



**COMMISSION OF INQUIRY INTO
SPECIAL AGRICULTURE & BUSINESS LEASES (SABL)**

**COMMISSION OF INQUIRY INTO THE SPECIAL
AGRICULTURE AND BUSINESS LEASE (SABL)**

FINAL REPORT

John Numapo
Chief Commissioner
Port Moresby

24th June, 2013



COMMISSION OF INQUIRY INTO SPECIAL AGRICULTURE & BUSINESS LEASES (SABL)

EXECUTIVE SUMMARY

This is our Final Report. It differs markedly from our Interim Report in structure and content layout as a direct result of the manner in which the government received our Interim Report. This change of strategy on our part, amongst other imperatives, is a full acknowledgement that the government is entitled to demand of us a Final Report of a kind that suits its purposes. However we do have a duty to report the truth as we discovered the truth through our investigations, in the context of our own experiences as well as offer best options on the way forward.

This Commission of Inquiry (COI) was established by Acting Prime Minister Hon. Sam Abal MP pursuant to his powers under Section 2 of the Commission of Inquiry Act (Chapter 31) on 21st July 2011 to investigate and inquire into SABLs and their operations.

Growing concerns over the way in which SABLs were being acquired and the manner in which SABLs were being used for dubious agriculture and business purposes, as some instances indicated, generated heated debate. It was estimated that over 5.2 million hectares of customary land around the country had been alienated, mostly for 'special agriculture activities' over virgin forest tracts containing tropical hardwoods. It was estimated that more than 400 SABLs have been issued over customary land since the early 1980s to the time this COI was set up.

The turnkey event that singularly galvanized government into action was the James Cook University conference in Cairns, Australia in March of 2011 where social and environmental scientists, natural resource managers and non-governmental organizations from Papua New Guinea (PNG) and other countries met to discuss future management and conservation of PNG's native forest. An anecdotal figure of 5.2 million hectares of customary land being alienated through SABLs was first noted at that conference. It was resolved there that appropriate actions be taken to halt further grant of SABLs by Department of Lands and Physical Planning and issue of Forest Clearance Authority (FCA) by PNG Forest Authority. The conference called for an inquiry to be set up by government to inquire into the application, registration, processing and issue of SABLs. The conference further called for a moratorium to be imposed on processing of SABL applications while the inquiry was being carried out.

The government moved proactively and set up this COI. By a set of wide Terms of Reference (TOR) this COI was directed to investigate seventy-two (72) SABLs scattered around the country. During the course of our inquiry three (3) more SABLs were added, increasing the total number of SABLs we needed to investigate to seventy-five (75).

We were initially tasked to complete inquiries within three (3) months, by which time we were to provide a Final Report containing our findings and recommendations to the government. The initial three months was simply inadequate. We were directed to investigate a large number of SABLs and the wide ranging TOR obligated us to carry out investigations into many aspects. Critical intervening factors affected our progress too. Therefore an extension of a further three months was given. However, as it turned out, the extra time also proved inadequate. Our recommendation for the government to properly fund and capacitate future Commissions of Inquiry like ours is fully informed by hardships we faced.

We adopted a three phased approach to our inquiry. The first phase involved a combined sitting of all three Commissioner Waigani, through which we received preliminary evidence from our Legal and Technical team on the 75 SABLs. Preliminary evidence was presented in the form of Opening Statements. Evidence provided in the Opening Statements was primarily sourced from Government Printing Office (National Gazette); Department of Lands and Physical Planning (DLPP); Department of Agriculture and Livestock (DAL); Department of Environment and Conservation (DEC); Papua New Guinea Forest Authority (PNGFA); Papua New Guinea Investment Promotion Authority (IPA); and through a combined presentation from the National Research Institute (NRI) and the National Land Development Program (NLDP) office.

In the second phase the COI was divided into three teams, composed of a Commissioner and legal and technical officers, and dispatched to conduct onsite hearings in respect of the 75 SABLs individually.

The third and final phase was a final hearing, conducted by the Commissioners separately or jointly as appropriate, to consolidate and adjust evidence contained in the Opening Statements with evidence gathered during the onsite hearings.

For the record, phase two and three activities were disrupted by funding and other issues, including critical intervening events that have plagued this Inquiry.

We provide a summary of our findings in the context of the legislative foundation for SABLs, the Department of Lands and Physical Planning processes by which customary land is acquired by the State and leased back to the customary landowners or their nominees, and the network of inter-departmental approvals and regulatory processes that facilitate agriculture and business activities on SABLs.

SABLs are facilitated through Sections 11 and 102 of the Land Act 1996 (the Land Act) working together. The State acquires customary land under Section 11 of the Land Act through an “instrument of lease in an approved form”. The Land Investigation process, which is normally

carried out for the State to acquire customary land under Section 10 of the Land Act (Acquisition by Agreement), is also utilized to obtain informed consent of the affected landowners before their customary land is acquired and converted to SABL. The “instrument of lease” in Section 11 of the Land Act is often referred to as ‘Lease Agreement’ or ‘Head Lease’ in DLPP practice terms. Land acquired under Section 11 of the Land Act is simultaneously re-leased by title deed to an “agreed” person or entity under Section 102 of the Land Act as SABL. Hence the use of the term ‘lease-leaseback’ is both descriptive of the lease and re-lease of land back to the landowners, and the SABL process itself.

We recommend that the current SABL setup be done away entirely. We have carefully considered the option of retaining the SABL setup as an optional method for availing customary land for national development. We have fully considered retaining the SABL setup with more stringent safety features. In the end our view is that the inherent risks associated with the option are unacceptable because we believe any reforms to the law or process may not satisfactorily remove the loop holes, inadequacies or permissive ambiguities that are being used to abuse the SABL process and hijack land use after SABLs are granted.

Whilst we do note that there are some success stories, especially in relation to relatively smaller SABLs, we have discovered serious problems with most of the SABLs. Our findings in all the individual SABLs are set out appropriately, with their full details and respective recommendations.

This COI’s main outcomes maybe categorized into four broad thematic areas:

(i) In the first part we suggest way forward recommendations. We recommend that the mechanism for acquiring and releasing customary land as SABLs for land based development be reviewed with a view for it to be replaced with a better and risk free option. We recommend that a land policy platform that underpins land access and use options be adopted. We recommend that DLPP practices be streamlined and strengthened. We recommend that a better option for accessing customary land for development be identified and process pathway which clearly shows all the vital stop points on that better option’s process path be mapped out.

(ii) We further recommend that the processes within DAL, PNGFA, DEC, and IPA be fully reviewed and mapped, to indicate their operating linkages. We have found inadequacies in all the respective implementing agencies. We therefore recommend options for their capacity and structural adjustments.

(iii) In the second part we deal with SABLs we found to be irregular. We identify any irregular SABLs and describe the nature of their irregularity and provide options for rectification or nullification as the case may be.

(iv) Thirdly we recommend prosecution of all persons and entities implicated in any unlawful activity.

(v) Our final and signature recommendation is that the government urgently settle a National Land Policy platform. We recommend a critical review of all land laws to harmonize practice and

procedures for the land laws and their requirements, which will definitively settle the Overarching National Land Policy. A policy platform will set the foundation for harmonizing the legal framework and pave the way for the State to access customary land in a non-threatening and landowner friendly way.

(vi) We recommend that this National Land Policy be settled first so that the legislative and process reforms, as well as capacity and structural adjustments for implementing government agencies, can be informed in the proper context.

As we did in our Interim Report we acknowledge the cooperation of representatives of the agencies of government that deal with SABL, namely DLPP; DAL; PNGFA; DEC; IPA; and Department of Provincial and Local Level Government (DPLLG) and respective Provincial Governments of the provinces where the 75 SABLs are located, all stakeholders, all interested parties and everyone who came forward to provide information and assistance to this COI.

John Numapo
Chief Commissioner
Port Moresby

21 June, 2013

TABLE OF CONTENT

	<u>Pages</u>
FOREWORD	1-5
A. INTRODUCTION	
1. Background.....	9-10
2. Establishment of the Commission of Inquiry.....	10
3. Terms of Reference.....	11-12
4. List of Special Agriculture & Business Leases (SABLs).....	12-16
5. Legislative and Policy Framework on SABL.....	16-19
6. Roles of Government Agencies in SABL.....	19-52
B. FINDINGS & RECOMMENDATIONS ON INDIVIDUAL SABLs	
7. <u>SABLs</u> :-	
(i) Roselaw Limited (Portion 160C).....	53-70
(ii) Ainbai-Elis Holdings Ltd (Portion 40C).....	70-80
(iii) Nuku Resources Ltd (Portion 26C).....	80-92
(iv) Vanimo Jaya & One Uni Development Corporation (Portion 248C)	92-104
(v) Wammy Limited (Portion 27C).....	104-117
(vi) West Maimai Investment Ltd/Yangkok Resources Limited..... (Portion 59C)	117-128
(vii) Bewani Palm Oil Development Ltd (Portion 160C).....	128-147
(viii) Konekaru Holdings Ltd (1) – (Portion 2465C).....	147-161
(ix) Konekaru Holdings Ltd (2) – (Portion 2466C).....	161-170
(x) Veady Holdings Ltd (Portion 2485C).....	170-179
(xi) Changhae Tapioka (PNG) Ltd (Portions: 444C; 446C; 517C;..... 518C; 521C & 520C)	179-202
(xii) Okena Goto Karato Development Corporation Ltd (Portion 146C)	203-211
(xiii) Musida Holdings Ltd (Portion 16C).....	212-213
(xiv) Musa Valley Management Co. Ltd (Portion 17C).....	213-225
(xv) Kemend Kelba Kei Investment Ltd (Portion 155C).....	225-230
(xvi) Porom Coffee Ltd (Portion 302C).....	230-235
(xvii) Hewai Investment Ltd (Portion 351C).....	235-239

C. SUMMARY OF FINDINGS

8.	Findings on Government Agencies Responsible for SABL:-	
	(i) Department of Lands and Physical Planning.....	241-249
	(ii) Department of Provincial and Local Level Government.....	249-251
	(iii) Department of Agriculture and Livestock.....	251-254
	(iv) PNG National Forest Authority.....	254-258
	(v) Department of Environment and Conservation.	258-259
	(vi) Investment Promotion Authority.....	259-260
9.	Lack of Co-operation between Agencies.....	260-261
10.	SABL Failed at Implementation Stage.....	261-262

D. MAIN RECOMMENDATIONS

11.	Current SABL Process – Recommendations for Improvement.....	262-267
12.	Way Forward for SABL – Land Reforms.....	267-270

E. ACRONYMS

1) COI	Commission of Inquiry
2) DAL	Department of Agriculture & Livestock
3) DEC	Department of Environment and Conservation
4) DLPP	Department of Lands & Physical Planning
5) DPLLG	Department of Provincial Affairs & Local Level Government
6) IPA	Investment and Promotion Authority
7) PNGFA	Papua New Guinea Forest Authority
8) SABL	Special Agriculture & Business Leases
9) TOR	Terms of Reference
10) FCA	Forest Clearance Authority
11) LIR	Land Investigation Report
12) LGIS	Land Geographical Information System
13) CoA	Certificate of Alienability
14) EIA	Environment Impact Assessment
15) EIS	Environment Impact System
16) NADP	National Agriculture Development Program
17) CHEC	Changae Ethanol Corporation
18) EIR	Environment Inception Report
19) OGKDC	Okena Goto Karato Development Corporation Ltd
20) MoA	Memorandum of Agreement
21) VPL	Victory Plantation Limited
22) MVMCL	Musa Valley Management Company Limited
23) MCL	Musa Century Limited
24) FMA	Forest Management Agreement
25) NFB	National Forest Board
26) LIP	Land Investigation Process
27) NARI	National Agriculture Research Institute
28) NLDP	National Land Development Program

A. INTRODUCTION

1. Background

The introduction of Special Agriculture and Business Lease (SABL) by the government was noble and well-intended but with no proper checks and scrutiny overtime, scrupulous individuals and corrupt government officials took advantage and abused the SABL process. This resulted in land held under customary tenure been drastically reduced from 97% to 86% representing a decline of 11% in customary landownership over the years. This present a huge problem in a country such as PNG where bulk of its population live in rural areas and are subsistence farmers living on their land for sustenance and survival. In addition, the present population growth at 7.5% has now made customary land become scarce giving rise to land disputes and other social and law and order problems.

Land under the lease-leaseback for Special Agriculture and Business Leases (SABL) is not meant to be sold or permanently alienated. The title held in SABL by a leaseholder is only temporary and the land reverts back to the customary landowners after the expiration of the lease. And because the acquisition of title is for temporary period only no payment of rent or compensation (for conversion to title) by title holders is permitted.

SABL was introduced in the late 1970's to encourage customary landowners to free up their customary land for business and other economic activities. It was established essentially to create business opportunities for the local people and empower them to participate meaningfully in the economic development of the country. The lease-leaseback scheme is intended to create a good title over the land which can be used as collateral to obtain mortgage for business activities.

The primary reason for the State's involvement in the lease-lease back is two-fold: firstly, converting customary land into a State lease provides the guarantee and the security for purposes of bank loans and; secondly, the State has a duty to protect and safeguard the interests of customary landowners to ensure that customary land is not permanently taken away from them (total alienation).

The lease-lease back scheme was introduced because of the long delay in the introduction of customary land registration and the delays encountered in the tenure converting customary land. Tenure converted land was subject to very strict limitations which discouraged banks and other lenders from lending money on tenure converted freeholds. With the lease-leaseback, there are no legal limitations and it provided a

better security. Once the land is leased to the State it becomes a State Lease and classified as “alienated land” and customary laws including rights and practices over the land is suspended for the term of the lease. The State Lease is registered under the *Land Registration Act (Chapter 191)* and is governed by the provisions of that Act and the *Land Act (Chapter 185)*. It would then be treated as a normal lease just like any other State leases recognized by law with government guaranteed title to the land. The only difference is that the land reverts back to the landowners after the expiration of the lease.

2. Establishment of the Commission of Inquiry (COI) into Special Agriculture & Business Leases (SABL)

The Commission of Inquiry (COI) into the Special Agriculture and Business Leases (SABL) was established by the Acting Prime Minister Hon. Sam Abal, MP by virtue of his powers conferred under Section 2 of the *Commission of Inquiry Act (Chapter 31)* through an Instrument dated 21st July, 2011. The instrument also appointed the following Commissioners:

- (i) John Numapo - Chief Commissioner & Chairman
- (ii) Alois Jerewai - Commissioner
- (iii) Nicholas Mirou - Commissioner

The Counsel Assisting and other technical staff were also appointed to assist the COI consisting of the following:

- (i) Simon Ketan – Counsel Assisting
- (ii) Paul Tusais – Senior Counsel assisting the Counsel Assisting
- (iii) Jimmy Bokomi – Assisting Counsel
- (iv) Mayambo Peipul – Senior Technical Advisor
- (v) Mark Pupaka – Technical Advisor
- (vi) Avia Koisen – Technical Advisor
- (vii) Wemin Boi – Technical Advisor
- (viii) Mathew Yuangu – Secretary to COI

3. Terms of Reference (TOR)

The Terms of Reference (TOR) provided and gives the Commission of Inquiry into the Special Agriculture and Business Lease (SABL) specific reference points to investigate and inquire into and report on them.

The COI into the SABL were given the following Terms of Reference (TOR):

- (a) *Determine the legal authority for the issuance of SABL; and*
- (b) *Determine the procedure for the issuance of SABL in accordance with the legal authority if any; and*
- (c) *Inquire into and confirm the number of SABL issued to date and the particulars of each including:-*
 - i. *location; and*
 - ii. *customary ownership whether there are any disputes regarding SABL; and*
 - iii. *prior informed consent and approval by customary landowners for the issue of SABL over the particular customary the subject of each SABL; and*
 - iv. *in whose name the title to the SABL is held; and*
 - v. *if not in the customary landowners name then in whose name is the particular SABL title is held; and*
 - vi. *if not in the customary landowners name then by what authority and whether it is lawful under the relevant legislation for the title to be held by a non-customary landowner of the land the subject of the particular SABL; and*
 - vii. *if all of the matters in the preceding sub-paragraph (i) and (vi) involved duly granted approvals and permits from the Departments of Agriculture and Livestock; Environment and Conservation; Lands and Physical Planning and PNG Forest Authority; and*
 - viii. *inquire into and determine if the requisite or subsequent approvals determined under proceeding sub-paragraph 3 (vi) were lawful and duly obtained; and*
 - ix. *inquire into and determine if Forest Clearance Authority (FCA) in respect of each SABL complied with the proportionate agriculture development input; and*
 - x. *inquire into and determine if FCA in respect of each SABL complied with the Environment Permit terms and conditions; and*

- xi. *inquire into and determine if any official or individuals, both citizens and foreigners have engaged in unethical and/or criminal conduct in the course of the operation of each SABL including:*
- *employment of illegal Immigrants; and*
 - *engagement in illicit or illegal trade including sale and consumption of drugs, prostitution, firearms and pornography; and*
 - *unethical conduct in the disregard for the customs and traditions of the local area and sacred grounds; and unlawful and unethical mistreatment of the local people in undermining their dignity and respect; and*
 - *inquire into and assess the effectiveness of existing legal and policy framework in the improved management of SABL in future including facilitating the applications from legitimate applicants; and*
 - *inquire into and determine if all of the seventy-five (75) SABLs covering approximately 5.2 million hectares of customary land in PNG had complied with the existing legal and policy framework, incorporation of Land Groups Act 1974, the Land Act 1996, the Forestry Act 1991 and the Environment Act 2000.*

Note:

- There are certain aspects of the TOR (e.g. Clause xi (i) – (iii)) that were not investigated in greater detail due to time constraints and lack of resources.

See Appendix '1' for the following:

- (i) Instruments of Appointments
- (ii) Statement of Case
- (iii) Terms of Reference (TOR)

4. List of Special Agriculture & Business Leases (SABLs) referred to the COI

A total of seventy-two (72) SABLs were referred to the COI but during the course of the inquiry another three (3) more SABLs were added on. It is interesting to note that from the list that many of the SABLs were subleased to the developers for a period up to 99 years for the same period as granted under the head-lease. This effectively means that the land owners have transferred all their rights to the developers leaving no residual rights of any kind to the land owners. In effect, the subject land has been 'totally

alienated' from the customary landowners and given to the developers who are, in most cases, foreigner companies or entities.

Out of the seventy-five (75) SABLs referred to the COI, a total of fifty-eight (58) were granted 99 year leases under a 'sub-lease' arrangement. Five (5) SABLs were granted a 70 year leases, two (2) were granted 50 year leases, one (1) was given a 45 year lease and eight (8) were given 40 year leases. One of the SABL does not have any detail relating to the term of the lease but it presumed that a 99 year lease would have been granted as a standard practice similar to the majority of the other SABLs.

FULL LIST OF THE SEVENTY-FIVE (75) SABLs

*(Refer to Annexure "1")

GAZETTED SPECIAL AGRICULTURE AND BUSINESS LEASES GRANTED TO COMPANIES NUMBERED

NO	GRANTEE	Term (Years)	Area (Hectares)	Land Description			Province	Notes
				Portion	Project	Developer		
1	VAILALA OIL PALM LTD	99	11,800.00	377C			GULF	In process
2	TRUKAKE LIMITED	99	120.70	46	No record		ENBP	No record
3	BARAVA LIMITED	99	244.7/00	307	No record		ENBP	No record
4	LOLOKORU ESTATES LTD	45	1750.00	1C	NBPOL	NBPOL	WNBP	No record
5	BAINA AGRO - FOREST	40	42,100.00	29C	Baina Agroforestry	Nasy1 98	CENTRAL	Approved
6	ROSELAW LTD	99	25.118	2541C	Idumava Multi-Purpose Marine Facility	Dynasty Real Estate (RH Subsidiary)	NCD	No record
7	PULIE ANU PLANTATION	99	42,233.00	396C	?? see also Pulie Oil Palm Project Below		WNB	No record
8	VANIMO JAYA LTD & ONE UNI DEVELOPMENT CORPORATION	99	47,626.00	248C	West Aitape (Port 248C) Agroforestry Project	One-Uni Development Corporation	WSP	Approved
9	ZIFASING CATTLE RANCH	50	8374.23	79	No record		Morobe	No record
10	PERPETUAL SHIPPING LTD	50	283.29	19C	No record		GULF	No record
11	CASSAVA ETAGON HOLDINGS LTD	99	20,000.00	884C	No record		NIP	No record/DNPM
12	EMIRAU TRUST (LIMITED)	99	3,384.38	53C-58C	No record		NIP	No record
13	CHANGHAE TAPIOKA (PNG) LIMITED	40	1656.00	519C	Cassava BioFuel Project	Changae Tapioka (PNG) Ltd	CENTRAL	Not FCA/Approved
14	CHANGHAE TAPIOKA (PNG) LIMITED	40	74.87	444C	Cassava Biofuel Project	Changae Tapioka (PNG) Ltd	CENTRAL	Not FCA/Approved
15	CHANGHAE TAPIOKA (PNG) LIMITED	40	66.77	446C	Cassava Biofuel Project	Changae Tapioka (PNG) Ltd	CENTRAL	Not FCA/Approved
16	CHANGHAE TAPIOKA (PNG) LIMITED	40	2,514.00	517C	Cassava Biofuel Project	Changae Tapioka (PNG) Ltd	CENTRAL	Not FCA/Approved

17	CHANGHAE TAPIOKA (PNG) LIMITED	40	3,573.00	518C	Cassava Biofuel Project	Changae Tapioka (PNG) Ltd	CENTRA L	Not FCA/Approve d
18	CHANGHAE TAPIOKA (PNG) LIMITED	40	2,514.00	521C	Cassava Biofuel Project	Changae Tapioka (PNG) Ltd	CENTRA L	Not FCA/Approve d
19	CHANGHAE TAPIOKA (PNG)	40	2,514.00	520C	Angoram Integrated Project	Brilliant Investment Ltd	CENTRA L	Not FCA/Approve d
20	BRILLIANT INVESTMENT LIMITED	99	25,600.00	146C	Tufi Wanigela Agroforestry Project	Victory Plantation Ltd	ESP	Approved
21	OKENA GOTO KARATO DEVELOPMENT CORPORATION LTD	99	28,100.00	146C	Yumu Agro- Forestry Project	Aramia Plantation Ltd	ESP	Approved
22	YUMU RESOURCES LTD	99	115,000.00	30C			CENTRA L	Approved
23	KOARU RESOURCE OWNERS COMPANY LIMITED	99	59,460.00	323C	Kerema Agro- forestry Palm Oil Project	Pacific Internation al Resources (PNG) Ltd	Gulf	Approved
24	RAKUBANA DEVELOPMENT LTD	99	24,581.00	871C	Danfu SABL	Tutuman Developme nt Ltd	NIP	Approved
25	TABUT LIMITED	99	11,864.00	885C	Mamiru SABL	Tutuman Dev Ltd	NIP	Approved
26	UMBUKUL LIMITED	99	25108.00	886C	No Record		NIP	Approved
27	CENTRAL NEW HANOVER LIMITED	99	56592.00	887C	Central New Hanover SABL	Tutuman Dev Limited	NIP	Approved
28	MEKEO HINTERLANDS HOLDINGS LTD	99	116,400.00	45C	Mekeo Hinterland Oil Palm Project	Albright Limited	CENTRA L	Approved
29	WOWOBO OIL PALM LIMITED	99	23,180.00	4C	Wowobo Oil Palm Plantations	Reko (PNG) Ltd	GULF	Approved
30	AKAMI OIL PALM ESTATE LIMITED	99	231.20	104C	Roka Mini Oil Palm Estate	Expection Hicks Constructio n Ltd	WNBP	Approved
31	AKAMI OIL PALM LIMITED	99	345.75	2628C	Roka Mini Oil Palm Estate	Expectation Hicks Constructio n Ltd	WNBP	No record
32	POMATA INVESTMENT LIMITED	99	15,000.00	196C	Sigite Mukus Integrated Development Project	Gilfford Ltd	WNBP	No record
33	NAKIURA INVESTMENT LIMITED	99	16,100.00	198C	Sigite Mukus Integrated Development Project	Gilfford Ltd	ENBP	No record
34	RALOPAL INVESTMENT LIMITED	99	11,300.00	197C	Sigite Mukus Integrated Development Project	Gilfford Ltd	ENBP	No record
35	BEWANI PALM OIL DEVELOPMENT LTD	99	139,909.00	160C	Bewani Oil Palm Development		WSP	No record
36	SEPIK OIL PALM PLANTATION LTD	99	116,840.00	144C	Turubu Integrated Agriculture Project	Wewak Agriculture Developme nt Ltd	ESP	Approved
37	RERA HOLDINGS LIMITED	99	68,300.00	2C	Mukas Melkoi Integrated Agricultrue	DD Lumber Ltd	WNBP	No Record

					Project			
38	ABEDA AGRO FOREST LIMITED	99	11,700.00	409C	Abeda Integrated Agro-forestry Project	Albright Limited	CENTRAL	Approved
39	AKIVRU LIMITED	99	6,111.00	398	Puli Anu Oil Palm Project	Monarch Investments Limited	WNBP	No record
40	IVAGA OUROUINO-MUSENAMTA	99	10,741.00	397	Puli Anu Oil Palm Project		WNBP	No record
41	POLOPO LIMITED	99	8,328.00	35	Puli Anu Oil Palm Project		WNBP	No record
42	KAVUN LIMITED	99	7,161.00	34	Puli Anu Oil Palm Project		WNBP	No record
43	GORORANTO LIMITED	99	8,893.00	33	Pulie Anu Oil Palm Project		WNBP	No record
44	MUSIDA HOLDINGS LIMITED (Court Revoked)	99	211,600.00	16C	Revoked - now part of Portion 17C	n/a	ORO	Approval Withdrawn
45	EAST WAII OIL PALM LIMITED	99	21,108.00	5C	??		GULF	No record
46	AIOWA OIL PALM LIMITED	99	12,341.00	6C	??		GULF	No record
47	NUKU RESOURCES LIMITED	99	239,810.00	26C	Nuku (Port 26C Integrated Agro-Forestry Project	Skywalker Global Resources (PNG) LTD	WESTERN	Approved
48	TUMU TIMBERS DEVELOPMENT LTD	99	790,800.00	1C	Kumul Dosa	Rimbunan Hijau	ESP & WSP	No record
49	LA-ALI INVESTMENTS LIMITED	70	7,170.00	5C	Wawoi Guavi Oil Palm Project	Rimbunan Hijau	WESTERN	Pending (in process)
50	MUDAU INVESTMENT LIMITED	70	10,450.00	6C	Wawoi Guavi Oil Palm Project	Rimbunan Hijau	WESTERN	Pending (in Process)
51	GODAE LAND GROUP INC	70	15,153.00	7C	Wawoi Guavi Oil Palm Project	Rimbunan Hijau	WESTERN	Pending (in process)
52	HAUBAWA HOLDINGS LIMITED	70	11,110.00	8C	Wawoi Guavi Oil Palm Project	Rimbunan Hijau	WESTERN	Pending (in process)
53	FOIFOI LIMITED	70	33,900.00	9C	Wawoi Guavi Oil Palm Project	Rimbunan Hijau	WESTERN	Pending (in process)
54	UNUNG SIGITE LIMITED	99	13,000.00	27C	Sigite Mukus Integrated Development Project	Gilford Limited	WNBP	Approved
55	KONEKARU HOLDINGS LTD	99	457.00	2465C	Konekaru Holdings	Activities under PNG LNG	CENTRAL	No record
56	KONEKARU HOLDINGS LTD	99	98.00	2466C	Konekaru Holdings	Activities under PNG LNG- Leighton (PNG) Ltd	CENTRAL	No record
57	TORIU TIMBERS LIMITED	99	11,240.00	904C			ENBP	Approved
58	TORIU TIMBERS LIMITED	99	42,240.00	903C			ENBP	Approved
59	MAPSERA DEVELOPMENT CORPORATION LTD	99	54,384.00	54C			ESP	In Process
60	WEST MAIMAI INVESTMENTS LTD & YANGKOK RESOURCES LIMITED. PALAI	99	149,000.00	594C			WSP	Approved

	RESOURCES LTD (JOINT TENANTS)							
61	POROM COFFEE LIMITED	99	24.10	302C			WHP	No record
62	VEADI HOLDINGS LIMITED	99	1057.45	2485C			CENTRA L	No record
63	KEMEND KELBAKEI INVESTMENT LTD	99	41.30.00	155C			WHP	No record
64	TOSIGIBA INVESTMENT	99	632,538.00	14C			WESTE RN	No record
65	NORTH EAST WEST INVESTMENTS LTD (NEWIL)	99	470,642.00	1C			WESTE RN	No record
66	NORTH EAST WEST INVESTMENTS LTD (NEWIL)	99	149,117.00	27C			WESTE RN	No record
67	MUSA VALLEY MANAGEMENT COMPANY LIMITED	99	320,060.00	17C			ORO	Approved
68	WAMMY LIMITED	99	105,200.00	27C			WSP	Approved
69	AINBAI-ELIS HOLDINGS LIMITED	99	22,850.00	40C			WSP	In process
70	HEWAI INVESTMENT LTD	99	358.00	351C			SHP	No record
71	PURARI DEVELOPMENT ASSOCIATION INC	99	656,034.00	8C (GP)			GULF	No record
72	OSSIMA RESOURCES LIMITED	99	31,430.00	163C			WSP	In process
73	VAILALA OIL PALM LIMITED	99	11,800.00	377C			GULF	In process
74	URASIR RESOURCES LIMITED	99	112,400.00	16C			MOROB E	In process
75	NUNGAWA RAINFOREST MANAGEMENT ALLIANCE LIMITED	99	109,580	55C			ESP	Approved

5. Legislative & Policy Framework on SABL

(i) Legislative Framework

There are a number of legislations that provides the basic legal framework for the administration of SABL. The agencies of government responsible for SABL assume their powers and authority from these legislations to discharge their respective functions, roles and responsibilities pertaining to SABL.

The principal legislation that deals specifically with SABL is the *Land Act 1996*. Sections 11 and 102 of the *Land Act 1996* relates to acquisition of customary land.

Sections 11 and 102 of the *Land Act 1996* are set out below.

Section 11 – ‘Acquisition of Customary Land for the Grant of Special Agricultural and Business Lease.’

Sub-section (1): *The Minister may lease customary land for the purpose of granting a special agricultural and business lease of the land.* Sub-section (2): *Where the Minister leases customary land under Subsection (1), an instrument of lease in the approved form, executed by or on behalf of the customary landowners, is conclusive evidence that the State has a good title to the lease and that all customary rights in the land, except those which are specifically reserved in the lease, are suspended for the period of the lease to the State.* Sub-section (3): *No rent or other compensation is payable by the State for the lease of customary land under Subsection (1).*

Section 102 – ‘Grant of Special Agricultural and Business Leases’.

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

Sub-section (2): *A special agricultural and business lease shall be granted-*

to a person or persons; or

to a land group, business group or other incorporated body,

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

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

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

Sub-section (5): *Rent is not payable for the special agricultural and business lease.*

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

Sub-section (7): *Notwithstanding anything in this Act, a special agricultural and business lease shall be effective from the date on which it is executed by the Minister and shall be deemed to commence on the date on which the land subject*

to the lease was leased by the customary landowners to the State under Section 11.

Sections 11 and 102 basically outline a ‘two-step processes’ in acquiring customary land for SABL purposes. Firstly, the State acquires a lease over the customary land which is often referred to as the ‘head lease’. The head lease is executed between the Minister for Lands & Physical Planning on behalf of the State and the customary landowners or their representatives pursuant to Section 11 of the *Land Act*. The customary landowners must give their consent and sign the relevant lease documents to indicate that they are fully aware of the State’s acquisition of their land for SABL purposes. The second step involves the State leasing the land to a nominated developer (lessee) for Special Agriculture and Business purposes under a ‘sub-lease’ arrangement agreed to by the customary landowners pursuant to Section 102. In most cases, the sub-lease will outline the type of agricultural project and/or business activities to be undertaken on the land leased for SABL.

(ii) Policy Framework

There is no clear policy framework *per se* on SABL. The absence of a proper policy framework on SABL has resulted in *ad hoc* procedures and practices been used. This has resulted in abuse and manipulation of the process by corrupt individuals and people with vested interests. The Acting Secretary of the Department of Lands & Physical Planning (DLPP) Romily Kila-Pat in his evidence to the COI stated that there are no clear policy guidelines on SABL since the concept on lease-lease back was introduced. Mr Kila-Pat admitted that the department has failed to develop a workable policy framework that guides the administration and management including the implementation of SABL.¹ There is no clear policy particularly outlining the process and procedures relating to the application, processing, registration, approval and issuance of SABL titles. In the absence of a clearly prescribed procedures on SABL, DLPP often applies the same process that it uses for other general land acquisitions such as using of the ordinary ‘tender forms’ to apply for an SABL lease or advising prospective applicants to submit an ordinary letter of ‘expression of interest’ for an SABL lease. The significance of SABL is eroded by this *ad hoc* practice. To correct this defect, DLPP developed a set of new “proposed process and procedures”² in 2011 to guide the process on SABL. Mr Adrian Abby, Acting Deputy Secretary Customary Land Services told the inquiry that the new ‘proposed process and procedures’ were developed because of concerns raised by the public over the manner in which SABL was managed. He

¹ Affidavit “Exh. RKP 1” – Annexure ‘1’

² Affidavit “Exh. AAE 2” at p.2

admitted that DLPP had to react quickly to the growing public concern and debate over the SABL processes. The whole purpose of the new procedures was to ensure clarity, consistency and certainty in the entire process.

The lack of a proper policy framework has made it difficult for DLPP to properly manage SABL in a transparent and accountable manner as we discovered in our inquiry. There are no proper checks and balances which resulted in abuses and unethical practices creeping into the whole SABL process. Instances of abuse and malpractices are highlighted in the individual SABL reports.

The COI note with concern that since the introduction of the SABL scheme in the late 1970's, successive governments through their responsible agencies have failed to develop relevant and appropriate policy framework to guide the implementation of SABL resulting in massive procedural abuses on the lease-lease back scheme.

6. Roles of Government Agencies in SABL

There are five (5) agencies of government that are responsible for the administration and management of SABL. Their functions relates particularly to the SABL process from application, to registration, processing, and approval including issuing of titles for the SABLs. The agencies are; Department of Lands and Physical Planning (DLPP); Department of Environment and Conservation (DEC); National Forest Authority (PNGFA); Department of Agriculture and Livestock (DAL) and Department of Provincial Affairs and Local Level Government (DPLLG).

The Investment Promotion Authority (IPA) also plays a significant role in ensuring that companies intending to carry out business in the country must comply with the laws of the country. It provides information relating to the company structure, shareholding in the company, names of shareholders and directors and the nature of their business operations. The information obtained from IPA has greatly assisted the COI to determine whether or not companies involved in SABL are conducting the exact nature of business they are registered to do in the country. We note instances of abuse of business permits by a number of companies engaging in different business activities from what they are originally registered to do. Instances of such abuses are highlighted in the individual SABL reports.

There are other departments such as the Department of Transport, Department of Commerce and Industry and Department of Works that are also required to play a role in SABL but have not done so. For example; the 'road line' project requires the input and oversight of the departments of Transport and Works. Business activities other than agro-forestry projects would require the involvement of the department of

Commerce and Industry. Department of Labour and Employment input is also required especially for foreign work permits and labour hire and mobilization for SABL projects.

We outline below the respective roles, functions and responsibilities of the agencies.

I. Department of Lands and Physical Planning (DLPP)

The Department of Lands and Physical Planning (DLPP) is the 'lead agency' of government responsible for SABL and has the mandate by virtue of the *Land Act 1996* to manage the whole SABL processes. It is responsible for the processing of SABL applications including registration, approvals and issuance of SABL titles after all the legal requirements are satisfactorily fulfilled. DLPP is also responsible for maintaining accurate and current land records and maintaining an up-to-date titles register and data base on all the SABLs issued throughout the country. In addition, DLPP is required to conduct regular inspections, audits and checks on SABLs after they have been granted. DLPP also has the authority to revoke SABLs for breaches and non-compliance with the conditions of the leases issued. Essentially, DLPP plays a major and important role in the administration, management and supervision of the SABLs in accordance with the relevant provisions of the *Land Act 1996*. One of the important functions of DLPP is to prepare the instrument of lease (lease-leaseback) after the grant is made through to gazettal of the lease and finally issuing of the lease once all the pre requisite requirements have been met (including input from other agencies) and approval given by the Minister responsible for DLPP or his appointed delegate. Pursuant to Section 11 of the *Land Act*, once the instrument of lease is executed by or on behalf of the customary landowners, it is conclusive evidence that the State has a good title to the lease and all customary rights in the land are suspended for the period of the lease to the State.

(a) Acquisition of Customary Land for SABL

Sections 11 and 102 of the *Land Act 1996* provides for the acquisition of customary land for the lease-leaseback through a direct grant for SABL purposes. However, the Act does not make provisions for the actual step-by-step process and procedures for SABL applications and this has resulted in the DLPP developing its own process and procedures on SABL alluded to above. Much of these procedures however, are *ad hoc* and without legal basis.

There are four (4) Divisions within DLPP that manages the SABL process. The Divisions being; Customary Leases Division, Land Information Services

Division, Office of the Surveyor General and the Office of the Registrar of Titles. The Office of the Secretary for DLPP gives the final approval and issue the instrument of lease through a direct grant issued by the Minister responsible for Lands and Physical Planning or his authorized delegate.

Acquisition of customary land for SABL would normally begin with some initial discussions taking place between the developer/investors and landowners who wanted their customary land to be used for agro-forestry projects or other business activities. DLPP has no involvement in the initial negotiations between the landowners and the developers but it is understood that the Department of Agriculture & Livestock (DAL) is often approached for technical advice and assistance during the negotiation stages.

The Registrar of Incorporated Land Groups (ILGs) plays no role at all in the SABL process as it was not a requirement previously for landowners to have their ILG registered before applying for SABL. It was discretionary on the part of the landowners to form their ILGs before applying for an SABL. However, under recent amendments to the *Incorporated Land Group Act 2004* it is now compulsory for landowners to register themselves into ILGs before applying for an SABL. The relevant provision is Section 5 of the *Land Group Incorporation Act 2004*.

(a) SABL Application Process

The following new ‘proposed process and procedures’ is currently used by DLPP for SABL³:

(i) Lodgement of SABL application

The landowners or their representative(s) with the developers/investors would approach DLPP if both parties agreed to develop agro-forestry projects or other business activities on the customary land. DLPP will explain the processes involved in the lease-leaseback for an SABL grant.

The landowners would then engage a surveyor to survey the subject customary land. In most cases, the developers/investors would assist the landowners with funding to engage surveyors to undertake surveying work for the proposed SABL. After the

³ Ibid p. 2 – 11

land is surveyed it is lodged by the surveyor to the office of the Surveyor General for examination, approval and registration. The registered copy of the survey plan is then referred to the Chief Information Officer for file creation of the registered parcel of land.

Customary landowners or their representative(s) applying for SABLs are required to submit their application in an approved form to the Director of Customary Lease. However, there is no prescribed application form specifically for SABL and customary landowners are usually advised to use the “ordinary standard tender form” or “just write a letter of application”. The following documents must accompany the application form:

- (a) Development proposal indicating the level of impact of the project and its viability – two categories of projects; major impact project or minor impact project
- (b) Type of lease – (agriculture or business)
- (c) Consent/Approval forms from relevant government agencies (Department of Environment and Conservation, National Forest Authority and Department of Agriculture and Livestock)
- (d) Topographical Map – includes sketch map of the land, description of the land
- (e) Registered Survey Plan
- (f) Incorporated Land Group Certificate (*Land Groups Incorporation Act 2004*)
- (g) Genealogy
- (h) Land Use Plan

(ii) Zoning Proposal of the Area

SABL applications can either be submitted through to the Provincial Lands Office in the provinces or submitted directly to the DLPP headquarters in Port Moresby. A Land Investigation Instruction number is issued to conduct the land investigation.

After receiving the SABL application form, the Customary Lands Division of DLPP conducts due diligence checks to ensure that there are no pending disputes over the subject land proposed for SABL, no other existing leases on the land (e.g. mining leases, petroleum development licences, forest management area, protected wild life habitat and other SABLs etc.) and the land is customarily owned. This is also to confirm the status of the land and also to ensure that the land is free from encumbrances. Evidence of landowner's consent to lease the land is also very important.

(iii) Land Use Plan

The Physical Planning Division of the DLPP is responsible for approving the Land Use Plan depending on its assessment of the SABL application. The Chief Physical Planner will assess and determine the magnitude of the project and land use requirement. He will assess if it is a major impact project or minor impact project. He will then formulate a Development Plan and publish the draft Land Use Plan in the media inviting comments and/objections from the public to be submitted to the National Physical Planning Board within a certain period. If no comments or objections are received from the public regarding the Land Use Plan then a notice is published in the National Gazette to declare the approval of the plan and date of the effectiveness of the execution of the land use plan. According to Adrian Abby, the Acting Deputy Secretary-Customary Land Services of DLPP, the Land Use Plan approval was introduced to refine the new process on SABL.

(iv) Land Investigation Process (LIP)

The Land Investigation Process (LIP) starts when DLPP issued a Land Investigation Instruction Number to the Provincial Lands Office from where the SABL application is lodged. Upon the receipt of the instruction number, a land investigation is carried out by an Officer from the Customary Lands Division of DLPP with the assistance of the Provincial Lands Officer and a District Lands Officer. As part of the investigation, the Officers are also required to conduct an awareness to ensure that the landowners are fully aware of the SABL including the advantages and disadvantages of it. They must also understand the sub-lease agreement and the term of the lease including the development agreement between the developer and the landowners and the benefits that may be derived from the project. Land boundary inspection for the proposed SABL is carried out and clearly demarcated by a surveyor from DLPP. Physical inspection of the boundary is also carried out by the Officers of the State and the landowners. This will also include landowners from the adjacent land that shares a common

boundary with the SABL applicant to ensure that they do not encroach onto the other land. A declaration of 'Recognition of Customary Rights' is then certified by the Provincial Lands Officer if it is established that there is no dispute over the land proposed for SABL by the adjoining landowning clans.

During the land investigations, the Lands Officers from DLPP and Officers from the Provincial and District Administrations also conduct awareness program with all the villages making up the SABL area and must obtain their 'informed consent' to lease their customary land for the proposed SABL projects.

(v) Land Investigation Report (LIR)

The Land Investigation Report (LIR) is crucial to the granting or refusal of an SABL. The LIR contains vital information to proceed with acquiring the lease. A typical LIR would contain the following information:

- Name, location and type of land
- Identification of the customary landowners (genealogy)
- Area / size of land to be acquired (a survey plan)
- Proposed term of the Lease
- Declaration of land boundaries with other landowning clans and adjoining landowners
- Types of rights enjoyed by the clan members on the land;
- Purpose of land alienation
- Informed consent of the landowners to lease the land;
- Proposed agro-forestry development and types of business activities to be carried out;
- Future use of the land including availability of sufficient land for the landowners to continue to sustain their livelihood – this also includes population statistics and growth, and
- The proposed developer of the project and its business background and expertise in developing the project.

The LIR also contains other vital information that is necessary for the granting of the lease. The LIR is jointly compiled by the Provincial Lands Officers and Customary Lands officers from DLPP. After the LIR is completed it is referred to the Provincial Administrator who will (when all necessary requirements are met) then make 'Recommendations as to Alienability' for the alienation of the subject customary land for SABL. He is then expected to submit his recommendations to the Custodian of Trust Land to will to issue a 'Certificate of Alienability' pursuant to the provisions of the *Land Registration Act* and the *Land Act*. Unfortunately, we discovered that this requirement has not been complied with.

(vi) Execution of Lease-Leaseback Agreement

The Lease-Lease Back Instrument is prepared pursuant to Section 11 (2) of the *Land Act 1996* by the Customary Lease Officer and taken to the respective province for execution by the landowners. The landowners or their appointed agents or a representative executes the 'Lease-Lease Back Agreement' in the presence of the National Customary Leases Officer and the Provincial Lands Officers. The signed Lease-Lease Back Agreement is then sent back to the Customary Leases Division of DLPP for execution by the Minister for Lands or his delegate being the Secretary for DLPP.

(vii) Notice of Direct Grant

When the execution of the Lease-Lease Back Agreement is completed by the Minister or his delegate, the Customary Leases Officer requests for the land file from the Land Information Services Division who would have already created a file as requested previously by the Office of the Surveyor General. All completed documentations pertaining to the SABL application are attached to the land file and a Direct Grant Notice pursuant to Section 72 (c) of the *Land Act* is prepared by the Customary Lease Officer in duplicate. A minute is prepared and attached to the land file to advise the Minister or his delegate to peruse the documents with the necessary recommendations and if the Minister or his delegate is satisfied than he gives his approval and on the Lease-Lease Back Agreement and the Direct Grant Notice is executed.

The lands file containing the executed instruments are referred back to the Customary Leases Division for publication of the Notice of Grant. The publication of the Direct Grant Notice is paid for by the landowners and once gazetted a copy is then submitted back to the Customary Lease Officers.

(viii) Registration and Issuance of Native Land Dealing Number

The Customary Leases Officer requests for the Native Land Dealing (NLD) to be registered with the Office of the Surveyor General. The Surveyor General checks all the documentations and if all is in order than the NLD is registered and a number issued. A Native Land Dealing contains the following documents:

- Executed Lease/Lease Back Agreement
- Schedule of Owners (names of shareholders- individual person(s) or groups)
- Agency Agreement (Appointed Agent or Representative)
- Declaration of Custom in relation to Land Tenure
- Certification in Relation to Boundaries
- Registered Survey Plan

Most of the documents such as Schedule of Owners, Agency Agreement and Certificate in Relation to Boundaries and Declaration in Relation to Land Tenure would be contained in the Land Investigation Report (LIR). The Agency Agreement refers to appointment of Agent(s) or Representative(s) agreed to by the landowners to represent them for purposes of executing the Lease and also to accept monies paid as considerations for the Lease on their behalf. The Certificate in Relation to Boundaries is a declaration by the Lands Officers that they have walked the boundaries with the landowners and adjacent landowners for the land proposed for the SABL project.

Note:

(Native Land Dealing (NLD) is an old terminology used during the colonial era and it has now changed to Customary Land Dealing (CLD)).

(ix) Preparation, Approval and Registration of SABL

A Certificate of Title in duplicate for the SABL is prepared by the Customary Leases Officer which is then attached to the Lands File with a checklist and sent to the Deputy Secretary- Customary Lands Services through the Director-Customary Leases. The Deputy Secretary then recommends to the Minister or his delegate for approval and execution.

Once the Certificate of Title is executed by the Minister or his delegate it is referred to the Registrar of Titles for registration. Before registering the SABL, the Registrar of Titles is required to examine all the documentations relating to the SABL contained in the file. Once the Registrar is satisfied that all necessary documents required for the grant of the SABL are in order and procedural requirements met including due diligence checks completed for compliance purposes, he will create a new file for the particular SABL. The land description of the proposed SABL area is entered into the Register Book. The next Volume and Folio numbers in the register book is affixed onto the SABL document.

Once a title reference is affixed to the SABL Certificate of Title the Registrar then approves and signs the SABL and the date of approval is entered in the Register Book. The Owner's Copy of the SABL is then released to the applicant or the authorized agent and the Registrar of Titles copy is placed in the Titles record. All the above information is then captured and entered into the DLPP's computer database system and Land Geographical Information System (LAGIS) and the hard copy of completed file is then stored in the Registry.

According to the Acting Secretary Romily Kila-Pat, DLPP is currently doing a review of the *Land Act 1996* with one of its priorities to review the current process and procedures on the SABL and also tightening up the loopholes of the current Land Act. DLPP acknowledges that the current land laws do not adequately cater for SABL and needs to be addressed immediately.

There were only thirty-nine (39) registered Survey Plans found on records out from the 75 SABLs issued which are now subject of this inquiry. Twenty-five (25) Survey Plans have not been collected and processed yet SABL have already been issued. One SABL has no record at all.

The COI noted with great concern that DLPP does not keep a proper and up-to-date record on all the SABLs issued. Despite numerous directives and summonses, the Registrar of Titles Henry Wasa has not produced copies of the SABL titles to the COI. He admitted that due to poor storage of the records and files some of the SABL files have gone missing and cannot be found.

LIST OF SURVEY PLANS
(Refer to Listing – Annexure “I”)

Survey Plans– Collected

SF#	PLAN#	PORTION #	MILINCH	FOURMIL	PROVINC E
15077 (E)	1/130	160C	OENAKE/BEWANI	VANIMO/AITAPE	WSP
15323 (E)	1/136	162 & 163	BEWANI/OENAKE	AITAPE/VANIMO	WSP
12073 (E)	2/144	248C	TADJI	AITAPE	WSP
15215 (E)	2/151	59C	LUMI	AITAPE WEWAK	WSP
15265 (E)	2/158	40C	BEWANI	AITAPE	WSP
15266 E	2/159	27C	MAIMAI/YELLOW	AITAPE	WSP
18077 (E)	9/133	1C	VARIOUS	BLUCHER/RAGGI	W.P
21260 (E)	10/731	351C	KARIUS	WABAG	SHP
8271R	11/609	155c	BAIYER	RAMU	WHP
9649 (E)	11/1436	302C	BAIYER	RAMU	WHP
6501P	15/522	1C	GARUA	TALASEA	WNBP
12800 (E)	15/802	104C	MEGGI/DAGI	TALASEA	WNBP
128008 (E)	15/879	196C	NAKANAI/WOIPUNA	TALASEA	WNBP
12808 E	15/880	197C	WOIPUNA	TALASEA	WNBP
12808	15/881	198C	WOIPUNA	TALASEA	WNBP
12907 A	15/915	27C	NAKANAI	TALASEA	WNBP
12847 A	15/981	2	KAPIURA/WOIPUNA	TALASEA/GASMATA	WNBP
			FULLEBORN		
441	19/178	45-48	KOKOPO	RABAU	ENBP
	19/450	307,308	KOKOPO	RABAU	ENBP
12945 A	19/1913	903C & 904C	PONDO/OPEN	RABAU	ENBP
12793 E	21/353	871C	PONDO/OPEN	NAMATANAI	NIP
12670 E	23/453	884C	LOSSUK/DJAUL	KAVIENG	NIP
12790 E	23/467	885C	LAVONGAI	KAVIENG	NIP
18075 E	28/126	14C	CARRINGTON/KARIUS	KUTUBU/WABAG	WHP
			STRICKLAND/BOSAVI	BLUCHER/RAGGI	
			CAMPBELLA/AIEMA		
			TOMU/SISA		
12685 E	33/28	396C	GOGOR/MIO	ROUALT/ARAWE	WNBP
12829 E	33/29	397 & 398	MIO	ARAWE	WNBP
18076 E	35/15	1C	VARIOUS	RAGGI/KUTUBU	WP

				MURRAY/AWORRA	
14995 E	37/118	4C	AURI	KIKORI	GP
18084 E	37/120	5C	AURI	KIKORI	GP
18085 E	37/121	6C	AURI	KIKORI	GP18159 E
18159 E	37/123	8C	AURI	KIKORI/KARIMUI	GP
18014 E	42/381	45C	OMERI/KUKIPI/EPO	YULE/WAU	CP
			OIAPU/TAURI/ONO		
18058 E	42/382	409C	KAIRUKU/EPO	YULE	CP
14768	43/400	29C	KASE	BUNA	CP
14965 E	43/401	30C	KASE	BUNA	CP
14944 A	49/2590	520C	RIGO	MORESBY	CP
18195 A	49/2751	2464C, 2465C	GOLDIE, GRANVILLE	MORESBY/HAMIL	CP
		2466C		OF MORESBY	CP
12645 E	66/11	53C, 58C	ELEOA	EMIRA	NIL

Survey Plans - Not Collected

SF#	PLAN#	PORTION #	MILINCH	FOURMIL	PROVINC E
	37/114	377C	IHU/KEREMA	KIKORI/WAY	GP
		2541C	GRANVILLE	MORESBY	NCD
	M1/16	79	ONGA	MARKHAM	MOROBE
	37/115	19C	KASE	BUNA	CENTRAL
	49/2589	519C	RIGO	MORESBY	CENTRAL
		444C	RIGO	MORESBY	CENTRAL
		446C	RIGO	MORESBY	CENTRAL
	49/2511	517C	RIGO	MORESBY	CENTRAL
		518C	RIGO	MORESBY	CENTRAL
	49/2591	521C	RIGO	MORESBY	CENTRAL
	3/605	146C	ANGORAM/MARIEN BERG	BOGIA/VANIMO	ESP
	50/91	146C	KUPARI	TUFI	ORO
	42/380	323C	KUKIPI/CUPOLA	YULE	GULF
	23/468	886C	LOVANGAI	KAVIENG	NIP
	23/469	887	LOVANGAI	KAVIENG	NIP
	3/624	144C	TRING	WEWAK	ESP
	2/149	26C	VARIOUS	VARIOUS	WP
	36/21	56C	GUAVI	AWORRA	WP
	36/22	7C	GUAVI	AWORRA	WP
	36/23	8, 9C	GUAVI	AWORRA	WP
	3/657	54C	MASALAGA/KUBALIA	WEWAK	ESP
			CHAMBRI/YAMBON		
	49/2800	2485	GOLDIE	MORESBY	CENTRAL
	50/96	17C	GORA/SAFUA/BIBIRA	TUFI/MORESBY	ORO
	7/230	16C	SAVAI/ANNANBERG	BOGIA/RAMU	MOROBE
	3/671	55C	MASALAGA	WEWAK	ESP

II. Department of Provincial Affairs & Local Level Government (DPLLG)

The Department of Provincial Affairs & Local Level Government (DPLLG) houses the Office of the Custodian of Trust Land established under Section 167 of the *Land Registration Act (Chapter 191)*. The Custodian of Trust Land represents the State and 'holds in trust' all the customary land throughout the country for and on behalf of the customary landowners. The primary duty of that office is to protect and safeguard the interests of customary landowners in matters relating to customary land. All dealings with customary land especially relating to acquisition must be properly approved by the Custodian of Trust Land. The Secretary of DPLLG is the Custodian of Trust Land. For practical purposes and convenience, the Secretary for DPLLG has delegated some of his powers to the Provincial Administrators especially relating to making 'Recommendations as to Alienability' after satisfying themselves from the land investigation report that customary land is no longer required by the landowners and they have agreed to lease their land for SABL purposes for a specific lease period. The authority to 'Issue a Certificate of Alienability' (CoA) has not been delegated and is still vested in the Custodian of Trust Land according to Mr Manasupe Zurenuoc the former Secretary of DPLLG and Custodian of Trust Land.

The roles, functions and responsibilities of the Custodian of Land Trust are clearly spelled out Section 134 of the *Land Act 1996* and Section 166 (3) of the *Land Registration Act* respectively. The primary role of Custodian of Trust Land is to issue the 'Certificate of Alienability' (CoA) before a customary land is alienated and acquired by the State for public purposes which also include SABL. However, before issuing the certificate the Custodian of Trust Land must be satisfied that a reasonable inquiry has been carried out and the land proposed to be acquired for SABL under Sections 10 and 11 of the *Land Act* is no longer required by the customary landowners. Furthermore, he must also be satisfied that the landowners still have some remaining land for their livelihood.

The process begins with a production of a Land Investigation Report (LIR) by DLPP, a copy of which is sent to the Secretary of DPLLG. Upon the receipt of the LIR and the Secretary for DPLLG in his capacity as Custodian of Trust Land makes a 'Recommendation as to Alienability' and issue a 'Certificate of Alienability' if he is satisfied that all necessary requirements relating to acquisition are fulfilled. Acquisition of customary land under Section 10 (Acquisition by Agreement); Section 11 (Lease-Lease Back) or Section 12 (Compulsory Acquisition) of the *Land Act* must first be certified by the Custodian for Trust Land before any acquisition of customary land can be formalized. Without a Certificate of Alienability, the DLPP cannot proceed to execute the acquisition or lease as the authority to authorize alienation of customary land is vested with the Custodian of Trust Land. Acquisition process only commences after the Certificate of Alienability is issued

for alienation. Customary land acquired without a Certificate of Alienability renders the whole acquisition defective and void.

The administrative procedures for alienating customary land were established in accordance with Sections 166, 168 and 169 of the *Land Registration Act* and Sections 132, 133, 134 and 135 of the *Land Act 1996* which vested the Custodian of Trust Land with the responsibility to protect the interests of customary landowners.

In recent years a good number of SABLs were issued without first obtaining the Certificate of Alienability from the Custodian of Trust Land as DLPP was of the view that the Certificate of Alienability is not necessary and therefore not required before granting an SABL. In some cases, SABLs were granted without the knowledge and approval of the Custodian of Trust Land. This is contrary to the provisions of the *Land Registration Act* and the *Land Act* referred to above.

Majority of the acquisitions of customary land for SABL purposes under Section 11 (2) of the *Land Act 1996* are often for ninety-nine (99) years which means that the rights of the customary landowners are suspended and/or removed for the period of the lease and it is imperative that the process of alienation has to be properly certified by the Custodian of Trust Land in a form of a Certificate of Alienability.

According to Mr Zurenuoc, Certificates of Alienability (CoA) were officially only issued for forty-seven (47) SABLs by the Custodian for Trust Land exercising his powers under Section 134 of the *Land Act* covering a total land area of 116,492.84 hectares of customary land.⁴

*(The full list of the 47 SABLs issued with Certificate of Alienability (CoA) is shown in Appendix 4).

There are two reported cases of illegal issuance of SABL by DLPP without proper Certificates of Alienability (CoA) been issued by the Custodian of Trust Land.

The first one involves Portions 53C – 58C, Milinch Eleoa, Fourmil, Emirau Island, New Ireland Province. An SABL over five (5) different Portions of land (53C, 54C, 55C, 56C, 57C and 58C) on Emirau Island were issued to one individual without the full and informed consent of the landowners. It was stated that 29 Incorporated Land Groups (ILGs) were registered without the consent of the landowners and whilst this was being disputed, State Lease Volume 16, Folio 223 was issued to Emirau Trust for 99 years on the 16th March 2007. The total land area involved and granted under the SABL is 3,384.38 hectares and in real terms this covers the whole Emirau Island. People have no right to their customary land for the next 99 years over Emirau Island.

⁴ Affidavit 'Exh. "MZ 13" p. 7 & 8

The second illegal issuance of SABL relates to Portions 885C (Mamirum Land); Portion 886C (Umbukul Land), Portion 887C (Central New Hanover) Milinch Lavongai, Fourmil Kavieng. The three portions of land are located on New Hanover Island in New Ireland Province. In this case, certificate of alienability has not been obtained prior to executing the lease. The total land area involved is 93,564 hectares and the SABL title was issued in 2007 for 99 years without the informed consent of the landowners. The SABLs were granted on the 30th October 2007 under the State Leases Title Reference Volume 17 Folio 17; Volume 17 Folio 18 and Volume 17 Folio 19 to Tabut Limited, Umbukul Limited and Central New Hanover Limited respectively.⁵

The Custodian of Trust Land strongly recommends that the SABLs issued for the above Portions as described above be cancelled as no Certificate of Alienability was issued before the leases were executed by DLPP and therefore, the granting of the SABL is defective and unlawful.

LIST OF SABL ISSUED WITH CERTIFICATE OF ALIENABILITY (CoA)

*(Refer to Affidavit 'Exh. "MZ 13" at p. 7 & 8)

Records of Certificate of Alienability ("CoA") Issued for SABL: 1995 – 2011

CoA	LAND NAME	AREA (ha)	PURPOSE	PROVINCE	NO. OF YEARS
4/2-95	Mandres	12,300	Agriculture	East New Britain	20
92/5-96	Beliau	875	Agro-forest	West Sepik	99
93/5-96	Huwapien	440	Agro-forest	West Sepik	99
94/5-96	Tolum	414	Agro-forest	West Sepik	99
95/5-96	Nilkopon	359	Agro-forest	West Sepik	99
96/5-96	Kalilo Titolum Yalentigi	1158	Agro-forest	West Sepik	99
97/5-96	Humelki	440	Agro-forest	West Sepik	99
98/5-96	Wamti	2030	Agro-forest	West Sepik	99
99/5-96	Labaigu	101	Agro-forest	West Sepik	99
100/5-96	Meini	59	Agro-forest	West Sepik	99
101/5-96	Nayan	163	Agro-forest	West Sepik	99
102/5-96	Beliau	1253	Agro-forest	West Sepik	99
105/5-96	Wurakelki	1.810	Agro-forest	West Sepik	99
106/5-96	Trnaluea	0.8614	Agro-forest	West Sepik	99
107/5-96	Trnalvea	0.7150	Agro-forest	West Sepik	99
108/5-96	Nanum Samoru	121	Agro-forest	West Sepik	99
109/5-96	Lupaite	1000	Agro-forest	West Sepik	99

⁵ Ibid p.5 & 6

110/5-96	Eipalom Frenggaopau		Agro-forest	West Sepik	99
111/5-96	Paukel Eingom	1909	Agro-forest	West Sepik	99
112/5-96	Pauke/Eryale	1909	Agro-forest	West Sepik	99
113/5-96	Naupingo	646	Agro-forest	West Sepik	99
114/5-96	Siran	800	Agro-forest	West Sepik	99
115/5-96	Faipou Kufau	1600	Agro-forest	West Sepik	99
116/5-96	Umam Taingo	1200	Agro-forest	West Sepik	99
117/5-96	Emingowabe	1288	Agro-forest	West Sepik	99
118/5-96	Moyu	802	Agro-forest	West Sepik	99
119/5-96	Wolpango A&B	100	Agro-forest	West Sepik	99
120/5-96	Naimbele A7B	800	Agro-forest	West Sepik	99
121/5-96	Elia	530	Agro-forest	West Sepik	99
122/5-96	Tolum	277	Agro-forest	West Sepik	99
123/5-96	Tolum	277	Agro-forest	West Sepik	99
124/5-96	Tuliara (Sokei)	81	Agro-forest	West Sepik	99
125/5-96	Kiripau	81	Agro-forest	West Sepik	99
126/5-96	Wamti	1069	Agro-forest	West Sepik	99
127/5-96	Yilkili & Wilkili	1069	Agro-forest	West Sepik	99
128/5-96	Uh Simeninge	440	Agro-forest	West Sepik	99
128/5-96	Uh Simeninge	440	Agro-forest	West Sepik	99
129/5/96	Pare Angole	440	Agro-forest	West Sepik	99
130/5-96	Huhotonga	440	Agro-forest	West Sepik	99
45/9- 2004	Bilane Pilapila	1750	Oil Palm Dev.	West New Britain	99
32/6- 2006	Amoamo Inaoea	569	Rice Project	Central	40
2/4-2007	Matairuka (P521C)	1,068	Casava Project	Central	40
3/4-2007	Bigairuka (P52C)	2,031	Casava Project	Central	40
4/4-2007	Sarua Keina (518C)	3,573	Cassava Project	Central	40
5/4-2007	Bouferena (519C)	1656	Cassava Project	Central	40
8/4-2007	Bore (Portion 517)	2,514	Cassava Project	Central	40
7/6-2010	Iokoru & Kahiru	1057.45	LNG project	Central	30
16/4- 2011	Vabari (Portion 643C)	65,800	Agro-forest	Central	99
Total: 47		116,492.84	Hectares		

According to records, the number of Certificates of Alienability officially issued by the Custodian for Trust Land for Special Agricultural Business Leases (SABL) since 1995 was forty-seven (47) altogether covering a total land area of 116,492.84 hectares.

III. Department of Agriculture and Livestock (DAL)

The Department of Agriculture and Livestock (DAL) is the lead government agency in agriculture sector and one of its functions is to provide leadership in overseeing, coordination, assessment and approval of integrated agriculture agro-forestry project commonly known as 'Forest Clearance Authority' (FCA) projects of the government by ensuring that projects are effectively implemented by the relevant stakeholders according to the terms and conditions of good code of practices and within the legal framework governing utilization and development of land resources for agriculture.

The involvement of DAL in SABL is mainly through other existing legislations that require the involvement and input of DAL such as the *Forestry (Amendment) Act 2000* which deals with the FCA and the *Environment Act* which deals with land and waste management. There is no specific legislation that prescribes DAL's specific roles and functions pertaining to SABL. DAL's role is to screen, evaluate and approve agriculture project proposals and where necessary assists projects proponents in revising proposal particularly, technical capacities, land use assessments, developments and implementation schedules to satisfactory standards. DAL also conducts an independent land suitability test and land capability assessments (on behalf of the project proponents) of all project proposals covering the total SABL area and provides recommendations to the developer on the extent of the land areas readily available for agriculture development. The department also co-ordinate public hearings with customary landowners. The Provincial Administrator presides as the Chairman of the public hearing with a representative of the DAL as Deputy Chair with other government agencies represented such as DEC, PNGFA, DLPP and Department of Transport. Public hearing is one of the requirements in approving SABL. The landowners are given the opportunity through the public hearing to voice their approval or objection to the proposed agriculture project. Hence, DAL is an integral part of the whole SABL processes because it has the expertise on land use management for agricultural purposes. DAL must therefore, give the necessary approvals under the relevant provisions of both the *Forestry (Amendment) Act 2000* and the *Environment Act* before an SABL is granted.⁶

SABL enables access to customary land specifically for agriculture projects usually on large tracts of land areas that are identified as having potential for sustainable agriculture developments. The FCA projects would require clear-felling of trees over large tracts of forest land for agriculture development for cash/commercial

⁶ Refer to Annexure "IV" for Affidavit & Statements

crops such as oil palm, cocoa, coconut, coffee, rubber, cattle ranching and other commercial crops such as jethropa and cassava for bio-fuel. Fruits and nuts are also included as integrated projects. Clear-felling of forest under the FCA can sometimes be mistaken for logging operations. In some instances, the developers log the timbers (in the process of forest clearance) and because the logs are of good quality, they are exported to bring in the much needed revenue which might be used later for agriculture projects. However, there have been some instances of abuse when the developers continue to log and have not develop any agro-forestry projects as first intended and reflected in the ‘Development Agreement’ between the Developers and the Landowners. And because of that landowners have expressed concerns that SABL is used as a disguise to log timbers. Some of the FCAs were turned into full-scale a logging operation which is contrary to the provisions of the *Forestry (Amendment) Act 2000*.

DAL’s involvement in SABL is specifically for agriculture projects only such as agro-forestry development but there are other business ventures and projects that are not agricultural in nature and this will require the input from other government agencies such as Department of Transport for road line projects and Department of Trade & Industry for other business activities. Very little has been mentioned about the inputs by these two departments throughout the inquiry despite the fact that both played very important roles in SABL.

List of SABL Approved by DAL & PNGFA for Forest Clearing Authority (FCA)

*(Refer to Listing at p. 24 ‘Exh. Annex. “IV”)

Attachment 1: List and Development Status of Poverty, economic and pure Agriculture Integrated (FCA) Projects.

Province/ District	Project Name	Land Use Option (s)	Approval Status (DAL)	FCA Status (PNGFA)	Development Status/Comm ents
		Sandaun Province			
Vanimo Green	Scotiaho	Cocoa	Approved	Approve d	Progressing well
	Walsa	Cocoa	Approved	Approved	Progressing well.
	Mumuru	Cocoa	Approved	Approved	Progressing well

	Ori	Cocoa	Approved	Approved	Progressing well
	Ossima	Cattle	Pending	Pending	Public Hearing Conducted
	Ambai Alis	Oil Palm	Pending	Pending	Provincial Approved
	Bewani	Oil Palm	Approved	Approved	Initial work progressing
Telefomin	Wammy Namea	Oil Palm	Pending	Pending	Land use assessment in progress
Aitape Lumi	West Aitape	Oil Palm	Approved	Approved	Progressing
	East Aitape (Samas)	Oil Palm	Approved	Approved	Poor, review called for change from Oil Palm to Cocoa/Rubber New FCA Application.
	Moile West Aitape	cocoa	Approved pending	Pending	EIR and Environment Permit pending
Nuku	Nuku	Cocoa, tick, jethropa,	Approved	Pending	Need report for FCA Status
	Portion 59C Palai Yankok, Maimai	Cocoa, rubber Jertopha Teak	Approved pending	Need report of FAC status	Need report of FCA Status
East Sepik Province					
Angoram	Marenberg Hills	Cocoa	approved	approved	Recommended work for nursery seed garden.
Wewak	Turubu	Oil Palm	approved	approved	Progressing well
	Turubu Portion 145C	Jetropha	Approved	Pending	
Ambunti/Maprik	Nugwaia Bogos	Large scale (Various)	Approved	Pending	Environment permit issued
	Bassei	Oil Palm	Approved	Pending	
Wosera Gawi	Nungwaia Sengo Portion 54C	Rubber, Cocoa, Jetropha, Teak	Approved	Approved	
Madang Province					
Middle Ramu	Urasirk	Approved Oil Palm	Approved	Pending	Assessment stage
	Middle Ramu/Bogia	Oil Palm	Pending		Registration of ILGs
Bogia	Bogia	Rubbber/Oil	Pending	Pending	Assessment

		Palm			Stage, Social mapping (ILG) yet to commence
		Morobe Province			
		Oro Province			
Oro	Wanigela	Oil Palm 15C	approved	approved	Yet to commence
	Musa Pongani	Oil Palm Portion 116C	pending	pending	Yet to commence
	Musa Pogani	Integrated	Approved	Pending	Project assessment stages received.
	Eroro/Sambogo	Cocoa, Cassava	approved	pending	
		Milne Bay Province			
Alotau	Gadaisu	Oil Palm	pending	pending	Land use study completed
	Sagarai	Oil Palm	pending	Pending	EOI received
		Central Province			
Kairuku Hiri	Baina	Oil Palm	approved	approved	FCA cancelled
	Yummu	Oil Palm	Approved	Pending	Proposal being assessed
	Mekeo inalnd	Oil Palm	approved	approved	No progress
	Abeda	Oil Palm	Pending	Pending	Land use assessment conducted.
Abau	Abau	Oil Palm			
			pending	pending	Proposal assessments stages
		Gulf Province			
	Turama	Oil Palm	Pending	pending	Proposal received for assessment.
	Vailala	Oil Palm	pending	pending	
		Western			

		Province			
		East New Britain			
Pomio	Illi wawas	Oil Palm	approved	approved	Progressing well
	Suikol	Cocoa, Coffee	approved	pending	
	Tauri Head	Oil Palm	approved	pending	
	Mukus Melkoi	Oil Palm	approved	pending	
	Sigite Mukus	Oil Palm	Approved	pending	
	Illi Stand alone	Cocoa/Balsa	Approved	pending	
	Toriu	Cocoa	Approved	pending	Environment permit approved
Gazelle	South Baining	Oil Palm	Approved	Approved	Project Monitoring required
	Kairak/Kerevat	Oil Palm	Approved		Does not require FCA.
		West New Britain			
Bialla	Lolobau Island	Cocoa, Kamarere	approved	Pending	Need EIA
Talasea	Aria Vanu Block 2	Cocoa	pending	pending	Awaiting receipt
		New Ireland			
Namatana i	Danfu	Cocoa	approved	approved	Project Monitoring required
	Central Namatanai	cocoa	approved	approved	Project Monitoring required
Balimo	Kuria Emeti	Cocoa, sago, rice rubber, cashew, vanilla, rosewood,	pending	pending	Project assessment in Progress

A number of SABLs were issued either without the direct involvement of DAL or SABLs that were issued but DAL do not have any records of them. Herebelow are the list of these SABLs indicating their current status.

COI NO.	Grantee	Developer	Project	Approval Status	Comments
23	Koaru Resource Ownrs Company Limited			Approved	No direct dealing.
29	Wowobo Oil Palm Limited			Approved	No direct dealing.

Approved SABLs with nor records by the office of the Deputy Secretary - PATS

COI NO.	Grantee	Developer	Project	Approval Status	Comments
71	Purari Development Association Inc.			No record	No record
46	Aiowa Oil Palm Limited			No record	No record
45	East Waii Oil Palm Limited			No record	No record
10	Perpetual Shipping Limited			No record	No record
57	Toriu Timber Limited				Undergoing revision Project Proposal
32, 33 & 34	Pomata Investment Ltd, Ralopal Investment Ltd & Nakiura Ltd.			No records	
24	Rabubaka Development Limited	Tutuman Development Limited	Cocoa Development Projects	Approved.	
27	Central New Hanover Limited	Tutuman Development Limited	Cocoa and Oil Palm Development Project.	Approved	
37	Rera Holdings Limited	DD Lumber Limited	Oil Palm Development Projects	Approved	
24	Rabubaka Development Limited	Tutuman Development Limited	Cocoa Development Projects	Approved	
27	Central New Hanover Limited	Tutuman Development limited	Cocoa and Oil Palm Development Project	Approved	
74	Urasir Resources Limited				

Approved Agriculture Projects with no direct involvement of DAL

COI NO.	Grantee	Developer	Project	Approval Status	Comments
14, 15, 16, 17, 18 & 19	Changhae Tapioca (PNG) Limited	Cassava Bio Fuel Project	Cassava Bio Fuel Project	Approved	Not an FCA therefore no direct dealing with the project.
74	Urasir Resources Limited		Rubber, and Oil Palm	Approved development plan only without issuance of Certificate of Compliance	Pending full approval

IV. PNG National Forest Authority (PNGFA)

The PNG National Forest Authority (PNGFA) also plays an important role in the processing and approval of SABLs through the issuance of the 'Forest Clearance Authority' (FCA). There are two (2) types of authorities – Type 1 is a Timber Authority (TA) issued by the Chairman of the Provincial Forest Committee to carry out smaller scale agriculture or other land use on forested land pursuant to section 87 of the *Forestry Act 1991* and Type 2 is a Forest Clearing Authority (FCA) to undertake large scale forest clearance issued by the National Forest Board pursuant to sections 90A, 90B, 90C and 90D of the *Forestry Act 1991* as amended. For SABL, the Type 2 Authority (FCA) applies.⁷

Sections 90A and 90B deals with large scale conversion of forest to agricultural and any other land use whilst sections 90C and 90D deals with large scale conversion of forest to road (major road construction). The process through which an FCA is granted over the entire or part of an SABL are prescribed in sections 90A and 90B and in the case of a major road, sections 90C and 90D of the *Forestry (Amendment) Act 2000* and the *Forestry (Amendment) Act 2007*. For agriculture or land use project more than 50 hectares the application for an FCA is lodged with the National Forest Board in accordance with section 90A (1) or in the case of a road project more than 12.5 kilometres the application is lodged with the Board in accordance with section 90C (1) of the Act. Section 90A (3) provided the checklist for the evaluating team to check through to ensure that the application lodged is compliant and complete before it is referred to the Provincial Forest Management Committee (PFMC) and the Board for consideration and subsequent granting of FCA pursuant to section 90B of the Act.

⁷ Affidavit 'Exh. "KP 6"'

The National Forest Board (NFB) through the Managing Director determines the SABL application and refer it to the Department of Agriculture & Livestock (DAL) (if DAL has not already been given the application) to process the application in compliance with section 90B of the Act.

Section 90A provided a 'checklist' to assist PNGFA to decide whether or not an FCA should be granted. The following documentations must accompany the application for FCA:

- (i) Detail development plan/proposal – sec. 90A (a);
- (ii) Copy of land lease or other document relating to other types of land tenure – sec. 90A (b);
- (iii) Project implementation schedule – sec.90A (c);
- (iv) Project's detail costs – sec.90A (d);
- (v) Map and description of the project – sec.90A (e)
- (vi) Verification of Ownership – sec. 90A (f);
- (vii) Support letters and recommendations from other relevant departments – sec. 90A (g);
- (viii) Approved Plans from DEC – sec. 90A (h);
- (ix) Details of equipment and manpower – sec. 90A (i);
- (x) Conduct of Public Hearings – sec. 90A (j);
- (xi) Project Agreement between landowners and applicant/developer – sec. 90A (k);
- (xii) Certification by Secretary of DAL – sec. 90A (l);
- (xiii) Sales & Purchase Agreement between landowners and applicant/developer – sec.90A (m) and,
- (xiv) Other pre requisite requirements as determined from time to time – sec. 90A (n).

When the Managing Director of PNGFA is satisfied that an application has met all the necessary requirements alluded to above, he then refers the application to the respective PFMC for deliberations pursuant to section 90B (2) and (3). Where the PFMC is satisfied with the application, it submits its recommendations to the National Forest Board as required under section 90B (4). When the Board is satisfied with the PFMC's

recommendations, it will grant the FCA to the applicant/developer. The description and content of a FCA is prescribed in section 90B (9).

Before the FCA commence, the applicant/developer must lodge for approval by the Managing Director of National Forest Board the following:

- (i) Performance Bond in accordance with section 98;
- (ii) Plans of Base Camp and Log Pond;
- (iii) A Five (5) Year Forestry and Agriculture Plan; and
- (iv) Annual Forestry and Agriculture Implementation Plan.

FCA only applies where the applicant/developer wish to 'clear fell' or 'cut down trees' for purposes of clearing the land for agricultural (agro forestry) projects or other business activities including construction of roads. Trees or logs cleared for this purpose can be sold if they are of 'merchantable value' instead of going to waste. Clear felling or cutting of logs is a subsidiary activity to the principal activity which is the SABL. FCA was never intended for a full-scale logging operation as the primary business activity.

From the 75 SABLs issued, there are only twenty (20) that are been approved by the National Forest Board for Forest Clearance Authority (FCA) pursuant to the *Forestry (Amendment) Act 2000* and they include:

- (1) Illi Wawas Integrated Rural Development Project, East New Britain Province (ENBP);
- (2) Illi Wawas Road line Development/Construction Project, ENBP;
- (3) Illi Stand Alone Integrated Project, ENBP;
- (4) Abeda Integrated Agriculture Project, Central Province;
- (5) Angoram Marienberg Integrated Agriculture Project, East Sepik Province (ESP);
- (6) Toriu (Inland Lassul) Integrated Agriculture Project, ENBP;
- (7) Suikol-Makolkol Integrated Agriculture Project, ENBP;
- (8) Mekeo Hinterland Integrated Agriculture Project, Central Province;
- (9) Danfu Integrated Agriculture Project, New Ireland Province (NIP);
- (10) Wewak Turubu Integrated Agriculture Project, ESP;
- (11) Aitape West Integrated Agriculture Project, Sandaun Province;

- (12) Tufi Wanigela Integrated Porject, Oro Province;
- (13) Mukus Melkoi Integrated Agriculture Project, ENBP;
- (14) Sigite Mukus Integrated Agriculture Project, ENBP;
- (15) Bewani Oil Palm Project, Sandaun Province;
- (16) Scotchiao Cocoa Development Project, Sandaun Province;
- (17) Wanigela Tree Farming Project, Oro Province;
- (18) Central New Hanover Integrated Agriculture Project, NIP;
- (19) Aitape East Integrated Agriculture Porject, Sandaun Province;
- (20) Gre-Drimgas Road Alignment Project, Western Province.

The Illi Wawas Integrated Rural Development Project, Illi Wawas Roadline Project and Illi Stand Alone Project were issued with two (2) authorities: 'Timber Authority' to facilitate Agriculture/Roadline and other land use development and a 'Forest Clearance Authority' to facilitate forest clearance over the 'same land.' They were issued under the 2000 Amendment to the Forestry Act. All other SABLs listed above were issued with only one Authority for FCA to clear forest for agro forestry projects and other business activities including Roadline projects.

*(Refer to Annexure "II" for full listing indicating status of Forest Clearing Authority (FCA) issued is contained).

V. Department of Environment and Conservation (DEC)

The Department of Environment and Conservation (DEC) plays an important role in the processing and approval of SABL applications. The legislative framework under which DEC operates is well defined with its functions and roles relating to SABL clearly defined under the *Environment Act 2000*. The previous *Environment Planning Act* and *Water Resources Act 1982* were repealed and replaced by the *Environment Act 2000*. Its main focus on SABL applications is the project's impact on the environment and water ways including waste discharge associated with the project. The department is responsible for issuing Environment Permit to proposed development projects once it is satisfied that all necessary requirements are fulfilled. Before issuing the environment permit, it must conduct an Environment Impact Assessment (EIA) of the project. Sections 47 – 56 of the *Environment Act* (the 'Act') provides for the assessment process. Projects are divided into three (3) main categories of Activities described as Level 1 – 3 Activities under the *Environment (Prescribed Activities) Regulation 2002*. SABL projects falls under Level 3 Activity as in most cases it requires forest clearing/harvesting and land

clearance over a large tract of land. Section 90 of the Act provides for the approval process relating to large scale forest clearance for agriculture or other land use including Roadline projects where the land area involves more than 50 hectares. Indeed, any projects involving large-scale forest clearance require an environmental approval before any permits can be issued by the PNG National Forest Authority. This has been a requirement since the Forestry Act came into force in early 1990s.⁸

For Level 3 Activity, the following must be done:

- (i) **Registration of Intention to Carry out Preparatory Works (sec. 48)** – Prior to any feasibility or environmental studies into a Level 3 Activity, DEC would require the proponents of the project or the developer to register his ‘Intention to Carry out Preparatory Work’ with the department. DEC requires sufficient information from the proponents of the project before it accepts the Notification and issues an instruction for the Environmental Impact Assessment (EIA) process to begin. A Notification will include details on the proponent/developer, company registration certificate, brief descriptions of the project and the environment (physical, biological and social) and its location. Failure to register an Intention to carry out an activity is an offence.
- (ii) **Notice to Undertake Environment Impact Assessment (sec. 50)** – Once the registration of Intention is accepted by DEC, the project proponent/developer is advised in writing to undertake an Environment Impact Assessment (EIA). The first step in EIA is the submission of the Environment Impact Statement (EIR). The EIR identifies who will be conducting the EIA and their qualifications. The EIR is assessed by the Impact Assessment Branch of the DEC. Other Divisions within DEC are also invited to comment on the EIR to ensure that it complies with all the guidelines. It is now also a requirement to present the EIR to the Environment Council as an information paper so that the Council is informed of projects in the pipeline.

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

- *Purpose of the Development* – describing linkages with the 4th National Goals and Directive Principles under the preamble of the Constitution. This will also include detailing economic benefits from the project for the nation and the impacted communities where the project is developed.

⁸ Refer to Annex. “III”

- *Viability of the Project* – includes capital costs, details of the proponents technological expertise and resources, results of feasibility studies, information landowner’s consent and participation in the project, lifespan of the project and development phases of the project.
- *Description of the Proposed Activity* – background information, process technologies, detailed location maps, site layouts, site selections, flow chart (wastes generated etc.), nearby development activities that may contribute to background pollution levels.
- *Characteristics of the Receiving Environment* :
 - Physical – data on ambient environmental qualities
 - Biological – presence of protected species, special purpose areas, existing terrestrial and aquatic ecology and presence of vulnerable species
 - Social – existing socio-economic data on the resource owners
- *Potential Impacts of Proposal*
- *Waste Minimization, Cleaner Production and Energy Balance*
- *Environmental Management, Monitoring & Reporting*

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

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

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

(iv) Acceptance of EIS (sec.56)

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

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

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

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

(vi) Environment Permit (sec.62)

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

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

(vii) Management of Environment Permits

Environment Permits are issued with conditions. The project is required to submit a 'Waste Management Plan' and an 'Environmental Management and Monitoring Plan' within three (3) months of commencement of the permit. In addition, there will be a requirement to monitor discharges of wastes and to report on non-compliance with conditions. Permit holders are required to submit annual performance reports to DEC.

(viii) **Environmental Audits & Investigations (sec.74)**

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

List of DEC Approved and Pending Projects (SABL)**(Refer to Listing – Annexure “III”)**

GRANTEE	PERIOD	AREA	PORTION	PROVINCE	PROJECT	DEVELOPER	STATUS
TRUKAKE LTD	99	120.7	46	ENBP	no record		
BARAVA LTD		244.7	307	ENBP	no record		
LOLOKORU ESTATES LTD	45	1750	1C	WNBP	NBPOL	NBPOL	Approved (EPA)
BAINA AGRO – FOREST LTD	40	42100	29C	CENT	Baina Agroforestry	Nasy1 98	Permitted
ROSELAW LTD	99	25.11	2541C	NCD	Idumava Multi-Purpose Marine Facility	Dynasty Real Estate (RH Subsidiary)	In Process
PULIE ANU PLANTATION LTD	99	46233	396C	WNBP	?? See also Pulie Anu Oil Palm Project below		
VANIMO JAYA LTD & ONE UNI-DEV	99	47626	248C	WSP	West Aitape (Port. 248C)) Agro-Forestry Project	One-Uni Development Corporation	Approved (EPA)
ZIFASING CATTLE RANCH	50	8374.23	79	MOROBE	no record		
CASSAVA ETAGON WHY LTD	99	20000	884C	NIP	no record		
EMIRAU TRUST	99	3384.38	53C-58C	NIP	no record		
CHANGHAE TAPIOKA (PNG) LTD	40	1656	519C	CENT	Cassava Bio Fuel Project	Changae Tapioka (PNG) Ltd	In process (EIS)
CHANGHAE TAPIOKA (PNG) LTD	40	74.87	444C	CENT	Cassava Bio Fuel Project	Changae Tapioka (PNG) Ltd	In process (EIS)
CHANGHAE TAPIOKA (PNG) LTD	40	66.77	446C	CENT	Cassava Bio Fuel Project	Changae Tapioka (PNG) Ltd	In process (EIS)
CHANGHAE	40	2514	517C	CENT	Cassava Bio Fuel Project	Changae	In process

TAPIOKA (PNG) LTD						Tapioka (PNG) Ltd	(EIS)
CHANGHAE TAPIOKA (PNG) LTD	40	3573	518C	CENT	Cassava Bio Fuel Project	Changae Tapioka (PNG) Ltd	In process (EIS)
CHANGHAE TAPIOKA (PNG) LTD	40	2514	521C	CENT	Cassava Bio Fuel Project	Changae Tapioka (PNG) Ltd	In process (EIS)
CHANGHAE TAPIOKA (PNG) LTD	40	2514	520C	CENT	Cassava Bio Fuel Project	Changae Tapioka (PNG) Ltd	In process (EIS)
BRILLIANT INVEST LTD	99	25600	146C	ESP	Angoram Integrated Project	Brilliant Investment Ltd	Permitted
OKENA GOTO KARATO DEV. CORP.LTD	99	28100	146C?	ORO	Tufi Wanigela Agro-forestry Project	Victory Plantation Ltd	
YUMU RESOURCES LTD	99	115000	30C	CENT	Yumu Agro Forestry Project	Aramia Plantation Ltd	In Process (EIS)
KOARU RESOURCE OWNERS CO LTD	99	59460	323C	GULF			
RAKUBANA DEV. PTY LTD	99	24581	871C	NIP	DANFU SABLE	Tutuman Development Ltd	Permitted
TABU LTD	99	11684	885C	NIP	Mamiru SABL	Tutuman Development Ltd	In process (EIS)
UMBAKUL LTD	99	25108	886C	NIP	no record		
CENTRAL NEW HANOVER LTD	99	65692	887C	NIP	Central New Hanover SABL	Tutuman Development Ltd	Permitted
MEKEO HINTERLAND HOLDINGS LTD	99	116400	45C	CENT	Mekeo Hinterland Oil Palm Project	Albright Ltd	Permitted

(1.3) Environment Act 2000 / Environment (Prescribed Activities) Regulation 2002

The *Environment Act 2000* is a very detailed piece of legislation that defines clearly the roles, functions and responsibilities of the Department of Environment and Conservation (DEC) relating to SABLs. The Environment Act sufficiently covers all aspects of environmental management and safeguards and is indeed a complete legislation by its own right. As mentioned previously the main focus of the legislation on SABL applications is the project's impact on the environment and water ways including waste discharge associated with the project.

DEC is responsible for issuing Environment Permits to proposed development projects once it is satisfied that all necessary requirements are fulfilled. Environment Permits are issued with conditions requiring developers to comply with the conditions. Failure to comply with the conditions will result in the immediate revocation of the permit.

Some of the SABLs referred to this inquiry do not involve large scale forest clearance and also some involve projects that do not require permit under the Environment Act due to their size and limited impact they may have on the environment. For example; the three (3) SABLs that do not require permit under the Environment Act are:

1. Roselaw Ltd – Idumava Multi-Purpose Marine Facility – Dynasty Real Estate
2. Akami Oil Palm Estates – village oil palm estates less than 1,000 hectares
3. Vead Holdings Ltd – PNG LNG project, Central Province – Leighton Bros Ltd.

One important function of the DEC through its Auditing & Compliance Branch is to conduct regular environmental audits, inspections and investigations to ensure that developers complied with the conditions of the environment permit. Section 74 of the Environment Act makes it mandatory that audits and inspections are carried out on a regular basis. The enforcement aspect to ensure compliance is however, seriously lacking within the DEC. And according to the Secretary of DEC, Dr Wari Iamo, this is due largely to lack of funding and qualified and skilled manpower to carry out the audits. Consequently, many reported cases of non-compliance of the environment permits have not been investigated due to the above problems.

VI. Investment Promotion Authority (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.

IPA's role in SABL is somewhat limited to only ensuring that foreign investment companies such as project developers for SABLs complies with the investment guidelines and business laws of the country. The investment companies must have sufficient starting capital and expertise in developing the project. The shareholding arrangements and business addresses are clearly stated in accordance with the relevant provisions the Companies Act 1997 and IPA Act 1992. For record purposes and file administration, IPA must

be informed of any subsequent changes to shareholding arrangements and business ownership of a company involved in SABL. (The importance of this requirement is to ensure transparency and greater accountability on the part of foreign companies operating in PNG). IPA is putting up these stringent requirements to ensure that there is no “K2 Company or fly-by nighters” operating in PNG without having any regards to the laws of the host country. All foreign investors/companies operating in PNG have both the moral and corporate responsibilities to ensure that their operations are wholly transparent and they pay the necessary taxes as required of them under the taxation laws of this country.

IPA has the authority to de-register any businesses that does not comply with IPA Act including the Company Act.⁹

VII. Project Proponents/Developers

The Project Proponents/developers are also required to develop a comprehensive Agro Forestry Proposal that reflects its company profile, level of technical expertise, its financial capacities to develop and sustain the project over the period of the lease, cost/benefit analysis to justify the project’s economic viability and showing other benefits to be derived through this investment, especially in terms of levies, royalties, employment, and other spin-off benefits and income earning opportunities in the medium to long term future.

The Agro Forestry Proposal is then submitted to the Department of Agriculture & Livestock (DAL) for the Public Hearing to take place on the project site to gauge the views of the customary landowners to ascertain whether or not they support the project. DAL takes the lead role in organizing the Public Hearing which also involves the Department of Environment & Conservation (DEC); Department of Transport and the Department of Lands & Physical Planning (DLPP).

The Agro Forestry Proposal is also submitted to DEC for a Level 3 Permit to be issued to the Developer. When a Level 3 Permit is issued, it is then submitted together with the overall business plan to the National Forest Authority/National Forest Service for the issuance of the Forest Clearance Authority (FCA) permit pursuant to the provisions of the Forestry Act as stated above.

Upon the receipt of the Project Submission containing the Proposal, DAL having satisfied itself that all necessary and relevant requirements have been met, the Secretary for DAL will then issue a Certificate of Compliance for large scale conversion of forest to agriculture for FCA Permit.

⁹ Refer to Affidavits & Statement in ‘Exh, “V”

The 75 SABLs referred to this inquiry will be individually examined based on the guidelines and the requirements stated above by the various agencies of government to ascertain if they are properly and lawfully issued.

B. FINDINGS AND RECOMMENDATIONS MADE ON INDIVIDUAL SABL

1. ROSELAW LIMITED (Portion 2541C) (SABL NO. 6)

A. REPORT

1.1. Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were fully covered. It was not necessary to investigate into TOR (g) (i)-(iii). Roselaw Limited has subleased the SABL to a developer over Portion 2541C and it will not take any active part in the development on the land. The focus of inquiry into this matter was on whether there was inclusive participation by all landowners in the decision to create an SABL on their land and on whether everyone gave their informed consent on every decision. The sublease holder did not take up on an invitation to give evidence at the inquiry to clarify its part in this matter and to protect its own interests.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued SABLs were carefully assessed. In addition to that the monitoring, oversight, approval and permit setup in the Department of Environment & Conservation (DEC) was investigated. Whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was fully investigated.

1.2 Company Structure & Shareholding Arrangements – Roselaw Limited

Roselaw Limited is a registered company and is duly incorporated with the Registrar of Companies with its certificate of incorporation being incorporated on the 22nd November 2004 described as IPS No. 1-52603. The registered address of the company is Section 01, Allotment 479, Kennedy Road, Gordons, National Capital District. This address also serves as its address for service and postal address.

The total number of shares issued is one (1) share. There is one sole shareholder by the name of Rose Haraka, a female aged 36 from Tatana village, National Capital District.

The directors of the company are Rose Haraka and Andrew Law, aged 73, a Malaysian by descent. Apparently, they both are also husband and wife and both are owners of Roselaw Limited. Andrew Law is the company secretary. Annual returns were filed each year since 2005 until 2008. From 2008 to 2011 there were no annual returns filed which suggest that there were no business activities taking place.

Roselaw is the registered proprietor and developer of Portions 2541C Granville, NCD (the land) and was granted an SABL on the 13th December, 2005 for ninety-nine (99) years. Roselaw Limited subsequently entered into a sub-lease agreement with Dynasty Estates Limited who has plans to develop a wharf and storage facilities on part of the land (Portions 2541C). The sub-lease agreement was to commence on the 10th August 2010 and end on the 11th December 2104, a period of 94 years. Incidentally, Roselaw Limited (Lessor) and Dynasty Estates Limited (Lessee) share the same registered address at Section 479, Allotment 1 Kennedy Road, Gordons, NCD.¹⁰

Roselaw has subleased the SABL to a developer (Dynasty Estates Limited) and it will not take any active part in the development on the land. The focus of inquiry into this matter was on whether there was ‘inclusive participation’ by all landowners in the decision to create an SABL on their land and on whether everyone gave their ‘informed consent’ on every decision. The sublease holder did not take up on an invitation to give evidence at the inquiry to clarify its part in this matter and to protect its own interests.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully assessed. In addition to that the monitoring, oversight, approval and permit setup in the Department of Environment & Conservation (DEC) was investigated. Whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was fully investigated.

1.3 Sources of Information

Brief facts disclosed in the COI Listings constituted the initial data in this matter. A Gazettal Notice was obtained from the Government Printing Office (GPO). A file containing copies of the Land Investigation Reports (LIRs), Survey Plan (Map), Notice of Direct Grant, copy of Title deed, and various documents and correspondences were obtained from the DLPP.

Company extracts were obtained from Investment Promotion Authority (IPA). Correspondences and environment approval process records were obtained from DEC. There was no need to seek or obtain anything from the Department of Agriculture and Livestock (DAL) and Papua New Guinea Forestry Authority (PNGFA) because there is no

¹⁰ Refer to Annex. “VII”

Forest Clearing Authority (FCA) required for this project as it is a 'un-forested' land within the boundaries of the National Capital District. Documents received for this matter are tabulated in the Schedule of Documents. Roselaw Limited submitted documentary information before, during and after the formal hearings.

1.4 Location of Portion 2541C

Portion 2541C is a 99 year SABL. It is located in the Milinch of Granville and Fourmil of Port Moresby, in the National Capital District. It covers 25.118 hectares of land, the area of which is delineated on Survey Plan bearing Catalogue Number 19/2562.

1.5 Land ownership and Land Disputes

There was initial uncertainty as to whether all of the 25.118 hectares of land now encompassed within Portion 2541C was customary land, prior to its conversion to SABL. It has since become clearer that certain lands known as Iduvaivai and Idumava were acquired by the Colonial Administration and are encompassed within Portion 780. It is also clearer now that those lands included within Portions 2540C, 2541C, and 2542C were at least customary lands prior to conversion into SABLs. The Tubumaga clan were the customary landowners of the said land and through their Tubumaga Incorporated Land Group. (ILG) agreed for the State to acquire the land through a lease-lease back arrangement for business activities. Whilst Roselaw Limited is NOT a landowner company, it is nonetheless the company that the Tubumaga ILG agreed for the SABL to be granted to it. It was argued however, that not all landowners gave their consent for the SABL to be granted to Roselaw Limited.

There has been continuing land disputes over these lands, now apparently wrongly referred to as the Iduvaivai or Idumava lands, since 1983. It is alleged that the name change (from their actual traditional names to Iduvaivai or Idumava) in the LIR was deliberately done to create a smoke screen. Otherwise all of those lands contained in Portions 2540C, 2541C and 2542C are locked in land disputes involving various parties since well before 2005 and continue to be so. As noted further in this Report there is no mention of all those land disputes in the LIR at all. In the face of all the disputes that are pending, the non-discloser brings the entire land investigation process into question. The integrity of the Land Investigation Report itself and its accuracy is also questionable. The LIR did not refer to the long standing land disputes over the lands contained Portions 2540C, 2541C and 2542C.

There will not be any findings in relation to the past and present land disputes in this Report, except only to the extent that the lack of reference to it affects the LIR and its authenticity.

Persons of interests complained that their lands have been included in this SABL without their informed consent. Their dissent and findings on the issue of unqualified landowner consent are discussed further this Report in the context of Tentative Findings.

1.6 Grant of Lease

Portion 2541C containing 25.118 hectares was granted directly to Roselaw Limited for 99 years. The grant is dated 13th December 2005. It was gazetted on 12th December 2005 through National Gazette Issue No G184 of 2005. The lease was granted under the hand of then acting DLPP Secretary Romily Kila-Pat as the Ministerial Delegate.

Roselaw Limited was incorporated on 22nd November 2004. It is owned by 36 year old Papua New Guinean woman Rose Haraka of Tatana Village, and her 73 year old Malaysian husband, Andrew Law. Both are also directors of the company.

1.7 Compliance with the Land Act 1996

The DLPP file contains three different versions of Land Investigation Reports (LIR) by two investigators, all of them incomplete and defective. Obviously there was no coordination between the investigators. It is impossible to confirm which Land Investigation Report was relied on by DLPP to eventually issue the SABL. Only one of the investigators, Kevau Buruka Sabadi, who is attached with the Motu-Koita Assembly, was summoned to give evidence.

Kevau Sabadi was taken through his LIR on 25th October 2011. In the course of that it was noted that nineteen people, obviously members of one or two families, signed their attestations indicating that they participated in the 'boundary walk', as well as to indicate their consent for a lease-leaseback. Mr Sabadi verified his own, albeit defective LIR by executing the Certificate of Alienability. That was improper. Since he prepared the LIR Mr Sabadi could not validly sign off on the Certificate of Alienability, which is improper even if he had delegated authority from the Custodian of Trust Lands from the Department of Provincial and Local Level Government (DPLLG) to perform that function. For the record Mr Sabadi had no right to sign off on the Certificate of Alienability.

Mr Sabadi's evidence is discussed further down in this Report but it must be noted at this juncture that his LIR is not worthy of the purpose it is meant to serve. Mr Sabadi only merely accepted what was conveyed to him by Mr Madaha Resena MPA. Clearly he did not consult landowners, except possibly Mr Madaha Resena's family members. Every other landowner had no say on the issue of whether their land was to be converted to SABL and indeed whether title was to be vested upon a one woman entity

called Roselaw Limited. Mr Madaha Resena MPA refused to testify himself so his views remain unknown.

In short, the so called LIR in this matter was defective and unreliable. None of the current DLPP best practices that makes operational or enlivens the general intention encapsulated under Sections 11 and 102 of the Land Act was correctly followed. More significantly, since no Lease-leaseback Instrument was executed between the landowners and State, the latter never obtained the right to create or issue a title over the Iduvaivai lands. Hence the grant of the SABL is defective and unlawful. The State cannot issue a SABL title without first obtaining the right to do so over customary land. The State can only properly obtain such right through the execution of an agreement, commonly known as a Lease-leaseback Instrument, under Section 11 of the Land Act. Therefore, the title over Portion 2541C was unlawfully created and was then unlawfully issued as an SABL to Roselaw Limited.

1.8 IPA Status of the Developer

The initial understanding was that Roselaw was the developer. Evidence shows that Roselaw wanted to do an outright purchase of the customary land. This option was not supported all by landowners except Mr Madaha Resena MPA. However, even if it was supported by landowners, disposing off customary land in the manner proposed at the time is prohibited under Section 132 of the Land Act. That section says: “Subject to Sections 10 and 11, a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom, and a contract or agreement made by him to do so is void”.

Therefore the purchase option was also unlawful and it was not really available to Roselaw Limited. In any case Roselaw Limited is not the developer. Roselaw Limited has never filed annual returns since its incorporation so obviously it is a non-functional “paper company.”

Evidence now shows that Dynasty Estates Limited is the developer. When this fact became clear Dynasty Estates Limited was asked through its lawyers to produce evidence protecting its interests but it has not taken up on the invitation. It is unclear whether Dynasty Estates Limited executed a ‘Development Agreement’ with Roselaw Limited. It is also not known what sort of sub-lease it has over Portion 2541C.

Dynasty Estates Limited was incorporated on 25th January 1989. IPA extracts show Dynasty Estates Limited has a share capitalization of 25000000. At the beginning a Kiew Chiong Tiong held a nominal stake of one share, Rimbunan Hijau (PNG) Limited held 9999 shares and the rest were held by a Gotha Company Limited, making the latter majority owner. That changed on 21st November 2011. Rimbunan Hijau (PNG) Limited

transferred its 9999 shares to Gotha Company Limited, making the latter the sole owner of Dynasty Estates Limited.

Initial investigation into this matter was around the LIR processes and obvious lack of landowner consent and on the non-compliance with the DLPP processes and best practices. Therefore no focused searches were done on Dynasty Estates Limited but it appears that it is certified by IPA as a Foreign Enterprise to carry on Business in PNG.

Gotha Company Limited is virtually unknown. IPA has no records of its addresses, shareholding and directorship details. It was only merely given a company number (7-1408). The date of its incorporation is noted as “1st January 1111” and the place of its incorporation is noted as Hong Kong. Just how Gotha Company Limited would have got approval to acquire full ownership of a PNG registered company remains a mystery.

1.9 DAL Status (Land Use/Development Plans, Certificate of Compliance, etc)

DAL has had no knowledge of this SABL. The COI has no DAL file created for this SABL and whatever may have otherwise transpired in relation to any approvals from the DAL is not known. In any case, it is presumed that because this is a non-agro-forestry project it does not require DAL’s input to approve and issue Forest Clearing Authority (FCA). Also the subject land is a grass land and not forested. The same reason would also apply to the non involvement of the PNG National Forest Authority.

I.10 DEC Status (Meeting Requirements for Approval in Principle)

DEC process is half complete. The DEC file has a copy of Notice of Preparatory Work pursuant to Section 48 of the Environment Act 2000. Dynasty Estates Limited identified its project as a Level 2 project. It is not known whether Dynasty Estates Limited submitted any Environment Inception Report (EIR) or any Environment Impact Statement (EIS).

Nevertheless a notice under Section 55(2) of the Environment Act was published recently in the daily papers advising of an application filed with the Director of Environment (DEC) by Dynasty Estates Limited, seeking assessment of an Environment (Waste Discharge) Permit it requires. Apparently Dynasty Estates Limited wants a permit to construct a Multi-Purpose Marine Facility at Idumava Point. The notice advises where the application is to be viewed and also advises that submissions may be filed no later than 24th April 2012 – that date is two weeks away at the time of this Report. What this means is that the permit sought is yet to be issued.

In the absence of any ‘Development Agreement’ with Roselaw Limited this proposed development is enlightening. It is particularly informative that this notice refers Dynasty Estates Limited’s intention “to construct a Multi-purpose Marine Facility to extend its

operation of logistical shipping support to its operations in Port Moresby and PNG at Portion 2541 at the Idumava Point in Central Province". That connotes that there is existing facilities and operations that is sought to be extended.

It is unfortunate that Dynasty Estates Limited has invested heavily in the land in the knowledge that Portion 2541C is a valid SABL. However, as noted elsewhere in this Report, this SABL is invalid and is totally voidable because it was unlawfully created and issued.

1.11 Forestry Act 1991 (Meeting Requirements for Grant of FCA)

The Forestry Act and PNGFA requirements do not apply to this SABL as stated above.

1.12 Landowner's Concerns

Landowner concerns were raised through Mr Rei Heni, who is the representative and principal opponent of Roselaw Limited. Mr Rei Heni is now head of the Tubumaga clan of Tatana. At some point, after the SABL was issued, he replaced Mr Madaha Resena MPA as clan leader. Mr Rei Heni testified on 25th of October 2011. He shed light on the defective LIR containing nineteen names. Mr Rei Heni confirmed those people as being members of Mr Madaha Resena's one extended family. It is noted that the 19 persons consented to the "sale" of land. There is no consent for land to be converted to SABL. No other landowner from Tatana Village was included. This evidence was not seriously disputed. Therefore it stands confirmed that the landowners were not consulted for purposes of the LIR and consequently they never rendered their 'informed consent' for the land to be converted to SABL and/or for Roselaw Limited to be the title holder of the SABL.

1.13 Summary of Witnesses Evidence

Mr Kevau Buruka Sabadi was first of a total of seven witnesses who testified in this matter. His evidence is covered at length elsewhere in this Report but the highlight of his evidence is, he confirms he prepared the LIR and then proceeded to execute the Certificate of Alienability. He said he interviewed the landowners but it turns out that he only talked with Mr Madaha Resena who provided him a list of his family members. There is conflict of evidence from Mr Sabadi too. He was asked to confirm another evidence, sworn affidavit evidence, that he filed for purposes of a National Court proceeding (O.S 265 2006) filed by persons of interests (including the principal Mr Rei Heni) within weeks after realizing that Iduvaivai land had been converted to SABL. In his affidavit dated 26th April 2006 he had said that he never conducted any Land Investigation or prepared the LIR. He was forced to execute it by Messrs Simon Malu

and Jacob Wafinduo of the DLPP. Mr Sabadi was clearly caught out. Since he could not reconcile these conflicting stories his evidence is unworthy of any credence.

Mr Sabadi improperly executed a Certificate of Alienability against an obviously defective LIR that he himself hastily put together and, as other witnesses' evidence will show, only part of the DLPP processes were also hastily completed within hours of Mr Sabadi executing the LIR and Certificate of Alienability. Iduvaivai land had a history of being marred by past and recent land disputes. Therefore just how free of disputes the land was of continuing disputes at the time was never investigated, let alone referred to in the LIR. This critical lack of investigation and reporting also rendered the LIR unreliable and defective.

The 2nd witness was Mr Romilly Kila-Pat, the Acting Secretary of DLPP. He exercised the Ministerial Delegated powers to grant the SABL to Roselaw Limited. The highlight of his evidence is that he decided there was no need for the State and landowners to execute a Lease Agreement (Lease-leaseback Instrument). He said the operational person, a Mr Daniel Katakumb, considered Mr Sabadi's defective LIR as acceptable, which is why he advised him to act on it. Nevertheless Mr Kila-Pat failed to be deterred by the obviously defective LIR. Perhaps the most troubling revelation is that the land investigation itself, the LIR and Certificate of Alienability were all executed by the same man on Thursday 8th December 2005. On the next day, Friday 9th December 2005, the gazettal notice was prepared. It most likely would have been published that day had the weekend not intervened. It was published on Monday 12th December 2005 and the issue of SABL title on Tuesday 13th December 2005 a mere formality. Mr Kila-Pat's explanation for the 'fast work' is that everything was ready and there was nothing wrong with the speed with which things were concluded. He appeared to be unfazed by the fact that a process that normally takes up months and years was completed in just two days.

Had Mr Kila-Pat allowed himself time to do a few cross checks and verification, and had he waited for landowners to come to him to execute the Lease-leaseback Instrument with the State, he would have realized that the whole thing was unsupported by landowners. The SABL was issued in the hasty manner on 13th December 2005. Soon thereafter Rei Heni and his clansmen tried to have the SABL revoked. They instituted legal proceedings on or around January 2006 challenging the decision to grant the SABL. All these underscores the fact that Mr Simon Malu and Rose Haraka and others possibly fraudulently collaborated to convert customary land to SABL.

Mr Kila-Pat's explanation for both the 'fast work' and not executing a Lease-leaseback Instrument is critically faulty and arguably deceptive. His explanation is untenable under any circumstances and it is possible that his story masks a fraudulent activity. He simply could not have had the power to grant an SABL without first obtaining the right to grant it by executing a Lease-leaseback Instrument under Section 11 of the Land Act. The Lease -leaseback Instrument process not only gives the State the right to deal with

customary land but it also acts to convert customary land to State land, so that the State can then lease it back to the person or entity that the landowners had agreed to as the preferred developer.

Executing Lease leaseback Instruments started in 1978 when the system was conceptualized. This evidence is from the outgoing Secretary for DLPP, Mr Pepi Kimas. Mr Kimas testified on 27th October 2011 in relation to this and the several Central Province matters. In the course of his appearance he was asked a series of questions and in relation to the following specific question Mr Kimas gave the specific answer that settles the issue of vitality of the Lease- leaseback Instrument:

The question was; *“So there was already a lease-lease back agreement being used by the Department of Lands as way back as 1978?”*

Mr Kimas’s answer was (quote); *“Absolutely, because that is the way it should be; that is the way it should be. State will not lease land. State will not lease anything it does not have rights over. So that was really the way to go. So it was a conditional kind of a lease; you lease your land to me on condition that I lease it back to you. What you need is that title so that you can go to financial institutions to get some loan”* (end of quote).

Mr Kila-Pat skipped this vital process deliberately. In so doing he unlawfully caused a SABL to be created, which he further unlawfully granted to an entity that was not even agreed upon by the landowners as their preferred developer.

Mr Rei Heni was the 3rd witness. He represented all landowners. He succeeded Mr Madaha Resena as head of Tubumaga Clan of Tatana Village, the land owing clan. When asked what he knew of a Land Investigation carried out by Mr Sabadi, Mr Rei Heni said he was never aware of it. He said his people were not notified of any proposed land investigation and in fact no investigation took place. Mr Rei Heni confirms that the 19 people who appear to have signed for purposes of the LIR are all members of Mr Madaha Resena’s family. These 19 persons are mostly Mr Resena’s children and grandchildren and they really do not represent or speak for all the members of the Tubumaga Clan of Tatana Village.

It is noted that those 19 persons agreed to the “sale of 25 hectares of piece of land in Idumava land”. The appended list of names and signatures were submitted not as a part of any LIR, especially one that led to the creation of a SABL, but for the “sale of land.” Therefore any LIR for the purposes of a SABL and subsequent grant of SABL would have no landowner consent foundation and therefore invalid.

Rose Haraka was the 4th witness. Her evidence is brief. She is the sole owner of Roselaw Limited. She is from Tatana Village, of the family of Madaha Resena. She confirmed that Roselaw Limited is her own company. Notwithstanding her references to “they all will benefit” the SABL holder is Rose Haraka’s personal company.

Mr Madaha Resena MPA would have shed much needed light on letters he wrote to officers of the DLPP and how he influenced outcomes during the LIR and thereafter but he declined to testify. Through an undated letter to Daniel Katakumb of the DLPP Mr Resena requested a 99 year SABL to be granted to Roselaw Limited. He urged Mr Katakumb to contact Rose Haraka on a phone number he supplied (686 8056) if Mr Katakumb needed “financial assistance”. Had Madaha Resena testified he would have been asked to clarify why he wrote that letter. He would have been also asked to clarify why he changed position from wanting to “sell” the land to wanting to “lease” it instead.

Madaha Resena filed a submission dated 26th October 2011. In it he says he is speaking for Tubumaga Land Group. He said further that everybody from the clan agreed to have the land acquired by the State to then lease to Roselaw Limited. This assertion is of course unsupported by the other uncontested and clear evidence. Had he testified he would have been asked to justify his assertion.

The 5th witness to testify was Mr Simon Malu of DLPP. His evidence is that he completed the LIR and asked Mr Sabadi to sign off on it as a proper and final LIR. Whilst doing the LIR that way is wrong, Mr Malu’s evidence stands in contrast to Mr Sabadi’s evidence: The latter said he carried out the Land Investigation himself, prepared LIR and then signed off on it and the Certificate of Alienability.

The highlight of Mr Malu’s evidence is that he prepared the LIR at the request of Rose Haraka who wanted to buy the land from landowners. The transcript of Mr Malu’s evidence could make interesting reading were it not for the fact that what he did (legitimise a prohibited activity) was deceptive and dangerous for customary land security. Section 132 (Disposal of Customary Land) of the Land Act states that: “Subject to Sections 10 and 11, a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom, and a contract or agreement made by him to do so is void.”

What occurred was neither a customary land sale nor a lease-leaseback. Even then the landowners wanted a 99 year lease, not a sale so the LIR was deceptive.

During his investigations Mr Simon Malu did not convene a meeting of the landowners to gauge their views as part of the land investigation process. He recalled going into Tatana Village for “refreshments” and since no one stepped forward to protest at the time he thought there was landowner consent for conversion of the land to SABL or sale or whatever, and that Roselaw Limited was the agreed entity to whom land was to be sold to. As it turned out he was wrong on all counts.

When asked why the Land Investigation, LIR, execution of the Certificate of Alienability (by the wrong person in fact), check and verification at the DLPP, sign off by the Ministerial Delegate, preparation and publication of the Gazettal Notice, and issuance

of the SABL were done all at once, Mr Simon Malu uttered “no comment”. Again when queried why the all too important Lease-leaseback Instrument was not signed he said it was not required and that a “Section 11 notice” was sufficient.

The problem with that story is that the Lease-leaseback Instrument and the one page document titled “Notice under Section 11” are not one and same thing. In fact they serve different purposes. The Lease-leaseback Instrument is an agreement between the State and landowners. A notice under Section 11 (the one for this SABL is dated 9th December 2005) is an attestation from the Minister’s Delegate (Mr Kila-Pat in this case) that the land was not required and was not likely to be required by its customary owners.

It is to be noted that Mr Simon Malu’s evidence and Mr Kevau Buruka Sabadi’s evidence clashed. Their evidence is antagonistic of each other’s. They do not say that only one of them prepared the LIR or they both collaborated on it. Since they assert exclusive authorship of the LIR their evidence is unreliable. Even if the LIR was put together by Mr Simon Malu and Mr Kevau Buruka Sabadi was asked to sign it as Mr Malu asserts, for that reason alone the LIR would be defective and improper and rendered unreliable for its intended purposes.

The final witness was Law King Taing ‘aka’ Andrew Law, Rose Haraka’s husband. He testified in his capacity as the company Secretary for Roselaw Limited but he really did not say anything of significance. He did file a brief submission. It appears Mr Law is employed by Rimbunan Hijau (PNG) Limited as a ‘marine operations manager’. He said he was neither involved nor had any interest in Dynasty Estates Limited and Roselaw Limited. His evidence and answers to questions put to him regarding the both companies leaves a lot to be desired.

B. FINDINGS

The following findings and recommendations are made:

- (i) Certain lands known as “Iduvaivai” and “Idumava” were acquired by the Colonial Administration in the 1950’s and are encompassed within Portion 780. Those lands included within Portions 2540C, 2541C, and 2542C were at least customary lands prior to conversion into SABLs.
- (ii) Since 1983 there has been continuing land disputes over the lands now apparently wrongly referred to as the “Iduvaivai” or “Idumava” lands. These lands are contained in Portions 2540C, 2541C and 2542C and are locked in land disputes between various parties since well before 2005 and continue to be so. In as much as the LIR did not refer to any land disputes over the lands contained Portions

2540C, 2541C and 2542C, the non-discloser brings the entire land investigation process into question.

- (iii) The SABL granted to Roselaw Limited over Portion 2541C is voidable and may have been fraudulently granted. It appears to have been granted on the basis of a patently defective LIR that was possibly commissioned in secret by Ms Rose Haraka and Mr Madaha Resena MPA with the help of Mr Kevau Buruka Sabadi, Mr Simon Malu and Mr Daniel Katakumb. The Acting Secretary Mr Romily Kila-Pat in his capacity as the Ministerial delegate has also played an active role in fast-tracking the approval and granting of the SABL to Roselaw Limited in record time. The LIR was 'validated' (through execution of a Certificate of Alienability) by Mr Kevau Buruka Sabadi who also prepared the LIR. No Lease-leaseback Instrument was executed between the landowners and the State to lawfully permit the State to grant an SABL. In these circumstances the creation and grant of the SABL was unlawful.
- (iv) The nineteen (19) people who supplied their signatures for purposes of the LIR in this matter only agreed to the "sale" of 25 hectares of piece of land in Idumava land and not for a lease. The list of names and signatures submitted was not as part of any LIR for consent purposes to clear customary land for a SABL to be created but for the "sale" of customary land. Therefore the so called LIR for purposes of the SABL over Portion 2541C, and the subsequent grant of SABL title on 13th December 2005, was not founded on landowner consent. Consequently the SABL was invalid and improper.
- (v) The Tubumaga ILG offered to sell their customary land outright for a fee of K125, 000.00 to Roselaw Limited in a letter dated 11th February, 2005. According to Rose Haraka, the arrangement to sell the land was earlier "facilitated by DLPP" on the 01st December, 2003 when the Tubumaga clan entered into an agreement with DLPP pursuant to which the SABL would be issued to Roselaw Limited in exchange for a consideration of K125, 000.00 amongst other benefits payable to clan members.
- (vi) Rose Haraka appears to have wanted to buy customary land outright for K125, 0000.00 rather than leasing it from the landowners. Therefore she asked Mr Malu to do a land investigation and prepare a LIR, which she intended to use to secure a SABL. It means the so called LIR, fraudulently contrived and concocted to legitimize a prohibited activity, was deceptive and dangerous for customary land security. Section 132 (Disposal of Customary land) of the Land Act states that:

“Subject to Sections 10 and 11, a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom, and a contract or agreement made by him to do so is void.” This was neither a customary land sale nor lease-leaseback.

- (vii) The option to purchase the customary land outright is unlawful and not available to Roselaw Limited. In any case, Roselaw Limited is not the developer as it has never filed annual returns since its incorporation so obviously it is a non-functional ‘paper company’. According to evidence Dynasty Estates Limited is the developer. Dynasty Estates Limited is a ‘foreign owned’ company and a subsidiary of Rimbunan Hijau (PNG) Limited. According to the IPA Extract dated 7th December 2011, the sole shareholder of Dynasty Estates Limited is a James Sze Yuan YUAN, a Malaysian national. The directors are: Ik King TONG; James LAU SZE YUAN; Chiong Ong TIONG; and the company secretary is Geok Lian WONG. All of whom are Malaysian nationals. It is without a doubt that the land would have been sold to a foreign company in Dynasty Estates Limited and the land would have been totally alienated from the customary land owners which is contrary to Section 132 of the Land Act. It can be concluded therefore, that Dynasty Estates Limited is only using Rose Haraka and Roselaw Limited as a “front” to pursue its business interest in the country.

- (viii) The entire process; Land Investigation process, the LIR, execution of the Certificate of Alienability, DLPP cross-check and approval process, preparation of Gazettal Notice, and grant of the SABL was concluded in just two days. When the landowners became aware of this they quickly instructed counsel and instituted legal proceedings in the National Court to nullify the SABL. This demonstrates that there was no ‘informed consent’ from the landowners and in the circumstances the SABL was irregularly created and is defective. Its existence is unlawful.

- (ix) The explanation provided by the Acting Secretary Mr Kila-Pat; for both the ‘speedy’ approval and lack of a Lease- leaseback Instrument is critically faulty and arguably deceptive. His explanation is untenable under any circumstance and it is possible that his story masks possible fraudulent acts. He could not have had the power to grant an SABL without first obtaining the right to grant it by executing a Lease-leaseback Instrument under Section 11 of the Land Act. The Lease leaseback Instrument process gives the State the right to deal with customary land. It also acts to convert customary land to State land, so that the State can then lease it back to the person or entity the landowners agreed upon as their preferred developer.

- (x) Mr Kila-Pat skipped a vital process by which the State must first acquire the right to create a SABL on customary land. In his own words he said in evidence: (quote) *“So what happens is that the landowners need a title but it has to be guaranteed by the State through this title. What they do is lease the land to the State and the State in return guarantees the landowners by issuing a lease-lease back title.”* (end of quote). If this is the sum total of Mr Kila-Pat’s understanding of the Lease-leaseback process it just might explain why the process appeared unimportant to him. Lease-leaseback is a vital process but in this case it did not take place. Therefore Mr Kila-Pat unlawfully sanctioned the creation of an SABL, which he then further unlawfully granted to an entity that was not even agreed to by the landowners as their preferred developer.

- (xi) Mr Kila-Pat attempted to justify things by referring to a practice known as the Section 11 Notice. But that (Section 11 Notice) is simply a notice from the DLPP Secretary saying land is not needed for any other purpose by the landowners. It is an added precaution that acts to ensure that the State does not unerringly sanction fraudulent acts or that landowners are deprived of land needed for survival purposes. Section 11 Notice, particularly the one on the Portion 2541C file, does not grant any rights to the State to create and grant an SABL.

- (xii) Dynasty Estates Limited has not given evidence at the Inquiry but it does appear to have invested substantially in its Multi-purpose Marine Facility at Idumava Point. It is unfortunate that Dynasty Estates Limited has invested heavily in the land. This SABL is invalid and is totally voidable in the first instance because it was unlawfully created and issued.

- (xiii) It seems strange that there was such a high level of ignorance of facts and possibly inexcusable and incompetent advice to the sub-lease holder. Any due diligence check would have disclosed that the legality of the SABL was an ongoing issue and it was the subject of court proceedings since early days. More importantly though, Mr Law King Taing aka Andrew Law is not only Rose Haraka’s husband, he is the company Secretary for Roselaw Limited. He is also employed by Rimbunan Hijau (PNG) Limited as a marine operations manager. Rimbunan Hijau (PNG) Limited was instrumental in setting up Dynasty Estates Limited and it is most likely that Mr Law King Taing aka Andrew Law was instrumental in securing the land for the Multi-purpose Marine Facility at Idumava Point. He may even be working on the project right now. Therefore it does appear that Dynasty Estates Limited may have exposed itself to preventable risks in the circumstances.

- (xiv) The Land Investigation Process (LIP) was not properly carried out and the Land Investigation Report (LIR) was badly done. No effort was made at all to consult all the landowners and collect their signatures. The Tatana Villagers 'consulted' were just from one extended family, that of Mr Madaha Resena MPA. Even then the following important DLPP best practice requirements for SABL did not happen: -
- (a) A Boundaries Walk was not carried out. Even if it was done or attempted, no landowners other than Rose Haraka's family members participated in it. The land area is relatively small and easily accessible so a transparent boundary walk was always feasible but this basic requirement of the land investigation process did not take place;
 - (b) Informed Consent of Landowners was not obtained from all the people making up the Tubumaga clan;
 - (c) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries have not been breached was not obtained. Instead the same members of Rose Haraka's family who 'gave' their informed consent also appended their signatures as 'attestation' to this requirement, which of course was wrong and deceptive;
 - (d) The Certificate of Alienability (CoA) was executed without careful assessment of consequences. In fact it was executed by Mr Kevau Buruka Sabadi, the same person who carried out the land investigation and did the LIR. He had no power, delegated or otherwise, to execute the CoA. Even if he had authority no traditional land use rights were preserved. That was a reckless failure. Traditional excess right should have been reserved. Critically though, as the land investigation and LIR was done to guise a prohibited customary land sale, execution of the CoA was deceptive and fraudulent.

C. RECOMMENDATIONS

- (i) For the reasons contextualized in the Findings made including the fact that the SABL is not founded upon any Lease-leaseback Instrument, this SABL was improperly granted to Roselaw Limited over Portion 2541C. We recommend that the title issued to Roselaw Limited be **REVOKED**.

- (ii) DLPP's Land Investigation Process (LIP) appears to be a good strategy overall. If the process is strictly and diligently followed, it could ensure that contextual, informed consent of customary land owners and customary land rights holders are obtained.

- (iii) The LIP needs to be improved. Mere use of forms is restrictive. There must be substantive compliance on every requirement of the LIP:-
 - (a) Landowners must be free to attach qualification or conditions to their consent if they wish because merely offering signatures may not reflect their real (contextual or relative) position;

 - (b) There is a clear difference between the attestation of those who traverse the SABL boundary (boundaries walk) and attestation by owners of adjacent land who must confirm that the boundaries of the proposed SABL do not infringe upon the boundaries of their own clan lands. These are two separate attestation requirements. The two forms must be distinguishable one from the other.

 - (c) The Certificate of Alienability (CoA) format needs to be changed. What is of value is the substantive compliance in relation to its purpose: The CoA is the final attestation that landowners have agreed to have their customary lands alienated and they have agreed to have their rights over it suspended for the duration of the lease. It is the message being conveyed through the execution of the CoA that is critically important. The CoA process is not just a 'bump on the road' step to be overcome by those in a hurry.

 - (d) The CoA in this matter was executed without careful assessment of consequences. It was executed by a person with no authority to execute.

The proper authority is the Custodian of Trust Lands through his 'delegated' and properly 'authorized' Provincial Administrators.

**SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Listing – Annexure “VII”)**

NO	NAME & DESCRIPTION OF DOCUMENTS RECEIVED BY THE COI FOR PORTION 2541C	SOURCE OF DOCUMENT
	Department of Lands & Physical Planning (DLPP)	
1	Set of Land Investigation Reports (LIR) dated 14/09/10	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 2/159	DLPP
3	SABL Title Deed dated 08/10/ 10.	Registrar of Titles
4	Gazettal Notice Dated 15/10/10.	G243/10
	Investment Promotion Authority (IPA)	
1	Current IPA extract set for Dynasty Estates Limited	IPA
2	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to Dynasty Estates Ltd, dated 20/03/03	IPA
3	Current IPA extract set for Roselaw Limited	IPA
4	Current IPA extract for Rimbunan Hijau (PNG) Ltd	IPA
	PNG Forest Authority (PNGFA)	
	No files...	-----

	Department of Agriculture & Livestock (DAL)	
	No files...	-----
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC
	Miscellaneous /Submission from Parties	
1	Cover submission with appended annexure by Andrew Law dated 15/04/10.	Roselaw Limited /Blake Dawson
2	Submission contained in Manila Folder containing a affidavit from Kevin Rarua dated 02/09/11.	person of interest
3	Amended Review Book dated 20/11/09 for purposes of National Court Review of Land Court decision dated 17/02/09.	Tuva & Ass.
4	Letter Roselaw Ltd confirming Agreement to sell to Roselaw Ltd dated 11/02/05 from Madaha Resena.	Madaha Resena
5	Submission by Rei Heni dated 18/08/11.	Rei Heni
6	Affidavit of Rei Bagu dated 30/08/11.	Rei Bagu
7	Affidavit of Nou Gagoa received by COI on 25/08/11.	Nou Gagoa
8	Submission by Madaha Resena dated 26/10/11	Blake Dawson Layers

**2. AINBAI –ELIS HOLDINGS LIMITED (Portion 40C)
(SABL No. 69)**

A. REPORT

This is a Report on Special Agriculture and Business Lease (SABL) over **Portion 40C**. It is No. 69 on the original Commission of Inquiry (COI) List. Portion 40C is a Direct Grant under Section 102 of the Lands Act 1996 to **Ainbai-Elis Holdings Limited** in the Sandaun Province.

1.1 Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were covered. Only minimal investigation was done for TOR (g) (i)-(iii). The sublease holder – **Starlink Limited** – has not commenced its activities. All the Statutory approvals processes are still in their initial stages.

Procedures and processes followed by Department of Lands and Physical Planning (DLPP) were screened. Monitoring, oversight, approval and permit setup in the Departments of Agriculture & Livestock (DAL) and Environment & Conservation (DEC) in context of their approval process were investigated. Papua New Guinea Forest Authority (PNGFA) process for granting Forest Clearance Authority (FCA) was scrutinised. Whether or not informed consent of the landowners was obtained at every stage; from the initial land investigation stages to pre and post permit approval public hearings, was also investigated.

1.2 Sources of Information

Brief facts disclosed in the COI Listings constituted the initial data in this matter. A Gazettal Notice in this matter was obtained from Government Printing Office (GPO). A file containing copies of the Land Investigation Report (LIR), Survey Map, Lease leaseback Instrument, Notice of Direct Grant, Title deed and correspondences were obtained from the DLPP.

Company extracts were obtained from Investment Promotion Authority (IPA). Records and status report on the DAL and DEC processes were obtained from them. PNGFA was sourced too but no documents were obtained from it as the Forest Clearance Authority (FCA) process over this SABL remains unfinished. All Documents received in this matter are tabulated in the Schedule of Documents appended to this Report.

The final source of information is transcript evidence from witnesses. These are summarized in Sections L, M & N of this Report. The chairman of the SABL holder (Kevin Imba), the sub-lease holder's representative (Joseph Chuo King Kai) and the 'opposition' representative (Thomas Seu) as well as the Provincial Administrator Joe Sungi and Provincial Lands Officer of the West Sepik Province Daniel Waranduo testified in this matter.

1.3 Location of Portion 40C

Portion 40C is a 99 year SABL over 22, 850 hectares located in the Milinch of Bewani (SE) and Fourmil of Aitape in the West Sepik Province. It is delineated on a

class 4 survey plan bearing Catalogue Number 2/158. The title deed is contained in DLPP file, Volume 18 Folio 55.

1.4 Land Ownership and Land Disputes

Prior to its conversion to SABL the entire 22,850 hectares of land now encompassed within Portion 40C was customary land. Other than the almost overwhelming opposition to the SABL holder and sublease holder, there is no land dispute over the lands covered by the SABL. Consequentially no findings of land disputes are noted in this Report for any of the lands covered by Portion 40C.

1.5 Grant of Lease

Portion 40C is a 'Direct Grant' to Ainbai-Elis Holdings Limited pursuant to Section 102 of the Land Act. The grant is dated 2nd December 2010 and it was gazetted on 29th November 2010 through National Gazette Issue No G284 of December 2010. This lease was granted under the hand of Romily Kila-Pat as Ministerial Delegate.

Ainbai-Elis Holdings Limited was incorporated on 31st December 2008. Its single Director and shareholder is one Kevin Imba. Most landowners of the SABL area support another entity called Ainbai-Elis Development Corporation Limited. Tentative Findings in relation to these landowner companies and the concerns of representatives of those who constitute them are summarised in the following findings.

1.6 Compliance - Sections 11 & 102 of Land Act 1996

The DLPP file shows that land investigations were carried out and a Land Investigation Report (LIR) was done. However, right from the beginning, when this COI was commissioned, there has been opposition to both the SABL holder and its nominated developer. The level of opposition is shown in various letters from landowners themselves and submissions from Wagambie Lawyers who act for them.

The opposing group's company, Ainbai-Elis Development Corporation Limited, was incorporated on 19th November 2010. It has fifteen shareholders with equal shares. It has twenty two directors, some of whom are shareholders. Consent for a Lease-leaseback agreement with the State and Ainbai-Elis Holding Limited was signed by eleven ILG executives on behalf of landowners. All the persons who signed on the Lease-leaseback Instrument (for Ainbai-Elis Holdings to obtain title) are also executives of Ainbai-Elis Development Corporation Limited. It has been

alleged that the signatures were forged. It is unclear whether they changed sides after giving consent to Ainbai-Elis Holding Limited or their signatures were forged. None of the persons' whose signatures were allegedly forged testified so a finding that there was forgery is neither proper nor appropriate in this matter.

The boundaries of Portion 40C overlaps at various places with the boundaries of neighbouring Portion 160C (held by Bewani Palm Oil Development Limited). The landowners of the overlapping areas have not really said they wish to be part of any of the two SABLs. According to Mr Daniel Waranduo (Provincial Lands Officer) both Portions 160C and 40C are defective due to the boundary overlaps alone.

Mr Joseph Sungi, the Provincial Administrator, signed on the Certificate of Alienability (CoA), to authenticate the LIR process and pave way for a Lease-leaseback Instrument to be executed between the State and landowners. Mr Sungi made no reservations for any traditional landowner rights. To the extent that Mr Sungi appears to have executed the CoA, albeit without full knowledge of the boundaries overlap, the CoA is defective and void. The Findings set out in this Report places contexts in these discoveries.

1.7 IPA Status of the Developer

Starlink Limited is the nominated developer. It was granted a sub-lease over the entire SABL on the very next day after the SABL was granted. Starlink Limited is 'wholly foreign-owned.' It has Forest Industry participant and IPA certification. It appears to have certification for everything except permission to engage in Agriculture activities.

When queried why the developer had not obtained approval to engage in the most important activity on an SABL, that is the agro forestry project, the developer's representative (Joseph Chuo King Kai) said they were waiting for all statutory approvals before they get IPA certification for agriculture activities. It is to be noted that that is not a good excuse at all. These SABLs are principally for agriculture activities. DAL and DEC permits are really in relation to standards and compliance. FCA from the PNGFA is only for land clearance and it is simply facilitative – of the main agriculture activities. Therefore the developer's demonstrated inability, especially in that they appear not to have placed priorities in the right areas raises issues in relation to its long term commitment and sense of prioritization.

1.8 DAL Status (Agriculture Development Plans & Other Land Use Plans)

Acting Secretary of DAL Francis Daink wrote to Mr Stanley Ting, the Managing Director of Starlink on 28th September 2010. Mr Daink wrote: *"I am pleased to inform you of the 18,000 hectare oil palm and integrated rural development project for the Ainbai-Elis area in the Vanimo Green District, Sandaun Province, is approved in principle."* This was done despite the fact that DAL had not issued a 'Certificate of Compliance' for large scale conversion of forest to agriculture or other land use development pursuant to Section 90A (3) (i) of the Forestry Act 1991. At the time Starlink Limited did not have IPA certification to engage in agriculture activities. This careless discharge of a statutory discretion by a senior officer of government demonstrates his propensity to grant approvals willy-nilly and without appreciation of the consequences of his actions.¹¹

1.9 DEC Status (Meeting requirements for Approval in Principle)

DEC process is half complete. A copy of the Environmental Inception Report (EIR) is made available to this inquiry. Starlink Limited also appears to have submitted an Environment Impact Statement (EIS) to secure the Approval in Principle. At the time of the hearing this EIS was available for members of the public to view and inspect and make commentary, over a period of 20 days starting from 22nd September 2011. It was simultaneously displayed at the Sandaun Provincial Administrator's Office at Vanimo and at the DEC Offices on the 5th Floor of the Somare Foundation building in Waigani.

1.10 Forestry (Amendment) Act 2007 (Meeting Requirements for Grant of FCA)

No Forestry Clearance Authority (FCA) has been issued for this SABL. However at this juncture a discovery generic to most SABLs must be recorded: Section 90B (9) (a) (iii) of the Forestry (Amendment) Act 2007 requires forest clearing to be apportioned in blocks of 500 hectares. The PNG Forest Board may increase or decrease the quota for good cause, but it seems as a matter of convenience FCA holders are being permitted to clear up to 5,000 hectares (ten times what is prescribed by law) at any one time. Increases above the maximum allowed are being promoted by DAL. According to Francis Daink, they allowed clear-felling of forest up to 5,000 hectares to enable the developer to sell the merchantable logs harvested through clear-felling and 'raise capital to put into the intended agricultural projects'. This explanation is absurd and goes against the very purpose of FCA.

¹¹ Annex. "11"

If DAL is doing this on the basis of proper technical advice available to it, it has not produced examples of assessments made by it on the economics of scale to justify the arbitrary increase.

1.11 Landowner Concerns

Landowner concerns were raised at the hearings by Mr Thomas Seu who testified on behalf of the landowners aligned with Ainbai-Elis Development Corporation a rival company to Ainbai-Elis Holding Limited. There have been lengthy submissions on their people's behalf by Wagambie Lawyers as well. All these evidence is contextualized in the Summary of Witness's Evidence below.

1.12 Summary of Witnesses Evidence

Five (5) witnesses testified directly in this matter. Evidence given by the former Secretary of DLPP Mr Pepi Kimas is included in this matter because, even though he gave generic evidence in respect of all the cases investigated, his evidence impacts upon the findings, reporting and recommendations proposed in the context of this matter.

The 1st witness was Mr Joseph Sungi, former Provincial Administrator of Sandaun Province. He testified in relation to this and the other six (6) Sandaun Province SABL matters on 15th November 2011 at the Vanimo Local Government Council Chambers. His evidence was that he executed the Certificate of Alienability attached to the LIR in this matter because he thought everything was in order. He also gave other generic evidence. Highlights of some aspects of his evidence are stressed in their appropriate context in other Sandaun Province matter Reports.

The 2nd witness to testify was Daniel Waranduo. He is the Provincial Lands Officer for the Sandaun Province. He gave evidence on Tuesday 22nd November 2011. He said he was not part of the field team but he verified the LIR afterwards, for the Administrator to execute upon the Certificate of Alienability. The field team constituted of Suman Holis, Simon Malu and Lazarus Malesa.

Mr Waranduo recalled that the LIR in this SABL was in order. The field team had been on the ground for a week. In the end they produced the LIR and he noted that the landowner representatives had signed off on the correctness of it. However refer to the Findings and Recommendations for contextualization of this witness's evidence.

Mr Kevin Imba was the 3rd witness. He too testified on Tuesday 22nd of November 2011. He is the Chairman of the SABL holder. His evidence in relation

to the LIR process is similar to that of Daniel Waranduo. Mr Imba's assertion is that this proposed agro forestry project was in response to landowner aspirations to generate development. He said that the differences or opposition to him and his company is based on personalities, not lack of consent. His other evidence relates to the delay in the DAL, DEC and PNGFA processes.

The 4th witness was Thomas Seu. He spoke for what appears to be the clear majority of landowners. The landowners oppose both Kevin Imba and Starlink Limited, which conforms to Kevin Imba's assertion that only 20% of the people support him. Subject to finding compromise or settlement on the issue of release of the developer and perhaps surrender of the 45 year sublease, this project appears doomed.

Mr Joseph Chuo King Kai was the 5th witness. He stood in for the appropriate officers of the developer who were not present in the country. For the most part, his evidence was general. He said things were not settled as yet and they were waiting for the approvals. He said they were here for the long haul and they wanted to help the landowners. He confirmed that the project had not yet commenced.

B. FINDINGS

The following findings are made:

- (i) The Agro Forestry Project on **Portion 40C** has not substantively commenced. Its commencement appears to be delayed pending grant of all statutory approvals.
- (ii) Starlink Limited and Ainbai-Elis Holdings appear to have executed a preliminary MOU regarding logging and marketing, road construction and agriculture project agreement. However DAL and DEC approvals and permits are incomplete. Caretaker DAL Secretary - Francis Daink's grant of what he said was an "approval in principle" for the Agriculture Land Use Plan to Starlink Limited when it did not have IPA certification to engage in agriculture activities, stands on record as a careless discharge of DAL's statutory functions. Mr Daink's demonstrated propensity to grant approvals willy-nilly and without appreciation of the consequences of his actions is a serious cause for concern. His conduct also does not auger well for DAL's continued oversight and monitoring functions for this and other agro forestry projects, especially under his watch and supervision.
- (iii) The Land Investigation Process (LIP) was not properly executed and the Land Investigation Report (LIR) was badly done. It remains unproved as to whether

there was fraud and forgery in the consultation and collection of landowners' signatures.

- (iv) The Boundaries Walk did not happen. The sheer size of the land mass involved ruled that out but as a requirement this pivotal activity of the LIP did not take place. This cause, among others, the undisputed boundaries overlap;
- (v) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries have not been breached was not properly obtained. This among others resulted in boundary overlaps and arbitrary apportionment and placement of land within two adjacent SABLs, namely within Portion 160C and Portion 40C. For reason of the boundary overlap alone the SABL over Portion 40C, and by necessary implication the SABL over Portion 160C, are defective and voidable;
- (vi) The Certificate of Alienability (CoA) was executed without careful assessment of consequences. No traditional land use rights were noted or preserved. That is a reckless failure. Excess rights for customary landowners, both for survival or pleasure, should have been reserved. The land mass is so vast and not all of it (22, 850 hectares) is needed for proposed Agro Forestry activities.

C. RECOMMENDATIONS

- (i) The overwhelming majority of landowners opposed to the SABL holding company (Ainbai-Elis Holdings Limited) and its nominated developer is a potential cause for landowner discontent and disruption. Therefore there is an urgent need for compromise. Alternatively the developer needs to be disengaged with minimal losses to it and the SABL title transferred to the company that enjoys majority support, namely Ainbai-Elis Development Corporation Limited.
- (ii) DLPP's Land Investigation Process (LIP) appears to be a good strategy overall. If the process is strictly and diligently followed, it could ensure that contextual, informed consent of customary land owners and customary land rights holders are obtained.
- (iii) The LIP needs to be improved. Mere use of forms is restrictive. There must be substantive compliance on every requirement of the LIP:-

- (a) Landowners must be free to attach qualification or conditions to their consent if they wish because merely offering signatures may not reflect their real (contextual or relative) position;
 - (b) There is a clear difference between the attestation of those who traverse the SABL boundary (boundaries walk) and attestation by owners of adjacent land who must confirm that the boundaries of the proposed SABL do not infringe upon the boundaries of their own clan lands. These are two separate attestation requirements. The two forms must be distinguishable one from the other;
 - (c) The Certificate of Alienability (CoA) format needs to be changed. What is of value is the substantive compliance in relation to its purpose: The CoA is the final attestation that landowners have agreed to have their customary lands alienated and they have agreed to have their rights over it suspended. It is the message being conveyed through the execution of the CoA that is critically important. The CoA process is not just a 'bump on the road' step to be overcome by those in a hurry; and
 - (d) The CoA in this matter was executed without careful assessment of consequences. No traditional land use rights were preserved. This is a reckless failure, given the sheer size of the land mass and the fact that not all 239, 810 hectares of land was going to be needed for Agro Forestry activities. The Agriculture Development Plan submitted by the developer discloses that only 40% of the land will be utilized for agriculture purposes.
- (iv) The COI recommends that the SABL grant on **Portion 40C** in favour of **Ainbai- Elis Holdings Limited** is to be **REVOKED** for non-compliance with statutory requirements pertaining to granting of SABL. It is apparent that all necessary and relevant approvals have not been given by relevant agencies of government responsible for the administration of SABL to legitimize the granting of the SABL.
- (v) Ainbai-Elis Holdings Limited and its nominated developer Starlink Limited are refrained from conducting any form of business over Portion 40C.

SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Annexure "X")

NO	NAME & DESCRIPTION OF DOCUMENTS RECEIVED BY THE COI FOR PORTION 40C	SOURCE OF DOCUMENT
Department of Lands & Physical Planning (DLPP)		
1	Land Investigation Report (LIR) dated 15/11/10	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 2/158	DLPP
3	SABL Title Deed dated 02/12/ 10.	Registrar of Titles
4	Notice of Direct Grant to A-EHL dated 29/11/10	DLPP
5	Gazettal Notice Dated 30/12/10.	G284/10
6	Lease-leaseback Instrument dated 15/11/10	DLPP
7	Sublease (for 60 yrs) to Star Link Limited dated 03/12/10	DLPP
Investment Promotion Authority (IPA)		
1	Current IPA extract set for Star Link Limited	IPA
2	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to Star Link Limited, dated 29/07/10	IPA
3	Current IPA extract set for Ainbai-Elis Holding Limited	IPA
4	Current IPA extract for Ainbai-Elis Development Corp. Ltd	IPA
PNG Forest Authority (PNGFA)		
±	Certificate of Registration as Forest Industry Participant issued to Star Link Limited, dated 30/11/10	PNGFA
Department of Agriculture & Livestock (DAL)		

1	DAL File containing assorted documents & correspondences, including DAL approval notices	DAL
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC
	Miscellaneous /Submission from Parties	
1	Set of "Sales & Purchase Agreement" between Star Link Limited and Landowner groups dated 28/03/10	Star Link Limited /Ainbai-Elis Ltd
2	Indexed Arch Folder containing Statutory Approval & various documents from DAL & DEC numbered 1- 41.	Star Link Limited
3	2 Arch Folders Environmental Reports & Submissions	Star Link Limited
4	"Project Agreement" dated 12/03/10	Star Link Limited
5	Full (bound) Submission by Wagambie Lawyers on behalf of Ainbai-Elis Development Corporation disputing the legitimacy of SABL holder and regularity of LIR	Ainbai-Elis Dev. Corp. Limited & Wagambie lawyer

**3. NUKU RESOURCES LIMITED REPORT (Portion 26C)
(SABL No. 47)**

A. REPORT

This is final Report on Special Agriculture and Business Lease (SABL) over **Portion 26C**. It is No. 47 on the original Commission of Inquiry (COI) List. Portion 26C is a 'Direct Grant' under Section 102 of the Land Act 1996 to **Nuku Resources Limited** of Nuku in the Sandaun Province.

1.1. Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were covered. No further investigations are required for TOR (g) (i)-(iii). There are only three foreign employees of the developer in the country and all of them have valid entry and work permits. In any case, the Nuku Integrated Agro Forestry Project has not substantially commenced its programs.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issues SABLs, was carefully assessed. The monitoring, oversight, approval and permit setup in the Departments of Agriculture & Livestock (DAL) and Environment & Conservation (DEC) were investigated. Papua New Guinea Forest Authority (PNGFA) process for granting Forest Clearance Authority (FCA) was scrutinised. Also whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was fully investigated.

1.2 Sources of Information

Brief facts disclosed in the COI Listings constituted the initial data in this matter. The Gazettal Notice was obtained as a result of inquiry at the Government Printing Office (GPO). A file containing copies of the Land Investigation Reports (LIRs), Survey Map, Lease –leaseback instrument, Notice of Direct Grant, copy of title deed, and various documents and correspondences were obtained from the DLPP.

Company extracts and other records were obtained from Investment Promotion Authority (IPA), DAL and DEC. PNGFA was sourced too but no documents were obtained from it as the Forest Clearance Authority (FCA) process over this SABL is unfinished. All documents obtained or received in this matter are tabulated in the Schedule of Documents.

The sublease holder (developer) and persons of interest, including Arkama Resources Limited's Rex Yarura), submitted documentary information before, during and after the formal hearing in this matter.

The final source of information is transcript evidence from witnesses. These are summarized under the summary of evidence below. Transcript of some of the witnesses' evidence obtained at Vanimo is defective. It is likely due to bad recordings but possibly as a result of poor transcribing as well. The defects are not major and where appropriate the intent of evidence has been elicited from the nature of the immediate line of inquiry as well as the content and context of questions posed.¹²

¹² Annex. "X"

1.3 Location of Portion 26C

Portion 26C is a 99 year SABL. It is contained in DLPP file, Volume 16 Folio 74 and is located in the Milinch of Yellow (SE), Maimai (NE, NW, SE, SW), Masalaga (NW, SW) and Wongamush (NE, NW) and Fourmil of Aitape and Wewak in the Sandaun Province. It covers 239, 810 hectares of land, the area of which is delineated on a Class 4 Survey Plan bearing Catalogue Number 2/149.

1.4 Land Ownership and Land Disputes

Prior to its conversion to SABL the entire 239,810 hectares of land now encompassed within Portion 26C was customary land.

A land dispute was mentioned in evidence but it was not substantiated when the issue of its authenticity was raised with the witness. This is noted in Rex Yarura's evidence. As a result no findings of land disputes are noted in this Report for any of the lands covered by Portion 26C.

Findings on the issue of unqualified landowner consent are discussed further in this Report in the context of the Findings.

1.5 Grant of Lease

Portion 26C was granted directly to Nuku Resources Limited for 99 years. It covers 239, 810 hectares of land. The grant is dated 2nd April 2009 and it was gazetted on 1st April 2009 through National Gazette Issue No G58 of 2009. The lease was granted under the hand of then DLPP Secretary Pepi Kimas as the Ministerial Delegate.

Nuku Resources Limited was incorporated on 12th March 2009. It is a landowner company from the SABL area. Its shares are held equally by two Papua New Guineans namely; John Bagra and Ray Lewis. Both men are the company's only directors. John Bagra is also involved in Arkama Resources Ltd, which appears to be Nuku Resources Limited's rival land owner company. Tentative Findings in relation to these two land owner entities and the concerns of those who constitute them are summarised below.

1.6 Compliance - Sections 11 & 102 of Land Act 1996

The DLPP file shows that land investigations were carried out and a Land Investigation Report (LIR) was done: Seven landowner representatives signed, to attest to their participation in the boundary walk as well as to indicate their consent (as landowner agents) for a lease-leaseback to be issued. These same people executed on the Lease-

leaseback Instrument later. Three persons from out of a list of six people from neighbouring villages signed, to certify and acknowledge that they had no interests in the land to be converted to SABL and also to attest to the correctness of the boundaries of the proposed SABL. Mr. Joseph Sungi, the Provincial Administrator, signed off the Certificate of Alienability, to authenticate the LIR process and also pave way for a Lease-leaseback Instrument to be executed between the State and landowners. Mr. Sungi made no reservations for any traditional landowner rights.

On the face of it the bare minimum requirements of the Land Act 1996 for this matter seem to have been complied with. Also current DLPP best practices, that makes operational and enlivens the general intention encapsulated under Sections 11 and 102 of that Act appear to have been followed. However the Findings set out below renders these discoveries only contextual.

1.7 IPA Status of the Developer

A Skywalker Global Resources Company (PNG) Limited is the developer of the Nuku Integrated Agro Forestry Project. On 6th April 2009 Nuku Resources Limited granted a sublease over the entire SABL to Skywalker Global Resources Company (PNG) Limited.

Skywalker Global Resources Company (PNG) Limited is wholly foreign owned. According to current IPA records (as at 19th September 2011) it is owned by a foreign parent company called Skywalker Global Resources Company, which is incorporated and registered in Hong Kong.

On 1st October 2010, Managing Director of Skywalker Global Resources Company (PNG) Limited, one Tam Chinn Hin, wrote to the Registrar of Titles requesting him to ask PNGFA to issue a FCA for the project on Portion 26C. In his letter Tam Chinn Hin confirmed amongst others that a Leroi Holdings Limited (which he said was listed on the Hong Kong Stock Exchange) held majority (51%) share in Skywalker Global Resources Company (PNG) Limited. This statement is at variance with current IPA records, which show Skywalker Global Resources Company as being the sole owner of Skywalker Global Resources Company (PNG) Limited.

An erroneous entry in the IPA records is noted: Original sole shareholder in Skywalker Global Resources Company (PNG) Limited, one Desucatan LISA, transferred all of his/her 100 shares to Skywalker Global Resources Company on 12th April 2007, but this person's shareholding status in the IPA records has not ended, to reflect the change. The IPA records now need to be corrected to fully reflect the change in the shareholdings.

1.8 DAL Status (Land Use Plans, Certificate of Compliance, etc)

DAL issued a Certificate of Compliance for large scale conversion of forest to agriculture or other land use development pursuant to Section 90A (3) (i) of the Forestry Act 1991 before any Agriculture Development Plan for this project was submitted for approval. Issuing a Certificate of Compliance (Form 235) is a DAL function under the Forestry Act 1991. A certificate dated 12th August 2010 appears to have been given by DAL under the hand of Secretary Mr Aton Benjamin. This appears to be a rather careless discharge of a very important statutory function.

Evidence available to this COI shows that the agriculture component of this project will be composed of diversified portfolios. It appears that oil palm, rubber, teak forest, jethropa and cocoa will be the mainstay of the project while vanilla and coffee will be inter-cropped under the proposed larger teak forest plantation.

1.9 DEC Status (Meeting Requirements for Approval in Principle)

DEC process is half complete. An Environment Inception Report (EIR) was approved on 8th December 2009. An Environment Impact Statement (EIS) dated 27th October 2010 has been submitted by the developer. This has been displayed in public, for inspection and commentary. The COI's DEC file contains both expressions of support and opposition for the EIS. The Ministerial Approval in Principle is yet to be given.

No Project Agreement is in place between Nuku Resources Limited and Skywalker Global Resources Company (PNG) Limited. When queried at the hearing why no Project Agreement was executed, Chairman of Nuku Resources Limited (Mr. Ray Levis) and Managing Director of Skywalker Global Resources Company (PNG) Limited (Mr. Tam Chinn Hin) said they were waiting for the DEC and PNGFA processes to be completed.

There has been significant progress to settle the project's development agreement after the Vanimo hearings. Nuku Resources Limited and Skywalker Global Resources Company (PNG) Limited signed a MOU on 14th January 2012. The implications of this MOU are discussed in the context of Findings under Part B of this Report.

1.10 Forestry Act (Amendment) Act 2007 (Meeting Requirements for Grant of FCA)

No Forest Clearance Authority (FCA) has been issued. Copies of correspondences in the COI's DAL file shows opposition to grant of FCA in this matter. There were two letters written to the PNGFA Managing Director, Mr Kanawi Pours that shows this. One is from Rex Yarura (Chairman of Arkama Resources Limited) and other is from DLPP Deputy Secretary (Customary Lands) Romilly Kila-Pat dated 1st September 2010. Both letters requested the PNGFA Managing Director to not issue a FCA because the Land Investigation process was not in order.

1.11 Landowner Concerns

Landowner concerns are mostly raised by Mr. Rex Yarura, the Chairman of Arkama Resources Limited, the rival company to Nuku Resources Limited. Three other persons raised three different issues: Mr Ray Mainu raised issues of overlapping boundaries between Portion 26C and Portion 59C (which is jointly held by West Maimai Investment Limited, Yangkok Resources Limited and Palai Resources Limited). A Mr Luke Tom (Chairman, Nalu Forest Management Area (FMA) alleged that the Sandaun Province SABLs are all within current FMAs and a Mr Joshua Yinawo, who claims to be a conservationist spoke of the potential environmental risks likely to be generated by Agro Forestry projects and his preference for the carbon trade.

All of these witnesses' evidences are contextualized in the Summary of Witness's Evidence below.

1.12 Summary of Witnesses Evidence

A total of ten (10) witnesses testified in this matter. Mr. Pepi Kimas, the former Secretary of DLPP testified last. He is counted among this matter's witnesses because, even though he gave generic evidence in respect of all the cases investigated, his evidence impacts upon the findings and reporting, as well as the recommendations proposed in the context of this matter. The following nine (9) witnesses gave direct evidence in relation to this SABL.

The 1st witness was Mr. Joseph Sungi, former Provincial Administrator of Sandaun Province. He testified in relation to this and the other six (6) Sandaun Province SABL matters on 15th November 2011 at the Vanimo Local Government Council Chambers. His evidence was brief and to the point. He said he executed the Certificate of Alienability attached to the LIR in this matter because he thought everything was in order. He also gave other generic evidence. The highlights of some aspects of his evidence are stressed in their appropriate context in the other Sandaun Province's SABL reports.

The 2nd witness to testify was Mr. Daniel Waranduo. He is Director Lands for the Sandaun Province. He gave evidence on 16th November 2011. He said that as this project was approved by the Joint District Planning and Budget Priorities Committee (JDP&BPC) the LIR team just issued toksaves out to have everyone to gather at Nuku Station. He said everyone was very supportive for the project. Forms were issued which were duly completed and collected. Mr Waranduo further said the LIR team talked to everyone at that time and they all understood. The witness remembers that people of neighbouring tribes who own land adjacent to this SABL attested to the correctness of

the boundaries. Mr. Waranduo clearly recalls that there was no opposition to the proposed project at the time.

Mr Ray Levis was the 3rd witness. He too testified on 16th November 2011. He is the Chairman of the entity that holds the SABL title. His evidence in relation to the LIR process is similar to that of Mr Daniel Waranduo. Mr Ray Levis' asserts that the Nuku Integrated Agro Forestry Project was in response to landowner aspirations to generate development, especially to ensure that road links are opened up and a successful agro forestry project is established to offer landowners a better quality of life. His other evidence relates to the delay in the DAL, DEC and PNGFA processes, some of which have been discussed above.

The 4th witness was Mr Tam Chinn Hin. He is former Managing Director of Skywalker Global Resources Company (PNG) Limited. He appeared with Skywalker Global Resources Company (PNG) Limited's General Manager, Mr Edrian Hazelman. The latter joined him midway through the evidence. For the record, Mr Edrian Hazelman is the 5th witness.

Mr Edrian Hazelman told the inquiry that he has vast experience in the agro forestry sector in Australia, New Zealand, Fiji and PNG. He has experience working with indigenous landowners in many countries within the region. His engagement by the developer appears to be a strategic business decision by the latter; firstly it is a public statement about its long term commitment to the project and secondly to tap into Mr Hazelman's unique experiences within PNG. Reading Mr Edrian Hazelman's work experiences, although he mentioned these himself, is a very impressive resume indeed.

Mr Hazelman stated that K6.7 million has already been laid out to fund preparatory works. He said (quote): *"To give you an idea of our costs to date, we have spent over K2.1 million on roads, even though we have not got approvals in good faith. We have spent K1.9 million on consultants. We have spent 0.3 million on helping with cocoa trading and our operating costs have been K2.3 million bringing the total to K6.7 million"* (End of quote). This statement on preparation costs is also mentioned in other evidence.

Mr Rex Yerura was the 6th witness. He has also made other submissions to the COI. The thrust of his evidence and submission is that he and his people prefer to have their own SABL, over which they intend to develop oil palm as a mono crop. He says he has an 'investor' lined up.

The highlight of Mr Rex Yarura's evidence is the essence of his message. He started his evidence by stating (quote): *"Thank you, your Honour. My reason is not to stop the project. I like the project. My reason is like this. I see that I have a big portion in hectares in Portion 26C." "It covers a big landmass of Nuku District. It is difficult for one developer to develop the entire hectares. I was already a founder of Nuku Resources and*

I was in Nuku Resources as an active member and we appointed Ray Levis to be Chairman of the portion 26C” (end of quote).

Three more witnesses’, being the 7th, 8th, and 9th witness, also testified in this matter. The nature of their respective evidence is discussed above of this Report.

Mr Ray Mainu’s land straddles two SABLs. He raised boundary overlap issues between Portions 26C and 59C. The title over Portion 59C is held jointly by West Maimai Investment Limited, Yangkok Resources Limited and Palai Resources Limited. His said landowners from his area have difficulty identifying themselves with either SABL; not without losing land rights over the other. It is not possible to determine the seriousness of this overlap issue on current evidence.

Mr Luke Tom (Chairman of Nalu Forest Management Agreement area (FMA)) alleged that the Sandaun Province SABLs are within current FMAs. If that is true, there may possibly be a breach of Section 90A (2) of the Forestry Act 1991. However, while Mr. Luke Tom’s assertion has not been disproved one way or other there is evidence to show that most FMAs in Sandaun Province have either expired or were about to expire. In fact interests in SABLs appear to have been triggered by expiring FMAs.

Mr Joshua Yinawo (self-proclaimed conservationist) had issues with the overall concept of SABL. He said a potential environmental risk likely to be generated by Agro Forestry projects outweighs the benefits. He is concerned as a landowner of the area, although he actually has no land within any SABL under investigation. Also his professed preference for the carbon trade places his evidence in a different context.

B. FINDINGS

The following tentative findings are made:

- (i) The Nuku Integrated Agro Forestry Project has not substantively commenced. It commencement appears to be delayed pending grant of FCA by PNGFA;
- (ii) Skywalker Global Resources Company (PNG) Limited has invested upwards of K6.7 million in preparations work. On the evidence the developer’s interest appears genuine and its continued interest in the project, despite what appears to be a lengthy delay, supports their commitment to the project and their undertakings;
- (iii) Skywalker Global Resources Company (PNG) Limited and Nuku Resources Limited signed a MOU on 14th January 2012. The contents of their undertakings appear balance and mutually beneficial for both parties (ie. landowners and developer). This is a further demonstration of commitment by the developer and also an

indication of its' genuine desire to bring development that will benefit the landowners as well;

- (iv) DAL and DEC approvals and permits appear to have been granted without any independent assessment on project viability. That really does not auger well for the future, especially regarding these departments' continued oversight and monitoring functions over SABLs;
- (v) The Land Investigation Process (LIP) was not properly executed and the Land Investigation Report (LIR) was badly done. Effort was made to consult landowners and collect signatures. The number of villages consulted does indicate time and effort spent;
- (vi) The Boundaries Walk did not happen. The sheer size of the land mass involved ruled that out but as a requirement this pivotal activity of the LIP did not take place;
- (vii) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries have not been breached, was not properly obtained;
- (viii) The Certificate of Alienability (CoA) was executed without careful assessment of consequences. No traditional land use rights were noted or preserved. That is a reckless failure. Excess rights, both for survival or pleasure, should have been reserved. The land mass is so vast and not all of it (239, 810 hectares) is needed for proposed Agro Forestry activities. The Land Development Plan submitted by the developer shows that only 40% of the land will be utilized for agriculture activities. Under these circumstances, the abject failure of the Provincial Administrator and the Lands Officers who advised him showed negligence on their part.
- (ix) There is no real opposition to the Agro Forestry Project. In fact everyone wants the project be a reality. Even leading antagonist Mr Rex Yarura said in his evidence: "My reason is not to stop the project. I like the project...I see that I have a big portion in hectares in portion 26C." "It covers a big landmass of Nuku District. It is difficult for one developer to develop the hectares. I was already a founder of Nuku Resources and I was in Nuku Resources as an active member and we appointed Ray Levis to be Chairman of the portion 26C."
- (x) The 'opposition' is not really an opposition to the project or SABL holder. The opponents are really focused on 'going it alone'. These people own land on one

side of the SABL so they want to divide up Portion 26C and get a separate title over their part of the land. Apparently they have established a company (Arkama Resources Limited) to progress the idea. Naturally they want to engage a different developer as well. Their 'opposition' surfaced after the LIP and LIR was completed. In fact the 'opponents' consciously endorsed Nuku Resources Limited initially.

- (xi) People who constitute Nuku Resources Limited do not dispute the claim to land by people who constitute Arkama Resources Limited yet the SABL cannot be split up just like that. It will undo Portion 26C and toss everything back to the drawing board. Both Nuku Resources Limited and Arkama Resources Limited will lose out. Therefore, as is explained below by way of a Recommendation in this Report, the parties must respect each other's positions and find a way to work together.

C. RECOMMENDATIONS

- (i) Nuku Integrated Agro Forestry Project appears to be viable. Therefore the way forward would be for the two groups, those who support Nuku Resources Limited and those who back Arkama Resources Limited, to agree to work together. A viable alternative really does not exist for both parties. The SABL cannot be just split up as Arkama Resources Limited would prefer. Title could be surrendered by Nuku Resources Limited and allow everything to go back to the drawing board but the entities will then have to separately traverse the long winded process again, possibly with no guarantee of success in the end for both or either of them.
- (ii) DLPP's Land Investigation Process (LIP) appears to be a good strategy overall. If the process is strictly and diligently followed, it could ensure that contextual, informed consent of customary land owners and customary land rights holders are obtained.
- (iii) The LIP needs to be improved. Mere use of forms is restrictive. There must be substantive compliance on every requirement of the LIP:-
 - (a) Landowners must be free to attach qualification or conditions to their consent if they wish because merely offering signatures may not reflect their real (contextual or relative) position.
 - (b) There is a clear difference between the attestation of those who traverse the SABL boundary (boundaries walk) and attestation by owners of adjacent land who must confirm that the boundaries of the proposed SABL do not infringe upon the boundaries of their own clan lands. These are two

separate attestation requirements. The two forms must be distinguishable one from the other.

- (c) The Certificate of Alienability (CoA) format needs to be changed. What is of value is the substantive compliance in relation to its purpose: The CoA is the final attestation that landowners have agreed to have their customary lands alienated and they have agreed to have their rights over it suspended. It is the message being conveyed through the execution of the CoA that is critically important. The CoA process must not be treated lightly.
- (d) The CoA in this matter was executed without careful assessment of consequences. No traditional land use rights were preserved. That is a reckless failure, given the sheer size of the land mass and the fact that not all 239, 810 hectares of land was going to be needed for Agro Forestry activities. The Land Use Plan submitted by the developer discloses that only 40% of the land will be utilized for agriculture purposes. The failure of the Provincial Administrator and the Lands Officers who advised him possibly borders on criminal negligence.
- (iv) We recommend that the current SABL granted to **Nuku Resources Limited** over **Portion 26C** be **REVOKED** and a new grant issued to a new incorporated entity made up of landowners of both Nuku Resources Limited and Arkama Resources Limited through their Incorporated Land Group (ILG) or issue a new SABL jointly to Nuku Resources Limited and Arkama Resources Limited.

M. SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Listing – Annexure “X”)

NO	NAME & DESCRIPTION OF DOCUMENTS RECIEVED BY THE COI FOR PORTION 26C	SOURCE OF DOCUMENT
	Department of Lands & Physical Planning (DLPP)	
1	Set of Land Investigation Reports (LIR) dated 02/03/09	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 2/149	DLPP
3	Notice of Direct dated 01/04/ 09	Registrar of Titles

3	SABL Title Deed dated 02/04/ 09	Registrar of Titles
4	Gazettal Notice Dated 01/04/09	G243/10
5	Lease-leaseback Instrument dated 06/03/09	DLPP
6	Sublease (for 50 yrs) to Skywalker Global Resources Co. (PNG) Limited executed on 03/07/09	DLPP
	Investment Promotion Authority (IPA)	
1	Current IPA extract set for Skywalker Global Resources Company (PNG) Limited	IPA
2	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to Skywalker, dated 20/03/09	IPA
3	Current IPA extract set for Nuku Resources Limited	IPA
4	Current IPA extract for Arkama Resources Limited	IPA
	PNG Forest Authority (PNGFA)	
1	Certificate of Registration as Forest Industry Participant issued to Skywalker Global Resources C. (PNG) Ltd, dated 16/04/08	PNGFA /Skywalker
	Department of Agriculture & Livestock (DAL)	
1	DAL File containing assorted documents & correspondences, including DAL approval notices	DAL
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC

	Miscellaneous /Submission from Parties	
1	Indexed Manila Folder containing Approval documents	Skywalker
2	Submission by Nuku Resources Ltd containing Miscellaneous documents prepared by Ray Levis (22/9/11)	Nuku Resources Limited
	“Nuku Projects Planning Situation” prepared by Developer	Skywalker
3	Assorted submissions from Edrian Hazelman (GM, Skywalker) on project viability, etc.	Skywalker
4	Correspondences from Rex Yarura of Arkama Resources Ltd	Arkama RL

4. VANIMO JAYA & ONE-UNI DEVELOPMENT CORPORATION (Portion 248C) (SABL NO. 8)

A. REPORT

This is the final report on Special Agriculture and Business Lease (SABL) over **Portion 248C**. It is No. 8 on the original Commission of Inquiry (COI) List. Portion 248C was initially a ‘Direct Grant’ under Section 102 of the Lands Act 1996 to **Uni-One Development Corporation and Vanimo Jaya Limited (‘jointly’)** of Aitape in the Sandaun Province.

1.1 Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were covered. It was not possible to carry out in-depth investigations for TOR (g) (i)-(iii). The provincial investigating team for this matter, constituted by the Chief Commissioner and counsels, was unable to visit the SABL and project site due to logistical problems. Interviewing people on site and inspecting documents was therefore not possible. A direction for the Managing Director of the SABL developer – a Mr Peng Heng Chew – to testify in Port Moresby went unheeded due to the non-availability of that person.

The procedure, through which the Department of Lands and Physical Planning (DLPP) issues SABLs, was carefully assessed. The monitoring, oversight, approval and permit set-up in the Departments of Agriculture & Livestock (DAL) and Department of Environment & Conservation (DEC) were fully investigated. Papua New Guinea Forest Authority (PNGFA) process for granting Forest Clearance Authority (FCA) was

scrutinised. Also whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was thoroughly investigated.

1.2 Sources of Information

Initial data on this matter was the brief facts disclosed by the COI Listings. That led to inquiry at the Government Printing Office (GPO) where the Gazettal Notice was obtained. Following that a file containing copies of the Land Investigation Reports (LIRs), Survey Map, Lease –leaseback instrument, Notice of Direct Grant, copy of title deed, and various documents and correspondences were obtained from the DLPP.

Company extracts and other records were obtained from Investment Promotion Authority (IPA), DAL and DEC. PNGFA was sourced but no documents were obtained from it as its Forest Clearance Authority (FCA) process over this SABL is unfinished. All documents obtained or received in this matter are tabulated in the Schedule of Documents below.¹³

The final source of information is the transcript of evidence from witnesses. The transcript contains evidence from the former Provincial Administrator of Sandaun Province, the Provincial Lands Officer involved in this matter, the chairman of the landowner entity, and a representative of persons of interests. Their evidence is summarized under 1.12 below. It needs to be stressed again that the no representative from the developer and SABL holder has given evidence.

1.3 Location of Portion 248C

Portion 248C is a 99 year SABL. It covers 47, 626 hectares of land in the Milinch of TADJI and Fourmil of AITAPE in the Sandaun Province. The SABL was initially a ‘direct grant’ to Vanimo Jaya Limited and One-Uni Development Corporation ‘jointly.’ The grant is dated 19th July 2006. It was gazetted on 20th July 2006 through National Gazette No G143 under the hand of the then DLPP Secretary Mr Pepi Kimas.

On 14th May 2007 One-Uni ceded its half share in the SABL to Vanimo Jaya Limited. It made Vanimo Jaya, a foreign company, the sole owner of the SABL. Later, in evidence Mr Ignas Aro the Chairman of One-Uni Development Corporation, confirmed DLPP records that the SABL title was unconditionally sold for a mere K2, 000.00. This will most likely stand as one of the cheapest land sale in modern times. As will be noted later in this Report, the SABL was sold when there is no development agreement between Vanimo Jaya and the landowners. Moreover the landowners’ nominated

¹³ Annex. “X”

company is functionally defunct. The decision to sell the landowners' share of the title is the most reckless act any landowner chairman could commit. For his part Mr Ignas Aro should be charged criminally for this reckless behaviour if not then he should be replaced as the chairman of the landowner company.

1.4 Land Ownership and Land Disputes

Prior to conversion to SABL the entire 47, 626 hectares of land encompassed by Portion 248C was all customary land.

There was one reference to a land dispute. There was an allegation that opposition to the project may have underlying issues and disagreements over land rights. That remains unsubstantiated. Therefore, there will be no findings in relation to land disputes within any part of the lands covered by Portion 248C.

Findings on the issue of unqualified landowner consent are discussed below, in the context of these Findings.

1.5 Grant of Lease

Portion 248C was a direct grant to Vanimo Jaya Limited and One-Uni Development Corporation as 'joint tenants' for 99 years. It covers 47, 626 hectares of land. The grant is dated 19th July 2006. It was gazetted on 20th July 2006 through National Gazette Issue No G143 of 2006. The SABL was granted under the hand of the former DLPP Secretary Pepi Kimas as the Ministerial Delegate. On the 14th May 2007 (ten months later from the date of the direct grant) One-Uni Development Corporation (the landowner company) sold its share of the SABL to Vanimo Jaya Limited according to the title deed kept at the Registrar of Titles Office. This now means Vanimo Jaya Limited is the sole title holder of the SABL.

Vanimo Jaya Limited was previously Vanimo Jaya Pty Limited. It was incorporated in its current form on 30th November 1992. Its nine shareholders are Pang Heng CHEW, Wang Ping KO, Ngie Yung LAW, Ngik Chiew Law, Keng Ping LAW aka LAU, Toh Heng Lu, Tung Mei SII, Huat Ping TING, and Ding Kuong TIONG. The directors are Pang Heng CHEW, Wang Ping KO, Ngie Yung LAW and Toh Heng Lu. All shareholders and directors are Malaysian nationals. This means Vanimo Jaya Limited, the sole SABL holder, is wholly foreign owned. The registered company address for Vanimo Jaya Limited is Section 439, Lot 20 Islander Village, National Capital District.

One-Uni Development Corporation is a landowner company that has a joint tenancy over Portions 248C and nominated Vanimo Jaya Limited as its preferred developer of the project. The company structure and shareholding arrangements of One-Uni Development Corporation are unclear and there is no IPA record to verify the company

structure but what is clear is that it is a landowner company. According to Mr Ignas Aro, the Chairman of One-Uni Development Corporation, the shareholders of the company are the landowners of the One and Uni language groups (tribes). The shareholders are represented by a Board of Directors consisting of thirteen (13) directors representing all the villages within the ILGs. There is no administrative and management structure in place for One-Uni Development Corporation and not even a registered office for purposes of service. It is therefore, a non-functional company and can be best described as nothing more than a 'paper company'.

1.6 Compliance with Sections 11 & 102 of the Land Act 1996

The DLPP file shows that a form of land investigation was carried out and a Land Investigation Report (LIR) was prepared. Prior to that the landowner consultation process may have taken place but took a lot longer than normal. According to Mr Bruno Tangfa, the Provincial Director of Lands with the Department of Sandaun who testified in relation to the LIR, landowner consultation lasted up to '15 years.'

Several landowner representatives signed, to attest their participation in the boundary walk as well as to demonstrate their consent for a lease-leaseback. These same people also executed the Lease-leaseback Instrument between themselves and the State. Mr Joseph Sungi, the then Provincial Administrator, signed off on the Certificate of Alienability, to authenticate the LIR process and pave the way for a Lease-leaseback Instrument to be executed. As he did in other SABLs, Mr Sungi did not make any reservations for any traditional landowner rights.

Evidence shows that the majority of the people of One and Uni ethnic groups consented to the SABL because they want agro forestry project in their land. Minimum requirements of the Lands Act 1996 appear to have been complied with here. However current DLPP best practices that enliven the intention postulated under Sections 11 and 102 of that Act appear not to have been substantially followed or achieved.

1.7 IPA Status of the Developer

Vanimo Jaya Limited is the developer of the Aitape West Agro Forestry Project. As noted above, on 14th May 2007 One-Uni ceded its half share in the SABL to Vanimo Jaya Limited. Therefore Vanimo Jaya, a foreign company, is now the sole owner of the SABL. Landowners no longer have any interests on the land. All their rights including residual rights have been disposed of by virtue of the transfer of their shares in One - Uni to Vanimo Jaya Ltd through a sale that fetched the landowners only K2, 000.00 for their share of the entire portion of land (Portion 248C).

1.8 DAL Status (Land Use Plans, Certificate of Compliance, etc)

The Aitape West Agro Forestry Project has substantially progressed. The agriculture component is for Palm Oil development. DAL has submitted a copy of the Agriculture Development Plan. Aitape West Agro Forestry Project is into its 4th year of operations. Whilst it was not possible for the provincial inquiry team to confirm status properly through a site visit, verifiable evidence shows that up to 200, 000 oil palm trees have been planted and land is being cleared for more.

Vanimo Jaya Limited provided copies of progress reports it submitted to DAL in accordance with compliance requirements. The COI has received seven (7) Progress Reports spanning January 2010 to May 2011, covering various operating months.

1.9 DEC Status (Meeting Requirements for Approval in Principle)

DEC and PNGFA records indicate that an Environment Permit [WD-L3 (112)] was issued to One-Uni Development Corporation. It was issued to be valid for 50 years and is therefore obviously current. A copy of the Environment Impact Assessment (EIA) is not available to this COI.

1.10 Forestry (Amendment) Act 2007 (Meeting Requirements for Grant of FCA)

There is a current Forest Clearing Authority (FCA 10-02) over this SABL. Obviously forest clearance is taking place to clear land for oil palm planting but it has not been verified as to whether FCA 10-02 is the first or is a subsequent issue. It has not been possible to ascertain whether logging operations are in compliance with the submitted Agriculture Development Plan and FCA 10-02. Again it has not been possible for the provincial inquiry team to confirm status properly through a site visit.

At this juncture a discovery generic to most SABLs under inquiry needs to be recorded: Section 90B (9) (a) (iii) of the Forestry (Amendment) Act 2007 requires forest clearing to be apportioned into blocks of a maximum of 500 hectares. The PNG Forest Board may increase or decrease the figure for good cause. However it seems FCA holders (developers) are being permitted to clear 5,000 hectares (ten times what is prescribed) at any one time. Increases above the maximum allowed are being promoted by DAL. Presumably this is done on the bases of technical advice available to it, but DAL has not produced examples of assessments made by it on the economics of scale to justify the arbitrary increase.

1.11 Landowner Concerns

While initial support for the Project is still current, the people from One want to separate and venture out on their own. That was the message given in evidence by Mr Andrew Api who is the interim company secretary of Moile Resources Limited. The latter was registered with IPA in 2010 to facilitate this desire to separate. Andrew Api's said 12 villages of One wanted to separate and venture out on their own. It does appear that Moile Resources Limited is fully registered as a landowner company. Whether it is engaged in any other projects or it has just been set up for this (Aitape West Agro Forestry Project) is unclear.

Mr Ignas Aro disputed Mr Andrew Api's assertions. He said he is not aware that there is such level of opposition or separatist sediments in the project area. He said 12 villages would be like the entire SABL area, covering both One and Uni groups. In any case the two men's evidence is further contextualized in this Report as summary of witness's evidence under 1.12 below.

1.12 Summary of Witnesses Evidence

A total of four (4) witnesses testified in this matter. The evidence given by the former Secretary of DLPP Mr Pepi Kimas has affected and informed certain conclusions, findings and recommendations reached in this matter.

The 1st witness to testify was Mr Joseph Sungi, the former Provincial Administrator of Sandaun Province. He testified in relation to this and the other six (6) Sandaun Province SABL matters on 15th November 2011 at the Vanimo Local Government Council Chambers. His evidence was brief and to the point. He executed the Certificate of Alienability attached to the LIR in this matter because he considered everything to be in order. He also gave other generic evidence. The highlights of some aspects of his evidence are stressed in their appropriate context in the other Sandaun Province matter Reports.

The 2nd witness to testify was Mr Bruno Chilong Tanfa. He was Director Lands for the Sandaun Province at the time of the LIR. He gave evidence on 23rd November 2011. His evidence is that his project was initiated or established as a result of a National Executive Council (NEC) decision and therefore the landowner consultation process took up to 15 years to complete. He also said the LIR was actually prepared by one Mr Bras Nekial and he (Tangfa) just verified the LIR for the Provincial Administrator to execute the Certificate of Alienability. As far as Mr Tangfa was concerned all the steps in the Land Investigation Process was complied with and the Land Investigation Report was in order and he verified and forwarded it to the Provincial Administrator accordingly.

The 3rd witness in this matter was Mr Ignas Aro. He also testified on 23rd November 2011. He is the Chairman of the landowner company and his evidence was in relation to the progress and status of the project. He asserted that a 'Development Agreement' with the developer was executed but he was unable to provide a copy of it to the COI. Mr Aro confirmed that One-Uni Development Corporation sold its share of the joint SABL title to Vanimo Jaya for K2000.00.

The 4th witness was Mr Andrew Api. He is the interim Chairman of Moile Resources Limited. His evidence is briefly discussed as stated above under the Landowners Concern (para 1.11) of this Report. The highlight of Mr. Andrew Api's evidence is: (quote) *"I represent 12 villages. The purpose for us forming the new landowner company (Moile Resources Limited) is to separate portion 248C for us to get our own sub-title and we will manage our own resources. With the best wishes of the people with the current management of Vanimo Jaya & One-Uni that is why we have to form a landowner company to represent the people and deliver the best to them"* (end of quote). However there is no verifiable evidence to confirm Mr Api's contention that all of the One people to venture out separately.

B. FINDINGS

The following findings are made:

- (i) The SABL title over **Portion 248C** is in the hands of Vanimo Jaya Limited, which is essentially a foreign owned company. The cause and reason for this is the very careless and reckless decision Ignas Aro, Chairman of One-Uni to sell the landowners' half share of an SABL owned 'jointly' by Vanimo Jaya Limited and the landowner's company One-Uni Development Corporation.
- (ii) The Aitape West Agro Forestry Project has already substantively commenced. It is now into to its 4th year of operation. Up to 200, 000 oil palm trees have been planted and land is being cleared for more planting.
- (iii) Not much is known in terms of benefits and participation structure between developer and landowners due to the lack of information on the 'Development Agreement' before and after the sale of the landowner's shares in One-Uni Development Corporation.
- (iv) Vanimo Jaya Limited has not testified before this COI and so not much is known about their operations, the operational and management structure including

details of foreign employees. However it has complied in patches with the progress reporting requirements.

- (v) DAL and DEC appear to completely lack the capacity and aptitude for independent verification and monitoring of progress at the project site. They have not carried out any inspections and are unable to police and monitor ongoing statutory compliance requirements. As this is a project that spans decades and these oversight functionalities by responsible agencies of government is crucial to ensure compliance but the on-going failure by the responsible agencies reflects a serious neglect on their part in the discharge of their statutory functions and is simply inexcusable.

- (vi) The Land Investigation Process (LIP) was not properly executed and the Land Investigation Report (LIR) was badly done. But effort was made to consult landowners and collect signatures. The number of villages consulted does indicate time and effort spent to consult with the landowners. In the LIP we discovered the following:
 - (a) The Boundaries Walk/Inspection did not happen. The sheer size of the land mass involved ruled that out but as a requirement this pivotal activity of the LIP did not take place;
 - (b) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries has not been breached, was not properly obtained;

 - (c) The Certificate of Alienability (CoA) was executed without careful assessment of the consequences. No traditional land use rights were preserved and there are no residual rights for the landowners. The land was sold to a foreign entity lock, stock and barrel. This is a reckless failure, especially given the size of the land mass and the fact that not all of the 47, 626 hectares of land was going to be needed for Agro Forestry activities.

- (vii) There is no real opposition to the Aitape West Agro Forestry Project. Even if the people of One language group desire to venture out separately as Mr Andrew Api says, it is rather late as development plans and projections for expansion and other projections have been done upon the premise that there will be one SABL. In fact the chances of there being created any "sub-titles" like Andrew Api wants is uncertain as SABL Title is in the hands of the foreign developer.

- (viii) The 'opposition' is not really an opposition to the project or SABL holder. The so called opponents are really focused on 'going it alone'. These people own land on one side of the SABL so they want to divide up Portion 248C and get a separate title or "sub-title" over their part of the land. Their 'opposition' surfaced after all the processes, LIP and LIR including, were completed and even after the project had commence with planting of oil palm trees.
- (ix) The landowners have weakened their position considerably by transferring their share and title for a payment of K2000 to Vanimo Jaya Limited, a foreign company. IPA records shows that One-Uni Development Corporation has already transferred its title under the sub-lease of the lease-leaseback arrangements to Vanimo Jaya Limited a wholly foreign owned company who is the now sole shareholder of the SABL.
- (x) There is no development agreement between One-Uni Development Corporation and Vanimo Jaya Limited on benefits-sharing of this project. Some references were made to an MOU (memorandum of understanding) being signed between the two companies but that may have no legal basis to strengthen the position of the landowners. In any case, with the outright sale and transfer of the title under the sub-lease, the customary landowners might not benefit at all from the business activities conducted on their land.

C. RECOMMENDATIONS

- (i) One-Uni Development Corporation ceded and transferred its half share in the SABL title to Vanimo Jaya for reasons that are not clear. The transfer was effected without obtaining informed landowner consent. The transfer needs to be undone.
- (ii) Ignas Aro, the chairman of One-Uni Development Corporation has acted recklessly in selling the landowner half share in the SABL title. For that he should be charged criminally for forgery and fraud.
- (iii) The Aitape West Agro Forestry Project is operational. Therefore to protect the project's viability and to ensure its future stability any sectarian or marginalized group discontent needs to be fully addressed and continuing interest and support consolidated rather quickly.

- (iv) The two groups, those who support One language group and Uni language group, need to agree to work together. The SABL cannot be split up or “sub-titled” as Mr Andrew Api would prefer. A title can be surrendered to allow everything to go back to the drawing board but the entities will then have to separately traverse the long winded process again, possibly with no guarantee of success. Even then, in this instance the SABL title is no longer the landowners’ but in foreign hands.
- (v) DLPP’s Land Investigation Process (LIP) appears to be a good strategy overall. If the process is strictly and diligently followed, it could ensure that contextual, informed consent of customary land owners and customary land rights holders are be obtained.
- (vi) The LIP needs to be improved. Mere use of forms is restrictive. There must be substantive compliance on every requirement of the LIP as stipulated under the Land Act 1996:-
 - (a) Landowners must be free to attach qualification or conditions to their consent if they wish to because merely offering signatures might not reflect their real (contextual or relative) position;
 - (b) There is a clear difference between the attestation of those who traverse the SABL boundary (boundaries walk/inspection) and attestation by owners of adjacent land who must confirm that the boundaries of the proposed SABL do not infringe upon the boundaries of their own clan lands. These are two separate attestation requirements. The two forms must be distinguishable one from the other.
 - (c) The Certificate of Alienability (CoA) format must be changed. It is substantive compliance in relation to its purpose that is of value: CoA is the final attestation that landowners agreed to have their customary land alienated and that it is safe for their rights over it to be suspended. It is the message being conveyed through the execution of the CoA that is critically important.
 - (d) The Certificate of Alienability (CoA) was executed without careful assessment of the consequences. No traditional land use rights were preserved from the massive size of the land taken up under the SABL and furthermore, only 40% of the total land mass will be utilized for the proposed agricultural project and it does not make sense at all to lease out

the entire land mass without leaving any residual rights to be enjoyed by the landowners. This is a reckless failure on the part of the Provincial Administrator who is supposed to protect the interests of the landowners.

- (vii) The COI recommends the immediate **REVOCATION** of the SABL title over **Portions 248C** granted to **Vanimo Jaya Limited** a ‘foreign-owned’ company and that the whole transaction be **REVIEWED** and properly **RE-NEGOTIATED** to ensure landowner’s participation in this SABL. It is contrary to the provisions of the Land Act (secs. 11, 102 and 132) to transfer a title over customary land to a foreign company.

SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Listing – Annexure “X”)

NO	NAME & DESCRIPTION OF DOCUMENTS RECEIVED BY THE COI FOR PORTION 248C	SOURCE OF DOCUMENT
	Department of Lands & Physical Planning (DLPP)	
1	Set of Land Investigation Reports (LIR) dated 26/06/06	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 2/144	DLPP
3	SABL Title Deed dated 19/07/ 06.	Registrar of Titles
4	Gazettal Notice Dated 20/07/06	G143 of 2006
5	Lease-leaseback Instrument dated 19/07/06	DLPP
6	Transfer by One-Uni of its share in the SABL to Vanimo Jaya Limited dated 14/05/07	DLPP
	Investment Promotion Authority (IPA)	
1	Current IPA extract set for Vanimo Jaya limited	IPA
2	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to Vanimo Jaya Limited	IPA
3	Current IPA extract set for One-Uni Limited	IPA
4	Current IPA extract for Moile Resources Limited	IPA

	PNG Forest Authority (PNGFA)	
4	Certificate of Registration as Forest Industry Participant issued to Vanimo Jaya Limited	PNGFA
	Forest Clearing Authority (FCA 10-02) granted to Vanimo Jaya Limited	PNGFA & Vanimo Jaya Limited
	Department of Agriculture & Livestock (DAL)	
1	DAL File containing assorted documents & correspondences, including DAL approval notices	DAL
4	Aitape West One-Uni Agro Forestry Project Proposal	DAL
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC
2	Letter advising grant of "Approval in Principal" 06/11/95	DEC
	Set of Seven Progress Reports (DEC copies) for assorted operating months filed by Vanimo Jaya Limited	DEC
3	Indexed Manila Folder containing DEC approval documents	DEC
	Miscellaneous /Submission from Parties	
1	"Sales & Purchase Agreement" between Global Limited and Landowners dated 15/04/10	Wammy Limited /Global Elite Ltd
2	Indexed Manila Folder containing Approval documents	Global Elite Ltf
3	"Detailed Agriculture Plan" (WARDEP)	Global Elite Ltd
4	Aitape West One-Uni Agro Forestry Project Proposal	Vanimo Jaya Ltd
4	"Project Proposal"	Global Elite Ltd

5	Submission by Kuman Lawyers containing Miscellaneous doc.	Nakap
6	Submission from Nakap Agro Forestry JV Dev. Limited	Nakap
7	Submission from Moile resources Limited dated 01/08/11	Moile Resources

5. **WAMMY LIMITED (Portion 27C)**
(SABL NO. 68)

A. REPORT

This is my final Report on Special Agriculture and Business Lease (SABL) over **Portion 27C**. It is No. 68 on the original Commission of Inquiry (COI) List. Portion 27C is a 'Direct Grant' under Section 102 of the Lands Act 1996 to **Wammy Limited** of Aitape in the Sandaun Province.

1.1 Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were covered. No further investigations are required for TOR (g) (i)-(iii). At the time of the hearings at Vanimo only one foreign employee of the developer was in the country and he had valid entry and work permits. Wammy Rural Development Project, on Portion 27C, is yet to substantially commence its programs.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully assessed. The monitoring, oversight, approval and permit setup in the Departments of Agriculture & Livestock (DAL) and Environment & Conservation (DEC) were investigated. Papua New Guinea Forest Authority (PNGFA) process for granting Forest Clearance Authority (FCA) was scrutinised. Also whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was fully investigated.

1.2 Sources of Information

Brief facts disclosed in the COI Listings constituted the initial data in this matter. The Gazettal Notice was obtained as a result of inquiry at the Government Printing Office (GPO). A file containing copies of the Land Investigation Reports (LIRs), Survey Map, Lease –leaseback instrument, Notice of Direct Grant, copy of

title deed, and various documents and correspondences were obtained from the DLPP.

Company extracts and other records were obtained from Investment Promotion Authority (IPA), DAL and DEC. PNGFA was sourced too but no documents were obtained from it as the Forest Clearance Authority (FCA) process over this SABL is unfinished. All documents obtained or received in this matter are tabulated in the Schedule of Documents.

The sub-lease holder and developer is **Global Elite Limited** and persons of interest Moses Lalyawo of the opposing landowner faction representing Nakap Agro Forestry Joint Venture Development Limited submitted documentary information.

The final source of information is transcript evidence from witnesses. These are summarized in the Findings below. Transcript of certain witness's evidence obtained at Vanimo are not fully discernable. It may be due to poor recording or as a result of poor transcribing as well. The defects are not major and where appropriate the intent of evidence has been elicited from the nature of the immediate line of inquiry as well as the content and context of questions posed.¹⁴

1.3 Location of Portion 27C

Portion 27C is a 99 year SABL in the Milinch of Maimai and Fourmil of Aitape in the Sandaun Province, containing 105, 200 hectares of land. It is delineated on a Class 4 Survey Plan bearing catalogued No. 2/159 and was granted to Wammy Limited under the hand of the then DLPP Secretary Pepi Kimas in his capacity as Ministerial Delegate. The SABL was granted on 8th October 2010 and gazetted on 15th October 2010 through National Gazette issue No G243 of 2010.

1.4 Landownership and Land Disputes

Prior to its conversion to SABL the entire 105, 200 hectares of land now encompassed within Portion 27C was customary land.

There was no land dispute *per se* mentioned or referred to in evidence or submission but the principal witness for the opposing side and Chairman of the SABL holder's rival landowner company (Nakap Agro Forestry JV Development Limited) Mr Moses Lalyawo said he is concerned that his people's land has been divided up without their consent. He said that some 355,900 hectares of land, which should come under the control of Nakap Agro Forestry JV Development Limited has been distributed over Portion 26C, Portion 27C, and Portion 59C. He

¹⁴ Annex. "X"

also said his people's land that straddles the two Sepik province's boarder is also included in another SABL in the East Sepik Province.

As a result no findings of land disputes are noted in this Report for any of the lands covered by Portion 26C. Findings on the issue of unqualified landowner consent are discussed further in this Report.

1.5 Grant of Lease

Portion 27C was granted directly to Wammy Limited for 99 years covering 105, 200 hectares of land. It is delineated on a Class 4 Survey Plan bearing catalogued No. 2/159. The grant is dated 8th October 2010 and was given under the hand of the then DLPP Secretary Pepi Kimas in his capacity as Ministerial Delegate. The grant was gazetted on 15th October 2010 through National Gazette issue No G243 of 2010.

Wammy Limited was incorporated on 7th April 2010. Its shareholders are Robert Aiwar, John Melo, Peter Tai, and Jonnah Yamaijo. They hold equal shares. They and eighteen (18) other Papua New Guineans are directors of Wammy Limited.

1.6 Compliance with Sections 11 & 102 of the Land Act 1996

The DLPP file shows that Land Investigations Process (LIP) was carried out and a Land Investigation Report (LIR) was compiled. Seven landowner representatives signed, to attest to their participation in the boundary walk/inspection as well as to indicate their consent (as landowner agents) for a lease-leaseback to be issued. These same people executed on the Lease-leaseback Instrument later. Three persons from out of a list of six people from neighbouring villages signed, to certify and acknowledge that they had no interests in the land to be converted to SABL and also to attest to the correctness of the boundaries of the proposed SABL. Mr Joseph Sungi, the Provincial Administrator, signed off the Certificate of Alienability, to authenticate the LIR process and also pave way for a Lease-leaseback Instrument to be executed between the State and landowners. Mr. Sungi made no reservations for any traditional landowner rights and has not allowed for any residual rights to be enjoyed by the landowners during the period of the lease.

On the face of it the bare minimum requirements of the Lands Act 1996 for this matter seem to have been complied with. Also, current DLPP best practices that makes operational and enlivens the general intention encapsulated under Sections 11 and 102 of that Act appear to have been followed. Nevertheless the Findings set out below renders these discoveries only contextual.

1.7 IPA Status of the Developer

Global Elite Limited is the developer of the Wammy Rural Development Project. On 18th October 2010 Wammy Limited granted a sublease over the entire SABL (Portion 27C) to Global Elite Limited for sixty (60) years. It was approved by Mr Pepi Kimas for purposes of Section 128 and 129 of the Land Act 1996 and registered with the DLPP on 29th October 2010.

Global Elite Limited is wholly foreign owned. According to current IPA records (as at 19th September 2011) it is owned by a Malaysian named Chiong Ming Ting. Whilst Global Elite Limited seems to be fully certified under the Investment Promotion Act 1992, its Certificate permitting a 'Foreign Enterprise to Carry on Business in an Activity' (Form 4) only relates to Forestry, Construction, and Retail activities.

Whilst Global Elite Limited has Forest Industry Participant Certification, it conspicuously lacks IPA authority to engage in Agriculture activities. The company's representative, Mr. Albert Lau, insisted at the Vanimo hearings that the developer will secure the certification when it needs to, presumably when it is ready to plant oil palm or rubber trees or whatever it needs to plant, and that again presumably after it has logged out sufficient areas for the purpose and more importantly, after it had made enough money to "recoup its costs" and also "additional money to fund the costs of the agriculture component." This indicates that the developer is not bringing into the country its own resources and capital to invest in the country and instead trying to raise money in-country through logging activities before it venture out into agriculture and other business activities. This is contrary to the National Government's policy on foreign investment to boost the local economy by bringing in the foreign exchange.

However lack of certification and apparent lack of urgency on the part of the developer is a concern at this stage. This concern amplifies another concern raised by other SABL investigations: Sublease holders appear to be 'developers' with no primary experience base and expertise in Agro Forestry which is why they contract out the Agriculture development component (which of course is the sole purpose of SABLs) to entities not consciously approved and or sanctioned in the LIR process conducted within the spirit of Section 102 of the Land Act 1996.

1.8 DAL Status (Land Use Plans, Certificate of Compliance, etc)

An agriculture land use plan has been made available for the COI's requirements. It constitutes a Project Proposal as well as time bound development schedules in

the Agriculture Development Plan for purposes of monitoring and oversight in relation to the agriculture component of the project.

DAL has approved this project. By letter dated 27th September 2010 under hand of its Deputy Secretary Mr Francis Daink, DAL advised Global Elite Limited that its Agriculture and Rural Development Project Proposal had been approved. In the absence of any Certificate (of Compliance) for large scale conversion of forest to agriculture or other land use development pursuant to Section 90A (3) (i) of the Forestry Act 1991, it is to be accepted that the Wammy Rural Development Project has been formally approved by DAL. However it is to be noted that other correspondences available to this COI show that DAL's approval was given before a Public Hearing that was scheduled to take place at Telefomin on 6th November 2010, but which actually occurred almost three (30 months later on Saturday 5th February 2011 at Worikori Village in Telefomin. Evidence available to this COI shows that the agriculture component of this project will be composed of oil palm and rubber.

1.9 DEC Status (Meeting Requirements for Approval in Principle)

DEC process is complete. The Environment Inception Report (EIR) and Environment Impact Statement (EIS) were prepared, presented and accepted. That culminated in Minister Benny Allan MP issuing the Approval in Principle on 20th July 2011.

On 11th April 2010 a Project Development Agreement was executed between Wammy Limited and Global Elite Limited for "logging, log marketing and commercial agriculture". The implications for this project agreement are discussed in the context of the Findings below.

1.10 Forestry Act (Amendment) Act 2007 (Meeting Requirements for Grant of FCA)

There was no Forest Clearance Authority (FCA) issued for the Wammy Rural Development Project. Copies of correspondences in the COI's Persons of Interests file shows opposition to grant of FCA in this matter.

At this juncture a discovery generic to most SABLs under inquiry needs to be recorded: Section 90B (9) (a) (iii) of the Forestry (Amendment) Act 2007 requires forest clearing to be apportioned in blocks of 500 hectares. The PNG Forest Board may increase or decrease the figure for good cause. However it seems FCA holders (developers) are being permitted to clear 5,000 hectares (ten times what is prescribed) at any one time. Increases above the maximum allowed are being promoted by DAL exercising its "discretion" according to Francis Daink however;

such discretion(s) is not based on law or any sound policy of government and is therefore, unlawful. To date, DAL is not able to provide any reasons and/or justifications on why it is approving forest clearing over the legal limit stated by law.

1.11 Landowners Concerns

In support of the evidence disputing the legitimacy of the LIR process, Moses Lalyawo of Nakap Agro Forestry JV Development Limited put forward detailed submissions on the complete lack of 'informed consent' by each of the Incorporated Land Groups (ILGs) that constitute Nakap Agro Forestry JV Development Limited. Their assertion that Wammy Limited is a loose off-shoot of the former Amanab 56 Forest Management Agreement (FMA) constituted only by five villages (out of a total of twenty-two) from the western part of Namea Local Level Government (LLG) in the Telefomin District has not really been negated by Wammy Limited. It was asserted that 'Wammy' is the acronym for the five villages that constitute it, namely Wagou, Aiendami, Mandopai, Mokedami, and Yuwari). Again no attempt has been made by Wammy Limited to negate this.

Landowner concerns were also raised by Moses Lalyawo who testified as representative of those opposing Wammy Limited and Global Elite Limited. As Chairman of Nakap Agro Forestry JV Development Limited Mr Lalyawo said he is concerned that his people's land has been divided up without their consent. He said during the hearings at Vanimo that some 355,900 hectares of land, which should come under the control of Nakap Agro Forestry JV Development Limited has been distributed over Portion 26C, Portion 27C, and Portion 59C. He also said his people's land that straddles the two Sepik province's boarder has even been included in another SABL in the East Sepik Province. His evidence and opposition submissions that amplify the thrust of his evidence are contextualized in the Summary of Witness's Evidence below.

1.12 Summary of Witnesses Evidence

A total of seven (7) witnesses testified in this matter. The 1st witness was Mr Joseph Sungi, former Provincial Administrator of Sandaun Province. He testified in relation to this and the other six (6) Sandaun Province's SABL matters on 15th November 2011 at the Vanimo Local Government Council Chambers. His evidence was that he executed the Certificate of Alienability (CoA) attached to the LIR in this matter because he thought everything was in order. He also gave other generic evidence. The highlights of some aspects of his evidence are stressed in their appropriate context in the other Sandaun Province matters Reports.

The 2nd witness to testify was Mr Daniel Waranduo. He is Provincial Lands Officer of Sandaun Province. He gave evidence on 17th November 2011. He confirmed that there was a form of Land Investigation conducted and a LIR was generated as a result. He further said that he vetted the LIR, which was principally created by Simon Malu of the DLPP, for the Provincial Administrator to execute the Certificate of Alienability.

Mr Waranduo said about 6-12 Incorporated Land Groups (ILGs) withheld their consent for Wammy Limited and Global Elite Limited to be the vehicles of development. It is to be noted that Mr Waranduo's evidence on this aspect is quite significant. It confirms that there was conscious dissent and opposition during the Land Investigation process. Obviously the LIR did not reflect that. Therefore what happened thereafter was not on the basis of popular landowner wish to lease their land. This conclusion therefore lends credence to and strengthens the position of Nakap Agro Forestry JV Development Limited and particularly the objections raised by its Chairman, Moses Lalyawo.

Moses Lalyawo was the 3rd witness in this matter. He testified on 18th November 2011. His evidence is adequately discussed throughout this Report and it need not be repeated here except to note his unwavering objection to the grant of the SABL to Wammy Limited. His evidence will be fully analysed in the Findings and in the Recommendations of this Report.

The 4th witness was Mr John Anis, who is the Chairman of Wammy Limited. His evidence in relation to the LIR process is similar to that of Mr Daniel Waranduo except that he 'thinks' and was of the opinion that there was informed consent from all the landowners. Mr Anis said that the Wammy Rural Development Project was initiated in response to landowner aspirations to generate development, especially to ensure that road links are opened up and a successful agro forestry project is established to offer landowners an opportunity to earn some money and improve their lifestyle.

The 5th witness was Mr Albert Lau. He testified on behalf of Global Elite Limited. In fact he appeared with a forester called Mr Marvin Jocero, who was allowed to join him at the witness stand mid-way through the evidence. For the record, Mr Marvin Jocero is the 6th witness. Mr Lau's evidence is also adequately discussed in this Report. The thrust of his evidence is also analysed in context of the Findings.

Mr Yaujang Kokrow, LLG President of Namea LLG of the Telefomin District, was scheduled to be the final witness. He had indicated that he wanted to formally inform the COI that the Joint District Planning and Budget Priorities Committee (JDP&BPC) of Telefomin District endorsed Nakap Agro Forestry JV Development

Committee to be the preferred landowner development company and the LLG funded its activities. He was to testify on Monday 21st November 2011 but he was unavailable and so the Managing Director of Nakap Agro Forestry JV Development Limited Mr. Johnson Wapunai was called instead. The kind of evidence Mr. Yaujang Kokrow would have presented is noted here to demonstrate a consistency in the opposition's contention that Wammy Limited was never supported right from the start. For its part, Wammy Limited has made no attempt, either in evidence or through any formal submission, to negate this damaging consistency in evidence from its opponents.

Mr Johnson Wapunai said that there was no formal land investigation carried out in the area. He queried as to how any investigation into an area of up 105,200 hectares could be done in a few days. He said any investigation would take up to three months to complete. He also confirmed that the map over Portion 27C was scaled and drawn by a surveyor called Patrick Kopal from his desktop in Port Moresby. The surveyor never visited Edwaki, which encompasses the SABL lands in Namea LLG.

The highlight of Messrs Moses Lalyawo and Johnson Wapunai's evidence is their contention that they do not dispute the right of Wammy Limited (in the composite form of the five villages that constitute it) to exit and be the vehicle for development for its own people. They just want to organize their own people and resources on their part of the land.

B. FINDINGS

The following findings are made:

- (i) The Wammy Rural Development Project has not substantively commenced. It commencement appears to be delayed pending grant of FCA by PNGFA. The developer also needs to construct a 50 kilometre road connecting the project area to the nearest road.
- (ii) Global Elite Limited has spent K0.5 million in preparations work. While on the evidence the developer's interest appears genuine, its continued interest in the project needs to be seen, particularly in the light of what clearly appears to be polarized, irreconcilable positions between the two contending landowner groups.
- (iii) On 11th April 2010 a 'Project Development Agreement' was signed between Wammy Limited and Global Elite Limited for "logging, log marketing and

commercial agriculture". For the record, the contents of their undertakings appear balance and mutually beneficial for both parties. It could be accepted as demonstration of commitment by the developer.

- (iv) DAL and DEC approvals and permits appear to have been granted without any independent assessment on the impact of ongoing, visible substantial landowner disagreements and opposition to both Wammy Limited and Global Elite Limited.
- (v) The Land Investigation Process (LIP) was not properly executed and the Land Investigation Report (LIR) was badly done. Even though some landowners appear to have been consulted and their signatures collected, the genuineness of the LIR is in doubt in the light of the allegations of fraud raised by the opposing group. The following findings are made in respect to the LIP and LIR:-
 - (a) The Boundaries Walk/Inspection did not happen. The sheer size of the land mass involved ruled that out but as a requirement this pivotal activity of the LIP did not take place;
 - (b) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries have not been breached, was not properly obtained;
 - (c) The Certificate of Alienability (CoA) was executed without careful assessment and regard to the lack of popular support for the project and visible opposition to both Wammy Limited and Global Elite Limited as preferred entities. No traditional land use rights were noted or preserved. That is a reckless failure. Excess rights, both for survival or pleasure should have been reserved for the customary landowners. The land mass is vast and not all of it is needed for the proposed Agro Forestry project. The Land Development Plan submitted by the developer shows that only 40% of the land will be utilized for agriculture activities;
 - (d) There is no opposition to the Wammy Rural Development Project as such. Proponents of Nakap Agro Forestry JV Development Limited do not dispute the right of Wammy Limited (in the composite form of the five villages that constitute it) to exit and pursue development for its own people. The Proponents of Nakap Agro Forestry JV Development Limited want to organize their own people and resources on their side or part of the land;
 - (e) The efforts of Nakap Agro Forestry JV Development Limited seem to be supported by the Namea LLG. In fact Namea LLG appears to be the active

proponent of the entity. Evidence before the COI also indicates the sitting member of Parliament for Telefomin Electorate is a proponent and active supporter of Nakap Agro Forestry JV Development Limited;

- (f) Landowners who constitute Nakap Agro Forestry JV Development Limited have already mobilized themselves in the same way other SABL holders have done but they find their land included in three separate SABLs, namely Portion 26C held by Nuku Resources Limited, Portion 27C held by Wammy Limited and Portion 59C held jointly by West Maimai Investment Limited, Yangkok Resources Limited & Palai Resources Limited. They appear to be pro agro forestry projects; and
- (g) The claims of overlapping boundaries, both on SABL maps and in respect of traditional land rights, by the Proponents of Nakap Agro Forestry JV Development Limited is serious. At the least it confirms the suspected arbitrary creation of maps based solely on satellite technology by different people at different times with no reference to existing maps. At the most, these claims implicate and impact upon the validity of all three SABLs, namely Portion 26C, Portion 27C and Portion 59C.
- (vi) The above findings by implication means that the conclusions reached in relation to these three SABLs (Portion 26C, Portion 27C and Portion 59C) stand to be affected, at least to the extent that their territorial and boundary integrity and validity was left undiscussed in their respective Reports.

C. RECOMMENDATIONS

1. The Wammy Rural Development Project, as long as there is no reconciliation between the landowners, particularly between Wammy Limited and those that support Nakap Agro Forestry JV Development Limited, there is bound to be further problems in the future. A viable, quick fix alternative really does not exist for both parties. The SABL cannot be just split up along customary boundary lines as any division of the SABL will involve a process. Title could be surrendered by Nuku Resources Limited and allow everything to go back to the drawing board but the parties will then have to separately traverse the long winded process again, with no guarantee of success in the end for both or either of them to be granted an SABL or separate SABLs. Therefore the way forward would be for the two groups to agree to work together.

2. DLPP's Land Investigation Process (LIP) appears to be a good strategy overall. If the process is strictly and diligently followed, it could ensure that contextual, informed consent of customary land owners and customary land rights holders are obtained.

3. The LIP needs to be improved. Mere use of forms is restrictive. There must be substantive compliance on every requirement of the LIP:-
 - (a) Landowners must be free to attach qualification or conditions to their consent if they wish because merely offering signatures may not reflect their real (contextual or relative) position;

 - (b) There is a clear difference between the attestation of those who traverse the SABL boundary (boundaries walk) and attestation by owners of adjacent land who must confirm that the boundaries of the proposed SABL do not infringe upon the boundaries of their own clan lands. These are two separate attestation requirements. The two forms must be distinguishable one from the other;

 - (c) The Certificate of Alienability (CoA) format needs to be changed. What is of value is the substantive compliance in relation to its purpose: The CoA is the final attestation that landowners have agreed to have their customary lands alienated and they have agreed to have their rights over it suspended. It is the message being conveyed through the execution of the CoA that is critically important. The CoA process is not just a 'bump on the road' step to be overcome by those in a hurry.

 - (d) The CoA in this matter was executed without careful assessment of foreseeable consequences and possibly in hasty disregard for concerns raised through the Land Investigation process. No traditional land use rights were preserved. That is a reckless failure, given the sheer size of the land mass and the fact that not all 105, 200 hectares of land was going to be needed for Agro Forestry activities. The Land Development Plan submitted by the developer discloses that only 40% of the land will be utilized for agriculture purposes. The failure of the Provincial Administrator and the Lands Officers who advised him possibly borders on criminal negligence.

- (iv) The COI recommends that the SABL title over **Portions 27C** held by **Wammy Limited** be **SURRENDERED** and be **RE-NEGOTIATED** to ensure that all landowners interest of both Wammy Limited and Nakap Agro Forestry Development JV Limited are accommodated with a properly structured benefit-sharing agreement between all parties to this SABL.

SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Listing – Annexure “X”)

NO	NAME & DESCRIPTION OF DOCUMENTS RECEIVED BY THE COI FOR PORTION 27C	SOURCE OF DOCUMENT
	Department of Lands & Physical Planning (DLPP)	
1	Set of Land Investigation Reports (LIR) dated 14/09/10	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 2/159	DLPP
3	SABL Title Deed dated 08/10/ 10.	Registrar of Titles
4	Gazettal Notice Dated 15/10/10.	G243/10
5	Lease-leaseback Instrument dated 9/10/10	DLPP
6	Sublease (60 yrs) to Global Elite Limited dated 18/10/10	DLPP
	Investment Promotion Authority (IPA)	
1	Current IPA extract set for Global Limited	IPA
2	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to Global Limited, dated 29/7/10	IPA
3	Current IPA extract set for Wammy Limited	IPA
4	Current IPA extract for Nakap Agro Forestry Development Ltd	IPA
	PNG Forest Authority (PNGFA)	
1	Certificate of Registration as Forest Industry Participant issued to Global Limited, dated 30/11/10	PNGFA
	Department of Agriculture & Livestock (DAL)	

1	DAL File containing assorted documents & correspondences, including DAL approval notices	DAL
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC
2	Letter advising grant of "Approval in Principal" 20/07/11	DEC
	Miscellaneous /Submission from Parties	
1	"Sales & Purchase Agreement" between Global Limited and Landowners dated 15/04/10	Wammy Limited /Global Elite Ltd
2	Indexed Manila Folder containing Approval documents	Global Elite Ltf
3	"Detailed Agriculture Plan" (WARDEP)	Global Elite Ltd
4	"Project Proposal"	Global Elite Ltd
5	Submission by Kuman Lawyers containing Miscellaneous doc.	Nakap
6	Submission from Nakap Agro Forestry JV Dev. Limited	Nakap
7	Submission from Hon. Peter Iwei (MP) for Nakap (3/1/12)	Nakap

**6. WEST MAIMAI INVESTMENT LTD / YANGKOK RESOURCES LTD / PALAI RESOURCES LTD
(Portion 59C)
(SABL NO. 60)**

A. REPORT

This is the final Report on Special Agriculture and Business Lease (SABL) over **Portion 59C**. It is No. 60 on the original Commission of Inquiry (COI) List. Portion 59C is a 'Direct Grant' under Section 102 of the Lands Act 1996 issued 'jointly' to **West Maimai Investment Limited, Yangkok Resources Limited and Palai Resources Limited** of Nuku in the Sandaun Province.

1.1 Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were covered. No further investigations are required for TOR (g) (i)-(iii). The few foreign employees of the developer who are in the country appear to have valid entry and work permits. The name of the agro forestry project that is to be carried out in Portion 59C, which is 'jointly' held by West Maimai Investment Limited, Yangkok resources Limited and Palai Resources Limited is not really clear but the project, whatever it maybe for, is yet to substantially commence its programs.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL were carefully assessed. The monitoring, oversight, approval and permit setup in the Departments of Agriculture & Livestock (DAL) and Environment & Conservation (DEC) were investigated. Papua New Guinea Forest Authority (PNGFA) process for granting Forest Clearance Authority (FCA) was scrutinised. Also whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was fully investigated.

1.2 SOURCES OF INFORMATION.

Brief facts disclosed in the COI Listings constituted the initial data in this matter. The Gazettal Notice was obtained as a result of inquiry at the Government Printing Office (GPO). A file containing copies of the Land Investigation Reports (LIRs), Survey Map, Lease –leaseback instrument, Notice of Direct Grant, copy of title deed, and various documents and correspondences were obtained from the DLPP.

Company extracts and other records were obtained from Investment Promotion Authority (IPA), DAL and DEC. PNGFA was sourced too but no documents were obtained from it as the Forest Clearance Authority (FCA) process over this SABL is unfinished. All documents obtained or received in this matter are tabulated in the Schedule of Documents below.

The sub-lease holder and developer **Gold World Resources Company (PNG) Limited** submitted documentary information. In other SABLs from the West Sepik Province that have been investigated, persons of interest gave evidence and filed cover submissions. In this case, there were initial complaints and a petition filed prior to the Vanimo hearings that raised issues on informed consent and impropriety in the Land Investigation process. As will be noted further in this Report, no one stepped forward to progress the issues raised at the hearing.

The final source of information is transcript evidence from witnesses. These are summarized below. Transcript of certain witness's evidence obtained at Vanimo contain some major defects. It appears the microphone apparatus at the witness stand did not function properly and responses of some witnesses in this matter were not captured. The defects are not fatal and where appropriate the intent of evidence has been elicited from the nature of the immediate line of inquiry as well as the content and context of questions posed.¹⁵

1.3 Location of Portion 59C

Portion 59C is a 99 year SABL in the Milinch of Lumi and Fourmil of Aitape & Wewak in the Sandaun Province, containing 149, 000 hectares. The land area is delineated on a Class 4 Survey Plan bearing catalogued No. 2/151.

1.4 Land Ownership and Land Disputes

Prior to its conversion to SABL all the 149, 000 hectares of land now encompassed within Portion 59C was customary land.

No land dispute was mentioned or raised in evidence or submission. There had been some complaints and a petition was also filed prior to the Vanimo hearings, essentially raising issues of lack of consent and also raising issues of impropriety over the Land Investigation process, but no one stepped forward to confirm these at the hearings. Therefore no findings of land disputes are noted in this Report for lands covered by Portion 59C. Findings on the issue of unqualified landowner consent are discussed in further this Report in the context of Findings.

1.5 Grant of Lease

This SABL is a Direct Grant issued 'jointly' to West Maimai Investment Limited, Yangkok Resources Limited and Palai Resources Limited under the hand of the then DLPP Secretary Pepi Kimas in his capacity as Ministerial Delegate. The SABL was gazetted on 23rd April 2010 through National Gazette issue No G83 of 2010 and title was issued on 26th April 2010.

West Maimai Investment Limited was incorporated on 27th January 2010. Its sole shareholder is Benjamin Hasu. He and one other (Charles Welei) are the directors of the company. Both of these persons are Papua New Guineans. Palai Resources Limited was incorporated on 13th April 2010. Its shareholders are Steven Waleke and Eddie Yanamba, two Papua New Guineans who are also the directors of the

¹⁵ Annex. "X"

company. Yangkok Resources Limited was also incorporated on 13th April 2010. Its shareholders are Jeremy Ampan and Camilus Weyip and both men are also Directors.

1.6 Compliance with Sections 11 & 102 of the Land Act 1996

The DLPP file shows that land investigations were carried out and a Land Investigation Report (LIR) was compiled. Six (6) landowner representatives (Charles Willie, Melchior Manau, Vincent Mapei, Bill Akoko, Peter Manao and Linus Willie) signed to attest to their participation in the boundary walk and inspection with Simon Malu from DLPP. They also gave their consent (as landowner agents) for a lease-leaseback to be issued. The same people executed on the Lease-leaseback Instrument later. Three persons from out of a list of six people from neighbouring villages signed, to certify and acknowledge that they had no interests in the land to be converted to SABL and also to attest to the correctness of the boundaries of the proposed SABL. Mr Joseph Sungi, the Provincial Administrator signed off the Certificate of Alienability to authenticate the LIR process and also pave way for a Lease-leaseback Instrument to be executed between the State and landowners. Mr Sungi made no reservations for any traditional landowner rights.

On the face of it the bare minimum requirements of the Land Act 1996 for this matter seem to have been complied with. Also current DLPP best practices, that makes operational and enlivens the general intention encapsulated under Sections 11 and 102 of that Act appear to have been followed. Nevertheless the Findings set out below of this Report renders these discoveries only contextual.

1.7 IPA Status of the Developer

Gold World Resources Co (PNG) Limited is the developer of what is referred to as the integrated agro forestry project. The project was initially referred to as 'Maiyanpal Integrated Agro Project' at same stage but that is unsettled. On 6th July 2010 the three joint holders of the SABL subleased, acting collectively by executing separate agreements, granted a sub-lease over the entire SABL (Portion 59C) to Gold World Resources Company (PNG) Limited for fifty (50) years. It was approved by Mr Pepi Kimas for purposes of Section 128 and 129 of the Land Act 1996.

Gold World Resources Co (PNG) Limited is a wholly foreign owned. According to current IPA records (as at 19th September 2011) it is wholly owned by what appears to be its Malaysian parent company called Gold World Resources (International) Limited. Unlike the developers in a few other SABLs under

investigation in the Sandaun Province, Gold World Resources Company (PNG) Limited has been fully certified under the Investment Promotion Act 1992. Its Certificate permitting a Foreign Enterprise to Carry on Business in an Activity (Form 4) dated 24th November 2010 is inclusive, which means it is permitted to engage in all aspects of the agro forestry business.

This discovery is noted here because the apparent lack of certification for the agriculture component of their projects for some developers in other SABLs under investigation is a cause for concern. Certain sub-lease holders appear to be 'developers' with no primary experience base and expertise in the agriculture aspect of the Agro Forestry business, which is why they seem likely to contract out the Agriculture development component (which of course is the sole purpose of SABLs) to entities not consciously approved and or sanctioned in the LIR process conducted within the spirit of Section 102 of the Land Act 1996.

1.8 DAL Status (Land Use Plans, Certificate of Compliance, etc)

An 'Agriculture Land Use Plan' has been made available for the COI's requirements. It constitutes a Project Proposal.

DAL has approved this project. By way of several letters, one letter in particular dated 22nd December 2010 DAL, under the hand of its Deputy Secretary Mr Francis Daink, advised Gold World Resources Co (PNG) Limited that its Integrated Agro Forestry Project proposal over Portion 59C had been approved. Mr. Daink also issued and file for this developer a Certificate of Compliance for large scale conversion of forest to agriculture or other land use development pursuant to Section 90A (3) (i) of the Forestry Act 1991 (Form 235). For all intent and purposes, Gold World Resources Co (PNG) Limited has been approved to commence work on its project. However it is to be noted here that there are major boundary over lapping issues (see Reports for Portion 26C & 27C) that create uncertainties over the validity of this SABL. Gold World Resources Co (PNG) Limited also needs to construct a 35 kilometre road inland connecting the Sepik Highway.

Evidence available to this COI shows that the agriculture component of this project will be composed of an integrated portfolio of economic trees and other fruit plants.

1.9 DEC Status (Meeting Requirements for Approval in Principle)

DEC process appears to await the final approval, which is the issuance of a Ministerial Approval in Principle. The Environment Inception Report (EIR) and

Environment Impact Statement (EIS) were prepared and presented and accepted after a request for re-submission.

1.10 Forestry Act 1991 (Meeting Requirements for Grant of FCA)

No Forest Clearance Authority (FCA) has been issued for this SABL despite the fact that the Deputy Secretary of DAL has issued to the developer a Certificate of Compliance for large scale conversion of forest to agriculture or other land use development pursuant to Section 90A (3) (i) of the Forestry (Amendment) Act 2007 (Form 235). That would ordinarily trigger the issuance of a FCA but for some reasons it was not issued.

1.11 Landowner Concerns

Landowner concerns were raised by Mr Moses Lalyawo, Chairman of Nakap Agro Forestry JV Development Limited who testified as representative of those opposing West Maimai Limited, Yangkok Resources Limited and Palai Resources Limited over Portion 59C in the same manner as he opposed Wammy Limited over Portion 227C. Mr Lalyawo told the inquiry that he is concerned that his people's land has been divided up without their consent. He said during the hearings at Vanimo that some 355,900 hectares of land, which should come under the control of Nakap Agro Forestry JV Development Limited has been distributed over Portion 26C, Portion 27C, and Portion 59C. He also said his people's land that straddles the two Sepik province's boarder has even been included in another SABL in the East Sepik Province. This gives one some indication on how big and massive the land is that is now the subject of his inquiry. Moses Lalyawo's evidence and opposition submissions that amplify the thrust of his evidence are contextualized in the Summary of Witness's Evidence below.

1.12 Summary of Witnesses Evidence

A number of witnesses testified in this matter. The 1st witness was Mr Joseph Sungi, former Provincial Administrator of Sandaun Province. He testified in relation to this and the other six (6) West Sepik Province SABL matters on 15th November 2011 at the Vanimo Local Government Council Chambers. His evidence was that he executed the Certificate of Alienability attached to the LIR in this matter because he 'thought' everything was in order. He also gave other general evidence. The highlights of some aspects of his evidence are stressed in their appropriate context in the other Sandaun Province matters Reports.

The 2nd witness to testify was Mr Daniel Waranduo. He is the current Director of Lands (Provincial Lands Officer) for the Sandaun Province. He gave evidence on 17th November 2011. He confirmed that there was a form of Land Investigation conducted and a LIR was generated as a result. He further said that he vetted the LIR, which was principally created by Simon Malu of the DLPP, for the Provincial Administrator to execute the Certificate of Alienability.

Mr Waranduo said some incorporated land groups have not given their consent to West Maimai Investment, Yangkok Resources Limited and Palai Resources Limited and the developer Gold World Resources Company (PNG) Limited to be the developer of the project. It is to be noted that Mr Waranduo confirms that there was conscious dissent and opposition during the Land Investigation process. Obviously the LIR did not reflect that. Therefore what happened thereafter was not on the bases of popular landowner consent. This conclusion therefore lends credence to and strengthens the position of Nakap Agro Forestry JV Development Limited.

Mr Moses Lalyawo was the 3rd witness in this matter. He testified on 18th November 2011. His evidence is adequately discussed throughout this Report and it need not be repeated here except to note that his strong objections against the other landowner companies and his desire on behalf of his ILG to separate from the other ILGs.

B. FINDINGS

The following findings are made:

- (i) There were a total of seventy-five (75) ILGs listed as affected by this SABL over Portion 59C but only thirty-five (35) ILGs have given consent for the SABL through their respective representatives. It was apparent throughout the evidence that there were a lot of disagreements and disputes over the composition and make-up of the directors and shareholders of the three (3) landowner entities – West Maimai Ltd, Yangkok Resources Ltd and Palai Resources Ltd as ‘joint tenants’ of this SABL.
- (ii) The landowner company-Nuku Resources Ltd owner of Portion 26C has also opposed SABL over Portion 59C particularly in relation to the proposed projects around the Yangkok LLG area.
- (iii) Portions 26C (239,810 hectares), 27C (105,200 hectares) and 59C (149,000 hectares) covers a total of 494,010 hectares of land stretching from Sandaun

Province across to East Sepik Province. The land size is massive and covers a lot of villages with a big population within the area.

- (iv) No project has not substantively commenced on Portion 59C. It commencement appears to be delayed pending grant of FCA by PNGFA. The FCA application is still pending approval by PNGFA.
- (v) All the other approvals and permits from other agencies of the government have not yet been given for this project for it to commence operations. There is no road access to the area.
- (vi) There appears to be no Project Development Agreement between the landowners and the developer to indicate the types of benefit he landowners would receive from the project.
- (vii) The three (3) SABLs over Portion 26C, 7C and 59C are from within the same locality and criss-crossing each other with no clear demarcation of the boundaries and it is totalling confusing.
- (viii) There is apparent dissent amongst the landowners for variety of reasons ranging from opposing the SABLs to dissatisfaction and disputes over the make-up and composition of the shareholding arrangements and directorship positions on the boards.
- (ix) The Land Investigation Process (LIP) was not properly executed and the Land Investigation Report (LIR) was badly done. Even though some landowners appear to have been consulted and their signatures collected, the genuineness of the LIR is in doubt in the light of the allegations of fraud raised by the opposing group.
- (x) The Boundaries Walk did not happen despite the assertion by some witnesses that they conduct the boundary inspection. The sheer size of the land mass involved ruled that out but as a requirement this pivotal activity of the LIP did not take place.
- (xi) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries have not been breached was not properly obtained.
- (xii) Not all landowners have given their consent to lease their land for the SABL as required under Section 11 of the Land Act.

- (xiii) The Certificate of Alienability (CoA) was executed without careful assessment with regard to the lack of popular support for the project and visible opposition to West Maimai Ltd, Yangkok Resources Ltd and Palai Resources Ltd as preferred entities to represent the interests of customary landowners. This also includes the developer Gold World Resources (PNG) Ltd. No traditional land use rights were noted or preserved. That is a reckless failure. Excess rights, both for survival or pleasure, should have been reserved. The land mass is vast and not all of it is needed for the proposed Agro Forestry project.
- (xiv) Landowners who constitute Nakap Agro Forestry JV Development Limited have already mobilized themselves in the same way other SABL holders have done but they find their land included in three separate SABLs, namely Portion 26C held by Nuku Resources Limited, Portion 27C held by Wammy Limited and Portion 59C held jointly by West Maimai Investment Limited, Yangkok Resources Limited & Palai Resources Limited. They appear to be pro agro forestry projects.
- (xv) The claims of overlapping boundaries, both on SABL maps and in respect of traditional land rights, by the Proponents of Nakap Agro Forestry JV Development Limited is serious. At the least it confirms the suspected arbitrary creation of maps based sole on satellite technology by different people at different times with no reference to existing maps. At the most these claims implicate and impact upon the validity of all three SABLs, namely Portion 26C, Portion 27C and Portion 59C.
- (xvi) The above finding by implication means that the conclusions reached in relation to these three SABLs (Portion 26C, Portion 27C and Portion 59C) stand to be affected, at least to the extent that their territorial and boundary integrity and validity was left undiscussed in their respective Reports.

C. RECOMMENDATIONS

- (i) Recommendations made previously for the two (2) SABLs (Portions 26C & 27C) on processes and procedures pertaining to acquisition of an SABL applies equally to Portion 59C for the simple reason that they involved the same landowner groups and are also located within the same area or vicinity sharing common boundaries;
- (ii) The COI recommends that the Joint Tenants comprising West Maimai Ltd, Yangkok Resources Ltd and Palai Resources **SURRENDER** the title held over Portion 59C and subject it to a further **REVIEW** specifically relating to adjoining boundaries which will require a proper Land Investigation process to be carried out and

informed consent of all affected landowners obtained prior to the issuance of a SABL;

- (iii) The board structure and the shareholding arrangements and directorship of the of the landowning companies – West Maimai Investment Ltd, Yangkok Resources Ltd and Palai Resources Ltd are to be **RE-NEGOTIATED** and **RE-CONSTITUED** with equal representations from all landowner’s ILGs; and
- (iv) All or any work currently undertaken by the developer of the project on Portion 59C are to be suspended until the review is completed.

SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Listing – Annexure “X”)

NO	NAME & DESCRIPTION OF DOCUMENTS RECIEVED BY THE COI FOR PORTION 59C	SOURCE OF DOCUMENT
Department of Lands & Physical Planning (DLPP)		
1	Set of Land Investigation Reports (LIR) dated 07/02/10	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 2/151	DLPP
3	SABL Title Deed dated 26/04/ 10.	Registrar of Titles
4	Gazettal Notice Dated 23/04/10.	G83/10
5	Lease-leaseback Instrument dated 9/10/10	DLPP
6	A set of 3 X Subleases (for 50 yrs) to Gold World Resources Co. (PNG) Limited by the joint SABL title holders dated 06/ 07/10	DLPP
Investment Promotion Authority (IPA)		
1	Current extract set for Gold World Resources Co. (PNG) limited	IPA
2	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to Global Limited, dated 24/11/10	IPA
3	Current IPA extract set for West Maimai Investment Limited	IPA

3	Current IPA extract set for Yangkok Resources Limited	IPA
4	Current IPA extract set for Palai Resources Limited	IPA
	PNG Forest Authority (PNGFA)	
1	Certificate of Registration as Forest Industry Participant issued to Global Limited, dated 02/06/11	PNGFA
	Department of Agriculture & Livestock (DAL)	
1	DAL File containing assorted documents & correspondences, including DAL approval notices	DAL
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC
	Miscellaneous /Submission from Parties	
1	Indexed Manila Folder containing Approval documents	Gold World Ltd
2	"Project Proposal"	Gold World Ltd
3	"Report of irregular activities" (Petition) by thirteen persons from Yangkok who have interests in land covered by Portions 26C & Portion 59C dated 22/08/11	13 persons signed the petition.

**7. BEWANI PALM OIL DEVELOPMENT LIMITED (Portion 160C)
(SABL NO. 35)**

A. REPORT

This is the final Report on Special Agriculture and Business Lease (SABL) over **Portion 160C**. It is No. 35 on the original Commission of Inquiry (COI) List. Portion 160C is a 'Direct Grant' under Section 102 of the Land Act 1996 to **Bewani Palm Oil Development Limited** of Bewani in the Sandaun Province.

1.1 Terms of Reference Covered

All Terms of Reference (TOR) heads (a) to (i), except (g), were fully covered. Further investigations for purposes TOR (g) (i)-(iii) remain uncompleted, particularly in relation to employees of the contracted entity that is now visible on the ground within the SABL – Bewani Forest Products Limited. It was not possible to complete investigations into the operations of this company mainly because its involvement was not known before the site visit to the SABL area. It has been difficult to expand our investigation into this aspect after their involvement became known. However this entity is owned by the same two people who own the sub-lease over Bewani Oil Palm Plantations Limited and that it appears to be fully certified Forest Industry Participant and whilst it is a PNG incorporated entity because of the nationality of its owners it has been certified as a foreign entity, permitting it to carry on business in PNG.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully assessed. The monitoring, oversight, approval and permit setup in the Departments of Agriculture & Livestock (DAL) and Environment & Conservation (DEC) were investigated. Papua New Guinea Forest Authority (PNGFA) process for granting Forest Clearance Authority (FCA) was scrutinised. Also whether or not informed consent of the landowners was obtained at every stage; from the initial land investigations stages to pre and post permit approval public hearings, was fully investigated.

1.2 Sources of Information

Brief facts disclosed in the COI Listings constituted the initial data in this matter. The Gazettal Notice was obtained as a result of inquiry at the Government Printing Office (GPO). A file containing copies of the Land Investigation Reports (LIRs), Survey Plan (Map), Lease–leaseback Instrument, Notice of Direct Grant,

copy of Title deed, and various documents and correspondences were obtained from the DLPP.

Company extracts were obtained from Investment Promotion Authority (IPA). Other records, mostly of correspondences and approvals were obtained from DAL, PNGFA and DEC. All documents obtained or received for this matter are tabulated in the Schedule of Documents. Bewani Palm Oil Development Limited submitted documentary information before, during and after the formal hearing in this matter.

The final source of information is transcript evidence from witnesses. These are summarized below in this Report. Some witness's evidence transcripts were either missing (not transcribed on the records) or defective (illegible). Like in most of the other Sandaun Province's SABLs investigated, transcript of some of the witnesses' evidence obtained at Vanimo turned out to be defective. It is likely due to bad recordings but possibly as a result of poor transcribing as well. The defects are not major and where needed the intent of evidence has been elicited from the nature of the immediate line of inquiry as well as the content and context of questions posed.¹⁶

1.3 Location of Portion 160C

Portion 160C is a 99 year SABL. It is contained in DLPP file, Volume 15 Folio 41 and is located in the Milinch of Oenake (SW) & (SE), Bewani (NW) (NE) and Fourmil of Vanimo in the Sandaun Province. It covers 139, 909 hectares of land, the area of which is delineated on a Class 4 Survey Plan bearing Catalogue Number 1/130.

1.4 Land Ownership and Land Disputes

Prior to its conversion to SABL the entire 139, 909 hectares of land now encompassed within Portion 160C was customary land.

No land disputes were mentioned in evidence. As a result no findings of land disputes are noted in this Report for any of the land area covered by Portion 160C. Findings on the issue of unqualified landowner consent are discussed further in this Report in the context of the Findings.

¹⁶ Annex. "X"

1.5 Grant of Lease

Portion 160C containing 139, 909 hectares was granted directly to Bewani Palm Oil Development Limited for 99 years. The grant is dated 11th July 2008. It was gazetted on 14th July 2008 through National Gazette Issue No G124 of 2008. The lease was granted under the hand of the then DLPP Secretary of DLPP Mr Pepi Kimas as the Ministerial Delegate.

Bewani Palm Oil Development Limited was incorporated on 3rd March 2008. Mr Belden Norman Namah was the sole shareholder then and the directors were John Wuni, Belden Norman Namah, Bob Namah, Ambrose Bewatou, and Tom Sirae. The latter was also the company secretary and he still continues to be so according to IPA records.

Bewani Palm Oil Development Limited has a chequered history and it needs to be stated briefly here.

On 8th April 2008, barely a month from the date of incorporation, Bewani Palm Oil Development Limited changed ownership. It was sold for a “cash” consideration by the sole shareholder Belden Norman Namah to one Jimmy Tse. All the original directors ceased to be directors. Jimmy Tse and one Hung Kai Hii (a Malaysian national) then became the directors. On 21st October 2010 Hung Kai Hii ceased to be director. This therefore meant that Jimmy Tse (who appears to be a Papua New Guinean) became the sole director of Bewani Palm Oil Development Limited as at 21st October 2010 and he continues to be so.

It is to be noted that Bewani Palm Oil Development Limited, a landowner company with an asset base of a 99 year SABL (Portion 160C) containing 139, 909 hectares of virgin tropical forest tract, was sold for ‘cash’ to a person who was not consciously approved by the landowners through the Section 102 (Land Act 1996) process.

IPA extracts show that on 24th November 2008 Bewani Palm Oil Development Limited (by then fully owned by Jimmy Tse) issued 999900 shares, bringing the total issued shares to one million. It remains unknown, but given that only one person constituted the Board of Directors at the time the extra share issue is unlikely to have been authorized by Board of Directors’ resolution.

On 23rd March 2009 (less than a year after he acquired ownership of the SABL owning company) Jimmy Tse transferred all of the million shares in Bewani Palm Oil Development Limited for a consideration of K1.00 each in the following manner:

- (a) Transferred 800,000 shares (80%) to Million Miles Group Limited of Singapore;

- (b) Transferred 150,000 shares (15%) to a Bewani Palms Management Limited to be held “in trust” for four (4) landowners groups; and
- (c) Transferred the remaining 50, 000 shares (5%) to Bewani Palms Management Limited.

IPA extracts further shows that Million Miles Group Limited has its registered office in the British Virgin Islands. Between 20th March 2009 and 21st October 2010, Million Miles Group Limited was 80% owner of Bewani Palm Oil Development Limited. The implication therefore is that for a time a landowner company with unrestricted control of a 99 year SABL lease (Portion 160C) containing 139, 909 hectares of virgin tropical forest tract, was effectively in foreign hands.

The COI is not able to ascertain the motive and/or reasons behind the sale and re-sale of Bewani Palm Oil Development Limited and share movements to different individuals and entities in a short space of time as there was no evidence forthcoming on that. The whole transactions remain a total mystery. In the absence of any evidence to the contrary, the likely assumptions relating to these transactions would be that, either people just seized the opportunity to make some quick money; or there is a continuing untold narrative that may yet need clarification. One thing is certain though: the seemingly reckless speculative behaviour without any safety legal mechanisms being in place, particularly with the biggest asset that the people of Bewani have at the centre of it, is almost criminal in nature.

The Land Investigation process may have been carried out either deceptively or under a mistaken belief that Bewani Palm Oil Development Limited would remain as a landowner company. That would have been promoted as the preferred landowner entity in order for it to be agreed as the SABL holding entity under Section 102 of the Land Act 1996. However, by the time the title deed was issued on 11th July 2008, the company had already been sold to Jimmy Tse. Contrary to the law’s intent the SABL (Portion 160C) was directly granted to a non-landowner, one man ‘paper company.’ Not long after that the greater danger became manifested. The company was then effectively transferred to a foreign company with only a few token shares being held ‘in trust’ for the landowners. The reasons why these arrangements were made continue to puzzle a lot of people. The point being made though is that all of this dangerous speculative behaviour need not have taken place at all. They need never happen elsewhere too.

Due to time and costs constraints that has plagued this COI it has not been possible to carry out compliance searches at IPA so it is not known if Million Miles Group Limited complied with requirements under the Investment Promotion Act

1992 (as amended), including requirements under Section 36A (2) of it, which say foreign enterprises must obtain from IPA a certificate permitting foreign enterprises to acquire or hold an interest in a national enterprise. For the record though, on 21st October 2010, Million Miles Group Limited transferred all its shares to the four Landowner companies so it no longer has any interest in Bewani Palm Oil Development Limited.

The four landowner companies that own equal shares in Bewani Palm Oil Development Limited are:

1. Bewani Palms Management Limited is owned by a Philip Eludeme (PNG citizen) and its directors are Philip Eludeme himself and three other Papua new Guineans namely, Charles Litau, John Wuni and Bob Namah. On 21st October 2010 it also transferred all its shares in Bewani Palm Oil Development Limited to the four landowner companies. Therefore it no longer has any shares in Bewani Palm Oil Development Limited.
2. The 'holding in trust' arrangement with respect to the 150,000 shares referred to above appears to have been formalized on 21st October 2010. The "Lancos" (landowner companies) now own all the issued one million shares (in equal shares of 250,000 each) in Bewani Palm Oil Development Limited. The Landowner companies are Palms 21 Limited, Momu Holdings Limited, Ossima Yalamaki Limited, and Bulaulai Limited. IPA information shows that two of these 'Lancos' are wholly owned by ILGs and the other two are owned by individuals.
3. Bulaulai Limited was incorporated on 3rd September 2008. It is owned by eleven ILGs. Its eleven directors appear to be the respective chairman of these ILGs. Ossima Yalamaki Limited was incorporated on 21st August 2008. It is owned by thirteen persons who are also its directors. Momu Holdings Limited was incorporated on 4th July 2008. It is owned by Camillus Abu and Jacob Yani. It is not known whether the two men hold their shares in trust for any groups. They and seven others are directors. Palms 21 Limited was incorporated on 22nd February 2008. It is owned by twenty three ILGs. It has five directors.
4. The Developer is Bewani Oil Palm Plantations Limited. It was incorporated on 10th October 2010. It is equally owned by a Kim Tee TEE and a Lip Hian TEE. They are both Malaysian nationals. They and a Papua New Guinean called Marie Manumanua are the directors.

On 16th November 2010 a sublease was entered on behalf of Bewani Oil Palms Plantations Limited. An appended “Agricultural Sublease” instrument that was filed at the time of this entry at the title office shows that the sublease to Bewani Oil Palms Plantations Limited is for the “remaining term of the lease”. This instrument also states that a “Project Agreement” entered into between the SABL holder, the Landowner Companies, and Bewani Oil Palms Plantations Limited on 28th October 2010 is part of the sub-lease. After the Vanimo hearings the developer has produced to the COI a Project Agreement.

It needs to be stated too that, earlier correspondences on the DAL, DEC and PNGFA files show that an entity called Maxland (PNG) Limited was initially involved in the Bewani Oil Palm Development Project. By an initial development arrangement Maxland (PNG) Limited was to hold 85% in Bewani Oil Palm Development Project and Bewani Palm Oil Development Limited 15%. That arrangement was approved by DAL. At some point the DAL Secretary wrote to the Chairman of the National Forest Board to persuade the National Forest Board to grant a Forest Clearance Authority to Maxland (PNG) Limited. In the letter the Secretary of DAL Mr Anton Benjamin confirmed that all the DAL approvals had been granted. By implication this means the Bewani Oil Palm Development Project was approved on the basis of agriculture Land Use Plans submitted by Maxland (PNG) Limited.

Since Maxland (PNG) Limited was the preferred developer when the DAL, DEC and PNGFA processes were commenced, DEC prepared a company profile which is retained in the COI’s PNGFA file. The profile shows Maxland (PNG) to be a Malaysian company and is wholly owned by a Priceworth Wood Products.

Maxland (PNG) has faded completed out of the picture. Why and how this entity was disengaged with by Bewani Palm Oil Development limited is unclear.

1.6 Compliance with Sections 11 & 102 of the Land Act 1996

The DLPP file shows that land investigations were carried out over a period of time and various Land Investigation Reports (LIRs) were prepared in respect of each ILG. Landowner representatives of each constituted in the various ILGs consulted signed their attestations for having participated in the process, including the boundary walk and also to indicate their consent (as agents) for a lease-leaseback to be issued. It is not known as to whether

these same people executed on the Lease-leaseback Instrument later because the Instrument of Lease leaseback is not before this COI.

Mr Joseph Sungi, the Provincial Administrator, signed off the Certificate of Alienability (CoA) to authenticate the LIR process and also pave way for a Lease-leaseback Instrument to be executed between the State and landowners. But as noted above whether a Lease leaseback Instrument was executed is uncertain because no copy of it is in the DLPP file and there is no explanation for its absence. As he did in others, Mr Sungi made no reservations for any traditional landowner rights in this matter.

Mr Sungi told that he inquiry that he was 'forced' by certain officers of the DLPP to sign the Certificate of Alienability (CoA) for the Bewani Oil Palm SABL when he came to the DLPP's office apparently for other business. He said he was surprised but realized that there was a lot of 'political pressure' to sign the CoA. He has not seen the Land Investigation Report (LIR) and had no idea if there was one on file. For the record, the LIR is the most fundamental pre requisite requirement to signing the Certificate of Alienability. Mr Sungi failed to carry out the necessary due diligence required of him as the head of the province before he signed off on the CoA.

On the face of it the bare minimum requirements of the Land Act 1996 for this matter seem to have been complied with. Also current DLPP best practices that makes operational and enlivens the general intention encapsulated under Sections 11 and 102 of that Act appear to have been followed. However the Findings set out below render these discoveries only contextual.

1.7 IPA Status of the Developer

Bewani Palm Oil Development Limited is the developer of the Bewani Oil Palm Development Project. On 16th November 2010 a sublease was granted and entered on behalf of Bewani Oil Palms Plantations Limited for the remaining term of the SABL. Bewani Oil Palms Plantations Limited is owned by two Malaysian nationals namely, Kim Tee TEE and Lip Hian TEE. These two persons also own a related company called Vanimo Forests Products Limited that is involved in logging operations in the Sandaun Province.

IPA records show that Vanimo Forests Products LTD was incorporated on 14th October 2010. This entity is the only visible presence on the ground. It was observed to be engaged in selective logging operations. Apparently it

has been engaged to do forest clearance on Portion 160C. To obtain more clarification on these arrangements Bewani Palm Oil Development Limited's Company Secretary Mr Tom Sirae was asked to produce a copy of the formal agreement that engaged Vanimo Forest Products Limited as the contracted entity. He has not done that.

Like most SABL owning landowner companies from Sandaun Province investigated by this COI, Bewani Palm Oil Development Limited is a non-functional "paper" landowner company. It has no management structure. Its single Director, Jimmy Tse, has no idea how the company is faring. There has never been any board meeting (which is not possible in the circumstances) and it is unlikely there will be one soon. Therefore, it is uncertain as to whether Vanimo Forest Products Limited is answerable to the landowner companies who own Bewani Palm Oil Development Limited or it is just answerable to the developer.

Knowledge about the involvement of Vanimo Forest Products Limited in this Project came to the attention of the COI late. Due to time and funding constraints its involvement and operations in the SABL could not be properly investigated. However the sub-lease holder seems to have transferred operational functions to Vanimo Forest Products Limited, which is owned by the same two people who are the sub-lease holders. When the parameters of engagements are uncertain, issues of transparency and questions about whether the sub-lease holder is properly discharging its contractual obligations to the landowners appear to be raised here.

1.8 DAL Status (Land Use Plans, Certificate of Compliance, etc)

DAL has approved the Bewani Oil Palm Project. The then acting Minister for Agriculture and Livestock Mr Patrick Pruaitch formally wrote to Mr Jimmy Tse of DAL's approval on 13th June 2008. DAL also prepared a Certificate of Compliance dated 25th November 2008 for large scale conversion of forest to agriculture or other land use development pursuant to Section 90A (3) (i) of the Forestry Act 1991. Issuing a Certificate of Compliance (Form 235) is a DAL function under the Forestry Act 1991. All development plans and project proposals available to this COI indicated that this project will be for oil palm production.

1.9 DEC Status (Meeting Requirements for Approval in Principle)

DEC process for this project has been fully complete. The Environment Inception Report (EIR) and the Environment Impact Statement (EIS) were submitted respectively in September 2008 and November 2008 by the developer. The later was displayed in public, for inspection and commentary (Notice in the Post Courier dated 28th November 2008). After going through the process Ministerial Approval in Principle was finally given on 12th December 2008. This project's Environment Permits (WDL3 (200)) & (WEL3 (154)) issued on 18th December 2008 are current and will expire on 16th January 2034.

1.10 Forestry Act 1991 (Meeting Requirements for Grant of FCA)

Bewani Palm Oil Development Limited and Bewani Oil Palm Plantations Limited are both registered Forest Industry Participants. Bewani Oil Palm Plantations Limited submitted a 2011-2012 'Annual Forest Clearance Plan' which was approved. It therefore is current to the 26th of April 2012. A 'Five (5) Year Forest Clearance Plan' was also approved by the PNG National Forest Authority (PNGFA). It is extremely doubtful if the developer is keeping to the approved (appended) Development Schedule on agro-forestry activities as the primary reason for such approvals. Forest Clearance Authority (FCA) granted to Bewani Oil Palm Development Project is FCA 10-03. As at 13th May 2011 no approval was given for forest clearance within the initial nursery area to transplant the almost 300,000 oil palm seedlings that were raised in the pre-nursery stage. It is noted by PNGFA that Bewani Forest Products Limited is the contractor for purposes of forest clearing.

At this juncture a discovery common to most SABLs under inquiry needs to be recorded: Section 90B (9) (a) (iii) of the Forestry Act 1991 requires forest clearing to be apportioned in blocks of 500 hectares. The PNG Forest Board may increase or decrease the figure for good cause. However it seems FCA holders (developers) are being permitted to clear 5,000 hectares (ten times what is prescribed) at any one time. Increases above the maximum allowed are being promoted by DAL. If DAL is doing this on the basis of proper technical advice available to it, it needs to produce examples of assessments made by it on the economics of scale to justify the arbitrary increase. DAL is of the view that it does not make any practical sense to only clear 500 hectares than plant oil palm or whatever cash crop and clear again another 500 hectares to plant again as this will be too costly and in most cases discouraging to the developers. This is apart from raising capital from

merchantable logs harvested through clear felling to raise capital, a common practice within the industry.

1.11 Landowners Concerns

Landowner concerns were raised by Peter Wuni and Abel Numb. Peter Wuni was threatened at the Vanimo hearings, causing the hearings in this matter to be adjourned twice. The main thrust of their evidence is that there was no Land Investigation conducted amongst the landowners. They also said that the land and timber within this SABL was 'pre-sold and money was paid to someone.' They said the landowner companies were only paid K20, 000.00 each which is not enough. Abel Numb said he was from Apombo village which is located in the middle of Portion 160C. He said he and his people were assaulted for voicing their dissent.

There have been a few correspondences from affected persons raising the same sort of complaints. Given the history of speculative dealings in the SABL holding entity recorded in this Report, the angry scene and disruptions caused at the hearing and manner in which processes were cut short to approve and create this SABL (see Mr Pepi Kimas' evidence below), the allegations of arbitrary behaviour cannot be dismissed as merely insignificant disputations of a few.

All of these witnesses' evidences are contextualized in the Summary of Witness's Evidence below. However, at this juncture the implications concerning the cancelled SABL over Portion 163C need to be stated. Portion 163C is SABL number 72 on the original COI list. Portion 163C was improperly created within the already existing Portion 160C and granted to Ossima Resources Limited. That is why Portion 163C was later cancelled by the Registrar of Titles. The story this narrative presents amplifies the underlying landowner discontent in the way the informed consent was obtained for the Bewani Oil Palm Project. The proponents of Ossima Resources Limited are naturally part of the dissent group within the Bewani Oil Palm Project.

This SABL was a direct grant over Portion 163C for 99 years. The SABL covered 31, 430 hectares of land located within the Milinch of Bewani & Onake and Fourmil of Aitape & Vanimo. The grant is dated 28th January 2011. The SABL was cancelled by the Registrar of Titles on 12th May 2011. It stands cancelled. The reason for this cancellation is affixed to the cancelled title retained by the Registrar of Titles. The Registrar of Titles became aware later that Portion 163C SABL was located within the greater SABL Portion

160C which is held by Bewani Palm Oil Development Limited. Portion 160C was issued first in time on 17th July 2008. Portion 163C is one of the 75 SABLs this COI is mandated to investigate and report on. That is all that needs to be reported of Ossima Resources Limited, but the mix up with these two direct grants underscores the fact that either not all landowners who have interests over the land constituted in Portion 163C were consulted or that they did not give their informed consent for the grant of an SABL over Portion 160C which also included their customary land. Therefore, if nothing else happens, from henceforth, Ossima Resources Limited and the cancelled Portion 163C will be the anecdote to the Bewani Oil Palm Project story.

1.12 Summary of Witnesses Evidence

A total of eight (9) witnesses testified in this matter. Pepi Kimas testified last. He is counted among those who testified in this matter because, whilst he gave generic evidence in respect of all the cases investigated, he also gave specific evidence that affect the findings and recommendations in this matter. The following nine (8) witnesses gave direct evidence in relation to this matter.

As in other cases the 1st witness was Joseph Sungi, former Provincial Administrator of Sandaun Province. He testified in relation to this and the other six (6) Sandaun Province SABL matters on 15th November 2011 at the Vanimo Local Government Council Chambers. In his brief evidence he said he executed the Certificate of Alienability attached to the LIR in this matter because he thought everything was in order. He also gave other generic evidence. The highlights of some aspects of his evidence are stressed in their appropriate context in the other Sandaun Province matter Reports.

The 2nd witness to testify was Bruno Chilong Tanfa. He was the Director Lands in the Sandaun Provincial Administration and in that capacity he carried out the Land Investigation. He gave evidence on 21st November 2011. He said everyone was for the project. Forms were issued which were duly completed and were collected. Mr Waranduo further said the LIR team talked to everyone at that time and everyone understood. He remembers that people of neighbouring tribes who own land adjacent to this SABL attested to the correctness of the boundaries and that there was no opposition to the project at the time.

Mr Tanfa said he was not involved in the mapping process. He said that in response to a query as why there were huge overlaps in boundaries. Portion

160C extends into almost a third of the area constituted in Portion 40C (which is the SABL held by Ainbai-Elis Holdings Limited). For the record Portion 40C was created later in time, which appears up front to raise issues of the validity of that SABL. However it also raises issues of lack of informed consent being granted by the people within the overlapping areas to be included in Portion 160C. People of Ainbai-Elis, especially the overlapping areas have no desire to be a part of Portion 160C and Bewani Oil Palm Project. The LIR, to the extent that it legitimizes overlaps in SABL boundaries and conflicting interests with the people within the SABL held by Ainbai-Elis (Portion 40C) is defective. That also, naturally, affects the credibility of this witness's evidence.

Peter Wuni was the 3rd witness. His evidence was disrupted initially but he finally testified on 21st November 2011. He is from the area represented by Palms 21 Limited, which is one of the four landowner companies and shareholder in the SABL holder. He said not all land owners gave their informed consent and that those who gave consent, including two his own two brothers (John and Samson Wuni), were handpicked to give consent in Port Moresby by Mr Belden Namah. Peter Wuni further said he and others Imbio One Village, Imbio Two Village and Imbinis Village were not happy with the fact that land was given away free (rent free) and the fact that money seems to have been prepaid to someone for the trees that are currently being clear felled and round logs being exported and for damages to sago trees and other damages caused as a result of the clearing for nursery at Imbio Village.

The 4th witness was Bob Namah. He is the Chairman of Bulaulai Limited. One of the four landowner companies who are equal shareholders in the SABL holder. Out of all the witnesses who testified Mr Namah provided the most comprehensive justification for the Bewani Oil Palm Project. He gave evidence that provides possible reasons why persons of interests such as the proponents of Ossima Resources Limited might be demonstrating a level of dissent and also why individuals like Peter Wuni are coming forward now. Mr Namah refuted a suggestion put to him that monies have been paid as inducements to obtain people's silence, if not support for the project. Mr Namah concluded by asking the COI to make appropriate recommendations that might make things work better, not just find fault with people's effort to improve their lives.

The merits of Bob Namah's evidence will be weighed against the totality of the evidence in this Report. What will not be cured by his evidence is the substantial boundary overlap with adjacent SABLs, especially with Portion

40C, and the undisputed wish of those within the other SABLs not to be a part of the Bewani Oil Palm Project.

Joe Samou and Jim Sumo were the 5th and 6th witnesses. They are the Chairman of Ossima Yalamaki Limited and Momu Holdings Limited respectively. Their evidence only merely supports what Bob Namah said. They also feel there is no much dissent or opposition to the Bewani Oil Palm Project from their people. They further said that their people need services that the government and provincial government almost cannot provide, especially roads as they need to have access to the modern world. That is why they support the project.

Abel Numb was the 7th witness in this matter. He identified himself as the second in charge in his Apombo Village and he represented everyone from his village and the Chief who was illiterate and too old but who in fact was opposed to the Bewani Oil Palm Project. Mr Numb gave evidence on 22nd November 2011, in opposition to the project. As already noted in this Report as matter of landowner concern, Mr Numb said he and his people from Apombo Village were assaulted for voicing their dissent.

Mr Jimmy Tse was the 8th witness. He is the sole director of Bewani Palm Oil Development Limited. As already noted in this Report under the IPA Status of the developer and related companies, Mr Jimmy Tse has no idea how the SABL holder is faring. There has never been any board meeting and it is unlikely there will be one soon. The SABL holder has no management structure and, as Mr Tse agreed, the landowner company is just a 'paper company.' Mr Tse said he has been unable to disassociate himself with the company but his initial involvement was simply because of a desire to assist the landowners.

Whatever the reasons are and how Jimmy Tse got involved in the first place including his current involvement as a one-man Board of Director is just bizarre. He was responsible for unexplained and possibly unlawful share transfers and movements for which he has provided no reasonable explanation. Given what happened previously, and the fact that Bewani Oil Palm Projects is taunted and perhaps going to be one of the biggest such projects, this person's continued involvement as a one-man Board of Director in Bewani Palm Oil Development Limited without perceptible or tangible benefits to himself is strange.

Mr Pepi Kimas, former Secretary of DLPP was the last to testify. He basically said he was under a lot of 'political pressure' to issue the direct grant to Bewani Palm Oil Development Limited. He said he was pressured from the

Prime Minister's level down. For the record that probably explains why there were short cuts taken to grant this SABL.

However what is particularly unacceptable, as far as the purpose of SABLs and the current DLPP best practices in SABL administration is concerned, is the fact that this SABL was granted to a entity which had already been sold for 'cash' by its original one man owner (Mr Belden Norman Namah) to another one man owner (Mr Jimmy Tse). The latter had nothing in common with the resource owners. He particularly did not have their informed approval under law to be the sole owner of the SABL title holder. Mr Jimmy Tse's involvement, the 'cash' sale arrangement, what transpired soon thereafter (including share transfers to a foreign company) were matters that the landowners simply could not have sanctioned through the LIR process.

B. FINDINGS

The following findings are made:

- (i) The Bewani Oil Palm Project has commenced. It has two nursery sites. It is said there are over a million seedlings in these nursery sites. Planting has commenced at the major nursery site at Imbio Village. The only place properly cleared for planting is at the Imbio nursery site. It is doubtful whether all the seedlings at the sites will be re-planted as the Imbio nursery site is not big enough for even half the seedling stock to be re-planted. There appear to be no other areas being prepared to be planted soon.
- (ii) Bewani Palm Oil Development Limited (SABL holder), Bewani Oil Palm Plantations Limited (developer) and the four landowner companies which hold equal shares in the SABL holder signed and entered into a 'Development Agreement' to develop Bewani Oil Palm Project. At the moment the SABL holder and its shareholding landowner companies remain unstructured 'paper companies.' The activities taking place on site are funded and carried out by the developer and its related company, Bewani Forest Products Ltd.
- (iii) Simmering landowner discontent and dissent existed well before this COI was commissioned with its TORs and continues to exist. The bases of discontentment appear to be their initial lack of informed consent to be part of the project.
- (iv) There are major overlaps within the boundaries of Portion 160C and the adjacent Portion 40C. Considering the size of the overlaps there will almost certainly be

irreconcilable legal issues unless the overlapping issues are addressed with due speed.

- (v) DAL, DEC And PNGFA approvals and permits have been issued. What is lacking is follow up monitoring for purposes of compliance and progressive reporting particularly on land development projected time lines as there already appears to be delays in the project implementation schedules.
- (vi) The Land Investigation Process (LIP) was not properly carried out and the Land Investigation Report (LIR) was badly done. There were no reservations noted in the Certificate of Alienability (CoA). Garden areas, sago patches and hunting grounds and other areas of importance to the majority of the people within the SABL area who are a still rural-based and subsistence farmers were not preserved. As a result there will be long term issues of livelihood on the land if the anticipated riches from oil palm do not materialize. There is a plan to relocate landowners into selected areas, to make viable a housing scheme agreed under the development agreement (also to contain landowner freedom as well?) is likely to compound the consequences of non-reservation of landowner rights. The following defects were noted from the LIP:
 - (a) Whilst effort may have been made to consult some landowners and collect signatures, and the number of villages consulted does indicate time and effort spent;
 - (b) The Boundaries Walk did not happen. The sheer size of the land mass involved ruled that out but as a requirement this pivotal activity of the LIP did not take place;
 - (c) Declaration as to Custom, which is an attestation by owners of adjacent lands that the integrity of their land boundaries have not been breached was not properly obtained. Almost immediately, the lack of certainty on the boundaries coupled with no effective consultation with border people has translated to the huge border overlaps and forced inclusion people who have no wish to be part of the project; and
 - (d) The Certificate of Alienability (CoA) was executed without careful assessment of consequences. No traditional land use rights were noted or preserved. That is a reckless failure. Excess rights, both for survival or pleasure, should have been reserved. The land mass is so vast and not all of it (139, 909 hectares) is needed for proposed Agro Forestry activities. The Provincial Administrator and the Lands Officers who advised him are equally at fault.

- (vii) There is no real opposition to any form of project. Had the LIP and LIR been carried out and done properly there could have been better appreciation by the persons who show dissent. The initiative that led to the grant of Portion 163C to Ossima Resources Limited, which was a SABL within a SABL was partly as a result of lack of full consultation and partly as result of a desire to be separate. The Title was cancelled regularly.
- (viii) For the record the 'cash' sale of the SABL holder (before it was granted the SABL), the intriguing share floats without a Board of Directors' Resolution, and the share transfers within and outside PNG remain unexplained. What purposes were served by these mysterious share movements has not been explained. However it does highlight the inherent risk SABLs granted no strict landowner controls are exposed to. It also underscores the need to put in place regulations to ensure that shares in SABL holding entities do not become the subject of speculative dealings.

C. RECOMMENDATIONS

1. Bewani Oil Palm Project appears to be viable. However the ability by DAL, DEC and PNGFA to effectively monitor permit conditions to ensure compliance is almost non-existent. And as long as the landowner entities remain unstructured "paper companies" they will lack the capacity to ensure that the developer delivers upon agro forestry component of the Project Development Agreement after the selective logging of hard wood stops. Therefore Bewani Palm Oil Development Limited (the SABL holding entity) must become fully functional with a proper management structure as a matter of priority.
2. The overlaps in the boundary between Portion 160c and Portion 40C must be rectified as a matter of priority to avoid serious consequences down the line.
3. DLPP's Land Investigation Process (LIP) appears to be a good strategy overall. If the process is strictly and diligently followed, it could ensure that contextual, informed consent of customary land owners and customary land rights holders are obtained. For this reason, the LIP needs to be improved. Mere use of forms is restrictive. There must be substantive compliance on every requirement of the LIP:-

- (a) Landowners must be free to attach qualification or conditions to their consent if they wish because merely offering signatures may not reflect their real (contextual or relative) position;
- (b) There is a clear difference between the attestation of those who traverse the SABL boundary (boundaries walk) and attestation by owners of adjacent land who must confirm that the boundaries of the proposed SABL do not infringe upon the boundaries of their own clan lands. These are two separate attestation requirements. The two forms must be distinguishable one from the other.
- (c) The Certificate of Alienability (CoA) format needs to be changed. What is of value is the substantive compliance in relation to its purpose: The CoA is the final attestation that landowners have agreed to have their customary lands alienated and they have agreed to have their rights over it suspended. It is the message being conveyed through the execution of the CoA that is critically important. The CoA process is not just a 'bump on the road' step to be overcome by those in a hurry.
- (d) The CoA in this matter was executed without careful assessment of the consequences. No traditional land use rights were preserved. That is a reckless failure, given the sheer size of the land mass and the fact that not all 139,909 hectares of land was going to be needed for Agro Forestry activities. The Land Use Plan submitted by the developer discloses that between 30 - 40% of the land will be utilized for agriculture purposes. The failure of the Provincial Administrator and the Lands Officers who advised him possibly borders on criminal negligence.

The COI recommends that the SABL grant over **Portion 160C** to **Bewani Palm Oil Development Limited** is to be **REVOKED** and **REVIEWED**. The COI is satisfied that there was no proper LIR been conducted and 'informed consent' of the landowners including those landowners of the adjacent land (Portions 40C) was not obtained prior to the issuing of the SABL title. The whole shareholding arrangements including the company structure of the Bewani Palm Oil Development Limited needs to be reviewed as well.

SCHEDULE OF DOCUMENTS RECEIVED
(Refer to Listing – Annexure “X”)

NO	NAME & DESCRIPTION OF DOCUMENTS RECEIVED BY THE COI FOR PORTION 160C - Bewani Palm Oil Development Limited	SOURCE OF DOCUMENT
Department of Lands & Physical Planning (DLPP)		
1	Set of Land Investigation Reports (LIR) dated 10/06/08	DLPP
2	Rural Class 4 Survey Plan - Catalogue No. 1/130	DLPP
3	SABL Title Deed dated 11/11/ 08	Registrar of Titles
4	Gazettal Notice Dated 14/07/08	G243/10
5	Lease-leaseback Instrument dated 28/08/10	DLPP
6	Sublease for 'remaining term of the lease granted to Bewani Oil Palms Plantations Limited dated 28/08/10	DLPP
Investment Promotion Authority (IPA)		
1	IPA extract for Bewani Palm Oil Development Limited (BPODL)	IPA
2	IPA extract for Bewani Oil Palms Plantation Limited (BOPPL)	IPA
3	IPA extract for Bewani Forest Products Limited (BFPL)	IPA
4	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to BOPPL, dated 29/11/10	IPA
5	Certificate Permitting Foreign Enterprise to carry on Business Activity issued to BFPL, dated 29/11/10	IPA
PNG Forest Authority (PNGFA)		
1	Hard bound PNGFA file (No. 157-10-03) containing all docs. on Bewani Oil Palm Development Project; PNGFA generated and received documents	PNGFA
PNG Forest Authority (PNGFA)		

	Department of Agriculture & Livestock (DAL)	
1	DAL File containing assorted documents & correspondences, including DAL approval notices	DAL
	Department of Environment & Conservation (DEC)	
1	DEC File containing assorted documents & correspondences, including DEC approval notices	DEC
2	Letter advising grant of "Approval in Principal" 12/12/08	DEC
	Miscellaneous /Submission from Parties	
1	"Project Agreement" between BPODL, BOPPL and the four Landowner companies dated 28/10/10	BPODL /POPPL
2	Indexed Manila Folder containing Environmental Permit Application	BPODL /POPPL
3	"Project Development Plan" dated June 2008	Consultants
4	Copy Project Agreement, copy statutory approvals and assorted records of landowner mobilization payments received from Tom Sirae (BPODL Secretary)	BPODL
5	Manila Folder containing assorted submissions, queries, complaints and correspondences from "Persons of Interests".	Persons of Interests

**8. KONEKARU HOLDINGS LIMITED (1) – (Portion 2465C)
(SABL NO. 55)**

A. REPORT

This is a final Report on Special Agriculture Business Lease (SABL) over **Portion 2456C** Volume 37 Folio 105 Granville, Port Moresby, Central Province. Portion 2456C is a 'Direct Grant' to **Konekaru Holdings Limited** ('KHL') pursuant to Section 102 of the Land Act. For the record, there are two different grants under the name of Konekaru Holdings Limited. The first grant is over Portion 2456C and the second grant is over Portion 2466C and both are adjacent to each other. Both SABLs are loosely referred to

as 'Konekaru 1' (Portion 2456C) and 'Konekaru 2' (Portion 2466C). There is also Portion 2485C granted to Veady Holdings Limited that is also adjacent to Konekaru 1 & 2. The three SABLs involved the same people in most cases and the land owning clans are also the same. The evidence will be generic for the three SABLs and they will be discussed interchangeably throughout this report.

1.1 Terms of Reference Covered

The Terms of Reference (TOR) heads (a) to (i) except for (g) were fully covered for purposes of this inquiry. IPA records show that Konekaru Holdings Limited (KHL) was duly registered under the Companies Act 1997 on the 15th September 2009 and was issued with a Company Registration no. 1-69621. A copy of the certificate of incorporation is attached and shown in the Schedule of Documents below.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully examined and assessed. The monitoring, oversight, approval and permit processing with other relevant agencies of government such as Department of Agriculture & Livestock (DAL) and Department of Environment & Conservation (DEC) were also investigated and furthermore, whether or not 'informed consent' of the landowners was obtained at every stage from the land investigation stages to public hearings including the application, registration, approval and issuance of the SABL title.

1.2 Sources of Information

Relevant government agencies were called in to give evidence relating to Portion 2456C held by Konekaru Holdings Limited including other persons of interest and the landowners. There were also other witnesses representing companies operating and conducting business on the subject land.

Aside from oral evidence tendered to the inquiry, there were also documents including Land Investigation Report (LIR), company extracts, copy of Title deed, Notice of Direct Grant as well as other relevant documents were also tendered into the inquiry. Affidavits were also filed and tendered before the inquiry by a number of witnesses. The final source of information which made up the bulk of the evidence came through the transcripts from oral evidence and presentations during the hearings.

Witnesses were called from the four (4) government agencies that were principally involved in issuing the SABL. These were: Department of Central Province, Department of Lands and Physical Planning (DLPP), Department of Provincial Affairs and Local Level Government (DPLLG) and Department of

Environment and Conservation (DEC). As this is not an agro-forestry project and not on forested land it was not necessary to call witnesses from Department of Agriculture and Livestock (DAL) and the PNG National Forest Authority (PNGFA).¹⁷

1.3 Location of Portion 2465C

Portion 2465C, Volume 37, Folio 105, Granville, Milinch of Port Moresby is located in the Motu-Koita villages of Papa and Lealea near the LNG Plant site in the Central Province and approximately 15 kilometres from the city of Port Moresby. The land is also traditionally known as “Iarogaha” comprised of a total land area of 980 hectares.

1.4 Grant of Lease

On the 14th January 2010, a ‘Notice of Direct Grant’ under Section 102 of the Land Act over Portion 2465C was issued to Konekaru Holdings Limited for a 99 year lease commencing on 4th January 2010 and expiring on 3rd January 2109. The SABL was for the 457 hectares of land situated along the Papa/Lealea villages in the Central Province. The former Secretary of DLPP Pepi Kimas facilitated the lease agreement.

The details of the SABL over Portion 2465C is as follows:

Legal Description	Portion 2465C Granville
Registered Survey Plan catalogue no.	49/2751
SABL Holder	Konekaru Holdings Limited
Date of Registration of lease	03rd January 2010
Period of Lease	99 years (4th January 2010 - 3rd January 2109)
Land area of lease	980 hectares

¹⁷ Annex. “VIII”

1.5 Landowner Involvement & Consent

The 'Iarogaha Garau Incorporated Land Group' (ILG) of Papa/Lealea was incorporated under the Land Groups Incorporation Act Chapter 147 on the 27th October 2009 initiated by Mr Henao Tetei, a village leader of the area. The purpose of its incorporation was to aid in the process of facilitating landowner support to obtain an SABL grant for Konekaru Holdings Limited. However, it was discovered later that Iarogaha Garau ILG was made up only of one clan named 'Vanemata Clan,' members of whom are descendants of 'Homoka Rei' and Henao Tetei is the eldest male descendant. Other clans are not included in the Iarogaha Garau ILG and this brought about discontentment and disputes amongst the landowners which eventually ended up in the National Court. Landowners who testified told the inquiry that they were not adequately consulted and were not involved in the process and have not given their consent for the SABL.

1.6 Company Structure & Shareholding Arrangements of Konekaru Holdings Limited ('KHL')

Konekaru Holdings Limited ('KHL') was a duly registered company under the Companies Act 1997 and incorporated on the 15th September 2009 with its company registration number 1-69621. A Charles Kassman of PO Box 1430, Boroko applied for the registration of KHL. The two appointed directors of the company were Gerard Kassman and Henao Tetei. Incidentally, Gerard Kassman also has an interest in 'CJ Ventures Limited' (a company owned by his two sons) that has a 99 year sublease agreement with Konekaru Holdings Limited.

KHL was initially established as a landowner company to participate in the spin-off benefits and other business activities generated as a result of the LNG Plant Project.

On the 02nd March, 2010 a Notice of Change of Directors was filed by Kundu Legal Services by the principal of the firm Mr Emmanuel Mai indicating that five (5) new directors were appointed. They are: Gumasa Heni, Nickey Maraga, Nao Nao, Hebore Vagua and Reverend Vani Gorogo. All these people are from Papa village and have the same postal address. Each of the new directors were issued with one share each out of the total of five shares. However, there is no record of any board minutes and resolutions appointing the new directors. On the 30th March 2010, the company issued an additional 45 shares and distributed nine (9) shares each to the five newly appointed shareholders to hold 'in trust' for their respective clans.

On the 13th April 2010, a Gomara Segrick was appointed a director of the company and Doriga Berasi appointed as a shareholder holding ten (10) shares.

However, there is no record of any board meeting to show that the two individuals got appointed to their respective positions through a resolution of the board.

Total number of shares issued to date is seventy-five (75). The majority shareholders are: Gerard Kassman with 38 shares and Henao Tetei with 37 shares after all the other six (6) trustee/directors/shareholders transferred their shares to Gerard Kassman and Henao Tetei. It is presumed that the six directors and shareholders have either resigned or terminated as directors of the company however, the IPA records did not show how and why directors lost their shares.

The timeline of important events concerning the Konekaru Holdings Limited SABL (Portion 2456C) is shown below in chronological order of their happening:

(Refer to Annexure "VIII")

Milestone		Date of Completion/Grant Execution/Issue	Proponent/Applicant	Responsible Entity/Respondent
Incorporation of CJ Ventures Limited	1	25 February 2009	Charles Kassman	IPA
Incorporation of Konekaru Holdings Limited at IPA	2	16th September 2009	Charles Kassman	IPA
Registration of Iarogaha Garau ILG	3	27th October 2009	Henao Tetei	Department of Lands
Land Investigation Report (LIR)	4	3rd December 2009	Conducted by a John Lui (retired Lands officer) and a Lazarus Malesa (National Dept. of Lands staff) and signed off by Raga Gulu (Dept. of Central Province	Department of Central Province.

			Lands Officer)	
Governor Moroi's request letter	5	4th January 2010	CoA signed at the 'direction' of Gov. Moroi	Mr Raphael Yipmaramba, P/A Central Province.
Recomm. as to Alienability	6	6th January 2010	R. Yipmaramba, P/A	Department of Central Province.
Certificate of Alienability	7	Not produced	Not done (Dept. of Prov. Affairs)	Not done (Dept. of Prov. Affairs)
Lease/leaseback Agreement	8	4th January 2010	Iarogaha No. 1 Clan members	Department of Lands Department of Central
Notice of Direct Grant	9	14th January 2010	Secretary, Dept. of Lands	Department of Lands
Registration and Issue of SABL title	10	3rd January 2010	Registrar of Title, Lands Department	Department of Lands
Sub-Lease of SABL title to CJ Ventures Limited for 99 years	11	1st February 2010	Konekaru Holdings Limited (Gerard Kassman)	CJ Ventures Limited (Charles Kassman)
Inclusion of new shareholders and directors to Konekaru Holdings Ltd. from Papa Clan	12	30th March 2010	Konekaru Holdings Limited	Konekaru Holdings Limited
Filing of OS (JR) No. 565 of 2010	13	1st October 2010	Vane and Dabara Clan of Papa and Vane Mata ILG	Konekaru Holdings, CJ Ventures, Pepi Kimas Secretary for Lands.

1.7 Legal Disputes

Legal proceeding (OS NO. 494 of 2010) was filed in the National Court relating to the shareholding arrangements of the company – Konekaru Holdings Limited (KHL). This proceeding relates to the dispute over the control and management of KHL. Five other persons from the same landowning unit declared themselves as shareholders and directors of KHL without the approval of the other existing shareholders and directors of the company. The Court ruled that allotment of shares to the five (5) new shareholders on the 02nd March, 30th March and 13th April, 2010 without the approval of the existing shareholders (through a Board resolution) is unlawful pursuant to Section 43 of the Companies Act and therefore, is invalid and not binding. The Court ruled that the first plaintiff, Henao Tetei and second plaintiff, Gerard Kassman are the only two shareholders in Konekaru Holdings Limited. The Order also restrained the other landowners, their servants, agents and associates from interfering with the operations of KHL. This Order effectively means that there are only two shareholders and directors of KHL. With the reduction of the number of shareholders, KHL is no longer a representative landowner company.

The ruling has not gone down well with the other landowners. Battle lines were drawn and things were going to get worse from then on. A judicial review (OS (JR) NO. 565 of 2012) initiated by the other disgruntled landowners was filed on the 9th August 2011 seeking a review of the Lease-leaseback Agreement as many landowners alleged that their names were not included in the Agreement and their signatures forged without their knowledge. They alleged fraudulent conduct on the part of Henao Tetei and others. They dispute the granting of the State lease but in the course of the proceedings the landownership issue crept into the pleadings. On the 16th August 2011, Justice Gavera-Nanu granted an interim junction effectively restraining the First Defendant Morea Lahui representing the Dabara clan of Papa village and its servants and agents including Vane Mata ILG; Konekaru Holdings Ltd; CJ Ventures Ltd and DLPP from dealing with the subject land (Portions 2456C & 2466C) until the matter is properly determined.

1.8 IPA Records

The recent IPA company extract dated 2nd August 2011 shows that all appointed shareholders and directors representing the different clans have ceased or their appointments revoked from the company registry. This follows a legal proceedings filed by Henao Tetei and Gerard Kassman. The Court found the inclusion of additional shareholders and directors as unlawful and not in accordance with the provisions of the Companies Act. All the shares reverts back to the two original shareholders Gerard Kassman with 38 shares in his name and

Henao Tetei holds 37 shares in his name. In effect, Gerard Kassman is a major shareholder of KHL.

At the time of incorporation of KHL, it was discovered that the company (KHL) is not a landowner company as intended for purposes of holding an SABL on behalf of the customary landowners. All the shares were held by only two individuals – Gerard Kassman and Henao Tetei. Both were also directors of the company. A Charles Kassman (biological son of Gerard Kassman) was appointed Company Secretary at the time of incorporation.

1.9 Project Developer

Konekaru Holdings Limited (KHL) appointed CJ Ventures Limited as its preferred developer of the project. CJ Ventures Limited was incorporated on the 25th February 2009. Its shareholders were Charles Kassman and John Kassman, both biological sons of Gerard Kassman who is now (after the passing of Henao Tetei) the sole shareholder KHL.

CJ Ventures Limited signed a sub-lease agreement on Portion 2456C with KHL on the 1st February 2010. The intention of the sub-lease was to make land available to Exxon Mobile for its LNG Plant site should they require additional land for lease to support their operations. KHL and CJ Ventures (sub-lessee) are owned by one family to the exclusion of all other legitimate landowners of Papa and Lealea villages. According to IPA records, Charles Kassman owns 50% of CJ Ventures Ltd whilst he holds a position as Company Secretary of KHL. It is apparent that a single family is both a lessor and sub-lessee over Portion 2456C and this goes against the accepted practices and norms of customary landownership in PNG where land is communally owned by the clans and not one family. It also gives rise to a potential conflict of interest with the same individuals involved in both companies as it does not allow business to be conducted at 'arms-length.'

CJ Ventures had fenced off a big portion of Portion 2465C directly adjacent to the LNG Plant site and has commenced its business operations. There are no documents pertaining to the regulatory approvals such as environment permit, land use plan, development agreement etc. to ensure it complies with the relevant legislations before it commenced business. Landowners in their evidence to the inquiry stated that they do not know what sort of business CJ Ventures is doing on their land and also have not seen any monetary benefits from its business operations.

1.10 Landowners' Concerns

A good number of landowners representing different clans in and around the Papa / Lealea villages have raised objections to the granting of the SABLs over Portion 2456C and Portion 2466C to KHL. It was obvious that the majority of the landowners apart from Henao Tetei have not given their informed consent for their customary land to be leased. Affidavits submitted to the inquiry by the following landowners Ata Joseph Baeau, Chairman of Vane Mata ILG; Vaguia G. Seri, Ken Kohu, and Vani Baruni, all members of the Iarogaha Clan of Papa village, Central Province have testified that they have not been fully informed and have not given their consent for their customary land to be alienated. They were been misled into thinking that KHL was a landowner company until they checked with the IPA and discovered that there were only two shareholders and directors of KHL and they are Gerard Kassman and Henao Tetei. Gerard Kassman is a major shareholder and holds 38 shares whilst Henao Tetei holds 37 shares.

They told the inquiry that Gerard Kassman is not a landowner from Papa/ Lealea villages but is from 'Muni Ogo' clan of Korobosea in NCD and has no ancestral links whatsoever with the people of Papa/Lealea and therefore, does not own any land in Papa. As far as the landowners are concerned, KHL is a non-landowner company and strongly recommended that the SABL issued to KHL be revoked immediately.

The landowners told the inquiry that there was no land investigation carried out by anyone including the inspection of the adjoining boundaries from either the Division of Lands of Department of Central or the DLPP. There was also no Land Investigation Report (LIR) produced for Portions 2456C and 2466C. There was no 'public hearing or meeting' to gauge the landowners views for these SABLs. Furthermore, there is no Certificate of Alienation (CoA) issued by the Custodian of Trust Land from Department of Provincial and Local Level Government (DPLLG) to allow for the alienation of these portions of customary land for SABL purposes.

The former acting Provincial Lands Officer of the Department of Central Province (currently attached to the Surveyor General's office of DLPP) Mr Ata Unage told the inquiry that the LIR and Lease-leaseback Agreement signed by the Agents purportedly representing the landowners is defective. Only two people signed on behalf of the all landowners who have their names listed on the documents and in some instances forged the signatures of other landowners which borders on fraud and is a criminal act. Signatures of three (3) out of the six (6) agents/landowner representatives were forged on the LIR and the Lease-leaseback Agreement. Ken Kohu, Vani Baruni and Vaguia Seri through their sworn evidence told the inquiry that although they were named as agents/landowner representatives, they have not signed on Lease-leaseback Agreement and the

signatures they sighted on the documents under their names were not their signatures and therefore, must have been forged.

The land area covering Portions 2456C, 2466C and 2485C (Veady Holdings Ltd) is huge and there a total of twelve (12) clans altogether from Papa, Lealea and Boera villages in the Central Province that have links to the land and exercise ownership rights over the land but yet they have not participated in the land investigation process and were not invited to any public meetings to discuss the SABLs and the business activities to be conducted on their land. Most importantly, majority of the landowners have not given their consent to lease their land for SABL.

1.11 Department of Central Province

Certain functions, roles and responsibilities of DLPP were transferred to the Provincial Governments through the decentralization process and devolution of powers some years ago which effectively transferred some functions of the national government to the provincial governments. One such function is the conducting of Land Investigation Process (LIP) and compiling of necessary documentations including the Land Investigation Report (LIR) for SABL application purposes. The documentations are then forwarded to DLPP for registration, processing, approval and issuing of SABLs.

Papa, Lealea and Boera villages are located in the Central Province and the SABLs (Portions 2456C, 2566C & 2485C) are in the Central Province hence, the Department of Central Province would have the jurisdiction of the first instance to deal with these SABL applications. Evidence showed that no officers from the Division of Lands Department of Central Province were involved in the LIP and other processes leading up to the issuing of the SABLs for the three (3) portions referred to above.

The then Provincial Administrator of Central Province Raphael Yipmaramba refused to sign the Certificate of Alienability (CoA) for the three (3) Portions of land (2456C-KHL '1'; 2566C-KHL '2' & 2485C- Veady Holdings Ltd) when he discovered that the no proper land investigation was carried out and particularly, that it was not carried out by his Lands Officers from the Department of Central Province. He told the inquiry that Officers from the National Lands Department (DLPP) usurped the function and conducted the land investigations without his knowledge. However, he later signed the CoA when a lawyer Emmanuel Mai of Kundu Legal Services convinced the Lands Officer Manase Rapilla to advice him to sign.

Raga Gulu is the Senior Lands Officer with the Department of Central. He told the inquiry that he was completely left out of the land investigation process (LIP). He informed the inquiry that the LIR was prepared by officers from DLPP without his knowledge. In his evidence to the inquiry he said the LIR was prepared by Lazarus Malesa from DLPP and was sent down to him to sign but he was reluctant as the whole process relating to the LIR was irregular and improper. According to Mr Gulu, the LIP and LIR supposed to have been done by him and his officers from the Department of Central and not by officers from DLPP. He was very suspicious about the involvement of DLLP in what is clearly a provincial function.

1.12 DEC Status (Meeting Requirements for Approval in Principle)

The Department of Environment and Conservation (DEC) is an important agency of government that deals with SABL applications. As stated elsewhere in this report, DEC's main focus is the project's impact on the environment and water ways including waste discharge. In his evidence to the inquiry, Gerard Kassman of CJ Ventures Ltd indicated that his company intends to make some part of the land (Portions 2456C, 2466C & 2485C) available to Exxon Mobil and LNG Plant should they require any land for storage purposes etc. As the land is within the close proximity to the LNG Plant site, it would be easy access for the company.

Given the nature of its operations it is highly likely that Exxon Mobil (LNG Plant) might be storing dangerous chemicals that are harmful to the environment and it is important therefore, that an Environment Impact Assessment study (EIA) must be carried out in accordance with Sections 47 – 56 of the Environment Act. In this case, the EIA should have been carried out by CJ Ventures Ltd or its nominated agent with the necessary technical expertise approved by DEC following its assessment of the Environment Inception Report (EIR) which is supposed to have been submitted by CJ Ventures Ltd prior to any work been carried out. There was also no Environment Impact Statement (EIS) and as a result DEC has not issued any Environment Permit to CJ Ventures Ltd to approve the usage of the land for storage purposes.

1.13 DLPP Process (Compliance with Land Act)

It was obvious that officers from DLPP comprising Lazarus Malesa, Simon Malu, Henry Wasa and Romily Kila-Pat deliberately decided to ignore and by-pass the existing protocols and practices between the DLPP and the Provincial Administration on matters relating to the granting of SABL when they decided to grant three (3) separate SABLs for KHL '1', KHL '2' and Veady Holdings Ltd respectively over Portions 2456C, 2466C and 2485C. The DLPP officers have not

consulted with the Lands Officers of the Department of Central Province before carrying out the land investigation process. Although the subject lands come under the jurisdiction of the Central Provincial Administration, Lands Officers from the Division of Lands of the Central Province were not involved in the land investigation process. It is clear that the land investigation process was 'high jacked' by officers from DLPP when this is clearly the function of Lands Division of the Department of Central.

It is also noted that the term of the sublease exceeds the term of the head lease which is improper and unlawful. The Registrar of Titles Henry Wasa went ahead to register the SABL titles under KHL when there is an existing land dispute over the land. He failed to exercise caution and did not conduct the due diligence checks to ensure that the land is free from any encumbrances before registering the title. This is a careless and reckless discharge of an official function.

Lazarus Malesa compiled the LIR when he is not authorized to do so. He does not work for the Department of Central and there is no evidence to show that he was properly authorized by the Provincial Administrator of Central Province to compile the LIR.

Romily Kila- Pat in his capacity as Acting Secretary for DLPP and a Ministerial Delegate for purposes of SABL went ahead to grant the SABLs for Portions 2456C and 2466C despite the fact that the LIR was defective and the Lease-leaseback Agreement fraudulently acquired.

1.14 Kundu Legal Services (formerly MAI Lawyers)

It appears that Emmanuel Mai of Kundu Legal Services played a major role in getting the LIR signed including the Certificate of Alienability (CoA). He became very influential in setting up the shareholding structure of KHL by including other landowners onto the board to maintain some level of peace amongst the landowners. Whilst his intentions may be good the Court ruled otherwise that the inclusion of the new directors and shareholders onto the KHL board without a proper resolution of the current board was unlawful is contrary to the Companies Act 1997.

It was also clear from the evidence that Mr Mai was heavily involved in facilitating the production of the LIR on behalf of his clients and 'rushed' the Lands Officers of Central Provincial Administration to sign the LIR which was incomplete and not properly done. Provincial Administrator of Central Province Raphael Yipmaramba told the inquiry that he was 'pressured by a lawyer' (referring to Mr Mai) who turned up at his office and left the Declaration of Alienation to be signed by Mr Yipmaramba but he refused because the LIR was not complied by Officers from

the Central Provincial Lands office. Mr Mai however, managed to convince Manase Rapilla the Acting Deputy Administrator of Central Province at that time to get Mr Yipmaramba to sign the Declaration and Recommendation for Alienation of customary land.

The conduct of Mr Mai raises a lot of questions. As it appears he was exerting pressure and to some degree coerced government officials into signing incomplete and defective LIR including the Certificate of Alienability (CoA) which resulted in the issuing of the SABL. Mr Mai's conduct is unbecoming of professional lawyer who should, at all times, act within the confines of the law and provide the best advice available and ensuring that things are done correctly on behalf of his client.

B. FINDINGS

The following findings are made:

- (1) Konekaru Holdings Ltd (KHL) was granted an SABL lease for 99 years over Portions 2456C known as "Iarogaha" through a 'Direct Grant' under Section 102 of the Land Act by the Acting Secretary of DLPP in his capacity as Ministerial Delegate on the 14th January 2010. The SABL title on Volume 37 Folio 105 dated 15th January 2010 and registered on 3rd February 2010 was issued by DLPP. The lease covers a land area of 457 hectares and situated close to the LNG Plant site near the Papa / Lealea villages of the Central Province.
- (2) Iarogaha Garau Incorporated Land Group (ILG) was incorporated under the Land Groups Incorporation Act Chapter 147 for the purposes of getting landowner's support to obtain an SABL for its nominated landowner company, Konekaru Holdings Ltd. The ILG was incorporated by Henao Tetei on the 27th October 2009. It was found however, that Iarogaha Garau ILG represents one clan only and does not represent the other 12 clans of Papa / Lealea villages.
- (3) The shareholders of the KHL are Henao Tetei with thirty-seven (37) shares and Gerard Kassman with thirty-eight (38) shares making him the majority shareholder. An attempt was made by the other landowners to become shareholders and directors but this was ruled unlawful by the Court which means that Henao Tetei and Gerard Kassman are the only two shareholders to this day. (*Henao Tetei passed away during the course of the inquiry which now leaves Gerard Kassman to be the sole shareholder of KHL).
- (4) CJ Ventures Ltd was incorporated on the 5th February 2009. The company is owned by Gerard Kassman's sons Charles and John Kassman as shareholders. CJ Ventures signed a sub lease agreement with KHL over Portion 2456C on the 1st February

2010. The lease was for 99 years effectively meaning that KHL has transferred all its rights lock, stock and barrel to CJ Ventures leaving no residual rights to KHL, the nominated landowner company. The purpose of the sub lease was to provide services to the LNG Plant site works including leasing out some parts of the land to LNG for storage purposes however, CJ Ventures Ltd has carried not carried out any substantive business operations on the Portions 2456C and 24566C to date.

- (5) The current shareholding arrangements of both KHL and CJ Ventures showed that both companies are owned by one family, the Kassman's family. With the recent passing of Henao Tetei, there is no landowner involvement or participation in the two companies. Evidence revealed that Gerard Kassman is not a landowner as he comes from the 'Muni Ogo' clan of Korobosea and has no ancestral links to 'loragaha' land in Papa / Lealea area. With no landowner's involvement, KHL is no longer a landowner company and this defeats the whole intent and purpose of SABL.
- (6) We also found that the 'informed consent' of ALL landowners was not obtained for purposes of leasing their customary land. It is also very clear from the evidence that Konekaru Holdings Limited (KHL'1') is not a landowner company. Furthermore, we found that the sublease made to the developer CJ Ventures Ltd to be fraudulent and improper.
- (7) Investment Promotion Authority (IPA) has not been diligent in the discharge of its function when it went ahead to include Nicky Maraga, Gumasa Heni, Nao Nao, Hebore Vaguia and Rev. Vani Gorogo as additional shareholders and directors of KHL on the 02nd March 2010 without a proper resolution of the board made by current shareholders. Another new appointment was made again on the 13th April 2010 when Gomara Sedrick was appointed as a director. All these new appointments were cancelled according to the recent IPA extract dated 02nd August 2010. The revocation or cancellation of their appointments were ordered by the National Court when it was discovered that there were no minutes of board meeting or resolutions recommending inclusion of additional board members and the action taken by IPA to include them is contrary to Section 43 of the Companies Act and therefore, unlawful.
- (8) There was no land investigations carried out and no public hearings or meetings held to gauge the views of the landowners and most importantly get landowner's consent to lease their land for the SABL. There was no boundary walk or inspection carried out. All these are important requirements of law under Sections 11 and 102 of the Land Act and must be complied with before an SABL is granted. We find that the whole land investigation process and compiling of the LIR were 'high jacked' by the staff of DLPP when they have no authority to do so as it was clearly a function of the Department of Central. They have usurped the

roles and functions of Lands Officers of Central Province. The whole process is riddled with defects and is flawed.

- (9) The LIR was incomplete and defective, the Certificate of Alienation was signed under duress because of undue pressure been applied to Officers of the Central Province. There seem to be a lot of controversies at every stage of the process leading up to the issuing of the SABL. All these issues and concerns raised throughout should be reason enough for DLPP not to issue this particular SABL but yet it proceeded to issue the SABL. This raises a lot of questions.
- (10) Emmanuel Mai of Kundu Legal Services acted improperly and unprofessionally in facilitating the application and processing of the SABL.
- (11) The SABL issued to **Konekaru Holdings Limited** ('KHL') over **Portion 2456C** was improper and unlawful as proper processes and procedures prescribed as minimum requirements under Sections 11 and 10 of the Land Act 1996 have not been complied with in granting the SABL.
- (12) There are a lot of irregularities, defects and breaches in the granting of this SABL to KHL over Portion 2465C that the SABL cannot lawfully stand.

C. **RECOMMENDATIONS**

We accordingly recommend that the SABL granted to **Konekaru Holdings Limited (KHL '1')** over **Portion 2465C** to be **REVOKED**.

We further recommend that the SABL to be **REVIEWED** in its entirety and a proper land investigation to be carried by Lands Officers of the Department of Central Province and a new Land Investigation Report (LIR) to be produced. Public hearings/meetings to be conducted and 'informed consent' of ALL landowners must be properly obtained prior to processing and issuing of a new SABL. A new SABL can only be granted after the Custodian of Trust Land is satisfied with all the reports pursuant to Section 132 of the Land Act before issuing the Certificate of Alienability (CoA).

Other generic recommendations made in previous SABLs pertaining to process and procedures on pertaining to the application, processing, approval and issuance of an SABL are also adopted as part of the recommendations and equally apply to this SABL.

9. **KONEKARU HOLDINGS LIMITED '2' (Portion 2466C)**

(SABL NO. 56)

A. REPORT

This is the final Report on Special Agriculture Business Lease (SABL) over **Portion 2466C** Volume 37 Folio 106 Granville, Port Moresby, Central Province. Portion 2466C is also a 'Direct Grant' to **Konekaru Holdings Limited (KHL '2')** pursuant to Section 102 of the Land Act.

The SABL (Portion 2466C) is on the land adjacent to Portions 2456C (Konekaru '1') and much of what has been discussed in KHL '1' (Portion 2465C) applies in a similar way to KHL '2' on Portion 2466C. This SABL (KHL '2') involves the same people, parties and landowners and in many respects the evidences will be the similar for both SABLs. For this reason, we recommend that this final report be read together and in conjunction with the previous report on Portion 2456C (KHL'1'). References will be made to certain aspects of the previous report because of the similarities. There may be other aspects that are peculiar to this SABL (KHL'2') and these will be discussed and highlighted separately.

1.1 Terms of Reference

The Terms of Reference (TOR) (a) to (i) except for (g) were fully covered for purposes of this inquiry into this SABL. Investment Promotion Authority (IPA) records show that Konekaru Holdings Limited (KHL '2') was incorporated as a company and duly registered on the 14th September 2009.

In examining this SABL, the process and procedures used to issue this SABL was thoroughly assessed. The application, processing and issuance of this SABL grant and the different roles of the relevant agencies of government responsible for the administration of SABL in general were also investigated. Also whether or not, 'informed consent' of the landowners was properly and sufficiently obtained prior to the issuing of the grant. The entire process of land investigation, land boundaries inspection, consent of adjoining landowners, public hearings/meetings involving the landowners and project development agreement(s) between the landowners and the nominated developer were also examined.

1.2 Sources of Information

Information and evidence given by the relevant government agencies including landowners and other persons of interest in KHL '2' were similar in many respects to KHL'1' as alluded to above. Much of what has been said about KHL'1' also applies to KHL'2' as it involves the same individuals, parties and people. References and commentaries are made interchangeably between the two SABLs.

There were also documentations submitted to the inquiry relating to LIR, company extracts, copy of title deed, notice of direct grant including other relevant documents pertaining to Portion 2466C (KHL'2'). Affidavits and supporting documents were also filed by different witnesses relating to this SABL. Bulk of the evidence came through the transcripts from oral evidence presented and recorded during the hearing.

Witnesses were called mainly from the Department of Lands and Physical Planning (DLPP), Department of Central Province, Department of Provincial Affairs and Local Level Government (DPLLG) and Department of Environment and Conservation (DEC). As this project is not an agro-forestry project and not located on a forested land it was not necessary to call the Department of Agriculture and Livestock (DAL) and PNG National Forest Authority (PNGFA).¹⁸

1.3 Location of Portion 2466C

Portion 2466C, Volume 37, Folio 105, Granville, Milinch of Port Moresby is located in the Motu-Koita villages of Papa and Lealea near the LNG Plant site in the Central Province and is approximately 15 kilometres from the city of Port Moresby. The land is also traditionally known as "Iarogaha". The total land area granted for this SABL lease is 457 hectares.

1.4 Grant of Lease

A Notice of Direct Grant under Section 102 of the Land Act was gazetted in the National Gazette no. G7 by the Secretary of DLPP granting a 99 year SABL to Konekaru Holdings Limited (KHL '2') over Portion 2466C. The 99 year lease commenced on the 4th January 2010 and will expire on 3rd January 2109. It was registered as Volume 37, Folio 105 on the 3rd February 2010. Portion 2466C covers a land area of 457 hectares. Portion 2466C is adjacent to Portion 2456C within the same vicinity. Infact it was the same piece of land within the same locality but split into two different portions for the SABLs. As mentioned above, the land is owned by the same landowning group of Papa /Lealea villages.

¹⁸ Annex. "VII"

The details of the SABL are shown below:

Legal Description	Portion 2466C Granville
Registered Survey Plan catalogue no.	49/2751
SABL Holder	Konekaru Holdings Limited
Date of Registration of lease	03rd January 2010
Period of Lease	99 years (4th January 2010 to 3rd January 2109)
Land area of lease	457 hectares

1.5 Landowner Involvement

Landowner Company “Iarogaha Garau Incorporated Land Group” (ILG) was incorporated under the Land Groups Incorporation Act Chapter 147 on the 27th October 2009 by Henao Tetei claiming to represent the landowners. Iarogaha ILG was formed to facilitate the support of the landowner’s to obtain SABL over their customary land – Portions 2456C and 2466C (KHL ‘1’ & KHL ‘2’).

Iarogaha Garau ILG would be used as a vehicle to obtain SABL grants for the landowner company – Konekaru Holdings Limited. It was discovered however, that Iarogaha Garau ILG was made up of only one clan named “Vanemata”, members of whom are descendants of Homokai Rei and Henao Tetei is the eldest male descendant. Other clans are not included in the Iarogaha Garau ILG and this brought about a lot of discontentment amongst landowners resulting in continuous disputes. A number of clans (landowning units) were not included in the Iarogaha Garau ILG and therefore, it does not represent all the landowners including clans from Papa / Lealea villages.

A landowner, Henao Tetei who claimed to be Chief of the Iarogaha Garau clan wrote a letter to a Charles Kassman dated 29th December 2009 and appointed Mr Kassman as the ‘agent’ and ‘representative’ to represent the Iarogaha Garau ILG to facilitate the application and processing of the SABL over Portion 2466C. There is no evidence to show that other landowners have agreed to or consented to appointing Mr Kassman to be their agent or representative of the Iarogaha Garau

ILG. It appears that Henao Tetei acted alone without consulting the other landowners.

Charles Kassman is also a company secretary of Veady Holdings Limited that holds an SABL over Portion 2485C within the same vicinity. Henao Tetei was also a one time director and shareholder of Veady Holdings Ltd. There is an obvious conflict of interest in this transaction.

Timeline showing important events concerning the Konekaru Holdings Ltd SABL Portion 2466C in a chronological order of their happenings:

(Refer to Annexure "VIII")

Milestone		Date of Completion/Grant Execution/Issue	Proponent/Applicant	Responsible Entity/Respondent
Incorporation of CJ Ventures Limited	1	25 February 2009	Charles Kassman	IPA
Incorporation of Konekaru Holdings Limited at IPA	2	16th September 2009	Charles Kassman	IPA
Registration of Iarogaha Garau ILG	3	27th October 2009	Henao Tetei	Department of Lands (DLPP)
Land Investigation Report (LIR)	4	3rd December 2009	Conducted by a John Lui (retired Lands Officer) and Lazarus Malesa (DLPP) and signed off by Raga Gulu (Dept. of Central Province, Lands Officer)	Department of Central Province.
Governor Moroï's	5	4th January 2010	CPG Governor Moroï request PA	Mr Raphael Yipmaramba, Prov.

request letter			to sign the Recommendation as to CoA	Administrator (PA) Dept. of Central Province.
Signed Recommendation as to Alienability	6	6th January 2010	Mr Raphael Yipmaramba PA, Dept. of Central	Department of Central Province.
Certificate of Alienability	7	Not produced	Not done – Custodian of Trust Land (DPLLG)	Not done – Custodian of Trust Land (DPLLG)
Lease/leaseback Agreement	8	4th January 2010	Iarogaha No. 1 Clan members	DLPP Department of Central
Notice of Direct Grant	9	14th January 2010	Secretary Dept. of Lands	DLPP
Registration and Issue of SABL title	10	3rd January 2010	Registrar of Title Lands Department	DLPP
Sub-Lease of SABL title to CJ Ventures Limited for 99 years	11	1st February 2010	Konekaru Holdings Limited (Gerard Kassman)	CJ Ventures Limited (Charles Kassman)
Inclusion of new shareholders and directors to Konekaru Holdings Ltd. from Papa Clan	12	30th March 2010	Konekaru Holdings Limited	Konekaru Holdings Limited
Filing of OS (JR) No. 565 of 2010	13	1st October 2010	Vane and Dabara Clan of Papa and Vane Mata ILG	Konekaru Holdings, CJ Ventures, Pepi Kimas Secretary, DLPP

1.6 Konekaru Holdings Limited 1 & 2 (Portions 2465C & 2466C)

As stated at the outset of this report, much of the evidence given for Portion 2465C (KHL'1') would be similar and is the same for Portion 2466C (KHL '2') and vice versa. The land investigation report (LIR); certificate of alienability (CoA); landowner's consent or nil consent; public hearings, involvement and participation of the various government agencies such as: DLPP, IPA, DEC, DPLLG and Department of Central would be similar in many respects to Portion 2456C as discussed earlier. This is simply because the two SABLs (Portion 2456C & Portion 2466C) are within the same location and are in fact, adjacent to each other. It appears that land investigation processes were done together for both SABLs on the same date with the same individuals and people involved. It is for this reason that the two SABLs (Portions 2456C & 2466C) should be read together. The evidence adduced so far applies to both SABLs and are used interchangeably for the purpose of this report. The findings however, will be made separately.

B. FINDINGS

The following findings are made:

1. Like Portion 2456C (KHL'1'), Konekaru Holdings Limited (KHL '2') was also granted a 99 year lease (SABL) over Portion 2466C through a Direct Grant under Section 102 of the Land Act by the Acting Secretary of DLPP Romily Kila-Pat in his capacity as Ministerial Delegate on the 14th September, 2010 apparently on the same date as Portion 2456C.
2. At the time of incorporation it was discovered that Iarogaha Garau ILG was not a landowner company for purposes of holding an SABL on behalf of the landowners. It does not represent ALL the landowners as it is made up of only one clan out of the twelve (12) clans of Papa / Lealea villages. There is no evidence of 'informed consent' given by other landowners. Evidence showed that Henao Tetei acted alone in incorporating the Iarogaha Garau ILG to use as a vehicle to obtain a SABL.
3. There were only two (2) shareholders in KHL'2' (similar to KHL'1') and the shares were held individually by Henao Tetei and Gerard Kassman. Henao Tetei held 37 shares and Gerard Kassman held 38 shares making Gerard Kassman the majority shareholder. There is no evidence to show that the shares are 'held in trust' for the other landowners. Charles Kassman, son of Gerard Kassman was appointed the Company Secretary at the time of incorporation. With such shareholding arrangements, there can be no doubt that KHL'2' is a company owned by one family and is not a landowner company.

4. Evidence also shows that Charles Kassman and his father Gerard Kassman are from the 'Muni Ogo' clan of Korobosea in NCD and has no connection whatsoever to any land in Papa or Lealea area although, Gerard Kassman in his affidavit attested that he belonged to the 'Dubara Idibana Hohodae' clan. He stated that his mother is Pidi Monise and his great, great grandfather is from the Iarogaha clan. There is however, no evidence to support this assertion. Motu-Koita is a patrilineal society and land ownership passes through the male line. Apart from his own statement regarding his ancestral links to the land he has not called in any witnesses to corroborate his evidence. Gerard Kassman's statement that he is a landowner from Iarogaha clan cannot stand.
5. The appointment of Charles Kassman as an 'agent' or 'representative' of the Iarogaha Garau ILG by Henao Tetei for purposes of obtaining an SABL over Portion 2466C is improper and unlawful. There is no evidence of any meetings held or resolution passed let alone consulting with the other landowners before the decision to appoint Charles Kassman was made. It was a unilateral decision by Henao Tetei when he clearly has no authority whatsoever to make such appointments.
6. The decision of the National Court in OS No. 494 of 2011 to remove other clan members (landowners) as shareholders and directors of Konekaru Holdings Ltd leaving the shareholders to only two people (Henao Tetei and Gerard Kassman) effectively means that Konekaru Holdings Ltd is no longer a landowner company.
7. It is clear from the evidence that the incorporation of Iarogaha Garau ILG, Konekaru Holding Ltd and CJ Ventures Ltd were carefully planned with 'ulterior motives' and intended to benefit only a few people at the expense of the landowners. There was misrepresentation and fraud involved in the whole process. Everything was 'rushed' from land investigation to the production of the Land Investigation Report (LIR), to the issuing of Certificate of Alienability (CoA) and the actual granting of the SABL. Officers especially from DLPP were collaborating with lawyers purporting to represent landowners and developers resulting in the granting of the SABLs for Portions 2456C and 2466C in record time. The intimidation tactics used by the officers from DLPP and the lawyers to hasten the processing and granting of the SABL is both unacceptable and unprofessional. There are evidence of short-cuts and by-passing of established process and procedures by officers of the State in granting the SABL. The conduct of persons involved in granting of this SABL were 'highly suspicious' as they have gone beyond their call of duty and in the process crossed jurisdictions and

usurped the roles and functions of other agencies of government to ensure that the SABL is granted to individuals of their choice.

8. There were evidences of political pressure exerted on the Provincial Administrator Raphael Yipmaramba by the former Governor of Central Province Alphonse Moroi to sign the Certificate of Alienability (CoA). There were also pressures exerted by Mr Emmanuel Mai of Kundu Legal Services to have all the necessary documentations (LIR, CoA etc) signed to facilitate the granting of the SABL although some of the documents were either incomplete or defective. The whole process from land investigation to signing of documentations and granting of the SABL were done in a speed never seen before. Non compliance with the basic requirements under Section 102 of the Land Act would render the SABL null and void.
9. There were no proper records at the IPA to ascertain the shareholding arrangements of both KHL'1' and KHL'2' despite the Order issued by the Court. The records held by IPA do not show the changes of directors and shareholders. Number of important documents on shareholding was missing from the IPA records.
10. It is obvious that Iarogaha Garau ILG is not made up of the landowners and does not represent the interest of the landowners for purposes of obtaining an SABL. We also found that Konekaru Holdings Ltd (KHL) is not a landowner company as it is owned by only two (2) individuals (Henao Tetei with 37 shares and Gerard Kassman with 38 shares). We also found that the LIR was defective and customary landowners have not given their 'full consent' rendering the whole SABL grant for Portion 2466C null and void. The manner in which the SABL application was processed and the grant issued when the basic requirements have not been met as required under Section 11 and 102 of the Land Act is a blatant disregard of the law and those responsible must be held accountable for their unlawful conduct and actions.

C. RECOMMENDATIONS

Based on the above findings, we recommend that the SABL grant to Konekaru Holdings Limited (KHL'2') over Portion 2466C be immediately **REVOKED**.

We further recommend that the SABL be **REVIEWED** in its entirety and a proper land investigation to be carried by Lands Officers of the Department of Central Province and a new Land Investigation Report (LIR) to be produced and a fresh application for an SABL is to be submitted. Public hearings/meetings to be conducted and 'informed

consent' of ALL landowners must be properly obtained prior to processing and issuing of a new SABL. A new SABL can only be granted after the Custodian of Trust Land is satisfied with all the reports pursuant to Section 132 of the Land Act 1996 before issuing the Certificate of Alienability (CoA).

The other generic recommendations made in other previous SABLs (above) pertaining to process and procedures relating to the application, processing, approval and issuance of an SABL are also adopted and equally apply part of these recommendations.

10. VEADI HOLDINGS LIMITED (Portion 2485C)

(SABL NO. 62)

A. REPORT

This is the final Report on Special Agriculture and Business Lease (SABL) over **Portion 2485C** Volume 40, Folio 243, Goldie, Milinch Port Moresby, Central Province. Portion 2485C is a 'Direct Grant' to **Vead Holdings Limited** pursuant to Section 102 of the Land Act.

1.1 Terms of Reference Covered

The Terms of Reference (TOR) heads (a) to (i) except for (g) were fully covered for the purposes of this inquiry. Evidence given in KHL'1' (Portion 2465C) and KHL'2' (Portion 2466C) may also apply to this SABL as well. Portion 2485C is adjacent to the above two portions and to some extent, involves the same individuals, people and parties. Evidences and commentaries may be used interchangeably between the three (3) SABLs as they are adjacent to each other.

1.2 Location of Portion 2485C

Portion 2485C Volume 40, Folio 243, Goldie, Milinch of Port Moresby is approximately 15 km from the city of Port Moresby. Portion 2485C is on a customary land traditionally known as "Lokoru" comprising a total area of 1057.45 hectares. The land is situated within the close proximity of the LNG Plant site and has been used to extract gravel for the construction of the LNG Plant. A quarry is set up on site to produce sand and gravel.

The evidence presented to the inquiry showed that Portion 2485C ("Lokoru") is owned by the following clans of Motu-Koita: Vane clan; Mokagaha clan; Rurua

clan; Dabara clan; Venehako clan; Geara clan; Iarogaha no. 1 clan and Iarogaha no. 2 clan. There are eight (8) clans altogether that own Portion 2485C.

1.3 Grant of Lease

A Notice of Direct Grant under Section 102 of the Land Act over Portion 2485C was issued to Veadu Holdings Limited and gazetted in the National Gazette No. 161 by the Secretary of DLPP in his capacity as Ministerial Delegate on the 29th July 2010. The lease was a 99 year lease commencing on 18th June 2010 and expires on the 17th June 2109. The SABL covers a land area of 1057.45 hectares.

Details of the SABL are shown below:

Legal description	Portion 2485C Goldie
Registered Survey Plan catalogue no.	49/2800
SABL Holder	Veadu Holdings Limited
Date of Registration of lease	05 th August 2011
Period of Lease	99 years (18th June 2010 to 17th July 2109)
Land area of lease	1057.45 hectares

1.4 Veadu Holdings Limited

IPA records shows that Veadu Holdings Limited (VHL) was duly registered as a company on the 27th November 2009 under the Companies Act 1997. The company registration no. is: 1-70679.

Veadu Holdings Ltd ('VHL') was initially formed as a landowner company to participate in business spin-offs and other activities within and around the LNG Plant Project in a similar manner as KHL '1' and KHL '2'. Social mapping studies carried out by the Department of Petroleum and Energy in conjunction with Esso Highlands Ltd (operator of LNG project) identified landowning clans/groups from Papa/Lealea including Boera villages and have them registered as an Incorporated Land Group (ILG) for purposes of holding an SABL to participate in the business activities for the benefit of the landowners.

At registration, the initial shareholders of Veadi Holdings Ltd were:

- (i) Henao Tetei
- (ii) Rogea Renagi
- (iii) Vaguia Hebore
- (iv) Nao Nao
- (v) Joseph Ata Baeau
- (vi) Vani Gorogo
- (vii) Heni Gumasa

The initial directors of Veadi Holdings Ltd are:

- (i) Nao Vaguia
- (ii) Maraga Dikana
- (iii) Billy Doriga
- (iv) Teddy Vani
- (v) Tani Karo
- (vi) Gumasa Heni
- (vii) Morea Geita
- (viii) Nicky Maraga – Managing Director
- (ix) John Kassman - Company Secretary

Five (5) months later, on the 20th April 2010 the company effected some changes to its shareholders and directors and in the process removed the original shareholders (listed above). New shareholders and directors were appointed representing the ten (10) landowning clans. Each clan is represented on the board with their nominated shareholder holding shares in 'trust' for the ten (10) clans.

The new shareholders are as follows:

- (i) Gumasa Heni – Iarogaha No. 1 Clan (1 share)
- (ii) Vani Goasa - Iarogaha No. 2 Clan (1 share)

- (iii) Renagi Koari - Gevana Clan (1 share)
- (iv) Vani Koari – Boera Gevana Clan (1 share)
- (v) Morea Lahui – Dabara Clan (1 share)
- (vi) Nao Nao - Vehehako Clan (1 share)
- (vii) Homoka Rei - Vane Clan (1 share)
- (viii) Esau Tarata – Rarua Clan (1 share)
- (ix) Hebore Vaguia – Geara Clan (1 share)
- (x) Rex Vani – Mokagaha Clan (1 share)

The new directors are:

- (i) Nao Nao
- (ii) Gomara Sedrick
- (iii) Lahui Tani
- (iv) Morea Lahui
- (v) Tani Garo - Company Secretary

Changes to the shareholders and directors were made because of disagreements and disputes amongst members of the landowning clans. Some original shareholders of Veady Holdings Ltd (VHL) decided to withdraw from the board when they realized that some shareholders are not landowners. One such shareholder is Joseph Ata Baeau who was the original shareholder of VHL. In his evidence to the inquiry he stated that VHL was granted SABL lease illegally and fraudulently because VHL does not have the mandate of the landowners. Landowners have not approved or agreed to VHL shareholding arrangements. Evidence also show that those recently appointed as shareholders and directors of VHL were not approved by the majority of the landowners. There were also no minutes or resolutions of the board meeting endorsing the removal of the original shareholders and the appointment of the new ones to replace them on the 20th April 2010. This is a clear breach of company laws and corporate governance under the Companies Act 1997. It was further discovered that those individuals who incorporated and registered VHL as a company at the initial stage were not genuine landowners and do not have the authority to represent the various

landowning clans of Papa, Lealea and Boera villages. This resulted in disputes which have ended up in court.¹⁹

Timeline of events regarding the application, processing and granting of the Vead Holdings Limited SABL Title in chronological order:

(Refer to Annexure “VIII”)

Milestone	Incorporation & Registration of Business Entities	Date of Completion/Grant Execution/Issue	Proponent/Applicant	Responsible Entity/ Respondent
1	Incorporation of Vead Holdings Limited at IPA	16th November 2009	John Kassman and Papa clan members	IPA
2	Incorporation of Leighton (PNG) Limited at IPA	19 January 2010	Leighton PNG Limited	IPA
3	Certificate permitting Foreign Enterprise	28 January 2010	Leighton PNG Limited	IPA
4	Land Investigation Report (LIR)	17th March 2010	Emmanuel Mai and Papa clan members	Provincial Lands Office (Dept. of Central)
5	Recommendation as to Alienability	Emmanuel Mai and Papa clan members	Department of Central Province	Prov. Administrator – Central Province
6	Memorandum of Agreement	April 2010	9 Clans of Papa village	9 Clans of Papa village
7	Notification of Preparatory Work	20th April 2010	Leighton (PNG) Limited	DEC

¹⁹ Annex. “VI”

8	Notice to Apply for an Environment Permit	4th May 2010	Leighton (PNG) Limited	DEC
9	Certificate of Alienability	15th June 2010	Emmanuel Mai and Papa Clan members	Custodian of Trust Land (DPLLG)
11	Gazettal of Notice in the National Gazette	29 th August 2010	Secretary, DLPP	Secretary, DLPP
12	SABL Title	5 th August 2010	Veadi Holdings Ltd	DLPP
13	Environment Permit	7 th September 2010	Leighton (PNG) Ltd	DEC
14	Environment Permit Application	10 th September 2010	Leighton (PNG) Ltd	DEC

1.5 Leighton (PNG) Limited

Leighton (PNG) Limited, an Australian company was nominated as the preferred developer by Veadi Holdings Ltd and was given a 100 hectare sub-lease portion of the SABL to construct a quarry and provide sand and gravel for the construction of the LNG Plant. There is no record to show the number of years for this sub-lease to Leighton (PNG) Ltd but whatever it is it only applies to a small portion of the whole SABL. The total SABL land area held by Veadi Holdings Ltd is 1057.45 hectares.

Leighton (PNG) Ltd was incorporated on the 19th January 2010 under the Companies Act 1997. It obtained an IPA certificate permitting a 'Foreign Enterprise to Carry on Business in PNG' on the 28th January 2010 according to IPA records. Leighton also obtained a 25 year Environment Permit under Section 65 of the Environment Act 2000.

Leighton has completed its work for the supply of gravel and sand for the early construction work for the LNG Plant site and has already demobilized heavy equipments and machinery from the quarry. It has already commenced winding down its operations.

Leighton applied for a five (5) year environment permit due to its short duration of operation but was granted a twenty-five (25) year environment permit. No explanation was given by Department of Environment and Conservation (DEC) on why a longer period (25 years) was given. According to evidence, Leighton only used the portion of land for two years to conduct its operations and left after all its work to supply gravel and sand to the LNG Plant were completed. There are reporting conditions and obligations of the permit holder stipulated under the environment permit but it now appears that these conditions and obligations may not be met as Leighton (PNG) Ltd has completed its job and left.

The chronological order of events (above) clearly shows that Leighton (PNG) Ltd commenced its operations on the 100 hectare portion of the SABL land area before the actual lease was issued. Veady Holdings Limited (VHL) has no authority to sub-lease the 100 hectare portion to Leighton (PNG) Ltd as the process of alienation has not been fully completed. This was subsequently corrected but the fact remains that the granting of the sub-lease by VHL without a proper title is unlawful. Indeed, whilst the disputes and arguments between landowners continued, Leighton completed its operations and left and is no longer affected by the disputes.

Veady Holdings Ltd was still in its formative stages when Leighton commenced work on site and it is not clear who benefitted out of the sub-lease and what sort of benefit (if any) that flows to the landowners.

Mr Dan Kakaraya who represented Leighton (PNG) Limited told the inquiry that Leighton was contracted by Exxon Mobil to supply sand and gravel for the construction of the LNG Plant as construction work has begun and the company was time-bound to discharge its obligations under the contract. Leighton (PNG) was under the impression that all matters pertaining to the granting of SABL were in order prior to the sublease arrangements with Veady Holdings Limited.

B. FINDINGS

The following findings are made:

1. The continuous disputes over the shareholding arrangements of Veady Holdings Ltd and frequent changes to its shareholders and directors indicated a serious problem in this SABL (Portion 2485C). We found that the whole SABL processes were rushed by government officers particularly of the Department of Lands and Physical Planning (DLPP) and lawyers and other people purporting to represent the interests of the landowners. Undue pressure was exerted on the officers of the Department of Central Province including the Provincial Administrator to

'rush' things as the LNG Plant was starting and landowners wanted a 'slice of the cake' in this project. Short-cuts were made and the proper process and procedures were not followed to grant the SABL. The disturbing aspect of it all is that officers of DLPP took it upon themselves to deliberately by-pass the guidelines which not only undermines the whole SABL process but also breached Sections 11 and 102 of the Land Act. It leaves a lot to be desired on their part especially when they are very people charged with the responsibility to guide the process and ensuring that things are done correctly.

2. We also found that not ALL the landowners agreed to and gave their consent before the land was alienated for the SABL. Disputes and arguments between landowners started right at the outset which resulted in frequent changing of shareholders and directors to show their disapproval. There were people like John Kassman who is not a landowner. A number of original shareholders like Joseph Ata Baeau pulled out when he realized that non-landowners were included as shareholders. The dispute ended up in court and it is still pending.
3. We found that land investigation was not carried out and there were no public hearings involving all the landowners to get their consent for this SABL. Infact there was no 'informed consent' from the landowners. There were no boundaries inspections of the adjoining land and landowners of the adjoining boundaries have not given their consent. The land investigation report was rushed and therefore, defective. The certificate of alienability was fraudulently obtained. The application, processing and granting of this SABL was riddled with defects so much that it cannot lawfully stand. We found the whole SABL over Portion 2485C issued to Veady Holdings Limited (VHL) to be void.
4. The 99 year lease was far too long a period given the nature of the business. Leighton (PNG) has left after it completed all its quarry operations within three (3) years after been granted the sublease. It wasn't necessary to sublease the land for 99 years as the sublease holder Leighton (PNG) will not require the land for that long period. There is no possibility of the land been used for other business activities such as agro-forestry project as the land is unsuitable for agriculture. The life span of the LNG Plant is likely to take between 30 – 40 years by conservative estimates. The 99 year SABL for Portion 2485C is too long and the danger is that the landowners will be alienated from their customary land for 99 years without any tangible benefits to them.

5. We also consider the issuing of the Environment Permit for 25 years to be irregular. The SABL does not meet the minimum requirements stipulated under Sections 11 and 102 of the Land Act.

C. RECOMMENDATIONS

We recommend that the SABL over **Portion 2485C** issued to **Veadi Holdings Ltd** to be **REVOKED**. The SABL to be **REVIEWED** and proper land investigation be carried out and informed consent of all the landowners must be obtained as pre requisite to any dealings on the land. All landowners must agree to the appointment of shareholders and directors of Veadi Holdings Ltd and must ensure that the shareholders and directors of Veadi Holdings Ltd is made up of representatives from each of eight (8) clans of Papa, Lealea and Boera villages who shall hold the shares in trust for their respective clans.

We also recommend that the SABL lease over Portion 2485C be limited to between 30 - 40 years instead of 99 years so that the land can revert back to the landowners after the LNG project cease operations. The original intentions of the landowners were to participate in the spin-off business activities generated by the LNG Plant Project and therefore, there will be no reason to have the customary land alienated for 99 years after the life of the LNG project.

Other recommendations made in relation to the process and procedures involving the land investigation process, land investigation report and certificate of alienability in the other previous SABLs equally apply in this SABL and are to be adopted.

11. **CHANGHAE TAPIOKA (PNG) LIMITED (Portions 444C; 446C; 517C; 518C; 521C & 520C)**

(SABL NOS: 14 – 19)

A. REPORT

1.1 Introduction

This is a final Report on the Special Agriculture and Business Lease (SABL) involving seven (7) different SABLs covering approximately 20,000 hectares of both customary land and State land within the Launakalana area of the Rigo District, Central Province. The National Government through the national Department of Agriculture and Livestock (DAL) and Central Provincial Government recognized the importance and potential of cassava bio-fuel and decided to develop this project under a public/private partnership. This project was also reflected in the National Agriculture Development

Plan (NADP) to support and promote the cassava industry. The National Executive Council (NEC) in its decision No. 108/2004) on the 21 July 2004 approved in principle the cassava bio-fuel project to go ahead. This followed a submission to Cabinet sponsored by DAL following a proposal from Changhae Ethanol Corporation of South Korea ('CHEC').

On 04th February 2005, a Memorandum of Agreement (MoA) was signed between the Independent State of Papua New Guinea and the developer Changhae Ethanol Corporation Limited of South Korea (CHEC) through its subsidiary Changhae Tapioka (PNG) Limited ('CTL') to develop a cassava project for bio/ethanol fuel.

Immediately after the MoA was signed an 'Inter-Departmental Committee' was set up to work on this project. The Committee is made up of Department of Agriculture and Livestock (DAL); Department of Lands & Physical Planning (DLPP); Department of Central Province; Department of Trade & Industry (DT&I) and Investment Promotion Authority (IPA).

A National Cassava Committee was set to oversee this project chaired by Mr Vele Kagen, Deputy Secretary – Corporate Services of DAL.

1.2 Terms of Reference

The Terms of Reference (TOR) heads (a) to (i) except for (g) were fully covered for purposes of this inquiry. IPA records show that Changhae Tapioka (PNG) Limited was incorporated on the 16th July 2003. A copy of the certificate of incorporation is attached and shown in the Schedule of Documents below.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully examined and assessed. The monitoring, oversight, approval and permit processing with other relevant agencies of government such as Department of Agriculture & Livestock (DAL) and Department of Environment & Conservation (DEC) were also investigated and furthermore, whether or not 'informed consent' of the landowners was obtained at every stage from the land investigation stages to public hearings including the application, registration, approval and issuance of the SABL title.

1.3 Location of the Portions

There are seven (7) different SABLs altogether for the cassava project covering different portions of state and customary lands located in the Launakalana area of Rigo District in the Central Province. Customary landowners were encouraged to lease out their land adjacent to the state land under a 'Land Mobilization

Program' to provide sufficient land for cassava cultivation to support the production and processing of the cassava bio-fuel. The State is obligated under the MoA to acquire additional land from the customary land owners (in addition to the land already acquired by the State) through a land mobilization program to deliver a total land area to 20,000 hectares required for the cassava bio-fuel project to make it viable.

The description is as follows:

PORTION	LAND/VILLAGE NAME	LAND AREA	SURVEY PLAN	PERIOD OF LEASE	DEVELOPER
519C	Bauforena	1,656.0 hectares	49/2591	40 years	Changhae Tapioka (PNG)
444C	Karamugamana No.1	74.87 hectares	49/487	40 years	Changhae Tapioka (PNG)
446C	Karamugamana No.2	68.77 hectares	49/487	40 years	Changhae Tapioka (PNG)
517C	Bore	2,511.0 hectares	49/2511	40 years	Changhae Tapioka (PNG)
518C	Saroakeina	3,573.0 hectares	49/2513	40 years	Changhae Tapioka (PNG)
520C	Bigairuka	2,514.0 hectares	49/2590	40 years	Changhae Tapioka (PNG)
521C	Matairuka	2,514.0 hectares	49/2590	40 years	Changhae Tapioka (PNG)

There are a total of eleven (11) Incorporated Land Groups (ILGs) representing seven (7) villages in the Rigo District that granted SABLs on behalf of their landowning clans and groups. However, only six (6) ILGs were identified on records as listed below:

- (i) Vero Garo ILG (No. 10952)
- (ii) Mouna/Ikana Garegarea ILG (No. 10954)
- (iii) Kororo ILG (No. 11031)
- (iv) Miserubu ILG (No. 11034)
- (v) Berabonio ILG (No. 109534)
- (vi) Bouforena ILG (??)

For the record, Portions 517C, 518C, 520C, 521C, 444C and 446C are held by four (4) ILGs under a 'tenancy in common' arrangements. The villages under those four ILGs are; Bore, Matairuka, Bigairuka, Saroakeina and Niuruka. The total combined population of these villages is estimated at 1,594 people. The total land area of the above portions (customary land) is approximately 10,900 hectares.

The State land identified around the Launakalana project site which was also included under the land mobilization program for the cassava project were Portions 127, 128, 129 and 115A comprising a total land area of 2,800 hectares. The customary land area comprising of the seven (7) SABLs is approximately 10,900 hectares. From the 20,000 hectares initially required for the cassava project under the MoA, the government was only able to secure up to 13,000 hectares of land for the project. It is yet to make available the additional 7,000 hectares.²⁰

1.4 Grant of Lease

The table below shows the 'Notice of Direct Grant' issued pursuant to Section 102 of the Land Act for the seven (7) SABLs in the Rigo District:

²⁰ Annex. "VI"

(Refer to Annexure "VI")

DATE OF DIRECT GRANT	LAND NAME & PORTION	LEASE PERIOD	SABL ISSUED TO	DIRECT GRANT ISSUED TO	ISSUED BY
07/04/04	517C	25 years	Bore ILG	Bore ILG	Pepi Kimas Secretary, DLPP
01/02/07	517C	40 years	Bore ILG	Changhae Tapioka (PNG)	Dr Puka Temu, Minister for Lnads
01/02/07	518C	40 years	Sarua Keina South ILG	Changhae Tapioka (PNG)	Dr Puka Temu, Minister for Lands
25/01/07	519C	40 years	Vero Garo, Mouna/Ikana, Garegarena ILG	Vero Garo, Mouna/Ikana Garegarena, Bouforena, Kororo and Miserubu ILGs.	Pepi Kimas, Secretary for DLPP
01/02/07	519C	40 years	As above	Changhae Tapioka (PNG) Ltd	Dr Puka Temu, Minister for Lands
01/02/07	444C	40 years	(Changhae Tapioka (PNG))	Changhae Tapioka (PNG) Ltd	Dr.Puka Temu, Minister for Lands

01/02/07	446C	40 years	Changhae Tapioka (PNG)	Changhae Tapioka (PNG) Ltd	Dr Puka Temu, Minister for Lands
01/02/07	520C	40 years	Bigairuka ILG	Changhae Tapioka (PNG)	Dr P. Temu, Minister for Lands
01/02/07	521C	40 years	Matairuka ILG	Changhae Tapioka (PNG)	Dr P. Temu Minister for Lands

Note:

- (i) Highlighted in 'red' are different Notices of Direct Grants issued over the same portions; Portion 517C and Portion 519C by the then Secretary for DLPP, Pepi Kimas and Minister for Lands Dr Puka Temu. Secretary Kimas issued the grants to the ILGs whilst Minister Temu issued the grants directly to the developer.
- (ii) Highlighted in 'brown' are the so-called 'State Leases' issued for Portion 444C and Portion 446C by Minister for Lands, Dr Puka Temu.
- (iii) As will be noted from the table (above) except for Portion 517C (25 year lease) the rest of SABLs are for forty (40) year leases.

1.5 Department of Lands & Physical Planning (DLPP) – Complying with Procedures

There were a lot of inconsistencies in the manner in which direct grants were made by the Department of Lands and Physical Planning (DLPP). In some cases direct grants were made directly to the developer-Changhae Tapioka (PNG) Ltd whilst some were issued to the registered Incorporated Land Groups (ILGs) representing the landowners (shown in the table above). For example; direct grants for Portions 517C, 518C, 519C, 444C, 446C, 520C and 51C were given directly to the developer- Changhae Tapioka (PNG) Ltd whilst Portions 517C and 519C were issued to the ILGs' representing the landowners. It will be noted from

the table above that all direct grants issued to the developer-Changhae Tapioka (PNG) Ltd were granted by the Dr Puka Temu the then Minister for Lands whilst direct grants issued to landowners through their respective ILG's were made by the former Secretary for Lands Pepi Kimas.

The former Secretary for Lands Pepi Kimas told the inquiry that the Minister for Lands does not have any authority and/or discretion to issue grants directly to the developer unless the landowners agreed for the lease to be granted directly to the developer (Section 102 (2) (b) of the Land Act). The former Secretary told the inquiry that the Ministerial discretion to issue direct grants is limited and restricted only to issuing it to the landowners through their nominated representatives or ILGs unless the landowners agreed for the grant to be issued to a third party. The landowners must agree in principle as to who is assigned the lease so that they continue to maintain their interests on the land as after all the land reverts back to the landowners after the lease expires. According to Mr Kimas the current practice is that the direct grants are first issued to the landowners or their nominated representative(s) who then sublease it to a preferred developer as this is the only way the landowners can participate and benefit from any projects or business activities occurring on their land. But despite his advice Minister Temu went ahead and issued the grants directly to the developer without the approval of the landowners. Mr Kimas also told the inquiry that because the Cassava bio-fuel project was initiated by the government there was a lot of 'political pressure' to quickly get the project off the ground and he could not do much despite the fact that laws were breached and short-cuts were made to issue the grants.

There is no evidence to date to suggest that the landowners have given their consent or agreed for the direct grants being issued directly to the developer – Changhae Tapioka (PNG) Limited. Statements tendered to the inquiry on behalf of the landowners indicated that no such consent or approval was given by the landowners for the direct grants to be issued to Changhae Tapioka (PNG) Limited. Therefore, the actions taken by the former Minister for Lands Dr Puka Temu to issue grants directly to the developer -Changhae Tapioka (PNG) Ltd without any agreement or approval of the landowners is contrary to Section 102 (2) (b) of the Land Act and is therefore, unlawful.

The inquiry was told that Portions 444C and 446C were State leases however, DLPP has not produced any documentary evidence to prove that. The records from DLPP indicated that the SABL over Portions 518C, 519C, 520C and 521C were issued "jointly" to both the developer Changhae Tapioka (PNG) Ltd and the ILGs representing the landowners but there are no documentations to prove that. If, however there is any truth in this assertion than the whole lease arrangement is improper, irregular and unlawful as the grants cannot be made 'jointly' to the ILG

(lessor) and the developer (lessee). The notice in the National Gazette No. G15 of 10th February 2007 however, showed that Direct Grants were only made to the developer Changhae Tapioka (PNG) Ltd and not to the landowners through their nominated ILGs.

As will be noted from the table above, two (2) separate Notices of Direct Grants were issued for Portions 517C and 519C as highlighted in 'red'. The first lot of direct grants for these two portions 517C and 519C were issued by Mr Pepi Kimas on the 07th April 2004 and the second subsequent direct grants were made again for the same two portions by Dr Puka Temu on the 01st February, 2007 some three (3) years later. The principle in law relating to 'first-in-time' will apply which means that the direct grants issued by Pepi Kimas is legitimate and lawful for all intended purposes and will stand as it was issued first in time. Furthermore, the subsequent grants made by Dr Temu cannot stand as leases are already held for Portions 517C and 519C by virtue of an earlier grant made on the 07th April, 2004 and therefore, the two portions are no longer free from any encumbrances as they already got existing leases on them. A judicial precedent on indefeasibility is pretty much settled in this area of law where it is held that no new leases can be created and issued over the same portion of the land that already has an existing lease. The case of: *Ramu Nickel Ltd & 2 Others v. Hon. Puka Temu MP, Minister for Lands & 2 Others (N.325 of 2007) (OS. No. 950 of 2005)* illustrates the point clearly.

It was apparent that there was a total lack of coordination, consultation and dialogue between the former Secretary of DLPP Pepi Kimas and his Minister for Lands Dr Puka Temu resulting in double issuing of leases over the same portions of land and also the manner in which direct grants were made. It was clear from the outset that both Mr Kimas and Minister Temu were operating in total isolation from each other and doing their own little things without realizing that both were issuing different grants for the same portions of land. It was a clear breach of the existing laws including procedures relating to SABL and therefore, reflects badly on DLPP as the principle agency of government responsible for the administration and management of SABL. The handling of the whole SABL relating to the cassava bio-fuel project in the Launakalana area of the Rigo District in the Central Province was a complete mess. Minister Temu's direct involvement and active interests in the processing and approval of these SABLs raises a lot of questions. It must be stressed that the issuing of direct grants to the developer-Changhae Tapioka (PNG) Ltd by the Minister without the approval of the landowners is a clear breach of Section 102 (2) (b) of the Land Act. Furthermore, the granting of new leases over portions of land that already have existing leases is unlawful.

1.6 Department of Agriculture and Livestock (DAL) – Land Use Plan & Development Agreements etc.

The Department of Agriculture and Livestock (DAL) is the lead government agency responsible for the development of the Cassava Bio-Fuel Project and played the key role in ensuring that the cassava project goes ahead. A Cassava Development Committee (Cassava Committee) was formed and Deputy Secretary for Corporate Affairs of DAL Mr Vele Kagenya was appointed the Chairman. The Cassava Committee is an inter-agency committee comprising of DAL, Department of Trade and Industry, Central Provincial Administration, DLPP and IPA.

The cassava bio-fuel project was proposed following research and studies conducted by DAL and National Agriculture and Research Institute (NARI) which indicated high potential for cassava cultivation and processing in Central Province. The local geography combined with the socio – political and economic status and people’s enthusiasm makes Rigo District the most ideal location for the cassava project.

DAL in conjunction with the Cassava Development Committee compiled and formulated the ‘Central Province Cassava Bio Fuel Project Development Plan 2007 to 2012’. This document is the project’s blueprint and basically outlines, amongst others, the following:

- Project Development Schedule
- Land Development
- Project Infrastructure Development
- Outgrower Estate Concept
- Nucleus Estate Concept
- Site Development Output
- Manpower Requirements
- Production, Processing & Marketing Chain
- Field Preparations & Planting
- Field Management
- Plant Agronomy
- Economic Cost – Benefit Analysis
- Project Implementation

DAL through the Cassava Committee was to oversee the whole project and report to government. DAL was directed to work with the Department of Lands & Physical Planning (DLPP) and Department of Central to secure adequate land (both State and customary land) for the cassava bio-fuel project in Rigo District under a Land Mobilization Program. One of the functions of the Cassava Committee was to oversee the implementation of the project through effective coordination and monitoring to ensure that it meets the overall development

priorities and targets set under the National Agriculture and Development Plan (NADP).

The government realized the importance and potential of cassava as an impact crop that can sustain the economic well-being of the people as reflected in the NADP and therefore, allocated K1 million in the 2007 and 2008 budget to support and promote the cassava industry through the public/private sector partnership with Changhae Tapioka (PNG) Ltd. The selected project site covers an estimated 20,000 hectares of both traditional and State land within the Bore-Saroakeina area in the Rigo District, Central Province. The land mobilization for lease-leaseback arrangements to develop the 20,000 hectares for the Nucleus and Outgrower Farming Systems has been completed. The project is expected to take five (5) years to complete commencing in 2007 and achieving full completion status by 2012 by which time an Ethanol Plant will be constructed for downstream processing of the cassava bio-fuel.

However, due to shortage of land and other land related issues the cassava project has not been fully developed and to date only 800 hectares of land were used for cassava cultivation but no cassava has been sold yet. The cassava project has virtually come to a standstill. Management of Changhae Tapioka (PNG) Ltd has raised their concerns regarding the land issues and other government processes that have contributed towards the stalling of the whole project. The company also blamed the government for not honouring its commitments and obligations under the MoA. DAL and the Cassava Committee laid the blame squarely on the Department of Central and DLPP for not handling the land issues well resulting in the current impasse. The cassava project has not really taken off since after the signing of the MoA. It is now 2012 and the cassava project is far from achieving full completion as expected.

The Deputy Secretary (Corporate Affairs) of DAL Mr Vele Kagenia is his evidence to the inquiry stated that he was appointed as Chairman of the Cassava Committee and given the responsibility to coordinate and facilitate the cassava project. He told the inquiry that the land acquisition process was handled by DLPP and the Department of Central. He testified that he was not involved in the drafting of the MoA and infact the MoA was formulated prior to his appointment as Chairman of the Cassava Committee. He only witnessed the signing of the MoA between the Government of PNG and CHEC on the 4 February 2005.

Mr Kagenia told the inquiry that the government has not fully honoured all its obligations under the MoA but the sticking point throughout all these was the inability of the government to secure the 20,000 hectares of land required for the cassava project. The land mobilization was not completed in time as expected because of the failure in getting the landowner's consent and approval on the

sub-lease agreements. The land problems seem to be continuing to this day resulting in the project coming to a complete halt.

Clause 8 of the MoA gives 'exclusive monopoly' to Changhae Tapioka (PNG) Ltd to produce bio-fuel and other ethanol products in the country. In effect, the MoA is also extended to prevent the cultivation and processing of other crops such as jethropa, oil palm and coconut that also has the potential of producing bio-fuel and other ethanol products. DAL has given approvals in the past for jethropa and oil palm cultivations and there are jethropa and oil palm plantations already been developed and are fully operational in other parts of the country. The MoA does not acknowledge this fact. Mr Kagen a admitted that the MoA may have been done without considering the importance of other crops such as jethropa which has the potential of producing high grade bio-fuel products compared to cassava.

Mr Kagen a told the inquiry that the MoA must be reviewed as there are many loopholes in it. This was one of the reasons why the project has not taken off as expected. The other reason is the outstanding land issues and the sub-lease agreements. And unless these two (2) issues are adequately addressed the project will not get off the ground. Infact, the understanding between the Government of PNG and CHEC was that the MoA was to be reviewed after five (5) years from the date of signing but this did not happen.

1.7 Land Investigation Report (LIR) & Certificate of Alienability (CoA)

A number of Land Investigation Reports (LIRs) were not properly completed due to on-going land disputes amongst the landowners involved in the Cassava Project in the Rigo District. The Land Investigations were conducted from September to October of 2005 soon after a Memorandum of Agreement (MoA) was signed between the Government of PNG and Changhae Ethanol Corporation of Korea (CHEC) but took a long time to complete due to the landowner's disputes. The LIRs were prepared by officers from both the Department of Central and DLPP. At this juncture, we should point out that one of the pre requisite requirements of granting an SABL is that there must not be any land dispute between the landowners over the land proposed for the SABL. Any evidence of dispute over landownership is in itself sufficient to prevent an SABL from being issued until the dispute is resolved.

There were a total of eleven (11) LIRs prepared but many of them were not signed to indicate the consent of the landowners to lease out their customary land for the SABL. Officers from both DLPP and Central Provincial Administration (CPA) had to take the LIRs back to the landowners of Matairuka, Bigairuka, Omoagolo and Saroakeina to sign and give their consent before the Certificate of

Alienability (CoA) is issued for the cassava project to go ahead. There were a number of unsigned LIRs.

Only a few landowners of Bouforena ILG from Saroakeina village representing Portion 519C refused to sign the LIR because of ongoing land disputes and reasons on environmental damages to the environment from his project. All the other landowners from the other villages gave their consent and signed the LIRs for the cassava project to go ahead particularly for Portions 444C, 446C, 517C, 518C, 520C and 521C Milinch of Rigo, Fourmil of Moeresby, Central Province.

Certificates of Alienability (CoA) were issued for Matairuka (Portion 521C - Certificate No. 2/4-2007); Bigairuka (Portion 520C-Certificate no. 3/4 - 2007); Saroakeina (Portion 518C-Certificate No. 4/4 - 2007) and Bouforena (Portion 519C -Certificate No.5/4 - 2007) on the 14 April 2007 by Mr Gei Ilagi, the Acting Secretary for Provincial & Local Level Government (DPLLG) in his capacity as the Custodian of Trust Land following a letter from Mr Oswald Tolopa, Director of Policy Division, DLPP to Mr Ilagi dated 26 March 2007 recommending for the CoA to be issued for the four (4) Portions (above) after all the LIRs and other processes were completed to the satisfaction of DLPP.

This approach appears to be the correct process as emphasised by the former Secretary of Department of Provincial & Local Level Government (DPLLG) Mr Manasupe Zurenuoc when he gave evidence to the inquiry. According to Mr Zurenuoc, only the Secretary for DPLLG (in his capacity as Custodian of Trust Land) has the authority to issue Certificate of Alienability (CoA) and not Provincial Administrators. According to Mr Zurenuoc the powers to issue CoA has never been delegated to Provincial Administrators.

1.8 Landowners Concerns

There were some concerns raised by the landowners in relation to the land investigations, agency agreement and the LIRs. Concerns were raised by landowners from Bouforena ILG regarding future environmental effects to the environment and the river systems if the cassava bio-fuel project goes ahead. In a letter dated 10 February 2007, the landowners argued that the developer-Changhae Tapioka (PNG) Ltd has failed to provide an Environment Impact Assessment Report to highlight the potential negative effects to the environment including the river systems which provide most of the food for the people living in and around the area proposed for the cassava ethanol project. The letter was signed by the Chairman of Bouforena ILG Mr Mera Gigi, Secretary Mr Gumena Ivai and Treasurer Mr Gideon Kila.

A number of landowners from Matairuka, Bigairuka, Imoagolo and Saroakeina villages refused to sign the Agency Agreement form and give their consent for the SABL due to some disputes regarding the appointments of agents. Landowners from Bigairuka ILG had a land dispute with landowners from Riwali village over part of the land proposed for the cassava project which currently has some logging operations carried out in the area. Despite all these problems DLPP went ahead to grant the SABLs.

From the total of eleven (11) ILGs, few executives of Bouforena ILG objected to the project otherwise, all the other ten (10) ILGs supported the cassava bio-fuel project. It appears that 90% of the people wanted the cassava project to go ahead with 5% (Bouforena ILG) refusing to support the project because of environmental concerns and another 5% (Bigairuka and Riwali villages) reluctant to support the project because of current dispute over logging operations. The environmental concerns and the disputes over logging were to have been dealt with by the responsible agencies of government (DEC & PNGFA). The landowners however, did not translate into action their support for the project by signing the necessary Agency Agreements and also did not indicate their full and informed consent by signing the LIR.

Issues were also raised regarding lack of meetings and consultations with all the landowners affected by this project. Representations in the ILGs were also challenged by some landowners arguing that membership of the ILGs does not properly represent all the landowning clans. Landowners also argued that there was no proper social mapping and land investigations carried out before the production of the LIRs.

For the record, the initial land investigations were carried out in September and October of 2005 soon after the MoA was signed between the Government of PNG and Changhae Ethanol Corporation of Korea (CHEC) but because of the disputes amongst the landowners ranging from ownership of the land to make up of the ILGs to environmental concerns, the LIRs were shelved and not signed. It was two (2) years after the land investigation process that the LIRs were taken back to the landowners to obtain their consent and signatures before an SABL can be granted. It was a long delay indeed to complete the land investigation process and the LIRs. Within those two years circumstances have changed considerably and there have also been some changes to the ILG structures and landowner's enthusiasm and support for the cassava project has generally diminished. Company executives representing Changhae Tapioka (PNG) Ltd at the inquiry raised concerns over the unwarranted long delay resulting in the continued sunken costs incurred by the company with no returns which has impacted greatly on their cash flow situation. The developer was at the verge of pulling out from the project because of the unprecedented long delays in finalizing the LIRs.

1.9 Department of Environment and Conservation (DEC) - Environment Permit

The environmental permit is yet to be granted but the environmental assessment appears to have been carried out resulting in the recommendation made for permit with conditions. The developer Changhae Tapioka (PNG) Ltd submitted a Notification of Preparatory Works on the 03 November 2009 as required under Section 48 of the Environment Act 2000. After receiving the Notification, DEC issued a Notice to Undertake Environment Impact Statement Assessment under Section 50 of the Act. The developer submitted an Environment Inception Report (EIR) on the 11 December 2009. DEC has reviewed and approved the EIR. The developer also submitted its Environment Impact Statement (EIS) on the 7 May 2010 pursuant to Section 53 of the Environment Act and the assessment and public review process were completed. The EIS was then submitted to the Environment Council in June 2011 pursuant to Section 57 of the Act but the decision was deferred and the current status is unknown. The permit under Section 65 of the Environment Act is yet to be granted by the Director of Environment and therefore, it is not possible for the cassava bio-fuel project to proceed without a Permit. However, according to the Chief Executive Officer of Changhae Tapioka (PNG) Ltd Mr Thakur Ambupad, DEC has given its approval in principle but has not yet issued any Permit. The company is relying on the Cassava Committee set up by the government to handle the Permit side of things with DEC. The same also applies to all the land leases and titles with DLPP but nothing is happening at all and this has greatly disadvantaged the company. No one seems to be doing anything about it and the developer is blaming the Cassava Committee and the national government for not discharging its obligations under the MoA.

1.10 IPA Records

Investment Promotion Authority (IPA) records shows that Changhae Tapioka (PNG) Ltd ('CTL') is a foreign company owned by Changhae Ethanol Corporation Limited (CHEC) of Korea. It was registered as Changhae Tapioka (PNG) Limited for purposes of carrying out businesses in PNG. Changhae Tapioka (PNG) Limited is a subsidiary of CHEC. Recent changes to the management structure has now made Changhae Energieering (another subsidiary company of CHEC in Korea) to be the shareholders and directors of Changhae Tapioka (PNG) Ltd. The intention was to make Changhae Tapioka (PNG) Ltd to be a public company and because Changhae Energieering is a public listed company, it would assist in the process. Changhae Energieering is a major shareholder of Changhae Tapioka (PNG) Ltd with 99 percent of shares in the company.

Changhae Tapioka (PNG) Ltd applied for registration to carry out the following business activities: 'Alcohol Manufacturing,' 'Feedstock Wholesale' and 'Real Estate.' The application was made by a Teong Ho Lim as the resident agent of Changhae Tapioka (PNG) Ltd. A Leong Ho Lim signed as a Director/Secretary for Changhae Tapioka (PNG) Ltd. He is a minor shareholder with 100 shares and Changhae Ethanol Corporation Ltd of Korea a majority shareholder with 4,411,765 shares. Mr Teong Ho Lim is the sole Director and his address as at 27/11/2006 is Section 8, Lot 3, Boroko, NCD and his postal address in PO Box 58, Boroko, NCD.

Changhae Tapioka (PNG) Ltd was incorporated on the 16 July 2003 by Mr Teong Ho Lim at which time his residential address was in Sydney, NSW, Australia. On the 29 September 2010 according to the company returns the shares had increased to 18,031,858 of which 5,412,844 had been issued and the shareholders were Leong Ho Lim and Changhae Energeering Corporation of South Korea. The shareholding arrangements showed that Changhae Tapioka (PNG) Ltd is 100% foreign-owned. A Certificate (certificate no. 91833) permitting a foreign company to carry on business in PNG was issued on the 18 May 2007. The certificate was issued four (4) years after Changhae Tapioka (PNG) Ltd was incorporated.

The MoA between the Government of PNG and Changhae Ethanol Corporation Ltd signed on the 4 February 2005 does not make any reference to the share structure and share holding arrangements despite the transfer of rights and liabilities between the parties. The implication therefore, is that Changhae Tapioka (PNG) Ltd is still totally foreign-owned.

On 30 June 2005, Changhae Tapioka (PNG) Ltd was de-registered and removed from the list of registered companies by the Registrar of Companies for outstanding company returns but was reinstated again on the 22 September 2006. Since then there are no other recent records or company returns to verify its current status including its business operations in the country.

As stated at the outset, Changhae Tapioka (PNG) was also registered to carry out other business activities as well in PNG apart from manufacturing of ethanol fuel from cassava. It was also registered to do real estate business and feedstock wholesale business. There are however, no records with the IPA to show that Changhae Tapioka has ventured into these other business activities. There is also no evidence to the contrary to show that Changhae Tapioka (PNG) has not ventured into the other business activities that it registered to carry out.

1.11 Memorandum of Agreement (MoA)

The Government of Papua New Guinea signed a Memorandum of Agreement (MoA) with Changhae Ethanol Corporation Limited (CHEC) of Korea (owners of Changhae Tapioka (PNG) Ltd) to develop the cassava bio-fuel project in the Central Province. The Department of Agriculture and Livestock (DAL) was appointed as the lead government agency to develop the proposal for the Cassava Project venture. The objective is to promote large scale agriculture for economic development under the National Agriculture Development Program (NADP) framework. Other key agencies of government involved in this project include the Department of Lands & Physical Planning, Department of Trade & Industry, IPA, National Agriculture & Research Institute (NARI) and the Central Provincial Government.

DAL produced a 'Development Plan' for the cassava project called the "Central Province Cassava Bio Fuel Development Plan 2007 to 2012." This document sets out the project's goals and objectives and the benefits the country and people are likely to derive from the project. It also sets out the project development schedule, infrastructure development, landowner's participation, production, processing and marketing of the product, economic cost and benefits analysis and project implementation amongst others.

The Government of PNG's (State) obligations under the MoA is to ensure that land is available for the cassava project. Under clause 2(b) of the MoA the government is required to secure a total of 20,000 hectares of suitable arable land for cassava cultivation to be leased or sub leased to Changhae Ethanol Corporation Ltd (CHEC) on the terms prescribed under each of the agricultural leases, and all subsequent leases under the MoA to be transferred to CHEC for a period of 40 years subject to Section 82 and 83 of the Land Act and Sections 80 and 81 of the Land Registration Act. The land lease titles to be transferred to the subsidiary of CHEC, Changhae Tapioka (PNG) within 30 days of the signing of the Agreement.

This probably explains why the then Minister for Lands, Dr Puka Temu issued direct grants and transferred the lease titles of the seven (7) SABLs directly to Changhae Tapioka (PNG) Ltd, the subsidiary of CHEC for 40 years as per the terms of the MoA. The MoA however, is only an agreement between two parties and does not take away the legal requirements relating to the application, processing and issuance of an SABL as stipulated under Sections 11 and 102 of the Land Act. For this reason, the action(s) taken by the Minister to issue direct grants directly to the developer without the approval of the landowners is unlawful and defeats the whole purpose of SABL.

The government embarked on a very ambitious Land Mobilization Program to find sufficient land for the cassava bio-fuel project. Central Province and New Ireland Province were chosen for the Cassava Project. Through the land mobilization program, the State was able to secure a total of 34,467.84 hectares of land comprising part State land and part customary land in the two provinces. In Central Province a total of 14,505.84 hectares of both State land and customary land were confirmed available for the project while 20,462 hectares of State land and customary land confirmed for the Cassava Etagon Holdings project (Portion 884C) in Kaut, West coast of New Ireland Province.

The total land now confirmed available under the land mobilization for the cassava project in the Launakalana area, Rigo District of the Central Province is 14,942.40 hectares in total comprising of both State land and customary land with bulk of the land being customarily owned. The customary portions of the land are identified in the table shown above with different descriptions of portions and land area (Ha). The State portions of the land are not included in the table above but they include Portions 127, 128, 129 and 11A. The State's total land area is 1,028.50 hectares which has been included together with the customary land portions listed above.

The National Government has partially met its obligations under the MoA which includes the following:

- (a) Making available 14,942.40 hectares of land (three quarter of land required) for cassava cultivation in the Launakalana area of Rigo District, Central Province;
- (b) Survey Plans completed resulting in the creation of new leases over the customary land for Portions 516C, 517C, 518C, 519C, 520C and 521C Milinch, Rigo, Fourmil Moresby, Central Province;
- (c) Lease-leaseback Agreements completed and SABLs issued; and
- (d) Notices of Direct Grants issued to Changhae Tapioka (PNG) Ltd.

Clause 6 of the MoA also requires the National Government to be responsible for all the infrastructure development including supplying of electricity to the nucleus estates site for CHEC within a reasonable period of time. The government is also required to establish suitable wharfage space, storage and forwarding facilities at port(s) in close proximity to the nucleus estate to enable CHEC to export cassava and cassava based products.

1.12 Project Developer – Changhae Ethanol Corporation Limited (CHEC)

The project developer, Changhae Tapioka (PNG) Ltd is a subsidiary of Changhae Ethanol Corporation Limited of Korea (CHEC). It submitted a 'Cassava Business Plan' comprising two (2) major components; Cassava Farm and Ethanol Plant. In its business plan the developer was to develop a large-scale Cassava Farm in conjunction with PNG local farmers. The Plan constitutes a large Nucleus Estate and Out grower components confining to the Nucleus / Out grower Agro-enterprise farming system. The developer will invest in the farm initially and will also operate, purchase and market the cassava. PNG farmers were encouraged to take part in the cassava project by making available their land and also supplying cassava to the developer from their Out grower estates. The developer was required to provide the initial capital including technical expertise in the project.

Upon the successful completion of the Cassava Farm the developer will construct an Ethanol Plant five (5) years after the commencement of the cassava farm. The Ethanol Plant will then produce bio-fuel and other ethanol products from the cassava produced that will be marketed overseas. In its executive summary, the developer said (and we quote) “....PNG will get benefits such as the influx of huge investment, creation of employment, increase of rural income and development of new agricultural business.” (end of quote).

The obligations of the developer – CHEC under Clause 3 of the MoA includes:

- (a) Providing guaranteed market for all cassava produced both from CHEC's own farms and those from contracted Out growers and;
- (b) Provide adequate level of investment capital for the project with a minimum US\$26 million.

In addition to that, the developer was to create employment opportunities for the local people in and around the project area including spin-off businesses and provides cash income for the local people for the sale of their cassava at the farm gate or factory door.

The Chief Executive Officer of Changhae Tapioka (PNG) Ltd Mr Thakur Ambupad told the inquiry that the then Minister for Lands and Physical Planning Dr Puka Temu granted the company, Changhae Tapioka (PNG) Ltd the direct grants for all the seven (7) SABLs. The project immediately commenced after the direct grants were made as this was part of the agreement between the Government of PNG and Changhae Ethanol Corporation Limited (CHEC) under the MoA. The relevant clause of the MoA is Clause 2 (b) (i) which obligates the government to: “securing a total of 20,000 hectares of suitable land for cassava cultivation to be leased or sub leased to CHEC on terms prescribed on each of the agriculture leasesand

agriculture leases already secured and available to be transferred to CHEC upon signing of this Agreement. All subsequent leases under this Agreement to be transferred to CHEC for a period of 40 years subject to Sections 82 and 83 of the Land Act and Sections 80 and 81 of the Land Registration Act. The land lease titles to be transferred to the subsidiary of CHEC, Changhae Tapioka (PNG) Ltd within 30 days or such reasonable period upon signing of this Agreement.....”

According to Mr Ambupad, on the 25 July 2007 the company learned that some SABL titles were changed and given back to the landowners through their ILGs and this has prompted him to halt further work on the project as the action taken by the government to give the SABLs to the landowners is contrary to the terms of the MoA. He said without a secured title, it is not possible for the company to proceed with the project. To this day, the position with respect to the SABL titles over the portions of land is still not clear and until this is sorted out by the government no further work will be carried out by the company. Mr Ambupad made specific reference to Portions 444C and 446C which were originally issued to the company but then cancelled and re-issued to the landowners (ILGs) without any notice of cancellation/revocation of the lease to the company and the company was greatly concerned by the action(s) taken by DLPP. Numerous attempts were made to seek clarifications from DLPP regarding the leases but no information was forthcoming and the company was in a state of total confusion. The recent issuing of leases meant that there are now ‘dual titles’ over the portions of land, one held by the developer and the other by the landowners. As a result, the company has made a decision to stop all its operations until all these matters regarding the leases are sorted out. Nothing has been done since and the whole project has come to a complete stop and this will continue until the problem is sorted out.

The pre-conditions of the MoA (Clause 5) require the government to secure and lease 20,000 hectares of land in the Rigo area to CHEC with clear SABL titles. In the event the government is not able to secure the land than it is to find other suitable alternative. In his evidence to the inquiry, Mr Ambupad said that the Government of PNG has not complied with the terms of the MoA and has not honoured its obligations making it very difficult for the company to proceed with the project. In his opinion, the government had good intentions but the whole process of securing the 20,000 hectares of land required for this cassava project was rushed and done in an hastily manner resulting in all sorts of problems that is now affecting the project.

The company has so far developed 600 hectares of land as ‘trial plots’ for cassava cultivation mainly on Portion 444C, parts of 446C and 517C. The company’s main camp of the farm is situated on a State land (Portion 442?). According to Mr Ambupad they have so far spent \$US8 million on infrastructures and equipments

including machineries. The company employed roughly 300 people at the height of its operations but this has now been reduced to 30 staff after the land issues have surfaced. The company is now assessing its position and will soon decide whether to continue or wind down altogether if the problems continue as it is presently costing the company \$US60, 000 per month for its 'fixed costs'.

B. FINDINGS

A number of different findings can be made from the facts set out throughout this report. At the outset, there appears to be some problems relating to the Memorandum of Agreement (MoA) between the Government of PNG and CHEC and their respective obligations under the MoA, the actual land investigation processes including the Land Investigation Reports (LIRs), landowners' consent and lease agreements, issuing of Direct Grants as well as dual titles over the SABL leases and the cassava project itself.

We make the following findings:

(i) Memorandum of Agreement (MoA)

There are number of issues regarding the MoA signed between the Government of PNG and the developer – CHEC on the 4 February 2005.

Firstly, evidence revealed that the MoA was drafted by the developer – CHEC. The Government of PNG (the other party to the MOA) had very little input if not, none at all in the drafting and formulation of the MoA. This is apparent from the terms of the agreement which weighs very much in favour of the developer. In his evidence to the inquiry, Mr Thakur Ambupad the CEO of Changhae Tapioka (PNG) Ltd admitted that he drafted the MoA himself when he was engaged as a consultant by the company and later became the CEO of the company when the former CEO John Lim left. Mr Ambupad was particularly upset when the government failed to honour its obligations under the MoA. The failure by the government to deliver on its commitments under the MoA has forced the project to a complete stop.

Secondly, under Clause 2 (b) (i) of the MoA, the government was required to ensure that all new SABL titles including agriculture leases already secured and available covering some 20,000 hectares to be transferred to the developer – CHEC within 30 days of the signing of the MoA. This is practically impossible given the fact that much of the land needed for the project is customary land and the processes involved in acquiring customary land for SABL purposes is quite lengthy. The 30 days ultimatum is an unrealistic demand on the part of the developer.

Furthermore, it is improper and unlawful to grant SABL titles direct to the developer- Changhae Tapioka (PNG) Ltd as it is a foreign company. Section 102 of the Land Act clearly states that the SABL lease is only granted to person or persons, land groups, business group or other incorporated body to whom the customary landowners have agreed that such lease should be granted. Approval must first be obtained from the landowners before direct grants are made directly to the developer. Again, the land investigation process involved in obtaining the approval can take months sometimes years as seen in this particular case.

Thirdly, Clause 8 of the MoA gives exclusive monopoly to the developer over a period of ten (10) years to develop cassava bio-fuel when the State has already approved similar bio-fuel crop in the past such as jethropa and many of them are already in operation. The same applies to oil palm, sugar and coconut as these crops also have the potential to produce ethanol fuel and products. It further stated that the State will grant an extension of another ten (10) years after the initial 10 year period lapses. The clause also stops competition from other companies wanting to go into bio-fuel production. The exclusivity clause may have some implications on the development of other crops. The demand for exclusive monopoly is therefore, unreasonable and unrealistic.

Finally, the MoA does not provide an 'even playing field' for both parties and from our observations it puts the Government of PNG in a very disadvantaged position. This might explain the reason why the government was not able to adequately discharge all its obligations under the MoA. The inquiry found that the government has no substantive input in the formulation of the MoA and did not participate as equal partners in negotiating the terms of the Agreement. The State was rushed into signing the MoA without considering the ramifications. The relevant agencies of State with oversight roles and responsibilities in this project including the Department of Justice & Attorney General through the Office of the State Solicitor have seriously neglected their duties in providing sound and proper advice to government before the State entered into this Agreement. State lawyers involved in this project were reckless in the discharge of their official functions in providing to the government the proper advice available at the time before the State commits itself to the Agreement. The State runs a risk of being sued by the developer for breach of Agreement.

(ii) Granting of Lease

Section 102 of the *Land Act* requires the granting of lease to persons or entities to which the landowners agreed for the lease to be granted. Under the current practice the SABL lease is granted to the ILGs (comprising of landowners) who

then sublease to the developer for a period of time agreed to between the ILGs and the developer. In this present case some of the SABL leases were issued directly to the developer – Changhae Tapioka (PNG) Ltd leaving out the landowners altogether. Direct grants were issued directly to the developer, a foreign owned company. This is a total alienation of customary land and we find this transaction to be highly irregular, improper and unlawful and defeat the whole purpose and intent of a lease-leaseback and especially, landowner participations in agro-forestry projects and developments. It goes against every grain of the concept of SABL.

According to Pepi Kimas, the former Secretary of DLPP, a lot of companies or developers preferred to be issued the SABL direct rather than going to the landowners as they consider this process to be much faster. In addition, they require the title quickly to secure funds and undertakings to proceed with the project. Mr Kimas told the inquiry that he has refused to issue a number of direct grants straight to the developers in the past as it is simply improper and unlawful but the Minister for Lands Dr Puka Temu has overruled him and gone ahead to issue direct grants to the developers directly which is contrary to Section 102 of the Land Act. Although, the action taken by the Minister was unlawful and does set a very bad precedent, Mr Kimas didn't think it was his right to question the authority of Minister in issuing direct grants to the developer.²¹

There have been instances where 'dual titles' were issued to two different entities over the same portion of land. The Secretary for Lands exercising his delegated powers would issue a direct grant for a portion of land and the Minister would issue another subsequent direct grant over the same portion resulting in two separate leases. A new lease cannot be created over an existing lease as this is unlawful and renders the whole process including the granting of the lease defective and void.

For the Changhae Tapioka project, we find that 'dual titles' were issued over various portions of the land for the cassava project in the Launakalana area of the Rigo District. Portions 444C and 446C are customary land but were issued with 'State Leases' instead of SABL lease. The notices of direct grant for the two portions were granted to Changhae Tapioka dated 01 February 2007 with the actual State leases granted to Changhae Tapioka on the 21 December 2009. With respect to Portion 518C a direct grant was made to Changhae Tapioka on the 01 January 2007 but the actual SABL lease was granted to Saroakeina – South ILG. For Portion 519C, a direct grant was issued to Vero Garo, Mouna and Ikana Garegarena ILG's on the 25 January 2007 by the Secretary for Lands and a 'second' direct grant was issued for the same portion on the 01 February 2007 by

²¹ Ibid Exh. "PK 3" Annex. "VI"

the Minister for Lands to Changhae Tapioka (PNG). As for Portion 520C, three (3) separate direct grants were made. The 'first' direct grant dated 01 February 2007 was issued to Changhae Tapioka (PNG) and 'second' direct grant was granted again to Changhae Tapioka on the 20 February 2007. The 'third' direct grant was issued to Bigairuka ILG on the 25 January 2007. The actual SABL lease was granted to Bigairuka ILG on the 21 January 2007. Finally, for Portion 521C, direct grant was issued to Changhae Tapioka on the 01 January 2007 and actual SABL lease was granted to Matairuka ILG on the 21 September 2007.

According to the table of list (above) containing the summary and status of customary land portions submitted to the inquiry by the developer, SABL leases for Portions 518C, 519C, 520C and 521C were issued 'jointly' to Changhae Tapioka and the ILGs. Again, this is a clear example of 'dual titles' issued over the same portions of land and for the reasons stated above these SABL leases are defective and void.

(iii) Land Investigation Report & Landowners' Consent

The Land Investigation Report (LIR) took very long to complete. It took almost two (2) years after the completion of the land investigations to compile and finalize all the necessary documents for the SABLs to be issued. A total of eleven (11) Agency Agreement forms and schedule of ILG executives/agents contained in the LIR were not signed and had to be taken back to the landowners of Matairuka, Imoagolo and Saroakeina after two years for them to sign and give their consent.

We find that the whole land investigation processes including the compilation of the LIRs were done in a rush. The LIRs were incomplete and defective and not capable of producing an SABL. The oversight was noticed two years after the compilation of the LIRs which prompted the Acting Secretary of DLPP to direct his officers to go back and get the landowners to sign before the SABL applications can be processed. This clearly shows the lack of professionalism on the part of the officers carrying out the investigations.

We found that the whole land investigation process was poorly handled from the start. Landowners' consent which is pivotal to granting of the SABL was not obtained.

(iv) Environment Permit

A Notification of Preparatory Work was submitted to the Department of Environment and Conservation (DEC) on the 03 November 2009 by the developer Changhae Tapioka (PNG) pursuant to Section 48 of the Environment Act. After

assessing the Notification DEC issued a Notice to Undertake Environment Impact Assessment (EIA) on the 20 November 2009 pursuant to Section 50 of the Act, The developer submitted an Environment Inception Report (EIR) on the 11 November 2009 under Section 5 of the Act. The developer was advised that DEC approved the EIR but no official notification was sent to the developer. The developer also submitted its Environment Impact Statement (EIS) to DEC on the 7 May 2010 pursuant to Section 53 of the Act for assessment and a public review process has commenced but there was no outcome of that.

We find that despite the advice that the EIR was approved no Environmental Permit was issued to the developer to enable it to carry out work. And without an Environmental Permit the developer-Changhae Tapioka (PNG) cannot proceed with the project. It should also be noted that some landowners of the Bouforena ILG expressed concerns about the environmental impact of the project and refused to give their consent for the cassava project to go ahead. They were concerned that the project might pollute and cause harm to their land and water systems.

There is no evidence to suggest that the Environment Permit has been issued to the developer and DEC has no records to verify that a Permit has been issued. We conclude that no Environment Permit was issued and therefore, it is unlawful for the developer – Changhae Tapioka (PNG) Limited to proceed with the cassava project, especially the activities that have already been carried out on the 600 hectares of land referred to as ‘trial plots’ for cassava cultivation on Portion 444C and parts of Portions 446C and 517C.

C. RECOMMENDATIONS

Based on the findings made above, we recommend the following:

1. All the SABL Leases/Titles and Direct Grants including the “dual titles” issued to both the developer – Changhae Ethanol Corporation Limited (CHEC) of Korea through its subsidiary Changhae Tapioka (PNG) Limited and the landowners for Portions 444C, 446C, 517C, 518C, 519C, 520C and 521C are to be **REVOKED** forthwith.
2. The Memorandum of Agreement (MoA) signed between the Government of Papua New Guinea and the developer Changhae Ethanol Corporation Limited (CHEC) to be **REVIEWED**.

3. No further work is to be carried out on the Cassava Project until new SABL leases and Titles including Direct Grants are properly issued in accordance with Sections 11 and 102 of the Land Act.

12. OKENA GOTO KARATO DEVELOPMENT CORPORATION LIMITED (Portion 146C) (SABL NO. 21)

A. REPORT

1.1 Introduction

This is a final report on Special Agriculture and Business Lease (SABL) over Portion 146C, Volume 14, Folio 20, Milinch Kupari, Fourmil Tufi, Oro Province. The land (Portion 146C) is located in the lower Musa area, approximately 85 kilometres South East of Popondetta Township and 25 kilometres west of Tufi.

On the 9th March 2007, a Special Agriculture and Business Lease (SABL) was granted to Okena Goto Karato Development Corporation Limited (“OGKDC”) over Portion 146C by the then Secretary for Lands and Physical Planning, Mr Pepi Kimas in his capacity as the delegate of the Minister for Lands and Physical Planning.

The SABL was made with retrospective effect for a period of 99 years from the 19 February 2007. The SABL is for an agro-forestry project involving a land area of 28,100 hectares shown on the Survey Plan Catalogue No. 54/91. The nature of the business for this SABL was for a “Tree Farming” project generally with no specific reference to what sort of trees or tree crops that are to be farmed on the land. Prior to the grant, the land was held under customary tenure by the landowners.

The SABL is comprised, contained and registered in the Registrar of State Leases held and administered by the Department of Lands and Physical Planning (DLPP) through the Office of the Registrar of Titles.

1.2 Terms of Reference Covered

The Terms of Reference (TOR) heads (a) to (i) except for (g) were fully covered for purposes of this inquiry. IPA records show Okena Goto Karato Development Corporation Ltd (OGKDC) was incorporated under the Lands Groups Incorporation Act Chapter 147.

The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully examined and assessed. The monitoring, oversight, approval and permit processing with other relevant agencies of government such as Department of Agriculture & Livestock (DAL), Department of Environment & Conservation (DEC) and PNG National Forest Authority (PNGFA) were also investigated and furthermore, whether or not 'informed consent' of the landowners was obtained at every stage from the land investigation stages to public hearings including the application, registration, approval and issuance of the SABL title.

1.3 Sources of Information

Affidavits, statements including oral evidence were obtained in the course of the inquiry. Relevant key agencies of government such as the DLPP, PNG National Forest Authority (PNGFA), Department of Agriculture and Livestock (DAL) and Department of Oro were called in to give evidence and present to the inquiry relevant documentations pertaining to this SABL. The inquiry also heard evidence from the landowners and representatives of the developer.

Documents such as the Land Investigation Report (LIR); company extracts, copy of title deed, Notice of Direct Grant and Lease Agreement were also presented to the inquiry. The final source of information that makes up the bulk of the evidence came through the transcripts from oral evidence and other presentations made during the hearings in both Port Moresby and Popondetta.²²

1.4 Grant of Lease

A Notice of Direct Grant pursuant to Section 102 of the Land Act was issued to Okena Goto Karato Development Corporation Ltd on the 12 February 2007. The grant was issued for the SABL over the land bearing the same description as stated in the SABL lease. The Notice of Direct Grant was published in the National Gazette No.G23 of Monday 19 February 2007. As stated above, the SABL over Portion 146C was for a period of 99 years commencing on the 19 February 2007.

The lease appears to be still current at the time of the inquiry as there is no indication or evidence of subsequent forfeiture or revocation of the lease pursuant to Section 122 of the Land Act.

²² Annex. "IX"

1.5 IPA Records

The Okena Goto Karato Development Corporation Ltd (OGKDC) was incorporated under the Land Groups Incorporation Act Chapter 147 and having its address for services as c/- DFK Hill Mayberry, 5th Floor, Defence Haus, Corner Champion Parade & Hunter Street, NCD, PNG and Postal Address as PO Box 1829, Port Moresby, NCD. The company is a landowner company and purports to represent the interest of the landowners in and around the project area.

Okena Goto Karato Development Corporation Limited (OGKDC) has 14 shareholders and each shareholder has one (1) share each. OGKDC has ten (10) Directors and a Company Secretary according to IPA records. Records showed that the company is still current and in operation.

OGKDC nominated Victory Plantation Limited (“VPL”) as the preferred developer for the “Tree Farming” Project on Portion 146C, Milinch Kupari, Fourmil Tufi in the Oro Province. Victory Plantation Limited was incorporated on the 7 November 2005 and is still currently operating. Its registered address for service is Defence Haus, 5th Floor, Corner of Champion Parade & Hunter Street, Port Moresby, NCD, PNG. Noticeable clearly from the addresses it appears that both OGKDC and VPL operate from the same premises as both shared the same address.

In terms of share arrangements, VPL has 100 Ordinary shares all under the name of one person namely, Mr Edward Studdy. There were only two (2) directors of the company namely; Mr Edward Studdy and Mr Nicholas Studdy and both are Australian citizens. There is no Company Secretary for VPL according to IPA records. VPL’s asset value is K100.00 without NIL liabilities.

1.6 Landowner Consent & Land Investigation Report

In his evidence to the inquiry, John Bauso the landowners’ spokesman and Company Secretary for OGKDC from Gobe village in Tufi District told the inquiry that the whole purpose of setting up OGKDC was to create opportunities for local landowners to participate in business activities occurring on their customary land. Basic services to the area have been lacking over the years and both the Provincial Government and National Government have done nothing to improve the lives of people living in the lower Musa area. The setting up of OGKDC was to give the village people the opportunity to earn some money.

According to records, Hubert Murray Yaga from the Department of Oro and Simon Malu from DLPP were involved in the land investigations and also prepared the Land Investigation Report (LIR). Mr Bauso however, told the inquiry that there were no public hearings conducted by the two officers to gauge the views of the

landowners regarding the SABL. The officers only talked to a small number of landowners about the project and did not get the consent of the majority of the landowners. Also they did not walk the boundary of Portion 146C which is a pre requisite requirement to issuing an SABL.

Mr Hubert Murray Yaga, the Provincial Customary Lands Officer with the Division of Lands and Physical Planning of the Department of Oro however, denied any involvement in the land investigation process (LIP) as well as the compiling of the land investigation report (LIR). Mr Yaga told the inquiry that in 2002, VPL engaged Simon Malu, a Customary Lands Officer from DLPP and a Cartographer or Surveyor by the name of Alois from the National Mapping Bureau in Port Moresby to travel to Ako village in the Tufi LLG area to carry out the land investigations. They were there for almost a week and a half before Mr Yaga was picked up by a Tony Wong who he later came to know as a consultant on this project.

Mr Yaga told the inquiry that when he arrived at Ako village he found that the land investigations reports (LIR) were already completed by Simon Malu and also the survey work – completed by Alois. The consent forms were also completed with all the landowners from Okena present. He was then asked to sign all the documents in his capacity as Customary Lands Officer of the province. After he signed the documents, they were handed back to Simon Malu to take to Port Moresby. Mr Yaga did not participate in the land investigation process but was asked to sign the LIRs which he reluctantly did.

Mr Yaga was concerned because there was a breach of protocol in the manner in which the land investigations were carried out and the LIR prepared. As the Provincial Customary Lands Officer of the province he was not aware of the presence of Simon Malu and Alois in the province. He did not know what was happening but was surprised when he was presented with the documents to sign. He told the inquiry that matters relating to land in the province are first and foremost the responsibility of the Provincial Lands Office and not DLPP. Simon Malu and DLPP have by-passed the existing practice and protocols by conducting the land investigations without his knowledge. He does not have any knowledge as to whether or not the land investigations were actually been carried out and informed consent of the landowners properly obtained to lease their customary land for SABL purposes.

The Provincial Administrator Mr Owen Awaita informed the inquiry that he did not sign the Certificate of Alienability (CoA) for Portion 146C to OGKDC as he was advised by the Secretary of the landowner company that the CoA was already issued. There was nothing on the file to show who recommended for the issuing of the CoA. It is most likely that the CoA may have been issued without the appropriate recommendations of the Provincial Administrator.

The LIR indicated that the landowners agreed to lease their land for sixty (60) years but the actual State Lease indicated 99 years instead of 60 years. Despite the anomalies and the defects, DLPP went ahead and issued the SABL lease.

1.7 Memorandum of Agreement ('MoA')

A Memorandum of Agreement ("MOA") dated 25 January 2007 signed between OGKDC and VPL was used to facilitate the grant of an SABL over Portion 146C.

The MoA between OGKDC and VPL was in effect an 'Agreement' to develop and establish a agricultural project for a minimum lease period of 99 years. The MoA covers the 'sub-lease' agreement between OGKDC and VPL. The 'head lease' for the SABL remains with OGKDC.

The obligations of OGKDC under the MoA were to secure approvals from the relevant authorities for an SABL lease and a Forest Clearance Authority (FCA) from the PNG National Forest Authority (PNGFA). It was also required to cooperate and assist VPL in all matters relating to the establishment of the project. The obligations of the VPL were to carry out feasibility studies of the project and develop a Agricultural Development Proposal as well as the forestry surveys for the Forest Working Plan, Annual Clear Felling Plan and Environmental Plans required by relevant authorities for the 'harvesting of timbers' within the project area.

The MoA was signed by Arthur Diri, John Stanford Bauso, Cecil Kaipa, Romney Gill Bonima, Lindsay Jogo, Simon Bunaba, Lawrence Ada, Sava Paulus, Robert Bonigo and Conrad Ataembo representing the landowners and OGKDC. Someone without a name signed for VPL. The MOA was signed on the 25 January 2007.

A 'Lease Agreement' was also signed between OGKDC as the "landlord" and VPL as the "tenant" pursuant to the provisions of the Land Registration Act. Under the lease agreement, VPL was required to pay an annual rental of K14, 000.00 at the rate of 50 toea per hectare to OGKDC.

B. FINDINGS

(i) Land Investigation Report (LIR) & Landowners' Consent

It is clear from the evidence that the Lands Officers in the Department of Oro had little or no role at all in the land investigation process (LIP) and the preparation of the Land Investigation Report (LIR). We found that the whole process (land investigations, boundary walk, LIR etc.) were been 'high jacked' by DLPP and were

done without the knowledge of the Provincial Authorities. This is in breach of the established practice and protocols relating to application and processing of SABLs. The national Department of Lands (DLPP) should be working together with the Provincial Lands Office and the Provincial Administration to facilitate SABL applications as most of the functions pertaining to land have been transferred to the provincial governments. In this particular case, it is the responsibility of the Department of Oro to conduct land investigations, hold meetings with the landowners, walk the boundaries and prepare the LIR because the subject land is in the Oro Province.

We also found that the developer – Victory Plantation Limited (VPL) played a major role in assisting the facilitation of the entire land acquisition process and collaborated with Simon Malu and Alois from DLPP to carry out the land investigations and compiled the LIR. Again, all these were done without the knowledge of the Department of Oro and the Oro Provincial Government. We consider the conduct of the developer-VPL to be unethical, improper and wrong. The developer has taken over a role that clearly belongs to the State. Moreso, the whole arrangement gives rise to a conflict of interest situation. We doubt if the land investigations was ever carried out at all and the LIR compiled freely, fairly and independently without any undue influence from VPL as the preferred developer of the project.

The Land Investigation Report (LIR) dated 7 December 2006 compiled by Simon Malu from DLPP and signed by Hubert Murray Yaga appears to be incomplete and lack vital information that are important to obtain an SABL lease. Only a handful of people signed the Agency Agreement. The Schedule of Owners Status and Rights (a form attached to the LIR) remains incomplete in various parts of the Schedule. The Schedule contained names of children (minors) and very old illiterate people as having given their consent for the lease by signing the agency agreement form. Many names on the Agency Agreement form appear to be signed by the same person which suggests fraud. Most of the forms accompanying the LIR were either incomplete or not signed to indicate informed consent from the landowners. The paperwork in general, was poorly done and many parts of it are unreadable. Infact, not all landowners gave their consent to lease the land and their views were not sought regarding the proposed project development.

We found that no public hearing was conducted to gauge the views of the landowners on the proposed project and most importantly, to obtain their consent. Also there was no boundary walk/inspection carried out on the entire land boundary including adjoining boundaries.

We found serious flaws and irregularities in the granting of the SABL. These allegations were not rebutted either by DLPP, developer, or the Department of Oro. Infact, Mr Hubert Murray Yaga (the officer who signed the LIR) admitted that there were some serious defects in the LIR. He is also not convinced that the land investigations and boundary inspections were carried out properly. Also not all the landowners gave their consent to lease out their land. These are some of the minimum pre requisite requirements for lease-leaseback under Sections 11 and 102 of the Land Act. Non compliance with these minimum requirements will render the whole SABL defective and therefore, null and void.

(ii) Memorandum of Agreement (MoA)

Some issues were raised regarding the clauses in the Memorandum of Agreement (MoA) and the Lease Agreement. The Lease Agreement was drawn up by Gadens Lawyers of Port Moresby acting upon the instructions of the developer-Victory Plantation Limited (VPL).

The annual rental payment of K14, 000.00 (at the rate of 50 toea per hectare) payable to the landowners as stated in the Lease Agreement is unreasonable and simply inadequate for a land size area of 28,100 hectares. Not many landowners will benefit out of it. There is no mention of other benefits such as royalties, compensation, premiums, bonus and restitutions etc. in the MoA or in the Lease Agreement. The landowners may suffer economic loses under such arrangements. Apart from the annual rental, there are no other direct tangible benefits to the landowners for leasing their customary land.

Clause 4.2 of the Lease Agreement stated that the Landlord (AGKDC) “....must pay any land rent due under the State lease for the land to the national, provincial government or local level government rates and/or taxes for services provided to the land and shall pass on such costs to the Tenant (VPL) with evidence of such charges and taxes imposed by the relevant government...”

Rental payments and land rates/taxes do not apply to customary land and also is not a requirement under the Lease-leaseback arrangements. This clause is therefore, defective and not applicable.

Clause 19 of the MoA requires the Tenant (VPL) to sublease land back to the customary landowners to build their houses and make gardens which may attract some rental payment payable by the landowners to the developer (VPL) for the use of their own land within the SABL area subleased to the developer. This provision is simply outrageous as the customary landowners are entitled to some ‘residual or reserve rights’ over their customary land even if it under an SABL. It is not a total alienation and the landowners cannot be totally excluded from having

access to their land. In any case, the land reverts back to them after the expiry of the lease period. The important consideration should be that so long as any activity carried out by the landowners do not directly interfere with the operations of the developer, customary landowners should have access to their land if and when they wanted to as they still got the head lease over the SABL through their ILG – OGKDC.

It is obvious from the terms of the MoA that VPL was more interested in logging rather than getting into a long term sustainable agro-forestry business activity that will benefit the landowners as well as getting them actively involved in the business activity over a long period of time. The use of the generic expression “tree farming” without specific details of what sort of tree crops the developer intends to develop is reason enough to suggest that VPL is not serious about agro-forestry activities such as oil palm, cocoa or other tree crop plantations. Generally, the MoA simply does not promote the objective and purpose of the SABL.

(iii) Project Development

There is no Agriculture Development Plan presented to the inquiry although this was an agro-forestry project. Without an agriculture development plan, a Forest Clearance Authority (FCA) cannot be issued. There is also no Environment Impact Assessment (EIA) report presented. There were no Forest Working Plan and Annual Clear Felling Plan submitted to the inquiry. Clause 3.0 of the MoA requires the developer-VPL to consult and seek approval from the relevant authorities on these Plans but VPL has failed on its obligations to provide the Plans.

The proposed project was for a “tree farming” generally but no mention is made of any specific species of timber or any particular trees or tree crops the developer intends to farm. Such lack of information regarding the exact nature of the business has lead the inquiry to conclude that the developer-VPL is using tree farming as a ‘front’ to go into a full scale logging operation. And this is becoming a common trend and the inquiry has also found similar situations in other SABLs as well.

It was also noted that no Forest Clearance Authority (FCA) was issued by the PNG National Forest Authority (PNGFA). However, if it has been issued, a copy of the same was not presented to the inquiry. Evidence before the inquiry suggested that the developer has already carried out some clear felling (logging operations) in the area and if there is any truth in this than the VPL must immediately cease its operations as without an FCA clear felling cannot take place. This is contrary to Section 90B of the Forestry Act 1991.

We note a 'Recommendation for Alienability' on the file signed by the former Administrator of Oro Province, Mr Monty Derari on the 7 December 2006 but no Certificate of Alienability (CoA) was issued by the Custodian of Trust Land pursuant to Section 134 of the Land Act. We hold the view that no Certificate of Alienability was issued for Portion 146C. Without the CoA, customary land cannot be alienated.

(iv) Period of the Lease

The term of the lease is not clear. In the actual SABL Lease document it stated a 99 year lease over Portion 146C but in the Lease-Leaseback Agreement, the landowners gave their consent for a 60 year lease and in the LIR a term of 33 years was stated as the term of the lease. There is confusion and uncertainty over the exact term of the lease over Portion 146C. There is no satisfactory explanation given to the inquiry regarding this serious inconsistency and anomaly. A fundamental error or oversight has occurred regarding the term of the lease that could render the whole SABL defective. The term/period of the lease is crucial to the granting of the lease and must be clearly stated as everything else (subleases etc) hinges on or depends on the actual term of the lease that is granted under the SABL.

C. RECOMMENDATIONS

Based on the above findings, we recommend that the SABL granted to Okena Goto Karato Development Corporation (OGKDC) over Portion 146C, Milinch Kupari, Fourmil Tufi in the Oro Province is to be **REVOKED**. The SABL is tainted with so many defects that it cannot lawfully stand as a legitimate SABL.

This effectively means that any sublease Agreement entered into by OGKDC with any developer including Victory Plantation Limited (VPL) is void and is of no effect.

**13. MUSIDA HOLDINGS LIMITED (Portion 16C)
(SABL NO. 44)**

A. REPORT

1.1 Introduction

The report on this SABL held by Musida Holdings Limited ('MHL') will be very brief as the granting of this particular SABL was challenged in Court by another faction

of the landowners which resulted in its revocation. Following the Court Order Portion 16C was subsumed and subsequently became part of a larger SABL (Portion 17C) held by Musa Valley Management Company Limited (MVMCL). For this reason, reference will be made to Portion 16C and Musida Holdings Limited in the report on MVMCL.

This was a 99 year SABL lease issued to a landowner company called Musida Holdings Limited (MHL) owned by the people of Musida-Bareji-Pongani area of Safia LLG in the Ijivitari District of Oro Province. The perusal of the files supplied by the Department of Lands & Physical Planning (DLPP) shows that on the 8th January 2009, an SABL was granted to Musida Holdings Limited over the area of land described as Portion 16C, Milinch Gora, Fourmil Tufi, Oro Province totalling some 211,600 hectares in the Musa-Bareji-Pongani area of Safia LLG, Ijivitari District.

The Direct Grant was made by the then Secretary of DLPP Mr Pepi Kimas pursuant to Section 102 of the Land Act 1996 to Musida Holdings Limited in his capacity as Ministerial delegate. However, immediately after the issuance of the direct grant another landowner group opposing the SABL filed proceedings in the National Court to challenge it.

1.2 Legal Challenge over Grant & Subsequent Revocation of the SABL

The granting of the SABL to Musida Holdings Limited was challenged in Court by another landowner company from the same area with competing interest. The Musa Valley Management Company Limited ('MVMCL') challenged the grant of the SABL to Musida Holdings Limited in the National Court in Waigani by way of *OS No. 10 of 2009 Musa Valley Management Company Limited & Anor vs. Pepi. S. Kimas, Puka Temu, the State and Musida Holdings Limited*. The plaintiffs argued that majority of the customary landowners did not give their consent or approval for the State to acquire their customary land and sublease it to Musida Holdings Limited.

On the 2nd of January 2010 at the National Court in Waigani, Justice David Cannings, after considering the evidence made an Order declaring the granting of the SABL to Musida Holdings Limited as unlawful and therefore, null and void. He ordered that the SABL be revoked on the basis that consent was not given by the landowners as required under Sections 11 & 102 of the Land Act.

Following the decision of the National Court the then Secretary for Lands & Physical Planning Pepi S. Kimas issued a Notice of Revocation of the said SABL over Portion 16C on the 3rd February 2010. The revocation notice was published in the National Gazette No. G27 of Wednesday 10th February 2010.

1.3 Conclusion

The SABL over Portion 16C granted to Musida Holdings Limited was revoked and became a part of a larger SABL (Portion 17C) granted to Musa Valley Management Company Limited (MVMCL) as the portions of lands are adjacent to each other within the same area. Following the Court Order the SABL granted over Portion 16C has been revoked and no longer exist and therefore, does not require any further investigation by this COI. It is however, included in this report for purposes of reporting and completeness as it was one of the seventy-five (75) SABLs initially referred to the COI.

14. MUSA VALLEY MANAGEMENT COMPANY LIMITED (Portion 17C) (SABL NO. 67)

A. REPORT

1.1 Introduction

This is the final report on Special Agriculture and Business Lease (SABL) over Portion 17C Milinch Gore and Safia, Fourmil Tufi in the Ijivitari District, Oro Province issued to Musa Valley Management Company Limited ('MVMCL'). Portion 17C is within the same location as Portion 16C which was previously granted to Musida Holdings Limited (MHL) but was later revoked by the National Court when it found that informed consent of the majority of the landowners were not obtained prior to granting the lease. Portion 16C comprising of 211, 600 hectares is now merged together with a much larger area of Portion 17C which has a total land area of 320,060 hectares. MVMCL is the current grantee of the SABL over Portion 17C.

The brief background is that Musida Holdings Limited ('MHL') was formed by customary landowners living in villages in the Musa-Pongani area whilst the Musa Valley Management Company Limited ('MVMCL') was formed by customary landowners residing in Port Moresby, National Capital District. Both landowner companies applied for SABL over Portion 16C. In 2009, DLPP granted an SABL to Musida Holdings Limited over Portion 16C through a direct grant pursuant to Section 102 of the Land Act. When MVMCL found out about the granting of the SABL to MHL they filed proceedings in the National Court to challenge the granting of the SABL to MHL. The SABL was subsequently revoked by the Court when it found that majority of the customary landowners have not given their consent for the land to be leased out for SABL purposes. The remaining signatures

of the other ILG representatives were subsequently obtained as suggested by the Court in a meeting held at Kinjaki village but before the landowners could apply for a new SABL, MVMCL has already lodged an application for Portion 17C which also covered Portion 16C and was granted an SABL (See details below). Portion 17C supersedes the earlier grant over Portion 16C.²³

1.2 Terms of Reference

The Terms of Reference (TOR) heads (a) to (i) except for (g) were fully covered for purposes of this inquiry. The process and procedure through which the Department of Lands and Physical Planning (DLPP) issued the SABL was carefully examined and assessed. The monitoring, oversight, approval and permit processing with other relevant agencies of government such as Department of Agriculture & Livestock (DAL), Department of Environment & Conservation (DEC) and the PNG National Forest Authority (PNGFA) were also investigated and furthermore, whether or not ‘informed consent’ of the landowners was obtained at every stage from the land investigation stages to public hearings including the application, registration, approval and issuance of the SABL title.

The SABL issued to MVMCL was for a proposed oil palm and cattle projects located in the Musa-Bareji-Pongani (commonly referred to as ‘Musa-Pongani’) area of Safia LLG, Ijivitari District approximately 90 kilometres south-east of Popondetta township in the Oro Province. The total population of people living in and around the Musa-Pongani area is approximately 10,000. There are a total of sixty-two (62) ILGs representing the landowners. The Ijivitari District covers approximately 13,000 square kilometres and has a population of 68,000 people. The Musa-Pongani area has large tracks of forested land suitable for logging and other agro-forestry projects but remained undeveloped for many years. There are no major developments in and around the area and government services were virtually non-existence. People desperately wanted development in the area and decided to lease the portion of their customary land in order to bring in much needed development and allow people to have access to basic services to improve their livelihood.

1.3 Grant of Lease & Sub-Lease

On the 30th of September 2010, Mr Pepi Kimas the then Secretary for DLPP exercising his powers as the Ministerial Delegate, issued a Notice of Direct Grant under Section 102 of the Land Act granting an SABL title to Musa Valley Management Company Limited (MVMCL), a landowner company. The grant of

²³ Annex. “IX”

SABL was made in relation to the land described as “all that piece of land being Portion 17C, Milinch Gore and Safia (NW) Bibira (NE & SE), Fourmil Tufi and Moresby, Ijivitari District covering total land area of 320,060 hectares.”

The instrument of lease was signed on the 30th September 2010 between the State and MVMCL. The Lease-Leaseback Agreement was signed by a Simon Sare, Chairman of MVMCL in Port Moresby allegedly acting under a power of Attorney given to him by the landowners through their respective ILG chairpersons. The State lease was registered on the 08th October 2010. The gazettal of the Direct Grant was published in the National Gazette No. 228 dated 30th September, 2010. The area of the land is shown in the Survey Plan Catalogue No. 50/96.

MVMCL sub-leased to Musa Century Limited, ('MCL') a foreign company owned and operated by Malaysian nationals. The period of the sub-lease to Musa Century Limited was for ninety-nine (99) years which is essentially the entire duration of the head-lease leaving no residual (reserve) rights to the landowners. The sub-lease agreement tendered to the inquiry by Mr Romily Kila-Pat, Deputy Secretary- Customary Lands Division was undated but it is presumed that the sub-lease may have been issued on or after the grant of the head-lease.

1.4 Landowners Consent

The central issue arising out of this SABL was whether or not majority of the landowners have given their consent for the land (Portion 17C) to be leased to MVMCL by way of a direct grant and later sub-leased to Musa Century Limited (MCL) as a preferred developer. Evidence tends to suggest that not all the landowners gave their consent for their customary land to be leased for 99 years for an SABL. A number of land owners who gave evidence at the inquiry stated that they have not attended any meetings and were not adequately informed about the SABL and therefore have not given their informed consent. They also alleged fraudulent conduct on the part of the government officials and the developer company in obtaining signatures of landowners to indicate consent. Mr Sima Doi (a landowner witness challenging the grant of this SABL to MVMCL) told the inquiry that certain individuals like Simeon Sare, Steven Borasu and Patterson Borasu drafted letters of consent in Port Moresby and brought them back to the villages and misled and coerced people into signing the letter at night time and in odd places without holding a proper and formal meeting with all the landowners to explain the letters of consent before they are signed. Mr Doi strongly recommended for the cancellation of Portion 17C as no proper consent were given by all the landowners.

1.5 Competing Interests & Potential Land Disputes

A perusal of the customary land files from DLPP on this SABL showed that there were two landowner companies with competing interests to obtain SABL over Portion 16C and also Portion 17C which is an extension of Portion 16C by another 108,460 hectares. The initial Portion 16C comprised of 211,600 hectares was originally issued to Musida Holdings Limited which was later revoked by the National Court in *OS No.10 of 2009 – Musa Valley Management Co. Ltd and Anor - vs – Kimas, Temu and Musida Holdings Ltd*. The Court found that out of the 63 ILG's (Inco-operated Land Groups) in the area only 10 ILG representatives signed on behalf of the other 53 ILGs indicating landowner's agreement but there were no evidence to show that the representatives of the 10 ILG's were properly authorized to sign on behalf of the others and therefore, declare Portion 16C null and void.

Following the revocation of the lease, MVMCL applied for and was granted SABL over Portion 17C which also covers Portion 16C (initially granted to MHL but revoked by the Court). MHL has since filed for a judicial review challenging the grant of the SABL to MVMCL by way of OS No. 657 of 2011. Leave of Court was granted which also served as a stay on the grant of the SABL over Portion 17C. The first defendants were Romily Kila-Pat the Acting Secretary for DLPP and Minister for Lands Lucas Dekena; Second Defendant was the Independent State of PNG, third defendant being MVMCL which is the incumbent holder of the SABL over Portion 17C. The Stay Order of the Court has effectively barred MVMCL and MCL from carrying any business activities on Portion 17C including Portion 16C. The Order of the Court is still current and no business activity has taken place since. Coupled with that, the current moratorium on SABL imposed by the government until the conclusion of the COI into the SABL effectively stalls the SABL for Portion 17C.

1.6 Land Investigation

Evidence suggests that the land investigation process (LIP) on Portion 17C was not properly carried out and the land investigation report (LIR) was incomplete and unreliable. There was no 'boundary walk' to check and verify the boundaries of the land in question (Portion 17C). By conducting a physical boundary walk would also assist those inspecting the boundaries to ascertain if there were any overlaps in the boundaries with adjoining land owned by other clans who are not part of the SABL but would also be required to give their consent as well. In any case, Portion 17C covered a massive 320,060 hectares of land and it is possible that a Class 4 Survey may have been carried out to determine the boundaries based on GPS readings on the co-ordinates.

Evidence revealed that the LIP and LIR were done by a retired Lands Officer by the name of Frank Seboda who is not an unauthorized person to carry out such work. According to Hubert Murray Yaga, the Provincial Customary Lands Officer of Oro Province the LIP and LIR were done without his knowledge and he was only asked to sign the LIR. He refused initially to sign but later signed the LIR reluctantly. Mr Yaga also told the inquiry that he did not participate in the land investigation process (LIP) and was also not involved in compiling land investigation reports (LIR) for two (2) SABLs in Oro province namely; Okena Goto Karato (Portion 146C) and Musida (Portion 16C). He said the LIRs for these two SABLs were compiled by Mr Simon Malu from the national department of Lands (DLPP) assisted by the landowner companies and developers. Mr Yaga also revealed that he was 'forced' to sign the LIR by Simon Malu and later he was paid K300 including other expenses by Simon Malu.

For the record, DLPP was not able to produce a copy of the particular land investigation report (LIR) for Portion 17C compiled by Simon Malu and signed by Hubert Murray Yaga despite numerous requests and directions from the COI. The land investigation report is still missing to this day and cannot be found. Mr Yaga informed the inquiry that after he signed the LIR he sent it to DLPP in Port Moresby. Not only is it unusual but it is also unlawful for an SABL to be issued without a land investigation report (LIR). The LIR is the most fundamental pre requisite requirement for an SABL to be issued. Simply put, no LIR no SABL.

Mr Yaga told the inquiry that proper procedures and protocols were not followed in conducting the LIP and LIR in the province. As the Provincial Customary Lands Officer he is responsible for all the land investigation processes carried out in the province and no one else is authorized to carry out such work without his expressed approval. He expressed disappointment over the 'high jacking' of the whole process by unauthorized persons and individuals. He made specific reference to Frank Seboda a retired Lands Officer who conducted the land investigation when he is not authorized to do so. He also made reference to Simon Malu from the national department of Lands (DLPP) who has no authority whatsoever to conduct land investigations and prepare land investigation reports for purposes of SABL acquisition in Oro Province as this function has been decentralized to the provincial administration and comes under the Division of Lands of the Oro Provincial Government.

1.7 Agriculture Development & Land Use Plan – Department of Agriculture and Livestock (DAL)

MVMCL (Landowner Company) sub-leased Portion 17C under the SABL to the developer Musa Century Limited (MCL) to grow oil palm and also for cattle farming. Both are agriculture projects and therefore, the involvement of Department of Agriculture (DAL) is very important.

DAL is required to take a lead role in conducting awareness amongst the landowners and hold meetings to discuss the SABL and the proposed agricultural projects. DAL headquarters in Port Moresby instructed the Provincial Agriculture office in Popondetta to organize and chair the meetings held with the landowners for the Musa-Pongani SABL. The first meeting was held at Embessa village (middle Musa) on the 26th October, 2007 and the second meeting was held at Bareji (Pongani) village on the 8th October, 2010, three (3) years apart. The Oro Provincial DAL chaired both meetings. The first meeting was to basically announce the type of project(s) to be carried in the area under the SABL and the second meeting was, according to evidence, held for the same reason but in a different village. The second meeting however, was held one (1) month after the SABL was granted. The Notice of the Direct Grant for this SABL (Portion 17C) was issued on the 30th September, 2010. The holding of meetings and awareness program is part of the Land Investigation Process (LIP) and must be done prior to the granting of the SABL. The land investigation process will result in the compiling of the LIR which forms the basis of an application for an SABL. The manner in which the meetings were held especially the second meeting after the SABL was granted is wrong and contrary to the provisions of the Land Act (Sections 11 & 102).

It appears that no proper awareness were carried out by DAL and landowner's agreement were not sought in those two meetings other than the announcement of the new projects that are to take place under the SABL. Also there is no evidence to suggest that landowner's consent were obtained at these two meetings. Evidence showed that the meetings were organized haphazardly and many of the landowners were not given the opportunity to speak. Awareness is a pre requisite to obtaining landowners' agreement and consent prior to issuing of an SABL as customary landowners must be made aware of the intended projects the SABL and how they would benefit from such developments and projects taking place on their customary land. Landowners will decide for themselves if they wanted the projects to go ahead or not and therefore, unequivocal agreement and informed consent of ALL landowners is imperative.

Many landowners in the Lower-Musa area knew of the existence of the Musa-Pongani SABL as it involved some portions of their customary land but were not too sure what kind of developmental activities were to take place. They did not

participate in any meetings that were held and have no idea what was going on. They heard about the MVMCL (Landowner Company) but do not know who the directors and shareholder were because the proponents of this SABL are all Port Moresby-based landowners and totally isolated to the rest of the landowners living back in the villages. They also have no knowledge about the developer Musa Century Limited (MCL) who was granted the sub-lease of Portion 17C by MVMCL.

According to evidence given to the inquiry, there has been very little awareness carried out to inform customary landowners on the proposed SABL comprising Portion 17C. Awareness (if any) was carried out only in places where there are road access and around the coastline where villages could be reached easily by dinghies. However, much of the land within which the SABL was located is situated in-land with no road access hence, no awareness was carried out in those in-land villages where majority of the landowners live whose lands are directly affected by the SABL but do not know anything about it.

Another important consideration is the Agriculture Development Plan. The proponents of the proposed agriculture projects/activities are required to submit an Agriculture Development Plan for consideration and approval by DAL before an FCA can be issued. In the case of Portion 17C (Musa-Pongani) the Agriculture Development Plan (land use plan) is not very clear and does not set out in detail how the developer intends to develop the agro-forestry projects. The details are very sketchy and vague particularly in relation to development of oil palm and cattle project. There is no proper and viable implementation schedule for the both projects including specific time lines on when the developer intends to commence the projects after clearing the forest. With the lack of a clear agriculture development plan and other necessary details relating to the proposed projects on Portion 17C, the COI is led to believe that the developer MCL is not interested in developing the oil palm and cattle project but rather using them as an excuse/guise to obtain a Forest Clearance Authority (FCA) and embark on a full scale logging operations instead. This practice is quite common with many other SABLs throughout the country.

The Agriculture Development Plan submitted to DAL for Portion 17C by MCL and MCMCL for Oil Palm plantation and cattle farming under its 'Integrated Projects' category is still in the assessment stage and is not yet approved and as such no activity will take place until approval is given.

1.8 Forest Clearance Authority (FCA) – National Forest Authority (PNGFA)

The proposed agricultural project under this SABL was to develop an oil palm plantation and cattle farming. An estimated 90% of the land (Portion 17C) is thickly forested (with high quality merchantable logs) which will require a massive forest clearance to be carried out before the oil palm and cattle projects commences. A Forest Clearance Authority (FCA) for purposes of ‘clear-felling’ pursuant to Section 90B of the Forestry (Amendment) Act 1991 is required before any clearing of the forest takes place. There is currently no FCA issued to Musa Century Ltd as the original FCA issued for Portion 17C on the 28th January, 2010 was subsequently cancelled by the National Forest Board (NFB) on the 03rd August, 2011. The particular FCA remains cancelled to this day.

The Provincial Forestry office in Oro was initially involved and participated in some meetings carried out in 2007 and 2010 regarding this SABL. In early 1990s an inventory was carried out by the National Forest Authority (PNGFA) for a ‘Forest Management Agreement’ (FMA) over most part of Portion 17C because of its thick forest but the proposal for the FMA was later withdrawn. The forest inventory work was not part of the current SABL.

1.9 Environmental Approval and Permit – Department of Environment & Conservation (DEC)

The project proponent, Musa Century Limited (MCL), the developer of the Musa-Pongani SABL (Portion 17C) submitted an Environmental Inception Report (EIR) of the project area on the 7th April, 2008 to the Department of Environment and Conservation (DEC) for its approval in accordance with Section 51 (1) (a) of the Environment Act 2000. According to evidence received from the representatives of the MCL and MVMCL, the EIR was approved by DEC on the 28th of April, 2008. MCL was then advised by DEC to carry out the relevant environmental impact study and assessment on the environment proposed for the agro-forestry project and submit an Environment Impact Statement (EIS) to the Environment Council (EC) for deliberation and approval as the particular project is classified as a Level 3 project because of the level of destruction the proposed project is likely to cause to the environment. The EIS for Musa-Pongani SABL was produced and submitted to DEC in May of 2008 less than a month after the EIR was approved. Concerns were raised whether proper environmental assessments were been carried out before the EIS was prepared especially involving a large tract of land such as Musa-Pongani which covers 320,060 hectares of customary land. According to Mr Michael Wau, Deputy Secretary of DEC, it normally takes between 6 – 12 months to complete an EIS depending on the size of land proposed for the project. Landowners who gave evidence told the inquiry that they were not aware of any

environmental impact study been carried out either by the project proponent (MCL) or by any official from DEC.

A list of Environmental Permits pending approval and Permits that have already been issued for SABLs was submitted to the inquiry by Dr. Wari Iamo, Secretary of DEC. Portion 17C (Musa-Pongani) SABL does not appear on the list and there is no record of the either the EIR or EIS submitted by the project proponent (MCL) to DEC and Environment Council. Therefore, on record, there is no EIR or EIS for the Musa-Pongani SABL (Portion 17C) and for this reason it is not possible for DEC or the Environmental Council to issue an Environmental Permit for Portion 17C. And without an environment permit no activity can take place on the land.

B. FINDINGS

A number of findings are made as follows:

(i) Current Status of Portion 17C – SABL

Portion 17C currently held by MVMCL consist of and includes what was previously Portion 16C comprising 211,600 hectares and merged together with Portion 17C increasing the land area for the particular SABL to a total 320,060 hectares. The two portions of land (now merged) are within the same locality of the Musa-Pongani area of the Safia Local Level Government (LLG), Ijivitari Electorate in Oro Province. In effect, the two portions (Portions 16C & 17C) are one and the same thing and share the same boundaries.

The SABL over Portion 16C held by MHL was revoked by the National Court in 2009 and no longer exist. The SABL over Portion 17C held by MVMCL is still current however, a Stay Order has been imposed by the Court following an application for a judicial review by MHL (opposing faction). The stay order however, was recently lifted (during the course of this inquiry) enabling MVMCL to proceed with developmental projects proposed for the SABL.

There is no land dispute *per se* rather the dispute was between two different landowner groups formed in isolation from each other with competing interests to obtain an SABL over the same piece of land. The customary landowners based in the villages in Musa-Pongani formed the Musida Holdings Limited (MHL) which applied for and obtained an SABL over Portion 16C whilst the other faction of landowners residing in Port Moresby formed the landowner company Musa Valley Management Company Limited (MVMCL) who applied for and was granted SABL over Portion 17C following the revocation of Portion 16C by the National Court.

(ii) Land Investigation Process (LIP) & Land Investigation Report (LIR)

We found that proper procedures and protocols were not followed in conducting the Land Investigation Process (LIP) on Portion 17C. There was no 'boundary walk' to ascertain and verify the boundaries proposed for the SABL. There is no evidence to suggest that a Class 4 survey was conducted in place of a boundary walk given the enormous size of land (320,060 hectares) covered by Portion 17C which also covers and includes Portion 16C. Only two (2) meetings were held with only a handful of landowners but majority of the landowners were not invited to participate in those two meetings. One of the meetings was held after the granting of the SABL which is contrary to Sections 11 and 102 of the Land Act. There were no meeting(s) held with adjacent landowners to get their consent on the proposed SABL.

Furthermore, the land investigation was carried out by an unauthorized person, a retired Lands Officer by the name of Frank Seboda who is no longer an employee of the State and as such do not have any authority to conduct such investigation. The Land Investigation Report (LIR) was also compiled by Frank Seboda. The LIP and LIR were done without the knowledge and approval of the Oro Provincial Customary Lands Officer (PCLO) Hubert Murray Yaga and the Provincial Division of Lands. Mr Yaga did not participate in the LIP and had no input in the LIR but was told to sign the LIR by Simon Malu from DLPP and he reluctantly signed it.

(iii) Awareness & Landowner's Consent

We found that very little awareness was carried out on the SABL over Portion 17C in the Musa-Pongani area. The majority of the affected landowners were not consulted and have not participated in any meetings or hearings held to gauge landowner's views and agreements on the SABL as part of the land investigation process. Majority of the landowners have not given their 'informed consent' to lease their land for SABL and have not signed any documents to indicate their agreement and consent. Some signatures were fraudulently obtained. The informed consent of the customary landowners to lease their customary land is the most fundamental primary requirement to issuing an SABL and without such consent been properly obtained no SABL can be issued. We discovered that majority of the landowners in the villages in and around the Musa-Pongani area were not involved and did not participate in the initial application stages to obtain an SABL over Portion 17C.

(iv) Agriculture Development Plan & Forest Clearance Authority (FCA)

We also found that the 'Agriculture Development Plan' (land use plan) submitted to DAL by the project proponents MVMCL and MCL for purposes of obtaining an FCA is not very clear and does not outline in detail how the developer (MCL) intends to develop agro-forestry projects proposed for Portion 17C. The details were far too general and vague and only made reference to developing oil palm plantations and cattle farming with no specific details and viable implementation schedule(s) including specific timelines on developing these projects after clearing the forest. For this reason, the Agriculture Development Plan submitted to DAL for oil palm and cattle projects development on Portion 17C under the 'Integrated Projects' category has not been approved.

We also found that there is currently no Forest Clearance Authority (FCA) issued to Musa Century Limited (MCL) as the previous FCA issued for Portion 17C on the 28th January, 2010 was subsequently cancelled by the National Forest Board (NFB) on the 03rd August 2011. This FCA remains cancelled to this day.

The COI has not been able to ascertain how an FCA can be issued to MCL over Portion 17C when on official DAL records the Agriculture Development Plan has not been approved. It appears that the issuance of the FCA on the 28th January, 2010 was done improperly prompting the National Forest Board to later rescind its own decision and cancelled the FCA.

(v) Environment Inception Report & Environment Impact Statement - DEC

There is no record of either the Environment Inception Report (EIR) or the Environmental Impact Statement (EIS) for Musa-Pongani SABL over Portion 17C. The list of approved Environmental Permits submitted to the inquiry does not include Portion 17C. We found accordingly that no Environmental Permit was issued to MCL. The proposed oil palm plantation is a Level 3 category project under the Environment Act and as such will have some direct impact on the immediate environment and therefore, an EIR and EIS must be submitted to DEC for approval by Environment Council before the project commences. Without an EIR and EIS no work can be carried out.

All in all, the COI found that the issuing of the SABL over Portion 17C to MVMCL which was then sub-leased to MCL was improper and unlawful. We found no record of the Land Investigation Report (LIR); no record of the Environmental Permit issued to MCL. The Forest Clearance Authority (FCA) issued to MCL has already been cancelled and no longer is valid. We also found that consent were not obtained from the majority of the landowners to lease their land for the SABL

on Portion 17C. In addition, the SABL is not founded upon a proper Lease-Lease back instrument in accordance with Sections 11 and 102 of the Land Act and therefore, is defective and void.

We found therefore, that the SABL over Portion 17C was improperly and unlawfully granted to MVMCL and therefore, any subsequent sub-lease arrangements would be also be deemed to be void and of no effect.

C. RECOMMENDATIONS

Based on the findings made above, we recommend that the SABL over Portion 17C in the Musa-Pongani area issued to MVMCL and sub-leased to MCL is to be **REVOKED** forthwith. We also recommend that the entire SABL over Portion 17C (inclusive of Portion 16C) is to be **REVIEWED**.

Operations (if any) currently undertaken by the developer (MCL) on Portion 17C are to be **CEASED** forthwith.

We further recommend that the two different factions of the landowner groups representing MHL and MVMCL to immediately get together and discuss a way forward which would include putting aside their differences and agreeing to work together and re-apply for a new fresh SABL over Portion 17C which will also include Portion 16C. **ALL** landowners must be involved in the process and give their informed consent.

Government departments responsible for processing SABL applications must ensure that there is proper awareness carried out including boundaries inspection and all necessary consent obtained from all the landowners. The SABL application procedures and requirements must be fully complied with to ensure that the SABL is properly and legally granted.

The Division of Lands of the Oro Provincial Administration must take a lead role and be involved in the Land Investigation Process (LIP) and also the compilation of the Land Investigation Report (LIR).

**15. KEMEND KELBA KEI INVESTMENTS LTD (Portion 155C)
(SABL NO. 63)**

A. REPORT

1.1 Introduction

This is a final report on the Special Agriculture and Business Lease (SABL) over Portion 155C held by Kemend Kelba Investments Ltd, Milinch Baiyer and Fourmil Ramu in the Baiyer District of Western Highlands Province. The land is known as 'Kamut' comprising a land area of 41.30 hectares as shown on the Survey Plan Catalogue No. 11/609.

There are no serious irregularities in this SABL (Portion 155C) and as such this report is very brief for purposes of reporting only and completeness as it was one of the seventy-five (75) SABLs referred to this COI.

1.2 IPA Records

The Kemend Kelba Kei Investment Ltd ('KKKIL') is a landowner company formed in 1981 by the former Member of Parliament for Mul-Baiyer Mr Joel Pepa Pawa to operate the Kemend Coffee Plantation in the Mul-Baiyer area. According to the Investment Promotion Authority (IPA) records, Kemend Kelba Kei Investments Ltd was incorporated on the 22nd November, 2006 and has its registered office at Section 41, Allotment 104 Warakum, Mount Hagen, Western Highlands Province. A Certificate of Incorporation was issued to the company. The nature of the business operation is coffee production and selling of processed coffee beans.

The company was issued with 100 ordinary shares and has eight (8) shareholders who are also directors of the company who are mostly landowners. The break-up of the shares for the shareholders are as follows:

- (i) Peter Kali – 5 shares
- (ii) Justin Kingal – 8 shares
- (iii) Jacob Peng – 8 shares
- (iv) Jollen Peng – 8 shares
- (v) Paul Peng – 8 shares
- (vi) Jackson Plak Pugum – 50 shares
- (vii) Elan Pulgum – 8 shares

There is no other information regarding the operation of the company including returns on the IPA records except the application of incorporation documents which were submitted by the Company Secretary Justin Kingal on the 18th October, 2006.

The COI has not received any information whatsoever from the key and relevant government agencies responsible for the administration of SABL which includes DLPP, DAL and DEC despite numerous requests and directions issued. The inquiry was told that there are no official files or records on Kemend Kelba Kei Investment Ltd held by these relevant government agencies. DLPP does not have any record of the SABL issued over Portion 155C and the Registrar of Titles Mr Henry Wasa could not locate a copy of the title for this SABL.²⁴

1.3 Grant of Lease

By notice published in the National Gazette No. G170 dated 5th August, 2010 the then Secretary of DLPP, Pepi Kimas in his capacity as Ministerial Delegate issued a Notice of Direct Grant to Kemend Kelba Kei Investments Ltd pursuant to Section 102 of the Land Act under a 99 year lease. The Notice of Grant was dated 20th April, 2010.

1.4 Land Investigation & Landowners Consent

The land investigation process (LIP) and the Land Investigation Report (LIR) were carried out and compiled by John Ngants a private Land Consultant engaged by DLPP and Western Highlands Provincial Administration. Mr Ngants was the former Provincial Customary Lands Officer with the Western Highlands Provincial Administration (WHP) but was laid off work when the provincial administration ceased all its funding to land registration services in the province.

Mr Ngants told the inquiry that he was advised by Jacob Wafinduo (now deceased) of DLPP in a letter dated 10th October 2006 to carry out the land investigation over Portion 155C in consultation with the WHP Provincial Administration. On the 16th October 2007, the then Deputy Provincial Administrator of WHP, Mr Leo Meninga authorized Mr Ngants to carry out the land investigation and to compile a LIR and present it to the Provincial Administration for vetting and approval.

The COI is satisfied that although Mr Ngants was no longer an employee of the State he was, for all intended purposes, properly authorized by the relevant authorities to carry out the land investigations including compiling of the land investigation report over Portion 155C.

The land investigation was carried in the presence of the landowners headed by Mr Jackson Plak Pugum who is the principal landowner and other community leaders. At a meeting with the landowners in Kombolopa, Mr Pugum and the

²⁴ Annex. "XI"

landowners agreed to lease out their land for a coffee plantation through an SABL arrangement. The landowners agreed to register the land under the landowners company's name "Kemend Kelba Kei Investment Ltd" for purposes of bank loans and engaging management companies to manage the coffee plantations which was to be the main business activity or project under the SABL. It was at that meeting at Kombolopa that the landowners gave their unqualified 'informed consent' and signed the agreement form to lease out their customary land and convert it into an SABL.

Mr Ngants and the landowners walked the boundaries of the land identified as "Kamut" Portion 155C including the boundaries belonging to the adjacent landowners. Portion 155C was already a fully developed coffee plantation and has been in operation for the past 20 years but the landowners have not obtained a lease title over the land. The land remains customary land with no clear title. The LIR compiled by Mr Ngants and subsequently endorsed by Mr Paul Akel, District Lands Officer was sent to the Provincial Administrator for the endorsement of Alienability Recommendations. The LIR was then submitted with appropriate recommendations by the Provincial Administrator to the Customary Lands Division of DLPP to issue an SABL over Portion 155C.

1.5 Prove of Ownership –Portion 155C

There was no dispute over ownership of the land that was surveyed for the SABL, particularly Portion 155C. As stated above, there was already a coffee plantation in operation on the subject land operated by Jackson Plak Pugum and his family as principal landowners supported by other landowners in the area. The community leaders have also confirmed ownership rights and signed the 'Declaration of Recognition of Custom in Respect to and Rights in the Land' known as Portion 155C, Milinch Baiyer, Fourmil Ramu in the Baiyer District of WHP.

1.6 Sub-Lease

The sub-leasing of Portion 155C was initiated by the landowners when Mr Pugum approached Pacific Arabica Coffee Development Corporation (PACDC) to manage the plantation after realizing that the landowner company Kemend Kelba Investment Ltd had no finance, resources and lack management skills to manage the plantation properly. The landowners decided to engage PACDC to manage the plantation for them at an agreed fee. PACDC refused to take over the management of the coffee plantation unless the landowners have a proper title over the land and sub-lease it to PACDC. In addition to that the landowners also

decided to obtain an SABL title over the Kemend plantation to also use as collateral for bank loans and security should the need arises in future.

It was for this reason that Kemend Kelba Investment Ltd submitted its application and was granted an SABL. However, there is no record of the sub-lease agreement between Kemend Kelba Investment Ltd and PACDC.

1.7 Dispute

The dispute (if any) is really between the Kemend Kelba Investment Ltd (lessor) and the PACDC (lessee) over the management agreement of the Kemend Coffee Plantation. Prior to Mr Pugum acquiring the management of the plantation, it was previously managed by another landowner the former member for Mul-Baiyer Mr Joel Pawa who, as mentioned above, initiated the development of this plantation. Mr Pawa sold the plantation to Mr Pugum for K65, 000.00 and PACDC assisted Mr Pugum to purchase the plantation.

A Memorandum of Understanding (MOU) which formed the basis of the sub-lease agreement was signed between PACDC and Kemend Kelba Investment Ltd in 2007 for a subsidiary joint venture company 'Kemend Pacific Limited' to manage the Kemend Coffee Plantation for a period of five (5) years with PACDC holding 51% of the shares and Kemend Kelba Investment Ltd holding 49%. The MOU has since expired on the 10th February, 2012. Mr Pugum was appointed as a director of a Kemend Pacific Limited that manages the plantation.

Mr Pugum was generally disappointed with the way PACDC managed the plantation through its subsidiary company Kemend Pacific Ltd. Concerns raised by Mr Pugum was that although he was a director of Kemend Pacific Ltd kept he was not involved in the decision making process and was for the best part of his time as director kept in the dark and totally isolated from the management of the company. He was not invited to any board meetings and his views were not sought in a number of management decisions made. His other main concern was that PACDC has not paid any dividend to Kemend Kelba Investment Ltd as per the agreement in the sublease.

The MOU has already expired on the 10th February, 2012 and therefore, this is no longer an issue.

B. FINDINGS

There is nothing controversial or irregular about this SABL except to state for the records that the DLPP is not able to present to the inquiry the relevant copies of the instrument of lease and titles over Portion 155C over the land known as “Kamut” upon which Kemend Coffee Plantation is located on. Despite numerous requests the Registrar of Titles was not able to produce the relevant title and informed the inquiry instead that his office could not locate the file and title for this SABL. There were also no other documentations from DAL and DEC on this SABL.

The only documentations that were presented to the inquiry are the Land Investigation Report (LIR) compiled by Mr John Ngants and a copy of the National Gazette No. G170 dated 5th August, 2010 containing a Notice of Direct Grant to Kemend Kelba Kei Investment Ltd dated 20th April, 2010. Based on these, we conclude that an SABL title has been granted properly to Kemend Kelba Investment Ltd but that title has gone missing within the DLPP.

We found that the DLPP’s overall management of SABL files is very poor and leaves a lot to be desired. Important files including titles are missing without a trace and those charged with the responsibility to keep these documents in a safe and secured environment have failed to do so. This problem has become very common in many other SABLs as well.

We conclude that the concern raised with this SABL is really an internal matter between Kemend Kelba Investment Ltd (lessor) and Pacific Arabica Coffee Development Corporation (lessee) relating to a sublease agreement in a form of an MOU. In any event the MOU between the lessor and lessee has already expired on the 10th February, 2012 and we took the view that the sublease (if it exist) also expired on the same date. The management of Kemend Coffee Plantation has reverted back to the landowners (lessor). It is therefore, no longer an issue and the matter is closed.

In the absence of any formal records (at no fault of the landowners) and in all fairness we found that this SABL over Portion 155C was regularly and properly issued and is therefore, valid and legitimate for all intended purposes. We therefore, do not find any irregularities and impropriety in this SABL.

C. RECOMMENDATIONS

The inquiry recommend that DLPP immediately locate the missing file containing the title and other relevant documentations relating to Portion 155C SABL for Kemend Kelba Kei Investment Ltd or in the alternative, a new file is open and a new Instrument of Lease including Notice of Direct Grant pursuant to Section 102 of the Land Act based

on the National Gazette No. G170 of 5th August 2010 is created to give legitimacy and legal effect to the SABL issued for Portion 155C.

We also recommend that DLPP make some serious efforts to improve its filing system and most importantly, provide better and improved security so that important documents including titles and grants are properly secured given the importance of these documents.

Other than that, we do not have any other recommendations.

16. POROM COFFEE LIMITED (Portion 302C) (SABL NO. 61)

A. REPORT

1.1 Introduction

This is a final report on the Special Agriculture and Business Lease (SABL) held by Porom Coffee Limited over Portion 302C, Milinch Baiyer, Fourmil, Ramu, Western Highlands Province.

There are no serious irregularities or defects over this SABL (Portion 302C) and as such this report is very brief for purposes of reporting and completeness as it was one of the seventy-five (75) SABLs referred to this COI.

The circumstances and facts of this case are similar in many respects to that Kemend Kelba Kei Investment (Portion 155C) discussed above.

1.2 IPA Records

According to IPA records, Porom Coffee Limited was incorporated on the 31st October 2009 with its registered office at Section 16, Allotment 7/8, Manda Street, Mount Hagen, Western Highlands Province. A Certificate of Incorporation was issued on the same date.

The company has 200 ordinary shares and 100 shares were issued to Mr Wane Apele of Kotna village, Dei District, WHP and another 100 shares were issued to Mr Roimb Kundui also of the same village. Messrs Apele and Kundui are the only two directors of Porom Coffee Limited. There was no other information regarding the affairs or any transactions conducted by the company. There were also no Returns.

1.3 Grant of Lease

By Notice published in the National Gazette No. G160 dated 29th July, 2010 the then Secretary for DLPP, Mr Pepi Kimas in his capacity as Ministerial Delegate issued a Notice of Direct Grant dated 20th April, 2010 to Porom Coffee Limited over Portion 302C pursuant to Section 102 of the Land Act.

Portion 302C comprised of land area of 24.10 hectares and is an existing coffee plantation. A Rural Class 3 Survey was carried out and is identified as Catalogue no. 11/1436.

On the 18th January 2001, five (5) months after the gazettal of the Grant, an SABL title (S/L Volume. Folio 12) was issued by Mr Romily Kila-Pat for ninety-nine (99) years commencing on 04th May 2007 and to end on 03rd May 2106. Mr Kila-Pat signed as Ministerial Delegate on the 18th January 2011. It is interesting to note that SABL title was backdated to the 04th May 2007 and the only plausible explanation would that the Recommendation as to Alienability was made on the 13th November, 2007 by Mr Paul Akel, District Lands Officer of WHP. However, despite the recommendations for alienability no Certificate of Alienability was issued by the Custodian of Trust Land.

The inquiry received no evidence from DLPP regarding the lapse of time (5 months) between the date of the direct grant and the issuing of the actual SABL. Furthermore, no explanation was provided on why it has taken almost three (3) years (2007 – 2010/11) for both the direct grant and the SABL title to be issued after the completion of the land investigations and the land investigation report (LIR). Despite numerous requests and directives issued by the COI, DLPP has not provided any explanation on the delay and has also not produced the copies of the direct grant and the SABL title itself including other documentations pertaining to this SABL over Portion 302C. DLPP was not able to locate the file and the relevant copies of the instrument of lease for Porom Coffee Ltd. They could not also locate the title.²⁵

1.4 Land Investigation & Landowners Consent

A copy of the Land Investigation Report (LIR) dated 04th May, 2007 compiled by John Ngants and certified by Paul Akel, District Lands Officer of WHP was tendered to the inquiry by Mr Ngants. The LIR contains the following information:

- (i) The land known as “Porom” (Portion 302C) comprised of 24.10 hectares of land and is owned by Mr Roimb Kundui as principal landowner and his clan group called “Kinj Pints Eminga” by ancestral inheritance;

²⁵ Annex. “XI”

- (ii) Porom (Portion 302C) is an existing Coffee Estate operated and run by Roimb Kundui and his clan group since 1989 without any dispute;
- (iii) John Ngants and the landowners walked the boundaries and identified all the boundaries including adjoining ones as per Survey Plan No. 11/1436;
- (iv) There was no dispute over the land and it was already a fully developed Coffee Plantation;
- (v) The community leaders have also confirmed ownership rights and have signed the 'Declaration of Recognition of Custom in Respect to the Rights' in the land known as 'Porom' (Portion 302C);
- (vi) Eleven (11) people including Roimb Kundui and Wane Apele signed the Agency Agreement appointing Messrs Roimb Kundui and Wane Apele as representatives of the landowners; and
- (vii) All the landowners generally agreed and have given their 'informed consent' for the land to be leased for an SABL.

1.5 Sub Lease

The SABL over Portion 302C was sub-leased to Pacific Arabica Coffee Development Corporation Ltd (PACDC) after Roimb Kundui and his clan members (landowners) realized that the plantation was running down due to lack of funds and poor management. The sub-lease was for a period of five (5) years from 2007 to 2012. They approached PACDC and asked them to manage the plantation for them and bring it back to profitability. PACDC wanted security and asked the landowners to obtain a proper title over the land and sub-lease it to them and it was for this reason that the landowners applied for and were granted the SABL. The sub-lease arrangement was made through a Memorandum of Understanding (MOU) called the "Management Agreement" signed between the Porom Coffee Limited and PACDC in 2007. Porom Coffee Plantation was managed under a Joint Venture (JV) arrangement by virtue of this management agreement.

1.6 Landowners Concern

The landowner's concern was mainly to do with the sublease agreement between Porom Coffee Ltd and PACDC. Concerns were raised when the landowners discovered that there were some changes made to shareholding structure of the Joint Venture and that some directors were replaced with new ones without consulting the landowners. The problem was further compounded when the landowners found out that changes were made to the shareholding arrangement

with PACDC holding a majority share of 51% in the JV with the landowner's owning 49%. Again, this was done without any prior consultation with the landowners through their company Porom Coffee Ltd.

Landowner's also raised concern that their company Porom Coffee Ltd was not paid any dividends by PACDC since the signing of the MOU and were not consulted as a partner in the JV on a number of management decisions that were made. There was no shareholders meeting and the landowners were virtually kept in the dark. Landowners were frustrated and disillusioned and wanted the JV with PACDC to end and wanted to take back their coffee plantation.

B. FINDINGS

Similar to the previous case of Kemend Kelba Investment (above) there is nothing controversial or irregular about this SABL and as we discovered in the course of the inquiry the dispute (if any) was really between Porom Coffee Ltd (lessor) and PACDC (lessee) over the terms of the agreement under the MOU that provides the basis of the sub-lease. The landowner's through their landowner company Porom Coffee Ltd felt left out in many of the important management decisions that were made by PACDC who were engaged merely to manage the coffee plantation on their behalf for a fee.

Landowners were concerned that PACDC changes the shareholding structure and gave themselves controlling interests over the plantation through 51% majority shareholding under the Joint Venture. Furthermore, directors of the company were changed without consulting the landowners and this led to discontentment and frustrations.

The sub-lease ended in March of 2012 and the coffee plantation has reverted back into the hands of the landowner company Porom Coffee Ltd and therefore, is no longer an issue.

However, for purposes of ascertaining whether or not this SABL was properly issued, we make the following findings:

- (i) Mr John Ngants, a former Customary Lands Officer with the WHP provincial administration and now a private Land Consultant was properly authorized by DLPP and the Western Highlands Provincial Administration through respective authorization letters issued to him by Mr Jacob Wafinduo (now deceased) in his capacity as Manager – Customary Lands of DLPP in his letter dated 10th October 2006 and by Mr Leo Meninga – Deputy Administrator of Western Highlands Province through his letter dated 16th January, 2007. Mr John Ngants was properly authorized for all intended purposes to carry out the land investigations and the compiling of the LIR and we do not find any fault in that aspect of the administration of SABL;

- (ii) We found that the execution of the lease-leaseback deed by Mr Paul Akel, a District Lands Officer is improper and contrary to Section 11 (1) of the Land Act as only the Minister or his delegate has the authority execute the lease-leaseback for purposes of granting an SABL. In any case, we are of the view that this anomaly was corrected by DLPP subsequently resulting in the Notice of Direct Grant been issued by Mr Pepi Kimas pursuant to Section 102 of the Land Act on the 20th April, 2010;
- (iii) We also found that there is no Certificate of Alienability (CoA) issued by the Custodian of Trust Land although Alienability Recommendation was made by the Deputy Administrator of WHP. We assumed that CoA may have been misplaced or gone missing but based on all the documents submitted an SABL was issued on the 18th January 2011 by Mr Romily Kila-Pat exercising his powers as a delegate of the Minister for Lands;
- (iv) The following documents were tendered into the inquiry which includes; SABL title, Gazettal Notice, copy of the LIR, Alienability Recommendation and Certificate of Incorporation of Porom Coffee Ltd there were no other documentations tendered to the inquiry by DLPP, DAL or DEC despite numerous requests and directions from the COI;
- (v) We found that the SABL has been and continues to be developed and fully compliant of purpose of the lease being agriculture (cultivation of coffee) and business (cultivation, harvesting and sale of coffee cherries and beans); and
- (vi) We do not find any serious fault or defects with this SABL and considered that it was properly issued to the landowner's company Porom Coffee Limited. The coffee plantation is still operating.

C. RECOMMENDATIONS

The SABL over Portion 302C is properly issued in accordance with Sections 11 and 102 of the Land Act and we found the SABL to be valid and legitimate for all intended purposes. We recommend however, that DLPP create a new file for this SABL based on the direct grant published in the National Gazette dated 29th July 2010 and it must also ensure that all the relevant documentations for this SABL are sorted out and placed in the new file for future references.

We also recommend that DLPP make some serious efforts to improve its filing system and provide good security for all land files and titles as these documents are very important and priceless to title and leaseholders. The COI emphasised the importance of proper recording and filing system and the security of the titles within the DLPP as the principal agency of government responsible for land matters in the country.

Other than that, we do not have any other recommendations.

**17. HEWAI INVESTMENT LIMITED (Portion 351C)
(SABL NO. 70)**

A. REPORT

1.1 Introduction

This is the final report on the Special Agriculture and Business Lease (SABL) held by Hewai Investment Limited over Portion 351C, Milinch Karius, Fourmil Wabag, Southern Highlands Province.

This SABL is not so controversial and is similar in many respects to the two previous SABLs (Kemend Kelba Investment and Porom Coffee Limited) in Western Highlands Province. It was however, one of the SABLs that were referred to the COI and therefore, we report on it for purposes of reporting and completeness.

Portion 351C comprised of 358 hectares over the land traditionally known as “Hayapa” and is owned by Hayapa clan of Kobalu village, Tari District in the Southern Highlands Province. The Hayapa clan is made up of the family members of Pulupe, Payale, Tindipu, Pape, Papali, Matialu, Mondo and Kumapuko. Hayapa is located at Kobalu village some 11 kilometres south of Koroba Township in SHP.

Prior to the grant of the SABL over Portion 351C, except for customary rights and usage by the Hayapa clan members, the land was free from encumbrances including grants, interests or other leases that could have inhibited or prohibited the grant of the SABL. The land was also free from any disputes or claims of ownership by other clans living within the vicinity of the area. Landowning groups including landowners of the adjoining boundaries fully acknowledged the Hayapa clan as traditional landowners of Portion 351C.

1.2 IPA Records

Hewai Investment Limited (‘HIL’) was registered and incorporated on the 28th August 2009 as a landowner company to be used as an investment vehicle for the landowners of the Hayapa clan to participate in the LNG project spin-off activities and other business opportunities in the Southern Highlands Province. Its registered office is situated at Section 218, Lot 47, Pondorosa Street, Henao Drive, Gordons, NCD. Its postal address is PO Box 90, Mendi, Southern Highlands Province.

Hewai Investment Ltd is one of the three (3) joint venture companies in Kobalu Camp Joint Venture Ltd set up by the Kobalu people as an umbrella company to enter into LNG Project spin-off business activities and other investment opportunities. Esso Highlands Ltd, the developer of the PNG Gas project acknowledged the establishment of the Hewai Investment Ltd and wrote to Hon. William Duma the Minister for Petroleum and Energy advising him regarding the establishment of this landowner company.

According to the company extract from the Investment Promotion Authority (IPA) dated 9th September 2009, Hewai Investment Limited was issued 100 ordinary shares. The shareholders hold the shares in the following manner; Janet Gai 10, Andrew Wako Loko 10, Tamuni Matialu 10, Simon Pape 10, Tommy Payale 10, Andrew Pulupe 19 and James Tindipu 10. Janet Gai, Andrew Pulupe, Tommy Payale, Tamuni Matialu, Andira Papali James Tindipu and Simon Pape are also directors of the company. The company secretaries are Andawi Wako Loko and Nole Miape. All these shareholders and directors hold the shares in trust for the landowners of the Hayapa clan.

For purposes of securing a bank loan to commence its operations, the landowners agreed and gave their consent for Hewai Investment Ltd to apply for an SABL over Portion 351C to obtain a clear title to use as a collateral or security for the loan. The developer Esso Highlands also insisted that a proper and legal title must be obtained for the land (Portion 351C) first before Hewai Investment can enter into any joint venture arrangements with the company.²⁶

1.3 Grant of Lease

A Notice of Direct Grant was issued on the 10th November 2010 and published in the National Gazette No. G305 dated 16th December, 2010 for 99 years to Hewai Investment Limited over Portion 351C, Milinch Karius, Fourmil Wabag, Southern Highlands Province. The Notice of Direct Grant was issued by the then Secretary for Lands Mr Pepi Kimas in his capacity as Ministerial Delegate pursuant to Section 102 of the Land Act. Portion 351C comprised of 358 hectares of land.

On or about the 02nd of June 2010, Hewai Investment Ltd lodged an application in a form of 'Tender Form' as required under the Land Act to apply for an SABL. On the 28th September 2010, the Director of Customary Leases of DLPP Mr Andy Malo submitted a Minute together with the appropriate documentations recommending to the then Secretary for Lands Mr Pepi Kimas to approve the grant of the SABL to Hewai Investment Ltd. Mr Kimas issued the Notice of Direct

²⁶ Annex. "XI"

Grant after satisfying himself that all necessary documentations required for the issuance of the SABL were in order.

1.4 Land Investigation & Landowners Consent

A land investigation was carried out and a Land Investigation Report (LIR) was compiled by Mr David Takitako, a District Administrator in Tari on the 24th May 2010. The LIR also contained signatures of landowners giving their informed consent to lease their customary land for 99 years under the SABL. A 'Declaration of Recognition of Custom in Respect to Rights in the Land' known as 'Hayapa' was also made on the 14th May 2010.

The boundary walk was also carried out and all boundaries including adjoining boundaries were visited and inspected by David Takitako in the company of Andrew Pulupe, Tommy Payale, Tumbu Kumapuko and James Tindipu. The 'Certificate in Relation to Boundaries' was signed and dated 24th May 2010. A Survey Plan Catalogue No. 10/731 was produced for Portion 351C over the land now known as 'Hayapa'.

There were two (2) separate public hearings/meetings held with the landowners living within the vicinity of Portion 351C and at the both meetings there were no opposition to the proposal to lease the land under the SABL. Furthermore, no one opposed that Hayapa clan are the rightful owners of the land 'Hayapa' (Portion 351C) comprising 358 hectares.

A 'Recommendation as to Alienability' was made by Mr William Powi the Provincial Administrator of Southern Highlands Province and signed and dated on the 28th May 2010. The recommendation basically declared that there was no dispute as to ownership over Portion 351C ('Hayapa') and that the customary landowners have given their full consent to lease the land to the State under a lease-leaseback. It also recommended that the lease would not be detrimental to the best interests of the customary landowners or their descendants over the period of the lease (99 years).

1.5 Documentations from Relevant Government Agencies

The only file tendered to the inquiry was from DLPP which contained copies of the following documents:

- (i) A copy of the SABL Title dated 20/01/11 bearing the signature of Mr Romily Kila-Pat.

- (ii) Instrument of Lease for Customary Land (Lease-Leaseback Agreement) Deed dated 28/05/10 whereby the customary landowners agreed to lease the land to the State for 99 years and nominated Hewai Investment Ltd as the representative entity and company representing the interests of the landowners.
- (iii) Gazettal Notice of Direct Grant pursuant to Section 102 of the Land Act – G305 dated 16/12/10 signed by Mr Pepi Kimas.
- (iv) Certificate of Incorporation dated 28/08/09.
- (v) Survey Plan or Cadastral Map on Portion 351C, Hayapa.

B. FINDINGS

From the evidence obtained so far, we make the following findings:

- (i) The application and obtaining of the SABL over Portion 351C ('Hayapa') was prompted by a genuine desire by the landowners to free up their customary land for commercial purposes so they can meaningfully participate in the economic development taking place in their area especially through spin-offs benefits and other business opportunities from the massive LNG project;
- (ii) The land 'Hayapa' (Portion 351C) is customarily owned by the Hayapa Clan of Kobalu village, Tari, SHP and there is no land dispute or competing interests past or present over Portion 351C and there is also no other existing grants or leases over the same portion and it remains free of any encumbrances;
- (iii) The shareholders and directors of Hewai Investment Ltd have the full consent of the customary landowners and adequately represent their interests to enter into any transactions for and on behalf of the landowners regarding this SABL;
- (iv) The application, processing, approval and subsequent granting of the SABL has been properly executed and completed in accordance with Sections 11 and 102 of the Land Act and therefore, it is valid and lawful for all intended purposes;
- (v) There has not been any undue influence or coercion exerted by the shareholders or directors of Hewai Investment Ltd or by any members of the Hayapa clan or any officer of the State to get the landowners to agree to lease their land. The landowners freely and voluntarily agreed to lease their land under an SABL;
- (vi) There is no Certificate of Alienability (CoA) been issued for Portion 351C by the Custodian of Trust Land and in the words of Acting Secretary of DLPP Mr Kila-Pat,

the requirement for the Custodian of Trust Land to issue a CoA has been done away with some 10 or so years ago and is no longer necessary; and

- (vii) There are no apparent defects over the issuing of this SABL for Portion 351C and for this reason we accept the status quo and considered this SABL to be genuine, legitimate and lawful and was properly and correctly issued to Hewai Investment Ltd.

C. RECOMMENDATIONS

Based on the findings made above, the COI does not have any substantial recommendations to make except to once again insist that DLPP ensures that all necessary documentations essential for this SABL be made available and a new file is created for this SABL for record purposes. Other than that, we do not have any other recommendations.

C. SUMMARY OF FINDINGS

1.1 We now summarize our findings. For this purpose we incorporate and expand on what we said in our Interim Report relative to Terms of Reference (TOR) (a), (b) and (h). We include here our findings in relation to the roles, functions and responsibilities of each of the government agencies responsible for the management and administration of SABL. We also summarize the specific and generic findings on the 75 SABLs we investigated as per our TOR.

GOVERNMENT AGENCIES RESPONSIBLE FOR SABL

1.2 Government agencies involved in the management of SABLs are the Department of Lands and Physical Planning (DLPP); Department of Agriculture and Livestock (DAL); Department of Environment and Conservation (DEC); PNG National Forest Authority (PNGFA) and Department of Provincial and Local Level Government (DPLLG). Investment Promotion Authority (IPA) also plays an important role. It makes sure that companies, including foreign companies, which intend to do business on SABLs, are properly registered and authorized.

1.3 The Commission of Inquiry (COI) found widespread abuse, fraud, lack of co-ordination between agencies of government, failures and incompetence of government officials to ensure compliance, accountability and transparency within the SABL process from application stage to registration, processing, approval and granting of the SABL. Statutory compliance with respect to process and procedures and effective monitoring and oversight is seriously lacking. Instances of irregularities and deliberate breach of legislative requirements are also highlighted in the findings.

1.4 Throughout the course of our inquiries serious allegations were levelled against officials and senior bureaucrats of government agencies involved in the management of SABL. We heard about allegations of bribes and inducements being offered by project developers and representatives of landowner companies to procure SABL titles. In one instance a letter was written to Lands Officer in DLPP Mr Daniel Katakumb by Mr Madaha Resena MPA on behalf of a Roselaw Limited requesting that a SABL lease over Portion 2541C, Granville, NCD, be granted to Roselaw Ltd. Mr Madaha Resena urged Mr Katakumb to contact a Ms

Rose Haraka who is a director of Roselaw Ltd through a mobile number that he provided, should Mr Katakumb required “financial assistance”. There is no evidence to suggest Mr Katakumb did contact Ms Haraka or accept any financial assistance offered. [See Report on Roselaw Ltd - Portion 2541C – Annex. “VII”].

- 1.5 We received evidence of undue ‘political pressures’ being put on government officials by senior Ministers and politicians to fast-track SABL applications and issue titles. Incidences of political interference are numerous and are reported in the respective individual SABL reports. For instance, during inquiry into Bewani Palm Oil Development Ltd (Portion 160C) former DLPP Secretary Mr Pepi Kimas said he was subjected to extreme ‘political pressure’ from the Prime Minister’s level down, to issue a direct grant to Bewani Palm Oil Development Ltd. Former Sandaun Provincial Administrator Mr Joseph Sungi also told the inquiry he was ‘forced’ by certain officers of DLPP to sign the Certificate of Alienability (CoA) despite the fact that he had not sighted any Land Investigation Report and had no idea if one existed. Mr Sungi said he was surprised but realized that there was a lot of ‘political pressure’ to get the Bewani Palm Oil project off the ground. That SABL title was issued in record time. [See Report on Bewani Palm Oil Development Ltd – Portion 160C – Annex. “X”].
- 1.6 We found numerous instances of incompetence, failure, inaction and lack of commitment by officers of government agencies to properly and diligently carrying out their statutory functions. Legal requirements were deliberately breached and proper processes and procedures were either by-passed or simply ignored. We found a number of agencies to have been were reckless, careless and negligent in the discharge of their statutory functions. All these contributed to the problems associated with management of SABLs.

(I) Department of Lands and Physical Planning (DLPP)

- 1.7 As stated elsewhere in this Final Report, Department of Lands and Physical Planning (DLPP) is the lead agency, tasked with the overall oversight responsibility for SABLs. DLPP administers the Land Act and is responsible for administration and management of SABLs. It is also responsible for maintaining accurate records on all land dealings and is expected to keep up to date register of land titles including SABL titles. Security of land files is vital and DLPP is expected to keep all land files in a secured environment. Sadly we find these not to be the case at all.

- 1.8 DLPP's Mission Statement is: *"Promote the best use of land in PNG in the interests of all citizens individually and collectively by ensuring that an orderly process exists for land to be made available for sustainable economic and social development and that land rights are guaranteed"*
- 1.9 DLPP has been plagued with problems for a long time. It grappled with lack of resources, lack of funding, shortage of personnel, lack of office space and equipments, logistical problems, and staff discipline issues. These, coupled with leadership and senior management level issues affected its ability and capacity to manage the department. People criticized DLPP for being incompetent and corrupt, amongst them senior government ministers. The government and people have lost confidence and faith in DLPP. The department has been described as totally dysfunctional and incapable of managing the most important asset belonging to the people of PNG, their land. It is obvious DLPP has not lived up to its Mission Statement to protect the interests of citizens by guaranteeing their land rights. And in so far as SABL is concerned, it has not protected the interests of the people of this country, especially customary landowners.
- 1.10 We have found a number of problems that affect the administration and management of SABL, particularly relating to the application, processing, approval and grant of SABLs. Much of what we have discovered to be wrong with the SABL setup reflects the failures and incompetence of DLPP to properly manage the SABL process. We now highlight the problems.

(a) Lack of Procedural Guidelines on SABL

- 1.11 The Land Act makes no provision for the administrative processes and procedures required to facilitate SABL. There are no provisions in the regulations to guide and regulate the SABL process from application to processing and grant of the SABL. There is no consistency and uniformity in dealing with SABL applications. Sections 11 and 102 of the Land Act provide the basic framework for leasing customary land for SABL purposes but there are no procedures to operationalize the framework. Successive government failed to promulgate regulations and by-laws on SABL as required by Section 175 of the Land Act. This was confirmed by Acting DLPP Secretary Mr Romily Kila-Pat. There is no policy framework on SABL that would, in the absence of regulations or by-laws, guide the SABL process. Mr Kila-Pat told the inquiry his department has not developed any policy framework on SABL since its inception in the late 1970's.

1.12 Initially DLPP uses the process adopted for general land acquisition for SABL purposes. It permitted use of tender forms and expression of interest letters to apply for SABLs. In 2011 DLPP started using a set of guidelines to process SABL applications. According to Mr Adrian Abby, the Acting Deputy Secretary of Customary Lands Division, the new procedures were developed in response to concern over the manner in which the SABL scheme was managed. Mr Abby said the new procedures have not been incorporated into a subordinate legislation.

(b) Missing SABL Files

1.13 SABL files and titles are either 'missing', 'lost' or 'misplaced' at DLPP. This affected our progress. DLPP was given extended time to locate the files but only 55 files out of the 75 SABLs issued between March 2003 and April 2011 were produced to the inquiry. The other 20 files could not be located. According to Registrar of Titles, Mr Henry Wasa, the 20 files are amongst many land files that have gone missing, misplaced or stolen. We were told some files were damaged and completely destroyed by water leakage. Some files were misplaced when files were being moved from the basement where they were kept to an upstairs office. DLPP was allowed to reconstruct files using information from various sources. Advertisements were placed in the newspapers calling on SABL title holders to produce their copies of the titles, to enable DLPP to construct new files for those missing. Nine (9) new files were re-created with information provided by SABL title holders. At the close of finalizing the SABL list there were still 18 SABL files with no proper records. [See SABL Listing].

1.14 This revelation of missing land files and titles is frightening. We put it down to sheer carelessness, negligence and plain incompetence on the part of the Registrar of Titles and his staff at DLPP to ensure that land files are properly and securely kept. We are shocked that DLPP leadership has been so careless with the security and safety of the country's land files.

(c) Land Investigation Process (LIP) and Land Investigation Report (LIR)

1.15 A Land Investigation Process (LIP) formally starts the process of acquiring customary land for lease-leaseback. It culminates in the production of a Land Investigation Report (LIR). Information captured in the LIR is used to determine whether an SABL can be issued. Amongst information contained in the LIR is the

landowners' agreement and informed consent to lease their customary land for SABL purposes. Landowners are required to sign an Agreement form which is attached to the LIR to indicate their informed consent for a lease-leaseback. Consent must be given freely and voluntarily. Informed consent is the most critical thing that supports an application for SABL. Details of meetings and awareness programs carried out over proposed projects on the SABL must also be disclosed. Boundary walks and inspections are important requirements that must be carried out. Consent from owners of adjoining land must be obtained. All required information must be clearly and properly captured in the LIR.

- 1.16 LIRs for many SABLs are incomplete and poorly compiled and are simply insufficient to warrant grant of an SABL. Land Officers from DLPP have not been diligent in carrying out the LIP and in preparing LIRs. In many instances Lands Officers never consulted widely with landowners. They just consulted landowner agents or Incorporated Land Groups (ILGs) representatives. In some odd cases they 'consulted' and obtained 'consent' from developers. Section 102 (3) of the Land Act states that customary landowners must agree and give their full and informed consent for a SABL to be granted. In some instances landowners' signatures were forged. In another shocking instance signatures of minors and deceased clan members were 'procured'. This occurred happened when a LIR was being prepared for the SABL issued to Okena Goto Karato Development Corporation Ltd over Portion 146C in the Oro Province.
- 1.17 In some cases landowner companies applying for an SABL were heavily involved in the preparation and compilation of the LIR, which are then given to the Land Investigation Officers to endorse. We found that landowner companies and developers routinely pay 'allowances' to government officials to carry out land investigations. It is improper and raises issues of conflict of interest. We have found that in such instances the investigating officer inevitably makes recommendations in favour of the developer.
- 1.18 We have also found instances of landowner representatives and ILG representatives being manipulated by developers to fast track the issuing of the SABL titles. A good example of that is in the case of Musa Valley Management Company Ltd in the Oro Province (Portion 17C).
- 1.19 The most serious abuse in SABL acquisition process occurs during the land investigation stages. We found instances short-cuts made to established process, lack of landowner consultations and consent, lack of awareness programs,

involvement of developers and other unauthorized people in the process, lack of boundary inspection, lack of vital information and incomplete and defective LIRs are common, so much so that the integrity of the whole land investigation process has been significantly compromised. We therefore submit that since the LIP and LIR that start the process for SABLs is substantially affected, SABLs granted on the bases of defective LIRs are null and void. Therefore we have recommended that SABLs granted on the bases of defective LIPs and LIRs be voided. [See individual SABL Reports].

(d) Grant of Lease – Ministerial Discretion

1.20 Under current land policy arrangements only three kinds of entities may obtain SABLs: An individual or group of individuals agreed to by landowners; an Incorporated Land Group (ILG) as agreed to by landowners; or a landowner company (LOC) made up of landowners. The whole idea behind that is to make sure customary land ownership remains in the hands of customary landowners. According to Mr Adrian Abby, the current administrative requirement within DLPP is that the nominee for SABL must be a landowner company, a landowner representative or a landowner association rather than outsiders and foreigners.

1.21 However as the law stands, sections 11 and 102 of the Land Act allows SABL to be granted to anyone (person or company) that has the consent of landowners. It means foreigners and foreign-owned companies can be granted SABL over customary land if they are agreed to be the grantees of a SABLs by landowners. The only safeguard against this is unequivocal informed consent of the landowners. The Minister for Lands is vested with the discretionary power to decide whether or not to issue an SABL to a foreign entity, even where consent of landowners is given. We are concerned that this discretionary power is often abused. A case in point is in relation to the series of titles granted to Changhae (Tapioka) PNG Limited over Portions 517C, 518C, 520C, 444C and 446C in the Central Province. The then Minister for Lands Dr Puka Temu issued and double-issued SABL titles directly to the developer (Changhae (Tapioka) PNG Ltd), a foreign owned-owned company, using his ministerial discretion. The Minister issued the titles against strong and clear advice from his departmental head. [See SABL Report].

1.22 We found instances where ‘consent’ of landowners for SABL titles to be issued directly to foreign owned companies was obtained fraudulently through misrepresentations. We found that landowners were not aware that their

'consent' was being obtained to approve a particular entity or group to be granted an SABL over their customary land.

- 1.23 Out of the seventy-five (75) SABLs we investigated fifty-eight (58) of them were granted 99 year leases. In only seventeen (17) SABLs title was granted for less than 99 years. Nothing in the current Land Act makes it mandatory for SABLs to be granted for 99 years. Section 102 (4) states: "A special agricultural and business lease may be granted for such period, not exceeding 99 years, as the Minister deems proper". The duration of an SABL lease should be determined by the type and nature of the proposed agriculture and business projects or agro-forestry project including the type of cash crop (oil palm, cocoa, coffee etc) the developer wants to grow. Long term leases on customary land beyond needs is bad as multiple generations of customary landowners will be prevented from accessing their land over a long period of time, particularly when there is only minimal benefit accruing to landowners from the developments.

(e) Granting of Subleases to Foreign Entities

- 1.24 Serious abuse with lease-lease back also occurs at the secondary stage, with the sub-lease. Issues on the choice of developers, as to who are to be granted the sub-lease, are often the point of contention amongst landowners. In some cases SABLs are practically sold (total alienation) to foreign developers for the whole or balance of the 99 years, leaving no residual rights for the landowners. As we have found fifty-eight (58) out of the seventy-five (75) SABLs were sub-leased to developers for 99 years leaving no residual rights to the landowners.
- 1.25 Before a sublease is granted there are a number of pre-conditions that must be met. For example; the developer must furnish an agriculture development plan, land use plan and project development agreement stating what business they intend to develop over the SABL. An unacceptably high number of developers do not have demonstrated agricultural business background or experiences to develop agro-forestry projects. Just to keep up the pretence, they often outsource the agriculture component of agro forestry projects to other linked entities. The latter then become 'default' developers, but fundamentally these linked entities have not been approved or sanctioned by landowners through the LIP and LIR process.

- 1.26 The most shocking instance abuse we have discovered is in relation to the practice of extracting logs under the pretext of genuine SABL activities. We find it to be a current and ongoing practice. We are convinced that some SABL project proponents are not genuine developers of agro-forestry projects. They appear not to be here for the long haul but only for as long as it takes to log out their subleases. They appear to use fancy agriculture development plans and project development agreements as red herring to obtain permits to log out huge tracts of forest lands. They mislead and deceive landowners with the assistance of corrupt government officials. They literally pay off assertive clan leaders and then use divide and rule tactics to obtain subleases. Genuinely motivated landowners desperate for development and basic services are easy prey for these people. Some landowners are deceived by promises of instant wealth. Still other landowners, those who are particularly incapable of working their SABLs themselves, are forced to opt for unacceptable and risky lease arrangements. With corrupt government officials from implementing agencies riding shotgun for them, opportunistic loggers masquerading as agro-forestry developers are prowling our countryside, scoping opportunities to take advantage of gullible landowners and desperate for cash clan leaders.
- 1.27 Some sublease holders are subsidiaries of big logging companies operating in PNG operating under different names. They obtain Forest Clearance Authority (FCA) over a SABL sublease to harvest logs. They make no effort to commence operations on the agriculture component. As we noted elsewhere in this Report obtaining timber permits for logging activities under the Forestry Act and Forestry Private Dealings Act, through the Forest Management Areas (FMA), Timber Rights Purchase Areas (TRP) and Local Forest Areas (LFA) arrangements take many years. Requirements and conditions under these latter are stringent and rigid so it appears to us that securing FCA over SABLs under lax oversight conditions is easy and permissive for major logging operators to secure further logging tracts.
- 1.28 A preponderance of the evidence before us indicate that logging companies are the biggest beneficiaries of the SABL scheme. Most sublease holders are using sublease agreements primarily to extract logs. Most of them do not even make the attempt to clear fell harvested areas to start work on the agriculture component. They take full advantage by exploiting the flawed lease-leaseback process and capitalize on the poorly regulated and badly administered oversight apparatus. Our investigations reveal that over 50% of the so-called developers' currently holding subleases on SABLs are connected in one way or another to Rimbunan Hijau (RH) Limited, which by far is the biggest logging operator in PNG.

(II) Department of Provincial and Local Level Government (DPLLG)

(a) Custodian of Trust Land

1.29 The Secretary of the Department of Provincial and Local Level Government (DPLLG) is Custodian for Trust Land and is empowered by law to intervene in matters where customary landowner interests are at stake. One of the Custodian's primary responsibilities is to protect and safeguard the interest of customary landowners. He has the authority to issue a Certificate of Alienability (CoA) to clear the way for customary land to be converted to title. Before issuing a CoA the Custodian must satisfy himself that landowners will not require the land for the duration of the lease and also they have other land sufficient to sustain their livelihood. The functions and responsibilities of the Custodian for Trust Land are set out under Section 134 of the Land Act 1996 and Section 166 (3) of the Land Registration Act respectively.

(b) Unauthorized Issuing of Certificate of Alienability (CoA)

1.30 A Certificate of Alienability (CoA) is a clearing certificate issued by the Custodian for Trust Land before a lease-leaseback takes place and a SABL title is granted. The clearing act is a requirement under Section 11 of the Land Act on lease-leaseback.

1.31 We have identified problems with the administration of the CoA. Firstly, we found a number of SABLs without a CoA. Former Secretary of DPLLG and Custodian of Trust Land, Mr Manasupe Zurenuoc told the inquiry that only forty-seven (47) CoA were issued between 1995 and 2011 covering a total land area of 116,492.84 hectares (refer to list attached). Out of these nine (9) CoA were issued between 2003 and 2011. That being the case it seems just nine (9) out of the seventy-five (75) SABLs issued during the same period will be valid.

1.32 When this issue was put to DLPP Acting Secretary Mr Romily Kila-Pat, he said the practice of issuing a CoA to clear customary land for acquisition had been done away with ten (10) years previously and was no longer a requirement for processing SABL. He did not give any reasons why the requirement for CoA was done away with. He did say that the need for CoA was not "significantly and legally relevant and for practical convenience we do not consider this requirement necessary". Mr Kila-Pat did not produce any evidence of legislative

or policy changes to support his assertion. The fact though is that the law pertaining to the role of the Custodian for Trust Lands (including his duty to clear customary land for conversion to title by executing a CoA) has not changed. Ergo the requirement for a CoA as a pre-condition to issuing the SABL is still current. We find that Mr. Romily Kila-Pat's position reflects his own ignorance and competence. It also demonstrates the cause of the breakdown of standards within the DLPP during Mr. Kila-Pat's lengthy watch over the SABL process.

- 1.33 Secondly, Provincial Administrators have been signing the CoA based on the belief that powers of the Custodian for Trust Land were delegated to Provincial Administrators. There is no evidence to confirm that. The power that can be necessarily considered to have been delegated by the Custodian for Trust Land to the Provincial Administrators relates to the latter's duty to give 'Recommendations as to Alienability'. This is for practical purposes, especially to fast-track the SABL application process. Authority to sign off on the CoA still remains with the Custodian for Trust Lands. All recommendations for alienability are forwarded to the Custodian for Trust Land who then executes the CoA. The laws relating to this function remains unchanged.
- 1.34 Many Provincial Administrators recommendations alienability without appreciating the ramifications and consequences. Large tracts of customary land were recommended for ninety-nine (99) year leases when, in some instances, as low as only 40% of the land was actually needed for agricultural activities. None of them made provision for traditional land use rights for survival purposes to be preserved for the landowners. It is disturbing that senior bureaucrats of government at the provincial level can be so careless and reckless in the discharge of their statutory functions, especially when it affects landowners' most important asset, their land. Former Sandaun Provincial Administrator, Mr Joseph Sungi admitted that he executed the CoA SABLs in the province but he never checked to double check because he thought "everything was in order" and he trusted the people who carried out the land investigations explicitly. This kind of a response from the head of the province is simply unacceptable.
- 1.35 Power to issue CoA is vested in the Secretary for Department of Provincial and Local level Government (DPLLG), who is ex-officio Custodian for Trust Land. This power has never been delegated to Provincial Administrators at any time. Therefore Acting DLPP Secretary Mr. Kila-Pat's view that the need for clearance by CoA was discontinued is incorrect. We note that only forty-seven (47) CoAs were issued between 1995 and 2011. Only nine (9) out of the seventy-five (75) SABLs issued between 2003 and 2011 were properly cleared. It would seem

therefore that sixty-six (66) of the seventy (75) SABLs we investigated are void for lack of clearance by the Custodian for Trust Lands.

(III) Findings on Department of Agriculture and Livestock (DAL)

1.36 The Department of Agriculture and Livestock (DAL) plays a very important role in SABLs. Most of its roles are prescribed under the Forestry Act. DAL's role is to screen, evaluate and approve agriculture project proposals and also assist project proponents with agriculture development plans and land use plans. DAL coordinates public hearing and awareness with landowners for proposed SABLs. The most important role performed by DAL in SABLs is to assess project proposals and give clearance for an FCA to be issued. A Certificate of Compliance is issued by the DAL Secretary before the PNG National Forest Authority (PNGFA) issues an FCA. Ideally a separate Act of Parliament should prescribe DAL roles and functions in SABL process. There is real need for a legislation that consolidates DAL core functions so that it is able to properly oversight its critical roles over activities on SABLs.

(a) Misconception on SABL

1.37 DAL has been promoting a misconception that agro-forestry projects developers need to engage in logging first, to raise enough money to make the agriculture component of the project viable. Based on this misconception DAL has facilitated the approval of large tracts of forested land being "cleared" for agriculture projects. DAL Deputy Secretary Mr Francis Daink admitted that this practice is common. We find that DAL has been convincing the PNG Forest Authority to grant FCA permitting developers to clear up to 5000 hectares of forest lands when the law only permits 500 hectares at a time. Under current legislative arrangements developers must develop (i.e., clear and plant) the initial 500 hectares first before seeking FCA for the next 500 hectares. Developing the first 500 hectares is precondition for seeking the next FCA. This legislative safety mechanism has been dismantled by senior DAL officers like Mr Daink.

1.38 Mr Daink told the inquiry that developers were allowed to clear fell up to 5000 hectares (which is ten times the permitted acreage) for "practical convenience" as the initial 500 hectares are not sufficient for agriculture projects like oil palm plantation. The three of us may not fully appreciate the economics of scale in that, but we really do not have to do the mathematics. The practice is unlawful

for it is contrary to Section 90A of the Forestry Act 1991. For the record, forest clearance within an SABL is not logging per se. It is clearing up planting land; so indiscriminate clear felling is permitted.

- 1.39 The practice of selective harvesting of merchantable hardwood, either over the first 500 hectares and then the same on the next 500 hectares or over 5000 at any one time, without making meaningful effort to clear and develop the land defeats the purposes of SABLs. In the face of clear law and policy, we think this practice is evidence of deliberate capitalization of permissive ambiguity in the law and conscious abuse of the law's intent through the willing assistance of corrupt or incompetent DAL officials.
- 1.40 We found developers engaged in full scale logging operations. They have been logging for some times and are focussed on logging, often 'forgetting' about agricultural component which is the sole reason why they were granted SABLs. Turubu Oil Palm (Portion 144C) in ESP, Bewani Palm Oil (Portion 160C) in Sandaun, Rakubana (Portion 871C) and Tabut (Portion 885C) in NIP are some examples where logging is occurring without agriculture activities. In some instances there are nursery operations for oil palm projects, but we noted overgrown seedlings that were overdue for replanting by months or years.
- 1.41 The SABL scheme was conceived as an empowerment option for customary landowners, as an option that would facilitate economic opportunities for landowners and enhance national development. Encouraging foreign investment through large scale agro-forestry projects is part of SABL term of reference. The inception of Sections 90A to 90E into the Forestry Act 1991 was to facilitate large scale agro-forestry projects, not to replacement or to be used as a short cut to the requirements for regular logging operations. Those who wish to engage in business activities over SABLs, including foreign companies, on any scale, must have initial start up capital. This twisted logic about harvesting and selling logs to fund agro-forestry projects might convince simple minds in DAL but it does not cut with anyone else. If any so called 'developer' was not financially viable for long term investments they must never be permitted to destroy our forests. We find that DAL and other SABL administrators have failed miserably to assess the financial and technical capacities of developers before recommending to be issued permits, especially Forest Industry Participant status and as holder of an FCA.

(b) Lack of Monitoring and Compliance

- 1.42 We find that DAL especially is without initiative based capacity at its leadership level and incompetent as an organization to facilitate, much less oversight its functions in relation to use of SABLs. Mr Daink said that does not “monitor a lot of these projects as we rely heavily on the provincial agriculture divisions to provide us information of the progress of the projects in the provinces but most often we do not get any report from them”. DAL does not have the total capacity (funds, resources and personnel) to monitor projects on SABLs throughout the country. DAL has not implemented the 2009 National Agriculture Council recommendations for a “FCA Project Approval and Monitoring Guidelines” and a “Oversight Committee” comprising of representatives from DAL, PNG Forest Authority (PNGFA), Department of Environment and Conservation (DEC) and DLPP to be established to monitor all agricultural projects on SABLs.
- 1.43 There is no consultative dialogue between DLPP and DAL before SABLs are granted. We have found instances where large tracts of customary lands were given away for agro-forestry projects when the land is not suitable for agriculture. We have found in many SABLs only a small portion of the land is arable and suitable for agriculture whilst the rest are unsuitable due to mountainous or rugged terrain or swamps. A typical example is the 115,000 hectares given to Yumu Resources over Portion 30C in the Central Province, where only 26,000 hectares is near suitable for agriculture. Co-operation between DAL and provincial agriculture divisions are almost non-existent. A proactive DAL should screen, assess and evaluate project proposals, verify and approve agriculture development plans, assess technical and financial capacities of developers and scrutinize their development and implementation schedules to ensure that they meet the minimum requirements.
- 1.44 An overarching Act of Parliament that consolidates and sets out the functions and responsibilities of DAL needs to be introduced as matter of priority. This will provide solid foundation for DAL to frame its way forward, inform its organizational structure and will provide the framework for recurrent budget. DAL’s function in the SABL management process is pivotal to the SABL scheme’s viability. This role must be properly captured in the organizational setup as prescribed by such a law.

(IV) PNG National Forest Authority (PNGFA)

1.45 DAL is required to give approval for a FCA to be issued. It will do that by issuing a certificate of compliance for PNG National Forest Authority (PNGFA) to issue the Forest Clearance Authority (FCA) over an SABL. This is facilitated under Sections 90A and 90B of the Forestry Act. As discussed elsewhere in this report FCA is issued for clear felling of trees, to allow for the development of agro-forestry projects over an SABL.

(a) Abuse of Forest Clearance Authority (FCA)

1.46 The concept of FCA has been criticized by many people. Others have labelled it as nothing but a licence to log the forest under the pretext of SABL. Sadly we found this to be the case in the many of the 75 SABLs we investigated. We have adequately canvassed the issuance and management of FCAs under our summary of discussions relating to DAL. In addition to that we note that FCAs are issued under Section 90A of the Forestry Act 1991 following approval from DAL. The Forestry Act requires forest clearance for SABL purposes to be limited to 500 hectares. This is meant to ensure that planned agriculture projects are commenced before the developer moves onto the next 500 hectares. The developer may apply to increase the number of hectares and, based on proper assessment and technical advice provided by DAL, the National Forest Board may increase it up to 5,000 hectares. The only visible development on site is nursery and seedlings work. For example, in Bewani, over Portion 160C, two nurseries were on site with oil palm seedlings ready for transplanting. The nurseries appeared to be neglected and but the seedlings were already overdue for planting by six months when the COI visited one of the project sites at Imbio village.

1.47 Developers and FCA holders are logging well outside of 500 hectares covered by their current FCA, without any form of agriculture activities on the first cleared block of 500 hectares. In most cases prior approvals (fresh FCA) are sought to do that. Monitoring by DAL and PNGFA is lacking or nonexistent and developers are taking advantage of that. In some instances the lack of monitoring and oversight by DAL and PNGFA are deliberate. DAL Deputy Secretary Mr Daink told the inquiry that for “practical purposes we would allow developers to continue with the clear felling until they clear the maximum land they require for the agriculture project”. Mr Daink said it was inconvenient for developers to “stop start” with the clearing

work and so they are allowed to continue. This ‘convenience’ arrangement is in direct breach of Section 90A of the Forestry Act and no amount of explanation would justify the actions of both developers and irresponsible DAL and PNGFA officials.

- 1.48 Section 90A of the Forestry Act provides the checklist, for the documentation that must accompany an application for FCA pursuant to Section 90B of the Forestry Act. Amongst the requirements is for the developer to provide details of agriculture development plans, project agreement with landowners, project implementation schedules, past experiences of the project proponents in similar projects, and detail project costs. This information would assist DAL and PNGFA to determine if the project is what it is said to be and not a logging operation. Without this information, a FCA cannot be issued. Allegations of inducements and bribes offered to DAL officers have been rife but we neither able to find proof of these practices nor are able to discard them of hand for that reason under the circumstances.

(b) Amendments to Forestry Act 1991 and Customary Landowner Interests

- 1.49 Sections 90A to 90E are additions that were inserted into the Forestry Act 1991 by Forestry (Amendment) Act 2001 to cater specifically for the SABL scheme. Sections 90A and 90B particularly altered the object and intent of FCA substantially. Section 90A (3) requires project proponents to submit sufficient and adequate information for evaluation before an FCA is issued. Information such as agriculture land use plans, development agreement, land boundaries and maps, verifications of ownership and informed consent of the landowners, and certifications and approvals by other relevant agencies of government such as DLPP, DEC, DAL or Provincial Governments. Additional information such as the developer’s background experience and expertise in developing the project, investment capital and financial resources, equipments, personnel and anticipated timelines to complete the project are also required.
- 1.50 The recent amendment to the Act, through the Forestry (Amendment) Act 2007 has taken away the requirement on verification of ownership and landowners’ consent through their agents or ILGs with the amendment to Section 90A (3) (f) which states: “...and otherwise the consent in writing of the Board, lessee or owner of the land as the case may be.” The amendment effectively removed the need for FCA applications to include verifications of ownership of the land including the informed consent of the landowners by including the National

Forest Board and the lessee (developer) the authority to give consent for clearing of forest regardless of whether the landowners agreed to the lease at the first place or not. The 2007 amendment has, amongst others, effectively removed the most fundamental requirement on SABL which is unequivocal informed consent of the landowners at every turn, whether it is the choice of a preferred developer, term of the lease or type of agriculture activities to be carried out on the SABL. The removal of this fundamental requirement of landowner consent defeats the whole purpose of the SABL scheme, and the pivotal landowner empowerment outcomes for which the SABL scheme was introduced.

- 1.51 Prior to the 2007 amendment the PNGFA followed an exhaustive process of evaluation of applications for forest clearance for agricultural activities that included extensive consultations with relevant government agencies and conducting public hearings near the proposed project site to gauge landowner's views including objections. Forestry (Amendment) Act 2007 repealed Section 90B of Forestry Act 1991 and introduced a less exhaustive approval process for FCAs. Consultations with relevant government bodies and public hearings including giving landowners an opportunity to raise issues or objections relating to the FCA is now no longer. Landowners are now at disadvantaged position courtesy of the new amendment. PNGFA Managing Director Mr Kanawi Pou'ru said the recent amendment meant that the Provincial Forest Management Committee (PFMC) now deals with bulk of the FCA applications which also include evaluation and approval, leaving the National Forest Board and National Forest Service with very little power to reject applications. Issuing FCA in most cases is a matter of formality now following recommendations from the PFMC. After the 2007 amendment the number of FCAs issued between 2008 and 2011 almost tripled compared to the number of FCAs issued between 2003 and 2007. It is our considered view that the 2007 amendments be reviewed.

(c) Mismanagement of FCA

- 1.52 The management of FCA, including the limited collaboration between DAL PNGFA has never been smooth. PNGFA Managing Director Mr Pou'ru in a letter to DAL Deputy Secretary Mr Daink dated 20th May 2009 raised serious concerns over DAL's failure to properly screen applications. He said: "What has transpired has become distressing and threatens to ridicule the intentions of these project types. Most notable is the ever widening gap between forest clearance activities to that of the actual agriculture establishment/implementation. The real threat here is

that proponents may be disguising under the cover of sanctioned DAL project with underlying interest to log.”

- 1.53 Working and cooperation protocols for managing FCAs need to be sorted out quickly between implementing agencies FCA before they lose control of the situation. To avoid further abuses on FCA we recommend that the whole FCA process be reviewed with the view to strengthen it. We recommend that the 2009 National Agriculture Council recommendations for formulation of the FCA Project Approval and Monitoring Guidelines be done without delay.

(V) Department of Environment and Conservation (DEC)

- 1.54 Department of Environment (DEC) is responsible for issuing Environment Permits to proposed development projects over SABLs. The DEC permits set up is primarily focused on the proposed project’s impact on the environment and water ways including waste discharge and disposal. We found no major issues with DEC in so far as their role in SABL is concerned except for the monitoring and compliance aspect of the permits the department issues, which we find is somewhat lacking. We note that the DEC processes in screening, assessing and approving environment permits takes way too long time to complete, which, apart from the frustration, will affect costs, continuity choices and alternative options.
- 1.55 DEC records show the department dealt with twenty-six (26) out of the seventy-five (75) SABLs granted between 2003 and 2011. Given the number of SABLs granted and nature of proposed projects on them, we do not doubt that projects on more than 26 SABLs would be classified as Level 2 and 3 activities, but not all have been referred to DEC for processing and approval. We put this down to lack of proactivity on the part of DAL and PNGFA who would have provided to DEC the full list of projects on SABLs that are classified as Level 2 and 3 activities. The 26 SABL based projects that DEC dealt with are shown in Table C.

(a) Lack of Auditing and Compliance

- 1.56 One important function of the DEC through its Auditing and Compliance Branch is to conduct regular environmental audits, inspections and investigations on projects, including those carried out on SABL, to ensure that developers comply

with conditions of environment permits. Section 74 of the Environment Act makes it mandatory that audits and inspections are carried out on a regular basis. That not done by DEC. Secretary of Dr Wari Iamo said that was due to lack of funding and qualified and skilled manpower to carry out the audits. To date many complaints of non-compliance of the environment permits have not been investigated. DEC performs an important function to protect the country's environment and rich bio diversity. The government must ensure that DEC is adequately resourced and capacitated to effectively carry out its functions and responsibilities

(b) Delay in Processing Permit Applications

1.57 Processing and approval of Environment Permits, namely the Environment Impact Assessment (EIA), Environment Impact Report (EIR), Environment Impact Statement (EIS) takes too long. Negotiating these permit processes would take up to six (6) months. Grant of the Permit is only conditional. The developer is required to submit a Waste Management Plan and Environment Management and Monitoring Plan within three (3) months of its commencement so the whole process from start to finish takes approximately 12 to 18 months to complete. The waiting time will take longer if other factors come into play, particularly if the Environment Council takes long to sit as it has been the case in some instances. We think that DEC processes just takes too long. It frustrates and discourages investors. We note that time lines are also set by legislation. Certainly this is an area that needs to be reviewed.

(VI) Investment Promotion Authority (IPA)

1.58 Investment Promotion Authority (IPA) promotes and facilitates investments in the country. IPA's role in SABL is very limited to ensuring that businesses including foreign-owned companies intending to carry on business in PNG comply with the investment guidelines and business laws of the country.

(a) Accuracy of IPA Records

1.59 IPA does not keep up-to-date records of companies including shareholding arrangements and any changes made to it. Shareholding arrangements and directorship and ownership of companies holding SABL titles are changed constantly. We noticed a tendency on the part of IPA to record changing to names of shareholders and company directors at the request of landowners and others, without the usual proof in the of board resolutions and other resolutions. The National Court in the case of Konekaru 1 and 2 (Portions 2465C and 2466C) ruled that it was unlawful and illegal for IPA to change the names of board members and include new names without a proper board resolution. The Court ruled that this is contrary to Section 43 of the Companies Act and ordered the reinstatement of the previous directors and shareholders. IPA needs to improve on these areas and remain vigilant going forward.

(VII) Co-operation Between Agencies Responsible for SABL

1.60 We have highlighted elsewhere in this Report the lack of co-operation and co-ordination between different agencies of government responsible for managing SABL. Lack of consultation and collaboration between agencies continues to prevent effective management the SABL. There is no cohesiveness between agencies. Respective SABL implementing agency heads gave evidence at the inquiry and admitted the lack of consultation, dialogue and co-operation between their agencies. They admitted that agencies were operating in total isolation from each other. There was minimal dialogue between DAL, PNGFA, and DEC over some SABLs but in most instances respective agency approvals were given independently and without the knowledge of other agencies of government responsible for SABL.

(VIII) Head of Agencies Concerns on Lack of Co-operation

1.61 Chief Secretary to Government and Custodian of Trust Land, Mr Manasupe Zurenou said, (quote): *“Many of the customary land acquired for SABL were never issued with a ‘Certificate of Alienability’ by the ‘Custodian for Trust Land’ (who is the Secretary for DPLLG) as required under Section 134 of the Land Act 1996 (Chapter No 45) and Section 166 (3) of the Land Registration Act. In some instances, SABLs were processed without the Certificate of Alienability or without*

the knowledge and approval of the Custodian of Trust Land. This is unlawful and illegal. Department of Lands and Physical Planning (DLPP) holds a view that a Certificate of Alienability is not required for an SABL but that view is not correct in law. I put this down to lack of consultation and co-operation. There is an apparent lack of collaboration and co-ordination between the various agencies of government responsible for the implementation of SABL”.(end of quote).²⁷

- 1.62 DLPP Acting Secretary Mr. Romily Kila-Pat said in response to a question put to him: *“There is no co-ordination and co-operation between the various agencies of government that deals with SABL and it appears that each agency is doing its own thing in total isolation to others. We rarely have meetings with each other on matters relating to SABL but relied on advice(s) given to us by the developers and landowners that they have already got the necessary approvals from the other agencies to proceed with the SABL”.*²⁸
- 1.63 PNGFA Managing-Director Mr. Kanawi Po’oru said in response in response to a question was put to him regarding dialogue, consultation and co-ordination between different Agencies of the State regarding SABL that he had never met any departmental counterpart of SABL management. DEC Secretary Dr Wari Iamo expressed similar sentiments and actually blamed DLPP and PNGFA for not taking the initiative to call meetings.

(IX) SABL Failed at the Implementation Stage

- 1.64 The SABL scheme, both at the policy level and in manner it was implemented, has failed. There is no effective policy foundation in place to guide the implementation, especially in relation to application, processing, registration, approval and issuance of SABLs. There are no guidelines and procedures to guide implementation. Things have been done ad hoc. There is a need for certainty, consistency and regularity in the procedures and the processes to ensure transparency and accountability in the lease-lease back system. Monitoring and evaluation to ensure procedural compliance, whether legislative or policy based, is lacking. Those charged with the responsibilities to oversee and guide the implementation of SABL have not done their job properly. It is also apparent that landowner companies, developers and people with vested interests have hijacked the SABL process to suit their own ends. Greed and corruption at all levels; political, government bureaucracy, landowner agents /representatives, and developers have tainted a noble landowner empowerment initiative.

²⁷ Exh. “MZ 13” – Transcript p. 89

²⁸ Response transcript p.67

- 1.65 The Land Act in its current form does not protect or promote the interests of customary landowners. There are no procedural guidelines for customary land acquisition including a specific legislative framework that governs and regulate SABL. People have taken advantage of the weak legislation and policy foundation with the help of corrupt and incompetent government officials.

D. MAIN RECOMMENDATIONS

The COI makes the following recommendations in addition to the recommendations already made in the Interim Report including the recommendations made on the individual SABLs and the preliminary recommendations made contained in the overall findings.

The recommendations is in two (2) parts. The first part relates to improving the current SABL process with appropriate changes to improve its management. The second part relates basically to the ‘way forward’ for the SABL process under the land reforms that is currently on-going.

Harmonization and synchronization of practices and procedures relating to land acquisitions to ensure clarity and consistency between the different processes is well overdue. Piecemeal ad hoc approach to dealing with land issues has caused more harm than good. The entire land management system in the country is a mess. This has prompted debates and criticisms in various quarters over the years. The future looks bleak unless the government acts quickly to salvage the problem. And indeed the government has responded by commissioning the land reform programs current taking place under the auspices of the National Land Development Program (NLDP). It is expected that this will produce tangible outcomes that informs progress and development. Changes made must be based on sound legislative and policy framework influenced and driven by developmental aspirations of the government encapsulated in the various national strategic plans – Development Strategic Plan (DSP), Medium Term Development Strategic Plan (MTDS) and the PNG 2050 Vision. It is expected that the reforms will culminate ultimately into developing an overarching ‘National Land Policy’ that paves the way forward for everyone. The COI is cognizant of the current land reforms.

1. Current SABL Process – Recommendations for Improvement

- 1.1 The current legislative framework on SABL is sections 10, 11 and 102 of the *Land Act* that provides the legal basis for lease-leaseback is good law generally and we do not find any problem with it. However, it lacks procedural provisions for effective implementation and this has been a major problem in SABL. Section 175 of the *Land Act* provides for a sub-ordinate legislation in a form of a regulation or by-law to be made specifying specific procedures and processes to be followed in

effecting acquisitions of customary land for SABL under section 11 and its subsequent grant under section 102 of the Act. However, as we stated at the outset, there is no regulation or by-law developed under section 175 to ensure regularity and consistency in the process since the inception of the SABL scheme. The absence of a proper process and procedures has led to massive abuse as highlighted throughout this report.

- 1.2 The COI therefore, recommend for a sub-ordinate legislation to be promulgated under Section 175 as a matter of priority. DLPP developed a set of new ‘proposed process and procedures’ in 2011²⁹ to guide the process relating to application, registration, processing, approval and granting of SABL. We found that the new ‘proposed process and procedures’ worked well despite the fact that DLPP has no intention to formalized it into a by-law or policy but we consider the proposed process and procedures as necessary and would therefore, recommend that they be formally developed into regulation with appropriate changes so that it becomes legal and have the force of the law. It also ensures strict adherence to the procedures in dealing with SABL application. Proper evaluation and assessment of applications becomes mandatory. Safety mechanisms should also be included in the regulation so that an oversight or failure (deliberate or otherwise) in one aspect of the entire process will automatically trigger the whole SABL vetting process to a complete halt with ultimate consequences of a nullity. This will also apply to other agencies responsible for SABL.
- 1.3 As we pointed out in our findings, the recent amendments made to Section 90A and 90B of the *Forestry Act 1991* by Amendment No. 36 of 2000 - *Forestry (Amendment) Act 2001* followed by a recent subsequent Amendment No. 19 of 2007 – *Forestry (Amendment) Act 2007* have substantially altered the object and the intent of the FCA. It has taken away the requirements on verification of ownership and landowner’s consent through their agents or ILG’s and attempt to include the National Forest Board and the developer (lessee) to give consent for FCA. The recent amendment goes against the 4th National Goals and Directive Principles of the Constitution that vest all rights over land and natural resources on the people for the collective benefit of all. The amendment goes against the spirit of the constitution and we recommend that Section 90A (3) (f) of the *Forestry (Amendment) Act 2007* is repealed immediately as it does not safeguard the interest and ownership rights of the people of PNG.
- 1.4 The 500 hectares allowed for clear felling under the FCA (sec. 90A) needed to be clearly defined with strict monitoring conditions and enforcement so that it does not turn into a full logging operation as we noted throughout many of the SABLs that we have investigated. Developers who failed to comply will be penalized

²⁹ Ibid p. 2 - 12

including cancellation of the FCA. We recommend that DAL and PNGFA take the lead role in policing this aspect of SABL through the newly proposed 'FCA Project Approval and Monitoring Guidelines' referred to below once it is established.

- 1.5 We recommend that DAL implement, as a matter of priority, the 2009 recommendations of the National Agriculture Council to develop a proper 'FCA Project Approval and Monitoring Guidelines' and a 'Oversight Committee' comprising of key players from DAL, PNGFA, DEC and DLPP to be established to oversee and administer the new FCA guidelines to ensure compliance.
- 1.6 We further recommend Parliament to promulgate a specific legislation for DAL in a form of an Act of Parliament that prescribes the specific roles, functions and responsibilities of DAL in SABL. Areas of monitoring and compliance will be reflected in the new legislation. Penalties and enforcement procedures will be included. Obligations of developers to conform to set standards and practices including other requirements as conditions to obtain FCA will be explicitly stated. Prosecution will be swift for any breaches that occurred with ultimate cancellation of the FCA.
- 1.7 The lack of a clear policy framework *per se* to guide the implementation of SABL has resulted in the ineffective management of SABL. DLPP, the lead agency on SABL has admitted its failure in not developing a proper viable policy on SABL in the past 30 years since its inception. All the agencies responsible for managing SABL do not have clear policies too. Development of a relevant policy framework on SABL by each agency is essential. Agency heads are vested with the authority to develop relevant policies and we recommend that agency heads utilized this power to develop clear policies on SABL. Agency heads should be proactive and take the lead in developing policies instead of waiting on Parliament to pass laws as the legislative process can take long.
- 1.8 We recommend DLPP to immediately formulate a workable Policy on SABL with the involvement of other agencies (DEC, PNGFA, DAL, DPLLG and IPA) so that there is consistency and uniformity in dealing with SABL across all agencies. The proposed policy will guide the entire SABL process from application stage to processing, approval and granting of SABL.
- 1.9 During the course of our inquiries we were confronted by an over whelming lack of due diligence, non-compliance with administrative process requirements and deliberate acts of omissions by government officials. We noted a consistent pattern to the failure in practices along the SABL process pathway.
- 1.10 Prescribing sanctions through criminal offences may not be adequate deterrence for bad practice. We therefore recommend a series of reviews that we think will guide and inform process and legislative reform. We are convinced the best

practice option is to install compulsory requirements along the SABL process path. It means that in practice, unless the first set of requirements are complied with progress forward in the process either stops or terminates.

1.11 We therefore note seven (7) points along the SABL process pathway at which compulsory requirements may be inserted, starting from the Land Investigation process to commencement of activities on the SABL land. In practice the system of compulsory processes will be self-executing. Lack of any compulsory requirements will affect progress along the SABL process path, and should cause a stoppage or reversal in the process, or cause process termination. Lack of compliance will mean that progress in the process beyond the point will be rendered defective and voidable. These 'built in' self-executing requirements will provide the much needed assurance for compliance and regularity in the current process. The seven (7) points are listed below:

- (i) Land Investigation is the landowner consultation process that precedes any proposed special agriculture or business activity. The proposed agriculture or business activity is promoted and marketed to landowners through the Land Investigation process. Agreement for customary land to be utilized for the proposed purpose, and informed consent for the land to be alienated, is obtained from landowners. Therefore, considering the importance of the Land Investigation process, we strongly recommend that it must be carried out openly and transparently. Every affected landowner needs to be given a real opportunity to have his informed say. Open and transparent consultation includes widely carried out public hearings, full personal interviews and such other approved awareness methods.
- (ii) Land Investigation Report (LIR) is the complete and final report generated by the Land Investigation process. It is a composite of full consultation with landowners including; list of land owners by name and groups they belong to, agency agreement between the landowners and their representatives, attestation by selected persons who took part in the boundary walks, sketch map and description of the land, statements on applicable custom and attestations by owners of neighbouring lands, plus findings and assessment by the land investigators from DLPP. All the components that constitute the LIR must be identified and settled so that format of the LIR is standardized.
- (iii) Certificate of Alienability (CoA) is the vital clearing act for customary land to be acquired, through execution of a lease agreement between landowners and the State. The Custodian for Trust Land alone will sign on the Certificate of Alienability. He will have an unfettered discretion to sign or not sign. He

therefore needs to act responsibly. He cannot sign the Certificate of Alienability if any of the risks identified and referred to in this Report is present. Also, the validity of the Certificate of Alienability must not depend only on whether the right person signed. The Certificate of Alienability must be rendered invalid if it does not contain minimum reservations that protect survival activities of land owners, or if it does not preserve other existing rights or the State's rights in relation to the land. Therefore, the Certificate of Alienability needs to be standardized, incorporating all these important requirements.

- (iv) Lease Agreement is the instrument of acquisition of customary land and it is what the law (Section 11 of Land Act 1996) refers to as "approved form". The Lease Agreement must to be standardized, to cater for the conditions of lease; including the type of special agriculture or business activity to be engaged in, the full identity of the agreed SABL grantee, the agreed number of years for the direct grant, any prohibitions including restrictions on subleasing, and precise statement of the consequences of the breach of any lease conditions or prohibitions. For the Lease agreement to be executed there must be a valid Certificate of Alienability. The State representative cannot execute the Lease Agreement if he considers that the form and contents of the Certificate of Alienability is not correct.
- (v) Direct Grant by the Minister or his delegate is not a formality that concludes lead work of SABL managers in DLPP. The Minister or his Delegate has a statutory discretion. They must be satisfied that no simmering land owner issues exist before they grant the Direct Grant notice. They must be satisfied that the Lease Agreement is valid and it contains the features now recommended (above) to be included in all Lease Agreements; there must be a costed land use plan prepared and submitted by the agreed SABL grantee; the agreed SABL grantee must provide evidence capacity including sufficient funding and demonstrate experienced based competence in relation to the proposed agriculture or business activity.
- (vi) Registration of title by the Registrar of Titles is often mere a formality that finalize the Ministerial discretion. However there is a need now to place further check and balance options. The Registrar of Titles must make sure the Ministerial discretion has been regularly discharged. If he is not satisfied that the Ministerial discretion was regularly granted he must not register the Grant and refer it back to the Minister or his delegate with a brief on what needs to done to.
- (vii) The Title Deed must set out the purpose of the special lease, in accordance with the conditions for the release of land by the landowners. It must state

the special agriculture or business activity that will be carried on the SABL. The Title deed must contain a self-executing proviso that in the event the SABL is used for an activity other than its intended special purpose the grant will become null and void.

- 1.20 We recommend reviews on the following sections of the Land Act; Sections 11, 12, 72 and 102 especially in relation to the 'Ministerial discretion' in making grants. We found instances of abuse in this area. The exercise of the ministerial discretion should be made subject to other conditions (to be imposed by law) or limited only in certain circumstances or totally removed and vested in an entity made up of technical experts or representatives from various agencies of government currently involved in SABL. In addition, we recommend that safety mechanisms be put in place for purposes of checks and balance so that exercise of this discretion is not abused.
- 1.21 Sections 11 (1) and 102 (1) of the *Land Act* gives the discretion to the Minister to lease customary land and to grant title to such lease after it has been acquired. We recommend that this discretion should be made subject to Section 102 (2) so that the discretion is exercised only at the option of the customary landowners.
- 1.22 The SABL concept is good and we recommend that it be retained. However, the current process and mechanisms under which it operates must be reviewed to make it more efficient and effective. SABL should be housed under a new model that is transparent and safeguard the interests of customary landowners.
- 1.23 It is import to reaffirm and settle in Policy now that the SABL regime is a national development and customary landowner empowerment mechanism. The end result for the SABL process is for the advancement of customary landowners. No form of compensation is payable for converting customary land under Section 11 because conversion is being done at the behest of landowners. No rental charge was permitted because landowners were always meant to be majority or equity participants in the developments over their land.
- 1.24 The SABL mechanism will continue to be used as a vehicle for high impact land based development. It will continue to be the restricted mechanism by which customary land is released only for particular kinds of development. SABL's place in the current land law arrangements has never been in doubt but it has been significantly abused, as COI's findings in relation to individual cases will show. Therefore SABLs role within the National Land Policy will not change.
- 1.25 We recommend that the SABL mechanism be reserved for acquiring land, which will be released to agreed grantees, for development of high impact projects with strict conditions for maximum landowner benefit and participation. The guided oversight of the Custodian for Trust Land is a vital part of the security and risk

management matrix provided by the self-executing compulsory requirements the COI is recommending to be built into the SABL process.

- 1.26 Acquisition by Agreement Option: This option will continue to be the necessary power via which the State may acquire customary land that it needs for general development and national purposes around the country. By this option the State acquires customary land that is not needed by the customary land owners, to be held as reserve national land. This power will be retained. The SABL regime must be distinguishable from this process. The SABL regime and acquisition by agreement under Section 10 of the *Land Act 1996* are different options, which operate differently and target different outcomes.
- 1.27 Compulsory Acquisition Option: Authority to compulsorily acquire land is potent power vested in the State by Section 12 of the *Land Act 1996*, to acquire such lands it needs for national development purposes in the country. When the State acquires land compulsorily all landowner and land user rights are automatically converted to rights for compensation only. The right to acquire land by compulsory process for public purposes is one of the most cohesive powers the State wields as a matter of sovereign authority.
- 1.28 However the State's power to compulsorily acquire customary land is not clear. For instance, Section 132 of the Act prohibits dealings in customary land. Whereas the State's power to acquire customary land under Section 10 (by Agreement) and Section 11 (for SABL purposes) is exempted, there is no similar exception made for compulsory acquisition under Section 12 of the Act. By implication the State appears to have no power to compulsorily acquire customary land.

2. Way Forward for SABL – Land Reforms

- 1.29 As part of the recommended National Land Policy Harmonization exercise, a revised policy on compulsory acquisition of customary land is urgent and imperative going forward. The revised policy on compulsory acquisition of customary land will, while permitting compulsory acquisition, restrict the purposes for which customary land may be compulsorily acquired.
- 1.30 Customary lands maybe acquired only for public purposes, with what is 'public purpose' redefined to exclude commercial and other development ventures wherein customary landowners would normally have an to become equity participants.
- 1.31 We recommend that in the National Land Policy Harmonization exercise the State must settle policy going forward, as to how it will utilize its Section 12 powers to obtain and reclaim land it urgently needs in critical areas like National Capital

District. Prime State lands earmarked for public purposes and special use in Port Moresby City have been lost through lack of foresight and corruption within officialdom.

- 1.32 We recommend that the revised National Land Policy settle and state specific policy initiatives by which the State may compulsorily acquire land it needs for public purposes in urban areas, and reclaim any reserve and special purpose land in the nation's capital city and elsewhere that was lost through irregularity and corruption.
- 1.33 Consistent lack of planning and ignorance of planning regulations has seen towns and cities expand or become cramped in a dangerous and ad hoc manner. Therefore the COI recommend that, through the revised National Land Policy, the State develop a strategy on how inefficiencies in urban planning and physical planning need to be rectified and how powers in respective enabling statutes need to be enforced. That will complement its strategy to acquire private land compulsorily, for a long term 'Urban Renewal' program. We particularly note that Port Moresby appears to be severely affected by reserve land shortage.
- 1.34 Tenure Conversion Option: Conversion of customary land to free hold land under the *Land (Tenure Conversion) Act 1963* is still an option for landowners. Upon application the Land Titles Commission can determine any application as prescribed by the Act and make a conversion order converting the subject land, which is then forwarded to the Registrar of Titles for registration.
- 1.35 The process though is still lengthy in practice and Land Titles Commission has not been very proactive for a long time. A long backlog of applications spanning many years is the result.
- 1.36 Voluntary Customary Land Registration Option: This option is the most recent State policy initiative which is underpinned by operational statutory provisions, namely 2009 amendments to the *Land Registration Act 1981*. This option must therefore be interfaced with the utility of the SABL regime. Whereas the SABL regime is particularly suited for large scale high impact intensive land based development, voluntary land registration is best suited as a landowner empowerment option for more general land use, including use of customary land for residential purposes within the periphery of urban areas.
- 1.37 The way forward for the efficient management of short term landowner benefits from resource development and for the long term need to build a foundation for sustainable land based economic activities such as SABL, is through the vehicle created by the *Land Groups Incorporation Act and Land Registration Act* working together. ILGs with titles to duly registered customary land as the principal asset in their assets base is arguably the most important and viable citizen

empowerment option the State has institutionalized to date. The success of this development option is yet to be seen or felt, because the idea of it is yet to find traction with most people, but it is a viable option. The success of this landowner empowerment option will be enhanced by a continuing program for awareness and proactive engagement of NLDP implementing agencies with landowners and all stakeholders.

1.38 Meanwhile, the way forward through the Harmonization of Laws and Standardization of Practices exercise is urgent. A National Land Policy framework is also imperative. Progress in NLDP Reforms is critical for successful attainment of important projections in the DSP and its first MTDP. Finally, if voluntary customary land registration finds no traction with our people, a viable alternative mechanism must be found quickly, because right now there really is no risk free empowerment option available for our people at the lower end of the national and sub-national spectrum.

1.39 We note that as part of the new reforms on customary land relating to leases and other general dealings, the Parliament in 2009 passed the *Land Registration (Customary) (Amendment) Act 2009* and the *Land Group Incorporation (Amendment) Act 2009*. The two legislations came into effect in March of 2012 announced by the former Minister for Lands and Physical Planning Hon. Lucas Dekena, MP on the 01st March 2012. The legislation places emphasis on two main areas on customary land alienation. Firstly, customary land leased under the lease-lease back scheme must be registered under Incorporated Land Groups (ILGs) rather than individuals and developers for obvious reason that land in PNG is communally-owned with expressed and exclusive user rights for its clan members. Secondly, it prevents the sale of customary land (total alienation) registered under the ILGs to “outsiders” and only allows for the lease to be traded or sold for a specified period of time. At the expiration of the lease the land reverts back to the customary landowners. The two new pieces of legislations were intended to encourage voluntary land registration through ILG as it provides more protections and safety features safeguarding the landowners rights.....titles are not transferrable....better option than current practices on granting of SABLs. The amendments may have come one day too late to save many of the SABLs granted on long term leases with titles already transferred to foreign hands.

1.40 The legislations were intended to bring more transparency and accountability to the management of ILGs to ensure that benefits derived from customary land through the leases such as SABL is used solely to the benefit of the landowners. However, the new laws are yet to be tested on SABL and unless it is tried there is no guarantee it will work. Quite apart from these new legislations, there is still a need to review the current provisions under the Land Act 1996 on lease-lease back with a view to put a cap on the number of years for the sub-leases we

recommend fifty (50) years as the limit on SABL leases. Promulgation of a by-law or regulation specifically on SABL that clearly sets out the 'processes and procedures' relating to the application, registration, processing, approval and issuance of SABL. Once established by law, non-compliance with the prescribed procedures and processes will render the whole SABL defective and null and void.

- 1.41 Finally, it is our recommendation that PNG's land laws need to be harmonized and practices for converting customary land for formal use need to be standardized. A harmonization and standardization exercise will serve two purposes: Firstly it will make relevant options on acquisition provided by law easier to understand. Understanding is empowerment and staying informed is being empowered. Secondly, it is a risk management option. Harmonizing the laws and standardizing practices will remove ambiguity and generality in the laws and practices. Many painful lessons will remind us of the need to manage risks over customary land use. Therefore a Harmonization of Laws & Standardization of Practices exercise must be carried out. Its outcome will then inform the National Land Policy. We are not aware that the latter exists. If it does not then that needs to be settled as part of the reforms going forward.

APPENDIX '1'

(1) Instrument of Appointment

(2) State of Case

(3) Terms of Reference



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PORT MORESBY, FRIDAY, 22nd JULY

[2011

Commissions of Inquiry Act (Chapter 31)

COMMISSION OF INQUIRY

Into

THE MANAGEMENT GENERALLY OF THE SPECIAL AGRICULTURE AND BUSINESS LEASES AND ALL MATTERS RELATING TO THE SPECIAL AGRICULTURE AND BUSINESS LEASES

To: John Numapo (Chief Commissioner)
Alois Jerewai (Commissioner)
Nicholas Mirou (Commissioner).

STATEMENT OF CASE

STATEMENT OF CASE ON WHICH THE COMMISSION OF INQUIRY WAS ORDERED INTO THE SPECIAL AGRICULTURE AND BUSINESS LEASES AND ALL MATTERS RELATING TO THE SPECIAL AGRICULTURE AND BUSINESS LEASES.

1. Land acquisition for purposes of development has been a government policy since 1979 when the instrument Special Agriculture and Business Lease was established which was effectively incorporated into the *Land Act* 1962 and subsequently became the *Land Act* 1996. The intention of the post independence government of Papua New Guinea was noble and well intended but it has been left unchecked allowing it to be abused by forces that are beyond landowners capacity to manage.
2. The early governments used SABL policy as a means to increase economic activities and empower the local communities in Papua New Guinea to engage in development of the country by providing customary landowners with a form of land title, state lease and documentation necessary to lease their land for development purposes. Through issuance of SABL communities were expected to benefit through rental payments, employment opportunities, and increased welfare services and community facilities.
3. In the 1990s however, it became controversial when foreign business interests took advantage of the instrument of SABL under the *Land Act* 1996 and acquired 99 years lease through SABL. SABL approvals have increased at a high rate resulting to over 5.2 million hectares of customary land been acquired for commercial use at end of April, 2011. Studies have revealed that land held under customary tenure has decreased from 97% to 86%. This is serious concern for the government considering that Papua New Guinea is a country largely made up of rural based population.

Commission of Inquiry—continued

4. What is of particular concern is the fact that land has been alienated from their customary owners through the use of a government sanctioned outdated policy. The alienation of massive areas of customary land and placing it in the hands of landowners companies linked to foreign owned companies threaten the biodiversity that Papua New Guinea is well known about. Under the Lease—leaseback scheme, landowners lease their land to the State who then leases it back to the landowners. The landowners then sub-lease to another interested developer for a period up to 99 years.
5. A large majority of the SABLs for large agriculture projects have been issued directly to third part entities without proper knowledge and involvement of the landowners. A large number of SABLs have been abused for pure logging operations, without agriculture development. Several studies conducted by environmental experts reveal large logging operations in those SABL areas. There have been little monitoring, control and management of SABLs allowing for abuses which have become evident and which poses great danger for Papua New Guinea.
6. The current system of SABL will result in long term economic loss whereas real agriculture development and Forest conservation could realise large gains for Papua New Guinea. Also the rate of environmental degradation caused by logging operations under the SABL has become an international concern.
7. Issues surrounding the SABL management are jeopardising PNG's chances of securing funding for REDD+ and combating climate change. Papua New Guinea is one of the countries that are in the forefront of climate change issues at global stages. As such Papua New Guinea must be seen to live by its words in respect of conserving forests to help reduce the green house gas emission and its effect on climate.
8. Many segment of the community throughout the country, including civil society organisations, prominent leaders and landowner groups are increasingly objecting to SABL approval and management processes in recent times, and recommending for an independent inquiry and placement of moratorium on further processing of applications pending the completion of the inquiry.
9. In March, 2011, a large group of environmental and social scientists, natural resources managers and non-governmental organizations staff from Papua New Guinea and other nations met in James Cook University in the city of Cairns, Australia to discuss the future management and conservation of Papua New Guinea's native forest. A strong consensus was reached to take appropriate action towards addressing the issue and calling for a halt in granting of SABL and Forest Clearance Authorities (FCA).
10. The National Government has considered it important enough to warrant special attention hence, the Prime Minister's decision on convening a full scale Commission of Inquiry into SABL.

TERMS OF REFERENCE

KNOW you that I, Samuel T. Abal, Acting Prime Minister for Papua New Guinea, reposing confidence in your integrity and ability do, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31), and all other powers me enabling, hereby appoint John Numapo to be Chief Commissioner and Alois Jerewai Commissioner and Nicholas Mirou Commissioner to enquire into and report on the following matters:—

TERMS OF REFERENCE:

The Commission of Inquiry will:

- (a) determine the legal authority for the issuance of SABL; and
- (b) determine the procedure for the issuance of SABL in accordance with the legal authority if any; and
- (c) inquire into and confirm the number of SABL issued to date and the particulars of each including:
 - (i) location; and
 - (ii) customary ownership whether there are any disputes regarding SABL; and
 - (iii) prior consent and approval by customary landowners for the issue of SABL over the particular customary land the subject of each SABL; and
 - (iv) in whose name the title to the SABL is held; and
 - (v) if not in the customary landowners name then in whose name is the particular SABL title held; and
 - (vi) if not in the customary landowners name then by what authority and whether lawful for the title to be held by a non-customary landowner of the land the subject of the particular SABL; and

Commission of Inquiry—continued**Terms of Reference—continued**

- (vii) if all of the matters in the preceding Sub-paragraphs (i) to (vi) involved duly granted approvals and permits from the Departments of Agriculture and Livestock; Environment and Conservation; Lands and Physical Planning; and the Papua New Guinea Forest Authority; and
- (d) inquire into and determine if the requisite or subsequent approvals determined under preceding Sub-paragraph 3(vi) were lawfully and duly obtained; and
- (e) inquire into and determine if Forest Clearance Authority (or FCA) in respect of each SABL complied with the proportionate agriculture development input; and
- (f) inquire into and determine if FCA in respect of each SABL complied with the Environmental Permit terms and conditions; and
- (g) inquire into and determine if any official or individuals, both citizens and foreigners have engaged in unethical and/or criminal conduct in the course of the operation of each SABL, including:
- (i) employment of illegal Immigrants; and
 - (ii) engagement in illicit or illegal trade including sale and consumption of drugs; prostitution; fire-arms; and pornography; and
 - (iii) unethical conduct in the disregard for the customs and traditions of the local area, and sacred grounds; and unlawful and unethical mistreatment of the local people in undermining their dignity and respect; and
- (h) inquire into and assess the effectiveness of existing legal and policy framework in the improved management of SABL in future including facilitating the applications from legitimate applicants; and
- (i) inquire into and determine if all of the seventy-two (72) SABL covering approximately 5.2 million hectares of customary land in PNG had complied with the existing legal and policy frameworks, in incorporation of *Land Groups Act 1974*, the *Land Act 1996*, the *Forestry Act 1991*, and the *Environment Act 2000*; and
- (j) to take all steps and to exercise all powers under all enabling legislations, inter alia, the *Commission of Inquiry Act* to complete this Inquiry and to Report to the Prime Minister for tabling in the National Parliament including all Recommendations, as well as to refer to appropriate law enforcement authorities any incidences of criminal conducts this Commission of Inquiry may become aware of in the course of this Inquiry; and
- (k) to make recommendations arising from the Inquiry; and
- (l) to make such referral for prosecution as the Commission deems appropriate; and
- (m) AND I FURTHER direct the Inquiry be held in Port Moresby or as such other place or places in Papua New Guinea; and
- (n) AND I FURTHER direct the Inquiry be held in public, but I approve that you may permit it to be given in private, any evidence that in the course of inquiry you, in your absolute discretion, consider needs to be given in private in accordance with Section 12 of the *Commission of Inquiry Act* (Chapter 31); and
- (o) AND I FURTHER direct that you commence the inquiry without delay and proceed therein with all dispatch and render to me your final reports within three (3) months from the date of commencement of the inquiry; and
- (p) AND I FURTHER direct that this Instrument relating to the Terms of Reference of Commission of Inquiry into the Department of National Planning and Monitoring supersede any previous Instruments issued under my hand,

commencing on and from the date of the signature of this Instrument for a period of three (3) months.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

Commissions of Inquiry Act (Chapter 31)**APPOINTMENT OF ESTABLISHMENT COMMISSIONER OF INQUIRY, CHIEF COMMISSIONER AND COMMISSIONERS**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 2 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby—

- (a) appoint and establish the Commission of Inquiry into Special Agriculture and Business Leases; and
- (b) appoint John Numapo to be the Chief Commissioner; and
- (c) appoint Alois Jerewai and Nicholas Mirou to be Commissioners, commencing on and from the date of the signature of this instrument for the period of three (3) months.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

Commissions of Inquiry Act (Chapter 31)**APPOINTMENT OF SENIOR COUNSEL ASSISTING COUNSEL TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Paul Tusais as Senior Counsel assisting Counsel to the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

Commissions of Inquiry Act (Chapter 31)**APPOINTMENT OF TECHNICAL ADVISOR TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Garry Sali as Technical Advisor assisting the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

Commissions of Inquiry Act (Chapter 31)**APPOINTMENT OF TECHNICAL ADVISOR TO THE COMMISSION**

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Mayapo Peipul as Technical Advisor assisting the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

Commissions of Inquiry Act (Chapter 31)

APPOINTMENT OF TECHNICAL ADVISOR TO THE COMMISSION

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4A(1) of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Mark Pupaka as Technical Advisor assisting the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

Commissions of Inquiry Act (Chapter 31)

APPOINTMENT OF SECRETARY OF COMMISSION

I, Samuel T. Abal, Acting Prime Minister, by virtue of the powers conferred by Section 4 of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby appoint Mathew Yuangu to be the Secretary of the Commission of Inquiry into the grant of Special Agriculture and Business Leases for a period of three months commencing on and from 25th July, 2011.

Dated this 21st day of July, 2011.

S. T. ABAL,
Acting Prime Minister.

APPENDIX '2'**1. Annexure "I" (Volume 1)**

- Affidavits / Statements & Submissions – Department of Lands and Physical Planning.

2. Annexure "II" (Volume 2)

- Affidavits / Statements & Submissions – PNG Forest Authority.

3. Annexure "III" (Volume 3)

- Affidavits / Statements / Documents & Submissions – Department of Environment and Conservation.

4. Annexure "IV" (Volume 4)

- Affidavits / Statements / Documents & Submissions – Department of Agriculture and Livestock.

5. Annexure "V" (Volume 5)

- Affidavits / Statement / Documents & Submissions – Department of Provincial & Local level Government
- Investment Promotion Authority.

6. Annexure "VI" (Volume 6)

- Affidavits / Statements / Documents & Submissions – Veady Holdings Ltd (Portion 2485C).
- Affidavits / Statements / Documents & Submissions – Changhae Tapioka (PNG) Ltd (Portions: 444C; 446C; 517C; 518C; 520C & 521C).

7. Annexure "VII" (Volume 7)

- Affidavits / Statements / Documents / Submissions – Roselaw Limited (Portion 2451C).

8. Annexure “VIII” (Volume 8)

- Affidavits / Statements / Documents / Submissions – Konekaru Holdings Limited (1) & (2) (Portions 2465C & 2466C).

9. Annexure “IX” (Volume 9)

- Affidavits / Statements / Documents / Submissions: - Okena Goto Karato Development Corporation Ltd (Portion 146C); Musa Valley Management Co. Ltd (Portion 17C) & Musida Holdings Ltd (Portion 16C).

10. Annexure “X” (Volume 10)

- Affidavits / Statements / Documents / Submissions – Ossima Resources Ltd (Portion 163C); West Maimai Ltd (Portion 594C); Nuku Resources Ltd (Portion 26C); Bewani Palm Oil Development Ltd (Portion 160C); Vanimo Jaya & One Uni Development Corporation (Portion 248C) & Wammy Limited (Portion 27C).

11. Annexure “XI” (Volume 11)

- Affidavits / Statements / Documents / Submissions – Porom Coffee Ltd (Portion 302C); Kemend Kelba Investment Ltd (Portion 155C) & Hewai Investment Ltd (Portion 351C).