

INITIAL REPORT OF THE
COMMISSION OF INQUIRY INTO
TRANSPARENCY IN GOVERNMENT
DEALINGS
AND ACCOUNTABILITY OF PUBLIC OFFICE
HOLDERS

COMMISSIONERS:
THE HONOURABLE JUSTICE SIR KUBULAN LOS, CBE
MR RAPHAEL APA, Senior Magistrate

MR MEKEO GAULI, Senior Magistrate

PREFACE

This Commission of Inquiry was established under the Commissions of Inquiry Act Ch. No. 31. The Commission's original terms of reference were Withdrawn and replaced on 16th September, 1997. The replacement terms which have governed our inquiries are reproduced Within the Report following the letter accompanying the Report to the Prime Minister.

This Commission's terms of reference are directly or indirectly related to matters which were the subject of the Commission of Inquiry into the Engagement of Sandline International which reported on 29th May, 1997. As a consequence our Commission has generally been referred to as the "Second Sandline Inquiry".

This Commission took evidence from mid-October until mid-December, 1997. Public hearings resumed in the third Week of January, 1998 and continued until 37'" February, 1998. There was then an adjournment allowing time for preparation of submissions which were received on 11th and 12th March, 1998.

The receipt of Further information necessitated a resumption of hearings which

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occurred in June, 1998 This together with the relatively Wide-ranging and numerous terms OI reference contributed to the need for several extensions of the reporting date.

This is part of our report on the terms of reference. National Court judicial review proceedings have been commenced against the Commission by Mr

Chris Haiveta. Mr Haiveta gave evidence and was legally represented before the Commission. In July, 1998 he applied unsuccessfully to the Commission to disqualify itself, arguing reasonable apprehension of bias. He has recently re-activated the National Court proceedings on the same grounds.

The Commission has not been enjoined from reporting. So far as we know, an application has not been made for an injunction. However, in all the circumstances, we have decided not to deal in this part of our Report with issues or evidence which, as we see it, have prompted the National Court

proceedings. Such matters will be included in the remainder of our report

In the meantime we strongly believe there should be no further delay in

delivering our report on all other aspects.

ACKNOWLEDGEMENTS

The Commission especially acknowledges counsel assisting the Inquiry, Mr. IAN MOLLOY, for his outstanding and professionalism in the conduct of the hearing and assisting in the preparation of the report.

The Commission also especially acknowledges the professionalism and dedication of the special investigator, Mr. MARK PALMER and the assistance he has given to the Commission.

The Commission thanks the Secretary of the Commission, Mr. JACK NOUAIRI, and his staff at the Legal Services Division of the Department of the Prime Minister and National Executive Council for their assistance.

The Commission acknowledges the assistance of Mr. DEAN HENDERSON of Henderson Management Services Pty Ltd and all the staff of the Transcription Unit for their excellent performance in producing daily transcript in assisting the counsel and the commission.

The Commission also thanks all counsel who appeared before it, the Papua. New Guinea and Australian Attorneys-General Departments, the Independent Commission Against Corruption in Hong Kong; and. all institutions and individuals in Papua New Guinea and elsewhere, both public and private, who assisted with information coming before the Commission.

Terms of Reference No. I

The Sandline Contract made on 31st January, 1997 provided for the payment by the Independent State of Papua New Guinea to Sandline International of US\$36 million in two instalments each of US\$18 million.

The Public Finance Management Act 1995 sets out procedures for dealing with public monies which procedures in the main are directed at facilitating transparency and accountability in government dealings.

On 21st January, 1997, prior to the execution of the Sandline contract, Mr Loko, Acting Secretary of the Finance Department, wrote to the then Minister for Finance, Mr Haiveta, raising his concerns about the financing of the Sandline Project. In particular, he raised "aspects pertaining to ...legality". This was an intended reference to the Public Finance Management Act. (See paragraphs 5.7-8 of the Report of the first Sandline Commission of Inquiry.)

Section 39 of the Public Finance Management Act 1995 provides inter alia for the establishment of Supply and Tenders Boards. Pursuant to that provision the Central Supply and Tenders Board has been established

Under section 40, subject to that section and to section 41, tenders shall be publicly invited and contracts let for the purchase or disposal of property or

stores or the supply of goods and services the estimated cost of which exceeds the prescribed amount.

The consideration under the Sandline contract exceeded the prescribed amount.

The provisions of section 41 had no application because that section is limited to circumstances in which tenders are restricted to national tenderers. Section 40 sets out specific circumstances in which the aforementioned provisions of that section do not apply.

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The then Finance Minister, Mr. Haiveta, relied upon section 40(3) of the Act. That section provides, relevantly, that the preceding provisions of this section do not apply to the purchase or disposal of property or stores or the supply of works and services -

(c) Where in individual transactions involving amounts not exceeding K500,000 the Minister in his discretion considers that there is a natural disaster or it is not expedient or proper to call public tenders and, prior to the goods or services being provided, by certificate in writing narrates these circumstances and waives the provisions of this section.

Mr. Haiveta, in his evidence before the first Sandline Inquiry (Exhibit CI - 255 before this Inquiry) acknowledged that the limit of his power to waive the provisions of the Act was in respect of transactions up to K500,000. He purported to waive the requirements of the Act on the basis of a National Executive Council ("NEC") decision which "directed the Minister for Finance to waive the tender procedures". He understood, he said, that 'he NEC could simply waive the requirements for tenders, if, it received advice to that effect from the Solicitor-General. He said he still thought there was a mommy limit on the amount he could waive, namely K500,000. He accomplished this by notionally dividing the transaction into one hundred parcels of K500,000 each.

The Report of the first Sandline Commission of Inquiry states:

On 30th January, 1997, the then Minister for Finance was briefed by his Department Secretary on a draft certificate waiving the provisions of section 40 of the Public Finance (Management) Act. The fact that the Sandline contract involved a consideration far exceeding K500,000 (namely ten times that figure*) was dealt with by the extraordinary device of deeming the contract to contain one hundred parcels each

* In fact nearly one hundred times.

of half a million kina. Thus the certificate which the Minister was given and signed purported to contain one hundred waivers under

sub-section 40 (3) (c) of the Act.

Mr Loko admits to holding some reservations at the time concerning the legality of this device. He says he discussed it with his Deputy Vele Iamo and with the Minister. Reliance was placed on oral advice given by the State Solicitor Zachary Gelu. Mr Gelu steadfastly defended the above interpretation of the Public Finances Management Act

The Public Finance Management Act does not on any reasonable interpretation permit the notional division of a transaction into parcels each of £600,000 so as to allow the Minister to take advantage of section 40(3). The Minister

exceeded his power. On Mr Haiveta's behalf it was submitted by counsel that there was no basis for any finding that he acted without authority in subdividing the K50 million payment into lots of K500,000. It was said that the National Executive Council ("NEG") meeting of 15th January, 1997 directed Mr Haiveta (as Finance Minister) to waive the procedures of the Public Finance Management Act. However, we cannot see that the NEC had power to give such a direction. Lawful justification for what Mr Haiveta did cannot be gained from an NBC direction. The NEC is not above the law.

It is also pointed out that Mr Haiveta had departmental advice and he was following practice. In this respect reference is made by his counsel to the evidence, referred to above, of the then State Solicitor, Mr Gelu. We are not

altogether satisfied that any relevant "practice" existed.

Mr Gelu did not give evidence before this Inquiry. We make no finding as to the bona fides of his belief that the method of subdivision of the contract amount as employed in this transaction was lawful. Nor was there any

challenge to the assertion that he gave such advice to Mr Haiveta.

However we have great difficulty understanding how a lawyer, less still one holding the position of State Solicitor, could conclude that a monetary limit of authority as contained in the Public Finance Management Act could be side-stepped by crudely "sub-dividing" a transaction into numerous "parcels" not exceeding the ceiling of K500,000. For our part we also have difficulty understanding how a person with commercial experience or qualifications, someone such as Mr Haiveta occupying the office of Finance Minister, could unquestioningly accept that advice.

There was a failure to comply with the provisions of the Public Finance (Management) Act 1995 by Mr Haiveta and any others who were party to his purporting to divide the consideration under the Sandline contract, being approximately K50 million, into multiple parcels of [£500,000 in an attempt to attract the exemption contained in section 40(3) of the Act. We do not see that in all the circumstances Mr Haiveta can simply shift responsibility for this failure to comply with the provisions of the Act to the NEC and/ or the

State Solicitor.

It has been pointed out that the Sandline contract involved a top secret military operation, and that it could hardly be expected that such a proposal be put to public 'ender. There is much to be said for this. However, there remains a requirement to act within the law. The Public Finance Management Act permits for exceptions to its strict provisions in certain circumstances. Unless the circumstances which permit an exception exist, then there must be compliance with the provisions of the Act.

We should simply record that on behalf of the State it was conceded that the present law appears to be inadequate to cater for top level secret military operations such as occurred in this case. It was also said on behalf of the State that this may be the time for necessary amendments to the Act, ensuring that checks and balances were retained to avoid suspicion of

improper deals.

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Section 47(1) of the Public Finance Management Act 1995 is concerned with

the execution of State contracts. That section provides relevantly that Where there is no provision in any law as to the person or authority empowered to execute a contract or agreement on behalf of the Sate, that contract or

agreement may be executed—

(a) by the Head of State, acting on advice; or

(b) where the amount of the consideration does not exceed K5

million by the Minister; or

(c) Where the amount of the consideration does not exceed an amount (not exceeding K5 million) specified by the Minister,

by the Chairman of the tenders board which considered the

tender leading to the contract or agreement

The Sandline contract was purportedly executed on behalf of the State by the Minister for Finance, Mr. Haiveta. In order to comply with Section 47 (1) of the Public Finance Management Act the contract, being for a consideration

exceeding K5 million. should have been executed by the Head of State acting on advice.

Terms of Reference No.2

Sub-paragraphs {a} and (b) of Term of Reference No. 2 are concerned with any arrangement involving the former Minister for Finance Mr Haiveta. concerning CRA shares in Bougainville Copper Limited ("BCL") in January or February, 1997. Sub-paragraph (c) is concerned with any purchase of CRA shares in Bougainville Copper Limited in the same period.

There is no evidence of any "arrangement" made in January or February, 1997 concealing the purchase of CRA shares 'in Bougainville Copper Limited. The evidence relating to the State's proposal to purchase CRA'S interest in BCL is contained inter alia in the evidence of Mr Haiveta and Sir Julius Chan before the first Commission of Inquiry (the transcripts of which form exhibits before this Inquiry).

There is no evidence, and there has never been any suggestion, so far as we are aware, that there was any arrangement made in January or February 1997 between Mr Haiveta and any other person to purchase or sell CRA shares in Bougainville Copper Limited. The evidence is that CRA was a principal shareholder of BCL. There is no evidence of any dealings in CRA'S shares in BCL at all at the relevant time.

There was evidence before the first Sandline Inquiry that there were relatively increased dealings on the Sydney Stock Exchange in Bougainville Copper Limited shares on 14th and 17th February, 1997. As a consequence, on the first of these dates, the price of BCL shares increased considerably. This was referred to in the first Commission's report.

At or immediately before these dealings the following persons were in Hong Kong: Mr Haiveta, Mr Ijape, Mr Buckingham, Mr Grunberg, Mr Spicer, Mr McCowan and Mr Nicos Violaris. The first Sandline Commission reported that {with the possible exception of Mr Violaris) these persons met in Hong

Kong at that time to discuss matters relating to Bougainville Copper Limited.

The first Commission of Inquiry reported (at paragraph 16.59):

The Commission strongly suspects that one or more of the persons, or interests closely connected with such person or persons, who attended in Hong Kong, were behind those dealings in Bougainville

Copper Limited shares.

The Report was not here referring to (RA shareholdings. The reference was to other shares in BCL transacted on the Sydney Stock Exchange. Sub-paragraphs (a), (b) and (c) of Term of Reference No. 2 are specifically restricted to "CRA shares in Bougainville Copper Limited". The dealings of

14th and 17th February, 1997 were not concerned with such shareholdings.

Accordingly the evidence before this Commission which, arguably at least, implicates Mr Haiveta in the share-dealings on 14th and 17th February, 1997, is outside our Terms of Reference. The evidence we refer to comes from Mr Wingia, Mr Ragi and Mr Loko (who were at the time officer-holders in the Public Officers Superannuation Fund Board) and, to some extent, from Mr

Hooton, a share-broker.

In respect of sub-paragraph (d) of Ten of Reference No. 2 there have been extensive communications with the Australian Securities Commission ("ASC") concerning the report of their investigation into dealings in BCL shares in January and February 1997. Strict Australian legislative criteria must be met before the ASC will consider revealing a report. This Commission has met that criteria. Natural justice must also be afforded by the ASC to persons who might be adversely affected by the ASC's disclosure. There are also legislative requirements in Australia which protect the confidentiality of persons providing information to the ASC. We understand that the requirements of natural justice were met, and no objection was raised by any person who might be adversely affected.

It is unfortunate therefore that the Australian Securities Commission has failed to make its report (or any part of its report) available to this Commission of Inquiry. Instead, the ASC has informed this Commission that in its opinion its report will not provide any assistance to this Commission in respect of its inquiries. The ABC has purported to do this without knowing what other information this Commission of Inquiry has uncovered. Further, it is not known how (or if) the ABC has, for example, determined that no agent or associate of, or any person related to, a PNG "Leader" was involved in the BCL share dealings in early 1997. This is a matter raised by Term of Reference No. 2 (d)'and best left for this Commission of Inquiry to investigate. Unfortunately, this has not been possible because of the response of the ABC to the request for disclosure of the results of its investigation. The ASC's response to this Inquiry's request

for assistance has been disappointing.

Term of Reference No.3

In respect of Term of Reference No. 3 (a) the Commission has received evidence that Nicos Violaris and Sir Julius Chan were friends. In 1995 Mr Violaris became a party member of the People's Progress Party ("PPP") of which Sir Julius Chan was the parliamentary leader.

The PPP beneficially owned shares in a company known as Klan Pty Ltd ("Kalang"). The company was described as the business arm of PPP. Kalang owned properties at Six-mile which were being rented and some land at Waigani still undeveloped.

Sir Julius Chan held shares in Kalang in trust for PPP. In about November 1996 Sir Julius transferred these shares to Mr Violaris (to be held in trust for PPP). There was no explanation given as to why Sir Julius Chan transferred his shares to Mr Violaris, who had been a party member for less than a year, and not to any other party member. Sir Julius said it was the decision of the executive with which he agreed. '

It appears that Sir Julius Chan was still on the executive of PPP while he was the parliamentary leader of PPP until he was unseated in the 1997 June national election.

The Commission also received evidence from Sir Julius Chan that he had a family company known as PNG Gold and Jewelry Pty Ltd. The company had conducted a retail jewelry business but it was not making money. By early 1997 Mr Violaris had bought some shareholding in this company.

Sir Iulius Chan was keen on finding a buyer to sell off the rest of the shares in

PNG Gold and Jewelry, if not the whole business. In early 1997 Sir Julius engaged MI Violaris to look for a potential buyer. Mr Violaris was to

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perform as a broker through his company International Monetary Brokers Limited. A buyer, a Singaporean company, was found and the business was sold. There was no detailed evidence of the transaction but Mr Violaris also

sold his shareholdings to the company.

Sir Julius transferred his shares in PPP to Mr Violaris before January/February 1997. Mr Violaris' involvement in the PNG Gold and Jewelry business also commenced before this time. However, what occurred

in January and February 1997 should not be looked at in isolation.

It was unfortunate that the Commission was not able to receive oral evidence from Nicos Violaris, who was said to have been out of the country. However, a letter from him was produced (CI - 272). He said a family death necessitated his absence from Papua New Guinea. In the letter he denied participating in the running of the PNG Gold and Jewelry business, or putting any money into it or receiving any dividends from it.

The Commission notes that those denials are inconsistent with evidence already before the Commission and as set out above. {a number of weeks prior to completion of this Report, Mr Violans was in Brisbane, Australia. He was invited, but declined, to give evidence before this Inquiry or to speak to an investigator engaged in connexion with the Commission.

The answer to Term of Reference No. 3(a) is, YES. There is evidence before this Commission that Mr Nicos Violans did have a business association with Sir Julius Chan in January and February, 1997. Furthermore, die Commission

suspects that their association before and during the period in question was somewhat closer than Sir Julius now admits. It was not correct to say, as Sir Julius said before the first Sandline Commission-of Inquiry, that Nicos Violans was not a business associate. The relevant part of his evidence before the first Inquiry is annexed to this report

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How can the Commission tie in this finding with the Sandline saga? How is it relevant? The Commission refers to the first Sandline Commission Report on page 62. Mr Violaris was on the same flight to Hong Kong on 13th February, 1997 as Messrs Haiveta, Ijape and Spicer. He stayed in the same hotel in Hong Kong, Peninsula. Mr Haiveta told the first Commission that the purpose of the trip was to hold talks with Jardine Fleming about die State's acquisition of shares in BCL. The first Commission reported that there was more to the trip than that.

In the absence of any real co-operation from Mr Violaris, this Commission can only speculate on his reasons for travelling to Hong Kong at that time and on whether he was acting on his own behalf or on behalf of another or others.

As to Term of Reference No. 3 (b), the question is whether Nicos Violaris was a director in or a secretary or employee of International Monetary Brokers Limited in January and February 1997. The answer is - YES. There is evidence that Mr Violaris was a director of International Monetary Brokers. Mr Violaris admitted this on page 2 of his letter to the Commission (CI - 272). "

As to Term of Reference No. 3 (c) there is no evidence that any shares in International Monetary Brokers Were held by or in trust for any person to whom the Leadership Code applied or for the associate, agent or a related person of such person.

As to Term of Reference No. 3 (d) there is no evidence that Nicos Violaris or International Monetary Brokers Limited bought or sold shares in Bougainville Copper Limited on their own account or on behalf of any other person or entity.

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As to Term of Reference No. 3 (e) there is no evidence that Nicos Violaris held discussions with any person in Canada, London, Hong Kong Singapore or Australia for or on behalf of any leader concerning the extraction of minerals from the Panguna copper mine. However the reason for Mr

Violans's trip to Hong Kong in February 1997 remains unexplained.

Term of Reference No. 4

North Fly Highway Development Company Pty Ltd ("Roadco") is a company incorporated in Papua New Guinea on 20th February, 1981. The objects for which the company was incorporated are set out in clause 2 of its Memorandum of Association. 'lhat clause runs to many sub-paragraphs and provides that for the purposes of carrying out its operations the company

may involve itself in many different financial transactions including borrowing monies.

At all material times the shares in the company were beneficially owned by the State. The officers of the company are public servants (apparently all in the Department of Finance). The officers of the company acted under the instructions of the Minister for Finance representing the State. In particular, the activities of the officers of the company, so far as they involved

Sandline, were carried out at the direction of the then Minister for Finance, Mr Haiveta.

By a duly constituted meeting of directors it was resolved by the Board of Roadco on 24th January, 1997 that approval be given to the company being used as a vehicle to undertake the government's "Bougainville initiatives".

Mr Lama at the relevant time a Deputy Secretary in the Department of Finance and director of Roadco, said in evidence:

On the 24th January meeting all the directors were basically being advised of the arrangement that the State wanted to do in terms of using Roadco as a vehicle and the Directors at that

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point of time were also advised that some form of agreement would have to be entered between the State as shareholder and

Roadco to formalise the arrangement.

The fact that the first Sandline Commission found that a document was back-dated so as to give the impression that the Roadco loan agreement was prepared and approved on a date earlier than the date on which the agreement was drafted is not relevant to this Term of Reference. It is also irrelevant that the company was in fact struck off the Register of Companies at the time it purported to enter into the agreement. An order was made on

or about 10th March, 1997 by the National Court restoring the company to the Register.

Under section 319 of the Companies Act where an order is made restoring the name of a company to the Register and an office copy of the order is lodged with the Registrar, the company shall have been deemed to have continued in existence as if its name had not been struck off. It appears from the

Companies Office file (Exhibit CI - 1) that a copy of the court order was lodged with the Registrar.

Under clause 2 of its Memorandum of Association the company may acquire by purchase, hire, lease, exchange or otherwise shares or debentures. It may invest and participate in partnerships and joint ventures. It may purchase shares in a corporate body. We therefore find that Roadco was authorised under its Constitution to purchase shares in exchange for cash in Bougainville Copper Limited. Furthermore, under clause 3 of its Memorandum of Association, Roadco was empowered to borrow money or receive money on

deposit or enter into any arrangement or contract with any person or body of persons including a corporation with regard inter alia to the acquisition of shares .

The loan agreement entered into by Roadco contained in Appendix B (Exhibit CI 441) is expressed to be for the purpose of eventually acquiring shares in Bougainville Copper Limited. The Commission finds that the directors of Roadco were authorised to have the company enter into the loan agreement.

Term of Reference No. 5

The initial written orders of the former Commander to abort the Sandline contract are contained in Appendix A (Exhibit CI -3). In addition he gave oral orders on 16th March, 1997 concerning the apprehension of three key Sandline personnel. The written orders were provided to Major Enuma. and to Major Toropo. Each of them discussed the orders with the former Commander. Further detail or clarification of the former Commander's

expectations was provided.

In addition the former Commander notified the officers in charge of the various barracks of what he was intending. On the weekend of 15th/16th he dispatched trusted officers to Lae and Marius with instructions to deliver copies of his written addresses to the officers in charge of those locations on

17th March, 1997.

Major Enuma, who was the operations officer in charge of Rausim Kwik says that it was his job to give effect to the former Commander's written orders (which he was required to memorise). He says that after the 17th March, 1997 the former Commander did not give any further orders in relation to Rausim Kwik. He says that the document entitled Rausim Kwik II (Exhibit CY - 24) was a proposed plan prepared by him. He says that it was abandoned at an early stage without ever having been put into effect. The former Commander says that he had nothing to do with the operation

Rausim Kwik II orders.

There is a body of evidence to the effect that throughout the week of 17th March, 1997 soldiers and officers who supported or were sympathetic to Operation Rausim Kwik congregated at the Flag Staff House where the

former Commander then resided. Two tents were erected and a phone line

was installed to one of those tents. There were Defence Force vehicles

parked in the grounds of the Flag Staff House. There is no doubt the area was something of a sanctuary for Defence Force members involved in Operation Rausim Kwik. The former Commander was regarded by many as

al hero and he obviously had many supporters from within the

a nation

Defence Force.

Two factors supported the look of a sanctuary. The guards supplied at the Flag House were recognised by the official military hierarchy. But because there was a rift between those who sympathised with Singirok and the new command, members of the Special Forces Unit were assigned as guards.

Members of the same units were also organising meals for those on duty as guards.

Secondly there were officers and Civilians who visited as friends. Relatives and friends helped to cook and feed these visitors. That is normal in the PNG culture. Where there is death, or someone is in deep trouble, there is always a helping hand irrespective of the cause or of personal beliefs.

There was a suggestion that the former Commander planned to topple the Government. In particular it was argued on behalf of Sir Julius and Mr Ljape that the former Commander had a wider plan than a purely military operation. At its highest it was alleged there was an orchestrated conspiracy to change the government by overt threats of force with the assistance of some civilians and politicians. We consider the orders speak for themselves.

The Sandline contract was to be terminated. Those who were closely connected with the fanning of the contract might not allow that to happen.

If therefore any removal from office was intended, it was limited to that

purpose and not to frustrating the democratic system of government in Papua New Guinea. The written orders clearly recognised that there might be groups and individuals who would capitalise on the occasion and the event for their own interests.

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The question has been raised whether after his dismissal from the office of Commander, Singirok continued to give orders in relation to Rausim Kwik. Some of the witnesses who gave evidence seemed certain that he did, although they had no direct evidence. They seemed to find it inconceivable that officers such as Major Toropo and Major Enuma should be visiting the Flag Staff House and not continuing to take orders from the former Commander. The Commander, for his part, admits that he continued to speak to these and other officers about the progress of the operation. Major Enuma refers to similar conversations with the former Commander. However these witnesses deny that the former Commander gave any orders after his dismissal.

One point is that the former Commander remains convinced that his actions in launching Operation Rausim Kwilr were justified. With this attitude it is not clear why he would falsely deny that he gave orders after the 17th March, 1997. On the other hand Major Toropo, who also denied that the former Commander gave any orders after that date, plainly tried to understate his own involvement and the involvement of others in the operation. The same can be said of Captain David and probably of Captain Bro.

The issue of whether the former Commander continued to give orders to abort the Sandline contract after his dismissal from office is not of particular importance. That is because the lawfulness of , or the authority to give, such

orders is not dependent upon whether the Commander still held office. It is of no real consequence whether the instrument terminating his command had been delivered to him. Similarly nothing turns on whether an Acting Commander had been properly installed. Whatever the status of the former Commander at the time, it cannot be said that he acted within his authority.

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"Authority" means authority according to law. The key orders of the former Commander to abort the Sandline contract related to (a) the apprehension of several Sandline members and (b) the deportation from Papua New Guinea of all Sandline personnel. There was no lawful justification, whether in military or civil law, for this conduct. The office of the Commander of the Defence Force provided no authority for these actions. The former Commander did not at any stage have any timber or greater authority than any member of the public to involve himself in such conflict.

The former Commander has said, at times, that his actions were lawful because the Sandline contract was tainted by corruption, or that it was an illegal contract, or that it was immoral. In relation to the former Commander's belief and claim of corruption, indeed this Inquiry has revealed personal interest in the deal. This is mostly discussed under Term of

Reference No. 10.

Reference has been made, on behalf of the former Commander, to the Nuremberg trials. It has also been contended at times that the engagement of Sandline constituted a breach of section 200 or "the Comm?! Which prohibits the raising of unauthorised military or para-military forces.

Aside from comments that 'Will be made later on the application of section 200 of the Constitution, the first point to be made is that even if any one of these contentions was correct hence the formner Commander was bold in his stand, he was not thereby authorised to act in the manner in which he did. A breach of the Constitution by one person does not thereby authorise criminal conduct on the part of another. It is ludicrous to say that, for example, the representatives of a party to an allegedly illegal contract may be summarily imprisoned and deported. The former Commander should have protested in the normal way to the Government to abort the engagement of the Sandline.

He would, no doubt, have been putting his job on the line in the same way as he did by taking unilateral action. He himself might have considered he acted for the good of the nation. But such a precedent may be followed by another general for a personal and foolish reason detrimental to the peace and good order of the country.

Section 200 of the Constitution especially subsection (2), allows for training or arming a special force. But we note the role allowed is in "non-combatant" areas. There is solid evidence before the Commission that the Special Forces Unit would not have been ready within the specified time to take the leading role in the Bougainville operation- The foreign personnel would lead. So

what might have appeared a lawfiil contract could have been questioned

when the events unfolded on the operational level.

Throughout the Commission hearings attempts were made on behalf of Sir Julius Chan to widen, in our view, the term of reference to cover all manner of activities during the so-called Sandline crisis. As a consequence a great deal

of evidence was received which we have found is not relevant to this (or any other) term of reference. We include in that category 9. statement of one Mujo Sefa (in respect of which we make no other findings).

Term of Reference No.6

The evidence in respect of this Term of Reference was received from the following witnesses: the former Commander, Jerry Singirok, former Defence Minister, Mathias Ijape, former Deputy and Finance Minister,

Chns Haiveta, and the former Prime Minister, Sir Julius Chan.

The evidence of the former Commander and former Minister Ijape is that in the proposal Project Contravene Sandline International have quoted a price of US\$30 million. A week later Sandline requested a further US\$6 million to

cover the cost of training the members of the Special Forces Unit (SFU) from the PNG Defence Force for the task.

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The evidence of both Sir Julius Chan and Mr I-Iaiveta is that they were not aware of any increase in the price; that the only price that came to their knowledge was the US\$36 million that went before Cabinet in a submission on 15 January, 1997.

There were two proposals for Project Contravene by Sandline International. The first written proposal for Project Contravene (Exhibit CI -217) was provided to the former Commander in London in early 1996. This was a military support package for the Government of Papua. New Guinea. The proposal included a price of US\$327 million for the supply of electronic warfare equipment and helicopter support. However, Sandline was prepared

to quote a fixed price of US\$30 million as per paragraph 7.3 of the proposal:

"7.3 The total cost of the proposal is US\$327 million however we are prepared to quote a fixed price of US\$30 million, including the provisions of all personnel, management support and appropriate training resource for up to one year. A breakdown of equipment, personnel and costs is provided in section 9 below.")1

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The former Commander Singirok on his return from London briefed the Defence Minister Ijape and the minister in turn briefed the former Prime Minister, Sir Julius Chan on the first proposal. However, Sir Julius did not show any interest in it because there were peace equipment still underway and secondly the Government did not have the funds available to proceed with the proposal. It was not pursued by former Minister Ijape or former Commander Singirok though Tim Spicer continued to inquire with them of the proposal. The proposal proceeded no further.

The second written proposal was contained in a report by Sandline delivered to the State in early January, 1997. In that proposal (Exhibit CI -218) the

relevant options, options 3 and 4, were priced at approximately US\$30

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million. This proposal can be traced to about October 1996 when Tim Spicer met with the former Deputy Prime Minister, Mr Haiveta. He gave Mr Haiveta a copy of the first Project Contravene proposal. This opened a new chapter for Sandline International for further negotiations with the PNG Government.

In or about November that year Tim Spicer visited PNG on the invitation of Mr Haiveta. The Government then commissioned Sandline International to provide more detailed proposal. Sandline then came up with the second 'Project Contravene' proposal dated December 1996 (Exhibit CI - 218).

The second proposal contained four options open to the Government of

PNG:
OPTIONS

14. There are 4 options open to the Government of PNG.

15. Option 1

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.To maintain the military status quo and negotiate political

settlement with the BRA leadership

(1)

(1) Cost:

Very little incremental cost in the short term except cost of continuing current level of military activity during negotiation.

Subsequently there will be the cost of any "deal" with the ERA

and the continued loss of mining revenue.

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18.

Option 2

To continue to pursue a military solution (in order to allow a political settlement) by means of an overt military campaign

but using a revitalized command structure:

(a)

(3) Cost:

The estimated cost of this option would be in the region of

US\$20 million.

Option 3

Conduct a high speed covert military operation to conclude the crisis in the required time frame.

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It is estimated that the cost of this option would be something in the region of US\$30 million.

Option 4

A variation of Option 3A "coup do main" operation to seize the Panguna. mine without taking on any other BRA targets. This option would get straight to the centre of gravity of the

problem:

(b) Costs. Approximately the same cost as Option 3.

In the proposal the relevant options, options 3 and 4, were priced at approximately US\$30 million. The proposal concluded with a recommendation the State adopt a combination of options 3 and 4. There was nothing to suggest that the estimate in the region of US\$30 million would not be applicable to such a combination.

The second Project Contravene proposal was provided to Mr. Haiveta then Finance Minister, on or about 31st December, 1996. A copy was provided to the former Commander. Mr. Haiveta. also supplied a. copy to a. staff member of the then Prime Minister, Sir Julius Chan. The Finance Minister was absent from Port Moresby and was in his home at Namatanai, New

Ireland Province.

During the first week of January, 1997 Sir Julius took a trip to the Marshall Islands to attend a funeral service. He was accompanied. on that trip by the former Commander. They discussed inter alia the engagement of Sandline during that trip. On his return from the Marshall Islands on 7th January, 1997 the former Prime Minister was introduced, outside, his office, to Tim Spicer by Minister Ijape but he was not prepared to see Mr Spicer: as there was no prior appointment made. He then met in his office with the then Defence Minister Mathias Ijape. He requested that a summary of Sandline's proposal be provided to him.

A summary was prepared and delivered to the Finance Minister the following afternoon, 8th January, 1997. This document was accompanied by a letter from the Defence Minister. There exists another document signed by Tim Spicer: also dated 8th January, 1997, and addressed to the Prime Minister. That document contains a reference in writing to the increased price of

US\$36 million.

It is not clear how or why Mr. Spicer: would be preparing in effect two summaries for the Prime Minister on 8th January, 1997. Similarly it is not apparent how or why one such summary would be delivered under cover of letter from the Minister for Defence whereas the other document is

addressed to the Prime Minister direct from Sandline. On 8th January, 1997 the Prime Minister's only contact with Sandline had been an introduction to Mr. Spicer: on the previous day in which Sir Julius, according to his evidence, was unwilling to meet with Mr. Spicer because no appointment had been made. It is curious therefore, that Mr. Spicer: should in these circumstances be writing directly to the Prime Minister.

There is no doubt that Sandline had set a price of US\$30 million according to the December 1996 proposal Project Contravene. This set price was not a contract price at that material time since the Government had not made any decision on it. One cannot say that because it was not a contract or agreed price it cannot be a set price. Usually a price is set before a contract is entered.

From the evidence of the former Commander, it is very clear that after the Project Contravene proposal was provided to Mr Hai'veta, Mr Ijape and Mr Singirok on or about 1st December 1996, Sandline has increased their set price to US\$36 million. It was this increased price that Cabinet approved on 15 January 1997 and was agreed to by the Government and officials of

Sandline on 31st January.

What were the reasons for this increase? One possible reason is the cost of training the SFU members. This was one contention, however, it was never clarified whether the increased amount was said to be for the sustainment of the SFU members, or the cost for the extra instructors from Sandline to train the SFU, or the cost for extra equipment for use by the SFU or whatever. The evidence of the former Commander on this aspect of the increase has not been convincing. He thought the increase was for the SFU. However,

the Commission is not convinced that the former Commander knew the true reason for the increase. There could be other reasons. The SFU may have been used as a cover-up.

Another possible reason is to accommodate "extra" Sandline' expenses. We will refer to these again later.

In answer to this Term of Reference, No. 6 (a), whether there was ever a set price of US\$30 million for the Sandline contract, we say YES. There had been a set price of US\$30 million in the sense that Sandline International had quoted that amount in writing in the two Project Contravene proposals.

On the question in Term of Reference No.6 (b), whether this set price was later increased to US\$36 million, our answer is YES, there was an increase to that amount on the set price.

Terms of Reference Nos 7, 8 and 9.

7.1 The Commission has been severely hampered in its inquiries relating to these Terms of Reference by the lack of co-operation from Sandline International. Sandline International initially was represented before the Commission but at an early stage advised that it was withdrawing. :16

Commission has not had the benefit of any witnesses from, or any documents supplied by, Sandline.

On 18 March 1997 Lieutenant Vo gas of Sandline International prepared a list of equipment for handover to the PNG Defence Force. The list was given to Warrant Officer Mogola Raka on 18 March at Moem Barracks, Wewak. The

weapons actually handed over were not checked against the list. Further, the

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As to the equipment in Papua New Guinea, Warrant Officer Bomai's report was based on his team's inspection of the stock and his briefing by Warrant Officer Raka Mogola. He reported, among other things, that :

(a) Ammunition, weapons, accessories and general stores that were taken up to Wewak for training, did not have any stores list or associated documents. If there was, no copy was given to CQMSFU.

(b) A list for general stores (annexure A) and one for the weapons and accessories (annexure B), were produced by Sandline stores representative - only after WO Mogola requested them. The list was signed by Vogas of Sandline and dated 18 March

1997.

(c) Not all the ammunition was listed.

(d) There was no control in the issue of ammunition, weapons

and general stores whilst training was conducted at Urimo Range.

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On 31 July 1997 Dominic Leidimo, Ammunition Technical Officer who was in charge of all PNGDF ammunition, was tasked to supervise the removal of ex-Sandline ammunitions from the SFU base at Jackson's Airport to Goldie Ammunition Depot. His inspection revealed that a large quantity of

ammunition was missing.

Leidimo's findings were confirmed by Michael McRae. Upon his return to Port Moresby from Moern Barracks, Wewak, he made inquiries at Goldie River depot and discovered that some weapons brought over from Moem Barracks had gone missing. The missing weapons included 100 AK47 rifles, 20 Makarov Pistols, 10 RPGT Rocket Launches, 4 Mortar Tubes and an

unknown quantity of ordnance ammunition to go with the weapons.

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Mr McRae reported that at Jackson's Airport there were two aircraft supplied by Sandline - one a push/pull surveillance aircraft and the other a CASSA aircraft.

in respect of the equipment delivered into Papua New Guinea the evidence consists of the said inventories together with Mr. McRae's evidence of what he inspected in Port Moresby, Goldie River and Lae. There is no sufficient evidence for the Commission to conclude what is the age, condition and fair market value of the equipment delivered into Papua New Guinea. By virtue

of the fact that Sandline International has declined to take any active part in the Commission of Inquiry there is no evidence of the expenses incurred by Sandline in respect of that equipment.

In respect of the equipment held at RAAF Tindal the report of the inter-departmental delegation, supplemented by what Mr McRae has said, provides the only evidence. There is evidence in the report, and oral evidence of Mr. McRae, concerning the age and condition of some of this equipment. Mr. McRae noted that the helicopters were obviously second-hand. He was warned against touching any of the rockets which appeared to him to be "weeping". However, Mr. McRae has no relevant expertise and (this being no criticism of Mr McRae) there is no worthwhile evidence of the market value of any of the equipment located at Tindal. Additionally the absence of access to the helicopter log-books makes their valuation very difficult. Again there is no worthwhile evidence of the expenses incurred by Sandline in respect of the equipment

Inquiries of the Australian authorities reveal that various requirements have to be satisfied before the equipment will be released from Australia. Firstly, the Australian authorities maintain, with obvioid's justification, that the question of the ownership of the equipment, whether the owner be the Sate or Sandline International, has to be determined between those parties.

Secondly, the equipment is under the control of Australian Customs and it classified as "prohibited imports" and "prohibited exports". Therefore, Australian Customs requirements would have to be satisfied, presumably by the owner of the equipment, before it could be released from Australia.

By virtue of Sandline Internationals decision to take no active part in the Inquiry there is no evidence concerning any of the matters raised in Term of Reference No. 8. All such information would be exclusively within the knowledge of Sandline International. No such information has been forthcoming.

Similar cements can be made in respect of Term of Reference No. 9. The documents relating to Sandline Internationals bank amount in Hong Kong suggest that part of the payment of US\$18 million made by the State to Sandline International was paid to suppliers of military equipment or airman-tents. However, it cannot be said with any certainty what was paid, or to whom, in filfllment or part performance of any obligation on the part of Sandline International under the Sandline contract.

Term of Reference No.10

In relation to this Term of Reference, the Commission has received oral and documentary evidence pointing to where part of the payment of US\$18 million made by the State to Sandline International has gone. See in particular Appendices G and H (Exhibits CI - 243 and Cl « 244).

There was no contest that a payment of US3500,000 was made by Sandline International to Benais Sabumei in late February, 1997 out of the Sandline contract payment. At the time of the Sandline contract, Mr Sabumei did not hold any political office. He is a former Minister for Defence and a

businessman.

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Mr Saburnei said that that payment was for some consultancy work. He said he did work for a company Defence Systems Limited (DSL) in the early 1990's. He said he was engaged as an agent to set up a security or an armoury firm in PNG but this did not eventuate because DSL was not able -to provide services required by the State. He said he introduced DSL to the then Minister for Defence, Mr Ijape. DSL in turn introduced Tim Spicer to Mr Ijape.

When Mr Spicer was in Port Moresby Mr Saburnei said he raised with Spicer the issue of a consultancy fee. In consequence he said he was paid US\$500,000

The Commission finds Mr Saburnei's explanation as to why he was paid the US\$500,000 to be unconvincing. There is no evidence that DSL and or Sandline International were under any obligation to pay such a large sum of money to Mr Saburnei in the manner in which he was paid or at all.

Mr Saburnei had opened up an account with Citibank in Brisbane in February 1997 into which the US\$500,000 was transferred from Sandline International's account in Hong Kong. If the payment was a legitimate consultancy fee, there would have been no need to open a new account in a foreign country.

According to Mr Saburnei's evidence, the payment concerned was solely his, to be used as he wished. However, he has not satisfactorily shown how any part of that money was used for his own benefit. He said he used some to pay for personal expenses in Australia He was unable to identify any of these expenses. Mr Saburnei admitted that he did not use any of the money to pay his Australian credit card account which amounted at the time to some AUS\$5,000. In addition, there is evidence that in about July, 1997 Mr Saburnei applied for a personal bank loan of K10,000 for a holiday to India He was unable to give any explanation why he would borrow \$0,000 for a holiday, when he had up to US\$500,000 in cash at his disposal.

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Documentary evidence shows that a large part of the money was remitted to PNG from the Citibank account in Australia. There were two deposits of over K200,000 each to a bank account Mr Saburnei controlled at Boroko. A further US\$100,000.00 was transferred from his Citibank account to the account of a company in Goroka.

The money that was deposited to the bank in Boroko was withdrawn by cash cheques (some for more than K50,000) and one bank cheque for K10,000. Mr Saburnei refused to tell the Commission what he did with any part of that money or to whom the money was paid. He said at one stage, that money was used for business expenses of his company. Mr Saburnei also refused to answer why no entries disclosing the payees were made on the cheque books

for the account. Mr Sabumei did acknowledge that his company had not previously incurred expenses comparable to the magnitude of these

withdrawals be made from the Boroko account.

After observing Mr Sabumei give evidence the Commission formed the view that he was not telling the truth. He frequently refused to answer important questions. The Commission believes this was to avoid giving truthful answers which would have incriminated him or others. His story that the Sandline payment was a consultancy fee is rejected. He initially denied receiving any benefit from supplier of military equipment to PNG. He denied, falsely as we find, having any bank accounts outside Papua New Guinea. He refused to answer questions directed to him by the Chairman of the Commission. 'We recommend that the appropriate authorities consider charges of perjury and

odier possible offences against Benais Sabumei.

The Commission finds from all the circumstances, including the way in which Mr Sabumei was paid the US\$500,000, his constant refusal to answer questions on how he used any part of the money, and his refusal to tell the

Commission to whom any part of the money was paid, that the payment to

Mr Sabumei was corrupt and that he was used as a conduit for one or more recipients of the money. We will return later to the question who was

intended to or likely to benefit from the payment to Mr Sabumei.

Tillie evidence before this Commission is that on 13th February, 1997, soon after the Sandline contract was executed, Mr Ijape and Mr Haiveta, respectively the Ministers for Defence and Finance, traveled to Hong Kong. Mr Haiveta had taken a particularly active part in ensuring that the first installment payment of US\$18 million was remitted to Sandline International on or about 1st January, 1997. Both Ministers said that their trip to Hong Kong was at their own expense. However, Mr Ijape said he later claimed reimbursement from the State. According to Mr Haiveta, the purpose of their trip was to meet with Mr McCowan of Jardine Fleming concerning the

State's acquisition of CRA's shares in BCL.

Mr Haiveta, in evidence before the first Sandline Commission, denied meeting with Sandline personnel, Messrs Buckingham and Grunberg, in Hong Kong on that trip. He said he simply saw them in the hotel foyer on 14th February. He claimed that he did not even know that they were staying at the same hotel. However, Mr Ijape contradicted this claim. He said that he and Mr Haiveta, these Sandline people and others, had dined together on the night of 13th February. The first Commission found that it was not by coincidence that these people were in Hong Kong together. The trip was pre-

planned for Mr Haiveta to meet Mr McCowan and the Sandline personnel.

Before the present Commission of Inquiry Mr Haiveta admitted meeting with Messrs Grunberg and Buckingham on the evening of 13th February, 1997. Something of an explanation was advanced for this turn around in his

evidence.

As we have said Mr Haiveta gave evidence before the Commission. Subsequently evidence was presented to the Commission which may

ultimately be found to bear on Mr Haiveta's credibility and matters relevant
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to this term of reference. Mr Haiveta has commenced judicial review proceedings in the National Court relating, in least in part, to this evidence. At this stage we intend to leave any further reference to Mr Haiveta to be

taken up in the balance of our report.

Mr Ijape also gave evidence before the first Commission of Inquiry as to the circumstances in which he traveled to Hong Kong. He said he spent most of his time in his hotel room. He paid his own airfares and hotel expenses while on an official trip but said he later sought to be reimbursed. There is some difficulty in accepting at face value Mr Ijape's explanation of how he came to

travel to Hong Kong and the purpose of such travel.

The Commission examined Mr Sabumei's diary, particularly the entries on the page of 18th February 1997. Of course those entries were not necessarily made on that date. There are entries (in Sabumei's hand-writing) coinciding with the hotel name, telephone number and room number where Mr Ijape was staying in Hong Kong on 13th and 14th February, 1997. It is noted that some attempt has apparently been made to cross out or perhaps disguise the name of the hotel and its phone number where they appear in the diary. The same page makes reference to US dollars. On 24th February, 1997 Sandline International remitted the US\$500,000 from its account in Hong Kong to Mr

Sabumei.

Messrs Sabumei and Ijape were members of the National Party and had a political association. Both held seats in National Parliament at one time or another. The Commission inquired into the financial records of Mr Ijape. He was able to produce bank statements, but not all his financial records. He gave evidence that documents were either destroyed in a fire in his

accountants office in Goroka or went missing through a shift or relocation of office.

While it was true that Mr Ijape was cleared of any personal corruption or impropriety in the first Commission, that clearance was in relation to the actual signing of the contract with Sandline. He did not take an active role in that transaction or in remitting money to Sandline. However, in this inquiry we are required to find if any improper payment or improper advantage was gained in relation to the Sandline contract.

The commission has obtained from the ANZ bank: the bank cheque drawn on Mr Sabumei's account at Boroko for K10,000 and a copy of Mr Sabumei's application for that cheque. The cheque and the application are dated 13 May 1997. The cheque is made payable to Post Printing and has been negotiated. Handwriting on the back of the cheque includes the name Mathias Ijape and a reference to election posters. The National election was held in mid-1997 and Mr Ijape was a candidate.

The Commission has received from Sydney Franklin a copy of a fax to him dated 29 September 1996 from Benais Sabumei. Mr Franklin is a principal of J & S Franklin, a manufacturer of military tents and shelters in the United Kingdom. The firm is also licensed to deal in arms. Mr Franklin says he has been visiting PNG since the mid-1980's and knows Benais Sabumei from his time as PNG Minister for Defence.

J&S Franklin was a representative of Unicorn International, a Singapore Government-owned company. In early 1996 Mr Franklin says he first met Mathias Ijape who as PNG Minister for Defence, visited Singapore with a PNGDF mission. Franklin spoke to Mr Ijape about the purchase of a number of Singapore Navy patrol boats. So much or What we have said is supported by evidence from Mr Ijape and Mr Singirok (who was a member of the PNG team which traveled to Singapore at that time)

Mr Franklin claims that a short time later Mr Ijape phoned him from Papua New Guinea asking for 10% of the purchase price of the patrol boats, saying that otherwise he would refuse to sign a contract. Mr Franklin said he had experienced people indirectly asking for bribes but this was very blatant. Franklin says Mr Ijape continued to contact him, phoning frequently and at inconvenient times. Franklin says he "was 'kidding' Ijape along, wanting him to sign the agreement but not prepared to pay him". Franklin then said:

He (Mr Ijape) said to me at one stage he would arrange for a bank manager to receive the money on his behalf. A little later he said I should pay it to Benais Sabumei for him. He said Sabumei would contact me. Benais Sabumei sent me a fax that day. It was sent after a phone call from Ijape. I did not speak to Benais Sabumei. I did not pay Ijape any money whatever. As a result he refused to sign the agreement and the transaction did not go ahead.

The fax, said to have come from Benais Sabumei, has been produced. It is dated 27 September 1996. It refers to Sabumei's Arinta account at the Boroko branch of the ANZ Bank. It asks for money, in US dollars, to be sent by telegraphic transfer. ,

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This Commission is wary of the evidence coming from Mr Franklin. It has been shown that he has made payments to Mr Singirok which are improper. There is some evidence to suggest that equipment bought by the PNGDF from his company (and paid for) was not delivered. Mr Franklin was not available for cross-examination. His statement comes very late in the day. If he was motivated to help the Commission then we must question why he did not do so earlier.

However the fax said to have been sent by Mr Sabumei to Mr Franklin is important. It calls for an explanation from Mr Sabumei. His response comes in the form of a written statement dated 25 June, 1998, not by oral evidence.

This is understandable, Mr Sabumei has apparently been in Australia since

before the Franklin evidence was produced. However: it has to be said that

Mr Sabumei's response is less than might be expected. Mr Sabumei deals in the same statement with the bank cheque to Post Printing. We were informed

by his counsel that Mr Sabumei's statement was prepared in consultation with

his lawyers in Australia. His evidence is best explained by setting out his statement in full:

I am presently at the Gold Coast in Queensland, Australia on business. I do not have access to any of my financial records and therefore I am relying on memory to respond to the additional material produced by the inquiry.

In relation to the application for a bank cheque in favour of Post Printing, I do not recall preparing the application. Without access to records I am unable to know whether this cheque was prepared by me and for what purpose.

In relation to Franklin, I know Sidney (sic) Franklin as a defence lobbyist and consultant. I am unable to comment on the statements made by Franklin to Mr Molloy as I was not involved in any matters relating to the purchase of patrol boats from Singapore.

The fax to Franklin is dated almost two years ago and I have no recollection of that fax.

I have no further comment in relation to this material.

Mr Sabumei does not impugn the authenticity of the fax" There is no suggestion that it is a forgery, that it does not bear his signature, that it has been altered by anyone, or that it was not sent by him to Sydney Franklin. We

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find it extraordinary in one sense that Mr Sabumei should say that he has no recollection of the fax. On the other hand, we find his response consistent with his oral evidence: variously non-responsive, far-fetched and untruthful. Similarly, we simply disbelieve Mr Sabumei when he says he does not know anything about the bank cheque for K10,000.

We remain wary of the evidence from Sydney Franklin. We would not base an adverse finding against Mr Ijape on what he has to say alone. We would not make any adverse finding against Mr Ijape in respect of the bank cheque to Post Printing. As his counsel submitted, that cheque could have been to the credit of any member of the political party of which Mr Ijape was the leader. However, we cannot ignore the totality of the evidence to which we have referred.

The Commission has already concluded that Mr Sabumei was used as a means to direct an improper payment from Sandline to another recipient or

recipients. Having heard and seen Mr Ijape and Mr Sabumei, and taking the above matters into account this Commission believes that Mr Ijape received payment from Sandline through Sabumei. We do not know whether Sabumei kept some of the money for himself. But we find that the money, meaning the US\$500,000 paid by Sandline International to the credit of

Sabumei's Citibank account in Brisbane, was meant for Mathias Ijape and probably most of it, if not all, went to Mathias Ijape or his interests.

There is evidence that there were others who received payments from Sandline from the money paid by the PNG Government. The Sandline account disclosed another payment of US\$500,000 which remains unexplained. There was an initial payment of US\$16 million immediately after the US\$18 million was received into the Sandline account. No explanation was received from Sandline International concerning these payments.

However we believe it is reasonable to suspect that apart from the payment received by Mr Sabumei and through him Mr Ijape, there were others in PNG who may have received such improper payments or commissions.

The Commission attempted to identify beneficiaries of the payments which appear in the Sandline account: including the payments that went to the United States. The Commission was assisted by overseas authorities. Other inquiries were also carried out. The inquiries have not been successful to date.

We hope that those investigations will continue.

We should not leave this term of reference without some mention of Sir Julius Chan. He was represented throughout the Inquiry. His personal affairs were subjected to scrutiny both publicly before the Commission and through investigations. No evidence was uncovered of Sir Julius or anyone on his behalf receiving any improper benefit directly or indirectly from Sandline. His counsel, in support of this, introduced two affidavits of "Luke" Lucas, a disgruntled former adviser to the Prime Minister, Mr Bill Skate. Mr Lucas says he approached Sandline in late 1997 offering up to US\$9 million to settle a claim by Sandline against the State. Sandline provided evidence of corrupt payments made to Sir Julius Chan. In allegedly rejecting the approach, Sandline is said to have told Lucas there is no such audience. The relevance of these affidavits is said to be, as we understand it, that they provide evidence that Sir Julius did not corruptly benefit from the Sandline deal.

Even accepting to arguments to the contrary that Lucas has to say on the point we do not find Sandline's alleged rejection of any assistance to the Commission in its deliberations. We can imagine many reasons, not all consistent with an absence of the type of evidence which was sought why Sandline might reject Lucas's approach. We might also mention that before the first Sandline Commission, Tim Spice, Sandline principal, denied any improper payments.

We have found that to be untrue.

We should make it clear that we do not see it necessary to make any findings in respect of the truth of the contents of Lucas's affidavits. Counsel for current Prime Minister Mr Bill Skate advanced arguments why the Lucas affidavits should be rejected or his evidence disbelieved. We find the evidence

relevant according to the rules of evidence but even if accurate, of no real value.

We find it unnecessary to deal with the evidence of Samson Kaipu in any detail. He obviously had limited knowledge of what Mr Lucas was doing in travelling overseas. With no disrespect to Mr Kaipu, we are sure we would have found him of no assistance if we had come to decide the issues to which his evidence was directed

Term Reference No. 11

The Terms of Reference No. 10 and No. 11 are tied in together. The matters already dealt with under Term No. 10 are relevant to this Tenn of Reference. Our findings in this reference are restricted to events within the last three years only.

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The evidence adduced before this Commission of Inquiry has established that certain members of die PNGDF have received payments or financial inducements, benefits, advantages, secret commission or bribes from

suppliers of military equipment to the State of Papua N ew Guinea.

Mr Singirok during his time as the Commander of the PNGDF from 16 November 1995 to 17th March 1997 has received a total sum of 31,000 pounds from] 3: S Franklin, a London based company. It was one of the

major suppliers of military equipment to PNGDF.

During 1995 PNGDF had not purchased any military equipment from] 8: 8 Franklin. Prior to 1995 substantial items were purchased from] 8: S Franklin or suppliers associated with that company. Mr Singirok and Mr Sydney

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Franklin had met in 1987 in Port Moresby during a business visit by Mr Franklin. Mr Singirok was a major and a staff officer then. He made

apponitments For PNGDF officials to see Mr Franklin.

The second time they met or contacted each other 'as in February 1996 in Singapore. Mr Singirok went there as a member of the Defence Council to attend a military exhibition. Mr Singirok said they were already personal friends. It is doubtful that they could have maintained that personal

relationship over those 10 years without contacting each other.

In early: 1996 Commander Singirok issued an instruction that there would be no more supplies of military equipment from its major suppliers including] 3: . S Franklin. This was due to financial difficulties and also because a Defence White Paper was being prepared which speCifically mentioned the acquisition of certain equipment to be consistent with the development of the

Defence Force.

Shortly after renewing his acquaintance with Franklin in February 1996, a

substantial order for ammunition in excess of K2 million to Unicorn

International was approved by Mr Singirok. Franklins were an agent of

Unicorn, a Singapore company controlled by Singapore government. There were no tenders invited or quotations from other suppliers sought. However, a certificate of inexpediency was issued to purchase the equipment because the Commander had made a commitment by way of letter of intent :0

Como tn.

Mr Singirok took a number of overseas trips in 1996. In April he went to London. He was entertained by the Franklins who paid for his accommodation, transport and meals. Mr Franklin assisted him with 1000 pounds to open an account with the Lloyd's Bank in London. On 5 July 1996 J&S Franklin deposited 10,000 pounds into that account. In

December 1996 and February 1997 Franklins paid into Singirok's account in

London two further sums of more pounds. These monies were spent on personal purposes, partly on the purchase of property in the Port Moresby suburb of Gordons.

Mr Singirok said that initially he discussed with Sydney Franklin lack of finances for him to attend military exhibitions. It is quite ridiculous for the Commander's important overseas trips to be funded by an overseas company which is the supplier or the agent of suppliers of military equipment to PNGDF, and not by the PNG Government. is a Constitutional office holder at the time, Mr Singirok was subject to the Leadership Code. None of these payments were disclosed to the Ombudsman's Commission in his 1996 returns. They were disclosed in 1997, but only after they became public knowledge. There was no reason to conceal the receipt of these payments if they were made in good faith. Mr Singirok acknowledged to this Inquiry that

he was Wrong to take the money.

Mr Singirok denies these payments were bribes or financial inducements. It can be well imagined that a bribe or other improper payment might be introduced under a cloak of respectability, for example, by reference to providing financial assistance to the former Commander to attend military exhibitions. In fact, no such condition was attached to the payments. None of the money was used for the purpose of official travel. From all that has transpired between Mr Singirok and the Franklins in 1996, and notwithstanding what Mr Singirok might believe. the Commission finds these payments amounted to bribes. financial inducements, or secret commissions.

There is no other direct evidence of payments of the nature referred to in this Ten of Reference. The evidence of Colonel Aikung leads to the suspicion that he may have received corrupt payments. One of his first actions as Acting Chief of Logistics was to engage J&S Franklin to supply uniforms, and to cancel other existing orders. Thereafter he continued to engage Franklins notwithstanding notice that they were apparently overcharging and the goods they supplied were not of the best quality. Colonel Aikung in

addition, appears to have accumulated savings at a very commendable rate. Spread through his children's bank accounts and an IBD there is approximately {€112,000 on deposit. He did give an explanation of where the money came from. However because of his position and his dealings

suspicious do remain.

A supplier which deserves special mention is Pacific Paradise Corporation Pty Ltd. The principal of this company is Tom Rangip who, on occasions at least, describes himself as the managing director. In fact he is an insolvent. This company has been engaged to supply large quantities of foodstuff to the PEG Defence Force in various parts of the country. There have been complaints from at least two officers that the company has been under-supplying these goods. Notwithstanding knowledge of these complaints the company has continued to be paid the contract prices, and on occasions been paid in advance of delivery.

The company has been obtainingr significantly preferential treatment. Other Companies such as PSCH Trading and Niugini Fisheries have not been paid for goods they have in fact supplied notwithstanding in at least one case, resort to litigation. Colonel Aikung appears to be responsible, at least in part, for the preferential treatment which Mr. Rangip's company has received. On one occasion he refused to receive or consider evidence of this company; failures because that evidence had not come through proper channels.

Another aspect of abuse which should be specifically mentioned is the apparent inappropriateness of the some of the suppliers. Globe Pty Ltd. 1 Mujo Seth company, has been supplying food and equipment to the Defence Force. This company was apparently in the business of installing carpet and garage doors. It seems quite incredible it should find itself selling grenades to a national defence force. Documents produced by Globe Pty Ltd indicate that foodstuff it has supplied to the Defence Force has simply been purchased by Globe employees from a wholesaler such as Seeto Kui.,

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The system of engaging outside suppliers to provide equipment and services to the Defence Force has been systematically abused. Under the Public Finance: Management) Art 1995 a contract to supply goods (or services) to a value of K500,000 (previously K300,000) may be dealt with by the Defence Supply and Tenders Board. Proposed contracts over this threshold should be referred to the Central Supply and Tenders Board or the Minister.

In fact contract prices have on occasions been notionally divided so as to bring them Within the jurisdiction of the Defence Supply and Tenders Board Furthermore the Board members almost always issue certificates of inexpediency waiving the requirement to call for tenders. These certificates should be reserved to exceptional cases.

Quite frequently the Defence Supply and Tenders Board receives only one quotation. On occasions no quotation at all is received, a supplier is simply

nominated. In some of the worst examples the one person initiates the order, has made contact with a single supplier, has made the recommendation for a certificate of inexpediency, and has been a member of the board issuing the certificate. .'

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The Commission was told that in times of emergency, such as in Bougainville where the troops needed ammunition: clothing and food immediately, tender procedures slowed down the supplies. Also, when supplies were needed for quick and secret operations, tender procedures would only make the operations public. The Commission noted how frustrating the tender procedures might be in those situations. However, those situations cannot

cause granting of certificates of inexpediency to become the norm.

It is obviously very difficult to uncover unlawful payments as described in Term of Reference No. 11. Each party to the payment has an interest in maintaining the secrecy of the transaction. This Inquiry has only been able to touch the tip of the iceberg. The established system involves widespread abuse as to the supply of goods and services to the PNGDF.