increase in the lease period from 40 to 45 years without any supporting evidence is seen as a committed fraud on the part of the lease preparation officers or the Registrar of Titles office to exceed the agreed no. of years by landowners.

1.13.9 Following the issue of the SABL title to BAFL on 3rd November 2005, there was a letter sighted in DEC's tendered evidence dated 6 September 2005, of the then BAFL Chairman Mr Linus Aia writing to Dr

Wari Iamo Secretary of DEC seeking the support of DEC to conduct an oil palm activity.

Recommendation

1.13.10. That the lease be amended from 45 years to 40 years as supported by LIRs, Lease/leaseback agreement and schedule of Notice of Grant under Section 102.

1.14. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

1.14.1 The issue of a Forest Clearance Authority (FCA) lies in the PNGFA subject to the approvals sought in the DAL submissions and Certificate of Compliance and those of the DEC submissions. It is found in the evidence before the enquiry that neither BAFL, its first or second proposed development partner have obtained a Certificate of Compliance from DAL to warrant issuance to them of a FCA permit from PNGFA and all other relevant processes thereafter.

1.15. PNG FOREST AUTHORITY

1.15.1 It was found from evidence presented that NASYL No. 98 Ltd. was registered as a Forest Industry Participant and a certificate of registration dated 19 July 2004 was issued. Also noted on BAFL document was a timber permit on Forestry Regulation form 175 issued to NASYL No. 98 Ltd. by the PNGFA dated 31st March 2006.

1.15.2 There were no copies of applications for either the Forest Industry Participant or timber license sighted on file, either from PNG Forest Authority or NASYL. There was a copy on BAFL document showing

letter dated 28th March 2006 from Terry Warra A/Managing Director of PNGFA acknowledging receipt of NASYL's application for a license.

RECOMMENDATIONS

1.15.3 That the PNG Forest Authority officers summoned and failing to appear with material before the COI be served a stern warning so as to prevent future similar behaviour by PNGFA officers.

1.16. DEPARTMENT OF ENVIRONMENT AND CONSERVATION

1.16.1 A file was submitted to COI from DEC. Information contained in the file showed that a developer named NASYL No. 98 Ltd. was engaged by the Baina Agriculture Development Board to seek Environment permits to conduct forest clearing for an Oil Palm project. The Environmental Impact Statement (EIS) conducted in selected locations in Kairuku was approved by DEC on 6th March 2006.

1.16.2 However due to a fallout between the SABL Holder BAFL and the Developer, the Environment Permit was amended so as to cancel NASYL No. 98 Ltd. as the Operator of the Permit and installed BAFL as the Operator on the Permits.

1.16.3 Permit Nos. WD-L3 (87) and WE-L3(66) were granted for 25 years commencing 3rd April 2006 to BAFL. There were stringent conditions attached to the permits. One of the conditions of the Environment Permit (condition 25) required the operator, BAFL, to produce a waste management plan within three (3) months of the permit commencement date (3/4/06). This Plan is a management tool that guides

the operator of the project to manage the environmental issues identified in the EIS. It was not evident in the DEC file whether a Waste Management Plan had been submitted and whether the Annual charge of K2, 853 for each year since 2006 had been paid by BAFL.

1.16.4 It is also not stated whether PMS Timbers Ltd. as the new developer signed up by BAFL would have to obtain new Environmental Permits prior to it undertaking any development by virtue of the fact that the old Environment permits were obtained by the previous Developer NASYL No. 98 Ltd.

RECOMMENDATION

1.16.5 That in the absence of compliance by BAFL to any statutory requirement of the DEC that appropriate penalties under its enabling legislation be immediately instituted by DEC.

2. COI Inquiry File No. 22 for Special Purpose Agricultural and Business Lease over Portion 30C Volume 31 Folio 120 Milinch: Kase, Buna, Central Province in the name of Yumu Resources Limited.

2.1 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.

2.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Yumu Resources Ltd. SABL. These were:

- 2.2.1 Department of Central Province, (DCP)
- 2.2.2 Department of Lands and Physical Planning, (DLPP)
- 2.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)
- 2.2.4 Department of Agriculture and Livestock, (DAL)
- 2.2.5 Department of Environment and Conservation, (DEC)
- 2.2.6 PNGForest Authority (PNGFA)

2.3 Other persons of interest were also summonsed to provide evidence at the hearing. The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

2.4. Witnesses and Summonses

2.4.1 Other persons of interest were also summonsed to provide evidence at the hearing. The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No.
 Name and Position
 Pages
 Day
 Date
 1
 AIA, LINUS
 (Project Coordinator, Yumu Resources).

10/01/12-SABL
 2
 BOUTAU, CLIFF
 (Lands Manager, Dept. of Central)

10/01/12-SABL
 3
 KATAKUMB, DANIEL
 (Director, Lands Administration, DLPP)

24/01/12-SABL
 4
 KIMAS, PEPI
 (Secretary, DLPP)
 3-80

18/01/12-SABL77

5

LUBEN, ANTHONY
(Deputy Secretary, DLPP)
2-10

-SABL68 MIROU

6

RAGA, GULU
(Senior Lands Officer, DCP)

10/01/12-SABL

7

YIPMARAMBA, RAPHAEL
(Provincial Administrator, Central Province)
3-8

27 October 2011

2.5. Parties represented by counsel

2.5.1. 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.”

The following were granted leave to be represented by counsel

2.6. Exhibits and documents

2.6.1. There were eleven (11) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

Agreement dated 4th April
2007

C.O.I

10/01/12

Yumu 3

15

Minute of 23/04/12 by Mr Katakumb over concerns with regard to Process of SABL to Secretary

C.O.I

24/01/12

Yumu 4

2.7. Timeline of events of note regarding Yumu Resources Ltd. SABL Title

2.7.1. 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

1

Issuance of an Instruction no. from DLPP for the conduct of an LIR

Not sighted

No evidence on file

Dept. of Central DLPP

2

Production of an LIR Report

Not sighted

No evidence on file

Dept. of Central DLPP

3

Signed Recommendation as to Alienability by Prov.

Administrator

Not sighted

No evidence on file

Prov. Administrator Dept. of Central

4

Certificate of Alienability issued by Custodian of Customary Land

Not sighted

No evidence on file

Secretary, Dept. of Provincial Affairs

5

Registered Survey Plan

cat.no. 43/401

04/04/2007

Yumu Agro Forest Project

Surveyor General

6

Execution of Lease/Leaseback Agreement

04/04/2007

Yumu Resources Ltd.

State

7
Gazettal of Section 102 notice as to Land Grant
03/05/2007

DLPP
DLPP

8
Registration and issue of SABL title
09/05/2007

DLPP
DLLP

9
Development Agreement with Mansfield Ltd.
Not sighted

No evidence on file
YRL and Mansfield Ltd.

10
Development Agreement with Aramia Plantations Ltd.
11/10/2009

YRL and Aramia Plantations Ltd.
YRL and Aramia Plantations Ltd.

11
Sub-lease to Aramia Plantations Ltd.
06/11/2009

YRL and Aramia Plantations Ltd.
DLPP

12
Certificate of Compliance Large Scale Conversion of Forest to Agriculture or other Land Use
27th May 2011

Aramia Plantation Ltd.
DAL

13
EIS
Around 29th March 2010

No evidence on file
DEC

14
Payment of K50,000 fee for proposed Agro- forestry Project
18/08/2010

Aramia Plantation Ltd.
PNGFA

15
FCA licence
Not sighted
No evidence on file
PNGFA

2.8 FINDINGS

2. 8.1 The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Yumu Resources Ltd.

2.9. Yumu Resources Limited SABL

2.9.1 On 3rd May 2007 a Noticed of Direct Grant under Section 102 of the Land Act was Gazetted in the National Gazette No. G68 by the Secretary Department of Lands and Physical Planning. SABL title on Portion 30C Milinch Kase, Fourmil Buna, Central Province dated 7th May 2007 and registered 9th May 2007 was issued by the Department of Lands and Physical Planning to Yumu Resources Ltd. The Lease covered a land area of 115,000 hectares was for a period of 99 years commencing on 3rd May 2007 and expiring 2nd May 2106. Details of the SABL is shown below:

Legal description

Portion 30C, Volume 31 Folio 120, Milinch Kase, Buna, Central Province
Registered Survey Plan Catalogue no.
43/401

SABL Holder

Yumu Resources Ltd.

Date of Registration of lease

9th May 2007

Period of Lease

99 years

Land area of lease

115,000 hectares

Location

2.9.2 SABL Portion30C is situated north of Doa Rubber Plantation near Kuriva on the Hiritano Highway between the Kairuku LLG and Woitape LLG provinces. The SABL claims a total area of 115,000 hectares and is on the western side of that SABL adjacent to it is the Baina Agro-Forest Limited.

2.10. IPA

2.10.1. The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

2.10.2 Yumu Resources Ltd. is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. Incorporation of the company occurred on 21st July 2006. At the time of incorporation it was found that the company had four (4) shareholders, six (6) directors and three (3) company Secretary?s.

2.10.3 The shareholders holding one share each in their individual capacities and names were Alan Hara, Gelend Koloko, Jeffrey Onda and Kasina Somba. The Directors were Paul Hara, Iruma Asi, Besef Mona,

Salo Doa, Hala Enga and Duba Hara. The company secretary was Julio Mona, Francis Koma and Joe Obu.

2.10.4 It is noted that the shares were not held in trust for any clan or ILG as would be the case with a landowners company. It is further noted that the 19 members who signed as customary landowners for Lease/leaseback with the State cannot be conclusively taken to be absolute owners

of the entire 115,000 hectare of land under the SABL because of the absence of a LIF report determining ownership by custom by all interested parties in the land.

2.10.5 Because the shares are not held in trust for any clan or ILG it is safe to assume that Yumu Resources is not a landowner company within the meaning of a SABL processed title, but is a privately owned enterprise belonging to four individuals.

Recommendation

2.10.6 That in the absence of a LIR evidencing authorization for individuals to represent them on Yumu Resources Ltd. the purported landowner company, and by virtue of the shares being held privately by individuals that the SABL title is not held on trust by agents for all customary landowners on the face of the company records. The so named shareholders be instructed to obtain evidence of their being authorized to hold the shares in their individual capacities of the customary landowners.

2.11. Department of Central Province

2.11.1 The Department of Central Province (DCP) is the bureaucratic arm of the Central Provincial Government whose primary role it is to facilitate

government policies and directives through the work of its divisions of which the Lands Division is an important one.

Findings

2.11.2 There was no evidence of a formal Land Investigation Report (LIR) having been conducted by the Lands Division of the Department of Central Province (DCP) to facilitate the huge 115,000 hectares of land being alienated from customary ownership for Yumu Resources Ltd. SABL. Although DCP material provided to the COI showed DCP was attempting to develop a agro-forestry project, these were sketchy. There was no report or project submission regarding the project provided to the COI by DCP.

2.11.3 It is noted that the most fundamental omission in processing of the SABL was the LIR. In the normal course of events the DCP should have obtained an Instruction number from Department of Lands and Physical Planning (DLPP) for the processing of an LIR. Than it should have proceeded to conduct the LIR. No LIR material was sighted as requested of DCP.

2.11.4 In the Statutory Declaration of Mr Gulu Raga declared on 15th December 2011 he stated that he conducted a Land Investigation for the Yumu Agro-Forestry Project which involved the registration of seven ILGs for the area. The COI notes that the conduct of a land investigation and registration of ILGs does not satisfy the conduct of a LIR. These are two different and distinct activities because the LIR deals with processes leading up to the alienation of customary land for a SABL after a Land Investigation number has been issued by DLPP, whereas the Land

Investigation for ILG registration appears to be a Divisional operational activity being undertaken by DCP.

2.12. Department of Central Lands Office urging for Section 102 Notice

2.12.1 Of interest and concern is a letter from the same officer (Mr Raga Gulu) dated 11th of April 2007 to the Manager Customary Land at DLPP requesting him to proceed with the preparation of a Section 102 Notice. This letter advises that the landowners wished to develop their land for oil palm

planting purposes jointly with a developer (unnamed). In paragraph three of that letter Mr Gulu points out that due to the urgency of the project the Central Provincial Administration has proceeded to execute signing of Lease leaseback Agreement between Landowners and the State while the lands investigation was still in the process of being conducted. This request was found to be auctioned by DLPP.

2.12.2 This is found to be a direct and flagrant violation of due process where three important steps in the land alienation process has been directly breached. Firstly, there was no conduct of a Land Investigation Report (LIR). The LIR for all intents and purposes is critical to determining the rightful owners of the subject land and obtaining their approval for the land to be utilized for the proposed project including the set number of years for which the land is to be alienated for the project.

2.12.3 The LIR was critically important to ascertaining ownership as to custom, by owners of the subject land and owners of adjacent lands to the subject land. The LIR would also lead to the appointment of agents by the customary landowners to act on their behalf, whereby the agents would

sign Lease/leaseback documents and also be holding shares in the SABL holding company on trust on behalf of customary landowners.

2.12.4 Secondly, there was found to be no recommendation as to alienability of the subject land by the Provincial Administrator as required under the LIR and SABL process. This would have normally followed had a LIR been conducted and the Provincial Administrator upon satisfying himself as to the facts on the LIR that there was no Land dispute over the subject land would have signed a Recommendation as to Alienation instrument for the land.

2.12.4 Thirdly, the recommendation as to alienability would be taken with the LIR to office of the Secretary for Provincial Affairs and Local Level Government for registration. Following registration, the Provincial Affairs Secretary in his role as Custodian of Customary Land would issue a Certificate of Alienation over the subject land which is then passed on to Department of Lands to follow further processes leading up to issuance of the SABL. It was found from evidence before the COI that these three important steps in the SABL process was not followed.

2.12.5 The most incriminating evidence lending to these flaws in due process for producing the Yumu Resources Ltd SABL is in Mr Gulu Ragas 11th April 2007 letter to the Manager Customary Land at DLPP in which he appeals to the Manager of Customary Lands to proceed and gazette the Section 102 Notice as soon as possible so that the developer (unnamed) can be given a copy of it so it can have confidence to start the project. This is in clear breach of the established processes where gazettal of Section 102 Notice should only be done after all antecedent acts including certificate of alienation from Department of Provincial Affairs

and Local Level Government had been given to the DLPP. Mr Ragas assertion that an investor would feel confident to conduct business with a copy of the title, following the committal of a flawed process is found to be totally unacceptable.

Recommendation

2.12.6 That the SABL be revoked in its entirety. That a LIR be conducted by the Department of Central Province with the walking of the boundaries and certification as to ownership by custom. That only after the LIR has been completed, agent agreement signed, recommendation as to alienation, certificate of alienation issued and Lease/lease back agreement signed can further

actions be taken to process a SABL over the subject land.

2.12.7 That Mr Gulu Raga be charged and disciplined as warranted. That Mr Cliff Boutau, Manase Rapilla and Raphael Yibmaramba be reminded as to their respective roles regarding SABLs and to be re- educated and reinforced as necessary regarding due process in the conduct of LIRs.

2.13. DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DPALLG)

2.13.1 It was found that the Department of Provincial Affairs and Local Level Government was omitted from processing of the Yumu Resources SABL in a highly unusual suspicious manner. There was no fault found in the Department. The fault lay in the Department of Central Province and Department of Lands and Physical Planning.

Recommendation

2.13.2. That the Department of Provincial Affairs and Local Level Government be encouraged to submit as a matter of urgency for the amendment of the relevant laws to ensure the integrity of the office of the Custodian of Customary Lands in so far as issuance of Certificate of Alienability covering all customary lands in Papua New Guinea is concerned.

2.14. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

2.14.1 The Department of Lands and Physical Planning processes SABLs under the two main legal criteria prescribed under Section 10 and 11 of the Lands Act 1996 (the Land Act).

2.14.2 Both the Lands File and the Registrar of titles failed to provide relevant documents to the COI regarding Yumu Resources SABL. The landowner company Yumu Resources Ltd (YRL) provided copies of Lands Department documents which the COI has received; however they were noted to be defective and incomplete.

2.14.3 Material pertaining to be the Registrar of titles file discloses a copy of the title deed of SABL Portion 30C Volume 31 Folio 120 Milinch: Kase, Buna, Central Province. The SABL is issued in the name of Yumu Resources Limited dated 09 May 2007. Only the front part of the title Deed is copied but the back details which indicate whether the title has been subsequently sub-leased is blank.

2.14.4 A copy of Survey Plan Cat. No. 43/401 for the Yumu Agro-Forest area was also on file. The land portion of 115,000 hectares shown as Portion 30C was shown to have been surveyed by a Patrick R Kobal, Registered Surveyor on 22nd February 2007. The survey plan was registered by the Surveyor Generals office of the DLPP on 5th March 2007.

2.14.5 Another interesting document on file was a letter dated the 08th of August 2011 from Yumu Resources Ltd. to the Secretary for Lands attention Mr Romilly Kila Pat in which Yumu Resources Ltd. was responding to a newspaper editorial by DLPP for SABL holders to submit relevant documents. The letter states the following;

i that the investor developer did not spend any money on social mapping or ILG registration

and that all finances to get the SABL issued was from the Waitape LLG funds.

II. That the developer Mansfield Limited sublease was terminated for non-compliance with logging and marketing agreement (LMA), date of termination is not stated however it is interesting to note that an LMA is specifically for logging purposes and not for agricultural purposes such as oil palm projects.

III. That YRL has executed a new sublease agreement with a new developer Aramia Plantation Limited (APL). The letter states that APL has submitted an Environmental Impact Statement (EIS) for consideration for an Environment Permit

with the Department of Environment and Conservation (DEC).

2.14.6 In the evidence tendered to the COI by the current Chief Secretary and former Department of Provincial Affairs Secretary on the processing of customary land into a SABL, it is a condition precedent for a Certificate of Alienability to be issued under the hand of the Custodian of Customary Land being the Secretary of the Department of Provincial Affairs prior to preparation of Lease/leaseback agreement by DLPP and Notice under section 102 being published in the National Gazette of grant of the land. It is found that this important process was not followed prior to the lease/leaseback agreement being signed and land grant being published in the National Gazette.

2.14.7 The lease agreement was executed for and on behalf of the State by Anthony Luben Deputy Secretary Land Services Division on 4th April 2007. For the Land Owners the agreement was signed by 19 people witnessed by Mr. Linus Aia, President of the Waitape Local Level Government, Gulu Raga Provincial Lands Officer and Cliff Boutau Project Coordinator Central Provincial Administration.

2.14.8 The conduct of Mr Raga Gulu of Department of Central Province was in breach of due process when a week later in a letter dated 11 April 2007 to the Manager Customary Land at DLPP he advised the Manager to proceed with preparation of a Section 102 Notice as the Lease/leaseback agreement had already been executed. He stated "We have gone to sign the lease agreement with the landowners whilst the land investigation process is in progress".

This was found to be illegal and fraudulent by the COI because no LIR was in progress or had been conducted then or since.

2.14.9 It was also a direct breach of process by the Manager Customary Land at DLPP to heed the request from Mr Raga Gulu and action the section 102 notice whilst a Land Investigation Report was absent from file and a certificate of alienability from Department of Provincial Affairs and Local Level Government was not in place.

2.14.10 On 23rd April 2007 a minute was issued by the Director for Lands Administration Mr Daniel Katakumb to the A/Secretary for Lands regarding 11 lands files. The memo explicitly states that all requirements have been complied with and endorsed by the respective provincial authorities (Central Provincial Administration) and asks for Secretary's signature to allow for gazettal of the land parcels. The COI notes that this was a misleading minute for the Yumu SABL because no LIR had been done and no certificate of alienation had been issued for the subject land.

2.14.11 On 4th May 2007 another minute was sent to the Secretary from Mr Daniel Katakumb attaching the title deed and file and more or less directing the Secretary to affix his signature on the title deed. The memo further states that with the assistance of the developer the CPA has

liaised with the DLPP for registration of the SABL “to give them some confidence in investing”. The tenor of the letter implies the developer’s involvement in the issuance of the SABL.

2.14.12 A copy of a section 11 Notice declaring that there has been reasonable enquiry and that the minister is satisfied the land will not be required for use by customary land owners was dated 11 May 2007 and executed by the delegate of the Minister. A copy of its publication was not on file. A copy of a Section 102 direct grant Notice regarding Portion 30C dated 18 May 2007 executed by Pepi Kimas delegate of the Minister for Lands. A copy of the National Gazette dated Thursday 03rd of May 2007 was also on file. The gazette confirms the publication of the Section 102 direct grant Notice.

2.14.13 The COI in its inquiry into this SABL found no evidence of a Certificate of Alienability having been issued by the Department of Provincial Affairs. Neither had there been a Recommendation as to Alienability instrument signed by the Central Province Administrator. Neither was there a instruction number given by DLPP for an LIR to be conducted by DCP and there was no LIR conducted. It is noted by the COI that the Lease/leaseback agreement was executed without an LIR being conducted. It is evident that very important processes and procedures under Section 10 of the Land Act was not observed and complied hence statutory breach in the issuance of this SABL.

2.14.14 A separate sublease Agreement which is undated was entered into by both YRL as sub lessor and Aramia Plantations Ltd. (ARL) as sub lessee for 97 years commencing 11 October 2009 and expiring 3rd May 2106. The terms of the sublease states that the sub lessor shall lease the land Portion 30C for oil palm growth and log harvesting and in consideration for the use of the land the sub

lessee shall pay sub-lease rent of two million kina for the term of the sub-lease agreement. The Rent was to be paid in

2.14.14 Consecutive years with annual payment of K200, 000 and the first payment to occur after the first shipment of logs harvested from the land. The Lease-Lease back Agreement in clauses 1 and 6 refer to rent being paid annually at a rate to be set by the Valuer General. These clauses contravene Section 11 of the Land Act which says no rent is payable by the State for a lease of customary land under an SABL.

Recommendation

2.14.15. That the SABL be revoked in its entirety.

2.14.1 That a LIR be conducted by the Department of Central Province with the walking of the boundaries and certification as to ownership by custom. To effect this, that the DLPP issue Land Instruction Number to DCP authorising that Department to undertake Land Investigation and ILG registration process. That only after the LIR has been completed, agent agreement signed, recommendation as to alienation and certificate of alienation have been issued, can DLPP prepare a Lease/lease back agreement and proceed to issue a section 102 notice.

2.14.2. That Mr Simon Malu be charged and disciplined as warranted. That all line officers be re-educated in the processes involved in processing of SABLs and be advised of consequences of not following due process.

2.15. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

2.15.1 It is found in the evidence before the Inquiry that Yumu Resources Ltd have obtained a Certificate of Compliance from DAL dated 27th May 2011. However there was no evidence that they have obtained a FCA permit from PNGFA. The issue of a Forest Clearance Authority (FCA) lies in the PNGFA subject to the approvals sought in the DAL submissions, the issue by DAL of a Certificate of Compliance and EIS from DEC.

2.15.2 In a letter dated 29th May 2008 from Mr Anton Benjamin the Secretary of DAL to Mansfield Enterprise (PNG) Limited, he advised that Mansfield has satisfactorily met all the requirements under the Agro-Forest Development Project and should make formal application through PNGForest Authority and DEC to effect issuance of necessary permits and licenses.

2.16. PNG FOREST AUTHORITY

2.16.1 There were no Forestry files brought to the Inquiry as requested through emails, fax and phone. The material on Forestry was presented through copies from other presenters at the Commission such as DCP, DAL, Yumu Resources Ltd. Aramia Plantations Ltd. and DEC.

23.6 There was no evidence found of the previous developer Mansfield's application before the PNGForest Authority as Forest Industry Participant, however there was a certificate of Registration as Forest Industry Participant of Aramia Plantation Ltd dated 10 February 2010.

Also noted was a receipt no. A00361 dated 18/08/10 to Aramia Plantation Ltd. from PNGForest Authority's National Forest Service for the amount of K50,000, this being payment to process a FCA.

24. DEPARTMENT OF ENVIRONMENT AND CONSERVATION

24.1 A file was submitted to COI from DEC concerning the Yumu Resources Ltd. (YRL) application for Environment permit dated 27/09/11. The DEC file contained an Environment Inception Report for Yumu Agro-Forestry Project dated November 2008. It was submitted by Yumu Resources Ltd. in association with Mansfield Enterprises (PNG) Ltd. Also in the file was a Five year forest working plan submitted by Mansfield Enterprise (PNG) Ltd. in November 2008. The file also contained an Environmental Impact Statement for Yumu Agro-Forestry Project dated March 2010. It was submitted by Yumu Resources Ltd. in association with Aramia Plantations Limited.

24.2. It was noted that in a Notice dated 08/06/2008 under Section 50 of the Environment Act 2000, the DEC had advised YRL to undertake an Environment Inception Report (EIR) and a Environment Impact Statement (EIS). There was no further correspondence between DEC and YRL until a letter from DEC to YRL dated 08/06/2010 acknowledging that an EIS and application fee for same had been received from YRL on 29th March 2010.

24.3 Again there was another letter dated 12th August 2011 from Acting Executive Director of DEC Mr Michael Wau to YRL acknowledging receipt of YRLs Environment Impact Statement (EIS). It was not adequately explained to the COI by either YRL or the DEC as to why a

second EIS had been provided to DEC (the first on 29 March 2010 and another on 12 August 2011), or why two clear years had transpired between service of Section 50 Notice by DEC to YRL

to YRLs production of a EIS.

24.4 In a minute dated 02/07/2010 by the DEC it was noted that a public hearing as required under the Act was conducted for the EIA at Kuriva village attended by only 20-3- people. The general consensus was that a proper landowner association should be set up for the landowners. It was noted that no other public hearing was conducted in the subject land or nearby areas in preparation of the EIA and EIS for Yumu Resources Ltd.

24.5 A letter dated 22nd August 2011 from the Environment Council to YRL stated that its EIS had been rejected. The reasons for the rejection was that there were two EIS statements before the council. One was by YRL and the other was by their developer Mansfield Enterprises (PNG) Limited which should not have been the case. The other reason given was that Mansfield Enterprises (PNG) Limited has commenced the process to obtain an approval in principle for the project. If a new developer had been brought in, than a brand new application process was needed.